

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARIA PLACENCIA, individually and on behalf of her minor daughter, L.R., and TANYA BAH, individually and on behalf of her minor son, J.B., and SUSETTE BARBOUR, individually and on behalf of her minor son, J.W., and NATASHA BROWN, individually and on behalf of her minor sons, J.J. and J.J., and JOSEFINA CALCANO, individually and on behalf of her minor daughter, S.N., and MICHAEL EDWARDS, individually and on behalf of his minor son, M.E., and TINICA FEIMSTER, individually and on behalf of her minor daughter, D.H., and MARIA GARCIA-RODRIGUEZ, individually and on behalf of her minor son, M.R., and LATOYA V. GRANT, individually and on behalf of her minor daughter, A.S., and TISHA HATCH, individually and on behalf of her minor son, R.L., and VELMA HOWELL, individually and on behalf of her minor son, A.O., and CHANNELL KIMBLE, individually and on behalf of her minor sons, T.C. and T.C., and YOLANDA LOWE, individually and on behalf of her minor daughter, M.L.B., and WENDY MARTINEZ, individually and on behalf of her minor daughter, B.P., and ANGEL PIMENTEL, individually and on behalf of his minor son, T.P., and ROSEMARIE SAUNDERS-LEE, individually and on behalf of her minor daughter, S.A.L., and KOKAYEE SESSION-LANSIQUOT, individually and on behalf of her minor son, M.W.S., and GWEN D. SHANNON, individually and on behalf of her minor daughter, T.Y.V., and SIMONE TAYLOR, individually and on behalf of her minor son, R.T.; SUCCESS ACADEMY CHARTER SCHOOLS – NYC on behalf of Success Academy Charter School – Harlem 4,

Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY  
SCHOOL DISTRICT OF THE CITY OF NEW YORK  
d/b/a THE DEPARTMENT OF EDUCATION OF  
THE CITY OF NEW YORK,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

Maria Placencia, parent of L.R.; Tanya Bah, parent of J.B.; Susette Barbour, parent of J.W.; Natasha Brown, parent of J.J. and J.J.; Josefina Calcano, parent of S.N.; Michael Edwards, parent of M.E.; Tinica Feimster, parent of D.H.; Maria Garcia-Rodriguez, parent of M.R.; Latoya V. Grant, parent of A.S.; Tisha Hatch, parent of R.L.; Velma Howell, parent of A.O.; Channell Kimble, parent of T.C. and T.C.; Yolanda Lowe, parent of M.L.B.; Wendy Martinez, parent of B.P.; Angel Pimentel, parent of T.P.; Rosemarie Saunders-Lee, parent of S.A.L.; Kokayee Session-Lansiquot, parent of M.W.S.; Gwen D. Shannon, parent of T.Y.V.; and Simone Taylor, parent of R.T. (“Plaintiff Parents” and “Plaintiff Children”), and Success Academy Charter Schools – NYC (“Success Academy NYC”), on behalf of Success Academy Charter School – Harlem 4 (“Harlem 4”)<sup>1</sup> (together, “Plaintiffs”), as for their Complaint against the Board of Education of the City School District of the City of New York d/b/a the Department of Education of the City of New York (“DOE”), allege as follows:

### **NATURE OF THIS ACTION**

1. This Complaint seeks declaratory and injunctive relief from Defendant’s unlawful determination to revoke the co-location of Harlem 4’s middle school, grades 5-8 (“Harlem Central”) in DOE tandem public school buildings M149/M207 (“M149/M207”), beginning in the 2014-2015 school year.

2. Harlem 4’s students—97% minority, 15% with disabilities, 80% receiving free and reduced lunch, and 12% English Language Learners—have achieved extraordinary results. They rank in the top 1% citywide in overall student performance, and Harlem Central’s fifth grade students rank first in the entire state in Math. They provide a striking example of how a

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<sup>1</sup> In September 2012, Harlem 4 was merged into a new legal entity, Success Academy NYC. Following this merger, Harlem 4 is no longer a separate legal entity and is governed by Success Academy NYC. Accordingly, Success Academy NYC is the proper Plaintiff in this proceeding.

public school drawing from predominantly minority and low-income populations can achieve exceptional educational outcomes in the right environment.

3. On February 27, 2014, in an email to the press (the “Press Release”), the DOE announced its unilateral decision to revoke the co-location of Harlem Central, leaving the school and its students without a school building. This announcement meant that Plaintiff Children were suddenly stripped of the world-class education offered to them by Harlem Central. Later that day, the new Mayor of the City of New York, Bill de Blasio (the “Mayor”) and the Chancellor of the DOE, Carmen Fariña (the “Chancellor”), publicly confirmed in a press conference that this action was a final determination to exclude Harlem Central from the space it had been approved to share with, or co-locate in, other public schools in public school building M149/M207.

4. Under New York State Education Law, Art. 52-A, § 2590, *et seq.* (the “Education Law”) and Chancellor’s Regulation A-190, such a significant change in school utilization must be approved by the DOE’s Panel for Educational Policy (“PEP”), the governance body for the DOE, after a lengthy and extensive process of public notification, input, and review. The DOE entirely disregarded these legal requirements. No PEP vote was held before revoking the Harlem Central co-location, nor were disclosures published or opportunities provided for public input as required by law. The announcement came less than six months before the start of Harlem Central’s 2014-2015 academic year, also contrary to the Education Law.

5. Instead of following the requirements of the law, the DOE undertook a closed-door “review” of co-locations previously approved by the PEP in October 2013, just five and one-half months earlier. As part of its “review,” the DOE purportedly fashioned four new “core values” that the Mayor and the Chancellor later described as “criteria,” which were never

announced prior to the publication of the Press Release. These four criteria, however, were already considered, among other factors, as part of the original co-location process regarding Harlem Central, pursuant to the DOE's duties under the Education Law. In fact, these very issues were directly considered and addressed by the PEP in a Public Comment Analysis prior to its vote to approve the Harlem Central co-location in October 2013. In the complete about-face announced in the Press Release, the DOE cited no new factual information.

6. The DOE's application of the "objective" criteria resulted in only three charter schools losing their buildings, all of which happened to be operated by Success Academy Charter Schools ("Success Academy") and its founder, Dr. Eva Moskowitz, toward whom the new Mayor has repeatedly and publicly expressed targeted animosity. The Mayor has publicly singled out Dr. Moskowitz on numerous occasions, for example, declaring that Success Academy's founder should "stop being tolerated, enabled, [and] supported" and that she has a "destructive impact" on public education (despite the extraordinary student outcomes of Success Academy's 22 principally low-income, minority schools). The revocation of these Success Academy schools (one of which is among the best public middle schools in the city) was driven by the continued arbitrary targeting of Success Academy schools and their founder.

7. Notably, Harlem Central was the only existing school with current students that had its co-location revoked by the DOE, even though the Press Release stated that it purportedly sought to be as "minimally disruptive to those existing [enrollment] processes and the families going through them."

8. One hundred ninety-four (194) middle school students who planned to attend Harlem Central in the 2014-2015 school year will now be forced out of their high-performing public school as a result of the DOE's unlawful actions. Relying on the October 2013 PEP

approval, Harlem Central parents did not pursue other middle school options for their children because they believed that they had a school for the following year at which their children could continue their education.

9. These Harlem Central students are now foreclosed, at this late date, from the New York City middle school choice admissions process, from many private school admissions processes, and from seeking scholarships to private schools, and are left with no choice but to attend either their low-performing zoned district schools or an assigned low-performing middle school within their Community School District (“CSD”). At these schools, students perform, on average, 70 percentage points worse in Math and 48 percentage points worse in English Language Arts than students attending middle school grades at Success Academy schools. In one of these schools, sadly, not a single fifth grader passed either the statewide Math or English Language Arts exam.

10. The DOE’s revocation of Harlem Central’s co-location without any public process—including notice and the opportunity to be heard—denied Plaintiffs the due process they are guaranteed under the United States Constitution. In addition, the DOE denied Success Academy NYC’s right to Equal Protection under the Fourteenth Amendment, and the DOE should be estopped under New York law from revoking the co-location of Harlem Central.

11. Plaintiffs seek a declaration that the DOE’s revocation of the Harlem Central co-location is null and void and to enjoin the DOE from taking any actions contrary to the PEP’s October 2013 determination to co-locate Harlem Central in M149/M207.

## PARTIES

### **I. Plaintiffs**

#### **A. Plaintiff Parents**

12. The Plaintiff Parents bring this action individually and on behalf of their Plaintiff Children.

13. Latoya V. Grant is the parent of A.S., a current sixth grader at Harlem Central. Ms. Grant and her child reside in and are citizens of the State of New York.

14. Tanya Bah is the parent of J.B., a current fourth grader at Harlem 4. Ms. Bah and her child reside in and are citizens of the State of New York.

15. Josefina Calcano is the parent of S.N., a current fourth grader at Harlem 4. Ms. Calcano and her child reside in and are citizens of the State of New York.

16. Angel Pimentel is the parent of T.P., a current fourth grader at Harlem 4. Mr. Pimentel and his child reside in and are citizens of the State of New York.

17. Simone Taylor is the parent of R.T., a current sixth grader at Harlem Central. Ms. Taylor and her child reside in and are citizens of the State of New York.

18. Velma Howell is the parent of A.O., a current sixth grader at Harlem Central. Ms. Howell and her child reside in and are citizens of the State of New York.

19. Tisha Hatch is the parent of R.L., a current fourth grader at Harlem 4. Ms. Hatch and her child reside in and are citizens of the State of New York.

20. Gwen D. Shannon is the parent of T.Y.V., a current fourth grader at Harlem 4. Ms. Shannon and her child reside in and are citizens of the State of New York.

21. Rosemarie Saunders-Lee is the parent of S.A.L., a current fifth grader at Harlem Central. Ms. Saunders-Lee and her child reside in and are citizens of the State of New York.

22. Kokayee Session-Lansiquot is the parent of M.W.S., a current fifth grader at Harlem Central. Ms. Session-Lansiquot and her child reside in and are citizens of the State of New York.

23. Maria Placencia is the parent of L.R., a current sixth grader at Harlem Central. Ms. Placencia and her child reside in and are citizens of the State of New York.

24. Natasha Brown is the parent of J.J. and J.J. One child attends 4<sup>th</sup> grade at Harlem 4 and the other child attends 6<sup>th</sup> grade at Harlem Central. Ms. Brown and her children reside in and are citizens of the State of New York.

25. Tinica Feimster is the parent of D.H., a current sixth grader at Harlem Central. Ms. Feimster and her child reside in and are citizens of the State of New York.

26. Wendy Martinez is the parent of B.P., a current sixth grader at Harlem Central. Ms. Martinez and her child reside in and are citizens of the State of New York.

27. Yolanda Lowe is the parent of M.L.B., a current sixth grader at Harlem Central. Ms. Lowe and her child reside in and are citizens of the State of New York.

28. Maria Garcia-Rodriguez is the parent of M.R., a current sixth grader at Harlem Central. Ms. Garcia-Rodriguez and her child reside in and are citizens of the State of New York.

29. Channell Kimble is the parent of T.C. and T.C. Both children attend Harlem Central, where one child is a current fifth grader and the other child is a current sixth grader. Ms. Kimble and her children reside in and are citizens of the State of New York.

30. Michael Edwards is the parent of M.E., a current sixth grader at Harlem Central. Mr. Edwards and his child reside in and are citizens of the State of New York.

31. Susette Barbour is the parent of J.W., a current fourth grader at Harlem 4. Ms. Barbour and her child reside in and are citizens of the State of New York.

**B. Plaintiff Success Academy NYC and Harlem 4 Middle School (Harlem Central)**

32. Success Academy NYC currently operates eighteen high-performing public charter elementary schools in New York City: five schools in Harlem, three schools in the Bronx, seven schools in Brooklyn, and three schools in other neighborhoods in Manhattan. Success Academy also operates four public charter middle schools in Harlem that serve students matriculating from certain Success Academy elementary schools. For the 2014-2015 school year, Success Academy has been planning to operate six additional public charter elementary schools, three additional public charter middle schools, and one new public charter high school.

33. “Harlem Central” is the middle school (grades 5-8) of Harlem 4, a public charter school in Harlem that currently serves elementary and middle school students. In September 2012, Harlem 4 and four other public charter schools in Harlem operated by Success Academy Charter Schools merged into one legal entity, Success Academy NYC, pursuant to Section 2853(1)(b-1) of the Education Law, as amended. Success Academy Charter Schools is a not-for-profit public charter school management organization with an exceptional record of academic achievement in schools that serve a principally minority and low-income community. Success Academy schools are authorized by the Board of Trustees of the State University of New York. All Success Academy schools accept students on a random lottery basis, without any consideration for intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry of its applicants.

34. Currently, Harlem 4’s elementary school educates approximately 420 students in kindergarten through fourth grades at a separate location, DOE public school building M113. Elementary school students from Harlem 4 matriculate into Harlem Central, which currently educates approximately 120 students in fifth and sixth grades in tandem buildings M185 and



M208. Building M185/M208 is a temporary, one-year co-location for Harlem Central for the 2013-2014 school year. During the 2012-2013 school year, Harlem Central was sited in another temporary, one-year co-location in M149/M207—the same building at issue in this Complaint. Next year, 2014-2015, Harlem Central will serve 180-210 students in fifth through seventh grades. At full scale, in 2018-2019, Harlem Central will serve 335-375 students in fifth through eighth grades.

35. Prior to the DOE's revocation of the Harlem Central co-location, the school planned to start the 2014-2015 school year co-located in public school building M149/M207 on August 25, 2014.

## **II. Defendant**

36. Defendant Board of Education of the City School District of the City of New York is the governing body of the Department of Education of the City of New York. The DOE is a corporate body, created by Article 52 of the New York State Education Law, N.Y. Educ. Law § 2550, *et seq.*, that manages and controls the affairs of the New York City Public Schools.

37. At all times relevant to this action, the DOE acted under color of state law and its actions constitute state action.

### **JURISDICTION AND VENUE**

38. Jurisdiction is conferred upon this Court under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), as this action seeks redress for the violation of Plaintiffs' federal constitutional rights.

39. Plaintiffs further invoke this Court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), over the state law claim in that it is so related to the claims within the original jurisdiction of this Court that they form a part of the same case or controversy.

40. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

41. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391.

### **FACTUAL BACKGROUND**

#### **I. New York Constitutional Right to a Sound, Basic Public Education And Success Academy NYC's Related Mission**

42. Article 11, Section 1 of the New York Constitution mandates: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."

43. Success Academy schools, including Harlem Central, provide their students with an exceptional education that prepares them to excel in college, the workplace, and as civic participants. The well-rounded education that they receive results in literacy, math, writing, and verbal skills that meet and far surpass State educational standards.

44. Success Academy has as its mission to establish charter schools, including Harlem Central, in part to address what it perceives to be the constitutional shortcomings of New York City's public schools by providing a high quality free, public alternative to traditional public schools.

45. The district schools that Harlem Central students would otherwise attend do not provide a level of education that prepares their students to participate meaningfully in the workplace or function productively as civic participants. At these schools, the average pass rate in Math for fifth, sixth, and seventh grades is 11.9% for zoned schools and 18.2% for CSDs with middle school choice, meaning that only 11.9% and 18.2% of students are proficient for their grade levels in Math. For English Language Arts, the average pass rate is 12.5% for zoned schools and 18.1% for CSDs with middle school choice, meaning that only 12.5% and 18.1% of

students are proficient for their grade levels in English. In one of these schools, not a single fifth grader passed either the Math or the English Language Arts exam.

## **II. Success Academy and Harlem Central: A History Of High-Performing Co-Located Public Charter Schools Serving Primarily Low-Income and Minority Students**

46. Success Academy schools have a long track record of extraordinarily high student achievement. Success Academy schools serve principally minority and low-income communities. These schools, for students that have reached New York State testing grades (grades three and up), consistently rank in the top 3% of New York City public schools in student performance—matching or exceeding Gifted and Talented programs.

47. Harlem 4 students in particular have achieved extraordinary outcomes. On the 2012-2013 New York State assessments, Harlem 4 testing grades (third through fifth grades) had a pass rate of 83.2% in Math and 55.3% in English Language Arts—nearly three times the citywide pass rate in Math and more than double the citywide pass rate in English Language Arts. Harlem 4 ranks in the top 1% citywide in overall student performance, ranking higher than four out of the five citywide Gifted and Talented programs. Harlem Central’s fifth grade ranks first in the entire state in Math. Harlem Central’s fifth grade is also in the top 11% of students statewide in English Language Arts, and outperformed the Scarsdale School District, a suburban, predominantly Caucasian school district in New York, by 28 percentage points in Math in 2013.

48. Harlem 4 and Harlem Central serve students in Central Harlem, a community that is largely low-income and minority. 97% of Harlem 4’s students are African American or Hispanic, and 80% receive free or reduced-price lunch. 15% of Harlem 4’s students are children with disabilities. 12% are English Language Learners.

49. Only 15.3% of African American students in New York City passed the New York State Math assessment and 16.3% passed the English Language Arts assessment. Hispanic

students had similarly low pass rates of 18.0% and 16.6%, respectively. These numbers stand in stark contrast to the pass rates for Caucasian and Asian students—55.7% passed the Math assessment, and 47.4% passed the English Language Arts assessment.

50. Citywide, the achievement gap on New York State’s 2012-2013 assessments between students qualifying for free and reduced priced lunch, as compared with students who do not qualify, is 28.3 percentage points in Math and 28.7 percentage points in English Language Arts.

51. For Harlem Central’s rising fifth, sixth, and seventh graders zoned for district middle schools, the average pass rate for the corresponding grades at their zoned schools is 11.9% in Math and 12.5% in English Language Arts. These average pass rates represent a drop of 69.8 percentage points in Math proficiency and 48.3 percentage points in English Language Arts proficiency, as compared to the same middle school grades at Success Academy schools.

52. Some of Harlem Central’s rising fifth, sixth, and seventh graders reside in CSDs with middle school choice, and thus do not have an assigned zoned school. These students lack true choice, however, as the schools they have to choose among are chronically low-performing. The CSDs where these students with middle school choice reside have an average pass rate of 18.2% in Math and 18.1% in English Language Arts for corresponding middle school grades, representing a 66.8 percentage point decrease in Math proficiency and a 46.1 percentage point decrease in English Language Arts proficiency, as compared to the same middle school grades at Success Academy schools.

53. Across all grades, the available DOE school options perform on average 63.1 percentage points to 78.7 percentage points worse (depending on the grade) than Harlem Central in Math and 31.4 percentage points to 74.6 percentage points worse in English Language Arts.

54. If Harlem Central students are unable to attend one of the highest-performing middle schools across the state, they will have no choice but to attend some of the lowest-performing schools in New York City.

### **III. Harlem Central's Plaintiff Parents and Plaintiff Children**

55. All of the Plaintiff Parents intended to send their children to Harlem Central for the 2014-2015 school year. None of the Plaintiff Parents was notified in advance of the DOE's final decision to revoke Harlem Central's co-location. None of the Plaintiff Parents applied for a DOE public middle school, or any other public or private middle school, relying on the fact that their children would be able to attend Harlem Central. All of the Plaintiff Parents' children effectively have no other options at this point in the year than to attend their zoned district school or an assigned middle school within their CSD, as the middle school choice admissions process is closed.

56. A.S., the daughter of Plaintiff Latoya Grant, is receiving As and Bs at Harlem Central. If forced from Harlem Central, Ms. Grant would need to enroll her daughter in the zoned district school. A.S.'s zoned school is I.S. 117. The seventh grade pass rate at I.S. 117 last year was 4.1% in Math and 6.7% in English Language Arts.

57. J.B., the son of Plaintiff Tanya Bah, is excelling at Harlem 4. He is in the fourth grade honors math class, and he is reading above his grade level. J.B. is a special education student with an Individualized Education Program ("IEP"),<sup>2</sup> and he has received special education services since he was two years old. He initially attended his zoned district school, P.S. 194, but was not progressing and was not receiving speech therapy services on a consistent basis, so Ms. Bah enrolled him in Harlem 4 in the first grade. The fifth grade pass rate at P.S.

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<sup>2</sup> An Individualized Education Program ("IEP") is a plan developed for a child receiving special education or related services that details the child's academic performance, annual goals, necessary services and accommodations, and progress. 20 U.S.C. § 1414(d).

194 last year was 0% in Math and 0% in English Language Arts, meaning not a single student passed either test.

58. S.N., the daughter of Plaintiff Josefina Calcano, is getting As and Bs at Harlem 4. On February 27, 2014, Ms. Calcano found out that the DOE was effectively closing Harlem Central. Had she been given the opportunity to be heard, Ms. Calcano would have objected to the DOE's decision to revoke the co-location of Harlem Central. S.N.'s zoned district school is P.S. 75. The fifth grade pass rate at P.S. 75 last year was 27.9% in Math and 25.2% in English Language Arts.

59. T.P., the son of Plaintiff Angel Pimentel, is a special education student with an IEP, and he was an English Language Learner ("ELL"). T.P. started school at his zoned district school, P.S. 180. In first grade, T.P. was struggling academically. He eventually received an IEP and began receiving speech therapy. After receiving these services for some time, T.P. was still not progressing. After second grade, T.P.'s parents moved him to Harlem 4, where he had to repeat the second grade because he did not meet the basic academic requirements to progress to third grade. T.P. is now thriving at Harlem 4 academically. Whereas he failed the English proficiency test three times at P.S. 180, after slightly more than a year at Harlem 4, he became English proficient and passed the test. The fifth grade pass rate at P.S. 180 last year was 17.4% in Math and 7.4% in English Language Arts.

60. R.T., the son of Plaintiff Simone Taylor, is a special education student with an IEP. Ms. Taylor was not offered an opportunity to comment or provide input in advance of the DOE's revocation decision. R.T. attended P.S. 126 for Kindergarten before he came to Harlem 4 and Harlem Central. He was forced to repeat kindergarten at Harlem 4 because he was not prepared for first grade based on the education he received at P.S. 126. R.T.'s zoned district

school is I.S. 299. The seventh grade pass rate at I.S. 299 last year was 7.8% in Math and 6.2% in English Language Arts.

61. A.O., the son of Plaintiff Velma Howell, is an honors math student at Harlem Central. A.O.'s zoned district school is Creston Academy. The seventh grade pass rate at Creston Academy last year was 3.3% in Math and 4% in English Language Arts.

62. R.L., the son of Plaintiff Tisha Hatch, is a special education student with an IEP. R.L. is receiving his needed IEP services at Harlem 4. R. L. has a B average at Harlem 4. Prior to attending Harlem 4, R.L. attended P.S. 209 in the Bronx. Ms. Hatch was told in pre-kindergarten that R.L.'s motor skills were lacking and he needed occupational therapy. R.L. was tested but was never provided adequate services. When R.L. finally received an IEP, he received inconsistent special education services at his old school. R.L.'s zoned district school is P.S. 84. The fifth grade pass rate at P.S. 84 last year was 23.6% in Math and 18.2% in English Language Arts.

63. T.Y.V., the daughter of Plaintiff Gwen D. Shannon, is a special education student with an IEP. T.Y.V. is performing well at Harlem 4. Had she been given the opportunity to be heard, Ms. Shannon would have objected to the DOE's decision to revoke the co-location of Harlem Central. T.Y.V.'s zoned school is P.S. 7. The fifth grade pass rate at P.S. 7 last year was 32.6% in Math and 20.9% in English Language Arts.

64. S.A.L., the daughter of Plaintiff Rosemarie-Saunders-Lee, is a special education student with an IEP. S.A.L is succeeding at Harlem Central. Had she been given the opportunity to be heard, Ms. Saunders-Lee would have objected to the DOE's decision to revoke the co-location of Harlem Central. Ms. Saunders-Lee lives in CSD 4, where the average sixth grade pass rate last year was 17.9% in Math and 16% in English Language Arts.

65. M.W.S., the son of Plaintiff Koyakee Session-Lansiquot, is a special education student with an IEP. Had she been given the opportunity to be heard, Ms. Session-Lansiquot would have objected to the DOE's decision to revoke the co-location of Harlem Central. Ms. Session-Lansiquot lives in CSD 7, where the average sixth grade pass rate last year was 8.8% in Math and 8.2% in English Language Arts.

66. L.R., the daughter of Plaintiff Maria Placencia, has been at Success Academy since 1st grade and excels in every aspect of the curriculum. L.R. is reading on the highest level. Ms. Placencia travels a great distance to take her daughter to Harlem Central. Ms. Placencia has not made other school plans for L.R. next year. Ms. Placencia is afraid that if L.R. went to a CSD school she would lose interest and the confidence she has gained at Harlem Central. Ms. Placencia was not given a chance to voice her opinion at a public hearing. Had she been given the opportunity, Ms. Placencia would have opposed the revocation of the co-location of Harlem Central. Ms. Placencia lives in CSD 5, where the average seventh grade pass rate last year was 10.8% in Math and 15% in English Language Arts.

67. J.J. and J.J., the sons of Plaintiff Natasha Brown, are excelling academically at Harlem 4 and Harlem Central, respectively. Her sons are studying subjects that they would not learn for many years in the CSD middle school. Ms. Brown was never notified in advance of the revocation of Harlem Central's co-location. Had she been given the opportunity to be heard, Ms. Brown would have objected to the DOE's decision. Ms. Brown lives in CSD 7, where the average fifth grade pass rate last year was 9.8% in Math and 9.6% in English Language Arts. The CSD's average seventh grade pass rate for middle schools last year was 6.2% in Math and 8.1% in English Language Arts.



68. D.H., the daughter of Plaintiff Tinica Feimster, has made considerable progress at Harlem Central in reading and math. D.H. used to struggle with math but is now in a math honors class. Ms. Feimster lives in CSD 5, where the average seventh grade pass rate last year was 10.8% in Math and 15% in English Language Arts.

69. B.P., daughter of Plaintiff Wendy Martinez, is receiving an excellent education at Harlem Central and has scored at the highest level on the state tests. Had she been given the opportunity to be heard, Ms. Martinez would have objected to the DOE's decision to revoke the co-location of Harlem Central. Ms. Martinez has no other options for B.P. except for the failing schools in her neighborhood. Ms. Martinez lives in CSD 5, where the average seventh grade pass rate last year was 10.8% in Math and 15% in English Language Arts.

70. M.L.B., daughter of Plaintiff Yolanda Lowe, has had a successful academic and social experience at Harlem Central. Had she been given the opportunity to be heard, Ms. Lowe would have objected to the DOE's decision to revoke the co-location of Harlem Central. Ms. Lowe will not send her daughter to a failing district school, but Ms. Lowe currently has no other options. Ms. Lowe lives in CSD 7, where the average seventh grade pass rate last year was 6.2% in Math and 8.1% in English Language Arts.

71. M.R., daughter of Plaintiff Maria Garcia-Rodriguez, is receiving a great education at Harlem Central. Ms. Garcia-Rodriguez was never informed in advance of the Harlem Central co-location revocation. Had she been given the opportunity to be heard, she would have objected to the revocation of Harlem Central's co-location. Ms. Garcia-Rodriguez lives in CSD 4, where the average seventh grade pass rate last year was 15.5% in Math and 18.8% in English Language Arts.

72. T.C. and T.C., sons of Plaintiff Channell Kimble, are performing at a high level at Harlem Central. Ms. Kimble was never informed in advance of the revocation of Harlem Central's co-location. Had she been given the opportunity to be heard, Ms. Kimble would have objected. Ms. Kimble has not considered other middle school options but will not send her sons to a failing district school. Ms. Kimble lives in CSD 3, where the average sixth grade pass rate last year was 39.3% in Math and 35% in English Language Arts. The CSD's average seventh grade pass rate last year was 36.5% in Math and 40.2% in English Language Arts.

73. M.E., the son of Plaintiff Michael Edwards, has been performing well at Harlem Central. Mr. Edwards was not provided with the opportunity to be heard prior to the revocation of Harlem Central's co-location. Mr. Edwards cannot afford private school for his child. Mr. Edwards lives in CSD 5, where the average seventh grade pass rate last year was 10.8% in Math and 15% in English Language Arts.

74. J.W., the son of Plaintiff Susette Barbour, is a special education student with an IEP. J.W. is making great progress at Harlem 4 and recently graduated from a number of the IEP services he needed when he first enrolled. J.W.'s grades improve every year, and Ms. Barbour attributes her son's success to the assistance he receives at Harlem 4. Ms. Barbour was not notified in advance of the revocation of Harlem Central's co-location. Had she been given the opportunity, she would have opposed the decision. Ms. Barbour lives in CSD 12, where the average fifth grade pass rate last year was 10.7% in Math and 8.1% in English Language Arts. Ms. Barbour will not send her son to a failing traditional public middle school in her CSD, but Ms. Barbour currently has no other options.

#### **IV. New York State Education Law Permits the Co-location of Public Charter Schools in Public School Buildings**

75. New York State Education Law sets forth a detailed, comprehensive process for the approval of any school co-location, which is defined as a “significant change in school utilization.”

76. Specifically, once a charter authorizer approves a charter for a charter school, the school may share, or co-locate in, a public school building with traditional public schools.

77. For any proposal to co-locate a school (traditional or charter) in a public school building, the Chancellor must first prepare an Educational Impact Statement (“EIS”). The EIS must be made publicly available, including via the PEP’s official website, at least six months in advance of the first day of school in the succeeding school year. The EIS must include an analysis of a variety of features of the proposal, including “the ramifications . . . upon the community,” “the impacts . . . to any affected students,” and “the effect . . . on personnel needs, the costs of instruction, administration, transportation, and other support services.”

78. In addition, for any proposal to co-locate a charter school in a public school building, the DOE must also draft a Building Usage Plan (“BUP”). The BUP provides further information and analysis of the DOE’s decision, including, *inter alia*, information on “the actual allocation and sharing of classroom and administrative space between the charter and non-charter schools,” “a proposal for the collaborative usage of shared resources and spaces,” and a justification of how the proposed allocation and shared usage of space “would result in an equitable and comparable use of such public school building.” The BUP is included within the EIS prepared by the DOE.

79. Within 30 to 45 days after the EIS is posted on the PEP’s official website, the Chancellor or her designee must hold a joint public hearing to allow interested parties to present

comments and concerns regarding the proposal. Notice of the hearing must be widely and conspicuously posted. The DOE also must accept public comments via phone and e-mail.

80. The proposal is then submitted to the PEP for final approval. Before the PEP votes on the proposal, the DOE must issue a Public Comment Analysis, which analyzes all of the comments and concerns submitted to the DOE at least 24 hours in advance of the PEP's vote. The Public Comment Analysis must also include a statement about whether or not the DOE amended the proposal based on the comments it received.

81. The PEP may either vote to approve or reject the proposal. If the PEP approves the proposal, the affected co-located schools, in reliance on the PEP's decision, begin planning for the upcoming school year. As part of the approval process, the PEP issues a resolution memorializing its determination.

82. The New York State Commissioner of Education recognizes that the PEP's approval or denial of an EIS is a final determination, and considers charter schools necessary parties to any challenges to their co-locations pursuant to New York State Education Law.

83. When the DOE decides to close a traditional public school, it must comply with a similar process under New York State Education Law, as well as additional DOE procedures and protocols governing school phase-outs and closures. For schools being closed, the DOE prepares and publicly files an EIS describing and justifying the proposal. In addition, the DOE initiates a comprehensive review, including analyzing the school's recent historical performance and enrollment data, analyzing efforts already underway to improve the schools, consulting with superintendents and experienced educators, and gathering community feedback.

84. There are no permissible means under the New York State Education Law for the DOE to unilaterally revoke a charter school co-location.

## **V. The Proposal to Co-Locate Harlem Central in M149/M207**

85. On August 30, 2013, the DOE issued public notice of the proposed co-location of the middle school grades of Harlem 4 (Harlem Central) in public school building M149/M207, pursuant to New York Charter Law § 2853(3)(a-3). That same day, the DOE publicly filed and released its EIS and Second Revised BUP for the proposed permanent co-location of Harlem Central in M149/M207, describing the proposal in detail in both documents.

86. Building M149 is located at 34 West 118<sup>th</sup> Street, New York, NY 10026, and Building M207 is located at 41 West 117<sup>th</sup> Street, New York, NY 10026, both within CSD 3. M149 and M207 are “tandem buildings,” meaning that they are two separate buildings with separate entrances but are joined by a central core containing large shared spaces, such as auditoriums, gymnasiums, and/or cafeterias.

87. M149/M207 houses three other co-located schools: P.S. 149 Sojourner Truth (“P.S. 149”), a traditional public elementary and middle school that serves students in kindergarten through eighth grades and offers a pre-kindergarten program; P.S. M811 Mickey Mantle School (“PS811M@M149”), one site of a District 75 school that serves disabled students in kindergarten through eighth grades and offers a pre-kindergarten program; and Success Academy Charter School – Harlem 1 (“Success Academy Harlem 1”), a public charter school that serves students in kindergarten through fourth grades. In addition, the DOE currently permits one Community Based Organization, the Harlem Children’s Zone – Harlem Gems Program, to utilize space in M149/M207 for the operation of a universal pre-kindergarten program.

88. As required by the law, the EIS described in detail the considerations underlying the DOE’s proposal to co-locate Harlem Central in M149/M207, and the BUP described in detail how the buildings’ space would be allocated and shared among the co-located schools.

89. In the EIS issued for Harlem Central’s co-location, the DOE concluded that M149/M207 is an underutilized public school building. According to the 2011-2012 Enrollment, Capacity, Utilization Report (“Blue Book”), M149/M207 has the capacity to serve 1,205 students. For the 2013-2014 school year, the building serves approximately 1,104 students.

90. The DOE translates the information in the Blue Book into an “Instructional Footprint” to determine the baseline number of rooms that should be allocated to a school based on the grade levels served by the school and the number of sections per grade.

91. Based on enrollment and section projections for 2013-2014, each school co-located in M149/M207 currently receives the “baseline” allocation of space it is entitled to under the Instructional Footprint, and has further been allocated “excess space” beyond its baseline allocation. Moreover, for each year of the Harlem Central co-location currently at issue, P.S. 149 and PS811@M149 would continue to receive excess space in addition to their baseline allocations.

92. Pursuant to its extensive analysis of the co-location proposal, as set forth in the EIS and BUP published by the DOE, the DOE determined prior to the October 15, 2013 PEP vote that M149/M207 has sufficient space to accommodate Harlem Central, even when Harlem Central is operating at its approved full scale enrollment in the 2018-2019 school year.

## **VI. The Approval Process for the Harlem Central Co-Location in M149/M207**

93. Between August 30 and October 10, 2013, the EIS and BUP for the Harlem Central co-location were distributed in accordance with the New York State Education Law, and public comment was solicited.

94. Consistent with the Education Law, on October 10, 2013 the DOE held a joint public hearing at M149/M207 for the proposed co-location of Harlem Central in M149/M207 and received public comment. Approximately 114 members of the public attended the hearing,

and 23 people spoke. The DOE received a total of 58 comments from hearing participants, e-mail, and voicemail, on a variety of topics, including placement of District 75 students.

95. Following the hearing, the DOE published a Public Comment Analysis, which set forth the DOE's assessment of the concerns and comments submitted by the public at the hearing, via phone, and in writing. The DOE's Public Comment Analysis concluded that no changes were necessary to the proposal as a result of the public comments that were received.

96. On October 15, 2013, the PEP voted to approve the co-location of Harlem Central in M149/M207. After approving the co-location, the PEP issued a resolution creating a written record of its determination, stating:

WHEREAS, the Chancellor recommends that the Panel approve the Proposal; and

WHEREAS, it is the desire of the Panel to approve the Proposal; now therefore be it

RESOLVED, that in accordance with Education Law § 2590-g, the Panel for Educational Policy hereby approves the proposed co-location of grades five through eight of Success Academy Charter School – Harlem 4 (84M386) with existing schools P.S. 149 Sojourner Truth (03M149), P.S. M811 Mickey Mantle School (75M811), and grades kindergarten through four of Success Academy Charter School – Harlem 1 (84M351) in tandem buildings M149 and M207 beginning in the 2014-2015 school year.

97. Following the PEP approval and pursuant to the EIS and BUP, M149/M207 would serve as the permanent location for Harlem Central starting the 2014-2015 school year.

## **VII. The DOE's Statements and Actions Upon Which Plaintiffs Detrimentially Relied**

98. The PEP undertook this same approval process for the temporary co-location of Harlem Central's fifth grade in M149/M207 for the 2012-2013 school year.

99. On March 5, 2012, the DOE published a public notice, as well as the EIS and a BUP, for this proposed co-location. From March 5 through April 19, 2012, the EIS and BUP for

the co-location of the fifth grade of Harlem Central in M149/M207 were disseminated and written public comment was solicited.

100. On April 19, 2012, the DOE held a joint public hearing at M149/M207 for the proposed co-location and received public comment on the proposal. On April 25, 2012, the DOE issued a Public Comment Analysis for this co-location, and determined that no changes to the proposal were necessary.

101. On April 26, 2012, the PEP voted to approve the proposed co-location and issued a resolution formally approving the co-location.

102. The temporary, one-year co-location of the fifth grade of Harlem Central at M149/M207 accordingly was implemented.

103. The same PEP approval process sited Harlem Central's fifth and sixth grades in M185/M208 for the current, 2013-2014 school year. On March 1, 2013 the DOE published public notice, as well as the EIS and a BUP for this proposed co-location. On April 8, 2013, the DOE held a joint public hearing at M185/M208 for the proposed co-location. On April 16, 2013, the DOE issued a Public Comment Analysis and determined that no changes to the proposal were necessary. On April 17, 2013, the PEP voted to approve the co-location, and the temporary, one-year co-location of the fifth and sixth grades of Harlem Central in M185/M208 accordingly was implemented.

104. In the EIS, the BUP, and the Public Comment Analysis prepared prior to the October 2013 PEP vote on Harlem Central's permanent co-location in M149/M207, the DOE likewise unequivocally stated its support for the Harlem Central co-location.

105. In the EIS, the DOE stated that it "supports the co-location of grades five through eight of SA - Harlem 4 in M149/M207 beginning in 2014-2015. This proposal is intended to



create a long-term site for SA - Harlem 4's students in grades five through eight and allow SACS to continue providing high-quality educational opportunities for students in Manhattan."

106. On January 27, 2014, the DOE affirmed, in response to litigation, that the PEP's approval of the Harlem Central co-location was "equitable," "neither arbitrary nor capricious," and "should be upheld."

#### **VIII. Actions Taken By Plaintiffs In Reliance on the PEP Approval of the Co-Location in M149/M207**

107. Following the PEP's approval on October 15, 2013, Harlem Central undertook several steps in anticipation of opening its doors in M149/M207 for the 2014-2015 school year.

108. Harlem Central proceeded with staffing plans, including extensive recruitment activities and hiring a new principal, other administrators, and teachers.

109. Harlem Central also started detailed planning for the use of the rooms it had been allocated in the DOE's Second Revised BUP, and met with the DOE and contractors to discuss appropriate modifications to those rooms.

110. The Plaintiff Parents relied on the PEP's approval of Harlem Central's co-location in M149/M207. In particular, they did not seek to enroll their Plaintiff Children in any other schools. Fifth grade public school students without a school to attend the following year must participate in the DOE's Middle School Admissions process, and the deadline to submit the application for the 2014-2015 school year was December 13, 2013. Therefore, almost three months before the DOE announced its intention to revoke the Harlem Central co-location, the Plaintiff Parents had opted not to apply for DOE middle schools in reliance on the PEP's approval.

111. The Plaintiff Parents also did not seek out seats at private schools for their children or apply for scholarships to private schools. The deadlines to apply to most private

schools within the city, as well as the opportunity to be considered for scholarships and financial aid, also passed prior to the DOE's revocation announcement in the Press Release.

112. The Plaintiff Parents and the other parents of current and future Harlem Central students believed that their children would be able to attend Harlem Central in the 2014-15 school year and beyond, and planned for them to do so.

**IX. The Election of a New Mayor and the Increased Animus of the Mayor, the DOE, and the Chancellor Toward Success Academy Schools in Particular**

113. The Mayor, then the Public Advocate for the City of New York, announced his intention to run for the position of Mayor on January 27, 2013.

114. In the past, the then-Public Advocate used his office and the public forum to target Success Academy schools and the founder and Chief Executive Officer of Success Academy. For example, he publicly called for the DOE to halt the co-location of a Success Academy school and stated that he “wholeheartedly support[ed]” a lawsuit against Success Academy and the co-location.

115. During his mayoral campaign, the then-Public Advocate's attacks on Success Academy and its founder intensified. For example, the Mayor stated it was “time for [Success Academy's founder] Eva Moskowitz to stop having the run of the place,” that she must “stop being tolerated[,] enabled[,] supported[,]” and that she has a “destructive impact” on public education. The Mayor also stated that “[i]t's time for Eva Moskowitz's privilege and power to end.” The Mayor further stated that there is “no way in hell Eva Moskowitz should get free rent.”

116. Upon information and belief, the Mayor never publicly singled out any other charter school operator during his mayoral campaign like he did Success Academy schools and their founder.

117. After he was elected on November 5, 2013, the Mayor appointed the Chancellor to her position on December 30, 2013. The Chancellor serves at the will of the Mayor. Upon information and belief, the DOE made its February 27, 2013 determination at the direction of the Mayor.

**X. The DOE's Improper Revocation of Harlem Central's Co-location**

118. After the Mayor took office, he and the Chancellor stated that they were undertaking a review of co-locations approved by the prior administration, but provided no details regarding what such a review would involve.

119. Upon information and belief, such a categorical review by the DOE of PEP-approved co-locations was entirely unprecedented.

120. The DOE published no criteria for such a review and did not invite Success Academy NYC, Plaintiff Parents, Plaintiff Children, or other charter schools, parents, teachers, or students to be a part of the "review" process.

121. On February 27, 2014, DOE Press Secretary Devon Puglia distributed the DOE's Press Release via e-mail, which set forth a final determination by the DOE to revoke the co-location of Harlem Central in M149/M207.

122. The only charter school co-locations revoked were three Success Academy schools. Although the DOE also revoked six district school co-locations, it offered to re-site three of them. The DOE did not offer any plans to re-site any of the revoked Success Academy schools, including Harlem Central, the only existing school.

123. This announcement was made less than six months before August 25, 2014, the start of Harlem Central's 2014-2015 school year.

124. The Press Release stated that the DOE had conducted a "review of the proposals previously approved last fall." It further stated that, as a result of the "review," "we are

withdrawing 9 proposals,” but that three of the nine would be re-sited with new EISs, leaving six revocations. The Press Release did not explain how the Education Law or any other law allowed a proposal to be “withdrawn” after it had already been approved by the PEP.

125. The Press Release stated that the DOE had considered 49 co-locations approved by the PEP at its October 15 and October 30 meetings in 2013. The remainder of the co-locations approved during 2013 for the 2014-2015 school year—at PEP meetings on January 16, March 11, March 20, May 22, and June 19—were not targeted for “review.”

126. In the Press Release, the DOE set forth “several core values” that it claimed “comprised the lens” through which it conducted its “review”:

First, we do not believe new elementary schools should be opened on high school campuses. While there are examples where it can be effective, overall we have heard concerns from high school communities, as well as elementary level ones, about this practice. We believe high school campuses should serve high school students. Second, we want to ensure that all new schools have the resources they need to provide the services students deserve. Very small schools under 250 students may have difficulty providing the range of support needed to serve our students effectively. Third, we considered construction. We looked closely at proposals that would have depended on significant capital work to create space for the co-location, or those that required substantial dislocation to the existing schools within a building. Last, we considered District 75 capacity. We will not reduce seats for these students.

127. The Mayor held a press conference the same day (February 27, 2014) to announce to the public the DOE’s determination to revoke certain co-locations approved by the PEP in October 2013.

128. In this press conference, the Mayor described the purported “core values” as “consistent, objective criteria.” The Chancellor has also repeatedly referred to them as “criteria.” Neither the Mayor nor the Chancellor provided further details about how each co-location was

reviewed under these criteria. The DOE did not state which, if any, of the criteria each of the 49 reviewed co-locations did or did not meet.

129. The Plaintiff Parents and other parents whose children were scheduled to attend Harlem Central starting in August 2014 had no warning from the DOE before the Press Release was issued and no opportunity to be heard by any decision-maker.

130. The DOE did not state, prior to the DOE's final decision, that such a review could involve the revocation of lawfully approved co-locations. The DOE also did not state that if some adverse action were taken by the DOE in relation to an approved co-location, the DOE would not provide alternative space for the affected school.

131. The revoked co-locations included three charter schools, all of which were Success Academy schools: Harlem Central and two new elementary schools, Success Academy Charter School – City Hall and Success Academy Charter School – Jamaica.

132. Harlem Central was the only existing school with current students that had its co-location revoked by the DOE, even though the DOE Press Release claimed that the DOE sought to be “minimally disruptive to those existing [enrollment] processes and the families going through them.”

133. Given the timing of the announcement (less than six months before the August 25, 2014 start of Harlem Central's 2014-2015 school year) and the significant difficulty and expense associated with locating a new facility, the DOE's announcement effectively closed Harlem Central, one of the top-performing schools in New York State. Parents whose children were scheduled to attend Harlem Central in the fall had no warning from the DOE. As the Chancellor phrased it in a moment of candor that she later admitted regretting, Harlem Central children are

“on their own”—with even the deadline for participating in the dismal available alternatives expired.

134. The DOE did not (and as of the date of this Complaint, has not) offered any plan to re-site any of the revoked Success Academy schools, including Harlem Central. Additionally, the DOE did not follow the Press Release with any report or further discussion of the details or process for its review. As of the date of this Complaint, the Press Release is not publicly available on the DOE’s website. Instead, the only publicly available information is the Mayor’s opaque statements that “we [] review[ed]” the co-locations; “[w]e set out consistent, objective criteria;” and “[m]oving forward we will have a new approach in place.”

135. After the DOE announced its revocation of Harlem Central and two other Success Academy NYC schools, the Mayor stated that Success Academy’s reaction to the decision was a “sideshow” and that the Success Academy founder was only “an individual with a soapbox.”

136. The Chancellor has stated that the DOE needs to find space for “our own kids” and not public charter school students.

137. After the February 27 revocation decision, when asked about where Harlem Central students would go next year, the Chancellor stated “they’re charter schools. They’re on their own now.” Chancellor Fariña later stated that she had misspoken and regretted the remarks.

## **XI. The DOE’s Criteria As Applied to Harlem Central’s Co-Location**

138. The DOE’s Press Release set forth certain criteria it claims it considered during the “review” it conducted behind closed doors: (1) no elementary schools are permitted to be co-located in high school buildings; (2) small schools, serving under 250 students, are disfavored; (3) co-locations that would require significant capital work or substantial dislocation to existing

schools in the building are disfavored; and (4) no co-locations that result in reduced seats for District 75 students are permitted.

139. These four criteria reflect the types of considerations raised by the public and considered by the PEP prior to the approval of the Harlem Central co-location in October 2013.

140. The DOE's 24-page EIS describing the Harlem Central co-location, and the 27-page BUP approved by the PEP, included analysis on the potential application of the "new" criteria to the Harlem Central co-location, as did the DOE's 19-page Public Comment Analysis, published prior to the PEP's October 15, 2013 vote.

141. Although the Press Release treated these criteria as new considerations, they were not. They had been considered and addressed at the time set, and in the manner established, by the New York State Education Law—during the PEP approval process.

142. In addition to these criteria, in approving the Harlem Central co-location, the DOE also considered the strong academic track record of Harlem Central, concluding: "The DOE supports the co-location of grades five through eight of [Success Academy]-Harlem 4 in M149/M207 beginning in 2014-2015. This proposal is intended to create a long-term site for SA-Harlem 4's students in grades five through eight and allow [Success Academy] to continue providing high-quality educational opportunities for students in Manhattan."

143. In other words, in approving Harlem Central's co-location in M149/M207, the DOE took into account how successfully the school educated its students—inarguably, what should be the most important consideration, and the consideration most arbitrarily absent from the DOE's criteria set forth in the Press Release. Instead, the DOE relied upon four purportedly new criteria that were demonstrably arbitrary and capricious.

144. Harlem Central's co-location was singled out for revocation even though, as set forth below, not a single criterion is applicable to Harlem Central. Upon information and belief, there are other charter school co-locations that were reviewed for which none of the four criteria applied. Harlem Central's co-location was similarly situated with such co-locations. Such other charter schools' co-locations were not revoked.

145. Upon information and belief, there are also other charter schools whose co-locations were reviewed for which one or more criteria applied, and yet their co-locations were not revoked. In revoking Harlem Central's co-location, the DOE treated Success Academy NYC selectively and adversely as compared to other similarly situated charter schools whose co-locations the DOE reviewed and did not revoke.

**A. Criterion 1**

146. The first criterion appears to be that the DOE will forbid elementary schools and high schools from co-locating in one building.

147. Harlem Central's co-location is not a co-location of an elementary school with a high school. Therefore, the first criterion does not apply to the Harlem Central co-location.

148. In any event, this first criterion is pretextual as demonstrated by its inconsistent application by the DOE. The DOE has previously recommended and the PEP has approved the co-locations of at least 30 elementary schools in buildings that simultaneously serve high school students. Throughout New York City, elementary school and high school students learn on shared campuses, including traditional public schools, public charter schools, and private schools that serve kindergarten through high school grades.

149. The DOE has made multiple statements in the past acknowledging that concerns about co-locating elementary and high schools in one building are unfounded. For example, when proposing to site a Success Academy elementary school with Louis D. Brandeis High



School and four other high schools in 2011, the DOE noted that “[c]urrently, the DOE manages other campuses where elementary schools are co-located with high schools,” and that “[b]ased on its experiences with these co-locations, none of these co-locations have presented any unusual problems due to the co-location of elementary age students with high school age students.” And, Success Academy schools’ own experience in successfully co-locating elementary schools with high schools shows that, far from being a concern, hosting elementary and high school aged children in a building together has served to improve stability.

150. Furthermore, the DOE did not even apply this criterion consistently during its 2014 “review.” The DOE “reviewed” a co-location approved by the PEP on October 30, 2013 that co-located another elementary charter school in a building that houses a high school. Yet, despite the co-location of high school and elementary students in one building, the DOE did not revoke that co-location on February 27, 2014. Instead, it announced that it would be implemented.

**B. Criterion 2**

151. The DOE’s second criterion is that small schools, under 250 students, are disfavored. The only explanation offered by the DOE was that “[v]ery small schools under 250 students may have difficulty providing the range of support needed to serve our students effectively.” The DOE did not state whether “small schools under 250 students” includes schools that are expanding as new grade levels are added.

152. Harlem Central currently serves approximately 120 students, but is projected to serve approximately 335 to 375 students at full scale, crossing the 250-student threshold starting in August 2016.

153. To the extent that the DOE determined that Harlem Central met the “under 250” criterion because its enrollment was projected at 180-210 students during the 2014-2015 school

year, a significant number of the other 49 co-locations also failed this requirement, with enrollments projected at less than 250 during the 2014-2015 school year while they are phasing in to full enrollment. However, unlike Harlem Central, these schools' co-locations were not revoked.

154. Furthermore, less than one week after the Press Release, the DOE proposed replacing two of the revoked co-locations with three new DOE schools, each of which will enroll fewer than 250 students during the first two years that they phase in.

155. In addition, four of the co-locations that were not revoked had projected enrollments at full capacity ranging from 210 to 255 students, which resulted in them failing the DOE's criterion of not co-locating schools with "under 250" students. Each of these co-locations will be implemented next year.

156. The DOE could not rationally have found that the Harlem Central co-location failed this criterion.

**C. Criterion 3**

157. The DOE's third criterion supposedly reflects that the DOE disfavors co-locations that will involve significant capital work or require substantial dislocation to existing schools in the building. On its face, the third criterion does not apply to Harlem Central and also does not appear to have been applied consistently.

158. The DOE could not have rationally found that Harlem Central failed the third "no significant capital work" requirement. The co-location of Harlem Central would not have required extensive capital work, since Harlem Central largely would have used rooms already renovated by a sister school sharing the building, Success Academy Harlem 1.

159. Additionally, the co-location of Harlem Central would not have required substantial dislocation of any non-Success Academy school in the building. According to the DOE's own Second Revised BUP, P.S. 149 would have maintained the same number of rooms within the building during the entirety of its co-location with Harlem Central. PS811M@M149 would have changed its room allocation by zero rooms the first year of the co-location, and only three rooms over the next four years. None of its current students would have been required to move to a different location; the change would only affect future enrollment. Thus, no non-Success Academy school would have been substantially affected by Harlem Central's co-location.

160. Capital improvements are necessary whenever a school is co-located within a building regardless of the entity responsible for the co-location. Like other schools, Success Academy makes necessary capital improvements and facilities upgrades whenever a Success Academy school enters a new building.

161. Unlike DOE schools, which receive public funding for their renovation projects, Success Academy schools—like other charter schools—spend their own funds to upgrade the public school facilities in which they co-locate. Charter school students are public school students (principally minority and low-income), and they benefit from these important facilities improvements.

162. Additionally, when the DOE moves charter schools to different buildings, the DOE retains the benefit of the improvements and upgrades. The DOE has moved four elementary schools operated by Success Academy from one location to another. A fifth elementary school, Success Academy Charter School – Crown Heights, will move into a new

building this summer. Each move leaves behind substantial improvements and upgrades that were undertaken at the Success Academy school's expense.

163. The DOE typically spends well over \$100,000 in start-up costs to co-locate just one new district school and will spend up to \$400,000 in start-up costs co-locating the three new district schools that are replacing the two other Success Academy charter school co-locations that were revoked on February 27, 2014.

**D. Criterion 4**

164. The fourth criterion is that no co-locations will result in reduced seats for District 75 students. In setting forth this criterion, the DOE provided no rationale for its sweeping statement that it will "not reduce seats" for District 75 students within a particular building.

165. The DOE could not rationally have found that the Harlem Central co-location failed this requirement.

166. The effect that Harlem Central would have on PS811M@M149, a District 75 school with which Harlem Central was to be co-located at M149/M207, was addressed in the EIS, and therefore carefully considered by the PEP as part of its approval process. The EIS noted that PS811M@M149 serves 93 students in kindergarten through eighth grade, and that, under the co-location plan, each year the school would enroll fewer new students. As the DOE stated in the Harlem Central EIS:

In addition to the existing District 75 schools across Manhattan, there are three new school buildings opening in 2013-2014 and 2014-2015 that will be able to accommodate new District 75 students. Based on the School Constructive Authority's Programs of Requirements for each new building in Manhattan, these three new school building have a combined target capacity to serve 180 District 75 students. . . .

167. The DOE further noted that “there will continue to be an excess of District 75 seats in Manhattan. This means that there will be sufficient District 75 capacity in Manhattan to meet the needs of future District 75 students.”

168. In October 2013, the DOE analyzed the potential impact of the Harlem Central co-location on District 75 programs and concluded that no current students at PS811M@M149 would be displaced or affected. Only the capacity of PS811M@M149 would be reduced as its students matriculated out of the program, but even then the DOE noted that it would continue to enroll students in District 75 schools consistent with current practice. In short, the DOE’s own study makes clear that the Harlem Central co-location would not result in reduced seats for District 75 students in Manhattan.

169. Although the Chancellor and the Mayor have since suggested that displacement of District 75 students was the basis of the DOE’s determination to revoke Harlem Central’s co-location, any such determination represents a complete disregard for the DOE’s own prior evidence, analysis, and findings on this issue.

170. As with the other criteria, the DOE made no new findings on this issue since the October 2013 PEP approval and does not appear to have gathered any new evidence during its “review.” The DOE’s new inflexibility with respect to this criterion is without foundation in the facts previously found by the DOE, such as whether there remains sufficient (or an excess of) District 75 seats across Manhattan.

## **XII. The Detrimental Impact of the DOE’s Actions On Plaintiffs**

171. The DOE’s revocation decision effectively forces Harlem Central, one of the top-performing schools in New York City and New York State, to close.

172. The process of identifying, leasing, designing, improving and financing an appropriate replacement facility in private space would take significantly longer than the six

months before the start of the school year. In addition, the cost of finding appropriate space in Harlem is exorbitant. Even if Harlem Central were able to find a replacement facility within this impossible time frame, the inflated cost would be prohibitive.

173. Acting in reliance on the PEP's October 15, 2013 approval of its co-location, Harlem Central proceeded with staffing plans, including extensive recruitment activities and hiring of a new principal, other administrators, and teachers.

174. Harlem Central also started detailed planning for the use of the rooms it had been allocated, and met with the DOE and contractors to discuss appropriate modifications to those rooms.

175. The closure of Harlem Central fundamentally thwarts Success Academy NYC's mission to provide Harlem Central students a high quality free, public alternative to traditional public schools. Success Academy NYC will accordingly be irreparably harmed if the DOE's revocation is not undone.

176. The Plaintiff Parents did not apply for their children to attend alternate middle schools or elect to participate in the DOE's middle school enrollment process for the upcoming 2014-2015 school year after the PEP approved the co-location of Harlem Central. Fifth grade public school students without a school to attend the following year must participate in the Middle School Admissions process, and the deadline to submit the application was December 13, 2013. The Plaintiff Parents also did not seek out seats at private schools for their children or apply for scholarships to private schools. The deadlines to apply to many private schools within the city have also passed, as well as the opportunity to be considered for scholarships or financial aid to attend these schools.

177. Each Plaintiff Parent relied on the fact that his or her child(ren) would be able to attend Harlem Central. The Plaintiff Parents have accordingly been deprived of their ability to engage in the full admissions process, in which Plaintiff Parents and Plaintiff Children have a choice among schools, instead of being constrained to attend the school to which the children are assigned by the DOE.

178. If the DOE's revocation of Harlem Central's co-location stands, Harlem Central could not open. As a result, Plaintiff Children would be forced to move from a top-performing school into a school with dramatically lower academic results. Plaintiff Parents and Plaintiff Children will accordingly be irreparably harmed if the DOE's revocation is not undone.

**FIRST CLAIM**

Violation of 42 U.S.C. § 1983, Deprivation of Success Academy NYC's Right to Due Process under the Fourteenth Amendment to the United States Constitution

179. Plaintiffs repeat and reallege the allegations in paragraphs 1 to 178, as if fully set forth herein.

180. Success Academy NYC brings the First Claim pursuant to 42 U.S.C. § 1983 against Defendant Department of Education of the City of New York.

181. DOE acted under color of state law at all times relevant to the First Claim.

182. Success Academy NYC has a property right in its PEP-approved co-location, arising from New York law, including the text and operation of New York State Education Law and related rules, regulations, custom, and practice, as well as the PEP's October 15, 2013 vote approving the Harlem Central co-location, and such right is protected by the United States Constitution.

183. Success Academy NYC was deprived of its property right by the DOE's actions, namely, the February 27, 2014 revocation of Harlem Central's co-location.

184. Success Academy NYC was given neither adequate notice nor an opportunity to be heard prior to the February 27, 2014 revocation of Harlem Central's co-location.

185. The conduct of the DOE in revoking the Harlem Central co-location without affording Success Academy NYC notice and the opportunity to be heard violates the due process rights guaranteed to Success Academy NYC by the Fourteenth Amendment to the United States Constitution.

186. The violation of the Fourteenth Amendment rights of Success Academy NYC will continue unless enjoined by this Court.

187. Success Academy NYC will be irreparably harmed unless injunctive relief is granted and Success Academy NYC has no adequate remedy at law.

188. As a result of the violations of Success Academy NYC's Fourteenth Amendment rights, Success Academy NYC seeks declaratory and injunctive relief.

### **SECOND CLAIM**

Violation of 42 U.S.C. § 1983, Deprivation of the Plaintiff Parents' and Plaintiff Children's Right to Due Process under the Fourteenth Amendment to the United States Constitution

189. Plaintiffs repeat and reallege the allegations in paragraphs 1 to 178, as if fully set forth herein.

190. Plaintiff Parents and Plaintiff Children bring the Second Claim pursuant to 42 U.S.C. § 1983 against Defendant Department of Education of the City of New York.

191. The DOE acted under color of state law at all times relevant to the Second Claim.

192. Plaintiff Children have a property right in a sound public education guaranteed by Article 11 of the New York State Constitution.



193. Plaintiff Children's property rights were injured, altered, abridged, and infringed upon, and Plaintiff Children were deprived of their property right by the actions of the Defendant, namely, the February 27, 2014 revocation of Harlem Central's co-location.

194. Neither Plaintiff Children nor Plaintiff Parents were given adequate notice or an opportunity to be heard prior to the February 27, 2014 revocation of Harlem Central's co-location.

195. The conduct of the DOE in revoking the Harlem Central co-location without affording Plaintiff Parents and Plaintiff Children notice and the opportunity to be heard violates the due process rights guaranteed to them by the Fourteenth Amendment to the United States Constitution.

196. The violation of Plaintiff Parents' and Plaintiff Children's Fourteenth Amendment rights will continue unless enjoined by this Court.

197. Plaintiff Parents and Plaintiff Children will be irreparably harmed unless injunctive relief is granted and they have no adequate remedy at law.

198. As a result of the violations of Plaintiff Parents' and Plaintiff Children's Fourteenth Amendment rights, Plaintiff Parents and Plaintiff Children seek declaratory and injunctive relief.

**THIRD CLAIM**  
Promissory Estoppel

199. Plaintiffs repeat and reallege the allegations in paragraphs 1 to 178, as if fully set forth herein.

200. Plaintiffs bring the Third Claim against Defendant Department of Education of the City of New York.

201. The DOE made statements and took actions approving Harlem Central's co-location on which Plaintiffs reasonably relied.

202. Based on such statements and actions, Plaintiffs reasonably expected that the Harlem Central co-location would be implemented consistent with the PEP's approval.

203. The DOE should have expected, based on its prior statements and actions, that Plaintiffs would rely on the PEP's approval of the co-location of Harlem Central and expect the DOE to implement the co-location, especially given the DOE's statements and actions in support thereof.

204. Plaintiffs detrimentally relied on the PEP's approval of Harlem Central's co-location and the DOE's statements and actions in support thereof.

205. By reason of the foregoing, the DOE should be estopped from revoking the PEP-approved co-location of Harlem Central in M149/M207.

#### **FOURTH CLAIM**

Violation of 42 U.S.C. § 1983, Deprivation of  
Success Academy NYC's Right to Equal Protection under the Fourteenth Amendment to the  
United States Constitution (Selective Enforcement)

206. Plaintiffs repeat and reallege the allegations in paragraphs 1 to 178, as if fully set forth herein.

207. Success Academy NYC brings the Fourth Claim pursuant to 42 U.S.C. § 1983 against Defendant Department of Education of the City of New York.

208. The DOE acted under color of state law at all times relevant to the Fourth Claim.

209. Success Academy NYC's Harlem Central co-location was similarly situated with other school co-locations approved by the PEP in October 2013 that the DOE subsequently reviewed in 2014.

210. In revoking Harlem Central's co-location, the DOE treated Success Academy NYC selectively and adversely as compared to other similarly situated charter schools whose co-locations the DOE reviewed.

211. Upon information and belief, the DOE's revocation of Harlem Central's co-location based on the supposed applicability of one or more of the four criteria was pretextual.

212. Upon information and belief, the DOE's decision to revoke the Harlem Central co-location was based on the targeted animus of the Mayor against Success Academy NYC schools and its founder and/or the bad faith intent to injure Success Academy NYC.

213. The DOE acted without a rational basis in conducting the post-PEP approval review, revoking Harlem Central's co-location, and treating Success Academy NYC selectively and adversely as compared with other similarly situated schools whose co-locations Defendant reviewed.

214. The violation of the Fourteenth Amendment rights of Success Academy NYC will continue unless enjoined by this Court.

215. Success Academy NYC will be irreparably harmed unless injunctive relief is granted and Success Academy NYC has no adequate remedy at law.

216. As a result of the violations of Success Academy NYC's Fourteenth Amendment rights, Success Academy NYC seeks declaratory and injunctive relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter an order:

- A. Declaring unconstitutional and/or otherwise unlawful the DOE's revocation of the Harlem Central co-location;
- B. Declaring null and void the DOE's revocation of Harlem Central's co-location;

- C. Enjoining the DOE from taking any steps contrary to the PEP's October 2013 determination to co-locate Harlem Central in M149/M207;
- D. Granting reasonable attorneys' fees; and
- E. Granting such other and further relief as this Court would deem just and proper.

Dated: New York, New York  
March 17, 2014

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