

STATE OF NEW MEXICO
COUNTY OF MCKINLEY
ELEVENTH JUDICIAL DISTRICT COURT

TERI GARCIA AND STEPHANIE MORTENSEN,

Plaintiffs,

No. D-1113-CV-2018-00425

v.

GALLUP-MCKINLEY COUNTY SCHOOL DISTRICT
AND JOAN NEZ, in her capacity as Custodian of Records
for Gallup-McKinley County School District,

Defendants.

**AMENDED COMPLAINT FOR VIOLATION OF THE
NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT**

Plaintiffs Teri Garcia and Stephanie Mortensen, by and through their undersigned attorneys of record, Mason & Isaacson, P.A. (Patrick T. Mason), hereby submit their Complaint for Violation of the New Mexico Inspection of Public Records Act ("IPRA"). Plaintiffs bring this action to compel Defendants Gallup-McKinley County School District ("GMCS D") and its records custodian, Defendant Joan Nez, to comply with its obligations to produce public records under the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.* As alleged more particularly below, Defendants have violated the Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.*, by failing to produce such records within the required time. By their actions, Defendants have violated IPRA. As grounds for this Complaint, Plaintiffs state as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Teri Garcia is a resident of the County of McKinley, State of New Mexico.
2. Plaintiff Stephanie Mortensen is a resident of the County of McKinley, State of New Mexico.
3. Defendant Gallup-McKinley County School District ("GMCSD") is a public body, as defined in NMSA 1978, § 14-2-6(F), created by the Constitution of the State of New Mexico with its principle offices in McKinley County, State of New Mexico. Defendant Joan Nez ("Nez") is the Custodian of Records for GMCSD.

4. GMCSD, as a public-school district, is subject to the New Mexico Inspection of Public Records Act.
5. Jurisdiction and venue are proper pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.* and the venue statute, NMSA 1978, § 38-3-1(C)(1988).

FACTUAL BACKGROUND

5. This action is brought pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.* ("IPRA") seeking to compel the production of public records maintained by GMCSD.

6. On July 2, 2018, Plaintiffs submitted a written IPRA request via email to Defendant Nez, requesting:

"[F]rom the last six months, any and all records and communication, electronic or otherwise, regarding the participation or exclusion from participation, of charter school students in district school sports, dances, or events.

Additionally, please provide any and all records or communications form [redacted] the last six months regarding the Middle College High School or Middle College Students."

See July 2, 2018, IPRA request email to Defendants, attached and incorporated herein as Exhibit 1.

7. Upon information and belief, all of the above requested records are kept and retained during the normal course of Gallup-McKinley County School District business and operations.

8. Following receipt of Plaintiffs' IPRA request on July 2, 2018, Defendants, through Nez, acknowledged receipt of the request five business days later on July 10, 2018¹, and stated that "[t]his office will send you notice explaining when inspection will be allowed or when we will respond to your request to inspect public records." The letter further stated "Please be advised that under NMSA 1978 Section 14-2-8D, the school district may take up to fifteen (15) days to respond to your request." See July 10, 2018, letter from Nez, attached and incorporated herein as Exhibit 2.

9. As of the filing of this Complaint, over twenty-four (24) days have passed since Plaintiffs' initial IPRA request, Defendants have neither produced any records nor communicated with Plaintiffs in any respect with the exception of their July 10, 2018 letter.

10. Defendants' July 10, 2018 letter clearly states a notice would be forthcoming

¹ Defendants' acknowledgement of receipt on July 10, 2018 was not within three business days from when Plaintiffs' request was received. Specifically, NMSA 1978, § 14-2-8(D) requires:

"A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. *If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request.* The three-day period shall not begin until the written request is delivered to the office of the custodian." (Emphasis added).

of public officers and employees. NMSA 1978, § 14-2-5. an essential function of a representative government and an integral part of the routine duties declared to be the public policy of this state, that to provide persons with such information is officers and employees. ... [Moreover,] [i]t is the further intent of the legislature, and it is greatest possible information regarding the affairs of government and the official acts of public 13. Further, it is "the public policy of this state, that all persons are entitled to the

or not the records are required by law to be created or maintained." maintained or held by or on behalf of any public body and relate to public business, whether other materials, regardless of physical form or characteristics, that are used, created, received, to access: "all documents, papers, letters, books, maps, tapes, photographs, recordings and 12. NMSA 1978, § 14-2-6(G) broadly defines the records to which the public is entitled

THE INSPECTION OF PUBLIC RECORDS ACT

Defendants. Defendants from producing all records sought in Plaintiffs' IPRA request and as no aspects of NMSA 1978, § 14-2-1 have been asserted, such claims are accordingly waived by 11. Upon information and belief, there are no relevant exceptions which would prevent are therefore in violation of IPRA.

to Plaintiffs' since their July 10, 2018 letter, nor have they issued the notice referenced, and responsive to Plaintiffs' IPRA request. However, Defendants have failed to provide records (15) days to respond. Defendants' letter implies they would thereafter provide records Plaintiffs' request to inspect public records. The letter further noted Defendants have fifteen explaining *when* inspection would be allowed or *when Defendants would respond* to

14. IPRA provides a specific procedure for a custodian of public records to follow upon the receipt of a written request to inspect public records that “[a] custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request.” NMSA 1978, § 14-2-8(D).

15. “Custodian” means any person responsible for the maintenance, care or keeping of a public body’s public records, regardless of whether the records are in that person’s actual physical custody and control. NMSA 1978, § 14-2-6(A). Nez, or at all times relevant was, Custodian of Records for GMCSO.

16. “Within fifteen days of receiving a written request, the custodian must either permit inspection of the records, provide a written explanation of why any request has been denied, or in the case of an excessively burdensome or broad request, inform the requester that additional time will be needed to respond. See §§ 14-2-10 to -11. If the custodian has not responded to a written request within fifteen days, the ‘person requesting the public records’ may conclude that the request has been denied. Section 14-2-11(A).” *San Juan Agric. Water Users Ass’n v. KNME-TV*, 2011-NMSC-011, ¶¶ 11, 150 N.M. 64, 257 P.3d 884.

17. Plaintiffs’ requested copies of documents and Defendants have failed to produce responsive records within fifteen (15) days after receipt of Plaintiffs’ written request. Defendants did not provide a written explanation of denial or a determination that Plaintiffs’ written request was excessively burdensome or broad, but rather acknowledged that the

request was received, and Plaintiffs would receive notice of when inspection would be allowed and when Defendants would respond to Plaintiffs' request to inspect public records. Defendants' written acknowledgment was sent to Plaintiffs on July 10, 2018, and to date, no further communication or notices have been received. Accordingly, by not permitting Plaintiffs' inspection of the requested public documents within fifteen (15) days of receiving their request, Defendants are deemed to have denied Plaintiffs' IPRA request.

18. Defendants have failed to comply with the law regarding Plaintiffs' IPRA request and, therefore, should be compelled to do so now pursuant to Court Order.

COUNT I: VIOLATION OF THE INSPECTION OF PUBLIC RECORDS ACT

19. Plaintiffs incorporate the preceding paragraphs by reference herein.

20. Defendants have violated IPRA in the following ways:

- a. Defendants failed to produce the documents requested by Plaintiffs and required by IPRA.
- b. Defendants never responded to Plaintiffs request in violation of IPRA. Not only does this constitute a failure to provide written explanations of denials under NMSA 1978, § 14-2-11, it violates the requirement under NMSA 1978, § 14-2-8(D) for a response.
- c. Defendants' July 10, 2018 letter of acknowledgment was also untimely for failing to produce an initial response to the request within three business days of receiving the request, as required by NMSA 1978, § 14-2-8(D).

d. Defendants at no time asserted that the request was excessively burdensome or broad or indicated that additional time would be needed to respond to the written request.

21. The documents Plaintiffs requested are not subject to any of the exceptions enumerated in NMSA 1978, § 14-2-1 and there is no time frame indicated as to when the requested documents may be produced.

22. Plaintiffs are entitled to recover damages up to One Hundred Dollars (\$100.00) per Day, plus our actual damages, costs, and reasonable attorney's fees. NMSA 1978, § 14-2-11(C).

DECLARATORY RELIEF

23. Plaintiffs incorporate the preceding paragraphs by reference herein.

24. There exists an actual controversy between Plaintiffs and Defendants as to whether Defendants' conduct, as alleged above, constitutes violations of IPRA and whether the documents requested by Plaintiffs must be produced.

25. Plaintiffs are entitled to declaratory relief that Defendants have violated IPRA and that the documents requested by Plaintiffs must be produced.

INJUNCTIVE RELIEF

26. Plaintiffs incorporate the preceding paragraphs by reference herein.

27. Pursuant to NMSA 1978, § 14-2-12(B), Plaintiffs are entitled to a writ of mandamus or an injunction ordering Defendants to produce copies of all relevant documents in Defendants' possession as provided in Plaintiffs' request.

28. Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining Defendants from withholding the requested records from Plaintiffs.

29. Due to Defendants' failure to provide timely responses, Plaintiffs are entitled to damages pursuant to NMSA 1978, § 14-2-11(C).

30. Plaintiffs are entitled to recover costs and attorneys' fees in pursuing this action pursuant to NMSA 1978, § 14-2-12(D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that:

- A. The Court declare that the records sought by Plaintiffs are public records and documents and are subject to disclosure; and
- B. The Court issue a writ of mandamus or an injunction ordering Defendants to produce the records and information requested without any further delay; and
- C. The Court award damages as allowed under New Mexico law, specifically, but not limited to, reasonable attorney's fees, costs, actual damages, and all other damages permitted by NMSA 1978, § 14-2-11(C); and
- D. The Court enter an Order for such other and further relief as the Court deems just and proper, including but not limited to, costs and reasonable attorneys' fees.

Respectfully submitted,

MASON & ISAACSON, P.A.

By: /s/ Patrick T. Mason
 Patrick T. Mason
 Post Office Box 1772
 104 E. Aztec
 Gallup, New Mexico 87305-1772
 505-722-4463
 p.mason@mihawfirm.net

Patrick T. Mason

From: Teri Garcia <tl_garcia@outlook.com>
Sent: Monday, July 2, 2018 1:48 PM
To: jnez@gmcs.k12.nm.us
Cc: stephjomort@gmail.com
Subject: NM Public Records Act

Good Afternoon,

Pursuant to the New Mexico Inspection of Public Records Act, we hereby request from the last six months, any and all records and communication, electronic or otherwise, regarding the participation or exclusion from participation, of charter school students in district school sports, dances, or events.

Additionally, please provide any and all records or communications form the last six months regarding the Middle College High School or Middle College Students.

Teri L. Garcia
1010 Yei Ave
Gallup NM 87301
505-870-1900

Stephanie Mortensen
509 Aztec Court
Gallup NM 87301
505-979-0837



GALLUP-MCKINLEY COUNTY PUBLIC SCHOOLS

MIKE HYATT
SUPERINTENDENT



PAULETTA WHITE
Assistant Superintendent of Student Services

GERALD HORACEK
Assistant Superintendent of Curriculum & Instruction

TIM BOND
Assistant Superintendent of Support Services

JVANNA HANKS II
Assistant Superintendent of Business Services

July 10, 2018

SENT VIA EMAIL

Teri Garcia
1010 Yel Ave
Gallup NM 87301
tl_garcia@outlook.com
505-870-1900

Stephanie Mortensen
509 Aztec Court
Gallup NM 87301
stefjomort@gmail.com
505-979-0837

Re: Document No. GMCS-IPR-18-01

Dear Ms. Garcia and Ms. Mortensen:

This is an acknowledgement that your request for inspection of public records relating to from the last six months, any and all records and communication, electronic or otherwise, regarding the participation or exclusion from participation, of charter school students in district school sports, dances, or events.

Additionally, all records or communications from the last six months regarding the Middle College High School or Middle College Students has been received.

This office will send you notice explaining when inspection will be allowed or when we will respond to your request to inspect public records. If required, copies are available at \$.10 per page.

Please be advised that under NMSA 1978 Section 14-2-8D, the school district may take up to fifteen (15) days to respond to your request.

Sincerely,
Joan Nez
Joan Nez
Custodian of Records

xc: Superintendent
FILE

