

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joe Wojtas and The Day,

Complainants

against

Docket # FIC 2019-0493

Superintendent of Schools, Stonington
Public Schools; and Stonington Public
Schools,

Respondents

July 20, 2020

The above-captioned matter was heard as a contested case on October 25, 2019, and November 22, 2019, at which times the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2019-0474; Joe Wojtas and The Day v. Superintendent of Schools, Stonington Public Schools; and Stonington Public Schools.

After consideration of the entire record, the following facts are found, and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter of complaint filed on August 9, 2019, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by improperly redacting information contained within a record disclosed as part of their response to an FOI request made by the complainants on April 11, 2019. Additionally, the complainants requested that a civil penalty be imposed against the respondents.

3. Section 1-200(5), G.S., defines “public records or files” as follows:

Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

4. Section 1-210(a), G.S., provides, in relevant part:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

5. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

6. It is found that the records requested by the complainant, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

7. It is found that by email dated April 11, 2019, the complainants requested the following:

- a. Attendance and payroll records for 2018-2019 school year for Timothy Chokas.
- b. Copies of any and all complaints filed against Chokas during his employment in the Stonington school system.
- c. Copies of any and all disciplinary records in his [Chokas'] personnel file.
- d. Copies of all emails sent or received by Chokas on his school-assigned email account since December 1, 2018.
- e. Any emails sent to school officials and employees concerning Chokas' actions towards students.
- f. Any correspondence between Chokas and the school system both electronically (emails) and in writing concerning his letter informing the school system of his June 30, 2019, resignation.
- g. Any emails or written correspondence concerning Chokas that the Stonington school system or its representatives have made to the Stonington police department or the Connecticut Department of Children and Families.
- h. Any letters of recommendation written by the Stonington school district on behalf of Chokas.

8. It is of note that the records requested in paragraphs 7a, 7b, 7c, and 7d, above, are the same records requested by the complainants in a previous request made on January 20, 2019. As

of the date of the complainants' request in this matter, all of the records responsive to the January 20, 2019, request had not yet been disclosed to the complainants.

9. It is found that on July 12, 2019, the respondents disclosed to the complainants records responsive to their request. The respondents noted that redactions were made to certain records pursuant to §§1-210(b)(11) and 1-210(b)(17), G.S., and §§17a-28 and 17a-101k, G.S.

10. Regarding the respondents' reference to redactions made pursuant to §17a-28, G.S., it is noted that such statute is lengthy and provides for the maintenance, disclosure and confidentiality of records of the Connecticut Department of Children and Families (DCF). The respondents did not cite to any particular provision of such statute and later abandoned reference to the statute when records were submitted for in camera inspection.

11. On November 25, 2019, the hearing officer ordered the respondents to submit to the Commission copies of any records for which exemptions had been claimed, either in part or in whole, for in camera inspection. The respondents complied with the order and submitted such records along with the required index on December 23, 2019. The in camera records are comprised of a two-page document identified as IC-2019-0493-001 and IC-2019-0493-002. The pages were previously disclosed to the complainants with redactions. However, such redactions to IC-2019-0493-002 were removed in a subsequent disclosure of the record to the complainants. Accordingly, such record is no longer at issue in this matter.

12. After a careful examination of the in camera record, it is found that the redactions on lines 9 and 37 of IC-2019-0493-001 are the initials of a student who reported alleged acts of misconduct to the respondents. In the complainants' appeal to the Commission, the complainants specifically state that they do not contest the redaction of the identity of the student. Accordingly, the redactions at lines 9 and 37 of IC-2019-0493-001 are not at issue in this matter.

13. Regarding the redactions to lines 13-22 of IC-2019-0493-001, the respondents contended that these lines constituted a record of child abuse and as such are exempt from disclosure pursuant to the confidentiality provisions of §17a-101k, G.S.¹

14. Regarding the respondents' reference to redactions made pursuant to §17a-101k, G.S., the respondents cited specifically in their post-hearing brief to subsection (a) which provides that:

The Commissioner of Children and Families shall maintain a registry of the commissioner's findings of abuse or neglect of children pursuant to section 17a-101g that

¹ The complainants argued that such allegations are more accurately described as a report of teacher misconduct and as such must be disclosed pursuant to §10-151c, G.S. Considering the findings and conclusions below, the Commission need not analyze such statute in this context.

conforms to the requirements of this section. The regulations adopted pursuant to subsection (i) of this section shall provide for the use of the registry on a twenty-four-hour daily basis to prevent or discover abuse of children and the establishment of a hearing process for any appeal by a person of the commissioner's determination that such person is responsible for the abuse or neglect of a child pursuant to subsection (b) of section 17a-101g. The information contained in the registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of federal law or regulations. Any violation of this section or the regulations adopted by the commissioner under this section shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year. (Emphasis added)

15. It is found that when the respondents were made aware of the allegations of misconduct by the teacher referenced in paragraph 7, above, they made a report to the Connecticut Department of Children and Families (DCF) in accordance with the requirements of §17-101a(a)(1), G.S. There is no evidence in the record regarding what alleged actions of the teacher the respondents deemed to constitute abuse as defined by statute.

16. Regarding reports of suspected child abuse, §17-101a(a), G.S., provides:

(a)(1) Any mandated reporter, as described in section 17a-101,² who in the ordinary course of such person's employment or profession has reasonable cause to suspect or believe that any child under the age of eighteen years (A) has been abused or neglected, as described in section 46b-120, (B) has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted upon such child, or (C) is placed at imminent risk of serious harm, or (2) any school employee, as defined in section 53a-65, who in the ordinary course of such person's employment or profession has reasonable cause to suspect or believe that any person who is being educated by the Technical Education and Career System or a local or regional board of education, other than as part of

² Teachers and school administrators are among those deemed to be mandated reporters of child abuse.

an adult education program, is a victim under the provisions of section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a,³ and the perpetrator is a school employee shall report or cause a report to be made in accordance with the provisions of sections 17a-101b to 17a-101d, inclusive.

17. "Abuse" as contemplated by §17a-101a(a), G.S., above, is defined in §46b-120(5), G.S., which states:

A child may be found "abused" who (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment;

18. There is no evidence in the record that the teacher who was the subject of the allegations engaged in any conduct that would be deemed abuse as defined in §46b-120, G.S. Additionally, it is found that there was no investigation conducted by either DCF or the Stonington Police Department that determined any such abuse occurred.

19. After a careful examination of the in camera records, it is found that the information redacted in lines 13-22 of IC-2019-0493-001 does not constitute a record of abuse and is therefore not exempt from disclosure pursuant to §17a-101k, G.S.

20. Additionally, the respondents contended that the redacted information as described in paragraph 19, above, was exempt from disclosure pursuant to §1-210(b)(17), G.S., because such record contains personally identifiable information of a student who is known to the complainants and that the redacted portion of the record is "directly related" to such student. Therefore, the respondents contended that the record constitutes an "education record" as contemplated by the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g.

21. Section 1-210(b)(17), G.S., provides that disclosure is not required of "[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g."

22. "[E]ducation records" is defined at 20 USC §1232g(a)(4)(A), as those records, files, documents, and other 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

³ As referenced in the statute, 53a-70 – Sexual Assault in the First Degree; 53a-70a – Aggravated Sexual Assault in the First Degree; 53a-71 – Sexual Assault in the Second Degree; 53a-72a – Sexual Assault in the Third Degree; 53a-72b – Sexual Assault in the Third Degree with a Firearm; 53a-73a – Sexual Assault in the Fourth Degree.

agency or institution. Therefore, as a threshold matter the records must be found to be "directly related to a student."

23. The respondents cited no Connecticut court decision interpreting the phrase "directly related to a student," as referenced in 20 USC §1232g(a)(4)(A), in the context of disclosure of allegations of teacher misconduct.

24. Courts in other jurisdictions, however, have examined the phrase "directly related to a student," and concluded that records of complaints and investigations of misconduct by teachers, administrators or staff, in cases where students are the alleged victims and witnesses and therefore are identified in the records, are not education records protected by FERPA, because they do not contain information "directly related to a student." Rather, such disciplinary records are "directly related" to the subject of the complaint, and only tangentially related to the student. See e.g., Cummerlander v. Patriot Preparatory Academy, 2013 WL 12178140 (S.D. Ohio 2013) (student witness statements are not education records because they do not directly relate to student witnesses but rather to the person who is the subject of the complaint); Briggs v. Board of Trustees Columbus State Community College, 2009 WL 2047899 (S.D. Ohio 2009) (records of student complaints about a teacher are "directly related" to the teacher and not to the students who complained); Young v. Pleasant Valley School District, 2008 WL 11336157 (M.D. Pa. 2008) (emails containing complaints about a teacher are not "directly related to a student," but rather are directly related to the teacher and only tangentially related to the student); Wallace v. Cranbrook Educational Community, 2006 WL 2796135 (E.D. Mich. 2006) (student statements alleging misconduct by a teacher are not "education records" because they are not "directly related to a student"); Baker v. Mitchell-Waters, 160 Ohio App.3d 250 (2005) (record of allegations of abuse of students by teachers do not directly relate to students); Ellis v. Cleveland Municipal School District, 309 F.Supp.2d 1019 (N.D. Ohio 2004) (records of allegations of teacher misconduct directly relate to the activities and behaviors of the teachers and do not directly relate to the students involved). But see Rhea v. District Board of Trustees of Santa Fe College, 109 So.3d 852 (Fla. Dist. Ct. App. 2013) (email written by student complaining about inappropriate classroom behavior of teacher is an "education record" protected by FERPA because the record is "directly related" to the student, even though it may also be "directly related" to the teacher).

25. In prior Commission decisions, the Commission employed a broader construction of the term "education records," largely relying upon the phrase "Personally Identifiable Information" as set forth in the regulations at 34 CFR §99.3, to identify what information is protected under FERPA. Utilizing that analysis, if a record "personally identified" a student, the Commission generally concluded that the record was exempt under FERPA and that the agency was prohibited from disclosing it. See Jeffrey Roets and the Wethersfield Federation of Teachers v. Superintendent of Schools, Wethersfield Public Schools, et al., Docket #FIC 2010-069 (portions of report of investigation into allegations of misconduct by school officials that personally identify a student are protected by FERPA); Jay Hardison v. Superintendent of Schools, Darien Public Schools, et al., Docket #FIC 2016-0853 (written

witness statements made in connection with an investigation into an incident involving school football coach and a student, wherein student is personally identified in the statements, are records that are "directly related to a student" and therefore are "education records" protected by FERPA); Jay Hardison v. Superintendent of Schools, Darien Public Schools, et al., Docket #FIC 2017-0036 (video depicting incident in which school football coach struck a student, where video was part of misconduct investigation, constituted an "education record" of the student that was protected under FERPA, as it targeted an already identified student and contained information that personally identified that student and other students); but see, e.g., Linda Lambeck and the Connecticut Post v. Chairman, Board of Education, Bridgeport Public Schools, et al., Docket #FIC 2013-677 (video depicting school principal dragging a student, wherein student is not personally identifiable, is not "directly related to a student" and therefore is not an "education record" protected under FERPA).

26. More recently however, looking to burgeoning and relevant law in other jurisdictions, the Commission employed the narrower analysis utilized in the decisions cited in paragraph 24, above. See Jay Hardison v. Superintendent of Schools, Darien Public Schools, et al., Docket #FIC 2017-0615 (parent emails that relate directly to complaints about school procedures, are not "directly related to a student" and therefore are not "education records" protected by FERPA).

27. After a careful inspection of the in camera records, it is found that the records constitute a two-page written correspondence from the principal to the superintendent, and is headlined with the subject, "Investigation of Student Allegation of Inappropriate Contact by a Teacher." The student is referenced twice in the record by initials only.⁴ Additionally, the correspondence makes reference to four other students having been interviewed regarding the teacher and references a previous concern raised about the same teacher in 2017.⁵ The correspondence also summarizes previous actions taken by the administration to assist the teacher in developing strategies to ensure students would not feel uncomfortable in class. Therefore, it is found that the records are directly related to the teacher and not the student. Consequently, it is found that such records do not constitute an "education record" as contemplated by FERPA, and are not exempt from disclosure pursuant to §1-210(b)(17) G.S. Accordingly, it is concluded that the respondents violated the FOI Act when they refused to disclose lines 13-22 of the record.

28. Based on the specific facts and circumstances of this case, the Commission declines to consider the imposition of civil penalties.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

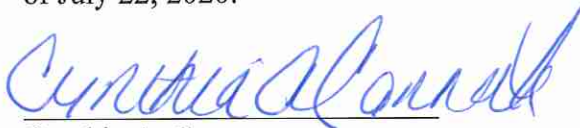
⁴ The initials are redacted and as previously mentioned in paragraph 12, above, the complainants do not contest such redaction.

⁵ No reference is made to the identities of the four students.

1. The respondents shall forthwith provide the complainants, free of charge, with a copy of the in record identified as IC-2019-0493-001 with lines 13-22 unredacted.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 22, 2020.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

JOE WOJTAS AND THE NEW LONDON DAY, 47 Eugene O'Neill Drive, New London, CT 06320-1231

SUPERINTENDENT OF SCHOOLS, STONINGTON PUBLIC SCHOOLS; AND STONINGTON PUBLIC SCHOOLS, c/o Attorney Kyle A. McClain, Zangari Cohn Cuthbertson Duhl & Grello P.C., 59 Elm Street, Suite 400, New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission