



United Federation of Teachers  
A Union of Professionals

October 12, 2011

Dr. John B. King, Jr.  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue  
Albany, New York 12234

Re: 2011-12 Contract for Excellence

Dear Dr. King:

On behalf of the United Federation of Teachers, the NY State NAACP, Class Size Matters and the Alliance for Quality Education we write to express significant concerns as to the propriety and legality of the Contract for Excellence process for the 2011-12 school year. These concerns begin with the State Education Department's ("SED's") reversal of the Contract for Excellence approval process, placing Contract submission before public comment, and the resultant disregard of the public process required by the Education Law. The New York City Department of Education's ("DOE's") subsequent failure to comply with even that flawed schedule further deprives statutorily recognized stakeholders of meaningful and timely participation in the Contract formulation and approval process. Indeed, nearly half the school year will have passed, and thus nearly half the money been spent, before the public process to develop the Contract would have concluded.

As you are aware, Education Law § 211-d(4) requires that a district's contract for excellence "shall be *developed* through a public process, in consultation with parents or persons in parental relations, teachers, administrators, and any distinguished educator appointed pursuant to [the Education Law]." (Emphasis added). Further, the law requires that "such process shall include at least one public hearing," and that in New York City "a public hearing shall be held within each county of such city." *Id.* Also, in New York City, each community district contract for excellence "shall be submitted by the community superintendent to the community district education council for review and comment at a public meeting." *Id.* Finally, Education Law § 211-d(4)

Dr. John B. King  
October 12, 2011  
Page 2

requires that “[a] transcript of the testimony presented at such public hearings shall be included when the contract for excellence is submitted to the commissioner.” Id.

As noted above, our concerns regarding the process for the 2011-12 school year begin with the schedule set by SED. SED’s calendar prescribes that districts submit their 2011-12 Contracts for Excellence to the Commissioner on September 15, 2011, *before* the public comment period, which was set to begin on September 19, 2011. This is a plain violation of the Education Law, which requires that the contracts be developed via a public process *prior* to being submitted to the Commissioner for his approval. Education Law § 211-d(4)(b). Indeed, the law requires that a transcript of the testimony presented at the public hearings be included in the submission to the Commissioner. Id. Compliance with this paragraph is impossible if the Contracts are to be submitted prior to the public comment period. SED’s own guidance from 2009 regarding the public process confirms this interpretation of the statutory language, indicating that “[a] school district *shall not* submit its Contract to the Commissioner for approval until: (1) the 30-day public comment period has ended; (2) all public hearings have been conducted; (3) the public comment record has been prepared; and (4) the public comment assessment has been prepared and posted on a school district website.” (Emphasis added).<sup>1</sup>

Of even greater concern is DOE’s failure to adhere to the Contract for Excellence statutory directives. DOE’s flouting of the requisite public process is twofold. First, with regard to the public comment mandate in New York City, the law clearly contemplates both public hearings *and* public comment at community district education council (“CEC”) meetings. See Education Law § 211-d(4)(b) and (c). It is our understanding, however, that DOE intends to present its 2011-12 Contract only at CEC meetings, thereby ignoring the public hearing requirement of Education Law § 211-d(4)(b). Second, SED’s calendar mandates that school districts publicize and post the proposed 2011-12 Contract for Excellence plan for the 30-day comment period no later than September 19, 2011. The public comment period is to end by October 18, 2011, and an assessment of comments from the public hearings is to be posted by the district on or before October 20, 2011. DOE originally scheduled presentations at the CECs in late September/early October, presumably in compliance with SED’s faulty schedule. We have recently been informed, however, that all of these presentations have been rescheduled to late October/early November, *after* the deadline imposed by the SED for public comment.

---

<sup>1</sup> Available at: <http://www.p12.nysed.gov/mgtserv/C4E/htm/PublicCommentProcess.htm>.

Dr. John B. King  
October 12, 2011  
Page 3

The current Contract for Excellence submission process, as set forth by SED and implemented by DOE, makes a mockery of the public process mandated by the Legislature. Contracts have been submitted to the Commissioner prior to any public comment period and well *after* the school year has begun. Funds have been allocated and are being spent before the public has had an opportunity to weigh in. This is particularly devastating in New York City, where a key, mandatory component of the Contract is class size reduction. Yet, from all indications, the average class size has increased again this year. In this the fifth and final year of DOE's legally mandated and SED-approved class size reduction plan, the class size goals set forth in the plan have not been achieved. Instead, rather than lower class sizes, SED and DOE have allowed the average class size to increase to levels higher than when the Legislature first passed the Contracts for Excellence law in 2007.

At a minimum, the stakeholders in New York City deserve the right to be heard in statutorily required public hearings and for their comments to be considered by SED before acting on the contract. We trust SED will act to ensure DOE compliance with the Education Law.

Sincerely,



Michael Mulgrew  
United Federation of Teachers

On Behalf of

Hazel Dukes  
New York NAACP

Leonie Haimson  
Class Size Matters

Billy Easton  
Alliance for Quality Education

cc: Dennis M. Walcott, Chancellor  
New York City Department of Education