

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

AMERICAN CIVIL LIBERTIES )  
UNION OF DELAWARE, )

Plaintiff, )

v. )

C.A. No. N25C-12-567 SPL

LOUANN HUDSON, in her official )  
capacity as FOIA Coordinator for the )  
CAPE HENLOPEN SCHOOL )  
DISTRICT; MARILYN MOORE, )  
in her official capacity as FOIA )  
Coordinator for the CHRISTINA )  
SCHOOL DISTRICT; KYLIE CROSS )  
in her official capacity as FOIA )  
Coordinator for the WOODBRIDGE )  
SCHOOL DISTRICT, )

Defendants. )

**DEFENDANTS BOARD OF EDUCATION OF THE CAPE HENLOPEN  
SCHOOL DISTRICT, LOUANN HUDSON, BOARD OF EDUCATION  
OF THE WOODBRIDGE SCHOOL DISTRICT, AND KYLIE CROSS'  
MOTION TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT**

**MORRIS JAMES LLP**

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*Attorneys for Defendants*

*Board of Education of the Cape*

*Henlopen School District, LouAnn*

*Hudson, Board of Education of the*

*Woodbridge School District,*

*and Kylie Cross*

Dated: February 2, 2026

Defendants Board of Education of the Cape Henlopen School District<sup>1</sup> (“Cape”), LouAnn Hudson (“Hudson”), Board of Education of the Woodbridge School District<sup>2</sup> (“Woodbridge”), and Kylie Cross (“Cross”) (collectively, Cape, Hudson, Woodbridge, and Cross shall be referred to as “Cape and Woodbridge Defendants”) hereby move to dismiss Plaintiff American Civil Liberties Union of Delaware’s Verified Complaint pursuant to Superior Court Civil Rule (“Rule” or “Rules”) 12(b)(6). In support thereof, Defendants state the following:

1. Plaintiff, American Civil Liberties Union of Delaware (“Plaintiff”) filed its Verified Complaint on December 22, 2025 (“Complaint”). (Trans. ID 78052762).

2. The Complaint alleges Cape and Woodbridge Defendants violated 29 *Del. C.* § 10003(m)(2) by charging unreasonable fees for the production of documents under Delaware’s FOIA statute, 29 *Del. C.* § 10000, *et seq.* (“FOIA Statute”). (Compl. ¶¶ 34-36, 52-54.)

3. Plaintiff alleges they issued FOIA requests to Cape and Woodbridge Defendants in October 2025 (“ELL Requests”). (Compl. ¶ 16). Shortly after

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<sup>1</sup> Plaintiff names Cape Henlopen School District as a Defendant in this action, but no such entity exists. The Board of Education of the Cape Henlopen School District is the legal entity that has the power to sue and be sued. *See Beck v. Claymont Sch. Dist.*, 407 A.2d 226 (Del. Super. 1979).

<sup>2</sup> Plaintiff names the Woodbridge School District as a Defendant in this action, but no such entity exists. The Board of Education of the Woodbridge School District is the legal entity that has the power to sue and be sued. *Id.*

receipt of Cape and Woodbridge Defendants' response to the ELL Requests, Plaintiff filed suit pursuant to 29 *Del. C.* § 10005(b).

4. Plaintiff's Complaint is subject to dismissal because Plaintiff did not file a petition with the Attorney General under 29 *Del. C.* § 10005(e), as required by Delaware law. *See Harvey v. Garrett*, 2025 WL 711134 (Del. Super. Mar. 5, 2025), *aff'd*; 2025 WL 2887020 (Del. Oct. 9, 2025) ("Appellant failed to comply with 29 *Del. C.* § 10005(b) and (e), which explain that FOIA petitions must be raised with the Attorney General's Office before appealing the issue to the Superior Court."); *see also Newman v. Delaware Div. of Pub. Health*, 2022 WL 1063857, at \*2 (D. Del. Apr. 8, 2022) ("To the extent Plaintiff alleges a FOIA violation under Delaware Law, *see* 29 *Del. C.* § 10005, she must seek an administrative review before filing suit in court.").

5. This interpretation of the FOIA Statute aligns with Delaware's longstanding exhaustion of administrative remedies doctrine. *Swan Energy, Inc. v. Inv'r Prot. Unit of Delaware Dep't of Justice*, 341 A.3d 1036, 1047 (Del. Super. 2025).

6. In order to preserve the integrity of the administrative process and the relationship between the courts and administrative agencies, Delaware courts have created a strong presumption in favor of requiring exhaustion. *Eckard v. NPC Int'l, Inc.*, 2012 WL 5355628, at \*3 (Del. Super. Oct. 17, 2012).

7. Delaware courts require “that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will either review any action by the agency or provide an independent remedy.” *Swan Energy, Inc.*, 341 A.3d at 1047. Whether to enforce the doctrine is a matter of judicial discretion. *Id.*

8. The presumption in favor of administrative exhaustion can be overcome by a showing of one of four conditions:

- (1) That finishing the administrative proceeding would be futile;
- (2) That public interest creates the need for a prompt resolution;
- (3) That the issue is a question of law only, not a matter of administrative expertise; or
- (4) That irreparable harm would result from the court’s denial of relief. *Id.* (citing *Levinson v. Delaware Comp. Rating Bureau, Inc.*, 616 A.2d 1182 (Del. 1992)).

9. Plaintiff bears the burden of overcoming this presumption. *Toll Bros., Inc. v. Wicks*, 2006 WL 1829875, at \*8 (Del. Ch. June 21, 2006).

10. The burden of showing an administrative review would be futile “is, necessarily, a high one.” *Eckhard*, 2012 WL 5355628, at \*3. In this case, requiring Plaintiff to utilize the administrative relief afforded by the Attorney General under § 10005(e) would not be futile because the Attorney General may grant Plaintiff’s requested relief under 29 *Del. C.* § 10005(e).

11. Specifically, Plaintiff’s Complaint seeks a declaration that Cape and Woodbridge Defendants’ administrative fees are unreasonable and violate 29 *Del. C.* § 10003(m)(2). Plaintiff also seeks an order enjoining Cape and

Woodbridge Defendants from charging unlawful administrative fees and an order directing Cape and Woodbridge Defendants provide the requested documents in compliance with the law.

12. Section 10005(e) clearly provides Plaintiff's requested relief as "[a]ny citizen may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur." 29 *Del. C.* § 10005(e).

13. Furthermore, Plaintiff's request for orders enjoining Cape and Woodbridge Defendants from charging "unlawful administrative fees" and directing Cape and Woodbridge Defendants to produce the requested documents "in compliance with the law" is nothing more than a request for compliance with Delaware law. As there is a presumption in Delaware that public officials discharge their duties and perform the acts required of them by law in accordance with the law and that they act fairly, impartially and in good faith, there is no basis for this Court to find that Cape and Woodbridge Defendants would not comply with the Attorney General's findings and Delaware law, and there is no special relief the Superior Court can provide that the Attorney General cannot. *Phillips v. Bd. of Ed. of Smyrna Sch. Dist.*, 330 A.2d 151, 154 (Del. Super. Ct. 1974); *see also Levinson*, 616 A.2d at 1192 ("DCRB is not seeking anything from the judicial system that it could not obtain from the Commissioner subject to later judicial review"). Accordingly, this factor weighs in favor of pursuing administrative relief.

14. The second factor also weighs in favor of Cape and Woodbridge Defendants' position. A party's "desire for a swift resolution.... does not justify leapfrogging administrative review to obtain a decision from this Court." *SimplexGrinnell, L.P. v. Delaware Dep't of Lab.*, 2012 WL 5362835, at \*7 (Del. Ch. Oct. 31, 2012). Rather, Delaware courts have found the public interest factor to be met where a plaintiff raises constitutional concerns which could "affect Delaware's entire administrative law system." *Swan Energy, Inc.*, 341 A.3d at 1048; *c.f. Levinson*, 616 A.2d at 1191 (finding that the public interest factor was not met where both parties "are protected and there is no need for a judicial decision in advance of the completion of the administrative process"). In the instant matter, Plaintiff has failed to provide any reason necessitating expedition or bypassing the administrative process.

15. Similarly, the third factor weighs in favor of pursuing administrative relief. FOIA enforcement falls squarely within the purview of the Attorney General's office, which has the administrative expertise and legal knowledge to properly consider Plaintiff's claim. *See Levinson*, 616 A.2d at 1191-92. In addition, an allegation that the claims involve questions of law, standing alone, is insufficient to "overcome the strong presumption that one must first avail oneself of readily available administrative remedies." *Hudley v. O'Donnell*, 1998 WL 842293, at \*2 (Del. Ch. Dec. 1, 1998).

16. Finally, Plaintiff cannot show that it would suffer irreparable harm if it is required to exhaust administrative remedies. Indeed, Plaintiff “is not seeking anything from the judicial system that it could not obtain from the [administrative agency] subject to later judicial review.” *Levinson*, 616 A.2d at 1192.

17. Accordingly, Delaware case law and the doctrine of the exhaustion of administrative remedies require Plaintiff pursue administrative relief under 29 *Del. C.* § 10005(e) before seeking relief in this Court.

**MORRIS JAMES LLP**

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SCHOOL DISTRICT,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I, James H. McMackin, III, Esq., hereby certify that on February 2, 2026, I caused the foregoing (i) **Defendants Board of Education of the Cape Henlopen School District, LouAnn Hudson, Board of Education of the Woodbridge School District, and Kylie Cross’ Motion to Dismiss Plaintiff’s Verified Complaint**, (ii) **[Proposed] Order**, (iii) **Notice of Motion Hearing**, and (iv) this **Certificate of Service** to be served upon all counsel of record *via File&ServeXpress*.

/s/ James H. McMackin, III  
James H. McMackin, III (#4284)