

DOCKET NO. X07 HHD-CV-14-5037565-S

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| CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., et al. <i>Plaintiffs</i> | : | SUPERIOR COURT |
| | : | COMPLEX LITIGATION |
| | : | DOCKET |
| v. | : | AT HARTFORD |
| | : | |
| M. RODI RELL, et al. <i>Defendants</i> | : | MARCH 19, 2014 |

DEFENDANTS' REPLY TO SCHOOL DISTRICTS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL

1. INTRODUCTION AND PRESENT FACTUAL SITUATION

Defendants originally filed their motion to compel (Doc. # 103.00, #104.00) production in accordance with subpoenas to certain school districts of teacher evaluations in those districts from 2010 to the present after engaging with the school districts' counsel in an unsuccessful good faith effort to resolve this discovery dispute. Upon reviewing the school districts' responsive filing (Doc. #109.00), defendants' counsel engaged in further discussion with the school districts' counsel, and reached a partial agreement regarding this matter. Those few school districts which have compilations have agreed to provide compilations of teacher evaluations for the years from 2010 to the present, without teacher or student identifying information. To the extent all originally subpoenaed school districts have been asked for compilations, the State is satisfied with that agreement as to its general request for all teacher evaluations.

The State continues to pursue a narrow subset of its original request, however, to which the school districts have not agreed. In an effort to drastically reduce the burden on the districts, the State offered to accept, in addition to the above-described compilations, the following:

As to each student individual plaintiff (and for each student whose parent is an individual plaintiff) and as to each student who is or whose parent is a member of plaintiff CCJEF and on the basis of whose membership CCJEF relies in asserting its standing in this litigation, either individual teacher evaluations or compilations of teacher evaluations, identified only as to student, and without any identifying information as to the teachers involved. The State understands this to be a very small number of students, so that no significant clerical or administrative burden will be created by this request.

2. THE SCHOOL DISTRICTS HAVE PROVIDED NO SUPPORT FOR THEIR CLAIM THAT AN ABSOLUTE PRIVILEGE BARS ANY DISCLOSURE OF TEACHER EVALUATIONS.

The school districts assert an absolute privilege for teachers' evaluations from disclosure not only under the Freedom of Information Act (hereinafter "FOIA"), but from any and all disclosure, including in civil litigation. For reasons explained in the State's previous brief (Doc. 104.00 at p. 4), Section 10-151(c) is simply an FOIA exemption, and not an absolute privilege. The school districts base their claim on one sentence in Conn. Gen. Stat. §10-151c. "Such consent shall be required for each request for a release of records." The school districts argue as follows:

If the legislature had meant only FOI requests to be covered by the second sentence, it could have said that teachers' consent would be required for "such requests" or, even, "each such request." But it did not: it chose to require teachers' consent "for each request" for teacher evaluations-whether or not those requests are FOI requests or other kinds of requests, such as civil discovery." See Doc. #109.00, p. 5, School Districts' Memorandum of Law In Opposition to defendants' Motion to Preclude (hereinafter "School Districts' Memorandum").

The school districts ignore the context of the preceding sentence in Conn. Gen. Stat. §10-151c, which limits “[s]uch consent” to the FOI by referring to public records and § 1-210. That sentence reads: “Any records maintained or kept on file by any local or regional board of education which are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1-210, provided that any teacher may consent in writing to the release of such teacher’s records by a board of education.” Furthermore, the sentence immediately following the one quoted by the school districts, involving personal misconduct of a teacher, also refers to disclosures under section 1-210.

Further, our Supreme Court has previously interpreted Conn. Gen. Stat. §10-151c simply as an exemption to FOIA, and has never suggested it could provide an exemption from discovery in civil litigation. As the Court explained,

In enacting § 10–151c, the legislature was apparently responding to an FOIC decision interpreting the § 1–19(b)(2) [now §1-210(b)(2)] exemption for personnel files as not including an exemption for teacher evaluation files. See 27 H.R.Proc., Pt. 7, 1984 Sess., pp. 2547–48, remarks of Representative Michael Helfgott. We reviewed the enactment of § 10–151c in *Board of Education v. Freedom of Information Commission*, 210 Conn. 590, 594, 556 A.2d 592 (1989), and concluded that “the purpose of Public Acts 1984, No. 84–276 was to clarify the earlier legislative intent of § 1–19(b)(2) [now §1-210(b)(2)].” In exempting “records of teacher performance and evaluation,” the legislature intended to preserve such files from unrestricted public access, in the same manner as otherwise provided in § 1–19(b)(2).

Rose v. Freedom of Info. Comm'n, 221 Conn. 217, 234, 602 A.2d 1019, 1028 (1992).

The school districts’ claim that Conn. Gen. §10-151c creates an implied absolute privilege for teacher evaluations is not consistent with our Supreme Court’s interpretation. In addition, they fail to include the complete legislative history of the remarks of Representative Lyons who introduced the sentence upon which the Districts rely as an amendment, moved for its adoption, and at the Deputy Speaker’s request remarked on its adoption.

Yes, thank you. Mr. Speaker. The amendment simply clarifies a gray area of the bill. The LCO analysis had stated that it was unclear in the bill. It's [sic] consent was needed for each access, or whether if one's given, the consent was continuing. This amendment would make it clear that you indeed had to give a consent for each time you wanted the records opened. Thank you.
27 H.R. Proc., Pt. 7, 1984 Sess., pp. 136-137, remarks of Rep. Lyons.

Seen in context, Representative Lyons' remarks as to teacher consent not being continuing provide no support for the School Districts' claim of an absolute protection given to teacher evaluations whether FOI requests or any other.

3. DEFENDANTS HAVE MET THEIR BURDEN OF DEMONSTRATING RELEVANCE AND ADDRESSED THE SCHOOL DISTRICTS' CLAIM OF BURDENSOMENESS.

Defendants have more than met their burden of demonstrating relevance. As stated in defendants' previous memorandum, teacher evaluations obviously shed light upon the issue of whether the State has provided quality teaching.

Defendants have also met the privacy and burdensomeness concerns asserted by the school districts. See Doc. #109.00, pp. 9-15, School Districts' Memorandum. Defendants have explicitly never sought identifiable information about individual teachers, and so the claim that "the privacy of . . . teachers is at stake here," was and is inaccurate. See Doc. #109.00, p. 11, School Districts' Memorandum.

4. CONCLUSION

The defendants have fully addressed all legitimate concerns about administrative burdens and teacher privacy and undue burdens. There is no basis in the law to assert an absolute privilege against the production of the minimal amount of information the State now seeks. .

Accordingly, defendants request that the school districts be ordered to produce, in addition to the compilations they have agreed to produce, redacted teachers' evaluations without

personally identifiable information only as to the teachers for each student plaintiff and for each student whose parent is a plaintiff and as to each student who is or whose parent is a member of CCJEF and on the basis of whose membership CCJEF relies in establishing its standing in this matter.

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CERTIFICATION

I hereby certify that the foregoing Defendants' Reply to School Districts' Memorandum of Law in Opposition to Defendants' Motion to Compel was filed electronically and a copy emailed on this 19th day of March 2014 to the following:

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