

Jared Kummer vs. Sevier School District

5/9/2024

I am appealing 3 types of denied email records responsive to the following Endurance Day/PE related terms.

4a. I am requesting all sent and received emails for the below-listed words/phrases, even if previously deleted, for the following SSMS employees, from August 1, 2018, through October 15, 2023: Michelle Nielson and Eric Baker.

Words/Phrases: Endurance Day(s), Jump Squat(s), Locker Room, Bean Bag, Exit Sign

4b. I am requesting all sent and received emails for the below-listed words/phrases, even if previously deleted, for the following SSMS employees, from August 1, 2022 through October 15, 2023: Kycen Winn, Kimberly Keisel.

Words/Phrases: Endurance Day(s), Locker Room, Exit Sign

Objectives in Gathering Historic Endurance Day Information

Objective 1: To learn more about the multi-year Endurance Day program (including timelines). This program included punishment that was violating the rights of children (including my children) behind parents backs (including behind my back).

Objective 2: Use information to benefit children (corrective education and support) and parents (awareness and ability to support) in the local community.

Objective 3: Continue to promote systemic change to better protect the interests of students and parents at Utah public schools.

Emails Denied Due to FERPA: Are the Denied Emails actually Educational Records?

"Education records" are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail.

34 CFR § 99.2

1-Is student PII found in the emails? Is it directly related to a student?

2- Prior to my request, were emails saved in accordance with District Policy 3990? Principal or District Office?

3. Locations of Education Records

3.1 All permanent student records for current students should be located in the principal's office or a secured, fireproof designated area (if available), which will maintain confidentiality.

3.2 Designated high school personnel have custodial responsibility for student records for three years. At the end of each school year, when records of the most recent graduating class go into storage, records from the fourth year previous are to be sent to the District records clerk at the district office.

3.3 All permanent records are stored at the district office in a secure, fireproof designated area (if available), which will maintain confidentiality, including records of students who have moved away, or dropped out of school and non-graduates.

3.4 Periodically, at the discretion of the District records clerk, former students' permanent records will be sorted, and the oldest, less frequently requested will be microfilmed.

School Based Emails Should not Automatically Be Considered Student Records.

“So, how does this notion of emails NOT enjoying FERPA protection fit with the idea of public records requests? In a high profile example, local newspapers sought documents from the community college where Jared Loughner (Rep. Gabby Giffords’ shooter) attended. Pima Community College argued the records were FERPA protected as they were maintained as part of his educational record. The court held that the college could not withhold emails among college staff about Loughner citing FERPA. The court held the emails were not ‘maintained’ by an educational institution under FERPA unless the institution had control over the access and retention of the record.” The fact that individual users can delete the emails in their inboxes, notwithstanding that an email “happen[s] to remain on the server by no action of the educational institution,” means that emails are not “maintained.” In the court’s view, the fact that the college had to conduct a “system wide database search for a word or name indicates these documents were not saved in a central location on a permanent database. Therefore, FERPA did not prevent disclosure of the documents. Source: Advanced Ferpa, Emails, and Academic Records” [Link](#) below

Source:

<https://district.maricopa.edu/sites/district/files/documents/pdf/legal/Advanced%20FERPA.pdf>



MARICOPA
COMMUNITY COLLEGES

Office of the
General Counsel
Compliance

School Based Emails Should not Automatically Be Considered Student Records.

State Department of Education Connecticut Determination on Emails in 2019.

“An email is a message sent by electronic means. Emails that are used as a communication tool and not maintained do not fit within the definition of an education record and are not subject to production under state or federal law. An email that is deliberately maintained by being printed and placed in a student’s physical file would reasonably be viewed as being maintained and would be an education record. In contrast, emails that are merely stored in a public school’s computer network system and not treated in a special way, organized or printed, would not be reasonably viewed as being maintained and would not be an education record.”



STATE OF CONNECTICUT
STATE DEPARTMENT OF EDUCATION



June 13, 2019

Source:
https://cdn.ymaws.com/members.ctbar.org/resource/resmgr/section_education/20200106_material.pdf?_zs=L1VOW&_zl=lpxr1

FERPA and GRAMA Interaction (USBE), Redaction is the key!

On April 15, 2024, Mr. Ben Rasmussen redacted student PII (not my child) from a past educator misconduct report (See Exhibit 1). Throughout the process, no one from USBE claimed that records could not be released to me due to FERPA. This shows that FERPA records can be released via the GRAMA process including to someone who is not the parent of a child so long as student PII is removed. |

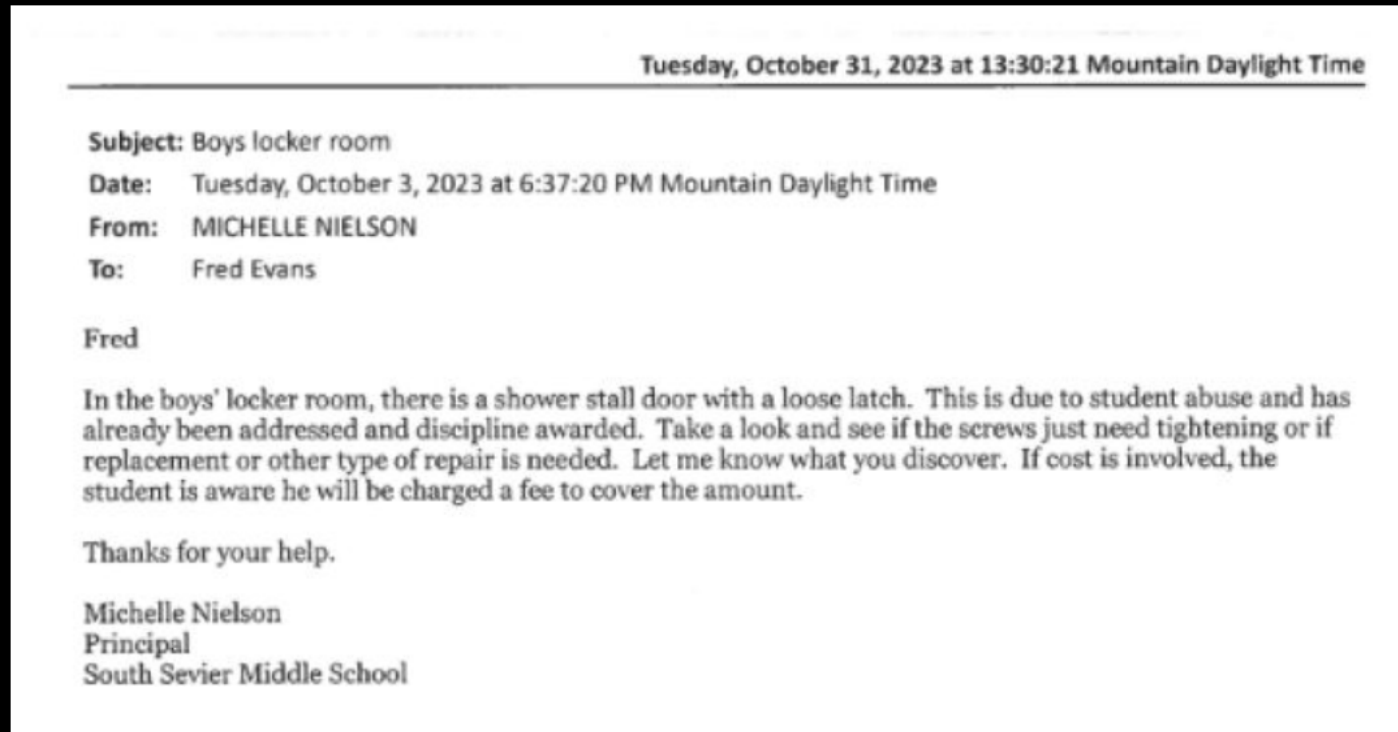
Relief Sought:

Emails Responsive to Endurance Day Key Words: I request that the SRC review the withheld supposed educational record emails and determine whether these are in fact educational records. Regardless of whether these are determined to be educational records or not, I respectfully request redacted (student PII/other information as appropriate) copies of the emails.

Note: USBE referred us to SRC Ombudsmon for Support related to a surveillance video in March of 2023.

FERPA-GRAMA Interaction. The Key is Redaction (Bryner vs CSD).

*If the name was listed and redacted, the content is no different!



Rural People don't have Extrasensory Perception abilities (ESP). Children from multiple towns attend South Sevier Middle School. I do not know most of them and they don't know me.

An email is withheld due to this being called an employee evaluation.

2190 - Employee Evaluation

Source: https://www.seviersd.org/index.php?option=com_content&view=article&id=284&tmpl=component

3.1.6 "Formative Evaluation" means formal evaluations that take place yearly and provide Educators with feedback on how to improve their performance. The Administrator conducting a Formative Evaluation may review applicable and available Educator Evaluation Multiple Lines of Evidence to include, but not limited to observations, evidence, Educator effectiveness, stakeholder input, student growth and information obtained from at least two Walk-through Evaluations. This information may be used to "re-validate" the most recent Summative Evaluation or as a basis to conduct a formal Summative Evaluation. Formative Educator Evaluation is based on the Effectiveness Standards.

7.10 Summative Rating Review:

7.10.1 A career educator who is not satisfied with a Summative Evaluation rating may request a review of the evaluation within 15 days after receiving the written evaluation.

7.10.2 If a review is requested, the Superintendent or the Superintendent's Designee shall appoint a person not employed by the District who has expertise in teacher or personnel evaluation to review the evaluation procedures and make recommendations to the superintendent regarding the Educator's Summative Evaluation in accordance with USOE guidelines.

Does the record include a formal evaluation rating and other formal criteria that prove it is part of the educator's annual performance evaluation?

Relief
Sought:

Employee Record: I have been provided with no information about this record other than it is an employee record. I request that the SRC review the email that was responsive to Endurance Day keywords/phrases and determine if it can be released to me. I am supportive of all redactions that may need to be made.

Attorney-Client Privilege Emails

Attorney/Client Records: I request that the SRC review the emails and release to me components of the emails that are public or able to be releasable to me as my family may be the focus. Information that may be releasable includes dates, headings, and encryption status. I made a GRAMA request in 2023 and received multiple email headings from Risk Management related to their communications with the Sevier School District (see Exhibit 2).

GRAMA Appeal

Brian Jensen

Thu, Sep 7, 2023 at 1:38 PM

To:

Cc: GovOpsinfo Dgo <GovOpsinfo@utah.gov>, Michael Broschinsky

Dear Mr. Kummer,

The Division of Risk Management ("Risk") supplements its prior denial of records sought under the Utah Government Records Access Management Act (GRAMA) as follows. Risk's previous denial complied with the requirements of Utah Code § 63G-2-205 because it described the records as emails sent by loss control consultant, Michelle Beus, to the personnel at Sevier School District identified in your request.

Nevertheless, to provide additional information to you and the CAO, Mr. Broschinsky, Risk supplements its denial with the descriptions below. As explained previously, the emails are protected records under Utah Code § 63G-2-305(24) because they address the investigation of loss occurrences that may be covered by the Risk Management Fund. The records are further protected under Utah Code § 63G-2-305(18) because they were prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding.

- 08.28.23 Chad Lloyd to Michelle Beus re SRC decision in Kummer appeal;
- 08.22.23 Michelle Beus to Nolan Anderson re Additional information on SRC appeal;
- 08.22.23 Michelle Beus to Nolan Anderson re Appeal to District Court;

District Makes Misleading DCFS Report and Lies to Sheriff's Office Related to KEY Endurance Days as Punishment Program Event.

On November 22, 2022, Sevier School District employees failed to report the punishment incident to DCFS or Law Enforcement as required by law.

On December 13, 2022, After we expressed concern (in-person) that there should be a 3rd party investigation, Sevier School District administrators made a misleading report to DCFS that does not even mention that 4 classes of children were punished. This report was converted by DCFS into a CANR and used as evidence of no wrongdoing in a police report that would be finished in January of 2023.

In late December of 2022, Sevier School District deceived the Sevier County Sheriff's office denying that the November 21, 2022 incident was a punishment, claiming that there had been no District policy violations, and claiming there had been no employee wrongdoing. Sevier District administrators also denied a Sheriff's office detective access to the November 21, 2022 Surveillance claiming they would need a subpoena because it was protected by FERPA.

10:39

LTE 4G

< Inbox

6 Messages
Quick Question

Detective Larsen,

You told me on the phone the other day that I could reach you by phone or email. I believe you told me at one point that you asked to see the surveillance. If you didn't please just let me know. If you did, can you please let me know who told you that you were not allowed to see it and the reasoning for this.

Very Respectdully,

Jared Kummer
Licensed Clinical Social Worker
Sent from my iPhone

10:40

LTE 4G

< Inbox

6 Messages
Quick Question

From: Kris Larsen >

To: Jared Kummer >

Today at 10:27 AM

I don't remember who said it, but the school district administration did in our meeting. They said due to FERPA laws, I'd have to get a subpoena from a judge to view it, which is standard.

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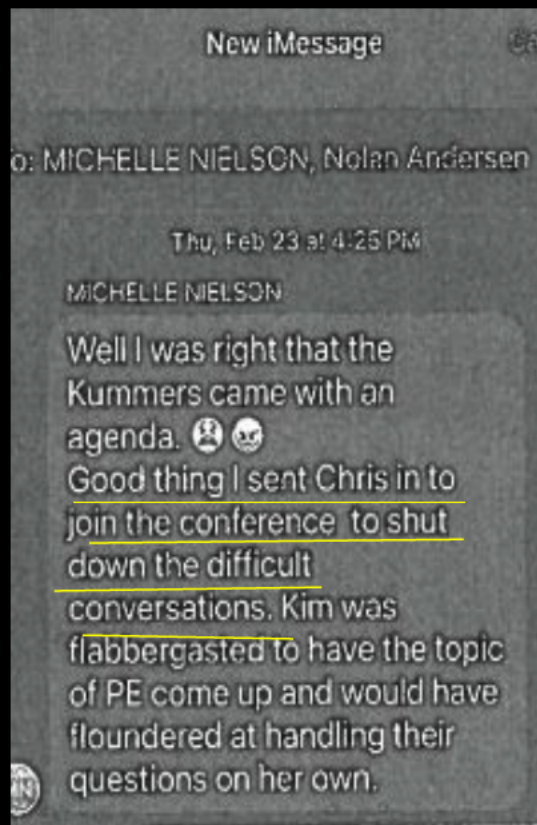
Detective Kris Larsen
835 E 300 N
Richfield, Utah 84701
(435)896-2602 Office
(435)896-2654 Fax

[See More](#)

School Principal Confirms Exercise as Punishment was Stopped.

On February 9, 2022, I met with multiple 8th grade teachers, the vice principal, and the principal. At this meeting, I brought up concerns about how one of my children had been punished with exercise the past school year by Eric Baker. The Principal interrupted me and stated in part “And I wish that that could have been brought up more directly last year, because we could have looked at making some changes...” I then directly asked her: “Can I get a confirmation that that exercise as punishment has stopped?” She immediately stated “It has, but that definitely is a conversation we should have outside of the meeting.”

History-Vice Principal Agrees that Ending Endurance Day Punishments was Good



On, February 23, 2022 we met with the 6th grade PE teacher and the Vice Principal. I again was expressing concern about Endurance Days used as punishment calling them "Punishment Days." The Vice Principal shared about changes made stating: "I do personally feel like the systemic changes have been positive, valuable." I responded by saying "Yeah...and that they took away endurance days, I don't know if that was necessary or not, but the exercise as punishment, Yeah." He agreed by saying "yes." He shared more about the new PE program and told us that there were still fitness days and that the name of endurance days had been "stripped" from the program.

Principal and HR Director Text.
Chris is the V.P.

Student Statement (2020-21 school year)

“We would usually have an endurance day once or twice a week out of the five in the week. Sometimes, there would be even more if someone in the class, or even school, was acting up during P.E. If students asked questions, kicked a ball in the gym, or were in any way disruptive; we would be punished with pushups, burpees, or other forms of exercise. Mr. Baker would also single out those who seemed to be in less fit conditions, including me. For punishment exercises, he would yell out the name of students he thought were unfit and would ask them in front of the class if they did the exercise. He would also make the class run more if anyone walked during the daily running lap. This created an environment of contention between the students and would lead to students being ostracized and or made fun of. One day while running, I tripped over a hole that was in the ground. INstead of helping or checking to see if I was ok, Mr. Baker stood pointed and laughed with the other students until a friend helped me up.”

Student Statement (2021-22 School Year)

“In 7th grade I also had Mr. Baker as a social studies teacher and we would switch off between P.E and social studies every day so I had P.E every other day for the whole year. And Mr. Baker had this bean bag in his classroom that he would use to reward the kids with if they were doing good. But if someone jumped on the bean bag without his permission the whole grade would automatically have an endurance day. And some kids would even jump on the bean bag on purpose because they thought it was funny to give the whole grade endurance days and one time someone jumped on the bean bag to give the whole grade an endurance day and then they missed the day that we had the endurance day so we had to have several endurance days I think until she came back which I think was about three P.E days. There were also other people who thought it was funny to jump on the bean bag.”

Student also experienced assignment of 600 jump-squats for punishment. Even though student did not complete all assigned reps student reports:

“From that jump squat endurance day I remember that I went to sleep that night and could not sleep because I would fall asleep and then I would barely move and my legs would hurt so bad it would wake me up. I even had to miss school the next day because I could barely walk and I think I was super sore and struggled to walk for like a week after that. I think I even might have been scared that I could not go to dance after that because my legs were so sore.”

Student Statement (attended SSMS for 3 years)

“Another thing I remember from P.E in 7th grade is that Mrs. Neilson the principal would even say over the intercom if the girls do not clean their locker room I think everyone with P.E would have to have an endurance day. And I think we had to do endurance days because of that before.”

Principal Michelle Nielson was an Endurance Day as Punishment Perpetrator and an Endurance Day Program Investigator!

Children Need Corrective Education and Parents Need Awareness of the Endurance Days.

Why You Shouldn't Use Physical Education As Punishment by Dr. Kim Spark

Impact of Exercise as Punishment: “When we demand a set of push-ups to punish misconduct, the message we’re sending — loud and clear — is that physical exercise is a terribly unpleasant activity and something we all should try to avoid. And, our children are certainly hearing it. At a time when not enough children (or adults, for that matter) aren’t getting the recommended amount of daily exercise, the last thing we should do is reinforce the idea that physical activity is something to dread. If kids are already trying to find reasons to be less active, viewing exercise as a punishment is all the more reason not to do it. This mentality can carry over into adulthood as well, leading to an aversion towards physical exercise for the rest of one’s life — naturally pushing a person in the direction of inactivity, obesity, and other health problems. The goal of any physical educator should be to teach students that exercise is a positive and productive way to spend time, rather than something to rebel against.”

<https://www.teachthought.com/education/physical-education-as-punishment/>