

OPRA Request

Board of Education of Newark

Submitted on 06/21/10 via E-Mail to PLuke@NPS.K12.NJ.US

To the Custodian of Records: Please accept this as my request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for my request. I claim entitlement to the records sought under both OPRA and the Common Law right of access.

Requestor's Name: John Paff
Address: DO NOT use regular mail either for replying to this request or or sending me the responsive records.
Please use e-mail or fax instead.
Phone: 732-873-1251
FAX: 908-325-0129
E-Mail: paff@pobox.com

Background:

According to records of the United States District Court, the parties to Veronica Williamson v. Newark Public Schools, Federal Court Docket No. 05-4008 settled their claims resulting in a stipulation of dismissal being filed on July 25, 2008. In the case, Plaintiff, who served as president of the Parent Teacher Student Organization, claimed that the principal of a local elementary school improperly suppressed Plaintiff's free speech and assembly rights.

On December 31, 2008, I submitted a records request to the Newark Public Schools for, among other records, a copy of the settlement agreement showing the terms and amount of the settlement. My request was denied on the basis that the settlement agreement had not yet been finalized.

I have submitted follow-up requests for these record approximately twenty times. The most recent denial, received today, June 21, 2010, states: "As of this date, the settlement agreement has not been finalized. The District awaits a response from plaintiff's counsel." I checked P.A.C.E.R. today, and the most recent entry there is still the July 25, 2008 stipulation of dismissal.

So, I am being told that this case, which the court marked settled nearly two years ago, is still "not finalized."

Even if the written settlement agreement hasn't been "finalized", has its essential terms been agreed to such that the only thing that needs to be done is reduce those terms to a signed writing? If so, then I'd like to point out that agreement is

already in effect and enforceable even if the formal writings have not yet been signed and approved. See, Lahue v. Pio Costa, 263 N.J.Super. 575, 596, 623 A.2d 775 (App.Div.), certif. denied, 134 N.J. 477, 634 A.2d 524 (1993) (“Where the parties agree upon the essential terms of a settlement, so that the mechanics can be ‘fleshed out’ in a writing to be thereafter executed, the settlement will be enforced notwithstanding the fact the writing does not materialize because a party later reneges.”)

So, in addition to responding to this request, would you please let me know if the settlement agreement embodied in the yet-to-be-finalized writing is enforceable in accordance with Lahue? If so, or even if not, would you please articulate the governmental interest in confidentiality that exceeds the public's interest, under the common law, to know the settlement terms and amount?

Records requested:

1. Settlement agreement in Veronica Williamson v. Newark Public Schools, Federal Court Docket No. 05-4008 (the agreement that shows the amount and terms of settlement), whether or not in final form.
2. Any checks written by or on behalf of any party to the suit arising out of any settlement or other disposition of the suit.
3. The first page of the contracts for insurance (so that I can identify the insurers or the JIFs) that provided defense or indemnification to any of the defendants in this suit.

I am sending a copy of this request to Seton Hall Professor Emily Goldberg at emily.goldberg@shu.edu and Seton Hall Associate Professor Shavar D. Jeffries at shavar.jeffries@shu.edu in case they may wish to provide me with information that may clarify this matter for me.

From: "Luke, Pamela" <PLuke@NPS.K12.NJ.US>
To: 'John Paff' <paff@pobox.com>
Subject: FW: Veronica Williamson v. Newark Public Schools, Federal Court
Docket No. 05-4008 (Revised)

Mr. Paff

This e-mail is in response to the attached OPRA request received by e-mail on June 21, 2010, with a deadline to respond due June 30, 2010.

With regard to the **Records Requested**, please be advised of the following:

1. Settlement agreement in Veronica Williamson v. Newark Public Schools, Federal Court Docket No. 05-4008 (the agreement that shows the amount and terms of settlement), whether or not in final form. **(Settlement agreement is a draft document with the terms thereof in process of negotiations. Access is denied pursuant to the Advisory Consultative Deliberative ("ACD") exception under OPRA, N.J.S.A 47:1A-1 et seq.**
2. Any checks written by or on behalf of any party to the suit arising out of any settlement or other disposition of the suit. **(Does not exist, no exchange of funds have occurred).**
3. The first page of the contracts for insurance (so that I can identify the insurers or the JIFS) that provided defense or indemnification to any of the defendants in this suit. **(Does not exist, the Newark Public Schools is self insured).**

Please be advised that I have forwarded your legal inquiries to our Office of the General Counsel.

Pamela D. Luke
Executive Legal Assistant
Office of the General Counsel
Newark Public Schools
973-733-8315 (tel)
973-733-8771 (fax)
pluke@nps.k12.nj.us

-----Original Message-----

From: John Paff [<mailto:paff@pobox.com>]
Sent: Monday, June 21, 2010 3:12 PM
To: Luke, Pamela
Cc: emily.goldberg@shu.edu; shavar.jeffries@shu.edu
Subject: Veronica Williamson v. Newark Public Schools, Federal Court Docket No. 05-4008

Ms. Luke:

Please see attached records request.

I am sending a copy of this request to Seton Hall Professor Emily Goldberg and Associate Professor Shavar D. Jeffries in case they wish to provide me with information that may clarify this matter for me.

Thank you.

John Paff



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