



Campaign for Fiscal Equity, Inc
110 William Street–Suite 2602, New York, NY 10038
Tel (212) 867-8455 Fax (212) 867-8460
www.cfequity.org



Alliance for Quality Education
94 Central Avenue, Albany, NY 12206
Tel (518) 432-5315 Fax (518) 432-9498
www.aqeny.org

To: Office of School Operations and Management Services
New York State Department of Education
From: Geri D. Palast, Executive Director, Campaign for Fiscal Equity
Billy Easton, Executive Director, Alliance for Quality Education
Date: April 17, 2007
Re: Comments on Draft Contract for Excellence

VIA EMAIL: EMSCSOM@MAIL.NYSED.GOV

Overview

The Campaign for Fiscal Equity and the Alliance for Quality Education have led the successful 14 year effort to establish the constitutional right to a sound basic education for all New York's public school children through litigation, policy development and advocacy, and organizing the input and action of parents and communities across the state. With the litigation complete and the budget legislation signed, we have enacted a budget that makes a down payment on a four-year commitment to provide adequate resources to fund this right, and a statute that reforms the school finance distribution system utilizing a foundation formula based on need. Most important here, the statute provides a framework for constructing an accountability system that ensures that through strategic investments, the Contract for Excellence, and multi-faceted performance measurements, New York schools can achieve and demonstrate that we have accomplished the goal of graduating every student from high school and giving them the tools to be responsible citizens and successful participants in a global society. Accountable implementation will be critical to our ultimate success.

Given the time constraints of this year's school calendar, we understand the necessity of providing timely and clear initial guidance for the first year of the development and implementation of the Contract for Excellence. This preliminary guidance must be followed up with a systematic regulatory effort to assemble the most informed experts, practitioners and public input to assure an accountability system that provides tools to achieve our goals.

There are four overarching principles that must drive the formulation of the Contract: 1) the first priority is to serve students with the greatest needs. Both the expenditure of resources, the primary focus of the Contract programs, and performance indicators and measurements must reflect this priority; 2) the regulatory, planning and implementation process must be transparent and include public participation. The statute requires solicitation of public input in this first year of the Contracts, as well as full public hearings

and a transcript in subsequent years. Guidance must be provided to assure that this is not lost in the short time scramble; 3) indicators, benchmarks and measurements must link inputs and outputs so that we can utilize the accountability system as a tool; and 4) District level Contracts must incorporate school specific planning information.

We appreciate your efforts, and look forward to working with you to finalize this guidance and further develop the future regulations. To this end, CFE and AQE respectfully submit the following comments on the draft outline of the Contract for Excellence issued by SED on April 9, 2007.

Transparency, Accountability and Public Participation

- 1. Emergency rules should be treated as temporary measures not as the presumptive framework for permanent rules. School reform should be transparent and publicly debated.** CFE and AQE have been challenging the state to provide a quality education for every child for the past fourteen years. Now, due to the emergency rulemaking process we are faced with the possibility that the regulations governing accountability will be determined in a few short weeks. Because of the school budgeting cycle, we are being forced into adopting emergency rules that will expire in ninety days. Traditionally, however, such temporary rules become the permanent regulations. Any emergency rules adopted must truly be treated as temporary in nature. The Regents should make an upfront public commitment that the emergency rules will be fully reviewed through New York State's regular rule-making process where the public has sufficient time to comment. The public deserves a full, open and deliberative process before such fundamental redesign of school accountability systems is enacted into final regulation.
- 2. The cover memo to the draft Contract for Excellence states that many stakeholders were consulted in formulation of the draft outline. Neither the Campaign for Fiscal Equity, the plaintiffs in the law suit nor the Alliance for Quality Education, the leading coalition of parent and community organizations advocating for reform, were consulted. Participation of parents and the community in education reform is critical to success of such reforms and to ensuring public accountability.** We hope that this was a simple oversight that will not be repeated in the future.
- 3. The draft Contract for Excellence fails to include instructions to the Districts regarding conduct of the public participation process.** The statute explicitly states that in the first year of implementation of the Contract, 2007-08, districts are required to solicit public comment. Beginning with the 2008-09 school year, the Contract must be developed in a public process that includes at least one public hearing.

The public participation procedures need to be explicitly spelled out in the proposed regulations in clear and plain language so that districts understand what is required and the public understands how they can effectively participate.

- 4. The draft Contract for Excellence fails to include instructions for the public complaint process.** The statute explicitly provides for the rights of parents and those acting in parental relations to file complaints regarding the implementation of the District

Contract. Since the process is one that allows grievance and appeals up to the Commissioner, there should be a standard statewide process and the development of a standard complaint form with instructions in plain language to be made available on the state, district and school offices, buildings and websites, where applicable. The Commissioner, in consultation with parent and community organizations, should develop such a complaint form.

General Requirements for All Allowable Programs

- 5. The regulations offer no guidelines to ensure programs predominately serve the students with the greatest educational needs.** The language stating that the Contracts for Excellence programs must predominately serve the students with the greatest educational need is the central defining principle of this reform package, yet there is no regulatory language to either guide districts in planning to meet the needs of these students or to ensure compliance. This language clearly prioritizes the targeting of these programs to students with the greatest educational needs. This is the only language that sets a priority as to which students need to be primarily benefited by these programs. As such, each program designed under the Contract for Excellence must be designed to predominately benefit the students with the greatest educational need.

Each program needs to:

- set goals for how these students' needs will be met;
- the number of such students who will be served by the program;
- the proportion of total students served who meet the articulated factors defining need;
- the proportion of total services provided under the program that will be devoted to meeting the needs of these students; and
- the educational gains expected for these students as a result of this program.

In addition, the outcome measures for each program need to be similarly broken down based upon how services meet the needs of these students, including:

- the number of students with greatest educational needs served;
- proportion of total students served who meet the articulated factors defining need;
- proportion of total services provided under the program that were devoted to meeting the needs of these students;
- educational gains achieved for these students as a result of this program.

- 6. To ensure targeting of funding to predominately serve students with greatest need, Contracts must specify allowable programs and projected related expenditures on a school-by-school basis. Priority should be given to schools with high concentrations of students with the greatest educational needs, including, but not limited to SURR schools or other schools classified by state or federal category as needing significant improvement.** The individual school is the unit of delivery of educational services. It is impossible to determine whether programs are targeted to predominately serve the students with the greatest educational need unless the Contracts report on delivery of programs on a school-by-school basis. The proposed regulations take a step in this

direction by prioritizing students in schools categorized as SURR, in restructuring, corrective action, improvement or requiring academic-progress status. However, the manner in which this priority is set is inappropriate and inconsistent with the law in that it seems to prioritize these schools over other schools which may have even higher concentrations of students with limited English proficiency, students in poverty and students with disabilities.

The following sentence should be replaced: *“School districts in designing their programs and services shall give priority to students with the greatest educational need who attend Schools Under Registration Review, and schools in restructuring, corrective action, improvement and requiring-academic-progress status.”*

The new sentence should read: *“School districts in designing their programs and services shall give priority to schools within the district that have the highest concentrations of students with the greatest educational need (including those students with limited English proficiency, students in poverty, and students with disabilities and students attending Schools Under Registration Review, and schools in restructuring, corrective action, improvement and requiring-academic-progress status).”*

- 7. School-based expenditure reporting should be designed to assist school districts, the state and the public in ensuring expenditures and programs predominately serve the students with the greatest educational needs.** Nothing in the regulations provides guidance for how to construct Contracts for Excellence in a manner that will be consistent with mandated school-based reporting of expenditures. School-based reporting should track the priorities of the Contracts for Excellence including the requirement that the programs predominately serve the students with the greatest educational needs.

Contract for Excellence—Elements

- 8. Contract for Excellence—A Plain Language Vision Statement and Plan.** We envision that a District’s Contract for Excellence will detail an overall district plan, including which schools it has targeted and why. The Contracts will be developed with broad public input, and should be written in plain language to ensure that the parents and the community can understand and take action where necessary. The Contracts and reports should be transparent and accessible in schools, school offices and on the web.
- 9. Benchmarks, Indicators and Performance Measures:** The development and use of benchmarks, indicators and performance measures that transparently report both the investment and progress resulting from the contracts, particularly for the students with greatest need, is critical. As noted above, once we determine the measures, inputs must be linked to outputs so we can determine success. Under this proposal, this information is not included under any of the contract options.

Some examples:

Examples: District and School

➤ District A-(Could apply at school level)

Problem: Overcrowded classes in K-3 in schools with low test scores

Investment: \$2 million

Intervention: Reduce class size to 18 and provide greater attention to low-scoring students to improve performance in specified schools serving predominately students in need (Menu--Class Size Reduction)

Indicators and Benchmarks

- **(inputs)** reduce class size by x% with annual targets over 4 years
- **(process corollaries)** number of facilities added, number of teachers hired
- **(outputs)** higher teacher retention by x% over 4 years with annual targets
- **(student outcomes)** Raise the test scores of Level 1 students by x% over 4 years with annual targets; Raise the test scores of Level 2 students by y% over 4 years with annual targets

➤ Target District B (Could apply at School Level)

Problem: Unacceptably low teacher experience level (avg. 1.1 years) as a result of a very high teacher turnover rate.

Investment: \$250,000

Intervention: Master Teacher initiative (Menu--Quality Teacher)

Indicators and benchmarks:

- **(inputs)** number of master teachers to be added over 4 years with annual targets
- **(process corollaries)** number of master classes taught; number of other professional development experiences provided; number of junior teachers mentored
- **(outputs)** change in teacher experience level; teacher retention rate by x % over 4 years with annual targets
- **(student outcomes)** value-added student-outcome measures improved by x% over 4 years with annual targets

➤ Target School A (Could apply at District level)

Problem: Inadequate number of reading specialists to allow extra time on task for students scoring below proficient on the ELA (ratio 1: 50 students)

Investment: \$250,000

Intervention: Provide Additional Reading Specialists for morning, after school and weekend sessions (Menu--More time on Task)

Indicators and benchmarks:

- **(inputs)** number of reading specialists to be added year 1, year 2, etc.
- **(process corollaries)** number of sessions provided; number of students tutored
- **(outputs)** change in number of reading specialists; ratio of teachers to low-scoring students by x % over 4 years with annual targets
- **(student outcomes)** value-added change in student reading scores of targeted groups by x% over 4 years with annual targets

10. **The statutory requirement that foundation aid and the supplemental educational improvement grants MUST supplement not supplant funds allocated in the base year for Contract purposes is critical to ensuring adequate funds for these purposes. This draft does not address the certification process for the independent audit to be designed by the Commissioner.** These regulations must lay out the elements of a

certified plan that will demonstrate that these monies are used for new and expanded programs. They must require a baseline budget for purposes of auditing, and delineate the process by which an independent accountant or the comptroller of the city of New York can certify that no supplantation has occurred. **We do not agree that these monies can be used to pay for the local share of capital projects (see below).**

11. **The draft Contract for Excellence fails to define key concepts--“highly qualified and experienced teacher” and a “highly qualified and experienced principal”-- central to the implementation of the law.** These terms are ubiquitous throughout the regulations. There must be clear definitions of what constitutes a “highly qualified and experienced teacher” and a “highly qualified and experienced principal.” This definition is so critical that we believe it should be put out for public comment to a wide array of stakeholders in the next stage of the regulatory process. For this interim period, we believe a clear definition should be included in this regulation. Without such clarification districts will be unable to implement key provisions and will fail to satisfy the spirit and the letter of the law.
12. **This regulation must make clear to Districts that nothing in this Contract shall make the distribution of quality teachers more inequitable.**
13. **This regulation must make clear to Districts that nothing in this Contract shall increase racial or income-based segregation of students.**

Class Size Reduction New York City

14. **The law requires that class size reduction plans in New York City be incorporated in the Contracts for Excellence for all community school districts as well as the City of New York.** The outline states, “New York City’s contract must also include a plan to reduce average class sizes, as defined by the Commissioner . . .”

This should be corrected to read, “The contracts for New York City and for each of the community school districts within New York City must also include a plan to reduce average class sizes, as defined by the Commissioner . . .”

The legislative language regarding New York City class size reduction applies to all contracts for excellence prepared within a city having a population of one million or more inhabitants. There is nothing that exempts some of these contracts from incorporating the class size reduction requirements.

15. **The law does not authorize the use of foundation aid (operating aid) for capital expenditures. The regulatory proposal to allow operating aid to be used for capital expenditures contravenes the purposes of the law and may also constitute supplanting.** The outline states, “Foundation Aid may be used for any purpose including paying for the local share of capital projects.” Foundation aid is operating aid, not capital funding. Using foundation aid to pay for the local share of capital projects undermines the fundamental purpose of the legislation and may also constitute supplanting.

When it comes to the Contract for Excellence usage of foundation aid, the commissioner is explicitly limited to adopting regulations “establishing allowable programs and activities intended to improve student achievement” which are limited to the allowed menu. Programs and activities” clearly connote operations, not capital projects. In recognition of the fact that New York City will need to create more classroom space in order to effectively reduce class size, the legislation requires that the Contracts for Excellence within New York City include plans to create or construct classrooms and school buildings. However, this requirement can in no way be construed as allowing foundation aid to be used for non-operating purposes.

16. **In New York City, most new schools being built and brought on-line simply reduce overcrowding and do not contribute to lowering class sizes. Districts should only be permitted to utilize additional funds for new teachers where they can demonstrate that class size has been reduced to the number as defined by the commissioner.** Schools built to reduce overcrowding are based on school capacity set at existing class size levels.
17. **Data reported to the State Education Department should be refined to reflect not simply the number of new teachers hired but instead indicate the number of teachers specifically hired to reduce class size. Districts should also be required to report the additions/changes they have made to the Capital Plan to support class size reduction.**
18. **Districts should be required to disaggregate their data in reporting General Education and Special Education class sizes.** Federal rules already exist that determine Special Education class sizes. These additional funds are targeted to reduce class sizes in general education classrooms. The blending of these numbers can produce false class size averages.
19. **The recommendations regarding placement of more than one teacher in a classroom need to be further refined.** A district should not be able to impose team teaching. Instead – the district should seek teachers supportive of the team teaching model. In addition, the district must provide professional development to maximize the effectiveness of collaborative teaching. To ensure the most effective environment for students – teachers should be assigned to one classroom only. The use of more than one teacher per classroom to reduce student-teacher ratio should be considered only as an interim measure.
20. **Class Size Reduction needs to be accomplished while assuring teacher quality.** There should be no lowering of the bar or lessening the requirements for teacher certification in order to comply with class size reduction requirement.

Class Size Reduction (Rest of State)

21. **The proposed regulations seek to impose priorities for class size reduction that are not consistent with the law.** While the law grants the Commissioner discretion in adopting regulations establishing allowable programs and activities intended to improve

school improvement, the prioritization based on grade or type of school should be eliminated. The legislation does not prioritize class size reductions in certain grades over others or in certain schools over others. Districts should be given the discretion to determine where class size reduction is most needed. SED's own data show that many districts outside NYC have already successfully lowered their K-3 class size but still have classes that are too large in the upper grades. To be consistent with the letter and the spirit of the law, this provision should be eliminated.

22. **The draft Contract for Excellence seeks to substitute improving teacher to student ratio for class size reduction despite clear legislative language to the contrary.** The option of “improving student-teacher ratio in elementary classrooms by adding an additional highly qualified teacher” is not allowable outside New York City. The legislation explicitly identifies circumstances in which it is allowable to utilize more than one teacher in a classroom or methods to otherwise reduce teacher to student ratio and those circumstances are restricted to cities of one million or more residents. By explicitly excluding such language from the sections of the bill that apply beyond New York City it is clear that the legislative intent is that they do not apply in the rest of the state. The menu of allowable programs and activities for the rest of the state includes class size reduction. Nothing in the legislation allows reduction in student-teacher ratio or adding more than one teacher to a classroom to serve as a proxy for class size reduction (except as explicitly defined to apply to New York City).

More Time on Task

Increased time on task is intended to mean more classroom time for students. Governor Spitzer made this clear in his January 29th education speech and his January 3rd State of the State.

Quotations from Governor Spitzer on Time on Task

January 29: More time in the classroom – whether in the form of longer school days, a longer school year, after-school programs, or changes in the structure of the day – can also make a difference.

January 3: We know that more time in the classroom – in the form of longer school days, a longer school year, and after-school programs – also makes a difference.

23. **After school programs are not mentioned as an option in this section despite clear intent from lawmakers and NYSED, thus creating the potential for confusion and controversy. This oversight must be corrected.** After school programs appear to have been inadvertently left off the list of allowable programs for increased time on task. In the web link to additional documents provided by NYSED along with the April 9, 2007 memo (www.emsc.nysed.gov/c4e-timeontask.doc) one of the documents is titled *Moving Towards Success: Framework for After-School Programs*.

After-school programs should be listed as a separate option and not subsumed under “lengthened school day” so there is no confusion as to after-school as an allowable activity. Many of the best after-school programs and tutoring programs

in the state are community-based programs. It should be explicit that there is no intention to preclude such programs from use under increased time on task.

The following language should be included as an option under *Time on Task*:

- **Option: After School Program**
 - **Essential Elements:**
 - Provide additional instruction by appropriately certified, highly qualified teachers or by highly qualified after-school program staff, to the extent required by law;
 - Provide student support services which may include guidance, counseling, attendance, behavioral support, or study skills which are needed to support improved academic performance;
 - Provide enrichment activities that contribute to youth development which has been demonstrated by research to support improved academic performance;
 - Mandate regular after-school attendance;
 - School Districts may contract with eligible community based agencies to provide these services.
 - **Data reported to State Education Department:**
 - Academic performance indicator targeted for improvement
 - Academic performance indicator goal
 - Cost
 - Current length of school day or week
 - New length of school day or week
 - Number of participating students
 - Number of students in specified needs categories served
 - Data indicating whether program achieved performance goal

24. **Time on task should not be limited to teaching literacy or numeracy or to preparing students to pass Regents examinations.** The *Essential Elements of Time on Task* programs should include the following options:

- i. Provide enrichment activities that contribute to youth development which have been demonstrated by research to support improved academic performance including programs in art, music and science.

25. **Systematic Instructional Time appears to be a reform in curriculum and teaching methodologies and does not qualify as Increased Time on Task. As defined in the draft regulatory document, it is not consistent with this category, nor allowed under the menu of options. It should not be allowed under these emergency regulations.** Valid educational reforms that constitute a change in instructional methods do not, unless otherwise defined, involve an increase in instructional time. Unless further clarified, this option is inconsistent with the legislation and should not be allowed. If there is an alternative definition consistent with this category, it should be specified and subject to public

discussion and consideration. The timing of the emergency regulations does not allow for such discussion, as such this item should be excluded at this time.

26. Individualized Tutoring

Under *Essential Elements*, replace "provides tutoring by appropriately qualified individuals" with "provide tutoring by appropriately certified, highly qualified teachers or by highly qualified tutoring staff, to the extent required by law."

Add additional element that reads, "School Districts may contract with eligible community based agencies to provide these services."

27. Summer School. Summer school should be included as a separate option under Time on Task.

Teacher and Principal Quality Initiatives

28. The legislation mandates that the Commissioner will work with school districts to create incentives for “highly qualified and experienced teachers to work in low performing schools.” (Emphasis added.) The draft Contract for Excellence eliminates the entire concept of “experienced.” The regulations need to reflect the law by promoting the objective of attracting “highly qualified *and experienced* teachers to low performing schools.” Also, “experienced” needs to be defined (see above).

29. The draft Contract for Excellence fails to collect outcome measures to evaluate the success of the intervention. If the ultimate goal is a High Quality Teacher (HQT) in every classroom and a High Quality Principal (HQP) in every school, the data being collected will not allow for such an evaluation. In addition, none of the data reporting required answers the simple question – what made the difference? We need to be gathering outcome measures that allow us to determine the efficacy of the programs. NYSED, not local school districts, must provide the necessary technical capacity to evaluate which programs, under teacher and principal quality initiatives and all other menu options, prove to be most successful and effective.

- a. Under *Programs to Recruit and Retain Highly Qualified Teachers*, there should be a future measure to determine the effectiveness of the program. Also, who are the teachers who are staying? If the goal is to recruit and retain HQTs, the data being collected here are insufficient to assess whether HQTs are being retained and for how long. Under *Programs to Recruit and Retain Highly Qualified Teachers*, there is no go-forward measure of teacher retention or quality and no use of teacher experience as required by law.
- b. Under *Professional Mentoring Programs for Beginning Teachers and Principals* there is a measure of teachers and principals served, but no measure of impact on teacher retention. Research shows that successful mentoring programs increase retention within high-needs schools. The

regulations need to create multi-year measures of success at teacher retention within low performing schools.

- c. Under *Incentive Programs* there is no measure of how many highly qualified and experienced teachers are attracted to low performing schools, the only measure is how many teachers and principals received the incentive. The measure should measure the educational resources provided to students, not the incentives provided to school personnel. In addition, we need an outcome measure that informs us on how the Incentive Program contributed to the retention rate of teachers.
- d. Under *Instructional Coaches for Teachers and School Leadership Coaches for Principals* there is no measure to indicate that this option reflects the objective of improving teacher and principal quality. There is no data-reporting requirement to measure impact on teacher quality. There is a measure of the number of coaches provided and the total coaching hours. Without measures specific to how this option improves the quality of teaching provided by individual teachers, and leadership of individual principals, these options should not be allowed. In addition, the menu should be expanded to include coaches for Special Education and ELL teachers.

30. **The draft Contract for Excellence does not meet the requirements of the law regarding creation of incentives to attract highly qualified and experienced teachers to low performing schools.** Under *Incentive Programs* the regulations fail to comply with the explicit directives of the law: a. no teacher experience measure is employed; b. no assistance for school districts in how to collaborate with teachers in the development of incentives; c. no indication of how the Commissioner will assist school districts in developing incentives.

Middle and High School Restructuring

31. **Districts may only be permitted to utilize funds to expand Advance Placement programs; implement International Baccalaureate programs; and/or establish early college high schools if they predominately benefit and enroll traditionally underserved populations that have not had access to these programs, i.e., students of color; ELLs; and students of poverty.**
32. **The draft Contract for Excellence should not include distance education.** The use of distance education to expand access to rigorous academic instruction or the pursuit of career-related learning opportunities is not research supported at this time and should not be included in the Contract.