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May 18, 2023

VIA EMAIL TO: llubinsky@axley.com

Lori M. Lubinsky

Axley Brynerson, LLP

RE: Open Records Request to SPASD dated April 19, 2023

Dear Lori:

On April 19, 2023, I submitted a public records request to the Sun Prairie Area School District. On May 10, you responded on behalf of the district.

From the outset, I should note that we are extremely disappointed with your response. The purpose of the public records law in Wisconsin is to promote transparency, accountability, and access to records that belong to the public. This particular matter—SPASD’s locker-room policy and the incident on March 3, 2023—is of significant public interest and has generated considerable debate locally and nationally. It is a matter of civil rights and school safety. The purpose of the request was simply to identify (1) what SPASD’s policy was on March 3, (2) what that policy is today, and (3) what SPASD did once it learned of the incident on March 3. WILL is not attempting to obtain pupil records or any other private information that would identify the victims or perpetrator. We are merely trying to learn more about the incident so that the parents, students, and taxpayers of Sun Prairie can understand whether the district’s elected officials are doing their job. I attempted to gather this information informally from you by asking you simple questions via email, but you declined. Your response to our public records request will likely necessitate a lawsuit.

Also, it is particularly disappointing that you are attempting to charge location costs. That appears to be an attempt to avoid the production of the records. We’ve submitted requests before to the SPASD and have not been charged location costs. By now imposing such a high cost to obtain information on such an important matter, you are leaving the distinct impression that SPASD is hiding something. The records I requested have no doubt already been gathered in response to SPASD’s own internal investigation, which SPASD officials have emphasized that they are performing. If the records have already been gathered, then no location costs would be appropriate.

Moving forward, we request that you amend your response to address several legal deficiencies. All this information can be found in the [Wisconsin Public Records Law Compliance Guide](#), which explains in detail all of your obligations (including case and statutory citations).

1. **Location Costs.** Can you please confirm what documents have already been located pursuant to SPASD's own investigation and immediately produce those documents? That may be sufficient to avoid a further production in response to our entire request.

In addition, if there are additional documents to be located, then you are still charging the incorrect rate for locating such documents. You charge the hourly rate for each individual searching their own emails. For example, Brad Saron (who apparently is paid \$262,000 including benefits) is charging \$131.27/hour to search his email. As the Guide explains, the rate you may charge should be "based on the pay rate of the lowest paid employee capable of performing the task." Therefore, SPASD's lowest paid employee who knows how to search email should perform the search, not their highest. For example, [SPASD pays \\$15.44/hour for general support staff and \\$149/day for a "professional educator."](#) We think SPASD could easily assign this location task to either of these positions and it could be completed in a minimal amount of time.

2. **"Review" Costs.** You cannot charge for "reviewing" documents. Only the actual, necessary, and direct *location* costs may be charged. As the Guide explains, "subsequent review and redaction of the record are separate processes, not included in location of the record, for which the requester may not be charged."
3. **Duplicative Costs.** You cannot charge for "IT Search for emails" in addition to charging for individuals to search their own materials. This is just another way to add on costs and is unnecessary for location of records.
4. **Request #3.** For request #3, we requested copies of meeting invitations or calendar invitations. You denied the request based on pupil privacy. But I did not mention students at all. I simply asked for copies of the meeting invitations or calendar invitations. If there are student names on these invitations, it is your obligation to redact those names.
5. **Narrowing.** Given that SPASD's position that asking for records related to a single incident on March 3 is "overly broad," in the spirit of compromise I will narrow our request by withdrawing Request #2, with the reservation to re-submit at a later date.

Please provide a response as soon as possible.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Daniel P. Lennington
Deputy Counsel