

Virginia:
Circuit Court for Fairfax County

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CIVIL PROCESSING

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Fairfax County School Board,

Civil Action No: 202207046
JOHN T. FREY
CIRCUIT COURT
FAIRFAX, VA

Petitioner

v.

Callie Oettinger,

Respondent

Request for Injunctive Relief and Damages

1. This case concerns Petitioner's withholding of, and delays in, releasing records that Respondent requested under the Freedom of Information Act (FOIA). Respondent has a legal right to request, access, and use the records to advocate for her son, who is a student with disabilities and protected under Individuals with Disabilities Education Act (IDEA), Americans with Disabilities Act (ADA), Section 504, and implementing regulations. Petitioner negatively impacted Respondent's ability to advocate for her son when Petitioner withheld and delayed release of requested records prior to the graduation of Respondent's son and prior to Petitioner terminating of special education for Respondent's son. Respondent has made timely and repeated efforts to secure the responsive records to her FOIA request from Petitioner, to no avail. This action is brought to secure the full release of records without additional delays and to address the negative impact of fees and delays associated with this matter.

The Parties

2. Petitioner is a public body corporate that, upon information and belief, at all relevant times has operated and administered FCPS and is located at 8115 Gatehouse Road, Falls Church, Virginia.

3. Respondent is, and at all relevant times has been, a citizen of the Commonwealth of Virginia who resides at 8110 Bellingham Court, Fairfax Station, Virginia 22039. FCPS is an alias for Petitioner. In this “Request for Injunctive Relief and Damages”, “Petitioner” refers to Fairfax County School Board (FCSB) and FCPS.

Jurisdiction and Venue

4. This Court has subject-matter jurisdiction over this action pursuant to Code of Virginia (Va. Code) § 8.01-620 because Respondent seeks injunctive relief.

5. This Court has personal jurisdiction over Petitioner pursuant to Va. Code § 8.01-328.1(A)(1) because Petitioner has at all times relevant to this action been located in Fairfax County and received Respondent’s request under FOIA and VFOIA.

6. Venue is proper in this Court under Va. Code § 8.01-261(15)(c) because the enjoined acts have been and are to be done in this county.

Factual Allegations

7. Petitioner has a history of a) delaying and withholding responses to FOIA and Family Educational Rights and Policy Act (FERPA) requests; b) invoking extensions allowable under Va. Code § 2.2-3704(B)(4)¹ as a practice rather than as an exception, failing to “specify the conditions that make a response impossible”, and failing to disclose its need for additional extensions prior to collecting FOIA fees; c) imposing extraneous, intermediary, or surplus fees or

¹ Va. Code § 2.2-3704(B)(4) states, “B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing: 4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days or, in the case of a request for criminal investigative files pursuant to § [2.2-3706.1](#), 60 work days in which to provide one of the four preceding responses.”

expenses that are not allowed pursuant to VA Code § 2.2-3704(F)²; d) misrepresentation in connection with a transaction³; e) failing to track payments made by Respondent and then double-charging Respondent; f) vilifying Respondent and/or other parents who submit FOIA and FERPA requests; g) vilifying and retaliating against Respondent and/or other parents and/or students who assert their civil rights and who engage in the protected activity of advocacy⁴; h) charging Respondent and/or other parents inconsistent hourly rates for its responses to FOIA requests; i) providing 100% waivers of FOIA fees to some parents and denying all waivers to others; j) charging Respondent and/or other parents and/or students fees that are in noncompliance with IDEA and Section 504 and implementing regulations; k) charging Respondent and/or other parents and/or students fees for services Petitioner doesn't provide; l) refusing to provide Respondent and/or other parents and/or students the services Petitioner was supposed to provide in exchange for fees paid by Respondent and/or other parents and/or students; m) refusing to fully provide and/or reimburse and/or refund fees when Petitioner has been found in noncompliance by the Virginia Department of Education (VDOE); n) delaying the reimbursement and/or refund of fees when it has been found in the wrong by Respondent and/or other parents and/or students, and/or VDOE; o) providing false information related to fees and refunds; p) vilifying Respondent and/or other parents who engage in the protected activity of advocating for their children and/or Respondent and/or other parents whose advocacy has led to Petitioner being found in noncompliance; q) advising staff to call instead of emailing so there wouldn't be a paper trail; and r) advising staff to remove student names and other personally

² Va. Code § 2.2-3704(F) states, "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication."

³ Va. Code § 59.1-200(A)(5), (A)(10), and (A)(14) state, "A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful: 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed; 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction. . . ."

⁴ United States Department of Education states, "The Federal civil rights laws that OCR enforces prohibit discrimination based on race, color, national origin, sex, disability and age in programs or activities receiving Federal financial assistance. In addition to prohibiting discrimination, each of these civil rights laws also prohibits retaliation against individuals who assert their rights."

<https://www2.ed.gov/policy/rights/guid/ocr/retaliationoverview.html>

identifiable information from emails and other documents so that the records wouldn't come up in FERPA and FOIA requests.

8. February 24, 2016, Petitioner advised staff member, "I suggest that you do not email your reply to her questions (no paper/email trail) – either call her to discuss or email to say these can be answered when she comes in for the next meeting with the committee." Staff member replied to Petitioner, "I wasn't planning to respond to her email . . . I love my job. 😊"

9. July 25, 2016, FCPS FOIA Officer Brandyn Reeves (Reeves) quoted Respondent \$49.53/hour for five hours of work related to one of Respondent's FOIA requests. Reeves refused Respondent a waiver of the fees.

10. July 26, 2016, Petitioner and Respondent attended mediation. Petitioner proposed reimbursing fees Respondent paid out of pocket for an evaluation of her son (after Petitioner refused to evaluate her son for special education three times between first and sixth grades).

11. July 27, 2016, Respondent submitted signed mediated agreement to Petitioner. Petitioner did not respond.

12. July 28, 2016, Respondent submitted the evaluation invoice to Petitioner for reimbursement per the mediated agreement. Petitioner did not respond.

13. August 20, 2016, Respondent resent her July 28, 2016, email and the attached invoice to Petitioner.

14. August 22, 2016, Petitioner emailed Respondent the mediated agreement with its signatures included on the document.

15. August 29, 2016, Respondent received reimbursement check from Petitioner a month after Respondent submitted the evaluation invoice for reimbursement.

16. July 22, 2017, Reeves approved a 100% waiver of FOIA fees to parent and FOIA requester William Park (Park) in exchange for his consent to an extended FOIA-response timeline.
17. July 26, 2017, Reeves approved a 100% waiver of FOIA fees to parent and FOIA requester William Park (Park) in exchange for his consent to an extended FOIA-response timeline.
18. September 15, 2017, Respondent submitted a FERPA request to Reeves. Reeves did not respond.
19. September 20, 2017, Respondent resent Respondent's September 17, 2017, FERPA request to Petitioner.
20. September 22, 2017, Petitioner advised Respondent it would work on providing FERPA response to her September 15, 2017 request.
21. October 30, 2017, Petitioner's email to staff proved Petitioner was intentionally trying to thwart FERPA regulations and prevent personally identifiable information about Respondent's son from appearing in emails or other records." Petitioner stated, "I need have [sic] data entered into my selected student's IEP progress reports before Wednesday. . . . Please let me know if 1) you do not know who the selected student is and I will have to call you with the information (or you can ask Ryan in person) 2) he does not appear on your dashboard in SEASTARS."
22. December 19, 2017, Reeves quoted Respondent \$35.00/hour for 2.5 hours of work related to one of Respondent's FOIA requests. Reeves refused Respondent a waiver of the fees.
23. January 23, 2018, Reeves quoted Respondent \$35.00/hour for 2.5 hours of work related to one of Respondent's FOIA requests. Reeves refused Respondent a waiver of the fees.

24. January 24, 2018, Reeves quoted Respondent \$35.00/hour for 2.5 hours of work related to one of Respondent's FOIA requests. Reeves refused Respondent a waiver of the fees.
25. February 5, 2018, Respondent submitted a FERPA request to obtain access to evaluations of her son. Reeves did not respond.
26. February 9, 2018, Respondent resent her February 5, 2018, FERPA request to Petitioner. Petitioner did not respond.
27. February 16, 2018, Sara Kolb (Kolb) contacted Respondent on behalf of Reeves and advised Respondent that Petitioner received Respondent's February 9, 2018 FOIA request and that, "It is not possible as a practical matter to provide the requested information within the initial five-work-day period provided for by the Act. School system staff members are processing the request, which you have made. The system expects to provide a response to your request within the supplemental period of seven work days as provided for in Va. Code § 2.2-3704(B)(4)." Kolb did not specify the conditions that made a response impossible within the 5-day timeline, pursuant to Va. Code § 2.2-3704(B)(4). Kolb did not provide Respondent a fee quote.
28. February 27, 2018, Respondent contacted Reeves and requested an update on Respondent's February 9, 2018, FERPA request. Reeves responded and provided responsive records.
29. February 28, 2018, Reeves approved a 100% waiver of \$3,027.50 in FOIA fees to Park in exchange for his consent to an extended FOIA-response timeline.
30. March 7, 2018, Reeves approved a 100% waiver of \$5,897.50 in FOIA fees to Park in exchange for his consent to an extended FOIA-response timeline.
31. April 2, 2018, Reeves approved a 100% waiver of \$192.50 in FOIA fees to Park in exchange for his consent to an extended FOIA-response timeline.

32. May 3, 2018, Petitioner's email to staff proved Petitioner was intentionally trying to thwart FERPA regulations and prevent personally identifiable information about Respondent's son from appearing in emails or other records." Petitioner stated, "For our good buddy (who's meeting is tomorrow afternoon), can you tell me . . ."

33. July 16, 2018, Reeves quoted another parent⁵ \$50/hour for five hours of work and stated, "Due to the volume of requested records, it is not possible as a practical matter to provide the requested information within the initial five-work-day period provided for by the Act. School system staff members are processing the request, which you have made. The system expects to provide a response to your request within the supplemental period of seven work days as provided for in Va. Code § 2.2-3704(B)(4)." Reeves did not specify the conditions that made a response impossible within the 5-day timeline, pursuant to Va. Code § 2.2-3704(B)(4). Reeves refused to provide a waiver of the fees. The parent's request was for, "*copies of invoices paid to the law firm of Blankingship & Keith, P.C. by Fairfax County Public Schools over the past twelve months.*"

34. October 8, 2018, Reeves approved a 100% waiver of \$883.75 in FOIA fees to Park in exchange for his consent to an extended FOIA-response timeline.

35. October 24, 2018, Respondent submitted a FOIA request. Reeves responded to say Respondent's request was actually a FERPA request and that Respondent must submit it to "Dawn Schaefer, Coordinator, Special Services". Respondent advised Reeves that Respondent had been clear that her request was a FOIA request.⁶

36. November 1, 2018, Reeves responded to Respondent's October 24, 2018, FOIA request and stated, "Due to the volume of requested records, it is not possible as a practical matter to

⁵ Parent's name will be made available to Court on request.

⁶ Response timelines for FOIA and FERPA requests differ. FOIA responses must be provided within five business days. A seven-day extension is allowable. FERPA requests have a 45-day timeline. Although the records requested by Respondent could fall under FERPA, by filing under FOIA, Respondent's request had to be provided within a shorter timeline.

provide the requested information within the initial five-work-day period provided for by the Act. School system staff members are processing the request, which you have made. The system expects to provide a response to your request within the supplemental period of seven work days as provided for in Va. Code § 2.2-3704(B)(4).” Reeves did not specify the conditions that made a response impossible within the 5-day timeline, pursuant to Va. Code § 2.2-3704(B)(4). Reeves did not provide a fee quote.

37. November 14, 2018, Reeves quoted Respondent \$54.39/hour for 4 hours of work related to one of Respondent’s FOIA request and stated, “Due to the volume of requested records, it is not possible as a practical matter to provide the requested information within the initial five-work-day period provided for by the Act. School system staff members are processing the request, which you have made. The system expects to provide a response to your request within the supplemental period of seven work days as provided for in Va. Code § 2.2-3704(B)(4).” Reeves did not specify the conditions that made a response impossible within the 5-day timeline, pursuant to Va. Code § 2.2-3704(B)(4). Reeves refused to provide a waiver of the fees. The parent’s request was for, “*copies invoices Blankenship & Keith submitted to FCPS, for work related to me and my son [student name].*” This request was identical in nature to the one submitted by another parent on July 16, 2018, but came with a higher hourly rate. Respondent asked Reeves about the inconsistent hourly rate, which changed from \$35/hour to \$54.39/hour for Respondent, and was \$4.39/hour more than Reeves quoted another parent.

38. November 14, 2018, Respondent contacted Virginia Freedom of Information Advisory Council Executive Director Alan Gernhardt. Gernhardt advised Respondent, “We generally advise having the lowest-paid person who can do the work be the one to do it in order to save money, as a matter of best practices.” Gernhardt later volunteered to contact Reeves and address Respondent’s FOIA concerns with Reeves.

39. November 16, 2018, Reeves advised Respondent that the \$54.39/hour rate is for “a senior staff member who bills at a higher rate . . .” Respondent asked Reeves the following, “Please advise the background of this senior staff member, and his or her title, so I understand why the charge is what it is. Please also advise if there are other senior staff members who work at the

same rate and/or if there is a different rate depending on the staff member.” Reeves did not respond.

40. Petitioner advised Respondent that it was looking into Petitioner’s delayed responses to Respondent’s FOIA and FERPA requests.

41. December 12, 2018, Respondent resent her November 16, 2018, email to Reeves and requested a response; made Reeves aware that Respondent saw the \$50/hour quote Reeves provided to another parent during the same time period, and for the same request parameters; and asked why Reeves was quoting Respondent a higher hourly rate than Reeves was quoting other parents.

42. December 19, 2018, Reeves refused to provide Respondent information about the \$54.39/hour rate.

43. January 9, 2019, Reeves provided Respondent FOIA-responsive records and advised Respondent that Petitioner changed the hourly rate from \$54.39/hour to \$35/hour. Reeves stated, “Although outside counsel conducted the review of these documents to ensure that no attorney – client privileged or student information is inadvertently released, we are charging the standard hourly rate as if the review was conducted by the FCPS FOIA office. The cost of staff time to search for the detailed invoices is \$52.50 (1.5 hours @ \$35.00).”

44. January 17, 2019, Petitioner advised Respondent it was still investigating Petitioner’s delays in responding to FERPA and FOIA responses.

45. August 22, 2019, VDOE found FCPS in noncompliance of IDEA and ordered it to provide compensatory education to the student of one of Respondent’s friends.⁷ In the year that followed, FCPS fought against paying for the compensatory education and related services. The United States Department had to get involved with VDOE before FCPS would pay in full for compensatory education and related services owed to the child and parent.

⁷ Parent’s information is will be provided to Court upon request.

46. October 28, 2019, Petitioner inadvertently sent Respondent an email intended for a staff member. Petitioner's email indicated the Respondent's son was being referred to in a manner to avoid including personally identifiable information in the email about Respondent's son.

47. October 30, 2019, Respondent submitted FOIA request to Reeves.

48. November 4, 2019, Respondent received a \$50 charge for FCPS's FCPSOn program, which provided computers to highschoolers countywide. Respondent's son already received a computer pursuant to his IEP, so Respondent asked FCPS why she was being charged for her son to receive a computer through FCPSOn.

49. November 7, 2019, Respondent submitted a FOIA request to Petitioner.

50. November 11, 2019, Reeves responded to Respondent's October 30, 2019, FOIA request, "Due to broadness of this request, it is not possible as a practical matter to provide the requested information within the initial five-work-day period provided for by the Act. Locating this information will take time. School system staff members are processing the request, which you have made. The system expects to provide a response to your request within the supplemental period of seven work days as provided for in Va. Code § 2.2-3704(B)(4)." Reeves did not specify the conditions that made a response impossible within the 5-day timeline, pursuant to Va. Code § 2.2-3704(B)(4). Reeves did not provide a fee quote.

51. November 14, 2019, Reeves responded to Respondent's November 7, 2019, FOIA request, "Due to the volume of requested records, it is not possible as a practical matter to provide the requested information within the initial five-work-day period provided for by the Act. It will take staff time to locate this information. School system staff members are processing the request, which you have made. The system expects to provide a response to your request within the supplemental period of seven work days as provided for in Va. Code § 2.2-3704(B)(4)." Reeves did not specify the conditions that made a response impossible within

the 5-day timeline, pursuant to Va. Code § 2.2-3704(B)(4). Reeves provided a fee quote of \$35.00/hour for 6.5 hours of work.

52. November 18, 2019, Reeves provided \$35/hour for 15 hours fee quote for Respondent's October 30, 2019, FOIA request. This quote was provided after the initial five-day timeline pursuant to Va. Code § 2.2-3704 and the additional seven-day extended timeline pursuant to Va. Code § 2.2-3704(B)(4). Reeves did not state Petitioner would require additional time, even though Petitioner was at the end of the extended timeline period.

53. November 20, 2019, Respondent asked Reeves how Petitioner determined 15 hours would be needed to fulfill Respondent's October 30, 2019, FOIA request.

54. November 25, 2019, Reeves responded to Respondent's November 20, 2019, question. Reeves refused to provide a credible answer for how the fee was determined. Reeves did not state that Petitioner would need additional time, beyond the five-day timeline pursuant to Va. Code § 2.2-3704 and the additional seven-day extended timeline pursuant to Va. Code § 2.2-3704(B)(4).

55. November 21, 2019, Theresa Johnson, then-FCPS's Assistant Superintendent, Department of Special Services, emailed South County High School (SCHS) Principal Gary Morris that the FCPSOn fee would not be waived and that the decision had been made from a "legal standpoint".

56. November 25, 2019, Morris emailed Respondent that FCPS would not waive the FCPSOn fee for students who have disabilities. Respondent advised FCPS its decision violated § 300.105 of IDEA and § 300.39(b) of IDEA.

57. November 26, 2019, FCPS's director of its Office of Special Education Procedural Support called Respondent and stated, "In looking at the emails and the situation going on with the FCPSOn and the fee, we absolutely agree that students who have it in their IEP can not be charged that fee. . . . We're going to take steps to rectify that problem that occurred."

58. November 29, 2019, and December 19, 2019, FCPS sent Respondent two more requests for payment of the \$50 FCPSOn fee.

59. December 3, 2019, Respondent submitted FOIA request related to FCPSOn to Petitioner. Petitioner did not respond.

60. December 18, 2019, Respondent resent Petitioner her December 3, 2019, FOIA request. Petitioner did not respond.

61. January 14, 2020, Respondent resent Petitioner her December 3, 2019, FOIA request. Petitioner did not respond.

62. January 17, 2020, Respondent resent Petitioner her December 3, 2019, FOIA request. Petitioner did not respond.

63. January 21, 2020, Respondent was contacted by a parent who had not been provided a refund. FCPS identified IEP students, but neglected to identify 504 Plan students with computer accommodations when it started processing refunds.

64. January 30, 2020, FCSB Member Abrar Omeish emailed Respondent, “The fee was just mentioned in the proposed budget presentation as an oversight.”

65. January 31, 2020, Reeves emailed Respondent FCPS response to Respondent’s December 3, 2019 FOIA request. This request was submitted late and without any previous request of an extension, putting FCPS in violation of VFOIA regulations.

66. January 31, 2020, Respondent submitted a second FOIA request related to FCPSOn Petitioner. Petitioner did not respond.

67. February 7, 2020, Respondent resent her January 31, 2020, email to Reeves and requested a response. Reeves did not respond.
68. February 10, 2020, Respondent resent her January 31, 2020, email to Reeves and requested a response. Reeves did not respond.
69. February 10, 2020, Reeves emailed Respondent FCPS response to Respondent's January 13, 2020 FOIA request. This request was submitted late and without any previous request of an extension, putting FCPS in violation of FOIA regulations.
70. February 10, 2020, During a SCHS PTA meeting, FCSB Member Karen Corbett-Sanders advised attendees that Respondent identified a "glitch" per the FCPS On fee and thanked Respondent for identifying the "glitch."
71. February 19, 2020, Respondent emailed Petitioner social media posts from Cameron Hibshman and Lourrie Duddridge, two education support specialist in the FCPS office of special education procedural support. Hibshman's first post states, "I hate the Freedom of Information Act!!! You don't need to know. People just need to live in ignorant bliss. #haveablesseday" Hibshman's second post states, "Let's be honest...folks who FOIA or FERPA entities for information are basically doing it to be PITAs Trust and believe...so to that I say KMA."
72. February 26, 2020, Reeves sent Respondent a quote for FERPA documents, even though FERPA records are supposed to be provided at no charge.
73. March 4, 2020, Reeves emailed Respondent that the request mentioned above would be processed as a FERPA, with no associated fee provided.
74. June 23, 2020, USDOE OCR released a report that was critical of VDOE and mandated changes be made, to include changing state regulations. Respondent forwarded the report to Petitioner. Petitioner responded that it did not have to follow the guidance, so Respondent filed a state complaint.

75. October 2, 2020, VDOE found FCPS in noncompliance of IDEA in regard to Respondent's state complaint related to FCPS's refusal to follow guidance in USDOE OSEP's June 23, 2020, report. VDOE ordered FCPS to develop a corrective action plan (CAP), which included reimbursement of fees Petitioner paid out of pocket.

76. FCPS refused to reimburse Respondent for the full \$1,000 she paid to one of the evaluators. Petitioner contacted VDOE to request assistance in securing full reimbursement from FCPS.

77. October 5, 2020, the Joint Legislative Audit and Review Commission (JLARC) released a report that was critical of VDOE, which oversees Petitioner and other LEAs.

78. November 20, 2020, Petitioner stated FCPS was processing Respondent's reimbursement. Respondent did not receive the \$1,000 reimbursement until December 1, 2020.

79. November 23, 2020, FCPS approved an Independent Education Evaluation (IEE) for Respondent's son, which included FCPS paying for the IEE in full.

80. December 14, 2020, JLARC released a report that was critical of special education in Virginia.

81. January 6, 2021, Respondent emailed FCPS about its failure to pay for the IEE. Petitioner replied that the payment would be processed.

82. February 11, 2021, Respondent again emailed FCPS about its failure to pay for the IEE. Again, Petitioner replied that the payment would be processed.

83. January 12, 2021, United States Department of Education (USDOE) Office for Civil Rights (OCR) notified FCPS Superintendent Scott Brabrand that "it is initiating a directed investigation of the Fairfax County Public Schools (District) due to disturbing reports involving

the District’s provision of educational services to children with disabilities during the COVID-19 pandemic.”

84. Respondent’s son attended FCPS during the COVID-19 pandemic period investigated by OCR.

85. Respondent’s son has disabilities and his Individualized Education Plan (IEP) was not implemented in full during the COVID-19 pandemic period investigated by OCR.

86. Respondent repeatedly tried to advocate for her son to ensure provision of FAPE during the COVID-19 pandemic period investigated by OCR and repeatedly requested compensatory services that addressed her son’s needs.

87. Respondent filed state complaints with VDOE during the COVID-19 pandemic and VDOE found FCPS in noncompliance with IDEA.

88. April 8, 2021, FCPS FOIA Officer Molly Shannon (Shannon) emailed Respondent that FCPS would NOT waive a \$35.00 fee associated with Respondent’s FOIA request.

89. September 27, 2021: Petitioner sued Respondent in an attempt to claw back FOIA documents it released, and to prevent her from publishing the documents on www.SpecialEducationAction.com. The documents include FCPS legal invoices, which indicate FCPS had out-sourced FOIA requests, to include Respondent’s, to high-priced out-of-house counsel.

90. November 16, 2021: Judge Richard E. Gardiner ruled against Petitioner per its lawsuit against Respondent. Gardiner called portions of Petitioner’s arguments “almost frivolous” and stated FCSB’s actions were “about as much a prior restraint as there ever could be.”

91. November 17, 2021 Shannon emailed Respondent a \$1,925.00 quote for a FOIA request. Respondent requested the fee be waived in exchange for her agreeing to an extended FOIA-response timeline. Shannon did not respond.
92. January 5, 2022, Respondent resent her November 17, 2021, email to Shannon, requesting that FCPS waive a \$1,925.00 FOIA fee in exchange for an extension of time. Shannon refused to provide a waiver.
93. January 21, 2022, Shannon refused to waive a \$35 FOIA fee for Respondent.
94. January 28, 2022, Shannon refused to waive a \$35 FOIA fee for Respondent.
95. April 28, 2022, OCR released findings of its investigation of LAUSD and its resolution agreement with LAUSD. Many of the issues OCR identified with LAUSD mirrored issues Respondent's son experienced in FCPS during the same period.
96. January - March 25, 2022, Petitioner charged Respondent and other students and families fees related to transcription services that Petitioner didn't actually provide. March 25, 2022, Respondent contacted Petitioner about this issue, asking why Petitioner hadn't updated its charging related to provision of college transcripts. Petitioner charges a per-school institution (college, military, etc) fee, although the majority of the time, Petitioner only uploaded transcripts once to an online platform, from which the institutions could then access the transcripts themselves.
97. April 28, 2022, FCSB member Megan McLaughlin emailed Respondent, "Thank you for this helpful & succinct description of FCPS' current transcript request process. As I noted below, operational changes have occurred since my sons applied to colleges. Thus, I will definitely look into these transcript fees. FCPS cannot and should not subject families to unjustifiable fees."
98. May 2, 2022, McLaughlin's aide Donna Nelson-Schneider emailed Respondent, "As you observed, these fees have continued while the technology has changed for schools to provide

transcripts to colleges as part of a student’s application process. From what Penny has learned as she’s looked into this issue, the Office of Counseling & Career and College Readiness is reviewing this notice for next year. We have also reached out to Instructional Services to learn more about the staff time involved in transcript requests, so we can have a better understanding of the process. We will be happy to share that information with you once we have received. In the meantime, please let us know what the situation is with your son, and if you have been told that he will not be allowed to participate in his graduation ceremony.”

99. May 2 – June 16, 2022, McLaughlin and Nelson-Schneider stopped communicating with Respondent and to date Respondent has not been refunded the money she was overcharged for transcripts. To Respondent’s knowledge, Petitioner has refused to refund all the fees it collected over a period of many years, for services it a) didn’t actually provide and b) misled parents and students to believe it did provide.

100. May 10, 2022, Respondent submitted a FOIA request for “all of FCPS’s documents and correspondence and any other digital or print records between FCPS and OCR, which relate to the investigation and resolution, specifically for the investigation OCR launched in 2021, when it announced at the same time that it would investigate FCPS and Los Angeles Unified School District.”

101. May 17, 2022, five days after Respondent submitted her May 10, 2022, FOIA request, FCPS responded, stating it needed seven additional days. It did not provide a quote or a specific reason for needing an extension..

102. May 24, 2022, FCPS provided Respondent with a quote for \$700. FCPS did not advise Respondent that it would need more time to process Respondent’s request and misled Respondent to believe that Respondent would receive request upon payment and day seven of the seven-day extension. Respondent emailed with a question about the fee.

103. May 26, 2022, Respondent paid \$700 fee, after not receiving a response to her May 24, 2022, email with a question about the fee. FCPS emailed Respondent requesting an extension of

up to a month. It did not offer to waive any of the fees. Respondent responded that she did not agree to the extension.

104. Respondent again requested compensatory education for her son in anticipation of 1) OCR's release of its resolution agreement with Petitioner and 2) knowledge that Petitioner would be swamped by such requests once the resolution agreement was released. Petitioner did not respond.

105. May 27, 2022, Attorney Bill Porter advised Respondent that Petitioner would be going to Court, to obtain an extension to the FOIA response timeline. Respondent replied to Porter and advised him that Petitioner waives fees for others. In the case of Park, Petitioner waived over \$20,000 in fees in exchange his consent to FOIA response timeline extensions. Porter did not respond.

106. May 31, 2022, Respondent again emailed Porter about waiving the \$700 fee in exchange for an extension. Porter did not respond.

107. June 2, 2022, Respondent again emailed Porter. This time Respondent cc'd FCSB members and stated her understanding was that FCSB was refusing to waive the \$700 fee, and that this understanding was the result of Porter failing to address Respondent's numerous mentions of waiving the \$700 in exchange for a FOIA response timeline extension.

108. January 2022-June 3, 2022, Petitioner refused to provide FERPA records to Respondent, even though it knew a) Respondent needed the records to advocate for her son; b) Respondent needed to provide the records to VDOE for open state complaints; s) Petitioner is required to provide records before IEP meetings (which it failed to do on numerous occasions); and d) there is a 45-day timeline Petitioner is required to, but failed to, follow.

109. Respondent again requested compensatory education for her son. Petitioner did not respond.

110. June 3, 2022, Petitioner held an IEP without Respondent or her son, even though FCPS knew they weren't available. In addition, Petitioner a) supposedly proposed an IEP for Respondent's son for the 2021-22 school year (which had already passed) during this meeting; b) refused to email the IEP to Respondent, even though Petitioner had been emailing IEPs to Respondent since 2017; c) made Respondent aware that the FERPA records Petitioner had previously refused to provide to Respondent were in the high school office for pickup (during a time it knew Respondent wasn't available).

111. June 3, 2022, Porter emailed Respondent and asked, "Are you making a settlement proposal, the terms of which are that you will agree to FCPS's requested extension to respond to your FOIA request if FCPS refunds you the \$700 FOIA cost that you have paid? Please confirm your intent at your earliest convenience so I can determine how to proceed." Respondent replied to Porter and reiterated her previous mentions of consenting to an extension of time in response to a waiver of the \$700.

112. June 6, 2022, Respondent's son graduated from high school.

113. June 7, 2022, Respondent emailed Porter and FCSB members and stated her understanding was that FCSB was refusing to waive the \$700 fee, and that this understanding was the result of Porter failing to address Respondent's numerous mentions of waiving the \$700 in exchange for an extension.

114. June 8, 2022, Porter emailed Respondent that he was "in the process of discussing your proposal with my client . . . "

115. June 9, 2022, Porter emailed Respondent, "In exchange for your agreement to an accelerated production schedule with documents produced on June 3 (already completed), June 7 (already completed), and June 17, the school board will waive 50% of the FOIA fee."

116. June 9, 2022, Respondent advised Porter she did not accept Petitioner's offer of a 50% waiver in exchange for an extended response timeline. Respondent countered by requesting a 100% fee and an extended timeline to June 13, 2022. Porter did not respond.

117. June 10, 2022, Petitioner advised Respondent that it was terminating her son's special education services.

118. June 13, 2022, Respondent resent her May 27, 2020, request for compensatory education to Petitioner. Petitioner responded, "Consideration of requests for special education services falls within the purview of the IEP team. Given that [STUDENT NAME] has exited special education, via graduation with an Advanced Studies Diploma, a representative from the Office Special Education Procedural Support will contact you to provide guidance on potential next steps for your consideration."

119. June 16, 2022, Respondent asked Petitioner when a representative from the Office of Special Education Procedural Support would contact her about compensatory education. Petitioner responded, "A representative from OSEP will follow-up with you regarding your request for compensatory services." Respondent asked Petitioner when this would happen. As of June 17, 2022, Petitioner has not contacted Respondent to schedule a meeting or to discuss Respondent's compensatory education request for her son.

120. As of June 17, 2020, Porter has failed to respond to Respondent's counteroffer and Petitioner has failed to provide a full response to Respondent's FOIA request.

Count I
(Detinue)

121. Respondent reasserts and incorporates her allegations in the preceding paragraphs as if fully set forth here.

122. Petitioner is required under VFOIA to provide requests within a specific timeline.

123. Petitioner is engaging in monetary transactions that change depending on who is making the FOIA request.

124. In the past, Petitioner offered 100% waivers of over \$20,000 FOIA fees in exchange for extensions, but in this case Petitioner refused a waiver in full and then offered a limited 50% waiver of \$700 FOIA fees in exchange for an extension.

125. Petitioner's refusal to waive \$700 for Respondent, even though it has waived over \$20,000 to at least one other parent, is retaliation.

126. Retaliation is a civil rights violation.

127. Petitioner proposed a quote in bad faith.

128. Petitioner misled Respondent to believe that if she paid the \$700 fee, she would receive a full response by the end of Petitioner's first seven-day extension.

129. Petitioner collected Respondent's \$700 before making her aware it would need an extension.

130. Petitioner failed to provide the service for which Respondent thought she was paying.

131. Petitioner harmed Respondent's ability to advocate when Petitioner delayed its response.

132. Petitioner forced Respondent to spend additional time/money of her own in response to its FOIA-related failures.

133. Petitioner failed to negotiate fees or discuss its bad faith proposal (and the failures that followed) in a timely manner, and instead waited until the day before a calendar control hearing

– and after it racked up more legal fees – to respond to a suggested proposal Respondent submitted to it a week earlier.

134. Petitioner misled the court about Petitioner’s historic FOIA-response process, to include that a) overtime IS involved in Petitioner’s FOIA responses; b) outside counsel ARE involved in Petitioner’s FOIA responses; c) staff in the Due Process & Eligibility office ARE involved in Petitioner’s FOIA responses; and d) Petitioner’s has a history of delaying and trying to claw back FOIA responses in an effort to delay and/or prevent public access to the response.

135 Petitioner has unreasonably refused to provide Respondent everything responsive to her FOIA request.

136. Petitioner has unreasonably expected Respondent to consent to an extension that benefits Petitioner, but harms Respondent.

137. Petitioner has refused to work with Respondent to come to an agreement that would address Petitioner’s need for an extension, while at the same time minimizing the harm done to Respondent.

Prayer for Relief

Wherefore, Respondent requests that the Court enter judgement in its favor, against Petitioner, awarding Respondent the following relief:

- A. Immediate provision of everything responsive to Respondent’s FOIA request.
- B. 100% refund of the \$700 already paid by Respondent.
- C. Reimbursement for court fees related to the filing of this document and all others.
Respondent is representing herself pro se and at this time is not requesting legal fees for payment to lawyers.

D. Waivers of future FOIA requests until at which time Respondent reaches the ceiling of \$10,000 in requests.

E. An award of such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

Callie Oettinger

June 17, 2022

REDACTED

Certificate of Service

I am representing myself pro se. I hereby certify on this 17th day of June 2022, a true copy of the foregoing was sent by email to Petitioner and Porter, and was mailed to Petitioner c/o William Porter, Blankingship & Keith, 4020 University Drive, Suite 300, Fairfax, Virginia 22030.