



June 21, 2021

Chancellor Meisha Porter  
New York City Department of Education  
Tweed Courthouse  
52 Chambers Street  
New York, NY 10007

**Re: Contract for Excellence FY 2021-22**

Dear Chancellor Porter:

Education Law Center (ELC) is the nation's legal defense fund for public education rights and, since 2011, has worked to advance the right of all children to a sound basic education as guaranteed by the New York Constitution. Class Size Matters is a non-profit advocacy group, dedicated to the goal of smaller classes in New York City public schools and nationwide.

We urge you to immediately schedule citywide hearings in all five boroughs on the state Contract for Excellence (C4E) funds to gain input from parents and community members on the design of the Department of Education's (DOE or district) C4E spending plan, as required by Education Law §211-d (4)(b). We also urge you to schedule presentations on the DOE's proposed C4E plan in each district Community Education Council as soon as possible.

In addition, we would like to remind you of the DOE's other legal obligations regarding the use of C4E funds, including the requirement to spend these funds only on specific programs and activities outlined in the law, and to prohibit using C4E funds to supplant funds previously expended by the district.

## 1. Citywide Hearings must be held as soon as possible

The C4E law, Education Law §211-d (4)(a), mandates that New York City's Contract for Excellence spending plan must be **developed in a "public process,"** in consultation with parents or persons in parental relation, teachers, and administrators. The Legislature enacted the law to ensure that the final C4E spending plan incorporates the priorities and concerns of stakeholder groups.

That process must include both hearings in each of the city's boroughs, as well as presentations of the proposed C4E plan at Community Education Council meetings. *Shaw v. Walcott*, Sup Ct, NY County, June 7, 2013, Moulton, J., index No. 100393/13. Not only is the DOE required to schedule citywide hearings but, crucially, those hearings also must be held in a **timely** fashion. *Id.*

Thus, the citywide hearings must be held before the DOE and school budgets are finalized, in order to afford those members of the public specifically enumerated in the statute—parents or persons in parental relation, teachers, and administrators—the opportunity to have meaningful input in the development of the C4E plan for the 2021-22 school year.

We request, therefore, that the DOE comply with the C4E's public process mandates and immediately schedule citywide hearings and CEC presentations.

The DOE must also document and post on the DOE website a summary of the substance of the oral comments provided at these hearings as well as written comments, including a statement of changes made to the district's spending plan as a result of each substantive comment, or why the comment was not incorporated into the plan. 8 NYCRR §100.13(d).

## 2. Funds should be spent only on specific, allowable activities

The C4E law, Education Law §211-d(3), restricts the use of C4E funds to the following programs and activities:

- (i) class size reduction,
- (ii) programs that increase student time on task, including but not limited to, academic after-school programs,
- (iii) teacher and principal quality initiatives,
- (iv) middle school and high school re-structuring,
- (v) expansion or replication of effective model programs for students with limited English proficiency, and
- (vi) full-day kindergarten or prekindergarten.

The DOE and school leaders must use the C4E funds on these allowable activities **only**. It is imperative that DOE provide proper oversight and supervision over the development and adoption of the C4E plan to ensure full compliance with this statutory requirement.

We also note that DOE has erroneously claimed in the past that minimizing class size increases or maintaining class size was an allowable activity. See, e.g., [NYC DOE Contract for Excellence FY 2021 Proposed Plan, at 11](#). While class size reduction is an allowable activity, simply maintaining or minimizing *increases* in class size increases does not comply with the C4E law. Given the increase in C4E funding this year, if DOE is going to claim spending in the class size reduction category, it should be demonstrated that the funds have been used on hiring additional numbers of classroom teachers over the number on staff previously, and that class sizes have actually been lowered as a result.

### 3. Supplement, not Supplant

The C4E law also mandates that DOE certify C4E funds “have been used to supplement, and not supplant funds allocated by the district...” Education Law §211-d (6); see also 8 NYCRR 100.13(c)(1)(i)(f). Thus, DOE cannot use C4E funds on programs previously supported by state, local or federal funds. The certification must be conducted by an independent auditor and must be presented, along with the annual district audit, to the New York City Panel for Educational Policy. 8 NYCRR §170.12(e)(2); [NYSED Memo re Independent Auditing Requirements](#), June 2, 2008.

Moreover, if the DOE or principals intend to use a separate source of funding to lower class size, for example from federal stimulus funds, Title I or IIA funds, the school’s Fair Student Funding budget, or a separate city categorical allocation created specifically for this purpose, the funds used under C4E to lower class size should be reported separately, so that there is no confusion over the source of that funding.

We look forward to hearing your response to these points of concern, and we are available to answer any questions you might have.

Thank you very much.

Sincerely,



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