

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE**

|   |   |                                 |
|---|---|---------------------------------|
| MIRANDA STOVALL,                            | ) |                                 |
|   | ) |                                 |
| Plaintiff,                                  | ) |                                 |
|   | ) |                                 |
| v.  | ) | Case No. <u>3:24-cv-336-GNS</u> |
|   | ) |                                 |
| JEFFERSON COUNTY BOARD OF                   | ) |                                 |
| EDUCATION, d/b/a JEFFERSON COUNTY           | ) |                                 |
| PUBLIC SCHOOLS,                             | ) |                                 |
|   | ) |                                 |
| MARTY POLLIO, in his official capacity as   | ) |                                 |
| Superintendent of Jefferson County Public   | ) |                                 |
| Schools,                                    | ) |                                 |
|   | ) |                                 |
| AMANDA HERZOG, in her official capacity     | ) |                                 |
| as Assistant General Counsel to Jefferson   | ) |                                 |
| County Public Schools,                      | ) |                                 |
|   | ) |                                 |
| and   | ) |                                 |
|   | ) |                                 |
| NCS Pearson, Inc., a Minnesota corporation, | ) |                                 |
| d/b/a Pearson VUE,                          | ) |                                 |
|   | ) |                                 |
| Defendants.                                 | ) |                                 |

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**COMPLAINT FOR DECLARATORY RELIEF**

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Plaintiff Miranda Stovall, through her undersigned counsel, hereby files this Complaint for Declaratory Relief and sues Defendants as follows:

**INTRODUCTION**

1. This action seeks to protect open access to public records from being stifled by inaccurate claims of copyright violations.

2. Plaintiff Miranda Stovall is an advocate for parental rights, educational reform, and education transparency in Kentucky, and the co-founder of a national non-profit organization focused on equipping and educating parents to advocate for their children.

3. All four of Mrs. Stovall's children attended Jefferson County Public Schools (JCPS) at one point.

4. Currently, one of Mrs. Stovall's children attends a JCPS school as a rising sophomore.

5. Mrs. Stovall routinely requests materials from JCPS under Kentucky's Open Records Act either out of her own personal interest or because of an inquiry she receives from a concerned parent, student, or educator as part of her non-profit work.

6. The materials she has requested include curriculum, surveys, teacher trainings, professional development sessions, and budget items.

7. She will continue requesting similar materials.

8. Mrs. Stovall requests copies of materials whose copyright is owned by Defendant Pearson under Kentucky's Open Records Act and intends to do so in the future.

9. Some of Mrs. Stovall's requests are met with a claim that the material is copyrighted and so cannot be provided to her.

10. These denials based on copyright have discouraged Mrs. Stovall from requesting materials Defendant Pearson owns the copyright to.

11. In this instance, Mrs. Stovall requested copies of a survey Defendant JCPS planned to administer to her child.

12. Defendant JCPS refused Mrs. Stovall's request, claiming that providing copies of the surveys would violate Defendant Pearson's copyright.

13. But providing copies of surveys administered to children in public schools to a concerned parent for her review as well as criticism, comment, and news reporting is a fair use and thus not a violation of Defendant Pearson's copyright. *See* 17 U.S.C. § 107.

14. To remedy this, Mrs. Stovall seeks a declaratory judgment that providing copies of the surveys in response to a public records request for non-commercial purposes like parental participation in the school system, criticism, comment, and news reporting is a fair use of the copyrighted material and thus non-infringing.

### **PARTIES**

15. Plaintiff Miranda Stovall is a resident of Louisville, Kentucky. She is a parent of one child who currently attends a JCPS high school and three other children who have attended JCPS-run schools in the past.

16. Defendant Jefferson County Board of Education, doing business as Jefferson County Public Schools, exercises control over the school system that denied Mrs. Stovall's request and administered the survey.

17. Defendant Marty Pollio is the Superintendent of Jefferson County Public Schools and exercises control over the school system in tandem with the Board of Education. At all times relevant to this complaint, Defendant Pollio acted within the scope of his employment and in his official capacity.

18. Defendant Amanda Herzog is Assistant General Counsel at Jefferson County Public Schools and denied Mrs. Stovall's Open Records Request. At all times relevant to this complaint, Defendant Herzog acted within the scope of her employment and in her official capacity.

19. Defendant NCS Pearson, Inc., doing business as Pearson VUE, is the copyright holder of the requested survey on whose behalf Defendant JCPS denied Mrs. Stovall access.

### **JURISDICTION AND VENUE**

20. This case arises under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

21. This Court has jurisdiction over the Complaint under 28 U.S.C. §§ 1331 (federal question) and 1338 (providing original jurisdiction for actions arising under the Copyright Act and depriving state courts of jurisdiction for actions arising under the Copyright Act).

22. This Court has authority to issue a declaratory judgment. 28 U.S.C. § 2201.

23. Venue is appropriate in this district under 28 U.S.C. § 1391(b)(2) as a substantial part of the events giving rise to this claim occurred in this district.

24. This Court has personal jurisdiction over Defendants Jefferson County Board of Education, Marty Pollio, and Amanda Herzog because they reside or are employed within its jurisdiction.

25. On information and belief, this Court has personal jurisdiction over Defendant NCS Pearson, Inc., because it maintains sufficient minimum contacts within the jurisdiction through contracts with JCPS and other entities.

### **FACTS**

26. Mrs. Stovall is a local mother who engages in advocacy and discussion surrounding parental rights, educational reform, and education transparency in Kentucky and nationwide.

27. In early January 2023, Mrs. Stovall heard about a survey that Defendant JCPS planned to administer to students in grades 6 through 12, including her child who currently attends a JCPS high school.

28. Mrs. Stovall was interested in obtaining a copy of the survey and encouraging public discussion, criticism, comments, and news reporting about its contents.

29. To allow her to do this, on or around January 17, 2023, Mrs. Stovall sent a Kentucky Open Records Act request to Defendant JCPS, asking it to “[p]rovide a full digital copy of the ‘BESS Social and Emotional Screener’ or ‘Mental Health Screener’ or ‘Screener Questionnaire’ to be given in 6-12 grades during school.”

30. On January 17, 2023, Defendant Amanda Herzog, Assistant General Counsel to Defendant JCPS, replied to Mrs. Stovall’s request and denied it.

31. Defendant Herzog stated, “We are not able to provide you with this record. This screener is the copyrighted intellectual property of Pearson. KRS 61.878(1)(k) prohibits from disclosure ‘All public records or information the disclosure of which is prohibited by federal law or regulation[.]’ Under this law, we are not able to provide you with copies of copyrighted materials.”

32. On information and belief, Defendant Herzog was acting under the direction and control of Defendant JCPS.

33. Defendants Pearson and JCPS offered to allow Mrs. Stovall to inspect the survey in person but refused to provide copies to her.

34. If Defendant JCPS had not withheld the survey due to its copyright status, Mrs. Stovall would have been entitled to copies of it under KRS § 61.874(1).

35. Without copies of the survey, it is difficult for Mrs. Stovall to speak about its contents to the public for purposes of criticism, comment, educational reform, and news reporting.

36. For example, skeptical listeners sometimes ask Mrs. Stovall for proof that their local schools are asking students the invasive questions she claims they are. Because JCPS refuses to provide her copies of the surveys, she can do little except ask listeners to believe her.

37. This stifles important political dialogue by preventing robust communication about important matters of the day.

38. Mrs. Stovall continues to request materials that are copyrighted by Defendant Pearson and are used by Defendant JCPS, and she intends to do so in the future.

### **INJURY TO PLAINTIFF**

39. Mrs. Stovall is injured by the denial of her request for copies of the surveys. Without copies, it is much more difficult for her to raise awareness of the topics contained in surveys being provided to schoolchildren in the district. Without copies, Mrs. Stovall must rely on her memory of what was contained in the surveys to discuss them with other parents, and she has to persuade others to believe her claims without proof.

40. This injury is caused by Defendant JCPS's refusal to provide copies, citing copyright protection.

41. Mrs. Stovall's injury, caused by this misapplication of copyright law, would be remedied by a declaratory judgment that providing her with copies of the survey is a fair use and thus not an infringement of Defendant Pearson's copyright.

### **CLAIM FOR RELIEF**

#### **The Copyright Act, 17 U.S.C. § 101, *et seq.*, and the First Amendment**

42. Plaintiff incorporates the allegations above as if fully set forth herein.

43. There is a real and actual controversy between Plaintiff and Defendants as to whether Defendant JCPS's provision of the requested surveys to Mrs. Stovall would infringe Defendant Pearson's copyright.

44. Mrs. Stovall is entitled to a judgment declaring that Defendant JCPS providing the surveys to her is a fair use that does not infringe Defendant Pearson's copyright.

45. Providing Defendant Pearson's copyrighted surveys in response to Mrs. Stovall's public records request is a fair use because, among other reasons, it is non-commercial, intended for core First Amendment purposes such as criticism, public comment, news reporting, political advocacy, and discussion; the requested surveys are published, factual, and utilitarian; the requested material is reasonable in amount and substantiality; and the effect on the relevant market is both minimal or non-existent and greatly outweighed by the public benefit of preventing copyright from interfering with public records requests and core First Amendment values. *See* 17 U.S.C. § 107.

46. In the alternative, should the Court find that the statutory fair use provision does not extend to this situation, this Court should find that the Copyright Act violates the First Amendment by making it unlawful to provide copies of the survey for purposes of criticism, public comment, news reporting, political advocacy, and discussion. Those activities are core protected speech that Congress may not prohibit. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011) ("This Court has held that the creation and dissemination of information are speech within the meaning of the First Amendment.").

### **RELIEF REQUESTED**

Plaintiff respectfully requests that this Court:

A. Enter a declaratory judgment that the provision of copyrighted material pursuant to a public records request for non-commercial purposes as in this case is a non-infringing fair use; and

B. Award attorneys' fees and costs pursuant to 17 U.S.C. § 505, and any other applicable legal authority; and

C. Grant Plaintiff such other and further relief as the Court deems appropriate.

Respectfully submitted,

June 6, 2024.

/s/ Braden H. Boucek

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