

Court: Interpretation of FERPA from Office of Open Records Overly Narrow

PUBLISHED ON

August 7, 2019

A recent court ruling could make it easier for schools to assess what is deemed a protected educational record when it faces a Right-to-Know Law request.

The Commonwealth Court of Pennsylvania recently overturned a final determination of the Pennsylvania Office of Open Records as an "overly narrow" reading of the Family Educational Rights and Privacy Act (FERPA).

In [*West Chester University of Pennsylvania v. Adrian Rodriguez*](#), the OOR ordered the school to produce approximately 500 pages of email correspondence to a requester, since, in its view, the emails did not meet the definition of an "education record" under FERPA. The court disagreed and ordered the OOR to take up the case a second time, this time applying the standards it set forward in its decision on July 24.

FERPA defines an education record as a record that contains information directly related to a student, and is maintained by an educational agency or institution. With respect to the emails at issue, the court determined that OOR applied incorrect standards in its analysis of both prongs of the definition.

Regarding the first prong, OOR asserted that only those records relating to "student academics" are directly related to a student. The court disagreed with this analysis, and, instead, confirmed that the appropriate inquiry is whether the record directly relates to a student - regardless of its subject matter. The record doesn't have to relate solely to student academics to be protected by FERPA.

Regarding the second prong of the definition, OOR asserted that the emails were not education records because they were not kept in the permanent files of a student. Calling this view overly narrow, the court confirmed that the maintenance prong of the definition only requires that the records "must be maintained in some way that preserves them and tracks request for access to them, but placement within a single student's permanent file is not the only action that could constitute such maintenance." Regardless of where and how a student record is maintained, so long as it is, in fact, maintained, it could be protected by FERPA.

The court's decision adopts a more realistic standard for schools to apply when assessing whether a document constitutes a protected education record, exempt from disclosure under the [Right-to-Know Law](#). If you have any questions about this recent decision or how it can apply to your own Right-to-Know procedures, please contact any member of the [Barley Snyder Education Practice Group](#).