

STATE OF NEW YORK
NEW YORK STATE EDUCATION DEPARTMENT

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In the Matter of an Appeal to the NYS Commissioner of
Education, AMANDA VENDER; individually and o/b/o
her minor Children, M.V.-W. and N.V.-W.; TIA SCHELLSTEDE,
individually and o/b/o her minor child, W.R.; TANESA
GRANT, individually and o/b/o her minor child M.M.;
NAILA ROSARIO, individually, and o/b/o her minor
child, L.R.; AMY MING TSAI, individually, and o/b/o her
minor children, M.M.2, M.-L.M., and M.-Y.M., and all similarly
situated NYC Public School Parents/Guardians and their
respective children, and CLASS SIZE MATTERS,

**VERIFIED
AFFIDAVIT OF
LEONIE HAIMSON**

PETITIONERS,

Pursuant to Section 310 of the N.Y. Educ. Law,

-v-

THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW
YORK, THE NEW YORK CITY DEPARTMENT
OF EDUCATION, AND CHANCELLOR DAVID
C. BANKS, in his official capacity,

RESPONDENTS,

From the Action of the Respondents Regarding Their Issuance of
the Virtual and Blended Courses Guidance, which Unlawfully
Permits the Respondents to Assign and Place Petitioners'
Respective Children in Virtual or Blended Classes
Without First Obtaining Express Written Consent from
Petitioner Parents/Guardians, in Violation of the NYSED
Regulations of the Commissioner, Section 100.2(u).

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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. We are located at 124 Waverly Place, New York, NY 10011. I was also a NYC public school parent for fifteen years.

2. I also co-chair the national organization, Parent Coalition for Student Privacy, founded in 2014 to strengthen the protections of student personal information.

3. I provide this Verified Affidavit in support of the above-captioned Appeal to the Commissioner of the State Education Department. The statements made herein are true and accurate to the best of my knowledge and belief, and as to those statements I make upon knowledge and information, I believe them to be true.

4. I believe that CSM has a direct and pressing interest in the subject matter of this Appeal – namely, the aggressive expansion of virtual and blended learning classes by Respondents and the manner and means by which they are implementing such new course offerings in New York City Public Schools.

5. 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.

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

7. CSM also engages in advocacy in support and on behalf of parents - to be informed and have a say in school policies and a seat at the decision-making table, as evidenced by our

assistance with filing a complaint to the Commissioner of Education in 2008 when Chancellor Klein attempted to disempower School Leadership Teams (SLTs) in developing a school-based budget and by our assistance with filing a lawsuit in 2014 when the Chancellor Farina closed SLT meetings to the public, in violation of the State Open Meetings Law. In both instances, CSM helped successfully overturn these actions by DOE. See <https://classsizematters.org/parent-empowerment/>.

8. Many research studies 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 likely to go on to college and get a four-year degree. Smaller classes have also been shown to lead to increased student engagement and lower teacher attrition rates, which over time contribute to a more effective, more experienced, teaching workforce. Those students who see the greatest benefit from smaller classes are students of color, English Language Learners, students with disabilities, and those from low-income families, which is why class size has been proven to be an effective way to narrow the achievement/opportunity gap. See Exhibit A, *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>.

9. 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.

10. As a result of this court decision and the fact that the Governor and the Legislature agreed to send more than one billion dollars to New York City in additional Foundation Aid to address these substandard conditions, a new state law was passed in April 2022, requiring the Department of Education to phase-in smaller class size caps over five years, starting in the fall of 2023.

11. On behalf of CSM, I decided to join this Commissioner’s Appeal because it appears that Respondents are aggressively moving to expand their course offerings to include virtual and blended learning (previously referred to as online learning) within New York City public schools and to assign students to these classes without prior parental consent. According to Respondents, utilizing virtual and blended learning is among the strategies they intend to use to reduce class sizes in schools that do not currently have the space for smaller classes.¹

12. I was also appointed to the Class Size Working Group by Chancellor Banks to develop proposals to implement the law. Expanding online learning was not among the Working Group’s recommendations. Instead, we proposed that NYC DOE create more space in overcrowded schools by capping their enrollment at lower levels when there are underutilized

¹ See NYC Department of Education’s draft Class Size Reduction Plan, dated May 7, 2024 at <https://drive.google.com/file/d/1--h0FIdTqoFcH5yJcHuUMVZrc3CSTfUQ/view>, a copy of which is provided as Exhibit B.

schools with the same grade levels nearby, and by implementing an accelerated and expanded capital plan to build more school seats.²

13. For numerous reasons, several of which I articulate here, I am concerned about the Respondents' plan to add virtual and blended learning to their course offerings portfolio.

14. First, remote learning led to negative outcomes and results for most students during the pandemic, including their lower achievement, less engagement, and mental health challenges.³ In general, online learning has poor results according to the research, especially for struggling students and those who do not have strong adult supervision at home.⁴

15. Further, many New York City public school students still lack reliable internet access and a laptop at home.

16. Thus the expanded use of virtual instruction is likely to worsen rather than improve the opportunity/achievement gap among public school students and undermine many of the benefits of class size reduction that would otherwise be expected.⁵

17. Second, I am also concerned because the more instruction is shifted to virtual programs, the more likely it is that we will see more data breaches of the sort that New York City schools have already experienced. For example, the *Illuminate* breach exposed the personal

² Class Size Working Group Final Report, December 11, 2023
<https://drive.google.com/file/d/1gSiFUcuLOjJ49PLCMptkroFjXBHow2b/view>.

³ See <https://gothamist.com/news/covid-19-nyc-schools-student-mental-health>.

⁴ See for example a study concerning remote learning during the pandemic: A.R. Golden, *et al.*, *What was a gap is now a chasm: Remote schooling, the digital divide, and educational inequities resulting from the COVID-19 pandemic*, *Curr Opin Psychol.*, 2023 Jun 12; available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10259090/>.

⁵ *Id.*

student data of more than a million current and former students in late December 2021 to early January 2022.⁶

18. I was encouraged that the New York State Education Department approved regulations on April 28, 2024, which require parental consent before a student could be placed in a virtual or blended learning class, since parents will then be able to withhold their consent if they cannot properly supervise their children at home, have doubts about the quality of education that this virtual learning can provide, or question its ability to meet their children's social and emotional needs.⁷

19. I recently received a copy of the NYC Department of Education's latest guidance on virtual and blended courses learning, dated May 13, 2024, entitled, "Virtual and Blended Courses."⁸ Upon information and belief, this document is not available online to most parents or members of the general public, as far as I know, because it is posted on a section of Respondent DOE's website only accessible to administrators and school staff. Nonetheless, some parents have since become aware of this document, including the Petitioners who are extremely concerned.

20. After reading it, I was extremely troubled because although on several pages, the guidance states that parental consent would be necessary before a student was assigned to a

⁶ Initially, the DOE stated that the breach affected about 800,000 current and former public school students *See* <https://www.nytimes.com/2022/07/31/business/student-privacy-illuminate-hack.html>. More recently, the DOE said that an additional 380,000 current and former students had their personal data exposed by this breach. *See* <https://nypost.com/2024/05/05/us-news/over-380k-more-nyc-students-had-info-leaked-bringing-total-to-over-1m/>. *See also* <https://www.schools.nyc.gov/about-us/policies/data-privacy-and-security-policies/data-security-incidents>.

⁷ *See* a copy of the regulations annexed as Exhibit C.

⁸ *See* a copy of this guidance annexed as Exhibit D .

virtual or blended learning class, the guidance also contains the following passages on pp. 20-21, dated after the regulations were approved by the Board of Regents:

30. Can schools program students in STARS for virtual/blended courses prior to receiving a parent opt-in decision? (New May 13, 2024)

Yes. Schools can program students for virtual/blended courses in STARS in anticipation of getting back Parent Opt-In Forms. This allowance is meant to ease the administrative burden for schools as they complete STARS programming. Final student schedules that include virtual/blended course(s) must have parental consent on file for all scheduled classes.

31. If a school does not receive a response from the parent by the first day of school (or term), what should they do? (New May 13, 2024)

*Schools should make every effort to engage parents in understanding the benefits and expectations of virtual/blended courses in order to make an informed decision. If a school does not receive a response by the first day of school, they should continue reaching out to the parent through the school's normal communication channels such as email and phone. **The student may remain in the virtual/blended course in accordance with the school's existing add/drop policies or until the parent declines to have their student participate in the virtual/blended course, whichever occurs first.** [emphasis added.] Schools should try to minimize any disruption to student's schedule in this process.*

21. Clearly, the fact that Respondents are allowing school administrators to assign students to virtual classes before they have received parental consent and giving them the permission to keep these students in such classes until the parent declines their participation, does not constitute parent consent; rather, such guidance is akin to an opt-out procedure, and not aligned to the clear requirements of the New York State Education Regulations. An opt-out procedure is a much weaker provision and contrary to the state regulations.

22. Without requiring express written parent consent, some parents will never become aware that their children are assigned to an online class until it is too late to do anything about it.

23. Upon information and belief and based on my decades of experience dealing with New York City school parents, many public school parents will not see the consent forms

regardless of whether they are delivered in the form of an email or by backpack mail, and school administrators will not feel obligated to ensure that they do.

24. Those parents who may not see the notice and consent forms, including recent immigrant families, those in temporary housing, non-English speaking parents, parents who work one or two jobs, and/or parents who themselves do not have reliable internet access at home are also among those who are the least likely to be able to provide the ongoing supervision necessary to ensure that their children are properly engaged in a virtual or blended learning class and are succeeding in it.

25. I strongly urge the Commissioner to require Respondents to revise their guidance and require and emphasize to school administrators that there must be written, verifiable parent consent before any student is assigned to a virtual or blended learning class. I also urge the Commissioner to require Respondents to modify the guidance to provide for a prompt manner and means of revoking parental consent should a parent wish to do so, by the submission for example, of a form provided by Respondents, and to allow parents to specify that their children should be reassigned to an in-person class if the child is found to be struggling in the virtual or blended class within a reasonable period. Finally, if any student is assigned to take a virtual or blended learning class at home, the Commissioner should require that Respondents must receive written confirmation from the parent that their child has reliable and consistent access to a laptop and internet service at home, and if not, that Respondents will be obligated to provide these services to the student.

For all these reasons, I request that the Commissioner grant the relief requested by
Petitioners in their entirety.

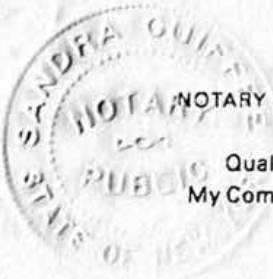
Dated: June 12, 2024
New York, NY

CLASS SIZE MATTERS

BY: *Leonie Haimson*
LEONIE HAIMSON
EXECUTIVE DIRECTOR

Sworn to before me this 12
day of June, 2024

Sandra Guiffre
Notary Public



SANDRA GUIFFRE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GU6215063
Qualified in New York County
My Commission Expires 12-21-2025