

MICHAEL R. DESHOTELS

038 503  
NUMBER:

SEC.

SEC. 27

VERSUS

19TH JUDICIAL DISTRICT COURT  
JOHN WHITE, IN HIS INDIVIDUAL  
AND OFFICIAL CAPACITIES, AS  
SUPERINTENDENT OF THE  
LOUISIANA DEPARTMENT OF  
EDUCATION AND THE  
LOUISIANA DEPARTMENT OF  
EDUCATION

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

---

PETITION FOR INJUNCTIVE RELIEF PURSUANT  
TO THE LOUISIANA PUBLIC RECORDS ACT

---

NOW INTO COURT, through undersigned counsel, comes the Plaintiff, Michael R. Deshotels, who respectfully represents as follows:

1.

Plaintiff, MICHAEL R. DESHOTELS, is a person of full age and majority and domiciled in the Parish of East Baton Rouge, State of Louisiana.

2.

Made Defendants herein are:

(A) JOHN WHITE, in his individual and official capacities, as Superintendent of the Louisiana Department of Education, a public body under the Louisiana Public Records Act, La. R.S. 44:1(A)(1). Based on reasonable information and belief, White is domiciled in the Parish of East Baton Rouge, State of Louisiana. White is the proper party defendant under La. R.S. 44:1(A)(3), La. R.S. 44:31(B)(3) and La. R.S. 44:35(E)(2) as a public official and custodian of public records for the Louisiana Department of Education; and

(B) THE LOUISIANA DEPARTMENT OF EDUCATION an agency of the State of Louisiana. The Louisiana Department of Education is the proper party Defendant under La. R.S. 44:1(A)(3), La. R.S. 44:31(B)(3) and La. R.S. 44:35(E)(2).

3.

This Court has subject matter jurisdiction pursuant to La. R.S. 44:35(B) and venue is proper under La. R.S. 44:35(A) as this case involves the production of public records from persons and governmental entities having their *situs* in East Baton Rouge Parish, State of Louisiana and, therefore, is within the territorial jurisdiction of this Honorable Court.

4.

The Plaintiff seeks public records from the Defendants under the Louisiana Public Records Act, La. R.S. 44.1, *et seq* (hereinafter referred to as "LPRA").

5.

On February 6, 2015, the Plaintiff submitted a public records request to Defendants in accordance with the LPRA as follows:

"Pursuant to the Public Records Act of Louisiana, R.S. 44:1 et seq., I request the following public records be made available to me or sent to me by letter or e-mail:

Please provide me with a copy of the October 2014 multi-stat report for all public schools in Louisiana, giving the actual total number of students enrolled in each grade including all the various categories of ethnic groups and free or reduced lunch and other designations in each public school in Louisiana in the manner specified in item number 1, of the judgment of the lawsuit dated August 29, 2014 number 632731, issued by Judge Downing of the 19<sup>th</sup> Judicial District Court of East Baton Rouge Parish, and signed by him on September 12, 2014. I do not want the suppressed or rounded off enrollment numbers.

In making my public records request dated January 30 [2015], I requested the multi-stat report for October 2015. This was an error on my part. I intended to request the 2014 multi-stat report. Mr. Humphrey in responding on behalf of the Department on February 5, [2015] did however send me a version of the 2014 multi stat report which contains suppressed or averaged ranges of the actual statistics in the actual multi-stat report. This report is not precise and is not the data I intended to request.

Please ask your staff to provide me with this information as soon as possible."

6.

On February 10, 2015, Troy Humphrey, Attorney for the Louisiana Department of Education, responded on behalf of the Defendants, via e-mail, as follows:

"On February 6, 2015, the Louisiana Department of Education received your public record request seeking a copy of 'the October 2014 multi-stat report' for all public schools in Louisiana. In accordance with La. R.S. 44:1 et seq. and other provisions of law regarding student records, the Department's public affairs office has requested that I provide you with the attached item."

7.

On February 17, 2015, Plaintiff, through undersigned counsel, responded to Troy Humphrey stating in pertinent part:

"On February 10, 2015, you submitted a copy of the October 2014 multi-stat report for all public schools in Louisiana that contained suppressed or averaged ranges of the actual statistics. The report you submitted did not contain the actual total numbers of students as requested. As you are aware, pursuant to the

Judgment of Judge Downing, the actual total number of students is considered a public record that must be disclosed.

Therefore, I request that you submit the October 2014 multi-stat report that contains the [sic] actual total figures of students to me and my client by the close of business on February 24, 2015."

8.

On February 23, 2015, Troy Humphrey responded by email stating "I will bring this matter to the attention of our data team and will follow up and provide you with an update."

9.

On March 18, 2015, Troy Humphrey sent a letter to undersigned counsel, which stated in pertinent part:

"The department has provided your client Mr. Deshotels with the October 2014 multi-stat in the form and fashion that is compliant with FERPA. That is the only version that can be released as a public records in response to your client's request."

10.

On March 23, 2015, the Plaintiff, through undersigned counsel, responded to Troy Humphrey in pertinent part as follows:

First of all, the Family Educational Rights and Privacy Act Regulations (FERPA), 20 U.S.C. § 1232g, does not prohibit the disclosure of the actual total number of students enrolled in each grade including the various categories and designations as requested by my client. Personally identifiable information refers to the student's name, parents' names, address, date of birth, place of birth, social security numbers, student identification numbers, and similar information. 34 C.F.R. § 99.3. It does not apply to the general data information requested by my client because the personal identification of the students will not be disclosed.

Second, this information is consider a public record that must be disclosed under the Louisiana Public Records Act ("LPRA"), La. R.S. 44:1, *et seq.* La. R.S. 44:31(B)(1) provides that "Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person of the age of majority may inspect, copy, or reproduce any public record." La. R.S. 44:4.1(A) states in part: "Any exception, exemption, and limitation to the laws pertaining to public records not provided for in this Chapter or in the Constitution of Louisiana shall have no effect." In this case, there is no specific exception under the LPRA or the Louisiana Constitution to prohibit the disclosure of the actual total number of students enrolled in each grade and there is no evidence that the disclosure of this information will implicate a privacy concern. Therefore, it is likely that the court will find that this information is subject to public disclosure.

Lastly, the Honorable Bob Downing has already ruled that this information is public under the LPRA. On September 14, 2014, Judge Downing issued a Judgment ordering that the Louisiana Department of Education disclose the actual

total number of students in each grade for the New Orleans Recovery School District and the State Recovery District. Therefore, it is likely that if we are required to litigate this matter, the court will give great deference to this prior ruling.

For the foregoing reasons, I urge you to reconsider your position and disclose these public records in order to avoid unnecessary litigation. Please let me know your position by the close of business on Monday, March 30, 2015.

11.

On March 30, 2015, Troy Humphrey responded on behalf of the Defendants in pertinent part as follows:

“While the Louisiana Department of Education is a public body, unlike most public bodies, it is also an educational institute that must comply with FERPA. The Department must follow procedures and policies put in place to protect the privacy of students. Accordingly, the Department cannot release the requested information unsuppressed.

Pursuant to the policies and procedures established to ensure student privacy, the Department can only release the requested information in the suppressed form that has been provided to your client. That information, if not suppressed could alone or in combination, is subject to being linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”

12.

Upon reasonable information and belief, the Defendants do have custody and control of the public information requested by the Plaintiff.

13.

As of the date of this filing, the Plaintiff has not been provided with the October 2014 multi-stat report for all public schools in Louisiana that contains the actual total number of students enrolled in each grade including all the various categories of ethnic groups and free or reduced lunch and other designations in each public school in Louisiana.

13.

While the Defendants allege that the precise totals requested by the Plaintiff cannot be provided because of their obligation to protect the personal information of the students pursuant to FERPA, this allegation is unfounded as the Plaintiff is only requesting the total number of students and not any personal information related to those students.

14.

La. R.S. 44:4.1(A) provides, in pertinent part, that, "all exceptions, exemptions and limitations shall be provided in this chapter or in the Constitution of Louisiana. Any exceptions, exemptions and limitation to the laws pertaining to public records not provided in this chapter shall have no effect."

15.

The documents requested by the Plaintiff are public records within the meaning of the LPRA because they are not excluded from disclosure by any provision of the LPRA, the Louisiana Constitution or the Family Educational Rights and Privacy Act Regulations. Therefore, the information is a public record under the LPRA and is subject to disclosure.

16.

As of this date of filing, the Defendants have failed to comply with the Plaintiff's public records requests and are in violation of the LPRA.

17.

Pursuant to La. R.S. 44:35 (A) and (D), the Plaintiff respectfully requests that this Honorable Court issue a preliminary injunction requiring the Defendants to immediately permit the inspection and the opportunity to make copies of the requested records and documents or to receive a copy of such records, and to enjoin the Defendants from withholding the requested records from the Plaintiff.

18.

The Defendants' refusal to comply with the Plaintiff's public records requests is arbitrary, unreasonable and capricious because this Honorable Court has already ruled that this information is a manner of public record. *See*, Judgment of Judge Bob Downing dated September 12, 2014 in the manner of *Michael R. Deshotels v. John White*, Docket Number 632,731, 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, State of Louisiana. The Defendants did not appeal this decision. Therefore, the Plaintiff is entitled to statutory penalties in the amount of one hundred dollars (\$100.00) per day, exclusive of Saturdays, Sundays and legal holidays, for each day of the Defendants' violation of the LPRA. *See*, La. R.S. 44:35(E).

19.

The Plaintiff has and will continue to incur attorney's fees and other legal expenses associated with these proceedings. The Plaintiff is entitled to recover his reasonable attorney's fees and all of the costs of this proceeding in accordance with La. R.S. § 44:35(D).

20.

John White is personally liable for the payment of any damages and is liable in solido with the Louisiana Department of Education for payment of attorneys fees and costs in accordance with La. R.S. 44:35(E)(2).

21.


Pursuant to La. R.S. § 44:35(C), this suit is entitled to preferential docketing. The Plaintiff respectfully requests that this matter be set for hearing within two (2) to ten (10) days of notice in accordance with La. C.C.P. art. 3602.

**WHEREFORE**, the Plaintiff, Michael R. Deshotels, respectfully prays that:

1. The Defendants, John White, in his individual and official capacities, as Superintendent of the Louisiana Department of Education, and the Louisiana Department of Education, be ordered to either promptly produce the records requested by Michael R. Deshotels or to show cause why they should not be ordered to be promptly provide the requested records, on a date and an hour assigned by this Court;
2. A preliminary injunction be issued herein requiring the Defendants to immediately permit the inspection and to provide copies of the requested records the Plaintiff, enjoin the Defendants from withholding the requested records from the Plaintiff, and award the Plaintiff reasonable attorney's fees, costs, and statutory damages in the amount of \$100.00 per day for each day of the Defendants' violation of the Louisiana Public Records Act;
3. For a permanent injunction in the form and substance of the preliminary injunction as prayed for above; and
4. The Defendants, John White, in his individual and official capacities, as Superintendent of the Louisiana Department of Education, and the Louisiana Department of Education, be cast for all of the costs of this proceeding.

Respectfully submitted,

**SMITH LAW FIRM**



---

J. Arthur Smith, III (La. Bar No. 07730)  
Adrienne D. Rachel (La. Bar No. 34391)  
830 North Street  
Baton Rouge, Louisiana 70802  
Telephone: (225) 383-7716  
Facsimile: (225) 383-7773  
E-mail: jasmith@jarthursmith.com  
E-mail: arachel@jarthursmith.com  
*Attorneys for Michael R. Deshotels*

**PLEASE SERVE:**

**JOHN WHITE**

Louisiana Department of Education  
1201 North 3rd Street  
Baton Rouge, LA 70802

James D. "Buddy" Caldwell  
**OFFICE OF ATTORNEY GENERAL**  
1885 North 3rd St.  
Baton Rouge, LA 70802

J.S. "Bud" Thompson, Jr.  
**DIRECTOR OFFICE OF RISK MANAGEMENT**  
1201 North 3rd St., Ste. G-192  
Baton Rouge, LA 70802

MICHAEL R. DESHOTELS

NUMBER:

SEC.

VERSUS

19TH JUDICIAL DISTRICT COURT

JOHN WHITE, IN HIS INDIVIDUAL  
AND OFFICIAL CAPACITIES, AS  
SUPERINTENDENT OF THE  
LOUISIANA DEPARTMENT OF  
EDUCATION AND THE  
LOUISIANA DEPARTMENT OF  
EDUCATION

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

---

ORDER

---

The foregoing being considered,

IT IS ORDERED that the Defendants, John White in his individual and official capacities and the Louisiana Department of Education, show cause on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, at \_\_\_\_\_ o'clock \_\_\_\_ M., why a preliminary injunction should not issue herein ordering the Defendants to promptly provide the records requested by the Plaintiff, and why they should not be cast in judgment for statutory damages in the amount of \$100.00 per day for each day of their alleged violation of the Louisiana Public Records Act, and why they should not be cast for the Plaintiff's reasonable attorney's fees and litigation expenses, and for all costs of this proceeding.

Baton Rouge, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

JUDGE, 19TH JUDICIAL DISTRICT COURT

**PLEASE SERVE:**

John White  
Louisiana Department of Education  
1201 North 3rd Street  
Baton Rouge, LA 70802

J. Arthur Smith, III  
830 North Street  
Baton Rouge, LA 70802