

-T A B L E O F C O N T E N T S-

	<u>Page(s)</u>
Table of Authorities.....	iii
Statement Of Facts.....	1,2
Argument.....	3
 <u>Proposition Of Law No. I:</u>	
Records of non-students are no longer confidential and are deemed to be public records.....	3
 <u>Proposition Of Law No. II:</u>	
Non-students records are no longer considered confidential and the provisions of FERPA do not prohibit the public records requested of non-students.....	4
 <u>Proposition Of Law No. III:</u>	
A person who makes a public records request for non-confidential public records has established a duty to provide them upon the requestor under the Ohio Public Records Act.....	5, 6
Conclusion.....	7
Certificate Of Service.....	7
Appendix	<u>Appx. Page(s)</u>
Notice Of Appeal to the Ohio Supreme Court (May 13, 2011).....	1
Affidavit filed with the Notice Of Appeal to the Ohio Supreme Court (May 13, 2011).....	2
Decision (Judgement Entry) of the Hamilton County Court of Appeals (April 20, 2011).....	3
Letter providing Souffrance's educational record.....	4
 <u>Constitutional Provisions; Statute:</u>	
20 U.S.C.A. §1232g(a)(6).....	5
R.C. §3319.321(B).....	6

- T A B L E O F A U T H O R I T I E S -

Page (s)

Alford v. Willoughby Civil Serv., 390 N.E.2d 782..... 5

State of Ohio ex rel. Cincinnati Enquirer, Division Of Gannet Satellite Information Network Inc. v. Cincinnati Board of Education et al 99 Ohio St.3d 6, 2003-Ohio-2260, 788 N.E.2d 629, 632..... 3

State ex rel. Cincinnati Enquirer v. Dupuis, 98 Ohio St.3d 126, 2002-Ohio- 7041, 781 N.E.2d 163,167..... 3

State ex rel. Corrigan v. Voinovich (1975) 41 Ohio St.2d 157, 324 N.E.2d 285..... 5

Fraternal Order Of Police Of Manchester v. Village of Manchester, 1981 WL 2567 Ohio..... 5

Hill v. Hill, 841 P.2d 722, 724, Utah App. (1988)..... 3

State ex rel. Mothers Against Drunk Driving v. Gosser, (1985), 20 Ohio St.3d 30, 485 N.E.2d 706..... 4

Pima Community College v. Arizona Dep't Of Econ. Sec., 148 Ariz. 302, 304, 714 P.2d 472, 474 Ariz App. (1986)..... 3

State ex rel. Sibarco Corp. v. City Of Berea (1966) 7 Ohio St.2d 85, 218 N.E.2d 428..... 5

Swanson v. Bowen Not Reported in F.Supp. 1988 WL 251979..... 3

State ex rel. Wright v. Weyandt 50 Ohio St.2d 194, 363 N.E.2d 1387..... 5

Constitutional Provisions; Statute:

Ohio Public Records Act ("OPRA")..... 1, 4, 5, 6, 7

Family Education Records and Privacy Act ("FERPA")..... 4

R.C. §149.43..... 3, 4, 6

R.C. §149.43(A)(1)(v)..... 2, 3

R.C. §2731.05..... 5, 6

R.C. §3319.321(B)..... 1, 3, 4, 6

20 U.S.C.A. §1232g..... 2, 4, 6

20 U.S.C.A. §1232g(a)(6)..... 4, 6

First Amendment of the U.S. Constitution..... 1, 5, 6

Free Speech Provision of the Ohio Constitution Art. 1 §11..... 1, 5, 6

R.C. §2731.11..... 6

Ohio Rules of Civil Procedure

Civ. R. 12(B)(6)..... 1-2, 5

- S T A T E M E N T O F F A C T S -

This case arises from the attempt of Appellant Sidney Lee Souffrance ("Souffrance"), to obtain certain records from a school named Life Skills Center ("LSC"), under the Ohio Public Records Act ("OPRA"). LSC denied the request, claiming that, although they were over the age of 18 years old, a signed release was needed. The persons records in question, are no longer "students", at LSC, and R.C. § 3319.321 does not prohibit the release of such records because they are no longer students, Id at (B).

On January 06, 2011, Souffrance sent a public records request ("PRR") to LSC seeking:

- A) Attendance records, addresses, and telephone numbers of all ~~students~~ students who were in Lab ("classroom") #3 & 4, 1st and 2nd session, in the entire months of May 2002 - June 2002.
- B) Computer user terminal records pertaining to a one Kelly Lynn Vaughn & Sidney Souffrance 1st & 2nd session, in May 01, 2002 - May 30, 2002.

On January 18, 2011, Souffrance sent another "PRR" letter slightly changing part (B) of the request by adding 3rd session.

On January 18, 2011 (the same day, after sending the second PRR letter) Souffrance received a reply from Susan K. Steinhauer, the Chief Legal Officer acknowledging receipt of Souffrance's PRR letter, which was dated for the 13th of January 2011. The response claimed that a signed release was needed and denied Souffrance's request, against OPRA, 1st Amendment to the United States Constitution and ~~the~~ Free Speech Provision of Ohio's Constitution Art. 1, § 11 respectively.

About one month later (February 14th, 2011), Souffrance filed a Writ of Mandamus, seeking to compel LSC to provide or make available the public record sought. See compliant First Appellate District, case No. C 1100090.

On March 17, 2011 LSC filed a motion to dismiss, and Souffrance filed a reply to and motion to deny respondents motion to dismiss on April 15, 2011.

On April 20, 2011 after considering LSC's motion to dismiss and Souffrance's reply, the court granted LSC's motion to dismiss, relying on Civ.R.

12(B)(6), stating: ***relator has not established a clear duty on the part of respondent to provide the records requested. The records are not subject to release under 20 U.S.C.A. §1232g, and is not considered public records under R.C. §149.43 (A)(1)(v)[▲], is flawed and clearly erroneous.

And it is for this reason that Souffrance has filed an appeal with this Honorable Court.* This case raises a substantial constitutional question and is of great pulic, general, and/or individual interest.

Each and every allegation asserted in the compliant are incorporated herein as if fully restated herein.

This case will set new case precedent, as there are no existing cases for this court to follow the doctrine of stare decisis. But the following argument and propositions of law should assist this court in coming to a conclusion in this case. This issue is thus ripe for decision in this Honorable Court.

[▲]See Appx. page 3

*See Appx. page 1-1B

A R G U M E N T

P R O P O S I T I O N O F L A W N O . I :

Records of non-student are no longer confidential and are deemed to be public records.

The records that Souffrance seeks, are on students who no longer attend LSC, and therefore are no longer confidential student records, because students apply to those who regularly attend such agency/public office. Other states have ruled that student is defined as "an individual who is in full time attendance as a student at an educational institution...", see Swanson v. Bowen, Not Reported in F. Supp. 1988 WL 251979; Hill v. Hill, 841 P.2d 722, 724, Utah App. (1988); and Pima Community College v. Arizona Dep't of Econ. Sec., 148 Ariz. 302, 304, 714 P.2d 472, 474 Ariz App. (1986). Also, see R.C. § 3319.32.1(B)* which apply to persons who are enrolled.

R.C. § 149.43(A)(1)(v), refers to "students" under the age of 18 years old" are not subject to release. The records that Souffrance seeks, are of (1) non-students, and (2) the records are of persons who are over the age of 18 years old and there is no signed release needed in order for the records to be provided to a person who requests such records. The First Appellate District's ruling in this case is contrary to the Ohio R.C. § 149.43(A)(1)(v), because Souffrance's request does not fall within the parameters of this statute.

LSC failed to overcome the burden to establish the application of an exception. See State ex rel. Cincinnati Enquirer v. Dupuis, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, 167. Souffrance asserts that the requested records constitute records as that term is used in R.C. § 149.43 et seq., and must be construed liberally in favor of broad access to records that Souffrance seeks. The records consist of "non-students", records, therefore, the records are subject to public inspection. See State of Ohio ex rel. Cincinnati Enquirer, Division Of Gannet Satelite Information Network Inc. v. Cincinnati Board Of Education et al. 99 Ohio St.3d 6 2003-Ohio-2260, 788 N.E.2d 629, 632.

*See Appx. page 6

PROPOSITION OF LAW NO. III :

Non-student records are no longer considered confidential and the provisions FERPA do not prohibit the public records requested of non-students.

The decision of the First District Court of Appeals was contrary to the provisions set forth in FERPA, when it ruled that the student records are not subject to release under 20 U.S.C.A § 1232g. Student records are not subject to release, however, non-students no longer in attendance at such agency or institution is.

When looking at 20 U.S.C.A. § 1232g (a)(6)*, we can see that the records requested are subject to public inspection, where it states in relevant part: "For the purpose of this section, the term "student includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution. (underline and bold added). So the requested records that Souffrance seeks are not prohibited by law, they are subject to public inspection upon request, and the records involve persons who are "non-students" at that school.

Similiter, Souffrance's mandamus action should (sic) have been granted, ordering LSC (a public office) to provide or make available the public records requested. See State ex rel. Mothers Against Drunk Driving v. Gosser, (1985), 20 Ohio St.3d 30, 485 N.E.2d 706, at paragraph one of the syllabus:

("Any document *** or any record necessary to the execution of the responsibilities of a governmental unit is a "public records" and "required to keep" within the meaning of R.C. § 149.43, Absent any specific statutory exclusion, such record must be made available for public inspection.").

In addition to this, Ohio Revised Code § 3319.32.1(B) — applies only to students who are in attendance regularly at such institution, when it comes to a signed release being needed. Souffrance should have been given access to the records requested. And Souffrance is entitled to a mandamus, and there is no other adequate remedy in the ordinary course of law. There is a clear legal duty imposed on LSC to perform an official act under OPRA.

A R G U M E N T

P R O P O S I T I O N O F L A W N O . I I I :

A person who makes a public records request for non-confidential public records has established a duty to provide them upon the requestor.

When an individual makes a claim on something, (subject of the right) which imposes a duty on another individual, (subject of the duty), that individual is saying that he/she has a right, interest, or stake in it. Similarly, Souffrance as a citizen of Ohio, requested public records under "OPRA", and it imposed a clear legal duty upon LSC to provide the records requested of non-students. When LSC denied Souffrance's request, "OPRA", first Amendment of the U.S Constitution, and the Free Speech Provision of the Ohio Const. Art. 1 §11 was violated, and Souffrance filed a complaint. In Ohio, it is well settled that, "To establish a claim in mandamus it must be proved that there exists a clear legal duty to act on the part of a public officer or agency, and that Relator has no plain or adequate remedy in the ordinary course of law," see Fraternal Order of Police of Manchester v. Village of Manchester, 1981 WL 2657 Ohio App., 1981 *4; Alford v. Willoughby Civil Serv., 390 N.E.2d 782; State ex rel; Wright v. Weyandt 50 Ohio St.2d 194, 363 N.E.2d 1387; State ex rel. Corrigan v. Voinovich 1975 41 Ohio St.2d 157, 324 N.E.2d 285.

Souffrance has no other adequate remedy at law in this case and there exists a clear legal duty imposed on LSC to perform an official act. See State ex rel. Sibarco Corp. v. City of Berea 1966 7 Ohio St.2d 85, 218 N.E.2d 428, where "Mandamus will not lie unless there is a clear legal duty to perform an official act, and where there is no plain and adequate remedy in the ordinary course of law." And R.C. 2731.05. The First Appellate District erred when it dismissed Souffrance's complaint in mandamus, relying on Civ.R. 12(B)(6), stating that Relator has not established a clear legal duty on the part of respondent to provide the records requested", and this was erroneous and contrary to law.

Thus, Souffrance has stated a claim for which relief can be granted. The first claim for relief was based on "OPRA". Souffrance's request made under the OPRA, and has a right of access to the requested records, and LSC and/or records Custodian both have a corresponding duty to permit public access to the requested records under OPRA.

Souffrance's right of access to the requested records, created by the OPRA has been violated by LSC's refusal to permit access to them or provide copies of them. And Souffrance is entitled to a Writ of Mandamus requiring LSC to produce or permit access to the requested records. ~~The first claim for relief was based on OPRA.~~

Souffrance's second claim for relief was based on the United States Constitution (First Amendment), and Ohio's Constitution, Free Speech Provision (Art. 1 § 11. LSC has a corresponding duty imposed by Constitutions to permit access to the requested records. Yet, LSC's denial, violated these constitutional rights of access to the requested records and breached their constitutional duty to permit access to such records.

LSC did provide Souffrance with his own educational record about 22 days after the Writ of Mandamus was filed on or about March 08, 2011.* The mandamus was filed on or about February 14, 2011. More than 10 days had elapsed upon the providing of Souffrance's own educational records. Although this had occurred LSC failed to provide the remainder of the request, of the other non-students.

Accordingly, Souffrance's compliant in mandamus, should have been granted and LSC's motion to dismiss, should have been denied ab initio. Because the most liberal reading of Souffrance's complaint, reveals that he was indeed entitled to a writ of mandamus and the relief sought thereof, according to and in compliance with R.C. §149.43 et seq., 20 U.S.C.A §1232g(a)(6), R.C. §2731.05, R.C. §3319.321(B), U.S and Ohio Constitutions, supra. As well as R.C. §2731.11, see conclusion in compliant C 1100090. Wherefore, this Honorable Court should uphold the legislator's intent of Ohio's Public Record Act.

*See Appx. page 4.

- C O N C L U S I O N -

The decision below is fundamentally wrong in its reasoning. The decision undermines the structure and purpose of the Ohio Public Records Act. In place of that coherent Act, the decision below would establish a disorderly method contrary to the legislator's intent of the Act. The danger of allowing the lower decision to stand, would be to allow tribunals to be free to disregard Ohio's Public Records Act, and must be rejected.

The decision below must be reversed. A reversal will promote the exemplary purposes of the Act and preserve the unmistakable legislative intent, which this Honorable Court has uniformly supported, **(stare decisis)**.

Respectfully submitted,


Sidney Lee Souffrance #518-780
P.O. Box 69
London, Ohio 43140
Appellant, Pro se

- C E R T I F I C A T E O F S E R V I C E -

I hereby certify that a copy of this Merit Brief was sent by ordinary U.S. mail to counsels of record for the appellees listed below, on June 30th, 2011.

Janik L.L.P.

Steven G. Janik (0021934)
Audrey K. Bentz (0081361)
Sean T. Needham (0081382)
9200 South Hills Blvd.
Suite 300
Cleveland, Ohio 44147
TEL: 440.838.7600
FAX: 440.838.7601

&

Zashin & Rich Co., L.P.A.

Patrick M. Watts (0075099)
Roy E. Lachman (0010389)
55 Public Square 4th FL.
Cleveland, Ohio 44113
TEL: 216.696.4441
FAX: 216.696.1618

Respectfully submitted,


Sidney Lee Souffrance #518-780

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IN THE SUPREME COURT OF OHIO

11-0823

State of Ohio ex rel.)
Sidney Souffrance,)
)
Appellant,)
v.)
)
John Doe,)
Records Custodian for)
Life Skills Center,)
)
Appellee.)

Case No.: _____

On Appeal from the Hamilton
County Court of Appeals,
First Appellate District.

Court of Appeals
Case No. C 1100090

NOTICE OF APPEAL OF APPELLANT SIDNEY LEE SOUFFRANCE

Sidney Lee Souffrance
1580 State Route 56, SW
P.O. Box 69, #A518780100
Building D-4, Cubicle 129-T
London, Ohio 43140-0069
TEL: 740.852.2454, ext.2411
FAX: 740.852.1591

Appellant, PRO SE

Janik L.L.P.
Steven G. Janik (0021934)
Audrey k. Bentz (0081361)
Sean T. Needham (0081382)
9200 South Hills Blvd. Suite 300
Cleveland, Ohio 44147
T: 440.838.7600, F: 440.838.7601

&

Zashin & Rich C.O., L.P.A.
Patrick M. Watts (0075099)
Roy E. Lachmann (0010389)
55 Public Square, 4th Fl.
Cleveland, Ohio 44113
T: 216/696.4441, F: 216/696.1618

Counsels for (Life Skills Center), Appellee.

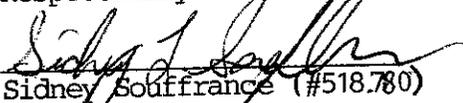
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MAY 13 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Notice Of Appeal Of Appellant Sidney L. Souffrance

Relator Sidney L. Souffrance hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Hamilton County Court of Appeals, First Appellate District, entered in Court of Appeals case No. C 110090 on April 20th, 2011.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,


Sidney Souffrance (#518.780)
Relator, Pro se

Certificate of Service

I hereby certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellees, (listed below), on 0 . .2011.

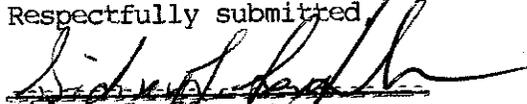
Janik L.L.P.

Steven G. Janik (0021934)
Augrey K. Bentz (0081361)
Sean T. Needham (0081382)
9200 South Hills Blvd. Suite 300
Cleveland, Ohio 44147
T: 440/838-7600
F: 440/838-7601
Email: Steven.Janik@Janiklaw.com
Audrey.Bentz@Janiklaw.com
Sean.Needham@Janiklaw.com

Zashin & Rich C.O., L.P.A.

Patrick M. Watts (0075099)
Roy E. Lachmann (0010389)
55 Public Square 4th Fl.
Cleveland, Ohio 44113
T: 216/696-4441
F: 216/696-1618
pmw@zrlaw.com
rel@zrlaw.com

Respectfully submitted,


Sidney Souffrance
1580 State Route 56
P.O. Box 69, #A518780.00
Building D-4, Cubicle 129-T
London, Ohio 43140-0069

IN THE SUPREME COURT OF OHIO

AFFIDAVIT OF INDIGENCY

I, Sidney Souffrance, do hereby state that I am without the necessary funds to pay the costs of this actin for the following reason(s).

- 1. I have knowledge of the facts stated herein and am competent to testify.
 - 2. I am incarcerated at London Correctional Institution, under the care of the state of Ohio (ODRC).
 - 3. Due to my incarceration, I am indigent within the meaning of the laws of the state of Ohio, and therefore am without sufficient funds with which to pay costs of paying the filing fees and other costs associated with mechanical requirements of the Supreme Court of Ohio, as set forth in the Rules of Practice of the Ohio Supreme Court, 15.3 and 8.51.
 - 4. I do not have property, stocks, bonds or any trust funds to offer for security in lieu of fees and costs in this cause of action.
- Pursuant to Rule 15.3, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waive. as well as the number of copies required be waived.

Sidney Souffrance
Affiant:

SWORN TO, OR AFFIRMED, AND SUBSCRIBED IN MY PRESENT THIS 11th DAY OF May, 2011

Gilbert A. Hurwood
NOTARY PUBLIC

My Commission Expires: 4/9/13

GILBERT A. HURWOOD
Notary Public, State of Ohio
My Commission Expires 1-9-2013

FILED
MAY 13 2011
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO EX REL.
SIDNEY SOUFFRANCE,

APPEAL NO. C-110090

Relator,

vs.

ENTRY GRANTING MOTION
TO DISMISS PETITION
FOR WRIT OF MANDAMUS

JOHN DOE, Records Custodian,
Life Skills Center,

Respondent.

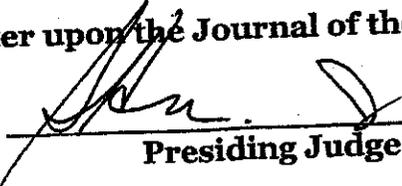
This cause came on to be considered upon the relator's petition for a writ of mandamus, the respondent's motion to dismiss, and the relator's memorandum in opposition.

The Court finds that the motion to dismiss is well taken and is granted under Civ.R. 12(B)(6). The relator has not established a clear legal duty on the part of respondent to provide the records requested. The relator's request for school records of the other student are not subject to release under 20U.S.C.A. 1232g, and as a result, they are not considered public records available for inspection and copying under R.C. 149.43(A)(1)(v).

The petition for writ of mandamus is dismissed. The relator's motion for summary judgment is overruled as moot. The motion of LS Cincinnati, LLC for leave to intervene is similarly overruled as moot.

To The Clerk:

Enter upon the Journal of the Court on APR 20 2011 per order of the Court.

By: 

Presiding Judge

(Copies sent to all counsel)

ROY E. LACHMAN
rel@zrlaw.com

March 8, 2011

VIA CERTIFIED MAIL

Mr. Sidney Souffrance
1580 State Route 56, SW
P O Box 69, A518780.00
Building D-4, Cubicle 129-T
London, Ohio 43140-0069

Dear Mr. Souffrance:

Please find enclosed your entire educational record related to Life Skills Center of Cincinnati.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

ZASHIN & RICH CO., L.P.A.



Roy L. Lachman

REL/tbp
Enclosures
cc: Life Skills Center of Cincinnati

- 1
- Screen 2
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(2 screens)

20 U.S.C.A. § 1232g

United States Code Annotated Currentness

Title 20. Education

Chapter 31. General Provisions Concerning Education (Refs & Annos)

Subchapter III. General Requirements and Conditions Concerning Operation and Administration of Education Programs: General Authority of Secretary (Refs & Annos)

Part 4. Records; Privacy; Limitation on Withholding Federal Funds

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

- (6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

Only the relevant part of this section shown for this courts review.

Comment [1]: ** Document Identifier type is XML.

Comment [2]: ** DecisionPath: INP:Demystify, INP:Search, INP:Document

R.C. § 3319.321

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXIII. Education--Libraries

Chapter 3319. Schools--Superintendent; Teachers; Employees (Refs & Annos)

Records and Reports

3319.321 Limits on public access to records concerning pupils

(A) No person shall release, or permit access to, the directory information concerning any students attending a public school to any person or group for use in a profit-making plan or activity.

Notwithstanding division (B)(4) of section 149.43 of the Revised Code, a person may require disclosure of the requestor's identity or the intended use of the directory information concerning any students attending a public school to ascertain whether the directory information is for use in a profit-making plan or activity.

(B) No person shall release, or permit access to, personally identifiable information other than directory information concerning any student attending a public school, for purposes other than those identified in division (C), (E), (G), or (H) of this section, without the written consent of the parent, guardian, or custodian of each such student who is less than eighteen years of age, or without the written consent of each such student who is eighteen years of age or older.