

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

SHANNON CORWIN, UMANG DESAI, ERIC SEVERSON,
TAMDEKA HUGHES-CARROLL, WANDA CAINE, on
behalf of themselves and all others similarly situated,

Petitioners,

VERIFIED PETITION
FOR INJUNCTIVE
RELIEF AND
DECLARATORY
JUDGMENT

-against-

Index No.

CITY OF NEW YORK; NEW YORK CITY
DEPARTMENT OF EDUCATION; RICHARD CARRANZA,
CHANCELLOR of NEW YORK CITY DEPARTMENT
OF EDUCATION;

Respondents,

For an Order and Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules.

Petitioners SHANNON CORWIN, UMANG DESAI, ERIC SEVERSON, TAMDEKA
HUGHES-CARROLL, and WANDA CAINE, by their attorneys GLASS HARLOW &
HOGROGIAN LLP, as and for their Verified Petition, on behalf of themselves and all others
similarly situated, respectfully allege as follows:

1. This is a special proceeding commenced to challenge the NYCDOE determination
and policy regarding COVID-19 and teacher eligibility for remote learning issued by the
NYCDOE on or about July 15, 2020, annexed as **Exhibit A** hereto, as arbitrary and capricious,
and to compel the NYCDOE to allow Petitioner educators employed by the NYCDOE, and all
others similarly situated, to telework remotely on full salary or without loss of leave balance

accruals due to safety concerns related to COVID-19, should New York City public schools remain open commencing at the start of the school year in September 2020.

2. Absent the requested relief, Petitioners and those educators similarly situated will face the Hobson's choice of choosing between their own and their families' safety, health, and possibly their lives, versus their own livelihoods and economic survival. Emergency injunctive relief is needed from this Court to protect Petitioners from Respondents' arbitrary and capricious policies regarding eligibility for remote work promulgated by the NYCDOE, which jeopardizes their own and their families' health and safety due to COVID-19 versus their economic livelihoods.

The Parties

3. Petitioner SHANNON CORWIN is employed by the New York City Department of Education (formerly known as the NEW YORK CITY BOARD OF EDUCATION), at all times relevant herein, as a Teacher.

4. Petitioner UMANG DESAI is employed by the New York City Department of Education (formerly known as the NEW YORK CITY BOARD OF EDUCATION), at all times relevant herein, as a Teacher.

5. Petitioner TAMDEKA HUGHES-CARROLL is employed by the New York City Department of Education (formerly known as the NEW YORK CITY BOARD OF EDUCATION), at all times relevant herein, as a Substitute Teacher.

6. Petitioner ERIC SEVERSON is employed by the New York City Department of Education (formerly known as the NEW YORK CITY BOARD OF EDUCATION), at all times relevant herein, as a Teacher.

7. Petitioner WANDA CAINE is employed by the New York City Department of Education (formerly known as the NEW YORK CITY BOARD OF EDUCATION), at all times relevant herein, as a Teacher.

8. Respondent CITY OF NEW YORK is a municipality of the State of New York, charged with educating the children of the citizens of New York City.

9. Respondent NEW YORK CITY DEPARTMENT OF EDUCATION (formerly known as the NEW YORK CITY BOARD OF EDUCATION) is a duly authorized and existing agency or corporation of the municipality of the City of New York, charged with educating the children of the citizens of New York City.

10. Respondent RICHARD CARRANZA is the Chancellor of Respondent NYCDOE, and, as such, is said Respondent's chief executive officer at times relevant, which promulgated the policy at issue.

Venue

11. Venue is placed in New York County, New York pursuant to CPLR Section 506(b) because it is where the headquarters of the NYCDOE is located.

Statement of Facts

Background re COVID-19 in New York City

12. In early 2020, citizens of New York State and throughout the world learned of the existence of the "novel coronavirus," which causes COVID-19 in humans.

13. As widely reported in the media, the virus which causes COVID-19 is spread mainly from person to person through droplets in the air when an infected person talks, coughs, or sneezes. These droplets can land on surfaces or are inhaled into another person's lungs causing

them potential infection. Spread is most common when infected people are within six feet of others.

14. COVID-19 seems to be spreading easily in the community (called “community spread”). Community spread means that people become infected with a disease and often do not know how or from where they contracted the virus.

15. On or about March 7, 2020, New York State Governor Andrew Cuomo declared a state of emergency to help New York more quickly and effectively contain the spread of the virus. This state of emergency declaration allows, among other things: expedited procurement of cleaning supplies, hand sanitizer, and other essential resources; allowing qualified professionals other than doctors and nurses to conduct testing; expedited procurement of testing supplies and equipment; expedited personnel onboarding; expedited leasing of lab space; and allowing EMS personnel to transport patients to quarantine locations other than just hospitals. This declaration remains in effect today and is annexed as **Exhibit B** hereto.

16. On March 10, 2020, NYCDOE officials issued a system-wide memo on the day New York City recorded its 70th confirmed positive case — instructing staff, “At the moment, there is no reason for any school to call [the Department of Health and Mental Hygiene] to report potential or confirmed cases. DOHMH is receiving information ... about positive test results strictly from laboratories.” The memo justifies the do-not-call instruction by stating, “We can support our colleagues at DOHMH by keeping their phones clear to speak with laboratories.” Source: **Source:** <https://www.thecity.nyc/health/2020/3/12/21210463/school-officials-say-don-t-report-coronavirus-symptoms-to-health-department>

17. On March 12, 2020, the Centers for Disease Control & Prevention (CDC) advised schools nationwide to “[g]ive special consideration to events that might put students, staff, or their

families in close proximity to others from communities that may have identified cases of COVID-

19. Consider whether any of these events should be canceled.” **Source:**

<https://www.thecity.nyc/special-report/2020/5/11/21257173/how-nyc-schools-officials-played-down-the-covid-19-threat>

18. On March 13, 2020, the World Health Organization (WHO) declared COVID-19 a global pandemic and school districts across the United States began to shut down schools. Mayor de Blasio refused to close NYC public schools. **Source:**

<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

19. On Sunday, March 15, 2020, Mayor de Blasio announced, after a week of mounting pressure from parents, unions, and other elected officials, to shut the schools amid the rapid spread of the coronavirus and convert to remote learning. Both Governor Cuomo and Mayor de Blasio had resisted calls to shut schools for weeks, warning that forcing health care workers to stay home and supervise their children would cause a drag on a hospital system already bracing for an overwhelming influx of patients. That calculation changed Sunday afternoon after the health care workers’ biggest union, 1199 SEIU, changed its position to voice support for closing schools. Mayor de Blasio said the NYCDOE would reopen schools on April 20, 2020. **Source:**

<https://www.thecity.nyc/2020/4/14/21247112/memo-ordering-nyc-schools-to-keep-virus-cases-quiet-probed>

20. On March 16, 2020, Governor Cuomo declared a state of emergency and directed all schools in New York to close by Wednesday, March 18 for two weeks ending April 1. Multiple executive orders were issued and kept school buildings closed through the end of the academic year. The 2019-2020 school year was completed remotely, where every teacher was allowed to

teach from their own home. **Source:** <https://www.governor.ny.gov/news/no-2024-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

21. On March 15, 2020, after Mayor de Blasio shut down the City's public schools, teachers were ordered to report to classrooms to receive in-person training on the "distance learning" they would be practicing with their students. Educators dutifully showed up to work from March 17-19, 2020, which, upon information and belief, caused several educators to become ill due to COVID-19 as well as infect their family members and loved ones at home.

22. On March 22, 2020, Governor Cuomo announced he was signing the "New York State on PAUSE" executive order, a 10-point policy to assure uniform safety for everyone. It included a new directive that all non-essential businesses statewide must close in-office personnel functions effective at 8 pm on Sunday, March 22, and temporarily banned all non-essential gatherings of individuals of any size for any reason. **Source:** <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>

23. Also, on March 22, 2020, Governor Cuomo announced "Matilda's Law" - named for the Governor's mother - to protect New York's most vulnerable populations, including individuals age 70 and older, those with compromised immune systems, and those with underlying illnesses. The measure requires this group of New Yorkers to stay home and limit home visitation to immediate family members or close friends in need of emergency assistance. Upon information and belief, this law is still in effect.

24. On June 8, 2020, the NY PAUSE order was lifted in New York City. In New York City, there are strict regulations of what non-essential businesses can be open and at what capacity. In coordination with New York State, the City entered a phased reopening on the following dates:

June 8: Phase 1; June 22: Phase 2; July 6: Phase 3; and July 20: Phase 4. **Source:** <https://forward.ny.gov/reopening-new-york-city>

25. On May 4, 2020, Governor Cuomo announced a phased reopening plan for different regions in New York State. This detailed phased reopening has four levels and was created based on guidance of the Centers for Disease Control (CDC). Because of the population density and the level of infections and community spread, New York City was not cleared to enter Phase 1 until May 29, 2020. **Source:** <https://forward.ny.gov/reopening-new-york-city>

26. On July 20, 2020, New York City was given the clearance to enter Phase 4 of the Forward NY Reopening Plan. Phase 4 allows the opening of outdoor recreation, zoos, botanical gardens, aquariums, museums, libraries, sporting events (without spectators), and schools. **Source:** <https://forward.ny.gov/new-york-city-phase-four-industries>

27. On August 7, 2020, Governor Cuomo announced that based on each region's infection rate, schools across the state are permitted to open this fall. Every region's infection rate is below the threshold necessary by the State's standards to open schools. The New York State Department of Health will review submitted reopening plans from school districts and notify districts of their status on August 10, 2020. New York City was one of the districts that was approved to reopen.

28. On August 12, 2020, at a press conference, Mayor de Blasio and Chancellor Carranza announced that New York City would be offering students "hybrid instruction." Students and their parents had time to opt into fully remote learning. At any point in the school year, students can switch from the so-called "blended learning" model to full-time remote learning. At each quarter, students can opt into blended learning with in-person instruction. **Source:**

<https://www.schools.nyc.gov/school-year-20-21/return-to-school-2020/welcome-to-the-2020-2021-school-year>

29. In the blended model, the DOE's health and safety plans call for students to remain in a small group with the same people in the same room, with teachers moving from class to class. NYC public schools submitted their preferred model on July 23, 2020.

Background regarding NYCDOE Policy Regarding Medical Accommodations

30. On July 15, 2020, the NYCDOE released its COVID-19 medical accommodation application using SOLAS. *See Exhibit A.* SOLAS is an online system designed to streamline the leave application process for NYCDOE employees. SOLAS makes it easier to apply for a leave of absence and upload the necessary supporting documentation.

31. The NYCDOE used the categories designated by the CDC as "high-risk" categories for contracting coronavirus. However, many of these categories are arbitrary and capricious and do not protect teachers, such as Petitioners herein, who do not fall within the CDC guidelines, but should also be allowed to work remotely due to serious health and safety risks to themselves and their families.

32. The CDC categories are written in an arbitrary and capricious manner, such that employees who are smokers and suffer from obesity or who are merely over 65 years old are eligible for medical accommodations and remote teaching at full salary for the upcoming school year. In contrast, many employees, including Petitioners and others similarly situated, would not qualify for these same medical accommodations for permission to work remotely for the upcoming school year, and can only take a leave of absence using their own CAR balance or sick leave time to avoid being taken off payroll by the NYCDOE if they refuse to report to school at

the beginning of the 2020-21 school year. These educators now have a Hobson's choice between their paycheck/livelihood and the health and safety of themselves and their loved ones.

33. Additionally, a teacher's CAR balance can result in additional monies to their pensions at the time of retirement on a 2 to 1 reimbursement basis pursuant to the UFT-DOE contract. The determination by NYCDOE to force Petitioners and others similarly situated to use their own CAR balance or sick leave time to protect their loved ones when they can safely teach remotely (in contrast to smokers, the obese, and those over 65 who get to work remotely) is also arbitrary and capricious, as the categories are not fashioned on a rational basis.

The Individual Petitioners

34. Petitioner Shannon Corwin is a Tenured English teacher at the High School for Health Professions and Human Services in District 2 of Manhattan within the NYCDOE. Her husband works as a Dean there. The campus where her school is housed in contains two other schools- ICE (a school that has students ranging in age from middle school through high school) and PS 226 (which is a District 75 school for students with moderate to severe special needs). The three schools together have 2,500 students and several hundred faculty. If the NYC COVID-19 case rate is currently 1%, that means potentially 25 people will have the power to infect others at any given time.

35. In March 2020, when schools were being "deep cleaned", the staircases in Petitioner Corwin's building were not being cleaned. A student smeared cupcake frosting on the bannister of a staircase and it remained on the wall for two weeks until one teacher cleaned it up. Petitioner Corwin states that her school campus has severe issues regarding ventilation and cleanliness. Many offices in her school are internal and have no windows to allow for fresh air. The rooms which have air conditioning units have not had their filters cleaned or changed in years.

The staircases all have windows behind security gates which make them impossible to open. The air quality in the staircases is terrible. Many teachers have complained that they have difficulty breathing when they use the stairs.

36. Petitioner Umang Desai is a tenured Biology Teacher at Brooklyn Technical High School. Like many other public schools, Brooklyn Tech is almost a century old and under constant repairs. According to Petitioner Desai, ventilation, a major issue in reopening, is limited at best: The exterior of the building is covered in scaffolding, and many classrooms have windows that do not open, and only one door. There are many fire doors on every floor that must remain closed and therefore will become high touch areas as anyone trying to travel down the hallways will need to use their hands to push the doors open. Most bathrooms have a limited number of sinks, and many do not have hot water.

37. Brooklyn Technical High School is a specialized high school and attracts a student body from all five boroughs in New York City. It is the largest high school in New York.

38. Throughout March 2020, many Brooklyn Tech students called out sick. By late March, after the schools were shut, a student informed teachers that she was “presumptive positive” with COVID-19.

39. At Brooklyn Tech, teachers were aware that at least one and possibly two of their colleagues were sick with the virus.

40. On March 15, 2020, Mayor de Blasio reversed course and announced that schools would be closed starting Monday and teachers would be required to attend in-school training for “distance learning” that Tuesday through Thursday.

41. Most students and faculty take multiple subway trains to get to school every day. With more than 400 adults and a quarter of the school’s 6,000-plus students in the building on any

day, a citywide infection rate of just 1% means about 20 people at Brooklyn Tech will be COVID-positive, a day. While subways are deep cleaned every night, they are not cleaned during rush hour and often many cars have windows that are locked or have malfunctioning ventilation systems.

42. According to Petitioner Desai, most students from Brooklyn Technical High School live in multi-generational households with elderly relatives. Many of their parents work as essential or health care workers as well. Since Brooklyn Technical High School has over 5,900 students, even with multiple cohorts, there is a fear that students will still contract coronavirus from public transit, another student, or a faculty member and get others sick. In fact, Petitioner Desai is aware of one teacher planning to return to school from Florida who has not properly quarantined herself in accordance with present New York State rules.

43. Petitioner Desai's father-in-law suffers from a chronic form of lymphoma and often requires his wife or himself (both DOE teachers) to drive him to and from doctors' appointments and treatments. They will not be able to help care for him if they are in a position of putting themselves in school buildings where they are exposed to COVID-19 on a daily basis. Additionally, his father has coronary artery disease and has had a heart attack in the past and stents placed in his cardiac arteries. Forcing Petitioner Desai back into the school would essentially prevent him from being able to visit his elderly parents because of the risk of exposing them and infecting them with asymptomatic spread. Petitioner is essentially going to be banned from seeing his family.

44. Petitioner ERIC SEVERSON is a Social Studies and Special Education teacher at Clara Barton High School in Prospect Heights, Brooklyn. As a Special Education teacher, Petitioner travels between four or five different classrooms daily and works with many other teachers daily.

45. The school building for Clara Barton High School is almost 100 years old and there are major issues with ventilation. Petitioner has windows in his classrooms that, while new, do not open at all. The school has 1350 students and 175 staff members. There are lots of shared spaces and not a lot of access to sinks and soap for handwashing. There are only two custodians during the day and three in the evening. There is not enough manpower to clean the school at all hours of the day. Several members of the faculty at Barton are elderly and Petitioner does not want to get them sick.

46. Petitioner SEVERSON believes that the obstinate and callous behavior of both Chancellor Carranza and Mayor de Blasio has created a hostile work environment for the teachers of the City of New York. He believes that their behavior is guided by political calculation and not for the general welfare of staff or students of NYC schools. He states that the NYCDOE has a terrible track record with providing basics like working air conditioners, supplies necessary for the classroom, and looking out for the health and well-being of students and staff. Given the failure to close schools in a timely manner in March 2020, Petitioner SEVERSON has no confidence in the mayor or DOE officials to respond properly this time.

47. Petitioner SEVERSON, while healthy and unable to qualify for medical accommodations to teach remotely, lives with his wife and young daughter in Jersey City. Because of the COVID situation, Petitioner and his wife had agreed to sign their child up for fully remote classes for the year. Petitioner's wife suffers from an autoimmune thyroid disorder.

48. Petitioner SEVERSON commutes to work via PATH Train and subway. He is concerned about the state of public transit and the amount of people taking public transit in the fall. Petitioner SEVERSON believes that even with mandated mask wearing, the air filtration systems on underground trains are problematic especially with many high-touch areas.

49. Petitioner SEVERSON says that even with reduced enrollment, prolonged contact indoors is unwise. The Clara Barton High School students and staff must commute from all over the five boroughs and beyond, often by train and bus, leading to exposure. Even if distancing is maintained in classrooms, it cannot be maintained in bathrooms or narrow hallways. There will inevitably be a second wave of COVID-19 in schools, and the NYCDOE has failed to act appropriately before.

50. Petitioner TAMDEKA HUGHES-CARROLL is a Substitute Teacher at New Preparatory Middle School in Jamaica, Queens. She is a single parent of two children with special needs and is fearful not just for her own health and safety but also for her children's health and safety. She has signed up two of her children for remote learning and one child for blended learning.

51. Petitioner HUGHES-CARROLL worries about her options for child care since she will have to report to her middle school. She has an attendant who only will be with her children for four hours a day and she is greatly concerned who will supervise her children while she is at work.

52. Petitioner HUGHES-CARROLL has lost several family members to COVID-19 and is deeply concerned about the cleanliness in her children's schools as well as her own.

53. Petitioner HUGHES-CARROLL teaches middle school students who will be unable to social distance from one another. Children love to be near each other and their caregivers. Many students take buses to school and will be sharing space for long periods of time. The school building has many windows that are nailed shut or so broken that they cannot open fully. Not all classrooms have good ventilation and the air conditioner filters have not been changed.

54. Petitioner WANDA CAINE is a tenured Teacher who works at a transfer high school in Morningside Heights, Manhattan. Petitioner's students are over-aged for high school but do not have enough credits necessary to receive a NYS Regents Diploma.

55. Petitioner CAINE commutes from her home in Stuyvesant Town, located at 18th Street & First Avenue, to work every day. She uses the L train crosstown and the 2 or 3 trains to 96th St. Beginning in March, as COVID-19 cases in NYC increased, her husband drove her to work every day.

56. Petitioner's husband has chronic lymphocytic leukemia and has a high risk for illness as his immune system is severely compromised. On the last day of school for students, March 13, 2020, Ms. Caine's husband's doctor individually called all his Chronic Lymphocytic Leukemia patients to advise that they and their families avoid all public spaces, and specifically advised that Petitioner CAINE not return to work in a school.

57. On or around March 17, 2020 Petitioner CAINE wrote to her principal and submitted the doctor's letter for the last few days. Teachers were told to continue coming into the building through the rest of the week; however, Petitioner worked with her colleagues remotely through the weekend and during the next week to plan the remaining semester of work online.

58. On or around April 5, 2020, Petitioner received official notification that a colleague with whom she had close contact had been symptomatic at that time and later confirmed positive for the virus.

59. The conditions of her workplace do not give Petitioner CAINE confidence that she, her family, or her students and colleagues will be safe from infection. The antiquated, non-working ventilation system in the school has been painted over but not repaired. This is documented in a

2018 public report and upon recent inspection less than two weeks ago, it was observed that three out of four 22-year-old motors no longer turn at all.

60. On July 23, 2020 Petitioner CAINE submitted a medical accommodation request to work remotely. She is 62 and has a family history of stroke, seizure and heart attack which they suffered in their early 60's. Her own risk is heightened by tachycardia, migraine with aura, and HRT, all of which correspond to increased risk of clotting and cardiac events. She has been unable to obtain a complete cardiac evaluation during the pandemic.

61. One week after the medical accommodation request was submitted, Petitioner CAINE's name no longer appeared on the principal's list of those who had applied for an accommodation. Inquiries to the Department of Education's provided contact did not respond, nor could the UFT, principal, or superintendent find any clarification from HR or any other source why this occurred.

62. Since there were some other cases of names disappearing from initial lists, Petitioner CAINE asked the union to investigate whether teachers between the ages of 60-65 would be denied their requests in order to force their premature retirement.

63. The online application continued to appear "in-process", so Ms. Caine did not attempt to make any other plans. On August 13, 2020, her name reappeared on the principal's list and with the request denied. She had no place to submit two letters from her husband's doctor saying that he is immunocompromised, and she must work 100% remote, but the UFT continued to offer some hope of negotiation.

64. Petitioner CAINE is now hearing from her students and hopes to continue working with them. She cannot go into the school building and is looking at retirement, but this was not her plan for this year. She has no other work lined up, and her pension will be an average of her last

three years, but three years ago was a much lower salary that will alter the monthly pension check more than she planned. Her second child is still in college.

Ongoing Health and Safety Risks

65. While there is tremendous improvement in the infection rate, hospitalization rate, new cases, and number of suspected COVID-19 deaths, certain indoor activities continue to be presently banned in New York City including theatres, indoor dining in restaurants and bars, and events in stadiums, as well as most in person court appearances in various workplaces. Across the City, there are many neighborhoods that have infection rates of more than 5% including Morrisania in the Bronx, Canarsie in Brooklyn, and Sunset Park in Brooklyn. Petitioners allege that they are being placed in an impossible situation by being forced to return to their buildings to work in non-hygienic conditions. Petitioners are told that the only way they can avoid returning to their buildings is to take an unpaid Family Medical Leave of Absence (FMLA). **Source:** <https://gothamist.com/news/coronavirus-statistics-tracking-epidemic-new-york>

66. Between March 1 to April 1, 2020, over 75 UFT members who contracted COVID-19 (presumably in their schools) passed away. The NYCDOE also lost administrators and School Safety Agents (SSAs).

67. New York City has been hit especially hard by the novel coronavirus. There is a ban on super spreader events that can occur at congregant settings like schools. Many students and staff who attend or work at New York City public schools take public transit to their buildings which can heighten the risk of catching any virus or illness and spreading it to others. This heightens the health risk of in-person teaching to teachers who may be vulnerable healthwise or may have family members who are vulnerable.

68. The impact of the arbitrary brick and mortar reopening of schools in areas experiencing surges is evident. After fully reopening schools in Israel, public officials were forced to again close schools as they quickly began experiencing COVID-19 outbreaks in the schools and community. **Source:** <https://www.nytimes.com/2020/08/04/world/middleeast/coronavirus-israel-schools-reopen.html>

69. It is important to note that before reopening its schools, Israel had fewer than 300 deaths (compared to nearly 32,495 deaths in New York State to date).

70. On August 31, 2020, Gov. Andrew Cuomo raised a warning flag for schools that are expected to reopen in person in some capacity in less than two weeks, forewarning that clusters of COVID-19 cases that have been popping in colleges will inevitably happen to some degree when K-12 starts the new year. Without a rational basis, respondents are requiring millions of public school employees and students in New York City to return to brick and mortar school buildings on September 8, 2020 amid an unacceptably high level of COVID-19 inflections across the country and smaller clusters of coronavirus popping up on college campuses in the Tri-State area. **Source:** <https://www.nbcnewyork.com/news/local/were-going-to-see-it-in-k-12-cuomo-urges-caution-on-nyc-school-reopening-amid-rough-start-or-colleges/2593541/>

71. The court system in New York City has been shut down largely since mid-March. Courts are trying to limit the number of people entering their buildings to maintain social distancing. In schools, there are no police officers to ensure mask-wearing compliance. Would a judge be comfortable if a teacher brought in their class of thirty students to the court-house for a field trip at this time? There should not be a double-standard. If courts are trying to limit foot traffic to courthouses with new rules, why are the schools not doing the same?

72. A new study reported by the *New York Times* highlights that physical school reopening will likely trigger more outbreaks, reporting that “the findings suggest that as schools reopen, communities will see clusters of infection take root that include children of all ages.” The study reveals that middle and high school students may be even more likely to spread the virus than adults. **Source:** <https://www.nytimes.com/2020/08/07/health/coronavirus-ny-schools-reopen.html>

73. Michael Mulgrew, the president of the United Federation of Teachers (UFT), has chided Mayor de Blasio for not having a test and trace corps established for NYC public schools. Mulgrew has called for extensive testing and tracing since April 2020.

74. On August 31, 2020, in light of concerns about school safety and supplies necessary for keeping buildings clean, Mark Treyger tweeted the following: “Receiving word that school leaders were informed last night that their schools could now use school \$ to purchase PPE for students/staff. Why is this sudden shift significant? Because the mayor promised to pay for adequate PPE for each school, centrally.” **Source:** <https://www.nyl.com/nyc/all-boroughs/news/2020/09/01/nyc-delays-reopening-of-public-schools>

75. On August 31, 2020, the teachers union, after threatening a strike for a few weeks, addressed the Executive Board. As of 6:10pm, the UFT did not have an agreement regarding testing and tracing with the City. Instead of voting to go on strike, Mulgrew asked the Board: “I want your permission to continue to see if we can get to a deal, but if we don't have it by tomorrow, that we go to DA with strike authorization vote. If we don't have that agreement, we ask you to authorize a strike vote.” **Source:** <http://nyceducator.com/2020/08/uft-executive-board-august31-2020.html>

76. On September 1, 2020, Mayor Bill de Blasio announced that the start of the school year will be delayed amid the threat of a teacher strike. De Blasio, joined by officials from both the teachers' and principals' unions, delayed in-person learning in New York City public schools until September 21 with remote learning set to begin on September 16. "Teachers who usually get two days of professional development at the beginning of the school year will now get nine," Schools Chancellor Richard Carranza said. **Source:** <https://abc7ny.com/nyc-schools-delayed-opening-teachers-strike-coronavirus-reopen/6398202/>

77. Days before the UFT and the City made a deal, teachers from schools across the NYC Department of Education were writing letters protesting the City's reopening plan.

78. On August 12, 2020, the head of the CSA union (for principals and assistant principals) wrote: "The city has failed to address many of our crucial concerns and ignored repeated appeals from school leaders to allow enough time to implement highly complicated protocols." **Source:** <https://www.documentcloud.org/documents/7034474-CSA-Letter-on-Delaying-in-Person-Learning-1.html>

79. On August 19, 2020, teachers from PS 169 in Brooklyn wrote, "By reopening school buildings without proper precautions and measures, it is inevitable that communities like ours will, once again, suffer the most." **Source:** <https://docs.google.com/document/d/1HCUYtP54SWLxb4zzOezaIfKMq8f3AbffmFW0yvUkIqY/edit?fbclid=IwAR2KMX4eufcM6VMI57w8kkFAsGYrexqHbLwX9-FUnLYTbpChwbZpHaoySmM>

80. The "mandatory testing" which was a major sticking point for the UFT will not be starting until early October and only between 10-20% of students and staff will be tested daily in each school. This leaves more than three-quarters of a school's population untested. Since many

people who have coronavirus are asymptomatic, there is a great fear that people who are unaware that they have coronavirus may go to school or work and infect others in their schools and homes.

Source: <https://nypost.com/2020/09/01/nyc-to-delay-reopening-of-schools-mayor-de-blasio-announces/>

81. Mr. Mulgrew claimed in a Delegate Assembly meeting on September 1, 2020 that schools have adequate PPE, yet teachers have been told that their schools only have enough to last a few days. Many NYC teachers have resorted to fundraising for PPE on websites like Donors Choose and GoFundMe. **Source:** <https://nypost.com/2020/08/15/nyc-teachers-pleading-for-covid-19-ppe-on-donation-sites/>

82. In New York City, most indoor recreation and dining is banned, yet schools will be permitted to be open. According to an article from the *Gothamist* on August 6, 2020, “open windows and fresh air seem to be the best defense, public health experts said. But not all classrooms have windows. Upgraded Heating Ventilation Air Conditioning [HVAC] systems are second best, but some schools have had broken HVACs for years. Regardless, experts recommend filters, fans, and purifiers -- but schools may have to buy those themselves at a time when budgets have been decimated.” This fact does not give many employees comfort in being forced to return to unsafe and dangerous work environments on September 10, 2020. **Source:** <https://gothamist.com/news/anxiety-air-what-we-know-about-ventilation-nyc-schools-ahead-reopening>

83. There are many school districts across the United States which have given employees more latitude to request an opportunity to work remotely from home and remain on payroll. More than a dozen representatives from teachers' unions in Essex County, including Millburn, NJ, signed a letter last week saying that local school buildings should not reopen in

September 2020, especially with the coronavirus death toll higher in Essex than in every other New Jersey county. The Millburn-Short Hills school district went fully remote after union pressure and substantial numbers of their educators requested remote work accommodations. See **Exhibit C** annexed hereto.

84. In New York State's Finger Lakes region, schools are offering families a virtual or hybrid option. Teachers were given a choice if they wanted to work remotely or work in their school buildings. New Paltz Central School District (NPCSD) believes in-person means reduced numbers in the classroom at all times, and hybrid learning means a rotating schedule that would bring all the district's students into classrooms during the week. As with other districts, the Wayne-Finger Lakes District and NPCSD favor a hybrid model, with students in grades K-5 split into two cohorts, each attending in person class twice a week. Middle school (grades 6-8) and high school (grades 9-12) students will also be split into two cohorts, with a similar two-days in person, two days remote learning schedule. Student independent work or teacher directed intervention would take place on Wednesdays. Teachers have been provided an option if they wish to teach fully remote or do hybrid classes. **Source:** <https://hudsonvalleyone.com/2020/08/01/kingston-saugerties-onteoara-and-new-paltz-school-districts-post-reopening-plans/>

85. The West Chester, Pennsylvania school board approved 8-1 a remote reopening plan that called for ongoing review of when it may be safe to begin either hybrid or in-school instruction. Teachers were instructed by their superintendent to work from their homes for the immediate future. **Source:** <https://patch.com/pennsylvania/westchester/west-chester-sd-opts-online-reopening-plan-8-1-vote>

86. All teachers in Cumberland Valley in Mechanicsburg, PA were granted an option to teach remotely if they desired to. They are offering a virtual academy so teachers were first

selected if they had a medical reason but they also were able to accommodate if a family member had medical issues as well. Members had to get their doctor to fill out medical forms. **Source:** http://www.cvschools.org/about_us/back_to_school_blueprint_-_2020-21

87. Many public schools in the state of Washington are offering an online school and a "regular" school, both of which will be 100% remote when they start. Teachers who want to be strictly online all year can apply to do so and will be considered based on their need to limit exposure. The "regular" school teachers will go hybrid if they ever make it there. Whether teachers are called to campus or not during the 100% remote schooling for all depends on the phase of reopening the county is in. **Source:** <https://www.king5.com/article/news/health/coronavirus/washington-state-unveils-classroom-models-as-districts-prep-for-fall-amid-coronavirus/281-57219a69-991c-423a-ae14-c6a6b1323754>

88. Schools in Girard, PA are providing teachers the option to work remotely if there were underlying conditions and a MD doctor confirmation. There was no major list of health conditions one had to fall under to get this accommodation, and one only needed a letter from his or her doctor. **Source:** <https://www.goerie.com/news/20200805/erie-school-district-considers-going-all-online-in-fall>

89. Many districts in southern New Jersey had so many teachers requesting to teach remote that their districts changed their reopening plans from being hybrid to being fully remote. **Source:** <https://www.nj.com/education/2020/08/list-of-nj-school-districts-planning-all-remote-classes-grows-to-150-aug-26-2020.html>

90. Courts have not been hesitant to overturn the decisions of elected officials or superintendents for in-person teaching when the decisions to force teachers to teach in-person are

clearly arbitrary, capricious, in bad faith, or in violation of the district's own lawful procedure. See *Florida Educational Association vs. Ron DeSantis* (State Circuit Judge Charles Dodson in Tallahassee largely agreed in an order granting a temporary injunction that blocks Gov. Ron DeSantis (R) From enforcing the mandate) **Source:** https://www.aft.org/sites/default/files/complaint_fl_schoolreopening_072020.pdf

91. Courts further have been reviewing injunctions to stop the return of teachers to brick and mortar buildings with increasing frequency. See *County of Fresno v Immanuel Schools* (Fresno County filed for an injunction to close Immanuel Schools Thursday evening, a week after the private school in Reedley opened for in-person instruction in violation of state and county emergency orders.) **Source:** <https://abc30.com/immanuel-schools-reedley-fresno-county-health-department-closed-private-school/6382000/#:~:text=BREAKING%3A%20Fresno%20County%20has%20filed,state%20and%20county%20emergency%20orders.>

92. In Florida, under similar circumstances to the instant matter, a judge ruled that Governor DeSantis' executive order ordering schools to reopen is a policy that is unconstitutional and granted a temporary restraining order finding that the Petitioners had substantial likelihood of success on the merits: "the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the benefit sought has little to no relationships to the right." See *Florida Education Association, et al., v. Desantis, et al.*, No. 2020-CA-001450 (Fla. 2nd Cir. Ct. Aug. 24, 2020)), a copy which is annexed as **Exhibit D**.

93. Interestingly many hearings, including the hearing for injunctive relief for AFT members in Florida, have been held remotely using Zoom technology. As the judge pointed out: "This is because it has been deemed highly unsafe to hold in-person hearings in Leon County

courthouses during this dangerous pandemic.” *See Florida Education Association, et al., v. Desantis, et al., supra.*

94. The judge also pointed out: “Many teachers are parents. Many of them have children who have medical conditions that make them particularly susceptible to coronavirus. Some teachers live with parents or other adults who are susceptible to coronavirus.” *See Florida Education Association, et al., v. Desantis, et al., supra.*

95. Moreover, the CDC guidelines which generally appear to form the basis of the July 15, 2020 NYCDOE medical accommodation rule for remote teaching have been politically compromised, and are constantly changing, such that the science may not support the present NYCDOE categories based on the CDC guidelines for remote teaching as written. *See Florida Education Association, et al., v. Desantis, et al., supra.*

96. Petitioners believe that this injunction will serve the public interest. An injunction in this case will give teachers the opportunity to opt-into remote learning and protect themselves and families from communal spread of coronavirus. This will allow NYC to reopen their school buildings without financial penalty. *See Florida Education Association, et al., v. Desantis, et al., supra.*

97. Petitioners have no other adequate remedy at law and the procedural vehicle of Article 78 is the only remedy available to them to seek the relief they request in this special proceeding.

98. On or about September 3, 2020, Petitioners’ counsel proposed to Respondents that the named Petitioners be allowed to work remotely pending the outcome of this petition, and on the morning of September 4, 2020, Respondents rejected their proposal.

99. No prior application has been made herein.

AS AND FOR A FIRST CAUSE OF ACTION

100. Respondents' guidelines for eligibility for remote teaching, promulgated July 15, 2020, as it applies to Petitioners and those similarly situated, are arbitrary, capricious, bad faith, and/or irrational.

101. No prior application has been made herein.

102. Petitioner has no other adequate remedy at law and the procedural vehicle of Article 78 is the only remedy available to him in order to seek the relief he requests in this special proceeding.

WHEREFORE, it is respectfully requested that Respondents should be compelled to allow Petitioners, and those similarly situated, to continue remote teaching without loss of salary in the absence of their eligibility for remote teaching based on the current July 15, 2020 guidelines, and without having to use their CAR or sick days until at least December 31, 2020 (consistent with those teachers being granted medical accommodations by NYCDOE for remote teaching, as shown in the letter annexed as **Exhibit E**); or, alternatively, until a safe and effective vaccine approved by the CDC and/or the U.S. Food and Drug Administration is made available; and for such and other further relief as the Court deems just and proper.

Dated: New York, New York
September 4, 2020

Respectfully submitted,

GLASS HARLOW & HOGROGIAN LLP
Attorneys for Petitioners
1 Blue Hill Plaza, Suite 1509
Pearl River, NY 10965
(212) 537-6859

By: *Sl Bryan Glass*
BRYAN D. GLASS
Partner

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

Shannon Corwin being duly sworn, deposes and states that (s)he is the Petitioner named in the Verified Petition, that (s)he has read the foregoing Verified Petition, and knows the contents thereof, and states that this is true to h(is) own knowledge.

Shanna Corwin

Subscribed and sworn to before
me this 31st day of August 2020

Rachel Beck

NOTARY PUBLIC

Notary Public, State of New York

No. 015A6057097

Qualified in Kings County

Commission Expires Feb. 10, 2023

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

Umarq Desha

, being duly sworn, deposes and states that (s)he is the Petitioner named in the Verified Petition, that (s)he has read the foregoing Verified Petition, and knows the contents thereof, and states that this is true to h(is) own knowledge.

[Signature]

Subscribed and sworn to before me this 20 day of Aug 2020

[Signature]

NOTARY PUBLIC

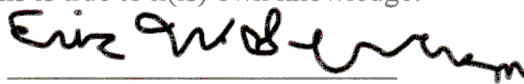
PAUL J. ADAL
Notary Public, State of New York
No. 015A6081097
Qualified in Kings County
Commission Expires 03/10/2023

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

Eric Severson, being duly sworn, deposes and states that (s)he is the Petitioner named in the Verified Petition, that (s)he has read the foregoing Verified Petition, and knows the contents thereof, and states that this is true to h(is) own knowledge.



Eric Severson

Subscribed and sworn to before me this 3rd day of September 2020



NOTARY PUBLIC

RACHEL BADAL
Notary Public, State of New York
No. 01EAG087097
Qualified in Kings County
Commission Expires 10/27/23

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

Tamdeka Hughes-Carroll, being duly sworn, deposes and states that (s)he is the Petitioner named in the Verified Petition, that (s)he has read the foregoing Verified Petition, and knows the contents thereof, and states that this is true to h(is) own knowledge.

Tamdeka Hughes-Carroll

Subscribed and sworn to before
me this 31st day of Aug 2020

Rachel Bedard NOTARY

PUBLIC NOTARIAL

State of New York

County of New York

Commission Expires

September 23, 2023

VERIFICATION

STATE OF NEW YORK)


COUNTY OF NEW YORK) ss:

Wanda Caine, being duly sworn, deposes and states that (s)he is the Petitioner named in the Verified Petition, that (s)he has read the foregoing Verified Petition, and knows the contents thereof, and states that this is true to her own knowledge.



Wanda Caine

Subscribed and sworn to before
me this 3rd day of September 2020


NOTARY PUBLIC
Notary Public, State of New York
No. 01BA6087097
Qualified in Kings County
Commission Expires Feb. 10, 2023