

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

UMANG DESAI, TAMDEKA HUGHES-CARROLL,
WANDA CAINE, COURTNEY BABCOCK, TULA
BARRETO, MARY ELLEN BIZZARRI, SAM CARUSO,
JAMES CONNORS, CARYN DAVIDSON, VANESSA
DUMEY, LYNETTE EDWARDS, JASON EINAUGLER,
AMY FEINSTEIN, IOLANI GRULLON, LYDIA
HOWRILKA, STACEY LAZARUS, YONGJUN LEE,
HELEN LESHINSKY, ROSEMARY MARTIN, IBETH
MEJIA, ELISHA MICHELENA, KIMBERLY MIDDLETON,
LACRETIA PENDERGRASS, SETH RADER, LINDA
RUBINO, SHARI SHAPIRO-RIBIAT, MADELYNE TODD,
CHLOE WU,

Petitioners,

AMENDED
VERIFIED PETITION
FOR INJUNCTIVE
RELIEF AND
DECLARATORY
JUDGMENT

-against-

Index No. 157166/20

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 UMANG DESAI, TAMDEKA HUGHES-CARROLL, WANDA CAINE,
COURTNEY BABCOCK, TULA BARRETO, MARY ELLEN BIZZARRI, SAM CARUSO,
JAMES CONNORS, CARYN DAVIDSON, VANESSA DUMEY, LYNETTE EDWARDS,
JASON EINAUGLER, AMY FEINSTEIN, IOLANI GRULLON, LYDIA HOWRILKA,
STACEY LAZARUS, YONGJUN LEE, HELEN LESHINSKY, ROSEMARY MARTIN, IBETH

MEJIA, ELISHA MICHELENA, KIMBERLY MIDDLETON, LACRETIA PENDERGRASS, SETH RADER, LINDA RUBINO, SHARI SHAPIRO-RIBIAT, MADELYNE TODD, and CHLOE WU by their attorneys GLASS HARLOW & HOGROGIAN LLP, as and for their Amended Verified Petition, respectfully allege as follows:

1. This is a special proceeding commenced by the above-captioned petitioners 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, as well as the “not comfortable” policy, issued on or about August 7, 2020, annexed as **Exhibit B** hereto, as arbitrary and capricious, and to compel the NYCDOE to allow the named Petitioner educators employed by the NYCDOE, to telework remotely on full salary or without loss of leave balance accruals due to safety concerns related to COVID-19, similar to the remote accommodations received by their colleagues who have been granted remote accommodations in September 2020.

2. Absent the requested relief, Petitioners and those educators similarly situated will face the Hobson’s choice of choosing between a rock and a hard place--i.e., possibly their lives and their families’ safety, health, 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 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.

4. 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.

5. 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.

6. Petitioner COURTNEY BABCOCK 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 TULA BARRETO 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. Petitioner MARY ELLEN BIZZARRI 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.

9. Petitioner SAM CARUSO 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.

10. Petitioner JAMES CONNORS 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.

11. Petitioner CARYN DAVIDSON 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.

12. Petitioner VANESSA DUMEY 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.

13. Petitioner LYNETTE EDWARDS 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.

14. Petitioner JASON EINAUGLER 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.

15. Petitioner AMY FEINSTEIN 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.

16. Petitioner IOLANI GRULLON 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.

17. Petitioner LYDIA HOWRILKA 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.

18. Petitioner STACEY LAZARUS 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.

19. Petitioner YONGJUN LEE 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.

20. Petitioner HELEN LESHINSKY 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.

21. Petitioner ROSEMARY MARTIN 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.

22. Petitioner IBETH MEJIA 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.

23. Petitioner ELISHA MICHELENA 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 School Social Worker.

24. Petitioner KIMBERLY MIDDLETON 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.

25. Petitioner LACRETIA PENDERGRASS 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.

26. Petitioner SETH RADER 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.

27. Petitioner LINDA RUBINO 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.

28. Petitioner SHARI SHAPIRO-RIBIAT 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.

29. Petitioner MADELYNE TODD 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.

30. Petitioner CHLOE WU 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.

31. 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.

32. 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

33. 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

34. 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.

35. 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.

36. COVID-19 spreads easier 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.

37. 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 C** hereto.

38. 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>

39. 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>

40. 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>

41. 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>

42. 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>

43. 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.

44. 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>

45. 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.

46. 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>

47. 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>

48. 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>

49. 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.

50. 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>

51. 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.

52. On or around August 29, 2020, the *New York Post* released an article describing new COVID-19 rules put forth by the NYC DOE for implementation in schools. The city Department of Education encourages mask breaks, especially for younger children, but it says they

should occur only “in a well ventilated space” or outdoors with students socially distanced six feet apart. And teachers must keep their own masks on even outside. Children in all grade levels will receive a grab-and-go lunch which they will eat in a classroom with a teacher. Teachers will be expected to engage students in instruction during this “instructional lunch” period. **Source:** <https://nypost.com/2020/08/29/new-covid-19-rules-revealed-at-nyc-elementary-school/>

53. On September 8, 2020, UFT members returned to their school buildings for Professional Development. Only faculty who had medical accommodations were allowed to attend the Professional Development remotely. Many teachers were dismayed to find roaches, dead rodents, dirty desks, and uncleaned bathrooms upon returning to their buildings. **Source:** <https://www.nydailynews.com/new-york/education/ny-special-education-working-conditions-20200909-vsden7gkhjfjbn2upjpkpymebxa-story.html>

54. On September 9, 2020 at least two teachers at different District 15 schools have tested positive for COVID-19 by the second day of educators’ return to classrooms. One teacher was at P.S. 001 Bergen School in Sunset Park and the other teacher at M.S. 88 in Park Slope. In a statement, a DOE spokesperson confirmed the two cases and said they notified staff at both schools immediately after the results were reported. **Source:** <https://www.pix11.com/news/back-to-school/staff-at-2-nyc-schools-test-positive-for-covid-19-as-teachers-get-ready-for-students>

55. On September 11, 2020, staffers at MS 88 shared their utter disappointment with the City of New York’s test and tracing program. In a letter obtained by several media outlets, teachers claim that, after reporting for work on Tuesday, Sept. 8, they were told to work remotely on Sept. 9. On Sept. 9 they received a staff-wide email informing them that an asymptomatic colleague had tested positive for COVID-19. At 6:30 am the next morning, faculty received another email claiming that an investigation was conducted and that the building was safe for them

to return to work that day. However, the teachers contend that the supposed contact tracing conducted was inadequate, and employees who had close contact with the infected staffer were not contacted. Source: <https://www.brooklynpaper.com/ms-88-coronavirus-open-letter-covid-schools/>

56. “It quickly became evident that despite the assurance that rigorous contact tracing was completed, we know this to be false,” the letter reads. “It has now been more than 36 hours since our coworker reported her positive test result, and at least 2 of the teachers who were in close contact with her have still received no communication from contact tracers or city officials.” Source: <https://www.brooklynpaper.com/ms-88-coronavirus-open-letter-covid-schools/>

57. On September 11, 2020, the number of New York City teachers testing positive for the coronavirus rose up again Friday. In an evening address to members, after reporting 16 cases among educators on Thursday, the UFT teachers’ union president announced a total of 22 cases had been identified ahead of the district's return to in-person learning in less than two weeks. Source: <https://www.nbcnewyork.com/news/local/union-again-threatens-to-delay-nyc-school-reopening-queens-teachers-stage-working-protest/2613376/>

58. UFT President Michael Mulgrew said that the City is not holding up its end of the bargain when it came to rapid results, and said that custodial staff also had not yet gotten all the cleaning materials that they need. He said those two hurdles must be addressed, or else the September 21st opening for schools could be at risk. "If the city can't live up to its agreement, we are going to say you can't open," Mulgrew said. Source: <https://www.nbcnewyork.com/news/local/union-again-threatens-to-delay-nyc-school-reopening-queens-teachers-stage-working-protest/2613376/>

59. On September 11, 2020, Nequan McLean, a dad and president of Community Education Council 16 in Bedford-Stuyvesant, said he learned Thursday that a teacher at MS 267 had tested positive. “There has been no official notification given out at the school. Everyone is back today,” he said Friday.

60. The parent advisory group voted 8-0 during an emergency meeting Thursday night to “take legal action” to stop the DOE from opening District 16 schools because officials did not turn over reports on ventilation and other building conditions. The group has retained a lawyer.

Source: <https://nypost.com/2020/09/12/doe-hiding-a-full-list-of-schools-with-covid-infected-teachers/>

61. On September 12, 2020, the *New York Post* revealed that the NYC Department of Education would not reveal a full list of schools where teachers who returned to work last week have tested positive for COVID-19. The DOE also would not say whether parents or guardians at the affected schools would be notified. As the number of teachers who test positive grew — at least 24 as of Friday — some co-workers say they were not notified or contacted by City disease detectives when staffers reported the infections.

62. On September 14, 2020, in a 40 minute Zoom conference, Michael Mulgrew claimed that the City was not making the grade for a safe reopening for students on September 21. Mulgrew was stark about the readiness of schools to reopen Sept. 21: “If you ask me if we are ready to open today, I would say we are not.” Source: <https://patch.com/new-york/new-york-city/city-not-making-grade-nyc-schools-reopening-says-union-prez>

63. On September 17, 2020, just days before students were set to return to their classrooms, New York City is again delaying the full reopening of school buildings and will instead phase-in the start of the year. School buildings are set to open on Monday, September 21,

2020, for children in pre-K and those in District 75, a separate set of schools that serve students with significant disabilities. Students in K-5 schools and K-8 schools will begin in-person classes on Sept. 29. Middle schools, high schools, and adult education students are expected to return on Oct. 1.

Source: <https://ny.chalkbeat.org/2020/9/17/21441431/another-last-minute-reversal-nyc-to-delay-school-reopening-for-most-students>

64. After the Mayor's announcement that schools would have a phased in approach to beginning in-person learning, UFT President Mulgrew issued a letter to members that mentioned the following: "All UFT members with in-person assignments will continue to report to school buildings next week even if they initially are providing remote instruction or services. Your eyes and ears in every school building are the key to ensuring that the safety plan is made real in every school. Please continue to be the advocates for safety in your school building." See **Exhibit D** September 17th Letter to UFT Members.

65. On September 18, 2020, Miranda Barbot, NYC DOE's spokesperson, stated that the number of coronavirus cases in NYC public schools is now at 61 cases at 35 different schools, meaning the positivity rate for all NYC DOE staff is at .33%. **Source:** <https://twitter.com/cveiga/status/1307343321501700096/photo/1>

66. On September 19, 2020, the *New York Post* disclosed that staff from one school in the Far Rockaway High School campus spent two days in the building after the staffer tested positive on Monday. They received notification about the case on Wednesday evening. Now 13 people are under quarantine. A NYCDOE spokeswoman would not explain the notification timing, saying only: "Because of our aggressive health and safety protocols, we immediately moved to

isolate that staff member, identify close contacts, and ensure they are quarantining.” **Source:**
<https://nypost.com/2020/09/19/nyc-doe-mum-on-staffers-potential-exposure-to-covid-19/>

67. On September 21, 2020, the CDC acknowledged airborne transmission for COVID-19. “The US Centers for Disease Control and Prevention updated guidance on its website to say coronavirus can commonly spread through respiratory droplets or small particles, such as those in aerosols,” which are produced even when a person breathes. Airborne viruses, including COVID-19, are among the most contagious and easily spread,” the site now says. **Source:**
<https://www.cnn.com/2020/09/20/health/cdc-coronavirus-airborne-transmission/index.html>

68. Previously, the CDC page said that COVID-19 was thought to spread mainly between people in close contact -- about 6 feet -- and "through respiratory droplets produced when an infected person coughs, sneezes or talks." Now the guidance states: “Stay at least 6 feet away from others, whenever possible,” and continues to direct people to wear a mask and routinely clean and disinfect. However, it also now says people should stay home and isolate when sick, and "use air purifiers to help reduce airborne germs in indoor spaces." **Source:**
<https://www.cnn.com/2020/09/20/health/cdc-coronavirus-airborne-transmission/index.html>

Masks, it notes, should not replace other prevention measures.

69. Since the NYC DOE is allowing students to have mask breaks to eat indoors; and is allowing staff members to drink and eat in their classroom, the NYCDOE health guidelines are moot.

Background regarding NYCDOE Policies Regarding Medical Accommodations

The 7/15/20 Medical Accommodation Policy

70. 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.

71. 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.

72. 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, 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.

73. 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 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, as well as teachers facing

disciplinary charges who get full pay while remote) is also arbitrary and capricious, as the categories are not fashioned on a rational basis.

The Informal Not Comfortable Accommodations Policy @ 8/7/20

74. Page 22 of the NYC Schools Reopening Guide, annexed as **Exhibit B**, states, in relevant part: *Schools and offices may consider the needs of individuals who may not feel comfortable returning to an in-person educational environment when making assignments and modifying work settings and/or schedules where possible.* The term "where possible" seems to be a concern of many who want an accommodation to work remotely. This should not be an issue in the NYCDOE schools. Based on simple math, it is possible for many more NYCDOE employees to be approved to work remotely. It is reported that roughly 40% of NYC students have opted for fully remote learning. The other 60% who are in blended learning will be remote at least half of the time. That means a minimum of 70% of instruction will be remote. Source: <http://iceuftblog.blogspot.com/2020/09/principals-have-discretion-to-offer.html>

75. There have been approximately 30,000 DOE employees who have been granted accommodations to work from home., and there are over 100,000 DOE employees. When over 70% of instruction is remote but only about one quarter of the staff is remote, it seems logical that the NYCDOE could offer thousands of additional accommodations to work from home.

76. Executive Superintendent Barbara Freeman sent the following email to her principals in Brooklyn North on September 22, 2020: "Many of you have asked Superintendents about allowing staff to work remotely. Be advised, all staff not on an approved accommodation are to report to work in person."

The Individual Petitioners

SHANNON CORWIN (former Petitioner mooted out)

77. 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 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.

78. In March 2020, when schools were being “deep cleaned”, the staircases in 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. 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.

79. CORWIN did not apply for remote work accommodation because there was no provision that allowed people to teach remote due to the health of their families. She helps care for her grandmother on the weekends. She is severely anemic and, as a result of childhood measles, is also predisposed to bouts of pneumonia. CORWIN takes precautions in caring for her so that she

can limit the risk of transmitting COVID-19 to her should she be an asymptomatic carrier, but her potential daily exposure to COVID-19 at the school building and on mass transit poses a dire risk to her health.

80. CORWIN said "I am shocked to discover" that the DOE has an "uncomfortable policy" that offers an informal remote work accommodation to teachers who are uncomfortable coming into the building. The UFT chapter leader and consultative council at her school are similarly shocked by the existence of this supposed policy. She is left wondering if the knowledge of this policy was willfully suppressed by the NYCDOE.

81. CORWIN is uncomfortable coming into her building due in part to just being just notified that a staff member staff tested positive. The building's ventilation has severe issues which consists of windows that open 2-3 inches, offices without windows, and stairwells that windows do not open. Last March, a custodian at CORWIN's school confided in her that "no deep cleaning" was occurring because the custodial staff didn't have the time nor resources to thoroughly clean each classroom and common space in the building. With only a skeleton crew of custodial staff doing an impossible workload of cleaning, CORWIN is uncomfortable in entering the building. CORWIN is uncomfortable returning to work because she commutes via mass transit. It is impossible to effectively social distance on mass transit and this problem will be exacerbated by the influx of students commuting to schools for the in-person component of blended learning. More people sharing enclosed spaces will increase the transmission rate, causing more people in the city to fall ill and die.

82. The transmission rate is also a concern because the Department of Education has not required teachers and staff to get tested, they have merely "recommended" it. The Department of Education is not keeping track of which staff members in each school have been tested, they are

only keeping a lagging and dilatory record of positive cases in the building. The only consideration for transmission by asymptomatic carriers who have not taken initiative to get tested is the agreement by the UFT and DOE that 10-20% of the school staff will get randomly tested every month. No further guidance or specifics about this supposed random testing initiative has disseminated to school staff.

83. This past spring, CORWIN counseled students who fell ill and students who were dealing with the illnesses and deaths of their siblings, parents, and grandparents. Remote education is not ideal, and it's frankly more work for teachers constantly responding to students' questions, but it is the best option we currently have to keep people safe and alive.

84. Very recently, after the filing of the original petition in this matter, on September 17, 2020, CORWIN's principal, Robert Gentile, said that he was told by the DOE legal office to call her. In this conversation, Gentile offered CORWIN a remote accommodation even though she did not apply for the medical accommodation. He said that he "didn't want anyone to be uncomfortable." CORWIN thanked him for the offer, but said that she "probably wouldn't take it." Gentile asked CORWIN to let him know if she changed her mind so that the programmer could adjust her schedule.

UMANG DESAI

85. 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 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 none have hot water.

86. Brooklyn Tech 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.

87. 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.

88. At Brooklyn Tech, teachers were aware that at least one and possibly two of their colleagues were sick with the virus. It was later confirmed by the chapter’s UFT that in fact five individuals had tested positive for COVID-19 in the school.

89. 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.

90. 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.

91. According to DESAI, many students from Brooklyn Tech live in multi-generational households with elderly relatives. Many of their parents work as essential or health care workers as well. Since Brooklyn Tech 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, 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.

92. DESAI's father-in-law suffers from a chronic form of lymphoma which puts him at high risk for severe COVID infection, and 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, as a result, Desai often takes him to appointments as well. He is also taking high blood pressure medication. A diagnosis which also puts him at risk for severe COVID infection. Forcing DESAI back into the school would essentially prevent him from being able to visit or care for his elderly parents because of the risk of exposing them and infecting them with asymptomatic spread. DESAI will be banned from caring for his family, as they are in the category for high severity infections of covid-19.

93. DESAI did not apply in July 2020 for a medical accommodation because he did not fit into any of the medical reasons listed for accommodation. He had been working remotely while losing CAR days from September 8, 2020 until the TRO was granted on September 13, 2020, and later vacated on September 18, 2020. His Assistant Principal of Organization (APO) informed DESAI that he was not on the remote accommodations list as of September 14 and that he needed to fix it (presumably by filing using the medical accommodations system online, SOLAS) after he sent her the court order and told her he would be marking myself present until a further decision was made by the court.

94. On September 15, 2020, DESAI then sent an email requesting his principal grant remote accommodations under the not comfortable policy as well (after he was informed for the

first time that such a policy exists based on the Respondents submitted court documents) as he was trying to do whatever possible to get put back on the appropriate list to resume getting paid. DESAI stated: "Dear Principal Newman, Page 22 of the New York City Department of Education School Reopening Plan states in part:" Schools and offices may consider the needs of individuals who may not feel comfortable returning to an in-person educational environment when making assignments and modifying work settings and/or schedules where possible."

95. DESAI's principal told the UFT consultation committee that his "hands were tied on the not comfortable policy from above." The principal has not responded to multiple emails DESAI has sent him requesting remote accommodations under the not comfortable policy.

96. DESAI applied through SOLAS citing the TRO and asked his principal for the not comfortable accommodation after reading about it in the City's court documents in this case and on the iceuftblog. He was never informed of this policy nor would he have known about it unless he was part of this lawsuit.

97. DESAI has not heard back from his principal nor the DOE to date on his not comfortable request for a remote accommodation despite multiple emails. He does not even know if he is still being deducted CAR days after the TRO to date.

ERIC SEVERSON (former Petitioner mooted out)

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

99. The school building for Clara Barton High School is almost 100 years old and there are extreme issues with ventilation. SEVERSON 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 SEVERSON does not want to get them sick.

100. 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 NYCDOE. 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, SEVERSON has no confidence in the mayor or DOE officials to respond properly this time.

101. SEVERSON lives with his wife and young daughter in Jersey City. His wife suffers from an autoimmune thyroid disorder, and is at high risk for COVID-19. For his wife's safety, they have chosen to have their daughter attend school fully remote this year.

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

103. SEVERSON did apply for medical accommodation pursuant to the 7/15/20 policy and was finally granted it on the second attempt after receiving an email from an unnamed DOE source, dated 9/14/2020, *after* the instant litigation was filed. He had not heard of the

uncomfortable policy until it was mentioned in court by the DOE lawyers during oral argument on Friday, 9/18/20.

104. SEVERSON states 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.

TAMDEKA HUGHES-CARROLL

105. 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 enrolled her children for remote learning and one child for blended learning.

106. 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.

107. 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.

108. 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.

109. HUGHES-CARROLL emailed her principal asking her for a remote work accommodation under the “not comfortable” policy. Her principal did not reply to her email request. HUGHES-CARROLL has now been forced to accept a position at a District 75 school.

WANDA CAINE

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

111. 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.

112. CAINE’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, CAINE’s husband’s doctor individually called all his CLL patients to advise that they and their families avoid all public spaces, and specifically advised that CAINE not return to work in a school.

113. On or around March 17, 2020, 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, CAINE worked with her colleagues remotely through the weekend and during the next week to plan the remaining semester of work online.

114. On or around April 5, 2020, CAINE 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.

115. The conditions of her workplace do not give 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.

116. On July 23, 2020, 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, and her doctor strongly advises she remain teaching remotely. She has been unable to obtain a complete cardiac evaluation during the pandemic.

117. One week after the medical accommodation request was submitted, CAINE's name no longer appeared on the principal's list of those who had applied for an accommodation. Inquiries to the NYC 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.

118. Since there were some other cases of names disappearing from initial lists, 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.

119. The online application continued to appear "in-process", so 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. In late August, CAINE asked her principal for an informally granted remote accommodation as suggested by the UFT. The principal didn't know how that would work as she had no procedure for attendance and would be forced to mark CAINE as being in the building during remote work. In mid-September, CAINE asked her principal if she had received a memo from the DOE about a principal's discretion for remote accommodation, but the principal said she had not received any information or memo. This week, CAINE's principal said that CSA, the principal's union, advised against principal's implementing decisions granting remote accommodations as they would then be held accountable to the D.O.E.'s attendance oversight. Only accommodations issued by the Central D.O.E. officially place teachers on a remote attendance list. The principal knows no protocol for, nor has ever made reference to, an "uncomfortable accommodation".

120. 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.

COURTNEY BABCOCK

121. Petitioner BABCOCK is a Teacher with the New York City Department of Education at High School of Art and Design in Manhattan.

122. BABCOCK is not comfortable with returning to her school due to COVID-19 related concerns with her commute from Long Island and bringing the germs from her school building home to her family. She cannot drive due to visual issues so she is forced to take public transportation.

123. BABCOCK states her school building is unsafe due to colleagues not maintaining the social distance required by the CDC.

124. BABCOCK has not been supplied with enough PPE for her classroom.

125. BABCOCK has witnessed the custodial staff installing sanitizer pumps as well as only taking out the garbage from each classroom.

126. BABCOCK did not ask because she did not think she fit within the July 15, 2020 medical accommodation policy and was not aware of any other procedure to obtain an accommodation to work remotely.

127. BABCOCK emailed her principal Maximillian Re-Sugiura on September 19, 2020, asking about the “not comfortable” work accommodation. Principal Re-Sugiura responded that he was awaiting word from the HR Department and his expectation was that Petitioner BABCOCK would be in the building.

TULA BARRETO

128. Petitioner BARRETO is a School Psychologist with the New York City Department of Education at PS66 in Bronx, NY.

129. BARRETO did not apply for medical accommodation.

130. BARRETO did not apply for an uncomfortable accommodation as she was not aware such an accommodation existed.

131. BARRETO was informed by both her Principal and Principal’s Secretary/ Payroll Secretary that her Principal could not permit her to work remotely from home because he does not have the authority to do so. In addition, in an email response dated September 8, 2020, her Principal wrote that until she received documentation indicating that she had been approved for an accommodation, he “was not in a position to create policy for individual staff members.

132. BARRETO states that the messaging from her school administration has been that only a formal medical accommodation pursuant to the 7/15/20 policy exists for NYC DOE employees.

133. BARRETO on September 6, 2020, requested to her Principal an accommodation to work remotely from home, due to her urgent child care need. BARRETO explained that she had applied electronically, via the Division of Human Capital/ HR Connect Leaves Department, on September 1, 2020, for Leave under the federal Families First Corona Virus Response Act (FFCRA). BARRETO explained that she does not have a child care provider to care for her while she is at home receiving one hundred percent virtual instruction. Under the FFCRA, employees are eligible for up to 12 weeks of leave at two-thirds the employee's regular rate of pay when an employee is unable to work due to a "bonafide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19." BARRETO's Principal responded the same day, via email, stating "It is my understanding that until we have clarification regarding your request, you are required to be physically in the building. We would expect to see you tomorrow then....At this point, until I have verification that you've been approved for an accommodation, I am not in a position to create a policy for individual staff members . The messaging from Central has been very specific surrounding this."

134. BARRETO's husband has an underlying medical condition that places him at severe risk from COVID-19. He had and is in remission from cancer and suffers from Diabetes and is currently undergoing a battery of tests to determine cardiovascular problems. As a result, he is immunocompromised and BARRETO fears her exposure to COVID-19 in her school building may put him at severe risk.

135. BARRETO feels extremely uncomfortable and apprehensive returning to her unsafe school environment. The building is old, generally unclean, and unsanitary. The small office that she shares with other coworkers is continuously dusty with consistent excessive mice droppings on the floor. Mice sightings are quite common throughout the school. Petitioner is constantly wiping mice droppings from the top of her desks as well as sweeping the floor of the mice droppings. BARRETO has found dead mice in her office several times.

136. BARRETO's school building has very poor ventilation, which was acknowledged in a September 9th teleconference between the Principal and the staff that air ducts are generating dust and debris into rooms within the building which poses safety concerns. He stated that the ducts would be cleaned but he could not ascertain when this would take place. He recognized that this is problematic and stated that in the interim, all windows remain open and most doors to the outside remain open in order to "increase airflow." This is very concerning to Petitioner and makes her feel extremely uncomfortable since dirty air ducts lower the quality of air in the building promoting the circulation of COVID-19 aerosoles in the environment.

137. BARRETO's office has very poor ventilation and despite often keeping the door open, and windows open, no cross ventilation exists. BARRETO is concerned that for ventilation purposes, during cold days in the fall and winter will cause herself to become ill with upper respiratory ailments such as bronchitis and pneumonia.

138. BARRETO has observed that the staff are not consistently wearing masks or practicing social distancing guidelines. During a recent staff teleconference meeting of September 9th, the Principal and Assistant Principal brought up concerns that multiple staff members were not wearing masks consistently or maintaining social distancing guidelines. The Assistant Principal stated that she had received complaints from staff members who were not wearing masks,

because they were upset at the mask wearing staff who required them to do the same. She mentioned that those not wearing masks were labeling those mask-wearing accusers as the “mask police.” The Assistant Principal even discussed instances in which various staff members had come to her office and did not socially distance from her or wear a mask. Despite the seriousness of the discussion, the administrator spoke to staff in a “soft” manner, encouraging them to abide by these safety guidelines, and not to become offended if a coworker or administrator reminds them to wear their mask or to keep their distance. It should be noted that during these staff teleconference meetings, BARRETO has observed some staff members not wearing masks.

139. BARRETO states that there is a shortage of promised and appropriate PPE, inadequate ventilation, practically non-existent expedited testing and tracing, and unsafe and unsanitary buildings is the norm

140. Many teachers in multiple school campuses throughout the City have walked out of school buildings and worked outside. The conditions of their workplaces are not what the Mayor or Chancellor are stating publicly.

MARY ELLEN BIZZARRI

141. Petitioner BIZZARRI has been a teacher with the New York City Department of Education since September 1, 2003, at PS 340 in Manhattan. She has worked at her current school since September 2017.

142. BIZZARRI does not feel safe working in her building. Even though she sees her class one day a week, she must teach her students remotely in the building. BIZZARRI risks exposing herself, her students, her family, and her colleagues to potential infection and viral transfer.

143. Even though BIZZARRI's principal is really trying hard to keep a safe and secure environment, given cuts to funding and unclear expectations, it is very hard for her to do so.

144. BIZZARRI did not apply for a medical accommodation because she did not qualify under CDC guidelines. BIZZARRI lives with her partner who has survived brain cancer and suffers from seizures.

145. BIZZARRI only learned about the "not comfortable" accommodation after September 18, 2020. She then informed her principal that she is very nervous about going into work but never formally applied for an accommodation.

146. BIZZARRI was unaware of the uncomfortable accommodation option until recently and was never advised by her Principal Pat Carney or Superintendent Donalda Chumney of the option.

SAMUEL CARUSO

147. Petitioner CARUSO is a Teacher with the New York City Department of Education at M293 in District 6.

148. CARUSO is not comfortable with returning to his school at the start of the 2020-21 school year because of COVID-19 related concerns.

149. CARUSO feels unsafe as the DOE Guidelines places no limit on class size in a gymnasium, only a social distance guideline of 12 feet for moderate to high intensity activity. This means that more than one 12-student pod will be present and mixed in the gymnasium during a class period. This undermines the whole purpose of the pod model, places the entire community at increased risk, and exposes CARUSO to twice as many students as other classroom teachers in his school building.

150. CARUSO states that the breakfast and working lunch period as currently mandated calls for every student to remove their mask for an extended period of time in their classroom for lunch. This practice completely undermines the safety of the teacher required to stay in that room.

151. CARUSO'S wife is an immunocompromised teacher and was approved for remote teaching under the DOE's reasonable health accommodation. CARUSO's presence in the school building under these unsafe conditions places his wife at increased risk as well and undermines her health accommodation.

152. CARUSO never applied for accommodations via SOLAS for a medical accommodation for remote work, he believed that he did not qualify and was not aware of any other procedure to obtain an accommodation to work remotely.

153. CARUSO did not know of any DOE informal not comfortable policy related to anxiety, family needs or childcare. This policy was never communicated to CARUSO or the school staff.

154. CARUSO sent an email this week to his principal asking for a remote work accommodation under the "not comfortable policy", and has not received a response.

JAMES CONNORS

155. PETITIONER CONNORS is presently employed as a teacher in the New York City Department of Education since 2014 at X454 in District 9, Bronx, which already lost a staff member to COVID-19 in early April, Ms. Carol King-Grant. As of 9/18/2020, there were over 90 cases in school buildings since staff reported to work on September 8th 2020, some of which are near the school which she works ([Source](#)).

156. As much as the school administration tries to keep school staff safe, the building lacks vents, Merv-13 filters, exhaust equipment, and is not deep cleaned. There is no mandatory

testing, and thus teachers, as well as students when they come on October 1st, are and will be coming into school building without a verified Covid-19 test. The bathrooms are very small and fit two stalls and a sink, with no windows or working ventilation/exhaust. CONNORS tries not to go to the bathroom at school. Furthermore, by no fault of their own, and due to the nature of our work as teachers, the vast majority of teachers do not wear masks while teaching their zoom classes. Many of these teachers are 3 to a room.

157. Windows do not open fully in classrooms, and according to latest CDC guidelines aerosolized forms of virus can spread very easily in low ventilated places, and the existence of a window does not guarantee low risk of Covid-19 infection ([Source](#)).

158. CONNORS does not feel safe returning to work because his wife had a high-risk pregnancy in the first trimester, characterized by an emergency room trip for an attempted abortion. The CDC guideline states: “pregnant people might be at an increased risk for severe illness from COVID-19” ([Source](#)). Furthermore, contracting Covid-19 would expose her to an increased risk of premature birth, still birth, or serious sickness ([Source](#))

159. CONNORS feels like he needs to be extra careful protecting his wife from COVID-19 because of her pregnancy complications in the first trimester. Since CONNORS share an apartment with his Wife, he is unable to socially distance.

160. Furthermore, CONNORS visits his Mother in New Jersey regularly to help her with day to day tasks as she suffers from early onset dementia, and so since she is over 65 she is at a heightened risk of exposure because of my visits. Also, CONNORS’ Step-Mother has Stage-4 cancer, and his helpful visits to her are affected by his working in an unsafe school building.

161. Teachers help each other do tasks that eliminate social distancing, such as moving boxes of books. It is not realistic to ask over 40 adults to socially distance and wear a mask on a

small floor of a school building day in and day out, and breaches of this protocol happen with regularity as CONNORS stated above. CONNORS states it's not his school's fault, it's the fault of the DOE for putting people in this position.

162. Furthermore, teachers do not get hospital grade PPE. They do not have access to N95 masks, and CONNORS is the only one who wears them at school. CONNORS has spent over \$500 on N95 masks and other PPE paraphernalia. CONNORS recently purchased an additional box of N95 masks for a 63-year-old paraprofessional who had a stroke and is worried about contracting the virus. CONNORS is also considering getting his wife in a 6th-month apartment so that she can separate from him until the baby is born.

163. In sum, the DOE decision to have staff report to unsafe buildings for remote and hybrid learning has taken a toll on CONNORS' mental health and personal life, and most importantly the safety of his wife. Everyday, CONNORS is forced to go in, he feels like he is chancing a catastrophe to earn a living. That is a compromise that CONNORS is unwilling to take. He would be able to perform his work duties to a higher degree of professionalism and with absence of chronic fear if he would receive a remote work accommodation.

164. It was stated on the DOE website that only people with personal medical issues could apply for remote accommodation, not people who live with an at-risk person. CONNORS never applied for a formal accommodation given he did not believe he qualified.

165. On September 22, 2020 the principal told CONNORS that he does not have the authority to grant an accommodation.

166. CONNORS was unaware of the not comfortable accommodation and was never advised by the Principal or Superintendent of this possibility.

CARYN DAVIDSON

167. Petitioner DAVIDSON is a Teacher with the New York City Department of Education at Millennium Brooklyn High School in Brooklyn.

168. DAVIDSON is not comfortable with returning to school at the start of the 2020-21 school year because of COVID-19 related concerns.

169. DAVIDSON does not feel that the NYCDOE can assure her safety in returning to school at this time because the building, which was built in 1912, has inadequate ventilation even when the Department of Education's so-called safety guidelines are followed.

170. DAVIDSON is a breastfeeding mother of an 11-month old child with a father who is high-risk for deadly impacts of COVID-19.

171. DAVIDSON is assigned to a school building that fails to meet the standard put forth by industrial hygienists that the air change per hour (ACH) be 6-12 ACH and that the percentage of fresh air in a room be 30-40%.

172. DAVIDSON states that the administrators and custodial staff in her school are closely enforcing DOE's dictates and guidelines for safety and ventilation, which are not in fact safe. They are closing all windows at night (leaving some open only a couple of inches at the top) and enforcing the belief that only a couple of inches of one window being open in a classroom or stairwell qualifies as adequate ventilation when teachers and students are present. All stairwell windows are only opened one inch, and they are covered with grates; many of the stairwell windows remain closed.

173. DAVIDSON states that there is no HVAC system other than in the library, auditorium, and cafeteria, which are broken and have still not been fixed.

174. DAVIDSON states that most student bathrooms do not have windows or sinks that operate effectively (students have to hold the faucet for it to work).

175. DAVIDSON states that her school is a scanning school and she fears that COVID-19 spreading will take place there due to her inadequately ventilated stairwells.

176. DAVIDSON states that there is no possible way that given these conditions, classrooms, stairwells and hallways can meet the actual ventilation standard of 6 air exchanges per hour. The building has windows with ACs but they merely recirculate the air that is already in the room, which is very concerning if COVID-19 droplets are in the air.

177. DAVIDSON is concerned that there will be no way to monitor social distancing in the stairwells, which will function as chokepoints. There are no windows open in the hallways, and all students go through scanning in the morning.

178. DAVIDSON continues to see at least one faculty member (an administrator) not wearing a mask. DAVIDSON'S principal told teachers to navigate social distancing in the classroom according to their comfort level (rather than sternly requiring consistent enforcement of this basic safety measure which is mandated by the DOE).

179. DAVIDSON has witnessed multiple faculty failing to socially distance in the weeks leading up to students' return and does not have any faith that her building will be successfully modeling social distancing as well that students will be able to effectively socially distance while waiting in the hallway for class, navigating the hallway during passing time, and moving through the unmonitored stairwells.

180. DAVIDSON states that she is overwhelmed with anxiety about "pumping" in the space provided as she does not believe it is safe or adequately ventilated to protect her, her child, her parents, and her partner. The original pumping room had no windows; after the UFT chapter

leader and Petitioner DAVIDSON advocated for a ventilated pumping room, the old faculty lounge was converted to a pumping room. There is only one window in the new pumping room, which has an air conditioning unit in it, and thus only the top of the window can open a couple of inches. The room has very high ceilings and it seems impossible that any adequate or actual ventilation can happen in that room. There is no cross-ventilation as there are no windows in any other rooms across from the pumping room (there is only the old, windowless pumping room).

181. DAVIDSON states that she is unable to use an actual pump as she must hand express in order to maintain her milk supply. That means that she has to wash her hands thoroughly to ensure that she has been sterilized beforehand expressing, and it also means she has to clean up after herself as there is often some milk on the floor afterwards). To complicate this, one of the two available faculty bathrooms has no windows. The hand expressing process takes more time than pumping and would involve DAVIDSON being in an inadequately ventilated room during her only break.

182. DAVIDSON's school is using a block schedule which requires that she teach two 80-minute periods in a row, with a 45-minute lunch (includes her pumping time) and then another 80-minute period. Students will be eating lunch in her classroom when she is taking her lunch and as such, she will be coming back into a room that students have been eating and talking in without masks on for 45 minutes.

183. Students are not divided into pods and so there will be intermingling of students in different classes, which would make contact tracing nearly impossible. Given the DOE's track record thus far with MS 88 and other schools with contact tracing, DAVIDSON fears that there will be no way to execute it within her school.

184. DAVIDSON's parents were her source of childcare last year and now they cannot support her due to her father being high-risk.

185. DAVIDSON's child is under 1 year of age and she cannot bring any other person into her life if she is going to protect her vulnerable father.

186. DAVIDSON has been in therapy since last winter to help her develop strategies for managing anxiety that manifests in increased heart rate, panics, negative mood swings, and difficulty sleeping.

187. Since returning to the building, DAVIDSON has been unable to bring herself into the pumping room due to her anxiety, and has experienced several anxiety symptoms. This has been impacting her health and her family.

188. DAVIDSON is overwhelmed by what has become a threat of possibly having to take a leave, and effectively having to choose between her family's well-being and her career.

189. DAVIDSON has applied for and has been denied remote accommodation 3 times. Petitioner DAVIDSON'S principal insists that the Superintendent has explicitly told him that he cannot grant approval to teach remotely.

VANESSA DUMEY

190. VANESSA DUMEY is employed as a Teacher with the New York City Department of Education at Rockaway Park High School for Environmental Sustainability in Queens.

191. DUMEY is not comfortable with returning to her school at the start of the 2020-21 school year because of COVID-19 related concerns.

192. DUMEY's school building is amongst the increasing number of NYCDOE schools with COVID-19 positive staffers.

193. On September 16, 2020 at 10:04 pm, DUMEY received an email from the principal reporting that a staff member in her school building tested positive for COVID-19 and was on site since September 8, 2020. DUMEY was instructed to report to the school building as usual the next day.

194. On September 17, 2020 at 8:44 pm, DUMEY received an email from the principal reporting that 2 more staff members in the school building tested positive for COVID-19 and were on site. The school building was closed the next day, Friday, September 18, 2020 under an initial 24-hour mandated closure and DUMEU was instructed not to report to the school building. DUMEY was directed to work remotely for the day until further instructions were provided.

195. On September 19, 2020, an email was sent at 7:57 pm stating the building is clear to reopen for regularly scheduled activities beginning Saturday, 9/19/20.

196. DUMEY is a single parent of two young children. The children's father, whom they see every other weekend, is also a NYCDOE employee and is equally concerned about his safety and well-being while in his school building. They both understand their vital role in their educational community.

197. DUMEY does not believe her building is safe because the City's process of approving schools to reopen through School Ventilation Action Teams is questionable. Additionally, the adherence of sanitizing, limiting protective equipment and materials, and response protocols given the rushed timeline is questionable to her.

198. DUMEY states that she was never informed of the DOE informal not comfortable policy related to anxiety, family needs or childcare. It was never communicated to her or the school staff.

LYNETTE EDWARDS

199. Petitioner LYNETTE EDWARDS is a teacher with the New York City Department of Education at PS98M in the Inwood section of Manhattan.

200. EDWARDS is not comfortable with returning to her school at the start of the 2020-21 school year because of COVID-19 related concerns

201. EDWARDS has a 15 year old daughter that suffers from a blood condition called thalassemia as well as asthma. Her doctors have informed EDWARDS that a COVID-19 infection would be significantly threatening to her physical health and safety, and could result in the need for blood transfusions or worse. He has recommended that EDWARDS take extra precautions with her daughter, including keeping her home from school and minimizing her contact with potential virus vectors. As a result, EDWARDS' daughter is at home and engaged in online schooling until a safe and approved COVID-19 vaccine is available.

202. EDWARDS does not feel that the NYCDOE can assure her safety and, consequently, that of her daughter in returning to school at this time. The building that EDWARDS works in is a poorly ventilated building with hallways and bathrooms that make it virtually certain that the virus will spread among students and staff.

203. EDWARDS states that one young male custodial worker claims to have an asthmatic condition that does not allow him to wear a mask while working. He is often in the hallways and the elevator moving furniture and supplies while breathing on staff members, including herself, who are forced to share confined spaces with him. Her principal stated his medical accommodation must be respected over the health and safety of other staff members.

204. EDWARDS comes to work every day terrified she may contract COVID-19, but even more so that she might expose her daughter to the COVID-19 virus and she will be horribly

impacted. The only reason she continues to work is because of the financial security and health benefits she needs to help maintain her family.

205. EDWARDS has requested an accommodation to work remotely and to date, has not been provided one despite her daughter's medical condition and despite the fact that she proved herself to be an effective online teacher throughout the spring of 2020, when all classes were online.

206. EDWARDS states that she has not been informed by her principal or other members of the administration of any "not comfortable" policy related to family needs, such as childcare or a vulnerable child/family member at home. Nor did the UFT representatives inform her of any such policy.

JASON EINAUGLER

207. Petitioner JASON EINAUGLER is presently employed as a teacher with the New York City Department of Education at PS 226 in the Bronx.

208. EINAUGLER is uncomfortable with returning to his school at the start of the 2020-21 school year because of COVID-19 related concerns.

209. EINAUGLER does not feel that he NYCDOE can assure his safety in returning to school at this time. His 3-year-old son is high risk with asthma. The child has been hospitalized twice last year within one month, once for two days with RSV and another time for 3 days because of a strain of coronavirus and was on a ventilator. His doctors do not want him in daycare, and they do not want EINAUGLER or his wife working anywhere but from home so as not to potentially expose the child to the risk which could be dire if he were to become infected.

210. EINAUGLER does not believe his building is safe because of the inadequate ventilation system. In the room that he will be remote teaching from, 2 out of the 4 windows open.

He is not aware of any proper air filtration systems that were recommended by experts installed in the school. He has been instructed to just have windows open. The hallways have low ceilings and are very narrow with little to no ventilation as well.

211. EINAUGLER states that there is no consistent testing required and consistent testing is needed to prevent the spread of the virus. There have been reported cases in the schools, but the DOE is not accurately releasing the number of cases or the school in which they originated.

212. EINAUGLER applied under 7/15/20 medical accommodation policy with a doctor's note and was denied.

213. EINAUGLER never received a letter about his request under the 7/15/20 policy but did receive a response when contacting NYCDOE of his denial.

214. EINAUGLER was told by the NYCDOE and the UFT that he was not eligible for an accommodation because he was not high risk.

215. EINAUGLER has no knowledge of any DOE informal or formal not comfortable policy related to anxiety, family needs or childcare, and as such did not apply for it. It was never communicated to him by his Principal or the school staff. He was informed by the UFT that the principal could give unauthorized accommodation to work remotely from home. His principal advised him that the NYCDOE did not authorize her to give any unauthorized accommodations.

AMY FEINSTEIN

216. Petitioner AMY FEINSTEIN is a teacher with the New York City Department of Education at Theatre Arts Production Company School (TAPCo) in the Bronx.

217. FEINSTEIN is not comfortable with returning to her school at the start of the 2020-21 school year because of COVID-19 related concerns.

218. FEINSTEIN was not aware of the “not comfortable” policy. As part of this petition, she learned about the existence of a “not comfortable” policy on September 18, 2020 and emailed her principal on September 20, 2020 asking for a remote teaching assignment.

219. On September 7, 2020, FEINSTEIN’S principal invited the non-remote staff to the opening days of professional development to be held in the school’s cafeteria. She wrote to him with a COVID-19 safety concern about meeting as a large group, but he dismissed her concerns via email.

220. On September 8, 2020, when FEINSTEIN entered the cafeteria to find desks spaced in a socially distant manner, but with several staff members not wearing masks. She copied down the Wi-Fi info and left the room before the start of the meeting to be socially distant. The principal introduced her as she left and supported her choice to find a place where she would be comfortable and encouraged others to do so. She has been working at the school’s rooftop garden via videoconference since then.

221. On September 10, 2020, in the “chat” of a videoconference staff meeting, FEINSTEIN asked several “questions about safety in the building” regarding ventilation and air exchange. After these questions, one of the assistant principals came to see her in person and asked if she had applied for an accommodation. She advised him that she did not qualify for the 7/15/20 medical accommodation and as far as she knew, she would not be eligible. He left the room without mentioning a “not comfortable” policy.

222. On September 10, 2020, FEINSTEIN called the Bronx district representative of the UFT, who advised her to speak to her UFT chapter leader to file an operational grievance about COVID-19 building safety. He did not mention anything about a not comfortable policy or asking

for an accommodation. She emailed the UFT chapter leader on September 12, 2020, with her safety concerns but he took no action on filing the grievance.

IOLANI GRULLON

223. Petitioner IOLANI GRULLON is a Kindergarten Teacher at PS 48. She has been a teacher for fifteen years.

224. In 2008, GRULLON's daughter received a heart transplant. According to the ACC, recipients of heart transplants, due to the immunosuppressant drugs they take, often face a particularly high mortality rate, 25%, from coronavirus. Source: <https://www.acc.org/latest-in-cardiology/journal-scans/2020/05/22/10/05/characteristics-and-outcomes-of-recipients>

225. GRULLON applied for medical accommodation on July 15, 2020 because she did not want to risk infecting her family. Her daughter is at great risk for serious illness if she were to contract coronavirus from her mother. GRULLON's medical accommodation was denied because while she does not meet any of the CDC conditions, one of her daughters does.

226. GRULLON has taken pains to keep her daughters safe. They strictly limit visitors to their home, and the children will learn remotely this year. But she had to return to P.S. 48 in Washington Heights to teach a dual language kindergarten class.

227. As a single mom, GRULLON cannot quarantine from her own children, nor can she afford to take a leave of absence or retire. When she returned to P.S. 48 this week, she walked one and a half miles to and from the school when the weather allowed, to reduce her chance of getting sick from the coronavirus.

228. GRULLON heard about the “not comfortable accommodation” from the Court on September 18, 2020. She applied by email on September 20, 2020. To date, her principal and her superintendent have not replied to her email request.

229. On September 22, 2020, GRULLON emailed the UFT and inquired about the not comfortable informal accommodation. She has not received any response. Senator Robert Jackson has reached out to her and has been unable to do anything.

LYDIA HOWRILKA

230. Petitioner LYDIA HOWRILKA is a Social Studies Teacher with the New York City Department of Education at Clara Barton High School in Brooklyn.

231. HOWRILKA believes that the NYCDOE cannot assure her safety in returning to school at this time because 75 UFT members died in the Spring. She claims Chancellor Carranza issued a memo to principals in March telling them not to report suspected cases of COVID-19 to the NYC Department of Health. Sadly, there are cases of COVID-19 that are being concealed in schools and are not being confirmed by the NYCDOE.

232. HOWRILKA says teachers are not being told to quarantine and are rather being bullied by their superintendents to reenter unsafe buildings. She is 31 years old and in good health, but she lives with her mother who is retired and in poor health. Her mother has a BMI over 30 and currently struggles with respiratory ailments. HOWRILKA also adds that she has relatives from both sides of her family that have died from heart attacks and is concerned that her inherited heart condition will be exacerbated by COVID-19.

233. HOWRILKA does not believe her building is safe because there are only two custodians during the day and two at night. Her classroom has not been swept, the desks are dirty, and there are roaches. The building is almost 100 years old and it has poor ventilation, narrow

hallways and the windows do not open. Some of the sinks in the bathroom do not work and there is no soap or towels to clean hands. The building is home to 1,350 students and 180 staff members.

234. HOWRILKA is worried even with cohorts, all of the people entering and exiting the building will lead to a spread of COVID-19. Staff and students come from all five boroughs, Long Island, Connecticut, and New Jersey. Most of them take public transportation. She is deeply concerned with the viral spread from communities with high infection rates to communities with low infection rates.

235. HOWRILKA did not ask for an accommodation because she did not think she fit within the accommodation policy. When she asked her principal on September 20, 2020 about the “not comfortable” accommodation, he stated: “According to Legal, I do not have that authority.

STACEY LAZARUS

236. Petitioner STACEY LAZARUS is a teacher with the NYCDOE at PS 59 in Brooklyn.

237. LAZARUS is not comfortable with returning to her school at the start of the 2020-21 school year because of COVID-19 related concerns.

238. LAZARUS requires an accommodation to work remotely from her employer because she is the parent and primary caretaker of a medically fragile child. Petitioner’s child falls into one of the CDC’s high-risk categories for people to have complications from COVID-19 due to chronic kidney disease.

239. LAZARUS is concerned about catching COVID-19 and bringing COVID-19 home to her daughter. Petitioner is concerned about her daughter having complications from the virus and petitioner’s ability to care for her and maintain her daughter’s health if she gets sick.

YONGJUN LEE

240. Petitioner YONGJUN LEE is employed as a high school chemistry teacher with the New York City Department of Education at Brooklyn Technical High School in Brooklyn.

241. LEE does not feel that his employer the NYCDOE can assure his safety in returning to school at this time since his wife is a high-risk pregnancy patient with 3 large fibroids and other underlying health conditions. Petitioner LEE'S wife is currently seeing three physicians on a weekly basis because of her high-risk pregnancy and complications, and she is being advised by her physicians for strict isolation due to her compromised immunity.

242. LEE adds, according to CDC, "pregnant people might be at an increased risk for severe illness from COVID-19 compared to non-pregnant people. Additionally, pregnant people with COVID-19 may be at increased risk for other adverse outcomes, such as preterm birth." (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html>) Also, according to Mayo Clinic, "Pregnant women have suppressed immune systems, and that could make them more susceptible to COVID-19." (<https://newsnetwork.mayoclinic.org/discussion/womens-wellness-pregnancy-and-covid-19/#:~:text=Pregnant%20women%20have%20suppressed%20immune,risk%20with%20severe%20viral%20illness.>)

243. LEE does not believe his building is safe because it is the largest school in the State of New York with windows that open only 3 inches, which does not guarantee the rapid air exchange for safe ventilation.

244. LEE is not comfortable with the current required procedure undertaken to ensure the safety of everyone, and the turnaround time for a COVID-19 test is extremely slow.

245. LEE adds, according to the findings by an industrial hygienist and chemist, Monona Rossol, who assesses workplace safety, all school ventilation reports in New York released by DOE are not reliable, as it does not indicate the most crucial information, air exchange rate per hour. And he stated that “an open window is not gonna cut it.” (<https://gothamist.com/news/ventilation-covid-school-air-flow-expert-teachers-warning>).

246. LEE has been teaching remotely since the pandemic started in March, and it has been a productive remote classroom experience without any problems. Therefore, he does not see any reason to risk the lives of people when the education can be safely delivered to our students online, like in many other large school districts and universities in the United States.

HELEN LESHINSKY

247. Petitioner HELEN LESHINSKY is presently employed as a Teacher with the New York City Department of Education at Jill Chaifetz Transfer School in the Bronx.

248. LESHINSKY does not feel that her employer the NYCDOE can assure her safety in returning to school at this time because she takes public transit to get to her building, putting her at high risk even before she arrives at work.

249. LESHINSKY states that she has already seen the NYCDOE violate the protocols it has put into place, such as failing to report positive cases in schools.

250. LESHINSKY has a diagnosis of Generalized Anxiety Disorder (first diagnosed in 2011). The COVID-19 epidemic has exacerbated her symptoms; she is prone to panic attacks, especially in indoor spaces with other people and on public transit. The physical symptoms of her anxiety, such as difficulty breathing, make it impossible for her to wear a mask for over 8 hours a day, as she will have to do once in-person learning begins. Anxiety is a serious illness that negatively impacts not only one’s emotional state, but also one’s cognitive functions and immune

system. She has had to take a restoration of health leave in the past due to this condition. She is fully willing and able to do my job remotely, while empowered to protect her own health and safety as much as possible. Petitioner LESHINSKY cannot be the teacher her students deserve at this time when suffering the immense anxiety of working onsite. Despite letters from two medical professionals confirming that she should be given an accommodation to work remotely, the DOE has denied her application twice

251. LESHINSKY does not believe her building is safe since the nurse's office has no ventilation of any kind; neither does the women's bathroom. Merv 13 or higher filters are not currently in the rooms and the existing survey only mentions open windows, not a full ventilation report showing how much air is being replaced. Masks only protect people from transmission via droplets, but we know the virus is airborne. Yet her building, like many others, has not had an inspection by a building engineer assuring that proper ventilation is in place.

252. LESHINSKY states that there is no protocol to quarantine an entire pod of students if one student gets sick, only to close off a room for cleaning.

253. LESHINSKY's building is not doing temperature checks, only relying on the self-reported screening app.

ROSEMARY MARTIN

254. Petitioner ROSEMARY MARTIN is presently employed as a teacher with the New York City Department of Education at PS 340 in Manhattan.

255. MARTIN is not comfortable returning to her school building. She has two elderly parents (85 and 83) who need care. Both have limited mobility and need help with everyday life. In addition to advanced age, her father is a stroke survivor and her mother has COPD and congestive heart failure. The anxiety caused by the thought of carrying the virus home from school

to her parents is crippling. Because MARTIN is fearful of exposure on rush hour subways on top of exposure in the school building, she has been walking 1.5 hours a day from her home to her school each morning.

256. MARTIN states that multiple COVID-19 cases were reported in the last week from over 30 DOE schools. As testing is not mandated, she knows about these cases because the staff members were voluntarily tested.

257. A colleague of MARTIN's went to a DOE recommended site and got tested on Sept 4th. She did not receive her results until Sept 19th. That does not make MARTIN confident in the DOE.

258. In March 2020, the DOE pushed its own agenda, forcing employees to return to work despite the growing numbers and positive cases inside DOE buildings. Over the past few weeks, they have not been forthcoming or transparent about issues in buildings, setbacks to their intended plans or who has decided individual buildings are safe. Everything feels rushed and not thorough and MARTIN is not comfortable taking the DOE's word for it with no confirmation or explanation from engineers or health professionals about the return to buildings. Her greatest fear right now is to see March 2020 repeat itself.

259. MARTIN did not know that an "not comfortable accommodation" existed. Her principal acknowledged how difficult it can be to take care of aging parents but did not offer any information regarding a "not comfortable" policy. MARTIN asked her principal for an accommodation and has yet to hear back.

IBETH MEJIA

260. Petitioner IBETH MEJIA is presently employed as a Special Education teacher within the NYC Department of Education at Aviation High School.

261. MEJIA does not feel that her employer NYCDOE can assure her safety in returning to school at this time since her school building is old and dirty. It is a place where COVID-19 could spread easily even if half of the student body of over 2,000 students is learning remotely from home.

262. The Department of Education did not provide the additional funding that would have been necessary for Aviation High School to meet minimal health and safety standards during a pandemic that would include a nightly deep cleaning of every place in the building, including the classrooms.

263. MEJIA works with a special education population that will have a very difficult, if not impossible, time attempting to wear a mask in the classroom for a 5.5-hour day where they will not be able to move to different classrooms after each period. Expecting these pupils to eat breakfast and lunch in the same classroom that they are in all day without socializing is completely unrealistic.

264. MEJIA asked for an accommodation and was denied. After a friend told her about the City of New York's School Reopening Plan filed with the State Education Department which says on Page 22: "Schools and offices may consider the needs of individuals who may not feel comfortable returning to an in-person educational environment when making assignments and modifying work settings and/or schedules where possible," MEJIA sent two emails to Principal Steve Jackson seeking an accommodation to work remotely as MEJIA is the single mother responsible for a son who is in grade 4 and will be learning remotely for this school year.

265. Principal Jackson never officially denied MEJIA's request in writing but she was told that she only could apply for leave through the Family First Coronavirus Response Act which permits leave at 2/3 pay for twelve weeks.

266. MEJIA cannot afford to live on 2/3 of her salary but will have to do so her son is not left alone all day. On her application for Family First Corona Virus Response Act Leave Ms. Mejia stated, “If there is an option to telework, I would prefer to telework”. It would be preferable for the students at Aviation High School for MEJIA to receive a child-care accommodation to be permitted to teach remotely from home rather than just sitting at home collecting 2/3 of her salary and not working. If MEJIA were to work, she could receive her full salary and help alleviate the teaching shortage that even Mayor Bill de Blasio acknowledged exists. In addition, MEJIA would be able to mind her son while he is learning remotely at home.

267. On September 22, 2020, Principal Jackson wrote the following email to his staff: “Lastly, I would like to address a question that I have received from a number of staff. I have heard from many of you asking if we can work from home during this fully remote learning time period. Unfortunately, that is not the current Department of Education policy and it is not in my authority to issue that allowance. Only staff who received the remote accommodation approval can work from home at this time. I have heard of a Queens school who received approval for this, but after inquiring, I was informed that this was allowed for very school-specific reasons and it is not a citywide policy.”

268. Also on September 22, 2020, Principal Jackson wrote to his staff the following, “I understand that this has been a topic of debate lately, and after much conversation with Central, please note that if you have not been granted an accommodation to work remotely from the DOE you must work in the building. This is the official answer I have received in response to my inquiry about remote teaching.”

269. This email is evidence that DOE is arbitrarily denying the existence of the “not comfortable” or informal accommodation exists.

ELISHA MICHELENA

270. Petitioner MICHELENA is presently employed as a School Social Worker with the New York City Department of Education since 2005 at IS 25Q and World Journalism Prep School in Queens.

271. Due to MICHELENA's anxiety and panic attacks, she tends to feel unsafe knowing that the Department of Education as a whole has no specific valid plan to keep us safe. MICHELENA's building no longer takes temperature and when the students are to arrive they are to rely on the families to honestly fill out the application. Not everyone in the staff is required to get tested and there are rising numbers of people contracting the disease. She is being told by the NYCDOE that she is to work like business as usual, such as being told to work until 3:20 pm (when the custodians are starting already to clean the building) and have not gotten an agreement at all from them for my job position about health and safety.

272. The principals have made it clear they expect us to be there for them with students in crisis, which MICHELENA does not have an appropriate space for or feel comfortable with. There is one bathroom on the floor that has no ventilation and many teachers are not listening to the rules of one teacher at a time. MICHELENA is in an office with two other people and a small window and an exhaust fan. MICHELENA is freezing the whole day due to the window being forced to be open. The hallways and stairways are not properly ventilated, even though they "passed" inspection.

273. MICHELENA was formally evaluated by her doctor as having the following medical conditions: Anxiety disorder, fatigue, panic disorder [episodic paroxysmal anxiety], irritable bowel syndrome without diarrhea, regular migraine, and elevated blood-pressure reading.

274. MICHELENA did apply for a medical accommodation on September 14, 2020. Petitioner MICHELENA submitted a medical note.

275. MICHELENA's medical accommodation was denied on September 15, 2020. The DOE HR Department said in an email that the claim was "not medically warranted."

276. On September 15, 2020 MICHELENA reapplied for a medical accommodation. She submitted the same paperwork.

277. MICHELENA was denied on September 16, 2020. The DOE HR Department said in an email that the reason why they are denying Petitioner MICHELENA is for "other." No further explanation was given.

278. MICHELENA was informed of the informal medical accommodation by her union representative via email. When she asked her principal on September 17, 2020 if she would be willing to talk about the informal accommodation to work remotely, the principal said on September 17, "Your next step is to apply for the DOE Medical Leave."

KIMBERLY MIDDLETON

279. Petitioner KIMBERLY MIDDLETON is presently employed as a Special Education teacher with the New York City Department of Education at Millennium Brooklyn High School in Brooklyn, New York.

280. MIDDLETON is not comfortable with returning to school at the start of the 2020-21 school year because of COVID-19 related concerns.

281. MIDDLETON does not feel that the NYCDOE can assure her safety in returning to school at this time. She is 32 years old and is the primary caretaker for her 91-year-old grandmother who has dementia and with whom she resides. MIDDLETON is incredibly concerned

about not being allowed to work remotely because her circumstances do not qualify for any of the accommodations offered by the New York City Department of Education.

282. MIDDLETON has to provide her grandmother with medication on a daily basis, attend to maintaining her personal hygiene, and several other activities of daily care that require her to be in close proximity every day. Additionally, her partner is also pre-diabetic and is having trouble regulating his glucose levels, putting him at elevated risk if he contracts COVID-19. If MIDDLETON were to contract COVID-19 from a co-worker or student, the members of her household would have an increased and wholly preventable risk of exposure and suffering severe complications from the disease.

283. MIDDLETON's school has not and in many instances cannot comply with the safety protocols promulgated by the Department of Education. The John Jay Campus building houses four other schools in addition to Millennium Brooklyn, and the schools are not effectively coordinating safety protocols or implementing them with fidelity. The Millennium Brooklyn classrooms are being set up to have 15 desks for students, but they are not all six feet apart from each other or my desk. After several attempts at reconfiguring the classroom, each desk is approximately five feet away from each other, at best, and the placement does not account for students sitting at the desk. Many of the desks are placed against the wall with the chair without leaving room for a body to fit in the seat, so any configuration would put the 15 students too close to each other and any instructor in the room.

284. There is currently no adequately specific protocol for how students or staff should be cleaning desks and the room before and after every class period that indicates, especially where students will be moving from room to room. MIDDLETON will also be teaching 9th grade

students, including those with special needs, who will all be new to the building and school procedures.

285. MIDDLETON is not confident that students will be able to keep their masks on all day and remain restricted to their desks for 80-minute class periods, except to go to the bathroom. They have only been given five “emergency” masks per room for children who forget their mask or their mask breaks during the school day. There will be multiple classes of up to 15 students in each room per day.

286. The mandatory temperature checks prior to staff entering the building are sporadic or do not occur at all. MIDDLETON has gone to work seven days since September 8, and her temperature was taken once on the first day and has not been taken since. The thermometers aren’t working or are not reading properly, so faculty and staff are reporting to work and there is no way to independently measure that they do not have a fever besides their self-report.

287. MIDDLETON also does not believe the building is safe. The classrooms do not have HVAC for proper ventilation. Teachers in the school have been told different information about how to create ventilation, none of which is practical or sufficient. MIDDLETON was told to keep the windows open approximately two inches, but not to use the air conditioner, and keep the door closed. Other teachers were told to use the air conditioners and keep their door open. Either way, there is an inadequate flow of fresh air to support the health of the students and staff.

288. MIDDLETON states that there are only two single-person bathrooms for the entire staff. One of the bathrooms has no window in it. Again, this pertains to ventilation.

289. MIDDLETON states that the instructional lunch protocol implementation means that students are at their desks with masks off and support staff will be in the room supervising the period. Teachers have not been provided a safe room to eat lunch where we can be socially distant

from each other without our masks. All the teachers in her school are scheduled to eat lunch at the same time. With a staff of 80, and no information about how many faculty members will be working remotely, there is no way to guarantee that any room in the building would adequately allow the faculty to eat lunch safely.

290. MIDDLETON did not ask because she did not think she fits within the July 15, 2020 medical accommodation policy and was not aware of any other procedure to obtain an accommodation to work remotely.

291. MIDDLETON was informed in an email on August 10, 2020 by her UFT representative that: "At this time there is not a leave for people in your household who have preconditions to COVID-19".

292. On August 26, 2020, MIDDLETON's union representative wrote, "There are more negotiations happening, such as getting a work accommodation for someone in your household who has a CDC condition". There were no affirmative updates.

293. On September 7, 2020, the UFT emailed and provided links for more information for members who wanted to find out more about options for childcare, but this still did not address concerns for those who have high risk or medical fragile members of their households who are not children.

294. MIDDLETON did not know of any DOE informal policy related to anxiety, family needs or childcare until the afternoon of September 18, 2020 when she read the summary of the morning appearance in Justice Ramseur's part. On September 15, 2020.

295. MIDDLETON spoke directly with her principal about her concerns and he said he understood and felt for her, but did not express knowledge of the "not comfortable" clause or provide any other recourse related to remote teaching.

296. On September 18, 2020 MIDDLETON received her weekly Admin Notes in which her principal wrote, “As of today, we have been told that all teachers not on an accommodation waiver must report to MBHS next week, even though we are fully remote. If this guidance changes, I will let everyone know ASAP.”

MATTHEW PASTORE (mooted out)

297. MATTHEW PASTORE is a teacher at Fort Hamilton High School in Brooklyn

298. PASTORE did not apply under the July 15th DOE medical accommodation policy with a doctor’s note. PASTORE did not believe he was eligible based on the conditions listed.

299. PASTORE is aware of the DOE informal not comfortable policy related to anxiety, family needs or childcare. He was not informed by school staff. Instead, PASTORE found the policy himself upon reading through the DOE reopening plan.

300. PASTORE applied in writing by emailing his principal directly. He emailed his principal on August 27, 2020, once he found the DOE informal policy. PASTORE requested to work remotely citing this policy.

301. Nine days later, on September 5, 2020 (Labor Day Saturday), the principal told PASTORE that she was not granting his request because she was “not making exceptions”.

302. It should be noted that nearly 60% of PASTORE’s school’s students have opted for full remote and ALL of PASTORE’s classes are remote students. Therefore, granting his request would not change anything related to the functioning of our school.

303. PASTORE is being asked to go to the school building and share a room, common spaces, and computer equipment with other teachers simply to live stream to students who are at home. Additionally, once school does open for students, PASTORE’s school’s latest approved

plan allows students to switch classrooms throughout the day. This further increases the potential for the virus to spread.

304. PASTORE's wife has given birth changing his need for a reasonable accommodation because of her high risk pregnancy.

305. PASTORE's is taking 6 weeks parental leave now that his wife has given birth. Once those six weeks have transpired, PASTORE is uncertain what he will do because he is deeply concerned still about exposing his wife and their infant.

LACRETIA PENDERGRASS

306. Petitioner LACRETIA PENDERGRASS presently employed as a teacher with the New York City Department of Education at IN-Tech Academy x368 in the Bronx.

307. PENDERGRASS has been medically diagnosed with chronic Anxiety and Depression that has only been further exacerbated with the onset and progression of this health crisis. The following is an excerpt from the clinical psychological profile he provided for PENDERGRASS to submit as medical documentation with her Reasonable Accommodations application (which was denied), "Ms. Pendergrass manifested symptoms of a chronic anxiety disorder that has been greatly exacerbated by thoughts or plans to leave the confines of her home due to concerns about the COVID 19 pandemic. Specific symptoms include excessive body arousal, excessive worry, depressed mood, sleep disturbance, nightmares, diminished capacity for sustained concentration, intrusive thoughts, periodic panic attacks and fear of leaving the home due to concerns about personal safety and safety and health of her grandmother. A return to the classroom setting is contraindicated at this time as her current psychological and emotional state leaves her unable to adequately meet the essential functions of her job as NYC public school teacher under such conditions. Once assured that she would not be required to leave the confines

of her home until her personal safety can be guaranteed, she would be able to meet the demands of her profession remotely.”

308. PENDERGRASS states that the thought of physically returning back to school in the wake of this health crisis, has impacted her mental and physical well-being, robbing her of her vibrancy and shrinking her into recoil; “it is enervating to say the least and incapacitating to say the most.”

309. PENDERGRASS lives and cares for her elderly grandmother. Potentially getting her sick has also been a tremendous source of angst and stress for her, which she worked to eliminate via social isolation. Her grandmother, who she lives with and cares for, is an older woman with respiratory concerns and her fear of contracting COVID-19 on the commute to and from work and interacting with countless others inside and outside the school building, is another layer that only works to exacerbate her anxious thoughts and depressive mood.

310. PENDERGRASS is requesting to continue working remotely from home so she can show up for herself and her students with high standards and integrity as she always has and continue to ensure the health and safety of herself and her grandmother.

311. PENDERGRASS does not believe her building is safe because their ventilation system needs work throughout the building, but particularly on the middle school side (where she teaches), where it is completely nonfunctional right now. The air quality is poor in many of the classrooms with limited functionality of windows, and the building has yet to receive PPE that is supposed to be guaranteed, and the solution to be used in the high powered sanitation and disinfecting machines is on backlog and has not arrived to the building.

312. PENDERGRASS does not have faith in her building to ensure her safety because despite having two teachers who tested positive for COVID-19 report to the building last week

(information known at the start of the school day), staff was not made aware until the very end of the day AND were still required to report (business as usual) the next day. No tracers have yet to be dispatched or contact made to any of the school staff.

313. PENDERGRASS does not feel safe in her building because bathrooms are SINGLE person restrooms and have no windows or ventilation system installed in them. Her school does not have a transparent and accountable system in place where staff, students and families can report COVID-19 status (anonymously) and others' can access this information to make informed choices for themselves in regards to health and safety, even if/when the DOE or school doesn't. These things and more indicate PENDERGRASS has full reason not to have faith in her school to prioritize her health and safety.

314. There is NO consideration given to or accommodations made for mental health diagnoses in either of the two formal processes PENDERGRASS applied through and was denied and only through the informal process at the discretion of your principal/supervisor, which she was also denied. This lack of representation and accommodation discriminately disregards/discards mental health; even though studies show mental health is very serious; it has very real and very dangerous health and safety implications when not provided for.

315. PENDERGRASS was denied Reasonable Accommodations through SOLAS on 9/4/20, with the cited reason being, "Not Medically warranted," because this type of accommodation discriminately does not account for mental disorders/impairments/illnesses, which her diagnosis falls under.

316. PENDERGRASS applied again for a medical accommodation through a different process handled through the Medical Bureau of NYC DOE, which considers ADA

accommodations outside of the very limited ones available through the Reasonable Accommodation process.

317. PENDERGRASS's accommodation was also denied through this avenue on 9/16/20, with the denial reason cited as, "Not medically warranted" despite the thorough and formal clinical assessment provided by her clinical psychologist which stated the medical necessity for her to work remotely.

318. After her medical accommodations for her diagnosis provided by her licensed clinical practitioner was denied twice through formal means, it was only when PENDERGRASS begin incessantly and unrelenting calling the DOE Central and the UFT, looking for recourse after both her requests through two different means were denied, was it brought to her attention the DOE has an "uncomfortable policy".

319. It was not until after several calls to DOE CENTRAL and speaking to a number of representatives that PENDERGRASS spoke to one who told her about this "uncomfortable policy". The person told her the policy is relatively unknown, but was something she should look into.

320. When PENDERGRASS called the union to confirm the existence of this policy, the union confirmed such a policy.. She was told by both DOE Central and the UFT (union) to go through the informal process of seeking approval for the accommodation through the principal, as he had discretion to accommodate her request. Despite a number of correspondences sent to her principal and two telephone calls trying to seek a remedy through this informal process, PENDERGRASS's principal made it clear he was not willing to go through this process and that she would have to seek a solution through the already exhausted means.

321. Even when PENDERGRASS expressed to her principal how both Central and UFT told her the principal had the authority and autonomy to make accommodations for her and how she knew of other principals who were exercising this autonomy, he again reiterated his unwavering position in regards to granting her accommodations because he did not want to have to make that choice, as other staff members were also seeking accommodations from him.

322. When PENDERGRASS initiated another conversation with him that emphasized the direction from Central to seek accommodations from the principal to work remotely, he replied via email with the following: “Ms. Pendergrass: As we discussed in our phone conversation, the best course at this point is the appeal process and working with your union. As for the rest, we are following DOE guidelines. Programming decisions are still being finalized.”

323. PENDERGRASS has now exhausted all avenues and appealing through this petition is her last and only recourse to secure much needed accommodations that take into consideration mental diagnoses and mental health that the DOE, UFT, and her principal discriminately do not consider “medically warranted.” She is also seeking consideration for her caregiver status of her elderly grandmother who has respiratory concerns.

SETH RADER

324. Petitioner SETH RADER is presently employed as a teacher with the New York City Department of Education at The James Baldwin School in Manhattan.

325. RADER is not comfortable with returning to his school at the start of the 2020-21 school year because of COVID-19 related concerns.

326. RADER has already made a request to work remotely and his principal has been open to revisiting the question of other teachers working remotely based on the school’s numbers, which continue to shift as they have a significant number of students who did not submit the DOE

survey to select remote or blended. At the time of the conversation, the administration seemed unclear about whether it actually had the discretion to do this.

327. RADER does not feel that his employer the NYCDOE can assure his safety in returning to school at this time because there is a high likelihood of coming into regular and sustained contact with people carrying COVID-19. Becoming infected or carrying the virus home would be disastrous as RADER lives with a family member who is immunocompromised and is particularly vulnerable to contracting COVID-19.

328. RADER does not believe his building is safe because the testing and tracing program in place is insufficient to identify cases among staff and students, increasing the likelihood of spending several hours a day each day in indoor spaces with someone carrying the virus. Limited ventilation, insufficient guidelines about what types of face coverings are deemed acceptable and how they must be worn to prevent dispersing the virus, lack of availability of N95 masks to protect the wearer from contraction, removal of masks for eating and drinking inside classrooms, inability to assure social distancing behavior and exposure to contaminated surfaces, all make these indoor spaces particularly dangerous.

329. There are 6 different schools in his building, none of which are community-based so the vast majority of staff and students rely on public transportation to commute, increasing the likelihood of cases in the building.

LINDA RUBINO

330. Petitioner LINDA RUBINO is a tenured teacher who is employed by the NYC Department of Education since who currently works at Brooklyn Technical High School.

331. RUBINO lives with her 67 year old husband who has a clotting disorder and scarred lung tissue caused by multiple bilateral pulmonary emboli and episodes of DVT in both legs along

with other health issues. Her 26 year old son who also lives with them has a BMI over 30. She lives in fear that she may contract COVID-19 and infect her family members and possibly kill them.

332. Brooklyn Technical High School has close to 6,000 students, 275 teachers and other support staff. Many of their students and staff travel from the Tri-State area on trains, buses, and the ferry. Many students live in multi-generational households with elderly relatives. Even though the 6000 students have been broken up into multiple cohorts there is a fear that students will contract COVID-19 from locations outside of school including home or public transit, and near or within the building from another student or faculty member.

333. RUBINO does not believe her building is safe because the inside air quality is poor. There are still windows that remain nailed shut and many that open only slightly. The building is almost 100 years old and few changes have been made to update or improve ventilation or facility. There are sinks in many classrooms, but the water has been turned off and left unrepaired.

334. Since Brooklyn Tech is the largest school in the nation, because of its sheer size it is impossible for the limited cleaning staff to get to all parts of the building on a daily basis. Staircases and hallways have inadequate air flow. RUBINO has yet to see a report that measures ACH (air changes per hour) in the building.

335. Several members of the science department have been afflicted with cancer including RUBINO. This past summer, a colleague had a kidney removed due to cancer.

336. RUBINO did not apply for a medical accommodation because she did not fit into any of the categories.

337. RUBIN never applied for a “not comfortable” accommodation. When a colleague asked about it on September 1, 2020 the principal shut down the conversation and said, “I do not

have that latitude to grant accommodation”. The UFT Consultation Committee pressed the principal further about this issue and the principal said, “The Superintendent is only allowing medical accommodations for remote work.”

SHARI SHAPIRO-RIBIAT

338. Petitioner SHARI SHAPIRO-RIBIAT is a tenured teacher employed by the NYC Department of Education at PS 238 in Brooklyn.

339. SHAPIRO-RIBIAT believes that the NYC DOE will not be able to protect or ensure the safety of staff or children. She has a heart arrhythmia and abnormal EKG readings; additionally, she has young children and takes care of elderly parents. She is concerned that being forced to be in the building under great stress would worsen her arrhythmia. If she is forced to go into school, her parents will be without a caregiver.

340. SHAPIRO-RIBIAT’s school building is unsafe because there are water-damaged floors that have not been repaired, faulty light sensors, windows that do not completely open, and air conditioners that are faulty. Under normal circumstances, the DOE struggles to keep their buildings safe and clean. Under these exceptional circumstances, it seems next to impossible for the NYCDOE will be able to keep buildings immaculate.

341. SHAPIRO-RIBIAT was told by UFT that she could request an "informal accommodation" from her principal, but when SHAPIRO-RIBIAT spoke to the principal, she claimed not to know anything about it and said it was impossible to request. She said her superintendent told her there was no such thing.

342. SHAPIRO-RIBIAT only found out about the "not comfortable policy" after seeing something about it on Facebook. Her multiple calls to the DOE, to the UFT & to HR Connect never communicated that policy to me.

343. SHAPIRO-RIBIAT refused to enter her workplace and is now working at home. SHAPIRO-RIBIAT's assistant principal has given her an opportunity to work for the week of September 21st remotely. The Assistant Principal has told Petitioner SHAPIRO-RIBIAT, "I cannot guarantee that you are getting paid". SHAPIRO-RIBIAT plans to put in for a family leave on the week of September 28.

MADELYNE TODD

344. Petitioner MADELYNE TODD is a teacher employed by the NYC Department of Education at P363K, a District 75 school.

345. TODD works with Special Education students who are unable to socially distance or wear masks. Students will be in this same space for long periods of time without a mask and they will be eating in the same space as well.

346. TODD does not feel comfortable working at her school because of inadequate PPE, inadequate ventilation, and issues with Wi-Fi connectivity. She did not apply for a medical accommodation because she did not have any of the CDC underlying conditions.

347. TODD has not asked her principal for an accommodation because the climate for her to do so is not comfortable. The school community has been trying to take action to go remote because of WIFI and space issues and TODD is worried that sending a request or comfort accommodation email would bring retaliation.

CHLOE WU

348. Petitioner CHLOE WU is presently employed as a Social Studies teacher with the New York City Department of Education since September 2004 at William H. Maxwell High School in Brooklyn.

349. WU has not completed a medical accommodation because she does not have any preexisting conditions.

350. WU is a programmer and is currently working in a small office that lacks ventilation.

351. William H. Maxwell Career and Technical High School is a vocational high school in Brooklyn, New York. It lies on Pennsylvania Avenue in the upper half of the East New York neighborhood, close to Liberty Avenue subway station on the C train. The building was built in 1912, but it was re-chartered as a high school in 1950. When the school was first constructed, over a century ago, classrooms and hallways had upper windows that would be open to allow for the clean circulation of airflow. Unfortunately, now due to building codes and fire codes, these windows have been shut.

352. Most of the students and faculty at the school take the subway, bus, or Long Island Rail Road into work every day. She is greatly concerned about viral transmission that can happen on public transit, in our shared spaces with the other high school, and even in the CTE classes which are largely hands-on and collaborative classes.

353. In March 2020, the campus that WU worked in had an issue of COVID. Staff was required to report to the building. Additionally, in April, three of WU's colleagues became ill from COVID.

354. The bathroom does not have any windows and there is no airflow. When WU reached out to the UFT, the union’s advice was “do not enter a room when someone else is in the room.”

355. WU was never informed by her principal or UFT representative about the “not comfortable accommodation.” WU never applied and she never asked for one.

The DOE’s History of Unsafe Working and Learning Conditions

356. Respondents have challenged our perspective that the Department of Education has frequently not acted in good faith when determining that working and learning conditions are safe for students and the adults who nurture them.

357. Asbestos, Lead Paint, PCP Pipes, September 11th, Superstorm Sandy, and Cancer Cluster are all instances in which the DOE chose to ignore hazards in their school buildings.

358. Asbestos is a mineral with long, strong, flexible, threadlike fibers that are relatively indestructible, heat resistant and chemically stable. These properties led it to be used in more than 3,000 different products, but particularly in insulation and fireproofing. An estimated 3.5 million tons were installed in schools and public buildings before being banned in New York City in 1970. If asbestos fibers are firmly bonded or compacted within other material — such as a plaster wall — it’s considered relatively safe. Source: <https://www.uft.org/your-rights/safety-health/environmental-health-and-safety/building-hazards/asbestos>.

359. Since 1979, New York State law has required that local boards of education survey all school facilities to identify material containing asbestos and prepare a formal plan for its removal. In 1979 New York City's board created an asbestos task force to conduct the survey and take follow-up steps to comply with the law. Source:

360. Then in 1986, a new Federal statute called the Asbestos Hazard Emergency Response Act required the board to prepare more detailed asbestos management plans for each school building. To meet the May 1989 deadline the Board of Education contracted with a company called Enviro-Safe to train workers to certify schools as asbestos-safe. That company was the lowest bidder, but it was newly organized, with virtually no experience. Source: <https://www.nytimes.com/1993/08/17/nyregion/school-asbestos-more-extensive-than-expected.html>.

361. Every school was to be inspected to identify any areas containing asbestos and findings summarized in the Asbestos Hazard Emergency Response Act (AHERA) report. The AHERA report included information about where asbestos-containing materials are located in the school building and this report must be on-site. Source: <https://www.uft.org/your-rights/safety-health/environmental-health-and-safety/building-hazards/asbestos>.

362. On August 17, 1993 Mayor David N. Dinkins ordered the reinspection of each of the city's public schools, vowing not to open any of them until they had been inspected and declared safe. With only 22 days until school started, inspections had only begun in 288 buildings. The emergency inspection of the New York City public school system found at least some exposed asbestos in every school checked so far, indicating the scandal over the school testing program is more severe and costly than officials initially expected. <https://www.nytimes.com/1993/08/17/nyregion/school-asbestos-more-extensive-than-expected.html>

363. On March 12, 2004 workers for a construction company were ripping up the gym floor in Public School 219 at 1060 Clarkson Avenue in East Flatbush when they unexpectedly hit concrete and sent asbestos dust into the air, said Paul Rose, a department spokesman. A school

employee contacted the Department of Education and officials ordered an air test, which came back positive for asbestos at 4 p.m. The school's students, teachers and staff were sent to several other schools in the area.

364. The head of the union that represents school custodians identified the maintenance company as Temco Service Industries. "This is a glaring example of the dangers the Department of Education is exposing the schools to by turning over the operations of their facilities to profit-motivated contractors," said Robert J. Troeller, the president of the custodians' union. Source: <https://www.nytimes.com/2004/03/12/nyre>

365. On May 4, 2004 City officials closed Public School 132 in Washington Heights after discovering asbestos in the building on Monday night. The shuttering of the elementary school disrupted the administration of the fourth-grade statewide mathematics exam, and the exam was postponed. Officials said the school would remain closed for additional environmental tests. Source: <https://www.nytimes.com/2004/05/05/nyregion/metro-briefing-new-york-manhattan-school-closed-after-asbestos-is-found.html?searchResultPosition=11>

366. Widely used in electrical products and building materials like caulk before a federal ban took effect in the late 1970s, PCBs, or polychlorinated biphenyls, have been linked to cancer, impairment of immune and reproductive functions, and other illnesses, as well as lower I.Q. levels. In December 2010, the NY Times reported that the Environmental Protection Agency planned to begin inspecting school buildings in New York City the following month for contamination with the toxic chemicals known as PCBs in response to a pilot study that found that the substance was leaking from old light fixtures in some schools. The decision followed an exchange of letters between the federal agency and city officials that showed the two sides disagreeing over the urgency of addressing a problem that the city said could affect 750 to 850 of about 1,200 school

buildings and cost about \$1 billion if all the old fluorescent fixtures throughout the school system were to be replaced. Source: <https://www.nytimes.com/2010/12/22/nyregion/22pcb.html>

367. Bloomberg administration officials maintained that the contamination did not pose an immediate health risk to students and that they preferred to finish the pilot study, which the city was conducting, before coming up with a broad plan. Natalie Ravitz, a spokeswoman for the city's Education Department, said that it was trying to find a solution that would not "impose a \$1 billion unfunded mandate on city taxpayers." She compared that sum with the cost of employing about 15,000 teachers. Source: <https://www.nytimes.com/2010/12/22/nyregion/22pcb.html>

368. NYLPI and the law firm White & Case brought a lawsuit against the city in 2011, representing the New York Communities for Change, a coalition of low and middle-income families. The city filed a motion to dismiss the lawsuit. In March 2013, however, a federal judge ruled against the city's motion, criticizing the city's "foot-dragging." In a settlement, the city agreed to cut in half its 10-year timeline. The settlement required the City to remove all PCB lighting fixtures by the end of 2016, a goal that has been essentially met. Since PCBs travel through the air from caulk in a process known as off-gassing, NYLPI is pushed for air testing and the provision of proper ventilation in schools. Source: <https://brooklyneagle.com/articles/2017/01/05/thousands-of-pcb-contaminated-lighting-fixtures-finally-out-of-nyc-schools/>

369. In November 2017, several dozen students and teachers who worked or attended school in Lower Manhattan during the 9/11 Terrorist Attacks begin filing claims with the federal government to receive assistance from the 9/11 Victim Compensation Fund. Michael Barasch, an attorney representing Hirsch and the other former students and teachers, told the Post that doctors

called the diagnoses a "cancer cluster." "A 28-year-old girl should not have breast cancer. A 29-year-old boy should not have colon cancer or bladder cancer." Source:

370. Stuyvesant was used as a staging area by rescue and recovery workers after 9/11. The elite public high school reopened a month later, on Oct. 9, amid heated debate about whether the building was free of contaminants. One veteran teacher stayed away from the school, telling The Post at the time that dust-filled air in the building was making him sick. **Source:** <https://nypost.com/2017/11/09/cancer-cluster-at-high-school-near-ground-zero/>

371. New York City Schools Chancellor Carmen Fariña said the city Department of Education is "monitoring the response people are getting." Source: <https://www.nbcnewyork.com/news/local/ground-zero-students-cancer-diagnoses-nyc-911/339169/>

372. In 2019, the UFT shared the following memo to members about signing up for the World Trade Center health program with the following mention: "Compensation may also be available to the family of any retired or in-service school employee who died from cancer or respiratory illnesses caused by repeated exposure to the WTC dust. Families must file a claim within two years of the relative's date-of-death." Source: <https://www.uft.org/world-trade-center-health-program>

373. On October 29, 2012, the natural disaster known now and forever as Superstorm Sandy slammed into New York City with cataclysmic power, a meteorological monster unseen across the region since the lethal 1938 "Long Island Express." In addition to the damage to infrastructure, homes, and businesses, 200 public school buildings were damaged and were "inoperable." **Source:** <https://ny.chalkbeat.org/2012/10/31/21089796/in-pictures-surveying-the-damage-sandy-wrought-on-city-schools>

374. A week after Superstorm Sandy hit students were compelled to return to school. Many of their schools were without heat. Teachers told students to “dress warmly” and to be prepared to wear outerwear in class.

375. On November 5, 2012, after serving a donated breakfast at P.S. 188, which did have heat, City Council Speaker Christine Quinn said she was not sure whether the city should be opening schools that do not have heat. She pointed out that at least some students who attend those schools have no heat at home, either so keeping the schools closed would not benefit them. UFT President Michael Mulgrew had told her he was seriously concerned about the city’s decision. Many schools were without heat late until the afternoon on November 5, 2012. **Source:** <https://ny.chalkbeat.org/2012/11/5/21089787/families-mostly-sanguine-about-heading-to-schools-without-heat>

376. Lead is a neurotoxin and young children are especially susceptible to its effects. Research shows that even relatively low levels can cause brain damage, including loss of IQ, hyperactivity, and other behavioral problems. The Centers for Disease Control has concluded that no level of lead exposure is safe. Source: <https://gothamist.com/news/nyc-schools-lead-paint-inspections>

377. In August 2019, according to new data released by the education department, more than 900 New York City elementary school classrooms have tested positive for lead after inspections revealed the presence of peeling, chipped, or otherwise deteriorating lead paint. Source: <https://ny.chalkbeat.org/2019/7/31/21108591/over-900-nyc-classrooms-serving-the-city-s-youngest-children-have-deteriorating-lead-paint-new-data>

378. The troubling results mark the first time the department has ever released statistics on lead paint in classrooms and were discovered during inspections of 5,408 classrooms in aging

buildings in the wake of a WNYC investigation that found evidence of dangerous lead levels in four schools. The city pledged to make the classrooms safe before the school year begins this The troubling results mark the first time the department has ever released statistics on lead paint in classrooms and were discovered during inspections of 5,408 classrooms in aging buildings in the wake of a WNYC investigation that found evidence of dangerous lead levels in four schools. The city pledged to make the classrooms safe before the school year begins this September and announced several changes to improve testing. Source: <https://ny.chalkbeat.org/2019/7/31/21108591/over-900-nyc-classrooms-serving-the-city-s-youngest-children-have-deteriorating-lead-paint-new-data>

379. New York City's Department of Education consistently failed to follow requirements for annual lead-paint inspections in schools over the last five years. Hundreds of city reports show that only 12% of schools serving young children were inspected once a year between 2015 and 2019. The records, obtained under the state Freedom of Information Law, show that inspections were most consistent in Manhattan, where 16% percent of schools received annual inspections, and least consistent in Brooklyn, where just over 2% of schools were inspected each year. Source: <https://gothamist.com/news/nyc-schools-lead-paint-inspections>

380. On August 12, 2020, the *New York Post* obtained a DOE document on lead in public schools. The DOE document details the results of 49,314 tests that confirmed the presence of lead paint in 655 schools across all five boroughs from 2015 through 2019. More than three-quarters of the tests — 38,164 — involved classrooms, with 19,145 positive results found in those used for instruction and another 19,018 from rooms used by Mayor de Blasio's signature, pre-K program, the spreadsheet shows. Source: <https://nypost.com/2020/08/12/nyc-schools-tested-positive-for-lead-paint-nearly-50k-times-in-5-years/>

Ongoing Health and Safety Risks

381. 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, and in person work 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>

382. 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).

383. 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.

384. 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>

385. 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).

386. 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 coronaviruses 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/>

387. 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?

388. 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>

389. 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.

390. 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.ny1.com/nyc/all-boroughs/news/2020/09/01/nyc-delays-reopening-of-public-schools>

391. 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>

392. 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/>

393. 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.

394. 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>

395. 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>

396. 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/>

397. 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/>

398. 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>

399. 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 E** annexed hereto.

400. 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-ontsora-and-new-paltz-school-districts-post-reopening-plans/>

401. 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-vol>

402. 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

403. 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>

404. 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>

405. 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>

406. 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

407. 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.>

408. 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 F**.

409. 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.*

410. 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.*

411. 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.*

412. The NYC Department of Education and the UFT agreed to a three-prong reopening strategy that include adequate PPE for all school-based personnel and students and a comprehensive test and tracing program. In addition to ensuring safe ventilation in buildings, these practices will ensure that staff and students will be safe. According to NY Labor all, all employees have the right to a safe workplace. Source: New York Consolidated Laws, Labor Law - LAB § 27-a. Safety and health standards for public employees.

413. According to NY Labor Law, “if the industrial commissioner 4 fails to seek relief under this section within forty-eight hours of being notified of such condition, any employee who may be injured by reason of such failure, or the authorized employee representative of such employees, may seek injunctive relief as provided in paragraph a of this subdivision.” Source: New York Consolidated Laws, Labor Law - LAB § 27-a. Safety and health standards for public employees

414. 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.*

415. 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.

416. 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.

417. No prior application has been made herein other than the original petition in this proceeding.

AS AND FOR A FIRST CAUSE OF ACTION

418. Respondent NYCDOE's guidelines/policy for eligibility for remote teaching, promulgated on or about July 15, 2020, as it applies to Petitioners, are arbitrary, capricious, in bad faith, and/or irrational. This policy is not broad enough to cover all of the different health issues that puts educators and their families at risk of sickness and possible death due to COVID-19 by being forced back to work by nameless administrators without medical expertise, and being denied the ability to work remotely at full pay like their similarly situated colleagues. In addition, several Petitioners requesting remote accommodations under this policy have been denied such accommodations without a rational basis, often denied multiple times, with untimely and unclear denials from unnamed individuals at DOE Medical, or even received no response at all.

AS AND FOR A SECOND CAUSE OF ACTION

419. Respondent NYCDOE's guidelines for eligibility for remote teaching under the "not comfortable" policy, promulgated on or about August 7, 2020, as it applies to **Petitioners**, are arbitrary, capricious, in bad faith, vague, and/or irrational because the terms and conditions that one can apply for an accommodation are not clearly defined by Respondents, and are subject to the whim and caprice of Respondent administrators without any clearly defined guidance who is eligible under such a policy and how it will be applied uniformly or on a consistent basis, and there is no rational review or appeal policy in place for those denied remote teaching accommodations under this policy.

AS AND FOR A THIRD CAUSE OF ACTION

420. The NYCDOE, by blatantly disregarding violations of the city's own building codes, are putting staff and students in "imminent and substantial threat and harm."

421. According to New York Consolidated Laws, Labor Law - LAB § 27-a. Safety and health standards for public employees, "Every employer shall: (1) furnish to each of its employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees; and (2) comply with the safety and health standards promulgated under this section.

422. By forcing teachers back to work in the face of serious and possibly life-threatening safety concerns, the NYCDOE is violating New York State Labor Law 27-a.

WHEREFORE, it is respectfully requested that Respondents should be compelled to allow Petitioners 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 G**); 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; or, alternatively, provide a rational review process for those denied accommodation requests for remote teaching under both the July 15th and August 7th accommodation policies.

Dated: New York, New York
September 22, 2020

Respectfully submitted,

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

By: s/
BRYAN D. GLASS
Partner

VERIFICATION

STATE OF NEW YORK)

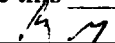
COUNTY OF NEW YORK) ss:

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




COURTNEY BABCOCK

Subscribed and sworn to before
me this 22 day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2018 

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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

Lula Barreto

TULA BARRETO

Subscribed and sworn to before
me this 22nd day of September 2020

Bryan Glass
NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2024 ✓

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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



MARY ELLEN BIZZARRI

Subscribed and sworn to before
me this 22nd day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2019 *22*

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 Amended Petition, that (s)he has read the foregoing Verified Amended Petition, and knows the contents thereof, and states that this is true to h(is) own knowledge.


WANDA CAINE

Subscribed and sworn to before
me this 12th day of September 2020


NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2023 

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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



SAM CARUSO

Subscribed and sworn to before
me this 21st day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2022 *22*

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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




JAMES CONNORS

Subscribed and sworn to before
me this 22nd day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2023 

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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



 CARYN DAVIDSON

Subscribed and sworn to before
me this 22nd day of September 2020



 NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2023

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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




UMANG DESAI

Subscribed and sworn to before
me this 22nd day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2023 

VERIFICATION

STATE OF NEW YORK)

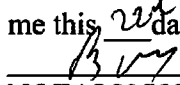
COUNTY OF NEW YORK) ss:

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



VANESSA DUMEY

Subscribed and sworn to before
me this 22nd day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2026 *22*

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:


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


LYNETTE EDWARDS

Subscribed and sworn to before
me this ^{12th} day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2028 

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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


JASON EINAUGLER

Subscribed and sworn to before
me this 22nd day of September 2020

1379
NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2023 *re*

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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




 AMY FEINSTEIN

Subscribed and sworn to before
me this ^{22nd} day of September 2020



 NOTARY PUBLIC

BRYAN GLASS
 Notary Public, State of New York
 No. 02GL6068978
 Qualified in Rockland County
 Commission Expires 1/22/2024

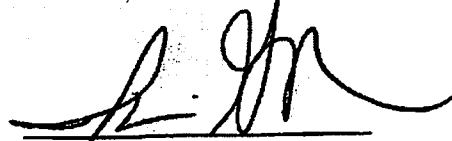


VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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


IOLANI GRULLON

Subscribed and sworn to before
me this 12th day of September 2020


NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2022

VERIFICATION**STATE OF NEW YORK)****COUNTY OF NEW YORK) NN:**

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



LYDIA HOWRILKA

Subscribed and sworn to before
me this 24th day of September 2020

NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2016

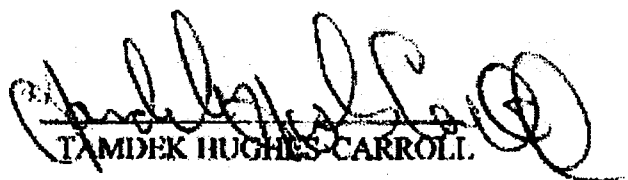
22 ✓

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 Amended Petition, that (s)he has read the foregoing Verified Amended Petition, and knows the contents thereof, and states that this is true to h(is) own knowledge.


TAMDEK HUGHES-CARROLL

Subscribed and sworn to before
me this 17th day of September 2020
[Signature]

NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2026 *[Signature]*

VERIFICATION

STATE OF NEW YORK)


COUNTY OF NEW YORK) ss:

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


STACEY LAZARUS

Subscribed and sworn to before
me this 22nd day of September 2020


NOTARY PUBLIC


BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2021 

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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



Type text here

YONGJUN LEE

Subscribed and sworn to before
me this 2nd day of September 2020



NOTARY PUBLIC

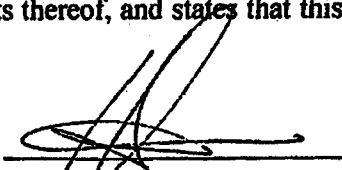
BRYAN GLASS
Notary Public, State of New York
No. 02GL0068978
Qualified in Rockland County
Commission Expires 1/22/2028

VERIFICATION

STATE OF NEW YORK)


COUNTY OF NEW YORK) ss:

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


HELEN LESHINSKY

Subscribed and sworn to before
me this 24 day of September 2020


NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6058978
Qualified in Rockland County
Commission Expires 1/22/2024 

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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




ROSEMARY MARTIN

Subscribed and sworn to before
me this 22 day of September 2020



NOTARY PUBLIC

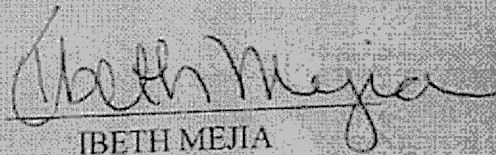
BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2024 

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) SS:

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


IBETH MEJIA

Subscribed and sworn to before
me this 29th day of September 2020

NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 020160897E
Qualified in Rockland County
Commission Expires 1/22/2024

VERIFICATION

STATE OF NEW YORK)


COUNTY OF NEW YORK) ss:

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


ELISHA MICHELENA

Subscribed and sworn to before
me this 19th day of September 2020


NOTARY PUBLIC

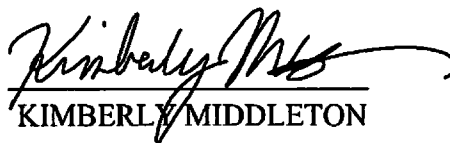
BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2022 

VERIFICATION

STATE OF NEW YORK)

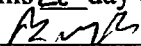
COUNTY OF NEW YORK) ss:

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



KIMBERLY MIDDLETON

Subscribed and sworn to before
me this 21st day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6066978
Qualified in Rockland County
Commission Expires 1/22/2018



VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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



LACRETIA PENDERGRASS

Subscribed and sworn to before
me this 22 day of September 2020

NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2028

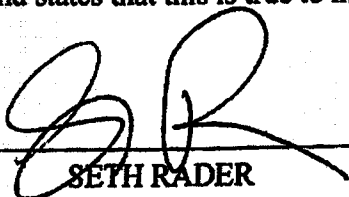


VERIFICATION

STATE OF NEW YORK)


COUNTY OF NEW YORK) ss:

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


SETH RADER

Subscribed and sworn to before
me this 21st day of September 2020


NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GI 6C68978
Qualified in Rockland County
Commission Expires 1/22/2024 

VERIFICATION

STATE OF NEW YORK)


COUNTY OF NEW YORK) ss:

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


LINDA RUBINO

Subscribed and sworn to before
me this 22nd day of September 2020


NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02016068978
Qualified in Rockland County
Commission Expires 1/22/2018 

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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


SHARI SHAPIRO-RIBIAT

Subscribed and sworn to before
me this 17 day of September 2020


NOTARY PUBLIC

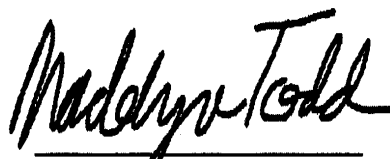
BRYAN GLASS
Notary Public, State of New York
No. 02016068073
Qualified in Rockland County
Commission Expires 1/22/2022

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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



MADELYNE TODD

Subscribed and sworn to before
me this 21st day of September 2020



NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02GL6068978
Qualified in Rockland County
Commission Expires 1/22/2018 *21*

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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



CHLOE WU

Subscribed and sworn to before
me this 21 day of September 2020

BVG
NOTARY PUBLIC

BRYAN GLASS
Notary Public, State of New York
No. 02016068978
Qualified in Rockland County
Commission Expires 1/22/2024 21