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DOCKET No.

SEC. 22

JOHN C. WHITE ON BEHALF OF  
THE LOUISIANA DEPARTMENT OF  
EDUCATION

versus

JAMES C. FINNEY

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE STATE

STATE OF LOUISIANA

APR 25 2016

BY JP  
DEPUTY CLERK OF COURT

\*\*\*\*\*

**PETITION FOR DECLARATORY RELIEF**

NOW INTO COURT, through undersigned counsel, comes John C. White,  
Superintendent and Custodian of Records on behalf of the Louisiana Department of Education  
(the Department), who seeks a judicial declaration as to the existence or need for creation of  
public records and other relief as shown for herein; and who respectfully represents:

1.

**Made Defendant herein:**

**James C. Finney, a person of the full age of majority domiciled and residing in the  
Parish of East Baton Rouge at 8121 Oak View Drive in Baton Rouge, Louisiana 70814.**

2.

That between September 8, 2015 and April 1, 2016, Defendant has made fifty (50)  
request for records from the Louisiana Department of Education, sending forty of those request  
on a daily basis between February 1 and February 26, 2016, and between March 8 and April 1,  
2016. Of those fifty (50) requests, only eleven (11) are made part of this Petition.

3.

As will be shown at trial of this matter, no records currently exist that are responsive to  
the requests included herein. Creation of these records would require a significant amount of  
staff time and would interfere with the operation of the Department's constitutional and legal  
duties. As such, these request are overly and unduly burdensome. Additionally, some of the  
information sought by these requests is exempt from public records law under Louisiana Revised  
Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

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REC'D C.P.

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4.

On September 8, 2015, the Defendant requested the following:

- a. *ACT Best Composite Score for 2014-15 Seniors by Parish/District and by Site (like those reports for 2014 and previous years linked at <http://www.louisianabelieves.com/resources/library/high-school-and-college-and-career-data-center>)*
- b. *With regard to the following report ([http://www.louisianabelieves.com/docs/default-source/data-management/state-district-comparison-students-scoring-18-\(2012-2015\).pdf?sfvrsn=2](http://www.louisianabelieves.com/docs/default-source/data-management/state-district-comparison-students-scoring-18-(2012-2015).pdf?sfvrsn=2)), the number of students contributing to each district's composite, the number of public students statewide, and the number of public students not attributed to a district.*
- c. *For the classes of 2015, 2014, 2013 and 2012 (and earlier years as available) and for each district in the state and for each high school site with at least 36 members of the cohort, the number of students whose best ACT score was each of the possible values (whole numbers 1-36).*

5.

After reviewing its files, the Department responded to the Defendant's request stating it was not in possession of responsive records on October 13, 2015.

6.

On October 21, 2015, the Defendant replied to the Department's response as follows:

*a) Please note the attached spreadsheet downloaded from the Louisiana Believes web site, which for the 2013 Graduating Class lists the numbers of students taking the ACT, and their average composite score, for each district in the state and more specifically for each school in the state with at least 10 students in the cohort. Reports for previous years contain similar data, the only difference being format (spreadsheet with one line per school for 2013; pdf with one page per district for previous years back to 1999).*

*Regardless of format, it is inconceivable that the Louisiana Department of Education, which calculated ACT assessment indices for 2013-14 and will soon do so for 2014-15, does not have the number of students attributed to each school and their ACT composite for those years. Perhaps the methodology for assigning students to schools changed slightly 2013-14 (or perhaps not). If the data for each of those two years are summarized in some form that shows school-level number of testers and average score, please provide a copy for inspection of that summary. If the data have not been summarized, please provide the composite test score and the six-digit sitecode for each student who took the test (approximately 40,000 statewide) and I will calculate the averages myself. If you argue that providing such raw data interferes with the privacy of a student in a cohort smaller than 10, I'm sure we can work out arrangements to protect that information, perhaps by combining the scores for the smallest schools within a district until the combination exceeds 10 students. Understand that if you claim that the department does not hold the records requested, you are providing evidence that the school performance scores based in part on ACT scores are a complete farce.*

*b) If you maintain the position that no record exists regarding the number of public school students whose ACT scores are not reflected in any of the composite scores in part "a" above, the only logical conclusion is that every member of the class of 2014 or 2015 who moved from one public school to another was counted in either the sending or receiving school's data, and that all other ACT scores reported by ACT for the classes of 2014 and 2015 would be from students outside the public system (private schools, home schools, etc.). If that is the case, and you respond with the requested records for parts "a" and "c", I will retract part "b" of the request.*

*c) For the classes of 2015 back to 1999, and for Louisiana public schools collectively and each district individually, please provide the number of testers, and of those how many earned each possible ACT composite score (1-36). Please include records as available for the public schools that aren't in a traditional district (RSD, Type 2 charters, lab schools, special schools, etc.). If the data are not summarized, please provide the school district code and the composite ACT score (and no other identifying information) for each student who was a member of a particular graduating class and had an ACT score reported to the state. I may later ask for school-specific data for schools above a certain minimal size. Note that ACT reports (and has for many years) the number of students in each state scoring each possible composite score (integers between 1 and 36). I wish to obtain records from the Louisiana Department of Education in order to compare results from public-school students with those not in the public system.*

*Please do not again offer the false assertion that a responsive record does not exist. As you should be able to ascertain, I am flexible as to format. I am not flexible regarding your Department's policy of hiding information from the public.*

7.

The Plaintiff avers that the only outstanding portion of this request is "c," and that creation of a record for "c" would require a significant amount of staff time to write, run, and verify the necessary programs connecting data elements across multiple databases and/or files to create the record requested. Additionally, the information sought by "c" is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

8.

On September 10, 2015, the Defendant requested the following:

- a) *Technical reports for any End-of-Course tests (including but not limited to Algebra I, Geometry, Biology, English II, English III and U.S. History) administered during the 2014-2015 school year.*
- b) *The scaled score resulting from each possible raw score on each form of each End-of-Course test (including but not limited to Algebra I, Geometry, Biology, English II, English III and U.S. History) used in 2014-2015.*
- c) *For each subject (including but not limited to Algebra I, Geometry, Biology, English II, English III and U.S. History), the scaled score ranges defining the ranges of scores that were considered Excellent, Good, Fair and Needs Improvement, and which of those ranges were considered passing vs. failing.*
- d) *For each of the End-of-Course subjects (including but not limited to Algebra I, Geometry, Biology, English II, English III and U.S. History), the number of tested students who were assigned each possible raw score and each possible scaled score (because some scaled scores may represent a range or raw scores).*

9.

The Department responded to this request on October 13, 2015 providing documents responsive to "b" and "c" above, and noting the report responsive to "a" was not completed at that time. As to "d" above, the Department stated that there is no responsive record.

10.

On October 30, 2015, the Defendant replied as follows:

*Here is my reply to each of your responses below, regarding my September 10, 2015, request for information concerning End of Course tests.*

- a) *Please immediately forward an electronic copy of each technical report as it becomes available.*
- b) *The records you provided satisfy this request in full, although not within the time frame established by law. I would encourage the Department to post this information on the web for all tests.*
- c) *The records you provided satisfy this request in full, although not within the time frame established by law.*
- d) *Your answer is incredible. It suggests the department has no records of the End of Course test results. Yet high school performance scores were released this week for 171 high schools, and one of the component subscores is based directly on End of Course test scores. Perhaps you are imagining that my request expects the data in a certain format. It does not. If you remain consistent in your position that the responsive records do not exist, please provide the following information for every student who took any End of Course test in December 2014 and every student who took any End of Course test in May 2015 (thus twelve combinations of subject and date):*
  - i) *student's grade classification (senior, junior, etc.)*
  - ii) *student's raw score.*

*Rest assured that I will later be asking for these records to be disaggregated by district and by location. But having the raw score distribution (statewide) for each test would be a good start.*

*I anticipate a prompt reply that contains the records requested.*

11.

The Plaintiff avers that the only outstanding portion of this request is "d," and that creation of a record for "d" would require a significant amount of staff time to write, run, and verify the necessary programs connecting data elements across multiple databases and/or files to create the record requested. Additionally, the information sought by "d" is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

12.

On September 18, 2015, the Defendant requested the following:

*For the 41,119 public-school testers identified in the table near the bottom of <http://www.louisianabelieves.com/newsroom/news-releases/2015/08/26/report-louisiana-is-number-one-state-in-annual-act-gain>,*

- a) *The date of administration and composite score for each time an individual student took a test.*
- b) *If available, information as to whether the student graduated by May, 2015. For the 7963 non-public-school testers identified in the same table (by the difference of 49,082 and 41,110),*
- c) *The date of administration and composite score for each time an individual student took a test.*
- d) *If available, information as to whether the student graduated by May, 2015.*

13.

The Department responded to this request on October 12, 2015 stating no responsive record exist for "a" and "b," and that the LDE does not receive any student level test scores for students attending nonpublic schools and no responsive record exist for "c" and "d."

14.

On October 30, 2015, the Defendant replied to the Department's response as follows:

*Pretending for the sake of discussion that no responsive records exist for any part of this request, please offer for inspection copies of all correspondence in 2014 or 2015 between the Louisiana Department of Education and ACT regarding testing and score reporting of public and/or private students in Louisiana, including the ACT test, the EXPLORE test, and the PLAN test. Redact student-identifying information such as names or dates of birth, of course.*

*If you find this task to be unreasonably daunting, perhaps we can return to the original request and you can make someone in the department available for a more meaningful response. Perhaps there actually are responsive records that can be found.*

*I await your prompt reply.*

15.

The Plaintiff avers that the only outstanding portions of this request are "a" and "b," and that creation of a record for "a" and "b" would require a significant amount of staff time to write, run, and verify the necessary programs connecting data elements across multiple databases and/or files to create the record requested. Additionally, the information sought by "a" and "b" is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a). Finally, the Department maintains that no responsive records exist for "c" and "d" as it does not receive any student level test scores for students attending nonpublic schools.

16.

On September 23, 2015, the Defendant requested the following:

*For all students in grades 3-8 who were given state-mandated tests between January 1, 2015, and May 31, 2015, whether LEAP, iLEAP, PARCC, PARCC-like or otherwise named:*

- a) The number of students who took each test or test form in Louisiana,*
- b) The number of students who took each test or test form in each school district in Louisiana, along with totals for private schools and home-schooled children,*
- c) The number and type (multiple-choice, true/false, short answer, etc.) of questions on each test or test form, and the lowest and highest possible raw scores,*
- d) The number of students who scored each possible raw score in Louisiana, on each test,*
- e) The transformation of raw to scaled score for each test (for example, a score of 43 correct out of 60 might result in a scale score of 385),*
- f) The number of students who scored each possible scaled score in Louisiana, on each test,*
- g) Documentation of whether (and if so, how) scaled scores were calculated in a way to maintain continuity with previously-administered tests for the same grade and subject combination, and*
- h) Documentation of the date that test scores were either calculated by the Department of Education internally or reported to the Department of Education by a vendor, for each test.*

17.

The Department responded to that request on October 13, 2015 attaching files responsive to "a" and "e;" giving answers to "b" and "c;" stating the report responsive to "g" was not completed; and stating that no records exist for "d," "f," and "h."

18.

On October 30, 2015 the Defendant replied to the Departments response as follows:

*Here are my thoughts on your responses to my public record request of September 22 (which you have been tracking with the date September 23):*

- a) the response would be complete, except for the unnecessary and irritating transformation of the numbers from exact integers to ranges of ten. In light of the fact that your department has now lost at least two lawsuits regarding this very point, please provide exact numbers. If there are any instances where the number is between 1 and 9, you are welcome to suppress it. If the number is actually 0, however, please report a 0.*
- b) the answer provided is sufficient.*
- c) I will continue to review the links provided and will follow up with you if I find any of the requested records to be lacking. For now, assume that this portion of the request is satisfied.*
- d) Your response is ridiculous. If the department truly doesn't have a tabulation of the number of students who earned each score, please provide the raw score for every student in electronic form (Excel-compatible, not pdf). Redact student-specific information such as name or date of birth, please.*
- e) The records provided are sufficient, although I would have preferred that they had been provided immediately upon request as directed by Louisiana law.*
- f) A proper response to part d would suffice for me to be able to calculate these numbers. Thus if part d is satisfied I will withdraw part f.*
- g) Please immediately forward each technical report to me as it becomes available.*
- h) I don't believe your response. I am tempted to request electronic copies of every piece of correspondence, internal or external, regarding the administration, scoring and scaling of all the LEAP, iLEAP and PARCC tests. Or perhaps you could just find the one document for each test (or group of tests) that announces internally the fact that the tests have been graded, and later that the raw/scale conversions have been determined.*

*I await your prompt reply, particularly regarding items a, d and h.*

19.

The Plaintiff avers that the only outstanding portions of this request are "d" and "f," and that creation of a record for "d" and "f" would require a significant amount of staff time to write, run, and verify the necessary programs connecting data elements across multiple databases and/or files to create the record requested. Additionally, the information sought by "d" and "f" is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

20.

On November 2, 2015, the Defendant requested the following:

*For the 174 high schools for which 2015 School Performance Scores (SPS) and letter grades were announced within the last week, please provide the following records:*

- a) *The number of students for whom an Algebra I EOC score was used in the tabulation, and among those, how many received each of the possible number of points in contribution to the assessment index (0, 100 or 150),*
- b) *Same as a, but for Geometry EOC,*
- c) *Same as a and b, but for Biology EOC,*
- d) *Same as a, b and c, but for English II EOC,*
- e) *Same as a, b, c and d, but for English III EOC,*
- f) *Same as a, b, c, d and e, but for US History EOC,*
- g) *For the ACT assessment index, the total number of students used in the tabulation and the number who received each of the twenty possible scores (100, 102.8, 105.6, . . . 150.4),*
- h) *For the Strength-of-Diploma/Graduation Index, the total number of students used in the tabulation and the number who received each of the several possible scores (0, 25, 50, 75, 100, 110, 115, 140, 150, etc.),*
- i) *For the Graduation Rate from which the Graduation Rate Index was calculated, the number of graduates (numerator) and the number in the cohort (denominator) that was used to calculate the rate.*
- j) *For the Progress Points (sometimes referred to as bonus points), the number of non-proficient students who could have earned progress points for the school, and how many of those earned each of the possible number of points (0, 0.05, 0.1, 0.2, etc.).*

*Feel free to add similar information for the 100+ high schools for which SPS and grades have not yet been reported. Please do not insult my intelligence or waste my time and yours by attempting to provide suppressed (nearest 10) numbers; I want integers that are useful in verifying the Department's calculations and exploring alternate scenarios under which more realistic and useful performance measures could be calculated. Recall that you have recently lost yet another lawsuit in which you attempted to use FERPA to skirt Louisiana's public record law.*

21.

The Department responded to that request on December 22, 2015 and received the following reply from the plaintiff that day:

*I am in receipt of your overdue response to my November 2, 2015, record request, which I find to be disappointing (though perhaps not surprising) in its avoidance of the records I requested, and the intentional and unnecessary obfuscation of some of the records that were produced.*

*Below I have pasted your response; my remarks will be in bold italics.*

- a) *The Department does not have a record illustrating the number of students by subject. Instead, a composite number of EOC testers was provided. See column E of the attached file.*

***I find it remarkable that the department would claim not to know how many students at each high school took each test, given that such information would have been essential to calculate the EOC assessment index. So either the statement above (that the Department does not have a record illustrating the number of students by subject) is false, or the EOC assessment index was not calculated in the manner described by Bulletin 111. Furthermore, your response did not address the second part of this item, "how many received each of the possible number of points in contribution to the assessment index." There is, for each school, a number of students who received 150 points, a number who received 100 points, and a number who received 0 points. Refer to 409.A.2 on page 3 at <http://www.doa.la.gov/osr/lac/28v83/28v83.doc> if this isn't clear.***

b) *The Department does not have a record illustrating the number of students by subject. Instead, a composite number of EOC testers was provided. See column E of the attached file.*

*Please see my response to (a) above.*

c) *The Department does not have a record illustrating the number of students by subject. Instead, a composite number of EOC testers was provided. See column E of the attached file.*

*Please see my response to (a) above.*

d) *The Department does not have a record illustrating the number of students by subject. Instead, a composite number of EOC testers was provided. See column E of the attached file.*

*Please see my response to (a) above.*

e) *The Department does not have a record illustrating the number of students by subject. Instead, a composite number of EOC testers was provided. See column E of the attached file.*

*Please see my response to (a) above.*

f) *The Department does not have a record illustrating the number of students by subject. Instead, a composite number of EOC testers was provided. See column E.*

*Please see my response to (a) above.*

g) *The attached file includes the number of students used in the ACT tabulation (See column F of the attached) and the number at each for TOP level (See column K to P of the attached) but it does not include the number who received each of the twenty possible scores as no such record exists.*

***If I request the number of students, I expect to receive the number of students, not an approximation to the nearest 10 students. There is no rational way that providing the actual number would interfere with student privacy, and your department has lost that argument in court at least twice. So please provide the correct numbers for column F, rather than the intentionally incorrect numbers that you have provided in their place. Also, the assertion that the Department has no record of how many students received each possible score on the ACT assessment index is ridiculous, unless you are admitting that the data reported to the public were fabricated out of thin air. Please refer to 409.B.1 of Bulletin 111.***

h) *The attached file includes the total number of students in the denominator for the graduation index. See column G. But it does not include the number who received each of the several possible points, as no such record exists.*

***A rounded number (nearest ten) is not the record I requested. Please refer to 613.A of Bulletin 111 and explain how the Strength of Diploma/Graduation Indices for each school could have been calculated without the Department possessing the records that I requested. Perhaps a random number generator?***

i) *See columns G and H of the attached file.*

***Thank you for Column H.***

j) *See column I and J for the number of nonproficient students by subject.*

***Your response is excellent for the first part of this item, and completely ignores the second part ("how many of those . . ."). Also, please provide actual numbers (rather than "<10"), even when they are single-digit. There is a big difference between zero and nine, and knowing the correct number does not give any information regarding the proficiency of any individual unless then number of non-proficient students is exactly zero. If that is the case, I see no harm (nor would I think a reasonable judge would see any harm), in allowing the public to know that everyone at a school had a proficient score.***



22.

The Plaintiff avers that "i" has been satisfied and that creation of a record for the remaining portions ("a" through "h" and "j") would require a significant amount of staff time to write, run, and verify the necessary programs to create the record requested. Additionally, the information sought by those portions is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

23.

On February 2, 2016, the Defendant requested as follows:

*For each of the 1105 schools for which a 2015 K-8 Assessment Index was reported (1099 still open; six closed), the following records*

*School name*

*Site code*

*2015 K-8 Assessment Index*

*Number of students for whom at least one test was included in the index*

*Number of test units (presumably around six for most kids if ELA and Math counted double at each grade)*

*Of the number above, the test units for which the points accumulated were 150*

*Of the number above, the test units for which the points accumulated were 125*

*Of the number above, the test units for which the points accumulated were 100*

*Of the number above, the test units for which the points accumulated were 0*

*Note that I have already reviewed the spreadsheet entitled "2015-school-performance-scores.xlsx" which contains the school names, site codes and assessment indices but not the other requested records.*

24.

The Department acknowledged receipt of that request on February 2, 2016 and, after reviewing its files, has determined that no responsive record or document exist.

25.

The Plaintiff avers that creation of a record for this request would require a significant amount of staff time to write, run, and verify the necessary programs connecting data elements across multiple databases and/or files to create the record requested. Additionally, the information sought by this request is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

26.

On February 4, 2016, the Defendant requested as follows:

*For each of the 338 schools for which a high school 2015 Assessment Index (End of Course Exams) of 5.0 or greater was reported (334 still open; four closed), the following records*

*School name*

*Site code*

*2015 Assessment Index for End of Course Exams*

*Number of student tests for which scores were included when calculating the index*

*Of the number above, the number for whom the points accumulated were 150*

*Of the number above, the number for whom the points accumulated were 100*

*Of the number above, the number for whom the points accumulated were 0*

*Note that I have already reviewed the spreadsheet entitled "2015-school-performance-scores.xlsx" which contains the school names, site codes and assessment indices but not the other requested records.*

27.

The Department acknowledged receipt of that request on February 4, 2016 and, after reviewing its files, has determined that no responsive record or document exist.

28.

The Plaintiff avers that creation of a record for this request would require a significant amount of staff time to write, run, and verify the necessary programs to create the record requested. Additionally, the information sought by this request is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

29.

On February 5, 2016, the Defendant requested as follows:

*For each of the 312 schools for which a high school 2015 Assessment Index (ACT) of 5.0 or greater was reported (308 still open; four closed), the following records*

*School name*

*Site code*

*2015 Assessment Index for ACT Exams*

*Number of student tests for which scores were included when calculating the index*

*Of the number above, the number for whom the points accumulated were 150.4 (ACT score of 36),*

*Of the number above, the number for whom the points accumulated were 147.6 (ACT score of 35),*

*Of the number above, the number for whom the points accumulated were 144.8 (ACT score of 34),*

*Of the number above, the number for whom the points accumulated were 142.0 (ACT score of 33),*

*Of the number above, the number for whom the points accumulated were 139.2 (ACT score of 32),*

*Of the number above, the number for whom the points accumulated were 136.4 (ACT score of 31),*

*Of the number above, the number for whom the points accumulated were 133.6 (ACT score of 30),*

*Of the number above, the number for whom the points accumulated were 130.8 (ACT score of 29),*

*Of the number above, the number for whom the points accumulated were 128.0 (ACT score of 28),*

*Of the number above, the number for whom the points accumulated were 125.2 (ACT score of 27),*

*Of the number above, the number for whom the points accumulated were 122.4 (ACT score of 26),*

*Of the number above, the number for whom the points accumulated were 119.6 (ACT score of 25),*

*Of the number above, the number for whom the points accumulated were 116.8 (ACT score of 24),*

*Of the number above, the number for whom the points accumulated were 114.0 (ACT score of 23),*

*Of the number above, the number for whom the points accumulated were 111.2 (ACT score of 22),*

*Of the number above, the number for whom the points accumulated were 108.4 (ACT score of 21),*

*Of the number above, the number for whom the points accumulated were 105.6 (ACT score of 20),*

*Of the number above, the number for whom the points accumulated were 102.8 (ACT score of 19),*

*Of the number above, the number for whom the points accumulated were 100.0 (ACT score of 18),*

*Of the number above, the number for whom the points accumulated were 0 (ACT score below 18).*

*Note that I have already reviewed the spreadsheet entitled "2015-school-performance-scores.xlsx" which contains the school names, site codes and assessment indices but not the other requested records.*

30.

The Department acknowledged receipt of that request on February 5, 2016 and, after reviewing its files, has determined that no responsive record or document exist.

31.

The Plaintiff avers that creation of a record for this request would require a significant amount of staff time to write, run, and verify the necessary programs to create the record requested. Additionally, the information sought by this request is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

32.

On February 17, 2016, the Defendant requested as follows:

*For each of the 309 schools (including four since closed) that received Strength of Diploma (Graduation Index) scores based on the 2013-14 cohort and applied to 2014-15 School Performance Scores:*

*The number of students in the final cohort*

*The number of those students who contributed 0 points to the index,*

*The number of those students who contributed 100 points to the index, and*

*For each other number of points that occurred for at least one individual, the point value and the number of students who contributed that number of points to the index.*

*Note that the explanation of School Performance Scores at School Performance Scores is less complete in its description of this particular index than is the case with the other indices, hence the open-ended form of the last item.*

33.

The Department acknowledged receipt of that request on February 17, 2016 and, after reviewing its files, has determined that no responsive record or document exist.

34.

The Plaintiff avers that creation of a record for this request would require a significant amount of staff time to write, run, and verify the necessary programs to create the record requested. Additionally, some of the information sought by this request is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

35.

On February 18, 2016, the Defendant requested as follows:

*For each of the 315 schools (including four since closed) that received Cohort Graduation Rate scores based on the 2013-14 cohort and applied to 2014-15 School Performance Scores:*

*The number of students in the initial cohort,*

*The number of students who entered the cohort,*

*The number of students who exited the cohort and were consequently not considered in the graduation rate,*

*The number of students who graduated, and*

*The cohort graduation rate.*

36.

The Department acknowledged receipt of that request on February 17, 2016 and, after reviewing its files, has determined that no responsive record or document exist for the first three items of this request; *“the number of students in the initial cohort, the number of students who entered the cohort, and the number of students who exited the cohort and were consequently not considered in the graduation rate.”*

37.

The Plaintiff avers that creation of a record for those portions of this request would require a significant amount of staff time to write, run, and verify the necessary programs connecting data elements across multiple databases and/or files to create the record requested.

38.

On March 22, 2016, the Defendant requested the following:

- 1) *For each school year since July 1, 2006, for which School Performance Scores and/or letter grades were reported, the following information:*
  - *a) The reported scores and grades, the methodology for calculating that year's scores, and the ranges of scores corresponding to each letter grade*
  - *b) For each school, sufficient raw data necessary and sufficient to reproduce the score reported, including sizes of cohorts, the number of students who earned each possible number of points on each part of the various indexes, and weights applied to various parts of the formula (including the weights used to combine elementary and secondary scores)*
  - *c) For any school receiving MFP funds but not both a School Performance Score and a letter grade, an explanation for the lack of score and/or grade and the raw data necessary and sufficient to create values for what the score and grade would have been*
  - *d) For each district (1-69), for the RSD-New Orleans, RSD-Baton Rouge, RSD-Louisiana, Type 2 charter schools collectively and voucher program collectively, sufficient raw data necessary and sufficient to reproduce the score reported (or to create a score if none exists for comparison)*
- 2) *For each school year starting July 1, 2006, and for each state-mandated test given each year, including but not necessarily limited to ACT, Explore, Plan, End of Course, LEAP, iLEAP, PARCC or PARCC-like, LAA1, and LAA2 and for each subject within each of those tests:*
  - *a) A copy of the relevant technical report listing, among other things, the total number of questions of each type and weight and the relationship between each raw score and the scale score reported to the public*
  - *b) The date(s) of test administration*
  - *c) The number of students who took the test*
  - *d) An explanation of how duplicate scores for an individual were handled*
  - *e) The distribution of scores statewide (the exact number of students who received each possible raw score)*
  - *f) The distribution of scores for each district (1-69), for the RSD-New Orleans, RSD-Baton Rouge, RSD-Louisiana, Type 2 charter schools collectively and voucher program collectively*
  - *g) The distribution of scores statewide by gender*
  - *h) The distribution of scores statewide by race/ethnicity*
  - *i) The distribution of scores statewide by economic status (free, reduced-price or full-price lunch)*

3) For any event wherein the Department of Education (or a vendor on its behalf) calculated expected or target test scores and compared them to subsequent actual scores:

- a) Raw data from which the target scores were calculated, and the resulting targets
- b) Full description of the model developed,
- c) Statistical analyses of the quality of the model, including F, R-squared or other statistical measures,
- d) The subsequent test scores that were compared with the target scores

To the extent today's request duplicates earlier requests, satisfaction of today's request would also satisfy the earlier ones.

39.

The Department acknowledged receipt of that request on March 22 2016 and, after reviewing its files, has determined that no responsive record or document exist for portions of this expansive request, specifically 1 "b" and "d," 2 "e" through "i," and 3 "a" and "d."

40.

The Plaintiff avers that creation of a record for those portions would require a significant amount of staff time to write, run, and verify the necessary programs connecting data elements across multiple databases and/or files to create the record requested and/or the information sought by those portions is exempted from public records law under Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).

41.

The Plaintiff maintains that it is not required to create a record as held by the Supreme Court of Louisiana in *Nungesser v. Brown*, 95-3005 (La. 01/16/96), 667 So. 2d 1036.

42.

The production of the databases is not possible in this matter as those databases contain information that shall not be released under the Family Educational Rights and Privacy Act (FERPA - 34 CFR 99 *et seq*) and Louisiana Revised Statutes 17:3914. Additionally, as shown above, several of these requests seek information that is exempt from public records law by Louisiana Revised Statutes 17:391.4 (E), 44:4 (33) (a) and 44:4 (27) (a).


43.

Should the Court find the Department is required to produce any of the records for the requests made part of this lawsuit despite the unduly burdensome nature of these requests, the Plaintiff requests this Court set fees for those records as contemplated by Louisiana Revised Statutes 44:32.

**WHEREFORE**, the Plaintiff Prays that the defendant be cited and served with a copy of this petition, and that, after due proceedings had, there be judgment in favor of the Plaintiff, the Louisiana Department of Education, and against the Defendant, James C. Finney, declaring that the Department is not required to create records for the requests made part of this suit as they are unduly burdensome and, as applicable, exempt from public records law, for attorney's fees and cost of these proceedings, and for all relief that is just and equitable.

**IN THE ALTERNATIVE**, the Plaintiff Prays for judgment setting a fee under Louisiana Revised Statutes 44:32 for each record that the Court finds is required to be produced.

Respectfully Submitted:


  
G.M. Millet, Jr (#32596)  
1201 North Third Street  
Baton Rouge, Louisiana 70802  
Tel: (225) 342-3572 Fax: (225) 342-1197

**Please Serve:**

James C. Finney  
8121 Oak View Drive  
Baton Rouge, Louisiana 70814.

**CIVIL**

- 01-DAMAGES
- 02-CONTRACT
- 03-PRISONER SUIT
- 04-EXECUTORY PROCESS
- 05-SUIT ON NOTES
- 06-EVICTION
- 07-WORKMENS COMPENSATION
- 08-JUDICIAL REVIEW
- 09-PROPERTY RIGHTS
- 10-INJUNCTION MANDAMUS
- 11-COMM. PROP. PARTITIONS
- 12-PUBLIC SERV. COMM.
- 13-OTHER PARTITIONS
- 14-OTHER
- 15-D.E.Q.
- 16-
- 17-
- 18-
- 19-
- 20-

FILED  
EAST BATON ROUGE PARISH, LA.  
2016 APR 25 PM 4:20  
  
DEPUTY CLERK OF COURT

2402-16-002532

### CITATION

**JOHN C. WHITE ON BEHALF OF THE  
LOUISIANA DEPARTMENT OF  
EDUCATION**  
(Plaintiff)

**NUMBER C647827 SECTION 22  
19<sup>th</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

vs.

**JAMES C. FINNEY**  
(Defendant)

**TO: JAMES C. FINNEY  
8121 OAK VIEW DRIVE  
BATON ROUGE, LA 70814**

**GREETINGS:**

Attached to this citation is a certified copy of the petition\*. The petition tells you what you are being sued for.

You must EITHER do what the petition asks OR, within fifteen (15) days after you have received these documents, you must file an answer or other legal pleading in the office of the Clerk of Court at 300 North Boulevard, Baton Rouge, Louisiana. If you do not do what the petition asks, or if you do not file an answer or legal pleading within fifteen (15) days, a judgment may be rendered against you without further notice.

This citation was issued by the Clerk of Court for East Baton Rouge Parish on **05-MAY-2016**.



*Dianna J. Manning*  
**Deputy Clerk of Court for  
Doug Welborn, Clerk of Court**

**Requesting Attorney: G M MILLET JR**

\*The following documents are attached:  
**PETITION FOR DECLARATORY RELIEF**

**SERVICE INFORMATION:**

Received on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, served on the above named party as follows:

**PERSONAL SERVICE:** On the party herein named at \_\_\_\_\_.

**DOMICILIARY SERVICE:** On the within named \_\_\_\_\_, by leaving the same at his domicile in this parish in the hands of \_\_\_\_\_, a person of suitable age and discretion residing in the said domicile at \_\_\_\_\_.

**SECRETARY OF STATE:** By tendering same to the within named, by handing same to \_\_\_\_\_.

**DUE AND DILIGENT:** After diligent search and inquiry, was unable to find the within named \_\_\_\_\_ or his domicile, or anyone legally authorized to represent him.

**RETURNED:** Parish of East Baton Rouge, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SERVICE: \$ \_\_\_\_\_  
MILEAGE \$ \_\_\_\_\_  
TOTAL: \$ \_\_\_\_\_

\_\_\_\_\_  
Deputy Sheriff  
Parish of East Baton Rouge

CITATION - 2402



EBR3600651