



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).¹

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.”²

¹ 20 U.S.C. § 1232h; 34 C.F.R. Part 98.

² 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).

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)³
- 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.⁴ 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.

³ This complaint was filed via mail and a tracking number was not received.

⁴ 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