

<p>EZ,</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>DEPTFORD TOWNSHIP BOARD OF EDUCATION and TODD REITZEL in his official capacity as School Business Administrator/Board Secretary,</p> <p style="text-align: right;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY GLOUCESTER COUNTY DOCKET NO.: GLO-L-377-23</p> <p style="text-align: center;">FINAL ORDER</p>
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This matter having come before the Court on this 23rd day of May 2023 as an Order to Show Cause, with Jamie Epstein, Esq., appearing virtually for the Plaintiff and Albert K. Marmero, Esq., appearing virtually for the Defendants.

IT IS on this 23rd day of May 2023 **ORDERED** as follows:

1. Plaintiff's request for a judgment ordering Defendants to disclose copies of all documents and information requested in Plaintiff's February 8, 2023, OPRA request is GRANTED.
2. Defendant shall turn over the requested records to Plaintiff no later than Friday, June 2, 2023.
3. Defendant shall make all appropriate redactions, if any, and provide an indexing of the reasons for redaction.
4. Plaintiff is the prevailing party and is entitled to all reasonable counsel fees.
5. Plaintiff shall submit a certification of services no later than Tuesday, June 6, 2023.
6. Defendant shall submit a response, if any, no later than Tuesday, June 13, 2023.
7. The return date for the counsel fee determination shall be **Tuesday, June 20, 2023, at 2:00 p.m. via Zoom.**

Benjamin C. Telsey, A.J.S.C.

Hon. Benjamin C. Telsey, A.J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
CAMDEN COUNTY, NEW JERSEY
DOCKET NO. 000377-23
APP. DIV. NO. _____

E.Z., :
:
Plaintiff(s), : TRANSCRIPT
: OF
v. : RETURN ON ORDER
: TO SHOW CAUSE
DEPTFORD BOARD OF :
EDUCATION and TODD :
REITZEL, in his :
official capacity as :
School Business :
Administrator/Board :
Secretary, :
:
Defendant(s). :
:

Place: Gloucester County Courthouse
1 North Broad Street
Woodbury, NJ 08096

Date: May 23, 2023

BEFORE:

THE HONORABLE BENJAMIN C. TELSEY, J.S.C.

TRANSCRIPT ORDERED BY:

JAMIE EPSTEIN, ESQ. (Jamie Epstein Law)

APPEARANCES:

JAMIE EPSTEIN, ESQ. (Jamie Epstein Law)
Attorney for the Plaintiff

ALBERT K. MARMERO, ESQ. (Marmero Law)
Attorney for the Defendants

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Digitally Recorded, Operator - Samantha Cole

1 Marmero that it's unfortunate that his clients did not
2 consult with him earlier on in this process. This was
3 just not the way requests are supposed to be handled by
4 any stretch of the imagination. And I'm surprised that
5 defendants didn't consider just trying to resolve this
6 prior to the presentation today. But regardless, the
7 facts in this case are that plaintiff is a resident of
8 Audubon, which is in Camden County. And plaintiff E.Z.
9 is a parent of a student within the New Jersey school
10 system. Defendant Deptford Township Board of Education
11 is the municipal body and is a political subdivision of
12 New Jersey. The Board of Education is a public agency
13 as defined by the Open Public Records Act and its
14 principal place of business is in Gloucester County,
15 Deptford, New Jersey.

16 Plaintiff commences this action under OPRA
17 47:1A-1, seeking records withheld by the Board of
18 Education. Plaintiff has a child who was enrolled in
19 the District's middle school during the 2022-2023
20 school year. Plaintiff made requests on multiple
21 occasions for copies of records, including the child's
22 student records and copies of documents accessible to
23 the general public, such as the Districts forms and
24 policies. Plaintiff's requests were each denied by the
25 Board of Education.

1 Plaintiff attempted to enroll in Genesis, an
2 online program that grants parents access to their
3 child's attendance, grades, assignments, code of
4 conduct incidents, and other records and information
5 relevant to the child's enrollment in the school within
6 the District. Plaintiff was denied the ability to
7 enroll in the program. Months later the Board of
8 Education explained to plaintiff that the request and
9 their Genesis access was denied because plaintiff is
10 not the legal guardian of the child. Plaintiff
11 requested copies of any legal documents demonstrating
12 the basis for this and did not -- were denied that
13 access as well.

14 On October 29th plaintiff filed an OPRA
15 request to obtain copies of documents and records the
16 Board of Education did not provide. And on February
17 8th, after several months and with no response to the
18 plaintiff's request, plaintiff filed a new OPRA request
19 requesting -- one, two, three, four, five, six, seven
20 -- eight separate items. To follow up on the request,
21 plaintiff contacted the -- and when plaintiff did not
22 receive any response to the subsequent request,
23 plaintiff attempted to try to get these documents by
24 contacting the superintendent. And on March 17th, the
25 superintendent -- I believe it's the superintendent,

1 Mr. Kanauss, responded to plaintiff, explaining that
2 the OPRA request for the access to the child's records
3 were denied because plaintiff is not the legal guardian
4 of the child. Plaintiff requests copies of any and all
5 Court order stating that and was denied that access as
6 well. And accordingly, the subsequent OPRA request was
7 filed.

8 As we all know, OPRA provides for the
9 intention of providing broad public access to
10 information about how (indiscernible) government is, so
11 that citizens and the media can play a watchful role in
12 curbing wasteful government spending and guarding
13 against corruption and misconduct. A public agency
14 seeking to restrict the public's right of access to
15 government records must provide specific, reliable
16 evidence sufficient to meet a statutorily recognized
17 basis for confidentiality. Absent such a showing, a
18 citizen's right of access cannot be interfered with.
19 If the Court determines that access has been improperly
20 denied, the access sought should be granted.

21 When a response to an OPRA request, agencies
22 are required to disclose only identifiable governmental
23 records not -- that are not otherwise exempt. As to
24 this request, the first objection made was to the
25 timeliness of the OPRA request and the filing of the

1 (indiscernible) complaint. That's been withdrawn, so I
2 don't need to address this.

3 The next group of requests are the PDF copies
4 which are 1, 2, and 4 of the February 8th request.
5 Defendants assert that no policies or documents
6 relative to these items exist as far as items 1 and 2.
7 That may be the case, but the plaintiffs -- strike that
8 -- the defendants -- and I may have misspoke before --
9 the defendants fail to certify that or provide any
10 response to the fact that those requests -- those
11 requested items did not exist. So defendant is clearly
12 in violation of case law with regards to the
13 requirements to do so.

14 As to item number 4, that item did in fact
15 exist and there was just simply no response. So
16 clearly, the defendants are in violation of their OPRA
17 obligations under the request number 4.

18 As to the other more substantial and broad
19 issue here, the defendants seem to suggest in their --
20 first of all, to be clear, there's no response to any
21 of the requests, but in the pleadings, once the
22 litigation was filed, defendants seem to draw a
23 distinction that the plaintiff in this case was not a
24 legal guardian so was not otherwise entitled to those
25 records. That distinction of a legal guardian is

1 really a red herring in this case.

2 What's clear is that the plaintiff is a
3 parent. And what's not disputed which we established
4 at the beginning of legal argument is that a parent is
5 entitled to the educational records of their child.
6 The defendants seems to have argued -- seems to be
7 arguing that there is an exemption even if the -- it's
8 hard for me to put in words because, frankly, the
9 argument doesn't make any sense. Defendant seems to be
10 arguing that there is an exemption under FERPA, which
11 is an identifiable -- potentially an identifiable
12 exemption under OPRA, where FERPA indicates that a --
13 its argument is that a non-parent is not entitled to
14 these items. But this is a parent, so I don't really
15 understand that argument at all.

16 I think there's a more broader general
17 argument being advanced by defendants that they don't
18 always know whether a person is a parent, so the
19 exemption would apply under FERPA. You know, that's
20 not before this Court. What's before this Court is the
21 fact that it's not disputed that the person who made
22 this OPRA request was the parent. So that's a non-
23 disputed issue.

24 So what the Court is faced with is a parent
25 who is requesting educational records of their child

1 which was denied by the defendant by not responding and
2 then ultimately in briefing denied in some -- based
3 upon some general argument that FERPA could apply if
4 it's not a non-parent. It's sort of a circular
5 argument that really doesn't make sense here. The
6 plaintiffs -- or the defendants have the burden of
7 proof to establish that there's an exemption. There's
8 exemption that applies to this situation. Clearly, Mom
9 is requesting educational documentation of her child.

10 The one issue that did come up in the
11 briefing was that there was an order and that order
12 perhaps suggested in the briefing to this Court that
13 there was language in that order that would have
14 limited the plaintiff's access to those educational
15 records or even that perhaps her parental rights were
16 terminated. So as a result of that and that being a
17 critical issue, the Court requested with consent of the
18 parties -- which I appreciate their consent -- to
19 review that order in advance. Because if her --
20 plaintiff's parental rights are terminated or if
21 there's some language in the order that said she was
22 not entitled to educational records, then defendant's
23 argument would make sense.

24 That's not what the order said. The order
25 simply indicated -- just established a custodial

1 arrangement -- a visitation arrangement for the
2 parties. That's it. There's no language limiting the
3 plaintiff's access to educational records. And there's
4 nothing suggesting that the plaintiff was not a parent.
5 So none of that applied here. So for all those
6 reasons, the defendants fail to establish their burden
7 for -- that an exemption applies to OPRA under this
8 case.

9 There was also a request for release of the
10 Court order in this case. Defendants seem to make two
11 arguments. Number one, they suggest that they're not
12 entitled to the order because of the whole parental
13 issue that I commented on. That clearly doesn't apply
14 here. Next, the defendants indicate a 138-3(d) which
15 is a Court rule exemption to those records. There's 20
16 subsections under (d). Defendants never point to the
17 subsection that they suggest applies. I reviewed that.
18 I didn't see any subsection that says that a party is
19 not entitled to a Court order. But again, it's not
20 this Court's obligation to try to fit a round peg in a
21 square hole and figure out what subsection applies.
22 There's no reference in -- other than just a broad
23 reference at 138-3(d).

24 So the Court doesn't find that applies
25 either. So for all of the reasons places on the

1 record, the Court finds that the plaintiff is entitled
2 to the requested records. Those records should be
3 turned over to the plaintiff in a reasonable period of
4 time. I'll just use the language "reasonable period of
5 time," unless Mr. Epstein is asking that I put a
6 specific date in there. And I'll hear from him on
7 that.

8 Also, as a result of this order today, the
9 Court finds that the plaintiff, who's clearly the
10 prevailing party is entitled to counsel fees. These
11 counsel fees should specifically include the time
12 necessary to prepare for oral argument today and appear
13 at oral argument today. So, Mr. Epstein, I'm going to
14 ask that you submit within two weeks of today's date a
15 certification of services. Mr. Marmero, you can submit
16 a response, if you choose to do so, within one week
17 after that. And I'm going to give this a return date
18 that we'll place that I'll identify as -- let's -- two
19 weeks will be -- so the certification services will be
20 June 6th. The response will be June 13th. The return
21 date barring scheduling conflicts would be June 20th at
22 two o'clock. I'm hopeful that counsel can --

23 UNIDENTIFIED COUNSEL: Yeah.

24 THE COURT: -- come to some agreement on
25 counsel fees and avoid any further appearance. But if

you can't, we'll keep that as the control date.