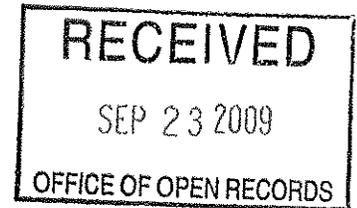


ATTORNEYS AT LAW

Michael V. Puppio Jr., Esquire
E-mail: Puppio@randplaw.com



September 16, 2009

Ms. Terry Mutchler, Executive Director
Office of Open Records
400 North Street
Harrisburg, PA 17120

Dear Ms. Mutchler:

I serve as the Solicitor for the Radnor Township School District. The purpose of this letter is to request an advisory opinion from the Office of Open Records with regard to a Right to Know request which was recently received by the school district. The legal question is whether the district is obligated to release all or a portion of district documentation of student violations of the school district's honor code, or whether such records are excepted from disclosure by sections 708(b)(15), (17), and/or (30) – pertaining to academic transcripts, records of noncriminal investigations, and records pertaining to minors, respectively, as well as the Family and Educational Rights and Privacy Act. In short: do the exceptions to the Right to Know Law exempt student discipline records from access by the public? The actual request is attached. The District responded within the required time frame and advised the requestor that the matter required legal review.

The pertinent facts are as follows: the requestor seeks any and all de-identified violations of the district's Academic Honor Code for the school years 2007-2008 and 2008-2009, and copies of any and all administrative and/or official actions taken as a result of the offenses or violations during the same period of time. The Administration has located and reviewed documents it believes are responsive to the request. The documents involved are accounts of alleged Academic Honor Code infringements by students, including: reports, dates of incidents, students and teachers involved, and outcome. It is evident that, even if names and other personally identifiable information are deleted, there is sufficient information remaining (e.g., grade, nature of infraction, class, date(s), etc.) that the minor student involved could be identified

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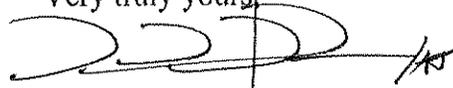
ATTORNEYS AT LAW

by the public viewing any produced documents. Naturally, the district believes such disclosure would be a clear violation of the student's right to privacy and statutory rights under FERPA.

The question involved is not the subject of pending litigation, therefore, the district believes the OOR can provide guidance on this issue. The resolution of the question is critical to the district in that the district is caught between two conflicting statutory obligations; i.e., its duty to protect the education records of students from disclosure, and the presumption of the public nature of district documents under the Right to Know Law. Additionally, enclosed please find the actual request.

Thank you for your courtesies and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MVP', with a vertical line extending downwards from the end of the signature.

Michael V. Puppio Jr., Esquire

MVP/aj
Enclosure

cc: Dr. Linda Grobman, Superintendent
Ms. Sharon Learn, Business Administrator
Mr. Steven Gerber, Esquire

Radnor Township School District

Radnor Township, founded in 1682, is located 13 miles west of Philadelphia and comprises 30,000 people. Radnor Township School District covers nearly 14 square miles and includes St. Davids and parts of Wayne, Rosemont, Bryn Mawr, Villanova, Ithan, Newtown Square and Radnor. The school system, which serves a diverse, multicultural population, includes three elementary, one middle and one high school.

135 S. Wayne Avenue
Wayne, PA 19087-4117
610.688.8100
www.rtsd.org

Right-to-Know Request Form

Date: August 26, 2009

Name: Sherry Judy

Last Name First Name

Address: 725 Governor Circle
Street

Newtown Square, PA 19073

City State Zip

Phone: 610.353.0273

Description of Request (Send to Ms. Sharon Learn. See information sheet for details): _____

____ Complete copies of any and all de-identified records of Academic Honor Code offenses maintained by the Administration for the school years 2007-2008 and 2008-2009 as required in Policy #106 of the Radnor Township School District.

____ Complete copies of any and all reports of de-identified violations of the Academic Honor Code for the school years 2007-2008 and 2008-2009 given to the Honor Council "to be used as a tool for further teaching and reflection about academic honor" as required in Policy #106 of the Radnor Township School District. Policy #106 states: "In this context, a 'de-identified' record is one in which the identity of any student(s) involved will be kept confidential."

____ Complete copies of any and all "de-identified" records of Academic Honor Code offenses for the school years 2007-2008 and 2008-2009 that are maintained by the Honor Council members as required in Policy #106 of the Radnor Township School District and maintained by any or all of the following teachers: Mrs. Pumarada, Mrs. Reardon, Mr. Rosin, Mr. Ryan.

____ Complete copies of any and all Administrative and/or official actions for the school years 2007-2008 and 2008-2009 that were taken as a result of any/all offenses and/or violations to the Radnor High School Academic Honor Code.

Form of Reply (electronic or print copy, physical inspection, etc.) **Electronic**

Fee schedule:

The district will charge the following fees when a requester seeks to obtain a copy and for conversion of an electronic record to paper:

Printing copy of non-paper record: \$0.25

Photocopying: \$0.25

Electronic copy of record: \$1 for disk

Physical inspection: No charge

Postage: Fees for postage may not exceed the actual cost of mailing.

Note: The total sum owed shall be paid before the public record is given to the requester.

____ **Judith A. W. Sherry**

Signature of person making request

OFFICE USE

Date received: _____

Date information provided: _____

Date request denied (if applicable): _____

Reason for denial (if applicable): _____



September 28, 2009

Michael V. Puppio, Jr., Esq.
Raffaele Puppio LLP
19 West Third Street
Media, PA 19063

Dear Mr. Puppio:

We are in receipt of your letter dated September 16, 2009 in which you ask for an advisory opinion on behalf of your client, the Radnor Township School District. Specifically, you asked the Office of Open Records to issue an advisory opinion on whether the school district is obligated to release all or a portion of district documentation of student violations of the school district's honor code, or whether such records are exempt from disclosure by the Right-to-Know law – specifically, those provision of section 708(b) relating to academic transcripts, records of noncriminal investigations and records pertaining to minors. You said that your request is in response to an actual Right-to-Know request that the school district received and which is currently under legal review.

This is admittedly a complicated subject and there are, as you point out, multiple legal authorities that must be analyzed in order to make this determination. There are multiple exemptions that could apply to this request within the Right-to-Know Law itself, as you have identified. Furthermore, there is the Family Education Rights and Privacy Act (FERPA), the federal law which will undoubtedly apply, as well. There may be state laws which bear on your analysis, as well.

Some of these laws are mandatory and prohibit disclosure. However, some, like the Right-to-Know Act, allow but do not require government agencies to withhold records. In fact, the Right-to-Know Law says that an agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying as long as release of the record is not prohibited under another law or by judicial order, protected by a privilege and the agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access. 65 P.S. 67 § 67.506(c).

We therefore decline to issue an advisory opinion on your request. This office could certainly identify which laws require redaction of or entirely prohibit disclosure of the records sought in the request you have described. But we hesitate to suggest that the school district withhold records that are within its discretion to release.

We will say, however, that where a law such as FERPA prohibits disclosure, your client should not perceive a conflict in its obligations, as the Right-to-Know Law clearly says, in more than one place, that a record that is exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree is not a public record. 65 P.S. § 67.101 (definition of public record); 65 P.S. § 305 (a)(3) (presumption that a record is public shall not apply if it is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree); 65 P.S. §506(c).

We wish you all the best and appreciate your thoughtful effort to help your client properly identify its obligations under these various laws.

Very truly yours,



Corinna V. Wilson
Chief Counsel