DISTRICT COURT TELER COUNTY, COLORADO Court address: **101 West Bennett Avenue** **Cripple Creek, CO 80813**	DATE FILED February 13, 2026 12:08 PM CASE NUMBER: 2022CV30023
Plaintiff: Erin O'Connell v. Defendants: WOODLAND PARK SCHOOL DISTRICT BOARD OF EDUCATION and CHRIS AUSTIN in his official capacity as Board Member; GARY BROVETTO in his official capacity as Board Member; DAVID ILLINGWORTH II in his official capacity as Board Member; SUZANNE PATTERSON in her official capacity as Board Member; DAVID RUSTERHOLTZ in his official capacity as Board Member,	**Court Use Only**
	Case Number: 22CV30023 Division 11
ORDER	

This matter came before this court due to a remand from the Colorado Supreme Court in case 2025 CO 57. The Supreme Court ruled the plaintiff was the prevailing party in the case, and it remanded the matter to the district court for hearing on the issue of attorney fees and costs. A hearing was held on 4 February 2026. Plaintiff and her counsel, as well as counsel for the defendants appeared by WEBEX. The court, by agreement of the parties, heard only argument

on the matter of fees and costs. Plaintiff's counsel also made a concession on the request for fees requesting this court to modify the requested amount downward by $10,810. There was no objection to this concession by opposing counsel.

BACKGROUND

In the present case (2025 CO 57), the Colorado Supreme Court held that the cure doctrine allows a public body to resolve a violation of the Colorado Open Meetings Law (COML) by holding a subsequent meeting that complies with the COML, so long as it does not merely "rubber stamp" the earlier decision of the public entity. *Id*. The court went on to hold that the COML focuses on the fact of a violation and not whether the violation was intentional or not. The Supreme Court held the plaintiff was the prevailing party and entitled to reasonable fees and costs because she proved a COML violation by the Woodland Park School Board. Consequently, it ruled as the prevailing party she was entitled to fees and costs as authorized by § 24-6-402(9). *Id*.

ARGUMENT

Counsel for Plaintiff argued for an award of attorney fees and costs with $144,305 (after applying the concession noted above) attributable to fees, and $4,517 to costs. In his argument, Mr. Maxfield argued several points, chief of which was that Ms. O'Connell's suit vindicated a public right. Mr. Maxfield went on to argue that the litigation was necessary in its entirety to protect the right of the public to participate in policy making.

Defendants' counsel, in his argument, recognized that some recovery was warranted; however, counsel argued that the amount should be around $40,000. The principal thrust of his argument was that the plaintiff prevailed only on a very narrow point, and that the remainder of

the fees requested were incurred for what was "fruitless" litigation. Counsel further argued that this court is required to apply the "lodestar" formula as outlined by various Colorado courts. See *Spensieri v. Farmer's Alliance Mut. Ins. Co.*, 804 P.2d 268 (Colo. App. 1990) and *Tallitsch v. Child Support Servs., Inc*., 926 P.2d 143 (Colo. App. 1996). Mr. Carlson also provided an exhibit in which he identified his belief as to which charges, or billing entries, were compensable, partly compensable, or non-compensable. Beyond the generalized entries noted, Mr. Carslon did not make any showing as to how he derived his proposed fees and costs award.

Additionally, I note Mr. Carlson did not object to the reasonableness of the Mr. Maxfield's hourly rates, the time dedicated to any one task, or make any claims of excessiveness, block billing or redundancy. Consequently, I find the rates charged and the time charged per billing entry reasonable due to the defendants' failure to contest them. See C.R.C.P. 8(d)(1).

FINDINGS AND ORDER

As a preliminary matter, I again note § 24-6-402(9)(b) authorizes an award of attorney fees and costs to a prevailing party. In determining a reasonable fee, I am to consider the factors outlined in § 13-17-103. In this case I find the following factor most determinative: "The extent to which the party prevailed with respect to the amount of and number of claims in controversy." *Id*. I am also required to use a lodestar calculation when calculating fees and costs. This method requires I determine the hours reasonably expended for a case in question by reviewing the total time expended, and I am then to deduct the time not reasonably expended. Once I have determined the appropriate number of hours, I am to multiply the reasonable hours by the billing rate. I must also make a finding that the billing rate itself is reasonable. Once these calculations are complete, I am authorized to adjust upward or downward the potential fees and costs

awarded after considering the results achieved, the amount at stake, and the complexity of the case. *Tallitsch v. Child Support Servs., Inc*., 926 P.2d 143 (Colo. App. 1996).

Additionally, in *Payan v. Nash*, 310 P.2d 212 (Colo. App. 2012), citing *Mares v. Credit Bureau*, 801 F.2d 1197, 1210 (10th Cir.1986) the court said, "…we note that it is not the court's burden "to justify each dollar or hour deducted from the total submitted by counsel. It remains counsel's burden to prove and establish the reasonableness of each dollar, each hour, above zero." The court followed by saying, "The fee applicant ... must ... submit appropriate documentation to meet "the burden of establishing entitlement to an award." ... [T]rial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees ... is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit and may use estimates in calculating and allocating an attorney's time." *Id*. "The reasonableness of the costs and their amount is a matter within the sound discretion of the trial court, and we will not disturb that determination on appeal absent an abuse of discretion." *Ballow v. PHICO Insurance Co*., 878 P.2d 672 (Colo.1994).

My analysis of this case shows that the fees and costs charged to Ms. O'Connell were reasonably expended during the litigation. My review of the varying billing exhibits support this contention. I note the billing exhibits reflect a detailed breakdown of how the fees and cost were determined.

With regard to the results obtained, it is clear Ms. O'Connell forced the school board to comply with the COML and to give the public the right to participate in policy making decisions. Moreover, while the cure doctrine was upheld, the legislative intent behind § 24-6-402(9)(b) was similarly upheld. Specifically, the Colorado Supreme Court said, "By conceding a violation, a public body could effectively prevent the award of costs and reasonable attorney fees to

prevailing parties even though they are a mandatory consequence for a violation of the statute." *O'Connell v. Woodland Park School District*, 25CO 57 §56 (CO 2025)."

Here, O'Connell's suit forced accountability on the School Board. The position argued by the School Board would, had the Colorado Supreme Court adopted it, have allowed the School Board to escape repercussions for its actions. Similarly, it would have allowed this school board, and other public bodies, to violate the COML with relative impunity because any violation could be remedied by a remedial cure. In contrast to what Mr. Carlson argues, O'Connell's lawsuit sent a message to public bodies across Colorado. Based on the ruling of the Colorado Supreme Court, government entities can be held accountable for their actions by being forced to pay an opposing party's fees and costs. Consequently, I find the results of the litigation far exceeded what defendants' counsel argues because the litigation results have state-wide implications.

And while defendants argue that certain claims failed, I find that even if true, they were ancillary to the overall purpose of O'Connell's suit which was to show that the Woodland Park School Board had violated the COML and was accountable for so doing. Equally important was the holding by the Colorado Supreme Court reinforcing that previous decisions made in violation of the COML could not be merely "rubber-stamped."

Additionally, and in contrast to what was argued, the Woodland Park School Board did not acknowledge "early on" O'Connell's position; rather, the School Board attempted to circumvent the requirements for transparency as noted in the Colorado Supreme Court's opinion, wherein the court noted concerns raised by the school board itself. "At the beginning of the meeting, Austin indicated that he was "not comfortable approving the agenda" because he did not understand what the "BOARD HOUSEKEEPING" agenda item meant, and he believed that the public would not either. Miller responded that, "from a purely legal perspective, . . . it's not

an absolute necessity to provide granularity to the public" or "to tell the public in advance about every single thing that's being issued." Austin continued to express his concerns about the lack of notice and transparency, asking whether the agenda item was left ambiguous "so that we don't have a houseful of people who have opinions" about chartering Merit Academy. Rusterholtz commented that he was "concerned about Mr. Austin's concern" and that the "only reason that it [was] on the agenda as housekeeping . . .[was] because of advice of counsel." Ultimately, the School Board approved the agenda in a 4–1 vote, with Austin casting the sole no vote. Miller subsequently introduced the MOU during the discussion of the "BOARD HOUSEKEEPING" agenda item. He and Neal then explained the purpose of the MOU, and after making an amendment to the original draft, the School Board approved the MOU in a 5–0 vote." *O'Connell v. Woodland Park School Board*, 25 CO 57.

Later, after Ms. O'Connell filed suit, the district court ruled after its hearing on a preliminary injunction that the "clear priority of the majority of the [School] Board was to charter Merit" and that the January 26 "'BOARD HOUSEKEEPING' [a]genda item was a conscious decision to hide a controversial issue regarding Merit, the MOU[,] and intent to charter." The district court further found that an "ordinary member of the community could not have understood or known what 'BOARD HOUSEKEEPING' . . . meant." The court rejected the School Board's argument that the February 9 or April 13 meetings cured the January 26 COML violation, instead concluding that the School Board merely rubber-stamped the January 26 decision at the two subsequent meetings*." Id*. Accordingly, I find that the School Board prolonged the litigation by failing to recognize its responsibilities under the COML, and that it should bear the expense of pursuing aggressive litigation. "An aggressive litigation strategy carries with it certain risks, one of which is that a party pursuing an aggressive strategy may, if it

loses, find itself required to bear a portion of the attorneys' fees incurred by the other party in responding to that aggressiveness." *Praseuth v. Rubbermaid*, 406 F.3d 1245 (10th Circuit 2005).

Based on the foregoing, and my examination of the motion, and having applied the requisite analysis as required by case law, I find it appropriate to award fees to plaintiff in the amount of $144,305 in attorney fees, and $4,517 in costs. The additional fees requested are not addressed in this order so as to allow Mr. Carlson to respond. Any objection to the updated fee request must be filed within 14 days of this order.

These amounts are reduced to judgment and will bear interest at the statutory rate.

So ordered this 13th day of February 2026.

BY THE COURT:

William H. Moller
District Court Judge