

A Teacher's Right to Access Student Records in a Disciplinary Proceeding is Not Absolute

As many school districts are aware, it is not uncommon for a district to receive a request to disclose allegedly relevant student records to a tenured teacher facing disciplinary charges in the context of an Education Law Section 3020-a proceeding. However, as school districts are also aware, the Family Educational Rights and Privacy Act (FERPA) protects the privacy of student educational records and prohibits the disclosure of such records except in limited circumstances. Thus, the teacher's right to access evidence relevant to his/her defense must be balanced against a student's right to privacy in his/her educational records. The decision recently issued by the Appellate Division, Fourth Department, in [In re Watertown City School District v. Anonymous](#) is a good reminder to school districts that a teacher's right to access student records in a disciplinary proceeding is not absolute.

At issue in the *Watertown City School District* case was whether a tenured teacher could compel the school district to disclose student records that the teacher claimed were "highly relevant" and "necessary" to the teacher's defense to disciplinary charges. The teacher served on the district a broad subpoena seeking the production of all student records for all student witnesses who would be testifying against the teacher during the disciplinary hearing. The sole limitation on the teacher's request was that records prior to seventh grade were not requested; all other student records were requested under the subpoena.

The district objected that the student records sought were irrelevant and protected under FERPA, and ultimately brought a proceeding in New York State Supreme Court to quash the subpoena. The Supreme Court disagreed with the district, and ordered the district to produce all of the records requested under the subpoena.

However, on appeal, the Appellate Division reversed the lower court's ruling, and granted the school district's petition to quash the subpoena. The Appellate Division explained that the teacher was required to come forward with a factual basis establishing the relevance of the documents sought. The Court held that the teacher failed to meet this burden, principally because the allegations of misconduct against the teacher involved activities outside the classroom and the teacher did not provide any specific information regarding how the students' educational records were relevant to her defense.

In light of the Appellate Division's ruling in the *Watertown City School District* case, school districts can breathe at least a small sigh of relief knowing a tenured teacher facing disciplinary charges cannot gain unfettered access to student records in search of evidence to use in his/her defense. At a minimum, the teacher must establish a factual basis demonstrating that the student records sought are relevant and reasonably related to the teacher's defense.

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