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July 22, 2024

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

Dear Commissioner Rosa,

Class Size Matters urges you to require the NYC Department of Education to revise its submission to the state, and instead develop and implement an actual multi-year plan as soon as possible to enable schools to meet the benchmarks in the class size law.

The law mandates that New York City cap class sizes in its public schools to no more than 20 students per class in grades K-3; no more than 23 students in grades 4th-8th, and no more than 25 students in high school classes by September of 2028, with an increase of 20% of all classes required to meet those caps each year. Moreover, the law requires that a “class size reduction plan” be submitted to the state that will “include the methods to be used to achieve the class size targets, such as the creation or construction of more classrooms and school buildings.”

The NYC DOE is now about to begin the second year of that process, and yet the document submitted by DOE officials on July 6, 2024 cannot be described as a plan, as it includes none of the steps that will achieve those goals, including sufficient funding, staffing, and space necessary to achieve the smaller classes required by the law.¹

We emphatically agree with the Commissioner’s letter dated December 18, 2023 that “it is imperative for the city and its stakeholder groups to complete a more comprehensive assessment and analysis of what budget and physical space needs must be prioritized and to identify the detailed, actionable items in the class size reduction plan that will be implemented over the next several years.”²

¹ This document, posted by NYC Department of Education on July 6, 2024 is entitled “FY 2025 Class Size Reduction Plan for NYC Public Schools” yet we will call it a “submission” or a “document” as it is not really a plan. <https://drive.google.com/file/d/1XKUYGUILwzYp7prCQqeatPvcJYL7oFTe/view>

² Letter from Commissioner Rosa to Chancellor Banks, Dec. 18, 2023 at: https://www.p12.nysed.gov/mgtserv/C4E/doc/nyc_class_size_reduction_plan/2023-24/commissioner-approval-letter-2023-nyc-class-size-reduction-implementation-report.pdf

The definition of a plan is a “detailed proposal for doing or achieving something,” or “a method for doing or achieving something, usually involving a series of actions or stages.”³ The DOE’s lack of progress in developing an actual multi-year plan is particularly disappointing given that the Class Size Working Group [CSWG] report, released last December, was replete with many practical and cost-effective recommendations that, if adopted, could provide a specific roadmap to compliance.⁴

Instead of providing any solid assurances that they will succeed in achieving these benchmarks, DOE officials write that they “believe” they will remain in compliance next year and that they will “*continue to investigate opportunities and methodologies by which to direct resources to schools to meet the newly mandated class size caps*” in future years. To continue to “investigate opportunities and methodologies” is not a plan.

In some ways, this document is even more lacking in substance than the FY 2024 version. Rather than outline what mechanisms will be used to achieve the benchmarks in the law, it uses the words “may” 35 times versus 19 times in last year’s submission. Instead, DOE officials appear to be assuming that they will be able to negotiate exemptions instead, as revealed by the fact that the word “exemption” is used 22 times here, versus eleven times in the preliminary draft posted in May 2024, and only eight times in the previous year’s submission.

The lack of progress in outlining specific steps to be taken to ensure compliance is also disappointing, given how the DOE was given a huge head start in this process. More than 40% of class sizes already complied with the class size caps when the bill was passed in June 2022, and the DOE was given an extra year to start planning when Governor Hochul signed the bill into law in September 2022.

Many of these points were made by a letter sent to DOE on June 24, 2024, signed by Class Size Matters as well as several advocacy and community groups, along with more than 560 parents, educators, and concerned citizens.⁵ Yet our suggestions to DOE on how to improve their draft plan -- by making the funding for class size reduction more substantial and more targeted to ramp up on teacher hiring, for example -- was entirely ignored. So was our proposal to provide a clear multi-year strategy to ensure that there is sufficient space for smaller classes in years three to five.

Thus we urge you to require DOE to revise their submission, so that it describes in detail what actionable steps will be taken each year in terms of providing the budget, staffing, and space to enable schools to

³ <https://dictionary.cambridge.org/us/dictionary/english/plan>; <https://www.encyclopedia.com/literature-and-arts/art-and-architecture/architecture/plan>

⁴ Class Size Working Group Final Report, December 11, 2023 at https://drive.google.com/file/d/1gSiFUcuLOjJ49PLCMptkroFjXBHow2b_/view

⁵ The letter to DOE along with its 570 signers is posted here. <https://classsizematters.org/570-nyc-parents-educators-community-leaders-say-to-doe-fix-your-class-size-plan/> The fact that the DOE response may have been hurried is suggested by the fact that the document entitled “DOE Summary of Public Comment,” dated July 5, 2024, has the word “Draft” watermarked on every page: <https://drive.google.com/file/d/1yr0vkrfeHWWa9lYcf6fstDXuPZXccPAq/view>

cap the requisite number of classes at the mandated levels each year, without relying excessively on exemptions or last-minute changes that could cause severe disruptions to schools.

Below we will describe in detail how the proposal submitted to the state fails to provide the resources necessary to achieve its ostensible goals, and how the failure of this administration to properly address the issue has already led to increases in average class size in most schools over the last two years, a trend which is likely to continue without significant changes to DOE policies and planning.

No plan to hire enough staff necessary to reduce class size

While DOE officials now estimate that they will have to hire 10,000 to 12,000 more teachers to achieve the class size limits in the law by the 2027-2028 school year, they have allocated only \$137 million to hire more teachers next year. This amount would pay for only about 1,300 teachers, a small fraction of the number required by year four. Moreover, this funding has been spread so thinly over 1,057 schools that 477 would receive less than \$100,000 – not enough to hire even one additional teacher.

Worse yet, these class size reduction funds are being provided to schools in many cases where cuts in other areas of their budgets will prevent them from actually lowering class size. More than 100 schools receiving class size funds are also seeing concurrent cuts to their Fair Student Funding (FSF) averaging \$129,931, greater than the average funding they are slated to receive to lower class size at \$103,985.⁶ One example is PS 131 in Brooklyn, a Title One school that according to reports may lose as many as three teachers next year, leading to increases in class size. While the school is slated to receive \$158,015 in class size reduction funds, their initial tax-levy budget allocations are being cut by more than \$215,751, including a cut of \$291,012 in Fair Student Funding.

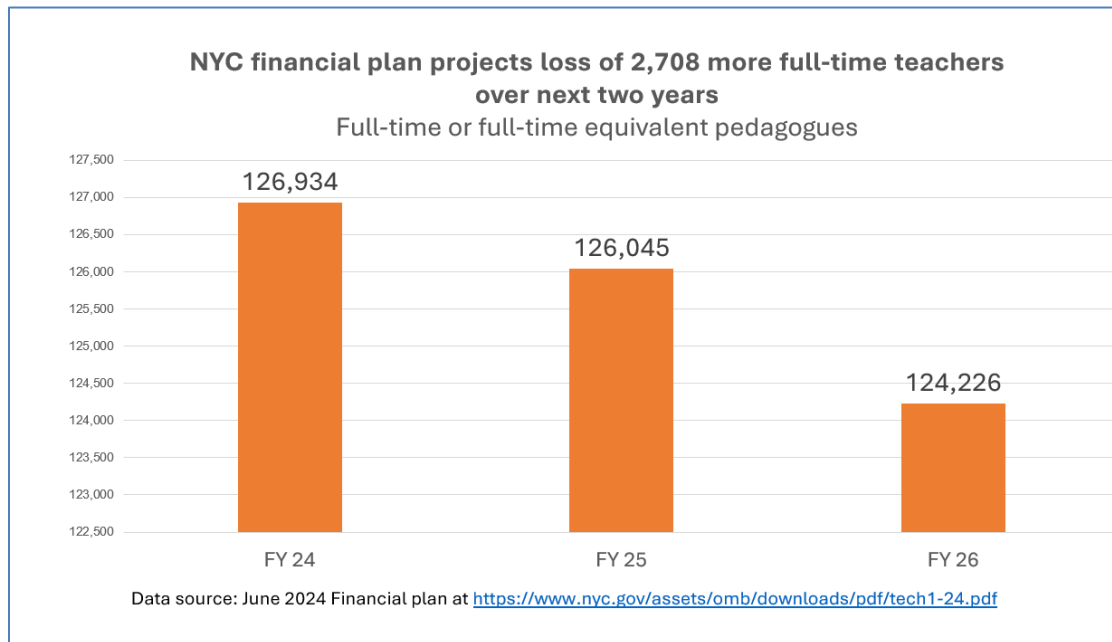
Here are a few of the Title One schools whose cuts to Fair Student Funding, the primary source of funds used by schools to hire teachers or keep them on staff, far outweigh the funds they are receiving to lower class size:

Org ID	School	Borough	School Type	FSF 25 Funds Received	CSR Funds Received	Change in FSF Funding from 24 to 25	Difference between FSF cuts & CSR Funds Added
23K323	P.S./I.S. 323	Brooklyn	K-8	\$2,672,182	\$154,762	-\$1,510,500	-\$1,355,738
19K452	Frederick Douglass Academy VIII Middle School	Brooklyn	Junior High-Intermediate-Middle	\$2,866,884	\$55,720	-\$805,835	-\$750,115
10X386	School for Environmental Citizenship	Bronx	Elementary	\$4,637,948	\$126,325	-\$473,868	-\$347,543
13K265	Dr. Susan S. McKinney Secondary School of the Arts	Brooklyn	Secondary School	\$1,916,751	\$54,263	-\$382,769	-\$328,506
06M328	Community Math & Science Prep	Manhattan	Junior High-Intermediate-Middle	\$1,494,567	\$49,710	-\$268,978	-\$219,268
09X297	Morris Academy for Collaborative Studies	Bronx	High school	\$4,680,516	\$102,883	-\$316,309	-\$213,426
20K506	P.S. 506: The School of Journalism & Technology	Brooklyn	Elementary	\$3,393,880	\$133,061	-\$329,312	-\$196,251
08X424	Bronx Academy for Multi-Media	Bronx	Junior High-Intermediate-Middle	\$2,623,708	\$82,383	-\$273,964	-\$191,581
31R057	P.S. 057 Hubert H. Humphrey	Staten Island	Elementary	\$3,621,121	\$143,783	-\$264,825	-\$121,042
02M303	Facing History School, The	Manhattan	High school	\$4,833,865	\$69,055	-\$96,362	-\$27,307
01M064	P.S. 064 Robert Simon	Manhattan	Elementary	\$1,623,656	\$57,759	-\$82,667	-\$24,908
16K765	Nelson Mandela High School	Brooklyn	High school	\$1,600,935	\$40,334	-\$61,954	-\$21,620

Since nearly half of the schools are receiving less from the class size reduction allocations than it costs to hire even one teacher, and so many others are receiving larger FSF cuts at the same time, this will severely undermine any efforts on their part to lower class size to the mandated levels.

Moreover, the longer the DOE waits to hire additional teachers, the more challenging it will be to ensure their quality and certification in the years to come. Instead of this limited, scattershot allocation, the DOE should be investing at least \$300 million next year to a specific subset of schools with sufficient space to allow them to hire one-fourth of the teachers that will be needed over the next four years, while ensuring that their budgets for staffing are not reduced elsewhere.

Unsurprisingly, the DOE provides no estimate or projection in this document as to how many additional teachers will actually be hired next year to lower class size, either in specific schools or citywide. The fact that the DOE has no coherent plan to do so is further revealed by the city’s financial plan, adopted on June 30, 2024.⁷ This plan projects a decline in the total number of total pedagogues by nearly 900 in FY 2025, and a decline of nearly 3,000 total pedagogues over the next two years.⁸ This is yet more evidence that the city has no coherent strategy or intention to hire enough teachers to lower class size in compliance with the law.



⁷ The Financial Plan of the City of New York, Adopted 2025 Financial Plan Full-Time and Full-Time Equivalent Staffing Levels, Fiscal Years 2024-2028 at <https://www.nyc.gov/assets/omb/downloads/pdf/adopt24-stafflevels.pdf>

⁸ While not all pedagogues are classroom teachers, the vast majority are. For the definition of a pedagogue, see <https://www.schools.nyc.gov/docs/default-source/default-document-library/c-200-9-12-2000-final-remediated-wcag2-0.pdf>

Failure to allocate Contracts for Excellence funding appropriately

The refusal on the part of the DOE to allocate and target sufficient funds towards class size reduction has occurred even though the city will be receiving an additional \$1.8 billion in state Foundation funds in FY 2025 compared to the amount received four years earlier, the result of an agreement between Governor Hochul and the NY Legislature to fully fund the Campaign for Fiscal Equity decision.

Of that \$1.8 billion in additional Foundation Aid, \$802,513,275 will be embedded in the form of Contracts for Excellence funds (C4E) for FY 2025, an increase of nearly \$227 million compared to FY 2024. The C4E program was instituted in 2007 to help address the deficiencies in the education provided by NYC schools as highlighted in the CFE lawsuit, most notably their excessive class sizes.

However, not a penny of this \$802.5 million in C4E funds, or the C4E increase of about \$227 million for FY 2025, has been targeted by DOE specifically towards class size reduction.⁹ An additional \$182 million will be used to subsidize Fair Student Funding, which then can be spent by principals however they like. The lion's share of the amount, \$442 million, will be provided to principals to choose from a menu of options allowable under the Contracts for Excellence law, with class size solely one among them.¹⁰

In their July class size submission, DOE officials report that in addition, they are recommending that principals use a small portion of this \$442 million (\$45 million) towards lowering class size, though they will not require this. Like the class size reduction funds, this relatively small amount of funding is so widely distributed to 715 schools that 562 schools are receiving less than \$100,000, not enough to hire a single teacher; that is if they choose to use it for that purpose. Like the class size reduction funds, the allocation is spread too thinly to make a significant difference.

Moreover, of the 715 schools receiving a total of \$45 million in these C4E funds, 307 schools are receiving city tax levy cuts at the same time, according to the DOE allocation memos. For 289 of these schools, the total amount they are receiving in city tax levy cuts is larger than the amount they are slated to receive through their C4E 2025 allocations.¹¹

When one examines the School Allocation Memorandum No. 05 sent to principals that distributes these funds, there is no mention that the additional \$45 million portion should be used for class size reduction as opposed to other allowable categories. Moreover, schools are also advised that if they choose to use

⁹ Instead, about \$178 million towards supporting Integrated Co-Teaching (ICT) Classrooms, summer school, PreK and ASD NEST classes, as in the past.

¹⁰ See slides 5 and 6 in: Contracts For Excellence and Class Size Engagement FY 2025 Proposed Plan, CEC Hearing_ District 9, May/June, 2024 posted at: [https://www.cec30.org/docs/presentations/FY25%20C4E%20Public%20Hearings_DISTRICT_30%20\(1\).pdf](https://www.cec30.org/docs/presentations/FY25%20C4E%20Public%20Hearings_DISTRICT_30%20(1).pdf)

¹¹ See School Initial Allocation Hold Harmless FY 2025, June 5, 2024, Table 2 https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy24_25/fy25_docs/FY2025_SA_M044_T02.xlsx

any of their C4E funds for class size reduction, they can do so either to “*Maintain class size reductions*” or “*Minimize growth of class size in FY2025.*” As the memo further explains, “*A school may fund a teacher to minimize the growth in class size that the school would have otherwise experienced due to budget cuts...*”¹²

The fact that schools are being told that they can use these funds to minimize class size growth and offset the impact of budget cuts suggests supplanting, which is specifically prohibited in the C4E law.¹³

We urge the State Education Department to strictly prohibit any sort of supplanting, now and in the future, especially as there is evidence of DOE having engaged in this last year as well.¹⁴ Supplanting is contrary to the intent of the C4E law and will undercut progress in lowering class size that would otherwise be expected.

Lack of any specified plan to provide sufficient space for smaller classes

While DOE officials have refused to allocate sufficient funding towards hiring enough teachers to lower class size, their performance is even worse when one considers the need to create more space for smaller classes.

There are hundreds of overcrowded schools without the space currently to lower class size to the mandated levels, although the DOE remains uncertain about how many exactly exist, more than two years after the law passed.¹⁵ Whether there are 540, 650, or more schools that lack the space, nowhere are any of these schools identified, nor are their districts or grade levels. The document also refuses to

¹² See School Allocation Memorandum No. 05, FY 2025, June 5, 2024, Appendix A: Contracts for Excellence Program Strategies, https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy24_25/fy25_docs/fy2025_sam005_Appendix%20A.docx

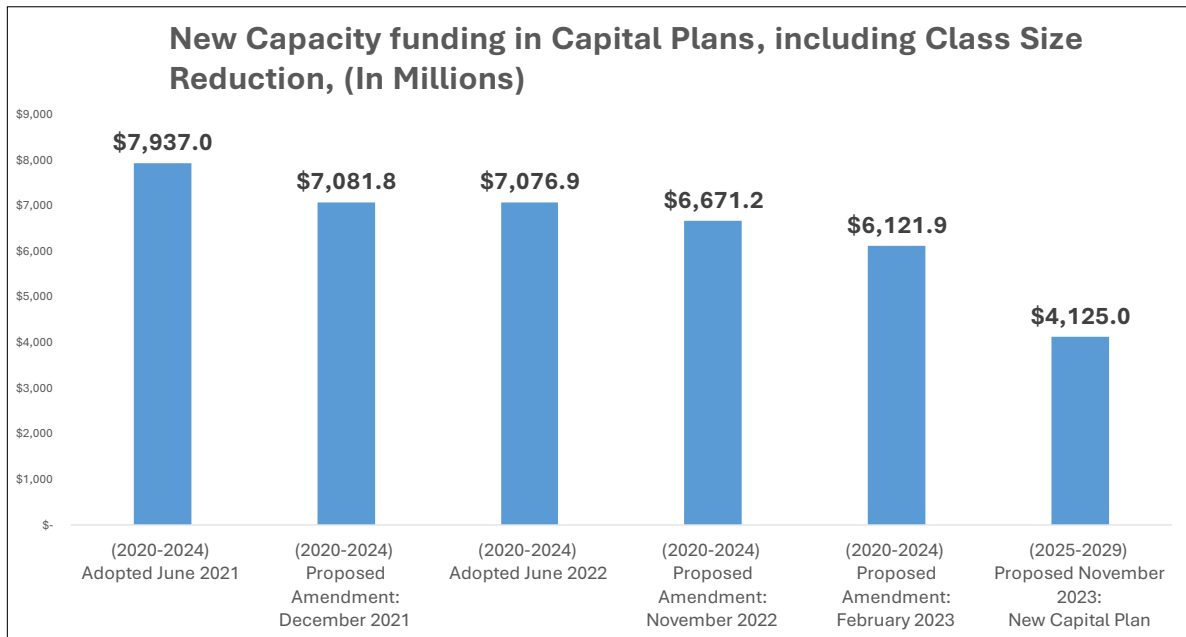
¹³ That law states the following: “*Increases in total foundation aid and supplemental educational improvement plan grants shall be used to supplement, and not supplant funds allocated by the district in the base year for all purposes set forth in subdivision three of this section.*” <https://www.nysenate.gov/legislation/laws/EDN/211-D>

¹⁴ See the NYSED analysis finding an insufficient number of teachers added through the C4E funding in FY 2024 compared to the number claimed by DOE, as cited here: https://www.p12.nysed.gov/mgt/serv/C4E/doc/nyc_class_size_reduction_plan/2023-24/12-5-response-to-nysed.pdf

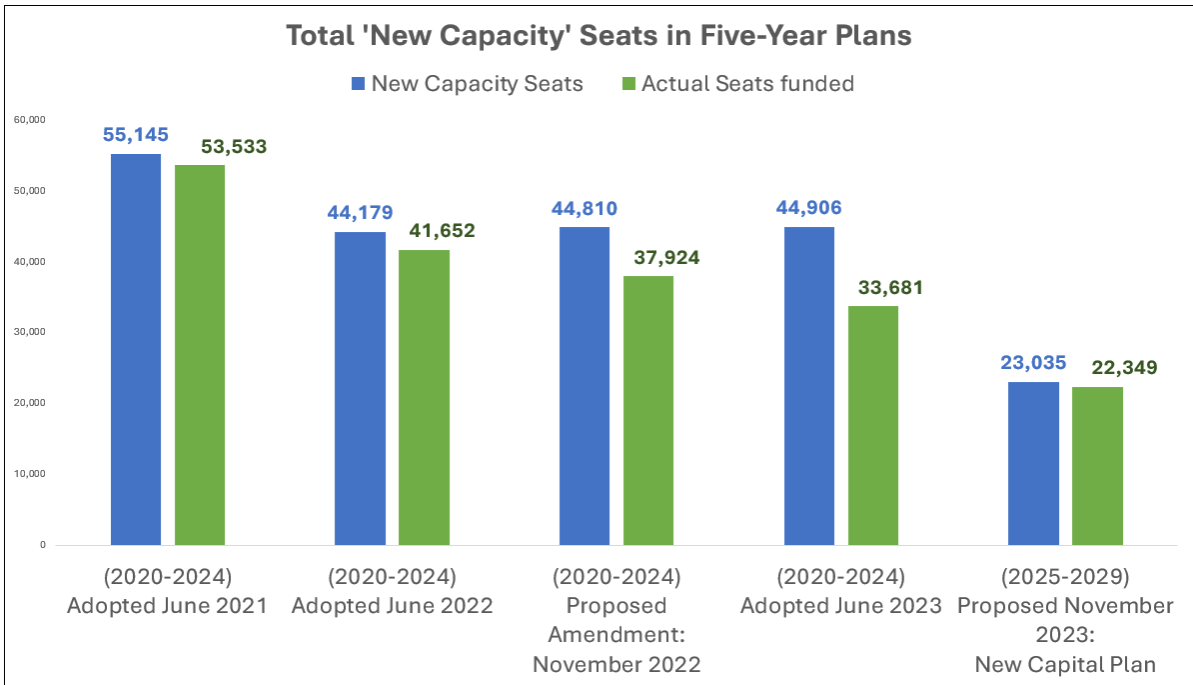
¹⁵ The July submission states that a subset of 650 principals responded to a survey saying that they did not have enough classroom space to lower class size to mandated levels. Yet in another part of the document, DOE says that their own “analyses show that roughly 540 schools need additional space to comply with the class size legislation with their current enrollment.” Apparently, DOE officials are still trying to determine how many of these schools exist, explaining that they are “currently working with ... schools to review their space and the data.”

reveal how many additional total classrooms will be needed, no less how they will be obtained in time to lower class size to the mandated levels within the next four years.¹⁶

But the most incriminating evidence of their lack of commitment to address the issue of the lack of space is that after the class size law was passed in June 2022, rather than expand and accelerate efforts to build new schools, the city cut the funding for new capacity by \$2.5 billion – without explanation.



¹⁶ In the list on page 16 of Tier One, Tier Two and Tier Three schools, the Tier 1 schools lack one classroom, Tier 2 schools lack “up to one classroom per grade” without saying how many rooms that means; and the 280 Tier 3 schools “need one or more classrooms per grade” again without specifying the total number.



The November 2023 capital plan also proposed to cut the number of new school seats by nearly half since the class size law was passed. And while that document discussed the DOE goals of providing more District 75 seats for disabled students, removing TCUs, replacing facilities that were lost due to lapsed leases or other reasons, and incorporating Early Learn sites, it mentioned the new class size law only in passing and not at all in the section which purported to explain how they assessed new capacity needs.¹⁷

Few if any substantive improvements were made in the February 2024 iteration of that proposed five-year plan. And as this July document submitted to the state admits, the DOE and SCA only began in January 2024 to look for the additional sites necessary to be able to comply with the class size law— one and a half years after the class size bill was approved by the Legislature, and seven months after the proposed FY 2025-2029 Capital Plan was first posted.

<p>Lever Three: NYCPS and SCA are utilizing city-wide data on current class size compliance and ENI to select sites for new capacity for the FY25-29 Capital Plan.</p>	<p>Timeline: January 2024 – on-going</p>
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¹⁷ School Construction Authority, FY 2025- FY 2029 Proposed Five Year Plan, November 2023 at: https://dnnhh5cc1.blob.core.windows.net/portals/0/Capital_Plan/Capital_plans/11012023_25_29_CapitalPlan.pdf?v=2017-04-17&sr=b&si=DNNFileManagerPolicy&sig=LmMx0Vrv3O960CtQmVnvz17PVxP194AIUHhmsdJktNo%3D, pp 48-49.

While the proposed five-year capital plan would create only 21,000 additional seats, the President of the School Construction Authority Nina Kubota testified at City Council Hearings on February 29, 2024 that 85,000 more seats would be necessary to comply with the class size law, and that “We know that we are going to be short for new capacity.”¹⁸ Nowhere is this estimate or any other mentioned in the current DOE submission to the state.

The new capital plan for FY 2025-FY 2029 not only fails to take into account the need for sufficient additional space for smaller classes, but unlike any previous capital plan it refuses to identify where 77% of the seats funded will be built, whether district or subdistrict, nor does it identify their grade levels. Instead, the SCA states that the locations and grade levels of the schools to be built over the next five years will never be identified in advance but rather, “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 lack of information not only would leave members of the public, including parents, community members, and local elected officials in the dark concerning the potential siting of schools and their input as to where new schools are needed, but it may also violate state law EDN § 2590-o, 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.”¹⁹

The refusal to provide this data also appears to violate Local Law 167, passed in 2018, which requires the DOE to provide an estimate of the need for new seats by grade level, subdistrict, and district, as well as the actual data and methodology used to arrive at these projections.²⁰ Any credible class size reduction plan must include this level of specificity.

The only significant change in the July class size submission to the state compared to the draft document posted in May is an acknowledgement that DOE will now have to add \$2 billion to new capacity which was required by the state budget passed in April.²¹ Yet no more details are provided as to how many additional seats will be built in which specific districts or subdistricts according to enrollment trends or the need to lower class size, and whether they will be completed in time to comply with the timetable mandated in the law.

18 See <https://citymeetings.nyc/city-council/2024-02-29-0100-pm-committee-on-education/media-viewer-with-transcript>

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

20 <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3458222&GUID=753D0240-EC6E-4727-84CC-23837D1B7ACC&Options=&Search>

21 The state budget required these funds to be added in exchange for boosting the borrowing limit for the city’s overall capital plan, as follows: *For the purpose of achieving the class size targets, as required by section 211-d of the education law, the city of New York shall increase planned spending on classroom construction by two billion dollars (\$2,000,000,000) over and above the planned capital spending detailed in the February 2024 School Construction Authority capital plan.*²¹ The July class size submission accordingly says that “As required by state law, \$2 billion has been added to the City’s capital budget for new seat construction in the FY 2025 Adopted Budget and will appear in a July update of the SCA Capital Plan.”

The data shows that there is a wide variation among districts in the number of schools without the space to lower class size currently. Yet at the same time, the DOE writes that they do not have to identify where they plan to build schools, since “Moving away from allocating funding by geographic areas improves SCA’s ability to evaluate a large number of sites citywide, respond to dynamic enrollment trends, and make decisions quickly.”

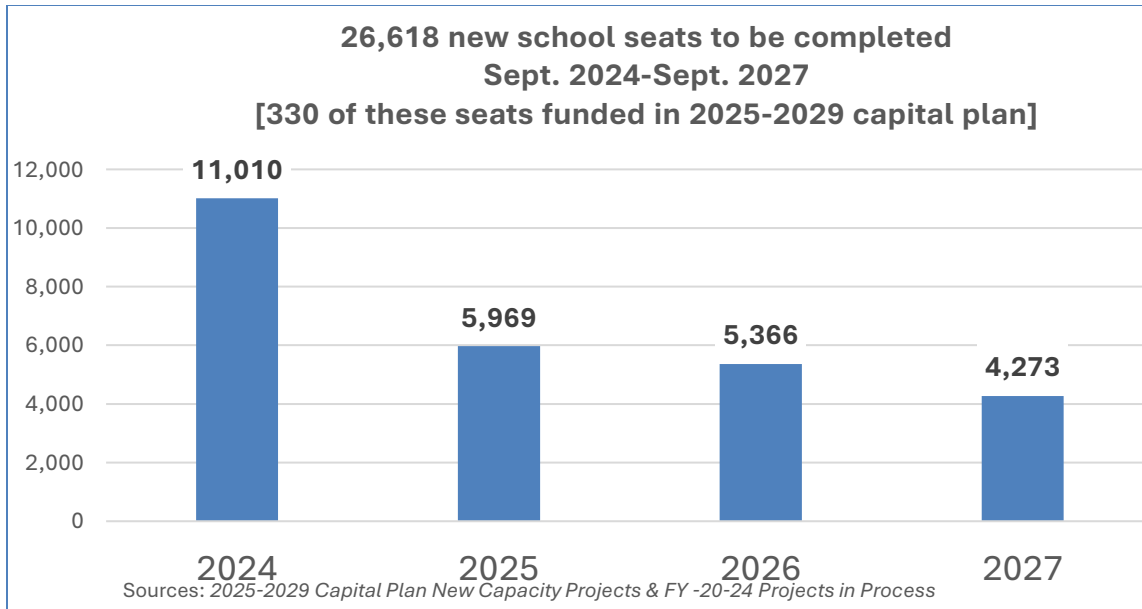
If schools are especially overcrowded in certain districts and subdistricts, building schools miles away will do little or nothing to address that need, unless the DOE expects to be busing students long distances, which the CSWG report specifically opposed and proposed specific guardrails to prevent such an outcome.

One of the only sections in the latest submission which claims to describe how the DOE is currently engaged in building schools for the purpose of lowering class size is Appendix C, which DOE describes as “a more detailed analysis of which schools with identified class size space needs will be positively impacted by the new capacity projects beginning in September 2024.”

Yet even a cursory examination of the list of projects in Appendix C reveals that several of these projects are re-sitings and replacements due to lost school buildings, rather than new buildings that will provide additional space for smaller classes. In fact, one of the projects described is the grade expansion of P.S. 108 Philip J. Abinanti from a K-5 School to a K-8 School, approved by the Panel on Educational Policy on March 27, 2024. The Educational Impact Statement for this proposal stated that this change in utilization will instead make it more difficult to reach the class size caps in the law; *“based on current enrollment projections, the expanded P.S. 108 may not be able to meet all class size targets as of the 2026-2027 school year if this proposal is approved.”*²²

Moreover, even with the additional \$2 billion in spending, it is hard to see how the SCA can catch up, given the large cuts that have already been imposed on new capacity. According to the February 2024 proposed plan, there will be a rapidly declining number of seats completed by school year 2027-2028, the final year in which 100% of classes are supposed to comply – totaling only about 27,000 additional seats through the end of that year.

²² <https://nycdoe.sharepoint.com/sites/PEPArchive/Shared%20Documents/PEP/2023-2024/March%202024%20Panel%20for%20Educational%20Policy%20Meeting/Public%20Notices/Proposals%20for%20Significant%20Change%20in%20School%20Utilization/Proposed%20Grade%20Expansion%20in%20X108/EIS%20X108.pdf?wdsle=0&CT=1720728092245&OR=ItemsView>



The only specific action described in the document by DOE officials in order to create more space relates to roughly 25 schools, in which a non-instructional room will be converted into a single classroom. And according to the document, it is unclear when even this minimal effort will occur.

First, the document says this process started in February 2024 and will be completed by August 2024.

<p>Lever One: Utilizing the results of the school-level needs assessment completed by principals, NYCPS and SCA are working to convert non-instructional space into instructional spaces in schools with minimal space needs ahead of SY24-25.</p>	<p>Timeline: February 2024 – August 2024</p>
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Yet on the very next page, the timeline for this renovation is described as beginning the following year: “NYCPS teams and SCA will work in tandem to allocate resources and ensure timely conversion of rooms into instructional space after the 2024-2025 school year.” Why the delay and disparity between the two timelines is not explained.

Refusal to allow schools to adjust enrollment to meet the class size caps

Far fewer schools would need to be renovated, expanded, or built if the DOE had adopted any of the CSWG proposals to adjust enrollment between nearby schools. Yet throughout this document, the DOE repeatedly proclaims their opposition to any such move. They describe this as a “limitation to families’ and students’ access” and that “Reducing enrollment at high-demand schools would limit families’ and students’ access to those schools.” These statements ignore that more evenly adjusting enrollment between nearby schools could save years and billions of dollars in school construction and expansion. As

the Class Size Working Group pointed out, it would likely provide significant benefits to both sets of schools.

More evenly distributing students between schools would not only provide more space in overcrowded schools for smaller classes, but would also allow more students at these schools to eat lunch at reasonable times and have more frequent access to the playground and the gym, but it would also aid underutilized schools, as their budgets are linked to enrollment and they would be better able to provide their students with more of the programs and services they need for a quality education.

Deputy Chancellor Weisberg admitted this at a Brooklyn Townhall Meeting on October 12, 2023. At the meeting, a fifth-grade student spoke about how it was unfair that some schools had so many fewer students than others, causing the underenrolled schools to suffer budget cuts and lose beloved teachers as a result. In response, Deputy Chancellor Weisberg said: *“This is the reality, students equal dollars. ... If the school gets too small, you can't afford programs. You can't afford PSAL. You can't afford enrichment, debate clubs, et cetera. We've got too many schools that have gotten below critical mass.”*²³

The State Education Department in their comments to DOE in December 2023 apparently echoed this realization, as follows: “if students attending schools with higher class counts were to be assigned to schools below the class size caps... those schools [could] provide more educational opportunities due to the increased FSF funding that accompanies higher enrollment.”²⁴

More evenly distributing students across schools might also lead to more diversity, as the most overcrowded schools currently tend to have a student body that is predominantly White and Asian, while the most underutilized schools tend to have students that are predominantly Black and Hispanic.

Yet DOE officials continue to be highly resistant to capping enrollment at lower levels at any schools to enable them to reduce class size, according to their July submission and elsewhere. While they imply that they leave this important decision up to principals, and that “In SY 2024-25, *Principals will not be required to limit student enrollment in order to meet these Targets*”, the reality is quite different.

Instead, DOE instructed principals that they were prohibited from asking to reduce their enrollments to enable them to lower class size, even when there were underutilized schools sitting nearby.²⁵ In a memo entitled “Review Initial Register Projections for the 2024-2025 School Year”, dated on or about December 1, 2023, the following instructions were given: *“Principals should not request changes to their register projections for the 2024—2025 school year in anticipation of the new class size law.”*

²³ <https://www.publicnow.com/view/DAD781EC6929E538C8D87AC7B27531FD6601B34F?1697222878>

²⁴ https://www.p12.nysed.gov/mgtserv/C4E/doc/nyc_class_size_reduction_plan/2023-24/12-5-response-to-nysed.pdf

²⁵ See the screenshot posted at: <https://3zn338.a2cdn1.secureserver.net/wp-content/uploads/2024/03/Memo-to-principals-vs.-capping-enrollment-Dec.-2023.jpg?time=1719432430>

Moreover, the DOE's policy on enrollment is inconsistent and opaque, as there are many high-demand schools that are allowed to cap their enrollment and thus keep their class sizes at extremely low levels. For example, the Special Music School, a highly selective and high performing public school, receives about 400 applications a year and yet admits only 15 Kindergarten students per year, which allows them to cap class sizes in grades K-5 to 15 students or less.

The elite Bard Early College chain that now has public high schools in Manhattan, Bronx, Queens, and Brooklyn is regularly flooded with thousands of applicants, and yet they limit each of their entering classes to only about 100 students, which enables them to cap nearly all their classes at 24 students or less.²⁶ Both sets of schools also have lower than average need-level, according to the characteristics of their enrolled students. Why the DOE allows certain oversubscribed schools to cap their enrollment and class sizes at extremely low levels and others not is unclear, even when this will prevent them from being able to meet the class size limits in the law.

Along with their continued delay in developing an expanded school construction plan, the DOE's refusal to cap enrollment for entering classes will make it extremely difficult to reach the class size goals in the law in many overenrolled schools within the specified timeline, without transferring students out of their current schools, which the CSWG and many others oppose. What would be the option for a K-5 elementary school with balanced classes to lower class sizes, for example, when it can take six years for students to move up through the grades?

DOE has also refused to shift any of the 3K or PreK programs from overcrowded elementary schools to half-empty Community Based Organization programs, as the CSWG report proposed. As of the fall of 2023, there were nearly 34,000 empty PreK and 3K seats in CBOs and Early Childhood Centers. Moving more 3K and PreK students into CBOs would also help provide these organizations with more sustainable budgets, especially as they are funded based on the number of classes they provide rather than the number of students they serve. Thus many CBOs have found it difficult to sustain operations with half-empty classes.²⁷

Shifting some of these seats from overcrowded elementary schools into CBOs could also provide more working parents with extended day and extended year services, and free up as many as 1400 classrooms and more than 20,000 seats in elementary schools, as pointed out in the CSWG report.²⁸

²⁶ For admissions ratio for the Special Music School, see <https://insideschools.org/school/03M859>. Bard High School in Manhattan receives 28 applicants per seats, according to <https://myschools.nyc/en/schools/high-school?dbn=01M696>

²⁷ DOE Fall 2023 New York City Public Schools Admissions Outcomes, at <https://auth-fohub.nyced.org/docs/default-source/default-document-library/fall-2023-new-york-city-public-schools-admissions-outcomes.pdf>

²⁸ DOE Fall 2023 New York City Public Schools Admissions Outcomes, at <https://auth-fohub.nyced.org/docs/default-source/default-document-library/fall-2023-new-york-city-public-schools-admissions-outcomes.pdf>

The CSWG report proposed far more policy changes in the areas of Space and Capital Planning than were mentioned or have been accepted by DOE – contrary to the claims made in this document. Though the DOE submission states they have incorporated the CSWG report’s Space Planning Recommendation #2, this portion of the report actually proposed that co-locations, school closings, grade expansions, or other changes in school utilization should cease unless there was a rigorous analysis in the Educational Impact Statement to show that these changes would not prevent existing schools from lowering class size. This is because every co-location eliminates classroom space with the need to replicate administrative and specialty rooms, and thus creates inefficiencies that may make it more difficult to lower class size currently and in the future. And yet the DOE has so far refused to include this analysis in their Educational Impact Statements.

The CSWG also proposed that the creation of new schools should be considered only if there is a separate new building to put them in, aside from District 75 schools. Instead, if there is a perceived need or idea for a valuable new program or service, existing underutilized schools should be given the resources to provide these new programs or services. Yet the DOE continues to create new schools and propose more co-locations without taking into account this consideration.

The DOE submission falsely claims to have incorporated the CSWG #3 and #4 for Space Planning and Capital Planning Recommendations– which included detailed suggestions as to how DOE and SCA could accelerate the acquisition of school space by expansion of schools and new school construction.

For example, in Recommendation #3, the Working Group proposed that the DOE and SCA immediately recognize the need for more school space and capital construction, and rather than cut the budget for new capacity in the proposed five-year plan, identify where new schools must be built and accomplish that on an accelerated timeframe. Recommendation #4 included many detailed proposals on how this could occur, from building annexes, acquiring closed parochial schools, hiring more real estate companies to be paid on commission to find sites, issue request for proposals (RFP) for space in the necessary neighborhoods; revive the Educational Construction Fund which has built no new schools in over a decade, and more. And yet none of these practical suggestions put forwarded by the CSWG have been adopted or are even mentioned in the DOE submission, despite its assertions to the contrary.

The unacceptable steps the DOE has proposed instead of providing an actual class size plan

As DOE officials continue to refuse to take the necessary steps to ensure that schools have enough staffing and space to lower class size to appropriate levels over the next four years, they appear to be pushing the onus for class size reduction on individual districts. Superintendents have been told that schools should increase compliance with the class law by three percent next year, ostensibly with their existing resources, staff, and spaces. This instruction risks forcing principals with insufficient space or staff in their schools to reassign existing teachers and/or classrooms currently used for other critical programs—contrary to the recommendations of the CSWG.

Instead the CSWG strongly advised that DOE should ensure that dedicated spaces for arts, theater, dance, science, and libraries, as well as staffing for those programs, should not be sacrificed for the goal of reducing class size.

Another potentially harmful proposal made by DOE is that schools expand their use of virtual learning if they have inadequate classroom space to lower class size. Given the profoundly negative impact of online instruction during the pandemic, when many students became disengaged, fell behind academically, and suffered serious emotional and mental health harm as a result, the expansion of virtual learning is fundamentally unwise in our view, and could undermine any positive effects from lowering class size.²⁹

Latest class size data shows class sizes increasing rather than declining

As a result of the DOE's lack of focus and commitment in lowering class size, class sizes have increased in most schools since the law was passed. Even though Section 3 of the July 6 DOE submission is entitled "current state of class sizes in New York City," and that right under that heading, the figures displayed are described as "existing class size data", neither of those descriptions are accurate.

Instead, the data presented is identical to that provided in their November 15, 2023 class size report to the state, which included class sizes as of October 31, 2023, rather than the end of the year. Nor does DOE offer any data showing how average class sizes have increased since the law was passed.

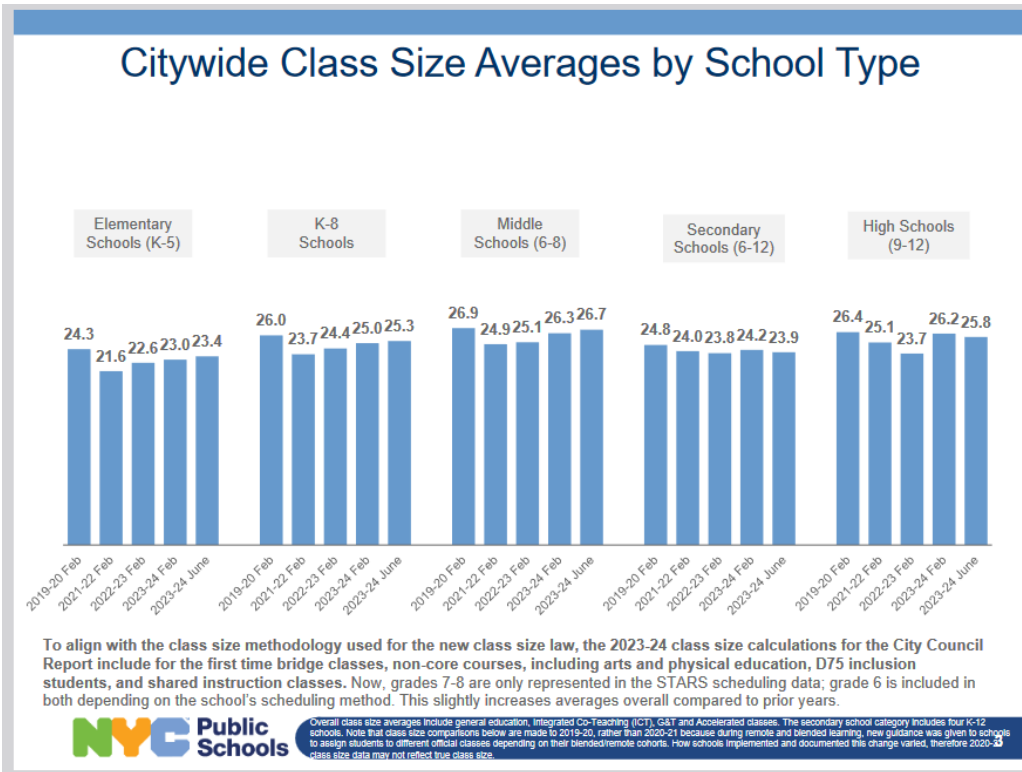
On June 30, 2024, the DOE released class size data by school, as required by Local Law 57, which was approved by the City Council on March 15, 2024.³⁰ The data as of June 15, 2024 revealed that average class sizes had increased significantly in June 2024 in elementary and middle schools, compared to the November 2023 data provided in the DOE's July class size submission.³¹ At all grade levels, aside from a

²⁹ On June 13, 2024, Class Size Matters and five parents filed a Commissioner's Appeal, challenging DOE guidance that schools could enroll students in online classes and keep them there until the parent opted out, which conflicted with State Education regulations on the subject. About two weeks after we submitted our Appeal, the DOE sent revised guidance to principals that better conformed to the SED regulations requiring prior parental consent, though we have not withdrawn our appeal. More on this here: <https://www.nydailynews.com/2024/07/05/nyc-public-schools-revise-remote-learning-policy-after-advocates-ask-state-to-intervene/?share=thwawgnhevfaoywnencr> and at <https://classsizematters.org/in-response-to-our-legal-appeal-doe-will-now-require-parent-consent-before-assigning-students-to-online-classes/>

³⁰ Local Law 57 amended Local Law 125 passed in 2005 which required class size reporting in November 15 and February 15 of each year. The DOE reporting on Nov. 15 reflects the Oct. 31 data, and the Feb. 15 reports include the audited Oct. 31 data. See <https://intro.nyc/local-laws/2024-57> and <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6506774&GUID=23BB5460-B06B-492B-A44B-6EAC2FE6C585&Options=ID%7CText%7COther%7C&Search=int.+45>

³¹ The February data of each year contains the Oct. 31 audited class sizes. Yet the original intent of advocates who originally drew up the language for Local Law 125 intended that the February report would contain mid-year class size data which the DOE has refused to report. <https://infohub.nyced.org/docs/default-source/default-document-library/2023-24-june-average-class-size-summary.pdf>

small number of 6-12 schools, average class sizes have increased sharply since October 31, 2021. Note that the February class size data cited in the chart below reflects the audited data from the previous October.



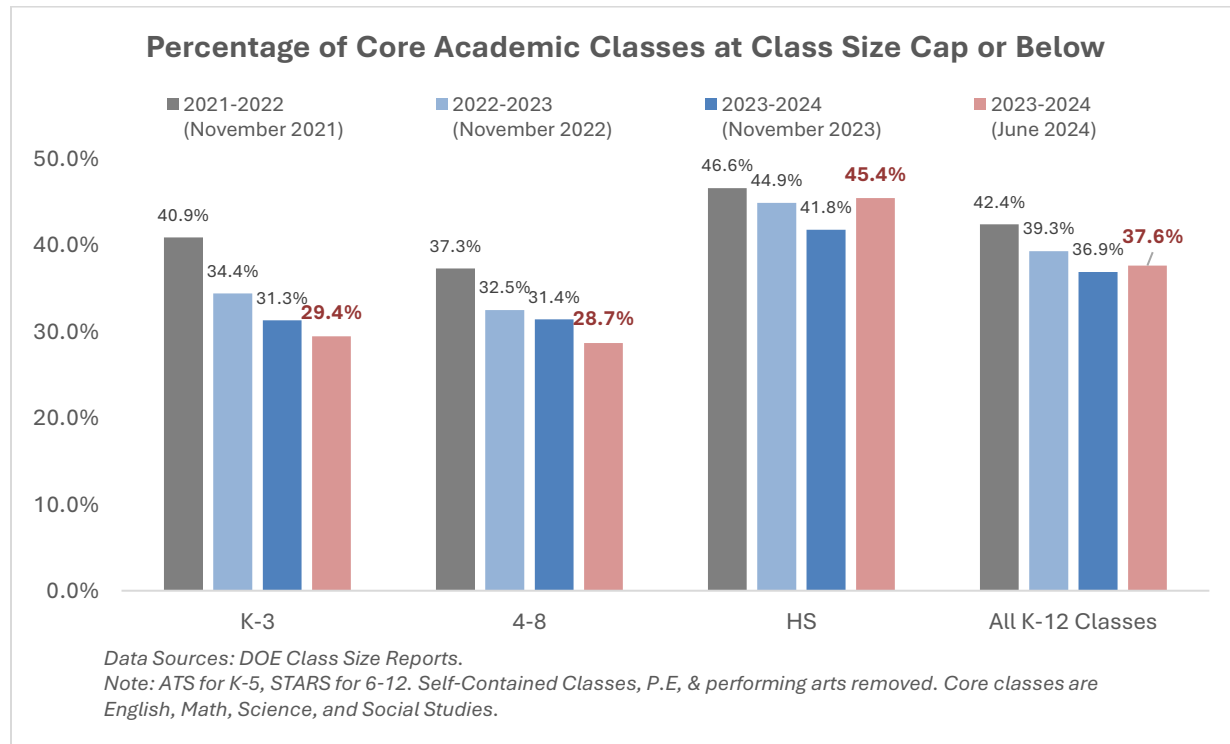
In addition, a separate analysis shows that the percentage of classes that comply with the caps in the law significantly has decreased since the 2022-2023 school year by more than 2 percentage points, from 41.9% in October 2022 to 39.8% in June 2024.

The longer term data for class sizes in the four core subjects of ELA, math, science, and social studies reveals that the percentage of classes that met the cap of twenty or less in grades K-3 declined sharply from 40.9% in the fall of 2021 to only 29.4% in the spring of 2024 – a drop of 28%.³² In 4th-8th grades, the percentage of classes in the four core subjects that met the cap of 23 fell from 37.3% to 28.7% -- a 23% decline. The percentage of high school classes that complied with the cap of 25 also dropped sharply from the fall of 2021 to the fall of 2023, but then increased by the spring – likely because of students graduating early or dropping out.

The only reason the average level of compliance across all grades remained nearly 40% overall derives from a quirk in how these percentages are calculated, as the total number of classes offered in high schools are greater than the number of classes in grades K-8, and thus their higher level of compliance skews the overall results. While there are only roughly 9,000 classes in grades K-3, there are more than

³² DOE only reported the sizes of ELA, math, science, and social studies classes until the 2022-2023 school year.

57,000 classes in grades 4-8 and nearly 79,000 in high school.³³ Thus, it is possible that while the percentage of classes in compliance with the caps in high school and overall could increase, average class sizes could grow at the same time in elementary and middle schools. That is why a detailed, phased-in plan is necessary to ensure that this does not occur.



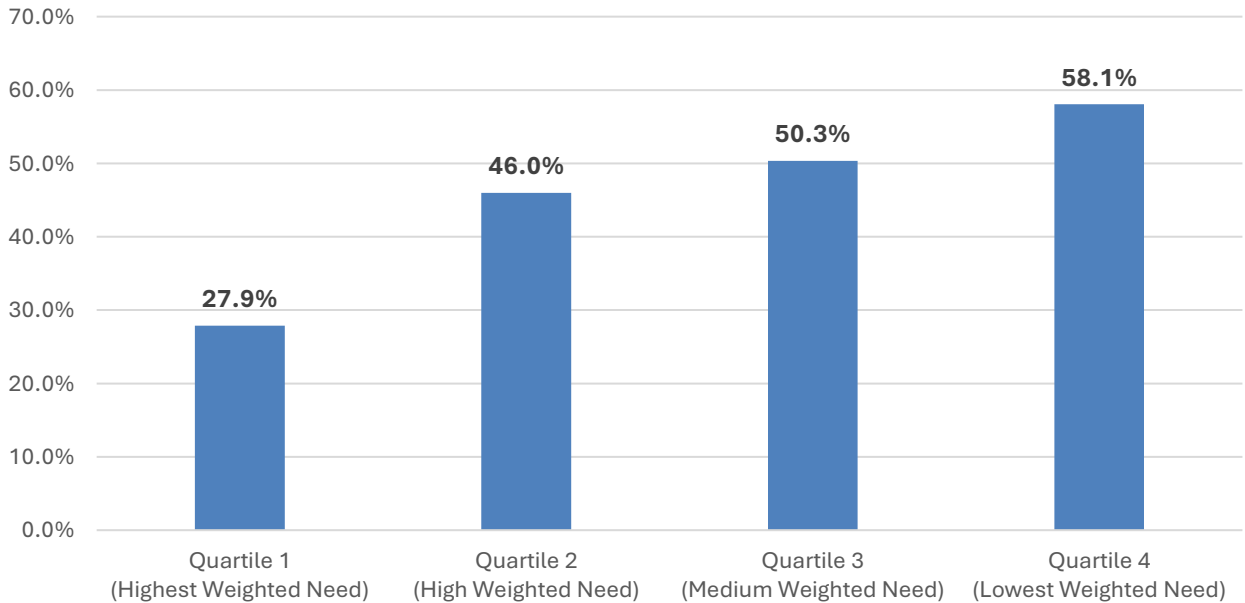
Instead of offering the most recent class size data or trends that would reveal backsliding, DOE repeats a misleading analysis that the schools with the highest economic needs already comply with the class size caps at a higher rate than other schools. However, the way in which DOE creates categories of schools based on their percentage of high need students ignores a fundamental fact: that schools in their highest need deciles tend to be very small and enroll comparatively few high need students.

When schools are categorized instead according to both their number and percentage of high needs students, as in the state’s weighted need formula, used to determine the proper allocation of Contracts for Excellence funds, a very different pattern emerges.³⁴ The higher a school’s weighted need **the less likely it is that its classes will meet the goals in the law**, as reflected in the below chart:

³³ Source: June Class Size Report for 2023-2024, School Data; <https://infohub.nyced.org/docs/default-source/default-document-library/june-2023-24-class-size---school.xlsx>

³⁴ The state’s list of NYC schools according to their weighted need for 2024-2025 is posted on their Contracts for Excellence page here: https://www.p12.nysed.gov/mgt/serv/C4E/24-25_C4E/2024-25-nyc-needs-weights-c4e.xlsx

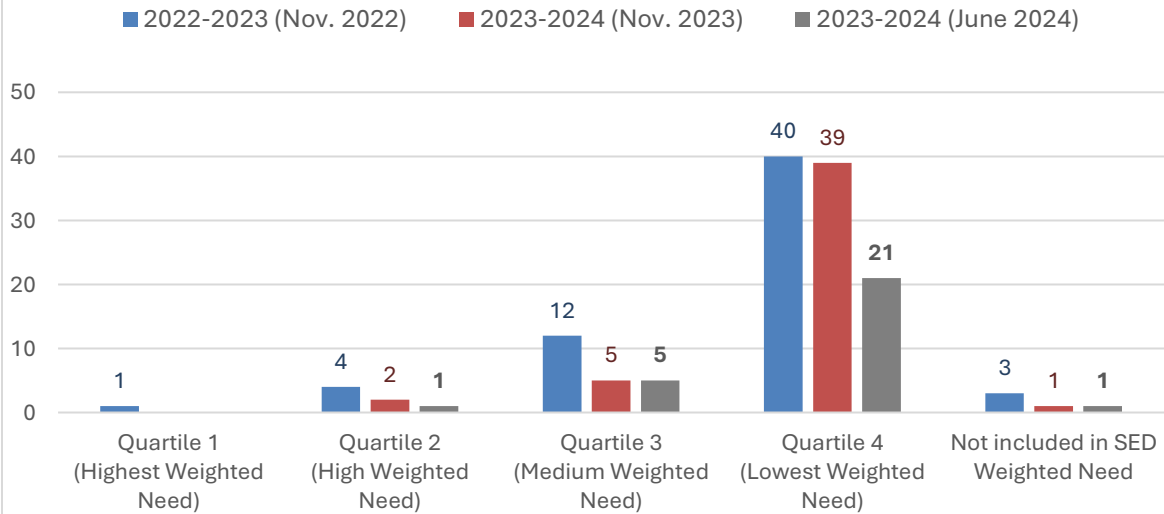
Percentage of all classes at or below caps by weighted need as of June 2024



Data Sources: DOE Table C Compliance Data for 2022-2023 & 2023-2024 (November), DOE Class Size Report for 2023-2024 (June). SED 2024-2025 Needs and Weights, New York City
 Note: ATS for grades K-5 & STARS for 6-12. Self-Contained Classes, P.E. & performing arts removed from analysis

Moreover, when the trend line is analyzed, it shows that a rapidly declining number of schools have fully complied with the class size caps over time, both overall and according to their weighted need. No schools in the highest weighted need category fully complied as of June 2024, and only 28 schools overall did by June 2024, compared to sixty schools in October 2022.

Schools that fully made class size caps, by year and state weighted need formula



Data Sources: DOE Table C Compliance Data for 2022-2023 & 2023-2024 (November), DOE Class Size Report for 2023-2024 (June). SED 2024-2025 Needs and Weights, New York City
 Note: ATS for grades K-5 & STARS for 6-12. Self-Contained Classes, P.E, & performing arts removed from analysis.

Fundamental flaws in the public process

In addition to the other deficiencies outlined above in terms of DOE’s proposed policies and practices when it comes to class size, there have also been multiple problems with the manner in which the agency carried out the public process specified by law.

According to the class size law, its regulations, and the calendar posted by the New York State Education Department, the DOE was supposed to present its preliminary draft class size plan and gain input from the public in a process beginning on May 20, 2024, and include hearings in each borough as well as meetings of each Community Education and Citywide Council. The law and the NYSED calendar also require that public notice of these hearings must be posted fifteen days before the hearings begin, which this year meant by May 5:

NOTE: For NYC, notice of the public process shall be provided fifteen days prior to the commencement of the first public hearing and shall be posted on the city school district's website

*as well as transmitted via email to school administrators, parent and teacher organizations, and elected officials.*³⁵

However, while dates were posted on May 6 for borough hearings that took place from May 20 through May 30 via Zoom, no links were provided that would allow anyone to sign up for these hearings in advance. *Worse yet, there were no dates, times, or locations provided for any of the required CEC or Citywide Council meetings until May 20, fifteen days later than the date prescribed by law.*³⁶

As of May 30th, information as to the dates, times, and locations was still lacking for 25 of the 33 CEC and Citywide Council hearings. Even as late as June 6, a full month following the deadline for notification, there were still no dates, times, or locations posted for twelve of the CECs.

Moreover, no alerts were sent to parents about the time and place of any of these hearings to our knowledge, even those parents who subscribe to DOE public announcements. CEC Presidents received only two relevant emails. The first message, dated May 7, only said that the “DOE’s annual Contracts for Excellence public process will be starting on May 22, 2024,” which was inaccurate as one of the borough hearings was already scheduled for May 20.

The second email to CEC leaders, dated May 30, included a one-and-a-half-page press release of the draft class size “plan”. None of the emails to CECs or Citywide Council leaders encouraged them to reach out to other parents in their districts to participate in these hearings. Perhaps as a result of this lax communication and notification process, there was very low attendance at these hearings.

Moreover no information was provided at any of these hearings as to what specific funding would be allocated to specific districts or schools for the purpose of lowering class size. Not until June 5, when the DOE’s \$137 million class size allocation memo was posted on a separate webpage, was this information made available about which schools would receive class size reduction funding and how much each would receive – and that specific information was not ever provided on the relevant DOE webpage or to CEC members, even in the hearings that took place after that date.³⁷

Why does this matter? Because parents, educators and community members were thus unable to provide meaningful feedback as to whether the allocations made to specific schools made sense or would likely achieve their stated goal. The fact that these allocations were not provided at the borough or district hearings suggests either an unacceptable lack of advance planning or a purposeful lack of

³⁵ https://www.p12.nysed.gov/mgtserv/C4E/24-25_C4E/2024-25-nyc-c4e-calendar-updated.pdf

³⁶ All these omissions can be verified by screenshots of the DOE C4E webpage posted in a folder here. <https://drive.google.com/drive/folders/1AeCQFeMk-SPPq5aFl3uJdcTRiQdbvNII>

³⁷ See for example the presentation give June 10, 2024 to CEC 30; but misleadingly entitled Fiscal Year 2025 Contracts For Excellence and Class Size Engagement FY 2025 Proposed Plan, CEC Hearing_ District 9CEC Hearing_ District 9, posted on the CEC 30 website: [https://www.cec30.org/docs/presentations/FY25%20C4E%20Public%20Hearings_DISTRICT_30%20\(1\).pdf](https://www.cec30.org/docs/presentations/FY25%20C4E%20Public%20Hearings_DISTRICT_30%20(1).pdf)

transparency on the part of DOE officials. In either case, it does not reflect well on their competence or commitment.

Finally, throughout the public input process, and to this day, the presentation that the DOE officials delivered at these hearings has never been posted on its website, making it impossible for members of the public who were unable to attend these hearings to provide informed comment. Nor was any email address made available online for members of the public to submit comments on the DOE's class size submission, as opposed to their separate Contracts for Excellence plan. The email address to send public comment, classsize@schools.nyc.gov, was made available only on a single slide of the power point delivered at the various C4E/class size hearings. Yet as mentioned above, this power point was never provided on the DOE website.³⁸

Conclusion

For all these reasons and more, we urge the Commissioner to reject the inadequate and haphazard proposals submitted by DOE, which do not constitute a real plan. If the DOE does not develop and implement clear policies and proposals specifying what series of steps they will take to enable schools to cap class sizes at the appropriate levels each year, it is questionable as to whether the city will be able to comply with the 40 percent requirement next year, and highly unlikely that they will be able to meet 60 to 100 percent requirement in years three to four, without drastic and disruptive actions that will harm students and schools.

Instead, DOE should be mandated to develop and put in motion as soon as possible an actual four-year plan that can succeed, without excessive exemptions and with sufficient funding and space provided to specific schools to meet the class size benchmarks in the law.

Such an updated Class Size Reduction Plan should include:

- What staffing and space will be added each year, using which specific mechanisms, so that 100% of classes can achieve the new class size caps by the end of the 2027-2028 school year;
- Enrollment and class-size projections for NYC public school, for each of the next four years.

This is essentially what the State appeared to demand after DOE submitted their first-year class size report in November 2023.³⁹

38 This appears contrary to DOE claims in their submission on p. 14 that “the City intends to continue to comply with the new State law by ensuring that there is sufficient funding to meet the newly mandated class size caps without cutting funding for current programs or staffing.”

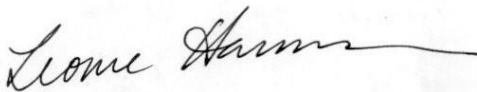
39 See DOE Responses to NYSED Class Size Questions, dated December 5, 2023, posted at https://www.p12.nysed.gov/mgtserv/C4E/ /nyc_class_size_reduction_plan/2023-24/12-5-response-to-nysed.pdf

DOE has had more than two years to put together such a plan, and has resisted doing so, despite the input of the CSWG, most of whose proposals they have so far refused to adopt. Any further delay would risk missing the required benchmarks, which could lead to the state withholding critical funding.

The other possible result is that DOE would comply in such a last minute fashion that teachers and space currently dedicated to other important classes, programs, and services would have to be reassigned to meet the caps, and/or students would have to be transferred out of their existing schools – measures that no one could possibly see as acceptable.

Yet none of this would be necessary if DOE officials were required to move forward in a proactive and effective manner now.

Yours sincerely,

A handwritten signature in black ink that reads "Leonie Haimson". The signature is written in a cursive style with a long horizontal flourish at the end.

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