

P.E.R.C. NO. 78-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Respondent,

Docket No. CO-77-284-126

- and -

MARK PRESS AND RIDGEFIELD PARK
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission, acting upon a motion for reconsideration filed by the Respondent, reaffirms its prior interlocutory ruling in P.E.R.C. No. 78-44, in which it upheld a Hearing Examiner's denial of a petition to quash a subpoena duces tecum issued in connection with an unfair practice proceeding. The Commission holds that the substance and intent of L. 1977, c. 346, which is effective May 1, 1978, and administrative regulations adopted thereunder, indicates that a court order, rather than a subpoena, may be necessary to release student records to a third party, but notes, as it did in its prior ruling, that an agency subpoena can be converted into a court order in accordance with Court Rules.

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Charging Parties.

Appearances:

For the Respondent, Parisi, Evers and Greenfield, Esqs.
(Mr. Irving C. Evers, Of Counsel)

For the Charging Parties, Goldberg & Simon, Esqs.
(Mr. Theodore M. Simon, Of Counsel)

DECISION ON RECONSIDERATION

Respondent, Ridgefield Park Board of Education ("Board"), seeks reconsideration of the Commission's January 24, 1978 interlocutory ruling ^{1/} in which we affirmed Hearing Examiner Edmund G. Gerber's denial of the Board's petition to quash a subpoena duces tecum issued during unfair practice proceedings involving the Board and Mark Press and the Ridgefield Park Education Association (Charging Parties). ^{2/}

The Board, by motion and supporting memorandum of law dated February 2, 1978, urges that we reconsider our previous ruling in light

^{1/} P.E.R.C. No. 78-44, 4 NJPER 76 (Para. 4037 1978)

^{2/} H.E. No. 78-15, 3 NJPER 385 (1977)

of a recently enacted law which relates to the grounds upon which the Board seeks to quash the subpoena; that is, the alleged confidentiality of a student's school records.

Charging Parties, on February 23, 1978, filed a Memorandum of Law in opposition to the Board's motion. After reviewing the submissions of both parties, we grant reconsideration for the limited purpose of evaluating the effect, if any, of the newly enacted law on our prior interim ruling.

On January 30, 1978 Senate Bill No. 260 was enacted as Chapter 346 of the Laws of 1977 to take effect 90 days hence (May 1, 1978). The law, when effective, will amend N.J.S.A. 18A:36-19 which was and will continue to be a law authorizing the State Board of Education to enact administrative regulations respecting pupil records. Neither the current nor amended version of the statute contains any substantive provisions regarding pupil records except, as noted, an authorization for the enactment of administrative regulations and a provision which saves board members, officers or employees from liability when releasing pupil records in conformity with the statute and the administrative regulations.

The main difference in the two versions of the statute is that the current law is written from the point of view of generally permitting access to pupil records, while the amended version's obvious intent is generally toward restricting access to the records.

Administrative regulations respecting pupil records, as noted in our prior decisions, have been in effect since May of 1975. (7 N.J.R. 251) These regulations are designed to restrict access to pupil records except as indicated in various sections which were

fully discussed in our prior ruling. Thus, it would appear that the amendment to N.J.S.A. 18A:36-19 has the effect of conforming the intent of the authorizing statute to that of the administrative regulations adopted thereunder, which are already in effect. The statute in no way amends the administrative regulations (N.J.A.C. 6:3-2.1 et seq.) which contain all the substantive guidelines on pupil records and thus the applicable law is identical to that extant when our prior ruling was issued.

The only aspect of the new legislation which may affect our prior decision, but not the result reached therein, stems from the legislative statement accompanying Senate Bill No. 260. In discussing N.J.A.C. 6:3-2.5(d)(10) we said:

While the New Jersey regulations speak in terms of a "court order" rather than a subpoena, it appears from comments made at the time these regulations were adopted that the State Board of Education may not have intended to place more stringent requirements on the release of student records than contained in the federal statutes. A summary of N.J.A.C. 6:3-2.5 which was placed in the New Jersey Register (7 N.J.R. 251(c)) at the time it was newly adopted states: "These changes have been made to conform to the federal regulations".
P.E.R.C. No. 78-44 at 7.

The legislative statement accompanying the bill indicates that the Legislature believes that the use of the term "court order" rather than subpoena in allowing third-party access to pupil records was deliberate.

However, the possibility of such a construction was fully anticipated in our prior ruling as we indicated in the sentence following the above-quoted passage:

However, if a court order is required, the subpoena may be converted into an enforceable court order pursuant to R. 1:9-6(b) to comply with N.J.A.C. 6:3-2.5(d)(10).

With that observation, we reaffirm our prior ruling in all respects.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hurwitz and Parcels voted for this decision. None opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
March 16, 1978
ISSUED: March 20, 1978