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Education Law Alert

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Ohio Supreme Court Upholds Attorney-Client Privilege

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In a 7-0 decision issued on November 29, 2011, the Supreme Court of Ohio ruled the attorney-client privilege exempted a school district from disclosure under the Ohio Public Records Act of itemized law firm invoices and a letter from the school's insurer to the board of education and the board's attorney. The case is titled *The State ex rel. Dawson v. Bloom-Carroll Local Sch. Dist.*, 2011-Ohio-6009. The Court held the district complied with the Public Records Act by providing a summary of the invoices stating the attorney's name, invoice total and the matter involved. The Court noted the steps taken by the district to maintain the confidentiality of the letter and invoices, and held the board of education did not waive the attorney-client privilege by reviewing and discussing the letter in executive session when there was no presentation or detailed discussion about the letter during the public portion of the board meeting.

Although the Court does not go into detail about the circumstances that precipitated the public records lawsuit, the evidence reveals the petitioner pursued several special education due process complaints concerning the services provided to her two children. A January 20, 2009, letter from the insurance company discusses a \$50,000 settlement to resolve one of the earlier due process claims. The petitioner commenced a new due process claim in early 2010. It appears the petitioner was frustrated with the outcome of the previous due process complaints and the level of effort exerted by the district to defend the school's position on the level of services required under the special education laws.

Yesterday's decision highlights the need for public schools to utilize swift, responsive communications, as well as the full and successful use of resolution and mediation opportunities for due process claims, before outright litigation.

Should you have question about the case, public records or special education, please do not hesitate to contact us at Eastman & Smith Ltd.

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