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April 1, 2009

Ladies and Gentlemen,

Thanks for inviting me to testify before this august body.

My name is Desmond A. Reid and I am the owner of Desmond A. Reid Enterprises/DARE Books. I am one of the victims of the Mayor's campaign to transfer wealth and influence from the poor and middle class to the rich.

About a year ago, I received notification of a Request for Bids, posted on the Department of Education's VENDEX system. Among other things, it required, in order to qualify to bid, that the vendors needed to have done \$5,000,000.00 million in business the previous year; have at least one salesperson in each Borough, have an EDI systems hook-up and be doing business with 16 of the 20 enumerated publishers. To my knowledge only 4 of the 100 stated vendors qualified to bid.

At a pre-bid meeting, a number of questions were asked of the DOE representatives. One was, could a number of current vendors combine to meet the \$5 million requirement? The answer was that a bidder, in order to qualify, was allowed to have one subcontractor. This still ruled most of us out, because most of us did less than \$500,000.00 in annual business. When the question was asked, "Considering that the DOE receive money from the state of New York and the Federal government, with their requirements for minority and women set-aside, why is there no apparent allowance for that in this hundred-plus page RFB?" The answer was that the DOE is a mayoral agency which is exempt from those requirements. Why is that so, and what can be done about it? Many questions were asked about special education, ESL and other material which are targeted to specialized populations, to which the answer was that those types of material would be ordered through whomever is awarded the Contract(s).

The DOE, in response to questions from the media and others, insist that they will save approximately 30% through this new procurement method. That may, or may not be true. Monopolies do create their own challenges. Publishers will increase their prices in the face of diminishing returns. However, the resultant loss of these dozens of vendors will nullify those savings. Not everything can be measured in immediate dollars and cents. The support system, which multiple vendors provide, is irreplaceable. To begin with, there is a myriad of information and assistance to the pedagogues by research done by even the smallest vendor that cannot be garnered by these large distributors. The awardees are not in the research and publishing business so they don't know what is needed. Additionally,

they are not in New York and are not familiar with the nuances and needs of New York school children and teachers. The vendors, like myself, provide a research and training arm for teachers and administrators, through workshops and one-to-one consultations.

In addition to supplying books, there is a wealth of vendor-created materials that some vendors provide. Since some of us are former teachers and administrators (as well as parents), we sometimes know what are lacking to give these educators that extra boost and an edge. We sometimes provide encouragement to these harried educators who are sometimes overwhelmed with discipline problems and other challenges.

In a society where there are so many ethnic groups, it is a challenge to have children "claim" learning. Many times the lessons deal with people other than "us." So if it doesn't apply to us we don't attach any importance to it. That's part of the problem why there is so little learning. But when it applies to us, we pay attention! So we learn. That's why divergent materials are so important in our classrooms. I believe that I heard of the importance of a curriculum of inclusion. We small vendors are the ones who find the material to be included.

The DOE divided up the textbook contract into three parts. Part one, the single title ordered books, to my knowledge, have been awarded to Ingram Book Company and Book Source. This is the bulk of the purchase. I inquired, this past week about the awarding of the other two parts (re-bound books and classroom library books) and was told that they will be awarded, soon. Additionally, the RFB for school library books was published last summer and, needless to say, the requirements were so stringent, that the "former" vendors cannot fulfill that, either. That, also, "will be awarded soon."

The outcome of the DOE's new procurement policy is that approximately 98 textbook vendors and I don't know how many library book vendors will be out of business. This will impact at least 500 employees and other support people. The savings may be 30% but the collateral damage will impact on the city's economy in a geometric way.

There are many vendors, like myself, who have been in business for many years. I, myself, have been in business for 27 years and I have done business with the DOE for 26. I, like many of the others, do not do it because it makes us rich, but because we see it as a service to our children and the other children of the city. Our satisfaction is not necessarily financial riches, but doing our part to make this a great city. But we are appalled and outraged at the way this whole lynching took place. We were always aware that our contracts could be cancelled, at any time, without cause, but none of us anticipated the cold-blooded way this would be handled. We were basically treated as enemies, to be eliminated.

The decision to excise the vendors was not made by a clerk or a supervisor at the Department of Education. It is a policy decision made by the Chancellor and the Mayor. It is one more step in the Mayor's quest to not

only transfer wealth from the poor and middle-class of this city to the rich, but to bedazzle people in the process. We are made to believe that it is all for the good of the children or the city. We have only to look at the transfer of public school funds to private entity under the title of "charter schools." Children are being "fired" from their schools, which are being given to private entities to accommodate people who do not want their children in the public schools. They can segregate their children while having the public pay for their education. There is much more that can be said on that matter, but this is not the forum. Suffice it to say that the children of this city will, ultimately, pay the price for such action.

I appeal to you, on behalf of myself and the other vendors, to review the procurement practices of this mayor in a serious way. And I don't ask that you do so only because I am a victim of this decision. I ask you to do so because you have been empowered to act as a check against an outrageous or irrational action of any mayor or city agency. I believe that no single person in government should be able to act, unfettered, when the interest of the constituents are not being served. I trust that you will act on this, and any other important matter as this, in a timely and effective way.

Thank you.

## **Position Statement**

### **Ad Hoc Committee of Minority/ Women and Small Business Owners**

#### **Issue: NYC DOE: RFPB 0578, Parts A, B and C**

As a consequence of the above bid from the New York City Department of Education Contracts and Purchasing Division, there will be a negative impact on the education of New York City's greatest treasure, our children, specifically in the **language minority communities**.

This bid excluded participation of small, minority and women owned businesses, predominantly based in or near New York City. For decades, ESL and Bilingual Program administrators and teachers have relied on minority vendors because they traditionally encountered difficulties identifying and procuring quality instructional materials targeted to the needs of this population. In addition, they provide free in-service training for their offerings which are carefully reviewed and aligned to curriculum and State Standards.

Under the newly awarded bid, textbooks and trade books that are available on the open market can only be purchased through the following giant companies based outside of New York State: Ingram and BookSource. The funds to purchase these materials are both federal (Titles I and III NCLB) and state funds (NYSTL and Part 154) whose guidelines prohibit exclusion of minority owned business. The Department of Education's website encourages minority-owned and small independent firms to do business with the Department, however; the above-mentioned bid totally violates this purported idea.

Unable to make free choices as to selecting textbooks and supplemental materials which support teaching and learning, the educators of NYC will be held hostage to a small handful of mega-publishing giants who will only provide those items which are most profitable for them. In corporate fashion, this will eliminate those materials which would be widely used by the language minority communities. The result of this will undoubtedly be quite the opposite of NO Child Left Behind. In NYC there will be countless children left behind – unserved by an education system which places less value on the children, and more value on making life “easier” for a department of bureaucrats.

#### **Response:**

The members of the Ad Hoc Committee have been in business in NYC for anywhere from five to thirty years providing supplementary educational materials for English Language Learners and other students of special needs.

The federal and state government makes this money available to local governments with the explicit understanding that it be used to service this population. Large companies, frequently headquartered outside of NYC, have profit as their primary goal, rather than serving the needs of the local educational community. Their employees are often not familiar with the culture and the communities served and are often reluctant to go into these communities. On the other hand, small minority vendors support schools by visiting them after regular hours and on weekends by providing parent workshops. Large companies approach to English Language Learners and other low literacy students is generic rather than targeted. This is problematic since low literacy students do not all share the same causal foundation.

In NYC, current English Language Learners constitute 13.4% of the school population with 42.2% of the students speaking a language other than English at home. In addition, the 13.4% does not include students identified as former English Language Learners, students who have transitioned into monolingual classes and are still in need of additional support with specialized language acquisition materials. It makes sense for teachers to purchase materials from vendors who understand their learning community.

We see a very different situation when we closely examine the employees of many of the companies that constitute the Ad Hoc Committee:

- **Attanasio & Associates** staff and consultants are former educators from NYC. Among the positions they have held are: Director of Literacy for NYC Chancellor's District, Director of Bilingual Education for NYC, Local Instructional Superintendents, principals, bilingual coordinators and teachers.
  - As a response to a demand from NYC teachers and administrators, Attanasio & Associates recently published *Getting Ready for the NYSESLAT and Beyond* and *Getting Ready for the English Regents Essays*, instructional test preparation materials specifically designed for English Language Learners.
  - Attanasio & Associates published Dr. Jocelyn Santana's book *Dominican Dream, American Reality* because they were committed to ensuring that this valuable resource be made available to NYC schools. With so few books for and about the Dominican community, one of the largest minority groups in NYC, they felt compelled to take action despite the roadblocks set by the NYCDOE.
- **Flame Company** has been successfully providing materials for parent involvement as well as training workshops for over thirty years. The loss of this company would be a tremendous blow to the parent community.
- Genaro Bastos, President of **Bastos Book Co.**, is an adjunct professor of graduate studies at N.J. City University, N. J. His company sells materials for ESL and bilingual high school students as well as AP materials. With the growing number of English Language Learners dropping out of high school, this is not a vendor we can afford to lose. He imports educational books that are published overseas. However, according to the new rules, since the publisher doesn't do business in the U.S. he will not be able to make these books available.
- **Alice King Books**, successor to Connie Kehoe's Literacy Warehouse, has operated as a Women/Minority Owned business since 1996. During that time, it has provided valuable services to the NYC Schools in the form of extensive Professional Development for teachers and administrators. Additionally, it has been the sole source of supplemental literacy materials from select publishers, chosen for their ability to comprise a Balanced Literacy block in keeping with the goals of NYC DOE.
- **Source International Technology Company**, which represents a significant number of self-publishers, employs many former educators. Their primary focus is providing educational books and materials specifically targeted for African-American students and materials in Spanish for English Language Learners.
- **Baum and Beaulieu**, a niche vendor renowned for its expertise with professional development materials has as its president two former educators. They work with teachers to help them make informed decisions regarding materials that will positively impact their students. They develop Professional Development Collections in all content areas including working with English Language Learners which has become their fastest growing target population.
- Patricia Chalco of **Chalco Educational Enterprises**, whose background is Early Childhood Education, has specialized in providing multicultural literature to the English Language Learner market for many years. She also provides accompanying parent workshops to encourage greater parent involvement in non-English speaking communities through sharing multicultural literature.
- **China Sprout** is a company that imports materials for the Asian community. They are really the only company that specializes in this specific community and losing them will be a tremendous disservice to all Asian students.

Schools need small companies who are committed to offering quality instructional materials and targeted professional development. These companies must continue to be approved vendors by the DOE so that schools can choose the appropriate materials for their students. If the bid is allowed to eliminate competition from small and local businesses, the impact will be disastrous for the students, educators, and parents as well as for the small and minority owned businesses in the community.

## Trade Books

The Division of Contracts and Purchasing (DCP) has issued new contracts for the purchase of trade books to be used in schools. These new contracts will offer a larger variety of titles, real time inventory status, more favorable shipping terms, expanded item (title) information and enhanced FAMIS e-catalog tools that support electronic ordering and invoicing.

Contracts have been awarded to multiple vendors for three different types of trade books:

**Class A:** **Single title trade books** defined as trade books sold individually, or in multiple copies of the same title.

**Class B:** **Pre-bound (rebound) trade books** defined as paperback books that have been converted into a hardcover trade book.

**Class C:** **Classroom library collections** defined as trade books that have been combined into a collection based on theme, reading level, special need, subject, etc.

The new contracts and vendor numbers for each class are as follows:

### Class A: Single Titles

Vendor	Vendor No.	Contract No.
Ingram Library Services, Inc.	ING032000	7105781
The Booksource, Inc.	BOO028000	7105782

### Class B: Pre-Bound (Single Title or Classroom Library Collection)

Vendor	Vendor No.	Contract No.
Ingram Library Services, Inc.	ING032000	7108104
Knowledge Industries, Inc.	KNO016000	7108105
Books & Media	BOO022000	7108103

## Class C: Classroom Library Collections

Vendor	Vendor No.	Contract No.
Ingram Library Services, Inc.	ING032000	7108108
The Booksource, Inc.	BOO028000	7108106
Knowledge Industries, Inc.	KNO016000	7108109
Steps to Literacy	STE087000	7108100
BMI Educational Services, Inc.	BMI005000	7108107

In addition to these new contracts, improvements have been made to the FAMIS Portal e-Catalog which will assist the school user in making more informed purchasing decisions when ordering trade books.

Some changes that have been made include:

- Real time item inventory availability
- Vendor-to-vendor comparison of item pricing
- Expanded item detail
- Electronic EDI transactions which will ultimately allow users to track their orders via the FAMIS Portal

Additionally, new contracts for Library Materials and Processing, which includes library book and AV materials, will be available in June.

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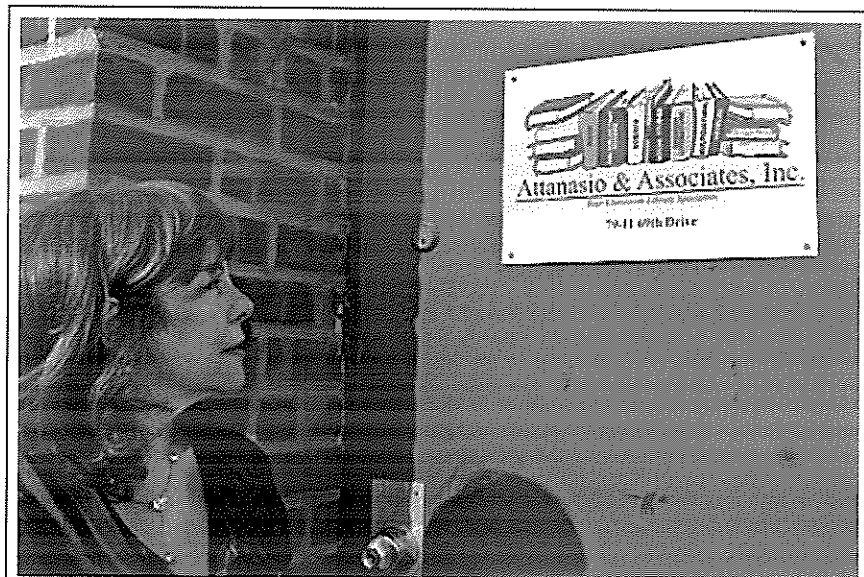
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## LANGUAGE COMPANIES SHUT BY NEW DEPT. OF ED POLICY



Small businesses in the boroughs won't survive under new textbook purchasing rules. > *By Helen Zelon*



Connie Attanasio stands outside her Queens business, which has provided textbooks for English language learners for years, but may be forced to close. *Photos by Rosie McCobb*

Connie Attanasio of Middle Village, Queens, has a master's degree in education and has been in business for 25 years providing books for students learning English and the teachers who guide them. Harlem-born Jesse Harris has been distributing language books and materials on African-American themes to city schools from his Bronx business since 1971. Genaro Bastos, an adjunct professor of sociolinguistics and language acquisition at Queens College and New Jersey City University, is a book provider, too, delivering works from his business in Woodside, Queens, to the city's schools since 1980.

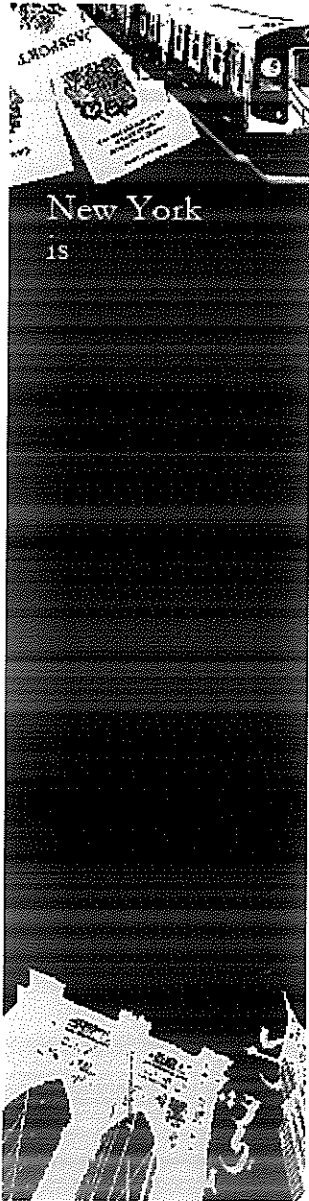
These small business owners – and dozens of others like them – have built relationships over decades with teachers, principals and other educational leaders. As minority entrepreneurs, they typify the kind of success that Mayor Bloomberg celebrates as the lifeblood of the city. Yet they say their businesses soon will be forced to close due to new procurement regulations enacted by the Department of Education in order to save money. Like all city agencies, DOE is under the gun to cut spending in the wake of the state budget crisis.

“Once this is implemented, I’ll be out of business,” said Bastos. “All my efforts have been spent serving school districts in New York City. Now, schools are no longer my customer; the customer is New York City. They change the rules, and now, you can no longer play the game. There’s no way I can survive.”

### Polyglot and penny-pinching

Two in five New York City public school students speak a language other than English with their families. One in nine are formally classified as English language





learners (ELLs); at least as many have attained basic proficiency but still require academic support. Dr. Pedro Ruiz, coordinator of the New York State Department of Education's Office of Bilingual Education and Foreign Language Studies, sums up the size of the challenge by simply calling New York "a bilingual state." The city's limited-English proficient (LEP) students, who according to Ruiz speak over 170 different languages, account for three-quarters of that population statewide; in other words, this particular textbook market is centered in NYC far more than in Rochester or Troy.

Until now, schools have relied on local vendors – practically all of whom happen to be minorities – for guidance in finding the best books for students learning English. The vendors in turn researched, developed and honed lists of books from publishers worldwide, bringing titles to the New York market that overseas publishers lack the resources to promote.

Under new Department of Education bidding guidelines, most of these established vendors are no longer eligible to compete for DOE contracts, because they don't meet new minimum thresholds of \$5 million per year in sales. The new rules also require deep purchasing discounts and sophisticated technological capacities – impossible targets for people like her, says Attanasio, who heads an Ad Hoc Committee of Minority Business Owners formed in response to the new DOE regulations.

"We don't operate for the benefit of our suppliers. We operate for the benefit of the public schools," said David Ross, the DOE's Chief of Procurements. Ross says the first part of the department's new contract, which was awarded in October, already has reduced the DOE's \$57 million total annual book tab by \$6.8 million. (The balance of the contract will be awarded later this month.) "Big and middle-size players were able to compete; the smallest players weren't able to compete for the award."


"We made an award to two vendors, as a competitive bid within the parameters of municipal law – although we're not required to do that," Ross said.

#### A different set of rules

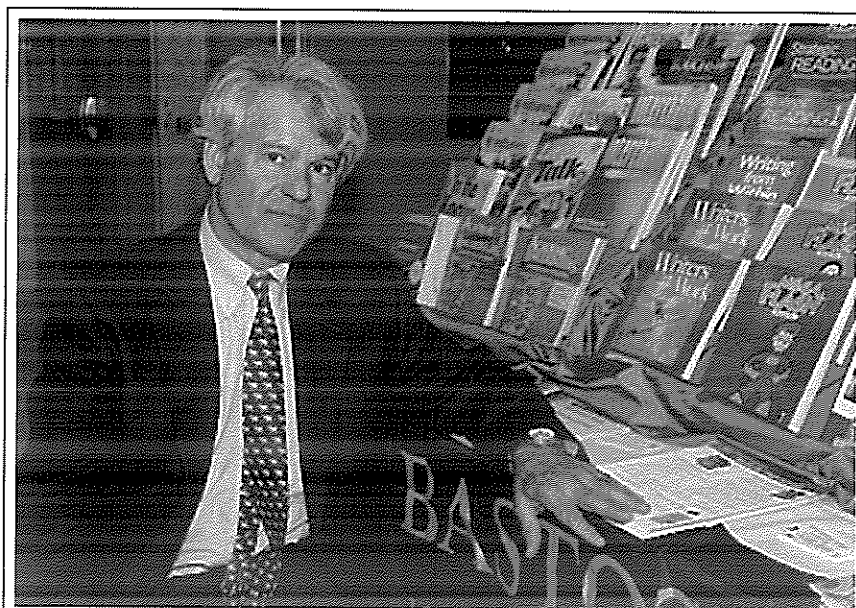
Ross' assertion that DOE procurement is not bound by municipal law is correct. The inclusion requirements for city government support of minority and women-owned businesses do not apply to the Department of Education, because the DOE is not actually a city agency. It is, according to the corporation counsel, a separate entity – a kind of orphan corporation that floats in its own legal universe, insulated from city, state and federal oversight regarding purchasing, reporting directly to Mayor Bloomberg and Schools Chancellor Joel Klein.

"For procurement purposes, DOE is not a mayoral agency," says Bloomberg spokesman Jason Post. "The enabling legislation of mayoral control specifically exempted procurement, so DOE follows state rules." Still, the ousting of minority and women vendors runs counter to provisions of city, state and federal law, including Local Law 129, which Mayor Bloomberg signed in 2005 requiring city agencies to buy more goods and services from firms that get city certification as M/WBEs – Minority or Women-Owned Business Enterprises. Although DOE receives city, state and federal funds, the fact that it is neither fish nor fowl – neither an agency of the city nor the state – means it is not bound to uphold city, state or federal antidiscrimination law in its procurement practices. DOE does require its vendors to have affirmative action plans on file and be equal opportunity employers, however, and it encourages proposals from women- and minority-owned businesses, says spokeswoman Marge Feinberg. But the financial and technical requirements of the procurement regulations dictate the terms of who may apply.

Mayoral control of the schools, which is due for review in 2009, grants DOE its protected status – a status that has a variety of critics well beyond small business interests. "The Bloomberg administration takes the unusual and questionable position that its education policies are not subject to state or city laws that it wishes to ignore," says Udi Ofer, advocacy director of the New York Civil Liberties Union. "Bloomberg also refuses to submit his proposed education regulations to a public comment period, as required by state and local law. Under Mayor Bloomberg's rationale, education policies are under his own authority. This is an unacceptable and undemocratic approach to education policy-setting, and must be considered as

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the state explores whether to extend mayoral control.”



Genaro Bastos, owner of Bastos Educational Textbooks, displays his collection of books for English language learners at a DOE conference for teachers last week.

### The biggies "don't speak the language"

Because "the smallest players" were excluded from the textbook bid, the educators and academics who for decades have developed products for the city's ELL population are being pushed out, and replaced with mammoth corporations located well outside of New York. To date, the DOE has awarded contracts to BookSource, based in St. Louis, and to the Tennessee-based Ingram, described on its website as "the world's largest wholesale distributor of book product" as well as a technology and shipping leader.

It's not just the local business people who object to the change. The state education department's Pedro Ruiz counts himself among the critics. "Students need support for different materials in different languages that the large corporations do not offer," he says. Big companies may offer works in Spanish and Chinese – "but what about Portugese, Bengali, Russian and Urdu? These small vendors are the ones that have the materials. They have been working very closely with the communities, with teachers and with parents, looking for materials that exist around the world."

The new regulations mean sharp cutbacks in personalized service. "The personal connection makes the difference," says Pat West, principal of PS 90 in the Bronx, who has worked for years with Jesse Harris. "Sometimes we don't know what we want. He brings things we might be interested in. He has introduced me to some authors that our librarian has had come in to talk to the kids. We invite them in, through his contacts."

Harris says he built his business "coming in, sitting down with teachers, talking about materials. We're not salespeople – we're consultants, we talk to teachers at 7 at night, after hours. We go into areas – in Bed-Stuy, East New York – where the principal can't talk during the day. At 7 pm, it's dark. Sales reps won't go into those areas. If they don't meet at a principal's conference, forget it – those schools are not being served."

"All of us, it's not just a business," says Bastos. "It's not just a pair of shoes. It's a product of education that's valid and important, not just a profit-making venture. We bring materials of the highest quality to New York City schoolchildren."

"Who'll put together these collections?" Attanasio asks, referring to series of books organized on a single theme. Her staff includes DOE veterans who've served as directors of literacy and heads of English as a Second Language programs; Attanasio was Assistant Director of the Bilingual Bicultural Mini School in East

Harlem before leaving the public schools. "We represent companies where the faces of our kids are found in the artwork in the books." The big corporations – according to the smaller players – can't duplicate small vendors' grassroots networks and relationships.

### Business is business

The ethics of pushing out minority business owners isn't the issue, says David Ross of the DOE. The issue is economics: Significant savings will accrue, along with easier, faster, cheaper and better book ordering for the city's schools. To ease the transition, the DOE has required all current, small-business vendors to "cut over" or migrate their lists to a database that will permit Ingram and Booksource to place and fill new orders. The small vendors have not been compensated for this service, which Jason Henry, DOE's Chief Administrator of Purchasing, valued at "less than half of a percent" of the roughly \$57 million that DOE spent on all textbooks last year. The half a percent comes to about \$285,000, nearly equal to the \$300,000 being spent by DOE on outside trade-books consulting by Accenture. DOE procurement officials say they will reconsider refunding some of these fees.

"This is a total abuse of power," says Bastos. "The educators are being left out."

"Hundreds of companies have been put out of business because they depend solely on New York City," says Harris. "It's mind-boggling. How can the mayor stand up in front of me and say, 'I want to be your mayor' and take the bread out of my mouth?"

The state education department is aware of the city's procurement practices, but has not yet responded to either the DOE or to Attanasio's Ad Hoc Committee of Minority Business Owners on the issue. Late last month, the State's Bilingual/ELL Committee of Practitioners met with Regent Betty A. Rosa, in charge of LEP/ELL programs, and Senior Deputy Commissioner Johanna Porter to discuss the DOE's revised bidding practice. Outgoing New York State Education Commissioner Richard Mills's office confirms receipt of a letter from Attanasio's group but will not commit to a formal response.

"Hopefully, in meetings with the NYC chancellor, Commissioner Mills will bring up this issue to see what can be done," said Pedro Ruiz, but time is critical. Henry and Ross of DOE say that the final parts of the contract will likely be awarded before the end of November, after which, small vendors say, their businesses will close.

Improving outcomes for ELL students is a primary goal of the Klein-Bloomberg administration. According to DOE statistics, fewer than one in four ELL students graduate from high school. "For students to improve, they have to have access to good materials," says Bastos. "They have to have access to people with expertise. How do we provide educational access to all these students?"

- Helen Zelon

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Attachment 1

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Excerpts

Report by Special Commissioner of Investigations

Richard S. Condon

February 2004

On page 4 of Commissioner Condon's report, he tells a tale we find to be inconceivable:

"A major DOE food vendor, the Irving Libertoff Company ("Libertoff"), was a defendant, along with its principal owner, Stuart Libertoff, in the Antitrust indictment. In May 2001, Stuart Libertoff pled guilty and was sentenced to 18 months in jail and a \$250,000 fine. The company also pled guilty, was placed on five years probation, was fined \$4,000,000 and ordered to pay restitution of \$2,500,000. In October 2000, prior to the resolution of the criminal case against it, Libertoff sold its assets to H. Schrier, Inc., ("Schrier") a sales company already owned by Libertoff. The ownership of that company was then transferred to the children of Stuart Libertoff and the children of his brother Gary, who ran the warehouse operation for Libertoff. The DOE consented to Libertoff's assignment of its 2000 food contracts to Schrier, but required that Schrier divest itself of Stuart and Gary's control and submit to monitoring. However, Stuart and Gary have retained ownership (with their children) of the Libertoff warehouse in Brooklyn and continue to lease the property to Schrier."

On page 30 of the same report, the Commissioner relates to the findings of another city agency:

"Several additional issues beyond the minimum qualifications sections call into question Schrier's ability to be a responsible bidder. Currently, the Department of Citywide Administrative Services ("DCAS") finds Schrier to be a non-responsible bidder and will not allow it to win DCAS contracts. The agency based its conclusion on several factors, including:

- The relationship between the Libertoffs and Schrier: Stuart and Gary Libertoff were principals in the Libertoff company before it was convicted in the Antitrust prosecution. Stuart was also convicted under this scheme, as well as for conspiring to defraud the IRS. Stuart and Gary currently own the warehouse property utilized by Schrier, through their company, GSI Realty. In addition to the rent collected from Schrier, the Libertoffs are also paid by the company on a note they hold on the sale of the Libertoff company assets to Schrier.
- Schrier President Brian Field's former management of the Big Apple Baking Company, Inc. ("Big Apple"): During his tenure as president of Big Apple, this office investigated allegations that DOE officials allowed that company to unduly modify its bid twice in order to win a food contract. DCAS questioned the integrity of Big Apple and its subcontractors who did not meet bid specifications and gave inaccurate information as to their days of operation.

• Big Apple's prior default on a contract: In 1998, Big Apple was found in default on a bread contract with the United States Veteran's Administration. While the contract termination was ultimately revised from a default to a termination for convenience, the company's actions, including its failure to disclose the contract termination to DCAS, raised the agency's concerns as to Big Apple's integrity and performance.

• Inappropriate communications between Schrier and another vendor: During a recent DCAS contract bid, it was determined that a Schrier official had contact with an official from another bidding company about bid pricing. Again, this raised integrity questions in the judgment of DCAS.

Schrier lost its initial appeal of the DCAS ruling in September 2003 and has since appealed to the Mayor's Office of Contracts. According to Benevento, he would not recommend an award to Schrier if it remains on the DCAS non-responsible list."

Attachment 2

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Excerpts

Report by Special Commissioner of Investigations

Richard S. Condon

February 2004

On pages 4-5 of the report, Commissioner Condon identifies low-balling as a major problem in the contract bid process:

“Ineffective bidding procedures employed by OSFNS officials allowed certain vendors to exploit the DOE. Specifically, these vendors bid low prices or “low-balled” on foods that were overestimated in the bid package and higher prices on foods that were underestimated in the bid package. The low prices allowed the vendors to underbid their competitors, whereas the high prices and high actual usage of certain items caused the DOE to pay the vendor far in excess of its original bid price.

In addition to the dozens of non-donated food items a vendor must bid on, a vendor must also submit a bid on the foods that are normally donated, primarily to ensure that the schools can obtain the products if the donated stock is not available. Prior to the food contracts currently in effect, a vendor’s bid prices on the purchase and sale of items that were otherwise or normally donated (hereinafter “normally donated”), as well as the bid prices on the purchase and sale of non-donated items, were multiplied by the estimated quantity for each item in the new contract. The vendors also bid on the “delivery” cost of transporting any donated items from the warehouse to the schools. That cost also was multiplied by the estimated delivery quantity for each item in the new contract. The aggregate bid prices on normally donated and non-donated bids, along with the delivery price, would constitute the overall bid figure submitted by a vendor, the most relevant factor in the awarding of contracts.

... the inclusion of bids for the normally donated items could skew a vendor’s aggregate bid price to the detriment of the DOE. Experienced vendors who know that they are rarely called on to purchase and sell normally donated foods will lower the bid price or “low-ball” such items, even below what its actual cost might be, in an effort to win a contract. Such low prices will offset increases in the vendor’s bid price on non-donated items, which they often sell to the schools. Therefore, the practice results in vendors being awarded contracts based on costs they will rarely incur and inflated prices on goods they will actually sell to the DOE. Although vendors engaged in low-balling commit no contractual violation, the practice effectively nullifies the purpose of competitive bidding.”



Attachment 3

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Excerpts

Report by Special Commissioner of Investigations

Richard S. Condon

February 2004

### **Commissioner Condon concluded that:**

- low-balling was “the most significant avenue by which vendors exploited the DOE.”
- In addition to their failings as administrators, DOE officials committed direct misconduct by accepting gifts from vendors doing business with their office and by subsequently lying to cover that misconduct.
- Schrier continued to gain preferential treatment when OSFNS officials allowed the company to obtain and hold the warehouse contracts despite non-compliance with contract requirements.
- The development and the processing of the first citywide distribution bid (which was created to make the bid process less complicated) lacked the level of formality necessary for a contract of such size and scope. In addition, the “informal committee” had no clear guidelines to follow in order to achieve its goal of vetting the bids.

### **Local 372 fully supports the recommendations by Commissioner Condon:**

- the DOE should “take measures to ensure that all those involved in procurement decisions abide by one set of rules and understand who holds the ultimate responsibility for contracting decisions.”
- the responsibilities of OSFNS and OPM be clearly delineated and that officials in those offices maintain greater cooperation in the awarding and monitoring of food vendor contracts.
- the DOE should conduct a thorough evaluation of those officials responsible for overseeing food purchasing procedures.
- DOE should re-evaluate their current responsibilities and that of any other official connected with food purchasing and make changes where appropriate.
- Schrier should be found non-responsible to bid on future DOE contracts, and that its current warehouse contracts not be renewed in the future.

**Whether the DOE awards a citywide contract or not, this office (Commissioner Condon) recommends additional changes to the food bidding process:**

- Evaluate alternatives to contingency pricing on normally donated items to prevent vendors from exploiting that policy by bidding unreasonably high prices.
- Create an accurate process for estimating usage figures for future bid proposals.
- Develop objective criteria for requesting voluntary price reductions, and alternatives in the event that vendors do not comply.
- Revise the policy of accepting donated foods to include a meaningful comparison of overhead costs versus vendor bid prices.
- Ensure compliance with all contractual obligations of vendors, including warehouse specifications. Require that both the Chief Executive of School Support Services and the Director of Financial Operations be advised of any contract violations regardless of their resolution.

## Attachment 4

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### Media Coverage of Aramark

Just weeks later, First Coast News TV in Jacksonville Florida reported that 2 children fell sick at Gregory Drive Elementary School, after a student found what he thought was a maggot in a box of raisins. The report said, "Tests at the University of Florida found it was a cocoa moth. Aramark claimed it did not pose a risk. However the product has been pulled from further distribution.

Then there's the matter of gifts to procurement officers or top administrators. The following article was printed in the 4/14/04 issue of the *Tennessean*, a Gannett newspaper.

### **Aramark Gifts**

Here are some of the items food-service vendor Aramark has given employees at five state universities where it has contracts over the past five years, according to campus reports:

#### **Austin Peay State University**

- \$3,413 in total gifts and benefits from 1998 to the present, mostly in holiday fruit and food trays, planning calendars, complimentary meal tickets and dinners at trade conferences
- Austin Peay says no employee benefited from \$690 in Aramark sponsorships at university athletic fund-raisers

#### **East Tennessee State University**

- "Unsolicited" Christmas gifts "such as Florida fruit boxes, a matted print or a similar item to high level administrators"
- Meal costs at business meetings with campus officials
- Atlanta Braves tickets for two vice presidents and an assistant vice president

#### **Middle Tennessee State University \***

- Golf games in Murfreesboro and during athletic events out of town for Athletic Director Boots Donnelly; Mike Gower, associate vice president for business and finance; and David Gray, facilities director
- Sponsorships of teams at "MTSU scholarship golf events"
- Meal costs at business meetings

#### **Tennessee State University**

- Four tickets each to the 2000 and 2001 Super Bowls for President James Hefner. Hefner also received tickets to the 1996 Olympics and hotel rooms in Atlanta in 1996 and 2000.
- TSU's vice president for business and finance, Clay Harkleroad, received tickets to the 1996 Olympics, Atlanta Braves games and the UT-Florida football game in 2001. Harkleroad paid \$100 for the four UT tickets. He also received a hotel room in Atlanta in 1996 and "played golf with Aramark officials and employees from other (Tennessee Board of Regents) universities during work hours without taking leave," according to state auditors.

## University of Memphis

- An associate dean attended several dinners over five years at an estimated value of \$250. Aramark paid \$175 for greens fees for that official at a "campus fund-raising golf tournament."
- No other gift or benefit exceeded \$75. Gifts and benefits included food baskets, meals, a \$15 Monet print and flowers.

\* Aramark also has a custodial contract at MTSU.

Source: Tennessee Board of Regents; comptroller of the treasury, state of Tennessee.

In an April 18, 2004 article the Star Telegram, reported parents and administrators in the Texas Keller school district's frustrations with Aramark. Here are some excerpts.

## MAINTENANCE MATTERS

### Keller schools trustee dissatisfied with Aramark ServiceMaster

By Darren Barbee  
*Star-Telegram* Staff Writer

KELLER - Frustration over repairs at some Keller district schools has Trustee David Farmer and some parents questioning whether Aramark ServiceMaster should be managing district maintenance.

Farmer recently toured Parkview Elementary School in north Fort Worth and found faucets that didn't work, a water fountain casing with an unsafe metal edge and cleaning chemicals labeled "Keep Out of Reach of Children" stored in a boys restroom, he said.

Kristin Mercado, the PTA president at Parkview Elementary School said she is more concerned about dirty air filters that apparently had not been replaced in several months. She said some children had reported headaches after being in certain classrooms. The filters have since been changed, she said.

The Aramark ServiceMaster contract cost the taxpayers in the Keller school district \$1,208,000.

# State can spoil a good meal

By Brad Bumsted  
Capitol reporter  
Monday, March 22, 2004

I've yet to run into any people who like the food at the state Capitol Cafeteria under a new service provider.

Wait, I'm wrong. There's Frank Kane, the press secretary for the Department of General Services, the agency that oversees the cafeteria and other Capitol facilities. Kane, who works for the Rendell administration, likes it.

## He gets paid to say that.

As Pittsburghers, why should you care what state employees and other guests eat at the **state Capitol Cafeteria**? I'm not sure, except that it might be of interest that **the contract was recently lifted from a West Newton, Westmoreland County, company, hired under former Republican Gov. Tom Ridge, and awarded to a Philadelphia food giant by the Department of General Services under Democratic Gov. Ed Rendell.**

**The service is now provided by Aramark, the company for whom a tower in Center City Philadelphia is named, the same city where Rendell served as mayor for eight years.**

**It might be noteworthy that DGS' new partnership came less than one month after Aramark decided to keep its headquarters in Center City, Philadelphia. The Philadelphia Inquirer, quoting sources, said Rendell and Philadelphia Mayor John Street in the end "got personally involved in persuading Aramark to stay in Center City." That occurred on Dec. 16.**

The agreement for the cafeteria was announced Jan. 14.

It's hard to believe that Aramark didn't have a friend in Harrisburg. Or maybe it's just a coincidence.

Right.

The contract is expected to generate about \$2 million in sales. The state gets a cut.

If you've eaten at PNC Park or Heinz Field you know Aramark. They sell food there as well as at stadiums and convention centers across the nation.

Two Democratic legislators recently complained to the Rendell administration that food served at the state Capitol cafeteria under Aramark is worse. It's more expensive and there's less selection than Nutrition Inc., they said.

The lawmakers were Rep. Tony DeLuca, D-Penn Hills and Rep. Ted Harhai, D-Monessen.

"We have heard from countless Capitol employees of their dissatisfaction with the new cafeteria operator," DeLuca and Harhai said in a letter to Rendell.

"Since Aramark has taken over in the cafeteria, the food selection has markedly decreased, the quality of offerings has fallen off, and the prices have increased," the lawmakers said. You can't blame Harhai for trying, given that Nutrition Inc. is in his district.

At current levels of service, the crowds will dwindle - more people will go out to restaurants - and the state won't make as much money, DeLuca contends.

Kane says he's heard "glowing" reviews of the Cafeteria food. There have only been minor, infrequent complaints, according to Kane.

Kane said he didn't know if Aramark was the lowest bidder among seven companies responding, but he says they had the lowest prices for consumers. Nutrition Inc's prices had gone up in its proposal, according to Kane.

Aramark must do something right when you look at its impressive list of clients. In 2000, Aramark was named one of America's most admired companies by Fortune Magazine.

So what's wrong here? Is it local management? Isn't DGS riding herd on the service provider? Is this too small of a blip on the radar screen for Aramark's big operations? I'm not sure.

One thing is for sure. Rendell knows about the food situation first hand. Unlike most governors, he has been a frequent visitor over the past year to the Capitol Cafeteria.

You'd think a governor well-known for appreciating a good meal and anything else that comes near his plate would demand a higher caliber of food for other state employees.

**Brad Bumsted covers Harrisburg for  
Tribune-Review Media Services.**



Attachments 5 - 9

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Media Coverage of Maximus, Inc.

(A29)

## City Signs Contract to Track Special Education Data

By ELISSA GOOTMAN

The New York City Department of Education, long criticized for a haphazard approach to special education, has signed a \$55 million contract with a Virginia company to overhaul the way it tracks information about 190,000 students with disabilities.

Advocates say that the new system is desperately needed, and that it will replace an antiquated computer system, which is supplemented by reams of paper documents. The combination, they say, too often results in children being denied services they need and are required by law to receive.

"We know that these problems are in terms of deprivation of what we don't know exactly how

widespread they are and where they occur," said Kim Sweet, the executive director of Advocates for Children, which monitors the school system and has sued it on behalf of students with disabilities. "Whenever advocates or researchers ask for data to assess how the Department of Education is doing in terms of compliance with special education law, the D.O.E. will say, 'Well, we'll give you our data, but we can't rely on it because it's not accurate.' And that's a major problem in terms of accountability."

The contract with the company, Maximus, is for five years. The Education Department estimated that, in addition, it would spend \$23 million over the next five years on related costs, including training and equipment.

The contract, signed Jan. 5 and

**A five-year program will cost \$55 million, with \$23 million in related expenses.**

expected to be publicly announced on Wednesday, comes as parents and principals throughout the city are bracing for cuts of up to \$1.5 billion in the department's \$20 billion budget next year.

Leomie Hamson, executive director of Class Size Matters, an advocacy group that has been critical of the school system's \$50 million project for tracking information like test scores, says she believes that "more attention and better record-keeping are absolutely necessary to ensure that special education students get the services that they need."

But, she added, "I would want to make sure that the data is accurate, because in the past the data has been severely flawed that they've entered into these massive systems."

Ms. Hamson said there should also be "really strict oversight and the ability of parents to access the information for their

it's not arbitrarily changed by people at D.O.E. without their knowledge."

Maximus, a company with more than 6,000 employees that does consulting and provides services to government agencies, ran into some controversy in a previous venture with New York City.

During the Giuliani administration, the city comptroller tried to block the company from receiving welfare-to-work contracts, arguing that the company had improperly used connections with city officials. After City Council hearings and lawsuits, the contracts went forward, but

the Bloomberg administration did not renew them.

In a separate case unrelated to New York City, Maximus agreed in 2007 to pay the federal government \$30.5 million to settle an investigation into its work preparing Medicaid claims on behalf of the District of Columbia.

Education Department officials said they had included a provision in the special education contract that would prevent employees involved in the Medicaid case from working on the city contract. They expressed confidence in the company, which was selected after the city issued a request for proposals a year ago.

"This is something that people have been asking for for a very long time," said Linda Wernikoff, the Education Department official in charge of special education.

Referring to individualized Education Programs, the federally mandated documents that outline which services special education students need, she said: "If you develop an I.E.P. online and that child is in the system, he can't fall between the cracks, he's right there." When the I.E.P.'s are on paper, and someone has to enter the data in a computer program, she said, "there's a lot of

who attend city public schools, the Maximus system will be used to track 23,084 others — mostly New York City residents — who attend private or parochial schools but receive services like physical and occupational therapy through the department. Ms. Wernikoff said she expected that a small group of about 30 schools would be able to use the system by fall, and that the entire system would be up and running by the spring of 2011.

While Ms. Sweet, of Advocates for Children, welcomed the new system, she said, "Absolutely, this should have been done sooner."

## Former City Council member Eva Moskowitz makin' a bundle at nonprofit schools

Friday, February 27th 2009.

Eva Moskowitz, the former City Council member who founded a small chain of nonprofit charter schools, is a passionate and ahrasive champion of the charter school movement.

She's also making a bundle.

Moskowitz, who makes no secret of her desire to create 40 charter schools across the city and run for mayor some day, raked in \$371,000 in salaries in the 2006-2007 school year from organizations connected to her four schools. tax records show.

Those schools, Harlem Success Academy 1, 2, 3 and 4, have an enrollment of about 1.000 pupils, from kindergarten to third grade.

The nonprofit organizations connected to the schools have yet to file more recent tax returns. but Moskowitz said in an interview late Thursday she received \$310,000 last year - the 2007-2008 year - \$250,000 in salary and \$60,000 in a bonus.

That means Moskowitz, who is responsible for four schools, makes more than Chancellor Joel Klein. who gets \$250,000 to run 1.400 schools.

In 2006-2007, she even surpassed John Ryan, the former chancellor of the State University of New York, who earned 5340,000 to manage some 70 campuses with nearly 300,000 students.

Needless to say, she left your run-of-the-mill public school principal, with an average annual salary of \$124,000, in the dust.

Tax records show in her first year of operation Moskowitz made \$85,000 as executive director of Harlem Success Academy, the group that receives DOE money to operate the charter schools.

At the same time, she received \$186,000 as chief executive officer of the Success Charter Network, a separate nonprofit that provides "management services" to her schools.

Finally, she received \$100,000 as an "independent contractor" for Friends of Gotham Charter School, which provides support finances for Harlem Success.

All three organizations share an address and list as officers Joel Greenblatt and John Petry, the millionaire hedge fund managers who bankrolled the Success Charter Network.

Moskowitz said her unusually high pay for 2006-2007, included compensation for months of planning work from the previous year.

"Yes, I earn a good living," Moskowitz said. "I also have an enormous responsibility to try and design 40 schools that are immensely successful. If your child walks into my school, I treat them like my child."

Charter schools are free to use the money they raise from outside sources any way they see fit - even if that means huge salaries for the chief executive.

Given that Moskowitz routinely complains that the Department of Education has failed to provide a fair share of funding for her students, it's fair to ask why she's paying herself so much for educating so few. Charters get about 90 % of what it costs to teach each child and raise funds for additional money.

Parents from Moskowitz's schools vehemently defend the Harlem Success Academy and say their kids are making phenomenal progress. That could very well be true, but the DOE has not posted independent test results for any of the Moskowitz schools.

Her critics, who include educators, parents, the teachers' union and Harlem political leaders, say she is a relentless self-promoter.

They say she is not shy about packing public meetings with a parent group she has organized, and then demanding that other public schools give up their space to make way for her programs.

"We had one meeting in East Harlem last year where she bused in her [students'] parents, and the situation get ugly and tense as they kept demanding space in our school," said one East Harlem community leader.

This week, more than 500 parents from the Harlem Success Academy were bused to a hearing at Public School 241 in West Harlem, a school the DOE wants to phase out and turn over to Moskowitz.

"We're unwilling to accept failure," Moskowitz said. "PS 241 has failed for years on end, and it needs to change."

Parents who send their children to 241, along with the local Community Education Council, say the DOE is violating the law by eliminating a zoned public school and replacing it with a charter.

**jgonzalez@nydailynews.com**

Thank you for inviting me to speak at this committee hearing on the Department of Education contracts. My name is Henry Garrido and I am the Assistant Associate Director of DC 37. I am here on behalf of our Executive Director, Lillian Roberts, who could not be here today due to a scheduling conflict. District Council 37 represents 125,000 employees and 80,000 retirees.

Contracting out not only erode wages, but we believe many of the contractors are violating Prevailing Wage laws and Living Wage laws, and at a time when thousand of New Yorkers are being laid off from jobs ranging from custodian workers to computer programmers that DOE is contracting out services at a higher cost then if they hired permanent civil servants. The issue of contracting out work normally performed by our members or members of other unions is one that needs to be brought out into the open. Our latest Whitepaper deals with examples of contracting out that fails to save any money and also puts the City at risk by placing unqualified people in our schools.

Let's look at the issues of accountability, transparency, and security. The Office of Special Investigation for New York City has uncovered many disturbing activities related to contractors. In one investigation involving Goodwill Temps there was widespread fraud in the medical records provided to a sole source contractor providing disabled workers to DOE. It was also revealed that over 600 consultants hired from Goodwill did not have background or fingerprint checks. Most of the temps hired also were never tested for skills and no reference check was performed. When a person is hire through the merit and fitness of the civil service system they are thoroughly checked out by DCAS. A full background check is performed with fingerprints sent to the FBI. Civil Servants handle sensitive information concerning people's medical history, social security numbers, and private financial information. Furthermore when it comes to the Department of Education the people hire are working with the most precious asset of this City, our children. The vetting process for a new hire in New York City is quite through. The same cannot be said of many of the contractors who the Department of Education pays to do background checks.

Lack of oversight is also a major problem with contractors. Another investigation involving a Temp Force employee revealed fraudulent overtime claims filed to the tune of \$50,000. The employee claimed to have work on Saturdays and extra time during the week and then forge the signature of his supervisor. Again none of that could happen with permanent city employees since overtime is capped and excess overtime claims would have raised a red flag and triggered an internal investigation of the matter.

The lack of cost control and use of subcontractors was also uncovered by the Special Investigator. DynTek Incorporated is one of the larger contractors with the City having over \$28 million contracts in 30 city agencies. Yet one investigation revealed that three separate subcontractors overbilled the City for over \$700,000. In these cases subcontractors were paid \$80 to \$90 per hour and billed the Department of Education between \$112 and \$160 per hour. Contract employees were encouraged to form their own companies in order to become subcontractors to DynTek and gain tax write-offs in

the process. It should be noted that it is illegal at the Department of Education for contractors to hire subcontractors.

Our Union believes that reform of the Procurement Process is needed to bring about more transparency, accountability, cost savings, and a sense that the public is getting its money worth from the thousands of contracts being let every year. When \$9 billion dollars is spent every year on various personnel contracts the taxpayer of New York as well as State and the rest of the country since some of the funding are state and federal funds being spent, some transparency is needed. No one can fully tell us how many workers are under contract, where they work, what they are doing and how is this benefit to the City. Ask any agency for a detail listing of contract employees and how many hours they work and most cannot give you even the most rudimentary information. Billions of dollars being spent and the City Council and the tax payers have no idea if their money is being well spent or wasted. Meanwhile every permanent employee is accounted for and their work is measured in the Mayor's Management Report. Any City employee fired for criminal activity, corruption, or incompetence are noted and accounted for in some public document. Not the same can be said of contract employees who are quietly dismissed or worst transferred to hide their misdeeds. No one in any agency really knows if the contract employee or consultant is properly vetted or reviewed. A total lack of transparency leads to other problems. If civil lawsuits are filed on misdeeds of a contractor ultimately the City is responsible.

We are calling for the City Council to start looking into reforming the procurement process to bring about fairness, transparency, accountability and to make sure the taxpayers are getting their money worth.



Council of School Supervisors & Administrators, New York City

New York State Federation of School Administrators  
Local 1 American Federation of School Administrators, AFL-CIO

READ INTO  
RECORD

## MEMORANDUM OF SUPPORT

New York City Council

Resolution No. 1831 (Katz, Avella, Comrie, Fidler, James,  
Stewart, Weprin, Palma, Gerson, Martinez and Nelson)

April 1st, 2009

President  
**Ernest A. Logan**

Executive Vice President  
**Peter J. McNally**

First Vice President  
**Randi Herman, Ed.D.**

Secretary  
**Mark Cannizzaro**

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Executive Director Operations  
**Anita Gomez-Palacio**

Executive Director Field Services  
**Audrey Fuentes**

The *Council of School Supervisors & Administrators (CSA)* supports Resolution 1831, calling upon the State Legislature to require the Department of Education to adhere to the standards typically followed by other City agencies, as specified in the procurement provisions of the City Charter, when awarding contracts, concessions and franchises.

The implementation of this resolution will increase transparency and accountability in the Department of Education's budget. The current unregulated contracting process enables wasteful and inefficient spending. During this time of economic hardship, when school budgets are facing unprecedented cuts, we must ensure that every taxpayer dollar is accounted for, and spent in the best interest of improving the education of our children.

CSA strongly encourages the New York State Legislature to pass legislation that is based on New York City Council Resolution 1831.

*CSA is local 1 of AFSA, the American Federation of School Administrators, a unit of the AFL-CIO. CSA is also part of NYSFSA, the New York State Federation of School Administrators. CSA represents nearly 6,000 Principals, Assistant Principals, Supervisors, Education Administrators, Day Care Directors and Assistant Directors, as well as 9,000 retirees and spouses.*

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**Department of  
Education**

Joel I. Klein  
Chancellor

52 Chambers Street  
New York, NY 10007

**Testimony of Photeine Anagnostopoulos, Chief Operating  
Officer**

**New York City Council  
Committees on Education and Contracts**

**Department of Education's Contracting Process  
April 1, 2009**



Good afternoon Chair Jackson, Chair James, and members of the Education and Contracts Committees. My name is Photo Anagnostopoulos, Chief Operating Officer of the New York City Department of Education. I am joined by my colleagues David Ross, Executive Director of Contracts and Purchasing, and Michael Best, our General Counsel. We are here today to discuss the Department's contracting processes.

External providers are critical to supplying our schools and departments with the services and materials needed to facilitate our students' learning. This includes contracts for supplies that go directly into classrooms such as textbooks, pencils, furniture and computers. It also means contracts for services such as professional development for teachers and principals and for support programs for students such as our Learn to Work internships and special education services. And then we have contracts that are essential to school operations -- such as bus contracts to provide transportation to get students to and from school, and food contracts to provide meals to students. In addition, we have contracts with a variety of vendors that provide other important programs and services such as Universal Pre-Kindergarten and tutoring for struggling students.

Of the Department's overall budget of \$21 billion, we spend over 3 billion dollars on goods and services contracts annually. Of that, we spend nearly a billion dollars on transportation and about 600 million dollars on contract schools for special education. We spend about \$440 million on professional services that go directly to students, also mostly for special education services. About \$230 million goes to supplies and materials, \$220 million for books, and \$150 million for food. About 1,500 vendors currently provide goods and/or services to the Department.

Vital to the workings of our classrooms and the functioning of our districts' operations, procurement must be done effectively and efficiently. It is the responsibility of the central procurement department to ensure as best as

possible that goods and services are delivered on a timely basis in a high quality manner. Our Division of Contracts and Purchasing (DCP), supported by our Legal and Finance teams, has established and maintained bidding and contracting procedures that garner the optimal combination of price and quality. The DCP has established processes that decrease the administrative burden on principals and offices while providing safeguards to ensure proper utilization of public funds and resources. We will discuss each of these points below.

Since the Department last testified on this topic before you, there have been a number of significant changes that impact on the procurement process. Grounded in the belief that schools can best determine what meets the learning needs of their students, all principals are now empowered to make a broad range of decisions that were previously determined centrally. The empowerment of schools represents a major shift in how schools operate, affording principals greater discretion in allocating their budgeted dollars between resources, determining what to purchase and making other decisions that affect their school's ability to perform. Our procurement procedures must take account of the fact that we have 1,500 public schools, each of which acts as a purchasing agent. We will describe later how this impacts the purchasing and contracting processes.

As a public school district, we must ensure that we use our public funds wisely and maintain purchasing procedures that are open, competitive and fair while allowing for our offices and schools to contract with the organizations that best meet our needs in terms of price, functionality, service and quality. We must provide information in a transparent manner that is readily accessible to the public. In establishing our procedures and reports, we are guided by the same basic principles that underlay the City's Procurement Rules

In fact, our rules and practices are notably similar to those City agencies follow. Competitive Requests for Proposals (commonly known as RFPs) and Requests

for Bids (commonly known as RFBs or “lowest bid”) are easily our most frequently used procurement methods, and our approach to conducting these is quite similar to the approach used by City agencies operating under the PPB rules. We advertise in the City Record, we maintain lists of open procurements on our website, we send invitations to bid or propose to vendors on our bid lists, and we often affirmatively reach out to the vendor community in the interest of encouraging competition. We then hold pre-bid or pre-proposal conferences and then we publish our responses to vendor questions. We open bids publicly, we have evaluation committees evaluate proposals, and we make our awards public. Each of these steps helps ensure that the process is competitive and results in the best price for the best quality of services to our schools and to the district.

We participate in the City’s Vendex system and we have dedicated resources to expanding the depth of background checks performed on vendors who stand to receive our contracts, rooting out vendors not worthy of serving our kids or receiving our money. We send contracts valued in excess of \$25,000 to the Comptroller for registration, we send contracts over \$5 million to the City’s Office of Management and Budget for its review.

Reflecting the fact that each of our 1500 schools is a purchasing site of its own, we have developed another set of procurement practices that allows for decentralized purchasing. These procedures must minimize the time and effort it takes schools to complete their purchases while ensuring that our schools’ dollars are spent wisely and are accounted for completely. To meet these requirements, we initiated the use of pre-qualification solicitations—or PQS—to procure professional services. PQS is a competitive process that offers schools more options, more meaningful competition, and greater fairness than existed before.

Before we established the PQS process, the Department would have awarded dozens of professional services contracts through a single RFP and schools

would choose any one of the listed vendors without any expectation that they even consider alternatives. Awarded vendors would hold contracts for up to five years while others were out of reach until a new contract would be awarded. Notably, we observed that often half or more of the vendors holding these contracts were never even used. Recognizing that the committees reviewing responses to these RFPs were really just qualifying vendors and that the selection of a specific vendor was, as it should be, made at the school level, we strategically altered the process. Vendors respond to a PQS in much the same way as they did to an RFP, and the evaluation of their proposals is conducted similarly as well, but now schools that spend over \$25,000 through these contracts must consider at least three proposals from the pre-qualified list of vendors. We built an on-line utility that makes it easy for schools to work their way through this process and the same system documents their efforts. In so doing, we've created a competitive process where before there was arguably no meaningful competition, and we have also increased options for schools.

So far, we've completed 12 PQS processes. The results include the award of 133 Arts Education Services contracts, 128 Student Support Services contracts, and 43 Contracts to Promote Safe and Supportive Schools. So far, we have awarded 464 contracts through the PQS contract process, and more are on the way.

Recognizing that the nature of the school system and the time constraints of the school year sometimes require us to move more quickly than a typical RFP process allows, we recently created a new competitive process known as expedited competitive solicitation, or ECS. This procurement method allows us to conduct a competitive procurement in circumstances where we do not have time to do an RFP. In the ECS process, we begin by publicly advertising the procurement in the City Record for seven days, and we also identify known vendors and companies who may be capable of doing the work and seek proposals from them. The goal is to create a competitive field of proposers that

the Department can select from in a short period of time. Proposals are evaluated by an Evaluation Committee, and once a vendor is selected the contract is processed in the same way as any other contract.

We also make use of both City and New York State Office of General Services Contracts whenever we're confident that the value offered through those contracts is at least on par with what we could achieve on our own.

A variety of changes and new initiatives have transformed contracting at the Department of Education, enabling us to offer greater value, more transparency and improved controls. We were the first to participate in the City's efforts to migrate to a new financial management system (FMS3) and continue to work toward the integration of our financial systems with the City's. We issue purchase orders, accept invoices and make payments electronically, the latter in coordination with the City's Department of Finance. These initiatives also support the City's environmental goals by reducing the use of paper. We built a catalogue management tool so that the schools' buying experience resembles what we have all grown accustomed to with Amazon and other web based systems. Similarly, we built a portal that, among other things, provides vendors with a one stop tool for finding contracting opportunities, accessing bid documents and updating company information, increasing competition by increasing the number of potential bidders.

We have enabled the schools to save millions of dollars by strategically leveraging our buying power to get better pricing on a wide range of commodities. In the past year alone, we have conducted new procurements that will enable us to save our schools millions of dollars through lower prices without sacrificing their ability to access a wide range of choices. We estimate savings that will be achieved through our new trade book contracts to be in excess of \$17 million annually. A recently conducted audio visual contract is expected to save over \$6 million annually.

Sensitive to the needs of our internal clients, and particularly the schools, as well as the vendors we partner with, we maintain dedicated customer service lines for both. Schools and internal clients call our "Client Services" line and vendors call our "Vendor Hotline." Client Services received over 16,000 calls last year and the vendor hotline fielded over 3,500 calls. We track calls coming into both and offer an email option as well, all to assure that our clients and vendors get the information they need promptly. Of course, we also maintain information about our procurement process, and how to become a vendor on our website.

We know that there has been discussion about the transparency of our procurement processes and also about our use of exceptions to competitive solicitation. Transparency and competition in procurement are important values for us, so let me take a few moments to address the concerns we have heard.

The Department continues to seek ways to become more transparent in our contracting processes. We have taken several steps in the last few years to make information available to the public and also to support vendors. I've already mentioned that we advertise, so let me offer a few specifics: Our requests for bids over \$15,000 and our services procurements over \$100,000 are advertised in the City Record for a minimum of 7 days before the due date, and the typical announcement runs for 14 days. We also use our website and typically post there for 20 days before the due date and our pre-qualified solicitations remain open and can be viewed on our website on an ongoing basis. Finally, the results or awards that come out of our procurements are also published on our website.

There have been several questions about the exceptions contracts, or contracts not put out for competitive solicitation, that have been granted for professional services. Exceptions contracts actually represent a very small fraction of the

Department's budget, approximately 1% of what we do in contracts and less than 2/10ths of 1% of our total budget.

All exceptions contracts in excess of \$100,000 are approved by the DOE's Committee on Contracts, which was first established under Chancellor Crew in 1997. While we have adhered to this process under Chancellor Klein, we have also worked to improve its transparency. The Committee on Contracts is composed of representatives from several DOE departments, including the Legal Office, the Division of Contracts and Purchasing, and the DOE's Auditor General. The Committee reviews and advises the Chancellor on all non-competitive professional service procurements in excess of \$100,000. The Committee's agenda items—meaning the procurements they are going to consider—are publicly noticed in the City Record for at least a week before the Committee meets, and all procurements the Committee will consider are also posted on the Department's website for a minimum of 7 days prior to the meeting. The results of the Committee's meetings are posted as well.

This process has helped us to keep the number of non-competitive procurements in check. In fiscal year 2008, the Committee approved 87 exceptions contracts, of which 68 were Pre-Kindergarten contracts. It is also worth pointing out that in fiscal year 2008, 85% of the dollar value of the DOE's exceptions contracts were for UPK contracts, extensions of contracts that had originally been awarded competitively, and contracts resulting from legal mandates. And no exceptions contract awarded during fiscal year 2008 had a total value of over \$5 million, even including all the years of multiple-year contracts. As of the middle of this school year, the Committee had approved only 24 exceptions contracts, of which 13 are for Pre-K. Again, these are a small fraction of our procurements and, of course, an even smaller fraction of the Department's \$21 billion budget.

Before closing, I want to talk to you about a procurement we're working on right now. I raise it because the approach we're taking highlights the complexities of

our environment and how a thoughtful and strategic approach to procurement practices can have a meaningful impact on our schools. Currently, we have a single contract that covers all manner of computer hardware purchases as well as the servicing of that equipment. It's a "one size fits all" contract, in that all of our schools are required to use the same service provider and the same level of services. Many schools complained, however, that they were paying too much, and we realized that they were paying for maintenance services they did not necessarily need but that were baked into the price of the equipment they purchased.

We're now approaching the finish line with two procurements that will ultimately result in contract awards to replace the current single contract. First, we're buying computer hardware in concert with the State's Office of General Services. By leveraging our buying power with the States, and by taking maintenance out of the price we pay for equipment, we'll be able to offer schools much lower prices than they see today. Second, instead of imposing a one size fits all support contract on all schools, we're offering schools a choice of service options so they can decide what level of services is in the best interests of their own schools. Finally, to foster even more competition and to offer more choices, we will be offering each school the ability to choose between one of two selected providers.

I can't share specifics like new prices, vendors and the like because these procurements have not been completed, but I can say that we've seen robust competition and all indications are that our schools will see attractive prices and options next year.

I think it's noteworthy that the only clients that will **not** have choices coming out of this procurement are our central offices. We believe it is reasonable to have our central procurement office, and in this case our Technology Division, make decisions on behalf of the Department's administrative offices. Our schools,



however, need the flexibility to address their individual needs, and our rules and practices reflect that need.

The Department is committed to greater transparency and efficiency in our contracting processes. We are also committed to maintaining the flexibility needed to ensure the smooth and effective operation of schools across the system while providing the accountability needed to ensure the proper use of public funds. We believe we have made good strides, and are happy to hear feedback from you and the public on ways we can improve. Changes in the DOE contracting process are not an academic exercise, because through the provision of goods and services to the schools, procurement procedures directly impact the learning environment of our students. Thank you for the opportunity to testify, and we are happy to answer your questions.



Council of School Supervisors & Administrators, New York City

New York State Federation of School Administrators  
Local 1 American Federation of School Administrators, AFL-CIO

## MEMORANDUM OF SUPPORT

New York City Council

Resolution No. 1831 (Katz, Avella, Comrie, Fidler, James,  
Stewart, Weprin, Palma, Gerson, Martinez and Nelson)

April 1st, 2009

President  
**Ernest A. Logan**

Executive Vice President  
**Peter J. McNally**

First Vice President  
**Randi Herman, Ed.D.**

Secretary  
**Mark Cannizzaro**

Treasurer  
**Laverne Burrowes**

Vice Presidents  
**Alexander Castillo**  
**Robert Kazanowitz**  
**Richard Oppenheimer**  
**Nilda J. Rivera**  
**Nancy Russo**

Executive Director Operations  
**Anita Gomez-Palacio**

Executive Director Field Services  
**Audrey Fuentes**

The *Council of School Supervisors & Administrators (CSA)* supports Resolution 1831, calling upon the State Legislature to require the Department of Education to adhere to the standards typically followed by other City agencies, as specified in the procurement provisions of the City Charter, when awarding contracts, concessions and franchises.

The implementation of this resolution will increase transparency and accountability in the Department of Education's budget. The current unregulated contracting process enables wasteful and inefficient spending. During this time of economic hardship, when school budgets are facing unprecedented cuts, we must ensure that every taxpayer dollar is accounted for, and spent in the best interest of improving the education of our children.

CSA strongly encourages the New York State Legislature to pass legislation that is based on New York City Council Resolution 1831.

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[www.csa-nyc.org](http://www.csa-nyc.org)

*CSA is local 1 of AFSA, the American Federation of School Administrators, a unit of the AFL-CIO. CSA is also part of NYSFSA, the New York State Federation of School Administrators. CSA represents nearly 6,000 Principals, Assistant Principals, Supervisors, Education Administrators, Day Care Directors and Assistant Directors, as well as 9,000 retirees and spouses.*



**OFFICE OF THE NEW YORK CITY COMPTROLLER**

**TESTIMONY BY**

**WILLIAM C. THOMPSON, Jr.**

**NEW YORK CITY COMPTROLLER**

**Before the  
New York City Council's Education and Contracts Committees**

**New York City Council  
250 Broadway, 16<sup>th</sup> Floor Hearing Room  
New York, NY**

**April 1, 2009  
1 PM**

**Testimony of William C. Thompson, Jr.**

Chairpersons Jackson and James, private members and observers, and members of the City Council's Education and Contracts committees, good afternoon. I want to thank you for holding this hearing and inviting me to discuss the New York City Department of Education's contracting process.

As many of you know, I have consistently spoken out and used the tools of my office to work to improve the Department's persistent lack of transparency.

This is a subject of great concern to me, not only as a New Yorker, but because—among my many duties as Comptroller and the City's Chief Financial Officer—I am responsible for promoting transparency and accountability in the fiscal management of our City.

My office also enforces many of the regulations designed to ensure fair and open competition through my audits of City agencies and my office's role in registering City Contracts.

For almost eight years now during my tenure as New York City Comptroller, I have time and again strongly criticized the use of no-bid contracts and improprieties at the DOE.

In 2001, the Department had a total of 38 no-bid contracts, valued at nearly \$15 million. However, by the end of 2002, after the Board of Ed was transformed into the Department of Education, the number of those contracts doubled to 76, with a total value of over \$47 million. In the next year, the number of no-bid contracts expanded to 94, with a total value of nearly \$45 million.

Currently, the total cost of non-competitively-bid contracts doled out by the Department since Mayor Bloomberg took office is a staggering \$300 million.

The Department of Education's resistance to ending no-bid contracts and improving transparency and public accountability is this: the Department continues to follow no formal rules when purchasing goods and services, in direct contrast to the stringent requirements imposed on other New York City and New York State agencies.

Despite pressure from my office, good government groups, and concerned citizens, the DOE refuses to adopt a set of formal procurement rules similar to those followed by every other City agency.

This is neither good government nor good public policy.

One particularly alarming consequence of DOE's nontransparent operations was its ultimately failed contract with Snapple Beverage Group. As many of you know, my office filed a lawsuit to block this \$126 million boondoggle. Notably, as a result of this lawsuit, the New York State Court of Appeals found that marketing contracts must now be submitted to the City's Franchise and Concession Review Committee. As many of you may also know, the City Administration

recently terminated its contract with Snapple before it was set to expire due to abysmal performance.

Today, in anticipation of this hearing and in an attempt to shine a bright light on the lack of transparency in the Department's operations—which, at \$20 billion, accounts for nearly one-third of the total City budget—my office has conducted an investigation of purchases made against DOE requirement contracts. We released the results of this effort in a letter to schools Chancellor Joel Klein earlier today.

In the letter, I informed Chancellor Klein that, on average, one out of every five DOE contracts ending in fiscal years 2007 and 2008 exceeded its maximum contract amount by 25 percent or more. In fiscal year 2009, 27 percent of DOE's requirement contracts have already exceeded that percentage and there are still three months remaining before the close of this fiscal year.

As a result, taxpayer money continues to be squandered through an opaque process that does not take advantage of the competitive marketplace.

This is unacceptable.

Of even greater concern, however, is that the Department's purchases exceed contract amounts by such huge margins that it raises fundamental questions about the integrity of DOE's entire contracting process.

I have submitted a complete summary of our findings for your review, and I would like to now briefly highlight some of the more disturbing examples uncovered during the course of the investigation.

In one case, the Department contracted to lease copiers from the Xerox Corporation for an estimated \$1 million. My office, however, found that the final cost for this service to city taxpayers ballooned to over \$67 million—a more than 6,700 percent increase.

Similarly, the Department contracted with Ideal Restaurant Supply to purchase cafeteria equipment for \$15,418. But after all was said and done, DOE had spent over \$850,000 for this service—a more than 5,500 percent increase.

Finally, there is the case of the Department's contract with Meizner, Inc. to buy micro-computer software. This contract was to cost no more than \$135,000. Instead, it ended up costing taxpayers over \$5.5 million.

These are just three of the most outrageous examples of the Department's mismanagement.

Overall, in fiscal years 2007 and 2008 combined, the DOE issued 372 requirement contracts, totaling approximately \$325 million, which exceeded their contract amounts by 25 percent or

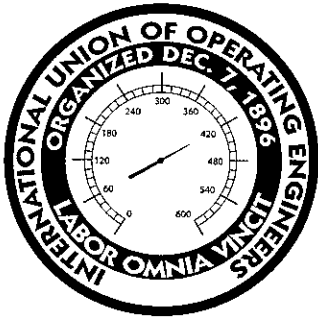
more. Incredibly, the DOE expenditures for these contracts ultimately amounted to more than \$1 billion.

In addition, 127 companies obtained requirement contracts from the Department with little or no competition. While those 127 contracts totaled almost \$196 million, the DOE actually spent more than \$525 million. One of these contracts amounted to a little over \$78,000, but the contractor was paid in excess of \$1 million.

The Department's failure to accurately project its expenditures prevents it from negotiating the best prices for goods and services, and wastes taxpayer money. It also provides an inaccurate picture of the Department's planned and actual expenditures to the public.

As I have insisted many times, the Department of Education must establish a transparent procurement process and demonstrate that it will spend the public's money responsibly. At the very least, the Department's contracting process should be subject to City Charter procurement rules, so that it is consistent with the contracting process of every other City agency.

Thank you.



## Local 891 International Union of Operating Engineers

**ROBERT J. TROELLER**  
Business Manager/President

### TESTIMONY APRIL 1, 2009 - NEW YORK CITY COUNCIL EDUCATION AND CONTRACT COMMITTEE HEARING

Good morning. My name is Robert Troeller. As Business Manager and President of Local 891, International Union of Operating Engineers, I represent the 950 Public School Custodian Engineers who are responsible for making sure school children in New York City can learn in the safest and cleanest environment. Custodial budget cuts over the past several years have resulted in manpower losses equivalent to over 1000 full-time custodial worker positions. It has become increasingly more difficult for my members to perform their job in an adequate manner. I'm here today to discuss mayoral control and the negative effects it has had on the safety and cleanliness of our schools. I also want to express my union's support for Res. No. 1831.

Shortly after the passage of the law which granted mayoral control of the New York City school system, Chancellor Klein developed and attempted to implement a plan to outsource custodial services. In response to his initiative, this Council held oversight hearings to examine his scheme. In 2004, the result of the Council's investigation and hearings was the passage of a Resolution (Res. 37a 2004). That Council Resolution called for a complete end to the outsourcing of school custodial services. The hearings exposed the many flaws in the procurement and contracting process used by the Department of Education. I am happy to report that due to the pressure brought about by those hearings, the objections of parents, the press and elected officials, the Department of Education abandoned that particular outsourcing effort.

During the same time period, the Chancellor issued a \$60 million dollar emergency no bid contract for custodial services. At that time, Local 891 brought the issue of this no bid contract to the attention of both the New York City and New York State Comptrollers. Due to flaws in the enactment of the Mayoral Control Legislation, both men claimed not to have oversight over the DoE's contracting process. Frustrated by a system with no oversight, my Local took the Chancellor and the DoE to court. The State Supreme Court declared that contract and the process by which it was entered into to be illegal. Under the judge's order the approximately 120 school buildings covered under the agreement were returned to the care of Civil Service Custodian Engineers. Those schools are still cared for under the civil service system today. Although there are fewer schools operated by private contracts than in the past, ANY is too many. Repeated studies of the NYC's public school custodial system have shown that Civil Service Custodian Engineers deliver superior service at a lower cost.

Hopefully, the DoE will soon be looking to enter into new agreements with vendors to supply the New York City School Custodian Engineers with supplies and equipment. The current extremely lucrative contract held by SDI has led to millions of dollars in waste. SDI has been granted a virtual monopoly. As an unnecessary middle man, they add an additional cost to every purchase Custodian Engineers make. The allocations my members receive are meant to provide labor only but Custodian Engineers utilize some of the money to supplement the supply allocations. The dollar amount they receive for supplies from the Department has remained unchanged since 1996. Our contract requires purchases be made through DoE approved sources. The Department of Education should accept competitive bids on custodial products and allow Custodian Engineers to purchase supplies from multiple vendors. Instead, they give a monopoly to one company and waste millions of taxpayers' dollars. Such waste is particularly unacceptable and offensive in these economic times.

I believe the Education Law must be amended. I have cited three examples of failed contracting procedures which are directly related to my members and custodial operations. One doesn't need to speculate too much to assume there are numerous examples of how the Department of Education squanders public funds. I have urged the State Legislature to amend the law so that an independent entity is given oversight of the Department of Education's procurement and contracting process. True oversight will never come from a Board that has a majority of its members appointed and serving at the will of the Mayor. Considering that the DoE spends more money than any other City agency, it's only reasonable that they should be required to follow all the procurement provisions outlined in the City Charter.



THE CITY OF NEW YORK  
INDEPENDENT BUDGET OFFICE  
110 WILLIAM STREET, 14th FLOOR  
NEW YORK, NEW YORK 10038

**Testimony of George Sweeting, Deputy Director, New York City Independent Budget Office, Before the Contracts and the Education Committees Regarding Contracting Practices of the Department of Education, April 1, 2009**

I am George Sweeting, Deputy Director of the New York City Independent Budget Office. I want to thank the Chairs and the Members of the two committees for the opportunity to appear before you today regarding contracting rules for the Department of Education.

Over a year ago, I appeared before a Council hearing on School Governance and Mayoral Control and described how the failure of the 2002 school governance legislation to clarify the department's standing under the procurement regulations that control contracting by other city agencies had left a gray area in the law that needed correction. We suggested that regardless of how the state legislature resolves the school governance question, it should fix the contracting loophole, along with several other budget process issues.

Those of you familiar with IBO procedures may be surprised to hear us making a specific recommendation on this matter. In general, IBO has chosen not to make policy recommendations in order to maintain our role as a source of objective and non-partisan analysis. Over the years we have made one exception and that is for recommendations on questions of budget process. We have supported proposals that improve budget transparency, public understanding, and greater accountability for how city resources are spent.

Since the mayoral control legislation was passed in 2002, most New Yorkers assume that the DOE functions like all other city agencies. However, aside from altering the make-up of the Board of Education and the process for appointing a Chancellor, the legislation made few other changes. The renamed Department of Education is still fundamentally a state entity and as such is not subject to provisions of the New York City Charter that govern procurement policy for city agencies. Specifically, the Procurement Policy Board (PPB), which is created in Section 311 of the Charter, is authorized to issue rules and regulations to be used when city departments procure goods and services. The PPB has exercised that authority to establish a regime of procurement rules which, among other things, largely prohibit sole source contracts for major purchases, requiring competitive bidding instead.

The PPB rules are intended to improve transparency, avoid excessive costs, and reduce the potential for favoritism that can result in the absence of competitive bidding. While agencies procuring goods may chafe under the strictures that the PPB imposes, it is



difficult to understand how those rules are considered useful when other city agencies procure goods and services, but unnecessary or too cumbersome for the DOE.

A change to state law clarifying that the DOE is indeed subject to PPB rules and to the full authority of the City Comptroller under the City Charter and existing laws in reviewing and registering contracts, would serve to improve transparency, accountability, and confidence in the DOE's procurements, and potentially save the city money.

Thank you and I would be glad to answer any questions you may have.

**TESTIMONY**  
**VERONICA MONTGOMERY-COSTA**  
**PRESIDENT, LOCAL 372**  
**NEW YORK CITY BOARD OF EDUCATION EMPLOYEES**  
**AND**  
**DISTRICT COUNCIL 37**  
**AMERICAN FEDERATION OF STATE,**  
**COUNTY AND MUNICIPAL EMPLOYEES**  
**AFLCIO**

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**CITY COUNCIL EDUCATION COMMITTEE HEARING**  
**OVERSIGHT: DEPARTMENT OF EDUCATION CONTRACTS**

**TESTIMONY SUBMITTED BY**

**VERONICA MONTGOMERY-COSTA**  
**PRESIDENT - LOCAL 372 AND DC 37, AFSCME, AFL-CIO**

**APRIL 1, 2009**

Chairman Jackson and Committee Members:

Local 372 commends the City Council Education Committee for holding this oversight hearing regarding DOE contracts.

Local 372 further suggests that our City agencies, emulate what President Obama has done to establish transparency and accountability for federal spending of taxpayer money, by publishing on line all budgetary expenditures including all outside vender contracts on line for the public to examine. Since the Mayor's demolition of the Central Board of Education and the 32 Community School Boards, the practice of public review of school budgets is a thing of the past.

Local 372 testified before this committee in 2004 to shed light upon some of the more glaring abuses by vendors, the indefensible inadequacy of DOE contract oversight and the absence of accountability by the Mayor and Chancellor to anyone.

Once again, Local 372 strongly urges the City Council Education Committee to conduct a thorough investigation of DOE contract practices. We stand firm in our opposition to contracting out any services that could be done better and more economically by City workers.

Local 372 calls for an evaluation of the DOE's choice to contract out Food Services Distribution, when our Local 372 Loaders and Handlers have proven they can do the job better and more economically.

Local 372 also calls for an evaluation of the contracting out of the attendance program to the United Way, when Local 372 Family Paraprofessionals, have done it better and with more personal interest in the outcome for our students.

**The Five Most Important Reasons Food Services Distribution  
Should Be Done by Local 372 Loaders and Handlers**

**1. COST**

Continuing to employ Local 372 Loaders and Handlers would prevent having to call them in to rescue food deliveries, when outside contractors fail to keep up with the high demand of a feeding program second only in size to that of the United States Army.

Beginning in September 2004, Local 372 Loaders and Handlers were called in to fill the void created by the new contractors, working on weekends and holidays to ensure that our City's school children got the vital nutritional support to send them to their classrooms learning-ready. Chaos and lack of supplies forced OSFS (Office of School Food Services) to enter into 10-month emergency contracts with three new vendors, tremendously increasing the cost of the original contracts. To make matters worse, the DOE has since auctioned off the 13 City trucks that were sitting idle in a Long Island City warehouse, never considering that they might be needed for permanent or emergency needs.

**2. INTEGRITY OF FOOD**

Local 372 members insure a safer delivery of frozen and perishable commodities, since they routinely perform inspections of cartons before delivery to schools to ensure that the goods intended for our school children are in compliance with United States Department of Agriculture (USDA) recommended food safety regulations.

### **3. ACCOUNTABILITY**

Although required in the vendor contracts, the DOE has no mechanism in place to ensure that vendors have properly screened their employees to meet the City's fitness requirements with thorough background checks. It is vital that proper screening is used to protect our school children. Local 372 members, have been properly fingerprinted and approved for employment in the schools. If our members are arrested, the DOE receives immediate notification.

### **4. DEDICATION and RELIABILITY**

Local 372 Loaders and Handlers are used to working in the worst of conditions, in snow and sleet, facing icy winds. They do it for the school children. Following 9/11, they performed far beyond the call of duty, put their lives on the line and went into intense heat of Ground Zero to deliver fans, food, water, clothing and medical supplies. They walked over razor-sharp shards of metal and glass, with only paper face masks to protect them from the acrid smoke. No one had to tell them to do it. They did it for the rescue workers. They did it for New York.

Outside contractors don't have a sense of family with our City. The dedication and reliability of our Local 372 Loaders and Handlers is something money cannot buy.

### **5. END CONTRACT FRAUD**

In his February 4, 2004 report to Chancellor Klein, Special Commissioner Condon presented a detailed analysis charging that "... officials at the Office of School Food and Nutrition Services ("OSFNS") have failed to adequately exercise oversight of food purchasing procedures.

Commissioner Condon concluded that "...obvious weaknesses in the bidding procedures coupled with contract requirements that tended to favor one vendor were

ignored by the OSFNS for many years, allowing that vendor and others to reap profits far in excess of what they should have earned. These failures were exacerbated by officials at the Office of Purchasing Management (“OPM”), who also failed to protect the integrity of the bidding process despite mounting evidence that vendors were exploiting it.”

Commissioner Condon’s report also identified individuals from these offices who had engaged in misconduct by accepting gifts in excess of \$2,500 from individuals conducting business with OSFS (Office of School Food Services).

Condon’s Report also identified vendors with obvious past histories of fraud — some with prior convictions and jail time — that were awarded contracts with the DOE as well as other City agencies.

Vendors, who failed to meet contract requirements, were not required to conform to those requirements and continued those contracts without penalty.

(See attachment 1.)

**Vendors cheat the DOE out of \$millions through the practice of low-balling.**

On pages 4-5 of the report, Commissioner Condon identifies low-balling as a major problem in the contract bid process:

“Ineffective bidding procedures employed by OSFNS officials allowed certain vendors to exploit the DOE. Specifically, these vendors bid low prices or “low-balled” on foods that were overestimated in the bid package and higher prices on foods that were underestimated in the bid package. The low prices allowed the vendors to underbid their competitors, whereas the high prices and high actual usage of certain items caused the DOE to pay the vendor far in excess of its original bid price. (See Attachment 2.)

## **What did the DOE learn from Commissioner Condon?**

We have attached a summary of Commissioner Condon's conclusions and recommendations. (See attachment 3.) The newly released "District Council 37 White Paper V" reveals that the more things are reported to change, the more they stay the same.

In an attempt to revamp the procurements process, the new administration of School Food Services consolidated the 13 contracts for food delivery services into 3 large contracts to achieve economies of scale and required that these food purchases adhere to the Consumer Price Index in order to prevent price gouging and inflated food prices.

Under the new system, the 3 selected vendors would purchase, warehouse and deliver the commodities to all city schools. These 3 vendors would also store and deliver commodities donated by the USDA. All new vendors would receive a standard price for their delivery services. Savings would be accomplished through lower food costs achieved by economies of scale.

Two vendors named in Condon's 2004 report for overcharging OSFS were Chef's Choice and Teri Nichols. Condon recommended that the DOE Legal Department recoup any overpayments made to the vendors, and place report findings in the vendor's files as a consideration in any future contract award. Two years after the report, Teri Nichols received a 3-year contract for \$65 million and Chef's Choice has another 3-year contract for \$10 million.

The DOE spends about \$48 million a year for delivery service contracts — an increase of more than \$18 million a year since the so-called changes in the delivery systems were implemented.

## **DC 37 and Local 372's Proposal for School Food Delivery.**

Local 372 fully supports the proposal for School Food Delivery as stated in DC 37 White Paper V:

“This new proposal takes into account the changes in the procurement process and the reduced number of trucks in School Food Services, and it renews our request that the DOE hire the personnel needed to operate 8 trucks to deliver donated frozen goods to the schools. This will require hiring 8 new Motor Vehicle Operators, 16 Loaders and Handlers and purchasing 8 additional trucks.

Since the donated commodities are provided and warehoused by the USDA at no charge to DOE, there is no possibility of savings through bulk purchases or on storage and, therefore, very little financial incentive for the vendors to provide the deliveries. In fact, vendors have often used this justification to obtain higher prices for delivering donated items.

The implementation of our new proposal would save about \$4 million.



**New York City Student Attendance should be monitored by  
Local 372 workers, who are personally dedicated stakeholders  
in their neighborhood children's success in school.**

Contracting out the DOE attendance program to any CBO like the United Way or any high-priced, high-tech software company cannot have a positive impact on our City's 1.1 million school children.

New York City students and parents know they can depend upon the Local 372 members in their schools, because they live in their school community and are parents, grandparents and guardians of other children in their schools.

One of the Mayor's first fiscal initiatives was to lay off Local 372 Family Paraprofessionals as a quick fix to budgetary shortfalls. Our Family Paras actually made home visits to follow up on student absences.

All public schools must be places where children are missed when they do not attend for a single school day, not a month or most of a school year. Why didn't the senseless murder in 2006 of Nixmary Brown, a child invisible in the system, wake the DOE from its comatose state regarding school support services?

Schools must be places where someone who actually cares, calls home to find out why a child is absent from school that same day.

Even the outsourced sophisticated computer program costing tens of millions of dollars cannot replace the diligence of community members who are also school support service employees, when it comes to tracking our precious school children.

Schools must be places which provide an effective plan to follow up on absences for which the call home has produced no satisfactory explanation.

Local 372 Family Paraprofessionals in each school site could make those phone calls, follow up with home visits as needed and assist attendance teachers with required paper work — a long-term fix that would not cost the taxpayers tens of millions of dollars.

**School Support services also provide incentive  
for at-risk children to attend our schools.**

Children who know there are adults like our Local 372 SAPIS, in whom they can confide, are more likely to come to school when there are problems at home. At-risk students who know there are Peer Leadership or Conflict Resolution and Drug Abuse prevention programs in which they can participate are also more likely to attend school on a regular basis. That is why we need a SAPIS in every school site.

Parents with family issues causing their child's absence, or parents who are simply unable to navigate the maze of the reformed DOE, can rely on our Local 372 Parent Coordinators, because they are fellow community members who can get them the help they need.

**Buyer Beware — We must vet outside vendors carefully.**

The Department of Education finally re-opened bidding in 2004 after CBS-TV's education reporter Marcia Kramer reported that Schrier, Inc. had "ties to a man Chancellor Klein once prosecuted and sent to jail for his part in a school food bid rigging scandal."

Months before, Chancellor Klein defended Schrier saying, "In our system, the fact that someone was once punished doesn't mean we bar them from future opportunities."

There is something very wrong with the system of controls in our bidding procedures; and part of the problem can be traced back to the change in cultures from public service to private enterprise. Our bidding process must be aimed at saving taxpayer money, while improving services. It must not be our mission to make outside corporations richer, or create jobs out-of-state while laying off New Yorkers

Aramark, the Philadelphia-based food vending giant, was one of the companies bidding on the 2004 citywide Food Services Distribution contract. An on line search revealed Newspapers and television reports from St. Louis where Aramark had a \$23.5 million contract to move school food and supplies. described the situation just weeks after Aramark took over as "chaotic."

The *St. Louis Post Dispatch* reported the chaos began when 45 school children and a teacher fell sick 40 minutes after lunch at Lafayette Elementary School. This incident, which resulted in two vendors being terminated on orders by the city health department, was followed by 9 schools being without food or milk for lunch, or receiving the deliveries very late.

We have included more results of our search on Aramark for your edification. (See Attachment 4.)

### **The Snapple Deal - How sweet it is!**

Although it was not a DOE contract, the Mayor saw the Snapple deal as a way to make a fast buck in the City schools, but he did not properly consider the health and nutrition implications of placing the vending machines in buildings with school children.

This union President has been a leader in getting legislation passed to keep junk foods out of the schools in New York State. I was appalled when the Mayor announced he was replacing soda vending machines with Snapple, as if Snapple was a healthier choice. Compare the Snapple label with the can of soda and see that there is even more sugar and more calories in many of the Snapple varieties — enough to cause disruptive, inattentive and hostile behavior changes in some students, not to mention obesity.

### **Maximus, Inc. - Unvetted and Unproven**

Local 372 learned in the *New York Times*, January 14, 2009 issue that the City had signed a contract with Maximus, Inc. of Virginia for a 5-year Special Education data tracking program that will cost \$55 million with \$23 million in related expenses. (See attachment 5.)

Local 372 understands the need for improving the tracking of Special Education data, but at a time when school support service employees — vital to the learning readiness of all of our students — are facing impending layoffs, this extraordinarily high priced software solution seems obscene and reckless.

In the January 14, 2009 issue of the *Village Voice*, entitled “Billy Thompson’s Maximus Moment,” a reference is made to Giuliani administration Comptroller Alan Hevesi. (See attachment 6.)

The *Voice* reminds us that during the Giuliani administration, Comptroller Hevesi, “detected the stench of a \$104 million dollar contract to run the City’s Welfare-to-jobs programs that Giuliani wanted to go to a consulting firm called Maximus. The Virginia-based firm was chock full of neo-con hacks living the high life on the city’s dime while they expensively lectured the poor about their responsibilities, while sharing the loot with Giuliani’s own former top welfare policy advisor.”

The *Los Angeles Times* reported on October 30, 2008 that Maximus had been criticized repeatedly for work on a \$32 million contract that county officials called inadequate - work which could have been performed better and more economically by county workers. (See attachment 7.)

According to the *The Los Angeles Times*, ...“Maximus has spent more than \$124,000 this year (2008) on lobbyists and thousands more on political contributions to county supervisors, including some not running for reelection for two more years.”

A press release dated November 15, 2007, stated, “Connecticut Attorney General Richard Blumenthal today sued MAXIMUS, Inc. for breach of contract after it failed to provide the state with a functioning computer system used to access criminal justice information and conduct immediate criminal background checks...

Blumenthal said, “Maximus minimized quality - squandering millions of taxpayer dollars and shortchanging law enforcement agencies... Maximus has sued its own primary subcontractor, claiming that the system is a failure - a dramatic admission of its own ultimate responsibility.” (See attachment 8.)

Local 372 accessed on line a letter from the Wisconsin Legislative Audit Bureau. It addresses overcharges of \$51,300 incorrectly billed by Maximus for administration of its W-2 program in Milwaukee for time spent by Maximus staff who were actually working on projects outside of Wisconsin.

Local 372 contends that the DOE clearly did not properly vet Maximus, Inc. before awarding them \$80 million dollars of taxpayer money.

Local 372 asks this committee, “If we could acquire the attached articles and correspondence easily through publicly accessible means, why couldn’t the DOE?”

**Local 372 finds that the lines drawn between service to the electorate and future personal gain are getting more and more fuzzy.**

A *New York Daily News* report on February 27, 2009 calls former New York City Council Education Chair Eva Moskowitz, who founded a small chain of charter schools, as “a passionate and abrasive champion of the charter school movement.” (See attachment 10.)

Local 372 sees Ms. Moskowitz as having been instrumental in New York City’s transformation into two apparent school systems. One is a system of public schools, usually in lower income neighborhoods, which are stripped of vital support services for which they have the greater need. The other, consists of small academies with catchy theme names, and Charter Schools, which siphon off an ever-increasing amount of the DOE budget. Charter schools drain the higher performing students from their neighborhood schools and prevent our public schools from being academically and racially diverse.

Ms. Moskowitz’ sustained philosophical dedication to charter schools was rewarded with a salary last year of \$310,000 for running Harlem Success Academy 1, 2, 3 and 4, serving a total of 1,000 pupils from kindergarten to third grade. Chancellor Joel Klein gets \$250,000 to run 1,400 school sites and is responsible to 1.1 million students.

As with the other charter schools in New York City and nationwide, there is no definitive data as to the superiority of these charter schools over properly funded and staffed public schools.

### **In Conclusion:**

Local 372 strongly urges this committee to conduct a thorough investigation of DOE contract practices.

The lure of contracting out remains a distraction from what ought to be the City's mission — to provide improved services and sustain a stable municipal workforce who will, in turn, contribute to our tax base and support our local businesses.

When city workers are unemployed, especially with no comparable jobs available to them, they go from unemployment lines to welfare rolls, from being supporters of the city economy to being burdens on the city economy. If cutting jobs means cutting revenues, where is the sense in any Mayor's choice to balance the City budget by contracting out, thus cutting city workers?

It must not be our mission to make outside corporations richer and create jobs out-of-state.

**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: 4-1-09

(PLEASE PRINT)

Name: Comptroller William Thompson John Graham *Deputy Comptroller*

Address: 1 Centre Street - Rm 530

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: April 1, 2009

(PLEASE PRINT)

Name: Joseph Colletti

Address: 230 JAY ST 11201

I represent: UFT

Address: 52 Broadway 10004

◆ 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: \_\_\_\_\_

Name: George Sweeting (PLEASE PRINT)

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

I represent: Independent Budget Office

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. 831

in favor  in opposition

Date: APRIL 1 2009

Name: ROBERT S TROELLER (PLEASE PRINT)

Address: LOCAL 891

I represent: LOCAL 891

Address: 63 FLUSHING AVE



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: GENARO BASTOS 66-32  
Address: P.O. BOX 770-433 WETHECOLIST  
NY 11374  
I represent: BASTOS EDUCATIONAL BOOKS  
Address: P.O. Box 770-433  
WOODSIDE, NY 11377

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 202/109 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/1/09

(PLEASE PRINT)

Name: KAROL HARRIS  
Address: \_\_\_\_\_  
I represent: \_\_\_\_\_  
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: 9/1/09

(PLEASE PRINT)

Name: Photeina Anasnikov  
Address: 52 Chambers St NY  
I represent: 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: 4/1/09

(PLEASE PRINT)

Name: Desmond A. Reid

Address: 33 Lafayette Ave, Bklyn, NY 11217

I represent: Desmond A. Reid Enterprises

Address: 33 Lafayette Ave, Bklyn, NY 11217

**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: Connie Attamasio

Address: 7911 69th Drive MUMNY 11379

I represent: Ad Hoc Committee of Minority Vendors

Address: Same

**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: 4/1/09

(PLEASE PRINT)

Name: Veronica Montgomery-Costa

Address: 125 Barclay Street NY 10007

I represent: President + President Local 372

Address: DC37

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: 4/1/09

Name: David Ross (PLEASE PRINT)

Address: 65 Court Street

I represent: Dept. of Ed

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: \_\_\_\_\_

Name: Michael Best (PLEASE PRINT)

Address: 52 Chambers Street

I represent: NYC DOE

Address: 52 Chambers Street

**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: 4/1/09

Name: Rodney Deas (PLEASE PRINT)

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

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

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

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