



January 5, 2024

VIA EMAIL AND FIRST-CLASS MAIL

Mr. Stephen Bannon
Chairman of the Selectboard
334 Main Street
Great Barrington, MA 01230

Dr. Peter Dillon
Superintendent of Schools
Berkshire Hills Regional School District
P.O. Box 617, 50 Main Street
Stockbridge, MA 01262

Re: [REDACTED]

Dear Chair Bannon and Dr. Dillon:

We represent [REDACTED] in connection with her legal claims arising from the recent violation of her secured rights under both federal and state law.

We are writing to you even as we continue to investigate the events of December 8, 2023 and thereafter to request that the Great Barrington Selectboard and Berkshire Hills Regional School District *immediately* undertake an independent investigation into the events at issue including, without limitation, determining how and by whom a criminal complaint was initiated against our client and how each step of the decision-making which took place thereafter was made. We have no doubt that you recognize the urgency of this request as it relates to [REDACTED] safety and the need to put in place best practices so that nothing like what occurred here happens again.

The events which took place on December 8, 2023 relating to the criminal investigation of [REDACTED] and the school's decision to allow a Great Barrington Police Department ("GBPD") officer to enter [REDACTED] classroom and interrogate her regarding the location and content of a book, are deeply concerning. Among other things, these actions raise numerous and serious legal issues with regard to the lack of any reasonable suspicion, let alone probable cause, to interrogate our client, the alleged lack of identifying information about the complainant based upon whose word a criminal investigation was opened, the GBPD's failure to have the alleged complainant follow available and well-established procedures to challenge a book in a school setting and the clear discrimination against [REDACTED] based upon her sexual orientation.



Todd & WeldLLP

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I attach and enclose a letter already sent by the ACLUM and GLAD sent to the GBPD and the Great Barrington District Attorney's Office which addresses additional concerns.

We ask that you respond to us as soon as reasonably possible about our request for an independent investigation.

Please understand that this letter is sent with a full reservation of our client's rights.

Very truly yours,

Howard M. Cooper

Enclosure

cc:


Maria T. Davis, Esq.
Shayne Lotito, Esq.



December 29, 2023

By Email

Timothy J. Shugrue
District Attorney for Berkshire County
7 North Street
Pittsfield, MA 01201
Contact.BerkshireDA@mass.gov

Paul E. Storti
Chief of Police
465 Main Street
Great Barrington, MA 01230
pstorti@townofgb.org

Re: Law Enforcement Search for and Investigation of Book at W.E.B.
Du Bois Middle School

Dear District Attorney Shugrue and Chief Storti:

We write on behalf of the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") and GLBTQ Legal Advocates & Defenders ("GLAD") to express deep concern about your offices' responses to a complaint about a book in a classroom at the W.E.B. Du Bois Regional Middle School in Great Barrington in which the complainant purportedly described the book as containing "pornography."

While we are gratified to see that Chief Storti has reportedly said in an on-line post that he "apologize[s] to anyone who was negatively affected" by this unprecedented law enforcement action, we remain concerned that there has been no acknowledgement that what occurred was unwarranted and unauthorized by law. Instead, in public statements and media reports, your offices have asserted that they had an obligation and no choice but to take criminal investigatory steps in response to this complaint. In your statements, you seem to be defending the fact that a police officer went to the school, visited a teacher's classroom, questioned the teacher, looked for the book and possibly even suggested a search of the entire school might be

appropriate—as well as the fact that a criminal investigation was opened by the District Attorney’s office when the matter was referred by the police.

Contrary to your defenses of what occurred, under the laws of the Commonwealth, discussed below, no criminal investigation was warranted. Instead, your offices should have advised the complainant to raise their concerns with the school.

We ask that you take immediate steps to instruct your staffs—and inform the public—that law enforcement responses to concerns about books in schools and other educational programs are not appropriate and should not and will not happen again. Failure to take affirmative and prompt action could mislead law enforcement elsewhere in the Commonwealth into thinking such action is lawful—when it is not—and will leave unredressed the chilling effect of your offices’ actions on the constitutionally protected rights of students in the Commonwealth to receive (and of educators to share) information without unwarranted censorship, to enjoy an educational environment free of discrimination based on gender, and to freely exercise their rights without threats, intimidation or coercion from law enforcement.¹

Controlling Statutory Provisions

Massachusetts Gen. Laws c. 272, § 31 defines unlawful “obscenity” as material “*taken as a whole*” that “(1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the [alleged] offense was committed; (2) depicts or describes sexual conduct in a patently offensive way; *and* (3) *lacks serious literary, artistic, political or scientific value.*” (emphases added).

The statute defines material that is “harmful to minors” as either material qualifying as obscenity or material that “if *taken as a whole*, [] (1) describes or represents nudity, sexual conduct or sexual excitement so as to appeal *predominantly* to the prurient interest of minors; (2) is *patently* contrary to prevailing standards of adults in the county where the [alleged] offense was committed as to suitable material for such minors; and (3) *lacks serious literary, artistic, political or scientific value for minors.*” (emphases supplied).

Strict adherence to these statutory boundaries is necessary to “limit[] the reach of the statute to material outside the First Amendment’s protection with respect to minors.” *Commonwealth v. Mienkowski*, 91 Mass. App. Ct. 668, 674 (2017).

¹ An open letter we previously sent to school officials throughout the Commonwealth with regard to calls to remove book from schools sets forth the details of the laws through which these rights are established and is available [here](#). We also direct your attention to the Massachusetts Civil Rights Act, which prevents interference or attempted interference with secured rights by threats, intimidation or coercion. Mass. Gen. L. c. 12, §§ 11H and I.

Under these definitions, the book at the heart of the complaint clearly does not qualify as obscene, pornographic, or material harmful to minors, due, among other things, to the literary value of the award-winning, coming-of-age book at issue, which a simple on-line search would have revealed. Such literature can be vital for young people who are coming of age and may benefit from seeing themselves and others they know represented. But, regardless, the Legislature has specified its intent that law enforcement in Massachusetts has no role in policing materials made available by schools, teachers or school librarians.

Specifically, the law provides an absolute defense to any charges of distributing obscene or allegedly harmful material to minors where the accused is “a bona fide school, museum or library, or was acting in the course of employment as an employee of such organization” Mass. Gen. L. c. 272, §§ 28 and 29 (emphasis added).

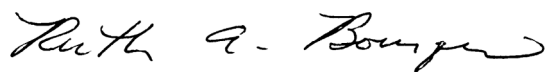
By enacting this language, the Legislature clearly established that law enforcement has no role in enforcing these statutes as to any materials provided by schools or other educational programs and their personnel acting in the scope of their employment.

Conclusion

In light of the above, we ask that you take immediate steps to make clear to your employees, the schools, and the larger community that you recognize law enforcement had no role here and that an incident like this will not happen again.

Although we will likely be in contact again after we finish review of the public records we recently received in response to our request to the Police Department, we write now because prompt action is required to remove the unlawful chilling effect that has been created by your offices with regard to fundamental civil rights and civil liberties.

Sincerely,



Ruth A. Bourquin
Senior Managing Attorney
Jessica L. Lewis
Staff Attorney
Rachel E. Davidson
Free Expression Staff Attorney
ACLU

Mary L Bonauto
Sr. Director of Civil Rights &
Legal Strategies
Gary Buseck, Senior Advisor
Chris Erchull, Attorney
GLAD

cc: Superintendent Peter Dillon peter.dillon@bhrsd.org
School Committee Chair Stephen Bannon
scbannon@gmail.com
Principal Miles Wheat miles.wheat@bhrsd.org