

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

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DAVID GRINAGE, OLAIYA DEEN, JENNIFER  
FREEMAN, GREGORY MENDEZ, SERITA  
MENDEZ, ANNA RAMIREZ, KATHRYN CORBETT,  
ROSE LANEY, TA-TANISHA RICE, BETSY  
GOTBAUM, as PUBLIC ADVOCATE FOR THE CITY:  
OF NEW YORK and RANDI WEINGARTEN, as  
President of the UNITED FEDERATION OF  
TEACHERS, Local 2, American Federation of Teachers,  
AFL-CIO,

Plaintiffs,

-against-

THE BOARD OF EDUCATION OF THE CITY  
SCHOOL DISTRICT OF THE CITY OF NEW YORK,  
and JOEL I. KLEIN, as Chancellor of the City School  
District of the City of New York,

Defendants.

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Index No. \_\_\_\_\_

Date Filed: \_\_\_\_\_

**SUMMONS**

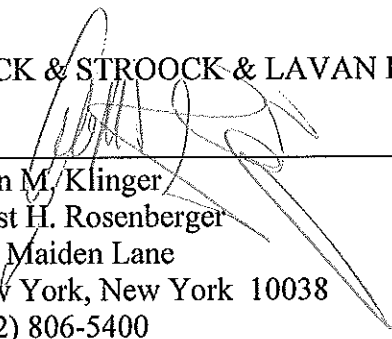
The basis for Venue is the place of  
Defendants' business and the county in  
which the action arose pursuant to  
CPLR 504(3)

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and  
to serve a copy of your answer on the Plaintiffs' attorneys within 20 days after the service of this  
summons, exclusive of the day of service (or within 30 days after the service is complete if this  
summons is not personally delivered to you within the State of New York); and in case of your

failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
March 24, 2009

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

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District of the City of New York, :  
:  
Defendants. :  
:  
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Index No. \_\_\_\_\_  
IAS Part \_\_\_\_\_

**COMPLAINT**

Plaintiffs David Grinage, Olaiya Deen, Jennifer Freeman, Gregory Mendez, Serita Mendez, Anna Ramirez, Kathryn Corbett, Rose Laney, Ta-Tanisha Rice, Betsy Gotbaum, as Public Advocate for the City of New York, and the United Federation of Teachers, by its President Randi Weingarten (the "UFT") (collectively "Plaintiffs"), by their attorneys Stroock & Stroock & Lavan LLP and the New York Civil Liberties Foundation, hereby allege, as and for their Complaint as follows:

**PARTIES**

1. Plaintiff David Grinage is a citizen and a resident of the State and City of New York. He is also the parent of a student enrolled in I.S. 392 located in District 23. He is the

president of the District 23 Community Education Council, which is responsible for approving zoning lines for P.S. 150, among other schools.

2. Olaiya Deen is a citizen and a resident of the State and City of New York. She is also the parent of a student enrolled in P.S. 75 located in District 3. She is a resident of District 3 and is a member of the Community Education Council for District 3, which is responsible for approving zoning lines for P.S. 241, among other schools. As a member, one of the schools she is responsible for is P.S. 241.

3. Jennifer Freeman is a citizen and a resident of the State and City of New York. She is also a parent of a student enrolled in M.S. 54 located in District 3. She is a resident of District 3 and is the Secretary of the Community Education Council for District 3, which is responsible for approving zoning lines for P.S. 241, among other schools. From 2007-2009, Ms. Freeman served as chair of the Space Committee of Community Education Council 3, focusing on ways to alleviate overcrowding in District 3 Schools. She also served on the Manhattan Borough President's Citywide task force on overcrowding.

4. Plaintiffs Mr. Gregory Mendez and Mrs. Serita Mendez are residents of the State and City of New York. They are also parents of six children, all of whom have attended P.S. 150 in Brooklyn, New York. Currently, their two youngest children – a rising third grader and kindergartner – are enrolled at P.S. 150. Mr. and Mrs. Mendez reside in School Attendance Zone 150 in Brooklyn, New York across the street from the school.

5. Plaintiff Anna Ramirez is a resident of the State and City of New York. She is also the parent of two children – a first grader and a fourth grader – enrolled at P.S. 194 in Harlem. Ms. Ramirez resides in School Attendance Zone 194 in Harlem, two blocks from the school.

6. Plaintiff Kathryn Corbett is a resident of the State and City of New York. She is also the grandmother and guardian of a student enrolled in P.S. 241 in Harlem. Ms. Corbett resides in School Attendance Zone 241 in Harlem, around the corner from the school.

7. Plaintiff Rose Laney is a resident of the State and City of New York. She is also the grandmother and guardian of two students enrolled in P.S. 150. She resides in School Attendance Zone 150 in Brooklyn. Ms. Laney is also the President of the P.S. 150 Parent-Teacher Association and the President of the District President Council.

8. Ta-Tanisha Rice is a resident of the State and City of New York. She is also the aunt and guardian of a student enrolled in P.S. 194. She had resided in School Attendance Zone 194, but now resides in District 3. Ms. Rice is also the former President of the P.S. 194 Parents' Association and a current member of its School Leadership Team.

9. Plaintiff Betsy Gotbaum is the Public Advocate for the City of New York. The Public Advocate is an independently elected citywide official, next in line to the Mayor of the City of New York, who serves as an ombudswoman for residents of New York City, and investigates City agencies and programs. Public advocate Gotbaum established an education/parent hotline in 2003 that addresses problems with education services, co-produced two brochures for educators answering common parent questions, and issued several policy reports on such topics as parent coordinators, career and technical education, school-based health clinics and school safety and environmental conditions. In 2007, at the request of the leadership in the State Assembly, Public Advocate Gotbaum appointed the Commission on School Governance to study New York City's education governance structure and make recommendations for the State Legislature. In September 2008, the Commission

released its final report. Betsy Gotbaum has been serving as the public Advocate since January 2002.

10. Plaintiff Randi Weingarten is a resident of the State and City of New York, and is the President of the UFT, Local No. 2 American Federation of Teachers, AFL-CIO. The UFT, an unincorporated association with its principal place of business in the City and County of New York, is a public-employee labor organization representing non-supervisory pedagogical personnel and classroom paraprofessionals employed by the Board of Education of the City School District of the City of New York (the "BOE"), including staff at the three schools to be closed. Among the UFT's principal objectives is promoting education as a social agency for developing the capacity of the young, for enlightening adults and for working towards a society motivated by the ideal of service and democratic participation.

11. Defendant 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.<sup>1</sup> The BOE's central office is located at 52 Chambers Street, New York, New York 10007.

12. Defendant Joel I. Klein is the Chancellor of the New York City Schools and as such, under New York Education Law, functions as chief executive officer for the City

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<sup>1</sup> In conjunction with amendments to the State Education Law enacted in 2002, most powers of the Board 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 Board also conducts business as the Panel for Education Policy. For purposes of this Petition, Chancellor Klein, the Board, the Department of Education and the Panel for Education Policy are sometimes referred to, collectively, as the "BOE."

School District of the City of New York. The Chancellor serves at the pleasure of and is selected by the Mayor of the City of New York.

### **JURISDICTION AND VENUE**

13. Jurisdiction is proper pursuant to CPLR § 3001 and CPLR § 301.

14. Venue is proper in New York County pursuant to CPLR § 504(3) since, *inter alia*, the administrative action giving rise to the dispute was taken within New York County.

15. Pursuant to Education Law §3813, notices of claim were filed in connection with this matter.

### **ALLEGATIONS**

#### *Summary of Action*

16. This action reveals the BOE's disregard for statutorily guaranteed rights of community voice and participation, through Community Education Councils' powers of approval over changes in zones. The BOE has and continues to act by fiat, in derogation of the legislatively created balance between local participation and central control by utilizing its powers over school creation to alter attendance zones unilaterally without the consent or involvement of the very people the community school serves.

17. This type of disenfranchisement of communities is taking place in schools such as P.S. 150, P.S. 194 and P.S. 241, which are being erased from the zoning map, instead of having efforts made, by working with parents, teachers and administrators, to improve them.

18. Upon information and belief, even with the closing of those zoned schools, the BOE does not intend to create any other district or BOE public school seats for the displaced

children within their community zone, leaving them to apply for seats in either selected public schools in neighboring zones or the charter schools to be placed in the existing building.

19. Such unilateral alteration of the rights of residents within the affected zones violates Section 2590-e(11) of the Education Law, which reserves to the Community Education Councils the power to approve zoning changes, and flies in the face of the BOE's own understanding of what the law provides. In his testimony before the statutorily created task force that recommended Section 2590-e for adoption, 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).

20. By this Complaint, the parents of students enrolled in these schools, their community leaders and educators seek to take back their "important role" by enforcing their statutory rights to have a voice in the education of City children.

### *Zoning*

21. From its start in 1842, State-legislated 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. Over the years, the school boards (both centralized and decentralized)



created subdivisions within what have become community school districts. School children residing within the geographic District would attend primary and secondary schools within the District. That District was further subdivided into catchments or Attendance Zones. School Children residing within an Attendance Zone have a 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 are tied to their Zoned Schools.

22. These 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). Indeed, the 2003 amendments redubbed what had previously been the Community School Boards (one for each District) as Community 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)), and, accordingly, to approve the alterations or abrogation of any Zone or all Zones.

23. The BOE has recently announced the impending closing of three such Zoned elementary schools: P.S. 194, Countee Cullen School (Harlem); P.S. 241, Family Academy (Harlem); and P.S. 150, Christopher School (Brooklyn). Each of these schools is the Zoned elementary school tied to its geographic Attendance Zone area.

24. The BOE has not created new Zoned elementary schools within the respective Zones to serve the children displaced by the school closings, nor, upon information and belief, does the BOE intend to submit a proposed change in zoning to compensate for the closing of the zoned elementary schools. Instead, upon information and belief, the BOE intends that the

displaced students apply to either the charter schools which it intends to locate within the closing school buildings or a selection of traditional public schools from neighboring zones.

25. In a recent notice sent to the parents of students zoned for the soon-to-be closing P.S. 150, parents were told they could apply to any of four schools, three traditional public schools outside their zone or the charter schools being located in the P.S. 150 building. The three traditional public schools listed must first provide seats to students within their own attendance zones, before admitting those from a neighboring Zone. The charter schools also may not act as a new zoned school for residents of the P.S. 150 Zone for they are statutorily forbidden from limiting admission to students within a specific zone and must, pursuant to State Education Law §2854(2)(a)(b), where interested students exceed seats available, admit students based upon a lottery. Thus, students from the now emptied affected Zoned school would find themselves competing for seats with students already zoned to the three traditional schools outside their Zone and students from their entire District as to the Charter Schools.

26. By removing the sole zoned school within the zones, one or two grades at a time, the BOE has altered the zoning lines by rendering each of the three soon-to-be school-less zones a nullity. Because an Attendance Zone is tied to its Zoned School, eliminating the school eliminates that sole meaning of the Zone – to designate, by geographic area, the right to a guaranteed seat in a particular school. When that seat is destroyed, so is the Zone. The approval of such zone alterations is specifically reserved to the CECs, which represent the community's voice in the local school district. Such alteration may not be lawfully effectuated by the BOE without CEC approval. Therefore, the closing of these three schools, and others, should they be so planned, is in violation of Education Law §2590-e(11) and should be enjoined.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

27. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 24 as if set forth herein.

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

29. The BOE's intended closing of three Zoned elementary schools, P.S. 150, 194 and 241, which are the only Zoned elementary schools in those Zones, without any provision for the creation of new Zoned Schools within the Attendance Zones or the application for a change in zoning lines violates §2590-e(11).

30. The BOE was and is required to submit such zoning changes to the Community Education Council for approval. By failing to do so, the BOE violates §2590-e(11).

31. Plaintiffs seek a declaration pursuant to CPLR § 3001 that such actions would violate Section 2590-e(11) of the Education Law.

**SECOND CAUSE OF ACTION**  
**(Injunctive Relief)**

32. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 29 as if set forth herein.

33. Based upon all the foregoing, the BOE has illegally implement a zoning change in violation of the Education Law and Plaintiffs are entitled to an injunction preventing Defendants from continuing to implement this unlawful policy.

**WHEREFORE**, Plaintiff respectfully requests that the Court grant judgment herein as follows:

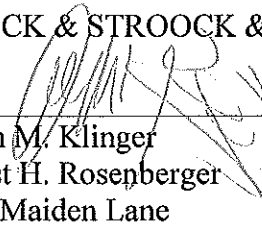
A. On the First Cause of Action: an order declaring that Defendant would violate Education Law §2590-e(11) by closing the only zoned school within a zone without approval of the Community Education Council.

B. On the Second Cause of Action: an order enjoining Defendants from so violating §2590-e(11).

C. For such other and further relief as may be just and proper.

Dated: New York, New York  
March 24, 2009

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**SUMMONS and COMPLAINT**

Attorneys for      **STROOCK & STROOCK & LAVAN LLP**  
                                         Plaintiffs

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**PLEASE TAKE NOTICE**

Check Applicable Box

**NOTICE OF ENTRY**      that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on                          20

**NOTICE OF SETTLEMENT**      that an Order of which the within is a true copy will be presented for settlement to the Hon.  
one of the judges of the within named Court,  
at                                                  20                          , at                          M.  
on

Dated:

**STROOCK & STROOCK & LAVAN LLP**

Attorneys for

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212 806 5400

To:

Attorney(s) for