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Testimony before the Assembly Standing Committee on Education

On school infrastructure and facilities.

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Dear Chair Nolan and the esteemed members of this Committee:

Thank you for holding these important hearings today. My name is Leonie Haimson and I am the Executive Director of Class Size Matters, an advocacy group devoted to informing the public about the proven benefits of small classes. We also monitor trends in NYC, where our public school students suffer from the highest class sizes and the most overcrowded conditions in the state.

Last month, Class Size Matters released a report entitled ***Seats Gained and Lost in NYC Schools: The Untold Story***.¹ As we explained in this report, last school year about 575,000 NYC students attended class in overcrowded school buildings, according to DOE data.² At the same time, over 330,000 students were crammed into classes of 30 or more.³ Yet this overcrowding is likely to worsen without fundamental reforms to the process of school planning and siting, and an increase in funding for school construction.

Our report revealed for the first time, rather than creating net 100,000 seats between 2004 and 2013, as former Mayor Michael Bloomberg claimed, the real number of net seats was less than half that number — only about 45,000, when seat loss is taken into account. Moreover, of the net 45,000 new seats, the vast majority were filled by the rapidly expanding number of charter school students attending school in NYC public school buildings, with only 2,357 net seats filled by district public school students during that time.

These seat losses, the result primarily of lapsed building leases, the removal of trailers and elimination of annexes, were identified using data from the annual NYC Department of Education's School Capacity and Utilization Reports, known more familiarly as the Blue Book.

¹Class Size Matters, *Seats Gained and Lost in NYC Schools: The Untold Story*, Sept. 2017; posted at: <https://www.classsizematters.org/wp-content/uploads/2017/09/Web-Seat-Loss-Report.pdf>

² NYC Department of Education., November 2016. "Enrollment, Capacity & Utilization Report Target Calculation 2015 – 2016 School Year." The figures above are the number of students in schools at 100% target utilization or more.

³ DOE November 2016 Class size data posted at: http://schools.nyc.gov/AboutUs/schools/data/classsize/classsize_2016_11_15.htm

These findings help explain the increased overcrowding that has plagued New York City schools in recent years, especially in the elementary grades, with the number of overcrowded elementary school buildings increasing by 17 percent, and the number of students in these buildings increasing by 29 percent between 2004 and 2012.

This occurred because in fully half of all districts, elementary school buildings lost net capacity during this period. Of the 19 districts that experience growth in elementary school enrollment, there were only three in which the net new capacity exceed growth: in districts 2, 11, and 22. Seventeen out of 32 districts lost net elementary seats during this period.⁴

Currently, the DOE estimates that they have funded fewer than 60% of the seats necessary given current overcrowding and expected enrollment growth – with about 49,000 K12 seats in the five-year capital plan, with the actual need for seats at about 83,000. Yet the DOE doesn't explain how they arrive at their needs estimates, and we believe the need for seats is much larger, as the DOE's figure appears not to account for the continuing rapid expansion of space taken up by charter schools co-located in our district schools, nor the increased number of preK students in our schools.

The DOE's projected needs assessment also doesn't seem into the projected loss of thousands of seats eliminated through the removal of TCUs, given the fact that there are no funds allocated in the five-year capital plan towards replacing their classrooms, or the possibility that there will be lost leases. Meanwhile, the amount of funding in the capital plan dedicated to replacing lost leases has sharply declined since 2009 from \$1.3 billion to only \$140 million in 2017 – a cut of nearly 93%.

In many schools, the expansion of preK, though obviously a boon to working parents, has exacerbated overcrowding. Now the introduction of 3K threatens to worsen this trend. This program started this year in District 7 in the Bronx and District 23 in Brownsville. Last week, the administration announced that 3K classes would be added to schools in District 4 in East Harlem; and District 27 in Queens in 2018-2019 and would be offered in all schools in these districts the following year. In 2018, 3K will also be implemented in District 9 in the Bronx, and District 31 on Staten Island. In the fall of 2020, the city plans to add 3K classes to D19 in Brooklyn and D29 in Queens.⁵

Yet many if not most of the elementary schools in these districts already suffer from extreme overcrowding, and none of them are enough new seats funded. For example:

- In District 4, there are 17 schools at or over 100% and no new elementary seats are planned.
- In District 7, there are 19 schools at or over 100% and less than half the seats that DOE says are needed are in the capital plan.
- In District 23, 11 schools or 30% of schools are overcrowded and 41% or 4,579 students are already attending overcrowded schools, with no new district seats funded in the capital plan.

⁴ Districts in which there was net seat loss in elementary schools included D4, D7, D8, D10, D12, D25, D27, D13, D14, D16, D17, D21, D23, D25, D27, D30, and D32; see the charts on p. 10-11 at <https://www.classsizematters.org/wp-content/uploads/2017/09/Web-Seat-Loss-Report.pdf>

⁵Katie Honan, 3-K Arrives In Two More Districts Next Year as Mayor Plans Full Expansion, October 12, 2017; <https://www.dnainfo.com/new-york/20171012/far-rockaway/3-k-pre-k-nursery-public-school-expansion>

- In District 31, the schools already average at 102%, with 42 overcrowded schools and only about half the seats needed funded in the capital plan, according to DOE.⁶

Even worse, DOE estimates of the need for new seats do not include the growth of 3K or preK, as far as we can tell – as the City Planning formula used to project enrollment growth from housing starts hasn't been revised since 2008 and is based on census data that is nearly 20 years old. The problem of overcrowding will also likely be compounded by the rapid construction of many thousands of new market-rate and affordable housing units, which will likely cause enrollment to increase even more rapidly.

City Planning immediately needs to update its formula to include 3K and preK students if these programs are going to be sited in our public schools, and ensure that the formula is based on more recent Census data. The report makes several other recommendations to improve the transparency and reliability of school planning, including that the DOE should include seat loss in its annual reporting, publicly release transparent estimates of the need for new seats that account for lost seats, and make explicit the data, assumptions and methodology in these needs assessments.

The city's zoning process should be reformed to ensure that new schools are built along with new housing, instead of years afterward, and DOE should take aggressive action to avoid further seat loss in the future. The DOE should also halt the co-location of new schools in existing buildings, charter or otherwise, which tends to reduce capacity by converting classroom space into administrative and cluster rooms.

Last July, Class Size Matters along with the Public Advocate, the Alliance for Quality and nine NYC public school parents filed a complaint with the State Education Department demanding that they make the city comply with the original class size reduction plan that was submitted and approved by the state in 2007.⁷ Yet instead of lowering class size, class sizes increased sharply starting in 2007, and are now far larger than when the C4E law was passed. The number of students in grades 1 through eight in classes of 30 or more has nearly doubled since 2007, and the number of students in grades 1-3 in classes this large has exploded by an amazing 4000% since 2007.⁸

The Contracts for Excellence law flowed from the Campaign for Fiscal Equity decision, in which the state's highest court said smaller classes were necessary for NYC children to receive their constitutional right to an adequate education.⁹ Regulations enacted by the state after the C4E law passed required that the capital plan be aligned with smaller classes, since class size reduction would not be possible without sufficient space in schools.¹⁰

⁶ All this data and more are included by district in power points posted at: <https://www.classsizematters.org/school-overcrowding-and-capital-plan-briefings-feb-2017/>

⁷ The legal petition filed July 6, 2017 is posted here: <https://www.classsizematters.org/wp-content/uploads/2017/07/Agostini-et-al-v.-Farina-class-size-Verified-Petition.pdf>

⁸ See the data here: <https://www.classsizematters.org/trend-in-nyc-class-sizes-through-nov-2016/>

⁹ See CFE II, 100 N.Y.2D at 911-12, 914.

¹⁰ http://www.p12.nysed.gov/mgtserv/C4E/htm/C4e_class_size_reduction_NYC_2.htm

As part of our complaint to SED, we pointed out how to this day, DOE has refused to align the school capacity formula and the capital plan with smaller classes, and the formula instead assumes class size averages of 28 students per class in grades 4-8, and 30 in high school.

In December 2014, a Blue Book work group with members appointed by Chancellor Farina and co-chaired by Lorraine Grillo, the President of the School Construction Authority, proposed that the school capacity formula be aligned with the class sizes in the city's original C4E plan, submitted and approved by the state in 2007. The City sat on these recommendations for more than six months, and finally in July 2015, in the middle of summer, announced that they would accept several proposals but reject this one, which several members said was most critical.¹¹ The members of the Blue Book Working Group have asked for an explanation from the Mayor's office several times, but have never received one.

In April 2016, through a Freedom of Information Law request, I asked for a copy of the decision memo from the Mayor's office that would explain why the city rejected this proposal. Finally, in August 2017, more than year after my request, I received a copy of the memo, but it was almost entirely blacked out. The only legible information pertains to which recommendations they accepted, with the proposals they rejected and all the explanations for the basis for these decisions redacted.¹²

Though the FOIL determination letter that I received from the city along with the memo claims the redactions were made because of the exception to FOIL listed under Public Officers Law Section 87(2)(g), this section of the law also says that any facts or data cited in such a document should not be redacted but provided to the public.¹³ Thus, if the redactions are legal, the decision made by the City had no basis in either facts or data.

Interestingly, the only other information one can glean from the blacked-out memo were the names of the top city officials who signed off on it, including Deputy Mayor Shorris, the Corporation Counsel, the Mayor's Chief of Staff, and the head of OMB, but no one from the DOE or SCA, which is surprising, given how the issue pertains to the way school capacity should be measured.

Thank you again for your time, and for holding these hearings today.

¹¹ Several articles covered this issue, including in Chalkbeat at: <https://ny.chalkbeat.org/posts/ny/2015/07/28/city-to-tweak-how-it-calculates-school-space-needs/#.VbjlDIH3arU> Schoolbook/WNYC at: <http://www.wnyc.org/story/city-make-changes-how-it-accounts-space-schools/> and DNAInfo at: <https://www.dnainfo.com/new-york/20150729/sunset-park/de-blasio-not-doing-enough-fix-school-overcrowding-critics-say> .

¹² A copy of the memo is posted here: <https://nycpublicschoolparents.blogspot.com/2017/09/see-how-city-hall-blacked-out-nearly.html>

¹³ Letter from Katherine Cocklin, Associate Counsel, Records Access Officer, dated August 11, 2017; posted at: <https://drive.google.com/file/d/0B1Ghj5xYLG5KdkhHUWIHZGQzTWFUWDILYm5mUGtXNnISUjFJ/view>

See also the copy of Public Officers Law Section 87(2) (g) at <https://www.rcfp.org/new-york-open-government-guide/ii-exemptions-and-other-legal-limitations/exemptions-open-records-s-4>