

On April 15, 2026, after extending its time to respond, *see* 65 P.S. § 67.902(b), the District denied the Request, arguing that the records contain exempt information regarding a minor, 65 P.S. § 67.708(b)(30), and are protected from disclosure by the Federal Educational Records Privacy Act (“FERPA”), 20 U.S.C. §§ 1232g *et seq.*

On April 22, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and arguing that additional records must exist.² *See* 65 P.S. § 67.901. The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On May 4, 2026, the District submitted a position statement, arguing, among other things, that the appeal should be dismissed as moot because the responsive records were provided to the Requester on April 20, 2026, two days prior to his filing of the instant appeal. In support of its position, the District provided the affidavit, made subject to the penalties set forth in 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, of Virginia Warihay (“Warihay Affidavit”), the District’s Open Records Officer, who confirms that all of the requested records are educational records of the Requester’s minor daughter and that the records were made available to the Requester via digital link on April 20, 2026.³

In the statement attached to his appeal form, the Requester acknowledges receiving a “limited subset of materials,” but argues that not all responsive records were produced. By correspondence dated May 5, 2026, the OOR directed the Requester to confirm whether he had, in fact, received the responsive records and was satisfied with the District’s production and wished

² The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”). Additionally, the instant appeal was reassigned to the undersigned Appeals Officer for disposition on May 4, 2026.

³ On May 11, 2026, in response to an objection from the Requester, the District submitted a second copy of the Warihay Affidavit signed by Open Records Officer Warihay.

to withdraw the appeal. If not, the OOR directed the Requester to identify any issues that remain outstanding for disposition by the OOR.

On May 7, 2026, the Requester responded to the OOR's directive, arguing, among other things, that the District had not "met its burden of establishing that all responsive records were produced" because (1) the District relies upon an unsigned "affidavit" or attestation, (2) the District's submission is conclusory, (3) the records produced using Kiteworks⁴ are no longer reasonably accessible, (4) the District's submissions are internally inconsistent, both purporting to grant access to and withhold responsive records under FERPA, (5) the District improperly characterizes the Request as seeking only educational records when one item of the Request seeks "employee restraint-training certificates and proof of physical intervention training for a staff member[,]" and (6) that the District's blanket withholding of records under FERPA and RTKL exemptions was improper. The Requester also provided a declaration, made subject to the penalties set forth in 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), affirming, in relevant part, that:

5. Records of restraint incident(s) in their totality involving my child have not been produced.
6. Records of identities of staff performing restraints on my child have not been produced.
7. On February 29, 2024, I emailed Meredith Adams, Sandra Falkner, Daniel Nevins, [and] Melanie Susi at 1:28 pm. I included an attachment with that email. The [D]istrict did not provide records of communications through RTKL documenting this email being forwarded to District Administration or legal counsel.
8. Documentation corresponding to certain restraint incident(s) also was not included in the FERPA records previously produced in connection with the ODR proceeding.

⁴ The records were produced using Kiteworks, a platform used by entities to securely share sensitive information.

9. The [D]istrict did not produce any records documenting communication of staff and board about indicated and unfounded reports related to my child.

Raftas Declaration, ¶¶ 5-9.

As a preliminary matter, the Requester acknowledges receiving and reviewing some records sought in the instant Request by means of a records request submitted under FERPA, which were provided prior to the Requester filing the instant appeal. Although the Requester couches the District's decision to withhold the records in response to the RTKL matter while providing them under FERPA, as internally inconsistent, the fact that the District provided educational records pursuant to the access provisions of FERPA rather than the RTKL is not inconsistent. *See* 65 P.S. § 67.3101.1 ("If the provisions of th[e RTKL], regarding access to records conflict with any other federal or state law, the provisions of th[e RTKL] shall not apply."); 65 P.S. § 67.306 ("Nothing in th[e RTKL] shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree."). As noted in the Warihay Affidavit, the educational records sought in the Request were provided to the Requester in their entirety, without redaction, pursuant to FERPA; therefore, the only issue before the OOR is whether the District conducted a good faith search for and provided *all* records sought in the Request. *See Warihay Affidavit*, ¶¶ 6-8.

As noted above, the Requester argues that communications responsive to Items 1 and 2, and all records responsive to Item 5, which the Requester alleges cannot be educational records under FERPA, were not provided by the District. In response to a request for records, "an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the identified record[.]" 65 P.S. § 67.901. While the RTKL does not define the term "good faith effort," in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency's physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining all potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of its position that all responsive records were provided, the District submits the Warihay Affidavit, which provides, in relevant part, as follows:

2. I have personal knowledge regarding the [RTKL] requests submitted to the District by [the Requester] on March 16, 2025, and at issue in this appeal, AP 2026-1618.
3. On the date that this [R]equest was submitted, I was the RTKL Officer charged with the responsibility of processing RTKL requests, and I processed these requests.
- ...
5. The student at the center of the [R]equest is the daughter of the Requester.
6. All of the records requested are educational records pertaining to the Requester's minor daughter.
7. The District and Requester have been opposing parties in litigation at ODR 28527-23-24 KE.
8. All of the records requested were previously provided to the Request[e]r during the course of the above-mentioned litigation and through prior FERPA requests.

...

12. All records requested by and through the subject RTK were considered FERPA records and were provided to Request[e]r through a digital link on April 20, 2026.

Warihay Affidavit, ¶¶ 2-3, 6-8, 12.

Although the District’s evidence was executed by Ms. Warihay, who serves as the District’s Open Records Officer, the *Warihay* Affidavit does not provide any description of the District’s search for responsive records. Additionally, while the District asserts that all of the requested records “were considered FERPA records” and were provided in response to litigation between the parties and/or the Requester’s FERPA request, the District has not explained how Item 5, which seeks training records for District employees, would constitute an educational record under FERPA. Based upon the evidence provided, therefore, the District has failed to prove that it conducted a good faith for records responsive to Items 1, 2 and 5 of the Request.⁵ *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a “more likely than not” inquiry).

Notably, it is undisputed that the Requester is a parent of minor child who is the subject of the Request and that, as a parent, the Requester is entitled to the child’s educational records under FERPA. *See* 20 U.S.C. §§ 1232g(a)(1)(A)-(B), 1232g(b). Because the District has not argued, and the OOR cannot perceive, a conflict between FERPA and the RTKL as it relates to the public nature of the records or the Requester’s entitlement to access thereto, we find that the educational

⁵ Because the Requester identified the District’s response to these Items of the Request as being deficient in response to the OOR’s inquiry regarding the records provided, the District need only perform a supplemental search for these Items and not Items 3 and 4 of the Request. Additionally, insofar as the Requester claims he can no longer access the records provided to him in response to his FERPA records request, any dispute over access to records under FERPA must be made pursuant to the processes thereunder.

records of the child may be requested under the RTKL.⁶ *Central Dauphin Sch. Dist. v. Hawkins*, 286 A.3d 726 (Pa. 2022); *see also West Chester Univ. of Pa. v. Rodriguez*, 216 A.3d 503, n.9 (Pa. Commw. Ct. 2019).

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the District is required to conduct a good faith search for records responsive to Items 1, 2 and 5 of the Request and provide them to the Requester within thirty days. Alternatively, the District can provide a sworn affidavit or statement made under the penalty of perjury describing its search for records and explaining that no additional responsive records, other than those already provided to the Requester, exist. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Chester County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁷ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

⁶ However, to the extent the responsive records constitute educational records of another child, they may be withheld or redacted accordingly under FERPA.

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: 14 May 2026

/s/ Joshua T. Young

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Sent via OOR e-file portal to: Nicolas Raftas;
Casandra K. Blaney, Esq. and Virginia Warihay, AORO