

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 217 CD 2024

COMMONWEALTH CHARTER ACADEMY CHARTER SCHOOL,
Appellant,

v.

SUSAN SPICKA AND EDUCATION VOTERS OF PA,
Appellees.

BRIEF FOR APPELLANT,
COMMONWEALTH CHARTER ACADEMY

**Appeal from the Order of the Honorable John F. Cherry, Dated February 6,
2024, in the Court of Common Pleas of Dauphin County at 2022 CV 7857**

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Dated: June 24, 2024

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I. STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 42 Pa.C.S. § 762.

II. ORDER IN QUESTION

AND NOW, this 6th day of February, 2024, upon consideration of the Petition for Review of Commonwealth Academy Charter School, the Response of Susan Spika and Education Voters of PA, the Briefs of the parties, oral argument and the *in camera* submission to this Court under cover dated September 26, 2023, it is hereby ORDERED that:

We summarily AFFIRM the Final Determination of the Office of Open Records (“OOR”) filed September 22, 2022, for the reasons set forth therein.

We reject Petitioner’s claim that, even with redactions as directed by OOR, the identity of a student/and or their parent would be discoverable. We find that the REDACTED example of the Community Class Registration Form, as submitted to the Court *in camera*, meets the directive of the OOR.

Further, we do not find that Petitioner’s proposal of production of an Excel Spread Sheet, rather than production of the documents themselves, adequately responds to the Request.

Accordingly, Petitioner shall, within *60 days* of the date of this ORDER,

provide the requested Community Class Registration Forms redacted of:

Student names

Student Identification Numbers

Parent/Caretaker/Guardian Names and Signatures

The names of the business or organization and its entity number or Tax ID Number.

BY THE COURT:
John F. Cherry
Judge

III. SCOPE AND STANDARD OF REVIEW

This Court’s review of a trial court’s disposition of a statutory appeal involving a local agency under the Right-to-Know Law (“RTKL”) is “limited to determining whether findings of fact are supported by competent evidence or whether the trial court committed an error of law, or an abuse of discretion in reaching its decision.” *Allegheny County Department of Administrative Services v. A Second Chance, Inc.*, 13 A.3d 1025, n. 3 (Pa. Cmwlth. 2011). The scope of review of a question of law under the RTKL is plenary. *Id.*

IV. STATEMENT OF QUESTIONS INVOLVED

(1) Whether the trial court erred by failing to defer to the obligation of the School to ensure the removal of all personally identifiable information as required by the Family Educational Rights and Privacy Act (“FERPA”)?

Suggested Answer: Yes

(2) Whether the trial court erred by rejecting the School’s claim that, even with redactions to the Community Class Reimbursement forms, the identity of the student and/or their parent would be discoverable?

Suggested Answer: Yes

(3) Whether the trial court erred in holding that releasing the requested information from the Community Class Reimbursement forms in an alternate format does not adequately respond to the request?

Suggested Answer: Yes

(4) Whether the trial court erred by failing to defer to the obligation of the School to balance the students’ and their parents’ interests in controlling access to dissemination of personally identifiable information protected by constitutional privacy rights?

Suggested Answer: Yes

V. STATEMENT OF THE CASE

Commonwealth Charter Academy Charter School (“CCA”) – a K-12 public cyber charter school duly authorized and organized under the laws of the Commonwealth of Pennsylvania – recognizes that vital student learning and essential socialization and student maturation will occur outside a traditional school setting and therefore encourages students to engage in real world learning experiences as an extension of the CCA curriculum. Consequently, CCA offers a Community Class Reimbursement (“CCR”) program wherein CCA will reimburse a parent/guardian for the instructional component of an extracurricular class taken in the community. For the 2019-2020 and 2020-2021 school years, CCA reimbursed up to \$200 per school year per student. To obtain a CCR, a parent/guardian is required to complete (by hand or otherwise) and submit a Community Class Registration Form with the attached Community Class Attendance Form, and proof of payment. Once received, CCA maintains the completed forms and accompanying proof of payment in its electronic filing system. In the system, there is a folder specifically designated for each individual student, wherein the documentation is maintained. (R. 18a, 49a-52a).

On May 23, 2022, Susan Spicka, the Executive Director of Education Voters of PA – a statewide public education advocacy organization (“Requesters”), submitted a Right-to-Know Law (“RTKL”) request to CCA. Requesters sought the following:

Copies of ALL ‘Community Class Registration Forms’ for the 2019-2020 and 2020-2021 school year that were submitted to CCA with the following UNREDACTED information:

Course title:

Number of time[s] the class meets:

Start date:

Cost of the class:

Amount requesting for the reimbursement:

On June 30, 2022, CCA partially denied the request, insofar as it sought records exempt from disclosure under Section 708(b)(1), (6), and (15) of the RTKL. However, in this notification, CCA did provide the aggregate cost of the classes for the 2019-2020 and 2020-2021 school years. (R. 32a-35a).

On July 21, 2022, the Requesters appealed to OOR; and on August 8, 2022, CCA submitted a position statement to the Pennsylvania Office of Open Records (“OOR”). (R. 30a-31a, 37a-68a).

Procedural History

On September 16, 2022, OOR issued a Final Determination in *Susan Spicka and Education Voters of PA v. Commonwealth Charter Academy Charter School*, OOR Docket No. AP 2022-1704, finding that CCA successfully demonstrated that the CCR forms are education records that contain personally identifiable information (“PII”) and are protected by the federal Family Educational Rights and Privacy Act

(“FERPA”), but nevertheless, directing CCA to provide the redacted CCR forms to the Requesters. (R. 15a-21a).

On October 13, 2022, CCA filed a Petition for Review of the Final Determination issued by OOR, arguing that OOR erred to the extent the Final Determination requires CCA to redact and disclose the CCR forms, which constitute education records and contain PII exempt from access under FERPA. (R. 4a-71a).

On October 20, 2022, President Judge John F. Cherry of the Dauphin County Court of Common Pleas (“trial court”) issued a court order staying the proceedings pending issuance of a final decision in *Central Dauphin School District v. Hawkins*, No. 88 MAP 2021.¹ (R. 72a).

On February 21, 2023, the Requesters filed an uncontested Motion to Lift Stay, which the trial court granted on March 7, 2023. (R. 73a-74a).

On March 17, 2023, the Requesters filed an Answer to the Petition for Review. (R. 75a-92a).

On May 31, 2023, the trial court conducted a status conference, wherein a schedule for the parties to file briefs in support of their respective arguments in consideration of the decision in *Central Dauphin School District v. Hawkins* was set.

On September 8, 2023, the trial court heard oral argument. (R. 93a-109a).

¹ On December 21, 2022, the Pennsylvania Supreme Court issued an opinion in *Central Dauphin School District v. Hawkins*, 286 A.3d 726 (Pa. 2022).

On September 26, 2023, CCA provided the CCR forms for *in camera* review, as proposed at oral argument. (R. 110a).

On February 6, 2024, the trial court issued an Order summarily affirming OOR's Final Determination. (R. 112a-113a). Then, on May 7, 2024, the trial court issued an opinion setting forth the reasons the Order of February 6, 2024, should be affirmed. (Attached as Exhibit A; R. 123a-125a).

VI. SUMMARY OF ARGUMENT

The Court of Common Pleas of Dauphin County erred by summarily affirming the Office of Open Records' Final Determination requiring the redaction and production of student education records in direct contravention of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S. C. § 1232g, and constitutional privacy rights. FERPA imposes a serious responsibility on public schools to safeguard student and family privacy, and any failure by a school to protect personally identifiable information will result in an erosion of trust between the school and the families and/or in harm or embarrassment to students and their families.

The recent pronouncement that education records in a public school's possession are presumed public under the Pennsylvania RTKL is antithetical to the protection of the Commonwealth's children and the avoidance of unjustified administrative burdens on our schools. CCA maintains that it has an obligation to ensure the removal of *all* PII as required by FERPA and to balance the students' and their parents' interests in controlling access to dissemination of PII protected by the constitutional privacy rights, and that redaction of the Community Class Reimbursement forms did not sufficiently satisfy either obligation. If, going forward, schools will be placed in the untenable position of redacting student education records to comply with a RTKL request, the school must be able to provide

the information which is subject to access in a format it deems appropriate to protect student and parent privacy. In its judgment, the school has done just that, by providing all of the requested information to the Requester in an Excel spreadsheet and PDF during the pendency of this action.

Therefore, Commonwealth Charter Academy respectfully requests that this Honorable Court overrule the decision of the Court of Common Pleas of Dauphin County.

VII. ARGUMENT

A. THE COMMUNITY CLASS REIMBURSEMENT FORMS SUBMITTED BY PARENTS/GUARDIANS TO CCA ARE EDUCATION RECORDS PURSUANT TO FERPA AND CONTAIN PERSONALLY IDENTIFIABLE INFORMATION EXEMPT FROM ACCESS UNDER THE RTKL.

As a public school in Pennsylvania, CCA is statutorily required to, and does, comply with the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.101 *et seq.*, and the federal Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and its implementing regulations,² 34 CFR Part 99. However, these statutes differ greatly with respect to the who, what, and how of access to records. The RTKL, Act Number 3 of 2008, provides residents of the United States with access to official government information in order to promote transparency and accountability. *See* Act of February 14, 2008, P.L. 6, No. 3, Short Title; 65 P.S. § 67.102; *Pennsylvania State Education Association v. Commonwealth, Department of Community & Economic Development*, 148 A.3d 142, 155 (Pa. 2016); *Pennsylvania State Police v. Grove*, 161 A.3d 877, 892 (Pa. 2017). In contrast, the purpose of FERPA is “to assure that parents and eligible students can access the student’s education records, and to protect their right to privacy by limiting the transferability of their education records without their consent. 120 Cong. Rec.

² The Department of Education regulations were formerly titled, the “Privacy Rights of Parents and Students.” 53 FD 11943, Apr. 11, 1988.

39862.” 73 Fed. Reg. at 74831.³ That being said, the Pennsylvania Supreme Court recently held that education records in a public school’s possession are presumed public under the RTKL, and the school bears the burden to prove a record is exempt from disclosure. *Central Dauphin School District v. Hawkins*, 286 A.3d 726, 742 (Pa. 2022). Despite this broad pronouncement, antithetical to the protection of the Commonwealth’s children and the avoidance of unjustified administrative burdens on our schools, the court did caution on multiple occasions throughout its majority opinion that “*these determinations [under FERPA and the RTKL] involve context-specific, case-by-case, fact-sensitive examinations, which turn on reasonableness* — that is, whether the District ‘has made a reasonable determination that a student’s identity is not personally identifiable’ when ‘taking into account other reasonably available information.’” *Id.* at 744 (citations omitted) (emphasis supplied). The court also “said, it is the responsibility of the agency, here the District, to balance student’s informational privacy rights, by implementing required redactions, in the first instance,” *Id.*, while recognizing that redactions may come in varying forms. *Id.* at 742 (“the District is obligated to redact students’ images by, for example, blurring

³ Interesting to note, when amendments to Pennsylvania’s open records law were being debated in the General Assembly in 2008, Pennsylvania’s current Governor, the Honorable Joshua D. Shapiro, then a member of the Pennsylvania House of Representatives, stated that disclosure of education transcripts “is governed by Federal law. The Family Educational Rights and Privacy Act is a Federal law that protects the privacy of student education records, and it applies to all schools that receive funds under an applicable program of the U.S. Department of Education.” Pa. H. Jour. 367 (Feb. 6, 2008).

or darkening portions of the video revealing the students' identities"); *See also, Evans v. Federal Bureau of Prisons*, 951 F.3d 578, 587 (D.C. Cir. 2020) (discusses the possibility of similar methods of segregability, i.e., screenshots in lieu of video footage.).

FERPA and its implementing regulations protect the privacy rights of parents and students attending educational institutions receiving federal funds by requiring schools to obtain parental consent before disclosing: (1) education records; or (2) any personally identifiable information contained in an education record. *See* 20 U.S.C. § 1232g(b)(1),(2). FERPA defines "education records" as those records that are "[d]irectly related to a student" and "[m]aintained by an educational agency or institution or by a party acting for the agency or institution." 20 U.S.C. § 1232g(a)(4)(A); *see also* 34 C.F.R. § 99.3. Additionally, the regulations define "personally identifiable information" as:

- a) The student's name;
- b) The name of the student's parent or other family members;
- c) The address of the student or student's family;
- d) A personal identifier, such as the student's social security number, student number, or biometric record⁴;

⁴ As used in the definition of "personally identifiable information," "biometric record" means "a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns;

- e) Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
- f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

34 C.F.R. § 99.3. The Pennsylvania Supreme Court has interpreted the regulations to allow for the disclosure of “an education record ordinarily protected from disclosure to all but an eligible student or her parent ... without consent if the student’s personally identifiable information has been removed.” 34 C.F.R. § 99.31(b)(1); *Central Dauphin School District*, 232 A.3d at 730.

In the *Central Dauphin School District* case, the requester submitted a request for a school bus surveillance video, which captured an incident which took place in a public setting between a student athlete and a parent. *Id.* at 719. The school district denied the request, arguing that the bus surveillance video was an “education record” protected from disclosure by FERPA. *Id.* On appeal, the Office of Open Records,

voiceprints; DNA sequence; facial characteristics; and *handwriting*.” 34 C.F.R. § 99.3 (emphasis supplied).

the Dauphin County Court of Common Pleas, and the Commonwealth Court all concluded that the school district failed to demonstrate that the bus surveillance video qualified as an education record warranting any protection under FERPA. *Id.* at 720-721. The school district appealed to the Pennsylvania Supreme Court to address the following issue: “Whether the Commonwealth Court erred as a matter of law in determining that the requested video, which depicts children on a school bus during the school day, is not exempt from disclosure under [FERPA].” *Id.* at 721. The court ultimately determined the school district did not show that the requested video was exempt from disclosure under the RTKL or FERPA and ordered the school district to redact and disclose the video. *Id.* at 745.

Given the fact sensitive nature of determinations under FERPA and the RTKL, different circumstances can yield different results. *Id.* at n. 13. Such is the case here – where the request seeks a true educational record not a record of the school which contains personally identifiable student information.

Here, both OOR and the trial court found CCA successfully demonstrated that the CCR forms are education records that contain personally identifiable information protected by FERPA. (R. 19a, 124a). OOR determined the forms: contain a variety of identifiers, including name and address; directly relate to the student because they identify courses taken by a student; and are maintained by CCA in each student’s

individual file. CCA respectfully requests that this Court not disturb that conclusion, based upon OOR's factual and legal determinations.

Since the CCR forms qualify as an education record, CCA is required by FERPA to redact **all** personally identifiable information prior to disclosure. 34 C.F.R. § 99.31(b)(1); *Central Dauphin School District*, 232 A.3d at 730.

CCA initially denied Requester's request for the CCR forms, and accompanying information, based upon the conclusion⁵ that records that qualify as education records protected by FERPA are entirely exempt from access under the RTKL. *See* 20 U.S.C. § 1232g; 34 C.F.R. Part 99; 65 P.S. § 67.305(a) (records in the possession of a local agency shall be presumed to be a public record unless the record is exempt under section 708; is protected by a privilege; or is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree), 65 P.S. § 67.306 ("Nothing in this act shall supersede or modify the public

⁵ For public schools, which regularly train their employees on the legal requirements related to confidentiality of student information and which provide information to parents/guardians and eligible students on an annual basis, the pronouncement that education records in the possession of a public school are presumed public, 286 A.3d at 742, is a shift in student-centered focus and in time demands. No longer may school professionals be completely devoted to the students and parents/guardians, but rather must prioritize devoting attention to satisfying the whim of any resident of the United States who submits a request for student education records of any type or quantity. Imagine for a minute, Jane Doe submits a request to the School District of Philadelphia for the report cards for all 179,000 students (approximate number) for the last marking period of the 2023-2024 school year. Instead of focusing time and attention to student learning and other student needs, the School District of Philadelphia is required to assess and redact information from each of the 179,000 records. It's absurd to think either the Pennsylvania General Assembly or the U.S. Department of Education intended this result. *See*, 1 Pa.C.S. § 1922(1) (in construing a statute – such as the RTKL – it is to be presumed by the courts of the Commonwealth that the General Assembly “does not intend a result that is absurd, impossible of execution or unreasonable”).

or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.”), and 65 P.S. § 67.708(b) (The following are exempt from access by a requester under the RTKL: “(1) A record, the disclosure of which: (i) would result in the loss of Federal or State funds by an agency or the Commonwealth[.]”). (R. 32a). Consequently, CCA did not provide redacted copies of the CCR forms and accompanying information. Before OOR and the trial court, CCA continued to pursue the argument that education records are exempt from access under the RTKL, but also argued, in the alternative, that personally identifiable information could not be removed in a way that would allow for disclosure of the records. (R. 4a-12a, 93a-99a, 105a-107a). OOR and the trial court addressed the argument related to redaction of personally identifiable information and ordered CCA to provide the CCR forms redacted of any identifying information. (R. 20a, 112a-113a).

On appeal, CCA maintains that the original CCR forms are personal records of student educational endeavors (different in kind from school surveillance videos) and contain personally identifiable information, which cannot be redacted; therefore, CCA cannot provide access to the CCR forms in their entirety. Although CCA acknowledges that it did not explicitly address the mode by which a parent/guardian completes a CCR form, whether typed or handwritten, until oral argument, it can be inferred from the evidence related to submission and the oral argument transcript,

that almost all parents/guardians complete the forms by hand and then submit them electronically to CCA in varying forms. (R. 98a).

Handwriting is an identifying characteristic open for all to see. *See, U.S. v. Doe*, 457 F.2d 895, 898 (2d Cir. 1972); *U.S. v. Mara*, 410 U.S. 19, 21 (1973); *In Re Casale*, 512 Pa. 548, 555-556 (1986).⁶ As mentioned above, FERPA includes “handwriting” in the definition of “biometric record” which is included in the definition of “personally identifiable information.” Although, as used in the definition, “handwriting” relates to a student’s handwriting, CCA maintains that this inclusion supports a determination that handwriting is an identifying characteristic. And here, the handwriting of the parent/guardian constitutes “[o]ther information that, alone or in combination, is linked or linkable to a specific student.” In addition, Requester has demonstrated that she is willing to publicly share information obtained through RTKL requests and other sources, including private CCA Facebook groups. (R. 55a-68a). Consequently, CCA cannot disclose the handwritten forms even with redactions to the Requesters; doing so would be in violation of FERPA, and is therefore, not required under the RTKL. 65 P.S. §§ 67.305(a), 67.306.

⁶ These cases, all criminal in nature, involved efforts by either a grand jury or a District Attorney to obtain handwriting exemplars. In these cases, the court examined the expectation of privacy an individual has in the physical characteristics of a person’s script. Although vastly different from the issues here, the determinations and holdings related to handwriting are instructive.

B. PROVIDING THE REQUESTED INFORMATION IN AN ALTERNATE FORMAT ADEQUATELY RESPONDS TO THE REQUEST.

The trial court erred in finding that the production of the requested information in an alternate format did not adequately respond to the RTKL request.⁷ (R. 12a). The RTKL broadly defines a “record” as “[i]nformation, regardless of form characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102. In addition, the provision on redactions states that an agency shall redact “information which is not subject to access, and ... grant access to the information which is subject to access.” 65 P.S. § 67.706. Moreover, “an agency may create a record in order to ease review of requested information.” *See Grine v. County of Centre*, 138 A.3d 88 (Pa. Cmwlth. 2016), *app. denied*, 157 A.3d 483 (Pa. 2016) (instead of providing detailed invoices that contained usage of cellular phones the County created a color-coded spreadsheet that tracked usage between the Judges and the DA’s office); 65 P.S. § 67.705. Furthermore, if an agency has concerns regarding the alteration or manipulation of

⁷ On March 5, 2024, contemporaneously with its Notice of Appeal and Concise Statement of Matters Complained of on Appeal, CCA provided the Requesters with the requested information from the 2019-2020 and 2020-2021 Community Class Reimbursement forms in an Excel Spreadsheet and PDF. A notarized Certification accompanied the documents. (R. 120a). CCA also published a news story about the appeal and the PDF of the CCR information on its website: <https://ccaeducate.me/news-events/newsroom/cca-fights-to-protect-student-and-family-privacy/>.

information, the agency may provide the information in another format. *See Bowling v. Pennsylvania Emergency Management Agency*, OOR Dkt. AP 2009-0128.

In rendering its decision in *Central Dauphin School District*, the Pennsylvania Supreme Court discussed context-specific reasonableness and different circumstances yielding different results. Although CCA is not required to create a record which does not currently exist in its possession, custody, or control, CCA has an obligation under the law to guarantee the privacy of legally protected student academic information and a commitment to its students and parents to do the same. To that end, CCA presented evidence, by way of Affidavit before OOR and oral argument before the trial court, expressing its concerns related to “manipulation” of the information, i.e., the Requester’s own demonstrated record of holding the academic choices of parents and cyber students to public ridicule and shaming, albeit perhaps a different type of “manipulation” than contemplated thus far, if it provides the handwritten CCR forms to Requesters. (R. 55a-68a, 98a-99a). Under the circumstances, and balancing the interests, it is reasonable for CCA to provide the information in an alternate format to protect the information which is not subject to access – which is ultimately student participation in real world learning experiences.

The Requesters originally sought the following unredacted information from the CCR forms: course title; number of time[s] the class meets; start date: cost of the class; and amount requesting for the reimbursement. CCA can, and in fact already

has during the pendency of this action, provided the requested information to the Requesters in both an Excel Spreadsheet and PDF format. Given all the interests at issue here, including the intersection of student privacy laws, CCA respectfully requests this Honorable Court to conclude that the trial court erred in finding the provision of the requested information in a spreadsheet did not adequately respond to the request.

C. PARENTS HAVE A CONSTITUTIONALLY PROTECTED PRIVACY INTEREST IN THE INFORMATION.

Under Section 706(b)(1), public records are exempt from public access if disclosure “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” 65 P.S. § 67.708(b)(1)(ii). Beyond that statutory protection, in *Pennsylvania State Education Association v. Commonwealth, Department of Community & Economic Development*, the Pennsylvania Supreme Court held that individuals possess a constitutional right to privacy in certain types of personal information. 148 A.3d 142, 158 (Pa. 2016) (“The right to informational privacy is guaranteed by Article 1, Section 1 of the Pennsylvania Constitution, and may not be violated unless outweighed by a public interest favoring disclosure.”). In its Final Determination, OOR concluded that “there are no constitutional right to privacy concerns for the

OOR to address.” (R. 20a). The trial court did not specifically address this issue in its Order or Opinion.

OOR has since determined that it does not need to conduct a separate analysis when a school district raises a constitutional right to privacy because the FERPA analysis created by Pennsylvania’s appellate courts incorporates the right to privacy, which mandates that personal information of students be either redacted or withheld, as appropriate. *See Hulse v. Keystone Central School District*, OOR Dkt. AP 2023-0640, n.1. This very well may satisfy the right to privacy as it relates to students, although technically under FERPA the rights reside with the parent/guardian until the student turns 18, but it fails to acknowledge any separate right a parent/guardian may have. As discussed above, handwriting is an identifying characteristic, and to the extent a parent/guardian can be identified, the unredacted information reveals information about the parent’s/guardian’s personal choice related to what programs their child/children will participate in and the cost at which that participation comes.⁸ CCA families reside in all parts of the Commonwealth – many in smaller communities where identities can be easily deciphered from the unrestricted publication of original handwritten forms. The risks to the privacy of students and

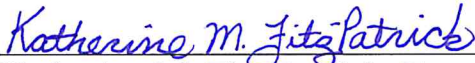
⁸ CCA acknowledges that it did not provide notice to parents/guardians about the request, its disposition, or its appeal, or make redactions in the first instance. However, at the time of the request, its disposition, and appeal, CCA believed the requested records were entirely exempt. CCA did raise the issue and set forth its rationale related to constitutional privacy, but it was not able to fully fulfill its obligations due to the status of the law.

their families when such academic records are divulged is a very real concern to CCA and one which deserves consideration.

VIII. CONCLUSION

For the foregoing reasons, CCA respectfully requests reversal of the February 6, 2024, Order of the Dauphin County Court of Common Pleas. This Court should find the original CCR forms exempt pursuant to FERPA and the RTKL, or, in the alternate that provision of the requested information in an alternate format satisfies the purpose of the RTKL.

Respectfully submitted,



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June 24, 2024

CERTIFICATE OF SERVICE

I, Katherine M. Fitz-Patrick, hereby certify that on June 24, 2024, a true and correct copy of the foregoing Brief of Appellant was served via First-Class Mail, postage prepaid upon:

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Katherine M. FitzPatrick
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Exhibit A

E 5-7-24 RAR

COMMONWEALTH CHARTER ACADEMY CHARTER SCHOOL, Petitioner, v. SUSAN SPICKA AND EDUCATION VOTERS OF PA, Respondents

: IN THE COURT OF COMMON PLEAS : DAUPHIN COUNTY, PENNSYLVANIA : CIVIL ACTION : NO. 2022 CV 7857 : COMMONWEALTH COURT : DOCKET NO. 217 CD 2024

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TRIAL COURT OPINION

This matter came before the trial court on the appeal of Commonwealth Charter Academy Charter School ("CCA") of the Final Determination of the Office of Open Records ("OOR"). On February 6, 2024, we affirmed the September 16, 2022, Final Determination of the Office of Open Records ("OOR").¹

By way of relevant procedure before this court, on October 13, 2022, CCA filed its Petition for Review of Final Determination of the Office of Open Records. Pursuant to the parties' request, on October 21, 2022, we ordered a stay of disposition pending the decision of the Pennsylvania Supreme Court in Central Dauphin School District v. Hawkins, 286 A.3d 726 (2022). On February 21, 2023, Susan Spika, (Respondent/Requester") filed an uncontested Motion to Lift Stay, which we granted by Order of March 7, 2023. On March 17, 2023, Respondent filed an Answer to the Petition to Review. The parties filed briefs.

On September 8, 2024, we heard oral argument. At oral argument, counsel for CCA proposed that it submit, for in camera review, redacted and unredacted Community Class Registration Forms at issue in this dispute. (Transcript of Proceedings, September 8, 2023, p. 6). CCA's

¹ We inadvertently utilized the date of the Final Determination as September 22, 2022.

counsel also proposed submission of an Excel spreadsheet as an alternative form of disclosure of the contents. *Id.* Under cover dated September 26, 2023, CCA submitted those documents.

Following *in camera* review, we issued our February 6, 2024, Order. We concluded that the Final Determination of OOR set forth the correct legal analysis and reasoning in support of disclosure of the Community Class Registration Forms as redacted and adopted the same.

In affirming and adopting the reasoning of the Final Determination of the OOR, we properly exercised our discretion and concluded as a matter of law that disclosure of redacted records comports with the Right to Know Law (“RTKL”) and the protections of Federal Educational Rights and Privacy Act (“FERPA”). For the same reasons, as set forth at pages 3-6, in the Final Determination, we reject the argument of CCA that, because the requested forms are education records, they are not public records, and are necessarily exempt from disclosure under FERPA and §102 and §305(a) of the RTKL.

We properly exercised our discretion and concluded as a matter of law that disclosure of redacted records does not contravene *Central Dauphin School District v. Hawkins*, 286 A.3d 726 (2022). We read *Central Dauphin* to hold that classification of a record as an educational record under FERPA does not automatically render it exempt from disclosure under Sections 102 and 305 (a). The redaction provisions of the RTKL and FERPA regulations apply to education records to contemplate redaction to remove “personally identifiable information”.

Here, Respondent/Requester seeks five fields of information on the forms: The course title, the number of times the class meets, the cost of the class and the amount of reimbursement sought. The reacted forms delete personally identifiable information. We do not construe *parent* handwriting to be personally identifiable information under 34 CFR Section 99.3 (f).

For these reasons, the Order of February 6, 2024, should be affirmed.

BY THE COURT:


JOHN F. CHERRY
JUDGE

May 7, 2024

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MAY 07 2024

I hereby certify that the foregoing is a true and correct copy of the original filed.


Notary