

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

THE TRAVERSE CITY RECORD-EAGLE,

Plaintiff,

v

TRAVERSE CITY AREA PUBLIC SCHOOLS
BOARD OF EDUCATION, a public body and
M. SUE KELLY, an individual and its President,

Defendants.

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)Case No. 20-35220-CZ

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HONORABLE

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KEVIN A. ELSENHEIMER

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CONSENT JUDGMENT

At a session of said Court held in the Courthouse in the
City of Traverse City, County of Grand Traverse, State of
Michigan, on the ____ day of _____, 2021.

PRESIDING: The Honorable _____
Circuit Judge

This matter has come before the court for entry of consent judgment.

The parties enter into this consent Judgment relating to the ruling by this Honorable Court and the Michigan Court of Appeals relating to the “Kelly Document” and the violations of the Open Meetings Act and Freedom of Information Act that followed therefrom. The Record Eagle has alleged a pattern of OMA and FOIA violations relating to former Superintendent Cardon’s separation of employment. As to the remaining claims relative to the Plaintiff’s Complaint, Defendants have, at all times, denied any and all liability to Plaintiff but agrees to enter into this consent judgment bringing the instant cause of action to a conclusion consistent with the following provisions.

THE PARTIES HEREBY AGREE AND STIPULATE:

1. That the Traverse City Board of Education improperly withheld the “Kelly Document” or any attachments thereto from production relating to a Freedom of Information Act request from the Plaintiff and otherwise violated the Open Meetings Act in connection with its handling of the “Kelly Document” as previously ruled upon by this Honorable Court and the Michigan Court of Appeals.
2. That the parties agree that the Defendant delayed production of the Cardon Separation Agreement that was the subject of the Plaintiff’s FOIA request.
3. The parties agree that in light of the fact that discussions occurred outside of open session, the district acknowledges that more discussion should have happened in open session prior to ratifying the Cardon separation agreement.
4. That the parties agree that the Defendant, Traverse City Area Public Schools Board of Education impermissibly designated certain documents (e.g., text messages) as either privileged or personal and failed to produce them in response to Plaintiff’s FOIA requests.
5. That the parties agree that certain text messages requested from Defendant Kelly were not produced or certified as to not exist relative to the various FOIA requests issued by the Plaintiff.
6. That the parties agree that the Defendants impermissibly executed a Non-Disclosure Agreement in violation of the Open Meetings Act.
7. That the parties agree that the purpose for entering closed session at its meeting on October 11, 2019 was not properly identified before proceeding into closed session.

IT IS SO ORDERED:

1. That the Traverse City Area Public Schools Board of Education is enjoined and restrained from committing future violations of the Open Meetings Act, MCL 15.261, *et. seq.* and the Freedom of Information Act, MCL 15.231, *et. seq.*

2. That this Court retains jurisdiction to hear all matters between the parties arising under the Open Meetings Act, MCL 15.261, *et. seq.* and the Freedom of Information Act, MCL 15.231, *et. seq.*, including allegations over future violations and to enforce this Order.
3. That the parties hereby agree to meet and confer to resolve any disputes regarding any alleged violations of the Open Meetings Act, MCL 15.261, *et. seq.* and the Freedom of Information Act, MCL 15.231, *et. seq.* prior to bringing any matter before this Honorable Court for enforcement of the instant Order.
4. Defendants are to pay to Plaintiff \$65,000 in attorney fees relative to the violations of the OMA and FOIA as set forth above. That no additional award of attorney fees shall be entered for the allegations that are the subject matter of Plaintiff's Complaint. The parties agree that there will be no imposition of fines and costs relating to any claim of intentional violation of OMA and FOIA as set forth in the Plaintiff's Complaint.
5. That all remaining claims set forth in Plaintiff's Complaint are hereby dismissed with prejudice and without any further costs, fines or attorney fees other than what is specifically set forth above.
6. This Order shall remain in full force and effect until this court specifically orders otherwise.

This Order is a final order and does close the case.

Date: _____



09/17/2021
07:50AM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

Hon. Kevin Elsenheimer

Approved as to form and stipulated for entry:

/s/ Robin Luce Herrmann
ROBIN LUCE HERRMANN (P46880)
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Date: September 15, 2021

/s/Gregory W. Mair
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Date: September 15, 2021