

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA

v.

GERALD A. SANDUSKY

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CP-14-CR-2421-2011
CP-14-CR-2422-2011

DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA

2012 MAY - 1 P 3:09

FILED FOR RECORD

MOTION TO QUASH SUBPOENA

The Mifflin County School District, Mifflin County, Pennsylvania, by and through KNEPP & SNOOK, its duly appointed Solicitors, hereby moves the Court for an Order quashing a subpoena served on said District, and states:

1. The Mifflin County School District, Mifflin County, Pennsylvania, is a political subdivision of the Commonwealth of Pennsylvania, a reorganized School District of the Second Class, existing under and by virtue of the "Public School Code of 1949", as amended, with administrative offices situated at 201 Eighth Street, Highland Park, Lewistown, PA 17044.
2. On or about April 13, 2012, the Mifflin County School District was served with a subpoena in the above-captioned criminal proceedings requesting production of certain documents and records related to a student in the District.
3. The student in question is identified by name and as "Accuser/Alleged Victim 9" and for purposes of this pleading will be referred to as "the Student".
4. The subpoena seeks complete and non-redacted copies the following with regard to the Student:

- 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 Mifflin County 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 Mifflin County School District records not specified in the preceding paragraphs.
- 5. The Mifflin County School District is mandated to keep various records relating to students in the District.
 - 6. Many of the records maintained by the District contain information that is protected by state and federal law.
 - 7. To the extent that the subpoena seeks complete school records, the subpoena seeks information protected by various state and federal laws, as is more specifically detailed in the following paragraphs.

SECTION 1 - MOTION TO QUASH SUBPOENA PURSUANT TO FERPA

- 8. The Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g 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.
- 9. 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.

10. Since 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).
11. The subpoena in question does not indicate why the personal identifiable information concerning the Student is relevant or admissible in the case at bar, and the District has no information as to how such information is admissible or relevant.

WHEREFORE, the District asks for an Order quashing the subpoena, or, in the alternative, an Order that the subpoenaed records shall be deposited with the Court rather than the Defendant, Gerald A. Sandusky, and that the records will be placed under seal, and made available to the Defendant if, and only if, the material becomes relevant.

SECTION 2 - MOTION TO QUASH SUBPOENA PURSUANT TO HIPAA

12. To the extent that the subpoena seeks 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. § 164.512(e).

WHEREFORE, the District asks for an Order quashing the subpoena to the extent that the records sought are protected by HIPAA.

SECTION 3 - MOTION TO QUASH SUBPOENA PURSUANT TO THE MENTAL HEALTH

PROCEDURES ACT

13. To the extent that the subpoena seeks 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.
14. 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 Mifflin County School District by way of the referenced subpoena.

WHEREFORE, the District asks for an Order quashing the subpoena to the extent that the records sought are protected by the Mental Health Procedures Act.

SECTION 4 - MOTION TO QUASH SUBPOENA PURSUANT TO STATUTORY

PRIVILEGE

15. To the extent that the subpoena seeks 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 and/or the confidential communication to school personnel privilege, 42 Pa.C.S. § 5945.

WHEREFORE, the District asks for an Order quashing the subpoena to the extent that the records sought are protected by statutory privilege.

SECTION 5 - MOTION TO QUASH SUBPOENA PURSUANT TO THE JUVENILE ACT

16. To the extent that the subpoena seeks 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.*

WHEREFORE, the District asks for an Order quashing the subpoena to the extent that the records sought are protected by the Juvenile Act.

Respectfully submitted,

KNEPP & SNOOK



By

ORRIS C. KNEPP, III, Esquire

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Attorneys for Mifflin County School District

Dated: 5-1, 2012

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the above document upon the following by depositing the same in the United States Mail, first class, postage prepaid, at Lewistown, Pennsylvania, on the 1st day of ~~April~~ *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
Strawberry Square, 16th Floor
Harrisburg, PA 17120

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DEBRA C. IMEL
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CENTRE COUNTY, PA

KNEPP & SNOOK

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Mark J. Remy
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