



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

January 29, 2013 Government Records Council Meeting

Rita Watson
Complainant

Complaint No. 2009-29

v.

Washington Township Public Schools (Gloucester)
Custodian of Record

At the January 29, 2013 public meeting, the Government Records Council (“Council”) considered the January 22, 2013 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that this complaint be dismissed because the Complainant withdrew her complaint via letter to the Honorable Susan M. Scarola, Administrative Law Judge, dated December 17, 2012 (via legal counsel) because the parties have reached settlement in this matter. Therefore, no further adjudication is required.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 29th Day of January, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: February 6, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 29, 2013 Council Meeting**

Rita Watson¹
Complainant

GRC Complaint No. 2009-29

v.

Washington Township Public Schools (Gloucester)²
Custodian of Records

Records Relevant to Complaint: A copy of A.W.'s pupil records.³

Request Made: October 28, 2008⁴

Response Made: November 3, 2008

Custodian: Margaret Meehan

GRC Complaint Filed: December 29, 2008⁵

Background

January 31, 2012

Government Records Council's ("Council") Interim Order. At its January 31, 2012 public meeting, the Council considered the January 24, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

"... the Council accept the Administrative Law Judge's Initial Decision dated January 5, 2012 denying the Custodian's motion for summary disposition and remanding the matter to the Office of Administrative Law for the scheduling of a hearing consistent with the Council's Interim Order dated December 22, 2009."

February 2, 2012

Council's Interim Order distributed to the parties.

June 18, 2012

Complaint transmitted to the Office of Administrative Law.

¹ Represented by A. John Falciani, Esq. of Law Office of A. John Falciani (Woodbury, NJ).

² Represented by Joseph F. Betley, Esq., of Capehart, Scatchard (Mt. Laurel, NJ).

³ The Complainant requested additional records which are not at issue in this complaint.

⁴ The Complainant asserts in the Denial of Access Complaint that she submitted an initial letter request on September 1, 2008 and again on September 13, 2008 and September 18, 2008; however, the evidence of record shows that none of said letter requests refer to OPRA.

⁵ The GRC received the Denial of Access Complaint on said date.

December 17, 2012

Letter from the Complainant's Counsel to the Honorable Susan M. Scarola, Administrative Law Judge. Counsel states that the Complainant is withdrawing this complaint from consideration because the parties have agreed to settle the matter.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant withdrew her complaint via letter to the Honorable Susan M. Scarola, Administrative Law Judge, dated December 17, 2012 (via legal counsel) because the parties have reached settlement in this matter. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

INTERIM ORDER

January 31, 2012 Government Records Council Meeting

Rita Watson
Complainant

Complaint No. 2009-29

v.

Washington Township Public Schools (Gloucester)
Custodian of Record

At the January 31, 2012 public meeting, the Government Records Council ("Council") considered the January 24, 2012 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, accepts the Administrative Law Judge's Initial Decision dated January 5, 2012 denying the Custodian's motion for summary disposition and remanding the matter to the Office of Administrative Law for the scheduling of a hearing consistent with the Council's Interim Order dated December 22, 2009.

Interim Order Rendered by the
Government Records Council
On The 31st Day of January, 2012

Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: February 2, 2012



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 31, 2012 Council Meeting**

**Rita Watson¹
Complainant**

GRC Complaint No. 2009-29

v.

**Washington Township Public Schools (Gloucester)²
Custodian of Records**

Records Relevant to Complaint: A copy of A.W.'s pupil records.³

Request Made: October 28, 2008⁴

Response Made: November 3, 2008

Custodian: Margaret Meehan

GRC Complaint Filed: December 29, 2008⁵

Background

December 22, 2009

At the December 22, 2009 public meeting, the Government Records Council ("Council") considered the December 9, 2009 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. Because there are disputed issues of material fact, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts, as well as for a determination of whether the Custodian unlawfully denied access and, if so, whether such denial was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

January 5, 2010

Council's Interim Order distributed to the parties.

¹ No legal representation listed on record.

² Represented by Joseph F. Betley, Esq., of Capehart, Scatchard (Mt. Laurel, NJ).

³ The Complainant requested additional records which are not at issue in this complaint.

⁴ The Complainant asserts in the Denial of Access Complaint that she submitted an initial letter request on September 1, 2008 and again on September 13, 2008 and September 18, 2008; however, the evidence of record shows that none of said letter requests refer to OPRA.

⁵ The GRC received the Denial of Access Complaint on said date.

April 9, 2010

Complaint forwarded to the Office of Administrative Law (“OAL”).

January 5, 2012

Administrative Law Judge’s Initial Decision on the Custodian’s motion for summary disposition. The Administrative Law Judge (“ALJ”), after reviewing the procedural history and facts of the complaint, determined in relevant part that:

“While OPRA is intended to keep open government records, the statute expressly preserves the authority of other laws. Because student records in New Jersey are governed by the requirements and restrictions of FERPA and N.J.A.C. 6A:32-7.5, they must be released to a parent when requested. Petitioner has transferred guardianship of her son, so her parental authority to obtain his student records may have been revoked. A final conclusion cannot be reached without seeing the wording of the court order from Delaware granting the guardianship transfer.

Based on the foregoing, I **CONCLUDE** that respondent’s action seeking summary decision dismissing petitioner’s GRC complaint seeking access to her son’s school records must be **DENIED.**”

January 9, 2012

Letter from Custodian’s Counsel to the GRC. Counsel states that the Board reserves all rights to appeal the ALJ’s denial of the motion for summary decision until a decision has been reached by the ALJ on all issues. Counsel further states that the Custodian will await such a decision before determining whether exceptions are warranted.

Analysis

Whether the GRC should adopt, modify or reject the ALJ’s Initial Decision dated January 5, 2012 denying the Custodian’s motion for summary disposition?

The ALJ’s findings of fact are entitled to deference from the GRC because they are based upon the ALJ’s determination of the credibility of the parties.

“The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility.” In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div.), *certif. denied* 121 N.J. 615 (1990). The Appellate Division affirmed this principle, underscoring that, “under existing law, the [reviewing agency] must recognize and give due weight to the ALJ’s unique position and ability to make demeanor-based judgments.” Whasun Lee v. Board of Education of the Township of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. “When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ’s credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole.” Cavalieri v. Board of

Trustees of Public Employees Retirement System, 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep't of Health v. Tegnazian, 194 N.J. Super. 435 , 442-43 (App. Div. 1984). The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor." *Id.* at 443. Additionally, the sufficiency of evidence "must take into account whatever in the record fairly detracts from its weight"; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent's Hospital v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

Here, the ALJ fairly summarized the testimony and evidence, explaining how he weighed the proofs before him and explaining why he denied the Custodian's motion for summary disposition. The ALJ's conclusions are clearly aligned and consistent with those credibility determinations. As such, the Council finds that it can ascertain the factual and legal basis for the ALJ's decision.

Therefore, the Council accepts the ALJ's Initial Decision dated January 5, 2012, denying the Custodian's motion for summary disposition.

Because the ALJ has determined that there are factual issues remaining to be determined, this matter is remanded to the Office of Administrative Law for the scheduling of a hearing consistent with the Council's Interim Order dated December 22, 2009.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council accept the Administrative Law Judge's Initial Decision dated January 5, 2012 denying the Custodian's motion for summary disposition and remanding the matter to the Office of Administrative Law for the scheduling of a hearing consistent with the Council's Interim Order dated December 22, 2009.

Prepared By: Karyn Gordon, Esq.

Approved By: Catherine Starghill, Esq.
Executive Director

January 24, 2012



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

INTERIM ORDER

December 22, 2009 Government Records Council Meeting

Rita Watson
Complainant

Complaint No. 2009-29

v.

Washington Township Public Schools (Gloucester)
Custodian of Record

At the December 22, 2009 public meeting, the Government Records Council (“Council”) considered the December 9, 2009 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that because there are disputed issues of material fact, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts, as well as for a determination of whether the Custodian unlawfully denied access and, if so, whether such denial was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 22nd Day of December, 2009

Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.



Harlynn A. Lack, Secretary
Government Records Council

Decision Distribution Date: December 29, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 22, 2009 Council Meeting**

**Rita Watson¹
Complainant**

GRC Complaint No. 2009-29

v.

**Washington Township Public Schools (Gloucester)²
Custodian of Records**

Records Relevant to Complaint: A copy of A.W.'s pupil records.³

Request Made: October 28, 2008⁴

Response Made: November 3, 2008

Custodian: Margaret Meehan

GRC Complaint Filed: December 29, 2008⁵

Background

November 4, 2009

Government Records Council's ("Council") Findings and Recommendations. At its November 4, 2009 public meeting, the Council considered the October 21, 2009 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

“[B]ecause the evidence of record shows that the Complainant was no longer the legal guardian of A.W. at the time of the OPRA request, the Custodian did not unlawfully deny the Complainant access to A.W.'s pupil record pursuant to *N.J.A.C. 6A:32-1 et seq.* and *N.J.S.A. 47:1A-9.a.*”

November 6, 2009

Council's Findings and Recommendations distributed to the parties.

November 16, 2009

Complainant's request for reconsideration of the Council's November 4, 2009 Findings and Recommendations. The Complainant asserts that the reasons supporting

¹ No legal representation listed on record.

² Represented by Joseph F. Betley, Esq., of Capehart, Scatchard (Mt. Laurel, NJ).

³ The Complainant requested additional records which are not at issue in this complaint.

⁴ The Complainant asserts in the Denial of Access Complaint that she submitted an initial letter request on September 1, 2008 and again on September 13, 2008 and September 18, 2008; however, the evidence of record shows that none of said letter requests refer to OPRA.

⁵ The GRC received the Denial of Access Complaint on said date.

the Council's reconsideration of this matter include mistake and extraordinary circumstances.

In support of the motion for reconsideration, the Complainant asserts that the GRC did not properly consider the significance of all of the evidence in the record. Specifically, the Complainant asserts that she is legal guardian and has never lost custody of the child for whose records the Complainant requests.

Analysis

Whether the Complainant has met the required standard for reconsideration of the Council's November 4, 2009 Findings and Recommendations?

Pursuant to *N.J.A.C. 5:105-2.10*, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. *N.J.A.C. 5:105-2.10(a) – (e)*.

Applicable case law holds that:

“[a] party should not seek reconsideration merely based upon dissatisfaction with a decision.” *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. *D'Atria, supra*, 242 N.J. Super. at 401. ‘Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.’ *Ibid.*” *In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey*, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In support of her motion for reconsideration, the Complainant asserts that mistake, and extraordinary circumstances require the Council's reconsideration of its November 4, 2009 decision. Specifically, the Complainant contends that the GRC did not properly consider the significance of all of the evidence in the record. Specifically, the Complainant asserts that she is legal guardian and has never lost custody of the child for whose records the Complainant requests.

The GRC has reviewed the evidence submitted by the parties in this matter. Upon further review, it appears that there is a dispute between the parties involving the material facts of this case; that is, whether the Complainant is a legal guardian entitled to obtain the school records of a minor.

Because there are disputed issues of material fact, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts, as well as for a determination of whether the Custodian unlawfully denied access and, if so, whether such denial was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because there are disputed issues of material fact, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts, as well as for a determination of whether the Custodian unlawfully denied access and, if so, whether such denial was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Prepared By: Karyn Gordon, Esq.
In House Counsel

Approved By: Catherine Starghill, Esq.
Executive Director

December 9, 2009



State of New Jersey
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101 SOUTH BROAD STREET
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JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

November 4, 2009 Government Records Council Meeting

Rita Watson
Complainant

Complaint No. 2009-29

v.

Washington Township Public Schools (Gloucester)
Custodian of Record

At the November 4, 2009 public meeting, the Government Records Council (“Council”) considered the October 21, 2009 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that because the evidence of record shows that the Complainant was no longer the legal guardian of A.W. at the time of the OPRA request, the Custodian did not unlawfully deny the Complainant access to A.W.’s pupil record pursuant to *N.J.A.C. 6A:32-1 et seq.* and *N.J.S.A. 47:1A-9.a.*

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 4th Day of November, 2009

Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.



Janice L. Kovach, Secretary
Government Records Council

Decision Distribution Date: November 9, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 4, 2009 Council Meeting**

**Rita Watson¹
Complainant**

GRC Complaint No. 2009-29

v.

**Washington Township Public Schools (Gloucester)²
Custodian of Records**

Records Relevant to Complaint: A copy of A.W.'s pupil records.³

Request Made: October 28, 2008⁴

Response Made: November 3, 2008

Custodian: Margaret Meehan

GRC Complaint Filed: December 29, 2008⁵

Background

October 28, 2008

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

November 3, 2008

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The Custodian states that access to A.W.'s pupil records is denied because materials received from Family Court in the State of Delaware indicate that the Complainant is no longer the legal guardian for A.W.

December 29, 2008

Denial of Access Complaint filed with the Government Records Council ("GRC") with no attachments.

The Complainant states that she submitted an OPRA request to the Washington Township Public Schools office on October 28, 2008. The Complainant states that she

¹ No legal representation listed on record.

² Represented by Joseph F. Betley, Esq., of Capehart, Scatchard (Mt. Laurel, NJ).

³ The Complainant requested additional records which are not at issue in this complaint.

⁴ The Complainant asserts in the Denial of Access Complaint that she submitted an initial letter request on September 1, 2008 and again on September 13, 2008 and September 18, 2008; however, the evidence of record shows that none of said letter requests refer to OPRA.

⁵ The GRC received the Denial of Access Complaint on said date.

was denied access to A.W.'s pupil records because the Complainant would need the Court's approval to obtain such records.

The Complainant asserts that the Township has unlawfully denied access to the record.⁶

The Complainant does not agree to mediate this complaint.

February 3, 2009

Request for the Statement of Information ("SOI") sent to the Custodian.

February 9, 2009

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated October 28, 2008.
- Letter from the Custodian to the Complainant dated November 3, 2008.
- Motion and Affidavit of the Family Court of the State of Delaware dated September 30, 2008.
- Letter from Mr. Michael E. Heston, Esq. ("Mr. Heston"), of Capehart, Scatchard, to the Complainant dated January 6, 2009 attaching A.W.'s pupil records.

The Custodian certifies that the search for the requested records was performed by the Washington Township High School administration and guidance departments. The Custodian also certifies that no records responsive were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").

The Custodian certifies that she received the Complainant's OPRA request on October 28, 2008. The Custodian certifies that she formally responded in writing to the Complainant request for A.W.'s pupil records on November 3, 2008, denying access because the Washington Township Public Schools discovered that the Complainant was no longer the legal guardian of A.W. based on the motion and affidavit provided by the Family Court of the State of Delaware.

The Custodian contends that pursuant to N.J.S.A. 47:1A-7.b., the GRC does not have the jurisdiction to determine alleged denials of requests for pupil records and cites to Bava v. Bergen County School District, GRC Complaint No. 2003-84 (January 2004) and Pusterhofer v. Shrewsbury Board of Education, GRC Complaint No. 2004-188 (April 2005). Further, the Custodian contends that general access to pupil records is controlled by the Family Education Rights and Privacy Act ("FERPA") and by *N.J.A.C. 6A:32-7.5*.

⁶ The Complainant asserts that the Custodian failed to provide the requested pupil record even in the face of a court order; however, the court order which the Complainant submitted to the GRC relates to a complaint filed with the Commissioner of Education (identified as OAL Docket No. EDU 8073-08, Agency Docket No. 162-6/08).

The Custodian asserts that FERPA and *N.J.A.C.* 6A:32-7.5. contain comprehensive mechanisms to address alleged violations of requests for confidential pupil records.⁷

Additionally, the Custodian argues that at the time of the Complainant's request for A.W.'s pupil records, the Complainant was no longer the legal guardian of A.W. and thus has no right of access to A.W.'s records.⁸

Analysis

Whether the Custodian unlawfully denied access to the requested pupil records?

OPRA provides that:

"... government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions ...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

"...[t]he public agency shall have the burden of proving that the denial of access is authorized by law ..." N.J.S.A. 47:1A-6.

OPRA also provides that:

"[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any

⁷The Custodian notes that in a separate administrative appeal filed by the Complainant with the Commission of Education (identified as OAL Docket No. EDU 8073-08, Agency Docket No. 162-6/08), challenging certain disciplinary actions taken by the Washington Township Public School district against A.W., the requested records were provided to the Complainant on January 6, 2009 pursuant to a directive from Administrative Law Judge Lisa James-Beavers.

⁸On February 13, 2009, the Complainant submitted additional correspondence to the GRC in an apparent attempt to amend her complaint to include the additional records which are not at issue in the instant complaint. However, *N.J.A.C.* 5:105-2.3(h)(1) only allows a complainant to amend their complaint within thirty (30) days from the date of filing the initial complaint. Pursuant to *N.J.A.C.* 5:105-2.3(h)(2), which provides that additional amendments may be considered upon acceptance by the Executive Director, the GRC declines to accept the Complainant's attempted amendments to the instant complaint.

statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.” (Emphasis added.) N.J.S.A. 47:1A-9.a.

The rules of the State Board of Education and the Commissioner of Education define a “student record” as:

“... information related to an individual student gathered within or outside the school district and maintained within the school district, regardless of the physical form in which it is maintained.” (Emphasis added.) *N.J.A.C.* 6A:32-1.1.

Additionally, the rules of the State Board of Education and the Commissioner of Education define a “parent” as:

“... the natural or adoptive parent, the *legal guardian*... or a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student’s welfare). Unless parental rights *have been terminated by a court of appropriate jurisdiction* ...” (Emphasis added.) *N.J.A.C.* 6A:32-1.1.

The rules of the State Board of Education and the Commissioner of Education provide that:

“Only authorized organizations, agencies or persons as defined herein shall have access to student records ... [t]he student who has the written permission of a parent the parent of a student under the age of 18 whether or not the child resides with that parent ...” *N.J.A.C.* 6A:32-7.5.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In the instant complaint, the Complainant contends that the Custodian unlawfully denied access to A.W.’s pupil file. The Custodian contends that the Complainant was not provided with the requested record because a court document proves that the Complainant is no longer A.W.’s legal guardian.

OPRA provides that “the provisions of [OPRA] shall not abrogate any exemption of a...regulation promulgated...” N.J.S.A. 47:1A-9.a. Pursuant to *N.J.A.C.* 6A:32-1.1., the definition of a “student record” is “... information related to an individual student gathered within or outside the school district and maintained within the school district ...” Further, the definition of a “parent” is a “natural or adoptive parent, [or] legal guardian... [u]nless parental rights *have been terminated by a court of appropriate jurisdiction.*” (Emphasis added.) *Id.* Additionally, *N.J.A.C.* 6A:32-7 provides that “[o]nly

authorized organizations, agencies or persons as defined herein shall have access to student records ...” *Id.* at *N.J.A.C.* 6A:32-7.5. Among the organizations, agencies and persons that have access to a student record is “... the parent of a student under the age of 18 ...” *Id.*

The Custodian in this complaint provided documentation from the Family Court of the State of Delaware which established that the Complainant was no longer A.W.’s guardian as of September 30, 2008, or nearly a month prior to the submission of the Complainant’s OPRA request.

The Complainant was therefore not a “parent” as defined at *N.J.A.C.* 6A:32-1.1 at the time of the OPRA request. Because *N.J.A.C.* 6A:32-7 specifies that only authorized persons, including parents, may have access to student records, the Complainant is not entitled to access to the requested records. *N.J.S.A.* 47:1A-9.a.

Therefore, because the evidence of record shows that the Complainant was no longer the legal guardian of A.W. at the time of the OPRA request, the Custodian did not unlawfully deny the Complainant access to A.W.’s pupil record pursuant to *N.J.A.C.* 6A:32-1 et seq. and *N.J.S.A.* 47:1A-9.a.

Because the Council finds that access to the requested record was properly denied under OPRA and *N.J.A.C.* 6A:32-1, the Custodian’s allegation that the GRC does not have jurisdiction to adjudicate this complaint is moot.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the evidence of record shows that the Complainant was no longer the legal guardian of A.W. at the time of the OPRA request, the Custodian did not unlawfully deny the Complainant access to A.W.’s pupil record pursuant to *N.J.A.C.* 6A:32-1 et seq. and *N.J.S.A.* 47:1A-9.a.

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

October 21, 2009