

**New York Citywide Council
On Special Education:
2021-2022 Annual Report**

New York Citywide Council on Special Education

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INTRODUCTION

The Citywide Council on Special Education (CCSE) was created by the state law that provided for mayoral control of New York City schools. The council is comprised of 11 voting members, nine of whom are parents of students who have an Individualized Education Program (IEP). These members, as of 2020, are elected by DOE families to serve a 2-year term or are appointed by current council members if a vacancy occurs. The New York City public advocate selects the two additional voting members. The public advocate's two representatives must have extensive experience and knowledge in educating, training or employing individuals with disabilities. A high school senior who has an IEP is selected by the chancellor's designee to serve as a non-voting member for one year.

The law establishing the CCSE requires that the council hold at least one public meeting per month. The other requirement is that the council issue an annual report assessing the effectiveness of the New York City Department of Education (DOE) in providing special education services to students with disabilities. The report should include recommendations on how these services can be implemented and improved.

The 2021-22 school year was a disastrous and unfortunate year due to the ongoing public health crisis of the COVID-19, and its effect on the education of children in New York City schools. In-person classes resumed as the number of deadly cases of COVID declined, but frequent disruptions and uncertainties persisted in city schools. The situation was stressful for all parents but especially for those of medically vulnerable students. IEP meetings were mostly done online via Zoom or Teams. Glitches, hitches, dropped calls, frozen screens, lack of internet access or devices and the infamous phrase “you’re on mute” caused delays and confusion for both staff and parents. The previous year, due to the pandemic’s continuing effect on schools, the number of students referred for special education evaluations dropped by 57%, prompting current concerns that many students are not getting the help to which they are entitled under the law.

While the two and half years of the pandemic took a toll on learning for almost all students, the effect on those with disabilities was particularly severe. [A report by the New York State comptroller](#) found that in fall 2020, 46% of New York City students with IEPs were receiving only some of the interventions mandated in their IEPs—or none at all. “Parents, practitioners, and researchers agree that the circumstances of the pandemic resulted in learning loss and will exacerbate pre-existing achievement gaps, especially for students with disabilities,” the report said.¹ Going forward, DOE will need to devote extra attention to ensure that these students will emerge from the COVID crisis prepared for a bright future.

¹ <https://www.osc.state.ny.us/files/reports/pdf/special-education-report.pdf>

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TAKEWAYS FROM THE 2021-22 SCHOOL YEAR

January 2022 saw the inauguration of a new mayor, Eric Adams, and with him the appointment of new schools' chancellor: David Banks. Banks, a lifelong New Yorker and long-time educator founded the Eagle Academies for Young Men, a group of all-boys public schools. Unlike many past mayoral campaigns, education did not figure prominently in the 2021 contest, with many voters more focused on public safety, health and the city's economy after the pandemic.

It appears as a result, Mayor Adams did not take office announcing many new or different programs for city schools. One of his few education initiatives was a plan to help thousands of students who may have dyslexia, a learning disability. The plan will include screening almost all city public school students for dyslexia, providing additional supports for students with dyslexia at 160 elementary and middle schools. The Mayor's plan also includes the launching of new dyslexia programs and additional literacy training for teachers. The mayor has frequently said that he suffered from dyslexia but was not diagnosed causing his academic performance to suffer as a result. Dyslexia, [the mayor said](#), "haunts you forever until you can get the proper treatment that you deserve."²

In addition to programs focused on dyslexia, the education department is requiring schools to switch to a phonics-based literacy curriculums in a move away from balanced literacy initiatives to placing more value on teaching methods based on the science of reading. Both initiatives are designed to address what is seen as a literacy crisis in city schools where less than 40 percent of all Black and Hispanic students were considered proficient in reading, based on the state standardized test in 2019.³

Projected cuts in funding for public schools in fiscal year 2023, which the administration claims were due to declining enrollment, raised concern about education for children with IEPs. Many principals said they would have to cut special education teachers. A November 2022 [report](#) by the NYS Comptroller's office predicts a Special Education Staff vacancy rate in NYC of almost 24% in the 2022-2023 school year.⁴ A teacher at the East Bronx Academy told *Gothamist* she is

² <https://www.nytimes.com/2022/05/12/nyregion/adams-dyslexia-nyc-schools.html>

³ Test Results (nyced.org)

⁴ https://www.osc.state.ny.us/files/reports/osdc/pdf/report-13-2023.pdf?utm_content=20221119&utm_medium=email&utm_source=weekly+news

concerned that some special education classes would no longer be able to have two teachers, a violation of IEP class setting mandates⁵

During the 2021-22 school year, all IEP meetings were held virtually. Despite the best efforts of the DOE to complete IEP meetings in a timely manner, staffing shortages and intermittent absences due to COVID caused cancellations of IEP meetings or forced teams to proceed without a full IEP team. Parents appeared on Zoom meetings only to be told that a specialist, such as an occupational therapist, physical therapist, speech/language teacher or counselor, could not attend due to illness. Families who lacked stable internet access found remote IEP meetings to be challenging.

Given such problems, it is a wonder that the DOE has made any gains in the provision of services to students with IEPs during the year, and yet it did. Information provided in November 2021 and in January 2022 indicated that a substantially higher percentage of students received the services mandated in their IEPs.

IMPLEMENTATION OF NEW YORK CITY SPECIAL EDUCATION PROGRAMS⁶

Primary Program Type	Nov 1, 2021	Jan 17, 2022	Change in Percentage Points
	Percent Fully Receiving	Percent Fully Receiving	
Integrated Co-Teaching Services	83.1%	87.6%	+4.5 Points
SETSS	78.3%	85.3%	+7.0 points
Special Class	79.8%	84.4%	+4.6 Points
Total	81.5%	86.3%	+4.7 Points

Source: [February 2022 City Council Report](#)

This increase extended to Related Services, the specialized help or instruction some students get to help them get the maximum benefit from their other classes, the most common supports

⁵ Jessica Gould, "[As School Year Ends, Many NYC Principals Forced to Cut Staff Because of Reduced Budgets,](#)" *Gothamist*, June 23, 2022

⁶ [February 2022 City Council Report](#)

being Occupational Therapy, Speech and Language Therapy, and Special Education Teacher Support Services.

IMPLEMENTATION OF RELATED SERVICES

November 2021 Compared to January 2022

Related Services Recommendation Type	Nov 1, 2021	Jan 17, 2022	Change in Percentage Points
	Percent Full Encounter	Percent Full Encounter	
Counseling Services	85.2%	91.7%	+6.5 Points
Counseling Services Bilingual	53.9%	60.0%	+6.1 Points
Hearing Education Services	86.9%	90.1%	+3.2 Points
Occupational Therapy	83.0%	87.9%	+4.9 Points
Physical Therapy	88.2%	92.1%	+3.9 Points
Speech-Language Therapy	90.9%	94.9%	+4.0 points
Speech-Language Therapy Bilingual	76.8%	81.0%	+4.2 Points
Vision Education Services	78.3%	86.0%	+7.6 Points
Total	86.9%	91.7%	+4.8 Points

This improvement has been citywide, and particularly pronounced in historically hard to serve districts. For example, *monolingual Speech services in Bronx districts (D7,8,9,10,11,12) increased by an average of 19 points compared to last year*, and Speech services in Bronx High Schools increased by an average of 40 points. Similarly, *Bilingual Speech services in Bronx districts (D7,8,9,10,11,12) increased by an average of 20 points compared to last year*, and Speech services in Bronx High Schools increased by an average of 22 points.

While we applaud the department’s steadily improving compliance numbers, we are eager to understand how this compliance can improve the education of students with IEPs. Although the overall academic performance of students with disabilities has improved, elementary and middle school students with disabilities are less likely to be proficient in English Language Arts and Math than their general education peers, often failing to meet [New York State Next Generation Standards](#).⁷ Students with disabilities graduating with New York State high school diplomas are not meeting the same standards as their general education peers. As parents, we are working with the schools to improve student competency. By law, disabled students must

⁷ [Next Generation Learning Standards | New York State Education Department \(nysed.gov\)](#)

be provided with a Free and Appropriate Public Education and accorded adaptations and accommodations to supplement and support their innate abilities, talents and skills.

OVERVIEW: SPECIAL EDUCATION IN THE 2021-22 SCHOOL YEAR

During the 2021-22 school year 1,058,888 students (about the entire population of the state of Montana) attended New York City public schools, including charter schools, making it the largest school district in the United States. Of those students, [20.6 percent](#) or approximately 218,000 New York City public school students have disabilities and receive educational support services via an Individualized Education Program (IEP).⁸ To provide a frame of reference, this is more than the total number of children in the Philadelphia public schools. While many of these New York City students receive exemplary services, the CCSE knows from research, school visits and discussions with parents that special education in New York City falls short in many ways with life-long consequences.

CITY PUBLIC SCHOOL STUDENTS WITH DISABILITIES⁹

Grade Level	General Education Students	Students with Disabilities
3K	89.6%	10.4%
Pre-K	89.8%	10.2%
Grades K-5	77.3%	22.7%
Grades 6-8	77.2%	22.8%
Grades 9-12	80.3%	19.7%

⁸ <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance>

⁹ Public School Indicators - IBO - Independent Budget Office (nyc.ny.us)

Just as with any group of children, students with IEPs vary greatly. They live in all parts of the city, are of all races and ethnicities, speak many different languages, and have different skills, abilities, although in NYC schools Black and Latinx children are over represented in the population of students with IEPs.¹⁰ All students with IEPs regardless of demographics and disability status, are entitled to a Free and Appropriate Public Education.

The idea that all students with disabilities have a right to such an education is relatively new in the United States. Up until the last third of the 20th century, few students with disabilities went to public schools. Most were taught at home, attended expensive private schools or received little to no education. In 1975, Congress passed the Education for All Handicapped Children Act¹¹, or EHA, establishing the right for all children to have a public education. This act eventually led to the Individuals with Disabilities Education Improvement Act (IDE(i)A)¹² passed in 2004. It is this law that governs special education in the United States today.

Schools must evaluate all students with disabilities or who are suspected to have a disability. Parents may also submit evaluations to the school district to support the identification of a disability they believe might be affecting their child. Once a child is determined to have a disability, the school district must develop a written Individualized Education Program (IEP) for that student and provide the services called for in that program. The plan must set out specific objectives and goals for the student and methods to track progress as well as address management needs and accommodations needed to access learning. IEPs are legal contracts that are in effect for one year. The act also calls for students to be educated in the least restrictive environment (LRE) possible and requires that parents be informed of any special education programs available to their child. Parents and students are encouraged to be an active member of the IEP team and are an integral voice in the development of the IEP.

LRE means that students with disabilities may be placed in special classes, separate schools, or otherwise removed from the more traditional educational environment only when the nature of their disability is such that, even with the use of supplementary aids and services, the

¹⁰ <https://infohub.nyced.org/docs/default-source/default-document-library/annual-special-education-data-report-sy21.pdf>

¹¹ [Education for All Handicapped Students Act](#), Pub.L. 94-142

¹² New York State Department of Education, "[Individuals with Disabilities Education Improvement Act 2004](#)," *Special Education*, Nov. 15, 2015

school is unable to provide supports necessary for a student to learn in a more traditional setting. The LRE must:

- Provide the special education services the student needs;
- Provide for the education of the student to the maximum extent appropriate to meet the needs of the student with other students who do not have disabilities; and
- Be as close as possible to the student's home.

In addition, IDEIA outlines procedural safeguards that must be followed and sets forth appropriate discipline measures for students with disabilities.

Qualifying evaluations for every disability are defined in Part B of IDEIA. Students must re-qualify for special education services every three years. To determine eligibility, the special education team must use more than a single assessment, including, but not limited to, an intelligence test and an academic achievement test.¹³

Schools in New York State provide a range of services to meet the needs of these students. Starting from the least restrictive and moving toward the most restrictive they are:¹⁴

- General education program with no special services;
- General education program with some support, such as testing accommodations and management needs;
- General education program with related services such as Special Education Teacher Support Services (SETSS) for a minimum of 2.5 periods per week. This can mean a special education teacher working with the child or working with the child's teacher so that teacher can better meet the child's needs. If the child receives the services directly, he/she may meet with a teacher individually or in a group.
- Integrated co-teaching services. These services, ICT classes, are classes with two teachers, one of whom is a special education teacher, and a mix of general education students and students with disabilities. They usually have 20 general education children to 12 special education children. Some smaller co-teaching

¹³ "[Individuals with Disabilities Improvement Act \(IDEA\)](#)" *Special Education News*

¹⁴ University of the State of New York, State Education Department, Office of P-12 Education: Office of Special Education, [Continuum of Special Education Services for School-Age Children with Disabilities](#), April 2008 (updated November 2013)

classes for students with autism, known as ASD Nest (offered in conjunction with NYU) and ASD Horizon classes,¹⁵.

- Self-contained classes in regular schools. These are classes where all the students have IEPs though they may not have the same disability. These classes may have 6, 8 or 12 students and can include children whose ages span 3 years.
- Students whose needs the DOE has been unable to meet in a community school setting receive their program in District 75. District 75 has a complicated history, but at its root, this district segregates students based on disability because of the failure of the DOE to successfully meet the needs of some disabled students in community school settings. These programs offer classes for students with disabilities such: autism spectrum, significant cognitive delays, emotional disabilities, sensory impairment or multiple disabilities. These programs can be in district school buildings, in specialized schools, and, in some cases, in hospitals or other agencies
- Outside placements are given to a small percentage of students whose needs cannot be met by a district program. These students attend a NYSED-approved non-public school, private school, residential schools, or other setting at public expense. The district may agree that its programs are inadequate to meet the needs of the child or a hearing officer may determine that a child requires such a placement.

The act recognizes 13 categories of disability. They are¹⁶:

- Autism
- Deaf-blindness
- Deafness
- Emotional disability (formerly Emotional Disturbance in NYS)¹⁷
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment (including ADHD)

¹⁵ Metropolitan Center for Research on Equity and the Transformation of Schools, "[About the NYU ASD Nest Support Project](#)"

¹⁶[https://govt.westlaw.com/nycrr/Document/I09ae5707c22211dda1bb852bdc84e3be?viewType=FullText&originContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/I09ae5707c22211dda1bb852bdc84e3be?viewType=FullText&originContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

¹⁷ <https://www.jdsupra.com/legalnews/board-of-regents-replaces-the-term-2502168/>

- Specific learning disability (including dyslexia, dyscalculia and dysgraphia, and other learning issues)
- Speech or language impairment
- Traumatic brain injury
- Visual impairment, including blindness

KEY DISABILITY CLASSIFICATIONS IN NYC TRADITIONAL PUBLIC SCHOOLS, 2019-20¹⁸

Disability Classification	Share of Students with Disabilities
Learning Disability	36.9%
Speech Impairment	31.7%
Autism	11.0%
Other Health Impairment	9.2%
Emotional Disability	5.2%
Intellectual Disability	3.1%
Other	2.8%

¹⁸ New York City Independent Budget Office, [Education Indicators](#), December 2021

It should be noted that having one of these s not automatically qualify a child for special services. For a child to have an IEP, the evaluation must establish that the disability would present barriers to learning without the provision of accessibility supports and services.

INDIVIDUALIZED EDUCATION PROGRAMS

The Individualized Education Program (IEP) is the backbone of the Individuals with Disabilities Education Improvement Act or IDEA. The IEP should be a framework for a child's educational success and provide a path to a Free and Appropriate Public Education (FAPE) required by the IDEA. Creating an IEP should be a deliberate and intentional process with assessments, evaluations and in-depth conversations with parents, teachers, and other professionals, as needed, to address the child's needs for support. The IDEA requires that the IEP be created by a team of school professionals and the parent(s)/and/or care-giver of the student with the disability. All members have a specific and dynamic role in the creation of the IEP, although not all members of the team will implement the IEP during the child's school year. As students get older, they are encouraged to become an active participant of the IEP team with their input and insight adding a valued asset to the IEP process.

The IDEA has adapted and changed since its inauguration as the Education for the Handicapped Act in 1975 and, partly as result, increasing numbers of students have been identified as appropriate for educational supports at an earlier age. Thousands of children who were in early intervention programs move through the public education system with an IEP as early as Pre-K, as 3- and 4-year-olds, and entering kindergarten the year they turn 5.

A child's entry, or transition, into school-aged programs can be very confusing for parents. The bureaucratic process can be stifling and overwhelming. In New York, a separate division of the city Department of Education, the [Preschool Committee on Special Education](#) (CPSE)¹⁹, handles the creation of plans for 3- and 4-year-olds while another division, the [Committee on Special Education](#) (CSE)²⁰, creates plans for school-aged students from 5 to 21 years old. In the past, community-based organizations, rather than the DOE, solely provided the 3- and 4-year-old programs.

¹⁹ <https://www.p12.nysed.gov/specialed/lawsregs/sect20016.htm>

²⁰ <https://www.schools.nyc.gov/learning/special-education/help/committees-on-special-education>

Since three and four-year-olds are not classified in the same way as older students, the system may not reflect their specific needs. Three and four-year-olds are identified only as preschool students with a disability. Students in kindergarten and above receive one of the 13 classifications referred to above as defined in the IDEA. For parents of 4-year-olds, the start of kindergarten may be the first time they hear the words “developmental delay” or “autism.”

Testing to determine whether a child is eligible for special education services rarely concentrates on the child's assets or skills. School staff insist that the only way to get appropriate services to a child is to concentrate on what the student lacks, whether that is physical, psychological, or developmental, and how that need affects a student's ability to learn. This emphasis on deficits can be overwhelming to parents.

As the child moves through the system, IEP meetings are usually held once a year. Every three years a mandated triennial evaluation is administered to determine the continued need for specialized services. Parents are to be informed of their rights at each IEP meeting and process guidance is informed by the DOE's [Standard Operating Procedural Manual](#) (SOPM).²¹ If a parent or another member of the IEP team feels that there should be an IEP meeting before the annual meeting, they can request the IEP team reconvene at any time. A parent can also request an evaluation in writing at any time.

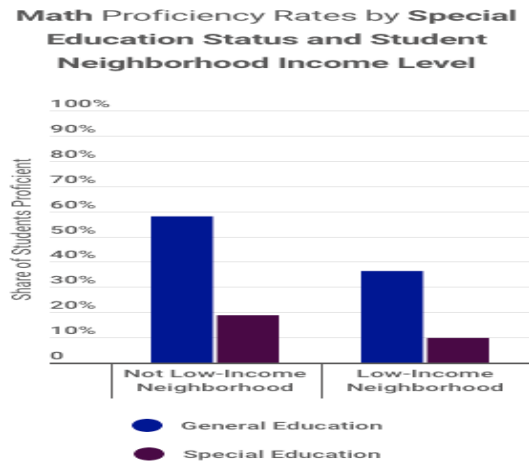
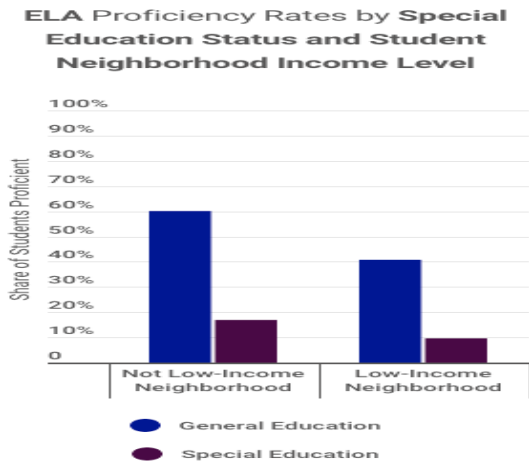
As children progress through school, their support needs may grow and change. Parents and care givers often have questions about assessments, aptitudes, and transitions into post-secondary opportunities and education. Unfortunately, IEP meetings often fail to answer many of these questions. Meetings can feel overwhelming and often take place under time constraints that leave parents and caregivers uncertain if the IEP will meet the needs and supports of their child. In-depth conversations about transition planning and explanations of assessments are often impossible in these fast-paced meetings. While older students are encouraged to participate in their IEP, they may not feel comfortable having discussions in front of parents and teachers, or they may feel that their input is invalidated. IEP meetings need to be more collaborative and should provide adequate time to address all questions and develop a meaningful and intentional program that addresses the concerns of all IEP team members.

Parents and advocates have become increasingly concerned with the fidelity of the IEP process as data suggests that IEPs developed in NYC schools are failing to address gaps in educational achievement. As the graphics below show, there is an obvious difference between outcomes for students receiving special education services and their general education peers. There is

²¹ https://infohub.nyced.org/docs/default-source/default-document-library/specialeducationstandardoperatingproceduresmanualmarch.pdf?sfvrsn=4cdb05a0_2

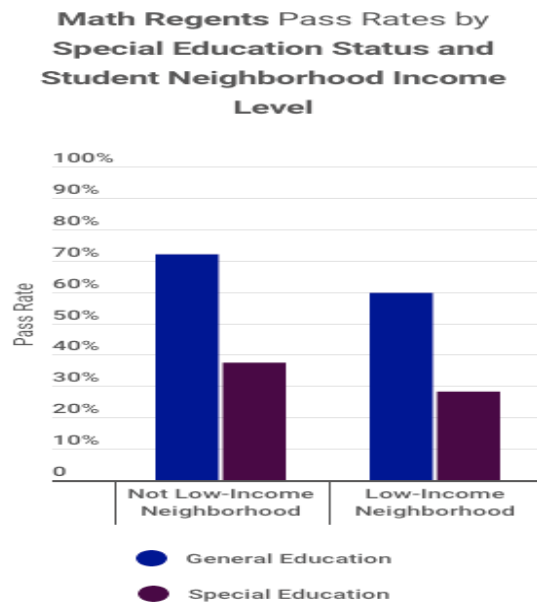
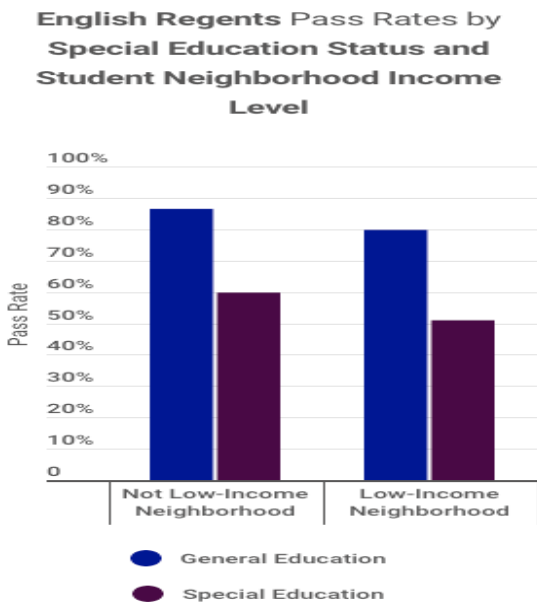
also a marked difference when neighborhood income is figured into the equation. Overall, about 16% of students with IEPs graduate from high school reading at or above grade level.

ELA AND MATH PROFICIENCY BY SPECIAL EDUCATION STATUS AND INCOME²²



(New York City Independent Budget Office, *Education Indicators: Traditional Public Schools: Grades 3-8 Test Performance 2018-2019*, April 2022)

ENGLISH AND MATH REGENTS OUTCOMES BY SPECIAL EDUCATION STATUS AND INCOME²³



²² <https://www.ibo.nyc.ny.us/iboreports/student-achievement-3-8-academic-performance-2022.html>

²³ <https://www.ibo.nyc.ny.us/iboreports/regents-exam-performance-2022.html>

Concerns about the IEP process are often brought to the attention of the CCSE. The CCSE believes that parents know their children best and are a valuable resource in the development of an IEP; however, parents often report feeling disrespected and unheard, having their recommendations and suggestions dismissed during the IEP process. Parents are required to receive notice of their rights as well as copies of all documents and assessments utilized to develop the IEP. Sometimes these documents are never received or are received with such short notice that parents are not able to review them thoroughly before meeting. This is especially true of parents attending an IEP for the first time who are unfamiliar with the process or how to invoke their rights.

Language access also continues to be an issue.²⁴ This causes issues for families who need interpretation services. Non-English-speaking parents and caregivers were not able to request an interpreter for their IEP meeting, as this service requires a two week notice. Notices of a scheduled IEP meeting are only required to be sent 7 days in advance. These parents are left to find a friend to interpret or are offered an interpreter without certification, such as a school aide, cafeteria staff, or a gym teacher. Even if an interpreter can be arranged in time, often the documents and assessments are not translated. In a November 2022 CCSE meeting, John Hammer, Deputy Chief Executive Director, Special Education Office Division of Specialized Instruction and Student Support, acknowledged that the DOE often lacks the resource to have evaluations, IEPs and assessments translated for families. DOE has made significant strides in providing translations, but the COVID pandemic has once again caused delays and confusion.

RECOMMENDATIONS

While we applaud the DOE's steadily improving compliance numbers, we are eager to understand how compliance can improve the education of students with IEPs and more actively engage families in the IEP development and process. We believe the DOE can take several steps to do that.

- DOE shall provide all parents of students with IEPs with a concise document in a timely fashion and in plain language describing the rights of the parent in public, NYSED-approved non-public, private or charter schools.

²⁴ [Special Education Standard Operating Procedures Manual \(nyced.org\)](https://www.nyc.gov/html/osep/html/2018/08/20180808_sedops_manual.html)

- Before every IEP meeting and attached to the notice of the meeting, DOE shall provide parents with all necessary information regarding the child’s progress including, but not limited to, any classroom assessments, progress reports, evaluations, or observations.
- Before an IEP meeting takes place, DOE shall provide parents of students with disabilities with all necessary documents used to determine the child’s special education needs including, but not limited to, evaluations, observations and assessments, and progress reports of current IEP goals in the parent’s language of choice.
- Parents and guardians should leave every IEP meeting feeling heard and respected, knowing what services their child will receive, and knowing that these services are in place.
- DOE shall mail a letter to all new public-school parents that provides clear, concise information on how parents can access appropriate supports and services for their children. That letter should be available in all of DOE’s covered languages.
- Parent Counseling and Training, a Related Service to help parents understand their child’s needs and services, shall be offered to parents on every initial IEP developed at the Committee on Preschool Education or the CSE, and not exclusively for parents of students with a diagnosis/classification of autism as under current policy.
- All schools must send progress reports and other assessments of students with IEPs to their homes along with the student’s report card.

IMPARTIAL HEARINGS

When there is a disagreement regarding an IEP, parents can invoke their due process rights to settle the disagreement. They can ask for a resolution meeting, for mediation, or an Impartial Hearing. If a parent disagrees with the outcome of an Impartial Hearing, they have the right to contact the New York State review officer to appeal the decision.

An Impartial Hearing can create a significant financial burden on families. Parents with limited resources often cannot afford to hire a lawyer to represent them at hearings and free or low-cost legal services can be difficult to find or have exceptionally long waitlists. Fees of \$5,000 or above for legal representation is not out of the ordinary to secure qualified legal representation to face the DOE’s team of experienced education attorneys.

Due to an overwhelmed system with a hefty back-log of cases, families often face delays in the Impartial Hearing process. Timeliness is important so the student can start receiving services as soon as possible, and the law reflects this urgency. New York State education law requires that an Impartial Hearing officer must be appointed within two days after the parent’s complaint is received, and the hearing should begin within 14 days. Under normal circumstances, the entire process should take no more than 75 days. Unfortunately, parents have been known to wait much longer than that, in some cases over 200 days, according to a state mandated analysis issued on June 6, 2019.²⁵ of the Impartial Hearing Office conducted by Deusdedi Merced of Special Education Solutions, LLC. This is a particular problem in New York City which, in the school year 2019-2020, was responsible for 96% of all requests for Impartial Hearings filed in New York State.²⁶ As of November 2021, over 16,000 cases, a 34% increase from the previous year had been filed, and over 9,000 cases had not even been assigned to a hearing officer.²⁷

The report on Impartial Hearings coincided with the release of a report by the state comptroller on special education compliance issues in New York City. The report found according to *Chalkbeat*, “The city has been violating federal law governing students with disabilities for the past 13 years and that previous efforts to reform the system had ‘not resulted in the systemic change necessary.’”²⁸

Among the “failures at virtually every level of New York City’s special education system,” the report cited the city’s continued failure to provide students with disabilities and their parents all the rights and safeguards required by federal and state laws and regulations. This accounts for why more complaints are filed in New York City than in the rest of the state of New York.

In January 2022, there were still 16,253 pending Impartial Hearings. Among the reasons for the backlog/delay at DOE are:

- An insufficient number of Impartial Hearing officers;
- Delays in payment to Impartial Hearing officers;

²⁵ Deusdedi Merced, *Report: External Review of the New York City Impartial Hearing Office*, Special Education Solutions, Feb. 22, 2019

²⁶ Reema Amin, “New York State Changes Course on Plan to Address Backlog of Special Education Cases,” *Chalkbeat New York*, Oct. 20, 2020

²⁷ [NYC Special Education Complaints Grow as Hearing Officers Wait for Cases - THE CITY](#)

²⁸ Alex Zimmerman, “NYC Vows to Address Special Education Failures Detailed in State Review. But Will Their Reforms Go Far enough?” *Chalkbeat New York*, June 9, 2019

- A city requirement that families go through another hearing process to maintain a student’s current placement while the complaint crawls through the DOE process, a violation of federal law;
- Abysmal conditions in the space used for Impartial Hearings at Livingston Street in Brooklyn: no heat or air conditioning, small rooms, no waiting areas, no access to copying;
- Assignments of unusual numbers of hearings to one officer as no others would accept the assignment. One officer had a docket of 1,200 plus cases.
- A continuance of DOE’s failure to provide the services mandated in the IEP or inability to meet the needs of the student outlined in the IEP.

The agreement Under the direction of former mayor, Bill de Blasio, on December 1, 2021, the city and state entered into a Memorandum of Agreement to transfer the responsibilities of the Impartial Hearing Office to the Office of Administrative Trials and Hearings (OATH). Oath is the city agency tasked with administrative trials and hearings, and whose director reports to the mayor and whose employees are employees of the City of New York. [The OATH office](#) adjudicates complaints from a wide range of city issues from Conflicts of Interest Boards to Sanitation and building code violations.²⁹

The agreement also called for OATH to hire up to 50 full-time hearing officers and create a special education unit.³⁰

The city and state said the move would help ease the backlog, but many parents objected, expressing doubt that the shift would solve the problem. Parents and advocates charged that having New York City DOE decisions reviewed by city employees undermines the intention of impartiality. In a school district under direct governance by the mayor, an Impartial Hearing system also under the purview of the mayor poses a significant conflict of interest.³¹ Lawsuits filed after the announcement of the memorandum charge the city with creating contrived and time-consuming restrictions on a parent’s and student’s right to a speedy hearing.

²⁹ <https://www.nyc.gov/site/oath/about/about-oath.page>

³⁰ Yoav Gonen, “Special Education Tuition Hearings Shift to NYC Trials Agency to Address Backlog,” *Chalkbeat New York*, Dec. 23, 2021

³¹ Michael Elsen-Rooney, “Parents Fear Spec. Ed. Shift Could Hurt Kids,” *New York Daily News*, May 16, 2022

A complaint filed under Article 78 of New York’s Civil Practice Laws and Rules argued that the city and state education departments, as well as the mayor of New York City had acted “arbitrarily, capriciously, in excess of the scope of their authority and in abuse of their discretion” in issuing the memo. Additionally, the complaint charged the memorandum violates state laws and regulations and “illegally exceeds OATH’s exclusive authority to hear cases brought against agencies of the City of New York, and ... violates the explicit requirement for public notice and comment prior to expansion into new categories of cases to be adjudicated by OATH.”

Bills were introduced in the New York State Senate (S 8620)³² and State Assembly (A 9287)³³ to address this issue and return responsibility for the Impartial Hearings to the New York City school district. The bills state, “Individuals so appointed shall not be an employee of the state educational agency or the local educational agency involved in the education or care of the child, or of any public agency or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing; nor may the Impartial Hearing officer be an employee of a municipality in which the school district is located or of any of its agencies”

At the close of the 2022 session, the State Senate had passed S 8620, but the Assembly bill did not reach the Assembly floor for a vote when the legislature adjourned its regular session for the year. In June, Mayor Adams issued an [executive order](#) affirming that OATH would adjudicate Impartial Hearings (see appendix 13).³⁴

MIDDLE AND HIGH SCHOOL ADMISSIONS

All students in Community School Districts 1 to 32, regardless of special education status, participate in the admissions process for high school and middle school using the DOE’s online portal. Additionally, in October 2021, the Office of Enrollment announced that students in inclusion programs in District 75, New York City’s separate special education district, would also be able to apply to middle and high schools using the online portal for the first time. District 75

³² [NY State Senate Bill S8620 \(nysenate.gov\)](#)

³³ [NY State Assembly Bill A9287 \(nysenate.gov\)](#)

³⁴ <https://www1.nyc.gov/office-of-the-mayor/news/020-002/executive-order-20>

students not in inclusion programs will continue to be placed by school-based support teams and the District 75 placement office.

Choosing an appropriate middle or high school is a difficult and crucial decision for all students and their families. In 2021, approximately 18,000 8th grade students with disabilities were transitioning to high school. However, graduation rates for students with disabilities are far below the citywide average; 58 percent of students with disabilities earned a high school diploma in 2021, compared to 81 percent of students citywide.

To complete the middle and high school applications, students are expected to select and rank up to 12 programs in order of preference. Some middle and high schools have more than one program, for example, a general education program and a dual language program, or an arts and a STEM program. Each of those programs counts as a separate entry on an application.

Students are assigned a random lottery number that places them in a priority group based on specific criteria. For programs that use randomly assigned numbers, students are admitted according to their random number, beginning with priority group 1. For schools with screened and audition programs, students are evaluated and ranked based on admissions criteria. Other programs, particularly in middle school, give preference to students from the surrounding neighborhoods.

According to the [Department of Education guide to admissions](#) for the 2021-2022 school year, “Every school is expected to welcome and serve students with Individualized Education Programs (IEPs) in accordance with the recommended programs and services on their IEPs. All school programs admit students with and without IEPs. Testing accommodations are provided according to students’ IEPs or 504 plans.”³⁵

Despite this policy, schools vary widely in their willingness, ability and experiences in serving students with IEPs, making some schools a better fit for these children than others. One issue can be the school building itself. School buildings are categorized as fully accessible, partially accessible or not accessible. According to the School Construction Authority, 73 percent of high schools are partially or fully accessible. A partially accessible school may allow a student access to all relevant programs, but bathrooms and cafeterias may not accommodate students with mobility needs.

For years, information on accessible buildings was difficult to come by so parents often had to contact or even visit individual schools, but DOE now provides much of this information in its

³⁵ <https://www.schools.nyc.gov/docs/default-source/default-document-library/2022-nyc-public-schools-admissions-guide---accessible>

online portal. Families can check a box on the admissions form to view schools that meet their accessibility needs.³⁶

However, when it comes to school choice, students in need of accessible buildings have far fewer options than other students.³⁷ Students applying to screened schools must not only meet the standards for the particular school but also find a school that meets accessibility criteria. Though students with disabilities are given priority for enrollment, families must often choose between a school that is an appropriate programmatic fit and one that is accessible.

The current capital plan runs through 2024 and includes \$750 million for improvements to make school buildings more accessible by widening partitions and doors, making public assembly spaces ADA compliant, creating accessible bathrooms, and installing wheelchair lifts, ramps and automatic door openers.³⁸ Once work is completed, 57 additional elementary, middle and high schools will be fully accessible and three more will be partially accessible.

For admissions purposes, middle and high school students are grouped into two categories: general education and students with disabilities. A student is classified as having a disability if their IEP indicates 20 percent or more of their academic programming is conducted in a special education setting. The CCSE has learned, however, that students in private or parochial schools or being homeschooled with an Individual Education Service Program (IESP) and who receive related services but are not in a special education setting were not classified as having a disability if they re-enrolled in New York City public schools. This prevented them from receiving priority for admissions. The council worked with the Office of Special Education and the Office of Enrollment to change that. As a result, any student with four or more sessions a week of SETSS services on their IESP will be classified as a student with a disability, regardless of what type of school they attended.

MIDDLE SCHOOL

Middle school programs fall into three categories:

³⁶ Alex Zimmerman, "[How Accessible Are New York City's High Schools? Students with Disabilities are About to Find Out,](#)" *Chalkbeat New York*, Feb. 25, 2017

³⁷ Christina Veiga, "[Few Options: Many NYC High Schools are Off Limits to Students with Disabilities,](#)" *Chalkbeat New York*, March 2, 2022

³⁸ School Construction Authority and New York City Department of Education, [FY 2020 – 2024 Five-Year Capital Plan Proposed Amendment](#), February 2022

- District programs: Open only to students and residents of the school’s zoned district. If a child attends an elementary school in a district other than where they are zoned for middle school, the middle school zone determines eligibility. Some schools are open to all students in the Community School District, while others may be open only to students who live in the smaller geographic zone around a school.
- Borough-wide programs: Open to students who live or attend elementary school in the entire borough.
- Citywide programs: All 5th-grade students in the city may apply. Some citywide programs may require an audition as part of the admissions process.

Middle school students are placed into priority groups for each program they apply to. Priority groups include continuing 5th-grade students for K-8 schools, students who reside in the district or borough, residents of the zone, or students eligible for free or reduced lunch. The last is a priority designed to encourage diversity in admissions.

HIGH SCHOOL

Students list up to 12 choices in order of preference. To optimize their chances, students are advised to list programs in true order of preference; select a mix of high-demand programs and programs that have an excess of seats; include programs in which the student is in priority group 1; and apply to schools with a mix of admissions methods.

According to the Office of Student Enrollment, every year approximately 4,000 students do not receive an offer for any school on their application. The enrollment office reports that 97 percent of students who complete an application with 12 choices receive an offer at one of their chosen schools. For the Fall 2021 admissions cycle, fewer than 800 of the 4,000 did not list 12 choices on their applications. Many students who do not receive an offer at one of their choice schools do not enroll in the placement offered, though most do end up in a district school. The Office of Enrollment did not respond to a request regarding details on how many students with IEPs receive an offer from one of their choice schools.

Admissions criteria for high schools vary widely.

There are nine specialized high schools, eight of which admit students solely on the basis of a single test, the Specialized High School Admissions Test (SHSAT). The ninth, LaGuardia High School, requires an audition. Few students with disabilities attend these schools. Approximately 1% of students with IEPs sit for the SHSAT, a number that has remained stagnant over time.

LaGuardia High School had the lowest percentage of students with IEPs of any screened school (3.2%) and saw the smallest increase between 2016 and 2021.³⁹

In October 2021, the Office of Enrollment announced that District 75 students will now be able to take the SHSAT, though it provided little information on the specifics of how students would be recruited, prepared and accommodated for the exam. Beyond the test, reports regarding students with IEPs at the specialized high schools raises concerns over how any who are accepted will be supported to succeed. A FOIL request of how many D75 students sat for the SHSAT over the last 5 years found and increase in the number of students who sat for the exam in the 2021-2022 school year at 27 students. In total for the last 5 years, 71 D75 students had taken the exam and out of those students only 12 students had ever received an offer to a specialized high school. (see appendix 14) For three of the last 5 years zero D75 students were offered a seat. Only 6 students from D75 were offered a seat as a result of the 2021-2022 exam a .02% of the total students (27.669) who sat for the exam and .14% of D75 students who sat for the exam were offered a seat out of 4053 students.⁴⁰

In addition to these nine schools, approximately 100 of the city's 400 high schools have some sort of screen for admission. These schools have seen improvements in the number of students with IEPs admitted, increasing from 5% to 11% of enrollment over five years. In 2019-20, 12 out of the 17 top-ranked screened high schools other than the specialized high schools had an enrollment of at least 10% students with IEPs, and at seven of those schools the number was more than 15%, according to a [report by education policy consultant David Rubell](#).⁴¹ Overall, 11.2% of students at these schools had IEPs. While these numbers are promising and represent an improvement from 2015-2016 when only 5.8% of students at these schools had IEPs, they are still below the citywide averages. For example, in Manhattan, the target for students with IEPs should be 19%.

Even when students are accepted, families report frequent problems receiving accommodations for students with disabilities at screened schools. At a November 2021 CCSE meeting, representatives from the Office of Enrollment confirmed complaints that schools turn

³⁹ David Rubel, "Over Four Years 2016-20 More IEP Students at Screened High Schools," 2021, <https://www.davidrubelconsultant.com/wp-content/uploads/2022/02/Over-Four-Years-2016-20-More-IEP-Students-at-Screened-High-Schools.pdf>.

⁴⁰ <https://www.cpacnyc.com/2022/06/15/update-2021-22-enrollment-admissions-data/#:~:text=This%20increase%20in%203K%20enrollment,is%201%2C058%2C888%20for%202021%2D22.>

⁴¹ <https://www.davidrubelconsultant.com/wp-content/uploads/2022/02/Over-Four-Years-2016-20-More-IEP-Students-at-Screened-High-Schools.pdf>

students with disabilities away. “In terms of schools turning away kids... we, too, hear that,” Sarah Kleinhandler, the education department’s chief for enrollment, told the council. She said the department does not support schools doing that and, when they hear of such cases, works to address them. Building accessibility can also be an issue for disabled students, leaving them with fewer options in their applications for middle and high school as many DOE buildings do not meet or only partially meet ADA accessibility requirements. The CCSE has also heard reports from parents that they were told that a particular school does not have the class setting mandated by the child’s IEP such as an ICT class.

RECOMMENDATIONS

Significant changes need to be made for students with IEPs to have equal access to the same school choice as those without special education needs. These changes include:

- More transparency regarding the experience and ability of individual schools in accommodating students with disabilities to allow families the opportunity to better select programs that are an appropriate fit;
- Removing the “20%” rule, which defines disability status by placement;
- Prioritizing making all schools accessible to students with mobility needs in future capital plans so that these students have the same choices other students do;
- Providing better access to information for families in District 75 inclusion programs who use the online application portal, including information on the ranking and matching process and the availability of open houses;
- Instituting school choice for all students in District 75 at all grade levels, not just those in District 75 inclusion.
- While we maintain that removing screens is the best way to create equity and access, until that happens more effort should be made to recruit and retain students with IEPs into screened programs, especially at the nine specialized high schools. Specific targets should be set that match the percentage of students with IEPs in the school population.
- There should be an annual examination of the experiences of students with IEPs and IEP mandate compliance at screened schools to understand the frequency and quality of special education services and accommodations.
- More clarity on efforts to recruit, prepare, and accommodate students from District 75 who want to sit for the SHSAT and are accepted into specialized high schools.

GRADUATION

New York City continues to rely on unreliable data to defend its deficiencies when it comes to low high-school graduation rates. Ironically, the city schools continue to push students along regardless of whether they are prepared to graduate. This creates a city where graduation numbers reflect improvement but the unemployment and dropout rates indicate that much more work needs to be done.

For students with disabilities, graduation outcomes and post high school success fairs even worse. The four-year graduation rate for New York City students with disabilities was 58%, according to the [latest data](#)⁴². The number was 5 percentage points higher than 2020 but was 23 percentage points lower than the 81% rate at which all students graduated in New York City. Only 53% of students with disabilities in New York City high schools graduated in four years with a regular high school diploma. The others took longer to graduate with a regular diploma, graduated with an alternate diploma, or did not graduate at all. This is not a sustainable way to function and leads to poorer success post high school, less independence and more reliance on support systems such as public entitlements. Data from the bureau of labor statistics shows a direct relationship between educational attainment and future earnings, thus demonstrating the importance of graduating from high school and obtaining post-secondary education.⁴³

According to the New York State Education Department (NYSED), every school district must adopt written policies and procedures ensuring that students with disabilities have the appropriate opportunities to earn a regular high school diploma. Furthermore, this opportunity must be available to students regardless of where they attend school or who provides them with special education services. The NYSED lists the following factors as key for students with disabilities to earn regular high school diplomas.⁴⁴

1. “Students will be enrolled in coursework that leads to a diploma and be provided instruction by teachers highly qualified in the subject area courses being taught.”
2. “Each student with a disability will receive appropriate special education supports and services to address the effect of the student's disability on participation and progress in the general education curriculum.”

⁴² <https://data.nysed.gov/gradrate.php?state=yes&year=2021&districtneeds%5B%5D=1&cohortgroup=0>

⁴³ <https://www.bls.gov/careeroutlook/2022/data-on-display/education-pays.htm>

⁴⁴ <https://www.p12.nysed.gov/specialed/publications/iepdiploma.htm>

3. “[Committees on Special Education], parents and students will understand the relationship between courses of study, a regular diploma and the student's post-secondary goals.”
4. “Transition planning and activities will be meaningful and motivate the student to work towards a regular diploma.”

[Looking across the United States](#), several states have been able to achieve high graduation rates for students with disabilities. Arkansas (83.8%), Kansas (78.4%), New Jersey (78.8%), and Texas (77.4%) all exceeded the national average rate for students with disabilities by more than 10 percentage points in 2016-17. Nationally the average graduation rate for students with disabilities was 67.1%, 17.5 percentage points lower than the 84.6% rate at which all students graduated.⁴⁵

As the pandemic disrupted teaching and learning, New York state education officials have made it easier to graduate. This included offering a new option that allowed students with disabilities to use a higher score on certain Regents exams to compensate for a lower score on others. In June 2022, the State Board of Regents also agreed to allow students who passed a class but then failed or missed the Regents exam because of “illness, injury or quarantine” to apply for a local diploma as opposed to the standard Regents diploma. That option has been available to students with disabilities since 2016 but now will apply to all students. The Board of Regents has also made it easier for students to appeal if they receive a failing grade on a Regents exam.⁴⁶ Overall, statewide graduation rates have increased by about 15 percentage points since 2005. We can expect that these rates will continue to rise based on recent changes in the requirements for a diploma. Students with disabilities can now graduate without passing any Regents exams, and an amendment to Section 100.2 and 100.5 of the Commissioner’s regulations in 2016 under former State Education Commissioner Mary Ellen Elia now allows for students with disabilities to appeal their Regent scores in addition to creating multiple pathways to graduation.⁴⁷ These amendments reduced the weight of standardized test scores in requirements for graduation and allowed other assessments such as portfolios.⁴⁸ Education

⁴⁵ <https://nsba.org/ASBJ/2019/April/Graduation-Rates-Students-Disabilities>

⁴⁶ Reema Amin, “[Proposal Would Make It Easier for NY Students to Pass Regents Exams](#),” *Chalbeat New York*, May 17, 2022

⁴⁷ <http://www.nysed.gov/curriculum-instruction/multiple-pathways>

⁴⁸ <http://www.regents.nysed.gov/common/regents/files/meetings/Jan%202015/115p12a2.pdf>

officials tout this as a way to keep standards rigorous while still providing different paths for students to show they have mastered the material. It is unclear how much any particular change affected the graduation rate, but state officials said 9,900 students used the option to swap out their final Regents exam for another assessment this past year and appeals tripled in New York City in 2016 after the state made it easier to appeal a failed score.⁴⁹ In 2021 when the state canceled Regents exams, the graduation rate increased slightly across New York state.

RECOMMENDATIONS

To increase graduation rates and to make the high school diploma and transition impactful for students with disabilities, DOE should:

- Work with students and their families to help them develop comprehensive transition plans starting in the 9th grade;
- Consider graduation requirements along with IEP goals each year in grades 9 through 12;
- Provide early notice to the parent and student about diploma options;
- Hold at least four citywide transition fairs every year.

TRANSITION AND TRANSITIONAL SERVICES

For students with IEPs, the preparation to [transition out of DOE](#) begins as early as age 12.⁵⁰ Transition occurs when students graduate from high school or turn 21, depending on their specific circumstances and needs. Students' transition plans can range from pursuing a vocation to attending a four-year college and pursuing a career in academia. [The transition process](#) is overseen by the student's IEP case manager as well as the student's family or care giver and the student.⁵¹

⁴⁹ <https://www.chalkbeat.org/posts/ny/2017/03/10/number-of-new-york-city-students-successfully-appealing-regents-exam-scores-in-order-to-graduate-triples/>

⁵⁰ <https://www.schools.nyc.gov/learning/special-education/preschool-to-age-21/after-high-school>

⁵¹ <https://www.schools.nyc.gov/docs/default-source/default-document-library/family-guide-to-transition-planning>

An [initial vocational assessment](#), which evaluates the student's career abilities, interests and basic skills, is given to the student at the age of 12.⁵² The opinions and input of parents and faculty members at the student's school regarding the student's abilities are also considered. At the age of 14, discussion of students' transition plans becomes a part of the annual IEP meeting. The student and his or her caregivers or family members must be present at any IEP meeting where the student's transition plan is discussed or modified, as these people are essential to the process. Measurable postsecondary goals, such as academic, vocational or social-emotional learning goals, are recommended for the student and family to consider.

This annual process culminates in an exit summary, provided during the year prior to graduation, that outlines the student's abilities in several domains such as life, academic, social and emotional. The exit summary also addresses a student's limitations and areas where they may need the supports of accommodations to attain success in their goals. The exit summary includes information regarding the student's progress toward their postsecondary goals, along with recommendations for how the student can achieve these goals. This can include accommodation recommendations and exploring the pros and cons of disclosing of the student's disability when entering the workforce, but plans can vary depending on the student and their needs.

The IEP team as well as the student's involvement in the IEP transition process is extremely important and helps center the student's desires and goals while still being realistic about accommodations and accessibility needs. Student involvement is also integral to students' burgeoning independence, as when they leave public-school they will enter a world where they will continue to require self-advocacy to overcome societal barriers often placed in the way of success for disabled people.

During this process, students and their families can benefit from contacting DOE's [Transition and College Access Centers \(TCAC\)](#).⁵³ These centers are located throughout the city, with one for each borough. Students and families who utilize these centers receive guidance from staff members on the IEP transition process. The training that students receive is largely based on their academic and career goals. The TCAC provides information on many career options and helps students complete work to help them successfully meet the necessary criteria for a transition out of the DOE. The TCAC centers also facilitate work experiences for students with

⁵² <https://www.p12.nysed.gov/specialed/transition/level1careerassess.htm>

⁵³ <https://sites.google.com/schools.nyc.gov/thebronxtcac/>

IEPs through the Summer Youth Employment Program which provides a paid work-related experience and career exploration to high school students.

RECOMMENDATIONS

TCACs have improved the transition process but more needs to be done. The CCSE recommends that DOE:

- Provide adult mentors to advise students and families during the transition process;
- Add paid adult mentors with disabilities who have completed their education and/or path to employment. Such mentors could be instrumental in encouraging students with IEPs to pursue paths that engage and inspire them.
- Create mentorship circles with adults and children who have disabilities. This would allow students greater access to role models who may have had similar lived experiences and who can advise them through the transition process. While the TCACs provide some of this, it is not known how many of the transition advisors and providers have disabilities and therefore come from a place of lived experience when mentoring students.
- Aim to hire educators and counselors with disabilities and lived experiences in the special education system in order to create a more inclusive office environment as well as to demonstrate to students with disabilities that there are multiple career paths that they can pursue and succeed in and to provide more mentorship opportunities.
- Establish more TCAC sites, pop-up sites or TCAC at Saturday Academy sites. The special education system serves over 200,000 students across the city, but DOE has only five TCAC sites. Traveling around the city, even within one's own borough, can be difficult due to lack of resources or familial responsibilities, the lack of more conveniently located sites can prevent some families and students from getting the help they need especially when having to travel by public transit in a system that is not always accessible.
- Host quarterly or /monthly informational sessions, such as those held by [Beyond Access](#) at in-person sites like Saturday Academy.⁵⁴ This would likely increase parent and student engagement in the transition process and ensure greater success for students with

⁵⁴ <https://www.schools.nyc.gov/learning/special-education/family-resources/beyond-access-series>

disabilities and their families. At these sessions, students would be able to meet other students who are going through the process and interact socially.

- Encourage students with disabilities, particularly those with classifications such as autism, to work with the strengths inherent in their disabilities. Some social-emotional support groups focus on assimilating students into a neurotypical environment. This can be seen as encouraging people to suppress their natural traits and needs. The groups may encourage behaviors such as autistic masking (intentional suppression of autistic traits) that can lead to burnout and greater struggle in students' personal and professional lives. Students should be encouraged to have transition goals that support their authentic selves. One possible solution would be to organize activities for students in transition by career goals and academic interests rather than disability.
- Create inclusion groups with general education students included in transition support groups and workshops. This would allow all students to develop many different skill sets--academic, vocational and social—while also letting them express themselves authentically. Group facilitation would focus on preparing all participants to foster inclusive workplace environments. Some suggested groups might include, STEM club, group volunteer sessions at a social work office, a welding workshop, or simply a space to talk about similar career interests.
- Utilize the newly establish partnerships with Northwell Hospitals and public-private partnership announced by Mayor Adams in September 2022 to offer innovative inclusion experiences for students with IEPs that benefit students and businesses in developing inclusive workplaces.^{55, 56}

LANGUAGE-BASED LEARNING DISABILITIES

In January 2022, the new chancellor of New York City schools, David C. Banks, announced the creation of a school for students with dyslexia and other reading disorders, following through on incoming Mayor Eric Adams' campaign promises.⁵⁷ A dyslexic himself, Mayor Adams has said he believes early interventions such as student screenings would help identify students who

⁵⁵ <https://www.northwell.edu/news/the-latest/northwell-to-provide-student-internships-at-new-york-city-schools>

⁵⁶ <https://www.nyc.gov/office-of-the-mayor/news/656-22/mayor-adams-schools-chancellor-banks-historic-public-private-partnership-career#/0>

⁵⁷ Alex Zimmerman and Reema Amin, "[NYC to Open New School for Students with Dyslexia, Banks Says](#)," *Chalkbeat New York*, Jan. 26, 2022

have difficulty with phonemic awareness and so would properly provide more students with IEPs. This in turn would help them get daily supports and improve their academic performance giving them greater access to higher education. Early screenings, such as those proposed by the mayor, could also help break the school-to-prison pipeline where zero tolerance practices, repetitive expulsions and school arrests historically push students of color and students with disabilities out of the school system and into the criminal system. A [survey](#) by the Correctional Education Association found that 47% of the prison population are adults with dyslexia.⁵⁸

In late April 2022, Mayor Adam's proposed⁵⁹ a \$7.4 million budget for screening students for dyslexia and creating two dyslexia schools in the Bronx and Harlem. With limited information on specifics and funding, parent advocates are eagerly awaiting more details of the mayor's plan.

The mayor's push to correct historical and systematic failures in providing adequate and widespread instruction for students with Language Based Learning Disabilities (LBLD) received praise from many parent and literacy advocates, though some advocates expressed concerns with creating even more segregated settings based on disability labels. For many, the mayor's acknowledgement of his own battle with dyslexia provided evidence that Mr. Adams understands the plight of students struggling to read and will take the necessary actions to institute curricula system-wide that will best suit this population. Concerns have been raised about the initiative's focus on emerging readers, largely ignoring the needs of students in older grades with significant literacy challenges.

More than 20% of New York City students have IEPs and 73% are considered low-income. Students classified as "learning disabled" account for the largest group of students with IEPs: 67,436 students. The lack of a universal reading curriculum with well-trained teachers, up-to-date reading materials and literacy teachers to support struggling readers also contribute to low reading levels in the city.

Faced with such obstacles, parents have galvanized efforts to create schools to serve their children. [Bridge Preparatory Charter School](#) is the only publicly funded school in New York state

⁵⁸<https://web.p.ebscohost.com/abstract?direct=true&profile=ehost&scope=site&authtype=crawler&jrnl=07402708&AN=156181535&h=Q062ValcgrHk7G2XDxziWENa%2br7DNldUws9PjrLDibRgt4AjSiih%2f7QzLsVTCnJrZquruVcRrcjnfiZbTToIcg%3d%3d&crl=c&resultNs=AdminWebAuth&resultLocal=ErrCrlNotAuth&crlhashurl=login.aspx%3fdirect%3dtrue%26profile%3dehost%26scope%3dsite%26authtype%3dcrawler%26jrnl%3d07402708%26AN%3d156181535>

⁵⁹ Jessica Gould, "[Mayor Adams Proposes \\$7.4 Million Plan for Public Schools to Address Dyslexia](#)," *Gothamist*, April 29, 2022

with a focus on students with dyslexia and other reading disorders.⁶⁰ Located on Staten Island, the school was created in response to the lack of adequate reading curriculum for students with reading disorders in New York City. Bridge Preparatory has been praised for understanding the science behind reading instruction and its relation to other subject matter, and for its use of [Orton-Gillingham, a](#) multi-sensory approach.⁶¹ In multisensory learning, as opposed to memory learning, students utilize all senses to learn to read and write. This methodology has proved successful for students with reading disorders. Parent-led groups like [Literacy Academy Collective](#) are advocating for additional schools to support dyslexic students, arguing that learning to read is a civil right.⁶²

Historically, private institutions, such as [The Winward School](#),⁶³ have served New York City public school students when zoned schools have failed to provide students with a Free and Appropriate Public Education. Enrolling a child in such a program, however, is time-consuming and expensive. Once a child is identified as having a reading delay, the process involved in requesting an evaluation, securing a neurological evaluation and understanding the results can take many months and cost thousands of dollars. The lack of support offered to families navigating the process can leave families feeling deflated and defeated. The process often leaves families managing new challenges that may arise with obtaining an IEP with carefully aligned goals and measurements for their child. To add to the stress, DOE often fights parents who say their child cannot be served in public schools and need a private program, forcing families to sue the DOE every year to be awarded tuition for specialized schooling. As a result, years can be lost from the moment a child is identified as having a reading delay to when they receive appropriate intervention.

There is only one state approved non-public school (private schools that accepts direct payment from the state) in NYC, the Churchill School, that addresses language-based learning disabilities. Unfortunately, the school is moving toward privatization and starting in 2020 has stopped accepting applications from DOE students and only accepts students with a private application. After the current cohort of DOE students transition out, it will be a fully privatized school.⁶⁴ Privatization will make the school much less accessible to less resourced families. Their free

⁶⁰ <https://www.bridgeprepcharter.org/>

⁶¹ <https://www.readingrockets.org/article/orton-gillingham-what-you-need-know>

⁶² https://www.literacyacademycollective.org/about_us

⁶³ <https://www.thewindwardschool.org/community/academics/language-arts-program>

⁶⁴ <https://www.businesswire.com/news/home/20190826005514/en/The-Churchill-School-Announces-Transition-to-a-Fully-Independent-School>

after-school reading program is also difficult to access due to limited spots, waitlists and transportation barriers for students that attend schools out of borough.

RECOMMENDATIONS

The CCSE is encouraged by Mayor Adams' commitment to helping students with dyslexia and reading disorders. It urges the city to take these steps as well:

- Engage the Citywide Councils on Special Education, English Language Learners, High Schools and District 75 as stakeholders on all task forces considering programming, therapeutic school construction and enrollment that affect students with language-based learning disabilities. The Citywide Councils are tasked with the responsibility of advising and recommending policies on behalf of the students they represent.
- Have DOE collaborate with subject matter experts (literacy, writing, math, science, social studies, physical education, etc.), therapeutic services (occupational therapy, physical therapy, speech), providers, school counselors, psychologists and experts in assistive technology when creating and reviewing programming for students with dyslexia and other reading disorders.
- Select evidence-based curriculum, namely Orton-Gillingham, as a framework for addressing language-based learning disabilities to provide successful outcomes for the whole child.
- Address dyslexia and other reading disorders with a city-wide initiative, not the creation of a single school per borough. With a single school, the city will repeat the outcomes we see with gifted and talented where placement is limited and a large population of students go unserved.
- All staff providing instruction to students with learning disabilities and staff of community-based organizations (CBOs) instructing these students should receive professional development, certification, training, and/or accreditation for teachers through the Orton-Gillingham academy. An annual report should be released to the public with detailed data on staff training and certifications.
- The Annual School-Age Special Education Data report should include fields detailing students' multiple and co-occurring disabilities and should reflect dyslexia or reading disorders for students whose primary classification under IDEA is not learning disabilities. For example, if said student's primary classification is "other health impairment," but the child also has reading disorders, the reporting must indicate a reading disorder.
- Consideration of any reading disorder or learning disability related to literacy should also be considered and reflected in the creation of the student's IEP and IEP goals.

STUDENTS IN TEMPORARY HOUSING

More than 104,000 New York City public school students – almost 10% of all students – lived in temporary housing for all or part of the 2021-2022 school year, according to data released by DOE. This represents an increase of almost 3% from the previous year. The number includes those living in city Department of Homeless Services shelters, doubled up or sharing housing with someone else, living in a hotel/motel or having no shelter.⁶⁵ While numbers are not available on the percentage of these students that have IEPs, there is no reason to think it is not similar to or greater than the percentage of students with IEPs in the overall student population. We also know that living in temporary housing makes it more difficult for students with disabilities to get the services they need to which they are legally entitled. Students in temporary housing, whether or not they have IEPs, face many challenges including hunger and poor nutrition, lack of access to health care, developmental disabilities related to trauma, school instability, enrollment barriers, issues related to transportation, health and safety, as well as mental health concerns that may affect learning.⁶⁶ This affects their school attendance and performance. More than 60 percent of children living in shelters, for example, are defined as chronically absent, meaning they miss at least 10% of school days. Students living in shelters are three times more likely to drop out of high school than their peers and only 60% graduate from high school in four years, compared to more than 80% for the city as a whole. Another unfortunate statistic shows that despite protections provided in the McKinney-Vento Act, (see below) 80% of STH have been transferred from their school in their borough of origin, leading to school instability.⁶⁷

The COVID 19 pandemic highlighted problems many of these students have accessing technology and the internet, leaving many of them unable to access their virtual classrooms. This led to a dramatic drop in attendance of students in temporary housing.⁶⁸ In response, the Legal Aid Society and a private law firm filed a class action suit on behalf of homeless families, charging that the poor internet service in city shelters denied the children living in them their

⁶⁵ Troy Closson, "[More Than 104,000 New York City Students Were Homeless Last Year](#)," *New York Times*, Oct. 26, 2022

⁶⁶https://www.advocatesforchildren.org/sites/default/files/library/learning_in_limbo_1989.pdf?pt=1

⁶⁷ <https://data.cityofnewyork.us/Education/2021-Students-In-Temporary-Housing/3wtp-43m9>

⁶⁸ Selim Algar, "[NYC Homeless Student Attendance Drops Sharply So Far This School Year](#)," *New York Post*, Oct. 18, 2021

right to a “sound basic education.” The two sides reached a settlement and in May 2022 the city said it had installed Wi-Fi at every family homeless shelter.⁶⁹ Before that settlement was reached, however, some homeless families who had been struggling to get online services for their children and stated that school officials threatened to report them to the Administration for Children’s Services for educational neglect because they were unable to log into remote learning.⁷⁰

When schools were closed in the first half of 2020, the New York State attorney general issued [guidance](#) on serving students in temporary housing during the COVID pandemic.⁷¹ This was in addition to the already established rules under the [federal McKinney-Vento Act](#) that sets requirements for school districts that serve students in temporary housing. The act calls for schools to provide liaisons to help homeless students access public education, including but not limited to making sure they can enroll in school; are referred to health, dental and mental health resources; get help to transition to college; have transportation to school and can remain in their school of origin.⁷²

RECOMMENDATIONS

Considering the effects of COVID 19 on students in temporary housing, the CCSE recommends:

- DOE provide prompt busing or give rideshare vouchers to students in temporary housing so a higher number of them may attend their school of origin. This will promote school stability.
- DOE will not weaponize the Administration for Children’s Services to punish families managing homelessness when their children are absent from schools.
- DOE will give priority to families in temporary housing who request technology and technology assistance.

⁶⁹ David Brand, “[NYC Installs WiFi at Every Family Homeless Shelter Following Legal Settlement](#),” *City Limits*, May 25, 2022

⁷⁰ -- “[Homeless Families Say They’re Being Threatened with ACS Intervention Because They Can’t Log In for Remote Learning](#),” CBS New York, Oct. 26, 2020

⁷¹ https://ag.ny.gov/sites/default/files/nyag_mv_guidance.pdf

⁷² <https://schoolhouseconnection.org/wp-content/uploads/2020/09/The-McKinney-Vento-Act-Quick-Reference.pdf>

- DOE will provide extra evaluations to determine whether students in temporary housing need IEP services along with health and wellness, nutrition and mental health services to address the effects of the traumas of homelessness and the COVID pandemic.
- Every shelter should have a social worker and a designated IEP teacher at every school to act as liaisons between the school and shelters to help students living in the shelter with issues related to their education, including helping them get IEP services if necessary.
- After-school tutoring should be available at every shelter or at a nearby community organization with priority given to STH city funded after school programs.
- Every community school district should have a district office special education person focused on students in temporary housing.

TRANSPORTATION

In accordance with Chancellor’s Regulation A-801, DOE provides transportation to all eligible New York City students in public, charter and non-public schools. However, all too often students with disabilities cope with long bus rides, unreliable transportation and uncomfortable or even unsafe conditions on buses. This was especially true during the 2021-22 school year as children returned to school in person during a global pandemic. The busing system faced extreme staff shortages, leading to long routes, buses coming late or not showing up at all, and a risk of COVID transmission on over-crowded and poorly ventilated buses. As students returned to classrooms fulltime in September 2021, students whose IEPs call for busing experienced unprecedented difficulties securing safe and reliable transportation to and from school. The school year opened with hundreds of families not receiving their mandated busing services, leaving many families stranded without busing for the first several weeks of school.

The CCSE helped escalate the concerns of over 150 families directly to the Office of Pupil Transit due to many issues including not having a bus, extremely long bus rides, late buses and the absence of bus paraprofessionals and nurses. Parents were advised to lodge concerns with the Office of Pupil Transit call line. Many who did that, however, spent hours on hold or had their calls disconnected before they could speak with a representative. When parents did connect with a representative, they were often referred to their school’s busing coordinators, leaving their complaints unresolved. The *Daily News* [described](#) the state of busing at the beginning of

the school year as “a ‘cataclysmic’ failure [that] has left scores of city kids without buses for days or weeks.”⁷³

In response to busing shortages, DOE provided a contracted car service for families. This service, however, required the parent or guardian to escort their child to and from school and was riddled with no shows and drop offs to incorrect addresses. Some parents were forced to pay hundreds of dollars out of pocket to escort their children to school via hired car services and then forced to wait months for reimbursement by DOE. Some parents even reported to the CCSE that lost their employment due to chronic lateness or absences because of feeling obligated to transport their children to school for fear of being charged with educational neglect or having their children miss vital related support services and educational supports.

In years past, bus route information was mailed to student’s families prior to the start of the year. In 2021-22, parents were told to locate this information in their New York City Student Account (NYCSA). This created difficulties for parents who did not have access to the accounts because they did not have an account assigned, (as is the case with all students entering kindergarten) did not have reliable computer or internet access or could not read one of the languages on the account. This left many families with no information on the status of their child’s busing, forcing them to wait to be contacted by the driver or bus matron in the days leading up to the first day of school.

In addition to the shortage of buses, bus drivers and busing staff, high school students who take regular public transit were left without school-issued MetroCards due to an inventory shortage and delay in getting MetroCards to schools. According to *Chalkbeat*⁷⁴, students were given form letters asking the Metropolitan Transportation Authority (MTA) to allow them to ride without the required train fare. Many students were left stranded or had to access their transportation illegally because MTA staff was not available in stations to allow them through the turnstiles.

Busing was also an issue for students with IEPs who had been offered placement in the Special Education Recovery Services (SERS) and Summer Rising Summer Enrichment Programs. Busing was supposed to be provided so that students with disabilities or in temporary housing could participate in these after-school and summer services, but DOE then said it would not provide transportation to the summer program for students with disabilities but would instead

⁷³ <https://www.nydailynews.com/new-york/education/ny-nyc-parents-struggle-ongoing-school-bus-woes-20211025-xxchpblporba3p74se6ixhusyi-story.html>

⁷⁴ Christina Veiga, “[NYC Students Heading Back to School Got Form Letters Instead of MetroCards to Ride Transit](#),” *Chalkbeat New York*, Sept. 16, 2021

reimburse families. This forced many families to pay out of pocket and wait for reimbursements promised by DOE.⁷⁵ As the SERS programs ended in June, busing had never been made available to families wanting to participate in the SERS program. Many families had been forced to opt out of these essential programs because of the lack of transportation as well as a disorganized roll-out of the program.⁷⁶

The year 2021-2022 also saw the city purchase Reliant Busing and create its own non-profit, New York City School Bus Umbrella Services (NYCSBUS). NYCSBUS will operate approximately 10% of all busing for NYC DOE. This move places a bus company directly under the auspice of NYC DOE and the Office of Pupil Transportation for the first time. NYCSBUS has also pledged to have a 100% electric bus fleet by year 2035.⁷⁷

Students over the age of 14 with an IEP are eligible to receive travel training, according to the [DOE website](#).⁷⁸ This training, DOE says, “Teaches students with disabilities how to travel safely and independently on public transportation.” However, it appears this program is not operating. One District 75 school’s website states that the program has been discontinued due to COVID-19 and staffing shortages.

It should be noted that in preparing this report, no current official data on student busing in New York City could be found. A [report by New York Appleseed](#) also points out the lack of data on school busing past or present and says the most recent information they could find was a statistic from 2019.⁷⁹ The last data available on special education busing assignments is from November 2020 and this data does not address many of the concerns that parents have regarding special education busing.

RECOMMENDATIONS

⁷⁵ Alex Zimmerman, “[Summer School Busing Gap Could Exclude Homeless Students and Children with Disabilities, Advocates Fear](#),” *Chalkbeat New York*, June 8, 2021

⁷⁶ <https://ny.chalkbeat.org/2022/4/7/23013866/nyc-special-education-recovery-services-after-school>

⁷⁷ [NYC School Bus Umbrella Services Inc. \(electrictruckandbuschallenge.org\)](#)

⁷⁸ <https://www.schools.nyc.gov/learning/special-education/school-settings/district-75>

⁷⁹ https://www.nyappleseed.org/wp-content/uploads/NYA_YellowBusReport_April2022_Final-1.pdf

The CCSE makes the following recommendations regarding transportation for students with IEPs:

- Creation by the Office of Pupil Transportation of a transparent and accessible system for parents to get information on busing delays and routes as well as the status of complaints filed. This system will have designated time frames for OPT to respond to complaints and provide written documentation of the complaint’s resolution or closure, or an explanation of why the office was unable to resolve a complaint..
- Creation of a school transportation oversight committee made up of parents, paraprofessionals and DOE officials to mitigate and mediate all concerns related to the functions of OPT. This committee should also include oversight by the comptroller’s office to ensure the appropriate handling of budgets and contracts.
- Immediate reinstatement of the travel training program that provides training on safe travel on public transit for students over the age of 14 with IEPs.
- Bi-annual (November and May) reports by OPT on busing, tracking the number of students-- with and without IEPs--assigned busing, the number of bus routes and the number of students assigned to each route. These reports will also include safety inspection reports; information on busing staff training and licensing; and data on all incidents, including documentation of no-show buses, late buses and other data as deemed necessary.
- The DOE will ensure that every family that utilizes busing has access to a NYCSA account and will commit to mailing out busing information to incoming Kindergarteners’ families as they do not have a NYCSA established until the student starts school.

ACS AND DOE PARTNERSHIP

[Chancellor’s Regulation A-750 on Child Abuse and Maltreatment Prevention](#) includes procedures for reporting cases of suspected abuse to the New York State Central Register for child abuse and maltreatment, for cooperating with Child Protective Services investigations and policies, and for dealing with concerns regarding school absences for elementary and middle school students.⁸⁰ When a report is made, the case is kept on record at the State Central

⁸⁰ <https://www1.nyc.gov/assets/acs/pdf/covid19/ChildAbuseMaltreatmentPrevention.pdf>

Register (SCR) until the youngest child in the family at the time of the investigation turns 28 years old--even if the case is determined to be completely unfounded.⁸¹

For years, the CCSE has received reports of families struggling to receive mandated services for their children with IEPs who have been subjected to investigation by the city's Administration for Children's Services (ACS) as a tool to silence them or deter them from speaking out. This happens disproportionately to families of color, immigrant families and families with children classified as having an emotional disability/disturbance.

In May 2021, then-Mayor Bill de Blasio announced that city schools would not provide a remote learning option for the school year starting in September even though more than 60% of New York City public school students were still learning from home full-time because of concerns about COVID.⁸²In response, families across the city participated in a "Strike for Safe Schools" citing poorly ventilated classrooms, immunocompromised family members, and unsafe school environments as reasons they felt the push to in-person learning would not be safe. They were concerned about an array of issues such as the poor air quality and inadequate ventilation in some classroom and a lack of full-time nurses, social workers or counselors in many schools

In August 2021, DOE announced remote learning would be available to medically fragile students but that DOE would provide far less instruction than it had when schools offered a fully remote option in 2020-21: five hours a week for elementary school students and 10 hours for those in middle or high school. DOE [listed 20 conditions](#) that could qualify a student for home instruction and said students who were immunocompromised could also apply.⁸³ While hundreds of families applied for the program despite the limited hours, some waited for months for their applications to be processed.⁸⁴ In the November 9, 2021 issue of *Principal's Digest*, an update to ACS guidelines surrounding attendance highlighted that schools should use "Code 06" for "absence due to special circumstances" when a family was awaiting approval for homeschooling or home instruction.

⁸¹ <https://www1.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page#a>

⁸² <https://ny.chalkbeat.org/2021/5/24/22450700/nyc-no-remote-learning-option-next-school-year>

⁸³ <https://www.documentcloud.org/documents/21074142-doe-homecoming-health-and-safety-guide-september-8-2021>

⁸⁴ <https://ny.chalkbeat.org/2021/10/1/22704701/medically-necessary-remote-instruction-nyc-schools>

Parents who opted to keep their children at home because of concerns about COVID faced an additional anxiety: fear that they could be investigated by ACS. “Hundreds of families have been targeted by ACS not because their children are in imminent danger or not being educated but because the DOE would simply prefer they learn in-person and some principals have used ACS to retaliate against outspoken parents,” one parent involved in Strike for Safe Schools said.

New York City school personnel reported 2,822 possible cases being investigated by ACS between September and November 2021, and 11,560 between August 2020 and November 2021,⁸⁵ according to *The 74*. This account updated an earlier story that found city school personnel had made more than 2,400 calls to the state’s hotline to report cases of suspected abuse or neglect in fall 2021, a 45% increase over the previous year. Of those 839 cited “educational neglect,” which often means a child is not going to school.

Chalkbeat reported that ACS data showed that education department staff made 207 reports of educational neglect during the first two months of the school year. The numbers tripled in the last two weeks of October, compared to the first month of school. Late October is when school enrollment numbers are compiled, so the reports may have been part of an effort to boost enrollment numbers.⁸⁶

During a September 2021 press conference, in a response to a question about whether ACS would investigate parents who were hesitant to send their children into schools because of safety concerns, then Chancellor Meisha Porter said, “The only time the ACS will intervene is if there is a clear intent to keep a child from being educated.” Mayor de Blasio also sought to allay parents’ fears about ACS investigations. “If in the beginning of the school year, a parent is not ready, we’re going to keep talking to them or we’re going to keep trying to convince them,” he said. “If that goes on for a while, then it’s a different scenario.”⁸⁷

Despite these instructions, families said they were reported even though they were in the process of arranging appropriate education for their child or awaiting approval for home instruction, were keeping their children home for safety concerns, had no safe way to get their

⁸⁵ Asher Lehrer-Small, “[NYS Underreported Abuse & Neglect Allegations Made by NYC School Staff](#),” *The 74*, March 1, 2022

⁸⁶ Christina Veiga and Amy Zimmer, “[They Believed Home Was Safer than School. Now Some NYC School Parents are Accused of Educational Neglect](#),” *Chalkbeat New York*, Nov. 19, 2021

⁸⁷ Eileen Grench, “[New School Year Brings New Concerns of Pandemic ‘Educational Neglect’ Child Welfare Probes](#),” *The City*, Sept. 9, 2021

child to school, or feared that sending their child to in-person school could put an immunocompromised family member at risk.

Chalkbeat reported that families of color and guardians of children with disabilities were most likely to be subject to investigation. While about 60% of the city’s children are Black and Latinx, they represent 90% of those involved in ACS investigations or placed in foster care due to reports of child neglect. Thanks to an amendment to the Local Law Article 132 in 2021, a report of demographic data on ACS reports, investigations and outcomes will be published annually so that race and ethnicity data can be tracked more accurately so that policy can be developed to address the over representation of ACS involved Black and Latinx families.⁸⁸

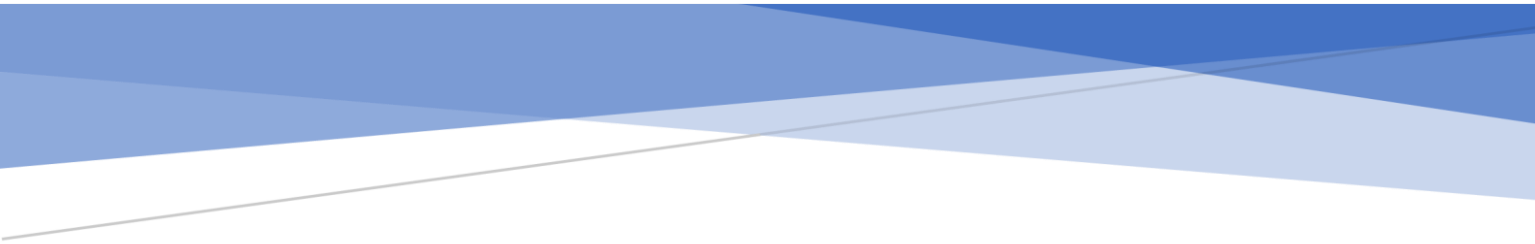
RECOMMENDATIONS

- Based on these reports, the CCSE recommends: The Independent Budget Office (IBO) conduct an immediate audit of educational neglect cases for the last five years and release a report on it by September 2022; followed by audits and reports on an annual basis.
- Families waiting for their medically fragile home instruction applications to be reviewed should not be subject to punitive attendance codes that can result in a report of educational neglect.
- An appeals process be made available for families who are denied home instruction.
- All attendance officers go through mandatory training on attendance codes to avoid cases being improperly brought against families.
- Training be provided to all mandated reporters on alternative approaches as recommended by NYC Mandated Reporting Group’s “Alternatives to Mandated Reporting Guide.” (see appendix 15)
- Families with members who are immunocompromised, include multiple generations, live in deeply impacted zip codes or include children with sensory issues that make mask wearing difficult or who have other extenuating circumstances be eligible to use attendance Code 6, indicating a student with a disability is being alternatively educated at home. This change would encourage positive engagement with families and would avoid punitive consequences of child welfare involvement and investigation for

⁸⁸ <https://intro.nyc/local-laws/2021-132>

responsible parents. It would also reduce the allocation of resources to the investigation of unnecessary “educational neglect” calls.

- DOE will hold sanctioned community-led information sessions on how vulnerable families can protect themselves from unfounded ACS cases and how mandated reporters can avoid misusing a system with disproportionate outcomes. This would help mitigate the possible separation of loving families. The effects of an ACS investigation on families can lead to long lasting consequences of emotional stress on a child, as well as the parent or caregiver. It can affect trust in the educational system, family mental health, parental stability and employment, housing and more for years after a case is opened.



APPENDICES

CCSE Resolution--Approval of CCSE Budget

Citywide Council on Special Education

Resolution #001 Approval of CCSE Budget – Term 2021- 2022


Whereas, the members of the Citywide Council on Special Education (CCSE) have received an operating budget from the NYC Department of Education in the amount of \$25,000; now, therefore, be it

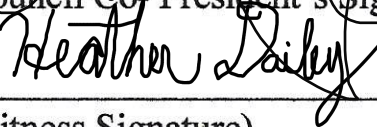
Resolved, that the Citywide Council on Special Education (CCSE) establish its operating budget for the 2020-2021 school year as follows:

Supplies	\$500
Procurement Card (P-card)	\$5,000
Member Reimbursements	\$15,000
Meeting expenses\Travel Reimbursement	\$500
Non-contracted Services	\$3,000
Training	\$1000


BE IT FURTHER RESOLVED that the CCSE hereby reserves the right to move funds from one cost code to another as necessary upon majority approval by the Council.

BE IT FURTHER RESOLVED that the CCSE requires that the DOE provide the CCSE with a monthly breakdown of expenses.




 (Council Co- President's Signature)


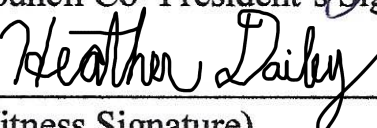
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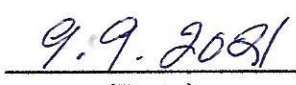
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 (Council Co- President's Signature)


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CCSE Resolution--On Remote Learning in School Year 2021-2022

Citywide Council on Special Education

Resolution #002 Resolution on Remote Learning in School Year 2021-22

The Community and Citywide Education Councils (CCECs) are composed of parents who have been elected or appointed to serve as stakeholders of NYC School Community Districts, and specific cohorts of students, representing NYC public school students and their families.

The following resolution offers the Citywide Council on Special Education's position regarding Remote Learning in the 2021-22 School Year:

WHEREAS, children under 12 years of age are not eligible to be vaccinated, many of whom have older siblings;

WHEREAS, the rate of vaccination among 12–17 year-olds is lower than the vaccination rate of those 18 and older, and where 56% of New York City children age 12 to 17 have received at least one dose of the COVID-19 vaccine ;

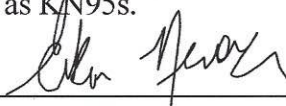
WHEREAS, a more contagious variant of SARS-CoV-2, which makes children more susceptible to infection and transmission, is now the dominant variant in New York City;

WHEREAS, while immunocompromised students may be eligible for medical accommodations through Home and Hospital Instruction , CCSE members have unanswered questions about whether students with immunocompromised family members are eligible for the same remote learning medical accommodations;

WHEREAS, many New York City school buildings are overcrowded and may not have the space to provide consistent social distancing, which poses a particular risk at lunch when students will not be masked, especially in light of more transmissible variants;

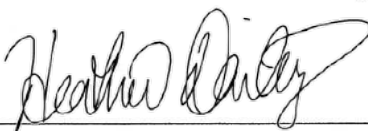
WHEREAS, the city has reduced the amount of COVID 19 PCR testing to 10% of opted in students; and WHEREAS, the DOE has not yet committed to providing more substantial masks, such as KN95 masks, necessary to protect against the more contagious DELTA variant.

THEREFORE BE IT RESOLVED, that the Department of Education continue to expand the list of accommodations, including but not limited to children ages 3 to 11, until vaccines are approved for that age group, for high quality remote learning; increase Covid testing over last year; and provide high quality masks such as KN95s.



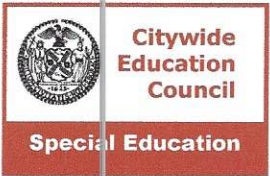
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Citywide Council on Special Education

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CCSE Resolution--On Appeals to Denial of Remote Option



Citywide Council on Special Education

RESOLUTION #3 - ON APPEALS TO THE DENIAL OF A REMOTE OPTION

The Community and Citywide Education Councils (CCECs) are composed of parents who have been elected or appointed to serve as stakeholders of NYC School Community Districts, and specific cohorts of students, representing NYC public school students and their families.

The following resolution offers the Citywide Council on Special Education's position regarding Remote Learning in the 2021-22 School Year:

WHEREAS, children under 12 years of age are not eligible to be vaccinated, many of whom have older siblings;

WHEREAS, the rate of vaccination among 12–17 year-olds is lower than the vaccination rate of those 18 and older, and where 56% of New York City children age 12 to 17 have received at least one dose of the COVID-19 vaccine ;

WHEREAS, a more contagious variant of SARS-CoV-2, which makes children more susceptible to infection and transmission, is now the dominant variant in New York City;

Whereas the the NYC Doe has listed a number of medical issues that will allow for children to use a remote platform for schools;

Where as the parent applying for the exemption for a remote access for their child must submit documents to the DOE medical team; and,

Whereas there is no appeals process for a parent of a student who has been denied a remote option;

THEREFORE BE IT RESOLVED, that the Department of Education immediately create such an appeals process, and that such an appeals process shall be completed within ten (10) business days of the date of the receipt of the appeal(s)



Citywide Council on Special Education

(Council Co- Presidents Signature)

9/23/21

(Date)

(Witness Signature)

9/23/21

(Date)

(Council Co- Presidents Signature)

9/23/21

(Date)

(Witness Signature)

9/23/21

(Date)

CCSE Resolution--Pupil Transportation Demands

Citywide Council on Special Education

RESOLUTION #4 - PUPIL TRANSPORTATION DEMANDS

WHEREAS, New York City public schools exist to serve all the city's public school students;

WHEREAS, in accordance with Chancellor's Regulation A-801, the Department of Education (DOE) provides transportation to all eligible New York City students in public, charter, and non-public schools. In partnership with the Metropolitan Transit Authority (MTA) and our school age and preschool bus companies, our mission is to ensure safe and reliable transportation to and from school;¹

WHEREAS, Curb-to-school or specialized bus service is provided to students whose medical, health, or disability-related conditions or special circumstances prevent them from being able to walk or utilize other forms of transportation to get to and from school;

WHEREAS, under the DOE Transportation Rights, students should expect Dependable and timely school bus service, travel on a school bus that is properly equipped and inspected for safety, including an inspection by the NYS Department of Transportation performed every six (6) months, and the shortest and safest bus route to minimize travel times to and from school;²

WHEREAS, for a safe environment free from discrimination, harassment, and bullying; in accordance with Chancellor's Regulation A-832 any such incidents should be reported to their school's Respect for All liaison (RFA) or e-mailed to RespectforAll@schools.nyc.gov ;

WHEREAS, families can report any behavioral or safety incident on the school bus to their school for documentation and appropriate follow-up and filing a complaint to initiate an unbiased investigation performed by the appropriate investigatory unit or agency; and timely resolution of any complaints and/or concerns

WHEREAS, 150,000 NYC students attending public schools, charter schools and non-public schools are eligible for pupil transportation including 50,000 students who have IEPs and 5000 students in temporary housing.³

WHEREAS, in June 2021, the DOE, having failed to provide school bus service to students mandated for summer/extended school instruction, offered free car service for Students with disabilities and students in temporary housing in order to attend the Summer Rising program.⁴

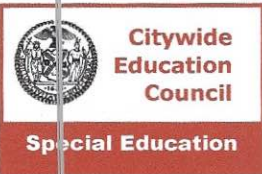
¹ <https://www.schools.nyc.gov/school-life/transportation/transportation-overview>

² <https://www.schools.nyc.gov/school-life/transportation/transportation-rights>

³ <https://ny.chalkbeat.org/2020/8/28/21406253/school-bus-contract-nyc>

⁴ <https://ny.chalkbeat.org/2021/6/29/22556614/summer-rising-transportation-disability-homeless>

Reso #H - jpd2



Citywide Council on Special Education

WHEREAS, in March 2021, Mayor DeBlasio announced a long term investment in student bus transportation in the acquisition of Reliant Transportation and the establishment of the non-profit organization New York City School Bus Umbrella Services Inc. (NYCSBUS) to service 950 school age bus routes annually for the DOE.⁵

WHEREAS, during Chapter 683(a federally funded program that pays Special Education schools to provide year-round instruction. In New York City it is District 75 schools who provide instruction for the most severely disabled students in the New York City Public Schools), families who rely on summer programs for mandated 12-month services encountered numerous instances of late pick ups, no social distancing on minibuses, children dropped off at the wrong location/site, children reported lost for numerous hours and reports of busses with non functioning air conditioning when the outside temperatures were well over 80 degrees.

WHEREAS, Despite numerous promises from OPT that busses would be in place for the first day of the 2021-2022 school year, parents still reported children not being picked up, children being lost, excessively long travel times, wheelchair bound students not being provided vehicles with chairlifts, and overcrowded minibuses with no air conditioning or proper ventilation.⁶

WHEREAS, during Chapter 683 thousands of families were stranded for almost 3 weeks waiting for a bus route to be assigned, missing mandated instruction and other in-person services and being forced to pivot to remote learning;

WHEREAS, only 40% of NYC families have established NYCSA accounts and the rest were unable to access busing information when in the past, OPT sent busing information as a written notice 10 days prior to school starting;

WHEREAS, incoming kindergarten families did not have access to busing information since NYCSA accounts are only established once the students are enrolled, nor did non-public school families, leaving tens of thousands of students stranded without access;

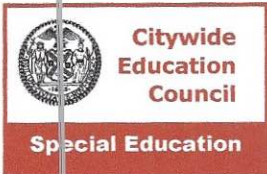
WHEREAS, the staffing of bus paraprofessionals is an immense obstacle in the transportation of our students leaving many unable to board their assigned bus;

WHEREAS, the extent of late, no-show, merged and doubled-up routes in Summer to Fall 2021 can partly be explained by the shortage of licensed school bus drivers throughout New York and other states, a problem that reflects eight years of NYCDOE allowing routes to be put out for bid without an Employee Protection Provisions (EPP) compensation package for the workers;

⁵ <https://www1.nyc.gov/office-of-the-mayor/news/710-20/mayor-de-blasio-long-term-investment-bus-transportation-city-students>

⁶ <https://ny.chalkbeat.org/2021/9/13/22672760/school-buses-leave-nyc-students-stranded-on-first-day>

Reso #4 - pg 3



Citywide Council on Special Education

WHEREAS, Metrocards intended for High School students for pupil transportation went missing during the first week of school leaving students very little choice but to crawl under the turnstile in order to get home. Penal Law 165.15 Theft of Services Theft of service in relation to train is Section 165.15 punishable up to one year in jail;⁷

WHEREAS, PS 770 in District 17 reported to media that bus shortages left families with no bus routes for the entire school for several days, forcing families to take time off from work in order to transport their children;⁸

WHEREAS, parents have the right to receive information or communicate with a staff member at their school or Department of Education (DOE) office in their language regarding any and all matters related to transportation;

WHEREAS, these language barriers and technology constraints place an undue burden on families that are already struggling;

THEREFORE, BE IT RESOLVED that we ask the DOE to prioritize the final acquisition of Reliant Transportation 950 bus routes and bus fleet in order to service all 150,000 students eligible for transportation;

BE IT RESOLVED that we ask a pilot program for the recruitment, training and nomination of sub-paras strictly for the use of servicing students in need of bus paras be created under the supervision of the District 75 Superintendent to allow a faster expedition of the subpara nomination process and allow more parents to apply;

BE IT RESOLVED that we ask for OPT to acknowledge and study the deficiencies that occurred during Summer Rising and Chapter 683 and schedule discussions with stakeholders on how to staff and problem solve promptly without relying only on a possible extension of the CURB car service contract in anticipation of unmet busing needs;

BE IT RESOLVED we ask attendance be collected on the number of students unserved due to bussing deficiencies and made public and disaggregated by borough and by district;

BE IT RESOLVED we ask that OPT takes initiative to prioritize students who require a specialized learning classroom environment for the 'fewer students on route' accommodation in regards to transportation especially in cases of behavior and/or safety;

BE IT RESOLVED we ask that OPT shorten the maximum route duration times and create routes that adhere to them; enforce limited time travel where granted by an IEP;

BE IT RESOLVED we demand a more stringent oversight of OPT practices including but not limited to a reporting system of when site visits to bus companies are done, when bus inspections and repairs are cataloged,

⁷ <https://ny.chalkbeat.org/platform/amp/2021/9/15/22676461/nyc-students-metrocards-missing>

⁸ <https://pix11.com/news/local-news/brooklyn/east-flatbush-families-left-scrambling-after-no-show-buses/>

Citywide Council on Special Education

a transparent record of specialized vehicles and routes for students in need of ambulatory services, and how many routes are assigned to one driver;

BE IT RESOLVED we demand a more transparent and accessible complaint system for families and schools to report instances of no pickup, maintenance issues, missing children, safety concerns, and infractions on safety protocols;

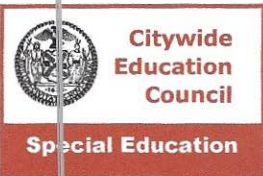
BE IT RESOLVED, we demand the creation of a school transportation oversight committee made up of parents, paras, and DOE officials to mitigate and mediate all concerns related to the functions of OPT;

BE IT RESOLVED, we ask that OPT maximize climate control on the vehicles, preferably with clean HVAC technology that is at least as energy efficient as New York City MTA buses used in public transportation;

BE IT RESOLVED, we demand that OPT improve training for all drivers and attendants. Uniformity in training including first aid, car seats, disability awareness/acceptance, bullying, and how to do bus evacuation drills. Update the modules parents created years ago; allow parent leaders to vet the training vendors and to do quality control visits or presentations to training in progress;

BE IT RESOLVED we demand OPT to proactively inform families (thru backpack mail) & schools on busing rights including: how to get accommodations; publish the different accommodations available and the codes to support the school based transportation liaisons on the Transportation section of the DOE website; how to add busing when changing schools or housing, especially for those residing in family residences; how to lodge a complaint; and how to seek a variance. We also ask that all forms and information are accessible and available in any languages the DOE serves.

Cc: Chancellor Meisha Porter
Chief Operations Officer Kevin Moran
OPT Director of Ridership John Benson
CEO of NYCSBUS Matt Berlin
NYC Comptroller Scott Stringer
NYC Public Advocate Jumaane Williams
NYC City Council Education Chairman Mark Treyger



Citywide Council on Special Education

Approved by CCSE 10/7/2021



(Council Co- Presidents Signature)

_____ 10/7/21


(Date)



(Witness Signature)

_____ 10/7/21

(Date)



(Council Co- Presidents Signature)

_____ 10/7/21

(Date)

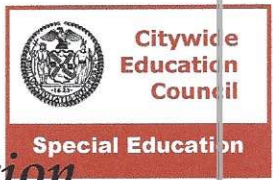


(Witness Signature)

_____ 10/7/21

(Date)

CCSE Resolution--Filling a Vacancy with Carolyn Castro (2021-2023 term)



Citywide Council on Special Education

Resolution #005 CCSE Appointee to the CCHS (Francine Almash)

Whereas, the Education Law 2590 states that the Citywide Council on Special Education (CCSE) shall have an appointee serve on the Citywide Council on High Schools;

Whereas, the Citywide Council on Special Education (CCSE) has conducted an application and interview process, and consulted with parents of student receiving services pursuant to article eighty-nine of the State Education Law 2590;

Whereas, applications have been sent to the Department of Education for review and approval; now, therefore, be it

Resolved, that the Citywide Council on Special Education (CCSE) hereby confirms the vote of Francine Almash to serve as the Citywide Council of Special Education’s Appointee on the Citywide Council of High Schools for the term of 2021 - 2023

(Council Co- Presidents Signature)

10/7/21
(Date)

(Witness Signature)

10/7/21
(Date)

(Council Co- Presidents Signature)

10/7/21
(Date)

(Witness Signature)

10/7/21
(Date)

CCSE Resolution--Filling a Vacancy with Carolyn Castro (2021-2023 term)

Citywide Council on Special Education

Resolution #006 Filling a Vacancy with Carolyn Castro (2021-2023 Term)

Whereas a duly elected member of the Citywide Council on Special Education (CCSE) neglected to attend three regularly scheduled monthly meeting of the CCSE of which s/he was properly notified without rendering a written valid excuse; and

Whereas, as of August 10, 2021 the Citywide Council on Special Education (CCSE) declared a vacancy for the Citywide Council on Special Educator, and:

Whereas, the Citywide Council on Special Education (CCSE) following Chancellor's Regulation D - 150, publicized the vacancy widely, described the application process and specified a deadline for submitting applications, and;

Whereas written recommendations from parents of students with IEPs were solicited and received, and;

Whereas, candidates for the vacancy were interviewed over a time period from October 11 - October 20, 2021, now, therefore, be it


Resolved, that the Citywide Council on Special Education (CCSE) hereby confirms the selection of Carolyn Castro to serve as a member of the Citywide Council on Special Education (CCSE) for the remainder of the 2021-2023 term



(Council Co- President's Signature)

10/21/21


(Date)



(Witness Signature)

10/21/21

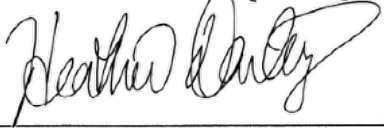
(Date)



(Council Co- President's Signature)

10/21/21

(Date)



(Witness Signature)

10/21/21

(Date)

CCSE Resolution--Filling a Vacancy with Cynthia Arbulu Vacca (2021-2023 term)

Citywide Council on Special Education

Resolution #006A Filling a Vacancy with Cynthia Arbulu Vacca (2021-2023 Term)

Whereas a duly elected member of the Citywide Council on Special Education (CCSE) submitted his resignation on August 9, 2021; and

Whereas, as of August 10, 2021 the Citywide Council on Special Education (CCSE) declared a vacancy for the Citywide Council on Special Educator, and:

Whereas, the Citywide Council on Special Education (CCSE), following Chancellor's Regulation D - 150, publicized the vacancy widely, described the application process and specified a deadline for submitting applications, and;

Whereas written recommendations from parents of students with IEPs were solicited and received, and;

Whereas, candidates for the vacancy were interviewed over a time period from October 11 - October 20, 2021, now, therefore, be it

Resolved, that the Citywide Council on Special Education (CCSE) hereby confirms the selection of Cynthia Arbulu Vacca to serve as a member of the Citywide Council on Special Education (CCSE) for the remainder of the 2021-2023 term



(Council Co- President's Signature)

10/21/21
(Date)




(Witness Signature)

10/21/21
(Date)



(Council Co- President's Signature)

10/21/21
(Date)



(Witness Signature)

10/21/21
(Date)

CCSE Resolution--Changes in School Governance

Citywide Council on Special Education

Resolution #007 Changes of School Governance

The Citywide Council on Special Education (CCSE), was established by NYS Education Law 2590-B, 4 b (1-3) advise and comment on any educational or instructional policy involving the provision of services for students with disabilities; . . . and make recommendations, as appropriate, on how to improve the efficiency and delivery of such services.

WHEREAS, Chapter 91 of the Laws of 2002 (the Law) and Chapter 123 of 2003 established a centralized, mayoral control system of governance for the New York City School District, and in April of 2019 the legislature extended the provisions of mayoral control for three years, until June 30, 2022; and in the January 2022 preliminary State Budget Governor Hochul proposes an extension of mayoral control for an additional 4 years¹

WHEREAS, in accordance with the Law, the Citywide Council on Special Education is part of the Citywide and District Community Education Councils (CCECs) that are composed of parents and community members who have been elected or appointed to serve. The Citywide Education Councils are composed of parents of specific cohorts of students, representing NYC public school students and their families;

WHEREAS, the current construct of Mayoral Control limits or removes the powers inherent in the Community Education Councils

WHEREAS, within the New York State Education Law 2590 (b) states that the community and citywide councils shall have no executive or administrative powers or functions;

WHEREAS, the Panel for Education Policy, which does have the power to enact policy, continues to remain an almost entirely appointed council that some in the legislature have referred to as the Mayor's rubber stamp;^{2, 3, 4}

WHEREAS, with the exception of one Parent Member, all other members of the Panel for Education Policy are appointed by the Mayor and Borough Presidents, in conjunction with the City Council, and are not actually elected by the people that they represent;⁵

WHEREAS, with each new Mayor there has been disruption and upheaval of the public-school system

WHEREAS, after 20 years of Mayoral Control of NYC schools it is reasonable that an independent assessment of the effectiveness of mayoral control be conducted

WHEREAS, reviewing the effectiveness of Mayoral Control, will give stakeholders the necessary information to improve upon school governance that values the voices of parents, students, and community stakeholders.

WHEREAS, students with IEPs still graduate at a lesser rate of their comparable peers in general education

WHEREAS, only 16% of students with IEPS graduate with grade level proficiency in ELA and Math.

¹ <https://ny.chalkbeat.org/2022/1/18/22890294/ny-hochul-budget-2022-schools-increase-mayoral-control>

² https://comptroller.nyc.gov/wp-content/uploads/documents/NYC_NoMoreRubberStamp_v24_Jan2013.pdf

³ <https://ny.chalkbeat.org/2009/5/19/21085356/mayoral-control-critics-give-school-board-literal-rubber-stamps>

⁴ <https://www.educationviews.org/panel-for-education-policy-a-laugh-but-no-joke/>

⁵ <https://www.schools.nyc.gov/about-us/leadership/panel-for-education-policy>

Citywide Council on Special Education

WHEREAS, Citywide and Community Education Councils are advocates for students and their parents, functioning as an advisory board, in that they frequently write resolutions, conference with Superintendents, Chancellor and various Department of Education officials, and the Special Education Office, learn about policy, curriculum, budgets and more, and give an inordinate amount of volunteer hours to support their communities;

WHEREAS, Citywide and Community Education Councils hold regular monthly accessible public meetings, consistently communicating with the public to keep community members informed of any challenges, ideas, and progress that the Council and Department of Education may have to share;

WHEREAS, Citywide and Community Education Councils provide the Department of Education with the on-the-ground knowledge of their community's resources and needs,

WHEREAS, a new, more democratic form of School Governance, will allow for greater parent voice, transparency and accountability:

THEREFORE, BE IT RESOLVED that the composition of the PEP shall be an odd number of members, as follows:

- 5 members who are current or former NYC public-school parents, appointed by the Borough Presidents
- 5 members who are appointed by the Mayor of the City of New York who have expertise in issues regarding the education of all children
- 5 members who are current public-school parent, elected by all the members of the Citywide and District Community Education Councils
- 1 member appointed by Public Advocate office
- 1 member appointed by the Citywide Council on High Schools
- 1 member appointed by the Citywide Council on Special Education
- 1 member appointed by the Citywide Council on English Language Learners

For a total 19 voting Panel for Education Policy members, who shall serve as a voice for all public-school stakeholders

BE IT RESOLVED that one non-voting appointee from the NYC comptroller's office be added to the Panel for Education Policy to encourage fiscal oversight and accountability;

BE IT RESOLVED that an appointed Panel for Education Policy member will be allowed to serve out their term on the Panel for Education Policy except in exigent circumstances.

BE IT RESOLVED that all Citywide and Community Educational Council members be allowed to vote for the parent representative(s) on the Panel for Education Policy;


BE IT RESOLVED that all appointments by the Mayor and Borough Presidents be reviewed by Citywide and Community Education Councils who will then have the opportunity to give feedback that will be added to the public record before finalizing any appointment to the PEP in order to encourage parent and community engagement and accountability in the appointment process.

Citywide Council on Special Education

BE IT RESOLVED that a designated records access officer⁶ be assigned at the Department of Education, tasked with the responsibility of fulfilling timely data requests made by Citywide and Community Education Councils, able to articulate what data the Department of Education is at legal liberty to disclose, interpreting and presenting available data and accept input on further data to be collected and disseminated over time; thus increasing transparency for all


BE IT RESOLVED recurring data reports be generated and provided every 90 days (quarterly) and that data requests should be provided within 90 calendar days of request

AND, BE IT FURTHER RESOLVED, that the NYS Legislature create a cooperative task force made up of NYC public school parents, Citywide and Community Education Councils' members, local and statewide elected officials with knowledge of special education and English Language Learner systems, New York State Regents, and Panel for Education Policy members to conduct a comprehensive study on school governance in New York city, and submit recommendations on a transition plan for school governance in New York City that will increase parent voice, increase shared responsibility in school governance, add checks and balances for greater oversight and accountability, and increase structure consistency and sustainability in Citywide and Community Education Councils and educational policy.




(Council Co- President's Signature)

1/15/2022
(Date)



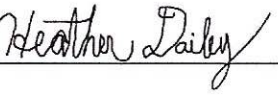
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01/20/2022
(Date)



(Council Co- President's Signature)

1/25/2021
(Date)



(Witness Signature)

01/20/2022
(Date)

⁶ Or other appropriate title

**CCSE Resolution--Against the Move of the Impartial Hearing Office
(IFO) to the Office of Administration and Trials (OATH)**

Citywide Council on Special Education

CCSE Resolution #8 - Against The Move of the Impartial Hearing Office (IHO) to the Office of Administrative Trials and Hearings (OATH)

Background:

The Citywide Council on Special Education shall have the power to:

1. Advise and comment on any educational or instructional policy involving the provision of services for students with disabilities;
2. Advise and comment on the process of establishing committees and/or subcommittees on special education in community school districts pursuant to section forty-four hundred two of this chapter;
3. Issue an annual report on the effectiveness of the city district in providing services to students with disabilities and making recommendations, as appropriate, on how to improve the efficiency and delivery of such services; and
4. Hold at least one meeting per month open to the public and during which the public may discuss issues facing students with disabilities.

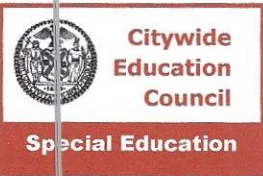
Whereas, NY Educ. L. § 2590(b) (4) establishes the Citywide Council on Special Education and charges it with advising and commenting on, "any educational or instructional policy involving the provision of services for students with disabilities";

Whereas, the Council has learned that the Department of Education has entered into a Memorandum of Agreement whereby it expresses its intention to move the special education impartial hearing process, which has been implemented by the district internally as an element of the development and delivery of special education to NYC families for the past 45 years, to a City agency that has no knowledge of or experience with education at all, much less the education of students with special needs Office of Administrative Trials and Hearings (OATH); and

Whereas, the Individuals with Disabilities Education Act guarantees the right to an Impartial Hearing Officer who is free from any conflict of interest and is not an employee of the district or the agency financially and or managerially responsible for the provision of services and the Impartial Hearing Officer has demonstrable expertise in the area of special education 20 U.S.C. 14-15 (f) (3)(A)(i)(ii) as both the New York City Department of Education and Office of Administrative Trials and Hearings are ultimately overseen by the Mayor of the City of New York it is a conflict of interest to move Impartial Hearing to the Office of Administrative Trials and Hearings.

Whereas, the access to and delivery of due process rights under State and Federal special education law are designed to be core elements of the provision of services for students with disabilities, as the US Supreme Court has held since 1982; and

Reso # 8
pg 2



Citywide Council on Special Education

Whereas, Citywide Council on Special Education has not been consulted about this important aspect of special education in which the Department of Education has historically exercised an important role that it now chooses to walk away from; and

Whereas, as a result CCSE has not had an opportunity to advise about its views concerning this proposal; and

Whereas, CCSE has input it wishes to make in this regard,

Now be it therefore RESOLVED that

It is the sense of CCSE that the Chancellor erred by entering into an agreement to change district special education policy without informing, consulting, or accepting advice from CCSE; and that

The CCSE expresses its strong resolve to provide advice with respect to this important change, after having been fully briefed about the background of and reasons for consideration of such a change, before any steps are taken to effectuate the proposed agreement.

(Council Co- President's Signature)

2/17/22

(Date)

(Witness Signature)

2/17/22

(Date)

(Council Co- President's Signature)

2/17/22

(Date)

(Witness Signature)

2/17/22

(Date)

CCSE Resolution--To Authorize the Transfer of Funds

Citywide Council on Special Education

Resolution #009 to Authorize the Transfer of Funds

Whereas, the members of the Citywide Council on Special Education (CCSE) have received an operating budget from the NYC Department of Education in the amount of \$25,000; now, therefore, be it

Resolved, that the Citywide Council on Special Education (CCSE) establish its operating budget for the 2021-2022 school year as follows:


Supplies	\$500	Meeting expenses\Travel Reimbursement	\$500
Procurement Card (P-card)	\$5,000	Non-contracted Services	\$3,000
Member Reimbursements	\$15,000	Training	\$1000

BE IT FURTHER RESOLVED that the CCSE hereby reserves the right to move funds from one cost code to another as necessary upon majority approval by the Council.

BE IT FURTHER RESOLVED that the CCSE requires that the DOE provide the CCSE with a monthly breakdown of expenses.

Whereas, the CCSE Members, need to pass a resolution to allow the Senior Grants Officer, to transfer \$600 from “P-Card” cost code to the “Member Reimbursement” cost code to cover expenses related to the member reimbursements.

NOW THEREFORE, BE IT RESOLVED that the CCSE adopts the following authorization to transfer \$600 from the “P-Card” cost code to the “Member Reimbursement” cost code to cover expenses related to the member reimbursements.



 (Council Co- President’s Signature)

02/23/2022

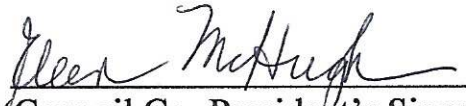
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 (Witness Signature)

02/23/2022

 (Date)



 (Council Co- President’s Signature)

2/23/2022

 (Date)



 (Witness Signature)

02/23/2022

 (Date)

CCSE Resolution--Filling a Vacancy with Laretta Joseph (2021-2023 term)

Citywide Council on Special Education

Resolution #010 Filling a Vacancy with Laretta Joseph (2021-2023 Term)

Whereas a duly elected member of the Citywide Council on Special Education (CCSE) neglected to attend three regularly scheduled monthly meeting of the CCSE of which s/he was properly notified without rendering a written valid excuse; and

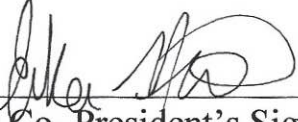
Whereas, as of January 20, 2022 the Citywide Council on Special Education (CCSE) declared a vacancy for the Citywide Council on Special Educator, and:

Whereas, the Citywide Council on Special Education (CCSE) following Chancellor's Regulation D - 150, publicized the vacancy widely, described the application process and specified a deadline for submitting applications, and;

Whereas written recommendations from parents of students with IEPs were solicited and received, and;

Whereas, candidates for the vacancy were interviewed and discussed by the Citywide Council on Special Education (CCSE) members, now, therefore, be it

Resolved, that the Citywide Council on Special Education (CCSE) hereby confirms the selection of Laretta Joseph to serve as a member of the Citywide Council on Special Education (CCSE) for the remainder of the 2021-2023 term



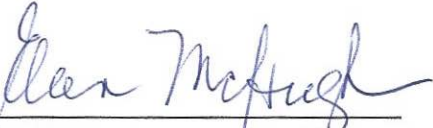
(Council Co- President's Signature)

3/3/22
(Date)




(Witness Signature)

3/3/22
(Date)



(Council Co- President's Signature)

3/3/22
(Date)



(Witness Signature)

3/3/22
(Date)

**CCSE Resolution--On Expanded Transportation Options for NYC
Student (MetroCards)**



Citywide Council on Special Education

Resolution #011 on Expanded Transportation Options for NYC Students (MetroCards)

WHEREAS, schools distribute student MetroCards to eligible students in K-12 at the beginning of each semester, and as needed during the school year;

WHEREAS, students with mandated IEP bus services currently do not have an alternative option of transportation and the current state of bussing is inadequate in transferring our most needy students in a timely fashion or fails to reach students;

WHEREAS, students can use the school distributed MetroCard at every subway and local bus;

WHEREAS, student MetroCards are:

- Distinct and separate from MetroCards sold to the public
- Only able to be used for three trips each school day; allowing high school students to travel to school, from school to an after-school activity, and from that activity home
- Only to be used by the student to whom it was assigned
- For use for school and school-related activities between 5:30AM and 8:30PM only on days when the student's school is open for classes (generally Monday-Friday)
- Valid for one school semester; new cards are issued at the beginning of each semester by schools

WHEREAS, many schools hold Saturday classes for academic intervention; academic & sporting events and practices are often held on the weekends across the city, also including Special Education Recovery Services;

WHEREAS, many activities, including Academic and Special Education Recovery Services, can run later into the evening after the 8:30pm curfew for MetroCard usage, and on weekends;

WHEREAS, students and families must absorb any transportation costs for students to travel for school-related activities on weekends;

WHEREAS, schools have access to one day, two-trip MetroCards, that can and be given to students for weekend use as needed and required if use of MetroCards cannot be extended to the weekends;

Citywide Council on Special Education

WHEREAS, the present Metrocard program does not include current transportation technologies via app, watch, digital wallet, or physical card for services like the OMNY Program;

WHEREAS, the present Metrocard program are not eligible for passage on our NYC Ferry service which can lead to unnecessary extended travel time when using alternative routes through trains and bus routes for students in what is commonly known as “transportation deserts;”

WHEREAS, the NYC MTA Express Bus Service is not eligible for passage when considering alternate routes through trains and bus routes for students residing in “transportation deserts;”

THEREFORE, BE IT RESOLVED, that the Citywide Council on Special Education (CCSE) urges MetroCard usage times for traveling to and from school and school-related activities be expanded to board a bus or enter the subway up to 4 times per day between 5:30 AM and 10:00 PM, every day of the week;

THEREFORE, BE IT RESOLVED, that the CCSE urges an extension of the validity of the current MetroCard program to cover the months of July and August for students participating in Summer School, Summer Rising, or in a Summer Youth Employment Program.

THEREFORE, BE IT RESOLVED, that the CCSE encourages the DOE / MTA partnership to enable students the use of digital based transportation apps such as OMNY for public transportation.

THEREFORE, BE IT RESOLVED, that the CCSE encourages the DOE / MTA Express Bus service partnership to enable students with both MetroCard and/or the use of digital based transportation apps such as OMNY for public transportation.

THEREFORE, BE IT FURTHER RESOLVED the CCSE encourages the DOE to partner with NYC Ferry System operated by Hornblower and owned by New York City Economic Development Corporation, Governor’s Island Ferry operated by the Trust for Governors Island to provide transportation alternatives enabling students to use school funds for their travel.

[1] <https://www.schools.nyc.gov/school-life/transportation/bus-eligibility>

[2] <https://www.schools.nyc.gov/school-life/transportation/metro-cards>

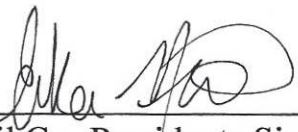
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Citywide
Education
Council


Special Education

Citywide Council on Special Education


(Council Co- Presidents Signature)

6/2/22

(Date)


(Witness Signature)


6/2/22

(Date)


(Council Co- Presidents Signature)

6/2/22

(Date)


(Witness Signature)

6/2/22

(Date)

**Petition in New York State Supreme Court Challenging the
Memorandum
of Understanding on Adjudication of Special Education Complaints**

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ALBANY

-----X IN THE MATTER OF THE APPLICATION OF

VANESSA M. GRONBACH, NANCY M. LEDERMAN, JEFFREY J. SCHIRO, DA VID R. GRONBACH, AUDREY DANIEL, MARISA CARBONE, MINDY G. WOLMAN, DR. ISRAEL WAHRMAN, DANIEL M. AJELLO, BRAD H. ROSKEN, ELISE KESTENBAUM, STEVEN FORBES, JENNIFER YOUNG, JUDITH SCHNEIDER, SEBASTIAN A. WEISS, ANNETTE HICKS GILL, MARIA R. DISPENZA, RACHELGIBBONS and LINDA AGOSTON,

Petitioners,

For an order pursuant to Article 78 of the Civil Practice Law and Rules and for other relief,

-against-

NEW YORK STATE EDUCATION DEPARTMENT; OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS; CITY SCHOOL DISTRICT OF NEW YORK; BETTY ROSA, in her capacity as COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF EDUCATION; DANIEL MORTON- BENTLEY, in his capacity as COUNSEL AND DEPUTY COMMISSIONER OF NEW YORK STATE DEPARTMENT OF EDUCATION; BILL DE BLASIO, in his capacity as MAYOR OF THE CITY OF NEW YORK; MEISHA PORTER, in her capacity as CHANCELLOR OF THE CITY SCHOOL DISTRICT OF NEW YORK; LIZ VLADECK, in her capacity as GENERAL COUNSEL OF NYC DEPARTMENT OF EDUCATION; JONI KLETTER, in her Capacity as COMMISSIONER AND CHIEF ALJ of NYC OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS,

Respondents.

-----X

I. PRELIMINARY STATEMENT

The City of New York has failed to comply with Federal special education laws for more than thirteen (13) years. Coinciding with this noncompliance has been an exponential growth in the number of special education due process complaints filed against New York City, and its Department of Education (“DOE”). The unprecedented number of due process complaints filed in New York City – the majority of which are resolved in favor of parents of students with disabilities – is indicative of its inability to offer a free, appropriate public education to resident students with disabilities as required under Federal and State law. The filing crisis has been exacerbated by a failed 2014 initiative of the DOE to “fast-track” tuition reimbursement claims and a practice of the DOE to shift service implementation burdens onto parents of dually- enrolled disabled students attending nonpublic schools. The December 1, 2021 Memorandum of Agreement (“MOA”; Ex, A), which transfers the adjudication of special education due process complaints to the City’s Office of Administrative Trials and Hearings (“OATH”), is illegal because it creates a due process mechanism that is not impartial. The true purpose of the December 1, 2021 MOA is not to reduce the

number of unassigned due process cases, but to reduce the City's due process costs and increase the City's control over due process outcomes.

II. FACTUAL BACKGROUND

New York City's delivery of special education services to children has been in crisis for decades and has been the subject of numerous, still ongoing, class action lawsuits brought by families of disabled children (Verified Petition, hereinafter referred to as "Ver. Pet." at ¶ 24). The New York State Education Department ("SED") undertook a series of steps culminating, in September 2021, in publishing a Request for Information ("RFI") soliciting information regarding the creation of a new system for due process hearings in New York City. SED was considering how contractual relationships, either with individual Impartial Hearing Officers ("IHOs") or a management entity, could resolve outstanding noncompliance regarding the New York City DOE's due process system (Ver. Pet. at ¶ 25; Exs. G, H, M, O). In disseminating the RFI, SED sought suggestions on how to address a backlog of unassigned special education due process complaints filed with the DOE (Ver. Pet. at ¶ 26). Separately, a class action lawsuit has been filed and is pending in the Eastern District of New York, *JSM v. Department of Education*, No. 20-cv-705 (E.D.N.Y.) challenging the DOE's drastic failure to assign IHOs within the legally mandated 2-business-day window (Ver. Pet. at ¶ 27). Moreover, the New York State Legislature has taken forceful action to address the collapse of the DOE's impartial hearing process by enacting S6682/A7614 and it is presently submitted to the Governor for signature (Ver. Pet. at ¶ 28). On November 5, 2021, in response to the crisis and in the context of the RFI, 64 IHOs currently hearing cases in New York City committed to taking a total of approximately 14,000 additional cases within a year, which would effectively eliminate the DOE's backlog of unassigned cases (Ver. Pet. at ¶ 29). SED never responded to the those who replied to the RFI, and instead executed the MOA with OATH and the DOE on December 1, 2021.

On December 1, 2021, Respondents Morton-Bentley of SED, Kletter of OATH, and Vladeck of NYCDOE, executed the MOA on behalf of their respective agencies, whereby the parties agreed to transfer to Respondent OATH, the exclusive power to conduct and oversee special education due process hearings brought against the DOE (Ver. Pet. at ¶ 30 and Exhibit. A). The MOA requires that, when fully implemented (upon the hiring of 40 full-time new administrative law judges by OATH,) current New York State certified IHOs hearing DOE cases will be prospectively precluded from hearing any new cases arising in New York City, effectively decertifying all the IHOs currently certified by SED and assigning all future cases exclusively to OATH ALJs (Ver. Pet. at ¶ 31).¹ None of the agency signatories to the MOA had the capacity to enter into such an agreement without express agency action or authorization (Ver. Pet. at ¶ 38). The MOA was entered into without notice or consultation, without comment or a hearing, without bid or bidding, without even an announcement or, to date, publication of the MOA once signed (Ver. Pet. at ¶ 33).

The MOA states in part: "SED will take steps to propose amendments to regulations to support the use of hearing officers hired by OATH and the ability of OATH to assign cases to its impartial hearing officers as OATH deems

appropriate” (Ver. Pet. at ¶ 43; Ex. A at ¶ 14, pp. 3- 4). To date, SED has not proposed amendments to the Commissioner’s Regulations to transfer special education hearings to OATH (Ver. Pet. at ¶ 44). OATH, however, has already taken aggressive action to implement the MOA before any changes to the regulations have been proposed or adopted (Ver. Pet. at ¶ 45; Exs. B, C, D). On December 3, 2021, OATH published a job announcement for 25 *Special Education Hearing Officers* with civil service title of Executive

¹The overwhelming majority of IHOs are limited at present to hearing only cases in NYC and have been informed by SED that even after the MOA is fully implemented, they will not be permitted to hear any cases elsewhere in the state (Ver. Pet. at ¶ 31 n. 3).

Agency Counsel, Title Code 95005, Level M1 (Ver. Pet. at ¶ 46; Ex. B). On or about December 16, 2021, OATH published a job announcement for a about December 16, 2021, OATH published a job announcement for a range of new management, administrative, and ministerial positions (Ver. Pet. at ¶ 48, Ex. D).

On December 7, 2021, Christopher Suriano, an Assistant Commissioner from SED’s Office of Special Education, emailed all New York State certified IHOs informing them that the DOE’s special education impartial hearing system would be transferred to OATH and that OATH would be hiring full time hearing officers, sharing with the IHOs the OATH job posting and thanking them for their work (Ver. Pet. at ¶ 51 and Ex. E). This was subsequently followed up by a lengthier letter conveying essentially similar information and sentiments (Ver. Pet. at ¶ 51; Ex. F). Any current IHOs who cannot apply to the OATH special education hearing officer position would be functionally decertified in New York City (Ver. Pet. at ¶ 52; Exs. A, D).

III. RELEVANT FEDERAL AND STATE DUE PROCESS MANDATES

Under the Individuals with Disabilities Education Act (“IDEA”), *see* Pub. L. 108-446, § 101, 118 Stat. at 2647, 20 U.S.C. §§ 1400-1482 (2006), and its implementing regulations, *see* 34 C.F.R. Part 300 (December 1, 2008), a free and appropriate public education (“FAPE”) must be available to all disabled children residing in the State between the ages of 3 and 21, *see* 34 C.F.R. § 300.101(a).² In New York State, students with disabilities between the ages of 3 and 5, as well as 18 through 21, are entitled to FAPE. *See* Article 89 of the N.Y. Educ. Law § 4402.

Like most States, and consistent with the IDEA, New York State offers three dispute resolution options: mediation, *see* 8 NYCRR § 200.5(h), a written state complaint

²The term “free appropriate public education” means special education and related services that –

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

process, *see* 8 NYCRR § 200.5(1), and due process hearings, *see* 8 NYCRR § 200.5(i). With respect to due process hearings, New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding “any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student.” *See* 8 NYCRR § 200.5(i)(1); *see also* 20 U.S.C. §§ 1415(b)(6)-(7); 34 C.F.R. §§ 300.503(a)(1)-(2), 300.507(a)(1). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five (5) business days before the hearing; and obtain a verbatim record of the proceeding. *See* 20 U.S.C. §§ 1415(f)(2)(A), (h)(1)-(3); 34 C.F.R. §§ 300.521(a)(1)-(4); 8 NYCRR §§ 200.5(j)(3)(v), (vii), (xii).

The IHO must render and transmit a final written decision in the matter to the parties not later than forty-five (45) days after the expiration of the resolution session period. *See* 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); 8 NYCRR § 200.5(j)(5). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations. *See* 34 C.F.R. § 300.515(c); 8 NYCRR § 200.5(j)(5). The decision of the IHO is binding upon both parties unless appealed. *See* N.Y. Educ. Law § 4404(1).

A party aggrieved by a decision of an IHO may subsequently appeal to the Office of State Review where the appeal will be heard by a State Review Officer (“SRO”), *i.e.*, the second tier. *See* N.Y. Educ. Law § 4402(2); *see also* 20 U.S.C. § 1415(g)(1); 34 C.F.R. § 300.514(b)(1); 8 NYCRR § 200.5(k).

The December 1, 2021 MOA violates both Federal and State due process mandates owed to preschool and school-aged disabled students residing within the City of New York. OATH does not qualify as a State Educational Agency (“SEA”), a Local Educational Agency (“LEA”) or public agency as defined by 34 C.F.R. § 300.33, therefore it cannot, as a matter of Federal law, conduct impartial hearings under the IDEA.

IV. IHOS v. OATH SPECIAL EDUCATION HEARING OFFICERS

The IDEA sets forth minimum qualifications for IHOs who preside over IDEA hearings. *See generally*, 20 U.S.C. § 1415(f)(3)(A). Consistent with the IDEA, New York State sets forth specific qualifications for hearing officers. Specifically, the hearing officer must be admitted to the practice of law (unless previously certified as an IHO prior to September 1, 2001); have a minimum of two years practice/experience in education/special education/disability rights/civil rights; have access to support/equipment necessary to perform duties; and be certified by the New York State Commissioner of Education as an impartial hearing officer, which requires, among other things, successful completion of training/update programs and annual submission of a certification that these requirements have been met. *See* 8 NYCRR §§ 200.1(x)(1)-(4). As of November 15, 2021, there were 162 IHOs certified to adjudicate these cases in New York City (Ver. Pet. Ex. O). Consistent with the requirement that IHOs not be employees of the school district that has appointed them, IHOs are independent contractors. *See* 8 NYCRR § 200.1(x). Based on a previous

pay policy (changed in June 2020), many IHOs heard special education cases on a part-time basis and held other part-time and full-time jobs (Ver. Pet. Ex. I, p. 19).³

In New York State, each school district must adopt a written policy that establishes administrative practices and procedures for the selection and appointment of an impartial hearing officer consistent with procedures set forth in the Regulations of the Commissioner of Education. *See* 8 NYCRR § 200.2(b)(9). Accordingly, the DOE has done so and created an Impartial Hearing Office to oversee the “administrative and clerical aspects of [IDEA] impartial [due process] hearings” for the DOE (Ex. N, p. 6). Specifically, the Impartial Hearing Office –

is responsible for processing requests for impartial hearing, appointing [IHOs], calendaring hearing dates, communicating with parties, providing transcription, interpretation, translation, other hearing-related services, processing evidence, and issuing reports analyzing these processes

Ex. N., p. 6.

³The New York State Board of Regents recently authorized expanding rules for who is eligible to become a hearing officer. As of March 31, 2021, attorneys licensed in other states who have at least one year of experience in law, may apply to serve as IHOs (Ver. Pet. Ex. M).

The Impartial Hearing Office maintains some degree of autonomy and independence, though it reports to the Deputy Chancellor of School Planning and Development (Ex. I, p. 22). With respect to impartiality, the Impartial Hearing Office's stated objective is to "remain impartial at all times," communicating with parties and IHOs in a professional and free of bias manner (Ex. N., p. 6).

In contrast to the current system, the December 1, 2021 MOA between the DOE, OATH, and SED states that OATH will establish a Special Education Unit staffed by full-time *impartial* hearing officers (Ex. A p. 1) (emphasis added). OATH, however, has posted openings for approximately twenty-five (25), full-time *Special Education Hearing Officers* (M1) (Exs. B, C). OATH special education hearing officers will, in turn, be managed by a newly created position -- a *Supervising Special Education Hearing Officer* (M2) (Ex. D). OATH's posting for non-impartial, employee special education hearing officers not only violates a number of Federal and State statutes and regulations, *see, e.g.*, 20 U.S.C. § 1415(a), (d); 34 C.F.R. §§ 300.121, 300.150, 300.500, 300.504; N.Y. Educ. Law § 4404(1)(c); 8 NYCRR 200.1(x)(3), but it also violates the express terms of the MOA (Ex. A at ¶2.a.). Under the employment structure set forth in OATH's job postings, the content of decisions rendered by non-impartial, employee special education hearing officers, *i.e.*, favorable or unfavorable to the City and/or relief awarded to prevailing parents, will now be subject to City-management control (Exs. B, C, D). Unlike current IHO's, OATH's non-impartial, employee special education hearing officers may also be subject to discipline, including termination, for issuing (what the City may determine to be) too many unfavorable and/or costly decisions to the City (Ex. R).

V. THE NYC FILING CRISIS

The overwhelming number of due process filings are in New York City, with the school district consistently commanding over 90% of the total number of due process complaints filed statewide since the 2014-15 school year (Ex. I, p. 13). Further, within a four-school year span (*i.e.*, 2014-15 through 2017-18), New York City had a 51% increase in the number of due process complaints filed, with the average number of due process complaints filed per day steadily increasing (Ex. I, p. 13).

The number of cases in New York City have continued to rise during the COVID-19 pandemic. "Last year, approximately 14,000 due process complaint notices were filed" in New York City (Ex. F). More than 16,300 cases were open as of November 9, 2021, a 34% increase from the number of cases in the 2019-20 school year, according to state officials (Ex. O).

The reasons for the unprecedented number of due process filings in New York City is at the heart of the City's illegal attempt, with SED's approval, to transfer the adjudication of special education impartial due process hearings to OATH. The City has failed to comply with federal special education laws for more than thirteen (13) years, while the State's most recent Compliance Plan for the City (May 2019) has failed to substantially improve the system (Ex. O). The high number of due process complaints filed in New York City – the majority of which are resolved in favor of children and parents – raises valid questions of the DOE's ability to offer a FAPE to its students with disabilities.

This apparent failure is longstanding, as indicated by the exponential growth in the number of due process complaints since, at the least, the 2015-15 school year (Ex. I, p. 19).

The transactional costs of special education due process claims to the New York City school district are substantial. For example, in fiscal year (“FY”) 2017 (*i.e.*, July 1, 2016 through June 30, 2017), New York City processed 4,184 special education claims resulting in approximately a \$280 million payout, which represented 82% of all claims paid out by New York City in FY 2017 (Ex. P).

The unprecedented number of due process filings in New York City is directly attributable to written and unwritten policy decisions of the DOE regarding two common remedies sought in special education impartial due process complaints filed in the City: (1) tuition reimbursement and/or direct payment for unilateral placements of disabled students in nonpublic schools; and (2) dual enrollment services for disabled students enrolled by their parents in nonpublic schools.

1. Tuition Reimbursement/Direct Payment Cases

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents’ claim. *See Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *School Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 369-70 (1985). The remedy of tuition reimbursement has been extended to authorize direct payments to a private school for educational services rendered where *Burlington/Carter* factors are satisfied. *Mr. A. v. New York City Dep’t of Educ.*, 769 F. Supp. 2d 403, 427-28 (S.D.N.Y. 2011); *S.W. v. New York City Dep’t of Educ.*, 646 F. Supp. 2d 346, 358-60 (S.D.N.Y. 2009); *Connors v. Mills*, 34 F. Supp. 2d 795, 805-06 (N.D.N.Y. 1998).

In September 2014, the DOE implemented a set of changes to simplify and expedite the reimbursement process for parents by permitting parents to file a ten-day notice (“TDN”), without a corresponding due process complaint, for purposes of potential settlement (Ex. Q).

The initiative had three (3) primary components: first, the DOE set a goal of settling *Carter* cases within a fifteen (15) day window after receiving notice of private school placement; second, the

DOE said it would not re-litigate settled cases unless a student’s IEP is changed or when the child enters the final grade of his or her school; and third, the DOE would only require paperwork from parents every three years (Ex. R). It is estimated that between 13,000 and 15,000 TDNs and due process complaints were filed in New York City in 2017 and 2018 (Ex. I, p. 13).

As described above, the DOE’s September 2014 initiative did not succeed in reducing due process filings. Nor did it succeed in its intended purpose of resolving more claims via settlements. As Assistant Commissioner Suriano has

publicly acknowledged, “the settlement process takes a long time in New York City” (Ver. Pet. Ex. O). While the DOE has, in the past, attributed delays in *Carter* case settlements to the Comptroller’s Office (whose approval is required by the City’s Charter), the Comptroller’s Office has vehemently denied that position (Ex. K).

The increased filings following the DOE’s failed September 2014 initiative came at great financial cost to the DOE. Total expenditures for reimbursement (or *Carter*) cases, adjusted for inflation, grew by more than 500% over a little more than a decade, from \$107 million in 2010 to \$710 million in 2020. The Mayor’s Preliminary Budget for 2022, released in January, added \$220 million to the 2021 budget for *Carter* case costs at the DOE, an increase of 51% from the amount budgeted in the 2021 Adopted Budget. The addition of \$220 million to the current year’s budget for *Carter* cases brings the 2021 budget for these expenses to \$653 million. Similarly, last year’s Preliminary Budget included a \$150 million increase in 2020 for prior year *Carter* cases that raised the budget at that time to more than \$540 million. Nonetheless, actual expenditures for *Carter* cases in 2020 were \$710 million, 31.4% higher than the budgeted amount. From the DOE’s fiscal perspective, *Carter* Case expenditures are difficult to budget for because they are largely determined by two (2) factors that are out of the DOE’s control: private school tuition costs and how often parents succeed when seeking reimbursement for services to meet their children’s needs (Ex. R).

Under the December 1, 2021 MOA, the DOE’s ability to budget for *Carter* case expenditures will be greatly improved, because OATH will have the discretion to control, via its non-impartial, employee special education hearing officers, how often parents of disabled students succeed when seeking reimbursement for nonpublic school tuition and services to meet their children’s needs (Exs. A, B, C, D, R).

2. Dual Enrollment Services Claims

A board of education must offer a FAPE to each student with a disability residing in the school district who requires special education services or programs. *See* 20 U.S.C.

§ 1412(a)(1)(A); N.Y. Educ. Law §§ 4402(2)(a), (b)(2). However, the IDEA confers no individual entitlement to special education or related services upon students who are enrolled by their parents in nonpublic schools. *See* 34 C.F.R. § 300.137(a). Although school districts are required by the IDEA to participate in a consultation process for making special education services available to students who are enrolled privately by their parents in nonpublic schools, such students are not individually entitled under the IDEA to receive some or all of the special education and related services they would receive if enrolled in a public school. *See* 34 C.F.R. §§ 300.134, 300.137(a), (c), 300.138(b).

However, when a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (“IESP”) under the State’s “dual enrollment statute.” *See* N.Y. Educ. Law §3602-c. The task of creating an IESP is assigned to the same committee that designs educational programing for students with

disabilities under the IDEA, namely a local Committee on Special Education (“CSE”) that includes, but is not limited

to, parents, teachers, a school psychologist, and a district representative. *See* N.Y. Educ. Law §§ 3602-c, 4402; *see also* 20 U.S.C. §§ 1414(d)(1)(A)-(B); 34 C.F.R. §§ 300.320, 300.321; 8 NYCRR §§ 200.3, 200.4(d)(2).

If disputes occur between parents and school districts related to IESPs, State law provides that “[r]eview of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of [Education Law § 4404],” which effectuates the due process provisions called for by the IDEA. *See* N.Y. Educ. Law § 3602-c(2)(b)(1). Incorporated among the procedural protections of the IDEA and the analogous State law provisions governing dual enrollment programming is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing. *See* N.Y. Educ. Law § 4404(1); *see also* 20 U.S.C. §§ 1221e-3, 1415(e)-(f); 34 C.F.R. §§ 300.151- 300.152, 300.506, 300.511; 8 NYCRR §§ 200.5(h)-(l).

While the statutory scheme of Education Law section 3602-c places the responsibility of selecting and placing the student in a nonpublic school on the parent, the implementation of the services called for by a student's IESP falls on the school district insofar as “[b]oards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent.” *See* N.Y. Educ. Law § 3602-c(2)(a). In New York City, however, the DOE places the obligation on parents to secure service providers (*i.e.*, special education teachers, speech and language therapists, occupational therapists, and physical therapists) for students attending nonpublic schools. If parents of disabled students in New York City are unable to secure providers at the DOE’s standard rates, they can either forego those service altogether, or secure private providers at enhanced rates and attempt to recover those costs from the DOE in due process hearings.

While it may very well be permissible for a school district to include the parent in the identification of a particular provider, especially if the parent is willing and able to do so, it does not follow that the responsibility to redress a parents’ inability to locate a provider is shifted permanently to the parent. *See Application of a Student with a Disability* (New York City Dep’t of Educ.), Appeal No. 17-034 at 7 (SRO Aug. 10, 2017).

Indeed, the SRO has recently stated that the DOE’s current system for providing special education teachers to dually enrolled students by using “independent” special educators is a violation of State law. *See Application of a Student with a Disability* (New York City Dep’t of Educ.), Appeal No. 20-140 at 11 (SRO Sept. 23, 2020); *Application of a Student with a Disability* (New York City Dep’t of Educ.), Appeal No. 20-115 at 6 (SRO Sept. 3, 2020); *Application of a Student with a Disability* (New York City Dep’t of Educ.), Appeal No. 20-087 at 5-6 (SRO Aug. 20, 2020).⁴ Notwithstanding the SRO’s repeated holding in such cases, the DOE continues the practice of shifting the burden of IESP implementation onto parents of disabled students.

Alternatively, even if the DOE's dual enrollment process is not illegal, it is ineffective and unnecessarily contributes to the due process filing crisis. The DOE's process thrusts parents

⁴The Commissioner of Education has made it abundantly clear, and has repeatedly held, that public school districts lack the authority to provide core instructional services through independent contractors. See *Appeal of Boyd*, 51 Ed. Dept. Rep., Decision No. 16,364 (June 28, 2012); *Appeal of Woodarek*, 46 Ed. Dept. Rep. 1, Decision No. 15,422 (July 7, 2006); *Appeal of Sweeney*, 44 Ed. Dept. Rep. 176, Decision No. 15,139 (Nov. 24, 2004); see also *Board of Coop. Educ. Servs. for Second Supervisory Dist. of Erie, Chautauqua & Cattaraugus Ctys. v. Univ. of State Educ. Dep't*, 40 A.D.3d 1349, 1350 (3d Dep't 2007).

State Review Officer decisions can be accessed at: <https://www.sro.nysed.gov/decision>- Commissioner of search

Education decisions can be accessed at: <http://www.counsel.nysed.gov/Decisions/dcommissionersdecisions>

into a quagmire of trying to figure out how much the public services for their disabled child should cost, which is manifestly unreasonable because it is the DOE's responsibility to ensure that services are delivered, and cost is not a permissible reason to defer or avoid the obligation to implement a student's services. *See* N.Y. Educ. Law §§ 3602-c(2)(a), (7)(a)-(b).

VI. IHOs HAVE A PROTECTED PROPERTY INTEREST IN CERTIFICATION

An Impartial Hearing Officer shall be an individual admitted to the practice of law in the State of New York who is currently in good standing and who has a minimum of two years practice and/or experience in the areas of education, special education, disability rights or civil rights; or be an individual certified by the State of New York as an impartial hearing officer on September 1, 2001. *See* 8 NYCRR 200.1(x)(1).

In order to obtain and maintain certification, an IHO must successfully complete a training program, attend such periodic update programs, annually submit a certification, possess knowledge of, and the ability to understand, the provisions of Federal and State law and regulations pertaining to the IDEA, possess knowledge of, and the ability to conduct hearings in accordance with appropriate, standard legal practice, and be willing and available to accept appointment to conduct impartial hearings. *See* 8 NYCRR 200.1(x)(4). IHOs are assigned from a list on a rotation basis. *See* N.Y. Educ. Law § 4404.

On December 7, 2021, Christopher Suriano, Assistant Commissioner of Education, Office of Special Education of Respondent SED, informed all currently State-certified IHOs that Respondent SED had entered into the MOA and that, after the transition period, they would no longer be able to hear special education cases (Ex. E). Assistant Commissioner Suriano's email confirmed that all SED-certified impartial hearing officers' ability to continue to serve in New York City was to be eliminated (Ex. E). Their certification with respect to New York City was entirely dependent on whether they applied for a full-time, salaried position at OATH and were accepted for employment by OATH (Exs. E, F).

Education Law § 4404(1) mandates that the Commissioner of Education "promulgate regulations establishing procedures for the suspension or revocation of impartial hearing officer certification for good cause." 8 NYCRR § 200.21(b) provides that "[t]he certification of impartial hearing officers is subject to . . . revocation on the grounds of incompetence or misconduct;" and 8 NYCRR § 200.21(b)(3)(vi) provides that "[i]f, upon a review of the facts, the commissioner finds misconduct or incompetence on the part of the impartial hearing officer . . . the certification of the . . . officer may be . . . revoked." Grounds for revocation of certification include, *inter alia*, the failure to issue a decision in a timely manner, and conduct constituting "misconduct or incompetence." *Matter of Tyk v. New York State Education Department*, 19 A.D.3d 427 (2d Dept. 2005).

The procedure for revoking an IHO's authority is contained in 8 NYCRR § 200.21(b) and generally provides that the authority may be revoked by giving the IHO a written statement of the charges and an opportunity to submit a

response. See *Tyk v. New York State Educ. Dep't*, 2 Misc. 3d 782, 774 NYS2d 272 (N.Y. Sup. Ct. 2003), rev'd, on other grounds, 19 A.D.3d 427, 796 N.Y.S.2d 405 (2d Dept. 2005). That procedure of “revoking” certification clearly impacts the petitioner's reputation and honor since the clear implication of a revocation is that the affected party did something wrong. *Id.* at 784.

As noted by the Court in *Tyk*, IHOs have a protected property interest in their SED certification. Neither Federal nor State Regulations require IHOs to apply to, or be employed by, OATH. Both in signing the MOA, and by taking affirmative steps to implement the MOA, Respondents have arbitrarily and capriciously deprived the Petitioners of their protected property interests in their certification. The MOA effectively terminates the certification of all IHOs to hear New York City cases, for reasons other than misconduct or incompetence, without due process of law.

VII. CONCLUSION

The Court should grant petitioners’ motion for a temporary restraining order, and other relief, and prohibit the Respondents from transferring to OATH the exclusive power to conduct and oversee special education due process hearings brought against the DOE.

Dated: December 22, 2021

New York, New York

A handwritten signature in black ink, appearing to be "Jan St", written in a cursive style.

WORD COUNT VERIFICATION

I hereby certify that the foregoing document complies with 22 NYCRR 202.8-b (a) which requires that: affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each; and reply affidavits, affirmations and memoranda of law shall be no more than 4,200 words.

The total number of words in this document, exclusive of the caption, table of contents, table of authorities and signature block is 5032.

Dated: New York, New York December 22, 2021

A handwritten signature in black ink, appearing to read 'Laura St'.

LAURA GENTILE

FOIL Response on D75 Students and SHSAT

Liz Vladeck
General Counsel

December 14, 2022

VIA EMAIL

Heather Dailey
Citywide Council on Special Education
Heather.m.dailey@gmail.com

RE: #F20,529/OpenRecords #: FOIL-2022-040-00424

This letter is in final response to the above-referenced Freedom of Information Law (FOIL) request. In your request, you ask for “*data on how many students from district 75 sat for the Specialized High School Admissions test for school years 22-23, 21-22, 20-21, 2019-2020, 2018-2019. (Last 5 years). By self contained and inclusion settings. How many of these students were given an offer to a specialized high school*”.

Please be advised that the Office of Student Enrollment has informed the undersigned of the following:

- During the 2021-22 school year, **27** students at District 75 schools took the SHSAT. Among these, less than 6 received offers to a testing Specialized High School.
- During the 2020-21 school year, **7** students at District 75 schools took the SHSAT. Among these, none received offers to a testing Specialized High School.
- During the 2019-20 school year, **9** students at District 75 schools took the SHSAT. Among these, none received offers to a testing Specialized High School.
- During the 2018-19 school year, **19** students at District 75 schools took the SHSAT. Among these, less than 6 received offers to a testing Specialized High School.
- During the 2017-18 school year, **9** students at District 75 schools took the SHSAT. Among these, none received offers to a testing Specialized High School.

Please be advised that your access to data reflecting self-contained and inclusion settings is denied in accordance with the following provisions of the Public Officers Law (POL). POL § 87(2)(a) permits an agency to deny access to records or portions thereof that are specifically exempted from disclosure by state or federal statute. The Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (together with its implementing regulations, 34 C.F.R. Part 99, FERPA) prohibits disclosure of personally identifiable information constituting or derived from education records, absent consent of the parent or eligible student, or the existence of a specifically enumerated exception in FERPA that would permit non-consensual disclosure. See 34 C.F.R. §99.3, §99.30 and §99.31. Personally identifiable information includes not only direct and indirect identifiers such as student and family names, addresses and dates of birth, but also “other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” 34 C.F.R. §99.3. Because the data you have requested falls entirely within this definition given the number of data elements you have requested on a student-by-student level, access to data reflecting self-contained and inclusion settings is denied.

Public Officers Law §87(2)(b) permits an agency to deny access to records or portions thereof that if disclosed would constitute an unwarranted invasion of personal privacy under Public Officers Law §89(2).

Office of the General Counsel • 52 Chambers Street • Room 308 • New York, NY 10007

Telephone: 212-374-6888 Fax: 212-374-5596

The records you have requested could, if disclosed, be used to identify individual parents or students, and reveal other information that is private. Such a violation of privacy is unwarranted, and consequently, access to pertinent data is denied.

This concludes the Records Access Unit's response, and your request will be marked as "closed" in the Unit's database as of the date of this letter.

Any person denied access to a record may appeal the decision in writing within thirty days. Please state a specific ground for appeal and include copies of the initial request and the denial. Appeals should be sent to: General Counsel, c/o Office of Legal Services, New York City Department of Education, 52 Chambers Street – Room 308, NY, NY 10007, FOIL@schools.nyc.gov.

Sincerely,

Milena Schatzle /s/

Milena Schatzle
Deputy Records Access Officer
FOIL@schools.nyc.gov

MS/dn

Alternatives to Mandated Reporting Guide

ALTERNATIVES TO MANDATED REPORTING

This guide is meant to assist social workers in challenging the role that they play in the family policing system. It aims to share references to essential resources that can be provided in place of a call to the State Central Registry in New York.

“Child welfare system” implies that the system’s purpose is to improve or protect the welfare of children... In fact, this system is not about child or family welfare, protection, or care. This system is about regulating, policing, punishing and destroying families...They divert attention away from the real causes of harm in our society. Instead of blaming people in power who created and maintain unjust systems, they blame the most marginalized people for societal problems.

--Dorothy Roberts, J.D., author of
Shattered Bonds: The Color of Child Welfare

NYC Mandated Reporting Group
Contact:
MR_A_MR@Googlegroups.com

PROCESSING GUIDE

WHEN YOU ENCOUNTER A SITUATION IN WHICH YOU SUSPECT NEGLECT...

01 PAUSE.

Do I fully understand the needs of the student/family?

02 REFLECT.

Am I mistaking poverty or other financial inability to provide as neglect or maltreatment?

Have I checked myself for implicit biases including racial bias?

03 REVIEW YOUR UNDERSTANDING OF NEGLECT...

Am I calling out of frustration, fatigue, or inability to know how to best serve students and family?

Am I calling just to cover myself from liability or is this really in the best interest of the child and family?

NEGLECT

A DIFFERENT LENS

According to ACS, neglect is defined as the failure of a parent or caretaker to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child's health, safety, and well-being are threatened with harm.



Neglect categories are often misunderstood because we ignore a fundamental social work perspective of understanding a person within the context of their environment. The chart on the next page guides you through how to examine situations without ignoring historical and systemic inequities through a more active anti-racist lens.



MISUNDERSTOOD CATEGORIES OF NEGLECT

ACTUAL NEEDS

ALTERNATIVES TO CALLING

Failure to provide adequate food, clothing, or shelter.

- Food insecurity
- Housing insecurity
- Employment/financial insecurity

- Food: [NYC.gov](#); [SNAP](#); [Mutual Aid](#)
- Housing: [Coalition for the Homeless](#)
- Employment/Cash Assistance: [NYC.gov](#)

Failure to provide medical or mental health care (including drug abuse services)

- Lack of access to health care

- [NYC.gov Free Health Resources](#)
- [NYCWell](#)
- [NYC Health + Hospitals Clinics List](#)

Failure to support a child's educational needs by 1) keeping a child home from school for unexcused reasons or 2) not following up with a child's educational needs despite the school's outreach to the parent or caretaker

- Barriers to school engagement and attendance
- Lack of access to technology for online learning
- Disinterest in online learning due to trauma from COVID-19

- [Updated DOE Guidance on MR](#)

Leaving a child alone who is not developmentally (assumptions about developmental abilities based on bias) able to be left alone without adequate supervision.

- Barriers to appropriate childcare
- Closures of childcare facilities

- [Wiggle Room](#)
- [New York Foundling's Crisis Nursery](#)

Leaving a child with someone without establishing a plan for the provision for food, clothing, education, or medical care.

- **Not being able to find adequate and affordable childcare or after school programs**

- [Workers Need Childcare](#)

Leaving a child with someone that does not have the ability to appropriately supervise or protect the child.

- **Barriers to affordable childcare or after school programs**

- [New York Foundling's Crisis Nursery](#)

Subjecting a child to humiliation, fear, verbal terror, or extreme criticism.

- **Unresolved generational trauma**
- **Unmet mental health needs**
- **Projection of workplace treatment**

- [NYCWell](#)
- [NYC Health + Hospitals Clinics List](#)

Using corporal punishment beyond what is objectionably reasonable and it results in the physical or emotional harm of a child.

- **Unresolved generational trauma**
- **Barriers to understanding trauma-informed parenting**

- [NYCWell](#)
- [NYC Health + Hospitals Clinics List](#)

Exposing a child to family violence

- **Unresolved generational trauma**
- **Barriers to accessing conflict mediation**

- [Family Justice Centers](#)
- [Mediations and Alternative Dispute Resolution](#)

Parent or caretaker using drugs to the point of not being able to adequately take care of a child.

- **Decriminalization of addiction**
- **Racially motivated biases against certain drugs**

- [Family Justice Centers](#)
- [Mediations and Alternative Dispute Resolution](#)

Keeping, manufacturing, or selling (prescribed?) drugs in the presence of a child, or giving drugs (alcohol?) to a child.

LAST RESORT

WHEN YOU FEEL A CALL IS ABSOLUTELY NECESSARY...

RECONSIDER & REMEMBER...

- * Intervention does not equal help. An ACS investigation does not ensure that a family's needs will be met (nor is it designed to do so).
- * An ACS investigation is a form of state surveillance that can generate information and evidence to prompt and/or support unnecessary criminal investigations that can tear a family apart.

- * An ACS visit to a family's home is both invasive and traumatizing. Every detail of a family's home is scrutinized and children are often asked to disrobe so they can be searched for physical marks and bruises
- * Always process the situation again and consult trusted help before making your decision. (See slide 2)

IF YOU MAKE THE CALL, ASK YOURSELF...

- Have I included parent/guardian in the decision-making and reporting process?
- Did I provide the family with CUP's Guide to Parents' Rights?
- Did I connect the family to a legal advocate or Family Defense Practice? (e.g. at Brooklyn Defender Services/Bronx Defenders)
- Am I giving a holistic, reasonable account of the family's situation and strengths?

ADDITIONAL RESOURCES

Strategies

Develop safety guidelines that protect families from harm caused by the family regulation system.

Know your threshold for not calling and think through ahead of time when a call would be warranted.



Resources

- [Single Point of Access \(SPOA\)](#)
- [Children's Single Point of Access \(CSPOA\)](#)
- [Mobile Crisis Teams \(MCT\)](#) -- Can have schools call mobile crisis teams who will come to school or home as an alternative to calling 911
- [Hidden Water](#) -- Restorative Justice approach to breaking cycle of child sexual abuse)
- [Ali Forney Center](#) -- Crisis housing for LGBTQ youth)
- [The Door](#) -- Free wrap around services for youth ages 12-24
- [Save Our Streets \(SOS\)](#) -- Used for violence intervention and can also replace police at school events.
- [What You Need To Know About ACS](#) -- A Guide to Parental Rights by CUP/Brooklyn Defender Services
- [DOE's Changes to Educational Neglect](#)

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