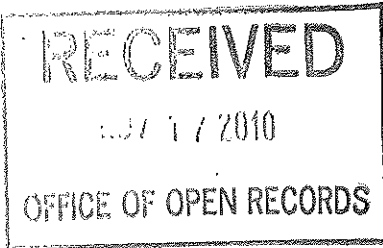




LATSHA DAVIS YOHE
& MCKENNA, P.C.

ATTORNEYS AT LAW



PLEASE REPLY TO: Exton
WRITER'S E-MAIL: skerns@ldylaw.com

November 17, 2010

Via Electronic and First Class Mail

Mr. Jeffrey J. Wood, Esquire
Appeals Officer, Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Re: Final Determination re Kerns v. Ambridge Area School District
Docket No. AP 2010-0964
Our File No.: 1016-09

Dear Mr. Wood:

I am writing to notify you of my intent to appeal, my intent to file a petition for review and to request reconsideration from the Office of Open Records concerning the above-referenced Final Determination. The reasons for this appeal and request for reconsideration are as follows:

(1) Ambridge Area School District ("Ambridge") did not deny the August 12, 2010 Right To Know request for records based upon Section 703 of the Right To Know Law ("Law"). In the Ambridge September 24, 2010 Response, Ambridge references "Right to Know Law requests" received on August 11, 2010 as being "insufficiently specific" pursuant to Section 703. (See attached Ambridge September 24, 2010 Response.) This reference could not possibly be referring the August 12, 2010 Right to Know request for records, as the request had yet to be received by Ambridge on August 11, 2010. On page two of Ambridge's Response, the heading reads "For the RTK request dated August 12, 2010", which is followed by a denial of the requested records based solely upon Section 708(b)(10)(i)(A) of the Law. No where under the heading "For the RTK request dated August 12, 2010" is a reference made to Section 703 of the Law. Also, attached to each section of records provided or where requested records were not provided, Ambridge attached a cover sheet describing the request date, the records requested and, for a denial, the reason the request was denied. The cover sheet for the August 12, 2010 Request also does not reference Section 703 of the Law, but bases the denial solely on Section 708(b)(10)(i)(A) of the Law. (See attached Cover Sheet for August 12, 2010 Request.)

350 Eagleview Boulevard, Suite 100 • Exton, PA 19341 • (610) 524-8454 • FAX (610) 524-9383

1700 Bent Creek Boulevard, Suite 140 • Mechanicsburg, PA 17050 • (717) 620-2424 • FAX (717) 620-2444

3000 Atrium Way, Suite 251 • Mt. Laurel, NJ 08054 • (856) 231-5351 • FAX (856) 231-5341

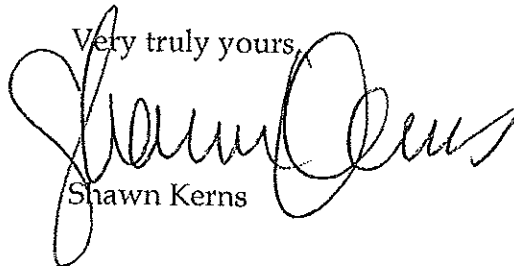
Maryland Telephone: (410) 727-2810

Mr. Jeffrey Wood
Appeals Officer, Office of Open Records
November 17, 2010
Page 2

(2) Counsel for Ambridge did not supply me with a copy of its reply to my appeal, as is required. In the Final Determination, referenced is an October 28, 2010 letter from the Law Office of Ira Weiss "on behalf of the School District and its ORO" in reply to this appeal. (See attached Final Determination, p. 2-3.) Also, pursuant to the Final Determination, this October 28, 2010 letter from the Law Office of Ira Weiss amplified "the factual background of this appeal and" reaffirmed "the internal and predecisional deliberations exception of the correspondence and documentation requested". Counsel for Ambridge failed to address a denial of the requested records based upon Section 703 of the Law. This failure was also addressed on page four of the Final Determination, where it was noted that "[a]ccordingly, the School District properly denied access to these records under 65 P.S. §67.703, and although the School District, and the Requestor, argues the appeal on other grounds, the OOR need not address such here."

Fairness necessitates a reversal of this Final Determination, so that the intent of legislators that public records should be public is kept intact. Please advise if the Office of Open Records will unilaterally reconsider, change and/or vacate this Final Determination based upon mistake of fact or if additional appeals will be required.

Thank you for your time and consideration regarding this matter.

Very truly yours,

Shawn Kerns

SPK/sb
Enclosures

cc: Ira Weiss, Esquire (via electronic mail)
Lori Byron (via electronic mail)



LATSHA DAVIS YOHE
& MCKENNA, P.C.

ATTORNEYS AT LAW

PLEASE REPLY TO: Exton
WRITER'S E-MAIL: skerns@ldylaw.com

August 10, 2010

Via Electronic and First Class Mail

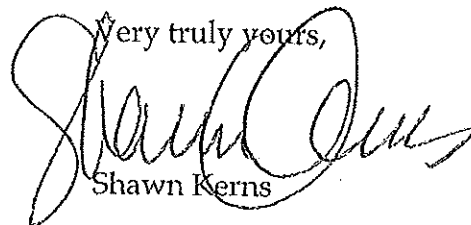
Ms. Lori Byron
Business Manager
Ambridge Area School District
740 Park Road
Ambridge, PA 15003

Re: Right to Know Request For Records
Our File No.: 1016-09

Dear Ms. Byron:

Attached please find a Right to Know request for records directed to the Ambridge Area School District.

Thank you for your time and consideration regarding this matter.

Very truly yours,

Shawn Kerns

SPK/sb
Enclosure



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: August 10, 2010

REQUEST SUBMITTED BY: Email and U.S. Mail

NAME OF REQUESTER: Shawn Kerns

STREET ADDRESS: 350 Eagleview Blvd., Suite 100

CITY/STATE/COUNTY/ZIP: Exton, Pennsylvania, Chester County, 19341

TELEPHONE: 610-524-8454

RECORDS REQUESTED: Please provide copies of the following documents pertaining to Ambridge Area School District:

- (1) All Documents Evidencing Lease Payments By or To the District For Use of All Real Property;
- (2) Contracts for Use of School Facilities By All Organizations, Including Religious Use;
- (3) Invoices and Payments Received Regarding Use of School Facilities By All Organizations, Including Religious;
- (4) Evacuation Plans for all Ambridge Area School District Buildings;
- (5) All Communications, Meeting Minutes and Other Documentation involving Ambridge Board Members regarding the Baden Academy Charter School charter application;
- (6) All Communications, Meeting Minutes and Other Documentation involving Ambridge Board Members regarding VEBH Architects and/or Thomas F. Durkin;
- (7) All Contracts involving VEBH Architects and/or Thomas F. Durkin.

Thank you.

DO YOU WANT COPIES? Yes

DO YOU WANT TO INSPECT THE RECORDS? No

DO YOU WANT CERTIFIED COPIES OF THE RECORDS? No

****PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES****
****IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL****

FOR AGENCY USE ONLY

RIGHT TO KNOW OFFICER:

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*



LATSHA DAVIS YOHE
& MCKENNA, P.C.

ATTORNEYS AT LAW

PLEASE REPLY TO: Exton
WRITER'S E-MAIL: skerns@ldylaw.com

August 12, 2010

Via Electronic and First Class Mail

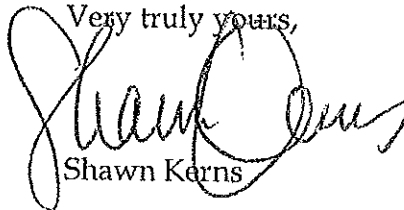
Ms. Lori Byron
Business Manager
Ambridge Area School District
740 Park Road
Ambridge, PA 15003

**Re: Right to Know Request For Records
Our File No.: 1016-09**

Dear Ms. Byron:

Attached please find a Right to Know request for records directed to the Ambridge Area School District.

Thank you for your time and consideration regarding this matter.

Very truly yours,

Shawn Kerns

SPK/sb
Enclosure



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: August 12, 2010

REQUEST SUBMITTED BY: Email and U.S. Mail

NAME OF REQUESTER: Shawn Kerns

STREET ADDRESS: 350 Eagleview Blvd., Suite 100

CITY/STATE/COUNTY/ZIP: Exton, Pennsylvania, Chester County, 19341

TELEPHONE: 610-524-8454

RECORDS REQUESTED: Please provide copies of the following documents pertaining to Ambridge Area School District:

Any and all correspondence and/or documentation between the Ambridge Area School District and the Pennsylvania Department of Education pertaining to (1) the Baden Academy Charter School, (2) Pennsylvania Cyber Charter School and (3) the former Mt. Gallitzin facility located at 1016 W. State Street, Baden, PA 15005. Thank you.

DO YOU WANT COPIES? Yes

DO YOU WANT TO INSPECT THE RECORDS? No

DO YOU WANT CERTIFIED COPIES OF THE RECORDS? No

****PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES****
****IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL****

FOR AGENCY USE ONLY

RIGHT TO KNOW OFFICER:

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

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Ambridge Area School District

Central Administration Office • 740 Park Road • Ambridge, PA 15003 • 724-266-2833 • 724-266-3981 fax
Joseph W. Pasquerilla, Ed.D., Director of Curriculum, Instruction and Assessment
Erwin F. Weischedel, Ed.D., Superintendent of Schools
Lori P. Byron, CPA, Business Manager

September 24, 2010

Shawn Kerns, Esquire
Latsha Davis Yohe & McKenna, P.C.
350 Eagleview Boulevard, Suite 100
Exton, PA 19341

**RE: AMBRIDGE AREA SCHOOL DISTRICT
RIGHT TO KNOW REQUEST**

Dear Mr. Kerns:

On August 11, 2010, the Ambridge Areas School District received your Right to Know Law ("RTKL") requests seeking copies of the documents described below. You agreed to an extension of time until today's date for the District's response. The District's responses are as follows:

Your requests are partially granted and partially denied.

Your requests for "any documents" and without a time period are insufficiently specific as a matter of law under Section 703 of the RTKL because the requests are not sufficiently narrow to enable the School District to discern what is being requested. Nolan v. Council Rock School District, OOR Dkt. AP 2010-0419 (citing Pennsylvania State Police v. Office of Open Records, 995 A.2d 515 (Pa. Commw. Ct. 2010)). Without waiver of any rights to assert insufficient specificity or any other applicable exemptions, the District has made copies of the following documents:

1. Documents evidencing lease payments by or to the district for use of all real property.
2. Contracts and/or use of facilities forms for use of school facilities by all organizations including religious use.
3. Payments received regarding use of school facilities by all organizations, including religious. Home addresses, home telephone numbers, and bank account information have been redacted from these checks under Section 706



Ambridge Area School District

Central Administration Office • 740 Park Road • Ambridge, PA 15003 • 724-266-2833 • 724-266-3981 fax
Joseph W. Pasquerilla, Ed.D. Erwin F. Weischedel, Ed.D. Lori P. Byron, CPA
Director of Curriculum, Instruction and Assessment Superintendent of Schools Business Manager

of the RTKL. This information is protected as personal and financial information. 65 P.S. § 67.708(b)(6).

Invoices regarding use of school facilities by all organizations, including religious - The District denies this request because the School District is not required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the School District does not currently compile, maintain, format or organize the record. 65 P.S. § 67.705.

4. Records relating to evacuation plans are exempt under Section 708(b)(3) as records, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building. 65 P.S. § 67.708(b)(a)(3).
5. Communications and other documentation involving Ambridge Board Members regarding Baden Academy Charter School are exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL because they are records that reflect the internal, predecisional deliberations of the School District, its members, employees or officials. 65 P.S. § 67.708(b)(10)(i)(A).
6. All communications, meeting minutes and other documentation involving Ambridge Board Members regarding VEBH Architects and/or Thomas F. Durkin.
7. All Contracts involving VEBH Architects and/or Thomas F. Durkin - The District denies this request because the School District is not required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the School District does not currently compile, maintain, format or organize the record. 65 P.S. § 67.705.

For the RTK request dated August 12, 2010:

8. Any and all correspondence and/or documentation between the Ambridge Area School District and the Pennsylvania Department of Education pertaining to (1) the Baden Academy Charter School, (2) Pennsylvania Cyber



Ambridge Area School District

Central Administration Office • 740 Park Road • Ambridge, PA 15003 • 724-266-2833 • 724-266-3981 fax
Joseph W. Pasquerilla, Ed.D. Erwin F. Weischedel, Ed.D. Lori P. Byron, CPA
Director of Curriculum, Instruction and Assessment Superintendent of Schools Business Manager

Charter School and (3) the former Mt. Gallitzin facility located at 1016 W. State Street, Baden, PA 15005 - Communications and other documentation involving Ambridge Area School District and the Pennsylvania Department of Education regarding Baden Academy Charter School are exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL because they are records that reflect the internal, predecisional deliberations of the School District, its members, employees or officials. 65 P.S. § 67.708(b)(10)(i)(A).

The School District duplicated this material, 122 pages, at a rate of \$0.25 per page, costing the School District \$30.50. Postage will be \$4.99. Based upon the guidance from the Office of Open Records, you must pay before the copies described above will be provided. Please prepare a check in the amount of \$35.49, made payable to the Ambridge Area School District, and forward it to: Lori P. Byron, CPA, Business Manager, 740 Park Road, Ambridge, PA 15003. Upon receipt, the responsive records will be immediately mailed to you.

You have a right to appeal any denial of information in writing to Terry Mutchler, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120. If you choose to file an appeal you must do so within fifteen (15) business days of the mailing date of this response as outlined in Section 1101. Please note that a copy of your original Right to Know request and this letter must be included when filing an appeal. The law also requires that you state the reasons why the record is a public record and address the reasons the School District denied your request.

If you have any questions or need additional information regarding this matter, please feel free to contact me at (724) 266-2833, Extension #1251.

Sincerely,

Lori P. Byron, CPA
Business Manager
Ambridge Area School District

RIGHT – TO – KNOW REQUEST

AUGUST 12, 2010

RECORD REQUEST #1, 2, 3:

ANY AND ALL CORRESPONDENCE AND/OR DOCUMENTATION BETWEEN THE AMBRIDGE AREA SCHOOL DISTRICT AND PENNSYLVANIA DEPARTMENT OF EDUCATION PERTAINING TO (1) THE BADEN ACADEMY CHARTER SCHOOL, (2) PENNSYLVANIA CYBER CHARTER SCHOOL AND (3) THE FORMER MT. GALLITZIN FACILITY LOCATED AT 1016 W. STATE STREET, BADEN, PA 15005.

Request denied – Communications and other documentation involving Ambridge Area School District and the Pennsylvania Department of Education regarding Baden Academy Charter School are exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL because they are records that reflect the internal, predecisional deliberations of the School District, its members, employees or officials.

Ambridge Area School District and the Pennsylvania Department of Education pertaining to (1) the Baden Academy Charter School, (2) Pennsylvania Cyber Charter School and (3) the former Mt. Gallitzin facility located at 1016 W. State Street, Baden, PA, 15005 (the "Request").

As a threshold matter, the OOR notes that the Requester also made a request per the RTKL to the School District on August 11, 2010, which is not the subject of this appeal *sub judice*, but for purposes of responding to the August 11, 2010 and to the August 12, 2010 requests, the parties invoked an agreed upon extension of time for response.

Lori P. Byron, the Open Records Officer ("ORO") for the School District, timely notified the Requester, by letter dated September 24, 2010 (the "Response"), that the Request was denied in accord with Section 703 stating that "(y)our requests for 'any documents' and without a time period are insufficiently specific as a matter of law . . . because the requests are not sufficiently narrow to enable the School District to discern what is being requested", and pursuant to Section 708(b)(10)(i)(A) contending that such "communications and documentation . . . are exempt from disclosure . . . because they are records that reflect internal, predecisional deliberations of the School District, its members, employees or officials" (the "Denial").

The Requester timely appealed to OOR, by letter dated October 15, 2010, arguing that the School District did not meet its burden of proving that such communications are internal, predecisional and deliberative in character" citing *Sundquist v. East Nantmeal Township*, OOR Dkt. 2010-0775, under Section 708, but not addressing Section 703.

The OOR, by letter to Requester and ORO, dated October 20, 2010, invited additional information to be considered in this matter, with the record in this appeal closing on October 28, 2010. Specifically, the ORO, or School District was provided opportunity to submit legal and factual information to support its asserted basis for denial in the Response involving Sections 703 and 708(b)(10)(i)(A). The School District, in reply to this appeal, provided a letter dated

October 28, 2010, from the Law Office of Ira Weiss on behalf of the School District and its ORO, amplifying the factual background of this appeal and reaffirming the internal and predecisional deliberations exception of the correspondence and documentation requested. The Requester did not supplement the record.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The School District is a local agency subject to the RTKL required to disclose public records. 65 P.S. §67.302. A record in possession of a local agency is presumed to be public unless it is exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305 and *Jones v. OOR*, 993 A.2d 339 (Pa. Commw. Ct. 2010).

The School District denied the records sought in the Request predicated upon Section 703 because the Request is overly broad and not sufficiently specific to enable a response. This Section provides that a request “should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested” 65 P.S. §67.703. The Request seeks “(a)ny and all correspondence and/or documentation” without explaining or defining the parameters of time frame, subject matter or another criteria to permit an accurate or specific identification of letter or email correspondence and/or other miscellaneous documentation materials which may conceivably encompass, for example: class assignments, class schedules, maintenance reports, transportation plans, cafeteria menu, textbook order. The OOR agrees with the School District that the Request as phrased is overly broad, and that the phrase “any and all” without being confined to a specific type of records, is not sufficiently specific as a matter of law. *See PSP v. OOR*, 995 A.2d 515 (Pa. Commw. Ct. 2010). The OOR has consistently held that a request must be sufficiently narrow to allow a reader to

discern what records are being requested. *See Diana Nolan v. Council Rock School District*, OOR Dkt. AP 2010-0419; *Urbina v. Office of the Governor*, OOR Dkt. AP 2009-0972.

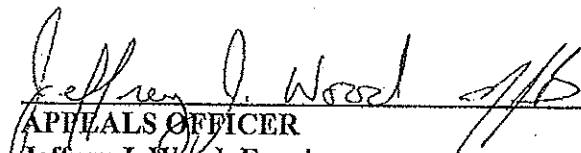
Accordingly, the School District properly denied access to these records under 65 P.S. §67.703, and although the School District, and the Requester, argues the appeal on other grounds, the OOR need not address such here.

Lastly, under the RTKL, an appeals officer is required "to review all information filed relating to the request." 65 P.S. 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. 65 P.S. 67.1102(a)(2). The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. 65 P.S. 67.1102(a)(2). Here, the facts are undisputed, neither party requested a hearing, and the OOR has the necessary, requisite information and evidence before it, to properly adjudicate the matter.

CONCLUSION

For the foregoing reasons, the Requester's Appeal is denied. This Final Determination is binding on the parties. Within thirty (30) days of the mailing of this Final Determination, either party may appeal or petition for review to the Beaver County Court of Common Pleas. 65 P.S. §67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: November 15, 2010



APPEALS OFFICER
Jeffrey J. Wood, Esquire

Sent to: Shawn Kerns; Lori P. Byron

Brawley, Maryanne

From: Shawn Kerns [skerns@ldylaw.com]
Sent: Wednesday, November 17, 2010 5:21 PM
To: DC, OpenRecords
Cc: lbyron@ambridge.k12.pa.us; iraweiss@weisslawoffices.com
Subject: Request for Reconsideration re Final Determination Dkt. No. AP 2010-0964
Attachments: Wood OOR 11.17.10 Request for Reconsideration of Final Determination.pdf; Byron 081010 RTK Request.pdf; Byron 081210 RTK Request.pdf; Ambridge Response to 8.10.10 and 8.12.10 RTK Requests.pdf; Ambridge Cover Letter for Denied 8.12.10 RTK Request.pdf; OOR Final Determination re Ambridge 8.12.10 RTK Request.pdf

Dear Sir or Madam,

Attached please find the following attachments directed to Mr. Jeffrey Wood, Esquire, Appeals Officer in the matter of Kerns v. Ambridge Area School District (Dkt. No. AP 2010-0964).

- (1) Correspondence regarding request for reconsideration;
- (2) 8/10/10 RTK Request for Records directed to Ambridge Area School District;
- (3) 8/12/10 RTK Request for Records directed to Ambridge Area School District;
- (4) 9/24/10 Ambridge Area School District Response to RTK Requests;
- (5) Cover Sheet for Ambridge Response to 8/12/10 Request; and
- (6) OOR Final Determination in the matter of Kerns v. Ambridge Area School District.

Thank you for your time and consideration regarding this matter.

Sincerely,

Shawn Kerns, Esquire
Latsha, Davis, Yohe & McKenna, P.C.
350 Eagleview Blvd., Suite 100
Exton, PA 19341
P (610) 524-8454 F (610) 524-9383
skerns@ldylaw.com

ATTORNEY/CLIENT PRIVILEGE CONFIDENTIALITY NOTICE

The information in this transmission is intended only for the individual or entity named above. It may be legally privileged and confidential. If you have received this information in error, notify us immediately by reply email at skerns@ldylaw.com. Send the original transmission to us by mail. Return postage is guaranteed. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, dissemination, distribution or copying of this communication or its contents is strictly prohibited.



November 30, 2010

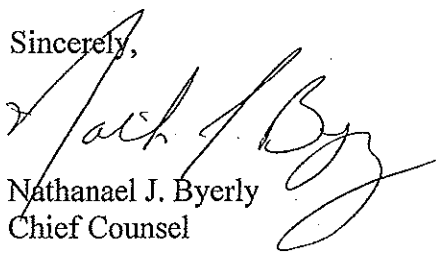
Shawn Kerns
Latsha Davis Yohe & McKenna, P.C.
350 Eagleview Boulevard, Suite 100
Exton, PA 19341

RE: Petition for Reconsideration, OOR Dkt. AP 2010-0964

Dear Mr. Kerns:

We are in receipt of your Petition for Reconsideration that was received by this office on November 22, 2010 in connection with the Office of Open Records Final Determination docketed as *Kerns v. Ambridge Area School District*, OOR Dkt. AP 2010-0964. We hereby deny your Petition.

Sincerely,


Nathanael J. Byerly
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records
Lori Byron