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7 In Pro Per

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

11 CAROL NYE-WILSON AND DALE
12 WILSON,

13 Plaintiffs,

14 vs.

15 UNITED STATES DEPARTMENT OF
16 EDUCATION,

17 Defendants.

CIVIL NO. CV 11 05678 PSG

CASE MANAGEMENT STATEMENT
FOR CAROL NYE-WILSON AND DALE
WILSON

Date: March 13, 2012

Time: 2:00 p.m.

Place: Courtroom 5, 4 Floor

Magistrate Judge: Hon. Paul S. Grewal

18 **1. Jurisdiction and Service:**

19 Plaintiffs has shown that the U.S. Department of Education (“Department” or
20 “Defendant”) violated the Freedom of Information Act (“FOIA”), 5 U.S.C. §552, when the
21 Department failed to respond to their FOIA requests as require to do so under statute. Only after
22 the filing of this instance action, has the Defendant actually then produced some of the records
23 sought to their son, while intentionally withholding records known to be damaging to the
24 Defendant. Plaintiffs seeks A. Order Defendant to make the requested records in their entirety
25 available to Plaintiffs free of charge due to Defendant’s willful withholding of documents from
26 Plaintiffs, as Court may enjoin an agency from withholding agency records and order the
27 production of improperly held agency records; B. Enter a preliminary and permanent injunction
28 against the Defendant ordering the relief requested herein; C. Declare that the Defendant failed to
disclose the records requested by Plaintiffs is unlawful; D. Award Plaintiffs the litigation costs and
reasonable attorney’s fees incurred in this action pursuant to 5 U.S.C. §§ 552(a)(4)(E) &
552(a)(g)(3)(B), and other applicable law; E. Plaintiffs seek the Court to punish each and every

1 Defendant employee responsible for noncompliance as provided by 5 U.S.C. § 552(a)(4)(G); F.
2 Plaintiffs seek the Court to maintain jurisdiction over this action until, in respect to the Requests,
3 Defendant is in compliance with FOIA, and every order of this Court; G. Order Defendant to stop
4 their ongoing campaign and obscene habitual need to continue tortuous actions against Plaintiffs
5 and their family and find some other American family to pick on; and H. Grant such other relief as
6 the Court may deem just and proper.

7 Defendant distracts the Court by noting that over 8,000 pages of responsive documents
8 have been produced, while in fact many of the pages are *duplicates of the same materials* coming
9 from various sources with no apparent modifications to any record. Further, Defendant, as shown
10 in the Nye-Wilson statement in *Chapel*, and in previous actions against Defendant, routinely
11 makes such claims, when as briefed historically withhold materials known to be damaging to
12 Defendant and Defendant's actions.

13 **2. Facts:**

14 **Prior to December 6, 2011**

15 This is claim under FOIA against the Department of Education for separate requests for
16 records filed by Plaintiffs. In this case, the Plaintiffs, a Freedom of Information Act (FOIA)
17 requester, allege that the Department has wrongfully withheld records in violation of the FOIA.
18 Specifically, the Plaintiffs allege that the Department has failed to respond to the Plaintiffs' FOIA
19 requests within the time period mandated by 5 U.S.C. § 552(a)(6)(A)(1). It was only AFTER
20 Plaintiffs' son filed his lawsuit that the Defendant acted. No order has been filed yet.

21 Defendant has made various claims and misrepresentations to the Court, which contradict
22 evidence and requirements for the Defendant overseeing accreditation agencies as published by
23 statute 34 C.F.R. PART 602. In addition, Defendant has actually misled the Court as to its own
24 policies. In one of many examples, Defendant has repeatedly misled the Court concerning records
25 retention, knowledge of and interaction with third parties – namely attorneys. See in *Chapel*
26 Declaration of Jill Siegelbaum Nov 21, 2001, Exhibit 9, which Defendant now claims is the
27 correct Disposal Authority, it had previously failed to use against Plaintiff. Defendant now argues
28 that materials do exist and are being held at the Federal Records Center, but fails to alert the Court
that records are actually burnt to CD-ROM for easy retrieval by Defendant and are not sent to the
Federal Records Center! (Compare pages **10-9** which Defendant cites as compared to **10-10**).
Defendant expects the Court to not turn the page to see that the Defendant has in fact misled the
Court, and Defendant kept this version of the Disposal Authority from Plaintiffs' son prior to his

1 response to the motion to dismiss. **Then on December 6, 2011, opposing counsel claimed that**
2 **the CDs, which are to be maintained by Defendant per policy, are actually not, "... and our**
3 **representation is there are no CD-ROMS being maintained by the department of education"**
4 **(see page 14 of the transcript, lines 9-18, then on page 17, lines 19-25 to page 18, lines 1-3).**
5 (see attached "A").

6 The Defendant's own OIG noted the failures of the AAEU to do its job, which is part of
7 the Complaint and at issue for Tort. Defendant is well aware that the records, *now claimed* (after
8 various other claims) are not maintained and show that the AAEU has been negligent for over 10
9 years regarding its regulatory duties, by simply rubber-stamping approval of accreditors. On this
10 point, the Public has a valid interest that Accreditation and State Liaison office is run in a
11 negligent way, with no regard for the student or family.

12 Motion to dismiss in CHAPEL should be denied. The Court should cause Defendant to
13 make the requested records in their entirety available to Plaintiff as they support the Federal Torts
14 Claims Act case.

15 It is expected that the Defendant will continue to misled the Court to believe it has fulfilled
16 FOIA in order to keep various records hidden or claimed they were too much of a hardship to
17 produce or that they did not exist, in order to keep records from discovery from Plaintiffs,
18 obstructing justice for a Federal Torts Claims Act case. *This actually happen before your Honor*
19 *on December 6, 2011 as predicted by Plaintiffs' son in his CMC.*

20 Underlying issues involve two master's degrees in which the accredited school Western
21 Seminary offers. Western's accreditation involves the two accreditors, which are in turn are
22 regulated by Defendant (Defendant publically makes this known). According to the Defendant's
23 own OIG, the office that oversees the two accreditors has a history of negligence, even going so
24 far as declaring that accreditors are compliant with 34 C.F.R. PART 602 when in fact accreditors
25 either do not have the required policies per statute or their policies are actually not compliant.
26 Defendant acknowledges this as on January 2, 2009 Mula stated to Randy: **"We have already**
27 **determined that the criteria related issues with NWCCU and ATS are their failure to**
28 **satisfactorily address your complaints, and their failure to comply with the Secretary's**
Substantive Change requirements." Here Mula was referring to 34 C.F.R § 602.23 and 34 C.F.R
§ 602.22. Mula subsequently noted this to Kevin Ford on June 17, 2008, "We are working with
both ATS and NWCCU to make sure that they have complaint policies and **substantive change**
policies that are in compliance with the Secretary's Criteria. This is being done as a direct result

1 of Mr. Chapel's complaint.” Defendant repeated failed to produce these two documents to
2 Plaintiff and his mother until forced through litigation. The accreditors continue to cover and
3 refuse to produce policies which should be public as also required per statute 34 C.F.R § 602.23 to
4 be made available. Both accreditors and Defendant refuse to produce materials, while claiming
5 materials exist and are regulated by Defendant and used against Plaintiff and his family, in which
6 Plaintiff has now suffered to the point that his wife divorced him. However, not everyone has
7 been willing to go along with the cover up, as Tisa Lewis, ATS Director, Accreditation and
8 Institutional Evaluation on April 23, 2007 stated: “We do not use ‘substantive change’ language,
9 but both of the issues you mentioned below would require Board action.” (11-01474-F Oct 13,
10 **2011 production at index 487**). Charles Willard, Director, Accreditation and Institutional
11 Evaluation stated immediately after Lewis, “Although the Commission on Accreditation does not
12 use, in its standard and procedures, the language of substantive change, Section Six of the
13 Handbook of Accreditation does note, in its ‘Guidelines Adopted by the Board of
14 Commissioners,’ **that a ‘school must seek the Board’s approval before it makes significant
15 changes in the design or requirements of an approved [degree] program. The guidelines do
16 not include further details with respect to what constitutes ‘significant changes,’ and I would
17 concur with Tisa’ judgment that change in either amount you suggest is probably
18 significant.” (11-01474-F Oct 13, 2011 production at index 488)**. [Emphasis Plaintiff]. This is
19 only one small fraction of the problems Defendant wishes to hide and *refuse to produce all
20 records concerning*. (i.e., even some of the Accreditor’s own employees are unwilling to go
21 along with the fraud and disagree with Defendant’s claims that “substantive change” and
22 “exception” exist which were used against Plaintiff and his family).

20 **Since to December 6, 2011**

21 After the hearing, Defendant sought to combine both cases under your Honor. This was
22 approved with a 30-day extension of time, to respond after the order in *Chapel*. No order in
23 *Chapel* has been made.

24 Since this time, Defendant made a lack-luster search, which is still not complete, and
25 producing records previously claimed to not exist. Defendant then “found” 9 additional pages on
26 Jan 11, 2012.

27 Your Honor is aware of the December 19, 2011 letter to ATS counsel Tom Johnson, which
28 was referred to within the *Chapel* reply to the combining of both cases and the 30-day extension
request after the order (see attached “B”). Plaintiffs’ son responded again to ATS on Jan 11, 2012

1 (see attached “C”) noting the negligent issues. ATS/ COA continues to cover for Western and
2 itself and refuses to speak to Plaintiffs or their son. Defendant has made no further contact.

3 The Court should take into consideration that schools that violate student rights, based on
4 claims that their “accreditor” allows per their policies have been successfully sued. See the matter
5 of *Brooker v. Franks et al (Missouri State) Missouri Western District Court, 2006cv03432*. This
6 case is referenced in *CHAPEL*, exhibit AA “*Why Accreditation Doesn’t Work and What*
7 *Policymakers Can Do About It*”, page 1. Your Honor should also take into consideration that had
8 Defendant, and its accreditors done their jobs and held Western Seminary accountable, Western
9 could have faced termination of their accredited status by ATS/COA or the licensing state office.
10 Such action has devastating results, as your Honor is aware of. See *The Institute of Medical*
11 *Education, Inc v. Western Association of Schools and Colleges 11-cv-05755-PSG*. The Defendant
12 has been negligent in its duties, which in turn, the accreditor ATS/COA has been negligent in its
13 duties. Both have a duty to the public, the Plaintiffs and their son. Defendants have taken action
14 against other accreditors who committed similar acts like ATS/COA with their “exception”
15 scheme of unwritten policies, but refuses to do so with ATS/COA as referenced in *CHAPEL*,
16 exhibit AA “*Why Accreditation Doesn’t Work and What Policymakers Can Do About It*”, page 4.¹

17 //

18 The Defendant knows it has done wrong and damaged Plaintiffs and their son due to being
19 negligent in its duties. It just wants this covered up and for the Plaintiffs to go away.

20 //

21 In 2008 Defendant alleged such records exist to support its conclusion against Plaintiffs
22 and their son, but relies on lawyering to keep such records or the acknowledgment of such records
23 actually never existed from Plaintiffs and their son. Such requests fit squarely within the FOIA
24 process. The right of citizens to see what their government is up too, is working to hide and cover
25 up at the expense of our family is at the core of American values. *United States Department of*
26 *Justice v. Reporters Committee For Freedom Of The Press, 489 U.S. 749, 772-73 (1989)* (“[A]
27 democracy cannot function unless the people are permitted to know what their government is up
28 to.”). The Public interest far outweighs any harm and undue hardship to the Defendants, since
29 “the words of a statute [FOIA] are, of course, dead weights unless animated by the purpose of the

¹ “secret standards” for accreditation that the American Bar Association had failed to publish but enforcing, much like the scheme
ATS/COA/Western cooked up. This was deemed unacceptable by the Defendant and NACIQI. John Nussbaumer, quoted in
Elizabeth Redden, “Rough Ride for Law School Accreditor,” *Inside Higher Ed* 5 Dec 2006
<<http://www.insidehighered.com/layout/set/print/news/2006/12/05/aba>> 20 Jun 2007.

1 statute. The purpose of this statute is to shed light ‘on an agency's performance of its statutory
2 duties.’” *United States Department of Justice v. Reporters Committee For Freedom Of The Press*,
3 *489 U.S. 749, 772-73 (1989)*.

4 Plaintiffs respectfully request this Court should undertake its’ analysis of these FOIA
5 requests by "recognizing the enduring beliefs underlying freedom of information laws: that an
6 informed public is desirable, that access to information prevents governmental abuse and helps
7 secure freedom, and that, ultimately, government must answer to its citizens.” *Pansy v. Borough of*
Stroudsburg, 23 F.3d 772, 792 (3rd Cir. 1994).

8 “Claims for damages do not constitute a commercial interest--***at least not when the claims***
9 ***are grounded in tort***. The D.C. Circuit has held that the term "commercial" is to be given its
10 ordinary meaning when read in conjunction with FOIA. *Public Citizen Health Research Group v.*
11 *Food and Drug Administration, 704 F.2d 1280*, 1290 (D.C.Cir.1983) (discussing exemption to
12 FOIA). Information is commercial if it relates to commerce, trade, or profit. See Department of
13 Defense Freedom of Information Act Program, 52 Fed.Reg. 13641, 13655 (1987) (to be codified
14 at 32 C.F.R. 286.33) (defining categories of requesters for fee assessment). ***Information helpful***
15 ***to a tort claim furthers a requester's interest in compensation or retribution.***” as cited in
McClellan Ecological Seepage Situation v. Garlucci, 835 F.2d 1282 (9th Cir. 1987)

16 Defendant is well aware of and seeks to limit or even scuttle the tort claims by misleading
17 that 8000 pages of repeatedly copies of the same documents is acceptable, while intentionally
18 withholding **critical** materials or now claiming such materials don’t exist to keep them from
19 Plaintiffs and son, while in 2008 they were claimed to have existed to which Plaintiffs are seeking.
20 Plaintiffs alerts the Court that *Exhibit 30 in Nye-Wilson* shows that the Defendant is actively
21 censoring speech concerning this case from the public, by modifying public information using
Departmental resources to cover up what it has done to Plaintiffs and their son.

22 Finally, Defendant is well aware that Plaintiffs’ son has spent ¼ of his life dealing with
23 this mess. As Dr. **Gregory L. Katz, Ph.D.** (831-462-0696) has stated:

24 “Randy Chapel is a 45-year-old, separated [now divorced], Caucasian male with a history
25 of significant psychiatric/psychological distress secondary to multiple stressors. He
26 identifies experiences of betrayal and mistreatment by staff of Western Seminary and
27 subsequently receiving no support or assistance in addressing his concerns as the primary
28 stressors leading to his psychological disturbance. He experiences severe depression, with
dysphoric mood, suicidal ideation, feelings of hopelessness and low self esteem. He has
become socially isolative, and unable to function effectively in his occupation. It has
adversely affected his social relationships, and contributed significantly to failures in his
romantic/marital relationship. He experiences ongoing depression, with feelings of

1 hopelessness and discouragement over his future. It has been impactful in all areas of his
2 life, including his ability to function occupationally. His mental condition has greatly
3 interfered with his ability to focus, concentrate and be motivated and he has been partially
4 disabled or totally disabled for a number of years related to his condition. He continues
5 temporarily partially disabled, only able to work a few hours per week. His future earning
6 capacity is diminished, as it is likely he will continue to suffer from some degree of
7 depression/dysphoria indefinitely. Certainly, with a positive resolution to his concerns, his
8 mental status would improve to some degree, but absent this it is likely he will continue to
9 suffer significant emotional distress. It is recommended he participate in individual
10 psychotherapy and assessment for psychotropic medications to assist him in addressing his
11 psychological symptoms. He will likely need psychotherapy on a weekly basis for at least
12 the next two years, with reevaluation at that time. Diagnostically, he continues to meet the
13 criteria for Major Depressive Disorder, Recurrent and there is a history of Attention Deficit
14 Disorder and symptoms of an Avoidant Personality Disorder.”

15 Dale is 100% disabled and 61. Because of his injuries he will continue to need medical
16 and psychiatric attention, physically he is likely to lose his legs as his body is giving out. Carol is
17 72 years old and holding on the best she can. We are doing and have done everything we can to
18 hold Randy together over the last 11 years, short of committing him. Randy has had several
19 welfare checks made on him, including Section 5150. Defendant would care less how much
20 damage they cause Randy, let alone us. We greatly fear that this will end in tragedy. Plaintiffs’
21 son’s life is completely damaged and such cannot be fixed. He basically has a death drive having
22 been driven to destruction, despair and damage. “Once personally identifiable information has
23 been made public, the harm cannot be undone.” and “DOE experiences the irreparable harm
24 suffered by those students whose privacy interests are violated” *United States v. Miami*
25 *University*, No. 00-3518, 2002 U.S. App. LEXIS 12830, (6th Circuit) June 27, 2002. Defendant
26 continues to support and protect ATS/COA at all costs while using public money, since such
27 covers up its own negligence, while Western Seminary continues to declare publically it had been
28 “*vindicated*” of any wrong doing, its agents use the Courts/litigation² and those willing to cover
for them against Randy.

3. Principal Issues:

As noted above, Defendant has withheld materials and seeks to have the Court proclaim
such action as reasonable at the cost of Plaintiffs and their son and families. Plaintiffs’ son has

² See *Brotherhood Mutual Insurance Company v. Guide One Mutual Insurance Co. California Northern District Court, Case No. 2011cv02148*. Here both insurance companies are blaming each other as to who is at fault and should pay for representing Western. In the mean time, while Randy is not a party to the case, they continue to violate FERPA at will, without Randy being able to set the record straight as to what actually has been testified and in evidence. This sort of harassment is typical of Sam Phillips and his office and nearly caused Randy to take devastating action. You can only push people so far before very bad things happen. Due to the parties involved, it is not a matter of “if” but “when” tragedy is going to occur at this point.

1 now lost everything, including his marriage and his son due to the actions of the Defendant
2 delaying production of materials, further actions addressed in the tort case and NyeWilson's
3 declaration in *Chapel*. Defendant slyly asks *what else needs to be produced*, only out of fear to
4 answer the Complaint and allow discovery regarding purported records claimed to exist, but to
5 which Defendant refuses to produce.

6 Plaintiffs' respectfully ask the Court to finalize the order in *Chapel*. Plaintiffs' further
7 respectfully asks that the order include:

- 8 a. Defendant to make the requested records requested in *CHAPEL* and as noted in his
9 reply brief to Defendant's motion to dismiss in their entirety available to Plaintiffs
10 within 20 days.
- 11 b. Defendant to make the requested records held by the Federal Records Center
12 concerning ATS/COA and NWCCU as previously requested by Plaintiffs' son due to
13 the FOIA requests and make these records in their entirety available to Plaintiffs
14 within 20 days. [these show that the negligence of the AAEU spans over 10 years and
15 supports the OIG conclusions that the AAEU was rubber stamping approval of
16 accreditors, which in turn are part of the yet to be filed Tort case against the
17 Defendant. They also show that ATS did not have policies in place as a requirement
18 prior to seeking approval or renewal by the Defendant].
- 19 c. Defendant to make the requested records concerning communications between
20 Western's attorneys and Defendant's attorneys, ATS/COA's attorneys and
21 Defendant's attorneys and NWCCU's attorneys and Defendant's attorneys available in
22 their entirety to Plaintiffs within 20 days. [Chuck Mula previously indicated
23 Defendant's attorneys (Office of General Counsel) was communicating with
24 NWCCU's attorney, and in spite of whatever claims by Ms. Siegelbaum, Defendant
25 actually had Tom Johnson's contact information in its rolodex and there clearly are
26 communications that have not been provided].
- 27 d. Defendant to make the requested records concerning communications between
28 ATS/COA and Defendant available in their entirety to Plaintiffs within 20 days. This
include handwritings, typewriting, printings, and every other means of recording upon
any tangible thing, including materials of the June 26th 2008 meeting [Defendant and
Mula previously declared that such did not exist in the prior *Nye-Wilson* litigation, in
the current *Chapel* and this case. Now Defendant has provided a single page on Jan

1 11, 2012, which indicates a meeting did take place between Joyce Jones, Chuck Mula,
2 Jeremiah McCarthy, Tisa Lewis, and Bill Miller. Defendant has a history of
3 misrepresentation and hiding materials].

- 4 e. Defendant to make the requested records concerning communications between
5 NWCCU and Defendant available in their entirety to Plaintiffs within 20 days. This
6 include handwritings, typewriting, printings, and every other means of recording upon
7 any tangible thing, including materials of the July 2008 meeting and communications
8 [Defendant and Mula previously declared that such did not exist in the prior Nye-
9 Wilson litigation, in the current *Chapel* and this case. Now Defendant has provided 3
10 pages showing that in fact communications did take place, where Defendant asked
11 NWCCU to write up a statement for the Defendant. NWCCU did in fact write up a
12 statement for the Defendant to use against Plaintiffs, and even notes of sending a draft
13 of the statement for review].
- 14 f. The Court declares communications between Chuck Mula and Randy Chapel, Chuck
15 Mula and Carol Nye-Wilson, which have not been produced, are hereby deemed valid
16 and authentic. [Mula has withheld communications between himself and Plaintiffs and
17 himself and Plaintiffs' son. Defendant has withheld these records, as they betray
18 knowledge by the Defendant of wrongdoing and negligence].
- 19 g. The Court declares Defendant failed to timely disclose the records requested by
20 Plaintiffs CHAPEL, NYE-WILSON and WILSON.
- 21 h. Defendants will compensate \$10,000 to Plaintiff CHAPEL for litigation costs and
22 reasonable attorney's fees incurred in this action payable within 20 business days. (for
23 Pacer, gas to and from Court, internet, consulting with actual attorneys, research, etc.)
- 24 i. Defendants will compensate \$10,000 to Plaintiffs NYE-WILSON and WILSON for
25 litigation costs and reasonable attorney's fees incurred in this action payable within 20
26 business days. (for Pacer, phone teleconferencing, internet, consulting with actual
27 attorneys, research, going to the law libraries, buying legal books, etc.)
- 28 j. Court shall maintain jurisdiction over this action until requested records are fully
produced and every order of this Court.
- k. Plaintiffs CHAPEL, NYE-WILSON and WILSON will dismiss their respective
Complaints when requested records are fully produced.
- l. Statute of limitations is tolled for _____ months.

- m. Defendants are ordered to stop their ongoing campaign and obscene habitual need to continue tortuous actions against Plaintiffs and son.
- n. Other relief as the Court may deem just and proper:

4. Motions:

Defendant has yet to file a motion to dismiss on grounds of mootness. Parties are waiting for the Court's orders in *Chapel*.

5. Amendment of Pleadings:

Plaintiffs will amend his complaint as needed or at the direction of the Court.

6. Evidence Preservation:

Plaintiffs note that Defendant has intentionally misled the Court concerning its record preservation policy regarding materials held by Defendant (see above). Law already has been noted to Defendant concerning failing and withholding materials, which this Court has authority over. (Complaints *Chapel* and *Nye-Wilson*).

7. Disclosures:

The parties have not conducted any discovery. Plaintiffs are well aware that discovery is allowed and that Defendant doesn't want to answer the complaint or answer key material questions *concerning records claimed to exist*, but to which no third party has seen, some accreditor's own employees dismiss as out rightly existing or an make any statement concerning.

8. Discovery:

The parties have not conducted any discovery. Plaintiffs are well aware that discovery is allowed and that Defendant doesn't want to answer the complaint or answer key material questions *concerning records claimed to exist*, but to which no third party has seen, some accreditor's own employees dismiss as out rightly existing or an make any statement concerning.

9. Class Actions:

This is not a class action.

10. Related Cases:

RANDY CHAPEL, an individual; CAROL NYE-WILSON, an individual and DALE WILSON, an individual V. COMMISSION ON ACCREDITING OF THE ASSOCIATION OF THEOLOGICAL SCHOOLS, a corporation; THE ASSOCIATION OF THEOLOGICAL SCHOOLS IN THE UNITED STATES AND CANADA, a corporation; UNITED STATES and

1 DOES 1 through 200, inclusive; **NOT FILED**. Plaintiffs anticipate filing an amended complaint
2 to include additional parties related to Defendants COMMISSION ON ACCREDITING OF THE
3 ASSOCIATION OF THEOLOGICAL SCHOOLS and THE ASSOCIATION OF
4 THEOLOGICAL SCHOOLS IN THE UNITED STATES AND CANADA at a later date.

5 United States District Court For The Northern District Of California, San Jose Division,
6 NYEWILSON, ET AL, V. United States Department Of Education, 11-05678 PSG. **Active**. This
7 case is waiting for the order in *Chapel*.

8 United States District Court For The Northern District Of California, San Jose Division,
9 Chapel V. United States Department Of Education And Margaret Spellings, 08-04982 RS.
10 **Dismissal without Prejudice**. Plaintiff sought to cause Defendant to answer his FOIA to then use
11 that information in the NyeWilson case below.

12 Hawaii District Court, Nye-Wilson V. United States Department Of Education, Margaret
13 Spellings And Does 1 - 20, 08-00498 ACK. **Settled. \$5,000 and documents**. Defendant
14 continued to insist that it had produced all records, when in fact it had not. Defendant repeatedly
15 asked for settlement to avoid adverse judgment against itself. Defendant produced additional
16 records, which previously were been withheld by Chuck Mula and Defendant as they connected
17 Defendant to NWCCU's false statements and claims used by Defendant in an investigation. This
18 continues into this current instance action, with the Defendant refusing to turn over materials.

19 **11. Relief:**

20 Plaintiff seeks the motion to dismiss to fail. In addition:

- 21 A. Order Defendant to make the requested records in their entirety available to Plaintiffs
22 free of charge due to Defendant's willful withholding of documents from Plaintiffs, as
23 Court may enjoin an agency from withholding agency records and order the production
24 of improperly held agency records;
- 25 B. Enter a preliminary and permanent injunction against the Defendant ordering the relief
26 requested herein;
- 27 C. Declare that the Defendant failed to disclose the records requested by Plaintiffs is
28 unlawful;
- 29 D. Award Plaintiffs the litigation costs and reasonable attorney's fees incurred in this
30 action pursuant to 5 U.S.C. §§ 552(a)(4)(E) & 552(a)(g)(3)(B), and other applicable
31 law;

- 1 E. Plaintiffs seek the Court to punish each and every Defendant employee responsible for
2 noncompliance as provided by 5 U.S.C. § 552(a)(4)(G);
- 3 F. Plaintiffs seek the Court to maintain jurisdiction over this action until, in respect to the
4 Requests, Defendant is in compliance with FOIA, and every order of this Court;
- 5 G. Order Defendant to stop their ongoing campaign and obscene habitual need to continue
6 tortuous actions against Plaintiffs and their family and find some other American
7 family to pick on; and
- 8 H. Grant such other relief as the Court may deem just and proper.

9 **12. Settlement and ADR:**

10 ADR is not acceptable. Defendant intentionally has not responded to Plaintiffs' FOIA
11 requests, most of all intentionally withholding materials known to and would be used towards the
12 Federal Torts Claims Act case. As described in *Chapel* and in *Nye-Wilson*, Defendant has either
13 misled the Court or failed to produce records known to be damaging to Defendant regarding
14 Federal Torts Claims Act case. The Court should deny the Defendants pending dispositive motion
15 and maintain jurisdiction over this action.

16 Currently, the press is covering various cover ups at schools involving sexual misconduct.
17 This case needs to go public, and Secretary Arne Duncan needs to explain his agency's actions to
18 the public.

19 **13. Consent to Magistrate Judge For All Purposes**

20 Both parties have filed a Consent to Magistrate Judge for all purposes.

21 **14. Other References**

22 None.

23 **15. Narrowing of Issues:**

24 The parties have already narrowed the issues through the meet and confer procedure
25 described in *Chapel* and Plaintiffs' statement wherein.

26 **16. Expedited Scheduling**

27 Additional measures to expedite are not necessary.

28 **17. Scheduling**

Plaintiff requests that the Court set additional case management dates.

18. Trial:

A trial will be required in this case.

19. Other:

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It is expected that due to the cases being related, that Plaintiffs' son will be in attendance at the CMC, but only speak if requested.

Dated: March 6, 2012

Respectfully submitted,

By: /s/ Carol Nye-Wilson

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By: /s/ Dale Wilson

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In Pro Per