

SUPREME COURT OF NEW YORK
COUNTY OF KINGS

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In the Matter of

JOANNE ADAMS, individually, and on behalf of her child,
Y.A., who attends P.S. 25; SHAKEMA ARMSTEAD,
individually, and on behalf of her child, D.M., who attends
P.S. 25; and CRYSTAL WILLIAMS, individually, and on
behalf of her two children, H.T. and K.T., both of whom
attend P.S. 25,

Petitioners,

—against—

DEPARTMENT OF EDUCATION OF THE
CITY OF NEW YORK,

Respondent,

For an Order, Pursuant to Article 78 of the CPLR and
Section 2590-e(11) of the Education Law, Annuling the
Decision to Close P.S. 25 in the County of Kings.

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Petitioners Joanne Adams, individually, and on behalf of her child, Y.A., Shakema
Armstead, individually, and on behalf of her child, D.M., and Crystal Williams, individually, and
on behalf of her two children, H.T. and K.T. (collectively “Petitioners”), by their attorneys
Advocates for Justice, hereby allege, as and for their Verified Petition as follows:

PARTIES

1. Petitioner Joanne Adams is a citizen and resident of the State and City of New
York. She is a resident of the County of Kings and lives within the attendance zone for Public
School 25 (“P.S. 25”). She is also a parent of a third grader, Y.A., who attends P.S. 25, which is
located in Community School District 16, located in the County of Kings.

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PETITION**

2. Petitioner Shakema Armstead is a citizen and resident of the State and City of New York. She is a resident of County of Kings and lives within the attendance zone for P.S. 25. She is also a parent of third grader, D.M., who attends P.S. 25.

3. Petitioner Crystal Williams is a citizen and resident of the State and City of New York. She is also a parent of two students, a second grader, H.T., and a third grader, K.T., both of whom are enrolled in P.S. 25. Petitioner and her children live in the County of Richmond. Petitioner Williams serves as the Vice President of the Parent Teachers Association at P.S. 25.

4. Respondent The Board of Education of the City of New York (the “Board” or the “BOE”) is a corporate body created by and existing under the laws of the State of New York pursuant to Sections 2551 and 2590 of the Education Law. Pursuant to various provisions of that law, including, *inter alia*, Sections 2554 and 2590-g, the BOE is charged with several responsibilities including administering and managing the educational affairs of the City School District and serving as the employer of all educators hired to teach in the City School District.

5. In conjunction with amendments to the State Education Law enacted in 2002, most powers of the Board of Education but the power to ratify collective bargaining agreements as the statutory employer of personnel for the City School District of the City of New York, were diverted to the Chancellor, with the Board’s administrative operations assigned to a body denominated by the Mayor as the New York City Department of Education (the “DOE”). The Board also conduct business as the Panel for Education Policy (the “PEP”).

6. Respondent DOE’s central office is located at 52 Chambers Street, New York, New York 10007. For the purposes of this Petition, the Board, the Department of Education, the PEP, and the Chancellor, are collectively referred to as the DOE.

JURISDICTION AND VENUE

7. Jurisdiction is proper and pursuant to CPLR Section 3001 and CPLR Section 301.

8. Venue is proper in Kings County pursuant to CPLR Section 504(2) since, *inter alia*, two of the Petitioners reside in Kings County, P.S. 25 is located in Kings County, and the cause of action arose there.

FACTUAL ALLEGATIONS

Summary of Action

9. This action charges the DOE with deliberately ignoring the statutorily guaranteed rights of the community and its participation through the Community District Education Council's (CEC's) power over the approval of changes in zoning lines. The DOE has ignored and continues to ignore the legislatively created balance between local participation and central control by utilizing its powers over school openings and closures to alter attendance zones unilaterally without legal authority – namely, without a preceding vote of approval to change the zoning lines by the affected CEC.

10. By its unilateral action – the Chancellor proposing and the Board of Education voting to close the only zoned elementary school in the neighborhood of Community School District 16 – P.S. 25, the Eubie Blake School, it is effectively attempting to change zoning lines and is thereby unlawfully usurping the statutory authority of CEC 16 to approve all such changes. Further, and in so doing, the DOE disenfranchised an entire community.

11. Upon information and belief, the DOE does not intend to create any replacement zoned elementary school for the displaced students of P.S. 25. Instead, the Chancellor intends to force parent of the affected students to apply to alternate elementary schools, none of which come close to the level of academic support or small classes received by P.S. 25 school students.

12. According to the DOE’s school performance dashboard, P.S. 25 is the second best public elementary school in Brooklyn and the fourth best public elementary school in the entire city of New York, as measured by the school’s positive impact after taking into account the need level of the incoming students. It also outperforms every charter school in the city, except for Success Academy-Bronx 2, in its positive impact on student achievement and attendance. There simply are very few schools in the City that equal P.S. 25’s level of academic excellence or the opportunities offered its high-needs student population.

13. As a result of the violation of law, the DOE is sending these affected students into an educational system that offers them far less potential to be as successful as in their former school; the chances of attending an elementary school that exceeds the academic level of their former school is almost nil. Therein lies the tragedy of its unlawful action.¹

P.S. 25, the Eubie Blake School, and its population

14. Public School 25 (“P.S. 25”), the Eubie Blake School, is a zoned elementary K-5 school,² located in Building K025 at 787 Lafayette Avenue, Brooklyn, New York. The school is co-located with Success Academy Bedford Stuyvesant 3 (84K833) (“SA-Bed Stuy-3”).

15. Because of its location, P.S. 25 consistently enrolls a significant number of families in transitional housing. As of the 2015-2016 school year, P.S. 25 enrolled 23.3% homeless students, with 30.7% students ever homeless. Last school year, 85% of its students were listed as having high economic need (as opposed to the city-wide index of 61%), according to the DOE performance dashboard. P.S. 25 also has an unusually large number of students with disabilities – 31% (as opposed to the city-wide index of 20%). However, only ten percent of these children are in self-contained classrooms. The remaining 21% of students with disabilities

¹ P.S. 25 teachers too will be displaced and will be required to join the Absent Teacher Reserves.

² See ¶ 34 *infra* discussing zoning.

were in general-education or inclusion classrooms and received a combination of collaborative, Special Education Teacher Support Services (“SETSS”) learning pursuant to their Individual Education Programs (“IEPs”). Ninety-four percent of the students are black and Hispanic. In 2016-2017 school year, there were 110 students in the school. Class sizes range from 10 students per class to 18 students per class, according to the DOE. P.S. 25 is a model of academic achievement for learning in small class environments. See Diagram 15.1.

NYC Department of Education

2017 School Performance Dashboard

→Select School: 16K025 [ES] — P.S. 025 Eubie Blake School

→Select View: City (City includes 661 ES)

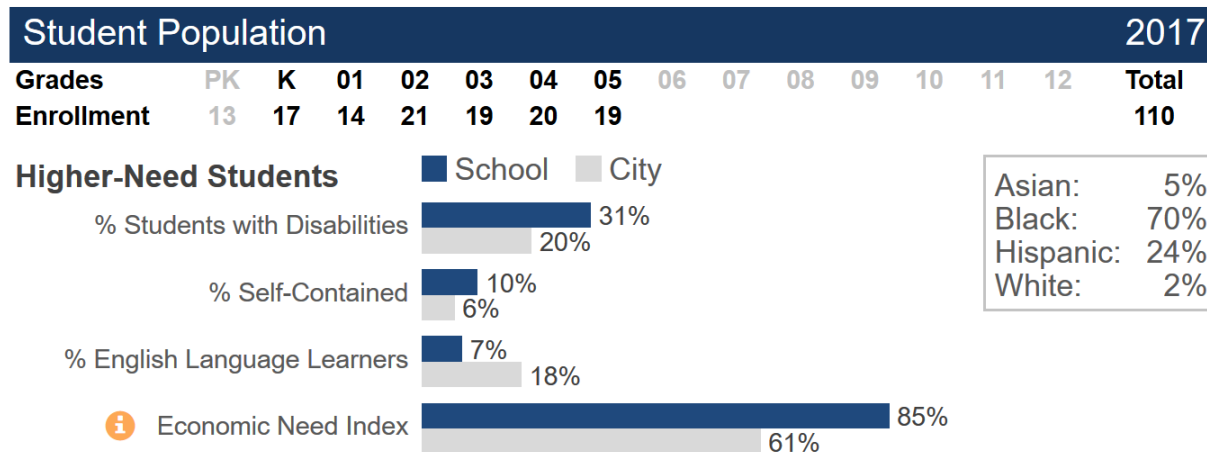


Diagram 15.1

P.S. 25’s achievements

16. The DOE measures school practices and conditions by its Quality Review standards and NYC School Surveys. Potential scores are between 1.00 and 4.99. According to the DOE’s Framework Scores for P.S. 25, Student Achievement scores is 4.92. The remaining scores are represented in diagram 18.1

School practices and conditions (measured by Quality Review and NYC School Survey) that drive student achievement. Scores are on scale from 1.00 - 4.99.

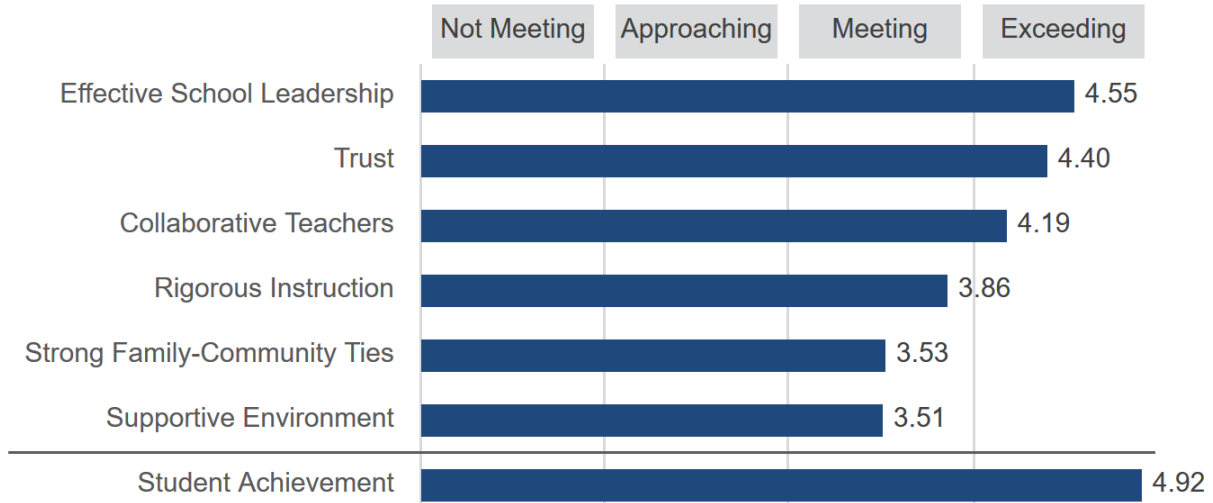


Diagram 18.1

17. As diagram 18.1 provides, Effective School Leadership scores at 4.55; Trust scores at 4.40; Collaborative Teachers scores at 4.19; Rigorous Instruction scores at 3.86; Strong Family-Community Ties scores at 3.53; and Supportive Environment scores at 3.51. These are excellent scores for a small zoned school, which the DOE should have publicized, but never did.

18. These students’ ELA and Math performance on the state examinations have steadily risen in recent years, reflecting well on the small school academic environment. As reflected in diagram 18.1, the school’s academic achievement has increased each year since 2014-2015, and now exceed citywide averages.

Shaded regions are middle two quartiles citywide. Results above shaded regions were in top 25%, and results below the shaded regions were in the bottom 25% citywide.

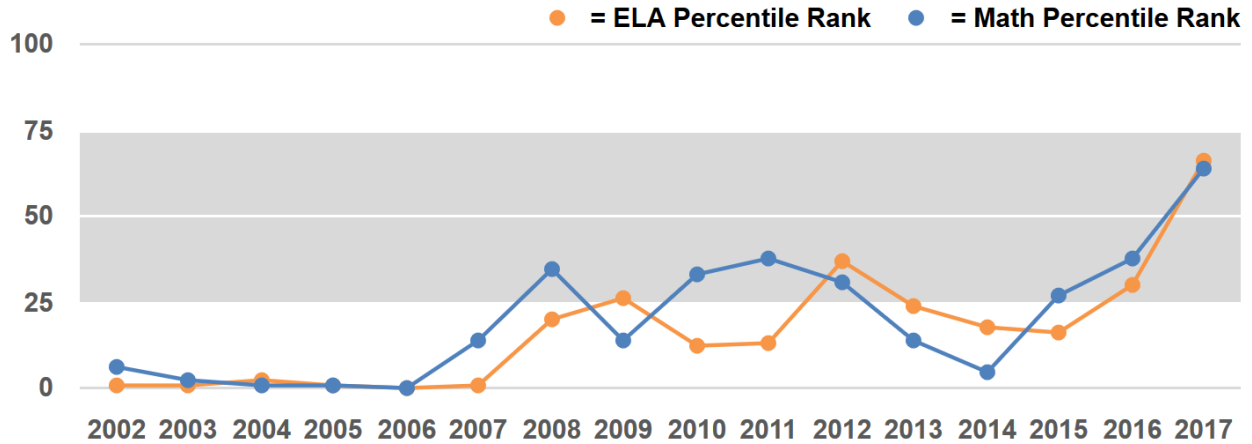


Diagram 18.1

19. See Diagram 18.1 reflecting that P.S. 25’s achievements have exceeded that of the City’s average scores in ELA and Math.

20. P.S. 25 also has the 4th highest positive impact (.93) on student achievement of any of the 661 public elementary schools in New York City, according to the DOE’s own metrics, when the need level of its incoming students is taken into account.³ See Diagram 21.1.

21. The school outperforms its comparison schools in terms of proficiency on the state exams by 21 percentage points in ELA and in math, according to the DOE Performance Dashboard.

22. The students with disabilities in the school especially excel compared to those in comparison schools, in ELA., math, and attendance.

³ Impact is measured by achievement on state examinations based on expected outcomes when considering its incoming students.

Based on all student achievement metrics, **Impact** measures school against expected outcomes, adjusted for incoming student factors; **Performance** is unadjusted performance.

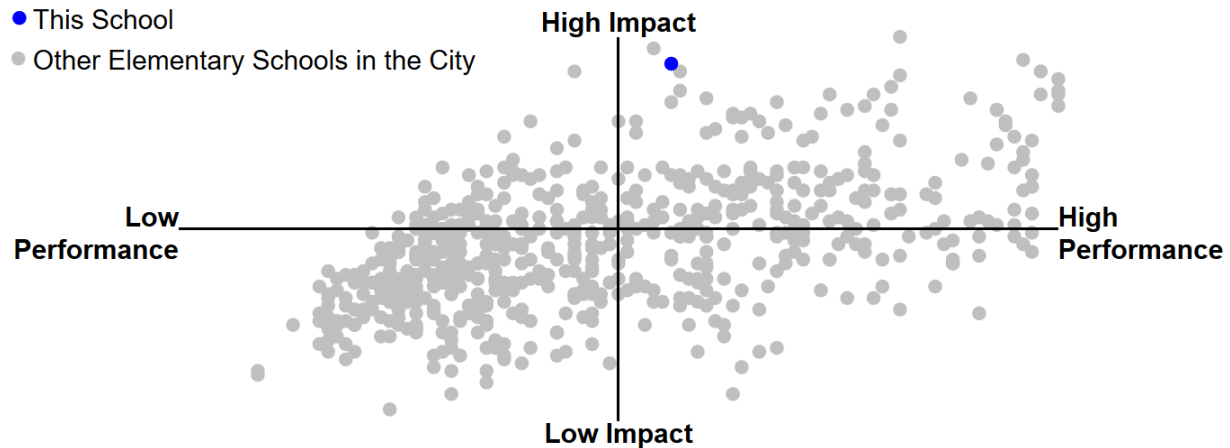


Diagram 21.1

23. The only other three elementary schools in New York City with higher impact scores than P.S. 25 are Walton Avenue school in the Bronx (1.00); P.S. 15 in Manhattan (.97); and P.S. 172 in Brooklyn (.94).

24. The only charter school that outperforms P.S. 25 is SA-Bronx 2 (.94), while the impact ratings of SA-Bed Stuy-2 (.86) and Bed-Stuy-1 (.85), in Brooklyn, are far lower.

25. And when P.S. 25's results are compared with those students in Brooklyn, it has the 2nd highest positive impact of student achievement of any elementary school.

26. For unknown reasons, the DOE has not made well-known the steady and stellar achievements of P.S. 25. The few elementary schools that compare to P.S. 25's success are either a distance from P.S. 25 and/or P.S. 25 students would have difficulty enrolling because their seats are filled with children within their attendance zones.

27. When it came to P.S. 25, however, the DOE did not announce let alone inform the District 16 Community or the CEC that P.S. 25 had the highest positive impact rating of any

school in the district, and that it consistently outperformed most of the other elementary schools in the City when the need level of its student body is taken into account. Had the DOE done so, it is less likely that the school would be suffering from low enrollment. This finding was also not mentioned in the Education Impact Statement in which the proposal to close the school was made. Nor was it made known to the Panel on Education Policy by the Department of Education at the time it proposed voting to close P.S. 25.

28. Moreover, according to the latest available data, there were at least five other public schools in New York City with smaller enrollments, not at risk of closure.

29. Rather than close P.S. 25, the DOE should be using the success of P.S. 25 as a model school for academic achievements based on small class sizes of 10 to 18 students per class and expand its enrollment through placing an additional preK or a 3K program within the school.

30. Upon information and belief, with the closing of the zoned school, the DOE does not plan to create any other district or DOE elementary public school seats for the displaced students within their community zone, leaving them to apply for seats in either selected public schools in neighboring zones, in different districts, or at SA-Bed Stuy 3, the charter school that is planned to take over the space following the evacuation of the building by P.S. 25 students.

31. Upon information and belief, once vacated, the DOE plans to give the entire building to Success Academy Bed Stuy 3, which currently is co-located in the building. If it does so, again upon information and belief, this building will be the first time in which an entire building owned by the DOE is provided to a charter school.

32. The unilateral alteration of the rights of residents within the affected zone violates § 2590-e(11) of the Education Law, which reserves to the CEC the exclusive power to approve changes to zoning lines. Further, this action completely disregards the DOE's own understanding

of what the law was supposed to provide. In his testimony before the statutorily created task force that recommended Section 2590-e for adoption, then Chancellor Klein stated that proposal would establish “Community District Education Councils, which would play an important role with respect to various aspects of the school system, including budget, education policy and zoning. Zoning of elementary schools is a particularly important function for these District Councils. I want to underscore that nothing in the school system reorganization will affect established attendance feeder patterns and zoning of schools.” (Testimony of Joel I. Klein, New York State Senate Majority Task Force on NYC School Governance Reform, April 4, 2003).

33. By this action, Petitioners, whose children are students enrolled in P.S. 25, seek to have a voice in the education of their children, by enforcing their participatory and statutory rights as parent representatives of the school and of the District, as voters of the representatives of the CEC, as victims of the unlawful changes in zoning lines proposed by the Chancellor and approved by the Panel on Education Policy of the Board of Education *before* the CEC voted to make such change pursuant to a public hearing.

Zoning

34. From its start in 1842, the State-legislated Board of Education formed to provide public education in New York City was centered around the community school with the creation of community school boards in the then Wards (geographic voting regions) of the City. The school board of each such Ward or District was empowered to establish community or neighborhood schools to educate students within the Ward. About fifty years later, the Ward system was abolished in favor of a more centralized system of education. In New York City, for example, a reorganization of the Board of Education in 1896 eliminated the previously powerful local Ward School Trustees. In 1917, the Board's membership was further reduced to just seven,

chosen from the citywide elite. Under such a board, it was argued, the professional educators would be more free to shape a modern school system, designed to meet the complex needs of the industrial city.

35. Over the years, the school boards (both centralized and decentralized) created subdivisions within what then became community school districts. School children residing within the geographic District would attend primary and secondary schools within their District. That District was further subdivided into catchments or Attendance Zones. School children residing within an Attendance Zone had the right to attend the school designated for that Zone—the Zoned School—solely based upon their residence. Every student within a Zone had the same right. Thus, geographic Attendance Zones were tied to their Zoned Schools.

36. The existence of Attendance Zones have continued to today, unaltered by the 2002-2003 amendments to the Education Law that provided for and refined mayoral control. (See Chapter 21 of the Laws of 2002; Chapter 123 of the Laws of 2003; or the subsequent revisions). Indeed, the 2003 amendments redubbed what had previously been the Community School Boards (one for each District) as Community District Education Councils (“CECs”), and explicitly reserved to the CECs of each District the power to approve the configuration of the Zones within their District (Education Law § 2590-e(11)). Accordingly, the CECs had the exclusive power to approve the alteration or abrogation of any Zone or all Zones within their District.

37. By proposing to close a zoned schools without a vote of the CEC, the DOE is also violating Chancellor’s regulations A-185, which describes a detailed timeline and process in which the Community District Superintendent must consult with the appropriate school communities, including the parents of children who will be affected by the proposed zoning

change, prior to submitting a proposal to change any zoning lines, which is then voted upon by the CEC. None of this occurred in the case of P.S. 25.

Closing P.S. 25

38. On February 28, 2018, the Panel on Education Policy of the Board of Education voted to close P.S. 25 at the end of the 2017-2018 school year. In so doing, the DOE deliberately ignored the statutorily guaranteed rights of the community and its participation through the Community District Education Council’s power over the approval of changes in zoning lines.

39. By its unilateral action, voting to close the only zoned elementary school in that zone or neighborhood of Community School District 16 – P.S. 25, the Eubie Blake School, the DOE and the Board of Education are effectively removing zoning lines, and thereby unlawfully violating the statutory authority of CEC 16 to which the authority to change zoning lines is exclusively reserved. Further, and in so doing, they disenfranchised an entire community.

40. Upon information and belief, the DOE does not intend to create any replacement zoned elementary school for the displaced students. Instead, the DOE intends to send the affected students to alternate elementary schools many of which do not come close to the level of academic support or achievement provided to P.S. 25 school students.

41. The DOE has violated and continues to violate Section 2590-e(11) of the Education Law.

FIRST CAUSE OF ACTION
(Violation of Education Law 2590-e(11))

42. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 40 as if set forth herein.

43. Pursuant to Section 2590-e(11) of the Education Law, the right to approve of zone alterations is reserved to the Community District Education Councils.

44. The DOE's intended closing of Zoned elementary school P.S. 25, which is the only Zoned elementary school in that Zone, without any provision for the creation of new Zoned School within the Attendance Zone or the application for a change in zoning lines violates §2590-e(11).

45. The DOE was and is required to submit such zoning changes to the Community District Education Council for approval prior to any vote of the Panel on Education Policy of the Board of Education to close the school. By failing to do so, the DOE violates §2590-e(11).

46. The DOE's actions as aforescribed violates Section 2590-e(11) of the Education Law.

PRAYER FOR RELIEF

WHEREFORE, Petitioners request that this Court enter a Preliminary and Permanent Injunction

a) Declaring that the DOE violated Section 2590-e(11) of the New York State Education Law by voting to close P.S. 25, the Eubie Blake School, *prior* to the duly noticed meeting and proper vote by the CEC No 16, (i.e., with the noticed agenda, if any, and proposed resolution, if any, and a properly held meeting and vote), (and, only if passed, by the Community District Education Council No. 16, that would provide the DOE with the necessary authorization to close the school).

b) Staying and, after full development of the record, annulling the Panel on Education Policy of the Board of Education's vote closing P.S. 25 as having been taken in violation of Section 2590-e(11).

c) Directing that the issue of the closure of P.S. 25 be submitted to Community District Education Council No. 16 (CEC16);

d) Directing that the Panel on Education Policy of the Board of Education renounce and revoke on whether to close P.S. 25 should CEC 16 properly vote to remove the only zoned elementary school, P.S. 25, from the Attendance Zone.

e) Granting to the Petitioners their costs, attorneys fees, and expenses; and

f) Granting such other and further relief as may be just and equitable.

Dated: March 27, 2018
New York, New York

ADVOCATES FOR JUSTICE
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By: _____ /s/

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