

Subject: NYC DOE's Contract for Excellence proposed plan for FY 2022

To: Commissioner Betty Rosa, Regent Chancellor Lester W. Young Jr.

From: Leonie Haimson of Class Size Matters, Wendy Lecker of Education Law Center, and Jasmine Gripper of Alliance for Quality Education

Date: July 29, 2021

Dear Commissioner Rosa and Chancellor Young:

We have several serious concerns about the NYC Department of Education's proposed Contract for Excellence plan for FY 2022, which we would like to share with you.

1. Funding amount subject to C4E should be maximized

The DOE plan only allocates \$531 million to the C4E program, the same amount as last year. They claim that this is because *"For FY 2022, the State has not allocated to NYCDOE any additional C4E funding above the amount it provided in SY 2009-2010."*¹ And yet the state increased Foundation Aid to NYC schools this year by \$530 million, in the first year of a three-phase increase to fully fund the Campaign for Fiscal Equity settlement.

In response to a query from the Alliance for Quality Education, the DOE further explained:

*"It is a portion of Foundation Aid and the amount is determine by statute and by the NYS Commissioner of Education. In prior years, the Commissioner has provided school districts with the specific amount that should be set-aside for C4E (based on a complex formula). The Commissioner has not done this for several years, but the statute provides that the amount set aside for C4E should not be less than the amount set aside for it in the prior year. This is what NYC has followed."*²

We are writing to inquire whether you agree that DOE need not allocate more funding to C4E and if so, please provide the basis for this conclusion and an explanation of how this is consistent with the language and intent of C4E, N.Y. Education Law §211-d, especially as these long-delayed funds are intended to ensure a sound basic education for NYC students.

2. C4E funds should be used to supplement not supplant

In the DOE's proposed C4E plan, about \$214 million in Contracts for Excellence funds are to be provided to principals to use as they saw fit. As in recent years, the DOE claims that these funds can be used to supplant funding previously provided but now cut by the city: that *"SED has provided guidance*

¹ https://infohub.nyced.org/docs/default-source/default-document-library/fy22-c4e-boroughwide-presentation_july-2021_v2.pdf

² Email from Joyce Elie <JElie3@schools.nyc.gov> to Jasmine Gripper, 7/27/21 .

explaining that certain expenditures may be paid for with C4E funds even though these programs or expenditures were originally or have been typically paid for by the district or by other grants.”

Yet supplanting is specifically prohibited in the C4E law.³ We urge you to forbid the city from using any C4E funds to fill in gaps made by the city’s own budget cuts, to ensure that NYC students receive improvements in their learning conditions going forward, as the CFE decision and the statute

3. C4E funds cannot be used to maintain or increase class sizes

The DOE has also claimed in its Fair Student Funding Guide as well as in their overall C4E proposal that funds spent ostensibly in the category of class size reduction can be also used to maintain class size or minimize class size increases.

In 2003, the state’s highest court concluded that class sizes in NYC schools were too large to provide NYC children with their constitutional right to a sound basic education, yet class sizes have risen since then, especially in the early grades. NYC students have waited too long to have this violation of their rights addressed. C4E specifically enumerates, as an allowable activity, *reducing class size*. N.Y. Education Law §211-d(3). Keeping class sizes at their current level or allowing further increases is not an allowable activity, and will not achieve C4E’s goal of reducing class size.

4. The legally required C4E public process should be followed

This year, as in the recent past, the DOE has held hearings and formally adopted a C4E plan too late in the year to make a difference in terms of the actual spending of these funds by the district or the individual schools. Nor has the DOE ever taken into account public comments by revising their plan. In recent years, they have also failed to post any summary of the public comments provided, and/or explain which ones they accepted or rejected in revising their plan, as the law requires.⁴

As we pointed out in our email to you on July 23, 2021, given the significant increase in Foundation Aid for the upcoming school year, we believe it is vital to ensure that districts demonstrate they have actually listened to stakeholder input, as intended. Moreover district spending plans should be submitted to the State and approved or rejected before schools open in September, so that the final, adopted plan has any relevance to the actual spending of these funds and for students to be able to receive the full benefits of these programs for the entire 2021-22 school year.

The last time NYSED posted a schedule for districts to follow in their C4E public process and plan submission was in 2016.⁵ That calendar fixed the last date for public comment on district plans as August 19, with August 25 as the deadline for plan submission. A similar schedule for this year would enable the state to approve C4E plans or require they be revised before school starts in the fall. In future years, we believe an even earlier time frame would be advisable.

We look forward to your timely response.

³ N.Y. Education Law §211-d(6)

⁴ N.Y. Education Law §211-d(4); 8 NYCRR §100.13(d)

⁵ http://www.p12.nysed.gov/mgtserv/C4E/16-17_C4E/2016-17_ContractsforExcellence.htm