

EXHIBIT 5

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

ANNERIS FERNANDEZ, individually and on behalf of her minor child E.H.; ASHLEY NORMAN, individually and on behalf of her minor child I.C.; CHANCE SANTIAGO; GRISSLET RODRIGUEZ, individually and on behalf of her minor child J.T.; SARAH FRANK; MARISSA MOORE, individually and on behalf of her minor child K.M.; and LUCIE IDIAMEY-GABA, individually and on behalf of her minor child D.B.;

Petitioners,

v.

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK and DAVID C. BANKS, as Chancellor of the City School District of the City of New York,

Respondents.

**AFFIDAVIT IN SUPPORT OF
VERIFIED PETITION**

Index No.

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

LEONIE HAIMSON, being duly sworn, deposes, and states:

1. My name is Leonie Haimson, and I am the founder and Executive Director of Class Size Matters (“CSM”), a non-profit, non-partisan organization of parents and concerned citizens founded in 2000 and dedicated to achieving smaller class sizes, principally in New York City (“NYC”) public schools. CSM serves as a clearinghouse for information on class size, regularly examining research on the benefits of reducing class size and analyzing class size data in New York City and elsewhere. These efforts allow CSM to educate parents, public officials, advocates, and school board members in New York City and around the country on the

importance of class size in American education and to advocate for the benefits of smaller classes.

2. Specifically, we analyze budgeting and space issues in New York City public schools, especially in relation to their ability to lower class sizes to the levels necessary to provide a sound, quality education.

3. There are many research studies that conclusively show that smaller classes lead to better student outcomes in every way that can be measured. Students who are in smaller classes achieve better grades, get better test scores, are less likely to be suspended or experience disciplinary problems, are less likely to drop out of high school, and are more like to go on to college and get a four-year degree. Smaller classes have also been shown to lead to lower teacher attrition rates, which then over time contributes to a more effective, more experienced teaching workforce. *See Ex. 1, Summary of Class Size Reduction Research, CLASS SIZE MATTERS, <https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2019/05/Summary-of-Class-Size-Reduction-Research-NY-updated.pdf>.*

4. In the landmark *Campaign for Fiscal Equity* case, the Court of Appeals concluded in 2003 that NYC public school students were deprived of their rights under the State Constitution in part because their classes were too large. The Court wrote: “[P]laintiffs presented measurable proof, credited by the trial court, that New York City schools have excessive class sizes, and that class size affects learning.” *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 911 (2003) (“CFE II”). It continued: “[P]laintiffs’ evidence of the advantages of smaller class sizes supports the inference sufficiently to show a meaningful correlation between the large classes in City schools and the outputs [of test results and graduation rates].” *Id.* at 912. “[T]ens of thousands of students are placed in overcrowded classrooms... and provided with inadequate

facilities and equipment. The number of children in these straits is large enough to represent a systemic failure.” *Id.* at 914.

5. In 2007, the State Legislature passed a new law, called the Contracts for Excellence, which required New York City schools to lower class size over five years to an average of no more than 20 students per class in grades K-3, no more than 23 students per class in grades 4-8, and no more than 25 students per class in high school. Still, as early as 2007 – sixteen years ago – the Five-Year Class Size Reduction Plan stated that “[f]irst, decisions regarding the co-location of a new school or program in an existing building *will explicitly take into account the decisions and plans principals have made regarding reduced class size* [emphasis added]. It is important to be clear that the DOE will *not* place a new school or program in a building at the expense of those schools and programs already operating within the building and that these decisions will be made in consultation with school principals.” Ex. 2, *New York City Five Year Class-Size Reduction Plan*, N.Y.C. DEP’T OF EDUC. 10 (Nov. 24, 2008). Yet instead of decreasing class size, class sizes increased sharply, and on average now remain larger than before the Contracts for Excellence law was passed in most grades. *See* Ex. 3, *Planning for Class Size Reduction: Presentation to Public Advocate Office*, CLASS SIZE MATTERS (Mar. 9, 2023), <https://classsizematters.org/class-size-school-overcrowding-presentation-to-public-advocate-office/>.

6. Over the years, the Department of Education’s (“DOE”) Educational Impact Statements (“EISs”) regarding proposed co-locations and re-sitings have included no analysis or discussion of the actual educational impact that the proposed co-locations and re-sitings have on the students in the existing public schools, including regarding their class sizes.

7. In recognition of the need for smaller classes, the fact that the city was now due to receive the promised additional school funding to resolve the CFE case, and the realization that the 2007 law was ineffective in bringing down class sizes to acceptable levels, in June 2022 the New York State Legislature overwhelmingly passed a new bill to require the NYC DOE to phase-in smaller classes over five years, to no more than twenty students per class in grades K-3, 23 students per class in grades 4-8, and 25 students per class in high school academic classes. This bill was signed into law by Governor Hochul in September 2022, with the agreement that the phase-in period would begin in the fall of 2023. *See* Ex. 4, N.Y. Educ. Law § 211-D, <https://www.nysenate.gov/legislation/laws/EDN/211-D>.

8. Yet neither of the EISs for these proposals – not the re-location of Edward A. Reynolds West Side High School, nor the co-location of Aspirations Diploma Plus High School in the building of Brownsville Academy High School, both proposed to commence in September 2023 – takes into account that existing class sizes in these schools are larger than the law requires, and they will need additional space starting in the fall of 2023 to lower class sizes that may not be available in their new, considerably shrunken spaces. The EISs fail to consider the necessity to reserve adequate classroom space to enable schools to lower class sizes to mandated levels in the future.

9. Instead, both EISs specifically say that their estimations of available space are based on a document called the “Instructional Footprint,” the current version of which was written in 2015 and assumes current class sizes will continue into the foreseeable future. In fact, these EISs explicitly state, “[f]or existing schools, the Footprint is applied to the *current number* of classes and class size a school is programming.” Ex. 5, West Side High School EIS Appendix

B: Instructional Footprint at 16; Ex. 6, Brownsville EIS Appendix B: Instructional Footprint at 25 [emphasis added].

10. The original 2007 DOE Instructional Footprint, used to guide space allocation and changes in school utilization including co-locations, assumed class sizes of twenty students per class in grades K-3, and 25 students in grades 4-5 in non-Title One schools. *See Ex. 7, DOE Instructional Footprint*, N.Y.C. DEP'T OF EDUC. (2007), https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2021/10/NYCDOE_Instructional_Footprint-2007.xls. (It did not specify what class sizes were assumed for Title One schools). *See id.*

11. In 2009, however, the Instructional Footprint raised class size standards for grades 4-5 to 28 students per class, without explanation. *See Ex. 8, DOE Instructional Footprint*, N.Y.C. DEP'T OF EDUC. (2009), https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2021/10/NYCDOE_Instructional_Footprint_revisedMay2009_noco-5.pdf.

12. Then in 2011, the Footprint eliminated any standards for class size from the document completely, except in the case of alternative learning centers, transfer high schools, full time GED programs, and Young Adult Borough Centers. *See Ex. 9, DOE Instructional Footprint*, N.Y.C. DEP'T OF EDUC. (2011), https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2021/10/DOEFOOTPRINTSConsolidatedVersion2011_FINAL.pdf.

13. What is particularly striking is that while the current Instructional Footprint calls for smaller classes in transfer schools such as Brownville Academy and Edward A. Reynolds West Side High School to limit their class sizes to 25 students per class (the same size as the new class size law requires) this objective is never mentioned in any of the EISs regarding their changes in utilization; moreover, the DOE fails to provide any analysis to ensure that they will

be able to have class sizes that small in their new, diminished spaces. *See* Ex. 10, *DOE Instructional Footprint*, N.Y.C. DEP'T OF EDUC. (2015), https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2021/10/DOE-Instructional-Footprint_December_2015.pdf.

14. In fact, the organizational chart of the Edwards A. Reynolds High School reveals that more than half, or 22 out of 34 academic classes, were larger this school year than the 25 students per class specified for transfer schools in the Instructional Footprint, which is also the size required by the new state class size law. *See* Ex. 11, West Side High School Organizational Chart. Indeed, five classes were larger than the 34 students per class required by the current union contract. *Id.* Thus, as many as 20 additional classrooms may be needed by the school to lower class size to the levels required by the new state law.

15. The organizational chart of Brownsville Academy reveals a similar pattern: 11 out of the 22 academic classes are above the limit of 25 students per class, and thus the school may need as many as 10 additional classrooms to lower class size to required levels. *See* Ex. 12 Brownsville Organizational Chart.

16. In the past, the DOE has proposed and approved co-locations without regard to any impact on class size and, when questioned, have taken the position that the Education Law requires only that they discuss projected enrollment and not class size. *See* Ex. 13, February 15, 2019 Email Exchange with Brooklyn Zoning office (“N.Y. Educ. Law § 2590-h and Chancellor’s Regulation A-190 require that an educational impact statement (EIS) discuss the current and projected student enrollment of the affected school, *not the average class size*” [emphasis added]). As set forth herein and in the accompanying Verified Petition, this is

contrary to established scholarly evidence and the express terms of the Education Law, which requires that all significant educational “impacts” on students be described.

17. The Education Law and the Chancellor’s regulation both state that the EIS should describe “*the impacts of the proposed...significant change in school utilization to any affected students.*” Ex. 14, N.Y. Educ. Law § 2590-h; Ex. 15, Chancellor’s Regulation A-190. Clearly a doubling in class size would have a profoundly negative effect on the education received by students at these transfer schools, restricting opportunities to learn, receive adequate support, and garner important feedback from their teachers.

18. More recently, at a meeting at a Bronx school on January 9, 2023, Max Applebaum, DOE Senior Director of District Planning for Bronx and Queens, admitted that neither the EISs nor Building Utilization Plans (“BUPs”) proposed by the DOE for fall 2023-24 account for the existing public schools to lower their class sizes, as the new class size law requires.

19. There is also the need to ensure there is dedicated space for students with disabilities to receive their mandated services. According to the EIS, 43% of the students at West Side High School have disabilities. *See* Ex. 5, West Side High School EIS at 11.

20. Educ. Law §2590-h also requires that the EIS should describe “the ability of other schools in the affected community district to accommodate pupils following the . . . significant change in school utilization,” suggesting that any proposed co-location should also analyze the level of class size and/or overcrowding in nearby schools or districtwide. Educ. Law §2590-h(2-a)(b)(vi).

21. Within District 4 in East Harlem, in which West Side’s new building is located, more than 11,000 students, or about 65% of the high school students in that district, are in classes

larger than the cap in the Class Size Law, according to DOE data. *See* Petition Ex. 32, *Updated DOE Class Size Report 2022-2023; District Level Distribution Report*, N.Y.C. DEP'T OF EDUC., https://infohub.nyced.org/docs/default-source/default-document-library/updated2023_pct_classsize_district.xlsx. This demonstrates that more space will likely be needed districtwide to lower class sizes to appropriate levels.

22. Within District 17 in Brooklyn, in which Brownsville is located, more than 15,000 students, or about 55% of the high school students in that district, are in classes larger than the cap in the Class Size Law. *Id.*

23. Additionally, specific to the Brownsville co-location, there is nothing in the EIS or the BUP about what will happen if Aspirations soon requires more space to meet the Class Size Law. Brownsville would suffer significant constriction in space from this proposed co-location, and that constriction would only worsen if Aspirations took up more space to lower class sizes to required levels as well.

24. According to the EIS of the proposal to co-locate Aspirations Diploma Plus with Brownsville Academy, 26% of the students at Brownsville Academy have Individualized Education Programs (“IEPs”). *See* Ex. 6, Brownsville EIS at 15. The student population at Aspirations Diploma Plus have similar high needs, with 32% of students with IEPs. *Id.* at 14.

25. At the same meeting in the Bronx on January 9, 2023, Ron Caccioppoli, Director of Space Planning at NYC Department of Education, admitted that there is nothing in any of the EISs produced for these proposed re-sitings, or in the Instructional Footprint upon which the EISs are based, that ensures or even analyzes whether there would be sufficient dedicated spaces for students with disabilities to receive their mandated services after the re-sitings occur.

26. Similarly, the EIS for West Side High School does not analyze or ensure that the 11% of students who are English Language Learners have appropriate dedicated spaces to receive their mandated services. *See* Ex. 5, West Side High School EIS at 11.

27. In fact, there are not enough classrooms set aside in either the EIS or BUP for the co-location to ensure sufficient dedicated spaces for speech, counseling/guidance, Special Education Teacher Support Services (“SETSS”), English as a New Language services (“ENL”), or Social-Emotional Learning (“SEL”)/behavioral intervention.

28. According to its BUP, Brownsville Academy will lose 12 full-size classrooms – fully two thirds of the 18 they currently use, without any assurances that there will be sufficient space for the class size reduction required by the new state law. *See* Ex. 16, Brownsville BUP at 10. They will also lose one half-size classroom and one quarter-size classroom, and now be left with only one of each, which will not be sufficient for its students to receive their mandated services, including for speech, counseling, guidance, pull-out/SETTS, ENL, SEL/behavioral intervention spaces, which are all mandated by their IEPs. *Id.* These services cannot be provided effectively in shared spaces because of the need for privacy and a quiet, focused environment.

29. According to the room counts in the EISs, West Side High School will lose five full-size classrooms, all five of its half-size classrooms, as well as on campus access to its LYFE Center, full-size gym, and SBHC, while gaining three quarter-size rooms. But the West Side EIS generically states that “[t]his proposal, if approved, is not expected to impact the current or future academic offerings at West Side High School.” *See* Ex. 5, West Side EIS at 6. No analysis provided in any of the documents that the DOE has prepared says that there will be adequate space for class size reduction as required by the new state law, or for its students to receive their mandated services, including for speech, counseling, guidance, pull-out/SETTS, ENL,

SEL/behavioral intervention spaces. These services cannot be provided effectively in shared spaces because of the need for privacy and a quiet, focused environment.

30. Even more egregiously, nowhere in the EIS concerning the re-location of the West Side High School is there any description of the likely educational impact of losing the LYFE day care center established specifically to serve the infants and toddlers of the young parents who currently attend this transfer school.

31. The other document on which the EIS is purportedly based is the 2021-2022 Enrollment, Capacity and Utilization Report, also known as the Blue Book. The Blue Book capacity formula – which was changed in December 2021 by the School Construction Authority without any discussion or consultation with educators or affected communities – is currently based upon the unrealistic assumption that each middle and high school can schedule every regular classroom and specialty room every period of the day. This is a purely hypothetical assumption that is not realistic in most schools and bears no relationship to the actual experience and functionality of either West Side or Brownsville. Accordingly, any reference in the EIS to the Blue Book capacity or utilization is unrealistic and generic, having no relationship to actual conditions at these schools.

32. Nor is there any discussion of the impact on the West Side students who will be deprived of their full-size gym, wrap-around health services, and their GED program, all of which will be left behind in the building they will now be forced to leave.

33. In fact, in neither of these EISs is there any real examination or description of the likely profound effects on the students at West Side High School and Brownsville Academy if they are deprived of the space for smaller classes and/or dedicated rooms to receive their mandated services, as the law calls for. Instead, these EISs, as structured by the DOE, contain

only a bare-bones mathematical discussion. The discussion is based upon an insufficient allotment of rooms for each school, which in turn, is based upon an arbitrary formula in the Instructional Footprint that has changed over time. Nowhere do these documents even attempt in the most rudimentary fashion to assess how the loss of this space and these programs will profoundly affect the education of the marginalized and exceedingly vulnerable students served by these schools, many of whom may likely become disengaged and drop out before graduation as a result.

VERIFICATION

I have read the foregoing Verified Petition and I know the contents to be true based on my position as Executive Director of Class Size Matters and on my knowledge of the facts and circumstances discussed in the Petition. As to the allegations based on information and belief, I believe them to be true.

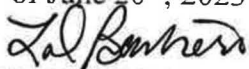
Dated:
June 20, 2023



LEONIE HAIMSON

Sworn to before me this day

of June 20th, 2023



LAURA DAWN BARBIERI
NOTARY PUBLIC, STATE OF NEW YORK
Notary Public
Registration No. 02BA6394203
Qualified in New York County
Commission Expires July 1, 2023