



**Testimony on the Contracts for Excellence at City Council Hearing**

10/13/2009

**Prepared Testimony of Chief Operating Officer Photeine Anagnostopoulos before the New York City Council Education Committee**

Good afternoon, Chairman Jackson and members of the Committee on Education. Thank you for inviting me to testify today about the Contracts for Excellence.

**OVERVIEW**

As most of you know, in 1993, the Campaign for Fiscal Equity filed a constitutional challenge to New York State's school finance system, arguing that the State short-changed the City's public schools and denied its students their constitutional right to a sound, basic education. I would like to thank everyone involved in that battle, including Robert Jackson, who was one of the original plaintiffs. In April 2007, New York State's Legislature and Governor finally acted on the court ruling, sending our City an unprecedented increase in education aid designed to address decades-long funding inequities.

As a result of the severe economic downturn, the State unfortunately has been unable fulfill its initial plan for annual increases in foundation aid as called for by the Fiscal Equity settlement. This year, the State extended its planned phase-in period for that settlement from four to seven years, freezing Foundation Aid for the current school year and for next school year at levels awarded during the 2008-09 school year. Over \$1.3 billion of promised additional foundation aid to New York City schools will now be delayed by at least two years. Given that Contracts for Excellence (C4E) funding is a subset of foundation aid funds, there will be no new C4E funding this year or next year.

Moreover, while the State awarded no increase in foundation aid or C4E funding this year, our non-discretionary costs continue to rise, driven by increases in teachers' compensation, salaries, pensions, and fringe, and growth in mandated special education services. Rising costs mean that each C4E dollar will not stretch as far as it did previously. With decreased purchasing power and no increase in C4E funds, we have very limited capacity to fund new programs with C4E dollars.

**PUBLIC HEARINGS**

Before I outline this year's proposed plan for the C4E funds, please allow me to describe the public hearing and comment process related to the allocation of C4E dollars. As required by State law, the Department of Education held public hearings on its proposed 2009-10 C4E plan. Two factors drawn from last year's experience led us to schedule this year's hearings during September and early October rather than June and July.

First, it would have been premature to hold public hearings on schools' C4E allocations in June given the highly volatile economic situation. Until May, we were still facing potential cuts of up to 13% for some of our schools. Only after the City Council adopted the City budget in the middle of June could we finalize funding allocations to our schools. Thanks to federal stimulus funding, no school experienced a cut larger than 4.9%. Through the end of the school year and into the summer, the majority of schools were reallocating some portion of their C4E funds between eligible C4E program areas as they worked to minimize the negative impact of the budget cuts on their students. While the majority of school budgets were largely settled as of opening day in September, a large number of schools moved dollars between approved C4E program areas even during this past month.

Second, by holding public hearings in the fall when the overall budget picture was better defined, we also could enable more families, educators, and other community members to participate in the public engagement process than if we'd held the hearings during the summer. In FY09, we held hearings in June when school budgets remained unsettled. Those hearings proved unproductive, and we ultimately scheduled a second round in response to public concerns about the timing being too early. That second FY09 round was held during the summer, and those hearings were poorly attended. By holding the hearings in the fall, we were able to present a more accurate picture of the proposed use for C4E funds while also maximizing the opportunity for public participation compared with the summer vacation months.

To encourage greater attendance, we also expanded the number of public meetings from 5 to 33 by presenting the C4E plans at the Community Education Councils in each district (plus the high school CEC) rather than holding only one in each borough. This not only created the opportunity for more people to attend a public meeting on C4E allocations, but also enabled the people who know each District's schools and students best to review their particular district's plan along with the citywide C4E proposal. Full details about our C4E proposal are also posted on the DOE website, including general details about the citywide plan, school- and district-level allocations, details about program additions/enhancements, student achievement performance targets, affected population groupings, and a description of the process for submitting written comments. It is important to note that by presenting the C4E plans in each district, covering all 5 boroughs, our efforts for public engagement went well beyond the C4E regulations, which require only one hearing in each borough.

We also have complied with the regulations governing timing for public comment, which only require a 30-day public comment period after the plan is posted and before it is submitted to the State for approval as well as public notice of the time and place of a public hearing one week before its scheduled date. While the SED does publish recommended annual timelines for public comment and submission periods, those timelines are not mandated. Earlier this summer, we discussed this fall timetable with officials from SED. As planned during those discussions, we contacted the State to submit this year's C4E plan on October 9.

## **NEW YORK CITY'S PROPOSED 2009-10 C4E SPENDING PLAN**

The State's C4E regulations provide specific guidelines both about where the C4E funds must be distributed and how they must be spent. Please note that our C4E plans for 2007-08 and 2008-09 were approved by the SED, including the distribution of C4E dollars between schools and the allocation of C4E dollars across eligible categories. New York City's total Contract amount for 2009-10 is \$644 million, which includes \$257 million from 2007-08 and \$387 million from 2008-09, with no new funds for 2009-2010. The proposed FY10 budget includes:

<i>(dollars in millions)</i>	<b>Original allocation from FY08</b>	<b>Original allocatio n from FY09</b>	<b>Total FY10 dollars (combined FY08 and FY09 allocations)</b>	<b>Percent of C4E funding</b>
Discretionary allocations to schools	\$146	\$242	\$388	60%
Targeted allocations to schools	\$67	\$76	\$143	22%
District-wide initiatives	\$14	\$39	\$53	8%
Maintenance of effort*	\$30	\$30	\$60	9%
<b>TOTAL</b>	<b>\$257</b>	<b>\$387</b>	<b>\$644</b>	

*NOTE: Percentages may not equal 100% due to rounding.*

*\* The statutory limit on application of C4E funds to programs that antedated C4E legislation is \$30 million per year.*

We have always distributed C4E dollars between schools in accordance with State regulations – 75% of the C4E dollars are distributed to the 50% of the schools representing the neediest students according to the State's definition. As allowed by the C4E regulations, we have maintained the amount of C4E funds from the first two years of C4E within each school's budget with only minor exceptions. This was done to avoid disruption to schools' instructional programs, particularly given the significant budget cuts. All schools that received "targeted" C4E allocations (e.g., funding for new CTT or ASD classrooms, ELL summer school, or for full-day pre-kindergarten classrooms) in 2008-09 are proposed to receive those allocations again in 2009-10 as long as they retained the population necessary to maintain effort in that category. In a small number of cases, schools that previously received these targeted funds lost populations necessary to support those particular programs. We therefore proposed redistribution of those funds to other high-need schools that gained eligible populations in 2009-10. Additionally, we are also reallocating money from schools that closed in June 2009 (~\$2.3m). Only \$23 million, or less than 4% of the total contract amount of \$644 million, is being moved between schools (equivalent to \$10 million between districts) to accommodate the shift in eligible populations for the targeted programs between schools.

We also have always required our schools to allocate their C4E dollars within the eligible program areas allowed under C4E law: reducing class size; increasing student time on task; improving teacher and principal quality; restructuring middle and high schools; expanding access to full-day pre-kindergarten; or supporting model programs for English language learners (ELLs). Specific decisions about how to allocate funding within the six eligible program areas are determined by our principals. The principals consult their Senior Leadership Teams to determine how best to meet the needs of their particular students, with the goal of achieving the maximum positive impact on student achievement. This year, most schools moved some portion of their C4E funds between the eligible program areas – as is allowed by law – to optimize instructional programs to meet students’ needs while making the necessary budget cuts and handling the rise in teacher costs.

As of October 8, 2009 (data used in submission of C4E Plan for 2009-2010 to the SED)

<i>(Dollars in millions)</i>	<b>Full Contract Amount (combined 2007-08 and 2008-09 dollars)</b>	<b>Percent of C4E funding (based on 10/8 data)</b>
Class Size Reduction	\$290	45%
Time on Task	\$171	27%
Teacher & Principal Quality	\$94	15%
Middle & HS Restructuring	\$54	8%
Full- Day Pre-Kindergarten	\$7	1%
Model Programs for ELL students	\$28	4%
<b>TOTAL</b>	<b>\$644</b>	

Largely over the last month, we have seen a net shift of \$17 million from class size reduction to time on task strategies as schools updated their budgets, including their C4E allocations. This shift largely occurred in situations where schools realized that they could not afford to reduce class size school-wide, but they could prioritize more focused teacher time on subsets of students requiring extra support. We saw that many principals were re-focusing C4E resources on intervention programs for their highest-need students as budget cuts otherwise decreased their capacity to deliver those valuable services to the students at greatest risk for failure. During this time period, principals were also required to finalize their staffing plans in the context of hiring restrictions. While further analysis is needed for confirmation, it is likely that the combination of budget cuts and rising costs created a situation where principals felt that other strategies would be more effective and achievable than class size reduction. This is unsurprising as principals adjusted to reduced overall budgets with such strategies as consolidating some classrooms, reassigning educators from team teaching positions to push-in or pull-out instruction, reconfiguring classes, and adjusting scheduling. This shift of resources away from class size reduction and largely into time on task initiatives accounts for most of the differences we see between data pulled a month ago to present at public hearings and the proposed allocations in the C4E plan readied for submission to SED last week.

(For examples of C4E programs within these six categories, please see details attached to this testimony.)

## **NEW YORK CITY'S CLASS SIZE REDUCTION PLAN**

Under the Contracts for Excellence, New York City was required to develop and implement a five-year class size reduction plan. In 2009-10, class size reduction remained the top priority for use of C4E funds, with \$289 million out of \$644 million devoted to this purpose when school-based allocations are combined with system-wide funding toward creation of more Collaborative Team Teaching (CTT) classes. Class size reduction efforts represent 45% of proposed C4E spending, a figure that well exceeds the 25% minimum required for class size reduction, as specified in New York City's five-year class size plan.

I'd like to take a moment to discuss what we experienced in terms of class size last year. First, let me note that it is difficult to appropriately mix elementary and high schools numbers when calculating system-wide changes in class-size. In high schools, we saw a decline in average class size of 0.47 students. Across schools serving grades K-8, average class size increased by a modest 0.2 students over the 2008-2009 school year. For those schools that used C4E dollars specifically for class size reduction, we saw a smaller increase of 0.1 students compared with an increase of 0.3 students among schools that did not use C4E dollars for class size reduction purposes.

It is important to understand that our five-year class size plan covers all City schools, but more than one-third, or 500, of our schools did not receive a sufficient C4E allocation to hire even one additional teacher. This includes 60% of those schools deemed "lower need" by the State's calculation, some of which represent schools with our highest class sizes. It is therefore unsurprising that class sizes have dropped more notably in schools allocating C4E resources toward class size reduction than in the system as a whole. Additionally, increased teacher compensation and unpredicted changes in student enrollment adversely impacted class size efforts, even in schools prioritizing the use of C4E funds for that purpose.

To gain a more complete understanding of the class size situation, it is important to look at the changes in class size at the school level. Last year, over 60% of our schools either reduced class size towards target levels or maintained class sizes at-or-below target levels. Another 25% of our schools saw class sizes increase, but either achieved decreased pupil-teacher ratios or they already were so close to the class size targets that use of additional dollars in this area would have taken them significantly below target levels, such that they chose not to spend their dollars toward that goal given tight budgets. In fact, the overall increase in class size citywide was driven by gains in only 14% of our schools that experienced an outright increase in average class size. In fact, if those 166 schools were held aside, the rest of the schools in the City, on average, experienced no increase in class size.

The fact that class size has remained relatively stable in a context of decreased budgets and annually increasing costs is evidence of New York City's continued attention to class size.

I have included for your reference a table highlighting the types of changes in class size that our schools experienced last year.

Category	Number/ Percent of Schools	Notes and examples
Average class size declined	267/ 44.8%  Non-C4E  40.6%	Average class size declined in nearly half of schools that invested C4E dollars toward class size reduction. For example, Francis Lewis High School in Queens was identified by the SED as one of 75 schools targeted for priority class size reduction efforts. Francis Lewis invested \$600,000 of C4E dollars toward this purpose, reducing average class size at the school by two students. Average class size at Francis Lewis remains four students above target levels, but class size has been steadily decreasing. Pupil-teacher ratio at the school is 20, which is relatively low for a high-performing high school like Francis Lewis.
Pupil-teacher ratio declined	58/ 9.73%  Non-C4E  9.47%	Pupil-teacher ratio decreased at 10% of the 596 schools investing C4E dollars for class size reduction. For example, PS 194 in Manhattan invested \$90,000 in class size reduction dollars toward reducing pupil teacher ratio. Average class size remained at 20 students, which is still well-below the average class size target of 22 for elementary schools, but their investment in class size reduction allowed them to achieve a very low pupil-teacher ratio of 11.2.
Maintained average class size below target levels	105/ 17.6%  Non-C4E  14.7%	Nearly 18% of the 596 schools maintained average class size below target levels they had had already achieved as a result of our multi-year focus on reducing class sizes citywide. Class size funds were required to maintain those levels in a context of tighter budgets, and sometimes as a result of enrollment fluctuations at a particular school. PS 7 in the Bronx invested \$95,000 in class size reduction. Class size remained roughly constant, at two students below average class size target levels. Pupil teacher ratio increased to 11.7, still a very low level. With such low existing class sizes and pupil-teacher ratios, that \$95,000 is probably an investment to maintain those conditions in the face of changing enrollment or fiscal conditions at the school. In addition, PS 163 in Manhattan had an average class size of 22 students in both FY08 and FY09. That school has wisely invested in class size reduction for years. To reduce class size further below target levels would have required an additional investment in two more teaching positions on top of maintenance of previous class size investments.
Average class size very close	74/	Another 12.4% of 596 schools maintained average class sizes very close to target levels. Upon deeper investigation, we identified a variety of factors impeding further class size reduction. In some cases, for example, "breakage" made reducing

to target levels	12.4%  Non-C4E  14.3%	class sizes unrealistic. In those schools, adding another teacher might have reduced class sizes to an oddly low level in one grade while potentially necessitating increased class size in a different grade. For example, PS 47 in Queens is a very small school with only nine classes and average class size close to target levels. Enrollment increased by four students, and adding another class to accommodate that growth would've caused disproportionate class size increases in a different grade
No apparent reason for not reducing class size	78/ 13.0%  Non-C4E  14.3%	<p>Finally, in 13% –or 74 of 596 schools – there was no apparent reason for not reducing class size. We did observe that schools falling into this category shared some common characteristics. In general, C4E funds at these schools were invested in hiring new teachers, but such investments did not keep pace with overall teacher attrition levels. Many of these schools had higher than average teacher salaries. They invested C4E funds in teachers, but got “less bang for their buck.” Also, these schools tended to be large (more than 500 students). As a result, changes in student population could create sizeable swings in the base number of teachers needed to maintain class size.</p> <p>Additionally, in some of these cases, the C4E allocation was too small to fully fund a teacher’s salary. Some schools attempted to cobble together multiple funding sources for this purpose, but in retrospect, we probably should have disallowed allocation of C4E funds when they were well-below levels sufficient to add a teaching position to the school. We are working to stop such investments in FY10.</p>

Based on our analysis of last year's data, we have been working closely with our schools to continue improving their class size reduction efforts. At the very beginning of the budget planning process, we distributed a system-wide memo concerning class size reduction strategies and provided individual coaching to clarify available strategies. Over the summer, we analyzed schools' projected registers and staffing plans to identify places where class size might be on the rise. Soon after the school year began, field staff began individual outreach to schools to verify that the C4E plans they developed in the spring were appropriate to meet the needs of the students that actually showed up in the fall. In some cases, this has already led to a shift in the programmatic allocations as mentioned earlier in this testimony, with schools moving their allocations within the six approved program areas during the first month of school.

Still, we cannot pretend that the current fiscal climate is not impacting our class size reduction efforts, and this situation is hardly unique to New York City. Even with the recent influx of federal funding through the American Recovery and Reinvestment Act (ARRA), school districts across the country have struggled with substantially slashed budgets. Teacher layoffs necessarily had a negative impact on class size nationwide. On September 7, 2009, the *New York Times* reported that some classes in Arizona were "jammed with nearly 50 students" this year, and the "norm for Los Angeles high schools this fall is 42.5 students per teacher."

Thanks to ARRA, cuts in central offices, school-based hiring restrictions, and the strong foundation of support our schools have received over the course of this Administration, New York City managed to avoid the teacher layoffs that so many other districts are enduring. Without ARRA funds in particular, we might have been forced to lay off more than 14,000 teachers, which would have resulted in unimaginable class-size increases.

After the October 31 audited registers are available, we will again follow up to identify schools where class sizes are significantly over target. In addition to these efforts, we also want to begin planning for the longer-term. Any expectation that we will be able to significantly reduce class sizes in a context of rising costs and diminishing resources is unrealistic. We are therefore focusing our energies on maximizing the maintenance of the improvements made in class size over the past eight years and on supporting further class size reduction in targeted schools wherever possible. Given that the State has extended the overall phase-in period for funding the CFE settlement from four to seven years, New York City will have to adjust our funding plans. This will include considering the impact of the overall budget forecast on our class size plan. After completion of the November class size report, we will be better positioned to approach this work.



We must remember to consider our recent work on class size reduction in perspective over time. In the first year of Contracts for Excellence Funding, FY08, year-over-year average class size changes K to 8 ranged from flat in second grade to a decrease of one student in seventh grade. Last year, with the growing budget crisis, principals' behavior grew predictably cautious, and we saw the year-over-year change in class size range from a 0.9 increase in third grade to a 0.1 decrease in fourth grade. Even after the modest uptick experienced in most of our K-8 grades last year, class size has decreased in every K-8 grade under this Administration, ranging from a decrease of 0.2 students in kindergarten to a decrease of 3.1 students in fifth grade, for an average decrease of 1.4 students since 2002.

It is also important to understand the potential costs of reducing class size in every City school to target levels. In total, achieving that goal would add roughly another \$600 to \$700 million to our budgets per year – and that does not account for the billions of dollars in related capital expenditures.

## **CONCLUSION**

In conclusion, I would like to emphasize that the Department has worked closely with the State throughout the C4E planning and implementation process. We are fully compliant with all aspects of the legislation, conforming to requirements about where the funds are spent and how they are spent. We have held annual public hearings in accordance with the law to gather feedback on our proposed plans, and our FY08 and FY09 C4E plans were approved by the State Education Department. We are confident that this year's proposed plan will also be approved.

Most importantly, we are seeing results demonstrating that our use of C4E funds is achieving the goal of the Contracts for Excellence legislation – improving student achievement, particularly among our highest need students and schools.

Even in these tough times, our talented educators have motivated and prepared their students to achieve outcomes that few would have believed possible a decade ago. Last year, the City's four-year graduation rate rose again to 60.7% (66% according to the traditional City calculation). Among fourth graders, 68.9% achieved proficiency in English and 84.9% achieved proficiency in math. To put that in context, our fourth graders are basically at parity with the rest of the State in mathematics, which was unimaginable at the outset of this Administration. Meanwhile, among eighth-grade students, 57.0% achieved proficiency in English and 71.3% achieved proficiency in English. In 2002, only 29.5% of eighth graders were proficient in English and only 29.8% were proficient in math. Whether you look at test results or graduation rates, our progress has outpaced New York's other large cities and the state as a whole, in part because we have also narrowed the achievement gap.

Thank you again for inviting me to address the Committee and for your continued commitment to our students, families, and schools.



TESTIMONY OF THE NEW YORK CITY DEPARTMENT OF EDUCATION COMMITTEE  
ON EDUCATION THE CITY COUNCIL OF NEW YORK

OCTOBER 13, 2009

Marykate O'Neil, Chief of Staff  
Chief Achievement Officer for Special Education and English Language Learners

Good morning, Chairman Jackson and Members of the Education Committee, thank you for the opportunity to speak in support of Int. 396-A. I would also like to thank Speaker Quinn and Council Member Gentile for working with the Department to amend the bill to reflect our concerns about student privacy.

My name is Marykate O'Neil and I am Chief of Staff to the Department of Education's Chief Achievement Officer for Special Education and English Language Learners.

All New York City students with disabilities are important to the New York City Department of Education, but we share your particular concern about those students whose educational needs are so severe that they require a 24-hour continuous program in a residential facility. These students have needs that require total supervision during activities of daily living, intensive programming beyond the school day to meet their educational goals, to maintain their educational progress and to accommodate their physical and emotional disabilities. Students are placed in an out-of-state residential program only as a last option, when an in-state program cannot be located. There are currently 294 students in New York City who are in out-of-state residential facilities. Given these students' needs, we applaud the Council's efforts to ensure their safety and reduce their numbers.

This legislation adds an important link to help ensure that parents have information about out-of-state schools, consistent with federal, state and local confidentiality requirements. The Department supports this legislation, which will provide the Council and the public access to information regarding the out-of-state residential schools in which New York City students are placed, including details on locations of the facilities, student populations in these schools, the number of City students placed in each facility, information about discharges of City students, information about completed investigations of allegations of abuse and neglect and enforcement actions.

It's helpful to understand the process that leads to the placement of a student in an approved out-of-state residential program. If an Individualized Education Plan team, composed of various participants, including school staff and a parent, determines that there is no public school

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placement appropriate in a community school to address the needs of a child, the case is sent to the Central Based Support Team. The Central Based Support Team is a centrally administered office within the Department that assists in identifying state-approved private placements. If no appropriate in-state school can be located, the Department considers schools on the State's list of approved out-of-state schools. Schools can only be added to this list if they satisfy the terms of the State's Billy's Law.

Since the implementation of Billy's Law in 2005, the number of City children placed in out-of-state schools has sharply decreased. As of today, for the 2009-10 academic year 908 students are placed in residential facilities; there are 294 students in out-of-state residential facilities; 15 of which are first time placements. This number is a decrease from the 515 students placed in out-of-state facilities during the 2005-2006 school year. We are committed to implementing this new law, which seeks to further that goal.

I would be pleased to answer your questions.

## EXAMPLES OF C4E PROGRAMS

C4E program	School	Strategy	Instructional Strategies
<p>ELL programs Model Programs for English Language Learners</p>	<p>10X008</p>	<p>Innovative Programs for ELL populations</p>	<p>10X008 has used a portion of their C4E funds to support the salary of three additional supplemental bilingual teachers who provide academic intervention services via the push in/ pull out strategy with a focus on literacy skills development to students in grades 1 and 2.</p>
	<p>32K377</p>	<p>Innovative Programs for ELL populations</p>	<p>32K377 implemented two programs for the ELL students:</p> <p>One program focuses on providing specific remediation/AIS to our ELL population in grades 2-7. The remediation will be in addition to their mandated services. The AIS program will focus on using Orton Gillingham Multi Sensory Learning Strategies. Through the multi sensory approach we will help ELL learners develop language acquisition skills and vocabulary development. This particular program will aim to improve language and literary skills/comprehension.</p> <p>The second program focuses on supporting our Title III after school program. We will expand our Title III program with an additional day by implementing a Saturday Academy that will support and enhance reading and math skills as well as language development. Our "at risk" population will be invited to attend the Saturday Academy. We will use visual strategies that will enhance literacy and math development. We will also use technology to support the language production and vocabulary development of our ELL population. This will include the Ticket to Read, Rosetta Stone and Read V-Life Math Software. Funds will also be used to strengthen parent involvement by offering workshops and computer literacy for ELL parents.</p>
	<p>24Q143</p>	<p>Innovative Programs for ELL populations</p>	<p>C4E funds will ensure implementation of Dual Language Program in Grades K, 1 and 2. This program will promote language and culture as well as social equity which support bilingual proficiency for both native and non-native speakers of English and Spanish. The program will provide students with total immersion in their native and target languages. The program will follow the Teachers College Curriculum and New York State learning standards as all other classes but will be enhanced with technology, cultural awareness, enrichment and strong family involvement. Dual Language class will consist of English proficient and Spanish proficient students. The children will be instructed utilizing the Balanced Literacy model of instruction (involving reading, writing, listening and speaking) in both English and Spanish. All other subject areas will be taught in English and Spanish. Parents will commit to keeping their children in the Dual Language Program for the child's five years at P.S. 143 and will be involved in school-wide activities.</p>

C4E program	School	Strategy	Instructional Strategies
<p>Programs to support middle school students</p>	<p>12X216</p>	<p>MS Instructional Changes designed to provide challenging academic and learning opportunities to students including implementation of academic intervention programs</p>	<p>12X216 has used a portion of their C4E funds to support the salary of two additional teachers who utilized daily supplemental blocks of time during the day, specialized ESL software and data gathered from inquiry teams to target students performing at the bottom 1/3 in the school building. Academic intervention is provided in a 1 to 1 model to students in grade 8 which have demonstrated low academic achievement. The teachers focus on math and ELA skills development.</p>
	<p>02M217</p>	<p>MS Instructional Changes designed to provide challenging academic and learning opportunities to students including implementation of academic intervention programs</p>	<p>Professional Development for Teachers and staff from outside vendors and in house teacher leaders. More teachers will be working with highly qualified coaches and more teachers have been identified as teacher leaders to turn key staff development for progress towards school goals. Similar to fiscal year 2009, the FY'10 funds will be used primarily used to hire Aussie and/or another staff developer to provide professional development to the staff in the areas of math and ELA</p>

C4E program	School	Strategy	Instructional Strategies
<p>Programs to support middle school students (continued)</p>	<p>32K383</p>	<p>MS Instructional Changes designed to provide challenging academic and learning opportunities to students including implementation of academic intervention programs</p>	<p>From the 32K383 FY 09 plan: C4E funding supports the "NYC Specialized High School Exam Saturday Academy for Grade 7 Students in grade 7 who will be offered the opportunity to attend a six week Saturday academy that will focus on the skills and strategies needed to exceed the standards for the NYC Specialized High School Exam. The course will reinforce the content area skills taught in language arts and mathematics in grade 7. It will also focus on the reading, logical reasoning, note-reading comprehension, geometry, algebra, word problems and arithmetic skills tested. The course will be taught by highly certified teachers in the content area who will pre-test the students and differentiate the instruction so that all students will have the skills necessary to succeed. Accelerated Courses: We are offering seven accelerated NYS Regents credited classes in mathematics and science; courses include Integrated Algebra, Physical Science/Earth Setting and Living Environment. Students in grades 7, who met the standards and/or exceeded the standards in mathematics and science, and who were recommended by their teachers were programmed into the above named courses. These accelerated courses offer our students an advanced and enriched curriculum that promotes reasoning, critical thinking, creativity, problem solving and other higher-order thinking. Instructional strategies such as pre-testing, curriculum compacting, alternative assessment and materials and independent research enrich the curriculum. Our goal is to for students to receive instruction at a pace and level of complexity appropriate for their level of giftedness. The teachers for these classes will be highly qualified in content area and have their salaries partially funded from the Contract For Excellence"</p>

C4E program	School	Strategy	Instructional Strategies
Class size reduction	10X226	New Classroom: an additional teacher relative to the student populations, teaching independently that accomplished class size reduction at the school level.	10X226 has used a portion of their C4E funds to support the salary of two additional teachers relative to their student population thereby reducing class size at the aggregate school level. Targeted grades and population were 3rd and 4th grade English Language Learners. The additional C4E teacher at X226 continues the trend of school wide class wide reduction, School wide class size in FY 08-21.44, FY 09-20.5, FY1-19.29
	29Q192	New Classroom: an additional teacher relative to the student populations, teaching independently that accomplished class size reduction at the school level: Q192: School wide class size in FY 08-25.0, FY 09-24.8, FY 10-22.81	C4E funding is targeted for reducing mathematics classes in the seventh and eighth grades. Q192 continues the three year trend of school wide class size reduction, School wide class size in FY 08-21.44, FY 09-20.5, FY1-19.29



C4E program	School	Strategy	Instructional Strategies
MS/HS restructuring	31R440	HS Instructional Changes designed to provide challenging academic and learning opportunities to students including implementation of academic intervention programs	<p>31R440's 2008-2009 C4E plan described a newly implemented program sponsored by the Dana Center in collaboration with Agile Minds and New Visions. After one year of implementation, however, it was revealed that this program did not prove to be successful in terms of focusing on the individual needs of the schools target populations (only 49% of students successfully passed the June 2009 Algebra Regents). As a result, with permission from the President and Vice President of the school's PSO, New Visions, the program was revised and classes and curriculum restructured in order to refocus instruction and target the student needs. New Dorp High School staff spent the summer working with the teacher support network at New Visions to develop a curriculum that provides stronger supports for the needs of targeted sub-groups (ELL, Students with Disabilities, Low Income and Black and Hispanic Males). This curriculum provides rigorous course work that integrates technology, academic vocabulary and a strong emphasis on the development of writing skills (a weakness found by nearly 23 inquiry teams during the last 4 years of the inquiry process).</p> <p>In order to provide these students with the supports of this new curriculum, these ninth and tenth grade algebra students have reduced class size (micro-targeting of groups of students to provide instruction at a reduced class size of less than 28 students in a class) as well as two to three additional periods of instruction per week (lower level students have 8 periods of instruction and all others have 7 periods of instruction per week). Funding supports teacher salaries.</p>
	30Q450		<p>Long Island City HS will continue to use C4E funds to expand the entire school's reorganization into Smaller Learning Communities (called Personalized Learning Environments). Some of the funding will be used to contract with the Institute for Student Achievement to provide continued support and coaching for our ongoing structural change across the school. In addition C4E funds will be used for enhanced Advisory to support the frequently difficult transition to high school faced by students in the Contract for Excellence categories. The course will cover key areas of transition including, but not limited to, conflict mediation/resolution, time management, behavior management, social maturation, advocating for oneself with adults, appropriate conduct, study skills, self enrichment and vision, creating a self vision for the future, and understanding/appreciating/welcoming differences.</p> <p>The entire smaller learning community program will be expanded into the twelfth grade. As well, the entire advisory program is being revised and restructured to encompass more topics and to address more student needs.</p>

C4E program	School	Strategy	Instructional Strategies
Full Day Pre K	06M189	Expanding the instructional hours for existing half-day pre-K programs so that they last for a full day	School has instituted a full day pre-k program with use of C4E funding. Prior to C4E school had a ½ pre-k program (AM & PM). With the full day expansion, the school now has 2 pre-k classes (1 TL-funded, 2nd C4E-funded) serving 36 students.
	24Q307	Expanding the instructional hours for existing half-day pre-K programs so that they last for a full day	24Q307 is using their C4E funds to support 2 full-day Pre-kindergarten programs. A continuation of the SY 2008-2009 expansion to a full day pre K program funded with C4E funding



TESTIMONY OF THE NEW YORK CITY DEPARTMENT OF EDUCATION COMMITTEE  
ON EDUCATION THE CITY COUNCIL OF NEW YORK

OCTOBER 13, 2009

Marykate O'Neil, Chief of Staff  
Chief Achievement Officer for Special Education and English Language Learners

Good morning, Chairman Jackson and Members of the Education Committee, thank you for the opportunity to speak in support of Int. 396-A. I would also like to thank Speaker Quinn and Council Member Gentile for working with the Department to amend the bill to reflect our concerns about student privacy.

My name is Marykate O'Neil and I am Chief of Staff to the Department of Education's Chief Achievement Officer for Special Education and English Language Learners.

All New York City students with disabilities are important to the New York City Department of Education, but we share your particular concern about those students whose educational needs are so severe that they require a 24-hour continuous program in a residential facility. These students have needs that require total supervision during activities of daily living, intensive programming beyond the school day to meet their educational goals; to maintain their educational progress and to accommodate their physical and emotional disabilities. Placement of a student in an out-of-state residential program is done only as a last option, when an in-state program cannot be located. There are currently 294 students in New York City who are in out-of-state residential facilities. Given these students' needs, we applaud the Council's efforts to ensure their safety and reduce their numbers.

This legislation adds an important link to help ensure that parents have information about out-of-state schools, consistent with federal, state and local confidentiality requirements. The Department supports this legislation, which will provide the Council and the public access to information regarding the out-of-state residential schools in which New York City students are placed, including details on locations of the facilities, student populations in these schools, the number of City students placed in each facility, information about discharges of City students, information about completed investigations of allegations of abuse and neglect and enforcement actions.

It's helpful to understand the process that leads to the placement of a student in an approved out-of-state residential program. If an Individualized Education Plan team, composed of various participants, including school staff and a parent, determines that there is no public school

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**Department of  
Education**

placement appropriate in a community school to address the needs of a child, the case is sent to the Central Based Support Team. The Central Based Support Team is a centrally administered office within the Department that assists in identifying state-approved private placements. If no appropriate in-state school can be located, the Department considers schools on the State's list of approved out-of-state schools. Schools can only be added to this list if they satisfy the terms of the State's Billy's Law.

Since the implementation of Billy's Law in 2005, the number of City children placed in out-of-state schools has sharply decreased. As of today, for the 2009-10 academic year 908 students are placed in residential facilities; there are 294 students in out-of-state residential facilities; 15 of which are first time placements. This number is a decrease from the 515 students placed in out-of-state facilities during the 2005-2006 school year. We are committed to implementing this new law, which seeks to further that goal.

I would be pleased to answer your questions.

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Testimony  
of

Richard Farkas, Vice President  
Middle and Junior High Schools

United Federation of Teachers

before

The New York City Council  
Education Committee

on

The NYC Contracts for Excellence  
2009 – 2010 Proposed Plan

October 13, 2009

Good morning, Chairman Jackson and distinguished members of the Education Committee. My name is Richard Farkas and I am the Vice President of Middle & Junior High Schools for the United Federation of Teachers (UFT). Thank you for the opportunity to testify today about the Department of Education's (DOE) proposed 2009-2010 Contract for Excellence (C4E). We believe that without continued vigilance by all interested parties, these critical funds will not deliver the desired results for our schoolchildren, thus impeding their chances for excellence or equity in education.

The UFT is vested in the success of C4E. We strongly supported the Campaign for Fiscal Equity lawsuit as well as the Contracts for Excellence legislation that emerged from the lawsuit victory. We were initially encouraged by the court's specific mandate that the state establish a comprehensive accountability system that will ensure that the C4E reforms implemented actually deliver a quality education opportunity for New York City's schoolchildren.

The C4E structure as outlined by the State Education Department (SED) has three components: (1) contracted funding in six program areas - Class Size Reduction, Time on Task, Teacher and Principal Quality Initiative, Middle and High School Restructuring, Full-Day Pre-K and English Language Learner Model programs; (2) dedicated funding sources in addition to approved city and state education budgets; and (3) a public review and approval process. But it is only with the DOE's cooperation and compliance that the SED and the oversight bodies can have the data to accurately assess contract performance.

C4E is designed so that school systems that are required to enter into a C4E agreement with the state must target schools with the greatest need. The contracted money is supposed to be supplemental, not to replace or supplant other aspects of the school system's budget.

One of our chief concerns with the DOE's process was the manner in which they retrofitted the New York State Education Department's (NYSED) funding formula into their-Fair Student Funding process. This makes it very difficult to accurately track C4E money and the specific prioritized funding that occurs at the school level.

The DOE should be required to report not only on the amount of C4E money being allocated to each school and the category of C4E program that it will be spent on, but also the specific changes that each school will make with these funds. There is no description of what schools are actually doing to accomplish these goals and therefore we have no means to evaluate whether the funds are being spent according to the law or, equally important, whether the use of the funds is actually accomplishing the purpose identified.

Ultimately, accountability is judged via the mandated public participation process, complete with time lines and transparency detailed in the regulations. In order for the state or the public to accurately assess the C4E program in New York City and whether students have benefited as intended by the law, concrete financial information about how the C4E funding is distributed and used by each school must be open to scrutiny. Adherence to the accountability structure must be documented, accessible, straightforward and timely.

The Campaign for Fiscal Equity engaged in an exhaustive review of the data and uncovered a number of serious issues with respect to the funding allocations, transparency and the process for public participation. We concur with their analysis. It is also important to note that DOE released its draft plan three months late, after school had started, rendering any public input virtually meaningless.

Beyond voicing our concerns over the shortcomings of the DOE's proposed 2009-2010 C4E plan, we also want to weigh in on the broader implications of implementing these reforms and focus attention on what we feel is the core issue.

We all recognize, of course, that there is a major distinction between the legislation as written and how the measures will be carried out. Over the course of the past three years, however, we have not been satisfied with the DOE's implementation of the C4E process, especially with respect to reducing class size.

As this committee knows, the DOE's class size reduction track record since the city began receiving C4E funding is disappointing. We took a hard look at the class size data in April of this year and found that of 765 schools that received a total of \$150 million in class size

reduction funding, 47 percent lowered class size, two percent saw no change, and 48 percent actually increased class sizes. In other words, schools getting these state funds were just about as likely to increase class size as to decrease it.\*

Additionally, the DOE has identified Collaborative Team Teaching as a class size reduction mechanism. Collaborative Team Teaching is a powerful tool for the inclusion of students with disabilities into general education classes. But to make it a class size reduction tool often means that the class sizes are set with an eye to class size statistics rather than adjusting the size to ensure that special needs students can be adequately served.

Just three weeks ago, the UFT filed grievances revealing thousands of overcrowded classes citywide. I'm sure you've all read the newspaper accounts detailing burgeoning classrooms from Staten Island to the Bronx and most critically in Queens. And I know that you are aware that those grievances relate to contractual class sizes, which are far above the sizes that the DOE agreed to as part of the C4E process. While we're pleased that the DOE is working to address UFT and parent concerns, we really need to target the C4E funding with laser-like precision on class size reduction.

It is difficult to understand how the DOE can be in compliance with the law when class sizes actually rose substantially last year, despite the allocation of tens of millions of dollars to reduce class size.

We are realists, and we understand that the DOE is facing serious challenges just keeping classrooms whole. Given the enormity of the current state and city budget problems, we have had to accept the fact that the C4E funds in the Department of Education's budget will be held steady at the FY 2009 levels.

\*Note: Some of these schools did put additional teachers into crowded classrooms, a measure that this data cannot capture. – UFT Research Department, "Class Sizes Rise—and Likely to Rise More" April 14, 2009



But recognizing the economic realities doesn't mean we should do nothing. Yes, we will have a couple of years of just maintaining C4E funding levels and will not see additional funding moving forward as originally intended. However, we cannot abrogate our responsibility to carefully scrutinize how the DOE is allocating the money, nor can we reduce our efforts to keep them in compliance

Additionally, we have advocated in Albany – with limited success to date – for fine tuning of the legislation to change class size reduction requirements from city-wide averages to either classroom caps or, at the very least, averages per grade per school. We have also previously recommended that the leadership of the DOE go beyond voluntary principal compliance with discretionary C4E funds and take on the role of insuring that each school is spending its C4E funds appropriately.

We are encouraged by the new leadership at the helm of the New York State Education Department. We expect to work closely with Regents Board Chancellor Meryl Tisch and SED Commissioner David Steiner to enhance the enforcement and oversight of C4E as we go forward. We are very hopeful that our continued efforts in this area will yield positive results.

The UFT and other education advocates will continue to push to keep every education dollar possible targeted to classrooms. We will continue to be vigilant on behalf of the schools and the students in the greatest need, and we welcome the City Council's support in this fight.

Thank you for the opportunity to address our concerns.



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**Public Comment on Proposed Contract for Excellence 2009-10  
of the  
New York City Department of Education  
Submitted October 8, 2009**

**Overview**

The Campaign for Fiscal Equity (CFE) leads a coalition of parents, students, education advocates and the public working to ensure the constitutional right of the opportunity for a “sound basic education” for every public school student in New York. This right was established by the New York State Court of Appeals in *CFE v. State* after 13 years of litigation. CFE worked closely with the Governor and the legislature to enact the Education Budget and Reform Act of 2007 that provided a total commitment of \$3.2 billion in new funding over four years for New York City Public Schools, including \$2.35 billion additional in foundation aid. In addition to the new state funds, New York City was required to add an additional \$2.2 billion over four years, providing \$5.4 billion in new money to ensure this right becomes reality. The \$2.35 billion additional in foundation aid, distributed by the State on the basis of need, is subject to the Contract for Excellence (Contract). The Contract is the strong accountability structure that directs the use of the funds to serve predominately schools and students with the greatest educational need (translated by the State Education Department (SED) into the 75/50 rule) through investment in six programs proven to advance academic achievement. Contract funds must be used to supplement city tax levy funds, not supplant or simply fill budget holes; otherwise, there will not be real growth over the baseline as the court required. The Act and the regulations also require extensive informed public participation in the development and approval processes accompanied by extensive transparent information on program and evaluation down to the school level. These processes should be completed prior to the start of the school year to maximize their utility in decision-making and to ensure that programs are implemented at the beginning of the school year.

In keeping with the constitutional mandate, CFE is committed to ensure that all of the new funding and accountability measures are implemented so as to make the opportunity for a sound basic education a reality. CFE, as the plaintiff, is the guardian of these funds intended to raise the overall school budget so that students with the greatest educational

need can make academic progress, graduate high school, and become civic participants who can compete in the global economy.

In 2009-10, the third year of the implementation of the CFE settlement process, the economic downturn resulted in the stretching out of the funding phase-in from four to seven years, including a funding freeze in years three and four. However, the obligation to continue the Contract in the amount of the cumulative investment for the first two years remains in place. Thus, while New York City did not receive an increase in Contract dollars, the New York City Department of Education (DOE) is obligated this year to report all the appropriate information on allocations and investments down to the school level for the two-year increase of \$645 million in foundation aid that is covered by the Contract. The Act, regulations and guidance called for the proposed Contract process to take place during the months of June and July 2009. There has been no modification of the process requiring adequate notice and hearings in each of the five boroughs, CEC level hearings, transparent information regarding allocations and investments at the district and school levels, and a 30-day public comment period. Revised Contracts were to be submitted to SED by July 10, 2009 and the Contract was to be submitted for approval by the Commissioner no later than September 15, having worked through issues at the staff level of the SED. These processes and timelines were not followed in either the letter or the spirit of the law.

DOE has made progress, particularly in the area of distribution of the funds to the neediest schools and students according to the 75/50 rule (75% of the funds must be invested in the 50% of schools whose students have the greatest educational need, defined as coming from families living in poverty, being disabled and/or English language learners, and performing below the state standard and/or not graduating in four years). However, we have new and continuing issues that must be resolved.

#### **1. The DOE Contract Process Undermines the Purposes of the Contract:**

- *Provide the Public with Relevant Transparent and Accessible Information*
- *Provide Opportunity for Meaningful Public Comment that Impacts the Contract Development and Approval*
- *Provide a Timely Process that Precedes the School Year*

CFE is concerned that the Contract Process as conducted by DOE undermines the purposes of the Contract and appears to make a mockery of it.

DOE is not in compliance with the public hearing requirements attendant to DOE's preparation of the proposed 2009-10 Contract.

First, DOE has chosen not to conduct hearings in the 5 boroughs, and instead to conduct hearings at the CEC level. While we understand that there may be a good rationale for this change, there is neither mention of the rationale nor any reference to approval by the SED to bypass this requirement. These should be provided.

Second, assuming there is a good rationale and prior approval for this change, “hearings” at the CEC level are more diffused processes and thus it is incumbent on DOE to ensure that the SED regulations and guidance on notice and information are strictly enforced. The SED requires that notice of these hearings should include “a detailed description of proposed allocations . . . on a school level.”<sup>1</sup>

Materials provided on the DOE website are difficult to access and understand, and they are misleading. The DOE’s proposed 2009-10 Contract understates the total amount of funding subject to Contract restrictions. As you know, New York State Education Law § 211-d sets forth the requirements by which school districts must prepare and report their Contract expenditures, including their maintenance of effort. In addition, this statute requires school districts subject to Contract reporting provisions to maintain expenditures at the same level as the amounts approved in the Contracts for the preceding two years. Therefore, to accurately reflect the DOE’s 2009-10 maintenance of effort obligations, the 2009-10 Contract must encompass both the 2008-09 as well as the 2007-08 maintenance of effort amounts.

DOE’s proposed 2009-10 Contract materials refer to the 2008-09 Contract amount, or approximately \$388 million, as the 2009-10 Contract amount. The law and SED guidance make clear that the proposed 2009-10 Contract should total approximately \$643 million. DOE’s materials do not include the 2007-08 Contract maintenance of effort expenditures, totaling approximately \$257 million. A recently added reference on the DOE website states that allocations made in 2007-08 will be maintained but no material is provided other than a link to that year’s Contract. Since the approved allocations in the Contract may not reflect actual expenditures, we believe that a database containing actual 2007-08 expenditures would more accurately reflect expected maintenance of effort expenditures.

Further, the written materials regarding 2009-10 repeatedly state that this \$388 million is essentially a maintenance of effort plan. Upon closer review of the school-level data provided only on that limited amount, CFE has found that monies have been shifted among programs and strategies and no explanation has been provided. See below in **Comparison** section.

In addition, at those hearings that have already occurred and which we have attended, CFE has observed district superintendents merely presenting summary information regarding the citywide proposed Contract and summarizing the district’s program allocations but not providing any specific school-level information. It would have been

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<sup>1</sup> See <http://www.emsc.nysed.gov/mgtserv/C4E/htm/PublicCommentProcess.htm>.

far more effective if DOE had prepared a database for each individual district and sent it as an attachment with the letter requiring each district to hold a Contract hearing.

Public comment on the proposed 2009-10 Contract can only be meaningful if district superintendents explain how the proposed Contract plan will affect schools in the communities they are addressing. Thus the public hearings instituted by DOE regarding the proposed 2009-10 Contract lack the substance necessary for meaningful public input.

## 2. Timeline

As noted above, the SED laid out a timeline for the 2009-10 Contract process:

- June 1—Districts issue proposed contract and post for 30 day comment period;
- July 1 (or 12 days from posting period)—Districts post assessment of public comments;
- July 10—Districts have **completed** public hearings;
- July 10—Deadline for Contract resubmissions from districts to SED;
- July 15, August 15 and September 15 as needed—2009-10 Contracts submitted to Commissioner for approval.

The DOE posted the notice for public comment on September 8, 2009, at the start of the school year with comments due on October 8. This timeline renders the already non-transparent process virtually meaningless.

## 3. Comparison of DOE's Proposed FY10 Allocations with FY09 Approved Allocations Indicates Changes in Maintenance of Effort and Raises New Questions

We initially compared the summary projected allocations for FY10 with the approved allocations for FY09 using DOE's file *FY10ProposedC4EAllocations\_BySEDNeedCategory*. A number of allocations were mislabeled on that file. Therefore, we used the school-level file *FY10ProposedC4EAllocations\_ComprehensiveBySchool* for comparisons. We found:

- A substantial reduction in the Contract dollars allocated for programs to Improve Teacher and Principal Quality. The proposed allocation for FY10 is \$12,465,160 lower than the allocation for FY09.
- The proposed allocations for the DOE ASD Program includes \$1,802,418 for fringe benefits; in FY09, no Contract dollars were allocated for fringe benefits.
- The proposed allocation for ELL Success Grants is \$30,419, reduced from \$6,958,595 in FY09.

- Under Time on Task, the proposed allocation for “lengthened school day” is \$7,983,641, a reduction of \$17,215,018 from FY09. (Note: We arrived at this figure by recoding the expenditures under the DOE Programs Summer School and Summer School Fringe from the “Before and After School” to the “lengthened school year” SED strategy.)

Comparing the FY10 projected school-level allocations (from DOE’s file, *FY10ProposedC4EAllocations\_ComprehensiveBySchool*) with FY09 approved allocations by SED program and strategy, we found:

- Significant funding was moved from one school to another. For example, 1) only 220 of 347 schools receiving FY09 Contract dollars for “creating additional classes” received such funding under the FY10 proposals. Instead, the proposal provides funding for 315 new schools. 2) Of the 561 schools that received funding for “lengthened school day” in FY09, 196 received funding in FY10. The average allocation for those schools was reduced by \$18,043. Ninety-four schools were newly allocated funding for this purpose. How does DOE propose to evaluate programs that are not sustained?
- DOE’s presentation, “2009-10 Contracts for Excellence Proposed Plan,” states that “Many schools chose class size reduction or pupil teacher ratio strategy to avoid increased class size.” CFE believes that using Contract dollars to fund teaching positions previously paid from the city tax levy is supplanting.
- A larger percentage of Contract dollars for Reducing Class Size are allocated for “creating additional classrooms” in the proposed plan for FY10 than in FY09. The allocation for “creating additional classrooms” was increased by \$23,602,779, while the allocation for “reducing student/teacher ratio” was reduced by \$20,234,926. In on-going discussions between CFE and DOE on the class size issue, DOE has stated that in 2008-09 many schools had erroneously selected the “creating additional classroom” strategy rather than the “reducing teacher/student ratio” strategy. Based on these discussions, CFE questions the basis for the increase in funding for “creating additional class rooms”, and believes that DOE should make a clear distinction in the definition of these strategies so that accurate designations are made for purposes of accountability and evaluation.
- CFE has additional concerns about funding allocated under the Reducing Class Size program. CFE’s research on 2008-09 class sizes in NYC shows that very few K-5 schools that received funding for “creating additional classrooms” in DOE’s approved plan for 2008-09 actually reduced general education class size by two students or more (the minimum reduction that could possibly be effective). In meetings with DOE, staff has indicated that our analysis is sound, and that the average class size was reduced in only 268 of 593 schools receiving funding for Reducing Class Size in 2008-09. DOE also indicated that average weighted class sizes in funded schools were 23.29 in 2008-09 and 23.01 in 2009-10. How does DOE plan to account for the appropriate use of these new funds to reduce class size compared with 2007-08 or 2008-09?

- Of the 1,409 schools that received Contract dollars in FY09 and FY10, the schools in the top 50% of Need are allocated a slightly larger percentage of funds for FY10 than in FY09. However, many schools in the quartile with the greatest needs are losing funding, while schools in the quartile with the next greatest need are receiving increased allocations. CFE's analysis shows that the average allocation of the 365 schools in the quartile with the greatest need was reduced by \$9,000. The average allocation of 363 schools in the third quartile was increased by \$38,000. Is there an explanation for this? When will DOE establish new quartiles based on current data?
- Given the substantial changes in the allocation and use of funding between FY09 and FY10, what evidence is there that FY08 allocations have not changed? DOE's website states the following: "For 2009-10, the NYCDOE intends to maintain effort for programs established using Contracts for Excellence funds in 2007-08 – the first year of C4E implementation statewide – as stipulated in its approved 07-08 and 08-09 plans."

#### 4. Continuing Issues

- **Transparency and Disclosure–Base year school-level program and personnel expenditures; Current year school level program expenditures**

DOE has come a long way in providing transparent information as noted in the discussion of incremental progress above. However, it is critical for parents and the public to see and compare the specific annual school-level program and personnel expenditures to both ensure that the investment was made and to make a determination regarding supplantation. This information does not appear in the publicly provided materials.

Making detailed school-level expenditure and strategy-implementation data available is also critical to evaluating the effectiveness of the strategies allowed under the Contract. Some programs and the chosen strategies will undoubtedly prove more effective than others in improving student achievement. Identification of those strategies will ensure that education funding from all sources is directed to strategies that result in the greatest increases in achievement for all students.

SED Reporting regulations require: "...a school district shall report in total and for each of the allowable programs and activities included in its contract for excellence and which the district proposes to fund with in annual contract amount, for each school and each district wide program:

- Expenditures in the base year;
- Budgeted expenditures for the current year;
- Actual expenditures for the current year.

This information has not yet been provided.

- **Reporting Contract Expenditures, Public Release of Supplantation Audit Protocols and Report, and Making the Contract and New York City School Students Whole**

Last year and again today, CFE acknowledges that the DOE's non-discretionary new costs were greater than the new State and City funds. But after 13 years of litigation and a law that compels new funding to supplement and not supplant local funding, DOE must provide the necessary school-level information from prior and current years so that SED, the New York City Comptroller, CFE and the public can determine that Contract funds are not supplanting city funds. Neither the Contract expenditures nor the audit reports for 2007-08 and 2008-09 have been publicly released. According to the CFE analysis of the 2008-09 Contract, New York City used \$243 million in state funds to supplant city funds. While the SED approved that Contract, we continue to seek a further review by the SED and the NYC Comptroller on this issue. This is particularly important since the 2009-10, and probably the 2010-11 Contracts will be a modified continuation of that agreement. To uncover the full extent of the supplantation and devise a remedy that restores the supplanted funds to the classroom will be essential to fulfilling Contract obligations under the law.

- **The Lack of Funding to District 75 Schools Raises Policy Concerns:** Again, the same as last year, we raise the issue that the District 75 schools face some of the same challenges experienced by many schools within the system – the need for qualified teachers and principals, class size reduction, the opportunity for more time on task. DOE should make a good faith effort to outline the policy issues that led to the decision to allocate no Contract dollars to District 75 schools.

### **Conclusion**

Progress is challenging in times of economic downturn. But these are times to strengthen what we have already built, and reallocate resources to schools, programs and strategies that are shown to be the most effective. Both policymakers and the public can only do that when we have the proper data to create the roadmap for making informed choices and investing in programs and strategies that produce results. It is the responsibility of all State and City officials, especially in tough economic times, to work together with parents, educators and the public to achieve these goals, and to work closely with these advocates to ensure proper implementation of the law.



**Testimony before the Education Committee  
New York City Council  
Alliance for Quality Education  
Tuesday, October 13, 2009**

**Oversight: Reviewing the DOE's Contracts for Excellence**

My name is Eric Weltman, and I am the New York City Advocacy Director of the Alliance for Quality Education. On behalf of the Alliance for Quality Education, I want to thank Chairman Jackson and members of the Education Committee for the opportunity to testify today.

New York has a moral and Constitutional obligation to provide all children with a sound basic education which will equip them for work and civic engagement. It's an obligation that was recognized by our state's highest court, and one that the legislature intended to help fulfill when it passed the Education Budget and Reform Act in 2007. The law established a commitment to investing more state aid in best educational practices in certain districts including New York City. Known as Contract for Excellence, or C4E funds, this funding is targeted towards proven educational practices for the highest-need students. The purpose and intent of this new investment in our schools was and is very clear: It is an addition to the City's own funding, not a substitute or replacement for that funding. To use the state funding as a substitute is referred to as "supplanting," and the law made it illegal.

Today, AQE is releasing a report, "*New York City's Contract for Excellence: Closing the Funding Gap or a Funding Shell Game?*" The report documents our answer to the question posed in the title, an answer that is both encouraging and disturbing. The answer is "both." The additional dollars that New York State is investing in New York City's schools are successfully closing the funding gap between the highest and lowest poverty schools. At the same time, though, we have evidence that the DOE used Contract for Excellence funds to replace city dollars—in other words Contract funds were used to supplant which is a violation of state law. The consequences are serious for a generation of school children who are not receiving the full benefits of our state's commitment to their education.

We are submitting a copy of our report for the record, which is also available on our web site, [www.aqeny.org](http://www.aqeny.org). I will briefly review some of our evidence today. Just as the evidence is clear, so is the call to action: We are asking you to join with us in calling for New York's Commissioner of Education, Dr. David Steiner, to make a determination as to whether supplanting of Contract for Excellence funds occurred and to order a restoration of these funds by New York City.

I will begin with the great news. In school year 2007-08, \$258 million in Contract for Excellence money went to New York City schools, with an additional \$379 million the following school year. Under the terms of the Contract for Excellence, 75% of the C4E funds must go to the neediest 50% of schools within New York City. Our findings are that:

- In 2007-08 and 2008-09, the New York City Contract for Excellence provided \$704 more per pupil to the schools with the highest poverty than to those with the least poverty as seen in the graph on page 4 of our report.
- The C4E has closed the funding gap by \$280 per pupil, when taking into account the higher costs of educating students living in poverty.

This is a triumph of state policy. The Contract for Excellence is effective at getting education funding to those who need it the most and correcting historic imbalances that have penalized generations of New York children for being impoverished, immigrants, or disabled.

Unfortunately, DOE's supplanting has undermined this progress towards equity.

In 2008, the C4E funding was originally distributed in an equitable manner directing \$573 per pupil to highest poverty schools compared to \$158 per pupil to lowest poverty schools, a difference of \$415 per pupil.

Simultaneously the DOE was instituting funding cuts to the schools. While the Contract for Excellence provided the largest increases to the neediest schools, the DOE distributed cuts in the exact opposite manner with the largest cuts going to the schools with the highest poverty and the smallest cuts going to the schools with the least poverty. Enacted cuts to the highest poverty schools were \$444 per pupil while those to the lowest poverty schools were only \$203 per pupil--a difference of \$241 per pupil.

The result was that instead of providing \$415 per pupil more for the highest poverty schools, the Contract for Excellence funds only provided \$174 more per pupil because the first \$241 per pupil were used to make up for the larger cuts in the poorest schools. Substituting the Contract for Excellence funds for City funds violates the restriction on supplanting.

The graphs on pages 7 and 8 of our report demonstrate that while the Contract for Excellence provided the largest increases to the highest poverty schools, the DOE made the largest cuts in city funds to these very same schools thus undermining the progress obtained through the Contract for Excellence. Taking with one hand what the Contract for Excellence gave with the other amounts to little more than a funding shell game.

The bottom line: the funding gap was reduced by only \$174, rather than the original \$415 due to the City's actions, short-changing our neediest students with a funding shell game that is wrong and illegal.

The state's Commissioner of Education, Dr. David Steiner, must take appropriate enforcement action to see that New York City children receive the equity that they need and deserve, that the Constitution calls for, and that state law requires. We ask you to join us today in calling on Commissioner Steiner to act.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/13/09

(PLEASE PRINT)

Name: Renée Holmes

Address: 168 Jefferson Ave

I represent: CEC 13 and my children

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/13/09

(PLEASE PRINT)

Name: Debra Barnes

Address: 1441 Bedford Ave, 3B

I represent: North Crown Heights Community

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: ~~Maria~~ Kim Sweet

Address: \_\_\_\_\_

I represent: Advocates for Children

Address: 151 West 30th St, 5th floor

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 396 A Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/13/09

Name: MARYKATE O'NEIL (PLEASE PRINT)

Address: 52 CHAMBERS ST.

I represent: NYC DOE

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/13/09

Name: Jenni for K Bell-Ellwanger (PLEASE PRINT)

Address: 52 Chambers St.

I represent: DOE

Address: same as above

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Photine Anagnostopoulos (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Alison Avera

Address: 64 W. 108<sup>th</sup> St NY NY 10025

I represent: Dept. of Education

Address: 52 Chambers St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. 396-A Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/13/09

(PLEASE PRINT)

Name: Lois Kessler

Address: 52 Chambers Street

I represent: NYC DOE

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Brian Fleischer

Address: 42 Carolin Rd., Up. Montclair, NJ 07043

I represent: NYC Department of Education

Address: 52 Chambers Street

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Stephanie Lawkins

Address: 52 Chambers St.

I represent: NYC Dept. of Ed.

Address: same as above

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 396-A Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 10/13/09

(PLEASE PRINT)

Name: Judy Nathan

Address: 52 Chambers St.

I represent: NYC Department of Education

Address: 52 Chambers St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 10/13/09

(PLEASE PRINT)

Name: Helaine K. Dora

Address: 19 Hudson Street, NYC 10013

I represent: Campaign for Fiscal Equity

Address: 110 William Street, Suite 2602

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: Oct 13, 2009

(PLEASE PRINT)

Name: Leonard Fuzio

Address: 91-48 220th St

I represent: Issues Council

Address: 91-48 220th St

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: October 13, 2009

(PLEASE PRINT)

Name: Eric Weltman

Address: 2-4 Nevins St., Brooklyn

I represent: Alliance for Quality Education

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: Oct 13, 2009

(PLEASE PRINT)

Name: Leonie Hanson

Address: 124 Waverly Pl

I represent: Class Size Matters

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: Oct 13, 2009

(PLEASE PRINT)

Name: Richard Farkas

Address: UFT

I represent: Vice President of UFT

Address: 52 Bway

Please complete this card and return to the Sergeant-at-Arms