



KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
CRIMINAL DIVISION (302) 577-8500
DIVISION CIVIL RIGHTS & PUBLIC TRUST (302) 577-5400
FAMILY DIVISION (302) 577-8400
FRAUD DIVISION (302) 577-8600
FAX (302) 577-2610

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB37

July 29, 2025

VIA EMAIL

Shannon Marvel McNaught
The News Journal/Delaware Online
smcnaught@gannett.com

RE: FOIA Petition Regarding the Indian River School District

Dear Ms. McNaught:

We write in response to your correspondence, alleging that the Indian River School District violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("FOIA"). We treat this correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005 of whether a violation of FOIA has occurred or is about to occur. As discussed more fully herein, we determine that the District did not violate FOIA by redacting the parent names from the settlement agreements it produced in response to your request.

BACKGROUND

On May 14, 2025, you submitted a FOIA request for "all settlements or legal releases signed by school or district officials from Jan. 1, 2020 to present."¹ The District replied with a production of redacted settlement agreements. You then asked for the records to be sent unredacted, because you believe "FOIA does not permit the redaction of parent names or dates."² The District responded that they "believe the agreements meet the definition of educational records under [the Federal Educational Rights and Privacy Act ("FERPA")]" and that the redactions to

¹ Petition.

² *Id.*

remove personally identifiable information were appropriate and required under the law” and “[y]ou are not entitled to unredacted versions containing personally identifiable information and/or information from which the identity of an individual student, and/or their status [as] a student who qualifies for special education services under the IDEA, could be derived.”³ This Petition followed.

In the Petition, you argue that redacting parent names is not appropriate under FOIA’s exemption for “pupil files . . . the disclosure of which would constitute an invasion of personal privacy, under [FOIA], or any State or federal law, as it relates to personal privacy.”⁴ You believe that disclosing parent names does not invade the student’s personal privacy, as it creates “merely a possibility of identification.”⁵ Further, you contend that settlement agreements do not constitute education records and are not entitled to the same level of privacy. You believe these agreements “touch on school governance and student welfare, making the public interest in transparency far more compelling than the mere possibility of privacy intrusion from naming parents.”⁶

The District, through its legal counsel, replied to the Petition (“Response”), including the affidavit of the Superintendent who attests to having personal knowledge of the facts in the affidavit. In its Response, the District argues both FERPA and FOIA’s exemption for pupil files in Section 10002(o)(1) are applicable. The District explains that FERPA denies federal funds to any educational entity that has a policy or practice of releasing any personally identifiable information in education records without written consent of the parents. Education records are defined as materials containing information directly related to a student, which are maintained by an educational agency or institution. The District states that Delaware law provides that student’s educational records are confidential and may only be released in accordance with the Department of Education regulations, which incorporate FERPA. The District asserts that personally identifiable information is defined under FERPA to include both direct identifiers, like a student name, and indirect identifiers, like a birth date, which can be used to distinguish or trace the identity of the student.

In this instance, the District states that it provided seven agreements to you, one of which is unredacted, as it involved an employee, rather than a student. For the remaining six agreements, the Superintendent attests that the District determined the settlements were “education records” under FERPA and redacted the personally identifiable information therein. Additionally, the District maintains that school districts are prohibited from publicly identifying students as being disabled. The District argues that releasing redacted settlement agreements met the intent behind FOIA while still protecting Delaware’s students from the unlawful disclosure of their personal information.

³ *Id.*

⁴ 29 *Del. C.* § 10002(o)(1).

⁵ Petition.

⁶ *Id.*

DISCUSSION

Delaware's FOIA law "was enacted to ensure governmental accountability by providing Delaware's citizens access to open meetings and meeting records of governmental or public bodies, as well as access to the public records of those entities."⁷ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁸ The public body has the burden of proof to justify its denial of access to records.⁹ In certain circumstances, a sworn affidavit may be required to meet that burden.¹⁰

In this case, you allege that the parent names were improperly redacted, arguing the settlement agreements are not "educational records" and thus not entitled to the same level of privacy as educational records. Section 10002(o)(6) excludes from the definition of "public record" any records that are "specifically exempted from public disclosure by statute or common law." Under 14 *Del. C.* § 4111(a), "[e]ducational records of students in all public and private schools in this State are deemed to be confidential," but "[e]ducational records may be released, and personally-identifiable information contained therein disclosed, only in accordance with the Family Educational Rights and Privacy Act . . . under 20 U.S.C. § 1232g and its implementing regulations set forth in 34 C.F.R. Part 99 and, with respect to records for students with disabilities, in accordance with Chapter 31 of this title and its implementing regulations."¹¹ The Delaware regulations require "[e]ach school district, charter school, and private school [to] develop, adopt, and maintain a written policy regarding the educational records of its students," and this policy must comply with FERPA and its regulations.¹²

FERPA defines "education records" as "those records, files, documents, and other materials which – (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution."¹³ FERPA further provides that "[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent

⁷ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁸ 29 *Del. C.* § 10003(a).

⁹ 29 *Del. C.* § 10005(c).

¹⁰ *Judicial Watch, Inc.*, 267 A.3d at 1008-1012.

¹¹ 14 *Del. C.* § 4111(a).

¹² 14 *Del. Admin. C.* § 251-2.0.

¹³ 20 *U.S.C.* § 1232g(a).

of their parents.”¹⁴ Personally identifiable information includes direct identifiers such as a student or parent name, and indirect identifiers, which can be used to link a student identity to the record.¹⁵

Upon reviewing these settlement agreements, the District determined that these agreements, including the parent names, fall within the scope of “education records,” and the parent names in these agreements are required to be kept confidential under this state and federal legal authority. While we find the District’s rationale to be reasonably determined, to the extent you disagree with the District’s analysis of legal authority outside of the FOIA statute, you may wish to seek relief from the courts.¹⁶

CONCLUSION

For the reasons set forth above, we conclude that the District did not violate FOIA by redacting the parent names from these settlement agreements.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Michelle G. Bounds, Attorney for the Indian River School District

¹⁴ 20 U.S.C. § 1232g(b).

¹⁵ 30 C.F.R. § 99.3.

¹⁶ 29 Del. C. § 10005. Section 10005(b) states “[a]ny citizen denied access to public records as provided in this chapter may bring suit within 60 days of such denial.”