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IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
MERCER COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS Plaintiff, v. TIMOTHY D. FARQUER Defendant.	)	No. 25 CF 81 Hon. Matthew Durbin

MEMORANDUM OF LAW IN SUPPORT OF A FINDING OF NO PROBABLE CAUSE

Defendant Timothy D. Farquer, by and through his undersigned counsel, respectfully submits this memorandum of law in support of a finding of no probable cause as to Count I: Official Misconduct, a Class 3 felony under 720 ILCS 5 § 33-3(a)(2).

I. INTRODUCTION

The question before this Court is an easy one. No reasonably cautious person would believe Mr. Farquer knowingly performed an act he knew was forbidden by law based on allegations that he (1) violated a state law that only applies to **hospitals**, (2) violated a federal law that only applies to **healthcare providers, insurance plans, or clearinghouses**, or (3) violated a federal law that explicitly allows school officials like Mr. Farquer to access the precise type of student information at issue here. In charging Mr. Farquer, the State has contorted laws that are either inapplicable (because they apply only to **healthcare-related** entities) or for which the plain statutory language contradicts the State's claims. Mr. Farquer is charged with a felony on the basis that he (1) violated the Illinois Hospital Licensing Act and (2) violated the Computer Tampering Law by exceeding his authority as superintendent in accessing basic health information about students maintained by the Mercer County School District #404 (the "School District"). Both allegations are frivolous.

As its name suggests, the Hospital Licensing Act only applies to hospitals and its staff. This Court need not look any further than the plain language of the statute to hold that, as a matter of law, this statute does not apply to Mr. Farquer. Similarly, in an inexplicably strained attempt to charge Mr. Farquer with something, the State charges him with exceeding his authority, in violation of the Computer Tampering Law, on the basis that federal statutes, the Health Insurance Portability and Accountability Act ("HIPAA") and the Family Educational Rights and Privacy Act ("FERPA"), preclude him from accessing the student information. It strains credulity to see how the State determined there was probable cause that Mr. Farquer exceeded his authority on these bases. As with the Hospital Licensing Act, even a basic reading of HIPAA makes clear this law does not apply to the School District or Mr. Farquer. The purpose of HIPAA centers on, among other things, combating waste, fraud, and abuse in health insurance and healthcare delivery. It applies only to healthcare providers, health plans (such as health insurance companies), and healthcare clearinghouses that process and convert nonstandard health data. To state the obvious, neither Mr. Farquer, nor the School District, are any of those things.

That leaves one basis to find that Mr. Farquer exceeded his authority, in violation of the Computer Tampering Law: if he violated FERPA. But FERPA is clear. Mr. Farquer is permitted to access student information if he has a legitimate educational interest, **as determined by the School District**. The State put forth no factual evidence indicating the School District made such a determination. Indeed, the testimony from the State's only witness makes clear: no one consulted anyone at the Mercer County Board of Education (the "Mercer BOE") or reviewed Mercer BOE policies. Indeed, the statement released by the Mercer BOE following the State charging Mr. Farquer makes clear that the Mercer BOE believes Mr. Farquer's access to student health information was lawful. The Court can end its inquiry there. The only evidence the State put forth to support a finding of probable cause was a detective's legal interpretation of federal law. No

reasonably cautious person would believe Mr. Farquer violated any federal law solely on the basis of the legal interpretation of a detective that, as the State itself admitted at the preliminary hearing, is not an attorney and cannot interpret statutes.

For the reasons set forth below, this Court should find there was no probable cause to charge Mr. Farquer with Count I: Official Misconduct, a Class 3 felony under 720 ILCS 5 § 33-3(a)(2) on the basis that he "knowingly" violated the Hospital Licensing Act, 210 ILCS 85 § 6.17(i) (Count II) and the Computer Tampering Law, 720 ILCS 5 § 17-51(a)(2) (Count III).

II. BACKGROUND

Defendant Timothy D. Farquer is the superintendent of the School District, a position he has held since July 2024. On September 25, 2025, the State charged Mr. Farquer with violating three statutes: Count I: Official Misconduct, a Class 3 felony under 720 ILCS 5 § 33-3(a)(2); Count II: Unauthorized Access to Medical Records, a Class A misdemeanor under 210 ILCS 85 § 6.17(i); and Count III: Computer Tampering, a Class A misdemeanor under 720 ILCS 5 § 17-51(a)(2). *See* Ex. 1, Information for Violation of Statute (Sept. 25, 2025) (the "Charges").

On October 20, 2025, Mr. Farquer appeared before this Court for a preliminary hearing on Count I, the only felony charge. Ex. 2, Hearing Transcript (Oct. 20, 2025), at 3:3-6. To establish it had probable cause to charge Mr. Farquer with Count I, the State presented a single witness: Detective Lindsey Kenney, the officer who conducted the investigation into Mr. Farquer that led to the Charges. *Id*. at 3:12-16. The State submitted no other evidence. Detective Kenney testified she received a complaint from Amber Wood, a Mercer County High School nurse, that, on two occasions, Ms. Wood "had been given directives by the superintendent, Mr. Farquer, to provide medical records to him of students that she felt wasn't lawful to do or was morally, ethically wrong or against HIPAA laws as far as it's associated with her position." *Id.* at 4:5-15.

The first complaint "was in regard to hand, foot, and mouth ("HFM") disease that was

currently going around the high school" (the "HFM Incident"). *Id.* at 4:16-5:2. According to Detective Kenney, following diagnoses of HFM, Ms. Wood "received guidance from the County Health Department that if they reached a threshold of . . . 10 cases within 10 days, they would have to disclose the cases but would not be required to disclose any names or any identifying information." *Id.* According to Detective Kenney, the only information the County Health Department needed related to the HFM Incident was "the number of cases and then within how many days the cases were diagnosed," not the student names. *Id.* at 10:7-12. Detective Kenney testified that Ms. Wood told her Mr. Farquer "requested names, contact information, the date that the student was diagnosed." *Id.* at 5:3-9. Detective Kenney stated that she reviewed an email exchange between Ms. Wood and Mr. Farquer where Ms. Wood expressed her "concern" at providing Mr. Farquer the requested information. *Id.* at 5:10-6:6.

The second incident Ms. Wood reported to Detective Kenney regarded an incident the prior school year involving the School District's response to measles cases in Illinois (the "Measles Incident"). *Id.* at 6:13-7:7. According to Detective Kenney, School District nursing staff, including Ms. Wood, advised Mr. Farquer of the actions they were taking in response to guidance from the Illinois Department of Public Health ("IDPH"). *Id.* at 7:8-8:7. In response, according to Detective Kenney, Mr. Farquer instructed Ms. Wood to "compil[e] a list of students and their immunization status and hav[e] that list ready in case they need it for . . . I think sending out parent letters in case there is a student exposed." *Id.* Detective Kenney testified that Ms. Wood did not initially comply so, eventually, Mr. Farquer gave her a "directive" to compile the information. *Id.* Detective Kenney testified that the "information [Ms. Wood] felt was inappropriate or protected" that should not have been shared with Mr. Farquer "was the specific names of the students." *Id.* at 8:17-20. According to Detective Kenney, the information was compiled into a spreadsheet on the School District's Google Drive, which can only be accessed by individuals within the School District.

Id. at 8:21-9:12. Detective Kenney testified to viewing this spreadsheet on Ms. Wood's computer and stated that she observed that the individuals who had access to the spreadsheet were Mr. Farquer, the School District nurses, and a School District teacher, Amanda Heinrich. *Id.* at 9:9-22. Detective Kenney testified she did not know why Ms. Heinrich was given access to the spreadsheet but that there was no legal reason Ms. Heinrich should have access to it. *Id.* at 9:24-10:6. Notably, Detective Kenney testified that when Mr. Farquer was informed that Ms. Heinrich had access to the spreadsheet "he said he was not aware of that," and "he didn't know how she was on there." *Id.* at 11:8-12:4. According to Detective Kenney, Mr. Farquer "did not believe he had added her but didn't know if other people that had access to that drive could have added her." *Id.*

Detective Kenney testified that at the time the Charges were presented to the State, her investigation was "thorough" and "complete." *Id.* at 14:21-15:1. Beyond speaking to Ms. Wood and reviewing the emails and spreadsheet, the only other step Detective Kenney took in her investigation was to research two federal laws: HIPAA and FERPA. *Id.* at 15:8-12. Detective Kenney did not review the Illinois School Student Records Act ("ISSRA"). *Id.* at 17:21-23.

III. STANDARD OF REVIEW

Under the Illinois Constitution, the State must establish probable cause for all felony charges it brings. Ill. Const. 1970, art. I, § 7 ("No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brough by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause"). "Probable cause exists where the facts and circumstances, considered as a whole, are sufficient to justify a belief by a reasonably cautious person that the defendant has committed a crime." *People v. Cummings*, 2023 IL App (1st) 220520, ¶ 24 (citing *People v. Hopkins*, 235 Ill. 2d 453, 472 (2009)).

In Count I, the State charged Mr. Farquer with committing official misconduct, in violation

of Section 33-3(a)(2) of Act 5 of Chapter 720 of the Illinois Compiled Statutes, a Class 3 felony. *See* Ex. 1. Under subsection (a)(2) of that statute, "[a] public officer or employee commits misconduct when, in his official capacity, he . . . knowingly performs an act which he [] knows he is forbidden by law to perform." 720 ILCS 5 § 33-3(a)(2). According to Count I, the acts Mr. Farquer allegedly "knowingly" performed despite knowing they were forbidden are the violations of the laws set forth in Counts II and III: Unauthorized Access to Medical Records, a Class A misdemeanor under the Hospital Licensing Act, 210 ILCS 85 § 6.17(i) (Count II) and Computer Tampering, a Class A misdemeanor under the Computer Tampering Law, 720 ILCS 5 § 17-51(a)(2) (Count III). There is no independent conduct underlying Count I. Thus, because Count I is predicated solely on Counts II and III, to establish probable cause, the State must show that it had probable cause that (1) Mr. Farquer knowingly performed the acts underlying Counts II and III and (2) knew he was forbidden by law to perform those acts.

IV. ARGUMENT

The State cannot establish probable cause to charge Mr. Farquer with Count I because it cannot establish probable cause that Mr. Farquer "knowingly perform[ed] an act which he [] knows he is forbidden by law to perform." 720 ILCS 5 § 33-3(a)(2). Namely, the State cannot show "a reasonably cautious person" would believe Mr. Farquer knowingly violated the statutes underlying Counts II and III because, as a matter of law, the statutes either do not apply or Mr. Farquer was authorized to access the student health information (the "Student Health Information") he is accused of unlawfully accessing.

A. There Is No Probable Cause That Mr. Farquer Knowingly Violated Any Law.

The State cannot establish that a "reasonably cautious person" would believe Mr. Farquer knowingly violated the statutes underlying Counts II and III because (1) the Hospital Licensing Act does not apply to Mr. Farquer and (2) as a matter of law, Mr. Farquer did not exceed his

authority, in violation of the Computer Tampering Law.

i. The Illinois Hospital Licensing Act Does Not Apply To Mr. Farquer.

The State cannot show that a "reasonably cautious person" would believe Mr. Farquer knowingly violated Illinois's Hospital Licensing Act (the "HLA") because that law does not even apply to Mr. Farquer. The State charged Mr. Farquer with violating Section 6.17(i) of the HLA by "demand[ing] a school nurse to disclose vaccination information to him, compil[ing] it into a google document, and shar[ing] with an unauthorized individual." Ex. 1, (Count II). The purpose of the HLA is:

> to provide for the better protection of the public health through the development, establishment, and enforcement of standards (1) ***for the care of individuals in hospitals***, (2) for the construction, maintenance, and operation ***of hospitals*** which, in light of advancing knowledge, will ***promote safe and adequate treatment of such individuals in hospital***, and (3) that will have regard to the necessity of determining that ***a person establishing a hospital*** have the qualifications, background, character and financial resources to ***adequately provide a proper standard of hospital service*** for the community.

210 ILCS 85 § 2(a). Under the HLA, "hospital" means "any institution . . . ***devoted primarily*** to the maintenance and operation of facilities ***for the diagnosis and treatment or care*** of 2 or more unrelated persons ***admitted for overnight stay or longer in order to obtain medical*** [treatment] . . . ." *Id.* at 85 § 3.

Section 6.17 of the HLA sets forth standards for "Protection of and confidential access to medical records and information." Under subsection (i), "[a]ny individual who willfully or wantonly discloses hospital or medical record information in violation of this Section is guilty of a Class A misdemeanor." Thus, to bring a charge under the HLA, the State must establish probable cause for two elements: (1) that the defendant "willfully or wantonly" (2) "disclose[d] hospital or medical records in violation of this Section." 210 ILCS 85 § 6.17(i). Consistent with the rest of the HLA, Section 6.17 makes clear that it only applies to hospitals and a "hospital's medical staff and its agents and employees." *See, e.g.*, 6.17(a) ("Every **hospital** licensed under this Act shall develop

. . . .) (emphasis added); 6.17(b) ("All information regarding a **hospital** patient gathered by the **hospital's** medical staff and its agents and employees . . . must be protected from inappropriate disclosure . . . .) (emphasis added); 6.17(d) ("No member of a **hospital's** medical staff and no agent or employee of a **hospital** shall disclose . . . .") (emphasis added).

Based on the plain language of the statute, it is clear that neither a school district nor a superintendent meet the definition of "hospital" or a "hospital's medical staff and its agents and employees." "It is well established that when a statute defines the terms it uses, those terms must be construed according to the definitions contained in the act." *Gruchow v. White*, 375 Ill. App. 3d 480, 485, (4th Dist. 2007); *see also Hobby Lobby Stores, Inc. v. Sommerville.*, 2021 IL App. 2d 190362, ¶ 30 (holding that when an "Act provides a clear definition" it "eliminat[es] any need to look further"). "The best indication of [] intent is the plain and ordinary meaning of the statute's language." *Levine v. City of Chicago*, 2024 IL App (1st) 231245, ¶ 29. If the "language is clear and unambiguous," courts "must apply the statute as written without resorting to any aids of statutory construction." *People v. Pohl*, 2012 IL App (2d) 100629, ¶ 16.

Neither Mr. Farquer, nor his employer, the School District, meet the definition of a "hospital" under the HLA. There is no ambiguity requiring interpretation beyond the statute's plain meaning. It cannot be disputed that the School District is not "***devoted primarily*** to the maintenance and operation of facilities ***for the diagnosis and treatment or care*** of 2 or more unrelated persons ***admitted for overnight stay or longer in order to obtain medical*** [care]." It is a school district. It is primarily devoted to educating students. The State has put forth no evidence establishing the School District is a "hospital" under the HLA. Similarly, as Detective Kenney admitted, Mr. Farquer is obviously not a hospital. Ex. 2 at 15:19-20. Nor could Mr. Farquer, as an employee of the School District, be considered a "hospital's medical staff," "agent," or "employee." Indeed, the State charged Mr. Farquer "in his official capacity ***being a public school superintendent***,

employed at the Mercer County Senior High School." Ex. 1 (emphasis added); *see also* Ex. 2, at 12:10-17 (testifying that all of her investigation was based on Mr. Farquer alleged conduct "related to [his] employment as the school superintendent" and in his role as superintendent).

The complete inapplicability of the HLA to the School District and Mr. Farquer makes sense given the law is literally called the "Hospital Licensing Act."[1] Put simply, the HLA does not apply to Mr. Farquer—a superintendent of a school district—and the State cannot credibly argue otherwise. Thus, the State cannot establish that a "reasonably cautious person" would believe that Mr. Farquer knowingly violated the HLA.

ii. Mr. Farquer Did Not Violate the Computer Tampering Law.

The State also cannot show that a "reasonably cautious person" would believe Mr. Farquer knowingly violated Illinois's Computer Tampering Law because, as a matter of law, Mr. Farquer is authorized to access Student Health Information. To establish probable cause to bring a charge for violation of Subsection (a)(2) of the Computer Tampering Law, the State must show it had probable cause to believe Mr. Farquer "knowingly and without authorization of a computer's owner or in excess of the authority granted to him . . . accesse[d] or cause[d] to be accessed a computer or any part thereof, a computer network, or a program or data." *People v. Janish*, 2012 IL App (5th) 100150, ¶ 16; *see also* 720 ILCS 5 § 17-51(a)(2). The basis of this charge is that Mr. Farquer allegedly "knowingly and **in excess of the authority granted to him as superintendent**

[1] Even if the HLA applied, which it clearly does not, the State has not established that a "reasonably cautious person" would believe that Mr. Farquer violated it because, as explained below, under federal law, state law, and school board policies, Mr. Farquer is entitled to access the Student Health Information. *See infra* Part IV.A.ii.2. Additionally, the State has put forth no evidence that Mr. Farquer "willfully or wantonly" disclosed the student health information to a school district teacher. The HLA strictly defined "willfully and wantonly" as requiring "an actual or deliberate intention to cause harm or … show[] an utter indifference to or conscious disregard for the safety of others or their property." 210 ILCS 85 § 6.17(i). Detective Kenney testified that Mr. Farquer was unaware that Ms. Heinrich had access to the Document and believed "[h]e did not believe he had added her but didn't know if other people that had access to that drive could have added her." Ex. 2 at 11:10-12:4. Detective Kenney did not testify to any facts that would lead "a reasonably cautious person" to believe Mr. Farquer acted with "actual or deliberate intention to cause harm." Additionally, as explained below, the Student Health Information at issue is an "education record" under both state and federal law, not a "hospital or medical record." *See infra* Part IV.A.ii.2.a.

caused to be accessed information on the computer of the school nurse and obtained data, being health care information." *See* Ex. 1 (Count III) (emphasis added).

Detective Kenney testified that Mr. Farquer violated this statute when he directed Ms. Wood to provide him the Student Health Information in response to the Measles Incident and the HFM Incident. Ex. 2 at 4:5-15; 7:8-8:7. According to Detective Kenney, Mr. Farquer's alleged unlawful access to the Student Health Information violated both HIPAA and FERPA, and thus, was in excess of his authority as superintendent. *See id* at 4:5-15; 15:8-12. Importantly, if there is no probable cause that Mr. Farquer knowingly violated HIPAA or FERPA then there is no probable cause Mr. Farquer violated the Computer Tampering Law because there is no probable cause that he exceeded his authority. Critically, the State has not admitted a single **fact** establishing probable cause that Mr Farquer violated either statute. The State's ***only*** evidence to support its claim that there is probable cause Mr. Farquer violated HIPAA or FERPA is Detective Kenney's testimony on her interpretation of those law. Her interpretation is wrong as a matter of law.

As an initial matter, Detective Kenney's testimony that Mr. Farquer is not permitted to access Student Health Information (including student names) under HIPAA and FERPA is an improper legal opinion. As this Court ruled at the preliminary hearing:

> [Detective Kenney] is not an attorney and **cannot answer to any legal conclusions or interpretations whatsoever** based upon the administrative acts or federal HIPAA laws or Illinois state laws as applicable here in official misconduct, unauthorized access to medical records, and computer tampering. So **she cannot opine as to those particular legal issues**, just the investigation and the factual basis on which the State has charged these matters.

See Ex. 2 at 26:23-27:11. Indeed, the State agrees that Detective Kenney is not an attorney and cannot interpret law. *See id.* at 26:7-13 ("Objection, Judge. She's not an attorney. He's asking her about all these statutes. She's not attorney."). But Detective Kenney's improper legal opinion is **the only evidence** the State has that Mr. Farquer accessing the Student Health Information violated HIPAA and FERPA. *See id.* at 15:8-12 (testifying she researched "state statute and federal law

statute of the HIPAA laws and then FERPA"); *id.* at 17:3-14 (testifying she "relied upon HIPAA in making [her] charges" of "unauthorized access to medical records, official misconduct."); *id.* at 13:20-14:7 (testifying, incorrectly, that "there is nowhere in [FERPA] that states administration of schools or school personnel should get access to student health records"); *id.* at 22:18-23:11. (testifying to her conclusion that, as superintendent, Mr. Farquer would only be authorized to access a "portion" of a student's records because FERPA and HIPAA require parental consent before releasing "medical records"); *id.* at 23:16-19 (testifying to her conclusion that, in response to a measles risk, a "superintendent would [not] have a right to access information about a student to determine if they might be susceptible to measles"); *id.* at 25:24-26:6. (testifying to her conclusion that Mr. Farquer had a "legitimate educational interest" in "the number of cases [of HFM] . . . and the individuals specifically affected, but not the names and the contact information of those students"); *id.* at 19:16-17 (testifying, incorrectly, that "federal law [HIPAA] would supersede the state law [ISSRA]"); 24:21-25:8 (testifying that she "relied upon FERPA" for the "opinions that [she was] expressing"). Not a single one of Detective Kenney's opinions is based on any **fact**. Critically, Detective Kenney is wrong: (1) HIPAA does not apply and (2) federal law, state law, and school board policies specifically authorize Mr. Farquer, as superintendent, to access Student Health Information for educational purposes, such as the Measles and HFM Incidents.

1. HIPAA Does Not Apply To Mr. Farquer.

HIPAA does not apply to schools in the School District. HIPAA is a federal law "to improve portability and continuity of health insurance coverage . . . , to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes." 42 U.S.C. § 1320d et al. The law applies only to individuals or entities who meet the definition of a "covered entity." *See* 45 CFR § 160.103 (defining key terms

in HIPAA to implement the law). According to the U.S. Department of Health and Human Services ("HHS"), a "covered entity" is one of three types of individuals/entities: (1) a healthcare provider (such as a doctor, clinic, dentist, etc.), (2) a health plan (such as a health insurance company), or (3) a healthcare clearinghouse (i.e. an entity that processes nonstandard health information from a third party into standard format). *See* U.S. Dep't of Health & Human Servs., Covered Entities and Business Associates, HHS.gov (Aug. 21, 2024), https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html (last visited Oct. 24, 2025); *see also* 42 U.S.C. § 1320d. Critically, as HHS explains:

> In **most cases**, the *HIPAA* Privacy Rule **does not apply to an elementary or secondary school** because the school either: (1) is **not a *HIPAA* covered entity** or (2) is a *HIPAA* covered entity **but maintains health information only on students in records that are by definition "education records" under *FERPA*** and, therefore, is not subject to the *HIPAA* Privacy Rule.

U.S. Dep't of Health & Hum. Svcs., *Does the HIPAA Privacy Rule apply to an elementary or secondary school? (FAQ 513)*, (Nov. 25, 2008, last reviewed July 26, 2013), https://www.hhs.gov/hipaa/for-professionals/faq/513/does-hipaa-apply-to-an-elementary-school/index.html (last visited Oct. 24, 2025) (emphasis added).

Schools in the School District do not qualify as covered entities under HIPAA. As HHS helpfully explains "even though a school employs school nurses . . . or other health care providers, the school is not generally a *HIPAA* covered entity because the providers do not engage in any of the covered transactions, such as billing a health plan electronically for their services." *Id.* The State has not put forth any evidence that any school in the School District engages in HIPAA-covered transactions such that it would qualify as a covered entity. Even if the State had shown that, which it did not, as HHS makes clear, the type of health information even a HIPAA-covered school generally maintains is not "protected health information" under HIPAA. *Id.* (noting that even a HIPAA-covered school would likely "not be required to comply with the *HIPAA* Privacy

Rule because the school maintains health information only in student health records that are "education records" under *FERPA* and, thus, not "protected health information" under *HIPAA*.) The State has not put forth any evidence that the type of information Mr. Farquer allegedly accessed is "protected health information" under HIPAA, rather than "education records" under *FERPA*. Indeed, as explained below, the information Mr. Farquer allegedly accessed are, as a matter of law, are "education records" under *FERPA*. *See infra* Part IV.A.ii.2.a.

The only evidence the State submitted that Mr. Farquer's alleged access to Student Health Information violated HIPAA is Detective Kenney's testimony that (1) Ms. Wood reported to Detective Kenney that Mr. Farquer's alleged access to this information violated HIPAA, and (2) Detective Kenney reviewed and interpreted HIPAA. Ex. 2 at 4:5-15; 15:8-12. But as Detective Kenney admitted, she did not "rely upon Amber Wood as having legal authority to express legal opinions." *Id.* at 15:5-7. And this Court and the Parties all agree that Detective Kenney is not an attorney. *Id.* at 26:7-27:11. Accordingly, as this Court held, she "cannot answer to any legal conclusions or interpretations whatsoever based upon the administrative acts or federal HIPAA laws or Illinois state laws as applicable here in official misconduct, unauthorized access to medical records, and computer tampering." *Id.* Detective Kenney can only testify as to the "investigation and the **factual basis**" for the Charges. *Id.* Detective Kenney has not testified to a single fact that establishes that either the School District or Mr. Farquer meet the definition of "covered entity" under HIPAA such that the law applies to Mr. Farquer. Detective Kenney did not testify that Mr. Farquer is a healthcare provider, a health plan, or a healthcare clearinghouse. Nor could she.

In short, the plain language of HIPAA, and guidance from the federal agency authorized to implement it, make clear HIPAA does not apply to either the School District or Mr. Farquer. Because HIPAA does not apply to Mr. Farquer or the Student Health Information at issue, the State cannot establish that a "reasonably cautious person" would believe Mr. Farquer knowingly

violated HIPAA. If there is no probable cause Mr. Farquer violated HIPAA, that cannot be the basis for probable cause he exceeded his authority, in violation of the Computer Tampering Law.

2. FERPA and ISSRA Specifically Permit Mr. Farquer To Access Student Health Information.

The State cannot establish probable cause that Mr. Farquer's alleged access to Student Health Information exceeded his authority because both federal and state law permit him to access such information. Access to student education records is governed by federal law, FERPA, and state law, ISSRA. Mr. Farquer is authorized to access the Student Health Information under both.

a. Mr. Farquer is Permitted to Access Education Records Under FERPA.

FERPA prohibits schools from "permitting the release of education records . . . of students without the written consent of their parents to any individual, agency, or organization, ***other than to the following*** . . . ***other school officials***, including teachers within the educational institution or local educational agency, ***who have been determined by such agency or institution to have legitimate educational interests***. . . ." 20 U.S.C. § 1232g(b)(1)(A). The statute defines a student's "education records" as "those records, files, documents, and other materials which—(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). The Code of Federal Regulations provides further guidance, defining "education records" as records that are "**directly related to a student** and that are **maintained by an educational agency or institution**," including "**health records**." U.S. Dep't of Educ., What Is an Education Record?, Protecting Student Privacy (Oct. 21, 2025), https://studentprivacy.ed.gov/faq/what-education-record (emphasis added) (citing 34 CFR § 99.2 to interpret "education records" under FERPA).

Mr. Farquer is permitted to access the Student Health Information under FERPA because (1) that information is considered an "education record" and (2) he is a "school official" with a

"legitimate educational interest." *First*, under FERPA, the Student Health Information Mr. Farquer allegedly clearly part of the students' "education record." According to Detective Kenney, Mr. Farquer allegedly requested the following student health information: "names, contact information, the date that the student was diagnosed" for the HFM Incident and "the specific names of the students" and vaccination status in the Measles Incident. *Id*. at 5:3-9; 8:17-20. All of this information is information that (1) directly relates to students and (2) is maintained by the School District. The State submitted no evidence to the contrary and, indeed, Detective Kenney admitted FERPA applied to the Student Health Information. Ex. 2 at 13:20-14:7; 15:8-12; 23:12-15.

Second, under FERPA, Mr. Farquer is permitted to access the Student Health Information because he is a "school official" who has been determined by the School District "to have legitimate educational interests." *See* 20 U.S.C. § 1232g(b)(1)(A). There can be no dispute that Mr. Farquer, as the superintendent for the District, is a school official,[2] and the State has no evidence that would support an argument otherwise. Thus, the State must show probable cause that Mr. Farquer did not have a "legitimate educational interest" to access the Student Health Information. Under FERPA, whether Mr. Farquer has a "legitimate educational interest" is determined by the School District. *Compare* 20 U.S.C. § 1232g(b)(1)(A) (permitting the release of education records without parental consent to school officials "who have been ***determined by such agency or institution to have*** **legitimate educational interests**" (emphasis added)) *with* U.S. Dep't of Educ., *To Which Educational Agencies or Institutions Does FERPA Apply?*, https://studentprivacy.ed.gov/faq/which-educational-agencies-or-institutions-does-ferpa-apply (last visited Oct. 23, 2025) ("By 'educational agencies or institutions' we mean public schools,

[2] The U.S. Department of Education guidance makes clear that "school official" is a broad term, including even accountants, human resources professionals, and support or clerical personnel. U.S. Dep't of Educ., *Who Is a School Official Under FERPA?*, https://studentprivacy.ed.gov/faq/who-school-official-under-ferpa (last visited Oct. 24, 2025).

school districts . . . and postsecondary institutions, such as colleges and universities.") (emphasis added)). This is consistent with how courts in other states have interpreted FERPA. *See, e.g.*, *Sch. Bd. of Miami-Dade Cnty. v. Martinez-Oller*, 167 So. 3d 451, 453 (Fla. Dist. Ct. App. 2015) ("FERPA unambiguously and exclusively entrusts the determination of 'legitimate educational interests' with educational agencies . . . [that] determination is an agency, not court, determination.'").

In its closing argument at the preliminary hearing, the State argued that Mr. Farquer "demanded" the Student Health Information and that the "information that he was requesting was not for any type of educational purpose." Ex. 2, at 29:24-30:10. But the only evidence the State submitted that Mr. Farquer did not have an educational purpose in accessing the Student Health Information is Detective Kenney's conclusory and improper legal opinion based on her reading of FERPA. *See* Ex. 2 at 15:8-12 ("I researched state statute and federal law statute of HIPAA laws and then FERPA"); 13:20-14:7 ("There is nowhere in [FERPA] that states that administration of schools or school personnel should get access to student health records."); *id.* at 23:20-24:15 (testifying that student education records can be access only "[i]f there is educational interest, and if there is, again, like I said earlier, a public health emergency, something that would constitute a health issue within the community, then appropriate parties can be notified. School personnel, such as a superintendent, is not listed in that appropriate party section"); *id.* at 25:24-26:6 (testifying that Mr. Farquer would have an educational interest only in accessing "[t]he number of cases, yes, and the individuals specifically affected, but not the names and contact information of those students"). But, again, this Court and the Parties all agree: Detective Kenney is not an attorney; she "cannot answer to any legal conclusions or interpretations" of law. *Id.* at 26:7-27:11. Detective Kenney can only testify as to the "investigation and the **factual basis**" for the Charges. *Id.*

Detective Kenney did not testify to a single "factual basis" to support the conclusion that Mr. Farquer would not have a "legitimate educational interest" to access the Student Health Information. She did not testify that the ***School District*** determined that Mr. Farquer did not have a "legitimate educational interest" to access Student Health Information. There is no testimony that Detective Kenney consulted with the Mercer County Board of Education (the "Mercer BOE") to determine Mr. Farquer had no legitimate educational interest. There is no testimony that Detective Kenney reviewed the Mercer BOE policies to determine Mr. Farquer had no legitimate educational interest. Indeed, had Detective Kenney done either of those things, she would have learned facts indicating that her personal interpretation that Mr. Farquer did not have a "legitimate educational interest" under FERPA is wrong.

Pursuant to Mercer BOE policies, "the Superintendent is authorized to develop administrative procedures ***and take other action as needed*** to implement Board policy and ***otherwise fulfill his or her responsibilities***." *See* Policy 3:40: Superintendent, Mercer Cnty. Sch. Dist. Policy 3:40 (May 17, 2023), https://www.mercerschools.org/_files/ugd/61ee79_f4d9e0963a3d4eaeb702a4cb73d34cb6.pdf (last visited Oct. 24, 2025) (emphasis added). It is common sense that as superintendent, the School District would expect Mr. Farquer to be able to access Student Health Information, as needed, to fulfill his responsibilities, which surely include ensuring the School District appropriately responds to outbreaks of illnesses, both for the general safety of its students and as requested by the IDPH. Indeed, as the Mercer BOE stated following the State filing the Charges against Mr. Farquer: "student health records are explicitly defined as part of the student's school record. Their use by teachers, school nurses, and support staff ***is not only common but necessary*** to meet the educational and developmental needs of our students." WRMJ, *Mercer County Superintendent's Preliminary Hearing Continued to Nov. 4*, WRMJ.com (Oct. 20, 2025), https://wrmj.com/mercer-county-superintendents-preliminary-hearing-continued-to-nov-4-2025/

(emphasis added). The Mercer BOE emphasized that "these records are ***governed by the Family Educational Rights and Privacy Act and ISSRA, not by HIPAA or medical privacy laws*** applicable to healthcare providers. Their use ***within the school setting is lawful, regulated, and essential*** to the functioning of our educational mission." *Id.* (emphasis added).

The State argues[3] there was no educational purpose because the Student Health Information was not "even deemed necessary to give to the [Illinois Department of Public Health or the Mercer County Health Department]." Ex. 2, at 31:6-10. But what information any health department requested is irrelevant under FERPA. It does not matter whether the State or a court thinks there was a legitimate educational interest. *See Sch. Bd. of Miami-Dade Cnty.*, 167 So. 3d at 453 (Fla. Dist. Ct. App. 2015) ("FERPA unambiguously and exclusively entrusts the determination of 'legitimate educational interests' with educational agencies . . . [that] determination is an agency, not court, determination.'"). What matters, under FERPA, is what the School District determined.

Put simply, there is no evidence the School District determined Mr. Farquer would not have a "legitimate educational interest" in accessing the Student Health Information. Because there is no probable cause that Mr. Farquer violated FERPA, there is no evidence that would lead "a reasonably cautious person" to believe that Mr. Farquer knowingly exceeded his authority, in violation of the Computer Tampering Law.

b. Mr. Farquer is Permitted To Access Education Records Under ISSRA.

Similar to FERPA, ISSRA prohibits schools from "release[ing], transfer[ring], disclos[ing], or otherwise disseminat[ing]" student records except in certain circumstances. 105 ILCS 10 § 6. One of those permissible circumstances is "to an **employee or official of the school**

[3] In arguing that Mr. Farquer did not have an educational purpose to access the Student Health Information, the State also appears to conflate its argument that Mr. Farquer allegedly improperly shared the spreadsheet from the Measles Incident with a teacher. *See* Ex. 2, at 31:11-16. This allegation is not relevant to Count III and, as explained above, the HLA (Count II) does not apply to Mr. Farquer. *See supra* Part IV.A.i. Importantly, there is **no testimony** that Mr. Farquer is the person who shared the spreadsheet.

or school district or State Board with current **demonstrable educational or administrative interest** in the student, in furtherance of such interest." 105 ILCS 10 § 6(a)(4). ISSRA defines a "school student record" is defined as "any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its discretion or by an employee of a school . . . ." 105 ILCS 10 § 2(d). ISSRA recognizes two types of student records: Permanent and Temporary. A "Student Permanent Record" is "the minimum personal information necessary to a school in the education of the student and contained in a school student record." 105 ILCS 10 § 2(e). A "Student Temporary Record" is "all information contained in a school student record but not contained in the student permanent record." 105 ILCS 10 § 2(f). According to the Illinois Administrative Code, which implements ISSRA, a student's permanent record includes a student's health record, which "medical documentation necessary for enrollment." *See* 23 Ill. Adm. Code 375.10. And a "Student Temporary Record" includes "health-related information." *Id.*

Mr. Farquer is permitted to access the Student Health Information under ISSRA because (1) the Student Health Information is a "student record" and (2) Mr. Farquer is a school official with a "demonstrable educational or administrative interest." *First*, under the plain language of ISSRA and the Illinois Administrative Code, the Student Health Information is clearly part of the both the students' "Permanent Record" and "Temporary Record." *See supra* Part IV.A.ii.2.a (describing the information as names, contact information, vaccination status, and/or the date of diagnosis). All of this information is (1) part of a student's health record or generally relates to a student's health and (2) maintained by the School District. There is no evidence to the contrary. Indeed, Detective Kenney admitted she did not even review ISSRA as part of her investigation. *See* Ex. 2 at 17:21-23.

Second, under ISSRA, Mr. Farquer is permitted to access these types of records as an official of the school district with a "current demonstrable educational or administrative interest" in the students related to the Measles Incident and the HFM Incident. *See* 105 ILCS 10 § 6(a)(4). For the same reasons explained above, Mr. Farquer, as superintendent, clearly had a "current demonstrable educational or administrative interest" in protecting students related to the Measles Incident and the HFM Incident. *See supra* Part IV.A.ii.2.b (explaining who has a legitimate educational interest under FERPA). The State did not submit any evidence that would lead a "reasonably cautious person" to believe otherwise.

* * *

In short, as a matter of law, Mr. Farquer did not violate HIPAA because it does not apply. And there is no factual evidence that Mr. Farquer violated FERPA (indeed the plain language of the statute, Mercer BOE policies, and Mercer BOE public statements show Mr. Farquer would be permitted to access Student Health Information under both FERPA and ISSRA). Thus, nothing would lead a "reasonably cautious person" to believe Mr. Farquer exceeded his authority as superintendent, in violation of the Computer Tampering Law.

B. Because The State Cannot Show Probable Cause That Mr. Farquer Knowingly Violated Any Law It Cannot Establish Probable Cause for Count I.

This Court should find no probable cause for Count I because the state cannot establish probable cause that Mr. Farquer knowingly violated any laws. Count I, charging Mr. Farquer with committing official misconduct, in violation of Section 33-3(a)(2) of Act 5 of Chapter 720 of the Illinois Compiled Statutes, is predicated on Mr. Farquer allegedly knowingly violating the Hospital Licensing Act, 210 ILCS 85 § 6.17(i), (a legal impossibility since the HLA is not applicable to Mr. Farquer, a school superintendent) and (Count II) and the Computer Tampering Law, 720 ILCS 5 § 17-51(a)(2) (Count III), (similarly impossible because as superintendent, he is legally authorized and obligated to access) both of which he was accused of violating. *See* Ex. 1. Because

Count I is predicated solely on Counts II and III, to establish probable cause, the State must show that it had probable cause that (1) Mr. Farquer knowingly performed the acts underlying Counts II and III and (2) knew he was forbidden by law to perform those acts.

For all the reasons stated above, the State has not established that "a reasonably cautious person" would believe Mr. Farquer knowingly violated either the HLA or the Computer Tampering law. *See supra* Part IV.A.

V. CONCLUSION

Based on the foregoing, the State has failed to meet its burden to establish that the State had probable cause to charge Mr. Farquer with the Class 3 felony of official misconduct under 720 ILCS 5 § 33-3(a)(2). Accordingly, Mr. Farquer respectfully requests this Court issue a finding of no probable cause for Count I.

Dated: October 27, 2025

Respectfully submitted,

Timothy D. Farquer

By: /s/ *Lindsey A. Lusk*
Lindsey A. Lusk, One of his Attorneys

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Attorneys for the Defendant

CERTIFICATE OF SERVICE

I, Lindsey A. Lusk, an attorney, hereby certify that I caused a copy of the attached **Memorandum of Law in Support of a Finding of No Probable Cause** to be served on the following counsel of record via email and Odyssey eFileIL, the Court's electronic filing system, on this 27th day of October 2025.

Grace Simpson
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/s/ Lindsey A. Lusk
Attorney for Defendant

EXHIBIT 1

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
MERCER COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)
)
vs.) CASE NO. 2025 CF 81
)
TIMOTHY D. FARQUER Defendant.).
DOB: 08/29/1972

INFORMATION FOR VIOLATION OF STATUTE

Now comes Mercer County State's Attorney Grace A. Simpson, in the name and by the authority of the People of the State of Illinois, and charges:

Count I – that on or about September 1, 2025 through present, in Mercer County, Illinois, the defendant, TIMOTHY D. FARQUER, committed the offense of OFFICIAL MISCONDUCT, in violation of Section 33-3(a)(2) of Act 5 of Chapter 720 of the Illinois Compiled Statutes, a Class 3 felony, in that said defendant, in his official capacity being a public school superintendent, employed at the Mercer County Senior High School, knowingly performed an act which said defendant knew was forbidden by law, being ordering an employee to give him UNAUTHORIZED ACCESS TO MEDICAL RECORDS/COMPUTER TAMPERING.

Count II – that on or about September 1, 2025 through present in Mercer County, Illinois, the defendant, TIMOTHY D. FARQUER, committed the offense of UNAUTHORIZED ACCESS TO MEDICAL RECORDS, in violation of Section 6.17(i) of Act 85 of Chapter 210 of the Illinois Compiled Statues, a Class A misdemeanor, in that said defendant in a willful and wanton manner disclosed medical records protected under 210 ILCS 85, in that said defendant demanded a school nurse to disclose vaccination information to him, compiled it into a google document, and shared with an unauthorized individual.

Count III -- that on or about September 1, 2025 through present in Mercer County, Illinois, the defendant, TIMOTHY D. FARQUER, committed the offense of COMPUTER TAMPERING, in violation of Section 17-51(a)(2) of Act 5 of Chapter 720 of the Illinois Compiled Statues, a Class A misdemeanor, in that said defendant knowingly and in excess of the authority granted to him as superintendent caused to be accessed information on the computer of the school nurse and obtained data, being health care information.

Grace Simpson
State's Attorney/Assistant State's Attorney

Detective/Deputy/Officer Inv. Kenney being duly sworn under oath deposes and says that the within information against Timothy D. Farquer, DOB: 08/29/1972 is true.

Affiant

Subscribed and sworn to before me this 25th day of September 2025.

Notary Public

OFFICIAL SEAL
KELLI JO CHAFFER
Notary Public - State of Illinois
Commission No. 1000665
My Commission Expires November 27, 2028

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
MERCER COUNTY, ILLINOIS

I, Matthew J. Lurbin Judge of the Circuit Court of the Fourteenth Judicial Circuit of Mercer County, Illinois, have examined the within information against Timothy D. Farquer DOB: 08/29/1972 and the sworn testimony of Kenney thereto and find probable cause to believe that an offense was committed and that the named defendant committed it.

9/25/, 2025

JUDGE

EXHIBIT 2

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
MERCER COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
vs.	)	NO. 25 CF 81
TIMOTHY D. FARQUER, Defendant.	)	**PRELIMINARY HEARING**

REPORT OF PROCEEDINGS of the hearing before the Honorable JUDGE MATTHEW DURBIN, commencing on **October 20, 2025**.

APPEARANCES:

ATTORNEY GRACE SIMPSON,

Assistant State's Attorney,
for the People of the State of Illinois;

ATTORNEY DOUGLAS SCOVIL,

for the Defendant.

Brenda Peterschmidt
Official Court Reporter
IL License No. 083-002599

INDEX

WITNESS	PAGE
LINDSEY KENNEY	
Direct Examination by Ms. Simpson	3
Cross-Examination by Mr. Scovil	14
Redirect Examination by Ms. Simpson	27
Recross Examination by Mr. Scovil	28
Reporter's Certificate	36

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EXHIBITS

(None)

(The following proceedings were had in open court, commencing at 9:29 a.m.)

THE COURT: Mr. Scovil appears in 25 CF 81 for the defendant, Mr. Timothy Farquer.

THE DEFENDANT: Farquer.

THE COURT: That's spelled F-a-r-q-u-e-r.

Ms. Simpson is here for the State. Matter is set for preliminary hearing. Are we having testimony?

MS. SIMPSON: I believe so.

MR. SCOVIL: Yes.

THE COURT: Call your first witness, please.

MS. SIMPSON: State calls Detective Lindsey Kenney.

(The witness was sworn.)

LINDSEY KENNEY,

called to testify in the matter herein, after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SIMPSON:

Q. Please state your name.

A. Lindsey Kenney.

Q. What is your occupation?

A. Detective with the Aledo Police Department.

Q. How long have you been so employed?

A. Two years January here. I've been an officer for

14 years.

Q. And, through the course of your investigation, did you receive a complaint regarding a Timothy Farquer?

A. Yes.

Q. And, in regards to that complaint, what did you learn?

A. My complainant, Amber Woods -- she's a Mercer County High School nurse -- She was reporting, originally, unauthorized access to medical records of two IT employees within the school district. And, while taking that report, she informed me that she had been given directives by the superintendent, Mr. Farquer, to provide medical records to him of students that she felt wasn't lawful to do or was morally, ethically wrong or against HIPAA laws as far as it's associated with her position.

Q. And, specifically to the superintendent's request, what did that entail?

A. The first complaint that I received from her was in regard to hand, foot, and mouth disease that was currently going around the high school. She had received guidance from the County Health Department that if they reached a threshold of, I believe, 10 cases within 10 days, they would have to disclose the cases but would not be required to disclose any names or any identifying

information. And then afterwards, they would just be guided on how to control -- control the spread of it.

Q. And in relation to the hand, foot, and mouth disease, did the superintendent request additional information?

A. Yes, he requested names, contact information, the date that the student was diagnosed. I believe they wanted vaccination status, although I don't believe that would pertain to hand, foot, and mouth in any way.

Q. Did the complainant express to the superintendent originally that she felt that that was inappropriate?

A. There was an e-mail thread that I reviewed. There is at one time that she addresses her concern, but that was with a previous issue. But throughout reading the e-mails, she'd provide him information as far as what IDPH wants the school to follow.

THE COURT: Wait. What is IDPH?

THE WITNESS: Illinois Department of Public Health. Sorry.

THE COURT: Very well.

THE WITNESS: But she would provide that information to him. She would tell him, you know, this is what we're doing as far as notifying people that might be exposed to the illness. There is a lot of back and forth in the

e-mail thread between the two of them, Ms. Wood and Mr. Farquer. The feel of the e-mail, to me, was that she was uncomfortable with providing the information, so she would just provide generic or general information to him because she didn't want to disclose the student medical records to him.

Q. Did he also in fact ask for a spreadsheet of the high school cases in the form of a Google Doc?

A. I believe he asked for the information from Ms. Wood, and then there was discussion of whether or not this information could be exported into an Excel file to create a spreadsheet.

Q. You mentioned that there was a previous issue. Do you know anything about that?

A. It was towards the end of the previous school year, April of 2025. There was a conversation amongst Ms. Wood, Mrs. Smith, the Mercer County Junior High nurse, and, I believe, Holly Lampkin, the New Boston Elementary nurse, and Becky Hyatt, who is now retired; she was the Apollo Elementary nurse. There was discussion about measles cases being diagnosed within the state, specifically within the Chicago area.

They expressed to Mr. Farquer in the e-mail that guidance they had again received from the health

department was that it would be best to obtain student immunization records -- which they have to have those records and provide them to the state of Illinois anyway -- but it would be important to have those records in an area they could locate them quickly along with staff and teacher records in case someone's exposed, and they can notify everyone in a quick manner.

Q. In that incident, was additional or information that they did not feel was appropriate requested in that scenario?

A. With that specific concern throughout the e-mail thread, the nursing staff tells Mr. Farquer that they feel like they need to act on it quickly. They need to get student information and staff information together quickly because that's what they were told to do by the health department.

He tells them to create -- well, specifically Ms. Wood; she seems to be the main person that's communicated to by Mr. Farquer in the e-mails -- there is discussion of compiling a list of students and their immunization status and having that list ready in case they need it for -- I would think -- I think sending out parent letters in case there is a student exposed.

He continues to tell them not to address the

concern with -- their concern with getting staff immunization records. But he does request her to provide the student list, and she goes around it, sends him information through the e-mails, but she never discloses any names to him until he tells her to consider it a directive. Which he had done so, eventually, with the hand, foot, and mouth also. He made it directive.

Q. He uses that specific language of please consider this a directive?

A. Yes, in both of the e-mails.

Q. And, eventually, does Ms. Wood disclose the names of the students upon being given that directive?

A. Yes. She told me she did because, by that point, she felt like she was being targeted and that she was afraid that, if she didn't follow the directive, she would face disciplinary action or be terminated from her position.

Q. And is that in fact the information she felt was inappropriate or protected to be shared, was the specific names of the students?

A. Correct.

Q. So, eventually, that information was compiled into a -- was given to the superintendant; is that correct?

A. Yes.

Q. And, upon being given that information, what was the -- what did -- where did that information go?

A. It was -- I was advised by Ms. Wood that a spreadsheet was created on the Google Drive which is shared by the school district.

THE COURT: The district?

THE WITNESS: The Mercer County School District uses the Google platform for --

THE COURT: So anybody can see it?

THE WITNESS: -- communication.

Well, within the school district. But you can assign privacy to certain people.

THE COURT: All right. Go ahead.

THE WITNESS: Okay.

So the spreadsheet was created on Google Drive and a Google document. Ms. Woods showed this to me on her computer. The people that were assigned to the drive were Mr. Farquer, Mercer County school nurses, and Amanda Heinrich. And Amanda Heinrich is not a part of nursing staff. She is not part of administration. She's part of the teaching staff, and she's the union representative on the teacher's side for the teacher's union.

BY MS. SIMPSON:

Q. Through the course of your investigation, was

there any reason that this person should have been or needed to be given this information?

A. Not for any legal reason. I do not know why she was added to that drive other than she's a union rep, but there is no reason for her to have access to medical records.

Q. And, specifically, I want to go back to the Public Health Department related to hand, foot, and mouth. The information they needed was not related to specific individuals or their names of any kind; is that correct?

A. No, just the number of cases and then within how many days the cases were diagnosed, I believe.

Q. So after you received this complaint from Ms. Wood, what did you do next?

A. Well, I obtained copies of any paperwork she provided to me. She had kept paper copies of all of her communication between her and Mr. Farquer, so I obtained that. And I also had school logs from TeacherEase based on the complaint with the other -- of the other defendants in this case.

That following week, I drafted search warrants for the Mercer County High School IT Department and the Mercer County School District unit office in Joy. Those were executed, I believe, on September 24th. We, assisted

by the Mercer County Sheriff's Department, we seized computers and cell phones in relation to Mr. Farquer and Mrs. Long and Ms. Norton.

Q. And did you, upon executing search warrants, did you make contact with the defendant?

A. I did not personally make contact with him. Chief Baker did.

Q. Was the defendant here interviewed?

A. Yes.

Q. What was the substance, if any, of that interview?

A. He acknowledged, from what I read on Chief Baker's report, he acknowledged he had this information but that the concerns that Ms. Wood had as far as violating HIPAA laws were incorrect. He thought that there was some miscommunication between the two as to why he needed the information and that it possibly had something to do with the number of cases that had been diagnosed.

He also was asked about the Google Drive and the existence of the Google Drive, and he acknowledged he created it. He was informed that Amanda Heinrich was on the list of people with access to this drive, and he said he was not aware of that. He made a comment that maybe

she had been added because of a union issue, but, otherwise, he didn't know that she was on there. He did not believe he had added her but didn't know if other people that had access to that drive could have added her.

Q. And through the entirety of your investigation, was this information recovered related to -- or obtained -- related to Mr. Farquer's official capacity as the superintendent?

A. Can you clarify the question? I'm sorry.

Q. Yes. All of the investigation that you did was related to Mr. Farquer's employment as the school superintendent; is that correct?

A. Yes, ma'am.

Q. All of those actions would have been done in conjunction with him being the superintendent at the Mercer County High School, correct?

A. Yes.

Q. And Mercer County High School, is that located in Mercer County, Illinois?

A. Yes.

Q. And the individual that we are referring to as Mr. Farquer, do you see him in the courtroom today?

A. I do. He's sitting at the defendant's table with a striped tie, glasses, and his attorney to his right.

MS. SIMPSON: Your Honor, I would ask that the record reflect the identification of the defendant.

THE COURT: The record will so reflect.

BY MS. SIMPSON:

Q. After speaking to the defendant, was there anyone else of note in your -- to note in your investigation at this time?

A. Not that I recall. I -- again, I didn't personally interview him. I would have to refer to the entry of Chief Baker into the report for any more specifics.

Q. And so, according to Ms. Wood, she felt that this information that he demanded through the course of their e-mails to be accessed was information that he did not have access to; is that -- or should not have had access to, specifically the names?

A. Yes, because at the time, there was not a health emergency that would have been a reason to give him that information.

Q. So occasionally there are reasons why, such as a pandemic, et cetera, that would allow someone to have this information; is that correct?

A. Yes. There is a federal law, FERPA, a federal education law that protects disclosing student records in

particular situations. I don't know all of the wording of that law, but there's portions of it that talk about appropriate parties being provided that information such as law enforcement or public emergency -- public health emergency personnel. There is nowhere in there that states that administration of schools or school personnel should get access to student health records.

Q. And at this time -- During this time, there was no national emergency declared during the timeframe of your investigation?

A. No.

Q. Nothing that you, through the course of your investigation discovered would excuse or explain the demand for this information?

A. No.

MS. SIMPSON: I have nothing further for this witness.

THE COURT: Cross.

MR. SCOVIL: Thank you.

CROSS-EXAMINATION

BY MR. SCOVIL:

Q. Detective, would it be fair to say that you made a thorough, complete investigation of the charges before they were presented to the State's Attorney's office?

A. With the knowledge and information that I had at

the time, yes.

Q. Well, does that mean there was other knowledge you did not have at the time?

A. It's possible.

Q. Okay. Now, did you rely upon Amber Wood as having legal authority to express legal opinions?

A. No.

Q. Well, then what did you do to investigate what law applied in this situation?

A. I researched state statute and federal law statute of the HIPAA laws and then FERPA, as I mentioned earlier, the federal education law.

Q. So, based on your investigation of HIPAA, I assume you learned that applies only to medical personnel and hospitals, correct?

A. Yes.

Q. All right. Is Tim a doctor?

A. No.

Q. Is he hospital?

A. No.

Q. Is he a medical provider?

A. No.

Q. So then HIPAA has no application to the allegations in this case, does it?

A. I would --
MS. SIMPSON: Objection, Your Honor.
THE WITNESS: -- not agree with that.
MS. SIMPSON: Legal conclusion. That's for the Court to decide.
MR. SCOVIL: This witness has given plenty of legal conclusions.
THE COURT: That's overruled. She's already said that she's done research. Her conclusions, I'll hear them. Go ahead.
MR. SCOVIL: Thank you.
THE COURT: Do you need that rephrased or readdressed, re-asked?
THE WITNESS: Sure.
MR. SCOVIL: May I ask the reporter to read it back, please, Judge?
THE COURT: I believe that she can do that. Will you, please.
(Record read).
THE WITNESS: No, he's not.
MR. SCOVIL: All right.
BY MR. SCOVIL:
Q. So then I believe the followup question was, since he is not a doctor, not a medical provider, not a

hospital, HIPAA doesn't apply correct?

A. Correct.

Q. All right. So basically you couldn't base your charges on a violation of HIPAA, then, could you?

A. Yes.

Q. How, since HIPAA applies to hospitals, doctors, and medical providers, and we've already established Tim isn't one of those?

A. The charge, I believe, was unauthorized access to medical records, official misconduct. I didn't specifically state a portion of the HIPAA law as a charge.

Q. Well, I understand. But you said you relied upon HIPAA in making your charges.

A. I did.

Q. All right. So HIPAA has no applicability, so you're way off base on relying on HIPAA, weren't you?

MS. SIMPSON: Objection, Your Honor, argumentative.

MR. SCOVIL: I'll rephrase.

THE COURT: Thank you.

BY MR. SCOVIL:

Q. In the course of your investigation, did you bother to read the Illinois School Student Records Act?

A. No.

Q. No. Do you think that the Illinois School

Student Records Act might have more applicability than a federal law?

A. It's possible. I don't know.

Q. Okay. Now, would it surprise you to know that under the Illinois Schools Student Records Act it talks about what constitutes a school student record?

A. Uh-huh.

Q. Would it surprise you to know it defines what a student's permanent record is?

A. No, it wouldn't surprise me.

Q. And would it surprise you to know there is such a thing as student's temporary record?

A. No.

Q. And would it surprise you to learn that there is a definition of what constitutes a school health record of a student?

A. No.

Q. And would it surprise you to know that under the administrative code that has applicability to the Illinois School Student Records Act that health records means medical documentation and is made part of the student's permanent record?

A. No.

Q. All right. So if the student's health record is

maintained by the school, are part of the school records, one would think, then, that the Illinois School Student Records Act would apply, correct?

A. Sure.

Q. Since it defines their medical records as being part of their school records?

A. Yes.

Q. All right. Now, assuming that you read that Act, you might have learned that information of a student's health records could be accessed by members of the school?

A. What would be the basis for the records to be accessed?

Q. Well, perhaps, if you bothered to read the Illinois School Student Records Act and the code relating to it, you would have found out why it would have applied.

A. Then I would say the federal law would supercede the state law.

Q. Oh, the federal law.

A. And if there's parties that should appropriately have that information, they would have it.

Q. Well, you made no showing that the FERPA rules --

MS. SIMPSON: Objection, Your Honor. Is there a question posed? Argumentative.

MR. SCOVIL: Maybe if I could finish the question.

THE COURT: I think both parties are arguing with each other. Just answer the questions --

MR. SCOVIL: Sure.

THE COURT: -- that are asked and be a little bit more direct, Mr. Scovil.

MR. SCOVIL: Thank you, Judge.

BY MR. SCOVIL:

Q. With respect to the measles incident, it's your understanding there was a directive issue by the Illinois Department of Public Health to the superintendent of the school district, correct?

A. I don't know where the guide -- who the guide was specifically sent to. I know that the nursing staff sought guidance from the local health department, and they have guidance from the Illinois Department of Public Health.

Q. All right. So they were directed to assemble information?

A. Yes.

Q. And do you have any information that shows the information that was assembled was contrary to what was directed by the Illinois Department of Public Health to be to be collected?

A. I haven't personally seen the guidance, no?

Q. Okay. So the next issue we would have would be on the hand, foot, and mouth disease. Did you, in the course of your investigation, learn that Amber Wood had been subject to prior discipline by the superintendent?

A. Not that I'm aware of.

Q. Did you learn in the course of your investigation she was facing discipline because of the fact she had incorrectly reported information to the Mercer County Department of Public Health regarding hand, foot, and mouth disease?

A. No.

Q. Might that have been the reason that Amber Wood was fearing that she might be terminated is because this was the second occasion she had done things in contravention of what she had been directed to do by a superintendant?

MS. SIMPSON: Objection, Your Honor, speculation. She already testified she doesn't have any knowledge.

THE COURT: Sustained.

BY MR. SCOVIL:

Q. Now, with respect to Ms. Wood, did Ms. Wood tell you that she had called back the Mercer County Department of Public Health and reported that she had made a mistake in reporting the hand, foot, and mouth information, that

there were really only 6 cases and that she had erroneously reported this to the department?

A. No.

Q. She didn't bother to tell you that?

A. No. I saw the mention of the 6 cases in Mr. Farquer's interview.

Q. All right. And he basically indicated that's why he asked for the information, to verify what she had said. Is that also what you learned as the result of the investigation that was done by the chief of the Aledo Police Department?

A. I believe in his interview, or at least in the report, it's worded there was either misunderstanding or a miscommunication.

Q. Was that how Ms. Woods phrased it, that she misunderstood or she miscommunicated information?

A. No, she never told me that.

Q. So, as the superintendent, would the superintendent have a right to have access to a student's student records?

A. It depends on the portion of the record.

Q. Well, we already know what -- well, let me back up. Maybe you don't know. Would a student record mean any writing or other recorded information concerning a

student by which a student may be individually identified and maintained by a school or at it's direction or by and employee of the school regardless of how or where the information is stored?

A. Again, I would believe it would be portion of records. I do know with the medical records consent has to be given by the parent and the student before that information is released.

Q. What do you rely on for that statement?

A. It's in the federal education laws, and it's also in patient privacy act laws.

Q. And with respect to the health records, we've already established that's part of a student's records, correct, you agree with that statement?

A. Yes.

Q. All right. So the superintendent would have a right to access information about a student to determine if they might be susceptible to measles, correct?

A. No.

Q. No. So, you don't think that, when the superintendent, who's the chief operating employee of the school district, wants to look at information about whether there is a possibility for an outbreak in the schools he's in charge of, that wouldn't be information

he'd want to know about?

MS. SIMPSON: Objection, Your Honor. It's already been asked and answered. She says it depends on what information. She's testified that she does not believe that information falls under that, and she's testified to the additional information.

THE COURT: No, this is more specific. It's overruled. She can answer it.

MR. SCOVIL: Thank you.

THE WITNESS: If there is educational interest, and if there is, again, like I said earlier, a public health emergency, something that would constitute a health issue within the community, then appropriate parties can be notified. School personnel, such as a superintendent, is not listed in that appropriate party section.

BY MR. SCOVIL:

Q. Appropriate party section of what?

A. Like I mentioned earlier, appropriate parties, if there's a public health emergency, include law enforcement personnel, emergency management, agency personnel.

Q. Once again, what do you rely upon for these opinions that you're expressing?

MS. SIMPSON: Objection, asked and answered.

BY MR. SCOVIL:

Q. Is it FERPA? Is that what I'm supposed to believe?
A. Yes.
Q. All right. Did I miss something here about my client being charged with a violation of federal law?
A. No.
Q. Okay. So he's not charged with any violation of a federal law, is he?
A. No.
Q. All right. So he's charged with violation of the Hospital Registration Act, which we established in Count 2 he's not a hospital, and in Count 3, you alleged that he obtained access to information about students that had foot, mouth, and hand disease?
A. Yes.
Q. And it's your position as superintendent he cannot access those records?
A. Not without a --
Q. Because Amber Wood said so?
MS. SIMPSON: Objection, mischaracterizing the witness's testimony.
THE COURT: I'll allow it.
THE WITNESS: Not without an educational interest.
BY MR. SCOVIL:
Q. Well, isn't there an educational interest if I'm

in charge of a school district and there's an outbreak of hand, foot, and mouth? Wouldn't that be of interest to the school district?

A. The number of cases, yes, and the individuals specifically affected, but not the names and contact information of those students.

Q. Well, is that information that's contained under the definition of a health-related information under 23 Illinois Administrative Code, Section 375.10 which implements the Illinois School Student Records Act?

MS. SIMPSON: Objection, Judge. She's not an attorney. He's asking her about all these statutes. She's not attorney.

MR. SCOVIL: Well, I would agree she's not an attorney, Judge. But she sure seems to have a lot of opinions as to what laws apply to the situation. And if my client is being charged on the basis of her misapplication of Illinois law, then I think I get to inquire because my client's being tarred and feathered by the detective's understanding of the law. Perhaps the understanding should come from the State's Attorney's office.

THE COURT: I think you made your point, Mr. Scovil. I'm going to agree with the --

MR. SCOVIL: Thank you.

THE COURT: -- State at this time that this witness is not an attorney and cannot answer to any legal conclusions or interpretations whatsoever based upon the administrative acts or federal HIPAA laws or Illinois state laws as applicable here in official misconduct, unauthorized access to medical records, and computer tampering. So she cannot opine as to those particular legal issues, just the investigation and the factual basis on which the State has charged these matters. Is that understood?

MR. SCOVIL: It is.

THE COURT: Thank you, sir.

MR. SCOVIL: Nothing further.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. SIMPSON:

Q. You were asked by Mr. Scovil about the doing a thorough investigation. Do you believe that your investigation is complete as of this time?

A. There is more investigation to be done.

Q. Would you characterize it as the investigation is ongoing at this point?

A. I do.

MS. SIMPSON: I have nothing further, Your Honor.
THE COURT: Anything based on that one question?
MR. SCOVIL: I just wonder how the detective charges somebody without her investigation being complete.
THE COURT: That's a ponderance that you're going to have to keep to yourself. That's not a question to this witness. You are excused at this time, Ms. Kenney.
THE WITNESS: Thank you.
MR. SCOVIL: Can I ask one other question I forgot?
THE COURT: I'm sorry, Ms. Kenney, just one more.
THE WITNESS: Okay.
MR. SCOVIL: Thank you.

RECROSS EXAMINATION

BY MR. SCOVIL:

Q. You indicated that you obtained the communications between my client and Ms. Wood prior to the time you obtained any subpoenas, correct?
MS. SIMPSON: Your Honor, I'm going to object because this is outside the scope of the State's Redirect. He's done asking questions. He said he was done.
MR. SCOVIL: I asked if I could reopen, I believe.
MS. SIMPSON: That was not Counsel's wording.
THE COURT: Well, I'm allowing it. This is preliminary hearing, for goodness sakes.

MR. SCOVIL: Thank you.
THE COURT: Let's go ahead and see where this goes.
THE WITNESS: Could you ask again, please?
BY MR. SCOVIL:
Q. You obtained communication between my client and Ms. Wood prior to the time you obtained any subpoenas in this case?
A. Yes, I believe so.
MR. SCOVIL: Nothing further.
THE COURT: All right. Your may step down now. Thank you.
(The witness was excused.)
THE COURT: Okay. Next witness, please.
MS. SIMPSON: Your Honor, that's all the State has for purposes of preliminary hearing.
THE COURT: Do you have any evidence, Mr. Scovil?
MR. SCOVIL: No, Judge.
THE COURT: Argument, Ms. Simpson?
MS. SIMPSON: Yes, Your Honor. As this relates to Count 1, which is the only thing that we are here for as to official misconduct -- the other two counts do not require a preliminary hearing -- the issue in front of the Court today is obviously one that has some complexities to it relating to multiple statutes. However, Mr. Scovil's

line of questioning didn't touch on, I think, the largest portion of this, which is that Mr. Farquer asked or demanded the information be accessed.

The information that was accessed, in part, is some of what is contained in the regular course of signing up for school, et cetera, however, the demand for the specific nature, information that he was requesting was not for any type of educational purpose or reasoning as specifically to those exact names and the information requested. And then, after multiple requests and concerns being brought to him by the -- by Ms. Wood, he then demanded it as a directive.

Some of the questions Mr. Scovil asked, there was no factual testimony of it, of certain allegations that Mr. Scovil asked about. There's no proof of those things to present to today. The testimony that the Court heard was that this information was demanded, there was no reasoning or necessity for the specific names, and, not to mention, after obtaining that information, he then creates this Google Doc that has been shared with more unauthorized or inappropriate parties as to related -- as related to that specific information.

So, it's not just a one-time or a request or accessing this information; it's the totality of the

circumstances, Your Honor, in front of this Court that make it so that it rises to the level of the charges that are in front of the Court today, specifically, gaining the access that he -- of information that was not necessary to conduct his business or those of the school.

That is also guided by the -- what was testified to from the advice from the Department of Health or the Mercer County Health Department, none of which was even deemed necessary to give to the health department, let alone to the superintendent.

He wants to argue that that was appropriate or necessary for performing duties as in exact names, which were not necessary, as well as then sharing it with, again, additional individuals of a Google Drive that he specifically created, he specifically had access to, and then goes above and beyond to share that information. So, for those reasons, as it relates to probable cause for this matter, which is what we are here for today, I would ask that the Court find probable cause as it relates to Count 1.

THE COURT: Argument against, Mr. Scovil.

MR. SCOVIL: If I could make a rather unusual request that I haven't made in 48 years of practicing law, I would like to provide the Court with a memorandum. And the

reason for that is this is not a simple area. The State makes a lot of, 'Oh, this applies, that applies, you can't do this.' Well, rather than me sit here and argue and read to you tons of information, I would like the opportunity to provide you and the State with a written argument that indicates why Count 2, which is premised on the Hospital Records Act, has no applicability to the facts of this case.

And Count 3 is computer tampering, which, by definition, basically says you have to prove the defendant knowingly accessed data; second, that the defendant obtained the data; third, the defendant acted without authorization of the computer's owner; and fourth, the defendant knew that he acted without authorization of the computer's owner.

THE COURT: Mr. Scovil --

MR. SCOVIL: Yes.

THE COURT: This is a preliminary hearing. As to Count 2 and 3, that would be for a motion to dismiss.

If you can limit your memorandum as to Count 1 only for purposes of probable cause, then I can get through that first. And I will grant you that leave, and this matter can be continued for further argument once the State has your memorandum.

I have no problem with that. This is a little bit more complex than some other cases that come before the Court from day to day.

And when do you believe that you might have that memorandum ready for Court review?

MR. SCOVIL: We'll have it ready for you by Friday.

THE COURT: Then can we continue this to -- well, I'm not here next week.

MS. SIMPSON: Your Honor, I would ask that the State be able to respond to said memorandum.

THE COURT: Absolutely I'm going to give you an opportunity to respond. Because I don't know what it's going to say, and you don't know what it's going to say, so absolutely that's fair. That's totally appropriate. Can we come back on a Monday or a Tuesday in two weeks?

(Discussion off the record)

THE CLERK: Can we come back, Mr. Scovil, November 4th? Would that work at, like, 8:30?

MR. SCOVIL: Are you here? It's Election Day.

THE CLERK: Yeah, we're working.

MR. SCOVIL: Okay. I have two matters in Cambridge at 9:00.

THE CLERK: Okay.

MR. SCOVIL: So I can probably be hereby 10:30 or 11:00.

THE CLERK: 11:00 is fine with me.
MR. SCOVIL: 11:00 on the 4th, then.
THE COURT: Will that be fine, Ms. Simpson?
MS. SIMPSON: Yes, Your Honor.
THE COURT: Okay. November 4th we'll come back for additional argument. And the Court reserves any ruling at this point based upon the evidence that I have heard today.
MR. SCOVIL: May I ask --
THE COURT: Anything further?
MR. SCOVIL: I'm sorry, Judge. I was going to ask if I could ask for clarification on your prior ruling. Since it appears to me that the acts of official misconduct alleged in Count 1 are premised upon the actions in Counts 2 or 3. May I argue why 2 and 3 don't apply to Tim? And if I convince the Court 2 and 3 don't apply, then there is no Count 1, because the predicate offenses for which Count 1 is based upon haven't been established.
THE COURT: If you do that, the Court's going to entertain it.
MR. SCOVIL: Thank you.
THE COURT: So lump it together.
MR. SCOVIL: All right.
THE COURT: I'll reverse myself to hear your full argument on all of these chain of events so I have a

better idea of where your argument's going in refuting the State's allegations, sir.

MR. SCOVIL: Very good. Thank you.

THE COURT: Okay. And the State will, obviously, get an opportunity to respond to all of that. So we'll see you in November. Thank you. That's it for today.

(Proceedings concluded at 10:13 a.m.)

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
MERCER COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
vs.	)	NO. 25 CF 81
TIMOTHY D. FARQUER, Defendant.	)	

I, BRENDA K. PETERSCHMIDT, an Official Court Reporter for the Fourteenth Judicial Circuit of Illinois, do hereby certify that the foregoing Report of Proceedings was reported in machine shorthand by me and is a true, correct, and complete transcript of my machine shorthand notes so taken at the time and place hereinabove set forth to the best of my ability.

BRENDA PETERSCHMIDT
Official Court Reporter
IL License No. 083-002599

Dated: October 22, 2025