SIEGEL TEITELBAUM & EVANS, LLP
ATTORNEYS AT LAW
260 MADISON AVENUE, 22ND FLOOR
NEW YORK, NEW YORK 10016

TELEPHONE:
(212) 455-0300
FACSIMILE:
(212) 455-0301

January 9, 2014

Commissioner of Education
New York State Education Department
89 Washington Avenue
Room 111, Education Building
Albany, NY 12234

Dear Commissioner of Education:

We hereby appeal the denial of access regarding our June 17, 2013 Freedom of Information Law ("FOIL") request sent to a Records Access Officer at the New York State Education Department (SED), 89 Washington Avenue, Rm. 128 EB, Albany, New York 12234.

We made the request on behalf of the Community Education Council for District 14 in Brooklyn, NY and of the Parent Teacher Association for P.S. 75 Emily Dickinson School in New York, New York for records of all SED communications from January 1, 2011 through May 1, 2013 relating to the Gates Foundation, the Shared Learning Collaborative, inBloom Inc., Wireless Generation or Amplify pursuant to Article 6 of the Public Officers Law.

On August 5, 2013, we received a letter from a Records Access Officer, dated July 30, 2013, that advised in part, "Due to the scope and nature of your request and the effort required to identify the appropriate records, it will take the Department additional time to complete your request. You will hear from the Department by July 31, 2014 as to whether your request will be granted or denied in whole or in part. If you would like to narrow your request, you may do so by submitting another request for records under FOIL to the above address."

On August 16, 2013, we amended our request and limited its scope based on the advice of a Records Access Officer, who explained that seeking this information for "any and all officials and/or employees" was too broad and suggested that we provide the names of the relevant individuals at SED. Accordingly, we provided the names of the specific individuals at SED whose communications with the Gates Foundation, the Shared Learning Collaborative, inBloom Inc., Wireless Generation or Amplify we sought for the relevant time period.

On November 7, 2013, a Records Access Officer from SED responded to our Amended Request and noted that "your FOIL request is still under review. Due to the scope and nature of your request and the effort required to identify the appropriate records, it will take the Department additional time to complete your request. Your request will be granted in part on a rolling basis and be completed by November 28, 2014."

We called the Record Access Officer once in late December and several times in the past week and left voice mail messages regarding why it will take SED over 15 months to process our request even after we limited its scope based on SED's suggestion. We have not received any response.

SED's unreasonable withholding of the requested information constitutes a denial of access. See 21 N.Y. Comp. Codes R. & Regs. § 1401.5(e)(7) (Failure to comply with the time limitations may be appealed including where an agency "responds to a request, stating that more than 20 business days is needed to grant or deny the request in whole or in part and provides a date certain within which it will do so, but such date is unreasonable under the circumstances of the request."). For SED to take more than 15 months to process our request for communications between certain identified individuals at SED with 5 companies during a specific time period is unreasonable.

What is more, to date, SED has not provided a single document notwithstanding its assertion that it will provide documents on a rolling basis. SED has also failed to respond to our multiple calls inquiring when we might receive the first batch of requested documents and to clarify what part, if any, of our request is denied so that we could take the appropriate action.

Sincerely,

Norman Siegel
Maryam Jazini Dorcheh