

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of

JESSICA HUSEMAN,

Petitioner,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent.

**AFFIRMATION OF
JOSEPH BARANELLO
IN SUPPORT OF
RESPONDENT'S
VERIFIED ANSWER**

Index No. 151019/2016

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JOSEPH A. BARANELLO, an attorney admitted to practice before the Courts of New York, affirms, pursuant to CPLR § 2106, subject to the penalties of perjury, that:

1. I am the Central Records Access Officer (hereafter the "CRAO") for respondent the New York City Department of Education (hereafter "DOE") and am an attorney in the Office of the General Counsel of DOE. I have held the position of CRAO for over six years.

2. I submit this affirmation in support of Respondent's Verified Answer. The statements in this affirmation are based on my personal knowledge and upon information provided to me by other employees of DOE and contained in the books and records of DOE.

3. In this Article 78 proceeding, Petitioner challenges DOE's responses to four of her requests for records made pursuant to New York Public Officers Law § 84 et seq., also known as the Freedom of Information Law ("FOIL").

I. Background

4. Between June 2015 and November 2015, Petitioner made eight separate FOIL requests to DOE, including the four requests at issue in the Verified Petition. Several of these FOIL requests sought multiple types of records, and in total Petitioner requested 14 types of documents and data during this approximately five month period.

5. During calendar year 2015, DOE received approximately 1,065 FOIL requests. Calendar year 2015 was therefore an even busier year than 2014, during which DOE received approximately 987 FOIL requests, and both years represent a significant increase in the volume of FOIL requests from the approximately 788 FOIL requests that DOE received in 2013. This trend has continued in 2016, as thus far DOE has observed more than a 50% increase in the number of new FOIL requests than were received during the same time period in calendar year 2013.

6. In responding to these hundreds of FOIL requests, my team typically coordinates the collection of records among multiple DOE offices. In some cases, records are available only at individual DOE schools. Many of these FOIL requests seek voluminous records that must be reviewed to determine if they contain information that must be redacted before it may be produced. The process of redacting information from these records is frequently time-consuming.

7. DOE has made significant efforts to provide, as quickly as reasonably possible, data and documents to Petitioner, pursuant to her numerous FOIL requests. Specifically, DOE has provided documents to Petitioner in response to her numerous FOIL requests as follows (the DOE internal reference numbers of FOIL requests are in parentheses): DOE produced to Petitioner spreadsheets containing approximately 4,718 records in September

2015 (F11,422 and F11,470), a spreadsheet containing approximately 1,660 records in October 2015 (F11,401), spreadsheets containing approximately 161,750 records in November 2015 (F11,471), a spreadsheet containing approximately 160,500 records in December 2015 (F11,471), approximately 270 pages of documents containing approximately 18,000 records in February 2016 (F11,402), and a spreadsheet containing approximately 989 records in March 2016 (F11,472).

8. To be clear, the above listed responses are solely for Petitioner's FOIL requests. DOE responds to hundreds of additional FOIL requests every year.

II. First Request at Issue in This Proceeding – F11,422

9. By letter dated June 11, 2015, Petitioner submitted a FOIL request that DOE designated as FOIL reference number F11,422.

10. FOIL request F11,422 sought data from the DOE's Special Education Call Center from 2012 to 2015. Specifically, Petitioner sought “[t]he names of schools about which parents complained,” “[t]he names of school administrators or teachers named in the complaints,” “[t]he nature of the complaints,” and “[t]he action taken by the district to address the complaints.” (Pet. Exh. 1.) Petitioner's request acknowledged that under federal law some redaction of this information would be necessary to protect the identity of students.

11. By letter dated June 18, 2015, five business days after the request was received, I acknowledged the request. My letter also stated that a response was anticipated by July 17, 2015, which is 20 business days from the date of the acknowledgement.

12. Given the complexity and extent of F11,422 and the necessity of reviewing such a large volume of records to determine whether they could be permissibly

produced, as well as the volume of other FOIL requests that DOE receives and responds to (from Petitioner and many others), I determined following the issuance of my June 18, 2015 letter that DOE would require additional time to respond to the request. While my estimate as to when these records would be produced thereafter changed over time, each time my estimate changed I wrote letters so advising Petitioner, each time providing her with an updated estimate as to when I then believed the records could be produced.

13. The data that Petitioner sought in this request is stored in a large database. When appropriate filters were created and the records responsive to request F11,422 were extracted from the database, DOE determined that approximately 2,900 records were responsive to Petitioner's request.

14. On September 14, 2015, DOE produced an Excel spreadsheet to Petitioner. This spreadsheet included data on all of the approximately 2,900 records that were determined to be responsive to Petitioner's request. For each record, DOE produced the school identification code where available (in the form of the school's District Borough Number, "DBN"), the date the complaint was opened, the status of the complaint (e.g., pending or closed), the resolution status (e.g., resolved or in progress), the source of the contact, the topic area to which the complaint related, and the sub-topic area to which the complaint related.

15. DOE did not provide the names of teachers or administrators who were named in these complaints because no separate data field with these names exists in DOE's database; rather, teacher and administrator names are included only in the detailed narratives regarding these complaints. DOE did not provide detailed narratives from the records regarding the nature of the complaints or the actions taken to resolve the complaints because DOE determined that it was prohibited from disclosing this information by federal statute, specifically

the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and its implementing regulations located at 34 C.F.R. Part 99.

16. FERPA prohibits school districts from disclosing most education records (whether maintained as hard-copy records or as data) of students, without the written consent of the parents of each student who is the subject of such records. The statute further provides that federal funds for educational programs shall be withheld from a school district that violates FERPA. The FOIL statute provides that records and information that are exempt from disclosure pursuant to another state or federal statute are exempt from disclosure pursuant to FOIL. Public Officers Law § 87(2)(a).

17. The U.S. Department of Education has emphasized, most notably in the preamble to the 2008 final rule that revised (among many other provisions) the definition of “personally identifiable information” found in the regulations promulgated under FERPA, that “FERPA is a privacy statute, and no party has a right under FERPA to obtain information from education records except parents and eligible students.” 73 Fed. Reg. 74,806, 78,834 (Dec. 9, 2008).

18. The definition of personally identifiable information encompasses various types of information, including basic information like a student’s name, address, date of birth, and other direct or indirect identifiers. See 34 C.F.R. § 99.3. While FERPA’s implementing regulations include a de-identification provision, which permits an educational agency such as DOE to release education records without consent after removal of all personally identifiable information, it also requires the educational agency to make “a reasonable determination that a student’s identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably identifiable information.” 34 C.F.R. § 99.31(b).

19. In the context of determining whether records constitute personally identifiable information and, if so, how to de-identify such records, the U.S. Department of Education has indicated that “[t]he simple removal of nominal or direct identifiers, such as name and SSN (or other ID number) does not necessarily avoid the release of personally identifiable information.” 73 Fed. Reg. 74,806, 74,831. In fact, FERPA’s regulations define “personally identifiable information” very broadly, to encompass other types of information, including information that is linkable to a specific student and would allow a “reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” 34 C.F.R. § 99.3. Moreover, as the U.S. Department of Education noted in the preamble to the 2008 revisions, this new standard was promulgated to afford greater and clearer protection against the disclosure of student records than was provided by the standard it replaced. 73 Fed. Reg. 73,806, 74,831.

20. Almost all of the detailed narratives sought by Petitioner in the First Request contain direct personal identifiers such as student and parent names, dates of birth, student ID numbers, home addresses, and home phone numbers. However, DOE determined that releasing the database fields which describe the nature of the special education complaints and the actions taken by DOE to resolve these complaints would violate its obligations under FERPA, even if these direct personal identifiers were redacted. DOE reached this determination because of the unique nature of many special education needs, which are rooted in students’ particular disabilities. Complaints regarding a student’s special education needs can be specific enough that even with basic personal identifiers redacted, a member of the school community could determine the identity of a student based upon the content of their special education complaint or the specific actions taken by DOE to resolve the complaint.

21. For example, a number of the complaints arise from situations in which a student has received a new or different diagnosis, necessitating new or different educational or related services. Because a specific set of special education services at a specific school can be unique, a reasonable member of the school community could read such a detailed narrative and identify the student by the services described, thereby learning private information about the student's disability status.

22. Even when the services described in a complaint are not unique, the detailed narratives frequently contain other information that, in combination, would allow a reasonable member of the school community to identify the student with reasonable certainty. For example, the detailed narratives can contain information regarding the student's grade level, the names of the student's teacher and other service providers, and whether the student has siblings at the school (and whether those siblings also receive special education services). Each of these pieces of information alone may not directly identify a student, but in combination pose a serious risk that a reasonable member of the school community would be able to identify the student described in the complaint.

23. The data sought by Petitioner is city-wide, but typically contains (as Petitioner requested) information about which school each complaint relates to. This creates a difficult situation for DOE: DOE is required, in order to comply with federal FERPA regulations, to determine whether release of a record will allow a "reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." 34 C.F.R. § 99.3. However, because the data sought by Petitioner includes school communities all over the city, it is extremely difficult to check every one of the approximately 2,900 responsive detailed narratives to determine the uniqueness of the

particular disability and services the student is receiving and to assess the risk that the substance of the complaint will reveal the student's identity to a reasonable person in the school community even if personal identifiers are redacted.

24. In addition to the detailed narratives of the complaints, a large number of the approximately 2,900 records responsive to the First Request also refer to "notes" describing the actions taken by DOE to resolve the complaint. These notes typically contain the text of emails sent or summaries of phone calls or meetings conducted in the course of resolving a complaint, and generally include a significant amount of student-specific information similarly protected by FERPA.¹ In some cases, these notes also incorporate internal correspondence among DOE employees deliberating over the proper way to resolve a complaint, and therefore constitute pre-decisional materials subject to FOIL's intra-agency exemption. Pub. Officers Law. § 87(2)(g).

25. There are approximately 2,200 such "notes" that correspond to the approximately 2,900 records responsive to the First Request. In many cases, there are multiple notes corresponding to a single complaint record, and some of these notes are quite lengthy, so that a single record and its associated notes can comprise thousands of words. In addition to the redaction of direct personal identifiers in these notes, in order to produce these notes DOE would be required to compare the information in each detailed complaint narrative with the information in its associated notes, to ensure that the combination of this information does not paint such a unique portrait that a reasonable member of the school community could identify the student

¹ Each of the approximately 2,900 responsive records also contains a data field that briefly summarizes the actions taken by DOE and typically refers to the "notes" for more detailed information. These summaries of actions taken by DOE also contain student-specific information and therefore may not be disclosed without significant redaction for the same reasons that apply to the detailed complaint narratives and the "notes."

with reasonable certainty. For example, even if a complaint does not describe the student's particular special education services in detail, the associated notes frequently include emails from the student's principal, teacher, and/or service providers that carefully review the student's particular services as part of addressing how to resolve the complaint.

26. I estimate that it will take an average of approximately 8 minutes to redact each of the approximately 2,900 records and their associated "notes." This would require approximately 386 hours of redaction time. In addition to the time necessary to redact each record, because of the sensitive nature of the student-specific information contained in these records, each record would need to be carefully reviewed to ensure that its disclosure, in redacted form, would not violate FERPA. I estimate that this careful review of the redactions made to the approximately 2,900 records and their approximately 2,200 associated notes would take an average of an additional 6 minutes per record, because the reviewer would need to conduct a substantially similar comparison of all of the information available in each record and its associated notes to ensure that the redactions required by FERPA were performed. This would require approximately 290 hours to review the redactions, for a total of approximately 676 hours. In addition, in many cases officials at individual schools would need to be consulted about the potential uniqueness of the substance of a special education complaint, requiring even more review time.

27. DOE cannot reasonably engage an outside professional service to provide the extensive redaction required to produce the records sought by Petitioner in the First Request. Properly redacting these records requires an understanding of what constitutes an uncommon or unique combination of education services, such that removing direct personal identifiers is inadequate to protect the student's identity. An outside firm would lack sufficient familiarity

with the DOE school system to know, for example, whether placement of a child in a class with no more than six students is common or uncommon at a particular school. Given the multitude of different combinations of special education services described in these thousands of records, and the need to consult with individual schools in many cases to determine the uniqueness of particular situations, it is not possible for DOE to outsource this work. In addition, providing an outside firm with data containing information on medical diagnosis for thousands of students raises its own serious privacy concerns.

28. My letter of September 14, 2015 that accompanied the records stated that this was DOE's final response to F11,422. Petitioner administratively appealed my September 14, 2015 final response by an appeal letter dated September 18, 2015 addressed to DOE's then-General Counsel and Records Access Appeals Officer (RAAO) Courtnaye Jackson-Chase.

29. RAAO Jackson-Chase issued her decision on the appeal by letter dated October 7, 2015. The RAAO found that the decision to withhold the narratives of the complaints and the actions taken by DOE to resolve them was appropriate given the strict requirements of FERPA to protect student privacy, since the records in question "are not necessarily de-identified by merely withholding obvious identifiers, such as names, social security numbers or home addresses of students, and may lead to re-identification." The RAAO also noted that federal FERPA regulations require DOE to consider how information that is disclosed may be combined with previously or subsequently released data or other reasonably available information in a manner that allows for the identification of students. 34 C.F.R. § 99.31(b)(1). Under the circumstances, the RAAO denied Petitioner's appeal.

30. Given the extensive personal information contained in these records and the difficulty of ensuring that a reasonable person in each school community would not be able

to identify the student at issue in each complaint, DOE had a reasonable basis for denying access to the detailed narratives describing each complaint and the notes reflecting DOE's responses to each complaint. In addition, because of the extraordinary effort required to separate the FERPA-protected information in each record from the material, if any, that may be disclosed, and the impossibility of effectively outsourcing this work, performing the enormous number of redactions sought by Petitioner would constitute a major burden on DOE's resources.

III. Second Request at Issue in This Proceeding – F11,402

31. By letter dated June 11, 2015, Petitioner submitted a FOIL request that DOE designated F11,402.

32. In FOIL request F11,402, Petitioner sought “purchase records for schools purchasing instructional technology (including laptops, tablets and Smart Boards).” Petitioner specifically requested the name of the school, the product purchased, and the itemized cost of each product. Petitioner did not initially specify any time period for this request or limit it to any particular subset of schools. Petitioner subsequently clarified that she was seeking records from the 2012-2013 school year to the present, in regard to the entire DOE school system.

33. By letter dated June 18, 2015, five business days after the request was received, I acknowledged the request. My letter also stated that a response was anticipated by July 17, 2015, which is 20 business days from the date of the acknowledgement.

34. Responding to F11,402 required collecting records from four different school years, for a wide variety of products, for every school in the DOE school system. Given the complexity and breadth of F11,402, as well as the volume of other FOIL requests that DOE receives and responds to (from Petitioner and many others), I determined following the issuance

of my June 18, 2015 letter that DOE would require additional time to respond to the request. While my estimate as to when these records would be produced thereafter changed over time, each time this estimate changed I wrote letters so advising Petitioner, each time providing her with an updated estimate as to when I then believed the records could be produced.²

35. By letter dated September 18, 2015 and addressed to RAAO Jackson-Chase, Petitioner filed an administrative appeal alleging that F11,402 had been constructively denied. RAAO Jackson-Chase issued her decision on the appeal by letter dated October 7, 2015. The RAAO noted that Chancellor's Regulation D-110(VIII)(A) states that a FOIL request may be deemed constructively denied only where the request is neither granted nor denied within the applicable time limits or within the time limits set in the acknowledgement letter or any extension letters. The RAAO found that Petitioner's appeal alleging constructive denial was premature because DOE's efforts to respond to F11,402 within the applicable time limits communicated in my correspondence with Petitioner were ongoing. (A copy of Chancellor's Regulation D-110 is annexed to this affirmation as Exhibit C.)

36. On February 19, 2016, DOE produced a PDF document to Petitioner containing purchase records for the types of technology sought in F11,402. The PDF document was 270 pages long and included approximately 68 records per page, for a total of more than 18,000 records. For each record, DOE provided the name of the school, the name of the product purchased, the quantity of the product purchased, and the purchase price of the item(s). (A copy

² In addition to the extension letters annexed to the Petition, I also wrote a letter to Petitioner dated September 22, 2015 providing her with an updated estimate as to when I then believed the records sought in F11,402 could be produced. A copy of this letter is annexed to this affirmation as Exhibit A. Furthermore, because DOE's efforts to respond to the Second, Third, and Fourth Requests have been ongoing during the pendency of this proceeding, I have continued to send letters advising Petitioner of my new estimates of when the records sought in her requests could be produced. Copies of these letters are annexed to this affirmation as Exhibit B.

of the letter I sent Petitioner dated February 19, 2016 accompanying these records is annexed to this affirmation as Exhibit D.)

37. DOE did not redact any information from the records provided to Petitioner in its final response to FOIL request F11,402 on February 19, 2016.

IV. Third Request at Issue in This Proceeding – F11,472

38. By letter dated July 1, 2015, Petitioner submitted a FOIL request that DOE designated F11,472.

39. FOIL request F11,472 requested four types of records. First, Petitioner requested the “DOE database of employees currently on paid and unpaid leave.” Second, Petitioner sought the “database of all NYC DOE investigations, open and closed, from the 2014-2015 school year to present.” Third, Petitioner sought “copies of all employee settlement agreements from January 2014 to present.” Fourth, Petitioner requested a “list of all employees in the 2014-2015 school year who received bonuses, and the amount they received.”

40. By letter dated July 9, 2015, five business days after the request was received, I acknowledged the request. My letter also stated that a response was anticipated by August 6, 2015, which is 20 business days from the date of the acknowledgement.

41. Responding to F11,472 required coordination among multiple DOE offices, including Human Resources, the Division of Teaching and Learning, and the Office of the General Counsel. The four sub-parts of F11,472 sought voluminous quantities of documents and data, and several types of records sought require careful review and redaction to comply with the exemptions in the FOIL statute. For example, the requested data concerning employees currently on leave requires redaction to the extent these records reveal private information about employees on medical leave.

42. Given the complexity and extent of F11,472, as well as the volume of other FOIL requests that DOE receives and responds to (from Petitioner and many others), I determined following the issuance of my July 9, 2015 letter that DOE would require additional time to respond to the request. While my estimate as to when these records would be produced thereafter changed over time, each time this estimate changed I wrote letters so advising Petitioner, each time providing her with an updated estimate as to when I then believed the records could be produced.

43. By letter dated September 18, 2015 and addressed to RAAO Jackson-Chase, Petitioner filed an administrative appeal alleging that F11,472 had been constructively denied. RAAO Jackson-Chase issued her decision on the appeal by letter dated October 7, 2015. The RAAO noted that Chancellor's Regulation D-110(VIII)(A) states that a FOIL request may be deemed constructively denied only where the request is neither granted nor denied within the applicable time limits or within the time limits set in the acknowledgement letter or any extension letters. The RAAO found that Petitioner's appeal alleging constructive denial was premature because DOE's efforts to respond to F11,472 within the applicable time limits communicated in my correspondence with Petitioner were ongoing.

44. On March 25, 2016, DOE produced a spreadsheet to Petitioner containing data on bonuses paid to DOE employees for the 2014-2015 school year as sought in the fourth part of F11,472. This spreadsheet included approximately 989 records. For each record, DOE provided the name of the employee, the employee's role (e.g., principal or assistant principal), the school where the employee worked, the "tier" or bonus level, the amount of the bonus paid to the employee, and whether this amount was pro-rated. No information was redacted from this

document. (A copy of the letter I sent Petitioner dated March 25, 2016 accompanying these records is annexed to this affirmation as Exhibit E.)

45. DOE is committed to providing final responses to the other three parts of F11,472 by May 13, 2016 and has advised Petitioner of this date certain.

V. Fourth Request at Issue in This Proceeding – F11,648

46. By letter dated September 18, 2015, Petitioner submitted a FOIL request that DOE designated F11,648.

47. FOIL request F11,648 sought copies of all emailed communication to or from my office sent in regard to FOIL requests F11,471, F11,472, and F11,422. FOIL request F11,648 also requested “copies of all emails sent in the process of fulfilling this FOIL request.”

48. By letter dated September 25, 2015, five business days after the request was received, I acknowledged the request. This letter also stated that a response was anticipated by October 26, 2015, which is 20 business days from the date of the acknowledgement.

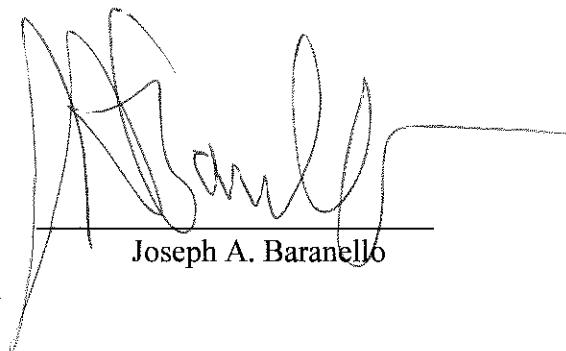
49. Given the extent of F11,648, the need to review each responsive email to determine whether statutory exemptions such as attorney-client privilege and the intra-agency exemption apply and to make necessary redactions of exempt information from the responsive emails, as well as the volume of other FOIL requests that DOE receives and responds to (from Petitioner and many others), I determined following the issuance of my September 25, 2015 letter that DOE would require additional time to respond to the request. While my estimate as to when these records would be produced thereafter changed over time, each time this estimate changed I wrote letters so advising Petitioner, each time providing her with an updated estimate as to when I then believed the records could be produced.

50. By letter dated January 22, 2016 and addressed to RAAO Jackson-Chase, counsel for Petitioner filed an administrative appeal alleging that F11,648 had been constructively denied. RAAO Jackson-Chase issued her decision on the appeal by letter dated October 7, 2015. The RAAO noted that Chancellor's Regulation D-110(VIII)(A) states that a FOIL request may be deemed constructively denied only where the request is neither granted nor denied within the applicable time limits or within the time limits set in the acknowledgement letter or any extension letters. The RAAO also noted that additional time was necessary to respond to F11,648 due to the volume of records located in response to this request, the need to determine the extent to which statutory exemptions for attorney-client privilege and intra/inter-agency records permit DOE to redact the responsive records, and the time necessary to make redactions.

51. DOE is committed to providing a final response to this FOIL request by April 29, 2016 and has advised Petitioner of this date certain.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the petition be denied in its entirety, that Petitioner's request for relief be denied in all respects, and that Respondent be granted such other and further relief as to the Court deems just and proper.

Dated: New York, New York
April 4, 2016



A handwritten signature in black ink, appearing to read "Joseph A. Baranello", is written over a horizontal line. The signature is fluid and cursive, with some loops and variations in thickness.

EXHIBIT A



**Department of
Education**
Carmen Farina, Chancellor

Courtenaye Jackson-Chase
General Counsel

Joseph A. Baranello
Central Records Access
Officer & Agency Attorney

Office of Legal Services
NYC Dept. of Education
52 Chambers Street
Room 308
New York, NY 10007

+1.212.374.6888 tel.
+1.212.374.5596 fax

September 22, 2015

VIA EMAIL

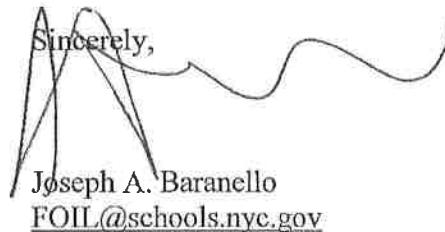
Jessica Huseman
jlh2228@columbia.edu

RE: #F11,402

Instructional Technology info.

Dear Ms. Huseman:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a response is currently anticipated by October 13, 2015.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

JAB/ma

EXHIBIT B



**Department of
Education**
Carmen Farina, Chancellor

Courtenaye Jackson-Chase
General Counsel

Joseph A. Baranello
*Central Records Access
Officer & Agency Attorney*

Office of Legal Services
NYC Dept. of Education
52 Chambers Street
Room 308
New York, NY 10007

+1.212.374.6888 tel.
+1.212.374.5596 fax

February 10, 2016

VIA EMAIL

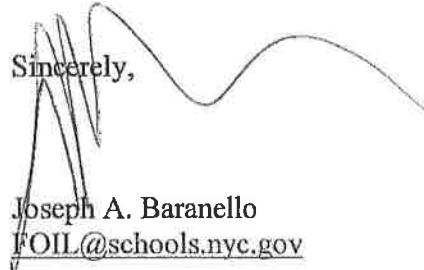
Jessica Huseman
jlh2228@columbia.edu

RE: #F11,402

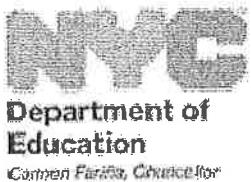
Instructional Technology info.

Dear Ms. Huseman:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a response is currently anticipated by March 10, 2016.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

JAB/nb



5Courtenaye Jackson-Chase
General Counsel

Joseph A. Baranello
Central Records Access
Officer & Agency Attorney

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NYC Dept. of Education
52 Chambers Street
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+1.212.374.6888 tel.
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March 4, 2016

VIA EMAIL

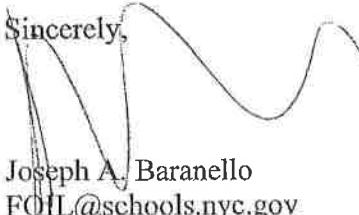
Jessica Lauren Huseman
jlh2228@columbia.edu

RE: #F11,472

Employee Data

Dear Ms. Huseman:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a response is currently anticipated by April 1, 2016.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

JAB/ma



**Department of
Education**
Carmen Farina, Chancellor

Charity Guerra
Acting General Counsel

Joseph A. Baranello
*Central Records Access
Officer & Agency Attorney*

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+1.212.374.5596 fax

March 25, 2016

VIA EMAIL

Jessica Lauren Huseman
jlh2228@columbia.edu

RE: #F11,472

Employee Data

Dear Ms. Huseman:

This letter is in partial response to the Freedom of Information Law (FOIL) request referenced above. Records that respond to request item 4 are attached.

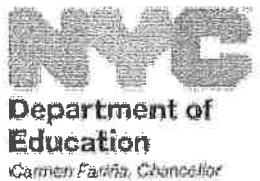
With respect to the balance of your request, pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a final response to all request items is anticipated by May 13, 2016.

Any person denied access to a record may appeal the decision in writing within thirty days. Please state a specific ground for appeal and include copies of the initial request and the denial. Appeals should be sent to: Charity Guerra, Acting General Counsel, c/o Office of Legal Services, New York City Department of Education, 52 Chambers Street – Room 308, NY, NY 10007, FOIL@schools.nyc.gov.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

JAB/ma



Charity Guerra
Acting General Counsel

Joseph A. Baranello
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March 7, 2016

VIA EMAIL

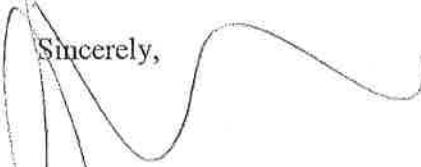
Jessica Huseman
jessica.huseman@columbia.edu

RE: #F11,648

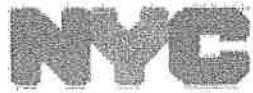
FOIL Requests Information

Dear Ms. Huseman:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a response is currently anticipated by March 21, 2016.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

JAB/ma



**Department of
Education**

Carmen Farina, Chancellor

Charity Guerra
Acting General Counsel

Joseph A. Baranello
*Central Records Access
Officer & Agency Attorney*

Office of Legal Services
NYC Dept. of Education
52 Chambers Street
Room 308
New York, NY 10007

+1.212.374.6888 tel.
+1.212.374.5596 fax

March 21, 2016

VIA EMAIL

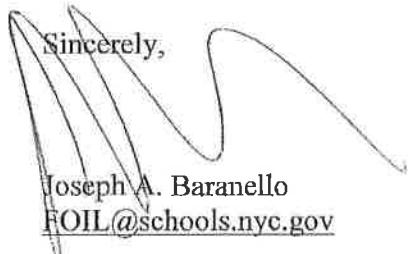
Jessica Huseman
jessica.huseman@columbia.edu

RE: #F11,648

FOIL Requests Information

Dear Ms. Huseman:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a response is currently anticipated by April 18, 2016.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

JAB/ma



Charity Guerra
Acting General Counsel

Joseph A. Baranello
Central Records Access
Officer & Agency Attorney

Office of Legal Services
NYC Dept. of Education
52 Chambers Street
Room 308
New York, NY 10007

+1.212.374.6888 tel.
+1.212.374.5596 fax

April 4, 2016

VIA EMAIL

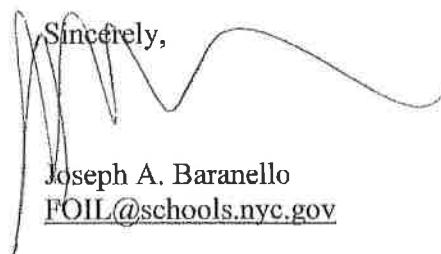
Jessica Huseman
jessica.huseman@columbia.edu

RE: #F11,648

FOIL Requests Information

Dear Ms. Huseman:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a final response to your request is anticipated by April 29, 2016.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

JAB/nb

EXHIBIT C

Regulation of the Chancellor

Category: **PERSONNEL**

Issued: 6/18/09

Number: **D-110**Subject: **FREEDOM OF INFORMATION LAW (FOIL) PROCEDURES**Page: **1 of 1**

SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation D-110 dated July 8, 2008, and has been revised to reflect changes in the Public Officers Law that became effective on August 8, 2008 and January 2, 2009.

Changes:

- There is now a basis for determining the actual cost of reproducing (but not searching for) records maintained in electronic storage devices or media.
- Records must be provided on the medium requested if it can be accomplished reasonably or by engaging an outside professional service. Records provided in computer format may not be encrypted.
- In renewing a contract for the creation or maintenance of records, the contract may not impair the right of the public to inspect or copy records.
- An agency shall not deny a request because it is voluminous or burdensome if an outside professional service may be engaged to provide copying, programming or other such services, the cost of which may be recovered.
- An unwarranted invasion of personal privacy includes the sale or release of names and (work) addresses of public employees if such lists would be used for solicitation. (Former provision referred to "commercial purpose;" "solicitation" was substituted.) A requester may be required to give a written certification that the information will not be used for solicitation.
- When a record or data maintained in a computer storage system can be retrieved or extracted with reasonable effort, the agency is required to do so. Any programming necessary to retrieve a record and to transfer it to the medium requested shall not be deemed to be the creation of a new record.

ABSTRACT

This regulation governs requests made pursuant to the Freedom of Information Law (NYS Public Officers Law §84, *et seq.* and 21 NYCRR Part 1401) to inspect or obtain copies of records maintained by the New York City Department of Education. This regulation supersedes Chancellor's Regulation D-110, *Freedom of Information Law (FOIL)*, dated July 8, 2008.

INTRODUCTION

Department of Education personnel shall provide to the public the information and records required by FOIL, as well as records otherwise available by law.

I. RECORDS

A. Definition of Records (Public Officers Law ("POL") § 86(4))

A "record" is any information kept, held, filed, produced or reproduced by, with or for the New York City Department of Education ("DOE") in any physical form whatsoever, including, but not limited to reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations, or codes.

B. Mandated Records (POL § 87(3))

The DOE must maintain the following records:

1. A record of the final votes taken by the Panel for Educational Policy, the Citywide Councils on Special Education and High Schools, and the Community Education Councils;
2. A record setting forth the name, public office address, title, and salary of every officer or employee of the DOE;
3. A reasonably detailed current list by subject matter of all records in the possession of the DOE whether or not available under FOIL for public inspection and copying. The list is to be updated annually, and the date of the most recent update shall be conspicuously indicated. ED-1, the State Education Department's Records Retention and Disposition Schedule, may be useful in this regard. It is available at:
http://www.archives.nysed.gov/a/records/mr_pub_ed1.shtml

The DOE is not required to create a record in response to a FOIL request or to respond to questions. FOIL pertains to requests for and releasability of records. However, see Section VII below concerning electronic records.

II. RECORDS EXEMPTED FROM PUBLIC ACCESS

A. The public has access to all records, except that the DOE may deny access to records or portions of records that:

1. Are specifically exempted from disclosure by state or federal statute* (POL § 87(2) (a));
2. If disclosed, would constitute an unwarranted invasion of personal privacy (POL § 87(2) (b)) (see Section III below);
3. If disclosed, would impair present or imminent contract awards or collective bargaining negotiations (POL § 87(2) (c));
4. Are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise (POL § 87(2) (d));

* For example, FERPA, the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

5. Are compiled for law enforcement purposes and which, if disclosed, would:
 - a. interfere with law enforcement investigations or judicial proceedings;
 - b. deprive a person of a right to a fair trial or impartial adjudication;
 - c. identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - d. reveal criminal investigative techniques or procedures, except routine techniques and procedures (POL § 87(2) (e)).
 6. If disclosed, would endanger the life or safety of any person (POL § 87(2) (f));
 7. Are inter-agency or intra-agency materials unless they are:
 - a. statistical or factual tabulations or data;
 - b. instructions to staff that affect the public;
 - c. final agency policy or determinations; or
 - d. external audits, including but not limited to audits performed by the comptroller and the federal government (POL § 87(2) (g)).
 8. Are examination questions or answers which are requested prior to the final administration of such questions (POL § 87(2) (h)); or
 9. If disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures (POL § 87(2) (i)).
- B. The release of and access to student records is governed by FERPA (the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g). See Chancellor's Regulation A-820, *Student Records: Confidentiality, Access, Disclosure and Retention*. Generally, information that would tend to identify a student, including but not limited to his/her name, student identification number and parent's name, must be redacted from documents prior to their release. However, if the requester represents the parent or eligible student whose records he/she is requesting and provides a written consent or release, the personally identifying information for his/her client will not be redacted (see Attachment No. 1).

III. UNWARRANTED INVASION OF PERSONAL PRIVACY (POL § 89(2) (b-c))

- A. An unwarranted invasion of personal privacy includes, but shall not be limited to:
 1. Disclosure of employment, medical or credit histories or personal references of applicants for employment;
 2. Disclosure of items involving the medical or personal records of a client or patient in a medical facility;
 3. Sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
 4. Disclosure of information of a personal nature which, if disclosed, would result in economic or personal hardship to the subject party and such information is not relevant to the work of the DOE; or
 5. Disclosure of information of a personal nature reported in confidence to the DOE and not relevant to the ordinary work of the DOE.
- B. An employee's name, job title and salary are not exempt under this provision.
- C. To prevent an unwarranted invasion of personal privacy, the Central Records Access Officer, Central FOIL Designee or local Records Access Officer (see Section IV) shall delete identifying details such as social security or file number, date of birth and personal/home contact information prior to releasing records.

- D. Disclosure shall not be construed to constitute an unwarranted invasion of personal privacy when the person to whom a record pertains consents in writing to the disclosure or when a person seeks access to records pertaining to himself/herself.

IV. DESIGNATION AND RESPONSIBILITIES OF THE CENTRAL RECORDS ACCESS OFFICER, CENTRAL FOIL DESIGNEES AND LOCAL RECORDS ACCESS OFFICERS

- A. The Chancellor shall designate an individual to act in the capacity of Central Records Access Officer (CRAO). The CRAO is the sole person authorized to receive and act on requests to inspect or obtain records maintained by the central DOE offices and any other location within the DOE that does not fall within one of the Integrated Service Centers (ISCs), the Children First Network (CFN); District 79 or the Citywide District for Special Education (District 75), or a Community Education or Citywide Council.
- B. Each central office shall designate an individual as Central FOIL Designee (CFD), forward his/her name and contact information to the CRAO and update the information as needed. In the event that a central office receives a FOIL request in the first instance, the CFD shall forward a copy of the request to the CRAO in order to maintain an accurate central record of all FOIL requests.
- C. The ISC or CFN Senior Counsel acts as the Records Access Officer (RAO) for each ISC/CFN. The RAO is the sole person authorized to receive and act on requests to inspect or obtain records of the schools and offices that the ISC/CFN supports. The RAO shall forward a copy of each FOIL request to the CRAO in order to maintain an accurate central record of all FOIL requests. The CRAO will assist the RAO in responding to requests and may review records prior to their release.
- D. Similarly, District 79 and District 75 also shall designate individuals to act as RAOs (one each) for their school and office records.
- E. The Administrative Assistant in each Community Education Council ("CEC") or Citywide Council (Special Education or High School) shall act as the RAO for that Council. Requests for Council documents shall be submitted in writing, either in person, by mail, electronic mail, or by facsimile directly to the Council's Administrative Assistant.
- F. If the CRAO is the first to receive a FOIL request for records from the ISC/CFN, District 75/79 or a Community or Citywide Council, the request will be forwarded to the RAO to be acknowledged and processed.
- G. Each CFD and RAO shall compile and maintain a reasonably detailed current list by subject matter of all records in the possession of the office, ISC/CFN, D75/79 or Council, whether or not such records are accessible under the law and provide an updated copy of the list to the CRAO annually (see Section I.B.3 above).

V. PROCEDURES FOR OBTAINING ACCESS TO RECORDS

- A. Requests to inspect or obtain copies of records maintained by the central DOE offices, and any other location within the DOE that does not fall within one of the ISCs, CFN, District 79 or 75, or a Community or Citywide Council, shall be submitted in writing, either in person, by mail, by facsimile or electronic mail, to:

Central Records Access Officer
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007
Fax: (212) 374-5596
FOIL@schools.nyc.gov

Requests must reasonably describe the records being requested so that an effective search can be conducted (POL § 89(3)). No specific form or format is required for the FOIL request.

- B. Requests to inspect or obtain copies of ISC/CFN, District 79 or 75, or Community Education or Citywide Council records, including records maintained within a particular school, may be submitted in a similar manner to the appropriate RAO or may be made by submitting the request in writing to the CRAO, pursuant to Section V.A.
- C. FOIL requests submitted by representatives of the press/media should be sent to the Office of Communications and Media Relations. Responses will be coordinated with the CRAO.

VI. RESPONSES TO FOIL REQUESTS

- A. Within five (5) business days of receipt of a written request for a record reasonably described, the CRAO or his/her designee (for central records) or the RAO (for ISCs, the CFN, Districts 75/79 and Community Education or Citywide Councils) shall:
 1. Make such record available to the requester. If records are maintained on the internet, inform the requester that the records may be accessed on the DOE's website (giving the specific location, i.e., the link) and, that if he/she does not have internet access, a printed copy will be provided;
 2. Deny such request in writing, and provide a reason for the denial; or
 3. Acknowledge in writing the receipt of such request and state the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied.

If the request or any portion of the request for a record is not reasonably described, inform the requester and include direction, to the extent possible, that would enable that person to reasonably describe the records being sought.

- B. The CRAO or RAO shall consult with the custodian of the records, as needed, estimate the amount of time it will take to locate and then review documents responsive to the request, and determine whether any or all of the records or portions thereof are releasable. If the CRAO or RAO determines to grant a request in whole or in part, and if circumstances prevent disclosure within twenty (20) business days from the date of the acknowledgement, he/she shall state, in writing, both the reason for the inability to grant the request within twenty (20) business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.

In accordance with State Regulations, among the factors to consider in determining a reasonable time are: "the volume of a request; ease or difficulty in locating, retrieving or generating records; the complexity of the request; the need to review records to determine the extent to which they must be disclosed; the number of requests received; and similar factors that bear on the ability to grant access to records promptly and within a reasonable time" (21 NYCRR 1401.5 (d)).

- C. Responses to requests also may be sent by electronic mail provided that the written requests do not seek a response in some other form.
- D. The letter of acknowledgement shall inform the requester that he/she may be charged for copies of records made available under FOIL pursuant to Section VII below. The letter of acknowledgement shall state:

Section 87(2) (b) (iii) of the Public Officers Law permits an agency to charge a copying fee of 25¢ per page. Once we have obtained the records responsive to your request, we will notify you of the cost. [Once payment is requested, add: Please make your check or money order payable to *New York City Department of Education* and indicate the FOIL # on the document.]

In the event the records requested are voluminous, the requester may be advised of the estimated cost of reproduction and asked to pay for and authorize their reproduction before copies are made. However, copies of records may be released prior to receiving payment. Although the DOE is not required to charge for copies of records that are provided, charges should be imposed when it is cost effective to do so especially when responsive documents are voluminous. The DOE may waive these fees also.

- E. The CRAO or his/her designee shall forward copies of the request and acknowledgement to the CFD of the office(s) maintaining the records sought, or RAO. The CFD or the RAO, as appropriate, shall gather the records from the appropriate office, school, or CEC. The CFD or RAO shall release or deny access to the records requested within the time frame set forth in the acknowledgement letter. In some cases, the records will be forwarded to the CRAO for release. If the records cannot be released by the date indicated, the CRAO or RAO must send a letter extending the response date and provide a reason for needing additional time to respond to the request (see Section VI.B).
- F. Where a public record is determined to be too voluminous to photocopy, the CRAO, CFD, or RAO will direct the requester to the place where the records may be inspected.
1. Records may be inspected or copied at the office of the appropriate CFD/RAO or CRAO or at the location he/she specifies at a mutually convenient time made by appointment on any regular business day, usually between 9:00 a.m. and 5:00 p.m. In the event that the records are maintained at a school, any appointment must be scheduled on a school day.
 2. Records will be made available for inspection subject to the following conditions:
 - a. No records may be altered or destroyed by the requester;
 - b. No records may be copied or removed by the requester from the location where their inspection has been authorized;
 - c. Records made available for inspection will be kept available for ten (10) business days after the requester has been notified of their availability. Failure of the requester to inspect the records within that time will terminate processing of the request, and the file will be closed.
 - d. If records require redaction prior to disclosure, a request for inspection may be denied and the requester informed that the records are only available as copies, for which appropriate payment must be made.
- G. Where the CFD, RAO, or the CRAO believes that a record or portion of a record is subject to an exemption from disclosure, he/she must redact the record before releasing it and inform the requester of the specific ground(s) for denying access to the record/portion within the relevant time frame.
- H. Upon request, the CRAO, CFD, or RAO shall certify to the correctness of the copies of the records being provided (see Attachment No. 2).
- I. If the records sought do not exist or are not in the possession of the DOE, the CFD, CRAO or RAO must inform the requester and, in addition, shall certify, on request, that the DOE is not the custodian of such record(s); or that the DOE is a custodian of such records but a diligent search was conducted and the records were not located (see Attachment No. 2).
- J. Any letter denying access to records or portions of records also must contain a notice of appeal rights (see Section VIII below). Copies of cover letters of responses by a CFD and extension letters (see Section VI.D above) should be sent to the CRAO.

VII. FEES; ELECTRONIC INFORMATION

- A. Where copies of records are being provided, the records may be provided for no fee. However, if fees are charged, the following fee schedule applies:
1. 25 cents (25¢) per page for documents up to 8½ x 14 inches in size, subject to modifications consistent with the law;
 2. For other records, the actual cost of reproducing the record, but in accordance with this subsection. In determining the actual cost of reproducing a record, an agency may include only:
 - a. an amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record;

- b. the actual cost of the storage devices or media provided to the person making the request in complying with such request;
 - c. the actual cost of engaging an outside professional service to prepare a copy of a record, but only when the agency's information technology equipment is inadequate to prepare a copy, if such service is used to prepare a copy; and
 - d. preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed or if an outside professional service would be retained to prepare a copy of the record.
- B. A request may not be denied on the basis that it is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the agency lacks sufficient staffing or on any other basis if the agency may engage an outside professional service to provide copying, programming, or other services required to provide the copy, the costs of which the agency may recover pursuant to Section VII.A above.
- C. When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so. When doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the agency shall be required to retrieve or extract such record or data electronically.
- D. Any programming necessary to retrieve a record maintained in a computer storage system and to transfer that record to the medium requested or to allow the transferred record to be read or printed shall not be deemed to be the preparation or creation of a new record.
- E. An agency shall provide records on the medium requested if it can reasonably make such copy or have such copy made by engaging an outside professional service. Records provided in a computer format shall not be encrypted.
- F. No agency shall enter into or renew a contract for the creation or maintenance of records if such contract impairs the right of the public to inspect or copy the agency's records.
- G. No fee shall be charged for the inspection of or search for records, for a certification that the records are accurate or that a diligent search was conducted and no records were located, or for document(s) that have been printed or reproduced for current distribution to the public.
- H. The above-noted fee schedule is subject to modification consistent with the law.

VIII. APPEALS

A. Constructive Denial

A requester who is neither granted nor denied access to records within the time limits set forth above or in the acknowledgment letter or any extension letter(s) may consider the request constructively denied and may appeal such denial in accordance with the procedures set forth below.

B. A requester denied access to any DOE record may, within 30 days, appeal such denial by writing to:

The General Counsel
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007
FAX: (212) 374-5596
FOIL@schools.nyc.gov

To expedite the process, the requester should provide a copy of the request and a copy of the denial of access and give the basis for the appeal. The General Counsel shall issue a written decision on the appeal within ten (10) business days following receipt of the appeal and fully explain in writing the reasons for further denial, or provide access to the record sought. A copy of the appeal and the written determination shall be forwarded to the Committee on Open Government*. A copy of the written determination shall be forwarded to the CFD/RAO also.

IX. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

<i>Office of Legal Services</i> N.Y.C. Department of Education 52 Chambers Street – Room 308 New York, NY 10007 FOIL@schools.nyc.gov	Fax: 212-374-5596
Telephone: 212-374-6888	

* Address: NYS Department of State, Committee on Open Government, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

In addition, copies of the FOIL law, state regulations, advisory opinions and other information on FOIL can be found on the Committee's website at <http://www.dos.state.ny.us/coog>.

PARENT'S CONSENT TO RELEASE OF STUDENT RECORDS

I, _____, am the parent/guardian of
print name

_____,
print name of student _____, date of birth _____,

_____, who attends/attended the New York City
student ID # _____

Public Schools in _____. The last school he/she attended
year/time period _____

was/is _____ in
name and address of school _____

_____. The student is under the age of 18.
borough _____

(Please provide any additional information that might be helpful in locating the student records
(e.g., address or name, if different when he/she attended)):

I give consent to the New York City Department of Education to release my child's student records
including _____ specify records _____

to _____ provide name and address of person, agency, or company _____

Purpose of disclosure: _____

_____ signature of parent/guardian _____ date

STUDENT'S CONSENT TO RELEASE OWN STUDENT RECORDS

I, _____, print name _____, date of birth _____,

student ID # _____ attended the New York City Public Schools

in _____. The last school I attended was
year/time period _____ in _____.

name and address of school _____ in _____ borough _____.

I am at least 18 years old.

(Please provide any additional information that might be helpful in locating your records (e.g., former address, name, if different when you attended)):

I give consent to the New York City Department of Education to release my student records, including

specify records _____
to _____ provide name and address of person, agency or company _____

Purpose of disclosure: _____

signature of former student _____ date _____

RECORDS CERTIFICATION SAMPLE

I, John Doe, the Records Access Officer and an Assistant Director of the Division of School Facilities in the New York City Department of Education, hereby certify that the attached records are true and accurate copies of the boiler repair for Jones High School in Queens from 2006 to 2008.

I further certify that these records were made and kept in the regular course of business of the Department of Education, and it is in the regular course of business of the Department of Education to make and maintain such records.

*John Doe**July 1, 2008*

(See Certification Blanks on the following pages)

CERTIFICATION OF DILIGENT SEARCH CONDUCTED AND NO RECORDS FOUND**SAMPLE CERTIFICATION**

I, Jane Doe, hereby certify that I am the Senior Counsel and Records Access Officer of the Bronx Integrated Service Center ('ISC') of the New York City Department of Education, and in that capacity I have the authority to make this certification.

I also certify that, at my direction, staff members conducted a diligent search of the records that are in the custody and control of P.S. 555, and no records responsive to this FOIL request (OORS report concerning Sam Smith for an incident of March 18, 2005) were located.

*Jane Doe**July 1, 2008*

N.B. Either Certification may be made by the CRAO, RAO, CFD, or a Principal, Office/Unit Director or other supervisor.

(See Certification Blanks on the following pages)

RECORDS CERTIFICATION

I, _____, the Records Access Officer and

_____ of the
title

of the New York City Department of Education,
office/school

hereby certify that the attached records are true and accurate copies of

_____ describe records

I further certify that these records were made and kept in the regular course of business of the Department of Education, and it is in the regular course of business of the Department of Education to make and maintain such records.

_____ signature

_____ date

DILIGENT SEARCH CONDUCTED AND CERTIFICATION OF NO RECORDS FOUND

I, _____, hereby certify that

I am the Records Access Officer and _____
title

of the _____ of the New York City
office/school

Department of Education, and in that capacity I have the authority to make this certification. I also certify
that, at my direction, staff members conducted a diligent search of the records that are in the
custody and control of _____
place/office/school

and no records responsive to this FOIL request were located.

signature

date

EXHIBIT D



**Department of
Education**

Carmen Farina, Chancellor

Courtenaye Jackson-Chase
General Counsel

Joseph A. Baranello
*Central Records Access
Officer & Agency Attorney*

Office of Legal Services
NYC Dept. of Education
52 Chambers Street
Room 308
New York, NY 10007

+1.212.374.6888 tel.
+1.212.374.6596 fax

February 19, 2016

VIA EMAIL

Jessica Huseman
jlh2228@columbia.edu

RE: #F11,402

Instructional Technology info.

Dear Ms. Huseman:

This letter is in final response to the Freedom of Information Law (FOIL) request referenced above. Records that respond to your request are attached. Consequently, the FOIL Unit's response to this request is concluded, and it will be marked "closed" in the Unit's database.

Any person denied access to a record may appeal the decision in writing within thirty days. Please state a specific ground for appeal and include copies of the initial request and the denial. Appeals should be sent to: Courtenaye Jackson-Chase, General Counsel, c/o Office of Legal Services, New York City Department of Education, 52 Chambers Street – Room 308, NY, NY 10007, FOIL@schools.nyc.gov.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

EXHIBIT E



**Department of
Education**

Garnett Farina, Chancellor

Charity Guerra
Acting General Counsel

Joseph A. Baranello
*Central Records Access
Officer & Agency Attorney*

Office of Legal Services
NYC Dept. of Education
52 Chambers Street
Room 308
New York, NY 10007

+1.212.374.6888 tel.
+1.212.374.5596 fax

March 25, 2016

VIA EMAIL

Jessica Lauren Huseman
jlh2228@columbia.edu

RE: #F11,472

Employee Data

Dear Ms. Huseman:

This letter is in partial response to the Freedom of Information Law (FOIL) request referenced above. Records that respond to request item 4 are attached.

With respect to the balance of your request, pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a final response to all request items is anticipated by May 13, 2016.

Any person denied access to a record may appeal the decision in writing within thirty days. Please state a specific ground for appeal and include copies of the initial request and the denial. Appeals should be sent to: Charity Guerra, Acting General Counsel, c/o Office of Legal Services, New York City Department of Education, 52 Chambers Street – Room 308, NY, NY 10007, FOIL@schools.nyc.gov.

Sincerely,

Joseph A. Baranello
FOIL@schools.nyc.gov

JAB/ma

Index No. 151019/2016
Justice Cynthia Kern

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of

JESSICA HUSEMAN,

Petitioner,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules.

**AFFIRMATION OF JOSEPH BARANELLO IN
SUPPORT OF RESPONDENT'S VERIFIED
ANSWER**

ZACHARY W. CARTER

*Corporation Counsel of the City of New York
Attorney for Respondents*

*100 Church Street
New York, N.Y. 10007*

*Of Counsel: Joshua C. Wertheimer
Tel: (212) 356-0877
Matter #. 2016-004045 GL*

Due and timely service is hereby admitted.

New York, N.Y., 2015....

....., Esq.

Attorney for