



action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff National Student Legal Defense Network (NSLDN) is a nonpartisan, non-profit organization incorporated in the District of Columbia. NSLDN's mission is to work, through a variety of means, to advance students' rights to educational opportunity, and to ensure that higher education provides a launching point for economic mobility. To further its mission, NSLDN gathers information, including through responses to FOIA requests submitted to government agencies, in order to inform the public via, *inter alia*, its website, social media, press releases and other comments to the media, and regulatory comments to government agencies.

6. Defendant the U.S. Department of Education (ED) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). ED has possession, custody, and control of the records that NSLDN seeks.

### **STATEMENT OF FACTS**

7. On March 8, 2018, NSLDN submitted a FOIA request to ED seeking all records produced by ED to Navient Corporation, Navient Solutions, Inc., or Pioneer Credit Recovery, Inc. in response to discovery requests issued in connection with an ongoing Consumer Financial Protection Bureau enforcement action, *CFPB v. Navient Corporation et al.*, Case No. 3:17-cv-00101-RDM ("the Litigation"), and any communications between ED or the U.S. Department of Justice and the defendants in the Litigation.

8. Specifically, NSLDN's request sought:

- 1) All documents produced by the U.S. Department of Education to Navient Corporation, Navient Solutions, Inc., or Pioneer Credit

Recovery, Inc., pursuant to any discovery request, subpoena, or other request issued in, or in connection with, the Litigation.

- 2) All communications or correspondence between the U.S. Department of Education or the U.S. Department of Justice, on the one hand, and counsel for any defendant in the Litigation regarding any discovery or subpoena request issued in the Litigation.
9. ED assigned the request tracking number 18-01253-F.
10. On March 15, 2018, ED granted NSLDN's request for a fee waiver.
11. NSLDN has not received any further communication from ED regarding its request.

*Exhaustion of Administrative Remedies*

12. As of the date of this complaint, ED has failed to (a) notify NSLDN of any determination regarding its FOIA request, including the scope of any responsive records ED intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

13. Through ED's failure to respond to NSLDN's FOIA request within the time period required by law, NSLDN has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Failure to Conduct Adequate Search for Responsive Records**

14. NSLDN repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

15. NSLDN properly requested records within the possession, custody, and control of ED.

16. ED is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

17. ED has failed to promptly review agency records for the purpose of locating those records which are responsive to NSLDN's FOIA request.

18. ED's failure to conduct an adequate search for responsive records violates FOIA.

19. Plaintiff NSLDN is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to NSLDN's FOIA request.

**COUNT II**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

20. NSLDN repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

21. NSLDN properly requested records within the possession, custody, and control of ED.

22. ED is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

23. ED is wrongfully withholding non-exempt agency records requested by NSLDN by failing to produce non-exempt records responsive to its FOIA request.

24. ED is wrongfully withholding non-exempt agency records requested by NSLDN by failing to segregate exempt information in otherwise non-exempt records responsive to NSLDN's FOIA request.

25. ED's failure to provide all non-exempt responsive records violates FOIA.

26. Plaintiff NSLDN is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

WHEREFORE, NSLDN respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to NSLDN's FOIA request;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to NSLDN's FOIA request and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to NSLDN's FOIA request;
- (4) Award NSLDN the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant NSLDN such other relief as the Court deems just and proper.

Dated: August 1, 2018

Respectfully submitted,

/s/ Daniel A. McGrath  
Daniel A. McGrath  
D.C. Bar No. 1531723  
/s/ Elizabeth France  
Elizabeth France  
D.C. Bar No. 999851

/s/ John E. Bies

John E. Bies  
D.C. Bar No. 483730

AMERICAN OVERSIGHT  
1030 15th Street NW, B255  
Washington, DC 20005  
(202) 869-5244  
daniel.mcgrath@americanoversight.org  
beth.france@americanoversight.org  
john.bies@americanoversight.org

/s/ Robyn K. Bitner

Robyn K. Bitner\*  
N.Y. Bar No. 5294970  
*Pro hac vice* motion to be submitted

NATIONAL STUDENT LEGAL DEFENSE  
NETWORK  
1015 15th Street NW, Suite 600  
Washington, DC 20005  
(202) 734-7495  
robyn@nsldn.org

\*Member of the N.Y. bar only; practicing in the District of Columbia under the supervision of members of the D.C. Bar while D.C. Bar application is pending.

*Counsel for Plaintiff NSLDN*