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Stephanie Waller

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 FILE NO. 2025 CV 083495

PLAINTIFF'S RULE NISI MOTION

Plaintiff respectfully submits that Defendant is subject to the Open Records Act, O.C.G.A. § 50-18-70 *et seq*., and, as a factual and legal matter, will be unable to carry its burden of establishing that the records requested by Plaintiff are otherwise exempt from disclosure. *See Appen Media Grp., Inc. v. City of Sandy Springs*, 374 Ga. App. 841, 844 (2025) (Here, it was the [agency's] burden to show why the requested records should not be disclosed as a matter of law.) (citing *Napper v. Ga. Television Co.*, 257 Ga. 156, 161 (e) (1987)).

To secure the just, speedy, and inexpensive determination of this action, *see* O.C.G.A. § 9-1 1-1, the Plaintiff requests that the Court complete and enter the attached Proposed Rule Nisi (Ex. A) setting this matter for a hearing at the Court's earliest convenience, affording Defendants a full and fair opportunity to show cause,

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if any they have, why Plaintiff's Open Records Act requests should not now be complied with.[1]

I. Background

a. The Request

Laura Corley, a journalist with the Macon Melody, sent an ORA request to the Bibb County School District. Complaint, Ex. A. The request sought "[r]ecords that reflect the dollar amounts of settlements the school board approved in 2024." Complaint, Ex. A. Ms. Corley was "not seeking **access to any other information within** any settlement agreements, only the dollar amounts." *Id.*

b. The District's Denial of Access

The District responded:

> 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.

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[1] The Court has broad discretion to set and amend its schedule. O.C.G.A. § 15-1-3 (Every court has power: (6) To amend and control its processes and orders, so as to make them conformable to law and justice. and to amend its own records, so as to make them conform to the truth[.]); *Ellis v. Cameron & Barkley Ca*, 171 Ga. App. 211, 211, (1984) (Much latitude of discretion must be allowed the Courts, as to their mode of conducting business[.]Discretion in regulating and controlling the business of the court is necessarily confided to the judge; and this [Court of Appeals] should never interfere with its exercise unless it is made to appear that wrong or oppression has resulted from its abuse.) (internal citations omitted).

> 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.

Complaint, Ex. B. That same day, Ms. Corley responded: A dollar amount wouldn't include 'confidential, personally-identifiable, education-related information about a particular BCSD student.' *Id.*

The District said nothing further in response.

c. The District's Past Practice Regarding Disclosure of Settlement Amounts

The District routinely discloses litigation settlement amounts on their meeting minutes, which is appropriate, considering that the information is public by law. In February 2019, the District's Board meeting minutes reflected the fact that a settlement had been approved for J.G. in the amount of $17,500.00. Complaint, Ex. C. Similarly, in October 2017, the District's Board meeting minutes reflected the fact that a settlement had been approved for M.M. for $100,000.00 plus $44,000.00 in Medicare set aside, and for S.M. for $125,000.00. Complaint, Ex. D. In contrast, the meeting minutes from July 18, 2024 state: Settlement for Student JH (ACTION). The Board voted unanimously to approve this action item. Complaint, Ex. E.

To be clear, the only reason why Plaintiff has any reason to believe that this settlement agreement implicates a student is because the District volunteered that information, on their meeting minutes and in correspondence (*supra*) with the Plaintiff. Complaint, Ex. B, Ex. E. Now, the District self-servingly argues that it cannot disclose the dollar amount of the settlement agreement because Plaintiff already knows that the settlement agreement relates to a student. This argument misses the critical fact that the only reason why Plaintiff has any reason to believe that the settlement relates to a student is because Defendant inexplicably chose to provide that information to the public. *See id*. The District cannot strategically insulate public records from disclosure by first (1) intentionally disclosing that the settlement relates to a student and then (2) arguing that because Plaintiff knows the settlement involves a student, the records are inaccessible under FERPA.

d. The Attorney General's Warning to the District

Ms. Corley filed previous requests for similar settlement information with the District. The District responded to those requests by relying on *Mullins v. City of Griffin*, 886 F. Supp. 21 (N.D. Ga. 1995). In response, Ms. Corley sent a complaint regarding the District's denial of access to the Attorney General. After receiving the complaint and a response from the District, the Attorney General concluded: "it does not appear that *Mullins v. City of Griffin*, 886 F. Supp. 21 (N.D. Ga. 1995) supports the school district's position on the non-release of the settlement agreement, should a financial settlement have been reached." Complaint, Ex. F.

Despite receiving this warning letter from the Attorney General in April 2025, the District still denied the request at issue in this matter (which was even more narrowly tailored than the original, broader request that the Attorney General reviewed).

II. Legal Argument

By way of this Rule Nisi Motion, Plaintiff requests a final hearing before this Court, providing Defendant with a full opportunity to meet its burden of proof as to why the relief sought in the Complaint should not be granted.

A. The Sought Records Are Public Pursuant to the Open Records Act

The Open Records Act, §§ 50-18-70 *et seq*., provides a broad right of access to public records:

> The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and **so that the**

> **public can evaluate the expenditure of public funds** and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records.

O.C.G.A. § 50-18-70 (emphasis added). And the Open Records Act 'expressly creates a private right of action to enforce the obligations imposed on persons or agencies having custody of records open to the public under the Act.' *Blau v. Georgia Dep't of Corr.,* 364 Ga. App. 1, 5 (2022) (citing *Blalock v. Cartwright*, 300 Ga. 884, 887 (II) (2017); O.C.G.A. § 50-18-73 (a)).

When a Court analyzes whether records must be disclosed pursuant to the ORA, the first inquiry is whether the documents at issue are 'public records.' *Blau v. Georgia Dep't of Corr.,* 364 Ga. App. 1, 5, 873 (2022) (internal citations omitted). If the documents are public records, the second inquiry is whether they are protected from disclosure under a statutory exemption. *Id*.

These records easily meet the first prong of the test, and Defendant's response does not argue otherwise. Complaint, Ex. B. The ORA defines a "public record" as all "documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency…." O.C.G.A. § 50-18-70 (b)(2). This definition necessarily includes settlement agreements created and/or entered into by public agencies, which are "documents… prepared and maintained or received by an agency…." *See id*. Indeed, the declared intention of the Legislature in enacting the ORA was "so that the public can evaluate the expenditure of public

funds and the efficient and proper functioning of its institutions." O.C.G.A. § 50-18-70. To that end, the law must be "broadly construed to allow the inspection of governmental records." *Id.*

B. FERPA Does Not Bar Release of A Public Settlement Agreement, especially if the Agreement is Redacted to Show Only the Dollar Amount Spent by the District

The Family Educational Rights and Privacy Act (FERPA) is a federal statute that governs the disclosure of student educational records by schools that receive federal funding. 20 U.S.C. § 1232(g). To the extent that FERPA applies, it acts as an exemption to the Open Records Act. O.C.G.A. § 50-18-72 (a)(1)(Public disclosure shall not be required for records that are… [s]pecifically required by federal statute or regulation to be kept confidential….).

The critical question posed by this case is whether FERPA specifically requires the dollar amount of a settlement agreement to be kept confidential, (*see id.*) and of course, it does not.

FERPA provides for the withholding of federal funding to schools that fail to keep educational records confidential. "Educational records" is defined as 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 U.S.C. § 1232(g)(4)(A).

Few state courts have had the opportunity to review the question of whether the dollar amount of a settlement agreement qualifies an "educational record" under FERPA. However, it appears that the few existing decisions wholeheartedly

support Plaintiff's position. As a Michigan state court observed when considering whether a settlement agreement was public under that state's public records law despite the fact that it involved a student, potentially implicating FERPA, "not every document that includes a student's name is an educational record." *The Herald Publishing Company, LLC v. Coopersville Area Public Schools*,[2] Circuit Ct. Case No. 09-01400-PZ, March 30, 2010 (concluding that FERPA did not bar the release of dollar amounts of a school settlement agreement involving a student) (*citing Owasso Ind School Dist v. Falvo*, 534 U.S. 426, 432-436 (2002)).

A trial court judge in Arizona reached the same conclusion when applying FERPA to a public school settlement agreement involving a student, stating that "the privacy interests…of the former student…is minimal when weighed against the greater public interest for transparency in the expenditure of public funds by the district." *Heller v. Safford Unified School District*, Superior Ct. of Graham Co., Case No. CV2011-00165.[3] The *Heller* Court further observed that despite the existence of "an undocumented opinion by an official of the Department of Education which states that disclosure of the subject settlement agreement would violate FERPA," the fact remained that the "FERPA [statute] does not address whether settlement agreements are prohibited from disclosure," and that the district's reliance upon "a comment to the federal rule" was unconvincing, given that the district could cite to no federal statute or case that supported its position. *See id*. Accordingly, the *Heller* Court ordered the production of the sought records.

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[2] A copy of this trial court order is attached hereto.
[3] A copy of this trial court order is attached hereto.

The highest court in Massachusetts similarly concluded that while much of the information within a settlement agreement involving a disabled student was protectable under FERPA, a redacted version of the record must nevertheless be provided to the requester. *Champa v. Weston Pub. Sch.,* 473 Mass. 86, 98–99, 39 N.E.3d 435, 446 (2015) ("Notably, once personally identifiable information is redacted, the financial terms of such agreements, which necessarily reflect the use of public monies, partially or fully, to pay for out-of-district placements, do not constitute an unwarranted invasion of personal privacy; indeed, the public has a right to know the financial terms of these agreements.").

Federal courts applying FERPA have reached the same conclusion, pointing out that "[t]he language of FERPA does not provide…a reason to object to production of settlement agreements," when the agreements are "not related to student academic performance, financial aid, or scholastic probation, nor are they of a type specifically excluded from production by FERPA. Without any such protection, there is no impediment to their production by Defendants." *Dahmer v. W. Kentucky Univ.,* No. 118CV00124JHMLLK, 2019 WL 1781770, at *7 (W.D. Ky. Apr. 23, 2019).

There may be some unbinding federal guidance from the Department of Education that argues in Defendant's favor (although after a reasonable search, Plaintiff's Counsel was unable to locate any such guidance). However, to the extent that such guidance exists, it is not binding upon this Honorable Court. The practices of the Department of Education, "like any other interpretive aid— can

inform a court's determination of what the law is," but the views and practices of the Department of Education do not, and cannot, supersede the judgment of the judiciary in applying black letter law to fact. *Loper Bright Enters. v. Raimondo,* 603 U.S. 369, 386–87, (2024) (internal citations and quotations omitted).

Again, to be clear, Plaintiff is only seeking the ***dollar amounts*** of the settlement agreements entered into in the year 2024— as opposed to personal identifying information relating to any individual. The District has provided no reasonable explanation, factual or legal, for its absurd statement that "The dollar amounts contemplated by the JH settlement include confidential, personally-identifiable, education-related information about a particular BCSD student." Complaint, Ex. B. The information is public under Georgia's Open Records Act, and FERPA does not otherwise bar the information's release.

Plaintiff's request is simple— redact the entire settlement agreement, except for the line(s) containing the dollar amount(s) paid by the District pursuant to the settlement, and provide that redacted agreement pursuant to the Open Records Act. The mere disclosure of the District's expenditure of public funds would not violate FERPA, or any other law, and therefore, such disclosure is required under the ORA.

C. Relief Sought

Plaintiff requests that the Court require the Defendant to produce the requested records, and that the Court find that the Defendant violated the Open Records Act, O.C.G.A. § 50-18-70 *et seq*. Plaintiff also seeks recovery of its reasonable attorney fees and litigation costs pursuant to O.C.G.A. § 50-18-73(b).

i. Compliance with the Act

The Act provides that the superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. O.C.G.A. § 50-18-73 (a). Plaintiff seeks to enforce the District's compliance with the Act, specifically, Plaintiff asks that this Court issue an order directing the District to comply with the law by providing responsive records with appropriate redactions except for the public dollar amount(s) of the settlement, and that the Court also find that a violation of law occurred when the District denied access in June of 2025.

ii. Attorney's fees and costs

Attorney's fees should be awarded to a successful Open Records Act plaintiff if it appears that the defendant acted without substantial justification in withholding responsive records, and that no special circumstances exist which would preclude Plaintiff from obtaining relief in the form of attorney's fees and costs. *See* O.C.G.A. § 50-18-73 (b).

Given the legislature's finding that public access to public records should be **encouraged**, O.C.G.A. § 50-18-70, the best way to encourage access to public records is to award fees to successful plaintiffs, absent truly extraordinary or special circumstances. O.C.G.A. § 50-18-73 (b). *See Chua v. Johnson,* 336 Ga. App. 298, 302 (2016); *see also Deal v. Coleman,* 294 Ga. 170, 172(1)(a) (2013) (when we apply a

statute we must presume that the General Assembly meant what it said and said what it meant) (citation and punctuation omitted); OCGA § 50–18–70(a) (stating that it is the intent of the General Assembly that ORA be construed in favor of granting access to public records).

III. Conclusion

Plaintiff asks that this Court complete the attached Rule Nisi (Ex. A) and set this matter for a hearing, at which the District can attempt to meet its burden of proof to establish that it did not violate the Open Records Act when it failed to provide Plaintiff with appropriate redacted records.

Respectfully submitted this the 4th day of August, 2025.

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/s/ Joy Ramsingh

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EXHIBIT A

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

GEORGIA TRUST FOR LOCAL NEWS, LLC, D/B/A THE MACON MELODY,	)	
Plaintiff,	)	CIVIL ACTION FILE NO. ____________________
v.	)	
THE BIBB COUNTY SCHOOL DISTRICT,	)	
Defendant.	)	

RULE NISI

Plaintiff's Rule Nisi having been read and considered, Defendant is hereby ordered to be and appear before the Court at __________ am/pm on the ________ day of ______________, 2025, in Courtroom ___ of the Bibb County Courthouse at 601 Mulberry Street, Macon, GA 31201, and show just cause, if any they have, why an Order should not issue compelling them to comply with Plaintiff's Open Records Act requests.

SO ORDERED, this the _______ day of ______________, 2025.

____
Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2025, I caused to be electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the court's electronic filing system, which will automatically send e-mail notification of such filing to all counsel of record.

/s/ Joy Ramsingh
Joy Ramsingh (GA Bar #862332)

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

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[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.

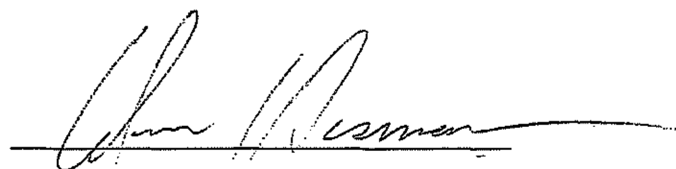
In sum, the Court concludes that neither the FERPA nor any exemption under the Michigan FOIA exempts disclosure of the amount of money defendant paid to settle the underlying lawsuits. Plaintiff is entitled to that specific, nonexempt material.

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

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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