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**The Council of the City of New York**

**COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION**

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**COMMITTEE ON EDUCATION**

Hon. Mark Treyger, *Chair*

**February 28, 2020**

**Oversight: Class Size Reduction**

**PRECONSIDERED RES. NO. (T:2020-5915)**

By Council Member Treyger

**TITLE:**

Resolution calling upon the New York State Legislature to amend state education law to prohibit reissuance of any charter originally issued to a charter school that has subsequently closed due to surrender, revocation, termination or non-renewal of its charter

## **Introduction**

On February 28, 2020, the Committee on Education, chaired by Council Member Mark Treyger, will hold an oversight hearing on “Class Size Reduction.” Representatives from the Department of Education (DOE), union leaders, advocates, educators, parents, students and other interested stakeholders have been invited to testify.

## **Background**

There is a considerable body of research that has linked small class sizes with a variety of cognitive and non-cognitive benefits for students, both short and long-term.<sup>1</sup> A review of the research shows that students in the early grades perform better in small classes, especially students from disadvantaged backgrounds, who experience even larger performance gains than other students when enrolled in smaller classes.<sup>2</sup> Small class sizes enable teachers to be more effective, allowing them to spend more time on instruction and less on classroom management.<sup>3</sup> Further, research has found that children who attend small classes in the early grades continue to benefit over their entire lifetimes.<sup>4</sup>

The most influential and oft-cited study on the impact of reducing class sizes is Tennessee’s Student Teacher Achievement Ratio (STAR) experiment, in which over 11,500 students and 1,300 teachers in 79 Tennessee elementary schools were randomly assigned to small or regular-sized classes from 1985-89.<sup>5</sup> Such randomized experiments are very rare and considered to be the gold

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<sup>1</sup> Schanzenbach, D.W., *Does Class Size Matter?* National Education Policy Center, February 2014, accessed at <https://nepc.colorado.edu/publication/does-class-size-matter>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> C.M. Achilles; Helen Pate Bain; et al, "Tennessee's Student Teacher Achievement Ratio (STAR) project", 2008, Harvard Dataverse, V1, accessed at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=hdl:1902.1/10766>.

standard of social science research.<sup>6</sup> The results from STAR showed that smaller classes benefitted all students – boosting achievement on math and reading standardized tests.<sup>7</sup> Small-class benefits in STAR were larger for students from low socio-economic status families and black students, indicating that reducing class size could be an effective strategy to reduce the black-white achievement gap.<sup>8</sup> Longitudinal data on STAR participants found that small classes had positive impacts not only on test scores, but also on life outcomes in the years after the experiment ended.<sup>9</sup> Students who were assigned to small classes did better than those assigned to regular-sized classes on a variety of outcomes, including juvenile criminal behavior, teen pregnancy, high school graduation, college enrollment and completion, and savings behavior and homeownership, among others.<sup>10</sup> Subsequent research supports these positive findings, as exemplified in a 2014 review of the research by the National Education Policy Center.<sup>11</sup>

Reducing class size as an education reform strategy has been challenged by some as being too costly, because it requires investments in hiring and training more teachers.<sup>12</sup> However, others point to an even greater return on that investment. Alan Krueger, a prominent Princeton University economist and former chair of the White House Council of Economic Advisers, conducted a cost-benefit analysis of the Tennessee STAR project and found that every dollar invested in smaller

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<sup>6</sup> Schanzenbach, D.W., *Does Class Size Matter?* National Education Policy Center, February 2014, accessed at <https://nepc.colorado.edu/publication/does-class-size-matter>.

<sup>7</sup> C.M. Achilles; Helen Pate Bain; et al, "Tennessee's Student Teacher Achievement Ratio (STAR) project", 2008, Harvard Dataverse, V1, accessed at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=hdl:1902.1/10766>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Schanzenbach, D.W., *Does Class Size Matter?* National Education Policy Center, February 2014, accessed at <https://nepc.colorado.edu/publication/does-class-size-matter>.

<sup>12</sup> See, e.g. Grover J. Whitehurst and Matthew M. Chingos, "Class Size: What Research Says and What it Means for State Policy," Brown Center on Education Policy at the Brookings Institution, May 11, 2011, accessed at [https://www.brookings.edu/wp-content/uploads/2016/06/0511\\_class\\_size\\_whitehurst\\_chingos.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0511_class_size_whitehurst_chingos.pdf).

classes yielded about \$2 in benefits.<sup>13</sup> Others point to even greater long-term economic benefits to society that accrue from higher graduation rates, lower crime rates, reduced need for social services, and higher tax revenues from greater lifetime earnings.<sup>14</sup>

### **Class Size Reduction Efforts in New York State**

Efforts to reduce class size have been underway for decades, yet class sizes still remain high. In 1997, as part of the State budget agreement, the Assembly Majority's education initiative entitled Learning, Achieving and Developing by Directing Education Resources (LADDER) was adopted.<sup>15</sup> LADDER significantly increased State support for some existing education programs and provided funding for major new initiatives, including a universal pre-kindergarten program and early grade class size reduction (EGCSR).<sup>16</sup> To reduce class sizes, LADDER provided for a first year EGCSR grant of \$75 million, beginning in 1999-2000, growing to \$225 million over three years, to reduce the average class size for grades kindergarten through third grade to 20 students.<sup>17</sup>

#### *Campaign for Fiscal Equity*

Funding for class size was also impacted by the New York State Court of Appeals' 2006 decision in *Campaign for Fiscal Equity v State of New York (CFE)*, which found that the State was not funding schools at a level that ensured all students received a "sound basic education," as

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<sup>13</sup> Alan B. Krueger, "Economic Considerations and Class Size," *The Economic Journal*, 113, February 2003, accessed at <https://www.classsizematters.org/wp-content/uploads/2011/04/economic-considerations-and-class-size.pdf>.

<sup>14</sup> Dennis Van Roekel, *Class Size Reduction: A Proven Reform Strategy*, National Education Association Policy Brief, 2008, accessed at [http://www.nea.org/assets/docs/PB08\\_ClassSize08.pdf](http://www.nea.org/assets/docs/PB08_ClassSize08.pdf).

<sup>15</sup> Steven Sanders, Chairman, Standing Committee on Education, New York State Assembly, *1997 Annual Report, Committee on Education*, December 15, 1997, accessed at <https://www.assembly.state.ny.us/Reports/PandC/1997education.html>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

required by the state constitution.<sup>18</sup> The Court of Appeals held that the State was effectively violating the rights of children by failing to provide resources essential for a sound basic education, and ordered the State to reform the funding system to ensure that every school in New York City has the resources necessary to provide students with the opportunity for a sound basic education.<sup>19</sup> Among the essential resources for a sound basic education that the Court identified was reasonable class sizes; importantly, in an earlier 2003 ruling, the Court found that class sizes in New York City public schools were excessive.<sup>20</sup> The Court, in its 2006 decision, further found that the State's failure to provide sufficient school funding impeded the ability to maintain reasonable class sizes in many New York City schools.<sup>21</sup>

In response to the *CFE* rulings, state lawmakers enacted school funding reforms in 2007 by consolidating more than two dozen different state school funding formulas into what would become Foundation Aid, a new aid formula based on need.<sup>22</sup> Foundation Aid, which was first implemented statewide in the 2007-08 school year, currently comprises about two-thirds of state school aid to local districts.<sup>23</sup> Among the funding streams consolidated into Foundation Aid was EGCSR Grants.<sup>24</sup>

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<sup>18</sup> Campaign for Fiscal Equity, Inc. v State of New York, 8 N.Y.3d 14 (2006).

<sup>19</sup> *Id.*

<sup>20</sup> Danielle Farrie, Monete Johnson, Wendy Lecker and Theresa Luhm, *Reducing Class Size in New York City: Promise vs. Practice*, Education Law Center, June 2016, accessed at <https://edlawcenter.org/news/archives/new-york/new-york-city-losing-ground-on-reducing-class-size.html>.

<sup>21</sup> *Id.*

<sup>22</sup> Zach Williams, "Three questions that define school 'Foundation Aid'," *City & State New York*, October 22, 2019, accessed at <https://www.cityandstateny.com/articles/policy/education/three-questions-define-school-foundation-aid.html>.

<sup>23</sup> *Id.*

<sup>24</sup> NYSED, "State Aid to Schools: A Primer Pursuant to Laws of 2019," August 2019, p. 31, accessed at <http://www.oms.nysed.gov/faru/PDFDocuments/2019-20Primer.pdf>.

## *Contracts for Excellence*

In addition to creating Foundation Aid, the Legislature also enacted the “Contracts for Excellence” (commonly referred to as “C4E”) law in 2007, “to provide additional accountability for increased State Aid for low performing school districts.”<sup>25</sup> Under C4E, low performing school districts receiving additional funding under the Foundation Aid formula are required to develop a spending plan to ensure that the aid received is spent on a few specific programs proven to raise the achievement of students with the greatest educational need.<sup>26</sup> There are currently six allowable program categories on which Foundation Aid subject to C4E restrictions may be spent including: 1) class size reduction;<sup>27</sup> 2) increased student time on task; 3) teacher and principal quality; 4) middle school and high school restructuring; 5) model programs for students with limited English proficiency; and 6) full-day kindergarten or pre-kindergarten.<sup>28</sup>

Notably, New York City is the only district mandated to reduce class sizes under C4E, which also required that the DOE develop a five-year class size reduction plan for all grade levels.<sup>29</sup> Subsequently, the DOE submitted a five-year class size reduction plan with annual targets that was approved by the state in the fall of 2007.<sup>30</sup> The DOE’s plan required reducing average class sizes over five years to the following levels:

- 19.9 for Kindergarten through Grade 3;
- 22.9 for Grades 4 through 8;
- 24.5 for Grades 9 through 12 (in core classes).<sup>31</sup>

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<sup>25</sup> NYSED website, “Contracts for Excellence,” accessed on 1/23/19 at <http://www.p12.nysed.gov/mgtserv/C4E/>.

<sup>26</sup> *Id.*

<sup>27</sup> Note that New York City is required to submit a class-size reduction plan as part of its Contract for Excellence and New York City is the only district for which class size reduction is a mandatory program.

<sup>28</sup> NY CLS Education §211-d(3)a.

<sup>29</sup> NY CLS Education §211-d(2)b.

<sup>30</sup> Danielle Farrie, Monete Johnson, Wendy Lecker and Theresa Luhm, *Reducing Class Size in New York City: Promise vs. Practice*, Education Law Center, June 2016, accessed at <https://edlawcenter.org/news/archives/new-york/new-york-city-losing-ground-on-reducing-class-size.html>.

<sup>31</sup> *Id.*

The City's class size reduction goals were originally supposed to be met by the 2011-12 school year, using expected increases in Foundation Aid, but as described below, these goals were never met and in fact, class sizes are even larger now than they were in 2007.<sup>32</sup>

### **Class Size Reduction in New York City**

Class sizes in NYC public schools have long been among the largest in the state.<sup>33</sup> The only class size limits in City schools are the maximum class sizes delineated in the United Federation of Teachers (UFT) contract.<sup>34</sup> The UFT contractual class size limits are as follows:

- Pre-Kindergarten: 18 students with a teacher and a paraprofessional;
- Kindergarten: 25 students;
- Grades 1-6 in elementary schools: 32 students;
- Junior high school/middle school (all grades 4–8 or 5–9, if located in a middle school, then middle school class size applies); 33 students in non-Title I schools; 30 in Title I schools;
- High school: 34 students; 50 in physical education/gym.<sup>35</sup>

The UFT can file complaints regarding class sizes that exceed these limits, which are supposed to be addressed early in the school year according to new expedited procedure for class- and group-size grievances negotiated as part of the 2018 contract.<sup>36</sup> Despite these large maximum class sizes, the UFT often files thousands of grievances each year regarding classes that exceed these limits, many of which go unresolved.<sup>37</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> New York State Education Department (NYSED) Information and Reporting Services website, "The Chapter 655 Report," See "Table 3 - Average Class Size" in *Chapter 655 Reports from 1999 to 2008* and *Chapter 655 Reports from 2009 to Present* available at <http://www.p12.nysed.gov/irs/chapter655/home.html>.

<sup>34</sup> UFT, "Class size and instructional materials," *New York Teacher*, September 5, 2019, accessed at <https://www.uft.org/news/you-should-know/know-your-rights/class-size-and-instructional-materials>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See e.g., UFT, "More than 3,500 classes over size limits," *New York Teacher*, October 1, 2014, accessed at <https://www.uft.org/news/news-stories/more-3500-classes-over-size-limits>.

In 2005, the City Council enacted Local Law 125, requiring the DOE to publicly report data on class sizes for each grade at the school, district, borough and city level.<sup>38</sup> The availability of this data has enabled researchers and advocates to track class sizes trends over time. As previously noted, the data shows that the City has not made progress in meeting class size reduction requirements imposed by the C4E law. In 2007-08, after the City failed to make its first year C4E targets despite slight class size reductions, the State imposed a corrective action plan for the following year.<sup>39</sup> However, beginning in 2008-09, class sizes began increasing sharply, which DOE blamed initially on City budget cuts and later on the wider recession that led the State to suspend planned increases in Foundation Aid as well as to impose cuts in school aid.<sup>40</sup> In 2010, the State Education Commissioner gave DOE a temporary reprieve on its citywide class size reduction requirements, “due to the current economic climate.”<sup>41</sup> Instead, DOE proposed focusing its class size reduction efforts solely on 75 low-achieving schools with large class sizes, but even in many of the 75 “focus” schools, class sizes increased rather than decreased.<sup>42</sup>

According to a data analysis by the advocacy organization Class Size Matters, not only has DOE failed to reduce class sizes as required since passage of the C4E law in 2007, average class sizes in City schools are actually larger than they were then and have increased steadily since 2008-09.<sup>43</sup> The analysis found that class sizes have risen in all grades, but particularly in grades K-3,

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<sup>38</sup> See DOE InfoHub website, “Class Size Reports,” at <https://infohub.nyced.org/reports/government-reports/class-size-reports>.

<sup>39</sup> Danielle Farrie, Monete Johnson, Wendy Lecker and Theresa Luhm, *Reducing Class Size in New York City: Promise vs. Practice*, Education Law Center, June 2016, accessed at <https://edlawcenter.org/news/archives/new-york/new-york-city-losing-ground-on-reducing-class-size.html>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Leonie Haimson, “Class size trends in NYC public schools,” Class Size Matters, Feb 23, 2018, accessed at <https://www.classsizematters.org/citywide-class-size-trends-since-1998/>.

where average class sizes are 14% larger than they were in 2007.<sup>44</sup> Further, Citywide more than 330,000 students are in very large classes of 30 or more and the number of 1<sup>st</sup> through 3<sup>rd</sup> graders in classes of 30 or more has increased by nearly 3000% since 2007.<sup>45</sup>

### *DOE Funding for Class Size Reduction*

There are two primary sources of expense funding for class size reduction in City schools, state C4E funds and federal Title IIA funds.<sup>46</sup>

As previously noted, the C4E law was enacted in 2007 and funding was first allocated in the 2007-08 school year with increasing amounts to be phased in over four years.<sup>47</sup> Instead, due to an economic downturn, after two years funding levels stopped increasing and remained essentially static thereafter.<sup>48</sup> The table in Appendix show the C4E amounts DOE allocated by program area, including allocations for class size reduction, each year from 2007-08 to 2019-20. As shown, the total combined C4E funds allocated to the six program areas has been \$348 million per year for the past ten years, although amounts allocated among the program areas has varied over the years.<sup>49</sup>

Federal Title IIA funding is allocated to reduce class size across the system.<sup>50</sup> The Title IIA Supplemental allocation gives priority to schools where classes are in excess of 20 pupils and

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See School Allocation Memorandum No. 05, FY 2020, “Contracts for Excellence (C4E) Discretionary Allocations to Schools,” and School Allocation Memorandum No. 26, FY 2020, “Title IIA Supplement,” accessed at [https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fy19\\_20/am\\_fy20\\_pg1.htm](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy19_20/am_fy20_pg1.htm).

<sup>47</sup> Danielle Farrie, Monete Johnson, Wendy Lecker and Theresa Luhm, *Reducing Class Size in New York City: Promise vs. Practice*, Education Law Center, June 2016, accessed at <https://edlawcenter.org/news/archives/new-york/new-york-city-losing-ground-on-reducing-class-size.html>.

<sup>48</sup> *Id.*

<sup>49</sup> DOE Infohub, “Contracts for Excellence,” accessed 2/26/20 at <https://infohub.nyced.org/reports/financial/contracts-for-excellence>.

<sup>50</sup> School Allocation Memorandum No. 26, FY 2020, “Title IIA Supplement,” accessed at [https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fy19\\_20/am\\_fy20\\_pg1.htm](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy19_20/am_fy20_pg1.htm).

academic performance is poor.<sup>51</sup> If space is not available to form additional classes, funds may be used for an additional teacher in a classroom, to supplement the instructional program.<sup>52</sup> “Priority must be given to reducing class size in general education settings and must demonstrate the following: Reduction of class sizes to 15-18 students or fewer (including the use of co-teaching and floating teachers that bring the student to teacher ratio to one teacher per 15-18 students).”<sup>53</sup> The total Title IIA Supplemental funds allocated to schools in FY 2020 is approximately \$52.5 million.<sup>54</sup>

The DOE also allocated capital funding for class size reduction for the first time in the FY 2015 – 2019 Five-Year Capital Plan, produced by the School Construction Authority (SCA) for DOE.<sup>55</sup> The initial adopted FY 2015 – 2019 Five-Year Capital Plan allocated \$490 million for a Class Size Reduction Program to create an additional 4,900 seats, targeted specifically to reduce class sizes.<sup>56</sup> By the time the Final Report of the FY 2015 – 2019 Five-Year Capital Plan was released in September 2019, the actual amount spent on Class Size Reduction projects was just \$192.1 million.<sup>57</sup> The current, FY 2020 – 2024 Five-Year Capital Plan allocates just \$150 million to the Class Size Reduction Program, a significant decrease.<sup>58</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*, Table 1 – Title IIA School Allocation Summary.

<sup>55</sup> SCA website, Capital Plan Reports & Data, *FY 2015 – 2019 Five-Year Capital Plan*, accessed at <http://www.nycsca.org/Community/Capital-Plan-Reports-Data#Capital-Plan-67>.

<sup>56</sup> *FY 2015 – 2019 Proposed Five-Year Capital Plan*, p. 25, February 2014, copy on file with the City Council Finance Division

<sup>57</sup> SCA website, Capital Plan Reports & Data, *Fiscal Years: 2015 - 2019 Final Report*, p. 18, September 2019, accessed at <http://www.nycsca.org/Community/Capital-Plan-Reports-Data#Capital-Plan-67>.

<sup>58</sup> SCA website, Capital Plan Reports & Data, *FY 2020 – 2024 Five-Year Capital Plan*, p. 23, February 2020, accessed at <http://www.nycsca.org/Community/Capital-Plan-Reports-Data#Capital-Plan-67>.

## **Issues and Concerns**

Despite the court ruling in *CFE* that NYC class sizes are too large and State enactment of the C4E law calling for class size reduction, class sizes in City public schools have continued to increase since 2007.

As a result, in July 2017, parents and advocates filed a petition with then-State Education Commissioner Mary Ellen Elia, charging the DOE with failing to reduce class sizes as mandated by the C4E law.<sup>59</sup> The Commissioner dismissed the petition in December 2017, ruling that the DOE's 2007 class size reduction plan "concluded" in 2012, five years after it was approved, so the petition was moot even though the City never implemented the plan.<sup>60</sup> In response, nine parents from all five New York City boroughs, along with advocacy organizations Class Size Matters and the Alliance for Quality Education, filed a lawsuit against New York Education Commissioner Mary Ellen Elia in Albany State Supreme Court in April 2018 to enforce the class size reduction mandate.<sup>61</sup> The State Supreme Court "deferred" to the Commissioner's interpretation of the term "within five years" in the C4E law so the plaintiffs appealed to the Appellate Division in 2019.<sup>62</sup> The plaintiffs argued that the Commissioner misinterpreted the C4E law: the five-year endpoint in the law was the deadline the Legislature imposed to accomplish class size reduction, not the date "at which the City's legal obligation would magically disappear."<sup>63</sup> Arguments in the lawsuit,

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<sup>59</sup> Education Law Center press release, "NYC Parents File Complaint to Enforce Law to Reduce Class Size," July 6, 2017, accessed at <https://edlawcenter.org/news/archives/new-york/nyc-parents-file-complaint-to-enforce-law-to-reduce-class-size.html>.

<sup>60</sup> Education Law Center press release, "New York City Parents Take Fight to Reduce Class Size to Court," April 16, 2018, accessed at <https://edlawcenter.org/news/archives/new-york/new-york-city-parents-take-fight-to-reduce-class-size-to-court.html>.

<sup>61</sup> *Id.*

<sup>62</sup> Education Law Center press release, "Lawsuit to enforce mandate to reduce class size in New York City schools moves forward," May 29, 2019, accessed at <https://edlawcenter.org/news/archives/new-york/lawsuit-to-enforce-mandate-to-reduce-class-size-in-new-york-city-schools-moves-forward.html>.

<sup>63</sup> *Id.*

*Agostini v Elia*, were heard on January 13, 2020 in the Appellate Court in Albany, with a decision pending and not likely to be issued before the summer.<sup>64</sup>

Advocates also have serious concerns regarding the accuracy of DOE data regarding school capacity and utilization, which are critical to measuring overcrowding and availability of space to reduce class size.<sup>65</sup> For many years, critics charged that the DOE's annual Enrollment, Capacity & Utilization Report, commonly known as the “Blue Book,” did not accurately portray school capacity and utilization.<sup>66</sup> In fact, in the *CFE* lawsuit the State Supreme Court found that the Blue Book formulas inflated school capacity, stating:

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 space if such space is in fact used for classrooms. For example if a crowded school is forced to convert its gymnasium or auditorium into classroom space, the capacity formula indicates increased capacity.<sup>67</sup>

Shortly after taking office, Mayor de Blasio and Chancellor Fariña announced formation of a Blue Book Working Group (BBWG) in February 2014, to review and propose recommendations to make the Blue Book more “transparent, accurate, and easy-to-understand.”<sup>68</sup> The DOE adopted initial BBWG proposals in 2014, but did not adopt all of the later recommendations released in July 2015, including a key recommendation to lower class-size

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<sup>64</sup> Leonie Haimson, Class Size Matters, “News about arguments in our class size lawsuit & tomorrow’s radio show,” January 14, 2020, accessed at <https://www.classsizematters.org/news-about-arguments-in-our-class-size-lawsuit-tomorrows-radio-show/>.

<sup>65</sup> Patrick Wall, “How much space does a school need? City agrees to tweak its answers,” *Chalkbeat*, July 28, 2015, accessed at <https://chalkbeat.org/posts/ny/2015/07/28/city-to-tweak-how-it-calculates-school-space-needs/#.Vbj3DCpVikr>.

<sup>66</sup> *Id.*

<sup>67</sup> Supreme Court, New York County, New York, Campaign for Fiscal Equity et al. v. State of New York et al. 187 Misc.2d 1, 719 N.Y.S.2d 475, January 9, 2001.

<sup>68</sup> DOE press release, “City Announces Changes to The 2013-2014 Blue Book,” Jun 27, 2014, accessed at <https://www.schools.nyc.gov/about-us/news/announcements/contentdetails/2014/06/27/city-announces-changes-to-the-2013-2014-blue-book>.

targets.<sup>69</sup> Instead, the DOE said “it will study the working group’s five other recommendations over the following year.”<sup>70</sup> The BBWG recommendation on class size had to do with the Blue Book “target” methodology which is used to calculate capacity for each instructional room by using a target class size that varies by grade level.<sup>71</sup> The BBWG recommended using the class size standards set forth in the City’s Five -Year Class Size Reduction Plan, required under the C4E legislation and approved by the State in 2007, in calculating Blue Book maximum target capacity.<sup>72</sup> Over time, the target class sizes for grades K to 3 had already been lowered to 20 students, the target established in the State-approved C4E five -year class size reduction plan.<sup>73</sup> However, the Blue Book continues to use a target class size of 28 for grades 4 to 8, and a class size of 30 for grades 9 to 12.<sup>74</sup> Not only are these target class sizes for grades 4 to 12 higher than class sizes specified in the state-approved C4E five -year class size reduction plan, they are higher than current average class sizes. For that reason, advocates maintain that the Blue Book’s school capacity numbers are inflated and utilization rates do not accurately reflect overcrowding. Further, use of current Blue Book data in DOE/SCA standards for constructing new capacity means the City is building new schools to contain class sizes larger than current levels in grades 4 to 12.

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<sup>69</sup> Patrick Wall, “How much space does a school need? City agrees to tweak its answers,” *Chalkbeat*, July 28, 2015, accessed at <https://chalkbeat.org/posts/ny/2015/07/28/city-to-tweak-how-it-calculates-school-space-needs/#.Vbj3DCpVikr>.

<sup>70</sup> Dan Rosenblum, “DOE Greenlights ‘Blue Book’ Ideas on Space,” *The Chief-Leader*, Aug 3, 2015, accessed at [https://thechiefleader.com/news/news\\_of\\_the\\_week/doe-greenlights-blue-book-ideas-on-space/article\\_b415a674-39f0-11e5-8b67-af3d1eb163eb.html](https://thechiefleader.com/news/news_of_the_week/doe-greenlights-blue-book-ideas-on-space/article_b415a674-39f0-11e5-8b67-af3d1eb163eb.html).

<sup>71</sup> DOE, *Enrollment, Capacity & Utilization Report 2018 – 2019 School Year: Classic Edition (Target Calculation)*, P1, accessed at <http://www.nycsca.org/Community/Capital-Plan-Reports-Data#Enrollment-Capacity-Utilization-69>.

<sup>72</sup> Lorraine Grillo and Shino Tanikawa, “Recommendations of the Blue Book Working Group,” p.4, July 28, 2015, accessed at <https://assets.documentcloud.org/documents/2183985/blue-book-working-group-recommendations.pdf>.

<sup>73</sup> DOE, *Enrollment, Capacity & Utilization Report 2018 – 2019 School Year: Classic Edition (Target Calculation)*, P1, accessed at <http://www.nycsca.org/Community/Capital-Plan-Reports-Data#Enrollment-Capacity-Utilization-69>.

<sup>74</sup> *Id.*

Finally, as mentioned earlier, the cost of reducing class sizes has often been cited as an obstacle, since it requires substantial up-front costs for hiring and training more teachers, as well as potential capital costs for providing additional classroom space.<sup>75</sup> Although the *CFE* lawsuit initially resulted in additional resources, in the form of increased State Building Aid and Foundation Aid, including C4E funding specifically intended for class size reduction, the promised increases in State aid were never fully phased in due to the recession beginning in 2008-09. However, despite resistance from Governor Cuomo, City officials and advocates have continued to lobby the State to fully fund Foundation Aid to the levels specified as a result of the *CFE* lawsuit.<sup>76</sup> Advocates are also urging City officials to invest more City tax-levy funds in class size reduction, citing the evidence-based benefits to students, as well as an estimated two-to-one return on investment and substantial potential cost savings from lowering special education referrals, boosting graduation rates, and “reducing the need for expensive and often less effective intervention services.”<sup>77</sup>

## **Conclusion**

Today’s hearing will provide an opportunity for the Committee to examine DOE’s efforts to reduce class sizes in New York City schools. The Committee also expects to hear testimony from parents, students, educators, advocates, unions, and other members of the public about their concerns and recommendations on the subject of class size reduction.

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<sup>75</sup> See, e.g. Grover J. Whitehurst and Matthew M. Chingos, “Class Size: What Research Says and What it Means for State Policy,” Brown Center on Education Policy at the Brookings Institution, May 11, 2011, accessed at [https://www.brookings.edu/wp-content/uploads/2016/06/0511\\_class\\_size\\_whitehurst\\_chingos.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0511_class_size_whitehurst_chingos.pdf).

<sup>76</sup> See, e.g. Reema Amin, “Amid \$6B shortfall, Cuomo pitches smaller increase in education spending, new funding formula,” *Chalkbeat*, January 21, 2020, accessed at [https://chalkbeat.org/posts/ny/2020/01/21/amid-6b-shortfall-cuomo-pitches-smaller-increase-in-education-spending-new-funding-formula/?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=cb\\_bureau\\_ny](https://chalkbeat.org/posts/ny/2020/01/21/amid-6b-shortfall-cuomo-pitches-smaller-increase-in-education-spending-new-funding-formula/?utm_source=newsletter&utm_medium=email&utm_campaign=cb_bureau_ny).

<sup>77</sup> Leonie Haimson, Class Size Matters, “Fund Class Size Reduction Now!” January 16, 2020, accessed at <https://www.classsizematters.org/fund-class-size-reduction-now/>.

Preconsidered Res. No.

Resolution calling upon the New York State Legislature to amend state education law to prohibit reissuance of any charter originally issued to a charter school that has subsequently closed due to surrender, revocation, termination or non-renewal of its charter.

By Council Member Treyger

Whereas, In 1998, the State Legislature passed the New York State Charter Schools Act, which authorized a system of up to 100 publicly-funded but privately-run charter schools to operate independently of public school districts in the state; and

Whereas, Pursuant to the law, charters are issued for a term not to exceed five years, after which the charter school can apply for subsequent five-year renewals; however, the charter authorizer may refuse to renew or otherwise revoke or terminate a charter for reasons such as serious violations of law; violation of the charter, including fiscal mismanagement; failure to enroll or retain adequate numbers of students with disabilities, English language learners, and low-income students; or failure to achieve performance targets; and

Whereas, Subsequent amendments to state law in 2007 and 2010 raised the statewide cap on charter schools to 460, with a smaller sub-cap in New York City; and

Whereas, Under legislation passed in the 2015 state legislative session, the charter school sub-cap for New York City was increased to allow an additional 50 new charters, to be issued on or after July 1, 2015; and

Whereas, The 2015 legislation also provided that 22 charters that had been previously issued and then were surrendered, revoked, or terminated prior to July 1, 2015, so-called “zombie” charters, could be reissued; and

Whereas, A subsequent agreement with Mayor de Blasio in 2017 held that the 22 “zombie” charters could be reissued without counting towards New York City’s charter school sub-cap; and

Whereas, As of March 4, 2019, all 50 of the new charters and 22 “zombie” charters authorized since 2015 have now been issued; and

Whereas, In his Fiscal Year (FY) 2021 New York State Executive Budget, Governor Cuomo has proposed to “authorize the reissuance of any charter originally issued to a charter school that has subsequently closed due to surrender, revocation, termination or non-renewal of its charter, regardless of the date of such closure”; and

Whereas, Further, Governor Cuomo’s proposal would only permit the issuance of additional “zombie” charters in New York City; and

Whereas, If the Governor’s proposal is enacted, it would allow an additional 15 charters to be opened in New York City, according to press reports; and

Whereas, In addition, more “zombie” charters would become available in the future, as charters are revoked; and

Whereas, According to the New York City Charter School Center, there are currently 260 charter schools operating in New York City serving 126,400 students in all five boroughs, with 32 more charter schools in the pipeline yet to be opened; and

Whereas, The growing costs for the increasing number of charter schools means less funding is available for traditional district schools; and

Whereas, Spending on charter schools in New York City currently exceeds \$2 billion per year; and

Whereas, The Governor's FY 2021 Executive Budget also proposes a 5.3% per pupil spending increase for charter schools across the state, though it only proposes a 3% increase in education spending overall and just a 2% increase for New York City public schools; and

Whereas, Costs associated with charter schools will continue to rise annually due to State mandates, charter school growth and increases in enrollment; and

Whereas, Rather than opening increasing numbers of charter schools, which divert much-needed funding from district schools, the State should be investing more in New York City's under-resourced traditional public schools; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to amend state education law to prohibit reissuance of any charter originally issued to a charter school that has subsequently closed due to surrender, revocation, termination or non-renewal of its charter.

LS# 13988  
JA  
2/26/20

## APPENDIX A

C4E Spending Plans By Program Strategy for 2007-08 to 2019-20													
Program	School Year												
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Class Size Reduction	\$152.7	\$149.5	\$152.9	\$127.0	\$146.8	\$147.7	\$148.7	\$160.3	\$179.5	\$185.1	\$188.7	\$132.6	\$136.9
Time on Task	48.3	107.6	103.2	115.0	113.4	113.9	111.9	107.6	80.6	75.9	77.2	73.9	78.4
Teacher/Principal Quality Initiatives	39.8	68.0	55.6	40.0	36.7	31.8	31.3	28.5	22.1	2.8	23.3	22.6	21.4
Middle/High School Restructuring	16.9	36.0	38.5	27.0	13.5	12.6	11.9	10.6	2.8	2.7	1.8	2.7	2.7
UPK/K	0.2	4.9	6.5	5.0	8.3	9.3	9.1	9.5	9.5	9.5	9.2	9.4	9.1
Model Programs for ELLs	0.0	21.5	27.0	26.0	27.5	31.1	33.7	31.5	31.9	32.1	37.2	40.7	36.7
Unallocated			3.9	7.0	1.8	1.2	1.4						
<b>TOTAL:</b>	<b>\$257.8</b>	<b>\$387.5</b>	<b>\$387.5</b>	<b>\$348.0</b>	<b>\$348.0</b>	<b>\$348.0</b>	<b>\$348.0</b>	<b>\$348.0</b>	<b>\$348.0*</b>	<b>\$348.0*</b>	<b>\$348.0*</b>	<b>\$348.0*</b>	<b>\$348.0*</b>

\*\*Numbers in DOE presentations were Preliminary and may not add to total funds

Source: DOE "Contracts for Excellence Proposed Citywide Plan - CEC Presentation" for years 2007-08 to 2019-20<sup>1</sup>

<sup>1</sup> DOE Infohub, "Contracts for Excellence," accessed 2/26/20 at <https://infohub.nyced.org/reports/financial/contracts-for-excellence>.