

Jeannine Kiely, *Chair*
Susan Kent, *First Vice Chair*
Valerie De La Rosa, *Second Vice Chair*
Bob Gormley, *District Manager*



Antony Wong, *Treasurer*
Eugene Yoo, *Secretary*
Ritu Chattree, *Assistant Secretary*

COMMUNITY BOARD NO. 2, MANHATTAN

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April 26, 2021

Hon. Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Hon. Bill de Blasio
Mayor
City Hall
New York, NY 10007

Hon. Scott Stringer
Comptroller of New York City
One Centre Street
New York, NY 10007

Hon. Corey Johnson
Speaker of New York City Council
224 West 30th Street, Suite 1206
New York, NY 10001

Meisha Ross Porter
Chancellor, NYC Department of Education
52 Chambers Street
New York, NY 10007

Dear Governor Cuomo, Mayor de Blasio, Comptroller Stringer, Speaker Johnson, and Chancellor Porter:

At its Full Board meeting April 22, 2021, Community Board #2, adopted the following resolution:

Transparency and Reform around Carter and Connors Cases

Whereas:

1. The Individuals with Disabilities Education Act (IDEA) states that all children must be given a “free appropriate public education”, and that schools, districts, states are required to provide a free appropriate public education (FAPE) to children with disabilities that meet their unique needs;
2. The NYC DOE Committee on Special Education (CSE) maintains a list of private schools that the State has pre-approved for the purpose of meeting those needs;
3. When the state-approved options are not appropriate for a student, or those schools are full, there are two ways the NYC DOE might pay for a private school that is not on the State’s pre-approved list:
4. *Florence County School District Four v. Carter* determined that when a parent or guardian disagrees with the DOE’s [Individualized Educational Plan](#) (IEP), they may elect to place their student in a non-public school and seek reimbursement for their costs or direct payment to the school by commencing legal proceedings against DOE (aka “Carter Cases”);

5. IDEA establishes a mechanism for parents to challenge the DOE's evaluation of their children and plans to address their special education needs by providing them with the opportunity to request an impartial hearing through which they can challenge DOE's recommended educational plan for their children;
6. The Preliminary Budget for FY 2022 added \$220 million for Carter Cases at the Department of Education (DOE), an increase of 51% from the amount budgeted in the FY 2021 Adopted Budget;
7. Pursuing Carter Cases is cost and time prohibitive for the great majority of NYC families because:
 - a. Requirement of time and funds to navigate the impartial hearing process;
 - b. Exorbitant legal/consultant fees;
 - c. High cost of neuropsychological and other outside evaluations to secure a diagnosis;
 - d. Language access for families with Limited English Proficiency (LEP);
 - e. The necessity for families to have the ability to pay private school tuition before decisions on cases are settled, typically 12 to 18 months, with times being extended even longer during the COVID-19 pandemic;
8. *Nancy Connors v. New York State Board of Regents*, held that when a parent or guardian disagrees with their child's IEP and is unable to pay up front for a non-public school, they must ask the school to accept their child based upon their promise that they will seek an impartial hearing requiring the NYC DOE to pay the tuition. Information about Connors Cases is difficult to obtain¹;
9. NYC DOE Compliance Assurance Plan of 2019 detailed how New York City was out of compliance with federal law for the 13th straight year on its delivery of services for students with disabilities and mandated services on student IEPs not being provided²;
Public schools simply do not have enough services to cover the needs of many of the city's 224,000 students with disabilities³;
10. In March 2021, the NYC Independent Budget Office published "*Carter Case*" *Spending for Students With Special Needs Continues to Grow Rapidly*", that shows the city spent \$710 million in FY 2020, up 500% in 10 years, for nearly 14,000 students, but the IBO has not been able to obtain demographic, geographic or any other data on these students;
11. Many Carter Cases involve students with dyslexia and autism spectrum disorders whose needs are not met in their local school even when Orton Gillingham (OG) and other intervention methods are implements in Integrated Co-Teaching (ICT) Classroom settings⁴;
12. Many Carter Cases involve students with physical disability, hearing impairment, speech/language impairment, visual impairment, whose needs are not met because of physical barriers that potentially limit access at their local school⁵;
13. Currently, the NYC DOE and School Construction Authority (SCA) do not widely fund or build new schools or classroom space based on the IDEA status of students that are leaving the public school system and seeking Carter/Conner status;

¹ <https://law.justia.com/cases/federal/district-courts/FSupp2/34/795/2462659/>

² <https://www.documentcloud.org/documents/6025929-NYCDOE-Compliance-Assurance-Plan-May-2019.html>

³ <https://ny.chalkbeat.org/2019/5/28/21108256/surge-of-complaints-by-parents-of-special-education-students-sparks-crisis>

⁴ <https://www.usatoday.com/in-depth/news/education/2020/02/09/disability-special-education-dyslexia-doe-nyc-sped-private-placement/4651419002/>

⁵ <https://sites.ed.gov/idea/regs/b/a/300.8>

14. Private schools that serve Carter and Conner students continue to expand and provide models for the DOE, such as Churchill School⁶ & Center, The Aaron School⁷ and Winston Preparatory School of NY⁸; and
15. NYC DOE's Hybrid Learning Plan has erected an even higher barrier of access for Students with IEPs to received their legally mandated services⁹;

Therefore Be it Resolved Community Board 2 urges the Mayor, City Council, and Elected officials to:

1. Centralize Carter and Connors procedural information and support to create equity and access for all by eliminating the prohibitive factors families face when pursuing these cases, i.e. legal expenses, upfront tuition fees, time requirement, and language access;
2. Call on the Comptroller's office and DOE to conduct an audit on the DOE implementation and efficacy of Carter Cases, resulting in a report that includes demographic, geographic, racial, socio-economic concentration, disability classification, and other data for students receiving Carter Case funding;
3. Utilize the data gathered in the aforementioned report to develop curriculum and variety of programs to support and teach children with disabilities *within* current schools and develop and maintain programs as to best serve these students with disabilities within the public-school system;
4. Mandate that the NYC DOE address the fundamental and systemic problems with their delivery of special education services by expanding the [School Age Special Education Data Reports](#) to include:
 - a. Racial/age/geographical/gender demographics of students affected;
 - b. Data on programs to support students with autism spectrum disorders;
 - c. Data on the 2019 [I READ](#) literacy program for early grade ICT classrooms;
5. Urge the NYC DOE and School Construction Authority (SCA) to create and fund programs, like those offered by the planned Essex Crossing and the Bleecker Street schools, in its Five-Year Capital Plan, and explore the possibility of creating a DOE public school program for dyslexic students, based on the population size of identified students; and
6. Urge NYC DOE and School Construction Authority (SCA) to fund and create programming, and build classroom space based on the IDEA status of students that are leaving the public school system and seeking Carter/Conner status and on the population size of identified students.

VOTE: Unanimous, with 46 Board Members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,

⁶ <https://www.churchillschoolnyc.org/about>

⁷ <https://www.privateschoolreview.com/aaron-school-profile>

⁸ <https://www.winstonprep.edu>

⁹ <https://gothamist.com/news/parents-and-lawmakers-fear-nycs-special-needs-students-are-falling-far-behind>

Jeannine Kiely, Chair
Community Board #2, Manhattan

Patricia Laraia, Chair
Schools and Education Committee
Community Board #2, Manhattan

JK/EM

- c: Hon. Carolyn Maloney, Congresswoman
- Hon. Jerrold Nadler, Congressman
- Hon. Brad Hoylman, NYS Senator
- Hon. Brian Kavanagh, NYS Senator
- Hon. Deborah J. Glick, NYS Assembly Member
- Hon. Yuh-Line Niou, NYS Assembly Member
- Hon. Jumaane Williams, NYC Public Advocate
- Hon. Gale Brewer, Manhattan Borough President
- Hon. Margaret Chin, Council Member
- Hon. Carlina Rivera, Council Member
- Hon. Mark Treyger, NY City Council, Chair, Committee on Education
- Hon. Helen Rosenthal, Council Member
- Hon. Daniel Dromm, Council Member
- Sayde L. Campoamor, Director of Community Affairs, NYC DOE
- Marisol Rosales, Executive Superintendent, Manhattan, NYC DOE
- Kelly McGuire, incoming District 2 Superintendent, NYC DOE
- Hillary Casado, Principal, PS 3
- Kelly Shannon, Principal, PS 41 Greenwich
- Renny Fong, Principal, PS 130 Hernando
- Jacqui Getz, Principal, MS 297 75 Morton
- Isora Bailey, Principal, NYC iSchool
- Daphne Perrini, Principal, Harvey Milk High School
- Kate Burch, Principal, Harvest Collegiate High School
- Jaivelle A. Reed, Principal, Chelsea Career and Technical Education High School
- Rachel Seher, Principal, City-As-School High School
- Melissa H. Silberman, Head of School, Broome Street Academy
- Matthew Chook and Len Silverman, D2PC Co-Presidents
- Leonie Haimson, Executive Director, Class Size Matters
- Yolanda Smith, Senior Budget Education Analyst, NYC Independent Budget
- Jasmine Gripper, Executive Director, Alliance for Quality of Education

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Meisha Ross Porter
Chancellor, NYC Department of Education
52 Chambers Street
New York, NY 10007

Jasmine Gripper
Executive Director, Alliance for Quality Education
726 Broadway, 5th Floor
New York, NY 10003

Dear Governor Cuomo, Mayor de Blasio, Speaker Johnson, Chancellor Porter, and Executive Director Gripper:

At its Full Board meeting April 22, 2021, Community Board #2, adopted the following resolution:

Funding for Smaller Classes for Fall 2021

Whereas:

1. NYC schools continue to have the largest average class sizes in the state, and NY's highest court determined that public school class sizes were too large to provide students with their constitutional right to a sound basic education¹;
2. Reducing class size has proven to be one of the best ways to improve student learning, lower teacher attrition rates and disciplinary problems, and narrow achievement and opportunity gaps between racial, gender, and economic groups²;

¹ https://www.law.cornell.edu/nyctap/I03_0084.htm

² <https://nepc.colorado.edu/files/publications/Mathis%20RBOPM-9%20Class%20Size.pdf>

3. NYC schools are due to receive approximately \$7 billion in federal funds to be spent over the next two to three years, and more than \$530 million in additional state funds next year, rising to \$1.3 billion annually over the next three years in increased Foundation Aid;
4. The additional Foundation Aid is the result of the decision in the Campaign for Fiscal Equity (CFE) lawsuit, in which the state's highest court determined NYC students had been denied their constitutional right to a “sound basic education”, in part because their classes were too large³;
5. The 2007 Contracts for Excellence (C4E) law, which settled the CFE case, required NYC to reduce class size in all grades; and yet, class sizes have increased since that decision was made over 15 years ago;
6. The City Council has proposed in its [Preliminary Budget Response](#) that \$250 million be allocated towards an initiative to lower class size next year, targeted for struggling schools with particularly vulnerable students;
7. The Mayor and the Council have now agreed to fully fund Fair Student Funding at about \$600 million and the Council has proposed \$110 million in spending to ensure that every public school has at least one full-time school counselor and one full-time social worker, as well as other necessary supports for students;
8. \$250 million could pay the salaries of, roughly, 2,500 new teachers, which could reduce the size of 10,000 classrooms – as adding a new teacher lowers class size for all the other students in a school in the same grade or subject;
9. Smaller classes lead to better grades and test scores, stronger student engagement, fewer disciplinary referrals, and higher graduation rates, especially for students who need help the most;
10. Fewer than half of all NYC students would be able to attend school full-time next year with current class sizes if there was a need for three-feet of social distancing; and
11. Due to the COVID-19 pandemic, and the potential need for social distancing next year, smaller classes will be essential to the health, safety and emotional wellbeing of our students, as well as their academic achievement.

Therefore Be It Resolved, Community Board 2 urges the Mayor, the Department of Education Chancellor, Speaker Corey Johnson, and the members of the City Council and Elected officials to:

1. Ensure that in the final, negotiated budget for FY 2022, at least \$250 million is allocated to hire 2,500 additional teachers to lower class size, with a priority on K-5, and in school communities that have suffered a disproportionate impact of the pandemic;
2. That there also be rigorous reporting requirements for DOE and accountability provisions attached to this funding so that smaller classes actually result from this funding;
3. Mandate that the DOE partner with SUNY and CUNY teacher workforce diversity programs including [Teacher Opportunity Corps](#) (TOC II) and [NYC Men Teach](#) to fill a significant number of these new positions;
4. That the final budget shall also contain \$110 million to ensure that every public school has at least one full-time school counselor and one full-time social worker;
5. Permanently incorporate fully remote learning into the school system to support teachers, students and families that choose to, or have to, remain remote post-pandemic, for the school year 2021-2022, and develop structures and policies for students wishing to engage in remote learning for

³ https://www.law.cornell.edu/nyctap/I03_0084.htmhttps://www.law.cornell.edu/nyctap/I03_0084.htm

school years beyond including funding for associated technology infrastructure and professional development;

6. Require DOE to secure more private spaces such as Pre-K Centers; Community Based Organizations (CBOs), that are already NYC funded early childhood education providers⁴ to create more space in schools by relocating Pre-K classes currently in public schools to stand-alone or CBO sites;
7. That over the next four years, DOE phase in lower class sizes in all schools, which will require the creation of more classroom space and building and leasing more schools with city and state funds, as well as the additional federal funds that will likely result from the Infrastructure bill proposed by President Biden;
8. Require DOE to build out new schools in buildings that private developers have reserved space for public schools, such as Essex Crossing and Bleecker School; and
9. Require the DOE to immediately lease or purchase the buildings where at least 17 Catholic Schools were closing in the wake of the pandemic⁵; and
10. There is no longer any excuse for Mayor de Blasio and future Mayors to deny NYC students their constitutional right to smaller classes.

VOTE: Unanimous, with 46 Board Members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,



Jeannine Kiely, Chair
Community Board #2, Manhattan



Patricia Laraia, Chair
Schools and Education Committee
Community Board #2, Manhattan

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Hon. Scott M. Stringer, NYC Comptroller
Hon. Jumaane Williams, NYC Public Advocate
Hon. Gale Brewer, Manhattan Borough President
Hon. Margaret Chin, Council Member

⁴ <https://cccnewyork.org/cbo-centers-are-essential-to-education> Now more than ever they will need that opportunity for health and safety and to recover from the losses they've suffered during the Covid pandemic.ng-nycs-young-children/

⁵ <https://abc7ny.com/what-catholic-schools-are-closing-school-closings-nyc-which-2020/6309217/>

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