

Bullying: More than lunch money

By Jeremy Rosen

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A New Jersey court has ruled that a state Open Public Records Act request triggered the release of an Evesham student's disciplinary record — a decision that could open a door for parents to check whether public school officials are consistently keeping kids safe.

For two years, the parent of a Florence V. Evans Elementary School student has fought for records that could reveal how district officials handled one of his children allegedly being choked, punched and kicked by another student. The parent, identified as K.L., filed a lawsuit seeking documents after the district didn't fulfill his OPRA request for records of his children being bullied and the school's action.

Although state aid was needed to keep the Route 73 school open last year, the district has decided to pay tens of thousands of dollars in legal fees so far to try to keep those investigatory and disciplinary records private.

The district must now also reimburse K.L. for an undetermined amount of attorney's fees related to a disciplinary record the district provided in July 2010, four months after he filed suit, according to a Dec. 12 appellate decision.

School District Attorney William Donio, of Atlantic City firm Cooper Levenson, shouted at me in response to questions about public money being spent to prevent K.L. from obtaining what most parents would want — records showing how well their child is protected at school.

Donio attacked K.L.'s reputation and called me “an enabler” of K.L.'s “absolute vendetta” against the school board.

(Donio accuses K.L. of creating district conflicts since 2008, when Evans Principal Lou Casanova filed a complaint against him with the state Division of Youth and Family Services. The complaint was based on alleged statements made to school employees by K.L.'s two children. He said K.L. also filed civil rights complaints.)

“It's unfortunate that the taxpayers have to pay anything for the frivolous and malicious filings of K.L.,” Donio said.

K.L.'s actions have earned Donio's firm about \$70,000 in legal fees.

But would K.L. spend thousands of dollars in attorney's fees just to be vindictive?

Let's focus, though. This case and court decision can hold public school officials accountable for student safety. That must terrify administrations that don't like oversight or questions from those who pay their salaries.

“We don't think it's a good idea to have records with federal and state confidentiality to them (made public) based on redaction,” Donio said during our phone conference with Superintendent John Scavelli, who said little. “I think most parents would agree that their children's pupil records should not be subject to disclosure simply on the request of another parent like K.L.”

I completely disagree. OPRA requires and courts have held that students' medical and personal information must be removed from public records. Most parents want to know their kids are safe at

school and officials are consistently protecting them.

K.L.'s children are among the few black students at Evans, according to his attorney Jamie Epstein. Four alleged bullying incidents against them — including one where Appellate Judge Victor Ashrafi stated one child was choked, punched and kicked — occurred from late 2009 to early 2010.

Donio is petitioning the Supreme Court to hear a challenge of the district's loss in Appellate Court. Epstein may file a cross-petition challenging the Appellate Court's denial of access to 11 pages of investigatory documents under OPRA and Common Law. Epstein's cross-petition would be due by Jan. 13.

"Unlike Evesham, I have to consider whether my client can afford to do this," he said.

The Appellate Court reviewed under seal those 11 pages of investigatory records sought by K.L. and determined them to be attorney materials subject to qualified privilege.

In this decision, Ashrafi wrote those records appear to have been created after K.L. filed his Jan. 26, 2010, request with the school board for copies of school records of bullying incidents involving his children via OPRA and common law. The appellate judge said the pages included notes about the incidents, but didn't concern litigation or qualify under attorney-client privilege exemption.

"We have no reason on this record to conclude that the school district has provided inaccurate information" to K.L., Ashrafi wrote. "(K.L.) has not shown why he has a substantial need for the notes to determine whether the school district investigated incidents that may have occurred on the four dates he listed and what action the district took."

In July 2010, Evesham's district released to K.L. a record showing disciplinary action taken against a student who allegedly choked, punched and kicked one of K.L.'s children. That student's name was redacted, and his penalty is not detailed in court records.

Donio told me the district decided to release the edited report only because the disciplined student's parents gave consent.

Courts in other states have held student disciplinary records should be released with appropriate redactions, under a federal statute governing confidentiality of student records, known as "FERPA."

"The board's argument on appeal that FERPA prohibits the disclosure of a disciplinary form concerning one student to the parent of another student contradicts its own decision to disclose the redacted document to (K.L.)," Ashrafi wrote.

Donio argues the disciplinary record was not released via OPRA and therefore K.L. should not be reimbursed for his legal expenses.

Not so, ruled the Appellate Court.

Ashrafi wrote: "This OPRA lawsuit was the catalyst for disclosure of the document ..."