

**MID VALLEY SPECIAL EDUCATION COOPERATIVE  
FREEDOM OF INFORMATION REQUESTS  
REPORT TO THE EXECUTIVE ADVISORY  
BOARD**

**February 6, 2019**

Mid Valley responded to two Freedom of Information requests.

On December 6, 2018, Ms. Jennifer Smith Richards, from the Chicago Tribune and Jodi S. Cohen from ProPublica Illinois requested the following:

All logs from August 1, 2017 to the present that detail the instances when students were placed in an isolated time out, seclusion, or any other type of confinement (referred to as "isolated time out" in the description below).

**Response:** There were no public records responsive to this request.

All logs from August 1, 2017 to the present that detail instances when physical restraint was used (referred to as "restraint" in the description below).

**Response:** There were no public records responsive to this request.

The written record of each incident of isolated time out and/or restraint that occurred between August 1, 2017 to the present, including but not limited to the following information:

- o The date of the incident
- o The beginning and ending times of the incident
- o A description of any relevant events leading up to the incident
- o A description of any interventions used prior to the implementation of isolated time out
- o A description of the incident and/or student behavior that resulted in isolated time out
- o A log of the student's behavior in isolated time out, including a description of the restraint techniques used and any other interaction between the student and staff
- o A description of any injuries (whether to students, staff, or others) or property damage
- o A description of any planned approach to dealing with the student's behavior in the future
- o A list of the school personnel who participated in the implementation, monitoring, and supervision of isolated time out
- o The date on which parental notification took place.

**Response:** Behavioral Incident Report and Isolated Time Out and Physical Restraint Report forms from August 1, 2017 through the present, as responsive to the request were provided. The documents were produced in redacted format according to the following exemptions:

- FOIA Section 7.5(r), as this information constitutes a school student record, as defined and prohibited from disclosure under the *Illinois School Student*

*Records Act* and the corresponding regulations because you are not authorized to receive such information.

- FOIA Section 7(1)(a), citing the *Family Educational Rights and Privacy Act* ("FERPA") and its corresponding regulations, as this information constitutes an education record as defined and prohibited from disclosure therein because you are not authorized to receive such information. In particular, as last updated by the Department of Education, the FERPA Rules defines personally identifiable information to include: (a) the student's name; (b) the name of the student's parent or other family members; (c) the address of the student or student's family; (d) a personal identifier, such as the student's social security number, student number, or biometric record; (e) other indirect identifiers, such as the student's date of birth, place of birth and mother's maiden name; (f) information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty; or (g) information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 CFR 99.3.
- FOIA Section 7(1)(c), which exempts from disclosure "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information."
- See also, *Univ. of Ky. v. The Kernel Press, Inc.*, Case No. 16-CI-3229 (Ky. Cir. 2017)
- Defendant the Kernel Press (The Kernel), the student-run newspaper of Plaintiff University of Kentucky (UK), requested from UK copies of all records detailing a professor's resignation within the context of a sexual assault complaint filed by two students. UK refused to disclose records containing personally identifiable student information under the *Family Educational Rights and Privacy Act* (FERPA), reasoning that disclosure would be an invasion of the students' personal privacy. The Court found that while FERPA generally permits disclosure of employment records directly related to an employee in their employment capacity, these records also directly related to the students, making them educational records protected by FERPA. As such, the Court found them exempt from disclosure under the Kentucky Open Records Act. The Court also held that the records could not be disclosed in redacted form because redaction would not offer adequate protection, as details in the records would make it easy for one to identify the students with reasonable certainty.

In support of Mid-Valley Special Education Cooperative's use of these exemptions, we note that the parents or guardians of the students whose documentation is sought in this request have not consented in writing to the disclosure of information in connection with Mid-Valley's response to this FOIA request, and Mid-Valley believes this information is highly personal to the students and their families and would constitute an invasion of their personal privacy if disclosed in un-redacted format.

- The written notification to parents for each of the incidents of isolated time out and/or restraint from August 1, 2017 to the present, including but not limited to the date of the incident, a description of the intervention used, and the name of a contact person with a telephone number to be called for further information.

**Response:** There were no additional records responsive to this request.

- Records of the training and orientation materials provided to district staff members about the district's isolation and/or seclusion procedures, and all training and orientation materials related to physical restraint.

**Response:** Two participant workbooks: Nonviolent Crisis Intervention, A Program Focusing on the Safe Management of Disruptive and Assaultive Behavior and Nonviolent Crisis Intervention Foundation Course were provided. Also provided were two refresher workbooks: Nonviolent Crisis Intervention Foundation Refresher and Nonviolent Crisis Intervention, For Review of the Nonviolent Crisis Intervention Training Program. These CPI materials were provided to Mid-Valley by the Crisis Prevention Initiative ("CPI"). Therefore, all but the cover of this document has been withheld from disclosure pursuant to the following exemption:

- FOIA §7(1)(g) which exempts from disclosure "trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested."

The Nonviolent Crisis Intervention Participant Workbook is declared proprietary by the Crisis Prevention Institute; more specifically, Nonviolent Crisis Intervention Participant workbook states as follows:

"2015 CPI (reprinted 2017) All rights reserved. This work is protected by copyright laws of the United States and other countries and remains the sole and exclusive property of CPI. This work may not be reproduced in any manner without the express written permission of CPI."

"CPI hereby grants CPI certified Instructors a perpetual, nonexclusive, and nontransferable license to use this work in teaching this program to staff within the Certified Instructor's Base of Employment, as defined in the Instructor Guide. This license is site-specific to the Certified Instructor's Base of Employment and includes the right to distribute this work to program participants for use during training. Any other use of this work is strictly prohibited and will be considered a breach of this license and a violation of applicable copyright laws. Certified instructors are not agents (implied, apparent, or otherwise) or employees of CPI and do not have the authority to act for or on behalf of CPI. "

In addition, according to the Terms of Service, which is listed on CPI's website, CPI's content is protected by copyright, trademark, service mark, patent, trade secret, or other propriety rights and laws. In addition, the Terms of Service specifically indicates that CPI's content may not be distributed to others. Disclosure of the training materials would cause CPI competitive harm. Please see the link, included here, to view CPI's Terms of Service:

<https://www.crisisprevention.com/Terms-of-Service>.

- Records that show the staff members who were trained in and permitted to use physical restraint between August 1, 2017 to the present.

**Response:** A list of Mid-Valley staff who have been trained in and permitted to use physical restraint from August 1, 2017 to the present was provided.

Mid-Valley Special Education Cooperative is responsible for the partial denial of your request. You may ask the PAC to review this decision concerning your records request by submitting a Request for Review to the PAC by electronic mail or U.S. Mail within 60 days after this response. A Request for Review by the PAC should be directed to:

Public Access Bureau  
Office of the Attorney General  
500 S. 2nd Street  
Springfield, IL 62706  
[publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)  
(217) 558-0486

You also have the right to administrative review by a court of law pursuant to FOIA Section 11.

The second Freedom of Information Request came in on January 15, 2019. Mr. Mihelich, from IRTA requested the following:

Please provide the name and email address of all teachers or administrators who are retiring in 2019.

**Response:** A document was provided.

Personnel time to respond: 38 hours  
Personnel cost to respond: \$2,140  
Attorney cost: Will be reported once invoice is received

Respectfully Submitted,



Nancy Sporer / FOIA Officer