Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
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Reviewer: Victoria H

STATE OF RHODE ISLAND, PROVIDENCE, SC.	**SUPERIOR COURT**
NATIONAL EDUCATION ASSOCIATION OF RHODE ISLAND, and NATIONAL EDUCATION ASSOCIATION – SOUTH KINGSTOWN, *Plaintiffs,* **vs.** **SOUTH KINGSTOWN SCHOOL COMMITTEE, by and through its Members, Christie Fish, Kate McMahon Macinanti, Melissa Boyd, Michelle Brousseau and Paula Whitford, SOUTH KINGSTOWN SCHOOL DEPARTMENT, By and through its Acting Interim Superintendent Ginamarie Massiello, NICOLE SOLAS, and JOHN DOE HARTMAN,** *Defendants.*	**C.A. No. PC21-05116**

PARENTS' MOTION FOR SUMMARY JUDGMENT

Defendants Nicole Solas and Adam Hartman ("Parents") hereby move for summary judgment and submit the following memorandum of law in support of their Motion for Summary Judgment. Plaintiffs National Education Association Rhode Island ("NEARI") and National Education Association South Kingstown ("NEASK") (collectively "Plaintiffs") lack standing to bring this action and Parents are immune from suit under Rhode Island's anti-SLAPP statute, R.I. Gen. Laws § 9-33-1, *et seq* ("anti-SLAPP statute"). There are no genuine issues of material fact as to Plaintiffs' liability for violating the anti-SLAPP statute and Parents are entitled to dismissal of Plaintiffs' lawsuit and judgment as a matter of law.

INTRODUCTION

This lawsuit is an unprecedented attempt to enjoin the statutory public records process and stop citizens from seeking public information in good faith about the operations of their government. This extraordinary case is brought by a party without standing, disregards the entire statutory scheme under the Access to Public Records Act ("APRA"), R.I. Gen. Laws § 38-2-1, *et seq.*, and is an affront to Parents' rights to open and transparent government under the APRA, the anti-SLAPP statute, and the United States and Rhode Island Constitutions.

Judgment should be entered in favor of Parents on the grounds that Plaintiffs lack standing and that Parents are immune from suit under R.I. Gen. Laws § 9-33-2. In addition, the Court should award Parents costs and reasonable attorney fees for having to defend this action. This matter should be left open only for limited discovery to ascertain whether damages should be awarded under § 9-33-2(d) against Plaintiffs for bringing a frivolous action for the purpose of harassing Parents and inhibiting their statutory and constitutional rights, as set out in Defendants' concurrently filed Motion for Limited Discovery.

STATEMENT OF FACTS

This lawsuit was brought because Nicole Solas wanted to know what her public school would be teaching her daughter in kindergarten.

Nicole did what any responsible parent would do in that situation, and asked the principal of Defendant South Kingstown School Committee ("School Committee") what her daughter would be taught in the upcoming school year. Compl. ¶ 13. Rather than

answer the questions of a concerned parent, school officials directed Nicole to submit formal public records requests under APRA, instead. *Id.* at ¶ 14. So she did—whereupon school officials and attorneys told her she would have to pay thousands of dollars for them to comply with her records requests. May 14, 2021 Letter to Solas attached as Exhibit 1. Unable to pay that price, Nicole resubmitted narrower requests. *See, e.g.,* Responses to May 14, 16, 18, 2021 APRA Requests attached as Exhibit 2.

Nicole then paid for some of records to get answers to questions the School Committee had up until that point refused to provide. But instead of receiving answers to her questions, let alone comprehensive record responses, what she got instead was page after page of heavily (often completely) redacted documents. Examples of the thousands of pages of redacted documents are attached as Exhibit 3.

Unsatisfied with such inadequate responses to basic questions about her daughter's education, Nicole and her husband, Adam Hartman, submitted additional records requests. Because of the onerous fees the School Committee had assessed regarding her previous requests, they chose to submit narrow, individual requests rather than submitting several large requests. This allowed them to estimate the potential fees and determine what was provided, what was withheld, and how much it would cost to receive answers to their questions.

Apparently viewing the Parents' requests as too numerous, the School Committee then threatened to sue Nicole. On June 2, 2021, the School Committee Defendants placed on the Committee's agenda "[f]iling lawsuit against Nicole Solas to challenge filing over

160 APRA requests." Exhibit 4. Not surprisingly, the School Committee's actions met with widespread community outreach and disapproval.

At the same time the School Committee was planning to sue Nicole, Plaintiffs also started discussions about her. On August 2, 2021, Plaintiffs filed this lawsuit against Nicole and her husband, and requested a Temporary Restraining Order and Preliminary Injunction, contending that the records she requested would reveal teacher records "of a personal nature," as well as records "about union-related activities," which the Plaintiffs contend are not subject to public disclosure. Compl. ¶¶ 65–66.

Plaintiffs filed this action naming Parents as Defendants even though the School Committee has been processing the Parents' APRA requests, and aggressively applying APRA exemptions to those requests, *see* Exhibits 1–3, including with the assistance of capable outside counsel, Exhibit 5.

Plaintiffs' suit is unquestionably an explicit attempt to prevent Parents from exercising their statutory and constitutional rights to petition their government for disclosure of public information. Plaintiffs lack standing, and this case is an abuse of APRA and lacks any legal merit. It constitutes a Strategic Lawsuit Against Public Participation ("SLAPP") and for that reason, Parents are entitled to judgment. The Court should also award Parents attorney fees and costs.

ARGUMENT

A party is entitled to summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is

entitled to judgment as a matter of law." R.I. R.Civ. P. 56(c). A motion for summary judgment is the proper vehicle for resolving an anti-SLAPP claim. *Hometown Props., Inc. v. Fleming,* 680 A.2d 56, 63 (R.I. 1996).

I. Plaintiffs lack standing to bring this case.

In a string of cases reaffirmed for nearly three decades, the Rhode Island Supreme Court has made it clear that Plaintiffs have no standing to initiate a preemptive case against a public records requester seeking public information under APRA. Consequently, the Complaint fails to allege any viable cause of action, and should be immediately dismissed.

In 1991, the Rhode Island Supreme Court addressed the exact situation presented in this case. In *Rhode Island Federation of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991), a teachers' union sought to enjoin production of records related to its members' pension benefits. *Id.* at 799. The union asserted that the pension benefit information would violate its members' privacy rights. *Id.* at 800. The trial court denied the union's request for injunctive relief "on the ground that APRA simply did not provide an injunctive remedy to persons or entities seeking to block disclosure of records"—exactly the situation in this case, *id.*, and the Supreme Court affirmed, unequivocally and unanimously agreeing that APRA "only provides a remedy for those persons or entities that are denied access to public records." *Id.* In every other APRA case decided after that, the Supreme Court has held that APRA does not permit third parties to sue as Plaintiffs are doing in this case. "[W]hen a statute is free from ambiguity and expresses a clear and definite meaning, the court must accord to the words of the statute such clear and obvious

import without adding to or detracting from the plain everyday meaning of the words contained in the statute." *Id.* at 802.

The Court confronted the issue again in 1997 and 2004. In both cases, the Court reiterated that APRA does not provide a party, such as the union, with standing to challenge somebody else's public records request.

In 1997, depositors with insolvent state-chartered banks sought injunctive relief to prevent the governor from disclosing, pursuant to APRA, the names and other information related to depositors who lost money when the Rhode Island Share and Deposit Indemnity Corporation became insolvent. *Portbriand v. Sundlun*, 699 A.2d 856, 860 (R.I. 1997). The Court rejected the depositors' argument that under APRA they can challenge the governor's release of information: "[W]he have held that [APRA] affords no right to prevent the release of private information. … *APRA does not contemplate 'reverse-FOIA' suits*." *Id.* at 867 (emphasis added).

The Court addressed the issue again in 2004, reiterating that "APRA provides a remedy only to those people who are denied access to public records; *it does not provide a remedy to prevent public agencies from disclosing records.*" *In re New England Gas Co.*, 842 A.2d 545, 547 (R.I. 2004) (emphasis added). In that case, the Court rejected the plaintiff's argument that it could bar disclosure of information related to expenses incurred during a labor dispute, based on the holdings from *Pontbriand* and *Rhode Island Federation of Teachers*.

The reasons for this clear line of precedent are plain. If Plaintiffs' remote, speculative, and unsubstantiated claims of harm were sufficient to state a cause of action

against a citizen who exercises her rights under APRA, the result would be to turn the public records statute entirely upside down. APRA exists for the specific purpose of "facilitat[ing] public access to public records." R.I. Gen. Laws § 38-2-1. It is intended to "open up various state government documents to inspection by private citizens and news-gathering entities in order to enhance the free flow of information." *Hydron Labs, Inc. v. Dep't of Atty. Gen.*, 492 A.2d 135, 137 (R.I. 1985). APRA is also a careful, finely wrought statutory scheme that allows public entities to review requests and grant or deny them, or apply the law's specific, enumerated exemptions. R.I. Gen. Laws §§ 38-2-2, 38-2-3. It also allows records requesters—and *only* records requesters—to seek administrative and judicial relief if responsive records are not provided. R.I. Gen. Laws § 38-2-7. It provides no mechanism whereby third parties may intercede to block a records request, as Plaintiffs are attempting here.

If Plaintiffs' case were allowed to proceed, it would serve as precedent that *any* private third party could interject itself into the public records process. That would allow private parties to disrupt statutory deadlines, R.I. Gen. Laws § 38-2-3(e), and demand relief that is not provided for by law, such as Plaintiffs request in their Complaint ¶ 71(A-B)—and it would ultimately obstruct "the free flow and disclosure of information to the public," *Providence Journal Co. v. Rhode Island Dep't of Public Safety*, 136 A.3d 1168, 1174 (R.I. 2016) (internal marks and citation omitted), that the Assembly has expressly provided for, and that Rhode Island courts have affirmed time and again. That is not and should not be the law. It would also inundate the courts with demands to issue advisory opinions on documents and records for which no party to the APRA process has sought

judicial review. *H.V. Collins Co. v. Williams*, 990 A.2d 845, 847 (R.I. 2010) ("The Supreme Court will not entertain an abstract question or render an advisory opinion."). The APRA was not crafted to allow for this.

The fact that Plaintiffs have no legal basis to sue the Parents (or the School Committee) is dispositive of this case. Judgment must be entered in favor of Parents because Rhode Island law has consistently held that reverse-FOIA cases like this are simply not allowed in Rhode Island.

II. Plaintiffs' action violates Rhode Island's anti-SLAPP statute.

This case was brought by Plaintiffs against the Parents *specifically because* the Parents exercised their constitutional and statutory rights to petition government and to speak on a matter of public concern. It is a textbook example of a Strategic Lawsuit Against Public Participation.

The Rhode Island General Assembly enacted the Anti-SLAPP statute to encourage "full participation by persons and organizations and robust discussion of issues of public concern." R.I. Gen. Laws § 9-33-1. That law's purpose is "to secure the vital role of open discourse on matters of public importance, and we shall construe the statute in the manner most consistent with that intention." *Hometown Props., Inc. v. Fleming,* 680 A.2d 56, 62 (R.I. 1996). It was "the General Assembly's clear design that conditional immunity apply to all legitimate petitioning activity that becomes the subject of a punitive civil claim." *Id.* at 63.

Under the anti-SLAPP statute, "immunity will apply as a bar to *any* civil claim … directed at petition or free speech" activity. R.I. Gen. Laws § 9-33-2(a) (emphasis added).

"Petition or free speech" activity is defined broadly to include "any written or oral statement made in connection with an issue of public concern," or any statement submitted to a legislative body or any other governmental proceeding, or made in connection with a matter under consideration by the judiciary. *Id.* at (e).

The Parents' public records requests are plainly written statements on a matter of public concern—they relate to the content of teaching materials and the operation of public schools. The requests were submitted to an elected legislative body, pursuant to state law. Thus, Parents are immune from suit, unless their petition or free speech constitute a "sham," which it plainly does not.

Instead, Parents lawfully exercised their rights to petition and free speech under the Anti-SLAPP statute by seeking public information about public activities of a public-school board. Parents were named as defendants in this case expressly because of those protected activities. The Anti-SLAPP statute therefore applies, and prohibits this suit.

A. The Parents' public records requests constitute protected activity under the anti-SLAPP statute.

A party "shall be conditionally immune from civil claims" when such claims are based on the party's exercise of "his or her right of petition or of free speech." R.I. Gen. Laws § 9-33-2(a). A party's exercise of his or her right to free speech is broadly defined to mean:

> [1] any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; [2] any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; or [3] any written or oral statement made in connection with an issue of public concern.

Id. at (e).

The public records requests at issue in this case easily meet this definition. First, the requests were obviously "written statements." Complaint, App. B. Second, the entire purpose of the APRA is for the pubic to have open access to "issue[s] of public concern." The APRA exists for the purpose of "facilitat[ing] public access to public records." R.I. Gen. Laws § 38-2-1. It is intended to "open up various state government documents to inspection by private citizens and news-gathering entities in order to enhance the free flow of information." *Hydron Labs.*, 492 A.2d at 137. And Rhode Island courts have "long recognized that the underlying policy of the APRA favors the free flow and disclosure of information to the public." *Providence Journal Co.*, 136 A.3d at 1173. In other words, requests under APRA are "made in connection with an issue of public concern," as the entire purpose and structure of the law is to facilitate the public's right to access public information. R.I. Gen. Laws §§ 9-33-1 & 9-33-2(e). Thus, public records requests generally fall within the broad ambit of the Anti-SLAPP statute.

In this case specifically, the public records requests seek information from the School Committee, a public body, about the activities of public officials, including the school superintendent and public school officials, on matters relating to public education—issues from curriculum to discipline to teacher training. Compl., App. B. The operations and functions of public school bodies and the manner in which children are educated in public schools are plainly and obviously "issue[s] of public concern." The

public records requests in this case specifically were thus made in connection with significant issues of public concern.

Finally, the records requests were made to a "legislative body"[1] in a statutory "governmental proceeding" governed by the APRA. R.I. Gen. Laws § 9-33-2(e).

Under the broad definition of the "right to petition or of free speech," therefore, there is no serious question that the public records requests at issue in this case are protected under the anti-SLAPP statute.

B. This lawsuit was directed at Parents' petition and free speech activity.

Nor is there any dispute that this case is specifically directed at the Parentsbecause they exercised their rights to petition government and to free speech. Under the anti-SLAPP statute, "immunity *will* apply as a bar to any civil claim … directed at petition or free speech" as defined in the statute. R.I. Gen. Laws § 9-33-2(a) (emphasis added). This lawsuit was filed against the Parents in response to the Parents' public records requests. *See* Compl. ¶ 7 ("Defendant Nicole Solas ("Solas") is an individual who has submitted approximately two-hundred (200) separate requests for records from the School Department."); *id.* at ¶ 8 ("Defendant John Doe Hartman ("Hartman") is in [*sic*] individual who has submitted approximately twenty (20) separate requests for records from the School Department."). Thus, this lawsuit, which named Parents as Defendants in a manner that is not authorized or contemplated by the APRA, is specifically directed at

[1] *See Felkner v. Chariho Reg'l Sch. Comm.*, 968 A.2d 865, 870 (R.I. 2009) ("a member of the school committee is considered an elected official."); *Town of Johnston v. Santilli*, 892 A.2d 123, 129 (R.I. 2006) ("school committees … are … municipal bodies.").

them for exercising their statutory right to request public information from the government. Plaintiffs' Complaint concedes that the lawsuit was brought because of Parents' public records requests. In other words, the Complaint itself establishes the anti-SLAPP violation.

B. Parents' public records requests cannot be deemed to constitute a "sham."

Because Plaintiffs' case is directed at the Parents' rights to petition the government and to free speech, "immunity will apply … except if the petition or free speech constitutes a sham." R.I. Gen. Laws. § 9-33-2(a). Under the Anti-SLAPP statute, the petition or free speech only constitutes a sham if it is *both*:

> (1) Objectively baseless in the sense that no reasonable person exercising their right of speech or petition could realistically expect success in procuring the government action, result, or outcome, and
>
> (2) Subjectively baseless in the sense that it is actually an attempt to use the governmental process itself for its own direct effects. Use of outcome or result of the governmental process shall not constitute use of the governmental process itself for its own direct effects.

Id. at (a)(1) and (2). Under this definition, the Parents' records requests cannot, as a matter of law, constitute a sham.

First, the Parents' public records requests cannot be characterized as "objectively baseless" because the Parents can and should "realistically expect success in procuring" government action, i.e., responsive records. Under the APRA, unless specifically exempted, *all* records maintained or kept on file by *any* public body, whether or not those records are required by any law or by any rule or regulation, "shall be public records and every person or entity shall have the right to inspect and/or copy those records." R.I. Gen.

Laws Ann. § 38-2-3. And the presumption is always in favor of disclosure, not secrecy. *Cf. Providence Journal Co. v. Convention Ctr. Auth.*, 774 A.2d 40, 46 (R.I. 2001) ("[T]he basic policy of APRA favors public disclosure of the records of governmental entities.").

What's more, "an agency bears the burden of showing that records requested pursuant to APRA are not subject to disclosure." *Pontarelli v. R.I. Dep't of Elementary & Secondary Educ.*, 176 A.3d 472, 480 (R.I. 2018). And when interpreting an ambiguous provision of the APRA, the Court should interpret that provision in a manner consistent with APRA's stated purpose of facilitating public access to public records. *See, e.g., The Rake v. Gorodetsky*, 452 A.2d 1144, 1147 (R.I. 1982). In this case, the Parents requested public records about public education activities from public officials, and *did so at the express direction of the School Committee Principal.*

Given that the public records laws are "broadly conceived," *NLRB*, 437 U.S. at 220, and given the nature of the requests as requests for *public* information, the Parents realistically (and sensibly) believe the School Committee will properly exercise its statutory duties under the law and Parents' requests will be fulfilled.

Indeed, even the Union believes—and has alleged—that the Parents *can* "realistically expect success" in procuring responsive records. In fact, that is the entire basis of Plaintiffs' suit. In their Complaint, Plaintiffs allege that "[i]t is anticipated that teacher records will be produced that will be of a personal nature." Compl. ¶ 65. They further allege that "[i]t is further anticipated that teacher records will be produced that may or will contain discussions about union-related activities." *Id.* at ¶ 66. In other words, the Plaintiffs themselves assert that the Parents' records requests will be fulfilled

under the requirements of the APRA law. And that means, the Plaintiffs agree that Parents *can* "realistically expect success in procuring … government action, result or outcome" on their APRA requests. R.I. Gen. Laws § 9-33-2(a). In other words, the Complaint establishes that the records requests are not "objectively baseless."

Rhode Island law also makes this point plain. In *Alves v. Hometown Newspapers, Inc.,* 857 A.2d 743 (R.I. 2004), the Rhode Island Supreme Court held that certain letters to the editor of a local newspaper were a reasonable attempt to petition the government to address the defendant's concerns, and therefore that they were not "objectively baseless" for purposes of the Anti-SLAPP law. *Id.* at754. The Court wrote:

> In his letters, [defendant] addressed a matter that was under review and consideration by a local governmental body. The statements addressed an issue of public concern in his community. He sent letters to the editor of a local newspaper. [Defendant] expressed concern over the potential increased cost of the Natick school project. His statements concerning Plaintiff related to his position as a School Building Committee member and his alleged role with respect to the project. The Plaintiff has failed to demonstrate that the letters were objectively baseless in the sense that no reasonable person making those statements could have realistically expected success in procuring the government action, result or outcome.

Id. As a consequence, when a State Senator sued the defendant for libel for publishing the letters to the editor, he violated the Anti-SLAPP statute, and the Court awarded summary judgment—and attorney fees—to the defendant. *Id.* at 754, 757.

The same reasoning applies here, perhaps more so. Unlike the letters to the editor in *Alves,* the Parents' records requests here were directed to a public body, seeking public information under state law on a matter under consideration by a local governmental entity: the School Committee. The requests pertain to a significant issue of public

concern in the community—public education, student curriculum, and school administration. Because the record requests seek information that should reasonably be available and fairly be disclosed, they are plainly not "objectively baseless," but are legitimate attempts to exercise statutory and constitutional rights. For Plaintiffs to sue Parents for this is plainly barred by the Anti-SLAPP law.

In addition, the records requests are also not *subjectively* baseless. An action is subjectively baseless when litigants "utilized the process itself rather than the intended outcome in order to hinder and delay plaintiff." *Pound Hill Corp. v. Perl,* 668 A.2d 1260, 1264 (R.I. 1996). First, Plaintiffs were in no way "hindered" or "delayed" by Parents' records requests. Plaintiffs are not even parties to the statutory public records process, so they cannot assert any claim that they were "hindered" or "delayed." Second, the records requests were made for the legitimate purpose of *obtaining public information*.

In fact, Defendant Nicole Solas tried to obtain information about her daughter's education informally, without using the APRA process at all; she initially sent her school principal a series of questions pertaining to curriculum, lesson plans, and training materials. Compl. ¶ 13, App. A. The School Committee Principal then *directed* Ms. Solas to submit public records requests under APRA, instead. *Id.* at ¶ 14. In other words, the public body in this case *told* Ms. Solas to use the public records process to obtain public information. When the School Committee did not respond to her requests, Ms. Solas then submitted additional requests for the same purpose: obtaining public information about the operations of the public schools her daughter would attend. Thus, Parents' records

requests cannot in any way be characterized as "subjectively baseless." They are both lawfully authorized and subjectively and objectively legitimate.

III. Parents have a *constitutional* right to free speech and to petition the government.

In addition to the statutory protections afforded Parents under the Anti-SLAPP statute, Parents also have a *constitutional* right to free speech and to petition the government that is violated by Plaintiffs' request for injunctive relief. The First and Fourteenth Amendments to the U.S. Constitution and Article I Section 21 of the Rhode Island Constitution provide that the State shall not infringe the right to free speech or the right to petition the government for a redress of grievances. These are "cognate rights," *Thomas v. Collins,* 323 U.S. 516, 530 (1945), that are both "integral to the democratic process." *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011). A citizen's petition "to the government assume an added dimension when [she] seek[s] to advance political, social, or other ideas of interest to the community as a whole." *Id.* at 395.

By attempting to prevent the School Committee, in advance, from answering the Parents' public requests for information, Plaintiffs' lawsuit is a restraint on speech and a limitation on their right to petition. The Plaintiffs have asked this Court to "[t]emporarily, preliminarily *and permanently* restrain the School Department Defendants from providing responses to any of the pending [APRA] requests." Compl. ¶ 71A.–B (emphasis added). Plaintiffs seek an injunction that would *permanently bar* the Parents from exercising their statutory right to receive information from the government—which necessarily limits their constitutional rights of speech and petition.

Injunctions, carry greater risks of censorship than do legislation, and therefore require "more stringent application of general First Amendment principles." *Madsen v. Women's Health Ctr., Inc.,* 512 U.S. 753, 764–65 (1994). The Plaintiffs' truly extraordinary request for relief fails to remotely approach the significant governmental interest and narrow tailoring required for an injunction limiting Parents' constitutional rights. An attempt to enjoin—let alone *permanently* enjoin—the exercise of First Amendment rights constitutes a prior restraint, *Near v. State of Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931), and the Supreme Court made clear fifty years ago that such motions "bear[] a heavy presumption against [their] constitutional validity." *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam). Plaintiffs have failed to overcome that heavy presumption here.

The Plaintiffs claim an injunction is necessary to ensure that only public records are released and that responsive records do not contain teachers' personal information or information about union affairs. Pls.' Mot. TRO at 1–2. But the process of determining which records are public and which are not, as well as which exemptions apply, is vested in the School Committee—the public body in possession of the records. *R.I. Fed'n of Teachers*, 595 A.2d at 802 ("[T]he Legislature has cast the public official as the guardian of exempted material."). It is *not* vested in Plaintiffs. And Plaintiffs' unsubstantiated allegations that it "anticipate[s]" that the School Committee will disclose personal records or other records purportedly exempted from the public records law, Compl. ¶¶ 65–66, is simply insufficient to overcome the Parents' rights to free speech and petition. *N.Y. Times,* 403 U.S. at 714; *see also Riley v. Nat'l Fed'n of*

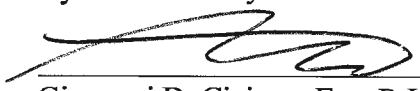
Blind, 487 U.S. 781, 795 (1988) ("[T]he First Amendment does not permit the State to sacrifice speech for efficiency"). The fundamental rights protected by the First Amendment and Article I Section 21 of the Rhode Island Constitution trump state interests even if they may create some incidental injury, as the Plaintiffs allege here. Thus even if taken as true, the allegations made in Plaintiffs' Complaint are simply insufficient to maintain an action that implicates the Parents' constitutional rights.

CONCLUSION

Based on the foregoing, judgment should be entered in favor of Parents and against Defendants, finding that Plaintiffs lack standing, that Parents are immune from suit under R.I. Gen. Laws § 9-33-2(a), and awarding Parents costs and reasonable attorney fees for having to defend this action pursuant to R.I. Gen. Laws § 9-33-2(d).

Respectfully submitted this 19th day of August 2021 by:

Defendants,
Nicole Solas and Adam Hartman
By their Attorneys



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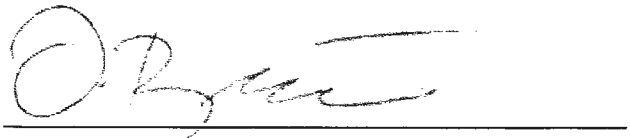

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CERTIFICATE OF SERVICE

I, Giovanni D. Cicione, hereby certify that a true copy of the within was sent this 19 day of August, 2021 via electronic mail and first-class mail, postage prepaid to:

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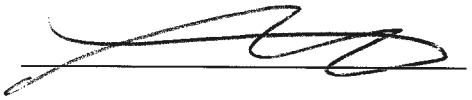

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Exhibit 1

HENNEOUS
CARROLL
LOMBARDO LLC

May 14, 2021

Ms. Nicole Solas
Sent electronically to: nicolesolas@gmail.com

Re: APRA Request Received on May 4, 2021

Dear Ms. Solas:

As you know, this office represents the South Kingstown School Department. In this capacity, I am in receipt of your revised request for certain records under the Rhode Island Access to Public Records Act. Specifically, you requested documents related to the following:

Records of all business dealings with the Collective in Wakefield, RI and Sarah Markey and Tara Apperson.

On May 12, 2021, Jenna Ouelette, Executive Assistant to the Superintendent South Kingstown School Department, sent you an email response to your request seeking clarification by asking, "In regard to the request you made on May 4, 2021, would you clarify that you are seeking documents regarding Ms. Markey in her role with The Collective, and not independent of The Collective?" You responded to that email by stating that you wished to request:

Documents pertaining to Markey both in her role with The Collective and independent of her role.

Response:

With respect to School Committee meeting agendas and minutes which pertain to Ms. Markey as a member of the School Committee, you may access those agendas and minutes through the following links:

https://go.boarddocs.com/ri/soki/Board.nsf/Public#

https://opengov.sos.ri.gov/OpenMeetingsPublic/OpenMeetingDashboard?subtopmenuId=201&EntityID=3349&MeetingID=1008130

https://opengov.sos.ri.gov/OpenMeetingsPublic/OpenMeetingDashboard?subtopmenuId=201&EntityID=7271&MeetingID=1008727

With respect to the additional information requested, including communication documents, pertaining to Sarah Markey, a School Committee member, the School Department estimates that it will take 38 hours to retrieve and compile said documents, as well as redact said documents for attorney client privileged information and other information that is not considered a public record. Therefore, pursuant to R.I. Gen. Laws § 38-2-4 (b), there shall be a search and retrieval fee for said documents of fifteen dollars ($15.00) per hour. For a total cost of:

38 (first hour being free) x $15.00 = **$570.00**

In addition, the School Department estimates that the documents will be approximately 60,000 pages, including all email communications during Ms. Markey's time on the School Committee. Therefore, pursuant to R.I. Gen. Laws § 38-2-4 (a), there shall be a cost per copied page of fifteen ($.15) cents per page. For a total cost of:

60,000 x $.15 = **$9000.00**

Should you wish to pay the total amount **$9570.00** to receive these documents, please contact me and we will provide you with the same. Alternatively, if you wish to amend your request, please contact me with said amendment.

Please feel free to contact me with any questions.

In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. You may also access additional information concerning the Access to Public Records Act through the Attorney General's website at www.riag.ri.gov.

Sincerely,

/s/Aubrey L. Lombardo

cc: Linda Savastano, Superintendent
Jenna Ouelette

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Exhibit 2

SOUTH KINGSTOWN SCHOOL DEPARTMENT

307 CURTIS CORNER ROAD, WAKEFIELD, RI 02879-2106

Linda Savastano
SUPERINTENDENT OF SCHOOLS

(401) 360-1307
FAX (401) 360-1330
TTY 1 800 745-5555
email: lsavastano@sksd-ri.net

May 21, 2021

via email

Ms. Nicole Solas

Re: APRA Request of May 14, 2021

Dear Ms. Solas,

This letter is sent in response to your APRA request of May 14, 2021 in which you sought:

List of all text books, literature, handouts, and other reading material assigned to English students in grades 7 through 12 for the academic years 2019/2020 and 2020/2021..

Response:
The School Department is not in possession of responsive documents.

In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. You may also access additional information concerning the Access to Public Records Act through the Attorney General's website at www.riag.ri.gov.

Sincerely,

Linda Savastano
Superintendent

SOUTH KINGSTOWN SCHOOL DEPARTMENT

307 CURTIS CORNER ROAD, WAKEFIELD, RI 02879-2106

Linda Savastano
SUPERINTENDENT OF SCHOOLS

(401) 360-1307
FAX (401) 360-1330
TTY 1 800 745-5555
email: lsavastano@sksd-ri.net

May 24, 2021

via email

Ms. Nicole Solas

Re: APRA Request of May 16, 2021

Dear Ms. Solas,

This letter is sent in response to your APRA request of May 16, 2021 in which you sought:

Metrics, rubrics, standards, or parameters of the equity audit mandated by the school committee.

Response:
The District does not possess responsive documents.

In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. You may also access additional information concerning the Access to Public Records Act through the Attorney General's website at www.riag.ri.gov.

Sincerely,

Linda Savastano
Superintendent

SOUTH KINGSTOWN SCHOOL DEPARTMENT

307 CURTIS CORNER ROAD, WAKEFIELD, RI 02879-2106

Linda Savastano
SUPERINTENDENT OF SCHOOLS

(401) 360-1307
FAX (401) 360-1330
TTY 1 800 745-5555
email: lsavastano@sksd-ri.net

May 27, 2021

via email

Ms. Nicole Solas

Re: APRA Request of May 18, 2021

Dear Ms. Solas,

This letter is sent in response to your APRA request of May 18, 2021in which you sought:

Athletic policies of South Kingstown School District before and after any changes proposed or made in the name of "equity" or "culturally responsiveness" or "accessibility" or "antiracism."

Response:

The district is not in possession of responsive documents.

In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. You may also access additional information concerning the Access to Public Records Act through the Attorney General's website at www.riag.ri.gov.

Sincerely,

Linda Savastano
Superintendent

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Exhibit 3

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Date:	[redacted]
From:	[redacted]
To:	[redacted]
Cc:	[redacted]
Subject:	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
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[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

[redacted]

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Case Number: PC-2021-05116
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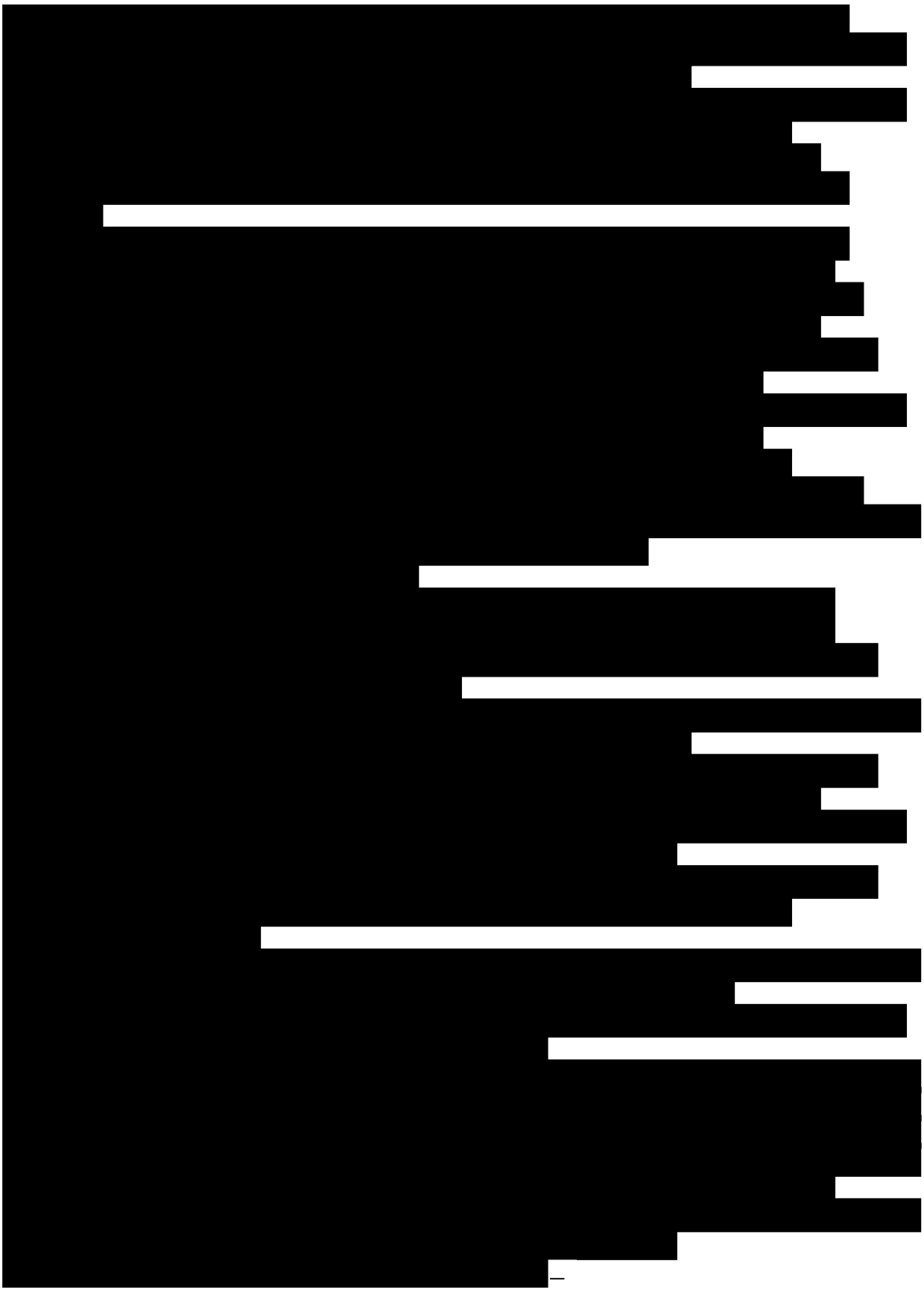
Reviewer: Victoria H

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H



Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

[redacted]

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Date:	[redacted]
From:	[redacted]
To:	[redacted]
Cc:	
Subject:	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Exhibit 4

Wednesday, June 2, 2021
South Kingstown School Committee Special Meeting Agenda

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Members of the public wishing to access this meeting may do so at http://www.clerkbase.com/RI_SouthKingstown_Live_SchoolCommittee.html
For Community Comment please join using this link or in-person at Curtis Corner Middle School Cafeteria>
https://skschools.zoom.us/j/94831252087?pwd=VUFaeUhFT0E0QTJsd0k1NFdZeDhBQT09
Passcode: 230647
**Or Telephone: US: +1 929 205 6099 **
Webinar ID: 948 3125 2087
Passcode: 230647
[*6 mute/unmute & *9 raise hand]

1. 7:30 PM Executive Session

A. Convene Open Session and Recess to Executive Session

B. The School Committee may seek to convene in executive session in accordance with R.I. Gen. Laws for the purpose(s) of: RIGL 42-46-5(a)(2): discussion / action Potential litigation related to South Kingstown Town Council investigation and joining Council in subpoena lawsuit to be filed and Potential litigation related to over 160 APRA requests filed by one individual

C. Adjourn Executive Session and Reconvene Open Session

2. Open Session

A. Call to Order

B. Pledge of Allegiance to the Flag

C. Roll Call

D. School Committee Agreements (norms)

E. Reporting of Votes Taken in Executive Session

F. Seal the Minutes of Executive Session

G. Chair - Agenda review

H. Discussion / Action: Joining Town Council lawsuit to be filed related to enforcement of a subpoena

I. Discussion / Action: Filing lawsuit against Nicole Solas to challenge filing of over 160 APRA requests

3. Comments from the Community

A. Community Comment

4. Adjournment

A. Adjourn

The order of business maybe altered or suspended at any meeting by a majority of those present. A vote may be taken on any item on this agenda. Each regular meeting shall continue until such time as all matters on the agenda have been considered and acted upon, provided, however, that at 10 pm the chair shall call for actions required before adjournment and a subsequent motion to

agenda. The school committee may go into executive session under Title 42, Ch. 46, Section 5 of the General Laws of Rhode Island.

The South Kingstown School Department does not discriminate on the basis of race, religion, color, sex (including pregnancy, gender identity, and sexual orientation), parental status, national origin, age, disability, family medical history or genetic information, political affiliation, military service, or other non-merit based factors, in accordance with applicable laws and regulations.

Any changes to this Agenda will be published on the school district's website, at the two public locations required by R.I. Gen. Laws § 42-46-6, and transmitted to the Secretary of State's website at least forty-eight (48) hours in advance of the meeting.

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 8/20/2021 3:10 PM
Envelope: 3246430
Reviewer: Victoria H

Exhibit 5

HENNEOUS
CARROLL
LOMBARDO LLC

May 21, 2021

Ms. Nicole Solas
Sent electronically to: nicolesolas@gmail.com

Re: APRA Request Received on May 16, 2021

Dear Ms. Solas:

As you know, this office represents the South Kingstown School Department. In this capacity, I am in receipt of your revised request for certain records under the Rhode Island Access to Public Records Act. Specifically, you requested documents related to the following:

Digital copies of Sarah Markey's emails in the last six months.

Response:

With respect to the documents requested, the School Department estimates that it will take 5 hours to retrieve, redact and compile said documents. Therefore, pursuant to R.I. Gen. Laws § 38-2-4 (b), there shall be a search and retrieval fee for said documents of fifteen dollars ($15.00) per hour. For a total cost of:

5 x $15.00 = **$75.00**

You will be provided with those documents electronically.

Should you wish to pay the total amount **$75.00** to receive these documents, please contact me and we will provide you with the same. Alternatively, if you wish to amend your request, please contact me with said amendment.

Please feel free to contact me with any questions.

In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the Department of the Attorney General, 150 South Main Street, Providence,

Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. You may also access additional information concerning the Access to Public Records Act through the Attorney General's website at www.riag.ri.gov.

Sincerely,

/s/Aubrey L. Lombardo

cc: Linda Savastano, Superintendent
Jenna Ouellette

HENNEOUS
CARROLL
LOMBARDO LLC

June 26, 2021

Ms. Nicole Solas
Sent electronically to: nicolesolas@gmail.com

Re: APRA Request Received on May 4, 2021

Dear Ms. Solas:

As you know, this office represents the South Kingstown School Department. In this capacity, I am in receipt of your revised request for certain records under the Rhode Island Access to Public Records Act. Specifically, you requested documents related to the following:

Records of all business dealings with the Collective in Wakefield, RI and Sarah Markey and Tara Apperson.

On May 12, 2021, Jenna Ouelette, Executive Assistant to the Superintendent South Kingstown School Department, sent you an email response to your request seeking clarification by asking, "In regard to the request you made on May 4, 2021, would you clarify that you are seeking documents regarding Ms. Markey in her role with The Collective, and not independent of The Collective?" You responded to that email by stating that you wished to request:

Documents pertaining to Markey both in her role with The Collective and independent of her role.

On May 15, 2021, after receiving the District's bill or compilation, review, redaction and copying of the document requested, you revised your request to:

Narrow the scope of documents pertaining to Sarah Markey to the last six months.

On May 17, 2021, the District sent you an estimated bill to compile, review and redact the revised requested documents in the amount of $79.50. You provided a check to the District for that amount on May 26, 2021. You indicated through your attorney in a June 16, 2021 email that you expected these documents prior to the end of the month of June 2021.

HENNEOUS CARROLL LOMBARDO LLC

Response:
Please see attached.

Some of the documents that you requested have been redacted, as they are not public documents pursuant to R.I. Gen. Laws §38-2-2(4)(A)(I)(a), because they are records "relating to a client/attorney relationship…"and shall not be deemed public.

Some of the documents that you requested have been redacted, as they are not public documents pursuant to R.I. Gen. Laws §38-2-2 (4)(i)(M), because they constitute correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

Some of the documents that you requested have been redacted, as they are not public documents pursuant to R.I. Gen. Laws §38-2-2 (4)(A)(I)(b), because they contain personal individually identifiable records otherwise deemed confidential by federal or state law or regulation, specifically the Family Educational Rights and Privacy Act, (20 U.S.C. § 1232g; 34 CFR Part 99).

In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. You may also access additional information concerning the Access to Public Records Act through the Attorney General's website at www.riag.ri.gov.

Sincerely,

/s/Aubrey L. Lombardo

cc: Linda Savastano, Superintendent
Jenna Ouelette

HENNEOUS CARROLL LOMBARDO LLC

July 14, 2021

Ms. Nicole Solas
Sent electronically to: nicolesolas@gmail.com

Re: APRA Request Received on May 25, 2021

Dear Ms. Solas:

As you know, this office represents the South Kingstown School Department. In this capacity, I am in receipt of your revised request for certainrecords under the Rhode Island Access to Public Records Act. Specifically, you requested documents related to the following:

Digital copies of emails of Stephanie Canter during May, June, July, August, September and October, 2020.

On June 2, 2021, the District sent you an estimated bill to compile, reviewand redact the revised requested documents in the amount of $150.00. You provided a check to the District for that amount on June 25, 2021.

Response:

Please see attached.

Some of the documents that you requested have been redacted, as they arenot public documents pursuant to R.I. Gen. Laws §38-2-2(4)(A)(I)(a), because they are records "relating to a client/attorney relationship…"and shall not be deemed public.

Some of the documents that you requested have been redacted, as they arenot public documents pursuant to R.I. Gen. Laws §38-2-2 (4)(i)(M), because they constitute correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

Some of the documents that you requested have been redacted, as they arenot public documents pursuant to R.I. Gen. Laws §38-2-2 (4)(A)(I)(b), because they contain personal individually identifiable records otherwise deemed confidential by federal or state law or regulation, specifically the Family Educational Rights and Privacy Act, (20 U.S.C. § 1232g; 34 CFR Part 99).

In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the

Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where therecord(s) are maintained. You may also access additional information concerningthe Access to Public Records Act through the Attorney General's website at www.riag.ri.gov.

Sincerely,

/s/Andrew Henneous

cc: Ginamarie Masiello, Interim
Superintendent
Jenna Ouelette, Asst.

HENNEOUS
CARROLL
LOMBARDO LLC

155 South Main Street, Suite 406, Providence, RI 02903