

SUPREME COURT OF THE STATE 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; SHAMEKA 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,

VERIFIED ANSWER

Index No. 506124/18

Petitioners,

- against -

THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT 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.

-----x
Respondent the Board of Education of the City of New York (hereinafter, the “BOE”), by its attorney, Zachary W. Carter, the Corporation Counsel of the City of New York, hereby Answers the Verified Petition, dated March 27, 2018, and respectfully alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “1”, except admit that Petitioner Joanne Adams (“Petitioner Adams”) is a resident of the State and City of New York and the County of Kings, that she is a parent of a third grader, Y.A., that P.S. 25 is located in Community School District 16 located in the County of Kings, and affirmatively states that Y.A. attended third grade at P.S. 25.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “2”, except admit that Petitioner Shakema Armstead (“Petitioner Armstead”) is a resident of the State and City of New York and the County of Kings, that she is a parent of a third grader, D.M., that P.S. 25 is located in Community School District 16 located in the County of Kings, and affirmatively states that D.M. attended third grade at P.S. 25.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “3” of the Verified Petition, except admit that Petitioner Crystal Williams (“Petitioner Williams”) is a resident of the State and City of New York and the County of Richmond, that she is a parent of a third grader, K.T., and that she is the Vice President of the Parent Teachers Association at P.S. 25.

4. Denies the allegations set forth in paragraph “4” of the Verified Petition, and respectfully refers the Court to the statutory provision cited therein for a complete and accurate statement of its contents

5. Denies the allegations set forth in paragraph “5” of the Verified Petition, and respectfully refers the Court to Article 52-A of the Education Law for a complete and accurate statement of its contents

6. Denies the allegations set forth in paragraph “6” of the Verified Petition, except admits that the BOE’s central office is located at 52 Chambers Street and that Petitioners purport to proceed as set forth therein.

7. Denies the allegations set forth in paragraph “7” of the Verified Petition, except admits that Petitioners purport to invoke the jurisdiction of this Court as stated therein.

8. Denies the allegations set forth in paragraph “8” of the Verified Petition, except admits that Petitioners purport to lay venue in this judicial district as stated therein, and affirmatively states that Respondent does not challenge venue.

9. Denies the allegations set forth in paragraph “9” of the Verified Petition.

10. Denies the allegations set forth in paragraph “10” of the Verified Petition.

11. Denies the allegations set forth in paragraph “11” of the Verified Petition, and affirmatively states that the DOE is not currently planning to open a replacement zoned district elementary school for the 2018-2019 school year.

12. Denies the allegations set forth in paragraph “12” of the Verified Petition, except admit that, according to the DOE’s school performance dashboard, P.S. is the second best public elementary school in Brooklyn and the fourth best in the City, and that P.S. 25 outperforms charter schools other than Success Academy-Bronx 2 in its positive impact on student achievement and attendance.

13. Denies the allegations set forth in paragraph “13” and footnote 1 of the Verified Petition.

14. Admits the allegations set forth in paragraph “14” of the Verified Petition.

15. Denies the allegations set forth in paragraph “15” of the Verified Petition, except admits that last year, according to the DOE performance dashboard, 85% of its students were listed as having high economic need, that 31% of its students have disabilities and 10% of these students are in self-contained classrooms, that 94% of the students are black and Hispanic, and affirmatively states that in 2016-2017 school year there were 100 students in grades 1 through 5 in the school, and that in 2015-2016, 23.3% of students enrolled at P.S. 25 were in temporary housing.

16. Admits the allegations set forth in paragraph “16” of the Verified Petition.
17. Denies the allegations set forth in paragraph “17” of the Verified Petition, except admits that P.S. 25’s 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.
18. Denies the allegations set forth in paragraph “18” of the Verified Petition, except admits that P.S. 25’s academic achievement has increased each year since 2014-2015.
19. Denies the allegations set forth in paragraph “19” of the Verified Petition.
20. Admits the allegations set forth in paragraph “20” of the Verified Petition.
21. Admits the allegations set forth in paragraph “21” of the Verified Petition.
22. Denies the allegations set forth in paragraph “22” of the Verified Petition.
23. Admits the allegations set forth in paragraph “23” of the Verified Petition.
24. Admits the allegations set forth in paragraph “24” of the Verified Petition.
25. Denies the allegations set forth in paragraph “25” of the Verified Petition, except admits that P.S. 25 has the second highest positive impact of student achievement of any elementary school in Brooklyn.
26. Denies the allegations set forth in paragraph “26” of the Verified Petition.
27. Denies the allegations set forth in paragraph “27” of the Verified Petition, except admits that P.S. 25’s positive impact rating and performance with respect to the need level of its student body were not included in the EIS or presented to the PEP.
28. Denies the allegations set forth in paragraph “28” of the Verified Petition.
29. Denies the allegations set forth in paragraph “29” of the Verified Petition.
30. Denies the allegations set forth in paragraph “30” of the Verified Petition.

31. Denies the allegations set forth in paragraph “31” of the Verified Petition.

32. Paragraph “32” of the Verified Petition consists entirely of a legal conclusion to which no answer is required. To the extent that an answer is deemed to be required, Respondent denies the allegation set forth in paragraph “32” and respectfully refers the Court to the statutory provision and testimony cited therein for a complete and accurate statement of its contents.

33. Denies the allegations set forth in paragraph “33” of the Verified Petition, except admits that Petitioners purport to proceed as set forth therein.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the Verified Petition.

35. Denies the allegations set forth in paragraph “35” of the Verified Petition, and affirmatively states that zoned schools give admissions priority to students living in the school’s zone, which is a specific geographic region or attendance zone, and that students residing in an attendance zone have a right to attend the corresponding zoned school and respectfully refer the Court to Chancellor’s Regulation A-101 for a complete and accurate statement of its contents.

36. Denies the allegations set forth in paragraph “36” of the Verified Petition, except admits that attendance zones continue today, and respectfully refers the Court to the statutory provision cited therein for a complete and accurate statement of its contents.

37. Paragraph “37” of the Verified Petition consists entirely of a legal conclusion to which no answer is required. To the extent that an answer is deemed to be required, Respondent denies the allegations set forth in paragraph “37” and respectfully refers the Court to the regulation cited therein for a complete and accurate statement of its contents.

38. Denies the allegations set forth in paragraph “38” of the Verified Petition, except admits that on February 28, 2018 the PEP voted to close P.S. 25 at the end of the 2017-2018 school year.

39. Paragraph “39” of the Verified Petition consists entirely of a legal conclusion to which no answer is required. To the extent that an answer is deemed to be required, Respondent denies the allegations set forth in paragraph “39”.

40. Denies the allegations set forth in paragraph “40” of the Verified Petition, except admits that

41. Paragraph “41” of the Verified Petition consists entirely of a legal conclusion to which no answer is required. To the extent that an answer is deemed to be required, Respondent denies the allegations set forth in paragraph “41” and respectfully refers the Court to the statutory provision cited therein for a complete and accurate statement of its contents.

42. In response to paragraph “42”, Respondent repeats and realleges its responses to the allegations set forth in paragraphs “1” through “41” of the Verified Petition as if fully set forth herein.

43. Denies the allegations set forth in paragraph “43” of the Verified Petition, and respectfully refers the Court to the statutory provision cited therein for a complete and accurate statement of its contents.

44. Paragraph “44” of the Verified Petition consists entirely of a legal conclusion to which no answer is required. To the extent that an answer is deemed to be required, Respondent denies the allegations set forth in paragraph “44”, except admits that P.S.

25 is the only elementary school in that attendance zone, and respectfully refers the Court to the statutory provision cited therein for a complete and accurate statement of its contents.

45. Paragraph “45” of the Verified Petition consists entirely of a legal conclusion to which no answer is required. To the extent that an answer is deemed to be required, Respondent denies the allegations set forth in paragraph “45” of the Verified Petition, and respectfully refers the Court to the statutory provision cited therein for a complete and accurate statement of its contents.

46. Paragraph “46” of the Verified Petition consists entirely of a legal conclusion to which no answer is required. To the extent that an answer is deemed to be required, Respondent denies the allegations set forth in paragraph “46” of the Verified Petition, and respectfully refers the Court to the statutory provision cited therein for a complete and accurate statement of its contents.

**AS AND FOR A STATEMENT OF
PERTINENT AND MATERIALS FACTS
RESPONDENT RESPECTFULLY ALLEGES:**

47. The assertions contained in the annexed Affidavits of Rebecca Rawlins and Lianna Wright, both sworn to on April 12, 2018, and the attached exhibits, are incorporated herein.

48. The DOE strives to ensure that all students in New York City have access to a diverse range of high-quality schools at every stage of their education. To meet the needs of all New York City students, the DOE must allocate space efficiently. To that end, it evaluates public school buildings throughout the City that are “under-utilized,” meaning they have space to accommodate additional students.

49. Eubie Blake School, referred to as P.S. 25, is an existing zoned elementary school serving students in grades K-5 and offering a pre-Kindergarten program.

50. P.S. 25 is located at 787 Lafayette Avenue, Brooklyn, New York, in Community School District 16.

51. P.S. 25 is located in building K025 and is currently co-located with Success Academy – Bed Stuy 3 (84K883), referred to as SA Bed Stuy 3, a charter school.

The District Planning Process & Rationale for the Proposed Closure of P.S. 25

52. The DOE’s district planning process for the 2018-2019 school year began in the spring of 2017, with several Central and Field Offices within the DOE participating. The DOE’s District Planning Committee is responsible for examining all under-enrolled schools (i.e., all schools with less than 250 students), which included P.S. 25.

53. K025 has the capacity to serve a total of 1,004 students according to the 2016-2017 Enrollment, Capacity and Utilization Report. In the current 2017-2018 school year, 261 total students are being served across P.S. 25 and SA Bed Stuy 3, which yields a building utilization rate of 26%.

54. During the 2014-2015 school year, P.S. 25 served 164 students in grades K-5. In contrast, in the current 2017-2018 school year, P.S. 25 is serving only 94 students in grades K-5, which represents a 43% decline in enrollment in the past three years. Additionally, only 26% of kindergarten applicants ranked P.S. 25 first, well below the district median of 40%, and only 8% of kindergarten students residing in the P.S. 25 zone chose to enroll in P.S. 25 for kindergarten in the 2017-2018 school year.

55. P.S. 25 struggled with declining enrollment and low demand by students and families, despite increasing test scores over the last three years and multiple prior interventions, such as programmatic changes at the school, recruitment and re-branding support, and school re-design. Teachers had few opportunities for instructional collaboration with

colleagues as they are often the only staff member teaching a particular grade. These ongoing challenges contributed to a loss of per-pupil funding, potentially resulting in fewer academic, extracurricular and athletic opportunities than schools with robust enrollment, and the DOE believes that a well-rounded education demands more resources than a small school like P.S. 25 can provide. For these reasons, the DOE proposed the closure of P.S. 25 at the end of the 2017-2018 school year.

56. The members of the Community Education Council for District 16 (hereinafter, the “CEC”) support the proposed closure of P.S. 25.

57. The CEC issued a letter dated August 1, 2017 noting its recommendations to be implemented in the 2018-2019 school year. One of these recommendations was the closure of P.S. 25. The CEC noted the declining enrollment at the school over the last four years, with enrollment estimated at 118 students for the 2017-2018 school year. In particular, the CEC stated that:

We don’t believe that these numbers allow the school to provide students with the resources necessary for success. We believe that neither students nor, educators are currently set-up for success in such an environment. Closing the school will allow families to choose their children’s school, without adding additional administrative burden on another school.

See the Affidavit of Rebecca Rawlins dated April 12, 2018, Exhibit A.

58. As stated above, enrollment at P.S. 25 for the 2017-2018 school year was actually less than the CEC projected.

Public Engagement

59. As with all proposals related to a significant change in school use, the DOE offered multiple opportunities for community engagement and outreach in advance of the

PEP's vote on the proposed closure of P.S. 25, including opportunities mandated by the Chancellor's Regulation A-190 and Education Law 2590-h(2-a).

60. The DOE publicly announced the proposed closure of P.S. 25 on December 18, 2017.

61. The DOE made phone calls to families in the evening of December 18, 2017 both in English and Spanish to notify them of the proposed closure and the upcoming school community meeting scheduled for December 19, 2017.

62. Letters notifying families of the proposed closures and announcing the date and time of a school community meeting were backpacked home with P.S. 25 students on December 18, 2017.

63. On December 19, 2017, Superintendent Rahesha Amon, along with key representatives from DOE Central and Field offices, held a school community meeting to provide information and answer any questions that families had about the proposed closures. Approximately 70 members of the public attended the meeting.

64. A notice of the proposed closure issued and publicly posted on January 5, 2018 informed the community that a joint public hearing regarding this proposal would be held at the school building on February 5, 2018. See Rawlins Aff., Exhibit B.

65. A DOE representative was listed in the notice who could provide further information, and submission of public comment was encouraged, whether prior to the hearing in oral or written form or at the hearing. Id.

66. Notice of the date and location of the PEP meeting at which the proposal would be considered was also provided. Id. at 4.

Educational Impact Statement

67. Under New York State Education Law section 2590-h(2-a), the DOE is required to prepare an Educational Impact Statement (EIS) regarding any proposed school closing or significant change in school utilization.

68. On the January 5, 2018, the DOE issued an EIS proposing the closure of P.S. 25. See Rawlins Aff., Exhibit C (EIS dated Jan. 5, 2018). The EIS was posted on DOE's website.

69. The EIS was amended on January 26, 2018 to reflect the space used in K025 by Urban Dove, a community based organization. See Rawlins Aff., Exhibit D.

70. The EIS encouraged members of the public who wished to provide comments on the proposed closure of P.S. 25 to attend the Joint Public Hearing scheduled for February 5, 2018 at 6 p.m.. The EIS also provided that comments were to be submitted at least 24 hours in advance of the PEP meeting at which this proposal is subject to a vote in order to be mentioned in the Public Comment Analysis to be published and provided to the PEP the evening before the PEP votes. In addition to sharing comments at the hearing, members of the public could submit comments by email or voice mail.

71. The EIS provided the name, address, email and phone number of a member of the DOE's Office of District Planning who could be contacted if members of the public wanted additional information on the proposal to close P.S. 25.

72. The EIS also identified the date, time and location of the PEP meeting where the proposal to close P.S. 25 would be voted on.

Joint Public Hearing

73. The Education Law also requires that DOE hold a Joint Public Hearing regarding any proposed school closing or significant change in school utilization.

74. On February 5, 2018, a Joint Public Hearing was held at P.S. 25 where approximately 75 members of the community, including families and students were in attendance and invited to share their thoughts about the proposal.

75. A total of 16 members of the public spoke at the Joint Public Hearing, including P.S. 25's principal, Anita Coley, and CEC 16 President Nequan Mclean.

Public Comment Analysis

76. On February 27, 2018, the DOE released a Public Comment Analysis that summarized all comments received at the Joint Public Hearing or through the phone line or email address by 6 p.m. on that date. See Rawlins Aff., Exhibit E.

77. Many comments stated their general opposition to the proposal and questioned the decision to close P.S. 25 in light of the school's test scores. In response, the DOE noted that several factors went into consideration when making the difficult decision to close P.S. 25, particularly the school's struggle with declining enrollment and low demand by students and families.

78. The Public Comment Analysis was shared with the PEP in advance of its February 28, 2018 meeting.

PEP Meeting

79. The PEP meeting took place on February 28, 2018 at Murry Bergtraum High School at 411 Pearl Street, New York, New York 10038. The PEP meeting was open to the public and attendees had an opportunity to provide public comment before the PEP members and Chancellor. The PEP meeting last over 8 hours, with the majority of the meeting involved the PEP listening to public comments on various EISs.

80. At the February 28, 2018 PEP meeting, the PEP voted to close P.S. 25.

Impact of the Closure of P.S. 25 & Current Status

81. P.S. 25 will close at the end of the 2017-2018 school year and will no longer exist as an elementary school option in the 2018-2019 school year.

82. All P.S. 25 students continuing in elementary school will receive an alternative elementary school option before being discharged from P.S. 25.

83. Petitioners and other parents and guardians with students at P.S. 25 – have received a customized application.

84. DOE staff is working individually with all current students in grades K-4 as well as current students in grade 5 who do not meet promotional criteria to identify a strong school option that meets their needs.

Impact on Staff

85. The closure of P.S. 25 will result in all teachers, administrative and non-pedagogical staff at P.S. 25 being excessed at the end of the school year. All excessing will be conducted in accordance with existing labor contracts. Excessed teachers will be eligible to apply for other City positions and any teachers who do not find a position will be placed in the ATR pool, meaning that they will continue to earn their salary while serving as teachers in other City schools.

Impact on the Admissions Process at Other District 16 Schools

86. In light of the closure of P.S. 25, students in District 16 will not be able to enroll at P.S. 25 for elementary school. These students will, however, have access to a broad range of elementary schools options. Moreover, the closure of P.S. 25 is not expected to otherwise impact the admissions process at other District 16 elementary schools. There are sufficient kindergarten seats in District 16 to accommodate future students who may have

otherwise wished to enroll in P.S. 25. Indeed, schools in District 16 currently have the capacity to serve approximately 6,500 students in grades K-5.

Applications & Matching Process

87. The DOE is holding a special enrollment process for all students attending schools that are closing at the end of the 2017-2018 school year.

88. Applications were due last week and letters announcing the placement results will be mailed – in compliance with the Court’s order – no earlier than May 4, 2018, or per further order of the Court.

89. The parents and guardians of P.S. 25 students were encouraged to submit applications that would rank alternate schools, including a list of better school options that were pre-populated on their applications.

90. In light of its closure, P.S. 25 was not included in the kindergarten match process for the 2018-2019 school year. The kindergarten match results were mailed to parents and guardians on March 22, 2018.

91. As of April 10, 2018, only 36% of P.S. 25 students (who will remain in elementary school next year) have submitted applications.

92. As of April 10, 2018, Petitioner Adams has submitted an application on behalf of her child, Y.A., and Petitioner Armstead has submitted an application on behalf of her child, D.M.

93. As of April 10, 2018, Petitioner Williams has not submitted an application on behalf of her children.

94. The DOE believes that parents or guardians who do not submit applications will be at a disadvantage. Without an application, the DOE has no preference

information for the former P.S. 25 student, so the DOE will need to select a school using the same list of better options that the students had on their pre-populated application. However, without an application the DOE is unable to take into consideration anything the parents or guardians would have placed value on, such as location, after-school programming, school size, unique academic offerings, among other things.

95. All former P.S. 25 students, regardless of whether or not they submit an application, will receive a placement at a new school when the DOE sends out letters in May 2018. If any of these families visit a Family Welcome Center over the summer, the DOE will provide support to help families in finding a better fit, as DOE does with all families.

96. The DOE's Office of Student Enrollment is working to match students attending schools that will closing at the end of June 2018 with their newly assigned schools. The DOE anticipates completing this placement process by the end of April 2018.

97. As per the parties' March 28, 2018 agreement, and so-ordered by the Court, the DOE will not mail offer letters to the parents and guardians of student entering grade 1-5 from any of the closing schools until May 4, 2018 or upon further order of the Court.

98. As of today's date, parents and guardians of approximately 3,000 students – from closing schools – entering grades 1-5 do not know which school their children will be attending this fall.

99. Likewise, as of today's date, Petitioners do not know where their children will be placed.

100. Any delay in the matching process would create great concern and confusion for parents and guardians of the 3,000 children who are anxious to learn which school the students from any of the closing schools will be attending in the fall.

101. Likewise, any delay notifying applicants and their families of which schools their children will be attending this fall would have a negative and unfair impact.

Rezoning

102. In 2003, the newly-created Community Education Councils (CECs) were given authority under section 2590-e(11) of the Education Law to approve zoning lines applicable to schools under their jurisdiction.

103. The DOE's Office of District Planning (ODP) is currently working with CEC 16 to rezone the K025 zone where P.S. 25 was located. The ODP will present plans and receive community feedback at CEC meetings in advance of officially providing proposed changed zoning lines for vote.

104. A zoning decision made by the CEC may be appealed to the DOE's Office of Legal Services.

FOR A FIRST DEFENSE:

105. The Verified Petition fails to state a cause of action.

FOR A SECOND DEFENSE:

106. Respondent's actions and determinations in this matter had a rational basis and were not made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of discretion.

FOR A THIRD DEFENSE:

107. Respondent's actions in preparing the proposal and engaging the community were neither arbitrary nor capricious and were at all times lawful, proper, and in substantial compliance with applicable law, and Petitioners have not met their burden of demonstrating a clear legal right to the relief requested.

FOR A FOURTH DEFENSE:

108. The DOE's decision to close P.S. 25 does not implicate zoning.

WHEREFORE, Respondent respectfully requests that the verified petition be dismissed in its entirety, that the relief sought therein be denied in all respects, that judgment be entered for Respondent, and that Respondent be granted costs, fees, and disbursements together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 12, 2018

ZACHARY W. CARTER
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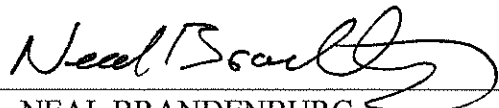
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VERIFICATION

STATE OF NEW YORK)
): SS
COUNTY OF NEW YORK)

NEAL BRANDENBURG, deposes and states that I am employed by Respondent New York City Department of Education as an Attorney in its Office of Legal Affairs, that I have read the foregoing Verified Answer, that I know the contents thereof to be true, except for those matters alleged upon information and belief, which I believe to be true, and that the bases for my knowledge and belief are my review of Department books and records and conversations with Department employees.



NEAL BRANDENBURG

Sworn to before me this
day of April, 2018.



NOTARY

GINA VARGAS LEON
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01VA6271644
Qualified in Kings County
Commission Expires November 5, 2020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of,

JOANNE ADAMS, individually, and on behalf of her child, Y.A., who attends P.S. 25; SHAMEKA 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 -

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT 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, Annulling the Decision to Close P.S. 25 in the County of Kings.

VERIFIED ANSWER

ZACHARY W. CARTER
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Attorney for Defendants
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Of Counsel: Carolyn E. Kruk
Tel: (212) 356-0893
LM 2018-034242

Due and timely service is hereby admitted.

New York, N.Y., 2018

..... Esq.

Attorney for.....