



Iowa General Assembly

2012 Legal Updates

Legislative Services Agency – Legal Services Division

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PUBLIC RELEASE OF EDUCATIONAL RECORDS - IOWA AND FEDERAL OPEN RECORDS LAW

Filed by the Iowa Supreme Court
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Press-Citizen Company, Inc., v. University of Iowa
No. 09-1612

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20120713/09-1612.pdf

Background and Procedure. The underlying sexual assault incident upon which this open records lawsuit is based occurred in October 2007 and involved students at the University of Iowa (University). Approximately one month after the incident, the Iowa City Press-Citizen (Press-Citizen) requested the University to produce certain reports, correspondence, e-mails, memos, and other University records relating to actual or attempted sexual assault incidents at the University in October 2007. The University originally produced only 18 pages of documents and claimed that other related documents were confidential records under Iowa's Open Records Act (Iowa Code chapter 22) and not subject to disclosure. The Press-Citizen subsequently filed a lawsuit in district court and a motion to compel the University to produce the requested documents. The district court granted the motion. The University produced 950 pages of documents and prepared a descriptive index (Vaughn index) of over 3,000 documents, which were submitted to the court for an *in camera* review. Upon review, the court entered an order dividing the 3,000 documents into five categories and further ordered the University to disclose certain documents not protected as confidential and subject to disclosure without any redactions (category 3 documents) and certain documents that are confidential and should be released, with student-identifying information redacted (category 4 documents). The University appealed the district court's order with respect to some of the category 3 documents and with respect to all of the category 4 documents.

Issue. Whether student confidentiality provisions of the federal Family Educational Rights and Privacy Act (FERPA) supercede the general disclosure requirements of government records under Iowa Code chapter 22, requiring the appealed category 3 and category 4 documents to be kept confidential.

Arguments and Analysis.

Iowa's Open Records Act and FERPA. In a divided 4-3 decision, the majority noted that the case "requires us to decide where disclosure ends and where confidentiality begins" under Iowa Code chapter 22 and FERPA. Iowa Code §22.2(1) generally requires "state and local entities" (defined as government bodies in the Act) to provide public access to their records. The University of Iowa, a state entity, is subject to Iowa Code chapter 22. Although the Act contains several exceptions to this general requirement of disclosure, the Court noted that the University did not base its argument on any of those statutory exceptions. Instead, the University argued that disclosure under Iowa law of the appealed documents is superceded by the federal confidentiality requirements of FERPA, and that the appealed University documents must therefore be kept confidential. FERPA was enacted by Congress in 1974 "under its spending power to condition the receipt of federal funds on certain requirements relating to the access and disclosure of student educational records" (citation omitted). Under FERPA, federal funding is not available to any educational institution or agency if it has a "policy or practice" of allowing the release of educational records or of allowing the release of personally identifiable information contained in educational records without the proper consent. The Press-Citizen argued that FERPA is merely a funding provision and not a "positive law" (meant to regulate certain behavior) and that FERPA does not prohibit disclosure of student educational records under Iowa Code chapter 22.

Iowa Code §22.9. While noting that "state and federal courts are sharply divided" on the issue of how to characterize FERPA confidentiality provisions and whether such provisions can supersede state open records laws, the Court

declined to resolve the conflict and instead focused its analysis on a provision in the Iowa Open Records Act that “already gives priority to FERPA”, Iowa Code §22.9. That Iowa Code section provides the following:

If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

An agency within the meaning of section 17A.2, subsection 1, shall adopt as a rule, in each situation where this section is believed applicable, its determination identifying those particular provisions of this chapter that must be waived in the circumstances to prevent the denial of federal funds, services, or information.

Under the first paragraph of Iowa Code §22.9, any provision of the Iowa Open Records Act that would cause the denial of federal funds to a state agency “shall be suspended.” The Court opined that, if the University regularly released educational records pursuant to Iowa Code §22.2(1), the University would be engaging in a “practice” of allowing the release of confidential educational records, assuming the records contained personally identifiable student information. The sanction for this “practice” would be a loss of federal funding. The Court interpreted the “policy or practice” requirement under FERPA broadly, rejecting the Press-Citizen’s arguments that the University had failed to show that the disclosure of such records in this one particular case would “definitely” cause the University to lose federal funding and that a one-time production of records in this particular case does not amount to a “policy or practice.”

The Court also dismissed the Press-Citizen’s argument that the second paragraph of Iowa Code §22.9 required the University to adopt a rule identifying those particular provisions of the Iowa Open Records Act that must be waived to prevent the denial of federal funds, and because of this failure to adopt a rule, the first paragraph of Iowa Code §22.9 was rendered ineffective and inapplicable. The Court determined that the paragraphs are not interrelated as the first paragraph was enacted in 1967, is written in the passive voice, and is directed at a general audience, while the second paragraph was enacted 17 years later in 1984 and is directed specifically to state agencies. The Court noted that “there is no indication that if an agency should fail to adopt a rule under the second paragraph...that the legislature intended the first paragraph to have no effect.” The Court concluded that Iowa Code §22.9 “incorporates confidentiality obligations from FERPA.”

Redaction. The Court also considered whether the confidentiality requirements under FERPA can be met by redacting certain student information in an educational record or whether the entire educational record must be withheld. The University argued that under regulations adopted by the United States Department of Education interpreting “personally identifiable information,” an educational record must be withheld in its entirety if such information would allow a reasonable person to know who the student was, even with redactions. In this case, there was a great amount of publicity surrounding the incident and the University argued that no amount of redaction could prevent the Press-Citizen from knowing the identity of the students involved in the incident. The Court agreed and found that, consistent with current federal regulations, the educational records may be withheld in their entirety in situations where the requester would otherwise know the identity of the student even with redactions.

Court Order or Subpoena Exception. Finally, the Court considered whether an exception contained in FERPA that provides that educational records disclosed pursuant to a court order or a subpoena may be released upon the condition that parents and students are notified prior to the issuance of the order or subpoena. The Court noted that this exception has been applied only in cases where the records are relevant to the issues raised in the lawsuit and did not involve the records themselves. The Court ruled that the “judicial order” exception cannot authorize disclosure whenever a party chooses to bring a separate court action seeking access to educational records, effectively making FERPA applicable only until the party requesting the educational records chooses to go to court.

Holding. The Court reversed the judgment of the district court relating to the disclosure of the records that were the subject of the appeal in this case, finding that the University was not required to release such records.

Dissent. The dissent noted that compliance with a judicial order pursuant to a generally applicable state public records statute does not amount to a policy or practice of any educational agency or institution that would subject the University to a loss of federal funding under FERPA. The dissent failed to find a conflict between FERPA and Iowa Code chapter 22, and would have required the educational records at issue in the case be disclosed.

LSA Monitor: Rachele Hjelmaas, Legislative Services Agency, Legal Division, (515) 281-8127.