

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kathleen Biga,

Complainant

Docket # FIC 2017-0683

against

Superintendent of Schools, Derby
Public Schools; and Derby Public
Schools,

Respondents

October 10, 2018

The above-captioned matter was heard as a contested case on February 13, 2018, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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 on September 15, 2017, the respondents, as is their customary practice with very young students, videotaped a classroom of four-year olds, and that on such day, the complainant's child, who was a student in the class, was involved in an incident.
3. It is found that, following the incident, the complainant made a request to view the videotape of the classroom. It is further found that, by email dated September 21, 2017, the respondents informed the complainant that she could make an appointment to view the videotape.
4. It is found that, on October 5, 2017, the complainant reviewed the videotape at the offices of the respondents, and that she has since reviewed the videotape more than once.
5. It is found that the complainant contacted the Department of Children and Families regarding the incident, which department conducted an investigation into the incident.
6. It is found that, by email dated October 10, 2017, the complainant requested that the videotape be preserved. It is found that, by return email on October 10, 2017, the respondent superintendent informed the complainant that the videotape would be preserved and that the

respondents do not provide copies of videotapes, but would be happy to schedule another meeting with the complainant to review the videotape again.

7. It is found that, by email dated October 17, 2017, the complainant requested a copy of the videotape.

8. It is found that, by email dated October 17, 2017, the respondents replied to the complainant, and informed her that since several other children are seen in the videotape of the classroom, the Family Educational Rights and Privacy Act (FERPA) prevented the respondents from providing the complainant with a copy of the videotape, without the consent of all parents or guardians of the all students.

9. By email dated October 18, 2017, the complainant thanked the respondents and informed them that she would contact all parents and guardians to acquire consent.

10. By letter dated November 11, 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 failing to provide her with a copy of the videotape.

11. Section 1-200(5), G.S., defines "public records or files" as:

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.

12. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

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

14. It is found that the respondents maintain the requested record, the videotape, and that such record is a public record within the meaning of §§1-200(5), §1-210(a), and 1-212(a), G.S.

15. At the hearing in this matter, and on brief, the respondents contended that the videotape is exempt from mandatory disclosure by virtue of §1-210(b)(17), G.S., which exempts: “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g.”

16. FERPA, 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”

17. 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.

18. “Education 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.” Further, Title 34, §99.3 of the Code of Federal Regulations provides that:

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. It is concluded that the requested record, a videotape of the classroom activities of four year-old students, is an education record within the meaning of 20 U.S.C. §1232g(a)(4)(A). It is further found that the videotape cannot be edited to delete the images of the other students.

20. 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.

21. The Commission has previously addressed the issue of videotapes that show more than one student in Docket #FIC 2004-551; Mary Baltimore v. Superintendent of Schools, Cromwell 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).

See also, Leah Walsh v. Superintendent, Bethel Public Schools; and Bethel Public Schools (December 12, 2012).

22. At the hearing in this matter, the complainant contended that, since the respondents provided access to the videotape to other school officials, school staff members and their union representatives, and the local police, the respondents have waived the requirements of FERPA, and therefore they cannot deny her a copy of the videotape. However, FERPA provides for

limited disclosure to school and law enforcement officials. The complainant provided no authority to suggest that permissible disclosure pursuant to the FERPA statutes waives the respondents' duties and requirements under FERPA.

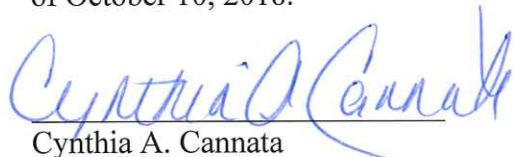
23. It is found that the respondents did not waive the privacy rights of the other students on the videotape when they permitted limited access to the requested records, under the facts and circumstances of this case.

24. Accordingly, it is concluded that the requested videotape is exempt from mandatory copying, pursuant to §1-210(b)(17), G.S., and FERPA, 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.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 10, 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:

KATHLEEN BIGA, 74 Coppola Terrace, Derby, CT 06418

SUPERINTENDENT OF SCHOOLS, DERBY PUBLIC SCHOOLS; AND DERBY 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