

“What keeps you up at night?”

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Illinois Federal Court rejects FERPA as a bar to the release of student records

By Amy C. Foerster and Courtney L. Schultz

“FERPA does not ‘prohibit’ the release of education records.” That was the surprising conclusion of Judge Joan Gottschall of the United States District Court for the Northern District of Illinois in a March 7th decision issued in *Chicago Tribune Co. v. Univ. of Illinois Bd. of Trustees*. Before making your students’ records available for public review based on the *Chicago Tribune* case, however, it is important to recognize the narrow applicability of Judge Gottschall’s decision.

In this case, the *Chicago Tribune* used the Illinois Freedom of Information Act to request that the University of Illinois produce the admissions records of certain matriculated students. The Illinois FOIA contains an exemption from disclosure for “information specifically prohibited from disclosure” by federal law. Predictably, the University denied the *Tribune*’s request because student records are protected by FERPA. In response, the newspaper filed a lawsuit seeking to compel disclosure.

In permitting the *Tribune*’s claim to move forward, Judge Gottschall hung her analysis on the word “prohibited” in the Illinois FOIA, applying a very narrow construction of the statute. Specifically, she determined that FERPA does not “prohibit” the release of educational records, but only ties an institution’s receipt of federal funds to compliance with FERPA. In other words, Judge Gottschall found that because the University could avoid FERPA’s protections by rejecting federal education funds (including Title IV student aid), FERPA does not “prohibit” anything.

Generally speaking, only public institutions – that is those subject to state open records laws – need to be concerned with the *Tribune* decision. Before giving third parties access to student records, however, public institutions should check their respective state laws. For example, Pennsylvania’s Right-To-Know Law provides an exemption if disclosure “would result in the loss of

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Federal or State funds,” which directly addresses Judge Gottschall’s concern. 65 P.S. § 67.708(b)(1)(i).

As society strives to find a balance between transparency in the use of public funds and the desire to protect individual privacy, we will see more challenges to FERPA’s protections. Saul Ewing will continue to monitor this area of the law and issue additional updates as developments unfold.

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