

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

In the Matter of P. Doe

v.

Warwick School Committee

DECISION

Held: This appeal relates to whether or not a parent may have access to a list of questions used in the investigation of a school nurse teacher's class presentation in a health and family life class for younger students. After checking the applicability of relevant statutes, i.e. the Federal Family Rights and Privacy Act, the Rhode Island Educational Records Bill of Rights Act, and the Federal Pupil Privacy Protection Act, we find the parent is not entitled to the list of questions at issue. The appeal is therefore denied and dismissed.

DATE: January 10, 2008

Travel of the Case and Jurisdiction

This case results from the decision of a school nurse teacher who was teaching a health and family life class for younger students not only to discuss in this class topics inappropriate for students in this age range, but also to discuss these topics in a coarse and cavalier manner. All concede that the actions of this teacher were inappropriate. The school believes that it has taken appropriate action to remediate this situation. In investigating what was said in the class the school district, with parental permission, conducted individual interviews with the students in the class. The school district prepared a list of questions to be used in these interviews. The petitioning parent wants a copy of these questions. The respondent school district is prepared to give the petitioning parent a copy of her daughter's response to these questions, but it is refusing to disclose the questions themselves.

This matter has been heard by the Warwick school committee which upheld the decision of the district not to provide the parent with a copy of the question list. Mediation efforts to resolve this dispute were not fruitful and this matter came on for a hearing as a contested case under the Rhode Island Administrative Procedures Act. Testimony was taken at this hearing, legal arguments were heard, and a transcript was prepared. The matter is now in order for decision. The Commissioner's jurisdiction in this matter is grounded in the following two statutes:

R.I.G.L. 16-39-1 Appeal of matters of dispute to commissioner. – Parties having any matter of dispute between them *arising under any law relating to schools or education* may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved. (Emphasis added)

R.I.G.L. 16-39-2 Appeal of school committee actions to commissioner. – Any person aggrieved by any decision or doings of any school committee or in any other matter *arising under any law relating to schools or education* may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved. (Emphasis added)

A reading of these statutes will show that for the Commissioner to exercise jurisdiction over a case it is not enough for the case to involve a school — the case must also *arise under* a, “law relating to schools or education.” Our Supreme Court has stated: “Many statutes apply to educational institutions but lack the particular relation with schools or education that will bring them within the scope of the commissioner’s jurisdiction.” *Asadoorian v. Warwick School Committee*, 691 A.2d 573 (R.I. 1997) The *pro se* litigant in this case has not pointed us to any particular statute that would provide her with access to the question list she seeks, but we think it plain that we must decide whether the Federal Family Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and its Rhode Island analogue, The Rhode Island Educational Records Bill of Rights Act (R.I.G.L.16-71-1, *et seq.*), require the school district to disclose the question list at issue.

We will also examine whether the Federal Pupil Privacy Protection Act might provide the petitioner with an avenue to the question list she seeks. These statutes are clearly laws “relating to schools or education” over which the Commissioner has jurisdiction.

A statute we will not address in this case is Rhode Island’s Access to Public Records Act (APRA) (R.I.G.L.38-2-1, *et seq.*) Jurisdiction over the APRA is plainly vested in the Office of Attorney General (R.I.G.L. 38-2-8) and the Rhode Island Superior Court. (R.I.G.L.38-2-9) Since the Commissioner of Education lacks jurisdiction over APRA cases nothing we say in this case should be construed to foreclose the petitioner from exercising whatever rights she has under APRA.

Positions of the Parties

The Parent

The Parent contends that she is entitled to a copy of the question list.¹

The School District

The school district contends that it is not required to disclose the question list.

Findings of Fact

The facts of this case are not in real dispute. The only real issue in this case is a legal issue — is the parent entitled to the question list?

Conclusions of Law

A. Federal Family Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) & The Rhode Island Educational Records Bill of Rights Act (R.I.G.L. 16-71-1, *et seq.*)

Under FERPA the term “education record” encompasses those records, files, documents, and other materials which—

1. contain information directly related to a student; and
2. are *maintained* by an educational agency or institution or by a person acting for such agency or institution. (20 U.S.C. § 1232g See: FERPA Regulations at 34 CFR 99.3)

It is clear that the notes summarizing the student’s responses to the question list contain information “directly related to the ...student” and that these responses have been

¹ Transcript, page 7.

maintained by the school district. These response notes are therefore “education records” concerning a particular student which must be made available to the student’s parents in accordance with FERPA and the Rhode Island Educational Records Bill of Rights Act. The question list itself however — which is a document separate from the responses of the student — is not an “education record” because it is a generic document which does not, “contain information directly related to a student.” Under FERPA the rule is that generic protocols and question lists which do not contain information relating to a particular student are not “education records” which must be disclosed to parents. Letter of the Director of the Family Compliance Office, October 2, 1997. We therefore conclude that the question list at issue in this case is not “discoverable” under FERPA. We reach the same conclusion under the Rhode Island Educational Records Bill of Rights Act because this act, under its own terms, incorporates the FERPA definition of “education records”:

R.I.G.L. 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.

B. Federal Pupil Privacy Protection Act (PPRA) (20 U.S.C. 1232h)

The PPRA gives parents the right to inspect school surveys and material used in school instruction. (20 U.S.C. 1232h) The question list at issue here, however, is not a school survey. Instead it is document used to elicit witness information from individuals who were present when an incident of a potentially disciplinary import occurred. The question list is also not an item of instructional material. In sum, we must find that the PPRA does not give the parent in this case the right to inspect the question list at issue.

Conclusion

The appeal must be denied and dismissed.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

January 10, 2008
Date