

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

James Carey,

Complainant

against

Docket #FIC 2017-0686

Superintendent of Schools,  
Regional School District 4; and  
Regional School District 4,

Respondents

November 7, 2018

The above-captioned matter was heard as a contested case on January 30, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. A Report of Hearing Officer, dated July 23, 2018, was issued to the parties. At the Commission's regular meeting of September 12, 2018, the Commission did not adopt such report but rather voted to remand the matter to the Hearing Officer for further consideration. A Second Report of Hearing Officer, dated October 4, 2018, was issued to the parties. At the Commission's regular meeting of October 24, 2018, the Commission voted to table the matter.

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 September 12, 2017, the complainant requested from the respondents copies of:
  - a - All external and internal communications regarding the District's plans to, and subsequent engagement of, SPIRAL International to provide foreign student services to the District, including, but not limited to, letters, emails, financial arrangements, memos, reviews or other from June 29, 2017 to the present.
  - b - Any and all information regarding payments or benefits,

real or in-kind made, paid by the District or by any agent of the district, to or for an employee, or representative of the District, private contractors, and consultants in connection with SPIRAL or third parties affiliated with this company. Including but not limited to trips, dinners, credit card expenses, receipts, educational junkets, gifts, or any and all other expenses paid for, reimbursed, or to be reimbursed by the District, including any attorney fees paid by the District in connection with this matter, from June 29, 2017 to the present.

c -Any and all information regarding payments made by the District, or made by agents working at the direction of or in any way connected to the District, credit extended, reimbursements, or other funds expended in connection with the two week exchange student hosting program, including but not limited to transportation costs, housing cost, boarding costs, medical costs, and all other expenses, either paid prior to, during or after the program took place.

3. It is found that, under cover letter dated October 16, 2017, the respondents provided to the complainant records responsive to his request.

4. By letter dated November 8, 2017, and filed on November 13, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by not providing all requested records, as described in paragraph 2, above.

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....”

8. It is found that, to the extent the respondents maintain the requested records, such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that, under cover letter dated November 17, 2017, the respondents provided the complainant with an additional record, which had been left out of the previous group of records provided on October 16, 2017. It is found that such record consists of one page entitled Valley Regional High School, a sub account for “Chinese Stud. Ex.” and includes account numbers, dates of payments, payment amounts and identification of payees. It is found that ten names of payees were redacted from the page, while fifteen other payee names on the page were not redacted.

10. At the hearing in this matter, the complainant contested the redactions in the record described in paragraph 9, above. In addition, the complainant contended that the respondents should have provided further sub-accounting records, such as receipts, invoices, and expense reports, in response to his request.

11. At the hearing in this matter, the respondents contended that they were not aware that the complainant was seeking sub-accounting records. The respondents pledged to search for any such records and, if located, provide them to the complainant.

12. It is found that, by his comprehensive request described in paragraph 2, above, the complainant was clearly seeking detailed financial records regarding the SPIRAL program. It is concluded that, by failing to provide the sub-accounting records promptly to the complainant, the respondents violated §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

13. With respect to the redactions described in paragraph 9, above, the respondents initially contended that the Family Educational Rights and Privacy Act, 20 USC 1232g (“FERPA”), a federal statute protecting student educational records, provides a basis to withhold the redacted sections. The complainant contended that the one page record described in paragraph 9, above, is not an educational record within the meaning of FERPA.

14. The respondents provided a copy of such record to the Commission for in camera inspection on October 29, 2018, and contended on the accompanying index that the redactions were made pursuant to both §1-210(b)(17), G.S., which incorporates FERPA, and §1-210(b)(11), G.S. Such document is hereby designated IC-2017-0686-1.

15. 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 20 USC 1232g.”

16. FERPA 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 . . . .

17. “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.

18. The federal FERPA regulations, specifically, 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.

19. On brief, the respondents contended that the redacted record contains information directly related to students and is maintained by the district, thus such record is an educational record, within the meaning of FERPA.

20. On brief, the complainant contended that the records that he requested were fiscal in nature and did not directly relate to individual students. Rather, the complainant contended that the redactions consist of individuals who were paid a fee for housing foreign students during the two-week period they attended school in Regional School District 4, and likened such persons to employees of the district. See Klein Independent School District v. Maddox, 830 Fd2 576 (5<sup>th</sup> Cir. 1987) (definition of educational records does not include records of teachers or staff employed by an educational institution).

21. Although it is unclear from the administrative record whether those who housed students, or host families, were paid a fee or merely reimbursed for expenses, it is found that such persons are not akin to employees of the district within the meaning of Klein.<sup>1</sup>

22. It is found that the record at issue does not relate directly to the academic education of a student and thus, at least on its face, would not appear to be what a layman would consider to be an “education record” such as a transcript, test score, homework assignment or the like.

23. However, an educational record need not pertain to the academic education of a student. See U.S. v. Miami University, 294 F.3d 797, 812 (6th Cir. 2002) (university disciplinary records of students were education records under FERPA); State ex rel. ESPN v. Ohio State Univ., 970 N.E.2d 939, 957 (Ohio 2012) (records relating to an Ohio State football player implicated in an NCAA investigation concerning trading memorabilia for tattoos); Gonzaga University v. Doe, 536 U.S. 273, 292 (2002) (Breyer, J., concurring) (addressing the issue of whether a student may sue a private university for damages under FERPA for the disclosure of records of a student who had engaged in sexual misconduct); Belanger v. Nashua, New Hampshire, Sch. Dist., 856 F. Supp. 40, 50 (D.N.H. 1994) (records of an educationally disabled student used in juvenile court proceedings); Roets v. Wethersfield Public Schools et al., Docket #FIC 2010-69 (records of an investigation of the misconduct of a superintendent in permitting the son of the chair of the board of education to retake a course, thereby improving his grade as reflected on his high school transcript).

24. The Commission agrees that an education record as defined by FERPA need not pertain to academics. By its terms, however, FERPA does require that the record contain information “directly related to a student” or students.

25. The Commission recently examined the meaning of “educational record” in Docket #2017-0615; Jay Hardison v. Chairman, Board of Education, Darien Public Schools; and Board of Education, Darien Public Schools (September 12, 2018). In that case, the Commission analyzed the records at issue therein as to whether it “directly related to a student” and ultimately

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<sup>1</sup> The ten individual payments consisted of one payment of \$1500, two payments of \$1000, four payments of \$500, and three payments of \$250.

concluded that such records, which involved the conduct of the Board of Education, did not directly relate to a student and therefore were not educational records under FERPA.

26. The phrase “directly related to a student” is not defined under FERPA. In Hardison, the Commission looked to relevant case law, as reiterated and set forth in paragraphs 27 and 28, below.

27. Ellis v. Cleveland Municipal School Dist., 309 F. Supp. 2d 1019 (E. Ohio 2004) involved a discovery dispute concerning, among other records, information related to discipline imposed on substitute teachers following altercations between those teachers and students. The court concluded that the records were not protected from discovery by FERPA because “FERPA applies to the disclosure of student records, not teacher records.” (internal citation omitted). The court further elaborated:

While it is clear that “Congress made no content-based judgments with regard to its ‘education records’ definition,” Miami University, 294 F.3d at 812, it is equally clear that Congress did not intend FERPA to cover records directly related to teachers and only tangentially related to students [internal citation omitted]. Thus, courts have held FERPA does not prevent the disclosure of records specifying reasons for teacher certificate revocations or the names of the victim and witnesses to an alleged incident of sexual harassment by a teacher. Brouillet v. Cowles Pub. Co., 114 Wash. 2d 788, 791 P.2d 526, 533 (1990); Board of Educ. of Colonial School Dist. v. Colonial Educ. Ass’n, 1996 WL 104231 at 5-6 (Del.Ch. 1996). ...

Ellis at 1023.

28. In Rhea v. Dist. Bod of Trustees of Santa Fe College, 109 So.3d 581 (Dist. Ct. of Appeals Fla. 2013), a former adjunct professor demanded that the college provide a complete copy of an email received by the college (the professor had received a copy of the email but with the name of the student redacted). The college refused to send the unredacted email and argued that the student’s identity was protected by FERPA. The email from the student complained of the petitioner’s inappropriate classroom behavior, his humiliating remarks to students, and his unorthodox teaching methodologies. Because an education record must “directly relate” to a student, the court noted that FERPA excludes information relating only indirectly to students. But the court noted that the term “directly related” to a student is still quite broad. The court noted that the email described the student’s personal impressions of the classroom atmosphere in the context of the petitioner’s teaching and methodology.

The student’s knowledge of, and connection to, the information conveyed in the email is not merely peripheral or tangential. As a member of the class, the student claimed to have experienced the treatment described in the email, and the email is the student’s own words.

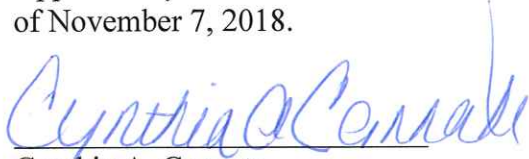
Rhea at 858.

29. Thus, concluded the court, the email was an educational record protected by FERPA.
30. Upon careful in camera inspection of IC-2017-0686-1, it is found that the information in the record does not name or otherwise identify the exchange students and only indirectly or tangentially relates to them; that is, as adduced at the hearing, the information merely details certain payments made by the respondents to those individuals who temporarily housed the students for a limited period of time in 2017.
31. It is concluded that, while the phrase “directly related to a student” is broad, it is not sufficiently broad to encompass the record at issue in this case. Accordingly, it is found that the record described in paragraph 9, above, is not an “educational record”, within the meaning of FERPA.
32. As indicated in paragraph 14, above, on the index to in camera records, the respondents also contended that §1-210(b)(11), G.S., exempts the redacted portions of the record described in paragraph 9, above. No evidence was presented at the hearing in this matter with respect to this exemption.
33. Section 1-210(b)(11), G.S., provides that disclosure is not required of:
- Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age, provided this subdivision shall not be construed as prohibiting the disclosure of the names or addresses of students enrolled in any public school in a regional school district to the board of selectmen or town board of finance, as the case may be, of the town wherein the student resides for the purpose of verifying tuition payments made to such school;
34. It is found that the record at issue does not contain the name or address of any foreign exchange student. Based upon a careful in camera examination, it is also found that such record does not contain the addresses of any of the individuals who received governmental funds. Rather, as found in paragraph 30, above, the redacted portions of the record merely indicate the names of those who housed the foreign exchange students for a limited time period in 2017.
35. Based upon the evidence in this matter, it is concluded that the redacted portions of the record described in paragraph 9, above, are not exempt by virtue of §1-210(b)(11), G.S.
36. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the redacted portions of the record described in paragraph 9, above, from the complainant.

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

1. Forthwith, if they have not already done so, the respondents shall provide copies of the sub-accounting records described in paragraph 11 of the findings, above, to the complainant, free of charge.
2. Forthwith, the respondents shall provide an unredacted copy of the record described in paragraph 9 of the findings, above, to the complainant, free of charge.
3. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its special meeting of November 7, 2018.



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:

**JAMES CAREY**, Attorney At Law, 19 Halls Road, Suite 212, P.O. Box 803, Old Lyme, CT 06371

**SUPERINTENDENT OF SCHOOLS, REGIONAL SCHOOL DISTRICT 4; AND REGIONAL SCHOOL DISTRICT 4**, c/o Attorney Kevin M. Roy and Attorney Gregory Jones, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission