



November 30, 2023

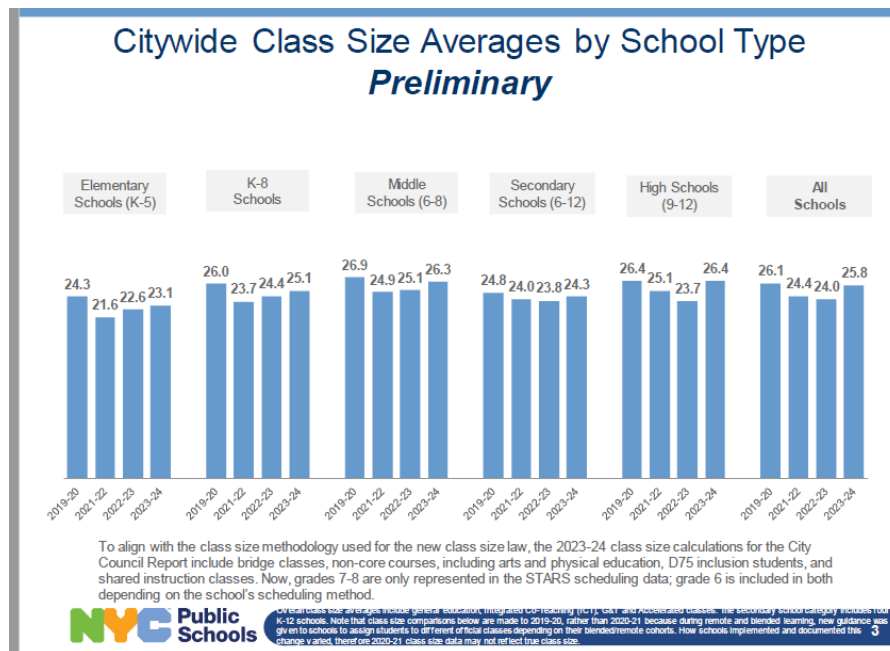
Commissioner Betty Rosa
 NY State Education Department
 Via email: Commissioner@nysed.gov

Dear Commissioner Rosa:

We urge you to require the NYC Department of Education to prepare a Corrective Action Plan for the implementation of the class size law, as average class sizes increased this year at all grade spans. For elementary and middle school grades, the increase was for the second year in a row.

Given the current trend it is unlikely that the class size limits in the law will be met next year or thereafter, given the evident failure of the administration to make any necessary changes in policies or practices to achieve those goals, as further revealed by their Report on Implementation of the State’s Class Size Caps, posted on November 15, 2023 (from here on, referred to as the Implementation Report).¹

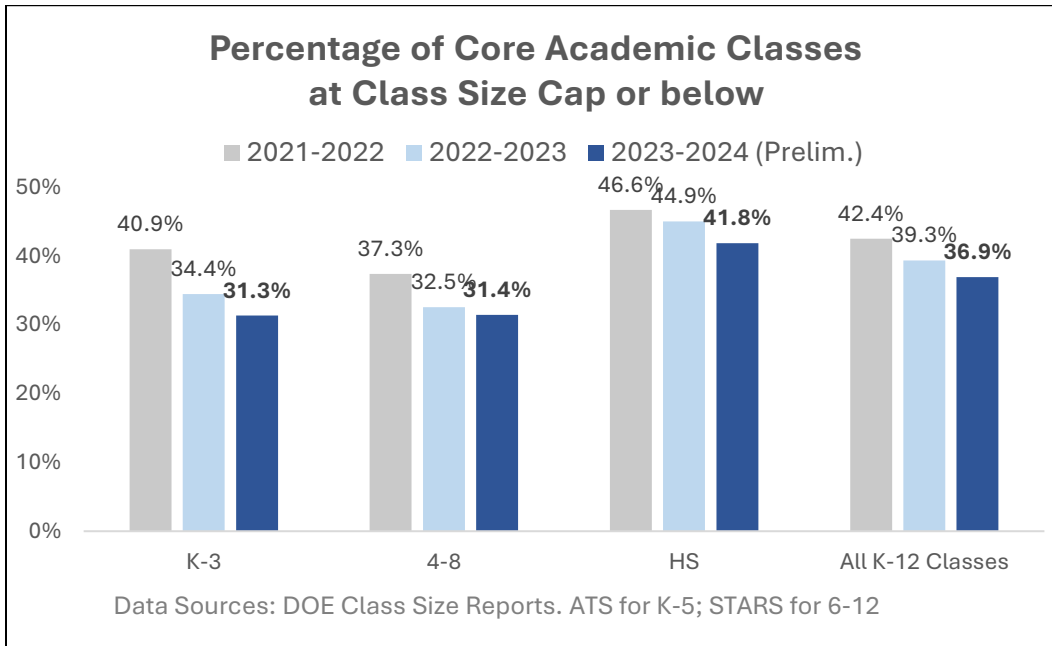
For elementary, K-8 and middle schools, this was the second year of increases, according to their own class size summary, as reported separately on the DOE Infohub website on the same date, as reproduced below -- but omitted from their Implementation Report.²



¹ Posted at https://drive.google.com/file/d/1-KteQw2qzn8u0_cIROs3WrXIPaaDRDpg/view

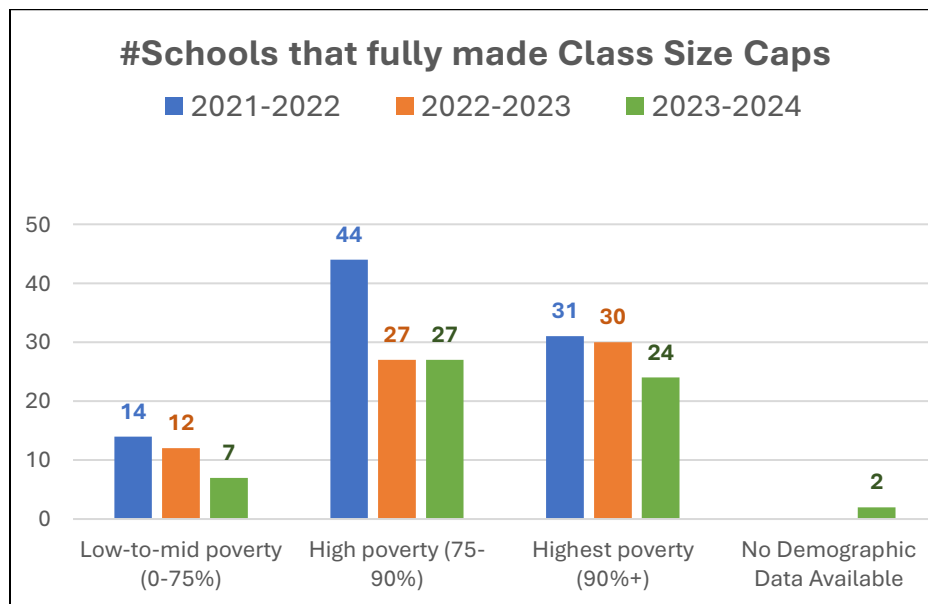
² <https://infohub.nyced.org/docs/default-source/default-document-library/2023-24-preliminary-average-class-size-summary.pdf>

The class size data over time also reveals that this is also the second year in a row in which the percentage of classes that were able to meet the caps in the new law declined, of no more than 20 students per class in grades K-3, 23 students per class in grades 4th- 8th, and 25 students per class in core high school academic classes.



At this rate, NYC public schools will not meet the second year requirement in the law that 40% of classes adhere to the required caps.

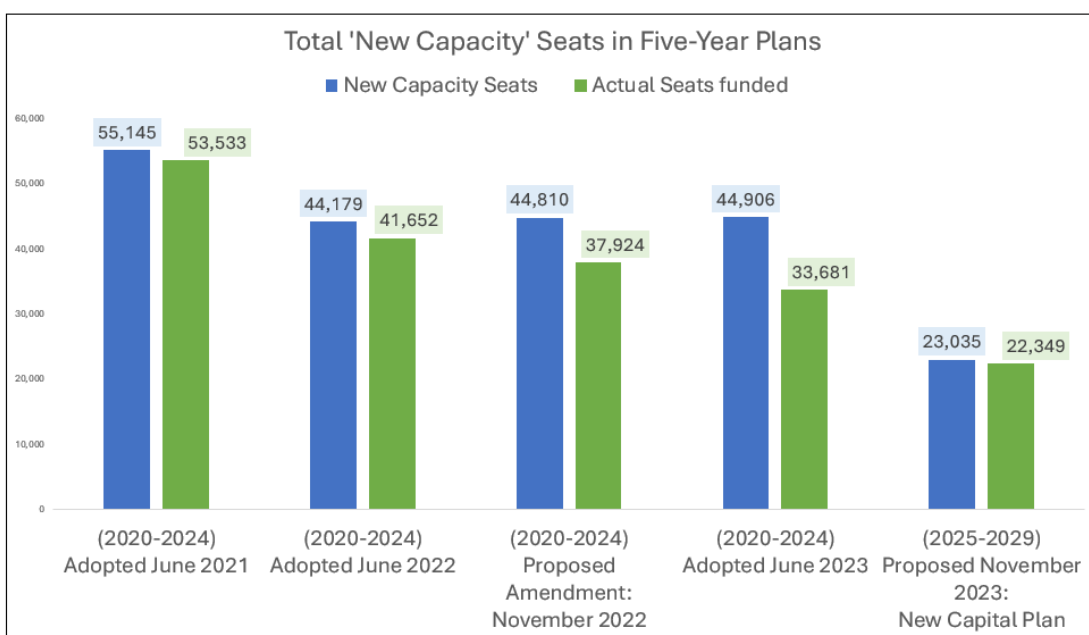
The number of schools that fully met all the caps in the law also has continued to decline, from 89 schools in the fall of 2021 to only 60 schools this school year, or only about 4 percent of all schools. Only 24 or 6 % of the schools with the highest economic need achieved these limits in all their academic classes this year.



Moreover, the Department has made no apparent attempt to stem class size increases since the new law was passed in June of 2022 in any of their policies or procedures, whether it be space planning, enrollment planning, budgeting, or the capital plan, and have outlined no steps to do this in their Annual Report.

In addition, the lack of specificity in their Report on Implementation of the State’s Class Size Caps (from now on referred to as the Class Size Implementation Report), released on November 15, does not conform to the requirements of the new class size law, which states that this report must include **“the annual capital plan for school construction and leasing to show how many classrooms will be added in each year and in which schools and districts to achieve the class size targets”**, as well as a list of **“schools that have made insufficient progress toward achieving the class size reduction targets...and a detailed description of the actions that will be taken to reduce class sizes in such schools.”**³

On November 1, the School Construction Authority released the new proposed five-year capital plan for FY 2025-2029 that will determine whether the class size caps can be met in the most overcrowded districts. The proposed plan would cut \$2 billion in new capacity and more than 20,000 seats, as compared to the current five-year plan, continuing a steadily declining number of new seats funded since June 2021.⁴

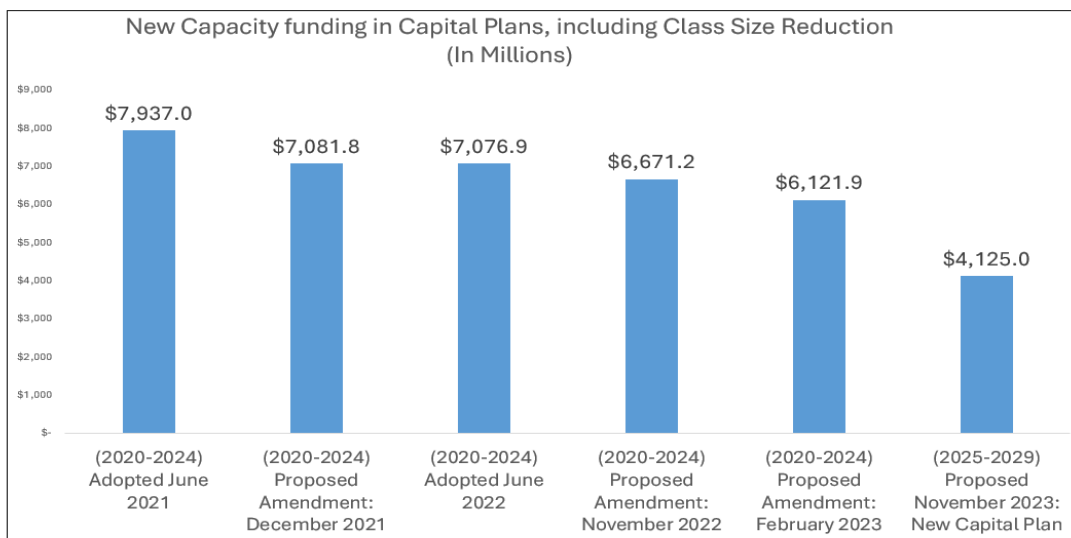


In their Class Size Implementation Report, Department of Education officials estimate that the capital costs of implementation for building enough new school space to lower class size is “up to the tens of billions,” and yet they also admit they are planning to allocate only about \$4 billion for this purpose, implying that they do not intend to comply with the law.⁵

³ <https://www.nysenate.gov/legislation/laws/EDN/211-D>

⁴ https://dnnhh5cc1.blob.core.windows.net/portals/0/Capital_Plan/Capital_plans/11012023_25_29_CapitalPlan.pdf?sv=2017-04-17&sr=b&si=DNNFileManagerPolicy&sig=LMmx0Vrv3O960CtQmVnvz17PVxP194AIUHhmsdJktNo%3D

⁵ At a meeting of the Chancellor’s Parent Advisory Council on Nov. 10, 2023, Chancellor Banks and Deputy Chancellor Weisberg were asked about these cuts. Deputy Chancellor Weisberg said that the decision to cut the amount of funding dedicated to new school construction in the new capital plan was made not by the Chancellor, but by the Mayor and the Office of Management Budget, and that the cost of building enough schools to comply with the law was “in the neighborhood of \$30 billion. See the video of his remarks at <https://vimeo.com/manage/videos/883381018>



Moreover, neither the proposed new five-year capital plan nor the Class Size Implementation Report includes any information about where most of the seats to be built will be located, in terms of borough, district, or what grade level.

Instead, 77% of the funded seats remain unidentified according to borough, district, or grade level. This lack of transparency makes it unlike all previous capital plans. Instead, the plan says that from now on, *“projects will be officially listed in the Plan following the identification of a suitable site and the commencement of the school facility’s design process.”*

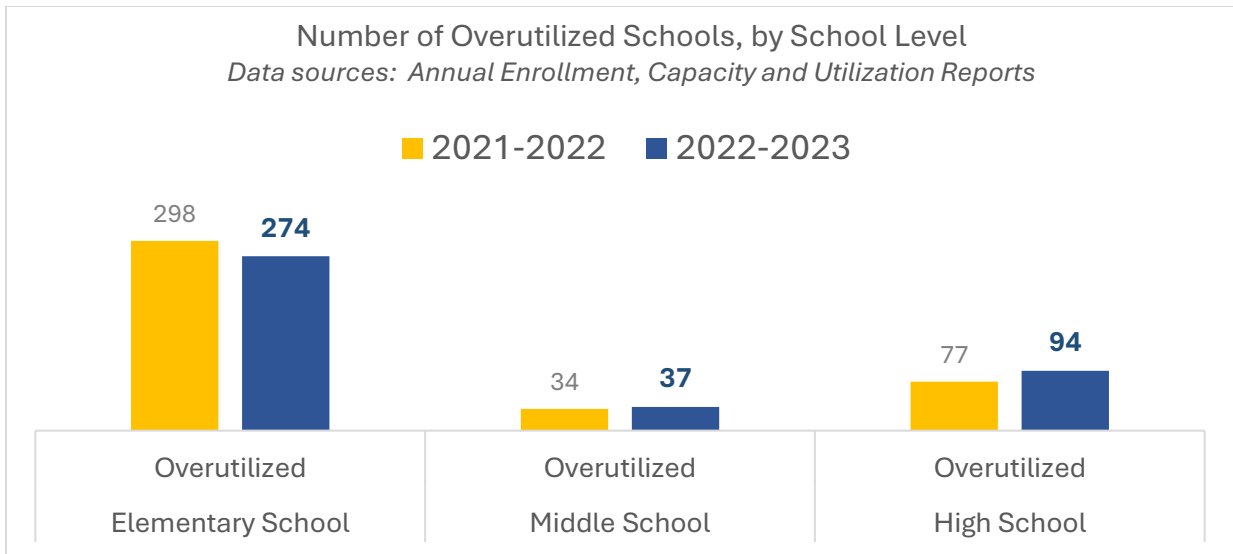
This omission leaves the public out of the process completely and without any input as to where new schools are needed or sited. Worse yet, the lack of specificity appears to violate the class size law, which requires the Class Size Implementation Report to **“show how many classrooms will be added in each year and in which schools and districts to achieve the class size targets”**.

This lack of specificity also appears to violate Education Law § 2590, that requires the Chancellor to annually prepare an **“educational facilities master plan...including a list of prioritized projects to the extent ascertainable and [to] list each proposed new educational facility and set forth a justification, including demographic data, documenting the long term need therefor.”**⁶

Neither the Class Size Implementation Report nor the proposed Five-Year capital plan contains any list of “prioritized projects” nor any demographic data to justify either the 23 percent of seats identified as to district, all of which were carried from the current plan, nor any of the 77 percent of seats that remain unidentified

This is despite the fact that according to the latest available data, nearly 400 NYC public schools were overcrowded last year, with the number of overcrowded middle and high schools increasing over the last two years.

⁶ <https://codes.findlaw.com/ny/education-law/edn-sect-2590-o/>



According to DOE officials, elementary schools in Districts 20, 21, 22, 25, 27, 28 and 31 do not currently have the space to cap Kindergarten classes at twenty students or less.⁷ And yet five of those districts do not have any seats specified in the proposed Five-year Capital Plan for FY 2025-2029.

In Districts 27 and 31, the number of seats funded have been sharply cut back in the new proposed plan, compared to the current plan. As it takes at least four to five years to site and build new schools, without significant changes to the capital plan in conjunction with enrollment adjustments across schools, it will be impossible to meet the class size mandates in the law. And yet in a message sent to principals this week, the DOE explicitly told them that “Principals should not request changes to their register projections for the 2024-25 school year in anticipation of future implementation of the new class size law.”

While the Class Size Implementation Report admits that “enrollment has grown slightly in District 1-32 schools in grades K-12 in FY 2024 for the first time since 2015,” it fails to detail any plan to adjust to that growth or to ensure that the class size caps can be met, as required in the law.

In addition to lacking information about where new space will be created to comply with the mandated class size limits, the class size law also requires that the city’s Implementation Report should include the following:

“specific information on the number of classes in each school ... and the number of new classes that were created in each school for each year the number of classroom teachers that existed in each schooland the number of new classroom teachers in each school for each year” as well as “the actual class sizes for the current school year, and the projected class sizes for the upcoming school year for each school by grade level.”

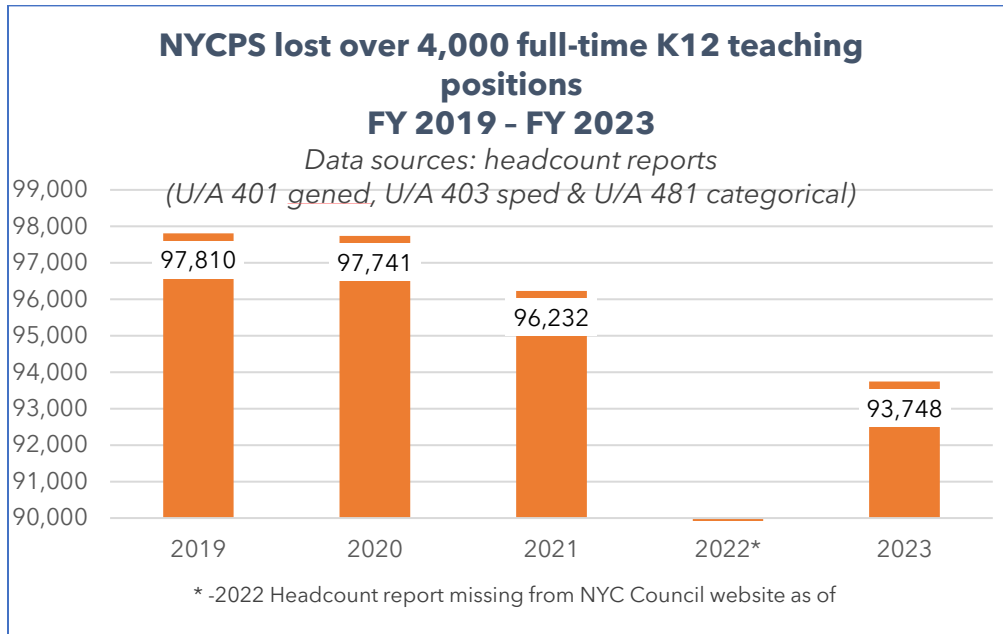
Yet the report includes none of the above information and does not even project class sizes for next year. Instead, in Table C, on three tabs labelled the 2024-2005 school year, it says the following: “At this time, NYCPS does not have enough information to project any changes from the 2023-24 class size report.”⁸ This also is non-compliant with the law.

While in the Class Size Implementation Report, the DOE asserts that their hiring of additional teachers to cap class size at the legal limits will cost from \$1.4-\$1.9 billion, there is no mention of any intention to cover these costs.

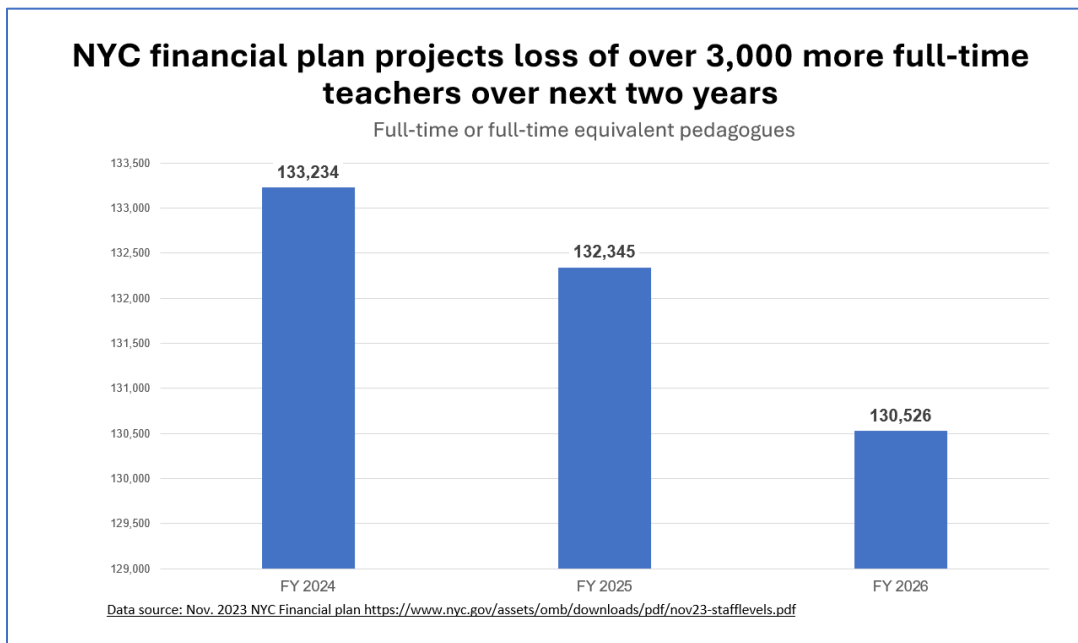
⁷ Office of Student Enrollment, Modeling Enrollment Reductions through Admissions: Kindergarten Match Simulations, June 2023.

⁸ <https://docs.google.com/spreadsheets/d/1l29lWke5xPvGewdZP4HUE4sMHk0GRmnU/edit#gid=168927941>

According to official DOE headcount data, provided to the City Council, the number of K12 teachers has decreased by over 4,000 K12 teachers since FY 2019.



The city’s just-released financial plan reveals a further loss of over 3,000 more full-time pedagogues between June 30, 2024 and June 30, 2026.⁹



We also have deep and continuing concerns about the city’s lack of maintenance of effort, and the fact that the DOE has not complied with the requirement in the Contracts for Excellence law that it must supplement rather than supplant funding used to support its schools.

New York City is receiving more than \$9.4 billion in state Foundation Aid this year, as a result of a three- year phase-in of more than \$1.3 billion since FY 2021, to settle the Campaign for Fiscal Equity lawsuit, in which the city’s excessive class

⁹ <https://www.nyc.gov/assets/omb/downloads/pdf/nov23-stafflevels.pdf>

sizes were a central issue in the case. And yet not a single dollar of these additional funds has been specifically targeted by the DOE to lower class size.

Instead, the city has cut its own support to schools, most drastically in the 2002-3 school year, and again this year, with more than 600 schools receiving mid-year budget cuts as of October 31.

Worse yet, the Mayor has proposed even more damaging cuts to another \$547 million from DOE budget for this fiscal year, to be followed by an additional cut of \$602 million in FY 2025, \$625 million in FY 2026 and yet another \$625M in FY 2027.¹⁰ It will be impossible to lower class size with cuts these large: ***in fact, class sizes will increase even more sharply than before if these cuts enacted.***

The DOE also continues to propose co-locations and grade expansions without any apparent thought of how these changes in school utilization may affect existing schools' ability to lower class size. On December 20, the Panel for Educational Policy will vote on two proposed grade expansions and a new co-location. In all of these cases, the Educational Impact Statements explicitly say that their estimation that there is available space for these changes in school utilization are based upon *"the current number of classes and class size a school is programming."*¹¹ Yet in all of these schools, their class sizes this year are above the caps in the law, in most cases substantially so.¹²

Lastly, over the last six months a Class Size Working Group comprised of educators, advocates, parents, representatives of unions and elected officials, along with members of the Panel for Education Policy and Community Education Councils have been deliberating to craft recommendations on how the new class size law should be implemented. The recommendations of the group include, but are not limited to, creating new schools to provide more space for smaller classes, limiting enrollment in overcrowded schools, creating incentives for the hiring of new teachers, and providing adequate funding to schools to ensure that the law can be implemented. Yet the Chancellor has taken none of these steps to achieve the smaller classes required by law.

In short, without significant changes to DOE policies implemented as soon as possible, it is extremely unlikely that the 40 percent goal of classes will meet the benchmarks in the class size law next year. It will be impossible for the city to reach full compliance by year five unless the State Education Department requires them to initiate a corrective plan to do so.

We thus urge you to require that the NYC Department of Education develop and submit such a plan that outlines the current data on trends in class size and school overcrowding, as well as the specific steps that will be taken to achieve smaller classes, in terms of increased staffing, changes in enrollment planning and the capital plan, to ensure that there is sufficient space and staffing to fulfill the mandates in the law.

Yours sincerely,

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¹⁰ <https://www.nyc.gov/assets/omb/downloads/pdf/peg11-23.pdf>

¹¹ <https://pwsauth.nycenet.edu/get-involved/families/panel-for-education-policy/2023-2024-pages/december-20-2023-school-utilization-proposals>

¹² For example, the DOE is proposing to expand the grades at School for Global Leaders (01M378) from K-5 to K-8, despite the fact that 68% of the school's core academic classes are above the cap currently. The school shares a building with Lower East Side Preparatory High School (01M515), a transfer high school, in which 40% of their core academic classes are currently above the cap, according to the data included in Table C of the DOE Class Size Implementation Report at <https://docs.google.com/spreadsheets/d/1I29IWke5xPvGwdZP4HUE4sMHk0GRmnU/edit#gid=523668642>.