



MONTCLAIR PUBLIC SCHOOLS

BUSINESS OFFICE

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EMIDIO D'ANDREA

Business Administrator

December 11, 2020

Via Email (opra+request-18677-4f8f2785@requests.opramachine.com)

Sunlight Policy Center

Re: OPRA request dated November 24, 2020

Dear Sir/Madam:

You recently requested documents from the Montclair Board of Education ("Board" or "District") pursuant to the Open Public Records Act ("OPRA") on November 24, 2020. The time in which a public entity has to respond to an OPRA request begins to run the day after the custodian of records receives such a request. Your request was received by the Board on November 24, 2020.

Under normal circumstances, a public entity typically has seven (7) business days to respond to such a request. However, on March 20th, Governor of New Jersey, Phillip Murphy, signed A3849/S2302. Same modifies N.J.S.A. 47:1A-5, to provide government entities additional time to respond to OPRA requests during a State of Emergency or other public health emergency, including the current COVID-19 outbreak.

On December 2, 2020, the District requested clarification of your OPRA request. On December 2, 2020, you provided clarification and the response time began anew.

At this time, the following is provided in response to your OPRA request:

- 1. All communications from the Montclair Education Association and the New Jersey Education Association to the Montclair Board of Education for August, September and October 2020 concerning the "Charles Bullock School" and/or the "Applied Behavior Analysis program".**

The documents responsive to your request are not considered government records under OPRA and not subject to disclosure under OPRA because such documents: (1) reveal personally identifiable student information; or (2) were generated on behalf of public employees in connection with collective negotiations. See 20 U.S.C.A. §1232g; 34 CFR Part

99; N.J.S.A. 47:1A-1.1.

"A government record shall not include the following information which is deemed to be confidential for the purpose of P.L. 1963 (C.47:1A-1 et seq.) as amended and supplemented:" "information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student." N.J.S.A. 47:1A-1.1. Moreover, the Family and Educational Rights and Privacy Act ("FERPA"), prohibits schools from disclosing a student's records, without first obtaining parental consent. Notably, FERPA prohibits the release of any "personally identifiable information," which includes any information which "alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community...to identify the student with reasonable certainty." 34 C.F.R. 99.3. Accordingly, the District may not release information which contains personally identifiable information regarding a specific student.

At this time, the email thread responsive to your request reveals personally identifiable information regarding specific District students.

In addition, N.J.S.A. 47:1A-1.1 exempts from disclosure "[i]nformation generated by or on behalf of public employers or public employees in connection with: ... [c]ollective negotiations, including documents and statements of strategy or negotiating position." At this time, the document responsive to your request was generated on behalf of the MEA in connection with negotiations and, therefore, is not subject to disclosure under OPRA.

If you have any questions, please feel free to contact me.

Thank you.

Sincerely,



Emidio D'Andrea
Business Administrator/Custodian of Records