IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

GEORGIA TRUST FOR LOCAL NEWS, LLC d/b/a The MACON MELODY, Plaintiff, v. THE BIBB COUNTY SCHOOL DISTRICT, Defendant.	CIVIL ACTION NO. 2025-CV-083495

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT'S SIXTH AND NINTH DEFENSES, WITH INCORPORATED MEMORANDUM OF LAW

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I. INTRODUCTION

Documents showing expenditure of taxpayer funds by a government agency epitomize the type of information that Georgia's Open Records Act (the **"ORA"**) requires be made public. *See* O.C.G.A. § 50-18-70(a) ("…public access to public records should be encouraged…so that the public can evaluate the expenditure of public funds…."); *see also Cent. Atlanta Progress, Inc. v. Baker,* 278 Ga. App. 733, 735 (2006) (holding that a NASCAR bid prepared by a private corporation was nevertheless a "public record" where the evidence showed that significant public funds had been expended). Here, Plaintiff requested such information from Defendant, the Bibb County School District (the **"School District"**), but the School District refused to provide it. The School District's position is ill founded.

Specifically, this dispute concerns Plaintiff's attempt to learn the amount that the School District approved to pay settlements during a specified time. Plaintiff issued an ORA Request seeking records showing that figure. The School District contends that this number—the amount that the School District approved to pay settlements—somehow constitutes an "education record" as defined by the federal Family Educational Rights and Privacy Act (**"FERPA"**) and Individuals with Disabilities Education Act (**"IDEA"**) and, therefore, is supposedly shielded from disclosure. The School District has asserted two affirmative defenses in this

action—its SIXTH DEFENSE and its NINTH DEFENSE—premised on this "education records" theory.

But the School District's theory is wrong. Records showing the School District's payment of taxpayer money to settle claims are not education records and are not exempt from public disclosure. *See*, *e.g.*, *Red & Black Pub. Co., Inc. v. Bd. of Regents*, 262 Ga. 848, 851–52 (1993) (holding that "records . . . of the type [FERPA] is intended to protect [are] those relating to individual student academic performance, financial aid, or scholastic probation"). Thus, Plaintiff respectfully moves for partial summary judgment under O.C.G.A. § 9-11-56 dismissing the School District's SIXTH DEFENSE and NINTH DEFENSE.[1]

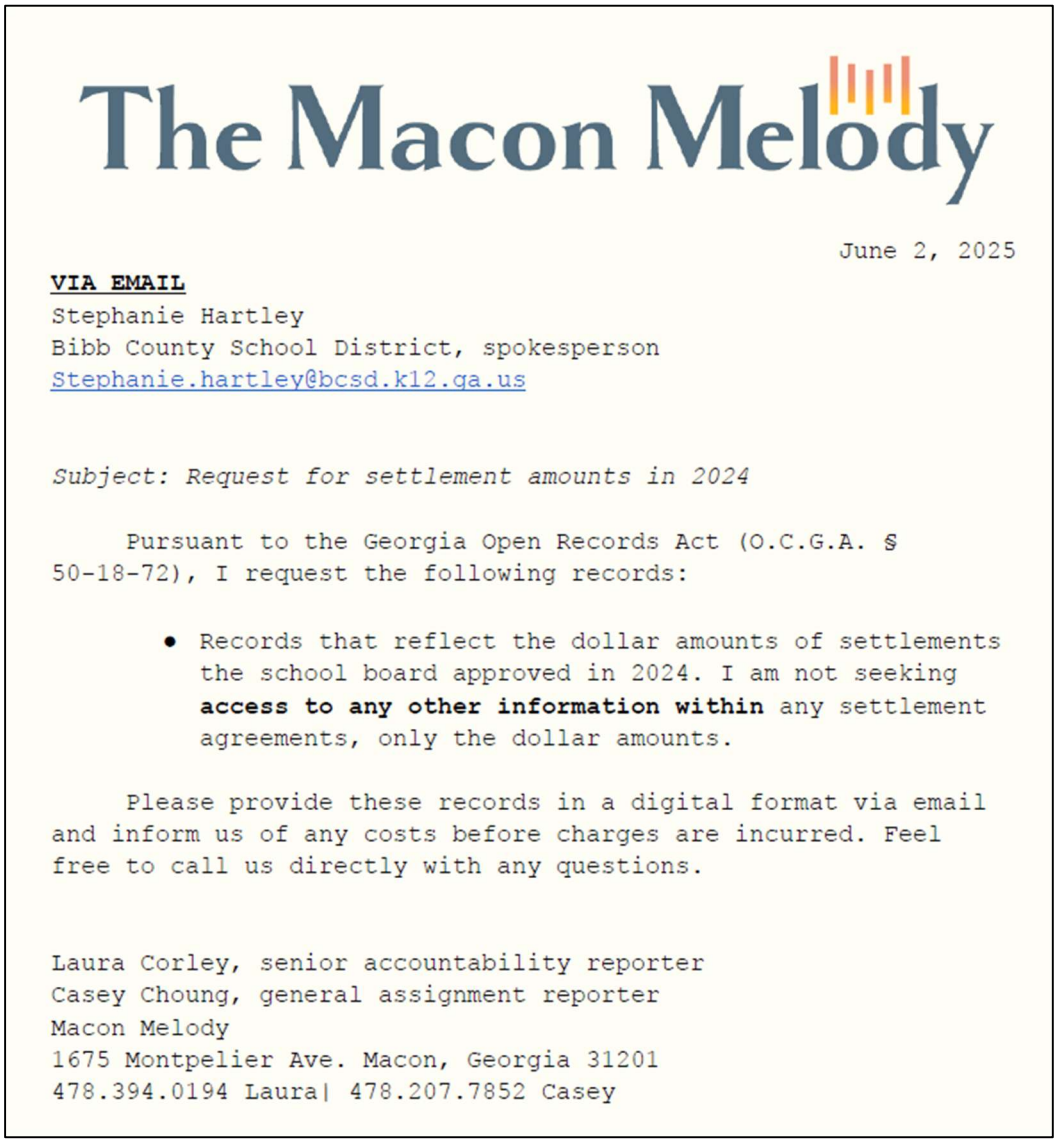
II. FACTS

A. The Open Records Request

Plaintiff, the Georgia Trust for Local News (d/b/a The Macon Melody), sent Defendant a request for records under the Open Records Act, O.C.G.A. 50-18-70 *et seq*. (the **"ORA Request"**). (*See* 10/13/2025 Answer and Affirmative Defenses of Defendant Bibb County School District (the **"Answer"**), ¶ 5; 8/3/2025 Complaint

[1] Plaintiff also seeks partial summary judgment that the School District is an "agency"—and that the records at issue are "public records"—within the meaning of the Open Records Act. (*See* footnote 13, below.)

(the **"Complaint"**), ¶ 5 and Exhibit A).[2] The ORA Request reads, in its entirety, as follows:



The Macon Melody

June 2, 2025

VIA EMAIL
Stephanie Hartley
Bibb County School District, spokesperson
Stephanie.hartley@bcsd.k12.ga.us

Subject: Request for settlement amounts in 2024

Pursuant to the Georgia Open Records Act (O.C.G.A. § 50-18-72), I request the following records:

- Records that reflect the dollar amounts of settlements the school board approved in 2024. I am not seeking **access to any other information within** any settlement agreements, only the dollar amounts.

Please provide these records in a digital format via email and inform us of any costs before charges are incurred. Feel free to call us directly with any questions.

Laura Corley, senior accountability reporter
Casey Choung, general assignment reporter
Macon Melody
1675 Montpelier Ave. Macon, Georgia 31201
478.394.0194 Laura| 478.207.7852 Casey

(*See* Complaint, Exhibit A; Answer, ¶ 5).[3]

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[2] *See* Plaintiff's Statement of Theory of Recovery and of Facts as to Which No Genuine Dispute Exists (**"Pls. Stmt."**), ¶ 1.

[3] *See* Pls. Stmt., ¶¶ 2-3.

As shown above, the ORA Request emphasizes that it seeks nothing but the dollar amounts of settlements that the School District's Board approved during calendar year 2024. Plaintiff sought no other information concerning or contained in any settlement—just records sufficient to ascertain the amount of public funds that the School District spent on them. (*See* Complaint, Exhibit A).[4]

B. The School District's Response

The School District's response to Plaintiff's ORA Request (the **"ORA Response"**) reads as follows:

[4] See Pls. Stmt., ¶¶ 2-3.

On Thu, Jun 5, 2025 at 1:21 PM Hartley, Stephanie <Stephanie.Hartley@bcsdk12.net> wrote:

> Good afternoon,
>
> Please see the response to the ORR.
>
> We are in receipt of your Open Records Request dated June 2, 2025, requesting 'records that reflect the dollar amounts of settlements the school board approved in 2024' pursuant to the Georgia Open Records Act. As a professional courtesy, I can confirm that the JH settlement from the Bibb County Board of Education's July 18, 2024 meeting is the only settlement approved by the Board in 2024. As a result, any information we provide about the dollar amounts for 2024 settlements will inherently be tied to that individual settlement. That fact prevents the District from providing you with the requested financial records. The dollar amounts contemplated by the JH settlement include confidential, personally-identifiable, education-related information about a particular BCSD student. As you are aware, minor students enjoy robust privacy protections under such federal statutes as the Family Educational Rights and Privacy Act ('FERPA'), among others. FERPA is a federal law that affords parents the right to have access to their children's education records and the right to have control over the disclosure of personally identifiable information from the education records. The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99. Georgia's Open Records Act, O.C.G.A. § 50-18-72(a)(1), allows withholding of records 'specifically required by federal statute or regulation to be kept confidential,' and O.C.G.A. §50-18-72(a)(37) allows the withholding of '[a]ny record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations.' FERPA's definition of 'personally identifiable information' includes (1) information that, alone or in combination, is linked or linkable to specific students that likely would allow a reasonable person in the school community without personal knowledge of the relevant circumstances to identify the students with reasonable certainty; and also (2) information requested by a person whom the District reasonably believes knows the identity of the student to whom the education record relates. It is the District's position that information related to the JH settlement, including the dollar amount associated with its approval, is protected by the robust confidentiality provisions of FERPA and the Individuals with Disabilities Education Act ('IDEA'). The District is therefore constrained by state and federal law from providing you with the information you seek.
>
> Thank you,
>
> **STEPHANIE HARTLEY**

(*See* Complaint, ¶¶ 9-10 and Exhibit B; Answer, ¶¶ 9-10).[5]

[5] *See* Pls. Stmt., ¶ 5.

1. The School District's refusal to provide the requested "financial records"

As the above-depicted text shows, the School District (through its Chief Communications Officer, Stephanie Hartley) refused to produce the records. (*See* Complaint, ¶¶ 9-10 and Exhibit B; Answer, ¶¶ 9-10).[6] To support this refusal, the School District relied on FERPA's provisions regarding confidentiality of "education records" and "personally identifying information," in tandem with the provisions of the Georgia's Open Records Act that exempt from disclosure records that are required by federal law to be kept confidential and records whose disclosure might jeopardize the receipt of federal funds. (*See* Complaint, Exhibit B).[7]

Although the ORA Response asserts that the requested records contain "education-related information," it refers to the records as ***"financial records."*** (*Id.* (emphasis added)).[8]

2. The School District's voluntary disclosure of unrequested information

The School District's ORA Response also volunteers information that Plaintiff did not request. Whereas Plaintiff expressly limited its ORA Request to

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[6] *See* Pls. Stmt., ¶¶ 5-6.

[7] *See* Pls. Stmt., ¶ 5.

[8] See Pls. Stmt., ¶¶ 5, 7.

"dollar amounts of settlements," the ORA Response states that there was only one settlement during the requested time period and that the settlement involved a student with the initials JH. (*Id*.).[9] The student's initials were also previously disclosed in the minutes of a meeting of the School District's Board. (Answer, ¶ 18).[10]

C. This Lawsuit and the School District's FERPA Defenses

After receiving the School District's ORA Response, Plaintiff sent a follow-up email noting that "[a] dollar amount wouldn't include 'confidential personally-identifiable, education-related information about a particular [] student.'" (Complaint, ¶ 12 and Exhibit B; Answer, ¶ 12).[11] The School District did not respond to this follow-up email. (*See* Complaint, ¶ 13; Answer, ¶ 13).[12] Thus, Plaintiff filed this action, seeking an order compelling disclosure of the requested records. Plaintiff's Complaint also seeks a ruling that the School District's refusal to produce the records is in violation of the Open Records Act, as well as an award of attorneys' fees and litigation expenses.

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[9] *See* Pls. Stmt., ¶¶ 5, 7.

[10] *See* Pls. Stmt., ¶ 8-9.

[11] *See* Pls. Stmt., ¶ 10.

[12] *See* Pls. Stmt., ¶¶ 10-11.

In its pleadings, the School District has asserted two FERPA-related defenses (the **"FERPA Defenses"**): The School District's SIXTH DEFENSE alleges that the "document at issue is protected from disclosure by the Family Educational Rights and Privacy Act ("FERPA") and its implementing regulations in addition to the Individuals with Disabilities Education Act ("IDEA") and its implementing regulations." (*See* Answer, p. 2). And the School District's NINTH DEFENSE asserts that "Plaintiff failed to join an indispensable party necessary for full adjudication of this case." This defense apparently refers to the student and parents whose information the School District contends is reflected in the requested records. (*See* 12/29/2025 Amended Answer and Affirmative Defenses of Defendant Bibb County School District (**"Am. Answer"**), p. 1).

III. ARGUMENT

A. When a purported affirmative defense fails as a matter of law, summary judgment is appropriate as to that defense.

Partial summary judgment is appropriate when undisputed facts show that a party is entitled to judgment as a matter of law as to a part of the case. *See* O.C.G.A. § 9-11-56 (a & c). This includes instances where one or more of a defendant's affirmative defenses fail as a matter of law; in such instances, the plaintiff may seek and should be awarded summary judgment as to those failed defenses. *See*, *e.g.*, *Foundry Sys. & Supply, Inc. v. Indus. Dev. Corp.*, 124 Ga. App.

589, 592 (1971) ("The trial court properly granted a partial summary judgment for the plaintiff which in effect struck the defenses of accord and satisfaction."); *Mauldin v. Lowe's of Macon, Inc.*, 146 Ga. App. 539, 541 (1978) (affirming partial summary judgment dismissing defense of novation); *Jones v. Farrington*, 194 Ga. App. 10, 10 (1989) (affirming partial summary judgment rejecting affirmative defenses).

Moreover, summary judgment makes an especially appropriate means for addressing legal questions, including matters of statutory construction. "Any question as to the proper construction to be given to a statute is for the court to determine, . . . and application of a statute's terms to undisputed facts is a question of law." *Curlee v. Mock Enterprises, Inc.*, 173 Ga. App. 594, 600 (1985); *see Red & Black Pub. Co., Inc.*, 262 Ga. at 851–52 (resolving issue, whether documents were covered by FERPA, on a motion for judgment on the pleadings); *S.A. ex rel. L.A. v. Tulare Cnty. Office of Educ.*, CVF 08-1215 LJO GSA, 2009 WL 3126322, at *1 (E.D. Cal. Sept. 24, 2009) (resolving issues as to whether documents constituted "education records" as one of law); *cf. Southern Prestige Homes v. Moscoso*, 243 Ga App 412 (2000) (noting that contract-interpretation issues are particularly well suited for summary adjudication).

B. The School District's FERPA Defenses fail as a matter of law.

As the School District correctly acknowledges, its SIXTH DEFENSE and NINTH DEFENSE are, indeed, affirmative defenses. Assuming that the "financial records" at issue constitute "public records" as defined in the Open Records Act,[13] then the School District must disclose the record(s) unless the School District proves that the record(s) fall under one of the Open Records Act's exemption provisions. *See* O.C.G.A. § O.C.G.A. § 50-18-70(b)(2) (defining "public record"); O.C.G.A. § 50-18-71(a) (requiring disclosure of public records unless specifically exempted by law); O.C.G.A. § 50-18-72 (listing exemptions); *see also Smith v. Northside Hosp., Inc.*, 347 Ga. App. 700, 705 (2018) (summarizing steps in ORA analysis);[14] *Napper v. Ga. Television Co.*, 257 Ga. 156, 161 (1987) ("If there has

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[13] The School District has not denied that the records constitute "public records," and it could not plausibly attempt such a denial. The School District is a school district and thus an "agency," within the meaning of the ORA, and the requested records are documents prepared, maintained, or received by the School District. *See* O.C.G.A. § 50-18-70(b) (defining "agency" and "public record"); O.C.G.A. 50-14-1 (definition of "agency" incorporated by reference in O.C.G.A. § 50-18-70(b)(1)). (*See* Pls. Stmt., ¶¶ 12-13).

[14] "[W]hen an action to enforce the Act is brought, the first inquiry is whether the records are 'public records' as defined by the Act, and if so the second inquiry is whether they are protected from public disclosure under a statutory exception." *Smith v. Northside Hosp., Inc.*, 347 Ga. App. 700, 705 (2018) (punctuation and citations omitted)).

been a request for identifiable public records within the possession of the custodian thereof, the burden is cast on that party to explain why the records should not be furnished."). Here, the School District's FERPA Defenses attempt to invoke two exemption provisions: O.C.G.A. § 50-18-72(a)(1), which exempts from disclosure documents that are "required by federal statute or regulation to be kept confidential[,]" and O.C.G.A. § 50-18-72(a)(37), which allows public agencies to withhold "any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under [FERPA] or its implementing regulations[.]"

Simply put, the School District asserts that the record(s) at issue are exempt from disclosure (or require student or parental consent) because (i) the Open Records Act exempts records that FERPA or other federal law deem confidential; and (ii) according to the School District, FERPA deems the records at issue here confidential. But the School District's contention is mistaken because FERPA does not apply and does not allow the School District to withhold the requested information concerning its use of public funds.

1. The confidentiality provisions in FERPA (and IDEA) apply only to "personally identifying information" contained within "education records."

The pertinent FERPA/IDEA provision[15] speaks only to the release of "education records" or "personally identifiable information" that such "education records" contain:

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of **education records** (or personally identifiable information **contained therein** other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization . . .

20 U.S.C. § 1232g(b)(1) (emphases added). Concerning documents that are not "education records" and information that does not come from "education records," FERPA says nothing. *See*, *e.g.*, *Red & Black Pub. Co., Inc.*, 262 Ga. at 851–52 (holding documents not covered by FERPA because they were not "education records"); *Dahmer v. W. Kentucky Univ.*, 118CV00124JHMLLK, 2019 WL 1781770, at *3 (W.D. Ky. Apr. 23, 2019) (same); *Wallace v. Cranbrook Educ. Community,* No. 05-73446, 2006 WL 2796135, *6 (E.D. Mich. Sept. 27, 2006) ("Here, since the documents requested are not education records for purposes of

[15] The IDEA incorporates by reference FERPA's definition of "education record." *See* 34 CFR § 300.611.

FERPA there is no reason to redact the statements as they are not protected from disclosure by FERPA.").

Furthermore, FERPA's implementing regulations allow education records to be disclosed so long as all personally identifying information is redacted:

> ***De-identified records and information.*** An educational agency or institution, or a party that has received education records or information from education records under this part, may release the records or information without the consent required by § 99.30 after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.

34 C.F.R. § 99.31(b)(1).

2. The requested School-District financial records are not "education records," and settlement amounts are not "personally identifying information" contained in an education record.

The School District's records showing the amount of a settlement payment are not "education records," nor does that amount constitute "personally identifying information" from any education record. To the contrary, as the School District's ORA Response acknowledges, the information may be found in the

School District's "financial records." (*See* Complaint, Exhibit B).[16] Additionally, the ORA Request specifies that it does not seek any personally identifying information. Any such information (if it existed) could be excluded or redacted. Thus, FERPA and IDEA do not apply.

a. Records reflecting a settlement amount are not "education records."

The pertinent FERPA definition encompasses ***"education"*** records—*i.e.*, records regarding educational matters—and only records that ***"directly relate"*** to a student:

> For the purposes of this section, the term **"education records"** means . . . those records, files, documents, and other materials which-
>
> (i) contain information **directly related** to a student; and
>
> (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

[16] *See* Pls. Stmt., ¶ 7. Of course, any number of documents might contain the requested "financial records"—financial reports, memoranda, bank statements, cancelled checks, wire transfers, data fields in spread sheets, *etc*. *See* O.C.G.A. § 50-18-70(b) (defining the scope of documents encompassed by the Open Records Act). Such "financial records" concerning the School District's payouts are not "education records" of any student. *See Owasso Indep. Sch. Dist. No. I-011 v. Falvo*, 534 U.S. 426, 435 (2002) ("FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar[.]").

20 U.S.C. § 1232g(a)(4)(A) (emphases added). The dollar amount paid to settle a claim does not satisfy either of these two elements, as dollar amount information does not concern "education" and also does not "directly relate" to a student.

The Georgia Supreme Court has held that "education records" under FERPA include only records that reflect "student academic performance, financial aid, or scholastic probation." *Red & Black Pub. Co., Inc.*, 262 Ga. at 852. Thus, the Supreme Court rejected the argument that FERPA precluded access to records of the student Organizations Court at the University of Georgia. *See id*. at 851-52. This binding precedent precludes any notion that documentation concerning the dollar amount paid by a school district to settle a claim constitutes an education record.

Federal courts and courts in other states have construed FERPA the same way, holding that information concerning allegations and claims of misconduct do not concern education and are therefore not education records. *See Dahmer*, 2019 WL 1781770, at *3 (ordering disclosure of student witness statements); *Wallace,* 2006 WL 2796135, *4 (holding that records of investigation into teacher misconduct against a student "do not implicate FERPA because they do not contain information directly related to a student"); *Ellis v. Cleveland Mun. Sch. Dist.*, 309 F. Supp. 2d 1019, 1021–25 (N.D. Ohio 2004) (rejecting argument that reports of altercations between substitute teachers and students were "education records");

Bauer v. Kincaid, 759 F. Supp. 575, 591 (W.D. Mo. 1991) (holding incident reports concerning students were not "education records" covered by FERPA); *Bd. of Educ. of Colonial Sch. Dist. v. Colonial Educ. Ass'n*, CIV. A. 14383, 1996 WL 104231, at *5–6 (Del. Ch. Feb. 28, 1996) (holding documents concerning investigation into alleged teacher misconduct were not "educational"), *aff'd*, 685 A.2d 361 (Del. 1996); *Poway Unified Sch. Dist. v. Superior Court (Copley Press),* 62 Cal. App. 4th 1496, 1507, 73 Cal. Rptr. 2d 777 (1998) (rejecting argument that claim document filed on behalf of student constituted an "education record").

Under these holdings, even student-court records, incident reports and witness statements detailing a student's conduct or wrongdoing perpetrated against the student fall outside the definition of "education records." The holdings thus refute any argument that records showing the mere amount of an expenditure of public funds could constitute an "education record."

Indeed, courts have specifically rejected the proposition that settlement agreements or amounts paid in settlement constitute "education records." *See Herald Publishing Co. v. Coopersville Area Public Schools*, Case No. 09-01400-PZ in the Circuit Court for the County of Ottawa, Michigan (summary judgment opinion dated March 30, 2010, ordering disclosure of amounts paid in settlement) (attached hereto); *Heller v. Safford Unified Sch. Dist.*, No. CV 2011-00165 in the

Superior Court of Graham County, Arizona (opinion dated August 22, 2011, ordering disclosure of settlement agreement) (attached hereto).

The reason the authorities are so clear and consistent is that they all state the obvious. The amount of taxpayer funds paid to settle a claim is not "educational" information; and the financial records showing that payment are not "education records." *See also* 20 U.S.C. § 1232g(b)(4)(A) (requiring that each education institution maintain a record, kept with the "education records of each student" indicating the individuals, agencies, or organizations that have requested or obtained access to the student's education records); *Owasso Indep. Sch. Dist. No. I-011*, 534 U.S. at 434-35 (discussing various administrative and procedural requirements that apply to true, FERPA "education records").

b. The requested records do not contain personally identifying information.

The ORA Request in this case also does not implicate FERPA or the IDEA (which incorporates FERPA's definition of "education records") because the requested records do not contain any personally identifying information. The only datum requested is a number, the amount paid to settle claims. The ORA Request does not seek the name of the claimant, the nature of the claim, details concerning any allegations or anything else except a single dollar figure. (*See* Complaint, Exhibit A). For this additional reason, the School District's FERPA Defenses fail as

a matter of law.[17] 34 C.F.R. § 99.31(b)(1) (allowing disclosure of "de-identified" records without consent even if they are "education records").

IV. CONCLUSION

For the reasons stated herein, Plaintiff requests that this Motion for Partial Summary Judgment be granted and that the Court enter an Order dismissing

[17] The School District apparently contends that, because the identity of the one claimant whose claim was settled during the requested time might already be known or ascertainable, disclosing the amount of the settlement would constitute disclosure of the claimant's "personally identifying information." This contention fails for two reasons. First, as held in the cases above, information concerning the existence of a claim and its settlement amount (or even the underlying allegations) are not "educational" and thus not covered by FERPA. Second, the initials of the claimant and the fact that there was only one claim were voluntarily disclosed by the School District; so, if revealing such information violates FERPA, then the School District already committed that violation. (*See* Complaint, ¶ 5; Answer, ¶¶ 5, 18). The School District cannot take advantage of its own violation to evade its obligations under the ORA. *See*, *e.g.*, *K.L. v. Evesham Twp. Bd. of Educ.*, 423 N.J. Super. 337, 364, 32 A.3d 1136, 1151 (App. Div. 2011) ("The Board's argument on appeal that FERPA prohibits the disclosure of a disciplinary form concerning one student to the parent of another student contradicts its own decision to disclose the redacted document to plaintiff."); *see also The Fla. Star v. B.J.F.,* 491 U.S. 524, 535 (1989) ("[W]here the government has made certain information publicly available, it is highly anomalous to sanction persons other than the source of its release."); *Cause of Action Inst. v. Nat'l Oceanic & Atmospheric Admin.*, CV 19-1927 (TSC), 2023 WL 3619345, at *4 (D.D.C. May 24, 2023) (in federal Freedom of Information Act case, rejecting argument that would allow agencies to "easily evade their FOIA obligations . . . resulting in an end run around the [statute]").

Defendant's SIXTH DEFENSE and NINTH DEFENSE and ruling that the School District is an "agency" and the records at issue are "public records" within the meaning of the Open Records Act. Plaintiff also requests all additional relief that the Court deems appropriate.

Respectfully submitted, March 10, 2026.

/s/ Lucas W. Andrews
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CERTIFICATE OF SERVICE

I, Lucas W. Andrews, hereby certify that on March 10, 2026, I caused a copy of the foregoing MOTION to be filed using the Court's ECF system, which will send notice to all counsel of record. In addition, I have caused copies to be sent by Statutory Electronic Service to bennettbryan@parkerpoe.com and carolinescalf@parkerpoe.com.

This day, March 10, 2026.

/s/ Lucas W. Andrews
LUCAS W. ANDREWS
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EXHIBIT A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

THE HERALD PUBLISHING COMPANY, L.L.C.,
a New York limited liability company,
d/b/a THE GRAND RAPIDS PRESS

Plaintiff,

v

COOPERSVILLE AREA PUBLIC SCHOOLS, a Michigan local education Agency,

Defendant.

OPINION and ORDER

Case No. 09-01400-PZ
Calvin L. Bosman

Before this Court are competing motions for summary disposition with respect to plaintiff The Herald Publishing Company, LLC d/b/a The Grand Rapids Press's complaint seeking enforcement of the Michigan Freedom of Information Act, MCL 15.231 ("FOIA"). Both motions are brought under MCR 2.116(C)(8) and (C)(10). The Court grants plaintiff's motion under MCR 2.116(C)(10) and denies defendant's motion.

Defendant Coopersville Area Public Schools denied plaintiff's two requests made under the FOIA for information regarding the settlement agreements resolving two cases filed against the school district in the United States District Court for the Western District of Michigan. Plaintiff filed a request with defendant on July 23, 2009 seeking information regarding the settlement in *Booth v Coopersville Area Public Schools, et al*, and on November 30, 2009, seeking information regarding the settlement in *DeHaan v Coopersville Area Public Schools, et*

al. Both cases involved allegations by students that fellow students assaulted them and coaches of the High School's athletic teams fostered a culture of "hazing" that allowed the incidents to occur. Both cases were resolved by confidential mediation and subsequently executed confidential settlement agreements. After each case settled, plaintiff sought information under the FOIA "referencing any amounts of money paid by the Coopersville Area Public Schools, or on their behalf, and any other documents or portions of documents sufficient to show the amounts paid in settling the aforementioned case."

Defendant denied both requests, setting forth a number of reasons why any documents that reference the amount of money paid to settle the suits are exempt from disclosure under FOIA. After legal proceedings that are not germane to the issue before the Court, plaintiff filed an Amended Complaint with two counts on January 5, 2010. Each count seeks enforcement of the Michigan FOIA to compel disclosure of the monetary settlement of the respective federal lawsuits. Plaintiff subsequently filed this motion for summary disposition, in which it argues that it is entitled to summary disposition because the information sought is not exempt from disclosure under the FOIA as a matter of law. Defendant too, filed a motion for summary disposition, arguing that the information is exempt from disclosure and so it is entitled to summary disposition in its favor of plaintiff's claims.

The purpose of the FOIA is to provide the people of Michigan with full and complete information regarding the government's affairs and the official actions of government officials and employees. *State News v Mich State Univ*, 274 Mich App 558, 567-568; 735 NW2d 649 (2007), rev'd in part 481 Mich 692; 753 NW2d 20 (2008). The FOIA is a pro-disclosure statute; it does not prevent disclosure but rather, requires disclosure of records unless a specific exemption applies, and those exemptions are narrowly interpreted. *Herald Co v Bay City*, 463

Mich 111, 119; 614 NW2d 873 (2000). The public body claiming the exemption has the burden to prove the exemption applies. *State News, supra* at 570. It also must separate exempt and nonexempt material where possible and make the nonexempt material available. *Id.* at 580.

It is true that only "public records" are subject to disclosure under the FOIA, however, contrary to defendant's argument, the settlement agreements are public records. The statute defines a "public record" as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." MCL 15.232(e). Although possession of a document alone is insufficient to make it a public document, if the public body uses and retains a document in the performance of an official function, the document is a public record. *Howell Educ Assoc MEA/NEA v Howell Bd of Educ*, ___ Mich App ___; ___ NW2d ___ (2010) (Docket No 288977, issued January 26, 2010) slip op at 4. Thus, as plaintiff states, regardless of who prepared it, a document becomes a public record if it is used and retained in the performance of an official function. *Detroit News, Inc v Detroit*, 204 Mich App 720, 724-725; 516 NW2d 151 (1994) (concluding that telephone bills were a public record even though a private entity dictated "their form and content" because the city used and retained them to perform an official function—to document and pay the expenses of a public official). Here, defendant admitted it retained copies of the agreements and used them to ensure that the terms were fulfilled. Therefore, the settlement agreements are public records, despite the fact that the insurer's attorney negotiated and helped create them.

In addition, contrary to defendant's argument, the insurer's attorney represented *defendant* in the lawsuits and worked on its behalf, not the insurer's behalf. *Kirschner v Process Design Assoc, Inc*, 459 Mich 587, 598; 592 NW2d 707 (1999). Because defendant was the party to the suits, the settlement agreements are its records, not its insurer's records. Likewise, the fact

that defendant's insurer paid the money to settle the cases is immaterial. Defendant expended public funds to purchase the insurance and will expend additional public funds to pay future increased premiums because of the settlements. Moreover, our Supreme Court affirmed a trial court's conclusion that a settlement agreement resolving a lawsuit against a public body is a public record. *Detroit Free Press, Inc v Detroit*, 480 Mich 1079; 744 NW2d 667 (2008). Therefore, the Court concludes that there is no genuine issue of material fact that the settlement agreements and any documents setting forth the terms are public records.

Defendant also asserts that the amount of money paid to settle the lawsuits is exempt from disclosure because it falls within the "settlement agreement privilege." Plaintiff argues[1] that Michigan law does not recognize a "settlement agreement privilege" and, as a result, the exemption for "other privileges recognized by statute or court rule" in MCL 15.243(1)(h) does not apply. The Court agrees. Our Supreme Court has explicitly held, "there is no FOIA exemption for settlement agreements." *Detroit Free Press, supra* at 1079. Accordingly, defendant's reliance on *Goodyear Tire & Rubber v Chiles Power Supply, Inc*, 332 F3d 976, 980-81 (2003), in which the Court recognized a "settlement privilege" is misplaced.[2] MCL 15.243(1)(h) does not exempt disclosure of the settlement agreements.

Defendant asserts that "the federal court has stated that [the settlement] privilege applies to the mediation settlement agreement." However, the district court's statement is not binding on

[1] Plaintiff addressed each defense that defendant raised in its denial letters and its answers to the complaint. Defendant did not address several of the claimed exemptions in its brief in opposition to plaintiff's motion for summary disposition or in its brief in support of its motion for summary disposition. Accordingly, the Court concludes that it does not dispute that the amount of money paid to settle the lawsuits is not protected by the attorney-client privilege or other privileges listed in MCL 15.243(1)(h) [besides the "settlement privilege that it addressed] or by a federal court order sealing the agreement. Thus, the Court does not address plaintiff's arguments with respect to those exemptions.

[2] The Court notes that *Goodyear* did not involve a FOIA request, and the Court did not conclude that a settlement agreement was privileged. Rather, it held that the contents of settlement negotiations and statements made during settlement talks are privileged communications.

this Court. First, the district court simply explained that the Sixth Circuit is unique in protecting settlement agreements; it did not order the agreements or the case files sealed. In fact, the court specifically indicated that the settlement agreements were not court records and that it held a hearing on the Booth settlement because court approval was necessary because the student was still a minor. Thus, as plaintiff notes, the settlements are not sealed by court order. Further, as the district court indicated in its order to remand this case back to this Court, although it has the jurisdiction to enforce the agreements between the parties, it does not have jurisdiction over third parties. "[T]he settlement cannot control the outcome of a case involving different parties, much less insulate a question of Michigan law from review by the Michigan courts." Finally, as the district court also indicated, this case involves only a state law claim, not a federal law claim, and thus, federal law is inapplicable.

Defendant next asserts that because of the sensitive nature of the allegations, the details of the mediation settlement agreement are intimate and embarrassing and the release of the details will reopen old wounds; therefore, the privacy exemption of MCL 15.243(1)(a) applies. The Court disagrees. The FOIA provides that disclosure of "information of a personal nature" is exempt "if public disclosure would constitute a clearly unwarranted invasion of an individual's privacy." MCL 15.243(1)(a). Information of a personal nature is that which is "intimate, embarrassing, private, or confidential." *Mich Fed of Teachers & School Related Personnel, AFT, AFL-CIO v Univ of Mich*, 481 Mich 657, 676; 753 NW2d 28 (2008). The customs, mores, and ordinary views of the community inform a court's understanding of the privacy exemption. *Bradley v Saranac Commun Schools Bd of Educ,* 455 Mich 285, 294; 565 NW2d 650 (1997).

The Court agrees that the details regarding the hazing incidents are intimate, embarrassing, private and confidential information. There may also be other information in the

settlement agreements that would be intimate, private, or confidential. That material may be exempt. However, plaintiff only seeks the amount of money spent on the district's behalf to settle the lawsuits, not any of the other details of the settlements or the incidents themselves.

Generally, how public funds are spent is not private information. In *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 233; 507 NW2d 422 (1993), the Court concluded that the travel expense records of a public body, the Board of Regents, were not records of a personal nature, despite the fact that the expense reports might lead to personal information—the actual names of individuals the board was considering in its search for a new university president. Similarly, in *Detroit Free Press, Inc v Southfield*, 269 Mich App 275, 282; 713 NW2d 28 (2005), the Court concluded that the names of pension recipients combined with their pension amounts is not information of a personal nature because the information is not solely related to private assets or personal decisions. Rather, the amounts reflected specific governmental spending decisions regarding retirees' continued compensation and "'[t]he precise manner of the expenditure of public funds is not a private fact.'" *Id.* at 283 (citations omitted).

Here, the payment of money to settle the lawsuits is, in essence, the expenditure of public funds, which is not a private fact. Likewise, any documents that reflect the amount of money are similar to expense reports, which are not records of a personal nature. Although the details of the settlement agreements are confidential by their own terms, the Court concludes that the amount of money paid to settle the lawsuits is not confidential under the FOIA. The fact that the expense was incurred to settle lawsuits regarding embarrassing and private incidents does not make the expense personal information.

Because the Court finds that the information is not of a personal nature, it need not decide whether the disclosure would be a clearly unwarranted invasion of the individual's privacy.

State News, supra at 579. Therefore, the privacy exemption in the FOIA does not prevent disclosure of the sought-after information.

The last issue is whether the federal Family Educational Rights and Privacy Act ("FERPA"), 20 USC § 1232(g), exempts the disclosure of the amount of money paid to settle the lawsuits. The FERPA provides for the withholding of federal funding to schools that fail to keep "educational records" confidential. "Educational records" is defined as "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 USC § 1232(g)(4)(A). However, not every document that includes a student's name is an educational record. See *Owasso Ind School Dist v Falvo*, 534 US 426, 432-436; 122 S Ct 934, 938-941; 151 L Ed 2d 896 (2002) (concluding that student-graded assignments are not educational records). Generally, educational records are those that are academic in nature and contain information related to education—grades, academic performance, financial aid or scholastic probation. See *Bauer v Kincaid*, 759 F Supp 575, 591 (WD Mo, 1991); *Kirwan v The Diamondback*, 352 Md 74, 91; 721 A 2d 196 (1998) (noting that "the FERPA was obviously intended to keep private those aspects of a student's educational life that relate to academic matters or status as a student").

In particular, records that are related to a teacher or employee of the educational agency or institution are not protected. *Klein Independent School District v Mattox*, 830 F2d 576, 579 (CA 5, 1987). Records may clearly involve students as victims and witnesses and still not be educational records if "the records [are] directly related to the activities and behaviors of teachers." *Ellis v Cleveland Muni School Dist*, 309 F Supp 2d 1019, 1021-1023 (ND Ohio, 2004) (concluding that incident reports describing altercations between substitute teachers and

students, student witness statements regarding the altercations, and information regarding subsequent discipline of the teachers were not educational records governed by the FERPA).[3] See also *Wallace v Cranbrook Educ Commun*, 2006 US Dist LEXIS 71251, 2006 WL 2796135 (ED Mich, 2006) (holding that unredacted student witness statements concerning a maintenance employee's alleged inappropriate sexual behavior toward students were not "education records" under FERPA, and thus, were subject to discovery in the employee's wrongful discharge suit); and *Baker v Mitchell-Waters*, 160 Ohio App 3d 250, 252; 826 NE2d 894, 896 (Ohio App 2 Dist, 2005) (concluding that the county board's records relating to allegations of abuse or neglect of students by teachers were not protected from discovery by FERPA, because the requested documents did not contain information directly relating to students).

Here, the underlying lawsuits alleged misconduct on the part of school employees. Accordingly, the information sought in this case is not simply about the student-plaintiffs' private affairs, rather, it clearly involves the actions of the employees of a public body at work and that public body's expenditures. As in *Ellis*, although the settlement agreements may be linked to students as victims and witnesses, they are also directly related to the alleged improper activities of the coaches. Additionally, unlike in *Ellis* and *Wallace* where the reports and statements apparently included the student's names, plaintiff does not seek identifying information, but only the amount of monetary damages paid to settle the lawsuits. Furthermore, simply because a student has chosen to sue a school does not "transmogrify" the tort claim and any settlement resolving it into an educational record. See *Poway Unified School Dist v Superior Court (Copley Press)*, 62 Cal App 4th 1496, 1507; 73 Cal Rptr 2d 777 (1998) (concluding that FERPA did not prohibit the release of the names of students who filed tort claims against a

[3] The Court acknowledges that it is not bound by this decision, or *Wallace, infra* and *Baker, infra*; however, it finds the reasoning helpful and persuasive. *Abela v Gen'l Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004).

school district arising out of a hazing incident because those records were not educational records). Thus, the Court concludes that the information sought regarding the amount of money paid to settle the lawsuits is not an educational record as contemplated by the FERPA.

In sum, the Court concludes that neither the FERPA nor any exemption under the Michigan FOIA exempts disclosure of the amount of money defendant paid to settle the underlying lawsuits. Plaintiff is entitled to that specific, nonexempt material.

Plaintiff also argues that it is entitled to attorney fees and costs incurred in enforcing the FOIA. The Court agrees. Under the FOIA, if the person asserting the right to receive a copy of all or a portion of a public record prevails in an action, the court "shall" award reasonable attorney fees and costs. MCL 15.240(6); *Detroit Free Press v Southfield, supra* at 289. Whether defendant's action in denying the FOIA request was reasonable is irrelevant. *Id.* Here, plaintiff "prevailed" in the FOIA action because the action was reasonably necessary to compel disclosure and the action substantially caused the delivery of the information to the plaintiff. *Id.* Defendant refused to disclose the information sought and would not have disclosed it without an order from the court. Thus, plaintiff prevailed in the action and is entitled to reasonable attorney fees and costs.

Plaintiffs' Motion for Summary Disposition is GRANTED. Defendant's Motion for Summary Disposition is DENIED.

It is so ordered.

Dated: March 30, 2010

Calvin L. Bosman, Circuit Judge

EXHIBIT B

IN THE SUPERIOR COURT
OF
GRAHAM COUNTY, STATE OF ARIZONA

Date: August 22, 2011

JUDGE D. COREY SANDERS

By: Kristi Ferguson, Judicial Assistant

MATTHEW HELLER, an individual,

Plaintiff,

vs.

SAFFORD UNIFIED SCHOOL DISTRICT, a public body,

Defendant.

Case No. **CV2011-00165**

UNDER ADVISEMENT RULING

After hearing oral argument on August, 18, 2011, the Court took under advisement the issue of whether the confidential settlement agreement entered into between Savanna Redding and the Safford Unified School District should be disclosed to the plaintiff pursuant to A.R.S. 39-121.01, Arizona's Public Records law.

The Court finds the following facts:

1. Savanna Redding and the Safford Unified School District entered into a confidential settlement agreement for damages she claimed due to an unlawful strip search conducted by school personnel.

2. Safford Unified School District is a public body.

3. The settlement agreement, including any payment records maintained by the school district, are public records and are subject to disclosure, upon proper request by any person.

4. Plaintiff requested disclosure of the records, but his request was denied by the district, citing the federal Family Educational Rights and Privacy Act ("FERPA").

5. Plaintiff filed a special action in this Court pursuant to A.R.S. 39-121.02 after the district denied access to the documents requested.

6. The stated purpose of the Arizona public records statute is to encourage transparency and full disclosure. The statutes and case law cited by plaintiff clearly supports his position.

7. Defendant school district cites a section-by-section analysis of FERPA which indicates an

interpretation by the federal Department of Education that settlement agreements relating to discrimination, wrongful death or other lawsuits are education records entitled to protection under FERPA. The district relies on an undocumented opinion by an official of the Department of Education which states that disclosure of the subject settlement agreement would violate FERPA.

8. The policy of FERPA is to protect the privacy rights of individuals by non-disclosure of educational records and does include records maintained by a school district after the student is no longer enrolled at the institution.

9. The facts of the civil lawsuit brought by Savanna Redding against the Safford Unified School District were widely publicized, including her identity and the identity of the school employees involved in the illegal search. Except for the terms of the settlement agreement, no other information has been kept private.

10. The district asserts that it does not maintain any records of actual payment or directives for payment pursuant to the terms of the settlement agreement and that the agreement does not need to be redacted to protect the privacy interests of any individuals.

As conclusions of law, the Court finds that the privacy interests of the former student, Savanna Redding, is minimal when weighed against the greater public interest for transparency in the expenditure of public funds by the district. FERPA does not address whether settlement agreements are prohibited from disclosure. The Court finds that the Arizona public records law and the cases interpreting it are more directly on point in resolving this matter. The state law is clear that disclosure is mandated. The district relies on a comment to a federal rule and can cite no federal or state case law on point.

The Court also notes that pursuant to CFR 99.31(a)(9)(i), FERPA would not be violated if disclosure of educational records is pursuant to Court order.

For the foregoing reasons, the Court grants the relief requested in plaintiff's special action and orders the Safford Unified School District to disclose the settlement agreement entered into between it and Savanna Redding, without redaction.

Each party shall bear their own costs and fees.

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