

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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CONEY ISLAND PREP; LESLIE-BERNARD JOSEPH; HOUSING WORKS, INC.; CHARLES KING; MARK LEVINE; and ALEXANDRA GREENBERG, :

Plaintiffs, : No. 2020 - _____

-against- :

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX. M. AZAR II, *in his official capacity as Secretary of Health and Human Services*; DR. ROBERT KADLEC, *in his official capacity as Assistant Secretary of Health and Human Services*; CENTERS FOR DISEASE CONTROL AND PREVENTION; DR. ROBERT R. REDFIELD, *in his official capacity as Director for the Centers for Disease Control and Prevention*, :

Defendants. :

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**DECLARATION OF LESLIE-BERNARD JOSEPH
IN SUPPORT OF PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

I, Leslie-Bernard Joseph, under penalty of perjury, state as follows:

1. I am a resident of Brooklyn, New York and have served as the CEO of Coney Island Prep (“CIP”), a free public charter school in Brooklyn, since 2019. I previously served as the school’s founding Dean of Students and later as Deputy Executive Director. In addition to my time at CIP, I have worked at the law firm Skadden, Arps, Slate, Meagher & Flom LLP and McKinsey & Company consulting, where I did significant pro bono work and advising on behalf of public institutions and not-for-profit organizations. I hold a bachelor’s degree from Princeton

University, an education master's degree from Stanford University, and juris doctor from Stanford Law School.

2. Central to my mission as an educator is building culture and community in the classrooms where I teach and at the schools and organizations I lead. This extends beyond the subjects and material that are taught to how students enter the building, what they wear, how they greet each other and the teacher, and what the built environment highlights. My students are expected to learn more than just the lessons in the syllabus, but also how to care for themselves and each other with pride, professionalism, respect, integrity, drive, and empathy.

3. CIP teaches more than 1,000 students from kindergarten through twelfth grade across three campuses and is dedicated to preparing every scholar for success in the college or career of their choice. Schools are located in the Coney Island, Bath Beach, and Gravesend neighborhoods of Brooklyn, and serve a diverse community of students and families. Across CIP's three schools, 43% of scholars identify as Black, 30% Latinx, 16% White, 10% Asian, and 1% Multi-Racial. Its families speak over two dozen languages and include immigrants from Africa, Asia, Europe, and Latin America. 22% of its scholars have special needs, which is a higher proportion than CIP's Community School District in southern Brooklyn, and 11% are English Language Learners, meaning English is not their first language. As an expression of its families' economic need, approximately 86% of CIP scholars are eligible for Free and Reduced-Price Lunches, a federal program providing food assistance through schools.

4. CIP is dedicated to putting every one of its students in the best educational position possible and to providing its students with opportunities available at the best schools in the city. It provides rigorous, standards-aligned instruction in grades K-12, and relies on student assessment data to drive instruction and to inform professional development for teachers. The

first five years of elementary school help students build a long-term foundation for success. CIP Elementary outperforms its district, New York City, and New York State on standardized test scores and had eliminated racial achievement gaps on state tests in grades three and four.

Scholars receive social emotional learning and support through advisory programs that ensure all students, especially in middle and high schools, are assigned a dedicated faculty member to help students progress. CIP High School strives to offer a college preparatory experience and encourages students to complete an Advanced Regents Diploma, while also receiving college counseling and support. In service of this mission, it ensures students have access to summer experiences on college campuses and study-abroad opportunities regardless of access and need. Moreover, it continues to support its students through college, where students-of-color and students without means face specific challenges. Thus far, of the four CIP classes that have completed high school, more than 95% of students received college acceptances before completing high school, and 100% received college acceptances or opted for military service. CIP also supports its alumni's college persistence goals.

The Impact of Covid-19

5. CIP's neighborhood and community have been especially hard hit during the pandemic. The virus has disproportionately infected Black and Latinx New Yorkers, immigrants, and essential workers, all of whom are over-represented in CIP's community. As of May, the ZIP code 11224, spanning Coney Island and Sheepshead Bay, had the second highest death rate in Brooklyn: one in 240 people died. This fell heavily on CIP families and staff who saw countless infections and suffered more than a dozen dead.

6. One CIP High School senior entered the spring among the top students in his class. Like many of his peers across the country he completed school remotely and was unable to

attend a prom or graduation ceremony in person. With a number of excellent options to choose from, the student opted for his top-choice college. Between financial aid and the contribution of his father, he was certain about the steps he would take after graduation. Early in the pandemic, his father contracted Covid-19 and was among the first of thousands to die in New York City. For this high school senior, his spring was marked by his family's loss and the uncertainty about his own future without the financial support for college.

7. For another family, with multiple students attending CIP across grade levels, the mother would contract Covid-19 and eventually die from its complications. The father became a single parent of four, tasked with the burden of consoling and caring for children whose grade levels spanned kindergarten to ninth grade. Without the mother's income, the family has fallen months behind on rent and risks becoming housing insecure.

8. CIP families and staff have also disproportionately suffered from the collateral consequences of the pandemic and quarantine. Many parents lost their jobs or were furloughed without pay—more than one hundred families suffered such economic shocks. Many homes were led by single parents carrying additional burdens throughout this period. Many families faced psychological and other challenges that were exacerbated by quarantine and economic distress. Many were housing insecure or struggled to pay critical bills. Many households cared for elder family members or those with pre-existing conditions that left them especially vulnerable to dangerous outcomes if infected.

9. In one family, their patriarch and sole breadwinner contracted Covid-19. After a long battle with the virus, he was lucky to survive. Nonetheless, the lingering effects of the illness and their impact on his health have persisted. His inability to fill shifts and work has left

his family with no steady source of income, thrusting them into a precarious financial predicament.

CIP Adapts to Covid-19

10. Given the extreme risk Covid-19 presented to the Coney Island area, CIP took several extraordinary steps necessary to continue to serve its education mission while keeping its community safe. We recognized that the pandemic would disproportionately impact the Coney Island community—given the high proportion of Black and Latinx residents and low-income families, the number of essential workers, and the disparate access to excellent healthcare in low-income communities of color. We anticipated that socio-economic disparities among our students and faculty would likely widen as the pandemic progressed, and that families without means would have serious challenges keeping their children connected to their education remotely.

11. We also recognized that remote learning would severely impact the school's emphasis on culture and community. Students would lose the routines that shaped their conduct throughout the day, and there would be fewer indicia at home to remind students of their responsibilities to one another and the community at large. Students and families would be prevented from celebrating milestones and achievements, including high school graduation in-person. As a result, even before closing the school, I began planning two things at once: (1) how to move as much of the social and cultural experience of the school online in addition to the lessons and classwork that would also be taught remotely; and (2) how to ensure that the school kept its promise to students, families and the wider community to ensure kids' needs were met regardless of their socio-economic background.

12. Much of CIP's response to the pandemic, described below, therefore is motivated by these goals: an emphasis on culture and storytelling in video lessons; additional counseling, tutoring, and communication with students and parents; food assistance not just on the premises but also in the surrounding neighborhood; and micro-grants to families and alums who need additional support.

13. We took early action in order to prevent unnecessary Covid-19 exposure to students, families and staff. On Thursday, February 27, 2020, I began preparing for school closure. We ended a retreat in Washington, D.C. intended to plan for the upcoming school year and to devise anti-racism strategies central to our mission. On March 6, I directed my Chief Operating Officer to draft specific school closure plans. The following Friday, March 13, 2020, the school closed and moved education online. We took this move days before the first shelter-in-place order in the country and before New York City and New York state schools would close on March 16 and March 19, 2020, respectively.

14. Within a short number of days, CIP commissioned and built an online platform for students to access lessons. We prepared protocol and guidance for faculty to prepare lectures, demonstrations and classwork and readied new software, video resources, and cloud storage for the same.

15. In order to keep its students connected to online education from home, CIP committed to providing every scholar who needed one with a working laptop computer or tablet. On the day we distributed the devices, there was such demand that there was a line around the block of CIP family members and cars double parked on both sides of the street. The school distributed approximately two hundred devices that day. It has repaired or replaced

approximately 100 computers since closure. In total, more than 790 devices are currently on loan to families.

16. A large proportion of CIP's students require federal food assistance, and in the normal course we offer breakfast and lunch to all students for free regardless of need. Nearly all CIP families rely on the school to feed their children to some degree, and school closure shifted that burden to parents and caregivers.

17. CIP partnered with a vendor to provide meal services to our students, our families, and the greater community. Meals were provided for pick-up on site at one of CIP's facilities, or off-site through a mobile food truck pickup service. Meals distributed off-site were made available at three locations in CIP's neighborhoods where the greatest number of students live near multiple New York City Housing Authority public housing developments including Marlboro Houses, Sheepshead Bay Houses, and a location near Carey Gardens, and Coney Island Houses. On the first day this program operated, it served one hundred meals in 45 minutes. Between mid-March and the end of August, CIP distributed more than 125,000 meals via its on-site and off-site food pickup programs. This includes both CIP students and their families, as well as community members. For eligible CIP students and children under the age of 18, meals were reimbursable through federal child nutrition programs. For ineligible adults, CIP covered the costs of meals. Currently, CIP is partnering with the same vendor to arrange for weekly meal delivery to students' homes.

18. CIP serves a community that has been especially hard hit by the direct and collateral costs of the pandemic. Many of our families during the pandemic have faced difficulties paying for housing, food, childcare, electric bills, internet access, and other household necessities.

19. Consistent with our equity mission, the school has provided micro-grants to certain families so that our students' educations have the resources and stability to continue. Thus far, we have provided more than \$95,000 in microgrants to more than one hundred twenty-five families. A large portion of recipient families are housing insecure; many have more than one child in CIP schools; 100% have three or more risk factors, such as special needs, language assistance, trauma, etc.

20. In addition to the resources dedicated to the food, technology and financial assistance above, CIP faculty and staff have had to divert resources to support families remotely in further ways. Our faculty have spent additional hours preparing and filming virtual lessons and lectures. Our staff performs routine check-ins with students and families to ensure that we can support the challenges that arise from distance learning and quarantine generally. Families and students considered to have the fewest risk factors are contacted weekly, and those with greater needs receive daily calls or conferences.

21. CIP provides similar resources to its recent alums who have had to return home due to their college's closure. These are students many of whom were already facing challenges adapting to higher education and who are returning to homes where many of the risk factors facing current CIP students are present. As a result, they often require similar support—food assistance, technology for remote learning, counseling and other guidance—and we have committed to addressing those needs as they would currently enrolled students.

22. We also spent significant time addressing students' extra-curricular and higher education plans which have been altered by Covid-19. This ranges from the students' summer opportunities and study experiences, many of which were canceled, required travel that was no longer possible, or had to shift remotely. My staff worked with each student to ensure there were

no financial barriers to their participation given new Covid-19 related obstacles, or that canceled experiences could be replaced. Many of last year's graduates faced similar challenges with respect to their upcoming school admission and/or employment, where travel, technology, and other obstacles presented by the pandemic put those students' higher education ambitions at risk. We worked to ensure those students were able to commit to their chosen schools.

23. In preparation for the new school year, I engaged a global consulting firm to study Covid-19 best practices across the education sector and present options to inform planning for the fall. Based on that research, CIP has taken several additional steps to ensure we can adapt to changing health risks this fall and school year. We have procured additional medical equipment, such as thermometers. We have secured a supply chain to ensure we have sufficient supplies of hand sanitizer, bleach, and other disinfectants necessary to keep facilities and persons as uncontaminated as possible. We have procured new equipment in order to provide better supervision and medical surveillance, or to serve hot meals to students in their classrooms in order to avoid large gatherings in the cafeteria. We have contracted with local facilities to provide outdoor recreation space sufficient to meet the full student body's needs. We have installed remote video systems in every classroom, allowing students to participate in lessons from home or alternatively for teachers to be able to conduct lessons remotely to students in class; this technology positions the school to isolate students or faculty who have been exposed, who have presented symptoms, or have tested Covid-19 positive and require them to clear a 14-day quarantine per state and federal guidelines.

24. CIP is on the frontlines of the pandemic, protecting and providing for the health of its students and the public health of its community. The New York Departments of Education and Health require public charter schools like CIP to retain health staff and to follow certain

safety rules, including standards and guidelines directly responsive to protecting the community from Covid-19. While the state has provided substantial bright-line guidance, it also leaves room for schools to exercise their own discretion, and CIP has committed to taking steps beyond those that have been mandated. CIP's protocols will require us to send a pod of contacts or a classroom home for a period of isolation while they are all tested. Similarly, we have isolated staff members with suspected contacts and closed buildings to allow for cleaning. We do this in addition to requiring masks at all times and other distancing and hygiene precautions beyond those required by state and local authorities.

25. As early as July 17—the same week the state released its reopening guidance—CIP's research and blueprint was publicly available on our website for all families, staff, and other networks to review. It includes deep cleaning protocols, temperature checks, mandates for mask wearing, scheduled hand sanitizing, reduced class and cohort sizes, physical distancing, restrictions on shared materials, family trainings on public health protocols, a school-wide communication plan, and adjusted daily schedules to rotate use of facilities, entrance and egress. The Blueprint has been shared as an example for schools across the country through Charter School Growth Fund, Achievement First Accelerator, and through other education listservs.

26. CIP began its school year on August 31, 2020 with 100% of students receiving instruction remotely. After being surveyed for their preference on returning to school for in-person instruction or continuing remote learning, a majority of CIP families expressed a preference for continuing remote instruction. Families continue to be weary of sending their children to school, absent the ability to confirm that no members of the community will carry Covid-19 into the building. CIP intends to deliver instruction remotely throughout the fall, in accordance with the wishes of its families and will not open all of its campuses and classrooms.

Our Injuries Generally

27. It is my understanding that the federal government has withheld from CIP and me a number of duties to public disclosure and participation to which we are entitled: 1) recent legislation passed on a bipartisan basis requires the development and implementation of a federal biosurveillance network, providing for participation in and the creation of a network for “near real-time” information during a public health emergency, deadlines for which have not been met; 2) a number of reports and public disclosures that relate to the nation’s preparations and response to public health emergencies, the nation’s underlying public health, health disparities along race and ethnicity, and Covid-19 specifically; and 3) opportunities to participate in the regulatory and rulemaking process whereby we can contribute our experience as educators on the frontlines of the pandemic providing for the health and safety of students, family and staff.

Our Need for Biosurveillance

28. Absent rapid testing or near-real time information as to the prevalence of Covid-19 in New York City and specifically the Coney Island community, CIP does not have sufficient information to tailor its safety protocols to the present risk conditions. We must retain the capacity to operate remotely and in-person in tandem and be poised to switch between those programs at short notice. Moreover, CIP has started the new school year remote until it can establish that it can safely reopen.

29. CIP families and students face the same ambiguity regarding public health and safety that is a direct result of insufficient Covid-19 testing and reporting. Accordingly, when it reopens to on-site education, CIP is committed to providing its families the flexibility to choose whether to attend in-person or remotely per their own safety assessment and risk factors. If it reopens to in-person learning, it will continue to offer some remote options to those families who

prefer their children continue to learn from home. This will continue until those families feel comfortable sending their children to school in-person, including having sufficient information to be assured that testing and tracing can adequately capture and contain the virus.

30. In normal times, schools are health care providers, offering immediate urgent care and coordination of the physical and mental health of their students as well as public health duties with respect to their student and family bodies at large. The pandemic has charged this mandate with additional life-or-death significance. CIP has taken a leadership position on these issues, hiring consultants and seeking the wisdom of experts, establishing health and safety protocols far beyond state and local mandates, and sharing our plans with the wider charter and public school network. As a result, we take a keen interest in all federal, state and local regulation and rulemaking, especially where it has the potential to manifest the rapid testing and tracing infrastructure that has been sorely lacking in the United States' response to this pandemic.

31. Absent the near real-time information a biosurveillance network could provide, New York City's school administrators have been struggling to meet the conflicting demands of government officials whose guidance sometimes has felt like putting a finger to the wind. At the federal level, the CDC cautioned schools against reopening prematurely and then revised its guidance to recommend the prompt reopening for the sake of families and local businesses. I understand this shift is significantly due to pressure from the White House and political officials who have been consistently downplaying the risks of Covid-19, including those related to schools. The New York Mayor and local health officials have pushed public school reopening twice, mere days before their deal permitting public schools to reopen. This month, October, after a concerning rise in Covid-infection rates in certain neighborhoods, local officials mandated

the closure of schools in certain ZIP codes, including CIP. The mixed messages we are receiving from public health officials is a direct result of limited testing supplies, delayed results, and other factors that prevent the collection of near real-time data with respect to the progress of the virus.

32. Such near real-time information will not just inform public officials, but it will empower schools to play their public health roles on behalf of their students, families and staff. Schools will always be charged with significant discretion with respect to applying health policy within their community and facilities, as well as making critical decisions in-the-moment that may make the difference in containment of the virus. We play an important public communications role, interfacing with families and young people to impart the latest guidance and best practices, so that they can make necessary adjustments at home. Moreover, we are positioned to play an invaluable role in public health monitoring, as we are performing temperature checks and monitoring symptoms of our students and families throughout the year.

33. Accordingly, I have been denied necessary information about and opportunities to participate in the development and design of the nation's crucial biosurveillance infrastructure. I know of no federal effort to collect comprehensive information from schools regarding Covid-19; to my knowledge, CIP has not been invited to participate or contribute in any such effort, and those ad-hoc efforts to collect or produce data fall short of the surveillance needed to combat Covid-19. I have concerns that absent input from the school sector, the federal government will ignore important aspects of the information we can provide and the information we need in order to operate safely amidst this pandemic and other public health emergencies. Given the preparations CIP has taken with respect to Covid-19, we have a significant amount of knowledge to share, and whether it be via public meeting or public comment, these are important

opportunities for us to share the lessons of our experience and advocate on behalf of our community of students, families, and staff.

Our Informational Injuries

34. The information and reports that the government failed to provide would help CIP and me to understand the wider public health risks we face, interpret and evaluate programs of our partners and vendors, understand the successes and failures in other jurisdictions, plan for adverse eventualities, and manage decisions with respect to staffing, training and procurement protocols.

35. At CIP, we pay close attention to latest public health information. Early disclosures in the Covid-19 outbreak shaped our early decisions to close the school, divert resources to remote learning, and prepare for supporting our families during a potential shutdown. Throughout the pandemic, we have continued to follow the latest information released by federal, state and local public health agencies, and update our opening and operating plans accordingly. These are living documents that undergo routine revisions as guided by data, the experience of other schools, and best practices guidance. We partner with a global consulting firm to ensure our leadership team is fully briefed as to the latest public health knowledge and that our plans rapidly incorporate new information. CIP shares its plans with partner organizations and the wider charter school community, so our well-informed conduct can have positive downstream effects.

36. The past months have also reminded us how tight the connections are between public health and public education. We have seen throughout New York City and beyond that the costs of the Covid-19 pandemic to children's educations are falling disproportionately on poorer Americans, especially Black and Latinx students. Participation in remote learning depends on

many factors, from access to technology to levels of home supervision to engagement strategies of different schools, and studies have shown that among the collateral impacts of the pandemic have been the costs to students of color. While at CIP, we are proud of our efforts to innovate and engage our kids remotely, we are also acutely aware of the challenges and risks disproportionately they, their families and their teachers face. As a result, we pay special attention to any and all public health guidance, looking for solutions that can get our kids back in the building where we believe we provide the best education they deserve.

37. The reports that the federal government is withholding are directly relevant to CIP's equity mission. We are dedicated to ensuring that our programs address longstanding disparities in education and institutional care, and that includes our ability to participate in and provide for the health considerations of our students and families. To that end, we benefit from vantage on the experience of other schools, whether they are in New York City, New York state, or other jurisdictions across the nation. This includes not only relevant data with respect to their experience of Covid-19, but also data with respect to the public health context in which they operate—including the presence of co-morbidities, other causes of death, and resources and capacity of area health services. Furthermore, such information would be invaluable to understanding not just the transmission risks but how some facilities were able to succeed where others failed, i.e. what mitigation and distancing strategies work with young children in order to protect students, staff and families alike.

38. Similarly, understanding federal emergency preparedness and the capacity of these contingencies positions CIP and its programs to advocate for their deployment in our community, to anticipate areas where federal support may fall short, and to design our own programs accordingly. This information will directly inform our operations and CIP and ensure

we are directing our own limited resources to the greatest benefit of our students, parents and staff. This is especially necessary because in our response to Covid-19 we continue to operate with limited resources and without the fullest information available.

39. In particular, the reports on national health disparities along race and ethnicity are relevant to CIP's mission and my management of the school. CIP operates in a racially and ethnically diverse part of Brooklyn, and our students, families and staff experienced disproportionate infections and fatalities compared with less diverse parts of the city. It is my understanding that the federal government has struggled to collect this information adequately with respect to Covid-19, and that despite its efforts to remedy these issues, the shortfalls continue, in part due to a failure of federal coordination that permits states and counties to ignore such data. We understand that the federal government has an obligation not just to collect this data, but to analyze it and propose strategies to close such health disparities. Absent these highly relevant reports to which the public is entitled, the burden of mitigating adverse outcomes within our community rests unduly on our shoulders and those of our partners.

Our Procedural Injuries

40. If invited, I or CIP staff would participate in the opportunities that the government has denied us, and our school and our leadership would benefit from the information released in any resulting reports.

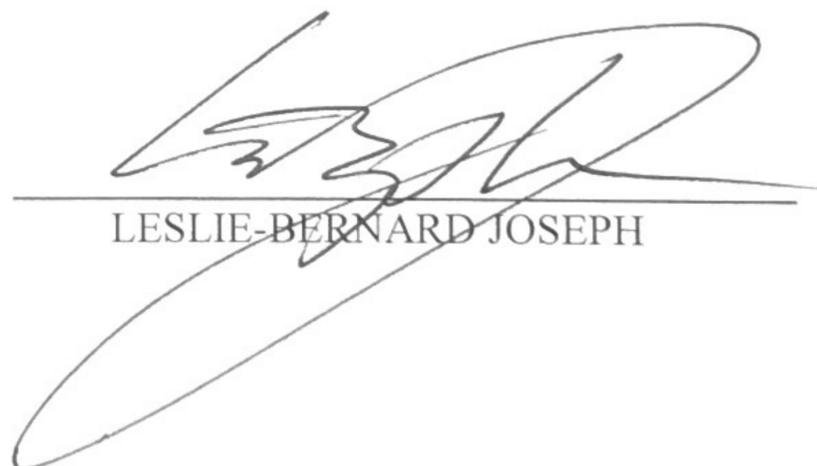
41. CIP's leadership team is well-positioned to participate in such opportunities—including among other things public meetings, convenings soliciting stakeholder or expert input, and drafting comments on federal rules—given the investment we have made in studying the landscape with respect to Covid-19 preparedness and our role engaging and coordinating with other charter school networks. Given that the health and safety of our students is central to our

planning and operations, our experience and perspective is directly relevant to these participatory opportunities and the kind of information the government is supposed to seek through them.

42. Given the community that CIP serves, denying our participatory rights also silences the students, families, teachers and other staff. We are not doctors and nurses working in hospital intensive care, but we are being asked to stand on the frontlines. Federal leaders have made clear that we are being asked to operate safe and healthy schools, and like many essential workers, we are being asked to do so despite the risks involved. Given the racial and ethnic disparities already shaping health outcomes in our community, the federal government's denial of our procedural rights not only silences our organization. The federal government has shut the door on the thousands of people we serve and represent—thousands who are already suffering from the federal government's neglect.

I swear under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: October 28, 2020



LESLIE-BERNARD JOSEPH