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DEPARTMENT OF JUSTICE
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OPINION 15-0085

90 – C – PUBLIC RECORDS

Representative Neil Abramson
District 98
601 Poydras Street, Suite 1635
New Orleans, LA 70130

La. Const. Art. XII, §3 La. R.S. 44:4
La. R.S. 17:3996
La. R.S. 17:3991

Lusher Charter School, a Type 3 charter school, must disclose the name of an admissions exam used in the course of evaluating students for admission in response to a public records request. If a public records request is submitted to the school requesting access to the content of the admissions exam, the school could rely upon La. R.S. 17:3996(B)(10) and La. R.S. 44:4(16) to deny access.

Dear Representative Abramson:

Our office received your request for an opinion concerning the application of Louisiana's Public Records Law, La. R.S. 44:1 *et seq.*, to an admissions exam utilized by a charter school. More specifically, the correspondence included with your request indicates that a parent requested access to the admissions exam administered by Lusher Charter School, a Type 3 Charter School in New Orleans ("Lusher"). While the correspondence asks about the applicability of the Public Records Law to the exam, we understand that the individual requesting access to records from the school has indicated that the specific information sought is the name of the admissions exam used rather than the content of the exam itself. Thus, our opinion will address access to the name, as well as the content, of the exam.

The right of access to public records is provided for by the Louisiana Constitution, article XII, section 3, providing that "[n]o person shall be denied the right to . . . examine public documents, except in cases established by law." The Public Records Law was enacted by the Louisiana legislature to protect and define the constitutional right of access to public documents. The Louisiana Supreme Court has instructed liberal construction of the Public Records Law, with any doubt being resolved in favor of access.¹ As directed by La. R.S. 44:31, providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees unless there is a specific provision of Title 44 or other law that exempts the records from inspection.

As an initial matter, we note that there appears to be no dispute that admissions exams utilized by a charter school fall within the definition of "public records" in La. R.S. 44:1(A)(2)(a), as they are records used by a charter school in the conduct or performance of public business.²

¹ See, e.g., *Title Research Corp. v. Rausch*, 450 So.2d 933, 936 (La.1984).

² Consistent with La. R.S. 17:3996(B), charter schools are required to comply with the Public Records Law.

The Public Records Law contains two provisions relevant to testing instruments used by educational institutions. La. R.S. 44:4(16)(e) is specific to records of a board or institution of higher learning and exempts “[t]est questions, scoring keys, and other examination data pertaining to the administration of an academic examination.”³ More directly relevant to your inquiry, La. R.S. 44:4(27) provides that the Public Records Law shall not apply:

(a) To any testing instrument used or to be used by the state Department of Education or the State Board of Elementary and Secondary Education to assess the performance of individual students, nor to any answers for such tests or any individual student scores on such tests.

(b) Nothing in Subparagraph (a) of this Paragraph shall prohibit any person authorized by policies adopted by the state Department of Education or the State Board of Elementary and Secondary Education from having access to the test instrument, test answers, or any individual student scores on such tests as necessary for the performance of his duties and responsibilities, nor any parent or guardian of a child who has taken any such test from having access to or being provided the child's individual test scores.

We understand that Lusher requires prospective students to take an entrance exam prior to admission and that such exam is provided by a testing service that Lusher has worked with for several years. The Lusher administration believes that the admissions test suits its needs and the same test is used from year to year. While Lusher notes that the above-cited exceptions in La. R.S. 44:4 do not name charter schools, it nonetheless urges the application of such exceptions to charter schools, stating:

If the Lusher admission exam were to become publicly available, those applicants with access to the exam could gain an unfair advantage over other applicants. Moreover, if the admissions exam does not fall under the above referenced exemptions, then virtually all tests given in Louisiana primary and secondary schools would be subject to the Public Records Act. This could lead to results that are very disruptive to education in Louisiana. For example, a parent could use the Public Records Act to request a copy of his or her child's biology exam before it is administered. Such an outcome would not serve a public purpose and would undermine the academic testing and grading system currently in place.

While La. R.S. 44:4(27) specifically names the Department of Education and the State Board of Elementary or Secondary Education, and while charter schools are specifically required to comply with the Public Records Law, as directed by La. R.S.

³ Subsection f exempts “[t]eaching materials used by faculty that are not provided to students, including unpublished lecture notes, outlines, slides, syllabi, or recordings.” La. R.S. 44:4(16)(f).

17:3996(B)(10), the legislature qualified that a charter school is required to comply with the Public Records Law to the extent the Public Records Law is otherwise applicable to a public school with the same grades.⁴ Thus, if the Public Records Law does not require other public schools to provide access to testing instruments, except as qualified by La. R.S. 44:4(27)(b), it follows that, if Lusher were presented with a public records request for a copy of the actual admission examination, Lusher could deny access to the request, citing to both La. R.S. 17:3996(B)(10) and La. R.S. 44:4(27). Thus, to refer back to the example provided by Lusher, the school could rely upon these two statutes, when read together, to deny a parent's request for his child's biology exam before it is administered.

However, as previously noted, we understand that the requestor has indicated he is not seeking access to the content of the admissions exam, but rather, more simply, to the name of the exam used by Lusher. Thus, the inquiry becomes whether it is appropriate for Lusher to deny access to the name of the admissions exam used. Lusher has indicated that disclosing such information could allow some parents to gain access to the exam and coach a child into performing well.⁵ As we understand the admissions process through phone conversations with Lusher, the admissions exam is one of multiple factors considered in determining whether to accept a child for admission.

The Charter School Demonstration Programs Law, La. R.S. 17:3971 *et seq.*, contains language concerning admissions requirements, La. R.S. 17:3991(B)(3) providing:

Admission requirements, if any, that are consistent with the school's role, scope, and mission may be established pursuant to rules promulgated by the state board. Such admission requirements shall be specific and shall include a system for admission decisions which precludes exclusion of pupils based on race, religion, gender, ethnicity, national origin, intelligence level as ascertained by an intelligence quotient examination, or identification as a student with an exceptionality as defined in R.S. 17:1942(B). Such admission requirements may include, however, specific requirements related to a school's mission such as auditions for schools

⁴ La. R.S. 17:3996(B)(10) provides, "Notwithstanding any state law, rule, or regulation to the contrary and except as may be otherwise specifically provided for in a an approved charter, a charter school established and operated in accordance with the provisions of this Chapter and its approved charter and the school's officers and employees shall be exempt from all statutory mandates or other statutory requirements that are applicable to public schools and to public school officers except for the following laws otherwise applicable to public schools with the same grades: ... (10) Public Records Law, R.S. 44:1 *et seq.*" (Emphasis added).

⁵ While Lusher's concerns are somewhat speculative, we acknowledge that a representative with another charter school verbally provided more concrete examples of experience with parents accessing admissions exam content when the name of the exam was made available. Further, our ultimate rejection of this argument is not intended to diminish the sincerity of the assertions made to our office that parents are able to utilize resources available to them to obtain access to a copy of the exams and that such advanced knowledge provides some children with an unfair advantage. Rather, our conclusion is reached based on the fact that any exception to the constitutional right of access must be narrowly construed, and in order to deny access, the law must unequivocally protect such a record from disclosure.

with a performing arts mission or proficiency in a foreign language for schools with a language immersion mission. Any school which was chartered prior to July 1, 2012, and which incorporated achievement of a certain academic record as part of its admission requirements may continue to utilize such admission requirements. No local board shall assign any pupil to attend a charter school.


Thus, while the school is permitted to have admission requirements, this does not permit the use of intelligence quotient examinations. While the school believes that giving the name of the admissions examination used could compromise the security of the content, the requestor believes that he is entitled to know that the examination utilized is not one which qualifies as an intelligence quotient examination.⁶ Lusher has expressed concerns that, if parents become aware of the examination being used and obtain access to the content, this could potentially compromise the usefulness of results and result in the need to utilize different admissions tests from year-to-year.⁷ While this may be a compelling reason to advocate for a change in the law to provide for a specific exception relevant to the name of an admissions test used by a charter school, it is the opinion of this office that the current Public Records Law does not provide such an exception.

In conclusion, it is the opinion of this office that Lusher Charter School, a Type 3 charter school, must disclose the name of an admissions exam used in evaluating students for admission in response to a public records request. If a public records request is submitted to the school requesting access to the content of the admissions exam, the school could rely upon La. R.S. 17:3996(B)(10) and La. R.S. 44:4(16) to deny access.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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⁶ Lusher specifically asserts the admissions exam used is not an intelligence quotient examination.

⁷ Compromised examination scores have the potential to impact decisions made as a direct result of the scores, such as grade assignment, grade promotion, teacher evaluations and school accountability ratings. Further, if the exams used must change each year, not only does this mean the school will experience additional costs associated with giving an admissions exam, it also presents a challenge to the school as far as evaluating data from year-to-year to determine the effectiveness of the exam.