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**Testimony for the
Senate Democratic Conference Task Force on NYC School Governance
by
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Good afternoon. My name is Geri Palast, and I am the Executive Director of the Campaign for Fiscal Equity (CFE). I want to thank the Senate Democratic Conference Task Force on NYC School Governance for this opportunity to submit testimony.

For fourteen years, CFE led the litigation that established the constitutional right to a sound basic education for all public school students in New York and the legislative efforts that secured historic reforms for unprecedented funding - distributed based on need and tied to accountability, transparency and public participation measures. CFE now monitors and analyzes the state and city education budget and policies, and organizes parents and the public to ensure full funding and proper implementation of these reforms.

School governance in NYC must balance administrative leadership and democratic participation in service of the primary goal of student achievement and academic excellence for all students. As many experts have commented, no one governance structure is the all time panacea, and fine tuning is necessary to maintain the appropriate checks and balances. As a watchdog and advocacy organization, CFE will address its comments to: public input and participation in decision making; accessible information and transparency in reporting; accountability for results; and the role of independent oversight by the state, advocates or other third parties.

CFE is concerned that major decisions concerning public education in NYC are made without adequate information or meaningful public input. The new Education Budget and Reform Act of 2007 (Act) provides a lens through which to observe and comment on these key issues that apply in other contexts. The Act can provide a model since it is designed to incorporate public participation, accountability and transparency in the decision-making, in this case for the development of the Contract for Excellence (named for CFE, known as C4E), the state approved agreement with NYC that determines how the new classroom operating dollars will be spent.

Case Study: New York City Contract for Excellence—School Operating Aid

The Act provides operating money for the schools through a foundation formula based on need. NYC, a district with low performing schools receiving substantial new funds, must enter into an agreement with the State regarding how these funds will be invested in five specified strategies. A Contract must be developed at the citywide and community school district levels by the NYC Department of Education (DOE), and these proposed Contracts must be approved by the State Education Department (SED) prior to monies flowing to NYC schools. The law requires public input into the development of these Contract proposals, meaningful

comment on the proposals, as well as providing for a complaint and appeal process. In 2007, the first year of operation, NYC was only required to seek public comment in some form. In the subsequent three years, NYC is required to provide for review of Community School District plans by the Community Education Councils at a public hearing and hold public hearings in each borough on the citywide plan. Transcripts of these hearings must be included when the Contract is submitted to the State Commissioner for review. Although, in 2007, SED failed to set specific timelines in its emergency regulations for these processes, new proposed final regulations allow for reasonable notice and a 30 day comment period. These proposed final regulations were open for public comment in March and adopted by the Regents in May 2008. <http://www.emsc.nysed.gov/mgt/serv/C4E/PublicCommentProcess.htm> The regulations require input, review and final agreement by both the public and the state government, provide checks and balances on the DOE's decision-making at multiple points in the process, and can serve as a model for city decision-making with different levels of scrutiny depending on the size of budgetary impact or the breadth of school or student impact. With these regulations in place, parents and the public were able to raise objections to the first round of hearings conducted by DOE on the 2008-2009 Contract proposal—insufficient notice, program, budget and measurement data, and lack of necessary translation. We were able to go to SED to seek enforcement, and DOE was compelled to conduct a second set of hearings and provide the necessary information.

Impact of Public Participation on the Contract for Excellence Process

In April 2007, the State provided the DOE with \$470 million in foundation aid, of which \$258 million was required to be distributed predominately to the highest need students in the lowest-performing schools by investing in five research-proven strategies for improving educational achievement. While there was admittedly limited time between the finalizing of the state budget and the DOE school budget allocations distributed in May, no effort was made to involve the public in this process. When DOE provided the schools with their allocations, DOE determined that \$110 million of this new money would go to fund its Fair Student Funding (FSF) initiative and asked principals receiving these funds to further allocate this money among the five strategies. The DOE stated that FSF was implemented to correct historic funding inequities. The basic guiding principle of the initiative was to drive money directly to the schools based on student characteristics of poverty, English Language Learners and Special Education. CFE performed an analysis of the distribution that also included reviewing the performance data for these schools and found that about 40% of these funds were going to high performing schools.

SED originally set the Contract submission deadline for July 1st but later extended it to July 15th. Despite repeated requests by CFE for consultation and announcement of a formal process, the DOE waited until close of business on July 5th to post its proposed Contract covering only \$228 million of the \$258 million Contract dollars. The proposal was posted in a very complicated format on the web, and the public was notified for the first time that public hearings were to be held the following week from July 9-12 in the five boroughs. The initial DOE Contract only broadly defined the distribution of the new funding to the five required strategies and provided no school level detail. After the four days of public hearings, DOE did reallocate some funds, provided information on the \$30 million missing from their original proposal and added some school level data. DOE still failed to provide the 32 Community

School District plans, as well as program data, benchmarks and measurements to hold schools accountable and make it possible to measure results - *as required by the law*.

In 2008, we are now midway into the second year of the contract process. The public participation requirement has already yielded rewards. In year one, DOE treated the Contract process largely as an act of notification providing limited information to the public until after the fact consistent with their current practice. However, in year two, real negotiations took place regarding budget allocations, transparent data, and appropriate notice and comment.

In 2007, the Contract, originally scheduled for approval on August 15th, did not receive final approval until November 19, 2007 due to objections raised by CFE, other advocates and the public. During the four months of negotiation, advocates played a significant role in the revision of the Contract. Given that the Act clearly intended an active public role by providing the public with statutory rights and tools, CFE and other advocates were able to raise concerns and gain access to additional information from both DOE and SED throughout the negotiation and approval processes. Our work resulted in major changes to the final Contract, including the reallocation of approximately \$46 million to the highest need low performing schools and students and the use of performance as an indicator of need. The final Contract includes some additional programmatic information on how the schools will spend their investments but fails to provide the public with accessible benchmark and measurement information. Perfect—no. A step in the right direction—yes.

On the city level, the 2007-08 Contract process informed the planning for 2008-09. Based on the changes made to the 2007-08 Contract and supporting information, CFE and other advocates were better able to track the dollars and make recommendations at the outset on how to target money to the highest need students in the lowest performing schools. Building on last year's experience, we engaged in an informed input and planning process with DOE to maximize the impact of the new investment in closing the achievement gap, and target the development of the class size reduction plan to low performing and overcrowded schools - *as required by the law*.

On the state level, CFE and other advocates worked closely with the SED to shape the final regulations that were put into place in May. The revised regulations provide greater clarity and specificity on the rules for public participation, transparency and accountability for Contract development—including coordination with the budget process, specific timelines for each aspect of the process, and accessible formats for reporting information. SED staff agreed that meaningful public participation requires: input at the front end in framing decisions, adequate and timely notice to the public, understandable information made available on the web and in a variety of locations in the most common primary languages as well as English, a reasonable comment period, and a right of appeal on both policies and implementation.

These are approaches that can be considered in designing a more democratic governance structure that provides for meaningful public input in a wide variety of policy decisions. The extent of public input and review can be determined by setting thresholds based on factors such as the size of the budgetary impact or breadth of impact on students.

The opportunity for meaningful public input is fortified by the availability of third party review, appeal, and/or decision-making. Providing a mechanism for third party check or review

should also be considered. In the case of the Contract, the state role in approving the Contract, controlling the release of the funds, and acting as the final arbiter in the complaint process provides the third party for decision-making, complaints and review, as well as providing the public with another forum to raise concerns.

Case Study: School Capital Plan—School Construction Aid

There can be no meaningful democratic input without transparent and accessible information, and measures of accountability. The Contract experience proves the value of school governance processes that are inclusive, collaborative and transparent. We understood the value of these processes all the more because they were not put into place by the state in 2006 (despite our call for them) when the state provided \$11.2 billion in a combination of direct aid and borrowing authority to subsidize the City's \$13.1 billion 5 year plan to nominally resolve the CFE litigation. The state capital funding came with "no strings"—no reporting and specific accountability requirements nor any direction to spend the funds to target the neediest students and schools.

While there are statutory requirements for hearings and input for the capital plan and its amendments, the plans are a complex set of documents that are difficult to understand and may not provide all the necessary information to track projects. Their limitations challenge the ability of experts, let alone the public, to monitor the progress the school system is making in completing the projects ostensibly funded in the capital plan and, ultimately, accomplishing the plan's goals. In order for the public to have meaningful input, there must be an accessible and transparent means for the public to track the long-term impact of the expenditures of capital funds.

While the city's five year school capital plan and amendments list all of the projects in every different program category from new school construction to roof repair to auditorium upgrades and beyond, neither the amendment nor any other document details whether projects are completed on time or on budget, whether projects have changed nor do amendments specifically articulate what criteria were used to alter the plan. The narrative gives a broad overview of some changing criteria such as increased construction costs but no specific analysis of the impact of the changed criteria is provided.

These reports should be more readily accessible on the DOE and SCA websites; adding narrative introductions explaining how to view and read the documents; modifying and augmenting the reports in specific areas; and creating an entirely new report to specifically track project status.

At present only the five year class size reduction plan required as part of the city's Contract for Excellence calls for linkage with the capital plan, creating some backdoor accountability. In sum, without transparent and adequate information provided in an accessible form, there can be no meaningful public input or accountability.

Conclusion

As we said at the outset, school governance in NYC must balance administrative leadership and democratic participation in service of the primary goal of student achievement and academic excellence for all students. The experience gained through the Contract for Excellence process provides a model for public participation that has produced positive results. The concepts can be adapted to fit other circumstances. We would like to work with the members of this committee in exploring how to incorporate the concepts of accessible, transparent information provided to the public in a timely manner so that there is an opportunity for meaningful public input, comment, review, approval and complaint in major budget and policy decision-making with accountability for results and third party review. Providing a structured forum for meaningful public input will help restore the democratic balance in the governance of the NYC schools.

Thank you.