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25-ORD-118

May 9, 2025

In re: Sophie Pruitt/Ashland Independent School District

Summary: The Ashland Independent School District (“the School District”) did not violate the Open Records Act (“the Act”) when it did not provide records it does not possess.

Open Records Decision

Sophie Pruitt (“Appellant”) submitted a request to the School District seeking a variety of school records related to her time as a student at Paul G. Blazer High School from 2004 to 2008.¹ Responding individually to each part of the request, the School District stated it does not possess any records responsive to the Appellant’s request. This appeal followed.²

¹ Specifically, the Appellant sought: (1) “Enrollment, attendance, and transcript records”; (2) “Disciplinary records, including incident reports, suspensions, expulsions, and appeals”; (3) “Reports from school resource officers, law enforcement interactions, and referrals to alternative education programs”; (4) “Psychological or behavioral evaluations conducted by the school”; (5) “Any communications between school staff and external agencies . . . regarding [her] education, discipline, or placement”; (6) “All records related to school bus incidents involving” the Appellant, including injury reports, incident reports, or disciplinary actions related to bus incidents; (7) “All records and communications regarding [the Appellant’s] right to protest and petition on school grounds,” including the official school policy on “student-led protests, petitions, or free speech” and all “emails, memos, or written communications among school administrators, teachers, and staff regarding” the Appellant’s right to protest; (8) “LGBTQ+ policies and relevant school materials in effect between 2004-2008”; (9) “Data on bullying, harassment, and violence against LGBTQ+ students from 2004-2008”; (10) written communications concerning the Appellant and her disciplinary status; and (11) “All records of positive recognition, commendations, awards, or affirming documentation” from the Appellant’s time at the school.

² The Appellant also submitted the School District’s responses to five other requests but did not submit the requests to which the School District was responding. Thus, the School District’s other responses are not at issue in this appeal. See KRS 61.880(2)(a).

On appeal, the School District maintains that it does not possess any records responsive to the Appellant's request. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does or should exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records do or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

Here, the Appellant has not established a *prima facie* case that the School District possesses responsive records. Even if the Appellant had established a *prima facie* case, the School District has explained that it follows the retention schedule governing records of public school districts,³ and that any records that previously may have existed have been destroyed. Thus, the School District did not violate the Act when it did not provide records it does not possess.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

³ See Records Retention Schedule, Public School District, available at <https://www.education.ky.gov/districts/trans/Documents/Public%20School%20District%20Records%20Retention%20Schedule.pdf> (last accessed May 9, 2025).

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Distributed to:

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