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Amended State Law Expands Public Records Act Protection of Student Personal Information

Since Washington State's Public Records Act, RCW Title 42.56, et. seq. was first enacted in 1972, over 500 exemptions have been put into law, with more being added nearly every year.

Although certain information or records have been deemed "categorically exempt" and do not need to be disclosed to the public, courts have required that exemptions be narrowly construed and that the minimal amount of information necessary be redacted or withheld from records disclosed.

Within the K-12 education context, the Washington State Legislature has long considered "personal information in any files maintained for students in public schools" to be private and exempt from disclosure (codified at RCW 42.56.230(1)). However, over the years several courts have ruled that various other records and correspondence (including emails) that discuss private student matters are not necessarily maintained in student files, and thus may not be exempt from production to the members of the public.

On April 25, 2023, the Legislature recognized the importance of protecting the personal information of minor students in all records by enacting SSB 5127. SSB 5127 both creates a new section and amends Public Records Act section RCW 42.56.230.

In the new section created by SSB 5127, the Legislature noted that while the current RCW 42.56.230 provides an exemption for personal information in records maintained on a student's behalf, narrow interpretation of the current exemption has created instances where information has been released from school records that contain personal information about a student or related to a student, and that release has allowed the student to be identified. With the amendment to RCW 42.56.230, the Legislature's stated intention is to provide additional clarity in the narrow situation involving the disclosure of personal information related to a student that may be found in a nonstudent record.

Specifically, SSB 5127 amends RCW 42.56.230 to exempt from production "personal information...for a student enrolled or previously enrolled in a [school district], in any records pertaining to the student, including correspondence."

SSB 5127 further provides that this clarity is intended to ensure school districts understand that they can protect a student's privacy and redact personal information related to a student regardless of the type of record in which the information is found.

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This amendment, which becomes effective on July 23, 2023, provides wide-ranging protections to students for records in which their privacy was previously uncertain, including emails, text messages, handwritten notes, or even voicemails that discuss private student information. While portions of these records may still need to be produced to members of the public, this new law allows schools to take additional protective action, including redacting the student's name or other information that may reveal the student's identity.

Additional Information

For more information regarding SSB 5127 and its effect, this update or other similar updates to public records law, please contact Kutak Rock attorneys [Brian Kistler](#) or [Alex Fern](#), listed on the left. You may also visit us at www.KutakRock.com.

