



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Judith Shpak,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-566

Superintendent of Schools, Oxford Public Schools; and  
Oxford Public Schools,  
Respondent(s)

February 10, 2016

## 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, March 9, 2016**. 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 February 26, 2016**. 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 February 26, 2016**. **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 February 26, 2016**, 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: Judith Shpak  
Rebecca Goldberg, Esq. and Carolyn M. Dugas, Esq.

2016-02-10/FIC# 2015-566/Trans/wrbp/CAL/VB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Judith Shpak,

Complainant

against

Docket #FIC 2015-566

Superintendent of Schools,  
Oxford Public Schools; and  
Oxford Public Schools,

Respondents

December 2, 2015

The above-captioned matter was heard as a contested case on November 17, 2015, at which time the complainant and the 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, by letter dated August 25, 2015 to the Oxford Board of Education, the complainant requested access to all records that have the name or initials of the complainant's daughter and that are "pertaining to the obsession and threatening comments towards my daughter by a male student" (the "requested records"). The letter expressly referenced emails and other documents written by Rebecca Cavallaro, Director of Pupil Services; Heath Hendershot, Principal of the Oxford Center School; and Stephanie Miller, Assistant Principal of the Great Oak Middle School. The August 25, 2015 letter was a second request following complainant's letter dated June 1, 2015 which requested, more broadly, access to all records that have the name or initials of the complainant's daughter.
3. It is found that on June 5, 2015, the respondents provided the complainant with approximately thirty pages of records, including report cards and records indicating the testing results of the complainant's daughter.
4. By letter dated July 2, 2015 to the complainant, the respondents reported that the IT department was currently searching its database for relevant emails; that all other educational records relating to the complainant's daughter were provided on June 5, 2015; and that records relating to other students could not be provided. The July 2, 2015 letter also informed the complainant that, based upon the concerns she had expressed, the respondents would conduct a Title IX investigation as well as a formal bullying investigation.

5. By email dated and filed August 31, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act ("FOIA") by failing to provide records responsive to the request.

6. It is found that, by email dated September 2, 2015 to the complainant, counsel for the respondents acknowledged the August 25, 2015 letter, stating that, pursuant to the Family Educational Rights and Privacy Act (sometimes herein "FERPA"), the complainant is entitled to receive educational records concerning her own child, but generally not educational records concerning other children. The email also stated that the August 25, 2015 letter would be treated as a renewed request for the educational records of the complainant's child. Finally, the September 2, 2015 email updated the complainant concerning the Title IX investigation.

7. It is found that on September 11, 2015, the respondents provided the complainant with approximately 132 pages of emails that pertained to the complainant's daughter.

8. 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.

9. 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.

10. 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."

11. It is found that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

12. At the hearing, the respondents claimed that the requested records are exempt from disclosure pursuant to §1-210(b)(17), G.S. The respondents further contended that, because the complainant knows the identity of the other student involved in the reported behavior, disclosure of the reports, even in redacted form, would reveal “personally identifiable information” about the other student.

13. It is found that the respondents submitted seventy pages of records for in camera inspection, and on the index to the in camera records claimed the exemption at §1-200(b)(17), G.S., for each record. Such records are hereby identified as IC-2015-566-1 through IC-2015-566-70. The respondents testified, and it is found, that these seventy pages comprise all the requested records.

14. Section 1-210(b)(17), G.S., provides that nothing in the FOIA shall be construed to require the disclosure of “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232b.”

15. “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.

16. This Commission has concluded that 20 U.S.C. §1232g prohibits public schools that receive federal funds from disclosing information concerning a student that would personally identify that student, without the appropriate consent. Docket #FIC 1999-306; Brenda Ivory v. Vice-Principal Griswold High School, Griswold Public Schools; and Griswold Public Schools.

17. 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. (emphasis added)

18. 34 C.F.R. §99.12 provides, in relevant part, as follows:

What limitations exist on the right to inspect and review records?

(a) If the education records of a student contains information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

19. Based on the in camera inspection, it is found that IC-2015-566-1 through IC-2015-566-70 constitute emails and typed as well as handwritten reports concerning specific student behavior of a student other than the daughter of the complainant. It is found that the complainant knows the identity of the other student who is the subject of the reports.

20. It is therefore found that the respondents could not meaningfully redact the requested records because, pursuant to 34 C.F.R. §99.3(g), such redaction could not adequately protect the confidentiality obligations that the respondents have to the student discussed in the records who is not the complainant's daughter.

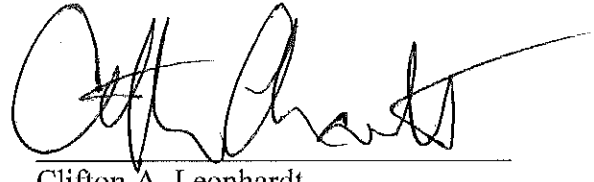
21. It is found that the parents of the other student mentioned in the reports have not provided consent for the complainant to inspect the education records pertaining to the other student. It is also found that the other student is less than eighteen years of age.

22. It is concluded that IC-2015-566-1 through IC-2015-566-70 are exempt from disclosure as privacy protected educational records, pursuant to the provisions of §1-210(b)(17), G.S., and FERPA.

23. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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.

A handwritten signature in black ink, appearing to read "Clifton A. Leonhardt", written over a horizontal line.

Clifton A. Leonhardt  
as Hearing Officer

FIC2015-566/HOR/CAL/12022015