

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA

v.

GERALD A. SANDUSKY

CP-14-CR-2421-2011

CP-14-CR-2422-2011

FILED FOR RECORD
2012 MAY -4 P 12
DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY, PA

**BALD EAGLE AREA SCHOOL DISTRICT'S EMERGENCY MOTION TO QUASH
SUBPOENAS AND FOR A PROTECTIVE ORDER**

AND NOW comes the Bald Eagle Area School District, pursuant to Pa.R.P. No. 234.4(b) and 4012, and Centre.CIV.R.234.4, the Bald Eagle Area School District (hereinafter referred to as "The District"), by and through its duly appointed Solicitors, ANDREWS & BEARD LAW OFFICES, file the within Emergency Motion to Quash five (5) subpoenas, as well as for a Protective Order, pursuant to and in support thereof, aver as follows:

1. The Bald Eagle Area School District, Centre County, Pennsylvania, is a political subdivision of the Commonwealth of Pennsylvania, existing under and by virtue of the "Public School Code of 1949", as amended, with administrative offices situated at 751 S. Eagle Valley Road, Wingate, Pennsylvania 16823.
2. The District's facilities consist of four (4) Elementary Schools, a Middle School, and a High School.
3. On or about April 9, 2012, the Bald Eagle Area School District was served with four (4) subpoenas for records of four (4) former students from the District in the above-captioned criminal proceedings requesting production of certain

documents and records related to the former students in the District. (A copy of the subpoenas are attached hereto as Exhibit "A").

4. On or about April 9, 2012, the Bald Eagle Area School District was served with a subpoena in the above-captioned criminal proceedings requesting the current Superintendent, Mr. Daniel Fisher, to testify at the Centre County Courthouse in Bellefonte, Pennsylvania, scheduled on May 16, 2012, at 10:00 a.m. (A copy of the subpoena is attached hereto as Exhibit "B").
5. The students in question are identified by name and as "Accuser/Alleged Victim 3, Accuser/Alleged Victim 4, Accuser/Alleged Victim 7, Accuser/Alleged Victim 10" and for purposes of this pleading will be referred to as "Students".
6. The subpoenas seek complete and non-redacted copies of the following with regard to the Students:
 - a. Complete school records;
 - b. All IQ/intelligence testing as well as the method/manner of testing;
 - c. All school discipline records to include "in-school" suspension, "out-of-school" suspension and expulsions of the student as mandated by district policy;
 - d. All records that detail any psychiatric/psychological diagnosis including Axis I, II, III, IV and V;
 - e. All records that describe any "in-school" services provided by the school district or outside vendor who provides such services for behavior related issues, TSS support and/or behavior specialist who prepared or manages treatment plans for the student while at the school for any academic day;

- f. Any and all school records to include medical information, psychiatric and psychological records provided to the Office of Attorney General, the Pennsylvania State Police and/or other federal, state, sheriff or local law enforcement agencies through use of a subpoena, search warrant or voluntary means by the school district to the requesting law enforcement agency;
- g. Any and all school records provided to any CYS County Agency, adult/juvenile probation office, long/short-term treatment center, county jails or similar locations that a child would be prevented from leaving such as juvenile detention centers;
- h. All grade reports for any period where the child was a student;
- i. All records that were provided to the Bald Eagle Area School District by the student or another school district in regard to a possible transfer from another school district.
- j. All school district reports from the transferring district along with the name of the district the child transferred from during any academic year or prior to the start of the following academic year;
- k. All absentee days along with any and all medical or other reasons the child was not in attendance for the academic year to include the name and address of the physician and/or medical provider wherein an attendance excuse was provided;
- l. All Bald Eagle Area School District records not specified in the preceding paragraphs.

7. The Bald Eagle Area School District is mandated to keep various records relating to students in the District.
8. Many of the records maintained by the District contain information that is protected by state and federal law, more specifically, the Family Education Rights and Privacy Act (FERPA).
9. To the extent that the subpoenas seek complete school records, the subpoenas seek information protected by various state and federal laws, as is more specifically detailed in the following paragraphs.

SECTION 1 – MOTION TO QUASH SUBPOENAS PURSUANT TO FERPA

10. The Family Education Rights and Privacy Act (FERPA), 20 U.S.C. §123g et seq., and its implementing regulations, 34 C.F.R. Part 99, require that all student records containing personal identifiable information concerning an individual student must be kept confidential and cannot be disclosed without parental consent unless otherwise authorized.
11. Under FERPA and its implementing regulations the District is required to notify the Student and/or the Student's parent of, in advance of compliance therewith by the District.
12. Pennsylvania Courts hold that material and documentation not discoverable pursuant to Pennsylvania Rule of Criminal Procedure 573, may be discovered through the service of a subpoena pursuant to Pennsylvania Rule of Criminal Procedure 107. However, the Defendant must articulate a reasonable basis for the request, as utilizing subpoenas to compel production of documents merely for

inspection or for a fishing expedition is improper. See Commonwealth v. Cook, 865 A.2d 869, 877 (Pa.Super. 2004).

13. A subpoena is improper when it is unduly broad or requires the improper inclusion of irrelevant information. Commonwealth v. Meja-Arias, 734 A.2d 870, 875 (Pa.Super.1997).
14. The Congressional policy reflected in FERPA places a significantly heavier burden on the party seeking access to student records than on one seeking other records which are not impressed with that policy, when the issue before the court is whether to allow disclosure of education records covered by FERPA, a trial judge, in the exercise of discretion, must conduct a balancing test in which the privacy interest of the student is weighed against the genuine need of the party requesting the information for its disclosure. Zaal v. State, 326 Md. 64, 602 A.2d 1247 (1992).
15. The subpoenas in question do not indicate why the personal identifiable information concerning the Students is relevant or admissible in the case at hand, and the District has no information as to how such information is admissible or relevant, and the Defendant fails to articulate a foundation as to the reasonableness, materiality and justiciability of such a request.

WHEREFORE, the District asks for an Emergency Motion to Quash the subpoenas, or, in the alternative, that this Honorable Court issue an appropriate Protective Order.

SECTION 2 – MOTION TO QUASH SUBPOENAS PURSUANT TO HIPAA

16. To the extent that the subpoenas seek IQ/intelligence testing as well as the method/manner of testing; psychiatric/psychological diagnosis including Axis I, II, III, IV and V; services for behavior issues; medical information; and psychiatric and psychological records, such records are protected from disclosure by the Health Insurance Portability and Accountability ACT (HIPAA), 42 U.S.C. §1320d-6 as implemented at 45 C.F.R. §164.51(e).
17. Much of the documentation and information requested constitutes confidential and/or privileged information under the Act.

WHEREFORE, the District asks for an Emergency Motion to Quash the subpoenas to the extent that the records sought are protected by the Health Insurance Portability and Accountability Act.

SECTION 3 – MOTION TO QUASH SUBPOENAS PURSUANT TO THE MENTAL HEALTH PROCEDURES ACT

18. To the extent that the subpoenas seek IQ/intelligence testing as well as the method/manner of testing; psychiatric/psychological diagnosis including Axis I, II, III, IV and V; services for behavior issues; and psychiatric and psychological records, such records are confidential under the Mental Health Procedures Act, 50 P.S. §7111.
19. Courts have determined that the confidentiality provisions of the Mental Health Procedures Act to be “restrictive” and to cover “all documents” unless there is “written consent or one of the enumerated exceptions apply”. See, Commonwealth v. Simmons, 719 A.2d 336 (Pa.Super.1998) and Johnsonbaugh v. Dept. Public Welfare, 665 A.2d 20 (Pa.Super. 1995). None of the enumerated

exceptions are applicable to the documents sought from the Bald Eagle Area School District by way of the referenced subpoenas.

20. Furthermore, much of the documentation and information requested constitutes confidential and/or privileged information.

WHEREFORE, the District asks for an Emergency Motion to Quash the subpoenas to the extent that the records sought are protected by the Mental Health Procedures Act.

SECTION 4 – MOTION TO QUASH SUBPOENAS PURSUANT TO STATUTORY PRIVILEGE

21. To the extent the subpoenas seek IQ/intelligence testing as well as the method/manner of testing; psychiatric/psychological diagnosis including Axis I, II, III, IV and V; services for behavior issues; and psychiatric and psychological records, such records are privileged under the psychiatrist/patient privilege, 42 Pa.C.S. §5944.
22. Furthermore, the aforementioned requested documentation is considered a confidential communication to school personnel pursuant to, 42 Pa.C.S. §5945, which establishes any communications between a Guidance Counselor and a Student are confidential communications which remain privileged.

WHEREFORE, the District asks for an Emergency Motion to Quash the subpoenas to the extent that the records sought are protected by Statutory Privilege.

SECTION 5 – MOTION TO QUASH SUBPOENAS PURSUANT TO THE JUVENILE ACT

23. To the extent that the subpoenas seek records provided to any CYS County Agency, adult/juvenile probation office, long/short-term treatment center, county

jails or similar locations that a child would be prevented from leaving such as juvenile detention centers, such records are protected by the Juvenile Act, 42 Pa. C.S. §6301 *et seq.*

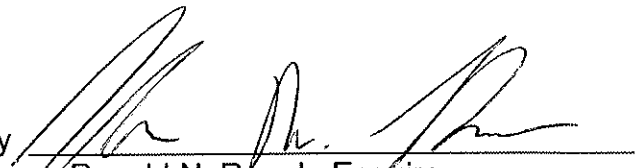
24. In light of the nature of the educational records requested, should the Court desire to review any such records in order to better determine the reasonableness, materiality, and relevance of Defendant's subpoenas, the Bald Eagle Area School District requests that such review occur *in camera*.

WHEREFORE, the Bald Eagle Area School District respectfully requests that this Honorable Court quash Defendant's subpoenas or, in the alternative, issue an appropriate Protective Order.

Respectfully submitted,

ANDREWS & BEARD LAW OFFICES

By



Ronald N. Repak, Esquire

Pa. I.D. No. 309138

Carl P. Beard, Esquire

Pa. I.D. No. 33479

3366 Lynnwood Drive

P.O. Box 1311

Altoona, PA 16603

(814) 943-3304

Attorneys for Bald Eagle Area School District

Date: May 4, 2012

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA

v.

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DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY, PA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the above Motion to Quash Subpoenas and/or for Protective Order upon the following by depositing the same in the United States Mail, first class, postage prepaid, on the 4 day of May, 2012, addressed as follows:

Joseph L. Amendola, Esquire
110 Regent Court
Suite 202
State College, PA 16801-7966

Jonelle Harter Eshbach, Esquire
Office of the Attorney General
1600 Strawberry Square, 16th Floor
Harrisburg, PA 17120

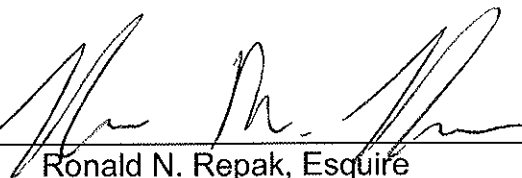
Slade McLaughlin, Esquire
1 Commerce Square
2005 Market Street
Suite 2300
Philadelphia, PA 19103

Michael J. Boni, Esquire
15 St. Asaphs Road
Bala Cynwyd, PA 19004

Respectfully submitted,

ANDREWS & BEARD LAW OFFICES

By



Ronald N. Repak, Esquire
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Attorneys for Bald Eagle Area School District

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SUITE 202
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TELEPHONE
814-234-6821

FAX
814-234-6013

SUBPOENA ATTACHMENT

Mr. Daniel F. Fisher, Superintendant
Bald Eagle School District
751 South Eagle Valley Road
Wingate, PA 16823

**Re: Commonwealth of Pennsylvania vs. Gerald A. Sandusky,
Nos. CP-14-CR-2421-2011 & CP-14-CR-2422-2011**

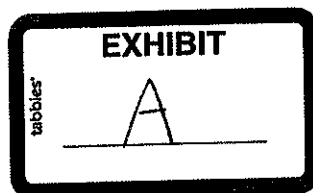
Dear Mr. Fisher:

Upon receipt of this correspondence and the attached documents, please contact me at 814-234-6821 and I will provide the name of Accusers/Alleged Victims 3, 4, 7 and 10 in regard to the above-captioned matters who were former students of the Bald Eagle School District. Please make certain the names of Accusers/Alleged Victims 3, 4, 7 and 10 be given the utmost consideration from being made public in order to comply with the Order of the Court dated March 13, 2012 which I have enclosed for your information. This Order applies to all person(s) who may gain knowledge of the name.

Pursuant to the enclosed Subpoena and Subpoena Attachment, you are requested to provide Joseph L. Amendola, Esquire, 110 Regent Court, Suite 202, State College, PA 16801 with copies of Bald Eagle School District records, documents and reports as well as other information kept and maintained by your District as described in this Subpoena Attachment. The following records, documents and reports are to be provided in their original form with no redactions and/or pages omitted:

A. Copies of the entire school district records as kept and maintained by the Bald Eagle School District for Accusers/Alleged Victims 3 ([REDACTED]), 4 ([REDACTED]), 7 ([REDACTED]), and 10 ([REDACTED]) to include the following:

1. Complete school records;
2. All IQ/intelligence testing as well as the method/manner of testing;



3. All school discipline records to include "in-school" suspension, "out-of-school" suspensions and expulsions of the student as mandated by district policy;
4. All records that detail any psychiatric/psychological diagnosis including Axis I, II, III, IV and V;
5. All records that describe any "in-school" services provided by the school district or outside vendor who provides such services for behavior related issues, TSS support and/or behavior specialist who prepared or managed treatment plans for the student while at the school for any academic day;
6. Any and all school records to include medical information, psychiatric and psychological records provided the Office of Attorney General, the Pennsylvania State Police and/or other federal, state, sheriff or local law enforcement agencies through use of a subpoena, search warrant or voluntary means by the school district to the requesting law enforcement agency;
7. Any and all school records provided to any CYS County Agency, adult/juvenile probation office, long/short-term treatment center, county jails or similar locations that a child would be prevented from leaving such as juvenile detention centers;
8. All grade reports for any period the child was a student;
9. All records that were provided to the Bald Eagle School District by the student or another school district in regard to a possible transfer from another school district;
10. All school district reports from the transferring district along with the name of the district the child transferred from during any academic year or prior to the start of the following academic year;
11. All absentee days along with any and all medical or other reasons the child was not in attendance for the academic year to include the name and address of the physician and/or medical provider wherein an attendance excuse was provided;
12. All Bald Eagle School District records not specified in Paragraph Nos. 1 through 11.

Truly,



Joseph L. Amendola, Esquire

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

VS. :

CP-14-CR-2421-2011

CP-14-CR-2422-2011

GERALD A. SANDUSKY :

ORDER

AND NOW, MARCH 13, 2012, to carry out the agreement reached between counsel, it is ordered as follows:

1. The names of persons heretofore identified as Victims 1 through 10 shall remain protected under the seal of the Court and may not be disclosed by any person, except pursuant to court order or other authorization of the court.

2. Any subpoena seeking records regarding the alleged victims who have been publicly identified to date only as Victims 1 through 10 from child welfare agencies; physicians, hospitals or other medical providers; mental health providers; schools; social service agencies; or the like, shall have affixed to the front of the subpoena in at least 18 point type the following notice:

NOTICE

BY ORDER OF THE COURT OF COMMON PLEAS OF CENTRE COUNTY PENNSYLVANIA, DATED MARCH 13, 2012, ANY PERSON OR AGENCY RECEIVING THIS SUBPOENA IS NOTIFIED THAT THE NAME OR ANY IDENTIFYING INFORMATION OF THE PERSON FOR WHOM THE RECORDS OR OTHER INFORMATION IS SOUGHT IS PROTECTED BY THE SEAL OF THE COURT.

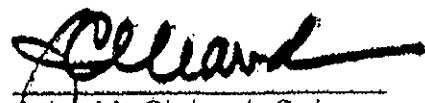
UNDER POTENTIAL PENALTY OF CONTEMPT OF COURT, THE PERSON'S NAME OR IDENTIFYING INFORMATION MAY NOT BE DISCLOSED TO ANY PERSON EXCEPT AS REQUIRED TO COMPLY WITH THIS SUBPOENA.

FILED FOR RECORD

2012 MAR 13 A 9:03

DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY, PA

By the Court:


John M. Cleland, S.J.
Specially Presiding

Commonwealth of Pennsylvania
COUNTY OF CENTRE

COMMONWEALTH OF PENNSYLVANIA

VS.

GERALD A. SANDUSKY, DEFENDANT

TO MR. DANIEL F. FISHER, SUPERINTENDANT, BALD EAGLES SCHOOL DISTRICT, 751 SOUTH EAGLE
 VALLEY ROAD, WINGATE, PA 16823

You are ordered by the court to come to CENTRE COUNTY COURTHOUSE, COURTROOM NO. 1,
 SECOND FLOOR, 102 SOUTH ALLEGHENY STREET at Bellefonte, Pennsylvania, on
 WEDNESDAY, MAY 16, 2012 at 10:00 A. M. to testify on behalf of
 DEFENDANT in the above captioned case
 and to remain until excused.

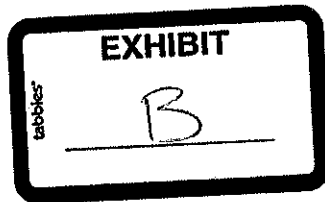
And bring with you the following: COMPLETE AND NON-REDACTED COPIES OF THE
 INFORMATION REQUESTED IN THE SUBPOENA ATTACHMENT.

Witness, the Honorable, Thomas K. Kistler, President Judge of our said
 Court at Bellefonte, this 9TH day of APRIL, A.D. 20 12

Debra C. [Signature] Prothonotary

If you fail to attend or to produce the documents or things required by this Subpoena, you may be
 subject to the sanctions authorized by Rule 234.5 of the Pennsylvania rules of Procedure, including, but
 not limited to, costs, attorney fees, and imprisonment.

CC 106



NOTICE

**BY ORDER OF THE COURT OF COMMON
PLEAS OF CENTRE COUNTY,
PENNSYLVANIA, DATED MARCH 13, 2012,
ANY PERSON OR AGENCY RECEIVING THIS
SUBPOENA IS NOTIFIED THAT THE NAME
OR ANY IDENTIFYING INFORMATION OF
THE PERSON FOR WHOM THE RECORDS
OR OTHER INFORMATION IS SOUGHT IS
PROTECTED BY THE SEAL OF THE COURT.**

**UNDER POTENTIAL PENALTY OF
CONTEMPT OF COURT, THE PERSON'S
NAME OR IDENTIFYING INFORMATION MAY
NOT BE DISCLOSED TO ANY PERSON
EXCEPT AS REQUIRED TO COMPLY WITH
THIS SUBPOENA.**