STATE OF RHODE ISLAND, PROVIDENCE, SC. **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.***	**SUPERIOR COURT** **C.A. No. PC21-05116**

DEFENDANT PARENTS' RESPONSE TO PLAINTIFFS' MOTION TO VOLUNTARILY DISMISS COMPLAINT PURSUANT TO RULE 41

Defendants Nicole Solas and Adam Hartman ("Parents") submit the following memorandum of law in response to the Motion to Voluntarily Dismiss filed by Plaintiffs National Education Association Rhode Island ("NEARI") and National Education Association South Kingstown ("NEASK") (collectively "Union"). The Motion should be denied because it is premature and because this Court has found a material issue of fact on a live legal question for which Parents are seeking affirmative relief.

INTRODUCTION

Plaintiffs brought this lawsuit as an unprecedented attempt to enjoin the statutory public records process and stop Parents from seeking public information in good faith about the operations of their government.

In response to this case, Parents previously moved for summary judgment, asserting that (1) the Union lacks standing to disrupt the carefully wrought public records process under the Access to Public Records Act ("APRA"); and that (2) Parents are immune from suit under Rhode Island's Anti-SLAPP statute. R.I. Gen. Laws § 9-33-2. This Court denied summary judgment, but allowed Parents' Anti-SLAPP argument to proceed, on the grounds that there are "genuine issues of material fact" to be resolved with respect to Parents' assertion of Anti-SLAPP immunity. Decision at 27.

The Union now seeks to voluntarily dismiss this case. The Motion should be denied because there is a live legal issue regarding Parents' Anti-SLAPP claim, and Parents have affirmative claims for relief, including attorney fees, which preclude voluntary dismissal at this point. The Union has also failed to carry its burden of proof under the Anti-SLAPP statute.[1] The Motion to Dismiss should be denied.

STATEMENT OF FACTS

This lawsuit was originally brought because two parents wanted to know what their public school would be teaching their daughter in kindergarten.

In 2021, the Parents enrolled their daughter in kindergarten at Wakefield Elementary School within the South Kingstown School District ("District"). Affidavit ¶ 4 (attached as Exhibit A). When Nicole Solas enrolled her daughter, she did what any responsible parent would do, and asked the principal of Wakefield Elementary various

[1] Parents have thus filed concurrently with this Response a renewed Motion for Summary Judgment, asking that judgment be entered in Parents' favor because by filing the Motion to Dismiss, the Union has essentially conceded that Parents' claim for Anti-SLAPP immunity is not objectively or subjectively baseless based on the unrebutted evidence.

questions about the educational climate at the school, including what her daughter would be taught in the upcoming school year. *Id.* ¶ 5.

Rather than answer the questions of a concerned parent, school officials directed Nicole to submit formal public records requests under APRA. *Id.* ¶ 6; Compl. ¶ 14. So, she did. Aff. ¶¶7–8.

After Ms. Solas submitted her public records requests, school officials and their attorneys told her that she would have to pay thousands of dollars for them to comply with several of the requests. *Id.* ¶ 9; Exhibit 1 to Mot. for Summ. J. ("MSJ") (May 14, 2021, Letter to Solas).

Nicole then paid for some of the records to get answers to questions the School Committee had up to that point refused to provide. But instead of receiving answers to her questions, let alone comprehensive record responses, what she got was pages of heavily (often completely) redacted documents. Aff. ¶¶ 11–12. (Examples of the thousands of pages of redacted documents are attached as Exhibit 3 to MSJ.)

Unsatisfied with such inadequate responses to basic questions about their daughter's education, and unable to pay onerous fees for public information, the Parents then submitted narrower requests so they could understand the costs associated with each request and determine whether she was able and willing to pay for responsive records. Aff. ¶ 10; *see also* Exhibit 2 to MSJ (Responses to May 14, 16, 18, 2021 APRA Requests).

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." MSJ Exhibit 4. Not surprisingly, the School Committee's actions met with widespread community disapproval.

At the same time the School Committee was planning to sue Nicole, the Union also started discussions about her. On August 2, 2021, the Union filed this lawsuit against the Parents, 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.

The Union filed this action naming Parents as Defendants even though the School Committee had been processing the Parents' APRA requests, and aggressively applying APRA exemptions to those requests, *see* MSJ Exhibits 1–3, including with the assistance of capable outside counsel, MSJ Exhibit 5. The Union specifically sought an injunction to "restrain the School Department Defendants from providing responses to any of the pending [records] requests." Complaint at ¶ 71(B).

The Parents answered the Complaint, asserting, among other affirmative defenses, that "Plaintiffs[']s complaint violates Rhode Island's anti-SLAPP … statute." Answer, Affirmative Defense Number 7. The Parents also sought as relief "reasonable attorneys' fees and costs, pursuant to § 9-33-2(d)," Compl. at 7(2), and "compensatory and punitive damages pursuant to § 9-33-2(d)." *Id.* at 7(3)

On August 20, 2021, Parents filed a motion for summary judgment, contending that: (1) the Union lacks standing to initiate a preemptive case seeking to prevent the

disclosure of public information against a public records requester under APRA, *see Rhode Island Federation of Teachers v. Sundlun*, 595 A.2d 799, 800 (R.I. 1991), and (2) the Union's lawsuit constitutes a Strategic Lawsuit Against Public Participation under R.I. Gen. Laws § 9-33-1 because the Union filed this case against Parents specifically because Parents exercised their constitutional and statutory rights to petition the government and speak on matters of public concern.

On June 9, 2022, this Court found that the Union had standing to seek declaratory relief,[2] but denied summary judgment on Parents' Anti-SLAPP claim, finding "genuine issues of material fact as to the Parents' assertion of Anti-SLAPP immunity." Decision at 27. As a result, this Court has already determined that this case *should* proceed to determine whether Anti-SLAPP immunity applies, and if so, whether Parents should be awarded affirmative relief in the form of attorney fees and possible damages under that statute for having to defend against an action that violates their rights.

[2] The Court found that "Although Plaintiffs' Verified Complaint did not plead a violation of privacy laws, it was averred sufficiently to give fair and adequate notice of the type of claim being asserted." Decision at 13. Parents contend that the APRA does not provide a "remedy to persons or entities seeking to block disclosure of records," *Rhode Island Federation of Teachers*, 595 A.2d at 800, and as such the Union has no standing to pursue a case seeking to prevent disclosure under APRA. According to the Court, the Union has standing under the Uniform Declaratory Judgment Act ("UDJA"), but that is only so if the Union has standing and can articulate "some legal hypothesis" that will entitle it to relief. *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005). Apart from "a violation of privacy laws," the Court did not identify a legal basis for relief, and the Union has disavowed any basis for relief other than the UDJA. Union Resp. to MSJ at 12–18. As a result, Parents contend that the Union continues to lack standing to bring this matter, unless it can identify a legal claim for relief apart from the UDJA. Parents have filed concurrently with this Response a Motion for a More Definitive Statement requesting that the Union identify a proper legal cause of action.

ARGUMENT

I. The Union's Motion to Dismiss must be denied because this Court has already determined that there is a live fact question regarding Parents' claim for immunity under the Anti-SLAPP statute.

The Union's cause of action always lacked a proper factual or legal basis, and the Parents have no problem with the Court entering judgment for Parents on the Union's claim. The Union admits that it filed this lawsuit without a proper factual basis. It says in its Motion that it "reached out to the School Department" around September 22, 2021 (a full month *after* filing this case), when it should have done so *before* filing this case. Then, after belatedly, conducting its due diligence, the Union learned that "**Counsel for the School Department confirmed that none of the other requests had been paid for, and thus, no other records at issue were scheduled for disclosure."** Mem. of Law in Support of Mot. to Voluntarily Dismiss Complaint at 4–5 ("Mot."). Thus, there was nothing for the Union to seek in its lawsuit to begin with—a fact it could, and should, have learned before filing this case.

At this stage, however, dismissing the Union's meritless claim would not resolve the case. The rules of civil procedure required the Union to reach out to the School Department **before** filing this extraordinary and unprecedented lawsuit. Specifically, the Union was required to perform a "reasonable inquiry" before, not after, filing suit. *See* Rule 11, R.I.R.C.P; *see also Heal v. Heal*, 762 A.2d 463, 468 (R.I. 2000) (lawyer's failure to make a "reasonable inquiry into the factual basis" of claim violates Rule 11). *See further* Rule 3.1, Rhode Island Disciplinary Rules of Professional Conduct, R. 3.1. ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein,

unless there is a basis in law and fact for doing so."). The fact that the Union waited until *after* it filed and served this lawsuit inculpates, not exculpates, the Union.

Additionally, when a lawyer files a meritless lawsuit without conducting a reasonable investigation, and that lawsuit targets a party's right of "petition or free speech," the aggrieved party can obtain relief under Rhode Island's Anti-SLAPP statute, R.I. Gen. Laws § 9-33-2. Courts typically do not allow an offending party to escape the consequences of filing a lawsuit improperly targeting the right of petition or free speech by unilaterally seeking to dismiss the action once an Anti-SLAPP motion is filed. *See, e.g.*, *Pfeiffer Venice Props. v. Bernard*, 123 Cal.Rptr.2d 647, 652 (Cal. App. 2002) ("[B]ecause a defendant who has been sued in violation of his or her free speech rights is entitled to an award of attorney fees, the trial court must, upon defendant's motion for a fee award, rule on the merits of the SLAPP motion even if the matter has been dismissed prior to the hearing on that motion."); *Coltrain v. Shewalter*, 77 Cal.Rptr.2d 600, 608 (Cal. App. 1998) ("Otherwise, SLAPP plaintiffs could achieve most of their objective with little risk—by filing a SLAPP suit, forcing the defendant to incur the effort and expense of preparing a special motion to strike, then dismissing the action.").

There is no dispute in this case that the Union's case against the parents lacked a basis in law and fact. The issue raised by the Union's Motion is not whether the Court should grant judgment against the Union on its cause of action. Instead, the issue is whether the Union can escape the consequences set forth in R.I. Gen. Laws § 9-33-2 and obtain dismissal without having to answer Parent's Anti-SLAPP claim.

The Court has already determined that this case was directed at Parents for exercising their petition and speech rights under the Access to Public Records Act ("APRA") on a matter of public concern. Decision of June 9, 2022 at 20–22. Thus, Parents are "conditionally immune" from suit under R.I. Gen. Laws § 9-33-2(a). And although the Court denied summary judgment on the basis that "there are genuine issues of material fact" regarding the third element of Anti-SLAPP immunity—that is, whether the Union can prove that Parents' APRA requests were a "sham," Decision at 27—that only shows that the Plaintiff's Anti-SLAPP motion remains a viable issue.

Rhode Island Supreme Court precedent is clear that the issue of whether a lawsuit violates the Anti-SLAPP statute must be addressed by a motion for summary judgment in the case alleged to violate the statute. A party's rights under the Anti-SLAPP statute are not considered a separate cause of action. *Palazzo v. Alves*, 944 A.2d 144, 151 (R.I. 2008) ("[T]he Anti-SLAPP statute cannot reasonably be read as providing a mechanism by which a party may file a separate 'SLAPP-back' lawsuit"; all issues related to damages must be determined in the original action). The claim for Anti-SLAPP immunity must, instead, be decided as part of a "unitary proceeding" with the original cause of action. *Id.* ("the statute envisions a unitary proceeding—one in which all contentions of the parties would in the end be 'wrapped up.'"). In other words, Anti-SLAPP immunity, and the live fact question that still exists regarding that immunity, must be decided *before* this case can be dismissed.

It is thus irrelevant that Parents have not filed a counterclaim. *See* Pls.' Mot.. at 12. The only way a party can pursue her rights under R.I. Gen. Laws § 9-33-2 is to file a

motion for summary judgment, which Parents did here. The only way the Union can avoid liability under that statute is to carry its burden and prove that Parents objectively and subjectively believed their public records requests were a "sham."[3] The Union has made no attempt to meet its burden, despite two opportunities to do so—first in response to Parents' initial motion for summary judgment, and now in response to this Court's Decision.

The Union cites no authority that a party can file a SLAPP that targets someone's constitutionally protected activity, but then escape liability by seeking dismissal of the offending lawsuit prior to resolution of the Anti-SLAPP motion. And, as noted above, courts that have addressed the question have said this is not permissible, because it would be contrary to public policy. The purpose of the Anti-SLAPP law is to prevent parties like the Union from using lawsuits to chill people's free speech and petition rights. To allow the Union to do so with impunity by withdrawing its complaint while the Anti-SLAPP motion is pending would thus contradict the purpose of the Anti-SLAPP statute. *See further Moore v. Liu*, 81 Cal. Rptr.2d 807, 812 (App. 1999) ("Persons who threaten the exercise of another's constitutional rights … should be adjudicated to have done so, not permitted to avoid the consequences of their actions by dismissal of the SLAPP suit when a defendant challenges it.").

[3] To obtain a dismissal without Anti-SLAPP fees and damages, the Union must prove that the Parents' Anti-SLAPP claim was objectively and subjectively baseless. Decision at 27. Yet the Union admits it has conducted no discovery. Pls.' Mot. at 11. If the Union fails to carry its burden of proof on the issue, then Parents will prevail on their Anti-SLAPP claim. By filing this Motion to Dismiss, rather than marshalling evidence, the Union has failed to carry its burden.

The only case the Union cites is an unpublished trial court opinion that expressly did *not* involve a lawsuit targeting someone's right to petition or free speech rights. Pls.' Mot. at 10. What's more, that unpublished decision involved a case where events happened after the complaint was filed that made the case moot. That is not so, here. In this case, the event the Union contends make this case moot *already* existed *when* the Union filed the lawsuit. The Union could have readily determined that Parents had not paid the fees demanded by the School Committee, so at the time it filed the complaint, there was no risk that the School Committee would produce records—which is the bases for the Union's new claim that its complaint is moot. But if it was moot in September 2021, it was moot when it was filed a month earlier. The Union's failure to conduct a minimally adequate investigation, and its failure to discover until now a fact that already existed before, does not make this case moot or provide a defense to Parents' Anti-SLAPP motion.

II. The Anti-SLAPP statute provides for affirmative relief for the Parents in the form of attorney fees and possible damages from having to defend against an action that violates their rights.

Contrary to the Union's assertions, R.I. Gen. Laws § 9-33-2 provides the Parents with the absolute right to recover their attorney fees and costs should the Union fail to meet its burden of proving the Parents objectively and subjectively believed their requests were a "sham." R.I. Gen. Laws § 9-33-2(d) provides that if the Court grants an Anti-SLAPP motion **or** if the "party claiming lawful exercise of his or her right of petition or of free speech ... is, in fact, the eventual *prevailing party at trial*, the court *shall* award the prevailing party costs and reasonable attorney's fees." (Emphasis added.)

Nothing in the statute or case law provides the Union with a basis to defeat a party's attorney fees claim by unilateral act. Likewise, the fact that the Court found a live factual dispute on the issue of whether Parents' public records requests were objectively and subjectively unreasonable does not defeat Parents' right to claim attorney fees.

The Union's exposure in this case is not limited to attorney fees and costs. Compensatory damages are also mandatory if Parents prove that the Union's claims were either: 1) frivolous; 2) brought with the intent to harass; **or** 3) intended to "otherwise inhibit the party's exercise of its [constitutional] right to petition or free speech."*Id.* In addition to mandatory compensatory damages, the Court could also grant punitive damages. *Id.*

The Union's implicit admission that it should never have brought this case in the first place does resolve some of the issues, but it does not resolve any of the issues related to R.I. Gen. Laws § 9-33-2. While the Union's admission that this suit was meritless *ab initio* supports Parents' Anti-SLAPP motion, it certainly does not give the Union the ability to unilaterally avoid its exposure for attorney fees, costs, and potential compensatory and punitive damages.

III. The Union has failed to carry its burden of proof under the Anti-SLAPP statute by filing a Motion to Dismiss.

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

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 appl[ies] to all legitimate petitioning activity that becomes the subject of a punitive civil claim." *Id.* at 63. The statute applies "to *any* civil claim … directed at petition or free speech" activity. R.I. Gen. Laws § 9-33-2(a) (emphasis added).

The Union's assertion that "no prejudice will result from a voluntary dismissal," Mot. at 8, is wholly false. The Parents (and the public) have *already* experienced prejudice, because the Parents were forced to defend this action, and the chilling effect of the Union's choice to sue the Parents for exercising their legal rights has already been felt *Cf. Palazzo*, 944 A.2d at 150 n.9 (SLAPPs are brought to "chill" the exercise of legal rights.)

The Union also "misstates the order of proof." *Alves v. Hometown Newspapers, Inc.*, 857 A.2d 743, 756 (R.I. 2004). The Anti-SLAPP statute applies if the defendant is being sued for making (1) "any written or oral statement… to a legislative, executive, or judicial body, or any other government proceeding" (2) that deals with "a matter of public concern" and (3) is not a "sham." R.I. Gen. Laws § 9-33-2(a), (e); *see also Sisto v. Am. Condo. Ass'n, Inc.*, 68 A.3d 603, 615 (R.I. 2013).

This Court has already found that the Parents' ARPA request satisfied the first and second elements. *See* Decision at 20, 22. The only remaining question, then, is whether Parents' request was a "sham" under the Anti-SLAPP statute, a question on which this Court found "there are genuine issues of material fact,"—issues *the Union* must prove up. *Id.* at 27.

To emphasize, the *Union* bears the burden of proof. *Alves v. Hometown Newspapers, Inc.*, No. CIV.A.2001-1030, 2002 WL 475282, at *5 (R.I. Super. Mar. 14, 2002), *aff'd*, 857 A.2d 743 (R.I. 2004) ("Once the [Parents] demonstrate[] that the published statements meet the definition of free speech or petition contemplated by R.I. Gen. Laws § 9–33–2(e), the burden shifts to the [Union] to show that the published statements constitute a sham.").

Yet in response to this Court's ruling finding that there are "genuine issues of material fact" which the Union must prove up, Decision at 27, the Union has *not* offered any evidence, but instead has moved to dismiss. By filing that motion instead of marshalling evidence to prove that Parents' APRA requests were a sham, or are otherwise unprotected by the Anti-SLAPP statute, the Union has effectively *conceded* the Parents' case. *CACH, LLC v. Potter*, 154 A.3d 939, 944 (R.I. 2017) ("In failing to produce any evidence in opposition to the motion for summary judgment, [the Defendant] failed to comply with the requirements [of a Rule 56 motion for summary judgment]."); *see also Brochu v. Santis*, 939 A.2d 449, 452 (R.I. 2008) ("A party facing summary judgment may not rest upon mere allegations or denials in the pleadings, mere conclusions, or mere legal opinions[.]" (internal citations omitted)).

This Court's ruling made clear that the only reason the Parents were not entitled to summary judgment was because there was some chance the Union could prove that Parents' original records requests were a sham. Rather than attempting to prove that, the Union is now seeking to abandon the case. Although the Union claims the reason it seeks dismissal is due to mootness, Parents have shown above that this is a fabrication. In reality, the Union's motion is a concession that this case was illegitimate to begin with—and that means the Anti-SLAPP motion should be granted.

Nor could the Union prove that Parents' APRA requests were objectively and subjectively baseless, even if it tried. *See* Parents' Renewed Motion for Summary Judgment. In this case, the Parents requested *public* records about *public* information regarding the *public* operations of their *public* school district. They did so *on the instructions* of the school district. Solas Affidavit ¶ 6, Ex. 2. The Union only brought this case because the Union believed the records would be disclosed under the APRA. Complaint ¶¶ 65–66. Given the broad definition of public records under the APRA,[4] the presumption in favor of disclosure,[5] the burden on the government to prove that withholding records is lawful,[6] and that the public records law is "broadly conceived," the Parents realistically (and sensibly) believed the School Committee would abide by its statutory duties and fulfill Parents' requests. Additionally, the APRA requests were filed to obtain public information, Solas Affidavit ¶ 13, at the direction of the school, *id.* at ¶ 6,

[4] *See* R.I. Gen. Laws Ann. § 38-2-3.
[5] *See Providence J. Co. v. Convention Ctr. Auth.*, 774 A.2d 40, 46 (R.I. 2001).
[6] *See Pontarelli v. R.I. Dep't of Elementary & Secondary Educ.*, 176 A.3d 472, 480 (R.I. 2018).

Ex. 2, and in no way did they hinder or delay the Union, *Sisto*, 68 A.3d at 615. These factors mean that Parents APRA requests *as a matter of law* cannot be objectively and subjectively baseless. The Parents have offered unrebutted evidence on this point.

In short, the Union has not only failed to carry its burden under the Anti-SLAPP statute but has effectively conceded this by filing this Motion to Dismiss rather than marshalling (or even seeking) evidence to meet its burden of proof on the sole factual obstacle to Parent's motion for summary judgment.

CONCLUSION

Based on the foregoing, the Union's Motion to Dismiss should be denied.

Defendants,
Nicole Solas and Adam Hartman
By her Attorneys

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CERTIFICATE OF SERVICE

I, Kris Schlott, hereby certify that a true copy of the within was sent this 21st day of July 2022 by electronic mail and first-class mail, postage prepaid to:

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Exhibit A

AFFIDAVIT OF NICOLE SOLAS

I, Nicole Solas, declare under penalty of perjury under the laws of the State of Rhode Island as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this affidavit and am competent to testify regarding them.

2. I am a mother who lives within the South Kingstown School District ("District").

3. The South Kingstown School District is governed by the South Kingstown School Committee ("Committee").

4. In March 2021, I enrolled my daughter in Kindergarten at Wakefield Elementary School within the District.

5. After I enrolled my daughter, I asked the Wakefield Elementary School Principal, Coleen Smith, various questions, including questions about curriculum and what would be taught to incoming Kindergarten students at the school. Ex. 1.

6. Rather than answer my questions, Ms. Smith directed me to submit formal public records requests under the Access to Public Records Act ("APRA"). Ex. 2.

7. I submitted the APRA requests in response to this communication because the school directed me to do so.

8. I submitted public records requests under the APRA on several issues, including matters involving school curriculum, lesson plans, school personnel, and school operations, including those of the Committee.

9. For several of my requests, school officials demanded that I pay thousands of dollars to produce responsive records.

10. Because I was unable to pay thousands of dollars to receive information responsive to my public records requests, I broke down each request to be as specific as I could to understand any costs associated with any particular request, and to determine whether I wanted to pay the costs associated with retrieving the records.

11. For several requests that I submitted, I received responses that indicated there were no responsive records, even though my requests were for information that I believed was public information that existed.

12. For several requests that I submitted, I received dozens and sometimes hundreds of pages of completely blacked out and redacted records in response to my public records requests.

13. When I submitted my public records requests, I did so to receive public information.

14. In other words, my public records requests were aimed at procuring favorable government action; namely, the Committee producing responsive records to my public records requests.

15. When I submitted my public records requests, I reasonably expected the Committee to produce records that were responsive to my requests.

16. Indeed, it was the school that directed me to submit public records requests; thus, it was my expectation that the school and the Committee would fulfill those requests.

17. When I submitted my public records requests, I reasonably expected the Committee to comply with the law by producing responsive records if they existed or identifying a lawful basis for withholding responsive information.

18. When I included phrases like "not public information" in some of my public record requests, I did not intend to mean that other requests that did not include such phases were seeking non-public or private information.

19. When I submitted my public records requests, I did not do so to hinder or delay any party, including the Committee.

20. When I submitted my public records requests, I did not do so attempting to use the public records process for its own direct effects apart from receiving public information, which is the outcome or result of the public records process.

21. It is my understanding that under the APRA, no public records may be "withheld based on the purpose for which the records are sought..." R.I. Gen. Laws § 38-2-3(j).

22. Thus, it is my understanding that my "intent" or motivation in submitting APRA requests is irrelevant for purposes of the Committee producing responsive records.

23. Nonetheless, my motivation in submitting my public records requests was to receive public information.

24. On or about June 2, 2021, the Committee placed on its public agenda an item indicating that it was considering legal action against me for submitting requests for public information.

25. The Committee never pursued legal action against me.

26. On or about August 2, 2021, Plaintiffs National Education Association of Rhode Island and National Education Association–South Kingstown ("Plaintiffs") filed a legal action naming me as a defendant that sought to prevent the disclosure of information I requested in public records requests.

27. It is my belief that the Plaintiffs filed this action specifically because I submitted public records requests, and thus the action was directed at my free speech and petition activity under Rhode Island's anti-SLAPP law. R.I. Gen. Laws § 9-33-1, *et seq*.

28. It is my belief that Plaintiffs action has interfered with and otherwise hindered my free speech rights and my rights to petition the government, including my right to summit record requests under the APRA.

I declare that to the best of my knowledge the foregoing is true and correct.

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE:

Nicole Solas

Nicole Solas

DATED: 7/18/2022

Sworn to and subscribed before me this 18 day of July, 2022.

MOLLY D. MAGEAU
Notary Public
State of Rhode Island
3.29.26

Notary Public

My commission expires:

Exhibit 1

Wakefield Elementary School Curriculum, Policies, and Information Request

Inbox

Nicole Solas Apr 25
to csmith

Coleen,

I request the following:

1. All curriculum for all grades at Wakefield Elementary School.

2. Titles and authors of all books in all classrooms and the library that promote antiracism, race relations, any political topics relating to Black Lives Matters and President Trump, gender theory, transgenderism, and all topics of sexuality, sexual orientation, and sexual education.

3. Disclosure of all policies, official and unofficial, written and unwritten, relating to antiracism, critical race theory, gender theory, sexual education, and any political topic.

4. Disclosure of all common practices relating to antiracism, critical race theory, gender theory, sexual education, and any political topic.

5. Disclosure of all professional development trainings, relating to gender theory, transgenderism, antiracism, critical race theory, and political topics. Please provide the exact or approximate dates of these trainings.

6. Disclosure of whether you keep official or unofficial school records relating to children's sexuality, sexual orientation, or sexual education.

7. Disclosure of all past and present lesson plans that incorporate or promote the ideologies of antiracism, gender theory, transgenderism, and critical race theory.

8. On the phone you stated that students build upon a line of thinking about history and I need clarity on what exactly this line of thinking is. You stated that Kindergartners are asked "what could have been done differently" on the first Thanksgiving. What education objective does this lesson achieve? What education source supports this objective?

9. On the phone you stated that it is common practice to refrain from or be mindful of using gendered terminology, including calling the students "boys" and "girls." Please cite the education source supporting this practice.

10. On the phone you stated that children would not be grouped according to who has "pigtails" because pigtails is considered gendered terminology. Please cite the education source supporting your assertion that the word "pigtails" is gendered terminology.

11. Disclosure of all special guests who have promoted or spoken about antiracism, gender theory, antiracism, race relations, race in general, and any political topic. This includes but is not limited to a drag queen reading to children, a transgender person reading a book to children about sexuality or gender or simply speaking to students about those topics, a political activist meeting with a teacher or administrative personnel, and any politically affiliated guest hosted or invited by the school.

12. All education sources supporting lessons and curriculum relating to antiracism, gender theory, transgenderism, race relations, and sexual education.

13. Please define the following terms, which I presume are embedded into the Wakefield Elementary School Curriculum:

Equity
Culturally Responsive Teaching
Affinity Groups
Implicit bias
Inclusion
Oppressor
Colonialism
Diversity (specifically, is a balanced diversity of viewpoint implicit in all curriculum?)

You stated on the phone that you will respond in the first week of May after testing is complete. Please feel free to respond as you acquire information instead of waiting to respond comprehensively. I anticipate providing curriculum information should be easy since it's likely to be fully developed, approved, and accessible to principals. I look forward to your response.

Nicole Solas

Exhibit 2

Coleen Smith Apr 27
to me

Hi Nicole
Thank you for your email. With the scope of your request for information on our district, I recommend that you use the link below to submit our request for this information. It will bring you to the page on our district website with directions and details.
https://www.skschools.net/resources/communications/public_records
Best
Coleen

Show quoted text

Coleen P. Smith
Principal
Wakefield Elementary School
SKIP preschool-grade 4