CFE A PROJECT OF ELC EDUCATION LAW CENTER

February 21, 2013

By Fax and Regular Mail

Dr. John B. King, Jr.
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Re: Contract for Excellence 2012-2013

Dear Commissioner King:

On behalf of the Campaign for Fiscal Equity, we are writing to request that the State Education Department ("SED" or "State") correct the timeline for districts to propose their Contract for Excellence ("C4E") for 2013-2014 and subsequent years, consistent with the C4E law and to provide the public with a meaningful opportunity for input on those plans. As we discuss below, the SED timeline in the past two years violates the plain language of the C4E law and undermines a principal purpose of the law: to facilitate public participation, accountability and transparency in the development and implementation of district C4E spending plans.

The C4E law mandates that a school district "develop its C4E plan through a public process, in consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator." N.Y.S. Education Law §211-d(4)(a). Such process must include a public hearing and, for New York City, must include a hearing in each county, as well as presentation of community C4E plans in a CEC meeting. §211-d(4)(b)-(c). Further, a transcript of these hearings must be included in the district's submission of its C4E plan to the State. §211-d(4)(b).

It is clear that the public process prescribed in the C4E law is intended to afford the public an opportunity to provide meaningful input into how the school district proposes to spend its C4E funds, prior to submission of the final C4E plan to the State for approval. Thus, in order for these provisions of the

law to have any meaning, the public hearing and input process must occur prior to the actual expenditure of any C4E funds in accordance with an approved C4E plan.

As we explain, the timeline established by the State for the 2011-12 and 2012-13 school years has effectively precluded the public from any meaningful participation in the development of New York City's C4E plans, in contravention of the C4E law.

First, the State's timeline for development of the C4E plans has improperly reversed the order of legally prescribed steps for developing the C4E plan. Contrary to ¶211-d(4)(b), the State requires districts to submit a proposed plan prior to the public hearing process. This step causes significant delays in the public review process. For example, in 2012-13, the New York City DOE explained that its lengthy delay in scheduling public hearings was due to having to wait for the State to approve DOE's class size plan, a component of the C4E plan. There is nothing in the C4E law that requires a class size plan, or any component of that plan, be submitted to the State prior to the public process.

Second, the State's timeline directs districts to start the public process too late in the school year to afford a meaningful opportunity for public review and input on the CFE plan. The timeline for 2012-13, for example, establishes September 14, 2012 as the date to commence the 30 day public comment period, well after the start of the school year. The New York City DOE did not post its proposed plan until February 14, 2013, almost halfway through the school year and, as of this date, public hearings have yet to be scheduled. Thus, over halfway in the school year, and after significant C4E funds have been expended, the DOE still has yet to complete the statutorily prescribed public review and input process.

Similarly, the timeline established by the State for the 2011-12 school year provided for the public comment month to begin in the middle of September 2011. In 2009, in sharp contrast, the State's timeline for public hearings began in June, which provided an adequate opportunity for the public to participate in the development of the C4E plan before the C4E funds were spent.

Setting a timeline that prevents the public from participating in the development of the C4E plan until after the school year begins, and therefore after districts have begun

expending C4E funds, undermines the plain language and legislative intent of the C4E.

We request, therefore, that for the 2013-2014 school year and all subsequent years, the State establish a timeline that begins in the May or June and that complies with the Contract for Excellence law by mandating posting of a district's C4E plan and public hearings and comments prior to submission of the plan to the State.

We are available to discuss the concerns set forth in this letter. Thank you for prompt attention to this matter.

Respectfully submitted,

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