OAH 22-0305-39352

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Fixing Stillwater Schools,

vs.

Stillwater Area Schools Board of Education.

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter comes before Administrative Law Judge Christa L. Moseng upon the parties' joint waiver of an evidentiary hearing and agreement to submit closing arguments for disposition of the matter.[1] The parties' closing arguments were filed on December 4, 2023, and the record closed on that date.[2]

Michael E. McCarthy, Chair, appeared on behalf of Fixing Stillwater Schools (or, Complainant).[3] Trevor S. Helmers and Molly M. Fischl, Squires, Waldspurger & Mace, P.A., appeared on behalf of Stillwater Area Schools Board of Education Independent School District (ISD) 834 (Respondent or the District).

Also on December 4, 2023, Complainant filed an "Error Notice Re: Motion Denial" (Complainant's December 4, 2023 Notice).

On December 7, 2023, Complainant filed a "Notice of Proscribed Factual Asservation" and a "Notice of Fraud." On December 8, Respondent filed a letter opposing the December 7 filings and requesting sanctions.

STATEMENT OF THE ISSUE

Did the District violate Minn. Stat. § 13.03 with respect to Complainant's August 18, 2021, data request?

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[1] Prehearing Conference Digital Recording (Oct. 23, 2023) (on file with Minn. Office Admin. Hearings). The waiver was made by the parties' attorneys during the prehearing conference and is not founded upon any prior agreement of the parties.

[2] Complainant's Memorandum for Proposed Final OAH Order and Proposed Order (Dec. 4, 2023) (Compl't's Mem.) and Respondent ISD 834's Closing Argument Brief (Dec. 4, 2023) (Resp't's Br.).

[3] The Complainant association appears to be represented by a person who is not admitted and licensed to practice law in Minnesota. Minn. R. 1400.5800 (2023) would prohibit such representation in a contested-case proceeding. Because proceedings under Minn. Stat. § 13.085 (2022) are not contested cases, the Judge has considered all filings made on behalf of Fixing Stillwater Schools whether or not they were filed by an attorney.

SUMMARY OF DECISION

By failing to establish procedures to insure that requests for government data are received and complied with in an appropriate and prompt manner, the District violated Minn. Stat. § 13.03, subd. 2(a).

FINDINGS OF FACT

1. Fixing Stillwater Schools is an association of individuals which includes Catherine Hobbs and Michael E. McCarthy.[4]

2. Respondent is Stillwater Area Schools Board of Education Independent School District No. 834. The District's Responsible Authority for purposes of Minn. Stat. §§ 13.01-.90 (2022)[5] is its Superintendent, Michael Funk.[6] Funk assumed this responsibility on July 1, 2022. At the times relevant to this proceeding, Meletta Cran, Administrative Assistant to the Director of Human Resources, responded to Complainant's data requests on behalf of the District.[7]

3. On August 18, 2021, Hobbs sent the following request to the District's then-Superintendent and Responsible Authority Malinda Lansfeldt:[8]

> I seek access to inspect data on the following: All data that document Woke Kindergarten material and material from content creator Ki Gross within the district. All data pertaining to course materials for Claire Henning, and all data pertaining to the class materials, lectures, and coursework of Joe Haker. If the syllabus or course material for the SAHS Ethnic [& Cultural] Studies class has been created, I request access to that data as well. [This includes, but is not limited to, any and all data contained in letters, emails, text messages, notes, reports, meeting minutes, etc.]

4. The District confirmed receipt of the August 18, 2021 request the same day.[9]

5. On August 23, 2021, the District responded to the request, stating that:[10]

   a. Woke Kindergarten is not included in the Stillwater Area Public Schools Curriculum;

   b. Can you provide us with more specific information you are looking for from Claire Henning?;

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[4] Complaint, 2.
[5] The Minnesota Government Data Practices Act (the MGDPA, or the Act) Minn. Stat. 13.01, subd. 2.
[6] Affidavit of Michael Funk (December 4, 2023) (Funk Aff.), ¶1.
[7] *See, e.g.*, Exhibit (Ex.) 3 (email correspondence to and from Cran).
[8] Respondent's Exhibit in Support of Closing Argument (Resp't's Ex.) 1.
[9] Resp't's Ex. 2.
[10] *Id*.

c. We do not have any record of the coursework of Joe Haker; and,

d. The Ethnic [& Cultural] Studies course syllabus will be available after August 30.

6. On August 27, 2021, Hobbs clarified the request regarding course materials for Claire Henning, as follows:[11]

> This is a clarification of the current open data request pertaining to Claire Henning. I request access to her 2020-2021 syllabus, including tests and supporting materials, including but not limited to papers, photos, lectures, video lectures, emails, and news articles. I also request any materials from her that includes the word oppression.

7. An Ethnic & Cultural Studies course was being taught for the first time during the fall of 2021.[12]

8. Hobbs or Complainant created and maintains a website discussing Hobbs's efforts to obtain data relating to the Ethnic & Cultural Studies course.[13]

9. On August 31, 2021, Cran sent the 2021-2022 Ethnic & Cultural Studies syllabus to Hobbs.[14] The same day, Hobbs responded: "Thank you! I know you guys must be super busy gearing up for the school year. and I appreciate your response."[15]

10. Hobbs or Complainant have made other data requests to the District pertaining to the Ethnic & Cultural Studies course, including on December 31, 2021.[16]

11. On June 22, 2023, Fixing Stillwater Schools filed a Data Practices Complaint Form (the Complaint) with the Office of Administrative Hearings. The Complaint stated that "required production remains outstanding" from its August 18, 2021, request.[17]

12. In a July 12, 2023, letter addressed to counsel for Complainant the District wrote:[18]

> On August 31, 2021, Ms. Cran sent the 2021-2022 Ethnic & Cultural Studies Syllabus to Ms. Hobbs, which the District believed to be the only existing responsive data that was maintained at that time. However, the District has since become aware of additional data that existed at the time

[11] Resp't's Ex. 2.
[12] Resp't's Br., 3.
[13] Compl't's Mem., 9; *See* Complainant's "Reply to Respondent's Submittal of July 17, 2023, and ISO 834's Request for Dismissal", (July 31, 2023) (Compl't's July 31 Filing) at 5. *Available at* https://www.mn834.org/ethnicstudies/ (last accessed December 6, 2023).
[14] Resp't's Ex. 4.
[15] Resp't's Ex. 4.
[16] Compl't's July 31 Filing, at 4, and its attached Ex. 2.
[17] Complaint, 2.
[18] Resp't's Ex. 5, at 2.

of Ms. Hobbs' request in August 2021, and as such, the District is providing that data now.

13. On July 17, 2023, the District filed its Response to the Complaint.[19] Its Response elaborated on the July 12 letter:[20]

> When Ms. Cran responded to the Complainant [on August 31, 2021], the District reasonably believed that this was the only government data that it maintained that was responsive to the Complainant's request. Ultimately, it was determined that at the time of this response, the Teacher had actually prepared some assignment documents and had gathered some materials that would ultimately be used in the course, but the District staff that responded to the requests did not have access to those materials. These materials have now all been provided to the Complainant.

14. On August 14, 2023, the Judge found probable cause to believe that the District violated Minn. Stat. § 13.03 with respect to Complainant's August 18, 2021, request.

15. On September 6, 2023, during a phone call with counsel for the District, Fixing Stillwater Schools's attorney clarified that Hobbs's August 18, 2021 data request, requested data related to the 2020–21 English course taught by Claire Henning in addition to Claire Henning's Ethnic & Cultural Studies course materials.[21]

16. On November 6, 2023, counsel for Complainant withdrew, and wrote that correspondence regarding the matter should be directed to Michael McCarthy. Since counsel for Complainant withdrew, Complainant's filings have been signed by McCarthy.

17. OAH's costs in this matter exceed $1,000.

18. Any Conclusion of Law more properly designated as a Finding of Fact is adopted herein.

19. Any portion of the accompanying Memorandum that is more properly considered a Finding of Fact is incorporated herein.

Based on these Findings of Fact, the Judge makes the following:

[19] Response to Data Practices Complaint (July 17, 2023).
[20] *Id*. at 8.
[21] Affidavit of Molly M. Fischl (December 4, 2023) (Fischl Aff.), ¶2.

CONCLUSIONS OF LAW

1. Minn. Stat. § 13.085 authorizes the Judge to consider and determine this matter.

2. The District is a government entity under Minn. Stat. §§ 13.01-.90 and subject to the requirements of the Act.[22]

3. Complainant bears the burden of proof to establish by a preponderance of the evidence that Respondent violated Minn. Stat. § 13.03 with respect to Complainant's August 18, 2021 data request.[23]

4. The decision record comprises all evidence and argument submitted until the hearing record closed.[24]

5. Under Minn. Stat. § 13.03, subd. 2(a), the responsible authority in every government entity must establish procedures to insure that requests for government data are received and complied with in an appropriate and prompt manner.

6. The delay in discovering data in the District's possession and in providing a complete response to Complainant's August 18, 2021, data request (as clarified on August 27, 2021) establishes that the District violated Minn. Stat. § 13.03, subd. 2(a).

7. The Office of Administrative Hearings must refund the filing fee of a substantially prevailing complainant in full, less $50, and the Office's costs in conducting the matter shall be billed to the respondent, not to exceed $1,000.[25]

8. Substantially prevailing complainants are rebuttably presumed to be entitled to reasonable attorney fees not to exceed $5,000.[26] An award of attorney fees may be denied if the judge determines that the violation is merely technical or that there is a genuine uncertainty about the meaning of the governing law.[27]

9. Complainant substantially prevailed in its complaint.

10. Complainant is presumed to be entitled to reasonable attorney fees not to exceed $5,000, and the presumption has not been rebutted. The violation was not merely technical and there is no genuine uncertainty about the meaning of the governing law.

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[22] *See* Minn. Stat. § 13.02, subds. 7a (defining "government entity") and 11 (defining "political subdivision" to include any school district).
[23] Minn. R. 1400.7300, subp. 5 (2023). Under Minn. Stat. § 13.085, subd. 5(d), proceedings on a data practices complaint are not a contested case under Minn. Stat. ch. 14, however the Administrative Law Judge determines that Minn. R. 1400.7300, subp. 5, articulates the correct burden of proof for a data practices case as no other standard is identified in section 13.085.
[24] Minn. Stat. § 13.085, subd. 4.
[25] Minn. Stat. § 13.085, subd. 6(c).
[26] Minn. Stat. § 13.085, subd. 6(a).
[27] *Id.*

11. Any Finding of Fact more properly considered to be a Conclusion of Law is adopted herein.

12. Any portion of the accompanying Memorandum that is more properly considered to be a Conclusion of Law is incorporated herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Judge makes the following:

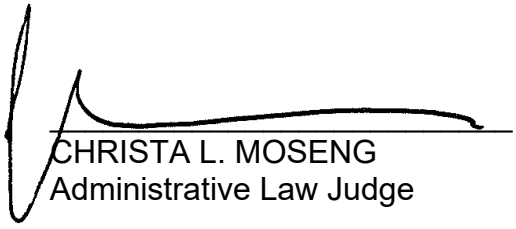
ORDER

1. Respondents shall pay $1,000 to the Office of Administrative Hearings for the Office's costs in conducting this matter, as documented in an invoice to be sent by the Office to Respondents.

2. The Office will refund $950.00 of Complainant's filing fee.

3. No later than December 26, 2023, Complainant may file an attorney fee motion and affidavit that conform to Minn. Gen. R. Prac. 119, and serve them upon Respondent. Respondent may file a response within ten business days of receipt of such motion.

Dated: December 15, 2023



CHRISTA L. MOSENG
Administrative Law Judge

NOTICE

This Order is the final decision in this case. Any party aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63–.69 (2022).

MEMORANDUM

I. Introduction

This proceeding under Minn. Stat. § 13.085 arises out of Fixing Stillwater Schools' Complaint that Respondent violated Minn. Stat. §§ 13.01-.90 (2022), the Minnesota Government Data Practices Act (the MGDPA, or the Act).[28]

II. Procedural History

Fixing Stillwater Schools filed its Complaint on June 22, 2023.[29] The Chief Administrative Law Judge assigned this matter to the undersigned to conduct a review pursuant to Minn. Stat. § 13.085, subd. 3. On June 23, 2023, the Office of Administrative Hearings (Office) sent to the District, by certified mail, a copy of the Complaint along with a notice letter.[30] The District timely filed its Response and accompanying exhibits on July 17, 2023.[31]

On July 31, 2023, Fixing Stillwater Schools filed a "Reply to Respondent's Submittal of July 17, 2023, and ISD 834's Request for Dismissal." On August 2, 2023, the District filed a letter requesting that Fixing Stillwater Schools' July 31 filing be stricken from the record.

The Complaint and the District's timely response, together, demonstrated there was probable cause to believe that the District violated Minn. Stat. § 13.03 with respect to Complainant's August 18, 2021 request. Because the record established probable cause to believe that the District violated the Act, the undersigned issued the notice required under Minn. Stat. § 13.085, subd. 3(b), on August 14, 2023 (Probable Cause Notice).

On August 30, 2023, a prehearing conference was held, and a hearing set for September 25, 2023.[32] The parties were required to exchange and file exhibits, exhibit lists, and witness lists by September 20, 2023.[33] Neither party filed exhibits, exhibit lists, or witness lists by the deadline. The parties notified the Office that they had reached a tentative resolution of the matter and requested that the hearing be cancelled. The request was granted.

On October 23, 2023, a prehearing conference was held to discuss the status of the matter.[34] At the prehearing conference the parties agreed that, in the event that their settlement was not finalized, they waived the evidentiary hearing and would submit

[28] Minn. Stat. § 13.01, subd. 2.
[29] *See, generally,* Complaint.
[30] *See* Minn. Stat. § 13.085, subd. 2(d).
[31] District's Response to Data Practices Complaint (Response) (July 17, 2023); Exhibit List and Exhibits (July 17, 2023).
[32] First Prehearing Order (Sept. 5, 2023).
[33] *Id.*
[34] Order for Prehearing Conference (Oct. 2, 2023).

closing arguments.[35] The parties were required, by November 20, 2023, to either notify the court that they had resolved the matter and that this proceeding could be dismissed or to submit their written closing arguments.[36]

On November 6, 2023, Complainant's counsel withdrew. The closing argument deadline was extended to December 4, 2023, at the request of Complainant, and as agreed to by Respondent.[37]

Since the withdrawal of Complainant's counsel, Complainant's filings have sometimes borne multiple titles[38] and occasionally refer to documents by titles not appearing on any filing.[39] These discrepancies, together with the volume of filings submitted in a short time, has made it challenging for the tribunal to be certain that the correct document is referenced. However, the Judge has confirmed with administrative staff that all the parties' properly filed documents are included in the record for consideration.

On November 17, 2023, Complainant filed its Motion for Relief from Errors in the 14 August 2023 Determination, Notice of Complaint Elaboration, and Proposed Order Affirming Discovery and Amending Schedule. On November 20, 2023, Respondent filed a letter opposing the November 17, 2023 filings.

On November 22, 2023, Complainant filed its Motion for Complaint Amendment, Elaborated Complaint, Timeline Exhibit, and attachments. On November 28, 2023, Respondent filed a letter opposing the November 22, 2023 filings. On November 29, 2023, Complainant filed its Memorandum for Leave to Amend Complaint.

On December 1, 2023, Complainant's requests in its November 17 and 22 filings were denied.[40]

III. Applicable Law

Minn. Stat. § 13.085 provides an expedited administrative remedy for violations of the Act. Minn. Stat. § 13.085 states that proceedings on a complaint under the section are not a contested case within the meaning of chapter 14 and are not otherwise governed by chapter 14. Instead, the procedure for, and possible dispositions of, complaints brought under the section are provided by the section.

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[35] Order Requiring Filing (Oct. 25, 2023). *See* Minn. Stat. § 13.085, subd. 4(a) (providing that "[a]n oral hearing to resolve questions of law may be waived upon consent of all parties and the presiding administrative law judge.").
[36] *Id.*
[37] Order Granting Extension of Time (Nov. 17, 2023).
[38] *See, e.g.*, the document filed on November 17, 2023, titled "Notice of Complaint Elaboration" and "Complaint Amendment," and referred to internally in headers of subsequent pages as "Petition for Restated Complaint."
[39] *See, e.g.*, Comp't.'s Dec. 4 Notice, at 1 (referring to a Motion for Terminal Finding); Compl't's Mem., at 2 (referring to a Memorandum for Termination).
[40] Order Denying Motions (Dec. 1, 2023).

A. The Record for Decision

Minn. Stat. § 13.085, subd. 4, provides that "[t]he administrative law judge must consider any evidence and argument submitted until the hearing record is closed[.]" The statute does not define "evidence," except to state that it includes affidavits and documentation.[41]

B. The Scope of the Matter to be Decided and the Burden of Proof

Disposition of a complaint under Minn. Stat. § 13.085 requires the Judge to determine "whether the violation alleged in the complaint occurred."[42] The Complaint alleged a violation of Minn. Stat. § 13.03 with respect to a data request made on August 18, 2021.[43] A complainant bears the burden of proof to establish that the alleged violation occurred by a preponderance of the evidence.

C. Minn. Stat. § 13.03

Minnesota Statutes section 13.03 relates to the public's rights to access to government data. Among other topics, it contains provisions requiring government entities to establish procedures for receiving and complying with requests for government data, and detailing requirements for responses to such requests.[44] Government entities must respond to data requests in an appropriate and prompt manner and provide a response within a reasonable amount of time.[45]

IV. Analysis

The issue presented by the Complaint is relatively straight forward: Did the District violate Minn. Stat. § 13.03 with respect to Fixing Stillwater Schools' August 18, 2021 data request? But this matter arises under a statute with limited procedural guidance. As a result, discussion of the record and standard for decision is necessary before addressing the substantive issue.

A. The Record for Decision

Because the statute requires consideration of any evidence and argument submitted until the hearing record is closed, all of the parties' submissions have been considered. No portion of the record has been struck or excluded from consideration. The Judge must determine whether, based upon the entire record, Complainant met its burden to prove that it is more likely than not that the District violated Minn. Stat. § 13.03 with respect to Complainant's August 18, 2021, request.

Order Denying Motions (Dec. 1, 2023).

atute does not appear to constrain the record even to *relevant* evidence, or to impose any other standard for admissibility.

[42] Minn. Stat. § 13.085, subd. 5(a).

[43] Complaint, 2.

[44] Minn. Stat. § 13.03, subds. 2, 3.

[45] Minn. Stat. § 13.03, subd. 2(a); Minn. R. 1205.0300, subp. 3 (2023).

The parties waived a hearing and agreed to submit the matter for determination as a matter of law. As a consequence, no disputed facts have been subject to trial. Minn. Stat. § 13.085 does not specify the standard to apply under these circumstances. The summary disposition standard is an appropriate analogue. For purposes of applying the summary disposition standard in this circumstance, the parties' joint waiver of a hearing, together with their closing arguments, are construed as cross-motions for summary disposition.

B. Summary Disposition Standard

Summary disposition is the administrative law equivalent to summary judgment.[46] Summary disposition is appropriate where there is no genuine issue of material fact and where the application of law to undisputed fact will resolve the controversy.[47] The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary disposition of contested case matters.[48]

The Administrative Law Judge's function on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but solely to determine whether genuine factual disputes exist with regard to material issues.[49] The judge does not weigh the evidence on a motion for summary disposition.[50]

In deciding a motion for summary disposition, the judge must view the evidence in the light most favorable to the non-moving party.[51] All doubts and factual inferences must be resolved against the moving party.[52] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[53]

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact.[54] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts that are in dispute that can affect the outcome of the case.[55]

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[46] *Pietsch v. Minnesota Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2023).
[47] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp*., 378 N.W.2d 63, 66 (Minn. Ct. App. 1985); *Gaspord v. Washington County Planning Commission*, 252 N.W.2d 590, 590-591 (Minn. 1977); *See* Minn. R. 1400.5500 K (2023); Minn. R. Civ. P. 56.03.
[48] *See* Minn. R. 1400.6600 (2023).
[49] *See, e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[50] *Id.*
[51] *Ostendorf v. Kenyon*, 247 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[52] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[53] *DLH*, 566 N.W.2d at 69.
[54] *Thiele*, 425 N.W.2d at 582.
[55] *Highland Chateau, Inc. v. Minnesota Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *rev. denied* (Minn. Feb. 6, 1985).

It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.[56] A genuine issue is one that is not sham or frivolous.[57] A material fact is a fact whose resolution will affect the result or outcome of the case.[58]

While the purpose and useful function of summary disposition is to secure a just, speedy, and inexpensive determination of an action, summary disposition cannot be used as a substitute for a hearing where any genuine issue of material fact exists.[59] Summary disposition is only proper where there is no fact issue to be decided.[60]

C. The August 18, 2021 Data Request and the District's Response

Fixing Stillwater Schools requested, in its August 18, 2021 data request: (1) All data documenting Woke Kindergarten material and material from content creator Ki Gross; (2) all data pertaining to course materials for Claire Henning; (3) all data pertaining to the class materials, lectures, and coursework of Joe Haker; and (4) data relating to the "SAHS Ethnic Studies class," if it had been created.

The District responded that it had no responsive data for items one and three and that data responsive to item four would be available after August 30. It requested clarification of item two, pertaining to Claire Henning. Fixing Stillwater Schools responded with a clarification of item two on August 27, 2021.

D. The Parties' Arguments

Fixing Stillwater Schools argues that the District's responses to the August 18, 2021 data request violated Minn. Stat. § 13.03 by: (1) providing no responsive data to request item number three, concerning Joe Haker;[61] (2) not providing course materials for Claire Henning from the 2020–21 school year until after this proceeding began;[62] (3) failing to provide access to certain requested materials on November 15, 2022;[63] and failing to provide responsive data for other data requests.[64] Fixing Stillwater Schools maintains that the District "continues to refuse production of Claire Hennings 2020-2021 data,"[65] but does not provide details of what, if anything, it expects the District still to provide.[66]

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[56] Minn. R. Civ. P. 56.05.
[57] *Highland Chateau,* 356 N.W.2d at 808.
[58] *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976); *see also O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).
[59] *Sauter*, 70 N.W.2d at 353.
[60] *Id.*
[61] Compl't's Mem., 7.
[62] *Id*., 7–8.
[63] *Id*., 9.
[64] *Id*., 8.
[65] *Id*., 6.
[66] *But see* Compl't's July 31 Filing at 10 and attached Ex. 4 (discussing "additional images of requested materials not acknowledged by the District which have been received from others" which appear to pertain to a data request that is not at issue in this proceeding).

The District argues that its response regarding request item number three was accurate, complete, and timely.[67] It also argues that, until September 6, 2023, the District believed that the item pertaining to course materials for Claire Henning was requesting data relating to her 2021–22 Ethnic & Cultural Studies course, and not to her 2020–21 English course.[68] It asserts that the belief was reasonable in light of Complainant's focus on the Ethnic & Cultural Studies course and because Complainant did not respond in a way that led it to believe that its response was incomplete.[69] The District argues that when it understood that Complainant sought data pertaining to the English course, it provided the data.[70]

Finally, the District argues that Complainant's evidence and arguments pertaining to issues outside the scope of this proceeding should be disregarded.

E. Summary Disposition is Warranted

1. Facts and Arguments Pertaining to Other Data Requests are Immaterial

First, arguments and evidence pertaining to facts other than the August 18, 2021 request and the district's response(s) do not show there is a factual dispute material to the ultimate issue in this proceeding. For example, Complainant refers to a November 15, 2022, opportunity to access to responsive data as a basis for an alleged violation. The November 15 data access opportunity pertained to the District's response to Hobbs's December 31, 2021 data request.[71]

The Complaint identified only one request as the basis of the alleged violation: the August 18, 2021 request. A violation premised upon the District's response to a December 31, 2021 data request is not alleged in the Complaint and so is outside the scope of the tribunal's authority to address.[72] Arguments and evidence that relate to data requests and responses other than the August 18, 2021 request are considered only for their tendency to prove or disprove a fact material to the ultimate issue to be decided: whether the District violated Minn. Stat. § 13.03 with respect to Complainant's August 18, 2021 data request. They are otherwise irrelevant.

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[67] Resp't's Br., 11.
[68] *Id*., 3–5, 6.
[69] Resp't's Br., 3–4, 6.
[70] Resp't's Ex. 10.
[71] See Compl't's Timeline Exhibit, at 5 (reproducing, in part, the December 31, 2021 request for "[a]ll materials provided to, shown or promoted to students in the high school ethnic studies course throughout the first semester of 2021[.]"); at 8 (reproducing a November 7 email from the District to Respondents inviting them to inspect materials "for the Fall 2021 Ethnic [& Cultural] Studies course").
[72] *See* Minn. Stat. § 13.085, subd. 5(a) (requiring a determination of "whether the violation alleged in the complaint occurred"). Complainant has repeatedly moved or argued—most recently on December 4, 2023—that the scope of this proceeding include data requests other than the August 18, 2021 request. *See* Compl't's Dec. 4 Notice. These motions have been denied, and upon reconsideration, remain denied for the reasons discussed in the Probable Cause Notice and the December 1, 2023 Order Denying Motions.

2. Facts and Argument Concerning the Joe Haker Request Item and Response Cannot Establish a Violation

With respect to the request for "all data pertaining to the class materials, lectures, and coursework of Joe Haker," no factual dispute exists regarding the request or the District's response. The District responded within five days that it had no responsive data. Fixing Stillwater Schools argues that the District violated Minn. Stat. § 13.03 by not having or providing material responsive to its request.

Complainant cites no provision of Minn. Stat. § 13.03 for its claimed obligation for the District to obtain or retain material that might be responsive to its request. It argues, without citation, that the district violated "requirements pertaining to managing public data created by contract employees." Such a provision cannot be found in Minn. Stat. § 13.03. As a matter of law, Complainant cannot meet its burden to establish that the District's response to this request item violated Minn. Stat. § 13.03.

3. Undisputed Facts Establish a Violation

Finally, no material factual disputes preclude disposition of the alleged violation relating to the request for "[a]ll data pertaining to course materials for Claire Henning."[73] Undisputed facts establish that the District violated Minn. Stat. § 13.03 with respect to this item.

The District admittedly did not provide Henning's 2020–21 English course syllabus until 2023.[74] The District argues that it did not provide the 2020–01 syllabus sooner because it believed the original request to pertain to the Ethnic & Cultural Studies course and not the English course. But, more significantly, on July 12, 2023, the District provided, for the first time, "additional data that existed at the time of Ms. Hobbs' request in August 2021[.]"[75] The District explained that the data was prepared by the teacher but was not available to the District staff that responded to the request.[76]

The District argues that its delayed production of the English course syllabus is attributable to a reasonable misunderstanding or miscommunication and not a violation. However, it is the District's July 12, 2023 response that establishes a violation of Minn. Stat. § 13.03.

Government entities are required to establish procedures to insure that requests for government data are received and complied with in an appropriate and prompt manner.[77] The District conceded in July 2023 that it identified and provided information that it should have identified and provided in 2021. The District did not attribute the delayed production of this responsive data to a misunderstanding or miscommunication.

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[73] As clarified to include "access to her 2020-2021 syllabus, including tests and supporting materials, including but not limited to papers, photos, lectures, video lectures, emails, and news articles. I also request any materials from her that includes the word oppression."
[74] Resp't's Ex. 10.
[75] Resp't's Ex. 5.
[76] Response, 8.
[77] Minn. Stat. § 13.03, subd. 2(a).

It did not provide evidence or argument that could support attributing the delay to anything other than its procedures. Undisputed facts in the record establish that the District's procedures in 2021 did not insure that all data responsive to Complainant's request would be identified and provided promptly. Accordingly, it can be determined as a matter of law that the District violated Minn. Stat. § 13.03, subd. 2(a).

V. Disposition

Minn. Stat. § 13.085, subd. 5, provides that a judge must determine whether the violation alleged in the complaint occurred and make at least one of the following dispositions:

> (1) dismiss the complaint;
>
> (2) find that an act or failure to act constituted a violation of this chapter;
>
> (3) impose a civil penalty against the respondent of up to $300;
>
> (4) issue an order compelling the respondent to comply with a provision of law that has been violated, and may establish a deadline for production of data, if necessary; and
>
> (5) refer the complaint to the appropriate prosecuting authority for consideration of criminal charges.

The District's failure to provide a complete response to Complainant's August 18, 2021 request for "[a]ll data pertaining to course materials for Claire Henning" until July 12, 2023, establishes that the District violated Minn. Stat. § 13.03, subd. 2(a). The District had not established a process that would insure an appropriate and prompt response to the request. The violation alleged in the Complaint occurred.

A. No Civil Penalty is Warranted

Complainant urges imposition of a $300 civil penalty. The District argues that no civil penalty is warranted.

To determine whether a civil penalty should apply, the Judge must consider the factors described in Minn. Stat. § 13.08, subd. 4, regarding whether the government entity has substantially complied with general data practices requirements. These factors include, but are not limited to, whether the entity has: (1) designated a responsible authority; (2) designated a data practices compliance official; (3) prepared the data inventory that names the responsible authority and describes the records and data on individuals that are maintained by the government entity; (4) developed procedures required by Minn. Stat. §§ 13.03, 13.025, and 13.05; (5) acted in conformity with an opinion issued under section 13.072 that was sought by a government entity or another person; or (6) provided ongoing training to government entity personnel who respond to requests.

The District has established that it has designated a responsible authority and a data practices compliance official.[78] The District maintains policies and procedures pertaining to public access procedures, the rights of data subjects, and procedures to ensure that data on individuals are accurate and complete and to safeguard the data's security.[79] The District provides ongoing training to District staff involved in public data requests.[80] Finally, the District has provided evidence that its data practices procedures have been improved since 2021.[81] For these reasons, no civil penalty is warranted.

B. No Further Disposition is Warranted

Complainant has provided no evidence, beyond mere denial and speculation, that the District's response to the August 18, 2021 data request is incomplete.[82] The District argues and has provided evidence that it has fully responded to the request.[83] Complainant has not made the required showing to justify a hearing. It would be moot to order a response that has already been provided.

The record does not establish that the violation was willful, and thus does not provide a reason to refer the matter for consideration of criminal charges.

C. Attorney Fees

A complainant who substantially prevails on the merits in an action under Minn. Stat. § 13.085 is rebuttably presumed to be entitled to an award of reasonable attorney fees.[84] An award of attorney fees may be denied if the judge determines that the violation is merely technical or that there is a genuine uncertainty about the meaning of the governing law.[85]

Complainant requests an award of $5,000 for attorney fees. The District argues that its violation was technical and that attorney fees should be denied.

The statute does not define "merely technical." In another context, the Minnesota Supreme Court has distinguished a technical violation of the Data Practices Act from a violation that would "subvert the basic purpose of the statute."[86] Here, the failure to maintain procedures that would provide appropriate and prompt responses to data requests goes to the basic purpose of the statute. Accordingly, the District's violation cannot be regarded as merely technical.

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[78] Funk Aff., ¶ 2.
[79] *Id.*, ¶¶ 3, 5.
[80] *Id.*, ¶ 4.
[81] *Id.*, ¶¶ 2, 3.
[82] Undoubtedly, Fixing Stillwater Schools believes that other data request responses are incomplete, but they are outside the scope of this proceeding.
[83] Resp't's Ex. 10, at 3.
[84] Minn. Stat. § 13.085, subd. 6(a).
[85] *Id.*
[86] *State v. Smith*, 367 N.W.2d 497, 503–04 (Minn.1985).

Because the record establishes the violation alleged in the Complaint, Fixing Stillwater Schools substantially prevailed on the merits. It is presumptively entitled to an award of reasonable attorney fees. Complainant may file, and serve upon the District, an attorney fee motion and affidavit that conform to Minn. Gen. R. Prac. 119. The District may file a response to the motion. A motion that does not substantially meet the requirements of Minn. Gen. R. Prac. 119 will be denied.

VI. Sanctions

The District has requested on multiple occasions that Complainant's filings be struck, in part or in whole, because they: are unauthorized by statute or rule; exceed the scope of the matter to be decided; contain confidential information; and, are defamatory. It has objected to Complainant's accusations that the District and its attorneys have engaged in fraud or unethical conduct. And it has asserted that Complainant's filings appear to be filed for the purpose of harassment.

Most recently, the District requested that "Complainant's allegations that the District and its attorneys have engaged in fraud or unethical behavior must be removed from the record in these proceedings and Complainant should be admonished from engaging in any further defamation and ordered to not file any further correspondence or pretend motions."[87] To this point, the Judge has taken no action on the District's requests.

The requests to strike the filings are denied to ensure that the decision record complies with the statutory requirement to consider "any evidence and argument."

Regarding the remainder of the District's requested sanctions, some discussion is warranted. The Judge acknowledges that the Office of Administrative Hearings has not formally adopted the Minnesota General Rules of Practice. However, the rules and their explanatory comments provide a useful framework for considering the objected-to conduct.

Rule 1 of the General Rules of Practice provides that the same duties required of a lawyer are required of self-represented litigants. Minnesota courts recognize that "some accommodations may be made for pro se litigants" but have "repeatedly emphasized that pro se litigants are generally held to the same standard as attorneys and must comply with court rules."[88]

Minn. Gen. R. Prac. 9.06(b) defines "frivolous litigant" to include "[a] person who in any action or proceeding repeatedly serves or files frivolous motions, pleadings, letters, or other documents, conducts unnecessary discovery, or engages in oral or written tactics that are frivolous or intended to cause delay." By its repeated and duplicative arguments for reconsideration of interlocutory orders and by its filing and service of unauthorized "Notices," Complainant has met this definition.

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[87] Letter from Trevor S. Helmers to Hon. Christa Moseng (Dec. 8, 2023).

[88] *Black v. Rimmer*, 700 N.W.2d 521, 527 (quoting *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. Ct. App. 2001)).

Motions for reconsideration of interlocutory orders should be uncommon. Minn. Gen. R. Prac. 115.11 requires litigants in district courts to obtain permission from the court prior to filing a motion for reconsideration, and permission is to be granted only upon a showing of compelling circumstances. The Advisory Committee Comment related to Rule 115.11 notes that:

> Motions for reconsideration play a very limited role in civil practice, and should be approached cautiously and used sparingly. It is not appropriate to prohibit them, however, as they occasionally serve a helpful purpose for the courts. Counsel should understand that although the courts may have the power to reconsider decisions, they rarely will exercise it. They are likely to do so only where intervening legal developments have occurred (e.g., enactment of an applicable statute or issuance of a dispositive court decision) or where the earlier decision is palpably wrong in some respect. Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered.

The Judge also notes that there are sound policy reasons favoring limited consideration of motions for reconsideration in this context. Such motions, if filed routinely, could unnecessarily multiply the proceedings in administrative matters, depriving the parties of the economy and relative informality offered through the administrative process. Such motions could be used as a tactic to delay resolution or to increase costs for a party opponent.

Complainant, through its filings, has repeatedly requested or argued for reconsideration of interlocutory orders. It does so to a large extent by relitigating decided matters and repeating previous arguments. These filings have been wasteful of court resources and have materially increased the cost of this administrative proceeding.

As an example, in a December 7, 2023, filing,[89] Complainant purports to bring to the Judge's attention the contents of an email and a telephone conference both of which are part of the record and were considered (and cited) as part of the December 1, 2023 Order Denying Motions. Complainant's December 7 filing—one of two "Notices" filed on that date—came three days after Complainant's December 4, 2023 Notice, which also argued for reconsideration of the December 1 order. The December 4 Notice, in turn, repeated prior arguments that the Judge should reconsider the August 14, 2023 Probable Cause Notice. It is sufficient for a litigant to make an argument known, preserving it for the record, including an objection to a judge's determination. But repeatedly making redundant arguments or multiple filings addressing matters already considered and decided by the Judge is frivolous and wasteful.

[89] Compl't's Notice of Fraud (Dec. 7, 2023).

Fixing Stillwater Schools has also made multiple accusations of fraud or unprofessional conduct.[90] The tribunal takes such accusations seriously. However, Fixing Stillwater Schools seems to make the accusations casually—significantly more casually than an attorney might—and for the purpose of objecting to interpretations of circumstances or events that it disagrees with or doubts.[91] The Judge concludes that Fixing Stillwater Schools' allegations of fraud lack support and, based on its casual use of the word, do not warrant the gravity that would ordinarily attend such an accusation.

The District requests sanctions for Complainant's conduct. If the tribunal were to consider sanctions in the manner described by Minn. Gen. R. Prac. 9, it could only impose them upon a motion "made separately from other motions or requests," or upon its own initiative, and after notice and hearing. Because this order constitutes a final disposition of the Complaint, the Judge declines to take the question up on its own initiative.

VII. Conclusion

By failing to establish procedures to insure that requests for government data are received and complied with in an appropriate and prompt manner, the District violated Minn. Stat. § 13.03, subd. 2(a).

C. L. M.

[90] Complainant's allegations of fraud include: fraudulent response to the Complaint (Motion for Relief from Errors, 3); fraud with respect to the parties' agreement to waive the hearing (Dec. 4 Notice, 6; *See, generally*, Compl't's Notice of Fraud); and unspecified fraud on the court (Resp't's Mem., 11–12).

[91] *See, e.g.*, Complainant's Notice of Fraud (Dec. 7, 2023) (alleging fraud based on Complainant's differing understanding of the record and other relevant information).