

<p>DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO 7325 S. Potomac Street Centennial, CO 80012</p> <hr/> <p>Plaintiffs:</p> <p>CHERRY CREEK TRANSPORTATION EMPLOYEES ASSOCIATION and CHERRY CREEK EDUCATION ASSOCIATION</p> <p>v.</p> <p>Defendants:</p> <p>CHERRY CREEK SCHOOL DISTRICT NO. 5 and TUSTIN AMOLE in her official capacity as Custodian of Records.</p> <hr/> <p>Rory M. Herington, No. 40024 Sharyn E. Dreyer, No. 19637 Colorado Education Association 1500 Grant Street Denver, Colorado 80203 Telephone: 303-837-1500 Facsimile: 303-861-2039 Email: rherington@coloradodea.org sdreyer@coloradoea.org</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number:</p> <p>Courtroom:</p>
<p>COMPLAINT</p>	

The Plaintiffs, the Cherry Creek Transportation Employees Association and the Cherry Creek Education Association, by and through their attorneys, Rory M. Herington and Sharyn E. Dreyer, hereby file their Complaint pursuant to C.R.C.P. 106(a)(2) and request injunctive relief pursuant to C.R.C.P. 65 against the Defendants, the Cherry Creek School District No. 5 and Tustin Amole in her official capacity as Custodian of Records, and hereby state the following:

INTRODUCTION AND JURISDICTION

1. The Plaintiffs seeks relief pursuant to C.R.C.P. 106(a)(2) to compel the Defendants to perform their legal duty to deny the release of personnel records of employees which were requested pursuant to the Colorado Open Records Act (“CORA”). The requested records constitute “personnel files” and are therefore exempt from disclosure to anyone

other than the person in interest, pursuant to § 24-72-204(3)(a), C.R.S. The Custodian of Records has a legal duty pursuant to CORA to deny release of the personnel files of the employees. *Id.* The Custodian of Records would be violating her duty by releasing the requested personnel records.

2. The Plaintiffs seek injunctive relief pursuant to C.R.C.P. 65 because the employees whose personnel records are sought in the CORA request will be irreparably injured by release of the requested records and there is no other adequate remedy at law.
3. This Court has jurisdiction of this action pursuant to C.R.C.P. 106(a)(2) and C.R.C.P. 65.

PARTIES AND VENUE

4. Plaintiff Cherry Creek Transportation Employees Association (“CCTEA”) is a labor organization that represents approximately 115 school bus drivers employed by Cherry Creek School District No. 5, who are members of CCTEA and the CCTEA bargaining unit. This Plaintiff, as a person in interest, has standing to sue on behalf of its members because those members have standing to sue in their own right, because the CCTEA’s interest in protecting the legal rights of its members is germane to its organizational mission, and because the relief requested in this lawsuit does not require the participation of individual members. As relief, the CCTEA requests that an injunction be issued pursuant to C.R.C.P. 65 prohibiting the Defendants from releasing the requested personnel records of its members of any of them.
5. Plaintiff Cherry Creek Education Association (“CCEA”) is a labor organization that represents approximately 2,435 teachers and other licensed professional, non-management employees of Cherry Creek School District No. 5, who are members of CCEA and the CCEA bargaining unit. This Plaintiff, as a person in interest, has standing to sue on behalf of its members because those members have standing to sue in their own right, because CCEA’s interest in protecting the legal rights of its members is germane to its organizational mission, and because the relief requested in this lawsuit does not require the participation of individual members. As relief, the CCEA requests that an injunction be issued pursuant to C.R.C.P. 65 prohibiting the Defendants from releasing the requested personnel records of its members of any of them.
6. Defendant Cherry Creek School District No. 5 (“School District” or “District”) is a Colorado public school district duly constituted and existing pursuant to applicable Colorado laws. The School District oversees and maintains the employment records of the personnel it employs. The School District’s central offices are located in the City of Greenwood Village, County of Arapahoe, State of Colorado.
7. Defendant Tustin Amole is the Director of Communications and Custodian of Records for the School District
8. Venue is proper in this district pursuant to C.R.C.P. 98.

GENERAL ALLEGATIONS

9. On or about January 21, 2016, the School District received a CORA request asking for the following information for each of six named current or former employees of the District:
 - a. job application,
 - b. position and salary if currently employed by the District,
 - c. discharge date if no longer employed by the District,
 - d. any records of complaints about the job performance of the employee, and
 - e. any records of disciplinary action taken against the employee.
10. Five of the six employees named in the CORA request are/were School District bus drivers and one is a teacher in the District. One of the five bus drivers is no longer employed in the District.
11. Four of the employees named in the CORA request are members of one of the Plaintiff Associations. Two of the currently employed bus drivers are members of the CCTEA and the teacher is a member of the CCEA.
12. The CORA request was submitted to the School District by Kevin Vaughan, a reporter for “9 Wants to Know,” Channel 9 News, Denver, Colorado.
13. On or about January 25, 2016, Tustin Amole, Director of Communications for the School District, responded in writing to the CORA request on behalf of the District. She provided to the reporter the following records/information sought in the CORA request: (a) the job applications of the six named employees, (b) the positions and salaries of the five current District employees, and (c) the discharge date of the former District employee.
14. The Custodian of Records declined to provide the other records sought in the CORA request (i.e., items d and e, above) at that time, stating that the District needed an additional seven days to review the relevant case law and determine whether those records should be released.
15. On or about February 5, 2016, the School District informed the 9News reporter in writing that the District had decided not to release the requested records of any complaints about the named employees’ job performance and the requested records of any disciplinary action against the named employees. The District stated that these records are part of the named employees’ personnel files and are therefore protected from disclosure under CORA.
16. On or about March 14, 2016, an attorney for 9News submitted a letter to the School District in support of the CORA request. The attorney argued that the records of any

complaints and disciplinary action against the named employees sought in the CORA request do not constitute personnel files and therefore must be disclosed to the public.

17. Upon information and belief, the School District, after receiving the letter from the 9News attorney, requested additional time from 9News to reconsider its decision regarding release of the requested records.
18. On or about March 17, 2016, the School District's counsel informed the Plaintiff Associations of the CORA request from 9News and provided a copy of the request to the Plaintiffs' counsel. In subsequent conversations with the Plaintiffs' counsel during the week of Monday, March 21, 2016, the School District's counsel stated that the School District had decided to release the requested records of any complaints or disciplinary action to 9News. Plaintiffs' counsel advised the District's counsel that CCTEA and CCEA object to release of those records and will file suit on behalf of their members to obtain an injunction preventing their release. The District's counsel responded that, if such suit is not filed by the close of business on March 25, 2016, the District will release the records in issue.
19. The Plaintiff Associations object, on behalf of their affected members, to release of the records of any complaints and disciplinary action against the named employees. Melissa Hart, who is employed to represent and advocate for members of, *inter alia*, the two Plaintiff Associations, states in her affidavit, attached hereto as Exhibit 1, that the affected employees have legitimate expectations of privacy in their personnel records, including records of any complaints or disciplinary action against them, pursuant to the statutory protections of C.R.S. §24-72-204(3)(a) and the District's policy and practice. Ms. Hart asserts that the subject employees will be irreparably harmed by release of the records because their individual privacy rights and statutory protections will be irreparably compromised and they have no other adequate remedy at law.
20. The School District has adopted Policy 4134, attached hereto as Exhibit 2, which, *inter alia*, provides for the confidentiality of teachers' employment records maintained in both District and school building personnel files. Policy 4134 provides that only a very limited group of people will have access to these files, specifically certain School District human resources personnel and designees. Consequently, Policy 4134 creates legitimate and reasonable expectations of privacy concerning these records on the part of teachers in the District.
21. The School District has a consistent, long-standing practice of treating bus drivers' personnel files in the same manner as teachers' personnel files in regard to which people may access them. Specifically, the District limits access to bus drivers' personnel files to a very limited group of people, thereby providing bus drivers with an expectation of privacy concerning the records contained in their personnel files.
22. The Colorado Open Records Act provides the right to inspect public records not specifically exempted by law. CORA contains an exemption regarding the inspection of personnel files. §24-72-204(3)(a)(II), C.R.S. ("The custodian *shall deny the right of*

inspection of the following records ... Personnel files, but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise such person's work.”)

23. Personnel files are defined to include home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship. §24-72-202(4.5), C.R.S. CORA expressly excludes certain records from the definition of personnel files, specifically: past or current employment applications, employment agreements, performance ratings, final sabbatical reports and any compensation, including expense allowances and benefits, paid to employees (*Id.*) and any employment contract or any information regarding benefits provided under any settlement agreement (§24-72-204(3)(a)(II)(B)).
24. The records in issue in this case do not fall within any of the express statutory exceptions to the term, “personnel files.”
25. The subject employees have legitimate and reasonable expectations of privacy concerning the records contained in their personnel files and are statutorily protected from the disclosure of such records.
26. The School District has a specific affirmative duty to deny inspection and release of the requested records. §24-72-204(3)(a)(II), C.R.S.
27. The employees named in the CORA request will be irreparably injured by the Defendant's release of the requested records. The CORA requester is a local news media organization with a television station and a website. Consequently, it is very likely that the contents of the requested personnel records, along with the identities of the subject employees, will be publicly and widely disseminated if they are released by the School District. This result is particularly likely to occur in the event that the records contain adverse information or negative opinions about the named employees or their performance.

CLAIM FOR RELIEF – C.R.C.P. 106(a)(2)

28. The Plaintiffs reallege and incorporate by reference paragraphs 1-27 of this Complaint.
29. The Plaintiffs, on behalf of their affected members, have a clear right to the relief sought, i.e., an order directing the Defendants not to release the requested personnel records in issue.
30. The Defendants have a clear duty to refrain from releasing the records in issue, pursuant to CORA, § 22-72-204(3)(a)(II).
31. The CCTEA and CCEA and their affected members have no other available remedy to prevent the Defendants from releasing the records in issue to the requesting news media organization.

WHEREFORE, the Plaintiffs, Cherry Creek Transportation Employees Association and Cherry Creek Education Association, respectfully request that this Court provide the above-requested relief and also enter an order awarding costs and reasonable attorney fees to the Plaintiffs and providing such other and further relief as this Court deems just.

Respectfully submitted this 25th day of March, 2016.

/s/ Sharyn E. Dreyer
Rory M. Herington
Sharyn E. Dreyer
Attorneys for Plaintiffs

Plaintiffs' address:
Cherry Creek Transportation Employees Association
Cherry Creek Education Association
2851 S. Parker Road, # 1000
Aurora, CO 80014

CERTIFICATE OF SERVICE

I certify that on this 25th day of March, 2016, a true and correct copy of the foregoing COMPLAINT was filed via ICCES and served on the following:

Sonja S. McKenzie
Steve Colella
General Counsel
Office of Legal Resources
Cherry Creek School District No. 5
4700 S. Yosemite St.
Greenwood Village, CO 80111
(720) 554-4251

Served electronically smckenzie3@cherrycreekschools.org; scolella@cherrycreekschools.org