

**STATE OF VERMONT
SUPERIOR COURT
CIVIL DIVISION**

Lola Duffort,
Plaintiff

v.

Rutland Unit
Docket No. _____

**Vermont Agency of Education and Vermont
State Board of Education,**
Defendants

COMPLAINT

Introduction

In this action, Lola Duffort, a journalist with the Rutland Herald, primarily seeks a court order permitting her to inspect or copy data records of bullying, hazing, and harassment incidents in each of Vermont’s public schools. Ms. Duffort has also requested that the sought information be produced as a compilation, if that would be the most efficient and cost-effective method of production. This information is sought because the public has a vital interest in knowing how well the Vermont Agency of Education (hereinafter “AOE”), the Vermont State Board of Education (hereinafter “SBE”), and the schools they oversee are meeting the safety and educational needs of Vermont’s children.

Annually, defendant AOE acquires electronic records containing data regarding bullying, hazing, and harassment complaints and responses to those complaints from each public school in Vermont. These electronic records sent by schools, districts, and/or supervisory unions are imported into the AOE’s electronic databases, producing AOE records containing school-level information. Annually, defendant SBE is required to report, “on a school by school basis,” the number of complaints of bullying, hazing, and harassment, and responses thereto, in Vermont’s public schools. 16 V.S.A. § 164(17).

When a “public agency” acquires or produces written or recorded information, regardless

of physical form or characteristics, in the course of agency business, those records are publicly accessible, 1 V.S.A. § 317(b), unless they are specifically exempt by law. The defendants have unlawfully refused to produce records responsive to Ms. Duffort's requests, even though the records are plainly subject to disclosure under Vermont's Public Records Act. Therefore, Ms. Duffort asks the Court to demand that the defendants produce these records.

Jurisdiction and Venue

1. This Court has jurisdiction to hear public records enforcement actions in accordance with 1 V.S.A. § 319(a).
2. This Court has personal jurisdiction over the defendants by virtue of the defendants being subdivisions of the government of the State of Vermont.
3. Venue is proper in this Unit because the public records act expressly states that a person denied access to public records may apply to enjoin the public agency from withholding agency records in the Civil Division of the Superior Court in the county where the requestor resides or has his or her place of business. *Id.*

Parties

4. Plaintiff Lola Duffort is a resident of Rutland County, Vermont.
5. Ms. Duffort is a journalist and is employed as a full-time staff writer by the Rutland Herald.
6. Ms. Duffort's place of business is in Rutland County, Vermont.
7. Defendant AOE is a "public agency" as that term is defined by Vermont's Public Records Act. 1 V.S.A. § 317(a)(2).
8. Defendant AOE is directed by the Secretary of Education, Rebecca Holcombe. 3 V.S.A. § 2701.
9. At all times relevant to this suit, Rebecca Holcombe was the Secretary of Education.
10. The Secretary of Education is a member of the SBE. 16 V.S.A. § 161.

11. Defendant AOE's staff acts as the staff for the SBE.
12. Defendant AOE executes policies adopted by the SBE and is required to "[i]nform citizens of the condition of . . . the public education system," 16 V.S.A. § 212(8), "[e]stablish requirements for information to be submitted by school districts," *id.* § 212(9), "[e]stablish an information clearinghouse and accessible database to help districts share information . . . designed to create and sustain a safe learning environment," *id.* § 212(19), among many other tasks, *see generally id.* § 212.
13. Defendant SBE is a "public agency" as that term is defined by Vermont's Public Records Act. 1 V.S.A. § 317(a)(2); 16 V.S.A. § 161.
14. At all times relevant to this suit, Stephan Morse was the chair of the SBE.

Facts

Ms. Duffort Requested Data that Defendant AOE Collects and Possesses

15. Defendant AOE annually collects data regarding bullying, hazing, and harassment complaints that occur in Vermont's public schools from each school, school district, or supervisory union.
16. Defendant AOE annually collects data regarding the responses to bullying, hazing, and harassment complaints that occur in Vermont's public schools from each school, school district, or supervisory union.
17. According to Defendant AOE's Model Procedures on the Prevention of Harassment, Hazing and Bullying of Students and the Combined Incident Reporting Software Instructions, each Vermont public school, school district, or supervisory union must annually report the number of bullying, hazing, and harassment complaints it receives to Defendant AOE. *See* 16 V.S.A. § 570(b); **Exhibit A, AOE's Model Procedures on the Prevention of Harassment, Hazing and Bullying of Students, VIII. D; Exhibit B, AOE's Combined Incident Reporting Software Instructions, Vermont AOE, 2016.**

18. According to Defendant AOE's Model Procedures on the Prevention of Harassment, Hazing and Bullying of Students and the CIRS Instructions, each Vermont public school, school district, or supervisory union must annually report its responses to complaints of bullying, hazing, and harassment to Defendant AOE. *See* 16 V.S.A. § 570(b); **Exhibit A; Exhibit B.**
19. According to Defendant AOE's document on Bullying Incidents Data Gathering, Vermont's public "school districts are required to collect data on the number of reported incidents of bullying and the number of incidents that have been verified and to make such data available to" the Secretary of Education. *See* **Exhibit C, Vermont AOE (formerly "Vermont Department of Education") document on Bullying Incidents Data Gathering.**
20. Defendant AOE provides Vermont's schools with access to the Combined Incident Reporting Software (hereinafter "CIRS"). *See* **Exhibit B.**
21. Defendant AOE operates and manages the CIRS.
22. The CIRS is an electronic data collection tool that enables Defendant AOE to electronically collect and record data sent by schools, school districts, or supervisory unions.
23. The CIRS enables Vermont public schools, school districts, or supervisory unions to electronically record, collect, and report data to Defendant AOE.
24. Annually, Defendant AOE collects the reported number of bullying, hazing, and harassment complaints from each of Vermont's public schools, school districts, or supervisory unions. *See* **Exhibit B.**
25. Defendant AOE creates data reports from the data it collects by inputting a particularized request to the CIRS.
26. The CIRS is capable of searching, organizing, and producing a report from data contained in the Defendant AOE's electronic databases.
27. The CIRS Reporting Instructions define the terms "bullying," "hazing," and "harassment."

See Exhibit B.

28. Defendant AOE uses the data to assess individual school compliance with federal and state school safety standards. *See* 16 V.S.A. § 165(a)(8).
29. Vermont law states that Defendant SBE, of which the Secretary of Education is a member, shall annually report “on a school by school basis” the “number and types of complaints of harassment, hazing, or bullying . . . and responses to the complaints.” *See* 16 V.S.A. § 164(17).
30. Vermont law states that the Secretary of Education “shall use the information in the report to determine whether students” are provided substantially equal educational opportunities. *See* 16 V.S.A. § 164(17).
31. As a member of the SBE, the Secretary would acquire the report discussed in ¶ 29, were it created.
32. The report discussed in ¶ 29 has not been completed for the school years 2012-2013, 2013-2014, or 2014-2015. ***See Exhibit D, Email exchange between Lola Duffort and Greg Glennon, March 25 and April 1, 2016.***
33. As of January 2016, Defendant SBE had never received funding from the state budget for independent staff.

The Defendants Denied Ms. Duffort’s Record Requests for Bullying, Hazing, and Harassment Data, and Refused to Help Her Understand the Relevant Information in Their Possession.

A. Ms. Duffort’s First Request to Defendant AOE

34. Bullying, hazing, and harassment in schools are current topics of national public discussion.
35. Ms. Duffort sought and seeks information on bullying, hazing, and harassment in order to inform the general public of the number of complaints in each of Vermont’s public schools and the schools’ responses to those complaints, if any.

36. Ms. Duffort believed and believes information regarding the number of bullying, hazing and harassment complaints, and responses to those complaints, is vital to helping the public understand whether Vermont's schools are meeting students educational and safety needs.
37. On January 26, 2016, Ms. Duffort contacted AOE employee Richard Boltax by phone to inquire about the bullying, harassment, and hazing data collected by the AOE. **See Exhibit E, Email Exchange Between Lola Duffort and Stephanie Brackin, January 26, 2016.**
38. Mr. Boltax told Ms. Duffort that he needed approval from the AOE's Communications Manager before he could speak to her.
39. On January 26, 2016, Ms. Duffort contacted Stephanie Brackin, AOE's Communications Manager, asking whether Mr. Boltax could speak with Ms. Duffort regarding the data. **See Exhibit E.**
40. On January 27, 2016, Ms. Brackin responded to Ms. Duffort, but did not provide approval to speak with Mr. Boltax. **See Exhibit F, Email Exchange Between Lola Duffort and Stephanie Brackin, January 27, 2016.**
41. Ms. Brackin's response did not provide information or records regarding the bullying, harassment, and hazing data collected by the AOE.
42. On January 27, 2016, in response, Ms. Duffort stated that she was looking for the number of complaints of bullying and verified complaints of bullying from Vermont's schools. **See Exhibit F.**
43. Ms. Duffort used the shorthand "verified complaints" based upon AOE documents stating that Vermont's "school districts are required to collect data on the number of reported incidents of bullying and the number of incidents that have been *verified*." **See Exhibit C (emphasis added).**
44. Ms. Duffort asked, "How can I get this data?"
45. Ms. Brackin responded that she believed she had found the correct information and was working with the AOE's data unit to respond to Ms. Duffort's request. **See Exhibit F.**

46. Ms. Duffort asked Ms. Brackin whether the AOE had the requested data per school or per district. **See Exhibit F.**
47. Ms. Duffort asked Ms. Brackin about which years the AOE possessed such data.
48. Later that day, Ms. Brackin wrote to Ms. Duffort, stating that the AOE could only provide state-level data because “much of the data would be suppressed” from individual schools or districts. **See Exhibit F.**
49. Defendant AOE believes it must not disclose any number of students for any particular data point if the whole number of students in the data point is less than eleven.
50. Individual schools in Vermont have had more than ten complaints of bullying in a single year in the years 2012-2013, 2013-2014, and 2014-2015.
51. Individual schools in Vermont have had more than ten complaints of hazing in a single year in the years 2012-2013, 2013-2014, and 2014-2015.
52. Individual schools in Vermont have had more than ten complaints of harassment in a single year in the years 2012-2013, 2013-2014, and 2014-2015.
53. Ms. Brackin responded stating that she was concerned about the workload of the AOE’s data employees.
54. Ms. Duffort, in response, requested the number of bullying, harassment, and hazing complaints and verified complaints by district for the last five years. **See Exhibit F.**
55. Ms. Duffort did not receive a response to this request.

B. Ms. Duffort’s Second Request to Defendant AOE

56. On February 3, 2016, Ms. Duffort emailed Ms. Brackin a request for AOE data collected from Vermont’s public school districts “regarding the number of reported bullying incidents and the number of verified bullying incidents” for 2012-2013, 2013-2014, and 2014-2015. **See Exhibit G, Email Exchange Between Lola Duffort, Stephanie Brackin, and Judy Cutler, February 3-17, 2016.**

57. On February 8, 2016, Judy Cutler, the AOE's Public Records Officer, denied Ms. Duffort's public records request, claiming that the AOE was "unable to provide any responsive documents" to her request. **See Exhibit G.**
58. Ms. Cutler's February 8th email stated that no such records existed.
59. Ms. Duffort responded by asking how it was possible that the AOE could have the number of bullying complaints and incidents for the entire state without having the number of incidents per school district. **See Exhibit G.**
60. On February 9, 2016, Ms. Cutler responded, stating that the AOE collects the district level data through a "data collection tool." **See Exhibit G.**
61. Ms. Cutler stated that the AOE could "recreate" a district level data report.
62. Ms. Cutler stated that any district level data would be suppressed because of confidentiality concerns.
63. On February 11, 2016, in response to additional questions from Ms. Duffort, Ms. Cutler stated that the AOE did not "maintain a report" responsive to Ms. Duffort's request. **See Exhibit G.**
64. Ms. Cutler refused to extract and compile the requested data from the data available in the AOE's databases.
65. On February 16, 2016, Ms. Duffort appealed the denial of her public records request to the Secretary of Education. **See Exhibit H, Email from Lola Duffort to Rebecca Holcombe, Secretary of Education, February 16, 2016, and Email from Greg Glennon to Lola Duffort, February 22, 2016.**
66. Ms. Duffort attached copies of her correspondence with Stephanie Brackin and Judy Cutler with her appeal.
67. On February 22, 2016, the Secretary of Education, through the AOE's General Counsel, Greg Glennon, denied Ms. Duffort's appeal. **See Exhibit H.**
68. The Secretary's denial stated that "[w]e do collect raw state level data (for bullying

incidents) but we do not subsequently create a district by district report, as you have requested.”

69. The Secretary refused to extract and compile the requested data as a response to Ms. Duffort’s request.
70. The Secretary did not inform Ms. Duffort of her right to judicial review of the Secretary’s decision.

C. Ms. Duffort’s Third Request to Defendant AOE

71. On March 4, 2016, Ms. Duffort sent a formal public records request to the AOE for each data file sent annually “by each reporting school district or supervisory union regarding that district or supervisory union’s bullying incident data for the 2012-2013, 2013-2014, 2014-2015 school years.” ***See Exhibit I, Email from Lola Duffort to Greg Glennon and Judy Cutler, March 4, 2016, and Email from Greg Glennon to Lola Duffort and Judy Cutler, March 4, 2016.***
72. On March 4, 2016, the AOE’s General Counsel, Greg Glennon, denied Ms. Duffort’s request. ***See Exhibit I.***
73. Mr. Glennon stated that the AOE “[did] not maintain any school district or supervisory union level reports due to small cell sizes.”
74. Mr. Glennon stated that the failure to maintain reports of bullying incident data was meant to prevent a breach of personally identifiable information.
75. In the response, Mr. Glennon did not provide the legal basis for the denial.
76. In the response, Mr. Glennon did not provide information about how Ms. Duffort could appeal the denial.
77. On March 7, 2016, Ms. Duffort sent a letter to the Secretary of Education appealing Mr. Glennon’s denial of her public records request. ***See Exhibit J, Letter from Lola Duffort to Rebecca Holcombe, Secretary of Education, March 7, 2016.***

78. In the appeal letter, Ms. Duffort included a copy of the email exchange regarding her request.
79. In the appeal letter, Ms. Duffort expressed confusion about how the AOE could not have the data she requested when the AOE's website says that the data is required to be collected by Vermont's public school districts and reported to the AOE. **See Exhibit K, AOE webpage on safe schools reports and publications.**
80. Ms. Duffort's confusion was exacerbated by the AOE's CIRS Reporting Instructions to schools stating that "[a]ll hazing, harassment and bullying complaints" were "incidents which must be reported."
81. On March 14, 2016, the Secretary of Education, through AOE General Counsel Greg Glennon, denied Ms. Duffort's appeal. **See Exhibit L, Email from Greg Glennon to Lola Duffort, March 14, 2016.**
82. The Secretary's denial totaled two lines of text.
83. The Secretary's denial stated, "We do not possess these records. You may want to contact the local school district(s) for this information."
84. The Secretary did not respond to Ms. Duffort's questions regarding the statements on the AOE website.
85. The Secretary refused to extract and compile the requested data to respond to Ms. Duffort's request.
86. The Secretary did not inform Ms. Duffort of her right to judicial review of the Secretary's decision.

D. Ms. Duffort Seeks to Consult with Defendant AOE to Clarify Her Request

87. On March 15, 2016, Ms. Duffort, through her counsel, contacted Mr. Glennon by phone to clarify the AOE's denial of her public records request. **See Exhibit M, Letter from Jay Diaz to Greg Glennon, March 18, 2016.**

88. Mr. Glennon denied Ms. Duffort the opportunity to speak with additional AOE staff in order to clarify her request.
89. Mr. Glennon asked that all other questions be sent in writing.
90. On March 18, 2016, Ms. Duffort, through her counsel, sent a letter to Mr. Glennon. **See Exhibit M.**
91. The letter summarized the correspondence between Ms. Duffort and AOE staff.
92. The letter detailed the reasons for Ms. Duffort’s confusion regarding how the AOE could not possess the information she sought even though AOE staff and documents stated that such information was annually sent to the AOE by public schools, school districts, or supervisory unions.
93. As described in the letter, the confusion was based on:
 - 1) The CIRS Instructions statement that Vermont law “requires the Secretary to report annually, on a school-by-school basis, the number and types of complaints” of harassment, hazing, and bullying;
 - 2) Vermont statute 16 V.S.A. § 164(17), which requires the State Board of Education, of which the Secretary is a member, to report annually on a school-by-school basis, the number and types of complaints of harassment, hazing, or bullying, and responses to the complaints; and,
 - 3) AOE staff statements in response to her formal and informal requests for public records informing her that the AOE did receive and collect bullying data from school districts.
94. The letter included ten questions regarding the AOE’s CIRS data collection process.
95. On March 18, 2016, in an emailed response to Ms. Duffort’s letter, Mr. Glennon stated that the AOE annually receives five electronic files, which include bullying, hazing, and harassment data, from each Vermont public school, school district, or supervisory union. **See Exhibit N, Email from Greg Glennon to Jay Diaz, March 18, 2016.**

96. Mr. Glennon's response stated that these files are annually "purged" from AOE electronic records storage servers.
97. Mr. Glennon's response stated that the AOE possessed CIRS "data reported from the 2015 school year at the district level."
98. The 2014-2015 CIRS data received by Defendant AOE from Vermont's public schools, school districts, or supervisory unions was not yet purged on March 18, 2016.
99. Mr. Glennon's response stated that the AOE could extract and compile information responsive to Ms. Duffort's request from AOE's electronic databases if it combined these files together and electronically sorted the information accordingly.
100. Mr. Glennon's response stated that "it would constitute the creation of new records to pull [the electronic CIRS files from each school] together via a new query/report to respond to [Ms. Duffort's] request."
101. Mr. Glennon's response advised Ms. Duffort to contact each school to obtain the electronic CIRS files they annually send to the AOE.
102. On March 24, 2016, Ms. Duffort, through her counsel, asked Mr. Glennon for direct answers to the questions in the March 18th letter. **See Exhibit O, Emails from Jay Diaz to Greg Glennon, March 24, 2016.**
103. On April 4, 2016, Mr. Glennon sent an additional response to Ms. Duffort's March 18th letter. **See Exhibit P, Email from Greg Glennon to Jay Diaz, April 4, 2016.**
104. Mr. Glennon's April 4th email quotes each question from Ms. Duffort's March 18th letter and shows a "response" to each question. Some of the "responses" were used multiple times to "respond" to different questions.
105. In response to Ms. Duffort's question "Does the AOE receive the number of bullying complaints/incidents and verified bullying incidents from each school?" Mr. Glennon did not respond with a "yes" or a "no."
106. In response to the question quoted in ¶ 105 Mr. Glennon described the process by which

each school, school district, or supervisory union submits bullying incident data to the AOE.

107. In response to the question “Please explain the State Board of Education’s and AOE’s lack of a report of school-by-school bullying complaints and responses to those complaints as required by 16 V.S.A. § 164(17),” Mr. Glennon wrote that the AOE provides each Vermont public school with the ability to report its school-level data to the public.
108. Mr. Glennon explained in response to the question quoted in ¶107 that the AOE believed its approach mentioned in ¶107 was responsive to the requirement in 16 V.S.A. § 164(17).
109. Ms. Duffort does not feel that Mr. Glennon’s responses to the questions in Ms. Duffort’s March 18th letter responded sufficiently to the lack of a school-by-school report of bullying, hazing, and harassment incidents in Vermont public schools.
110. Mr. Glennon’s responses to the questions in Ms. Duffort’s March 18th letter did not explain why Defendant AOE would not provide Ms. Duffort with the data sent to Defendant AOE by each Vermont public school, school district, or supervisory union.

E. Ms. Duffort’s Request to Defendant SBE

111. On March 25, 2016, Ms. Duffort sent a public record request via email to Maureen Gaidys, the AOE’s Executive Staff Assistant for Secretary Rebecca Holcombe, “for the school by school reports referenced in 16 V.S.A. § 164(17), for the following school years: 2012-13, 2013-14, and 2014-15.” ***See Exhibit D.***
112. Ms. Gaidys is the contact listed on Defendant SBE’s website. The email’s subject line was “Public Records Request to the State Board of Ed.” ***See Exhibit D.***
113. On April 1, 2016, Ms. Duffort received an email from Mr. Glennon denying her request for records sent to Defendant SBE on March 25, 2016. ***See Exhibit D.***
114. The April 1st denial did not inform Ms. Duffort of her appeal rights or to whom she should write to appeal the denial.

115. On April 12, 2016, Ms. Duffort appealed the denial to Stephan Morse, the chair of Defendant SBE, requesting that the reports be produced, with redactions where appropriate. **See Exhibit Q, Email from Lola Duffort to Stephan Morse, April 12, 2016, and Email from Greg Glennon to Lola Duffort, April 13, 2016.**
116. On April 13, 2016, Mr. Glennon, on behalf of Mr. Morse, responded to Ms. Duffort's April 12th appeal email. **See Exhibit Q.**
117. Mr. Glennon's April 13th email stated that, "the Vermont State Board of Education does not maintain these records for the reasons I cited in my correspondence to you dated 3/25/16."
118. Mr. Glennon's email did not inform Ms. Duffort of her right to judicial review of the denial.

F. Ms. Duffort Seeks Further Clarification Through Consultation with Defendant AOE

119. On April 28, 2016, Ms. Duffort, through her counsel, contacted Mr. Glennon via email. **See Exhibit R, Email from Jay Diaz to Greg Glennon, April 28, 2016.**
120. The email inquired about the AOE's legal authority to "purge" the CIRS data files sent by Vermont's public schools, districts, or supervisory unions.
121. On May 3, 2016, Mr. Glennon responded via email. **See Exhibit S, Email from Greg Glennon to Jay Diaz, May 3, 2016.**
122. Mr. Glennon's response stated that the AOE considers the electronic CIRS data files sent by Vermont's public schools, districts, or supervisory unions to be "transitory records."
123. In the AOE's Record Management Plan, "transitory records" are defined as those records that are "only needed for a limited period of time in order to complete a routine action or prepare or update a formal or on-going record. They are not subject to any specific legal recordkeeping requirements, explicit or implied, and are administratively obsolete after the specific action or process to which they relate is complete." **See Exhibit T, AOE Transitory Records Document.**

124. Defendant AOE's transitory records document does not include any information regarding data received from Vermont public schools, school districts, or supervisory unions.
125. Mr. Glennon stated that "the data contained within these [electronic CIRS data] files are imported into and retained within the AOE state-level database. Therefore, once they have been processed, the extract files themselves are administratively obsolete."
126. On May 24, 2016, Ms. Duffort, through her counsel, contacted Mr. Glennon via email. ***See Exhibit U, Email from Jay Diaz to Greg Glennon, May 24, 2016.***
127. The May 24th email asked whether the AOE had the ability through some process involving the "state-level database," to locate the number of bullying and other incidents for a particular public school or district in a particular year.
128. On May 31, 2016, Mr. Glennon responded to Ms. Duffort's May 24th email. ***See Exhibit V, Email from Greg Glennon to Jay Diaz, May 31, 2016.***
129. Mr. Glennon's response stated that the CIRS provided by the AOE to each school or district includes a mechanism which allows school personnel to create a school-level report of bullying data.
130. Mr. Glennon's response stated that "the granular incident data [sent by public schools or districts to the AOE] persist in the state-level database."
131. On June 8, 2016, Ms. Duffort, through her counsel, sent an email to Greg Glennon. ***See Exhibit W, Email from Jay Diaz to Greg Glennon, June 8, 2016.***
132. The June 8th email asked Mr. Glennon whether the AOE had any records in its possession "showing the number of bullying incidents or complaints for a particular public school and/or the number of verified bullying incidents or complaints for a particular public school."
133. A response to the June 8th email's question was never received by Ms. Duffort or her counsel.
134. No response to the June 8th email's question was sent by any employee of Defendant AOE

to Ms. Duffort or her counsel.

F. Ms. Duffort's Fourth Request to Defendant AOE

135. On June 15, 2016, Ms. Duffort, through her counsel, sent a formal public records request to the AOE's Custodian of Record, care of Mr. Glennon. **See Exhibit X, Letter from Jay Diaz to Greg Glennon, June 15, 2016.**

136. Ms. Duffort's request was written as follows:

- 1) "Please supply copies of records, including but not limited to records in the Combined Incident Reporting Survey (CIRS) database, showing the number of bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, 2014-2015.
- 2) Please supply copies of records, including but not limited to records in the CIRS database, showing the number of verified bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, 2014-2015."

137. Ms. Duffort's request asked that the requested data be extracted and compiled in response to her request, if that was the least costly method of disclosure.

138. Ms. Duffort's request included a legal memorandum arguing for disclosure of the requested records, citing caselaw suggesting that a compilation of the requested data would be a public record, and explaining how to respond to public record requests without disclosing allegedly exempt information.

139. On June 16, 2016, Mr. Glennon denied Ms. Duffort's June 15th public records request via email. **See Exhibit Y, Email from Greg Glennon to Jay Diaz, June 16, 2016.**

140. Mr. Glennon's denial stated that the request "would require the creation of new records that do not currently exist. We decline to create these records."

141. On June 22, 2016, Mr. Glennon emailed Ms. Duffort's counsel, stating that Ms. Duffort may appeal the June 16th denial to the Secretary of Education. **See Exhibit Z, Email from Greg Glennon to Jay Diaz, June 22, 2016.**
142. Defendant AOE did not respond to the legal memorandum provided with Ms. Duffort's June 15th public records request.
143. On June 22, 2016, Ms. Duffort, through her counsel, appealed the denial of her June 15th public record request to the Secretary of Education. **See Exhibit AA, Letter from Jay Diaz to Rebecca Holcombe, Secretary of Education, June 22, 2016.**
144. The June 22nd appeal letter provided a summary of letters and email exchanges between Ms. Duffort and AOE staff as evidence that the data sought by Ms. Duffort is in the AOE's possession.
145. The June 22nd appeal letter to the Secretary of Education included a copy of the June 15th public record request and legal memorandum sent to Mr. Glennon.
146. On July 1, 2016, the Secretary of Education denied Ms. Duffort's appeal. **See Exhibit BB, Letter from Rebecca Holcombe, Secretary of Education, to Jay Diaz, July 1, 2016.**
147. The Secretary's July 1st denial letter states that, if produced, the requested information would include "small cell size(s)" that could risk identifying students at particular schools.
148. The Secretary's July 1st denial letter does not explain how Defendant AOE knows that such data productions would be protected from disclosure if it, as it claims, does not have recorded information regarding the number of bullying, hazing, and harassment complaints or responses thereto.
149. The Secretary's July 1st denial letter does not address the merits of the legal memorandum provided by Ms. Duffort's counsel with the June 15th public records request.
150. The Secretary's July 1st denial letter does not address the Vermont Public Records Act provisions allowing for the redaction of 1) personally identifying information when in the interest of privacy, or 2) certain student records.

151. The Secretary's July 1st denial letter does not inform Ms. Duffort of her right to judicial review of the Secretary's decision as required by 1 V.S.A. § 318(a)(3).

First Cause of Action – Failure to Produce

Vermont Agency of Education

152. Paragraphs 1 through 151 are incorporated as if set forth at length herein.
153. By refusing to produce any recorded information acquired or produced in the course of agency business in response to Ms. Duffort's requests before June 15, 2016, Defendant AOE violated Vermont's Public Records Act.
154. By refusing to produce any recorded information acquired or produced in the course of agency business in response to Ms. Duffort's June 15, 2016 and June 22, 2016 requests, Defendant AOE violated Vermont's Public Records Act.

Second Cause of Action – Failure to Produce

Vermont State Board of Education

155. Paragraphs 1 through 154 are incorporated as if set forth at length herein.
156. By refusing to produce any recorded information acquired or produced in the course of agency business in response to Ms. Duffort's March 25, 2016 and April 12, 2016 requests, Defendant SBE violated Vermont's Public Records Act.
157. By refusing to produce records that Defendant SBE is statutorily required to create by 16 V.S.A. § 164(17) in response to Ms. Duffort's March 25, 2016 and April 12, 2016 requests, Defendant SBE violated Vermont's Public Records Act.

Third Cause of Action – Failure to Extract and Compile

Vermont Agency of Education

158. Paragraphs 1 through 157 are incorporated as if set forth at length herein.

159. By refusing to extract and compile recorded information acquired or produced in the course of agency business in response to Ms. Duffort's requests before June 15, 2016, Defendant AOE violated Vermont's Public Records Act.

160. By refusing to extract and compile recorded information acquired or produced in the course of agency business in response to Ms. Duffort's June 15, 2016 and June 22, 2016 requests, Defendant AOE violated Vermont's Public Records Act.

Fourth Cause of Action – Failure to Meaningfully Consult

Vermont Agency of Education

161. Paragraphs 1 through 160 are incorporated as if set forth at length herein.

162. By failing to meaningfully consult with Ms. Duffort in order to clarify her request and ensure Defendant AOE could facilitate the disclosure of information relevant to her request, Defendant AOE violated Vermont's Public Records Act.

Fifth Cause of Action – Failure to Provide Notice

All Defendants

163. Paragraphs 1 through 162 are incorporated as if set forth at length herein.

164. By failing to provide proper notice of denial, the asserted statutory basis for denial, facts supporting the denial, or notice of the right of judicial review in their denials to Ms. Duffort's public record requests, defendants violated Vermont's Public Records Act.

Request for Relief

165. Accordingly, Ms. Duffort asks that this Court:

- a) declare that defendants' refusals to produce records responsive to Ms. Duffort's request was unlawful;
- b) declare that the requested compilation of information sought is a public record;

- c) declare that Defendant AOE’s continued withholding of the requested records is unlawful;
- d) declare that Defendant SBE’s failure to create the report required by 16 V.S.A. § 164(17) in response to her public record request was unlawful;
- e) enjoin defendants from continuing to withhold the requested records;
- f) enjoin Defendant AOE from “purging” CIRS data (which includes bullying, hazing, and harassment data) sent to the AOE by Vermont public schools, school districts, or supervisory unions, unless it is determined through this suit that the AOE maintains this data in its possession after the “purge;”
- g) declare that Defendant AOE’s failure to meaningfully consult with Ms. Duffort in order to facilitate disclosure of public records responsive to her request was unlawful;
- h) declare that defendants’ failures to properly notify Ms. Duffort of the statutory basis for their denials, facts supporting their denials, or her right to appeal were unlawful; and,
- i) award her reimbursement of the costs and fees reasonably incurred in bringing this action as provided by 1 V.S.A. § 319(d)(1).

The American Civil Liberties Union Foundation of Vermont

_____/s/_____
James Diaz
ACLU Foundation of Vermont
137 Elm Street
Montpelier, VT 05602
(802) 223-6304
jdiaz@acluvt.org

Counsel for Lola Duffort
July 21, 2016