

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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ALAN P. SOUSA

VS.

SCHOOL ONE  
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DECISION

DATE: January 27, 1993

Held: Commissioner of Education  
does not have jurisdiction  
to decide parent's appeal  
concerning private school's  
failure to provide access  
to and copies of student's  
educational records.

## Introduction

This matter concerns an appeal to the Commissioner of Education by Alan P. Sousa from the refusal of School One to provide his daughter with access to and copies of her high school transcripts.<sup>1</sup>

For the reasons set forth below, we deny the appeal based on the Commissioner's lack of jurisdiction to decide this dispute.

## Background

School One is a private secondary school located in Providence. Appellant's daughter attended School One for 4 years, graduating in June 1991. Her tuition bill for the 1990-1991 school year was not paid in full.

In July or August 1992, Appellant, on behalf of his daughter, asked School One to send copies of her transcript to him and certain institutions of higher education. School One refused Appellant's request because of the outstanding tuition balance for the 1990-1991 school year. Appellant thereupon filed the instant appeal.

## Positions of the Parties

Appellant contends that under federal and state law he and his daughter must be provided with access to, interpretations of, and copies of her educational records at School One. Appellant asserts that the rights afforded by statute apply regardless of the existence of an outstanding tuition balance. Appellant notes that School One is withholding all of his daughter's records, even

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1 The Commissioner designated the undersigned hearing officer to hear this appeal. It was heard on September 1, 1992.

those for the years in which her tuition is paid in full.

Appellant maintains that he intends to fulfill his promise to pay the outstanding tuition, but that in the meantime he and his daughter are entitled to receive copies of her records in the same form that are provided to other students.

School One asserts that it has a policy of not permitting students to register for classes when tuition is owed, but that in this case it allowed Appellant's daughter to register for her final trimester based on Appellant's promise to pay the tuition in full. School One contends that its ability to operate is dependent upon the tuition it receives, and that it is not the intent of federal and state law to punish educational institutions in instances where individuals have failed to fulfill their financial obligations.

#### Discussion

With regard to the federal law aspect of Appellant's claim, the Family Educational Rights and Privacy Act (20 U.S.C. 1230, 1232g) and the Regulations promulgated thereunder (34 C.F.R. Part 99) provide parents and eligible students with the right to, inter alia, inspect and review education records of the student, receive a response to reasonable requests for explanations and interpretations of the records, and, in limited circumstances, obtain copies of the records. The Act and the Regulations apply to educational agencies and institutions to which funds are made available under any federal program administered by the United States Secretary of Education. The responsibility to enforce

the Act and the Regulations rests with the Secretary of Education. To that end, the Family Policy and Regulations Office in the United States Department of Education investigates and processes complaints alleging violations of the Act and the Regulations, and the Secretary of Education is authorized to withhold funds from any educational agency or institution which fails to comply with the Act and the Regulations.

Appellant's state law claims are based on R.I.G.L. 16-71-1 to 6, known as the Rhode Island Educational Records Bill of Rights Act. (attached as Appendix 1). Enacted in 1991, the Act provides the parent, legal guardian, or eligible student with the right to, inter alia, inspect and review records, receive a reasonable explanation and interpretation of the records, and obtain copies of the records. (R.I.G.L. 16-71-3).

We hold that we do not have jurisdiction under either statute to decide this dispute.

Complaints alleging violations of the federal Act and regulations are to be filed with the Family Policy and Regulations Office of the United States Department of Education. The Department's regulations direct that office to investigate complaints and issue findings. The Secretary of Education is authorized to take action in cases of noncompliance by educational agencies or institutions. Accordingly, we have no jurisdiction to entertain a claim alleging a breach of the Family Educational and Privacy Rights Act.

With regard to the Rhode Island Educational Records Bill of Rights Act, we find that the Act does not apply to private schools.

Unlike numerous other provisions of Title 16 of the General Laws which apply to both public and private schools,<sup>2</sup> the Educational Records Bill of Rights Act does not contain any reference to "private schools." The beginning of the first sentence of R.I.G.L. 16-71-2 refers to "each child enrolled in an elementary or secondary school within the state of Rhode Island," but the sentence later places the statute's notification requirement on "the school district responsible for the operation of the school," a reference to public schools.<sup>3</sup> In referring to an aggrieved person's right to appeal to the Commissioner of Education and to superior court, R.I.G.L. 16-71-4 states that "[s]hould a decision be rendered against the school system, the records shall be corrected by the school system in accordance with the decision," another reference to public schools. We are unable to find any clear indication in the language of the Act that it applies to private schools.

The available legislative history for the Educational Records Bill of Rights Act, of which we take official notice, shows that 3

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- 2 For example, the requiring of fire drills (R.I.G.L. 16-21-4); the requiring of instruction in history and government (R.I.G.L. 16-22-2) and in health and physical education (R.I.G.L. 16-22-4); the provision of achievement testing (R.I.G.L. 16-22-9); and the requiring of immunization (R.I.G.L. 16-38-2).
- 3 This sentence in R.I.G.L. 16-71-2 is similar to the language of R.I.G.L. 16-22-8 which states that whenever 20 students "apply for a course in the Italian, Portuguese, or Spanish language in any high school of the state, the school committee of the specific town shall arrange" for the course to be conducted. Although R.I.G.L. 16-22-8 initially refers to "any high school of the state," it places the responsibility to conduct language courses on the "school committee of the specific town," and thus applies to public schools only.

floor amendments were made to the bill: an editorial change in subsection 5 of section 3, the addition of subsection 6 of section 3, and the addition of section 6. It also shows that the bill as introduced contained the following explanation by the Legislative Council:

This act creates a hearing process through which parents and eligible students can contest records concerning the student kept by school systems.

The Act's explanation does not indicate that it applies to private schools. To the contrary, it speaks of "school systems," a reference to public schools. We further note that if the Legislative Council's explanation expresses the object of the Act, that object can be accomplished without applying the Act to private schools. Consequently, an interpretation of the Act which limits its application to public schools does not defeat the purpose of the Act. Finally, while we recognize the axiom that a remedial statute is to be construed liberally, we are also aware that a reviewing body cannot arbitrarily extend the ordinary meaning of the language in a statute.

School One is a private school. We find that, based on our review of the language and history of the statute, the Educational Records Bill of Rights Act does not apply to private schools. We further find that the action complained of in this appeal does not violate a law relating to schools or education over which the Commissioner exercises enforcement authority. We therefore hold that we do not have jurisdiction to decide this dispute. Accordingly, we deny the appeal.

CONCLUSION

The appeal in this matter is denied for lack of jurisdiction.

*Paul E. Pontarelli*

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Paul E. Pontarelli  
Hearing Officer

Approved:

*Peter McWalters*

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Peter McWalters  
Commissioner of Education

DATE: January 27, 1993

CHAPTER 71  
THE RHODE ISLAND EDUCATIONAL RECORDS BILL  
OF RIGHTS

SECTION.	SECTION.
16-71-1. Short title.	16-71-4. Decisions.
16-71-2. Notification.	16-71-5. Parents and guardians.
16-71-3. Educational records review rights.	16-71-6. Records defined.

**16-71-1. Short title.** — This chapter shall be known as the "Educational Records Bill of Rights Act".

**History of Section.** reference is to "this act". The reference is to P.L. 1991, ch. 306, § 1. The apparent reference is to "this chapter", and "this chapter" was substituted for "this act" by the compiler.

P.L. 1991, ch. 306, § 1.  
**Compiler's Notes.** As enacted by P.L. 1991, ch. 306, § 1, this section contained a

**16-71-2. Notification.** — The parents or guardians of each child enrolled in an elementary or secondary school within the state of Rhode Island, or the student if over the age of eighteen (18), shall annually be notified in writing by the school district responsible for the operation of the school of their rights under this chapter. Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

**History of Section.** reference is to P.L. 1991, ch. 306, § 1. The apparent reference is to "this chapter", and "this chapter" was substituted for "this act" by the compiler.

P.L. 1991, ch. 306, § 1.  
**Compiler's Notes.** As enacted by P.L. 1991, ch. 306, § 1, the end of the first sentence contained a reference to "this act". The

**16-71-3. Educational records review rights.** — The parent, legal guardian or eligible student, shall have the following enumerated rights:

(1) The right to personally inspect and review records in existence at the time of the request, that are required to be kept by law or regulation, of the student within ten (10) days of such request. Said request shall be made to the school's principal or designated appropriate authority;

(2) The right to a reasonable explanation and interpretation of the records;

(3) The right to copies of the records. The cost per copied page of written records shall not exceed fifteen cents (\$.15) per page for records copyable on common business or legal size paper. No fee will be assessed to search for or to retrieve the records;

(4) The right to have such records preserved as long as a request to inspect is outstanding;

(5) The right to request an amendment and/or expungement of such records if the parent or eligible student believes that the information contained therein is inaccurate, misleading, or in violation of the student's right to privacy; said request shall be made in writing to the appropriate recordskeeper;

(6) Any person aggrieved hereunder shall have the right to appeal in accordance with the provisions of chapter 39 of this title;

(7) At any time prior to the filing of an appeal to the superior court pursuant to the administrative procedures act, if, as a result of a hearing as set forth in chapter 39 of this title, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent, legal guardian or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both. If an educational agency or institution places such a statement in the education records of a student the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

**History of Section.**

P.L. 1991, ch. 306, § 1.

Compiler's Notes. As enacted by P.L. 1991, ch. 306, § 1, subdivisions (1), (5), and

(6) ended with a period. In 1991, the compiler substituted a semicolon for a period at the end of subdivisions (1), (5), and (6).

**16-71.4. Decisions.** — Should a decision be rendered against the school system, the records shall be corrected by the school system in accordance with the decision.

**History of Section.**

P.L. 1991, ch. 306, § 1.

**16-71.5. Parents and guardians.** — The rights of parents as enumerated in this chapter shall also pertain to legal guardians.

**History of Section.**

P.L. 1991, ch. 306, § 1.

**16-71.6. Records defined.** — For the purposes of this chapter the term "records" shall be defined in accordance with the definition of "education records" contained in 20 U.S.C. § 1232G.

**History of Section.**

P.L. 1991, ch. 306, § 1.

Compiler's Notes. As enacted by P.L. 1991, ch. 306, § 1, this section contained a reference to "'educational records' contained

in 20 U.S.C. 1232(G)". The correct reference is to "'education records' contained in 20 U.S.C. § 1232G", and, in 1991, the compiler substituted such reference for the former reference.