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EXECUTIVE OFFICE

November 21, 2019

By Electronic Mail to RCarranza@schools.nyc.gov

Richard Carranza
Chancellor
New York City Department of Education
52 Chambers Street
New York, NY 10007

Re: Request for Data on Matching Funds for Charter School Capital Improvements and Charter School Lease Payments and Subsidies

Dear Chancellor Carranza:

A recent report from the organization Class Size Matters, entitled *Spending by NYC on Charter School Facilities: Diverted Resources, Inequities and Anomalies*, asserts that the Department of Education (DOE) may not be in compliance with state laws intended to provide equitable resources to public district and charter schools.¹

Specifically, the report contends the following:

1. The DOE is required by New York State Education Law §2853(3)(d) to approve capital improvements and facility upgrades in excess of \$5,000 for co-located charter schools, yet it appears that DOE rarely, if ever, rejects a request.
2. The DOE did not match \$22.1 million in co-located charter school expenditures on capital improvements and facility upgrades in public school buildings between fiscal years 2014 and 2019, as required by New York State Education Law §2853(3)(d). In FY 2019, DOE matched the full expenditure for only one-third of co-located schools.
3. The DOE paid lease subsidies to 39 charter schools in FY 2019 in excess of their reported base rent, even though State Education Law §2853(3)(e)(5) stipulates that lease subsidies shall be the lesser of actual rental costs or 30 percent of basic tuition payments per pupil.
4. The DOE paid \$13.2 million in direct lease payments for nine charter schools in FY 2019 that occupy their own private buildings. If DOE had not voluntarily leased space for these charter schools, but rather required the schools to file an appeal for subsidized rental

¹ <https://www.classsizematters.org/wp-content/uploads/2019/10/Charter-School-Facility-Costs-10.21.19.pdf>

assistance with the State Education Department, the lease payments would be eligible for 60 percent reimbursement from the State, under State Education Law §3602(6-g).

5. The DOE is paying rental subsidies to eight charter schools in seven private buildings, in which the charter school's Charter Management Organization or an associated LLC or foundation appears to own the building, seemingly in violation of at least the spirit of the relevant state education laws, which repeatedly refer to rental or lease costs in the determination of the rental subsidy.

If true, these findings indicate that DOE has underfunded co-located non-charter schools, while overpaying for charter school subsidies and failing to maximize available state funding.

To more fully investigate the assertions from Class Size Matters, pursuant to authority under Chapter 5 of the City Charter, the Office of the New York City Comptroller hereby requests information outlined in the attached schedule. For each item, if the DOE does not have the information requested, please so state in the response. In addition, when responding to this letter, please identify the request number to which the information or documents relate.

To further this inquiry, we would appreciate acknowledging receipt of this request and designating a liaison who can facilitate a response.

Please respond to this request by December 20, 2019. In doing so, please email the requested data in Excel or CVS form and any necessary explanatory materials to Dylan Hewitt, Director of Intergovernmental Relations, at dhewitt@comptroller.nyc.gov.

If you have any questions or would like to discuss further, please call Dylan at 212-669-8056. Thank you in advance for the Department's anticipated cooperation.

Sincerely,



Alaina Gilligo
First Deputy Comptroller

Enc.

November 21, 2019 Data Request

1. In May 2010, New York State adopted legislation (A11310/S7990) that requires the Chancellor of the New York City Department of Education to approve any capital improvements or facility upgrades in excess of \$5,000 proposed by a charter school co-located within a public school building.² Specifically, New York State Education Law §2853(3)(d) states:

“Notwithstanding any other provision to the contrary, in a city school district in a city having a population of one million or more inhabitants, the chancellor must first authorize in writing any proposed capital improvements or facility upgrades in excess of five thousand dollars, regardless of the source of funding, made to accommodate the co-location of a charter school within a public school building.”³

In addition, the Chancellor’s regulation A-190 states:

“Any charter school which proceeds with a capital improvement or facility upgrade that has not been approved by the Chancellor or the Chancellor’s designee shall be responsible for funding improvements or upgrades to be made in an amount equal to the expenditure of the charter school for each non-charter public school within the public school building within three months of the charter school’s improvements or upgrades.”

Please provide the following information related to co-located charter school requests for capital improvements or facility upgrades.

- a. A complete list of all co-located charter school requests for capital improvements or facility upgrades since May 2010, indicating which, if any, were not approved by the DOE, and the reasons for the denial.**
 - b. For all projects that were not approved, please indicate if the project proceeded and if the charter school provided matching funding to co-located schools.**
2. The aforementioned legislation further requires the DOE to provide an equal amount of capital improvements or facility upgrades to each co-located, non-charter public schools if the Chancellor approves a renovation project exceeding \$5,000 for a charter school. Specifically, New York State Education Law §2853(3)(d) states:

“For any such improvements or upgrades that have been approved by the chancellor, capital improvements or facility upgrades shall be made in an amount equal to the expenditure of the charter school for each non-charter public school within the public school building. For any capital improvements or facility upgrades in excess of five thousand dollars that have been approved by the chancellor, regardless of the source of funding, made in a charter school that is already co-located within a public school building, matching capital improvements or facility upgrades shall be made in an amount equal to the expenditure of the

² <https://www.nysenate.gov/legislation/bills/2009/a11310/amendment/original>

³ <https://www.nysenate.gov/legislation/laws/EDN/2853>

charter school for each non-charter public school within the public school building within three months of such improvements or upgrades.”

According to the Chancellor’s regulation A-190, issued on August 1, 2019, the DOE defines “capital improvements or facility upgrades” as:

“...an addition or alteration to an existing building, which is permanent and is intended to increase a building’s value, beauty, or utility, or to adapt the building for a new purpose. Such addition or alteration becomes part of the existing building, or is intended to be permanently affixed to the existing building so that removal would cause material damage to the building or article itself. In addition to the foregoing, the following is a non-exhaustive list of additions or alterations that shall constitute facility upgrades: painting; the replacement of floor covering(s); the installation of electrical or computer network wiring; and the addition of window unit air conditioners. The Chancellor retains final authority to determine whether a given proposed project qualifies as a facility upgrade.”⁴

Regulation A-190 further states:

“The costs of both labor and supplies shall be included in the calculation of the cost of a proposed capital improvement or facility upgrade. All work undertaken and supplies purchased as part of a single project shall be considered in the calculation of the cost of a proposed capital improvement or facility upgrade.”

The Class Size Matters report indicates that DOE may be excluding certain expenditures from the matching requirement, including “individual projects costing less than \$5,000, equipment purchases, computers, smartboards, shared space enhancements, and re-painting/re-carpeting areas previously upgraded within five years.”

Please provide the following information related to DOE’s interpretation of State Education Law §2853(3)(d), as reflected in the Chancellor’s regulation A-190.

- a. Please clarify how DOE interprets the \$5,000 threshold. Does DOE apply the matching requirement to each *individual project* exceeding \$5,000, or does DOE apply the matching requirement after the co-located charter school requests total capital improvements or facility upgrades exceeding \$5,000 in any given year or some other period of time?**
- b. Has DOE ever matched any *individual projects* undertaken by co-located charters that cost under \$5,000, even if a match is not required by law? If yes, please provide a list of all projects that cost under \$5,000 that have been matched since the law took effect.**

⁴ <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-190-significant-changes-in-school-utilization-and-procedures-for-the-management-of-school-building-housing-more-than-one-school>

c. For each project that triggered the matching expenditure requirement required under State Education Law §2853(3)(d) in FYs 2014 to 2019, please provide the following information:

- i. Total amount spent by the charter school
- ii. Specific exclusions to the DOE match calculation, including the dollar amount and the reason for the exclusion
- iii. Number of co-located non-charter schools
- iv. Total DOE matching funds

3. As reported by Class Size Matters, and as shown in the “Charter School Lease Report” posted on the City Council website, 39 charter schools received annual lease subsidies in excess of their site base rent in FY 2019.⁵

For each charter school that received lease assistance payments in FY 2019, please provide the following information, which is required under State Education Law §2853(3)(e)(5) to calculate the payment amount:

- a. Actual rental cost of the alternative privately owned site selected by the charter school in FY 2019. If the “actual rental cost” is different than the reported “site base rent,” please explain why.
- b. Enrollment used to calculate lease subsidy, either total enrollment for a new school or the increase in enrollment for a school undergoing grade expansion
- c. Actual lease subsidy payment in FY 2019

4. DOE directly holds leases for nine charter schools in eight buildings that do not share space with non-charter schools. Under State Education Law §3602(6-g), lease subsidies provided to charter schools following an appeal to the State Education Department are eligible for 60 percent state reimbursement.

Please explain the rationale for providing directly leased space to the following schools:

Building Code	Location Code	Location Name
K677	K882	Success Academy Charter School - Bushwick
K884	K886	Success Academy Charter School - Flatbush
M387	M265	Success Academy Charter School - Washington Heights - New York 1
M389	M357	Success Academy Charter School - Harlem 6
M389	M386	Success Academy Charter School - Harlem 4
X859	X598	KIPP Freedom Charter School
Q374	Q337	Success Academy Charter School - Rosedale - New York 5
Q781	Q374	Success Academy Charter School - South Jamaica
Q885	Q705	Renaissance Charter School

⁵ <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/02/Department-of-Education-Charter-School-Lease-Report.xlsx>

5. According to Class Size Matters, the DOE is paying rental subsidies to eight charter schools that lease space from entities that appear to be related, including the school's Charter Management Organization and affiliated LLCs or foundations.

Please clarify if the DOE believes that such arrangements are permissible under state law. Additionally, please provide any definitions or rules that the DOE uses in determining applicable rental costs, including but not limited to, the DOE's treatment of maintenance, costs of capital improvements, costs of occupancy, security, insurance and real property taxes.