

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BAY AREA LEGAL AID,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION,

Defendant.

Civil Action No. 21-00003 (KBJ)

ANSWER

Defendant the United States Department of Education (the “Department” or “Defendant”), by and through undersigned counsel, respectfully submits this Answer to the Complaint filed by Plaintiff Bay Area Legal Aid. All allegations not specifically admitted are denied. Defendant responds specifically to each numbered paragraph of the Complaint as follows.

RESPONSES TO THE NUMBERED PARAGRAPHS

Defendant responds below to the separately numbered paragraphs and prayer for relief contained in the Complaint. To the extent that any allegation is not expressly admitted herein, it is denied. Moreover, to the extent that the Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their accurate and complete contents; however, Defendant’s references are not intended to be, and should not be construed to be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiff; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action.

1. This paragraph contains Plaintiff's characterization of this action, to which no response is required. To the extent that a response is required, Defendant admits that this action purports to be brought under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* ("FOIA").

JURISDICTION AND VENUE¹

2. Defendant admits that this Court has jurisdiction subject to the terms and limitations of FOIA and venue is proper in this judicial district under FOIA.

PARTIES

3. The allegations contained in these paragraphs consist of Plaintiff's characterization of itself, to which no response is required. To the extent that a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

4. Defendant admits that the Department is a federal agency under FOIA. The remaining allegations consist of Plaintiff's conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies the remaining allegations contained in this paragraph.

FACTS

Regulatory Background

5. The allegations contained in this paragraph consist of Plaintiff's characterization of Title IV of the Higher Education Act ("HEA") and its implementing regulations, to which no response is required. To the extent that a response is required, Defendant respectfully refers the

¹ Merely for ease of reference, Defendant replicates the headings contained in the Complaint. Although Defendant believes that no response is required to such headings, to the extent a response is deemed required and to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

Court to 20 U.S.C §§ 1070 *et seq.* and 34 C.F.R. Part 668 for a complete and accurate statement of their contents and denies any allegations inconsistent therewith.

6. The allegations contained in this paragraph consist of Plaintiff's characterization of the HEA, to which no response is required. To the extent that a response is required, Defendant respectfully refers the Court to 20 U.S.C §§ 1070 *et seq.* for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

7. The allegations contained in this paragraph consist of Plaintiff's characterization of the HEA and its implementing regulations, to which no response is required. To the extent that a response is required, Defendant respectfully refers the Court to 20 U.S.C §§ 1070 *et seq.* and 34 C.F.R. § 682.402 for a complete and accurate statement of their contents and denies any allegations inconsistent therewith.

The False Certification Application Process

8. The allegations contained in this paragraph consist of Plaintiff's characterization of the HEA's implementing regulations, to which no response is required. To the extent that a response is required, Defendant respectfully refers the Court to 34 C.F.R. § 682.402 for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

9. The allegations contained in this paragraph consist of Plaintiff's characterization of the Department's Dear Colleague Letter GEN-95-42 (September, 1995), to which no response is required. To the extent that a response is required, Defendant respectfully refers the Court to the Dear Colleague Letter for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

10. The allegations contained in this paragraph consist of Plaintiff's characterization of its internal processes, to which no response is required. To the extent that a response is required,

Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

BayLegal's FOIA Request

11. Defendant admits it received a FOIA request from Plaintiff dated October 22, 2019. The remainder of this paragraph consists of Plaintiff's characterization of its request, to which no response is required. To the extent that a response is required, Defendant respectfully refers the Court to the FOIA request for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

12. Defendant admits.

13. Defendant admits it responded to Plaintiff's FOIA request on March 13, 2020. The remainder of this paragraph consists of Plaintiff's characterization of that response, to which no response is required. To the extent that a response is required, Defendant respectfully refers the Court to the FOIA request response for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

14. Defendant admits it received a FOIA appeal from Plaintiff dated June 10, 2020. The remainder of this paragraph consists of Plaintiff's characterization of its appeal, to which no response is required. To the extent that a response is required, Defendant respectfully refers the Court to the FOIA appeal for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

15. Defendant admits it responded to Plaintiff's FOIA appeal on August 31, 2020. The remainder of this paragraph consists of Plaintiff's characterization of that response, to which no response is required. To the extent that a response is required, Defendant respectfully refers the

Court to the FOIA appeal response for a complete and accurate statement of its contents and denies any allegations inconsistent therewith.

CAUSE OF ACTION

16. Paragraph 16 consists of conclusions of law, to which no response is required. To the extent that factual allegations are made, Defendant denies the allegations. To the extent that a response is required to any other allegations, Defendant denies the allegations.

17. Paragraph 17 consists of conclusions of law, to which no response is required. To the extent that factual allegations are made, Defendant denies the allegations. To the extent that a response is required to any other allegations, Defendant denies the allegations.

PRAYER FOR RELIEF

The remainder of Plaintiff's Complaint contains Plaintiff's requested relief, to which no response is required. To the extent that a response is required, Defendant denies that Plaintiff is entitled to the requested relief or to any relief whatsoever.

DEFENSES

In further response to the Complaint, Defendant raises the following defenses. Defendant respectfully requests and reserves the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the Complaint become known to Defendant throughout the course of this litigation.

FIRST DEFENSE

Plaintiff is not entitled to compel the production of records protected from disclosure by one or more of the exemptions or exclusions to the FOIA.

SECOND DEFENSE

This Court lacks subject matter jurisdiction over any of Plaintiff's requests for relief that exceed the relief authorized by FOIA.

Date: February 12, 2021

Respectfully submitted,

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