

# A Watershed Moment for Asian Americans and Pacific Islanders

Today marks a historic day for Asian Americans and Pacific Islanders, as leading civil rights advocates, attorneys, academics and community leaders from across the country celebrate the *Advancing Justice Conference*, the first national civil rights convening of its kind for the Asian American and Pacific Islander community. Never before has the Asian American and Pacific Islander community come together on a national scale to discuss comprehensively the priorities and crises facing our community. Leading the effort are four major Asian American and Pacific Islander civil rights organizations, who hosted the conference: the Asian Pacific American Legal Center in Los Angeles; Asian American Institute in Chicago; the Asian American Justice Center in Washington, D.C.; and the Asian Law Caucus in San Francisco.



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Over the past two days, more than 400 participants and speakers have gathered in downtown Los Angeles to build new foundations for advancing Asian American and Pacific Islander civil rights. Southern California was a strategic choice for this inaugural convening as Los Angeles and Orange County are home to 12 percent of the nation's Asian American and Pacific Islander population - the largest concentration in the United States.

Conferences happen every day, but this one is particularly timely and urgent. Today, more Asian Americans and Pacific Islanders are organizing on a national scale to rally for the issues that affect their communities. Just this past week, the Asian Pacific American Legal Center released two new reports that give evidence for the growing political strength of the Asian American and Pacific Islander community and the increasing participation at the polls. In *Asian Americans at the Ballot Box*, the Asian Pacific American Legal Center's analysis of Los Angeles County voter and exit polling data shows that a record 293,000 Asian Americans and Pacific Islanders voted in the 2008 general election, an increase of 39 percent from 2000 and nearly double the rate of growth of all voters.

Contributing to the record participation of Asian Americans and Pacific Islanders at the polls was targeted efforts to turn out limited English-speaking Asian American voters. Based on the Asian Pacific American Legal Center's very successful bilingual get-out-the-vote campaigns in 2006 and 2008, *Getting Out the Asian American Vote* highlights best practices that led to astounding double-digit increases in turnout amongst targeted Asian American voters (compared to typical campaigns that result in low single-digit increases). Together, these two reports highlight that Asian Americans and Pacific Islanders are hungry

to be informed and mobilized, especially on issues that matter to the community. While based on Los Angeles area efforts, the reports are a microcosm of what is happening in - and the potential of - the rapidly growing Asian American and Pacific Islander community around the nation.

As reflected in the theme, "Asian American and Pacific Islanders Building New Foundations for Civil Rights," the conference seeks to mobilize this growing Asian American and Pacific Islander voter and political base in order to address the remaining struggles for justice, including immigration reform, health care reform and low-wage workers' rights. One of the conference highlights is the first major public appearance of the new Assistant Attorney General for Civil Rights Tom Perez. Confirmed just three weeks ago, Perez will keynote the conference today and will confirm the Obama Administration's commitment to reinvigorate federal civil rights enforcement. As the nation's chief civil rights enforcer, Perez will play a critical role in the future of many issues affecting Asian Americans and Pacific Islanders, including voting rights, housing discrimination and immigration.

Another highlight is the panel on hate crimes prevention, which is particularly timely given President Obama's signing of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009 earlier this week. Many attending the conference spent more than a decade fighting for passage of the legislation, in order to combat ongoing violent attacks against Asian Americans around the nation. In addition, the conference also lays the groundwork to expand our understanding of our own community, providing opportunities to explore emerging issues such as the movement toward using a human rights framework for Asian American and Pacific Islander issues, challenges faced by Pacific Islander groups, and the clashing intersection of national security and civil liberties concerns. The conference also highlights how Asian American and Pacific Islander civil rights issues overlap significantly with the struggles of other communities seeking justice, such as African American, Latino and the lesbian and gay communities.

This week's *Advancing Justice Conference* has provided the Asian American and Pacific Islander community the opportunity to build a common social justice agenda and to connect local and regional efforts to mobilize our communities. Collectively, the speakers and attendees have worked on these issues for decades in our own neighborhoods and cities, but until now, have not had the opportunity to come together at a national level to dialogue and build momentum around these issues. On behalf of our partner organizations, the Asian Pacific American Legal Center has been thrilled to host this inaugural conference in Los Angeles and we look forward to working with other civil rights leaders to truly advance justice.

You can learn more about the *Advancing Justice Conference* by visiting [www.advancingjustice.org](http://www.advancingjustice.org). Select sessions from the conference programs will be available for viewing after Nov. 1, 2009. For more information about the Asian Pacific American Legal Center, visit [www.apalc.org](http://www.apalc.org).



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# The Debate Over E-mails as Education Records

Answering a question that has been much-debated in recent years, the U.S. District Court for the Eastern District of California recently held that an e-mail is not an education record subject to the relevant provisions of the Education Code or the Family Education Right to Privacy Act (FERPA), unless it contains information related to the student and is "maintained" by the agency. (*S.A. v. Tulare County Office of Ed. and California Dept. of Ed.*)



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(E.D. Cal., Sept. 24, 2009/Oct. 6, 2009, No. CV F 08-1215) 2009 WL 3126322/2009 WL 3296653.) Conversely, an e-mail that is not maintained by the educational agency is not an education record. The court determined that e-mails not "printed and placed" in a student's permanent file are not "maintained" by a local education agency, even if they are kept in staff e-mail in-boxes or may be electronically retrieved from the local education agency's server.

In this case, the student had requested that the local education agency produce "a copy of any and all electronic mail sent or received by the local education agency concerning or personally identifying" him, in their original electronic format. The local education agency produced a stack of paper e-mails from the student's file, but told the student that the electronic versions of the e-mails had been "purged."

The student filed a compliance complaint with the California Dept. of Education, which found that FERPA defines "education records" as records containing personally identifiable information that are also "maintained" by the local education agency; thus, the electronically purged e-mails were not education records because they were not "maintained" by the local education agency. The student then filed a federal lawsuit, and argued that all e-mails specifically identifying him, whether printed or in electronic format, should be deemed education records. The student claimed the local education agency "maintained" all e-mails in the local education agency's central e-mail server, and/or in the individual in-boxes of local education agency staff. Finally, the student argued that deleted e-mails could be retrieved from the local education agency's electronic storage system using information technology.

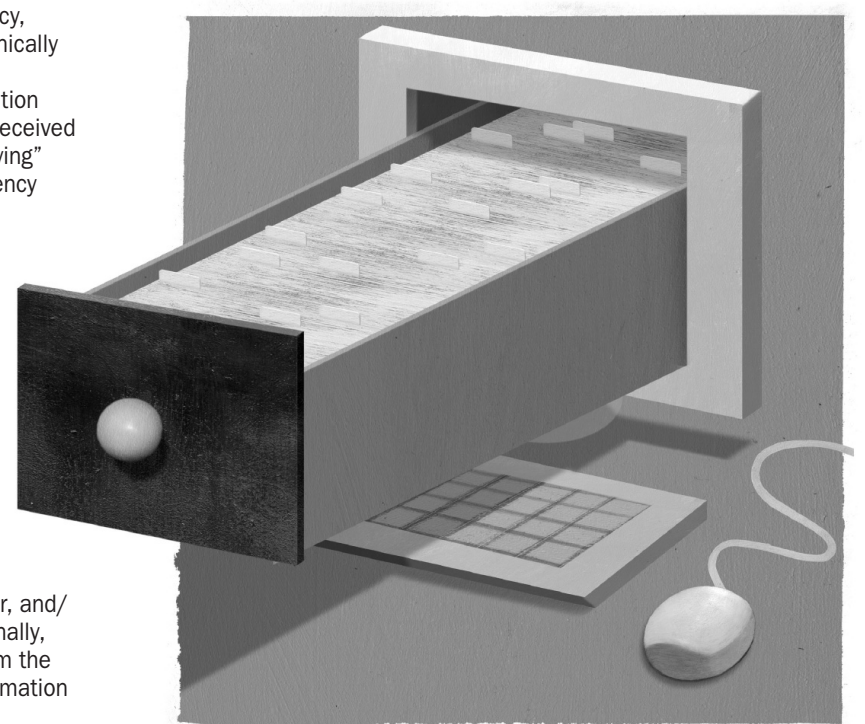
The court rejected all of the student's contentions. The court noted that nothing in FERPA "requires a [local education agency] to maintain an e-mail or any other record based solely on the fact that it contains personally identifiable information about a student." However, the court was careful to note that FERPA and the Individuals with Disabilities Education Improvement Act do specifically require the maintenance of certain records, such as a record of each request for access to and disclosure of personally identifiable information, a student's final grades, attendance records, and applicable health records.



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The court observed that the U.S. Supreme Court has held that the word "maintain," as used in FERPA, "suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database." (*Owasso Indep. School Dist. v. Falvo*, 534 U.S. 426, 432-33 (2002).) "FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar[.]" (Id., 534 U.S. at 433-45.)

Thus, the court found: [The California Dept. of Education] correctly



determined that e-mails that are not in Student's permanent file are not "maintained" by [the local education agency]. E-mails, like assignments passed through the hands of students, have a fleeting nature. An e-mail may be sent, received, read, and deleted within moments. As such, Student's assertion - that all e-mails that identify Student, whether in individual inboxes or the retrievable database, are maintained "in the same way the registrar maintains a student's folder in a permanent file" - is "fanciful."

The court also found that the local education agency did not violate FERPA when it purged the electronic versions of the e-mails without notice to the parents, as those records were not "maintained" by the local education agency, and that the local education agency had no obligation to provide for the parent's inspection of e-mails that were not education records.

Notably, the court did not directly address the issue of whether e-mails would be considered "maintained" as education records if they were printed and placed in a non-centralized file, such as by a classroom teacher, rather than in a permanent file. For example, the opinion noted that the U.S. Supreme Court has declined to rule whether a teacher's classroom grade book is an education record.

This is a case of first impression on this topic, and federal district court decisions, while persuasive, are not binding authority upon other federal district courts or the 9th Circuit Court of Appeals. Thus, districts should exercise caution and consult legal counsel when issues relating to the maintenance and/or disclosure of e-mails as education records arise. Additionally, all school officials are advised to continue to carefully monitor the content of their e-mails with the expectation that they could, at some point, be deemed education records and thus disclosed to a parent or other authorized recipient.

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