

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
BOSTON DIVISION**

**BOSTON PARENT COALITION FOR  
ACADEMIC EXCELLENCE CORP.,**

**Plaintiff,**

**v.**

**THE SCHOOL COMMITTEE OF THE  
CITY OF BOSTON, ALEXANDRA  
OLIVER-DAVILA, MICHAEL O'NEILL,  
HARDIN COLEMAN, LORNA RIVERA,  
JERI ROBINSON, QUOC TRAN, ERNANI  
DeARAUJO, and BRENDA CASSELLIUS,**

**Defendants**

**and**

**THE BOSTON BRANCH OF THE NAACP,  
THE GREATER BOSTON LATINO  
NETWORK, ASIAN PACIFIC ISLANDER  
CIVIC ACTION NETWORK, ASIAN  
AMERICAN RESOURCE WORKSHOP,  
MAIRENY PIMENTAL, and H.D.,**

**Defendants-Intervenors.**

**Civil Action No. 1:21-cv-10330-WGY**

**MEMORANDUM IN SUPPORT OF MOTION  
PURSUANT TO FEDERAL RULE 60(b)**

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Invoking Federal Rule of Civil Procedure 60(b)(2) and (3), the Boston Parent Coalition for Academic Excellence Corp. (the “Boston Parents”) seeks relief from the judgment entered by this Court on April 15, 2021. Because the case is now on appeal in the First Circuit, the Boston Parents request an immediate indicative ruling under Federal Rule of Civil Procedure 61.2(a).

### **I. PRELIMINARY STATEMENT**

New evidence, in the form of highly relevant text messages between two members of the Boston School Committee, has recently come to light. These text messages have long been in the possession of the City of Boston, and should have been provided to the Boston Parents in response to its public records request and should have been made a part of the agreed-upon record in this case when the Court originally considered it. But the City, instead, concealed the messages, thereby depriving the Boston Parents and the Court of the opportunity to consider them. The reason for the City’s actions can and must be inferred from the content of the concealed evidence: the text messages show clear racial motivation and anti-White racism on the part of two School Committee members who were leading proponents of the Zip Code Quota Plan. In fact, the content of this previously suppressed evidence is so damning that both members have now been forced to resign.

These facts are unique. They warrant the relief sought, and they elevate the Boston Parents’ request beyond that of other Rule 60 motions. As this memorandum explains, the Boston Parents timely exercised their rights under state law to obtain copies of these and other text messages exchanged between members of the School Committee during the meeting where the Zip Code Quota Plan was adopted. But when the School Committee responded to that request, it deliberately concealed clearly racist statements, first, by *deleting* racist portions of text messages from what it claimed was a “transcript” of text messages, and, second, by misrepresenting that it had produced

complete records when it knew that it had not. This prejudice was further compounded when neither the City of Boston nor the individual Defendants came clean when it came time to provide this Court with an agreed-upon record. It was only after the *Boston Globe* published leaked copies of the offensive texts that the City of Boston finally produced them to the Boston Parents, long after this Court issued its decision in this case. That is what prompts this Motion.

These previously concealed text messages clearly reflect racial animus. And while such animus is not necessary for the Court to invoke strict scrutiny when evaluating the Zip Code Quota Plan, evidence showing such animus makes the case for strict scrutiny all the more compelling. Because the City concealed that evidence and deprived the Boston Parents and the Court from considering it, relief from the Court's only partially-informed judgment is warranted. Unfortunately, the City's conduct was uncovered too late for the Court to issue relief related to the requested preliminary injunction. But it is not too late for the other forms of relief the Boston Parents requested, including the permanent injunction barring any further use of the Zip Code Quota Plan, as well as relief specific to the families represented by the Boston Parents.

But this Motion does not seek any such ultimate relief, nor do the Boston Parents ask the Court to reverse its prior ruling. The issue presented by this Motion is solely whether the new evidence and its withholding by the City warrant relief from the current judgment and the re-opening of the case at the District Court level. As this Memorandum explains, the answer to both questions is a resounding yes, and the Motion should, therefore, be granted.

## **II. RELEVANT FACTUAL AND PROCEDURAL HISTORY**

### **A. Procedural History**

On April 15, 2021, this Court issued an Order for Judgment in this matter in favor of Defendants. Doc. 104. The Court based that decision on an agreed upon record that included

certain text message communications between two members of the Boston School Committee – Vice-Chairperson Alexandra Oliver-Dávila and Member Lorna Rivera – that discussed, among other things, racist comments that had been made by the School Committee chair at the time, Michael Loconto. *See* Doc. 38-71, 72. That record, however, contained no indication that Oliver-Dávila or Rivera had made their own racist statements because the City had not produced any such text messages.

The Boston Parents obtained the text messages included in the record through a public records request for “ALL electronic text messages” during the October 21st School Committee meeting. *See* Darragh Murphy Declaration (“Murphy Decl.”) ¶¶ 8-10, Exhibit 1. In response, the City produced an eight (8) page *transcript* of responsive text messages (not the text messages themselves). Murphy Decl., Atts. D and E. The City did not disclose that it had removed text messages when preparing the transcript, nor did it indicate that it had withheld any documents. *Id.*

Six days later, the Parties included that transcript in the Joint Agreed Statement of Facts (“ASE”). Doc. 38. Exhibit 72 to the ASE contained transcribed text messages between Oliver-Dávila and Rivera. *Compare* ASE01862 *with* Murphy Decl., Att. E. In the Agreed Statement of Facts, the Boston Parents, the Defendants, and the Intervenors all represented that:

The parties, by their undersigned counsel, hereby stipulate and agree to the facts set forth herein and to the authenticity of the documents attached hereto. To the extent the statements below cite to documents, the documents are true and accurate copies and the parties refer the Court to those documents for a more thorough discussion of the facts.

Doc 38 at 1. More specifically, with regard to the text messages, the Defendants<sup>1</sup> represented that:

A true and accurate transcription of text messages between Boston School Committee Members, Vice-Chairperson Alexandra Oliver Davila and Lorna Rivera during the October 21, 2020 Boston School Committee meeting is attached as Exhibit 72.

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<sup>1</sup> Although the Intervenors objected to Paragraph 67 of the Agreed Statement of Facts, the Court correctly treated the Defendants’ text messages as part of the record before it.

*Id.* at ¶ 67.

The Boston Parents, and their counsel, relied on the production and on Defendants' representations concerning the completeness of the text messages in agreeing, on March 16, 2021, to forgo discovery in this matter and proceed solely upon the agreed upon record, as set forth in the ASE. It was on that record, and only upon that record, that the Court issued its decision.

Around the same time, the *Boston Globe* made its own public records request for text messages. Like the Boston Parents, the *Boston Globe* received a sanitized version that the City incorrectly passed off as complete. Two weeks ago, however, the *Boston Globe* published previously undisclosed, leaked copies of text messages sent between Oliver-Dávila and Rivera during the October 21<sup>st</sup> meeting. Murphy Decl., Atts. F and G. These text messages were clearly responsive to both the Boston Parents' and the *Boston Globe*'s public records requests, but despite the City's repeated representations that it had produced all relevant text messages (discussed above), the text messages published in the *Boston Globe* article had been withheld. In that article, both Rivera and Oliver-Dávila claimed that they had provided those text messages to the City of Boston in October 2020. Murphy Decl., Att. F. However, the City never produced them and never disclosed that they were being withheld. *See* Murphy Decl. ¶12.

These text messages (discussed in detail below) clearly reflect Rivera's and Oliver-Dávila's own racist views, and their racially-focused motivation for supporting the Zip Code Quota Plan. As a result of the *Boston Globe* uncovering these previously concealed racist messages, both Rivera and Oliver-Dávila have now joined Mr. Loconto in resigning from the School Committee. *See* Murphy Decl. ¶21.

Following the June 7, 2021 *Boston Globe* Article, the Boston Parents called upon the City to supplement its previous, deficient production. *See* Murphy Decl. ¶13. Having been caught red-

handed, the City made a supplemental production on June 18, 2021, that, this time, included 51 individual screenshots of text messages (as opposed to transcripts of them) sent and received by Boston School Committee members. Murphy Decl., Atts. I-1 – I-5. All of these text messages were responsive to the Boston Parents' initial public records request, which was made *before* this Court first considered this case.

## **B. Text Messages Omitted from the Record**

The City of Boston's recent production of text messages makes two things clear: (1) it withheld relevant text messages from the Boston Parents and the Court; and (2) it altered and omitted texts from the transcript it prepared to conceal clearly damaging communications between Oliver-Dávila and Rivera. The two most egregious examples of this conduct are described below.

*First*, the City chose not to transcribe portions of the text messages that contained racist comments by Oliver-Dávila and Rivera. A comparison of the newly produced text message screenshots and the originally produced transcript make this crystal clear:



\*\*\*\*\*

AOD - Best sc meeting ever I am trying not to cry

LR - Me too!

LR - Why can't we get interpretation/translation right? Why does language access have to be so hard?

AOD - When I was on the meeting that explained the proposed policy people got to choose to go into a room to get the whole meeting translated - at least that is how I understood it

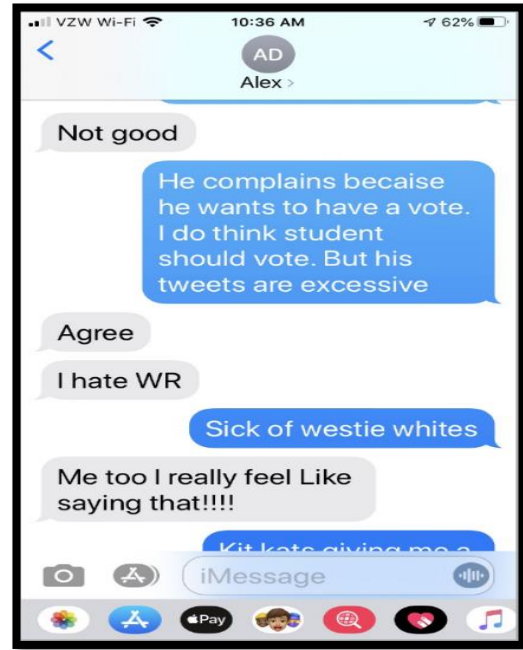
LR - Should I ask Dr. C what the heck?

AOD - Sure you can text her.

\*\*\*\*\*

On the left are the actual, unaltered text messages that the City just recently produced. Murphy Decl., Att. I-2, at 15. On the right is the transcript the City produced on March 23 and presented as the complete text message string. Murphy Decl., Att. E, at 1. The actual text message and the transcript begin identically, but in preparing the transcript the City chose to delete the critical language addressing race, namely, Rivera’s comment “Wait til the white racists start yelling at us” and Oliver-Dávila’s response “Whatever...they are delusional.” As shown above, the transcript produced by the City does not contain so much as an ellipsis indicating that a part (and a critical part at that) of the text message had been removed.

*Second*, in the transcript the City prepared it likewise concealed, in its entirety, the adjacent text messages between Oliver-Dávila and Rivera. *See* Murphy Decl., Att. I-2, at 19. Once again, from the racially charged content of the removed text messages, it is readily apparent why the City chose to conceal them as the two members agree that they are “[s]ick of westie whites.” The terms “WR” “and “westies” refer to West Roxbury, one of the zip codes treated unfavorably by the Zip Code



Quota Plan, a point that Oliver-Dávila has publicly confirmed. *See* Murphy Decl., Att. F (“June 7, 2021, *Boston Globe* Article”). Importantly, these concealed text messages were sent immediately before the text messages between Rivera and Oliver-Dávila that the City did include in the record. *See* Doc. 38-72 (Agreed Exhibit 72). Thus, the omitted messages easily could have been produced, and the decision not to produce them must have been deliberate.



### III. APPLICABLE STANDARD

Upon a timely motion, “the court may relieve a party or its legal representative from a final judgment, order, or proceeding.” Rule 60(b). As the First Circuit has instructed, “when an appeal is pending from a final judgment, parties may file Rule 60(b) motions directly in the district court without seeking prior leave from us.” *Commonwealth v. S.S. Zoe Colocotroni*, 601 F.2d 39, 42 (1st Cir. 1979). “The district court, being familiar with the case, is in a far better position than is an appellate court to evaluate the motion’s merits quickly.” *Id.* at 41.<sup>2</sup>

The First Circuit has specified the procedure that district courts are to use in handling such motions, stating that “[t]he district court is directed to review any such motions expeditiously, within a few days of their filing...” and that “if the district court is inclined to grant the motion, it should issue a brief memorandum so indicating.” *S.S. Zoe Colocotroni*, 601 F.2d at 42.<sup>3</sup> “Armed with this [indicative ruling], movant may then request [the First Circuit] to remand the action so that the district court can vacate judgment and proceed with the action accordingly.” *Id.*<sup>4</sup>

District courts have broad discretion to set aside a judgment if a movant is able to show that it is entitled to relief under one of the six subparts of Rule 60(b).<sup>5</sup> Here, relief is appropriate based on two of those subparts: (a) the introduction of “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule

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<sup>2</sup> See also *Rosaura Bldg. Corp. v. Municipality of Mayaguez*, 778 F.3d 55, 64 (1st Cir. 2015) (“parties litigating before this Court should file a motion under Rule 60(b) to vacate a judgment directly with the district court, without seeking prior leave from the Court of Appeals”).

<sup>3</sup> See, further, *S.S. Zoe Colocotroni*, 601 F.2d at 42 n.3. (“If the district court is unable conscientiously to dispose of the motion within a few days ... it should issue a brief memorandum to this effect. The memorandum should indicate that the motion is non-frivolous and not capable of being fairly decided solely on the basis of the court’s initial screening and that the court will require a specified number of more days to complete its review ...”).

<sup>4</sup> See also, generally, FRCP 62.1(a)(3) (where “an appeal [] has been docketed and is pending, the court may ...state either that it would grant the motion if the court of appeals remands for that purpose ...”).

<sup>5</sup> See *Hoult v. Hoult*, 57 F.3d 1, 3 (1st Cir. 1995).

59(b),” FRCP 60(b)(2); and (b) the existence of “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party,” FRCP 60(b)(3).<sup>6</sup>

#### IV. ARGUMENT

Here, the Boston Parents are entitled to relief under Rule 60(b) because it is able to show that “that [its] motion is timely; that exceptional circumstances exist, favoring extraordinary relief; that if the judgment is set aside, [it] has the right stuff to mount a potentially meritorious claim or defense; and that no unfair prejudice will accrue to the opposing parties should the motion be granted.” *Karak v. Bursaw Oil Corp.*, 288 F.3d 15, 19 (1st Cir. 2002).

First, the Boston Parents’ motion is timely. Motions under Rule 60(b)(2) and 60(b)(3) must be brought within one year of the entry of judgment at issue. Because the judgment at issue was entered on April 15, 2021, a little more than two months ago, this motion is timely.<sup>7</sup> Second, the circumstances described above are certainly “exceptional” and merit the requested relief under Rule 60(b)(2) and (3), as discussed below.

Third, if the judgment is set aside, the Boston Parents have evidence to mount a potentially meritorious claim. The new evidence of racial animus by two leading members of the Boston School Committee – standing alone or in combination with all the other evidence before the Court – warrant the application of strict scrutiny, thereby making the Zip Code Quota Plan presumptively unconstitutional. Moreover, the deliberate concealment of this evidence lends further support to the Boston Parents’ position that the Zip Code Quota Plan was racially motivated.

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<sup>6</sup> Because, as discussed below, the legal standard for Rule 60(b)(3) is distinct from that for 60(b)(2), Plaintiff respectfully requests that the Court rule upon each ground separately. *See Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978); *Fisher v. Kadant, Inc.*, 589 F.3d 505, 512 (1st Cir. 2009).

<sup>7</sup> *LeBaron v. Mass. P’ship for Corr. Health*, No. CV 17-10323-PBS, 2017 WL 3812132, at \*2 (D. Mass. Aug. 31, 2017) (“Rule 60(c)(1) provides a one year limitation period for reasons (1), (2) and (3) of Rule 60(b) and there is no time limitation for a motion brought under Rule 60(b)(6).” (quotation marks and brackets omitted)).

Fourth, there will be no unfair prejudice. As noted, the City of Boston concealed this evidence long enough such that the use of the Zip Code Quota Plan has progressed too far to enjoin its use for the class entering the Exam Schools in the fall of 2021. But, other forms of requested relief remain available, including an injunction barring any further use of the Zip Code Quota Plan as well as relief specific to the families represented by the Boston Parents, including but not limited to nominal damages. Defendants can hardly claim to be prejudiced *unfairly* when it was their own actions that created the problem now before the Court.

#### **A. Relief Is Appropriate under Rule 60(b)(3)**

Rule 60(b)(3) allows a court to vacate a final judgment or order based upon an adverse party's fraud, misrepresentation, or misconduct. FRCP 60(b)(3). Relief is warranted where, as here, "the challenged behavior must *substantially* have interfered with the aggrieved party's ability fully and fairly to prepare for and proceed at trial." *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 924 (1st Cir. 1988), *aff'd*, 900 F.2d 388 (1st Cir. 1990) (emphasis in original).

##### **1. Fraud, Misrepresentation and Misconduct Are All Present**

"Rule 60(b)(3) is designed to afford protection against judgments that are unfairly obtained rather than against judgments that are factually suspect." *Karak*, 288 F.3d at 22.<sup>8</sup> This purpose is reflected in the type of fraud considered under the Rule. In the First Circuit:

fraud perpetrated in the course of litigation interferes with the process of adjudication, and it is this kind of litigation-related fraud that principally concerns Rule 60(b)(3)'s fraud provision. Once such fraud is proved, the judgment may be set aside merely upon the movant's showing that the fraud "substantially interfered with [the movant's] ability fully and fairly to prepare for, and proceed at, trial."

*Roger Edwards, LLC v. Fiddes & Son Ltd.*, 427 F.3d 129, 134 (1st Cir. 2005) (quoting *Tiller v. Baghdady*, 294 F.3d 277, 280 (1st Cir. 2002)).

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<sup>8</sup> See also *Rozier*, 573 F.2d at 1339 (Unlike Rule 60(b)(2), "subsection [(b)(3)] of the Rule is aimed at judgments which were unfairly obtained, not at those which are factually incorrect.").

The conduct here constitutes such a fraud. Text messages by two School Committee Members revealing not only their racial motivation but their racial animus, were deliberately concealed. Moreover, the concealed text messages concerned one of the races (White students) and one of the Zip Codes (West Roxbury) that would be, and was, most negatively impacted by the Zip Code Quota Plan. Murphy Decl. Ex. I-2. The City gave no indication that it was withholding highly relevant messages, nor did it indicate that it had altered the messages to remove references to race when it transcribed the messages. Murphy Decl., Att. D. *See also* Murphy Decl., Att. C.

The transcribed text messages the City produced in response to the Boston Parents' public records requests were an important part of the Agreed Statement of Facts and, thus, the closed record on which the Parties agreed this Court would base its decision. *See* Docs. 38-1 through 38-75. The City and Defendants forwent repeated opportunities to come clean about the concealed text messages, but instead chose, each time, to make representations they knew were false. Indeed, in the Agreed Statement of Facts, *the participants in the concealed text messages* stipulated to the authenticity of the transcript. Doc 38 at 1.

Providing the Boston Parents with doctored transcripts, concealing the existence of the omitted portions, and then submitting that doctored evidence to the Court is exactly the type of fraud that courts and scholars agree triggers the application of 60(b)(3).<sup>9</sup> The requirements of fraud under Rule 60(b)(3) are met here.<sup>10</sup>

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<sup>9</sup> *See Roger Edwards*, 427 F.3d at 134 (highlighting “forged evidentiary documents” as “paradigmatic”).

<sup>10</sup> *See, e.g., Hutchins v. Cardiac Sci., Inc.*, 491 F. Supp. 2d 136, 138 (D. Mass. 2007) (“When it later came to light that Cardiac Science had knowingly concealed [relevant information] and repeatedly misrepresented itself ... the court became concerned its earlier ruling lacked an adequate foundation and, upon reconsideration, vacated it” under Rule 60(b)(3)).

In addition (or in the alternative) to constituting *fraud*, such conduct likewise satisfies the standard for a *misrepresentation* under Rule 60(b)(3). In responding to the public records requests, the City was required to disclose if any information was withheld. M.G.L. 66 s. 10(b)(iv). It made no such disclosure. Murphy Decl., Atts. C and D. In stark contrast, when the City finally and appropriately produced the original text messages on June 18, 2021, the City admitted that “[b]ased upon request for all texts messages associated with the” Boston Parents’ public records request, “the City has determined that it will provide additional text messages.” Murphy Decl. ¶15; Murphy Decl., Atts. H. “[T]he failure to disclose known facts when there was a duty” to do so qualifies as a misrepresentation. *Alpine v. Friend Bros.*, 244 Mass. 164, 167 (1923).

The individual Defendants who participated in the concealed text message conversations misrepresented that the documents at issue were “true and accurate.” A transcription cannot be “true and accurate” when it is incomplete, and certifying a document is “true and accurate” when it is incomplete is a false statement.<sup>11</sup> Relief is appropriate under Rule 60(b)(3).<sup>12</sup>

Finally, the Boston Parents are entitled to the relief, even if the Court were to find the *misconduct* here to be entirely inadvertent. The First Circuit’s definition of misconduct under Rule

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<sup>11</sup> See, *U.S. v. Boskic*, 545 F.3d 69, 87 (1st Cir. 2008) (“our precedent establishes that a jury can properly find that the defendant made a false statement by swearing that the incomplete answers to questions on a form are truthful even if the defendant does not also swear that the responses to the questions on the form are complete”) (collecting cases); *U.S. v. Adcox*, 19 F.3d 290, 292 n1 (7th Cir. 1994) (“when it failed to include [] crucial” details, transcript was not “true and accurate transcription”); *Langadinos v. Pezza Law, P.C.*, No. MICV201200911, 2014 WL 7406008, at \*4 (Mass.Super. Apr. 25, 2014) (obligation “to maintain true and accurate records” not met where “incomplete”); *U.S. v. Sheehy*, 541 F.2d 123, 125 (1st Cir. 1976) (“Although appellant certified that the information in the financial statement was ‘true and accurate’ there were substantial misstatements” in that it omitted items); *Van Eperen v. Mass. Mut. Life Ins., Co.*, No. 3:14-CV-13008-MAP, 2017 WL 9249439, at \*4 (D. Mass. Feb. 28, 2017) (statement not “true and accurate” where incomplete).

<sup>12</sup> See, e.g., *In re Wayne Manor, Inc.*, 117 B.R. 12, 14 (D. Mass. 1990) (upholding vacation of final order because “the Bankruptcy judge was not clearly erroneous in finding that the plaintiff was guilty of ‘something approaching deceit’” where plaintiff had misrepresented amount owed); *Hutchins v. Cardiac Sci., Inc.*, 456 F. Supp. 2d 196, 202–03 (D. Mass. 2006) (reconsidering and denying summary judgment under Rule 60(b)(3) where “misrepresentation appears conceded” and the “repeated and knowingly false assertion ... was at the core of” the operative pleadings).

60(b)(3) is “an expansive concept,” and it “‘does not demand proof of nefarious intent or purpose as a prerequisite to redress,’ and the term ‘can cover even accidental omissions.’” *West v. Bell Helicopter Textron, Inc.*, 803 F.3d 56, 67 (1st Cir. 2015) (quoting *Anderson*, 862 F.2d at 923 (courts are required “to take an expansive view of ‘misconduct’” under Rule 60(b)(3) as a narrow interpretation “would be pleonastic, because ‘fraud’ and ‘misrepresentation’ would likely subsume it”)). Consequently, “[a]ccidents—at least avoidable ones—should not be immune from the reach of the rule.” *Anderson*, 862 F.2d at 923.<sup>13</sup>

To be sure, the conduct here does not appear to have been inadvertent; to be so would require repeated, improbable accidents and oversight. For example, the transcription occasionally stopped mid-text message, omitted clearly racially motivated commentary, and then resumed only after the conversation returned to innocuous topics. But, at least for now, the Court need not examine or determine whether anyone acted intentionally or not, especially given that counsel for Defendants has not, despite repeated requests, provided any explanation for the concealment of these text messages. Even if there is some innocent explanation for the concealment of the text messages, the fact remains that they were concealed from the Boston Parents and the Court and, thus, the standard for misconduct under Rule 60(b)(3) is met.<sup>14</sup>

## **2. Substantial Interference Resulted**

To decide this motion, the Court also need not determine whether the withheld information would ultimately change the outcome of the case. To succeed under Rule 60(b)(3), the Boston

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<sup>13</sup> See also *Wright v. Reithoffer Shows, Inc.*, 90 Mass. App. Ct. 1112 (2016) (“the First Circuit has explicitly relied on the discussion of misconduct in *Anderson*, and held that misconduct is a concept elastic enough to cover ineptitude leading to omissions which deprive a litigant of a fair trial.”).

<sup>14</sup> See, e.g., *Anderson*, 862 F.2d at 923 (“it takes scant imagination to conjure up discovery responses which, though made in good faith, are so ineptly researched or lackadaisical that they deny the opposing party a fair trial”); *Wayne Manor*, 117 B.R. at 14 (“The Bankruptcy judge needed to find no more than ‘misconduct’ within the meaning of Rule 60(b)(3) in order to reconsider his earlier order.”)

Parents need only demonstrate that the fraud, misrepresentation, or misconduct at issue impacted their ability, fully and fairly, to prepare and present their case. *West*, 803 F.3d at 67.<sup>15</sup> The First Circuit has explained:

Under a substantial interference rule as we envision it, a party still need not prove that the concealed material would likely have turned the tide at trial. Substantial impairment may exist, for example, if a party shows that the concealment precluded inquiry into a plausible theory of liability, denied it access to evidence that could well have been probative on an important issue, or closed off a potentially fruitful avenue of direct or cross examination. Substantial interference may also be established by presumption or inference.

*Anderson*, 862 F.2d at 925 (internal citations omitted).

The Boston Parents satisfy that standard here. “The failure or refusal to produce a relevant document, or the destruction of it, is evidence *from which alone* its contents may be inferred to be unfavorable to the possessor.” *Marquis Theatre Corp. v. Condado Mini Cinema*, 846 F.2d 86, 89 (1st Cir. 1988) (internal citations and quotation marks omitted).<sup>16</sup> Put simply:

When the contents of a document are relevant to an issue in a case, the trier of fact generally may receive the fact of the document’s nonproduction or destruction as evidence that the party which has prevented production did so out of the well-founded fear that the contents would harm him.

*Nation-Wide Check Corp. v. Forest Hills Distributors, Inc.*, 692 F.2d 214, 217 (1st Cir. 1982).

Under Rule 60(b)(3), where, as here, documents or information are “deliberately suppressed, [their] absence can be presumed to have inhibited the unearthing of further admissible evidence adverse to the withholder, that is, to have substantially interfered with the aggrieved

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<sup>15</sup> See, also, *Catskill Dev., L.L.C. v. Park Place Ent. Corp.*, 286 F. Supp. 2d 309, 319 (S.D.N.Y. 2003) (“plaintiffs need not show that the outcome of the lawsuit would have been different if the missing evidence had been produced earlier. They need only show that the withheld evidence would have been a valuable tool for obtaining meaningful discovery into some theory of liability”).

<sup>16</sup> See also *Knightsbridge Mktg. Servs., Inc. v. Promociones Y Proyectos, S.A.*, 728 F.2d 572, 575 (1st Cir. 1984) (same); *Com. Ins. Co., of Newark, N. J. v. Gonzalez*, 512 F.2d 1307, 1314 (1st Cir. 1975) (“It is elementary that if a party has evidence, here, allegedly, a document, in its control and fails to produce it, an inference may be warranted that the document would have been unfavorable.”).

party's trial preparation.” *Anderson*, 862 F.2d at 925 (collecting cases). Here, there is no question the City and several of Defendants knew about the highly relevant, yet omitted text messages. Indeed, it had to have been someone (or multiple people) that made the decisions to: (1) identify those text messages which expressed racial animus and directly linked the Zip Codes at issue to racial demographics, (2) remove the text of those messages from those that were transcribed, and (3) then misrepresent the nature of the production. On this foundation, a presumption of substantial interference must apply.<sup>17</sup>

Even putting this presumption aside, the City's decision to withhold the text messages substantially interfered with the Boston Parents' ability to prepare for and proceed with their case fully and fairly. To so establish, the Boston Parents “may demonstrate ‘that the concealment precluded inquiry into a plausible theory of liability, denied it access to evidence that could well have been probative on an important issue, or closed off a potentially fruitful avenue of direct or cross examination.’” *West*, 803 F.3d at 67 (quoting *Anderson*, 862 F.2d at 925). Here, the Boston Parents agreed to proceed solely on the agreed-upon record (and, critically, to forgo discovery) in full reliance on the representations accompanying the City's public records production and those made in connection with the preparation and submission of the Agreed Statement. Had the City been truthful and disclosed that it had withheld these text messages, the Boston Parents never would have agreed to proceed on what we now know is an *incomplete* record. And, had the City provided the Boston Parents with the missing text messages – along with whatever else may have

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<sup>17</sup> See, e.g., *West*, 803 F.3d at 69 (vacating and remanding in light of “the judge's failure to draw a presumption of substantial interference” where “the defendants culpably withheld their knowledge”); *Hausman v. Holland Am. Line-U.S.A.*, No. CV13-0937 BJR, 2016 WL 51273, at \*5 (W.D. Wash. Jan. 5, 2016) (where “[a]pproximately one-third of the emails contain one or more words that should have triggered their production” “Defendants are entitled to the presumption that the destruction/suppression of the emails substantially interfered with their trial preparation” (citing *Anderson*, 862 F.2d at 924 and *West*, 803 F.3d at 67); *Thomas v. City of New York*, 293 F.R.D. 498, 505 (S.D.N.Y. 2013), *aff'd sub nom. Thomas v. McAullife*, 691 F. App'x 671 (2d Cir. 2017) (where individual “remained quiet despite his ongoing duty to disclose documents”, the “misconduct relating to the [information] was intentional”).



been withheld – they surely would have incorporated them into the briefing and argument, especially given the racial character and animus reflected in the concealed messages. Thus, the incomplete production and withholding of the text messages substantially interfered with the Boston Parents’ ability to prepare and present their case fully and fairly.<sup>18</sup>

To be clear, the Boston Parents do not suggest at this time that counsel for Defendants participated in either the decision to conceal the text messages or to doctor the transcripts that it then certified were “true and accurate” when submitted as evidence. Undersigned has requested from the Defendants’ counsel an explanation for how it came to be that the text messages were withheld and a false transcript produced. Because no such explanation has been provided to date, the Boston Parents have not drawn any conclusions beyond the fact that critical evidence was improperly concealed. Undersigned has also requested information about what other relevant documents the City may have withheld. Again, no answer has yet been given. This is all to say that, given what we know transpired and given what we do not yet know about the why, how, and degree of what transpired, additional fact-finding is likely to be necessary to establish the extent of the misconduct and to ensure the Boston Parents are able to fully and fairly prepare their case.<sup>19</sup>

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<sup>18</sup> See, e.g., *Anderson*, 862 F.2d at 930 (remanding denial of 60(b)(3) motion where “the transcript contains nothing which shows that plaintiffs were put on notice to call opposing counsel at the outset or forgo their testimony”); *Catskill Dev.*, 286 F. Supp. 2d at 319 (“Had plaintiffs’ counsel possessed the tapes, they would have been fodder for cross examining the participants in the conversations”); *Corcoran v. McCarthy*, 2010 S.D. 7, ¶ 27, 778 N.W.2d 141, 152 (“the failure to disclose substantially interfered with McCarthy’s ability to respond to Corcoran’s final argument” (relying on *Anderson*)); *Hernandez v. Results Staffing, Inc.*, 907 F.3d 354, 365 (5th Cir. 2018) (“the misrepresentations ... as well as the failure to disclose medical records responsive to RSI’s discovery requests, presumably ‘inhibited the unearthing’ of evidence adverse to Hernandez and ‘substantially interfered’ with defense counsel’s preparation” (quoting *Anderson*, 862 F.2d at 925)); *Rally Mfg., Inc. v. Mr. Gasket Co.*, No. 87-1533-CIV-MISHLER, 1992 WL 211010, at \*5 (S.D. Fla. June 12, 1992) (“deliberate failure to reveal [information] interfered with defendants’ ability to fully and fairly present its case. Painter would not have centered Gasket’s defense around [evidence at issue] if he knew of the [withheld information].” (citing *Anderson*)).

<sup>19</sup> *West*, 803 F.3d at 70 (where documents were withheld, directing “the district judge to determine whether additional documents are responsive” as well); *Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994) (granting 60(b)(3) motion and reopening discovery); *Catskill Dev.*, 286 F.Supp.2d at 320 (same).

**B. Relief Is Appropriate under Rule 60(b)(2)**

Rule 60(b)(2), in turn, provides relief in light of “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).” FRCP 60(b)(2). Because a Rule 59(b) motion “must be filed no later than 28 days after the entry of judgment” and because the newly discovered evidence was only revealed by the Boston Globe’s article more than two months after the entry of judgment, Rule 60(b)(2) applies. *Compare* FRCP 59(b) with Murphy Decl., Atts. F and G.

In such cases, “‘newly discovered evidence’ normally refers to ‘evidence of facts in existence at the time of trial of which the aggrieved party was excusably ignorant.’” *Rivera v. M/T Fossarina*, 840 F.2d 152, 156 (1st Cir. 1988) (quoting *Brown v. Pennsylvania Railroad Co.*, 282 F.2d 522, 526–27 (3d Cir. 1960)). Thus, in the First Circuit, a movant will succeed on a motion under Rule 60(b)(2) where it is shown that

- (1) The evidence has been discovered since the trial;
- (2) The evidence could not by due diligence have been discovered earlier by the movant;
- (3) The evidence is not merely cumulative or impeaching; and
- (4) The evidence is of such nature that it would probably change the result if a new trial is granted.

*Mitchell v. United States*, 141 F.3d 8, 18 (1st Cir. 1998) (internal brackets omitted).<sup>20</sup>

There can be no disagreement that the first two prongs are met here. First, as noted, both the Boston Parents and the general public were made aware of the withheld text messages more than two months after judgment in this case when the Boston Globe first revealed their existence.<sup>21</sup>

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<sup>20</sup> While a probable change in result is part of the Rule 60(b)(2) analysis, it is not part of the analysis under Rule 60(b)(3), where “an adverse party’s fraud, misrepresentation, or misconduct” is present. *See supra* at VI.A.1.

<sup>21</sup> *See, e.g., Graham by Graham v. Wyeth Lab’ys, Div. of Am. Home Prod. Corp.*, 906 F.2d 1399, 1417 (10th Cir. 1990) (no “dispute that the evidence was newly discovered, i.e., that [it] did not come to light until after the Graham trial had concluded”); *In re Glob. Energies, LLC*, 763 F.3d 1341, 1348 (11th Cir. 2014) (first prong satisfied where “Wortley discovered the [messages] well after the bankruptcy court denied with prejudice his motion to dismiss the bankruptcy petition”).

Second, the Boston Parents exercised ample due diligence by sending two separate public records requests specifically seeking such communications. Murphy Decl., Atts. C and D. The actual text messages were not produced and their content was transcribed so as to omit the discussion of race and specific Zip Codes.<sup>22</sup> *Id.*

Thus, the only questions the Court needs to decide are: (1) whether the text messages are “merely cumulative or impeaching”; and (2) whether they are “of such nature that [they] would probably change the result” had they been before the Court. *Mitchell*, 141 F.3d at 18.

As to the first question, the answer is “No, the evidence is not cumulative or impeaching.” At the heart of the Boston Parents’ case is the claim that the Zip Code Quota Plan was enacted to engage in constitutionally impermissible racial balancing by using an admissions process designed to decrease the number of White and Asian students admitted to the Exam Schools. *See* Doc. 62. Where available, the Boston Parents relied upon statements made by the Committee Members referencing the racial motivations behind the Zip Code Quota Plan, such as their statements at both the October 8<sup>th</sup> and October 21<sup>st</sup> open meetings, their presentations and publications, and their contributions at closed meetings as reflected by the meeting minutes.<sup>23</sup>

Although the Boston Parents believe that a showing of racial animus, in the sense of animosity toward a particular race, is not necessary to invoke strict scrutiny, the presence of such animus creates a more compelling case and, indeed, can be an independent basis for using that

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<sup>22</sup> *See, e.g., Glob. Energies*, 763 F.3d at 1348 (second prong satisfied where “Wortley did exercise due diligence in trying to discover the messages and had asked for precisely those types of emails in his initial document request”, responding party “did not produce them”, and thus “Wortley did not know the messages existed”); *Renfro v. Parker*, No. 3:18-CV-609-DPJ-LRA, 2020 WL 6329468, at \*2 (S.D. Miss. Oct. 28, 2020) (“because Plaintiff exercised reasonable diligence to obtain that evidence, it may be considered under Rule 60(b)(2)”; *United States v. Walus*, 616 F.2d 283, 303–04 (7th Cir. 1980) (holding due diligence satisfied by efforts to obtain evidence and noting “[t]he due diligence requirement of Rule 60(b)(2) is circumscribed by a rule of reason”).

<sup>23</sup> Docs. 38-1; 38-2; 38-3; 38-5; 38-7; 38-18; 38-65; 38-68. *See also* Doc. 62 at 3-13.

highly-demanding standard.<sup>24</sup> Although the record shows some anti-Asian animus in connection with the mocking comments of Loconto (Doc. 62 at 7-8), the attribution of such animus to Oliver-Dávila and Rivera was indirect (and not convincing to the Court). And, there was no evidence in the record of anti-White racial animus. Now that has changed.

The newly disclosed text messages from Oliver-Dávila and Rivera – both leading proponents of the Zip Code Quota Plan – clearly show racial animus, which is presumably why the messages were covered up, and why Oliver-Dávila and Rivera both resigned when those messages came to light. Accordingly, the newly discovered evidence is not for purposes of impeachment. Nor can it be considered cumulative, as it provides evidence of actual animus on the part of two Committee Members for whom such proof was not previously available.<sup>25</sup>

As to the second question, the answer is “yes,” these text messages are exactly the sort of evidence that “would probably change the result” had they been before the Court. *Mitchell*, 141 F.3d at 18. Defendants, in their opposition, sought to distance the Zip Code Quota Plan from the evidence of actual animus on the record, arguing that Loconto’s comments were separate from the enactment of the Plan, claiming there were no such comments regarding White members of the community, and implying that his mockery was an isolated incident. *See* Doc. 76 at 15-16. The Court, in turn, explicitly relied on this reasoning in its Order. *See* Doc. 104 at 45 (“These were racist comments directed at the City’s Asian American community. This Court takes them seriously but finds no persuasive evidence that any other voting member had such animus. This is conclusive.”).

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<sup>24</sup> *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 325–26 (D. Md. 2018); *Saget v. Trump*, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018).

<sup>25</sup> *See, e.g., Glob. Energies*, 763 F.3d at 1349 (“Third, far from being cumulative or impeaching, the [withheld communications] were direct evidence of the plan and intent of” actors); *Graham*, 906 F.2d at 1417 (“The third prong of the test (that the evidence must not be merely cumulative or impeaching) appears to us, (as it must have appeared to the district court) to have been satisfied because of the gravity” of the evidence).

These new text messages change this evidentiary landscape. Three of the seven voting Committee Members – 43% of the Committee – are now on the record with statements of actual animus towards the two racial groups negatively impacted by the Zip Code Quota Plan. And those three Committee Members have all resigned over their comments. Actual racial animus among members of the Committee was far more prevalent than the Defendants initially represented to both the Boston Parents and the Court. *Compare* Murphy Decl., Att. I-2, at 15, 20 *with* Doc. 76 at 15-16.

Moreover, the actual animus evidenced by these text messages is directly linked to the enactment of the Zip Code Quota Plan. Murphy Decl., Att. I-2, at 15, 20. Exchanged during the public meeting, shortly before they voted to enact the Plan, these texts reveal not only racial animus, but racial animus connected to the Zip Code in which they knew primarily members of that race resided. *Id.* This rebuts Defendants’ argument that the racial animus held by the Committee Members was unrelated to their actions or the Zip Code Quota Plan itself. Doc. 76 at 15-16.

Where, as here, the newly discovered evidence would undermine or rebut the opposing party’s position, it is considered to meet the fourth prong.<sup>26</sup> Newly discovered evidence similarly meets the fourth prong where, as here, it provides support for the movant’s argument.<sup>27</sup> All four prongs, therefore, are met and relief is appropriate under Rule 60(b)(3).

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<sup>26</sup> See, e.g., *Walus*, 616 F.2d at 302 (“Because this new evidence destroys the Government’s basis for impeaching the defendant’s alibi evidence ... we have concluded that the denial of the defendant’s motion to vacate the judgment would work an intolerable injustice.”); *Rosebud Sioux Tribe v. A & P Steel, Inc.*, 733 F.2d 509, 516 (8th Cir. 1984) (where new evidence “flatly contradicts” prior position, “[t]he entire complexion of the case has been changed” and the newly discovered evidence is “material evidence in this case”).

<sup>27</sup> See *Chilson v. Metro. Transit Auth.*, 796 F.2d 69, 72 (5th Cir. 1986) (where audit revealed evidence supporting argument for alternative motive for official action, “the evidence revealed by an internal audit could be the material and relevant evidence which would raise the real possibility of producing a different result at the trial”); *Graham*, 906 F.2d at 1417 (“The fourth prong of the test (that the evidence must be material) was satisfied because [the evidence] focused on one of the most significant aspects of [plaintiff]’s claim”). See also *Kettenbach v. Demoulas*,

**C. In the Alternative, Relief is Appropriate Under Rule 60(b)(6)**

To the extent that this Court determines that relief is not appropriate under Rule 60(b)(2) or 60(b)(3), the Boston Parents request that relief be granted under Rule 60(b)(6).<sup>28</sup> Rule 60(b)(6) allows a court to “relieve a party or its legal representative from a final judgment” for “any other reason that justifies relief”, including “whenever appropriate to accomplish justice.” FRCP 60(b)(6); *Semtek Int’l Inc. v. Info. Satellite Sys.*, 2012 WL 831475, at \*6 (D. Mass. Mar. 9, 2012) (internal quotation marks omitted).<sup>29</sup> In order “to justify relief under Rule 60(b)(6), ‘a party must show extraordinary circumstances suggesting that the party is faultless in the delay.’” *Davila-Alvarez v. Escuela de Medicina Universidad Cent. del Caribe*, 257 F.3d 58, 67 (1st Cir. 2001) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380 at 393 (1993)).

The facts discussed throughout this Memorandum qualify as “extraordinary circumstances.” This is exactly the sort of case where revisiting the final judgment is necessary to serve the purposes of justice.<sup>30</sup> Should the Court determine that relief is not appropriate under Rule 60(b)(2) or 60(b)(3), the Boston Parents request that it be granted under 60(b)(6).

**V. CONCLUSION**

Consistent with *Commonwealth v. S.S. Zoe Colocotroni*, 601 F.2d 39, 42 (1st Cir. 1979), the Court should issue a “brief memorandum” indicating that it is “inclined to grant the motion.”

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901 F. Supp. 486, 494 (D. Mass. 1995) (analyzing *Rosebud Sioux* and *Chilson* and finding them “persuasive and entirely consistent with First Circuit case law”).

<sup>28</sup> See, e.g., *Huynh v. City of Worcester*, No. CIV.A. 08-40240-TSH, 2010 WL 5376863, at \*2 (D. Mass. Dec. 20, 2010) (noting “[t]he fact that Defendants relied primarily on Rule 60(b)(3) does not constitute a waiver of their secondary argument” which “invoked Rule 60(b)(6)”).

<sup>29</sup> See also *Huynh v. City of Worcester*, No. CIV.A. 08-40240-TSH, 2010 WL 3245430, at \*2 (D. Mass. Aug. 17, 2010) (analyzing “Rule 60(b)(6), which by its broad language, seemingly allows a court unfettered discretion to reopen a case for any reason that justifies relief.”).

<sup>30</sup> See, e.g., *Huynh*, 2010 WL 3245430, at \*4 (finding that conduct that “violated the public policy” “justifies granting relief under Rule 60(b)(6)”; *Semtek* 2012 WL 831475, at \*7 (“Here defendant raises a number of substantial factual challenges to plaintiff’s contentions ... all weighing in favor of vacature” under Rule 60(b)(6)).

Upon remand of the case from the First Circuit, the Court should grant the motion, vacating the April 15, 2021 judgment and conducting further proceedings herein.

Dated: June 22, 2021

Respectfully submitted:

/s/ Callan G. Stein

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**Certificate of Service**

I, Callan G. Stein, certify that the foregoing document was filed this date via the Court's CM/ECF filing system and will be sent electronically to the registered participants in this action.

/s/ Callan G. Stein



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
BOSTON DIVISION**

**BOSTON PARENT COALITION FOR  
ACADEMIC EXCELLENCE CORP.,**

**Plaintiff,**

**v.**

**THE SCHOOL COMMITTEE OF THE CITY OF  
BOSTON, ALEXANDRA OLIVER-DAVILA,  
MICHAEL O'NEILL, HARDIN COLEMAN,  
LORNA RIVERA, JERI ROBINSON, QUOC  
TRAN, ERNANI DeARAUJO, and BRENDA  
CASSELLIUS,**

**Defendants**

**and**

**THE BOSTON BRANCH OF THE NAACP, THE  
GREATER BOSTON LATINO NETWORK,  
ASIAN PACIFIC ISLANDER CIVIC ACTION  
NETWORK, ASIAN AMERICAN RESOURCE  
WORKSHOP, MAIRENY PIMENTAL, and H.D.,**

**Defendants-Intervenors.**

**Civil Action No. 1:21-cv-10330-WGY**

**DECLARATION OF DARRAGH MURPHY**

1. My name is Darragh Murphy, and I am a member of the Boston Parent Coalition for Academic Excellence Corp. (the "Boston Parents").

2. I make this declaration for use in the case of *Boston Parent Coalition for Academic Excellence, Corp. v. The School Committee of the City of Boston*, filed in the United States District Court for the District of Massachusetts and currently on appeal to the United States Court of Appeals for the First Circuit (the "Lawsuit").

3. I am over the age of eighteen and competent to testify. If called upon to testify in open court, I would provide the same information under oath as I am providing here by means of

this Declaration.

4. During the October 21, 2020 Boston School Committee meeting, text messages were sent by and amongst voting members of the Boston School Committee. Some of these text messages were made known to the public and the Boston Parents through a series of newspaper articles published by the *Boston Globe* on November 17-18, 2020. *See Read the Text Messages Sent After Former Boston School Chair's Racist Remarks, Boston Globe* (November 17, 2020), <https://bit.ly/3d485ju>, attached as **Attachment A**; *Text Messages Fly on Boston School Committee After Chairman's Racist Remarks, Boston Globe*, <https://bit.ly/3zQIGEQ> (November 18, 2020), attached as **Attachment B**.

5. On November 19, 2020, I electronically submitted a public records request to the City of Boston on behalf of the Boston Parents. (The substance of this public records request was quoted verbatim in the City of Boston's January 13, 2021 response. *See Attachment C* ("January 13, 2021 Response")).

6. In pertinent part, the November 19, 2020 request sought:

*Copies of all electronic communications, including emails, **text messages**, voicemails, social media messages, tweets, etc, **to and from** Superintendent Cassellius, her staff and/or assistants, and **all members of the Boston School Committee**, and all members of the Exam School Working Group regarding the Exam School Working Group, including electronic attachments to all electronic communications. Please limit your search of the above item(s) to the period **from January 1, 2018 to November 19, 2020**.*

**Attachment C** (Emphasis added).

7. On January 13, 2021, Catherine Lizotte, Legal Advisor to the City of Boston responded: "Records responsive to Request # R001023-111920 may be found here" with a link to the responsive documents. **Attachment C**. The January 13, 2021 Response comprised 213 pages of email correspondence and related attachments. No text message communications were

provided. The City of Boston did not indicate that any information was being withheld. *See generally, Attachment C.*

8. On February 23, 2021, I electronically submitted a second public records request to the City of Boston to make it clear that the text messages between the School Board Members were being requested:

*Copies of ALL electronic text messages, instant messages, and any other form of electronic communication sent and/or received, including any and all "group" messages sent and/or received by more than one of the following listed individuals, during the School Committee meeting scheduled for October 21, 2020, from the time the meeting started on 10/21/2020 until it was officially adjourned on Thursday, October 22, 2020, between and among each and all of the following: Superintendent Brenda Cassellius SC Chair Michael Loconto SC Members: Lorna Rivera Jeri Robinson Michael O'Neil Alexandra Oliver-Davila Hardin LK Coleman Quoc Tran.*

**Attachment D** (emphasis added; capitalization of “ALL” in original); (substance of February 23, 2021 request quoted verbatim in the City of Boston’s March 9, 2021 response).

9. On March 9, 2021, Catherine Lizotte responded: “Records responsive to Request 1 may be found here” with a link to the response. **Attachment D** (March 9, 2021 Response). The City of Boston did not indicate that any information was being withheld. *Id.*

10. The March 9, 2021 Response included eight (8) pages of text messages transcribed by the City of Boston. *See Attachment E.* These text messages included text messages from Vice Chairperson Alexandra Oliver-Dávila to School Board Member Lorna Rivera. *See id.* at 1, 2-3. Excerpts of these text messages were produced to the Court as Exhibit 72 to the Joint Statement of Agreed Facts. *See* Doc. 38-73.

11. On June 7, 2021, the *Boston Globe* published previously undisclosed, leaked copies of text messages between Oliver-Dávila and Rivera during the October 21, 2020 meeting. *See*

*After Sharing Racially Charged Texts about West Roxbury Families in October, a Boston School Official Has Resigned*, *Boston Globe* (June 7, 2021), <https://bit.ly/3vJpFjg>, attached as **Attachment F**; (“June 7, 2021 Boston Globe Article”); *see also* *Who Covered Up the Boston School Committee Texts*, *Boston Globe* (June 16, 2021), <https://bit.ly/3wIukmT>, attached as **Attachment G**.

12. It was only upon reading the June 7, 2021 Boston Globe Article that the Boston Parents learned that there were text messages sent amongst Boston School Committee members during the October 21, 2020 meeting that were not produced by the City of Boston in response to the Boston Parents’ repeated requests.

13. On June 9, 2021, I sent an email to the City of Boston, specifically Catherine Lizotte and Shawn Williams, Director of Public Records, reemphasizing that my November 19, 2020 and February 23, 2021 public records request sought “all of the relevant text/electronic messages” sent during the October 20, 2020 School Committee meeting, requesting that a fulsome response be provided, and seeking to understand why certain text messages were withheld from the City of Boston’s March 9, 2021 response.

14. On the same day, Shawn Williams responded that the City of Boston would “reopen your public records request and provide a new response.”

15. On June 18, 2021, Shawn Williams acknowledged that “[b]ased upon recent requests for all text messages associated with the” Boston Parents’ November 19, 2020 public records request, “the City has determined that it will provide additional text messages.”

**Attachment H.**

16. This supplemental production “consist[ed] of screenshots of text messages sent and received by the school committee members.” *Id.* Specifically, the City of Boston provided a total of 51 original screenshots received from the following Boston School Committee members:

- Vice Chairperson Alexandra Oliver-Dávila: 9 screenshots, attached as **Attachment I-1**;
- Member Lorna Rivera: 24 screenshots, attached as **Attachment I-2**;
- Member Jeri Robinson: 9 screenshots, attached as **Attachment I-3**;
- Member Michael O'Neill: 7 screenshots, attached as **Attachment I-4**; and
- Student Member Khymani James: 2 screenshots, attached as **Attachment I-5**.

17. Based on a review of these original text message communications, the City of Boston withheld relevant text messages from the Boston Parents by substantially altering and omitting the transcript of the text message communications that it did produce to the Boston Parents on March 9, 2021.

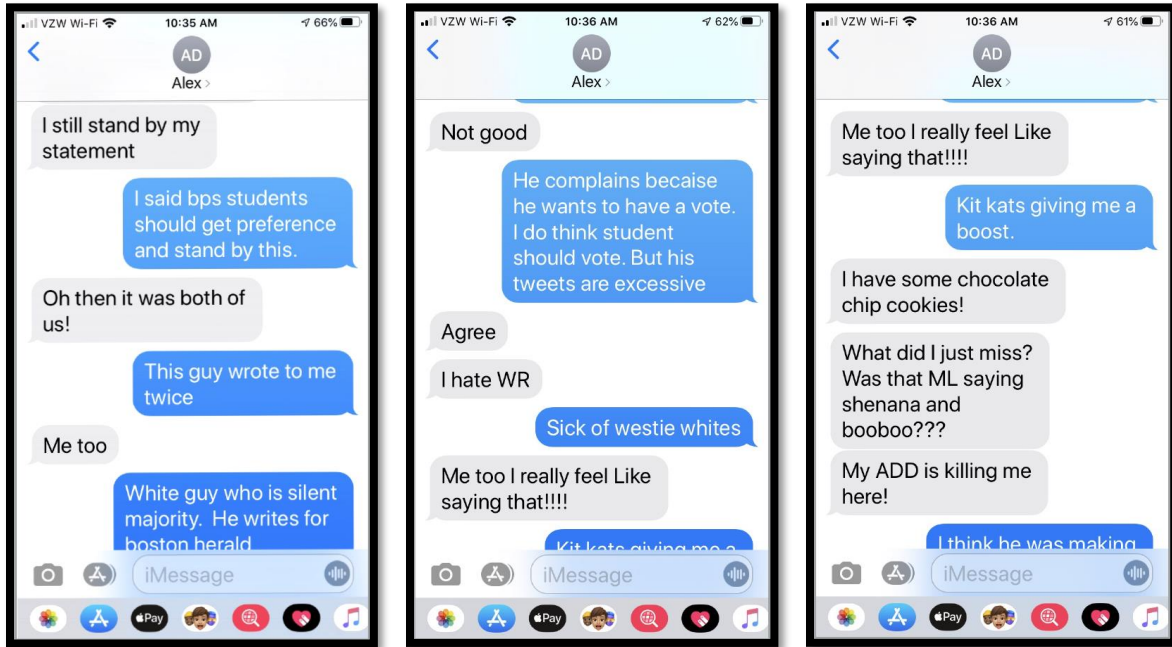
18. In this production, Lorna Rivera and Oliver-Dávila exchanged the following text messages:



See **Attachment I-2**, at 15. While parts of this text message were produced in the City of Boston's March 9, 2021 text message transcription, see **Attachment E**, at 1, the screenshot included the following text messages omitted from the transcription, specifically Lorna Rivera stating, "Wait til the white racists start yelling st [sic] us!" and Oliver-Dávila responding, "Whatever...they are

delusional.” Additionally, the screenshot provides timestamps for the text messages that were not included in the transcription. *Compare Attachment E*, at 1.

19. The City of Boston also produced the following text message between Rivera and Oliver-Dávila that were not included in the March 9, 2021 transcription.



Specifically, the text message string beginning “This guy wrote to me twice” (**Attachment I-2**, at 18) through “I have some chocolate chip cookies” (**Attachment I-2**, at 20) were not produced. Between these two bookends are the Boston School Committee members’ statements showing racial animus:

**Oliver-Dávila:** I hate WR

**Lorna Rivera:** Sick of westie whites

**Oliver-Dávila:** Me too I really feel Like saying that!!!!

**Attachment I-2**, at 19. Based upon statements in the June 7, 2021 Boston Globe Article, it is my understanding that “WR” and “westies” are references to “West Roxbury.” *See Attachment F*.

20. Instead of producing the above-referenced text messages, the City of Boston used an ellipsis:



LR - I said BPS students should get preference and stand by this.

AOD - Oh then it was both of us!

\*\*\*\*\*

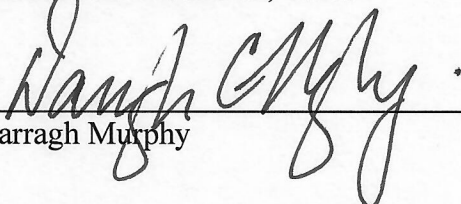
AOD - What did I just miss? Was that ML saying Shannana and booboo??? My ADD is killing me here!

LR - I think he was making fun of the Chinese names! Hot mic!!!

**Attachment E**, at 2. As stated above, the March 9, 2021 Response did not indicate that any information was being withheld. *Supra*, at ¶¶ 7, 9.

21. Following the publication of the above-referenced text messages, Chairperson Alexandra Oliver-Dávila (who assumed Michael Loconto's role as Chair) resigned from the Boston School Committee on June 7, 2021 and School Board Member Lorna Rivera resigned from the Boston School Committee on June 4, 2021.

Given under penalty of perjury in the City of Boston on June 22, 2021.

  
Darragh Murphy

# Attachment A



## Read the text messages sent after former Boston School Committee chair's racist remarks

bostonglobe.com

November 17, 2020 Tuesday 10:44 PM EST

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**Section:** K-12

**Length:** 692 words

**Byline:** James *Vaznis*

### Body

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#### ABSTRACT

"Was that ML saying Shannana and booboo???" Alexandra Oliver-Davila, vice chair at the time, wrote in a text to member Lorna Rivera obtained by the Globe.

#### FULL TEXT

Link to Image

The Globe obtained the below text messages through a public records request submitted after the last meeting of the Boston School Committee in October.

#### Wednesday, Oct. 21 - time unclear

Text conversation between Alexandra Oliver-Davila (AOD), then vice-chair of the Boston School Committee and now acting chair, and Lorna Rivera (LR), Boston School Committee member

AOD: *What did I just miss? Was that ML saying Shannana and booboo??? My ADD is killing me here!*

LR: *I think he was making fun of the Chinese names! Hot mic!!!*

AOD: *That's what I thought. Omfg he's gonna get killed someone is going to go back and capture that*

LR: *I almost laughed out loud. Getting giddy here!*

*Someone already captured Brenda on cell in twitter (?)!*

AOD: *I've been getting some funny tweets tonight it's hard not to smile or laugh. Yikes.*

LR: *Dios mia!!*

AOD: *No comment*

LR: *People tweeting about loconto hot mic!!*

*Anissa said WTF!* [LR was referring to City Councilor Anissa Essaibi-George]

AOD: *Oh no! It's gonna be ugly*

Read the text messages sent after former Boston School Committee chair's racist remarks

LR: *Someone texted me Loconto should resign, but I don't have them in my contacts*

AOD: *Oh boy How/where do I look on Twitter - sorry I'm old I'm not good at twitter*

LR: *Send me your handle and I will forward some*

*Or look up Anissa tweets*

AOD: *Alexoliver 33*

*Do we acknowledge the apology? What do we do??*

LR: *Did you see some of the tweets? I feel bad for loconto. Is he going to resign??*

AOD: *I feel bad too because he really was the person who pushed this forward with the Mayor*

*Idk if he will do it or not*

*I am not going to interrupt (?) him! Let him have his time. He needs it.*

LR: *Trying to redeem himself - [winking emoji]*

*Good night!*

AOD: *Good night.*

LR: *Good morning, actually!*

\*\*\*\*\*

**Wednesday, Oct. 21 - time unclear**

Text conversation between Michael Loconto (ML), former chair of the Boston School Committee, and Alexandra Oliver-Davila (AOD)

ML: *Do I need to worry about my non-sequitur earlier? I feel awful, I've been getting texts about it from Michael and Brenda.*

AOD: *I heard [end] and not whole thing. I think Anissa commented on it. I think be prepared just in case I'm sorry this all stinks!*

ML: *Ugh*

*Jeez*

*On twitter?*

AOD: *I know.*

*I'm sorry.*

*Yes.*

ML: *Oh God no*

*I don't know what to do*

AOD: *I think just again apologize. What does MO suggest? [AOD was referring to member Michael O'Neill.]*

Read the text messages sent after former Boston School Committee chair's racist remarks

ML: *Asking*

AOD: *I think that was good*

ML: *Jesus I am mortified*

AOD: *I know I'm very sorry*

*Do you want me to acknowledge your apology and say thanks or just leave it alone?*

ML: *I don't know*

\*\*\*\*\*

**Wednesday, Oct. 21 - time unclear**

Text conversation between Michael O'Neill (MON), member and former chair of Boston School Committee, and Michael Loconto (ML)

MON: *What the heck was your last comment/your mic was on. Hope you were talking to your daughter about a bedtime book. Sha boo. Boo boo boo?*

ML: *Geez I'm sorry I was talking to my wife about a kid's book*

MON: *Thought so, but it came out real weird!*

ML: *Should I address?*

MON: *You did it right.*

ML: *I'm mortified if someone took it another way, Brenda mentioned it too and said someone else texted her about it*

MON: *It was right after Liz read a bunch of names, could have been interpreted that you were commenting on the names. I knew you would never do that, assumed one of your daughters was saying good night. Glad you cleared it up right away. Don't worry about it any more.*

MON: *How far along are we?*

ML: *Ok thanks. I realized that after I got the text. I feel awful.*

ML: *We are on 159. 20 to go.*

MON: *You corrected very quickly. Regular watchers know your daughters always say goodnight to you.*

ML: *Anissa tweeting about it. I don't know what to do*

ML: *Am I ok? I hope I put that to bed.*

MON: *Please put me last, before VC and you, but after the other members.*

ML: *Of course, assumed as much.*

MON: *Let's vote!*

\*\*\*\*\*

**Wednesday, Oct. 21 - 11:31 p.m.**

Read the text messages sent after former Boston School Committee chair's racist remarks

Text conversation between Michael O'Neill (MON) and Brenda Cassellius (BC), Boston Public Schools superintendent

BC: *Yikes.*

## Graphic

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Former Boston School Committee Chairperson Michael D. O'Neill, at right, turns over the gavel to Michael Loconto who was elected as the new Boston School Committee chair in 2018.

**Load-Date:** November 18, 2020

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End of Document

# Attachment B

6/22/2021

Text messages fly on Boston School Committee after chairman's racist remarks - The Boston Globe

● **BREAKING**

MASSACHUSETTS HITS MILESTONE  
OF 4.1 MILLION PEOPLE FULLY  
VACCINATED

BREAKING: MASSACHUSETTS HITS  
MILESTONE OF 4.1 MILLION PEOPLE  
FULLY VACCINATED

# Text messages fly on Boston School Committee after chairman's racist remarks

By **James Vaznis** Globe Staff, Updated November 17, 2020, 5:39 p.m.



Former Boston School Committee chair Michael Loconto in 2018. BARRY CHIN/GLOBE STAFF/FILE

As a contentious Boston School Committee meeting on Zoom last month approached

<https://www.bostonglobe.com/2020/11/17/metro/text-messages-fly-boston-school-committee-after-chairmans-racist-remarks/>

1/6

6/22/2021

Text messages fly on Boston School Committee after chairman's racist remarks - The Boston Globe

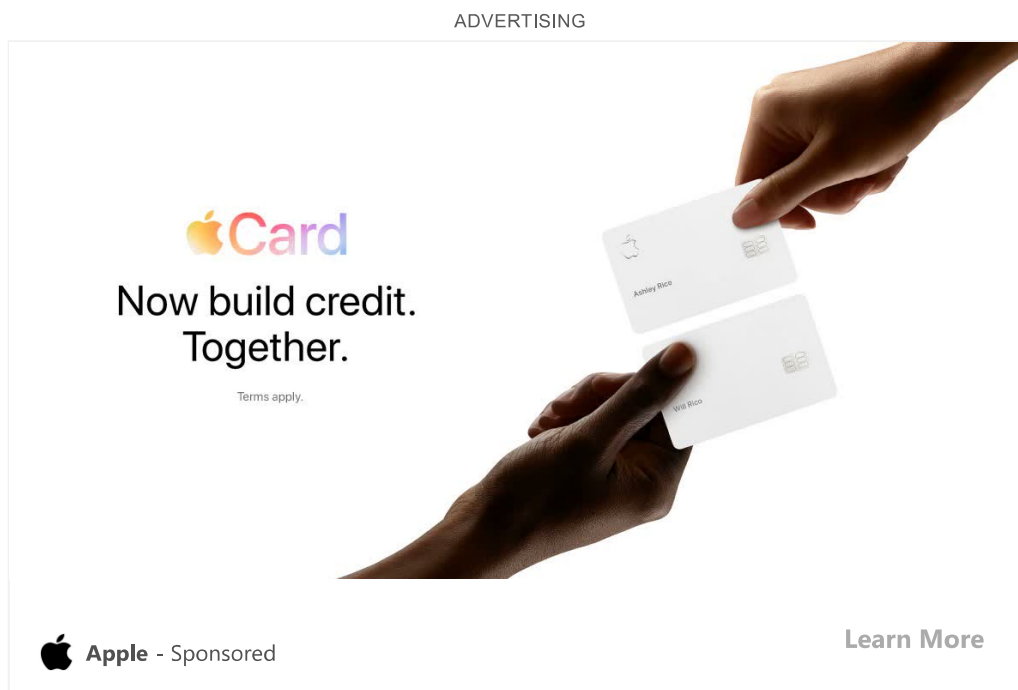
midnight, Chair Michael Loconto clicked off his camera, but accidentally left his microphone on. Within seconds, he could be heard [mocking the Asian names](#) of some upcoming speakers, remarks that set Twitter aflutter and reverberated around City Hall the next day.

His fellow School Committee members, stunned and confused by what they heard, sat nearly frozen in front of their cameras. One member initially thought the meeting had been Zoom bombed. But then, some members realized what had happened and started texting in disbelief.

“Was that ML saying Shannana and booboo???” Alexandra Oliver-Davila, vice chair at the time, [wrote in a text](#) to member Lorna Rivera obtained by the Globe.

Rivera fired back: “I think he was making fun of the Chinese names! Hot mic!!!”

“That’s what I thought,” Oliver-Davila responded. “He’s gonna get killed.”



[The uproar came swiftly.](#) City Councilor Annissa Essaibi-George tweeted while other School Committee viewers piled on. Essaibi-George and other councilors eventually



6/22/2021

Text messages fly on Boston School Committee after chairman's racist remarks - The Boston Globe

called for his resignation. By noon the next day, Loconto stepped down.

The School Committee, which is appointed by Mayor Martin J. Walsh, has not met since Loconto's downfall, and public comment has been scant. But text messages sent by members during that night, which were obtained by the Globe under a public records request, reveal the raw emotions and reactions they had to the offensive remarks that shook the Asian-American community and left a cloud over the School Committee and a landmark vote that night.

It was an awkward moment for members who were participating in the meeting from their homes with computer cameras focused tightly on their faces. Nearly seven hours into the Oct. 21 meeting, exhausted members seemed to struggle to comprehend how a political leader who was on the verge of shepherding through a historic change that would provide Black and Latino applicants greater access to the exam schools could at the same time disrespect another community of color.

School Committee members in interviews condemned the mocking.

"It was a hurtful comment," said Oliver-Davila, who is now acting chair. "I had worked with Michael Loconto for a long time. I got to know him as a man of integrity. I was sad about the comment for the Asian community. I was sad for Mr. Loconto. It was an inexcusable comment."

But she added that she hoped his remarks wouldn't overshadow his efforts to improve the school system.

Loconto, reached by text message, declined to comment.

Committee members' use of their cellphones for texting and other digital communications during their meetings has long raised eyebrows among many parents, educators, and activists, who have questioned whether members are distracted by personal matters or conversing with one another.



6/22/2021

Text messages fly on Boston School Committee after chairman's racist remarks - The Boston Globe

State law does not explicitly forbid public board members from texting each other during public meetings when less than a quorum is conversing digitally, according to the state attorney general's website. But the office discourages the practice if members do not share the written communications publicly.

None of the text messages provided to the Globe indicate that members were using texts to deliberate on the exam-school proposal. Rather, the communications initially captured the jubilation of making a temporary, but seismic, change in how exam school seats would be awarded and then the fallout from Loconto's comments.

The School Committee was considering a highly contentious proposal by Superintendent Brenda Cassellius to temporarily suspend the admission test for the exam schools because of safety concerns over administering an in-person test during a pandemic. Instead, admission next year will be based almost exclusively on student grades and most seats will be distributed by student ZIP code, prioritizing low-income areas.

The change, approved at nearly 2 a.m., generated wide-ranging reactions. Championed by civil rights advocates and progressive-minded parents, the proposal also garnered intense opposition from many Asian and white parents, whose children would face tougher odds of getting in.

It was the kind of polarizing change that Walsh had sought to avoid during his seven years in office. But in an unusual move, Walsh appeared at the School Committee meeting on Zoom and threw his support behind it, citing the pandemic.

Walsh was among nearly 200 supporters and opponents who testified. At about 11:30 p.m., Loconto mocked the Asian names after the next speakers were announced.

"That was like Shania, Shanaya, Shanay-nay, and Boo Boo, and David, right?" Loconto said.

Cassellius fired off a text to member Michael O'Neill: "Yikes!"

6/22/2021

Text messages fly on Boston School Committee after chairman's racist remarks - The Boston Globe

Soon Loconto felt the blowback.

“Do I need to worry about my non-sequitur earlier?” Loconto texted to Oliver-Davila. “I feel awful, I’ve been getting texts about it from Michael and Brenda.”

She told him Essaibi-George was publicly criticizing him.

“Ugh Jeez On twitter?” Loconto texted back.

“I know. I’m sorry. Yes,” she said.

“Oh God no I don’t know what to do,” he said.

“I think just again apologize,” she wrote.

O’Neill, the committee’s longest serving member, reached out to Loconto.

“What the heck was your last comment/your mic was on. Hope you were talking to your daughter about a bedtime book. Sha boo. Boo boo boo?” O’Neill wrote, apparently referencing a children’s song by Marky Weinstock.

“Geez sorry I was talking to my wife about a kid’s book,” Loconto said.

“Thought so, but it came out real weird!” O’Neill responded.

“I’m mortified if someone took it another way,” Loconto added after a couple of other texts. “Brenda mentioned it too and said someone else texted her about it.”

In explaining his remarks to the committee’s virtual audience, Loconto initially used the children’s book excuse. But Twitter kept buzzing, prompting Loconto to apologize again.

At one point in a text to O’Neill, Loconto wrote: “Am I ok? I hope I put that to bed.”

The next day Loconto issued another apology, saying he deeply regretted his actions.

O’Neill said in an interview he didn’t realize until after he rewatched the meeting the next day exactly what Loconto said and how hurtful the remarks were.

6/22/2021

Text messages fly on Boston School Committee after chairman's racist remarks - The Boston Globe

“He made a mistake, he owned up to it, and he resigned,” O’Neill said. “He is paying a heavy price for it.”

---

James Vaznis can be reached at [james.vaznis@globe.com](mailto:james.vaznis@globe.com). Follow him on Twitter [@globevaznis](https://twitter.com/globevaznis).

[Show 139 comments](#)

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# Attachment C



**BOSTON PUBLIC SCHOOLS**  
**OFFICE OF LEGAL ADVISOR**  
Martin J. Walsh, Mayor

1/13/21

RE: PUBLIC RECORDS REQUEST of November 19, 2020, Reference #s:

#R001025-111920  
#R001024-111920  
#R001023-111920  
#R001021-111920  
#R001020-111920  
#R001019-111920

Dear Ms. Murphy:

The City of Boston (City) has received your request for public records. This response applies only to records that exist and are in the custody of the City. See A Guide to the Massachusetts Public Records Law, p. 32, n.115. It is expected that a custodian of records must use her superior knowledge of her records with respect to responses to public records requests. 950 CMR 32.04(5). Below, please find your specific requests and BPS's responses in blue.

#R001025-111920:

*Copies of all data sets, spreadsheets, formulas, algorithms, calculations, instructions, rubrics, and guidelines used by the Superintendent's Exam School Working Group to identify the number of school aged children in each Boston ZIP code, the median income of each Boston ZIP code, and the allocation of exam school seats per Boston ZIP code, including copies of all simulations run by the Exam School Working Group, the Superintendent's Office, the Boston Public School department, and the Boston School Committee, and all electronic communication to and from all members of the Exam School Working Group, the Superintendent, the Boston School Committee, the Mayor's Office, the Boston City Council, and Boston Public Schools offices, regarding the work of the Exam School Working group, its data and findings, and the simulations.*

*Please limit your search of the above item(s) to the period from January 1, 2020 to November 19, 2020.*

Records responsive to Request #R001025-111920 may be found [here](#), [here](#), and [here](#).

#R001024-111920:

*Copies of all formulas, algorithms, calculations, instructions, rubrics, and guidelines used by the Boston Public Schools to convert, analyze, and standardize Grade Point Averages (GPA's) for all 6th grade applicants to Boston Latin Academy, the O'Bryant School, and Boston Latin School. Please limit your search of the above item(s) to the period from January 1, 2017 to November 19, 2020.*

Records responsive to Request # R001024-111920 may be found [here](#).

#R001023-111920:

*Copies of all electronic communications, including emails, text messages, voicemails, social media messages, tweets, etc, to and from Superintendent Cassellius, her staff and/or assistants, and all members of the Boston School Committee, and all members of the Exam School Working Group regarding the Exam School Working Group, including electronic attachments to all electronic communications. Please limit your search of the above item(s) to the period from January 1, 2018 to November 19, 2020.*

Records responsive to Request # R001023-111920 may be found [here](#).

#R001021-111920:

*ISEE exam scores and Grade Point Averages (GPA's) for school year 2019/2020 of all 6th grade students who did NOT receive invitations for School Year 2020/2021 to Boston Latin Academy, the O'Bryant School, and Boston Latin School, de-identified, with the name of the exam school to which each applicant was NOT invited to attend, the sending school name, and the ZIP code of each applicant.*

#R001020-111920:

*ISEE exam scores and Grade Point Averages (GPA's) for school year 2019/2020 of all 6th grade students admitted for School Year 2020/2021 to Boston Latin Academy, the O'Bryant School, and Boston Latin School, de-identified, with the name of the exam*

*school to which each applicant was invited to attend, the sending school name, and the ZIP code of each applicant.*

#R001019-111920:

*Grade Point Averages (GPA's) for school year 2019/2020 of all 6th grade students admitted for School Year 2020/2021 to Boston Latin Academy, the O'Bryant School, and Boston Latin School, de-identified, with sending school name and ZIP code of each applicant.*

Records responsive to requests #R001019, 1020, and 1021 may be found [here](#).

***Redactions***

Please note that student record information and personal emails, phone numbers, and addresses have been redacted.

***Conclusion***

You may appeal this response to the Supervisor of Records in the Office of the Secretary of the Commonwealth. G.L. c. 66, § 10A (c); G.L. c. 66, § 10(b)(ix); 950 CMR 32.08; 950 CMR 32.08(1)(h) (in petitioning the Supervisor, the requester shall provide a copy of such petition to the records access officer associated with such petition). You may also appeal to the Superior Court. 950 CMR 32.06(3)(c).

Sincerely,



Catherine Lizotte  
Legal Advisor  
(617) 635-9250

# Attachment D





**BOSTON PUBLIC SCHOOLS**  
**OFFICE OF LEGAL ADVISOR**  
Martin J. Walsh, Mayor

3/9/21

RE: PUBLIC RECORDS REQUEST of February 23, 2021

Reference #:

#R000337-022321

Dear Ms. Murphy:

The City of Boston (City) has received your request for public records. This response applies only to records that exist and are in the custody of the City. See A Guide to the Massachusetts Public Records Law, p. 32, n.115. It is expected that a custodian of records must use her superior knowledge of her records with respect to responses to public records requests. 950 CMR 32.04(5). Below, please find your specific requests and BPS's responses in blue.

1. *Copies of ALL electronic text messages, instant messages, and any other form of electronic communication sent and/or received, including any and all "group" messages sent and/or received by more than one of the following listed individuals, during the School Committee meeting scheduled for October 21, 2020, from the time the meeting started on 10/21/2020 until it was officially adjourned on Thursday, October 22, 2020, between and among each and all of the following: Superintendent Brenda Cassellius SC Chair Michael Loconto SC Members: Lorna Rivera Jeri Robinson Michael O'Neil Alexandra Oliver-Davila Hardin LK Coleman Quoc Tran.*

Records responsive to request 1 may be found [here](#).

2. *List of students who currently comprise the applicant pool for incoming school year 2021/2022 for the three exam schools (Boston Latin School, Boston Latin Academy, John D O'Bryant School), de-identified and sorted by GPA.*

There are no records responsive to request 2.

3. *All of the Grade Point Averages sorted by Zip Code of the students, de-identified, who currently comprise the applicant pool for incoming school year 2021/2022 for the three exam schools (Boston Latin School, Boston Latin Academy, John D O'Bryant School). Please provide the list by zip code. For example: Zip Code 02122: List all the GPA's of the de-identified students currently comprising the applicant pool who reside in Zip Code 02122. Zip Code 02126: List all the GPA's of the de-identified students currently comprising the applicant pool who reside in Zip Code 02126. And so on until every Zip Code in the City of Boston is included in the response, including Zip Codes for which there are no applicants in the pool and Zip Codes in which there are fewer than 10.*

There are no records responsive to request 3.

4. *Written transcript of the entire School Committee meeting held on October 21, 2020 which adjourned on Thursday, October 22, 2020.*

There are no records responsive to request 4.

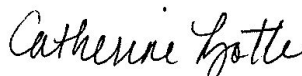
5. *Written transcript of the entire School Committee meeting held on October 8, 2020.*

There are no records responsive to request 5.

### **Conclusion**

You may appeal this response to the Supervisor of Records in the Office of the Secretary of the Commonwealth. G.L. c. 66, § 10A (c); G.L. c. 66, § 10(b)(ix); 950 CMR 32.08; 950 CMR 32.08(1)(h) (in petitioning the Supervisor, the requester shall provide a copy of such petition to the records access officer associated with such petition). You may also appeal to the Superior Court. 950 CMR 32.06(3)(c).

Sincerely,



Catherine Lizotte  
Legal Advisor  
(617) 635-9250

# Attachment E

(Text messages presented in italics)

Transcription of Text Messages Responsive to Public Records Request (R000876-102720)

**Wednesday, October 21, 2020**

**5:46 p.m.**

**“SA” and Lorna Rivera (LR)**

SA - Lorna, as a member of the Exam School Working Group, thanks for your support. *Mil gracias licenciada.*

LR - *Your efforts made this possible! Mil gracias!*

SA - *A la orden siempre, Lorna.*

LR - *Iguamente! (emoji smiley face)*

\*\*\*\*\*

**[time?]**

**Lorna Rivera (LR) and Alexandra Oliver-Davila (AOD)**

AOD - *Sure! Hi by law Chair sets agenda and we can't vote on anything Superintendent hasn't had a chance to respond to. He suggest talking to ML and asking him to add to the agenda for next time. We have 170 people speaking tonight so honestly this is probably not the best time to do it even if we could.*

LR - *Ok wow 170!?! I don't know if I will be able to stay awake. I am too old for this job.*

LR - *Hi I calculated 170 people \*3=510/60 min=8.5 hours. Is this for real? Can't we end at a certain time? Are we allowed to take breaks? I am sorry to complain.*

AOD - *Yup it's real. 2 min each but will be a very long mtg*

AOD - *I think take breaks as you need them.*

\*\*\*\*\*

AOD - *Best sc meeting ever I am trying not to cry*

LR - *Me too!*

LR - *Why can't we get interpretation/translation right? Why does language access have to be so hard?*

AOD - *When I was on the meeting that explained the proposed policy people got to choose to go into a room to get the whole meeting translated - at least that is how I understood it*

LR - *Should I ask Dr. C what the heck?*

AOD - *Sure you can text her.*

\*\*\*\*\*

**[time?]**

**Lorna Rivera (LR) and Brenda Cassellius (BC)**

(Text messages presented in italics)

LR - *Hi why is interpretation a continuing problem for some of our communities? I hope we can improve.*

BC - *We had Cantonese and I just asked Monica. This is the purview out the Committee. I suggested to Monica that if we have over a certain number of participants that we automatically default to all 10 languages but I think to provide it for SC it requires them to request it. Maybe bring it up to Mike.*

BC - *I can change for my team though!*

LR - *I will. I know there is so much going on. I really do appreciate your hardwork!*

BC - *[screenshot of Gchat from staff member that reads, "I believe SC only requests interpreters for public comment based on who signs up for public comment. It would be good to revisit that decision."]*

LR - *Thanks!*

\*\*\*\*\*

**[time?]**

**Lorna Rivera (LR) and Alexandra Oliver-Davila (AOD)**

\*\*\*\*\*

**[time?]**

AOD - *I still stand by my statement.*

LR - *I said BPS students should get preference and stand by this.*

AOD - *Oh then it was both of us!*

\*\*\*\*\*

AOD - *What did I just miss? Was that ML saying Shannana and booboo??? My ADD is killing me here!*

LR - *I think he was making fun of the Chinese names! Hot mic!!!*

AOD - *That's what I thought. Omfg he's gonna get killed someone is going to go back and capture that*

LR - *I almost laughed out loud. Getting giddy here!*

*Someone already captured Brenda on cell in twitter (?)!*

AOD - *I've been getting some funny tweets tonight it's hard not to smile or laugh.*

*Yikes.*

LR - *Dios mia!!*

AOD - *No comment*

LR - *People tweeting about loconto hot mic!!*

*Anissa said WTF!*

AOD- *Oh no! It's gonna be ugly*

(Text messages presented in italics)

LR - Someone texted me Loconto should resign, but I don't have them in my contacts

AOD - Oh boy How/where do I look on Twitter - sorry I'm old I'm not good at twitter

LR - Send me your handle and I will forward some

Or look up Anissa tweets

AOD - Alexoliver 33

Do we acknowledge the apology? What do we do??

LR - Did you see some of the tweets? I feel bad for loconto. Is he going to resign??

AOD - I feel bad too because he really was the person who pushed this forward with the Mayor

Idk if he will do it or not

AOD - I am not going to interrupt (?) him! Let him have his time. He needs it.

LR - Trying to redeem himself - [winking emoji]

Good night!

AOD - Good night.

LR - Good morning, actually!

\*\*\*\*\*

**Wednesday, October 21, 2020**

**10:34 p.m.**

**Lorna Rivera (LR) and Michael Loconto (ML)**

LR - Hi can you tell me how many more people left to testify? I couldn't find the spreadsheet in google

ML - 77 to go, many falling off

\*\*\*\*\*

**[time?]**

LR - Hi can you tell me if angie camacho is on the list and what number?

ML - yes she is #168, we are on 145

LR - Thanks.

\*\*\*\*\*

**[time?]**

**Michael Loconto (ML) and Alexandra Oliver-Davila (AOD)**

ML- Do I need to worry about my non-sequitur earlier? I feel awful, I've been getting texts about it from Michael and Brenda.

(Text messages presented in italics)

AOD - I heard *[end]* and not whole thing. I think Anissa commented on it. I think be prepared just in case I'm sorry this all stinks!

ML - Ugh

*Jeez*

*On twitter?*

AOD - I know.

*I'm sorry.*

*Yes.*

ML - Oh God no

*I don't know what to do*

AOD - I think just again apologize. What does MO suggest?

ML - Asking

AOD - I think that was good

ML - Jesus I am mortified

AOD - I know I'm very sorry

*Do you want me to acknowledge your apology and say thanks or just leave it alone?*

ML - I don't know

\*\*\*\*\*

**Wednesday, October 21, 2020**

**6:00 p.m.**

**"Marty" [Boston Mayor Marty Walsh] (MW) and Jeri Robinson (JR)**

MW - Good luck

JR - Glad we're remote. Lots of passion. Wish there was as much passion and concern for the rest of our 52,000 students and 122 schools and not just the select three.

Marty - I agree with you.

\*\*\*\*\*

**[time?]**

**Jeri Robinson (JR) and Alexandra Oliver-Davila (AOD)**

JR - Yes

**6:27 p.m.**

(Text messages presented in italics)

AOD – *What a great (unclear) totally trying not to cry, best meeting ever.*

JR – *So true. So proud of the Mayor*

AOD – *Me too, but we need to push because he said it was one year in his comments – we should call him and thank him so he knows where we stand.*

JR – *True. I did text and thank him at the conclusion of his remarks.*

AOD – *That's great.*

\*\*\*\*\*

**6:53 p.m.**

**Sonia Barney Gomez (SBG), Josette Williams (JR) and Jeri Robinson (JR)**

SBG – *Jeri how excited I'm for you. This is like doing the impossible. Waiting for the vote.*

JR – *Yes. Amazing what can happen during a pandemic. There are over 800 folks watching. Wish there was as much concern about all of our kids and schools.*

SBG – *Yes. Baby steps. I believe this is historic. I'm hoping community partners come in to support students to make sure our students succeed*

JW – *I'm holding on. Either way, folks are really showing their true colors!!! This city is never ready for real change but time has come.*

SBG – *I just told Monica we need to start scheduling our community meetings to make sure we have parent voices to [unclear] the changes permanent for next year.*

\*\*\*\*\*

**10:05 p.m.**

**Jeri Robinson (JR) and Michael Loconto (ML)**

JR – *what number are we up to?*

ML – *84. People starting to drop off now.*

\*\*\*\*\*

**11:00 p.m.**

**“SA” and Jeri Robinson (JR)**

SA – *How are you holding out Jeri. Looking pretty tired...*

JR – *I am. We still have about 70 speakers.*

SA – *that's 2 plus hours by my reckoning.*

JR – *Tulane [sic?] without our vote, so about 2 am.*

JR – *Some folks are dropping off, let's hope more do.*



(Text messages presented in italics)

\*\*\*\*\*

**Wednesday, October 21, 2020**

**[time?]**

**Alexandra Oliver-Davila (AOD) and Brenda Cassellius (BC)**

AOD - *Best meeting ever. Trying not to cry. What a great letter.*

BC - *Yup. I asked him to write it and I asked Tanisha to read it. Powerful.*

AOD - *Great idea!*

6:28 p.m.

BC - *Speak it.*

AOD - *Amen!*

\*\*\*\*\*

**Wednesday, October 21, 2020**

**5:27 p.m.**

**Michael O'Neill (MON) and Michael Loconto (ML)**

MON - *You should mention Khymani was on the national student panel last week.*

ML - *[thumbs up emoji]*

MON - *He was excellent and made us BPS Proud.*

ML - *[thumbs up emoji]*

**[time?]**

MON - *What the heck was your last comment/your mic was on. Hope you were talking to your daughter about a bedtime book. Sha boo. Boo boo boo?*

ML - *Geez I'm sorry I was talking to my wife about a kid's book*

MON - *Thought so, but it came out real weird!*

ML - *Should I address?*

MON - *You did it right.*

ML - *I'm mortified if someone took it another way, Brenda mentioned it too and said someone else texted her about it*

\*\*\*\*\*

MON - *It was right after Liz read a bunch of names, could have been interpreted that you were commenting on the names. I knew you would never do that, assumed one of your daughters was saying good night. Glad you cleared it up right away. Don't worry about it any more.*

(Text messages presented in italics)

MON - *How far along are we?*

ML - *Ok thanks. I realized that after I got the text. I feel awful.*

ML - *We are on 159. 20 to go.*

MON - *You corrected very quickly. Regular watchers know your daughters always say goodnight to you.*

ML - *Anissa tweeting about it. I don't know what to do*

ML - *Am I ok? I hope I put that to bed.*

MON - *Please put me last, before VC and you, but after the other members.*

ML - *Of course, assumed as much.*

MON - *Let's vote!*

\*\*\*\*\*

**6 43 p.m.**

**Michael O'Neill (MON) and Khymani James (KJ) (student member)**

KJ - *Are you comfortable on the logistics behind transferring elementary school grades to letter grades? I'm confused on that part and don't want to ask publicly if I can get a behind the scenes answer.*

MON - *I suggested last week and will suggest again tonight they bring in a 3rd party to oversee/work with BPS on the process. They do have a method to convert BPS grades to a 12 point system, based on the specific 1-4 grades in certain subjects. They have had to do it for years as GPA is already 50% of the criteria. But I would prefer independent oversight to build trust.*

KJ - *Ahhh I see*

**Thursday, October 22, 2020**

**12 29 a.m.**

MON - *Well done. Very well done.*

KJ - *Thank you, Mr. O'Neill.*

\*\*\*\*\*

**Wednesday, October 21, 2020**

**Michael O'Neill (MON) and Brenda Cassellius (BC)**

**11 31 p.m.**

BC - *Yikes.*

**Thursday, October 22, 2020**

**1 47 a.m.**

(Text messages presented in italics)

BC - *Remember I talked about that in my interview.*

MON - *(thumbs up sign)*

BC - *Thank you.*

MON - *(thumbs up sign)*

MON - *Congrats.*

\*\*\*\*\*

**Wednesday, October 21, 2020**

**6:19 p.m.**

**Khymani James (KJ) and Alexandra Oliver-Davila (AOD)**

AOD - *Great points. Thank you for message to fellow students. Sooo important!*

KJ - *Thank you, Ms. Oliver-Davila!!!*

AOD - *You are welcome! Keep asking your great questions!*

KJ - *Quick question. Is what is being voted on tonight called a "proposal" or a "policy"*

AOD - *proposed policy*

KJ - *Thank you!*

AOD - *Sure!*

**11:19 p.m.**

KJ - *Wow -I had to turn my camera off because of my facials.*

AOD - *That's a great strategy!*

AOD - *You are a trooper staying late!*

KJ - *Thanks Vice Chair. Trying my best to pull through!*

AOD - *Also you can leave! Everyone will understand because you have school tomorrow - past BSAC members have left around 9 pm*

KJ - *Yes, I am aware! Thank you - I told myself at the beginning of the year that I would attend all hours of the meeting since they're so important and only every other week.*

AOD - *You are a trooper! Hope your teachers give you a break on Thursday mornings*

KJ - *Me too! [smiling emoji]*

# Attachment F

6/22/2021

After sharing racially charged texts about West Roxbury families in October, a Boston school official has resigned - The Boston Globe

## THE GREAT DIVIDE

# After sharing racially charged texts about West Roxbury families in October, a Boston school official has resigned

By [Bianca Vázquez Toness](#) and [Felicia Gans](#) Globe Staff, Updated June 7, 2021, 9:21 p.m.

6/22/2021

After sharing racially charged texts about West Roxbury families in October, a Boston school official has resigned - The Boston Globe



Boston school committee member Lorna Rivera resigned after racially charged texts she sent during the October meeting were about to be made public. BOSTON PUBLIC SCHOOLS

*The Great Divide is an investigative team that explores educational inequality in Boston and statewide. [Sign up](#) to receive our newsletter, and send ideas and tips to [thegreatdivide@globe.com](mailto:thegreatdivide@globe.com).*

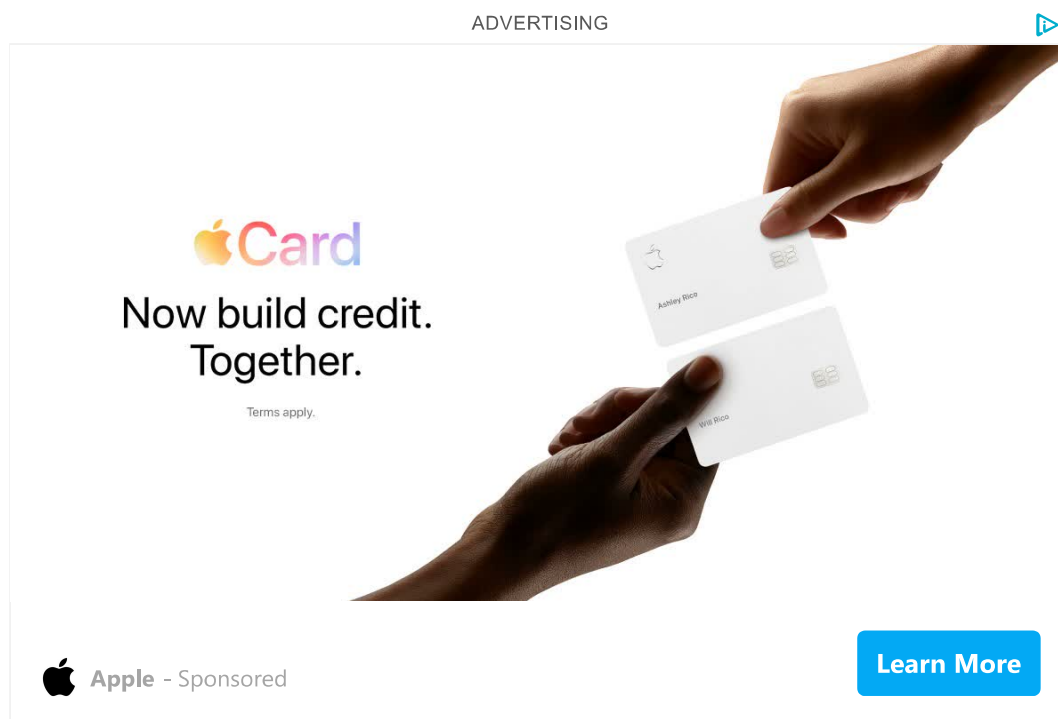
6/22/2021

After sharing racially charged texts about West Roxbury families in October, a Boston school official has resigned - The Boston Globe

A second Boston School Committee member has resigned due to racially charged observations made about parents during a lengthy public hearing last year about the exam school admissions process.

“Sick of Westie whites,” Lorna Rivera texted, referring to the Boston West Roxbury neighborhood, according to a transcript. Rivera is a professor of women’s studies at the University of Massachusetts Boston and Latina. She resigned her position on the committee Friday after the texts she sent during the October meeting were about to be made public.

“Wait until the white racists start yelling at us,” Rivera texted at another moment. “Whatever. They’re delusional,” replied Chairwoman Alexandra Oliver-Dávila.



The texts, [shared on Monday with the Globe columnist Marcela García](#), were part of a back-and-forth with Oliver-Dávila, but were withheld from the Globe when the newspaper requested texts and e-mails shared among School Committee members during the October Zoom meeting. That omission appears to break public records law

6/22/2021

After sharing racially charged texts about West Roxbury families in October, a Boston school official has resigned - The Boston Globe

though it's unclear whether the records were kept secret by school district or officials in the mayor's office.

The texts were sent the same night former School Committee chairman Michael Loconto was caught on Zoom making comments to his wife that seemed to [make fun of the Asian names of people lined up for public comment](#). Later during that meeting, the School Committee — shepherded by Loconto — passed one of the biggest changes in decades to its admissions process for its elite exam schools.

It's a change that ultimately led to [more students of color gaining admission](#) this fall to Boston Latin School, Boston Latin Academy, and the John D. O'Bryant School of Mathematics and Science. The change also caused fewer students from West Roxbury to gain admission to Boston's coveted exam schools, according to admissions data released last month. West Roxbury parents, among others, have protested the change.

Oliver-Dávila, who is also Latina, told García she plans to stay on the committee, despite comments she traded with Rivera. "I hate WR," she texted to Rivera, also about West Roxbury.

Oliver-Dávila did not respond to texts or calls Monday seeking to further understand her decision.

It's not clear why the texts between these two School Committee members only are coming to light now.

The day after the Oct. 21 meeting, the Globe requested all e-mails and texts among School Committee members about BPS matters exchanged during the meeting. The district soon shared a transcript of dozens of messages, including some messages between Rivera and Oliver-Dávila. However, the texts between the two women about West Roxbury were excluded. The document didn't indicate that messages had been redacted.



6/22/2021

After sharing racially charged texts about West Roxbury families in October, a Boston school official has resigned - The Boston Globe

Rivera and Oliver-Dávila told García, however, that they complied with the law and shared these messages with the school department in October in response to the Globe's public records request.

Boston Public Schools officials wouldn't explain exactly why these messages were withheld.

"Whenever there is a request for records held on a private device, we have to analyze whether the records pertain to public business," Xavier Andrews, Boston Public Schools director of communications, wrote in an e-mail Monday. "That analysis was done and records responsive to the request were provided."

Boston school officials referred questions about the decision to omit these texts to the city's legal department, which didn't respond to an e-mail seeking comment.

In Massachusetts, under public records law, agencies have a responsibility to tell the person who requested the records if anything has been redacted — and why, said Justin Silverman, executive director of the New England First Amendment Coalition.

"The law works in a way where the requester is never — should never be — unaware that there is information missing," he said.

Without knowing there has been information redacted, Silverman said, the requester won't have the opportunity to appeal the decision to redact, another key right protected under the public records law.

If the public records law is not followed, "government will be operating in secret," he said.

Others wonder how and why the information surfaced almost eight months later. "City officials need to be held accountable for withholding and leaking" the texts, said Peggy Wiesenber, a longtime Boston Public Schools watchdog. "I don't understand why this is coming out now," she said, adding that the timing seems suspect.

6/22/2021

After sharing racially charged texts about West Roxbury families in October, a Boston school official has resigned - The Boston Globe

According to Andrews, another local media outlet recently made a similar request for texts or e-mails. The school department has yet to respond to that request, but plans to exclude the inappropriate messages.

Rivera says the timing is deliberate and politically motivated.

“This is a right-wing coordinated effort to derail [the] BPS exam school vote,” she texted the Globe, referring to upcoming decisions on permanent changes to the admissions policy for the three exam schools. “The timing and leak of these texts were intentional and an inside job.”

Officials at the city of Boston and School Committee didn’t respond to e-mails seeking comment on Rivera’s accusation of a deliberate leak.

In a statement shared with the Globe, Superintendent Brenda Cassellius called the contents of the texts between Rivera and Oliver-Dávila “disappointing and hurtful to the Boston Public Schools community, and to our larger efforts to combat racism in all forms.”

The School Committee canceled its meeting for this week. It would typically be up to the mayor to appoint a new School Committee member to replace Rivera, but it’s not clear from the city charter whether an acting mayor has the authority to do so. Kim Janey is serving as acting mayor, replacing Martin J. Walsh, until the November election.

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After sharing racially charged texts about West Roxbury families in October, a Boston school official has resigned - The Boston Globe

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# Attachment G

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EDITORIAL

# Who covered up the Boston School Committee texts?

The public had every right to see text messages between school committee members on the night of a controversial exam school vote, but the city withheld them.

By **The Editorial Board** Updated June 16, 2021, 5:54 p.m.



Mayor Janey spoke at City Hall on June 16 to announce next steps for the Boston School Committee and share a COVID-19 update afternoon. CHRISTIANA BOTIC FOR THE BOSTON GLOBE

The next time the City of Boston says that it has complied with a public records request and leveled with the public, will anyone believe them?

The city's credibility is now in doubt, after the way it handled the fallout from a now-infamous Oct. 21, 2020, school committee meeting. Three school committee members have now resigned as a direct result of their behavior at that meeting, after making insulting and inappropriate statements.

But it's the city that may have actually broken a law, by failing to fully comply with a public records request from the Globe for records related to the meeting. If Superintendent Brenda Cassellius and Acting Mayor Kim Janey want the city to be regarded as trustworthy in the future, they'll need to figure out exactly who failed to provide the records and ensure it never happens again.

The nine-hour meeting, held on Zoom, was supposed to be historic. The appointed board unanimously approved a dramatic, but temporary, policy change in the way students are admitted to the city's three selective and prestigious exam schools, dropping the admission test and adopting a system based on grades and ZIP codes, yielding a class [with more Black and Latino students](#).

At the meeting, many white and Asian parents spoke out against the new admissions policy. The school committee chair, Michael Loconto, [was caught on a hot mike](#) mocking Asian American commenters.

ADVERTISING



Days after the meeting, the Globe's James Vaznis filed a public records request with Boston Public Schools for "copies of all cellular telephone text messages and e-mails related to BPS issues that were sent and received by each Boston School Committee member during their meeting that began on Oct. 21 and that ended on Oct. 22."

Under the state's public records and open meeting laws, the public has the right to observe and review how school committees, city and town councils, and boards of selectmen, among other appointed or elected government bodies, deliberate and make decisions during public hearings.

On Nov. 5, the Boston Public Schools' Office of Legal Advisor [sent Vaznis what it claimed were the responsive communications](#), including eight pages of text transcripts.

But as the Globe's Marcela García [reported earlier this month](#), the city improperly withheld clearly relevant text messages. The night of the meeting, members Lorna Rivera and Alexandra Oliver-Dávila had a text exchange that was turned over to BPS but was not given to the Globe:

"Best school committee meeting ever," Oliver-Dávila texted Rivera. "I'm trying not to cry." "Wait until the white racists start yelling at us," Rivera texted back. "Whatever. They're delusional," texted Oliver-Dávila. "I hate WR," she texted Rivera again, in reference to West Roxbury. "Sick of Westie whites," Rivera replied. "Me too. I really feel like saying that," Oliver-Dávila texted.

BPS said it "did omit portions deemed not 'related to BPS issues,' " which was the language in the Globe's records request. But it's hard to see how anyone would reach

that conclusion about the exchange in question — and even harder considering the texts that BPS *did* produce between Rivera and Oliver-Dávila. At one point, for instance, Oliver-Dávila asked Rivera how to find tweets regarding the meeting. Rivera also sent Oliver-Dávila a text expressing surprise that 170 people were slated to speak at the meeting and wondered if she'd be able to stay awake.

The fact that BPS released those trivial messages makes it even more striking that they withheld the West Roxbury exchange, which was far more clearly about “BPS issues.”

Earlier this month, Oliver-Dávila learned the withheld texts had been leaked and a local reporter had just filed their own public records request asking specifically for those in their attempt to authenticate them. Rivera and Oliver-Dávila instead shared them with García, of the Globe. Rivera had already resigned and Oliver-Dávila did hours after the texts became public.

Whatever the motives of the leaker, if it were not for them, the city would have successfully covered up records that the public was entitled to see. The Globe has now filed an appeal with the state's supervisor of records, who could determine that BPS violated the law. Unfortunately, although the public records law enables the supervisor to order BPS to belatedly produce the missing records, it does not allow her to hold BPS accountable for failing to do so in the first place or to file suit if BPS resists the order.

BPS owes the public an explanation. Trust in government only erodes when agencies skirt laws meant to ensure transparency. When a decision-maker on a city committee expresses hatred for a whole neighborhood, that's something the public has a right to know about — and the city has no right to hide.

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# Attachment H

**Subject:** City of Boston Public Records Office City Public Records Request :: R001023-111920

**Body:**



*City of Boston*

*Shawn A. Williams, Esq.*

*Director of Public Records*

06/18/2021

RE: PUBLIC RECORDS REQUEST of November 19, 2020., Reference # R001023-111920

Dear Darragh:

The City of Boston (City) has received your request for public records. This response applies only to records that exist and are in the custody of the City. See A Guide to the Massachusetts Public Records Law, p. 32, n.115. It is expected that a custodian of records must use her superior knowledge of her records with respect to responses to public records requests. 950 CMR 32.04(5). Specifically, you stated:

*Copies of all electronic communications, including emails, text messages, voicemails, social media messages, tweets, etc, to and from Superintendent Cassellius, her staff and/or assistants, and all members of the Boston School Committee, and all members of the Exam School Working Group regarding the Exam School Working Group, including electronic attachments to all electronic communications.*

*Please limit your search of the above item(s) to the period from January 1, 2018 to November 19, 2020.*

The records responsive to this request are provided via a link found below. What follows is an explanation of the records provided in this response in contrast to responses to previous requests.

**Prior Response by the City to Records Responsive to the Present Request**

The City first received a request for the responsive records in the fall of 2020. The original request sought copies of:

*"cellular telephone text messages and emails related to BPS issues that were sent and received by each Boston School Committee member during their meeting that began on Oct. 21 and that ended on Oct. 22."*

Public Records Request (R000876-102720)

In its response to request R000876, the City described the records it deemed responsive to that request. Records deemed non-responsive portions were omitted from the response; no records were withheld or redacted pursuant to a public records law exemption.

The City described the responsive records in its response to R00876:

**"Text Messages**

*With respect to text messages, it is important to note that none of the members possess a mobile phone that is owned by BPS or the City of Boston. Each member was contacted and asked to provide text message records from the respective personal devices that are responsive to your request."*

The City informed the requester that it omitted portions deemed not related to BPS issues.

**"Emails**

*Each member of the Boston School Committee is provided with an email address. To comply with this request, the BPS conducted a search of its email system for the dates and times of the meeting. No portions of these records were redacted."*

**Current Requests**

Based upon recent requests for all text messages associated with the above referenced matter, the City has determined that it will provide additional text message records. Recent requests seek all text message records rather than those specifically related to BPS business. Further, it has come to the attention of the City that the previously unreleased text messages have been published and made available to the public, making it "impossible to erase from public knowledge information already released." See *Globe Newspaper Co. v. Police Com'r of Boston*, 419 Mass. 852, 860 (1995).

**Responsive Records Included With This Communication**

The responsive records consist of screenshots of text messages sent and received by the school committee members. In the prior response a transcribed document was provided in lieu of screenshots. Please note the resolution of the screen shots may not provide optimal viewing at increased magnification - this is the condition of the records as provided to the City. No other copy of these screenshots exist. A copy of the previously released transcribed document is provided, as well as the emails previously provided in response to request R000876. These records have been released to the [Public Records Center](#). Click the link below to login to the Records Center and retrieve the requested records. [City Public Records Request - R001023-111920](#)

**Privately Owned Personal Devices**

As noted in the original response, members of the school committee do not possess City-issued devices. As a result, the responsive records were provided by the individual school committee members as screenshots from their personal devices.

**The Public Records Law**

Not all records created by a public employee are public records. Under Massachusetts law, a "public record" is a record "made or received by" a public employee acting in his or her capacity as a public employee, or as in the present instance as a member of a school committee. G. L. c. 4., s. 7 (26).

Each request for records must be reviewed on a case-by-case basis. Not every text message sent or received on a personal device of a public employee is a public record. Only those records "made or received" in the person's capacity as a public employee are deemed public. An individual analysis of each portion of a message sent from or received on a private device is therefore necessary to determine whether it meets this standard. In conducting such analysis, determinations of whether particular communications were made in a personal versus official capacity frequently require judgment calls between more than one reasonable conclusion. That is the case here, where the responsive records contain personal comments and observations by the members of the school committee that might reasonably be viewed as made in either capacity. However, as stated above, the City is aware that portions of those comments have already been published in the press and the availability of the information elsewhere affects the analysis. Those comments, in the context of a public meeting, have been determined to be responsive and public and therefore are released without omission or redaction.

**Records Retention**

The retention period of public records is determined by the retention schedules promulgated by the Supervisor of Records. Generally, records such as text messages are considered to be "transitory," meaning the retention period is brief. Transitory records do not require permission from the Supervisor of Records for destruction. A transitory record includes "messages created primarily to communicate information of short-term value." See 01.022 Correspondence (d) Transitory Messages, Municipal Records Retention Schedule (April 6, 2020).

In the present matter these records did exist at the time of the request, and as such are provided.

**Conclusion**

All responsive records are provided with this request. No records are withheld or redacted.

Very truly yours,



Shawn A. Williams, Esq.  
Director of Public Records  
Records Access Officer

Close

# Attachment I-1

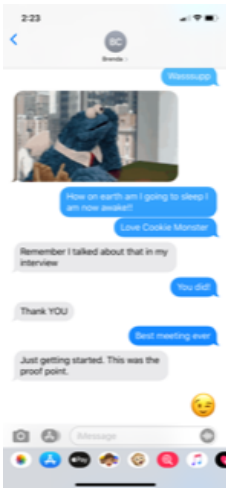
# Document 113-1 File



# Document 113-1 File

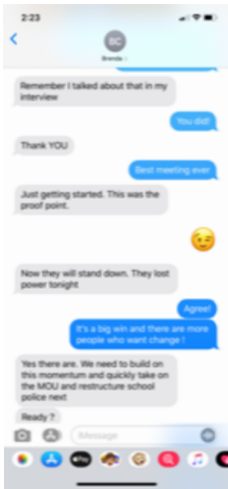


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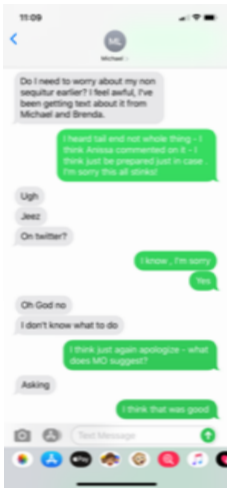




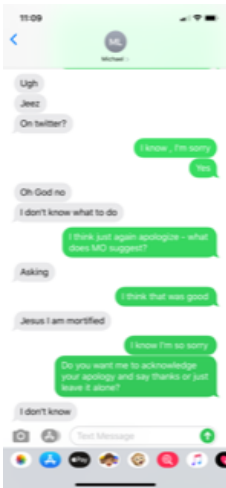
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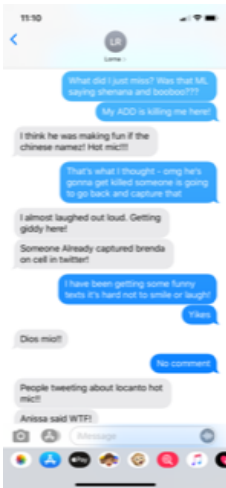
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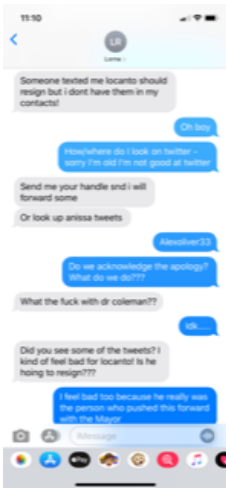
# Document 113-1 File



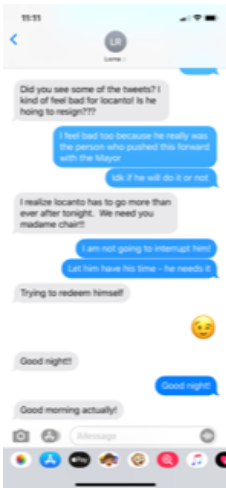
# Document 113-1 File



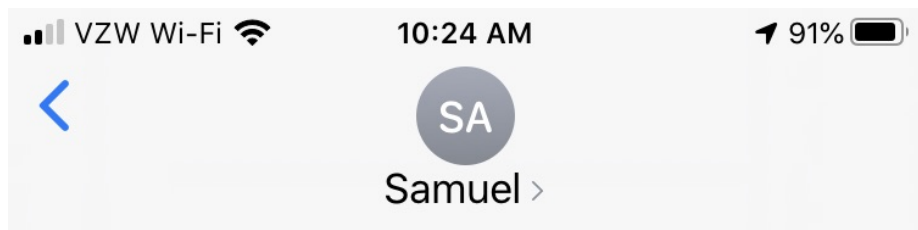
# Document 113-1 File



# Document 113-1 File



# Attachment I-2



iMessage  
Wednesday 5:46 PM

Lorna, as a member of  
the Exam School  
Working Group, thanks  
for your support. Mil  
gracias licenciada.

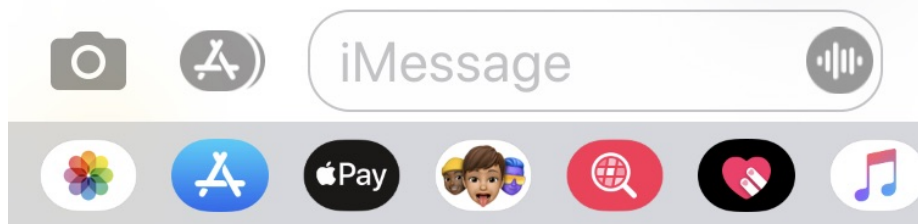


Your efforts made this  
possible! Mil gracias!!!!

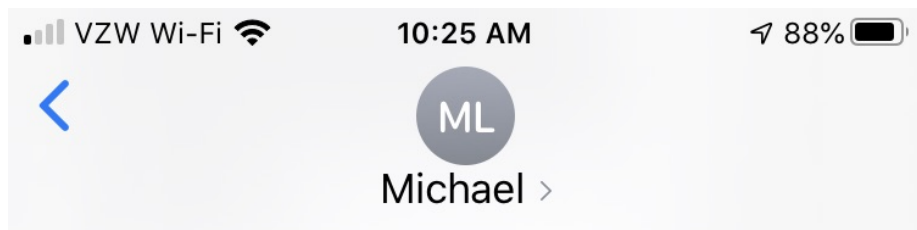
A la orden siempre,  
Lorna.

Igualmente! 😊

Delivered

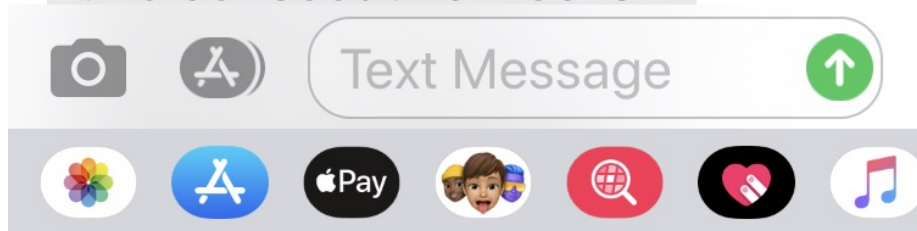


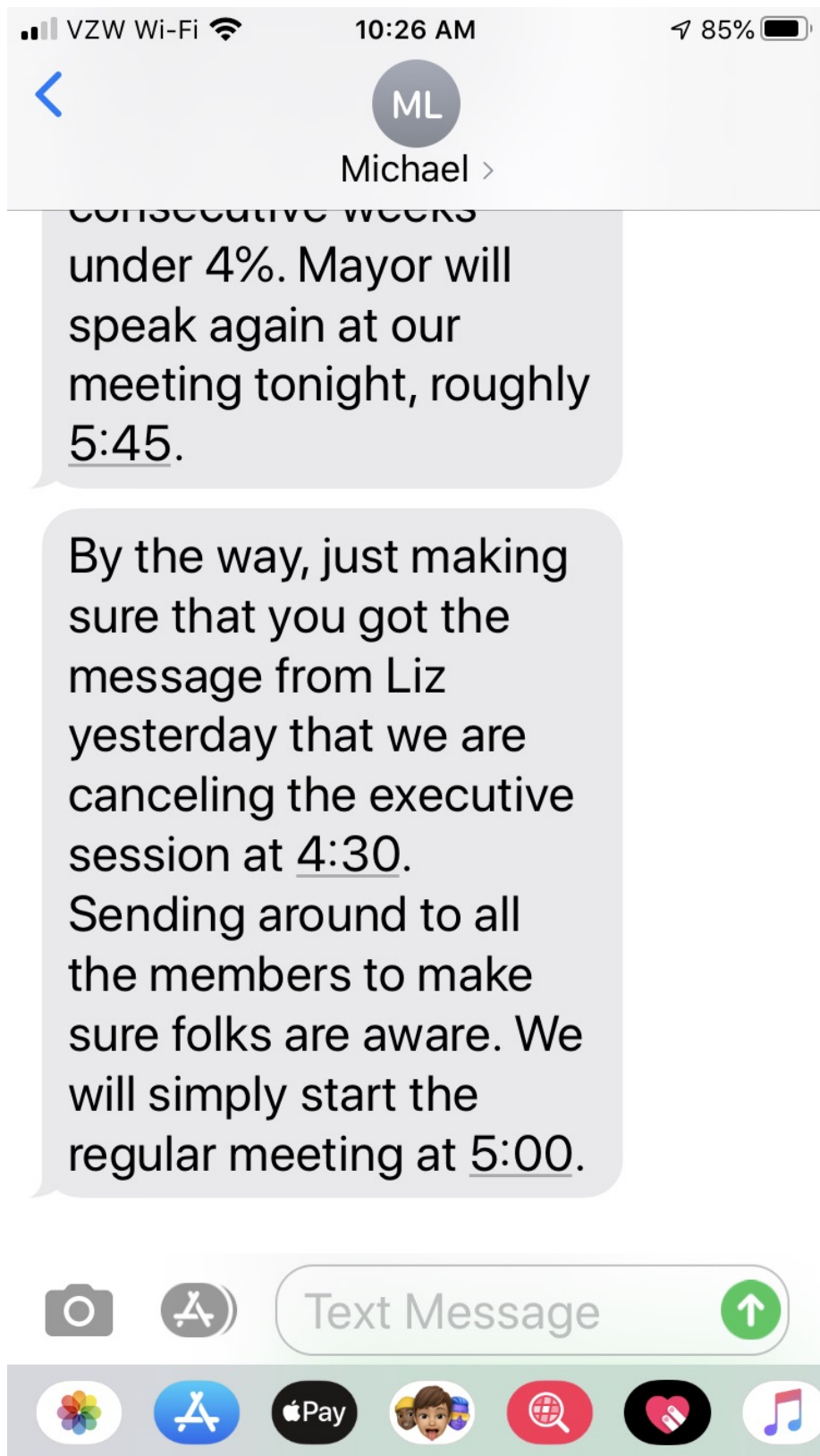


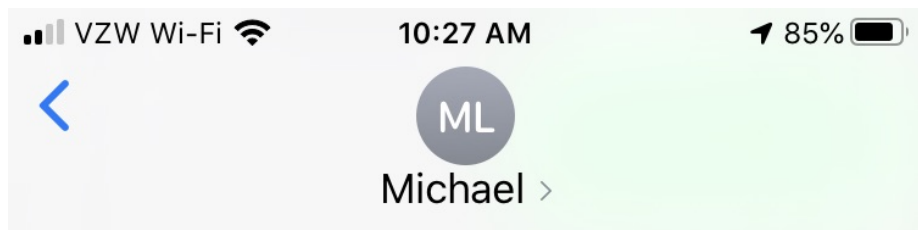


Wednesday 9:37 AM

Good morning. In non-exam news, our city wide positivity rate is now at 5.7. The mayor and Brenda have decided to shut down the schools completely. They are going to do a press release at 10:00. They are about to go in and talk with spedPAC now. We will begin to return high needs students once we have two consecutive weeks



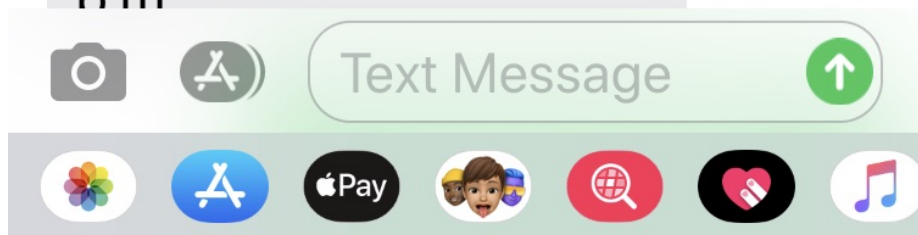




Wednesday 3:49 PM

Hi i calculated  $170 \text{ people} \times 3 \text{ min} = 510 \text{ minutes} = 8.5 \text{ hours}$ . Is this going to last this long. Cant we end at a certain time? Are we allowed breaks? I am sorry to complain. I will do my job but will needs breaks.

It's 2 minutes. Still a long time. Trust me, people will begin to fall off in droves after 11:00  
n m



VZW Wi-Fi

10:27 AM

83%



ML

Michael >

Ok. I have a five hour marathon meeting 8am to 1pm tomorrow. Will definately be braindead.

I feel you, unfortunately it is what it is

Wednesday 10:34 PM

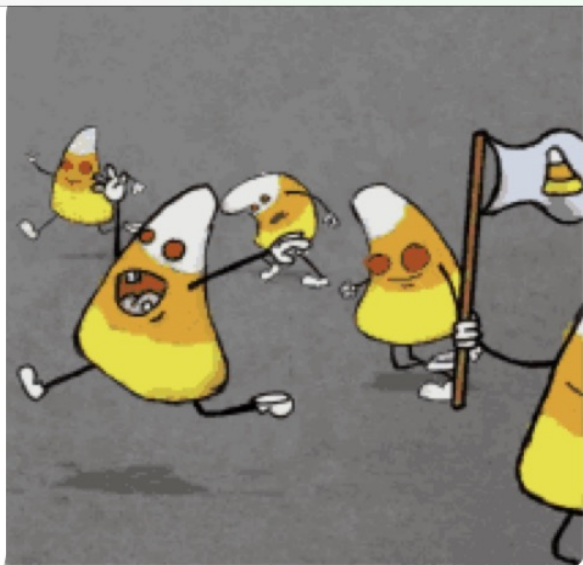
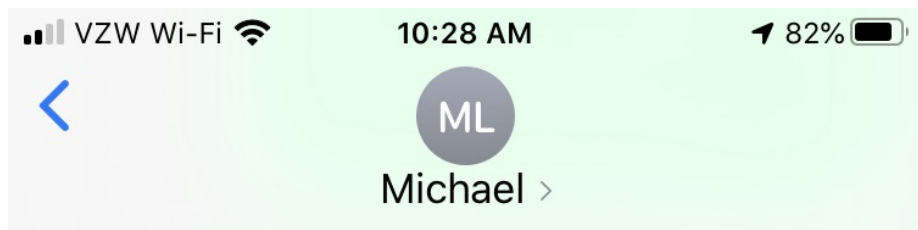
Hi can you tell me how many more people left to testify? I couldnt find the spreadsheet in google

77 to go, many falling off



Text Message

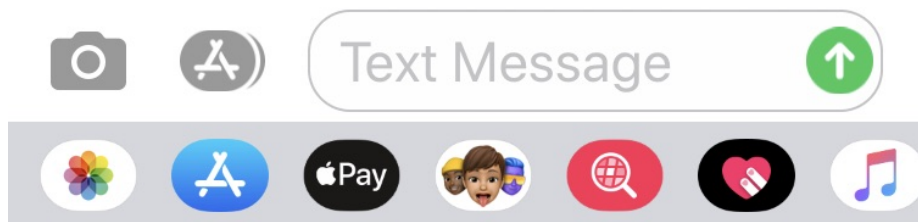


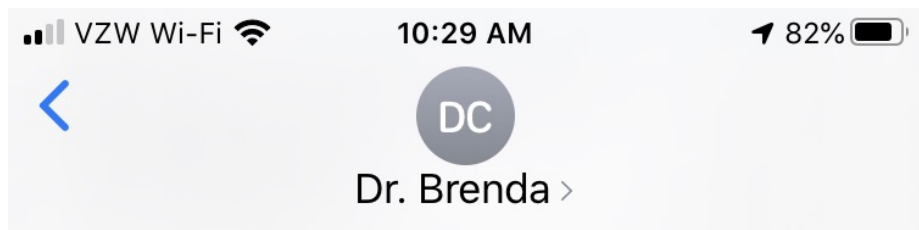


Hi can you tell me if  
angie camacho is on list  
and what number?

Yes she is #168, we are  
on 145

Thanks.





Wednesday 6:33 PM

Powerful.

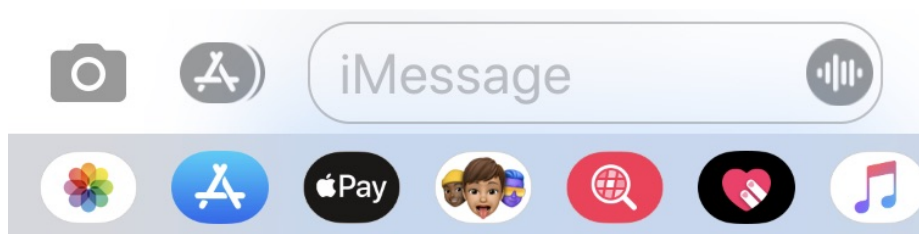
YES!!!!

So grateful for truth to power

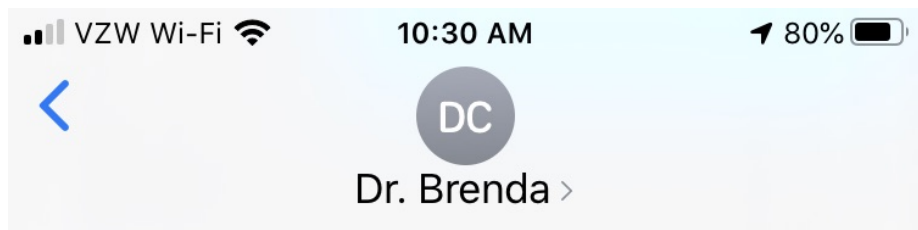
Yup. I asked him to write it and I asked Tanisha to read it. Powerful

Thank you. You are making history!!

We are





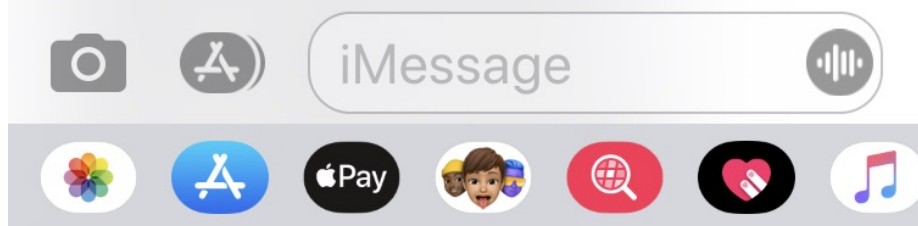


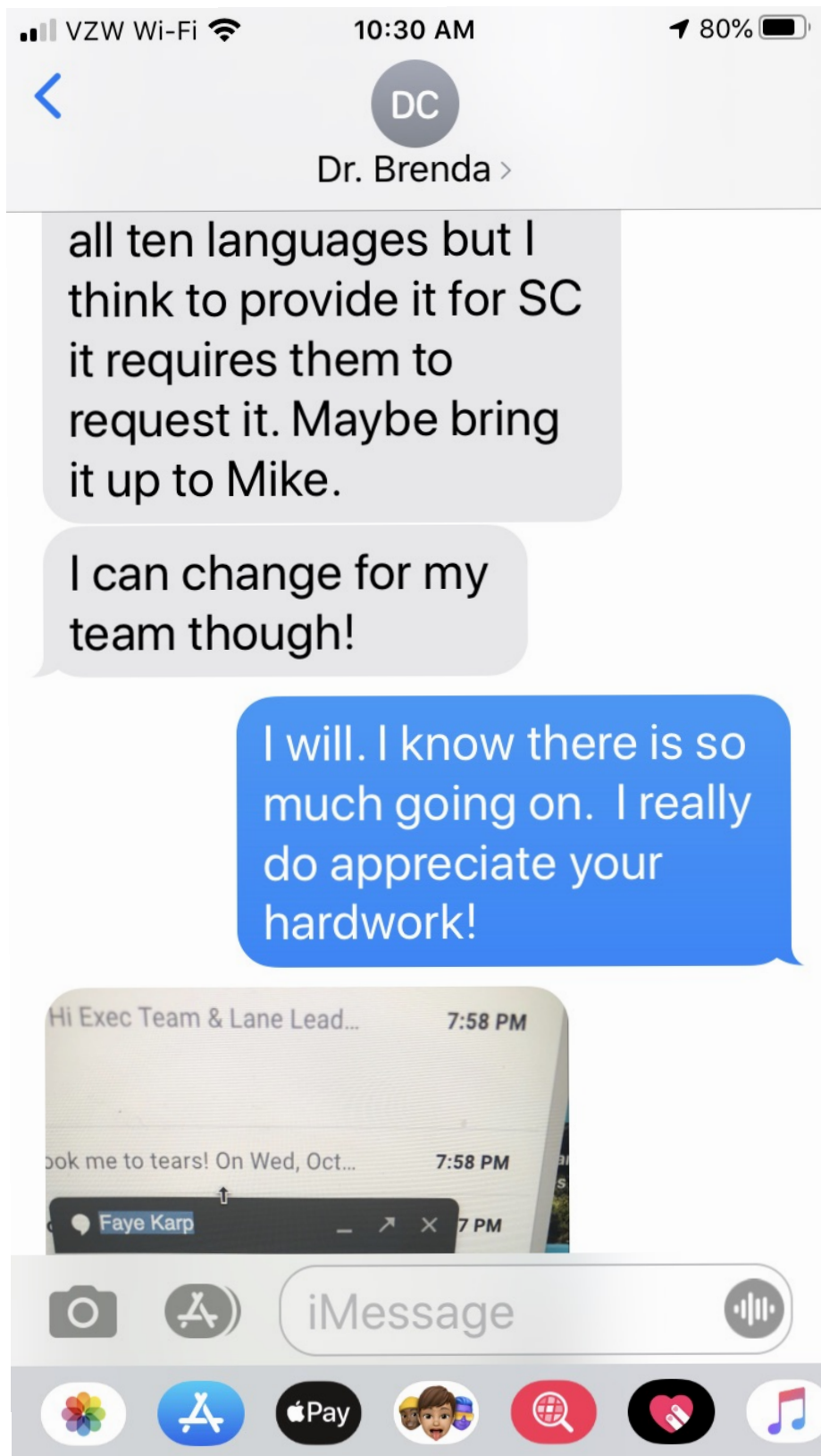
Wednesday 7:54 PM

Hi why is interpretation a continuing problem for some of our communities? I hope we can improve.

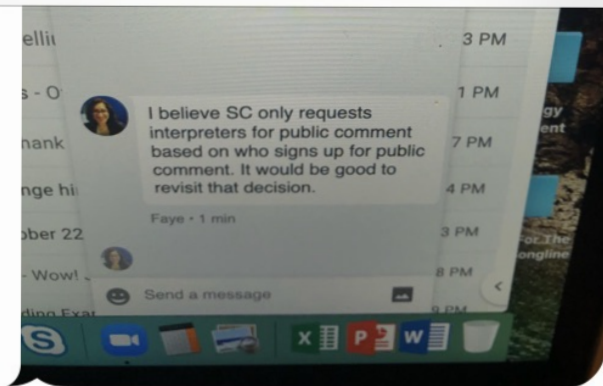
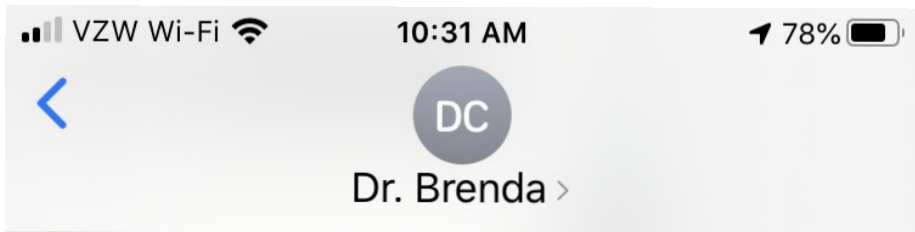
We had Cantonese and I just asked Monica. This is the purview out the committee.

I suggested to Monica that if we have over a certain number of participants that we automatically default to









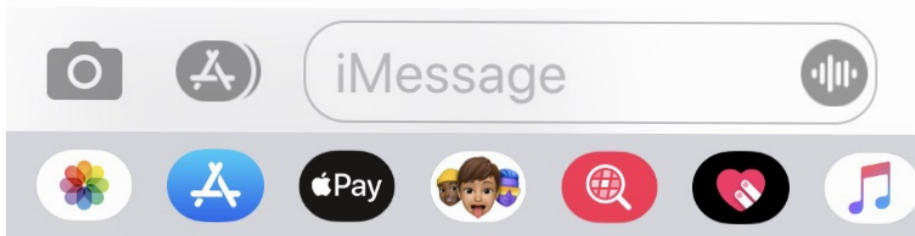
Thanks!

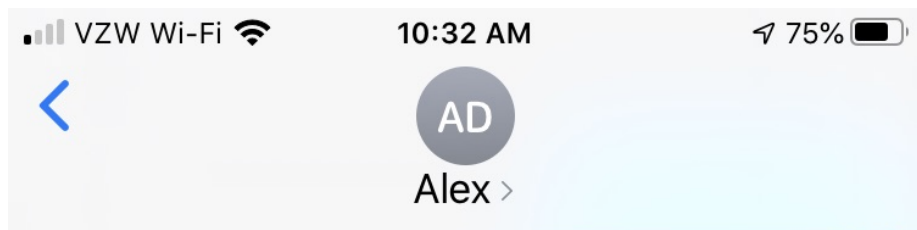
Wednesday 11:17 PM

I am Eating all my boy's halloween candy over here!

Ha!

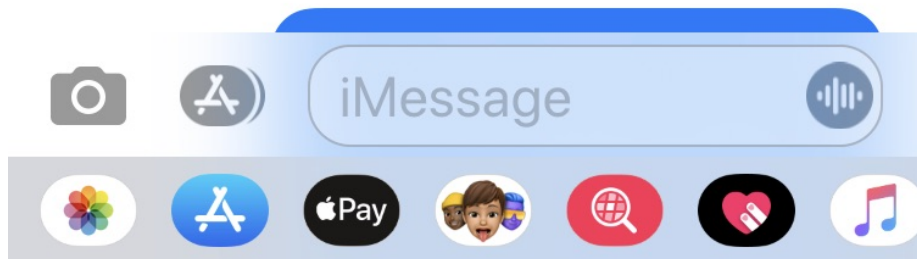
Thursday 2:03 AM

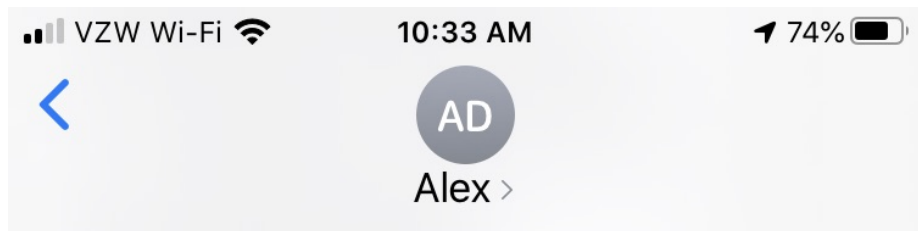




Sure!

Hi by law chair sets agenda and we can't vote on anything Superintendent hasn't had a chance to respond to. He suggest talking ML and asking him to add to the agenda for next time. We have 170 people speaking tonight so honestly this is probably not the best time to do it even if we could.



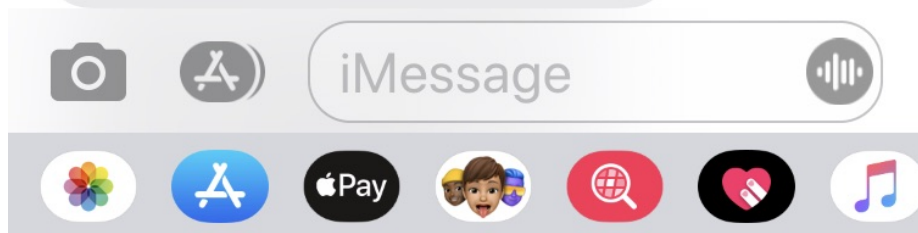


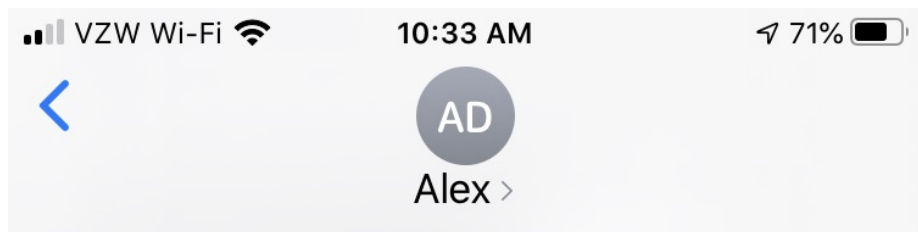
Ok. Wow 170!?! I dont know if i will be able to stay awake. i am too old for this job

Hi i calculated  $170 \text{ people} * 3 = 510 / 60 \text{ minutes} = 8.5 \text{ hours}$ . Is this for real? Cant we end at a certain time? Are we allowed breaks? I am sorry to complain.

Yup it's real

2 minutes each but will be a very long mtg





I think take breaks as  
you need them

Wednesday 5:03 PM

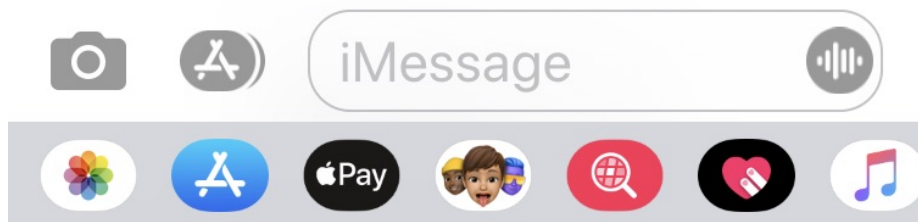
Your hair looks great!

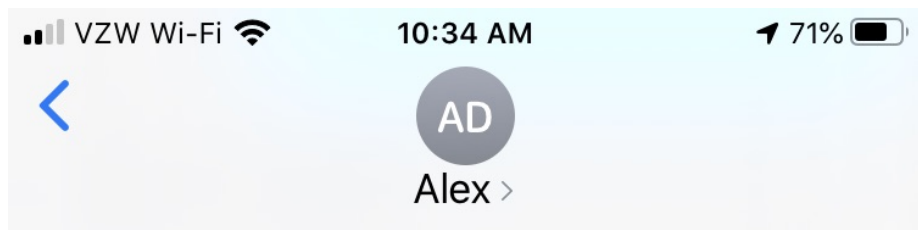
Ha! Ha! I just took a  
shower to wake up!

I'm actually having  
caffeine tonight!

Got my diet cokes lined  
up.

Man I miss DC!





Wednesday 6:34 PM

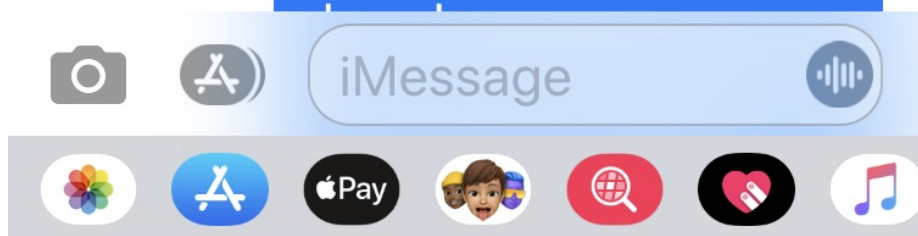
Best sc mtg ever I am  
trying not to cry

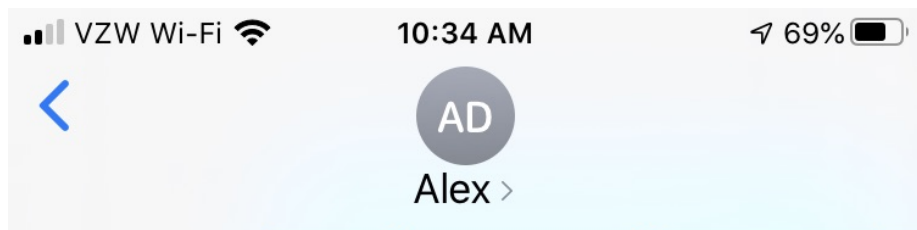
Me too!! Wait til the  
white racists start  
yelling st us!

Whatever... they are  
delusional

Wednesday 7:49 PM

Why cant we get  
interpretation/  
translation right? Why

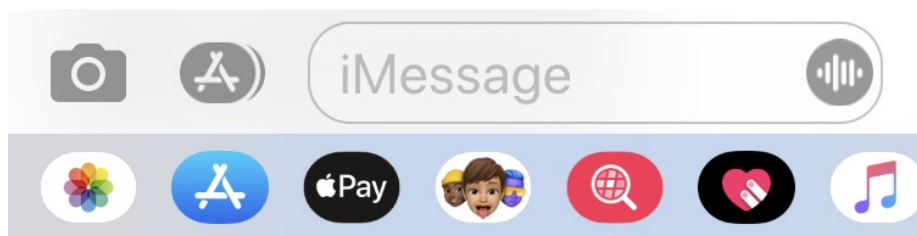




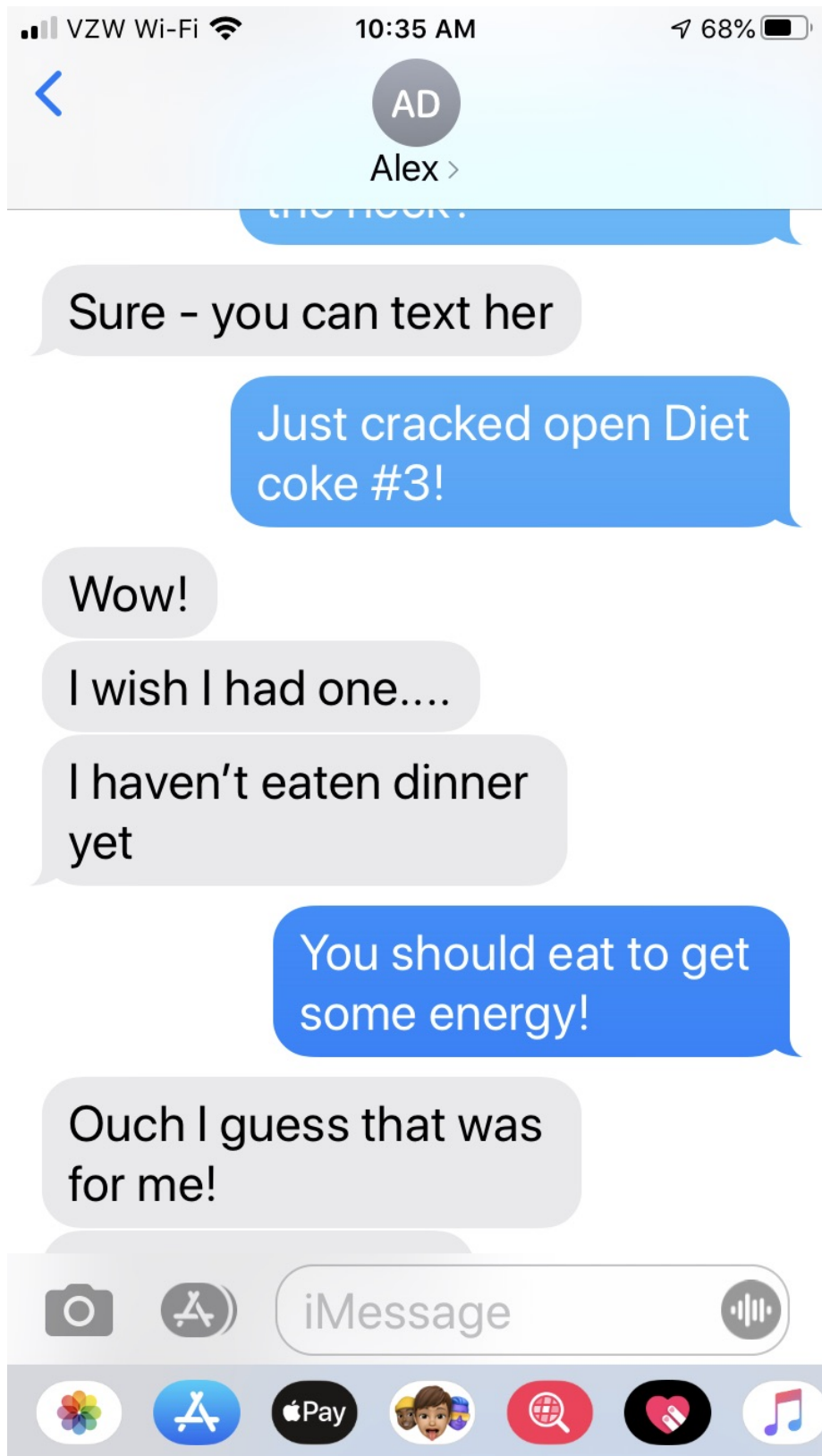
interpretation/  
translation right? Why  
does language access  
have to be so hard?

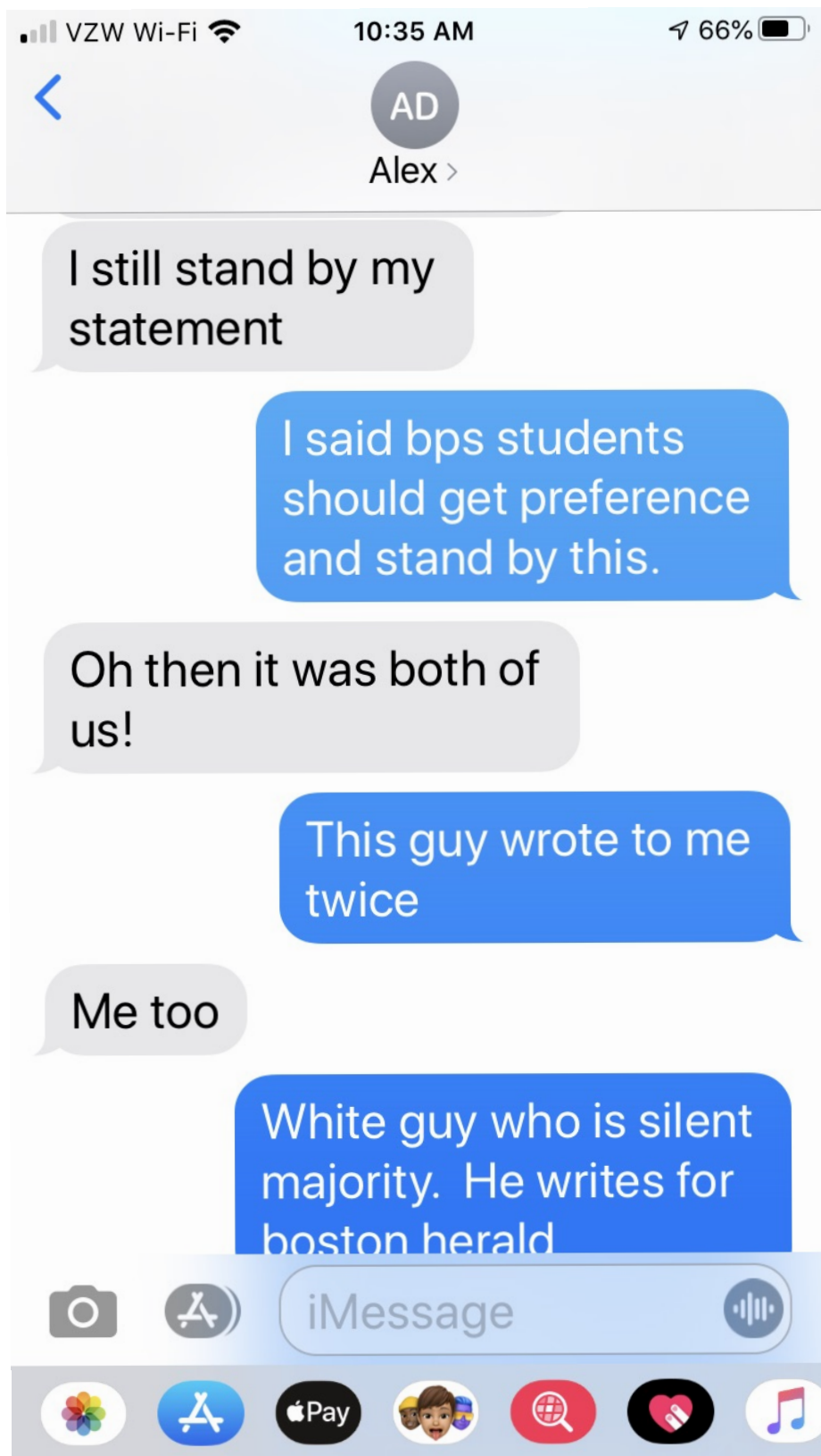
I don't know - when I  
was on the meeting that  
explained the proposed  
policy people got to  
choose to go into a  
room to get the whole  
meeting translated - at  
least that is how I  
understood it

Should i ask Dr C what  
the heck?

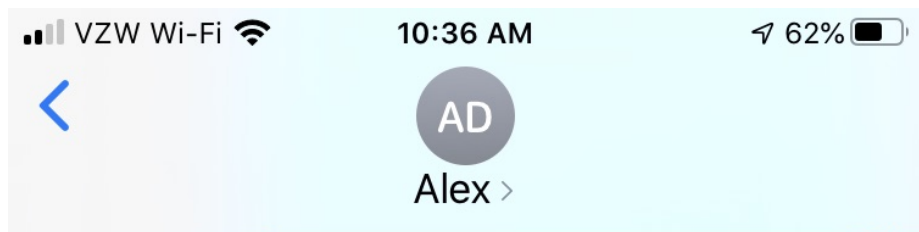












Not good

He complains because  
he wants to have a vote.  
I do think student  
should vote. But his  
tweets are excessive

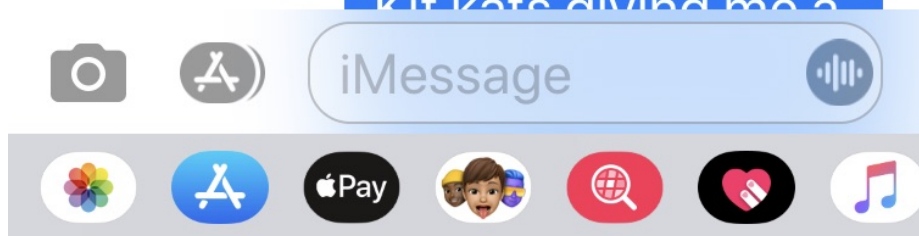
Agree

I hate WR

Sick of westie whites

Me too I really feel Like  
saying that!!!!

Kit kate giving me a



VZW Wi-Fi

10:36 AM

61%



AD

Alex >

Me too I really feel Like  
saying that!!!!

Kit kats giving me a  
boost.

I have some chocolate  
chip cookies!

What did I just miss?  
Was that ML saying  
shenana and  
booboo???

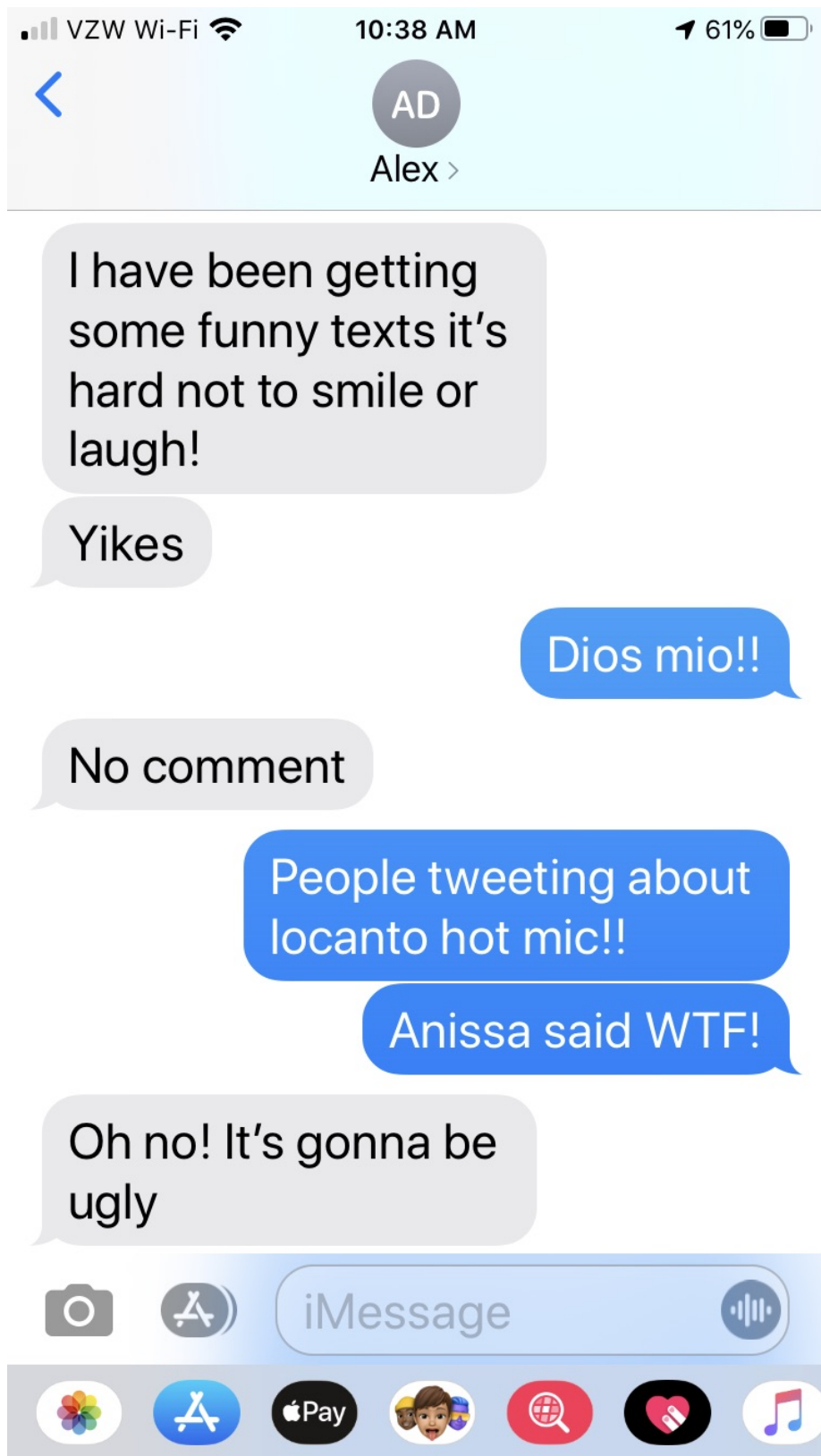
My ADD is killing me  
here!

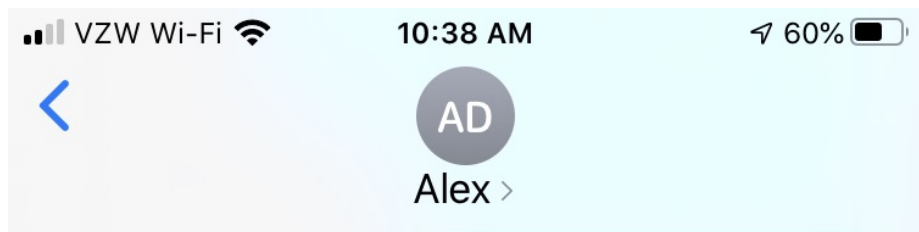
I think he was making



iMessage







Oh no! It's gonna be ugly

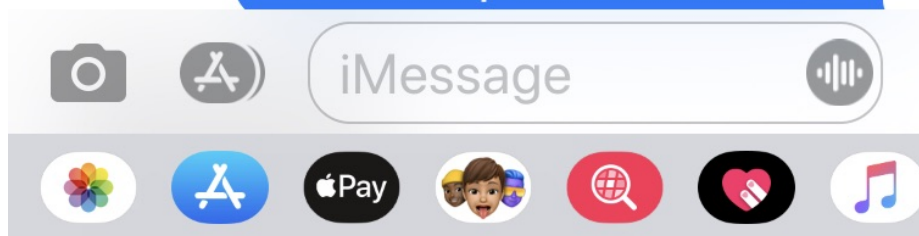
Someone texted me locanto should resign but i dont have them in my contacts!

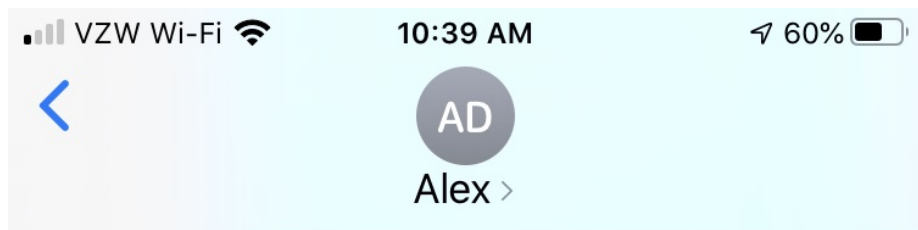
Oh boy

How/where do I look on twitter - sorry I'm old I'm not good at twitter

Send me your handle snd i will forward some

Or look up anissa tweets





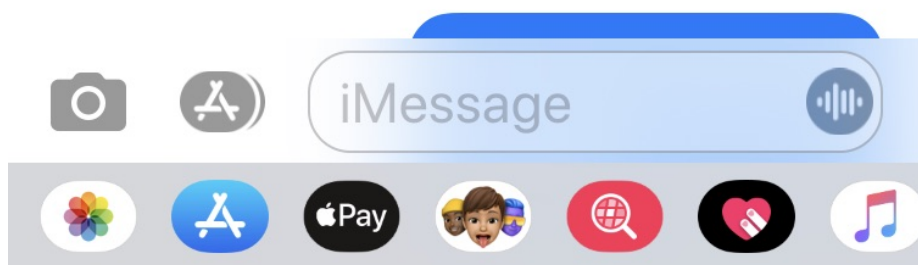
I feel bad too because  
he really was the person  
who pushed this  
forward with the Mayor

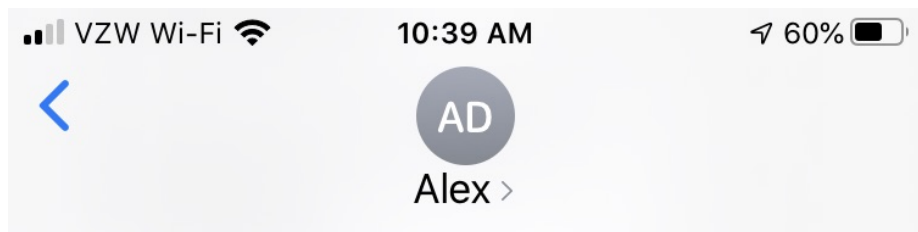
Idk if he will do it or not

I realize locanto has to  
go more than ever after  
tonight. We need you  
madame chair!!

I am not going to  
interrupt him!

Let him have his time -  
he needs it





Trying to redeem himself



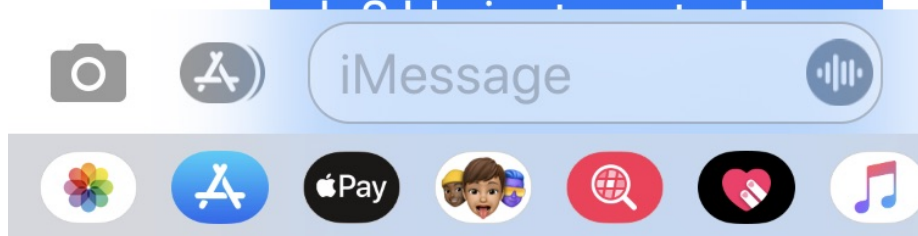
Good night!!

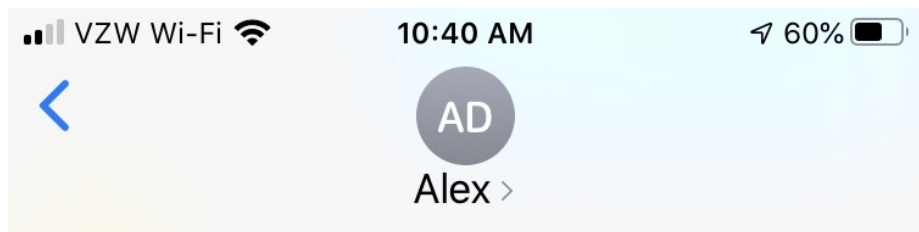
Good night!

Good morning actually!

Thursday 11:45 AM

Hey. People are really calling for locanto to resign! what are we to





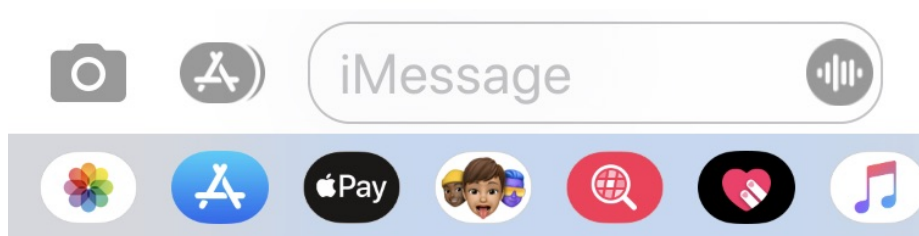
Good night!!

Good night!

Good morning actually!

Thursday 11:45 AM

Hey. People are really calling for locanto to resign! what are we to do? He just posted an apology in twitter. But AAPI community really pissed.

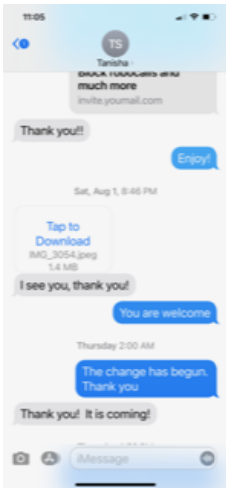




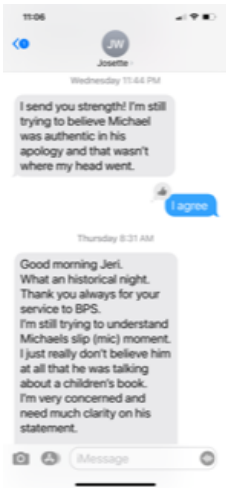
# Attachment I-3



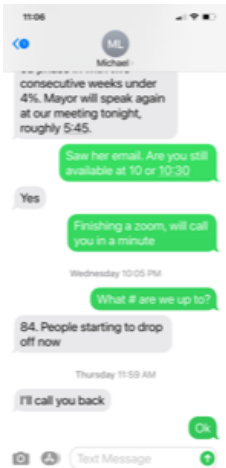
# Document 113-1 File



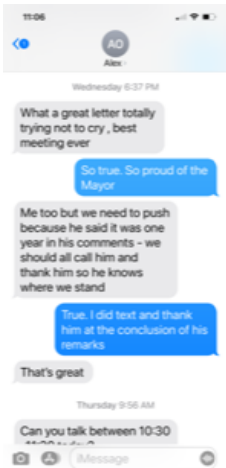
# Document 113-1 File

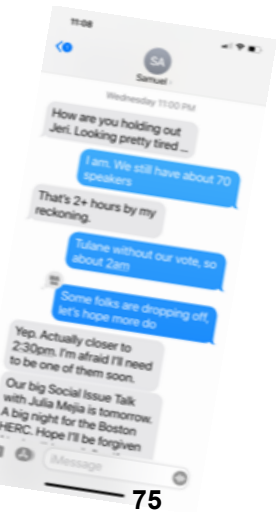


# Document 113-1 File

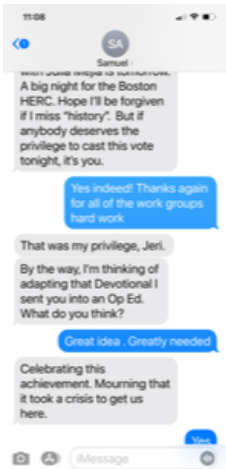


# Document 113-1 File

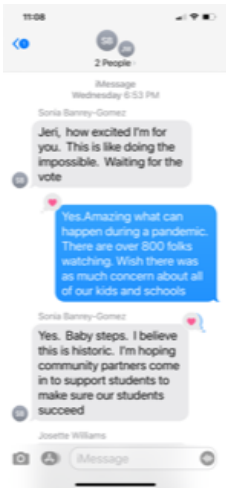




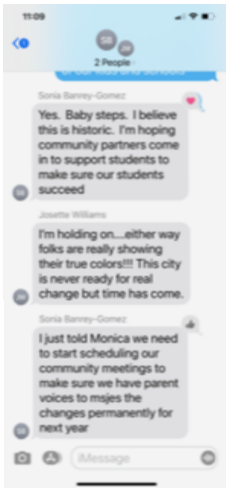
# Document 113-1 File



# Document 113-1 File



# Document 113-1 File



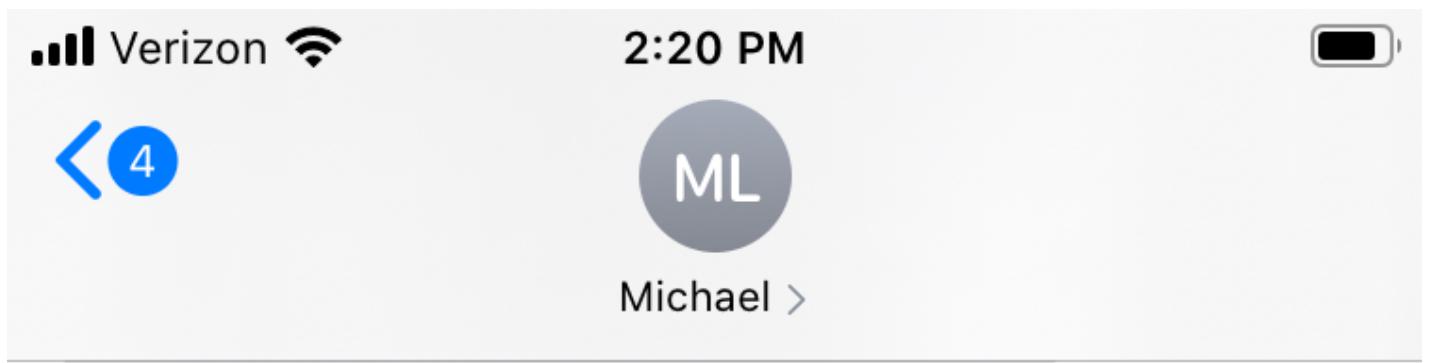


# ment 113-



79

# Attachment I-4



Wed, Oct 21, 5:27 PM

You should mention Khymani was on the national student panel last week

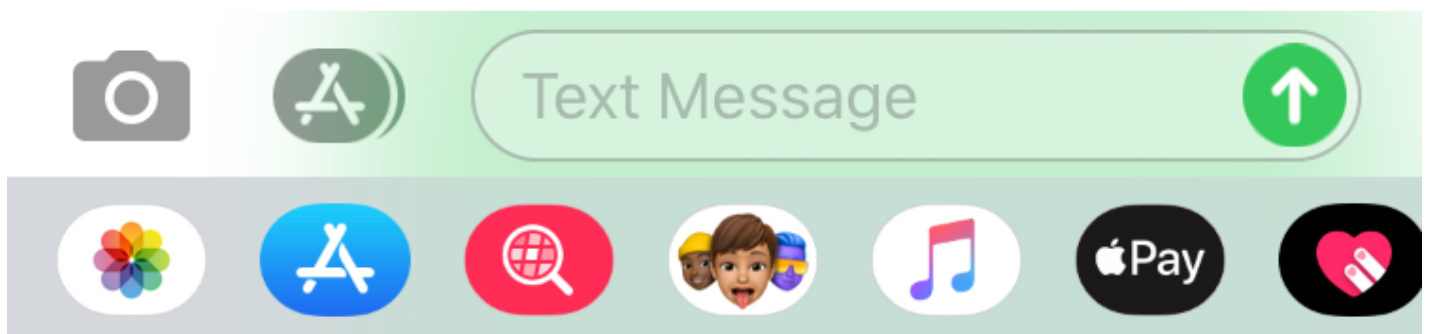


He was excellent and made us BPS Proud .



Made sure I gave you more credit than Mike Casserly

Funny guy . Thanks . It's appreciated.





Verizon

11:25 AM



Khymani &gt;

Wed, Oct 21, 6:43 PM

Are you comfortable on the logistics behind transferring elementary school grades to letter grades ?

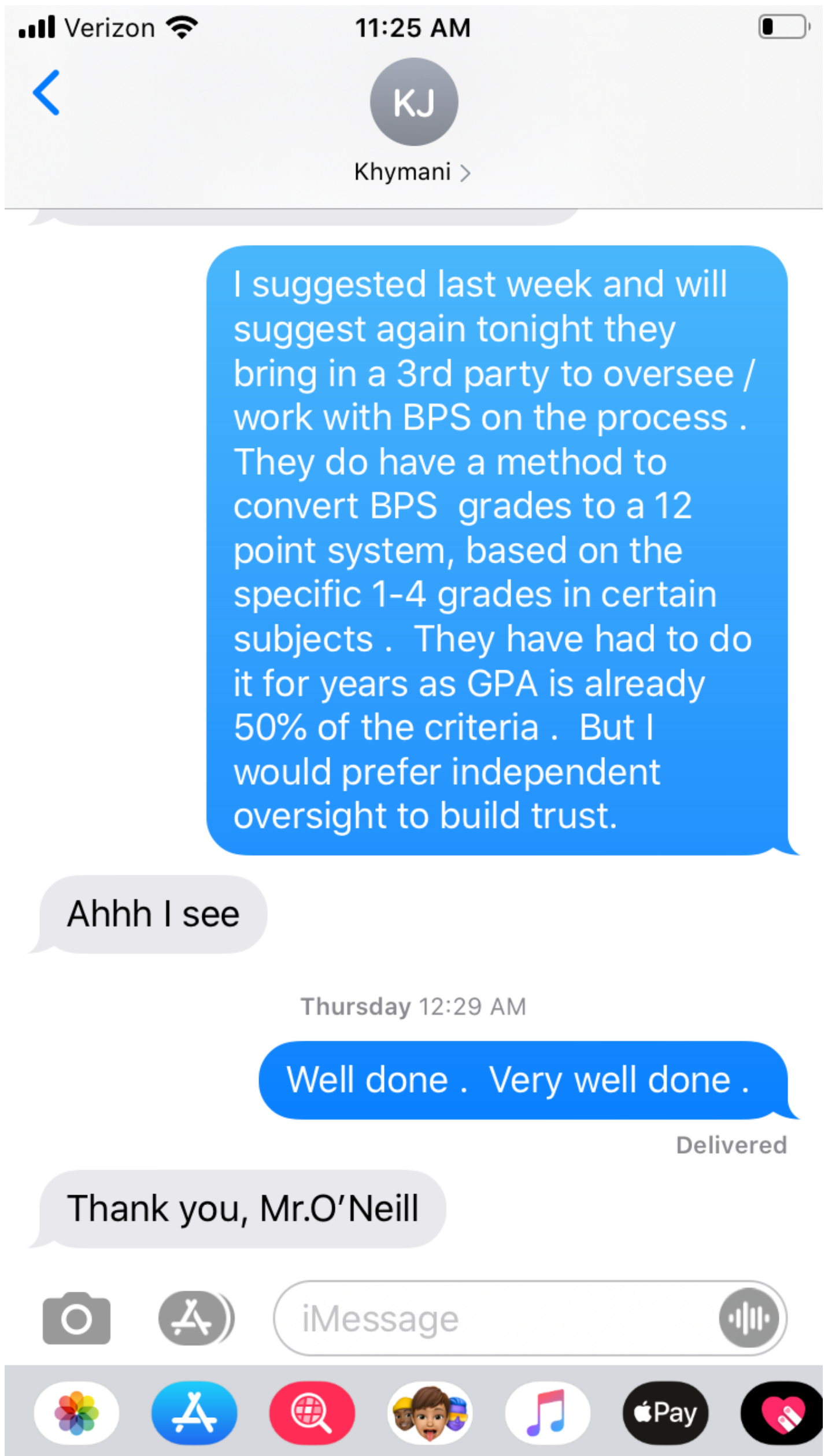
Im confused on that part and don't want to ask publicly if I can get a behind the scenes answer

I suggested last week and will suggest again tonight they bring in a 3rd party to oversee / work with BPS on the process . They do have a method to convert BPS grades to a 12 point system, based on the specific 1-4 grades in certain subjects . They have had to do it for years as GPA is already 50% of the criteria . But I would prefer independent



iMessage





11:25 AM

KJ

Khymani &gt;

I suggested last week and will suggest again tonight they bring in a 3rd party to oversee / work with BPS on the process . They do have a method to convert BPS grades to a 12 point system, based on the specific 1-4 grades in certain subjects . They have had to do it for years as GPA is already 50% of the criteria . But I would prefer independent oversight to build trust.

Ahhh I see

Thursday 12:29 AM

Well done . Very well done .

Delivered

Thank you, Mr.O'Neill

iMessage





Verizon

2:20 PM



Michael &gt;

It was right after Liz read a bunch of names , could have been interpreted that you were commenting on the names . I knew you would never do that , assumed one of your daughters was saying good night . Glad you cleared it up right away . Don't worry about it any more .

How far along are we ?

Ok thanks. I realized that after I got the texts. I feel awful.

We are on 159. 20 to go

You corrected very quickly . Regular watchers know your daughters always say goodnight to you .

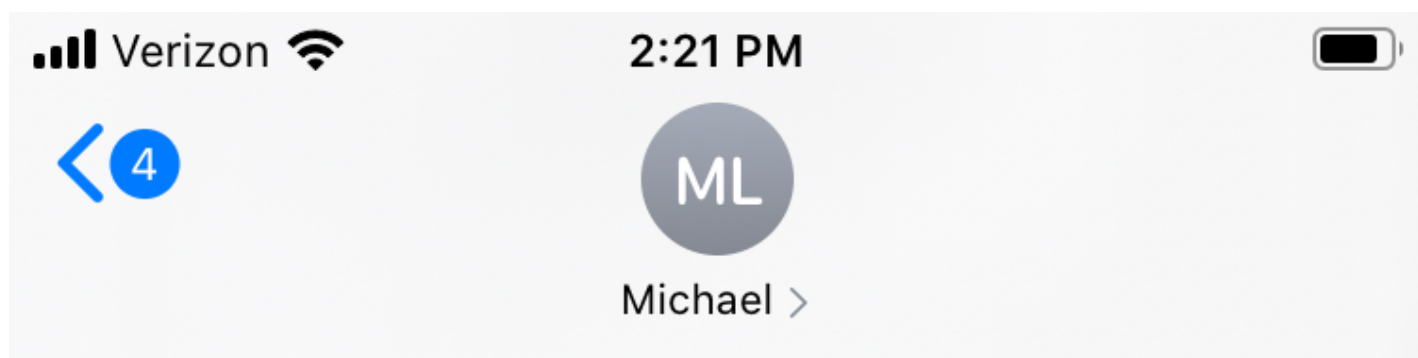
Anissa tweeting about it. I don't



Text Message







You corrected very quickly .  
Regular watchers know your  
daughters always say  
goodnight to you .

Anissa tweeting about it. I don't  
know what to do

Am I ok? I hope I put that to  
bed

Please put me last , before VC  
and you, but after the other  
members .

Of course, assumed as much

Hardin. Reached out three  
times since last meeting with  
no reply

Let's vote!



Text Message



# Attachment I-5

12:08



Alexandra &gt;

Wed, Oct 21, 18:19

Great points - thank you for message to fellow students - soooo important!

Thank you, Ms.Oliver-Davila !!!

You are welcome! Keep asking your great questions!



Wed, Oct 21, 20:03

Quick question: is what is being voted on tonight called a "proposal" or a "policy"

Proposed policy

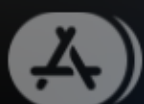
Thank you!

Sure!

Wed, Oct 21, 23:19

Wow - I had to turn my camera off because of my facials.

That's a great strategy!



iMessage



12:08



Alexandra &gt;

Wed, Oct 21, 23:19

Wow - I had to turn my camera off because of my facials.

That's a great strategy!

You are a trooper staying late!

Thanks Vice Chair. Trying my best to pull through!

Also you can leave! Everyone will understand because you have school tomorrow - past BSAC members have left around 9pm



Yes, I am aware! Thank you - I told myself at the beginning of the year that I would attend all hours of the meeting since they're so important and only every other week

You are a trooper! Hope your teachers give you a break on Thursday mornings

Me too 😊!!!

Fri, Oct 23, 12:08



iMessage

