

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02664-RPM-KLM

BPS, a minor and disabled person;
KATRINA L. STEWART, his parent and next friend; and
JOHN P. STEWART, his parent and next friend,

Plaintiff(s),

AND

Civil Action No. 12-cv-02666-RM-KLM

MAP, a disabled and incompetent person, and
CORINA S. SKINNER, his Guardian and Next Friend,

v.

BOARD OF TRUSTEES, COLORADO SCHOOL FOR THE DEAF AND BLIND;
COLORADO SCHOOL FOR THE DEAF AND BLIND;
LOUIS TUTT, individually and in his official capacity as principal for the
Colorado School for the Deaf and Blind; and,
DOES 1-10, who are unknown persons,

Defendant(s).

**DEFENDANT BOARD OF TRUSTEES FOR THE COLORADO SCHOOL
FOR THE DEAF AND BLIND'S RESPONSE TO PLAINTIFFS' FIRST SET
OF INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Defendant Board of Trustees for the Colorado School for the Deaf and
Blind, by its counsel, the Colorado Attorney General, Senior Assistant Attorneys
General Kit Spalding and Amy Colony, submit the following response to
Plaintiffs' Interrogatories and Request for Production of Documents:

SCOPE OF RESPONSE

1. In responding to Plaintiffs' Interrogatories and Requests, the Board has made a diligent search and a reasonable effort to comply with the Requests. The following responses are based upon the Board's state of recollection, knowledge, and belief. Discovery and investigation are ongoing, and the Board reserves the right to amend or supplement the responses herein at its option, and/or to introduce at trial or other proceedings related to this action, documents and information not described herein if such materials become known or available to the Board subsequent to the date of this response.

2. By stating that they will produce documents responsive to particular demands, the Board does not represent that such documents exist or have not already been produced, but only that the Board will search for and produce non-privileged documents, if any, which appear responsive to the particular demands and which have not already been produced. The Board will produce such documents, unless otherwise noted, by making them available for inspection and copying. At this time, the Board is not aware of the existence of any documents in addition to the documents that have already been produced by CSDB or its Board of Trustees as part of their respective initial disclosures pursuant to F.R.C.P. 26(a)(1).

3. In providing specific responses to the Requests, the Board does not in any way waive or intend to waive, but rather intends to preserve and are preserving:

- a. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of the responses or subject matter thereof, any subsequent proceeding in or the trial of this or any other action;
- b. All rights to object on any ground to the use of any of said responses, or the subject matter thereof, in all subsequent proceedings, including the trial of this or any other action;
- c. All rights to object on any ground to any demand for further responses to these or any other discovery requests involving or related to the subject matter of the inspection demands.

GENERAL OBJECTIONS

1. The Board objects to each and every instruction and definition to the extent any such instruction, definition, or request seeks to impose obligations in excess of those imposed by the Federal Rules of Civil Procedure. The Board's response is governed by the Federal Rules of Civil Procedure, rather than by the Plaintiffs' instructions and definitions.

2. The Board objects to each and every Interrogatory and Request to the extent that they seek information, documents or things protected by the attorney-client privilege, the attorney work-product doctrine, privileges that attach to educational records or any other applicable privilege or restriction upon discovery. The Board intends to produce no information, documents or things that are subject to any such privileges, doctrines, immunities or restrictions upon discovery. To the extent any privileged documents are inadvertently produced,

any such documents must be immediately returned and Plaintiffs are barred from reading or making any use of any information contained therein.

3. The Board objects to any of the interrogatories or requests that explicitly or implicitly call for or are based on a legal conclusion.

4. The Board objects to any of the interrogatories or requests that assume as true, a state of facts that have not been stipulated or demonstrated to be true.

5. The Board objects to any interrogatories or requests that are ambiguous or indefinite.

6. The Board objects to any of the interrogatories or requests that require it to speculate about information of which each Defendant has no firsthand knowledge or to produce documents for which the Board is not the custodian.

7. The Board objects to the interrogatories or requests to the extent they fail to describe the required documents with reasonable particularity as required by F.R.C.P. 34(b).

8. The Board objects to the extent that the number of Interrogatories and Requests for Production exceed that permitted by the Rules of Civil Procedure or the Scheduling Management Order.

INTERROGATORIES

INTERROGATORY 1:

a. Describe with specificity the nature of the relationship between the Superintendent and the Board, including whether the Superintendent is an ex-officio member of the Board.

b. Describe with specificity the nature of the relationship between the Director of Special Education, including whether the Director of Special Education is an ex-officio member of the Board.

RESPONSE:

CSDB objects to Interrogatory No. 1 as vague and overbroad. CSDB further objects to this Interrogatory because the term “ex officio” is vague and ambiguous as employed by Plaintiffs and not reasonably capable of interpretation within the context of this Response.

a. Without waiving the objections, Defendant refers Plaintiffs to CSDB Policies located at www.csdb.org:

BBA – School Board Responsibilities and Governance; BC – Board of Trustees Conduct; BCA-E1 – Code of Ethics for Board of Trustees; CBA/CBC – Qualifications/Powers and Responsibilities of Superintendent; CBI- Evaluation of Superintendent; CH- Policy Implementation.

b. The Board does not have supervisory authority over the Director of Special Education, rather, the Superintendent has direct supervisory authority over the Director of Special Education. Defendant refers Plaintiffs to the Job Description for the Special Education Director, Position No. 23618.

INTERROGATORY 2:

a. State the date, place, and circumstances in which the Board held an executive session during the 2009-2010 and 2010-2011 school season.

b. Describe with specificity any executive session held by the Board during the 2009-2010 and 2010-2011 school season that relates to the incidents that occurred on October 7, 2009, November 19, 2009, and March 4, 2010.

RESPONSE:

Defendant objects to Interrogatory No. 2 to the extent that it seeks confidential information related to discussions held during Board meetings in executive session. The Board of Trustees is subject to Colorado's Open Meetings Law, set forth at §24-6-401, C.R.S., *et seq.* However, state public bodies are authorized to meet in executive session for certain purposes. Section 24-6-402(3)(a). These discussions are exempt from disclosure pursuant to state law. Certain common law protections also apply to the substance of these meetings, including but not limited to, the attorney-client privilege, *see Upjohn v. United States*, 449 U.S. 383, 389 (1981), and deliberative process privilege, *see Department of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001); *Casad v. U.S. Dep't of Health & Human Servs.*, 301 F.3d 1247, 1251 (10th Cir.2002), and are therefore, not subject to disclosure.

Finally, Defendant objects to Interrogatory No. 2 to the extent that it seeks information concerning students that are not parties to this litigation and are

therefore protected by federal laws pertaining to the confidentiality of educational records. *See* 20 U.S.C. 1232g(b)(1) and (2); and 34 C.F.R. §99.31.

Without waiving the objections, Defendant refers Plaintiffs to the Board meeting minutes that are available at www.csdb.org and that identify the subjects discussed in executive session, as required by §24-6-402(2)(d)(1).

INTERROGATORY 3:

a. Explain with specificity the admission process of a student into the Colorado School for the Deaf and Blind.

b. Describe the documents reviewed by the Board when determining whether a student should be admitted into the Colorado School for the Deaf and Blind.

RESPONSE:

Defendant objects to Interrogatory No. 3 as vague, overbroad, unduly burdensome and not calculated to lead to the discovery of admissible evidence.

Without waiving the objections, Defendant states the following:

a. Defendant refers Plaintiffs to the admissions policies available on the CSDB website at www.csdb.org.

JF – Admission and Denial of Admission; JF-R – Admission and Denial of Admission Regulation.

b. The Board approves admission and denial of admission policies. It does not determine the admission or denial of admission of individual students;

nor does it review any documents to determine the eligibility of a student for admission to CSDB. The Special Education Director supervises the admission process at CSDB. *See Job Description for Special Education Director, Position No. 23618.*

INTERROGATORY 4:

a. Describe reports to the Board from the Colorado School for the Death and Blind regarding student conduct during the 2009-2010 and 2010-2011 school seasons.

RESPONSE:

Defendant objects to Interrogatory No. 4 as vague, overbroad, unduly burdensome and not calculated to lead to the discovery of admissible evidence. Defendant further objects to the Interrogatory because the term “reports” is vague and ambiguous as employed by Plaintiffs and not reasonably capable of interpretation within the context of this Response.

Defendant objects to Interrogatory No. 4 to the extent that it seeks confidential information related to discussions held during Board meetings in executive session. *See §24-6-401, C.R.S., et seq.* Defendant objects to the extent that the Interrogatory seeks information entitled to the protections of attorney-client privilege and deliberative process privilege, and is therefore not subject to disclosure.

Finally, Defendant objects to Interrogatory No. 2 to the extent that it seeks information concerning students that are not parties to this litigation and are

therefore protected by federal laws pertaining to the confidentiality of educational records. *See* 20 U.S.C. 1232g(b)(1) and (2); and 34 C.F.R. §99.31.

Without waiving the objections, Defendant refers Plaintiffs to the Board meeting agendas and minutes that are available at www.csdb.org.

INTERROGATORY 5:

a. State the circumstances under which a student may be suspended or expelled from the Colorado School for the Deaf and Blind.

b. Identify all persons involved in determining whether a student should be suspended or expelled from the Colorado School for the Deaf and Blind.

c. Explain with specificity the reason Chu Scott was not suspended or expelled from the Colorado School for the Deaf and Blind after the May 5, 2011 incident.

RESPONSE:

Defendant objects to Interrogatory No. 5 to the extent that it seeks information concerning a student, Chu Scott, that is not a party to this litigation and whose educational records are protected by federal laws pertaining to the confidentiality of educational records. *See* 20 U.S.C. 1232g(b)(1) and (2); and 34 C.F.R. §99.31.

Without waiving the above objection, Defendant refers Defendant refers Plaintiffs to the suspension and expulsion policies available on the CSDB website at www.csdb.org.

JKD/JKE – Suspension and Expulsion of Students; JKD/JKE-R – Suspension and Expulsion of Students Procedure.

Defendant further states that the Board of Trustees has no involvement with decisions concerning the suspension or expulsion of individual students.

INTERROGATORY 6:

a. State the date, place and circumstances under which the Board became aware that student-on-student sexual behavior occurred during 2009-2010 and 2010-2011 school seasons.

RESPONSE:

Superintendent Carol Hilty notified the Board members on May 18, 2011, via e-mail, of the peer-to-peer sexual incidents that are the subject of this litigation.

INTERROGATORY 7:

a. Identify all persons who conducted and/or were part of the investigation initiated by the Pueblo County Department of Human Services and later transferred to the El Paso County Department of Human Services in 2010 relating to student-on-student sexual behavior.

b. Describe any and all internal investigations conducted by the Board in 2010 relating to student-on-student sexual behavior.

RESPONSE:

a. Defendant Board objects to Interrogatory No. 7 to the extent that it seeks materials that are not within the custody and control of the Board but rather are records maintained by the Pueblo and El Paso County Departments of Human Services. Moreover, Defendant Board objects to Interrogatory No. 7 to the extent that it seeks information that is confidential and is not subject to disclosure, pursuant to § 19-1-303(2)(a), (d) and §19-1-307(e.5)(I)(J) and (III), C.R.S.

Defendant objects to the remainder of Interrogatory No. 7 as vague, overly broad and not calculated to lead to the discovery of admissible evidence

b. With respect to the request for materials and information related to any internal investigations of student-on-student sexual behavior in 2010, Defendant objects because the Interrogatory seeks records concerning students that are not parties to this litigation and are therefore protected by federal laws pertaining to the confidentiality of educational records. Pursuant to 20 U.S.C. 1232g(b)(1) and (2), and 34 C.F.R. §99.31, which requires prior written release of the student and/or parent or legal guardian, the records sought by Interrogatory No. 7 are not subject to disclosure.

Without waiving the above objections, Defendant states there were no internal investigations initiated by the Board of Trustees with respect to peer-to-peer sexual behavior in 2010.

REQUESTS FOR PRODUCTION:

1. All documents that report, describe, summarize, analyze, discuss, or comment on the training or educating of staff members and supervisors at the Colorado School for Deaf and Blind that relates to the identification, investigation, and reporting of child abuse, and student-on-student sexual behavior.

RESPONSE:

See Defendant CSDB's Response to Interrogatory No. 2.

2. All documents that report, describe, summarize, analyze, discuss, or comment on the internal investigation of the Colorado School for the Deaf and Blind that occurred in 2010 relating to student-on-student sexual behavior.

RESPONSE:

Defendant objects to Request for Production No. 2 because it seeks information concerning students that are not parties to this litigation whose educational records are protected by federal laws pertaining to the confidentiality of educational records, *see* 20 U.S.C. 1232g(b)(1) and (2) and 34 C.F.R. §99.31, and are therefore, not subject to disclosure.

3. All documents created by Carol Hilty that report, describe, summarize, analyze, discuss or comment on the student-on-student sexual behavior that occurred during the 2009-2010 and 2010-2011 school season.

Defendant objects to Request for Production No. 3 because it seeks information concerning students that are not parties to this litigation whose educational records are protected by federal laws pertaining to the confidentiality of educational records, *see* 20 U.S.C. 1232g(b)(1) and (2) and 34 C.F.R. §99.31, and are therefore, not subject to disclosure.

4. All documents created by Timothy Elstad that report, describe, summarize, analyze, discuss or comment on the student-on-student sexual behavior that occurred during the 2009-2010 and 2010-2011 school season.

RESPONSE:

Defendant objects to Request for Production No. 4 because it seeks information concerning students that are not parties to this litigation whose educational records are protected by federal laws pertaining to the confidentiality of educational records, *see* 20 U.S.C. 1232g(b)(1) and (2) and 34 C.F.R. §99.31, and are therefore, not subject to disclosure.

5. All documents that report, describe, summarize, analyze, discuss, or comment on the internal investigation of the Colorado School for the Deaf and Blind that occurred in 2010 relating to student-on-student sexual behavior.

RESPONSE:

Defendant objects to Request for Production No. 5 because it seeks information concerning students that are not parties to this litigation whose educational records are protected by federal laws pertaining to the confidentiality of educational records, *see* 20 U.S.C. 1232g(b)(1) and (2) and 34 C.F.R. §99.31, and are therefore, not subject to disclosure.

6. All documents relating to any communication with a parent or legal guardian of a student regarding the student-on-student sexual behavior that occurred during the 2009-2010 and 2010-2011 school season.

RESPONSE:

Defendant objects to Request for Production No. 6 to the extent that it seeks information concerning students that are not parties to this litigation and whose educational records are protected by federal laws pertaining to the confidentiality of educational records, *see* 20 U.S.C. 1232g(b)(1) and (2); and 34 C.F.R. §99.31, and are therefore, not subject to disclosure.

Without waiving the objections, Defendant attaches the May 20, 2011 letter that was issued by CDSB to all parents of currently enrolled CSDB students regarding the allegations of peer-to-peer sexual incidents.

7. All documents relating to BPS's education record in addition to personal notes or records of Louis Tutt, Carol Hilty, Ellen Trapp, John Vigne, and Timothy Elstad relating to BPS.

RESPONSE:

Defendant states that there are no documents responsive to this Request in addition to those already released to counsel pursuant to correspondence from Director of Special Education Jon Vigne and dated August 13, 2012. *See* Plaintiff BPS's Initial Disclosures, bates numbers 0000155-292.

8. All documents relating to MAP's education record in addition to personal notes or records of Louis Tutt, Carol Hilty, Ellen Trapp, John Vigne and Timothy Elstad relating to MAP.

RESPONSE:

Defendant states that there are no documents responsive to this Request in addition to those already released to counsel pursuant to correspondence from Director of Special Education Jon Vigne and dated August 13, 2012. *See* Plaintiff MAP's Initial Disclosures, bates numbers 0000155-325.

9. All documents relating to any executive session that occurred during the 2009-2010 and 2010--2011 school seasons.

RESPONSE:

See Defendant Board's Response to Interrogatory No. 2.

10. Provide a copy of the self-evaluation of the Board from 2009-2010 and 2010-2011 sessions.

RESPONSE:

See attached, Board of Directors Self-Evaluation Form Summer 2011; CASB Monthly Measuring February 2010.

JOHN W. SUTHERS
Attorney General

s/ Kathleen L. Spalding

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I certify that on September 3, 2013 I served the foregoing **DEFENDANT BOARD OF TRUSTEES FOR THE COLORADO SCHOOL FOR THE DEAF AND BLIND'S RESPONSE TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION** upon all parties herein via e-mail:

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s/ Amy Colony
