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25-ORD-360

November 17, 2025

In re: Eric Peck/Fort Thomas Independent Public School District

Summary: The Fort Thomas Independent Public School District (“the District”) did not violate the Open Records Act (“the Act”) when it denied a request for a copy of a copyrighted work.

Open Records Decision

On October 9, 2025, Eric Peck (“the Appellant”) requested “electronic or physical copies of any and all [w]ell-being questionnaires, surveys, assessments, and/or health screening forms [p]lanned or administered to students at Johnson Elementary and Highlands Middle School [d]uring the current school year.” In a timely denial, the District described the requested record as a “resiliency poll” owned by Terrace Metrics, Inc., which it stated “is proprietary and copyrighted material and is exempt under” KRS 61.878(1)(c) and KRS 61.878(1)(k). However, the District offered to let the Appellant inspect the record without obtaining a copy. This appeal followed.

Under 17 U.S.C. § 102(a), copyright applies to all “original works of authorship fixed in any tangible medium of expression.” Federal copyright law is incorporated into the Act under KRS 61.878(1)(k). *See, e.g.*, 22-ORD-095; 09-ORD-079. A copyright holder possesses several exclusive rights, including the right “to distribute copies . . . of the copyrighted work to the public by sale or other transfer of ownership” and the right to authorize others to do so. 17 U.S.C. § 106(3).

On appeal, the District identifies the record in question as the Terrance Metrics Resiliency/Wellness Assessment (“the Assessment”), and states that it is a copyrighted and “proprietary property.” The District quotes the Assessment’s implementation manual, which states that “all materials are copyrighted and are never to be shared with anyone outside of the district/school without express written consent of Terrace Metrics” and further notes at the bottom of each page that “[s]haring or reproducing this document is prohibited under any form without the written consent of Terrace Metrics, Inc.” Thus, it is clear that the copyright holder

has not authorized the District to distribute copies of the Assessment materials to the public.

The Appellant claims he is entitled to a copy of the Assessment under KRS 158.1415(2)(b)5., which provides that “[s]urveys or questionnaires” that are part of “[a]ny course, curriculum, or program offered by a public school on the subject of human sexuality provided by school personnel or by third parties authorized by the school” shall be “subject to an inspection by parents of participating students.” However, the District states the Assessment is not on the subject of human sexuality. Moreover, even assuming KRS 158.1415(2) applied, a parent is not entitled to copies of materials under that statute, but only “inspection.” In any event, the District has offered to make the Assessment available for the Appellant’s inspection. Because the Assessment is confidential under federal copyright law, the District did not violate the Act when it denied the Appellant’s request for a copy of that document under KRS 61.878(1)(k).¹

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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

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Distributed to:

Mr. Eric Peck
Mary Ann Stewart, Esq.
Brian Robinson, Superintendent
Ms. Jamee Flaherty

¹ Because 17 U.S.C. §§ 101, *et seq.*, is dispositive of the issues on appeal, it is not necessary to address the District’s alternative basis for denial under KRS 61.878(1)(c).