

Enforcement (“ICE”) between December 1, 2014 and the present; (2) all public records and/or Reports received by BPS or any of its employees or agents from BRIC and/or ICE between December 1, 2014 and the present; (3) all public records and/or Reports indicating, reflecting or referencing any policies, processes, practices, guidance, directives, memoranda and/or recommendations regarding BPS or any of its employees or agents sending or transmitting – or generating for – BPD, BRIC and/or ICE, any information concerning BPS students, including, but not limited to, student records, Reports and/or any other information about BPS students, between December 1, 2014 and the present; and (4) all public records and/or Reports indicating, reflecting or referencing any policies, processes, practices, guidance, directives, memoranda and/or recommendations regarding access to student records, Reports and/or any other information about BPS students sent or transmitted to BPS by BPD, BRIC and/or ICE.

2. The issue of public schools’ cooperation with law enforcement – already of intense public importance – has taken on heightened urgency for immigrant families since 2017. As federal deportation efforts have intensified, the question of how and under what circumstances public schools are providing information to the U.S. Department of Homeland Security Immigration and Customs Enforcement has become even more crucial. The threats to students and their families are real: the Plaintiffs’ initially sought public records from the Defendants relating to information sharing with BRIC upon learning of an incident where BPS shared information that led to a BPS student being taken into ICE custody and was subsequently deported. As a result of that incident, Plaintiffs sought to obtain public records relating to BPS’ sharing of student information in December of 2017 and was forced to instigate litigation to obtain the records sought (the “Initial Public Records Suit”)¹.

3. The records obtained through the Initial Public Records Suit evidenced that BPS’ sharing of student information was not an isolated incident as public officials had initially

¹ See Case No. 1884-CV-01938, *Center for Law and Education, Inc., et al. v. City of Boston, et al.*, Suffolk Superior Court.

insisted. Additionally, Plaintiffs learned that the Defendants' omitted from their production any documents that did not fall within the Defendants narrowly construed definition of "student incident reports," despite such a narrow construction not being within the spirit of the public records request. Based on this, Plaintiffs asked BPS to expand its production to include the excluded records, which BPS declined to do and instead suggested Plaintiffs submit a new public records request. As a result, the Plaintiffs submitted a request for additional public records on February 3, 2020, to which they have not received any substantive response. The public has a right to know the extent to which schools are sharing information on schoolchildren via the BRIC, particularly in this new era of heightened public scrutiny of the Nation's police and a call for accountability to the public which they serve.

PARTIES

4. Plaintiff, Center for Law and Education, Inc. is a nonprofit corporation dedicated to the pursuit of high-quality education for all children, in particular, children and youth from low-income families. Its principal place of business is Boston, Suffolk County, Massachusetts.

5. Plaintiff, Lawyers for Civil Rights, is a nonprofit corporation that fosters equal opportunity and fights discrimination on behalf of people of color and immigrants. Its principal place of business is Boston, Suffolk County, Massachusetts.

6. Plaintiff, Multicultural Education, Training, and Advocacy, Inc. ("META"), is a nonprofit corporation that advocates for equal educational opportunity for low-income, immigrant and language minority children, including, specifically, such children in the Boston Public Schools. Its principal place of business is Somerville, Middlesex County, Massachusetts.

7. Defendant City of Boston (the "City") is a municipal corporation organized under the laws of the Commonwealth.

8. Defendant Boston Public Schools is a department of the City organized under the Boston City Charter with a principal place of business at 2300 Washington Street, Roxbury, MA 02119.

9. Defendant Brenda Cassellius is the Superintendent of BPS with a principal place of business at 2300 Washington Street, Bruce C. Bolling Building – 5th Floor, Roxbury, MA 02119.

10. Defendant Boston School Police are part of the Department of Safety Services, a subdivision of BPS with a principal place of business at 2300 Washington Street, Roxbury, MA 02119.

JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant to G.L. c. 66, § 10A(d)(1)(i) and c. 231A, § 1.

12. Venue is proper because G.L. c. 66, § 10A(c) requires that any action filed by a requestor of public documents must be filed in the superior court in the county in which the noncompliant municipality is located.

FACTS

13. On February 3, 2020, CLE, LCR, and META (collectively “the Students’ Rights Groups”) sent a letter to Catherine Lizotte, Legal Advisor for BPS, wherein the Students’ Rights Groups sought the production of public records evidencing sharing of information between BPS and BRIC, BPD and/or ICE (the “February 3rd Request”). A true copy of the February 3rd Request is attached hereto as **Exhibit 1**.

14. The Students’ Rights Groups sent the February 3rd Request to Ms. Lizotte upon knowledge that Defendants’ production of documents in the Initial Public Records Suit omitted certain categories of documents as being outside of Defendants’ narrow construction of the public records requests at issue.

15. Pursuant to G.L. c. 66, § 10, Defendants had until February 17, 2020 to respond to the February 3rd Request.

16. On February 13, 2020, Defendants confirmed receipt of the February 3rd Request but did not provide a substantive response.

17. On April 21, 2020, counsel for the Plaintiffs left a voicemail with Ms. Lizzotte inquiring as to the status of the February 3rd Request.

18. By correspondence dated April 24, 2020, the Students' Rights Groups reminded Ms. Lizotte that a substantive response to the February 3rd Request was overdue and that the information sought in the February 3rd Request was critical in light of an upcoming Boston School Committee meeting. The April 24, 2020 correspondence is attached hereto as **Exhibit 2**.

19. On April 30, 2020, Shawn A. Williams, Director of Public Records, Records Access Officer for the City of Boston, advised the Students' Rights Groups that he was "reviewing all of the outstanding requests for records to City departments in the hopes of getting as many resolved as possible" and that "while the City is open virtually all of the attorneys are working remotely at this time." The Students' Rights Groups advised Mr. Williams that the response to the February 3rd Request was long overdue and that the deadline to respond had expired prior to the issuance of any applicable emergency orders relating to COVID-19.

20. On June 1, 2020, Ms. Lizotte left a voicemail in response to Plaintiffs' Counsels' voicemail of April 21, 2020, wherein she advised that Defendants were "compiling responses to the [February 3rd] Request and hope to have the process completed soon." The Students' Rights Groups have not received any further correspondence or communications from the Defendants.

21. To date, the Students' Rights Groups' have not received a response to their February 3rd Request that is compliant with the Massachusetts Public Records Law, G.L. c. 66, §§ 10 and 10A.

22. Upon information and belief, BPS and the BSP continue to disclose student information to BRIC and, as a result, the student information is being used by ICE to investigate violations of federal immigration laws.

23. It is critical that the Students' Rights Groups receive the public records requested in a timely fashion as funding of BRIC and the BPS policy relating to the sharing of student information are both under review. Absent this information, the Students' Rights Groups and the public at large lack the ability to participate in the discussion of these issues in any meaningful way.

The Massachusetts Public Records Law

24. "Public records" are defined by G.L. c. 4, § 7 cl. 26, as, in pertinent part:

[A]ll books, papers . . . or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof . . .

G.L. c. 4, § 7 cl. 26.

25. The requested records were "made or received" by an employee of a "department . . . of [a] political subdivision" of the Commonwealth and therefore are public records.

26. General Laws c. 66, § 10(a), provides that "[a] records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request"

27. General Laws c. 66, § 10A(d)(1)(iv) provides that in any proceeding such as this one to compel compliance with the Public Records Law, "a presumption shall exist that the record sought is public and the burden shall be on the defendant agency or municipality to prove, by a preponderance of the evidence, that such record or portion of the record may be withheld in accordance with state or federal law."

28. Further, "the superior court shall determine the propriety of any agency or municipal action de novo and may inspect the contents of any defendant agency or municipality record in camera" G.L. c. 66, § 10A(d)(1)(ii).

**Defendants Have Not Met Their Burden in Responding
to the Students' Rights Groups' February 3rd Request**

29. Defendants have failed to timely provide any substantive response to the Students' Rights Groups' February 3rd Request in violation of the Public Records Law.

30. Defendants have failed to timely advise the Students' Rights Groups that it does not intend to permit inspection or furnish a copy of the records requested and the reason for withholding such records or that it is not in possession of the records sought, to the extent either is applicable, nor have the Defendants sought an extension of the timeframe to respond, all in violation of the Public Records Law.

COUNT I
Injunctive Relief

31. The Plaintiffs repeat the allegations of ¶¶ 1-30 above.

32. G.L. c. 66, § 10A(d)(1)(i) provides in relevant part that "the superior court shall have jurisdiction to enjoin agency or municipal action".

33. The Defendants have refused to produce documents that are public records pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26.

34. The Plaintiffs are entitled to injunctive relief ordering Defendants to provide documents responsive to the February 3rd Request.

COUNT II
Declaratory Judgment Under The Public Records Law

35. The Plaintiffs repeat the allegations of ¶¶ 1-34 above.

36. There exists an actual controversy between the Plaintiffs and the Defendants concerning whether documents responsive to the February 3rd Request are public records under G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26 to which Plaintiffs are entitled.

37. The Plaintiffs are entitled to a declaration of the rights of the parties pursuant to G.L. c. 231A, § 1, determining that documents responsive to the February 3rd Request are public records pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26.

WHEREFORE, Plaintiffs respectfully pray that the court:

1. Enter a permanent injunction granting the relief sought in Count I above;
2. Enter a declaratory judgment pursuant to Count II of this Complaint declaring that the records responsive to the February 3rd Request are public records pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26;
3. Order costs and attorneys' fees pursuant to G.L. c. 66, § 10(A)(d); and,
4. Enter such other relief as the Court deems just and proper.

Respectfully submitted,

CENTER FOR LAW AND EDUCATION,
LAWYERS' FOR CIVIL RIGHTS,
MULTICULTURAL EDUCATION, TRAINING,
AND ADVOCACY, INC.,

By their attorneys,

/s/ Wayne E. George

Jonathan M. Albano, BBO #013850

Wayne E. George, BBO #656286

MORGAN LEWIS & BOCKIUS, LLP

One Federal Street

Boston, Massachusetts 02110-1726

Tel: 617.341.7700

Email: jonathan.albano@morganlewis.com

wayne.george@morganlewis.com

/s/ Oren Sellstrom

Oren Sellstrom, BBO #569045

Janelle H. Dempsey, BBO # 699379

LAWYERS FOR CIVIL RIGHTS

61 Batterymarch Street, Fifth Floor

Boston, Massachusetts 02110-3208

Tel: 617.988.0608

Email: osellstrom@lawyerscom.org

jdempsey@lawyersforcivilrights.org

/s/ Roger L. Rice

Roger L. Rice, BBO #418340
MULTICULTURAL EDUCATION, TRAINING,
AND ADVOCACY (META), INC.
P.O. Box 440245
Somerville, Massachusetts 02144
Tel: 617.628.2226
Email: rlr24@comcast.net

/s/ Alan Jay Rom

Alan Jay Rom, BBO #425960
MULTICULTURAL EDUCATION,
TRAINING, AND ADVOCACY (META), INC.
c/o Rom Law, P.C.
P.O. Box 585
Chelmsford, Massachusetts 01824
Tel: 617.776.0575
Email: alan@romlawoffice.com

/s/ Kathleen B. Boundy

Kathleen B. Boundy, BBO #050960
CENTER FOR LAW AND EDUCATION
105 Chauncy Street, 6th Floor, Suite 3
Boston, Massachusetts 02111
Tel: 617.451.0855
Email: kboundy@cleweb.org

Dated: July 23, 2020

DB1/ 115021110.1

EXHIBIT 1



**LAWYERS FOR
CIVIL RIGHTS
BOSTON**



February 3, 2020

Via First Class and electronic mail (legal@bostonpublicschools.org)

Catherine Lizotte, Esq.
Legal Advisor
City of Boston – Public Schools
2300 Washington St.
Roxbury, MA 02119

RE: Public Records Request

Dear Attorney Lizotte:

This request is submitted pursuant to the Public Records Act, G.L. c. 66, § 10 (“Public Records Act”), for public records in the custody of Boston Public Schools (“BPS”). As used in this request, “public records” is defined as in the Public Records Act.

We hereby request copies of the following:

1. All public records responsive to the public records requests dated December 6, 2017, attached as **Exhibit A**, and December 20, 2017, attached as **Exhibit B**, that have not already been produced in response to those requests and/or as part of the lawsuit entitled *Center for Law and Education et al. v. City of Boston et al.*, Superior Court No. 18-01938-B up to February 3, 2020. (The purpose of this request is simply to extend the timeframe for our original request up to the present time.)
2. For the time period December 1, 2014 to present, copies of public records, including but not limited to incident reports, intelligence reports, intelligence bulletins, gang intelligence bulletins, Boston Police Department (“BPD”) 1.1 reports, Boston School Police (“BSP”) – SSRIs, BSP Intelligence Reports/Form 26s, Department of Safety Incident Reports, Field Interrogation and Observation Reports, Face Sheets, and BPD incident reports sent or transmitted by BPS or any of its employees or agents to the Boston Regional Intelligence Center (“BRIC”) and/or Immigration and Customs Enforcement (“ICE”) or received by BPS or its employees or agents from BRIC and/or ICE.
3. For the time period December 1, 2014 to present, all BPD 1.1 reports generated by BPS or any of its employees or agents.
4. For the time period December 1, 2014 to present, all public records indicating, reflecting, or referencing any policies, processes, practices, guidance, directives, memoranda, and/or recommendations regarding BPS or any of its employees or agents sending or transmitting

to—or generating for—BPD, BRIC and/or ICE any information concerning BPS students, including but not limited to student records, incident reports, intelligence reports, intelligence bulletins, gang intelligence bulletins, BPD 1.1 reports, BSP” – SSR1s, BSP Intelligence Reports/Form 26s, Department of Safety Incident Reports, Field Interrogation and Observation Reports, Face Sheets, BPD incident reports, and/or any other information about BPS students .

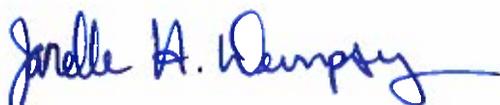
5. For the time period December 1, 2014 to present, all public records indicating, reflecting, or referencing any policies, processes, practices, guidance, directives, memoranda, and/or recommendations regarding access to student records, incident reports, intelligence reports, intelligence bulletins, gang intelligence bulletins, BPD 1.1 reports, BSP” – SSR1s, BSP Intelligence Reports/Form 26s, Department of Safety Incident Reports, Field Interrogation and Observation Reports, Face Sheets, BPD incident reports, and/or any other information about BPS students by BPD, BRIC and/or ICE.

The purpose of this request is to gain information about how BPS handles student privacy. The information will not be used for any commercial purpose.

The Public Records Law requires that you comply with this request within ten (10) days following receipt. If your response to any portion of the request is that any record or portion of it is not public, please set forth in writing the specific reasons for such denial, including which specific exemption you believe applies.

Should you have any questions regarding this request, please do not hesitate to contact Janelle Dempsey at 617-984-5246. Thank you for your time and prompt attention this matter.

Sincerely,



Janelle H. Dempsey
Lawyers for Civil Rights

Roger L. Rice
Multicultural Education, Training and Advocacy, Inc. (META)

Kathleen B. Boundy
Center for Law and Education

EXHIBIT A

CENTER FOR LAW AND EDUCATION

www.cleweb.org

reply to:

105 Chauncy Street, 6th FL

Boston, MA 02111

617-451-0855

kboundy@cleweb.org

7011 8th Street, NW

Washington DC 20012

202-986-3000

pweckstein@cleweb.org

December 6, 2017

Alissa Ocasio
Legal Advisor
Boston Public Schools
2300 Washington Street
Roxbury, MA 02119

Dear Ms. Ocasio: *Ali*

It has come to our attention that certain Boston Public School (BPS) personnel have been providing copies of student incident reports disclosing personally identifiable information about students at East Boston High School to the Boston Regional Intelligence Center (BRIC), the Boston Police Department (BPD) and ICE. We are aware that certain BPS immigrant youth have been targeted and are being written up by School Police Officers (SPOs) on the basis of overly broad, vague allegations of gang connections, and that the student incident reports are being disclosed to BRIC and BPD by SPO Sergeant Gabriel Rosa, for example, without prior consent or a lawfully issued judicial subpoena, in violation of federal and state student records laws.

Our concern today goes well beyond the procedure that BPS purports that it will follow should ICE arrive at the schoolhouse door. Based on what we now know, BPS's own employees are already acting in violation of students' clearly established constitutional and statutory rights, and the Administration has knowledge of the continuing violations, and whether directly or indirectly, through acts or omissions, has failed to supervise and/or provide guidance and training to its staff, including but not limited to SPOs under its jurisdiction.

We ask for your immediate intervention on behalf of the BPS Administration to halt the unlawful practices by BPS employees, contractors, subcontractors, or others who lack authority to disclose personally identifiable information from BPS students' education records.

In any case, BPS students must be provided due process before the 'incident report' can be used to constructively exclude a student from his/her education. At a minimum the student must be notified and provided a copy of any incident report that alleges his/her involvement in gang activity, and resulting inclusion in a gang database prior to such inclusion –lasting harm; the right to written notice of inclusion in such a database and, given the harm to the individual's interests, the right to contest any designation re/member, association, affiliation.

We also request the following: 1) by school, the number of BPS student school incident reports that have been forwarded to the BRIC during the past three years, 2) copies of those reports with student names

redacted, 3) copies of any memoranda of understanding between the Boston Police Department and the BPS or any school regarding BPS and police arrangements and student record sharing, 4) the details of any BPS instructions, as well as any policies, protocols, and/or circulars, governing the use of the label 'gang member', 'gang associate' or 'gang affiliate' by BPS employees and subcontractors with BPS.

Thank you for your consideration and prompt attention to this matter.

Yours truly,



Kathleen B. Boundy
CLE

Roger L. Rice
Alan Jay Rom
META

Elizabeth Badger
Kids in Need of Defense (KIND)

Matthew Cregor
Lawyers' Committee for Civil Rights under the Law

EXHIBIT B

CENTER FOR LAW AND EDUCATION

www.cleweb.org

reply to:

105 Chauncy Street, 6th FL
Boston, MA 02111
617-451-0855
kboundv@cleweb.org

7011 8th Street, NW
Washington DC 20012
202-986-3000
pweckstein@cleweb.org

December 20, 2017

Alissa Ocasio
Legal Advisor
Boston Public Schools
2300 Washington Street
Roxbury, MA 02119

Re: Massachusetts Public Records Request

Dear Ms. Ocasio: 

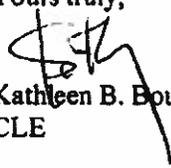
This is a follow up to our letter of December 5, 2017 objecting to Boston Public School (BPS) personnel disclosing copies of student incident reports that contain personally identifiable information, in particular about students at East Boston High School to the Boston Regional Intelligence Center (BRIC), the Boston Police Department (BPD) and ICE. To date we have received no response to our request for your immediate intervention on behalf of the BPS Administration to halt the unlawful practices by BPS employees, contractors, subcontractors, or others. Nor have we received a response or indication of whether BPS intends to respond to our request for information.

Please consider this a request under the MA Public Records Law, G.L. c. 66 § 10 and provide copies of the following records within ten (10) business days:

1. by school, the number of BPS student school incident reports that have been forwarded or otherwise provided to the BRIC during the past three years,
2. any such reports with student names redacted,
3. any memoranda of understanding between BPD and the BPS or between BPD and any school regarding BPS and police arrangements and student record sharing,
4. details of any BPS instructions, as well as any policies, protocols, and/or circulars governing use of the label 'gang member', 'gang associate' or 'gang affiliate' by BPS employees and subcontractors with BPS,
5. any request(s) or reports of request(s) by BPD seeking the names of ELL students from the Office of English Language Learners (OELL), and for each request, the response, including if such names were turned over and under what standard.

Thank you for your consideration and anticipated cooperation in this matter.

Yours truly,


Kathleen B. Boundy
CLE

Roger L. Rice
Alan Jay Rom
META

Elizabeth Badger
Kids in Need of Defense (KIND)

Matthew Cregor
Lawyers' Committee for Civil Rights under the Law

EXHIBIT 2



**LAWYERS FOR
CIVIL RIGHTS
BOSTON**



April 24, 2020

Via Email (clizotte@bostonpublicschools.org; legal@bostonpublicschools.org)

Catherine Lizotte, Esq.
Legal Advisor
City of Boston – Public Schools
2300 Washington St.
Roxbury, MA 02119

RE: LCR, META, and CLE Public Records Request Dated February 3, 2020

Dear Attorney Lizotte:

Pursuant to the Public Records Act, G.L. c. 66, § 10 (“Public Records Law”), Lawyers for Civil Rights (“LCR”), Multicultural Education, Training and Advocacy, Inc (“META”), and Center for Law and Education (“CLE”) submitted a public records request to Boston Public Schools (“BPS” or the “District”) on February 3, 2020 (“Request”). The Request sought public records in BPS’s custody concerning how it handles student privacy.

On February 13, 2020, you confirmed receipt of the Request. To date, however, BPS has failed to provide a substantive response, and the statutory timeframe for same has now lapsed several times over. As you are aware, the Public Records Law requires that you comply with the Request within ten (10) days following receipt. LCR, META, and CLE have been more than accommodating, and we are no longer willing to accept any additional delays.

We recognize that there has been a state of emergency in place since March 10, 2020 in response to the global COVID-19 pandemic. We also recognize and greatly appreciate all of the creative and flexible work BPS has been doing over the last month to address the myriad complex issues facing the District right now. BPS’s delayed response to this Request, however, is extremely lengthy. Had you compiled the requested records within the statutory time period, it would have been resolved well before any State and/or City shutdowns.

Moreover, there are action items on the Boston School Committee’s agenda that the requested information directly bears upon and would inform. The information sought through the Request is therefore critical, and it is necessary in order for the community to advocate for students.

With haste, we expect production of the records, or we feel that we will have no other option but to pursue legal action to compel compliance with the Public Records Law.

Catherine Lizotte, Boston Public Schools

April 24, 2020

Page 2 of 2

Should you have any questions about the scope of this Request, please contact Janelle Dempsey at 617-984-5246 or via email at jdempsey@lawyersforcivilrights.org, so that we may resolve any outstanding issues quickly. Thank you for your prompt attention to this matter.

Sincerely,



Janelle H. Dempsey

Oren Sellstrom

Lawyers for Civil Rights

Roger L. Rice

Alan Jay Rom

Multicultural Education, Training and Advocacy, Inc. (META)

Kathleen B. Boundy

Center for Law and Education

cc: Shawn A. Williams (*via email shawn.williams@boston.gov, publicrecords@boston.gov*)