



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866) 374-3617 Tel: (860) 566-5682 Fax: (860) 566-6474 • www.ct.gov/foi • email: foi@ct.gov

Jay Hardison
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0853

Superintendent of Schools, Darien Public Schools; and
Darien Public Schools
Respondent(s)

October 4, 2017

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, October 25, 2017**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE October 13, 2017**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE October 13, 2017**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE October 13, 2017** and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Jay Hardison
Attorney Thomas B. Mooney
Brian A. Zuro

FIC# 2016-0853/ITRAVDH/TAH/WRBP/2017-10-4

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Jay Hardison,

Complainant

against

Docket #FIC 2016-0853

Superintendent of Schools,
Darien Public Schools; and
Darien Public Schools,

Respondents

October 2, 2017

The above-captioned matter was heard as a contested case on March 30, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The Commission notes that, by motion dated and filed May 11, 2017, Brian A. Zuro, the father of the student referred to in the records at issue, requested permission to intervene in this case. On May 15, 2017, the motion, which was unopposed, was granted.

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. It is found that, by email dated November 11, 2016, the complainant sent the respondents the following request:

I have several additional questions to which I'd like to get answers.

- a. As I have tried to ask our RTM¹ Education Committee meeting with you, who *specifically*, made the decision to:
 - i. Suspend the coach initially?
 - ii. Suspend him for an additional two weeks?

¹ RTM stands for Representative Town Meeting.

- b. Who, if anyone, on the BoE, has actually seen the security camera video, as I believe that's going to be important down the road?
- c. Is it possible to get a list of the witnesses, and of their accounts, prior to the discovery of the security camera video? If so, I am requesting them.
- d. Can you confirm that the video is actually a DHS² security camera video? (Emphasis in original).

3. It is found that, by email also dated November 11, 2016, the Superintendent of Darien Public Schools (the "Superintendent") acknowledged the request, informing the complainant that he made both the initial suspension decision and the subsequent suspension decision and that, now that the matter was considered closed, he had no further comment.

4. By letter dated December 6, 2016 and filed December 9, 2016, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide records responsive to the request.

5. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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.

7. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

² DHS stands for Darien High School.

8. As an initial matter, it is found that the only part of the email referenced in paragraph 2, above, that can be construed as a request for public records is that contained in paragraph 2.c., above. The remainder of the email is the complainant's attempt to have the respondents answer certain questions for him, which is not one of the rights afforded to the complainant under the FOI Act. See, e.g., Chad St. Louis v. Chief Med. Examiner, State of CT, Office of the Chief Med. Examiner, et al., Docket #FIC 2009-389 (May 4, 2010) (dismissing the complainant's appeal concerning the respondents' failure to answer questions because "nothing in the FOI Act requires public agencies to answer questions").

9. It is found that the records requested by the complainant in paragraph 2.c, above, are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

10. It is found that, on October 1, 2016, during a Darien High School varsity football game, the coach of the football team was involved in an incident with a particular football player, in which the coach walked onto the field and struck the player's helmet. It is found that the respondents investigated this incident. In connection with the investigation, the respondents interviewed multiple witnesses, compiled witness statements, produced a document summarizing the witnesses' accounts, and issued a disciplinary memorandum. It is found that, upon conclusion of the investigation, the coach was suspended from his job for a period of time. Finally, it is found that this particular coach is also a teacher within the Darien public school system.

11. The complainant requested a copy of the list of the witnesses who were interviewed, as well as a copy of their statements. It is found that the respondents provided the complainant with a copy of the list of the witnesses, but have declined to provide the complainant with a copy of the witnesses' statements. It is noted that, while not requested in this case, the respondents also disclosed to the complainant an unredacted copy of the disciplinary memorandum.

12. At the contested case hearing, the respondents correctly pointed out that this case presents an intersection between §10-151c, G.S., a statute requiring the disclosure of records concerning teacher misconduct, and the Family Educational Rights and Privacy Act, 20 USC 1232b ("FERPA"), a statute protecting student educational records.

13. Section 10-151c, G.S., provides, in relevant part, that:

Any records maintained or kept on file by the Department of Education or any local or regional board of education that are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1-210, provided that any teacher may consent in writing to the release of such teacher's records by the department or a board of education. Such consent shall be required for each request for a release of such records. Notwithstanding any

provision of the general statutes, records maintained or kept on file by the Department of Education or any local or regional board of education that are records of the personal misconduct of a teacher shall be deemed to be public records and shall be subject to disclosure pursuant to the provisions of subsection (a) of section 1-210.

Disclosure of such records of a teacher's personal misconduct shall not require the consent of the teacher. . . . (Emphasis supplied).

14. Accordingly, while teacher disciplinary records are subject to the open records provisions of the FOI Act, the ultimate disclosability of such records must be construed in light of any applicable exemptions to disclosure raised by the respondents. See ¶ 6, above.

15. It is found that the witnesses' statements in this case were compiled in connection an investigation into alleged teacher misconduct. It is found that the teacher in question was ultimately disciplined for his conduct. It is therefore found that the requested records are disciplinary records subject to disclosure.

16. However, the respondents contend that the records are exempt from disclosure pursuant to §1-210(b)(17), G.S. Specifically, the respondents contend that, because the complainant knows the identity of the student involved in the incident giving rise to the investigation, disclosure of the witnesses' statements, even in redacted form, would reveal "personally identifiable information" about the student in violation of FERPA.

17. The hearing officer ordered that the records at issue be submitted to the Commission for an in camera inspection. On April 6, 2017, the respondents submitted the records to the Commission for an in camera inspection. The in camera records, which will be referred to as IC-2016-0853-1 through IC-2016-0853-6, are fairly described as sixteen separate interview summaries.

18. Section 1-210(b)(17), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of "[e]ducational records which are not subject to disclosure under [FERPA], 20 USC 1232b."

19. "Educational records" are defined at 20 U.S.C. §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 agency or institution.

20. This Commission has concluded that 20 U.S.C. §1232g prohibits public schools that receive federal funds from disclosing information concerning a student that would personally identify that student, without the appropriate consent. See Brenda Ivory v. Vice-Principal Griswold High Sch., Griswold Pub. Sch.; and Griswold Pub. Sch., Docket #FIC 1999-306 (Jan. 26, 2000).

21. 34 C.F.R. §99.3 provides, in relevant part, as follows:

Personally Identifiable Information

The term includes, but is not limited to--

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other 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; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

22. After a careful in camera inspection, it is found that the requested records discuss the football coach's interaction with one particular student. It is found that the student's conduct both before and after the incident in question is discussed in detail in the records. It is found that the complainant knows the identity of the student, as the incident in question occurred during a high school football game and generated a significant amount of public attention. Finally, it is found that, while the requested records primarily concern the coach's behavior, such behavior cannot be discussed and considered without direct reference to the one student with whom the coach was interacting.

23. Accordingly, it is found that the records at issue contain information "directly related to a student," within the meaning of 20 U.S.C. §1232g(a)(4)(A)(i). See Rhea v. Dist. Bd. of Trustees of Santa Fe College, 109 So.3d 851, 858 (Fla. Dist. CT App. 2013) (where the court determined that records may directly relate both to a student and a teacher and still be protected by FERPA: "[i]f a record contains information directly related to a student, then it is irrelevant under the plain language of FERPA that the record may also contain information directly related to a teacher or another person"). It is further found that the records at issue are "maintained by an education agency or institution," within the meaning of 20 U.S.C.

§1232g(a)(4)(A)(ii). Accordingly, it is found that the requested records are FERPA protected educational records.

24. During the hearing, it was suggested that the requested records could be disclosed after they were redacted so as to remove the student identifying information. It is found that, because the complainant knows the identity of the student involved in the incident, the respondents cannot redact the records in any way that would adequately protect the confidentiality obligations that they have to the student. See 34 C.F.R. §99.3 (g), above.


25. Finally, the intervenor contends, much like the complainant, that the requested records should not be considered FERPA protected educational records. While the Commission disagrees, the intervenor is certainly free to execute the necessary written consent so that the complainant can have access to the educational records pertaining to his child. See 20 U.S.C. §1232g(b)(2) (providing that, “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, . . . unless – (A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents . . .”) (Emphasis supplied).

26. It is found the requested records are exempt from disclosure pursuant to the provisions of §1-210(b)(17), G.S., and FERPA.

27. It is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is dismissed.



Valicia Dee Harmon
as Hearing Officer