

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

JAMES SHULTZ and RENEE CHEATHAM,

Petitioners,

-against-

NEW YORK STATE EDUCATION DEPARTMENT,  
SHANNON TAHOE, in her official capacity as Interim  
Commissioner of Education of the New York State  
Education Department, and TEMITOPE AKINYEMI, in  
her official capacity as Chief Privacy Officer of the New  
York State Education Department,

Respondents,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

Index No. \_\_\_\_\_

**AFFIDAVIT OF RENEE  
CHEATHAM IN SUPPORT  
OF VERIFIED PETITION**

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF NEW YORK )

RENEE CHEATHAM, being sworn, says:

1. I am one of the Petitioners in this Article 78.
2. I am the parent of a student and grandparent of three other students, all of whom currently attend schools in the Lockport City School District (“Lockport”).
3. On January 2, 2020, Lockport activated a biometric face recognition technology system in all of its schools, from elementary to high school. When I have visited the their schools, I have seen these many new surveillance cameras capturing images of the children’s faces. I understand that the New York State Education Department (“NYSED”) permitted Lockport to activate this intrusive and inaccurate face recognition system because

NYSED believes that the system does not involve any data about the students protected by New York's Education Law § 2-d.

4. Lockport did not engage parents, students, and teachers in the process by which the District acquired, installed and activated its face recognition system in all of Lockport's schools. Lockport held only one public meeting to introduce the community to the idea of using state money for technology in the classroom to purchase surveillance technology. That meeting was held on August 17, 2016, in the middle of a weekday afternoon in mid-August, when many parents were at work or out of town on summer vacation. Lockport has sent no emails or flyers to students and parents during the process of installing this technology in our children's schools.

5. Other than learning from local newspaper reports about NYSED's 18 months of engagement with the Lockport District, parents and students were provided no information about NYSED's ongoing involvement with Lockport on the operation of the system and the privacy policies Lockport kept revising until we were directed to the January 2, 2020 post on the Lockport schools website titled "January 2020 AEGIS Security System Update" from Superintendent Bradley, available at <https://www.smores.com/utzgy>.<sup>1</sup>

6. Lockport never hosted a town hall or any sort of meeting for students and families to learn more about the face recognition system.

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<sup>1</sup> Lockport did post a May 2019 Aegis Security System just as it tried to test the system, <https://www.smores.com/q13ms>. But the press reported that NYSED indicated at that time that the system was not supposed to be activated because NYSED stated that Lockport still had not taken steps to "protect the privacy of data subjects and properly secure the data. As such, it is the Department's continued recommendation that the District delay its use of facial recognition technology." See BuzzFeed News, *The First Public Schools In The US Will Start Using Facial Recognition Next Week*, Davey Alba, May 30, 2019, at 1:05 p.m. ET, available at <https://www.buzzfeednews.com/article/daveyalba/lockport-schools-facial-recognition-pilot-aegis>. A copy of this article is attached to the Affidavit of Stefanie D. Coyle, dated June 22, 2020, at Exhibit 12.

7. I never received any information from Lockport about what data is generated by the face recognition system and how the data from the face recognition system would be used or who has access to it.

8. Lockport should have spent the funds it received to purchase and install a face recognition system on actual educational programs and instructional technology. Neighboring districts invested their Smart Schools Bond Act money in iPads and faster internet, while Lockport bought spy cameras.

9. I am witnessing today the impact placed on the Lockport students who do not have the types of home technological resources Lockport could have put into place with Smart School Bond Act grant funding. The coronavirus is exposing the true digital divide that exists here in Lockport: the gap between students and their families who have speedy, modern-day internet connections and those who do not. Many families in Lockport do not have wi-fi and internet connection. They are not able to connect to the teachers now that schools have been closed due to the coronavirus pandemic. And many students do not have a dedicated device at home to do their work in the first place; they don't have chrome books or iPads to complete their assignments. These technological deficits are setting these students up for failure. My heart aches for these children, who day by day, become more disconnected from their school communities and lose critical social and emotional support and academic instruction.

10. Face recognition software does not belong in schools and has serious privacy and educational implications for students and teachers, especially students of color and undocumented students and families. I know from media reports in late December that the US National Institute of Standards and Technology, or NIST, has tested every face recognition algorithm on two of the most common tasks for face recognition and confirmed that racial bias is

present in basically all algorithms used in face recognition systems such as Lockport's. *See e.g.* MIT Technology Review, Artificial Intelligence, Dec 20, 2019, *A US government study confirms most face recognition systems are racist*, available at <https://www.technologyreview.com/f/614986/ai-face-recognition-racist-us-government-nist-study/>. A copy of this article is attached as Exhibit 1. That means that Lockport's system will mis-identify people of color significantly more frequently than white people.

11. The use of state funds for this technology takes away resources that could have been better utilized on education technologies. This sends a message to students that they must be continuously monitored, and their access to educational resources is less important than their constant surveillance.

12. I understand that NYSED's determination that the Lockport face recognition system does not involve student data means that we parents and our children have lost the protections and remedies guaranteed by Education Law § 2-d, relating to the personally identifiable biometric information of our children. We have lost the right that the District and its third party face recognition technology vendors, such as Ferguson ECC and/or SN Tech, not use any of that student data for commercial purposes. We have also lost the right that the District, and its third-party vendors, are required to notify parents in the event of any data breach or leak of student personally identifiable information.

13. I object to the loss of these privacy protections and remedies guaranteed by Education Law § 2-d to me and to my child.

14. As a petitioner in this Article 78 proceeding, I am requesting that the Court annul the Respondents' determination and restore our privacy rights, including all of the protections and remedies guaranteed by Education Law § 2-d, relating to all of the personally

identifiable biometric information of my child that is generated by the Lockport face recognition system.



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Renee Cheatham

Sworn to and subscribed before me  
this 22nd day of June, 2020



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Notary Public  
BETH HAROULES  
Notary Public, State of New York  
No 02HA4890292  
Qualified in New York County  
Commission Expires March 30, 2023