

Public Comment Analysis¹

Date: June 24, 2011

Topic: The Proposed Temporary Grade Expansion of the Co-Location of Harlem Success Academy 1 with P.S. 149 Sojourner Truth (03M149) and P811M (P811@M149/M207), a District 75 School, in M149/M207 for 2011-2012

Date of Panel Vote: June 27, 2011

Summary of Proposal

On December 10, 2010, the New York City Department of Education (“DOE”) issued an Educational Impact Statement (“EIS”) and a Building Utilization Plan (“BUP”) describing a proposal to temporarily expand the grades served by Harlem Success Academy (84M351, “HSA1”) in Tandem Buildings M149/M207 from K-5 to K-6 in 2011-2012 for one year. HSA1 is an existing public charter school located at 34 West 118th Street in District 3. It currently serves students in Kindergarten through fifth grade. HSA1 is co-located with P.S. 149 Sojourner Truth (03M149, “P.S. 149”) and P.S. 811 Mickey Mantle School (75M811, “P811M”) a District 75 school serving students with autism, or who are mentally retarded or emotionally disturbed, in M149/M207. Co-location refers to situations where multiple schools are located within a single school facility, often sharing certain common rooms and outdoor recreation areas. In this case all three co-located schools share the cafeteria, auditorium, 2 gymnasiums, and outdoor space at the tandem buildings. Tandem buildings are two separate classroom buildings with separate entrances, which are joined by a central core containing shared gymnasiums, auditorium, and cafeteria. The proposal was approved by the Panel for Educational Policy (“PEP”) on February 1, 2011.

On May 31, 2011, the DOE revised this proposal. This EIS has been modified as follows:

- Current enrollment figures have been updated to reflect the 2010 Audited Register;
- Projected enrollment for P.S. 149 has been updated to conform with final budget register projections for 2011-2012;
- The potential impact of a recently filed lawsuit on a related proposal concerning the re-siting and co-location of certain of HSA 1’s grades prior to the 2012-2013 school year has been included;

¹ This Analysis of Public Comments reflects those public comments received to date. The DOE will continue to accept public comments until Sunday, June 26 at 6 p.m. If any additional comments are received, they will be addressed in an amended analysis.

- The State Education Department’s approval of HSA1’s charter renewal and grade expansion has been included;
- P811M’s other sites have been identified;
- Additional information concerning building capacity calculations has been included;
- Additional information about the middle school choice process has been included;
- Information about the HSA1 admissions and lottery priorities has been corrected; and
- Additional information about school funding has been included.

The DOE also revised the BUP as follows:

- Formatting and typographical errors have been corrected;
- Current and projected enrollment figures have been updated;
- The total number of rooms available to be allocated between the schools has been revised;
- Room allocations have been revised;
- The number of gymnasiums in M149/M207 has been corrected;
- The proposed shared space schedule has been adjusted; and
- The DOE has clarified the rationale for the amount of time that each co-located school is allocated in the proposed shared space schedule.

This is a revised proposal to expand the grades served by HSA1 in M149/M207 from K-5 to K-6 for the 2011-2012 school year. If this revised proposal is approved, existing fifth graders at HSA1 who meet promotional standards will have the opportunity to attend sixth grade at HSA 1 in the 2011-2012 school year. These sixth-grade students would temporarily be served in HSA1’s current location.

In a separate EIS posted on December 10, 2010, the DOE proposed to re-site grades 5-8 of HSA1 to building M088, located at 215 West 114th Street, also in District 3 beginning in the 2012-2013 school year. HSA1’s grades 5-8 would be co-located with Wadleigh Secondary School (03M415, “Wadleigh”) and Frederick Douglass Academy II (03M860, “FDA II”) in building M088. This proposal was approved by the PEP on February 1, 2011.²

P.S. 149 is a zoned elementary school that serves 395 students in Kindergarten through eighth grade and also offers a Pre-Kindergarten program. P811M is a District 75 program that serves students with disabilities in grades Kindergarten through eighth grade and also offers a Pre-Kindergarten program. P811M serves students in multiple locations. In 2010-2011, 94 P811M students were served at M149/M207.

If this revised proposal is approved, HSA1 enrollment in 2011-2012 would grow by approximately 100-120 students, resulting in a total building utilization of 110-114%. Although a utilization rate in excess of 100% may suggest that a building will be over-utilized or over-crowded in a given year, this rate does not account for the fact that rooms may be programmed for more efficient or different uses than the standard assumptions in the utilization calculation.

² The PEP’s approval of the re-siting and co-location of HSA 1’s grades five through eight in building M088 has been challenged in a recently filed lawsuit. Although the DOE believes that it has complied with all applicable laws and regulations in connection with that proposal, if the court annuls the PEP’s vote, the DOE would consider issuing another proposal during the 2011-2012 school year to re-site HSA 1’s grades five through eight consistent with the court’s decision.

In addition, charter school enrollment plans are frequently based on larger class sizes than DOE standards, contributing to building utilizations above 100% while not impacting the utilization of the space allocated to the traditional public school. That will be the case in M149/M207 in 2011-2012: HSA1 programs elementary class sizes above the DOE target capacity for grades K-3. Specifically, HSA1 targets 25-30 students per class in these grades, while the DOE targets class sizes of 20 students in grades K-3. HSA 1's class sizes result in utilization rates of 125-140% for its classrooms. P.S. 149 and P811M are not expected to be over the target capacity for their respective space allocation.

In 2012-2013 and beyond, after HSA1's fifth and sixth grades relocate to M088, HSA1's enrollment in M149/M207 would be approximately 648 students, who would be enrolled in Kindergarten through fourth grades. Total enrollment in the building would be 1,196-1,241 students, yielding a building utilization rate of 105-109%.

The details of this proposal have been released in a revised Educational Impact Statement which can be accessed here along with the revised Building Utilization Plan ("BUP"):
<http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/2010-2011/June2011Proposals>
Copies of the revised EIS and BUP are also available in the main offices of HSA1, P.S. 149 and P811M.

Summary of Comments Received at the Joint Public Hearings

Two joint public hearings regarding the original proposal were held at Building M149/M207 on January 10 and January 20, 2011. At the hearings, interested parties had an opportunity to provide input on the original proposal.

On January 10, approximately 110 members of the public attended the hearing, and 15 people spoke. Present at the meeting were: District 3 Superintendent Sara Carvajal; P.S. 149 Principal Kayrol Burgess-Harper and School Leadership Team representative Sonya Hampton; Frederick Douglass Academy II Principal Osei Owusu-Afriye and School Leadership Team representative Julius Tajiddin; P811M Principal Barry Daub; Director of External Affairs of Harlem Success Academy 1 Jenny Sedlis; Network Leader of Frederick Douglass Academy II Derek Smith; Wadleigh School Leadership Team representative Anthony Burgess; Citywide Council on Special Education representatives Ellen McHugh and Jaye Bea Smalley; and Citywide Education Council 3 President Noah Gotbaum; and Division of Portfolio Planning representative Elizabeth Rose.

On January 20, approximately 155 members of the public attended the hearing, and 39 people spoke. Present at the meeting were District 3 Superintendent Sara Carvajal; P.S. 149 School Leadership Team representatives Casey Bower and Sonya Hampton; FDA II School Leadership representative Julius Tajiddin; Wadleigh Secondary School Leadership Team representative Anthony Klug; Director of External Affairs of Harlem Success Academy 1 Jenny Sedlis; P811M Assistant Principal Sam Slater and School Leadership Team representative Caren Gandelman; Citywide Education Council 3 President Noah Gotbaum and representatives Jimmy Brown, and Christine Annechino; UFT representative Mike McCourt; and Division of Portfolio

Planning representative Elizabeth Rose. Safiyah Rahim represented Council Member Inez Dickens at this hearing.

An additional joint public hearing regarding the revised proposal was held at June 16, 2011 at Building M149/M207. At the hearing, interested parties had an opportunity to provide input on the revised proposal. Approximately, 75 members of the public attended the hearing and about 31 people spoke. Present at the meeting were: P.S. 149 School Leadership Team (“SLT”) representatives Sonya Hampton, Patrick Walsh and Casey Bauer; Harlem Success Academy I SLT representative Roosevelt Callahan; P811M SLT representative Samantha Slater; Community Education Council (“CEC”) 3 President Noah Gotbaum and representatives Christine Annechino, Olaiya Deen, Jimmie Brown and Alicia Simpson; Executive Director of NAACP Ben Jealous and New York State President of NAACP Hazel Dukes and; Recy Dunn, Rachel Apter and Meg Barboza from the Division of Portfolio Planning.

The following comments and remarks were made at the joint public hearings on January 10 and January 20 on the **original** proposal:

1. During the SLT/CEC presentation portion of the Joint Public Hearing on January 20, the following questions were asked:
 - a. Why is P811M considered a separate entity when, in fact, it operates as a part of P.S. 149? Why are the inclusion students from P811M who spend the vast majority of their day in P.S. 149 classrooms not factored into P.S. 149’s overall population?
 - b. The EIS assumes that P.S./M.S. 149 enrollment numbers are remaining stable when, in fact, it has been growing. What method does the DOE use to calculate these enrollment numbers?
 - c. If the reason why enrollment numbers are bigger in kindergarten and first grade is due to the fact that the kids are coming from out of the zone and out of the district, has the DOE altered its enrollment policy accordingly in anticipation of lack of space or set up a wait list or notify the community?
 - d. Is it suitable for a single room or office to be used for multiple purposes? Is that a suitable learning environment as mandated by laws that oversee IEPs?
 - e. How does the EIS assume that the special education students will not be adversely affected by the expansion when, in fact, their classes will be placed in half-sized rooms?
 - f. Does the DOE take into consideration that special education students need classrooms with a lower ratio between teachers and students when determining the allocation of classrooms?
 - g. Who determines the class size for Success Charter?
 - h. Since charter school expenditures exceeding \$5,000 is to be matched at each of the co-located schools and since the charter school’s budget is not transparent, how will P.S. 149 know that it’s getting an equal share of the funding?
 - i. If the charter schools make several improvements, costing \$4,999, would that also be matched by the DOE for the co-located schools?

- j. Is the DOE aware of how HSA1 first came into the P.S. 149 portion of the building five years ago?
 - k. The building currently holds two gyms, one small and one large; currently, P.S. 149 uses the small gym and HSA1 the large one. Do you know who made that decision on utilization? And is that a fair distribution of space when P.S. 149 has far more students than HSA1?
 - l. Is the DOE concerned that the students are currently being taught in hallways, stairwells and closets? Doesn't that indicate that there's not enough space?
 - m. Was the expansion proposal submitted to the State Education Department?
2. P.S. 149 SLT representative Sonya Hampton asserted that the DOE has not properly conducted the Educational Impact Statement process ("EIS") as required by law. She was concerned that the SLT members, P.S. 149 community and parents were not informed about the EIS and did not receive copies with sufficient notice.
 3. P.S. 149 SLT representative Casey Bower also noted that there was no shared space committee and asserted that space at P.S. 149 was taken unfairly from them.
 4. Citywide Education Council 3 President Noah Gotbaum concurred with the SLT representative Sonya Hampton, adding that the principal of P.S. 149 was the only person who the DOE has been communicating with. He also expressed his concern that there is no detailed enrollment plan in the EIS, and expressed the opinion that the footprint that the DOE proposed is antiquated. He also asserted that the DOE does not take into consideration that Wadleigh and other District 3 schools tend to serve a higher percentage of special needs students (including ELLs and IEPs) compared to HSA1.
 5. Citywide Council on Special Education representative Jaye Bea Smalley referred to the EIS, which stated that the school would be at 112 to 114% capacity with the re-siting, and raised safety concerns. She was particularly worried about the effect overcrowding would have on students with disabilities.
 6. Citywide Council on Special Education representative Ellen McHugh urged the hearing attendees to participate in the process and work together.
 7. FDA II School Leadership Team Julius Tajiddin expressed his support of CEC 3 and P.S. 149 in protesting the Joint Public Hearing.
 8. Harlem Success Academy 1's Director of External Affairs Jenny Sedlis expressed her satisfaction with HSA1's performance and noted that she was eager to participate in the public review process.
 9. Safiyah Raheem from the Council Member Inez E. Dicken's Office stated the Council Member's opposition to the expansion and co-location proposals and added that the success of one school cannot be at the expense of another. She also proposed leasing parochial school spaces as an alternative solution.
 10. Multiple commenters expressed their opposition to the proposal, noting the disparities between P.S. 149 and HSA1;
 - a. P.S. 149 students have to eat lunch at 10:30 am while the students at HSA1 can eat at normal lunch hour.
 - b. P.S. 149 cannot use the same bathrooms as HSA1.
 - c. There is unequal nutritional offering at the schools.
 - d. There is an unfair allocation of resources that leads to better maintenance of facilities for HSA1.

- e. HSA1 does not take special education students or students with behavioral issues while P.S. 149 takes all students.
11. Several commenters expressed their dismay that there were “hateful” signs posted up at the schools.
 12. Several commenters urged parents to examine the DOE’s processes before attacking each other and blaming the Charter School.
 13. Multiple commenters expressed their support for the proposal, citing that their children have benefitted from attending HSA1.
 - a. One commenter noted her appreciation for the staff at HSA1 and how great they have been in teaching the students.
 - b. One commenter stressed that HSA1 is also a public school, like P.S. 149, and is providing parents with additional choice for quality education.
 14. One commenter expressed the opinion that the expansion would cause segregation and cited *Brown vs. Board of Education* to discuss the long-term psychological effects of segregation.
 15. One commenter said that he had to teach students in a storage room and urged the attendees to think about the psychological effects of such action on students.
 16. Multiple commenters noted that every student has a right to excellent education and asserted it would not be fair to share the space at the expense of another school.
 17. Several commenters urged attendees to work together and not use “hateful” rhetoric.
 18. One commenter raised concerns that both HSA1 and P.S. 149 students are adversely affected by the co-location (i.e. they both share a yard that is designed for early childhood students) and the expansion would worsen the impact.
 19. One commenter stated that students shouldn’t be treated as numbers, figures, or statistics.
 20. In response to the assertion documented at 10(e) above multiple commenters noted that:
 - a. 18% of HSA1’s population accounts for students with disability.
 - b. HSA1 hosts many classes that tailor to students with IEPs and behavioral problems.
 21. Several commenters raised safety concerns, specifically that;
 - a. The kindergarten students could be adversely affected by the presence of older students.
 - b. The class room size for special education programs would be reduced in half, confining the students and creating an undesirable learning environment.
 22. One commenter noted that district 3 schools are in general over utilized at over 100% capacity and inquired what the DOE is proposing to do about overcrowding.

The DOE received additional comments at the Joint Public Hearing which did not directly relate to the original proposal.

23. One commenter questioned the qualifications of Cathie Black as a Chancellor.
24. Several commenters also discussed the proposal to re-site and co-locate HSA1’s grades 5-8 with Wadleigh Secondary School and FDA II.
25. Two commenters expressed their opinion that the school system has transformed into what they characterized as a political entity.

**Summary of Issues Raised in Written and/or Oral Comments Submitted to the DOE
Regarding the Original Proposal**

26. Approximately 89 comments were received in opposition to the proposal without citing specific reasons and 2 comments were received in favor.
27. One commenter inquired how many ELL and Special Education students attend HSA1.
28. One commenter expressed the opinion that the proposed expansion would hurt P.S. 149 and P811M's ability to serve the students. The commenter also asserted that P.S. 149's growth and success have not been properly recognized.
29. Multiple commenters suggested allocating more resources to existing public schools in the building instead of expanding a charter school.
30. CEC 3 submitted a Resolution titled "CEC 3 Resolution Against Proposed and Future Charter Co-Locations in District 3 Including the Establishment of Upper West Success Academy in the Brandeis High School Complex, and Harlem Success Academy I Middle School at P.S. 149 and Wadleigh Secondary". The resolution asserted the following points:
 - a. District 3 has a range of good to excellent zoned and district schools, all of which require additional resources.
 - b. District 3 has numerous choice schools.
 - c. District 3 has been awarded a federal magnet grant, which attract students from across the district.
 - d. DOE's calculations project fewer than 300 district-wide elementary and middle school seats available by September 2012.
 - e. DOE has failed to provide long term plan on how to accommodate District 3 students over the next five years.
 - f. Success Charter co-locations have been uniformly terrible.
 - g. Success Charter Schools enroll and educate far lower percentages of the most needy and at risk children including ELLs.
 - h. CEC3 resolved that;
 - i. The PEP denies the votes on co-locations.
 - ii. There be a freeze on Charter co-locations and expansions in District 3 until DOE provides District 3 Community with adequate facilities and resources for existing schools.
 - iii. The Comptroller conduct an audit to reconcile DOE capacity and utilization statistics with experiences and observations of parents, educators, and CECs.
31. Council Member Melissa Mark-Viverito expressed her opposition to the proposals to co-locate charter schools in District 3 based on the lack of long term plan in place, engagement in extensive community dialogue, and development of comprehensive community impact statement.
32. FDA II SLT Chair Julius Tajiddin expressed the SLT's official opposition to the proposal and urged the DOE to withdraw. Following reasons were given:
 - a. There is hostility between HSA1 and M149 and co-locating the two schools would not be a good idea.
 - b. M149 cannot fit an expansion of HSA 1.
 - c. District 3 schools are overcrowded and underfunded.

33. One commenter noted that SETTS students take state tests, which is factored into the school's grade that reflects the school's grade level.

The following comments and remarks were made at the joint public hearing on June 16, 2011 on the revised proposal:

34. CEC 3 President Noah Gotbaum expressed the CEC 3's unanimous opposition to the proposal, asserting that:
- a. DOE should re-do the six months process for Educational Impact Statement and that would require a new utilization and new EIS.
 - b. Revised proposal gives different allocations of space that are unequal.
 - c. The proposed co-location will yield 114% capacity which he characterized as about 1/3 to 1/2 over what the building should be.
 - d. 149 provides education for a different group of students than that of Harlem Success Academy 1.
 - i. P.S. 149 teaches 10 times the number of homeless students
 - ii. P.S. 149 has CT classes and 5 special education classes compared to the zero that HSA1 has.
 - iii. Out of the 100 students that took HSA test, only one student has ELL while P.S. 149 has 25% ELLs.
 - e. HSA1 was authorized to focus on and educate kids who are most at-risk, but it does not do that.
 - f. HSA1 has zero attrition.
 - g. P.S. 149/ 811 students only get \$12,500 per student while there is a fixed \$14-15,000 for charter school students.
 - h. Special education and counseling is being provided in hallways.
 - i. UFT and NAACP lawsuits are the only voices that the DOE is listening to.
35. CEC 3 Vice President, Christine Annechino expressed the opinion that there is unequal access to entrances, bathrooms and gyms.
36. P.S. 149 SLT representative, Sonya Hampton, asserted that the students in the building have unequal access to resources such as the bathroom and noted that despite getting an "A" grade, P.S. 149 was not commended for it.
37. Casey Bower, P.S. 149 SLT Chairperson, asserted that co-locations end in separate and unequal facilities, treatment and opportunities. She expressed her opposition to the expansion and asserted that P.S. 149 students are losing arts and extracurricular activities. She also stated that self-contained students are asked to learn in half-size classrooms.
38. Julius Tajiddin, SLT member of Frederick Douglass Academy II, expressed his opposition to the proposal, asserting that:
- a. According to charter school law, all educational impact statements and building utilization plans must be published during the school year and at least 6 months prior to the following school year. Since the revised EIS and BUP were failed to be published following those regulations, HSA1 cannot expand in M149 building for 2011-2012 school year.
 - b. DOE asserts that excess of 100% utilization may mean the building is overcrowded, but does nothing to correct that and to ensure safety of little kids. He asked what safety measures the DOE is providing to ensure safety of young

- children in the over-crowded environment and also asked if there is a plan for an emergency situation.
- c. Special Education will be taught in closet space, hallways and stairwells.
 - d. There was no hearing in the first place when HSA1 first came into the building.
39. Olaiya Deen, a CEC representative, asserted that Bloomberg and Klein didn't know anything about education.
40. Alicia Simpson, a CEC representative, asserted that the DOE never comes to the parents for their opinions.
41. Hazel Dukes, NAACP President for New York State, stated that her organization has been fighting for equality and justice and noted that it is the right of every child to receive quality education. She also stated that all parents should have choices, but it is also the right of a Civil Rights organization to continue fighting to guarantee all children quality education.
42. Approximately 19 speakers expressed their opposition to the proposal. Asserted reasons were:
- a. Special education students will not receive fair services.
 - b. Charter school has two teachers per room while P.S. 149 only has one teacher per classroom.
 - c. Students should not have to eat lunch in the morning, immediately following breakfast.
 - d. P.S. 149 is a wonderful school and deserves the equal resources.
 - e. It is unfair that P.S. 149 students have no bathroom privileges on certain floors and unequal access to the gym and to playgrounds.
 - f. P811M students have special needs and need space.
 - g. It is unsafe to place varying age groups on the same floor.
 - h. It is degrading for the students to be taught in a storage room.
 - i. Class sizes should be reduced to no more than 22; currently, the class size at P.S. 149 goes up to 34 students per class. The co-location will prevent the school from ever reducing class sizes.
 - j. DOE redefined regular sized classrooms from 1,000 to 500 square feet, but the building code requires that there be at least 20 square feet per student in all rooms in schools. For special education students, there should be at least 75 square feet per student, but the DOE defines it as 250 square feet.
 - k. Charter and public schools can co-exist but not at the expense of each other.
 - l. Overcrowding undermines the quality of education students receive in the building.
 - m. HSA1 took over majority of the building on 118th Street from P811M.
 - n. Middle schoolers need their own floor.
 - o. HSA1 has a music teacher who has his own room.
 - p. There is disproportional allocation of rooms in the building; HSA1 has two staff rooms, guided reading room, reading lab, playroom and etc.
 - q. Charter schools should find their own space.
 - r. There are no parents on the Building Council that makes the decisions regarding the shared space. There are parents on the Space Shared Committee, but their opinions are not taken into consideration.

43. A commenter asserted that she has been on the safety committee for years, but has not heard of any safety plans.
44. Approximately nine speakers expressed their support for the proposal. Reasons cited were:
 - a. HSA1 has great class sizes and possess less room per student in the building.
 - b. HSA1 provides great education for the students.
 - c. Charter schools are also public schools.
 - d. Expansion would only be temporary.
 - e. Co-locations are common and do work. One commenter gave HSA3 as an example of a successful co-location.
45. Several commenters expressed their opposition to the NAACP/UFT lawsuit, stating that about 7000 students will be displaced in August if the lawsuit does what it has set out to do.
46. One commenter asserted that the issue is with the Department of Education and argued that everyone should have equal space.
47. Several commenters urged that the parents stop fighting and show respect each other since it is about the children.
48. A commenter on the shared space committee invited the parents to attend their meetings and bring up the issues in the meeting. He also urged that they work together and co-exist peacefully.
49. A commenter inquired what percentage of Harlem Success Academy I students live inside District 3.
50. Several commenters asked what was going to happen with the allocation of space after the temporary co-location period is over.
51. A commenter asserted that the co-location is not going to be temporary.

The following questions were asked during the hearing on the **revised** proposal:

52. If the NAACP lawsuits do not have any merit, why did the DOE redo the Building Utilization Plan? If the revisions are due to public comments, why wasn't the revision made prior to the PEP vote?
53. Is the DOE planning to do something to address the concerns from both sides of the proposal?
54. Do the parents have any input in the shared space plan?
55. What is an example of a reason why this co-location would not be passed?
56. What's going to happen with the sequence of events with the lawsuit? I want my charter school to open and be available for my kid.
57. Is it DOE's policy to have two schools inside a building fighting against each other to fight over resources?
58. What's the DOE's policy on competition? And isn't the natural result of competition having winners and losers who are fighting over limited resources?
59. Why would you put a charter school in a public school where there's not enough space?
60. If charter schools are also public schools, isn't it illegal for them to utilize their private funding?
61. What is the meaning of "equitable" to the DOE?
62. Why is DOE not encouraging the charter schools to buy or build their own buildings?

63. What determines a public school?
64. Often when charter schools apply, they don't even have a location in mind, but decide where they want to go later– why do you let that happen?
65. Who audits the Charter School lottery and why are the results not public? How do you regulate the lottery process?
66. Why is the Blue Book formula not aligned with the formula in the instructional footprint?
67. Why is the formula for class size in the blue book not aligned with the city's class size reduction plan?
68. Do you admit that co-locating schools is a very inefficient use of space as John White has admitted because every new school takes classroom space with new cluster space and administrative spaces?
69. Why are you making overcrowding worse by creating more schools and placing them in the same building?
70. There are 3000 kids on the waiting list for kindergarten and over 8000 kids in pre-k, why is it that you are creating more choices for charter schools rather than more space for kindergarten and pre-K students?
71. What are the rules surrounding the allowance of charter school parents participating on CEC and other leadership and decision making groups?
72. Why is no one from the charter school at the hearing?
73. DOE Policy of Competition—why does the DOE set up competitive scenarios where schools are set up to compete for resources and space (e.g. co-locations)? Aren't you hurting students, schools?
74. Can P.S. 149 use bathrooms on 3rd floor (HSA bathrooms) even when the classes are on the 3rd floor?
75. When HSA moves out will M149 get the two rooms back?

The DOE received additional comments at the Joint Public Hearing which did not directly relate to the **revised** proposal.

76. A commenter said that Hazel Dukes, present in the audience, should be careful about the lawsuits which might result in generation of uneducated children.
77. A commenter accused Mayor Bloomberg of making profit and urged to follow his “no-bid list.”
78. A commenter asserted that Eva Moscovitz has divided Harlem and Geoffrey Canada built it up.
79. A commenter said that the lawsuit does not sue the charter schools, but rather sue Bloomberg and the DOE.

Summary of Issues Raised in Written and/or Oral Comments Submitted to the DOE regarding the Revised Proposal

80. Noah Gotbaum, CEC 3 President, asked if corrections could be made to the transcript from the hearing and if there were a specific time frame to do so. He also asked the following questions:
 - a. Do you know the number of students who are expelled from or have been asked to leave Harlem Success Academy?

- b. Does the DOE approve of Harlem Success parents and students being told to go to anti- NAACP Rally and to start school 2 hours late?

**Analysis of Issues Raised, Significant Alternatives Proposed
and Changes Made to the Proposal**

D75 Inclusion Students

With regard to comment 1a, inclusion students are considered part of a class section within PS/IS 149. To the extent that during the day an inclusion student is part of a PS/IS 149 class section, the footprint (which is based on the total number of class sections that PS/IS 149 programs) takes them into consideration. There is additional space allocated to P811M for their class sections and for the resource rooms needed to serve the students of P811M. Because the footprint allocates classroom space based on the number of class sections, not the number of students, categorizing a given student as either a PS/IS 149 or P811M student does not affect the footprint allocation unless it requires one organization to program an additional class section to accommodate the student.

Enrollment Projections

With regards to comment 1b, every year, the DOE makes enrollment projection for each school for the following year based on current enrollment numbers, history of returns, and trends for kindergarten enrollment throughout the district. The DOE expects the enrollment of P.S. 149 to remain stable, given the stability of their overall enrollment over the previous three years. This year, enrollment in the kindergarten class at P.S. 149 was larger than the past year due to the fact that some of the school enrolled some students from out of the P.S. 149 zone or district. The DOE projects that the enrollment numbers at P.S. 149 will remain stable as long as P.S. 149 adheres to the DOE's enrollment policy.

With regards to comment 1c, the DOE has not altered its usual enrollment policy. The enrollment projection process includes sending the initial, data-generated enrollment projection to each school's principal, and maintaining a dialogue with each principal to ensure that the school's projection is as accurate as possible. The enrollment projections set out in the EIS are based on P.S./M.S. 149 continuing to serve two sections per grade school.

Space Allocation and Footprint

With regards to comments 1d, 37, and 42p while the Footprint sets forth a baseline space allocation based on the grade levels served by the school and number of classes per grade, school leaders are empowered to make decisions about how to utilize the space allocated to the school. These spaces can be used at the principal's discretion for suitable purposes. Furthermore, the principals are asked to program their schools efficiently so that classrooms can be used for multiple purposes throughout the course of the school day. As for the special education classes, the Footprint allocates a full-size or half-size classroom to accommodate each self-contained special education section. Additionally, the DOE will provide support to the schools to ensure that the schools use the space efficiently in order to maximize capacity to maintain appropriate delivery of special education and related services to students. Where appropriate, school leaders

will have an opportunity to draw upon the expertise and guidance of the Office of Special Education, which is dedicated to promoting positive educational outcomes for students with disabilities.

With regards to comment 1L, the Footprint sets forth the baseline number of rooms that should be appropriately allocated to the school based on the grade levels served by the school and the number of classes per grade. The DOE entrusts the principals of each of the co-located schools to make choices about how they utilize allocated space.

With regards to comments 16, 34b, and 34d, according to the Building Utilization Plan, and DOE standards for space allocation, all co-located schools will be allocated an equitable distribution of available space, and the DOE believes that they will not be adversely impacted by the expansion of HSA1. P.S./I.S. 149 and HSA 1 have different admission priorities, and thus are not expected to serve identical populations. At elementary grades, P.S. 149 is a zoned school, and admits students according to Chancellor's Regulation A-101; HSA1 follows the lottery preferences approved by its charter authorizer. Under recent amendments to state law, public charter schools must 1) serve all students who are admitted through their lotteries, and 2) serve a % of Special Education and English Language Learners comparable to the district average. Charter schools which fail to meet the special education and or ELL targets set by their authorizer risk being closed or having their renewal applications rejected.

With regards to comments 34h and 75, the revised Building Utilization Plan details P.S. 149's space allocation for 2011-2012 and 2012-2013. In each of those years, P.S. 149 is allocated an additional two full-size classrooms beyond its baseline allocation. However, the DOE does not dictate how those rooms will be allocated since all principals are free to program their space as they see fit.

With regard to comment 42h, sufficient classroom space has been allocated to each school; the DOE is not aware of schools using storage space for instruction.

With regard to comment 42j, the DOE defines all full-size classrooms across the city as rooms with 500 to 1,000 square feet of space. Half-size classrooms are defined as rooms with 240 to 499 square feet of space and can accommodate up to twelve special education students. These same standards apply to all schools across the city.

With regard to comments 42k and 42l, the DOE applies the Footprint to all co-located schools on a shared campus, whether district or charter, to determine the baseline allocation of space needed by each school. Because each school in a co-location receives its baseline allocation of space unless otherwise noted with an explicit rationale, no charter school should exist in a public school building at the expense of a district school, or vice versa. Additionally, the DOE observes the contractual cap on class sizes in all city schools, but given the finite amount of school building space available in the city, the DOE has no choice but to make the most efficient use possible of all school buildings.

With regard to 42o, PS/IS 149 and HSA are provided an allocation of 3 cluster rooms each, which they may use as they deem most useful.

With regard to comment 50, the space allocation in 2012-2013, after the 5th and 6th grades of HSA1 have relocated to another location, is set forth in the revised BUP on pages 9-10. The relocation of the 5th and 6th grades for 2012-2013 has been proposed in a separate EIS that was passed by the PEP on February 1, 2011.

With regard to comment 61, “equitable” means that the DOE allocates space to each school using the same impartial mechanism. The DOE strives to allocate resources fairly and impartially by applying the same mechanism (i.e. the Footprint) to each school organization to determine space needs and by allocating time in shared spaces proportionally based on enrollment.

With regard to comments 66 and 67, the Blue Book and Instructional Footprint result are very closely aligned. However, their uses are different: The Blue Book is a guide to overall building and system capacity, and is used primarily for future planning; the Instructional Footprint is used for current space needs at a school level.

With regards to comments 5 and 34c: Although a utilization rate in excess of 100% may suggest that a building will be over-utilized or over-crowded in a given year, this rate does not account for the fact that rooms may be programmed for more efficient or different uses than the standard assumptions in the utilization calculation, as described above. In addition, charter school enrollment plans are frequently based on larger class sizes than target capacity, contributing to building utilizations above 100% while not impacting the utilization of the space allocated to the traditional public school. The DOE does not anticipate that this proposal will impact the ability of P.S. 149 to meet the needs of its students in all grades.

Space Allocation for Special Education Classes

With regard to comments 1e, 1f, 21b, 37, 38c, and 42a, the citywide policy states that self-contained classes with 12 or fewer students may be held in half-size classrooms. The Footprint states that self-contained special education classes with student ratios of 6:1:1, 8:1:1, 12:1:1 and all other may be held in classroom size of 240-499 square feet. Because the proposed room allocation for special education classes abides by the citywide policy governing all DOE schools, the DOE does not anticipate it will impact the ability of P.S. 149 to serve special education students.

With regard to comments 4 and 5 regarding special education, the DOE takes into consideration the needs of special education students when allocating space. Currently, P.S. 149 serves students requiring special education services, including 41 students currently enrolled in 4 self-contained special education classes. Accordingly, the Footprint allocates half-size classrooms for these class sections. The Footprint was recently revised, so the DOE does not believe it to be antiquated.

With regards to comment 42f, the DOE believes that revised proposal would provide P811M with sufficient space for its students’ needs.

Class Sizes

With regards to comment 1g, HSA1's charter is authorized by the New York State Education Department. Typically for charter schools, a charter operator submits an enrollment plan to its charter authorizer with a projected number of students and number of class sections. HSA1 currently operates with class sizes of 25-30 students at every grade level.

With regard to 34c, the projected building utilization greater than 100% is driven by HSA class sizes larger than the DOE target class size for grades K-3. The DOE believes this projected utilization figure is manageable for the one year of the grade expansion proposal.

With regards to 42i, schools may choose how they use space in excess of footprint, including programming additional class sections to reduce class sizes. In the past, PS 149 has chosen to place its self-contained classes in full-size rooms, rather than program additional class sections to reduce class size.

With regard to comment 67, class size reduction goals which the commenter appears to be referencing are no longer in force. The Blue Book targets maximum capacity of 20 students per class in grades K-3, and 28 students per grade in grades 4-8.

Facility Upgrades by Charter Schools

With regard to comments 1h, 1i, and 10d, before making any capital expenditure or facility upgrade, costing over \$5000, a charter school must first obtain the chancellor's permission. Pursuant to Chancellor's Regulation A-190, all work undertaken and supplies purchased in connection with a single project, even if purchased in multiple installments of less than \$5,000, count towards the \$5,000 limit. If the chancellor approves the expenditure, the DOE must match the dollar amount towards the capital improvements for each of the co-located schools. Pursuant to Chancellor's The DOE's Division of Operations will oversee the capital expenditure approval and matching process.

Space Availability within M149/M207; General Co-location of schools

With regards to comments 1j, 32 b, and 59 given the reality of scarce building space and growing enrollment, it is the commitment of the DOE to utilize building space in the most efficient manner possible. According to the Enrollment-Capacity-Utilization Report (Blue Book), School Building M149 was determined to be an under-utilized building, meaning that the enrollment numbers at the school was materially below the total capacity of the building. Consequently, the excess space at School Building M149 was allocated to HSA1.

With regards to comment 19, a commenter made this point when the DOE representative was trying to explain the DOE formula for calculating building capacity. The mathematical formula is used to accurately predict the amount of space that each school would need to serve its students.

With regard to comment 51, the current proposal provides for a temporary co-location of HSA 1 with P.S. 149 and P811M. In order to make the co-location permanent, the DOE would have to draft a new educational impact statement that would be subjected to a public hearing process and a vote by the Panel for Educational Policy.

With regard to comments 57, 58, and 73, the DOE policy is to provide students choices of where to attend school. As a matter of policy, the DOE is committed to making full use of all its buildings in order to serve as many students as possible and provide these choices. Currently 33% of all DOE buildings house more than one school.

With regard to comments 69 and 70, the total number of students eligible for public education in New York City will remain the same regardless of whether charter schools exist. These students will need to be educated in DOE buildings, whether as part of a DOE school or a co-located charter school. This includes Kindergarten and pre-K students, who are also served by charter schools.

Shared Space Schedule

With regard to comment 1k, 18, 28, 42e, 42r and 54, the shared space schedule contained in the revised Building Utilization Plan attached to the EIS is only a proposal, not final. The final shared space schedule will be determined by the Building Council, consisting of the principals from each of the co-located schools in the building. In cases when the schools are unable to agree upon allocation or schedules for space, the DOE will provide support and work with the schools to ensure proper allocation.

The DOE does not anticipate that the proposed temporary expansion of the grades served by HSA1 at M149 by one grade level would adversely impact the students at P.S. 149 or HSA1.

With regard to comments 10a, 15, and 42c final decisions around lunch time scheduling and utilization of shared spaces are made by the Building Council. DOE standards assume that lunch can be scheduled over 3 periods. There is sufficient cafeteria capacity to accommodate all students within this amount of time. Some students at multiple DOE schools, including those which are not co-located with other schools, eat lunch at comparable times.

With regard to comment 35, the revised Building Utilization Plan ensures an equitable allocation of shared spaces among the co-located schools based on each school's proportional enrollment.

With regard to comment 10b and 42b, it is typical for co-located schools to be assigned their own bathrooms and to be designated unique entrances. This is done in order to promote the development and maintenance of individual cultures in each co-located school organization.

Authorization of HSA Grade Expansion

With regards to comment 1m, as HSA1's authorizer, the State Education Department approved the expansion of HSA1 to serve additional grades. However, the State Education Department did not approve or disapprove this particular co-location proposal, because the granting of a charter and the decision about the location of the school are independent processes.

EIS and Joint Public Hearing Process

With regards to comment 2, as required by applicable law or regulation, the DOE sent out Parent Letters, along with the Notice of Joint Public Hearing, Educational Impact Statement, and Building Utilization Plan, to the principals of each co-located school, requesting that the

principals backpack the letter and the notice home with the students, share the EIS with the School Leadership Team and make copies of the EIS available in the main office. The Joint Public Hearing dates for the original proposal (which was questioned in comment 2) and the revised proposal were determined after consultation the members of the School Leadership Team and the Citywide Educational Council.

With regard to comments 4 and 7 regarding the DOE's notifications, the DOE was in contact with CEC 3 and other members of the School Leadership Teams regarding the Joint Public Hearing on the original proposal. Those stakeholders were given input into the date, format, and agenda of the hearing.

With regards to comment 4 regarding enrollment projections, the EIS contains projections for the 2010-2011, 2011-2012, 2012-2013 school years based on the Enrollment-Capacity-Utilization Report (Blue Book). The space allocation, set forth by the Footprint, was confirmed by the building walkthrough and survey performed on October 28, 2010 by Richard Bocchicchio, Borough Director of Space Planning.

With regard to comment 34a and 38a the DOE believes it has complied with the legislation and Chancellor's Regulations governing this proposal. The original proposal was posted more than six months prior the beginning of the school year. The DOE's actions in posting the revised proposal were consistent with prior decisions of the Commissioner of the New York State Education Department.

With regard to 38d, State legislation and Chancellor's regulation A-190, which governs engagement around proposals for changes to school building utilization and mandates joint public hearings, had not been issued when HSA1 was first co-located with P.S. 149.

With regard to comment 52, the reasons for the revision to the building utilization plan include updating data, correcting factual errors, and revising the proposed shared space schedule to ensure equitable allocation of resources. These revisions were made as a result of feedback the DOE received on this proposal and similar co-location proposals, and not solely in response to any legal action. These revisions have been published in advance of a new PEP vote.

With regard to comment 53, the DOE believes these revisions are responsive to some of the concerns that have been raised regarding the proposal.

Shared Space Committee

With regards to comment 3, 42r and 54, buildings with existing charter school co-locations were to have set up Shared Space Committees earlier this year.

With regards to comment 32 (a), the DOE expects HSA1 and P.S. 149 to work collaboratively to build a strong work relationship through the Building Council and Shared Space Committee.

Leasing Space for HSA

With regards to comment 9 and 32 c, 42q and 62, the DOE believes that there is existing capacity available in the District. Since public charter schools are public schools, and serve public school

students, the DOE believes in providing space to public charter schools where possible. The DOE does not directly lease space for public charter schools. There are several charter schools that have or are in the process of developing private space; the DOE supports these efforts to expand the total capacity available to public school students.

Bathroom use

With regards to comment 10b, 36, 42e, and 74 it is typical in co-locations to designate specific bathrooms for specific school use. This is true in co-locations involving only DOE schools, as well as co-locations with charter schools.

Lunch Quality

With regards to comment 10c, the nutritional offerings at both schools are comparable since all DOE meals served must meet the DOE's rigorous standards (e.g. no MSG, no more than 30% calories from fat, no deep frying, and use of whole wheat).

Funding for Charter Schools

With regards to comment 10d, and 34g about operating budgets, All DOE schools receive public funding pursuant to a Fair Student Funding ("FSF") formula. Each student receives a per-pupil allocation based on the grade level of the student. In addition, FSF awards supplemental allocations on a per-pupil basis for students who have additional needs and therefore cost more to educate; for example, extra funds are allotted for English Language Learners. Thus, it is inaccurate to suggest that each student at P.S. 149/P811M receives an identical amount of per-pupil funding. The General Education Charter School per-pupil rate is determined by the New York State Education Department ("NYSED") and is based on the formula used for all traditional public school districts. Because that formula is created and administered by the State, the DOE has no control over the statutory funding levels for charter schools. In addition, traditional public schools receive additional public funds for use in capital projects. Charter schools receive no such capital funding.

With regard to comment 42b, public charter schools may spend their funding as they deem best for their students.

With regard to comment 60, all schools may raise funds to supplement public funding. DOE schools also benefit from City Council grants, private grants, partnerships with community based organizations that access external funding for their programs, and other sources of external funding, and the DOE itself also solicits private funding for projects through the Fund for Public Schools. State law specifically allows private entities to give monetary or other support to charter schools.

Charter Application Process

With regard to comment 64, the application process to receive a charter is separate from the process to receive space in a DOE building. Many charter schools do not request space in a DOE facility. Others may receive a charter, but there may not be space available in a DOE building; in these cases, the charter must either pursue private space or may not be able to open.

Special Education at HSA

With regard to comments 10e and 20a regarding the percentage of special education students at HSA1, approximately, 15% of students served by HSA1 have IEPs, compared to 18% at P.S. 149. Furthermore, HSA1 participates in the Universal School Meals Program, which means that students do not need to fill out the annual eligibility form in order to receive free or reduced meals.

Demographics of HSA Students

With regards to comment 14, currently HSA1 serves a student population consisting of 73.7% Black, 15.5% Hispanic, 1.9% White, 0.3% Asian or Native Hawaiian/other Pacific Islands, and 0.8% American Indian.

With regards to comment 27, about 15% of HSA1's population are students with IEPs and 1% are English Language Learner Students.

With regards to 34e, HSA lottery preferences determine admission to the school. These preferences provide priority to students defined as at-risk based on the academic performance of the school for which students are zoned or are currently attending.

With regard to comment 49, HSA 1 2010-2011 enrollment represent 6% of District 3 K-5 enrollment, including public charter schools located in District 3.

Charter School Lotteries

With regard to comment 65, a charter school's authorizer holds general oversight authority over its functions, including lotteries. The New York State Department of Education is the authorizer for the charter school at issue in this proposal.

School Safety

With regards to comment 21a and 38b, pursuant to Chancellor's Regulation A-414, every school/campus must have a School Safety Committee, consisting of principals, designees of all other programs operating within the building, U.F.T. Chapter Leader, Custodial Engineer, and In-house School Safety Agent Level III. The committee plays an essential role in the establishment of safety procedures, the communication of expectations and responsibilities of students and staff, and the design of prevention and intervention strategies and programs specific to the needs of the school. The committee will be responsible for addressing safety matters on an ongoing basis and making appropriate recommendations to the Principal(s) when it identifies the need for additional security measures, intervention, training, etc.

With regards to comments 42g, if the different ages of students are within the same school, it is the Principal's responsibility to determine the best way to place the different classes in the school's space; if there are issues stemming from different age groups between the schools on in the same area, the Principals may use the Building Council to raise and address these concerns.

Similarly, with regard to 42m, middle school students sharing a floor with younger grade students is not uncommon, and Principals may arrange their classes as they deem most appropriate within their space.

With regard to comment 43, Safety Committee meetings occur once a month, every month as part of state ed. law. Safety plans are available around the last week in August. By September 30th all of the schools must submit to Borough Safety Directors for edits. By Thanksgiving the plans have all been turned over and certified by NYPD. Plans are done once a year and may be altered based on construction etc.

D3 Building Utilization

With regards to comment 22, schools in Manhattan typically have class size higher than the target and have building utilization rate above 100%. Many elementary school buildings operate safely and effectively above 100% capacity. The DOE anticipates the class sizes at the co-located schools to be over 100% utilization, which will still be comparable to those at the neighboring schools. Long-term, the DOE's Capital Budget provides for the construction of renovation of additional school facilities.

General

With regard to comment 26, the DOE believes that the revised EIS cites reasons why the proposal should move forward.

With regard to comments 30 and 31, which express several reasons for opposition and also raise the need for more resources to be allocated to other District 3 schools, and long-term capacity planning for District 3 needs. The co-location of a public charter school does not impact the resources available to other District 3 schools, other than by enrolling students who might have attended those schools. The DOE supports choice over requiring students to attend a school they do not prefer. Co-locating a public charter school that enrolls District 3 students helps address District 3 capacity needs by utilizing previously under-utilized space.

With regards to comment 33, this proposal is not based on the grades set forth in the DOE's School Progress Reports, but is made in response to the growing enrollment at HSA1 and the availability of space in School Building M149.

With regards to comment 34(f) and 80(a), which concern the attrition rate at Success Academy schools and imply that Success Academy schools expel students, the recent amendments to the charter law require charter schools to make public a variety of information, including attrition rates. This information should be available on August 1.

With regard to comment 55, the DOE cannot provide a specific hypothetical reason why a co-location would not be passed. However, proposals have been withdrawn in the past in response to public feedback.

With regard to comment 56, we cannot predict the outcome of the current lawsuit. The DOE will do everything we can to ensure parent expectations about where their children will attend school in September are met.

With regards to comment 80(b), which inquires whether the DOE approves of Harlem Success parents and students attending a pro-charter school rally, the DOE takes no position on this.

DOE School Funding

With regards to comment 29 and 42d, the DOE schools receive funding pursuant to the Fair Student Funding formula, which applies to all schools citywide. This proposal does not have an impact on that formula.

DOE response to public feedback

With regard to 34i and 40 the DOE values all public feedback on its proposals. Revisions to this and other proposals have been made as a result of feedback received. In addition to holding joint public hearings for every proposal, the DOE maintains several channels of communication, including phone lines and e-mail addresses that parents can use to provide feedback and share their opinions on proposals.

With regard to comment 71, parents who have had a child enrolled in a DOE school within the past two years in grades K-8 are eligible to run for election to a CEC. Thus a public charter school parent whose child previously attended a DOE school may run for election each of the first two years after the student enrolled in a public charter school. All parents are welcome to attend CEC meetings and participate. Charter schools may also develop their own parent associations or forums for parental engagement with the school.

In response to comment 72, Roosevelt Callahan, Jenny Sedlis and Nicole Foster from Success Charter Network all attended the hearing.

In response to comment 75, the revised Building Utilization Plan provides the room allocation for each school for the 2012-2013 school year, after HSA 1's 5th and 6th grades have relocated. In this allocation, both P.S./I.S. 149 and HSA 1 are allocated space above their baseline footprint in proportion to their enrollment. There will be no change in the room allocation between the schools from 2011-2012 to 2012-2013.

In response to comment 63, all schools operated by the Department of Education are public schools; all charter schools authorized by NYSED, SUNY or the Department of Education are also public schools. These schools enroll students at no charge and are funded by tax revenues, among other sources.

With regards to comment 80, the DOE does not make corrections to the transcripts. As stated and signed by the transcriptionists at the bottom of each transcript, these are transcribed from audio recording by them to the best of their ability.

Comments 6, 8, 11, 12, 13, 17, 20b, 39, 41, 44, 45, 46, 47, and 48 do not require a response because they either do not address the proposal, or express unqualified support for the proposal as posted.

Changes Made to the Proposal

On May 31, 2011, the DOE revised this proposal. This EIS has been modified as follows:

- Current enrollment figures have been updated to reflect the 2010 Audited Register;
- Projected enrollment for P.S. 149 has been updated to conform with final budget register projections for 2011-2012;
- The potential impact of a recently filed lawsuit on a related proposal concerning the re-siting and co-location of certain of HSA 1's grades prior to the 2012-2013 school year has been included;
- The State Education Department's approval of HSA1's charter renewal and grade expansion has been included;
- P811M's other sites have been identified;
- Additional information concerning building capacity calculations has been included;
- Additional information about the middle school choice process has been included;
- Information about the HSA1 admissions and lottery priorities has been corrected; and
- Additional information about school funding has been included.

The DOE also revised the BUP as follows:

- Formatting and typographical errors have been corrected;
- Current and projected enrollment figures have been updated;
- The total number of rooms available to be allocated between the schools has been adjusted;
- Room allocations have been adjusted;
- The number of gymnasiums in M149/M207 has been corrected;
- The proposed shared space schedule has been adjusted; and
- The DOE has clarified the rationale for the amount of time that each co-located school is allocated in the proposed shared space schedule.