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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 23-16

May 3, 2023

Prince George's County Public Schools, Custodian
Kaleb Carter, Complainant

The complainant, Kaleb Carter, alleges that the Prince George's County Public Schools ("PGCPS") violated the Public Information Act ("PIA") by failing to provide him with copies of the graded scantrons of eight standardized tests that the complainant took in 2020. In response, the PGCPS contends that State regulations as well as school district policies and procedures preclude it from providing copies of the graded tests to the complainant, but that it can facilitate the scheduling of an appointment for the complainant to inspect (but not copy) his test results. As explained below, we conclude that the PGCPS did not violate the PIA in the way that the complainant alleges.

Background

In August of 2022, the complainant sent a PIA request to the PGCPS seeking "the computer generated scantron test results from the eight MSDE Standardized Tests of Accuracy and Proficiency that [he] took . . . during the COVID-19 pandemic (sometime in February 2020)." The PGCPS acknowledged his request the same day and explained that the request would be handled by the administration at the school where he had taken the tests and pursuant to PGCPS administrative procedures. Although the complainant and the PGCPS apparently continued to correspond regarding his PIA request, no records were produced. Thus, in November the complainant contacted the Public Access Ombudsman in an attempt to resolve his dispute. In January, the Ombudsman issued a final determination stating that the dispute had not been resolved.

In his complaint to this Board, the complainant continues to dispute the PGCPS's failure to provide him with copies of the "official computer generated results" from the eight standardized tests that he took.

The PGCPS responds by first noting that the complainant's request was "styled" as a PIA request, but that he was "immediately advised" that "the request would be handled pursuant to [a PGCPS] Administrative Procedure." The PGCPS further explains that the tests that the complainant took were "high stakes assessment[s]," and that PGCPS test security policies and administrative procedures forbid anyone to retain copies of a high stakes assessment answer document, test questions, or test form. However, the PGCPS

advises, individuals may review those materials related to their own testing “in a controlled, secure environment in the school building.” Such measures are designed to prevent the sharing of sensitive testing information—the answer keys in particular. To that end, the PGCPS explains that the school sent the complainant a letter—long after he had already engaged the services of the Ombudsman—inviting him to come to the school building to sign a non-disclosure agreement and review (but not copy) the records he requested. In addition, the PGCPS states that § 4-345¹ of the PIA—which concerns testing and examination information—would preclude it from providing copies of the records that the complainant seeks.

Analysis

We are authorized to resolve complaints that allege certain violations of the PIA, including allegations that a custodian wrongfully denied inspection of a public record. *See* § 4-1A-04(a)(1)(i). A complainant must first attempt to resolve a dispute through the Public Access Ombudsman, and may file a complaint only if the Ombudsman is unable to resolve the issue. § 4-1A-05(a)(1). Once a complaint has been filed, and if we conclude that a violation of the PIA has occurred, we must issue a written decision and order an appropriate remedy, as provided by the statute. § 4-1A-04(a)(2) and (3). For example, if we find that a custodian wrongfully denied inspection of a public record, then we must “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA is premised on the idea that “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees,” and thus the PIA provides a general right of access to public records. § 4-103. The PIA covers *all* public records—a term that is broadly defined, *see* § 4-101(k)—regardless of their nature or which unit or instrumentality of the government possesses them. “Except as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time,” and “[i]nspection or copying of a public record may be denied only to the extent provided [in the PIA].” § 4-201(a). In the interest of facilitating access and protecting public records, the PIA also directs official custodians to “adopt reasonable rules or regulations that, subject to [the PIA], govern timely production and inspection of a public record.” § 4-201(b). At the same time, those rules and regulations cannot supplant the PIA, nor can they serve to expand or restrict the PIA’s provisions. *See Lamson v. Montgomery County*, 460 Md. 349, 364 (2018) (holding that “Montgomery County Regulations cannot be invoked to prevent disclosure of records” because they “categorically preclude[] the disclosure of records that are permitted under the MPIA” and therefore “impermissibly limit[] the application of a state law enacted by the General Assembly”).

¹ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

Section 4-345 of the PIA generally provides a custodian discretion to deny inspection of “test questions, scoring keys, and other examination information” if disclosure would be “contrary to the public interest.” §§ 4-343, 4-345(a). However, “[a]fter a written promotional examination has been given and graded, a custodian *shall* allow a person in interest to inspect the examination and the results of the examination, but may not allow the person in interest to copy or otherwise to reproduce the examination.” (emphasis added). We are unaware of any Maryland case law that has examined the application of or otherwise interpreted this particular exemption.

State law empowers to State Board of Education to “adopt bylaws, rules, and regulations for the administration of the public schools.” Md. Code Ann., Educ. § 2-205(c)(1). Those regulations, in turn, require local school systems to “develop and adopt test administration and data-reporting policies,” which must include polices that provide for, among other things, “[t]he storage under lock and key of all secure tests and test materials in all versions, including, but not limited to, answer keys, audio tapes, videotapes, compact disks (CDs), and examinee answer documents, before, during, and after testing.” COMAR 13A.03.04.03A and B(1).

The PGCPS has complied with mandate contained in State regulations by adopting Policy Number 6139, which covers a broad array of tests, including the “norm-referenced test in use by the State” and “[a]ny other test instruments required by the Maryland State Board of Education and/or Prince George’s County Public Schools.” Prince George’s County Public Schools, Bd. of Educ. Pol’y No. 6139 (Amended Apr. 29, 2010).² That policy requires the local Superintendent to designate a “Local Accountability Coordinator” to implement procedures to ensure the security of testing materials, including “examinee answer documents.” *Id.* Policy number 6139 is embodied by the procedures detailed in Administrative Procedure 6139 which, consistent with State regulations, require that testing materials be stored “under lock and key” and preclude the copying, reproduction, use or disclosure “in any manner inconsistent with test security regulations and procedures any portion of secure test materials.” *See* Prince George’s County Public Schools, Admin. Proc. 6139, §§ IV.A.1 and IV.C.1.c (Nov. 2, 2020) (“AP 6139”).³

In addition to the procedures governing test security, the PGCPS has also adopted administrative procedures regarding access to individual school-based records. *See* Prince

² *See* <https://www.pgcps.org/globalassets/offices/general-counsel/docs---general-counsel/board-policies/6000/board-policy-6139---test-security-and-data-reporting.pdf> (last visited Apr. 13, 2023).

³ *See* <https://www.pgcps.org/globalassets/offices/general-counsel/docs---general-counsel/administrative-procedures/6000/administrative-procedure-6139---test-security-and-data-reporting.pdf> (last visited Apr. 13, 2023).

George’s County Public Schools, Admin. Proc. 5125 (Nov. 2, 2020) (“AP 5125”).⁴ Consistent with State regulations and the federal Family Educational Rights and Privacy Act,⁵ those procedures require that, within three school days of receiving a request by, *inter alia*, a parent or adult student, a school principal or designee must “facilitate the process for granting the request to view a student’s entire school record.” *Id.* § V.F.2.a. Review of the records must take place “in the presence of an appropriate qualified staff member,” and anyone reviewing records must sign a “Log of Review” beforehand. *Id.* § V.F.2.b and c.

Before determining whether a violation of the PIA has occurred here, we address the apparent implication in the PGCPs’s response that PGCPs policies and procedures, and not the PIA, control. The PGCPs refers to the complainant’s request as having been “styled” as a PIA request, and later contends that “[h]ad PGCPs processed [the complainant’s] PIA request in accordance with the [PIA], § 4-345 would have been applicable.” Though the PIA instructs official custodians to adopt rules and regulations that govern the process of inspecting public records, those rules and regulations are “subject to this title”—i.e., subject to the PIA. § 4-201(b). While it does not appear to us that either AP 5125 or AP 6139 is inconsistent with the PIA, we nevertheless emphasize that the PIA ultimately governs any written request for public records—including a student’s request for his or her school-based records. *Cf. Maryland Public Information Act Manual* (17th ed. July 2022), at 4-1 (“A written request expressing a desire to inspect or copy agency records may be sufficient to trigger the PIA’s requirements, even if it does not expressly mention the words ‘Public Information Act’ or cite the applicable sections of the General Provisions Article.”). The PGCPs should have processed the complainant’s PIA request in accordance with the PIA, and any of the PIA’s provisions relevant to disclosure of the records he seeks—including § 4-345—apply.

Turning to § 4-345(b), we conclude that it both requires that that PGCPs permit the complainant—a “person in interest”⁶—to inspect his graded test results and precludes the complainant from obtaining copies of those records. Noting that the complainant took

⁴ See <https://www.pgcps.org/globalassets/offices/general-counsel/docs---general-counsel/administrative-procedures/5000/administrative-procedure-5125---individual-student-school-based-records.pdf> (last visited Apr. 13, 2023).

⁵ See 20 U.S.C.A. § 1232g, commonly known as “FERPA,” which denies funding to educational agencies or institutions that have a policy of denying or effectively preventing parents of students “the right to inspect and review the education records of their children.” At the same time, FERPA also generally denies funding if an educational agency or institution has a “policy or practice of permitting the release of education records . . . of students without the written consent of their parents.” *Id.* § 1232g(b); see also 92 Md. Op. Att’y Gen. 137, 143-147 (2007) (discussing FERPA’s interaction with the PIA).

⁶ See § 4-101(g) (defining “person in interest” to mean, among other things, “the person . . . that is the subject of a public record”).

Tests of Achievement and Proficiency (“TAP”), the PGCPS explains that “a passing score is used to give a student course credit for a high school course in lieu of taking that course and receiving credit for that course toward completion of graduation credits.” As we see it, such a test can fairly be described as a “promotional examination.” The term “promotion” is often used to denote a student’s advancement from one grade level to another. *See, e.g.*, COMAR 13A.08.01.02B(3) (“The regulation shall include a provision for promotion of the 5-year-old child to first grade if the local superintendent or the superintendent’s designee determines that the child demonstrates capabilities warranting promotion to first grade.”); COMAR 13A.08.02.01 (“A system of information on enrollment, attendance, and promotion of students shall be maintained in accordance with the regulations of the State Board of Education.”). Thus, to the extent that TAP scores may result in the earning of credits required to “promote” a student from one grade to the next, we think § 4-345(b) requires the PGCPS to allow the complainant to inspect the “results of the [TAP] examination” once it has been “given and graded.” But, consistent with the exemption’s provisions, the PGCPS “may not allow [the complainant] to copy or otherwise to reproduce the examination[s].”⁷ § 4-345(b).

In light of § 4-345, we conclude that the PGCPS did not violate the PIA when it ultimately advised the complainant that he could inspect, but not copy his graded test results. We hasten to add, however, that the timing of the PGCPS’s response did not comply with the PIA’s provisions. The complainant sent his PIA request to the PGCPS on August 5, 2022, and the PGCPS sent the letter explaining the process for inspecting the records on January 5, 2023—long after the 30 days the PIA affords custodians to grant or deny a request had passed. *See* § 4-203(a)(1).

Conclusion

The PGCPS did not violate the PIA in the way that the complainant alleges—i.e., via its failure to provide the complainant with copies of his graded test results. Given that § 4-345(b) provides the complainant with the right to inspect—but not copy or otherwise reproduce—his test results, the PGCPS must coordinate another date and time for the complainant to inspect the records that he requested.

Public Information Act Compliance Board

John H. West, III, Esq., Chair

⁷ Though the complainant does not raise it, we briefly touch on the condition that the PGCPS places upon inspection—namely, the complainant’s execution of a non-disclosure agreement (“NDA”) that, among other things, forbids him from making “any type of notes as a result of [his] access” or “discuss[ing] the topics and/or specific content of the test materials with any other party.” In our view, these terms are consistent with § 4-345(b)’s prohibition on “otherwise . . . reproduc[ing]” testing-related records that are inspected by a person in interest.

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