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Testimony Of Leonie Haimson, Class Size Matters
Before the Joint NY State Senate & Assembly Finance, Ways & Means, and Education Committees
Regarding the Proposed FY23 Executive Budget
January 26, 2022

Dear Finance Chairs Krueger and Weinstein, Education Chairs Mayer, Benedetto, Liu, and other members of the committees:

In 2003, in the Campaign for Fiscal Equity case, New York's Court of Appeals, the State's highest court, said class sizes in NYC schools were too large to provide NYC students of their constitutional right to a sound, basic education. As the Court of Appeals wrote,

“Plaintiffs presented measurable proof, credited by the trial court, that NYC schools have excessive class sizes, and that class size affects learning. Plaintiffs' evidence of the advantages of smaller class sizes supports...a meaningful correlation between the large classes in City schools and the outputs...of poor academic achievement and high dropout rates...[T]ens of thousands of students are placed in overcrowded classrooms ... The number of children in these straits is large enough to represent a systemic failure.”¹

In 2007, the State Legislature passed the Contracts for Excellence law to address this systemic failure, by requiring the State to provide NYC and other high needs districts with their fair share of funding while including accountability and public participation requirements in the spending of these funds. The Legislature intended to ensure that the money be invested in programs proven to work and that students in NYC and elsewhere could finally receive their right to a sound, basic education. In addition, the law had a provision that the city must implement a state-approved class size reduction plan.

It never happened. Numerous audits revealed the DOE's failures to comply and there was an attempt early on by the state to impose a corrective plan, but NYC remained resistant to putting any effort into lowering class size. When the 2007-2008 recession happened, the DOE cut back on its own support for staffing, which caused class sizes to increase sharply. Moreover, our schools never received the full funding from the state they deserved.

Although the law allowed no such waiver, in October 2009, then-State Commissioner David Steiner wrote then-NYC Chancellor Joel Klein that the *“current economic climate* requires some changes to your contract and the

¹ Campaign for Fiscal Equity, Inc., et al. v. State of New York, et al., 100 N.Y.2d 893, 911-12 (2003) (“CFE II”) https://www.law.cornell.edu/nycap/103_0084.htm

original class size reduction plan created in 2007.”² This letter remained secret until it was leaked to investigative reporter Juan Gonzalez, who wrote about it the following year.³

The recession has been officially over for more than a decade, yet class sizes never recovered to pre-recession levels. This year, NYC schools are finally receiving the full amount from the CFE decision, in the first year of a three-year phase that will result in \$1.3 billion additional Foundation funds.

But the City still has no plan to lower class size in any systematic way. In fact, the DOE’s proposed C4E plan does not allocate a penny towards reducing class size in the “targeted” component, and in its discretionary component allows principals to use these funds instead to maintain current class sizes or limit class size increases.⁴ Maintaining and/or minimizing increases in class size does not provide any progress towards the smaller classes that NYC students need and deserve, according to the State’s highest court.

In addition, DOE claims that “FY 2022, the State has not allocated to NYCDOE any additional C4E funding above the amount it provided in SY 2009-2010.” This claim is made even though NYC schools are receiving \$530 million in additional state Foundation aid during SY 2021-22, increasing to \$1.3 billion annually over next three years, to fulfill the goals of the CFE lawsuit.

Another problem with the DOE’s proposed plan is the insistence that these funds can be used to supplant or fill in holes created by the City’s own tax levy cuts, even though supplanting is specifically prohibited in the C4E law.⁵ Again, it makes no sense to allow the City to use state funds where it has itself cut the budget for specific programs or staffing, as this would mean no progress or improvement towards providing equitable learning conditions for NYC students.

Finally, the C4E state law and regulations also require that the City’s plan “be developed through a public process, in consultation with parents or persons in parental relation, teachers, administrators.” This has never occurred. More specifically, districts are supposed to consider the public’s input during hearings and a comment period in the design of their final proposed plan before submission to the State for approval. And yet, the DOE holds hearings and schedules its public comment period so late in the fall and winter after the funds have been allocated. By the time the DOE has even submitted the plan to the State for approval, the C4E funds have already been spent.

² https://www.p12.nysed.gov//mgtsterv/C4E/doc/nyc_class_size_reduction_plan/2009_2010/Steiner_to_Klein_10_22_09.pdf

³ See Juan Gonzalez, “City took money for nothing as it got aid to cut class sizes, OK’ed packing more students together,” September 22nd 2010, at https://web.archive.org/web/20100929060851/https://www.nydailynews.com/ny_local/education/2010/09/22/2010-09-22_money_for_nothing_exclusive_city_took_aid_to_cut_class_sizes_okd_packing_more_in.html; Also my account here: <https://nycpublicschoolparents.blogspot.com/2010/09/revelations-concerning-seds-secret.html>

⁴ https://infohub.nyced.org/docs/default-source/default-document-library/fy22-c4e-boroughwide-presentation_july-2021_v2.pdf

⁵ See the plan which says, “Expenditures made using C4E funds must “supplement, not supplant” funding provided by the school district; however, 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 or by other grants.” The budget memo says, “C4E programs must supplement programs funded by tax levy dollars, and funds distributed pursuant to this SAM may not be used to cover the costs of programs and personnel previously funded with tax levy dollars, except in cases where a school can document and demonstrate that, due to cuts in tax levy funding, the programs or personnel would have been cut if not for the availability of C4E dollars.” https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy21_22/fy22_docs/fy2022_sam005.htm And yet the C4E law says this: “The school district audit report certified to the commissioner by an independent certified public accountant, an independent accountant or the comptroller of the city of New York pursuant to section twenty-one hundred sixteen-a of this chapter shall include a certification by such accountant or comptroller in a form prescribed by the commissioner and that the increases in total foundation aid and supplemental educational improvement plan grants have been used to supplement, **and not supplant funds allocated by the district in the base year for such purposes.**” [emphasis added].

This year the Community Education Council hearings on the C4E plan for 2021-2022 school year were scheduled for November and December 2021 and the deadline for public comment was set at January 17, 2022, just a few weeks ago, making the entire public process and state approval itself completely meaningless.⁶

Nor has the City ever posted its summary of public comment as required by C4E regulations 8 CRR-NY 100.13, which requires districts to post on their websites a “public comment assessment” that contains a description of the comments received, and a response to each, explaining which suggestions were accepted and which were rejected, and an explanation why.⁷

The State is partly to blame for failing to enforce its own regulations, and for neglecting to post any calendar since 2016 for hearings and the submission of a C4E plan that might allow the public to have a real opportunity to provide input into the spending of these funds.⁸

This year, class sizes in NYC schools have dropped significantly, especially in grades K-8, but this is entirely due to enrollment decline, not any effort on the part of the city. Our analysis finds that there are fewer general ed, ICT and gifted classes in grades K-12 than there were in 2019-2020 school year, and the percent class size reduction at each grade level is less than the percentage of enrollment decline.

Area	Grades	2019 Avg.	2021 Avg.	Class Size Change	2019 Enroll	2021 Enroll	Enroll Change	2019 Classes	2021 Classes	Classes Change
Citywide	K-3	23.8	21.2	-10.9%	243,654	211,345	-13.3%	10,271	9,980	-2.8%
Citywide	4-8	26.5	23.8	-10.2%	313,215	280,667	-10.4%	11,832	11,779	-0.5%
Citywide	9-12	26.1	25.4	-3.0%	1,229,665	1,184,853	-3.6%	47,040	46,723	-0.7%

Moreover, average class size in grades K-3 remains larger than when the C4E law was passed, and huge disparities persist across schools and districts, with more than 180, 000 students crammed into classes of thirty or more.⁹

As it stands, year after year, the DOE has ignored the views of parents and teachers on this issue. Every year that the DOE’s own surveys have been administered, smaller classes have been the top priority of K12 parents when asked what changes they would like to see in their children’s schools. According to a UFT teacher survey, 99% NYC teachers responded that class size reduction would be an effective reform to improve NYC schools, far outstripping any other proposal.¹⁰ And yet DOE refuses to follow through on a critical reform that we know for sure would lead to improved student outcomes, especially for children of color, English Language Learners, students with disabilities and those from low-income families.

That is why we are calling for the C4E law to be updated and strengthened with actual class size caps to be achieved over five years, with enhanced accountability and enforcement provisions, to ensure that this time the City follows through on its moral obligation to provide equitable class to our students, no matter where they live and go to school.

Thank you for the opportunity to provide testimony on this important issue.

⁶ <https://infohub.nyced.org/reports/financial/contracts-for-excellence/c4e-2021-2022-annual-hearings>

⁷ <https://govt.westlaw.com/nycrr/Document/I36530535c22211ddb29d8bee567fca9f?>

⁸ https://www.p12.nysed.gov/mgt/serv/C4E/16-17_C4E/2016-17_ContractsforExcellence.htm

⁹ We only counted HS students in social studies classes of thirty or more, in order not to double count.

¹⁰ <http://www.uft.org/files/attachments/annual-teacher-survey-2014.pdf>