COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

CENTER FOR LAW AND EDUCATION, INC., KIDS IN NEED OF DEFENSE, LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND ECONOMIC JUSTICE, MULTICULTURAL EDUCATION, TRAINING, AND ADVOCACY, INC., Plaintiffs, v. CITY OF BOSTON, BOSTON PUBLIC SCHOOLS, TOMMY CHANG, in his capacity as Superintendent of the Boston Public Schools, and BOSTON SCHOOL POLICE Defendants.	CIVIL ACTION NO.

COMPLAINT

1. This is an action for injunctive and declaratory relief pursuant to the Massachusetts Public Records Law, G.L. c. 66, §§ 10 and 10A, and the Massachusetts Declaratory Judgment Act, G.L. c. 231A, § 1. Plaintiffs seek an order requiring the defendants to produce: (1) records sufficient to identify, by school, the number of Boston Public School incident reports that have been provided to the Boston Regional Intelligence Center (the "BRIC") between December 20, 2014 and December 20, 2017; and (2) copies of the Boston Public School incident reports provided to the BRIC between December 20, 2014 and December 20, 2017.

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 intensify, 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 ("ICE") has become even more crucial. The threats to

students and their families are real: the public records request at issue here was made following an incident where Boston Public Schools ("BPS") shared information that led to a BPS student being taken into ICE custody and subsequently deported. The public has a right to know the extent to which schools are sharing information on schoolchildren via the BRIC.

PARTIES

3. Plaintiff, Center for Law and Education, Inc. ("CLE"), 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.

4. Kids in Need of Defense ("KIND"), is a nonprofit corporation that works to protect the rights of noncitizen children and to ensure that no child appears in immigration court alone without high quality representation. Its Boston office has its principal place of business is Boston, Suffolk County, Massachusetts.

5. Plaintiff, the Lawyers' Committee for Civil Rights and Economic Justice ("LCCR"), 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 Tommy Chang 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 December 6, 2017, CLE, LCCR, KIND, and META (collectively "the Students' Rights Groups") sent a letter to Alissa Ocasio, Legal Advisor for BPS, wherein the Students' Rights Groups objected to BPS disclosing student incident reports containing personally identifiable information to BRIC, the Boston Police Department and ICE. In the letter, the Students' Rights Groups sought Ms. Ocasio's intervention on behalf of the BPS administration to halt the complained of disclosure. A true copy of the December 6, 2017 letter is attached hereto as **Exhibit A**.

14. The Students' Rights Groups sent the December 6, 2017 letter to Ms. Ocasio upon knowledge that an incident report detailing a nonviolent altercation between students at an East Boston school contained a notation that it was being sent to BRIC. A true copy of the incident report is attached hereto as **Exhibit B**.

15. One of the students involved in the incident report was subsequently arrested by ICE agents and deported.

16. Upon information and belief, BPS and the Boston School Police continue to disclose student incident reports to BRIC and, as a result, the student information is being used by ICE to investigate violations of federal immigration laws.

17. On December 20, 2017, having received no response to its December 6, 2017 letter, the Students' Rights Groups sent a follow-up letter to Ms. Ocasio and therein made a public records request seeking, in relevant part, the following:

a. 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 (the "First Request"); and

b. Any such reports with student names redacted (the "Second Request").

A true and correct copy of the December 20, 2017 request is attached hereto as **Exhibit C**.

18. On January 23, 2018, BPS responded to the Students' Rights Groups' First Request regarding the number of BPS school incident reports provided to BRIC, indicating that "[t]he City is not in possession of any such records, lists or databases." A true copy of the January 23, 2018 letter from BPS is attached hereto as **Exhibit D.**

19. BPS also responded to the Students' Rights Groups' Second Request for copies of incident reports in its January 23, 2018 letter, stating, in contradiction of its response to the Students' Rights Groups' First Request, that the City could neither confirm nor deny the existence of records and that the requested documents were exempt from disclosure pursuant to G.L. c. 4, § 7(26)(f) (also known as Exemption (f) or the Investigatory Exemption and hereafter referred to as "Exemption (f)"), as disclosure could interfere with or compromise ongoing investigations and/or endanger the health or safety of an individual, even if heavily redacted, because there was a risk of identification of the victims and/or witnesses who cooperated with law enforcement. *Id.*

20. The Students' Rights Groups filed a timely petition with the Supervisor of Records for the Commonwealth of Massachusetts challenging the BPS's withholding of the requested records.

21. On February 20, 2018, the Supervisor of Records found that BPS had not met its burden of showing why it was unable to search the Boston School Police Department of Safety Services, Incident Report System. The Supervisor also determined that the number of incident reports that may have been provided to BRIC within the last three years, in whatever form they existed, would be responsive to the First Request. A true copy of the order issued by the Supervisor of Records is attached hereto as **Exhibit E**.

22. With regard to BPS's response to the Second Request, the Supervisor of Records found that BPS failed to meet its burden to identify whether it actually possesses incident reports pursuant to G.L. c. 66, § 10(b)(iv) and further failed to meet its burden of showing that disclosure of the incident reports "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest" as required to withhold responsive records pursuant to Exemption (f). *Id.*

23. The Supervisor of Records ordered BPS to provide responsive records consistent with her order to the Students' Rights Groups within ten days. *Id.*

24. On March 9, 2018, BPS sent a letter to the Students' Rights Groups indicating that, although it maintains a database of school incident reports, "the database contains no portion or field to indicate whether a report associated with a particular incident was reported to BRIC" and therefore BPS maintained that it was not in possession of any records or lists that can show, by school, the number of incident reports forwarded to BRIC. A true copy of the March 9, 2018 correspondence is attached hereto as **Exhibit F**.

25. Also in its March 9, 2018 correspondence, BPS reiterated that it was neither confirming nor denying the existence of the requested incident reports and that, to the extent they existed, disclosure would have a chilling effect on inter-agency information sharing and risk identifying witnesses and victims who cooperated with law enforcement due to their level of detail, thus the records were being withheld pursuant to Exemption (f). BPS further advised that, in the event the requested records exist, the Students' Rights Groups should request them from BRIC as opposed to BPS. *Id.*

26. BPS's March 9, 2018 response to the Students' Rights Groups' public records requests does not comply with the Massachusetts Public Records Law, G.L. c. 66, §§ 10 and 10A, nor does it comply with the Supervisor of Records' order dated February 20, 2018.

The Massachusetts Public Records Law

27. "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.

28. 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.

29. 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 ... ."

30. 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."

31. 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).

BPS Has Not Met Its Burden in Responding
to the Students' Rights Groups' First Request

32. Subsequent to the Supervisor of Records' order and in response to the Students' Rights Groups' First Request, BPS stated only that its database does not contain a field to indicate whether a report associated with a particular incident was reported to BRIC and therefore maintains that it is not in possession of any such records.

33. BPS has not denied that there exist other means by which it can determine whether an incident was reported to BRIC.

34. BPS's response is in direct violation of the Supervisor of Records' order which states unambiguously that "[t]he duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. *See* G.L. c. 66, § 10(a)(ii). Consequently, the number of reports that may have been provided to the BRIC within the past three years, in whatever form it may currently exist, would be responsive to [the Students' Rights Groups'] request."

35. There are other means to determine whether an incident was reported to BRIC. The incident report attached hereto as Exhibit B states "This incident will also be send [sic] to the BRIC." Thus, BPS is in possession, custody and control of responsive records.

36. BPS's limitation of its record review to fields within its database as opposed to a review of the individual reports is not justified by either the scope of the Students' Rights Groups' request or the Public Records Law.

37. BPS's response to Students' Rights Groups' First Request is therefore insufficient and in violation of both the Supervisor of Records' order and the Public Records Law.

BPS Has Not Met Its Burden in Responding
to the Students' Rights Groups' Second Request

38. The Supervisor of Records, in her order, informed BPS that it failed to meet its burden of identifying whether it actually possessed the requested incident reports pursuant to G.L. c. 66, § 19(b)(iv) and improperly issued a blanket denial; failed to establish how indirect

identification would occur if the reports were redacted; and failed to sufficiently establish that the disclosure "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest" as required by Exemption (f).

39. Despite the Supervisor of Records' order that BPS provide Students' Rights Groups with responsive records in a manner consistent with her order, BPS failed to do so, reiterating its position that Exemption (f) is applicable to the incident reports; claiming that the mere confirmation that the records exist could hinder law enforcement; and that the detailed narratives contained within the incident reports could lead to the to the identity of witnesses, victims and persons involved even if heavily redacted, jeopardizing their health and safety and prejudicing BRIC's law enforcement efforts.

40. Exemption (f) provides for the withholding of "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." G.L. c. 4, § 7(26)(f).

41. Exemption (f) does not create a blanket exemption for all records that investigative officials create or maintain.

42. As the custodian of the incident reports, BPS bears the burden of proving with specificity the application of the exemption.

43. The Public Records Law requires that where exempt information is intertwined with non-exempt information, the records custodian must produce any segregable, non-exempt portion of the records at issue. G.L. c. 66, § 10(a).

44. BPS failed to meet its burden of establishing that the requested documents were investigatory records compiled out of the public view by law enforcement or other investigatory officials, as required by G.L. c. 4, § 7(26)(f).

45. BPS failed to specify whether any of the incident reports at issue are related to an ongoing investigation.

46. BPS failed to meet its burden of establishing that disclosure of the requested materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest, as required by G.L. c. 4, § 7(26)(f).

47. BPS has not met its burden of showing how the disclosure of the incident reports would chill or hinder inter-agency information sharing such that it would so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

48. BPS failed to meet its burden of establishing that the requested materials do not include non-exempt information subject to mandatory disclosure with only exempt portions of the records redacted from public view.

49. BPS, therefore, has not met its burden of proving that Exemption (f) applies to the incident reports, or any portions thereof.

COUNT I
Injunctive Relief

50. The plaintiffs repeat the allegations of ¶¶ 1-49 above.

51. 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"

52. The defendant refused to produce non-exempt documents that are public records pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26.

53. The plaintiffs are entitled to injunctive relief ordering the defendant to provide, by school, the number of incident reports that have been forwarded or otherwise provided to BRIC and to produce any such incident reports.

COUNT II
Declaratory Judgment Under The Public Records Law

54. The plaintiffs repeat the allegations of ¶¶ 1-53 above.

55. There exists an actual controversy between the plaintiffs and the defendant concerning whether the incident reports are public records under G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26.

56. The plaintiffs are entitled to a declaration of the rights of the parties pursuant to G.L. c. 231A, § 1 determining that the incident reports which BPS shared with BRIC, as well as records indicating the number of such reports, 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 incident reports 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, KIDS IN NEED OF DEFENSE, LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND ECONOMIC JUSTICE, MULTICULTURAL EDUCATION, TRAINING, AND ADVOCACY, INC.,

By their attorneys,

Jonathan M. Albano, BBO #013850
Wayne E. George, BBO #656286
Sarah K. Paige, BBO #693380
MORGAN LEWIS & BOCKIUS, LLP
One Federal Street
Boston, Massachusetts 02110-1726
Tel: 617.341.7700

/s/ Matthew M. Cregor
Matthew M. Cregor, BBO #673785
Oren Sellstrom, BBO #569045
LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND ECONOMIC JUSTICE
61 Batterymarch Street, Fifth Floor
Boston, Massachusetts 02110-3208
Tel: 617.482.1145

/s/ Roger L. Rice
Roger L. Rice, BO #418340
MULTICULTURAL EDUCATION, TRAINING,
AND ADVOCACY (META), INC.
P.O. Box 440245
Somerville, Massachusetts 02144
Tel: 617.628.2226

/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

/s/ Kathleen B. Boundy
Kathleen B. Boundy, BBO #050960
CENTER FOR LAW AND EDUCATION
105 Chauncy Street, 6th Floor, Suite 3
Boston, Massachusetts 02111

/s/ Elizabeth Badger
Elizabeth Badger, BBO #663107
KIDS IN NEED OF DEFENSE (KIND)
155 Seaport Boulevard, 5th Floor
Boston, Massachusetts 02210

Dated: June 21, 2018

DB1/ 98045320.1

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.

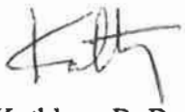
In any case, BPS students must be provided due process before the 'incident report' can be used to constructively exclude a student from his/her education. At a minimum the student must be notified and provided a copy of any incident report that alleges his/her involvement in gang activity, and resulting 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

Boston School Police
Department of Safety Services
Incident Report System
Date:

Return to Main Menu **(DO NOT USE THE BACK BUTTON)**

Report No:	Type of Incident: Harassment/Intimidation/Bullying	Incident Date:	Incident Time:
Involved In Incident: Juvenile Adult			Tier: I
On School Property: Yes	School Number: 1070	School Name: East Boston	
Address: 86 White St	City: East Boston	Phone: 6176359896	Lvl: H / Clst: G / RC: 641
Location: Cafeteria	Person Reporting: Ms. Carmen Pittella	Position: Dean of students	
Incident Description:	About [redacted] Sgt. Rosa (TZ-181 unit), Officer Ercolano (TZ-182 unit) and Lt. Giardina (TZM-11 unit) of the Boston School Police Department assigned to East Boston High School (86 White St East Boston Ma, 02128) received information from Ms. Pittella (Dean of students) that she was approached by a student identified as [redacted] No known gang affiliation). Who stated that while he was in the classroom, some kids kept talking and pointing at him at which time he didn't say anything. Studen[redacted] further stated that upon the class walking inside the lunch room he then again observed the two students looking at this, when he asked them, if they had something to say to him or if they had a problem. Student[redacted] then stated that both of the students approached him and attempted to start a fight but were unsuccessful. Student[redacted] further stated that he had overheard from some of his friends that the two students could be involved in a gang. Upon further investigating this incident Officer reviewed the CCTV Security cameras and were able to identify both students as [redacted] who is a Self-Admitting MS-13 Gang member) and [redacted]). School administrators along with School Police spoke with all students involved and mediated this incident. Officers will continue to monitor this incident. this incident will also be send to the BRIC.		
Status:			

BPD Notified: No	BPD CC No:	Ambulance: No	Ambulance ID:	Hospital:
Parent/Guard.Notified: Yes	By Whom: Ms. Pittella	Parent/Guardian Name: All Parents of Students	Home #:	Work #:
BPD Notified: No				
Other Police Notified:				
Other Notifications:				

Report Created By: 100829	Date Report Created:	Time Report Created:
Report Last Updated By: 100829	Date Report Last Updated:	Time Report Last Updated:
Officer Id: 100829	Officer Name: ROSA, GABRIEL	

Victim List

Last Name: [redacted]	First Name: [redacted]	Student No: [redacted]	School [redacted]
Address: [redacted]	City: [redacted]	Zip: [redacted]	Phon[redacted]
DOB [redacted]	Age: [redacted]	Se[redacted]	Race: [redacted] / Occupation: student

Additional Information:	

Suspect List

Last Name:	First Name:	Student No:	School:
Address:	City	Zip:	Phone:
DOB:	Age:	Sex:	Race:	Occupation:
Additional Information:	MS-13 Gang member (self-admitting)			
Height (Ft)(In):	Weight:	Hair:	Eyes:	SS#:
Other Characteristics:				
Status:	Referred for Disciplinary Action			

Last Name:	First Name:	Student No:	School: 1070 East Boston
Address:	City: East Boston	Zip: 02128	Phone:
DOB:	Age: 18	Sex: Male	Race: Hispanic	Occupation: student
Additional Information:	MS-13 Associate			
Height (Ft)(In): 5'08	Weight: 130	Hair: Black	Eyes: Brown	SS#:
Other Characteristics:				
Status:	Referred for Disciplinary Action			

Supervisor's Signature Reporting Officer's Signature Report Date

Exhibit C

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 20, 2017

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

Re: Massachusetts Public Records Request

Dear Ms. Ocasio: AR

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 D

BOSTON PUBLIC SCHOOLS

OFFICE OF LEGAL ADVISOR

January 23, 2018

Kathleen B. Boundy
105 Chauncy Street, 6th Floor
Boston, MA 02111

Re: Massachusetts Public Records Request

Dear Ms. Boundy:

Boston Public Schools (BPS) received your December 6, 2017 letter requesting public records on December 13, 2017. This letter shall act as the response to your request for public records and is made on behalf of all City of Boston Departments responsive to this request. Please note this response will apply only to records that exist and are in the custody of the City.

In response to your Public Records request, please be advised of the following:

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.

   Response: The City is not in possession of any such records, lists or databases.

2) Any such reports with student names redacted.

   Response: The City denies this request based on the Investigatory Exemption (f), which states:

   investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest

G. L. c. 4 §7(26)(f). Boston Regional Intelligence Center (BRIC) is a network of local, state and federal law enforcement agencies that collects, analyzes and disseminates strategic and tactical intelligence to reduce crime and counter terrorism in the Boston-Metro area. The City may comply with law enforcement authorities' requests of law enforcement records when it is a matter of public safety. Due to the sensitive nature of the request, the City cannot confirm or deny the existence of the records at this time as it could reveal information that would lead to the disclosure of intelligence sources and methods. In the event that the records exist, the Investigatory Exemption would apply as disclosure of the requested records to the public could severely impede law enforcement investigations, such as, homicides and threats to public safety. Specifically, disclosure could significantly interfere with, compromise or delay on-going investigative and prosecutorial efforts by local, state and federal law enforcement as it could potentially alert potential suspects to the activities of law enforcement officials. Additionally, disclosure could endanger the health or safety of an individual, organization or community as the detailed narratives of the records, even if heavily redacted of personally identifiable information, could create a risk of directly or indirectly identifying witnesses and victims who voluntarily cooperated with law enforcement.

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.

   Response: The City is not in possession of any such records.

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.

   Response: The City is not in possession of any such records.

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.

   Response: The City is not in possession of any such records.

Government records custodians are permitted to redact or withhold portions of public records, so long as a specific exemption to the law is cited. See G. L. c. 4, § 7(26). Under Massachusetts law you may appeal this response to the Supervisor of Records in the Office of the Secretary of the Commonwealth. G. L. c. 66, § 10A; 950 CMR 32.08.

Please be advised that school incident reports are not student records. FERPA does not apply to the disclosure of information derived from personal knowledge or observations that are contained in school incident reports. Notably, FERPA was amended to exempt "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." 20 U.S.C. § 1232 (g) (4) (ii). Personably identifiably information contained in school incident reports may be shared with law enforcement under the health and safety emergency exception. 20 U.S.C. § 1232 (g)(b)(1)(l); 34 CFR §99.36(a); 603 CMR 23.07(4)(e).

Sincerely,

Alissa Ocasio
Legal Advisor
Boston Public Schools
Office of Legal Advisor

Sarah Onori
Assistant Corporation Counsel
Boston Public Schools
Office of Legal Advisor

Exhibit E

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

February 20, 2018
SPR18/158

Alissa Ocasio, Esq.
Legal Advisor
City of Boston – Public Schools
2300 Washington Street
Roxbury, MA 02119

Dear Attorney Ocasio:

I have received the petition of Kathleen B. Boundy of the *Center for Law and Education* appealing the response of the City of Boston (City) – Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. Boundy requested a copy of:

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

A January 23, 2018 response was provided to Ms. Boundy informing her that the School has no records responsive to her Request Numbers 1, 3, 4 and 5. The January 23rd response also states that the School has records responsive to Request Number 2, however, the School is withholding those records pursuant to Exemption (f) of the Public Records Law. Ms. Boundy appealed the January 23rd response regarding Requests Numbers 1 and 2.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv) (written response must "identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based…"); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

The School's January 23rd response

Request Number 1

In its January 23rd response to Ms. Boundy's request for "the number of school incident reports that have been forwarded or provided to the BRIC during the past three years," the School stated that "[t]he City is not in possession of any such records, lists or databases."

However, in her February 5th petition, Ms. Boundy contends that the School Police, which is part of both the School and the City, maintains a database titled, "Boston School Police Department of Safety Services, Incident Report System." She indicates that officers of the School Police enter student school incident reports into this database, and that at least one of the reports in this database states that the incident discussed in the report will also be sent to the BRIC. Therefore, Ms. Boundy believes that the School has an obligation to search the Incident Report System database for reports mentioning the BRIC, and to provide her with the number of reports.

The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Consequently, the number of reports that may have been provided to the BRIC within the past three years, in whatever form it may currently exist, would be responsive to Ms. Boundy's request. It is unclear why the School cannot search the Incident Report System database to cull the number of reports that were sent to the BRIC. I find that the School has not met its burden in properly responding to Ms. Boundy's Request Number 1.

Exemption (f) – Request Number 2

Ms. Boundy's Request Number 2 is for "[a]ny such incident reports forwarded or

provided to BRIC, with student names redacted." The School denied access to these records under Exemption (f).

Exemption (f) permits the withholding of:

> investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest

G. L. c. 4, § 7 (26)(f).

A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities. Bougas v. Chief of Police of Lexington, 371 Mass 59, 62 (1976). Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses. Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 290 n.18 (1979). Exemption (f) invites a "case-by-case consideration" of whether disclosure "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." See Reinstein, 378 Mass. at 289-90.

The School's January 23rd response states that BRIC "collects, analyzes and disseminates strategic and tactical intelligence to reduce crime and counter terrorism in the Boston-Metro area." You further note that "[d]ue to the sensitive nature of the request, the City cannot confirm or deny the existence of the records at this time as it could reveal information that would lead to the disclosure of intelligence sources and methods." The School also states that if the records exist, "the Investigatory Exemption would apply as disclosure could severely impede law enforcement investigations, such as homicides and threats to public safety." Furthermore, the School believes that disclosure "could significantly interfere with, compromise or delay on-going investigative and prosecutorial efforts by local, state and federal law enforcement as it could potentially alert potential suspects to the activities of law enforcement officials."

The School did not meet its burden to identify whether it actually possesses the requested reports. G. L. c. 66, § 10(b)(iv) (written response must "identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based"). The School is not permitted to issue a blanket denial without providing any further information with respect to the existence of the requested records.

Further, Ms. Boundy requested reports with redaction of personally identifiable information of students; however, the School contends that even if the reports are heavily redacted, there is a risk of directly or indirectly identifying witnesses and victims. However, the School has not established how indirect identification would occur. The Department is advised that it has a duty to segregate those portions of a record that are specifically exempt from disclosure, and provide the balance of the record. Any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a). See Reinstein, 378 Mass. at 289-90 (the statutory exemptions are narrowly construed and are not blanket in nature).

Further, it is unclear what type of information is contained in the responsive records, nor is it clear how disclosure of this information "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest" as required by Exemption (f). I find that the School has not met its burden to withhold responsive records under Exemption (f) in their entirety.

Conclusion

Accordingly, the School is ordered to provide Ms. Boundy with responsive records in a manner consistent with this order, the Public Records Law and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Kathleen B. Boundy
Sarah Onori, Esq.

Exhibit F

BOSTON PUBLIC SCHOOLS

OFFICE OF LEGAL ADVISOR

March 9, 2018

Kathleen B. Boundy
105 Chauncy Street, 6th Floor
Boston, MA 02111

Dear Ms. Boundy:

Boston Public Schools (BPS) received the written determination from the Supervisor of Records regarding your public records appeal. *See*, SPR 18/158 Determination of the Supervisor of Records (February 20, 2018). In her letter the Supervisor ordered BPS to provide records responsive to Request 1 and 2 of your December 6, 2017 request "in a manner consistent with [the Supervisor's written determination], the Public Records Law and its Regulations." After review, BPS stands by its position that there are no records responsive to Request 1. Request 2 is denied for both the reasons stated in the January 23, 2018 letter, as well as, the additional reasons provided below. In your petition to the Supervisor you objected only to the response of BPS with respect to Request 1 and 2. In Request 1 you sought:

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.*

In the initial response to this request, BPS stated that it is not in possession of any such records, lists or databases that can show, by school, the number of BPS school incident reports that have been forwarded to the Boston Regional Intelligence Center (BRIC).

Although BPS maintains a database of school incident reports; however, the database contains no portion or field to indicate whether a report associated with a particular incident was reported to BRIC. Therefore, BPS reiterates its original position that it is not in possession of any such records or lists that can show, by school, the number of BPS school incident reports that have been forwarded to BRIC.

2) *Any such reports with student names redacted.*

BPS denied this request in its January 23, 2018 letter based upon the Investigatory Exemption (f) to the Public Records Law which applies to:

> *investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest*
>
> G. L. c. 4 §7(26)(f).

BRIC is a network of local, state and federal law enforcement agencies that collects, analyzes and disseminates strategic and tactical intelligence to reduce crime and counter terrorism in the Boston-Metro area. BPS may comply with law enforcement authorities' requests of law enforcement records when it is a matter of public safety, such as, homicides, serious threats to public safety and gang-related crime. Due to the sensitive nature of the request, BPS did not confirm or deny the existence of any such responsive records in its January 23, 2018 letter and continues to maintain this position. If BPS confirmed the existence of such records, disclosure could alert potential suspects who were previously unaware of this invaluable investigatory tool and information sharing, thus, jeopardizing law enforcement efforts.

In the event that these records exist, BRIC, rather than BPS, is the appropriate custodian to request these records as they presently maintain the most superior knowledge of these records. *See*, 950 CMR 32.04(5) (It is expected that a custodian of records must use her superior knowledge of her records with respect to responses to public records requests). As these records were necessarily compiled out of the public view and were specifically requested by BRIC to be used in confidential or highly sensitive public safety investigations, BRIC is the appropriate custodian of the records to release or, alternatively, redact personally identifiable or highly sensitive information so to not impede their current or future law enforcement efforts. If BPS, rather than BRIC, publicized these highly sensitive records, even in a redacted form, BPS could prematurely disclose information that BRIC was not prepared to make public or intended to keep private in pursuit of its on-going investigations, thereby, compromising and severely prejudicing BRIC's law enforcement efforts that would not be in the public's interests.

Further, such disclosure would have the chilling effect of hindering future effective information sharing between any local, state and federal law enforcement agencies and BPS regarding the prevention and investigation of public safety matters. Information-sharing is part of law enforcement's strategy in productively preventing and combating against public safety threats across the local, state and federal level. Disclosure of the incident reports BPS has shared with BRIC would potentially eliminate a useful law enforcement tactic and resource, which would severely impede any present or future law enforcement efforts and would not be in the public's interest.

Even if these records were heavily redacted of personally identifiable information, it still could create a risk of directly or indirectly identifying witnesses and victims who voluntarily cooperated with law enforcement. The narratives of the school incident reports are significantly detailed as each report provides: in-depth synopsis of the incident; date and timeline of the incident; the areas of the school or classroom where the incident took place; direct quotations of witnesses, victims and involved parties; patterns of behaviors of involved persons; explicit

descriptions of weapons involved in the incident; list of school personnel, school police officers and teachers involved in the incident. Thus, a student, school personnel, parent or any member of the public that is connected with the school could easily indirectly know the identity of the witnesses, victims and persons involved based on the detailed narratives of the school incident reports, even if heavily redacted. Additionally, any students involved in an incident who has an unredacted copy of an incident report could easily match the narratives of the incident reports to confirm that their incident report was sent to BRIC and directly identify other involved persons. If the incident reports are publicized, there is a high likelihood that direct and indirect identification of witnesses and victims could be discovered and it may put their health and safety in danger of facing retaliation for cooperating. BPS reasserts that this would severely prejudice BRIC's law enforcement efforts and would not be in the public's interests. For these reasons, Request 2 must be denied.

CC: Rebecca Murray

Sincerely,

Alissa Ocasio
Legal Advisor
Boston Public Schools
Office of Legal Advisor

Sarah Onori
Assistant Corporation Counsel
Boston Public Schools
Office of Legal Advisor