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, Plaintiff, -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: July 18, 2003 **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
July 18, 2013

STROOCK & STROOCK & LAVAN LLP

By: _____

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-and-

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SUPREME COURT OF THE STATE OF NEW YORK
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MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, Plaintiff, -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 FOR DECLARATORY JUDGMENT**

Plaintiff United Federation of Teachers (the "UFT"), by its President Michael Mulgrew, by its attorneys Stroock & Stroock & Lavan LLP, Adam S. Ross, Esq. and Carol L. Gerstl, Esq., hereby alleges, as and for its Verified Complaint for Declaratory Judgment, as follows:

BACKGROUND

1. The Chancellor of the City School District of the City of New York[1] is responsible for preparing Educational Impact Statements ("EISs") and Building Usage Plans ("BUPs") in connection with proposed co-locations and significant changes in school utilizations.[2] Recently, the Chancellor has submitted EISs and BUPs for co-locations and

[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 ("BOE"), referred to by Defendants as the Panel for Education Policy ("PEP"), devolved to the Chancellor, with the administrative operations assigned to a body denominated by the Mayor as the New York City Department of Education ("DOE"). The PEP retained the power to ratify collective bargaining agreements and, with the 2009 amendments, approve proposed school closures and significant changes in school utilization. The PEP consists of 13 members, eight of whom are appointed by the Mayor. The BOE, the DOE, the Chancellor and the PEP are collectively referred to herein as "Defendants."

[2] These responsibilities stem from the 2009 amendments to Education Law Article 52-A, which substantively required the Chancellor to (i) prepare an EIS – modeled after the Environmental Impact Statements required by the State Environmental Quality Review Act – to report on the impact of the proposal on the community at large; (ii)

significant changes in school utilizations for schools throughout the City, far in advance of when the changes will actually be implemented. None of these changes is scheduled to go into effect for the upcoming 2013-14 school year, with each slated to begin not before the start of the 2014-15 school year. The information provided in the respective EISs and BUPs is consequently premature, for, as a result of the lag time, the circumstances depicted could differ significantly by the time the changes are scheduled to go into effect. This contravenes the mandate and intention of Education Law Article 52-A, generally, and Education Law § 2590-h (2-a) (c), specifically.[3]

2. As elucidated below, one proposed co-location is grounded in the presumption that an elementary school, currently located in one building, will relocate to a new building after the 2013-14 school year in order to make room for a new school. However, construction on the new building has only recently started and there is great uncertainty as to whether it would be ready on time. Other proposed co-locations seek, for example, to co-locate grades of schools that the schools presently do not have authority to serve pursuant to their current charters. Although the proposals suggest that the schools are planning to apply to SUNY to expand the charters to serve those grades, they have not yet applied, much less been approved.

3. Further, each proposal's BUP projects sufficient building space to accommodate the co-located school. Yet, as shown below, many of the buildings currently suffer from severe space constraints and cannot feasibly house another school. Children attending school there are forced to have gym in their classrooms or eat lunch at 10:30 a.m., when many others are finishing breakfast, while social workers, speech therapists and special education staff are often

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ensure these EISs were publicly available at least six months before the following school year and specifically provided to several legislatively-designated entities, including the Community District Education Councils ("CEC") and School Leadership Teams ("SLT") affected by the proposed action; and (iii) hold joint public hearings with the impacted CECs and SLTs.

[3] Education Law Article 52-A treats the requirements necessary for a co-location and a significant change in utilization essentially the same. Therefore, any references to co-locations also include significant changes in utilization.

required to share one room. The DOE's indications that the buildings presently have space to accommodate new schools are inaccurate, and its further projections for the following school year are purely conjectural. The DOE does not address these issues in the EISs and BUPs, so the parents, students and the community at large are forced to guess whether any steps will be taken to ameliorate the situation during the two-or-more-year incubation period. In fact, some of these proposed co-locations are first slated to take effect in the 2015-16 or 2016-17 school years, which only exacerbates the staleness of any projections the DOE may offer in these proposals. Therefore, the EISs and BUPs submitted for these proposals, upon which the community is supposed to base its consideration of these important determinations, provide flawed information.

4. Nevertheless, the PEP approved each of these proposals, thereby continuing the DOE's *modus operandi* of closing allegedly "unsuccessful" schools that do not fit its current desire for small, themed schools rather than the traditional neighborhood school. Instead of trying to support these schools, many of which have long roots and are popular in their community, the DOE looks to replace them with favored charter schools. The purpose of the 2009 amendments to Education Law Article 52-A was to provide parents, students and community members with a greater voice in a more transparent City educational system by giving them a detailed notice of proposed changes and a meaningful opportunity to be heard. The premature submission of EISs obscures the operative conditions and deprives the most significant stakeholders the opportunity to access relevant and accurate information such that they may appropriately participate in the process as required by law.

5. Even though the DOE has an established practice of closing, co-locating and otherwise changing school utilizations, upon information and belief it has, until this year,

confined itself to proposing changes for the following school year. The DOE's practice of submitting EISs for proposals that would take place the following school year supports that it had previously shared the reading of Education Law § 2590-h (2-a) (c)—that EISs should be proposed to take effect in the following school year. In 2013, however, Defendants began proposing, and the PEP began approving, co-locations and other significant changes in school utilization that would first begin to take effect two or more school years after the vote.

6. It would appear from the DOE's abrupt shift in policy—submitting EISs two or more school years in advance of the proposed change—that there may be political rather than educational objectives at play. The proposals at issue here would bind the next mayoral administration to the same controversial education policies that the current administration has embraced. It is the height of hubris to suppose that future elected administrations cannot appropriately govern the NYC school system. The DOE's attempt to concretize the policies of its current leadership is as transparent as it is illegal.

7. The DOE's conduct violates the State Education Law, is unlawful and arbitrary and capricious.

PARTIES

8. 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 BOE.

9. Defendant BOE is located at 52 Chambers Street, New York, New York, and is a school board organized under and existing pursuant to the Education Law of the State of New

York and, for all purposes, serves as the government or public employer of all persons appointed or assigned by it. The City School District can be found and has facilities, including schools, in every Borough of the City of New York, including New York County.

10. Defendant Dennis M. Walcott is the Chancellor of the City School District 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 serves at the pleasure of and is selected by the Mayor of the City of New York.

JURISDICTION AND VENUE

11. This is a proceeding brought pursuant CPLR § 3001, seeking a declaration that Defendants have violated their obligations under Education Law § 2590-h (2-a) (c).

12. Venue is proper in New York County since, *inter alia*, relevant determinations complained of were made there, Defendants have refused to perform a duty imposed by law there, and other material events took place there.

ALLEGATIONS

The Educational Impact Statement

13. Recognizing the potential impact on a community when a school is co-located or its utilization significantly changes, the Legislature was concerned about the vast power wielded by Defendants and was determined to curb abuses. To "guarantee[] parents, students, staff and interested community participants a six-month opportunity to review and comment on any proposed school closings and restructuring or co-location and reuse of local school buildings," the Legislature amended Education Law Article 52-A to require the Chancellor to conduct a substantive study of the potential impacts of such closing on current and prospective students as well as the community, and report that underlying analysis in an EIS—which, significantly, was

to be publicly available and also filed with the affected stakeholders, including Community Education Councils ("CECs") and School Leadership Teams ("SLTs"). (See Excerpt of New York State Assembly Debate, dated June 17, 2009, at p. 82, annexed hereto as Ex. A). Prior to the 2009 amendments to Education Law, Article 52-A, the Chancellor was required only to "consult" with the affected CEC prior to unilaterally closing a school. (See Laws of 2003, Chapter 123, § 17, formerly Education Law § 2590-h(2)(a), annexed hereto as Ex. B).

14. Education Law § 2590-h, which outlines the Chancellor's powers and duties, sets forth the following seven categories of analysis that must be included in the EIS:

1. the current and projected pupil enrollment of the affected school, the prospective need for such school building, the ramifications of such school closing or significant change in school utilization upon the community, initial costs and savings resulting from such school closing or significant change in school utilization, the potential disposability of any closed school;

2. the impacts of the proposed school closing or significant change in school utilization to any affected students;

3. an outline of any proposed or potential use of the school building for other educational programs or administrative services;

4. the effect of such school closing or significant change in school utilization on personnel needs, the costs of instruction, administration, transportation, and other support services;

5. the type, age and physical condition of such school building, maintenance, and energy costs, recent or planned improvements to the school building, and such building's special features;

6. the ability of other schools in the affected community district to accommodate pupils following the school closure or significant change in school utilization; and

7. information regarding the school's academic performance, including whether the school has been identified as a school under registration review or has been identified as a school requiring academic progress, a school in need of improvement, or a school in corrective action or restructuring status.

Education Law §2590-h (2-a)(b)(i)-(vii.)

15. Education Law § 2590-h (2-a)(c) further requires that EISs be made publicly available so that those interested in and affected by the proposed change have the opportunity to weigh in on the matter. This public notice may include, but is not limited to, publication on the DOE's webpage. A copy must also be "filed" with the PEP, the impacted CEC, Community Boards, the community superintendent, and the SLT at least six months in advance of the first day of school in the succeeding school year. This requirement was included to provide the public with meaningful notice consisting of timely and ripe information, not information that is premature or stale. Legislative history confirms that Education Law § 2590-h (2-a)(c) was intended to "guarantee[] parents, students, staff and interested community participants a six-month opportunity to review and comment on any proposed school closings and restructuring or co-location and reuse of local school buildings." (See Ex. A). Assembly Speaker Sheldon Silver explained that the 2009 amendments to Education Law Article 52-A (which encompassed § 2590-h (2-a)(c)) guaranteed

> parents, students, staff and the public six months' notice and an opportunity to review and comment on proposed school closings and changes in the use of local school buildings . . . [it] will require the chancellor to issue an impact statement on any such proposed changes and hearings to allow public input.

16. The amendments provide that any such proposed co-location not be considered final until and unless the statutory analysis, notice and joint public hearings are completed and the PEP votes to approve them. Education Law § 2590-h (2-a) (e).

17. In sum, Defendants, by proposing these co-locations far in advance of when they would go into effect, circumvents Education Law § 2590-h (2-a) (c)'s requirement that EISs be published in advance of the first day of school in the succeeding school year. The delay between the EISs and the eventual change renders the EIS devoid of meaningful analysis or discussion of

the impacts on the community because such information is stale by the time the change is scheduled to occur with the concomitant risk that Defendants' projections upon which decisions are to be premised fail to come to fruition. This process deprives parents and communities of being able to comment on the actual situation that will exist when the co-location is scheduled to take effect. Thus, Defendants have not only violated the statutory mandates, but have also thwarted the amendments' purpose: to place checks on the DOE's authority by providing transparency and giving the community a voice in decisions that promise to impact them the most.

The Building Usage Plan

18. Along with the EIS, before a charter school is located or co-located in an existing public school building, the Chancellor must develop a building usage plan for each school proposed to be located or co-located. Education Law § 2853 (3) (a-3) (3) explains that BUPs are subject to the requirements of Education Law § 2590-h (2-a). Substantively, they must include, but are not limited to, the following information:

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

2. 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, including playgrounds 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;

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

4. building safety and security;

5. communication strategies to be used by the co-located schools; and

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

Education Law § 2853 (3) (a-3) (2).

19. BUPs, like EISs, are to be made publicly available. Education Law § 2583 (3) (a-3) (5).

20. Since the proposed BUPs included with the EISs were issued early, their projections are speculative and run afoul of Education Law § 2590-h (2-a) (c).

Co-Location of Success Academy Charter School – Bronx 2

21. On March 7, 2013, Defendants submitted an EIS and BUP for the proposed co-location of grades 5-8 of Success Academy Charter School – Bronx 2 ("SACS – Bronx 2") with J.H.S. 22 Jordan L. Mott and Bronx Writing Academy in Building X022 beginning in 2014-15. Defendants amended the EIS on May 10, 2013 and the PEP approved the amended proposal on June 19, 2013. (See Amended Educational Impact Statement for Success Academy Charter School – Bronx 2 ("SACS-Bronx 2 Amended EIS"), annexed hereto as Ex. C).

22. The Amended EIS for this co-location is premised on a series of events that may never occur. As explained above, this proposal is to co-locate grades 5-8 of SACS – Bronx 2. Yet, the current charter for SACS – Bronx 2 allows it to serve only grades K-5. This charter expires in February 2015. Although SACS – Bronx 2 "intends to apply to SUNY to review its charter and to expand . . . to serve grades K-8." A review of public records reveals no such application. Upon information and belief, SACS – Bronx 2 has not yet applied to SUNY to review its charter and to expand to serve grades K-8 and even if it does, there is no assurance that SUNY would approve its request. (See SACS-Bronx 2 Amended EIS, at 1.) This entire proposal is thus speculative and contrary to the State Education Law.

23. Further, upon information and belief, there is not sufficient space to co-locate SACS – Bronx 2 in the building. Accordingly, it is unlikely that there will be sufficient space for SACS – Bronx 2 to be co-located in this building. In light of this uncertainty, proposing this change almost two years in advance deprives the public of any meaningful information as to available space in the building. Without more current information, the community is ill-equipped to comment on the proposed actions, rendering meaningless the requirement for community involvement in decisions impacting the utilization of the school building and thereby violating Education Law § 2590-h (2-a) (c).

Co-Location of Success Academy Charter School – Harlem 2

24. On January 18, 2013, the DOE issued a proposal to co-locate grades 5-8 of Success Academy Charter School – Harlem 2 ("SACS - Harlem 2") with the Academy for Social Action, I.S. M286 Renaissance Leadership Academy, The Urban Assembly Institute for New Technologies and the Urban Assembly School for Performing Arts in Building M043 beginning in 2014-15. (See Educational Impact Statement for Success Academy Charter School – Harlem 2 ("SACS-Harlem 2 EIS"), annexed hereto as Ex. D). The PEP approved this proposal on March 20, 2013.

25. Further, upon information and belief, there also exist patent defects in the allocation of space between the current schools. There is not sufficient space in Building M043 to accommodate the co-location of SACS – Harlem 2 and the EIS is silent as to what, if any, steps the Chancellor will take to ameliorate this concern.

26. This proposal is premature because there is no space to co-locate SACS – Harlem 2. In light of this uncertainty, proposing this change almost two years in advance deprives the public of any meaningful information as to available space in the building. Without more current

information, the community is ill-equipped to comment on the proposed actions, rendering meaningless the requirement for community involvement in decisions impacting the utilization of the school building and thereby violating Education Law § 2590-h (2-a) (c).

Co-Location of Harlem Prep Charter School

27. On November 29, 2012 Defendants submitted a proposed co-location of grades 6-8 of Harlem Prep Charter School ("Harlem Prep") with P.S. 38 Roberto Clemente in Building M121 beginning in 2014-15. (See Educational Impact Statement for Harlem Prep Charter School ("Harlem Prep EIS"), annexed hereto as Ex. E.) The PEP approved this proposal on January 16, 2013.

28. Presently, P.S. 38 is co-located with DREAM elementary school, which serves grades K-5. (See Harlem Prep EIS, at 1.) The proposal to co-locate Harlem Prep is predicated on the assumption that DREAM would relocate to a new 11-story hybrid school/residential building after the 2013-14 school year, as planned. The new building site for DREAM is located about 20 feet from Building M121. Upon information and belief, construction on the new building has only recently started and it is doubtful whether construction on the new building can be completed by the 2014-15 school year.

29. Thus, the PEP's approval of this proposal did not inflict an actual injury on Plaintiff. Not only has the actual co-location not yet taken place, but the proposal is entirely dependent upon the completion of a building to house the new school, construction of which has only recently begun.

30. Further, upon information and belief, there are also space conflicts in Building M121 occasioned by the needs of DREAM and P.S. 38. For example, P.S. 38's social workers, speech therapists and special education staff all share one room due to insufficient space, with

tutors, counselors and speech therapists frequently having to work with students in the hallways. The EIS is silent as to what, if any, steps the Chancellor will take to ameliorate this concern.

31. In light of this uncertainty, proposing this change almost two years in advance deprives the public of any meaningful information as to whether DREAM's new building will be built in time for the 2014-15 school year. Without more current information, the community is ill-equipped to comment on the proposed actions, rendering meaningless the requirement for community involvement in decisions impacting the utilization of the school building and thereby violating Education Law § 2590-h (2-a) (c).

Grade Expansion of Washington Heights Expeditionary Learning School

32. On December 18, 2012, Defendants submitted a proposed grade expansion of Washington Heights Expeditionary Learning School ("WHEELS") from 6-12 to K-12 in Building M143 for the 2014-15 school year. (See Educational Impact Statement for WHEELS ("WHEELS EIS"), annexed hereto as Ex. F). The PEP approved this proposal on March 20, 2013.

33. While the EIS maintains that Building M143 is "underutilized," upon information and belief, the building is fully occupied and there is not adequate space to expand WHEELS. (See WHEELS EIS.) The "Enrollment Data" and target capacity data used to calculate the building utilization rates are from a document created in 2011-12 as well as a headcount from October 1, 2012. (See WHEELS EIS, at 3 n.9.) Therefore, the statistics offered in the EIS are deficient in not being current, and will only be further stale by 2014-15. Nowhere do Defendants offer any explanation as to how they will address this situation.

34. Proposing this change almost two years in advance deprives the public of any meaningful information as to enrollments and available space in the building. Without more

current information, the community is ill-equipped to comment on the proposed actions, rendering meaningless the requirement for community involvement in decisions impacting the utilization of the school building and thereby violating Education Law § 2590-h (2-a) (c).

Other Significant Changes in School Utilization

35. The changes in school utilization set forth above are just but examples of the actions taken by the Defendants in the final year of this administration. Indeed, since the beginning of this year, Defendants have proposed, and the PEP has approved, similarly premature changes in school utilization at the following schools:

- a co-location of Success Academy Charter School – Bronx 1 with schools located in Building X183 beginning in 2014-15;
- a co-location of Achievement First Apollo Charter School with schools located in Building K302 beginning in 2014-15;
- a co-location of KIPP S.T.A.R. College Preparatory Charter School Grades K-4 with schools located in Building M 195 beginning in 2014-15;
- a co-location of Boys Preparatory Charter School of the Bronx with schools located in Building X107 beginning in 2014-15;
- a co-location of Explore Envision Charter School Grades K-5 with schools located in Building K190 beginning in 2014-15;
- a co-location of New Public Charter School PAVE II Charter School with schools located in Building K111 beginning in 2014-15;
- a co-location of New Public Charter School Achievement First North Brooklyn Preparatory Grades K-4 with schools located in Building K377 beginning in 2014-15;
- a co-location of the High School Grades of Success Academy Charter Schools Harlem 1-5 with schools located in Building M620 beginning in 2014-15;
- a grade truncation of P.S. 340 in Building X340 beginning in 2014-15;
- a grade truncation of P.S. 360 in Building X360 beginning in 2014-15;

- a co-location of Success Academy Charter School – Manhattan Middle School with schools in building M625 beginning in 2015-16; and
- a grade truncation of Success Academy Charter School – Manhattan 2 located in Building M625 beginning in 2016-17.

36. These proposals suffer from the same types of flaws explained in paragraphs 21-34 above. Upon information and belief, enrollment projections are not based on statistics that would be relevant at the actual time of the implementation for the proposed action; proposals are dependent upon the decision of another body; and/or, often, there is not adequate space in the existing school to accommodate the change in utilization. Yet, the EISs provide little or no explanation as to what steps the Chancellor may take to ameliorate any such deficiencies.

FIRST CAUSE OF ACTION

Declaratory Judgment

37. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 36 as if set forth herein.

38. Education Law § 2590-h (2-a) (c) specifies certain requirements that must be met prior to voting to close any school and requires that information be provided in a timely fashion such that reasoned decisions may be derived from an analysis of the information provided.

39. By seeking changes now that will not take effect until the distant future, when circumstances may have changed, Defendants have failed to comply with these requirements and violated the statutory intent of Education Law § 2590-h (2-a) (c).

40. Plaintiff seeks a declaration pursuant to CPLR § 3001 that the Defendants have violated the dictates of Education Law § 2590-h (2-a) (c).

WHEREFORE, Plaintiff respectfully demands judgment:

Declaring that Education Law § 2590-h (2-a) (c) prohibits the submission of EISs for proposals that take effect after the first day of school in the succeeding school year; and for such other and further relief as may be just and proper.

Dated: New York, New York
July 18, 2013

STROOCK & STROOCK & LAVAN LLP

By: /s/
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Co-Counsel for Plaintiff

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, in the above-entitled proceeding; that he has read the foregoing Verified Complaint for Declaratory Judgment and knows the contents thereof; that the Verified Complaint for Declaratory Judgment 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
18 day of July, 2013

Notary Public

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