

STATE OF NEW YORK
DEPARTMENT OF EDUCATION

In the Matter of the Appeal of

Rubnelia Agostini, Deborah Alexander, Reeshema Brightley, Laura Cavalleri,
Johanna Garcia, Aurora Ronda, Naila Rosario, JoAnn Schneider,
Litza Stark, on Behalf of Themselves and their Children, Class Size Matters,
Alliance for Quality Education, and Letitia James as the Public Advocate for
the City of New York,

NOTICE OF
PETITION

Petitioners,

-against-

Carmen Farina, Chancellor, New York City Department
of Education and the New York City Department of Education, New York City
Board of Education

,

Respondents.

NOTICE:

You are hereby required to appear in this appeal and to answer the allegations contained in the petition. Your answer must conform with the provisions of the regulations of the Commissioner of Education relating to appeals before the Commissioner of Education, copies of which are available at www.counsel.nysed.gov or from the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

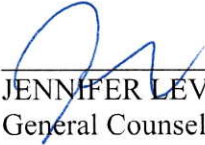
If an answer is not served and filed in accordance with the provisions of such rules, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the commissioner.

Please take notice that such rules require that an answer to the petition must be served upon the petitioner, or if the petitioner be represented by counsel, upon the counsel, within 20 days after the service of the appeal, and that a copy of such answer must, within five days after such service, be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

DATED: June 26, 2017



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Litza Stark, on Behalf of Themselves and their Children, Class Size Matters,
Alliance for Quality Education, and Letitia James as the Public Advocate for
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VERIFIED
PETITION

Petitioners,

-against-

Carmen Farina, Chancellor, New York City Department
of Education and the New York City Department of Education, New York City
Board of Education,

Respondents.

TO THE NEW YORK STATE COMMISSIONER OF EDUCATION:

Petitioners Rubnelia Agostini, Deborah Alexander, Reeshema Brightley, Laura Cavalleri,
Johanna Garcia, Aurora Ronda, Naila Rosario, JoAnn Schneider, Litza Stark, Class Size Matters,
Alliance for Quality Education, and Letitia James as the Public Advocate for the City of New
York, submit this petition presenting violations by Carmen Farina, Chancellor, and the New
York City Department of Education (“Respondents”) of the requirements for class size reduction
in the New York City public schools, as set forth in the Contract for Excellence Law (“C4E”),
N.Y. Education Law §211-d, and implementing regulations, 8 NYCRR 100.13(b)(1).

Respondents have failed to comply with the class size reduction requirements in the C4E
law and regulations by not implementing the class size reduction plan approved by the New

York State Commissioner of Education (“Commissioner”) in 2007 and by not revising the capital plan for New York City public schools to conform to, and implement, the approved 2007 class size reduction plan.

Petitioners seek an order from the Commissioner directing Respondents to: 1) meet the goals for class size averages approved in the 2007 Class Size Reduction Plan, as set forth in Paragraph 23 of this Petition, with a deadline no later than five years from now; and 2) take immediate action to align the capital plan for the New York City public schools with the 2007 approved class size reduction plan.

Petitioners also seek an order requiring the Commissioner to: 1) issue a final determination on this petition on an expedited schedule, not to exceed ninety (90) days from the date of filing; 2) establish a timeline of not less than five years for Respondents to reduce class size to the ultimate targets in the 2007 class size reduction plan; and 3) maintain oversight through monitoring and regular public reporting to ensure continuous class size reduction and achievement of the class size reduction targets in the 2007 class size reduction plan within the timeframe established by the Commissioner.

Petitioners, by their undersigned counsel, and for their petition allege as follows:

The Parties

1. Petitioner Rubnelia Agostini is a resident of the Bronx. Her son is a second grade student in P.S. 277, District 7. Her son receives special education services under an Individual Education Plan (“IEP”). His current class size is 25. His IEP requires placement in a small class, but there are no small classes at P.S. 277. Class sizes in P.S. 277 are as large as 27 children. His large class size prevents him from receiving the personal attention necessary for him to succeed in school.

2. Petitioner Deborah Alexander is a resident of Queens.. Her children are in 4th grade and first grade at P.S. 150, District 30. Their current class sizes are both 30. Both children feel unnoticed in their classes, and therefore decline to participate, owing to the large sizes. Classes in P.S. 150 are as large as 31.

3. Petitioner Reeshema Brightley is a resident of Manhattan. Her child is in kindergarten in P.S./I.S. 76 in District 3. Her child's kindergarten class is 24. Her child's teacher is unable to individualize instruction and has difficulties with classroom management, all as a result of the large class size. Class sizes in P.S./I.S. 76 are as large as 28 students.

4. Petitioner Laura Cavalleri is a resident of Staten Island. Her children are in 11th grade and 9th grade at Ralph McKee Career and Technical High School, 31R600, District 31. Her children are in classes of 31 students, with the exception of CTE shop classes, which are limited to 28. Classes in the school can be as large as 34 students. Many students in her childrens' classes have special needs and need individualized attention and support. The classes at the school are too large, impeding the ability of teachers to meet students' needs.

5. Petitioner Johanna Garcia is a resident of Manhattan. She has two children at P.S./I.S. 187, District 6. She has one child in second grade, who receives Special Education Teacher Support Services, Occupational Therapy and Speech Therapy under an IEP. His class size is 28 students. She also has a child in fifth grade, with a class size of 31. Class sizes in P.S./I.S. 187 can be as large as 32 children.

6. Petitioner Aurora Ronda is a resident of Bronx. She has a child in fifth grade at P.S. 72, District 8. Her child's class size is 35.

7. Petitioner Naila Rosario is a resident of Staten Island. She has a child in fourth grade at P.S. 172, District 15. Her child's fourth grade class has 32 children, the largest class

size in the school. Her child has been in large classes since kindergarten. She remains concerned that her child has not been able to receive the attention and feedback needed from her teachers. This year, her teacher often cannot respond to students' questions given the size of the class.

8. Petitioner JoAnn Schneider is a resident of Queens. She has a child in the fourth grade at P.S./I.S. 113Q, District 24. Her child receives special education services under an IEP. Her's son's fourth grade class has 31 students. Due to the size of the class, her son is not receiving the individual attention he needs and, as a result, is making only minimal progress in school. Class sizes in P.S./I.S. 133Q are as large as 33.

9. Petitioner Litza Stark is a resident of Queens. She has two children at P.S. 85, District 30. Her child in kindergarten has a class size of 28 students, and her child in second grade has a class size of 29. The class sizes cause excessive stress on teachers and students alike. When her older child was in a kindergarten class of 18, the class was more productive and nurturing than the experience both children are having in larger classes. The class sizes at P.S. 85 are as large as 32.

10. Petitioner Class Size Matters ("CSM") is a non-profit organization that advocates for smaller classes in New York City and the nation's public schools. Its office is located at 124 Waverly Pl., New York, NY 10011. CSM provides information on the benefits of smaller classes, particularly for at-risk children, to improve student engagement and learning, and reduce classroom disruption and disciplinary referrals. CSM also advocates for alleviating school overcrowding, and more parent decision-making in education policy.

11. Petitioner the Alliance for Quality Education ("AQE") is a grassroots advocacy and community organizing coalition, with an office at 726 Broadway, 5th Floor New York, NY

10003. AQE works with communities in New York City and across New York State to assist parents, teachers and others to advocate for a high quality public education for all students.

12. Petitioner Letitia James is the Public Advocate for the City of New York (the “Public Advocate”). In this capacity, the Public Advocate ensures that the city government serves its citizens by exercising oversight of city agencies, investigating citizen complaints regarding city services, and making proposals or seeking relief to address perceived shortcomings or failures. Since the beginning of her tenure, the Public Advocate has dedicated significant resources to resolving problems with the Department of Education and, in particular, with the DOE’s special education system. Plaintiff James has advocated on the issue of co-locations of schools, which impacts District 75 schools and special education services in general education schools, because it limits the amount of space available for smaller class sizes and for the provision of related services. Plaintiff James conducted five forums on the issue of “mayoral control” of New York City schools and issued a report. Mayoral control affects all aspects of public education in New York City, but has particular impact on the provision of special education services.

13. The Public Advocate has also engaged in litigation to vindicate the rights of schoolchildren with disabilities. In August 2015, after an extensive investigation into conditions on school buses, the Public Advocate joined two children in suing the Department of Education for failing to provide safe conditions – namely air conditioning – when transporting children with disabilities to school in the summer. In February 2016, the Public Advocate sued the Department of Education for failing to maintain a system that tracked and monitored IEP compliance, including the delivery of related services.

14. Respondent Board of Education (“BOE”), located at 52 Chambers Street, in New York County, is a school board organized and existing pursuant to the Education Law of the State of New York. The BOE has facilities, including schools, in every borough of the City of New York.

15. The Respondent CARMEN FARINA is Chancellor of the New York City Department of Education, with offices at Tweed Courthouse, 52 Chambers Street, in New York County. Respondent Farina is the Chief Executive Officer of the New York City Department of Education.

16. The Respondent NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”) is located at Tweed Courthouse, 52 Chambers Street, in New York County. DOE is responsible for the governance and administration of the public schools in the New York City School District (“District”), including compliance with the class size reduction requirements in the C4E law and implementing regulations.

Statement of Facts

Class Size Reduction Requirements

17. In Campaign for Fiscal Equity v. State (“CFE II”), 100 N.Y.2d 893, the New York Court of Appeals ruled that excessive class size was among the factors that contributed to the denial of New York City public school students’ right to a “sound basic education” under Article XI, §1 of the New York State Constitution. The Court found that overcrowded classes in District schools contributed to inadequate student performance and determined that reasonable class size is an essential resource for the provision of a constitutional sound basic education in the District. CFE II, 100 N.Y.2d at 911-12, 914.

18. In response to the CFE rulings, the New York Legislature enacted the C4E law in 2007. The C4E law established accountability measures to ensure those school districts receiving increases in funding under the Legislature's new school funding formula utilized those funds to deliver the essential resources identified in the CFE rulings. N.Y. Education Law §211-d.

19. The C4E law requires every district receiving increased state funds pursuant to paragraph 1(a) of the statute to annually develop a spending plan and submit the plan for approval by the Commissioner. The spending plan – called the Contract for Excellence -- must demonstrate that the district will spend the funding increases on specifically enumerated “allowable programs,” which include reducing class size. The law also requires any district that submitted a plan in the previous year to do so in the current school year. N.Y. Education Law §211-d (1)(e). The law prohibits use of C4E funds to supplant funds previously allocated by the district for such purposes. N.Y. Education Law §211-d (6).

20. Under the C4E law, districts are required each year to present their proposed annual Contract for Excellence spending plan for public comment. N.Y. Education Law §211-d (4). The Contract for Excellence must show how the district will spend funds on allowable programs, including reducing class size. N.Y. Education Law §211-d (3).

21. The C4E law also directs the Respondents to develop and submit to the Commissioner for approval, as an element of the Contract for Excellence, a five-year plan to reduce class size in District schools. The statute requires the plan reduce average class size in three distinct grade ranges: Pre-K to grade 3; grades 4 to 8; and in high school. The plan must also reduce class size in schools designated by the District as low performing and overcrowded. The plan must specify the methods to be used to reduce class size, including the renovation,

addition and construction of new classrooms and/or school buildings. The requirement to develop, submit and implement the class size reduction plan is not conditioned on the receipt of increases in state funding. N.Y. Education Law §211-d(2)(b)(ii).

22. The regulations implementing the C4E law require Respondents to align the approved class size reduction plan with the District's capital plan for school facilities. The class size reduction plan must also provide for continuous reduction of class size in the District-identified low-performing and overcrowded schools. 8 NYCRR 100.13(b)(1).

23. The C4E law and implementing regulations require class size be reduced in accordance with the approved plan within five years. N.Y. Education Law §211-d(2)(b)(ii); 8 NYCRR 100.13(b)(1).

The 2007 Class Size Reduction Plan

24. In response to the the C4E law and regulations, the DOE, in November 2007, submitted a five-year class size reduction plan ("2007 Plan") to the Commissioner for review. New York City Five Year Class Size Reduction Plan, Update, November 24, 2008, http://schools.nyc.gov/NR/rdonlyres/3F12A337-2FAF-492B-AEBB-59509284098A/0/NYCDOECSR5YR_YR2_FINAL.pdf.

25. The 2007 Plan established class size averages for District schools to be achieved in five years, or by 2011-12: no more than 20 students per class in Kindergarten to grade 3; no more than 23 students per class in grades 4 to 8; and no more than 23 students in high school.

26. The 2007 Plan also established set annual interim targets to ensure progress in meeting these class size averages within the five year timeframe..

27. The 2007 Plan included baseline class size data for every school to measure progress in reducing class size to the prescribed averages. The Plan also established specific

class size targets for 75 schools designated by the District as overcrowded and low-performing. The Plan specified that class size would be reduced in these schools from 29 or greater to fewer than 25 students.

28. The 2007 Plan also specified that DOE would continue to implement the Early Grade Class Size Reduction (“EGCSR”) program which had previously provided the DOE with state funds to reduce class size in Kindergarten to grade 3, and which was now rolled into C4E.

29. The 2007 Plan also specified the DOE would “incorporate class size reduction in all grades among the priorities” in the District’s capital plan for school facilities improvement and construction.

30. On November 19, 2007, the Commissioner approved the 2007-08 Plan. Memo from Johanna Duncan Poitier, November 29, 2007, <http://www.regents.nysed.gov/common/regents/files/documents/meetings/2007Meetings/December2007/1207emscvesidd5.doc>

31. In September 2008, the New York State Education Department (“SED”) reported that the DOE did not achieve the class size reduction interim targets for the 2007-08 school year as set forth in the 2007 Plan. The SED found that 70 schools received over \$20 million to reduce class size but class sizes and student/teacher ratios in those schools increased. Based on SED’s findings, the New York State Board of Regents (“Regents”) directed the DOE to “improve implementation of the second year of its class size plan” by preparing a corrective action plan to achieve the 2008--09 average class size and pupil-to-teacher ratio limits set in the 2007 Plan. NY State Education Department, Memo from Johanna Duncan-Poitier, September 8, 2008,

<http://www.regents.nysed.gov/common/regents/files/documents/meetings/2008Meetings/September2008/0908emscd4.doc>.

32. In November 2008, the Commissioner approved an amendment to the 2007 Plan to increase average class size for core academic classes in District high schools from 23 to 25 students per class. New York City Five Year Class-Size Reduction Plan, Update, November 24, 2008,

http://www.p12.nysed.gov/mgtserv/C4E/doc/nyc_class_size_reduction_plan/2008_2009/NYCD_OE_CSRP_5YR_YR_2_09012_FINAL.pdf

33. On December 12, 2008, the DOE reported on class size in the District's schools to the New York City Council. The DOE data revealed that class size was not reduced in 2008-09 as required by the 2007 Plan. The DOE data also revealed that class size increased sharply, the largest in a decade. Class size in Kindergarten to grade 3 significantly increased, eliminating nearly five prior years of gradual decline; class size increased in close to half of the 75 low performing and overcrowded schools; and class size increased in nearly half of the 756 schools that received \$150 million in class size reduction funding. DOE Class Size Report, 12/12/08, <http://schools.nyc.gov/AboutUs/schools/data/classsize/classsize12122008.htm>.

34. On September 9, 2009, New York City Comptroller William Thompson issued an audit showing the DOE did not use state EGCSR funds to lower class size Kindergarten to grade 3, as required by the 2007 Plan. The Comptroller further found the DOE improperly used \$46.8 million in EGCSR funds to pay for already existing, and not new, teacher positions. Audit Report on the Department of Education's Administration of the Early Grade Class Size Reduction Program, FM09-113A, September 9, 2009, <http://comptroller.nyc.gov/reports/audit->

report-on-the-department-of-educations-administration-of-the-early-grade-class-size-reduction-program/

35. On November 15, 2009, the DOE reported that class sizes had again increased sharply in 2009-10 in all grade ranges. In Kindergarten to grade 3, the increases were larger than in 2008-09. Space Crunch in New York City Public Schools, Class Size Matters, June 2014, p.38, <https://www.classsizematters.org/wp-content/uploads/2014/06/SPACE-CRUNCH-Report-Final-OL.pdf>; DOE 2009-10 Preliminary Class Size Report, November 27, 2009, <http://schools.nyc.gov/AboutUs/schools/data/classsize/classize112709.htm>

36. In February 2010, the Commissioner authorized the DOE to temporarily alter the 2007 Plan for the 2010-11 year “because of the current economic climate.” Letter from Commissioner Steiner to NYC Schools Chancellor Joel Klein, February 23, 2010, <https://www.classsizematters.org/wp-content/uploads/2016/10/Steiner-secret-Contract-Approval-Letter-2.23.10.pdf>. For 2010-11, the Commissioner allowed DOE to certify that for the 75 lowest performing and overcrowded schools, class size in those schools would not increase above the approved class size levels for 2009-10 or, in some cases, would not increase more than 50% of the Citywide increase. The Commissioner required the DOE submit a written amendment to the 2007 Plan for the 2010-11 year. Letter from Commissioner Steiner to NYC Schools Chancellor Joel Klein, February 23, 2010 <https://www.classsizematters.org/wp-content/uploads/2016/10/Steiner-secret-Contract-Approval-Letter-2.23.10.pdf>.

37. In a presentation on its 2010-11 Contract for Excellence Plan, DOE announced that it had submitted the 2010-11 amendment requested by the Commissioner and would post the amendment on the web “shortly.” 2010-11 Proposed Contracts for Excellence Plan,

<http://schools.nyc.gov/AboutUs/funding/c4e/2010-11ProposedCitywidePlan.htm>. The 2010-11 amendment was not subsequently posted or otherwise made public by the DOE.

38. In a presentation on its 2011-12 Contract for Excellence Proposed Plan, the DOE announced that, while bound to the C4E law to reduce class size, “it is necessary to reevaluate” the 2007 Plan. The DOE represented that, with the guidance and approval of SED, it would “monitor” class size in District schools in 2011-12 and would provide “updated information” on Plan implementation. 2011-12 Contract for Excellence Proposed Plan, <http://schools.nyc.gov/NR/rdonlyres/BF4782CD-821B-49AC-A796-E8B0598AA525/0/2012C4ECitywideProposedPlan.pdf>. No reevaluation of the 2007 Plan or update on implementation in 2011-12 was subsequently posted or otherwise made public by the DOE.

39. In a presentation on its 2012-13 Contract for Excellence Proposed Plan, the DOE reported that it would continue to monitor class size in District schools. The DOE also informed the public that it would update its class size plan. Contract for Excellence Proposed Plan FY 2013, <http://schools.nyc.gov/NR/rdonlyres/FCE32564-DD5A-43C1-80B9-93E4D06E1DBD/139036/2013C4EPlanCitywide.pdf>. No update on the 2007 Plan or on implementation of the Plan in 2012-13 was subsequently posted or otherwise made public by DOE.

40. In a presentation on its 2013-14 Contract for Excellence Proposed Plan, the DOE reported that it would focus on reducing class size in 75 low performing and overcrowded schools, but provided no details about what specific actions would be taken. NYC DOE, Class Size Reduction 2013-14, <http://schools.nyc.gov/AboutUs/funding/c4e/ClassSizeReduction2013->

41. The DOE also represented that SED directed the DOE to provide an update on class size in the 75 schools previously identified by DOE as low performing and overcrowded. According to the DOE, the SED further required the DOE to certify that class size would not increase in 2013-14 “by more than half of the citywide average increase over the 2012-13 class size.” Contract for Excellence Proposed Plan FY 2014, <http://schools.nyc.gov/NR/rdonlyres/42FE6927-66D0-487D-8257-79FC21A8E530/148914/2014C4EPlanCitywidePUBLIC8202014.pdf>. No update on class size reduction in the 75 low performing, overcrowded schools was subsequently posted or otherwise made available to the public by DOE.

42. In 2013, the DOE created a working group to improve the formula for calculating school capacity and utilization, a basic element for developing the District’s capital plan for school facilities. The working group recommended aligning the District’s school capacity and utilization formula with the class size averages in the 2007 Class Size Reduction Plan. Blue Book Working Group Recommendations, July 28, 2015, <https://www.scribd.com/document/272842006/Blue-Book-Working-Group-Recommendations>. The DOE rejected this recommendation and has maintained a formula using a class size averages of 28 in grades 4-8 and 30 in high school, well above the averages established in the 2007 Plan. See, e.g., Enrollment, Capacity and Utilization Report, Target Calculation, 2016-16 School Year, https://dnnhh5cc1.blob.core.windows.net/portals/0/Capital_Plan/Utilization_Reports/Blue%20Book%202015-2016.pdf?sr=b&si=DNNFileManagerPolicy&sig=AExrFIUz%2BQDwk%2F1ptyHq0ZkW2Ur9J69SJuy4MgQ%2BAp4%3D.

43. In a presentation on its 2014-15 Contract for Excellence Proposed Plan, the DOE

reported it would “help” reduce class size in 75 District schools in 2014-15, without identifying those schools. Contract for Excellence Proposed Plan FY 2015, <http://schools.nyc.gov/NR/rdonlyres/CC107727-59A2-4311-A7B2-6DCA0DB0AFE4/165836/2015C4EBoroughPresentationFINALrev61814.pdf>

44. In a presentation on its 2015-16 Contract for Excellence Proposed Plan, the DOE reported that it would “focus” on reducing class sizes in low performing schools identified by DOE as “renewal schools” in 2015-16. The DOE did not specify the measures that would be implemented to reduce class size in the renewal schools. Contract for Excellence FY16 Proposed Plan, <http://schools.nyc.gov/NR/rdonlyres/26881653-C4C8-4ACC-AD13-537D6B93B486/184676/2016C4EBoroughPresentation071515FINAL.pdf>

45. In a presentation on its 2016-17 Contract for Excellence Proposed Plan2, the DOE reported that it would continue to “focus” class size reduction in the District’s low performing renewal schools in 2016-17. The DOE did not specify the measures that would be implemented to reduce class size in the renewal schools. Contract for Excellence FY 2017 Proposed Plan, <http://schools.nyc.gov/NR/rdonlyres/1B60DF5B-C2C8-4E40-A58B-57A11705DE77/199835/2017C4EBoroughPresentationFINAL72016002.pdf>

46. From the 2007-08 to 2016-17 school year, the DOE has not reduced class size in District schools to the averages established in the 2007 Plan, including in schools identified by DOE as low performing and overcrowded.

47. From the 2007-08 to 2016-17 school year, the DOE has not aligned the District’s capital plan for school facilities with the 2007 Plan.

Class Size in District Schools

48. Numerous reports and analyses show that the DOE has not reduced class size in District schools to the averages established in the 2007 Plan, including in low performing, overcrowded schools identified by DOE.

49. A June 2016 report by Education Law Center shows that: 1) class size in District schools was significantly higher in all grade spans in 2015-16 when compared to 2007-08, and class size in each grade span were well above the targets set in the 2007 Plan; 2) since 2007, class size in the prescribed grade spans more likely increased rather than decreased; 3) in 2015-16, only 5% of Kindergarten to grade 3 children are in schools with average class size below the levels set in the 2007 Plan; 4) in 2015-16, only 12% of grade 4 to 8 students were in class size that met levels set in the the 2007 Plan; 5) in 2015-16, only 25% of high school students were in classes that met the levels set in the 2007 Plan and more than half of all high school students were in core classes with 30 students or more. Reducing Class Size: Promise vs. Practice, Education Law Center, June 2016, <http://www.edlawcenter.org/assets/files/pdfs/publications/Reducing%20Class%20Size%20in%20NYC%20-%20Promise%20vs.%20Practice.pdf>

50. The Education Law Center report, using DOE data, also analyzed the increases in average class size in District schools by grade span since 2007, and compared average class size to the targets in the 2007 Plan. The analysis shows average class size consistently remain well above the class size targets in the 2007 Plan in all grade spans:

Table 1. Average Class Size by Year and Grade Span

	Grade Span			
	K-3	4-5	6-8	9-12
C4E Goal	19.9	22.9	22.9	24.5
2007-08	20.9	23.8	25.9	26.1
2008-09	21.3	23.8	26.3	26.2
2009-10	22.1	24.6	26.3	26.6
2010-11	22.9	25.2	26.9	26.5
2011-12	23.9	25.5	27.2	26.4
2012-13	24.4	25.7	27.3	26.3
2013-14	24.7	26.0	27.1	26.4
2014-15	24.6	26.1	27.0	26.6
2015-16 (prelim.)	24.6	26.2	27.1	26.7

Reducing Class Size: Promise vs. Practice, Education Law Center, June 2016, p. 4, <http://www.edlawcenter.org/assets/files/pdfs/publications/Reducing%20Class%20Size%20in%20NYC%20-%20Promise%20vs.%20Practice.pdf>

51. Between 2007 and November 2016, class size averages in grades K-3 increased 18%, class size averages in grades 4-8 increased 6% and class size averages in grades 9-12 increased 1.5%. <http://schools.nyc.gov/AboutUs/schools/data/classsize/classsize.htm>

52. Between 2007 and November 2016, the number of students in grades 1 through 3 in classes of 30 or more increased approximately 4000%. 1,185 first through third graders in 2007 were in classes of 30 or more. In 2016, 43,219 first through third graders were in classes of 30 or more. <http://schools.nyc.gov/NR/ronlyres/882E11C3-4DDB-458B-89AF-EDF811048AC9/0/Feb200708CityLevelDistributionReport.xls>, http://schools.nyc.gov/NR/ronlyres/B33A9460-BAE3-4EFD-A17D-25085243AAAA/0/November2016_Pct_ClassSize_City.xlsx

53. In 2007, DOE did not report on how many kindergarten classes exceeded 30. DOE only reported the number of kindergarten students in classes of 25 or more. In 2007, 11,174 kindergarten students were in classes of 25 or more. In 2016, the number almost doubled to 21,519 kindergarten students in classes of 25 or more.

[http://schools.nyc.gov/NR/rdonlyres/882E11C3-4DDB-458B-89AF-](http://schools.nyc.gov/NR/rdonlyres/882E11C3-4DDB-458B-89AF-EDF811048AC9/0/Feb200708CityLevelDistributionReport.xls)

[EDF811048AC9/0/Feb200708CityLevelDistributionReport.xls](http://schools.nyc.gov/NR/rdonlyres/882E11C3-4DDB-458B-89AF-EDF811048AC9/0/Feb200708CityLevelDistributionReport.xls),

[http://schools.nyc.gov/NR/rdonlyres/B33A9460-BAE3-4EFD-A17D-](http://schools.nyc.gov/NR/rdonlyres/B33A9460-BAE3-4EFD-A17D-25085243AAAA/0/November2016_Pct_ClassSize_City.xlsx)

[25085243AAAA/0/November2016_Pct_ClassSize_City.xlsx](http://schools.nyc.gov/NR/rdonlyres/B33A9460-BAE3-4EFD-A17D-25085243AAAA/0/November2016_Pct_ClassSize_City.xlsx)

54. The number of students in grades 1 through 8 in classes of 30 or more nearly doubled between 2007 and 2016. In 2007, there were 84,240 students in classes of 30 or more in grades 1 through 8. By 2016, the number increased to 162,549 students.

[http://schools.nyc.gov/NR/rdonlyres/882E11C3-4DDB-458B-89AF-](http://schools.nyc.gov/NR/rdonlyres/882E11C3-4DDB-458B-89AF-EDF811048AC9/0/Feb200708CityLevelDistributionReport.xls)

[EDF811048AC9/0/Feb200708CityLevelDistributionReport.xls](http://schools.nyc.gov/NR/rdonlyres/882E11C3-4DDB-458B-89AF-EDF811048AC9/0/Feb200708CityLevelDistributionReport.xls),

[http://schools.nyc.gov/NR/rdonlyres/B33A9460-BAE3-4EFD-A17D-](http://schools.nyc.gov/NR/rdonlyres/B33A9460-BAE3-4EFD-A17D-25085243AAAA/0/November2016_Pct_ClassSize_City.xlsx)

[25085243AAAA/0/November2016_Pct_ClassSize_City.xlsx](http://schools.nyc.gov/NR/rdonlyres/B33A9460-BAE3-4EFD-A17D-25085243AAAA/0/November2016_Pct_ClassSize_City.xlsx)

55. DOE data from 2016 on the District's low performing Renewal Schools show that average class size did not decrease between 2014 to 2016 in 40% of the Kindergarten to Grade 8 schools. Only two of 57, or 3.5%, of these schools capped class size at the levels prescribed by the 2007 Plan. The DOE data further show that 29% of Renewal high schools did not reduce class size between 2014-16 and 39% reduced class size by two or fewer students. Only one of the 28 Renewal high schools, Orchard Collegiate Academy, capped class size at the level prescribed by the 2007 Plan. NYC DOE, 2016-2017 Preliminary Class Size Report, November 15, 2016, http://schools.nyc.gov/AboutUs/schools/data/classsize/classsize_2016_11_15.htm

56. Respondent Farina, in testimony before the New York City Council on May 28, 2015, reported that that class size in low performing, Renewal middle schools was about 29 students; far above the target levels set in the 2007 Plan. Transcript of the Minutes of the City Council Committee on Finance Jointly with Committee on Education, May 28, 2015 , p. 34, <http://legistar.council.nyc.gov/View.ashx?M=F&ID=3820568&GUID=C17A693A-0040-4164-910D-FE55BC0DAA78>.

FIRST CAUSE OF ACTION

57. Petitioners repeat and reallege each and every allegation set forth in Paragraphs 1-56 of this Petition.

58. Respondents have not reduced class size in District schools to the averages established in the 2007 Plan, including in those schools identified by DOE as low performing and overcrowded.

59. Respondents have failed to implement the 2007 Plan to reduce class size in District schools, including identified low performing, overcrowded schools, in violation of the C4E law, New York Education Law §211-d 2(b)(ii), and implementing regulations, 8 NYCRR 100.13(b)(1)

60. Respondent's ongoing violation of the C4E law, N.Y. Education Law §211-d 2(b)(ii), and implementing regulations, 8 NYCRR 100.13(b)(1), has caused, and is continuing to cause, Petitioners' children and thousands of other children to attend overcrowded District schools with excessive class size, depriving these children of an education in classes of reasonable size, an essential resource for a sound basic education under Article XI, §1 of the New York State Constitution.

SECOND CAUSE OF ACTION

61. Petitioners repeat and reallege each and every allegation set forth in Paragraphs 1-60 of this Petition.

62. Respondents' capital plan for financing and construction of renovation and new school facilities does not conform to, nor implement, the class size averages and targets prescribed in the 2007 Plan, as required by the C4E law, N.Y. Education Law §211-d(2)(b)(ii), and implementing regulations, 8 NYCRR 100.13(b)(1).

63. Respondents have not aligned the District's capital plan for school facilities with the class size averages established in the 2007 Plan, in violation of the C4E law, N.Y. Education Law §211-d(2)(b)(ii), and implementing regulations. 8 NYCRR 100.13(b)(1).

WHEREFORE, Petitioners respectfully request that the Commissioner:

1. Accept the within Petition and, upon filing, establish an expedited schedule of not more than 90 days for a final decision on the causes of action as set forth in the Petition;
2. Issue a final decision that Respondents have failed to reduce class size to the averages established in the 2007 Plan; have failed to implement the 2007 Plan from 2007-08 to 2016-17; and have failed to align the District's capital plan with the class size limits in the 2007 Plan, in violation of the C4E law, New York Education Law §211-d 2(b)(ii), and implementing regulations, 8 NYCRR 100.13(b)(1);

3. Order Respondents to reduce class size on a continuous basis to achieve the averages established in the 2007 Plan in District schools, including giving priority to low performing, overcrowded schools, within five years or by the 2021-22 school year. ;

4. Order Respondents, on an expedited schedule, to take all necessary action to align the District's capital plan with the class size reduction averages established in the 2007 Plan, which alignment shall be completed by December 31, 2017;

5. Order the State Education Department (SED) to monitor Respondents progress in reducing class size to the averages established in the 2007 Plan within the five year timeframe or by 2021-22, , and issue public reports on Respondents' progress on a quarterly basis; and

6. Order such further relief as the Commissioner deems appropriate, including the costs and disbursements of this proceeding.

Dated: *June 26, 2017*



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STATE OF NEW YORK
DEPARTMENT OF EDUCATION

In the Matter of the Appeal of

Rubnelia Agostini, Deborah Alexander, Reeshema Brightley, Laura Cavalleri,
Johanna Garcia, Aurora Ronda, Naila Rosario, JoAnn Schneider,
Litza Stark, on Behalf of Themselves and their Children, Class Size Matters,
Alliance for Quality Education, and Letitia James as the Public Advocate for
the City of New York,

Petitioners,

VERIFICATION

-against-

Carmen Farina, Chancellor, New York City Department
of Education and the New York City Department of Education, New York City
Board of Education

Respondents.

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

LEONIE HAIMSON, EXECUTIVE DIRECTOR OF CLASS SIZE MATTERS, being
duly sworn, deposes and says that she is a petitioner in the above proceeding; deponent has read
the foregoing petition and knows the contents thereof, the same is true to deponent's own
knowledge, except as to those matters therein stated to be alleged on information and belief, and
that as to those matters she believes them to be true.


LEONIE HAIMSON

Subscribed and sworn to before me
this 21 day of June 2017


Notary Public - State of New York

DANILO ARIZA
Notary Public - State of New York
NO. 01AR6277238
Qualified in New York County
My Commission Expires Mar 4, 2021