ORIGINAL

IN THE SUPREME COURT OF OHIO

SCHOOL CHOICE OHIO, INC.,	:	**Case No. 2014-0749**
Relator,	:	
vs.	:	**Original Action in Mandamus**
CINCINNATI PUBLIC SCHOOL DISTRICT, et al.,	:	
Respondents.	:	

ANSWER OF RESPONDENT, SPRINFIELD CITY SCHOOL DISTRICT, TO RELATOR'S COMPLAINT FOR ALTERNATIVE AND PEREMPTORY WRITS OF MANDAMUS

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CLERK OF COURT
SUPREME COURT OF OHIO

Comes now Respondent, Springfield City School District, by and through counsel, for its Answer to Relator's Complaint for Alternative and Peremptory Writs of Mandamus (hereinafter "Relator's Complaint") filed herein, states as follows:

FIRST DEFENSE

1. This Respondent denies the allegations in paragraph 1 of Relator's Complaint for want of knowledge.

2. This Respondent denies the allegations in paragraph 2 of Relator's Complaint for want of knowledge.

3. This Respondent denies the allegations in paragraph 3 of Relator's Complaint.

4. This Respondent denies the allegations in paragraph 4 of Relator's Complaint.

5. This Respondent denies the allegations in paragraph 5 of Relator's Complaint.

6. This Respondent denies the allegations in paragraph 6 of Relator's Complaint.

7. This Respondent admits R.C. 3319.321 provides Springfield City School District the ability to define and designate what constitutes "directory information" for its school district in accordance with the "Family Educational Rights and Privacy Act of 1974" (hereinafter "FERPA"), this Respondent denies all remaining allegations in paragraph 7 of Relator's Complaint.

8. This Respondent denies the allegations in paragraph 8 of Relator's Complaint.

9. This Respondent admits it already has adopted policies and practices defining and designating what constitutes "directory information" within its school district and denies all remaining allegations in paragraph 9 of Relator's Complaint.

10. This Respondent denies the allegations in paragraph 10 of Relator's Complaint.

11. This Respondent denies the allegations in paragraph 11 of Relator's Complaint for want of knowledge.

12. This Respondent denies the allegations in paragraph 12 of Relator's Complaint for want of knowledge.

13. This Respondent admits the allegations in paragraph 13 of Relator's Complaint.

14. Paragraph 14 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 14 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

15. Paragraph 15 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 15 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

16. Paragraph 16 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 16 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

17. Paragraph 17 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 17 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

18. Paragraph 18 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 18 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

19. Paragraph 19 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 19 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

20. Paragraph 20 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 20 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

21. Paragraph 21 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 21 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

22. This Respondent denies the allegations in paragraph 22 of Relator's Complaint for want of knowledge.

23. This Respondent denies the allegations in paragraph 23 of Relator's Complaint for want of knowledge.

24. This Respondent denies the allegations in paragraph 24 of Relator's Complaint.

25. This Respondent denies the allegations in paragraph 25 of Relator's Complaint.

26. This Respondent denies the allegations in paragraph 26 of Relator's Complaint.

27. This Respondent denies the allegations in paragraph 27 of Relator's Complaint.

28. Paragraph 28 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 28 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

29. Paragraph 29 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 29 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

30. Paragraph 30 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 30 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

31. Paragraph 31 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 31 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

32. Paragraph 32 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 32 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

33. Paragraph 33 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 33 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

34. Paragraph 34 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 34 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

35. This Respondent admits that on October 22, 2013, School Choice Ohio sent an email to Springfield City School District's Treasurer, Dale Miller, requesting the following information:

1) Student and parent's/ guardian's name;
2) Parent's/ Guardian's complete address, including email address;
3) Parent's/ Guardian's telephone contact information;
4) Student's grade level for the 2013-14 school year; &
5) Student's school building for the 2013-14 school year.

This Respondent denies all other remaining allegations in paragraph 35 of Relator's Complaint.

36. This Respondent denies the allegations in paragraph 36 of Relator's Complaint.

37. This Respondent admits that on October 22, 2013, Springfield City School District's Treasurer, Dale Miller, responded via an email to School Choice Ohio, Inc., which had an accurate copy of the Springfield City School District Board of Education policy related to Student Records and Directory Information in effect at that time attached to it. This Respondent denies the remaining allegations in paragraph 37 of Relator's Complaint.

38. This Respondent admits that on October 22, 2013, Springfield City School District's Treasurer, Dale Miller, responded via an email to School Choice Ohio, Inc., which had an accurate copy of the Springfield City School District Board of Education policy related to Student Records and Directory Information in effect at that time attached to it. This Respondent admits its website may have had a different policy posted on one page of its website as compared to the accurate policy that was in effect and provided in response to Relator's October 22, 2013 email, but this Respondent also states that the accurate policy was posted in the online Student Handbook, was embodied within the annual online FERPA notice, and was communicated both on its website and distributed in the District's annual registration forms. Furthermore, its website contained a disclaimer at that time (and does currently) which included, but was not limited to, the following statements:

> [W]hile we (Springfield City School District) try to keep the information up to date and correct, we (Springfield City School District), make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the website or the information, products, services, or related graphics contained on the website for any purpose. Any reliance you place on such information is therefore strictly at your own risk.

This Respondent denies all other remaining allegations in paragraph 38 of Relator's Complaint.

39. This Respondent admits that School Choice, Inc., sent Springfield City School District's Treasurer, Dale Miller, an email on January 9, 2014 requesting the following information:

1) Student's Name;
2) Student's Address;
3) Telephone Number(s);
4) Student's Date of Birth; &
5) Student's Date of Graduation.

This Respondent denies the remaining allegations in paragraph 39 of Relator's Complaint.

40. This Respondent admits its Treasurer, Dale Miller, sent School Choice, Inc., a letter on January 13, 2014, advising that Springfield City School District's disclosure of the requested information was not permitted pursuant to FERPA. This Respondent denies the remaining allegations in paragraph 40 of Relator's Complaint.

41. This Respondent admits the allegations in paragraph 41 of Relator's Complaint.

42. This Respondent admits Karen Osborn, Esq., of Martin, Browne, Hull & Harper, PLL, sent a letter to David Movius on April 4, 2014. This Respondent denies all other remaining allegations in paragraph 42 of Relator's Complaint.

43. This Respondent admits it produced documents on April 4, 2014 in response to David Movius' February 24, 2014, public records request. This Respondent denies all other remaining allegations in paragraph 43 of Relator's Complaint.

44. This Respondent denies the allegations in paragraph 44 of Relator's Complaint.

45. This Respondent admits that an April 25, 2013 email, sent by Ms. Fish, stated that the "Retention Committee" had discussed "a possible change of directory information policy for defensive reasons." This Respondent denies the remaining allegations in paragraph 45 of Relator's Complaint.

46. This Respondent denies the allegations in paragraph 46 of Relator's Complaint.

47. This Respondent admits it adopted a new "Acceptable Use Policy & Directory Information Consent" form and policies for the 2013-2014 school year by which it requested parental consent to disclose the following information for purposes approved by the Superintendent or his designee:

1) Student's name;
2) Student's address;
3) Student's telephone number (unless designated as "unlisted" on student's registration forms);
4) Date and place of birth;
5) Participation in officially recognized activities and sports;
6) Weight and height of members of athletic teams;
7) Dates of attendance;
8) Date of graduation; and
9) Awards received.

This Respondent denies all other remaining allegations in paragraph 47 of Relator's Complaint.

48. This Respondent admits the allegations in paragraph 48 of Relator's Complaint.

49. This Respondent admits Relator's October 22, 2013 public records request was forwarded to Dr. Estrop, who drafted an email in response which stated:

> Correct, we do not provide them any information. I would suggest that we send them our newly developed and approved Board Policy on this subject. Then if they have any questions, send them to our attorneys.

This Respondent admits its Treasurer, Dale Miller, then sent an email to School Choice Ohio, Inc., which had an accurate copy of the Springfield City School District Board of Education policy related to Student Records and Directory Information in effect at that time attached to it. This Respondent denies all other remaining allegations in paragraph 49 of Relator's Complaint.

50. This Respondent admits Dr. Estrop approved a request by Global Impact STEM Academy in January of 2014 for information which FERPA permits may be designated by a

school district as "directory information." This Respondent denies all other remaining allegations in paragraph 50 of Relator's Complaint.

ANSWER TO COUNT I

51. This Respondent incorporates herein by reference its responses to paragraphs 1 through 50 of the Relator's Complaint as if fully rewritten.

52. Paragraph 52 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 52 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations.

53. Paragraph 53 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 53 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations.

54. Paragraph 54 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 54 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

55. Paragraph 55 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 55 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

56. Paragraph 56 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 56 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

57. Paragraph 57 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 57 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

58. Paragraph 58 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 58 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

59. Paragraph 59 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 59 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

ANSWER TO COUNT II

60. This Respondent incorporates herein by reference its responses to paragraphs 1 through 59 of the Relator's Complaint as if fully rewritten.

61. This Respondent denies the allegations in paragraph 61 of Relator's Complaint.

62. This Respondent denies the allegations in paragraph 62 of Relator's Complaint.

63. This Respondent denies the allegations in paragraph 63 of Relator's Complaint.

64. This Respondent denies the allegations in paragraph 64 of Relator's Complaint.

65. This Respondent denies the allegations in paragraph 65 of Relator's Complaint.

66. This Respondent denies the allegations in paragraph 66 of Relator's Complaint.

67. This Respondent denies the allegations in paragraph 67 of Relator's Complaint.

68. This Respondent denies the allegations in paragraph 68 of Relator's Complaint.

69. This Respondent denies the allegations in paragraph 69 of Relator's Complaint.

ANSWER TO COUNT III

70. This Respondent incorporates herein by reference its responses to paragraphs 1 through 69 of the Relator's Complaint as if fully rewritten.

71. Paragraph 71 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 71 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

72. Paragraph 72 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 72 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

73. Paragraph 73 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 73 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

74. Paragraph 74 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 74 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

75. Paragraph 75 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 75 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

76. Paragraph 76 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 76 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

ANSWER TO COUNT IV

77. This Respondent incorporates herein by reference its responses to paragraphs 1 through 76 of the Relator's Complaint as if fully rewritten.

78. This Respondent denies the allegations in paragraph 78 of Relator's Complaint.

79. This Respondent denies the allegations in paragraph 79 of Relator's Complaint.

80. This Respondent denies the allegations in paragraph 80 of Relator's Complaint.

81. This Respondent denies the allegations in paragraph 81 of Relator's Complaint.

82. This Respondent denies the allegations in paragraph 82 of Relator's Complaint.

83. This Respondent denies the allegations in paragraph 83 of Relator's Complaint.

ANSWER TO COUNT V

84. This Respondent incorporates herein by reference its responses to paragraphs 1 through 83 of the Relator's Complaint as if fully rewritten.

85. Paragraph 85 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 85 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

86. Paragraph 86 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 86 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

87. Paragraph 87 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 87 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

88. Paragraph 88 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 88 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

89. Paragraph 89 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 89 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations.

90. Paragraph 90 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 90 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

91. Paragraph 91 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 91 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

92. Paragraph 92 of Relator's Complaint does not contain any allegations against this Respondent. However, to the extent paragraph 92 asserts any allegations against the Springfield City School District, this Respondent denies any such allegations for want of knowledge.

ANSWER TO COUNT VI

93. This Respondent incorporates herein by reference its responses to paragraphs 1 through 92 of the Relator's Complaint as if fully rewritten.

94. This Respondent denies the allegations in paragraph 94 of Relator's Complaint.

95. This Respondent denies the allegations in paragraph 95 of Relator's Complaint.

96. This Respondent denies the allegations in paragraph 96 of Relator's Complaint.

97. This Respondent denies the allegations in paragraph 97 of Relator's Complaint.

98. This Respondent denies the allegations in paragraph 98 of Relator's Complaint.

99. This Respondent denies the allegations in paragraph 99 of Relator's Complaint.

100. This Respondent denies the allegations in paragraph 100 of Relator's Complaint.

101. This Respondent denies the allegations in paragraph 101 of Relator's Complaint.

102. This Respondent denies the allegations in paragraph 102 of Relator's Complaint.

103. Further answering, this Respondent denies each and every allegation in Relator's Complaint for Alternative and Peremptory Writs of Mandamus save such as are herein specifically admitted to be true.

SECOND DEFENSE

104. For its second and further defense herein, this Respondent states Relator's Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

105. For its third and further defense herein, this Respondent incorporates their responses as above set forth and further states Relator lacks standing to assert all or some of the claims set forth in its Complaint for Alternative and Peremptory Writs of Mandamus.

FOURTH DEFENSE

106. For its fourth and further defense herein, this Respondent incorporates its responses as above set forth and further states that all or part of Relator's claims are barred by the applicable statute of limitations.

FIFTH DEFENSE

107. For its fifth and further defense herein, this Respondent incorporates its responses as above set forth and further states Relator's claims are subject to all state and federal immunities including, but not limited to, the immunities, defenses and limitations on damages set forth in Chapter 2744 of the Ohio Revised Code.

SIXTH DEFENSE

108. For its sixth and further defense herein, this Respondent incorporates its responses as above set forth and further states Relator has failed to mitigate its damages.

SEVENTH DEFENSE

109. For its seventh and further defense herein, this Respondent incorporates its responses as above set forth and further states that at all times pertinent it acted reasonably, in good faith, upon advice of counsel, in accordance with law and in the exercise of its statutory duties and responsibilities.

EIGHTH DEFENSE

110. For its eighth and further defense herein, this Respondent incorporates its responses as above set forth and further states Relator lacks the capacity to sue with respect to the mandamus claims.

NINTH DEFENSE

111. For its ninth and further defense herein, this Respondent incorporates its responses as above set forth and further states Relator lacks standing as there is a plain and adequate remedy in the ordinary course of law which Relator has failed to pursue with respect to its mandamus claims.

TENTH DEFENSE

112. For its tenth and further defense herein, this Respondent incorporates its responses as above set forth and further states Relator's claims are moot because this Respondent provided all responsive materials to Relator's request for "directory information" as defined by the Springfield City School District prior to the filing of this action.

ELEVENTH DEFENSE

113. For its eleventh and further defense herein, this Respondent incorporates its responses as above set forth and further states Relator has failed to exhaust all available administrative and judicial remedies and its claims are not ripe for adjudication.

TWELFTH DEFENSE

114. For its twelfth and further defense herein, this Respondent incorporates its responses as above set forth and further states Relator's Complaint is defective pursuant to R.C. § 2731.04.

THIRTEENTH DEFENSE

115. For its thirteenth and further defense herein, this Respondent gives notice that it intends to assert and rely upon all affirmative defenses, immunities, avoidances, counter-claims, cross claims and third party claims which become available or apparent during the course of discovery or trial, and it hereby reserves the right to amend this Answer to assert such defenses.

FOURTEENTH DEFENSE

116. For its fourteenth and further defense herein, this Respondent incorporates its responses as above set forth and further states that pursuant to the *McClung v. Silliman* doctrine, Relator's claims for mandamus must fail and such claims lack jurisdiction as a state court cannot entertain a mandamus proceeding which would result in directing the action of a federal officer or agency relative to a matter which is delegated by a federal officer or agency.

FIFTEENTH DEFENSE

117. For its fifteenth and further defense herein, this Respondent incorporates its responses as above set forth and further states that it had no clear legal duty and that Relator had no clear legal right to obtain the personally identifiable student information which is the information giving rise to this litigation.

SIXTEENTH DEFENSE

118. For its sixteenth and further defense herein, this Respondent incorporates its responses as above set forth and further states that it has no liability for attorney fees because its actions in response to Relator's request for directory information were in full compliance with Ohio's Public Records Law and reasonable in all respects.

SEVENTEENTH DEFENSE

119. For its seventeenth and further defense herein, this Respondent incorporates its responses as above set forth and further states that federal and state law confer upon this Respondent and the parents\guardians of its students the exclusive authority to determine if any personally identifiable student information is to be regarded as public "directory information."

WHEREFORE, having fully answered, Respondent, Springfield City School District, prays that Relator's Complaint for Alternative and Peremptory Writs of Mandamus be dismissed at Relator's costs pursuant to R.C. § 2731.12, and that Relator take nothing thereby.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 7th day of August, 2014, on the following ***via email*** pursuant to Ohio Civ.R. 5(B)(2)(f):

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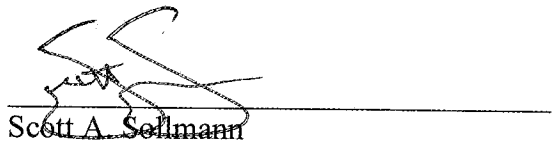

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