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## Testimony before the City Council on the Preliminary Budget for Fiscal Year 2025, The Preliminary Capital Plan for Fiscal Years 2024-2028

March 18, 2024

Thank you Chair Joseph and the other members of the Education Committee for holding these important hearings today. My name is Leonie Haimson, and I am the Executive Director of Class Size Matters, and I am here with my Associate, Michael Rance.

As the Council briefing paper points out, the Department of Education's Fiscal 2025 Preliminary Budget totals \$31.5 billion, which is \$1.1 billion less than the current Fiscal 2024 budget and fails to take into account a \$256.3 million increase in State Aid for New York City in the Governor's proposed State Fiscal 2025 Executive Budget. It also fails to consider that the Independent Budget Office has estimated that next year's budget will have a \$3.3 billion surplus.<sup>1</sup>

Moreover, the city is receiving more than \$1.3 billion in additional state Foundation funding as a result of the settlement of the Campaign for Fiscal Equity lawsuit, and that schools will need more funding rather than less to comply with the class size law, passed overwhelmingly in 2022, requiring the city schools to meet much lower class size caps by the end of the 2027-2028 school year.

The law calls for the phase-in over five years of smaller classes of no more than 20 students per class in grades K-3, no more than 23 students per class in grades 4<sup>th</sup>-8<sup>th</sup>, and no more than 25 students per class in high school, except for physical education and physical education and performing groups such as orchestra and band, which must be capped at forty students per class.

Sadly, class sizes have increased in most schools for the last two years in a row, and likely will continue to increase next year if this budget is adopted. In fact, compliance with the law will require significant changes in Department of Education budgeting policies and planning.

The DOE has estimated that in order to meet the goals of the legislation it would need to hire 10,000 to 12,000 more teachers, and yet as the Council briefing paper points out, as of January 2024, DOE had 8,200 vacant pedagogical positions.<sup>2</sup> As the chart on page 29 shows, the DOE plans to shrink the teaching force by another 889 full-time pedagogues next year, in alignment with the City's Financial Plan, which shows a loss of that many teachers next year, and nearly two thousand more the following year.<sup>3</sup>

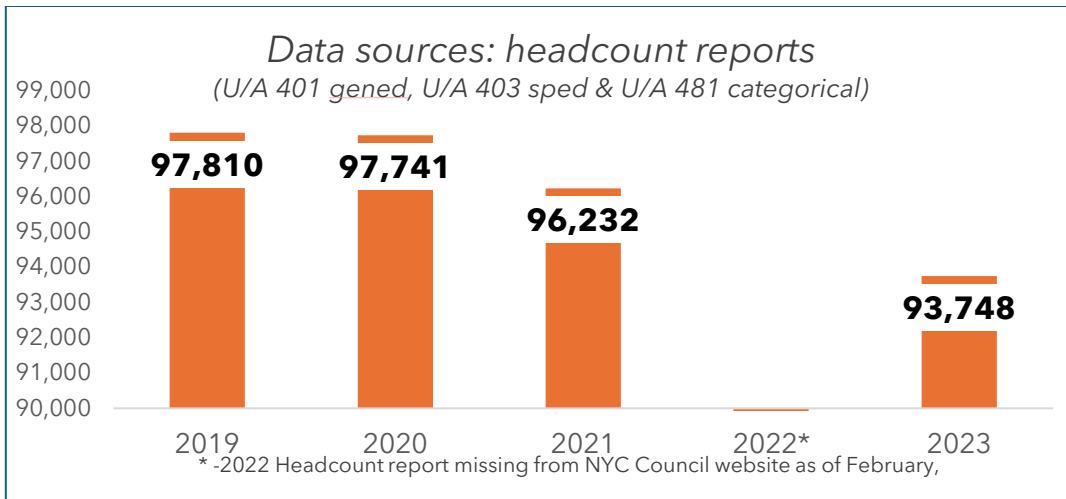
Our analysis of DOE headcount reports, posted on the Council website, reveals that DOE already eliminated over 4,000 full-time K12 teachers between FY 2019-FY 2023.

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<sup>1</sup> <https://www.ibo.nyc.ny.us/iboreports/print-2024-preliminary-budget-report-february.pdf>

<sup>2</sup> <https://legistar.council.nyc.gov/View.ashx?M=F&ID=12758493&GUID=0ADDFABD-49D2-479B-8D29-BB00A40EBA1>

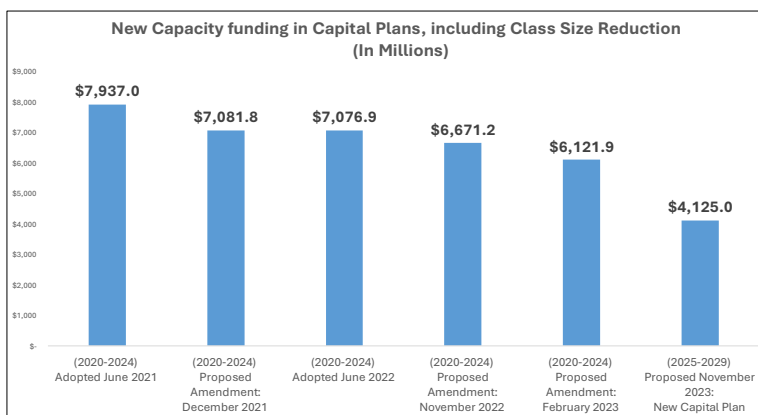
<sup>3</sup> : Jan. 2024 Financial plan at <https://www.nyc.gov/assets/omb/downloads/pdf/tech1-24.pdf>



While this year’s class size goal of 20% was met, next year’s goal of 40% looks questionable at this point, while the out-year goals for years three to five are implausible, given current DOE plans to continue to continue to shrink school budgets, the teaching force, and the capital plan.

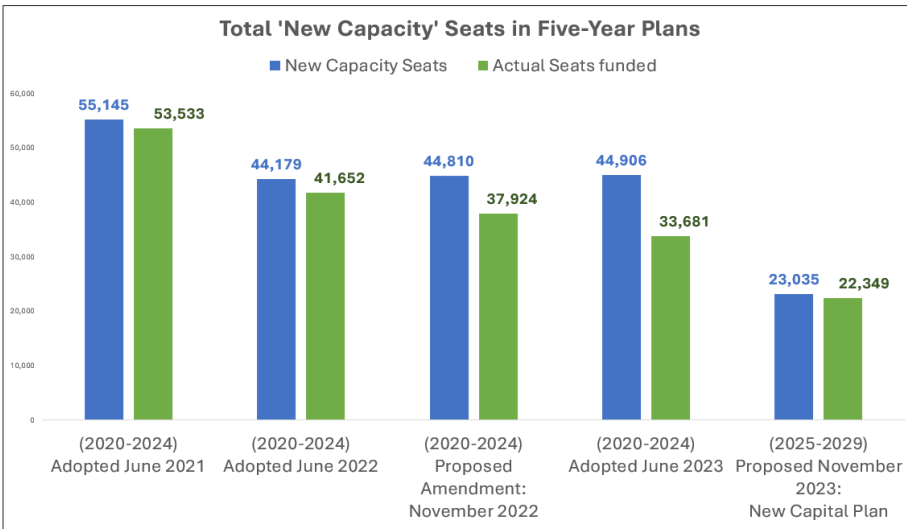
Rather than ramp up the creation of new seats given the need for more space as soon as the class size bill passed and was signed into law, the SCA has cut the funding for new seats by over \$2.5 billion, and the number of new seats nearly in half.<sup>4</sup>

According to the Council briefing paper, SCA “indicated that based on the current enrollment numbers for the 2023-2024 school year, SCA would need to create 85,000 new seats to reach compliance with the class size law” but between the current plan and new proposed plan, according to the Council analysis they have funded fewer than 60% of those seats, with many of them not coming online by the June 2028 deadline.<sup>5</sup>

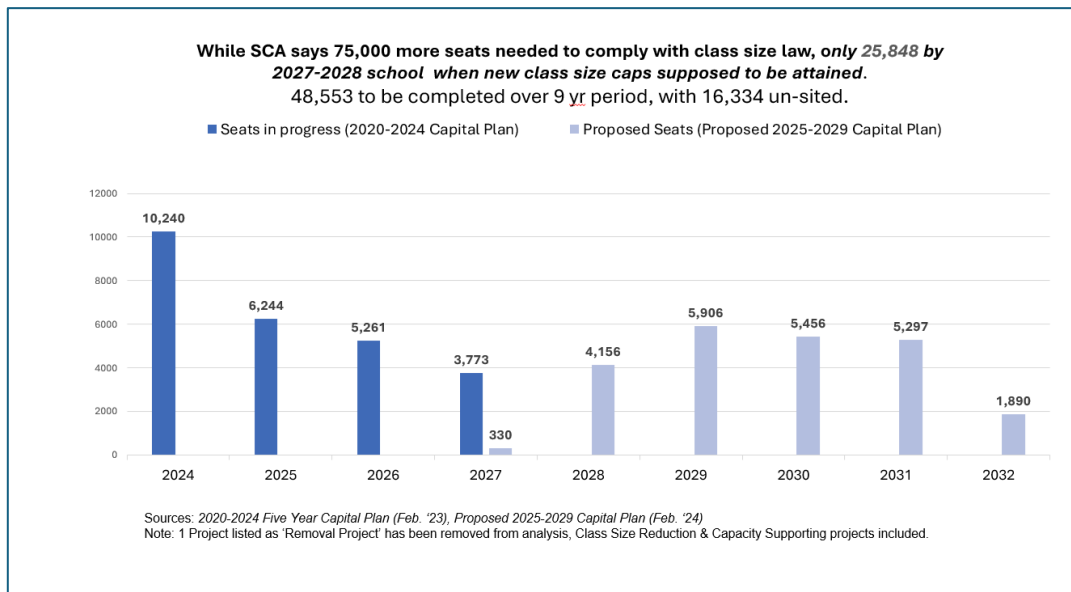


<sup>4</sup> When the Chancellor and Deputy Chancellor was asked about these radical cuts to the capital plan at a meeting on Nov. 10, 2023, they said that this was a decision made not by them but by the NYC Office of Management and Budget. See: <https://vimeo.com/manage/videos/883381018>

<sup>5</sup> See <https://legistar.council.nyc.gov/View.ashx?M=F&ID=12758494&GUID=0CF82049-2A0B-42E9-BFF9-D5A2A4E65031>. This briefing paper assumes the deadline in the law for full compliance is Sept. 2028, but it is actually June 2028, according to our reading of the law. See FAQ at <https://classsizematters.org/faq-on-the-states-new-class-size-law/>



According to our analysis, only 25,848 seats will be completed by the 2027-2028 school year if this plan is approved, only about 30% of the number the SCA says will be needed. Over the next nine years, only 48,553 seats will be completed if the capital plan is adopted, with 16,334 of them unsited. Presumably, this estimate of 85,000 seats needed was made assuming enrollment is not adjusted across nearby schools of the same grade levels to meet the benchmarks, as the Class Size Working Group proposed, though neither the DOE nor the SCA has disclosed how much of the overcrowding problem that would address.



It is also greatly concerning that 77% of seats funded in the new five-year plan lack any identification as to their borough, district, or grade level. Instead, the SCA asserts that new capacity projects will only be listed in the plan “*following the identification of a suitable site and the commencement of the school facility’s design process.*”<sup>6</sup>

<sup>6</sup> NYC School Construction Authority, FY 2025-2029 Proposed Five-Year Capital Plan, February 2024  
[https://dnnhh5cc1.blob.core.windows.net/portals/0/Capital\\_Plan/Capital\\_plans/02012024\\_25\\_29\\_CapitalPlan.pdf?sv=2017-04-17&sr=b&si=DNNFileManagerPolicy&sig=ExyJ25yWw4Gt5zwwG%2F%2F9rda14929cO%2Ba%2FMb0vAWq7Gv%3D](https://dnnhh5cc1.blob.core.windows.net/portals/0/Capital_Plan/Capital_plans/02012024_25_29_CapitalPlan.pdf?sv=2017-04-17&sr=b&si=DNNFileManagerPolicy&sig=ExyJ25yWw4Gt5zwwG%2F%2F9rda14929cO%2Ba%2FMb0vAWq7Gv%3D), p. 16

This lack of transparency not only leaves the public and elected officials entirely out of the potential siting of schools and their input ignored as to where new schools are needed, it also appears to violate two state laws. EDN § 2590-o 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.*”<sup>7</sup>

It even more clearly appears to violate the class size law, now known as Chapter 556 of the Laws of 2022, which states that the annual class size plan submitted to the state 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.*”<sup>8</sup>

There are other sources of additional savings and revenue that could help DOE pay for the additional staffing that will be necessary. Overall, charter schools are projected to cost the DOE \$3.28 billion next year. As part of that cost, DOE is required to subsidize the rent for charter schools, the only school district in the nation with this onerous obligation, at nearly \$100 million this year, and rising fast.<sup>9</sup>

In 2021, Class Size Matters released a report, showing how in many cases these rents are inflated by Charter Management Organizations or affiliated non-profits in order to leverage more dollars out of DOE.<sup>10</sup> Recently this occurred when an affiliated non-profit, the Friends of Hellenic Charter school on Staten Island tripled the rent charged to DOE, in order to finance the purchase of an empty lot next to the current school, on which they plan to build a new school including grade levels they have not yet been authorized to serve.<sup>11</sup>

In response to our findings, Sen. John Liu, Sen. Robert Jackson and Council Education chair Rita Joseph asked City Comptroller Brad Lander in 2021 to audit these charter rental reimbursement payments to ensure they’re based on fair market value, yet so far no audit nor any other measures have been done to control these costs.<sup>12</sup> A bill in the Legislature, S2137/A5672, sponsored by Senator Liu and AM Benedetto, would remove the obligation entirely of DOE to help pay for charter rent, and we urge the Council to pass a resolutions in support of this legislation.<sup>13</sup>

DOE has also been denied any state charter transition aid, the only school district in the state of New York that does not receive this aid, designed to help districts pay for part of the cost of charter school expansion. The Education Law Center estimates that the city has lost out on \$2.81 billion of transition aid between 2011 and 2022 and would receive about \$93 million this year if the city were eligible for transition aid.<sup>14</sup>

As the Council briefing paper also pointed out, NYC only receives 29% state reimbursement for new school construction, far less than the rate for other capital expenditures, because of a cost cap that has been

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<sup>7</sup> <https://codes.findlaw.com/ny/education-law/edn-sect-2590-o/>

<sup>8</sup> <https://www.nysenate.gov/legislation/laws/EDN/211-D> this refusal to divulge where new schools are planned appears contrary to the promises in an Memorandum of Understanding with the Council, signed by Mayor, Speaker and Chancellor on November 10, 2004, renewed annually which “*Requires the annual amendment to the capital plan to include siting and/or location of each project (by building or school district, as appropriate), cost estimates, start dates and completion dates for each project.*” The 2022 version of the MOU is posted at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5691569&GUID=DF0D66A7-2A38-470D-9CEA-4D084DBEE5EC&Options=&Search=>

<sup>9</sup> The spreadsheet with DOE charter rental subsidies for FY 2024 is here; <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2024/02/Department-of-Education-Charter-School-Lease-Assistance-Report.xlsx> The total is \$235,607,179. As the state reimburses 60%, the estimated cost this year to DOE will be more than \$94 million.

<sup>10</sup> <https://classsizematters.org/new-report-finds-doe-overspent-by-many-millions-on-charter-school-rental-subsidies-for-charter-schools-and-owed-millions-to-co-located-public-schools-for-facility-upgrades/>

<sup>11</sup> <https://www.chalkbeat.org/newyork/2024/03/06/nyc-sues-state-education-department-charter-rental-dispute/>

<sup>12</sup> <https://classsizematters.org/wp-content/uploads/2023/01/Letter-to-Comptroller-asking-for-audit-on-charter-school-matching-funds-rent.pdf>

<sup>13</sup> <https://www.nysenate.gov/legislation/bills/2023/S2137> and <https://www.nysenate.gov/legislation/bills/2023/a5672>

<sup>14</sup> <https://edlawcenter.org/the-unsustainable-cost-to-new-york-city-schools-of-charter-school-growth/> Other revenue 4 options posted here: <https://classsizematters.org/revenue-options-for-nyc-to-prevent-big-budget-cuts/>

exceeded. Efforts should be made to find out whether the SCA's construction costs are out of line, or if this cost cap can be raised, which could potentially yield billions more in capital funds.

Finally, the Mayor has asked the state for more borrowing authority for capital expenses. Last week, the NY Senate budget resolution tied an increase in the bonding limit for the city to their demonstrating that they have expanded the school construction capital plan to the level necessary to achieve the class size limits in the law.<sup>15</sup>

We hope the Council and the City take heed and refuse to approve any education budget or capital plan that fails to take the legal requirement to lower class size into account. Thank you again for holding these hearings today.

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<sup>15</sup> <https://www.nysenate.gov/legislation/bills/2023/R1952>