

## School District's Refusal to Release Bullying Investigation Report Upheld

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### Education Law Notes

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While the Freedom of Information Act ["FOIA"] generally seeks to provide access to records created by public agencies, and while anti-bullying laws require that parents be notified by a school district with regard to the district's response to bullying complaints, federal laws protecting the privacy rights of students provide a countervailing block to unfettered access to bullying investigation records and reports. A recent decision by the Freedom of Information Commission ["FOIC"] demonstrates how these contrary interests interact.

In *Smith v. Superintendent, Middletown Public Schools*, #FIC 2013-333 (January 30, 2014), a parent requested a copy of a bullying investigation report regarding her daughter. The report resulted from the District's Title IX investigation of allegations that a student was bullied by other students. The report discussed the behavior of four students, including the complaining parent's daughter (the alleged victim) and three other students apparently involved in the alleged bullying incidents. The School District declined to produce the requested report, as it asserted that the report was exempt from disclosure pursuant to the federal Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ["FERPA"], which protects the confidentiality of student records and "personally identifiable information." Records protected from disclosure under FERPA are likewise exempt from disclosure under the FOIA. The District asserted that since the parent knew the identities of all the students involved in the investigation, disclosure of the report, even if redacted, would reveal personally identifiable information about these other students.

The parent then brought a FOIA complaint against the District. The original FOIA complaint was brought by the alleged victim's father. Although the father passed away after the complaint was filed, the FOIC found that it would still have jurisdiction over the matter, and permitted the surviving spouse to pursue the case. Nonetheless, the FOIC ultimately agreed with the District as to the merits of the case and declined to order the District to disclose the report at issue. The FOIC found that the complainant-parent knew the identities of the students subject to the underlying investigation and who were discussed in the investigation report because it was the same parent who had brought the allegations concerning the three students' behaviors that triggered the investigation. As such, the FOIC found that simply redacting the names of the students could not protect the confidentiality obligations that the District had to the students discussed in the report who were not the complaining parent's daughter.

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Under FERPA, the complaining parent would have a right to access to her **own** child's records. The FOIC noted that in order to provide the complaining parent with access to the parts of the investigation report that involved her daughter, the District summarized the report as it pertained to her daughter and provided the summary to the parent. The FOIC determined, however, that the investigation report itself was exempt from disclosure in light of FERPA (as incorporated into the FOIA) and dismissed the FOIA complaint.

**Teachable moment?** The School District in this case struck the correct balance between providing the parent with such information required by law (namely, information regarding the parent's child) and protecting the privacy rights of the other students involved. Connecticut's anti-bullying laws (Connecticut General Statutes §10-222d) require a school district to communicate with the parents as to the steps being taken to secure the safety of a student who has allegedly been subjected to bullying; such information should include a description of the school's response to the acts of bullying and any consequences that may result from the commission of further acts of bullying. Keep in mind, however, that further description beyond such summary information may have an impact upon the privacy rights of the other students. While a school district must disclose information as it pertains to the child of a specific parent, it cannot disclose such information to that parent about the other students involved in a bullying episode (at least not without the written permission of all of the other students' parents or guardians). Nothing in the FOIA will trump this basic privacy directive, and the FOIC wisely took a path to promote consistency between the various legal mandates.

**Posted in** CT General Statutes, The Freedom of Information Act (FOIA)

**Tags:** Family Educational Rights and Privacy Act (FERPA)