

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

**NATIONAL EDUCATION ASSOCIATION
OF RHODE ISLAND, and NATIONAL
EDUCATION ASSOCIATION – SOUTH
KINGSTOWN,**

Plaintiffs,

vs.

**SOUTH KINGSTOWN SCHOOL
COMMITTEE, by and through its
members, Christie Fish, Kate McMahon
Macinanti, Melissa Boyd, Michelle
Brousseau and Paula Whitford, SOUTH
KINGSTOWN SCHOOL DEPARTMENT,
by and through its Acting Interim
Superintendent Ginamarie Masiello,
NICOLE SOLAS, and JOHN DOE
HARTMAN,**

Defendants.

C.A. No. PC 21- 05116

VERIFIED COMPLAINT

1. This is an action for declaratory judgment and other relief concerning the appropriate treatment of various records requests pursuant to the Access to Public Records Act (“APRA”), G.L. 1956 § 38-2-1 *et seq.* In short, this action seeks to: (a) prohibit the disclosure of non-public records; and/or (b) for those requests that call for personally identifiable and other personnel-related information about public school teachers, that no records be disclosed until the Court employs a balancing test that properly assesses the public interest in the records at issue measured against the teachers’ individual privacy rights.

JURISDICTION

2. The jurisdiction of this Court is invoked, in part, pursuant to the Uniform Declaratory Judgments Act (“UDJA”), G.L. 1956 § 9-30-1 *et seq.*, APRA, § 38-2-9, G.L. 1956 §§ 8-2-13 and 8-2-14.

PARTIES

3. Plaintiff, National Education Association of Rhode Island (“NEARI”) is a labor organization certified by the Rhode Island State Labor Relations Board to represent certified teachers in the State of Rhode Island for purposes of collective bargaining.

4. Plaintiff, National Education Association – South Kingstown (“NEASK”) is the local bargaining unit for certified teachers employed by the South Kingstown School Department. To the extent the local and the statewide organization are referred to collectively, they will be referred to as the “Union” or “NEA.”

5. Defendant South Kingstown School Committee (“School Committee”), is sued by and through its members, Christie Fish, Kate McMahon Macinanti, Melissa Boyd, Michelle Brousseau and Paula Whitford.

6. Defendant South Kingstown School Department (“School Department”) is sued by and through its Acting Interim Superintendent, Assistant Superintendent Ginamarie Masiello. The terms School Committee and School Department may be used interchangeably.

7. Defendant Nicole Solas (“Solas”) is an individual who has submitted approximately two hundred (200) separate requests for records from the School Department.

8. Defendant John Doe Hartman (“Hartman”) is an individual who has submitted approximately twenty (20) separate requests for records from the School Department.

9. Defendants Solas and Hartman are named and included only insofar as Plaintiffs are required to do so pursuant to G.L. 1956 § 9-30-11 which provides that “[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.”

STATEMENT OF FACTS

10. Since 1975, the NEA has been certified as the exclusive representative for collective bargaining on behalf of South Kingstown’s certified teachers.

11. Since 1975, NEARI has negotiated a series of collective bargaining agreements (“CBA”) with the School Department that set forth the terms and conditions of employment for NEA members.

12. The relationship between NEA and the Defendant, School Committee is also governed by state law, specifically, the Certified School Teachers’ Arbitration Act (“Michaelson Act”), G.L. 1956 § 28-9.3-1 et seq.

13. In or about April 2021, Defendant Solas, sent an e-mail to the Principal of a South Kingstown School with a list of questions and/or requests for records designed to gather information about, among other things, whether the school teaches critical race theory or otherwise includes it and other related concepts in its curriculum. Appendix A, *Solas E-Mail*.

14. The Principal recommended Solas file a request for public records pursuant to APRA concerning the information she was seeking. App. A.

15. By June 2, 2021, Solas filed about two hundred (200) APRA requests, many of which contain multiple requests within the request. Appendix B, *List of Pending APRA Requests*.

16. At one point, the School Committee considered whether it should file a lawsuit to obtain relief from the excessive number of requests by Solas.

17. Following the discussion of a possible challenge to Solas' APRA requests, Solas appeared on Fox News and on various websites, garnering national attention to her dispute with the School Committee concerning her requests, and her concerns regarding the critical race theory. Appendix C, *Internet Articles*.

18. The requests made by Solas call for a vast variety of records. App. B.

19. Following Solas' requests, the School Department received additional requests from other individuals and entities. App. B.

20. For example, there are a vast number of requests from another individual, Defendant John Doe Hartman. App. B.

21. From April 2021 to July 2021, the School Department received over three hundred (300) APRA requests. App. B.

22. The requests include, but are not limited to, requests for records that may relate to labor relations which do not constitute public records. For example, on May 16, 2021, Solas submitted Request No. 48 which calls for "digital copies pertaining to the AFL-CIO in the last four months." App. B, p. 1

23. The "AFL-CIO" is an acronym for the American Federation of Labor and Congress Industrial Organizations. It is a federation of unions that includes the NEA.

24. Solas also submitted Request No. 100 which calls for "digital copies of public documents relating to Patrick Crowley in the months of March, April, and May 2021." App. B, p. 1.

25. Patrick Crowley is a NEARI employee and Rhode Island AFL-CIO official.

26. The requests include, but are not limited to, requests for records that relate to teacher discipline and performance.

27. For example, Request No. 158 submitted by Defendant Hartman calls for "all complaints against Robin Wildman. App. B, p. 2.

28. Wildman is a retired teacher and former member of NEA.

29. Request No. 182 by Solas calls for “all disciplinary actions and relevant details taken against *any teacher* in the school district in the past three years. If actions or details are not public information, provide how many disciplinary actions are private *and against which teachers.*” App. B, p. 2 (emphasis added).

30. Request No. 202 by Solas calls for records related to a song performed by the South Kingstown High School choir and for records reflecting “what qualifications Ryan Muir [has] to talk about race and equality with choir students?” App. B, p. 2.

31. Ryan Muir is a teacher and member of NEA.

32. Request No. 241 submitted by Defendant Hartmann, requests records such as “CVs, contracts, job descriptions and all documents related to hiring of the first 50 teachers listed in the staff directory on the website of South Kingstown High School.” App. B, p. 3.

33. The requests include, but are not limited to, requests that call for teacher e-mails.

34. The so-called “teacher e-mail requests” are, for the most part, not broken down by type or category of e-mail and without regard to whether the e-mails are private or public or contain personally identifiable information.

35. For example, Request No. 164 calls for all e-mails between Linda Savastano (the former Superintendent) and Robin Wildman for a period of two years. App. B, p. 2.

36. Request No. 85 submitted by Solas calls for “digital copies of emails of Michael Alper in March 2021.” App. B, p. 1.

37. Michael Alper is a teacher and member of NEA.

38. Request No. 86 submitted by Solas calls for “digital copies of e-mails of Amber Lambert for the month of March.” App. B, p. 1.

39. Amber Lambert is a teacher and member of NEA.

40. The requests include requests for e-mails of various administrators who are not members of NEA.

41. For example, Request No. 47 by Solas calls for “digital copies of Linda Savastano’s emails in the last six months.” App. B, p. 1.

42. Request No. 59 by Solas calls for “exactly one hour’s worth of work to provide digital copies of Linda Savastano’s most recent emails.” App. B, p. 1.

43. For example, Request No. 297 by Hartman calls for “all Savastano emails from May 17, 2021, to the date this request is fulfilled.” App. B, p. 4.

44. Linda Savastano is the former Superintendent of South Kingstown who recently resigned amidst controversy at least partially involving Solas.

45. Based on the scope of the requests concerning Savastano's e-mails, upon information and belief, a response would call for communications between teachers who are NEA members and Savastano that are not public records or would otherwise not be subject to disclosure because disclosure would constitute a clearly unwarranted invasion of personal privacy.

46. On or about July 13, 2021, the Defendant School Committee responded to one of the recent APRA requests by releasing a total of about 6,500 pages of documents.

47. At this time, there remain many pending requests that are under consideration by the School Department as reflected by Appendix B.

COUNT I

Declaratory Judgment G.L. 1956 § 9-30-1

48. Plaintiffs hereby incorporate by reference Paragraphs 1 through 47 of the Verified Complaint as if fully set forth herein.

49. The Rhode Island APRA was first enacted in 1979.

50. Section 38-2-1 provides that the clear legislative purpose of APRA is *twofold* – (a) “to facilitate public access to public records,” *but also to* (b) “to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.” (emphasis added).

51. Accordingly, pursuant to § 32-2-2, not all records kept by public bodies are considered public records subject to disclosure pursuant to APRA.

52. For example, public records are only those that are “made or received pursuant to law or ordinance or in connection with the *transaction of official business* by any agency.” § 38-2-2(4) (emphasis added).

53. For example, although public bodies may keep many types of records, those that are kept incidental to other purposes which are not related to the transaction of official business are not public records.

54. For example, personal e-mails of NEA members that are unofficial private writings not related to the official business of the School Department do not become public records just because they are kept or received by a public body.

55. Although public policy typically weighs in favor of disclosure *when records are public*, these principals are not without legal limits. The APRA system is not an alternative to the civil discovery process and is not to be used for abusive purposes or a fishing expedition – it

was not intended “to empower the press and the public with *carte blanche* to demand all records held by public agencies.” Direct Action for Rights and Equality v. Gannon, 713 A.2d 218, 222 (R.I. 1998).

56. APRA excludes from public disclosure certain categories of documents.

57. For example, “[a]ny identifiable evaluations of public-school employees made pursuant to state or federal law or regulation” are not public records subject to disclosure under APRA. § 38-2-2(Z).

58. In addition, “Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining,” are not public records. § 38-2-2(H).

59. Furthermore, communications that constitute concerted activity pursuant to the State Labor Relations Act (G.L. 1956 § 28-7-1 et seq.) and the Michaelson Act are not public records, including communications among bargaining unit members concerning labor relations matters or communications between bargaining unit members and union officials concerning labor relations matters.

60. In addition, “[p]ersonnel and other personal identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of privacy pursuant to 5 U.S.C. § 552 et seq.,” are not public records subject to disclosure under APRA. § 38-2-2(4)(A)(I)(b) (emphasis added).

61. When a record contains personal identifiable information that may constitute a clearly unwarranted invasion of privacy, a balancing test must be conducted that considers the public interest in the record at issue, weighed against the privacy interests implicated by disclosure of the report. See, e.g., Department of the Air Force v. Rose, 425 U.S. 352, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11, 21 (1976); Lyssikatos v. Narragansett Police Department, Public Record Case No. 21-12 (R.I. Department of the Attorney General, April 15, 2021); Lyssikatos v. Goncalves, PC 2017-3678 (Long, J., 3/18/19).

62. The School Department is not required to produce thousands of documents, or to produce thousands of documents in redacted form, absent this Court conducting a balancing test considering the requests that implicate § 38-2-2(4)(A)(I)(b).

63. Redaction of records is not always sufficient to safeguard privacy concerns.

64. Upon information and belief, the School Committee is in the process of gathering and reviewing documents to respond to the requests pending in Appendix B.

65. It is anticipated that teacher records will be produced that will be of a personal nature and will contain the identities of the teachers engaged in the personal communication as well as other communications that relate to personnel issues, disciplinary issues, performance issues, medical issues and issues not related to the official business of the School Department.

66. It is further anticipated that teacher records will be produced that may or will contain discussions about union-related activities which are not public records subject to disclosure.

67. It is further anticipated that teacher e-mails will be produced that may or will contain discussions about critical race theory curriculum or other issues of “interest” to the requestors that will contain individual teachers’ names and personally identifiable information.

70. Given the circumstances of the requests, it is likely that any teachers who are identifiable and have engaged in discussions about things like critical race theory will then be the subject of teacher harassment by national conservative groups opposed to critical race theory.

WHEREFORE, the Plaintiffs respectfully pray that this Honorable Court:

A. For certain categories of documents which are not public records under APRA, enter declaratory judgment that the requested records are not subject to disclosure. This category should include, but may not be limited to, personal e-mails, labor relations materials, personnel records, disciplinary records, evaluations and other records that are incidental and do not concern the official business of the School Department.

B. For certain categories of documents which are potentially public records under APRA, examine the records *in camera* pursuant to § 38-2-9(b) and conduct the balancing test contemplated in § 38-2-2(A)(I)(b) to determine whether the disclosure of such records would constitute a clearly unwarranted invasion of privacy and thus, shall not be disclosed.

C. In the alternative, should certain records be subject to disclosure, to order redaction of personally identifiable information of teachers and/or other information which may lead to the identity of such teachers contained in the documents.

D. Grant the Plaintiffs such other relief as this court deems just and proper.

COUNT II

Injunctive Relief

71. Plaintiffs hereby incorporate by reference Paragraphs 1 through 70 of the Verified Complaint as if fully set forth herein.

WHEREFORE, the Plaintiffs respectfully pray that this Honorable Court:

A. Temporarily, preliminarily and permanently restrain the School Department Defendants from providing responses to any of the pending requests referenced in Appendix B and this Verified Complaint until a determination can be made by this Court that the School Department is required to produce such documents.

B. Temporarily, preliminarily and permanently restrain the School Department Defendants from providing responses to any of the pending requests referenced in Appendix B and this Verified Complaint until this Court conducts an appropriate *in camera* review pursuant to § 38-2-9(b).

C. Grant the Plaintiffs such other relief as this court deems just and proper.

Plaintiffs,
NEARI
NEA-SK
By their Attorney,

/s/ Carly Beauvais Iafrate

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VERIFICATION

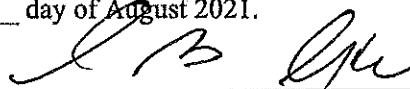
I, Jennifer Azevedo, Esq., Deputy Executive Director of the National Education Association Rhode Island, under oath depose and say that I am familiar with the allegations of the Complaint and the factual matters contained therein and to the best of my knowledge and belief same are true.



Jennifer Azevedo

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Subscribed and sworn to before me this ^{2nd} day of August 2021.



Notary Public
my comm exp 5/18/24