

WISCONSIN INSTITUTE FOR LAW & LIBERTY,  
330 E. Kilbourn Ave.  
Suite 725  
Milwaukee, WI 53202,

Petitioner,

Petition for Writ of Mandamus  
Case Code: 30952  
Case No. 23-CV-

MADISON METROPOLITAN SCHOOL DISTRICT,  
545 W. Dayton St.  
Madison, WI 53703,

Respondent.

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**PETITION FOR WRIT OF MANDAMUS**

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This is an action to enforce Wisconsin’s Open Records Law, Wis. Stat. §§ 19.31-19.39. State law declares it the public policy of this state that every citizen is presumptively entitled to complete access to the records of state and local government.

Petitioner Wisconsin Institute for Law & Liberty, by its Attorney, Thomas C. Kamenick, of the Wisconsin Transparency Project and Kamenick Law Office, LLC, hereby petitions this Court for a writ of mandamus directing the Respondent, Madison Metropolitan School District, to produce records requested by the Petitioner, alleging to the Court as follows:

**FACTUAL ALLEGATIONS**

***Parties***

1. Petitioner Wisconsin Institute for Law & Liberty (“WILL”) is a non-stock corporation incorporated under the laws of the State of Wisconsin with an address of 330 East Kilbourn Avenue, Suite 725, Milwaukee, Wisconsin 53202.

2. WILL is a law and policy center. Through litigation, education, and participation in public discourse, WILL advances the public interest in the rule of law, individual liberty, constitutional government, and a robust civil society. One method of advancing these interests is to encourage and support government transparency, including the enforcement of Wisconsin's Open Records Law. WILL also vigorously defends the rights of equality under state and federal law, and consistently advocates for reforms to Wisconsin's K-12 educational system to improve student proficiency and academic outcomes.

3. Respondent Madison Metropolitan School District ("District") is a public school district organized under the laws of the State of Wisconsin with a business address of 545 West Dayton Street, Madison, Wisconsin 53703.

4. As a "local . . . public body corporate and politic," the District is an "Authority" under Wis. Stat. § 19.32(1).

#### ***Venue & Jurisdiction***

5. This Court has jurisdiction to hear this matter under Wis. Stat. § 19.37(1)(a), which provides record requesters a private right to "bring an action for mandamus asking a court to order release of the record."

6. Venue is proper in this County under Wis. Stat. § 801.50(2), as the action arose in this County and the Respondent does substantial business in this County.

#### ***Facts***

7. In January 2022, multiple District employees reached out to WILL Deputy Counsel Daniel Lennington alleging that the District was discriminating against students based on race. One anonymous whistleblower provided Lennington with a screenshot of a policy that District administrators had circulated. The policy required teachers to meet with African

American students “first and more often” and English Language Learner students “second and more often” than other students.

8. On behalf of WILL, on January 31, 2022, Dan Lennington, WILL’s Deputy Counsel, sent an open record request (“January 31 Request”) to the District, using [publicrecords@madison.k12.wi.us](mailto:publicrecords@madison.k12.wi.us), the email address the District instructs requesters to use. A true and accurate copy of an email thread containing that request, as well as the screenshot described above, is attached as Exhibit A.

9. The record request attached the screenshot of the policy for reference and made the following four requests:

- a. “all records created, sent, received, or in effect since October 1, 2020, requiring or recommending that elementary school teachers prioritize instruction to students who are African American and/or BIPOC. . . . Please include both actual policies and proposed policies.”
- b. “all records created, sent, received, or in effect since October 1, 2020, . . . requiring or recommending that elementary school teachers meet with African American and/or BIPOC students first and/or more often than students in other racial groups. . . . Please include both actual policies and proposed policies.”
- c. “all records created, sent, received, or in effect since October 1, 2020, . . . requiring or recommending that elementary school employees prioritize and/or group students based on race in service of your district’s equity vision, mission, values, or other policies designed to promote Black excellence.”
- d. “all records created, sent, received, or in effect since October 1, 2020, . . . identifying the dates and times of staff meetings that were segregated by race. This would include any Outlook or other calendar invitations labeling certain staff meetings as ‘affinity groups’ or similar terms depicting racial or ethnic separations.”

10. Hearing no response from the District, Lennington asked for an update on March 7.

11. On March 8, the District responded, “Public records are reviewed in the order in which they are received. We will review this request as soon as practical.”

12. On August 4, Lennington again asked for an update. The District did not respond.
13. On September 19, Lennington again asked for an update, indicating that WILL was “planning on a lawsuit” if the records were not provided. The District did not respond.
14. On September 28, Lennington again asked for an update. The District did not respond.
15. On November 18, Lennington again asked for an update. The District did not respond.
16. On December 6, Lennington again asked for an update. He also pointed out that he had made multiple requests for an update with no response, and that according to a tracking spreadsheet provided by the District, the District had collected the relevant emails in May and had fulfilled several other requests received later. The District did not respond.
17. On behalf of WILL, on June 1, 2022, Dylan Palmer, a policy intern at WILL, sent an open record request (“June 1 Request”) to the District, using [publicrecords@madison.k12.wi.us](mailto:publicrecords@madison.k12.wi.us), the email address the District instructs requesters to use. A true and accurate copy of an email thread containing that request is attached as Exhibit B.
18. The June 1 Request sought: “For the 2021-2022 school year, the complete list of school board adopted textbooks on file with the clerk, in accordance with Wis. Stat. § 118.03(1).” A true and accurate copy of the June 1 Request is attached as Exhibit C.
19. On June 2, the District acknowledged the June 1 Request, noting that “responses are handled in the order in which they are received” and that “due to the COVID-19 pandemic, staff constraints, and the increase of public records requests received, we are experiencing a delay in responding to requests.”

20. As of the date of this Petition, the District has not provided any records in response to the January 31 or June 1 Requests. Nor has the District provided any estimates for when the records would be provided, explained their delay, or asked for a request to be narrowed.

21. The District has a history of extreme delay in responding to record requests.

22. On March 24, 2022, Lennington submitted a simple and straightforward request to the District: “Please provide a copy of the slides/handouts used during Regent Pride (3rd Hour) on March 24, 2022, at West High School.” The district acknowledged the request on March 28, but did not fulfill the request until November 7. The entire response consisted of a 1-page PDF, two 4-page PDFs, and a 20-page PDF slideshow. These documents were provided to students in March 2022, yet it took nearly eight months for the District to provide them to WILL.

23. On September 15, 2022, WMTV NBC 15 out of Madison reported about their six-months-and-counting attempt to get records regarding the sudden resignation of an East High School principal. See <https://www.nbc15.com/2022/09/16/open-records-roadblock-mmsd-takes-over-6-months-reply-nbc15-investigates-open-records-request/>.

24. According to that article, NBC 15 made a request to search four email accounts for a list of specific keywords in March, and had not heard back as of September, making timely reporting on the issue impossible. The article also noted that NBC 15 had made two other unfulfilled requests that were 164 and 99 days old at that point.

25. On September 26, 2022, Bryan C. Esch sued the District seeking production of records that had been delayed. See Dane County Case No. 2022-CV-2422. The case has not been resolved and is currently in discovery.

26. According to reporting on that lawsuit, the District initially communicated with Esch but stopped responding to requests for updates after three months. *See* Ed Treleven, *Lawsuit: The Wait for Madison School District Records at 9 Months and Growing Violates State Law*, Wisconsin State Journal, Sept. 29, 2022, available at [https://madison.com/news/local/crime-and-courts/lawsuit-the-wait-for-madison-school-district-records-at-9-months-and-growing-violates-state/article\\_6df4d6f8-6ba1-5a7b-86a0-8aa90bdecabd6.html](https://madison.com/news/local/crime-and-courts/lawsuit-the-wait-for-madison-school-district-records-at-9-months-and-growing-violates-state/article_6df4d6f8-6ba1-5a7b-86a0-8aa90bdecabd6.html).

27. This is the second time in eight months WILL has sued the District for failing to provide records. *See* Dane County Case No. 2022-CV-1216. WILL had submitted an open records request to the District via email on July 20, 2021. The request sought a single document – a copy of the District’s training entitled LGBTQA+101, provided by the District to its teachers in the spring of 2021. It took the District nearly three months just to deny the request. The case settled with the District producing the requested records.

28. The District, which is the second largest in the state, has a budget of almost \$600,000,000 per year. *See* Madison Metropolitan School District, *Fall Approved Budget 2022-2023*, at 9, available at <https://www.madison.k12.wi.us/fs/resource-manager/view/0841cb13-593d-40bf-b5b5-13484c5a8cf8>.

29. Of those hundreds of millions of dollars, the District dedicates only one staff position to responding to record requests, according to the District’s own spokesperson. In September of 2022, that position was vacant.

30. On December 5, in response to a record request from WILL, the District produced an Excel spreadsheet used to track record requests made to the District. A true and accurate copy of a printout of that spreadsheet is attached as Exhibit D.

31. The spreadsheet begins with requests made in June of 2020 and ends with requests made in September, 2022.
32. The oldest unfulfilled request dates from January 25, 2021 – almost two years old.
33. At least five other requests from 2021 remain unfulfilled, including NBC 15’s request described above.
34. The document lists 87 requests from 2022, of which 30 remain unfulfilled, including WILL’s two Requests and NBC 15’s two other requests described above.
35. The document lists 33 requests received after the January 31 Request that have been completed.
36. The document lists 8 requests received after the June 1 Request that have been completed.
37. The document contains the following entry in the “Status” column for the January 31 Request: “05/27/2022- emails need to be reviewed. BF re-sent email to MM on 08/04/22 SMTW forwarded info received from Cindy Green.”

**COUNTS I & II – VIOLATIONS OF WIS. STAT. § 19.35(4)(a)  
Unlawful Delay – January 31 Request & June 1 Request**

39. Under Wis. Stat. § 19.31, “it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” The statute further provides that “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied,” establishing “a presumption of complete public access to government records, consistent with the conduct of governmental business.”
40. The documents WILL requested are “records” under Wis. Stat. § 19.32(2).

41. WILL has a clear legal right to receive the records it requested and the District has a plain legal duty to produce them. Wis. Stat. § 19.35(1)(a) and (b) provide that “any requester has a right to inspect any record” and “to make or receive a copy of a record.”

42. Wis. Stat. § 19.35(4) provides that “Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority’s determination to deny the request in whole or in part and the reasons therefor.”

43. The Attorney General has opined that “10 working days generally is a reasonable time for responding to a simple request for a limited number of easily identifiable records.” Wis. Dep’t of Justice, *Wisconsin Public Records Law Compliance Guide*, Oct. 2019, at 15. “Requests for public records should be given high priority.” *Id.*

44. Although the January 31 Request is larger than some, it asked for clearly defined types of documents on a certain topic. No request, no matter how large, should ever take a year. Furthermore, the District could have partially fulfilled the Request immediately by providing the policy the Request specifically identified.

45. Wisconsin Statute Section 118.03(1) requires school boards to “adopt all the textbooks necessary for use in the schools under its charge” and that “[t]he list of the adopted books shall be filed with the school district clerk.”

46. The June 1 Request asked for a copy of that “list,” a single document that should be in the possession of the District’s clerk and could be located and produced in a few minutes.

47. To the extent any exemption may require or the balancing test may favor the withholding or redaction of any records responsive to WILL’s Requests, any such information must be redacted and the remainder of the records released. Wis. Stat. § 19.36(6).

48. Substantial damage will result if WILL is denied access to records it has a statutory right to view, and it has no other adequate remedy at law to obtain these records.

49. “If an authority . . . delays granting access to a record or part of a record after a written request for disclosure is made, the requester may . . . bring an action for mandamus asking a court to order release of the record.” Wis. Stat. § 19.37(1)(a).

50. The District’s repeated and growing delays are so extreme they qualify as arbitrary and capricious.

51. The District is intentionally choosing to understaff its custodial roles, depriving the public of its right to receive records as soon as practicable and without delay.

52. The District has been sued for its delays and has not improved its response time.

53. The District has been repeatedly criticized in the media for its delays and has not improved its response time.

54. Despite claiming that it reviews requests “in the order in which they are received,” the District completed numerous requests made after WILL’s January 31 and June 1 Requests.

55. The District chose to ignore WILL’s repeated requests for status updates.

56. The District compiled records responsive to the January 31 Request by May and has waited more than eight months to produce them.

57. The District has not performed any work on the January 31 Request since August.

58. The District has not performed any work on the June 1 Request.

59. The District demonstrates zero effort or desire to improve its response time for record requests despite repeated public attention and litigation. Significant punitive damages are

necessary to discourage the District's wanton disregard for its legal obligations and incentivize the District to devote a reasonable level of resources to fulfilling record requests.

60. "If a court finds that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously denied or delayed response to a request or charged excessive fees, the court may award punitive damages to the requester." Wis. Stat. § 19.37(3).

### **RELIEF REQUESTED**

WHEREFORE, the Petitioner demands a writ of mandamus to issue against the Respondent under Wis. Stat. § 19.37(1):

1. Compelling the Respondent to produce the requested records;
2. Declaring the Petitioner's rights and limiting the Respondent's conduct with respect to the requested records;
3. Awarding the Petitioner reasonable attorney fees, damages of not less than \$100 for each Count, and other actual costs under Wis. Stat. § 19.37(2);
4. Awarding the Petitioner punitive damages under Wis. Stat. § 19.37(3); and
5. Awarding such other relief as the Court deems appropriate.

Dated this January 17, 2023.

Respectfully submitted,  
WISCONSIN TRANSPARENCY PROJECT  
KAMENICK LAW OFFICE, LLC  
Attorney for Petitioner

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