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**Campaign for Fiscal Equity
Public Comment on Proposed Contract for Excellence 2008-2009
Of the
New York City Department of Education
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Overview

The Campaign for Fiscal Equity (CFE) leads a coalition of parents, students, education advocates and the public working to ensure the constitutional right of the opportunity for a “sound basic education” for every public school student in New York. This right was established by the New York State Court of Appeals in *CFE v. State* after 13 years of litigation. CFE worked closely with the Governor and the legislature to enact the 2007-2008 Education Budget and Reform Act that provided a total commitment of \$3.2 billion over four years for New York City Schools, \$2.35 billion in foundation aid subject to the Contract for Excellence. New York City was required to add an additional \$2.2 billion over four years, providing \$5.4 billion in new money to ensure this right becomes reality. **In keeping with the constitutional mandate, all of this new money is intended to raise the overall school budget so that students with the greatest educational need can make academic progress, graduate high school, and become civic participants who can compete in the global economy. As part of the ongoing dialog with the New York City Department of Education (DOE), CFE will work to ensure that all of the new funding and accountability measures are implemented so as to make this right a reality.**

CFE Principles

The CFE litigation, *CFE v State of New York*, successfully established the state constitutional right to a “sound basic education” for every public school child, interpreted as a meaningful high school education. The monetary settlement was intended to bring new funds to New York City to increase the school funding over the previous baseline and to provide a sound basic education for every New York public school child. The target population was low performing students and schools, students from families in poverty, students with disabilities, and English language learners. The determination of the

“adequate” amount is based on the provision of programs, personnel and services necessary to provide the sound basic education. Therefore, a cut in the base of services as well as in dollars undermines the ability of the City to grow the resources and provide a sound basic education.

The New York Court of Appeals required the state, both the Governor and the Legislature, to ensure that there were adequate new resources to correct the underfunding of New York City schools and provide the necessary personnel and services to secure that right. The court set a statutory minimum with inflation for funds needed over the baseline, and left the final agreement to the other branches of state government. The state was free to determine both the level and the source of funding, state and/or city. In April 2007, the state set the “adequate” levels described in the Overview.

The litigation was intended to ensure the addition of new funding each year over the previous year’s baseline for four years. The litigation was specifically structured to add dollars where needed, not to take away from the existing funding nor take from one set of schools to give to another—rob Peter to pay Paul.

The \$2.35 billion in foundation aid, distributed by the State on the basis of need, is subject to the strong accountability structure through the Contract for Excellence that directs the investment to serve predominately schools and students with the greatest educational need (translated by the State Education Department into the 75/50 rule) through investment in six strategies proven to advance academic achievement. The Act and the regulations also require extensive informed public participation in the development and approval processes accompanied by extensive transparent information on program and evaluation down to the school level.

2008-2009 is the second year of the four year implementation phase of the CFE settlement process. We have made progress, but we have new and continuing issues that must be resolved.

Incremental Progress in Resolving CFE: Funding and Implementing the Contract for Excellence

1. **Budget Increases:** Despite a downturn in the economy, the State provided New York City with \$622 million in foundation aid subject to the Contract, more than the \$528 million promised in the 2nd year phase-in, part of a \$644 million increase in state school funding for the city. After allowable deductions for inflation and charter school tuition increases, \$386 million is subject to the Contract. New York City added approximately \$400 million over last year’s final budget (only a \$280 million increase when the \$180 million mid-year school cut is taken into account) that includes the \$129 million budget restoration made by the New York City Council. The restoration includes \$9 million which, combined with \$6 million in DOE funds, will be used for incentives for schools to use their Contract dollars for English Language Learner and Middle School Reform Initiatives.
2. **Public Participation and Transparency in Contract Development and Comment:** The State Education Department (SED) insisted the DOE reissue its Contract and fully comply with

the notice and information requirements for public participation. DOE's second proposed Contract was revised to show the full distribution of the dollars, and extensive, if not complete, citywide and school level investment data and performance measures. DOE provided substantially adequate notice for this second set of public hearings with a new 30 day comment period.

3. **Distribution of Contract Dollars to the Predominately Neediest Schools and Students—75/50 Rule:** The Commissioner's Regulations require that 75% of the funds be invested in the 50% of schools whose students have the greatest educational need, defined as coming from families in poverty, being disabled, being English language learners, performing below the state standard and/or not graduating in four years (75/50 Rule). While the initial DOE proposal did not appear to comply with the rule that 75% of the funds must be invested in the 50% of schools with the greatest educational need, the new DOE proposal appears to have complied with the proper distribution of funds. Thus, more state CFE money is going to serve the neediest students. In addition, these funds are to be used for new investment in the six best practice areas.

These are important gains that have resulted from the new resources and rules that uphold CFE.

Critical Issues Yet to be Addressed:

1. **The Fulfillment of the Constitutional Right and the Legacy of this Historic Investment Depends on the Full Implementation of the Contract for Excellence Accountability System and the Required Transparency:** CFE, and its coalition education reform partners, worked with the Governor and the Legislature to carefully craft a system of accountability that informs stakeholders which schools receive Contract money; what programmatic services they are choosing for targeted students; what performance targets schools expect to achieve; and the cumulative effect of these investments over the four years. The DOE's Contract lacks specificity in several areas:

- a. **Cumulative Reporting of Annual Contract Investments from Both the Base Year(s) and the Current Year:**

The Education law was amended in 2008-09 in Subdivision 2(a)(vi) to require Contract districts to report both new contract investments as well as the continuation of Contract investments made in the base year(s). The purpose of this requirement is to ensure that Contract funds are treated as a discreet investment per the 75/50 rule in the six areas over the four years to accomplish the goal of the CFE settlement of achieving a sound basic education at the end of this period. This will facilitate holding the districts accountable for tracking investments and results. DOE did not provide this information in the proposed contract, and must do so prior to State approval.

b. Transparency and Disclosure--Base year school level program and personnel expenditures; Current year school level program expenditures:

DOE has come a long way in providing transparent information as noted in the discussion of incremental progress above. However, it is critical for parents and the public to see and compare the specific annual school level program and personnel expenditures to both ensure that the investment was made and to make a determination regarding supplantation. This information does not appear in the publicly provided materials.

SED Reporting regulations require: "...a school district shall report in total and for each of the allowable programs and activities included in its contract for excellence and which the district proposes to fund with in annual contract amount, for each school and each district wide program:

1. Expenditures in the base year;
2. Budgeted expenditures for the current year;
3. Actual expenditures for the current year.

This information has not yet been provided.

c. Relationship of Performance Targets to Program Investment:

A review of the performance targets shows that at best they hold schools accountable for improvements related to only parts of their selected programs. For example, Contract dollars for Collaborative Team Teaching, a program to better integrate students with disabilities into general education classrooms, were allocated to 318 schools, of which only 235 had a performance target for students with disabilities. This weakness has several potential consequences. Schools that make significant improvements with a student group that is the focus of an initiative under the Contract may not receive credit for that improvement because the group is not the subject of a performance target. On the other hand, schools may focus exclusively on achieving performance targets at the expense of other low-performing students.

The accountability system for Contract dollars is weak in that it provides incomplete information as to the effectiveness of specific programs with specific groups of students at specific grade levels. Over 700 schools have at least one performance target for students with disabilities. A review of the program strategies employed by a few of these schools indicates that some have no program targeted to improve the performance of students with disabilities. If schools are not uniformly successful in meeting targets for students with disabilities, it may be difficult to provide data that justifies continuing the large investments in education seen under the Contract. To justify continuation of the program, districts must continuously evaluate which programs are most effective for each group of students and invest their Contract dollars accordingly. CFE believes that the weakness of the

accountability system for Contract dollars threatens the long term viability of the program, and plans to make recommendations for improving accountability.

d. Transparency at the Citywide and School Program Level for English Language Learners (ELLs):

While there are significant improvements with the level of detail provided in this iteration of the proposed plans, the Contract fails to provide any programmatic data for the use of Contract dollars for model programs for English Language Learners. Other strategies present subset data on the programmatic usages.

- 2. Economic Challenges Threaten the District’s Ability to Continue Building on Contract Implementation:** CFE acknowledges that the DOE’s non-discretionary new costs were greater than the new State and City funds. But after 13 years of litigation and a law that compels new funding must supplement and not supplant local funding, DOE must provide the necessary school level information from prior and current years so that SED, the New York City Comptroller, CFE and the public can determine that Contract funds are not supplanting city funds.

Supplement/ Supplant: The Education Law and regulations require that the Districts use Contract funds to supplement (add to) city funds, not supplant (substitute for/replace) them. There are a number of ways to determine whether supplantation has taken place.

a. Three Approaches in Determining Supplantation

- i. Did the city spend more money this year than last? **Yes.**
In 2007-08--\$ 7 billion; In 2008-09--\$7.4 billion
- ii. Was each school made whole prior to the addition of Contract dollars taking enrollment and other annual fluctuations into account (ensuring that each Contract School has an increase over the base)? **This does not appear to be the case.** The city allocated an additional \$120 million dollars to offset cuts in Fair Student Funding. Over 86 percent of these funds were allocated to schools with relatively low student need.
- iii. Are Contract dollars used for “new and expanded” programs and personnel consistent at the central, district and school levels? (Contract dollars may not be used to pay for previously funded programs and personnel, except for \$30 million allotted for maintenance of effort that must be distributed according to the 75/50 rule.) **School level expenditure data from the base year required**

in the regulations are necessary to perform a part of this analysis. As noted above, DOE has not yet provided that information.

b. Budget Analysis

When the state required a new education investment of \$2.2 billion over four years from New York City, it anticipated certain annual contributions. The addition for 2007-2008 was to have been about \$630-650 million. The State did not anticipate the downturn in the economy, the City's midyear budget cuts in 2007-2008 or the reduced additions to the 2008-2009 budget. Since together the Mayor and the City Council added only approximately \$400 million for 2008-2009, even without subtracting the mid-year cuts, there is a budget shortfall of at least \$230-250 million in school budgets (about the number of Contract dollars distributed to schools with the greatest educational need.)

Due to the economy, the budget shortfall is exacerbated by a loss in buying power. In May 2008, Chancellor Joel Klein testified that \$809 million additional dollars are needed to maintain 2007-2008 current services. Given the current budget, this means that there could be in the neighborhood of a \$400 million shortfall or cut in the actual buying power to pay for services at the central, district and school levels.

DOE is currently including four pots of money to arrive at what they call "0" cuts in schools: \$89 Million in Teacher Legacy Money, \$120 Million in City Council Tax Levy Restorations, \$63 Million held back in the original proposed Contract for Excellence (May 22nd document), and the \$179 Million in discretionary funds distributed in the original proposed Contract for Excellence reduces the negative change in Fair Student Funding to "0".

It appears that with the addition of the \$63 million, DOE's investment of the \$359 million in Contract dollars allocated to schools is consistent with the 75/50 rule.

DOE appears to be investing the \$120 million tax levy money in the 50% of schools with relatively low educational need. DOE made no effort to adjust its original allocations to schools to achieve a more equitable distribution of the funds.

c. Possible Anomalous Result/Unintended Consequences

In doing so, DOE has made choices regarding the distribution of new but scarce resources in a way that appears to undermine the spirit and intent if not always the letter of the CFE law and settlement. By distributing the new City Council restorations of \$120 million only to schools with less concentrated need than the City median and distributing only CFE money to schools with the highest student need according to the letter of the law on paper, DOE claims that no schools will receive dollar cuts.

However, schools with the greatest educational need may experience a loss in current services.

How could that happen? As noted above, the Contract for Excellence was designed to ensure that new state dollars would be invested over the base already spent in the schools to build to a higher baseline over 4 years—that was the intent of the litigation, the court and the legislation. The compound impact of a reduction in buying power (other than providing for an inflation factor) and budget reductions were not part of the scheme. This new money was intended to add to or “supplement” the school funding base, and used to bring schools with the greatest educational need up to the constitutional level of a sound basic education. This effort to ensure that these dollars are used for new investment is reinforced by the requirement to spend it on new and expanded programs. These requirements are sound and consistent with the judicial and legislative intent.

By allocating *only* Contract dollars to schools with greater educational needs, and providing little or no tax levy dollars from the restorations, those schools may not be able to plug holes in current services created by budget cuts or loss of buying power, i.e. lay off a first grade teacher, cannot hire back or replace; can start an after school program.

As a result, this distribution may undermine support for CFE and the Contract requirements. The purpose of the CFE rules is to ensure that **more** money goes to these schools, so that the state money is used to **supplement** school budgets. While the City may be in technical compliance with the statute and regulations with this guidance, they may be undermining the intent of the law.

Tracking actual spending at the school level will be the only way we can determine whether there is supplantation, i.e. is money actually being used for new and expanded programs?

While DOE may use this potentially anomalous situation to argue for the undoing or “more flexibility” in the implementation of CFE requirements, it is critical to understand that any maldistribution of school funds must be looked at in the context of the \$17-18 billion DOE budget as a whole and the refusal of the Mayor to add the anticipated contribution this year. This problem is not caused by the rules ensuring that this small pot of \$386 million dollars is used to target impact money to bring schools and students with greater educational need to adequacy, and to provide the constitutionally required sound basic education.

If there is supplantation in this difficult economic period, CFE recommends that additional funds should be sought from contracting budgets and other central office expenses. Classroom dollars should be off the table.

- d. Equality of Personnel Purchasing Power:** More than 86% of the \$120 million in tax levy dollars restored by the Council was distributed to the schools with lesser educational need. Conversely, more than 95% of the \$63 million Contract dollars originally held for distribution is distributed to the schools with the greatest educational need. CFE understands that current DOE policy requires that when tax levy dollars are used for personnel, schools do not have to pay fringe benefit costs; however, when reimbursable or Contract dollars are used, the cost of fringe benefits must be included (we understand that fringes are calculated at approximately 36%). On its face, such a policy creates inequality in personnel purchasing power penalizing higher need low performing schools, and dramatically curtails the use of these critical Contract operating dollars for investments in new and expanded programs. CFE calls on DOE to inform SED and the public if this inequitable policy operates in fact. If so, it must be reconsidered, and Contract dollars released for other purposes.

- 3. Community Education Council (CEC) Review and Comment at a Public Meeting:** Both the statute and the regulations require the Community Superintendent to submit the Community School District Contract to the CEC for review and comment at a public meeting. From our consultations with CECs, it appears that they were neither provided with contracts for comment nor were there public meetings set up to receive their commentary. This provision was included in the law to ensure that parents do have direct input at the local level.

4. CFE Questions Investment in Non-Compliant Programs:

- a. *\$20 Million in Expansion of School-Wide Performance Pay Initiative***

As CFE interprets the regulation, pay incentive programs are narrowly defined “to encourage highly qualified and experienced teachers to work in low performing schools, provided that such programs shall not use funds for school-wide or district-wide salary enhancements or raises”. This proposal appears to violate the rule. In addition, the DOE’s Performance Pay Initiative is based on the city’s own Progress Report system and not the state’s Annual Yearly Progress Report system sanctioned by NCLB.

- b. *\$10 million for New and Expanded Principal Training***

In proposing \$10 million be allocated for new and expanded Principal Training – again, no details were provided showing how many Principals were trained previously and for how much – nor is there any information regarding previous sources of funding. In 2008, NYC needs to demonstrate that there is an increase in the number of Principals

being trained and at what cost. The city has to be able to demonstrate that Contract dollars are supplementing not supplanting previously raised private or public dollars.

- 5. The Lack of Funding to District 75 Schools Raises Policy Concerns:** Understandably, with the rich set of resources mandated for Special Education students, it is easy to overlook the District 75 schools in distributing the limited amount of Contract dollars. But District 75 schools face some of the same challenges experienced by many schools within the system -- the need for qualified teachers and principals, class size reduction, the opportunity for more time on task. DOE should make a good faith effort to outline the policy issues that led to the decision to allocate no Contract dollars to District 75 schools.

Conclusion

We have made progress, but we have a long way to go to make the constitutional right to sound basic education a reality. It is the responsibility of all State and City officials, especially in tough economic times, to work together with parents, educators and the public to achieve these goals, and to work closely with these advocates to ensure proper implementation of the law.