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FREEDOM OF INFORMATION



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M. Jeffry Spahr,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-571

Director, Pupil Personnel Services, Norwalk
Public Schools; and Norwalk Public Schools,
Respondent(s)

July 23, 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, August 8, 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 July 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 July 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 July 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: M. Jeffry Spahr
Mark J. Sommaruga, Esq.

7/23/12/FIC# 2011-571/Trans/wrbp/TCB//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

M. Jeffry Spahr,

Complainant

against

Docket #FIC 2011-571

Director, Pupil Personnel Services,
Norwalk Public Schools; and Norwalk
Public Schools,

Respondents

July 20, 2012

The above-captioned matter was heard as a contested case on March 16, 2012 at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

For purposes of hearing, the above-captioned matter was consolidated with Docket #FIC 2011-513; M. Jeffry Spahr v. Board of Education, Norwalk Public Schools.

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. By letter dated and filed on October 14, 2011, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his records requests.
3. 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.

4. 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.

5. 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.”

6. It is found that by letter dated September 28, 2011, the complainant made a request to the respondents to inspect the following records:

- a. “any and all records pertaining to the training, supervision, orientation, in-service training, guidance and continuing education of all paraprofessionals and/or 1:1 Adult Support providers of the NPS for the academic years of 2010-2011 and 2011-2012;”
- b. “any and all such records for paraprofessional and/or 1:1 Adult Support providers hired, retained or assigned to perform such paraprofessional or support activities or duties for Student A¹ for the 2011-2012 academic year;”
- c. “any and all records or materials pertaining to paraprofessional and/or 1:1 Adult Support providers’ knowledge, training and performance assessments, reviews or evaluations as well as any and all study guides, manuals, instructional or review materials distributed by or through the NPS to all paraprofessionals or Adult Support providers;” and
- d. “any and all such testing or study materials that were distributed to any paraprofessional and/or 1:1 Adult

¹ In order to protect the identity of the student involved, the student will be referred to as Student A throughout this decision.

Support providers assigned to work with Student A for the 2011-2012 academic year.”

7. It is found that, in another letter dated September 28, 2011, the complainant made a request to the respondents to inspect the following records:

- a. “any and all policies, directives, standard operating procedures, regulations, etc., regarding the use of paraprofessionals (or 1:1 Adult Support providers), in the classroom including, but not limited to, (a) any such policies pertaining to the direct communication between the paraprofessionals and the parents/guardians regarding the student and associated areas, and (b) the attendance and participation of paraprofessionals in PPT meetings;” and
- b. “the ParaPro or the other evaluation or assessment tools test results for the paraprofessionals currently being used by the NPS for the 2011-2012 academic year as well as for the prior 2010-2011 year.”

8. It is found that by letter dated September 30, 2011 the respondents informed the complainant that his requests had been received and that they were in the process of complying with them.

9. It is found, however, that on or about October 11, 2011, the complainant was informed that no records responsive to his request existed.

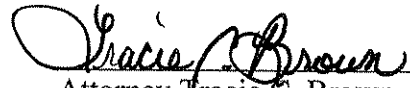
10. However, at the hearing on this matter and in his brief, the complainant contended that because such an admission would be so damning against the respondent Norwalk Public School’s special education department, it was incredible and therefore, he challenged the credibility of the respondents’ representation that they maintained none of the records he requested. The complainant contended that because the respondents must comply with certain Federal and State laws, and because Connecticut guidelines dictate that appropriate arrangements be made to train and evaluate paraprofessionals that are assigned to special needs children, it is shocking to the conscience and unbelievable that the requested records do not exist within the Norwalk Public Schools. The complainant contended that, therefore, the records must exist and should have been provided to him.

11. The respondent director provided credible testimony and it is found that the requested records do not exist.

12. It is concluded, therefore, that the respondents did not violate the FOI Act as alleged by the complainant.

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.



Attorney Tracie C. Brown
as Hearing Officer

FIC2011-571/hor/tcb/20120720