



PHOTO BY STEVE PFOST

Even if access to teacher evaluations were restricted to parents, they can't be legally prohibited from sharing the records, experts say.

DEBATE OVER DISCLOSURE

Making teacher evals a semiprivate record is legally difficult, experts say

BY YANCEY ROY

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ALBANY — Autopsies are the only public document for which access is limited to a subset of society, but Gov. Andrew M. Cuomo and state legislative leaders are trying to walk a tricky legal line in trying to create similar limitations on who can have teacher evaluations, experts said yesterday.

"The whole issue raises some very serious questions about whether it is possible or even permissible to carve out certain public records and make them available only to a subset of the public," said Michael Grygiel, an Albany lawyer and chairman of the state bar association's Committee on Media Law.

Even if lawmakers devise a way to allow parents alone to see the records — the same way only the next of kin has a right to an autopsy — there's seemingly no way they can prohibit parents from disseminating them to

other parents or PTA groups, or from posting them on the Internet, said Robert Freeman, head of the state Committee on Open Government and a specialist on the state's Freedom of Information Law.

"If it's made available to a parent, I can't imagine a mechanism that could prevent a parent from sharing it as he or she sees fit," Freeman said. "I don't see how, in this electronic age, you can stop a parent from starting a blog or sharing it publicly on the Internet."

The debate focuses on whether access can or should be limited to parents of students. Some officials note that evaluations of police and fire personnel aren't available publicly and want teachers treated the same. Assemb. Sandra Galef (D-Ossining) has said she'll introduce legislation that not only keeps teachers' performance records private, but also makes it illegal for school districts to make them available to anyone.

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The governor says the parent's right to know trumps teacher privacy, but once "you get beyond parents, it's less clear." Unions are fighting disclosure — but so far courts have ruled the evaluations public.

Cuomo himself seems to have yet to reach a conclusion. "I understand the initial, knee-jerk, 'reveal everything, just put it on a website' view," Cuomo said in a radio interview yesterday. "But this is a relatively new topic: What should the disclosure policy be for public employees?"

The governor indicated no solution was at hand, saying, "It's a conversation we'll have over the next few months."

Cuomo said the notion of making it a criminal offense for parents to disseminate the teacher evaluations was "absurd," but speculated whether there was a

way to supply the "data in a way that doesn't reveal the names."

Senate Majority Leader Dean Skelos (R-Rockville Centre) has said he wants no restrictions on the public release of teachers' evaluations. But Assembly Speaker Sheldon Silver (D-Manhattan) said last week that he favored a "method by which parents can know how a particular teacher or a particular grade performs" and added "that doesn't mean that some newspaper can have a picture of a teacher with their evaluation."

Setting such a restriction might prove problematic.

Even with an autopsy, a relative, after receiving it, can disseminate it without limitation.

Grygiel said trying to ban parents from sharing teacher evaluation records "would run afoul of the [U.S.] constitutional prohibition on prior restraint."

"Once a citizen has information that was lawfully obtained, the government can prohibit dissemination only in instances of the highest concern — such as national security," Grygiel said. "Otherwise, any prohibition is presumptively invalid under the First Amendment."

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CORRECTIONS

Brian Gilbride is the mayor of Sag Harbor Village. His last name was incorrect in a story yesterday.

THIS DATE IN HISTORY

1598 King Henry IV of France endorsed the Edict of Nantes, which granted rights to the Protestant Huguenots. The edict was abrogated in 1685 by King Louis XIV, who declared France entirely Catholic again.

1742 Handel's "Messiah" had its first public performance in Dublin, Ireland.

1860 The Pony Express completed its inaugural run from St. Joseph, Mo. to Sacramento, Calif. in 10 days.

1861 At the start of the Civil War, Fort Sumter in South Carolina fell to Confederate forces as the Union commander, Maj. Robert Anderson, agreed to surrender in the face of relentless bombardment.

1958 Van Cliburn of the United States won the first International Tchaikovsky Competition for piano in Moscow; Russian Valery Klimov won the violin competition.

1960 The U.S. Navy's Transit 1B navigational satellite was successfully launched into orbit.

1970 Apollo 13, four-fifths of the way to the moon, was crippled when a tank containing liquid oxygen burst. The astronauts managed to return safely.