

EXHIBIT A

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
FOR NEW CASTLE COUNTY**

AMERICAN CIVIL LIBERTIES UNION OF
DELAWARE;

Plaintiff

v.

LOUANN HUDSON, in her official capacity as
FOIA Coordinator for the **BOARD OF
EDUCATION OF THE** CAPE HENLOPEN
SCHOOL DISTRICT; MARILYN MOORE, in
her official capacity as FOIA Coordinator for the
BOARD OF EDUCATION OF THE
CHRISTINA SCHOOL DISTRICT; KYLIE
CROSS in her official capacity as FOIA
Coordinator for the **BOARD OF EDUCATION
OF THE** WOODBRIDGE SCHOOL DISTRICT

Defendants

C.A. No.

VERIFIED COMPLAINT

NATURE OF THE ACTION

This action seeks compliance with the Delaware Freedom of Information Act (“FOIA” or “the Act”). 29 *Del. C.* §§ 10001 *et seq.* In response to FOIA requests regarding the educational outcomes of vulnerable students in their districts, which have been routinely answered with minimal or no fees charged to a requestor, the Defendant **Boards of Education School Districts** have assessed unreasonable administrative fees, erecting a barrier to public information in contravention of the

plain language and purpose of FOIA. The ACLU of Delaware (“ACLU-DE”) therefore asks this Court to declare that Defendants ~~School Districts~~ violated 29 *Del. C.* § 10003(m)(2) by charging unreasonable fees for the production of public documents regarding the education of English Language Learners. ACLU-DE asks this Court to enjoin Defendants from charging unreasonable fees and to order ~~the~~ Defendant Boards of Education ~~School Districts~~ to produce responsive public documents consistent with the Act.

JURISDICTION AND VENUE

1. This complaint is timely filed within 60 days of the Defendants’ responses to FOIA requests, pursuant to 29 *Del. C.* § 10005(b).
2. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 541, and venue is proper under 29 *Del. C.* § 10005(b) because Plaintiff’s address is 100 W. 10th St., Wilmington, DE, 19801, in New Castle County.

PARTIES

3. Plaintiff is a private, nonprofit membership corporation founded in 1961 as an affiliate of the national American Civil Liberties Union. The mission of ACLU-DE and the common interest of its members is to preserve and protect fundamental constitutional rights. ACLU-DE has been a consistent advocate for educational equity in Delaware. *See generally Delawareans for Educational Opportunity v. Carney*, 199 A.3d 109 (Del. Ct. Chan. 2018).

4. Defendant **Board of Education of the** Cape Henlopen School District (“Cape Henlopen”) is a public, residential school district headquartered in Lewes, Sussex County, Delaware.
5. Defendant LouAnn Hudson is the Assistant Superintendent and the designated FOIA coordinator for Cape Henlopen. She is sued in her official capacity.
6. Defendant **Board of Education of the** Christina School District (“Christina”) is a public school district headquartered in Newark, New Castle County, Delaware.
7. Defendant Marilyn Moore serves as a Board Liaison in the Office of the Superintendent in Christina and is the designated FOIA coordinator for the district. She is sued in her official capacity.
8. Defendant **Board of Education of the** Woodbridge School District (“Woodbridge”) is a public school district headquartered in Bridgeville, Sussex, Delaware.
9. Defendant Kylie Cross serves as a Secretary to the Superintendent in Woodbridge and serves as the designated FOIA coordinator for the district. She is sued in her official capacity.

FACTS

The FOIA Statute

10. The core purpose of FOIA is to make the records of public bodies open to public view. *See 29 Del. C. § 10001.*
11. FOIA defines a “public body” as “any regulatory, administrative, advisory, executive, appointive or legislative body of the State . . . which: (1) Is supported in whole or in part by any public funds” *Id.* § 10002(k). Public school districts are public bodies under this definition. *See, e.g., Del. Op. Att’y Gen. 24-IB29, 2024 WL 4046099 (Aug. 9, 2024).*
12. FOIA provides that “[a]ll public records shall be open to inspection and copying” and “[r]easonable access to ... these records shall not be denied to any citizen.” *Id.* § 10003(a).
13. FOIA only permits a reasonable administrative fee charged to the requester when producing the relevant records will take more than one hour. *Id.* § 10003(m)(2). The public body “must make every effort to ensure that administrative fees are minimized,” and must “minimize the use of nonadministrative personnel in processing FOIA requests.” *Id.* To that end, administrative fees must be billed at the rate of “the lowest-paid employee capable of performing the service.” *Id.*
14. In addition, prior to fulfilling a request, the public body must offer an itemized written cost estimate to the requesting party and give the

requesting party an opportunity to proceed with, modify, or cancel the request based on the cost estimate. *Id.*

15. Defendants are public bodies, their records are public, and they have a duty to “make every effort to ensure that administrative fees are minimized.” *Id.* Defendants may only assess charges, as described in an itemized written estimate, that are reasonably required to process FOIA requests. *Id.*

ELL Requests

16. On October 1, 2025, and October 2, 2025, the ACLU-DE submitted FOIA Requests (the “ELL Requests”) to all 19 Delaware school districts, including Cape Henlopen, Christina, and Woodbridge (“Defendants”). *See* the ELL Request and Response for Cape Henlopen (attached and hereinafter referred to as “Exhibit A”); the ELL Request and Response for Chrstitina (attached and hereinafter referred to as “Exhibit B”); the ELL Request and Response for Woodbridge (attached and hereinafter referred to as “Exhibit C”); and the ELL Requests and Responses for non-defendant districts (attached and hereinafter referred to as “Exhibit D”).¹

¹ For ease of reference, the FOIA requests and responses from non-defendant school districts have been consolidated into one exhibit, Exhibit D. The two school districts that never responded to the ELL Requests, have been excluded from Exhibit D.

17. The ELL Requests sought information relevant to the educational opportunities and outcomes for all ELL students in Delaware public schools, including the thousands of ELL students enrolled in the Defendant districts.²
See Id.
18. The ELL Requests were supplemental to previous requests (the “2024 Requests”) made to all school districts in August 2024. *See* the 2024 Requests and Responses of Defendant Districts (attached and hereinafter referred to as “Exhibit E”).
19. Each Defendant fully responded to the 2024 Requests without assessing any fees to ACLU-DE. *Id.*
20. The 2024 Requests are substantively identical to the 2025 ELL Requests. That is, the type of information sought in the 2025 ELL Requests was largely identical to that sought in the 2024 Requests that Defendants answered

² For the 2025-26 school year, Cape Henlopen has 607 ELL students, Christina has 1,899, and Woodbridge has 483. *See Cape Henlopen School District/Fall Enrollment*, Delaware.gov (last accessed Dec. 19, 2025) <https://reportcard.doe.k12.de.us/detail.html#displaypage?scope=district&district=17&school=0&id=778>; *Christina School District/Fall Enrollment*, Delaware.gov, (last accessed Dec. 19, 2025) <https://reportcard.doe.k12.de.us/detail.html#displaypage?scope=district&district=33&school=0&id=778>; *Woodbridge School District/Fall Enrollment*, Delaware.gov, (last accessed Dec. 19, 2025) <https://reportcard.doe.k12.de.us/detail.html#displaypage?scope=district&district=35&school=0&id=778>. The public has a strong interest in understanding the educational outcomes of and opportunities afforded to these many vulnerable students.

without any charge; Plaintiffs merely sought updated data from the 2024-2025 academic year. *Compare* Exhibits A-C and E.

21. 14 non-Defendant districts responded to the ELL Request. *See* Exhibit D.
22. Four of these 14 districts responded to the 2025 ELL Request without charging any fees. *See* Exhibit D at 8-12, 53-56, 57-64, 65-68.
23. The enrollment of these four non-charging districts is 10,070,³ 15,870⁴, 4,938⁵, and 1,252⁶. For comparison, Christina has 12,799 students⁷, Cape Henlopen has 6,731 students⁸, and Woodbridge has 2,603⁹ students.
24. Seven of these 14 districts estimated administrative fees of less than \$400 and estimated no more than 8 hours of labor to respond to the ELL Request. *See* Exhibit D at 13-19, 20-25, 33-39, 47-52, 69-73, 74-80, 81-86.
25. Only Defendant districts assessed administrative fees for responding to the 2025 ELL Request of \$1,900 or more. *Compare* Exhibits A-C and D.

³ *Brandywine School District/Snapshot*, Delaware.gov (last accessed Dec. 19, 2025)

<https://reportcard.doe.k12.de.us/detail.html#aboutpage?scope=district&district=31&school=0>.

⁴ *Red Clay Consolidated School District/Snapshot*, Delaware.gov (last accessed Dec. 19, 2025)

<https://reportcard.doe.k12.de.us/detail.html#aboutpage?scope=district&district=32&school=0>.

⁵ *New Castle County Vocational-Technical School District Snapshot*, Delaware.gov, accessed Dec. 17, 2025,

<https://reportcard.doe.k12.de.us/detail.html#aboutpage?scope=district&district=38&school=0>

⁶ *Polytech School District Snapshot*, Delaware.gov, (last accessed Dec. 19, 2025)

<https://reportcard.doe.k12.de.us/detail.html#aboutpage?scope=district&district=39&school=0>

⁷ *Christina School District Snapshot*, Delaware.gov, (last accessed Dec. 19, 2025)

<https://reportcard.doe.k12.de.us/detail.html#aboutpage?scope=district&district=33&school=0>

⁸ *Cape Henlopen School District Snapshot*, Delaware.gov, (last accessed Dec. 19, 2025)

<https://reportcard.doe.k12.de.us/detail.html#aboutpage?scope=district&district=17&school=0>

⁹ *Woodbridge School District Snapshot*, Delaware.gov, (last accessed Dec. 19, 2025)

<https://reportcard.doe.k12.de.us/detail.html#aboutpage?scope=district&district=35&school=0>

26. Below, find a comparison chart created by ACLU-DE showing differences between Defendants and the other responding districts.

	Average of all other Districts	Cape Henlopen	Christina	Woodbridge
Hours Billed	7.77 ¹⁰	47.5	32	20
Total Fees billed	\$393.36	\$3,438.05	\$1983.36	\$2,000
Hourly rate	\$35.23 ¹¹	\$72.38	\$61.98	\$100

Cape Henlopen Response

27. Cape Henlopen responded to the 2024 Request without assessing any administrative fees. Exhibit E at 5.
28. FOIA Coordinator Hudson issued a timely response to the 2025 ELL Request on behalf of Cape Henlopen on October 23, 2025. Cape Henlopen replied that they would be charging administrative fees to satisfy the ELL Request. Cape Henlopen estimated that the Request would take 47.5 hours to complete, which would result in a total fee of \$3,438.05, at an average rate of \$72.38 per hour. Exhibit A at 5-6.
29. Cape Henlopen included a limited breakdown of expenses that would be performed by administrative personnel. Cape Henlopen stated that 1 hour

¹⁰ Smyrna did not list their hours and was thus excluded from this calculation.

¹¹ Smyrna did not list their hours and was thus excluded from this calculation.

of “work” would be completed by the Assistant Superintendent, 16.5 hours of work would be completed by the MLL Coordinator, 20 hours would be completed by the Director of Teaching and Learning, 10 hours of work would be completed by the Director of Finance, and an unknown amount of work would be completed by the HR Supervisor. *Id.*

30. The response did not include a specified rate for each administrative personnel’s respective labor.
31. Cape Henlopen did not offer an itemized written cost estimate to the ACLU-DE providing information sufficient to understand Cape Henlopen’s estimation of fees or what “work” each administrative personnel would perform to complete the response.
32. Cape Henlopen did not make sufficient efforts to minimize the use of nonadministrative personnel in processing FOIA requests; in fact, all work processing the ELL Request was to be performed by higher-paid administrators.
33. Upon information and belief, Cape Henlopen did not bill at the rate of the lowest-paid employee capable of fulfilling the task.
34. Upon information and belief, 47.5 hours is an unreasonable amount of billed time for Cape Henlopen to comply with the ELL Request.

35. Upon information and belief, \$3,648.05 is not the minimum reasonable cost for Cape Henlopen to comply with the ELL request.
36. Cape Henlopen did not make sufficient efforts to ensure that administrative fees are minimized under the FOIA statute.

Christina Response

37. Christina fully responded to the 2024 Request without assessing any fees. Exhibit E at 11-12.
38. FOIA Coordinator Moore responded to the 2025 ELL Request on behalf of Christina on November 18, 2025, explaining that Christina would charge administrative fees to satisfy the ELL Request. Christina estimated that the Request would take 32 hours to complete, which would result in a total fee of \$1,983.62, at an average rate of nearly \$62 per hour. Exhibit B at 6.
39. Christina included a limited breakdown of expenses, which stated that the “work” would be spread amongst the Supervisor of ELL and their Data Specialist. *Id.*
40. Christina did not offer an itemized written cost estimate to the ACLU-DE providing information sufficient to understand Christina estimation of fees

or what “work” each administrative personnel would perform to complete the response.

41. Christina did not make sufficient efforts to minimize the use of nonadministrative personnel in processing FOIA requests; in fact, only higher paid administrators were used to process the ELL Request.
42. Upon information and belief, Christina did not bill at the rate of the lowest-paid employee capable of fulfilling the task.
43. Upon information and belief, 32 hours is an unreasonable amount of billed time for Christina to comply with the ELL Request.
44. Upon information and belief, \$1,983.62 is not a reasonable minimum cost required for compliance with the ELL Request.
45. Christina did not make sufficient efforts to ensure that administrative fees are minimized under the FOIA statute.

Woodbridge Response

46. Woodbridge fully responded to the 2024 Request without assessing fees. Exhibit E at 17-18.
47. FOIA Coordinator Cross responded on October 23, 2025, stating that Woodbridge would be charging administrative fees to satisfy the ELL Request. Woodbridge estimated that the Request would take 20 hours to

complete, which would result in a total fee of \$2,000, at a rate of nearly \$100 per hour. Exhibit C at 6.

48. Woodbridge included a limited breakdown of expenses, which stated that the “work” would be spread amongst the Director of Curriculum and Instruction, four school principals, four MLL teachers, and the District Technology Specialist. *Id.*
49. Woodbridge did not offer an itemized written cost estimate to the ACLU-DE providing information sufficient to understand Woodbridge's estimation of fees or what “work” each administrative personnel would perform to complete the response.
50. Woodbridge did not make sufficient efforts to minimize the use of nonadministrative personnel in processing FOIA requests and unnecessarily relied upon higher-paid administrators.
51. Upon information and belief, Woodbridge did not bill at the rate of the lowest-paid employee capable of fulfilling the task.
52. Upon information and belief, 20 hours is an unreasonable amount of billed time for Woodbridge to comply with the ELL Request.
53. Upon information and belief, \$2,000 is not a reasonable minimum cost required for compliance with the request.

54. Woodbridge did not make sufficient efforts to ensure that administrative fees are minimized under the FOIA statute.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that Defendants' stated administrative fees are unreasonable and not the minimum amount necessary, in violation of 29 *Del. C.* § 10003(m)(2);
2. Enjoin Defendants from charging unlawful administrative fees;
3. Order Defendants to provide requested documents in compliance with the law.
4. Award Plaintiffs' attorneys' fees and costs pursuant to 29 *Del. C.* § 10005(d);
and
5. Grant all other appropriate relief as the Court deems just and proper.

Dated: ~~December 22, 2025~~ **February 19, 2026** **The American Civil Liberties Union
of Delaware**

/s/ Andrew Bernstein
Andrew Bernstein (#7161)
100 W. 10th St. #706
Wilmington, DE 19801
Phone: (302) 551-6809 Ext. 119
Email: abernstein@aclu-de.org

-and-

/s/ Oluwatobi O. Omotoso

(pro hac vice forthcoming)
100 W. 10th St. #706
Wilmington, DE 19801
Phone: (302) 654-5326
Email: oomotoso@aclu-de.org