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## Is Deliberation a Laudable Goal When Policy is a *Done Deal*? The Habermasian Public Sphere and Legitimacy in a Market Era of Education Policymaking

*Liza N. Pappas*

Minnesota State University, Mankato  
United States

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**Abstract:** The state mandated public hearings concerning school closing proposals in New York City provide a window into a diverse set of policy actors and their deliberations. Opposition to school closures is often cast as entrenched interests, emotional attachment, support for the status quo or at worst negligence. However, content analysis reveals that testimony offered by parent, community, and educator leaders contained a range of substantial critiques of school closing proposals, their motivations, justifications, and expected results. I argue that the hearings did not fully constitute a public sphere by Habermasian criteria, nor a counterpublic by Fraser and Dawson criteria. In fact, the hearings had contradictory effects; one school successfully fought closure by both resisting and reifying neoliberal logic in education policymaking. Some data demonstrates that this school's market-based argument resonated with state authorities, while other data indicates that this market-based argument coincided with the state's own interest to defend its legitimacy in policymaking.

**Keywords:** deliberation; public hearings; school closure policy; Habermas; community; race; neoliberalism

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### **¿Una deliberación es un objetivo louvável cuando una política es un acuerdo ya hecho? Una esfera pública que tiene una legitimidad en una era de mercado de la formulación de políticas educativas**

**Resumen:** En cuanto a las auditorías del Estado sobre las propuestas de fechamiento de las escuelas en la ciudad de Nueva York, hay una ventana para un conjunto diverso de actores políticos y sus deliberaciones. Argumento que como audiencias no constituyen totalmente una esfera pública por criterios de Habermasian, ni un "contrapúblico" por los criterios de Fraser y Dawson. De facto, como audifonos tienen los efectos contradictorios; Una escuela con un éxito no fechado de un año para resistir y reificar una lógica neoliberal en la formulación de políticas educativas. Algunos datos demuestran que el argumento se basa en las autoridades estatales, en tanto que otros datos indican que este argumento se basa en la formulación de políticas.

**Palabras clave:** decisión; audiencias públicas; política de cierre de la escuela; Habermas; comunidad; raza; neoliberalismo

### **A deliberação é um objetivo louvável quando a política é um acordo já feito? A esfera pública habermasiana e a legitimidade em uma era de mercado da formulação de políticas educacionais**

**Resumo:** As audiências públicas do Estado sobre as propostas de fechamento de escolas na cidade de Nova York fornecem uma janela para um conjunto diverso de atores políticos e suas deliberações. Argumento que as audiências não constituíram totalmente uma esfera pública pelos critérios de Habermasian, nem um "contra-público" pelos critérios de Fraser e Dawson. De fato, as audiências tiveram efeitos contraditórios; uma escola lutou com êxito no fechamento daquele ano por resistir e reificar a lógica neoliberal na formulação de políticas educacionais. Alguns dados demonstram que o argumento baseado em mercado desta escola ressoou com as autoridades estatais, enquanto outros dados indicam que esse argumento baseado no mercado coincidiu com o próprio interesse do Estado em defender sua legitimidade na formulação de políticas.

**Palavras-chave:** deliberação; audiências públicas; política de encerramento escolar; Habermas; comunidade; raça; neoliberalismo

## **Introduction**

Closing schools that are struggling to graduate students has become the policy of choice, particularly in large urban school systems. School closure advocates contend that closing the "failing" school removes it as the default option, and thereby facilitates families' better selections for their children's education (Kowal & Hassel, 2008). In comparison, opponents argue that school closure policy is not an effective solution for struggling schools and that it is a destructive policy for students, their schools, and their communities (Communities for Excellent Schools, 2010; Journey for Justice, 2014; Kirshner, Gaetner, & Pozzoboni, 2010). An increasing number of studies point out that closures are effective only to the extent that students subsequently attend better performing schools (Brummet, 2014; Carlson & Lavertu, 2015; de la Torre et. al, 2015; de la Torre & Gwynne, 2009; Enberg, J., Gill, B., Zamarro, G., & Zimmer, R., 2012; Ozek, Hanson, & Gonzalez, 2012).

School closure policy is not a new strategy for school districts, nor is the controversy that surrounds it. From the late 1930s through the 1980s, administrators readily introduced school closings to remedy budget shortfalls (Cibulka, 1983), resist desegregation plans (Ely, 1976), and redress declining enrollment (Colton & Frelich, 1979). In each of these time periods, as is the case today, many communities vehemently opposed school closings. Much of the historical literature that discusses community opposition characterizes it as a concern for the loss of relationships and

identity (Berger, 1983) – an emotional rather than a practical or cogent argument. Opposition to school closings today, as before, is often framed as acceptance of the status quo (Hill, Campbell & Gross, 2012).

What is novel about school closure policy today is the extent to which urban school districts across the United States have been promoting it as a core strategy to address chronic low-performance, defined by both graduation rates and standardized test scores. For this case, school administrators have had the ideological backing of the No Child Left Behind Act (the federal law in effect from 2002 to 2015), which ushered in an era of high stakes testing, and sanctions for schools and teachers. Efforts to close schools have also been boosted with funding from the U.S. Department of Education's Race to the Top program, which allocated \$4.35 billion in competitive funding to states to restructure schools (U.S. Department of Education, 2009). In 2011-2012, there were nearly 2000 schools closed across the country (U.S. Department of Education, 2015) with large urban school districts like New York City and Chicago (Ahmed-Ullah, Chase, & Sector, 2013) leading the way.

While financial incentives have proved effective in encouraging school districts to close schools they deem "failing," perhaps what has been more influential is the mindset that school failure is the school's alone. School closure policies are devoid of an understanding or a recognition of the larger political economy in which schools operate (Anyon, 2005). School closure policies, for instance, do not acknowledge decades of state disinvestment (Lipman, 2012), the exodus of white middle class communities and their resistance to school integration (Scott & Rand, 2014), nor decisions that have outsourced support services to private and unaccountable networks (Ball, 2009) and stripped schools of experienced teachers and other resources pivotal to school success (Cucchiara, 2013). By contrast, school closings both reflect and operationalize a market logic (Apple, 2001a). Market advocates in public education vow that the problems facing schools are inherent in the monopolistic structure of public schooling (Chubb & Moe, 1990). They insist that a free market system based on competition, minimal regulation and parent-choice would provide greater quality at a lower cost, even when the evidence that market reforms in education are effective is unclear (Belfield & Levin, 2002), and despite counter evidence that demonstrates that race and class inequities are reproduced through market mechanisms like choice and competition (Gulson, 2011).

A number of critics charge that school closure policy is less a policy about improving schools and more a policy to facilitate the privatization of public education, what is increasingly recognized as neoliberal education reform (Apple, 2001b; Lipman, 2011; Ravitch, 2013; Thiem, 2009). They have pointed out that closed schools are increasingly taken over by charter school operators (Lake, 2010; Weiss & Long, 2013; Zehr, 2011) which are under no obligation to abide by union rules (teacher autonomy, collective bargaining rights, etc.) nor other public accountability measures including budget reports, student discipline guidelines, and channels for parent voice such as parent associations. Others have alleged that closures serve larger neoliberal economic policies in alignment with urban neighborhood gentrification and racial re-segregation plans (Lipman & Haines, 2007; Means, 2008; Saltman, 2010; Scott, 2011). This occurs through the seizure of public assets and the displacement of income deprived, politically disenfranchised communities of color.

In November 2009, then New York City (NYC) Mayor Michael Bloomberg declared that he would replace the bottom 10% of low performing schools in the remaining years of his third term in office. During the three months that followed, thousands of New Yorkers headed to state mandated public hearings to contest twenty proposals to close large comprehensive high schools across NYC. NYC Department of Education (NYCDoE) administrators insisted that school closings would ensure better educational options and outcomes for students. However, parent and community leaders, elected officials, union representatives and educators expressed outrage over a lack of clarity

of closure proposals, including consistent criteria for identifying struggling schools, clear and sufficient replacement plans for students, as well as a genuine invitation for their input.

How can the divergent ways that school and community leaders view school closure policy be better understood? How effective was the public hearing process in engaging a broader public in a pivotal discussion about solutions for struggling schools? What counterarguments stick in this market era of education policymaking? In this article, I apply philosopher Habermas' theoretical underpinnings of the public sphere (1962, 1984), and critiques by contemporary deliberative democracy theorists Fraser (1990) and Dawson (1995, 2006), to answer these questions, and to consider the gap between the ideal of deliberation and the reality of the policymaking process. I analyze a multitude of assertions by diverse members of the public at select school closing public hearings, the constellation of those assertions across stakeholders and school communities, and responses from education administrators post hearings. Moreover, in light of one school community's ability to fight off school closure with a market-based argument, I consider how communities can both resist and reify neoliberal logic in education policymaking. Ultimately, I question the usefulness of deliberation when policymaking is a done deal. This article builds on previous inquiries into communities' influence over school closure policy (Finnigan & Lavner, 2012; Kretchmar, 2011). It also extends the empirical application of Habermasian theory in contemplating community participation in deliberative political processes (Chang & Jacobson, 2010).

### **NYC Context: School Governance, Mayoral Control, and Public Hearings**

For most of New York City's history, school governance consisted of an independent central board appointed by the mayor and local school boards appointed by the central board. For a thirty-five year period between 1968 and 2003, however, New York City elementary and middle schools were governed by locally elected community school boards that had some jurisdiction to appoint and remove superintendents, as well as veto or accept the superintendent's choice of principals (Gitell et al., 1972). The 1969 legislature called this reorganization of the school system *decentralization* as it limited the power of the mayor, and replaced the central school authority with a seven-member board. Five board members were appointed by each of the borough presidents, and two were appointed by the mayor. This form of decentralization also provided for the election of 32 community district (neighborhood designated) school boards with parent and community representatives. New Yorkers still vigorously debate the efficacy of this governance arrangement. Some charge that it led to nepotism and dysfunction within the public schools (Rogers, 2009). Others maintain that this level of community control allowed administrators, teachers, and parents to work together in creating sustainable school improvement (Lewis, 2013).

In 2002, when Michael R. Bloomberg was elected mayor of New York City, the state legislature supported abolishing the decentralized governance structure. In its place, Bloomberg created a school governance structure composed of a mayoral-appointed Chancellor and a thirteen-seat advisory body, the Panel on Education Policy (PEP).<sup>1</sup> Bloomberg used the term *accountability* as the key rationale for these governance changes; the mayor and his staff upheld that in the former decentralized system there was a diffusion of authority that created dysfunction and paralysis. Mayoral control, they reasoned, allowed them to define expectations, set standards, and measure

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<sup>1</sup> The PEP replaced the Board of Education, and is comprised of eight mayoral appointees and a representative from each of the five boroughs. While the PEP has voting power to approve policy changes, budgets, and contracts, early on in Bloomberg's first administration, limits on the PEP's independence were revealed when Mayor Bloomberg replaced three appointees who stated they intended to vote against his proposal. For more on the 2004 incident known as Monday massacre, see: <http://www.nytimes.com/2004/03/16/nyregion/bloomberg-wins-on-school-tests-after-firing-foes.html>.

results. From the perspective of diverse members of the public, the school closing process was a gauge for how the Mayor and the education policymaking process at large was accountable to them or not (Ravitch, 2009).

The public hearing process concerning school closures is itself a recent development in New York City school governance. In 2009, the New York State legislature amended the Mayoral control law to promote more community participation in school decision-making. This was done in response to widespread concerns about the lack of transparency, information access, and opportunities for public input under Mayor Bloomberg's administration in his first term, and three specific demands issued by a citywide coalition of community groups, the Campaign for Better Schools (C4BE). The previous governance law required the New York City Department of Education to consult with the affected community district education council before closing or substantially changing schools. However, the renewed law requires the Chancellor to (1) prepare an educational impact statement<sup>2</sup> for any proposed school closing or significant change in school utilization (including a phase out, grade reconfiguration, re-siting, or co-location of schools), and (2) to conduct a public hearing about any closing proposal in cooperation with the affected community district education council (CEC).<sup>3</sup> In addition, under the 2009 legislation, NYCDoE is required to officially submit all proposals to the PEP, the Mayor's advisory body, for approval. The one-year extension of the Mayoral Control law in 2016 renews this legislation.

By the end of 2009, some six months after Mayoral control had been re-authorized by the state legislature, the NYCDoE announced the closure of 20 schools, including 15 comprehensive high schools, in four separate announcements made over one week's time. On the morning of December 2, 2009, NYCDoE announced the closure of four schools – two high schools and two middle schools. At the end of that same workday, they announced the closure of four more high schools. Five days later, on December 7, the Department announced the closure of an additional nine schools (six of them high schools), and a week later they announced the proposed closure of three more high schools, bringing the total to 20.<sup>4</sup> In an email to reporters, NYCDoE spokesperson Will Havemann wrote that the Department was proposing to phase out schools that had “failed to advance student learning,” and that in accordance with the new governance law each proposal would be followed by a public comment period of 45 days.<sup>5</sup>

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<sup>2</sup> Educational Impact Statements are to include: the current and projected pupil enrollment of the affected school, the prospective need for such school building, the ramifications of such school closing or significant change in school utilization upon the community, initial costs and savings resulting from such school closing, the potential disposability of any closed school; the impacts of the proposed school closing or significant change in school utilization to any affected students; an outline of any proposed or potential use of the school building for other educational programs or administrative services; the effect of such school closing or significant change in school utilization on personnel needs, the cost of instruction, administration, transportation, and other support services; the type, age, and physical condition of such school building, maintenance, and energy costs, recent or planned improvements to such school building, and such building's special features; the ability of other schools in the affect community district to accommodate pupils following the school closure or significant change in school utilization; and information regarding such school's academic performance including whether such school has been identified as a school under registration review, requiring academic progress, a school in need of improvement, or a school in corrective action or restructuring status.

<sup>3</sup> For more on community district education councils, see:

<http://schools.nyc.gov/Offices/CEC/GPIInformation/CommunityEducationCouncils/one.htm>

<sup>4</sup> This was 13 more schools proposed for closure than the year before.

<sup>5</sup> <http://gothamschools.org/2009/12/02/city-announces-plans-to-shut-four-failing-public-schools/>

## Theoretical Framework

This article draws upon the theoretical contributions of Jurgen Habermas (1962, 1984) to investigate the conditions and institutional arrangements that best enable public participation, deliberation, and the accountability of democratic decision-making bodies. Habermas' notion of the public sphere (1962) has been rightly criticized for assuming that all members can deliberate as if they were social equals (Fraser, 1990), and for not acknowledging the central role power plays in governance and policymaking. Still, I use the public sphere framework as well as Habermas' theory of communicative action and validity claims (1984) to consider how deliberation takes shape in the school closing hearings and becomes a struggle over legitimacy there. I also evaluate whether the public hearings constituted counterpublics (Dawson, 1995; Fraser, 1990), and consider the influence of the market authority in today's current era of education policy-making, particularly how its logic enters into deliberation.

### The Public Sphere

Sociologist and philosopher Jurgen Habermas' (1962) defined the public sphere as "made up of private people gathered together as a public and articulating the needs of society with the state" (p. 176). For Habermas, the public sphere mediates between individual's private concerns and the intrusion of powerful institutions; it is a social place where individuals can deliberate their common interests, as well as be critical of the state. In this way, it serves a dual function to hold the state accountable to public opinion and later, to transfer public opinion through more formal participatory channels in government. In his analysis, Habermas identified three institutional criteria by which public spheres must abide in order to be effective: *disregard of status*, *domain of common concern*, and *inclusivity*.

By *disregard of status*, Habermas argued that an individual's humanity ought to be emphasized in the public sphere rather than their social or economic position in society. This principle, Habermas theorized, "leveled the playing field" during rational deliberation or argumentation. *Domain of concern* referred to the necessary space for individuals to discuss affairs that are not subject to the "monopoly of interpretation" of the church or state authorities. Habermas underscored that independence from the state and other institutionalized bodies is important for individuals to develop their own opinions. Lastly, *inclusivity* means "everyone had to be able to participate" (p. 37); for Habermas, inclusivity realizes democratic ideals by achieving an all-encompassing public. With these three criteria met, Habermas theorized that the public sphere could facilitate the accountability of decision-making bodies, not by violence, coercion, order of bureaucracy, or incentives of the market, but by "the unforced force of the better argument" (Habermas, 1984, p. 147).

### Validity Claims

In the public sphere, Habermas further explained that participants could best direct and assess deliberation through moral, critical, and rational criteria – what he termed "validity claims" (1984, p. 301). Validity claims were grounded in a moral-practical reasoning situated in the everyday experiences of individuals, and according to Habermas, ought to cover four dimensions: intelligibility, truth, normative rightfulness, and sincerity. Speech acts can also be rejected under each of the four aspects [ibid, p. 307]. In total, these four criteria for Habermas realize 'an ideal speech situation', and further ensure that deliberation not fall to self-interest, prejudice, or political affiliation. *Intelligibility* refers to semantic clarification but also contextualized knowledge so that all participants understand the language spoken (p. 89). *Truth* refers to assertions and explanations that reflect reality. *Normative rightfulness* recognizes prevailing norms, and *sincerity* reflects an expression of intention (p. 90-91).

By Habermas' account, in deliberation a collective agreement is achieved when all participants would, if asked, answer *yes* to each criterion, and any policymaker attempting to communicate with the general public would not achieve understanding unless his or her validity claims are fully accepted. Even if a policymaker subjectively believed that his or her position is valid, mutual understanding would not be realized to the extent participants raise challenges with any of the four validity claims. Habermas pointed out that validity claim challenges give rise to typical questions. For example, if the intelligibility of a speech act is challenged, the question "what do you mean by that?" would be raised. If the truth of a speech act is challenged, questions such as "are things really as you say" or "why are things that way and not some other way?" would be asked. If the normative rightfulness of a speech act is challenged the question would become "what is your justification?" Finally, if in the context of the interaction, there is question about sincerity, questions such as "are you deceiving me?" or "are you deceiving yourself?" would arise. Importantly, validity claim challenges, in general, raise questions about the legitimacy of any speech act, presumably important to any speaker. But in other writings, Habermas noted that the desire for legitimacy was often associated with "a political order's worthiness to be recognized" (1979, p. 178). Referring to the state's inability to control fluctuations in the economy, Habermas expounded that a legitimization crisis occurred at times when there is a decline in public confidence. Table 1 below outlines the four validity claims, their domain of focus, and challenges as outlined by Habermas.

Table 1  
*Habermas' Four Classes of Validity Claims*

Criteria	Domain of Focus	Challenge
Intelligibility	Contextualized Knowledge/ Comprehensiveness	What is the argument? What do you mean by that?
Truth	Facticity	What is the basis? Are things really as you say they are?
Normative Rightfulness	Positional Authority	What is the justification? By what authority is your action the right action?
Sincerity	Intention of Truth (or Deceit)	What is the intention? Are you deceiving me or yourself?

### Criticisms of the Public Sphere Context

Habermas' vision of the public sphere has drawn criticism from feminist, critical race, and civil society scholars (Abu-Haidar, 1999; McLaughlin, 1993) for minimizing the reality and impact of economic, racial, and political relations on forms of participation. Political scientist Nancy Fraser (1990) argues that "subaltern counterpublics" —rather than one public sphere—offer a deliberative space and process for those who have marginal status to identify their interests apart from the state's interests and interpretations, as well as from those more dominant and privileged members in the public sphere. Fraser promotes these counterpublics as crucial spaces for withdrawal and regroupment from the larger public sphere, as well as training grounds for "agitational activities" toward the wider public (68). Like Fraser, Dawson (1995, 2006) contends that in a stratified society,

counterpublics are necessary for the widening of contestation, as well as for the vitality of politically subordinated groups. Dawson was cautious, however, about the ability of any counterpublic to effectively inject its framework into the larger political system, and to influence state power from an isolated position. For example, Dawson (2006) concluded that the Black counterpublic in New Orleans was unable to influence the larger society in the United States to recognize and redress Hurricane Katrina's disproportionate devastation on communities of color.

Habermas' concept of the public sphere and the critiques put forth by Fraser and Dawson are useful for theorizing the public hearings concerning school closings in New York City in the 21<sup>st</sup> century. While some have argued that "there is no better way to ensure the long-term success of public involvement than to institutionalize a decision-making role for that involvement" (Thomas, 1995, 163), others warn that the institutionalization of public engagement diminishes the pressure outside groups can leverage on the system. The question that continues to engage deliberative democracy scholars is what kinds of processes and strategies effectively facilitate the public's impact on policymaking. Like Anderson (1998), I acknowledge that the public sphere is a contested site that can serve as collusion for more dominant groups, but which also "contain transformative possibilities for the creation of more authentic approaches to participation" (p. 574).

The state mandated public hearings concerning school closing proposals provide a window into a diverse set of policy actors and their deliberations. I argue that the hearings did not fully constitute a public sphere by Habermasian criteria, nor a counterpublic by Fraser and Dawson criteria. In fact, the hearings had contradictory effects; one school successfully fought closure that year by both resisting and reifying neoliberal logic in education policymaking. I present data that demonstrates that this school's market-based argument resonated with state authorities; but I also present data that indicates that their market-based argument coincided with the state's own interest to defend its legitimacy in policymaking.

## Methods

This article is part of a larger ethnographic study that investigated how key institutional actors framed school closure policy in New York City under the Bloomberg administration. Methods for the larger study included interviews and surveys of actors; observations of select organizational meetings and school closing public hearings where they intersected; and analysis of documents. For this article, transcripts of the school closing hearings along with field notes were the primary data sources. Select interviews with district and school staff are also consulted for purposes of triangulation (Mathison, 1988).

Hearing transcripts were provided by the New York City Department of Education. Hearings selected for this article focus on three of the twenty high schools proposed for closure in school year 2009-2010. The three schools were selected for the large attendance size of their public hearing (between 500-800 persons) as well as diversity in their geographic representation (they are located in three different boroughs across NYC.) In accordance with IRB regulations, the schools are not referred to by name, but by the pseudonyms School A, School B, and School C. Schools A & B are comprehensive high schools and School C is a career and technology high school. In 2009-2010, their student populations were comparable, although School A enrolled slightly more students.



Table 2  
*Populations by School (2009-2010)*

School	Population
School A	1, 474
School B	1, 017
School C	1, 096

### Data Analysis

I use content analysis to identify assertions provided by members of the public in three school closing hearings in the 2009-2010 school year. Transcripts were analyzed in two stages, using Atlas TI software. Transcripts were coded first by speaker: how individuals who testified introduced themselves at the microphone (speakers who did not introduce themselves were coded not-identified or “NI”). Transcripts were then coded for arguments made by each speaker. More than 125 codes of specific phrases, sentences, or passages were initially generated from the three transcripts using an open coding framework (Emerson, Fretz, & Shaw, 1995). From the 125 initial codes, 25 axial codes were identified across all three hearings, which were then collapsed into five larger themes of arguments against school closings. In the next section, I briefly review how the NYCDoE introduced school closing proposals, and then I provide results from the content analysis for the public comment periods at each of the three hearings.

### Case Study of Select School Closing Public Hearings (2009-2010)

At the start of each school closing public hearing in 2009-2010, NYCDoE administrators read a brief statement introducing each closure proposal. The introductory statements were the only oral remarks made by administrators at the hearings that year; they offer a glimpse into how the Department framed school closings. As Sunderman and Payne (2009) point out, when school districts propose closings, there are certain assumptions regarding the policy’s aim and outcome. The NYCDoE statements, for example, convey assumptions that school closings will result in increased student graduation rates (School A); continue the prior “remarkable success” of phasing out schools and opening new ones (School B); and “change the way the building is organized” (School C). These statements also carry implicit assumptions that previous school closures and opening schools were indeed successful, producing higher graduation rates, for example; and that changing the way the building is organized will yield better student outcomes.

Table 3  
 NYCDoE School Closing Public Hearings Opening Statement Excerpts from Administrators

Proposal Components	School A	School B	School C
Proposal Introduction	“This is a proposal to transform a school from one that is not graduating many children to one that is achieving this objective.”	“Over the past 4 years the Department has phased out over 90 schools, and we have opened 335 new schools that have demonstrated remarkable success. This proposal will continue that important work.”	“This is not a proposal to close the school building; it is a proposal to change the way the building is organized.”
Graduation Rate	Graduation rate is low.	Graduation rate is low and is declining.	4-year graduation rate is well below city average.
Progress Report	Failing Progress Report grade.		Failing Progress Report grade.
Enrollment	Less than 100 students listed the school as their first choice on this year’s high school application.	Enrollment is declining over the past 4 years.	Applications to school have declined .6 points.
Peer school comparison	Peer schools serving similar students are getting dramatically better results.	School is not achieving the same results as peer schools serving similar students.	
Replacement Plan	New schools will replace this school over time, first taking a 9 <sup>th</sup> grade and then growing as this school phases out. All students currently enrolled will have the opportunity to graduate from this school. All new schools would serve ELL & students w/ Special Education needs.	No plans right now for a replacement school for September 2010. What we will do over next year is work with you and the larger community to plan for a replacement. All students enrolled will have the opportunity to graduate.	Smaller schools will replace this school over time, first taking in 9 <sup>th</sup> grade, and then growing as this school phases out. All students currently enrolled will have the opportunity to graduate from this school. All new schools serve ELL & students w/Special Education needs.
Evidence Cited	Students are falling behind early on. Under 50% of freshman earned 10 credits (opposed to 11 credits to graduate on time).	Organizational culture learning environment is deeply troubled. Only 65% of students reported they feel safe in school survey.	Attendance rate is low. It is below the average for majority of schools in NYC.

*Note:* The graduation rate, progress report, enrollment and peer school comparison are criteria referenced.

The inconsistency regarding the criteria for identifying schools to close was one of the critiques put forward by members of the public. The NYCDoE cited poor Progress Report<sup>6</sup> grades for Schools A and C, but not for School B; freshman credit accumulation percentages in School A but not for Schools B and C; and the quality of organizational culture in School B, but not for Schools A and C. Organizational culture is not defined; the use of the adjective “troubled” and the reference to students’ perception of safety as reported on the school survey<sup>7</sup> does not provide clarity. The Department referred to their peer schools index<sup>8</sup> for School A and School B, but not for School C.

Replacement plans void of details were also a cause for concern among varied members of the public. The NYCDoE read statements that did not include timelines or more information, only broad promises: new schools will replace School A and that smaller schools will replace School C. The statements did not ease public concern about which students new schools would serve, and if replacement schools would serve the same students who were attending or would have attended the schools, were they not closed. In the cases of schools A and C, administrators noted that the replacement schools would cater to students with specific academic needs, English Language Learners (ELL) and students entitled to Special Education services. No replacement plan is mentioned in reference to School B.

In summary, administrators’ opening statements at school closing hearings in 2009-2010 reiterated the department’s rationale that closing schools would yield better outcomes, such as

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<sup>6</sup> The Progress Report (PR) was an internal NYCDoE cumulative measurement that evaluated schools with a letter grade [A-F] in three separate areas: school environment, school performance, and student progress. In 2009-2010 a school’s *environment* constituted 15% of its overall grade, by measuring student attendance as well as analyzing survey responses from parents, students, and teachers on their perceptions of school culture; *performance* accounted for 25% of the overall grade, based on the percentage of students scoring above average on the New York State ELA and math tests for elementary and middle schools, as well as graduation rates for high schools; *student progress* constituted a majority (60%) of the overall grade, measured by credit accumulation, course passing rates, and Regents exam completion.

<sup>7</sup> The NYC school survey has been administered annually since its inception in 2007. In 2009-2010 it contained four main sections: academic expectations, communication, engagement, and safety and respect. The section labeled “Safety and Respect” asked students 20 questions. Citywide survey responses are reported by percentages. For more on the survey, see: <http://schools.nyc.gov/accountability/tools/survey/default.htm>

<sup>8</sup> Peer Schools were defined as schools that serve similar populations in terms of grade span, demographic composition, and/or average incoming State exam scores. In 2009-2010 elementary and K-8 schools peer index was the weighted average of the percentage of students at the school eligible for free lunch (the Title I Free Lunch rate) (30%), percentage of Black/Hispanic students (30%), percentage of the student population with Individual Education Plans (30%), and percentage of the student population made up of English Language Learners (10%). The formula created a single score ranging from 0%-100%. Middle schools peer index operated on a 1.00–4.50 scale and was calculated using the following formula: Average student proficiency (based on the students’ fourth grade ELA and Math State test scores) minus (2 times percentage of students with IEP’s) High schools were sorted by a peer index which operates on a 1.00–4.50 scale using the following formula: Average student proficiency (based on the students’ eighth grade English Language Arts (ELA) and Math State test scores) minus (2 times percentage of Special Education students) minus (2 times percentage of Self-Contained special education students) minus (percentage of over-age students, or those students 16 years or older, as of December 31st of their ninth grade entry year.) When ranked by peer index, an elementary school, middle, or high school’s peer group consisted of the 20 schools above and 20 schools below it in the same school type category. A K-8 school’s peer group consisted of the 15 schools above it and 15 schools below it in the same school type category.

graduation rates. However, these statements did not specify how closing schools would actually achieve better outcomes. Administrators did not elaborate on factors troubling schools (nor of attempts to address those factors) and that justify closure. The inconsistency of criteria referenced raised more questions for members of the public. In the absence of detailed replacement plans, members of the public articulated that they had no clear understanding of how new schools would indeed generate better outcomes, especially for students at risk of not graduating.

The following section offers an analysis of the content of the testimony made by diverse members of the public at the three hearings. As members of the public consistently stated, the rationale for school closings presented by the NYCDoe failed to address their concerns. While opposition to school closures is often cast as entrenched interests, emotional attachment, support for the status quo or at worst negligence, content analysis reveals that testimony offered by parent, community, and educator leaders contained a range of substantial critiques of school closing proposals, their motivations, justifications, and expected results. The testimony provided uniformly disputed the NYCDoe's claim that school closings would provide better options and outcomes for students, as well as challenged the NYCDoe's legitimacy in policymaking. Furthermore, in looking across hearings, analysis reveals how assertions issued by the public in each of the hearings come together or do not -- to form a larger force against mass school closure policy. Content analysis of testimony also provides insight into why members of the public still participated in a process deemed foregone.

### **Analysis of Public Testimony: Diverse Participants and Assertions**

Following the introductory statements at the start of school closing public hearing in 2009-2010, NYCDoe administrators read instructions on how the public comment period would function, stating simply that the "purpose of the public hearing was for members of the public to provide comment," and that "each individual who signed up to speak would have 2 minutes at the microphone when called" (Fieldnotes, School B). Table 3 categorizes individuals who provided testimony in each of the three hearings presented in this article by the way they identified themselves at the microphone. From 57 different speaker identities, I created 12 more generalized "speaker" categories (column labeled "speakers") and five overarching "speaker groups" categories (column labeled "speaker group").

Table 4  
*Who of the "Public" Provided Testimony Opposed to School Closing Proposals?*

Speaker Groups	Speakers	School A	School B	School C	Total	Total % Speaker Groups
Students	Current Students	10	4	16	30	32%
	Alumni	14	9	21	44	
School Staff	Administrators	0	1	8	9	28%
	Staff (i.e., Guidance Counselor, Coach)	0	1	1	2	
	Teachers	14	18	21	53	
Families & Community	Parents/Family Community Members	5	3	4	12	10%
		3	8	0	11	
Organizational Partners	Community-Based Organizations/ Businesses	3	5	6	14	11%
	School Councils Members	8	3	1	12	
Representatives	Elected Officials	5	1	3	9	9.5%
	Union Representatives	5	2	2	9	
	Community Activists	0	4	0	4	
N/I	Non-identified (N/I)	(10)	(7)	(5)	(22)	9.5%
	Total	77	66	88	231	

As depicted in the table, of the 231 speakers across the three hearings analyzed, 74 identified as either current or former students (32%) and 64 comprised staff at the schools proposed for closure, including administrators, teachers, guidance counselors and coaches (28%). Thirty-three speakers identified as families of students or community members (10%). Twenty-six persons were labeled as school partners, including school council members, and organizational partners such as businesses and community based organizations (11%), and 18 individuals identified themselves as United Federation of Teachers (UFT) representatives, elected officials, or activists (9.5%). An additional 22 persons (9.5% of total) did not identify themselves at the microphone. A diverse public overall participated in the public hearing process in 2009-2010, represented by at least 12 distinct speaker categories.

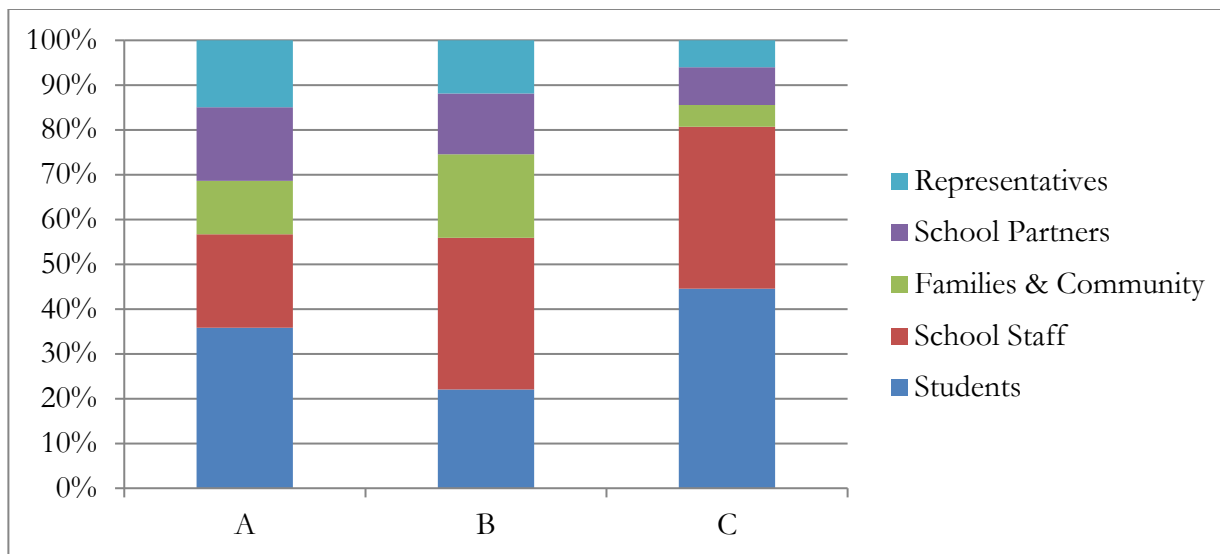


Figure 1. Speaker group distribution by school community.

Looking comparatively at the public hearings, there was a fairly even distribution of speaker roles by category. As represented in Figure 1 above, at School C, there were significantly more current students and alumni, and slightly more staff (in this case, teachers and administrators) who testified than in Schools A and B. At School A, more elected officials, union representatives, and school council members testified than in Schools B and C. At School B there were two times more community members who testified than at the other two schools.

The next part of this article provides a fine-grained analysis of the five major assertions issued across three school hearings: a) these are not failing schools; b) there are other motivations to close schools; c) closing is not a solution; d) no supports were provided; and e) lack of accountability in the process. In Figure 2 on the next page, I demonstrate in descending order the categories of assertions made by those members of the public who testified in the three hearings. I break down each category of argument and then examine the distribution of arguments by school community.

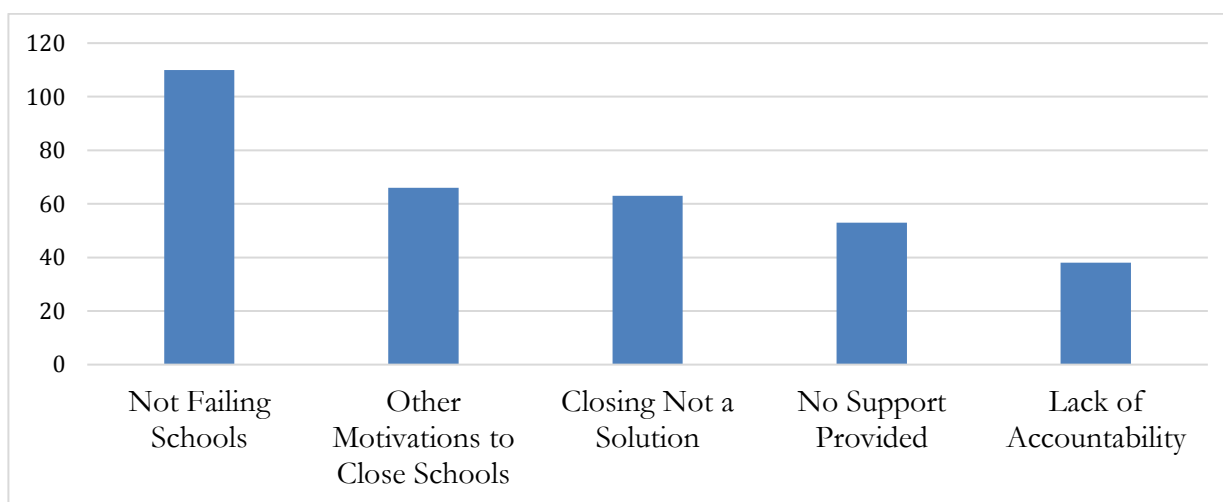


Figure 2. Assertions made by members of the public.

**“These are not failing schools.”** The largest assertion that emerged from the three public school hearings analyzed for this article was “These are not failing schools.” One hundred and ten incidences of this assertion were coded across all three hearing transcripts, constituting almost half (47.6%) of all assertions made. Members of the public debated the accuracy of the data provided by the NYCDoE to signify failure; for example, educators presented school generated graduation rates that rivaled those of the department. They also contested the adequacy and comprehensiveness of the NYCDoE evaluation system to fully capture the quality, achievements, and progress of their schools. Members of the public proposed the NYCDoE utilize an alternate set of criteria to consider in school closure decisions, including student triumph over personal adversity, teacher dedication, student employability, and the significance of the school to the community and neighborhood. Finally, members of the public testified that schools proposed for closure were disproportionately charged with serving “high needs” students. To many members of the public who testified, the fact that these schools served so many high needs students (in relation to other schools) made comparison against any standard that did not take these disparities into account unfair. The public summarized their view, exclaiming: “*We are not failing, the DoE is failing us.*”

**“Other motivations for closing schools.”** Sixty-six persons (30% of all speakers) across the three public hearings disputed that the purpose of school closings was to improve school performance. Instead they argued that there were other motivations for school closings that had nothing to do with academic success: incentives for school privatization in the form of charter schools, preferences for small schools over large comprehensive and technical high schools, and larger plans for the gentrification of neighborhoods. Nearly 15% of persons who made claims that there were other motivations to school closings drew attention to economic and racial dimensions of school closure policy as well as disparate racial and economic impacts. Some made the claim that school closings were a product of, coincided with, and produced racialized re-spatialization of neighborhoods, with the building of new schools designed to attract whiter and more moneyed neighborhood inhabitants. Many members of the public also stated that schools identified for closure were based on an assessment of whether or not the affected school community was equipped to fight the closure. A former PTA President, for example, stated that administrators targeted neighborhoods with families who do not primarily speak English, who do not typically have political representation via the electorate, and who do not generally have political power to fight back against such decisions: “Because they think you’re not aware of what’s going on!” [Speaker, School A]. A mantra emerged in the hearings that the NYCDoE was *closing schools by design*. Members of the public charged that data had been manipulated to feign failure, provide an appearance of neutral data driven decision-making, and ultimately to justify the replacement of schools.

**“Closing schools is not a solution.”** More than 65 individuals or 28% of speakers disputed NYCDoE’s claim that closing schools was an effective solution for schools that were struggling. While the NYCDoE rationalized that school closings would benefit students and school communities, members of the public argued precisely the opposite—that closing schools would harm students, school communities, and surrounding communities. Members of the public expressed specific concern for students who would get lost in the transition—especially students currently struggling in school. Increased drop-out rates, subsequent and increased jail or prison rates, and the message that “we are turning our backs on students” were projected areas of harm. Many remarked that closing schools would have a detrimental impact on neighborhoods, removing a pivotal resource, and a place for community connection, services, and support. Others warned of a cascade effect closings would have on nearby schools. In the words of a school council member who testified at School B, “Given the lack of a comprehensive plan for replacement high school seats, the closure of [this school] will have a negative impact on neighboring schools...overcrowding

them and diverting large numbers of students with great academic needs to them.” In the absence of clear and detailed school replacement plans, members of the public repeatedly asked, “where will students go?” The lack of replacement plans demonstrated little evidence that school closures would provide better choices, outcomes, and accountability. More than 90% of speakers who stated that closing is not a solution suggested that the Department invest more money in schools of concern, offer comprehensive and sustainable supports for students, teachers, and administrators, and work with the larger community to *fix the schools, don’t close them*. This indicated another area of disconnect between the NYCDoE and many members of the public: that there had been previous and strong enough attempts to assist schools now proposed for closure.

**“No support provided.”** There were more than 50 assertions that schools did not have proper support—about 21% of the overall assertions across the three public hearings—to succeed. Members of the public did not accept the NYCDoE’s implicit premise that schools had been adequately resourced to meet academic standards set for them. There were many who also questioned the Department’s role and accountability in maintaining school performance. Speakers stressed that schools had lost resources and other school based supports in recent years. Students highlighted “a loss of AP courses”; teachers named “programs that were whittled away” and a “decrease of support staff.” One teacher in particular talked about her class size increasing at the same time that the school could not afford a paraprofessional to assist her [School A]. Moreover, speakers noted that the schools proposed for closure were those that historically had been neglected-schools located in economically and politically disenfranchised communities of color deprived of adequate and equitable supports for decades. Testimony also pointed to recent changes in the department’s management strategy that had shifted its school support services infrastructure from the central office to external contractors. There were questions about who exactly from the Department was responsible for working with schools now proposed for closure, and what specific supports had been provided. A borough appointed representative of the Panel for Education Policy asked why financial resources had not been provided prior to the decision to close the school. A UFT representative who attended all three hearings stated that schools were struggling due to the *persistently failed management* of the NYCDoE. Here too, members of the public turned the tables on the NYCDoE – stating that it was the institution that was failing.

**“Lack of accountability.”** There were also 50 assertions about a lack of accountability in the school closing process, which accounted for 21% of all claims made. Where NYCDoE leaders professed that school closing proposals demonstrated accountability for educating children, members of the public countered that the proposals and school closing process had no real accountability to the larger public. They defined real accountability in two ways: how they were being heard and how the process was answering to them. It was not uncommon for actors at the microphone to single out any representative on the panel that presided over the school closing hearing. An assistant principal asked, “Where is the accountability of the superintendent?” A parent asked a DOE spokesperson, “what accountability will the DOE take?” And, in what would become a common response to the non-answerability of DOE administrators, one alumnus shouted at a deputy chancellor, “Get off your Blackberry!” Across three hearings, many speakers also lamented that the hearings were representative of a larger school governance structure that “ignores students, parents, and teachers.” “Where are Mr. Klein and Mr. Bloomberg?” demanded several people, referring to the then New York City Schools Chancellor and Mayor. “This is why I voted against Mayoral control,” remarked a state elected official. Lastly, accusations of non-accountability were not just specific to the school closing hearings and the larger education governance structure in New York City, but to the process of closing schools. “Breaking up the high school” in the words of one speaker “dilutes accountability rather than increases it. It makes the community less willing to invest



in education.”([School B]. Overall, many members of the public decried the process perfunctory and the proposals already “*a done deal.*”

**Summary.** The assertions made across hearings offer insight into the grounds by which diverse members of the larger public contested the Department’s school closing proposals. Overall they contested the following NYCDoE’s claims: the schools slated for closure were in fact failing; school closure was in the service of improving academic performance; closure was a viable solution for schools struggling; schools identified for closure had been given the resources and support necessary to meet expectations; and school closing hearings and the education governance structure at large was accountable to students, their families and communities, and the public. In total, the assertions of the public revealed vigorous challenges to the legitimacy of the claims on which the NYCDoE school closing proposals were based.

The question I answer next concerns the distribution of the five main assertions across school communities. I investigate support for assertions across hearings, asking whether particular assertions are distinctive to school communities or shared across hearings. Figure 3 below represents the distribution of assertions made within and across school communities. School communities A, B, and C were found to make fairly distinct assertions in their battle with the NYCDoE over school closing proposals.

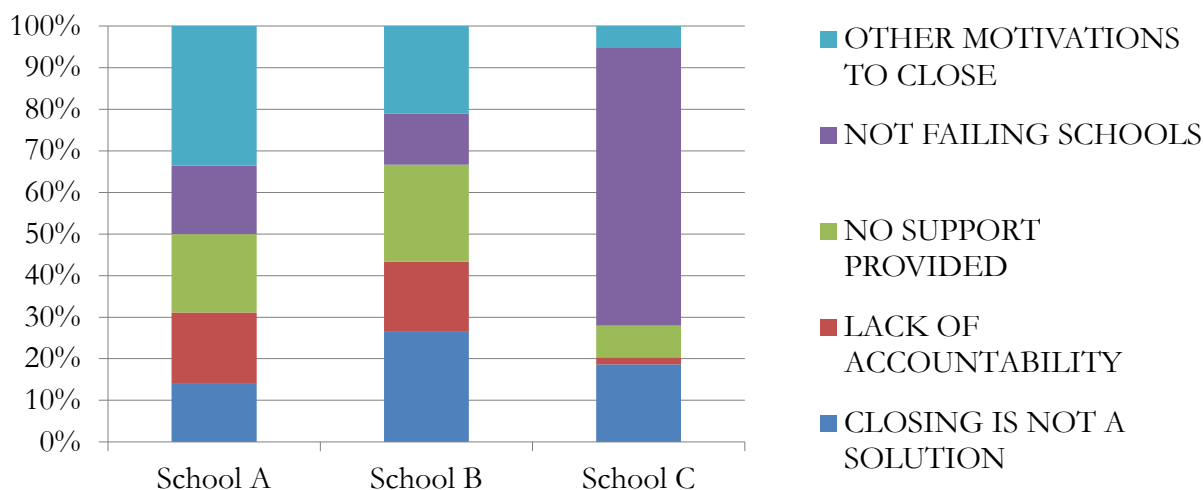


Figure 3. Assertions made across hearings.

As Figure 3 demonstrates, school communities differed in the prevailing assertions they made in contesting school closure policy. In School A, speakers coalesced around the assertion that there are other motivations to close the school—namely privatization. No assertion dominated the School B testimony; the five assertions were distributed fairly evenly. School C by and large made the assertion that their school was not failing. In the next section of this article, I look within each school communities’ assertions more closely to consider whether certain arguments have more salience in the current market sphere of public education.

### Looking Closer Within School-Community Assertions

As I have demonstrated, looking more closely at assertions across hearings revealed that the three school communities differed in the types of arguments they made in opposition to school

closing proposals. As mentioned earlier in the introduction, the three schools profiled in this article offer different education models for students. Schools A and B are comprehensive high schools focused on providing students a college preparatory education, whereas School C is a vocational school certifying students for work in mechanical and engineering trades. Assertions at School C's public hearing converged on themes of employability and living wage jobs, as well as job creation and larger societal economic revitalization. Clearly, these are not assertions school communities A and B could make as directly, given their school models. Still, the market argument is worth further examination in of itself as School C was ultimately removed from the closure list, and school administrators named its argument as the most compelling in subsequent interviews.

While Schools A and B made moral arguments for why their schools should not close (they had not been given adequate support, and closure would harm students and communities), School C largely made an economic argument: the school helps students secure jobs. At School C, more than 30 speakers stated outright that the school was equipping students for living wage employment after graduation, and that the school's placements of graduates in the trades was supporting the local economy and infrastructure. As an alumnus and current carpenter cleverly put it, "we believe in building schools, not closing schools down."

The importance of employable skills was pronounced for economically disadvantaged students attending the school. Several speakers who testified at School C emphasized that the school was located in one of the poorest congressional districts in the country and that it ensured "economically disadvantaged students to get hands-on instruction in their trade, thereby providing a way out of the poverty cycle" [Teacher, School C]. Several alumni also attested that the certificate they received from the school was "paying off," offering how that pay off was computed in hourly wages and salary figures. For example, an alumnus and car technician reported he grossed \$30,000 part-time while taking college classes. "That's pretty good, if you ask me," he remarked. Another alumnus relayed he earned close to \$90,000 per year as a new business owner, adding, "I also bought my condo last year because of this school!"

In addition to those who testified that the school was preparing students for living wage jobs, speakers made an argument not to close the school because of its unique contribution to the larger community's economic revitalization. One assistant principal emphasized that school alumni held leadership roles in many projects throughout the city, proclaiming, "Of all the infrastructure projects going on in New York City right now, you have here in the audience graduates that are working on these projects." Another assistant principal pointed out that the schools' areas of trade were particularly important to the local workforce, and that the school was providing skilled workers to areas that were in demand, stating, "in today's economy, the need for auto technicians and building trade workers may be more pressing than ever."

Several business owners too came forward to praise the school for teaching automotive, carpentry, electrical engineering, and heating, ventilation, and air-conditioning (HVAC) and to remind the NYCDoE that they held contracts with the city. A representative from a world-renowned car company tallied that the school had placed 15 students in two local dealerships, and that his company had worked with more than 30 student interns in the course of their relationship with the school. A second prominent business owner read a list of names of billion-dollar companies and company owners whom he promised, "recognize the value of what's being taught here and how valuable it is," and also added that his company, like others, "would refuse to let [closure] happen to the school."

While Schools A & B argued that the NYCDoE ought to consider schools' relationships to families and communities, School C argued that the NYCDoE ought to consider the school's relationship to the local economy. While Schools A & B asserted that their schools stood as historic

landmarks, School C's stressed that students' futures rested with a school that was both filling and creating jobs. Lastly, while Schools A & B regarded the closure as a loss for the entire community, for School C, the loss of the school was calculated in market terms. One student summarized this by stating that closing the school would be "deteriorating our school, our opportunities, and our careers." In summary, speakers at School C (school staff, students, alumni, and business partners alike) contested closure by appealing to a market-based framework for schooling.

At the conclusion of the school closing proposal public hearing process in 2009-2010, NYCDoe took School C off the list.<sup>9</sup> On March 3, 2010, based on community feedback and the demand for a continuation of the school's automotive program, the DOE issued a revised educational impact statement for School C. Several administrators who agreed to be interviewed on reasons why School C had been removed offered similar explanations for this decision: School C had provided a compelling argument that the school had been successful at providing students with jobs, and building strong alliances with industry partners. In many cases, administrators distinguished the argument made at School C's hearing as a unique example of adults who were speaking on behalf of students' interests, and not their own. For example, the district Superintendent stated, "[Speakers at School C] all spoke about the importance of programs for kids, which is something the others did not do. The others were angry teachers upset about losing their jobs. This one has great community turnout that talked about the impact of school on lives after graduation...prepared kids for a productive life after they left high school. That was very rich, special, and what did it. We were able to reconsider because of that."

Another NYCDoe administrator present at School C's hearing emphasized that School C's community focused on the school's ability to provide students with living wage jobs. This administrator noted that the community where School C was located was lacking in employment options and the school's facility to successfully prepare students for jobs in that vacuum had made an impression on her:

I'm always going to remember a group of kids that approached me and said, 'Miss, you are going to take away the only thing that we have here in this neighborhood that's giving us bread at home. We are graduates of the program, we're making X amount of money, and without that, where we are going to be at right now? You're gonna deny that opportunity to the rest of these kids that really need it?' I tell you, it broke—these kids really spoke from the heart. And it's true, [the school's] programs were really working very good for those kids, in that community. So, I said maybe we shouldn't phase out that school.

A third administrator whom was interviewed, a Deputy Chancellor whom served on the Chancellor's cabinet, pointed more directly to the role of industry partners in the decision to not close the school. This Deputy Chancellor expressed being captivated by business partners who had testified at the public hearing in support of the school and demonstrated having a meaningful partnership: "You know what made a difference there, the fact that the vice president of sales or whatever it was from BMW actually was there waiting his turn to speak. Didn't bully his way up to the front of the line. When he spoke he spoke well, and he also could talk about the relationship that had been built there...so that I think was a big big deal." A fourth NYCDoe representative, working in the Office of Portfolio Planning which developed all school closure proposals, also

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<sup>9</sup> Nineteen additional schools proposed for closure in 2009-2010 were approved by the PEP by a 9-4 vote. All eight Mayoral appointees voted in agreement, as did the borough representative from Staten Island. Unlike the other four boroughs, no school in Staten Island was proposed for closure that year. The remaining four borough appointees voted against the proposals.

acknowledged the criticality of industry voice in the department's ultimate decision: "A lot of times [Career & Technical Education] schools have connections with the local unions because they hire a lot of the kids out of the program...there was a trades council that was in the area that got very involved and so we, in talking with them, decided to [change the school closing proposal]," she confirmed.

These four interviews in total reveal the Department's impression with business industry partners, as well as with the market aims of schooling—equipping students with tools to be economically viable in society. However, conflicting interview data emerged that offers an alternate explanation for School C's avoidance of closure. A number of staff interviewed at School C said that they believed another factor had come into play to help their individual school case—the NYCDoE needing to protect its own legitimacy in policymaking. For example, the then principal of School C offered that from the beginning discussions of School C's closure proposal, representatives from the Department of Education had sent signals it would save its automotive program:

I'm telling you, before anything happened, and I don't remember what—it was early in the school year that we had an assembly with all the teachers and the Board of Ed. came down and said...someone slipped and said maybe one of your programs could be saved and that may be the automotive program. So this was before the hearings, before anything.

A variation of this explanation was also provided by one of the school's teachers and members of the school leadership team who divulged some of what he had learned privately about the school closure policy process. He said he was invited to several conversations with NYCDoE administrators where a secret deal had been struck:

A secret deal was struck in order to save [our school]. And part of the deal was getting a few people to actually, officially go on record and say there was a process and the process did actually work...And in reality the answer is no there is no true process, no the process doesn't work, the PEP is a rubber stamp committee...they don't ask real questions, they don't evaluate anything, they don't look at anything, they have no sense of the data. [The NYCDoE] needed someone to say yeah [the process] actually did work. And so we struck this backdoor deal, where a couple of business people and not-for-profits representatives of industry agreed to say, 'yes there was really a process, and the process worked, and proof that the process worked is look they actually listened to the people at [our school].'

A recording of the joint public hearing on School C's revised proposal on February 12, 2010 meeting includes testimony from this school leadership team member attesting that the "DOE had listened to the community." (Fieldnotes).

In the discussion section, I return to Habermas' public sphere construct and validity claims criteria, as well as Fraser and Dawson's counterpublic theories to make sense of the contradictory data presented through and after the public hearings, and to evaluate whether state authorities are held accountable to the public via deliberation.

## Discussion

Habermas' construct of the public sphere helps us to recognize the potential of a larger public coming together to deliberate matters of common concern (proposed school closings), and to hold state authority (mayoral control) accountable. To recap, Habermas evaluated the efficacy of public spheres by three criteria: *disregard of status*, which leveled the playing field during rational argumentation; *domain of concern*, which secured necessary independence to discuss affairs not subject

to the “monopoly of interpretation” of religious, market, or government authorities; and *inclusivity*, so that everyone was able to participate. With these three criteria met, Habermas contended that the public sphere could facilitate the accountability of decision-making bodies, not by violence, coercion, order of bureaucracy, or incentives of the market, but by “the unforced force of the better argument” (Habermas, 1984, p. 147). I will utilize these three criteria set forth by Habermas to evaluate the school closing public hearings as a public sphere, and then I will apply Habermas’ criteria of validity claims to public testimony.

Inclusivity was demonstrated in the wide array of speakers who testified at the public hearings (Table 3, page 15). Any individual who attended the hearings and wished to speak was afforded two minutes at the microphone, which at the very least, offered the appearance that the hearings had been structured to ensure that speakers’ professional or economic standing did not take precedence and that speakers of all status positions were regarded. By and large, speakers within and across the three hearings offered interpretations of school closure policy that was distinct from those put forward by the state; members of the public provided starkly different explanations for the impetus of school closure policies, and for what policies and actions should be pursued instead. In this way, the public hearings met noble aims of the public sphere to “uncover topics of relevance to all of society, interpret values, contribute to the resolution of problems, generate good reasons, and debunk bad ones” (Habermas, 1992, p. 452). Perhaps the most powerful ways that members of the public offered interpretations apart from the state were in the instances they offered a critical analysis of why schools were struggling, pointing to decades of disinvestment as well as the abandonment of White education policymakers (Buras, 2016; Lipman, 2013), rather than point to individual school failure. On these three criteria (disregard of status, domain of concern, and inclusivity) on a very rudimentary level, the public hearings operated very much as a public sphere.

The five arguments the public made in demanding their schools not be closed also met the criteria of validity claims as Habermas advised; members of the public debated the *intelligibility*, *truth*, *normative rightfulness*, and *sincerity* of NYCDoE school closure proposals. In asserting that schools were not failing, for example, members of the public rejected the validity claims of the NYCDoE based on Habermas’ criteria of *truth*. Members of the public debated the accuracy of the statistics and also disputed that the data the NYCDoE referenced accurately reflected their schools. Public testimony highlighted alternative criteria the Department should consider when evaluating school performance: student and school perseverance, and the school’s relationship to and standing in its community.

Members of the public also disputed the NYCDoE’s school closure proposals on grounds of *sincerity*: that school closing proposals were indeed in the interest of improving school performance. In many cases, members of the public asserted that the NYCDoE had ulterior motives to close schools in the interest of privatization, neighborhood gentrification and urban restructuring (Gulson, 2007; Lipman, 2011). In contrast to the NYCDoE’s framings of school closures as promoting school improvement and civil rights, several members of the public reframed school closures as racist policies that did not redress inequities in resources, power, access and opportunity, harkening critical race theorists who have demonstrated how whiteness as property persists (Harris, 1993). Some accused the NYCDoE of deception, manipulation of data to support its plans to close schools.

Public testifiers at the hearings also disavowed the *sincerity* that school closures were proposed to improve schools, based on the sheer fact that replacement plans were incomplete, or non-existent. In addition, they challenged the *intelligibility* of school closure plans, assessing that closures would negatively and disproportionately impact the most vulnerable students, leading them to drop out, and that surrounding schools would be negatively impacted by increased overcrowding and by the displacement of the least well served students. Many members of the public did not trust

that students attending schools proposed for closure would be afforded the opportunity to attend new schools that would eventually replace them. Members of the public also rejected the *sincerity* that there had been strong enough and sustained attempts to help schools succeed. They argued that their schools, classrooms, teachers, and students never had received comprehensive or adequate support, underscoring the historic and systematic race and class inequalities in education funding.

Overall, members of the public rejected the *normative rightfulness* of the DOE's authority and the legitimacy of the hearing process even while they participated in it. They argued that the hearing process, as part and parcel of the larger governance structure, was unaccountable—that it lacked transparency, genuine opportunities for input into decision-making, and answerability to those most affected by school closings. Perhaps members of the public dealt their biggest challenge to the validity of the hearing process itself as school closing decisions were perceived as 'a done deal.' In both issuing clear rational arguments against school closure policies, and in contesting the DOE's claims, members of the public fulfilled their responsibilities as deliberative actors and members of the public sphere, when it is often lamented as lacking (Gutman & Thompson, 2004).

The hearings were less successful in their fruition as a counterpublic. While members of the public did "identify their interests apart from the state's interests and interpretations" (Fraser, 1990, p. 9), they were less potent according to the other criteria set forth by Fraser and Dawson. Recall that Fraser argues that in stratified societies, counterpublics have a dual character—functioning as spaces for withdrawal and regroupment on one hand, and as bases and training grounds for agitational activities directed toward the wider public, on the other (p. 68). On this latter dimension especially, the public hearings were limited in their operationalization as a counterpublic. Despite a range of robust and nuanced arguments against school closure policy, the hearings fell short of a counterpublic—largely because they did not facilitate "agitational activities toward the wider public." Arguably, school communities were fragmented in strategy, and focused on overturning the individual proposal that was impacting their own schools; they were too divided to form a larger force against mass school closure policy. Dawson's concerns about the limitations of counterpublics to inject their frameworks into the larger political system are also applicable (2006). Arguably, public testimony, although unanimous in opposition, was not able to reframe more dominant narratives of school closures. Mainstream media continues to frame school closures as a tug-of-war between union leaders and school district administrators (Goldstein, 2010). There are very few outlets that give credence to neoliberalism and market logic in public education (Burch, 2009). For example, a recent NPR podcast (Benderev & Marisol-Meraji, 2016) notes that school closings can happen for complicated reasons such as population changes and choice, which can in turn lead to loss of enrollment and revenue, but does not problematize the merit of nor the role market-like principles such as choice and competition play in public schooling (Vasquez-Helig, 2013). Exceptions are typically found in less mainstream papers (see, for example, Rosales, 2015; English, 2010).

The vitality of the school closure hearings as public spheres and counterpublics cannot be assessed merely with the data that surfaced within the public hearings. In considering interview data with NYCDoE education administrators post hearings, Habermasian theory and its application gets blurry. For example, while structurally each speaker was afforded 2 minutes at the microphone, differentiating speakers by status eventually became evident. All four administrators interviewed regarded testimony from business leaders and students more highly for their seemingly less self-interested positions in keeping schools open. Across interviews, administrators lumped together teachers and school staff who testified in support of schools remaining open, as adults preoccupied with their own interests (their jobs). This evidence provides support for Fraser's theorem that participation in the public sphere can never be equal, because some voices will always weigh heavier than others, although not perhaps in all ways that Fraser may have anticipated. A BMW spokesperson certainly can be identified for a higher social and economic ranking, but students'

discussion of how they are making a living made just as much of an impression, according to administrators. On this dimension, students seemingly more successfully formulated their interests as a counterpublic, speaking back to decision-makers and structures that do not represent their own interests (Scott & Fruchter, 2009).

But this too comes unhinged. On a surface level, it may seem that School C students won over administrators by speaking from the heart, but their argument was deemed more powerful because it also tapped into a larger market ideology of schooling by underscoring the economic utility of public domain. This is distinct from the moral or civic utility that Schools A & B touted. All speakers in School C seemed convinced of the market merits in schooling, whereas speakers in Schools A & B rejected a core component of the market logic in assessing schools – evaluating individual school performance without any regard for the impact of the larger political economy. NYCDoE administrators espoused a market ideology by vocalizing the importance of providing jobs for students, as well as meeting the needs of the private sector. It is poignant to observe that administrators expressed concern about the private interests of teachers and unions, yet they lifted the voices and interests of industry partners and backed their rationale that schools not be closed for reasons of profit. Here we see another form of evidence of how education systems and actors respond to market incentives in schooling (Lubetisky, 2005).

Yet still, the pervasiveness of the market ideology does not fully explain School C's removal from the closure list. What ultimately becomes visible in School C's case study is the secret deal between district and school officials—not in the public sphere but in a much more private one. Certainly, public hearings did create an opening for more powerful interest groups (industry partners) to make their claims, but what was most influential in creating conditions for dealmaking and to save one school from closure was the state's own desire to reclaim the legitimacy it clearly lost with the public.

## Conclusion

Public testimony contesting school closing proposals in New York City in 2009-2010 revealed strong rational arguments such as inconsistent criteria in identifying failing schools, insufficient replacement plans, ulterior motives and a lack of accountability to the public. Testimony also challenged the validity claims of the NYC Department of Education's school closure proposals on Habermasian criteria of truth, intelligibility, sincerity, and normative rightfulness. As such, members of the public fulfilled their responsibilities as public sphere participants. However, Habermas' ideals for deliberation in the public sphere free from power differentials between speakers, coercion by the state, or forces by the market were proven untenable.

Testimony across school hearings revealed divided counterpublics, not robust enough to agitate the larger public and reframe dominant narratives concerning school failure and closure, nor to hold the state accountable to all communities affected. The argument that appeared to make the most impact is the one that coincided with the market purpose of schooling. It may have saved this school from the chopping block, but it may have further legitimized other school closures and market-based education policies. At the end of the day, public hearings proved to be more of an opportunity for the state to defend its legitimacy and insist that school closings proposals were not a done deal, than a genuine invitation for public deliberation.

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## About the Author

### Liza N. Pappas

Minnesota State University, Mankato

[Liza.Pappas@mnsu.edu](mailto:Liza.Pappas@mnsu.edu)

Liza N. Pappas is a visiting professor at Minnesota State University and an education and policy analyst in New York City. Her research interests include critical education policy, the processes by which education policy is shaped, implemented and experienced.

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