

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

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S.M. on behalf of herself and her children E.P., A.P. and
D.P.; G.S. on behalf of herself and her child A.E.; D.H.
on behalf of herself and her child S.H.; A.P. on behalf of
herself and her children M.L. and L.L.; H.A. on behalf of
herself and her child J.J.;

Index No.

SUMMONS

Plaintiffs,

Date Index No. Purchased:

-vs-

THE STATE OF NEW YORK; KATHY HOCHUL, as
Governor of the State of New York; NEW YORK
STATE BOARD OF REGENTS; NEW YORK STATE
EDUCATION DEPARTMENT; BETTY A. ROSA, as
New York State Commissioner of Education; BILL DE
BLASIO, as Chief Executive of New York City; NEW
YORK CITY DEPARTMENT OF EDUCATION; and
MEISHA PORTER, as Chancellor of the New York City
Department of Education;

Defendants.

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To the above named Defendants

See Attached Rider

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is that the Defendants are situated in this county.

Dated: New York, New York

December 28, 2021

ARNOLD & PORTER KAYE SCHOLER LLP

By: 
Jennifer B. Patterson (Bar No. 2661403)
Lucy S. McMillan (Bar No. 4337465)
250 West 55th Street
New York, NY 10019-9710
Telephone: +1 212-836-8000
Fax: +1 212-836-8689

LEGAL SERVICES NYC
Tara Foster, Esq.
Veronica J. Cook, Esq.
40 Worth Street, 6thth Floor
New York, NY 10013
Telephone: +1 646-442-3600

EDUCATION LAW CENTER
Gregory G. Little
Wendy Lecker
60 Park Place, Suite 3200
Newark, NJ 07102
Telephone: +1 917-664-4010

Attorneys for Plaintiffs

RIDER

State of New York
28 Liberty Street
16th Floor
New York, NY 10005
Attn: Managing Attorney's Office/Personal Service

Kathy Hochul, as Governor of the State of New York
State Capitol Building
Albany, NY 12224

New York State Board of Regents
89 Washington Avenue
Room 110EB
Albany, NY 12234

New York State Education Department
89 Washington Avenue
Albany, NY 12234

Betty A. Rosa, as New York State Commissioner of Education
89 Washington Avenue
Albany, NY 12234

Bill de Blasio, as Chief Executive of New York City
City Hall
New York, NY 10007

New York City Department of Education
52 Chambers Street
New York, NY 10007

Meisha Porter, as Chancellor of the New York City Department of Education
52 Chambers Street
New York, NY 10007

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Index No.

Plaintiffs,

**COMPLAINT FOR
DECLARATORY, INJUNCTIVE,
AND COMPENSATORY
RELIEF**

-vs-

THE STATE OF NEW YORK; KATHY HOCHUL, as
Governor of the State of New York; NEW YORK
STATE BOARD OF REGENTS; NEW YORK STATE
EDUCATION DEPARTMENT; BETTY A. ROSA, as
New York State Commissioner of Education; BILL DE
BLASIO, as Chief Executive of New York City; NEW
YORK CITY DEPARTMENT OF EDUCATION; AND
MEISHA PORTER, as Chancellor of the New York City
Department of Education;

Defendants.

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INTRODUCTION

1. When the Governor of New York ordered the closure of all New York City schools in March 2020, free, reliable internet service and functional devices to access the internet became essential educational resources necessary for the State and City to provide constitutionally guaranteed education. Despite having nearly two years to adjust to and plan for this new reality, Defendants have failed, to this day, to provide these essential resources to students in New York City. New COVID-19 variants and future waves of infections, followed by more school and classroom closures, are inevitable, and the need to access remote learning is here to stay in this new reality. This suit seeks to ensure that remote learning upholds, rather than ignores, the rights of students in New York City going forward, and to compensate the

plaintiffs and other similarly situated students and families for Defendants' past failures. Under the New York Constitution, education—whether offered in a classroom or online—must be available to all children, free of charge.

2. To date, the COVID-19 pandemic has disrupted three academic school years, causing multiple, lengthy, district-wide closures and untold numbers of classroom and school closures. Despite widely acknowledging that internet access and working devices are essential to learning during the pandemic, Defendants still do not provide free and reliable internet service or reliable working iPads and laptops to students who cannot afford to pay for them. Defendants also have not provided many eligible students with the academic intervention services that they are entitled to and that are necessary to make up for the staggering amount of academic instruction lost since March 2020. As a result, untold numbers of low-income students, and especially low-income students of color, in New York City have been deprived, and continue to be deprived, of the sound basic education that is their right under the New York State Constitution. Defendants' failure to ensure the education of their poorest and most vulnerable students will have a lasting and detrimental effect on an entire generation of New Yorkers.

3. This matter is brought by five parents of low-income New York City public school children (the "Parent Plaintiffs") on their own behalf and on behalf of their eight public school children (the "Student Plaintiffs"), to redress the significant learning loss suffered by the Student Plaintiffs, and the significant financial hardship suffered by the Parent Plaintiffs, as a result of Defendants' failure to provide free and reliable access to the educational services and resources required for constitutionally adequate remote learning during the COVID-19 pandemic. The remote-learning failures addressed in this action harmed similarly situated parents and students throughout New York City's public school system.

4. During the last three months of the 2019-2020 school year, and the entirety of the 2020-2021 school year, the Student Plaintiffs, like all New York City public school students, experienced well over 150 days of entirely remote instruction due to system-wide school closures resulting from the COVID-19 pandemic. Many students, including the Student Plaintiffs, experienced far more days of remote schooling due to individual school closures caused by COVID-19 cases in those schools. Additionally, the Student Plaintiffs who opted for fully remote schooling received only remote instruction during the last three months of the 2019-2020 school year and the entirety of the 2020-2021 school year. During the first few months of the 2021-2022 school year, some of the Student Plaintiffs have engaged in remote learning due to classroom closures, exposure to COVID-19 or while recovering from the COVID-19 vaccine.

5. Despite the ongoing and obvious need for free and reliable internet and working devices, Defendants failed to invest enough resources into those essential instrumentalities of learning, thereby denying the Student Plaintiffs, and numerous similarly situated students, a sound, basic public education as required by the New York State Constitution.

6. Defendants' failure to invest in free and reliable internet and working devices did not affect all New York City students equally. To the contrary, students and families who, like Plaintiffs, are members of racial and ethnic minority groups in the United States, were disproportionately harmed by Defendants' failure to provide students with those resources. Indeed, Defendants' failure exacerbated existing inequities in the public education received by minority students, such as the Student Plaintiffs, as compared with white students in New York City.

7. Defendants were aware that, even before the COVID-19 pandemic hit, low-income students, students of color, and non-native English speakers, such as the Student Plaintiffs, were attending under-resourced and underfunded schools, were struggling to meet state educational standards, and were less likely to graduate than their white or wealthy peers.¹ Furthermore, Defendants were and are aware that any failures related to remote learning would disproportionately harm students and families, like Plaintiffs, who are from low-income households and from racial and ethnic minority backgrounds.²

8. Yet, as has been widely reported, Defendants failed to provide internet services and necessary devices in a timely manner to some of the poorest families in New York City, including Plaintiffs. This failure exacerbated the so-called “digital divide,” whereby low-income families of color are far less likely to have access to internet service and up-to-date technological devices than are white families, and caused the Parent Plaintiffs to choose between paying for education for their children and basic essentials such as food.

9. Defendants also failed to provide the technological devices needed to participate in remote learning to many low-income students, including the Student Plaintiffs, for weeks or months, and, when they did provide devices, many of the devices were not internet-enabled and/or did not function properly.

10. Defendants further failed to provide meaningful information, training, and support to parents and students, including the Plaintiffs, so that students could access the remote learning

¹ See, e.g., Nicholas Rizzi, *Achievement Gap Widens for NYC Students of Color: Report*, Patch (Apr. 10, 2018, 3:43 PM ET), <https://patch.com/new-york/brooklyn/achievement-gap-widens-nyc-students-color-report>; Alex Zimmerman, *These Four Graphs Illustrate New York City's Stark Achievement Gaps by Race and Income*, Chalkbeat N.Y. (Jan. 31, 2018, 6:00 AM EST), <https://ny.chalkbeat.org/2018/1/31/21104265/these-four-graphs-illustrate-new-york-city-s-stark-achievement-gaps-by-race-and-income>.

² See Office of the Comptroller of the City of N.Y., *Overcoming NYC's Digital Divide in the 2020 Census* at 5 (July 2019), https://comptroller.nyc.gov/wpcontent/uploads/documents/Census_and_The_City_Overcoming_NYC_Digital_Divide_Census.pdf (“2019 Comptroller Report”).

system—the learning system required for the majority of the school days during the last three months of the 2019-2020 school year, the entirety of the 2020-2021 school year, and intermittently in the 2021-2022 school year. This failure disproportionately harmed Plaintiffs who are limited English proficient (“LEP”), as the minimal information that Defendants did provide was rarely, if ever, translated or interpreted into languages other than English.

11. While parents, educators and children alike hoped that the 2021-2022 school year would be a more “normal” school year for New York City children, the rise of new COVID-19 variants has made clear that children will continue to need, at minimum, some remote instruction when classrooms or schools are closed due to COVID-19 cases. Furthermore, Defendants have built remote learning into this year’s school calendar, even when COVID-19 is not a factor. For example, Election Day on November 2, 2021 was “a fully remote asynchronous instructional day.”³ Yet, on Election Day—which was a scheduled remote day— New York City Department of Education (“NYCDOE”) did not take steps to ensure that students, including Student Plaintiffs, had meaningful access to education. Many students, including the Student Plaintiffs, continued to struggle with device and internet issues on this day. In addition, the new policy of the NYCDOE is that “[o]n ‘[s]now days’ or days when school buildings are closed due to an emergency, all students and families should plan on participating in remote learning.”⁴ Yet, NYCDOE has not ensured access to reliable internet and devices for students who will need them when snow days occur.

12. Despite the obvious continuing need for free and reliable internet and working devices for all families that need them, as well as adequate training and support for parents and

³ See N.Y. City Dep’t of Educ., *2021-2022 School Year Calendar*, <https://www.schools.nyc.gov/about-us/news/2021-2022-school-year-calendar> (last visited Oct. 22, 2021).

⁴ See *id.*

students to ensure that students can access remote learning platforms, Defendants did not provide these educational resources.

13. In addition, while the NYCDOE has created some programs to address learning loss during the COVID-19 pandemic, many students, including some Student Plaintiffs, have not received any services to address their learning loss, including academic intervention services (“AIS”). Moreover, NYCDOE has not made information about these programs readily available or accessible.

14. Accordingly, Plaintiffs bring this action under the Education Article of the New York State Constitution, art. 11, § 1, as well as applicable New York State law and regulations, including NY Educ. Law § 3202 and 8 N.Y.C.R.R 100.2(ee), seeking (1) a declaration that Defendants’ failure to provide free and reliable internet and working devices, as well as training and support for parents and students to ensure that students can access remote learning platforms, violates the New York Constitution; (2) an order requiring Defendants to assess the need for reliable internet, working devices and training for students in need, including the Student Plaintiffs, and develop and implement a plan to provide these education resources to all students in need; (3) an order requiring Defendants to assess the need for compensatory education, including AIS, for students in need, including the Student Plaintiffs, and develop and implement a plan to provide these education resources to all students in need; (4) compensation for out-of-pocket expenses paid by the Parent Plaintiffs for internet access during the COVID-19 pandemic; (5) working internet-connected devices for students in need, including the Student Plaintiffs, for the 2021-2022 school year and beyond; (6) access to free internet for students in need, including the Student Plaintiffs, for the 2021-2022 school year and beyond; and (7) training and support for parents to access online learning platforms, including language access and technology training.

15. Plaintiffs also bring this action under the New York City Human Rights Law (“NYCHRL”), N.Y.C.A.C. §§ 8-107(4), 8-107(17), to redress the foreseeably discriminatory impacts of NYCDOE’s failure to provide remote learning, including the discriminatory impacts suffered by Student Plaintiffs and numerous similarly situated students.

16. Plaintiffs would have preferred to resolve these issues without resorting to litigation; however, counsel for Plaintiffs sent a letter and several emails to the NYCDOE detailing concerns about remote learning, and the NYCDOE failed to respond. As such, Plaintiffs now seek to redress Defendants’ failures by filing this litigation.

JURISDICTION AND VENUE

17. This Court has jurisdiction over Defendants pursuant to CPLR 301 and 302 because they reside in, have their principal place of business in, and/or regularly transact business in the State of New York and in this county.

18. This Court, as a court of original general jurisdiction, has jurisdiction over and is competent to adjudicate the causes of action set forth herein.

19. This Court has jurisdiction to grant a declaratory judgment and appropriate injunctive relief pursuant to CPLR 3001 and 3017(b).

20. Venue is proper in this county pursuant to CPLR 504(3) as against the New York City Department of Education because it is situated in New York County.

PARTIES

PLAINTIFFS

21. Plaintiff S.M. is the mother of Plaintiff E.P., a twelve-year-old Latino student enrolled in eighth grade in a New York City public middle school; Plaintiff D.P., an eleven-year-old Latino student enrolled in sixth grade in a New York City public middle school, and Plaintiff A.P., an eight-year-old Latina student enrolled in third grade at a New York City public

elementary school. S.M., E.P., A.P. and D.P. speak Spanish in their home. Spanish is S.M.'s primary language and native language and she requires interpretation and translation to communicate in English.

22. Plaintiff G.S. is the mother of Plaintiff A.E., a six-year-old Latina student enrolled in first grade at a New York City public school. G.S. and A.E. speak Spanish in their home and as their primary language. G.S. requires interpretation and translation to communicate in English.

23. Plaintiff D.H. is the parent of Plaintiff S.H, a fourteen-year-old Latinx student enrolled in eighth grade in a New York City public middle school.

24. Plaintiff A.P is the mother of Plaintiff M.L., a ten-year-old Latino student enrolled in sixth grade in a New York City public middle school, and Plaintiff L.P., a seven-year-old Latino student enrolled in second grade in a New York City public elementary school.

25. Plaintiff H.A. is the mother of Plaintiff J.J., a seven-year-old South Asian student enrolled in second grade in a New York City public elementary school. H.A.'s primary and native language is Bengali (Bangla) and she requires interpretation and translation to communicate in English.

DEFENDANTS

26. Defendant New York State is the legal and political entity with plenary responsibility for educating all New York public school students, including the responsibility to maintain and support the system of free common schools and ensure that all New York public school students receive a sound basic education under the Education Article.

27. Defendant Kathy Hochul ("Governor Hochul"), sued in her official capacity, is the governor of New York State.

28. Defendant New York State Board of Regents and its members are responsible for determining the policies governing New York's schools and for adopting rules and regulations to effectuate State education laws and policies. Education policies set by the Board of Regents govern State learning and promotion standards, State examinations, teacher licensing, and educational accountability. The Board of Regents elects the New York State Commissioner of Education.

29. Defendant Betty A. Rosa, sued in her official capacity, is the New York State Commissioner of Education and President of the University of the State of New York. She is the chief executive officer of the State education system and of the Board of Regents. Pursuant to New York Education Law section 305, she "shall enforce all general and special laws relating to the educational system of the state and execute all educational policies determined" by the Board of Regents. Defendant Rosa also oversees the operation of the New York State Education Department. She has general supervision over New York schools and is responsible for guiding district and city school officers with respect to their duties and school management.

30. Defendant New York State Education Department ("NYSED") is a department of the New York State government charged with the general management and supervision of all public schools in the State and all of the educational work of the State.

31. Defendant Bill de Blasio ("Mayor de Blasio"), sued in his official capacity, is the Mayor and Chief Executive of New York City.

32. Defendant Meisha Ross Porter ("Chancellor Porter"), sued in her official capacity, is the Chancellor of the New York City public schools.

33. The New York City Department of Education ("NYCDOE") is an agency of New York City. NYCDOE has control over educational matters affecting students in New York City,

and is responsible for the general supervision and management of New York City's public schools. NYCDOE is responsible for ensuring New York City's schools comply with federal, state, and local law.

STATEMENT OF FACTS

I. DEFENDANTS DENIED STUDENTS, INCLUDING STUDENT PLAINTIFFS, A SOUND BASIC EDUCATION WHEN THEY FAILED TO PROVIDE FREE AND RELIABLE ACCESS TO THE RESOURCES AND SUPPORTS REQUIRED FOR REMOTE LEARNING.

A. Remote Learning was a Large Component of the Education Provided to New York City Students, including the Student Plaintiffs, During the 2019-2020 and 2020-2021 School Years.

34. On March 16, 2020, due to the rise of COVID-19 cases, the New York City public school system closed down.⁵ On that day, then-New York State Governor Andrew Cuomo signed an Executive Order which, in part, directed all school districts statewide "to develop a plan for alternative instructional options, including distance learning" and submit the plan to the NYSED.⁶ New York City Mayor Bill de Blasio announced that the NYCDOE would begin remote learning for kindergarten through twelfth grade on March 23, 2020.⁷

35. On April 11, 2020, Mayor de Blasio announced that New York City school buildings would not reopen for the duration of the 2019-2020 academic year, and that students would continue to learn remotely through at least June 26, 2020.⁸

⁵ Office of the Governor of the State of N.Y., *Governor Cuomo Announces All New York City, Westchester, Suffolk, and Nassau Public Schools Will Close This Week to Limit Spread of COVID-19* (Mar 15, 2020), <https://www.governor.ny.gov/news/governor-cuomo-announces-all-new-york-city-westchester-suffolk-and-nassau-public-schools-will>.

⁶ Office of the Governor of the State of N.Y., *Governor Cuomo Signs Executive Order Closing Schools Statewide for Two Weeks* (Mar. 16, 2020), <https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-closing-schools-statewide-two-weeks>.

⁷ Office of the Mayor of the City of N.Y., *New York City to Close All School Buildings and Transition to Remote Learning* (Mar. 15, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/151-20/new-york-city-close-all-school-buildings-transition-remote-learning> ("Mayor's Remote Learning Announcement").

⁸ Eliza Shapiro, *N.Y.C. Closes Schools for Academic year, but Cuomo Says It's His Decision*, N.Y. Times (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/nyregion/nyc-schools-closed.html>.

36. The COVID-19 pandemic continued throughout the 2020-2021 school year. In the first month of the 2020-2021 school year, 280,000 students out of the approximately one million students in the New York City school system, or approximately 28 percent of students, chose to attend school through the blended learning program, which involved some days in person and some days remote, while the rest of the students, approximately 72%, began the school year fully remote.⁹

37. Students who opted for blended learning switched to fully remote learning for periods of two weeks at a time if a student or teacher in their in-person cohort tested positive for COVID-19, and an entire school switched to fully remote learning for a period of two weeks if two or more individuals in the school tested positive for COVID-19.¹⁰ Thousands of classrooms, including some of the Student Plaintiffs' classrooms, were shut down for intervals of two weeks, or longer, throughout Fall 2020 due to positive COVID-19 cases.¹¹

38. On November 18, 2020, less than two months after elementary schools opened for in-person blended learning, Mayor de Blasio announced that, due to rising COVID-19 cases across New York City, the public school system would close the following day, November 19, 2020, and all learning would proceed remotely for all students until further notice.¹² All public school children in New York City continued to learn remotely until the elementary schools

⁹ Christina Veiga & Alex Zimmerman, *De Blasio Pushed to Reopen School Buildings. Only About a Quarter of Students Showed Up for In-Person Instruction*, Chalkbeat N.Y. (Oct. 26, 2020, 2:07 PM EDT), <https://ny.chalkbeat.org/2020/10/26/21534808/few-nyc-students-attend-school-in-person>.

¹⁰ Ari Ephraim Feldman, *New York City Cuts "Two-Case Rule" for Closing Public Schools*, NY1 (Apr. 5, 2021, 1:30 PM ET), <https://www.ny1.com/nyc/all-boroughs/news/2021/04/05/new-york-city-cuts--two-case-rule--for-closing-public-schools>.

¹¹ N.Y. City Dep't of Educ., *Situation Room Summary*, <https://www.schools.nyc.gov/school-year/school-year-2020-21/return-to-school-2020/health-and-safety/daily-covid-case-map> [<https://web.archive.org/web/20210813174607/https://www.schools.nyc.gov/school-year/school-year-2020-21/return-to-school-2020/health-and-safety/daily-covid-case-map>] ("NYCDOE Situation Room").

¹² Eliza Shapiro, *New York City to Close Public Schools Again as Virus Cases Rise*, N.Y. Times (Nov. 18, 2020), <https://www.nytimes.com/2020/11/18/nyregion/nyc-schools-covid.html>.

opened for blended learning again on December 7, 2020. The middle schools did not reopen for blended learning until March 2021 and the high schools did not reopen for blended learning until April 2021.

39. Even after the schools reopened for blended learning, individual schools and classrooms continued to move to fully remote learning for ten-day periods when students or teachers tested positive for COVID-19.¹³

40. Despite remote learning being the main, if not sole, avenue for students in New York City to access their educations from March 2020 until June 2021, Defendants never established free and reliable access to the educational services and resources required for a functioning remote learning system that gave all students consistent and equitable access to their schools.

B. Defendants Failed to Invest in Free, Reliable Internet and Working Devices During the COVID-19 Pandemic, Even Though They are Essential Educational Resources.

41. With schools closed to in-person learning at various points between March 2020 and June 2021, students and families were only able to access education remotely and through technology. Instead of physical school buildings and classrooms, students learned via internet connections, virtual classrooms, and devices that allowed them to interact with those classrooms. Instead of worksheets and chalkboards, students completed virtual assignments and engaged with educators and fellow classmates in virtual chat functions. In some instances, they learned by watching videos their teachers had previously recorded.

42. The Constitution of the State of New York guarantees that each and every child in this State shall be able to receive an education within the “system of free public schools.” N.Y.

¹³ NYCDOE Situation Room.

Const., art. XI, § 1. Pursuant to this constitutional guarantee, the State is responsible for ensuring that each and every student has access to “a sound basic education.” *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 902 (2003) (*CFE II*). In doing so, it must “account for the particular needs of the at-risk student population” it serves. *Maisto v. State*, 196 A.D.3d 104, 117 (3d Dept. 2021).

43. As part of the State’s constitutional obligation to provide a sound basic education, it must provide (through its school districts) appropriate educational inputs, including teaching, facilities, and instrumentalities of learning. *CFE II*, 100 N.Y.2d at 908. Teaching is the “most important input.” *CFE II*, 100 N.Y.2d at 909. But teaching only succeeds as an input if students are capable of accessing their teachers while they are teaching.

44. “Facilities and instrumentalities of learning” are necessary ingredients in the educational process, encompassing both physical infrastructure such as buildings and computers, and sources of information such as textbooks and libraries. *CFE II*, 100 N.Y.2d at 911-14.

45. During the COVID-19 pandemic, the facilities and instrumentalities of learning included functioning devices, free and reliable internet access, and training and support for parents and students to access remote platforms. Without each of these items, students were unable to access any teaching.

46. Defendants publicly acknowledged the need for a functioning system of remote learning for all students, and especially the most vulnerable students, as soon as the schools were shut down in March 2020. In its March 16, 2020, guidance, NYSED directed school districts to “provide a variety of methods to allow for the possibility of restricted access to technology and

limited communication by students” and emphasized that schools must “strive to ensure that any plans for continuity of learning are equitable and available to all students.”¹⁴

47. Then-Governor Cuomo later stated at a press briefing that “[r]emote learning, if not done well, can be a vehicle of division. Remote learning tends to work better in the wealthier school districts and tends to work less well in the poorer school districts. It tends to work better in wealthier homes and less well in poorer homes.”¹⁵ Reflecting on the quality of remote learning during Spring 2020, then-Governor Cuomo stated in August 2020 that “[t]here were many inequities in remote learning” and that he “believe[s] it really aggravates the division in our education system between the wealthy and the poor households.”¹⁶ He acknowledged that the state and school districts had to make rapid transitions in the early days of school closures, but stated that “we’ve now had several months, we have to do a better job.”¹⁷

48. Yet, despite recognizing the importance of remote learning and mandating school districts to craft and implement transition plans, Governor Cuomo denied emergency federal funding to students in New York City and across the state. In late March, Congress allocated \$1.1 billion in federal emergency relief funds to New York school districts.¹⁸ Congress indicated that these one-time federal funds should be used to deliver urgently needed resources to connect

¹⁴ Letter from Shannon L. Tahoe, Interim Comm’r of Educ., to Sch. Dist. Superintendents et al. 4 (Mar. 17, 2020), <http://www.nysed.gov/common/nysed/files/programs/coronavirus/nysed-covid-19-third-guidance-3-17-20.pdf>.

¹⁵ Office of the Governor of the State of N.Y., *Audio & Rush Transcript: Five Months Since First Confirmed COVID-19 Case in New York, Governor Cuomo Announces Highest Number of Tests Ever Conducted in the State* (Aug. 1, 2020),

<https://www.governor.ny.gov/news/audio-rush-transcript-five-months-first-confirmed-covid-19-case-new-york-governor-cuomo>.

¹⁶ Joseph Spector, *Will schools reopen in New York? Cuomo explains what will be necessary*, Democrat & Chron. (Aug. 4, 2020), <https://www.democratandchronicle.com/story/news/politics/albany/2020/08/04/schools-reopen-new-york-cuomo-explains-what-necessary/5579649002/>.

¹⁷ David Sommerstein, *Cuomo Says Remote Learning Isn’t Best for Equal Learning*, N. Country Pub. Radio (Aug. 3, 2020), <https://www.northcountrypublicradio.org/news/story/42036/20200803/cuomo-says-remote-learning-isn-t-best-for-equal-learning>.

¹⁸ Mary McKillip & David Sciarra, Educ. L. Ctr., *New York’s Pandemic Adjustment: Depriving Resources to Students Impacted by COVID-19* at 3 (Apr. 22, 2020), https://edlawcenter.org/assets/files/pdfs/publications/NY_Pandemic_Adjustment_final.pdf.

students to their teachers and enable a continuity of instruction, learning and supports while at home.¹⁹ Nonetheless, weeks later, New York passed and Governor Cuomo signed a state budget that included a \$1.1 billion cut in state aid for public schools.²⁰ 46% of the state aid, or approximately \$717 million, was cut from New York City schools.²¹

49. In addition to depriving New York City schools of \$717 million, thereby canceling out the federal emergency relief funds, New York State failed to provide any state emergency relief to help New York City schools acquire resources for remote learning or ensure continuity of instruction.

50. Defendants repeatedly acknowledged that students could not access an adequate education via remote learning but failed to take responsibility for correcting that inadequacy. During a public discussion about school reopening in early August 2020, Mayor de Blasio stated: “I would say my kids are not going to get educated if they’re only all remote, it just won’t be as good.”²² He also stated that truly fair remote learning is “structurally impossible” because “many kids . . . don’t have adults in the home who can help them. They don’t have a situation where they’re going to be able to manage the whole process on their own.”²³ Mayor de Blasio said “[w]e will keep trying to improve remote [learning]” but stated that “[i]t’s just structurally flawed in the very, very being of it.”²⁴

¹⁹ *Id.* at 5.

²⁰ *Id.* at 3.

²¹ *Id.*

²² Office of the Mayor of the City of N.Y., *Transcript: Mayor de Blasio, Chancellor Carranza Tour Village Academy in Queens and Hold Media Availability* (Aug. 12, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/586-20/transcript-mayor-de-blasio-chancellor-carranza-tour-village-academy-queens-hold-media>.

²³ Office of the Mayor of the City of N.Y., *Transcript: Mayor de Blasio Appears Live on the Bran Lehrer Show* (Aug. 21, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/603-20/transcript-mayor-de-blasio-appears-live-the-brian-lehrer-show>.

²⁴ *Id.*

51. Thus, rather than investing greater resources in free and reliable internet and working devices, Defendants claimed that remote learning was inherently flawed and could not be fixed, even though all students had no choice but to receive remote instruction at least some of the time.

52. Defendants also understood that, like Plaintiffs, thousands of students and their families were unable to afford internet to access remote learning, yet they failed to provide free internet to Plaintiffs and other low-income families.

53. In July 2020, the Mayor's Office reported that 18 percent of all New York City households and 46 percent of New York City households living in poverty were without broadband internet.²⁵ Despite having already committed to maintaining remote learning through the 2020-2021 school year, Defendants took no steps to provide immediate internet access to those households. Instead, Mayor de Blasio committed to launching greater access to broadband for New Yorkers by early 2022.²⁶

54. Like their City-level counterparts, State-level officials also failed to address the inequitable digital divide that made it harder for New York's children of color to access their education remotely.

55. Indeed, even recent state legislation that caps broadband expenses for low-income households is insufficient. The legislation would still require even the poorest New Yorkers to spend \$15 per month for their children to access their "free" public education remotely, and it does nothing to remedy the lack of devices that still plagues many families, nor to reimburse

²⁵ Office of the Mayor of the City of N.Y., *Mayor de Blasio and Taskforce on Racial Inclusion and Equity Announce Accelerated Internet Master Plan to Support Communities Hardest-Hit by COVID-19* (July 7, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/499-20/mayor-de-blasio-taskforce-racial-inclusion-equity-accelerated-internet-master>.

²⁶ Office of the Mayor of the City of N.Y., *Transcript: Mayor de Blasio Holds Media Availability* (Nov. 29, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/818-20/transcript-mayor-de-blasio-holds-media-availability>.

them for the hundreds (if not thousands) of dollars they have already paid for internet service.

Worse, these “affordable” internet services are only required to provide download speeds of 25 megabits per second, which is roughly *one-eighth* as fast as merely the *average* U.S. broadband speed.²⁷

56. Students who have not had free and reliable access to remote learning since March 2020 have experienced educational loss, further demonstrating that Defendants failed to provide the Student Plaintiffs and other NYC children with a sound, basic education as required by the New York State Constitution. *See CFE II*, 100 N.Y.2d at 914-19.

C. Defendants’ Failures Denied Students Access to a Free Public Education in Multiple and Significant Ways.

57. Defendants failed in their obligations to provide students, including the Student Plaintiffs, with a sound basic education in four significant ways. First, they failed to provide Plaintiffs with free (or affordable) internet service so that they could connect to remote learning programs. Second, they failed to timely provide Plaintiffs with technological devices on which they could access remote learning programs and complete assignments. Third, they failed to provide information, training, and support to Plaintiffs to assist them with tasks including, but not limited to, connecting to and using remote learning programs, reporting issues with devices and receiving technical support, and communicating with teachers and school staff. Fourth, Defendants did not provide Academic Intervention Services (“AIS”), compensatory education, or other needed support when the Student Plaintiffs struggled, fell below performance standards, or were otherwise at risk of not achieving State learning standards.

²⁷ Compare N.Y. Gen. Bus. Law § 399-zzzzz(2) (mandating minimum speed of 25 MBPS) with Speedtest, *United States Mobile and Fixed Broadband Internet Speeds*, <https://www.speedtest.net/global-index/united-states> (accessed Sept. 3, 2021) (average speed of 195 MBPS).

1. Defendants Unlawfully Denied Students Access to a Free Public Education by Failing to Provide Free Internet Services.

58. Defendants were aware that, before the pandemic struck, there was a “digital divide” between wealthy households and low-income households in New York City.²⁸ As of 2019, 29% of all New York City households lacked any broadband internet access, and this rate rose above 40% in some neighborhoods, including those home to predominately low-income households and communities of color.²⁹ Yet, when New York City public schools closed their physical locations due to the COVID-19 pandemic and shifted entirely to remote learning, Defendants did not ensure that Plaintiffs had access to the high-speed internet services needed to participate in remote learning.

59. Instead, since March 2020, NYCDOE has distributed 175,000 devices *without included internet service* to students, including some of the Student Plaintiffs.³⁰ When NYCDOE *did* provide the Student Plaintiffs with devices that included internet service, the internet connections were often unstable or insufficient to connect to remote learning platforms used by the schools.

60. As the 2020-2021 school year approached, Defendants knew that the digital divide had not narrowed during the first few months of remote learning. Nonetheless, once

²⁸ See Office of the Comptroller of the City of N.Y., *Overcoming NYC’s Digital Divide in the 2020 Census* at 5 (July 2019), https://comptroller.nyc.gov/wp-content/uploads/documents/Census_and_The_City_Overcoming_NYC_Digital_Divide_Census.pdf (“2019 Comptroller Report”).

²⁹ See 2019 Comptroller Report at 5.

³⁰ Reema Amin, *The Education Department Distributed 321K iPads to NYC Students for Remote Learning. Now Principals Have to Get Them Back*, Chalkbeat N.Y. (July 29, 2020, 3:53 PM EDT), <https://ny.chalkbeat.org/2020/7/29/21347043/remote-learning-devices-distribution-nyc> (“Amin Article (July 29, 2020)”).

again, they did nothing to ensure that the most vulnerable students had access to broadband internet and/or internet-enabled devices.³¹

61. Even after the Defendants purportedly made efforts to narrow this divide to facilitate remote learning during the pandemic, 17-20% of New York households continued to lack internet access. This rate was startlingly worse—30%—for Black and Latinx New Yorkers.³²

62. Indeed, a July 2021 report by the Comptroller of New York City found that, during the COVID-19 pandemic, “many students were unable to participate in remote learning because they did not have a device or internet at home.”³³

63. As a result, many families, including Plaintiffs, have been forced to purchase internet access for the first time or to upgrade existing internet access to ensure that they had sufficient internet capabilities to support remote learning.³⁴ Families, including Plaintiffs, who reached out to NYCDOE for assistance in obtaining or paying for internet were, and continue to be, instructed to contact local internet providers and request discounts.³⁵ However, many of these providers did not offer discounts to families, and even those families who qualified for discounts were required to begin paying fees after sixty to ninety days—fees that regularly exceeded \$100 per month.³⁶

³¹ N.Y. State Dep’t of Educ, *Preliminary Fall 2020 Digital Equity Survey Results* at 6 (Sept. 2020),

<http://www.nysed.gov/common/nysed/files/programs/edtech/fall-2020-digital-equity-survey-results.pdf>.

³² N.Y. Civil Liberties Union, *NYSED Survey: 8% of NY Students Without Devices During Pandemic, Racial Disparities* (May 5, 2021), <https://www.nyclu.org/en/press-releases/nysed-survey-8-ny-students-without-devices-during-pandemic-racial-disparities>.

³³ City of N.Y. Office of the Comptroller, *Audit Report on the Department of Education’s Controls over the Distribution of Remote Learning Devices 4* (July 28, 2021), https://comptroller.nyc.gov/wp-content/uploads/documents/MD21_061A.pdf (“NYCDOE Audit Report”).

³⁴ See Reema Amin, *Spectrum, Optimum Relent, Will Offer Internet Deals to NYC Families with Debt*, Chalkbeat N.Y. (Mar. 27, 2020, 12:54 PM EDT), <https://ny.chalkbeat.org/2020/3/27/21225365/spectrum-optimum-relent-will-offer-internet-deals-to-nyc-families-with-debt>; <https://www.schools.nyc.gov/learning/blended-learning/technical-tools-and-support/ipads-and-laptops/free-and-low-cost-internet-options>.

³⁵ See *id.*

³⁶ See *id.*

64. For Plaintiffs, like so many families in New York City, the cost of internet has been burdensome. Because of Defendants' failure to provide free internet connectivity, some of the Plaintiffs have been forced to choose between paying for internet so their children can attend school and paying for basic necessities, such as food or rent.

2. Defendants Unlawfully Denied Students Access to a Free Public Education by Failing to Provide Them with Working Devices.

65. In addition to failing to provide sufficient internet services, the NYCDOE also failed to provide a sufficient number of devices to students, including the Student Plaintiffs. On March 15, 2020, Mayor de Blasio announced that the City would partner with Apple and T-Mobile to provide internet-connected devices to 300,000 New York City public school students.³⁷ Mayor de Blasio stated that these devices would be delivered in the coming weeks.³⁸

66. Five weeks later, 19,000 students, including some of the Student Plaintiffs, were still without a device to access remote learning.³⁹ Many of these students, including some of the Student Plaintiffs, tried to access remote learning from a parent's cellular phone, and many simply could not access learning at all.

67. As the 2019-2020 school year concluded, the NYCDOE should have devoted resources to improve remote learning and ensure educational access during the 2020-2021 school year. Instead, in July 2020, NYCDOE's central office made individual schools and principals responsible for collecting, redistributing, arranging repairs for, ordering, and paying for remote learning devices.⁴⁰ NYCDOE agreed to give 30,000 devices to schools that could not afford to

³⁷ Mayor's Remote Learning Announcement.

³⁸ *Id.*

³⁹ [Alex Zimmerman & Jessica Gould, 5 Weeks into Online Learning, NYC is Still Racing to Get Thousands of Devices to Students, Chalkbeat N.Y. \(Apr. 25, 2020, 1:06 PM EDT\), https://ny.chalkbeat.org/2020/4/25/21236279/students-lack-devices-nyc-schools-coronavirus.](https://ny.chalkbeat.org/2020/4/25/21236279/students-lack-devices-nyc-schools-coronavirus)

⁴⁰ Amin Article (July 29, 2020).

buy new ones, but refused to say how they would support schools or students if that supply ran out.⁴¹

68. This policy change made it even more difficult for families, including Plaintiffs, to access remote learning devices. Instead of contacting DOE's central office to request remote learning devices, families, including Plaintiffs, were advised to contact their child's school to request a device. Some school principals were unaware of the policy shift and stated that they only learned of the change once parents began asking in August where their requested devices were.⁴²

69. As a result of this policy shift and Defendants' continued failure to provide students with resources to access remote learning, thousands of students, including some of the Student Plaintiffs, lacked functioning remote learning devices as the 2020-2021 school year began, more than six months after the schools first closed and switched to remote learning due to the COVID-19 pandemic.

70. In October 2020, NYCDOE's then-Chancellor Carranza reported that 77,000 students were still waiting to receive remote learning devices.⁴³ More than a month later, 60,000 students were *still* without devices.⁴⁴ NYCDOE pledged to deliver those devices within four to five weeks, but some students did not receive a device until late January 2021.⁴⁵

⁴¹ *Id.*

⁴² Reema Amin, *NYC Schools Scramble to Help Students who Lack Devices as Online Learning Ramps Up Again*, Chalkbeat N.Y. (Sept. 22, 2020, 6:22 PM EDT), <https://ny.chalkbeat.org/2020/9/22/21451613/nyc-schools-device-access-remote-learning>.

⁴³ David Cruz, *NYC Schools Still Missing 77,000 Devices that Students Need for Learning*, Gothamist (Oct. 16, 2020, 8:14 PM), <https://gothamist.com/news/nyc-schools-still-missing-77000-devices-students-need-learning>.

⁴⁴ Eliza Shapiro, *When New York City Schools Reopen, About 700,000 Students Won't Be There*, N.Y. Times (Nov. 20, 2020), <https://www.nytimes.com/2020/11/20/nyregion/nyc-schools-reopening-coronavirus.html>.

⁴⁵ Carolyn Thompson, *Survey: Many NY Students Began Year Without Device, Internet*, NBC N.Y. (May 6, 2021, 12:43 AM), <https://www.nbcnewyork.com/news/local/survey-many-ny-students-began-year-without-device-internet/3039343/>; *Digital Divide: NYC Department of Education Says More Devices for Students Won't Arrive for at Least Another Month* (Nov. 20, 2020, 6:50 PM), CBS N.Y., <https://newyork.cbslocal.com/2020/11/20/nyc-schools-ipads-chromebooks/>.

71. As of March 2021, more than 16,000 requests for devices remained pending from 2020, in addition to thousands more that remained pending from 2021.⁴⁶

72. NYCDOE also failed to establish a system to repair or replace broken devices. The NYCDOE offered inconsistent and wide-ranging solutions, many of which were ineffective, to families whose devices were broken or inoperative. Some families, including some of the Plaintiffs, were directed to bring the broken device to their child's school for repairs. Others received no answer for weeks on end.

73. As a direct result of Defendants' failure to timely provide families with devices through which they could access remote learning, many low-income and nonwhite students and families, including Plaintiffs, struggled to access remote education throughout the entirety of the 2020-2021 school year.

3. Defendants Denied Students Access to a Free Public Education by Failing to Provide Adequate Training and Support for Students and Parents to Access Remote Learning.

74. NYCDOE also failed to provide sufficient technical support and information to families struggling with remote learning. This was particularly true for families who prefer to communicate in a language other than English. NYCDOE provided very little, if any, support to these families in their identified preferred language.

75. As difficult as remote learning is for all parents, for parents who lack technology skills or have limited digital literacy, like the Parent Plaintiffs, helping their children navigate remote learning is an even more arduous and time-consuming task. This is especially true for parents with limited English proficiency, including the three LEP Parent Plaintiffs.

⁴⁶ NYCDOE Audit Report at 11.

76. According to NYSED data, as of 2018, more than 160,000 students in the New York City schools have been identified as English Language Learners (“ELL”).⁴⁷ Moreover, as of 2018, 46% of children in low-income families in New York State, including some of the Student Plaintiffs, have one or more parents who were born in a foreign country.⁴⁸ As Defendants are aware, ELLs are a particularly vulnerable population. “ELLs have the highest dropout rate of any student group, while only 46% graduate on time.”⁴⁹

77. Yet, although the NYCDOE has relied on parents, including the Parent Plaintiffs, to play an active role in their children’s education during the pandemic, “the DOE has struggled to communicate with immigrant and LEP families in their home language and via accessible forms of communication that do not rely on families having access to the internet.”⁵⁰

78. The New York Immigration Coalition (“NYIC”) found that the NYCDOE “has delayed publishing translations of announcements about major policy changes, including how to access basic services, how to get, setup or troubleshoot devices or WiFi, summer school, busing, school closures, etc.” and further found that as many as 36% of LEP parents surveyed by NYIC in the summer of 2020 said they had not received information or assignments in the language they spoke at home.⁵¹

⁴⁷ N.Y. State Dep’t of Educ., *New York State Multilingual Learner/English Language learner (MLL/ELL) Data Report 2* (2019), http://www.nysed.gov/common/nysed/files/programs/bilingual-ed/nysed_ell_mll_data-report_2018-2019-a.pdf.

⁴⁸ Julie Sugarman & Courtney Geary, Migration Pol’y Ctr., *English Language Learners in New York State* 1 (Aug. 2018), https://www.migrationpolicy.org/sites/default/files/publications/EL-factsheet2018-NewYorkState_FinalWeb.pdf.

⁴⁹ Advoc. for Children of N.Y., *Disparities in Attendance During Covid-19* 2 (Apr. 2021), https://www.advocatesforchildren.org/sites/default/files/library/policy_brief_attendance_disparities_covid_41421.pdf?pt=1 (“Disparities in Attendance”).

⁵⁰ N.Y. Immigr. Coal. Educ. Collaborative, *2021 Education Roadmap for English Language Learners* 2 (2021), <https://www.politico.com/states/f/?id=00000178-4249-dd22-a17a-dffdf58e0000>.

⁵¹ *Id.*

79. If a student was unable to log in to a remote learning platform, if a device or website stopped functioning, or if a teacher or school sent an electronic communication, there was no resource for the student or a parent to refer to for guidance, and there was no guarantee that they would receive any assistance from Defendants in addressing the issue.

80. Defendants provided very limited support or training in English and, for all intents and purposes, *no* support or training in any other language for parents seeking assistance with their children's remote learning.

81. Defendants' failure in this regard deprived students, including the Student Plaintiffs, of their right to a sound basic education and widened the educational equity gap between white and wealthy students on the one hand, and low-income nonwhite students and students from families with limited English proficiency on the other.

82. Notably, NYCDOE attendance data shows that “[t]he January 2021 attendance rate for ELL tenth graders was 10.1 percentage points lower than the 2018-19 attendance rate for ELLs in tenth grade, while the attendance rate for ELL ninth graders fell 7.9 percentage points.”⁵² The data further shows that the attendance rate for ELLs dropped more significantly than non-ELL students.⁵³

4. Defendants Denied Students Access to a Free Public Education by Failing to Provide Academic Intervention Services and other Supports to Students at Risk of Failing or Not Meeting State Learning Standards.

83. Section 100.2(ee) of the Regulations of the New York State Commissioner of Education (“Commissioner’s Regs”) requires school districts to provide academic intervention services (“AIS”) to students who score below the designated performance level on State

⁵² Disparities in Attendance at 2.

⁵³ *Id.*

assessments and to those who are at risk of not meeting the State learning standards for their grade level in English, language arts, and/or mathematics.

84. Defendants were aware that many students, including some of the Student Plaintiffs, were in danger of not achieving the State learning standards for their grade level during the 2019-2020 and 2020-2021 school years. Yet, Defendants consistently failed to provide AIS to students who struggled during remote learning, even those who were at risk of failing.

85. For example, some of the Student Plaintiffs who were at risk of failing their grade were instructed to attend summer school programs. Yet, in some cases, those summer school programs were abruptly discontinued. In others, students were unable to participate in any purported additional instruction because they faced the same issues with internet connectivity and functioning devices described above.

86. Beyond those ineffective or nonexistent summer programs, none of the Student Plaintiffs have been offered any academic intervention services, despite the fact that they all missed significant days of class since March 2020, they all fell behind in their academic work, many were at risk of not being promoted to the next grade, and some were not, in fact, promoted.

87. Defendants failed to provide New York City public school students, including the Student Plaintiffs, with AIS during the COVID-19 pandemic, thereby depriving them of a sound, basic public education as required by the New York State Constitution.

II. DEFENDANTS' FAILURE TO PROVIDE FREE AND RELIABLE ACCESS TO THE RESOURCES AND SUPPORTS REQUIRED FOR REMOTE LEARNING HAD A DISPARATE IMPACT TO THE DETRIMENT OF PLAINTIFFS AND OTHER NYC FAMILIES ON THE BASIS OF RACE AND NATIONAL ORIGIN.

88. As set forth above, Defendants and other State and City officials were and are aware that, on the whole, low-income students, Black and Latinx students, and non-native

English speakers are attending under-resourced and underfunded schools, are struggling to meet state educational standards, and are less likely to graduate than their white or wealthy peers.⁵⁴ Defendants have further neglected these students during the COVID-19 pandemic by failing to ensure that access to education, remote learning platforms, and digital resources were provided in a nondiscriminatory manner.

89. The failure to provide the resources necessary for remote learning meant that the Student Plaintiffs and other students dependent on remote learning were deprived of full and equal access to their public education on the same terms as their peers of different backgrounds. Students of color in New York City, including the Student Plaintiffs, have been disproportionately impacted by the Defendants' failure to ensure that students could access their education.

90. Even early in the pandemic, it was clear that remote learning was structured in a way that resulted in worse outcomes for students of color than for white students.⁵⁵ Schools with predominantly Black or Latinx students had much higher rates of student absences from remote learning, and much lower rates of utilization of hybrid learning options.⁵⁶ Schools whose students were more than 25% Black or Hispanic were four times as likely to report low remote-learning engagement. Schools whose students were more than 50% Black or Hispanic were eight times

⁵⁴ See, e.g., Nicholas Rizzi, *Achievement Gap Widens for NYC Students of Color: Report*, Patch (Apr. 10, 2018, 3:43 PM ET), <https://patch.com/new-york/brooklyn/achievement-gap-widens-nyc-students-color-report>; Alex Zimmerman, *These Four Graphs Illustrate New York City's Stark Achievement Gaps by Race and Income*, Chalkbeat N.Y. (Jan. 31, 2018, 6:00 AM EST), <https://ny.chalkbeat.org/2018/1/31/21104265/these-four-graphs-illustrate-new-york-city-s-stark-achievement-gaps-by-race-and-income>.

⁵⁵ City of N.Y. Office of the Comptroller, *Strong Schools for All: A Plan Forward for New York City 20* (July 2020), https://comptroller.nyc.gov/wp-content/uploads/documents/School_Reopening_Report_07_07_20.pdf ("Strong Schools Report").

⁵⁶ N.Y. City Council, *Schools with High Black and Hispanic Populations Had Low Student Engagement During Pandemic, City Data Shows* (Oct. 15, 2020), <https://council.nyc.gov/press/2020/10/15/2028/>.

as likely to report such decreased engagement. Yet, Defendants failed to sufficiently modify their practices to address the issues with remote learning.

91. The racial equity gap in New York City schools is exacerbated by racially disparate access to reliable internet for remote learning. A 2019 report from the New York City Comptroller found that almost one-third of Black and Hispanic New Yorkers lacked broadband internet access, while only 20% of white New Yorkers lacked similar access.⁵⁷ This disparity means that families of color, including Plaintiffs, were less likely to be able to independently provide the resources their children needed to access remote learning than white families.

92. Defendants were aware of several options for ensuring that the instrumentalities of remote learning were available to students without discrimination on the basis of race, national origin, language use, or other impermissible factors, including providing access to free broadband services and free, functional devices to all students in need, and providing training to parents who were not proficient in English and/or were not technologically proficient, including Plaintiffs, in their preferred language. However, as evidenced by the racial disparities that persisted throughout the 2020-2021 school year, the City failed to meet its obligation to educate its students in a manner that did not disparately impact students of color like the Student Plaintiffs.

93. The City's failure to address the inequities of remote learning resulted in discriminatory educational impacts to students of color, including the Student Plaintiffs, and discriminatory financial impacts to the Parent Plaintiffs.

94. By failing to abate remote-learning policies that resulted in worse outcomes for certain groups of students, including students of color such as the Student Plaintiffs, the City

⁵⁷ 2019 Comptroller Report at 5.

Defendants violated their obligations under the New York City Human Rights Law, N.Y.C.A.C. §§ 8-107(4)(a)(1)(1), 8-107(17).

III. PLAINTIFFS WERE HARMED BY DEFENDANTS' FAILURE TO PROVIDE FREE AND RELIABLE ACCESS TO THE RESOURCES AND SUPPORT REQUIRED FOR REMOTE LEARNING

Plaintiffs S.M., E.P., A.P. and D.P.

95. Plaintiff S.M. is a Latina woman and the mother of three Latinx children, E.P., A.P., and D.P., all of whom attend New York City public schools. S.M.'s primary and native language is Spanish, and she has very limited English proficiency. S.M. requires interpretation and translation to communicate in English and has made NYCDOE aware of her language needs on a number of different occasions over the years. S.M. has a low income and very few resources.

96. When schools shut down in March of 2020, S.M. did not have electronic devices for her children or broadband internet service in her home.

97. S.M. requested devices from NYCDOE for her three children. NYCDOE provided a laptop for E.P., then a sixth-grade student, but the device was not internet-enabled. NYCDOE did not provide either A.P., a first-grade student, or D.P., a fourth-grade student, with any device for more than a month into remote learning. When A.P. and D.P. finally did receive devices, they too were not internet-enabled.

98. S.M. and her children informed the DOE through staff at the children's respective schools of the family's lack of internet access early on in the pandemic. When S.M. and E.P. told E.P.'s school about their lack of internet service, the school told S.M. that she should call the Optimum cable company and request broadband, and that the broadband would be free if she told Optimum that the broadband was for a school laptop.

99. However, when S.M. called Optimum, a representative told her that internet services would cost approximately \$75.00 per month, an amount that was prohibitively expensive for S.M.

100. With the help of her children, S.M. again called the school and a staff member told S.M., using her children as interpreters, that the school would look into her internet issues and would send someone to her home to resolve them. Nobody ever came to her home.

101. S.M. attempted to use her cell phone as a wireless hotspot to provide internet for her children so that they could access remote learning; however, the connectivity was insufficient for all three children to consistently attend classes. Therefore, in or about May 2020, two months after the schools closed and with no other options, S.M. eventually began paying a relative for her share of the costs of a WiFi package through Optimum.

102. S.M. currently pays a relative her share of an internet package through Verizon. She has paid hundreds of dollars for internet services since the schools closed in March 2020. The financial burden of paying for internet service for her children has impacted her ability to cover her rent, buy food, and pay for other necessities of living.

103. Even after S.M. began paying for home internet services in May 2020, her children had difficulty accessing remote learning through the devices they were provided by NYCDOE. S.M.'s children experienced malfunctioning devices, glitches, disconnections from remote learning platforms, and incorrect log-in codes, among other difficulties that prevented them from accessing their classrooms and assignments during this time.

104. In or about May 2020, school staff at D.P.'s and A.P.'s elementary school told S.M. that the DOE would send a tech person out to look at A.P.'s and D.P.'s malfunctioning iPads, but nobody ever came.

105. Due to these device issues, E.P., A.P. and D.P. missed a significant portion of their education for the remainder of the 2019-2020 school year.

106. Toward the end of the school year, D.P.'s school informed S.M. that he was in danger of failing the fourth grade and, as a result, D.P. would have to attend summer school remotely during the summer of 2020. However, the school discontinued the summer option after about two weeks. NYCDOE did not offer D.P. another opportunity to make up the learning he missed during the 2019-2020 school year due to Defendants' remote learning failures.

107. Because of the difficulties with remote learning during the 2019-2020 school year, S.M. wanted to send E.P., A.P. and D.P. to school in person during the 2020-2021 school year. However, because the school was only offering hybrid learning, E.P., A.P. and D.P. still had to learn remotely two or three days per week.

108. D.P.'s and A.P.'s hybrid learning did not begin until October 2020, and they were fully remote until that time. In addition, through the 2020-2021 school year, E.P., A.P. and D.P.'s schools shut down in-person learning multiple times due to COVID-19, forcing E.P., A.P., and D.P. to go back to learning remotely on those occasions.

109. Unfortunately, E.P., A.P. and D.P.'s access to remote learning was no better during the 2020-2021 school year than it was at the start of the pandemic. E.P., A.P. and D.P. were often unable to access the remote learning programs and, if they did access them, they were often knocked out of them in the middle of lessons.

110. Between November 2020 and December 2020, E.P.'s laptop began to malfunction and block him from the remote learning platforms entirely. S.M. and E.P. informed his school, but the school did not replace his device or provide any other assistance until late December. At that time, E.P. was provided with a new device, a small iPad.

111. Even with the new device, E.P.'s problems accessing remote learning continued throughout the 2020-2021 school year due to technical issues with the iPad and/or with internet service, the remote learning platforms, and login codes.

112. During Fall 2020, when A.P. was enrolled in hybrid learning, S.M. sent A.P.'s defective device to the school for repairs several times on in-person learning days, but the device was never fixed. On one occasion in December, the school did not return the tablet for about a week. During this time period, A.P. had no device at all. Even after she got the device back, the glitches and other problems accessing the remote classroom and classwork persisted.

113. Defendants did not provide S.M. with any training and provided minimal to no support to help her access remote learning platforms for her children or assist her children with their schoolwork during the 2019-2020 and 2020-2021 school years. Instead, teachers from E.P.'s, D.P.'s and A.P.'s schools contacted S.M. from time to time to ask why her children were not attending remote learning, or to tell her that E.P., D.P., and A.P. were behind.

114. When school staff called about her children, S.M. tried to explain the device and internet issues her children were having, but most of the time the individuals calling from the schools and/or NYCDOE did not speak Spanish. Using her minor children to interpret for them, school staff told S.M. on multiple occasions that someone would call her back with an interpreter, but no one ever did.

115. S.M. reached out to the parent coordinator at E.P.'s school for help a few times, but the parent coordinator just told her to do her best and offered no other support to S.M. or her children.

116. A.P.'s school contacted S.M. in March 2021 to let her know that her daughter had fallen further behind with only a 61% average. E.P. also fell behind drastically, particularly in

the area of math, due to Defendants' failure to provide him with proper access to remote learning. D.P.'s frustration tolerance, and decreased ability to focus worsened as a result of remote learning gaps and lost education and he too continues to struggle academically.

117. E.P., A.P., and D.P. have continued to struggle and fall behind academically during the 2021-2022 school year.

118. Prior to the pandemic, E.P. liked school and looked forward to it. He had aspirations to continue his education after high school and get a job. A.P. also liked school and was a good student and had dreams of becoming a ballerina. D.P. dreamed of becoming a firefighter or a disc jockey. The lack of resources and supports required for remote learning has caused E.P., A.P., and D.P. to struggle academically and to experience a great deal of anxiety about school. E.P., A.P., and D.P. continue to struggle in school now and have fallen behind academically.

119. Due to the NYCDOE's failure to provide internet services, properly functioning devices, and training, support, or effective communication regarding how to access remote learning, E.P., A.P. and D.P. were denied a sound basic education between March 16, 2020 and December 2021. Due to the NYCDOE's failure to improve remote learning, E.P., A.P. and D.P. are in danger of being denied a sound basic education for the coming Term, as well.

Plaintiffs G.S. and A.E.

120. Plaintiff A.E. is enrolled in first grade in a New York City public elementary school. A.E. lives with her mother, Plaintiff G.S. G.S. speaks Spanish and has extremely limited English proficiency. G.S. requires interpretation and translation to communicate in English. G.S. and A.E. have limited resources.

121. When A.E.'s school switched to remote learning in March of 2020, G.S. and A.E. did not have internet service and G.S. did not have a remote learning device for A.E. G.S. cannot afford to pay for home internet service.

122. G.S. requested a device from NYCDOE in March 2020 but A.E. did not receive an iPad until the end of May, two months after her school closed and remote learning began. A.E. did not receive any meaningful education during those two months.

123. Although G.S. attempted to access instruction for A.E. by logging into the remote learning with her cell phone, the cell phone did not have adequate internet connectivity and A.E. was frequently bumped off the school platforms.

124. By the time A.E. received the iPad at the end of May 2020, the 2019-2020 school year had nearly ended. A.E. and G.S. had difficulty logging onto the device with the codes provided. A.E. and G.S. also had trouble accessing the internet from the device. Since neither the school nor the family could resolve these problems, A.E. had to finish the school year using G.S.'s cell phone, which had very spotty connectivity.

125. G.S. and A.E. and their family moved to a new home prior to the start of the 2020-2021 school year, and A.E. enrolled in a neighborhood school in a blended learning program, attending school in person two or three days a week.

126. A.E. continued to experience remote learning access issues, which prevented her from receiving a consistent or adequate education. A.E. often had difficulty logging in to school applications and platforms on the iPad, and she continued to have connectivity issues. With the help of her children, G.S. contacted A.E.'s school about the issues with remote learning but nobody from the school or NYCDOE made any attempt to resolve them.

127. Given the continuous issues with A.E.'s iPad, in November 2020 with the assistance of a social worker, G.S. requested another tablet for A.E. G.S. did not receive a new device, nor did she receive any remote learning support or resources in Spanish, even though A.E. is registered as an English language learner (ELL) and G.S. speaks Spanish and requires interpretation and translation.

128. A.E. has continued to struggle and fall behind academically during the 2021-2022 school year.

129. A.E.'s connectivity issues and inability to access remote learning have caused a great deal of stress for A.E. and for G.S. Prior to the pandemic, A.E. enjoyed school and had dreams of being a dancer or a lawyer one day. Due to the persistent remote access issues, A.E. missed a significant portion of schooling during the 2020-2021 school year and continues to struggle with learning.

Plaintiffs D.H. and S.H.

130. S.H. is an eighth-grade student attending a New York City public middle school. S.H. and her mother, D.H., identify as Latinx. The family has limited income and resources.

131. When remote learning began in March 2020, S.H. used an Apple computer that her family had at home; however, the computer was old, and S.H. was unable to download some of the applications she needed for school. Often, when she tried to load a program or access the live Zoom instruction via Google Classroom, the computer would stall or shut down.

132. During the period from March 2020 to June 2020, S.H. used her mother's phone to participate in live instruction and submit classwork.

133. In June 2020, D.H. requested a device from the NYCDOE because S.H. could not connect with the cell phone or the old house computer and S.H. was failing her grade. In July

2020, S.H. received an iPad that was supposed to be internet-enabled and activated on the T-Mobile Education Plan.

134. When S.H. first tried to use the iPad during summer school, she was unable to access the Zoom classroom. The iPad indicated that Zoom was loading but it consistently failed to open. When S.H. tried to access the applications that were listed on the Google Classroom for her to complete schoolwork, she was unable to log in to them.

135. Immediately after receiving the iPad, D.H. called S.H.'s school's parent coordinator to discuss the connection issues. The parent coordinator told D.H. that there was nothing the school could do.

136. D.H. continued to call the school to complain about the device throughout July. She left messages for the parent coordinator and the dean, but was repeatedly told that there was nothing the school could do. When S.H. tried to use D.H.'s phone to participate in remote instruction, she continued to have issues getting into the live instruction, as well as problems accessing the assignments for classwork.

137. D.H. next called NYCDOE's technical support team. They told her that they were addressing the problem with the platform and apologized to her for the inconvenience.

138. Because she was unable to connect to the remote schooling, S.H. continued to fall behind in her classes. Remarkably, during the second to last day of summer school, S.H. was able to connect to the remote platform. She stayed up through the middle of the night in the attempt to do as much work as possible to meet the requirements for summer school. Although she submitted the schoolwork, she still failed the class and did not get promoted.

139. For the 2020-2021 school year, D.H. chose to keep S.H. enrolled in remote learning because she was concerned about the rising rates of Covid-19 infections.

140. As soon as remote instruction began on September 15, 2020, S.H. had the same issue with accessing the remote platform that she had over the summer. She was unable to log into the applications or access the assignments.

141. D.H. called the school dean to report the problem and the dean told her S.H. likely had a faulty device. He said that the school did not have many additional devices and, because S.H. already had a device, it was unlikely she would get another.

142. S.H.'s educational difficulties were exacerbated by the NYCDOE's failure to assign her an English Language Arts ("ELA") class at the beginning of the 2020-2021 school year and, despite complaints from D.H. and S.H., the NYCDOE did nothing about it until mid-October.

143. In October 2020, D.H., concerned that the problems might be the result of connectivity issues from her home internet service, bought a new modem and router in the hopes that improving the internet service in her home would allow S.H. to access the platform. The modem and router were a significant expense for the family and, in the end, they made no difference to the speed or sufficiency of internet access. S.H. continued to have difficulties accessing the remote platform.

144. S.H. also struggled to access specific websites for her classes. For example, when she tried to get the virtual textbook for her Science class, the website was blocked. When she tried to use the YouTube videos assigned by her Social Studies teacher, she encountered the same problem. She also had difficulty accessing the work from her ELA teacher because the links provided failed to work. As a result, S.H. fell further behind in school.

145. S.H. had issues accessing the remote learning platforms throughout the entirety of the 2020-2021 school year and into the current year.

146. D.H. continues to pay more than \$100 a month to Spectrum for high-speed internet access, an amount she cannot afford.

147. Defendants' failure to provide the resources and support necessary for remote learning has caused S.H. to experience a great deal of stress and her lack of access to education has caused her to fall behind in school.

Plaintiffs A.P., M.L. and L.L.

148. M.L. is a sixth-grade student who attends a New York City public middle school. His brother, L.L., a seven-year-old boy, attends third grade at a New York City public elementary school. M.L., L.L., and their family are Latinx and the family has limited means.

149. When remote learning began in March 2020, M.L. and L.L. both used a Dell computer that their family had at home; however, it did not have a camera or microphone and was not equipped for remote classrooms. As a result, A.P., M.L. and L.L.'s mother requested devices for her children in March 2020.

150. While M.L. and L.L. waited for their devices, they shared their sisters' Google Chromebooks. Both sisters had received these computers from their high school and were using them for their work as well. As a result, M.L. and L.L. had to share the devices throughout the day.

151. In May 2020, A.P. received two iPads for M.L. and L.L., both of which were internet-enabled and activated on the T-Mobile Education Plan.

152. Nonetheless, almost immediately, M.L. and L.L. had issues accessing their classroom instruction. The iPads would often freeze during the class time. Both children had difficulty connecting to the internet and the remote platforms, including Google Class, Google Meet, and third-party Apps like RazzKids, IReady, and IExcel.

153. A.P. contacted M.L.'s and L.L.'s teachers to report the problems and although the teachers were able to help with some of the connectivity issues, the iPads continued to freeze on a regular basis. When the iPads did work, they were very slow, making it difficult to complete work.

154. Over the summer, A.P. learned that the NYCDOE was conducting updates to all of the iPads. When M.L. attempted to use the iPad over the summer, he was unable to access any of the applications.

155. At the beginning of the 2020-2021 school year, A.P. chose to keep both children in remote learning because of her concern about the COVID-19 infection rate and delays in the reopening of in-person instruction.

156. At the start of the school year, A.P. received directions from the school that she had to change the email address associated with remote learning for both iPads. She repeatedly tried to change the emails on both iPads but was unsuccessful.

157. As soon as classes began on September 15, 2020, both M.L. and L.L. experienced difficulties with their iPads as they continued to rely on the cellular connection provided by the NYCDOE. The issues with connectivity resulted in frozen classes and dropped connections during instruction time. As a result, both M.L. and L.L. again relied on A.P.'s phone, or their sisters' Chromebooks, to participate during instructional time.

158. In November, A.P. opted for blended learning which enabled M.L. and L.L. to attend school two to three days a week. However, the school was shut down for two brief periods in November due to multiple positive cases, and again in January. During each instance that the children were not participating in live instruction, they had to return to remote learning.

159. In November, A.P. brought the iPads to the school to have the NYCDOE address the connectivity issues and the issue with the email addresses. Though the school fixed the issue with the connection, thereafter, M.L. and L.L. each received a notification that security permissions would not allow them to access the applications they needed and, as a result, they continued to have difficulties accessing remote learning.

160. In December 2020 and January 2021, M.L. and L.L. continued to experience spotty connections that resulted in frozen classes and dropped connections during instruction time. As a result, they both again began to use their mother's phone in order to participate in school.

161. In February 2021, the family contacted Spectrum to increase the speed of their home internet service and bought a new modem and router in the hope it would improve the connectivity. They now pay about \$150 a month for service. These changes failed to make a difference in the speed of the iPads' connectivity.

162. Since early February 2021, M.L. and L.L. have been doing schoolwork on their sisters' Chromebooks because of the continued issues with the DOE-provided iPads, including issues with them freezing, updating during class time or shutting off.

163. Defendants' failure to provide M.L. and L.L. with a functional system of remote learning has caused them and their family a great deal of stress. Both M.L. and L.L. have experienced significant learning loss. In addition, M.L. and L.L.'s family has been forced to purchase more expensive internet services, which has been a financial burden for the family.

Plaintiffs H.A. and J.J.

164. J.J. is a second-grade student who attended kindergarten in a New York City public school when the New York City school system closed in March of 2020. J.J.'s mother, H.A., has limited English proficiency. Bangla is J.J.'s and H.A.'s native language.

165. When remote learning began in March 2020, J.J. did not have a device to access remote instruction, so he used H.A.'s cell phone to participate in class. The service was spotty and he had difficulty participating. In addition, by using his mother's cell phone, J.J. exceeded his mother's data plan, which significantly increased the cost of the plan.

166. H.A. requested a device from the NYCDOE on March 27, 2020. The iPad did not arrive until April 17, 2020. H.A. did not have home internet access so when the device arrived in April, she signed up for home internet services through a 60-day accommodation program offered by Comcast and received a cable modem and a router. J.J.'s iPad functioned properly from April 2020 to June 2020.

167. Due to language access issues, however, J.J. continued to have trouble accessing remote learning during this time period. H.A. was unable to help J.J. navigate remote learning because all of the information about how to access the platforms was provided in English and, as the NYCDOE was aware, H.A.'s preferred language is Bengali (Bangla). As a result, J.J. missed out on instruction time during this period.

168. H.A. opted for remote-only instruction for the 2020-2021 school year; however, when the school year started, J.J. was unable to access any of the class platforms on the iPad. H.A. contacted the school for assistance but she was not provided with a Bengali interpreter and could not meaningfully communicate with staff at the school.

169. In early October, the iPad started having connection problems and J.J. was not able to access remote learning. J.J. attempted to do his schoolwork from his mother's phone for

a month. The connection on H.A.'s phone was often slow and when J.J. used it for classwork, he used all of H.A.'s data. J.J. also had difficulty participating with the class because of the small size of the phone screen and the many glitches in service.

170. At the end of October 2020, with the help of J.J.'s father, H.A. was able to speak to a teacher about the iPad's connection problem, but the teacher told her that he was not in the technology department and was unable to help H.A. J.J.'s father took the device to a relative who recognized that the service provided by Comcast was too slow. Not knowing what else to do, in early November 2020, H.A. applied for Comcast's Internet Essentials package for \$14.99 per month and an initiation fee of \$30.00. This provided H.A. with a faster internet speed.

171. After purchasing faster home internet service, H.A. was able to access the NYCDOE's remote learning platform; however, J.J.'s iPad inexplicably shut down on a regular basis, causing J.J. to lose work and miss valuable instruction time.

172. H.A. repeatedly tried calling the parent coordinator to ask for assistance, but she did not receive a response. The school continued to send H.A. instructions about remote learning in English. H.A. even sent J.J.'s iPad into the school a few times, but this never resolved the ongoing issues with the remote-learning device.

173. J.J. has continued to struggle and fall behind in school during the 2021-2022 school year.

174. Remote learning has been very difficult for J.J. Before COVID-19 he was excited about school, but after the pandemic hit, he got little to no attention from his teacher and he became disengaged from all learning. Remote learning has also been very difficult for H.A., who has struggled to help J.J. navigate the digital platform.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION: VIOLATION OF ARTICLE XI, SECTION 1, OF THE
CONSTITUTION OF THE STATE OF NEW YORK**

(ALL DEFENDANTS)

175. Plaintiffs reallege and incorporate by reference all allegations set forth in the preceding paragraphs.

176. All Students, including the Student Plaintiffs, have a right to a sound basic education guaranteed by Article XI, § 1, of the Constitution of the State of New York.

177. The right to a sound basic education includes the educational inputs of teaching, facilities, and instrumentalities of learning, and educational outputs demonstrating that their education is moving them towards the State’s goal of having its youth be prepared to become productive members of society.

178. Defendants violated that right by failing to ensure that the public schools attended by New York City public school students, including those attended by the Student Plaintiffs, had adequate resources to provide a sound basic education to students during the COVID-19 pandemic.

179. Defendants failed to take action to provide free and reliable internet and working devices. Despite repeated acknowledgments of the many barriers preventing students from accessing remote learning, including faulty or inadequate devices and lack of consistent, reliable internet access, Defendants have failed to dedicate sufficient resources to eliminating these barriers. Defendants have done so even while recognizing that students of color and low-income students are disproportionately affected by these failures.

180. As a result of Defendants’ acts and omissions, the Student Plaintiffs and other students like them lacked access to sound basic teaching.

181. As a result of Defendants' acts and omissions, the Student Plaintiffs and other students like them lacked access to sound basic facilities for learning.

182. As a result of Defendants' acts and omissions, the Student Plaintiffs and other students like them lacked access to sound basic instrumentalities of learning.

183. As a result of Defendants' acts and omissions since March 2020, the Student Plaintiffs' education and that of other students like them has been insufficient to progress them toward the goal of becoming productive members of society.

184. The Student Plaintiffs and other students like them have therefore been denied the sound basic education guaranteed to them by the State Constitution.

185. Defendants' actions and failures to act in violation of Article XI have caused harm to the Student Plaintiffs and other students like them, including education loss. If permitted to continue, the deprivations created by these violations will cause continued and compounding harms.

186. Defendants' actions—and failures to act—in violation of Article XI have caused harm to the Parent Plaintiffs and other parents like them who have had to pay for internet service in order to access education for the Student Plaintiffs, in violation of the free education guaranteed by the State Constitution.

SECOND CAUSE OF ACTION:
VIOLATION OF NEW YORK STATE EDUCATION LAW § 3202

(ALL DEFENDANTS)

187. Plaintiffs reallege and incorporate by reference all allegations set forth in the preceding paragraphs.

188. The Student Plaintiffs, who are school-aged children between the ages of 5 and 21 residing in New York City, have a right to a free public education, as do all other school-aged children in New York City.

189. The Student Plaintiffs and other students like them have been denied access to a free public education due to Defendants' policies and practices, which act as barriers to the Student Plaintiffs' right to educational opportunity and access to learning in violation of New York Educ. Law § 3202.

190. Specifically, Defendants' failure to provide adequate devices, pay for internet access, provide Academic Intervention Services and provide other instrumentalities of learning—including training and technology, translation and interpretation—has prevented the Student Plaintiffs, and other students like them, from receiving a free and basic education.

191. The Plaintiffs and other students and parents like them have and continue to be irreparably injured as a proximate result of Defendants' ongoing violation of New York Education Law § 3202.

192. Through their actions and omissions, Defendants failed to ensure that the Student Plaintiffs, and other students like them, receive the free education to which they are entitled under New York Education Law § 3202, causing harm to the Parent Plaintiffs, and other parents like them, who have had to pay for internet service in order to access education for their children.

**THIRD CAUSE OF ACTION: VIOLATION OF NEW YORK STATE
COMMISSIONER'S REGULATION: N.Y.C.R.R. §100.2 (ee).**

(ALL DEFENDANTS)

193. Plaintiffs reallege and incorporate by reference all allegations set forth in the proceeding paragraphs.

194. Plaintiffs and other students and parents like them, including those with limited English proficiency, have a right to additional support and instruction outside of the regular classroom in addition to the general curriculum, and to support services to address barriers to improved academic performance pursuant to 8 N.Y.C.R.R. § 100.2 (ee).

195. Defendants have failed to comply with their regulatory obligations to identify, properly notify, and provide academic intervention services and support to the Student Plaintiffs and other students like them, despite their need for and right to such support.

196. Plaintiffs and other students and parents like them have and continue to be irreparably injured as a proximate result of Defendants' ongoing violation of 8 N.Y.C.R.R. § 100.2 (ee).

197. Through their actions and omissions, Defendants failed to ensure that the Plaintiffs, and other students and parents like them, receive the additional instruction, services and support to which they are entitled under 8 N.Y.C. R. R. § 100.2 (ee).

**FOURTH CAUSE OF ACTION: VIOLATION OF NEW YORK CITY
ADMINISTRATIVE CODE § 8-107(4)(a)(1)(a) & 8-107(17)(a)**

(Against NYCDOE, Mayor de Blasio, and Chancellor Porter (the "City Defendants"))

198. Plaintiffs reallege and incorporate by reference all allegations set forth in the preceding paragraphs.

199. It is unlawful to directly or indirectly refuse, withhold from, or deny to any person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities, or privileges of the place or provider of public accommodation because of such person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service, or immigration or citizenship status. N.Y.C. Admin. Code § 8-107(4)(a)(1)(a).

200. It is unlawful for any person to aid, abet, incite, compel or coerce the doing of any of the acts prohibited by Chapter 8 of the New York City Administrative Code, including but not limited to those recited in the preceding paragraph.

201. Unlawful discrimination under the NYC Human Rights Law can be proved based upon disparate impact where the plaintiff demonstrates that a Defendant or “covered entity” has engaged in a policy or practice that results in a disparate impact to members of a protected category under the law and the plaintiff provides “substantial evidence that an alternative policy or practice with less disparate impact is available” to Defendant and would serve Defendant’s purposes. *See* N.Y.C. Admin. Code § 8-107(17)(a).

202. Education in the New York City public schools is a public accommodation.

203. The City Defendants’ failure to provide adequate educational services unlawfully discriminated against Plaintiffs and other students and parents like them, in that it resulted in disparate impacts to the detriment of Plaintiffs, and other students and parents like them, on the basis of race and/or ethnicity.

204. The City Defendants’ failure to provide adequate educational services unlawfully discriminated against Plaintiffs, and other students and parents like them, in that it resulted in disparate impacts to the detriment of Plaintiffs, and other students and parents like them, on the basis of national origin.

205. The disparate impact of City Defendants’ policies and practices upon students and parents of color, students and parents of non-U.S. origin, and students and parents who were born outside of the U.S. was statistically significant in comparison to New York City public school students as a whole.

206. Alternative policies or practices were available to the City Defendants that would have resulted in less discriminatory impact against Plaintiffs, and other students and parents like them.

207. The discrimination against Plaintiffs, and other students and parents like them, by the City Defendants was not confined to matters that are strictly educational or pedagogical in nature, in that it pertained not to pedagogical decisions about what the content of education would be, but to basic decisions and practices that determined whether students could access their education at all.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court issue the following relief:

- A. Declare that Defendants' conduct violates Article XI, § 1, of the Constitution of the State of New York, Section 3202 of the New York State Education Law, and Section 100.2(ee) of the New York State Commissioner's Regulation;
- B. Declare that the City Defendants' conduct violates Chapter 8 of the New York City Administrative Code.
- C. Enter an injunction against Defendants that orders them to cease engaging in the foregoing violations of law and to remediate the remote learning system in New York City's public schools such that it is functional and free for all students, including Student Plaintiffs;
- D. Order Defendants to assess the need for free and reliable internet, working remote learning devices, and training among their student population and develop and implement a plan to ensure that all New York City public school students who

- need it, including the Student Plaintiffs, have access to a functional remote learning device and internet services at no cost to the student or his or her family;
- E. Order Defendants to provide instructions to all parents of New York City public school students, including the Parent Plaintiffs, concerning the remote-learning system and platforms in the parent's preferred language;
- F. Order Defendants to develop and implement a claims process to provide payment to the Parent Plaintiffs and other eligible families for any out-of-pocket internet expenses they incurred to access the NYCDOE's remote-learning system and platforms since March 2020;
- G. Order Defendants to assess the need for compensatory education, including AIS, among their student population, and to develop, implement, and fund an expedited process and plan for remedying the lost educational opportunity suffered by all New York City public school students, including the Student Plaintiffs.
- H. Order Defendants to provide compensatory services and Academic Intervention Services to all such students including the Plaintiffs;
- I. Award Plaintiffs compensatory damages for economic harm arising from the City Defendants' violations of the New York City Human Rights law;
- J. Award Plaintiffs the fees (including attorneys' fees), costs, and expenses incurred in connection with enforcing the rights of Plaintiffs, including but not limited to the fees (including attorneys' fees), costs, and expenses incurred in this action; and
- K. Grant Plaintiffs any other relief the Court deems appropriate.

Dated: New York, New York

December 28, 2021

ARNOLD & PORTER KAYE SCHOLER LLP

By: 

Jennifer B. Patterson (Bar No. 2661403)
Lucy S. McMillan (Bar No. 4337465)
250 West 55th Street
New York, NY 10019-9710
Telephone: +1 212-836-8000
Fax: +1 212-836-8689

LEGAL SERVICES NYC
Tara Foster, Esq.
Veronica J. Cook, Esq.
40 Worth Street, 6thth Floor
New York, NY 10013
Telephone: +1 646-442-3600

EDUCATION LAW CENTER
Gregory G. Little
Wendy Lecker
60 Park Place, Suite 3200
Newark, NJ 07102
Telephone: +1 917-664-4010

Attorneys for Plaintiffs