

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**PATRICIA MONTANA,**

**VINCENT VOLLERO,**

**MICHAEL TURI,**

**CHERYL MILLER,**

**DONALD ELTING, and**

**ANNA O’CONNOR,**  
*Plaintiffs,*

v.

**MIGUEL CARDONA,** in his official capacity  
as Secretary of Education,  
400 Maryland Avenue, SW  
Washington, DC 20202, and

**U.S. DEPARTMENT OF EDUCATION**  
400 Maryland Avenue, SW  
Washington, DC 20202

*Defendants.*

Civil Action No.: 23-775

**COMPLAINT**

1. This is an action for a writ of mandamus and Administrative Procedure Act relief against the Secretary of Education Miguel Cardona and the U.S. Department of Education for unreasonably delaying the investigation, processing, review, and adjudication of complaints filed by parents alleging violations of the Protection of Pupil Rights Amendment (“PPRA”), 20 U.S.C. § 1232h and 34 C.F.R. Part 98, by their local school district.

2. Congress enacted the PPRA to protect parental rights. Ex. 1.

3. Accordingly, it directed the Secretary to provide an “office and review board within the Department of Education to investigate, process, review, and adjudicate” PPRA violations. 20 U.S.C. § 1232h(f).

4. The Secretary has delegated this responsibility to the Department’s Student Privacy Policy Office.

5. Between June and October 2021, plaintiffs Patricia Montana, Vincent Vollero, Michael Turi, Cheryl Miller, Donald Elting, and Anna O’Connor each filed a PPRA complaint with the Student Privacy Policy Office alleging that the Cedar Grove School District violated 20 U.S.C. § 1232h(c)(2)(C)(ii) and 34 C.F.R. §§ 98.3 and 98.4 by administering a mandatory survey to children seeking PPRA-protected information such as “religious affiliation,” “family demographic,” “race/ethnicity,” “gender identity,” whether “school is a safe space for your particular race/ethnic group,” whether “adults in your school are fair in dealing with people who look like you,” and whether “adults in your school are fair in dealing with people who don’t look like you,” without prior parental notice and consent. Ex. 2.

6. Under 5 U.S.C. § 555(b), the Department must conclude each “matter presented to it” within a reasonable time. The plaintiffs’ PPRA complaints are each a “matter presented” to the Department.

7. On July 6, 2021, plaintiff Patricia Montana and others filed similar claims regarding this unlawful survey with the New Jersey Department of Education, seeking relief under that state’s parental rights laws. Ex. 3.



8. On November 15, 2021, the state law claims were adjudicated by an administrative law judge, who ruled that the school district violated N.J.S.A. 18A:36-34 and 18A:36-36(a). Ex. 4.

9. The school district appealed, and on December 16, 2021, the New Jersey Assistant Commissioner of Education upheld the administrative law judge's decision, concluding that the survey violated N.J.S.A. 18A:36-34 and 18A:36-36(a). Ex. 5.

10. On August 15, 2022, the plaintiffs, through their counsel America First Legal Foundation ("AFL"), demanded that the defendants respond to their PPRA complaints by August 29, 2022. Ex. 6.

11. On or around August 26, 2022, Bernie Cieplak ("Cieplak") reached out to the plaintiffs on behalf of the Department and informed them that to communicate with AFL, the Department would need a signed written consent to share information with their attorney. Cieplak followed up with an email to plaintiff Elting reiterating the need for written consent. Ex. 7.

12. On September 1, 2022, AFL sent via email to Cieplak letters signed by each plaintiff authorizing the Department to communicate with AFL on this matter. Ex. 8. Cieplak acknowledged receipt the same day. Ex. 8.

13. On September 27, 2022, plaintiffs, through their counsel, requested that the Department provide prompt notice of any denial and the grounds for the denial pursuant to 5 U.S.C. § 555(e). Ex. 9.

14. On October 20, 2022, Frank Miller ("Miller"), the Department's Deputy Director of the Student Privacy Policy Office, mailed a notice to the plaintiffs to

inform them that the Department had written to Cedar Grove School District Superintendent Anthony Grosso (“Grosso”) to inform him that the Department was investigating the plaintiffs’ allegations; Miller included the letter to Grosso in his mailing to the plaintiffs. Ex. 10.

15. On December 20, 2022, AFL sent an email to Cieplak asking for an update on the status of the plaintiffs’ request for a Department investigation. Ex. 11.

16. On January 27, 2023, the Deputy Director of the Student Privacy Policy Office responded to AFL’s December 20, 2022, request for an update and stated that the Department had notified the Cedar Grove School District of its investigation in October and was awaiting a response. Ex. 12.

17. Neither AFL nor the plaintiffs have been provided further updates on whether any actions have been taken since January 27, 2023.

18. PPRA complaints are time-sensitive and implicate fundamental statutory and constitutional rights. Yet the defendants have failed to dedicate the financial and human resources required to investigate, process, review, and adjudicate parents’ PPRA complaints in a lawfully timely fashion. The Department’s unreasonable delay has effectively nullified plaintiffs’ rights and the rights of all other parents who have filed PPRA complaints.

### **Jurisdiction and Venue**

19. The Court has jurisdiction under 28 U.S.C. § 1651(a), 28 U.S.C. § 1361, and 28 U.S.C. §§ 1331, 2201.

20. Venue is proper under 28 U.S.C. § 1391(e).

**Parties**

21. The plaintiff Patricia Montana is a resident of Cedar Grove, New Jersey, and the parent of three students enrolled in the Cedar Grove School District in Cedar Grove, New Jersey. She filed three separate PPRA complaints on behalf of her three children with the Department of Education on July 1, 2021. The Department has not adjudicated her complaint. Ex. 13.

22. The plaintiff Vincent Vollero is a resident of Cedar Grove, New Jersey, and the parent of a student who is enrolled in the Cedar Grove School District in Cedar Grove, New Jersey. He filed his PPRA complaint with the Department of Education on July 2, 2021. The Department has not adjudicated his complaint. Ex. 14.

23. The plaintiff Michael Turi is a resident of Cedar Grove, New Jersey, and the parent of a student who is enrolled in the Cedar Grove School District in Cedar Grove, New Jersey. He filed his PPRA complaint with the Department of Education on June 30, 2021. The Department has not adjudicated his complaint. Ex. 15.

24. The plaintiff Cheryl Miller is a resident of Cedar Grove, New Jersey, and the parent of a student who is enrolled in the Cedar Grove School District in Cedar Grove, New Jersey. She filed her PPRA complaint with the Department of Education on October 24, 2021. The Department has not adjudicated her complaint. Ex. 16.

25. The plaintiff Donald Elting is a resident of Cedar Grove, New Jersey, and the parent of a student who is enrolled in the Cedar Grove School District in

Cedar Grove, New Jersey. He filed a PPRA complaint with the Department of Education on July 13, 2021. The Department has not adjudicated his complaint. Ex. 17.

26. The plaintiff Anna O'Connor is a resident of Cedar Grove, New Jersey, and the parent of two students who are enrolled in the Cedar Grove School District in Cedar Grove, New Jersey. She filed two PPRA complaints with the Department of Education on July 12, 2021. The Department has not adjudicated her complaints. Ex. 18

27. The defendant Miguel Cardona is the Secretary of Education. He is sued in his official capacity.

28. The defendant the U.S. Department of Education is a federal agency with headquarters at 400 Maryland Avenue SW, Washington, DC, 20202.

### **Claims for Relief**

#### *Count One: Mandamus*

29. AFL repeats paragraphs 1-28.

30. Congress enacted the PPRA to protect the fundamental constitutional liberty interest of parents and legal guardians “to control the education of their own” and “to direct the upbringing and education of children under their control.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

31. When local school districts violate parents’ PPRA rights, which include, *inter alia*, (a) their right to view all instructional material; (b) their right to prior notice of and an opportunity to opt their child out of surveys that gather protected

information; (c) their right to prior notice of and an opportunity to opt their child out of classroom activity that is not directly related to traditional academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings; and (d) their right to prior notice of and an opportunity to opt their child out of classroom activity that is not directly related to traditional academic instruction and that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group, they also violate parents' federal constitutional rights.

32. The defendants have a mandatory duty to adjudicate plaintiffs' PPRA complaints within a reasonable time. *See* 20 U.S.C. § 1232h(f); 5 U.S.C. § 555(b).

33. However, they have failed or refused to do so.

34. The plaintiffs' PPRA complaints have been pending without adjudication for nearly two years. This delay is facially unreasonable, especially given that the State of New Jersey investigated and resolved substantially similar complaints involving identical subject matter within six months.

35. Upon information and belief, the Department's failure to investigate, process, review, and adjudicate the plaintiffs' PPRA complaints is attributable to Secretary Cardona's decision to deprioritize parents' rights and PPRA enforcement for political reasons.

36. Mandamus is the appropriate remedy for Secretary Cardona's unreasonable delay in adjudicating the plaintiffs' PPRA complaints. *In re Core Communications, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008).

37. The plaintiffs have a clear statutory right to have their PPRA complaints investigated, processed, reviewed, and adjudicated.

38. The defendants have a clear statutory duty to investigate, process, review, and adjudicate the plaintiffs' PPRA complaints in a reasonable time.

39. There is no adequate remedy available to the plaintiffs other than a writ of mandamus.

40. If compelled to investigate, process, review, and adjudicate PPRA complaints in a reasonably timely fashion, the practical effect on the defendants will be slight.

41. Accordingly, a writ of mandamus should issue. *Lovitky v. Trump*, 949 F.3d 753, 759 (D.C. Cir. 2020) (citation omitted).

*Count Two: For Unlawfully and Unreasonably Delayed Agency Action*

42. The plaintiffs repeat paragraphs 1-41.

43. 5 U.S.C. § 555(b) provides that “within a reasonable time, each agency shall proceed to conclude a matter presented to it.”

44. The defendants' failure to adjudicate the plaintiffs' PPRA complaints is “agency action” under 5 U.S.C. §§ 551(13) and 701(b)(2).

45. 5 U.S.C. § 706(1) provides that to the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action and shall compel agency action unlawfully withheld or unreasonably delayed.

46. The defendants have unlawfully withheld or unreasonably delayed agency action by refusing or failing to investigate, process, review, and adjudicate the plaintiffs' PPRA complaints within a reasonable time.

47. The court therefore should compel the defendants to adjudicate the plaintiffs' PPRA complaints.

Relief Requested

Wherefore, the plaintiffs respectfully request that this Court:

A. Declare that the defendants have unlawfully failed to investigate, process, review, and adjudicate the plaintiffs' PPRA complaints in a reasonable time.

B. Issue a writ of mandamus requiring the defendants to investigate, process, review, and adjudicate the plaintiffs' PPRA complaints in a reasonable time.

C. Set a sixty-day deadline for the final adjudication of the plaintiffs' PPRA complaints.

D. Retain jurisdiction as appropriate.

E. Award reasonable costs and attorneys' fees as authorized by law.

F. Grant such further relief as may be just and proper.

[signature page follows]

March 23, 2023

Respectfully submitted,

/s/ Michael Ding  
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*\* Application for Pro Hac Vice Forthcoming*

*Counsel for the Plaintiffs*





## UNITED STATES DEPARTMENT OF EDUCATION

## STUDENT PRIVACY POLICY OFFICE

SPPO-21-01

**Protection of Pupil Rights Amendment (PPRA)**

*Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.*

*Rights of Parents under PPRA*

PPRA (20 U.S.C. § 1232h, 34 CFR Part 98) affords parents of students certain rights regarding, among other things, participation in surveys, the collection and use of information for marketing purposes, and certain physical exams. These include, but are not limited to, the right to:

- *Consent* before students are required to submit to a survey that concerns one or more of the following eight protected areas (protected information survey) if the survey is funded as part of a program administered by the U.S. Department of Education (Department) (applicable program) –
  1. Political affiliations or beliefs of the student or student's parent;
  2. Mental or psychological problems of the student or student's family;
  3. Sex behavior or attitudes;
  4. Illegal, anti-social, self-incriminating, or demeaning behavior;
  5. Critical appraisals of others with whom respondents have close family relationships;
  6. Legally recognized privileged or analogous relationships, such as with lawyers, doctors, or ministers;
  7. Religious practices, affiliations, or beliefs of the student or student's parent; or
  8. Income, other than as required by law to determine program eligibility.
- *Receive notice* and an opportunity to *opt a student out* of –
  1. Any protected information survey administered or distributed to a student by a local educational agency that is a recipient of funds under an applicable program (LEA) if the protected information survey is either not funded as part of a program administered by the Department or is funded as part of a program administered by the Department but to which a student is not required to submit;
  2. Any non-emergency, invasive physical examination or screening required by an LEA as a condition of attendance; administered by the school and scheduled by the school in advance; and, that is not necessary to protect the immediate health and safety of a student, with some exceptions; and
  3. Activities of an LEA involving collection, disclosure, or use of personal information collected from students for the purpose of marketing or sale (or to otherwise distribute such information to others for that purpose), with some exceptions.

- *Inspect*, upon request –
  1. Protected information surveys and surveys created by a third party, before the administration or distribution by an LEA of the surveys to a student;
  2. Any instrument used by an LEA to collect personal information for the purpose of marketing or sale (or otherwise distributing such information for that purpose), before the instrument is administered or distributed to a student, with some exceptions; and
  3. Instructional material, excluding academic tests or academic assessments, used by an LEA as part of the educational curriculum for a student.

These rights transfer from the parents to the student when the student turns 18 years old or becomes an emancipated minor under applicable State law.

#### *Requirements of LEAs under PPRA*

LEAs are required to develop and adopt policies, in consultation with parents, to address the protection of student privacy and parents' rights under PPRA, including those discussed above. In addition, LEAs must directly notify parents of these policies at least annually, at the start of each school year, and within a reasonable period after any substantive change to the policies.

LEAs must also directly notify, such as through U.S. Mail or email, parents of students who are scheduled or expected to be scheduled to participate in any of the activities or surveys listed below and must provide an opportunity for parents to opt their child out of participation. LEAs must make this notification to parents at least annually at the beginning of the school year, and this notification must include the specific or approximate dates when the activities or surveys are scheduled or expected to be scheduled. For activities or surveys that are scheduled after the school year starts, LEAs must provide parents with reasonable notification and an opportunity to review, as well as an opportunity to opt their child out. These activities and surveys involve:

- Collection, disclosure, or use of personal information collected from students for the purpose of marketing or sale (or otherwise distributing such information to others for that purpose), with some exceptions;
- Administration or distribution to a student of any protected information survey not funded as part of a program administered by the Department or funded as part of a program administered by the Department but to which students are not required to submit; and
- Certain non-emergency, invasive physical examinations or screenings, as described above.

Parents who seek additional resources on student privacy under PPRA may visit the Department's Student Privacy Policy Office website at <https://studentprivacy.ed.gov/>. Parents who believe their PPRA rights have been violated may file a complaint online by selecting the PPRA complaint form option at <https://studentprivacy.ed.gov/file-a-complaint> or by mailing the form to the following address:

Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

# Equity and Diversity Advisory Council Elementary School Needs Assessment

Thank you for helping us to determine our needs in the Cedar Grove School District. Please take a few moments to complete this anonymous survey to help us plan and prepare for the future.

## 1. Race/Ethnicity

*Mark only one oval.*

- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Black or African American
- ☐ Latin X
- ☐ Multiple Categories
- ☐ Native Hawaiian or Pacific Islander
- ☐ White
- ☐ Other

## 2. Gender Identity

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## 3. Do you feel school is a safe place?

*Mark only one oval.*

- ☐ Yes
- ☐ No

4. Do you feel school is a safe place for people who look like you?

*Mark only one oval.*

☐ Yes

☐ No

5. Do you feel school is a safe place for people who don't look like you?

*Mark only one oval.*

☐ Yes

☐ No

6. Do you feel the adults in your school are fair in dealing with people who look like you?

*Mark only one oval.*

☐ Yes

☐ No

7. Do you feel the adults in your school are fair in dealing with people who don't look like you?

*Mark only one oval.*

☐ Yes

☐ No

8. If you felt unsafe at school, would you feel comfortable going to your teacher or principal?

*Mark only one oval.*

☐ Yes

☐ No

9. What activities in school do you enjoy the most?

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10. What change would you like to see happen at your school?

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# Equity and Diversity Advisory Council - Memorial Middle School Students Needs Assessment

Thank you for helping us to determine our needs in the Cedar Grove School District. Please take a few moments to complete this anonymous survey to help us plan and prepare for the future.

## 1. Race/Ethnicity

*Check all that apply.*

- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Black or African American
- ☐ Latin X
- ☐ Multiple Categories
- ☐ Native Hawaiian or Pacific Islander
- ☐ White
- ☐ Other

## 2. Gender Identity

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## 3. Do you feel Memorial Middle School is a safe space for your particular racial/ethnic group?

*Mark only one oval.*

- ☐ Yes
- ☐ No

4. Do you feel the adults in your school are fair in dealing with people who look like you?

*Mark only one oval.*

☐ Yes

☐ No

5. Do you feel the adults in your school are fair in dealing with people who don't look like you?

*Mark only one oval.*

☐ Yes

☐ No

6. If you felt unsafe at school, would you feel comfortable going to your teachers or principal?

*Mark only one oval.*

☐ Yes

☐ No

7. What activities in school do you feel are most enjoyable?

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8. Can you provide any examples of racial or gender based discrimination you have experienced in the Cedar Grove Public Schools?

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9. What change would you like to see happen at your school?

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# Equity and Diversity Advisory Council Student Needs Assessment

This year the EDAC (Equity and Diversity Advisory Council) has worked to identify inequalities and diversity needs in the Cedar Grove School District. Part of this work includes the input from the students of Cedar Grove High School. EDAC is asking that you take a few moments to respond to this anonymous survey in order to plan and prepare for the future.

## 1. Race/Ethnicity

*Mark only one oval.*

☐ American Indian or Alaska Native

☐ Asian

☐ Black or African American

☐ Latin X

☐ Multiple Categories

☐ Native Hawaiian or Pacific Islander

☐ White

☐ Other

## 2. Gender Identity

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## 3. Religious Affiliation

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## 4. Family Demographic

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5. Do you value diverse perspectives presented in the curriculum?

*Mark only one oval.*

☐ Yes

☐ No

6. Prior to the shift to virtual learning, do you feel supported in Cedar Grove Public Schools?

*Mark only one oval.*

☐ Yes

☐ No

7. Do you feel the school is a safe space for your particular racial/ethnic group?

*Mark only one oval.*

☐ Yes

☐ No

8. Can you provide any examples of racial, gender based or religious discrimination you have experienced in the Cedar Grove Public Schools?

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9. Do you feel Cedar Grove Public School leadership is supportive of Diversity, Equity and Inclusion efforts?

*Mark only one oval.*

- ☐ Strongly Disagree  
☐ Disagree  
☐ Neutral  
☐ Agree  
☐ Strongly Agree

10. How comfortable are you with speaking about racial or religious diversity?

*Mark only one oval.*

- ☐ Very Comfortable  
☐ Comfortable  
☐ Neutral  
☐ Uncomfortable  
☐ Very Uncomfortable

11. What activities in school do you feel are most enjoyable?

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12. What changes would you like to see happen at your school?

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13. If there is an issue of discrimination, do you feel comfortable going to leadership?

*Mark only one oval.*

☐ Yes

☐ No

14. Please use this space to communicate other information based on this survey.

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# Equity and Diversity Advisory Council

## Faculty and Staff Needs Assessment

This year the Equity and Diversity Advisory Council (EDAC) has worked to identify inequalities and diversity needs in the Cedar Grove School District. Part of this work includes the needs of the Cedar Grove Public Schools faculty and staff. EDAC is asking that you take a few moments to respond to this anonymous survey in order to plan and prepare for the future.

### 1. Race/Ethnicity

*Check all that apply.*

- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Black or African American
- ☐ Latin X
- ☐ Multiple Categories
- ☐ Native Hawaiian or Pacific Islander
- ☐ White
- ☐ Other

### 2. Gender Identity

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### 3. Religious Affiliation

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### 4. Family Demographic

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5. Do you value the diverse perspectives presented in our curriculum?

*Mark only one oval.*

☐ Yes

☐ No

6. Prior to the shift to virtual learning, do you feel supported as a teacher in Cedar Grove Public Schools?

*Mark only one oval.*

☐ Yes

☐ No

7. Do you feel the school is a safe space for your particular racial/ethnic group?

*Mark only one oval.*

☐ Yes

☐ No

8. How comfortable are you with speaking about racial or religious diversity in your classroom.

*Mark only one oval.*

☐ Very Comfortable

☐ Comfortable

☐ Neutral

☐ Uncomfortable

☐ Very uncomfortable

9. Do you feel the leadership of Cedar Grove Public School is supportive of Diversity, Equity and Inclusion efforts?

*Mark only one oval.*

- ☐ Strongly disagree
- ☐ Disagree
- ☐ Neutral
- ☐ Agree
- ☐ Strongly agree

10. If there is an issue of discrimination, do you feel comfortable going to your principal or other district administrator?

*Mark only one oval.*

- ☐ Yes
- ☐ No

11. Can you provide any examples of racial, gender based or religious discrimination you have experienced in the Cedar Grove Public Schools?

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12. What change would you like to see happen at your school?

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13. Please use this space to communicate other information based on this survey.

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# Equity and Diversity Advisory Council

## Community Needs Assessment

This year the EDAC (Equity and Diversity Advisory Council) has worked to identify inequalities and diversity needs in the Cedar Grove School District. Part of this work includes the needs of the community that Cedar Grove Public Schools serve. EDAC is asking that you take a few moments to respond to this anonymous survey in order to plan and prepare for the future.

### 1. Race/Ethnicity

*Check all that apply.*

- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Black or African American
- ☐ Latin X
- ☐ Multiple Categories
- ☐ Native Hawaiian or Pacific Islander
- ☐ White
- ☐ Other

### 2. Gender Identity

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### 3. Religious Affiliation

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### 4. Family Demographic

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5. Do you value diverse perspectives presented in the curriculum?

*Mark only one oval.*

☐ Yes

☐ No

6. What do you feel are the most important components of your students' educational development?

*Check all that apply.*

☐ Identity to Feel Supported

☐ Adaption of Failure

☐ Cultural Competence

☐ Expectation of Academic Achievement

7. What do you hope your children will get out of their educational experience at the elementary, middle and high school level?

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8. Prior to the shift to virtual learning, do you or your children feel supported in Cedar Grove Public Schools?

*Mark only one oval.*

☐ Yes

☐ No

9. Do you feel the school is a safe space for your particular racial/ethnic group?

Mark only one oval.

☐ Yes

☐ No

10. Can you provide any examples of racial, gender based or religious discrimination you have experienced in the Cedar Grove Public Schools?

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11. What change would you like to see happen at your school

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12. Do you feel Cedar Grove Public School leadership is supportive of Diversity, Equity and Inclusion efforts?

*Mark only one oval.*

- ☐ Strongly disagree
- ☐ Disagree
- ☐ Neutral
- ☐ Agree
- ☐ Strongly agree

13. If there is an issue of discrimination, do you feel comfortable going to the teacher or leadership?

*Mark only one oval.*

- ☐ Yes
- ☐ No

14. Please use this space to communicate other information based on this survey.

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Dear Acting Commissioner of Education Angelica Allen-McMillan:

We are writing to you about our deep concern over Cedar Grove school district's failure to follow New Jersey statute 18A:36-34 requiring parental consent, among other things, before administering student surveys on certain confidential information. In addition to not following proper procedures in issuing surveys to students that solicit information explicitly protected by the statute, the Cedar Grove school district has continued to violate students' privacy by publicly sharing the results of those unauthorized surveys over the objection of parents as well as by asserting that it will continue to do so in future planning. We are asking you to investigate the Cedar Grove school district's compliance with the statute.

As way of background, on June 9, 2021, a "Community Needs Assessment" survey, prepared by the Cedar Grove School District's Equity and Diversity Advisory Council (EDAC), was sent directly to all middle school and high school student school email addresses. The survey, which called for answers to questions related to sensitive issues such as "race/ethnicity," "gender identity," "religious affiliation," whether "school is a safe place for your particular racial/ethnic group," whether "adults in your school are fair in dealing with your particular racial/ethnic group" and whether "adults in your school are fair in dealing with people not in your particular racial/ethnic group," was to be completed at the time of receipt.

Parents and caregivers did not receive written notification of the survey until the day it was sent to their children. On June 9, 2021, the District sent an email announcing the creation of EDAC and that it would be sending surveys to students and others to complete.<sup>1</sup> Many parents did not receive this notification until after their children had been emailed.

The notification was not only untimely it was entirely deficient. It omitted which grade levels would receive the survey, when the survey would be shared with families, staff, and students, and information about the content of the survey itself. It merely stated that the survey would be "voluntary" and "anonymous." Contrary to the District's mandatory policy 2415.05<sup>2</sup>, NJ Statute

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<sup>1</sup> A copy of the BOE email blast is attached.

<sup>2</sup> Located on the Cedar Grove School District website at [ELANOnline District Policies \(straussesmay.com\)](https://www.cedar-groveschools.org/ELANOnlineDistrictPolicies/straussesmay.com).

18A:36-34<sup>3</sup>, the PPRA<sup>4</sup>, and the unequivocal Decision of the Commission of Education in the *Michelle Green v. Board of Ed. of Ocean, Monmouth Cty.*, No. 368-16 (OAL decision 2016), there was no opt out provision, no request for consent, written or otherwise, or any opportunity to inspect the survey in advance. Moreover, the identity of the EDAC members was concealed; there was no one to contact in the event of questions or concerns.

Even more egregious, the survey was assigned in class to our third and fourth graders (8–10-year-olds) on June 10, again, without parents’ knowledge or prior authorization. In other words, third and fourth graders were given the survey as a class assignment and required to complete it in school. Their survey also asked students to identify their “race/ethnicity” and “gender identity” and asked sensitive and confusing questions like whether school is a “safe space for people who look like you” and whether school is a “safe space for people who don’t look like you.”

This was not communicated to families and caregivers in any email or elsewhere. Compelling students to complete the survey in class means the survey was not voluntary. There was no opportunity (or process) for students to opt out. The survey was also not anonymous as students, especially elementary school children, had to ask clarifying questions when completing it.

To repeat: Any notification to parents was not proper; it did not provide reasonable notification of the survey or an opportunity to opt their children out. Parents and caregivers were not provided with an advance opportunity to review the survey. There was no informed consent. There was no written consent. The survey was not voluntary. The survey was not anonymous.

Parents and caregivers raised objections to the Superintendent and BOE by email and phone prior to the BOE meeting on June 15 as well as at the meeting itself. Many did not receive reply emails or phone calls. And at the BOE meeting, the Superintendent was combative, condescending, and hostile to District family concerns while presenting on the EDAC and the survey itself. In a PowerPoint presentation, he shared student responses, taken out of context, without consent, all of which were critical of the Cedar Grove school experience. This willful

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<sup>3</sup> NJ 18A:36-34 (a) prohibits a school district from administering to a student “any academic or nonacademic survey, assessment, analysis or evaluation which reveals information concerning,” among other things, “sexual behavior and attitudes” and “illegal, anti-social, self-incriminating and demeaning behavior,” without “prior written informed consent from a student’s parent or legal guardian and provides for a copy of the document to be available for viewing at convenient locations and time periods.”

“The school district shall request prior written informed consent at least two weeks prior to the administration of the survey, assessment, analysis or evaluation.” *Id.* at 18A:36-34 (b).

“A student shall not participate in any survey, assessment, analysis or evaluation that concerns the [relevant issues] unless the school district has obtained prior written informed consent from that student’s parent or guardian.” *Id.* at 18A:36-34 (c).

“A school district that violates the provisions of this act shall be subject to such monetary penalties as determined by the commissioner.” *Id.* at 18A:36-34 (d).

<sup>4</sup> Protection of Pupil Rights Amendment, 20 U.S.C. § 1232(h) (2016).

use of the data is a further violation of both consent and anonymity, as families and students did not give permission for its public use.

At that same BOE meeting, he also would not identify members of the EDAC but noted that the parents and caregivers objecting to it were not suited to engaging in the work of the EDAC. Nor, notably, did the Superintendent apologize for the violations of the district policy, and state and federal law, agree to discard the results of the invalid survey, or promise to comply with legal requirements in the future. He failed to even pledge a review of the District's conduct. (A link to a video of that meeting is here: [CEDAR GROVE BOARD OF EDUCATION MEETING 06/15/2021 - YouTube](#))

Even now that the survey appears to be closed, there has been no acknowledgment by the Superintendent or BOE that they failed to follow proper procedure. This survey and any results submitted constitute a recurring violation of students' privacy rights and another violation of District policy and state and federal laws.

Copies of the surveys are attached. Please note that they were not voluntarily provided to district families upon request. We received them only after a parent was forced to file an OPRA request with the district.

Given the totality of Cedar Grove school district's misconduct, at a minimum, the Superintendent and BOE should (1) publicly acknowledge their wrongdoing and issue an apology to district families and students; (2) discard all survey results immediately; (3) identify the EDAC members by name; (4) provide assurances and clear communication on new procedures for administering surveys that are in accordance with district policy and state and federal law; and (5) be subjected to appropriate disciplinary measures.

We look forward to your prompt response.

Sincerely,

Rich and Lindsey Arrighi  
Daniella Barraco  
Romany and Amy Bekhit  
Jenn and Paul Bellerio  
Suzanne and Eddie Bitetti  
Joanne and Steve Cannataro  
Lisa and Rich Cassilli  
Maryann C. and James Colistra  
Therese and Mario Cordaro  
Marcella Crossman  
Rosanna Cruz  
Patty D'Angelo  
Dawn Daura  
Francine DeLeon  
Heather Rossetto-DeLeva

Janet and Rocco DeSiano  
Nicole and Chris Donlon  
Ami and Douglas Dow  
Donald and Melissa Elting  
Kerianne and Paige Esposito  
Joseph and Dina Fernandez  
Rich and Nicole Fisk  
Raffaella Freitas  
Edith and Rob Fusco  
Tom Gabriele  
Jamie Day Geiger  
Valarie and Anthony Genuario  
Kristy and Fred Giordano  
James and Kellie Goral  
David Grande  
Kim Kerney  
Andrea Jennings  
Jessica and Greg Jerry  
Jennifer Kropp  
Jodi Lejuez  
Jeanine and Dave Lemongello  
Dawn Lopez  
Jennifer and Mark Loftus  
Stacia and Andrew Lupinacci  
Julia and Michael Maraviglia  
Mike and Laura Marinelli  
Jenn and Eric Marino  
John Martinelli and Tracy Tanaka  
Toni Ann Mattia  
Daniel and Michelle Mauriello  
Carmen and Michelle Micciche  
Cheryl Miller  
Elizabeth Mills  
Sal Minieri  
Patricia and Jon Montana  
Michele De Leo Morales  
Karin and Robert Moro  
Jennifer Morresi  
Nicole Morresi  
Patricia Newcomb  
Jennifer and Dave Newman  
Agnieszka and Kevin Norman  
Janelle and Paulo Nunes  
Sean and Anna O'Connor  
Dina Paine  
Chris Parisi



Jeanine Patel  
Amy and Robert Paulus  
Erica Pekar  
Gia Perdikis  
Lucy Perdikis  
Thomas and Christine Perri  
Lisa Piazza  
Jacqueline Pinho  
Christine Puzio  
Kristen and Sam Recenello  
Dana and Stephen Ruggiero  
Diana and Mark Ruthman  
Ashley SanGiacomo  
Robert Saraiva  
Lisa and Ronnie Sheridan  
Patricia and Rocco Sica  
Tracy and George Slattery  
Billy Spallino  
Paul and Bonnie Stella  
Leo and Margaret Stringer  
Marian and Dom Tafuri  
Joe and Kelly Tencza  
Robert and Joan Testa  
Michael G. Turi  
Gaetana and Raul Velazquez  
Caroline and Michael Velonas  
Samuel and Angele Ventola  
Marcia and Vincent Vollero  
John Weinstein  
Janette Wilfling  
Nahed William  
Jacqueline and Jason Wolfstirn



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION ON**

**CROSS MOTIONS**

OAL DKT. NO. EDU 06551-21

AGENCY DKT. NO. 104-7/21

**PATRICIA MONTANA, DAVID M. GRANDE,  
THOMAS PERRI, AGNIESZKA NORMAN,  
LISA CASSILLI, AND JANET DESIANO,**

Petitioners,

v.

**ANTHONY GROSSO, SUPERINTENDENT,  
AND BOARD OF EDUCATION OF THE  
TOWNSHIP OF CEDAR GROVE, ESSEX  
COUNTY,**

Respondents.

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**Patricia Montana**, petitioner pro se on behalf of all petitioners.

**Jeffrey R. Merlino**, Esq., on behalf of respondents Anthony Grosso and Cedar Grove Township Board of Education (Sciarrillo Cornell Merlino McKeever & Osborne, attorneys)

Record Closed: October 12, 2021

Decided: November 15, 2021

BEFORE **GAIL M. COOKSON**, ALJ:

## **STATEMENT OF THE CASE**

Petitioners are several parents whose children attend Township of Cedar Grove (“Cedar Grove”) schools. They have brought this action in order to obtain certain relief from a survey presented to students on June 9, 2021, by the Cedar Grove Board of Education (“District”).<sup>1</sup> Petitioners allege that the survey was conducted in such a manner as to violate a requirement that a district obtain “prior written informed consent from a student’s parent or legal guardian and provide[ ] for a copy of the document to be available for viewing at convenient locations and time periods” before administering any “survey, assessment, analysis or evaluation which reveals information concerning” eight personal and sensitive categories. N.J.S.A. 18A:36-34(a); 20 U.S.C. § 1232h(b), Protection of Pupil Rights Act (“PPRA”). See also District Policy 2415.05.

Petitioners seek to have the surveys and all results removed from any student records and discarded, identification of any other agency or entity that received the results, identification of the members of the District’s Equity and Diversity Advisory Council (“EDAC”) that designed the survey, a public apology, affirmative action on assuring future compliance, and an award of fees and monetary penalties.

## **PROCEDURAL HISTORY**

The Petition of Appeal was filed with the New Jersey Department of Education, Office of Controversies and Disputes (“Department”) on July 6, 2021. The District filed its Answer to the Petition on July 29, 2021. The Department transmitted the petitioners’ complaint to the Office of Administrative Law (“OAL”) where it was filed on August 4, 2021, for adjudication as a contested matter pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13.

On August 6, 2021, the matter was assigned to the undersigned. On August 30, 2021, a telephonic case management conference was convened at which time pretrial

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<sup>1</sup> While petitioners have also named the District Superintendent individually as a respondent, I shall refer to the respondents in the singular and as the “District.”

issues and motions were discussed. A briefing schedule was established as both parties were of the opinion that the case could be disposed of without evidentiary hearings. The papers have all been filed and the cross-motions are now ripe for determination.

### **MOTIONS PRESENTED**

Respondent has filed a Motion to Dismiss the Complaint on several grounds. The District denies that the subject survey required prior parental consent because it disputes that it touched upon any of the statutory categories. It also disputes that the OAL has jurisdiction over any alleged PPRA violations, which it asserts must be brought in the federal administrative process before the United States Department of Education. The District also asserts as a defense to any consideration of the merits of the PPRA, in the event that I reach such, that the surveys were voluntary and thus, not “required,” a condition it states is necessary to trigger the PPRA’s strictures. Further, the District argues that the EDAC does not receive any federal funds and thus its Policy 2415.05 is not applicable.

Petitioners have filed a Motion for Summary Decision on their Complaint asserting that they are entitled to judgment in their favor as a matter of law and undisputed facts because the surveys touched upon gender identity and for the older students, religious affiliation. They also assert that the surveys were not genuinely “voluntary,” especially for the younger grades who were given the survey in class by the teacher as an anonymous but required assignment to be done right then and there.

### **LEGAL STANDARDS ON THE MOTIONS**

Here, both parties have moved for a determination that the application of the law entitles each to a favorable decision. Respondent moved, however, for a dismissal as a matter of law. For the purposes of a motion to dismiss –

[A] trial court should grant a dismissal “in only the rarest of instances.” Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772, 563 A.2d 31 (1989). A court’s review of a complaint is to be “undertaken with a generous and hospitable

approach,” *id.* at 746, 563 A.2d 31, and the court should assume that the nonmovant’s allegations are true and give that party the benefit of all reasonable inferences, Smith v. SBC Communications Inc., 178 N.J. 265, 282, 839 A.2d 850 (2004). If “the fundament of a cause of action may be gleaned even from an obscure statement of claim,” then the complaint should survive this preliminary stage. Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 626, 660 A.2d 505 (1995) (citation omitted).

[NCP Litig. Tr. v. KPMG LLP, 187 N.J. 353, 365 (2006).]

Petitioners have moved for summary decision in their favor. On such a motion, it is well established that if there is no genuine issue as to any material fact, a moving party may be entitled to prevail as a matter of law without an evidentiary hearing. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public and private litigation resources.

### **STATEMENT OF FACTS ON THE MOTIONS**

Applying those legal standards to the pleadings and any factual matters presented outside the pleadings, I **FIND** the following as facts that form the predicate to these cross-motions.

First, the “Community Needs Assessment” surveys at issue herein included the following questions at each of these school levels:

Elementary School:

1. Race/Ethnicity
2. Gender Identity
3. “Do you feel school is a safe place?”
4. “Do you feel school is a safe place for people who look like you?”
5. “Do you feel school is a safe place for people who don’t look like you?”
6. “Do you feel the adults in your school are fair in dealing with people who look like you?”
7. “Do you feel the adults in your school are fair in dealing with people who don’t look like you?”
8. “If you felt unsafe at school, would you feel comfortable going to your teacher or principal?”

9. "What activities in school do you enjoy the most?"
10. "What change would you like to see happen at your school?"

Middle School:

1. Race/Ethnicity
2. Gender Identity
3. "Do you feel Memorial Middle School is a safe space for your particular racial/ethnic group?"
4. "Do you feel the adults in your school are fair in dealing with people who look like you?"
5. "Do you feel the adults in your school are fair in dealing with people who don't look like you?"
6. "If you felt unsafe at school, would you feel comfortable going to your teachers or principal?"
7. "What activities in school do you feel are most enjoyable?"
8. "Can you provide any examples of racial or gender-based discrimination you have experienced in the Cedar Grove Public Schools?"
9. "What change would you like to see happen at your school?"

High School:

1. Race/Ethnicity
2. Gender Identity
3. Religious Affiliation
4. Family Demographic
5. "Do you value diverse perspectives presented in the curriculum?"
6. "Prior to the shift to virtual learning, do you feel supported in Cedar Grove Public Schools?"
7. "Do you feel the school is a safe space for your particular racial/ethnic group?"
8. "Can you provide any examples of racial, gender based or religious discrimination you have experienced in the Cedar Grove Public Schools?"
9. "Do you feel Cedar Grove Public School leadership is supportive of Diversity, Equity and Inclusion efforts?"
10. "How comfortable are you speaking about racial or religious diversity?"
11. "What activities in school do you feel are most enjoyable?"
12. "What changes would you like to see happen at your school?"
13. "If there is an issue of discrimination, do you feel comfortable going to leadership?"
14. "Please use this space to communicate other information based on this survey."

[Certification of Jeffrey R. Merlino, Esq. ("Merlino Cert.") Exhibits A, B, and C.]

Prior announcements about a survey being prepared by EDAC for students, staff, and the community were made during Board meetings but did not provide sufficient detailed information to allow parents or members of the public to determine whether the questions would be touching upon subject matters for which special consideration and permissions might be required. [Certification of Anthony Grosso (“Grosso Cert.”) ¶ 12.]

The surveys were provided to the children by email link or in the classroom (elementary grades) on June 9, 2021. [Grosso Cert. ¶¶ 14-15.]

Only on that same date, June 9, did parents receive an email invitation and link in order to complete the community version of the survey. It did not include any opt-in or opt-out language for parents to object to the student versions of the survey. [Grosso Cert. ¶ 13.] It also did not provide any location or time when parents could review and inspect the surveys in advance. [Petition of Appeal ¶¶ 4, 7.]

The surveys completed by third and fourth grade students were distributed, completed and collected by the classroom teachers during a classroom session. While the students were told that the surveys were anonymous, they were not told that they were voluntary and that they could decline to complete it or that they could discuss it with their parents prior to completing it. Any clarifying questions would have been asked in person of the teacher, negating to some extent the anonymity of the survey. [Petition of Appeal ¶ 6.]

In fact, the email instructions to those teachers stated:

We would very much appreciate that you have the kids take the survey in class tomorrow, Wednesday June 9. It is only about 8 questions and shouldn't take a great deal of time. To introduce the survey, tell the kids that no name is needed. Their answers are private, and no one will know how they answered. Tell them it is to help us plan for the future at [South End/North End] to help make it a better school. Keep it simple.

[Certification of David M. Grande (“Grande Cert.”) ¶¶ 3-4, Exhibits C & D).]

At a June 15, 2021, Board meeting, the Superintendent presented a PowerPoint on the surveys' results, inclusive of "student responses, taken out of context, without consent." Upon questions and concerns expressed by parents at the meeting, he would not identify members of EDAC<sup>2</sup>, commit to discarding the surveys and results, acknowledge that it had been unlawfully conducted, or that the District would comply with the laws in the future. [Petition of Appeal ¶¶ 8-9.]

The District does receive federal education funding; it is irrelevant that the EDAC itself specifically does not.

The surveys completed by students were anonymous and yet the District refused to produce them in response to an OPRA request from petitioners stating that they constitute "student records." [Certification of Patricia Montana ("Montana Cert.") ¶ 3.]

Yet, the summary of the surveys was posted on the District website. And that summary included language which showed the focus of the surveys:

The purpose of this needs assessment was to explore diversity and inclusion in the Cedar Grove Public Schools and seeks to eliminate bias and enhance diversity in all schools. Diversity is considered race/ethnicity, gender identity, LGBTQ+ status and disability status. This needs assessment seeks to explore previous and present bias to provide tangible solutions for all stakeholders. The survey participation yielded 567 participants (64 Faculty/Staff, 158 Families/Caregivers, 132 Elementary Students, 64 Middle School Students, 149 High School Students. . . .

When exploring responses of biased or discriminatory acts against individuals, the experiences varied. These experiences also varied from race, gender identity, religious affiliation and family demographics. It was clear that Cedar Grove Public Schools has had biased acts that have faced all subgroups who participated in this needs assessment.

[<https://sites.google.com/cgschools.org/edac/2021-needs-assessment> (emphasis added).]

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<sup>2</sup> The District website now sets forth the names for the next school year.  
<https://sites.google.com/cgschools.org/edac/members>



## **LEGAL ANALYSIS AND CONCLUSIONS**

All parties acknowledge the importance of diversity in the schools and the requirements that boards develop comprehensive equity plans to ensure that all students, regardless of their race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status are not subject to discrimination and that any barriers to achieving equity are removed. N.J.A.C. 6A:7-1.4(c). The question here, however, is whether the survey provided to students in June of this year and which might have been geared toward assisting the District in developing an equity plan, were undertaken in a manner inconsistent with the laws governing the rights of parents and students.

N.J.S.A. 18A:36-34 ("School surveys, certain, parental consent required before administration")<sup>3</sup> provides –

a. Unless a school district receives prior written informed consent from a student's parent or legal guardian and provides for a copy of the document to be available for viewing at convenient locations and time periods, the school district shall not administer to a student any academic or nonacademic survey, assessment, analysis or evaluation which reveals information concerning:

(1) political affiliations;

(2) mental and psychological problems potentially embarrassing to the student or the student's family;

(3) sexual behavior and attitudes;

(4) illegal, anti-social, self-incriminating and demeaning behavior;

(5) critical appraisals of other individuals with whom a respondent has a close family relationship;

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<sup>3</sup> I note that there is a new provision, N.J.S.A. 18A:36-34.1, but same is not in effect until December 29, 2021.

(6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;

(7) income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program; or

(8) social security number.

b. The school district shall request prior written informed consent at least two weeks prior to the administration of the survey, assessment, analysis or evaluation.

c. A student shall not participate in any survey, assessment, analysis or evaluation that concerns the issues listed in subsection a. of this section unless the school district has obtained prior written informed consent from that student's parent or guardian.

d. A school district that violates the provisions of this act shall be subject to such monetary penalties as determined by the commissioner.

District Policy 2415.05 provides:

PPRA requires written consent from parents of unemancipated minor students and students who are eighteen years old or emancipated minor students before such students are required to participate in a survey, analysis, or evaluation funded in whole or in part by a program of the United States Department of Education that concerns one or more of the following areas referred to as "protected information surveys":

1. Political affiliations or beliefs of the student or student's parent;
2. Mental or psychological problems of the student or student's family;
3. Sex behavior or attitudes;
4. Illegal, anti-social, self-incriminating or demeaning behavior;
5. Critical appraisals of others with whom respondents have close family relationships;

6. Legally recognized privileged or analogous relationships, such as with lawyers, physicians, and ministers;
7. Religious practices, affiliations, or beliefs of the student or parents;
8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program); or
9. Social security number.

This consent requirement also applies to the collection, disclosure or use of student information for marketing purposes, referred to as “marketing surveys”, and for certain physical examinations and screenings.”

The District intended to and did actually seek answers from students, who were not told it was voluntary but only anonymous, with elementary students being given it as an assignment in class, on the subjects of gender identity, gender discrimination, and for the older students, religion and religious discrimination, and family demographics. It matters not that there were only a few questions, cf. Green v. Bd. of Ed. of Ocean, Monmouth Cty, OAL Dkt. No. EDU 4867-15, Initial Decision (September 8, 2016), adopted with modif. Comm’r Final Decision (October 24, 2016), <http://www.njlaw.rutgers.edu/collections/oal>, but whether the subject of the questions triggered the legal requirement to provide advance opt-in notice to parents.

While respondent argues that no questions were asked which touched on prohibited subjects, except for the high school students on religion which is enforceable only under the PPRA, I concur with petitioners that –

Children confuse gender identity and sexual identity/orientation also. Often, young people “direct anti-lesbian, gay, or bisexual (LGB) language; negative attitudes; and hostility toward others not because of others’ actual or perceived sexual orientation but because they do not adhere to conventional gender or other prescriptive norms about appropriate or acceptable behavior.” Stacey S. Horn, *Sexual Orientation and Gender Identity-Based Prejudice*, 13 Child Dev. Persps. 21, 21 (2009) (citations omitted). This is especially frequent as “young people try to figure out their own

sexual orientations and gender identities.” *Id.* These concerns lead students to ponder their sexual behaviors and attitudes, including behaviors they might consider anti-social or demeaning, when assessing their gender identity.

[Petitioners’ Brief at 18.]

Similarly, the surveys asked some students about family demographics which could easily elicit highly personal, and oft publicly shamed, information, such as same-sex unions. Furthermore, for the elementary students to whom the survey was distributed in class, I agree with petitioners that such violated the law also prohibits public schools from requiring students to “supply information regarding [their] race, ethnicity, migrant status or economically disadvantaged status on any materials distributed in class.” N.J.S.A. 18A:36-36(a) (emphasis added).

I **CONCLUDE** on the basis of the undisputed facts and the law cited above that the legal requirement of the state education law, N.J.S.A. 18A:36-34, was triggered and this survey was not voluntary. I also **CONCLUDE** that the appropriate remedy is to discard the surveys and all results derived therefrom from the District’s website, student records, the EDAC, and to similarly extend and advise any other entity with whom the surveys or results were shared of this requirement, which entities must be disclosed. I do not consider it necessary for there to be a mandated public apology as the respondent is now the subject of this adverse ruling. Nor do I think monetary damages are called for; and fees are not warranted as the petitioners are representing themselves. Similarly, this Initial Decision, assuming adoption or only minor modification, also serves as guidance and stricture to the District with respect to future surveys conducted on diversity and related issues in the community and the schools.

### **ORDER**

Based upon the foregoing, it is **ORDERED** that the petitioners’ Motion for Summary Decision on their Petition of Appeal shall be **GRANTED**. It is further **ORDERED** that the respondent’s Motion to Dismiss the Petition of Appeal shall be **DENIED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties. of any exceptions must be sent to the judge and to the other parties.



November 15, 2021  
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

11/15/21

Date Mailed to Parties:

11/15/21

id

331-21

OAL Dkt. No. EDU 06551-21

Agency Dkt. No. 104-7/21

**New Jersey Commissioner of Education**

**Final Decision**

Patricia Montana, David M. Grande,  
Thomas Perri, Agnieszka Norman,  
Lisa Cassilli, and Janet DeSiano,

Petitioners,

v.

Anthony Grosso, Superintendent, and Board of  
Education of the Township of Cedar Grove,  
Essex County,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL) and the exceptions filed by the Board<sup>1</sup> pursuant to *N.J.A.C. 1:1-18.4* have been reviewed and considered.<sup>2</sup>

Petitioners, who are parents and caregivers of students in Cedar Grove schools, filed a petition of appeal asserting that the Board had improperly administered surveys to students without obtaining parental consent. Following the Board's motion to dismiss and petitioner's motion for summary decision, the Administrative Law Judge (ALJ) found that the survey was not voluntary, as no students were informed it was voluntary. The ALJ concluded that the surveys touched on subjects for which parental consent is required by *N.J.S.A. 18A:36-34* and that the Board

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<sup>1</sup> Respondents shall collectively be referred to as "the Board."

<sup>2</sup> Petitioners did not file a reply to the Board's exceptions. The Department of Education received several submissions from members of the public regarding this matter. As there is no provision in the applicable statutes or regulations for submissions from the public regarding contested cases, these submissions were not considered.

violated the statute by failing to obtain consent prior to administering the surveys. Specifically, the ALJ concluded that questions about gender identity, gender discrimination, and family demographics could elicit responses concerning sexual behavior or attitudes. The ALJ also concluded that the survey distributed to elementary school students violated *N.J.S.A. 18A:36-36(a)* by requiring students to provide information regarding their race and ethnicity in class. The ALJ determined that the appropriate remedy is for the Board to discard the surveys and all results derived therefrom from the district's website, student records, the district's Equity and Diversity Advisory Council, and any other entity with whom the results of the survey were shared. Accordingly, the ALJ denied the Board's motion to dismiss and granted petitioner's motion for summary decision.

In its exceptions, the Board argues that there is an issue of material fact regarding whether parental consent is required to ask a student's gender identity and that the ALJ improperly equated "gender identity" to "sexual behaviors and attitudes." The Board notes that the New Jersey Department of Education's (DOE) "Transgender Student Guidance for School Districts" states that "a school district shall accept a student's asserted gender identity; parental consent is not required." The Board also contends that the ALJ's conclusion was based on outdated information that characterized gender dysphoria as a mental illness, despite the fact that it has not been so characterized since 2013. Additionally, the Board argues that the surveys were voluntary, not required, and therefore no violation of *N.J.S.A. 18A:36-36* occurred. Finally, the Board contends that none of the surveys touched on the areas listed in *N.J.S.A. 18A:36-34*, and therefore parental consent was not required.

Upon review, the Assistant Commissioner<sup>3</sup> concurs with the ALJ that the Board violated *N.J.S.A. 18A:36-36(a)* by asking students to identify their race and ethnicity on a survey distributed in elementary school classrooms. While the Board contends that the surveys were voluntary rather than required, the Assistant Commissioner does not find this argument persuasive. Third and fourth graders who receive a survey in class would reasonably conclude that they are required to complete it, just as they are required to complete any other work distributed in the classroom.<sup>4</sup>

The Assistant Commissioner agrees with the ALJ that the questions on the surveys related to gender identity and gender discrimination could have resulted in students revealing information about their sexual behaviors or attitudes. While the questions do not outright request such information, *N.J.S.A. 18A:36-34* is triggered based on the information revealed, not the questions posed. The Assistant Commissioner acknowledges that gender identity is not equivalent to sexual behaviors and attitudes.<sup>5</sup> However, the combination of these questions,<sup>6</sup> and the fact that they were open-ended, invited students to reveal information that might include their sexual behaviors and attitudes.

Although the Board contends that the DOE's guidance pertaining to transgender students indicates that districts shall accept a student's asserted gender identity and that parental consent is

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<sup>3</sup> Pursuant to *N.J.S.A. 18A:4-34*, this matter has been delegated to Assistant Commissioner Kevin Dehmer because of the Acting Commissioner's recusal.

<sup>4</sup> Furthermore, the record demonstrates that in distributing the survey to teachers, the elementary school principals did not in any way indicate that the survey was voluntary; it is highly unlikely that the students were informed the survey was voluntary if their teachers were not so informed.

<sup>5</sup> The Board's exceptions suggest that the ALJ erroneously based her decision on outdated information relating gender dysphoria to a mental illness or a deviant sexual behavior, presumably because those issues were raised by petitioners during briefing. The Assistant Commissioner disagrees with the Board's characterization of the Initial Decision and, to the extent clarification is necessary, notes that the DOE does not consider students who assert a gender identity different than the one they were assigned at birth to be mentally ill or deviant.

<sup>6</sup> The Board's exceptions focus only on the questions regarding gender identity and fail to include any specific arguments regarding the ALJ's conclusion that the questions regarding gender discrimination implicate *N.J.S.A. 18A:36-34*.



not required, that guidance is inapplicable to the current situation. Given that the surveys were anonymous, the district could not have been using them to ascertain and record the asserted gender identity for each student. Furthermore, as discussed above, the question regarding gender identity is not the only question that could cause students to reveal information about their sexual behaviors and attitudes.<sup>7</sup>

The Assistant Commissioner recognizes and commends the Board's efforts to explore and address diversity, inclusion, and equity in its schools. However, those efforts cannot outweigh statutory requirements regarding the administration of surveys to students.<sup>8</sup>

Accordingly, petitioner's motion for summary decision is granted. The Board is directed to discard the surveys and results from all records.<sup>9</sup>

IT IS SO ORDERED.<sup>10</sup>



ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: December 16, 2021  
Date of Mailing: December 16, 2021

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<sup>7</sup> The Board also contends that there is an issue of material fact regarding whether parental consent is required to ask a student's gender identity. The Assistant Commissioner disagrees that this is an issue of fact, and finds that, in this matter, it is a question of law appropriate for resolution by summary decision.

<sup>8</sup> Having concluded that the surveys violate *N.J.S.A.* 18A:36-34 and -36, the Assistant Commissioner need not reach the question of whether the surveys violated district policy or federal law, or the Assistant Commissioner's jurisdiction to decide any questions of federal law.

<sup>9</sup> Other relief sought by petitioners, including monetary penalties, is denied for the reasons detailed in the Initial Decision.

<sup>10</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



August 15, 2022

Mr. Kevin Herms, Director  
Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Avenue, SW, Washington, DC 20202

**Re: Status of Protection of Pupil Rights Amendment Complaints  
Previously Filed by Clients of America First Legal Foundation**

Dear Mr. Herms:

America First Legal Foundation (AFL) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans.

I write to you today because the Department has unreasonably delayed responding to complaints filed by parents under the Protection of Pupil Rights Amendment (PPRA).<sup>1</sup>

We represent seven parents of children enrolled in the Cedar Grove School District in Cedar Grove, New Jersey. Last year, our clients filed separate PPRA complaints seeking an investigation of the Cedar Grove School District for administering a survey to children without parental notice and consent—in violation of 20 U.S.C. § 1232h (c)(2)(C)(ii), and 34 C.F.R. §§ 98.3 and 98.4. The survey, labeled “Community Needs Assessment,” was prepared by the district’s “Equity and Diversity Advisory Council.” It was sent to high school and middle school students directly via their email addresses and assigned in class to third and fourth graders (8 to 10-year-olds). The “Needs Assessment” gathered regulated personal information including “religious affiliation,” “family demographic,” “race/ethnicity,” “gender identity,” whether “school is a safe place for your particular race/ethnic group,” whether “adults in your school are fair in dealing with your particular racial/ethnic group,” and whether “adults in your school are fair in dealing with people not in your particular racial/ethnic group.”<sup>2</sup>

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<sup>1</sup> 20 U.S.C. § 1232h; 34 C.F.R. Part 98.

<sup>2</sup> The “Community Needs Assessment” appears to be a “Psychiatric or psychological examination or test” as defined at 34 C.F.R. § 98.4(c)(1), administered for the purpose of gathering information for “[p]sychiatric or psychological treatment” as defined at 34 C.F.R. § 98.4(c)(2) and for use in connection with a “research or experimentation program or project” as defined at 34 C.F.R. § 98.3(b).

PPRA Letter August 15, 2022

On July 6, 2021, several of our clients filed a Petition of Appeal with the New Jersey Department of Education Office of Controversies and Disputes, which was then assigned to an administrative law judge with the Office of Administrative Law. Contemporaneously, our clients filed PPRA complaints with your office. Parent names, complaint dates, and agency tracking numbers include:

- Patricia Montana (July 1, 2021 – 21-0340, 21-0341, 21-0342)
- Vincent Vollero (approximately July 2, 2021 – 21-0358)
- Michael Turi (June 30, 2021 – 21-0157)
- Cheryl Miller (November 1, 2021 – 21-0574)
- Donald Elting (July 13, 2021 – 21-0375)
- Daniella Barraco (approximately July 22, 2021)<sup>3</sup>
- Anna O'Connor (July 12, 2021 – 21-0374)

On November 15, 2021, the Administrative Law Judge issued a decision finding that “the surveys asked some students about family demographics which could easily elicit highly personal, and oft publicly shamed, information, such as same-sex unions”; that the surveys were not voluntary; and that the district violated N.J.S.A. 18A:36-34 and N.J.S.A. 18A:36-36(a). *See* Exhibit A. On December 16, 2021, the Assistant Commissioner of Education for New Jersey upheld the Administrative Law Judge’s decision. By contrast, there is no evidence that the Department of Education has taken *any* action to investigate and adjudicate our clients’ complaints. *See* Exhibit B.

Your office is charged with enforcing the PPRA to protect parents and children.<sup>4</sup> By imposing unnecessary bureaucratic delays, it has apparently chosen not to do so. This is unlawful. *See* 5 U.S.C. §§ 555(b), 706(1); *Sweet v. DeVos*, 495 F. Supp. 3d 835, 840-41 (N.D. Cal. 2020). There is simply no reason for a year to have passed without official action from the Department on our clients’ complaints. Therefore, to ensure the Department’s accountability and to protect our clients’ legal rights, we require a response from you on or before August 29, 2022, including a formal status update and a benchmarked schedule of action on these matters.

Please feel free to contact me if you have any questions.

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<sup>3</sup> This complaint was filed via mail and a tracking number was not received.

<sup>4</sup> DEPT. OF EDU., OEPD, *Student Privacy Policy Office*, <https://tinyurl.com/mujb4f3j> (last accessed August 15, 2022); 34 C.F.R. §§ 98.5 et seq.

PPRA Letter August 15, 2022

Sincerely,

/s/ Gene P. Hamilton

Gene P. Hamilton

Vice-President and General Counsel

America First Legal Foundation

CC: Hon. Lisa Brown, General Counsel, U.S. Department of Education

From: donald elting <[REDACTED]>  
Date: Tue, Aug 30, 2022 at 12:39 PM  
Subject: Fw: PPRA Complaint Tracking# 21-0375  
To: Ian Prior <[ian.prior@aflegal.org](mailto:ian.prior@aflegal.org)>, Tyler Sanderson <[tyler.sanderson@aflegal.org](mailto:tyler.sanderson@aflegal.org)>, Patricia Grande <[REDACTED]>

FYI just sent. Ill keep you posted.

----- Forwarded Message -----

**From:** donald elting <[REDACTED]>  
**To:** Cieplak, Bernard <[bernard.cieplak@ed.gov](mailto:bernard.cieplak@ed.gov)>  
**Sent:** Tuesday, August 30, 2022 at 12:37:38 PM EDT  
**Subject:** Re: PPRA Complaint Tracking# 21-0375

Good morning,  
Just catching up on e-mails and must have missed this! I may have misunderstood, I thought I could just send an e-mail?? I need some clarification. Under what Department of Education rule or regulation states I need this to be more than an email, and what form the rule or regulation requires, (if any) for a person's lawyer to communicate with Ed? I am in the office all week and can take care of this request once you clarify.  
Don

On Monday, August 29, 2022 at 08:36:27 AM EDT, Cieplak, Bernard <[bernard.cieplak@ed.gov](mailto:bernard.cieplak@ed.gov)> wrote:

As mentioned, in order to speak or communicate in writing with an attorney, we need a signed written consent for this office to share any information about a complaint with their attorney. Accordingly and until such time, should we receive signed written consent from an attorney or other legal representative, we will respond accordingly.

Sincerely,

Bernie Cieplak

SPPO

U.S. Department of Education

**From:** donald elting <[REDACTED]>  
**Sent:** Friday, August 26, 2022 4:49 PM  
**To:** Cieplak, Bernard <[Bernard.Cieplak@ed.gov](mailto:Bernard.Cieplak@ed.gov)>

**Cc:** Ian Prior <[ian.prior@aflegal.org](mailto:ian.prior@aflegal.org)>; [nicholas.barry@aflegal.org](mailto:nicholas.barry@aflegal.org)  
**Subject:** PPRA Complaint Tracking# 21-0375

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Mr.Cieplak,

As discussed via phone, America First Legal is currently representing me in this matter. Please direct all communications to Nicholas Barry at [nicholas.barry@aflegal.org](mailto:nicholas.barry@aflegal.org). Thank you.

Donald Elting

--

Ian Prior  
Senior Advisor  
America First Legal  
Phone: [REDACTED]  
Twitter: @iandprior

---

**From:** Cieplak, Bernard <Bernard.Cieplak@ed.gov>  
**Sent:** Thursday, September 1, 2022 4:18 PM  
**To:** Nicholas Barry  
**Subject:** RE: Authorization to communicate with AFL.

Nick,

This is to acknowledge receipt of consent from your clients identifying you as legal counsel with regard to their complaint relating to the Protection of Pupil Rights Amendment.

Accordingly, you along with your clients will receive a copy of any relevant correspondence from this Office in the near future.

Should you have any questions in the meantime, you may reach me at 202-568-9525.

Sincerely,

Bernie Cieplak  
Student Privacy Policy Office  
U.S. Department of Education

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**From:** Nicholas Barry <nicholas.barry@aflegal.org>  
**Sent:** Thursday, September 1, 2022 12:48 PM  
**To:** Cieplak, Bernard <Bernard.Cieplak@ed.gov>  
**Subject:** Authorization to communicate with AFL.

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Bernard,

I understand that each individual related to the attached letters has notified you by email to speak with me at AFL regarding their complaint and you requested a signed authorization from the individuals that AFL is authorized to speak with DOE on their behalf. Please find attached such authorizations.

They have notified you every possible way at this point to speak with us regarding their complaints. If there is anything else you need, please let me know.

Best,  
Nick

---

**From:** Nicholas Barry <nicholas.barry@aflegal.org>  
**Sent:** Tuesday, September 27, 2022 4:27 PM  
**To:** bernard.cieplak@ed.gov  
**Cc:** Sheila.Nix@ed.gov; Phil.Rosenfelt@ed.gov  
**Subject:** 5 U.S.C. 555(e) request related to AFL Clients.  
**Attachments:** Letter to Bernard Cieplak.pdf

Mr. Cieplak,

Please find attached a letter relating to AFL's clients that made complaints to the Department.

If you have any questions, please let me know.

Best,  
Nick





September 27, 2022

Bernard Cieplak  
Student Privacy Policy Office  
U.S. Department of Education  
Bernard.Cieplak@ed.gov

Mr. Cieplak,

As you are aware, AFL is representing Anna O'Connor, Daniella Barraco, Patricia Montana, Vincent Vollero, Michael Turi, Cheryl Miller, and Donald Elting related to their PPRA Complaints filed with DOE between June 2021 and July 2021. The Complaints alleged that surveys given by the schools asked about family demographics, solicited highly personal information, and that these surveys were not voluntary.

Pursuant to 5 U.S.C. 555(e), AFL is an interested person in connection with an agency proceeding. This letter is requesting prompt notice of any denial in relation to the above-named individuals' complaints. With this prompt notice, AFL expects to receive a brief statement of the grounds for the denial, if a denial has been made.

I was not able to locate any Department of Education regulations directing me to where a 5 U.S.C. 555(e) request could be made. Given that you are the point of contact for these complaints, you seem to be the most appropriate contact. If I need to make this request with another person or through a different process pursuant to DOE Regulations, please notify me of the regulations and where I can find the process.

Sincerely,

/s/ Nicholas R. Barry  
Senior Litigation Counsel  
America First Legal Foundation

Cc: U.S. Secretary of Education, Miguel Cardona  
c/o Sheila Nix, Chief of Staff, Sheila.Nix@ed.gov

Philip H. Rosenfelt, Deputy General Counsel for Program Services,  
Phil.Rosenfelt@ed.gov



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

October 20, 2022

Ms. Patricia Montana  
5 Emory Court  
Cedar Grove, New Jersey 07009

Complaint Nos. 21-0340,  
21-0341, 21-0342  
Protection of Pupil Rights  
Amendment

Dear Ms. Montana:

This is in response to your complaints filed with the Student Privacy Policy Office (Office) in which you allege that the Cedar Grove Public School District (District) violated your rights under the Protection of Pupil Rights Amendment (PPRA). Specifically, you allege that the District violated your rights under PPRA when it did not provide you with reasonable notice to review a survey that was administered to your children and an opportunity to exercise your right to opt your children out of participation. We apologize for the delay in addressing your concerns.

This Office has written Mr. Anthony Grosso, superintendent of the District, to inform him of your allegations. Enclosed for your reference is a copy of that letter. Once this Office has had an opportunity to review the response from the District regarding your PPRA allegations, we will again be in contact with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank E. Miller Jr.", is placed above the typed name.

Frank E. Miller Jr.  
Deputy Director  
Student Privacy Policy Office

Enclosure

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-4500

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*





UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

October 20, 2022

Mr. Anthony Grosso  
Superintendent  
Cedar Grove Public School District  
43 Greendale Road  
Cedar Grove, New Jersey 07009

Complaint Nos. (See Enclosed)  
Protection of Pupil Rights  
Amendment

Dear Mr. Grosso:

We are writing to inform you that, beginning on July 2, 2021, several parents (see enclosed list of names below) (Parents) filed complaints with the Student Privacy Policy Office (Office) alleging that the Cedar Grove Public School District (District) violated rights afforded parents under the Protection of Pupil Rights Amendment (PPRA) regarding their children (Students). 20 U.S.C. § 1232h; 34 CFR Part 98. This Office, under authority of 34 CFR § 98.5, investigates complaints in accordance with procedures outlined in § 98.8. The section states in summary:

- The Office will notify the complainant and the educational agency or institution against which the violation has been alleged, in writing, if it initiates an investigation of a complaint.
- The notification to the agency or institution under this section shall include the substance of the alleged violation and shall ask the agency or institution to submit a written response to the complaint.

This letter serves to notify you of the allegation and to provide you the opportunity to submit a written response. We apologize for the delay in informing the District of the allegation and regret any inconvenience this may have caused you.

This Office received complaints from the Parents alleging that the District violated their rights under 20 U.S.C. § 1232h(c)(2)(B) and (C)(ii) of the PPRA statute when the District did not notify them of a "Community Needs Assessment" survey (Survey) that was administered on June 9-10, 2021, to all of the District's middle school and high school students via their email addresses. The Parents allege that they were not provided reasonable notice to review the Survey that was to be administered to their children and an opportunity to exercise their right to

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-4500

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*



Page 2 – Mr. Anthony Grosso

opt their children out of participation. The Parents alleged that there were questions on the Survey that fall under some of the protected items in PPRA, listed below.

Background on PPRA:

There are a number of requirements under PPRA. These requirements include, but are not limited to, that local educational agencies (LEAs) must provide parents and students effective notice of their rights under PPRA. 20 U.S.C. § 1232h(d). An LEA is required to obtain prior written consent (active consent) from parents before students are required to submit to a survey, evaluation, or analysis that reveals information concerning one or more of the eight protected areas listed below if the survey is funded, in whole or in part, by U.S. Department of Education (Department) funds. For surveys that contain questions from one or more of the eight protected areas that are not funded in whole or in part with Department funds, LEAs must develop and adopt policies, in consultation with parents, regarding “arrangements to protect student privacy that are provided by the agency in the event of the administration or distribution” of such a survey to a student, including the right of a parent of a student to inspect, upon the request of the parent, any such survey and must notify a parent at least annually, at the beginning of the school year, of the specific or approximate date(s) of the survey and provide the parent with an opportunity to opt his or her child out of participating (passive consent). 20 U.S.C. §§ 1232h(c)(1)(B) and (c)(2). In addition, PPRA requires that LEAs develop and adopt policies, in consultation with parents, regarding the right of a parent of a student to inspect, upon the request of the parent, a survey created by a third party before the survey is administered or distributed by a school to a student; and any applicable procedures for granting a request by a parent for reasonable access to such survey within a reasonable period of time after the request is received. 20 U.S.C. § 1232h(c)(1)(A).

The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under State law. 20 U.S.C. § 1232h(c)(5)(B). Please note that the PPRA regulations have not been updated since Congress made several amendments to the law. You may refer to the Federal statute codified at 20 U.S.C. § 1232h, as well as the “Notice to Superintendents,” which is available at: <https://studentprivacy.ed.gov/node/501> for additional information.

Relevant Statutory Provisions:

20 U.S.C. § 1232h(c)(2)(B) and (C)(ii) of the PPRA statute states the following:

(B) Notification of specific events

The local educational agency shall directly notify the parent of a student, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when activities described in subparagraph (C) are scheduled, or expected to be scheduled.

(C) Activities requiring notification

The following activities require notification under this paragraph:



Page 3 – Mr. Anthony Grosso

...

- (ii) The administration of any survey containing one or more items described in clauses (i) through (viii) of paragraph (1)(B).

...

Paragraph (c)(1)(B)(i)-(viii) lists the following protected items that, if included in a survey, are subject to the above notification requirement:

- (i) Political affiliations or beliefs of the student or the students' parent.
- (ii) Mental or psychological problems of the student or the student's family.
- (iii) Sex behavior or attitudes.
- (iv) Illegal, anti-social, self-incriminating, or demeaning behavior.
- (v) Critical appraisals of other individuals with whom respondents have close family relationships.
- (vi) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.
- (vii) Religious practices, affiliations, or beliefs of the student or the student's parent.
- (viii) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Paragraph (c)(2)(A)(ii) requires that an LEA have a policy that offers an opportunity for a parent to opt their child out of participation in an activity described in (C), which in this instance is the opportunity to opt their child out of participation in the administration of a survey containing one or more items described in clauses (i) through (viii) of paragraph (1)(B).

Request for Information:

To complete the procedures outlined in § 98.8 of the PPRA regulations, please investigate this matter and provide this Office a written response within four weeks after the date of this letter. If your investigation reveals that the alleged violations of PPRA likely occurred, the written response should include a summary of any corrective actions taken, and your assurance that school officials have been provided training on the requirements of PPRA, as they relate to the issue. Further, to assist us in our investigation, please provide, at minimum, the following information in your response:

1. A copy of the District's general notice used by the District to notify parents of their rights under PPRA during the 2020-2021 and 2021-2022 school years;
2. A copy of the Surveys that were administered to students (one survey to middle school students and one survey to high school students), along with a dated copy of the specific details which informed parents of the administration of each Survey;
3. A copy of the District's policies, if any, developed in consultation with parents pursuant to 20 U.S.C. § 1232h(c) related to the administration or distribution to students of surveys

Page 4 – Mr. Anthony Grosso

that are created by third parties. The time frame for this request is from August 2020 to August 2021. Please make clear during what time period any responsive policy was in effect.

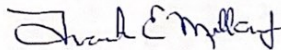
4. Please indicate whether the District used, in whole or in part, any U.S. Department of Education funds in the development of the Survey.

In an effort to expedite the processing of this complaint, please email your response to [PPRA.Complaints@ed.gov](mailto:PPRA.Complaints@ed.gov) including the complaint numbers referenced in the enclosed listing. In lieu of sending your response electronically, you may send your written response to the following address:

Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202 – 8520

If you have any questions specific to this complaint, please contact this Office, referencing your complaint number, at 202-260-3887 and select Option #3. For general information concerning PPRA and the Office's complaint procedures, please visit our website at: <https://studentprivacy.ed.gov/>.

Sincerely,



Frank E. Miller Jr.  
Deputy Director  
Student Privacy Policy Office

cc: Parents

Enclosure

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**From:** Nicholas Barry <nicholas.barry@aflegal.org>  
**Sent:** Tuesday, December 20, 2022 12:35 PM  
**To:** bernard.cieplak@ed.gov  
**Cc:** Sheila.Nix@ed.gov; Phil.Rosenfelt@ed.gov  
**Subject:** Re: 5 U.S.C. 555(e) request related to AFL Clients.

Mr. Cieplak,

I never received a response to my letter, however, my clients notified me that the Department of Education has launched an investigation into their PPRA Complaints.

I'm requesting you provide me with an update on the status of these investigations. As a reminder, I represent Patricia Montana, Vincent Vollero, Michael Turi, Donald Elting, Cheryl Miller, and Anna O'Connor.

If you have any questions, please let me know.

Merry Christmas,  
Nick

On Tue, Sep 27, 2022 at 4:26 PM Nicholas Barry <[nicholas.barry@aflegal.org](mailto:nicholas.barry@aflegal.org)> wrote:

Mr. Cieplak,

Please find attached a letter relating to AFL's clients that made complaints to the Department.

If you have any questions, please let me know.

Best,  
Nick



---

**From:** Miller, Frank E. <Frank.E.Miller@ed.gov>  
**Sent:** Friday, January 27, 2023 3:50 PM  
**To:** nicholas.barry@aflegal.org  
**Cc:** Cieplak, Bernard  
**Subject:** RE: 5 U.S.C. 555(e) request related to AFL Clients.

Mr. Barry,

We write following receipt of your request for a status update regarding the complaints filed against Cedar Grove Public Schools by parents now represented by AFL. As you are aware, at the end of October we notified the District in writing of our investigation and requested a written response. We are currently working through our investigative process. Thank you in advance for your patience as we work to address your clients' complaints.

Sincerely,

Frank E. Miller Jr.  
Deputy Director  
Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Ave, SW  
Washington, D.C. 20202-8520  
<https://studentprivacy.ed.gov/>

---

**From:** Nicholas Barry <[nicholas.barry@aflegal.org](mailto:nicholas.barry@aflegal.org)>  
**Sent:** Tuesday, December 20, 2022 1:34:56 PM  
**To:** Cieplak, Bernard <[Bernard.Cieplak@ed.gov](mailto:Bernard.Cieplak@ed.gov)>  
**Cc:** Nix, Sheila <[Sheila.Nix@ed.gov](mailto:Sheila.Nix@ed.gov)>; Rosenfelt, Phil <[Phil.Rosenfelt@ed.gov](mailto:Phil.Rosenfelt@ed.gov)>  
**Subject:** Re: 5 U.S.C. 555(e) request related to AFL Clients.

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Mr. Cieplak,

I never received a response to my letter, however, my clients notified me that the Department of Education has launched an investigation into their PPRA Complaints.

I'm requesting you provide me with an update on the status of these investigations. As a reminder, I represent Patricia Montana, Vincent Vollero, Michael Turi, Donald Elting, Cheryl Miller, and Anna O'Connor.

If you have any questions, please let me know.



Merry Christmas,  
Nick

On Tue, Sep 27, 2022 at 4:26 PM Nicholas Barry <[nicholas.barry@aflegal.org](mailto:nicholas.barry@aflegal.org)> wrote:

Mr. Cieplak,

Please find attached a letter relating to AFL's clients that made complaints to the Department.

If you have any questions, please let me know.

Best,  
Nick



**U.S. DEPARTMENT OF EDUCATION**  
**Protection of Pupil Rights Amendment (PPRA)**

**Parent/Student Complaint Form**

**SECTION 1: STUDENT INFORMATION**

First Name:  Last Name:  Date of Birth:

**SECTION 2: COMPLAINANT INFORMATION**

Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)

☒ Parent or Legal Guardian ☐ Self ☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title:  First Name:  Last Name:

Street Address:  Phone Number:

City:  State:  Zip Code:

Email: ☒ Check if SPPO may use this email address to contact you and forward official correspondence

**SECTION 3: EDUCATIONAL AGENCY INFORMATION**

Name and title of the local education agency or school district superintendent:

Name of local educational agency (i.e. school district):  Phone Number:

Mailing Address:  Dates Attended:

City:  State:  Zip Code:  Date of Alleged Violation:

**SECTION 4: PPRA VIOLATION INFORMATION**

Specifics of alleged PPRA violation:

If allegations concerns a survey, provide the name of the survey, analysis or evaluation:

Equity and Diversity Advisory Council - Memorial Middle School Needs Assessment (copies of surveys attached)

Source of funding for survey, analysis or evaluation (if known):

not known

Details of attempted resolution at local level:

Local School Officials Contacted	Dates	Results/Comments
SI Grosso, Principal DiMatteo, Teacher Conover	06/10/2021	Two separate emails; no response or reply
SI Grosso, DeVita, and BOE members	06/12/2021	OPRA request; mostly denials; received copies of Survey & Guide
BOE Meeting	06/15/2021	No resolution; survey results used in public presentation
Interim Exec County Superintendent Zarra	06/18/2021	email; phone call; assurance that he would talk to SI Grosso

Details of attempted resolution at State level (if State resolution procedure exists):

State Education Officials Contacted	Dates	Results/Comments
Acting Comm. Of Education (NJ DOE) Allen-McMill	06/23/2021	letter on behalf of 90+ families; no response or reply




**SECTION 5: CORRESPONDENCE INFORMATION**

Describe any correspondence, such as newspaper articles, website postings, e-mail or letter exchanges, that substantiates the information specifically required in Section 4 above. You may also attach copies of those relevant documents that support your allegations. Please note that, due to computer security concerns we will not accept the submission of audio or video files, CD/DVDs, or thumb drives. Also, the submission of nonessential, voluminous, or nonresponsive information may, among other things, delay the processing of your complaint, and could result in the dismissal and return of your complaint.

see attached PPRA Violation-Complaint document, which details the violations by Cedar Grove School District

**SECTION 6: CERTIFICATION**

  
Complainant's Signature

07/01/2021

Date:

*Privacy Act Statement.* The Department is authorized to solicit the information contained in this Form by 20 U.S.C. 1232g, h. Your disclosure of the information requested on this Form is voluntary, but if you fail to provide any of the information, it may result in, among other things, your complaint being dismissed or returned to you for additional clarification. The principal purpose for which the information requested on this Form will be used is to resolve your complaint and determine whether the educational agency or institution violated FERPA. The Department has published the routine uses for which the information requested on this Form may be used in a system of records notice entitled "Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) Record Systems (18-05-02), which was last published in the Federal Register on June 4, 1999 (64 Fed. Reg. 30106, 30123-24). The routine uses include, but are not limited to, disclosing records to the educational agency or institution against which a complaint has been made or the State Educational Agency in that State. The Department may modify and update this system of records notice, in which case that update in addition to the Department's other systems of records notices may be found at: <https://www2.ed.gov/notices/ed-pia.html>. The effects of not providing any of the requested information on this Form may include, among other things, that your complaint is dismissed or returned to you for additional clarification.

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**U.S. DEPARTMENT OF EDUCATION  
Protection of Pupil Rights Amendment (PPRA)**

**Parent/Student Complaint Form**

**SECTION 1: STUDENT INFORMATION**

First Name: R	Last Name: M	Date of Birth:
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**SECTION 2: COMPLAINANT INFORMATION**

Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)

☒ Parent or Legal Guardian    ☐ Self    ☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title: [dropdown]	First Name: Patricia	Last Name: Montana
----------------------	-------------------------	-----------------------

Street Address: [redacted]	Phone Number: [redacted]
-------------------------------	-----------------------------

City: Cedar Grove	State: New Jersey	Zip Code: 07009
----------------------	----------------------	--------------------

Email: ☒ Check if SPPO may use this email address to contact you and forward official correspondence

[redacted]
------------

**SECTION 3: EDUCATIONAL AGENCY INFORMATION**

Name and title of the local education agency or school district superintendent:

Superintendent Anthony Grosso
-------------------------------

Name of local educational agency (i.e. school district):

Cedar Grove Public School District	Phone Number: 9732391550
------------------------------------	-----------------------------

Mailing Address:

520 Pompton Avenue	Dates Attended: current
--------------------	----------------------------

City: Cedar Grove	State: New Jersey	Zip Code: 07009	Date of Alleged Violation: 06/09/2021
----------------------	----------------------	--------------------	--

**SECTION 4: PPRA VIOLATION INFORMATION**

Specifics of alleged PPRA violation:

no proper notification, no opportunity to opt out or review survey in advance, no informed consent, not voluntary or anonymous
--



If allegations concerns a survey, provide the name of the survey, analysis or evaluation:

Equity and Diversity Advisory Council - Memorial Middle School Needs Assessment (copies of surveys attached)

Source of funding for survey, analysis or evaluation (if known):

not known

Details of attempted resolution at local level:

Local School Officials Contacted	Dates	Results/Comments
SI Grosso, Principal DiMatteo, Teacher Conover	06/10/2021	two separate emails; no response or reply
SI Grosso, DeVita, and BOE members	06/12/2021	OPRA request; mostly denials; receives copies of survey & guide
BOE Meeting	06/15/2021	No resolution; survey results used in public presentation
Interim Exec County Superintendent Zarra	06/18/2021	email; phone call; assurance that he would talk to SI Grosso

Details of attempted resolution at State level (if State resolution procedure exists):

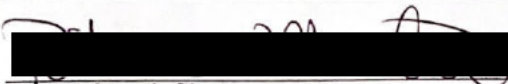
State Education Officials Contacted	Dates	Results/Comments
Acting Comm. of Education (NJ DOE) Allen-McMil	06/23/2021	letter on behalf of 90+ families; no response or reply

**SECTION 5: CORRESPONDENCE INFORMATION**

Describe any correspondence, such as newspaper articles, website postings, e-mail or letter exchanges, that substantiates the information specifically required in Section 4 above. You may also attach copies of those relevant documents that support your allegations. Please note that, due to computer security concerns we will not accept the submission of audio or video files, CD/DVDs, or thumb drives. Also, the submission of nonessential, voluminous, or nonresponsive information may, among other things, delay the processing of your complaint, and could result in the dismissal and return of your complaint.

see attached PPRA Violation-Complaint document, which details the violations by Cedar Grove school district

**SECTION 6: CERTIFICATION**

  
Complainant's Signature

07/01/2021

Date:

*Privacy Act Statement.* The Department is authorized to solicit the information contained in this Form by 20 U.S.C. 1232g, h. Your disclosure of the information requested on this Form is voluntary, but if you fail to provide any of the information, it may result in, among other things, your complaint being dismissed or returned to you for additional clarification. The principal purpose for which the information requested on this Form will be used is to resolve your complaint and determine whether the educational agency or institution violated FERPA. The Department has published the routine uses for which the information requested on this Form may be used in a system of records notice entitled "Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) Record Systems (18-05-02), which was last published in the Federal Register on June 4, 1999 (64 Fed. Reg. 30106, 30123-24). The routine uses include, but are not limited to, disclosing records to the educational agency or institution against which a complaint has been made or the State Educational Agency in that State. The Department may modify and update this system of records notice, in which case that update in addition to the Department's other systems of records notices may be found at: <https://www2.ed.gov/notices/ed-pia.html>. The effects of not providing any of the requested information on this Form may include, among other things, that your complaint is dismissed or returned to you for additional clarification.

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**U.S. DEPARTMENT OF EDUCATION  
Protection of Pupil Rights Amendment (PPRA)**

**Parent/Student Complaint Form**

**SECTION 1: STUDENT INFORMATION**

First Name:	Last Name:	Date of Birth:
M [REDACTED]	M [REDACTED]	[REDACTED]

**SECTION 2: COMPLAINANT INFORMATION**

Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)

☒ Parent or Legal Guardian      ☐ Self      ☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title:	First Name:	Last Name:
[REDACTED]	Patricia	Montana

Street Address:	Phone Number:
[REDACTED]	[REDACTED]

City:	State:	Zip Code:
Cedar Grove	New Jersey	07009

Email: ☒ Check if SPPO may use this email address to contact you and forward official correspondence      [REDACTED]

**SECTION 3: EDUCATIONAL AGENCY INFORMATION**

Name and title of the local education agency or school district superintendent:

Superintendent Anthony Grosso

Name of local educational agency (i.e. school district):	Phone Number:
Cedar Grove Public School District	9732391550

Mailing Address:	Dates Attended:
520 Pompton Avenue	current

City:	State:	Zip Code:	Date of Alleged Violation:
Cedar Grove	New Jersey	07009	06/09/2021

**SECTION 4: PPRA VIOLATION INFORMATION**

Specifics of alleged PPRA violation:

no proper notification, no opportunity to opt out or review survey in advance, no informed consent, not voluntary or anonymous



If allegations concerns a survey, provide the name of the survey, analysis or evaluation:

Equity and Diversity Advisory Council--Elementary School Needs Assessment (copies of surveys attached)

Source of funding for survey, analysis or evaluation (if known):

not known

Details of attempted resolution at local level:

Local School Officials Contacted	Dates	Results/Comments
SI Grosso, Principal DiMatteo, Teacher Conover	06/10/2021	two separate emails, no response or reply
SI Grosso, DeVita, and BOE Members	06/12/2021	OPRA request; mostly denials; received copies of surveys & guide
BOE Meeting	06/15/2021	no resolution; survey results used in public presentation
Interim Exec County Superintendent	06/18/2021	email & call; assurance that he would talk to SI but no resolution

Details of attempted resolution at State level (if State resolution procedure exists):

State Education Officials Contacted	Dates	Results/Comments
Acting Comm. Of Education (NJ DOE) Allen-McMill	06/23/2021	letter on behalf of 90+ families; no response or reply

**SECTION 5: CORRESPONDENCE INFORMATION**

Describe any correspondence, such as newspaper articles, website postings, e-mail or letter exchanges, that substantiates the information specifically required in Section 4 above. You may also attach copies of those relevant documents that support your allegations. Please note that, due to computer security concerns we will not accept the submission of audio or video files, CD/DVDs, or thumb drives. Also, the submission of nonessential, voluminous, or nonresponsive information may, among other things, delay the processing of your complaint, and could result in the dismissal and return of your complaint.

see attached letter

**SECTION 6: CERTIFICATION**


**Complainant's Signature**

07/02/2021

**Date:**

*Privacy Act Statement.* The Department is authorized to solicit the information contained in this Form by 20 U.S.C. 1232g, h. Your disclosure of the information requested on this Form is voluntary, but if you fail to provide any of the information, it may result in, among other things, your complaint being dismissed or returned to you for additional clarification. The principal purpose for which the information requested on this Form will be used is to resolve your complaint and determine whether the educational agency or institution violated FERPA. The Department has published the routine uses for which the information requested on this Form may be used in a system of records notice entitled "Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) Record Systems (18-05-02), which was last published in the Federal Register on June 4, 1999 (64 Fed. Reg. 30106, 30123-24). The routine uses include, but are not limited to, disclosing records to the educational agency or institution against which a complaint has been made or the State Educational Agency in that State. The Department may modify and update this system of records notice, in which case that update in addition to the Department's other systems of records notices may be found at: <https://www2.ed.gov/notices/ed-pia.html>. The effects of not providing any of the requested information on this Form may include, among other things, that your complaint is dismissed or returned to you for additional clarification.

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**U.S. DEPARTMENT OF EDUCATION**  
**Protection of Pupil Rights Amendment (PPRA)**

## Parent/Student Complaint Form

### SECTION 1: STUDENT INFORMATION

First Name:	Last Name:	Date of Birth:
J	V	

### SECTION 2: COMPLAINANT INFORMATION

**Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)**

☒ Parent or Legal Guardian      ☐ Self      ☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title:	First Name:	Last Name:
Mr.	Vincent	Vollero

Street Address:	Phone Number:

City:	State:	Zip Code:
Cedar Grove	New Jersey	07009

Email: ☒ Check if SPPO may use this email address to contact you and forward official correspondence

--

### SECTION 3: EDUCATIONAL AGENCY INFORMATION

Name and title of the local education agency or school district superintendent:
Superintendent Anthony Grosso

Name of local educational agency (i.e. school district):	Phone Number:
Cedar Grove Public School District	+1 (973) 239-1500

Mailing Address:	Dates Attended:
520 Pompton Ave.	current

City:	State:	Zip Code:	Date of Alleged Violation:
Cedar Grove	New Jersey	07009	06/09/2021

### SECTION 4: PPRA VIOLATION INFORMATION

Specifics of alleged PPRA violation:
No proper notification, no opportunity to opt out or review survey in advance, no informed consent, not voluntary/anonymous.

If allegations concerns a survey, provide the name of the survey, analysis or evaluation:

Equity and Diversity Council Student Needs Assessment

Source of funding for survey, analysis or evaluation (if known):

unknown.

Details of attempted resolution at local level:

Local School Officials Contacted	Dates	Results/Comments
BOE Meeting	6/23/2021	No resolution; survey results were used in public meeting presentation

Details of attempted resolution at State level (if State resolution procedure exists):

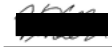
State Education Officials Contacted	Dates	Results/Comments
Acting Comm. of Education (NJ DOE) Allen-McMill	6/23/2021	letter on behalf of 90+ families; no response or reply

**SECTION 5: CORRESPONDENCE INFORMATION**

Describe any correspondence, such as newspaper articles, website postings, e-mail or letter exchanges, that substantiates the information specifically required in Section 4 above. You may also attach copies of those relevant documents that support your allegations. Please note that, due to computer security concerns we will not accept the submission of audio or video files, CD/DVDs, or thumb drives. Also, the submission of nonessential, voluminous, or nonresponsive information may, among other things, delay the processing of your complaint, and could result in the dismissal and return of your complaint.

see attached PPRA Violation-Complaint document, which detail the violation by Cedar Grove Public School District.

**SECTION 6: CERTIFICATION**

  
 \_\_\_\_\_  
**Complainant's Signature**

07/02/2021

**Date:**

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**U.S. DEPARTMENT OF EDUCATION**  
**Protection of Pupil Rights Amendment (PPRA)**

**Parent/Student Complaint Form**

**SECTION 1: STUDENT INFORMATION**

First Name:

M [REDACTED]

Last Name:

T [REDACTED]

Date of Birth:

[REDACTED]

**SECTION 2: COMPLAINANT INFORMATION**

Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)

☒ Parent or Legal Guardian☐ Self☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title:

Mr. [REDACTED]

First Name:

MICHAEL

Last Name:

TURI

Street Address:

[REDACTED]

Phone Number:

[REDACTED]

City:

CEDAR GROVE

State:

New Jersey [REDACTED]

Zip Code:

07009

Email: ☒ Check if SPPO may use this email address to contact you and forward official correspondence

[REDACTED]

**SECTION 3: EDUCATIONAL AGENCY INFORMATION**

Name and title of the local education agency or school district superintendent:

ANTHONY GROSSO

Name of local educational agency (i.e. school district):

CEDAR GROVE BOARD OF EDUCATION

Phone Number:

9732391550

Mailing Address:

520 POMPTON AVE

Dates Attended:

09/2016 - 06/2021

City:

CEDAR GROVE

State:

New Jersey [REDACTED]

Zip Code:

07009

Date of Alleged Violation:

06/09/2021

**SECTION 4: PPRA VIOLATION INFORMATION**

Specifics of alleged PPRA violation:

Failed to obtain Parental Consent for a survey that included questions pertaining to race and gender identity.



If allegations concerns a survey, provide the name of the survey, analysis or evaluation:

COMMUNITY NEEDS ASSESSMENT

Source of funding for survey, analysis or evaluation (if known):

Details of attempted resolution at local level:

Local School Officials Contacted	Dates	Results/Comments
SUPERINTENDENT & BOE	06/15/2021	NO RESPONSE TO DATE

Details of attempted resolution at State level (if State resolution procedure exists):

State Education Officials Contacted	Dates	Results/Comments
ANGELICA ALLEN-McMILLAN	06/23/2021	NO RESPONSE TO DATE

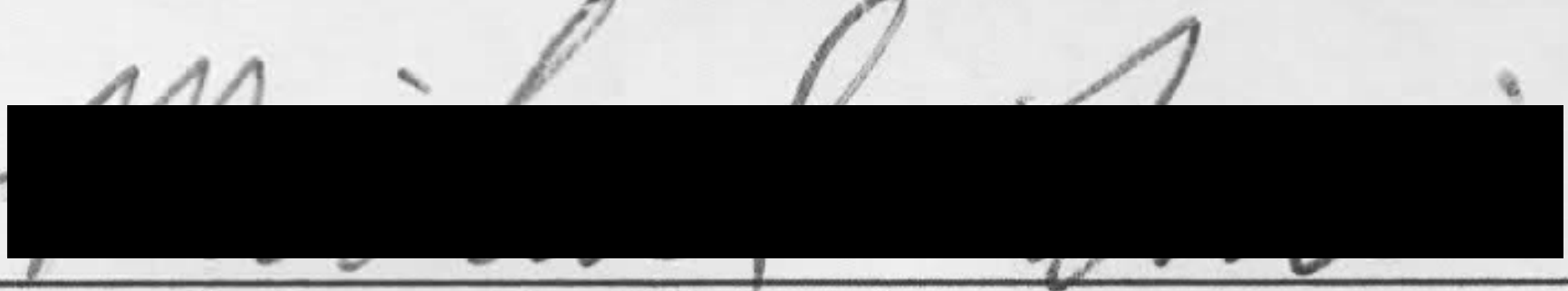


## SECTION 5: CORRESPONDENCE INFORMATION

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- CEDAR GROVE BOARD OF EDUCATION MEETING 06/15/2021 - YOUTUBE
- ATTACHED DISTRICT POLICY (PAGE 1)
- ATTACHED LETTER TO THE NJ STATE COMMISSIONER OF EDUCATION

## SECTION 6: CERTIFICATION

  
Complainant's Signature

06/30/2021

Date:

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U.S. DEPARTMENT OF EDUCATION  
Protection of Pupil Rights Amendment (PPRA)

## Parent/Student Complaint Form

## SECTION 1: STUDENT INFORMATION

First Name:

Last Name:

Date of Birth:

C [REDACTED]

M [REDACTED]

[REDACTED]

## SECTION 2: COMPLAINANT INFORMATION

Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)

☒ Parent or Legal Guardian☐ Self☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title:

First Name:

Last Name:

Mrs.

Cheryl

Miller

Street Address:

Phone Number:

[REDACTED]

[REDACTED]

City:

State:

Zip Code:

Cedar Grove

New Jersey

07009

Email: ☒ Check if SPPO may use this email address to contact you and forward official correspondence

[REDACTED]

## SECTION 3: EDUCATIONAL AGENCY INFORMATION

Name and title of the local education agency or school district superintendent:

Superintendent Anthony Grosso

Name of local educational agency (i.e. school district):

Cedar Grove Public School District

Phone Number:

9732391550

Mailing Address:

Dates Attended:

520 Pompton Avenue

current

City:

State:

Zip Code:

Date of Alleged Violation:

Cedar Grove

New Jersey

07009

6/8/2021

## SECTION 4: PPRA VIOLATION INFORMATION

Specifics of alleged PPRA violation:

No proper notification; no opportunity to opt out or review survey in advance; no informed consent; not voluntary or anonymous

If allegations concerns a survey, provide the name of the survey, analysis or evaluation:

Equity and Diversity Advisory Council - Memorial Middle School Needs Assessment (copy of survey and notification email attached)

Source of funding for survey, analysis or evaluation (if known):

Not known.

Details of attempted resolution at local level:

Local School Officials Contacted	Dates	Results/Comments
BOE Meeting	6/15/21	No resolution; survey results used in public presentation.
Superintendent Gross	6/16/21	phone call; no response

Details of attempted resolution at State level (if State resolution procedure exists):

State Education Officials Contacted	Dates	Results/Comments
Acting Comm. of Education (NJ DOE) Allen-McMill	6/23/21	Letter on behalf of 90+ families; no response or reply

**SECTION 5: CORRESPONDENCE INFORMATION**

Describe any correspondence, such as newspaper articles, website postings, e-mail or letter exchanges, that substantiates the information specifically required in Section 4 above. You may also attach copies of those relevant documents that support your allegations. Please note that, due to computer security concerns we will not accept the submission of audio or video files, CD/DVDs, or thumb drives. Also, the submission of nonessential, voluminous, or nonresponsive information may, among other things, delay the processing of your complaint, and could result in the dismissal and return of your complaint.

Please see attached PPRA Violation-Complaint document, which details the violations by the Cedar Grove School District.

**SECTION 6: CERTIFICATION**

  
  
 Complainant's Signature

10/24/21

Date:

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## Complaint Form

**Instructions:** The United States Department of Education's (Department) Student Privacy Policy Office (SPPO) reviews, investigates, and processes complaints of alleged violations of the Protection of Pupil Rights Amendment (PPRA). 20 U.S.C. 1232h and 34 CFR Part 98. PPRA is a federal law that affords certain rights to parents of students attending elementary or secondary schools with regards to any survey, analysis, or evaluation that asks students to reveal information of a personal nature. The rights afforded parents under PPRA transfer to the student when the student turns 18 years old or is an emancipated minor under applicable State law. PPRA also concerns marketing surveys, parental access to instructional material, as well as the administration of certain physical examinations to minors. A local educational agency (LEA), or school district, must provide parents effective notice of their rights under PPRA.

PPRA applies to the programs and activities of recipients of funds under any program funded by the U.S. Department of Education (Department), such as LEA. It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

1. Political Affiliations;
2. Mental and psychological problems of the student or the student's family;
3. Sex behaviors and attitudes;
4. Illegal, antisocial, self-incriminating, or demeaning behavior;
5. Critical appraisals of other individuals with whom respondents have close family relationships;
6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians and ministers;
7. Religious practices, affiliations or beliefs of the student or the student's parents; or
8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program.)

An LEA is required to obtain written consent before students are required to submit to a survey that contains one or more of the eight protected areas listed above, if the survey is funded in whole or in part by the Department. For surveys that contain questions from one or more of the eight protected areas that are not funded in whole or in part with Department funds, an LEA must notify parents at least annually, at the beginning of the school year, of the specific or approximate date(s) of the survey and provide parents with an opportunity to opt their children out of participating, regardless of whether the survey is anonymous or whether participation in the survey is voluntary. If the LEA is unable to identify the specific or approximate dates of the survey (or other activity described below) at the beginning of the school year, it must provide this notification to parents once the activity or survey is scheduled. Parents should be provided reasonable notification of the planned activities and surveys and be provided an opportunity to opt their children out, as well as be provided with an opportunity to review any pertinent surveys. Please note that PPRA does not apply to surveys administered to students in accordance with the Individuals with Disabilities Education Act. 20 U.S.C. 1400 et seq.

In addition to providing specific notification for surveys as described above, LEAs are also required to notify parents of these activities and provide parents with an opportunity to opt their children out of participating in the following activities:

- Activities involving the collection, disclosure or use of personal information collected from students for marketing purposes; and
- Any non-emergency, invasive physical examination or screening that is (1) required as a condition of attendance; (2) administered by the school and scheduled by the school in advance; and (3) not necessary to protect the immediate health and safety of the student, or of other students. This requirement does not apply to any physical examination or screening that is permitted or required by State law, including physical examinations or screenings permitted without parental notification.



LEAs must provide parents effective notice of their rights under PPRA, including the right to review, upon request, any instructional materials used in connection with any survey that concerns one or more of the eight protected areas and those used as part of the educational curriculum. For more information, see the model notification on our website: <https://studentprivacy.ed.gov/resources/ppra-model-general-notice-rights>.

LEAs are also required to develop and adopt policies, in consultation with parents, regarding these and other rights under PPRA. For more information, see <https://studentprivacy.ed.gov/faq/what-policies-must-local-education-agency-lea-develop-under-protection-pupil-rights-amendment>.

SPPO investigates written complaints alleging a violation of PPRA if the complaint: (1) is filed by a parent of a student (or a student 18 years or older or emancipated under State law) affected by a violation of PPRA; (2) is submitted to SPPO within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation; (3) contains specific allegations of fact giving reasonable cause to believe that a violation of PPRA has occurred; and (4) contains evidence of attempted resolution at the local level (and at the State level if a State complaint resolution process exists).

Individuals wanting to file a complaint should do so by completing this Complaint Form (available at <https://studentprivacy.ed.gov>) in its entirety and submitting it electronically or by mail. If you choose to submit this form electronically, please note that this form is an Adobe® fillable PDF and works best when used with Adobe Acrobat (available for download at <https://get.adobe.com/reader/>.) Once you have completed the form, please type your name in the signature space and click “Submit Form.” Your computer's default e-mail software program should then open and create an e-mail with the Complaint Form attached. In order to complete the submission process, you must send this email, and attachment, as appropriate.

In the event that you have either not selected a default e-mail software program on your computer, or the default e-mail software program you have selected does not open when clicking “Submit Form,” in order to complete the submission process, you must either save the form, manually attach it to an e-mail, and send that e-mail to [FERPA.Complaints@ed.gov](mailto:FERPA.Complaints@ed.gov); or, print the form, and sign and mail it to:

Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-8520

You should receive a confirmation of SPPO's receipt of your complaint within three business days from the date of your submission. Failure to complete the Complaint Form in its entirety or to not provide any of the information required for SPPO to determine whether your complaint contains specific allegations of fact giving reasonable cause to believe that a violation of PPRA has occurred, may result in, among other things, the dismissal and/or return of your complaint to you in order to obtain additional information needed by SPPO to further consider your complaint. If your complaint is dismissed, you may choose to resubmit a new complaint per the instructions set forth above and in accordance with the requirements of PPRA.

Also, you should be aware that when reviewing, investigating, or processing your complaint, SPPO may disclose, without your prior, written consent and pursuant to routine uses of the records that have been published in the system of records notice covering PPRA complaints, information contained in your complaint, such as the name of the complainant, the name of the student if the student did not submit the complaint, and the alleged violation(s), including, but not limited, to the educational agency or institution against which your complaint has been made.

## **SECTIONS 1 & 2: STUDENT AND COMPLAINANT INFORMATION**

It is important that in completing these sections, all requested information is provided regarding both the student and the complainant to include the student's correct birthdate. An attorney or advocate may file a complaint on behalf of a parent, a student who has turned 18 years old or an emancipated minor; however, SPPO will not discuss the complaint with the attorney or advocate without the prior, written consent of the parent, adult student, or emancipated minor, as applicable. SPPO will dismiss anonymous complaints and complaints filed by a party other than the parent, student who has turned 18 years old, or emancipated minor who is the subject of the complaint, or his or her attorney or advocate.



Please note only a parent or guardian of a student directly affected by a violation under the PPRA, or a student who has turned 18 years old or an emancipated minor under State law may file a complaint.

### **SECTION 3: LOCAL OR STATE EDUCATIONAL AGENCY INFORMATION**

This section requires that you provide, among other information, the name and address of the current superintendent of the LEA (school district) that you are alleging violated PPRA. PPRA applies to the programs and activities of a State educational agency, such as a State department of education, or other recipients of funds under any program funded by the U.S. Department of Education. For instance, private elementary and secondary schools generally do not receive funds from the Department and are, therefore, not generally subject to PPRA. SPPO generally will dismiss complaints filed against elementary or secondary schools that are not listed on the Department's National Center for Education Statistics Public School website (available at <https://nces.ed.gov/ccd/schoolsearch/>). Please note that it is extremely important that you enter the specific date (*mm/dd/yyyy*) of the alleged violation in this section for us to accurately determine the timeliness of your complaint. As stated above, a complaint must be filed within 180 days of the alleged violation or within 180 days after the complainant knew or reasonably should have known of the alleged violation.

### **SECTION 4: PPRA VIOLATION INFORMATION**

In describing the alleged violations, you must respond to all of the information requested in the heading(s) that pertain to the nature of your complaint. Your response should only include the relevant facts that would give reasonable cause to believe that a violation of PPRA has occurred. You must also include evidence of attempted resolution of the complaint at the local level (and at the State level complaint resolution process exists), including the names of local and State officials contacted and significant dates in the attempted resolution. To the greatest extent possible, please limit your response to the space provided in this Complaint Form; if more space is needed, you may attach additional documents in which you further describe your complaint. Failure to provide any of the required information may result in, among other things, your complaint being dismissed or returned to you for additional clarification, which would delay the processing, and might impact the timeliness, of your complaint.

### **SECTION 5: CORRESPONDENCE INFORMATION**

If there is any correspondence or other information, such as newspaper articles, website postings, e-mail or letter exchanges, that substantiates your allegations, please briefly describe it in this section. You may also attach copies of relevant documents that support your allegations. Please note that, due to computer security concerns, SPPO will not accept the submission of audio or video files, CD/DVDs, or thumb drives. Also, the submission of nonessential, voluminous, or nonresponsive information may, among other things, delay the processing, or result in the dismissal or return, of your complaint.

### **SECTION 6: CERTIFICATION**

Certify that the information you have provided in the Complaint Form is true and correct under penalty of perjury by typing in your name in the signature space, if filing electronically, or by printing out the Complaint Form and signing it, if filing via mail.



**U.S. DEPARTMENT OF EDUCATION**  
**Protection of Pupil Rights Amendment (PPRA)**

**Parent/Student Complaint Form**

**SECTION 1: STUDENT INFORMATION**

First Name: [REDACTED] Last Name: [REDACTED] Date of Birth: [REDACTED]

**SECTION 2: COMPLAINANT INFORMATION**

Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)

☒ Parent or Legal Guardian    ☐ Self    ☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title: [Mr.] First Name: [Donald] Last Name: [Elting]

Street Address: [REDACTED] Phone Number: [REDACTED]

City: [Cedar Grove] State: [New Jersey] Zip Code: [07009]

Email: ☒ Check if SPPO may use this email address to contact you and forward official correspondence [REDACTED]

**SECTION 3: EDUCATIONAL AGENCY INFORMATION**

Name and title of the local education agency or school district superintendent:  
 Superintendent Anthony Grosso

Name of local educational agency (i.e. school district): [Cedar Grove Public School District] Phone Number: [9732391550]

Mailing Address: [520 Pompton Avenue] Dates Attended: [current]

City: [Cedar Grove] State: [New Jersey] Zip Code: [07009] Date of Alleged Violation: [06/09/2021]

**SECTION 4: PPRA VIOLATION INFORMATION**

Specifics of alleged PPRA violation:

no proper notification, no opportunity to opt out or review survey in advance, no informed consent, not voluntary or anonymous



If allegations concerns a survey, provide the name of the survey, analysis or evaluation:

Equity and Diversity Advisory Council--Elementary School Needs Assessment (copies of surveys attached)

Source of funding for survey, analysis or evaluation (if known):

not known

Details of attempted resolution at local level:

Local School Officials Contacted	Dates	Results/Comments
SI Grosso, BOE President	06/09/2021	email, no response or reply
HS Principal, HS guidance counselor	06//09/2021	email, no response or reply
BOE Meeting	06/15/2021	no resolution; survey results used in public presentation
OPRA request for EDAC members	07/13/2021	pending response

Details of attempted resolution at State level (if State resolution procedure exists):

State Education Officials Contacted	Dates	Results/Comments
Acting Comm. Of Education (NJ DOE) Allen-McMill	06/23/2021	letter on behalf of 90+ families; no response or reply



**SECTION 5: CORRESPONDENCE INFORMATION**

Describe any correspondence, such as newspaper articles, website postings, e-mail or letter exchanges, that substantiates the information specifically required in Section 4 above. You may also attach copies of those relevant documents that support your allegations. Please note that, due to computer security concerns we will not accept the submission of audio or video files, CD/DVDs, or thumb drives. Also, the submission of nonessential, voluminous, or nonresponsive information may, among other things, delay the processing of your complaint, and could result in the dismissal and return of your complaint.

see attached letter

**SECTION 6: CERTIFICATION**

  
Complainant's Signature

07/13/2021

Date:

*Privacy Act Statement.* The Department is authorized to solicit the information contained in this Form by 20 U.S.C. 1232g, h. Your disclosure of the information requested on this Form is voluntary, but if you fail to provide any of the information, it may result in, among other things, your complaint being dismissed or returned to you for additional clarification. The principal purpose for which the information requested on this Form will be used is to resolve your complaint and determine whether the educational agency or institution violated FERPA. The Department has published the routine uses for which the information requested on this Form may be used in a system of records notice entitled "Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) Record Systems (18-05-02), which was last published in the Federal Register on June 4, 1999 (64 Fed. Reg. 30106, 30123-24). The routine uses include, but are not limited to, disclosing records to the educational agency or institution against which a complaint has been made or the State Educational Agency in that State. The Department may modify and update this system of records notice, in which case that update in addition to the Department's other systems of records notices may be found at: <https://www2.ed.gov/notices/ed-pia.html>. The effects of not providing any of the requested information on this Form may include, among other things, that your complaint is dismissed or returned to you for additional clarification.

Reset Form

Print Form

Submit Form



**U.S. DEPARTMENT OF EDUCATION**  
**Protection of Pupil Rights Amendment (PPRA)**

**Parent/Student Complaint Form**

**SECTION 1: STUDENT INFORMATION**

First Name:

Last Name:

Date of Birth:

**SECTION 2: COMPLAINANT INFORMATION**

Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)

☒ Parent or Legal Guardian☐ Self☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title:

First Name:

Last Name:

Street Address:

Phone Number:

City:

State:

Zip Code:

Email: ☒ Check if SPPO may use this email address to contact you and forward official correspondence

**SECTION 3: EDUCATIONAL AGENCY INFORMATION**

Name and title of the local education agency or school district superintendent:

Name of local educational agency (i.e. school district):

Phone Number:

Mailing Address:

Dates Attended:

City:

State:

Zip Code:

Date of Alleged Violation:

**SECTION 4: PPRA VIOLATION INFORMATION**

Specifics of alleged PPRA violation:

no proper notification, no opportunity to opt out or review survey in advance, no informed consent, not voluntary or anonymous



If allegations concerns a survey, provide the name of the survey, analysis or evaluation:

Equity and Diversity Advisory Council--Elementary School Needs Assessment (copies of surveys attached)

Source of funding for survey, analysis or evaluation (if known):

not known

Details of attempted resolution at local level:

Local School Officials Contacted	Dates	Results/Comments
SI Grosso, Principal DiMatteo, Teacher Conover	06/10/2021	two separate emails, no response or reply
SI Grosso, DeVita, and BOE Members	06/12/2021	OPRA request; mostly denials; received copies of surveys & guide
BOE Meeting	06/15/2021	no resolution; survey results used in public presentation
Interim Exec County Superintendent	06/18/2021	email & call; assurance that he would talk to SI but no resolution

Details of attempted resolution at State level (if State resolution procedure exists):

State Education Officials Contacted	Dates	Results/Comments
Acting Comm. Of Education (NJ DOE) Allen-McMill	06/23/2021	letter on behalf of 90+ families; no response or reply

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see attached letter

**SECTION 6: CERTIFICATION**

**Complainant's Signature**

07/12/2021

**Date:**

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Reset Form

Print Form

Submit Form





U.S. DEPARTMENT OF EDUCATION  
Protection of Pupil Rights Amendment (PPRA)

Parent/Student Complaint Form

SECTION 1: STUDENT INFORMATION

First Name:	Last Name:	Date of Birth:
E [REDACTED]	O [REDACTED]	[REDACTED]

SECTION 2: COMPLAINANT INFORMATION

Your relationship to the student whose education records are the subject of this complaint. (If an attorney or advocate, please note that SPPO will not discuss the complaint with you without the prior consent of the parent or eligible student who maintains the rights under PPRA.)

☒ Parent or Legal Guardian    ☐ Self    ☐ Other (ex. Attorney/advocate on behalf of the parent or eligible student)

Title:	First Name:	Last Name:
[REDACTED]	Anna	OConnor

Street Address:	Phone Number:
[REDACTED]	[REDACTED]

City:	State:	Zip Code:
Cedar Grove	New Jersey	07009

Email: <input checked="" type="checkbox"/> Check if SPPO may use this email address to contact you and forward official correspondence	acf42079@aol.com
--	------------------

SECTION 3: EDUCATIONAL AGENCY INFORMATION

Name and title of the local education agency or school district superintendent:
Superintendent Anthony Grosso

Name of local educational agency (i.e. school district):	Phone Number:
Cedar Grove Public School District	9732391550

Mailing Address:	Dates Attended:
520 Pompton Avenue	current

City:	State:	Zip Code:	Date of Alleged Violation:
Cedar Grove	New Jersey	07009	06/09/2021

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Reset Form

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## CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

<b>I. (a) PLAINTIFFS</b> PATRICIA MONTANA, VINCENT VOLLERO, MICHAEL TURI, CHERYL MILLER, DONALD ELTING, and ANNA O'CONNOR.  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b> MIGUEL CARDONA, in his official capacity as Secretary of Education, and U.S. DEPARTMENT OF EDUCATION  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																								
(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) AMERICA FIRST LEGAL FOUNDATION 611 Pennsylvania Ave SE #231 Washington, D.C. 20003 Tel.: (202) 964-3721	ATTORNEYS (IF KNOWN)																								
<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff         </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant         </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)         </div> </div>	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b> <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
<input type="radio"/> <b>E. General Civil (Other)</b> OR <input type="radio"/> <b>F. Pro Se General Civil</b>			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609  <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 To compel adjudication of PPRA complaints under 20 U.S.C. § 1232h(f), 5 U.S.C. § 555(b), and 5 U.S.C. § 706(1)

**VII. REQUESTED IN COMPLAINT**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

**JURY DEMAND:**

Check YES only if demanded in complaint  
 YES ☐ NO ☒

**VIII. RELATED CASE(S) IF ANY**

(See instruction)

YES ☐ NO ☒

If yes, please complete related case form

**DATE:** March 23, 2023

**SIGNATURE OF ATTORNEY OF RECORD** /s/ Michael Ding

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT

for the

District of Connecticut

PATRICIA MONTANA, VINCENT VOLLERO,  
MICHAEL TURI, CHERYL MILLER, DONALD  
ELTING, and ANNA O'CONNOR.

*Plaintiff(s)*

v.

MIGUEL CARDONA, in his official capacity as  
Secretary of Education, and U.S. DEPARTMENT OF  
EDUCATION

*Defendant(s)*

Civil Action No. 23-775

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* MERRICK GARLAND, Attorney General of the United States  
950 Pennsylvania Ave., NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: MICHAEL DING  
AMERICA FIRST LEGAL FOUNDATION  
611 Pennsylvania Ave SE #231  
Washington, D.C. 20003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 23-775

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_ , a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

## District of Connecticut

Civil Action No. 23-775

Signature of Clerk or Deputy Clerk



Civil Action No. 23-775

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

District of Connecticut

PATRICIA MONTANA, VINCENT VOLLERO,  
MICHAEL TURI, CHERYL MILLER, DONALD  
ELTING, and ANNA O'CONNOR.

*Plaintiff(s)*

v.

MIGUEL CARDONA, in his official capacity as  
Secretary of Education, and U.S. DEPARTMENT OF  
EDUCATION

*Defendant(s)*

Civil Action No. 23-775

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. DEPARTMENT OF EDUCATION  
400 Maryland Avenue, SW  
Washington, DC 20202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

MICHAEL DING  
AMERICA FIRST LEGAL FOUNDATION  
611 Pennsylvania Ave SE #231  
Washington, D.C. 20003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 23-775

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Connecticut

PATRICIA MONTANA, VINCENT VOLLERO,  
MICHAEL TURI, CHERYL MILLER, DONALD  
ELTING, and ANNA O'CONNOR.

*Plaintiff(s)*

v.

MIGUEL CARDONA, in his official capacity as  
Secretary of Education, and U.S. DEPARTMENT OF  
EDUCATION

*Defendant(s)*

Civil Action No. 23-775

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Civil Process Clerk  
U.S. Attorney's Office for D.C.  
601 D Street, NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

MICHAEL DING  
AMERICA FIRST LEGAL FOUNDATION  
611 Pennsylvania Ave SE #231  
Washington, D.C. 20003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 23-775

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
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☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_ , a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: