STATE OF NEW YORK
COUNTY OF NEW YORK

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In Matter of the Application of

MICHAEL P. THOMAS,

Plaintiff/Petitioner,

Index No.: 100538/2014

and

Hon. Peter H. Moulton
Part 57, Room 623

LETITIA JAMES, Public Advocate for the City of New York, and CLASS SIZE MATTERS,

Petitioners-Intervenors,

VERIFIED PETITION

for Order and Judgment Pursuant, Article 78 of the Civil Practice Law and Rules,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION, and CARMEN FARIÑA, Chancellor of the New York City Department of Education,

Defendants/Respondents.

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Intervening Petitioners, The Public Advocate for the City of New York, the Honorable Letitia James, and Class Size Matters, a membership organization, by their attorneys Advocates for Justice and New York Lawyers for the Public Interest, as and for their Verified Petition, herein respectfully allege as follows:

SUMMARY OF PETITION

1. This is an application for a declaratory judgment, pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR"), that respondent the New York City Department of Education (the Board or the DOE) and respondent the Chancellor of the New

York City Department of Education ("Chancellor") (collectively "respondents"), have an unlawful policy of denying public access to monthly School Leadership Team ("SLT") meetings, in violation of Public Officer's Law, Article 7, also known as the "Open Meetings Law" ("OML") and other state laws and regulations.

2. Under state law and DOE regulation, every New York City public school must have a School Leadership Team (SLT). The SLT includes representatives of the school's parents, teachers, staff and administration, and is the primary "vehicle for developing school-based educational policies and ensuring that resources are aligned to implement those policies." *See* Chancellor's Regulation A-655 § I. The SLT is responsible for developing the school's annual Comprehensive Educational Plan (CEP), which establishes the school's goals, needs, and instructional strategies for the year. *Id.* § II. The SLT must also ensure that the school-based budget (which is developed concurrently by a school's principal) is aligned with the CEP. *Id.*

3. SLTs also play other important roles as a school's primary vehicle for collaborative decision making. For example, SLTs hold joint public hearings with the DOE to ensure community input into proposed school closings. *See, e.g., Mulgrew v. Bd. of Educ. of City Sch. Dist. of City of New York*, 75 A.D.3d 412, 414-15, 906 N.Y.S.2d 9 (App. Div. 1st Dep't 2010). SLTs also serve as the vehicle for consultation with parent representatives regarding Title I and other federal reimbursable funding, as required by federal law. *See* Chancellor's Regulation A-655 § XI.

4. In short, School Leadership Teams are a required and critical piece of the governance structure for New York City public schools. They also meet all of the requirements for applying the Open Meetings Law: they perform a necessary governmental function required by state law as part of the formal governance structure of the DOE; they perform public business,

and require a quorum to do so; and they have clearly defined authority that is not merely "advisory" in nature. The Committee on Open Government (the office of the New York Department of State responsible for overseeing the Open Meetings Law) agrees and advises that an SLT must comply with the Open Meetings Law because it is a public body. *See* Comm. on Open Gov't, Advisory Op. OML-AO-3828 (June 22, 2004), available at http://docs.dos.ny.gov/coog/otext/o3828.htm; Comm. on Open Gov't, Advisory Op. OML-AO-3728 (Dec. 29, 2003), attached as Barbieri Aff. Ex. D.

5. Nonetheless, the DOE has argued in several court proceedings that School Leadership Teams are not subject to the State's Open Meetings Law and that therefore access to SLT meetings can be restricted and members of the public can be excluded. *See, e.g., Portelos v. Bd. of Educ. of the City of N.Y.*, 2013 N.Y. Slip Op. 32842(U) (Sup. Ct. N.Y. Cty, Nov. 4, 2013), appeal docketed, No. 100853/13, M-3716 (1st Dep't Dec. 16, 2013) (wherein the DOE argued that SLTs were not public bodies because they possessed only advisory powers), *and see Thomas v. NYC Dep't of Educ.*, No. 100538/14 (Sup. Ct. N.Y. Cty, filed May 19, 2014) (same)).

6. Upon information and belief, the DOE has also advised schools personnel that they can exclude members of the general public, including members of the press, from attending SLT meetings where matters of public importance are being deliberated. *See* Affidavit of Lisa Donlan ¶¶ 5-19.

7. This position is contrary to law, and it contravenes the fundamental principles of school based management and shared decision making that are required by state and federal law. Closing public school meetings to the public also violates public policy, including that which forms the basis of the Open Meetings Law.

8. SLT meetings must be open to the public for the additional reason that they are "civic meetings" that must be held at a public school (or other DOE premises) and therefore must open their doors to the general public under New York State Education Law § 414.

9. This Verified Petition advances important issues of government transparency and accountability that go beyond the interests of one or two individuals. Indeed, every citizen may be potentially impacted by the Court's decision in this matter. At stake is the very ability of the public, which includes members of the press, to attend and observe important school governance meetings conducted by SLTs whereat school curricula and budget issues are discussed and educational planning decisions are made.

10. The DOE's policy of excluding members of the public from attending school governance meetings conducted by the SLTs violates state law and public policy. Petitioners respectfully request that this Court render a declaration that respondents cannot exclude members of the public from SLT meetings and further recommend that members of the public be permitted to participate at SLT meetings in a manner consistent with SLT bylaws on matters of public significance.

PARTIES

Petitioners

11. Petitioner-Intervenor, The Public Advocate for the City of New York, the Honorable Letitia James, seeks permission to intervene in this action on behalf of the Office of the Public Advocate, which is charged with monitoring New York City agencies, fielding constituent complaints about their performance, and recommending measures to remedy systemic problems. New York City Charter ("Charter") § 24.

12. The Public Advocate is charged with overseeing and monitoring all New York City agencies, including investigating any shortcomings or failures in the provision of services to city residents. In addition, the Public Advocates fields complaints about the performance of city agencies and recommends measures to remedy systemic problems. New York City Charter ("Charter") § 24. The Public Advocate was established by the New York City Charter specifically as an elected government "watchdog." Accordingly, the Public Advocate has a particular interest in ensuring that this litigation leads to improved transparency that will benefit the multitude of communities that comprise the City of New York.

13. Petitioner Class Size Matters ("CSM") is a New York City based non-profit, non-partisan membership organization of parents and concerned citizens dedicated to achieving smaller class sizes in New York City and throughout the nation. CSM also serves as a clearinghouse for information on the benefits of class size reduction and the data on class size. These efforts educate parents, public officials (both elected and appointed), education advocates, and school boards, including the New York City Board of Education, on the state of class sizes in American education and need for class size reduction. Leonie Haimson is its Executive Director.

14. Affiant Lisa Donlan is a member of Class Size Matters and has been since 2007 the President of the Community Education Council (CEC) for District One on the Lower East Side of Manhattan. As its mission statement explains, the CEC's goal "is to help District One families and educators to exercise self-determination and local control over education policy and practices and to participate in decision-making at the level of family, school and community." *See* http://cecd1.org/about/mission-statement/.

Respondents

15. Respondent DOE is a school board organized under and existing pursuant to the New York Education Law and, for all purposes, serves as the government or public employer of all persons appointed to or assigned by it in the City of New York.

16. By chapter 91 of the Laws of 2002, New York's Education Law was amended so as to radically restructure the governance of the school district of the City of New York. The amendment provided, among other things, that the Mayor of New York was empowered to appoint a chancellor who would preside over a Board of Education which was to be expanded from seven to thirteen members, the majority of which were also to be appointed by the Mayor of the City of New York. Five Board members were to be selected by the Borough Presidents. Although that legislation itself made no specific reference to a "Department of Education of the City of New York", the bylaws subsequently adopted by the Board, provide that this thirteen member body "shall be known as the Panel for Educational Policy", which together with the Chancellor and other school employees is designated as the "Department of Education of the City of New York."

17. The by-laws of the Board state specifically that: "The Panel for Educational Policy is a part of the governance structure for the City School District of the City of New York, subject to the Laws of the State of New York and the Regulations of the State Department of Education. Other parts of the structure include the Chancellor, superintendents, community school boards, principals, and ***school leadership teams***. Together this structure shall be designated as the Department of Education of the City of New York" (emphasis supplied). *See* http://schools.nyc.gov/AboutUs/leadership/PEP/bylaws/default.htm. Thus, school leadership

teams are an integral part of the governance structure of the Department of Education of the City of New York.

18. At all relevant times herein, respondent Chancellor, under the Education Law, functions as the superintendent of the district schools and chief executive officer of the City School District of the City of New York.

VENUE

19. Pursuant to CPLR §§ 7502 and 7804(b), the basis of venue is that the principal office of the Respondents is located in New York County at 52 Chambers Street, New York, New York 10007.

STATEMENT OF FACTS

20. Petitioner The Public Advocate for the City of New York was elected as the government "watchdog." Under the Charter, the Public Advocate is the elected official empowered and charged with overseeing all City agencies, including investigating any shortcomings or failures in the provision of services to New York City residents.

21. In this capacity, the Public Advocate recently wrote to the DOE regarding its unlawful policy and requested that it reconsider its position regarding the propriety and legality of closing SLT meetings to the public. Joining her request were numerous members of Community Education Councils from around the City. See Barbieri Aff., Exh. A.

22. In response, the DOE acknowledged its unwritten unlawful policy and stated that it would continue to adhere to it. Specifically the DOE claimed that "SLTs serve an advisory purpose … ." It further asserted, "The SLT does not conduct public business and, as a result, is not a public body subject to the Open Meetings Law." See Barbieri Aff., Exh. B.

23. The New York City school system is the largest in the county. Approximately 1.1 million students are educated in approximately 1,800 schools.[1] New York City DOE's 2014-2015 operating budget exceeds $20 billion dollars.[2] According to the DOE, approximately $10 billion of that amount is reserved to school budgets.[3] Using gross calculations, these figures suggest that school budgets average $5 million dollars per school. IS 49's budget for this school year, for example, is approximately $5.4 million.[4]

24. Thus, SLTs are responsible for deciding issues affecting the educational curriculum of thousands of public school students and as part of that responsibility they make recommendations regarding multi-million dollar school budgets in order to align the curricula to the monies available.

25. Refusing to allow access by members of the public to SLT meetings does not serve the interests of the citizens of this City, each of whom are entitled to attend meetings held in public schools at which significant issues concerning the education of the youth of this City and the expenditure of taxpayer monies are discussed. These meetings must be open to the public and the press not only because the law so requires but also because our government officials must be accountable to the public and engage in public business in an open and transparent manner.

Applicable Statutory Provisions

26. In New York, SLTs must be established in every public school pursuant to New York Education Law § 2590-h, Commissioner's Regulation 100.11, and the Chancellor's

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[1] *See* http://schools.nyc.gov/AboutUs/default.htm (last visited January 4, 2015).
[2] *See* http://schools.nyc.gov/AboutUs/funding/overview/default.htm (last visited January 4, 2015).
[3] *Ibid.*
[4] *See* http://schools.nyc.gov/AboutUs/funding/schoolbudgets/fy15SchoolBudgetOverview.htm?schoolcode=R049 (last visited January 4, 2015).

Regulation A-655. Pursuant to Education Law § 2590-h(15)(b-1)(i), the SLT is responsible for developing an annual school Comprehensive Educational Plan ("CEP"). The principal must consult with the SLT in the formation of the school budget, and the SLT and the principal must work together to align the budget to the CEP. See Education Law §§ 2590-r(b) and 2590-h(15)(b-1)(i).

27. Commissioner's Regulation 100.11 specifically mandates the participation of parents and teachers in school based planning and shared decision-making for the purposes of improving the educational performance of students. Further, and as provided therein,

> [t]he plan for participation in school-based planning and shared decisionmaking shall specify: (1) the educational issues which will be subject to cooperative planning and shared decisionmaking at the building level by teachers, parents, administrators, and, at the discretion of the board of education or BOCES, other parties such as students, school district support staff, and community members.

8 N.Y.C.R.R. § 100.11(c).

28. Chancellor's Regulation A-655 was promulgated to ensure the formation of SLTs in New York City public schools, in accordance with Education Law § 2590-h. According to the Chancellor's Regulation A-655 (III)(B), there are three (3) mandatory members of the SLT – the parent association president, the principal and the United Federation of Teachers Chapter Leader. Chancellor's Regulation A-655 (III).[5] The minimum number of SLT members is 10 and the maximum is 17, but the regulation requires that the number of parents and staff must be balanced. *Id.* The Chancellor's Regulation requires that SLT meetings "must take place on school or DOE premises and be scheduled at a time convenient to parent members (day or evening)," and that "[n]otice of meetings must be provided in a form consistent with the open meetings law." Chancellor's Regulation A-655 § VII.

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[5] The Chancellor's Regulation is available at http://schools.nyc.gov/RulesPolicies/ChancellorsRegulations/default.htm.

29. Contained within Article 7 of the Public Officer's Law, the Open Meetings Law ("OML") provides in pertinent part that, "every meeting of a public body shall be open to the general public, with the exception of executive sessions." N.Y. Pub. Officers Law § 103(a).

30. Pursuant to Section 414 of the Education Law, all civic meetings held at schools or on other property belonging to a school district "shall be non-exclusive and shall be open to the general public." N.Y. Educ. Law § 414(1)(c).

The DOE's Unlawful Policy

31. Respondents represented in various legal documents, one filed in opposition to a similar petition as that before the Court – in the matter of *Portelos v. Bd. of Educ. of the City of New York*, *supra*, and in this matter, *Thomas v. New York City Dep't of Educ.*, an unlawful unwritten policy that SLTs are not public bodies and therefore these meetings may be closed to the public. See Barbieri Aff., Exh. B.

32. Respondents have enforced this policy by improperly and unlawfully prohibiting members of the public from attending SLT meetings (including Portelos and Thomas and *see* Affidavit of Lisa Donlan), and upon information and belief, continue to prohibit members of the public from attending such meetings.

SLTs are Public Bodies, Conduct Public Business And Must Comply with the Open Meetings Law

33. SLTs are "public bodies" and as such, its meetings must be held in compliance with the OML.

34. An SLT's development and determination of a school's Comprehensive Education Plan ("CEP") is public business, as are other SLT activities such as its discussions and recommendations concerning the CEP's alignment with the school's budget.

AS AND FOR A FIRST CAUSE OF ACTION

35. Petitioners repeat and reallege the allegations contained in Paragraphs 1 through 30 herein.

36. Pursuant to Education Law § 2590-h, Commissioner's regulation 100.11, and Chancellor's regulation A-655, an SLT must be established in every school.

37. Pursuant to the OML, "every meeting of a public body shall be open to the general public," with the exception of executive sessions. N.Y. Pub. Officers Law § 103(a).

38. SLTs are "public bodies" and as such, its meetings must be held in compliance with the OML. In accordance with this requirement, Chancellor's Regulation A-655 requires public notice of all SLT meetings "in a form consistent with the open meetings law."

39. SLT meetings must be held on school premises, and must be open to members of the general public, pursuant to both the Open Meetings Law and N.Y. Education Law § 414.

40. At SLT meetings the degree and manner of participation by members of the public must be established in accordance with SLT by-laws.

41. The DOE's own literature explaining the governance of SLTs provides that such meetings are open to the public. See Barbieri Aff., Exh. C, p.17.

42. The DOE's own literature regarding SLTs also provides that the members of the community may serve as members of the SLT. See Barbieri Aff., Exh. C, p.9.

43. Despite due demand by members of the public, SLTs have refused admittance to members of the general public.

44. Despite due demand by members of the public, SLTs have refused members of the general public the right to participate in SLT meetings consistent with SLTs' by-laws.

45. The respondents' refusal to ensure that SLT meetings are open to the public (and that public observers may participate in SLT meetings consistent with SLTs' own by-laws) violates the law and respondents' own policies, is arbitrary, capricious, an error of law, and violates the duties and responsibilities required by the DOE's governance structure.

WHEREFORE, Petitioners respectfully request that this Court grant judgment as follows:

1. Finding and declaring that the respondents' refusal to ensure that SLT meetings are open to the general public is arbitrary, capricious, and in violation of law.

2. Ordering respondents to comply with the law by permitting petitioners, their members, constituents, members of the school community, and members of the general public, to attend SLT meetings, and to participate in SLT meetings so long as such participation is in conformance with lawful SLT by-laws providing for same;

3. Finding and declaring that respondents violated Public Officer's Law § 103(a) by not opening School Leadership Team meetings to the general public, enjoining future violations of the Open Meetings Law, and awarding attorneys for Petitioners costs and attorneys fees in the amount to be determined by the Court;

4. Finding and declaring that SLTs are "civic meetings" within the meaning of New York Education Law Section 414(1)(c) and as such must be open to the general public;

5. Ordering Respondents to participate in a training session concerning the obligations imposed by the Open Meetings Law conducted by the staff of the Committee on Open Government pursuant to Public Officers Law § 107(1);

6. Ordering Respondents to revise Chancellor's Regulation A-655 to explicitly direct SLTs to provide in their respective bylaws that the public shall be permitted to attend and to provide for lawful bylaws concerning the public's attendance and participation;

7. Awarding costs and reasonable attorneys fees pursuant to Public Officer's Law § 107 to Petitioners-Intervenors' attorneys; and

8. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 6, 2015

NEW YORK LAWYERS FOR THE PUBLIC INTEREST

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Of Counsel to Class Size Matters

ADVOCATES FOR JUSTICE

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Of Counsel to The Public Advocate of the City of New York and Class Size Matters

VERIFICATION

STATE OF NEW YORK

COUNTY OF NEW YORK

I, JENNIFER LEVY, am General Counsel in charge of Litigation for the Public Advocate for the City of New York, a petitioner herein, and have read the contents of the foregoing Verified Petition and know the contents thereof; that the same is true to this affiant's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

The grounds of the affiant's belief as to all matters herein are based on the affiant's own knowledge, on telephone conversations with employees of the Office of the Public Advocate, from complaints and other correspondence, from information received from members of the public, and based on a review of documents in this matter and the files and proceedings connected herewith.

JENNIFER LEVY
General Counsel – Litigation
Office of the Public Advocate

Sworn to before me on this
6th day of January, 2015

NOTARY PUBLIC

MUHAMMAD UMAIR KHAN
Notary Public, State of New York
No. 02KH6268477
Qualified in Albany County
Commission Expires Sept. 10, 2016

VERIFICATION

STATE OF NEW YORK

COUNTY OF NEW YORK

I, LEONIE HAIMSON, am a petitioner herein and have read the contents of the foregoing Verified Petition and know the contents thereof; that the same is true to this affiant's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

The grounds of the affiant's belief as to all matters herein are based on the affiant's own knowledge, on telephone conversations, email exchanges, or in-person discussions with members of Class Size Matters, education advocates, Community Education Council members, and parents, from complaints and other correspondence, from information received from members of the public, and based on a review of documents in this matter and the files and proceedings connected herewith.

Leonie Haimson

Sworn to before me on this

6th day of January, 2015

L D Barbieri

LAURA DAWN BARBIERI
Notary Public, State of New York
Registration #02BA6284892
Qualified In New York County
Commission Expires July 1, 2017