



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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ATTORNEY GENERAL

December 8, 2022

*Via electronic mail*  
Ms. Kelly Kaufman  
keg7117@gmail.com

*Via electronic mail*  
Mr. John Filippi  
Assistant Superintendent for Finance and Operations  
FOIA Officer  
Deerfield Public School District No. 109  
517 Deerfield Road  
Deerfield, Illinois 60015  
jfilippi@dps109.org

RE: FOIA Request for Review – 2022 PAC 71868

Dear Ms. Kaufman and Mr. Filippi:

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2020)). For the reasons explained below, this office has determined that Ms. Kelly Kaufman's Request for Review is unfounded.

On May 10, 2022, Ms. Kaufman submitted a narrowed FOIA request to the Deerfield Public School District No. 109 (District) seeking:

[A]ll records from current students at South Park [Elementary School] (grades K-5) who have been granted permissive transfers to remain in their current school. This includes all requests, all communications related thereto (including emails and text messages), and all decisions made by District 109.<sup>[1]</sup> (Emphasis in original.)

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<sup>1</sup>E-mail from Kelly [Kaufman] to John [Filippi], Assistant Superintendent for Finance & Operations, Deerfield Public School District 109 (May 10, 2022).

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On May 17, 2022, the District informed Ms. Kaufman that her request was unduly burdensome pursuant to section 3(g) of FOIA.<sup>2</sup> The District indicated that it performed a search, which yielded 768 e-mails and a total of 1,478 pages of documents that may be responsive to her request. The District argued that because these records would contain "student identifying information that the District is prohibited from sharing" it "would require careful review by both a District staff member and outside counsel, which would take weeks to accomplish, at significant expense."<sup>3</sup> The District's response offered Ms. Kaufman the opportunity to narrow her request again to manageable proportions. In its response, the District also noted that it possesses "one internal record that generally summarizes the various permissive transfer requests and would also be responsive to this request."<sup>4</sup> The District asserted that this record is exempt from disclosure pursuant to the Illinois School Student Records Act (ISSRA)<sup>5</sup> and section 7.5(r) of FOIA.<sup>6</sup> Ms. Kaufman's Request for Review appears to challenge the District's assertion that responding to her request would be unduly burdensome. Ms. Kaufman indicated that she is seeking the records to shed light on the circumstances in which a student's permissive transfer is approved.

Section 7.5(r) of FOIA exempts from disclosure "[i]nformation prohibited from being disclosed by the [ISSRA]." Section 6(a) of ISSRA provides that "[n]o school student

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<sup>2</sup>Section 3(g) of FOIA (5 ILCS 140/3(g) (West 2020)) provides, in pertinent part, that:

Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

<sup>3</sup>Letter from John Filippi to Kelly Kaufman (May 17, 2022).

<sup>4</sup>Letter from John Filippi to Kelly Kaufman (May 17, 2022).

<sup>5</sup>105 ILCS 10/6(a) (West 2020).

<sup>6</sup>5 ILCS 140/7.5(r) (West 2021 Supp.), as amended by Public Acts 102-813, effective May 13, 2022; 102-1042, effective June 3, 2022.

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records or information contained therein may be released, transferred, disclosed or otherwise disseminated, except" to certain authorized parties who are irrelevant here. Section 2(d) of ISSRA (105 ILCS 10/2(d) (West 2020)) defines "school student record" as "any writing or other recorded information concerning a student and **by which a student may be individually identified**, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored." (Emphasis added.)

In *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill. 2d 373, 375 (1989) parents of students requested student test scores and the race of each student tested for a five-year period. The Illinois Supreme Court held that a "masked record, which deletes individual identifying information, does not fall within the definition of a school student record, and is not prohibited from disclosure under the Act." *Bowie*, 128 Ill. 2d at 379. In *Board of Education of City of Chicago v. Illinois Education Labor Relations Board*, 2013 IL App (1st) 122447, ¶19, 3 N.E. 3d 343, 350 (2013), the Illinois Appellate Court distinguished student disciplinary records from masked test scores, stating that "[a] 'masked' record is one where any information identifying a student has been deleted and the record is released for the purpose of research, statistical reporting, or planning." The court held that ISSRA prohibited disclosure of two students' disciplinary records because "the mere redaction of the students' surnames or reference to the students by their initials does not render the records 'masked.'" *Illinois Education Labor Relations Board*, 2013 IL App (1st) 122447, ¶21, 3 N.E. 3d at 350.

On June 2, 2022, an Assistant Attorney General (AAG) in the Public Access Bureau spoke with the District's outside counsel, Mr. Brian Crowley, regarding the District's response to Ms. Kaufman's request. He confirmed that pursuant to section 7.5(r) of FOIA, the District withheld one document which contains a summary of highly specific information pertaining to individual students who submitted permissive transfer requests. Mr. Crowley explained that when a family moves to another school attendance area within the District, but wishes to remain at the school their student has been previously attending, the family may submit a permissive transfer request to the District. Mr. Crowley stated that a relatively small number of students attend the Elementary School,<sup>7</sup> and that during the relevant time period the District has received only a few permissive transfer requests from students seeking to remain at the Elementary School. Additionally, Mr. Crowley indicated that the withheld document summarizes not only the names and contact information for the students seeking permissive transfers, but also details about the students' underlying circumstances concerning the requests. Therefore, Mr. Crowley asserted that redacting the names alone would not suffice to prevent the students from being identified. Moreover, Mr. Crowley asserted that any communications

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<sup>7</sup>See U.S. News, South Park Elementary School, *available at* <https://www.usnews.com/education/k12/illinois/south-park-elementary-school-223536> (lasted visited November 14, 2022) (student population is 408).


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responsive to Ms. Kaufman's request would constitute "student records" that are exempt from disclosure pursuant to ISSRA and section 7.5(r) of FOIA. He explained that neither the District, nor the Elementary School, creates or possesses any records concerning data or statistics regarding the number of permissive transfer requests that are received, granted, or denied. Accordingly, any responsive correspondence would relate to an individual student's request for a permissive transfer.

Ms. Kaufman's request sought records that likely contain highly personal information provided by students' parents, guardians, and potentially their medical professionals in support of their transfer requests. Such records that concern the circumstances of individually-identifiable students are "school student records" under section 2(d) of ISSRA. Because ISSRA specifically prohibits disclosure of "school students records", the District did not improperly withhold those records pursuant to section 7.5(r) of FOIA. Accordingly, this Request for Review is unfounded.

This file is closed. If you have any questions, my e-mail address is Shannon.Barnaby@ilag.gov.

Very truly yours,

  
SHANNON BARNABY  
Assistant Attorney General  
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cc: *Via electronic mail*  
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