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August 22, 2018

VIA ELECTRONIC MAIL

Gina Proctor
Executive Secretary
Utah State Records Committee
346 S. Rio Grande
Salt Lake City, UT 84101-1106
gproctor@utah.gov

Re: *Notice of Appeal*
Clinton v. Tooele County School District

Dear Gina:

I represent Appellant Raymond Clinton in the above-referenced matter. Mr. Clinton can be reached through me at the above address and telephone number. Mr. Clinton made a GRAMA request for records to the Tooele County School District on or about June 13, 2018, seeking documents relating to the Stansbury High Baseball program and himself as the former Coach. *See* GRAMA Request Form, attached hereto as **Exhibit A**. He made the GRAMA request because the Stansbury High Principal, Gailynn Warr, informed him on June 4, 2018, without warning or explanation, that the school would not be renewing his coach position for the coming season.

The attorney for the School District, Patrick Tanner, responded to Mr. Clinton on July 10, 2018 granting the request in part and denying it in part. *See* July 10, 2018 Letter from Mr. Tanner, with enclosures, attached hereto as **Exhibit B**. Mr. Tanner denied the request on the grounds that certain documents were classified as privileged or protected.

Mr. Clinton appealed Mr. Tanner's denial to the District Superintendent, Dr. Scott Rogers, on July 16, 2018. *See* July 16, 2018 Appeal Letter, attached hereto as **Exhibit C**. Dr. Rogers responded to the appeal on July 23, 2018, affirming the partial denial of the GRAMA request. *See* July 23, 2018 Letter from Dr. Rogers, attached hereto as **Exhibit D**.

Mr. Clinton hereby appeals the Superintendent's decision upholding the partial denial of Mr. Clinton's GRAMA request, and seeks reversal and release of the withheld records.

The School District divided the withheld records into four categories, which I will address individually:

1. Notes made by Principal Warr regarding comments or complaints received by community members regarding the baseball program and investigating the complaints

These records were withheld on the grounds that they are allegedly classified as protected under Utah Code Ann. § 63G-2-305(10), which categorizes the following records as protected:

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts; . . .

The School District misapplied this section because there is no evidence that Mr. Clinton was the subject of any civil, criminal, or administrative enforcement action or a disciplinary proceeding or investigation. Rather, as the Superintendent explained in his letter, the School District merely decided "not to offer [him] a coaching contract for next year's baseball season" and "[he was] given no . . . reprimand nor [was he] dismissed for . . . violations." *See Exhibit D, at 2.*

Even if the Principal's notes from her investigation into complaints about the baseball program could be found to fit into this category of records, release of those records to Mr. Clinton would not interfere with her investigation, deprive Mr. Clinton of an impartial

hearing, or disclose investigative techniques. Mr. Clinton's employment with the School District has already ended, and with it, presumably, so has the investigation. Furthermore, if the reason these notes were withheld was to protect the identity of a source pursuant to § 63G-2-305(10)(d), this explanation is contradictory, as other records produced by the School District on July 10, 2018 contained the identities of complainants. *See* Exhibit B. Nevertheless, the School District could have redacted the sources' identities from these notes, but it did not. Therefore, the School District had no basis to claim that the notes are protected under this subsection.

The School District also claimed that the notes are protected under Utah Code Ann. 63G-2-305(25), which protects the following records:

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest.

The Principal's notes from her investigation of complaints and comments regarding the baseball program could not contain "personal recommendations" the disclosure of which would constitute "a clearly unwarranted invasion of personal privacy" because any recommendations she received from outside sources were knowingly made to a school administrator regarding a school employee. Such comments could reasonably be expected to be shared and made part of the school's public records, and could not be considered an invasion of personal privacy. Furthermore, disclosure is in the public interest because Mr. Clinton has raised serious concerns regarding the process by which his employment ended. At the very least, the School District could have redacted the names of the individuals making the personal recommendations in order to protect their privacy. Therefore, these records are not protected by Subsection 25 of the Act.

2. Personnel records regarding Coach Jim Bolser

The School District withheld personnel records of Coach Jim Bolser on the grounds that these records are private under Utah Code Ann. § 63G-2-302(2)(a), which includes the following:

(2)(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b).

Mr. Clinton is not interested in records revealing any personal status information of Mr. Bolser. Instead, he merely sought documents relating to the baseball program and

himself as the coach. To the extent such records are found in the performance evaluations of Mr. Bolser, Mr. Clinton seeks those documents in redacted form. Furthermore, to the extent there are responsive records containing formal charges or disciplinary actions against Mr. Bolser that are now complete where the charges were sustained, those documents are public pursuant to Utah Code Ann. § 63G-2-301(3)(o).

3. Letters and emails from community members commenting on the quality of the baseball program and coaching

The School District withheld community comments regarding the baseball program and coaching claiming that they were protected under Utah Code Ann. §§ 63G-2-305(10) and (25). As explained with respect to category 1 above, the School District has misapplied Subsection 305(10). The Superintendent has already stated that Mr. Clinton was not subjected to any civil, criminal, administrative, or disciplinary proceeding, and even if he had been, that proceeding is now closed and release of the witness statements would not cause any interference. Furthermore, if the protection of identities was the sole purpose for withholding these records, the School District has not identified any reason why they could not have been released in redacted form.

Also explained in category 1 above, Subsection 305(25) does not apply because the authors of letters or emails to a school administrator “commenting” on the baseball program would not have a reasonable expectation of privacy in those communications such that it would be an “unwarranted invasion” to release them. Furthermore, the School District apparently did not have the same concerns when it released other emails from community members commenting on the baseball team to Mr. Clinton on July 10, 2018. *See* Exhibit B.

4. Witness statements of students taken in the course of the investigation of concerns relating to the baseball program

The School District withheld student witness statements taken in the course of the investigation claiming that they were protected under Utah Code Ann. §§ 63G-2-305(10) and (25). The School District again misapplies these subsections to Mr. Clinton’s circumstances, and ignores the option of redacting witness identities. Any investigation into the concerns relating to the baseball program was not the type of proceeding to which Subsection 305(10) protects, and release of the witness statements would not amount to an invasion of privacy pursuant to Subsection 305(25).

The Superintendent’s decision faults Mr. Clinton’s appeal letter of July 16, 2018 because it “does not appear to challenge the classification of the documents which were not provided” and does “not offer any grounds for questioning those classifications” or “basis to reverse the partial denial . . .” *See* Exhibit D, at 1-2. However, this is not required in the

governing statutes;¹ instead the appeal must simply state the contact information of the requester and the relief sought,² which Mr. Clinton's letter did. *See* Exhibit C. The Superintendent then found, without any analysis of the nature of the withheld records, that the documents were "properly classified as protected, private, or are student records precluded from disclosure under federal law." Exhibit D, at 2. The Superintendent gives no explanation of which records fall into which category and why, and completely ignores the fact that the letter from Mr. Tanner actually never classified any records as precluded from disclosure under federal law, let alone identified what federal law applied. The Superintendent's decision merely upheld the decision without any analysis and then chose instead to argue that Mr. Clinton has no claim against the School District regarding the loss of his coaching position.

Finally, the Superintendent should have ordered the records released to Mr. Clinton under Utah Code Ann. § 63G-2-401(6), because even if they were properly classified, the release of the information to Mr. Clinton regarding the grounds for the School District's decision to end his employment as baseball coach outweighs the interests of restricting access to protect either the investigation process or the individual witnesses. Witness names can be redacted to protect identity and privacy, however the information Mr. Clinton seeks is essential for him to determine the reasons for and legality of the School District's decision. Although it is apparent that Mr. Clinton's appeal letter attempted to make such an argument, the Superintendent apparently did not apply this analysis in his decision.

For these reasons, the provisions that the School District cited to claim that these records are protected or privileged do not apply. In fact, it appears that the School District arbitrarily used these Subsections to withhold certain records while it released other records apparently in the same category. Furthermore, the Superintendent should have released the documents because the interest in releasing them outweighs any interest in restricting access. Mr. Clinton therefore requests that the Committee overturn the School District's partial denial and order the School District to produce the records.

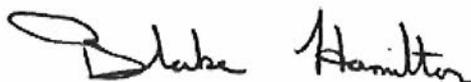
¹ Utah Code Ann. § 63G-2-401(3).

² Utah Code Ann. § 63G-2-401(2); *see also* Exhibit B, informing Mr. Clinton that he "may" include facts, reasons, and legal authority for the appeal.

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Sincerely,

DURHAM JONES & PINEGAR, P.C.

A handwritten signature in black ink that reads "Blake Hamilton". The signature is written in a cursive style with a large initial "B" and "H".

R. Blake Hamilton

Enclosures

cc: Dr. Scott A. Rogers, School District Superintendent
(srogers@tooeleschools.org)
Patrick L. Tanner, School District Attorney
(ptanner@burbidgewhite.com)