

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

VIRGINIA EDUCATION ASSOCIATION,
RICHMOND EDUCATION ASSOCIATION,
LOUDOUN EDUCATION ASSOCIATION,
SPOTSYLVANIA EDUCATION ASSOCIATION,
ARLINGTON EDUCATION ASSOCIATION,
YORK EDUCATION ASSOCIATION, SANDRA
BARNSTEAD, LINDA ALLEN, PATRICIA
CALDWELL-WILSON, BRADLEY MOCK, And
CAROL BAUER,

Case No.: _____

Petitioners,

v.

VIRGINIA DEPARTMENT OF EDUCATION,
BRIAN C. DAVISON,
And JOHN BUTCHER

SERVE: Steven R. Staples, Superintendent
Virginia Department of Education
James Monroe Building
101 N. 14th Street
Richmond, Virginia 23218

Brian C. Davison
43724 Stone Fence Terrace
Leesburg, Virginia 20176

John Butcher
4208 Riverside Drive
Richmond, Virginia 23225

Respondents.

PETITION FOR INJUNCTION

The Petitioners, by counsel, file this Petition for Injunction pursuant to, inter alia,
Virginia Code Sections 2.2-3809 and 2.2-3713 based on the following:

1. The Virginia Education Association (“VEA”) is an organization of education professionals with more than 50,000 public school employee members throughout the Commonwealth of Virginia, including teachers of grades 3 through 9. It has local affiliate professional associations in every school district in Virginia.

2. The Richmond Education Association (“REA”), Loudoun Education Association (“LEA”), Spotsylvania Education Association (“SEA”), Arlington Education Association (“AEA”) and York Education Association (“YEA”) are affiliates of VEA. Each is an organization of education professionals with thousands of public school employee members, including teachers of grades 3 through 9 employed by the local school boards.

3. Sandra Barnstead is a licensed Virginia teacher who taught middle and high school math for the Spotsylvania County School Board.

4. Linda Allen is a licensed Virginia teacher who taught middle school math for the Arlington County School Board.

5. Patricia Caldwell-Wilson is a licensed Virginia math teacher for the Loudoun County School Board.

6. Bradley Mock is a licensed Virginia middle school teacher for the Richmond City Public School Board.

7. Carol Bauer is a licensed Virginia elementary school teacher for the York County School Board.

8. The Respondents are, or will be, in possession of data and reports relating to the Individual Petitioners and the Association Petitioners’ teacher members that can be used to irreparably harm the Petitioners in the profession.

9. The Virginia Department of Education (“VDOE”) is an agency within the meaning of Virginia Code Section 2.2-3801 and a public body within the meaning of Virginia Code Section 2.2-3701.

10. VDOE is the licensing authority for the Virginia teachers and VDOE maintains personal information, personnel records, and performance data in the form of statistical records, including Standards of Learning (“SOL”) scores, Student Growth Percentiles (“SGP”)¹ scores, and other value added or assessment scores that may be used to evaluate teacher performance or prejudice judgments about individual teachers.

11. Brian C. Davison and John Butcher are residents of the Commonwealth of Virginia who served several requests on VDOE under the Virginia Freedom of Information Act (“FOIA”) that demand individual student SOL scores, SGP scores, and other assessment scores by teacher name, license number, subject taught, and school employed.

12. Respondent Butcher filed suit against VDOE under FOIA seeking student and teacher performance records for the City of Richmond. A Richmond Circuit Court Judge refused to release the information Butcher demanded.

13. Respondent Davison filed suit against VDOE under FOIA seeking data relating to teacher performance records, in the form of individual student SOL and SGP scores, for all Loudoun County teachers by each teacher’s full name, subject taught, and school where employed (the “Davison suit”).

¹ SGP is a form of so-called “value-added” measurement, which purports to measure teacher effectiveness by applying statistical formulae to students’ standardized test scores; but many experts agree that value-added estimates are not valid indicators of teachers’ success or student learning because so many factors, outside teachers’ control, affect student performance on standardized tests.

14. Petitioners were denied an opportunity to intervene in the Davison suit when they attempted to do so. The Loudoun County Public School Board was permitted to intervene but was prohibited by the trial court from raising important defenses to protect teachers' personal information including the personnel records exemption under FOIA.

15. On or about February 4, 2015, the VDOE released to Davison and Butcher SOL and SGP scores for every student in every school district in Virginia by school district, school name, subject, student and teacher with computer generated numbers inserted for student and teacher names (the "redacted data").

16. The redacted data VDOE released to Davison and Butcher on February 4, 2015 allowed Davison and Butcher to identify individual VEA members because they are the only teacher for a particular subject at a school and their names, with the subjects they teach, are on school websites.

17. On April 12, 2016, a Richmond Circuit Court Judge ordered VDOE to release individual student SOL and SGP scores by teacher name, school, and subject taught in the Davison suit. VEA is appealing that order.

18. After receiving thousands of pages of redacted data from VDOE, Respondents Davison and Butcher demanded VDOE data and reports with SOL, SGP, and other assessment scores by individual teacher name, school district, school name, and subject taught for the school districts of Loudoun County, Fairfax County, Virginia Beach, Chesapeake City, York County, Henrico County, Richmond County, Chesterfield County, Albemarle County, Arlington County, Alexandria City, Spotsylvania County and Richmond City. See Exhibits 1 & 2.

19. Many organizations and experts, such as the American Statistical Association, the National Academy of Sciences, and VDOE itself stress the limitations and unreliability inherent

in using SOL scores, SGP data and other value added student scores or assessments in measuring teacher effectiveness or competency.

20. SOL and SGP scores, particularly for elementary school students, may be reported to VDOE linked to a classroom teacher who has not delivered the instruction in that subject matter.

21. Upon information and belief, Respondents Davison and Butcher have, and intend to, use VDOE's statistical data and reports to make prejudicial judgments about the evaluation, performance, success, or failure of individual teachers. Davison also intends to link the VDOE's data and reports to individual teacher salary to make prejudicial judgments about the performance and compensation of individual teachers.

22. VDOE's release of the redacted data has already violated the Petitioners' right to protection of their personal, personnel, performance, and personally identifying information. VDOE's intention to release any data with teacher names, including the information respondents seek in Exhibits 1 and 2, will cause irreparable harm to the privacy, reputation, careers, and good names of the Individual Petitioners and the Association Petitioners' teacher members.

CLAIM I

23. The Petitioners restate and reallege the allegations in paragraphs 1-22 as if fully restated hereinafter.

24. The General Assembly enacted the Virginia Government Data and Collection and Dissemination Practices Act (the "Data Act") to preserve the privacy and personal rights of its individual citizens by preventing the misuse or dissemination of data, reports, or records maintained in governmental information systems relating to individuals.

25. The Data Act applies to all recordkeeping agencies, including VDOE, that maintain personal information, broadly defined as “all information that (i) describes, locates, or indexes anything about an individual including, but not limited to . . . employment records . . . or about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system”. Va. Code § 2.2-3801.

26. The Individual Petitioners and the Association Petitioners represent tens of thousands of individual teachers who are data subjects within the meaning of Virginia Code Section 2.2-3801.

27. Under the Data Act the VDOE has a duty to refrain from releasing “material for independent analysis without guarantees that no personal information will be used in any way that might prejudice judgments about any data subject”. Va. Code § 2.2-3805.

28. Data subjects are also entitled to specific protections including notice and an opportunity to challenge, correct, or purge information about him or her. Va. Code § 2.2-3804.

29. VDOE violated its duties under the Data Act because VDOE has engaged, is engaged, and is about to be engaged in releasing personal information, personnel records and performance records that identifies individual teachers which the respondents intend to use in ways that might prejudice judgments about individual teachers.

30. The VDOE violated its duties to the Individual Petitioners and Association Petitioners’ teacher members by failing to notify and give each teacher an opportunity to challenge, correct, or purge personal information before releasing it.

31. The Individual Petitioners and the Association Petitioners’ teacher members have and will suffer irreparable harm by VODE’s violation of their duties.

32. The Individual Petitioners and the Association Petitioners' teacher members have and will suffer irreparable harm by the Respondents dissemination and misuse of the VDOE's data and reports.

33. The Petitioners are entitled to an injunction to prohibit the Respondents from disseminating, disclosing, or further using the redacted data as well as the records encompassed by Davison and Butcher's former and current FOIA requests.

34. In the alternative, the Petitioners are entitled to an Order requiring the VDOE to give each individual data subject notice of its intended dissemination of personal information and an opportunity to challenge, correct or purge any information found to be incomplete, inaccurate, or not necessary to be retained pursuant to Virginia Code Section 2.2-3806.

CLAIM II

35. The Petitioners restate and reallege the allegations in paragraphs 1-34 as if fully restated hereinafter.

36. The personnel records exclusion in FOIA excludes from disclosure " records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject" and has been broadly defined to include all information gathered about an employee. Va. Code § 2.2-3705.1(1).

37. The Individual Petitioners and the Association Petitioners' teacher members are public employees entitled to the rights, privileges, and protections of FOIA, including the right to confidentiality of personnel records and personally identifying information.

38. VDOE is the licensing and regulatory agency for Virginia teachers. VDOE collects, maintains, and uses personnel and performance records, data, reports, and files obtained

directly from the school districts that employ the Individual Petitioners and the Association Petitioners' teacher member, and it has duties to preserve such information in a confidential manner.

39. VDOE violated its duties to the Individual Petitioners and the Association Petitioners' teacher members by failing to raise the personnel exemption defense in the Respondents litigation or by failing to notify Petitioners to enable them to timely intervene.

40. The Petitioners are entitled to an injunction against VDOE to prevent the release of any personally identifying information or personnel records pursuant to Virginia Code Sections 2.2-3705.1(1) and 2.2-3713.

41. The Petitioners are entitled to an injunction against Davison and Butcher to prevent the dissemination or use of any data, reports, or records they received from VDOE that contain personally identifying information or can be used to personally identify any individual teacher.

CLAIM III

42. The Petitioners restate and reallege the allegations in paragraphs 1-41 as if fully restated hereinafter.

43. Virginia statutes link student performance to teacher evaluations and teacher evaluations to maintenance of their jobs. Va. Code § 22.1-295(C) (school board procedures for teacher evaluations shall address student academic progress); Va. Code §22.1-303(A) (probationary teachers shall not be reemployed if performance evaluation is unsatisfactory); Va. Code §22.1-304(G) (school boards may consider teacher evaluations when implementing reductions in force); Va. Code §22.1-307 (teacher may be dismissed for incompetency including one unsatisfactory performance evaluation).

44. The General Assembly explicitly prohibits disclosure of such data. It mandates that “[t]eacher performance indicators, or other data used by the local school board to judge the performance or quality of a teacher ... **shall be confidential.**” Va. Code. § 22.1-295.1(C) (emphasis added).

45. The redacted data and the information Davison and Butcher currently demand from VDOE include performance indicators relating to the Individual Petitioners and the Association Petitioners’ teacher members which Respondents obtained without the petitioners knowledge or consent.

46. The redacted data and the information Davison and Butcher currently demand from VDOE contains data, reports, assessments or information that can be used or misused to make prejudicial judgments about teacher performance, competency, and professional qualifications.

47. Upon information and belief, the Respondents have and will use the redacted data and the information Davison and Butcher currently demand from VDOE to irreparably harm the Individual Petitioners and Association Petitioners’ teacher members in their professions.

48. There is no remedy at law that would adequately protect the Individual Petitioners and Association Petitioners’ teacher members.

49. The Petitioners are entitled to an injunction against the Respondents to prevent the release, dissemination, or use of any data, reports, or information that contain any teacher performance indicators or student records that can be used to make judgments about any teacher’s performance by their employers or any other person.

50. The Respondents will suffer no harm if an injunction is granted; and any inconvenience to the Respondents is outweighed by the harm Petitioners will suffer if the Respondents are not enjoined.

WHEREFORE, the Petitioners respectfully request an Order granting them the following:

1. An injunction against VDOE to prohibit VDOE from releasing any personal information, personnel records, performance data, or other material involving teacher names or student data in any manner that might be used to identify or prejudice judgments about individual teachers;
2. Alternatively, the Petitioners request an Order requiring VDOE to notify each teacher who is a data subject of the intended release and give him or her an opportunity to challenge, correct or purge all incomplete, inaccurate, not pertinent, not timely, or not necessary to be retained;
3. An injunction against Davison and Butcher to prohibit them from using or disseminating any personal information, personnel records, performance data, or other material received from VDOE involving teacher names or student data in any manner that might be used to identify or prejudice judgments about individual teachers;
4. Such further relief as the Court deems just and proper.

Respectfully Submitted:



Dena Rosenkrantz

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CERTIFICATION

I certify under the penalty of perjury that the factual allegations and information contained in this Petition are true and correct to the best of my knowledge and belief.

Sandra Barnstead
Sandra Barnstead

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Richmond

On ^{May} ~~April~~ 2nd, 2016, Sandra Barnstead appeared before me, the undersigned Notary Public for the aforesaid jurisdiction, and after being duly sworn, made oath that the facts in Petition for Injunction are true and correct to the best of her knowledge, information and belief.

Ann Elizabeth Robinson
Notary Public

My commission expires: 11/30/2018

