

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Department of Education's Administration of the Early Grade Class Size Reduction Program

FM09-113A

September 9, 2009



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the Department of Education's administration of the Early Grade Class Size Reduction Program.

DOE provides primary and secondary education to over one million New York City students (from pre-kindergarten to grade 12) in more than 1,500 schools. It prepares elementary and middle school students to meet grade level standards in reading, writing, and mathematics, and high school students to pass Regents exams and to meet specific graduation requirements. Audits such as this provide a means of ensuring that City agencies fulfill their mandated responsibilities, are accountable for the use of public funds, and make accurate and reliable information available to the public.

The results of our audit, which are presented in this report, have been discussed with Department officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the
Department of Education's Administration of the
Early Grade Class Size Reduction Program**

FM09-113A

AUDIT REPORT IN BRIEF

According to the State Education Department (SED), research indicates that class size reduction in early grades (kindergarten to third grade) leads to higher student achievement. To reduce class size, the State passed legislation to create the Early Grade Class Size Reduction program (EGCSR). In 2007, EGCSR funding was incorporated into State Foundation Aid. Foundation Aid funding is used for increases in general operating costs and ongoing programs, with the major part of the funding also subject to the provisions of the State's 2007 Contracts for Excellence legislation. That legislation required DOE to develop a five-year plan to reduce class size. DOE's plan was approved on November 19, 2007, and DOE continues to receive EGCSR funds to reduce class size in kindergarten to third grade.

Although the State combined EGCSR funding with Foundation Aid in 2007, during Fiscal Year 2008, DOE administered the program under the original funding requirements. The EGCSR program used both State and federal funds, each funding stream having its own program requirements. State funds must be used where space (capacity) is available to create new classrooms and reduce class size to an average of 20 or fewer students. New classes are defined as classes created in addition to those that would have existed without the EGCSR funds. DOE is precluded from using EGCSR funds to supplant (substitute for) City tax levy money that would normally pay for classrooms. In Fiscal Year 2008, DOE received approximately \$88.8 million from the State and supplemented the program with \$14.9 million in federal contributions and \$76.2 million in City tax levy funds to maintain the total EGCSR classrooms established in previous years. The total of these funds, \$179.9 million, was to be used to create approximately 1,600 additional classes, with an expectation of reducing the average early grade class size to 20 students.

The objective of this audit was to determine whether those schools that received EGCSR funding created the number of classrooms required to reduce class size.

Audit Findings and Conclusions

During Fiscal Year 2008, DOE did not spend \$48.4 million (26.9 percent) of the \$179.9 million of EGCSR funds in accordance with EGCSR guidelines and fell significantly short of providing the required number of additional classrooms paid for with State EGCSR funds. DOE used nearly \$46.8 million of the \$179.9 million earmarked for reducing early grade class size to supplant \$46.8 million in tax levy funds. By using EGCSR funds in place of tax levy funds, schools free-up less restrictive money to spend on other budget items instead of further reducing classroom averages.

The \$46.8 million should have been spent on creating an additional 414 general education classes at 245 schools across the City, but these funds were improperly used to pay for teacher positions that would have existed without the EGCSR program. The tax levy monies that should have been spent to pay those salaries were spent on other budget items.

Of the total \$46.8 million that was misused, 115 elementary schools used more than \$17.9 million to supplant tax levy funds instead of creating 159 additional classes, even though they had the need and capacity to add classrooms. An additional \$21 million was improperly allocated to 108 schools that did not have the capacity to add 185 additional classrooms. Finally, \$7.9 million was given to 46 schools to add 70 additional classrooms, which already had class sizes of 20 students or less in kindergarten to third grade and consequently had no need of additional EGCSR funding.

In addition, 15 schools misspent \$1.6 million, claiming to have spent it on per diem absence coverage, cluster teachers, and teacher removals (transfers, resignations, maternity leave, etc.) instead of using the funds to create 14 new classrooms.

DOE could have reduced average class size for general education in kindergarten through third grade if new classes had been created. DOE's insufficient monitoring and planning, and poor allocation of funds, however, significantly contributed to the failure to create the required number of classrooms. Furthermore, enhanced ISC oversight could have identified schools that received EGCSR funds but did not comply with early grade guidelines, lacked the capacity to add classrooms, or did not need additional classrooms.

Audit Recommendations

Since DOE now states that it conforms to the more flexible federal EGCSR guidelines, the audit's recommendations address the new federal policy in place as of Fiscal Year 2009. We make 8 recommendations to the DOE Central Office (Central) and Integrated Service Centers (ISCs), among them that:

DOE Central should:

- Continue to give priority to new classroom formation.

- Require schools to prepare a formal annual plan detailing whether funds will be used to add classrooms or to fund push-in teachers.
- Require ISCs to monitor the use of EGCSR funding to verify that it is in accordance with the plans established by those schools within their districts.

ISCs should:

- Closely monitor the schools that plan to add a classroom to ensure that funds are used only to create classrooms additional to those that would have existed without the EGCSR funds.
- Make use of Enrollment, Capacity, and Utilization Reports and projected enrollments for those schools that plan to add a push-in teacher to determine whether an additional classroom can be added instead.

INTRODUCTION

Background

The DOE provides primary and secondary education to over one million New York City students (from pre-kindergarten to grade 12) in more than 1,500 schools in districts within 10 regions. It prepares elementary and middle school students to meet grade level standards in reading, writing, and mathematics, and high school students to pass Regents exams and to meet specific graduation requirements.

According to the SED, research indicates that class size reduction in early grades (kindergarten to third grade) leads to higher student achievement. To reduce class size, the State Legislature created the EGCSR program through an amendment of Section 3602 of the State Education Law. Section 3602(37) was later repealed by the passage of Chapter 57 of the New York State Laws of 2007, and EGCSR funding was incorporated into State Foundation Aid. Foundation Aid funding is used for increases in general operating costs and ongoing programs, with the major part of the funding also subject to the provisions of the State's 2007 Contracts for Excellence. That legislation required DOE to develop a five-year plan to reduce class size. DOE's plan was approved on November 19, 2007, and DOE continues to receive EGCSR funds to reduce class size in kindergarten to third grade.

The EGCSR program uses both State and federal funds, each funding stream having its own program requirements. State funds must be used where space (capacity) is available to create new classrooms and reduce class size to an average of 20 or fewer students. New classes are defined as classes created in addition to those that would have existed without the EGCSR funds. DOE is precluded from using EGCSR funds to supplant (substitute for) City tax levy money that would normally pay for classrooms. Also, State EGCSR funds cannot be used to support a teacher who shares a classroom with a teacher supported by tax levy funds.

For the previous seven years, the State has provided \$88.8 million to fund approximately 1,600 EGCSR classrooms annually. To counter rising costs, DOE has contributed additional tax levy and federal funds to sustain State EGCSR program efforts. In Fiscal Year 2008, DOE supplemented the program with \$14.9 million in federal contributions and \$76.2 million in City tax levy funds. The total of these funds, \$179.9 million referred to as State EGCSR funds, was to be used to create approximately 1,600 additional classes, with an expectation of reducing the average early grade class size to 20 students.

Although the State combined EGCSR funding in Foundation Aid in 2007, during Fiscal Year 2008, the year covered by this audit, DOE administered the program under the original funding requirements. In Fiscal Year 2009, DOE combined the State and federal programs and now operates the program under federal guidelines, which are more flexible. EGCSR funding can now be used either to reduce class size or to add "push-in" teachers—teachers who share a classroom with another teacher and who provide extra academic support to individuals or small groups of students.

Several factors are considered in determining how EGCSR funds are distributed, such as building capacity, average class size, academic performance, and overall projected enrollment. Each borough has its own Integrated Service Center (ISC), which provides assistance with mandated and operational services to all schools in the borough.¹ The ISC works directly with Principals to ensure that services are effectively delivered to the schools. With regard to EGCSR, ISCs and school Principals work together to determine whether a school should be eligible to receive EGCSR funding.

Objective

The objective of this audit was to determine whether those schools that received State EGCSR funding created the number of classrooms required to reduce class size.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The subject of this audit was the \$179.9 million used to create approximately 1,600 additional classrooms. The scope of this audit was July 1, 2007, to June 30, 2008 (Fiscal Year 2008). To achieve our audit objectives, we reviewed the 2007-2008 Class Size Report—Detailed School Level Data,² Summary of School Allocation Memorandum No. 2 (SAM), Fiscal Year 2008 Early Grade Class Size Reduction, the DOE Budget Operations and Review final EGCSR allocation for 2007–2008, the New York City Five Year Class-Size Reduction Plan (updated November 8, 2007), and Section 3602(37) of the Education Law.

To obtain an understanding of DOE’s administration of the EGCSR program, we interviewed DOE officials, including each of the five ISC Deputy Executive Directors, an Assistant Budget Director from Budget Operations and Review, and the Auditor General. We also interviewed officials responsible for compiling the DOE 2007-2008 Class Size Report. We documented our understanding through written narrative and flowcharts.

¹ ISCs also offer schools assistance with most mandated and operational services, including human resources, payroll, budget and procurement, transportation, food services, facilities’ extended use, grant management, technology, health, student suspensions, safety, youth development, legal counseling, and special education. The Staten Island ISC also services districts 17, 18, 20, 21, and 22 in Brooklyn.

² The Detailed School Level Data report contains average class sizes for each school, broken down by grade and program type (General Education, Self-Contained Special Education, Collaborative Team Teaching) for kindergarten through ninth grade.

Information pertaining to elementary schools published in the Class Size Report (which is mandated by the City Council) was obtained from the DOE Automate The Schools (ATS) system. The Student Population Unit of the Office of the Auditor General (OAG) performs an October 31 Annual Register Verification to ensure the accuracy of the information in ATS. This information directly affects budget allocations as well as class size data reporting. The 2007-2008 Class Size Report presented data as of January 23, 2008, and reflects register adjustments made after the October 31 Annual Register Verification. Consequently, we relied on the integrity of the information as verified by the OAG and did not independently test the data.

To determine whether schools that received EGCSR funding created all the classrooms required, we reviewed the 2007-2008 Class Size Report and omitted grades four through twelve. We omitted Gifted and Talented, Self Contained (special education), and Collaborative Team Teaching (team teaching) classes to focus on only general education classes for our tests. We then omitted all schools that did not receive EGCSR funding.

DOE's Look-Up Chart was used to determine the number of classrooms that would have been funded without the EGCSR program (i.e., strictly through tax levy funds).³ (See Attachment I for the Look-Up Chart.) We then used the final EGCSR allocation obtained from Budget Operations and Review, and added the number of EGCSR classes allocated to the number of tax levy classes to arrive at the total number of classes each source of funding should have created citywide. We then compared the total number of classes a given school was required to create to the number of classes reported for that school on the Class Size Report to determine whether EGCSR funds were used to create classrooms additional to those paid for with tax levy funds.

For the schools where EGCSR funds were not used to create new classrooms, we reviewed Galaxy, the DOE on-line Budget Tracking System, to determine whether the EGCSR funds were appropriately budgeted for teachers in dedicated EGCSR classrooms and not used to pay for other teachers or for other school business. Further, we consulted the DOE 2007-2008 Enrollment, Capacity, and Utilization Report to determine whether those schools had the capacity to add an additional class. Finally, for schools that had capacity but did not add a classroom, we analyzed each grade, from kindergarten to third grade, to determine whether an additional class was actually needed to reduce class size.

To assess the reliability of DOE's Automate the Schools system, Galaxy (on-line Budget Tracking System) and Enrollment, Capacity, and Utilization Report, we talked with Department officials about data quality control procedures and reviewed relevant documentation.

³ A Look-Up Chart is used by DOE officials to determine the number of classes by correlating specific numbers of tax levy and program classes with specific enrollment levels. For example, if a school has 128 students in first grade, using DOE's standard allocation methodology of 25 students to one class, the Look-Up chart would show that the school should have five classes funded with tax levy funds. If the school was to receive EGCSR funds, an additional (sixth) class should be funded to comply with the goal of 20 students per class.

Discussion of Audit Results

The matters covered in this report were discussed with DOE officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference held on August 14, 2009. On August 18, 2009, we submitted a draft report to DOE with a request for comments. We received a written response from DOE on September 1, 2009.

DOE officials stated in the response that “we do not understand the purpose of this audit. The Comptroller has elected to assess the Department’s compliance with a State grant program that does not exist. As the Comptroller acknowledges, the grant funding . . . was discontinued after 2006-2007 school year. The Comptroller has audited the Department’s administration of this program in the 2007-2008 school year, *after the Program ceased to exist*. [Emphasis in original.] Accordingly, the Department rejects the Comptroller’s findings and recommendations.”

DOE officials further responded that the audit’s methodology was faulty since the auditors relied upon information that became available well after funding allocations were made. They stated that the auditors evaluated the program’s results using actual audited enrollment data, while DOE had to allocate funds based on inexact projections. They further asserted that the 2007-2008 Enrollment, Capacity and Utilization Report alone was not sufficient to determine a school’s capacity to create new classrooms, that the report was not available when allocations were made, and that the Comptroller’s methodology essentially ignored these timing issues.

We believe that in dismissing our findings DOE also dismisses its own responsibilities. The DOE response attempts to cloud the serious issues raised in the report by asserting that the program simply did not exist. Although the specific EGCSR legislation was repealed, DOE was required by new legislation, Contracts for Excellence, to develop a five-year class size reduction plan. That plan, as written by DOE and approved by the State on November 19, 2007, specifically stated that “the Department continues to be committed to reducing class size in early grades (i.e., grades K-3) via the Early Grade Class Size Reduction program.” This commitment was reflected in DOE’s own guidelines issued for the year in question, which state that the EGCSR allocation “remains separate in light of that requirement.” Those very guidelines were used in this audit to measure DOE’s performance. They clearly state, “Former State funds must be used to reduce class size to an average of 20 or fewer students and must be used to create new classes. . . . Funds cannot be used to create classes that already have to be organized because of other programs.”

Furthermore, a systematic evaluation of the results of any government program is an essential component of good management. Had DOE performed such an evaluation in previous years, the vast majority of the \$48 million cited in this report could have been used for creating additional classrooms where they were needed. Since DOE did not ensure that schools used EGCSR funds as planned and did not detect misuse of those funds, we question how much of \$1.03 billion in EGCSR funds allocated by DOE during the previous seven years was spent for purposes other than those originally intended.

Moreover, our audit measured the results of DOE's actions after the funds were allocated to determine whether schools actually used EGCSR funding as intended. While DOE claims the information used in the analysis was available only after the allocations had already been made, there was no evidence to suggest that DOE had ever previously performed a school level evaluation to verify that the schools receiving EGCSR funds spent the funds in conformance with EGCSR requirements.

As this report indicates, DOE fell seriously short of affording children in kindergarten to third grade a significantly improved educational setting, even when it had designated resources available to do so. DOE should consider performing year-end reviews of all such earmarked funds if it is to be accountable for the conscientious and appropriate use of public funds levied for specific benefits to children.

The full text of DOE's response is included as an addendum to this report.

FINDINGS

During Fiscal Year 2008, DOE did not spend \$48.4 million (26.9 percent) of the \$179.9 million of EGCSR funds in accordance with EGCSR guidelines and fell significantly short of providing the required number of additional classrooms paid for with State EGCSR funds. DOE used nearly \$46.8 million of the \$179.9 million in EGCSR funds earmarked for reducing early grade class size to supplant \$46.8 million in tax levy funds. By using EGCSR funds in place of tax levy funds, schools free-up less restrictive money to spend on other budget items instead of further reducing classroom averages. The \$46.8 million should have been spent on creating an additional 414 general education classes at 245 schools across the City, but these funds were improperly used instead to pay for teacher positions that would have existed without the EGCSR program. In addition, 15 schools misspent \$1.6 million on per diem absence coverage, cluster teachers, and teacher removals (transfers, resignations, maternity leave, etc.) instead of using the funds to create 14 new classrooms.⁴

DOE could have reduced average class size for general education in kindergarten through third grade if new classes had been created. The DOE's insufficient monitoring and planning, and poor allocation of funds, however, significantly contributed to the failure to create the required number of classrooms. Furthermore, enhanced ISC oversight could have identified schools that received EGCSR funds but did not comply with early grade guidelines, lacked the capacity to add classrooms, or did not need additional classrooms.

Table I below shows the allocation of EGCSR funds, by ISC, the amount of EGCSR funds used to supplant tax levy funds, and the number of classes not created during Fiscal Year 2008.⁵

⁴A cluster teacher is specially assigned to teaching elementary classes in music, art, science, health education, other subjects, or the fundamental skills, and is not assigned a homeroom class.

⁵ Although DOE contributed \$76.6 million in tax levy funds to sustain the number of EGCSR classrooms established during previous years and voluntarily elected to keep the program in its original form, the amounts cited in Table I are nonetheless considered to have been misused or used to supplant tax levy funds since the EGCSR program was subject to DOE's self-imposed restrictions during Fiscal Year 2008, the period covered by this audit.

Table I

**Schedule of State EGCSR Funds as Allocated and
As Used to Supplant Tax Levy Funds**

ISC	Funds Expended	Classrooms Allocated	Funds Used to Supplant	Funds Misspent	Total Funds Misused	Classrooms Not Created
Manhattan	\$25,371,814	229	\$ 8,898,417	\$348,276	\$ 9,246,693	83
Bronx	40,664,115	371	13,133,713	858,114	13,991,827	127
Queens	41,621,525	357	9,860,799	455,682	10,316,481	87
Brooklyn	38,878,097	352	10,058,566	—	10,058,566	90
Staten Island	33,443,316	286	4,824,093	—	4,824,093	41
Total	\$179,978,867	1,595	\$46,775,588	\$1,662,072	\$48,437,660	428

**DOE Used Nearly \$46.8 Million in EGCSR Funds
To Supplant Tax Levy Funds**

During Fiscal Year 2008, DOE used \$46.8 million of EGCSR funds to supplant tax levy funds at 245 schools across the City.⁶ Of the total \$46.8 million that was misused, 115 elementary schools used more than \$17.9 million to supplant tax levy funds instead of creating 159 additional classes, even though they had the need and capacity to add classrooms. An additional \$21 million was improperly allocated to 108 schools that did not have the capacity to add 185 additional classrooms. Finally, \$7.9 million was given to 46 schools to add 70 additional classrooms, which already had class sizes of 20 students or less in kindergarten to third grade and had no need of additional EGCSR funding. Insufficient monitoring and poor allocation of funds contributed to the failure to create additional classrooms.

Schools that did not create or need additional classrooms should have returned the funds to be reallocated to schools in need. Instead, they supplanted tax levy dollars, which allowed Principals to use the freed-up tax levy money at their discretion. See Table II below for a breakdown, by ISC, of the amount of EGCSR funds schools received, but used to supplant tax levy funds.

⁶ Twenty-four schools had multiple exceptions. Therefore, there were 245 schools that supplanted tax levy funds, not 269.

Table II

**EGCSR Funds Used to Supplant Tax Levy Monies,
By ISC**

ISC	Schools with Space That Did Not Create New Classes	Schools without The Capacity That Received EGCSR Funds	Schools without a Need That Received EGCSR Funds	Total
Manhattan	\$3,159,709	\$3,766,612	\$1,972,096	\$8,898,417
Bronx	3,702,446	8,005,487	1,425,780	13,133,713
Brooklyn	5,362,416	2,015,236	2,680,914	10,058,566
Queens	3,593,912	5,557,255	709,633	9,860,800
Staten Island	<u>2,093,295</u>	<u>1,659,381</u>	<u>1,071,416</u>	<u>4,824,092</u>
Total	\$17,911,778	\$21,003,971	\$7,859,839	\$46,775,588

Schools That Had the Space and Need Did Not Create New Classes with \$17.9 Million in EGCSR Funds

DOE allocated \$17.9 million in EGCSR funding to 115 schools that had the capacity and need to add classrooms. However, these 115 schools did not add an additional 159 classrooms with the EGCSR funding received. The \$17.9 million should have been used to hire teachers and create additional classrooms to lower the average class size. DOE’s SAM, No. 2, states, “Funds cannot be used to create classes that already have to be organized because of other programs.” In other words, EGCSR funds cannot be used to pay for classes and teacher salaries that were previously paid with other funding (i.e., tax levy). It appears that school Principals used EGCSR funds for classrooms that should have been paid for or were previously paid for with tax levy funds—a clear violation of SAM, No. 2.

To determine the number of classes needed with a goal of 25 students per class, and the number of classes needed with a goal 20 students per class, we used the Look-Up Chart. Classes listed under the 25 students per class section are the classes funded with tax levy money. Schools that receive EGCSR funding are required to create classes in addition to those funded with tax levy money to achieve a class size average of 20 students per class.⁷

For example, Bronx P.S. 36 had 94, 87, 90, and 76 students in kindergarten to third grade, respectively, and was allocated EGCSR funding for four additional classes. Using the Look-Up Chart, P.S. 36 should have created 15 tax levy classes (with 25 students) plus an additional three EGCSR classes, for a total of 18 classes (according to the Look-Up Chart only

⁷ The lookup chart contains several sections where the recommended number of classrooms is the same regardless whether the goal is to organize 20 or 25 students per class; therefore it may not be necessary to add additional classes. Although the Look-Up Chart did not require the additional class, certain schools were included in this section because they received EGCSR funds, did not add the required number of additional classes, and had at least one grade (kindergarten to third grade) with an average class size above 21 students.

three new classes were necessary). Table III below highlights general education data for P. S. 36, which was obtained from the 2007-2008 Class Size Report and the Look-Up Chart.

Table III

Abstract of Class Size Report
Bronx P.S. 36

Grade	Number of Students	Average Class Size	Actual Number of Classes	Look-Up Chart Number of Classes	
				25 Students	20 Students
Kindergarten	94	23.5	4	4	5
1 st Grade	87	29	3	4	4*
2 nd Grade	90	30	3	4	5
3 rd Grade	76	25.3	<u>3</u>	<u>3</u>	<u>4</u>
Total Classes			13	15	18

* P.S. 36 received funding for one more additional class than was suggested by the Look-Up Chart.

P.S. 36 received \$454,869 to create four EGCSR classes in addition to the 15 classes that would have normally been paid for with tax levy funds. However, Bronx P.S. 36 created a total of only 13 classes instead of the 18 suggested in the Look-Up Chart. According to the Galaxy budgeting system, P.S. 36 paid for 3 of the 13 classes using EGCSR funds, thus using three-fourths, or \$356,835, of the EGCSR funds received instead of the tax levy funds that should have funded these classes. According to P.S. 36, the remaining EGCSR funds were used to pay the salary of a cluster teacher instead of creating the additional classroom—a violation of EGCSR guidelines. As a result, average class sizes were not reduced and were significantly above the early class size goal of 20 students per class. Had P.S. 36 followed the Look-Up Chart, average early grade class sizes could have had 18.8, 21.7, 18, and 19 students per class in kindergarten to third grade, respectively. (It should be noted that this school could have added the necessary classrooms.)

Similarly, Brooklyn P.S. 327 was allocated \$334,744 to create three EGCSR classes and had an enrollment of 62, 76, 53, and 83 students in kindergarten to third grade, respectively. According to the Look-Up Chart, P.S. 327 should have created 10 tax levy classes plus the 4 EGCSR classes for a total of 14 classes. However, P. S. 327 received EGCSR funds for only three additional classes. The Class Size Report indicated that P.S. 327 created 11 general education classes. Consequently, P.S. 327 created only one of the three early grade classes. The one EGCSR class it did create resulted in a reduction of average class size from 31 to 20.7 in kindergarten. The remaining two EGCSR classes could have been added to any combination of first through third grades, but were not. Consequently, P.S. 327 supplanted \$223,163 in tax levy dollars, and all three grades had class sizes above 20, with highest being 27.7 in third grade. Table IV below highlights general education data for P.S. 327, which was obtained from the 2007-2008 Class Size Report and the Look-Up Chart.

Table IV

Abstract of Class Size Report
Brooklyn P.S.327

Grade	Number of Students	Average Class Size	Actual Number of Classes	Look-Up Chart	
				Number of	Classes
				25 Students	20 Students
Kindergarten	62	20.7	3	2	3
1 st Grade	76	25.3	3	3	4
2 nd Grade	53	26.5	2	2	3
3 rd Grade	83	27.7	<u>3</u>	<u>3</u>	<u>4</u>
Total Classes			11	10	14

Based on our analysis, the 115 schools cited here that had a need to reduce early grade class size had the space to add classrooms and received EGCSR funds did not use the funds to add the required number of classrooms. Each additional class created would have benefited not only the students who filled them, but also the other general education classes within the entire grade.

Inappropriate Allocation of \$21 Million in EGCSR Funds to Schools That Did Not Have Space to Add Classrooms

DOE improperly allocated \$21 million in EGCSR funds to 108 schools that did not have the space to create an additional 185 classrooms. SAM No. 2 states, “State EGCSR funds can only be allocated to schools where space is readily available to add new classes.” Since lack of school space impeded the creation of EGCSR classrooms and the EGCSR funds were retained by the schools, \$21 million of EGCSR funds was used to substitute for a like amount in tax levy monies.

For example, Bronx P.S. 64 in the Bronx was allocated \$562,790 in EGCSR funds to add five classes. According to the Look-Up Chart, for the number of students in general education classes reported by DOE, P.S. 64 created only its tax levy classes and did not create the additional EGCSR classes it received funding for. Consulting the Enrollment, Capacity, and Utilization Report for 2007-2008 revealed that P.S. 64 did not have the capacity that year and therefore was unable to add the EGCSR classrooms. Consequently, average class sizes in Kindergarten to third grade were 24, 24.6, 23, and 25.8, respectively.

Although schools may have had a need for additional funds due to enrollment and academic needs, State EGCSR funds should have been given to only those schools that had the space to add additional classrooms. Alternatively, when space is not available, DOE had the ability to allocate federal EGCSR funds, which are less restrictive. DOE guidelines for the federal EGCSR funds state, “If space is not available to form additional classes, funds [federal

EGCSR] may support push-in teachers to supplement the instructional program where space is not available to create new classes.”

For example, Brooklyn Public P.S. 160 was initially allocated funding for three State EGCSR classes, totaling \$333,973. However, \$223,049 for two classes was transferred from the State EGCSR funds and replaced with federal EGCSR funds totaling \$185,106, since the school was well over capacity. It should be noted, however, that P.S. 160 was able to create the one State EGCSR class with the funds it retained, lowering its class size average from 24.8 to 20.7 in second grade—despite being nearly 20 percent over capacity.

Clearly, school capacity is a major impediment to new classroom formation. Schools that did not have the capacity to create additional classrooms should not have received State EGCSR funding. ISCs and Principals have a working knowledge of the limitations of their schools and should have managed the restricted EGCSR funds within those constraints. By retaining these funds, schools were allowed to supplant tax levy dollars and use the freed-up money at their discretion.

Schools without a Need Used \$7.9 Million in EGCSR Funding

DOE allocated \$7.9 million of EGCSR funds to create 70 additional classrooms at 46 schools that did not need the funding to achieve class sizes of 20 students or less in kindergarten to third grade. According to the SAM No. 2, classrooms are to be allocated to schools based on “overall projected enrollment in eligible grades.” While projecting enrollment has its limitations, funds that were not needed because schools had early grade classes at or below an average of 20 students should have been returned. Instead, these EGCSR funds were kept by the schools and were used to pay salaries that should have been paid with tax levy money, while the freed-up, less restrictive tax levy money was spent in other areas.

For example, P.S. 38 in Manhattan was allocated three EGCSR classrooms and had 38, 44, 36, and 38 students in kindergarten to third grade, respectively. According to the Look-Up Chart, each grade should have two classes, regardless of whether the goal was to have classes at 20 or 25 students per class. Two classes per grade would have allowed the average class sizes to fall below 20 students in kindergarten, second grade, and third grade, without the use of EGCSR funds. Since average class size for those three grades would have been below 20 without use of EGCSR funds, P.S. 38 did not need two of the three classes. P.S. 38 did have a need to add a first grade class since class size exceeded 20 students. However, P.S. 38 kept the funding for the three classes (two classes it did not need, and the third it did not create). Consequently, P.S. 38 used all of the \$327,324 EGCSR funding it received to replace tax levy funds that should have been used to fund these classes. The EGCSR funds could have been reallocated to other schools that needed to reduce class size.

Misuse of \$1.6 Million in EGCSR Funds

Fifteen schools misspent approximately \$1.6 million of EGCSR funds that should have been used for creating additional classrooms and for the salaries of teachers assigned to the dedicated classrooms. Instead these funds were used to pay for cluster teachers, per diem absence coverage, and teacher removals. The State EGCSR program did permit a portion of the funds to be used for such purposes. SAM NO. 2 states, "Each full (1.0) classroom generates a 0.2 cluster position. . . . These cluster teachers must be the individuals who actually provide coverage to the teachers funded by [the EGCSR] program." However, our review of Galaxy budgets for each of the schools that did not create its required classes revealed that these 15 schools not only spent the money allocated for cluster and absence coverage, but supplemented those areas with funds that should have been spent on creating a new classroom. These schools did not attempt to supplant other funds (as did others previously mentioned), but freely misspent the money. Table V details, by ISC, the number of schools and amount of misspent EGCSR funds.

Table V

Schedule of Misspent Funds, by ISC

ISC	Number of Schools	Amount of Misspent EGCSR Funds
Bronx	7	\$858,114
Queens	4	455,682
Manhattan	4	348,276
Total	15	\$1,662,072

For example, P.S. 304 in the Bronx was allocated \$227,473 in EGCSR funds to add two additional classrooms. As previously stated, part of each EGCSR allocation are funds that can be used for cluster teachers and absence coverage. P.S. 304 should have used \$186,764 to pay the salaries for two teachers in dedicated classrooms, \$37,353 on cluster teachers, and \$3,356 for absence coverage. Applying the Look-Up Chart to the number of pupils in grades kindergarten to third grade revealed that P.S. 304 created only tax levy classes and did not create the additional EGCSR classes. As a result, average class size for each of those grades was more than 23 students. According to Galaxy, P.S. 304 budgeted the entire \$227,473 on per diem absence coverage. Subsequent to the issuance of the draft version of this report, DOE provided documentation stating that these funds were not spent on per diem absence coverage. However, the documentation provided did not indicate where these funds were used, nor whether they were returned. Consequently, DOE did not provide proof that these funds were used in accordance with EGCSR guidelines.

In another example, P.S. 146 in Queens was allocated \$259,158 to add two additional classrooms. P.S. 146 should have used \$213,168 to pay the salaries of two teachers in dedicated classrooms, \$42,634 on cluster teachers, and \$3,356 for absence coverage. Applying the Look-Up Chart to the number of pupils in kindergarten to third grade revealed that P.S. 146 created only tax levy classes and not the additional EGCSR classes. Consequently, average class size for

each those grades was 21 and over. P.S. 146 used a portion of EGCSR money to supplant \$63,044 in tax levy money on a first grade teacher. The remaining EGCSR money was used to pay for cluster teachers, such as allocating \$106,584 to a reading/literacy cluster teacher instead of a classroom teacher.

Had DOE personnel performed a cursory review, they could have easily identified those schools that used EGCSR funds improperly.

RECOMMENDATIONS

Since DOE now follows the more flexible federal EGCSR guidelines, the audit's recommendations address the new federal policy in place as of Fiscal Year 2009.

DOE Central should:

1. Continue to give priority to new classroom formation.
2. Require schools to prepare a formal annual plan detailing whether funds will be used to add classrooms or fund push-in teachers.
3. Require ISCs to monitor the use of EGCSR funding to verify that it is in accordance with the plans established by those schools within their districts.

ISCs should:

4. Closely monitor the schools that plan to add a classroom to ensure that funds are used only to create classrooms in addition to those that would have existed without the EGCSR funds.
5. Make use of Enrollment, Capacity, and Utilization Reports and projected enrollments for those schools that plan to add a push-in teacher to determine whether an additional classroom can be added instead.
6. Require Principals to obtain formal preapproval first if their schools intend to deviate from their plan's original intended use of EGCSR funds.
7. Perform year-end reviews of each school that received EGCSR funding and determine whether the schools complied with their original plans. ISCs should also consider the Principal's efforts to reduce early grade class size when making subsequent year allocations.

OAG should:

8. Consider conducting random reviews of schools that receive EGCSR funding and determine whether the schools complied with program guidelines.

DOE did not address the report's recommendations.



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

OFFICE OF THE CHANCELLOR
52 CHAMBERS STREET - NEW YORK, NY 10037

September 1, 2009

Mr. John Graham
Deputy Comptroller
Audits, Accountancy and Contracts
The City of New York Office of the Comptroller
1 Centre Street
New York, NY 10007-2341

Dear Mr. Graham:

This letter constitutes the New York City Department of Education's (Department's) response to the New York City Office of the Comptroller's (Comptroller) August 18, 2009 draft report (Report) on the Department's Administration of the Early Grade Class Size Reduction Program (Audit Report # FM09-113A).

We do not understand the purpose of this audit. The Comptroller has elected to assess the Department's compliance with a State grant program that does not exist. As the Comptroller acknowledges, the grant funding under the New York State Early Grade Class Size Reduction Program (EGCSR or Program), enacted by the New York State Legislature in 1997 for initiation in the 1999-2000 school year, was discontinued after the 2006-2007 school year. The Comptroller has audited the Department's administration of this program in the 2007-2008 school year, *after the Program ceased to exist*.

The New York State Legislature repealed Education Law § 3602(37), which had governed the Program and restricted the use of Program funds by school districts. Thus, in the audit year, the State funding that had previously been allocated for the Program was fully incorporated into State Foundation Aid. The State Foundation Aid funding that replaced the EGCSR funding was wholly unrestricted operating aid, no different from Department's similarly unrestricted New York City tax levy funding. Accordingly, the Comptroller's assertion that the Department used EGCSR funds, which had become unrestricted dollars, to "supplant" tax levy funds and "misspent" EGCSR funds, according to regulations which were no longer applicable, is nonsensical. Accordingly, the Department rejects the Comptroller's findings and recommendations.

System-wide, the Department used State EGCSR funds, plus significant additional funding from federal grants and local tax levy, to produce a meaningful and steady decline in average class sizes in Grades K-3. Between the 1999-2000 school year, the base year of the Program, and the 2006-2007 school year, the final year of the Program, the Department reduced average class size in kindergarten from 23.9 to 20.7, in Grade 1

from 25.2 to 21.3, in Grade 2 from 25.1 to 21.1, and in Grade 3 from 25.5 to 21.3.¹ In the audit year of 2007-2008, after the Program ceased to exist, the Department voluntarily allocated funds to schools under the carryover title of "State Early Grade Class Size Reduction", and average class size dropped to 20.6 in kindergarten, 21.1 in Grades 1 and 2, and 21.0 in Grade 3.

Background

The Early Grade Class Size Reduction Program was initiated by the New York State Legislature in 1997 "for the purpose of reducing class size in grades kindergarten, one, two and three." NY State Ed Law § 3602(37). The law sets a goal of reducing class size in those grades "to not more than twenty students per class, to the extent the funds available pursuant to this subdivision are sufficient to meet such goal." NY State Ed Law § 3602(37)(b)(i) (emphasis added).

The State Legislature intended to phase in the Program and appropriations were intended to increase annually. The grant funds were to be used by participating districts "in reducing class size or maintaining class size...which shall include but need not be limited to, salaries and benefits for additional teachers, costs of supplies and materials, and certain facilities costs." NY State Ed Law § 3602(37)(i). However, the Program was underfunded from its inception,² and appropriations, intended to increase annually, were capped after the Program's second year in 2000-2001. Accordingly, to maintain any gains in class size reduction, let alone to further such gains, the Department funded an increasing proportion of the classes created above the baseline level with federal and local tax levy funds.

In the base year of the Program, 1999-2000, the State appropriated \$49.20 million in EGCSR funding, enough to fund the teacher salaries and benefits necessary to create 924 new classes in Grades K-3.³ In 2000-2001, the State appropriation was increased to \$88.84 million, and the Department supplemented the Program with \$18.91 million in federal Early Grade Class Size Reduction aid and \$21 million in local tax levy to create 1,589 new early grade classrooms. The State appropriation was thereafter fixed at \$88.84 million, and the Department, due to a steady increase in teacher remuneration, had to dramatically increase its contribution of unrestricted City tax levy funding to the Program

¹ These class size calculations use the methodology consistent with the data published in the annual Mayor's Management Report, and exclude all classes with fewer than five students, special education classes, bridge classes and collaborative team teaching classes.

² The state EGCS statute makes the "basic grant per classroom" a function of a school district's median salary for a sixth-year teacher in 1994-95, and has not accounted for increases in the cost of teacher salaries or benefits. NY State Ed Law § 3602(37)(d).

³ In grades K-3, before consideration of EGCS reduction, the Department requires that tax levy funds be allocated to schools to establish an average class size in the vicinity of 25, with an allowance for "breakage" in a grade of up to one-half of that figure before a new class would have to be created. Accordingly, the Department measures "new classes" created under the Program, on a system-wide basis, by counting the total number of Grade K-3 classrooms in all schools above and beyond the number that would have been created under the 25-to-1 baseline.

simply to maintain the new classes that were created in funding year two. By the final year of the State's Program in 2006-2007, the Department was supplementing the \$88.84 million in State EGCSR funds with \$15 million in federal funds and \$71.17 million in local tax levy to fund an estimated 1,601 new early grade classrooms.

School Year 2007-2008

School Year 2007-2008, the year audited by the Comptroller, was a unique year in a number of ways relevant to this audit. The first factor, as previously noted, was that the State replaced the formerly-restricted EGCSR funding to the Department with unrestricted Foundation Aid. The second factor was the initiation of the Contracts for Excellence program, under which a significant portion of increased State education aid had to be distributed to certain schools, and had to be spent by those schools in one of five approved program areas: Class Size Reduction, Time on Task, Teacher and Principal Quality Initiatives, Middle and High School Restructuring, or Full-Day Pre-Kindergarten Programs.⁴ The third key factor was that the Department rolled out its Fair Student Funding program to redress inequities in school budget allocations that had been a legacy of subjective determinations made years earlier by local school boards. Fair Student Funding was designed to allocate unrestricted City tax levy and State Foundation Aid dollars to schools in a way that was simpler and fairer, in a manner such that the funding followed the students, with a base per-pupil allocation by grade level, and additional funding tied to students' special needs.

In view of these dramatic changes in the way the Department would be funding individual schools, and in consultation with principals, teachers and parents, the Department decided to implement the move to Fair Student Funding gradually to avoid disrupting schools' core programs and services for children. One component of the Department's strategy for minimizing the disruption to schools' core programs in School Year 2007-2008 was to voluntarily set aside funds to maintain the Grade K-3 classrooms that had been created under the defunct State EGCSR Program during the years that program was in existence, and thereby to avoid increased class sizes in schools that had relied upon EGCSR funding in prior years. The Department allocated \$181.71 million (comprised of \$88.84 million in unrestricted Foundation Aid, \$77.94 million in City tax levy, and \$14.93 million in federal early grade class-size reduction grant funding⁵) to elementary schools to maintain the fruits of the defunct State program. In view of the goals of minimizing disruption to schools' core programs and maintaining EGCSR classrooms created in prior years, it is neither surprising nor inappropriate that these funds were allocated overwhelmingly to those schools that had created Grade K-3 classrooms with EGCSR funds in prior years. Moreover, because the Department's decision to maintain a separate funding stream for the maintenance of new classes created

⁴ Of the approximately \$6 billion in total State education aid in School Year 2007-2008, \$258 million was subject to the Department's 2007-2008 Contracts for Excellence Plan, approved by the State Education Department.

⁵ Unlike the old State EGCSR Program, the federal EGCSR regulations permit schools to use the funds to either create new classrooms to reduce class size or, alternatively, to fund "push-in" teachers to reduce pupil-to-teacher ratios.

under the Program was wholly voluntary, *i.e.*, not compelled by any law or regulation, the Department remained free at all times during the audit year and thereafter to change its criteria around the allocation and/or use of the funds as it saw fit.

The Comptroller's Faulty Audit Methodology

The Comptroller uses actual audited enrollment data not available until January 2008 to evaluate allocation determinations that had to be made in Spring 2007.

Beyond the Comptroller's inexplicable determination to audit the Department's administration of a discontinued State grant program, the Comptroller's audit findings are undermined by his failure to understand the realities of school budgeting and the importance of providing stable classroom environments and teacher relationships for our youngest students.

Central and regional Department officials need to assess schools' relative needs and their capacities for new class creation early enough to set the schools' budgets so that they can hire teachers and set up classes before school opens. For that reason, Department officials need to make Program allocation determinations in the Spring for the following school year based on the Department's best enrollment projections. On some occasions, we learn of fluctuations from our Spring enrollment projections in July and August and work with schools and regional leaders to adjust or reassign funds before the start of the school year. However, our best enrollment projections may vary from actual Fall enrollments. In fact, school registers can remain quite fluid throughout the year, and especially through September and October. From an educational perspective, however, we cannot readily take a teacher budgeted with Program money out of a classroom of students in mid-September or October to adjust for an unanticipated decline in enrollment at one school or increase in enrollment at another. Given the unavoidable imprecision of budgeting in the Spring based on projected Fall registers, Department officials have to use their best judgment with the information available to ensure that their allocation of Program funds gives priority to schools with the greatest need and that Program funds are allocated only for "new" classes, *i.e.*, classes in addition to the number that would be created under the 25-to-1 baseline.

However, the Comptroller's audit methodology essentially ignores these timing issues, using actual audited enrollment data not available until January 2008 to evaluate whether funds were appropriately allocated to schools in Spring 2007 (see Report, p. 6). Obviously, the Department does not have the benefit of January 2008 audited enrollment data when making allocation determinations in Spring 2007. If the Comptroller wished to evaluate the Department's allocation determinations, he should have done so on the basis of information available to Department officials at the time those determinations had to be made.

Moreover, the Comptroller suggests that the Department should have monitored the schools that received EGCSR allocations so as to reallocate funds to other schools where applying the 25-to-1 rule to actual, rather than projected, enrollments indicates that a

class funded with EGCSR funds “should have been” funded with City tax levy. As an educational agency, the Department does not consider it pedagogically sound to move a Grade K-3 classroom teacher from one school to another in the middle of a school year. Moving a teacher from one school to another once the school year is well underway does no favors to young students in either school. In the absence of very dramatic fluctuations in enrollment, the Department’s policy favors classroom stability over moving teachers and students in and out of classrooms after the school year has begun. In the spring, Department officials use their best judgment with the information available to ensure that their allocation of Program funds gives priority to schools with the greatest need. If in the fall, enrollments experience minor shifts, the Department seeks to maintain staffing decisions rather than disrupt ongoing school operations.

The Comptroller uses a School Construction Authority report intended to inform long-term capital construction planning to assess schools’ capacity to create new classrooms.

In analyzing the capacity of specific schools to create new classrooms in Grades K-3, the Comptroller relied heavily on the 2007-2008 Enrollment, Capacity and Utilization Report prepared by the School Construction Authority (SCA), commonly referred to as the “Blue Book”. While the Blue Book is a useful tool for Department administrators to get a broad sense of comparative capacity and utilization across schools, it is not sufficiently fluid to be used alone for determining whether any given school can or cannot create a new early grade class in a given year.⁶

For example, the Blue Book does not indicate when school leaders decide to convert a general purpose room used for “cluster” classes, or even perhaps used as an office, into a Grade K-3 classroom. Neither does the Blue Book take into account all the specific needs of the school’s student population. For example, a school may have a projected enrollment of 100 students in Grade 1 and five general purpose rooms available for Grade 1 classes. Under the Department’s methodology, the school would generally be expected to create four Grade 1 classes with local funding, and could create one new class with EGCSRP funds. However, if 13 students in that school require a bilingual Spanish class, and 12 students require a bilingual Mandarin class, for example, that could leave only three rooms for the remaining 75 students, leaving no capacity for the creation of a new class to reduce the class size in those three English-only classrooms.

Accordingly, the analysis of a school’s capacity to add a new class requires consideration of more factors than are captured in the Blue Book, such as shifts in enrollment and student academic needs. Therefore, educational leaders familiar with the specific considerations of the specific schools, including the school principals themselves, must engage in a holistic evaluation of a school’s capacity to create a new class. It is not a determination that can be made centrally through the application of a generic mathematical formula using data from the Blue Book or any other citywide database.

⁶ Moreover, like the audited enrollment data used by the Comptroller, the 2007-2008 Blue Book was not available until well after the time when Department officials had to make allocation determinations in Spring 2007.

The Comptroller inaccurately counts early grade classroom creation.

Although he acknowledges that the intent of the old State EGCSR Program was to reduce class sizes in Grades K-3 by creating new classrooms in addition to the number that would have been funded with City tax levy under the 25-to-1 baseline, the Comptroller ignores this standard when alleging that the Department created 428 fewer classes than it should have in School Year 2007-2008. That is simply not true.

As discussed above, the Department had to make allocation determinations in Spring 2007 based on projected enrollments, and for sound pedagogical reasons, favors classroom stability over moving teachers and students in and out of classrooms after the school year has begun. However, just as actual enrollments in some schools that received EGCSR funding may be higher than projected, actual enrollments in other schools that did not receive EGCSR funding may be lower than projected. The Department therefore assesses the total number of early grade classrooms created based on the actual number of classrooms in Grades K-3 system-wide, compared against the number of Grade K-3 classrooms that would have been funded at a 25-to-1 baseline. In School Year 2007-2008, the system-wide enrollment in Grades K-3 was 237,291. At a 25-to-1 baseline, that would mandate the funding of 9,492 classes. However, the actual number of Grade K-3 classes funded in 2007-2008 was 11,114. Accordingly, the Department created 1,622 classes in Grades K-3 above the mandated tax levy baseline, surpassing the Program target.

We explained above why we do not favor shifting early-grade classroom teachers from one school to another after the school year has begun. But when one looks at the impact of the EGCSR Program on the system as a whole, the Department has met the early grade class creation targets and thus effected the reductions in early grade class size that come with it. The Department did not retroactively swap voluntarily earmarked EGCSR funds at some schools with tax levy funds at other schools so that the schools receiving EGCSR allocations and the schools where new classrooms were created line up perfectly, but the Program was ultimately executed across the Department's elementary schools with the desired impact on early grade class creation and class size.

Looking Forward

As the Comptroller notes in his Report, the Department decided for School Year 2008-2009 to again voluntarily extend the legacy EGCSR program, but to apply the more flexible federal Early Grade Class Size Reduction guidelines to all of the EGCSR funds allocated, thereby allowing schools to use the funds to either create new classrooms to reduce class size or, alternatively, to fund "push-in" teachers to reduce teacher-to-pupil ratios.

As we enter School Year 2009-2010, the Department is faced with the new realities of the financial crisis. In January 2009, the Department, anticipating a \$1.4 billion budget gap largely due to increased labor and special education costs and steep cuts in State and City aid, requiring massive teacher layoffs and, accordingly, the potential for increased class

sizes. When the American Recovery and Reinvestment Act was signed in February 2009, the Department calculated that it could avoid teacher layoffs, but that school budgets would still be cut in aggregate approximately 4 percent and that a hiring freeze would therefore still be necessary. In voluntarily earmarking and allocating unrestricted funds for EGCSR in 2009-2010, we will make clear that the intent of the funding is to retain teachers previously funded, whether for additional classrooms, for push-ins to reduce pupil-to-teacher ratios, or for class coverage in Grade K-3 classrooms.

Sincerely,

A handwritten signature in black ink, appearing to read 'Photeine Anagnostopoulos', followed by a long horizontal line extending to the right.

Photeine Anagnostopoulos
Chief Operating Officer