

STATE OF NEW YORK
STATE EDUCATION DEPARTMENT

REDACTED

In the Matter of JESSICA SANTOS,
on behalf of _____; ROSALINDA
MENDEZ, on behalf of _____;
YVONNE WALKER, on behalf of _____;
_____ ; TAMIKA FELIX, on behalf of _____
_____ ; CYNTHIA
BONANO, on behalf of _____
_____ ; and GUILLERMINA PIZARRO,
on behalf of _____
_____, and
_____, from action of the New York
City Department of Education and Girls
Preparatory Charter School of New York
regarding the co-location of P.S. 94, P.S. 188,
and Girls Preparatory Charter School.

AMENDED PETITION TO THE
COMMISSIONER OF
EDUCATION AND
REQUEST FOR STAY

NOTICE:

You are hereby required to appear in this appeal and to answer the allegations contained in the petition. Your answer must conform with the provisions of the regulations of the Commissioner of Education relating to appeals before the Commissioner of Education, copies of which are available from the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

If an answer is not served and filed in accordance with the provisions of such rules, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the Commissioner.

Please take notice that such rules require that an answer to the petition must be served upon the petitioner, or if he be represented by counsel, upon his counsel, within 20 days after the service of the appeal, and that a copy of such answer must, within five days after such service be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

Please take further notice that the within petition contains an application for a stay order. Affidavits in opposition to the application for a stay must be served on all other parties and filed with the Office of Counsel within three (3) business days after service of the petition.

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AMENDED PETITION TO THE
COMMISSIONER OF
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TO THE COMMISSIONER OF EDUCATION:

This Petition is filed on behalf of Jessica Santos, Rosalinda Mendez, Yvonne Walker, Tamika Felix, Cynthia Bonano and Guillermina Pizarro, parents of children who attend P.S. 188 The Island School (“P.S. 188”) and P.S. 94 in the M188 building in Manhattan, New York. Ms. Santos, Ms. Mendez, Ms. Walker, Ms. Felix, Ms. Bonano and Ms. Pizarro (collectively, “Petitioners”) submit this Petition to challenge the February 24, 2010 vote and resolution of the Panel for Educational Policy (“PEP”) of the New York City Department of Education (“DOE”) to expand the co-location of Girls Preparatory Charter School Lower East Side (“Girls Prep”) with P.S. 188 The Island School (“P.S. 188”) and P.S. 94.

Factual Allegations

Background Information Regarding the Petitioners and Schools Involved

1. Jessica Santos is the parent of _____, a fourth grader at P.S. 94. _____ is classified as autistic. In addition to a self-contained class, his Individualized Education Program (“IEP”) mandates occupational therapy, physical therapy and speech therapy. Rosalinda Mendez is the parent of _____, a sixth grader at P.S. 94. _____ is also classified as autistic. His IEP also recommends a self-contained class and mandates occupational therapy, physical therapy and speech therapy.

2. Yvonne Walker is the parent of _____, who is in fourth grade at P.S. 188. Tamika Felix is the parent of _____, who is in fourth grade at P.S. 188. Cynthia Bonano is the parent of _____, who is in seventh grade at P.S. 188. _____ requires special education services and is in a Collaborative Team Teaching (“CTT”) class. She also receives counseling. Guillermina Pizarro is the parent of _____ and _____, all of whom attend P.S. 188 in the first, second, fifth and seventh grades, respectively.

3. P.S. 94 is a District 75 special education school consisting of one main site and three off-sites. The school has a total of thirty-one classes, nine of which are located at M188. The site at M188 currently serves thirty-nine students with autism in nine classes in grades 4-8. Eight of the classes have 6:1:1 staffing ratios and one has an 8:1:1 staffing ratio. According to publicly available data, the student population at P.S. 94 is 81.64% male, and 18.36% female. 37.20% of the students are African-American, 44.93% are Hispanic and 12.08% are English Language Learners (“ELL”). All students at the school receive special education

services, 88% of them in the Most Restrictive Environment.¹ P.S. 94 received a Quality Review Score of Proficient on its Quality Review Report for the last two years, and is in Good Standing with New York State.²

4. P.S. 188 has 397 students in grades pre-kindergarten through eight. According to publicly available data, 64.23% of the students at P.S. 188 are Hispanic, 30.48% are African American, and 17.88% are ELLs. P.S. 188 has a 89.6% poverty rate.³ 23.8% of the students at P.S. 188 receive special education services.⁴ Of these special education students, 5 are educated in self-contained classes, and 79 students are in CTT classes or general education classes with related services.⁵ Of the students with disabilities receiving related services, 4 receive Special Education Teacher Support Services (“SETSS”), 37 are mandated to receive counseling, 38 are mandated to receive speech therapy, 10 are mandated to receive occupational therapy, and 2 are mandated to receive physical therapy.⁶
5. Girls Prep is an all-girls charter school that currently serves 261 students in grades K-5 at their location in the M188 building. The school primarily serves general education students. According to the school’s website, the school provides special education services for

¹ P.S. M094 REGISTER, <http://schools.nyc.gov/SchoolPortals/01/M094/AboutUs/Statistics/register.htm>, accessed March 25, 2010, a true and correct printout of which is attached as Exhibit A.

² QUALITY REVIEW REPORT 2008-2009, P.S. 94 http://schools.nyc.gov/OA/SchoolReports/2008-09/Quality_Review_2009_M094.pdf, accessed March 25, 2010, a true and correct printout of which is attached as Exhibit B.

³ SCHOOL DEMOGRAPHICS AND ACCOUNTABILITY SNAPSHOT, http://schools.nyc.gov/documents/oaosi/cepdata/2008-09/cepdata_M188.pdf, accessed March 25, 2010, a true and correct printout of which is attached as Exhibit C.

⁴ SPECIAL EDUCATION SERVICE DELIVERY REPORT 2009-2010, http://schools.nyc.gov/documents/teachandlearn/sesdr/2009-10/sesdr_M188.pdf, accessed March 25, 2010, a true and correct printout of which is attached as Exhibit D.

⁵ *Id.*

⁶ *Id.*

students who require “SETSS services, push in and pull out interventions, speech therapy, and tutoring.”⁷ These services do not address the needs of students who need more restrictive learning environments, such as the students at P.S. 94 and the students in self-contained classes or CTT classes at P.S. 188.

6. The M188 building is located at 442 East Houston Street in Manhattan, New York.
7. The three schools have shared space in the M188 building since 2007. In January 2010, the DOE proposed a plan for Girls Prep to expand to eighth grade and take over a larger part of the M188 building, specifically, on the fifth floor where PS 94 is located. To create the additional space, the DOE proposed that PS 94 phase-out the fourth and fifth grades so that, as students move out of those grades, no additional students will be accepted. The proposal gives Girls Prep eight rooms on the fifth floor for the 2010-11 school year, with an eventual expansion to 10 rooms. The DOE proposed that PS 94 occupy 7 rooms for the 2010-11 school year, with an eventual phase-down to 5 rooms.⁸
8. On January 8, 2010, the DOE issued an Educational Impact Statement (“EIS”) which outlined its proposal to gradually increase Girls Prep to a school serving students in grades kindergarten through eight.⁹ The EIS was published on the PEP website solely as a statement relating to the grade expansion of Girls Prep.¹⁰ On February 11, 2010, the DOE

⁷ See Public Prep: Enroll a Student, <http://publicprep.org/enroll>, accessed on March 25, 2010, a true and correct printout of which is attached as Exhibit E.

⁸ See EDUCATIONAL IMPACT STATEMENT: GRADE EXPANSION OF GIRLS PREPARATORY CHARTER SCHOOL OF NEW YORK (84M330) (Jan. 8, 2010), <http://schools.nyc.gov/NR/rdonlyres/585A6F4E-316F-45AF-A1C40F38AC7260E8/75238/M188GirlsPrepEISFinal1810.pdf>, a true and correct printout of which is attached as Exhibit F..

⁹ *Id.*

¹⁰ See PANEL FOR EDUCATIONAL POLICY, PROPOSALS FOR SIGNIFICANT CHANGES IN SCHOOL UTILIZATION, FEBRUARY VOTE, <http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/>

held a public hearing at the M188 building. Three hundred ninety people attended the hearing and fifty-four people spoke. Thirty-eight members of the public spoke in opposition to the proposal.¹¹ On February 24, 2010, the PEP voted in favor of the resolution to expand Girls Prep.¹² At no point did the DOE propose, nor did the PEP vote, on a separate resolution to decrease the number of classes of P.S. 94 students in the M188 building.

9. In March 2010, the Charter Schools Institute of the State University of New York recommended that the SUNY Trustees approve Girls Prep's application for renewal of its charter for a period of five years with authority to provide instruction to students in kindergarten through eighth grade.¹³ On March 16, 2010, the Board of Trustees of the State University of New York approved the renewal.¹⁴

Procedural Violations

10. New York State law requires that the DOE issue a proposal for PEP approval and prepare an EIS for any "significant change in school utilization, including the phase-out, grade

Proposals_Feb_Vote, accessed March 25, 2010, a true and correct printout of which is attached as Exhibit G.

¹¹ See REVISED PUBLIC COMMENT ANALYSIS, http://schools.nyc.gov/NR/rdonlyres/585A6F4E-316F-45AF-A1C4-F38AC7260E8/78009/M188_GirlsPreprevisedanalysisofcomment_22410.pdf, accessed March 25, 2010, a true and correct printout of which is attached as Exhibit H.

¹² MINUTES OF ACTION (DRAFT), PUBLIC MEETING OF THE PANEL FOR EDUCATIONAL POLICY, February 24, 2010, <http://schools.nyc.gov/NR/rdonlyres/FFDFC5C9-1F3D-46D9-BE3B-1A00BB759D3E/79727/moa22410draft.pdf>, accessed March 25, 2010, a true and correct printout of which is attached as Exhibit I.

¹³ See *Charter Schools Institute, State University of New York*, Initial Renewal Report: Girls Preparatory Charter School of New York, March 9, 2010, <http://www.newyorkcharters.org/documents/GirlsPrepFINALRnwRpt.pdf>, accessed April 21, 2010, a true and correct printout of which is attached as Exhibit M.

¹⁴ See Memorandum from Pedro A. Noguera, Chair, Charter Schools Committee, to Members of the Charter Schools Committee, March 16, 2010, a true and correct copy of which is attached as Exhibit N.

reconfiguration, re-siting, or co-location of schools.”¹⁵ Thirty to forty-five days following the filing of the EIS, the DOE must “hold a joint public hearing with the impacted community council and school based management team at the school that is subject to the proposed school closing or significant change in school utilization” to allow affected members of the public to comment on the proposal.¹⁶ Any proposed significant change in school utilization such as grade reconfiguration or relocation must then be approved by the PEP.¹⁷

11. In the EIS filed before the February 24 PEP vote on the grade expansion of Girls Prep, the DOE stated that space for the Girls Prep expansion would be created by the gradual phase-out of several classes of P.S. 94 students. The EIS stated that “[s]pace will be created through graduation of current students over the next several years, thereby reducing the total number of sections from nine to five with corresponding declines in student enrollment and space need.”¹⁸

12. This grade reconfiguration and phase-out of P.S. 94 required the issuance of an EIS describing the impact of the phase-out on students at P.S. 94, a public comment period and a vote of the PEP. None of these occurred. The EIS and PEP vote were only for the grade expansion of Girls Prep Charter School at the M188 building, and not for the grade reconfiguration of PS 94. Therefore, the PEP never approved the grade reconfiguration and phase-out of PS 94 at M188.

¹⁵ NY Educ Law § 2590-h(2-a)(a) (2009).

¹⁶ NY Educ Law § 2590-h(2-a)(d) (2009).

¹⁷ NY Educ Law § 2590-h(2-a)(e) (2009).

¹⁸ See Exhibit F.

13. Significantly, the parents of P.S. 94 students never received written notice from the DOE about the proposed grade reconfiguration.¹⁹ Instead, the parents heard about the proposal when the president of the Community Council on Special Education contacted Ms. Santos by phone.²⁰

Students at P.S. 94 Will Be Adversely Impacted by the Expanded Co-Location.

14. The EIS incorrectly stated that the grade expansion of Girls Prep would cause “...no effect on other support services offered to students. Other support services will continue to be provided consistent with citywide policy.”²¹ The EIS, however, ignored the impact that the expanded co-location would have on P.S. 94 students.

15. P.S. 94 students are on the autism spectrum and their disabilities range from mild to severe. Some of the children are non-verbal and strive to use communication devices and picture symbols to express themselves. Many of the students are extremely fragile and many are unable to express or meet their own needs.²² These children need routines and regular schedules, consistency in their surroundings, structure and stability within the school setting, and familiarity to create a comfortable environment that allows them to socialize and communicate with each other.²³

¹⁹ See Santos Aff. ¶ 7.

²⁰ *Id.*

²¹ See Exhibit F.

²² See Santos Aff. ¶ 4.

²³ See A PARENT’S GUIDE TO SPECIAL EDUCATION SERVICES FOR SCHOOL-AGE CHILDREN, NEW YORK CITY DEPARTMENT OF EDUCATION, http://schools.nyc.gov/documents/teachandlearn/ELL/Parent_Guide_English.pdf, accessed on March 25, 2010, a true and correct printout of which is attached as Exhibit J; see also Julia B. Stoner, et al, *Transitions: Perspectives from Parents of Young Children with Autism Spectrum Disorder (ASD)*, J DEV PHYS DISABIL 19:23-29 (2007), a true and correct printout of which is attached as Exhibit K.

16. P.S. 94 has been moved 5 times in the last 5 years, including in and out of the M188 building.²⁴ These moves are extremely disruptive for the children as well as staff. Autistic children need stability and routines in order to thrive. Disruptions such as moves set back their emotional and academic development significantly.²⁵
17. The grade expansion plan contemplates that P.S. 94 would share its technology room, science room and library with Girls Prep.²⁶ This would be extremely challenging for P.S. 94 students. Girls Prep is an all-girls school. P.S. 94 is a predominantly male, middle school, autistic population. The complications of sharing rooms and hallways with up to 500 elementary and middle school girls would impose significant stress for P.S. 94's emotionally fragile population.
18. The EIS also failed to address the impact on District 1 students of phasing out seats at P.S. 94. P.S. 94 is the only District 75 school within Community School District 1. Currently, there are 53 students with autism in District 1, and there are not enough seats in the elementary grades for them, so they are being sent to schools in other districts. The phasing out of classes at P.S. 94 would exacerbate the shortage further and would force parents of children with autism in District 1 to seek spaces in other districts. As a November 15, 2009 document from the DOE's Office of Portfolio Planning discussing the consequences of expanded co-location recognized, "there is a growing need for 6:1:1 D75 Programs in District 1, and 4-5 6:1:1 D75 classrooms will be needed in District 1 in the future."²⁷ The

²⁴ See Santos Aff. ¶ 5,

²⁵ See Exhibit J; *see also* Exhibit K.

²⁶ See Santos Aff. ¶ 6.

²⁷ See Letter from Community Superintendent and the Office of Portfolio Planning to District 1 CEC, November 15, 2009, a true and correct printout of which is attached as Exhibit L.

EIS did not address where autistic students who would have attended P.S. 94 will be accommodated in the coming years.

Expanded Co-Location Will Impact the Students at P.S. 188

19. Since Girls Prep moved into the M188 building in 2007, P.S. 188 has had a significant loss of classroom, cluster space and office space. Generally, these losses have resulted in a decline in the quality of related services provided to P.S. 188 students. As a result of the loss of space, the full-time speech and language therapist currently is housed in the back of a self-contained classroom, one part-time speech and language therapist must provide services in a teacher room, and a second part-time speech and language therapist has no designated space and must serve students in the hallway. There is no designated space for the part-time occupational therapist, who is forced to use space in P.S. 94. The two elementary guidance counselors must share a small office with the parent coordinator, making it difficult to maintain confidentiality or allow for group counseling. In addition to these losses in related service areas, the school's use of shared gym and auditorium space was curtailed. This forced the school to downscale the Middle School's 21st Century Community Learning Center program, decrease the curricula of the afterschool dance and percussion programs, and discontinue the boys' and girls' basketball teams.²⁸ An expanded co-location is likely to further reduce the available space for related services and programming for P.S. 188 students.

Impact on the Services and Safety of Students at P.S. 94 and P.S. 188

²⁸ See Affidavit of Yvonne Walker dated March 25, 2010, attached to this petition ("Walker Aff."), ¶¶ 4-6.

20. The EIS failed to consider the impact that expansion of Girls Prep would have on all the students in the M188 building, at both P.S. 94 and P.S. 188. In particular, the EIS did not accurately reflect the capacity at the M188 building or the impact that expanding Girls Prep could have on the safety of students at the M188 building.
21. The EIS stated that the M188 building is at 67% capacity. This is based on incorrect information. The capacity assessment fails to take into account that there has been construction that resulted in major alterations to the building, including the elimination of individual rooms.²⁹
22. The EIS inaccurately stated that the M188 building capacity is 1010 students. This number does not include all the staff in the building, or visitors. The architecture of M188 necessitates that in cases of natural disaster and emergencies, everyone be moved to this first floor, which, according to the most current Certificate of Occupation granted by the New York City Department of Buildings, has a capacity of only 920.³⁰
23. Currently, 397 students are enrolled in P.S. 188, 31 are enrolled in P.S. 94, and 261 students are enrolled in Girls Prep, making the total number of students in the M188 building 689. Under the enrollment proposed in the EIS, by the 2012-13 school year, 1001 students would be in the M188 building. This number does not include faculty and staff, estimated to be 208 by the 2012-13 school year.³¹
24. The proposal to house an additional 300 students in this building, for a total of approximately 1000 students and 200 adults, will jeopardize all students and adults in the

²⁹ See Walker Aff. ¶ 7 and Exhibit 1.

³⁰ See Walker Aff. ¶ 9 and Exhibit 3.

³¹ See Walker Aff. ¶ 7 and Exhibit 1.

expansion in the M188 building would be created by the “graduation of current [P.S. 94] students over the next several years, thereby reducing the total number of sections from nine to five with corresponding declines in student enrollment and space need.”³⁶ The law requires that the DOE prepare an educational impact statement for “any proposed school closing or significant change in school utilization, including the phase-out, grade reconfiguration, re-siting, or co-location of schools, for any public school located within the city district.”³⁷ This statement is required to include, among other things, “the ability of other schools in the affected community district to accommodate pupils following the school closure or significant change in school utilization.”³⁸ There is no statement in the EIS indicating the ability of other schools in the community to absorb the students who would have enrolled at P.S. 94.

28. The PEP did not vote on a proposal for the grade reconfiguration and phase-out of P.S. 94 at M188. New York State law requires that the DOE to prepare an EIS for any “significant change in school utilization, including the phase-out, grade reconfiguration, re-siting, or co-location of schools.”³⁹ After allowing for public comment, any proposed significant change in school utilization must then be approved by the PEP.⁴⁰ The PEP did vote to expand Girls Prep but failed to follow the appropriate process for voting on the grade reconfiguration and phase-out of several classes of students at P.S. 94.

29. The information contained in the EISs filed by the DOE in connection with the Girls Prep grade expansion is insufficient under New York Education Law §2590-h, subsection 2-a(b)

³⁶ See Exhibit F.

³⁷ NY Educ Law § 2590-h(2-a)(a) (2009).

³⁸ NY Educ Law § 2590-h(2-a)(b)(vi) (2009).

³⁹ NY Educ Law § 2590-h(2-a)(a) (2009).

⁴⁰ NY Educ Law § 2590-h(2-a)(e) (2009).

because the EIS failed to identify any impacts of the proposed change in school utilization on the students of P.S. 94 or P.S. 188.⁴¹ Specifically:

- a. The EIS failed to address the impact of having to share space within the co-located building. It stated only that “[t]here will be no students displaced at P.S. M094 or P.S. 188 by the expansion of Girls Prep.”⁴² While the EIS properly left such decisions to school leaders, it completely failed to acknowledge the strain of having to share space in the first place. The DOE should have considered more carefully the strain of sharing space on P.S. 94 and P.S. 188’s programs and its negative impacts on P.S. 94 and P.S. 188 students.
- b. The EIS’s conclusion that P.S. 94 or P.S. 188 students would not be displaced by the expansion of Girls Prep failed to appreciate that the expansion of Girls Prep will necessarily result in the loss of classroom space for P.S. 94 and P.S. 188 students.⁴³ With this conclusory and unelaborated declaration, the DOE failed to consider any of the impacts on P.S. 94 and P.S. 188 students of losing more space to Girls Prep. The EIS also completely disregarded the significant displacement of P.S. 94 and P.S. 188 students and programs within the school itself, as described above.

⁴¹See *Mulgrew v. Bd. of Educ.*, No. 101352/10 (N.Y. Sup. Ct. Mar. 26, 2010) (holding that the DOE failed to provide the detailed analysis that an EIS mandates when they merely included “boilerplate” language that did not provide meaningful information regarding the impacts of school closing on students and that the DOE failed to provide appropriate notice to the community when it merely posted the EIS on the DOE website.)

⁴² See Exhibit F.

⁴³ *Id.*

c. The EIS ignored the impact that the Girls Prep grade expansion would have on students with special needs at P.S. 94 and P.S. 188. As discussed above, the expanded co-location would necessarily result in the loss of instructional space for students at P.S. 94 and P.S. 188, and cause disruption for autistic students requiring stability.

d. The EIS statements regarding building capacity failed to accurately assess the safety ramifications of adding additional students in the building. M188 is unable to safely accommodate the proposed number of students in the event of an emergency.

30. The DOE failed to provide appropriate notice of the proposed grade expansion of Girls Prep and grade reconfiguration of P.S. 94 to the parents of students attending P.S. 94 and P.S. 188. New York State Law requires that an EIS “be made publicly available, including via the city board’s official website.”⁴⁴ The EIS for the grade expansion of Girls Prep was posted on the PEP website, but was never distributed or made available to P.S. 94 or P.S. 188 parents in any other fashion. Further, the title of the EIS posted on the website referred only to the grade expansion of Girls Prep and was insufficient to put parents of P.S. 94 and P.S. 188 students on notice that their children’s school would be affected.

31. The Petitioners served their original petition on the DOE on March 26, 2010. On April 19, 2010, the Commissioner of Education ordered the Petitioners to amend their petition and join Girls Preparatory Charter School as a respondent in this appeal.

⁴⁴ NY Educ Law § 2590-h(2-a)(c) (2009).

32. Petitioners are therefore filing this Petition to request that the Commissioner annul the PEP vote approving the grade expansion of Girls Preparatory Charter School.

A Stay Pending Decision On The Merits Is Necessary

33. Petitioners are also requesting that the Commissioner stay the proposed grade expansion of Girls Preparatory Charter School pending a final decision on the merits of this Petition.

34. A stay of the proposed expansion of Girls Prep is necessary to protect Petitioners' interests pending ultimate determination of this appeal. If a stay is not granted, the PEP's wrongful resolution to allow Girls Prep to expand into additional classrooms within the M188 building may take effect while the Commissioner's decision is still pending. The resolution that the DOE passed in contravention of New York Education Law § 2590-h should not be allowed to take effect during the pendency of the very process designed to make the PEP answer for its wrongful conduct.

35. It is in the Commissioner's discretion to grant a stay if necessary to protect the interests of the parties pending an ultimate determination of the appeal.⁴⁵ Courts traditionally consider two factors when determining whether stays pending appeal are appropriate: (1) whether the moving party will suffer irreparable harm absent the stay, and (2) the moving party's likelihood of success on the merits.⁴⁶

36. Petitioners would suffer irreparable harm to their children's educational interests if Girls Prep is allowed to occupy additional classrooms within the M188 building.

⁴⁵ See 8 NYCRR 276.1(a); see also CPLR § 2201.

⁴⁶ See, e.g., *Marietta Corp. v. Fairhurst*, 301 A.D.2d 734, 736 (N.Y. App. Div. 3d Dept. 2003).

37. During the 2009-2010 school year, Girls Prep has served grades K-5. As a result of the co-location during the 2009-2010 school year, P.S. 94 and P.S. 188 students have already lost crucial space for educational programs.
38. Under the PEP's resolution following the February 24 meeting, Girls Prep would expand to serve grades K-6 in the 2010-2011 school year. The expansion would result in Girls Prep students occupying additional classrooms that are currently being used by P.S. 94 and P.S. 188 students. This loss would deprive these students of educational space that they currently occupy and educational benefits that they currently receive.
39. If the expansion is implemented, P.S. 94 and P.S. 188 students would lose space for critical educational programs, and, as a result, lose education that cannot be replaced. That educational time cannot be regained even if Girls Prep is eventually ordered to return the classrooms and the space.
40. Expansion also would inevitably bring more of the same disruption to P.S. 94 and P.S. 188's educational programs and services that the school and students have already faced. This additional disruption and its negative consequences on the education of P.S. 94 and P.S. 188 students would be impossible to reverse. Both schools serve populations of particularly vulnerable students. Eliminating programs for these students would have incredibly detrimental effects on both the students and the community as a whole.
41. Because the PEP resolution violated clear procedural and substantive requirements of New York Education Law § 2590-h, subsection 2-a, and Petitioners' children face irreparable harm if the PEP's vote to allow Girls Prep's expansion continues, a stay is required pending a final decision on the merits of this Petition.

Relief Requested

1. The implementation of the PEP's resolution to expand Girls Prep into additional classrooms within the M188 building should be stayed pending a final decision on the merits of this appeal.
2. The February 24, 2010 PEP vote to expand Girls Preparatory Charter School in M188 should be annulled on the ground that it violated the procedural requirements identified in New York State law.
3. The DOE should be required issue a separate proposal, issue a separate EIS and hold a separate public hearing for the grade reconfiguration of P.S. 94 at the M188 building.
4. The DOE should be required to conduct a PEP vote on the P.S. 94 grade reconfiguration separately from the vote on the co-location of Girls Prep.
5. The DOE should be required to publish a new EIS for the grade expansion of Girls Prep that includes a substantive analysis of the impact of the proposal on the students at all three schools. This includes, but is not limited to, a thorough analysis of the number of classrooms that P.S. 94 and P.S. 188 will lose to Girls Prep during its expansion, the resulting loss of instructional space to P.S. 94 and P.S. 188 students and any impact on the two schools' ability to continue to provide related services, including occupational therapy, physical therapy, and counseling, to its students after losing the space.
6. The DOE should be required to make the revised EIS and co-location proposal available to all of the parents of students at P.S. 94, P.S. 188 and Girls Prep.

7. The DOE should be required to hold a joint public hearing with the impacted community council and school-based management team at Girls Prep, P.S. 94 and P.S. 188 and allow all interested parties an opportunity to present comments and concerns regarding the proposal.

Dated: New York, New York
April 22, 2010

Respectfully submitted,

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