

### **Public Comment Analysis**

Date: December 19, 2012

Topic: The Proposed Co-location of a New Public Charter School Success Academy Charter School Brooklyn 5 (84KTBD) with Existing Schools Dr. Susan S. McKinney Secondary School of the Arts (13K265) and a District 75 Inclusion Program P369K@265K (75K369) in Building K265 Beginning in 2013-2014

Date of Panel Vote: December 20, 2012

### **Summary of Proposal**

The New York City Department of Education (“DOE”) is proposing to site Success Academy Charter School Brooklyn 5 (84KTBD, “SA- Brooklyn 5”), a new public charter school that will serve students in kindergarten through fifth grade in building K265 (“K265”), located at 101 Park Avenue, Brooklyn, NY 11205, in Community School District 13 beginning in 2013-2014. If this proposal is approved, SA-Brooklyn 5 would open in September 2013 and would serve 164-210 students in kindergarten and first grade, and would add one grade each year until it reaches full scale in 2017-2018. At that time, SA-Brooklyn 5 would serve approximately 434-556 students in kindergarten through fifth grade.

SA- Brooklyn 5 would be co-located in K265 with Dr. Susan S. McKinney Secondary School of the Arts (13K265, “McKinney”), an existing secondary school that serves students in sixth through twelfth grades and a District 75 (“D75”) inclusion program, P369K@265K<sup>1</sup> (“P369K@265K”), in building K265. P369K@265K serves students in sixth through twelfth grade who attend general education classes at McKinney. Students at P369K@265K receive Special Education Teacher Support Services (“SETSS”) from staff of K369. K265 also houses the District 13 School Food Field Office and a community-based organization (“CBO”), Partnerships With Kids. A “co-location” means that two or more school organizations are located in the same building and may share common spaces like auditoriums, gymnasiums, and cafeterias.

In a D75 inclusion program, students with disabilities receive special education services in a general

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<sup>1</sup> 75K369 is an existing District 75 school currently sited at ten locations in Brooklyn, including K265. Other sites of this organization include: building K389 located at 383 State Street, Brooklyn, NY 11217; building K005 located at 820 Hancock Street, Brooklyn, NY 11233; building K056 located at 170 Gates Avenue, Brooklyn, NY 11238; building K067 located at 41 Saint Edwards Street, Brooklyn, NY 11205; building K117 located at 300 Willoughby Avenue, Brooklyn, NY 11201; building K261 located at 314 Pacific Street, Brooklyn, NY 11201; building K313 located at 283 Adams Street, Brooklyn, NY 11212; building K327 located at 111 Bristol Street, Brooklyn, NY 11212; and building K580 located at 105 Johnson Street, Brooklyn, NY 11201.

education classroom along with general education students. Thus, students at P369K@265K are enrolled in general education classes at McKinney based on their Individualized Education Program (“IEP”) recommendations and receive SETSS as well.

SA- Brooklyn 5 is a new public charter school that is authorized by its charter authorizer, the State University of New York Charter Schools Institute (“SUNY”), to serve grades K-5. Success Academy Charter Schools (“SACS”) is a charter management organization that currently operates 12 public elementary charter schools in New York City. SACS has been authorized by SUNY to operate six new public elementary charter schools starting in 2013-2014, including SA- Brooklyn 5. The four SACS elementary schools that received a Progress Report for both the 2010-2011 and the 2011-2012 school year received an overall grade of A.

If this proposal is approved, SA- Brooklyn 5 would open in September 2013 and would serve 164-210 students in kindergarten and first grade, and would add one grade each year until it reaches full scale in 2017-2018. At that time, SA- Brooklyn 5 would serve approximately 434-556 students in kindergarten through fifth grade. The school would admit students via the charter lottery application process, with preference given to District 13 residents, and a set aside, described in more detail below, for English Language Learners.<sup>2</sup>

K265 has been identified as an underutilized building. K265 has the capacity to serve 1,035 students, but in 2012-2013, McKinney and P369@265K are only projected to serve 470 students.<sup>3</sup> This yields a building utilization rate of approximately 45%,<sup>4</sup> which demonstrates that the building is “underutilized” and has space to accommodate additional students. In 2017-2018, SA- Brooklyn 5, McKinney and P369@265K would collectively serve 864-1,060 students in the building, which yields a projected utilization rate of 83% - 102%. As discussed in Section III.B, and in the attached Building Utilization Plan (“BUP”), while the anticipated utilization rate is in excess of 100%, all schools will receive space that meets all of their instructional needs.

The DOE supports SA- Brooklyn 5’s placement in District 13 and anticipates that it will provide excellent educational opportunities for students.

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<sup>2</sup> For more information about the charter school lottery application process, please consult the DOE’s directory of NYC Charter Schools, which can be accessed on the DOE’s website: <http://schools.nyc.gov/community/planning/charters/For+Parents>.

<sup>3</sup> Based on the 2012-2013 Budget Register Projections

<sup>4</sup> All references to building utilization rates in this document are based on target capacity data from the 2010-2011 Enrollment, Capacity and Utilization Report (“Blue Book”) and enrollment data from the 2012-2013 budgeted enrollment projections. This methodology is consistent with the manner in which the DOE conducts planning and calculates space allocations and funding for all schools. In determining the space allocation for co-located schools, the Office of Space Planning conducts a detailed site survey and space analysis of the building to assess the amount of space available in the building.

### **Summary of Comments Received at the Joint Public Hearing**

A joint public hearing regarding this proposal was held at K265 on December 7, 2012. At that hearing, interested parties had an opportunity to provide input on the proposal. Approximately 100 members of the public attended the hearing, and approximately 21 people spoke. Present at the meeting were Senior Superintendent Elaine Gorman, High School Superintendent Karen Watts, Citywide Council on High Schools member Monique Lindsay, Principal of McKinney Paula Holmes, and McKinney School Leadership Team (“SLT”) member Celia Green. New York City Councilmember Letitia James was also present. Additionally, Carrie Marlin from the Division of Portfolio Planning was also present, as was Thomas Franta from SUNY. Members of the Community Education Council (“CEC”) 13 and the SLT of P369@265K were invited to the Joint Public Hearing but did not attend.

The following comments and remarks were made at the Joint Public Hearing on December 7, 2012:

- 1) New York City Council Member Letitia James stated that:
  - a) CEC 13 would not participate in the joint public hearing for this proposal because it was a flawed process.
  - b) Schools in District 13 are hurting for resources and this co-location will destroy a school that is thriving and needs support from the DOE.
  - c) She does not oppose charter schools, but this is a flawed process that has less to do with education and more to do with real estate.
  - d) The DOE sets schools up for failure when it denies them resources and support.
  - e) Schools should invest in the talents of all children and should not cherry pick the best children.
  - f) The charter process is not transparent and the DOE should not have ignored her phone calls because she is an elected official.
  - g) This is a “beat the clock” moment for the Bloomberg administration.
  - h) If Success Academy really cares about serving students, why is there a waiver for students with Individualized Education Programs (“IEPs”)?
  - i) The D75 School has a waiting list, but the DOE has denied them the opportunity to expand.
- 2) Monique Lindsay, Brooklyn representative on the Citywide Council on High Schools, stated that she would not offer a statement on the proposal because she is standing in solidarity with the CEC.
- 3) A representative from the SLT asserted that:
  - a) This whole process is undermining children.
  - b) This proposal should be null and void.
  - c) Children are striving for academic excellence and this proposal will not allow for this to happen.
- 4) A commenter asserted that:
  - a) The DOE’s plans to construct new performing arts spaces will either displace students or force them to move elsewhere.
  - b) We are a D75 school, not D79. There is no D79 program in the building.

- c) The commenter stated that during an initial meeting an Office of Portfolio Management representative stated “don’t think of this as a punishment.”
  - d) This is one of the few programs that serves D75 students in District 13.
  - e) As a result of this proposal the utilization or capacity of the building will be 110%. No school wants to operate at 110% or even 100%. This utilization rate will result in overcrowding, less attention paid to students, and a greater chance of failure.
  - f) This proposal is only going to work if you cap enrollment at K265 and P369@265K.
  - g) The D75 program has 12 students who are appropriate in age and talent, but the school was denied the opportunity to expand.
  - h) The DOE sets schools up for failure by starving them of resources and support.
  - i) Real choice does not mean a lottery; it should be a school that serves students on a first come, first served basis.
  - j) Special-education reform was not considered since it was not included in the proposal anywhere.
  - k) Success Academy has six schools up for a PEP vote. Why does the school feel the need to conquer the city?
- 5) A McKinney student stated:
- a) Success Academy should not be co-located in my school building.
  - b) In proposing to co-locate the charter school in the building, the DOE only evaluates the available space, but it does not consider that the space is used to make students one-step closer to their dreams. What’s a performing arts school with no performing arts?
  - c) I can't learn in a class with 30 students.
  - d) Students will be trampled and the DOE will fail the students.
- 6) A student stated:
- a) That the idea of putting 800-100 students in a 400-student building is appalling.
  - b) Students will starve with the proposed lunch schedule.
  - c) Why would you put preschoolers in a high school and middle school building?
- 7) A student stated that:
- a) This proposal is a bad idea
  - b) I’m a senior and dance is my major. If the charter school comes, there will be no more dances and no more art. What about us?
  - c) As a basketball player, I don’t want to share the gym.
  - d) A charter school in the building will be hazardous.
- 8) A student discussed how McKinney greatly benefitted her over the years and the performing arts programs that the school offers provides a lot of diversity. She also sung an opera song and asserted that:
- a) Turning our school into a charter school will not be good.
- 9) A student asserted that:
- a) By putting a charter school in the building, the DOE is ruining the dreams of McKinney students to excel in performing arts programs.
  - b) It is not fair for Eva Moskowitz to bully her way into our schools.
- 10) Two students asserted that:

- a) The co-location will be extremely dangerous and the effects of the proposal will not be beneficial for the students.
  - b) Students' practice performance spaces are on the third floor, which is where Success will be located.
  - c) The building may fit 1025 students, but not comfortably. This neighborhood is dangerous and the DOE should not make the school dangerous.
  - d) The school is a performing arts school, not a nursery. We should not have to watch kindergarten students in our schools.
- 11) Another student asserted that:
- a) McKinney has been the best for him and the charter school will be the downfall. The charter school will eliminate all of the spaces necessary for the arts programs.
  - b) An elementary school does not belong in the building.
- 12) A community member noted that his mother has been a public school teacher in District 13. He also stated that:
- a) He is not against charter schools, but he believes that when they are co-located with public schools, the aftermath is terrible.
  - b) The teachers are unhappy and you can see the difference between charter schools and public schools in terms of resources.
  - c) The DOE should listen to these comments and be more responsible. If this is going to get done, the DOE needs to co-locate the schools responsibly.
- 13) A parent asserted that:
- a) He is not against charter schools because every parent has the right to choose what school their children go to.
  - b) But he is against Success coming into the building because elementary school kids should not be co-located with middle school and high school students.
  - c) The charter will ruin the performing arts courses.
  - d) Eva Moskowitz does not have to accept special education children.
  - e) Every year Success is co-located with McKinney, the others will have to cap enrollment and what would happen to the students who cannot attend the schools as a result?
- 14) Another commenter applauded the performances and the opinions of the students. He also expressed approval for the partnerships McKinney has and noted that this proposal will create less space and less time in shared spaces for students, and will therefore have an overall negative effect on McKinney students.
- 15) A commenter stated that she has been a teacher in District 13 for 24 years and noted that she was at the hearing to support McKinney because of its good reputation. She also asserted that:
- a) She supports CEC 13's boycott of the hearing. She stated that the hearing process is a very undemocratic process and that the proposal would go to the PEP which is a "puppet policy panel" that will vote against what is right.
  - b) She reminded the public that next mayoral election is in November and told the public to pay attention to the race. She further stated that this is just the dictatorship of the mayor.

- 16) A commenter stated that she is here to represent both McKinney and Success Academy because she will stand up for all children. She opposes this proposal because it will not work for any of the children. She asserted that when you phase-in a school, something has to be phased out.
- 17) One commenter asserted that:
- Eva Moskowitz should not be allowed to co-locate a school in this building. A charter school will affect the children already here.
  - This proposal is just an example of the privatization of public education.
  - Why did Eva get a waiver so she does not have to accept special education children?
  - When will the panel listen to the public?
- 18) One commenter asserted that:
- Charter schools mentally abuse children.
  - If Success is funded by a private organization, how come they can't buy their own building?
- 19) A teacher who has been a teacher in many district middle schools stated that the students at McKinney are the most behaved because of their arts programs. He also asserted that
- Space on third floor is not underutilized, and that space on every floor is utilized.
  - Five states now have grants to put in arts in schools. How come the DOE is trying to take away the arts programs from the school?
- 20) One commenter spoke in support of Success.
- 21) One commenter asserted that:
- He has a big problem with charter schools, but he will apply for a spot for his child at the charter school because he needs more options.
  - Education by lottery process is disgusting, just as disgusting as paying taxes for real estate.
  - All private schools have music and arts programs, and Bloomberg's children go to schools with arts programs.
  - This proposal represents reverse busing. Busing middle class kids to bring them into poor schools and take resources from other students. Other examples include the proposal to co-locate Community Roots in a DOE building.
  - Only the public schools admit students based on zones; charter schools don't look at zones when admitting students.
  - Clearly this proposal is a done deal because Success was not present at the hearing.
- 22) The art teacher at McKinney spoke about how she does not know how to explain to her students about where the art room will go. She explained how she already does not have enough space to teach six grade students and stores supplies for her students.
- 23) The theater teacher asserted that:
- He has a double classroom where one side is a Black Box theater and another side is a regular classroom. To you it looks like two rooms, to us it looks like an opportunity to actually learn something.
  - He does not think it benefits elementary students to walk around with high school students.
- 24) Multiple commenters stated that the proposal would cause the school to be unsafe.
- 25) Another commenter asserted that:
- Charter schools want to be located in DOE buildings because of underutilized space.

- b) The Arts are one of the greatest forms of mental development that you can have.
  - c) Privatization of education makes it separate but unequal.
  - d) Resources should be going to public schools, not private corporations.
- 26) Another commenter stated that she is not here for District 13 or as a CEC member from a neighboring district, but she is here as a parent of child who just auditioned at McKinney. She asserted that:
- a) She is not opposed to charter schools because they do many good things, but she is opposed to the DOE taking advantage of her community.
  - b) What gives Success Academy the right to accept student applications before the hearing?
  - c) Who gave Success Academy legal access or rights to our mailing list and our private info?
  - d) Does Success Academy have authorization or parental consent to videotape students?
  - e) We don't need your one dollar a month, pay some real rental income to the DOE.
  - f) We will not support Eva for mayor.

In addition to collecting feedback at the Joint Public Hearing referenced above, the DOE solicited feedback on this proposal via email, telephone and an internet feedback form.

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

- 27) The DOE received approximately 151 letters from parents and community members that stated:
- a. Parents selected McKinney for their children based on the school's academic and performing arts program, as well as the inclusion of special needs students in classes, small class sizes, and its excellent safety and track record.
  - b. This proposal will interfere with McKinney's success and will have a severe overall impact on a students' educational growth and performance.
  - c. Over the past ten years, the school has improved due to the school's programs, not because of its geographical proximity.
  - d. Students travel throughout the five boroughs, as well as Fort Greene and Farragut, to attend McKinney.
  - e. Parents feel secure that their children will receive a high quality education in a safe environment and feel that their children will be nurtured and adequately prepared for the future.
  - f. The DOE is making an egregious error by moving forward with this proposal and is doing a real disservice to the students and the community by supporting this charter proposal.
  - g. It is unacceptable and insulting that parents were not consulted in a decision of this magnitude during the planning stages.
  - h. Parents were only informed when it is time to move towards a vote from the Panel for Educational Policy.
- 28) A representative on behalf of Council Member Letitia James announced a press conference opposing the proposal and also stated that:

- a. The co-location of Success Academy Brooklyn 5 will compromise or eliminate the mandated services for District 75 students with an Individualized Education Program.
  - b. The co-location will diminish McKinney's educational mandate and its ability to offer classes in drama, chorus, dance, and visual arts.
  - c. The EIS states that the school will operate at 102% capacity. Operating above capacity will endanger students, compromise education, and eliminate state mandated resource rooms for children who attend P369@K265 and students with IEPs.
  - d. The DOE's expansion of charter schools has led to greater inequalities and a higher concentration of students with disabilities in our district public schools.
  - e. Charter schools have taken up increased amounts of critical space from the district schools that educate the neediest students, including in many cases libraries, classrooms, and intervention spaces, which leads to unacceptable conditions.
- 29) A parent of a student at McKinney asserted that:
- a. The charter school will occupy the top floor of the school.
  - b. This proposal will have a negative impact on children who currently attend McKinney because it will limit the amount of resources that current middle and high school students have.
  - c. The facility now has a dance room furnished with mirrors and ballet bars and music rooms which will be turned into classrooms for the charter school.
  - d. The commenter was opposed to co-locating students of all ages in one facility and was concerned about the safety of the children in the common spaces.
  - e. The commenter stated that the proposal would negatively impact the arts program, there would be safety concerns, overcrowded classrooms, and it would strip away resources for both students and faculty,
  - f. The commenter noted that the loss of the dance spaces would be detrimental to the education and development of her child.
  - g. The commenter also noted that McKinney is not an underperforming school and noted that it makes more sense to propose a charter within a facility that is desperately struggling.
- 30) A commenter wrote in support of opening SA Brooklyn-5.
- 31) The commenter noted that her child attends Success Academy Williamsburg and that Success Academy incorporates proven effective educational methods and implements progressive approaches to education. The commenter noted that Success Academy's rigorous curriculum, class sizes, positive school environment and effective staff provide quality education to children in New York City.
- 32) A commenter wrote in support of opening SA Brooklyn-5 for the following reasons:
- a) The commenter felt that parents should have more choices in selecting a school for their child, not fewer.
  - b) The commenter noted that charter school co-location merely makes use of existing classroom overcapacity, and does not hurt the children of local public school, and also raises the standards for all school children through competition.
  - c) The commenter also noted his daughter is an English Language Learner, and that she has progressed academically and developmentally at Success Academy.

- 33) A commenter wrote to support the proposal and stated that Success Academy gave her equal access to an exceptional public school.
- 34) A commenter wrote to support the proposal, noting that as a District 13 resident, the district needs access to more school options. The commenter also noted that Success Academy offers rigorous programming, multiple after-school programs, and an effective staff.
- 35) Four commenters wrote in support of the proposal, noting Success Academy staff is extremely competent and dedicated and that the community needs more educational options to the neighborhood.

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

Comments 13(a), 20, 30, 31, 32(a), 32(b), 32(c), 33, 34, and 35 are in favor of the proposal and do not require a response.

Comments 1(a), 1(c), 1(d), 1(e), 1(f), 1(g), 2, 3(a), 3(b), 4(b), 15(a), 15(b), 18(a), 21(b), 21(c), 21(d), 21(e), 21(f), 25(a), 25(d), 26(a), 26(e), and 26(f) are not directly related to the proposal and thus do not require a response.

Comments 3(c), 4(k), 5(a), 7(a), 8(a), 9(b), 12(a), 12(c), 17(a), 21(a), 27(a), 27(b), 27(d), 27(e), 27(f), 27(g), 29(b), 29(e), and 29(g) voice general opposition to the proposal. The DOE notes there is a need for increased options for students in the Brooklyn, including those students located in District 13. The DOE strives to ensure that all students in New York City have access to various educational options at every stage of their education. This proposal aims to provide a new option for these students.

The four operating SACS schools that received a Progress Report for the 2010-2011 and 2011-2012 school years received an overall grade of A. Further, students at SACS schools have performed well on Statewide standardized tests. At these schools, 96% of students tested proficient in Math on the New York State Tests in 2012 and 88% of students tested proficient in ELA

Comments 4(e), 4(f), 5(c), 5(d), 6(a), 10(c), 13(e), 19(a), 22, and 23 assert that the school does not have enough space to accommodate the charter school.

There are currently hundreds of schools in buildings across the city that are co-located; some of these co-locations involve multiple DOE schools, while others involve DOE schools and public charter schools sharing space. The DOE seeks to fully utilize all of its building capacity to serve students. The DOE does not distinguish between students attending public charter schools and students attending DOE schools. In all cases, the DOE seeks to provide high quality education and allow parents and students to choose where to attend.

The Citywide Instructional Footprint (the “Footprint”) is the guide used to allocate space to all schools based on the number of class sections the school programs and the grade levels served by the school. The number of class sections at each school is determined by the Principal based on enrollment, budget, and

student needs and there is a target class size based on the number of students in a class section for each grade level. At the middle school and high school levels, the Footprint assumes every classroom is programmed during every period of the school day except for lunch period. The full text of the Instructional Footprint is available at [http://schools.nyc.gov/NR/rdonlyres/78D715EA-EC50-4AD1-82D1-1CAC544F5D30/0/DOEFOOTPRINTSConsolidatedVersion2011\\_FINAL.pdf](http://schools.nyc.gov/NR/rdonlyres/78D715EA-EC50-4AD1-82D1-1CAC544F5D30/0/DOEFOOTPRINTSConsolidatedVersion2011_FINAL.pdf).

The Building Utilization Plan (“BUP”) sets forth the baseline number of rooms to be allocated to each school pursuant to the Footprint, as well as the total number rooms in a building to provide a more complete picture of the availability of space in a building. The BUP also provides the number of class sections each school is anticipated to serve each year during the phase-in of SA-5. If this proposed co-location is approved, in 2017-2018, McKinney will be allocated 23 full-size, 3 half-size rooms and 2.5 full size equivalent spaces (“FSE”) in designed administrative space. The full-size room count includes 3 additional full-size rooms on top of the school’s baseline footprint for performing arts spaces. P369@265K will be allocated 1 full-size room and SA- Brooklyn 5 will be allocated 23 full-size and 6 half-size rooms and 3.0 FSE in designed administrative space. This is adequate amount of space, according to the Footprint, to serve each of the school’s projected enrollments, based on programming and grades served.

In the fifth year of the proposal’s implementation, SA-Brooklyn 5 will receive its baseline allocation of instructional rooms, but will not receive certain administrative space, cluster rooms or resource rooms that it would otherwise receive under the Footprint. SA Brooklyn- 5 agrees, however, that it can adequately operate within the space the DOE has allocated in the BUP during the 2017-2018 school year because SACS uses different class size and space programming assumptions than the Footprint. Therefore, SA Brooklyn-5 believes it has the ability to continue to effectively deliver instruction in the space allocated by this BUP.

As noted in the EIS, K265 has the capacity to serve 1,035 students. If this proposal is approved, building K265 would collectively serve 864-1,060 students in the building, which yields a projected utilization rate of 83% - 102%. As discussed above and in the BUP, while the anticipated utilization rate is in excess of 100%, all schools will receive space that meets all of their instructional needs. 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. In addition, charter school enrollment plans frequently contemplate larger class sizes than target capacity, bringing, as here, building utilization to 100% while not impacting the utilization of the space allocated to either McKinney or to P369@265K.

Comments 4(a), 5 (b), 7(b), 9(a), 10(b), 11(a), 13(c) , 19(b), 25 (b), 28(b), 29(a) , 29 (c), and 29(f) suggest that performing arts spaces or McKinney’s ability to provide performing arts programs will be eliminated if this proposal is approved.

The DOE understands that McKinney students and parents and the community in general are enthusiastic about the arts programming offered at the school. The DOE does not believe the proposal will diminish the arts programming or the availability of arts programming at the school by proposing to co-locate SA-

Brooklyn 5 in the building. The DOE further notes that the assignment of specific rooms and the location of each school organization in the building will be made by the Office of Space Planning in consultation with the Building Council and if this proposal is approved and therefore no decision has been made yet. If this proposal is approved, and Office of Space Planning eventually sites Success Academy in a location that impacts McKinney's use of particular performing arts spaces in the building, the DOE is committed to recreating the impacted performance spaces in another location in the building. Thus, the DOE does not foresee that this proposal will affect students' access to performing art spaces.

Comments 1(h), 13(d), and 17(c) suggest that charter applicants can be exempted from the requirement to teach all students, including students with special needs.

The DOE is not aware of a waiver that exists that allows charter schools to be exempted from the requirement to serve Special Education students. Further, the DOE is not aware of Success Academy having a waiver that would allow the school to avoid teaching special education students. Under recent amendments to state law, public charter schools must 1) serve all students who are admitted through their lotteries, and 2) serve a percentage 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. SACS must admit all students according to its lottery preferences, and may not turn away a student because of language ability, behavioral problems or services required by an IEP.

Comment 1(i) and 4(g) suggest that P369@265K applied to expand but was denied.

P369@265K is an inclusion program, where students receive pull out services to meet their IEPs but are served in a general education class room at McKinney. The DOE notes that if District 75 seeks to increase enrollment at P369@265K in the future, this proposal will not affect the decision increase enrollment as P369@265K students are served in McKinney's space allocation in any case.

Comment 4(d) suggest that there are few D75 programs in District 13.

This proposal does not limit access to D75 programs in the district, nor does it limit P369@265K's ability to continue to enroll students and offer services.

Comment 4(f) and 13(e) suggest that this proposal will cause McKinney and P369@265K to cap enrollment.

The EIS projects the schools' enrollments based on 2012-2013 budget projections. The projected figures in the EIS are consistent with historical enrollment trends at each school. It has come to our attention that this year's actual enrollment for McKinney exceeds the projections as listed in the EIS. The DOE projected that McKinney would serve 448<sup>5</sup> students in 2012-2013, but it is actually serving 509<sup>6</sup> students. But, even with the addition of 61 students, the space the DOE has allocated to McKinney in the BUP will

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<sup>5</sup> 2012-2013 Budgeted Projections

<sup>6</sup> Unaudited enrollment data from October 26, 2012.

suffice because of the following reasons: the DOE allocates space based on the higher range of its projections, and the excess space allocated to McKinney in the BUP would be sufficient to allow for an increase in enrollment of this size. Thus, McKinney's current enrollment does not materially impact the space allocation proposed in EIS and BUP. While there is no "cap" proposed, enrollment at any school is based upon demand, performance, and available space, and seat targets for McKinney are established annually based on these factors. Thus, there has not been a cap established for enrollment at McKinney.

The DOE also projected that P369@265K would continue to serve 20-24 students based on historical enrollment trends. At no point has the DOE suggested that P369@265K would have to cap enrollment.

Comment 26(b) and 26(c) suggest that Success Academy has distributed and is accepting applications for this new proposed school even though the proposal to site SA-Brooklyn 5 in the building has not been approved by the PEP and that Success Academy received legal access to private mailing lists.

Although the proposed co-location of SA – Brooklyn 5 at K265 has not yet been approved, the charter was authorized by its charter authorizer, SUNY, to open in 2013-2014 in Brooklyn. Charter schools often launch targeted community outreach and student recruitment efforts designed to inform families and the community at large about their school and to attract families to apply and enroll in the schools. Charter schools maintain the right to advertise their programs and recruit students to apply for entry through the school's blind lottery process, which is typically held in April. Non-charter public schools also maintain the right to advertise their school and its programs. Any mention of the proposed locations of the schools should be listed as pending PEP approval. The DOE does not have access to the information Success Academy may have used to send out recruitment materials but school organizations, including charter applicants, have the right to purchase targeted mailing lists from private purveyors.

Comment 26(d) asked if SACS has authorization or parental consent to videotape students.

All parties are allowed to record the proceedings of any meeting open to the public. At the December 7, 2012 joint public hearing for this proposal, while not mandated to do so, SACS agreed to turn the cameras away from students when they were submitting public comment, at the request of McKinney's school leadership.

Comments 1(b), 1(d), 4(h), 12(b), 14, 16, 25(d), 28(d), and 28(e) contend that charter schools have inequitable access to space and resources as compared to traditional public schools.

With regard to the distribution of space, as discussed above, the DOE applies the Footprint to allocate instructional and administrative space to school organizations.

With regard to funding and other resources, charter schools receive public funding pursuant to a formula created by the state legislature, and overseen by the New York State Education Department. The DOE does not control this formula, and the funding formula for SACS is not affected by the approval or rejection of this proposal. Charter management organizations, just like any other school Citywide, may also choose to raise additional funds to purchase various resources they feel would benefit their students (e.g., Smartboards, fieldtrips, etc). However, pursuant to Chancellor's Regulation A-190, the Chancellor

or his/her designee must first authorize in writing any proposed capital improvement or facility upgrade in excess of five thousand dollars, regardless of the source of funding, made to accommodate the co-location of a charter school within a public school building. For any such improvements or upgrades that have been approved by the Chancellor, capital improvements or facility upgrades shall be made in an amount equal to the expenditure of the charter school for each non-charter school within the public school building.

With respect to concerns that charter schools “funnel” resources away from DOE schools, it should be noted that charter schools receive public funding based on their student enrollment, as do DOE schools. To the extent that a student opts to attend a charter school rather than a particular zoned DOE school, that zoned DOE school’s enrollment may decline, resulting in less per student funding. However, this very same result occurs whenever a student decides to attend a choice, unzoned DOE school, rather than his or her zoned school. In this regard, the impact of a parent selecting a charter school is no different than the impact of a parent selecting an alternative DOE school. The DOE believes that parents should have the ability to choose where they wish to send their child for school because this is of paramount importance. As a result, the DOE is committed to increasing the educational options available to families.

Comment 17(b) and 25(c) asserts that charter schools represent the privatization of education.

Charter schools are public schools available to all residents of New York City. They are publicly funded in a similar manner as district schools, but are operated by external organizations. Each school is governed by an independent board of directors. Under recent amendments to New York state law, for-profit entities may not operate new charter schools in the state.

Comments 18(b) suggest that SACS should open schools in private space.

The DOE seeks to provide space to education options for all students, regardless of whether they are served in DOE or public charter schools. The DOE welcomes public charter schools to lease space or provide their own space but will continue to offer space in DOE schools where it is feasible to do so.

Comments 1(e) and 4(i) assert that SACS has higher performing students because it is able to ‘select’ its own students.

Public charter schools are not able to select their own students, but rather must admit students through a charter lottery process. Lotteries select students randomly from among the applicant pool. In contrast, screened schools such as Brooklyn Technical High School are able to select their students based on academic achievement, attendance, teacher recommendation, and admissions tests. Moreover, zoned schools admit students based on home address, which is frequently correlated with income and parental education levels.

Comment 4(j) suggests that special education reform was not considered in this proposal.

As discussed in the EIS, the proposed co-location is not expected to impact the instructional programming at McKinney or P369@265K. In addition to General Education (“GE”) classes, McKinney currently offer

Integrated Co-Teaching (“ICT”), self-contained (“SC”) special education classes, Special Education Teacher Support Services (“SETSS”), and an English as a Second Language (“ESL”) program for ELL students. McKinney will continue to provide all of these programs, and students with disabilities will continue to receive all mandated services in accordance with their Individualized Educational Programs. ELL students at McKinney will also continue to receive mandated services. P369@265K provides inclusion programming for the D75 students served at the K265 site. The students served in the P369@265K program at the K265 site will not be impacted by this proposal and will continue to receive self-contained services and inclusion programming based on each student’s IEP. The DOE does not anticipate any impact to instructional programming at any of the schools or programs in the K265 building.

Additionally, the special education reform will not be impacted by this proposal and schools should continue to implement the initiative consistent with the DOE’s policy.

Comment 17(d) concerns the PEP’s review of public comments.

Consistent with state law, the DOE will provide an analysis of all public comments received on this proposal at least 24 hours before the scheduled PEP vote on this proposal. Thus, the PEP does review the public comments received on this proposal prior to voting on the proposal.

Comments 6(c), 10(d), 11(b), 13(b), 23(b), and 29(d) question placing elementary students in a building with high school students.

There are several successful examples of K-12 buildings or campuses, such as the Julia Richman Educational Complex, which houses four small high schools, a K-8 school, and a D75 program; Harlem Success Academy Charter School 4, an elementary school, which is co-located with Opportunity Charter School serving grades 6-12 in District 3; M013 in District 4, which houses an elementary school, a middle school, and a high school; and the Adlai Stevenson Campus in the Bronx which houses eight high schools, an Alternative Learning Center, and P.S. 138’s pre-kindergarten program. There are also numerous private schools Citywide that operate K-12 in a single building. The DOE is not aware of any increase in the number or severity of disciplinary problems at the DOE campuses where elementary and high school students are co-located. Furthermore, the DOE has no reason to believe that mixed grade level co-locations result in an increased of instructional or administrative demands on school administrators or staff.

Comment 5(d), 7(d), 10(a), and 24 claim that the proposal will impact McKinney students’ education and safety.

As discussed above, the DOE believes that this proposal will not cause any safety concerns and the DOE is proposing to co-locate SA-Brooklyn 5 in District 13 in order to provide additional educational options for families.

Pursuant to Chancellor's Regulation A-414, every school or campus is mandated to form a School Safety Committee, which is responsible for developing a comprehensive School Safety Plan that defines the normal operations of the site and what procedures are in place in the event of an emergency. The School Safety Plan is updated annually by the Committee to meet the changing security needs, changes in organization and building conditions and any other factors; these updates could also be made at any other time when it is necessary to address security concerns. The Committee will also address safety matters on an ongoing basis and make appropriate recommendations to the Principal(s) when it identifies the need for additional security measures.

If this proposal is passed, the School Safety Plan would be revised to ensure the safety of all students on the K265 campus.

Comments 6(b) and 7(c) concern questions regarding the usage of shared spaces.

The BUP includes a proposed shared space schedule for the co-located schools. The final shared space schedule will be finalized by the Building Council if this proposed co-location is approved by the PEP. Principals of the co-located schools sit on the Building Council and are free to deviate from the proposed plan and create a shared space schedule as long as it is agreed upon by both parties. The proposed shared space schedule in the BUP does demonstrate that all schools will receive enough time in the cafeteria and gymnasium, as well as the other shared spaces, to serve their students based on the school's enrollment.

If the Building Council is unable to agree upon a schedule for shared spaces, there is a mediation process outlined in the Campus Policy Memo, which is available at <http://schools.nyc.gov/community/campusgov>.

Comments 10(b) and 19(a) suggest that Success Academy will be located on the third floor, therefore eliminating the performing arts spaces available to McKinney students.

As previously stated, if this proposal is approved, the Office of Space Planning would decide actual room placement in consultation with the Building Council. Should the decision include allocating space to SA-Brooklyn 5 that is currently used for the arts program at McKinney, the DOE will recreate the impacted rooms in other areas of the building in order to continue supporting McKinney's programming needs.

Comment 28(a) and 28(c) assert that the proposal either compromises or eliminates the mandated services that should be provided to D75 students.

As noted in the EIS, this proposal will not have an effect on the D75 inclusion program located in the school. P369K@265K is a District 75 school that serves students in sixth through twelfth grades. P369K@265K serves 22 inclusion students with a range of disabilities and IEPs. Inclusion students at P369K@265K attend most general education classes alongside McKinney students, but also receive pull-out services or SETTS classes to support their IEPs. These students receive the pull-out services in a room designated for P369@265K in the K265 building. As SA- Brooklyn 5 phases in, student enrollment

at P369K@265K is expected to remain constant. This proposal is not expected to impact P369K@265K students currently attending school in K265, as these students will continue to receive all mandated services per their IEPs.

Moreover, P369@265K will be allocated 1 full-size room to provide pull-out services or SETTTS, which is appropriate based on the school's programming and projected enrollment.

### **Changes Made to the Proposal**

No further changes were made to the revised proposal.