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February 26, 2026

Via Electronic Mail

The General Counsel
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, N.Y. 10007
FOIL@schools.nyc.gov

Re: Appeal of Constructive Denial of FOIL Request #F23,024

Dear Ms. Vladeck:

I represent Defending Education, a national grassroots organization dedicated to securing a high-quality, value-neutral education for every American student. Pursuant to New York Public Officers Law §89(4), I write to appeal the constructive denial of Freedom of Information Law Request #F23,024 submitted on behalf of my client by Nicole Neily on January 16, 2024.

Ms. Neily's request sought "emails between the dates of September 1, 2023 and January 16, 2024" that contained the terms "migrant education," "migrant student(s)," "immigrant student(s)," "refugees," or "English as a New Language" and were "in the possession of" the following nine employees of New York City Public Schools:

- David C. Banks, Chancellor;
- Daniel Weisberg, First Deputy Chancellor;
- Kenita D. Lloyd, Deputy Chancellor of Family and Community Engagement & External Affairs;
- Carolyn V. Quintana, Deputy Chancellor of Teaching and Learning;
- Kara Ahmed, Ed.D., Deputy Chancellor of Early Childhood Education;
- Emma Vadehra, Chief Operating Officer;
- Danika Rux, Ed.D, Deputy Chancellor of School Leadership;
- Melissa Aviles-Ramos, Chief of Staff; and
- Mark Rampersant, Chief of Safety and Prevention Partnerships.

Ex. A at 1.

Despite the limited scope of this request, the Department has produced partial responses for only two of nine custodians and has invoked ten extensions in the 772 days since it was submitted. After acknowledging Ms. Neily's request on January 23, 2024, the Department invoked a 90-day extension on February 20, 2024; a 94-day extension on May 20, 2024; a 96-day extension on August 22, 2024; an 85-day extension on November 26, 2024; a 71-day extension on February 19, 2025; a 57-day extension on May 1, 2025; an 83-day extension on June 27, 2025; a 39-day extension on September 18, 2025; a 92-day extension on October 27, 2025; and, most recently, an 83-day extension on January 27, 2026. *See* Exs. B-K.

Although New York law allows extensions for FOIL responses, it requires that any extension be "reasonable under the circumstances of the request." N.Y. Pub. Off. L. §89(3)(a). Here, the cumulative delay of more than two years extends well beyond what New York courts have found to be reasonable. *Cf. Cuomo v. James*, 235 A.D.3d 578, 580 (1st Dep't 2025) (seven months); *Save Monroe Ave., Inc. v. New York State Dep't of Transp.*, 197 A.D.3d 808, 810 (3d Dep't 2021) (four months). Moreover, the partial productions that accompanied the Department's May 2025 and October 2025 extensions do not negate the constructive denial of the documents that remain unreleased. *See Barry v. O'Neill*, 185 A.D.3d 503, 505 (1st Dep't 2020).

Accordingly, Defending Education respectfully requests that your office direct the Department to produce all outstanding documents that are responsive to Ms. Neily's request within twenty days of the resolution of this appeal.

Sincerely,

/s/ J. Michael Connolly
CONSOVOY MCCARTHY PLLC
mike@consovoymccarthy.com

EXHIBIT A

Liz Vladeck
General Counsel

January 23, 2024

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

On January 16, 2024, the Office of Legal Services of the NYC Department of Education (DOE) received your Freedom of Information Law (FOIL) request, dated January 16, 2024, and assigned it a FOIL reference number of **F23,024**. Please include this reference number on all subsequent correspondence.

In your request, you ask for:

Emails between the dates of September 1, 2023 and January 16, 2024 that contain the terms:

- *Migrant education*
- *Migrant student(s)*
- *Immigrant student(s)*
- *Refugee(s)*
- *English as a New Language*

In the possession of the following New York City Public Schools employees:

- *David C. Banks, Chancellor*
- *Daniel Weisberg, First Deputy Chancellor*
- *Kenita D. Lloyd, Deputy Chancellor of Family and Community Engagement + External Affairs*
- *Carolyn V. Quintana, Deputy Chancellor of Teaching and Learning*
- *Kara Ahmed, Ed.D., Deputy Chancellor of Early Childhood Education*
- *Emma Vadehra, Chief Operating Officer*
- *Danika Rux, Ed.D, Deputy Chancellor of School Leadership*
- *Melissa Aviles-Ramos, Chief of Staff*
- *Mark Rampersant, Chief of Safety and Prevention Partnerships*

A search for records will be conducted. We anticipate providing you with a response by **February 20, 2024**.

If responsive records are located and identified for release, you will be notified of the cost of reproduction. At that time, please make your check or money order payable to the New York City Department of Education and include the FOIL reference number on the instrument of payment. Please be advised that Public Officers Law § 87(1)(b)(iii) permits the DOE to charge a fee of 25¢ per photocopy not more than nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with Public Officers Law § 87(1)(c).

Sincerely,

Thereza Osias /s/

Thereza Osias
Deputy Records Access Officer
FOIL@schools.nyc.gov

TO/nh

EXHIBIT B

Liz Vladeck
General Counsel

February 20, 2024

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter concerns the Freedom of Information Law (FOIL) request referenced above. Please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond to your request. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

With respect to factor 2 and 3, additional time is needed to locate and retrieve records utilizing specialized document review software. With respect to factor 4, responsive records will be reviewed pursuant to Public Officers Law § 87(2) to determine if any record or portion of records are exempt from disclosure. With respect to factor 5, at the time you made your request, many other FOIL requests were already pending, many of which involved multiple factors or all of the factors cited above.

Given the efforts being made to process your request, a response is expected by **May 20, 2024**.

Sincerely,

Thereza Osias /s/

Thereza Osias
Deputy Records Access Officer
FOIL@schools.nyc.gov

TO/nh

EXHIBIT C

Liz Vladeck
General Counsel

May 20, 2024

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter concerns the Freedom of Information Law (FOIL) request referenced above. Please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond to your request. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

You were previously advised that factors 2, 3, 4, and 5 were applicable to your request.

Pursuant to Section VI.C of CR D-110, subsection (d), please be advised that additional time is required to respond to your request. Factors 2, 3, 4, and 5 continue to be applicable, to an extent which was not foreseen when you were provided with today's date. Review of records presents greater complexity than is typical and necessitates the use of document review software. Records are under review to determine rights of access. Additionally, our unit continues to process requests that were received prior to your request.

Given the efforts being made to respond to your request, a response is expected by August 22, 2024.

Sincerely,

Thereza Osias /s/

Thereza Osias
Deputy Records Access Officer
FOIL@schools.nyc.gov

EXHIBIT D

Liz Vladeck
General Counsel

August 22, 2024

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter concerns the Freedom of Information Law (FOIL) request referenced above. Please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond to your request. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

You were previously advised that factors 2, 3, 4, and 5 were applicable to your request.

Pursuant to Section VI.C of CR D-110, subsection (d), please be advised that additional time is required to respond to your request. Factors 2, 3, 4, and 5 continue to be applicable. Review of records presents greater complexity than is typical and necessitates the use of document review software. Records are under review to determine rights of access. Additionally, our unit continues to process requests that were received prior to your request.

Given the efforts being made to respond to your request, a response is expected by November 26, 2024.

Sincerely,

Thereza Osias /s/

Thereza Osias
Deputy Records Access Officer
FOIL@schools.nyc.gov

EXHIBIT E

Liz Vladeck
General Counsel

November 26, 2024

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter concerns the Freedom of Information Law (FOIL) request referenced above. Please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond to your request. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

You were previously advised that factors 2, 3, 4, and 5 were applicable to your request.

Pursuant to Section VI.C of CR D-110, subsection (d), please be advised that additional time is required to respond to your request. Factors 2, 3, 4, and 5 continue to be applicable. Review of records presents greater complexity than is typical and necessitates the use of document review software. Records are under review to determine rights of access. Additionally, our unit continues to process requests that were received prior to your request.

Given the efforts being made to respond to your request, a response is expected by February 19, 2025.

Sincerely,

Thereza Osias /s/

Thereza Osias
Deputy Records Access Officer
FOIL@schools.nyc.gov

EXHIBIT F

Liz Vladeck
General Counsel

February 19, 2025

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter concerns the Freedom of Information Law (FOIL) request referenced above. Please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond to your request. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

You were previously advised that factors 2, 3, 4, and 5 were applicable to your request.

Pursuant to Section VI.C of CR D-110, subsection (d), please be advised that additional time is required to respond to your request. Factors 2, 3, and 4 continue to be applicable. Records are under review to determine rights of access. Review of records presents greater complexity than is typical and necessitates the use of document review software.

Given the efforts being made to respond to your request, a response is expected by April 25, 2025.

Sincerely,

Thereza Osias /s/

Thereza Osias
Deputy Records Access Officer
FOIL@schools.nyc.gov

EXHIBIT G

Liz Vladeck
General Counsel

May 1, 2025

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter is in partial response to the above-referenced Freedom of Information Law (FOIL) request.

Some records responsive to your request have been located and are attached.

With respect to the remainder of your request, please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond to your request. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

You were previously advised that factors 2, 3, and 4 were applicable to your request.

Pursuant to Section VI.C of CR D-110, subsection (d), please be advised that additional time is required to respond to your request. Factors 3 through 5 continue to be applicable. Records for this atypical request, which requires the use of document review software, continue to be reviewed on multiple levels to determine whether any portions are exempt from disclosure. In addition, the agency processes requests that predates this request as well as a high volume of requests that were submitted at the same time as this request.

Given the efforts being made to respond to your request, further response is expected by June 27, 2025.

N.Neily

Page 2
May 1, 2025

Any person denied access to a record may appeal the decision in writing within thirty days. Please note, however, that this is not a final response to your request. Your time to file an administrative appeal will not begin until a final determination has been issued. At that time, you will be given the contact information of this agency's Records Access Appeals Officer, to whom you may direct an administrative appeal if you wish to submit one.

Sincerely,

Thereza Osias /s/

Thereza Osias
Deputy Records Access Officer
FOIL@schools.nyc.gov

EXHIBIT H

Liz Vladeck
General Counsel

June 27, 2025

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. With respect to the remainder of your request, please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

Factors 3 through 5 continue to be applicable. Records for this atypical request, which requires the use of document review software, continue to be reviewed on multiple levels to determine whether any portions are exempt from disclosure. In addition, the agency processes requests that predates this request as well as a high volume of requests that were submitted at the same time as this request.

Accordingly, a response is expected by **September 18, 2025**.

Sincerely,

Kristen Woychowski /s/

Kristen Woychowski
Deputy Records Access Officer
FOIL@schools.nyc.gov

KW/nh

EXHIBIT I

Liz Vladeck
General Counsel

September 18, 2025

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. With respect to the remainder of your request, please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

Factors 3 and 4 are applicable. Records for this atypical request, which requires the use of document review software, continue to be reviewed on multiple levels to determine whether any portions are exempt from disclosure.

Accordingly, a response is expected by **October 27, 2025**.

Sincerely,

Kristen Woychowski /s/

Kristen Woychowski
Deputy Records Access Officer
FOIL@schools.nyc.gov

KW/nh

EXHIBIT J

Liz Vladeck
General Counsel

October 27, 2025

VIA EMAIL

Nicole Neily
President
Parents Defending Education
[REDACTED]

RE: # F23,024

Dear Ms. Neily:

This letter is in partial response to the above-referenced Freedom of Information Law (FOIL) request.

Some records responsive to your request have been located and are attached.

With respect to the remainder of your request, please be advised that pursuant to Section VI.C of DOE Chancellor's Regulation D-110 (CR D-110), additional time is needed to respond to your request. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, "[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency."

You were previously advised that factors 2, 3, and 4 were applicable to your request.

Pursuant to Section VI.C of CR D-110, subsection (d), please be advised that additional time is required to respond to your request. Factors 2 through 4 continue to be applicable. Records for this atypical request, which requires the use of document review software, continue to be reviewed on multiple levels to determine whether any portions are exempt from disclosure.

Given the efforts being made to respond to your request, further response is expected by January 27, 2026.

Any person denied access to a record may appeal the decision in writing within thirty days. Please note, however, that this is not a final response to your request. Your time to file an administrative appeal will not begin until a final determination has been issued. At that time, you will be given the contact information of this agency's Records Access Appeals Officer, to whom you may direct an administrative appeal if you wish to submit one.

Sincerely,

Kristen Woychowski /s/

Kristen Woychowski
Deputy Records Access Officer
FOIL@schools.nyc.gov

EXHIBIT K



Liz Vladeck
General Counsel

January 27, 2026

VIA EMAIL

Nicole Neily
President
Parents Defending Education

RE: # F23,024

Dear Ms. Neily:

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. With respect to the remainder of your request, please be advised that pursuant to Section VI.C of DOE Chancellor’s Regulation D-110 (CR D-110), additional time is needed to respond. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, “[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, and [5] the number of requests received by the agency.”

Factors 2 through 4 continue to be applicable. Records for this atypical request, which requires the use of document review software, continue to be reviewed on multiple levels to determine whether any portions are exempt from disclosure.

Accordingly, a response is expected by **April 23, 2026**.

Sincerely,

Kristen Woychowski /s/

Kristen Woychowski
Deputy Records Access Officer
FOIL@schools.nyc.gov

KW/nh