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25-ORD-339

October 29, 2025

In re: Brennan Crain/Warren County Public Schools

Summary: Warren County Public Schools (“WCPS”) violated the Open Records Act (“the Act”) when its initial response did not explain the basis of its denial. WCPS did not violate the Act when it withheld personally identifiable information exempt under federal law. But WCPS violated the Act when it withheld records in their entirety instead of redacting exempt portions and providing the remainder.

Open Records Decision

Brennan Crain, a reporter for WBKO (“the Appellant”), requested “records related to recent emergency responses” at two Warren County elementary schools. Specifically, the Appellant sought “[a]ny official reports created during the events,” “[a]dministrative notes documenting what happened before, during, and after the incident[s],” and “[a]ny record that contains information about emergency responses to any” Warren County schools since August 1, 2020. In response, WCPS provided nonexempt records but withheld other records under KRS 61.878(1)(a) and (k). Regarding its invocation of KRS 61.878(1)(k), WCPS explained the records are exempt under the Federal Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and the Kentucky Family Educational Rights and Privacy Act (“KFERPA”), KRS 160.700, *et seq.* This appeal followed.¹

When a public agency denies a request for records, it must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The agency must “provide particular and detailed information” in its explanation, not

¹ WCPS denied the Appellant’s request for records containing “information about emergency responses” under KRS 61.872(3)(b). The Appellant has not challenged that portion of WCPS’s response.

merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013). WCPS’s initial response stated only that “any additional records in the possession of WCPS” are exempt under KRS 61.878(1)(a), FERPA, and KFERPA. That response gave no explanation of the records withheld or how those exemptions applied to them. Thus, WCPS’s initial response violated the Act.

On appeal, WCPS supplements its response explaining that it cannot produce the records “without personally identifying the students involved in the incidents” which would violate FERPA² and KFERPA. FERPA provides that “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization, other than to” specified individuals under conditions not relevant here. 20 U.S.C. § 1232g(b)(1). KFERPA states that “[e]ducation records of students in the public educational institutions in [Kentucky] are deemed confidential and shall not be disclosed, or the contents released, except under the circumstances described in KRS 160.720.” KRS 160.705(1).

Under KRS 61.878(4), “if any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.” *See also Univ. of Ky. v. Kernel Press, Inc.*, 620 S.W.3d 43, 57 (Ky. 2021) (“FERPA does not prohibit an institution from releasing that record if all personally identifiable information is redacted. Redaction of FERPA-protected education records is commonplace.” (internal citations omitted; cleaned up)). Personally identifiable information includes:

- (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 record;
- (e) Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;

² FERPA is incorporated into the Act by KRS 61.878(1)(k).

- (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.

WCPS argues that the withheld records are replete with personally identifiable information as set forth in paragraphs (f) and (g) of the definition of personally identifiable information in 34 C.F.R. § 99.3. According to WCPS, the students involved in both incidents “have identifiable special needs and disabilities and receive services under individualized education programs.” As a result, “[r]eleasing information such as the classes or teachers involved, the nature of the students’ disabilities, behaviors, or the disciplinary consequences taken in response to the behaviors would enable members of the community to determine the students’ identities based on contextual details.” Thus, WCPS maintains that it correctly withheld the requested records in their entirety.

Because “[t]he applicability of FERPA to a particular record must be determined on a case-by-case basis,” 24-ORD-239, the Office requested a copy of the records for internal review under KRS 61.880(2)(c). In response, WCPS provided two sets of records, each related to one of the identified incidents.

To start, it is apparent that WCPS’s description of the records is accurate. The records do, in fact, contain details related to the students such as “the classes or teachers involved, the nature of the students’ disabilities, behaviors, or the disciplinary consequences taken in response to the behaviors” at issue. Because the students have specialized education needs and programs unique to them, the Office concludes that WCPS correctly determined that such information is exempt under FERPA as personally identifiable information because it “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.”³

³ The Office notes that the type of information 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” is inherently context specific.

However, WCPS does not address the portions of the responsive records that do not contain any information regarding the relevant students. Specifically, WCPS does not address the forms that contain, in part, standardized language not specific to the students or related incidents. Similarly, WCPS does not address portions of the records that describe the actions by staff members responding to the identified incidents. It is not apparent how descriptions of WCPS staff—absent the identity of the student’s teachers—responding to the identified incidents would lead to the identification of the students themselves.

For its part, WCPS relies on 20-ORD-001 and 20-ORD-031 as support for its decision to withhold the responsive records in their entirety, rather than redact personally identifiable information. However, those decisions considered requests seeking general categories of records related to named students. Because the students’ identities were known to the requester, the Office determined that, even with redactions, the records would be “linkable to a specific student” and therefore exempt under FERPA. In the present appeal, WCPS does not claim the Appellant knows the identity of the involved students. As such, WCPS violated the Act when it withheld the responsive records in their entirety, rather than redacting all personally identifiable information.⁴ *See, e.g.*, 03-ORD-163 (finding a school system had violated the Act when it withheld an anonymous complaint in its entirety instead of redacting personally identifiable information regarding a student).

At bottom, the requested records contain personally identifiable information regarding WCPS students which must be redacted pursuant to FERPA. But, because not all information in the records is personally identifiable information, WCPS violated the Act when it withheld the records in their entirety.

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.

⁴ WCPS has not further explained its reliance on KRS 61.878(1)(a). That statute exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Without any explanation from WCPS, the Office declines to find that KRS 61.878(1)(a) justifies withholding these portions of the records.

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/s/ Zachary M. Zimmerer
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