

NEW JERSEY EDUCATION REPORT

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School Attorney: If Murphy Signs the OPRA Bill, He'll Hurt Parents and Children

By [Guest Contributor](#) at May 29, 2024

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The New Jersey Senate's adoption of the recent amendment to the Open Public Records Act ("OPRA"), Bill S-2930, indicates a troubling future for a cornerstone of state law that has promoted government transparency for over two decades. The amendment cleverly removes the critical first section of the Act which determines that "government records shall be readily accessible for inspection, copying, or examination by the citizens of the State." For students and their parents in particular, this alteration signifies that danger looms beyond the horizon.

Since the Act's adoption in 2001, OPRA has acted as a safeguard against opaque governance, enshrining the public's right to access with only a few, well-defined exceptions. These limitations were designed to be narrowly interpreted, thus favoring the public's right to know and restricting the potential for government agencies to conceal unfavorable records. However, the recent legislative changes to OPRA indicate that New Jersey's troubled history of corruption and dismal transparency— at a time when these accusations are reaching yet another climax— will not be reformed.

As a seasoned attorney in education and school law, I have witnessed firsthand the transformative impact of OPRA. When I first began practicing in 1990, the market for education attorneys was underrepresented, in no small part because of the unforgiving bureaucratic process through which students and their families had to leap through to obtain records necessary for litigation. Before OPRA, the only way to gain access to a client's student records was through the Family Educational Rights and Privacy Act ("FERPA") and New Jersey's Pupil Records Act ("NJPR"), or through New Jersey's "Right to Know" Law. Pursuing each avenue was inevitably futile because there was no enforcement mechanism, save for the U.S. or New Jersey Department of Education, neither of which were particularly effective in enforcing student's rights. FERPA itself is a mere funding statute with corresponding regulations

establishing remedies for improper disclosure of student records, itself having no established procedures for the actual disclosure of those records.

Prior to OPRA, obtaining access to student records was a negative feedback loop—though you needed the records to pursue a violation of student’s rights, they could only be obtained through a judge’s order, which would not be granted in the absence of records demonstrating that a violation had occurred.

When OPRA emerged as a replacement statute of the old “Right to Know” Law, I was one of the first attorneys to use it to obtain student records held by public schools via a Court Order. (See Appellate Division opinions in *L.R. v. Camden BOE*, *K.E. v. Evesham BOE*, *C.E. v. Elizabeth BOE*.) Not only were the Courts now permitted to order access to student records, but also to award prevailing party’s attorney’s fees in OPRA cases. Not only could parents gain access to their children’s records, but the financial burden of pursuing violations committed by public school districts was significantly lessened. For example, in *Doe v. Rutgers, State Univ. of N.J.* (2022), the university’s denial of a graduate student’s access to his own student records was reversed because his access was guaranteed under OPRA. The Court noted that FERPA outlined no such procedures by which government entities were required to disclose student records.

This amendment ensures that a return to the days of pre-OPRA litigation is imminent. The procedural roadblocks in obtaining student records that the amendment would diminish is the capacity of parents to ensure that public schools are adhering to New Jersey education laws. Without access to their child’s education records, how is a parent to know what transpires during the eight hours per day that they are made to blindly entrust their child to their school?

Further, not only does the amendment unreasonably narrow the scope of requests—requiring the naming of government officials and their proper titles in the request, for example— but it also provides for government agencies to sue records requesters. The threat of retaliation already looms large in cases involving public schools that children remain enrolled in through and after litigation. This threat will only be exacerbated if districts are green-lighted to counter-sue parents seeking to enforce their child’s rights.

As this bill now heads to the Governor’s desk, it is crucial to consider its implications for an under-represented but significantly affected party: students and their families. All New Jersey students and their parents should immediately contact the Governor’s Office before it’s too late.