



FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

JAN 24 2022

RICK WARREN  
COURT CLERK

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

Case No. CV-2021-1085  
Judge Ogden

**PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

Plaintiffs move this Court pursuant to Okla. Stat. tit. 12, § 3237 for an order compelling Defendants to respond to Plaintiffs' discovery requests and requiring Defendants to pay the expenses and attorney fees incurred by Plaintiffs in preparing and filing this motion. Specifically, Plaintiffs request an order compelling Defendants to (1) answer Interrogatory Nos. 1-27 of Plaintiffs' First Set of Interrogatories for Defendants, and (2) produce the documents described in Request Nos. 1-15 of Plaintiffs' First Request for Production of Documents and Tangible Things by Defendants. This motion is made on the following grounds:

1. Plaintiffs filed a Petition pursuant to the Oklahoma Open Records Act, Okla. Stat. tit. 51, §§ 24A.1-24A.33, in the above-captioned matter on May 11, 2021. After an initial reservation of time, Defendants filed their Answer to Plaintiffs' lawsuit on June 17, 2021.
2. On October 29, 2021, Plaintiffs served upon Defendants (i) Plaintiffs' First Set of Interrogatories for Defendants, and (ii) Plaintiffs' First Request for Production of

Documents and Tangible Things by Defendants. *See* Okla. Stat. tit. 12, §§ 3226, 3233, 3234. A true and correct copy of Plaintiffs' First Set of Interrogatories for Defendants is attached hereto as Exhibit A. A true and correct copy of Plaintiffs' First Request for Production of Documents and Tangible Things by Defendants is attached hereto as Exhibit B.

3. On November 16, 2021, counsel for Defendants, William H. Hickman, moved to withdraw as counsel from the above-captioned matter and stated in part as the basis of his motion that his "withdrawal as counsel for Epic will not prejudice or inconvenience the parties." On November 30, 2021, this Court entered an Order Allowing Withdrawal of William H. Hickman as Counsel for Plaintiff.
4. On November 23, 2021, undersigned counsel was informed by a representative of Defendants that Sam R. Fulkerson of Ogletree Deakins in Oklahoma City, Oklahoma, would be representing Defendants in this case. To date, Mr. Fulkerson has not filed an entry of appearance in the above-captioned matter.
5. Also on November 23, 2021, undersigned counsel provided Mr. Fulkerson with a courtesy copy of both (i) Plaintiffs' First Set of Interrogatories for Defendants, and (ii) Plaintiffs' First Request for Production of Documents and Tangible Things by Defendants. In the same email correspondence, Plaintiffs' counsel noted for Mr. Fulkerson that the deadline for compliance with Plaintiffs' initial discovery requests was November 29, 2021.
6. Defendants' responses to both Plaintiffs' interrogatories and requests for production were due on or before November 29, 2021. Okla. Stat. tit. 12, §§ 3226, 3233, 3234. Defendants have failed to respond to, request an extension of time to respond, or

object to either Plaintiffs' First Set of Interrogatories for Defendants or Plaintiffs' First Request for Production of Documents and Tangible Things by Defendants. Accordingly, Defendants have waived the right to object to Plaintiffs' initial discovery requests. *See id.*

7. Counsel for both parties conferred via telephone on January 21, 2022, regarding, among other matters, Defendants' failure to timely respond to Plaintiffs' outstanding discovery. Undersigned counsel conferred in good faith with Counsel for Defendants in an effort to secure the outstanding responses without court action. Counsel for Defendants confirmed that Defendants were not prepared to provide responses to Plaintiffs' discovery requests. Undersigned counsel informed Mr. Fulkerson of Plaintiffs' intent to move to compel Defendants' responses, which are overdue by nearly two months.
8. Plaintiffs have incurred reasonable attorney fees and expenses to prepare and file this motion.

Based on the foregoing, Plaintiffs respectfully request an order requiring Defendants to (1) answer Interrogatory Nos. 1-27 of Plaintiffs' First Set of Interrogatories for Defendants, and (2) produce the documents described in Request Nos. 1-15 of Plaintiffs' First Request for Production of Documents and Tangible Things by Defendants. Plaintiffs further request relief which this Court deems just and equitable, including an award of costs and reasonable attorney fees in connection with this motion as contemplated by Okla. Stat. tit. 12, § 3237(A)(4).

**Dated: January 24, 2022**

Respectfully submitted,

*Kathryn E. Gardner*

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Kathryn E. Gardner, OBA #33509  
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Counsel for Plaintiffs  
Oklahoma Watch, Inc. and Jennifer Palmer

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of Plaintiffs' Motion to Compel Discovery was mailed this 24th day of January 2022, by depositing it in the U.S. Mail, postage prepaid to Sam R. Fulkerson at the mailing address provided below that Plaintiffs' counsel obtained from Ogletree.com and via email to sam.fulkerson@ogletreedeakins.com. Upon information and belief, Mr. Fulkerson is representing Defendants in the above-captioned matter.

Sam R. Fulkerson  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
621 N Robinson Ave  
Suite 400  
Oklahoma City, OK 73102  
T: 405-546-3751

*Kathryn E. Gardner*

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Kathryn E. Gardner

# **EXHIBIT A**

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA WATCH, INC. and	)		
JENNIFER PALMER,	)		
Plaintiffs,	)		
	)		
vs.	)	Case No.	CV-2021-1085
	)		Judge Ogden
EPIC BLENDED LEARNING CHARTER,	)		
a school district; EPIC ONE-ON-ONE CHARTER	)		
SCHOOL, a school district; BART BANFIELD,	)		
in his official capacity as SUPERINTENDENT	)		
of EPIC BLENDED LEARNING CENTER and	)		
EPIC ONE-ON-ONE CHARTER SCHOOL,	)		
Defendants.	)		

**PLAINTIFFS' FIRST SET OF INTERROGATORIES FOR DEFENDANTS**

Plaintiffs Oklahoma Watch, Inc. and Jennifer Palmer hereby request pursuant to Okla. Stat. tit. 12, §§ 3226 and 3233 that 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, answer the following interrogatories.

**INSTRUCTIONS**

1. Each Defendant, (i) Epic Blended Learning Centers, (ii) Epic One-on-One Charter School, and (iii) Bart Banfield in his official capacity as Superintendent of Epic Blended Learning Centers and Epic One-on-One Charter School, should provide an individual response to these interrogatories.

2. Each interrogatory herein is to be answered separately and fully in writing under oath. In answering these interrogatories, furnish all knowledge, information, and documents available to you, including knowledge, information, and documents in the possession, custody, or control of your attorneys; representatives; employees; agents; staff members; anyone acting on

your behalf or at your direction; and any other person who has possession, custody, or control of your knowledge, information, and documents.

3. If you are unable to answer a particular interrogatory fully and completely after making a diligent effort to secure the information needed to do so, answer the interrogatory to the fullest extent possible. Specify the portion of each such interrogatory that you claim you are unable to answer fully and completely, and further specify the facts on which you rely on to support that claim, including the efforts undertaken by you to secure the information necessary to answer the interrogatory.

4. If you object to a particular interrogatory, or to part of an interrogatory, the specific ground for the objection must be set forth clearly in your response to that interrogatory. If you object to only part of an interrogatory, the remainder of the interrogatory must be answered.

5. For any interrogatory or part of an interrogatory which you refuse to answer under a claim of privilege, identify the nature of the information withheld; specify the grounds of the claimed privilege and the paragraph of these interrogatories to which the information is responsive; and identify each person to whom the information, or any part thereof, has been disclosed. Likewise, if an objection is based on a claim that the information sought is protected work product, that claim, and the basis therefor must be clearly and expressly stated.

6. For any record or document responsive or relating to these interrogatories which is known to have been destroyed or lost, or is otherwise unavailable, identify each such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document.



7. Pursuant to Oklahoma law, serve a copy of your answers, and objections if any, to Plaintiffs within 30 days after service of these interrogatories. *See Okla. Stat. tit. 12, § 3233(A).*

#### **DEFINITIONS**

1. “ACTION” refers to the above-captioned matter, *Oklahoma Watch v. Epic Blended Learning Charter* (District Court of Oklahoma County Case No. CV-2021-1085).

2. “EPIC” means and refers to Epic Blended Learning Charter, a school district, and Epic One-on-One Charter, a school district, and/or any person acting on behalf or at the direction thereof, including, without limitation, any assistants, employees, attorneys, agents, staff members, and/or representatives of Epic Blended Learning Charter or Epic One-on-One Charter.

3. “BANFIELD” means and refers to Epic Superintendent Bart Banfield.

4. “YOU” or “YOUR” means and refers to Defendants EPIC and BANFIELD, and/or any person acting on behalf or at the direction thereof, including, without limitation, any assistants, employees, attorneys, agents, staff members, and/or representatives of EPIC and/or BANFIELD.

5. “FIRST REQUEST” means and refers to the request for PUBLIC RECORDS submitted to EPIC on July 27, 2020 by Jennifer Palmer in her role as a reporter for Oklahoma Watch for “emails to/from [ben.harris@epiccharterschools.org](mailto:ben.harris@epiccharterschools.org) from January 1, 2019 to July 25, 2020.” *See Plaintiffs’ Petition Exhibit A.*

6. “SECOND REQUEST” means and refers to the request for PUBLIC RECORDS submitted to EPIC on August 25, 2020 by Jennifer Palmer in her role as a reporter for Oklahoma Watch for “emails to/from [ben.harris@epiccharterschools.org](mailto:ben.harris@epiccharterschools.org) from June 20, 2019 to Aug. 30, 2019.” *See Plaintiffs’ Petition Exhibit C.*

7. “HARRIS” means and refers to Ben Harris, YOUR Co-Founder.

8. "AGREEMENT" means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

9. "ANY" means one or more.

10. "COMMUNICATION" means any disclosure, transfer, or exchange of information, ideas, opinions, or thoughts by any means, whether oral, written, telephonic, or electronic. Communication includes, without limitation, in-person meetings, telephone calls, emails, text messages, instant messages, voicemail, memoranda to file, letters, and any documents memorializing or reflecting a discussion among one or more individuals.

11. "DESCRIBE IN DETAIL" as used in these interrogatories includes a request for a complete description and explanation of the facts, circumstances, analysis, opinions, and other information relating to the subject matter of a specific interrogatory.

12. "DOCUMENT" as used herein shall have the broadest meaning permitted under the law of the State of Oklahoma. It means and includes, but is not limited to, any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, that is in your possession, custody, or control. The term includes agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they resulted in a final document; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts of telephone conversations; phone mail; email; text messages; instant messages; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; and computer print-outs.

The term document also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term document includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term control as used in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

13. For any interrogatory that asks you to "IDENTIFY":
  - a. Regarding a COMMUNICATION, "IDENTIFY" means to state: (i) the date the communication occurred, (ii) the location where it occurred, and (iii) all persons party to the communication, including, but not limited to, the speakers/senders of the communication, and the recipients of the communication.
  - b. Regarding a DOCUMENT or PUBLIC RECORD, "IDENTIFY" means to state: (i) the name, title, or subject of the document or public record, (ii) its date, (iii) the persons who authored, prepared, or created it, and (iv) the persons who received it.
  - c. Regarding a PERSON, "IDENTIFY" means to state each person's: (i) name, (ii) address, (iii) telephone number, and (iv) relationship, if any, to you.
14. "INCLUDING" means including, but not limited to.

15. "PERSON" means and includes any natural person, public official, corporation, company, partnership, joint venture, firm, association, proprietorship, public body, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

16. "PUBLIC RECORD" means all DOCUMENTS, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property.

17. "RELATING TO" means containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in whole or in part.

18. "REQUEST" means and refers to a request for public records made pursuant to the Oklahoma Open Records Act, Okla. Stat. tit. 51, §§ 24A.1-24A.33.

19. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted. The term or shall mean and, and vice-versa, as necessary to bring within the scope of the following interrogatories all information or documents that would be excluded absent this definition.

## **INTERROGATORIES**

1. DESCRIBE IN DETAIL YOUR policies and/or procedures in place since January 1, 2011, for responding to REQUESTS for PUBLIC RECORDS, including written and unwritten policies and/or procedures, and all versions of such policies and/or procedures.

2. With respect to each version of the policies and/or procedures identified and described in YOUR response to INTERROGATORY NO. 1, DESCRIBE IN DETAIL the costs YOU could and/or would assess to requestors of PUBLIC RECORDS and how YOU calculate such costs.

3. IDENTIFY all PERSONS since January 1, 2011, who have authored, drafted, formulated and/or developed each version of the policies and/or procedures identified and described in YOUR response to INTERROGATORY NO. 1.

4. IDENTIFY all PERSONS since January 1, 2011, who have approved or otherwise put into effect each version of the policies and/or procedures identified and described in YOUR response to INTERROGATORY NO. 1.

5. IDENTIFY all PERSONS since January 1, 2011, responsible for ensuring compliance with each version of the policies and/or procedures identified and described in YOUR response to INTERROGATORY NO. 1.

6. DESCRIBE IN DETAIL how YOU carry out legal review of REQUESTS for PUBLIC RECORDS. *See e.g.*, Defendants' Answer, p. 7, ¶ 43 ("Epic admits that it has described the fee necessary to review the emails as a "legal review" fee in relation to the work necessary to ensure the protection of the privacy rights of students, employees, attorney-client privilege, and other exceptions to the ORA.").

7. IDENTIFY all PERSONS since May 1, 2019, who have participated in legal review of REQUESTS for PUBLIC RECORDS made to YOU by (i) name, (ii) employer, and (iii) title.

8. IDENTIFY all PERSONS who have otherwise participated in processing and/or responding to REQUESTS for PUBLIC RECORDS made to YOU since May 1, 2019.

9. IDENTIFY all REQUESTS for PUBLIC RECORDS YOU have fulfilled after legal review or with the assistance of an attorney since May 1, 2019.

10. IDENTIFY all REQUESTS for PUBLIC RECORDS YOU have fulfilled without legal review or without the assistance of an attorney since May 1, 2019.

11. IDENTIFY all PERSONS who have been involved in any way with the FIRST REQUEST and/or SECOND REQUEST at issue in this ACTION, including but not limited to those who received the request, reviewed it, were involved in its processing and/or assessment, responded to it, searched for and/or retrieved responsive records, etc.

12. With respect to each PERSON identified in YOUR response to INTERROGATORY NO. 11, DESCRIBE IN DETAIL their involvement and all actions they took related to the FIRST REQUEST and/or SECOND REQUEST at issue in this ACTION.

13. IDENTIFY the title and version number of all software installed or executed on YOUR computer systems from January 1, 2020, to present.

14. IDENTIFY all email systems YOU currently use or have previously used from January 1, 2020, to present.

15. DESCRIBE IN DETAIL YOUR policies and/or procedures and the circumstances by which YOU assign an email address associated with EPIC to individuals, including but not

limited to email addresses that end in @epiccharterschools.org. This interrogatory includes, but is not limited to, both written and unwritten policies and/or procedures.

16. IDENTIFY all current and previous email addresses registered to @epiccharterschools.org.

17. DESCRIBE IN DETAIL what it costs YOU to provide requestors with copies of PUBLIC RECORDS that are responsive to REQUESTS. Your answer to this interrogatory should include a description of all costs YOU incur to provide requestors with paper copies as well as all costs YOU incur to provide requestors with electronic copies in any format you have previously provided to any requestor of PUBLIC RECORDS.

18. DESCRIBE IN DETAIL every instance YOU have accommodated inspection of PUBLIC RECORDS related to a REQUEST at any of YOUR places of business or operation since May 1, 2019. Your description should include: (i) the date the REQUEST was received, (ii) a description of the REQUEST, (iii) when and where the inspection took place, (iv) who was present during inspection, (v) the number of DOCUMENTS inspected, (vi) the format DOCUMENTS were inspected in, and (vii) whether legal review of the DOCUMENTS was performed prior to inspection.

19. IDENTIFY the number of emails received by or sent from ben.harris@epiccharterschools.org (i) between January 1, 2019, through and including July 25, 2020, and (ii) between June 20, 2019, through and including August 30, 2019.

20. IDENTIFY all PUBLIC RECORDS REQUESTS for emails received by or sent from ben.harris@epiccharterschools.org, including the disposition (pending, withdrawn, fulfilled, denied, etc.) of each REQUEST, and any costs YOU assessed to the requestor for fulfillment.

21. DESCRIBE IN DETAIL YOUR Health Insurance Portability and Accountability Act (HIPAA) policies and/or procedures including, but not limited to, (i) YOUR entity status (covered vs. non-covered entity, business associate, etc.), (ii) how and where YOU maintain protected health information, and (iii) who has access to protected health information. This interrogatory includes, but is not limited to, both written and unwritten policies and/or procedures.

22. DESCRIBE IN DETAIL YOUR Family Educational Rights and Privacy Act (FERPA) policies and/or procedures including, but not limited to, (i) how and where YOU maintain student education records, (ii) how YOU determine who is a school official and what constitutes a legitimate educational interest, and (iii) who has access to student education records. This interrogatory includes, but is not limited to, both written and unwritten policies and/or procedures.

23. IDENTIFY all privacy laws YOU have determined apply to or are implicated by the FIRST REQUEST and/or SECOND REQUEST at issue in this ACTION, including the facts supporting the application of those laws. *See e.g.*, Defendants' Answer, p. 5, ¶ 31 ("While the request may be seeking emails, those emails will need to be reviewed and potentially redacted to ensure compliance with various privacy laws, as well as the exceptions set forth in the ORA. As such, Epic cannot simply drop the electronic emails on a flash drive to give to Plaintiffs without potentially violating various state and federal privacy laws, which exempt such records from the Open Records Act.").

24. DESCRIBE IN DETAIL YOUR relationship with HARRIS from present dating back to January 1, 2011, including every change or modification to that relationship.



25. DESCRIBE IN DETAIL ANY compensation HARRIS has received from YOU from present dating back to January 1, 2011, sorted by calendar year, including but not limited to salary, wage, benefits, bonuses, paid leave, pension funds, commissions, etc.

26. DESCRIBE IN DETAIL YOUR essential functions and non-essential functions.

27. IDENTIFY all persons YOU contend should be joined in this ACTION. *See e.g.*, Defendants' Answer, p. 10, ¶ 2 ("Failure to join the proper party.").

**Dated: October 28, 2021**

Respectfully,



Kathryn E. Gardner, OBA #33509  
Reporters Committee for Freedom of the Press  
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T: (918) 255-0060  
[kgardner@rcfp.org](mailto:kgardner@rcfp.org)  
Counsel for Plaintiffs  
Oklahoma Watch, Inc. and Jennifer Palmer

# **EXHIBIT B**

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA WATCH, INC. and	)		
JENNIFER PALMER,	)		
Plaintiffs,	)		
	)		
vs.	)	Case No.	CV-2021-1085
	)		Judge Ogden
EPIC BLENDED LEARNING CHARTER,	)		
a school district; EPIC ONE-ON-ONE CHARTER	)		
SCHOOL, a school district; BART BANFIELD,	)		
in his official capacity as SUPERINTENDENT	)		
of EPIC BLENDED LEARNING CENTER and	)		
EPIC ONE-ON-ONE CHARTER SCHOOL,	)		
Defendants.	)		

**PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS BY DEFENDANTS**

Plaintiffs Oklahoma Watch, Inc. and Jennifer Palmer hereby request pursuant to Okla. Stat. tit. 12, §§ 3226 and 3234 that 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, produce the following, together with any written responses.

**INSTRUCTIONS**

1. Each Defendant, (i) Epic Blended Learning Centers, (ii) Epic One-on-One Charter School, and (iii) Bart Banfield in his official capacity as Superintendent of Epic Blended Learning Centers and Epic One-on-One Charter School, should provide an individual response to these requests.

2. You are required to produce all documents and tangible things responsive to these requests that are in your possession, custody, or control, including and without limitation, documents and tangible things in the possession, custody, or control of your attorneys,

representatives, employees, agents, staff members, and anyone else acting on your behalf or at your direction.

3. Produce all documents and tangible things responsive to these requests as they are kept in the usual course of business. Folders, labels, and the like are to be left intact.

Electronically stored information shall be produced in the form or forms in which it is ordinarily maintained.

4. You are required to respond to each numbered request separately with one of the following:

- a. A representation that you will comply with the particular request;
- b. A representation that you lack the ability to comply with the particular request; or
- c. An objection to the particular request.

5. If your response to the particular request is a representation that you lack the ability to comply, you must affirm that you undertook a diligent search in an effort to comply with the request, and specify whether your inability to comply is because the particular document, tangible thing, or category thereof has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in your possession, custody, or control. Set forth the name and address of any person or entity whom you know or believe to have possession, custody, or control of the requested document, tangible thing, or category thereof.

6. If you object to a request based on a claim of privilege or a claim that the information sought is protected work product, provide a log setting forth the following each document withheld:

- a. The date of the document;

- b. The title of the document (if any);
- c. Its author;
- d. The sender and each recipient of the document;
- e. The name of each person or entity who has custody of the document (or any copy thereof); and
- f. The basis for your claim of privilege or work product protection.

7. If you object to part of a particular request, that part must be specified, and your reasons for the objection stated. Your response to the request must contain a statement of compliance or a representative of inability to comply with respect to the remainder of that request.

8. Pursuant to Oklahoma law, respond in writing and produce the following to Plaintiffs within thirty days after service of these requests. *See* Okla. Stat. tit. 12, § 3234(B)(2)(a). Your response and/or production should be delivered to Kathryn E. Gardner at [kgardner@rcfp.org](mailto:kgardner@rcfp.org) or at the office of 110 S. Hartford Ave., Ste. 2524, Tulsa, OK 74120.

#### **DEFINITIONS**

1. “ACTION” refers to the above-captioned matter, *Oklahoma Watch v. Epic Blended Learning Charter* (District Court of Oklahoma County Case No. CV-2021-1085).
2. “EPIC” means and refers to Epic Blended Learning Charter, a school district, and Epic One-on-One Charter, a school district, and/or any person acting on behalf or at the direction thereof, including, without limitation, any assistants, employees, attorneys, agents, staff members, and/or representatives of Epic Blended Learning Charter or Epic One-on-One Charter.
3. “BANFIELD” means and refers to Epic Superintendent Bart Banfield.

4. “YOU” or “YOUR” means and refers to Defendants EPIC and BANFIELD, and/or any person acting on behalf or at the direction thereof, including, without limitation, any assistants, employees, attorneys, agents, staff members, and/or representatives of EPIC and/or BANFIELD.

5. “FIRST REQUEST” means and refers to the request for PUBLIC RECORDS submitted to EPIC on July 27, 2020 by Jennifer Palmer in her role as a reporter for Oklahoma Watch for “emails to/from [ben.harris@epiccharterschools.org](mailto:ben.harris@epiccharterschools.org) from January 1, 2019 to July 25, 2020.” *See* Plaintiffs’ Petition Exhibit A.

6. “SECOND REQUEST” means and refers to the request for PUBLIC RECORDS submitted to EPIC on August 25, 2020 by Jennifer Palmer in her role as a reporter for Oklahoma Watch for “emails to/from [ben.harris@epiccharterschools.org](mailto:ben.harris@epiccharterschools.org) from June 20, 2019 to Aug. 30, 2019.” *See* Plaintiffs’ Petition Exhibit C.

7. “HARRIS” means and refers to Ben Harris, YOUR Co-Founder.

8. “AGREEMENT” means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

9. “ANY” means one or more.

10. “COMMUNICATION” means and includes the internal and external disclosure, transfer, or exchange of information, ideas, opinions, or thoughts by any means, whether oral, written, telephonic, or electronic. Communication includes, without limitation, in-person meetings, telephone calls, emails, text messages, instant messages, voicemail, memoranda to file, letters, and any documents memorializing or reflecting a discussion among one or more individuals.

11. "DOCUMENT" as used herein shall have the broadest meaning permitted under the law of the State of Oklahoma. It means and includes, but is not limited to, any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, that is in your possession, custody, or control. The term includes agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they resulted in a final document; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts of telephone conversations; phone mail; email; text messages; instant messages; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; and computer print-outs.

The term document also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term document includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term control as used in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

12. "INCLUDING" means including, but not limited to.

13. "ORA" means and refers to the Oklahoma Open Records Act, Okla. Stat. tit. 51, §§ 24A.1-24A.33.

14. "PERSON" means and includes any natural person, public official, corporation, company, partnership, joint venture, firm, association, proprietorship, public body, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

15. "PUBLIC RECORD" means all DOCUMENTS, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property.

16. "RELATING TO" means containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in whole or in part.

17. "REQUEST" means and refers to a request for public records made pursuant to the Oklahoma Open Records Act, Okla. Stat. tit. 51, §§ 24A.1-24A.33.

18. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted. The term or shall mean and, and vice-



versa, as necessary to bring within the scope of the following interrogatories all information or documents that would be excluded absent this definition.

### REQUESTS FOR PRODUCTION

1. All DOCUMENTS sufficient to show YOUR policies and/or procedures in place since January 1, 2011, for responding to REQUESTS for PUBLIC RECORDS. This request includes, but is not limited to, both written and unwritten policies and/or procedures.

2. With respect to each version of the policies and/or procedures produced in response to REQUEST FOR PRODUCTION NO. 1, all DOCUMENTS sufficient to show the costs YOU could and/or would assess to requestors of PUBLIC RECORDS and how YOU calculate such costs.

3. All COMMUNICATIONS relating to or referring to YOUR policies and/or procedures for responding to REQUESTS for PUBLIC RECORDS from January 1, 2016, to the present. This request includes, but is not limited to, COMMUNICATIONS relating to both written and unwritten policies and/or procedures.

4. Engagement letters and any other DOCUMENTS related to YOUR retention of legal counsel for any purpose regarding YOUR obligations under the ORA, including legal review of REQUESTS for PUBLIC RECORDS. *See e.g.*, Defendants' Answer, p. 7, ¶ 43 ("Epic admits that it has described the fee necessary to review the emails as a "legal review" fee in relation to the work necessary to ensure the protection of the privacy rights of students, employees, attorney-client privilege, and other exceptions to the ORA.").

5. All DOCUMENTS relating to YOUR payment of legal counsel for any purpose regarding YOUR obligations under the ORA. This request includes, but is not limited to, DOCUMENTS that reflect salary information, billing schedules, invoices for services, etc.

6. DOCUMENTS sufficient to show all costs assessed by YOU to any requestor of PUBLIC RECORDS since January 1, 2016.
7. DOCUMENTS sufficient to show all payments YOU collected from any requestor of PUBLIC RECORDS since January 1, 2016.
8. All DOCUMENTS related to any PUBLIC RECORDS REQUEST for emails received by or sent from ben.harris@epiccharterschools.org, including, but not limited to, DOCUMENTS related to the FIRST REQUEST and SECOND REQUEST at issue in this ACTION.
9. All COMMUNICATIONS related to YOUR handling of any PUBLIC RECORDS REQUEST for emails received by or sent from ben.harris@epiccharterschools.org, including, but not limited to, COMMUNICATIONS related to YOUR handling of the FIRST REQUEST and SECOND REQUEST at issue in this ACTION.
10. All DOCUMENTS sufficient to show YOUR Health Insurance Portability and Accountability Act (HIPAA) policies and/or procedures. This request includes, but is not limited to, both written and unwritten policies and/or procedures.
11. All DOCUMENTS sufficient to show YOUR Family Educational Rights and Privacy Act (FERPA) policies and/or procedures. This request includes, but is not limited to, both written and unwritten policies and/or procedures.
12. All DOCUMENTS reflecting ANY compensation HARRIS has received from YOU including but not limited to salary, wage, benefits, bonuses, paid leave, pension funds, commissions, etc.

13. All COMMUNICATIONS YOU made or received referring to Jennifer Palmer, Oklahoma Watch, Ted Streuli, the Reporters Committee for Freedom of the Press, and/or Kathryn E. Gardner from July 1, 2020, to May 11, 2021.

14. All DOCUMENTS and COMMUNICATIONS YOU have received from the Oklahoma State Department of Education related to the ORA and/or REQUESTS for PUBLIC RECORDS.

15. All DOCUMENTS and COMMUNICATIONS related to ANY review, evaluation, opinion, or assessment of YOUR compliance with the ORA from January 1, 2016, to the present.

**Dated: October 28, 2021**

Respectfully,

*Kathryn E. Gardner*

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