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FREEDOM OF INFORMATION



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Leah F. Walsh,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-047

Superintendent, Bethel Public Schools; and
Bethel Public Schools,
Respondent(s)

November 16, 2012

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 p.m. on Wednesday, December 12, 2012**. 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 November 30, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE November 30, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE November 30, 2012**, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Leah F. Walsh
Henry J. Zaccardi, Esq.

11/16/2012/FIC# 2012-047/Trans/wrbp/VRP//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Leah F. Walsh,

Complainant

against

Docket #FIC 2012-047

Superintendent, Bethel Public Schools; and
Bethel Public Schools,

Respondents

November 16, 2012

The above-captioned matter was heard as a contested case on June 18, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. A copy of the videotape that is the subject of this complaint was submitted by the respondents for an in camera inspection.

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)(A), G.S.
2. It is found that the complainant, as counsel for the parents of a certain student, made a November 18, 2011 for certain records, including a copy of a videotape made by a surveillance camera inside a school bus.
3. It is found that the respondents denied the complainant's request for the videotape by letter on December 17, 2011, on the grounds that the videotape contained personally identifiable information of other students—that is, the images of other students riding on the bus at the time.
4. It is found that the complainant made a second request to the respondents for the videotape by letter dated December 28, 2011.
5. It is found that the respondents denied that second request by letter dated January 17, 2012.
6. By letter dated January 26, 2012, the complainant appealed to the Commission, alleging that the respondent's failure to provide the videotape violated the Freedom of Information Act ("FOIA").

7. It is found that the requested videotape shows a number of students being transported on a school bus, including the particular student whose parents are represented by the complainant.

8. It is further found that the videotape cannot be edited to delete the images of the other students.

9. Further, it is found that the respondents gave the parents who are represented by the complainant an opportunity to view the videotape, but did not give them a copy.

10. Section 1-210(a), G.S., states 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....

11. The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(b)(2), provides in relevant part that:

No 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, or as is permitted under paragraph (1) of this subsection 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”

12. Also, 20 U.S.C. § 1232g(a)(1)(A), provides in relevant part that:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of

one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. (emphasis added)

13. It is concluded that the requested videotape is a public record within the meaning of §1-210(a), G.S.

14. Administrative notice is taken of “Letter re: Berkeley County School District”, 7 FERPA Answer Book 40, 104 LRP Publications 44490 (February 10, 2004) (hereinafter “Berkeley Letter”). The Family Policy Compliance Office, a unit administering FERPA in the U.S. Department of Education, issued the Berkeley Letter. It states in relevant part:

If education records of a student contain information on more than one student, the parent requesting access to education records has the right to inspect and review, or be informed of, only the information in the record directly related to his or her child.... If, on the other hand, another student is pictured fighting in the videotape, you would not have the right to inspect and review that portion of the videotape.

15. The Commission has previously addressed the issue of videotapes that show more than one student in Docket #FIC 2007-100, Boyer v. Stonington Public Schools. In that case, the Commission concluded:

20 U.S.C. § 1232g(a)(1)(A) is “federal law”, as that term is used by §1-210(a), G.S. This federal law unambiguously establishes that a parent does not have the right to records which include or have information about students other than their own child. The Berkeley Letter reaffirms this principle in the specific context of a videotape and supersedes the earlier decision in Deborah Maynard v. Superintendent, Voluntown School District, Docket #FIC 1998-023. See also U.S. v. Miami University, 294 F. 3rd 797 (2002).

16. The complainant maintains that the Commission’s decision in Boyer should not be followed in this case, citing to Rome City School Dist. V. Grifasi, 806 N.Y.S. 3d 381 (Sup. 2005) and Lindeman v. Kelso Sch. Dist. No. 458, 162 Wash. 2d 196 (2007).

17. It is concluded that in both Rome City and Lindeman, above, a state court ordered disclosure of a surveillance videotape in circumstances similar to those in this case. However, the courts in those cases balanced the due process rights of a student subject to discipline against the privacy rights of other students pictured in the videotapes, an analysis that is not available to the Commission under §1-210(a), G.S. Further, the Commission notes that school officials are permitted to disclose education

records without prior written consent pursuant to court order or judicial subpoena, as occurred in Rome City and Lindeman, but are not similarly permitted to disclose education records pursuant to the order of an administrative agency such as this Commission.

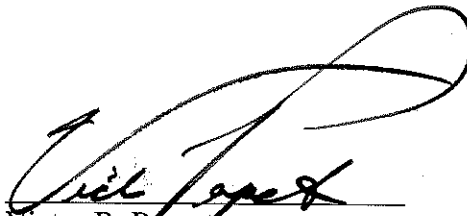
18. The Commission is therefore not persuaded sufficient reason exists to depart from its previous ruling in Boyer, above.

19. It is further found that the respondents did not waive the privacy rights of the other students on the videotape when they permitted the parents who are represented by the complainant in this matter to view the videotape.

20. Accordingly, it is concluded that the requested videotape is exempt from mandatory copying, pursuant to §1-210(a), G.S., and that the respondents did not violate the FOI Act when they declined to provide the complainant with a copy of the requested record.

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

1. The complaint is hereby dismissed.



Victor R. Perpetua
As Hearing Officer