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FREEDOM OF INFORMATION



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Ray Rossomando and the
Connecticut Education Association
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0728

Principal, Amistad Academy High School; and
Amistad Academy High School
Respondent(s)

July 7, 2017

Transmittal of Proposed Final Decision

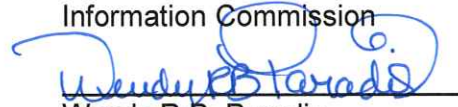
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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 p.m. on Wednesday, July 26, 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 July 19, 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 July 19, 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 July 19, 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: Ray Rossomando and the Connecticut Education Association,
c/o Attorney Melanie Kolek
Attorney Mark J. Sommaruga

FIC# 2016-0728/ITRA/VDH/TAH/WRBP/2017-07-7

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ray Rossomando and the Connecticut
Education Association,

Complainant

against

Docket #FIC 2016-0728

Principal, Amistad Academy High School;
and Amistad Academy High School,

Respondents

July 7, 2017

The above-captioned matter was heard as a contested case on April 4, 2017, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2016-0727; Ray Rossomando and the Connecticut Education Association v. Principal, Amistad Elementary School; and Amistad Elementary School; and Docket #FIC 2016-0729; Ray Rossomando and the Connecticut Education Association v. Principal, Amistad Academy Middle School; and Amistad Academy Middle School.

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 letter dated October 3, 2016, the complainants requested that Claire Polcrack, Principal for Amistad Academy High School, provide them with copies of three categories of records.
3. By letter dated October 18, 2016 and filed October 19, 2016, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying them the requested records.
4. Based on the testimony provided at the consolidated contested case hearing and on a review of the relevant law, a threshold issue in this case must be addressed.

5. 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. (Emphasis supplied).

6. Section 10-66uu, G.S., provides as follows:

Each contract for whole school management services between the governing council of a state or local charter school and a charter management organization shall (1) provide that such governing council is entitled to receive a copy of all records and files related to the administration of the charter school, including the compensation paid to the charter management organization and any expenditures of such compensation by the charter management organization, and (2) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by such governing council pursuant to the Freedom of Information Act, as defined in section 1-200, except that such governing council may redact such records and files to remove personally identifiable information of a contributor of a bona fide and lawful contribution, pursuant to a written request from such contributor. No request to inspect or copy such records or files shall be valid unless the request is made to such governing council in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206. (Emphasis supplied).

7. It is found that Achievement First, Inc. is a charter management organization that provides whole school management services¹ to Amistad Academy Elementary School, Amistad Academy Middle School, and Amistad Academy High School (the “Amistad

¹ Section 10-66aa (5), G.S., defines “whole school management services” as follows: “the financial, business, operational and administrative functions for a school.”

Schools”). The Amistad Schools are public charter schools.²

8. It is found that the three schools referenced in paragraph 7, above, are not separate and distinct corporate entities/agencies. Rather, it is found that Amistad Academy, Inc. (“Amistad”) is the non-profit entity responsible for the operation of the three charter schools in the City of New Haven. In addition, and most importantly for purposes of this analysis, it is found that there is one Amistad governing council (the “governing council”) that is responsible for the governance of Amistad and the each of the three Amistad Schools.

9. Finally, it is found that the request for records in this case was a request for records in the possession of Achievement First, Inc.

10. It is found the underlying request for records in this case was not made to the governing council; rather, it is found that the request was made to the Principal of Amistad Academy High School.

11. The state statute which provides access to records in the possession of a charter management organization makes clear that a request for such records must be made through the charter school’s governing council. The procedure set forth in the statute is mandatory, rather than permissive: “No request to inspect or copy such records or files shall be valid unless the request is made to such governing council. . . .”

12. The Connecticut Supreme Court has held that such legislative mandates cannot be ignored: “As we have often stated, [d]efinitive words, such as must or shall, ordinarily express legislative mandates of a nondirectory nature. . . . By contrast, [t]he word ‘may,’ unless the context in which it is employed requires otherwise, ordinarily does not connote a command. Rather, the word generally imports permissive conduct and the conferral of discretion.” Lostritto v. Community Action Agency of New Haven, Inc., 269 Conn. 10, 20 (2004) (citations omitted).

13. In this case, because the complainants did not make their request for records to the Amistad governing council, it found that the underlying request is not valid. Because the underlying request is not valid, it is found that no right of access to the records in question was legally conferred upon the complainants.

14. Accordingly, it is concluded that no violation of the FOI Act can be established on these facts.

² Section 10-66aa (1), G.S., defines a “charter school” as follows: “a public, nonsectarian school which is (A) established under a charter granted pursuant to section 10-66bb, (B) organized as a nonprofit entity under state law, (C) a public agency for the purposes of the Freedom of Information Act, and (D) operated independently of any local or regional board of education in accordance with the terms of its charter and the provisions of this section and sections 10-66bb to 10-66uu. . . .”

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