

Public Comment Analysis¹

Date: March 8, 2013
Topic: The Proposed Opening and Co-location of a New Middle School (19K654) with Existing Schools J.H.S. 166 George Gershwin (19K166), The UFT Charter School (84K359), and Achievement First Charter High School 2 in Building K166 Beginning in 2013-2014
Date of Panel Vote: March 11, 2013

Summary of Proposal

The New York City Department of Education (“DOE”) is proposing to co-locate a New District Middle school (19K654, “19K654”) in building K166 (“K166”) located at 800 Van Siclen Avenue, Brooklyn, NY 11207, in Community School District 19 (“District 19”). If this proposal is approved, 19K654 will be co-located in K166 with J.H.S. 166 George Gershwin (19K166, “J.H.S. 166”), an existing district middle school that serves students in sixth through eighth grades, and The UFT Charter School (84K359, “UFT Charter”), an existing public charter school that currently serves students in kindergarten through twelfth grades in two separate sites.² At K166, UFT Charter serves students in grades six through twelve. At another location, in building K292 (“K292”), which is located at 300 Wyona Street and 301 Vermont Street, Brooklyn, NY, 112072, in District 19, UFT Charter serves students in kindergarten through fifth grade; this proposal to co-locate 19K654 in K166 will not impact UFT Charter’s programs in K292. 19K654 will admit students through the District 19 Middle School Choice process, offering priority to students residing in the K166 residential zone and then using a limited unscreened admissions method. 19K654 will begin enrolling sixth-grade students in 2013-2014 and will add one grade per year until it is at full scale and serves students in sixth through eighth grades in 2015-2016.

In a separate Educational Impact Statement (“EIS”), posted on January 17, 2013, the DOE is proposing to gradually phase-out and eventually close J.H.S. 166 because of its low performance and inability to improve quickly to better support student needs. The proposal can be found at: <http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/2012-2013/Mar112013Proposals.htm>. If the phase-out proposal is approved, J.H.S. 166 will no longer admit sixth-grade students after the conclusion of the 2012-2013 school year. One grade will then be phased-out each subsequent year. During the 2013-2014 school year, J.H.S. 166 will serve students in seventh and eighth grades and, in 2014-2015, it will serve students in eighth grade. J.H.S. 166 will close after June 2015. For the purposes of this EIS, describing the opening and co-location of 19K654, it is assumed that the proposal to phase-out J.H.S. 166 will be approved by the Panel for Educational Policy (“PEP”). However, if the proposal to phase-out J.H.S. 166 is not approved, this EIS and the accompanying Building Utilization Plan (“BUP”) will be revised as necessary.

On February 5, 2013, the DOE issued amended Educational Impact Statements for the proposals to phase out and replace J.H.S. 166 with 19K654. The Educational Impact Statements were amended to update the eligibility status of J.H.S. 166 for School Improvement Grant funding. The amended information did not substantially revise the proposal.

In a separate EIS, posted on January 17, 2013, the DOE is proposing to resite the sixth through eighth

¹ The DOE will continue to accept comments concerning this proposal up to 24 hours prior to the Panel for Educational Policy’s (“PEP”) vote on March 11, 2013. Those additional comments will be addressed in an amended Public Comment Analysis which will be provided to the PEP before it votes on this proposal.

² Although UFT Charter School’s kindergarten through fifth grade and J.H.S. 292 are both located in building K292, they use separate entrances and therefore have separate addresses.

grades of UFT Charter from K166 to K292 in September 2013. If that proposal is approved, UFT Charter will only serve ninth through twelfth grades in K166. The proposal can be found at: <http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/2012-2013/Mar112013Proposals.htm>.³ For the purposes of this EIS, describing the co-location of 19K654, it is assumed that the proposal to resite UFT Charter's middle school grades will be approved by the PEP. However, if the proposal to resite UFT Charter's middle school grades is not approved, this EIS and the accompanying BUP will be revised as necessary.

In a separate EIS posted on January 17, 2013, the DOE is also proposing to backfill the space left vacant by UFT Charter's middle school grades with Achievement First Charter High School 2 ("AF High School 2") in K166 beginning in September 2013. If that proposal, located at <http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/2012-2013/Mar112013Proposals.htm>, is approved, AF High School 2 will serve students in ninth grade in 2013-2014, and would phase-in one grade each year, until the school is at full scale serving ninth through twelfth grades in 2016-2017.

For the purposes of this EIS, which describes the opening and co-location of 19K654, it is assumed that the proposal to co-locate AF High School 2 will be approved by the PEP. However, if the proposal to co-locate AF High School 2 is not approved, this EIS and the accompanying BUP will be revised as necessary. If this proposal is approved, 19K654 will be a district middle school that will serve students in sixth through eighth grades. 19K654 will admit students through the District 19 Middle School Choice process and will first offer priority to students residing in the K166 residential zone and then admit students using a limited unscreened admissions method. Students would then be matched to the school through a matching process operated by the Office of Student Enrollment ("OSE"). Additional information about the District 19 Middle School Choice process is provided in Section III.A of this proposal.

According to the 2011-2012 Enrollment, Capacity, Utilization Report ("Blue Book"), K166 has a target capacity of 1,320 students. In 2012-2013, the building is serving 986 students, J.H.S 166 is serving 400 students,⁴ and UFT Charter is serving 586 sixth through twelfth grade students,⁵ yielding a building utilization rate of 75%.⁶

In 2015-2016, once J.H.S. 166 has completed its phase-out, 19K654 is at full scale, AF High School 2's ninth through eleventh grades have phased-in, and UFT Charter's middle school is resited, it is projected that there will be approximately 825-980 students served in K166, thereby yielding an estimated building utilization rate of approximately 63%-74%. Once AF High School 2 is fully phased-in 2016-2017, K166 is projected to serve 895-1,070 students, thereby yielding an estimated building utilization rate of approximately 68%-81%.

If this proposal and the proposal to phase-out J.H.S. 166 are approved, 19K654 will replace the middle school seats that will be lost as a result of the phase-out and eventual closure of J.H.S 166 and will provide

³ UFT Charter is in the process of applying for renewal of its charter from its charter authorizer, the State University of New York's Charter School Institute ("SUNY CSI"). For the purposes of this EIS describing the co-location 19K654 in K166, it is assumed that SUNY CSI will approve UFT Charter's charter renewal. However, if SUNY CSI denies UFT Charter's application for renewal, the Building Utilization Plan ("BUP") associated with this proposal will be revised as necessary to accurately reflect the proposed allocation of space in K166.

⁴ 2012-2013 Unaudited Register (as of October 26, 2012).

⁵ This figure represents total headcount as of October 1, 2012.

⁶ All references to building utilization rates in this document are based on target capacity data from the 2011-2012 Blue Book and enrollment data from the 2012-2013 Unaudited Register (as of October 26, 2012) or charter headcount as of October 1, 2012. 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 will conduct a detailed site survey and space analysis of the building to assess the amount of space available in the building.

a new educational option for families in District 19.

K166 houses two community-based organizations (“CBOs”), CAMBA and the East New York Campus Satellite of Medgar Evers College (“ENY”). ENY hosts a GED Plus program in K166. GED Plus programs help students earn their GED and prepare them for college and career options. GED programs are offered to students who are 18-21 years old and are available as full-time or part-time programs. More information about GED Programs is available:

<http://schools.nyc.gov/Offices/District79/SchoolsProgramsServices/default.htm>.

Summary of Comments Received at the Joint Public Hearing

A joint public hearing regarding this proposal was held on February 21, 2013 at K166. Participants had the opportunity to provide input on the proposal.

Approximately 87 members of the public attended the hearing, and 14 people spoke. Present at the meeting were Community School District 19 Superintendent Joyce Stallings-Harte; District 19 Community Education Council (“CEC 19”) Representatives Erica Perez and Joyce French; Maria Ortega, Principal of J.H.S. 166; a representative from the Council Of School Supervisors and Administrators; Gregory Grant, a representative of the Parent Teacher Association (“PTA”) and School Leadership Team; Liz Genco representative from SUNY CSI; New York City Council Member Charles Barron; Deputy Chancellor David Weiner; Senior Director for School and Community Support Olivia Ellis; and Director of Brooklyn Planning Carrie Marlin from the Department of Education.

The following comments and remarks were made or submitted at the Joint Public Hearing on February 21, 2013:

1. Gregory Grant, a representative of the School Leadership Team and PTA stated:
 - a. We do not have a choice of which students we accept. Other schools get to handpick their students.
 - b. We get students from our feeder schools who have low scores and we have six months to improve their scores.
 - c. Every year, we are faced with the same challenges but the DOE has not helped us.
 - d. We lost a lot of qualified teachers who are either tired and chose to move on or are scared of the school being shut down.
 - e. We should have the chance to start on an even playing field.
 - f. We are still here working and we will continue to educate children.
2. CEC 19 representative Erica Perez stated that she is sad to sit here and see a school that is successful be attacked with the rest of her community. She further stated:
 - a. The school received a 95% pass rate on the Regents, so how is this considered a failing school?
 - b. 265 students at the school are overage which creates a lot of challenges. This is an unfair disadvantage when it comes to state testing.
 - c. The overage population is challenging. These are students who know they do not belong in Junior High School anymore. We deal with a lot of drop-outs and this school to prison pipeline needs to stop.
 - d. Charter schools will not accept these students because they are overage.
 - e. We should build a D79 program at the junior high school level and deal with keeping these students out of the penal system.
 - f. There are 395 students in the school and 28% of the students are special education students. This creates a very challenging environment and no one is taking into account that these students have nowhere else to go.

3. Principal Maria Ortega explained how she has been with the school for nine years and had been trained by the Leadership Academy. She explained that because of the location of J.H.S. 166, the school faces many large community issues like drugs and gang violence. She further stated:
 - a. We are a zoned school who accepts all of the students that are sent here. These students deserve all of the same opportunities.
 - b. The percentage of special education students has increased over the years. Our school now has 28% of students who are special education students. This takes a lot of time and resources to support these students.
 - c. 28% of the students at J.H.S. 166 have IEPs, while most other schools have 12%-15% of their students with IEPs.
 - d. We prepare our students for life by focusing them on ideas and concepts.
 - e. All of the increased programs at J.H.S. 166 have taught our students new ways of learning and how to avoid violence.
 - f. We have increased the performing arts programs at J.H.S. 166. We now have a chorus, a glee club, instrumentals, drama, theater, martial arts, and other programs.
 - g. The school has implemented a positive behavior support system where the students can earn Gershwin bucks.
 - h. Overage students are not accepted at other schools in New York City.
 - i. There are attendance issues with students who receive full-fare or half-fare metro cards. Students who receive half-fare metro cards have trouble attending school.
 - j. This has been a challenging environment to work in because our targets move each year. We have been a restart model, a turnaround model, and are now being proposed to phase-out. We need to be given a chance to improve and gain support from the DOE.
4. New York City Council Member Charles Barron spoke about the progress that J.H.S. 166 has made. He stated that:
 - a. There are D and F schools that are not being phased-out, but we are a C school.
 - b. We should have a meeting with the Chancellor to take about our plans to improve this school.
 - c. We need to make sure that every school receives support and proper resources to educate children.
 - d. The mayor is trying to privatize education.
 - e. We are not anti-charter, and every parent deserves a choice. The Mayor is manipulating charter and district parents to be at odds with each other.
 - f. This plan to have four schools in one building does not make sense. It will cause overcrowding in the school.
 - g. The students should not have lunch time scheduled at 10:00am, nor should the students share spaces with each other.
 - h. This school has the essential qualities of a strong school and it belongs to the community.
 - i. Public Charters are not like public schools. The charters take the cream of the crop from public schools and then evaluate the students differently and kick out the students who do not fit the model.
5. Three speakers spoke in support of the Achievement First co-location. The speakers believe that Achievement First will be a good partner and has seen co-location work at other schools.
6. One speaker spoke in support of the Achievement First co-location, noting that Achievement First helped his child with special needs. The speaker noted the co-location will work and the schools will be great partners.
7. One speaker spoke in support of Achievement First co-location in District 19. The speaker noted that District 19 needs more options and that Achievement First will create strong partnerships with the community.
8. A member of the J.H.S. 166 SLT spoke in support of the school and noted the following:
 - a. NYC schools are getting defunded and this is not fair.
 - b. If the community came together, we have the ability to save our school.
9. A parent from J.H.S. 166 spoke in support of the school, and noted the following:

- a. She does not understand why the school is being proposed for phase-out.
 - b. She noted that the teachers here treat their students like their own children.
 - c. The school should receive more money to be successful.
10. A representative from the Council of School Supervisors and Administrators (“CSA”) spoke personally in support of Principal Ortega and the District 19 community. The representative that recited a response on behalf of CSA. The response noted that:
- a. The schools proposed for phase-out do not fit a pattern. It seems the DOE picked these schools as if they were playing Russian Roulette.
 - b. The DOE is closing schools to open up more charter schools.
 - c. Low performing students are housed in warehouse schools. This is a failing strategy for turning schools around.

Additionally, a question was submitted in writing to the DOE at the Joint Public Hearing:

11. If the proposed phase-out is passed, how do we know the replacement plan will provide a better option for students?
12. What happened in the case of equity funding for schools?

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

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

Comments 2(e), 3(i), 4(d), 4(e), 8(b), 10(b) and 12 are not directly related to the proposal and thus do not require a response.

Comments 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 2(a), 2(b), 2(c), 2(f), 3(a), 3(b), 3(c), 3(d), 3(e), 3(f), 3(g), 4(a), 4(b), 4(h), 9(b) and 10(a) are related to the separate proposal to phase-out J.H.S. 166 and do not require a response.

Comments 5, 6, and 7 are related to the separate proposal to co-locate AF High School 2 at K166 and thus do not require a response.

Comments 3(j) and 9(a) voice general opposition to the proposal to phase out and replace J.H.S. 166 with a new middle school.

While some members of the J.H.S. 166 community object to the possibility of phasing out the school, the DOE is committed to providing a portfolio of high quality school options to students and families. The DOE believes that phasing out and replacing J.H.S. 166 is the best option for future students and the broader community, given the school’s performance struggles and the lack of evidence that the school is poised to quickly turn around to better support students. The Department is proposing to close and replace J.H.S. 166 because it believes that doing so will provide a better educational option to current students more rapidly and with more certainty than other interventions, which at this point are simply not adequate in order to provide a high quality option for current and future students.

Comments 2(d), 3(h) and 4(i) concern how charter and district schools accept students and note about the admissions for special education and overage students.

Any child eligible for admission to a district public school is eligible for admission to a public charter school. If the number of applicants exceeds the number of available seats at a charter school, a random selection process, such as a lottery, must be used. Lotteries select students blindly from among the applicant pool, but give preference to applicants from the community school district that the school is located in. Charter schools may give additional preferences to students based on various factors, including,

but not limited to, whether the applicant has a sibling already enrolled in the charter school, is an English Language Learner, and/or is eligible for free or reduced price lunches.

Application rules, procedures, and deadlines for charter schools vary, but most charter schools accept Pursuant 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 ELL students 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. Charter schools must admit all students according to their lottery preferences, and may not turn away a student because of language ability, behavioral problems, age or services required by an IEP.

In May 2010 the Charter Schools Act was amended to expressly require that charter schools demonstrate good faith efforts to attract and retain ELLs, students with disabilities, and students eligible for free or reduced lunch at rates comparable to those of the Community School District.

The DOE's annual Progress Report compares school performance with the 40 schools serving the most similar student populations. The Progress Report also provides "extra credit" to schools that succeed at helping ELL and Special Education students achieve. Thus, the incentive is for schools to serve its ELL and Special Education students well, and a school is not advantaged by having a lower enrollment of ELL and Special Education students.

Comment 4(f) concerns space in the building.

The DOE has determined that K166 has sufficient space to simultaneously phase-out J.H.S. 166 and phase-in 19K654, while also simultaneously resiting UFT Charter's middle school grades and phasing-in AF High School 2. With regard to the distribution of space, the DOE applies the Citywide Instructional Footprint (the "Footprint")⁷ to allocate a total room count to each organization as they phase into K166. The assignment of specific rooms for each school in the building will be made in consultation with the Principals of each school and the Office of Space Planning if this proposal is approved.

The Footprint is applied to both DOE and public charter schools to ensure equitable allocation of classroom, resource and administrative space. The Footprint sets forth the baseline number of rooms that should be allocated to a school based on the grade levels served by the school and number of class sections per grade. The number of class sections at each school are determined by the Principal based on enrollment, budget, and student needs; there is a standard guideline of target class size (i.e., 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 one lunch period. The BUP details the number of class sections each school is expected to program each year through 2015-2016 and allocates the number of classrooms accordingly. The BUP demonstrates that there is sufficient space in the building to accommodate the proposed co-location. Based on the BUP, each school will receive their baseline Instructional Footprint and will be allocated excess space throughout each year of the proposal.

Comment 4(g) concerns how the shared space schedule is developed and asserts that the students should not have to share spaces with each other.

The BUP outlines a proposed Shared Space Plan for the co-located schools, which outlines the duration of time each of the co-located schools will have in each of the shared spaces in building K166. The Shared

⁷ 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.

Space Plan is based upon the population size and other relevant factors further described below for each co-located school. Although the DOE has proposed how the shared spaces in the building may be utilized, Building Councils are free to deviate from the proposed Shared Space Plan to accommodate specific programmatic needs of all special populations or groups within each school as is feasible and equitable, provided that the Building Council comes to an agreement of the final Shared Space Plan collaboratively.

Ultimately, if all related proposals involving building K166 are approved, principals for all co-located schools would sit on the Building Council, and would create a plan for the allocation of shared spaces if this proposal is approved by the PEP. The Building Council meets regularly to address issues related to space allocations and shared space usage. In buildings with a charter school, there is also a Shared Space Committee, which meets at least 4 times per year, and includes a parent and teacher representative from each school. This committee monitors the implementation of the shared space schedule, and identifies areas of concern that can be addressed by the Building Council. According to Chancellor's Regulation A-190, the shared space committee shall be comprised of the principal (or an assistant principal of the D75 school organization), a teacher, and a parent from each co-located school or D75 school organization. With respect to a non-charter school's teacher and parent members, such shared space committee members shall be selected by the corresponding constituent member of the SLT at that school.

The Shared Space plan contained in the Building Utilization Plan does allocate time to each of the schools located in the building. Based on the plan, 19K654 will have lunch from 10:30a.m.-11:30a.m., UFT Charter will have lunch from 11:30a.m.-12:30p.m., J.H.S. 166 will have lunch from 12:30p.m.-1:30p.m., and AF High School 2 will have lunch from 1:30p.m. – 2:30p.m. As stated earlier, the Building Councils is free to deviate from the proposed Shared Space Plan to accommodate specific programmatic needs.

Comment 11 concerns the quality of the replacement plan for J.H.S. 166.

The DOE believes that the gradual phase out and replacement of J.H.S. 166 is the most appropriate strategy to ensure that all students in K166 receive a high quality education. The DOE counts on each of its schools to provide a high-quality education to its students—and it holds all schools to the same high standard. If a school is not getting the job done for students—whether it was opened recently or not—the DOE is compelled to take serious action to ensure its students do not fall even further behind. The DOE believes that closing a struggling school and opening a new school with new leaders and staff is a successful strategy to provide all students with an excellent education.

Under this Administration, New York City has replaced 142 of our lowest-performing schools with better options and opened 576 new schools. The DOE is proposing to close less than 1% of new schools that have been opened since 2002. Still we see our new schools significantly outperforming the schools they are replacing: new Schools have outperformed phase-out schools in both Math and ELA in grades 3-8. Overall, in ELA, new schools had 14.2 percentage points higher proficiency than schools in phase out, with 37.7% proficient in new schools and only 23.5% in schools in phase out in 2012. In math the difference is even more striking where new schools had 23.2 percentage points higher proficiency than schools in phase out, with 50.8% proficient in new schools and only 27.6% in schools in phase out in 2012.

Comments 4(c), 8(a), and 9(c) concern how New York City schools receive funding and school support.

The DOE acknowledges that budget cuts have impacted schools across the City. All public schools receive Fair Student Funding (FSF) dollars based on projected registers. In 2012-2013, New York City schools received \$5.0 billion dollars in FSF dollars. FSF dollars can be used all district schools to cover basic instructional needs and are allocated to each school based on the number and need-level of students enrolled at that school. All money allocated through FSF can be used at the principals' discretion, such as hiring staff, purchasing supplies and materials, or implementing instructional programs. As the total number of students enrolled changes, the overall budget will increase or decrease accordingly, allowing the

school to meet the instructional needs of its student population. In addition to the FSF student-need based dollars a school receives, all schools receive a fixed lump sum of \$225,000 in FSF foundation and \$50,000 in Children First Network Support to cover administrative costs.

All schools receive support and assistance from their superintendent and their Children First Network, a team that delivers operational and instructional support directly to schools. Struggling schools receive supports as part of system-wide efforts to strengthen all schools; and they also receive individualized supports to address their particular challenges. We do everything we can to offer struggling schools leadership, operational, instructional, and student supports that can help turn a struggling school around.

Comment 10(c) asserts that low performing students are housed in warehouse schools.

Students in District 19 have the option to apply to different schools through the district's middle school choice process. When this process results in higher percentages of certain student populations in a specific school, DOE counts on the school to provide a high quality education to all students and, for the purposes of accountability through Progress Report metrics, compares each school with other schools serving similar populations. As noted in the EIS, students are offered the opportunity to apply to a range of middle schools within their district, and/or schools with borough-wide or city-wide eligibility through the District 19 Middle School Choice process. Students may also choose to apply to a number of schools that manage their own admission process. Information about all of these options is printed in each district's Middle School Choice Directory, which can be found at <http://schools.nyc.gov/ChoicesEnrollment/Middle/Publications/default.htm#brooklyn>

J.H.S. 166 admits students through the District 19 Middle School Choice process. Through the District 19 Middle School Choice process, students receive priority admission to their zoned middle school when they rank that school on their District 19 Middle School Choice application. After a zoned school admits all zoned students matched during the District 19 Middle School Choice process, any remaining spaces at the school are open to out-of-zone District 19 students who indicated a preference for that school. J.H.S. 166 first admits students who reside in the K166 zone. If any space remains, J.H.S. 166 admits students using an unscreened selection method. Unscreened schools randomly select students from the pool of those who apply.

Changes Made to the Proposal

No changes have been made to this proposal.