

1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO. 19-0960F

\_\_\_\_\_) )  
 LENOX SCHOOL COMMITTEE, on behalf of the )  
 LENOX PUBLIC SCHOOL DISTRICT, )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MASSACHUSETTS BUILDING CODE )  
 APPEALS BOARD, TOWN OF LENOX, and )  
 JEFFREY A. CLEMONS, in his capacity as )  
 LEE/LENOX INSPECTOR OF BUILDINGS )  
 Defendants. )  
 \_\_\_\_\_) )

SUFFOLK SUPERIOR COURT  
 CIVIL ACTION  
 2019 MAR 27 P 2:47  
 JEFFREY A. CLEMONS

**COMPLAINT**

**INTRODUCTION**

As it recently pronounced, the Supreme Judicial Court has “taken judicial notice of ‘the actual and potential violence in our public schools,’” including in a case in which the Court passed without objection upon a school “lockdown” procedure whereby “all staff members are trained to get into the first lockable room that they are near,” and “[t]he doors are locked and faculty and students are told to barricade themselves in the room so that no one can gain entrance.” Commonwealth v. Villagran, 477 Mass. 711, 726 & n. 11 (2017) (identifying “barricading the doors” as being among the school’s “protocols” for a “lockdown,” “to ensure that all students and adults are safe”). Consistent with these safe and accepted protocols, and like many school districts throughout the Commonwealth, to best protect its students and staff in the dire life threatening circumstances of an active shooter event, the Lenox Public School District

(the "School District") purchased free-standing door barricade devices ("Door Barricades") to be used in the singular event that an armed intruder attacks a school building.

Notwithstanding the School District's proactive and commendable life saving measures in this regard, and despite the Lenox Police and Fire Departments' categorical endorsement of the School District's use of the Door Barricades, the Lee/Lenox Inspector of Buildings (the "Building Inspector") and Massachusetts Building Code Appeals Board ("BCAB") have reached the baseless determination that the Door Barricades violate certain provisions of the State Building Code. The School District therefore is forced to commence the instant action to challenge such determinations and restore its ability to best protect its students' and staff's safety.

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction in this matter, and venue is proper, pursuant to G.L. c. 30A, § 14.

#### **PARTIES**

2. The Plaintiff, Lenox School Committee, on behalf of the Lenox Public School District is a Massachusetts public body and school committee of the district with a principal place of business located at 6 Walker Street, Lenox, MA 01240.

3. The Defendant, Massachusetts Building Code Appeals Board, is a public body of the Commonwealth of Massachusetts, with a principal place of business located at 1000 Washington Street, Suite 710, Boston, MA 02118.

4. The Defendant, the Town of Lenox, is a Massachusetts municipal corporation with a principal place of business located at 6 Walker Street, Lenox, MA.

5. The Defendant, Jeffrey A. Clemons, in his capacity as the Towns of Lee/Lenox Inspector of Buildings, is the Inspector of Buildings for Lee/Lenox, with a principal place of business located at 32 Main Street, Lee, MA 01238.

### FACTS

#### I. Accepted Massachusetts Training and Protocols for School Lockdowns

6. In January of 2014, then-Governor Deval Patrick signed Executive Order 548 establishing the Massachusetts Task Force on School Safety and Security (the “State Task Force”). Months later, in July of 2014, the State Task Force issued the Massachusetts Task Force Report on School Safety and Security (the “School Safety Report,” a copy of which is attached hereto as **Exhibit A**).

7. The School Safety Report emphasized that “[a] school district neither needs nor wants to ‘reinvent the wheel’ when it comes to emergency management and School Safety Plans,” and further noted that “[t]here are many proven emergency policies and practices widely used by emergency responders and adapted for school use, such as . . . the whole school protocols, such as evacuation or lockdown.” See Exhibit A (School Safety Report), p. 7.

8. With respect to such “proven” and “widely used” procedures for school “lockdowns,” the School Safety Report advised that a “lockdown provides protection for student and staff when weapon-related violence is in progress or imminent in the building,” and “is designed to place barriers between the building occupants and assailant(s).” Id. at p. 16. The School Safety Report further underscored that “there are several ways to enhance a lockdown to empower individuals to take common sense actions critical to their safety,” including among others “**barricading the door using available furniture and other objects.**” Id. (emphasis added).

9. In addition, the School Safety Report recommended that “[t]o increase school districts’ capacity to prevent and respond to threats, funding should be appropriated to replicate the North Eastern Massachusetts Law Enforcement Council (NEMLEC) School Threat Assessment and Response System (STARS) regionally throughout the Commonwealth.” Id. at p. 27.

10. As NEMLEC’s website explains, “[t]he NEMLEC STARS Team has” developed a School Emergency Operations Plan (“SEOP”) “template as a way for districts to review and revise current plans, or completely build their local emergency operations plans and related policies and procedures from the ground up.” See NEMLEC website, available at: <http://www.starstoolkit.org/school-emergency-operations-plan-seop>.

11. The NEMLEC/STARS SEOP states that as part of a “lockdown,” “[w]hen securing in place, this procedure should involve barricading the door and readying a plan of evacuation or counter tactics should the need arise.” SEOP, p. 62, available at: <http://www.starstoolkit.org/school-emergency-operations-plan-seop>.

12. In multiple additional instances the SEOP specifically directs school officials to barricade doors in the event of an active shooter lockdown, including in stating that teachers and staff should:

- a. “Move any large objects in front of the door to barricade door. All moveable items such as chairs should be used as well.” Id. at p. 64;
- b. “Tie down the door, if possible, using belts, purse straps, shoe laces, etc.,” Id. at p. 66; and
- c. “Barricade the door with anything available (desks, chairs, etc.).” Id.

13. The Massachusetts School Safety Report also described that such emergency response “actions are often based on the response strategies of Alert-Lockdown-Inform-Counter-Evacuate (A.L.I.C.E.)” Id. ALICE is a program that provides to school districts throughout the United States training and certifications in preparing for active shooter events in school buildings. The School Safety Report emphasized the importance of “lockdown . . . training,” Id., and recommended that “[f]unding should be allocated for active shooter trainings” and “[p]reparedness training should be provided for all staff.” Id. at pp. 27-28.

**II. Lenox School Department’s Lockdown Training and Acquisition of Door Barricades for Use Exclusively in Lockdowns Involving Active Shooters**

14. In accordance with these recommendations, and like school districts throughout the Commonwealth, Lenox school and emergency officials have in recent years attended ALICE trainings at which they were instructed, consistently with the above-described protocol, that in a lockdown involving an active shooter, school staff should barricade classroom doors from the inside using the Door Barricades, among other types of objects such as chairs, desks and the like.

15. Precisely as they had been trained to do, and like many other school districts throughout the Commonwealth, Lenox school officials purchased the Door Barricades at a Home Depot store, where such barricades are displayed and readily available for purchase.

16. The Door Barricades are kept in the corner of classrooms and other rooms throughout the District’s school buildings, so that they remain easily accessible to staff in the event of an active shooter lockdown. In accordance with its training, the School District strictly limits the Door Barricades’ use to active shooter lockdowns.

17. Although fortunately no school building has since the District’s acquisition of the Door Barricades had a lockdown requiring their use, in the event that a Door Barricade is used, it may easily be placed and removed by anyone from the inside of the barricaded room. In

particular a Door Barricade may more readily be removed than other objects encouraged for use in barricading doors, such as desk, chairs, ties and other objects.

18. In addition to the aforementioned authority and official guidance reflecting the wide acceptance throughout Massachusetts of barricade devices such as the Door Barricades, in its publication entitled “K-12 School Security, A Guide for Preventing and Protecting Against Gun Violence,” 2<sup>nd</sup> Edition (2018) (“Homeland Security Guide,” a copy of which is attached as **Exhibit B**), the U.S. Department of Homeland Security advises that “[d]oor blockers are a relatively simple way to easily barricade a shooter from entering a doorway to classrooms, offices, auditoriums, hallways, etc.,” and that “[m]ost door blockers are simple and straightforward to use.” See Exhibit B (Homeland Security Guide), p. 18. Although the Homeland Security Guide notes that such door blockers may delay entry by first responders and that “[s]chools should also discuss fire code compliance with first responders,” the Lenox Fire Department wholly supports the School Department’s use of the Door Barricades.

### **III. Building Inspector and BCAB Proceedings and Determinations**

19. As part of its proactive efforts to coordinate its safety measures, on October 9, 2018 the School Department organized a school safety meeting (the “School Safety Meeting”) attended by various School Department and Town officials, including officials from the Police and Fire Departments, the Building Inspector and others.

20. At the School Safety Meeting, in the course of a discussion regarding the Door Barricades, the Building Inspector inquired about their precise nature or use. The School Department thus arranged to have a School Resource Officer visit the Building Inspector the following day to demonstrate how the Door Barricade is used.

21. Thereafter the Building Inspector issued a “violation notice” dated October 12, 2018 (the “Violation Notice,” a copy of which is attached hereto as **Exhibit C**) ordering the School District to “cease and desist the deployment and use of any unapproved barricade devices immediately . . . and to remedy, correct or abate” purported “violation[s]” of certain sections for 780 CMR and 521 CMR. Exhibit C (Violation Notice), pp. 2-3.

22. Although based upon the Building Inspector’s erroneous conclusion that the Door Barricades violate the State Building Code, 780 CMR, the Violation Notice recognized that even assuming the existence of a condition that technically deviates from the State Building Code’s requirements, the State Building Code “allows for some exceptions where security and life safety objectives conflict.” Exhibit C (Violation Notice), p. 2. Nonetheless, the Building Inspector concluded erroneously that the referenced State Building Code provisions do “not include any exceptions for educational use groups.” Building Commissioner Order, p. 2. This myopic conclusion, and the necessary corollary proposition that a school building is per se unprotected by the State Building Code’s exceptions for security and life safety events, are legally incorrect and, as practical and policy matter, utterly absurd.

23. The Violation Notice also purported to order “the removal of all unapproved devices from the Lenox school buildings.” Id. at p. 3.

24. After the School District timely filed an appeal with the BCAB to challenge the Violation Notice, the BCAB held a hearing (the “Hearing”) in this matter on November 20, 2018.

25. At the Hearing, School District Superintendent Dr. Kimberly Merrick, and Lenox Fire Chief Christopher O’Brien, both presented evidence in support of the School District’s position.

26. For example, Dr. Merrick explained the wide inclusion of the Door Barricades and similar objects as part of accepted school district safety plan lockdown procedures, the Fire Chief provided testimony establishing the ease with which anyone may remove the Door Barricade from the inside of the barricaded room. The School District also presented written materials in support of its position.

27. Despite the compelling evidence that supported the School District's position and belied the Violation Notice, the BCAB issued a written decision (the "Decision," a copy of which is attached hereto as **Exhibit D**) dated February 25, 2019 affirming the Violation Notice "with respect to the interpretation and application of 780 CMR in these specific circumstances." Exhibit D (Decision), p. 5.

28. Although not cited by the Building Inspector or referenced in the Violation Notice, and notwithstanding the Police and Fire Departments' unequivocal support of the School District, the Decision eschews such first responder support and testimony, and theorizes about the issue of emergency personnel access, stating that "the BCAB also opined that, in the event emergency response personnel needed to gain entry, they might need special means to release the barricade device, which could delay their entry to respond to an emergency in a classroom." Id. at p. 4.

29. In attempting to distinguish the Door Barricades from allegedly "code-compliant dead-bolt locking mechanisms," the BCAB offered conjecture, wholly unsupported by any evidence in the record, to the effect that such "[d]oor-locking mechanisms *typically* can be keyed on the outside, so authorized personnel could gain entry to a locked classroom door in the event of emergency evacuation." Id. (emphasis added).



30. Nor did the Decision substantiate any reasonable basis for the Building Inspector or BCAB to distinguish between the Door Barricades and other objects universally regarded as proper for use in barricading doors in active shooter situations, such as desks, chairs, tying-mechanisms and other objects.

31. Furthermore, in attempting to substantiate the Decision the BCAB essentially disclaims it as precedent, crafting an opening to decide disparately in future similar cases arbitrarily, explaining that “the BCAB observed that what might work in the District might not work in another school district,” and that, based on various “considerations . . . the BCAB found that it cannot offer general solutions, based on this Appeal, which should, or even could, be deemed applicable to other schools.” Id. at p. 5.

**COUNT I**  
**(Appeal under G.L. c. 30A, § 14)**

32. The School District repeats and reallages the allegations contained in Paragraphs 1-31 of this Complaint as if fully set forth herein.

33. The Decision, and the Violation Notice, both prejudice the substantial rights of the School District and are unsupported by substantial evidence, arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, in excess of the BCAB’s and Building Inspector’s statutory authority, respectively, made upon unlawful procedure, based upon an error of law and otherwise in violation of G.L. c. 30A, § 14 and other authority.

34. The Door Barricades are not subject to and/or comply fully with the Building Code and other law, and may be placed and removed easily without any special knowledge or effort, nor do the Door Barricades require tight grasping, tight pinching or twisting of the wrist to operate.

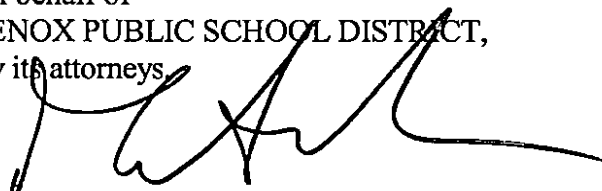
35. The Building Inspector and BCAB lack authority to order that the School Department refrain from using the Door Barricades, and the Building Inspector lacks authority to order that the School Department remove the free-standing Door Barricades from its buildings. Nor did the Decision affirm that part of the Violation Order requiring such removal.

**PRAYERS FOR RELIEF**

WHEREFORE, the Lenox School Committee and Lenox Public School District hereby requests that this Honorable Court:

- (1) Enter judgment in the School District's favor as to all counts;
- (2) Issue and order and judgment annulling the Building Code Appeals Board Decision dated February 25, 2019 and the Lee/Lenox Inspector of Building's underlying Violation Notice dated October 12, 2018; and
- (3) Award all such other relief as this Honorable Court deems just and equitable.

Respectfully submitted,  
LENOX SCHOOL COMMITTEE  
On behalf of  
LENOX PUBLIC SCHOOL DISTRICT,  
By its attorneys,



David A. DeLuca, Esq., BBO #543964  
[ddeluca@mhtl.com](mailto:ddeluca@mhtl.com)

Peter L. Mello, Esq. (BBO# 659680)  
[pmello@mhtl.com](mailto:pmello@mhtl.com)

Murphy, Hesse, Toomey & Lehane, LLP  
300 Crown Colony Drive, Suite 410  
Quincy, MA 02169

Telephone: (617) 479-5000  
Facsimile: (617) 479-6469

Dated: March 27, 2019