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Class Size Matters Testimony before the NY State Legislature on the education budget, charter schools, and whether NYC will meet the class size caps in the new state law

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Thank you for holding these important hearings today. My name is Leonie Haimson, and I am the Executive Director of Class Size Matters. There are three major topics I would like to address: the new state law requiring NYC phase in smaller classes in all grades, the new additional state Foundation funding for NYC schools, and the proposal by the Governor to raise the cap on charter schools.

First, thank you so much for passing the new state law on June 2, 2022, S9460/ A10498 requiring that NYC implement a five-year class size reduction plan, that will begin phasing in next fall.

The law requires that smaller class size caps will be achieved over five years of no more than 20 students per class in grades K-3, no more than 23 students per class in grades 4th-8th, and no more than 25 students per class in high school, with physical education and performing art classes capped at forty students per class. Each year starting in September 2023, 20 percent of all classes must achieve these caps, with an additional 20 percent of classes added each year, until all schools are compliant by the end of the 2027-2028 school year.

Thank you also for supporting the full phase-in of Foundation aid that will be completed next year with an additional \$600 million for NYC schools, in addition to an increase of about \$348 million this year. This increase in Foundation Aid, as you know, is the result of the CFE lawsuit, in which the state's highest court found that students in NYC public schools were deprived of their right to a sound basic education under the state constitution, in large part because of their excessive class sizes.

However, instead of increasing school funding this year in order to lower class size, the Fair Student Funding portion of school budgets was cut by about \$469 million this year; and 77% of schools had their Fair Student Funding cut by a total of \$469 million, according to the City Comptroller.¹

However, this analysis just looked at a portion of entire school budgets. We have found that schools' entire Galaxy budgets have been slashed by a net \$822 million as of January 12 of this year, compared to

¹ <https://comptroller.nyc.gov/newsroom/statement-from-comptroller-brad-lander-on-education-budget-changes/>

last year.² As a result, class sizes have sharply increased in many schools across the city, and many schools also lost their art and music classes, and other critical programs.³

Last year, because enrollment declined and for the first time school funding was not strictly tied to enrollment, along with hundreds of millions in federal stimulus funds meant to help students recover fully from the disruption caused by the pandemic, many parents/teachers reported that the smaller classes in their schools for the first time were ideal to meet learning and emotional challenges of their students.

Yet despite the now mandated need to lower class size, and an additional \$600 million in state Foundation aid that NYC schools are due to receive next year, the Mayor's preliminary budget for FY 2024 would continue to cut school budgets, contrary to the DOE's claims.

The overall DOE budget would be cut by another \$800 million, over and above a cut of \$176 million in November. Moreover, one of the major proposed bullet points in the city's Program to Eliminate the Gap would result in school staffing cuts of nearly \$100M next year, in addition to a mid-year cut of \$40M this year, described as "**Less than anticipated spending for schools addressing staffing changes related to vaccination mandate.**"⁴

The Independent Budget Office recently confirmed to me that this PEG does indeed represent a cut to school budgets, and would likely result in lower staffing levels next year, as schools are prevented from replacing teachers who had refused to be vaccinated.⁵ This will likely cause class sizes to increase once again.

According to an Office of Management Budget document released the same day as the preliminary budget, the city plans not to add a single additional teacher through at least June 2025; according to NYC Council data, DOE has already lost about 4,000 full-time K12 teachers between FY 2020 & FY 2023.⁶ The tweaks to the Fair Student Funding portion of school budgets that DOE announced on January 23, 2022 do not take into account the need for more staffing to lower class, and the formula continues to be strictly tied to school enrollment and thus incentives principals to overcrowd schools and classrooms.⁷

Moreover, even though according to the latest available DOE data in the 2021-22 Blue Book, approximately 347,000 of 38 percent of public school students citywide last year were enrolled in schools over 100%, the DOE has cut more than 11,000 school seats in the capital plan adopted in June 2022, and the amount spent on new school capacity has plunged from \$7.8 billion to \$6.3 billion .

² <https://classsizematters.org/cuts-to-school-budgets-as-of-jan-12-2023-compared-to-last-year-total-823-million-net/>

³ <https://www.nytimes.com/2022/06/28/nyregion/nyc-schools-budget-cuts-teachers.html>

⁴ <https://www.nyc.gov/assets/omb/downloads/pdf/peg1-23.pdf> , p. 15.

⁵ Email from Sarita Subramanian, Independent Budget Office, to Leonie Haimson, Feb. 2, 2023. She did emphasize, however, that about 25% of these FY 2023 cuts and proposed FY 2024 cuts were for fringe salary costs that do not affect school budgets.

⁶ <https://www.nyc.gov/assets/omb/downloads/pdf/jan21-stafflevels.pdf> , p. 22.

⁷ <https://www.nyc.gov/office-of-the-mayor/news/055-23/mayor-adams-chancellor-banks-push-increase-equity-fair-student-funding-formula>

In the November 2022 proposed amendment to the capital plan, released months after the Governor signed the class size bill into law, more cuts are made, and an additional 4,300 seats in ten districts have been pushed into the “funded for design only” category. Nowhere in that plan is there any mention of the need to provide more space to lower class sizes.

Nor are there any evident steps being anticipated to cap enrollment at lower levels in some of our most overcrowded schools. When asked at a Nov. 10, 2022 meeting of the Chancellor’s Parent Advisory Council if any changes were being considered to enrollment policies to ensure that severely overcrowded schools are able to comply with the class size law, Sarah Kleinhandler, Chief Enrollment Officer at DOE, responded: ***“we will work with schools and make sure that we’re adhering to this class size law if and when it’s when it actually is coming down. and we hear and I hear from leadership here, you know, in terms of like the larger picture of what we have to do....”***

Subsequently when Deputy Chancellor Weisberg was asked about the DOE’s enrollment policies during a City Council hearing on January 25, 2023, he replied that instead of making any steps to cap enrollment at extremely overcrowded schools to enable them to meet the class size caps in the class size law, DOE would rely instead upon instituting ***“new programming that is responsive to what the community is asking for in schools that are underutilized,”*** though he did not specify what that programming would include.⁸

Finally, the proposed charter co-locations introduced by DOE this fall and winter were based on space estimations that explicitly assumed that the current class sizes in the existing public schools would continue into the indefinite future, including in those schools where the vast majority of class sizes are far above levels specified in the law.

Our analysis of current class sizes suggest that because of enrollment decline, DOE is likely to meet the first year goal in 20 percent of classes meeting the new caps, and perhaps even the second year goals, if enrollment continues to decline and school budgets are not significantly cut.

Yet the class size caps in year three and thereafter are very unlikely to be achieved without an effective plan to be created and implemented as soon as possible that would add sufficient space through building new schools in our most overcrowded communities, since it can take five years or more to site and build a new school. Capping enrollment at lower levels in our most overcrowded schools also needs to be seriously considered.

In recognition of the lack of apparent planning, and the refusal of DOE to explain exactly how they intend to meet the benchmarks in the law, many parent leaders, elected officials, and advocates have sent a letter to the Chancellor, urging him to create a Task Force made up of stakeholder groups to help them create an equitable, effective class size reduction plan as soon as possible.⁹

Deputy Chancellor Weisberg has responded in a non-committal manner, saying that though it is a “priority for this administration to incorporate parent voice,” there is no need for a Taskforce, given that the DOE’s class size reduction plan will be presented for parent feedback at Contract for Excellence (C4E) hearings conducted in June.¹⁰ However, it has been our experience that since 2007, when the C4E

⁸ <https://legistar.council.nyc.gov/View.ashx?M=F&ID=11612014&GUID=1C796D91-62F0-4BC8-8B29-C75A60BB6ED7>

⁹ <https://docs.google.com/document/d/10YTDuulGmow9G1cnHz1KW7VPIrblnLqUleOOVGBrnHY/edit>

¹⁰ <https://classsizematters.org/wp-content/uploads/2023/02/Weisberg-response-to-CEC-15-resolution.pdf>

law was first passed and the mandated C4E hearing process began, the DOE has never altered any of their C4E plans in response to parent or advocate feedback.

We urge the Legislature to hold hearings to hear directly from DOE officials exactly what changes to school funding, the capital plan, enrollment, or other policies and practices are being considered in order to help schools meet the annual benchmarks in the law, especially in the out years; so that all NYC students will finally be provided with the opportunity to have the smaller classes that is their right under the State Constitution. They should also be asked directly why schools should be subjected to any more cuts when the DOE is receiving an additional \$600 million in Foundation Aid, funds that are meant to ensure that students can receive a sound basic education, including the smaller classes now required by the law.

We are also very concerned about the proposal made by Governor Hochul to allow about 100 additional charter schools in NYC, by eliminating the regional limits and by adding a number of previously authorized charters known as “zombie charters” which have closed or had their charters revoked.¹¹

This proposal, if enacted, could potentially add 300 more charter schools in NYC, since under current law, every charter school, whether elementary, middle, or high school, is allowed to expand to all grade configurations. NYC already has 275 charter schools – the vast majority of those authorized in the state.¹² The funding already diverted from the DOE budget by those 275 charters is approximately \$2.69 billion and still growing each year – not counting the space and services that co-located NYC charter schools receive for free.¹³

NYC charter schools that are sited in private space also receive subsidies from DOE to help pay for their rent, which this year is an estimated to cost about \$166 million; with 60% of that reimbursable by the state.¹⁴ Thus, the actual cost of charter schools to DOE’s budget is thus likely over \$3 billion annually. Since raising the charter cap could actually allow 300 more charter schools, this could more than double the number of charters in NYC and cost the DOE an additional \$3 billion per year or more.

All this is made worse by the fact that NYC is the only school district in the entire state and indeed the entire nation that is obligated to help subsidize the rent for charter schools, if not provided space in public school buildings. NYC is also the only school district in the state exempted from receiving charter school transitions aid meant to help reimburse districts who are forced to divert funding to charter expansion. According to an analysis of the Education Law Center, NYC has been denied over \$2.62 billion in state charter school transitional aid between 2011 and 2022 because of this exemption.¹⁵

Contrary of the claims of huge demand made by the charter lobby, according to an analysis by Chalkbeat, 58% of the city’s charter schools have lost enrollment over the past three years, not including charter schools that opened or closed during that time.¹⁶ Their claims of huge waiting lists are

¹¹ <https://ny.chalkbeat.org/2023/2/1/23581754/governor-kathy-hochul-lift-nyc-charter-school-cap-executive-budget-proposal-enrollment>

¹² <https://nyccharterschools.org/facts/>

¹³ https://council.nyc.gov/budget/wp-content/uploads/sites/54/2023/01/DOE_FY-2023_Charter_School_Report.xlsx

¹⁴ <https://www.budget.ny.gov/pubs/archive/fy23/ex/local/school/2223schoolaid.pdf>

¹⁵ <https://edlawcenter.org/news/archives/new-york/the-unsustainable-cost-to-new-york-city-schools-of-charter-school-growth.html>

¹⁶ <https://ny.chalkbeat.org/2022/12/5/23488735/nyc-charter-schools-student-enrollment-population-statistics-decline-covid>

unconfirmed by any independent audits and likely inaccurate, as they include many duplicates. Moreover, many charter schools, including as those affiliated with Success Academy, spend millions on advertising and marketing efforts in order to recruit more applicants; and was still urging more families to apply to their schools through October of the current school year, revealing a shortage of students in many of their schools.¹⁷ Finally, Success is also planning to recruit students who reside outside NYC, also suggesting a lack of demand within the city.

Many charters schools also exhibit high rates of student attrition, including at Success, where studies show 75% of students leave from Kindergarten on; and about 50% of students who make it to high school are forced to leave before graduation.¹⁸ Most NYC charter schools have far lower enrollment rates of high-needs students, including English Language Learners and students with disabilities.

We urge you to reject the Governor's proposal to raise the cap on charters, and instead close the loophole allowing charter schools to expand to all levels, in addition to the grade configurations that they were originally approved to serve. We also ask that you repeal NYC's unfair requirement to provide space to charters or help pay for their rent and ensure that from now on, NYC should receive state charter transitional aid as all other districts already receive.

Other bills that should be passed to strengthen the accountability and transparency of charter schools shall be approved by the Legislature and signed into law by the Governor, along with the same bills in the Assembly: [S4200](#) (Hoylman); increasing with transparency and limiting charter co-locations to three years; [S1395](#) (Liu); providing the Board of Regents with final say over charter approvals and re-authorizations; [S2171](#) (Liu); requiring the appointment of an independent fiduciary upon the dissolution of a charter school; [S355](#) (Jackson); requiring more accountability for charter schools in multiple ways; [S2137](#) (Liu); repealing the requirement that NYC must help pay for private space rented by charter schools; [S2173](#) (Salazar); allowing the state Comptroller to audit NYC charter schools; and [S2292](#) (Mayer); including school districts and in NYC community school districts in the approval process for issuing any new charter schools, where charter enrollment is already above 5% of the total public school enrollment.

Finally, I hope that the Legislature strongly consider holding hearings on the city's class size reduction plan or lack thereof, to see if they are providing sufficient funding and space to allow schools to meet the annual benchmarks in the new class size law, especially in the out years. Without this sort of oversight, I am very concerned that the DOE may instead wait until year three, and then announce it is impossible to comply with the law.

Thank you for the opportunity to testify to you today.

¹⁷ <https://web.archive.org/web/20221023173542/https://www.successacademies.org/apply/>

¹⁸ <https://garyrubinstein.wordpress.com/2022/01/25/success-academy-extends-its-75-attrition-streak/> and <https://garyrubinstein.wordpress.com/2022/07/15/nearly-half-of-success-academy-9th-graders-do-not-graduate-from-success-academy/>