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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 CAROL NYE-WILSON,) CASE NO. 18-1846-HRL
13 Plaintiff,)
14 v.) UNITED STATES DEPARTMENT OF
EDUCATION’S ANSWER
15 UNITED STATES DEPARTMENT OF) Hon. Howard R. Lloyd
EDUCATION,)
16 Defendant.)
17

18 Defendant United States Department of Education (“Federal Defendant”) by and through its
19 counsel, hereby admits, denies, alleges and otherwise responds to Plaintiff Carol Nye-Wilson’s
20 (“Plaintiff”) Complaint in the above entitled action (“Complaint”) as follows below. Each numbered
21 Paragraph below corresponds to the Paragraph numbers in the Complaint.

22 1. This Paragraph consists of a statement of law to which no response is required. To the
23 extent that any response is required, Federal Defendant denies each and every allegation in this
24 Paragraph.

25 2. This Paragraph consists of a statement of law to which no response is required. To the
26 extent that any response is required, Federal Defendant denies each and every allegation in this
27 Paragraph. Federal Defendant alleges that venue in this case is governed by 5 U.S.C. § 552(a)(4)(B).
28

1 3. This Paragraph contains Plaintiff’s characterization of this action, to which no response is
2 required. To the extent that any response is required, Federal Defendant lacks information sufficient to
3 form a belief as to the truth thereof and, on that basis, denies each and every allegation in this Paragraph.

4 4. This Paragraph contains Plaintiff’s characterization of this action, to which no response is
5 required. To the extent that any response is required, Federal Defendant denies each and every
6 allegation in this Paragraph.

7 5. Federal Defendant admits the first sentence in this Paragraph. Except as expressly so
8 admitted, Federal Defendant denies each and every allegation in this Paragraph.

9 6. This Paragraph contains Plaintiff’s characterization of this action, to which no response is
10 required. To the extent that any response is required, Federal Defendant denies each and every
11 allegation in this Paragraph.

12 7. Federal Defendant admits that Plaintiff submitted a FOIA request to Federal Defendant
13 on April 25, 2017. Except as so expressly admitted, Federal Defendant alleges that the request itself is
14 the best evidence of its contents and denies each and every allegation in this Paragraph that is
15 inconsistent with its contents.

16 8. Federal Defendant admits that it corresponded with Plaintiff on April 26, 2017. Except
17 as so expressly admitted, Federal Defendant alleges that the correspondence itself is the best evidence of
18 its contents and denies each and every allegation in this Paragraph that is inconsistent with its contents.

19 9. Federal Defendant admits that it corresponded with Plaintiff on May 12, 2017. Except as
20 so expressly admitted, Federal Defendant alleges that the correspondence itself is the best evidence of its
21 contents and denies each and every allegation in this Paragraph that is inconsistent with its contents.

22 10. Federal Defendant lacks information sufficient to form a belief as to the truth thereof and,
23 on that basis, denies each and every allegation in this Paragraph.

24 11. Federal Defendant admits that the Office of Inspector General responded to Plaintiff’s
25 FOIA Request No. 17-01585-F on May 24, 2017, and Federal Defendant alleges that the response itself
26 is the best evidence of its contents. Except as so expressly admitted, Federal Defendant alleges that the
27 response itself is the best evidence of its contents and denies each and every allegation in this Paragraph
28 that is inconsistent with its contents.

1 12. This Paragraph contains Plaintiff’s characterization of this action, to which no response is
2 required. To the extent that any response is required, Federal Defendant denies each and every
3 allegation in this Paragraph.

4 13. Federal Defendant admits that it has not released records in response to FOIA Request
5 No. 17-01585-F beyond what was released on May 24, 2017. Except as so expressly admitted, Federal
6 Defendant denies each and every other allegation in this Paragraph.

7 14. Paragraph 14 consists exclusively of a heading, to which no response is required. To the
8 extent that any response is required, Federal Defendant denies each and every allegation in this
9 Paragraph.

10 15. Federal Defendant admits that, on February 21, 2018, Plaintiff appealed Federal
11 Defendant’s response to her FOIA Request 18-00936-F. Federal Defendant denies that the appeal was
12 assigned tracking number 19-00033-A, and alleges that this appeal was assigned tracking number 18-
13 00033-A. Federal Defendant alleges that the appeal itself is the best evidence of its contents. Federal
14 Defendant denies that Plaintiff filed a FOIA request assigned tracking number 18-001621-F, and alleges
15 that Federal Defendant has no record of such FOIA request. Federal Defendant further alleges that
16 Plaintiff corresponded with Federal Defendant on February 6, 2018, and that correspondence was
17 assigned correspondence tracking number 18-001621. Because this correspondence was duplicative of
18 Plaintiff’s FOIA Request 18-00936-F, which was closed on February 15, 2018, it was not logged in as a
19 FOIA request, and Plaintiff was referred to Federal Defendant’s February 15, 2018 response to that
20 FOIA request. Except as so expressly admitted, Federal Defendant denies each and every other
21 allegation in this Paragraph.

22 16. Federal Defendant admits that on February 21, 2018, Plaintiff appealed Federal
23 Defendant’s response to her FOIA Request 18-00936-F and that Federal Defendant acknowledged
24 receipt of the appeal later that day. Except as so expressly admitted, Federal Defendant alleges that the
25 documents themselves are the best evidence of their contents and denies each and every allegation in
26 this Paragraph that is inconsistent with their contents.

27 17. Federal Defendant denies each and every allegation in this Paragraph.

1 18. This Paragraph contains Plaintiff's characterization of this action, to which no response is
2 required. To the extent that any response is required, Federal Defendant denies each and every
3 allegation in this Paragraph.

4 19. This Paragraph contains Plaintiff's characterization of this action, to which no response is
5 required. To the extent that any response is required, Federal Defendant denies each and every
6 allegation in this Paragraph.

7 20. Federal Defendant admits that Plaintiff communicated with it on March 22, 2018. Except
8 as so expressly admitted, Federal Defendant alleges that the communications themselves are the best
9 evidence of their contents and denies each and every allegation in this paragraph that is inconsistent with
10 their contents.

11 21. Federal Defendant incorporates by reference each and every admission, denial and/or
12 allegation contained in the preceding Paragraphs.

13 22. Federal Defendant denies each and every allegation in this Paragraph.

14 23. Federal Defendant denies each and every allegation in this Paragraph.

15 24. Federal Defendant denies each and every allegation in this Paragraph.

16 The remainder of the Complaint sets forth Plaintiff's prayer for relief, to which no response is
17 required. To the extent a response is required, Federal Defendant denies Plaintiff is entitled to any
18 relief.

19 Each and every allegation of the Complaint not heretofore expressly admitted, qualified, or
20 denied is hereby denied.

21 **AFFIRMATIVE DEFENSES**

22 1. Some of the records requested by Plaintiff, in full or in part, may be exempt from release
23 under the FOIA. In addition, some of the records requested by Plaintiff may not be agency records.

24 2. Plaintiff has failed to exhaust all administrative remedies and thus portions of her claim
25 are not within the jurisdiction of this court.

26 3. Federal Defendant lacks knowledge or information sufficient to form a belief as to
27 whether it has any additional, as yet unstated, defenses. Federal Defendant reserves the right to assert
28 additional defenses in the event further proceedings indicate it would be appropriate.

1 WHEREFORE, for the reasons set forth above, the Federal Defendant asserts that this action
2 should be dismissed and judgment entered in its favor, with appropriate costs awarded.

3 DATED: May 2, 2018

Respectfully submitted,

4 ALEX G. TSE
5 Acting United States Attorney

6 /s/ Michael T. Pyle
7 MICHAEL T. PYLE
8 Assistant United States Attorney