

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY MAY 11 2021
STATE OF OKLAHOMA

RICK WARREN
COURT CLERK

OKLAHOMA WATCH, INC. and)
JENNIFER PALMER,)
Plaintiffs,)
vs.)
EPIC BLENDED LEARNING CENTERS,)
a school district; EPIC ONE-ON-ONE CHARTER)
SCHOOL, a school district; BART BANFIELD,)
in his official capacity as SUPERINTENDENT)
of EPIC BLENDED LEARNING CENTERS and)
EPIC ONE-ON-ONE CHARTER SCHOOL,)
Defendants.)

42 _____

CV-2021-1085

PETITION FOR RELIEF FOR
VIOLATIONS OF THE OKLAHOMA OPEN RECORDS ACT

Plaintiffs Oklahoma Watch, Inc. and Jennifer Palmer (collectively "Plaintiffs"), by and through their undersigned counsel, petition this Court for (1) an order pursuant to Okla. Stat. tit. 12, §§ 1381-1398 temporarily and permanently enjoining Defendants Epic Blended Learning Centers, Epic One-on-One Charter School, and Bart Banfield in his official capacity as Superintendent of Epic Blended Learning Centers and Epic One-on-One Charter School (collectively "Defendants") from denying access to specific public records in violation of the Oklahoma Open Records Act ("ORA"), Okla. Stat. tit. 51, §§ 24A.1-24A.32; (2) for a declaration of the rights and responsibilities of Defendants as to the public records sought by Plaintiffs; and (3) a writ of mandamus pursuant to Okla. Stat. tit. 12, §§ 1451-1462 directing Defendants to produce the requested public records.

In support of this Petition, Plaintiffs allege and state the following:

PARTIES

1. Plaintiff Oklahoma Watch, Inc. (“Oklahoma Watch”) is a nonprofit news corporation that produces in-depth and investigative journalism as a public service for the benefit of all Oklahomans. Oklahoma Watch makes its content freely and openly available on its website (oklahomawatch.org) and various social media platforms.

2. Plaintiff Jennifer Palmer (“Palmer”) is a journalist and Staff Reporter at Oklahoma Watch who covers education.

3. Defendants Epic Blended Learning Centers and Epic One-on-One Charter School (collectively “Epic Charter Schools”) are school districts and “public bodies” within the meaning of the ORA. Okla. Stat. tit. 51, § 24A.3(2).

4. Defendant Bart Banfield (“Banfield”) is a natural person and currently serves as the Superintendent of Epic Charter Schools. Banfield is a “public official” within the meaning of the ORA. *Id.* § 24A.3(4). Banfield’s place of business as Superintendent of Epic Charter Schools is located within Oklahoma County, Oklahoma.

STATEMENT OF FACTS

A. Background Facts

5. Epic Charter Schools is a public charter school in Oklahoma that receives state education funding for each enrolled student in grades PreK to 12th. Schooling is delivered to students by one of two programs—Epic Blended Learning Centers (a hybrid program with online and in-person components) and Epic One-on-One Charter School (a virtual program).

6. Amid increasing interest and the demands of the COVID-19 pandemic, Epic Charter Schools has grown into the largest school system in Oklahoma. For Fiscal Year 2020-2021, Epic Charter Schools had an enrollment of nearly 60,000 students.

7. Alongside this explosive growth, Epic Charter Schools has faced increasing public scrutiny due to a number of controversies. *See, e.g.,* Adam Kemp, *What You Need to Know About the Epic Charter Schools Saga*, *The Oklahoman* (Oct. 3, 2020), <https://www.oklahoman.com/article/5673037/>.

8. Additionally, Epic Charter Schools has been the subject of multiple investigations and inquiries by law enforcement agencies and other government entities, including the Federal Bureau of Investigation,¹ the United States Department of Education Office of Inspector General,² the Oklahoma State Bureau of Investigation,³ and the Oklahoma State Auditor and Inspector's Office.⁴

9. One such investigation into Epic Charter Schools extended to its co-founders, Ben Harris ("Harris") and David Chaney ("Chaney"), for alleged embezzlement of state funds and obtaining money under false pretenses, including through the use of "ghost students" who received no actual instruction at the school. *See* Jennifer Palmer, *Search Warrant Alleges Embezzlement, Use of "Ghost Students" by Epic Schools*, *Oklahoma Watch* (Oct. 28, 2019), <https://oklahomawatch.org/2019/07/16/search-warrant-alleges-embezzlement-use-of-ghost-students-by-epic-schools/>.

10. A recent report issued by the State of Oklahoma's Multicounty Grand Jury raised concerns with Epic Charter Schools including a "lack of oversight" and "lack of transparency in

¹ *See* Andrea Eger, *Records Show FBI Has Also Been Looking Into Epic Charter Schools, Along With Federal Education Investigators*, *Tulsa World* (July 18, 2019), https://tulsaworld.com/news/local/education/records-show-fbi-has-also-been-looking-into-epic-charter/collection_52222052-cda2-5bdb-a64a-deec4d436b30.html

² *Id.*

³ *See* Caroline Halter, *Investigations Into Epic Charter Schools Explained*, *StateImpact Oklahoma* (Sept. 12, 2019), <https://stateimpact.npr.org/oklahoma/2019/09/12/investigations-into-epic-charter-schools-explained/>.

⁴ *See Epic Charter Schools Special Investigative Audit*, Oklahoma State Auditor and Inspector's Office (Oct. 1, 2020), <https://www.sai.ok.gov/Search%20Reports/database/Epic%20Charter%20Schools%20Investigative%20Audit%20-%20Part%20One.pdf>.

operations.” The report also detailed the “incestuous relationship” between Epic Charter Schools and Epic Youth Services, the for-profit management company owned by the schools’ co-founders, Chaney and Harris, which allowed the company to generate substantial “personal profit on the backs of Oklahoma students.” See Jennifer Palmer, *Grand Jury: Epic Charter School “System Ripe for Fraud,”* Oklahoma Watch (May 7, 2021), <https://oklahomawatch.org/2021/05/07/grand-jury-epic-charter-school-system-ripe-for-fraud/>.

B. Plaintiffs’ Oklahoma Open Records Act Requests

11. On July 27, 2020, Palmer, in her role as a reporter for Oklahoma Watch, sent Epic Charter Schools a written ORA request for “emails to/from ben.harris@epiccharterschools.org from January 1, 2019 to July 25, 2020” (hereinafter, the “First Request”). A true and correct copy of Plaintiffs’ First Request is attached as **Exhibit A**.

12. On August 20, 2020, a representative of Epic Charter Schools, Shelly Hickman (“Hickman”), responded to Palmer stating that Epic Charter Schools would produce documents responsive to the First Request for approximately \$40,691.26. This amount included approximately \$13,563.75 in purported “copy charges” for the emails at a rate of \$0.25 per page, and \$27,127.51 to “review, redact, and compile the documents at a cost of \$85.00 an hour.” Hickman further stated that Epic Charter Schools would only begin fulfillment of the First Request upon receipt of “one half of these amounts”—\$20,345.63—as a deposit, and would only produce the requested documents upon “payment in full” of an unspecified “total actual costs.” A true and correct copy of Ms. Hickman’s August 20 response is attached as **Exhibit B**.

13. On August 25, 2020, Palmer narrowed the First Request by submitting a new request seeking “emails to/from ben.harris@epiccharterschools.org from June 20, 2019 to Aug.

30, 2019” (the “Second Request”). A true and correct copy of Plaintiffs’ Second Request is attached as **Exhibit C**.

14. On September 16, 2020, Hickman advised Palmer via email that “the cost for fulfillment” of the Second Request would be \$4,812, comprised of \$1,604 in purported “copy charges” and \$3,208 for “legal review.” A true and correct copy of Ms. Hickman’s September 16 response is attached as **Exhibit D**.

15. Plaintiffs’ counsel contacted Epic Charter Schools via email on February 9, 2021, stating, *inter alia*, that copy charges were unnecessary based on the nature of Plaintiffs’ request (*i.e.*, seeking electronic copies of emails) and that there was no legal basis to charge Plaintiffs “legal review” fees in connection with the Second Request. Plaintiffs’ counsel also informed Epic Charter Schools that Plaintiffs were prepared to cover, in accordance with the ORA, the direct cost of copying the requested records (*e.g.*, purchasing a flash drive, CD-ROM, etc.). A true and correct copy of Plaintiffs’ counsel’s February 9 correspondence to Epic Charter Schools is attached as **Exhibit E**.

16. A representative of Epic Charter Schools, Benjamin Wadley (“Wadley”), responded on February 12, 2021, stating that production of records responsive to the Second Request on a “thumb drive or other medium” was “not possible” based on speculation that the records may “contain information that is protected under the Family Educational Rights and Privacy Act (‘FERPA’), the Health Insurance Portability and Accountability Act (‘HIPAA’), or state law privilege.” A true and correct copy of Wadley’s February 12 response is attached as **Exhibit F**.

17. In his February 12, 2021 response, Wadley also stated that Epic Charter Schools would be “charging a legal review fee” to respond to Plaintiffs’ Second Request. Ex. F.

And Wadley further stated that Epic Charter Schools’ “policy of charging copy costs and review charges for Open Records Act requests is nothing new.” Ex. F.

18. On March 3, 2021, Plaintiffs’ counsel responded to Wadley and requested that records responsive to Plaintiffs’ Second Request be made available for inspection in whatever format the school saw fit, negating the need for copy charges. Plaintiffs’ counsel also reiterated the \$3,208 in “legal review” fees demanded by the school was without a basis in law and amounted to a denial of Plaintiffs’ ORA requests. A true and correct copy of Plaintiffs’ counsel’s March 3 correspondence to Epic Charter Schools is attached as **Exhibit G**.

19. On April 9, 2021, William Hickman (“Hickman”), an attorney at Hickman Law Group responded to Plaintiffs’ counsel on behalf of Epic Charter Schools. He stated, *inter alia*, that Epic Charter Schools “cannot be expected to absorb the costs associated with” the Second Request. A true and correct copy of Hickman’s April 9 response is attached as **Exhibit H**.

20. As of the filing of this Petition, Epic Charter Schools has not made any records available to Plaintiffs in response to the Second Request or sent any further correspondence to Plaintiffs or Plaintiffs’ counsel regarding the Second Request.

CAUSES OF ACTION

Count I:

Violation of the ORA for Unlawful Withholding of Records Responsive to Plaintiffs’ Second Request

(All Defendants)

21. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1 to 20 as though fully set forth herein.

22. Under the ORA, “all records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction.” Okla. Stat. tit. 51, § 24A.5. In

order to effectuate this right of access, “a public body must provide prompt, reasonable access to its records.” *Id.* § 24A.5(6).

23. The records sought by Plaintiffs through the Second Request are records of public bodies and public officials, as defined by the ORA. *Id.* § 24A.3.

24. Defendants have failed to provide prompt, reasonable access to records responsive to Plaintiffs’ Second Request, and have failed to assert any provision of the law that would allow those records to lawfully be withheld.

25. Defendants have unlawfully denied access to and withheld records that are responsive to Plaintiffs’ Second Request.

26. Defendants’ denials and withholding of records requested by Plaintiffs in the Second Request is an abrogation of their duties under the ORA and a violation of the ORA.

**Count II:
Violation of the ORA for Assessment of Copy Fees in Unlawful Amount
in Response to Plaintiffs’ Second Request**

(All Defendants)

27. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1 to 20 as though fully set forth herein.

28. Under the ORA, “charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy.” *Id.* § 24A.5(4).

29. Plaintiffs are members of the news media.

30. The records sought by Plaintiffs through the Second Request were made in connection with and to further Plaintiffs’ reporting and newsgathering, a public interest as defined by the ORA. *Id.*

31. The records sought by the Second Request are electronic data (*i.e.*, emails).

32. Defendants have insisted they must produce paper copies of the requested electronic data (*i.e.*, emails) responsive to the Second Request and that Plaintiffs must bear the cost of said production at a rate of \$0.25 per page, totaling \$1,604 in copy charges.

33. Defendants refuse to produce records without payment of these unnecessary copy charges even though Plaintiffs are ready, willing, and able to bear the direct cost of making an electronic copy of the requested data (*e.g.*, purchasing a flash drive, CD-ROM, etc. to store copies of the emails).

34. Defendants' refusal to produce copies of records requested by Plaintiffs in the Second Request without payment of copy charges that the law does not entitle Defendants to collect is an abrogation of their duties under the ORA and a violation of the ORA.

**Count III:
Violation of the ORA for Denying Access to Inspect Records Responsive to Plaintiffs'
Second Request by Assessment of Copy Fees**

(All Defendants)

35. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1 to 20 as though fully set forth herein.

36. Under the ORA, "all records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours." *Id.* § 24A.5.

37. The ORA does not contain any provision allowing public bodies or public officials to charge fees for inspection of records responsive to an ORA request. *Id.* §§ 24A.1-24A.32.

38. Defendants have insisted they must produce paper copies of emails for Plaintiffs to inspect and that Plaintiffs must bear the cost of that production at a rate of \$0.25 per page, totaling \$1,604 in copy charges.

39. Defendants refuse to make records available to Plaintiffs for inspection without payment of copy charges.

40. Defendants' refusal to make records requested by Plaintiffs in the Second Request available for inspection without payment of copy charges that the law does not entitle Defendants to collect is an abrogation of their duties under the ORA and a violation of the ORA.

**Count IV:
Violation of the ORA for Unlawful Assessment of "Legal Review"
Fees in Response to Plaintiffs' Second Request**

(All Defendants)

41. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1 to 20 as though fully set forth herein.

42. Public bodies are prohibited from using fees "for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." *Id.* § 24A.5(4).

43. Defendants have insisted Plaintiffs must pay "legal review" fees, totaling approximately \$3,208, before Defendants will release records responsive to Plaintiffs' Second Request.

44. Defendants' legal review fees of \$3,208 are impermissible, as they are without a basis in law. The ORA does not contain any provision allowing public bodies or public officials to charge a requester fees for "legal review" of records responsive to an ORA request. *Id.* §§ 24A.1-24A.32.

45. Apart from copy charges, the only other type of fee the ORA contemplates a public body or public official assessing to requestors in certain circumstances is a search fee. However, “in no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media.” *Id.* § 24A.5(4).

46. Plaintiffs are members of the news media.

47. The records sought by Plaintiffs through the Second Request were made in connection with and to further Plaintiffs’ reporting and newsgathering—a public interest as defined by the ORA. *Id.*

48. Defendants’ withholding of the records requested by Plaintiffs based on payment of “legal review” fees that the law does not entitle Defendants to collect is an abrogation of their duties under the ORA and a violation of the ORA.

**Count V:
Violation of the ORA for Employing Unlawful Practices and/or Policies
for Assessing “Legal Review” Fees in Response to ORA Requests**

(Defendants Epic Charter Schools)

49. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1 to 20 as though fully set forth herein.

50. Public bodies are prohibited from using fees “for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.” *Id.*

51. The ORA does not contain any provision allowing public bodies or public officials to charge a requester fees for “legal review” of records responsive to an ORA request. *Id.* §§ 24A.1-24A.32.

52. Defendants Epic Charter Schools have a “policy” of charging fees for “legal review” of records in response to ORA requests (the “Legal Review Fees Policy”).

53. Defendants Epic Charter Schools relied on and applied their Legal Review Fees Policy in responding to Plaintiffs' First Request and Second Request and in refusing to provide responsive records thereto.

54. Defendants Epic Charter Schools' Legal Review Fees Policy violates the ORA.

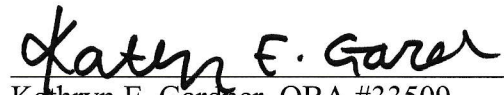
RELIEF REQUESTED

Therefore, Plaintiffs respectfully request that the Court:

- 1) Declare, pursuant to Okla. Stat. tit. 51, § 24A.17(B), that:
 - a. Defendants' withholding of public records responsive to Plaintiffs' Second Request is unlawful;
 - b. Plaintiffs are entitled to prompt disclosure of the requested records;
 - c. Defendants' assessment of copy fees at a rate of \$0.25 per page for providing copies of electronic data (*i.e.*, emails) to the news media for a news purpose in response to Plaintiffs' Second Request is unlawful;
 - d. Plaintiffs are entitled to copies of the requested records at the direct cost of copying (*e.g.*, purchasing a flash drive, CD-ROM, etc.);
 - e. Plaintiffs are entitled to inspect the requested records at no charge;
 - f. Defendants' assessment of and demand for payment of "legal review" fees in response to Plaintiffs' Second Request is unlawful; and
 - g. Epic Charter Schools is employing unlawful practices and/or policies of assessing and demanding payment of legal review fees in response to ORA requests.
- 2) Grant an injunction, pursuant to Okla. Stat. tit. 51, § 24A.17(B), or issue a writ of mandamus pursuant to Okla. Stat. tit. 12, §§ 1451-1462 requiring:

- a. Defendants to immediately provide copies of records requested by Plaintiffs pursuant to the ORA at the direct cost of copying (e.g., purchasing a flash drive, CD-ROM, etc.);
 - b. Defendants to also immediately make available for inspection the records requested by Plaintiffs pursuant to the ORA at no cost;
 - c. Prohibit Defendants from assessing or demanding payment for “legal review” fees in response to Plaintiffs’ Second Request; and
 - d. Prohibit Epic Charter Schools from employing unlawful practices and/or policies of assessing and demanding payment of legal review fees in response to ORA requests.
- 3) Award Plaintiffs reasonable attorneys’ fees in this action, pursuant to Okla. Stat. tit. 51, § 24A.17(B)(2).
- 4) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



Kathryn E. Gardner, OBA #33509
Reporters Committee for Freedom of the Press
110 S. Hartford Ave., Ste. 2524
Tulsa, OK 74120
T: (918) 255-0060
kgardner@rcfp.org
Counsel for Plaintiffs
Oklahoma Watch, Inc. and Jennifer Palmer

Exhibit A



Oklahoma Watch
impact journalism in the public interest

July 26, 2020

Epic Charter Schools
1900 NW Expy Floor R3
Oklahoma City, OK 73118

Dear Epic:

Under the **Oklahoma Open Records Act, 51 §24A.1 et seq.**, I am requesting an opportunity to inspect or obtain copies of the following public records:

Emails to/from ben.harris@epiccharterschools.org from Jan. 1, 2019 to July 25, 2020.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of public school operations. This information is not being sought for commercial purposes.

I would request a prompt response to this request. If you expect a significant delay in responding to or in fulfilling this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Best Regards,

Jennifer Palmer

Oklahoma Watch

Exhibit B

On Thu, Aug 20, 2020 at 4:12 PM Shelly Hickman <shelly.hickman@epiccharterschools.org> wrote:

Jennifer:

Actually, you do not need to direct open records requests to anyone individually. In the future, please submit your requests using our online form so they are properly ticketed and tracked. The link to the form on our website is here: <https://epiccharterschools.org/open-records-request> I will break up the school's response to your two requests individually in this email.

1. In response to your July 26, 2020 Open Records Act request for all "Emails to/from ben.harris@epiccharterschools.org from January 1, 2019 to July 25, 2020", Epic will produce all documents within its custody and control that are responsive to this request. At a rate of 25 cents per copy, we estimate copy charges to be approximately \$13,563.75. This is assuming each email is one (1) page. If emails are more than one (1) page, the copy charge will increase.

Additionally, due to the sensitive nature of these emails, which may contain confidential student data as well as other privileged information, there will be an added cost to review, redact and compile the documents you have requested, which is why they must be printed. Epic follows the policy of the State Department of Education for these costs, which allows for a charge of \$85.00 per hour when additional review is required, such as in this case. The State Department of Education policy can be found at <https://sde.ok.gov/sites/default/files/documents/files/201701041130.pdf> for your reference. Due to the high volume of requested documents, we estimate these charges to be approximately \$27,127.51.

Due to the significant time and expense it will take Epic staff to review, redact, compile and copy the requested documents, we will require a deposit of one-half of these amounts as a deposit prior to beginning. Upon receipt of your deposit, we will complete your request and determine total actual costs. Payment in full will be required prior to production of the requested documents. If copy charges as well as review charges are less than your deposit, any excess will be promptly refunded.

Please let us know when we can expect payment of the deposit and we will immediately begin working on your request.

Exhibit C

Open Records Request

Thank you. Your open records request has been received. However, due to EPIC's remote work environment amid the pandemic, non-academic records requests may take reasonably longer to fill than is typically experienced.

Open Records Request

Please select one of the following options.: Media

Information Requested: Emails to/from ben.harris@epiccharterschools.org from June 20, 2019 to Aug. 30, 2019.

Email Address: jpalmer@oklahomawatch.org

Purpose of Request: Public Interest

Name of Person Making the Request: Jennifer Palmer

Address: [500 N. Broadway Ave.](#)
Suite LL10
Oklahoma City, OK 73102
United States of America

Phone: 405-325-2084

Fax:

School or Company of Requestor: Oklahoma Watch

E-Signature: Jennifer Palmer

Date: 08/25/2020

Exhibit D

On Wed, Sep 16, 2020 at 11:23 AM Shelly Hickman <shelly.hickman@epiccharterschools.org> wrote:

In regard to your revised open records request on a different matter: After our IT vendor identified how many emails would be involved with your revised timeline and when we apply the same assumptions as the last estimate for this revised time frame, the cost for fulfillment is: \$1,604 in copy charges (again, we must print out the emails so we have the ability to redact anything necessary to be in compliance with FERPA and any other privacy laws) and \$3,208 for the legal review. This would be a total of \$4,812.

Exhibit E

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

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Bruce D. Brown
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MASSIMO CALABRESI

Time Magazine

MANNY GARCIA

Austin American-Statesman

EMILIO GARCIA-RUIZ

San Francisco Chronicle

JOSH GERSTEIN

POLITICO

ALEX GIBNEY

Jigsaw Productions

SUSAN GOLDBERG

National Geographic

JAMES GRIMALDI

The Wall Street Journal

LAURA HANDMAN

Davis Wright Tremaine

DIEGO IBARGÜEN

Hearst

KAREN KAISER

The Associated Press

DAVID LAUTER

The Los Angeles Times

MARGARET LOW

WBUR

JANE MAYER

The New Yorker

COLLEEN MCCAIN NELSON

The McClatchy Company

MAGGIE MULVIHILL

Boston University

JAMES NEFF

The Philadelphia Inquirer

NORMAN PEARLSTINE

New York, New York

THOMAS C. RUBIN

Stanford Law School

CHARLIE SAVAGE

The New York Times

JENNIFER SONDAG

Bloomberg News

NABIHA SYED

The Markup

ADAM SYMSON

The E.W. Scripps Company

PIERRE THOMAS

ABC News

SAUNDRA TORRY

Freelance

VICKIE WALTON-JAMES

NPR

JUDY WOODRUFF

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NBC News

CAROL ROSENBERG

The New York Times

PAUL STEIGER

ProPublica

Affiliations appear only

February 9, 2021

Mr. Benjamin Wadley
Director of Legal Services
EPIC Charter Schools
ben.wadley@epiccharterschools.org

VIA EMAIL

Dear Mr. Wadley:

I represent Oklahoma Watch in connection with a request for public records sought by Ms. Jennifer Palmer under the Oklahoma Open Records Act (“ORA”). Oklahoma Watch is a non-profit, award-winning, news organization that produces in-depth and investigative journalism as a public service for the benefit of all Oklahomans. Ms. Palmer is a seasoned journalist and Staff Reporter at Oklahoma Watch who covers education for the news organization.

On July 26, 2020, Ms. Palmer sent an ORA request in the public interest for newsgathering purposes to EPIC Charter Schools (“EPIC”) via an email to Ms. Shelly Hickman requesting “[e]mails to/from ben.harris@epiccharterschools.org from January 1, 2019 to July 25, 2020.”

Ms. Hickman first responded on August 20, 2020, to inform Ms. Palmer that EPIC would produce the relevant documents at a cost of approximately \$40,691.26 to Oklahoma Watch. This exorbitant fee included approximately \$13,563.75 for copy charges at \$0.25 per page and \$27,127.51 to review, redact, and compile the documents at \$85 an hour due to the “sensitive nature” of the emails.

On August 25, 2020, Ms. Palmer submitted another ORA request to EPIC via the school’s online form for such requests. In her request, Ms. Palmer identified herself as a member of the media, stated the purpose of her request was “public interest,” and significantly narrowed the scope of her original request to “[e]mails to/from ben.harris@epiccharterschools.org from June 20, 2019 to Aug. 30, 2019.”

Ms. Hickman then quoted the revised request at \$4,812—with \$1,604 in copy charges and \$3,208 for “legal review.” In response, Ms. Palmer asked for a detailed and itemized invoice regarding the request, hoping to negotiate the associated fees. Ms. Hickman did not provide Ms. Palmer with the invoice as requested. Instead, Ms. Hickman insisted that Ms. Palmer had made “a very large request” and in order to comply EPIC would have to “retrieve the records, make copies and then the legal review determines what has to be redacted for such things as HIPPA [sic], FERPA, attorney client privilege.” Ms. Palmer’s request has since gone unfulfilled.

The law governing requests for public records in Oklahoma clearly states that “fees shall not be used for the purpose of discouraging requests for information

or as obstacles to disclosure of requested information.” Okla. Stat. tit. 51, § 24A.5(4). EPIC’s fee of \$4,812 to fulfill Ms. Palmer’s public record request is prohibitive and in violation of the ORA. EPIC or any other public body may not make rules, policies, or procedures that conflict with the ORA or its enabling legislation. *See id.* §§ 24A.1- 24A.32; *Marley v. Cannon*, 1980 OK 147, ¶10, 618 P.2d 401, 405; 2006 OK AG 35. EPIC should provide Ms. Palmer with the requested public records at little to no cost to Oklahoma Watch pursuant to the ORA.

The \$4,812 quote Ms. Palmer received from EPIC in response to her ORA request included \$1,604 in copy charges and \$3,208 for “legal review.” Copy charges are unnecessary in this matter. As stated in her request, Ms. Palmer wishes to receive the requested public records—emails—electronically. Where records are kept in electronic format (like emails), they should be provided in such a format upon request. *See Transp. Info. Servs., Inc. v. Okla. Dep’t of Corrs.*, 1998 OK 108, ¶¶11-12, 970 P.2d 166, 171; 2006 OK AG 35; 1985 OK AG 36. It is Oklahoma law that “providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy.” Okla. Stat. tit. 51, § 24A.5(4). Oklahoma Watch is prepared to cover the direct cost of copying the relevant electronic data by purchasing a flash drive, CD-ROM, or other reasonable electronic data storage device in order for Ms. Palmer’s request to be fulfilled.

Additionally, there is no legal authority or basis for EPIC to assess fees to Oklahoma Watch related to “legal review” of public records relevant to Ms. Palmer’s request. While Oklahoma law does permit what is known as a search fee in certain circumstances, search fees shall “in no case” be assessed when the release of records “is in the public interest, including, but not limited to, release to the news media.” *Id.* In her request to EPIC, Ms. Palmer identified herself as a member of the media and stated her purpose as public interest. Attempting to charge Oklahoma Watch fees related to “legal review” of the public records relevant to Ms. Palmer’s request contradicts the ORA and has no legitimate basis in law.

EPIC’s actions in this matter have wrongfully denied Ms. Palmer’s right to access public records under the ORA. Please comply with your duties under the ORA and fulfill Ms. Palmer’s request no later than February 19, 2021—she has now waited nearly 200 days for the requested public records. *Id.* § 24A.5(6). Oklahoma Watch reserves all rights in regards to this matter.

Please make arrangements with Ms. Palmer regarding fulfillment of her public records request and any necessary payment. As stated above, Oklahoma Watch is prepared to cover the direct cost of copying emails to and from ben.harris@epiccharterschools.org from June 20, 2019, to August 30, 2019, in order for Ms. Palmer’s request to be fulfilled.

Thank you for your time and attention to this matter. I look forward to your response.

Respectfully,



Kathryn E. Gardner

Exhibit F

February 12, 2021

Via Email

Jennifer Palmer
Oklahoma Watch
395 W. Lindsey St., Suite 3120D
Norman, OK 73019
jpalm@oklahomawatch.org

Re: Open Records Act Request for emails of Ben Harris

Dear Ms. Palmer:

This letter is in response to your Open Records Act request to Epic Charter Schools for Ben Harris's emails. When we received your original request for all "[e]mails to/from ben.harris@epiccharterschools.org from January 1, 2019 to July 25, 2020", we advised you of our estimated copy costs of \$13,563.75, which was based upon 54,255 copies at the rate of 25 cents per copy (as allowed under 51 O.S. § 24A.5). We also advised you of our estimated costs for legal review of these copies due to the likelihood that they may contain sensitive information, including public school student records, student health information, and other privileged matters mandated to be kept confidential under state and federal law. This calculation was based upon an estimate of 54,255 documents in this time period, which can be reviewed at an average rate of 170 documents per hour, at a rate of \$85.00 per hour, for a total legal review fee of \$27,127.51. The \$85.00 per hour legal review fee is based upon the policy of the State Department of Education, which allows for a charge of \$85.00 per hour when additional review is required, such as in this case. This policy, which Epic has adopted, can be found at <https://sde.ok.gov/sites/default/files/documents/files/201701041130.pdf> for your reference.

When Shelly Hickman advised you of these costs, you then agreed to significantly modify the scope of your request to only those emails from June 20, 2019 to August 30, 2019. Based upon this modification, Ms. Hickman advised you that copy costs would now be approximately \$1,604.00, which is based upon 6,416 copies at the rate of 25 cents per copy. She also advised you the legal review costs would be reduced to \$3,208.00, computed as the cost to review 6,416 copies, which could be reviewed at the rate of 170 copies per hour, at the rate of \$85.00 per hour.

As you know, the Oklahoma Open Records Act allows a public body to charge a fee for the cost of copying documents requested in an amount not to exceed 25 cents per copy. 51 O.S. § 24A.5. While I appreciate your offer to supply a thumb drive or other medium to receive the documents electronically, in this particular instance, that is not possible. The records you have requested likely contain information that is protected under the Family Educational Rights

February 12, 2021

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and Privacy Act ("FERPA"), the Health Insurance Portability and Accountability Act ("HIPAA"), or state law privilege. Under FERPA, a school cannot disclose any information about a student without permission from the parent, or from the student if over the age of eighteen. Likewise, HIPAA prevents the disclosure of personal health information without permission. To the extent such health information is not covered by FERPA, HIPAA would prevent further disclosure. Additionally, this request may contain emails covered by state law privilege, such as attorney client privilege. Each document must therefore be copied and reviewed so that appropriate redactions of this confidential information can be made before production to you. While there are many document requests where the documents can simply be downloaded to a thumb drive, due to the sensitive nature of the records and likely redaction that is required under state and federal law, that is not an option for this request.

You are correct that the Open Records Act does not allow a public body such as Epic to charge a "search fee" when the request is in the public interest and comes from the news media. However, Epic is not requesting a search fee. Instead, Epic is charging a legal review fee as contemplated in the State Department of Education policy for instances such as this. As a public school, most emails responsive to your request will likely contain confidential student information which we are required by law to keep confidential. The school could in fact face severe liability if this confidentiality is breached by accidental disclosure to anyone outside of the school. Due to the serious consequences for unauthorized disclosure of this information and the need to protect our students, as well as other privileges allowed, legal review prior to disclosure is required.

Epic's policy of charging copy costs and review charges for Open Records Act requests is nothing new. In fact, just last year when Epic responded to a different Open Records Act request from you, Oklahoma Watch paid the statutorily allowed copy costs and review charges without question. I'm sure you can understand that as stewards of public education funds, Epic is obligated to safeguard those funds for the benefit of its students. Recovering reasonable costs and fees in responding to Open Records Act requests is part of that obligation.

Ms. Palmer, I am committed to working with you to get this matter resolved. If the reduced charges based on your modified request (emails between June 20, 2019-August 30, 2019) are acceptable, upon payment of half of the amount as a deposit, we will get started immediately on copying and review. If you want to limit the scope of your request even further, that would decrease costs and speed up the process of review.

Let me know how you want to proceed and please feel free to call if you want to discuss further.

February 12, 2021
Page 3

Sincerely,

Benjamin Wadley

Ben Wadley
Director of Legal Services
Epic Charter Schools

cc: Kathryn Gardner katiebethgardner@gmail.com
Mike Sherman msherman@oklahomawatch.org
Ted Streuli tstreuli@oklahomawatch.org

Exhibit G

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PAUL STEIGER
ProPublica

Affiliations appear only

March 3, 2021

Mr. Benjamin Wadley
Director of Legal Services
EPIC Charter Schools
ben.wadley@epiccharterschools.org

VIA EMAIL

Dear Mr. Wadley:

Thank you for your response to my initial correspondence. I am writing again on behalf of Oklahoma Watch to request EPIC Charter Schools ("EPIC") fulfill its obligations under the Oklahoma Open Records Act ("ORA") with respect to Ms. Jennifer Palmer's public records request submitted on August 25, 2020.

It is my understanding that EPIC is still requesting payment of \$4,812—comprised of \$1,604 for copy fees and \$3,208 for legal review—to fulfill Ms. Palmer's ORA request. Rather than providing copies of the requested public records, please make all emails to/from ben.harris@epiccharterschools.org from June 20, 2019, to August 30, 2019, available for inspection by Ms. Palmer in whatever format you see fit. *See* Okla. Stat. tit. 51, §§ 24A.5, 24A.6. Accordingly, no copy fees may be assessed for fulfillment of this request.

As to the purported fee associated with legal review, there is no basis in Oklahoma law for the assessment of such a fee. In your response to my initial correspondence, you stated that the "\$85.00 per hour legal review fee [which makes up the \$3,208 figure] is based upon the policy of the State Department of Education, which allows for a charge of \$85.00 per hour when additional review is required, such as in this case."

However, neither EPIC nor any other public body, including the State Department of Education, may make rules, policies, or procedures that conflict with the ORA or its enabling legislation. *See id.* §§ 24A.1- 24A.32; *Marley v. Cannon*, 1980 OK 147, ¶10, 618 P.2d 401, 405; 2006 OK AG 35. The ORA provides no authority or basis for EPIC to assess fees for legal review of public records. Accordingly, the attempt to charge Oklahoma Watch fees related to legal review of the public records relevant to Ms. Palmer's request violates the ORA. *See id.* § 24A.5.

"[F]ees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." *Id.* § 24A.5(4). Please comply with your duties under the ORA and promptly make the public records relevant to Ms. Palmer's request available for inspection at no cost to Oklahoma Watch. Oklahoma Watch reserves all rights in regards to this matter.

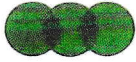
Thank you for your time and continued attention to this matter. I look forward to your response.

Respectfully,

Kathryn E. Gardner

Kathryn E. Gardner

Exhibit H



Hickman Law Group
attorneys counselors mediators

William H. Hickman
hickman@hickmanlawgroup.com

April 9, 2021

VIA E-MAIL:

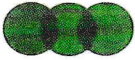
KatieBeth Gardner
110 S. Hartford Ave., Ste. 2526
Tulsa, OK 74120
kgardner@rcfp.org

RE: Epic Charter Schools

Dear Ms. Gardner:

I am in receipt of your letter dated March 3, 2021 to Mr. Benjamin Wadley, the Director of Legal Services for EPIC Charter Schools concerning the Open Records Request ("ORA") submitted by Ms. Jennifer Palmer on August 25, 2020. In your letter, you assert that "no copy fees may be assessed for fulfillment of this request," asserting that my client can provide copies of the requested public records for inspection by Ms. Palmer in whatever format my client sees fit. However, your conclusory analysis fails to consider that my client cannot simply provide unredacted copies of emails without: (1) conducting a review of said emails; and (2) redacting information as necessary to avoid any violations of law. We have a legal and moral obligation to protect our student's data and personal information, and we take that responsibility seriously. Further, your analysis fails to consider the burdensome, disruptive nature of the request considering that it seeks ALL the emails for an extended period without any specific topic, or search terms provided.

In the case *McVarish v. New Horizons Community Counseling and Mental Health Services, Inc.*, 1995 OK CIV APP 145, the Oklahoma Court of Appeals stated, "that the public interest is as equally well served by public agencies performing their essential services without burdensome, disruptive records requests as in providing release of information to taxpayers." *Id.* at ¶3. In the case *Merrill v. Oklahoma Tax Com'n*, 1992 OK 53, the Oklahoma Supreme Court determined that a fee to include labor and administrative costs were allowable when the request would cause excessive disruption of the public body's essential functions. In fact, the Merrill court discussed that the Tax Commission's legal staff and computer services division had to decide whether compliance was possible, and, if so, the procedure to be used in providing the services and costs. *Id.* at ¶9. Considering that Ms. Palmer's ORA was for all emails for more than a sixty (60) day period, this request is burdensome and will cause excessive disruption of the schools' essential function to educate children. Without providing any specific topics or search terms to narrow the scope of the records request, my client is legally obligated to comply with other basic principles of law, to include the privacy rights afforded to students under FERPA, privacy rights afforded to employees under HIPAA, as well as other privileges (such as attorney-client privilege) set out in the Oklahoma Open Records Act as exclusions to what constitutes a public record.



HickmanLawGroup
attorneys counselors mediators

If you have legal authority that would justify the production of records containing student privacy information, protected healthcare information, attorney-client privileged communications or other excluded records set forth in the Oklahoma Open Records Act, please provide said citations.

Over the past eighteen (18) months, my client has satisfied numerous open records requests. My client stands prepared to fulfill Ms. Palmer's request but cannot be expected to absorb the costs associated with a request that is burdensome and disruptive to its essential function to serve the children of Oklahoma. My client is and will continue to work in good faith and with reasonable diligence to comply with open records requests, and to ensure transparency with its public records.

If you have any questions, please not hesitate to contact me.

Sincerely,

William H. Hickman

CC: Ben Wadley