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Class Size Matters Testimony on Foundation Aid

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My name is Leonie Haimson, and I am the Executive Director of Class Size Matters, a non-profit organization dedicated towards providing information on the benefits of smaller classes for parents and teachers nationwide and advocating for smaller classes in the NYC public schools.

I concur with the testimony of Bob Lowry of the New York State Council of School Superintendents and many others, who have testified that an updated Foundation Aid formula should include additional aid for the large numbers of unhoused students or those in temporary housing in New York City or elsewhere, and also for the surge of recent immigrant students, who require more services and support to succeed academically. There also needs to be a thorough analysis of whether students with disabilities are being adequately funded through the current Foundation Aid formula, and if not, how much should be added for those with complex and serious disabilities.

I also concur in part with the testimony of the NYC Chancellor David Banks that additional funding should be considered to help the Department of Education lower class size, as the 2022 state law requires, but only if the city develops and implements an actual multi-year plan to use the funds for that purpose – which has not yet occurred, even though more than two years has followed the passage of the law.¹ There also needs to be strict and rigorous oversight by the state to ensure that the DOE is using this funding appropriately.

It is unfortunate but true that over many years, New York state has provided New York City funding specifically for smaller classes that was not properly used for that purpose. Instead, the city reduced its own funding for staffing, leading to class size increases instead. Over and over again, we have seen the DOE cutting back on its own support for schools as state funding has increased, revealing a lack of maintenance of effort.

Two separate audits by the New York State Comptroller in 2002 and 2005, and another audit by the New York City Comptroller in 2009 found that the city failed to abide by the rules of the categorical funding

¹ See the Class Size Matters letter to the State Commissioner of Education, sent in July 2024 at <https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2024/07/letter-to-state-regarding-DOE-class-size-submission-7.22.24.pdf> . See also the letter to the DOE, signed by over 570 parents, educators and advocates in June 2024 at <https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2024/06/Comments-on-DOE-draft-class-size-plan-plus-signers-6.24.24-v2.pdf>

provided by the state via the Early Grade Class Size Reduction program that began in 2000. These audits determined that DOE failed to hire thousands of teachers with the funds as promised, with the result being an inadequate reduction in class sizes or actual increases in class size in the city schools.² As the second of these two audits explained, “*DoE’s method substitutes Program funding for local funding that was used previously for early grade classes (and teachers) that existed prior to the Program’s implementation.*”³

In 2007, the Foundation Aid formula was established, and the separate Early Grade Class Size Reduction funding was folded into the larger amount provided through Foundation Aid, and more specifically, in that portion of that Aid known as the Contracts for Excellence. That law reconfirmed that no supplanting is allowed with these funds.⁴

Though the city received nearly \$1 billion in additional Foundation Aid in 2007-8 and 2008-9, and hundreds of millions of dollars through the Contracts for Excellence program, class size increased sharply over those two years rather than decreased in the city public schools.⁵

A report commissioned by the UFT found that during the 2007-2008 school year, nearly half (48.5%) of 390 elementary and middle schools that had claimed they were using C4E funds for class size reduction did not lower class size. Class sizes actually increased at about 34% of these schools, and in 43% of elementary and middle schools citywide, class sizes increased.⁶

At the NYC Contract for Excellence public hearings in July 2008, Class Size Matters pointed out that the DOE had no real plan to lower class size, as the C4E law also required, and that they had allocated \$46.3 million for this purpose, only 12% of the city’s Contract for Excellence funding.⁷ At the hearings, many speakers pointed out that “without oversight and support, schools would not actually reduce class sizes, as was the case in half of schools that received special funds to reduce class size last year.” They expressed concerns that in the following year, “the money will be spent to close holes in the budget rather than create or expand programs. Others worried that the new funding would be used to make up losses

² NYS Comptroller, Administration And Oversight Of The Early Grade Class Size Reduction Program 2002-S-33 <https://web.osc.state.ny.us/audits/allaudits/093003/093003-h/02s33.pdf> ; NYS Comptroller, Administration Of The Early Grade Class Size Reduction Program 2005-N-3 <https://web.osc.state.ny.us/audits/allaudits/093006/05n3.pdf>; NYC Comptroller, “Audit Report on the Department of Education’s Administration of the Early Grade Class Size Reduction Program,” FM09-113A, September 2009; <http://comptroller.nyc.gov/reports/audit-report-on-the-department-of-educations-administration-of-the-early-grade-class-size-reduction-program/> Though the last of these audits occurred after the Early Grade Class Size program had been subsumed into the Foundation Aid and Contracts for Excellence funding, the DOE had promised to keep the dedicated funding stream for smaller classes as part of their overall class size reduction plan as required by the C4E law, but failed to do so.

³ A detailed timeline of all these events are summarized between 1993, when the CFE lawsuit was first filed and Oct. 2017 is here: <https://www.classsizematters.org/wp-content/uploads/2017/06/Timeline-on-C4E-CSR-process-6.5.17.pdf>

⁴ That law states the following: “Increases in total foundation aid and supplemental educational improvement plan grants shall be used to supplement, and not supplant funds allocated by the district in the base year for all purposes set forth in subdivision three of this section.” <https://www.nysenate.gov/legislation/laws/EDN/211-D>

⁵ <https://www.classsizematters.org/wp-content/uploads/2017/06/Timeline-on-C4E-CSR-process-6.5.17.pdf>

⁶ John Tapper, *Class Size and the Contract for Excellence: Are we making progress in NYC’s public schools?* April 2008 <https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2024/09/UFT-report-on-C4E-and-class-size-2008.pdf?time=1725653989>

⁷ CSM, *40 Reasons why the State should reject NYC’s C4E proposal*, July 2008 at: <https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2024/09/40-reasons-why-the-state-should-reject-NYCs-C4E-proposal-July-2008.pdf?time=1725655267>

due to budget cuts in low-performing schools, rather than expanding services for high-needs children in those schools.”⁸ And yet that is exactly what occurred.

In Nov. 2009, class size data showed that class sizes had increased sharply in all grade ranges. In grades K-3, the increases were even larger than the year before and wiped out nine years of gradual decline.

In 2009, Acting State Education Commissioner Johanna Poitier specifically warned then-Chancellor Klein that “increases in Total Foundation Aid and Supplemental Improvement Plan Grants [must be] used to supplement, and not supplant funds allocated by the district in the base year for such purposes,” including the Early Grade Class Size funds that were now folded into Foundation Aid.⁹

Yet this unfortunate trend continued and has now recurred even more emphatically under the Adams administration, even though the original Foundation Aid formula instituted in 2007 has now been fully funded, with NYC DOE receiving about \$1.5 billion in additional annual state funding as a result. For the last two years, despite this increased aid and a state law requiring the city to lower class size, average class sizes have risen in most NYC public schools, as a result of the Mayor’s repeated cuts to school budgets.¹⁰

In January 2022, Class Size Matters, the Alliance for Quality Education and the Education Law Center wrote to State Education Commissioner Betty Rosa, expressing our concern that DOE officials had refused to specifically target a single penny of C4E funding towards lowering class size, and pointing out how the DOE continued to insist that that they can use these state funds to supplant or fill in holes created by the city’s own tax levy cuts.¹¹ This was explicitly stated in the DOE’s proposed C4E plan for FY 2022, as follows:

*...SED has provided guidance explaining that certain expenditures may be paid for with C4E funds even though these programs or expenditures were originally or have been typically paid for by the district.*¹²

As we wrote in our letter:

“Again, it would make no sense to allow state funds to be used where the city itself has made budget cuts, which would also mean no progress or improvement in terms of providing equitable learning conditions for NYC students.”

Yet the DOE has continued to supplant. The School Allocation Memorandum that distributes C4E funds for the current 2024-2025 school year advises principals that if they choose to spend these funds on lowering class size, they can do so either to “Maintain class size reductions” or “Minimize growth of class size in FY2025.” As the memo further explains, “A school may fund at teacher to minimize the growth in class size that the school would have otherwise experienced due to budget cuts...”¹³

⁸ https://www.chalkbeat.org/newyork/2008/7/31/21094756/concerns-criticisms-dominate-at-contracts-for-excellence-public-hearing/#.V_k2GCQ5tWA

⁹ https://www.p12.nysed.gov/mgtserv/C4E/pdf/September_2009_Packet_To_Superintendents.pdf

¹⁰ See Class Size Matters City Council testimony here <https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2024/03/CSM-testimony-on-class-size-2.29.24.pdf>; and the C4E amounts here: https://www.p12.nysed.gov/mgtserv/C4E/24-25_C4E/c4e-increase-reassessment-schedule-final.pdf

¹¹ See the letter sent in Jan. 2022 posted here: <https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2022/01/final-C4E-comments-1.13.22-2.pdf>

¹² https://infohub.nyced.org/docs/default-source/default-document-library/fy22-c4e-boroughwide-presentation_july-2021_v2.pdf

¹³ See School Allocation Memorandum No. 05, FY 2025, June 5, 2024, Appendix A: Contracts for Excellence Program Strategies, https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy24_25/fy25_docs/fy2025_sam05_Appendix%20A.docx

Indeed, the State Education Department noted that last year, although the DOE reported that Contracts for Excellence funds had allowed for the hiring of an additional 1,203 teachers in particular schools where principals chose to use these funds for that purpose, the actual count of teachers in these schools had increased by only 507, again indicating that supplanting had occurred.¹⁴ All this provides clear evidence that the DOE cannot be trusted with increased state funding for class size reduction without a fully transparent plan on how it will be spent, and strict oversight to ensure that this occurs. Unfortunately, no such plan exists.

As a secondary matter, we are also concerned about the amount of funding that flows out of the DOE annually to pay for charter schools and private school tuition and services, as required by state law. The DOE spent nearly \$3 billion on charter schools, and \$2.6 billion on non-public and contract schools in FY 2024, with both amounts increasing fast.¹⁵ These amounts do not include DOE spending on charter school rent.

New York City is the only school district in the state and indeed the nation that is also required to help pay for charter school rent, though none of these expenses are taken account of in Foundation Aid. These costs are sharply increasing. DOE's charter school rental payments increased from \$44.8 million in FY 2018 to more than \$246.5 million in FY 2024, a growth of 450%. After factoring in 60% state reimbursement for those charter schools that go through the appeal process, the city's spending on charter rental payments has risen from \$18 million to \$105 million, an increase of 486%.¹⁶

A report from Class Size Matters found that in some cases, NYC Charter Management Organizations or other affiliated organizations have apparently inflated the rents on their own charter schools to garner more funding in subsidies from the city and state.¹⁷ Prompted by our report, in March 2022, Sen. John Liu, the Chair of the NY State Senate NYC Education Committee, Sen. Robert Jackson, and City Council Education Chair Rita Joseph asked NYC Comptroller to audit the charter rent program.¹⁸ And yet this sort of charter school self-dealing has apparently persists.¹⁹

Surely, if it is a state priority to support charter schools by subsidizing their rent, the state should cover the entire amount of the cost, rather than 60%, and there needs to be far more scrutiny on these expenses to root out self-dealing, waste, and fraud.

¹⁴ https://www.p12.nysed.gov/mgtserv/C4E/doc/nyc_class_size_reduction_plan/2023-24/12-5-response-to-nysed.pdf pp. 2-3.

¹⁵ <https://www.schools.nyc.gov/about-us/funding/funding-our-schools>

¹⁶ The City Council posts spreadsheets each year detailing these costs under Terms and Conditions. The latest for FY 2024 is here: Department of Education – Charter School Lease Assistance Report (XLSX) at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2024/02/Department-of-Education-Charter-School-Lease-Assistance-Report.xlsx> The DOE is also paying directly for the rent of six Success Academy charter school buildings, costing about \$11 million in FY 2024 without any reimbursement from the state, because they have never asked Success Academy to go through the appeal process required in the law for state reimbursement.

¹⁷ Class Size Matters, *DoE Overspending On Charter School Facility Costs And Underspending On Matching Funds To Public Schools*, March 2021. https://secureservercdn.net/198.71.233.96/3zn.338.myftpupload.com/wp-content/uploads/2021/03/CSM_DOE-Spending_Charter-Schools-Facilities_FINAL-3.21.pdf

¹⁸ <https://classsizematters.org/wp-content/uploads/2023/01/Letter-to-Comptroller-asking-for-audit-on-charter-school-matching-funds-rent.pdf>

¹⁹ <https://www.chalkbeat.org/newyork/2024/03/06/nyc-sues-state-education-department-charter-rental-dispute/>