D.T. on behalf of L.T., Plaintiff-Appellant, v. NEW JERSEY DEPARTMENT OF EDUCATION, JEANETTE LARKINS in her official capacity as Records Custodian of the New Jersey Department of Education, Defendants-Respondents.	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION** **A-3484-24** **CIVIL ACTION** **On appeal from a final judgment of the Mercer County Law Division Dated: June 30, 2025** **TRIAL DOCKET NO. MER-L-2374-24** **SAT BELOW:** **HON. ROBERT T. LOUGY, A.J.S.C.**

BRIEF OF PLAINTIFF-APPELLANT D.T. ON BEHALF OF L.T.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Statutes

TABLE OF JUDGMENTS, ORDERS, & RULINGS

PRELIMINARY STATEMENT

We request that this Court reverse the decision of the Trial Court and hold that authorized individuals have, such as parents and guardians, may enforce their right to unredacted student records under New Jersey's Open Public Records Act, N.J.S.A. 47:1A-1 to -13. ("OPRA").

Since this Court's decision in L.R. v. Camden City Public School District, 452 N.J. Super. 56 (App. Div. 2017) ("L.R. I") (*per curiam*), aff'd by an evenly divided Court, 238 N.J. 547 (2019) ("L.R. II"), parents and guardians of children have the right to request copies of their children's unredacted student records under OPRA. This is important because, unlike the Family Educational Rights and Privacy Act and the New Jersey Pupil Records Act, which do not grant parents specific, enforceable rights, the Open Public Records Act is the only avenue for parents and guardians to both request and enforce their right to access their child's student records.

Here, the Trial Court erred because it found that Defendants-Respondents New Jersey Department Of Education, Jeanette Larkins in her official capacity as Records Custodian of the New Jersey Department of Education ("Respondents") had provided records to Plaintiff-Appellant D.T. on behalf of L.T. ("Appellant"), pursuant to the New Jersey Pupil Records Act, N.J.S.A. 18A:36-19 ("NJPRA"), instead of pursuant to OPRA.

There is no private right of action under the NJPRA, and in fact, the NJPRA, and the interpreting case law such as L.R. I, establishes that all access to student records must be processed pursuant to OPRA. See also Doe v. Rutgers, 466 N.J. Super. 14 (App. Div. 2021) (reversing the portion of the trial court's holding that denied the plaintiff access to his own student records under OPRA); K.L. v. Evesham Township Board of Education, 423 N.J. Super. 337 (App. Div. 2011) (reversing the trial court and holding that the plaintiff parent had the right to secure copies of his own child's student records). And consequently, the Trial Court erred by not awarding Appellant prevailing party counsel fees and costs.

One of the reasons that the L.R. case was so important for parents and students was that L.R. sought records under OPRA relating to her own child. On this issue, L.R. prevailed. L.R., 452 N.J. Super. at 96 (affirming that portion of the trial court's order "solely as to the release of J.R.'s own records"). Because the Court in L.R. granted L.R. access to her own child's records under OPRA, D.T.'s right to access their child's records in the instant case arose solely under OPRA.

For these reasons, as more fully set forth below, the order of the Trial Court must be reversed, and this matter remanded to the Trial Court for the entry of an order finding that the records were requested and released pursuant to OPRA, and for the entry of an order awarding Appellant reasonable attorneys' fees and costs.

STATEMENT OF FACTS

On September 26, 2023, Appellant [1] submitted an OPRA request to Respondents which demanded access to "The contents of the file of OAL DKT. NO. EDS 00267-22, DOE AGENCY DKT. NO. 2022-33719, D.T. ON BEHALF OF L.T., Petitioner, v. LAWNSIDE BOARD OF EDUCATION, Respondent. (final decision 1/19/23)." (Pa3; Pa21).

On October 4, 2023, Respondents provided certain, but not all, of the records responsive to the OPRA request. (Pa4; Pa27; Pa61-62). When Appellant inquired as to the missing documents, on October 12, 2023, Respondents informed her that additional time to respond until October 20, 2023 was required because additional potentially responsive records were being retrieved from offsite storage. (Ibid.; Pa26; Pa61). On October 26, 2023, Respondents sought an extension of time to November 6, 2023. (Pa4-5; Pa25; Pa60). Respondents ultimately sought a total of seven extensions of time to respond, with the one prior to the filing of the Verified Complaint and Order to Show Cause being until December 29, 2023. (Pa5; Pa24-27; Pa55-60).

[1] Appellant D.T. is the indigent mother of L.T., a severely disabled child who was at that time enrolled in the Borough of Lawnside school district, which is overseen by Respondent's NJDOE. The Trial Court recognized that L.T. "functions at the level of a two-year-old despite being born in 2014." (Pa217).

STATEMENT OF PROCEDURAL HISTORY

On December 26, 2023, Appellant filed a Verified Complaint and Order to Show Cause seeking the disclosure of the missing records pursuant to OPRA. (Pa1-30). Appellant made clear that her Verified Complaint and Order to Show Cause was filed "solely under the Open Public Records Act." (Pa3).

On December 28, 2023, the Trial Court granted Appellant's Order to Show Cause, set a briefing schedule, scheduled a case management conference, and scheduled the return date for the Order to Show Cause. (Pa31-35). On December 29, 2023, Respondents sought another adjournment of time to respond until January 11, 2024. (Pa55).

On February 1, 2024 (the date established by the Trial Court for Respondents to file their answer and responsive papers), Respondents filed a motion seeking an extension of time to answer, move, or otherwise respond. (Pa36-37). On February 5, 2024, the Trial Court granted this motion, extending Respondents' responding deadline and adjourning the return date for the Order to Show Cause. (Pa38-39).

On February 16, 2024 (the new date established by the Trial Court for Respondents to file their answer and responsive papers), Respondents filed a second motion seeking an extension of time to answer, move, or otherwise respond. (Pa40-41). Also on February 16, 2024, Respondents provided the responsive documents that had previously been withheld. (Pa50-51; Pa68).

On March 20, 2024, the Trial Court held a status conference with the parties. (1T).[2] During this conference, the Trial Court confirmed that "[Respondents] have now given [Appellant] all the access to the OPRA records as was ordered." (1T4:2-9). At that time, the Trial Court appeared to consider the only remaining issue to be the question of prevailing party counsel fees, though Respondents stated that they would also be filing a motion to dismiss in lieu of an answer. (1T4:10-9:7).

On March 21, 2024, the Trial Court granted the second extension motion, extending Respondents' responding deadline and adjourning the return date for the Order to Show Cause. (Pa42-44). In the short statement of reasons which accompanied the order, the Trial Court recognized that the parties "acknowledge that [Appellant] now has all the records that are [at] issue" and that "[w]hat remains at issue are questions of liability -- did [Respondents] violate OPRA in not turning the records over consistent with statutory obligations, as [Appellant] alleges -- and, if so, what award of counsel fees and costs is [Appellant] entitled to." (Pa44).

On April 5, 2024, Respondents filed a motion to dismiss the Verified Complaint and Order to Show Cause. (Pa45-93).

On April 30, 2024, the parties appeared before the Trial Court for oral argument on Respondents' motion to dismiss, and for the return date on Appellant's

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[2] 1T = March 20, 2024 Transcript
2T = April 30, 2024 Transcript
3T = August 13, 2025 Transcript

Order to Show Cause. (2T).

On May 1, 2024, the Trial Court entered an order which granted Appellant's Order to Show Cause and denied Respondents' motion to dismiss. (Pa103-127). Furthermore, the Trial Court granted Appellant's application to be deemed a prevailing party, was granted reasonable attorneys' fees and costs, and further was granted a fee enhancement. (Ibid.).

On June 5, 2024, Appellant filed a motion seeking prevailing party fees and costs, and a fee enhancement. (Pa128-207).

On July 11, 2024, Respondents filed a motion for reconsideration from the Trial Court's May 1, 2024 Order. (Pa208-209).

On August 13, 2024, the parties appeared before the Trial Court for oral argument on Appellant's application for prevailing party attorneys' fees, and for Respondents' motion for reconsideration. (3T).

On June 30, 2025, the Trial Court entered an order which granted Respondents' motion for reconsideration and dismissed Appellant's verified complaint with prejudice, including a denial of her request to be found a prevailing party under OPRA. (Pa214-227).

This appeal followed. (Pa228-232).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED BY HOLDING THAT PLAINTIFF HAD NO RIGHT TO ACCESS HER OWN CHILD'S RECORDS UNDER THE OPEN PUBLIC RECORDS ACT AND BY HOLDING THAT PLAINTIFF HAD REQUESTED ACCESS UNDER THE NEW JERSEY PUPIL RECORDS ACT

(Raised Below at Pa223-224; 3T23-7-10).

Appellant requested several categories of student records regarding or referencing her own child, L.T.

The Trial Court initially found that "the requested records [were] government records under Open Public Records Act ("OPRA")," and that "[Respondents] denied [Appellant] access to the records." (Pa105; Pa125). Specifically, the Trial Court found that Appellant was the prevailing party because "[Respondents] violated OPRA by unlawfully and unfairly extending time to provide most of the documents in the file requested by [Appellant]." (Pa126). And finally, "the Court finds that the records requested by Plaintiff were neither exempt under OPRA nor other state and federal regulations." (Pa127).

However, on reconsideration, the Trial Court did an abrupt about-face and found that "[Appellant] sought access to student records under the NJPRA, specifically [Appellant] requested L.T.'s unredacted special education records pursuant to her special education case." And

> [a]lthough [Respondents] provided some responsive records in September 2023, [Respondents] did not release the balance of the responsive records until [Appellant] provided a parental consent release required by the NJPRA. The parental consent release allowed [Appellant] access to L.T.'s student records through her position as L.T.'s parent **via the NJPRA and FERPA, not as a general requestor under OPRA**.

(Pa227 (emphasis added)). And because "the Court finds that [Respondents] properly denied [Appellant] access to the records and OPRA and then properly provided them to [Appellant] under the NJPRA, [Appellant] is not a prevailing party under OPRA." (Ibid.).

However, this specific holding is contrary to decisions that have been published before and after L.R. I. New Jersey statutes and case law clearly establishes that parents and guardians have the right to access their child's student records, and the sole mechanism for that access is OPRA.

An appellate court reviews "de novo the issue of whether . . . OPRA and the manner of its effectuation are warranted." Drinker Biddle & Reath LLP v. New Jersey Dep't of Law & Pub. Safety, Div. of Law, 421 N.J. Super. 489, 497 (App. Div. 2011) (quoting MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 543 (App. Div. 2005)). The same standard of review is applied to the trial "court's legal conclusions with respect to whether access to public records is appropriate under the common-law right of access." Ibid. (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

New Jersey courts have a long history of protecting an adult student's right and the right of a parent to access their child's records **under OPRA**.

In K.L., this Court reversed the trial court in part and held that "Plaintiff clearly has a right to review school records pertaining to his own children." (423 N.J. Super. at 357 (citing N.J.A.C. 6A:32-7.5(e) and 20 U.S.C. 1232(a)(1)(A)). The Court also held that because Plaintiff secured access to his child's records, they were the prevailing party under OPRA. Id. at 364.

In Doe v. Rutgers, the Appellate Division reversed the trial court in part and ordered disclosure of Doe's unredacted academic transcripts, discipline records, and financial records, subject only to the redactions to "preclude the identity of other students." 466 N.J. Super. at 31. The Court also observed that "[t]here is nothing in FERPA or its regulations that precludes higher education students from obtaining their own student records through OPRA." Id. at 26.

And, of course, in L.R. I, the Appellate Division held that "if a school district receives an OPRA request from an authorized person or organization listed under N.J.A.C. 6A:32-7.5(e), then it must process that request in compliance with OPRA and FERPA requirements." 452 N.J. Super. at 86 (emphasis in original). Here, D.T. was an authorized person who submitted an OPRA request that Defendants were required to process under OPRA.

Importantly, in both K.L. and L.R. I, the Courts ordered disclosure of those

plaintiffs' student records them and also ordered that references to other students' identities be redacted. L.R. I, 452 N.J. Super. at 96 (affirming the trial court in part and remanding "for further proceedings regarding access to records that mention or could identify other students."). This shows that parents, guardians and students over the age of 18 have access to their own records under OPRA in ways that the public does not.

Plaintiff never alleged that any other law applied to Plaintiff's claim. Contrary to the Trial Court's finding, Appellant's sole claim was under OPRA. The Verified Complaint states clearly that her request for records was made under OPRA, and that "this civil action is being brought solely under [OPRA.]" (Pa1-3). The complaint cited no other legal theory for access to records. (Ibid.).

Indeed, Appellant did not have the option of bringing an action under any law aside from OPRA. There is no private right of action under FERPA, Gonzaga Univ. v. Doe, 536 U.S. 273, 276 (2002), and New Jersey regulations similarly provide for no private right of action. L.S. v. Mount Olive Board of Education, 765 F. Supp. 2d 648, 664 (D.N.J. 2011) (holding that there is no private right of action under FERPA and the NJPRA); State v. J.S.G., 456 N.J. Super. 87, 105 (App. Div. 2018) (observing, as part of an analysis regarding whether a criminal defendant had a reasonable expectation of privacy in student records under State or Federal law, that there is no private cause of action under FERPA or the NJPRA). In addition, FERPA

"does not itself establish procedures for disclosure of student records." K.L., 423 N.J. Super. at 363.

Likewise, "the NJPRA and its governing regulations merely provide administrative remedies for a violation and do not provide for a private right of action or suppression." J.S.G., 456 N.J. Super. at 105 (citing L.S., 765 F. Supp. 2d at 664). Thus, a student, or a student's parents such as Appellant here, can only enforce their right to access records under OPRA.

Respondents acknowledged at oral argument before the Trial Court that Appellant had made "a request for unredacted copies of a student's own student records." (3T17:6-7). And there is no exemption to OPRA which permits an entity to withhold student records from the student and/or the parent, guardian, or legal representative of that student.

Under the decision of the Appellate Division in L.R. I, parents have had the right under OPRA to secure access to their children's records. 452 N.J. Super. at 95.[3]

L.R. I consisted of four consolidated appeals from proceedings in four different trial courts; only one of those four trial court proceedings involved a parent

[3] L.R. I was affirmed by an equally divided Supreme Court. L.R. v. Camden City Public School Dist., 238 N.J. 547 (2019) ("L.R. II"). An opinion by an equally divided court has no precedential value and affirms the decision of the Court below. Neil v. Biggers, 409 U.S. 188, 192 (1972). Walter M. Luers, Esq. and Jamie Epstein, Esq. were counsel for the Plaintiff in L.R. I and L.R. II.

seeking copies of their own child's records.

As noted by L.R. I, "in the fourth case, Camden City, the trial judge dealt with the separate issues posed by a parent's access **to her own child's records**, 'access logs' for those records, and other documents possessed by the school district that refer to her child." 452 N.J. Super. at 63 (emphasis added). In that case, the trial court had "ordered the school district to produce an unredacted copy of the child's own records and access logs, but not other records." Ibid. And L.R.'s complaint in their case against the Camden City Public School District contained only one Count, which was as an OPRA count, though she was *sua sponte* granted leave to amend her complaint on remand to add a common law count if she decided to seek access to records other than her own child's. Id. at 91, n.11. A plain reading of L.R. I shows that the ruling was in the context of OPRA, and there the Court affirmed "the trial court's grant of access concerning records that exclusively mention plaintiff's child." Ibid. Specifically, this Court stated clearly:

> We are satisfied . . . that a student or his or her parent, guardian, or authorized legal representative is entitled, subject to the child abuse and dependency caveats in N.J.A.C. 6A:32-7.6(a)(4)(i), to reasonable and prompt access to unredacted copies of his or her own records and access logs, assuming they do not incidentally mention or identify other students.
>
> [L.R. I, 452 N.J. Super. at 95.]

L.R. I held, without ambiguity, that the protections of N.J.A.C. 6A:32-7.5(g)

were procedural in nature and concerned the "*processing*" of requests for student records. L.R. I, 452 N.J. Super. at 86 (emphasis in original). Judge Sabatino specifically wrote that schools must "*process*" OPRA requests from an authorized person or entity for student record. Ibid. We quote the relevant passage in L.R. I in full immediately below:

> It is reasonable to conclude that N.J.A.C. 6A:32-7.5(g) centrally concerns functionality — a district's *processing* of student record requests from an authorized person or organization. For instance, **if a school district receives an OPRA request from an authorized person or organization listed under N.J.A.C. 6A:32-7.5(e), then it must process that request in compliance with OPRA and FERPA requirements**.

Id. at 86-87 (internal citations omitted; italics in original; bold and underline added). And the very first category of "authorized persons" listed under N.J.A.C. 6A:32-7.5(e) includes "the parent of a student under the age of 18[.]"

It is clear from the quoted passage above that the Defendants were required to "process" OPRA requests for a student's own records, or as is the case here, for a parent acting on their child's behalf. Any other interpretation would be unreasonable.

Had this Court intended for parents to access records through a law other than OPRA, the panel would not have used the example of an OPRA request. Indeed, if the panel had intended OPRA not to be the source of L.R.'s right to records in that case, then it would have dismissed L.R.'s case against Camden, because she asserted

her rights under OPRA only.

This case is on all fours with L.R. I., and this Court's holding regarding L.R.'s ability to access her own child's records via OPRA should have been applied to this case by the Trial Court. Appellant here is in the exact same position as L.R., and is authorized to access the records of her own child, L.T. The procedural protections that are in place to protect student records from unauthorized access have been satisfied – Appellant is known to Respondents and release of unredacted student records would have been appropriate.

Any other holding would turn L.R. I on its head. No plaintiff in L.R. I, including L.R. herself, brought any claim based on FERPA or New Jersey's regulations regarding student records. L.R.'s sole claim was under OPRA; as discussed above, they were not granted access under any other law.

Indeed, since L.R. I and L.R. II, the rights of students and the public have been clarified and expanded. Effective July 5, 2022, the Pupil Records Act regulations were amended to clarify that any person may utilize OPRA to request and receive records related to students, without the consent of the student, guardian or parent, provided that the board of education has removed or redacted "all personally identifiable information." N.J.A.C. 6A:32-7.5(g)(1). Surely Appellant's right to

access her child's[4] own student records is not narrower than the public's right to access such records.

Below, Respondents relied heavily on the fact that Appellant had executed a parental release for the requested records. And the Trial Court seemingly agreed, stating that

> [a]lthough [Respondents] provided some responsive records in September 2023, [Respondents] did not release the balance of the responsive records until [Appellant] provided a parental consent release required by the NJPRA. The parental consent release allowed [Appellant] access to L.T.'s student records through her position as L.T.'s parent **via the NJPRA and FERPA, not as a general requestor under OPRA**.

(Pa227 (emphasis added)). This argument is a red herring and should be disregarded.

First, as discussed above, FERPA "does not itself establish procedures for disclosure of student records." K.L., 423 N.J. Super. at 363.

Second, the fact that Respondents provided, and Appellant signed, a parental consent release prior to the disclosure of the records does not negate the fact that Appellant was always entitled to the release of the records pursuant to OPRA and N.J.A.C. 6A:32-7.5(e)(1). As an "authorized person," since L.R. I, parents have had the right to access their own child's unredacted records. It would be contrary to public policy for Respondents, and other entities like Respondents, to be able to

[4] To the extent other students are identified in responsive records, Appellant does not dispute that those names may be redacted.

circumvent the strictures and consequences of violating OPRA by providing a release after the denial of an OPRA request, and then allowing the entity to point to that very release as proof that the request had been made under the Pupil Records Act instead of OPRA.

Respondents may argue that the Supreme Court in L.R. II held that unredacted student records are "exempt from disclosure under OPRA." 238 N.J. at 561. Defendants will likely rely on Justice Patterson's concurrence that case. However, because the L.R. II Court was equally divided on how to construe the term "student record" under OPRA and N.J.A.C. 6A:32-2.1, L.R. I was affirmed and the concurring and dissenting opinions by the equally divided justices create no new legal precedent. Therefore, the L.R. II concurrence and dissent do not constitute precedent in any other case, and L.R. I controlled. Abbamont v. Piscataway Township Board of Education, 314 N.J. Super. 293, 301 (App. Div. 1998), aff'd, 164 N.J. 14 (1999) (confirming that a decision by an equally divided Court has no precedential weight in other cases).

As such, it was error for the Trial Court to this Court should reverse and remand this matter to the Trial Court with the appropriate instruction, including for the entry of an order awarding Plaintiff reasonable attorneys' fees and costs.

POINT II

ALTERNATIVELY, THE COURT SHOULD HOLD THAT THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT GRANTED RECONSIDERATION

(Raised Below at 3T:11:2-20).

Alternatively, we request that the Court hold that the Trial Court's grant of reconsideration was improvident. Although interlocutory orders are subject to revision at any time in the "sound discretion of the court in the interest of justice," Rule 4:42-2, the Trial Court's granting of reconsideration here was an abuse of discretion and should be reversed.

"An 'abuse of discretion is demonstrated if the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error of judgment.'" In re Estate of Ehrlich, 427 N.J. Super. 64, 76 (App. Div. 2012) (quoting United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 390 (App. Div.), certif. denied, 200 N.J. 367 (2009)).

Final orders may be modified when either the court expressed its decision on a palpably incorrect or irrational basis or the court did not consider, or failed to appreciate, the significance of evidence submitted. Rule 4:49-1; D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Under either standard, reconsideration was inappropriate. It was a clear error

of judgment (or it was palpably incorrect or irrational) for the Trial Court to rule, contrary to binding New Jersey case law, as discussed more fully above in Point I, that Appellant had obtained her child's student records under the NJPRA, rather than under OPRA.

Such use of reconsideration constituted reversible error.

CONCLUSION

For the foregoing reasons, the Trial Court's judgment against Plaintiff must be reversed and this matter remanded to the Trial Court with directions that Plaintiff be found to be the prevailing party under OPRA, and for an award of prevailing party counsel fees in favor of Plaintiff under N.J.S.A. 47:1A-6 and Mason v. Hoboken, 196 N.J. 51 (2008).

Respectfully submitted,

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Dated: November 5, 2025

D.T. ON BEHALF OF L.T., Plaintiff-Appellant, v. NEW JERSEY DEPARTMENT OF EDUCATION, JEANETTE LARKINS IN HER OFFICIAL CAPACITY AS RECORDS CUSTODIAN OF THE NEW JERSEY DEPARTMENT OF EDUCATION, Defendants-Respondents.	:	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NUMBER: A-3484-24 CIVIL ACTION ON APPEAL FROM A FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION- MERCER COUNTY Trial Docket No. MER-L-2374-24 Sat Below: Hon. Robert T. Lougy, A.J.S.C.

BRIEF ON BEHALF OF RESPONDENTS NEW JERSEY DEPARTMENT OF EDUCATION AND JEANETTE LARKINS, IN HER OFFICIAL CAPACITY AS RECORDS CUSTODIAN OF THE NEW JERSEY DEPARTMENT OF EDUCATION

Date Submitted: February 4, 2026

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

Page

STATUTES

REGULATIONS

OTHER SOURCES

PRELIMINARY STATEMENT

Any request to access student records is governed by multiple statutory schemes. The records at issue in this appeal are unredacted special education records which all agree are subject to the federal Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 to 1482; the Federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. §1232g(a)(4)(A); and the New Jersey Pupil Records Act ("NJPRA"), N.J.S.A. 18A:36-19. Those laws and their implementing regulations prohibit a records custodian from disclosing student records to any person organization or agency that is not an authorized person, organization or agency as defined in said statutes. However, those laws also carve out a right for a parent or guardian to obtain the unredacted student records of their own student if they submit a parental consent release. If an entity fails to comply with these acts and their implementing regulations, there are administrative remedies that a parent or guardian may seek by filing an appeal with the Commissioner of Education or a complaint with the United States Secretary of Education.

Under New Jersey's Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 to -13, records that must be kept confidential by statute, rule, or prior case law are excluded from public access. Because the IDEA, FERPA, and NJPRA designate unredacted special education records as confidential, they are

excluded from public access under OPRA. That much is not subject to debate. Instead, the basic premise of Appellant's appeal is that gaining access to those records (i.e. "prevailing") under the education laws made her a "prevailing party" under OPRA.

There is no legal authority for that novel proposition. OPRA, which governs the public's right to access a public record, is entirely distinct from laws like FERPA and the NJPRA that govern an individual's right to access a record that is private. Subjecting such records to OPRA is contrary to FERPA, the NJPRA, controlling appellate authority, and the general tenet that the identity of the requestor is not material to whether records are considered public records under OPRA's definition of a "government record."

The trial court correctly rejected Appellant's invitation to graft those other laws—which serve different objectives and have their own methods of enforcement—upon OPRA and to transform an otherwise protected student record into a "public record" and expand what it means to be a "prevailing party" under OPRA. This Court should do the same.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

A. Due Process Hearings and Student Records.

The IDEA governs the provision of special education services to students with disabilities and requires states to fashion a free and appropriate public education ("FAPE") to the unique needs of each disabled child by means of an individualized educational program, or "IEP." 20 U.S.C. § 1414(d). The IDEA also requires each state to provide a dispute resolution process for parents to request a due process hearing for disputes involving the IEP or other special education services. 20 U.S.C. § 1407(b), § 1415.

The New Jersey Department of Education ("DOE") has promulgated regulations governing the handling of matters arising under the IDEA. See N.J.A.C. 6A:14-1.1 to -10.2. All disputes related to special education services must be filed with DOE's Office of Special Education Policy and Dispute Resolution ("SPDR") by way of a due process petition. See N.J.A.C. 6A:14-2.7(c). The parties are then given an opportunity to resolve the matter before going to a hearing, by conducting a resolution session or participating in mediation if requested by the parent and agreed to by the district. See N.J.A.C.

[1] The procedural history and counterstatement of facts are closely related in this matter and have been combined to avoid repetition and for the court's convenience.

6A:14-2.7(g) & (h). If the local education agency (LEA) fails to resolve the dispute detailed in the due process complaint to the satisfaction of the parent, the SPDR will then transmit the matter to the Office of Administrative Law ("OAL") for a due process hearing. See N.J.A.C. 6A:14-2.7(h)(4).

The OAL's rules, N.J.A.C. 1:6A-1.1 to -18.5, govern the conduct of due process hearings. The regulations make clear that their purpose is to implement the IDEA, N.J.A.C. 1:6A-1.1(b), and that, "[s]ince these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided herein or pursuant to Federal law." N.J.A.C. 1:6A-1.1(c).

The IDEA and its corresponding regulations require that special education due process hearings must be conducted in a confidential manner. See 20 U.S.C. § 1417(c); 20 U.S.C. § 1412(a)(8); 34 C.F.R. § 300.123; 34 C.F.R. § 300.610; N.J.A.C. 1:6A-14.1(b). Specifically, 34 C.F.R. § 300.123 declares that states must maintain procedures to protect the confidentiality of personally identifiable information ("PII") collected, used or maintained under Part B of the IDEA. And, states and local agencies "must protect the confidentiality of personally identifiable information [PII] at collection, storage, disclosure, and destruction stages" (emphasis added). 34. C.F.R. § 300.623.

The IDEA also incorporates the privacy provisions of the FERPA, 20 U.S.C. § 1232g, which governs all education records. See 20 U.S.C. § 1417(c).

Critically, the IDEA regulations incorporate the definition of "education records" set forth in FERPA. 34 C.F.R. § 300.611. Under the FERPA regulations, an education record is any record directly related to a student maintained by a state or local education agency. 34 C.F.R. § 99.3. An educational agency cannot disclose any PII without parental consent. 34 C.F.R. § 99.30. PII is broadly defined as including any information that, "alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." 34 C.F.R. § 99.3. Thus, the IDEA regulations require state and local agencies to ensure the confidentiality of broadly defined PII at all stages, which includes the due process hearing.

In addition, the DOE's own regulations limit access to records involving students, including those pertaining to special education due process matters, to certain enumerated categories of individuals. See N.J.A.C. 6A:14-2.9(a) (citing N.J.A.C. 6A:32-7 (governing student records)); see N.J.A.C. 6A:32-7.5 (authorizing access to student records to among others, the student, his or her parent, certified school district personnel, and certified educational personnel). Accordingly, only the written findings and decisions of due process hearings are designated as being required to be made public, after the deletion of any PII

consistent with 20 U.S.C. § 1417. 20 U.S.C. § 1415(h)(4); 34 C.F.R. 300.513(d). No other document or other tangible material is designated as being required to be made public under the IDEA. See 20 U.S.C. 1415(h); see also N.J.A.C. 1:6A-14.5; N.J.A.C. 1:6A-18.2.

Under DOE's student records regulations, student records are exempt from OPRA. See N.J.A.C. 6A:32-7.5. Only upon the removal of all PII do student records no longer meet the definition of a student record and are only then subject to OPRA. N.J.A.C. 6A:32-7.5(g)(1). And, like under FERPA, DOE's regulations also define PII to include "[o]ther information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty." N.J.A.C. 6A:32-2.1.

B. Appellant's Request for Student Records.

On December 20, 2021, Appellant, D.T. on behalf of her child, L.T., filed a due process petition arising from a special education dispute under the IDEA, with DOE. (Pa3; Pa18.)[2] On January 11, 2022, the matter was transmitted to the OAL for a due process hearing. (Pa3; Pa18.) As a party to the matter, Appellant had access to all records related to the due process complaint,

[2] "Pa" refers to Appellant's appendix. "Pb" refers to Appellant's brief.

including, exhibits introduced and admitted into evidence at the hearing. After the hearing concluded, the OAL issued a final decision on January 19, 2023, and returned the file back to DOE. (Pa3; Pa49.)

Eight months later, on September 26, Appellant submitted a request to the DOE records custodian for "[t]he contents of the file of OAL DKT. NO. EDS 00267-22, DOE AGENCY DKT. NO. 2022-33719 D.T. ON BEHALF OF L.T., Petitioner, v. LAWNSIDE BOARD OF EDUCATION, Respondent." (Pa21.) Appellant acknowledged that the requested records are "education records," also referred to as student records, under the IDEA, FERPA and the NJPRA. (Pa3-4.) On October 4, which was within seven business days of that request, DOE provided the records in its possession that were responsive to Appellant's request. (Pa4; Pa48.) That initial production of records included the notice acknowledging the request for a due process hearing, the pleadings, Appellant's request to transmit the matter to the OAL for a hearing, and the administrative law judge's January 19, 2023, final decision. (Pa48.) On October 5 and 12, counsel for Appellant informed DOE that the production was incomplete and claimed there should have been "approximately hundreds of documents." (Pa4.)

When the OAL returns an agency file to DOE after a hearing, the exhibits are stored at an offsite storage facility as it is impractical to maintain all records associated with a due process hearing on-site due to lack of space. (Pa49.)

Therefore, on October 12, the records custodian requested additional time to retrieve the student records from the offsite storage facility. (Pa4-5; Pa24-26; Pa48-49.) DOE subsequently learned that the facility where any potentially responsive records would have been stored had suffered damage, and that local authorities were limiting access to the building until it was deemed structurally sound. (Pa49-50; Pa66.) Therefore, on October 12, October 26, November 6, November 17, November 29, December 8, December 19, and December 29, the records custodian contacted Appellant's counsel to request additional time to supplement its response. (Pa55-62.)

On December 26, 2023, Appellant filed a verified complaint and order to show cause ("OTSC"), alleging DOE had violated OPRA because it did not provide the entire contents of the OAL file in response to its initial September 26 request. (Pa6.)

On January 8, 2024, while the complaint was still pending. DOE received the balance of the records from storage. (Pa50.) The records included approximately 1808 pages of records, consisting mostly of exhibits that had been introduced at the OAL during the special education due process hearing. Ibid. Given the sensitive nature of all student records, DOE comprehensively reviewed the full file to determine if any other students were mentioned or could be identified from the records, and reviewed the records for any additional

applicable OPRA privileges or exemptions. Ibid. After reviewing the documents, DOE advised Appellant's counsel on February 1 and 15, that those records were confidential student records under the NJPRA, FERPA and the IDEA, and were not subject to public access under OPRA in their unredacted form. (Pa80-81; Pa88-89.) However, it found that Appellant had a separate statutory right to access the unredacted student records of her child under the IDEA, FERPA and the NJPRA, because Appellant had submitted a parental consent release with the request for records. (Pa88-89.)

On February 16, 2024, DOE produced the remaining unredacted student records to Appellant's counsel. (Pa50-51; Pa68.) Through counsel, DOE maintained that the records are student records not accessible to the public under OPRA and were only provided pursuant to the provisions of NJPRA and FERPA that allow a parent to access her child's records upon submission of a signed parental consent release. (Pa88-89.)

On April 5, 2024, DOE moved to dismiss the complaint on the grounds that the requested records are exempt from OPRA as access to the records is governed by federal and state laws concerning confidential student records, and as such, Appellant is not a "prevailing party" under OPRA entitled to counsel fees. (Pa107-112.)

On May 1, 2024, the trial court issued an order granting the OTSC and denying DOE's motion to dismiss. (Pa103-127.) The court awarded Appellant costs, counsel fees, and an enhancement under OPRA. (Pa216.) The court also ordered the parties to negotiate counsel fees. Ibid. Despite making good faith efforts, the parties were unable to resolve the matter.

Appellant filed a motion for counsel fees. (Pa215.) DOE simultaneously moved for reconsideration of the court's May 1 order, arguing that unredacted student records are exempt and not accessible under OPRA, and that Appellant's lawsuit was not the catalyst for production of the records. (Pa219-223.) Rather, DOE sought necessary extensions as it waited for potentially responsive records located off-site, and once received, needed to review the remaining records to determine if other students besides L.T. were referenced or could be identified and ultimately provided those records responsive to the request after confirming that the release provided by Appellant authorized release of those records. Ibid. For these reasons, DOE argued that Appellant is not a prevailing party as defined by OPRA and is not entitled to attorney's fees or a fee enhancement. (Pa221-22.)

On June 30, 2024, the trial court granted the motion for reconsideration, denying Appellant's request for attorney's fees, and dismissing the complaint with prejudice. (Pa214-227.) In its comprehensive opinion, the court explained

that it had "missed the complexities of interactions between FERPA, NJPRA, and OPRA and erroneously concluded that [DOE] violated OPRA when, in fact, they did not." (Pa225.) The court found that unredacted student records are protected from public disclosure under the NJPRA, FERPA, the IDEA, and other state and federal regulations specifically covering special education records. (Pa226.) (citing N.J.A.C. 6A:32-7.5(g) (providing protection from disclosure of information that could reveal a specific student's identity); 34 C.F.R. § 99.3 (defining what constitutes education records and PII); 20 U.S.C. § 1400 (governing the provision of special education services to students with disabilities); N.J.A.C. 1:6A-1.1 to –18.5 (setting forth rules established pursuant to the IDEA and the handling of special education due process hearings).

However, the court recognized that the NJPRA and FERPA grant access to unredacted student records upon a written request from a parent of a student under the age of eighteen. (Pa226-27.) (citing N.J.A.C. 6A:32-7.5(e) (setting forth organizations, agencies, and persons authorized access to student records)). Because the DOE released those records to Appellant pursuant to the NJPRA and FERPA—not as a general requestor seeking government records under OPRA—the court concluded that Appellant was not a prevailing party under OPRA, and thus denied her application for counsel fees and dismissed the complaint. Ibid.

This appeal followed.

ARGUMENT

APPELLANT CANNOT BE CONSIDERED A PREVAILING PARTY UNDER OPRA BECAUSE THE RIGHT TO ACCESS THE UNREDACTED STUDENT RECORDS DID NOT ARISE UNDER OPRA.

Because DOE was never obligated to release the requested records under OPRA, Appellant is not a prevailing party under OPRA. Appellant was entitled to access the student records in this case but only because she qualified under the NJPRA and FERPA; any individualized rights she may enjoy under those laws do not change the protected confidential status of the records under OPRA. The decision on appeal represents a straightforward application of the governing laws and should be affirmed.

A trial court's decision on statutory and regulatory legal issues is reviewed de novo. State v. Harper, 229 N.J. 228 (2017). OPRA was enacted to "maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (citation omitted). OPRA promotes this policy by making "government records" publicly accessible. N.J.S.A. 47:1A-1.1. That said, the right to access is not absolute.

OPRA also requires agencies to "safeguard a citizen's personal

information when disclosure would violate the citizen's reasonable expectation of privacy." N.J.S.A. 47:1A-1. The privacy clause under OPRA "imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests." Burnett v. Cty. of Bergen, 198 N.J. 408, 423 (2009). Therefore, the statute excludes from the definition of "government record" numerous categories of documents and information. Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274, 284 (2009). These include items exempted from disclosure by any statute, legislative resolution, executive order, or court rule. N.J.S.A. 47:1A-9. All unredacted student records are exempt from disclosure under OPRA by operation of the NJPRA and FERPA. See N.J.S.A. 47:1A-9(a) (providing that records required to be kept confidential by statute, rule or prior case law are excluded from public access under OPRA).

Like OPRA, FERPA and the NJPRA strives to strike a compromise, but the underlying interests are distinct. The latter laws represent attempts by Congress and the New Jersey Legislature to safeguard the legitimate privacy interests of students, while ensuring that students can access their own records and limited third parties can access educational records. In 1974, Congress enacted FERPA, 20 U.S.C. § 1232g, creating a standard of family educational rights and privacy. To ensure that students' education records are not disclosed

to unauthorized entities, FERPA prohibits federal funding to any education agency "which has a policy or practice of permitting the release of educational records (or personally identifiable information ("PII") contained therein other than directory information)" other than to authorized entities, without the consent of the parent or student. 20 U.S.C. § 1232g(b)(1). It defines "education records" broadly, as 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." 20 U.S.C. § 1232g(a)(4)(A)(i)-(ii).

The statute and regulations further delineate the authorized individuals and entities to whom PII from an educational record may be disclosed. 34 C.F.R. § 99.30 (setting forth conditions of when prior consent is required to disclose information); 34 C.F.R. § 99.31 (setting forth conditions of when prior consent is not required to disclose information); 34 C.F.R. § 99.3 (defining PII including, but not limited to, the name and address of the student and family members, personal identifiers such as social security number, and indirect identifiers, such as student's date of birth, place of birth and mother's maiden name, and information that, "alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the

student with reasonable certainty").

Following FERPA's enactment, the Legislature amended the NJPRA in 1977 to protect: a pupil's right "to be supplied with necessary information about herself or himself;" the right of "the parent or guardian and the adult pupil to be supplied with full information about the pupil, except as may be inconsistent with reasonable protection of the persons involved;" the rights of both pupil and parent or guardian "to reasonable privacy as against other persons;" and the "opportunity for the public schools to have the data necessary to provide a thorough and efficient educational system for all pupils." N.J.S.A. 18A:36-19. To that end, N.J.A.C. 6A:32-2.1 defines a "student record" as "information related to an individual student gathered within or outside the school district and maintained within the school district, regardless of the physical form in which it is maintained." N.J.A.C. 6A:32-7.5 details when authorized individuals and entities may access unredacted student records. For example, N.J.A.C. 6A:32-7.5(e) permits access to students with the written permission of a parent and parents of students under the age of eighteen; to students who are at least sixteen years old and who intend to terminate their education; and to adult students or parents of adult students who either have written permission from the adult

student or upon whom the adult student is financially dependent.[3] Thus, like FERPA, the State regulations limit access to identifiable student information to authorized persons, consistent with the State statutory mandate to ensure "reasonable privacy as against other persons." N.J.S.A. 18A:36-19.

DOE acted in accordance with those laws. After receiving Appellant's request for unredacted records of a specific student and the release signed by the student's parent, DOE provided Appellant those records in its possession. (Pa88-89.) It could not have provided the records under OPRA because the plain terms precluded their release. Appellant ignores that fundamental point.

Appellant's arguments envision the purpose of OPRA is to act as a vehicle to enforce other rights of access afforded under other laws and regulations, but as noted, there is nothing in the plain text of the statute to support that interpretation of the statute. (Pb15). N.J.S.A. 47:1A-9 clearly requires the opposite.

Appellant's arguments otherwise misread the Appellate Division's decision in L.R. v. Camden City Pub. Sch. Dist. ("L.R. I"), 452 N.J. Super. 56, 84-85, 90 (App. Div. 2017). There the Appellate Division held that all student records that can be used to identify a particular student are exempt from

[3] FERPA has a similar list of authorized entities that includes those identified in the State provisions. See 34 C.F.R. § 99.31.

disclosure under OPRA. The Supreme Court later granted certification to consider whether fully redacted student records are disclosable under OPRA based on a prior version of the NJPRA regulations. L.R. v. Camden City Pub. Sch. Dist. ("L.R. II"), 238 N.J. 547, 556 (2019). The equally divided Court failed to reach a consensus on that certified question, but the full Court agreed that unredacted student records are exempt from disclosure under OPRA. Compare id. at 560 ("To the extent that the disputed student records in these matters are protected from public disclosure by the NJPRA and its implementing regulations, those records are not subject to disclosure under OPRA.") (Patterson J., concurring) with id. at 57 ("A student record that identifies a particular pupil is subject to disclosure only to specifically authorized entities, N.J.A.C. 6A:32-7.5(a), and is not subject generally to [OPRA].") (Albin J., concurring in part and dissenting in part). Thus, regarding the main issue relevant to the instant matter, our Supreme Court was unanimous: unredacted student records are not subject to OPRA.

Appellant singles out one sentence in the Appellate Division's opinion stating, "if a school district receives an OPRA request from an authorized person or organization listed under N.J.A.C. 6A:32-7.5(e), then it must process that request in compliance with OPRA and FERPA requirements" pursuant to N.J.A.C. 6A:32-7.5(g). 452 N.J. Super at 86. But Appellant's argument that

this evinces an intent that underacted student records must be released pursuant to OPRA, fails for two reasons.

First, it ignores that public disclosure of unredacted student records under OPRA would violate both the NJPRA and FERPA, which would jeopardize federal funding. Second, the DOE has since amended its regulations in a manner which precludes Appellant's misreading of L.R. I. The promulgation of N.J.A.C. 6A:32-7.5(g)(1) in 2022 resolved the question that divided the L.R. II Court, by clarifying that a student record scrubbed of all identifiers, which can no longer reasonably identify a specific student through a release or combination of releases, is no longer a student record and may thus be released under OPRA. This amendment explained that a student record may only be released to a member of the public if scrubbed of all identifying information, because doing so would no longer qualify the record as a student record. See N.J.A.C. 6A:32-7.5(g)(1). See also 34 C.F.R. § 99.3; Rule Adoptions, 54 N.J.R. 1276(a), 2022 NJ REG TEXT 590702 (July 5, 2022) (explaining, in response to several public comments, DOE's intention to align the State regulations with FERPA); 54 N.J.R. 1276(a) (noting, in response to public comment, that "[o]nce a student record is removed of all personally identifiable information, then it is no longer considered a student record, and is releasable through OPRA"). The regulatory amendment in no way expresses that unredacted student records are releasable

to the general public under OPRA.

Because DOE had no obligation to release the requested records under OPRA, the trial court correctly found that Appellant is not a prevailing party under OPRA and therefore not entitled to counsel fees. (Pa227). Under OPRA, a requestor is entitled to attorney's fees when "they can demonstrate: (1) a factual causal nexus between plaintiff's litigation and the relief ultimately achieved; and (2) that the relief ultimately secured by plaintiffs had a basis in law." Mason, 196 N.J. at 76-77 (internal quotations omitted). A requestor "is not a prevailing party simply because the agency produced documents after an OPRA suit was filed." Spectraserv Inc. v. Middlesex County Utilities Authority, 416 N.J. Super. 565, 583 (App. Div. 2010). Rather, to be deemed a prevailing party, the plaintiff must demonstrate that "the complaint brought about change (voluntary or otherwise) in the custodian's conduct." Id. (citations omitted).

Further, the reasonableness of, and motivations for, a public agency's decision to deny or delay production of records is an important consideration in the causal nexus analysis. See Mason, 196 N.J. at 79; Grieco v. Borough of Haddon Heights, 449 N.J. 513, 521 (App. Div. 2015). This fact-sensitive inquiry "must take into account the fact that OPRA 'is designed both to promote prompt access to government records and to encourage requestors and agencies to work together toward that end by accommodating one another.'" Grieco, 449 N.J.

Super. at 519 (quoting Mason, 196 N.J. at 78).

Here, the record demonstrates that Appellant's lawsuit was not the catalyst for the DOE's production of documents. DOE provided responsive documents in its possession within seven business days, searched off-site locations where further potentially responsive documents could be stored, and while waiting for those records, DOE continued to seek reasonable and necessary extensions. (Pa221.) Extensions were necessary as the warehouse where the responsive records were stored sustained damage to a portion of the building prompting its closure by public authorities, which delayed retrieval of the records at issue. (Pa49-50; Pa66.) After those records were retrieved, DOE reviewed the records to determine whether they contained third-party student information, and promptly provided those records responsive to Appellant's request after confirming that the release provided by Appellant authorized release of those records. (Pa221; 227.) The parental consent release allowed Appellant access to her child's student records through her position as L.T.'s parent via the NJPRA and FERPA – not as a general requestor under OPRA. (Pa227).

OPRA also does not require production of documents that are already in the requestor's possession. See Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008) (determining that requiring duplication of a record does not "advance the purpose of OPRA, which is to ensure an informed

citizenry"). Appellant has been represented by the same counsel since she initiated the administrative proceedings and thus always had access to any documents from the OAL proceedings. See New Jersey's Rules of Professional Conduct 1.15 (requiring that a lawyer "shall hold property of clients . . . that is in a lawyer's possession in connection with a representation" and that "[c]omplete records" of property "shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.") (emphasis added).

Appellant's reliance on K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337 (App. Div. 2011) and Doe v. Rutgers State Univ. of New Jersey, 466 N.J. Super. 14 (App. Div. 2021), is misplaced. In K.L., the Appellate Division found the district's disclosure of a redacted disciplinary referral form concerning plaintiff's child after the filing of a lawsuit formed the catalyst for disclosure of the document, and thus, entitled plaintiff to attorney's fees. 423 N.J. Super. at 364 (emphasis added). K.L. does not hold that unredacted student records are subject to public access under OPRA.

Doe v. Rutgers is inapposite to the instant matter because this matter does not concern higher education. Further, Doe did not deal with the distinction between education records and government records, and the interplay between the IDEA, FERPA, and the NJPRA that is at issue here. The NJPRA broadly

classifies all student records as confidential and exempt from OPRA. As discussed above, under the current version of the NJPRA, unredacted student records do not fall within the purview of OPRA's production requirements. See N.J.A.C. 6A:32-7.5(g)(1).

Appellant's final argument that this Court must allow fees under OPRA to compensate for the absence of a private right of action under the NJRPA and FERPA, fares no better. (Pb10). The NJPRA and FERPA, respectively, set forth administrative remedies for noncompliance with the acts and implementing regulations. To begin with, N.J.A.C. 6A:32-7.7 sets forth rights of appeal for parents and adult students. For example, N.J.A.C. 6A:32-7.7(a), provides that parents and adult student may challenge student records "on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information, or denial of access to organizations, agencies, and persons" (emphasis added). Among other things, the parent or adult student may request, "expungement of inaccurate, irrelevant, or otherwise improper information from the student record;" insertion of additional data; "immediate stay of disclosure pending final determination of a challenged procedure"; and "immediate access to student records for organizations, agencies, and persons denied access, pending final determination of the challenged procedure." N.J.A.C. 6A:32-7.7(a)(1-4). N.J.A.C. 6A:32-7.7(b) also sets forth the process for requesting a

change in the student record or requesting a stay of disclosure pending final determination of the challenged procedure, which includes the ability to appeal a district board of education's decision to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3. See N.J.A.C. 6A:32-7.7(b)(4) (providing that "at all stages of the appeal process, the parent or adult student shall be afforded a full and fair opportunity to present evidence relevant to the issue"); N.J.A.C. 6A:32-7.7(c) (stating that appeals relating to student records of students with disabilities shall be processed in accordance with the requirements of N.J.A.C. 6A:32-7.7(b)).

FERPA also establishes procedures for administrative enforcement and administrative remedies for improper disclosure of student records. See 20 U.S.C. §1232g(f) (providing that "the Secretary shall take appropriate actions to enforce this section and to deal with violations of this section," which includes "action to terminate assistance"); id. at §1232g(g) (providing that "the Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations"); 34 C.F.R. §§99.60(a) and (b) (designating the Office of the Chief Privacy Officer ("Office") to investigate, process, and review complaints and violations and ensure compliance), id. at §99.63 (stating that a "parent or eligible

student may file a written complaint with the Office regarding an alleged violation"); id. at §99.64(a)-(b) (setting forth the investigation procedures), id. at §99.66 (setting forth the Office's responsibilities in enforcement); and id. at §99.67 (setting forth the enforcement of the Secretary's decision).

In short, while Appellant's parental consent release form entitled her to unredacted copies of the student records under the NJPRA and FERPA, it did not alter the fact that the records are not publicly accessible government records under OPRA itself. Because she cannot rely on OPRA to obtain the records and because DOE was not obligated to disclose the records under OPRA, it follows that she may not obtain attorney fees under OPRA. The trial court's decision comports with the requirements of the governing laws and, therefore, it did not abuse its discretion granting reconsideration. See Kornbleuth v. Westover, 241 N.J. 289, 301-02 (2020) (explaining that a trial court's reconsideration decision will not be disturbed "unless it represents a clear abuse of discretion" which "'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'") (citations omitted).

CONCLUSION

For these reasons, this court should affirm the trial court's decision.

Respectfully submitted,

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February 18, 2026

VIA ECOURTS
Superior Court, Appellate Division
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08650

Re: D.T. on behalf of L.T. v. New Jersey DOE, et al.
Trial Docket No.: MER-L-2374-24
Sat Below: Hon. Robert T. Lougy, A.J.S.C.
Court Below: Superior Court of New Jersey, Mercer County
Law Division – Civil Part
Our File No.: 41038-2
Appellate Docket No.: A-003483-24

Honorable Judges of the Appellate Division:

In lieu of a formal brief, we submit this letter brief in further support of the appeal filed by Appellant D.T. on behalf of L.T. ("Appellant").

TABLE OF CONTENTS

PRELIMINARY STATEMENT

Public agencies should not be permitted to avoid liability for fee-shifting under OPRA by contriving, ex-post, a new and unrelated basis for disclosing records when that new and unrelated reason was not the basis for the OPRA request.

The only private right of action available to Appellant to compel access to her child's own student records is the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1.1 to -13. The trial court erred by ignoring L.R. v. Camden City Public School District, 452 N.J. Super. 56 (App. Div. 2017) ("L.R. I"). The named Plaintiff in L.R. I was the only plaintiff in that consolidated appeal who sought and received access to their own child's records. L.R. I has never been reversed or superseded by any Department of Education regulations. Because L.R. I remains good law, we request that the Court correct the Trial Court's error.

This case is not about the New Jersey Pupil Records Act, N.J.S.A. 18A:36-19 ("NJPRA"), the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and the Individuals with Disabilities in Education Act ("IDEA"), 20 U.S.C. § 1415. Plaintiff has no private cause of action under the NJPRA and FERPA, and they elected to pursue their remedies under OPRA, not IDEA.

Several laws regulate how public agencies must handle student records, especially students with a disability. Just because a record is "subject to" a law does not mean a cause of action arises under it. Here, because Appellant filed suit under OPRA, the records were produced under OPRA and Appellant was the prevailing party under the catalyst theory as applied to OPRA.

REPLY TO RESPONDENTS' STATEMENT OF FACTS

Appellant relies on and incorporates by reference the procedural and factual history set forth in her merits brief. They only add the following in response to the combined Procedural History and Statement of Facts submitted by Respondents.

On September 26, 2023, Appellant submitted a request under **OPRA**. (Pa21). That same day, Respondents issued a Government Records Request Receipt which acknowledged the OPRA request, assigned it an internal control number (#C207292), and identified the OPRA Records Custodian (with an email address of OPRA.CUSTODIAN@doe.nj.gov). (Pa22). The OPRA records custodian then communicated with Appellant's counsel regarding the OPRA request. (Pa55-63). And Respondents made a partial production of records to Appellant pursuant to the OPRA request. (Pa4; Pa27; Pa61-62). Subsequent to this production, Respondents sought multiple extensions of their time to produce additionally responsive documents under OPRA. (Ibid.; Pa24-26; Pa55-61).

Pre-suit, Respondents never claimed that any requested documents were exempt under the NJPRA, FERPA, and/or the IDEA. (Pa126-127). Respondents clearly viewed their interactions with Appellant through the lens of OPRA.

After the complaint was filed, Respondents did assert that the OAL's file was exempt under FERPA, OPRA, and the Pupil Records Act, Pa080, but stated it was "willing to produce [additional] records to [counsel for Appellant], petitioner in the underlying OAL matter" but before they could do so they needed "a more current release from D.T." (Pa081). Respondents never asserted in that post-suit communication that they were providing access to records under any statute other than OPRA. (Pa081-082; Pa088-089).

LEGAL ARGUMENT

POINT I

APPELLANT SOUGHT AND OBTAINED RELIEF FROM THE TRIAL COURT UNDER THE OPEN PUBLIC RECORDS ACT

Respondents continue to advance the narrative that Appellant[1] sought her child's records under the NJPRA, FERPA, and the IDEA, rather than under OPRA.

[1] Respondents state that the identity of the requestor is not material to whether records are public under OPRA. (Rb. at 2). That is only true when a requestor is not an "authorized person" under N.J.A.C. 6A:32-7.5(a). As a parent requesting records of their own minor child, Appellant is explicitly covered by N.J.A.C. 6A:32-7.5(a), which includes within its definition of authorized persons "the parent of a student under the age of 18[.]"

Indeed, they spend four pages of their brief exhaustively detailing the requirements and restrictions of the NJPRA, FERPA, and the IDEA.

Appellant does not dispute the fact that these statutes serve to protect student records from unchecked disclosure to unauthorized individuals. But no statute or case cited in Respondents' brief changes the fact that Appellant is a person entitled to the requested records under each statute that they attempt to hide behind.

Respondents also claim that to reverse the Trial Court would be to approve the release of unredacted student records "to the general public under OPRA," and go on to catastrophize that this outcome would put the public federal funding of educational institutions at risk. This claim responds to an argument Appellant has never made in this case. **At no time in this case has Appellant advocated for the unmitigated release of unredacted student records to the general public**. All that she ever sought was the release of her own minor child's records.

And, despite the unsupported assertions of Respondents, the statutory schemes and controlling case law establishes that OPRA is a valid way for Appellant to obtain those records. OPRA specifically provides that "[t]he provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . any other statute[.]" N.J.S.A. 47:1A-9(a). Otherwise, OPRA defines "government record" to include essentially any

record that "has been made, maintained or kept on file" in the course of an agency's "official business" or that "has been received in the course" of an agency's official business. N.J.S.A. 47:1A-1.1. This definition is "broad." See Simmons v. Mercado, 247 N.J. 24, 39 (2021).[2]

Read together, the above establishes that OPRA permits access to all government records, including student records, as long as the disclosure of those records is in compliance with other applicable New Jersey and federal law.

Appellant will demonstrate how the disclosure of the records here pursuant to OPRA is in compliance with each statute (the NJPRA, FERPA, and the IDEA) in turn, a critical point which Respondents fundamentally ignore throughout their brief.

A. The New Jersey Pupil Records Act Is No Bar To Disclosure

Production of the records to Appellant here would not be a violation of the NJPRA. In fact, release of the records to Appellant is in fact expressly permitted under the NJPRA. Furthermore, the NJPRA specifically anticipates records being sought through OPRA, as Appellant did here.

The regulations established to interpret and effectuate NJPRA, specifically N.J.A.C. 6A:32-7.5(g), state clearly that "district boards of education and charter

[2] Here, we note that although the Legislature overhauled OPRA in 2024, none of those amendments implicated a parent's right to access their own child's records under OPRA.

school and renaissance school project boards of trustees **shall adhere to the requirements [of OPRA]**" (emphasis added).

And while N.J.A.C. 6A:32-7.5(g)(1) allows for the redaction of PII from any student record,[3] it only allows this when "responding to OPRA requests from any party, including parties **other than those listed at (e) above**[.]" (emphasis added). The regulations further direct that "**authorized organizations, agencies, or persons**, as defined in this section, shall have access to student records, including student health records." (emphasis added). Access is defined as "the right to view, make notes, and/or reproduce a student record." N.J.A.C. 6A:32-2.1. Under N.J.A.C. 6A:32-7.5(e), and "[o]rganizations, agencies, and persons authorized to access student records shall include . . . (1) [t]he student who has the written permission of a parent **and the parent of a student under the age of 18**, regardless of whether the child resides with the parent[.]" (emphasis added).

As such, Appellant is an authorized person entitled to access their child's student records under the clear language of the NJPRA. And the NJPRA expressly directs educational organizations, like Respondents here, to "adhere to the

[3] N.J.A.C. 6A:32-2.1 establishes that once any "information related to an individual student," is removed from a record, the document "no longer meets the definition of student record." (internal quotations omitted). Here, it is undisputed that Appellant seeks student records, as she sought her own child's unredacted records.

requirements [of OPRA].” N.J.A.C. 6A:32-7.5(g). The only role for Respondent to play in this scheme is to take actions that are sufficient to confirm the identity of the requestor.

If the NJDOE perceives a problem with the statutory scheme and regulations in their current form, they can go through the rulemaking process to amend the regulations or adopt new regulations. They did so in July of 2022 when the NJPRA regulations were amended, but those regulations did not limit a parent’s right to access unredacted records regarding their own child. N.J.A.C. 6A:32-7.5(g)(1).

B. The Family Educational Rights and Privacy Act Is Not a Bar to Disclosure

Contrary to Respondents’ assertions, production of the records to Appellant here would not be a violation of FERPA, and in fact is expressly permitted under that statute.

Respondents speculate that a release of the requested records to Appellant would put public federal funding of educational institutions at risk. This is categorically untrue under the facts before this Court. FERPA explicitly allows for release of information to “parents of a dependent student of such parents[.]” 20 U.S.C. § 1232g(b)(1)(H).

By having a policy that denies parents access to records, Respondents are the ones actually jeopardizing federal funding. FERPA states, in relevant part,

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution . . . the right to inspect and review the education records of their children.

20 U.S.C. § 1232g(a)(1)(A).[4] Then FERPA goes on to state that

> No funds under any applicable program shall be made available to any State educational agency . . . that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

20 U.S.C. § 1232g(a)(1)(B).

As such, Appellant is a "parent[] of a dependent student" entitled to access their child's student records under the clear language of FERPA.

C. The Individuals with Disabilities in Education Act Is No Bar to Disclosure

Respondents' position further risks the loss of federal funding to educational institutions in New Jersey under the IDEA. The IDEA requires that "[a]ny State educational agency, State agency, or local educational agency that receives

[4] This same section provides that if the records sought "include[] information on more than one student," then that additional information should be withheld from the requesting parent. 20 U.S.C. § 1232g(a)(1)(A). Appellant does not dispute that information relating to other students should be redacted from all records produced.

assistance under this part . . . shall establish and maintain procedures," including those that ensure "[a]n opportunity for the **parents of a child with a disability** to examine all records relating to such child." 20 U.S.C. § 1415(a) & (b)(1) (emphasis added). There is no dispute that Appellant the parent of a disabled child enrolled in a New Jersey public educational institution. (Pb. at 3, fn. 1; Rb. at 6).

As such, Appellant is a "parent[] of a child with a disability" entitled to access their child's student records under the clear language of the IDEA.

D. Appellant Elected Their Remedy, and Was Not Required to Exhaust Administrative Remedies

Plaintiff has no private right of action in Superior Court under FERPA and NJPRA; OPRA (and all of its remedies) is the only way to enforce a denial of access to records.

This cannot be disputed. See, e.g., L.S. v. Mount Olive Board of Education, 765 F. Supp. 2d 648, 664 (D.N.J. 2011) (holding that there is no private right of action under FERPA and the NJPRA). State v. J.S.G., 456 N.J. Super. 87, 105 (App. Div. 2018) ("the NJPRA and its governing regulations merely provide administrative remedies for a violation and do not provide for a private right of action or suppression."). And Doe v. Rutgers, State University of New Jersey stated very clearly that 'FERPA does not itself establish procedures for disclosure of school records." 466 N.J. Super. 14, 26 (App. Div. 2021).

Respondents point to the administrative procedures provided for in the statutes and interpreting regulations. None of these would have provided Appellant with the swift relief that OPRA offered.

For instance, the NJPRA provides that a person or organization aggrieved under the statute proceed through a multi-level appeal process involving the school administration, school board, and Commissioner of Education. N.J.A.C. 6A:32-7.7. At the end of the day, the decision on the dispute is made by a school administration, with review by the school board, and finally the Commissioner of Education: the same organizations who denied Appellant's request in the first place.

Appellant's ability to challenge the outcome (a decision of an agency such as the Department of Education) would be limited unless the question was a pure legal issue. See In re Herrmann, 192 N.J. 19, 27 (2007) (recognizing the "well recognized principle[s]" that judicial review of administrative agency action is limited); Melnyk v. Bd. of Educ. of the Delsea Reg'l High Sch. Dist., 241 N.J. 31, 40 (2020) (same, but further acknowledging that "[i]n an appeal from a final agency decision, an appellate court is 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.") (alterations in original).

Under FERPA, the only enforcement actions available must be brought by the Secretary of Education. 20 U.S.C. § 1232g(f). A parent of a child with a disability

filing a due process complaint must show that either substantive or procedural violations impacted their child's right to "receive a free appropriate public education." 20 U.S.C. § 1415(f). This is then heard by a hearing officer, with internal appeal procedures, and only once those remedies are exhausted can she seek recourse in Superior Court or United States District Court. 20 U.S.C. § 1415(f), (g), & (i). And there is no summary process or proceeding available for IDEA complaints. But here Appellant sought recourse specifically related to the denial of records, not allegations of due process violations under the IDEA. The fact that the records she sought under OPRA related to their prior IDEA complaint did not mandate that the denial of access to those records be adjudicated under the IDEA.

And under the IDEA, remedies are limited to parents of a disabled student, not all students. Since most students who receive individual education programs are not disabled, most parents of students with special needs would not be able to avail themselves of any remedies under the IDEA.

Even if a private right of action was available to Appellant under these statutory schemes, no statutory scheme, case law, or theory advanced by Respondents requires Appellant to exhaust any administrative remedies or elect to proceed under the NJPRA, FERPA, or the IDEA instead of under OPRA. Such an additional administrative hurdles would be contrary to New Jersey law. See Am.

Civil Liberties Union of N.J. v. N.J. Div. of Criminal Justice, 435 N.J. Super. 533, 536-37 (App. Div. 2014) (requiring the requestor to "clarify or engage in negotiations with the custodian as a jurisdictional prerequisite to instituting legal action to enforce his or her rights to access public information" is an "extra hurdle the requestor must clear before getting to the courthouse doors [that] is not only untethered to any provision in OPRA, but contravenes the clear public policy expressed by the Legislature in OPRA, directing the courts to construe 'any limitations on the right of access . . . in favor of the public's right of access.'") (quoting N.J.S.A. 47:1A-1).

In sum, Appellant had the right to seek review of the OPRA denial of access by a Superior Court judge, which enabled them, an indigent person, to obtain a lawyer and to seek prevailing party fees at the end of the case.

E. Controlling New Jersey Case Law is Inapposite to Respondents' Position

Though Respondents claim that "controlling appellate authority" supports their position, they point to none in their brief. They claim that Appellant misreads L.R. v. Camden City Public School District, 452 N.J. Super. 56 (App. Div. 2017) ("L.R. I"). But they ignore Appellant's status as the parent of the student identified in the records. The L.R. I Court granted L.R. access to her own child's records under OPRA, a situation on all fours with the case at bar. Id. at 86, 96. Nor does the

procedural posture of L.R. II, in which L.R. I was affirmed because the L.R. II Court was equally divided on the OPRA issues, change the analysis.

Appellant agrees that the Court stated, in dicta, that "to the extent that the disputed student records in these matters are protected from public disclosure by the NJPRA and its implementing regulations, those records are not subject to disclosure under OPRA." L.R. v. Camden City Pub. Sch. Dist., 238 N.J. 547, 560 (2019). And Appellant also agrees that Justin Albin, in his separately concurring and dissenting opinion, stated that "[a] student record that identifies a particular pupil is subject to disclosure only to specifically authorized entities, N.J.A.C. 6A:32-7.5(a), and is not subject generally to [OPRA]." Id. at 578. But, as set forth above in Section A, the records disputed here are not protected from disclosure to Appellant due to her status as an authorized person under the NJPRA. Respondents claim that Appellant's reliance on case law is misplaced. But in Doe v. Rutgers, 466 N.J. Super. 14 (App. Div. 2021), the court cited to L.R. I, and conducted an analysis of OPRA's interplay with FERPA, and rejected the defendants' arguments and stated unequivocally that "[t]here is nothing in FERPA or its regulations that precludes higher education students from obtaining their own student records through OPRA." Id. at 26.

Similarly, K.L. v. Evesham Township Board of Education, 423 N.J. Super. 337 (App. Div. 2011) is directly on point. As the opinion itself states, the Court

considered whether "whether OPRA or [FERPA], was the statutory basis upon which the Board disclosed the single disciplinary document." Id. at 345. The Appellate Division reversed the trial court and held that the plaintiff parent had the right to secure copies of his own child's student records. The type of record requested makes no difference; thus, K.L. cannot be distinguished on the basis that different kinds of records were requested. All records that relate to a parent's child are potentially releasable under OPRA. K.L. also establishes that a successful requestor of student records should be considered the prevailing party for purposes of attorneys' fees. In that case, the court held that the "[p]laintiff proved that this OPRA lawsuit was the catalyst for disclosure of the document by showing both a factual causal nexus between [the] litigation and the relief ultimately achieved [and] that the relief ultimately secured . . . had a basis in law." Id. at 364 (quotations omitted, alterations in original). Here, there is no dispute that Appellant's OPRA request and subsequent litigation led to the disclosure of records.

POINT II

APPELLANT IS ENTITLED TO ATTORNEYS' FEES

If the Court reverses the decision of the Trial Court dated June 30, 2025, the prior order, dated May 1, 2024, which held that Appellant was the prevailing party under the catalyst theory (Pa104), and further found that Respondents denied access

to the requested records, and that a causal nexus had been established between the litigation and the disclosure of records. (Pa125-126). In that event, we request that this Court remand this matter to the Trial Court for an award of counsel fees for the work performed by Appellant's counsel before that Court.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Appellant's opening merits brief, the Trial Court's judgment against Plaintiff must be reversed and this matter remanded to the Trial Court with directions that Plaintiff be found to be the prevailing party under OPRA, and for an award of counsel fees in favor of Plaintiff under N.J.S.A. 47:1A-6 and Mason v. Hoboken, 196 N.J. 51 (2008).

Respectfully submitted,

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