

SUPREME COURT OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of

TAMARA TUCKER and MELANIE KOTLER,  
individually, and on behalf of all parents and guardians  
of New York City public school students, and  
PAUL TRUST and SARAH BROOKS, individually, and  
on behalf of all similarly situated New York City public  
school teachers,

Petitioners,

**VERIFIED PETITION**

-against-

THE CITY OF NEW YORK, THE NEW YORK  
CITY DEPARTMENT OF EDUCATION, and the  
CHANCELLOR OF THE NEW YORK CITY  
DEPARTMENT OF EDUCATION, David C. Banks,  
In his official capacity,

Respondents,

For an Order, Pursuant to Section 6301 and Article 78  
of the CPLR and Sections 2590-g and 2590-q  
of the New York Education Law, Annulling the  
Adoption of the New York City FY 2023 Budget and  
the New York City Department of Education  
FY 2023 Education Budget.

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Petitioners Tamara Tucker and Melanie Kotler, individually, and on behalf of all parents  
and guardians of New York City public school students, and Paul Trust and Sarah Brooks,  
individually, and on behalf of all similarly situated New York City public school teachers  
(collectively “Petitioners”), by their attorneys Advocates for Justice, hereby allege, as and for  
their Verified Petition against the City of New York (the City), the New York City Department  
of Education (DOE), and the DOE Chancellor, David C. Banks, as follows:

## **INTRODUCTION**

1. This is an action to enjoin the further implementation of the New York City Department of Education (DOE) FY 2023 education budget, which was approved by Respondents and was unlawfully presented to New York City Council (City Council) prior to its being presented to and approved by the New York City Board of Education for the City School District of the City of New York (which the DOE refers to as the Panel for Education Policy and which hereafter is referred to as the City Board). Because New York Education Law §§ 2590-g and 2590-q require that the City Board review and approve the yearly estimated education budget, which should be presented in units of appropriation and in a manner prescribed by the New York City Charter, *prior to* its presentation to and vote by City Council, and *prior to* its incorporation into the Mayor's final budget for adoption by Respondent City, the order of the votes by the City Board and City Council was unlawfully reversed.

2. Specifically, Respondents DOE and Chancellor failed to require the adoption of the DOE FY23 estimated education budget ("Estimated Budget) by the City Board *prior* to the vote by City Council to adopt the City FY23 Budget, which thereby deprived the City Council of the benefit of the public hearing, public comments, and vote by the City Board, in violation of New York Education Law §§ 2590-g(1)(e) and 2590-q(4)(a), (5), (6).

3. Respondents DOE and Chancellor also failed to convene a meeting of the City Board, hold a public hearing, and receive public comments, for the purposes of voting on the adoption of the DOE FY23 Estimated Budget, prior to the vote by the City Council to adopt that budget in violation of New York Education Law §§ 2590(g)(1)(e) and 2590-q(5), (6).

4. Respondents DOE and Chancellor also failed to provide the City Board with sufficient information to allow it to evaluate and determine the impact of the proposed budget

cuts in the DOE FY23 Estimated Budget, which should have included estimates for total amounts proposed for programs or activities of the community district education councils in units of appropriation separate from those set forth for programs or activities operated by the City Board, and which should have been provided in or with the presentation of the DOE FY23 estimated education budget to the City Council prior to the City Council's vote on its adoption, in violation of New York Education Law §§ 2590-q(5), (6).

5. Instead of providing the Estimated Budget to the City Board in the form required by New York Education Law § 2590-q(5), Respondents provided a single page of estimates with no units of appropriation listed, nor any amounts listed for programs or activities of the community district education councils in separate units of appropriation or separate from those set forth for programs or activities operated by the City Board. Haimson Aff. ¶ 22, Exh. 11.

6. Instead of convening a meeting of the City Board to consider the FY23 Estimated Budget, on May 31, 2022, the Chancellor issued an Emergency Declaration claiming that an emergency required the immediate adoption of the Estimated Budget was "necessary to preserve the health, safety and general welfare of the students and school system as a whole," and that the Emergency Declaration would last for 60 days, or until the City Board voted to approve the Estimated Budget. Barbieri Aff. Exh. 3; Haimson Aff. ¶ 15.

7. Yet there was no specific emergency invoked, and in fact, in at least twelve out of the past thirteen years, since at least June 2, 2010, several different New York City Schools Chancellors have invoked a similar "emergency" using the same boilerplate language in order to immediately adopt a budget prior to a vote of the City Board and prior to the City Council vote. Haimson Aff. ¶ 16.

8. The only explanation offered by the Chancellor for the use of this Emergency Declaration was that “due to the timing of the release of projected funding for the city school district used to develop the Estimated Budget, there is not sufficient time to complete the public comment period and obtain Panel [i.e., City Board] approval of the Estimated Budget before budget allocations are sent to schools and the FY23 City Budget is adopted.” Haimson Aff. ¶ 17.

9. However, there was no material change to the Estimated Budget submitted to the City Board compared to the education portion of the overall Executive Budget for FY23 released by the Mayor on April 26, 2022. Haimson Aff. ¶ 18, Exh. 10.

10. Thus, the education portion of the Executive Budget could have been posted on the DOE website on April 26, 2022. Even with the required 45-day period for public comment, the City Board public meeting and vote could have been scheduled for June 10, 2022, prior to the City Council June 13, 2022 vote and adoption of the City FY23 Budget. Haimson Aff. ¶ 19.

11. Instead, according to the Emergency Declaration, the Estimated Budget was posted online and available for public comment on May 6, 2022. Haimson Aff. ¶ 19. Even then, with the required 45-day public comment period, the meeting and vote of the City Board could have been held on June 20, 2022 without an Emergency Declaration, and the City Council vote postponed to June 21, 2022, which is well within the deadline of June 30, 2022, in accordance with the City Charter. Haimson Aff. ¶ 20.

12. As a consequence of the Emergency Declaration, on June 5, 2022, Respondents DOE and the Chancellor released funding to schools for their respective individual 2022-2023 school education budgets, before either the City Board or City Council approved the DOE FY23 estimated education budget. These individual school budgets contained egregious and devastating cuts to almost every school in the City school district.

13. Thereafter, on June 13, 2022, the City Council voted to adopt the education budget for FY23 when it adopted the City F23 Budget, yet such vote occurred prior to the vote by the City Board, in violation of New York Education Law § 2590-q(5), (6).

14. On or about June 23, 2022, ten days later, the City Board voted to approve the Estimated Budget, which had already been adopted by City Council and Respondent City, following a public hearing at the City Board meeting at which nearly seventy members of the public including parents, teachers, and education advocates urged the City Board not to approve the proposed DOE FY23 estimated education budget. See Barbieri Aff. Exh. 2.

15. The members of the public who spoke out at the City Board's public hearing charged Respondents with creating chaos and disruption within the public school system and in the lives of New York City public school families. In detailing the already occurring consequences of the Respondents' egregious budget cuts, parents, teachers, and education advocates described to the City Board the loss of teachers and staff positions, programs and services, school counselors, social workers, and other essential programs and services throughout the public school system – all of which caused and would continue to cause irreparable harm not only to public school students and the education provided to them, but to the lives of teachers and staff, and to their respective schools. *Id.*

16. Instead of taking these comments seriously the Chancellor told the public and the City Board that their vote had no meaning because City Council had already adopted the City budget. The Chancellor stated further that the City Board's vote was merely procedural. *Id.* at 25-26, and see ¶ 18, *infra*.

17. Essentially, by these statements, the Chancellor denied the City Board its explicit approval authority over the estimated education budget that was provided to the City Board by the State Legislature in New York Education Law §§ 2590-g, 2590-q, and 2590-r.

18. The Chancellor told the public and the City Board the following:

Hi, I'm, Mr. Chancellor, I did want to make a statement before we go any further.

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But I do think it's important that you know, that first and foremost, this vote on this issue tonight, actually does not impact the school budgets or our overall budget.

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[T]onight, **what this is, this is a legally required procedural vote on the estimates of the DoE operating budget. So, it's an estimate because of the timing when the PEP reviews this, it typically it's before the budget is adopted.** So that being said, I know some of you may even question the value, even holding this vote after the budget negotiations for the coming year are already over. Right. **So, the timing, the timing this year is unusual.**

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**One, this vote tonight does not affect school budgets. You're not voting on whether or not you're approving the school budgets. The city council has already approved that. This is a procedural vote tonight.**

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**We don't refer to [these] as cuts, people call them cuts.** But essentially, we've seen it as right sizing the budget.

\*\*\*\*

I know the panel, you can certainly speak to it from your own perspective when that when the testimonies are done. But I did want the people who have signed up to understand that this vote that you are voting for, when people say I urge you to vote no, you're not, you're not, **the budgets have already been approved by the city. This is, this is a technical procedural vote that we're doing here tonight.**

**David Banks 1:21:14 (pages 25-26). See Barbieri Aff. Exh. 2.**

19. As a consequence of the delayed timing of the City Board's public meeting to consider the proposed estimated education budget for the 2022-2023 school year, which occurred after the City Council voted to adopt the City FY23 Budget, City Council was deprived of the benefit of the public hearing, the public comments, and vote by the City Board. The information provided at this public hearing addressed the consequences and irreparable harm caused by Respondents' FY23 cuts to the 2022-2023 school year education budget.

20. The Chancellor also told the attending public and the City Board that this year's timing of its vote was unusual. The evidence, however, is to the contrary. By reviewing public records, Petitioners discovered that for eight of the last ten years, City Council has voted to adopt the overall City budget *prior to* the City Board meeting and vote; according to public record, this trend appears to have begun in 2013. By these acts, several different administrations have improperly and illegally disempowered the City Board and eviscerated its essential authority under State law to consider and approve the estimated education budgets. Haimson Aff. ¶ 21.

21. The irreparable harm to Petitioners and their families that Respondents are causing by the DOE FY23 budget cuts, however, **was and is entirely avoidable**. Nearly \$5 billion dollars remain in unspent stimulus funds, which the federal government has allocated for City public schools. The City also has a reserve fund of over \$8 billion dollars. Any portion of this money could have and should have been used for New York City public schools for the 2022-2023 school year.

22. Accordingly, Petitioners respectfully call upon the Court to enjoin Respondents from causing further irreparable harm and to annul the adoption of the City FY23 Budget and to mandate reconsideration and revote by City Council on the DOE FY23 education budget.

### **PARTIES**

23. Petitioner Tamara Tucker is a citizen and resident of New York County within the State and City of New York. She is the mother of two children, ages eight and six, both of whom attend P.S. 125, the Ralph Bunche School. Tucker Aff. ¶¶ 1, 2.

24. Petitioner Melanie Kotler is a citizen and resident of Kings County within the State and City of New York. She is a parent-member of the School Leadership Team at P.S. 169,

a K-5 elementary school in Sunset Park, Brooklyn. She has a seven-year-old son who attends P.S. 169 and who will be entering the second grade. Kotler Aff. ¶ 1.

25. Petitioner Paul Trust is a citizen and resident of Queens County within the State and City of New York. He is a certified music teacher at P.S. 39 in Park Slope, Brooklyn. He was recently excessed from his assigned school due to the DOE FY23 education budget cuts. Trust Aff. ¶ 1, 5.

26. Petitioner Sarah Brooks is a resident of Kings County and citizen of the State and City of New York. She is a special education teacher at P.S. 169. Brooks Aff. ¶ 1.

27. Respondent City of New York is a municipal corporation and a political subdivision of the State of New York. The City's address is c/o Office of the Corporation Counsel, 100 Church Street, New York, New York 10007.

28. Respondent the New York City Department of Education is a corporate body that manages the City's public school system. The DOE refers to the New York City Board of Education for the City School District of the City of New York (*i.e.*, City Board) as the Panel for Education Policy (PEP). Respondent DOE's central office is located at 52 Chambers Street, New York, New York 10007.

29. Respondent David C. Banks is the Chancellor of the New York City Department of Education and is responsible for the administration and daily operations of the DOE, including its public schools in the New York City public school system.

30. In conjunction with amendments to the New York Education Law enacted in 2002, many powers of the then-Board of Education of the New York City School District were diverted to the Chancellor, with the then-Board's administrative operations assigned to a body denominated by the mayor as the New York City Department of Education.

31. The City Board was created by and existing under the laws of the State of New York pursuant to Sections 2551 and 2590 of the New York Education Law. Pursuant to various provisions of that law, including, *inter alia*, Sections 2554 and 2590-g, the City Board is charged with several responsibilities including advising the Chancellor, and “approving annual estimates of the total sum of money which is deemed necessary for the operation of the city district and the capital budget pursuant to [§ 2590-q].” N.Y. Educ. Law § 2590-g(1)(e).

32. The City Board currently consists of fifteen members. Nine members are appointed by the Mayor of the City of New York, who is currently Eric L. Adams. Each borough president appoints one member to represent his or her county, for a total of five members. One parent member, Tom Sheppard, represents all New York City public school parents. He was elected by all the Presidents of the 32 Community Education Councils (CEC).<sup>1</sup> The Chancellor is a nonvoting member of the City Board as are two high school students. N.Y. Educ. Law § 2590-c(a)(1); Sheppard Aff. ¶¶ 1-3.

### **JURISDICTION AND VENUE**

33. Jurisdiction is proper and pursuant to CPLR Sections 3001 and 301.

34. Venue is proper in New York County pursuant to CPLR Section 504(2) since, *inter alia*, one of the Petitioners resides in New York County, and the causes of action arose here.

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<sup>1</sup> The Community Education Councils (CECs) replaced the Community school boards that existed in each school district prior to the legislation that instituted “mayoral control” of the City’s education system in 2002. Each CEC is composed of nine district parents and two additional members who are appointed by the Borough Presidents. Currently, the nine parents are elected directly by parents within that particular community school district. Previously, each CEC had been elected by that community school district’s Parent Teacher Association or Parent Association. In June 2019, however, when mayoral control was extended by the N.Y. State Legislature, the election process was changed to promote a more democratic process by including all district parents in the selection of its respective CEC members.

## **FACTUAL ALLEGATIONS**

### **The City School District**

35. The New York City School District is the largest in the country. According to the DOE, during the 2021-22 school year, New York City's public schools had approximately 1.06 million students: about 13.9 percent were English Language Learners; 20.6 percent were students with disabilities; 71.9 percent are considered economically disadvantaged, in over 1,800 schools. Over 90% of students are considered students of color. In addition, approximately 80,000 teachers work for the DOE. *See Barbieri Aff. Exh. 14.*

### **Mayoral Control**

36. In 2002, the Mayor of New York City was granted control over the City's public schools by the State legislature. NY Bill Jacket, 2003 S.B. 5688, Ch. 123. Every two years or so the State legislature has continued to renew the mayor's authority. This June, Governor Kathleen C. Hochul signed legislation extending mayoral control for another two years. Sheppard Aff. ¶ 5; 2022 NY Senate Bill S9459.

37. Eric L. Adams is the current Mayor of New York City. Mayoral control over the City's schools gives him the power to appoint the Chancellor for the DOE and nine of the fifteen members of the City Board. NY Bill Jacket, 2003 S.B. 5688, Ch. 123; *see also Nacipucha v. City of New York*, 849 N.Y.S.2d 414, 418 (N.Y. Sup. Ct. 2008); Sheppard Aff. ¶ 3.

38. The current Schools Chancellor is David C. Banks. As Chancellor, Banks heads New York City's DOE as its chief executive officer and superintendent. The Chancellor is also responsible for implementing the DOE's educational policies and is a non-voting member of the City Board. *Nacipucha*, 849 N.Y.S.2d at 418; *see also* Sheppard Aff. ¶ 3.

39. The City Board is responsible for advising the City's DOE on all matters relating to City public schools, and students' welfare, and approving the DOE's proposed Estimated Budget. N.Y. Educ. Law § 2590-g; *see* Barbieri Aff. Exh. 13 at Article II: Powers and Duties; Sheppard Aff. ¶¶ 4-7.

#### **The City Board: Budget-related Functions**

40. Among a number of its responsibilities, detailed in the New York Education Law § 2590, the City Board is required to approve the yearly estimates of the total amount of money that it deems necessary for the operation of the city district schools during the City's next fiscal year, to approve the allocation of projected revenues among community school districts and their schools, and to approve the aggregation of the community school district budgets, with a proposed budget for administrative and operational expenditures of the City Board and the Chancellor, following a public hearing pursuant to New York Education Law N.Y. Educ. Law §§ 2590-q(4)(a); 2590-r(f); Sheppard Aff. ¶ 6-9.

41. In addition, the City Board approves all capital contracts of expenditures for New York City public schools, which provides for the maintenance of the New York City School District. Sheppard Aff. ¶ 7.

#### **The City Board: Monthly Meetings**

42. All votes by the City Board are conducted at public meetings and must be preceded by a public hearing on each proposed item. N.Y. Educ. Law §§ 2590-b; (c)(ii), (d); Barbieri Aff. Exh. 13 at 9.1 Calendar Meetings; Sheppard Aff. ¶ 8.

43. Because the public typically attends City Board meetings and is entitled to speak prior to any City Board vote on an agenda item, City Board meetings, which usually start at

6:30 pm or 7:00 pm, can last until the early hours of the morning of the next day. Sheppard Aff.

¶ 9.

### **The Budget Process for the DOE**

44. The City Board has several budget functions. Among them, it must approve the Fair Student Funding formula (the “FSF”). If the City Board approves the FSF formula, then the weights used by the formula are applied to determine that part of the budget that depends on the student enrollment for each New York City public school. Sheppard Aff. ¶ 14.

45. The City Board also must adopt estimates of the total sum of money that it determines is necessary for the operation of schools for the next fiscal year, in units of appropriation that include community school district budgets, with a proposed budget for administrative and operational expenditures of the City Board and the Chancellor. N.Y. Educ. Law §§ 2590-q(4)(a, (5); Sheppard Aff. ¶ 15.

### **The Egregious and Devastating FY23 Budget Cuts**

46. The FY23 education budget, as adopted by the City Council and signed by Mayor Adams delivered egregious and devastating cuts to school budgets virtually across the entire school system. Sheppard Aff. ¶¶ 43-44. Although the DOE refuses to disclose the exact total of the cuts made to each school’s budget, it admits to a reduction of at least \$215 million citywide as a result of the application of the Fair Student Funding (FSF) formula to what it claims are declining enrollment numbers. Barbieri Aff. Exh. 2 at 26, Exh. 10.

47. The DOE told City Council that the cuts were to already vacant positions. But that turned out to be untrue. Barbieri Aff. Exh. 7.

48. The FSF formula is the primary source of funds for City schools, making up approximately 65% of each school’s total yearly budget. Barbieri Aff. Exh. 11. The FSF formula

is based on a weighted formula that is supposed to take into consideration the relative educational needs of district schools. Sheppard Aff. ¶ 19.

49. A school's FSF is a product of each school's enrollment, which the DOE claims has been declining over the past several years. This money, which typically is sent to schools in advance of the start of the school year, is the primary source of funds that school principals use to hire teachers and staff and provide programs and services for their students.

50. According to the Respondent Chancellor, as a result of declining enrollment, the budget cuts to schools' Fair Student Funding will be approximately \$215 million dollars. Haimson Aff. ¶ 6.

51. However, according to an analysis by the City's Comptroller, almost 77% of schools, or 1,166 schools, will experience a reduction in their FSF in the sum of \$469 million dollars. Haimson Aff. ¶ 7, Exh. 3.

52. The DOE has confirmed that this year there was also a cut in the per student amount in the Fair Student Funding (FSF) formula, so that this fall, school principals will get a baseline of at least \$4,197.19, a reduction from last year of a minimum of \$25.81 per each general education elementary grade student with no learning challenges. Haimson Aff. ¶ 9, Exh. 6, 7.

53. However, due to the FSF formula use of a weighted average per student, the cut is larger for middle and high school students, by 8% and 3% respectively, and even larger for students who have learning challenges, including English Language Learners and/or students with disabilities. Haimson Aff. ¶ 9, Exh. 6, 7.

54. For example, the FSF cut for a special needs Kindergarten student in an inclusive class for more than 60 percent of the day, will be more than twice as large as \$25.81; that is due

to the weighted amount for that child, which is currently at 2.09. Therefore, these budget cuts will have especially devastating impacts on schools with large numbers of struggling and/or disadvantaged students. Haimson Aff. ¶¶ 9, 10.

55. And, according to an analysis by Class Size Matters, a non-profit educational advocacy organization that advocates for smaller class sizes, as of July 14, 2022, the DOE's cuts to schools' overall "Galaxy budgets," totaled over \$1.42 billion in cuts as compared to the prior year's budgets. That amount is far in excess of the \$215 million the DOE admitted to making. Haimson Aff. ¶ 8, Exh. 4, 5.

56. These Galaxy budget cuts mean that for the 2022-23 school year, 97% of schools lost funding, with an average of \$940,268 dollars cut per school, or 12% of their overall budget. Haimson Aff. ¶ 8. Although funds may be added to school budgets after July 14, 2022, the monies added later are limited, required to be used for specific purposes, and generally cannot be used for staffing. *Id.*

57. It will therefore be impossible for Respondents to lower class sizes in FY23 as they were recently directed to do by the State legislature, in legislation that was overwhelming passed and is awaiting Governor Hochul's signature. Instead, these budget cuts will likely cause class sizes to increase significantly. Haimson Aff. ¶ 4, Exh. 1, 2

### **The Egregious and Irreparable Harm Caused by the FY23 Adopted Education Budget**

58. The budget cuts unlawfully adopted have already affected many schools and have become a source of chaos and disruption across New York City public school system. Many teachers and staff positions have been and will continue to be eliminated. Trust Aff. ¶¶ 2, 6; Sheppard Aff. ¶ 43.

59. Students and teachers are and continue to be extremely disadvantaged over the loss of much needed programs and services and the elimination of teacher and staff positions. The teacher and staff cuts are particularly harmful to students because of the longstanding relationships many of these students had developed with their teachers, and because of the increase in class size that these cuts are likely to cause. Trust Aff. ¶¶ 7, 9; Sheppard Aff. ¶ 43.

60. Respondent Chancellor stated that he “expects for all those excess teachers to get picked up.” Barbieri Aff. Exh. 8. But first, it is unlikely that all teachers will receive regular positions within the system as the vast majority of schools are experiencing budget cuts, and two, getting “picked up” again will not remedy the fact that teachers who have developed long-term relationships with their students, once excessed, will not return to their former schools.

61. The smaller classes this past school year, resulting from sufficient funding and lower enrollments, engendered close student-teacher bonds, which allowed students to begin to recover from the disruptions of remote learning, hybrid learning, and repeated school closures. Kotler Aff. ¶¶ 2-4; Trust Aff. ¶¶ 7, 10.

62. All throughout New York City public schools, students, teachers, and staff have had to deal with the terrible emotional and mental toll that the Covid-19 has taken. Because of the lack of consistency that students experienced, along with the stress of the on-going pandemic, more students were experiencing meltdowns and crises than in previous years and continue to need the close emotional support of their teachers. Trust Aff. ¶¶ 10, 11.

*P.S. 39, Park Slope, Brooklyn*

63. Petitioner Paul Trust is a certified music teacher at P.S. 39; he has been teaching there since 2009. Because of the FY23 budget cuts at his school, he was excessed as part of the elimination of the entire music program. Trust Aff. ¶ 1.

64. Because of the budget cuts, P.S. 39 is being forced to discontinue their entire music program leading to the loss of three teachers and is causing many upset and angry students. Specifically, due to the FY23 adopted education budget, P.S. 39 is projected to lose at least \$500,000 in funding, forcing the school to eliminate its beloved music program, excessing music teacher Paul Trust, a second music teacher and a classroom teacher. Trust Aff. ¶¶ 4, 7.

65. Numerous studies have shown how critical music and arts programs are to children's development; these programs allow students to have creative outlets in school and learn skills that many children would not have the opportunity to acquire otherwise. Trust Aff. ¶¶ 8, 12.

66. The elimination of these music and arts programs due to the budget cuts will detrimentally harm not only the teachers who will be excessed, but also the students who will suffer from not being provided the well-rounded education that they not only deserve but are entitled to. Trust Aff. ¶¶ 12, 15.

67. For the hundreds if not thousands of teachers who are projected to be excessed from their schools due to these budget cuts, many will be assigned to the Absent Teacher Reserve ("ATR") if they are unable to secure positions at other schools. Trust Aff. ¶ 2.

68. In the ATR, these displaced educators will continue to be paid their full salaries; some, however, will serve as occasional substitute teachers, or may be placed in classes that they may not be qualified to teach, and/or placed far away from where they reside, which could lead to very long commuting times.

69. At the same time, however, not only will important programs and service be lost, and non-tenured teachers and other staff potentially suffer the loss of their livelihoods, but also the elimination of teaching positions in hundreds of schools will likely cause class sizes to

increase. Increases in class sizes is antithetical to the intent of the State legislature, which mandating the DOE to place much needed caps on class size starting in the Fall of 2022.

Haimson Aff. ¶ 5, Exh. 1, 2. The legislation passed overwhelmingly, with a vote of 59-4 in the Senate and 147-2 in the House. *Id.*

70. So instead of having class sizes shrink, as the legislature intended, Respondents' budget cuts will have the exact opposite effect: class size is expected to increase significantly causing substantial overcrowded classes this Fall. Haimson Aff. ¶ 6.

71. Many peer-reviewed studies have documented that smaller classes provide important benefits to students, especially to children of color and those from low-income families, who receive twice the gains from smaller classes than white middle-class students. Haimson Aff. ¶ 4.

*P.S. 125, the Ralph Bunche School, in New York County*

72. Tamara Tucker is the mother of two children, ages eight and six, who both attend P.S. 125, the Ralph Bunche School. P.S. 125 serves pre-K through fifth-grade students. Tucker Aff. ¶ 2.

73. Ms. Tucker is extremely distressed about the hundreds of thousands of dollars that is being cut from her children's school budget. Tucker Aff. ¶ 5.

74. As a result of the budget cuts, P. S. 125 has been forced to eliminate their partnerships with independent arts and music programs. This loss is devastating for its students because the school does not have any internal music or arts programs. Tucker Aff. ¶¶ 6-8.

75. Ms. Tucker strongly believes, and research demonstrates, that music and arts programs are valuable expressive outlets for children. Particularly at her children's school, the music and arts programs provide students with opportunities to learn about different cultures,

which provide benefits and valuable experiences that are typically not provided in their other classes. Tucker Aff. ¶¶ 6-8.

76. P.S. 125 may also have to excess their assistant teachers who have provided critical support to their students and classroom teachers. Tucker Aff. ¶¶ 9, 10.

77. Ms. Tucker has also heard from her principal that enrollment at the school is increasing not decreasing as the DOE inaccurately projected. With the elimination of teachers and teaching assistants, combined with increasing enrollment, class sizes will likely become substantially overcrowded, potentially up to thirty or more students per class, which is likely to negatively impact student learning. Tucker Aff. ¶¶ 9, 12-16.

78. Increased class size diminishes the opportunities teachers have for individualized assistance and instructions to their students. The anticipated class size increase will be a drastic change from current class sizes and will harm students who will be deprived of needed individualized support and attention. Tucker Aff. ¶¶ 9, 13.

P.S. 169, Sunset Park, Brooklyn

79. Melanie is the mother of one child who attends P.S. 169; she is also a member of the School Leadership team. Kotler Aff. ¶ 1.

80. Sarah Brooks is a Special Education teacher at P.S. 169. Brooks Aff. ¶ 1.

81. Both Ms. Kotler and Ms. Brooks are concerned about the devastating effects the budget cuts will have on P.S. 169 – losses currently estimated at approximately three million dollars according to Class Size Matters analyses. Kotler Aff. ¶¶ 5-9; Brooks Aff. ¶¶ 3, 14.

82. P.S. 169 is a K-5 elementary school in Sunset Park, Brooklyn. As a result of the budget cuts, the school will have to eliminate a number of part-time positions, including two English as a New Language teachers; an administrator who helps with Special Education

support; a computer specialist; a music teacher; and potentially four additional teachers who provide extra support for classroom teachers. Kotler Aff. ¶¶ 6(a)(i-vi).

83. In addition, P.S. 169 may not be able to hire additional paraprofessionals, who currently provide assistance to students with disabilities, for any newly diagnosed students for the upcoming school year. Typically, paraprofessionals are required to assist such students as part of their Individualized Education Plans. Kotler Aff. ¶ 6; Brooks Aff. ¶ 6.

84. P.S. 169 also faces the potential loss of multiple services and programs, including its afterschool programs; the ability to replace students' supplies and equipment; its funds for field trips; and its books and supplies for classroom libraries and lower grade classrooms. Kotler Aff. ¶ 6; Brooks Aff. ¶ 3.

85. The school may also lose its literacy coach, Brooks Aff. ¶, or worse, its entire literacy program. Kotler Aff. ¶¶ 6(k).

86. The school may also suffer the following devastating consequences of the budget cuts, including:

a. The loss several language paraprofessionals, and potentially one of two school counselors, who is the only English/Mandarin speaker, resulting in devastating and irreparable harm to students whose first language is not English. Brooks Aff. ¶¶ 4, 7.

b. The loss of paraprofessionals and a special education administrator may occur as a result of the school's lack of financial resources, resulting in teachers having to spend more time with specific students rather than teaching and supporting their classes as a whole. Brooks Aff. ¶¶ 8, 9, 11, 13.

c. The loss of afterschool programs and the potential loss of academic intervention teachers, resulting in at-risk students falling precipitously behind in their schoolwork. These after

school programs provide much needed additional educational resources for those students who require extra support, thereby keeping students at grade level. Brooks Aff. ¶¶ 9-10.

d. The loss of field trips will likely result in students who live at or below the poverty line being deprived of opportunities to be exposed to new experiences outside the classroom that they would otherwise not experience. Kotler Aff. ¶ 6; Brooks Aff. ¶ 12.

87. Finally, after eliminating the enumerated programs and staff, the school may also have to excess three or four teachers, resulting in increases in class sizes, which negatively impacts student learning opportunities. Kotler Aff. ¶¶ 4, 6-7, 9; Haimson Aff. ¶ 11.

### **System-wide Irreparable Harm**

88. According to a report by the City's Office of Management and Budget, thousands of teaching positions will be eliminated as a result of the budget cuts. Haimson Aff. ¶ 11, Exh. 8.

89. By eliminating teachers and staff, students face further disruptions to their education. Such disruptions will negatively impact those students who are already behind grade level because of Covid-19 or are suffering due to the effects of remote and hybrid learning, or because they face academic and/or emotional struggles, or because of the effects of poverty, or because they suffer from language barriers. Kotler Aff. ¶¶ 6-7.

90. All of these disruptions are impediments to obtaining a quality education that will only be made worse by the inevitable increase in class sizes that will result from the elimination of teachers and staff. Overcrowded classes decrease the ability for teachers to provide one-on-one educational opportunities to these students who are in desperate need of individualized attention. Kotler Aff. ¶¶ 2-5, 8-9; Brooks Aff. ¶¶ 6, 8, 11, 14.

**Denial of Students' Rights Under the New York State Constitution**

91. As a consequence of the budget cuts, Petitioners' children along with all New York City public school students have been denied their respective individual rights to a "sound basic education" under Article XI, § 1 of the New York Constitution. N.Y. Const. art XI, § 1; *see also Campaign for Fiscal Equity, Inc. v. New York*, 655 N.E.2d 661, 665 (1995).

92. Article XI, § 1 of the New York Constitution (the "Education Article") provides that "[t]he 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." N.Y. Const. art. XI, § 1.

93. As a municipality of New York State, New York City is bound by the New York State Constitution and laws passed by the State Legislature.

94. The New York Court of Appeals has interpreted the term "education" to mean "a sound basic education" to which all students within the state are entitled. *Bd. Of Educ. v. Nyquist*, 439 N.E.2d 359, 369 (N.Y. 1982). Further, the New York Court of Appeals has defined a "sound basic education" as one that is "meaningful," and which prepares schoolchildren "to function productively as civic participants." *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 332 (N.Y. 2003) (defining "sound basic education" as "one which prepares [students] to function productively as civic participants").

95. Respondents have failed to provide a sound basic education to Petitioners' respective families, and in their representative capacity to all New York City public school students, because they have failed to provide sufficient funds for school programs and services. The budget cuts deprive Petitioners' children and all New York City public school students of the programs, teachers, and activities necessary to a balanced and meaningful education and to sufficient educational opportunities.

96. On July 12, 2022, the City Council issued a letter to the Mayor and Chancellor to alert them to the harms that public school students will suffer, stating:

Our communities and young people are reeling from the effects of the pandemic. DOE's significant reductions to school budgets will hurt those with the greatest needs – Black and brown students, those from low-income communities and families, students with disabilities, and English language learners.... .... Your refusal to work towards resolution of these issues within the budget process has made them continuing items to address. The DOE's school budget policies are disrupting school communities in every borough, and we cannot afford for them to continue. The response we have received from you thus far – to wait until the school year to address this issue – is unacceptable, because it will be too late to avoid the negative impact on students. We are demanding that you restore the funds ahead of the looming major decisions within the month that allow schools to adequately and fairly plan for the school year. We look forward to your expedited action that permits us all to work towards adequately supporting our students.

*See Barbieri Aff. Exh. 6.*

97. Even with notice of the irreparable harm their budget cuts will cause, Respondents have failed to remedy the deficiencies in critical funding. Indeed, the Mayor has referred to individuals protesting the public school budget cuts as “clowns.” Barbieri Aff. Exh. 12.

98. Without access to an adequate public education, Petitioners’ families and all similarly situated public school students will face serious setbacks in their developmental path to becoming productive, self-sufficient adults.

99. Petitioners’ families, along with all New York City public school families, have been irreparably injured as a proximate result of Respondents’ ongoing violations of the Education Article.

100. Respondents, who collectively have responsibility for matters concerning the New York City public schools, have failed to meet their constitutional mandate to provide a sound basic education to all public school children in New York City.

101. Class Size Matters has completed surveys and interviews with parents, teachers, and principals who have told them that the smaller classes in their schools this past year, due to enrollment decline and the maintenance of sufficient funding, have been essential in allowing them to reconnect with their students and help them begin to recover from the disrupted learning and disengagement that resulted from school closures and remote learning during the height of the pandemic. Haimson Aff. ¶ 23, Exh. 5.

102. A Kindergarten teacher, who was assigned to a class of nineteen students this year rather than the 25 students as in previous years, reported that “the environment is so much calmer and more relaxed. We can give each child individualized attention and care each day... I am able to support and work with more students individually and in small groups. The classroom is less chaotic and loud and there are less behavior problems and disruption with a smaller class size, leading to better learning outcomes and the children’s ability to self-regulate and focus while I am teaching.” Haimson Aff. ¶ 24.

103. A fourth-grade teacher said “this year, there are 19 kids in my class and the difference is stark. We can give each kid tons of attention. Some of them have made 1.5 to 2 years of growth in reading already... we can give each child individualized attention and care each day.” Haimson Aff. ¶ 25.

104. Class Size Matters’ surveys and interviews have also revealed that the smaller classes have been key in allowing them to provide the emotional support necessary to reintegrate into the school community and mend from the distress they suffered as a result of the pandemic. As one parent of a middle school child wrote, “This is the first year (after being in NYC public schools for seven years before this) that the teachers are able to provide individualized attention

to my child's social and emotional needs. Her teachers all know her really well for the first time." Haimson Aff. ¶ 26.

105. If these cuts are made to school budgets, class sizes will likely increase sharply and much of the progress students have gained as a result of small class sizes will be lost in the anonymity of larger classes where their teachers will be once again unable to give them the academic and social-emotional support they need. Haimson Aff. ¶ 27, Exh. 12.

**AS AND FOR A FIRST CAUSE OF ACTION**

**(Violation of Education Law §§ 2590-q)**

106. Petitioners repeat and reallege the allegations set forth in Paragraphs 1 through 104 as if set forth fully herein.

107. The New York Education Law at Section § 2590-q – Budgetary and fiscal processes, provides as follows:

4. On such date as the mayor shall direct, the city board shall submit to the mayor: (a) estimates, as adopted, of the total sum of money which it deems necessary for the operation of the city district (other than functions to be financed from funds provided for in the capital budget of the city) during the next fiscal year of the city, together with the estimates submitted by the community boards, as originally submitted and as modified pursuant to subdivision three of this section; (b) estimates of the amount to be received as a result of the apportionment of moneys payable from the state in such fiscal year; and (c) estimates of the amount to be received for school system expenditures by the city district in such fiscal year from sources other than appropriations of city funds or appropriations or other provisions of funds in the capital budget of the city or apportionment of moneys from the state payable in such fiscal year.

5. All estimates submitted by the city board shall be prepared in the manner prescribed by the New York city charter for submission of departmental estimates for current expenses to the mayor and shall set forth the total amounts proposed for programs or activities of the community boards in units of appropriation separate from those set forth for programs or activities operated by the city board; provided, however, that nothing shall prevent the city board from including in such estimates a unit or units of appropriation to be allocated to it in its discretion, to community boards pursuant to subdivision ten of this section to finance innovative programs or activities by such community boards.

**6. In acting on the proposed units of appropriation for programs or activities of community district education councils, the city council of the city of New York may, subject to the veto of the mayor, increase or decrease the total amount of each such unit of appropriation but, notwithstanding any provision of the New York city charter or any other law to the contrary, they shall not have power to add any other unit of appropriation for one or more community boards.**

108. Respondents DOE and Chancellor's failure to submit the Estimated Budget to the City Board for adoption prior transmission to the Mayor and adoption by the City Council violates §§ 2590-q(4)(a), (5), and (6) of the New York Education Law.

109. Respondent City, by adopting the City FY23 Budget before the City Board conducted a public hearing and voted on the DOE FY23 Estimated Budget, violated New York Education Law §§ 2590-q(4)(a), (5), 6).

110. Pursuant to § 2590-q, Respondent Chancellor must submit budget "estimates, as adopted by the City Board, of the total sum which it deems necessary for the operation of the city district... during the next fiscal year of the city, together with estimates submitted by the community district education councils." N.Y. Educ. Law § 2590-q(4)(a).

111. Moreover, City Council has the right to "increase or decrease the total amount of each such unit of appropriation" pursuant to § 2590-q(6) of the New York Education Law.

112. Yet, the City Board was denied the opportunity to hold a meeting on the Estimated Budget because the Chancellor, pursuant to his Emergency Declaration, caused the Estimated Budget to be adopted by fiat.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners request that the Court

1. Issue a permanent injunction as follows:
  - a) Declaring that Respondents DOE and Chancellor violated New York Education Law Section 2590-q(4)(a) by their failure to require the adoption of the DOE FY23 estimated education budget by the City Board (which the DOE refers to as the Panel for Education Policy) prior to the vote by New York City Council on the City FY23 Budget, adopting that budget, thereby depriving the City Council of the benefit of the public hearing, public comments, and vote by the City Board, whose adoption was required to occur prior to the City Council's consideration and vote on the DOE FY23 education budget.
  - b) Declaring that the New York City Charter and/or New York Education Law were violated by Respondents DOE and Chancellor by the failure of the Chancellor to convene a meeting of the City Board, hold a public hearing, and receive public comments, for the purposes of voting on the proposed DOE FY23 estimated budget prior to the vote by the City Council to adopt that budget pursuant to New York Education Law §§ 2590-g(7), (8) and 2590-q(5).
  - c) Declaring that Respondents violated New York Education Law §§ 2590-g(1)(e), and 2590-q(4)(a), (5), (6) by failing to provide the City Board with sufficient information to allow the evaluation and determination of the impact of the proposed budget cuts in the DOE FY23 education budget, which should have included estimates for total amounts proposed for programs or activities of the community district education councils in units of appropriation separate from

those set forth for programs or activities operated by the City Board, and which should have been provided in or with the presentation of the DOE FY23 education budget to the New York City Council prior to City Council's vote on its adoption;

- d) Declaring Respondent City violated New York Education Law §§ 2590-q(4)(a), (5), (6) by its adoption of the City FY23 Budget by the New York City Council and the Mayor before the vote by the City Board approving the DOE FY23 estimated budget;
- e) Declaring Respondents have failed to meet their constitutional mandate to provide a sound basic education to New York City students.
- f) Annulling the vote by City Council on and the Mayor's approval of the City FY23 Budget, which incorporated the DOE FY23 education budget;
- g) Mandating as soon as practicable the reconsideration and revote by the New York City Council on the DOE FY23 education budget, to thereafter be incorporated by the City into the adopted City budget for FY23;
- h) Granting to Petitioners their costs, attorneys' fees, and expenses; and
- i) Granting such other further relief as may be just and equitable;

**2. Issue a Temporary Restraining Order that pending the hearing and determination of this matter, that Respondents are**

- a. Enjoined from any further implementation of the funding cuts contained in the adopted City F23 Budget, which approved the DOE FY23 education budget for the 2022-2023 school year;**

- b. Enjoined from spending at levels other than as required by the prior year  
**DOE FY22 education budget; and**
- c. Required, as soon as practicable to send a letter to all school parents and employees informing them of the temporary restraining order on the implementation of the City's FY23 Budget, which approved the DOE FY23 education budget for the 2022-2023 school year, and that the DOE education budget for FY22 school year will remain in effect until the Court renders a final decision on this application, with this letter copied to the Court and to the Petitioners' attorneys.

Dated: July 17, 2022  
New York, New York

ADVOCATES FOR JUSTICE  
*Attorneys for Petitioners*

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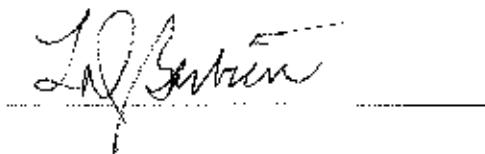
**ATTORNEY VERIFICATION**

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

Laura D. Barbieri, hereby affirms, deposes and states, under penalty of perjury, that I am Special Counsel to Petitioners in this matter and on the basis of multiple conversations with my clients, a thorough review of the case file that includes dozens of publicly available documents, along with reviews of financial analyses of the budget cuts that have occurred and are occurring across the NYC public school system, that I have knowledge of the contents of the Verified Petition and that I have read it completely, and that its contents is true to the best of my knowledge, and that as to those allegations based on information and belief, I believe them to be true. Further, because three of my clients reside outside the county of New York, where my office is located, I am making this Verification on their behalf.

Dated: July 18, 2022

New York, New York

A handwritten signature in black ink, appearing to read "Laura D. Barbieri", is positioned above a horizontal line. The signature is fluid and cursive, with "Laura" on top and "D. Barbieri" below it.