



April 12, 2019

Shea Lazansky  
Reporter – Shaw Media

**VIA EMAIL – [slazansky@shawmedia.com](mailto:slazansky@shawmedia.com)**

Re: FOIA Request dated April 8, 2019 and received April 9, 2019

Subject: Requesting any communication between the district and Dr. Keith F. Bell, in relation to the copyright infringement suit brought against the district, including communication that began Dec. 26, 2018, and any ensuing communication.

Dear Ms. Lazansky:

This letter will serve as Oswego Community Unit School District 308's response to your April 8, 2019 request under the Freedom of Information Act (5 ILCS 140/1 et seq.), in which you asked for the above referenced information. The information responsive to your request is attached.

To promote district transparency and assist others who may have a similar question, this responsive document will be posted online on the district's website. To access it, go to [www.sd308.org](http://www.sd308.org) and select *Our District > Freedom of Information Act Request > FOIA Request Responses*, then select *FOIA ID #19-15*.

Please be advised that to comply with your FOIA request, the district incurred an expense that comprised of the cost of labor and resources used to search for records responsive to your request

Please let me know if you have additional questions. Thank you.

*Mary Anne Buckley*

Mary Anne Buckley  
Freedom of Information Officer

----- Forwarded message -----

From: **Theresa Komitas** <[tkomitas@sd308.org](mailto:tkomitas@sd308.org)>

Date: Wed, Feb 13, 2019 at 2:39 PM

Subject: Fwd: SD 308 Follow Up

To: Maureen Lemon <[mlemon@ottosenbritz.com](mailto:mlemon@ottosenbritz.com)>, Christi Tyler <[ctyler@sd308.org](mailto:ctyler@sd308.org)>, Carrie Szambelan <[cszambelan@sd308.org](mailto:cszambelan@sd308.org)>

Please see Dr. Bell's request below.

----- Forwarded message -----

From: **Keith Bell** <[drkeithbell@gmail.com](mailto:drkeithbell@gmail.com)>

Date: Wed, Feb 13, 2019 at 2:20 PM

Subject: Re: SD 308 Follow Up

To: Theresa Komitas <[tkomitas@sd308.org](mailto:tkomitas@sd308.org)>

Hi Theresa,

Thank you for the update. Â

Would you please tell me the name and case # for the carrier with which you are now dealing?Â

Thanks.

On Feb 12, 2019, at 11:55 AM, Theresa Komitas <[tkomitas@sd308.org](mailto:tkomitas@sd308.org)> wrote:

Dr. Bell,

I wanted to communicate an update with you. We have heard back from our insurance carrier, however since the incident occurred several years ago, our carrier was different at that time. We have started working with the previous provider on the issue. We continue to work towards a resolution, and will continue to provide you updates each step along the way. If youÂ have any questions or concerns please let me know.

Thank you,

Theresa

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**Theresa Komitas**

Director of Communications and Public Relations

Community Unit School District 308

District Administration Center

4175 Rt 71

Oswego, IL Â 60543

630-636-3660

630-383-9287

[tkomitas@sd308.org](mailto:tkomitas@sd308.org)



Christi Tyler &lt;ctyler@sd308.org&gt;

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**Re: W-9**

1 message

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**Keith Bell** <drkeithbell@gmail.com>  
To: Christi Tyler <ctyler@sd308.org>

Wed, Apr 10, 2019 at 11:39 AM

Christi,

W-9 attached. Please let me know when the check goes out and the tracking number.

Have a good day.

Dr. Keith Bell

On Apr 10, 2019, at 11:12 AM, Christi Tyler <ctyler@sd308.org> wrote:

Good Morning,

We are processing your settlement payment and need the attached tax form completed. Let me know if you have any questions.

Thank you~

**Christi Tyler**  
*Chief Financial Officer / CSBO***Oswego CUSD 308**  
4175 Route 71  
Oswego, IL. 60543

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**Request for Taxpayer  
Identification Number and Certification**

**Give Form to the  
requester. Do not  
send to the IRS.**

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.  <input type="checkbox"/> Other (see instructions) ►	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>	
	-  -
<b>or</b>	
<b>Employer identification number</b>	
	-

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign  
Here**

Signature of  
U.S. person ►

Date ►

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You **will** not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

**a. Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note: ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

**b. Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

**c. Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

**d. Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

**e. Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual	Individual/sole proprietor or single-member LLC
• Sole proprietorship, or	
• Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	
• LLC treated as a partnership for U.S. federal tax purposes,	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or	
• LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	
• Partnership	Partnership
• Trust/estate	Trust/estate

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947



The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.



**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor <sup>4</sup>
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

**\*Note:** The grantor also must provide a Form W-9 to trustee of trust.

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information.

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

Hello Dr. Bell,  
I received our phone message. We are working with our insurance carrier regarding the matter and don't yet have an answer from them.  
Thank you,

**Theresa Komitas**  
Director of Communications and Public Relations

Community Unit School District 308  
District Administration Center  
4175 Rt 71  
Oswego, IL 60543

630-636-3660  
630-383-9287  
[tkomitas@sd308.org](mailto:tkomitas@sd308.org)

[www.SD308.org](http://www.SD308.org)

*Mission Statement: In partnership with our families and communities, Community Unit School District 308 will educate all students to reach their highest potential.*

# Dr. Keith Bell

3101 Mistyglen Circle • Austin, Texas 78746 • (512)327-2260

December 26, 2018

Dr. John Sparlin, Superintendent  
Community Unit School District 308  
4175 Route 71,  
Oswego, IL 60543  
630-636-3083  
jsparlin@sd308.org

Via Email: jsparlin@sd308.org

Re: Unauthorized Copying and Distribution of *Winning Isn't Normal* by Community Unit School District 308

Dear Dr. Sparlin,

My name is Dr. Keith Bell. I am writing in connection with my claims for copyright and trademark infringement against Community Unit School District 308 (herein after "you, "your," or "CUSD").

I am the author and owner of the copyright for a literary work entitled *Winning Isn't Normal* (see Exhibit A - Reg. No. TX0002672644). This copyrighted literary work is from my *Winning Isn't Normal*® series of literary works that are sold online through various outlets and distributed nationwide. For example, the *Winning Isn't Normal*, book as well as posters and t-shirts with representations of page 8 are sold via Keel Publications (see [www.keelpublications.com](http://www.keelpublications.com)). As emphasized by the posters and t-shirts, *Winning Isn't Normal* and the content of page 8 (see Exhibit B) reflect the thesis for an approach to motivate winning (i.e., success) that transcends competitive sports and other fields in which success is desirable. I also have a separate registered copyright for the abridged text used in the posters and t-shirts (see Exhibit C – Reg No. TX8503571.) Keel provides my contact information for those interested in obtaining permissions and/or licenses authorizing copying and distribution of the copyrighted literary works.

I also have a federally registered trademark *WINNING ISN'T NORMAL* (see Exhibit D - Reg. No. 4,630,749) for printed matter, namely, non-fiction publications, namely, books, booklets, pamphlets, articles, manuals and posters in the field of sports, fitness, and competitive performance and psychology.

I am concerned that CUSD or perhaps an associate, has engaged in unauthorized copying and distribution of a representation of page 8 of *Winning Isn't Normal*, thereby infringing my copyright and my trademark.

On December 22, 2015 a textual representation of page 8 of *Winning Isn't Normal* was posted on Oswego HS Wrestling's social media page (<https://twitter.com/OswegoWrestling> - See Exhibit E), which remains up as of this writing. Not only does the post lack proper attribution, but it appears that Oswego HS took credit for authoring the excerpt. Furthermore, the post was directly distributed to at least 333 of CUSD's social media followers and was made available to near seven billion, (and rapidly growing) households with access to the Internet.

The original post is a textual representation of the content of page 8. While the content of the post is not identical to page 8, there are only minor changes in wording and formatting that leaves it substantially similar to the content of page 8. Thus, it appears that someone with access to *Winning Isn't Normal* created the derivative textual representation of page 8. The derivative textual representation was then posted to CUSD's social media page by CUSD or an associate(s).

I was never contacted by CUSD or anyone else requesting permission to create the derivative representation of page 8, to duplicate or to distribute *Winning Isn't Normal*, or to display the textual representation anywhere on the Internet.

Under United States Copyright Law, the copyright owner of text or an image has the exclusive rights to **reproduce, distribute, perform, display or prepare derivative works** based upon the copyright material/work. 17 USC §§106 & 501. **Any reproduction, distribution, performance, derivative, or display of a copyrighted work without authorization from the copyright holder constitutes infringement.** This is a strict liability offense: you are responsible for any infringing act regardless of your intent. **Removal of the infringed works does not relieve you from liability for damages arising from your past infringements.**

#### **Damages Arising From Your Copyright Infringement**

**Actual Damages and your Profits.** In the event that a copyright owner's rights are infringed upon, a copyright owner is entitled to recover actual damages, **including costs saved** and profits earned by the infringer from the infringement *regardless* of whether the infringement was intentional or willful.

**Statutory Damages.** If, at the time of the Parties infringement, the written material was registered with the United States Copyright Office, which it was, I may elect to obtain statutory damages of up to **\$30,000.00** for each infringement or up to **\$150,000.00** for each willful infringement. Courts have typically enhanced damages 2-6 times for willful infringement. Attorney's fees may also be awarded.

"Willfulness" within the meaning of the Copyright act means that the infringer either had actual knowledge that it was infringing the plaintiff's copyright or else acted in reckless disregard of the high probability that it was infringing the plaintiff's copyright. *Fitzgerald Pub. Co., Inc. v. Baylor Pub. Co., Inc.*, 807 F.2d 1110, 1115, 1 U.S.P.Q.2d (BNA) 1261, 1265 (2d Cir. 1986). This knowledge

may be actual or constructive. *Ibid.* Moreover, willfulness may be established for statutory damages purposes by showing that the alleged infringers continued to use the copyrighted works after receiving a cease-and-desist letter from those works' owners. *Flowserve Corp. v. Hallmark Pump Co., Inc.* (S.D. Tex. 2011), 98 U.S.P.Q.2d 1979, 1986, 1987- 88, 2011 WL 1527951.

### **Demand for Insurance Policy Information**

Please be advised that the claims made against you may fall within "advertising injury" coverage provided as part of a typical Commercial General Liability ("CGL") policy. *See, J.I.P., Inc. v. Reliance Ins. Co.*, 165 F.3d 35 (9th Cir. 1998). **Please confirm that you have tendered this matter to your CGL insurer and provide me with the policy number, carrier, and claim number. Please be advised that your delay of tendering this claim to your insurer may result in a denial of coverage for the substantial damages I may seek to recover.**

In view of the facts and information provided above, you are liable for willful copyright infringement. I would like to resolve this matter amicably without the necessity of turning this matter over to my attorney and resorting to litigation. In order to do so, I require that you promptly take the following steps:

- 1) Immediately remove public displays of any unauthorized excerpts or representations that are identical or substantially similar to any portion of *Winning Isn't Normal* or any of my other works and any unauthorized uses of the registered trademark;
- 2) Immediately cease and desist further dissemination of any unauthorized excerpts or representations that are identical or substantially similar to any portion of *Winning Isn't Normal* or any of my other works and any unauthorized uses of the registered trademark;
- 3) Immediately cease and desist from acquiring any unauthorized excerpts or representations that are identical or substantially similar to any portion of *Winning Isn't Normal* or any of my other works;
- 4) Immediately destroy all electronic versions of any unauthorized excerpts or representations that are identical or substantially similar to any portion of *Winning Isn't Normal* or any of my other works and any unauthorized uses of the registered trademark;
- 5) Provide me with an explanation of the nature, duration, and amounts of all distributions, displays, and other disseminations of unauthorized excerpts or representations that are identical or substantially similar to any portion of the copyrighted literary work *Winning Isn't Normal* or any of my other works and any unauthorized uses of the registered trademark;

- 6) If the unauthorized derivative textual representation of page 8 of *Winning Isn't Normal* was not created by CUSD, or your associates, provide me with the source from which any unauthorized derivative representation was obtained.
- 7) Deliver all paper and other fixed copies of any unauthorized excerpts or representations that are identical or substantially similar to any portion of the copyrighted literary work *Winning Isn't Normal* or any of my other works and any unauthorized uses of the registered trademark to me for destruction;

**8. Enter into a signed settlement agreement and remit \$14,500.00 to me by January 11, 2019 in exchange for releasing you from liability for copyright infringement and any trademark infringement associated with the actions described above: Payable to: Dr. Keith Bell, 3101 Mistyglen Circle, Austin, TX 78746**

For settlement purposes, and in order to avoid the delay of litigation, I will settle these copyright and trademark infringement claims against you for the known infringements by issuing a release for the infringing past uses identified above only, for a payment of **\$14,500.00 paid in full before close of business on January 11, 2019 2018 and performance of the other demands listed above.**

I have invested significant funds and time in the development and authorized dissemination of my copyrighted literary work. As such, I am prepared to take aggressive legal action to protect my *Winning Isn't Normal* copyright and trademark. If you do not take the steps enumerated above by **January 11, 2019**, I shall be forced to seek all remedies provided by law, including injunctions; actual damages; statutory damages; full costs; and reasonable attorneys' fees.

If you or your attorney would like to schedule a phone call to discuss these terms, please let me know by **January 9, 2019**.

Nothing contained or omitted from this letter will be deemed to be an admission of any fact or waiver of any rights or remedies with respect to the subject of this letter, all of which rights and remedies are expressly reserved.

Sincerely,

Dr. Keith Bell

  
drkeithbell@gmail.com



# CERTIFICATE OF COPYRIGHT REGISTRATION



This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

*[Signature]*

REGISTER OF COPYRIGHTS  
United States of America

FORM TX

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 2 672 644

TX  
EFFECTIVE DATE OF REGISTRATION

9 Month 21 Day 89

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

Winning Isn't Normal

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Page ▼

2 NAME OF AUTHOR ▼

a Keith Frank Bell

DATES OF BIRTH AND DEATH

Year Born ▼ 1948 Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country U.S.A.

OR Citizen of ▼

Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Entire Text

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ▼

Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ▼

Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 1981

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK February 3, 1982 United States of America

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Dr. Keith Bell

3101 Mistyglan Circle  
Austin, Texas 78746

1598 Winford Ave.  
Ventura, CA 93004

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-11) on the reverse page of this page.  
• See detailed instructions. • Sign the form at line 10.

DO NOT WRITE HERE  
Page 1 of 2 pages

think you are one of those special people who win national championships and break world records?

Well, guess what? No one is special! The people who win are not special people. There is nothing special about the people who break world records. They are not special people — they do special things! They are just people who do special things. You can too! And you have to do special things, if you want to win.

## Winning Isn't Normal

Winning isn't normal. That doesn't mean there's anything wrong with winning. It just isn't the norm. It's highly unusual.

Every race only has one winner. No matter how many people are entered (not to mention all those who tried and failed to make cuts), only one person (or one relay) wins each event.

Winning is unusual. As such, it requires unusual action.

In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more. (Now, take note! Wanting it more is a decision you make and act upon — not some inherent quality or burning inner drive or inspiration!) And you have to make that value a priority.

You can't train like everyone else. You have to train more and train better.

You can't talk like everyone else. You can't think like everyone else. You can't be too willing to join the crowd, to do what is expected, to act in a socially accepted manner, to do what's "in." You need to be willing to stand out in the crowd and consistently take exceptional action. If you want to win, you need to accept the risks and perhaps the loneliness . . . because *winning isn't normal!!*

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Karen Lytle Clayette*

Acting United States Register of Copyrights and Director

Registration Number

**TX 8-503-571**

Effective Date of Registration:

November 06, 2017

## Copyright Registration for One Work by One Author

Registration issued pursuant to 37 CFR §202.3

### Title

Title of Work: Winning Isn't Normal

Title of Larger Work: Winning Isn't Normal

### Completion/Publication

Year of Completion: 2010

Date of 1st Publication: July 18, 2010

Nation of 1st Publication: United States

International Standard Number: ISBN 0-945609-96-5

### Author

- Author: Keith Frank Bell
- Author Created: text
- Citizen of: United States
- Domiciled in: United States
- Year Born: 1948

### Copyright Claimant

Copyright Claimant: Keith Frank Bell  
3101 Mistyglenn Circle, Austin, TX, 78746, United States

### Limitation of copyright claim

Material excluded from this claim: text  
Previous registration and year: TX 2 672 644, 1989  
New material included in claim: text

### Rights and Permissions

**Name:** Keith Frank Bell  
**Email:** drkeithbell@gmail.com  
**Telephone:** (512)327-2260  
**Address:** 3101 Mistyglan Circle  
Austin, TX 78746 United States

## Certification

---

**Name:** Keith F. Bell  
**Date:** November 06, 2017

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**FOR SETTLEMENT PURPOSES ONLY  
SUBJECT TO F.R.E. 408**

January 14, 2019

Dear Theresa,

Thank you for your timely reply, your removal of the infringing post, and your promise to remind the District staff of their obligations under applicable copyright laws. While appreciated, I still must insist that the District perform the demands, including compensating me for the infringement.

You seem to imply that because "the photo in question has been widely available on the internet for many years" it is okay that the District infringed upon my work. It is not.

US Copyright Law gives a creator the exclusive right to control the use of his copyrighted work. The District did not have my permission to use my work. In fact, it appears that the District didn't lift a finger to get my permission to use my work.

Moreover, it doesn't matter what the individual who posted the work believed. That person not only violated Twitter's Terms of Service and Rules by uploading a copyrighted post without owning its copyright, but also violated US Copyright Law. Moreover, the post didn't even meet Congress's safe harbor tests of brevity, spontaneity, and continuation.

It is totally inappropriate for the District to claim that it is okay for the District to steal my work just because many others have been stealing my work for a long time. In fact, the extensive theft of my work on the Internet makes it more important for me to protect my copyrights and trademarks and to strive to establish deterrents to others that might infringe.

You assert that the "posting on the Oswego wrestling twitter account was for a nonprofit and educational purpose." The District's use does not automatically qualify as "fair use" simply because the infringement occurred in an educational environment. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 578, 114 S.Ct. 1164 (1994) ("the mere fact that a use is educational and not for profit does not insulate it from a finding of infringement"). As you may know, the Copyright Act mandates four nonexclusive factors which courts will consider on a case-by-case basis in determining fair use which are, as follows:

***(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;***

School athletics can be and often are a substantial money-maker for school districts. Furthermore, the success of athletic departments depends on the success of its teams. Therefore, qualifying the District's infringement of *Winning Isn't Normal* as "non-profit" and educational is inappropriate. "The crux of the profit/nonprofit distinction is not whether the sole motive of the use is monetary gain but whether the user stands to profit from exploitation of the copyrighted material **without paying the customary price.**" *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 562, 105 S.Ct. 2218, 2231 (1985).

This first fair use factor of the Copyright Act also takes into account whether the work is transformative, that is, whether “it would further the purpose of copyright to advance scientific and artistic endeavor.” *Campbell*, 510 U.S. at 578, 114 S.Ct. at 1164. Another court described the “transformative” inquiry as “whether the new work merely supersedes the objects of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.” *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1269 (11<sup>th</sup> Cir. 2001) *reh’g den’d* 275 F.3d 58 (11<sup>th</sup> Cir. 2001) (citing *Campbell*, at 579). **The District’s direct, unaltered, unattributed quote from my book and passage, *Winning Isn’t Normal*, is not at all transformative and the District stood to profit from the exploitation of my book without paying the customary price, therefore, a court will find for me on the first fair use factor.**

***(2) the nature of the copyrighted work;***

The nature of my work is highly expressive, creative and original rather than factual. It is motivational, rather than educational. Fair use is much less likely to be found when the work infringed is creative or fictional versus factual. *A.V. ex rel. Vanderhye v. iParadigms, LLC*, 562 F.3d 630, 640 (4<sup>th</sup> Cir. 2009) (stating that “In considering the nature of the copyrighted work, the Supreme Court has instructed that ‘fair use is more likely to be found in factual works than in fictional works,’ whereas ‘a use is less likely to be deemed fair when the copyrighted work is a creative product.’”) (quoting *Stewart v. Abend*, 495 U.S. 207, 237, 110 S.Ct. 1750, 109 L.Ed.2d 184 (1990)); see *Campbell*, 510 U.S. at 586, 114 S.Ct. 1164 (“This second factor calls for recognition that some works are closer to the core of intended copyright protection than others, with the consequence that fair use is more difficult to establish when [creative] works are copied.”); *Salinger v. Colton*, 607 F.3d 68, 74 (2<sup>d</sup> Cir. 2010) (holding that with respect to the “nature of the copyrighted work” that *Catcher in the Rye* is a “creative expression for public dissemination [that] falls within the core of the copyright’s protective purposes”) (quoting *Campbell*, at 586); *Gaylord v. US*, 595 F.3d 1364, 1374 (Fed. Cir. 2010) (stating that relevant to this factor, courts must consider: “whether the work is expressive or creative, such as a work of fiction, or more factual, with a greater leeway being allowed to a claim of fair use where the work is factual or informational”); *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, 585 F.3d 267, 277 (6<sup>th</sup> Cir. 2009) (stating that the Supreme Court has held that these statutory factors must be considered “in light of the purposes of copyright”; the second factor addresses whether the work at issue is within the “core” of copyright protection with “creative expression for public dissemination” being within the “core of the copyright’s protective purpose.”) (quoting *Campbell* at 578); *MCA, Inc. v. Wilson*, 677 F.2d 180, 182 (2<sup>d</sup> Cir. 1981) (Our sister circuits have also considered, under this factor, whether the copyrighted work represents “substantial investment of time and labor ... in anticipation of a financial return.”). I spent considerable time and labor writing his creative, expressive book, the nature of which was motivational; an endeavor which I willingly undertook in anticipation of a financial return. **The court will find for me on the second fair use factor.**

***(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;***

This third “fair use” factor calls for both a quantitative inquiry into how much original material was used and a **qualitative one** regarding the material’s importance in the original work. See *Cambell* at 578, 586-87. On the one hand, I have used this passage as a motivational poster and on the back of t-shirts I sell which include only the quoted text. Under this version of the work, all of the information was taken and not just a portion of the book.

Alternatively, the amount of my work which was infringed by The District may have been relatively small by percentage of text, however, the one page used is the absolute heart of the book. Within the infringed page, it has been said that I reduced the key principles of the entire book to an inspiring, cohesive and cogent core statement. "[A] small degree of taking is sufficient to transgress fair use if the copying is the essential part of the copyrighted work." *Cable/Home Communication Corp. v. Network Productions, Inc.*, 902 F.2d 829 (11<sup>th</sup> Cir. 1990) (citing *Harper & Row*, at 539, 565-66); see also *Harper and Row* at 564-66 (finding infringement where, although defendant had taken only 300 words out of President Ford's memoirs, the words were "the heart of the book, the part most likely to be newsworthy and important in licensing serialization"). Further, evidence of verbatim copying is highly relevant when considering the third factor because "it may reveal a dearth of transformative character or purpose under the first factor, or a greater likelihood of market harm under the fourth." *Campbell* at 587. **The District copied the entirety of the posters and t-shirts I sell and of the core and most important statement of my book, near verbatim, and thus a court will find for me on the third fair use factor.**

***(4) the effect of the use upon the potential market for or value of the copyrighted work.***

I have registered copyrights for my book and the *Winning Isn't Normal* passage, neither are freely available for copying. I have published many books and chose to write books as part of my choice of livelihood. My construction of this motivational and creative material was specifically for athletics and athletes: for the District, or anyone, to deny me profits for my work under the guise of "educational purpose," rather than purchasing my *Winning Isn't Normal* works as is intended, is inappropriate. This final economic factor requires a court "to consider not only the extent of market harm caused by the particular actions of the alleged infringer, but also 'whether unrestricted and widespread conduct of the sort engaged in by the defendant ... would result in a substantially adverse impact on the potential market' for the original." *Campbell* at 590 (quoting *Nimmer on Copyrights* §13.05). Actual present harm need not be shown; such a requirement would leave the copyright holder with no defense against predictable damage. Nor is it necessary to show with certainty that future harm will result. *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 451, 104 S.Ct. 774, 793 (1984); see also *Harper & Row* at 567. "The economic philosophy behind the [Copyright] [C]lause ... is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors." *Eldred v. Ashcroft*, 537 U.S. 186, 212 fn 18, 123 S.Ct. 769, 785 fn 18 (2003). There is no question that should the essence of my *Winning Isn't Normal* works become widely infringed upon in the same manner as the District's infringement, my market will be substantially diminished. In fact, in several instances, we have been able to trace a trail from a single team handout distributed in a United States public school athletic department to material contained in blogs and onward to major websites with multiple tens of thousands of views. The economic harm and the potential for economic harm are real. **A court will find for me on the fourth fair use factor.**

**Statutory Damages**

17 U.S.C. § 504(c)(1) provides in pertinent part: "[T]he copyright owner may elect . . . to recover, instead of actual damages and profits, an award of statutory damages . . . in a sum of not less than \$750 or more than \$30,000 as the court considers just." The determination of the amount of damages within the statutory range is left entirely to the Court's discretion. See *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231-32 (1952); *Fermata Int'l Melodies, Inc. v. Champions Golf Club, Inc.*, 712 F. Supp. 1257, 1263 (S.D. Tex. 1989). In addition, as recognized by the Supreme Court in the *Woolworth* case, *supra*, the award of substantial statutory damages serves the deterrent purpose of the Copyright Act:



[A] rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers. It would fall short of an effective sanction for enforcement of the copyright policy. The statutory rule, formulated after long experience . . . also is designed to discourage wrongful conduct.

*Woolworth*, 344 U.S. at 233. **The Seventh Circuit, deciding a case out of Illinois, put it more bluntly: “infringers should not be free to ‘sneer’ in the face of the Copyright Act; courts must put defendants on notice that it costs less to obey the Copyright Act than to violate it.”** *International Korwin Corp. v. Kowalczyk*, 665 F. Supp. 652, 659 (N.D. Ill. 1987), *aff’d*, 855 F.2d 375 (7th Cir. 1988).

The determination of the amount of damages within the statutory range is left entirely to the Court’s discretion. In cases such as this one, where plaintiffs are seeking statutory rather than actual damages, district courts have typically awarded statutory damages equaling two to six or more times the outstanding fees that would have been paid if the infringement had been properly licensed. See *Chi-boy Music v. Charlie Club*, 930 F.2d 1224 (7th Cir. 1991) (upholding trial court’s award of 3 times amount defendant would have paid for a proper license agreement); *International Korwin v. Kowalczyk*, 855 F.2d 375 (7th Cir. 1988) (upholding statutory damage award of 3 times the amount that a properly purchased license would have cost over the relevant period of time); *Broadcast Music v. Star Amusements, Inc.*, 44 F.3d 485 (7th Cir.) (stating “unpaid registration fees actually provide a superior yardstick” while affirming district court award of three times unpaid registration fees); *Bruce v. Weekly World News, Inc.*, 310 F.3d 25 (5th Cir. 2002) (affirming statutory damage award of five times photo licensing fees and stating “[The infringer] cannot expect to pay the same price in damages as it might have paid after freely negotiated bargaining, or there would be no reason scrupulously to obey the copyright law.”), quoting *Iowa State Univ. Res. Found., Inc. v. Am. Broad. Cos.*, 475 F.Supp. 78, 83 (S.D.N.Y. 1979) *aff’d* 621 F.2d 57 (2d Cir. 1980); *April Music, Inc. v. White*, 618 F.Supp. 2d 497, 508 (E.D.Va. 2009) (“because of the important purposes served by statutory damages ... courts have routinely awarded statutory damages in amounts that are between two and three times license fees”); *Sixx Gunner Music v. The Quest, Inc.*, F.Supp.2d, 2011 WL 1460437 (D.Mass. April 15, 2011) (stating that damages “generally range from two to six times the amount saved by the defendant by not paying the license fees”); *Swallow Turn Music v. Wilson*, 831 F.Supp. 575, 581 (E.D.Tex. 1993) (awarding 3-4 times license fees as statutory damages); *Broadcast Music v. Triple Vending, Inc.*, 5 U.S.P.Q.2d 1346 (1987) (awarding almost 3 times license fees owed as statutory damages); see also Nimmer on Copyrights §§ 14.04[A] – [B].

#### **Damages Arising From Your Violation of the Digital Millennium Copyright Act**

In addition to violating copyright law in the District’s infringing use of the images in question, it appears that you may have violated Section 1202 of the Digital Millennium Copyright Act (“DMCA”) by removing copyright management information from the above image that was used on your social media page. 17 U.S.C.A. § 1202.

The DMCA provides that no person shall, without the authority of the copyright owner or the law “intentionally remove or alter any copyright management information... **or distribute... copies of works**, or phono records, knowing that copyright management information has been removed or altered **without authority of the copyright owner or the law.**” 17 U.S.C.A. § 120

The DMCA provides that for minimum statutory damages in sum of not less than \$2,500 or more than \$25,000.00 as to each violation. **Copyright management information includes the name of the author of the work.** My copyright management information is included with my images where those images

legitimately appear, but it has been edited or omitted from the images displayed on your social media page. Based upon the image used on your website this would subject you to a minimum of \$2,500.00 for the DMCA violations, in addition to attorney's fees and costs, and additional damages for the copyright infringements.

I remain interested in settling this matter without litigation, but I am prepared to take aggressive legal action to protect my *Winning Isn't Normal* copyrights.

Let me iterate, I am willing to settle this matter for a payment of \$14,500 plus the performance of my demands in my C&D to the District. Settlement language would have to have a Cessation of Use Clause and the release would have to include the following language: "For the sake of clarity, this release of claims does not include claims arising from any acts or omissions occurring or continuing after the Effective Date." This offer will only be good until 5pm CT on January 17, 2019. But I do not wish to engage in a lot of back and forth to settle this matter.

Should you wish to discuss this matter, you can reach me at 512 327-2260.

In the meantime, please confirm that the District has notified its insurance carrier of my claim against the District and provide me with the name, policy #, claim #, and contact information for your insurance carrier.

Nothing contained or omitted from this letter will be deemed to be an admission of any fact or waiver of any rights or remedies with respect to the subject of this letter, all of which rights and remedies are expressly reserved.

Regards,

Dr. Keith Bell

  
[drkeithbell@gmail.com](mailto:drkeithbell@gmail.com)

Good afternoon Dr. Bell,

Please see the attached letter, a hard copy was also mailed.

Thank you,

Theresa Komitas  
Director of Communications and Public Relations

Community Unit School District 308  
District Administration Center  
4175 Rt 71  
Oswego, IL 60543

630-636-3660  
630-383-9287  
[tkomitas@sd308.org](mailto:tkomitas@sd308.org)

[www.SD308.org](http://www.SD308.org)

*Mission Statement: In partnership with our families and communities, Community Unit School District 308 will educate all students to reach their highest potential.*



January 11, 2019

Dr. Keith Bell  
3101 Mistyglan Circle  
Austin, TX 78746

Dear Dr. Bell,

I am the Director of Communications at Oswego Community Unit School District No. 308. Dr. Sparlin has forwarded to me a copy of your December 26, 2018 correspondence regarding your "Winning Isn't Normal" copyright infringement claim. Thank you for bringing this matter to the District's attention.

Please know that the posting on the Oswego wrestling twitter account was for a nonprofit and educational purpose rather than a commercial purpose. Additionally, the photo in question has been widely available on the internet for many years. The individual who reposted the photo believed that it was permissible to do so under the fair use doctrine.

Based on your concerns, the posting in question has been removed from the Oswego Wrestling social media page. Additionally, my department will ensure that District staff are reminded of their obligations under applicable copyright laws.

Sincerely,

A handwritten signature in black ink that reads "Theresa Komitas". The signature is fluid and cursive, with the first name "Theresa" being more prominent than the last name "Komitas".

Theresa Komitas

Cc: Dr. John Sparlin, Superintendent

# WINNING ISN'T NORMAL

Winning isn't normal. That doesn't mean there is anything wrong with winning. It just isn't normal. It's highly unusual.

Every competition has only one winner. No matter how many people are entered, only one person or team wins the championship.

Winning is unusual – as such it requires unusual action.

In order to win, you must do extraordinary things. You cannot just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more. **WANTING IT MORE IS A DECISION YOU MAKE AND ACT UPON – NOT SOME INHERENT QUALITY OR BURNING INNER DRIVE OR INSPIRATION!** You have to make that value a priority.

You cannot train like everyone else. You have to train more and train better.

You cannot talk like everyone else. You cannot think like everyone else. You cannot be to willing to join the crowd, to do what is expected, to act in a socially accepted manner, to do what is "in". You need to be willing to stand out in the crowd and **CONSISTENTLY** take exceptional action. If you want to win, you need to accept the risks and perhaps the loneliness because..... **WINNING ISN'T NORMAL!!!**



Kangaroo Athletics LLC / Kangaroo

Track Club

Like This Page May 4, 2016

Winning isn't normal 😊

15

30 Shares



Like



Comment



Share



Write a comment



Friend Requests



Laurie Chapman

Sofia Komitas is a mutual friend.

Confirm Friend

See All

Winning isn't normal! #BeDifferent



Joe Tanis  
@coachtanis

Follow

## WINNING ISN'T NORMAL

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11:03 AM - 10 Nov 2015

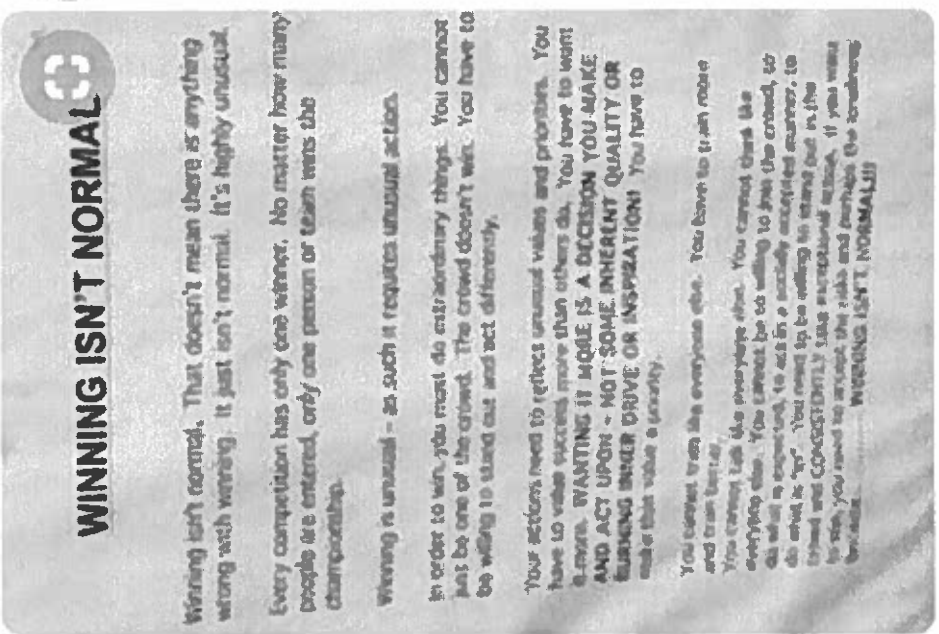
3 Retweets 4 Likes



🔒 <https://www.pinterest.com/pin/473018767092337463/?lp=true>

able Pins! Your old Pinterest shopping bag is now a secret board on your profile.

Search



Saved from  
**Jeremy Lott**  
Winning Isn't Normal







Dennis Silva II  
@densilva2

Follow

Winning isn't normal.

## WINNING ISN'T NORMAL

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You cannot talk like everyone else. You cannot think like everyone else. You cannot be to willing to join the crowd to

10:45 PM - 5 Feb 2018

12 Retweets 25 Likes



25



12





Jeff Knarr Retweeted



**NSU Baseball** @NSUBaseball32 · Nov 6

Winning isn't normal

## **WINNING ISN'T NORMAL**

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**Winning is unusual – as such it requires unusual action.**

In order to win, you must do extraordinary things. You cannot just be one of the crowd. The crowd doesn't win. You have to



Winning isn't Normal!!! Had a great tune up day with the throwers! Can't wait to see what they produce on Friday! I referenced this at practice in discussing their efforts throughout the season. #proudcoach #TBW LETS GO GET SOME FRIDAY at CLAY CENTER!!!

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## WINNING ISN'T NORMAL

"Winning isn't normal. That doesn't mean there's anything wrong with winning. It just isn't the norm. It is highly unusual.

Every competition only has one winner. No matter how many people are entered, only one person or one team wins each event.

Winning is unusual. And as such, it requires unusual action.

In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more. Now take note! Wanting it more is a decision you make and act upon — not some inherent quality or burning inner drive or inspiration! And you have to make that value a priority.

You can't train like everyone else. You have to train more and train better.

You can't talk like everyone else. You can't think like everyone else. You

can't be too willing to join the crowd, to do what is expected, to act in a

socially accepted manner, to do what's "in." You need to be willing to stand



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You cannot train like everyone else. You have to train more and train better.

You cannot talk like everyone else. You cannot think like everyone else. You cannot be to willing to join the crowd, to do what is expected to do.



29



18



**Winning isn't normal!** Let's continue to make the right decisions with

enthusiasm tomorrow at 6:30a.Thx @RILEYDARIC

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On the eve of our district game vs Hershey take a minute to read this snip it.  
**Winning isn't normal.** Give it all you have; be extraordinary! – at Hamburg Are.  
High School

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You cannot train like everyone else. You have to train more and train better.

You cannot talk like everyone else. You cannot think like everyone else. You cannot be to willing to join the crowd. To do what is expected of you.



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You cannot train like everyone else. You have to train more and train better.

You cannot talk like everyone else.



↻ 22



20



**Pennsauken T&F | XC** @PennsaukenTFXC · 10 Nov 2015

"If you want to win, you need to accept the risks and perhaps the loneliness...because **winning isn't normal.**"

## WINNING ISN'T NORMAL

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You cannot talk like everyone else. You cannot think like everyone else. You cannot be to willing to join the crowd, to do what is expected to do.

Michelle Demko @coachdemko · 5 Nov 2015

If you want to win you have to accept the risks & loneliness Bc winning isn't normal! @coachdemko Instagram.com/p/955gNdvCDv/



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**Michelle Demko** @coachdemko · 5 Nov 2015

If you want to win you have to accept the risks & loneliness Bc winning isn't normal! @coachdemko instagram.com/p/9s5gNdvcDv/



**Jarett Boss** @bossdubj · 3 Nov 2015

Winning isn't normal. Only one person or team can win. but lots of teams and people will lose. To win you have to be different than normal.