

4. He writes in #15 and throughout in opposition to the TRO, that it could cause a “ripple effect of reversing one hiring decision [that] could impact multiple staff and schools. “ Yet if the TRO is lifted, and schools continue to eliminate programs and classes and excess teachers, and the Court ultimately decides in the plaintiffs’ favor, that would cause immeasurably more chaos and prevent those teachers who had been excessed from being hired back in their original schools, especially once that received positions elsewhere.
5. In #16, he states that “Interrupting these budget processes would threaten schools’ ability to successfully open schools this September.” Yet as many principals have commented publicly and privately, they fear that with these budget cuts, they will be unable to provide an adequate education to their students during the following school year.
6. In #18 he argues that if schools are kept to their FY 22 budgets, “Hundreds of schools will lose funding compared to last year.” But the reality is that many more schools have been confronted with large budget cuts than budget increases for the following school year.
7. According to the City Comptroller who analyzed schools’ Fair Student Funding allocations, DOE provided FSF increases to 354 schools (approximately 23% of schools), but 1,166 schools (about 77%) received total cuts of \$469 million, with an average cut of \$402,456. This is an average cut of 8% of individual school budgets. About 450 experienced cuts of more than 10% of their budgets, and dozens with cuts of over \$1 million. <https://comptroller.nyc.gov/newsroom/testimony-of-new-york-city-comptroller-brad-lander-to-the-joint-hearing-of-the-new-york-city-council-committees-on-education-and-oversight-investigations-on-doe-school-budgets-for-fy-2023/>
8. Class Size Matters conducted an analysis of the Galaxy cuts to school budgets as of July 14, 2022. The Galaxy budget encompasses all the allocation lines that an individual school receives. As of July 14, 2022 As of July 14, out of 1,582 public schools, only 49 (3%) schools saw an increase in their overall Galaxy budget as of July 14, of an average of \$347,459. 1,533 schools (97%) saw decreases averaging \$940,268 in cuts. The total cuts to Galaxy budgets as of July 14 were \$1.4 billion. <https://classsizematters.org/total-galaxy-school-cuts-as-of-july-14-now-at-1-42-billion/>

9. As the city has pointed out, schools receive additional funding throughout the summer and into the school year, but generally that funding is supposed to be used for restricted purposes, and not for core programs and/or staffing.
10. Moreover, we also calculated of how much funding was added to school budgets after July 14 last year, in the various allocation categories, and the totals were about **\$430,417,160**. Thus, assuming the same would occur this year, the total cuts to school budgets would be about a billion dollars.
11. We cannot know for sure, however, the actual level of the cuts to individual schools to FY 23, until the Department of Education releases these figures, which they have so far refused to do. In any case, it is clear that many more schools have seen their budgets sharply cuts than have had them increased.
12. In #22, Mr. Schanback correctly writes that “Pursuant to NY Education Law-2590r, the DOE (and, in particular, the Chancellor or his designees) is required to engage in a months-long process of engagement with stakeholders at every level of DOE, including school principals, superintendents, Community Education Councils.” Yet to my knowledge no such engagement took place with either principals or CECs, and many members in both groups expressed shock and dismay at the level of cuts that schools suffered when they were announced on June 5, 2022.
13. In #23, he states that “neither state education law nor the NYC Charter requires the Mayor to defer to or even consider DOE’s budge requests,” but that is untrue. State education law (a) says the following: “On such date as the mayor shall direct, the chancellor shall submit to the mayor: (a) estimates, as adopted by the city board, of the total sum of money which it deems necessary for the operation of the city district (other than functions to be financed from funds provided for in the capital budget of the city) during the next fiscal year of the city, together with the estimates submitted by the community district education councils.”
14. Thus the Mayor must consider the overall education budget adopted by the City Board, including estimates submitted by the community district education councils,’ and according to § 2590-q

section 6, this must occur before the budget is adopted by the City Council, which did not happen in this case.

15. In #26, Mr. Schanback relates how DOE sent an email on February 18, 2022 to principals noting how schools would be funded for the upcoming year, but they were not informed of the decline in the per student amount of Fair Student Funding, nor about the way in which the formula would include a drastic decline in enrollment projections would be so severe as to cause them to lose up to 8% or more of their FSF budgets. Nor were they informed as to the cuts to the federal funds that they had received this school year.
16. This explains why when schools received their FSF budgets on June 5, 2022 the outcry was so intense and so distraught among principals, teachers, and parents, when they realized for the first time not only the severity of the budget cuts but how that would devastate the programs, services, and staffing levels at their schools.
17. As Mr. Schanback points out, the estimated education budget was posted on May 6, 2022, yet since the the Executive Budget was released on April 26, and the estimated education budget did not diverge in any significant way from the Executive Budget, except being far less detailed, it could have been posted on the same date. Given the 45 days of public comment, that means the budget could have been considered by the City Board and voted upon as early as June 10, prior to the Council vote on June 13.
18. Alternatively, the City Board vote could have occurred as late as June 20, 2022, which is still earlier than the deadline for a City Council vote of June 30. Thus, the Mayor and/or the Council could have waited till that date to finalize their agreement and hold a vote.
19. In #29, Mr. Schanback correctly notes that Chancellor Banks issued an Emergency Declaration on May 31, 2022, to allow him to send the much diminished FSF budgets to schools, and yet provides no explanation of what this Emergency consisted of. Indeed this contradicts his previous statements that the budget cuts were long known by the administration for many months, so that the estimated budgets could have been posted long before.

20. And yet by sending their shrunken FSF allocations to schools on June 5, this occurred before either the Council or the Board of Education had a chance to vote on the education budget, and in this way, the Chancellor short-circuited the entire process established in state law.
21. Indeed, an Emergency Declaration using the same boilerplate language that does not specify any actual emergency or unanticipated course of events, has been invoked by several different Chancellors in at least eight out of the last ten years.
22. In #23, Mr. Schanback explains how the “decrease in DOE’s bottom-line budget was primarily attributable to a reduction of federal dollars, which has been provided to DOE as a one-time infusion of pandemic-related relief over several years.”
23. Yet the pandemic is not over, and as the NYC Comptroller has pointed out, among others, nearly \$5 billion in federal relief funds for the Department of Education remains unspent.
24. In addition, the Memorandum of Law argues that it is purely speculative that the City Council will restore funding if they have the opportunity for another vote. Yet as has been widely reported in the media, many of the Council Members who voted for the budget initially have said publicly that they regret their vote now and would vote differently if given the chance.
- <https://www.cityandstateny.com/policy/2022/07/new-york-city-council-members-apologize-school-budget-vote/374611/> <https://nypost.com/2022/07/18/progressive-nyc-council-members-admit-they-were-wrong-to-vote-for-school-budget-cuts/> <https://gothamist.com/news/ny-city-council-members-demand-mayor-immediately-restore-school-funding>
25. Other Council Members have said publicly and privately that they received assurances from DOE before their vote that no teachers would lose their positions and no programs would be eliminated as a result of these cuts. Indeed, 41 out of 51 Members signed a letter demanding that the Mayor restore the cuts, to “allow schools to adequately and fairly plan for the school year.”
- <https://council.nyc.gov/press/wp-content/uploads/sites/56/2022/07/Council-Leadership-Letter-to-Mayor-Chancellor-re-School-Budgets-1.pdf>

26. In any case, whether or not the City Council does change their vote, according to state law, they should have voted following the City Board, rather than before.
27. The Memorandum of Law also repeats several time that the Petitioners waited an excessive amount of time before filing this lawsuit. At one point, on page 20, the attorney falsely claims the following: “the City Council[sic] then posted notice of the June 13, 2022 vote. Thus by that date Petitioners knew that the City Council was scheduled to vote on the City budget before the PEP’s vote on DOE’s Estimated Budget...Yet...Petitioners did nothing, waiting over two months, until July 18, 2022, to commence this proceeding...”
28. Actually between June 13 and July 18 is not two months but only 35 days. That is not an enormous amount of time to research the legal issues, gather evidence, prepare the Memorandum of Law and affidavits for the Petitioners and expert witnesses.
29. The City’s Memorandum of Law repeats many of the unsupported and illogical claims of the Schanback Affidavit, including that injunctive relief “would upset the careful budget process and impact the planning and delivery of City services to millions of residents which already has begun.” Instead, going forward with these harsh cuts would clearly upend and undermine the delivery of a sound basic education to nearly a million public schoolchildren, and allow for irreversible loss of programs and teachers that could not be restored, even if the Court eventually later in the petitioners’ favor.
30. Refraining from freezing the budgets now until the Court can decide on the merits of the case could cause irreparable harm, by forcing principals to excess teachers who have years of experience and close connections to their students, causing them to apply and possibly accept positions elsewhere.
31. The Memo of Law also falsely claims that “by imposing specific spending amounts that were not approved by the City Council, the Order improperly usurps the executive and legislative branches to make policy decisions.” Yet instead, the City has eliminated any role for the City Board in budgeting, contrary to State Law, and by sending sharply diminished budgets to schools before

either the City Board or the Council has voted, has usurped both their authority in a dictatorial fashion. Finally, the redress the lawsuit seeks is to allow the City Council to have another opportunity to vote, following the City Board's vote, as required by State Law.

32. One more point about Mr. Schanback's affidavit and the Memorandum of Law submitted by the City: They both insist on calling the City Board the Panel for Educational Policy, even though the state law clearly says in § 2590-b (a) that "*The board of education of the city school district of the city of New York is hereby continued.*" In the same way they seem to purposely ignore the main point of the lawsuit: that the state law must be respected and complied with in regards setting the education budget for schools.

Dated: July 26, 2022
New York, New York


Leonie Haimson

Sworn to before me this 26 day
of July 2022


Notary Public

