SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, and THE NEW YORK STATE CONFERENCE OF NAACP, THE ALLIANCE FOR QUALITY EDUCATION, RUBEN DIAZ, JR., BILL PERKINS, ERIC ADAMS, TONY AVELLLA, ALAN MAISEL, ROBERT JACKSON, CHARLES BARRON, ERIK MARTIN DILAN, MARK WEPRIN, LETITIA JAMES, RUBEN WILLS, STEPHEN LEVIN, HECTOR NAZARIO, ZAKIYAH ANSARI, JAMES ORR, JANICE LAMARCHE and BELINDA BROWN, Plaintiffs, -against- THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, and DENNIS M. WALCOTT, as Chancellor of the City School District of the City of New York, Defendants,	:	Index No. Date Filed: May 18, 2011 **SUMMONS** Plaintiffs designate New York County as the place for trial. The basis for venue is residence. See CPLR § 503.

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiffs' attorneys an answer to the Verified Complaint in this action within twenty (20) days service of this Summons upon you, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the annexed Verified Complaint.

Dated: New York, New York
May 18, 2011

STROOCK & STROOCK & LAVAN LLP

By:_____

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MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, and THE NEW YORK STATE CONFERENCE OF NAACP, THE ALLIANCE FOR QUALITY EDUCATION, RUBEN DIAZ, JR., BILL PERKINS, ERIC ADAMS, TONY AVELLLA, ALAN MAISEL, ROBERT JACKSON, CHARLES BARRON, ERIK MARTIN DILAN, MARK WEPRIN, LETITIA JAMES, RUBEN WILLS, STEPHEN LEVIN, HECTOR NAZARIO, ZAKIYAH ANSARI, JAMES ORR, JANICE LAMARCHE and BELINDA BROWN, Plaintiffs, -against- THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, and DENNIS M. WALCOTT, as Chancellor of the City School District of the City of New York, Defendants.	Index No._____ **VERIFIED COMPLAINT**

Plaintiffs, the United Federation of Teachers (the "UFT"), by its President Michael Mulgrew, and The New York State Conference of NAACP, the Alliance for Quality Education, Ruben Diaz, Jr., Bill Perkins, Eric Adams, Tony Avella, Alan Maisel, Robert Jackson, Charles Barron, Eric Martin Dilan, Mark Weprin, Letitia James, Ruben Wills, Stephen Levin, Hector Nazario, Zakiyah Ansari, James Orr, Janice LaMarche and Belinda Brown, by their attorneys Stroock & Stroock & Lavan LLP, Carol L. Gerstl, Esq. and Adam S. Ross, Esq., hereby allege, as and for their Verified Complaint, as follows:

BACKGROUND

1. Plaintiffs, a coalition of organizations dedicated to the advancement of educational opportunity, elected officials and public school parents bring the instant action to again address the New York City Department of Education's ("DOE") dogmatic effort to (i) short-circuit community participation in school governance, (ii) evade its responsibility to assist struggling schools before summarily seeking their closure often to improperly make way for charter schools, and (iii) co-locate other favored programs without regard to squeezing out the students in "traditional" public schools from any fair allocation of school resources. [1]

2. Notwithstanding last year's legal proceedings – successfully challenging the DOE's attempt to improperly close some 19 schools – the DOE's arrogant refusal to heed statute and even Court orders remains apparent. Indeed, after the School Closings I decision issued last year, the DOE brushed it aside, indicating that it would simply close the same schools the following year.

3. Defendants have continued to fail the same students and communities involved in last year's school closings proceeding, as well as others, by their (i) failure to comply with a settlement agreement arising from last year's proceeding by properly creating and implementing 10-part education plans in those schools; (ii) renewed attempts to close more than two-thirds of the same schools (some 15 of the original 19) despite not making contractually and statutorily required efforts to improve them; and (iii) new attempts to avoid meaningful compliance with the

[1] In conjunction with amendments to the State Education Law enacted in 2002 and 2009, many of the powers previously held by the Board of Education of the City School District of the City of New York, now referred to by Defendants as the "Panel for Education Policy" ("PEP"), devolved to the Chancellor, with the administrative operations assigned by the Chancellor to a body denominated by the Mayor as the New York City Department of Education ("DOE"). The Board of Education of the City School District of the City of New York, hereinafter "PEP," retained, *inter alia*, the power to ratify collective bargaining agreements, and with the 2009 amendments, approve proposed school closures and significant changes in school utilization and remains. The DOE, the Chancellor and the PEP are collectively referred to herein as "Defendants."

statutory process for the proposed co-location of charter schools by yet again merely paying lip service to substantive statutory requirements.

4. Indeed, Defendants set in motion their drive to close this year's list of schools before either the supports provided for in contract or by statute were realized. The schools were not even permitted the chance to improve with the help of the mandated assistance before Defendants' axe fell upon them.

PARTIES

5. Plaintiff Michael Mulgrew is a resident of the State and City of New York, and is the President of the UFT, Local No. 2, American Federation of Teachers, AFL-CIO. The UFT is an unincorporated association with its principal place of business in the City and County of New York and is the recognized bargaining agent for all nonsupervisory pedagogical personnel and classroom paraprofessionals employed by the Board of Education of the City School District of the City of New York (the "BOE").

6. Plaintiff The New York State Conference of NAACP is a nonprofit membership, civil rights organization, with fifty-six branches across the State. Its mission is to ensure educational, social and economic equality of minority groups and citizens.

7. Plaintiff The Alliance for Quality Education (AQE) is a not-for-profit coalition of more than 230 organizations comprising parents, children's advocates, teachers, clergy, labor unions, business representatives and others who believe that every child in New York State deserves a quality education. The organization has a presence in the State and City of New York. To that end, the AQE actively represents the interest of its constituents, including with regard to the proper provision of education services.

8. Plaintiff Ruben Diaz, Jr. is the Borough President of the Borough of The Bronx, Bronx County New York. As such, his duties and responsibilities include representing and

advocating the legitimate interests of all residents and enterprises in the Borough of The Bronx. Principal among these interests are concerns regarding the education of the City's children. Any action that impacts upon the education and welfare of public school students in The Bronx and their parents and communities is consequently of concern to the office of the Borough President.

9. Plaintiff Bill Perkins is the New York State Senator for the 30th Senate District in Manhattan, New York. He actively represents the interests of his constituents, including with regard to the proper provision of educational services.

10. Plaintiff Eric Adams is the New York State Senator for the 20th Senate District in Brooklyn, New York. He actively represents the interests of his constituents, including with regard to the proper provision of educational services.

11. Plaintiff Tony Avella is the New York State Senator for the 11th Senate District in Queens, New York. He actively represents the interest of his constituents, including with regard to the proper provision of educational services.

12. Plaintiff Alan Maisel is the New York State Assemblymember for District 59 in Brooklyn, New York. He actively represents the interest of his constituents, including with regard to the proper provision of educational services.

13. Plaintiff Robert Jackson is the District 7 City Council Member, representing parts of Morningside Heights, Hamilton Heights, West Harlem, Washington Heights and Inwood. He also serves as Chair of the City Council Education Committee. In that capacity, he represents the interests of public school children, their parents and communities.

14. Plaintiff Charles Barron is the District 42 City Council Member representing parts of East New York, Brownsville, East Flatbush, and Canarsie. He also serves as a member of the

City Council Education Committee. In that capacity, he represents the interest of public school children, their parents and communities.

15. Plaintiff Erik Martin Dilan is the District 37 City Council Member representing the communities of Bushwick, Cypress Hills, East New York, Ocean- Hill Brownsville and Wyckoff Heights. Dilan actively represents the interests of his constituents, including as to the provision of educational services.

16. Plaintiff Mark Weprin is the District 23 City Council Member representing communities in Hollis Hills, Queens Village, Little Neck, Douglaston, Bayside, Bellerose, Floral Park, Glen Oaks, New Hyde Park, Hollis, Hollis Park Gardens, Holliswood, and Fresh Meadows. Weprin actively represents the interests of his constituents, including as to the provision of educational services.

17. Plaintiff Letitia James is the District 35 City Council Member representing communities in Fort Greene, Clinton Hill, Prospect Heights and part of Bedford-Stuyvesant, Crown Heights and DUMBO. James actively represents the interests of her constituents, including as to the provision of educational services.

18. Plaintiff Ruben Wills is the District 28 City Council member representing communities in Jamaica, Richmond Hill, South Ozone Park, Ozone Park and Baisley Park. Wills actively represents the interest of his constituents, including as to the provision of education services.

19. Plaintiff Stephen Levin is the District 33 City Council Member representing communities in Greenpoint, Williamsburg, Park Slope, Boerum Hill, Brooklyn Heights, DUMBO, and Vinegar Hill. Levin actively represents the interests of his constituents, including as to the provision of education services.

20. Plaintiff Hector Nazario is a resident of the State and City of New York and the parent of a student enrolled in public school in the City School District. Nazario is also the President of the Community Education Council for Community School District 4. Academy of Environmental Sciences High School is located in School District 4 and is subject to the Settlement Agreement discussed herein and is designated under the State's accountability and registration review framework. In that capacity, he had a right to participate in certain of the statutory processes described herein.

21. Plaintiff Zakiyah Ansari is a resident of the State and City of New York and the parent of four children enrolled in public schools in the City School District. Ansari was also actively involved as a member of the Campaign for Better Schools, advocating for certain of the statutory procedures described herein.

22. Plaintiff James Orr is a resident of the State and City of New York and the parent of two children enrolled in public school in the City School District. Orr's children attend P.S. 114, which is the subject of one of the proposed co-locations here challenged. Orr also serves as the Vice President of the P.S. 114 Parent Association.

23. Plaintiff Janice LaMarche is a resident of the State and City of New York and the parent of a child attending public school in the City School District. LaMarche's son attends John F. Kennedy High School, which is on the DOE's closure list and is also designated as a School Under Registration Review school and a Restructuring school and is subject to one of the proposed co-locations here challenged. LaMarche also serves on the School Leadership Team ("SLT") and the Parent Association board for Kennedy H.S.

24. Plaintiff Belinda Brown is a resident of the State and City of New York and the parent of a child attending public school in the City School District. Brown's child attends

Christopher Columbus High School, which is subject to the Settlement Agreement discussed herein and is designated under the State's accountability and registration review framework. Brown is also a member of the Christopher Columbus SLT.

25. Defendant BOE is a school board organized under and existing pursuant to the Education Law of the State of New York and serves as the government or public employer of all persons appointed or assigned by it. The BOE is located at 52 Chambers Street, New York, New York.

26. Defendant Dennis M. Walcott is the Chancellor of the New York City Schools and as such, under New York Education Law, functions as chief executive officer for the City School District of the City of New York. The Chancellor operates through his administrative offices, denominated as the DOE. The Chancellor serves at the pleasure of and is selected by the Mayor of the City of New York.

ALLEGATIONS COMMON TO ALL CLAIMS

27. Last year (as it did again this year in February, March and April 2011), the Panel for Education Policy ("PEP") met to consider, *inter alia,* the controversial closing of some 19 schools throughout the City as well as certain co-locations. Those proposals provided the first test under the then-recently amended State Education Law, Article 52-A, designed to provide parents, students and community members a greater voice in a more transparent City school system. The DOE failed that test by subverting the legislatively-mandated process with boilerplate disclosures and faulty procedures, thereby depriving stakeholders of an informed and meaningful opportunity to participate in school governance. The DOE, in so doing, demonstrated a steadfast opposition to genuinely engaging the community, a *total* abdication of any obligation to provide assistance to schools, and a fixation on closing struggling schools rather than seeking to help them, often to make way for charter schools. Finally, underlying

these failures appears to be an insatiable desire to foster favored programs (or sponsors) by squeezing them into unsuitable spaces.

28. As a result, a coalition of organizations, parents and community leaders (including a number of Plaintiffs herein), commenced a challenge to the 2010 school closing and co-location process ("School Closings I"). On March 26, 2010, Justice Joan B. Lobis of this Court held that the DOE failed to comply with the Education Law's requirements. Mulgrew v. Bd. of Educ. of the City Sch. Dist. of the City of New York, 902 N.Y.S.2d 882, 890 (2010). Justice Lobis held that Education Law §2590-h requires the Chancellor to provide a "detailed analysis" of the impact of *any significant change in school utilization*, and to engage in a public process that provides for "meaningful community involvement regarding the [C]hancellor's proposals." Id. The Appellate Division, First Department, unanimously affirmed in Mulgrew v. Bd. of Educ. of the City Sch. Dist. of the City of New York, 75 A.D.3d 412, 413 (2010). When the DOE proceeded to take steps to effectuate co-locations that were premised upon the closure of the 19 schools that the Court had just determined should not be closed, the School Closing I parties challenged the DOE's actions, and under threat of additional motion practice before the Court to clarify that the Judgment in fact precluded such actions, the DOE agreed to resolve the issues. In so doing, the DOE committed itself to prepare and implement 10-part education plans at each of the 19 schools designed to give those schools a fair chance to improve (and thereby avoid closure in the future), and to limit the number of co-locations that would occur.

29. The invalidated 2010 PEP votes to close the original 19 schools took place amidst an unprecedented public outcry against the DOE's approach to school closings as a mere expedient to avoid having to improve schools with complex needs, caring little for legislatively-created mandates which only warranted providing stakeholders a (futile) chance to vent their

frustrations and treating the interest of students, parents and teachers as nuisances. In response to that public condemnation of the DOE's actions, School Closings I challenged the DOE's illegal closure of the 19 schools and attempt to replace them (either outright or through proposed co-locations) with new, smaller schools that often do not serve substantial portions of the students that were served by the closing schools. The Court found that during the 2010 closing process the DOE had blatantly skirted the procedural safeguards put in place to ensure community oversight and such noncompliance constituted "significant violations of the Education Law" and invalidated the PEP's January 26, 2010 vote. Mulgrew, 902 N.Y.S.2d at 889.

30. The School Closings I proceeding sought to require the DOE to adhere to the statutorily prescribed public process, obliging the DOE to reevaluate the proposed closings, in good faith and with the benefit of community input. The Supreme Court's analysis of the Education Law in School Closings I was in accord:

> [The DOE's] very argument [in the 2010 proceeding] would appear to trivialize the whole notion of community involvement in decisions regarding the closing or phasing out of schools. The decision of [the DOE] to alter their plans to close the Alfred E. Smith Career and Technical Education High School [in response to feedback from the community regarding the demand for an automotive program], however, underscores the importance of community input in the decision-making regarding school closure...as [the DOE] re-examine[s] in good faith the various programs in the schools they are proposing to close, and obtain meaningful community involvement, as required by the Education Law, respondents may well change their decisions with respect to some of the 19 schools, as they did with respect to the Alfred E. Smith Vocational High School.

Id. at 889-90.

31. This admonition, however, appears to have made little impact on the DOE, with the DOE continuing on as if the 19 closures had not been annulled by the Court. Indeed,

officials expressed their indifference to the Court's ruling, upon information and belief, stating they would simply renew their attempt to close the same schools the following year. Moreover, immediately after the Supreme Court annulled the closures (and before and after the First Department affirmed), the DOE brazenly took steps to move forward with the co-location of schools that were meant to replace 12 of the 19 schools that had been spared by the Court from improper closure. The petitioners maintained that the affirmed judgment forbade the DOE from summarily closing the schools without good faith compliance with the statutory closing process and that, (i) as the co-locations were part and parcel of the Educational Impact Statements ("EIS") found to be defective by the Court and (ii) were voted on as part of the same process annulled by the Court, they too were impermissible absent appropriate community review.

32. Both sides were initially unable to agree on the proper interpretation of the judgment in School Closings I. In that regard, petitioners wrote to the Court raising the potential need for clarification of the judgment. The Court advised counsel that a formal motion would need be made and that it would then address the issue. As the motion papers were being prepared, the parties were able to negotiate a settlement of the outstanding claim, memorialized in a letter agreement dated July 14, 2010, and signed by counsel for all parties that resolved these issues (the "Settlement Agreement," a copy of which is annexed hereto as Exhibit A).

33. The Settlement Agreement prohibited the DOE from proceeding with many co-locations, but permitted it to proceed with certain of them (largely where there was less potential for adverse impact on space utilization of the existing schools), and, reflective of the intent underpinning the School Closings I litigation, required the DOE to make a good faith effort to improve and re-evaluate schools in hopes of avoiding closure. To that end, the Settlement Agreement mandated that the DOE develop and implement during the 2010-2011 school year a

ten-part Education Plan (the "Education Plan") for each of the 19 schools subject to the Court's decision. As set forth herein, the DOE has failed to comply with that agreement, taking the same perfunctory approach to those obligations as it did to the requirements of the Education Law which necessitated the first School Closings proceeding, by developing so-called "Education Plans" that, upon information and belief, merely reflected the current resources of the schools rather than additional resources targeted at the school's needs and failing even to implement the defective Plans that it did create. Despite its failure to make good faith efforts to improve any of the 19 schools, and, as alleged below, a bare few months into the school year during which the Education Plans supposedly were to be implemented, the DOE again, impermissibly, sought to close 15 of those schools, frustrating the purpose of – and thus breaching – the Settlement Agreement.

34. The DOE's continued persistence in avoiding its statutory and contractual obligations unless compelled by this Court extends beyond school closures to co-locations as well. In keeping with the 2009 amendments to the Education Law that established the EIS process and its purpose of ensuring greater transparency, collaboration and accountability, the State Legislature, in May 2010, further amended the State Education Law to require the DOE, as part of the EIS, to create and publish a Building Utilization Plan ("BUP") whenever it proposed a charter school be co-located with a public school or located within a public school building. The May 2010 amendments, found in §2853(3)(a-3) of Article 56, set out the appropriate steps the DOE was required to take and information it was mandated to provide in creating the BUP.

35. As it did with the EIS requirement when first implemented, the DOE feigned compliance with the BUP requirement by providing the same type of perfunctory explanations that were struck down in School Closings I, rendering invalid some 17 co-locations recently

approved by the PEP to commence in 2011-2012. Specifically, as held by the Commissioner of Education in Appeal of Espinet regarding language virtually identical to that contained in other proposed co-locations:

> the inclusion of a proposal for the collaborative use of shared spaces, as required by Education Law §2853(3)(a-3)(2)(B), does not obviate the need for the discussion of the justification of feasibility and equitable and comparable use required by Education Law §2853(3)(a-3)(2)(C). Indeed, it is just such information, which should be available to the public as part of an EIS, prior to any hearing, that affords meaning to the process set forth in Education Law §2853(3)(a-3). ...
>
> This involves a substantive failure to analyze the impact of a significant change in school utilization on the affected students and cannot be characterized as harmless error.

Appeal No. 16,212, 2011 NY Educ. Dept. LEXIS 27, *27-28 (March 31, 2011). The DOE here repeats this "substantive failure," rendering these 17 co-locations invalid.

36. Even after the DOE amended two additional BUPs slated for consideration at the PEP April 28th vote to attempt to comply with the Espinet decision, the DOE failed to comply with the hearing requirements of §2590-h(2-a)(d-1) for amended EISs. When an EIS that includes a required BUP, has been substantially revised, another joint public hearing must be held "no sooner than fifteen days following the filing" of the revised EIS. The DOE failed to hold one for either of the two post-Espinet co-locations. The DOE again has avoided its statutory obligations.

37. In addition to the procedural safeguards provided in the Education Law's EIS process and the DOE's contractual obligation under the Settlement Agreement to develop and implement meaningful Education Plans, struggling schools also fall within State laws and regulations providing for State Education Department ("SED") oversight of required improvement efforts, including a prohibition against the closure of a school subject to such

oversight without the consent of the State Commissioner of Education ("Commissioner"). See Comm. Reg. § 100.2(p)(11)(iv). See also Comm. Reg. § 100.2(p)(9)(i)-(ix). These schools often serve disproportionate concentrations of students with high needs, including English Language Learners and students receiving varying degrees of special education services, as well as economically challenged students. Many of these schools have been struggling for some time without the benefit of the DOE performing the diagnostic aids and providing the additional support required under the SED framework.

38. Many of the schools the DOE is seeking to close this year, including 15 of the 19 School Closing I schools, have been identified by the Commissioner under the SED Differentiated Accountability and SURR/PLA frameworks. These regulatory schemes are designed much like the Settlement Agreement's Education Plans (which are modeled, in part, on the SED programs) to provide struggling schools with assistance in diagnosing areas of need, developing and implementing a plan of action to address those needs and the opportunity to use such extra supports to improve achievement. Pursuant to these integrated State frameworks, the DOE may not close schools subject to SED oversight absent the Commissioner's approval. Just as with its obligations under the Settlement Agreement to seek to improve the schools prior to closure, the DOE has failed to take required steps under SED regulations in a meaningful and timely manner to assist schools. Yet, the DOE purports to close those schools, beginning the following school year, without having sought or received the Commissioner's approval.

39. As set forth herein, and consistent with the DOE's disregard for any requirement that it collaborate in improving schools and not simply close them, the DOE has failed to provide these schools with a meaningful opportunity to benefit from these improvement efforts by

treating the framework as a mere tool for confirming DOE's pertinacious determination to close the schools.

2011 School Closures

40. By December 17, 2010 – a mere three months into the school year in which the contractual Education Plans were to be implemented – the DOE posted notice of 16 schools it sought to close.[2] These schools included 10 of the 19 School Closing I schools it was obligated to attempt to improve: (i) the Academy of Collaborative Education ("ACE"), (ii) KAPPA II, (iii) the School for Community Research and Learning ("Community Research"), (iv) the Academy for Environmental Science Secondary High School ("Environmental Science"), (v) Beach Channel High School ("Beach Channel"), (vi) New Day Academy ("New Day"), (vii) Frederick Douglass Academy III's middle school grades ("FDA III"),[3] (viii) Metropolitan Corporate Academy High School ("MCA"), (ix) Monroe Academy for Business and Law High School ("MABL"), and (x) Paul Robeson High School ("Robeson").

41. Just three days later, the DOE announced its intention to seek closure of an additional eight schools, including (xi) Christopher Columbus High School ("Columbus"), (xii) Global Enterprise High School ("Global Enterprise"), (xiii) Jamaica High School ("Jamaica"), (xiv) Norman Thomas High School ("Thomas"), and (xv) P.S. 332 Charles H. Houston ("P.S. 332") – yet another five of the 19 schools the DOE attempted to close in 2010, for a total of 15 (of the original 19) schools subject to the Settlement Agreement.

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[2] P.S. 114 Ryder Elementary ("Ryder") was proposed for closure on December 17, 2010, but the DOE has since withdrawn the proposal. Ryder is therefore excluded from this analysis, though, as discussed below, the co-location of Explore Excel Charter School with P.S. 114 is improper.

[3] In School Closings I, the DOE attempted to close FDA III in its entirety, whereas in 2011 only FDA III's middle school grades are proposed for closure.

42. Thus, a few months into the school year and but two months after the DOE met with UFT representatives and first proposed Education Plans pursuant to the Settlement Agreement, the DOE had undermined the purpose behind the 10-part Plans: to provide needed extra supports to allow schools a chance to improve and avoid closure, and again revealed their true intent – to close these schools despite law, rule, regulation or contract.

43. The initial 24 schools the DOE proposed this year for closures to begin the following school year (2011-2012) also included some 17 schools identified for oversight under SED's Accountability and registration review framework, discussed in detail *infra*.

44. Though the DOE this time provided some more information in the EIS for each school offered for closure, there were still many complaints from community members regarding the DOE's compliance with the school closure process. Upon information and belief, one of the most often voiced complaints was that the DOE failed to provide meaningful resources and assistance to improve the schools before determining to close them.

45. The PEP met on February 1, 2011, to consider the first batch of closures proposed by the DOE, save two that had been rescheduled.[4] Of the 10 schools voted on that day, eight are schools subject to the Settlement Agreement, of which six are also subject to SED oversight. The vote, viewed by the PEP as a mere formality, was, of course, to close all of the schools.

46. The PEP voted on the second batch of proposed school closings on February 3, 2011, and predictably approved the closure of all 12 schools it considered that day – seven of which are among the original 19 and therefore subject to the Settlement Agreement. These 12 schools also include 10 schools subject to SED oversight.

[4] The vote on P.S. 30 was re-scheduled for April 28, 2011 and I.S. 231 Magnetech 2000's vote was re-scheduled for April 23, 2011. Both proposals were approved on their respective PEP vote dates.

47. On March 3, 2011, the DOE proposed yet two more schools for closure: Bronx Academy High School and Pacific High School, setting the PEP review date for April 28, 2011. On that date, the PEP voted to close both of these schools. These two schools are also subject to SED oversight, bringing the total number of schools the DOE would dispose of currently to some 26 in a single school year, with 15 of them subject to the Settlement Agreement and 19 subject to SED oversight. As set forth in Table A, *infra* ¶ 55, contained in these totals are 12 schools that fall under both the Settlement Agreement and SED oversight.

Failure To Comply With Applicable State Laws And Regulations

48. As indicated in ¶¶ 45-47, the majority of the schools slated to be closed this year have been identified for oversight and improvement by SED under State law and regulations. As relevant here, the applicable and integrated State program include SED's Differentiated Accountability and Registration Review/Persistently Low Achieving framework.

49. In June 2010, the State of New York fused the federal framework for identifying Persistently Lowest-Achieving schools ("PLA schools"), which are eligible for specific federal funding, with the pre-existing SED Schools Under Registration Review ("SURR") program (itself already amended to align with No Child Left Behind), which had been applied to schools judged by the Commissioner as needing the most improvement. Also in compliance with Federal programs under the Elementary and Secondary Education Act of 1965, Title I, as amended, schools that also do not make adequate yearly progress, are designated to one of three progressive Differentiated Accountability phases: (1) Improvement phase; (2) Corrective Action phase; or (3) Restructuring phase. Together these programs require SED to monitor schools who are struggling pursuant to various measures. When City schools fall under such monitoring, the DOE is required to comply with state law and regulations providing for SED oversight.

50. Under the new coordinated framework, most schools identified as PLA schools also participate in the SURR program ("SURR/PLA schools"). Similarly, each of those schools, as well as others, are also assigned to one of the Accountability phases.

51. The PLA and SURR portion of the scheme requires a district, such as the City School District, to submit for Commissioner approval plans outlining the implementation of one of four Federal intervention schemes: (1) the Turnaround Model; (2) the Restart Model; (3) the Transformation Model; and (4) School Closure. The Commissioner has the power to approve such plans and sets the timeline for implementation. Comm. Reg. § 100.2(p)(10)(ii).

52. Each differentiated accountability phase requires some initial evaluative step immediately upon the school's designation within a particular differentiated status – school quality reviews ("SQRs") for Improvement phase schools (Comm. Reg. § 100.2(p)(6)(iv)(a)(1)), curriculum audits ("CAs") for Corrective Action phase schools (Comm. Reg. § 100.2(p)(6)(iv)(b)(1)); and assessments of educational programs by a joint intervention team appointed by the Commissioner ("JIT Reports") for Restructuring phase schools (Comm. Reg. § 100.2(p)(6)(iv)(c)(1)). As noted *supra*, the Settlement Agreement utilizes the Curriculum Audit tool as part of its required Education Plans as well. Most schools placed in one of these phases, particularly the restructuring phase, are also SURR/PLA and are thus required to be assessed by a JIT irrespective of for which Accountability phase it is designated. See N.Y. EDUC. LAW §211-b(2)(b).

53. These evaluations are then (supposed to be) used to formulate customized school plans, which are to cover a two-year period per phase and are intended to address specific causes for the school's failure to progress (Comm. Reg. §§ 100.2(p)(6)(iv)(a)(2), 100.2(p)(6)(iv)(b)(2), 100.2(p)(6)(iv)(c)(2)). The school district, here the DOE, is required to approve such plans

within three months of the school's designation and implement the plans no later than the beginning of the next school year (Comm. Reg. §§ 100.2(p)(6)(iv)(a)(2)(ii), 100.2(p)(6)(iv)(b)(2)(ii), 100.2(p)(6)(iv)(c)(2)(ii)).

54. The Commissioner retains the power to remove oversight and has the ultimate authority to assess whether a school has either progressed enough for removal or has failed to improve despite additional supports. Thus, if the DOE Chancellor seeks to close a school under registration review, he must first submit the proposed closure plan for the Commissioner's approval. Comm. Reg. §§ 100.2(p)(11)(iv)(a)-(c). The Commissioner, within his discretion, may grant approval of the plan only if:

> Chancellor has adopted the official resolutions or other approvals to close the school;
>
> A formal closure plan has been developed and approved in accordance with the requirements of the intervention prescribed by the Commissioner; and
>
> Parents, teachers, administrators, and community members have been provided an opportunity to participate in the development of the closure plan.

Comm. Reg. § 100.2(p)(11)(iv)(a)-(c).

55. The table below (Table A) provides a list of those schools sought to be closed in the current year which are designated as SURR/PLA schools and/or participate in the Differentiated Accountability framework:

	SCHOOL	YEAR(s) of SURR/PLA DESIGNATION	ACCOUNTABILITY STATUS
1.	Academy of Environmental Science*	n/a	Corrective Action (Year 1)
2.	Global Enterprise High School*	n/a	Corrective Action (Year 1)
3.	New Day Academy*	n/a	Improvement (Year 1)

4.	Performance Conservatory High School	n/a	Improvement (Year 1)
5.	MS 571	n/a	Improvement (Year 1)
6.	Bronx Academy High School	2011	Improvement (Year 1)
7.	Pacific High School	2011	Improvement (Year 1)
8.	Frederick Douglass Academy III (middle school grades) ⋆	n/a	Improvement (Year 2)
9.	School for Community Research and Learning⋆	2011	Improvement (Year 2)
10.	Monroe Academy for Business and Law⋆	2010, 2011	Improvement (Year 2)
11.	Norman Thomas High School⋆	2010, 2011	Restructuring (Advanced)
12.	IS 195 Roberto Clemente	2011	Restructuring (Advanced)
13.	John F. Kennedy High School	2010, 2011	Restructuring (Advanced)
14.	Christopher Columbus High School⋆	2010, 2011	Restructuring (Advanced)
15.	PS 102 Joseph O. Loretan	n/a	Restructuring (Advanced)
16.	Metropolitan Corporate Academy⋆	2010, 2011	Restructuring (Advanced)
17.	Beach Channel High School⋆	2010, 2011	Restructuring (Advanced)
18.	Jamaica High School⋆	2010, 2011	Restructuring (Advanced)
19.	Paul Robeson High School⋆	2010, 2011	Restructuring (Year 2)

⋆ These schools were also part of School Closings I and are thus subject to the terms of the Settlement Agreement discussed *supra* at ¶¶ 31-33. There are seven additional schools subject to the Settlement Agreement, three of which are on the DOE's closure list this year (and inexplicably in good standing with SED) – Academy of Collaborative Education, Kappa II and PS 332 – and four of which DOE has not sought to close in this round – Choir Academy of Harlem, Middle School for Academic and Social Excellence, W.H. Maxwell Career and Technical Education High School, and Business, Computer Applications & Entrepreneurship High School.

56. A key element of the this framework, like the 10-part Education Plans required by the Settlement Agreement, is the opportunity to use SED-required improvement plans (like the Educations Plans under the Settlement), to improve school outcomes. Generally, schools under SED oversight are given at least two years to improve (see e.g., Comm. Reg. §

100.2(p)(6)(iv)(a)(2)) and sometimes are given at least three years (Comm. Reg. § 100.2(p)(10)(vi)).

57. Accordingly, for schools in Differentiated Accountability and SURR/PLA, as some 12 of those listed on Table A, *supra*, are, the DOE is required to submit for Commissioner approval plans for improvement of each school, as well as plans that could result in closure of the school. The Commissioner retains the right to, in his discretion, approve or deny such plan. One consideration the Commissioner would evaluate in exercising such discretion is whether the DOE had complied with its obligations to take specified regulatory steps to improve the schools prior to seeking closure.

58. Upon information and belief, the DOE has failed to seek the Commissioner's approval of the closure of any of the 19 schools listed in the table above, let alone receive a single approval.

59. On January 31, 2011, Plaintiff UFT wrote to the Commissioner inquiring as to the DOE's apparent failure to comply with the regulatory framework by failing to seek and obtain the Commissioner's approval for the closure of the listed schools. (A copy of the letter is annexed hereto as Exhibit B.) The Commissioner's Office responded, by letter dated March 2, 2011, confirming the SED had not received any request from the DOE for approval of the intended school closures. (A copy of that letter is annexed hereto as Exhibit C.)

60. This failure to seek approval is substantive for it would allow the Commissioner to perform his statutory duty to evaluate the DOE's actions and inactions with regard to these schools and determine whether the schools had not been given a fair and proper opportunity to improve.

61. Indeed, the DOE has deprived schools of the opportunity to receive support they are entitled to receive and a meaningful chance to improve by neglecting to complete even the initial diagnostic step based upon which the DOE is required to approve and implement action plans to improve the schools.

62. Here, seven of the 19 schools listed in Table A, *supra*, are either in Improvement (Year 1) or Corrective Action (Year 1) status in the current school year and, as such, were required to have a SQR or CA, followed by an approved School Improvement Plan or Corrective Action Plan, respectively, that was approved no later than three months from designation. Upon information and belief, SED designated these schools in December 2010. Upon information and belief, the DOE has failed to complete even the initial SQR or CA for any of these seven schools within the required time (or even, upon information and belief to date), and therefore there can be no School Improvement Plans or Corrective Action Plans.

63. Several more of the schools listed in Table A were entitled to benefit from JIT Reports as they were designated Restructuring and/or SURR/PLA for the first time this school year. Thus, Bronx Academy High School, Pacific High School, Community Research and P.S. 102 Joseph O. Lorentan should have received, but upon information and belief did not receive, JIT Reports this year.

64. Although the Accountability framework contemplates progressively stringent requirements for assessment and improvement as the school moves through the phases, because the current integrated program was only recently implemented many of the closing schools were initially designated at the end of the progression as Restructuring and SURR/PLA schools. Yet, the years of struggle that warranted that placement came without any of the extra oversight and supports built into the progressive framework. Thus, although they are designated Restructuring

and SURR/PLA schools, this is really the first opportunity the schools have had to benefit from many aspects of SED's oversight. That opportunity is being cut off by DOE's actions in committing resources to seeking closure rather than providing the supports required by law.

65. Moreover, as noted *supra* at ¶¶ 51-54, the regulations explicitly prohibit the DOE from closing SURR schools without the Commissioner's approval, as the Commissioner's approval may be withheld because the DOE has failed to comply with its obligations to take specified regulatory steps to improve schools before closing them. Upon information and belief, inherent in the mandate for Commissioner approval at the end of the integrated Differentiated Accountability and SURR/PLA process is a mandate that the Commissioner ought to approve the closure of the schools that are in the intermediate steps of Differentiated Accountability, lest the DOE be able to shirk its obligations under State regulations to provide oversight and support while simultaneously circumventing Commissioner review.

66. Rather than (i) conduct required assessments for the schools which were to receive initial SQRs, CAs and JITs this year (¶¶ 62-63, *supra*) and (ii) provide required ongoing supports and oversight to the eight schools listed in Table A designated as Restructuring & SURR/PLA last year (2010) – which were supposed to have benefited from JIT Reports last year and should now be implementing action plans – the DOE, upon information and belief, opted to instead arrange for new, self-serving JIT evaluations designed to justify the preordained decision to seek closure of the schools. Predictably, each of the JIT Reports completed this year merely bootstraps the DOE's justification for closure by itself recommending closure.

BAD FAITH NON-COMPLIANCE WITH SETTLEMENT AGREEMENT

67. Despite the Supreme Court and the First Department both finding that the DOE had impermissibly abrogated the substantive rights of school stakeholders in connection with the school closing decision-making process and their admonishing the DOE about the purpose of the

process, the DOE acted undeterred in its apparently perfunctory approach to closing the targeted schools.

68. The at-issue schools, mostly larger high schools, upon information and belief, serve disproportionate concentrations of students with high needs, particularly, students who are over-age but under-credited, English Language Learners, students receiving special education services and students with severe disabilities. These schools also have many students with multiple socio-economic needs, such as homeless students. Upon information and belief, although these schools have experienced an influx of more and more students with high needs over the years, they have not received any additional resources or supports to aid in dealing with the changing circumstances. The Education Plans under the settlement agreement, and the schools' recent inclusion in the SED oversight framework provides them with the first real opportunity to utilize added supports to improve results. The DOE's conduct described herein in breaching the Settlement Agreement and failing to adhere to regulatory requirements serves to deprive the schools of even the opportunity to better serve these students, and hence irreparably harms those students.

69. It was in that context that, on July 14, 2010, the parties to School Closings I entered into the Settlement Agreement, obviating the need for additional motion practice before the Supreme Court in part requiring the DOE to develop and implement a ten-part Education Plan, modeled on many aspects of the SED Accountability and SURR frameworks, for the 2010-2011 school year intended to work towards improvement of all 19 schools on the 2010 closure list. Each such Education Plan was to provide at least the following additional supports to afford the schools an opportunity to improve:

A. Deployment of ATRs: Teachers and other professionals (guidance counselors, social workers, psychologists) within the Absent Teacher Reserve ("ATR") were

to be assigned to the schools to provide educational supports including, but not limited to, early intervention, small group instruction, push-in pull-out and/or team-teaching with a focus on English Language Learners ("ELLs") and special education students, as well as social and emotional support for students, including new immigrants, homeless students, and students re-entering the school system. ATRs through no fault of their own, have been excessed from a permanent position (*e.g.*, due to a school closure or fluctuations in enrollment) and have not yet found a new permanent position. Such teachers and other staff remain on DOE/PEP payroll and may be assigned as substitutes, or as additional personnel within a particular title. There is no additional cost to the DOE associated with the assignment of ATRs to a specific school in the manner contemplated by the Settlement Agreement, and the agreement required that these individuals help provide the schools with crucial support.

B. On-line Credit Recovery: In addition to existing credit recovery programs, where the school infrastructure supports it, each school was to implement additional on-line credit recovery programs. These programs are designed to provide catch-up credit towards graduation for those students not currently on track.

C. Support for Socio-economic Challenges: DOE Children First Networks were to be responsible for developing a plan with the SLT to identify a community based organization or organizations to support students and families with socio-economic challenges.[5]

D. School Leadership: The DOE was to consult with the UFT (which would act in consultation with and on behalf of the other School Closings I co-parties), regarding school leadership.

E. CEP Review: Superintendents were to review the Comprehensive Education Plan (CEP) of each school. Once approved, implementation would be monitored by the DOE. CEPs are in-depth plans completed by the SLT setting forth an assessment of the school's instructional programs, proposals for modifications and goals and objectives for the school. CEPs incorporate plans for identified interventions and, in that respect, serve the same function as the applicable action plans do for schools designated under the Differentiated Accountability framework. See N.Y. EDUC. LAW § 211-B (2)(a)-(b).

F. Curriculum Audit: A curriculum audit is a diagnostic tool utilized as part of the SED Accountability framework discussed *supra* and is designed to assess each school's educational program. Under the Accountability framework, SED contracts with an outside consultant to perform the audits.

G. Professional Development: Specialists from the DOE Children First Networks with expertise in instructional support for ELL and special education students

[5] The SLT is comprised of instructional and non-instructional personnel, as well as parents and community members. The SLT plays a significant role in school-based decision making and shaping educational policies.

were to provide targeted professional development and curriculum development for the school staff on strategies that have proven effective with ELL and special education students. Such professional development should have been tailored to each school's needs.

H. Instructional Support Alignment: DOE Children First Networks were to work with the principals and already-existing school teams (including, but not limited to, department teams, grade level teams and content teams) to develop instructional support plans aligned with the CEP.

I. Teacher Center: Principals and schools were to assess the school's resources and space to determine whether the possibility of establishing a Teacher Center exists. The UFT Teacher Center is a collaboration of the UFT, SED, DOE and participating schools and districts, school support organizations and metropolitan area universities and cultural institutions. It is a comprehensive professional development program that promotes teacher excellence and academic achievement for all students and operates throughout the five boroughs, 190 school-based sites and numerous outreach locations.

J. Joint Oversight Committee: As soon as practicable, the DOE and the UFT (in consultation with and on behalf of the other School Closing I parties) were to establish a Joint Oversight Committee ("JOC") to oversee and support implementation of the Education Plan. The JOC was vested with the authority to hear concerns regarding implementation of the Education Plan and make recommendations as to solutions.

70. As set forth herein, the DOE has arrogantly ignored and failed to comply with the Settlement Agreement.

71. As a threshold matter, in its dealings with the UFT members of the JOC regarding the requirements of the Settlement Agreement, upon information and belief, the DOE did not prepare meaningful Education Plans, which would have required first assessing the specific needs of each school and then designing the Plans to address those needs. The DOE should have been familiar with the precept, as it is the foundation of the SED Accountability/SURR framework as well. Rather, the DOE (much as it did in School Closings I) prepared "an" Education Plan that checks all the proverbial boxes, but not a single meaningful Education Plan. That is neither what the law nor the Settlement Agreement requires or prescribes. Exacerbating

that failure, the DOE has ignored many of the terms of its own defective Education Plans and paid but lip service to others.

72. Upon information and belief, the DOE did not implement the Education Plans or give the schools an opportunity to improve, as evidenced by the timing of its actions. The JOC met three times, twice in October, just two months prior to the DOE's announcement it was seeking to close the majority of the 19 schools. The JOC met again in February 2011, to discuss the implementation of the required Education Plans. However, even that meeting was an exercise in form not substance; for, earlier that same month, the PEP had met and had already voted to approve the closures of these same schools, rendering any efforts pursuant to the Education Plans futile.

73. Nonetheless, at the initial meeting on October 5, 2010, the UFT members of the JOC made several requests regarding the assessment of each school's need and the preparation of meaningful Education Plans, including that:

A. The 19 schools be exempt from the DOE's informal policy of not permitting ATRs to remain in the school they are excessed from. As explained in ¶ 69A, *supra*, ATRs may be excessed from a school where they are needed due to budget constraints at the school. Such excessing permits the school to remove that educator from its budget and shift the entry to the central budget. As school budgets are merely a management mechanism used by the DOE (teachers are not actually employed by an individual school, but by the PEP), there is no net cost or savings to the District by moving a teacher from an individual school's budget to DOE central's budget. Nonetheless, it is the DOE's policy that once a teacher is excessed and becomes an ATR, that teacher may be assigned to any appropriate school within a geographic area other than that from which he or she was excessed. Because the 19 schools were, pursuant to the Settlement Agreement, supposed to receive additional support beyond what DOE had been providing, the UFT asked that this policy be suspended so that needed teachers, who were being cut purely for school-level (not-DOE) budgetary reasons, be permitted to remain as ATRs. The DOE's refusal resulted in a preposterous swapping of teachers whereby 19 schools excessed needed teachers who then became ATRs. In turn, these ATRs were assigned by the DOE to other schools while at the same time the DOE assigned ATRs, without regard for needed license areas or quantities, to the 19 schools. Accordingly, a school with a career or technical program that was

forced to excess a teacher licensed to provide that program would be assigned an ATR from another school without the requisite licensure and be forced to close the program. Meanwhile, the needed teacher was assigned by the DOE to another school.

B. Beyond that, the UFT urged that an analysis be done to determine which additional ATRs could be assigned to these schools to address specific needs – even if excessed teachers were permitted to remain at the school – for the schools would have benefited from additional resources even prior to those teachers being excessed;

C. The DOE replace some of the ATRs that had already been assigned but who had either not reported to the school, retired or found another permanent position;

D. The DOE facilitate the opening of teacher centers at the schools that had expressed interest in having a teacher center, pursuant to the Settlement Agreement; and

E. The DOE provide a timeline for the required curriculum audits.

74. The DOE failed to take action with regard to virtually all of the requests.

75. At the October 19, 2010 meeting, the DOE finally provided Education Plans for the UFT members of the JOC to review. The UFT raised several key concerns regarding the deficiency of the Plans. As a threshold matter, the Plans did not appear to be based upon any analysis of the needs of the school. They were very general and reflected, upon information and belief, what would exist in the school in the normal course, not any new or additional initiatives or programs. Upon information and belief, even the DOE members of the JOC admitted that the goals set for most schools were too general to effectively set a course for the school. The Plans did not indicate how ATRs or other aspects of the Plans were going to be used by a school. Thus, neither the Plans nor DOE's implementation thereof reflected any good faith effort to first assess a school's needs and attempt to fill those needs.

76. The UFT asked that the Plans be improved and revised to align them with each school's needs. The DOE failed to do so.

77. Less than two months later, the DOE formally announced it was seeking closure of 15 of the 19 schools for which it had only just prepared (albeit flawed) Education Plans.

78. At the February 10, 2011 meeting, the UFT members of the JOC again raised issues having to do with the assignment of ATRs, particularly concerning the DOE's refusal to suspend its assignment policy.

79. The UFT members of the JOC also followed up on the facilitation of teacher centers and the absence of revised Education Plans. They also inquired regarding the requirement that each school's CEP be reviewed by the Superintendent (¶ 69E) and the status of the development of instructional support plans that are aligned with those CEPs (¶ 69H). The UFT learned that CEPs for the 2010-2011 school year had not even been finalized at the time of the meeting despite the PEP having already voted to approve closure of most of the 19 schools.

80. The UFT also learned at that meeting, for the first time, that the DOE had hired an outside consultant to conduct the required Curriculum Audits. As of the date of this Complaint, the UFT has still not received any written results of those audits.

81. Further, even with all of the inherent flaws and bad faith built into the DOE's Education Plans, the DOE further failed even to implement its own deficient Education Plans as written.

82. Deployment of ATRs: The first part of the Education Plan for each school required the deployment of ATRs in the district/high school superintendency to provide additional support at the Schools. Nonetheless, while the DOE's proposed Education Plans provided for such deployment, it was not carried out. Upon information and belief, in no less than nine schools, ATRs were simply not deployed in step with the Plan, let alone with the school's needs. Despite the fact that it would have cost the DOE nothing to comply with this

integral part of the Settlement Agreement, as ATRs remain on payroll while seeking a permanent position whether so deployed or not, the DOE shirked this responsibility.[6]

83. Upon information and belief, the DOE-prepared Education Plan created for Columbus called for two science ATRs, one stenography and typing ATR, one bilingual guidance counselor ATR, two social workers, two special education ATRs, and one physical education ATR to be assigned to Columbus. In fact, upon information and belief, at the beginning of the September 2010 semester, the school was forced to excess some 10 teachers due to budget constraints. Despite this and the requirements of the Plan, upon information and belief, only five ATRs initially reported to the school. Two of the assigned ATRs transferred out to other positions and one of them retired in the first part of the school year. Another ATR passed away. The remaining ATR teacher suffers from health issues and is unable to take up duties on a daily basis. Thus, the DOE has deprived this school (and in like manner others of the 19) of the benefit of one key requirement of the Settlement Agreement.

84. Likewise, the Education Plan for Environmental Science required one Math ATR and one Social Studies ATR. Upon information and belief, the school was only assigned one ATR for a short period of time, who was assigned hall duty.

85. On-line Credit Recovery: The second part of the Education Plan required that all schools with the infrastructure to support an on-line recovery program implement one, in addition to current credit recovery programs. Upon information and belief, at least two schools (ACE and Jamaica) did not even contemplate the possibility of an on-line recovery program, which would have helped the high need demographic of overage and under-credited students. Others, such as Columbus, Robeson, and Beach Channel, upon information and belief, only

[6] These included ACE, Environmental Science, Beach Channel, Columbus, Jamaica, Kappa II, MABL, Thomas and Robeson.

began implementing these vital programs as late as January, February, or March 2011 – a month or more *after* the DOE issued EISs seeking closure of the schools – and have not yet had a proper amount of time to function.

86. For example, upon information and belief, Columbus purchased APEX, an on-line credit recovery program, in December 2010 – the same month the DOE initiated closing procedures. Nonetheless, the school could not implement the program until the DOE provided funds this past March that allowed the school to utilize the library media center (a joint resource with all building schools) to operate the program. Despite having only limited access to the library media center, and therefore APEX, Columbus students were finally able to begin taking advantage of the program approximately three months *after* the DOE initiated closing procedures.

87. Support for Socio-Economic Challenges: The third part of the Education Plan made the DOE's Children First Networks ("Networks") responsible for developing a plan with each SLT to identify community-based organizations that would help support students and families with socio-economic challenges. Upon information and belief, although the Education Plans for several of the schools identified opportunities to seek new partners, the DOE failed to follow through on these opportunities. Moreover, the Education Plans for at least six schools disregarded this requirement entirely by flatly reporting that no new partnerships would be identified or anticipated.[7]

88. In addition and contrary to the Settlement Agreement, upon information and belief, the majority of covered schools have *lost* partnerships over the last year.

[7] These included Beach Channel, Columbus, Kappa II, New Day, Community Research and P.S. 332.

89. CEP Review: The fifth part of the Education Plan required each superintendent to review the CEP of each of the 19 schools. Once the superintendent approved the CEP, the DOE was to monitor its implementation. Upon information and belief, the superintendents either failed to so review the CEPs of at least seven schools or were still in the process of reviewing CEPs as in February 2011.[8] Given that reviews had not yet been completed with more than half the school year passed, meaningful monitoring could not be done. Moreover, rather than conduct reviews in a timely manner that would permit the schools to benefit from them, the DOE committed its energies to seeking closure of the vast majority of these schools.

90. Curriculum Audit: The sixth part of the Education Plan required DOE to arrange for a curriculum audit in each school. Upon information and belief, at least six schools did not receive the benefit of a curriculum audit at all and other schools, including Beach Channel, Columbus, FDA III, Global Enterprise, and Robeson had curriculum audits completed only *after* closure was a foregone conclusion.[9] Indeed, despites inquiries, the DOE informed the UFT members of the JOC in February that it had only then selected an outside vendor to perform the audits. At that late date, where the DOE had sought and PEP had voted to approve the closure of the vast majority of these schools, the purpose of the settlement agreement was frustrated. Still, to date, the UFT has not received the results of any curriculum audit.

91. Professional Development: The seventh part of the Education Plan was to employ specialists from the Networks with expertise in instructional support for ELLs and special education students to provide targeted professional development and curriculum development for the school staff on strategies that have proven effective with these students. Upon information

[8] These included Environmental Science, Beach Channel, Columbus, FDA III, Global Enterprise, Jamaica and Robeson.

[9] These included ACE, Environmental Science, Jamaica, MABL, Thomas, and P.S. 332.

and belief, only one school – Thomas – received the benefit of any specialist's expertise with ELL and special education students. More in line with the majority, Robeson scheduled meetings with specialists, only to be cancelled three times, while at least three other schools experienced a decline in existing ELL and special education supports.[10]

92. Notably, upon information and belief, several of the 15 again targeted schools had historic ELL and special education enrollment above the Citywide averages, necessitating these very types of support. For example, upon information and belief, during the 2008-2009 school year, 26% of all Columbus enrollees were students receiving special education services, while the citywide average in high schools was 13.7%. Moreover, upon information and belief, within that population, 12% of Columbus students were students receiving special education services in self-contained classrooms (very high needs within the spectrum of special education), whereas the City average for high schools was less than 3%. Nonetheless, upon information and belief, the DOE never carried out its obligation to provide even the needed supports anticipated in the deficient education plans to Columbus staff, instead rushing to again seek closure of the school.

93. Instructional Support Alignment: The eighth part of the Education Plan required the DOE's Networks to work with principals and existing school teams to develop instructional support plans aligned with each school's CEP. Upon information and belief, this joint venture went largely unrealized in at least nine schools evidencing the DOE's bad faith in substantively failing to meet an obligation so fundamental – having instructional support be coordinated to work with a school's CEP.[11]

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[10] These included Environmental Science, Columbus, P.S. 332.

[11] These included ACE, Beach Channel, Columbus, Global Enterprise, Jamaica, Kappa II, MABL, Thomas and Robeson.

94. Teacher Center: The ninth part of the Education Plan required principals and schools to assess the school's resources and space to determine whether the possibility of establishing a Teacher Center satellite exists. This requirement plainly contemplates that where resources would permit the establishment of a Teacher Center, one should be added. Though the schools went through the superficial exercise of assessing their resources, none of the schools that did not already have a Teacher Center added one. Contrary to the Settlement Agreement, upon information and belief, Robeson lost its Teachers Center in June 2010 when its facilitator retired with no replacement.

95. Joint Oversight Committee: The tenth part of the Education Plan created a Joint Oversight Committee. While the JOC met on a several occasions, with the UFT members providing repeated requests and comments, as described in ¶¶ 72-79 *supra*, the DOE merely went through the motions without making a good faith effort to mutually consider the substantive concerns raised by the UFT.

96. Accordingly, the DOE has frustrated the purpose of and materially breached the Settlement Agreement and should be required to comply with its terms. For the 15 schools targeted for closure which were deprived of the opportunity to improve with the additional supports provided by the Settlement Agreement, the DOE should be enjoined from closing such schools unless and until it has complied with the Agreement.

The 2011 Co-locations

97. As with proposed school closures, under the 2009 amendments, whenever the DOE proposes to co-locate two or more schools within a public school building it is required to prepare an EIS analyzing the proposed significant change in school utilization and providing parents and community members with the information necessary to allow for meaningful

participation. Pursuant to 2010 amendments, that EIS is required to include a BUP whenever the DOE proposes charter school be co-located with a public school or located within a public school building. N.Y. EDUC. LAW §2853(3)(a-3). As part of the EIS, the BUP is subject to the same requirements under §2590-h(2-a) before the PEP can vote on whether to approve the proposal to locate or co-locate.

98. The newly amended §2853(3)(a-3) mandates the following *minimum* level of information that the DOE must provide in each BUP:

A. The actual allocation and sharing of classroom and administrative space between the charter and non-charter schools;

B. A proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools, including but not limited to, cafeterias, libraries, gymnasiums and recreational spaces… which assures equitable access to such facilities in a similar manner and at reasonable times to non-charter school students as provided to charter school students;

C. Justification of the feasibility of the proposed allocations and schedules set forth in the above requirements and how such proposed allocations and shared usage would result in an equitable and comparable use of such public school building;

D. Building safety and security;

E. Communication strategies to be used by the co-located schools; and

F. Collaborative decision-making strategies to be used by the co-located schools including the establishment of a shared space committee.

EDUC. LAW §2853(3)(a-3)(2).

99. With respect to subpart "c", requiring the DOE to provide justification of the feasibility of its proposal and how it would result in an "equitable and comparable" use of the space, the Commissioner of Education has held that the DOE's typical boilerplate approach from one school to the next, much like the stock language successfully challenged in School Closings I, does not suffice. See Appeal of Espinet, Appeal No. 16,212, 2011 NY Educ. Dept. LEXIS 27 (March 31, 2011). Indeed, the Commissioner's decision relied upon the Court's holding in

School Closings I in reaching its determination, stating that the DOE's BUP for the at-issue co-location "fail[ed] to provide a justification of ... how [its] proposed allocations and shared usage would result in an equitable and comparable use of the building as required by Education Law §2853(3)(a-3)(2)(C)." Id. at *24. The Commissioner found the DOE's attempts at shared space allocation justifications deficient; pointing specifically to the BUP's inadequate table of "proposed" amounts of time per week each co-located school would have access to shared spaces and general boiler plate statements made by the DOE, that proposed allocations are based upon (on paper) population size and it is left to the Building Councils to make the co-location work on the ground. See id. at *24.

100. Specifically, the Commissioner held that such language failed to provide the mandated "justification for how the proposed allocations result in equitable and comparable use as required by the statute." Id. (internal quotations omitted). Accordingly, the Commissioner held:

> [T]he inclusion of a proposal for the collaborative use of shared spaces, as required by Education Law §2853(3)(a-3)(2)(B), does not obviate the need for the discussion of the justification of feasibility and equitable and comparable use required by Education Law §2853(3)(a-3)(2)(C). Indeed, it is just such information, which should be available to the public as part of an EIS, prior to any hearing, that affords meaning to the process set forth in Education Law §2853(3)(a-3)...
>
> The BUP ... fails to address how the proposed allocation of shared spaces in the K009 building ensures equitable and comparable use for impacted students as required by Education Law §2853(3)(a-3)(2)(C). *This involves a substantive failure to analyze the impact of a significant change in school utilization on the affected students and cannot be characterized as harmless error.*

Id. at *27-28, citing to Mulgrew, et al. v. Bd. of Educ. Of the City School Dist. Of the City of New York, et al., 75 A.D.3d 412,414 (1st Dep't. 2010) (emphasis added).

101. Based upon this substantive failure to analyze the impact of the co-location, the Commissioner nullified the PEP vote approving of the co-location and prohibited the DOE from going forward with any aspect of the co-location proposal until the DOE complied with the requirements of the Education Law. Id. at *28.

102. Thus, any BUP must, *inter alia*, provide for an equitable and comparable use of the space and provide justification for why the proposed use satisfies the equitable and comparable requirement. As explained herein, virtually all of the co-locations proposed for 2011-2012 school year that require a BUP contain the same fatal flaws as the BUP at issue in Espinet and therefore should come to the same result.

103. Prior to the Commissioner's decision in Espinet, the DOE had proposed several charter school co-locations, in addition to the co-location appealed in Espinet. Seventeen co-locations (excluding Espinet) were approved by the PEP during their February 1st, February 3rd, March 1st and March 23rd, 2011 votes (the "pre-Espinet co-locations"). Each of the 17 BUPs prepared by the DOE for these pre-Espinet proposed co-locations (listed below as Table B) contains a similarly insufficient table indicating proposed time for shared spaces and the same generic language as to justification for the table found to be deficient in Espinet.

	SCHOOL BUILDING	SCHOOLS PROPOSED TO BE CO-LOCATED	PEP VOTE APPROVING CO-LOCATION
1.	M088	**Harlem Success Academy Charter School (grades 5-8)** *(new co-location)* Wadleigh Secondary School (03M415) Frederick Douglass Academy II Secondary School (03M860)	February 1, 2011

2.	M149/M207	**Harlem Success Academy Charter School 1** (grades Kindergarten -4th continuously, K-7 only for 2011-2012) (*temporary grade expansion of the co-location*) P.S. 149 Sojourner Truth (03M149) P811M Mickey Mantle School, a District 75 School (75M811)	February 1, 2011
3.	M470, Brandeis Educational Campus	**Success Academy Charter School** *(new co-location)* Louis D. Brandeis High School (03M470) The Urban Assembly School for Green Careers (03M402) The Global Learning Collaborative (03M403) Innovation Diploma Plus (03M404) Frank McCourt High School (03M417)	February 1, 2011
4.	K332	**P.S. 401 (23K401)** (*new co-location*) **Leadership Preparatory Ocean Hill Charter School (84K775)** *(re-siting and new co-location)* P.S. 332 Charles H. Houston (23K332) Alternative Learning Center (K992)	February 3, 2011
5.	X030	**Bronx Success Academy 1 (84X493)** (*extension and expansion of a co-location*) PS 30 Wilton (07X030)	March 1, 2011
6.	X146	**Bronx Success Academy 2 (84X494)** *(extension and expansion of a co-location*) PS 146 Edward Collins (08X146)	March 1, 2011

7.	X475	**New Visions Charter High School for the Humanities** (*new co-location*) **New Visions Charter School for Advanced Math and Science** (*new co-location*) John F. Kennedy HS (10X475) Bronx Engineering and Technology Academy (10X213) Bronx School for Law and Finance (10X284) E.L.L.I.S. Preparatory Academy (10X397) Marble Hill High School for International Studies (10X477) Bronx Theatre High School (10X546)	March 1, 2011
8.	K308	**Teaching Firms of America Charter School** (*new co-location*) PS 308 Clara Cardwell (16K308)	March 1, 2011
9.	K033	**Brooklyn Success Academy Charter School** (*new co-location*) Urban Assembly School for Urban Environment (14K330) Foundations Academy (14K322) Alternative Learning Center (88K988) P368K@I033K, a District 75 School (75K368)	March 1, 2011
10.	K114	**Explore Excel Charter School** (*new co-location*) P.S. 114 Ryder Elementary (18K114)	March 23, 2011
11.	K218	**Invictus Preparatory Charter School** (*new temporary co-location*) JHS 218 James P. Sinnott (19K218) The School for Classics: An Academy of Thinkers, Writers, and Performers (19K683)	March 23, 2011
12.	M195	**New Middle School (05M514)** (*new co-location*) I.S. 195 Roberto Clemente (05M195) KIPP Infinity Charter School (84M336)	March 23, 2011

13.	M195[12]	**KIPP High School Grades** (*new temporary co-location*) New Middle School (05M514) I.S. 195 Roberto Clemente (05M195) KIPP Infinity Charter School (84M336)	March 23, 2011
14.	M060	**Girls Preparatory Charter School (84M330)** (*re-siting and new co-location*) East Side Community School (01M450)	March 23, 2011
15.	M501	**Promise Academy II (84M341)**(*temporary expansion and co-location*) Choir Academy of Harlem (05M469)	March 23, 2011
16.	M501[13]	**One Grade of Promise Academy I (84M284)** (*re-siting and new temporary co-location*) Choir Academy of Harlem (05M469) Promise Academy II (84M341)	March 23, 2011
17.	M013	**East Harlem Scholars Academy Charter School (84MTBD)** (*temporary new co-location*) Central Park East I (04M497) Central Park East II (04M555) JHS 013 Jackie Robinson (04M013)	March 23, 2011

104. Not only are the DOE's justifications for why the proposed co-locations provide an equitable and comparable use insufficient, but in fact, many of the co-locations do not provide for tenable – let alone equitable and comparable – use of shared space.

[12] The M195 school building is listed twice as the DOE proposed two co-locations in two different EIS/BUPs for the same building. The first proposed co-location added KIPP Infinity Charter School and then the second tacked on KIPP High School.

[13] The M501 school building is listed twice as the DOE proposed two co-locations in two different EIS/BUPs for the same building, first adding Promise Academy II and then one grade of Promise Academy I.

105. For example, in the DOE's proposed shared space plan for co-locating schools, Explore Excel Charter School ("Explore") and P.S. 114 Ryder Elementary ("PS 114"), the time allotted to each school for shared spaces, such as the gym and playground, are clearly inequitable and disproportionate to the number of students in each school. Explore has the gym for two hours and fifty minutes every day, while in comparison PS 114 is only allotted three and a half hours each day for almost three times the number of students. Despite the vast difference in student enrollment, Explore receives an hour and forty-five minutes in the playground a day while the larger PS 114 only receives an hour and a half. As in Espinet, the BUP does not seriously attempt to justify this inequitable arrangement.

106. The National Fire Protection Association ("NFPA"), a recognized authority on fire, electrical and building safety, has established consensus standards recognized by Occupational Safety and Health Administration ("OSHA") regarding fire safety for space involving young students. Among those standards is the requirement that rooms for kindergarten and first graders be located on the main floor containing exits; for most schools this is the ground floor (NFPA 9-1.1.2). This requirement means that although a building may appear to have available space on higher floors, co-located schools containing early childhood classes would need to divide up the first floor. This is the case in public school building K308, where, upon information and belief, there would be a lack of sufficient space on the ground floor for all of the early childhood classes proposed to be co-located. The DOE has failed to acknowledge, let alone justify, the apparent issues faced by these co-locating schools and their younger students.

107. Upon information and belief, K308 is already overcrowded, with small classrooms and small facilities like the cafeteria and gymnasium which would need be further shared with any co-located school. Upon information and belief, the facilities are so strained that

P.S. 308 Clara Cardwell ("PS 308") uses one of its regular classrooms as an overflow gym due to the gym's inability to hold PS 308's students. To accommodate the current student enrollment, the school lunch schedule runs for 3 hours and 15 minutes and therefore starts at 10:15 AM. The addition of a new school, Teaching Firms of America Charter School ("Teaching Firms"), would exacerbate the problem, lead to children using the lunchroom at an unreasonably early time, and create an inequitable and unfeasible situation in K308 for the current and incoming students.

108. Upon information and belief, students are already being taught in the hallways, stairwells and closets of public school tandem building M149/M207. The temporary co-location of Harlem Success Academy Charter School 1 ("HSA1") with the existing public schools, P.S. 149 Sojourner Truth ("PS 149") and P811M Mickey Mantle School, a District 75 School, ("P811M"), would further strain the already overcrowded conditions. Mysteriously, the DOE has allocated four hours in the "large gym" every day for HSA1 while allocating four hours and fifty minutes in the "small gym" for "PS/MS 149," and failing to allot P811M any gym time at all, be it in the small or large gym. The shared space proposal fails to note the capacity of either the large or small gym and it is therefore difficult to ascertain whether this proposal is "equitable and comparable."

109. Similarly, the DOE's proposed shared space schedule for co-locating Bronx Success Academy 1 and P.S. 30 Wilton in public school building X030 provides each school exactly the same amount of scheduled gym time despite P.S. 30 Wilton having double the number of students as Bronx Success Academy 1.

110. Upon information and belief, the library in public school building X475 ("X475") is closed and the librarian "excessed" out of the building but the DOE has inexplicably included the library in its shared space allocation table. This reveals the DOE's failure to address the

realities of these upon co-locations and their impact on existing students, rather than preparing BUPs based upon boiler plate paper numbers and allocations, resulting only in hypothetical equality (if that). The DOE has also completely failed to provide a schedule for the auditorium, which, upon information and belief, has been a hotbed of contention, leading the co-located schools to have to bring in a facilitator to address the issue.

111. The DOE's proposed shared space allocation for public school building K033 ("K033") has Brooklyn Success Academy Charter School ("Brooklyn Success") receiving a full half hour for breakfast in the cafeteria while the three other schools co-located in K033, Urban Assembly School for Urban Environment ("Urban Assembly"), Foundations Academy ("Foundations") and a District 75 School 75K368, P368K@I033K ("P368K"), have to share the cafeteria for a similar 35 minutes, despite, combined, having a significantly larger population. The DOE fails to provide any meaningful justification for this proposal.

112. In the proposed co-location of Invictus Preparatory Charter School ("Invictus"), with J.H.S. 218 James P. Sinnott ("JHS 218") and The School for Classics: An Academy of Thinkers, Writers, and Performers ("School for Classics"), in the public school building K218 ("K218"), the auditorium is scheduled to be used by School for Classics for an hour and a half every day, by Invictus for a half an hour every day and by JHS 218 only on the first Monday of every month. No justification is given for this clearly inequitable breakdown of time.

113. In several of the published pre-Espinet BUPs, the DOE failed to address certain shared space allocations entirely, instead stating that the "Building Council will coordinate scheduling based on programmatic needs." As the Commissioner stated in Espinet, although the DOE's "proposal for the allocation of shared spaces may require adjustment by officials of the co-located schools based on programming and need" that does not obviate §2853(3)(a-3)(2)'s

mandates that the DOE provide an actual proposed schedule of shared spaces and supply, in its BUP, the justification for such a proposal. "[T]he inclusion of a proposal for the collaborative use of shared spaces ... does not obviate the need for the discussion of the justification of feasibility and equitable and comparable use required by Education Law." Id. at *27-28, citing to Mulgrew, et al.,75 A.D.3d at 414. This is vital as once the BUPs are approved and the co-location goes forward, Building Councils are forced to make do with the situation at hand. The purpose of the BUP and the EIS process, in general is to evaluate whether the proposed co-location should be implemented. The DOE, continuing in its pattern of arrogantly disregarding the process created to answer that question, consistently leaves it to the schools themselves to make the best of ill-conceived situations foisted upon them by a central administration that is deaf to meaningful community input in the decision-making process.

114. The DOE implicitly acknowledged the defective nature of the original pre-Espinet 17 BUPs, when after the Commissioner's decision issued, the DOE amended or postponed the additional 13 charter school co-locations proposed for the April 28th PEP vote (the "post-Espinet co-locations").[14] Yet, even the DOE's handling of the EIS/BUP amendment process was critically flawed.

115. The BUPs for the three post-Espinet charter school co-locations that the PEP approved of on April 28, 2011 were amended on April 12, 2011. Upon information and belief, two of the amended BUPs – for M123 and M188 – were published too late to provide the

[14] Originally, the DOE proposed thirteen charter school co-locations for the PEP's approval in its April 28, 2011 vote. Twelve of the thirteen co-locations' BUPs included exactly the same flaws found in the Espinet BUP. Since the Commissioner's decision in Espinet, the DOE has withdrawn ten of the proposed charter school co-locations and amended two of the remaining three co- BUPs. Nonetheless, the DOE failed to comply with the requirements of statute in all but one instance (building K303), which from inception contained a school specific and more in depth discussion as to justifications. That the DOE included an expanded discussion in even one school's BUP demonstrates that it was capable of complying with the requirements of the statute in the first instance as to all schools.

community and the parents any genuine opportunity to review the information prior to the joint public hearing under §2590-h(2-a). Per §2590-h(2-a)(d-1), if the chancellor substantially revises an EIS (which by law includes the BUP), the chancellor must hold another joint public hearing "no sooner than fifteen days" following the filing of the *revised* EIS. This was not done.

116. The DOE held the joint public hearing for the M188 co-location on March 31, 2011. On April 12, 2011, almost two weeks *after* the joint public hearing, the DOE amended and published the M188 BUP. Contrary to the mandates of §2590-h(2-a)(d-1), the DOE failed to hold an additional joint public hearing on the substantially revised BUP.

117. Similarly, the DOE amended the BUP for M123 on April 12, 2011, one day before the joint public hearing was held. No other public hearing was held. As the Commissioner specified in Espinet, " it is just such information, which should be available to the public as part of an EIS, *prior to any hearing*, that affords meaning to the process set forth in Education Law §2853(3)(a-3)." Id. at *27 (emphasis added).

118. Accordingly, despite the DOE's attempt at compliance with the Espinet decision by amending a couple of the post-Espinet BUPs, it still failed to comply with the mandates of §2590-h(2-a)(d-1), when it failed to hold a joint public hearing regarding the substantially revised EISs within the statutorily mandated time frame.

119. Plagued by the same lack of compliance in Appeal of Espinet and the same disregard for the mandates of the Education Law as in School Closings I, the original 17 pre-Espinet BUPs represent "substantive failures" on the DOE's part to analyze the impact of their proposed co-locations and the two post-Espinet co-locations represent the DOE's failure (for the second time) to comply with the clear requirements of the Education law §2590-h(2-a)(d-1), setting forth the revised EIS process. Accordingly, the PEP votes approving these 19 co-

locations (the pre-Espinet and the post-Espinet co-locations), should be nullified and the DOE should be prohibited from moving forward with any aspect of the proposed co-locations until the DOE complies with the requirements of Education Law §2853(3)(a-3) and §2590-h(2-a)(d-1).

CAUSE OF ACTION FOR BREACH OF CONTRACT

120. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 119 as if set forth herein.

121. Plaintiffs UFT, NAACP and AQE (among other named Plaintiffs and School Closings I participants), and Defendant DOE have a valid and binding settlement agreement that, *inter alia*, required the DOE to prepare and implement a 10-part Education Plan intended to work towards improvement of all 19 school on the 2010 closure list.

122. The DOE has benefited from that Settlement Agreement by, upon information and belief, implementing the co-locations the Agreement permitted.

123. Yet, as stated herein, the DOE has failed to comply with its obligations under that Agreement.

124. Accordingly, Plaintiffs seek a declaration that DOE is required to comply with the Settlement Agreement and may not close the 15 schools subject to the Settlement Agreement (listed in Table A) and targeted for closure unless and until the DOE has complied with the Agreement.

CAUSE OF ACTION FOR DECLARATORY RELIEF FOR SCHOOL CLOSINGS

125. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 124 as if set forth herein.

126. The Commissioner's obligations to schools placed within SED's Differentiated Accountability and SURR programs require the exercise of his expertise, judgment and

discretion in determining and approving the specific actions to be taken with respect to each school.

127. The DOE's duty within that context is to seek the Commissioner's approval prior to closing any schools under those programs, a mandatory and nondiscretionary action. Comm. Reg. § 100.2p(11)(iv).

128. The DOE and the Chancellor have not sought the Commissioner's approval for the closure of any of the schools listed in Table A.

129. Further, DOE and the Chancellor have not complied with other requirements of the Differentiated Accountability and SURR programs by failing to take adequate and timely steps required to provide struggling schools needed supports and an opportunity to improve with the help of such supports.

130. The DOE has failed to afford the Commissioner the right to act upon such closures as mandated by law; the Commissioner has not approved such closures, and would be within his discretion to deny such approval in light of the DOE's failure to comply with other portions of the Accountability and SURR schemes.

131. Accordingly, Plaintiffs seek a declaration that DOE may not close the listed schools unless and until it has complied with the regulatory framework and obtained the Commissioner's approval.

CAUSE OF ACTION FOR DECLARATORY RELIEF FOR CO-LOCATIONS

132. Plaintiffs repeat and allege the allegations set forth in paragraphs 1 through 131 as set forth herein.

133. Section 2853(3)(a-3) of the Education Law creates a mandatory process that the DOE must follow for each proposal to locate or co-locate a charter school in a public school building.

134. As stated here, the DOE failed to comply with §2853(3)(a-3) by failing to properly provide justification for the feasibility and equitable and comparable use of shared spaces for each of the 17 pre-Espinet co-locations approved by the PEP in 2011 (listed in Table B).

135. Furthermore, the DOE failed to comply with §2590-h(2-a)(d-1) when it substantially revised the BUPs for the post-Espinet M188 co-location and the M123 co-location prior to the April 28th PEP vote.

136. Accordingly, Plaintiffs seek a declaration that the resolutions of the PEP approving the 19 co-locations identified herein are void and that the DOE may not co-locate the listed schools unless and until it has complied with the mandates of §2853(3)(a-3) and §2590-h(2-a)(d-1).

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

(i) Declaring that Defendants have breached the Settlement Agreement;

(ii) Compelling Defendants to specifically perform the Settlement Agreement in the upcoming school year (2011-12) and enjoining them from closing any school subject to the Settlement Agreement unless and until they have so complied;

(iii) Declaring that Defendants may not close the schools listed in the table above unless and until they comply with the Differentiated Accountability/SURR framework by seeking and obtaining the approval of the Commissioner;

(iv) Declaring that the resolutions of the PEP approving the 19 co-locations addressed herein be annulled;

(v) Declaring that the DOE is prohibited from moving forward with the proposals regarding the 19 co-locations addressed herein until the DOE complies with the requirements of Education Law §2853(3)(a-3) and §2590-h(2-a)(d-1); and

(vi) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York

May 18, 2011

STROOCK & STROOCK & LAVAN LLP

By: _____

Charles G. Moerdler
Alan M. Klinger
Ernst H. Rosenberger
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New York, New York 10038
(212) 806-5400

-and-

Carol L. Gerstl, Esq.
Adam S. Ross, Esq.
United Federation of Teachers
52 Broadway
New York, New York 10004

Co-Counsel for Plaintiffs

VERIFICATION

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

MICHAEL MULGREW, being duly sworn, deposes and says: that he is the President of Plaintiff United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO in the above-entitled proceeding; that he has read the foregoing Verified Complaint and knows the contents thereof; that the Verified Complaint is true of his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

MICHAEL MULGREW

Sworn to before me this
18th day of May, 2011

Notary Public

ADAM S. ROSS
Notary Public, State of New York
No. 02RO6155957
Qualified in Kings County
Commission Expires Nov. 20, 2014

Exhibit A

STROOCK

Alan M. Klinger
Direct Dial 212-806-5818
Direct Fax 212-806-7818
aklinger@stroock.com

July 14, 2010

Jesse I. Levine, Esq.
New York City Law Department
100 Church Street
New York, New York 10007

Re: Mulgrew, *et al.* v. Board of Education of the City School District of the City of New York, *et al.*; Index No. 101352/10

Dear Jesse:

I write in connection with the various meetings and discussions between the parties with regard to the interpretation and implementation for the 2010-11 school year of Justice Lobis' Decision, Order and Judgment (the "Order") in the above-captioned matter. As to the nineteen schools subject to Justice Lobis' Order (the "Schools"), the Department of Education has agreed that new schools will not be co-located with the existing programs in the following school buildings during the 2010-11 school year:

- Christopher Columbus High School/Global Enterprise High School
- Frederick Douglass Academy III
- Monroe Academy for Business and Law
- Charles Houston (P.S. 332)
- Middle School for Academic and Social Excellence

- Metropolitan Corporate Academy
- Paul Robeson High School
- W. H. Maxwell CTE High School
- Choir Academy of Harlem
- Business Computer Applications and Entrepreneurship High School

In addition, of the two schools proposed, Manhattan Academy for Arts and Language will not be co-located with Norman Thomas High School during the 2010-11 school year.

The parties have also agreed that the following Education Plan will be implemented in the Schools for the 2010-11 school year:

a. Consistent with the applicable collective bargaining agreement, ATRs in the district/high school superintendency will be deployed to these schools to provide additional support. ATR teachers in the district/high school superintendency will be used to provide educational support including, but not limited to, early intervention, small group instruction, push-in, pull-out and/or team-teaching with a focus on English language learners and special education students. ATR guidance counselors, social workers, psychologists, etc., in the district/high school superintendency will provide additional social and emotional support for students, for example, new immigrants, homeless population, and students re-entering the school system as needed.

b. Along with the current credit recovery programs, these schools will implement on-line credit recovery programs, provided that the school infrastructure supports the implementation.

c. DOE Children First Networks ("Networks") will be responsible for developing a plan with the school leadership team to identify a community based organization or organizations to support students and families with socio-economic challenges. Partnerships would vary from school to school based on need.

d. UFT in consultation with and on behalf of the Petitioners will consult with the DOE regarding school leadership.

e. Superintendent will closely and carefully review the Comprehensive Education Plan (CEP) of each school. Once approved, implementation will be monitored by the DOE.

f. There will be a curriculum audit in each school completed by full-time DOE staff.

g. Specialists from the Networks with expertise in instructional support for ELL and special education students will provide targeted professional development and curriculum development for the school staff on strategies that have proven effective with ELL and special education students. The work of those specialists would be defined by the needs of the school.

h. Networks will work with the principals and already-established school teams (including, but not limited to, inquiry, departmental, grade level, and content teams) to develop instructional support plans aligned with the CEP.

i. Principals and schools shall assess the school's resources and space to determine whether the possibility of establishing a Teacher Center exists.

j. As soon as practicable, the DOE and the UFT in consultation with and on behalf of the Petitioners shall establish a joint committee consisting of two members selected by the UFT in consultation with and on behalf of the Petitioners and two members selected by the DOE (the "Joint Oversight Committee") to oversee and support the implementation of this Plan. The Joint Oversight Committee shall have the authority to (i) hear concerns regarding the manner in which this Plan is being implemented and (ii) recommend solutions to problems or suggest resources to provide technical assistance. The Joint Oversight Committee shall not have the authority to direct any DOE employee to take any action.

This agreement does not preclude the parties from advancing their respective legal positions in any further appeal in the above-referenced proceeding and is made without

prejudice to the parties' rights under law with respect to entities other than the Schools in the above-referenced proceeding; provided that Petitioners' claims as to the proposed co-locations in the Schools subject to the Order other than those listed in this letter are waived. Likewise, the Education Plan shall not constitute a waiver or modification of any provision of any collective bargaining agreement, letter, or other agreement between the DOE and the UFT.

Please acknowledge below your client's agreement to these provisions.

Very truly yours,

Alan M. Klinger

cc: Mr. Michael Mulgrew
Michael Best, Esq.
Carol L. Gerstl, Esq.
Adam S. Ross, Esq.

ACKNOWLEDGED:

CORPORATION COUNSEL OF THE
CITY OF NEW YORK

By:

Title: Asst. Corp. Counsel

Exhibit B

United
Federation
of Teachers

52 Broadway
New York, NY 10004
212.777.7500
www.uft.org

January 31, 2011

Dr. David Steiner, Commissioner
New York State Education Department
89 Washington Avenue
Albany, NY 12234

Dear Dr. Steiner:

I write to apprise you of, and to address, the continuing failure of the Board of Education of the City School District of the City of New York and the Chancellor of the City school district (together the "DOE") to comply with State law and regulations in connection with the DOE's plan to close schools rather than improve them. The DOE's recent actions and inactions typify, once again, its brazen refusal to making required efforts to help schools before seeking to close them. This behavior shortchanges students, educators and their communities, and further evidences the DOE's disregard for the authority and programs of the State Legislature and the New York State Department of Education ("SED"). We ask that, prior to the closing of these schools, SED exercise its authority to enforce good faith compliance with State intervention mechanisms designed to support and improve schools.

As it did last year, the DOE seeks to close a large number of schools without meaningfully complying with SED-mandated improvement efforts and without seeking your approval in connection with those schools designated as part of the Differentiated Accountability ("Accountability") and Schools Under Registration Review ("SURR") programs. Indeed, some 17 of the 25 schools the DOE proposes to close this year have been identified as needing improvement through these programs, with at least seven of them only beginning the intervention process in Corrective Action and Improvement phases. (A list of the schools sought to be closed and their Accountability and SURR status is attached).

Specifically, pursuant to Education Law § 211-b(2)(a) and Commissioner's Regulation § 100.2p(6)(iv), Quality Review Teams are to be appointed to assist the schools in Improvement, Corrective Action, Restructuring and SURR status in developing and implementing school intervention plans. Pursuant to SED guidance on the Quality Review process for schools in the Improvement Phase, the resultant reports should have been distributed to the school and district, and school and district staff should have been able to use the findings and recommendations to develop a two-year improvement plan. Such plans were due to be approved no later than three months

following designation of the school in Improvement (§ 110.2p(iv)(a)(2)(i)) and implemented no later than the beginning of the following school year (§ 110.2p(iv)(a)(2)(ii)). Furthermore, such plans must be updated annually (§ 110.2p(iv)(a)(2)(ii)). Six of the schools slated to be closed by the DOE have been designated in the Improvement Phase. It appears the DOE has, at the very least in many cases, failed to meet these obligations. Indeed, in Monroe Academy for Business & Law High School, the Quality Review was scheduled for March, 2011, one month *after* the DOE intends the Panel For Education Policy to vote to close the school.

Schools in Corrective status were also required to undertake curriculum audits to assess the school's educational programs. Commissioner's Reg. § 110.2p(iv)(b)(1). Two of the schools sought to be closed – Academy of Environmental Science and Global Enterprise High School – are in their first year of Corrective Action. Pursuant to SED guidance on the conduct of Curriculum Audits, the school must use the results of such audit to revise its Comprehensive Education Plan ("CEP") and to inform the creation of a two-year corrective action plan (§ 110.2p(iv)(b)(2)). It is our understanding that the DOE failed to have curriculum audits performed at either of the schools and that, therefore, even assuming there is a corrective action plan, it is not based on the curriculum audit. Indeed, it is, at best, unclear whether a corrective action plan has been prepared, yet, these schools are subject to potential closure. Thus, rather than work within SED's articulated framework, the DOE instead seems intent on sabotaging any prospect for improvement, so that it can return to its initial scheme to close these many schools.

Similarly, Education Law § 211-b(2)(b) and Commissioner's Regulation § 100.2p(10)(ii) require the establishment of Joint Intervention Teams ("JITs") for the nine schools proposed for closure that are in Restructuring and/or SURR status. It is our understanding that the JITs' efforts, to the extent they performed visits and reviews (some schools may not have even received a JIT visit), turned out to be just as wasted as those of the Quality Review Teams. Where schools may have received copies of the JIT report and recommendations, and it is unclear whether this has even happened at all schools, it did not happen until December, 2010, after the DOE designated the schools for closure.

These failures are in stark contrast to the structural framework of the Accountability and SURR programs designed to provide schools and districts with information and assistance in developing plans of improvement (*e.g.*, Quality Reviews, Curriculum Reviews and JITs) as well as the time to implement those plans and show that improvement can be achieved. Schools placed in SURR status are typically given three full academic years to show progress. Comm. Reg. § 100.2p(10)(vi). Such schools also may not be closed by DOE until the requirements of Commissioners' Regulation § 100.2p(11)(iv) have been met and you have granted approval, which the DOE has, to our knowledge, not even sought.

The DOE's apparent failure to perform the required reviews and use the resulting recommendations in good faith to improve schools violates the intent of the statutory and regulatory plan as well as the regulatory timelines established in Commissioner's Regulation § 100.2p(iv) and affirmatively prevents schools from taking advantage of the recommendations to improve themselves. Generally, as you are aware, SED regulations

require the DOE formally to approve an improvement plan no later than three months from when a school is designated in a particular status (§§ 100.2p(6)(iv)(a)(2), (b)(2) and (c)(2)). Such plan is designed to cover a two year period and be implemented no later than the beginning of the next school year after designation. Id. The plan is also required to be updated annually. The DOE has failed to effectuate this framework.

This purposeful sidestepping of requirements is consistent with the DOE's actions with regard to school improvement obligations it took on as part of a settlement agreement arising from last year's State Court proceeding by which a coalition of parents, teachers, and community organizations, including the UFT, forced the DOE to keep schools open and comply with statutory mandates regarding closure. The settlement agreement required the DOE to take specific concrete steps designed to improve the schools it had improperly attempted to close. The DOE's response, much like its actions pursuant to SED regulations, has been mere lip service, with many of those same schools slated for closure again this year without real efforts being made or resources expended to improve them. Rather than give schools the required time and support to improve, the DOE seems single-mindedly bent on closing them irrespective of what laws, regulation and agreement they subvert.

Having taken on the regulatory responsibility to oversee efforts to improve schools, SED should not countenance the DOE's disdain of laws, regulations and your authority, and should withhold approval for the closure of the schools and require that the DOE work in good faith to improve schools before discarding them.

Very truly yours,

Michael Mulgrew
President

Exhibit C

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

COMMISSIONER OF EDUCATION
PRESIDENT OF THE UNIVERSITY OF THE STATE OF NEW YORK

March 2, 2011

Mr. Michael Mulgrew, President
United Federation of Teachers
52 Broadway
New York, NY 10004

Dear Mr. Mulgrew:

I am writing in response to your letter dated January 31, 2011 in which you state your concern about the "continuing failure of the Board of Education of the City School District of the City of New York and the Chancellor of the City school district (together the "DOE") to comply with State law and regulations in connection with the DOE's plan to close schools rather than improve them."

The State Education Department has not, as of this date, received any proposal from the New York City Department of Education (NYCDOE) regarding the closure of the schools referenced in your letter. Please be assured that any such proposals received from the NYCDOE will be reviewed in accordance with the requirements of Education Law and Commissioner's regulations.

For the schools that were identified in your letter, please see Attachment 1 for detailed information regarding interventions that have been or are scheduled to be conducted during the 2010-11 school year.

I am hopeful that the information provided in this letter will be helpful to you and look forward to continuing our collaboration to ensure that every child in New York City receives the best possible education. Should you require any additional information, please contact Ira Schwartz at (718) 722-2796.

Sincerely,

David M. Steiner
Commissioner

Enclosures

c: John King
Ira Schwartz

ATTACHMENT 1

Timeline for Differentiated Accountability Interventions

The following Differentiated Accountability Interventions have been or are scheduled to be conducted during school year 2010-11 for the following 17 schools:

DBN	School	Intervention/Timeline
04M635	Academy of Environmental Science Secondary High School	ESCA 2011
09X517	Frederick Douglass Academy III	SINI -2, will receive ESCA if it fails to make AYP in 10-11
12X245	New Day Academy	ESCA 2011
12X102	P.S. 102 Joseph O. Loretan	JIT Spring 2010
02M620	Norman Thomas High School	JIT Fall 2010
08X540	School for Community Research and Learning	JIT Winter 2011
10X475	John F. Kennedy High School	JIT Fall 2010
11X415	Christopher Columbus High School	JIT Fall 2010
11X541	Global Enterprise High School	ESCA Fall 2011
12X262	Performance Conservatory High School	ESCA 2011
12X690	Monroe Academy for Business/Law	JIT Fall 2010
15K530	Metropolitan Corporate Academy High School	JIT Fall 2010
17K625	Paul Robeson High School	JIT Fall 2010
27Q410	Beach Channel High School	JIT Fall 2010
28Q470	Jamaica High School	JIT Fall 2010
05M195	I.S. 195 Roberto Clemente	JIT Spring 2010
13K571	M.S. 571	ESCA 2011

The remaining eight schools that were identified as being slated for closure by the DOE are *In Good Standing* and do not require intervention under the State's accountability system.

Index No. Index Number

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, and THE NEW YORK STATE CONFERENCE OF NAACP, THE ALLIANCE FOR QUALITY EDUCATION, RUBEN DIAZ, JR., BILL PERKINS, ERIC ADAMS, TONY AVELLA, ALAN MAISEL, ROBERT JACKSON, CHARLES BARRON, ERIK MARTIN DILAN, MARK WEPRIN, LETITIA JAMES, RUBEN WILLS, STEPHEN LEVIN, HECTOR NAZARIO, ZAKIYAH ANSARI, JAMES ORR, JANICE LAMARCHE and BELINDA BROWN,

Plaintiffs,

-against-

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, and DENNIS M. WALCOTT, as Chancellor of the City School District of the City of New York,

Defendants.

SUMMONS
AND VERIFIED COMPLAINT

STROOCK & STROOCK & LAVAN LLP
Attorneys for Plaintiffs

180 MAIDEN LANE
NEW YORK, NEW YORK 10038-4982
212 806 5400

PLEASE TAKE NOTICE

Check Applicable Box

☐ NOTICE OF ENTRY — *that the within is a (certified) true copy of a entered in the office of the clerk of the within named Court on* *20*

☐ NOTICE OF SETTLEMENT — *that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at on 20 , at M.*

Dated:

STROOCK & STROOCK & LAVAN LLP
Attorneys for

180 MAIDEN LANE
NEW YORK, NEW YORK 10038-4982
212 806 5400

To:

Attorney(s) for