

Joint Public Hearing Testimony March 4, 2022

I would like to thank Chairperson Liu and Chairperson Mayer for providing this opportunity for the public to express concerns and offer suggestions relevant to the possible extension, alteration, or discontinuation of Mayoral control of New York City's public schools.

My name is Michael Athy and I retired last month after eighteen years with the NYC DOE; five as a teacher at Hillcrest High School (incidentally alma mater of Chancellor Banks) and thirteen as principal of Bayside High School (incidentally alma mater of both Mayor Adams and City Council Speaker Adams).

Please frame my comments as being offered by a resident of New York City; by a parent who was active in the PTA and SLT structures of his child's schools while she attended NYC public schools K through 12; by a recently retired employee of the NYC DOE; and by an avid student of the history, policies, and procedures of the NYC DOE. Through the examples cited in this testimony, I hope to provide illustrations as to what adjustments to the current framework of Mayoral control should be considered. I have no axe to grind and hope that this testimony will prove informative.

Firstly, I offer my apologies to the administration of Mayor Eric Adams and Chancellor David Banks as the unfortunate timing of the current law's sunset provision requires rigorous analysis, including this public hearing, of a system which they have inherited and for which they have been responsible for only about eight weeks at this juncture. I am certain that this short period, occurring in the middle of a school year, has not allowed sufficient time for the current administration to enact policies and structural changes they may have formulated during their transition period. Thus, these comments are offered based on what has been observed during the tenures of the Bloomberg and De Blasio administrations rather than on what may be in the planning stages from the Adams' administration.

Due to the enormous budget and attendant work force of the NYC DOE, Mayoral control at some level is logical and desirable. A single department which directly absorbs such a substantial percentage of the City's budget and which also draws resources from other agencies such as the NYPD, ACS, DOH, OYSD and others needs to conform with the policy, fiscal, and operational requirements set forth by the Mayor and Comptroller. A fully independent Board of Education, connected only by fiscal powers to the Mayor, would set the stage for interminable, unproductive maneuvering and tension between the two and divert attention from the primary focus of educating children.

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So, I believe the focus is not on whether Mayoral “control” should continue or not; but rather what level of Mayoral “control” and departmental structure best suit the NYC DOE and the City in the third decade of this century. It has been said that Mayoral “control” can be good or bad depending on who is the Mayor. I believe that this Committee should seek to fashion a structure to ensure good governance of the NYC DOE-**regardless of who is the Mayor.**

Mention of the politicization of the NYC DOE under Mayoral control is unavoidable and inevitable. Providing control through the levers of majority appointments to the Panel for Education Policy (PEP) and appointment of the Chancellor, the current law essentially removes all other parties, including the citizenry, from a meaningful say in NYC DOE governance other than through their quadrennial participation in the election of the Mayor. The current permanent supermajority allocated to Mayoral appointments (nine of fifteen seats) renders the remaining five Borough appointees and single CEC appointee window dressing. The appointees of the Borough Presidents appear to be selected on the basis of political relationships with their particular appointer; accountable only to them rather than to the communities they purport to represent.

Having attended several PEP meetings through the years, I can attest to the PEP’s near total compliance in voting favorably for virtually anything placed on its agenda by the NYC DOE. The occasional mumbling from a member and the opposition to some matters voiced during each meeting’s orchestrated public comments portion, usually related to changes in school utilization, give the appearance of engendering discussion, but are actually merely opportunities for attendees to blow off steam and feel they were heard. These efforts are inevitably followed by PEP votes in favor of whatever has been placed on the agenda; regardless. One can be forgiven for confusing PEP meetings with plenary sessions of a Presbyterian Politburo in which all results are predestined and all votes are perfunctory. The PEP, which should be a deliberative and representational body is, instead, a mere functionary unit within the NYC DOE structure.

Beyond its routine approval of proposals for changes in school utilization which are presented with inadequately prepared Educational Impact Statements from NYC DOE personnel, the PEP routinely approves scores of contracts, often totaling in the hundreds of millions of dollars, at its monthly meetings. When held separately, meetings of the PEP’s Contract Committee appear to rarely question the necessity of the contracts; their commitments in dollars; or the process by which the contract was solicited and awarded. Ethically dubious multimillion dollar contracts have been awarded in this process

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and the Office of the Comptroller, elected by the citizenry to keep watch on expenditures, is absent from this process as is the Independent Budget Office. Beyond the NYC DOE personnel invited to present at these Committee meetings, there is little evidence of financial acumen relevant to the public sector on display on the part of participants.

Beyond the democratic fig leaf provided by the PEP, the Mayor also exercises control of the NYC DOE through appointment of the Chancellor who, in turn, is free to appoint a seemingly endless series of Deputies; Associates; Leaders; Advisors; Coordinators; Special Advisors; and other titles-many commanding salaries North of \$200,000.00 and each fitted out with staff. Unlike the Federal system which calls upon the Congress to “advise and consent” on many high-level Presidential appointments-most notably cabinet secretaries-the current system for appointment of the Chancellor under Mayoral control requires no input from the locally-elected legislature: the New York City Council. Among the Chancellors thus far appointed under Mayoral control: Klein, Black, Walcott, Farina, Carranza, and Porter, some have required waivers due to lack of educational licensing or waivers due to pension conflicts. Several could not have qualified to be a school principal under the Chancellor’s Regulations now in effect. There was a notable lapse in ethical conduct on the part of one involving public money while another’s tenure was aborted due to flagrant faux pas on numerous fronts. It can be argued that some were appointed to provide a veneer of inclusion in an administration’s top level positions. The maintenance of a Deputy Mayor for Education (in addition to the Chancellor) for most of the Bloomberg administration and assignment of numerous Mayor’s Office personnel to the top ranks of the NYC DOE during the De Blasio administration indicate that neither Mayor was entirely comfortable that control of the PEP and Chancellor’s Office would be sufficient to ensure compliance with Mayoral priorities.

The hyper- politicization of the NYC DOE attributable to the current framework of Mayoral control does not stop at the highest levels. Unfortunately, it permeates middle management and affects the schools themselves in very tangible and stifling ways. Though no one signs a formal waiver of their rights as a United States citizen when joining the NYC DOE, there are harsh, vindictive, and retributive repercussions when an employee exercises anything resembling freedom of speech or of thought. I have personally witnessed and experienced such treatment. The insecurity of upper management which underlies this top-down approach is evidenced by the purposeful lack of any forum at which school principals are encouraged to communicate among themselves and by the many tortuous power-point presentations they are forced to endure; none of which provide for any feedback. This one-way

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communication is paramilitary in its explicit reinforcement of a chain of command and thought and effectively encourages self-censorship.

The reactive nature of NYC DOE upper and middle management is most observable when local media is involved. The twin axioms school principals live by: “Just stay out of *The Post*” and “No matter who they (*the NYC DOE*) say is Chancellor, the real Chancellor is Susan Edelman” (*education reporter for the NY Post*), reflect the trickle down paranoia that reaches epic levels when a school is spotlighted for reasons other than those preapproved by the NYC DOE. The number of times in which local media articles cite “a principal who spoke on condition of anonymity;” or “a school official who withheld their name due to fear of retribution;” is embarrassing and should cause self-reflection on the part of NYC DOE upper and middle management. But does not. Rather, it is NYC DOE practice to deny issues exist or to isolate the source of the issue for censure. This is accomplished externally through the use of “NYC DOE spokespersons” who seem incapable of answering a direct question or of telling the truth; and accomplished internally through the supervisory ranks’ downward pressure- inclusive of threats of removal, suspension, or termination. When local media is involved, the “emperor’s new clothes syndrome” becomes epidemic. When accompanied by a Mayor notably susceptible to pushback, this syndrome results in constant revision of policies and confusion within the ranks. An ongoing example of this consistent inconsistency inherited by the Adams’ administration involves the previous administration’s announcements, backtracks, and eventual development of no policy concerning admissions to high schools; including the specialized schools. The Bloomberg administration’s edicts that a “child’s zip code should not determine their future” resulted in elimination of localized zoning for some high schools but was never fully implemented. Simultaneously, the segregation of high performing students into “specialized schools” increased to nine schools and was done unilaterally by the Mayor with the PEP’s acquiescence. The De Blasio administration’s seemingly progressive, consistent pronouncements concerning zoning and screened admissions- followed by subsequent repeated caving to media-inspired pushback- continued right through to the last month of the administration and remains a source of confusion for families throughout the City as we speak.

The hyper- politicization of the NYC DOE attributable to the current framework of Mayoral control has also resulted in a bloating of the bureaucracy as successive politically appointed Chancellors have continued to construct additional layers between their own appointed immediate subordinates and those who actually work in the schools. Focused more on making the NYC DOE and Mayor “look good” than on actually contributing to schools’ performance, this cadre of “Executive Superintendents,”

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“Superintendents,” “Senior Advisors,” “Deputy Assistants,” “First Deputies” and “Directors” fulfill the mission of stifling employee voices-particularly principal-voices and thereby discouraging curiosity, questioning, and innovation. Curiously, many of the numerous “reorganizations” undertaken since the dawn of Mayoral control resulted in the same people being shifted from one office to another with no apparent improvement in performance, competency, accountability, nor basic management skills. The most recent restructuring involving seven Executive Superintendents and forty-four Superintendents, each with staffs of five or more and bolstered by innumerable “offices of---” is a good example of one of the more wasteful incarnations created by a Mayor and Chancellor unaccountable once in office.

The willful self-isolation of the NYC DOE’s upper management from the schools they are supposed to support is further evidenced in the language they often use, referring to upper management as “Central” (as opposed to the more derisive “Tweed”) and to school-based personnel as being “in the field;” a phrase which conjures antebellum or Orwellian imagery in the minds of most school-based personnel. The disregard and derision with which the politically appointed class within the NYC DOE view experienced, school-based personnel is further illustrated by the preference and propensity for filling middle and upper management positions with a revolving door of “talent” from among charter advocates; administrators from other States; non-educators; and occasionally administrators from Australia. This devaluation of the experiences and institutional knowledge of thousands of NYC DOE administrators does not go unnoticed and has resulted in a nearly uniform cynicism and passive resistance among them when each new wave of “reform” or “reorganization” is announced. The favored expression “the answers you seek are inside this room” only operates when the people in the room are listened to. Any fears of systemic chaos erupting should these multiple layers of supervision and control be reduced or eliminated can be addressed by considering the outstanding performances of the majority of schools during the period March, 2020 to June, 2021 when these multiple layers were largely missing in action and school leaders were left to their own devices to run things. The reductions in “edicts by email” and occasional admissions by the NYC DOE’s upper echelons that they had no idea how to cope with the effects of the pandemic allowed school leaders to focus on their schools and communities and thereby “get stuff done.”

Beyond the demoralizing effects that the above-described suppression and disrespect have produced and the lack of meaningful representation of stakeholders; the perpetuation of wasteful and inequitable financial practices permitted under the current structure of Mayoral control must be considered; many of which have lasting consequences. An outstanding example of unbridled and ineffective expenditure

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undertaken in the era of Mayoral control can be seen in the indiscriminate conversion of large high schools into small high schools; influenced by a pseudo-panacea known as the “small schools’ movement.” Running roughshod over the concerns and priorities of local communities and ignoring any input from administrators, dozens of large high schools were broken down into hundreds of small schools with the stated purpose of increasing student performance through personalization of their high school experience. This was accompanied by the unstated purpose of subdividing and neutralizing the vocal union chapters which inhabited the large high schools. After billions of dollars of “investment,” the results are made obvious by high school statistics released by the NYC DOE for school year 2020-2021 as twenty years after, **the system continues to rely on the large high schools:**

-Just 4.5% of all schools with high school grades service 27.1% of all high school students (27 of 601 schools servicing 87,809 of 321,184 students).

-Just 5.7% of all schools with graduating classes in June/August of 2021 produced 32.3% of all NYC DOE high school graduates (27 of 471 schools graduating 19,203 of 59,468 students).

-Each of the 27 schools cited in the above servicing and graduation statistics has an enrollment of 2,000 or more students-these are the remaining large high schools.

Rather than study, adapt, and apply the methods used by successful large high schools, the Mayor chose unilaterally to employ a sledgehammer approach; disregarding the economies of scale enjoyed by well-run large high schools. Beyond the ballooning of the NYC DOE’s budget to accommodate the staffing needed for these hundreds of small schools; the facts show that the aggregate enrollments of small schools which occupy buildings formerly used for one large high school are usually about 50% of the original school’s enrollment. As high school enrollments have remained fairly steady, this depopulating of buildings required additional capital expenditures in the building of new schools and additional operational expenditures in the leasing of spaces to accommodate new, small schools.

This gargantuan waste of public resources was accomplished as there was no offsetting authority or check to Mayoral control and was done so with the full acquiescence of the PEP. The Renewal School program, the De Blasio administration’s more union-friendly successor to the small schools’ programs, similarly spent near one billion dollars, with much of the money earmarked for professional development and other intangibles arranged and required Centrally through contracts approved by the PEP and without consultation as to suitability or need with the local school administrators or communities. In each case: the fragmentation into small schools and the Renewal schools; the primary motivation was political but the consequences are social and financial. It remains to be seen whether

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the Community Schools' initiative will result in improvement to the performances of students as there apparently is no reliable data to analyze. It is already evident that this program's scaling up, reportedly from ten to three-hundred schools with plans for further expansion under the NYC DOE's nominal management philosophy of "one size fits all," will cost multiple millions of dollars.

The capricious and determinedly inequitable manner in which the NYC DOE's so-called "Fair Student Funding" (FSF) formula has been administered by the NYC DOE's budget office is a particularly clear example of malfeasance enabled by the Chancellors and PEPs operating under the current provisions of Mayoral control. In theory, dollar amounts are awarded to each type of student based on **student need**. These amounts are then allocated to schools based on the number and types of students they enroll. Schools servicing more students with greater needs therefore should have received higher dollar amounts. In practice, some schools were awarded 100% of these calculated **need-based funds** while others received 80% and some received up to 127%- all for servicing students **with the same levels of need**. This discounting of need-based allocations to some schools while over-compensating of other schools was not a temporary situation; rather this continued from the inception of FSF in 2007 until this current school year (2021-2022)- **fourteen years** under two different administrations. Years of protests and advocacy on behalf of underfunded schools resulted in the NYC DOE's refusal to address the subject and the PEP's acceptance of the NYC DOE's litany of excuses; creating a class system among schools whereby "favored" schools received 100% or more of their **need-based** funds while others had to make due and seek efficiencies. This discrimination takes effort and is a remarkable achievement for a department which consistently engages in "one size fits all" management. This year, with a budget of \$38 billion (49% coming from New York State and Federal participation) is the first year that this class system has been reduced to schools receiving 100% and those receiving more than 100%- still a study in inequitable treatment.

Despite the gradual increase in the percentage of needs-based funding that has occurred over fourteen years, the NYC DOE maintains inequities within the FSF system. In addition to the per-student needs-based allocations each school should receive, some schools receive what is referred to as "Portfolio Funding" to support particularly expensive programs. The Specialized High Schools, Career & Technical Education (CTE) High Schools; and Transfer High Schools are supposed to receive these funds. Some do and some do not. As an example, the Bronx High School of Science will receive \$1,055.00 per student **in excess and over its FSF needs-based calculation for being specialized**; about \$3.16 million in additional funding depending on final enrollment figures. For no reason anyone can determine, La Guardia High

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School will receive \$1,478 per student for being a specialized audition school, about \$4.14 million in additional funding depending on final enrollment figures. The capricious nature of the DOE's awarding of Portfolio Funding's specialized school money is brought to light when we see that annually over \$11 million in specialized school portfolio funding is provided to schools that are not specialized high schools under Hecht-Calandra. This misappropriation is also evident in the awarding of over \$3.6 million annually of portfolio funding's CTE monies to schools that have no State-approved CTE programs while other, fully-approved CTE schools, receive a reduced allocation; if that. The fact that the inequities of FSF have been allowed to persist under the current Mayoral control structure, and the results these inequities have brought should be evidence enough that changes are needed to this system.

An added and permeating aspect to the fiscal mismanagement which have been enabled to fester under the current system for Mayoral control is the NYC DOE's rewarding of financial ineptitude and penalization of financial good management at the school level. Apparently depending on how much money the ever-expanding "Central" overhead has soaked up in a given year, schools will be informed late in the school year as to whether they can "roll over" any unspent surplus into the next school year's budget. Amazingly, despite receiving only a reduced fractional percentage of their FSF allocations, some schools with better management have been able to keep a surplus by the end of some school years. In some years, they have been allowed to roll this forward; in other years-the amount was capped with the majority of it being taken back by "Central;" in some years-any surplus was clawed back by "Central." On the other hand, schools who posted a deficit by the end of a school year have been variously given "repayment plans" (ironic and insulting if the school's initial allocation was below 100% of FSF); or had the amount wiped clean; thus rewarding inefficiency.

Another major example of the substantial financial mismanagement or malfeasance which the current system for Mayoral control of the NYC DOE has enabled involves the disastrous activities of the School Construction Authority (SCA). Although an "Authority" funded largely through NYS and NYC issued bonds, the SCA (which employs 900) appears on the NYC DOE organization chart as being under the direction of the Chancellor. Based on the presentations and actions of the SCA, it might be good for someone from the Chancellor's office to remind the SCA, whose slogan is "*we build 'em; they (NYC DOE) fill 'em*" of this organizational relationship. The SCA's operating budget of \$223 million is dwarfed by the capital budget for which it is responsible (about \$19.8 billion over 5 years not including the additional \$1 billion which they will be seeking at a meeting in April). Complaints concerning the SCA's lack of abilities to stay within their own cost estimates or work schedules are legendary, made worse by the absolute

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lack of any way in which a school may address or resolve them. The SCA operates entirely without competition and displays all the inefficiencies that such monopoly status confers. NYC DOE personnel disavow any authority or ability to reign in the SCA while the NYC DOE's own custodial department, the Division of School Facilities (DSF), is often also unable to control or coordinate with SCA.

The reluctance of the Chancellor's office and lack of input from the Comptroller's office to control the SCA are most damaging when considering how new construction is conducted. A current example may be found concerning high school seats in Queens where a current surplus of 2,800 seats will increase to 8,200 seats when four SCA projects currently in progress totaling \$542 million are completed. The SCA Capital Plan then calls for two more additional high schools which, if completed, further increase this surplus to 9,700 seats at an additional cost of at least \$228 million. The SCA cites magical projections which always point to the "need" for new and expensive construction while circumventing the concerns of local communities around school siting, disparaging them as "NIMBY." As the bonds issued to support the SCA are liabilities on the City and State, all stakeholders need to know that this Authority is conducting its business soberly and being monitored. The concerns of local communities should not be disregarded, but should be mirrored by careful monitoring of the SCA by the DOE as indicated on the organizational chart.

A final financial ramification of the current system of Mayoral control that deserves consideration is its effects on the pension system, specifically the Teachers' Retirement System (TRS). The Board which directs this multi-billion dollar fund consists of the chairperson of the PEP (usually elected chair by the PEP itself with its own majority appointed by the Mayor); two additional Mayoral appointees (one of whom must be a member of the PEP); three elected members (teacher members); and the Comptroller. Notwithstanding the comments concerning the PEP made earlier in this testimony, the presence of elected members and the Comptroller on the TRS Board may provide a model for recasting the PEP itself as a more representative and fiscally competent entity.

Summary of Recommendations:

1. Under the current framework, the PEP is not representative and the Mayor should not have a supermajority. If a few members cannot be convinced of the desirability of a proposal, perhaps that proposal needs reconsideration. Perhaps borrowing from the school-level governing entity: the School Leadership Team (SLT), the PEP should be comprised of representatives selected by stakeholders, particularly principals, with active participation rather than forensic criticism from the Comptroller's

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Office and Independent Budget Office. As the PEP affects TRS and contracts, competent and unbiased members are needed to analyze and make recommendations in these areas.

2. Any candidate for the office of Chancellor should be vetted by City Council.

3. Due to its huge and lasting impact, the SCA should be at least partially overseen by the Comptroller's Office.

4. There is a need for an explicit simple Chancellor Regulation re: freedom of expression and freedom from retaliation to promote innovation rather than current practices that suppress criticism.

5. There is a need for a drastic reduction in the size of the NYC DOE to make it responsive and manageable to undo the layering done in two decades of unregulated Mayoral control.

I thank you again for this opportunity to present at this Joint Public Hearing.