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ROBERT JACKSON

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**Testimony of
Councilmember Robert Jackson
Before the City Council Finance Committee Regarding the
Five-Year Educational Facilities Capital Plan for 2010-2014**

June 19, 2009

When my wife volunteered me to serve in the Parents' Association at PS/IS 187 in 1980, I didn't know it would lead to being Chair of the New York City Council Education Committee. But it's been a straight path - if you don't count the little 150 mile detour I made when I walked to Albany in 2003.

I am sad today. I am saddened to think that the City Council of New York is being manipulated by the administration in ways that reach far beyond the normal rough and tumble and disagreement of politics.

It's sad because it's the students in New York City Schools who are going to pay the price if this capital plan passes as written. Of course the real truth is that society pays the price when we don't give our children the opportunity for a "sound, basic education." And facilities are where a "sound, basic education" starts. That's why this vote on the proposed capital plan is so important.

If we don't get this plan right, now, at its start, then no matter how much additional money gets added in or taken away, no matter how many individual projects get put in or pulled out, the plan will still be wrong because its underlying assumptions are wrong.

The kids pay the price everyday – particularly in districts that have been historically overcrowded where our families live – because the Department of Education makes its data driven decisions based on bad data.

What does this bad data mean in the daily life of a student? For starters, it means that the DOE thinks that more kids can fit into the building than were intended to. When I was on the Community School Board in District 6, we opened a bunch of new schools. And when they opened, they were ready to roll – there weren't any unfinished wings or anything like that. They were full from day one. So compare the "then and now" numbers; tell me how these building capacity numbers can go up and down like the stock market:

PS 8 opened with a capacity of **547** in 1994, was listed at **785** in 2002 and is now at **623** with a target capacity of 505 and an enrollment of 612. Same building – same square footage.

PS 4 opened in 1995 and was listed as holding **600** – even though its layout is identical to *PS 8*. *PS 4* magically expanded and is listed in the 2002-2003 Blue Book with a capacity of **848!** No annexes – no additions.

IS 90 opened in 1993 with a capacity 1,350 students. Today the target capacity of *IS 90* is listed at 2,087. That's down from 2,975 in 2006.

I could cite many more examples but the point is our schools – *on paper* – are expanding and contracting like balloons and it comes back to the way capacity is counted. The really tricky thing is – you can't tell by looking at the numbers on paper; you have to know the buildings and walk the halls. And these paper numbers are the basis for the utilization rates – the percentage that everyone looks at **on paper** to see if their school is crowded. The ones that define need.

Now we can go back and forth with DOE – and we have done just that – without getting anywhere. But don't take my word for it. Ask

Justice Leland DeGrasse why he wrote these words into the 2001 New York State Supreme Court decision:

1/10/2001 State Supreme Court Decisions 719NYS 2d 475 Index 111070/93/CFE et al versus The State of New York:

“Overcrowding is even worse than indicated above because the ECU formulas actually overstate schools’ capacity. This inflation occurs because the formulas adjust for overcrowding by adding to schools’ capacity non-classroom spaces if such space is in fact used for classrooms. For example if a crowded school is forced to convert its gymnasiums or auditoriums into classroom space, the capacity formula indicates increased capacity.”*

** ECU = Enrollment, Capacity and Utilization*

The way that DOE gets information from the principals about utilization of space has **not** changed since Justice DeGrasse rendered that opinion. To be sure, it’s now collected on the web rather than paper, but there is still no way for a principal to indicate that Room 303, currently in use as a 4th grade classroom, was designed to be a science lab.

It doesn’t matter if you can make demographic projections with laser-like precision if you are projecting them on to a bad baseline number. Yes, I know that there is a formula that makes deductions for an entitlement number of specialty rooms based on enrollment. But look at the numbers – citywide, the schools have only 57.6% of the **minimum** number of specialty rooms.

Getting back to what an overcrowded school means to students and teachers – it means starting lunch way too early or way too late. It means getting less gym than State law requires. It means art-on-a-cart and having to take hands-on State science standards exams or Regents without ever having been in a lab. It may even mean not being able to schedule classes that are required for graduation. It certainly means less access to the school library.

Last month I sent each member except one the results of a citywide survey about facilities; I skipped one because only a single school had answered the survey in that Council District. I can’t speak to the

specific results in your district, but I know that, citywide, they were pretty revealing. Thirty-eight percent of the principals representing forty-one percent of our enrollment answered. Forty-one percent is not a small statistical sample! Eighteen percent of responding schools had at least one windowless classroom – now windowless classrooms aren't really legal. And it's not legal to shortchange kids on gym – 47% of the respondents said their students get less than an hour of gym per week.

Ask former Chief Judge Judith Kaye why she delivered this opinion.
The Court of Appeals, 2003:

“Some facts that the trial court classified as purely “physical” facilities inputs are inseparable from overcrowding and excessive class size – conditions whose measurable effect on students plaintiffs have shown. One symptom of an overcrowded school system is the encroachment of ordinary classroom activities into what would otherwise be specialized spaces: libraries, laboratories, auditoriums and the like. There was considerable evidence of a shortage of such spaces.”

Now most of you know that it was the Campaign for Fiscal Equity lawsuit – one I walked to Albany for - that eventually led to the Contracts for Excellence funding that is part of State law. In order to receive the C4E additional funding, that contract requires progress toward meeting certain class size reduction targets: class size of 20 in grades K-3 and class size of 23 in grades 4-12. 2012 is the deadline.

But read pages 20 and 21 of the Capital Plan. It spells out in black and white that the “targeted maximum” class size at the high school level is 30 and middle school, 28. Then there is what to me is just a bunch of mumbo-jumbo about using space more efficiently so that schools – and I’m quoting here – “may take advantage of lower utilization to create additional cluster rooms” or “may opt for lower class sizes.” Well, I didn’t think that lower class size was optional. And I thought that the courts were pretty darn clear in defining a “sound, basic education” as including art, music, dance, drama, science, technology, gym, out-door play, etc.

What am I missing? The underlying assumption of the Blue Book numbers that drive the capital plan is that when you reduce class size you will need **fewer** classrooms to hold students because you are going to use those classrooms more efficiently. **Fewer** classrooms – not more! Now the plan doesn't put it quite so succinctly. It merely increases the number of students it claims each school can hold when class sizes are reduced.

So I have a question for DOE that never gets answered: **Why don't we just start using those facilities more efficiently right now and save ourselves and the taxpayers a whole bunch of money?**

Come on folks - it defies common sense and logic to think that we will need **fewer** classrooms to accommodate reduced class size but this is an important underlying assumption of the Capital Plan.

I said I was sad – and I am – because I have worked damn hard on advancing equity in education and the harder I look, the more that I look at the details, the more I see that is wrong. It took me a long time to come to this detailed level of understanding because my role in CFE was always to rally people – not to be analytical. But, you know what? I'm not just sad – I'm angry.

I sat at this year's hearing on the Capital Plan in Community School District 6 and it was like watching a re-run that you've seen more than twice. Same complaints as when I was on the School Board. Same complaints that triggered CFE and 13 years of litigation. \$13.8 billion dollars from the current capital plan later – same complaints. I decided right then that I would vote "NO" until the plan is fixed.

We need to rethink the way this plan is constructed from the ground up. Right now, it's structurally flawed. But we have the power to say "NO" and send it back to the Department of Education. And we can tell them in no uncertain terms what it would take to get it right:

- Fix the capacity formula. Nothing will ever be right until we have an accurate inventory of seats.
- Align class size standards with state law- not increased program efficiency ratios.
- Give us a full statement of need so that we, the Council, as stewards of the public dollar, can compare what is in

the plan (DOE's top priorities) with what is not being addressed – that's the only way we can know that we are acting in the best interest of the public and our constituents.

- Put more money into new capacity. A coalition of advocates has proposed building schools, not jails, and their proposal makes good sense, especially when you consider that school construction gets reimbursed from the state at 50 cents on the dollar. Bear in mind that during the Great Depression, between 1929 and 1935, 94 public schools were built. The 2010-2014 plan proposes to build 44 schools.

When I read the memo from Corporation Counsel – a Department that reports to the Mayor, mind you, the guys who challenge us when we pass legislation they don't like – I got angry again. You know what folks, I didn't go to law school, but I know that "failure to approve" and all the dire scenario that was laid out following "failure to approve" is totally different than voting "NO". When we vote "NO" – the ball goes back to their court. It is up to the Department of Education to resubmit a revised plan that is acceptable to the Council. When we vote "YES" we are enabling the administration to move ahead with something that is fundamentally wrong.

I'm not posing as the authority on this – let me again quote someone who knows – Steven Sanders – former Chair of the New York State Assembly's Education Committee and sponsor of the 2002 legislation that defined our current governance system and granted the Council oversight on the capital plan. From his email of June 9, 2009:

"I do not think that there is anything ambiguous about Section 2590-P of the State Education Law as it relates to the adoption of a five year capital plan for the New York City School District. The plan must be submitted by the Chancellor to the City Board of Education for its approval. If the City Board votes in the affirmative then the plan must be approved by the City Council and signed into law by the Mayor. The City Board is not required to vote yes they CAN vote no if they so choose. If the City Board does not approve the plan then no plan may be submitted to the City Council until the City Board of Education does approve a plan. Similarly if the City Council does not vote in the

affirmative on a Plan that reaches the Council, then there can be no five year capital plan implemented, unless and until, the City Council approves. Under that circumstance the Chancellor would have to revise his plan resubmit it to the City Board for their approval and then have the City council approve it...if they so choose.”

The choice is clearly ours. Let’s make the right one.

The children depend on us to create the opportunity for them to have access to an education that will allow them to become future leaders and good citizens. We need to do right by them. Stand with me and send a united message: We cannot say “YES” to a plan that is structurally flawed and does not provide the things our children deserve. Don’t let anyone tell you it cannot be done. It can be done. It can be done if we stand together and demand on behalf of the children “Fix the plan.”

This is a non partisan issue so let’s take a page from Nancy Reagan’s book “Just say ‘NO!’” Or from more recent political history, let’s remember the farm workers’ rallying cry “Si se puede” and Barack Obama’s words: “Yes we can!” Let’s do this together.

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Dear Colleague:

This spring we will vote to approve or disapprove the Department of Education's Five Year Capital Plan for 2010-2014. I am voting "NO" until the structural flaws in the plan are fixed for my district. The accompanying attachments attempt to give you the tools to assess whether a "NO" vote is appropriate for you and the school district(s) you represent. Here is the reasoning behind my vote:

- Back in 1991 when Michael Rebell and I started the Campaign for Fiscal Equity (CFE), overcrowded schools and large classes were characteristic of New York City schools, and particularly of Community School District 6 where I was the School Board President and now represent a portion of in the Council. Fifteen years later, the lawsuit at last produced something tangible: the Contract for Excellence (C4E). In this historic agreement **the State requires that the City's Five Year Capital Plans be aligned with the standards specified the Contract for Excellence.**¹
- The Five Year Capital Plan ***is not aligned*** with the Contract for Excellence Standards. For example, the C4E agreement calls for classes of 23 in middle schools and high schools; the Capital Plan provides classes of 28 as its benchmark, falling far short of the C4E standard and way below the recommendations put forth in CFE. Diagram A shows what a difference this makes in how many students any one school can hold. The Capital Plan does not propose enough new capacity to meet C4E standards.
- When we vote to approve a plan that violates State law², we are aiding and abetting the Chancellor and the Mayor in avoiding accountability for our schools – **a "YES" vote on this version of the Plan means that we are agreeing to help them break the law.**
- The economy is no excuse for shortchanging schools. During the Great Depression of 1929-1935, 94 NYC public schools were constructed (plus an additional 23 schools between 1936 - 1940). These schools continue to be among the best in the system with large windows admitting lots of natural light and amply sized classrooms.
- Further, there is an underlying flaw in the way that the Department of Education has counted its current inventory of regular classrooms and gauged the need for new schools, what it calls new capacity. There are two ways to understand this flaw:
 - When an overcrowded school is forced to cope with too many students by creating regular classrooms out of gyms, science labs, art rooms or other specialty spaces, those emergency classrooms get added onto the building's capacity number. Some of our most overcrowded schools report at under 100% utilization – I've even toured schools where reading support and guidance services were delivered from bathrooms

but the Blue Book said the building was 93% utilized. So the way the Department of Education calculates building capacity is wrong. It was even a finding of fact in the CFE trial.

1/10/2001 State Supreme Court Decisions 719NYS 2d 475 Index 111070/93/CFE et al versus The State of New York: "Overcrowding is even worse than indicated above because the ECU* formulas actually overstate schools' capacity. This inflation occurs because the formulas adjust for overcrowding by adding to schools capacity non-classroom spaces if such space is in fact used for classrooms. For example if a crowded school is forced to convert its gymnasiums or auditoriums into classroom space, the capacity formula indicates *increased* capacity."

* ECU = Enrollment, Capacity and Utilization

- o A second way to look at this is to look at the number of cluster rooms a school has. Cluster rooms are the specialty spaces for science, art, music, dance, technology, shop etc. A school that is not overcrowded should have its full complement of specialty rooms according to the formula prescribed by DOE – which is in DOE's own wording – a "minimal standard."³ According to DOE's own numbers the City's public schools have only 57.6% of the specialty rooms they should (1,791 actually in use of 3,104 minimal benchmark). Yet DOE's own numbers also describe the system at 87% of utilization. If the schools are not crowded, where are the art rooms? Where are the science labs? Not surprisingly, CFE had something to say about the missing art rooms too:

The Court of Appeals, 2003:

"Some facts that the trial court classified as purely "physical" facilities inputs are inseparable from overcrowding and excessive class size – conditions whose measurable effect on students plaintiffs have shown. One symptom of an overcrowded school system is the encroachment of ordinary classroom activities into what would otherwise be specialized spaces: libraries, laboratories, auditoriums and the like. There was considerable evidence of a shortage of such spaces."

Conclusion – our schools are far more overcrowded than the official numbers imply.

Therefore, DOE's plans make flawed assumptions, consequently miscalculate areas of greatest need and superimpose dubious projections on a foundation of bad data. Imagine the owner of a shoe store deciding what to order. Not only does the owner need to project fashion trends but the owner needs to know accurately what the current inventory is. Just because a labeled box is on the shelf doesn't mean it really has size 8½ B Red Sandals in it. It could be empty or hold a pair of brown loafers. DOE's inventory system is broken.

After dialogue, multiple school tours with SCA staff and endless conversations failed to produce anything other than an acknowledgment by Kathleen Grimm that the Blue Book had problems and a promise to fix them in the next capital plan (the one before us now), I decided to reach out to gather my own data to prove or disprove what I had personally observed.

In 2007 I commissioned a survey conducted by St. Francis College professor Emily Horowitz and Class Size Matters Executive Director Leonie Haimson. Distributed to all school principals, an amazing 38% of our city's principals representing 41% of all students answered the survey; I think you will agree that this is a solid sample by any methodology. The survey was released in May 2008 and the results are posted on the web at http://www.classsizematters.org/principal_survey_report_10.08_final.pdf. We promised the principals anonymity. This may explain the high response rate but 2/3rds of the respondents provided their personal numbers and said "Please contact me for more information" (that follow-up is ongoing). Therefore the survey results do not identify individual schools.

It is one thing to read citywide statistics and another to relate it to the schools and constituencies that you represent. The attachment includes the results of this survey from the ***responding schools in your district*** as well as the Five Year Capital Plan for your District. Contrast what your

principals say the conditions in their schools are with what the Capital Plan proposes to deliver in your district. Does this plan do the job? I doubt it.

An additional point is that the Five Year Capital Plan does not articulate the full scope of need; it only tells us what DOE plans to spend \$11.28 billion doing. We know that the Plan includes only Level 5 (most urgent) repairs. Nowhere is there a statement of need that talks about what is not getting repaired. There is no way for us, as stewards of the public dollar, to assess whether the proposed plan is the best choice. Anytime, but especially in these tough times, I want to know that we are making the best, the wisest and most farsighted choices for our public expenditures. After all, \$11.28 billion doesn't come easy. I want a full statement of need to compare with the choices DOE has made.

I have spent 29 years fighting for our kids to get what CFE so succinctly called a "sound, basic education". That's an education that includes small classes, buildings that are not crowded, art, music, dance, science, technology, gym, and school libraries. Classrooms with windows. Lunch at lunchtime. Gyms where you can actually move around and exercise, unlike the converted 482 square foot class room that serves as a gym at MS 223 in my Council District.

I am not one to give up easily. The DOE publicly promised Community School District 6 in 2004 that the 2004-2009 Capital Plan would "eliminate overcrowding, restore cluster rooms to their intended purpose and get rid of the transportables [trailers] in our school yards."⁴ At the onset of that \$13.8 billion plan – money which resulted from the CFE lawsuit – Community School District 6 had 27,006 students, 37 of 76 cluster/specialty rooms, and 10 schools with annexes or trailers plus only 198 Pre-K seats (and this in the District with the city's highest percentage of English Language Learner pupils, where early childhood education can make such an impact!).

As of the most recent DOE enrollment report, Community School District 6 had 21,441 pupils, 60 of the 111 cluster/specialty rooms it should have, six schools with annexes/trailers, and 502 Pre-K seats. I don't call that restoring cluster rooms to their intended purposes (not with 51 cluster rooms being used for general instruction). I don't call that getting rid of transportables. And I ask you – if District 6 isn't overcrowded, why are its class sizes among the highest in the city? Why does it have only 54.1% of the **minimum** standard of specialty/cluster rooms?

This just isn't good enough. Providing anything less than 100% of the minimal standard of specialized classrooms does not earn a passing grade; it's failing by any standard. I can't plaster the subway system with ads saying how good things are with Mayoral Control or place full page statements in papers all over the city. If I can't convince you that things are not as rosy as the p.r. machines pumping out this stuff would have you believe, I hope that the words of the principals who serve your constituents will persuade you that this plan is not adequate.

I can only keep insisting that we do the right thing for our school kids. I continue to believe that the power of the legislative pen is greater than the power of the pocketbook that purchases ads. When we know that education is the single best social investment that we can make and we know that construction can act as an economic stimulus, it defies common sense not to provide the repairs and new seats that we really need. It is not a question of capital resources, but a question of political will. I urge you to join me in voting down this plan until DOE fixes it.

In Unity,



Robert Jackson

Footnotes:

- 1 **The Contract for Excellence** Citywide Class Size Reduction Five-Year Plan
Five-Year Plan Executive Summary <http://eservices.nysed.gov/c4e-public/reports/2007/otherreports/NYCDOE%20CSRP%205YR_11%208%2007_FINAL.doc>

http://eservices.nysed.gov/c4e-public/reports/2007/otherreports/NYCDOE%20CSRP%205YR_11%208%2007_FINAL.doc

- 2 State Law regarding the Contract for Excellence is articulated in section 211-d
EDUCATION LAW
TITLE 1. GENERAL PROVISIONS
ARTICLE 5. UNIVERSITY OF THE STATE OF NEW YORK
PART 1. GENERAL ORGANIZATION

Go to the New York Code Archive Directory

NY CLS Educ § 211-d (2009)

- 3 The Instructional Footprint definition that explains the allocation of space within a school can be found at: http://schools.nyc.gov/NR/rdonlyres/8DBFB040-D915-40CD-A2DE-1680EBFFAD07/43745/NYCDOE_Instructional_Footprint.pdf

- 4 Video recording of testimony by Kathleen Grimm at Community School District 6 Public Hearing on the 2004-2009 Capital Plan, conducted January 7, 2004

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MANAGEMENT

June 11, 2009

The Honorable Michael Bloomberg
Mayor
City Hall
New York, NY 10007

Dear Mayor Bloomberg:

The coalition of community activists that rallied this morning under the banner of "Build Schools, not Jails" has come up with a valuable suggestion that I hope you will recognize and implement, both for its grassroots origin and its positive contribution to our city.

The concept of diverting capital dollars from construction projects that build prisons to ones that build schools is simple; it speaks to the improved public safety and decreased crime rate that has happened under your administration. Why not say to the public that the need for jails has lessened but the need for schools has not? Why not take credit for this improvement?

Studies consistently show that in the long term every dollar invested in education yields a more skilled workforce (therefore higher tax revenues and lower public assistance costs), better health practices (therefore less public expenditures) **and** lower rates of incarceration (again lower costs to the public). This is a trifecta that is hard to beat!

The fact that school construction nets a 50% reimbursement from the State is an additional incentive. And there is no question that we need the seats to relieve overcrowding. When our facilities have only 57.6% of the MINIMUM number of specialty rooms that the Chancellor says they should have, when 28 out of 32 Community School Districts do not meet this minimum standard, we need more schools and more classrooms.

I urge you to incorporate the proposal into the proposed budget without further delay. We have so much to gain from your embrace of this concept.

In Unity,

c: Speaker Christine Quinn

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MEMORANDUM

TO: My Colleagues on the New York City Council

FROM: Robert Jackson
Chair, New York City Council Education Committee

DATE: June 18, 2009

RE: Memorandum from Jeffrey D. Friedlander 6/17/09

I am writing to respond to the memorandum from Jeffrey D. Friedlander First Deputy Corporation Counsel of the Law Department of the City of New York, an executive agency, regarding the consequences of a "NO" vote by the New York City Council, the municipal legislative body, on the proposed 2010-2014 Five Year Capital Plan submitted to the Council by the New York City Department of Education.

We need to understand the distinction between choosing to vote "NO" and failing to approve. State law gives the Council the power of oversight and the authority to approve or reject the proposed capital plan. Mr. Friedlander's memo speaks of "failure to approve" but that could come only from failing to vote at all. The Council diminishes its own power by treating this vote as a sub-set of the overall budget.

The importance of this particular vote is precisely because this is a **new** Five Year Capital Plan. It is based on some flawed assumptions. There will be no further opportunity to correct the underlying assumptions of the plan until the next "new" plan covering the years 2015-2019 is presented to the Council. The time to correct these errors is now.

A "NO" vote does **not** produce the scenario described by Mr. Friedlander referencing the appropriations in the new 2010-2014 plan that "all new proposed DOE capital work.....could not go forward." **The consequence of a "NO" vote on June 18, 2009 is that the Department of Education has until June 30, 2009 to resubmit its proposed Five Year Capital Plan for 2010-2014 and obtain Council approval of said plan.**

This is a deliberate check on executive authority written into State law by State legislators. If the Council votes "NO" on a Capital Plan, the burden shifts back to the Department of Education to produce a plan that will win the acceptance of the Council.

As we all know, there is a long wait between the date a project is approved and the date it is realized. That is simply the way capital funding works. Deputy Chancellor Kathleen Grimm consistently cites 2012 as the date when projects in the 2004-2009 plan will be completed; nothing approved in the 2004-2009 plan, the current plan, will be impacted by a "NO" vote.

Furthermore, the only way that there could be a "prolonged period without a plan" would be **if the Department of Education failed to submit a plan that would win Council approval.**

I have been clear on what I consider the shortcomings of this plan. I argue that we are obligated to reject this plan at the outset because it

- Does not meet the statutory mandates of State education law for class size in grades 4-12
 - The State law says class size in grade 4-13 must be 23 students.
 - The Plan calls for classes of 28 in grades 4-8 and 30 in grade 9-12.
- Uses a capacity formula that the New York Supreme Court identified as inaccurate in the 2001 Campaign for Fiscal Equity ruling.
 - Resulting in the conflicting claim that schools are at 79 % or 87% utilization (depending on which method is used) but have only 57.6% of the minimum number of specialty rooms, such as science labs, art rooms etc. If the schools are not crowded, where are the science labs?
 - Conclusion – the judge was right and DOE data on capacity is just plain wrong.
- It does not provide sufficient funds for new construction – in part because it plans for the wrong class sizes in middle and high schools and in part because overcrowding is far worse than the official data shows and hides real need.

I have a different perspective than the City Law Department. It is a perspective shaped by twenty years as a public school parent, sixteen years as a Community School Board member – including seven as a President, and thirteen years of litigation in the lawsuit that ultimately produced the State's Contracts for Excellence class size standards that this proposed Capital Plan ignores.

It is a perspective also shaped by conversations with former Assemblymember Steven Sanders, past Chair of the Assembly's Education Committee and sponsor of the 2002 legislation Mr. Friedlander is interpreting. Mr. Sander's insists, and I quote from his email of June 9, 2009,

" I do not think that there is anything ambiguous about Section 2590-P of the State Education Law as it relates to the adoption of a five year capital plan for the New York City School District. The plan must be submitted by the Chancellor to the City Board of Education for its approval. If the City Board votes in the affirmative then the plan must be approved by the City Council and signed into law by the Mayor. The City Board is not required to vote yes they CAN vote no if they so choose. If the City Board does not approve the plan then no plan may be submitted to the City Council until the City Board of Education does approve a plan. Similarly if the City Council does not vote in the affirmative on a Plan that reaches the Council, then there can be no five year capital plan implemented, unless and until, the City Council approves. Under that circumstance the Chancellor would have to revise his plan resubmit it to the City Board for their approval and then have the City council approve it...if they so choose."

It is the Department of Education's failure to produce a plan that both meets State law and corrects shortcomings identified by the State's Supreme Court that will jeopardize our children. A "NO" vote will pressure the Department to correct these flaws.

Grade Range	FY2007 Baseline Average Class Size	FY2012 Target Average Class Size*
K-3	21.0	19.9
4-8	25.6	22.9
9-12 (w/ electives)	24.9	22.9
9-12 (Core courses only)**	26.6	24.5

* Nov 8, 2007 Five Year Class Size Plan

** FY07 Baseline was only calculated with elective course, and therefore does not conform with the adjusted reporting of HS class size data by core course only. Baseline assumed from FY2008 class size reporting.

Although the financial difficulties facing the City and the State make the level of continued investment of operational funds uncertain, the proposed FY2010 – 2014 Capital Plan supports the achievement of these targets, and the ongoing implementation of the Class Size Reduction Plan, in several ways.

First, the proposed plan adjusts capacity calculations to accommodate lower maximum class sizes at the middle and high school levels. The proposed plan will continue the FY2005 – 2009 Plan's targeting of K-3 target class size at 20 students, consistent with Class Size Reduction Plan. It also reduces targeted maximum class size at the high school level by four students, to 30, and by 2 to 28 students at the middle school level. While these class sizes are not as low as the targeted overall average, it is important to understand two critical facts about middle and high school programming: first, that these are targeted maximums – averages will be lower, particularly if schools use classrooms more efficiently than assumed in the capacity formula; and second, that most schools in the system are and will be at less than 100% utilization, which they can choose to reflect in reduced class sizes. The following chart applies the underutilization and greater programming efficiency to the maximum class size assumptions, making clear the average class size reduction possible given physical constraints, if schools were to invest all their operating resources into class size reduction:

Grade Range	Target Maximum Class Size	FY2007 Actual Utilization	Class Size at Actual Utilization	Assumed Programming Efficiency	Class Size with Efficient Programming
6-8	28	84.5%	23.6	84.5%*	20.0
9-12	30	84.5%	25.4	84.5%*	21.4

* Based on 87.5% programming efficiency for regular classrooms – 85% of the space – and 67.5% for specialty classrooms – the remainder. Note that it is a coincidence that this number matches the FY2007 system wide utilization.

Obviously, most schools will not choose to program their rooms for 100% of the day, and some may take advantage of lower utilization to create additional cluster rooms – but it is clear that the new capacity calculations will create ample space for schools to achieve targeted reductions.

The second way that the new plan will support class size reduction efforts is through an emphasis on local neighborhoods, in both capital construction and in facility realignment. In most cases, overcrowding and larger class sizes are very local phenomena, reflecting school admissions zones that are poorly designed for the building, and or reflecting deeply popular schools into which the press of parents creates larger class size. Local neighborhood planning will help identify and solve these issues, in particular so that low performing schools with large class size – the priority of the class size reduction plan – can be given enrollment relief.

It is a requirement of the Contract for Excellence law and regulation that the Five Year Class Size Reduction Plan be aligned to the City's capital plan. The current Five Year Class Size Reduction Plan accounts for and plans on all the new construction identified in the FY2005 - 2009 Capital Plan. Assuming passage of the proposed FY2010 - 2014 Capital Plan by the City Council, the Five Year Class Size plan will be adjusted so that it remains aligned with our Capacity Program. That alignment will include the following:

- Class size reduction efforts will focus on those schools and communities that have new buildings opening, and or where facility realignment strategies will enable enrollment relief to currently overcrowded buildings.
- Coaching and guidance in class size reduction will continue to highlight the ways that schools can utilize their buildings, particularly given new capacity calculations, to achieve class size reduction
- Targeting of neighborhood planning to communities that are over-utilized, have large class size, and where there are low performing schools

The proposed FY2010 - 2014 Capital Plan devotes \$3.8 billion to New Capacity Projects over the next five years. This allocation will provide over 25,000 new seats in approximately 44 new buildings. This includes approximately 8,000 seats carried over from the FY2005 - 2009 Capital Plan. The new school buildings proposed in this Plan are:

- 21 small Primary school buildings, Grades PreK - 5
- 21 Primary/Intermediate school buildings, many of which will be Grades PreK - 8
- 2 Intermediate/High school buildings, which will range in grades 6 - 12.

This new capacity, coupled with ongoing strategies to align facilities with instructional and enrollment need, will enable the DOE to:

- Ameliorate localized overcrowding within districts
- Sustain the ability of schools to opt for lower class sizes by lowering the maximum classroom capacity as follows:
 - Grades 4 - 8 to 28
 - Grades 9 - 12 to 30
- Expand the Pre-Kindergarten resources available throughout the City

Room for improvement in city class-size crisis

Will the City Council rubber-stamp the Bloomberg administration's disregard of state education law? We'll find out today when Council members vote on a new capital budget for city public schools.

"City Hall is not complying with the law on reducing class size," Robert Jackson, (D-Manhattan), chairman of the Council's Education Committee, said yesterday as he urged a "No" vote on the budget.



JUAN GONZALEZ

Back in 1991, Jackson was the lead plaintiff in the lawsuit that eventually forced the politicians in Albany to increase state aid to schools by billions of dollars.

But now he claims Mayor Bloomberg and Schools Chancellor Joel Klein are flouting the settlement agreement in that case. The agreement, which was incorporated into state law, mandates that some of the extra money be used to reduce class size by 2012 to an average of 23 from fourth grade through high school.

Klein is proposing to spend \$3.8 billion over the next five years to add 25,000 new seats. The plan, however, will only reduce "target maximum class size" to 28 in grades

4-8 and to 30 in the high schools. That's far higher than what the law requires, Jackson claims.

Education Department spokesman William Havemann said the councilman has it all wrong. Those are "maximum" numbers per class, Havemann said, while the average number of students per class throughout the system will be lower.

Jackson has been around the schools long enough to know that a "maximum" target usually becomes the average. He also accuses the Education Department of hiding the true crisis of school overcrowding.

For years, the DOE has systematically eliminated cluster rooms — spaces that were used for art, science, computers and physical education — and turned them into regular classrooms, he said.

A citywide survey his committee conducted found 40% fewer cluster rooms throughout the system than the Education Department itself says are minimum standards.

Jackson is "mistaken" again, Havemann said, because "the recorded capacity of a school does not change when cluster rooms are used as regular classrooms."

But Jackson can't be so easily dismissed. To illustrate his point, he pulled out for me a floor plan of just one school, Intermediate School 218 in Washington Heights. When the school was built in 1993, it had an official capacity of 1,210. As a state-of-the-art building, it boasted 12 science labs, a dance studio, music rooms, cooking and sewing rooms, com-

puter labs, instrument storage rooms. But as the school got more crowded, many of those cluster rooms were turned into classrooms, and the city kept increasing its "official" capacity.

Today the Education Department lists the capacity of IS 218 at 1,726. Without any new rooms added, the building now magically can accommodate 500 more students.

"How can you tell me you're not overcrowded when your school doesn't have an art room, a science lab, a computer room, a guidance room or even sufficient lunchroom space to provide for its students," Jackson said. And that's happening all over the city.

That's why Jackson and many parent advocates want the Council to reject this capital budget. Instead of spending \$1 billion to build new jails in Brooklyn and the Bronx that those neighborhoods don't even want, they say, the mayor should use that money to build more classrooms.

"I understand the parents' frustration, but we have to have a budget in place," Council Speaker Christine Quinn said.

For the past week, Quinn has been repeating the administration's line: if the Council doesn't approve this budget today, all school capital projects will be in danger. Nonsense.

The Council is not another rubber stamp like the mayor's Panel for Educational Policy. Jackson is urging his colleagues to send Bloomberg a lesson: Follow the law and reduce class size.

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