



New York State Comptroller  
**THOMAS P. DiNAPOLI**

# Compliance With Special Education Regulations for the Provision of Services

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New York City Department of  
Education

Report 2018-N-5 | September 2020

Spotlight on Education



# Audit Highlights

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## Objective

To determine if the New York City Department of Education (DOE) arranged for eligible students to be placed in special education services and programs within the required time frames, and provided all of the services and programs recommended in the students' Individualized Education Program (IEP). We also assessed the time frames for students to commence receiving services and programs. Our audit covered the period of July 1, 2016 through January 21, 2020, and included all students who were initially referred during the 2016-17 school year.

## About the Program

Special education services and programs are designed to meet the educational and developmental needs of children with disabilities. Part 200 of the Regulations of the New York State Commissioner of Education (Regulations) stipulates the requirements for evaluating and placing students in special education. In New York City (NYC), DOE is responsible for determining eligibility for and providing special education services to such students. Specifically, the Regulations require that DOE arrange for the placement of eligible students in special education services and programs within 60 school days of receipt of parental consent to evaluate. However, arranging placement is not the end of the process as it is more important that eligible students be provided with the services and programs recommended in their IEPs in a timely manner. State Regulations do not define how long this should take.

A report issued in August 2019 by New York University/Steinhardt's Research Alliance for New York City Schools stated that the percentage of students with disabilities varies greatly across NYC – ranging from less than 5 percent in some areas to more than 25 percent in others – with disability rates higher in low-income neighborhoods.

## Key Findings

- Our analysis determined that DOE did not arrange for special education services within the required 60 school days for 18 percent of the eligible students in school year 2016-17. Non-compliance ranged from 32 percent in District 9 (located in the South Bronx) to 4 percent in District 11 (Northeast Bronx).
- DOE deprives itself of critical performance data by not calculating or tracking its compliance with the 60-school days requirement for arranging the placement of students in special education services and programs.
- 112 of our sample of 158 referred students were found eligible for special education services. However, we found that 28 of the 112 students either did not receive any or received only some of the services recommended in their IEPs.
- We also found situations where DOE provided services without the required parental consent. For 12 of the 112 students, there was no parental consent for any of the services, and for another 39 students, parental consent was not received for at least one of the services.

## Key Recommendations

- Calculate and track compliance with the 60-school days requirement for arranging special education services for eligible students.

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- Assess the reasons for non-compliance with the 60-school days requirement for arranging services for eligible students, and take appropriate action(s).
  - Develop guidelines for the length of time it should take for students to start receiving recommended related and program services. Similar to the analysis presented in this report, track compliance with these guidelines and take corrective action when lengthy time frames are identified.
  - Ensure that students receive all special education services listed in their IEP.
  - Ensure that parental consent for services is obtained prior to service provision.



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## Office of the New York State Comptroller Division of State Government Accountability

September 30, 2020

Mr. Richard Carranza  
Chancellor  
New York City Department of Education  
52 Chambers Street  
New York, NY 10007

Dear Mr. Carranza:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York City Department of Education's *Compliance With Special Education Regulations for the Provision of Services*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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| <b>Term</b> | <b>Description</b>  | <b>Identifier</b> |
|-------------|---|-------------------|
| ATS         | Automate the Schools  | <i>System</i>     |
| DOE         | New York City Department of Education   | <i>Agency</i>     |
| ICT         | Integrated Co-Teaching  | <i>Program</i>    |
| IDEA        | Individuals With Disabilities Education Act   | <i>Act</i>        |
| IEP         | Individualized Education Program  | <i>Key Term</i>   |
| IEP meeting | The point at which a student's eligibility for special education services is determined | <i>Key Term</i>   |
| NYC         | New York City   | <i>Key Term</i>   |
| PNP         | Prior Notice Package for Placement  | <i>Key Term</i>   |
| Regulations | Regulations of the Commissioner of Education  | <i>Key Term</i>   |
| SC          | Special Class   | <i>Program</i>    |
| School year | July 1 to June 30   | <i>Key Term</i>   |
| SED         | State Education Department  | <i>Agency</i>     |
| SEGIS       | Special Education Student Information System  | <i>System</i>     |
| SETSS       | Special Education Teacher Support Services  | <i>Program</i>    |
| STARS       | Student Transcript and Academic Reporting System  | <i>System</i>     |

# Background

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The Individuals With Disabilities Education Act (IDEA) ensures that a free appropriate public education is made available to eligible children with disabilities who require special education services to meet their educational and developmental needs. To be eligible for special education services, a child's school performance must be "adversely affected" by any of the qualifying disabilities specified in the IDEA (e.g., specific learning disability, health impairment, autism). The IDEA requires that each qualifying child receive, at least annually, an Individualized Education Program (IEP) detailing special education and related services tailored to the particular needs of the child that are reasonably calculated to enable the child to receive educational benefits.

Although the IDEA establishes a basic floor of education for children with disabilities, it does not displace states from their traditional role in setting their own educational policy. Each state remains free to calibrate its own educational standards, provided it does not set them below the minimum level prescribed by the IDEA.

Pursuant to the New York State Education Law, the Commissioner of Education has promulgated regulations regarding the education of children with disabilities (Regulations). Generally, the Regulations set standards for providing special education and related services designed to meet students' unique needs and to prepare them for further education, employment, and independent living. They stipulate procedural requirements for the referral, evaluation, IEP development, and placement of students in special education.

The New York City Department of Education (DOE) – the nation's largest school system, comprising 32 school districts and two citywide districts (see Exhibits A and B) – serves approximately 1.1 million students (40.6 percent Hispanic, 25.5 percent Black, 16.2 percent Asian, 15.1 percent White, and 2.6 percent other) at its more than 1,800 elementary, middle, and high schools, and provides special education services to approximately 198,000 of these students. DOE is responsible for evaluating students to determine their eligibility for special education services and for ensuring eligible students receive appropriate services. Toward this end, DOE follows a multi-step evaluation and special education process (see Exhibit C). According to a report issued in August 2019 by New York University/Steinhardt's Research Alliance for New York City Schools, the percentage of students with disabilities varies greatly across New York City (NYC) – ranging from less than 5 percent in some school districts to more than 25 percent in others – with disability rates higher in low-income neighborhoods.

Our prior audit ([2017-N-3](#)), issued in May 2019, determined that 29.2 percent of the students who were initially referred for evaluation during the 2016-17 school year were not evaluated within the required time frame. We also found that school districts varied widely in their ability to complete evaluations timely. The provision of special education services is the focus of this audit, which tracks the same cohort of students reviewed in the prior audit. Provision of special education services, as detailed in this report, includes both arranging for students' placement and delivering those services.

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Special education is a continuum of specially designed instruction, supports, and services provided in general education classrooms, separate special education classrooms, or a combination of both settings, and may include:

- Related Services – developmental, corrective, and other supportive services required to assist students with disabilities, including speech-language therapy, occupational therapy, counseling services, physical therapy, school social work, and vision and hearing education services.
- Integrated Co-Teaching (ICT) – services provided in an integrated classroom where general education students (about 60 percent) and students with disabilities (about 40 percent) are taught together by a general education and a special education teacher.
- Special Class (SC) – services provided to special education students in a small, “self-contained” classroom in a community school and/or a specialized school (District 75).
- Special Education Teacher Support Services (SETSS) – students are either removed from the classroom or taught in a smaller class setting for a portion of the school day (pull-out), or a teacher comes into the classroom to work with the student(s) during regular lessons (push-in).

A written IEP is developed when a student is determined to have a disability and is thus eligible for special education services. The IEP is a legal document that outlines, among other things, the recommended special education services the student is expected to receive in order to meet his/her unique needs. A student may receive one of the services noted above or a combination of those services. In addition, the student may receive other services and supports, including the services of a 1:1 paraprofessional, assistive technology, bilingual services, behavior supports, and transportation.

After the IEP is developed, the school/district must arrange placement for the services recommended in the IEP. The Regulations require the school/district to arrange for services within 60 school days from the date that parental consent to evaluate was obtained. According to DOE, arrangement occurs when a notice is sent to the parent indicating the special education placement that the student is being offered. This notice includes a summary of the student’s IEP recommendations, a school location letter if the child is being assigned to a new school, and a form for the parent/guardian to sign consenting to the provision of services. After consent is received, the student can then begin receiving the services outlined in the IEP.

The Special Education Student Information System (SEGIS) is the main system DOE uses to record and track information on special education students. SEGIS captures various dates such as the dates of referral, consent to evaluate, the IEP meeting, and when services were arranged; and contains the data necessary for DOE to calculate compliance with the 60-school days requirement. It is also the depository for students’ IEPs. Moreover, SEGIS also records the dates students actually started

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receiving related services. In SESIS, this start date is referred to as the “encounter attendance” date. However, SESIS does not capture when students’ special education programs started. DOE uses another system – the Student Transcript and Academic Reporting System (STARS) – to maintain information about the programs students are actually enrolled in, including course code/subject, type of program (e.g., ICT, SC, SETSS), and subject enrollment start dates. According to DOE, the enrollment start date is the date the student actually starts receiving the programs. DOE also uses Automate the Schools (ATS), a system that contains information on student attendance.

According to information in SESIS, 22,266 students in kindergarten to grade 12 were initially referred for special education services in school year 2016-17. For these students, our audit sought to determine whether DOE arranged for students’ placement in special education services within the required 60 school days. In addition, for our sample of 158 students, we sought to determine whether the students were provided with the services recommended in their IEP and the length of time it took for services to start.

# Audit Findings and Recommendations

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The provision of special education services, including the timeliness for both arranging placement and commencing services, is critical to ensuring that students reap the benefits of special education instruction and services as intended by the IDEA. Our audit found that DOE is not adequately managing this process as it does not track or calculate compliance with the required time frame for arranging services, nor does it calculate or track other critical performance measures or take corrective actions. Remarkably, according to DOE officials, knowing this information does not add value to their process, although we believe it is relevant to DOE's compliance with federal and State requirements.

## Compliance With the 60-School Days Requirement to Arrange Placement

The Regulations require DOE to arrange for a student's placement within 60 school days of receipt of parental consent to evaluate. However, DOE does not calculate or track compliance with this critical requirement even though the data is readily available in SESIS and easily calculable on a large scale. Without tracking this compliance, DOE is unable to make informed decisions when allocating staffing resources where they are most needed or take other appropriate actions. We performed our own analysis using DOE data and found that DOE did not arrange placement within the required 60 school days for 18 percent of the students who were eligible for special education services; the rates of non-compliance ranged from a high of 32 percent to a low of 4 percent among school districts.

Moreover, while compliance with this requirement is essential, it is just as critical that needed services be provided to these students in a timely manner after placement has been arranged. Our analysis of information for 112 of the 158 sampled students found that 28 students either did not receive any services (15) or received only some of the services (13) recommended in their IEP.

We also found that DOE neither tracks the overall timelines for how long it takes students to start receiving services nor sets performance goals for when this should occur. Based on our review of students who received related services, we found it took almost two months – an average of 56 calendar days/25 school days – from when DOE arranged their related services to when the related services were actually started. For the 112 students who were recommended for special education programs (non-related services), our review found it took two and a half months – an average of 75 calendar days/22 school days – to enroll them in those programs. We also found situations where DOE provided services without the required parental consent. For 12 of the 112 students, there was no parental consent for any of the services, and for another 39 of the 112 students, parental consent was not received for at least one of the services.

The Regulations require that DOE must arrange for appropriate special programs and services within 60 school days of receipt of parental consent to evaluate a student who was not previously identified as having a disability. Arrangement occurs when DOE sends a notice to the parent about the special education placement that

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the student is being offered. This notice, known as the Prior Notice Package for Placement (PNP), includes a summary of the student's IEP recommendations, a school location letter if the child is being assigned to a new school, and a form for the parent/guardian to sign consenting to the provision of services.

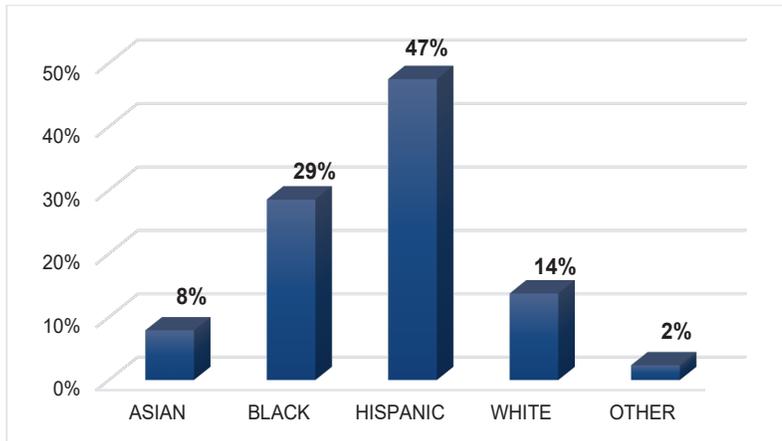
However, we found that DOE does not determine whether recommended special education services are being arranged for eligible students in conformance with the Regulations. Although these data points exist in SESIS, DOE does not calculate or track how long it takes to arrange for these critical educational services, nor does it assess if there are districts/schools where such arrangements are problematic. DOE's non-compliance with federal and State requirements is indicative of parts of NYC where the start of services for some students may be delayed. However, according to DOE officials, knowing this information is not useful and does not add value to their processes.

We disagree. First, it is essential that DOE comply with the requirements in the Regulations and have a mechanism in place to readily determine such compliance. Additionally, knowing whether services are being arranged timely is not only a critical component in efforts to ensure students are being placed and receive the services/programs recommended in their IEP, but also critical in ensuring compliance with the requirements of the IDEA and Regulations to meet students' unique needs and prepare them for further education, employment, and independent living. Because DOE does not calculate compliance with this metric, we performed an analysis of its data to determine whether DOE is complying with the 60-school days requirement for arrangement of services. Toward this end, DOE provided us with special education data for the 22,266 students initially referred for evaluations in the 2016-17 school year. Our analysis showed 15,068 of these students were identified by DOE as eligible to receive special education services/programs. However, services/programs were arranged for only 14,880 of the 15,068 students; DOE could not provide reasons why services were not arranged for the remaining 188 students. Figure 1 shows the breakdown of students for whom services/programs were arranged, by race/ethnicity.

## **Arrangement of Services: 2016-17 Initial Referrals**

To determine DOE's compliance with the 60-school days time frame for arrangement of services for the 14,880 students, we calculated how long it took from the date of parental consent to evaluate to the date services were arranged – which, according to DOE, is the date the PNP notice is sent to the parent. We excluded from this calculation 27 students for whom services were arranged but prior parental consent to evaluate was not obtained, as required. Our analysis found that, for the remaining 14,853 students, it took DOE an average of 46 school days (median of 38 days) to arrange for their services. Moreover, we also found that DOE arranged for services for only 12,222 of the 14,853 students (or 82 percent) within 60 school days.

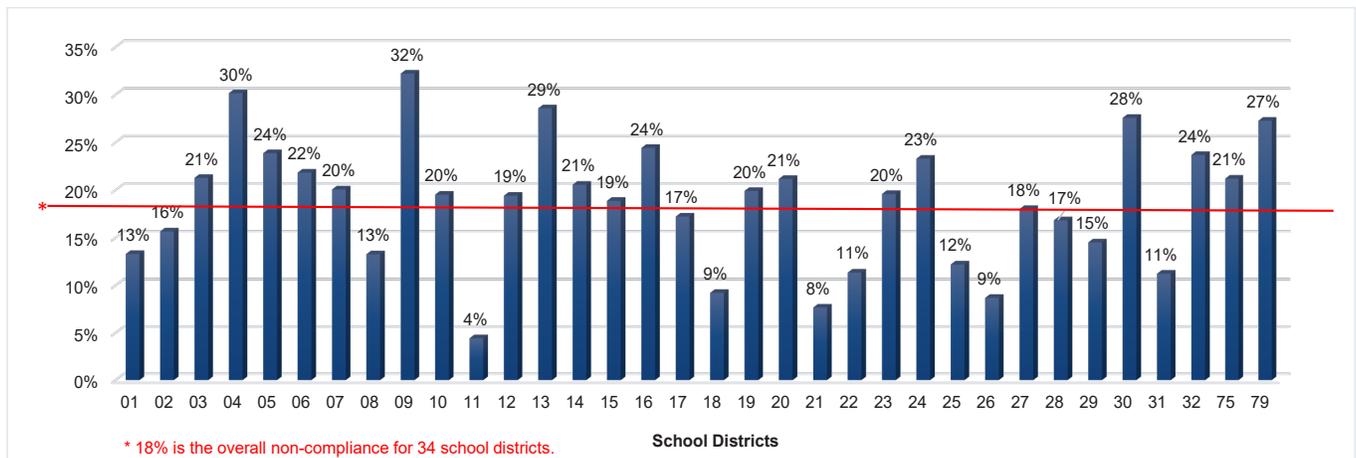
**Figure 1 – Race/Ethnicity of Students for Whom Services Were Arranged\***



\*Based on 14,853 students; excludes the 27 students for whom prior parental consent to evaluate was not obtained.

The percentage of students for whom the arrangement of services took more than 60 school days varied widely among school districts (Figure 2). For example, the highest non-compliance rate was 32 percent for District 9 (parts of the South Bronx), which was eight times the rate for District 11 (Northeast Bronx).

**Figure 2 – Percentage of Students With Service Arrangements Greater Than 60 School Days School Year 2016-17**



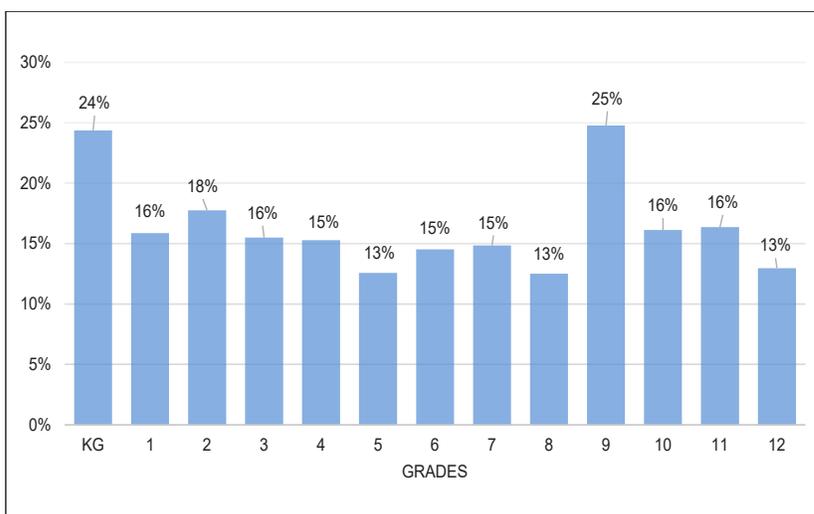
Further, we analyzed DOE’s data at the school level and identified widely ranging degrees of non-compliance with the 60-school days requirement. For example:

- At P.S. 75 in Riverside, Manhattan (District 3), arrangement for services was not completed within 60 school days for 21 of the 25 (84 percent) students who were determined to be eligible for services.

- At P.S. 30 in Staten Island (District 31), arrangement for services was not completed within the required 60 school days for 12 of the 16 (75 percent) students who were determined to be eligible for services.
- At P.S. 46 on Frederick Douglas Boulevard in Manhattan (District 5), arrangement for services was not completed within the required 60 school days for 16 of the 23 (70 percent) students who were determined to be eligible for services.
- At P.S. 153 in Maspeth, Queens (District 24), arrangement for services was not completed within the required 60 school days for 15 of the 25 (60 percent) students who were determined to be eligible for services.

We also analyzed DOE’s timeliness for arranging special education services by grade level. As shown in Figure 3, the non-compliance rate for DOE to arrange services is highest among ninth graders and kindergarteners – at 25 percent and 24 percent, respectively. At almost 20 percent (4,063 of 22,266), kindergarten students – who are beginning their post-preschool education – represent the largest number of all initial referrals.

**Figure 3 – Students With Service Arrangements More Than 60 School Days, School Year 2016-17**



## Arrangement of Services for Sampled Students

We also performed a separate analysis of a random sample of 158 of the 22,266 students who were initially referred for evaluations in school year 2016-17 to determine DOE’s compliance with the 60-school days time frame, and found that DOE should have arranged special education services for 112<sup>1</sup> of the 158 sampled students. DOE did not arrange services for 29 (or 26 percent) of the 112 students within 60 school days. On average, it took 108 school days to arrange for services.

<sup>1</sup> For the remaining 46 students, either they were determined to be ineligible for services or their referrals were closed.

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In response to our preliminary findings, DOE indicated that district-level compliance with the Regulations and a metric for its responsiveness in arranging for recommended special education services for sampled students are not useful as they do not add value to the process. DOE also indicated that our school-level analysis is misleading because it did not account for the recommended programs and services for these students, which can vary in complexity, type, frequency, and duration. We strongly believe that performing such analysis is the responsibility of DOE's management. However, DOE provided no evidence that it performed such analysis on a school, district, or systemwide level. Such analysis can identify delays in completing the placement process.

## Provision of Services

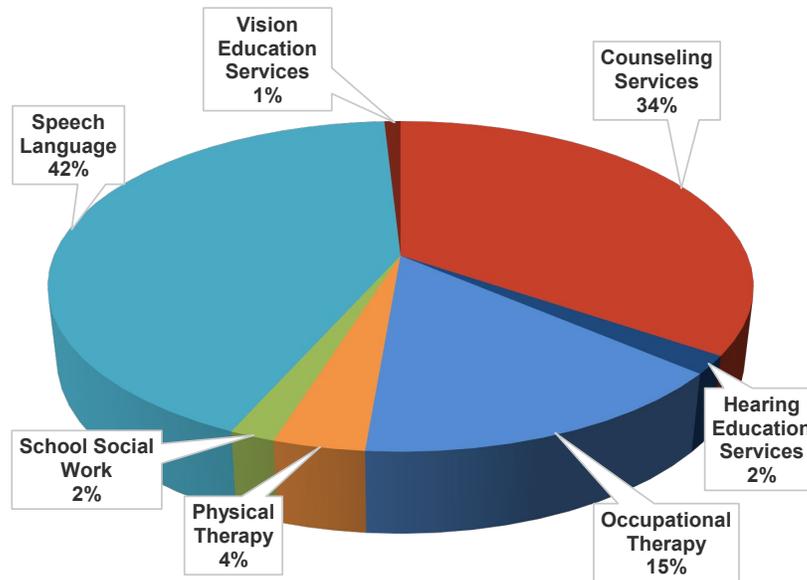
While arrangement of services is a vital component in the special education process, providing students with the recommended services within a prompt time frame is ultimately the end goal. For 112 of our sampled 158 students whose services were arranged, we performed analyses to determine whether the students received the recommended services as indicated in their IEP and the length of time it took for them to start receiving those services. These analyses are discussed below, broken down by related services and special education programs.

In response to our preliminary findings, DOE officials indicated that our analyses do not have any applicable legal standard and that these measurements are misleading. They asserted that the only valid measure under the law is the time from parental consent to evaluate and the arrangement of services – a metric that DOE does not measure. We recommend that DOE's management establish expectations for how long provision of services should take, and track such implementation for all students so they can determine when students are not receiving recommended services in a timely manner.

## Related Services

Related services are developmental, corrective, and other supportive services that may be required to assist a student with a disability to receive meaningful educational benefit. These include assistive technology services, audiological services, counseling, interpreting services for the deaf and hard of hearing, occupational therapy, orientation and mobility services, parent counseling and training, physical therapy, school nurse services, speech-language therapy, and vision and hearing educational services, and may include other developmental, corrective, or supportive services if required. Of the 112 sampled students who were recommended to receive special education services, 71 students had one or more recommended related services, totaling 113 related services, on their IEP, as shown in Figure 4. Speech-language, counseling, and occupational therapy accounted for 91 percent of the related services recommended, while physical therapy, hearing education, school social work, and vision education services made up the remaining 9 percent.

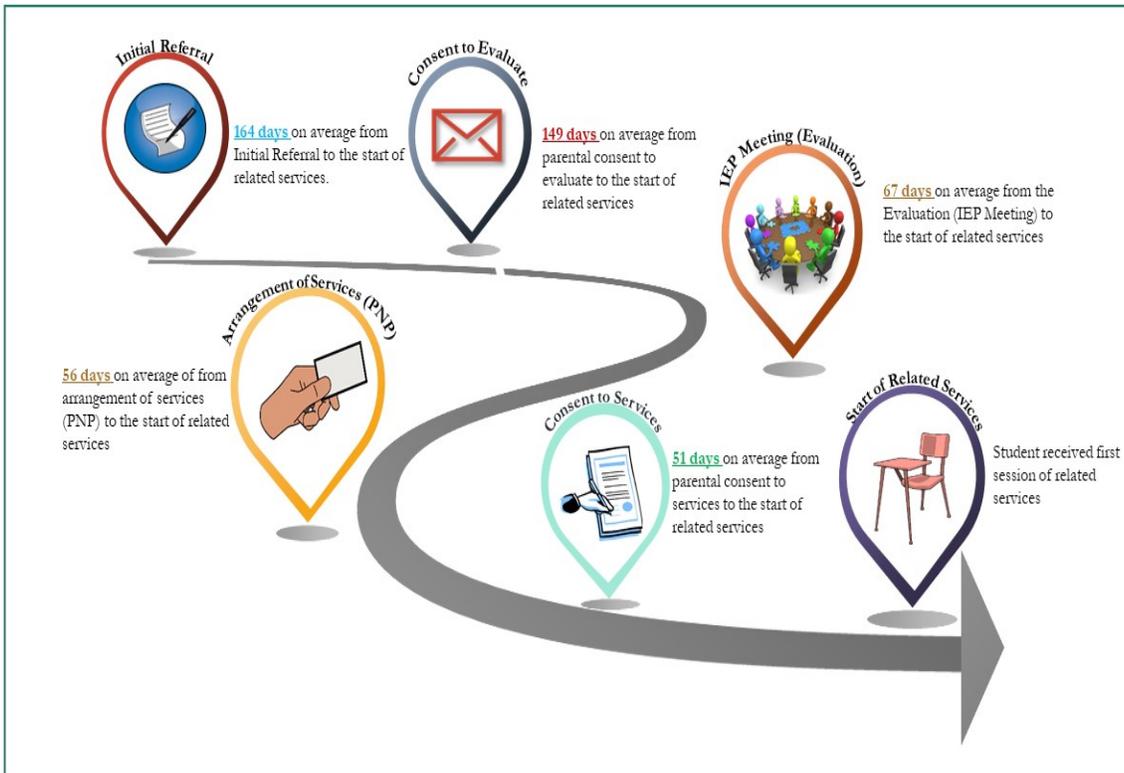
**Figure 4 – Distribution of Related Services Recommended to Sampled Students**



The Regulations do not stipulate time frames for students to start receiving their recommended special education services. However, the absence of time frames does not diminish the need to provide such services at the earliest possible date, nor does it prohibit DOE’s management from setting targets and tracking service delivery as a managerial tool. Because DOE does not calculate the length of time it takes to start related services, we used pivotal dates (e.g., dates of referral, parental consent to evaluate, IEP meeting/evaluation, arrangement of services, parental consent to services) to perform the analysis for 67 of the 71 students who were recommended for related services. We believe that this type of analysis can be useful for parents as well as policy makers in developing expectations for when they can expect recommended services to start from these well-defined milestone dates.

Figure 5 shows the average number of days to the start of services for the 67 students who received all or some of their recommended related services. Specifically, our analysis shows it took an average of 164 calendar days/84 school days from initial referral to when the student commences receiving related services. Therefore, a student who is referred for evaluation in September would, on average, begin receiving recommended services five months later, or in February of the following year. For these same students, we found it took almost two months, or 56 calendar days/25 school days, from the time DOE arranged their related services to the time services commenced.

**Figure 5 – Average Calendar Days to Start Related Services**

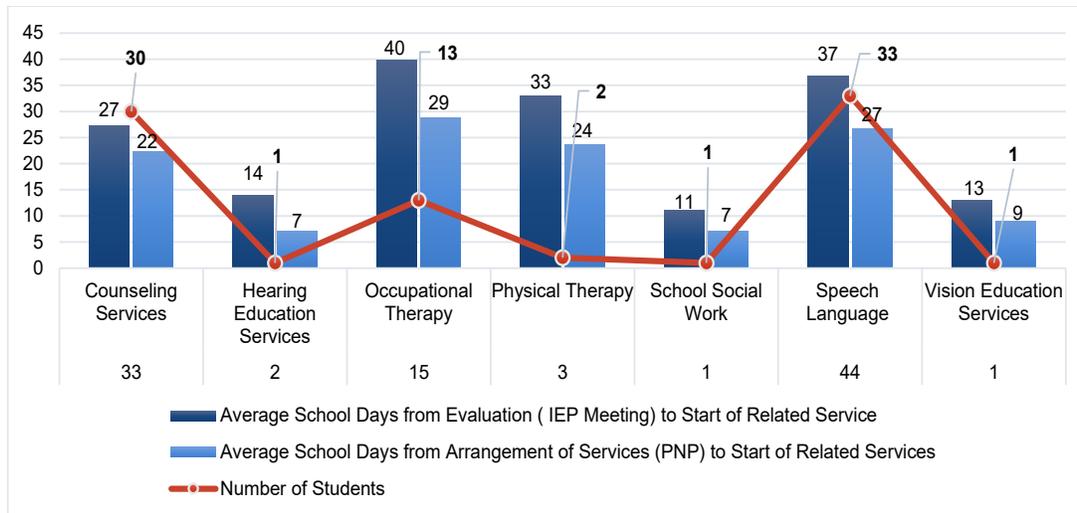


Not tracking this critical part of the process deprives DOE management of critical information and makes it more difficult for them to know where roadblocks in provision of services exist.

### **Analysis by Type of Related Service**

We also determined the average number of days it took to provide each type of related service (see Figure 6). For example, for 33 students who received a total of 44 individual or group speech-language services, we found it took an average of 71 calendar/37 school days to start the services based on when the IEP meeting was held and an average of 55 calendar days/27 school days to start from when arrangement was made.

**Figure 6 – Average School Days to Start Related Services, by Type\***



\*This analysis pertains to 64 of the 67 students who received a total of 99 services. Related services for the remaining 3 students began before services were arranged and/or parental consent was received.

By conducting an analysis similar to this one for all students receiving special education, DOE can benefit by knowing where delays exist in the implementation of related services and where additional resources/service availability needs to be added. For example, a kindergartener in District 9 (South Bronx) was referred in September 2016. DOE evaluated this student in November 2016 and recommended speech-language, counseling, and occupational therapy services. Although the student received counseling in November 2016, the speech-language services were not provided until January 2017. Moreover, occupational therapy did not start until November 2017 – more than a year after the referral.

### Students Not Receiving Recommended Related Services

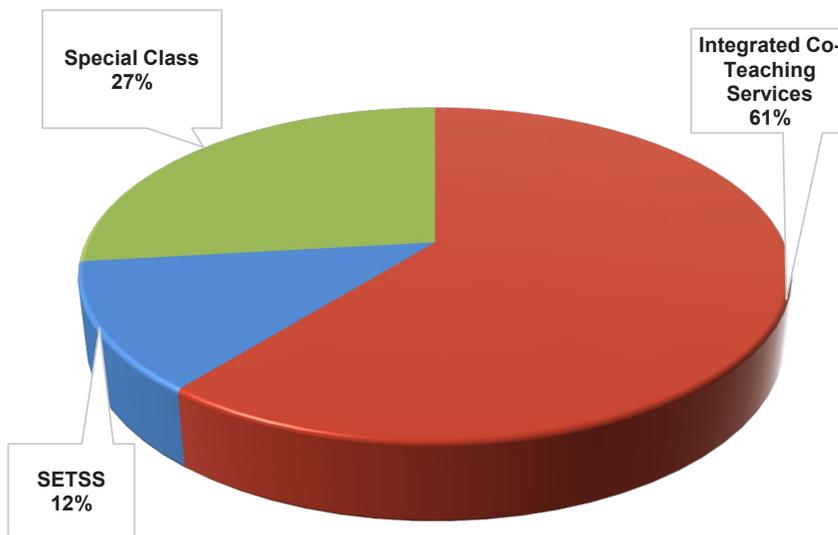
The Regulations require DOE to provide special education services to students with disabilities. Our analysis found that 67 of the 71 students received all of the recommended related services in their IEP. For the four students who did not, two were discharged from DOE before services could be provided. DOE received parental consent for the third student in April 2017. Although this student was discharged in June 2017, DOE did not provide any services in the intervening two months. The fourth student was referred in August 2016 and evaluated in December 2016; although this student's parent revoked consent for services in August 2017, DOE did not provide services for the eight months before consent was revoked.

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## Special Education Programs

ICT, SC, and SETSS are examples of instructional special education services students receive. Of the 112 sampled students, 102 had one or more ICT, SC, and/or SETSS recommendations on their IEP, for a total of 339 programs. Figure 7 shows the distribution of these 339 programs by ICT, SC, and SETSS recommendations on the IEPs for the 102 students.

**Figure 7 – Distribution of Programs Recommended to Sampled Students**



## Analysis of the Length of Time to Enroll Students in Programs

As previously discussed under Related Services, although the Regulations do not stipulate time frames for students to start receiving their recommended services, the absence of a required time frame for starting special education services does not diminish the need for DOE to provide such services at the earliest possible date.

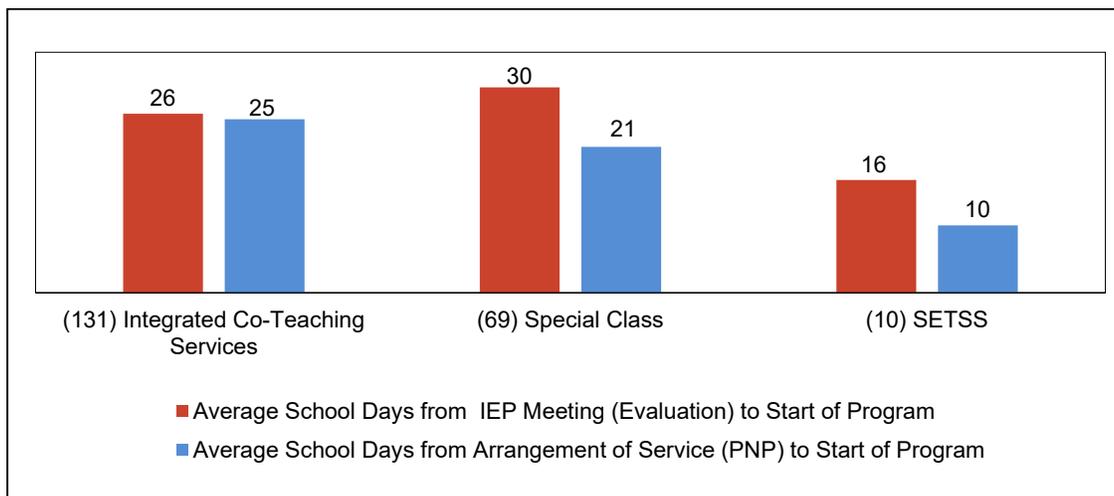
As we did for related services, we determined how long it took for students to start programs from pivotal dates (e.g., dates of referral, parental consent to evaluate, IEP meeting/evaluation, arrangement of services). Our analysis of the data for 102 sampled students shows it took an average of 153 calendar days/67 school days from initial referral to enrollment in these programs. Further, after DOE made arrangements to place these students in their recommended programs, it still took an average of 75 days/22 school days before they were enrolled. For example, a ninth grader in District 14 (parts of Brooklyn) was referred in September 2016, evaluated in March 2017, and recommended for four ICT subjects. However, the student was not enrolled in these subjects until September 2017 – a year after referral.

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## Analysis by Program Type

We also conducted an analysis to determine the average number of days it took to enroll students in each type of program. For example, as shown in Figure 8, it took an average of 26 school days after an IEP meeting was held and an average of 25 school days to start services after arrangements were made to enroll students in 131 ICT programs.

**Figure 8 – Average School Days to Start Special Education Programs, by Program Type\***



\*This analysis is of 64 students who were enrolled in 210 programs.

## Students Not Receiving Recommended Programs

The Regulations require DOE to provide special education services to students with disabilities. However, our analysis found that nearly 25 percent (or 25) of the 102 sampled students had not been enrolled in all of the programs recommended in their IEPs and thus were not receiving services, as follows:

- 12 of the 25 students were not enrolled in any of their programs (as of the end of the 2017-18 school year) although they were recommended for between one and four programs each. For example, a parent of a third-grade student provided consent to start services in December 2016. However, as of June 2018, the end of the 2017-18 school year, the student still was not enrolled in SETSS (Math and English Language Arts [ELA]) as recommended in the IEP.
- 8 of the 25 students were not enrolled for some of the programs recommended in their IEP. For example, a fifth grader was recommended for ICT in four subjects: ELA, Math, Science, and Social Studies. However, as of the end of the 2017-18 school year, the student was only enrolled for ICT in ELA.

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- 5 of the 25 students were enrolled in programs that were not aligned with the recommendations in their IEP. For example, a third grader was recommended for a special class in ELA. However, the student was enrolled in ICT. We found similar situations for four other students.

An IEP is customized to meet a student's individual needs. Consequently, a student does not benefit if he/she does not receive the services the IEP team determined to be most appropriate and beneficial – and that were agreed to by the parent.

## Lack of Parental Consent to Services

According to the Regulations, school districts shall not provide special education services to students initially referred for special education if the parent refuses to or fails to provide consent. We identified 12 of the 112 sampled students who were provided related services and/or special education programs without DOE first receiving parental consent to start the services. For example, a fourth grader was referred in September 2016. DOE evaluated this student and arranged for the recommended services in December 2016. The services were provided in January 2017; however, DOE did not provide documentation to show that parental consent was first received. We identified 39 other students who received at least one or more of their services before parental consent to services was received. While it is important to provide services to the students, DOE must comply with the Regulations.

## Other Matters

The State Education Department (SED), in its NYC Special Education Compliance Assurance Plan issued in May 2019, concluded that DOE had not met IDEA requirements for 13 consecutive years due to performance/compliance issues. The report further concluded that DOE failed to provide related services to students with disabilities as recommended in their IEP. Consequently, SED required DOE to submit an action plan to address these issues. Although requested, DOE did not provide us with a copy of the action plan it submitted to SED. We note that one of the recommendations in the Compliance Assurance Plan was for DOE to perform a root cause analysis for each non-compliance item, including for the provision of services. We believe the type of data analysis that we conducted and presented in this report is one of the methods DOE needs to adopt in order to perform its analysis.

## Recommendations

1. Calculate and track compliance with the 60-school days requirement for arranging special education services.
2. Assess the reasons for non-compliance with the 60-school days requirement for arranging services for eligible students, and take appropriate action(s).
3. Develop guidelines for the length of time it should take for students to start

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receiving recommended related services and special education programs. Similar to the analysis presented in this report, track compliance with these guidelines and take corrective action when lengthy time frames are identified.

4. Ensure that students receive all special education services listed on their IEP.
5. Ensure that parental consent to services is obtained prior to service provision.

# Audit Scope, Objective, and Methodology

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The objective of this audit was to determine whether DOE arranged special education services for students within the required time frame and provided them with the recommended special education services outlined in their IEP. The audit scope covered the period of July 1, 2016 through January 21, 2020, and included all students who were initially referred for special education during school year 2016-17.

To achieve this objective, we reviewed relevant laws, Regulations, and DOE guidance. We met with key DOE personnel to obtain an understanding of DOE's efforts to comply with special education Regulations. We assessed DOE's internal controls as they relate to the provision of special education programs and services. We also assessed DOE's internal controls as they relate to the arrangement of services data provided by DOE in support of the information included in the local law report on students referred for special education in school year 2016-17. The data we were provided showed the status of the 22,266 initial referrals for the 2016-17 school year as of October 2, 2017. For a random sample of 158 students who were referred in the 2016-17 school year, we reviewed student records in SESIS and STARS and compared the dates of arrangement of services. For this purpose, we reviewed student IEPs and PNP (arrangement of services) letters. Further, to verify provision of services, we reviewed the encounter attendance records in SESIS as of September 4, 2019 for those students who received related services. We also reviewed archived STARS data for school years 2016-17 and 2017-18 and ATS attendance information for those students who had program recommendations. To calculate the number of school days, we used listings of school closures/holidays for school years 2016-17 and 2017-18 that were provided by DOE.

STARS contains course programming information including course names, enrollment start dates, and enrollment end dates. According to DOE officials, most special education programs are not amenable to being tracked student-by-student on a per encounter basis. Therefore, to determine provision of special education programs, we relied on students' enrollment in STARS. We also analyzed the provision of 1:1 services by paraprofessional staff for some sampled students who were recommended for such support service. The results of our samples were not projected.

As part of audit procedures, the audit team used Geographic Information Systems (GIS) software for geographic analysis. As part of the geographic analysis, we developed a visualization (see Exhibit A) to improve understanding of our report.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to affirm that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They further affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on

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the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor’s Office of Operations have informed us that, as a matter of policy, mayoral agency officials will not provide representation letters in connection with our audits. As a result, we lack assurance from DOE officials that all relevant information was provided to us during the audit.

# Statutory Requirements

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## Authority

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

We conducted our audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objective.

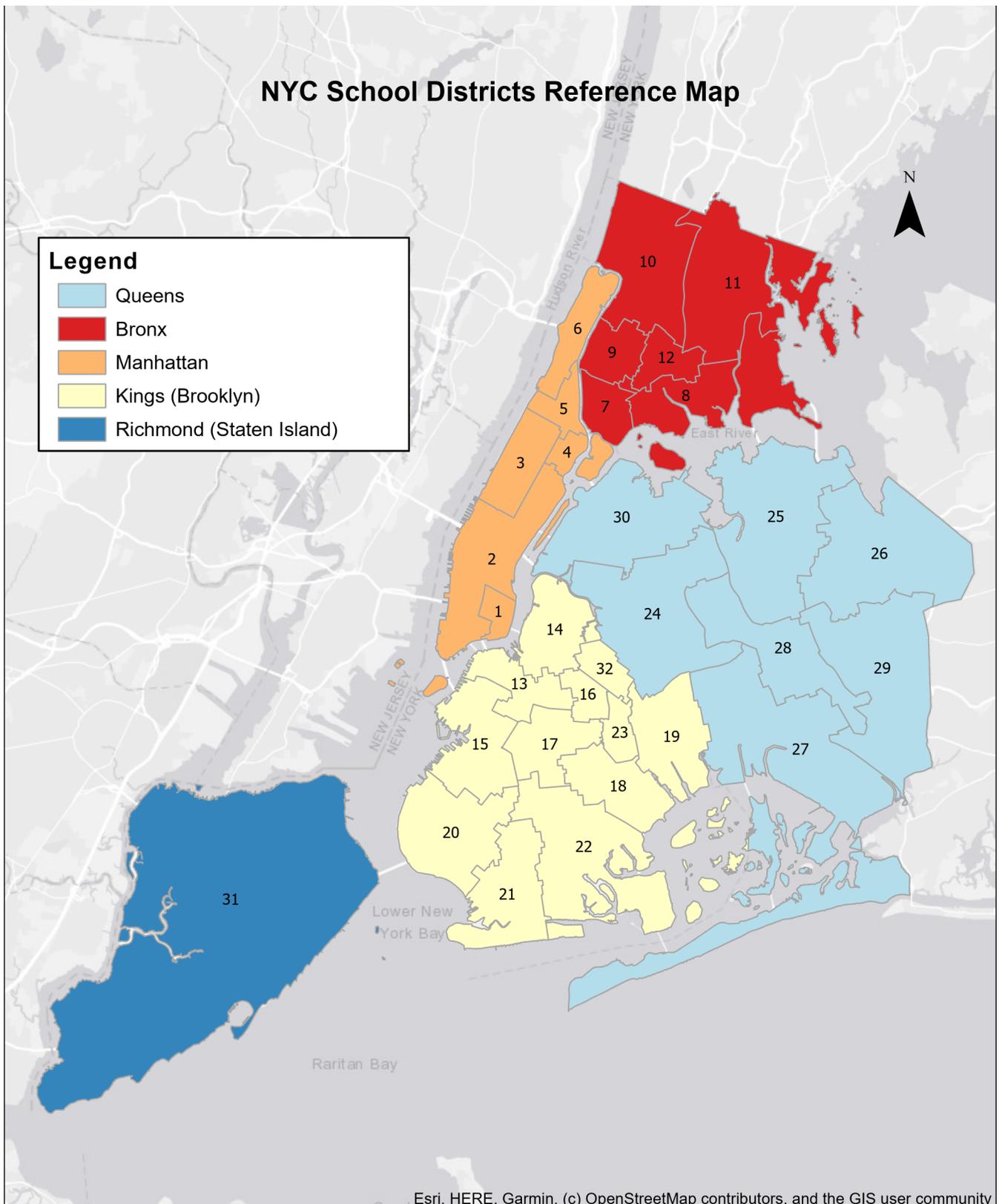
## Reporting Requirements

A draft copy of this report was provided to DOE officials for their review and comments. Their comments were considered in preparing this final report and are included in their entirety at the end of it.

DOE generally agreed with our recommendations, indicating it has deployed sophisticated business intelligence tools and associated practices to monitor and ensure timely provision of special education programs and related services to all students with IEPs. The response describes certain actions to address the timely provision of services and takes issue with the methodology we employed to reach our conclusion that DOE has failed to develop a means to determine compliance with the 60-school days requirement to arrange for students' placement. DOE has not made any efforts to calculate or track such information for the largest school system in the country. As described in our report, we used the data available to us to perform our analysis, such as the date DOE sends the PNP to the parent for the end of the process for the arrangement of students' placement. DOE also does not have a system in place to track the overall timelines of how long it takes students to start receiving services after placement has been arranged. As also described in our report, we used several pivotal dates (e.g., dates of referral, parental consent to evaluate, IEP meeting/evaluation, arrangement of services, parental consent to services) to calculate how long it took for students to start or be enrolled in services. We expect DOE to take our results as a strong indication that improvements are needed. We strongly encourage DOE to proactively manage the data it has on the provision of services process and to expeditiously put in place a system to calculate and track its compliance with the 60-school days requirement for the arrangement of services and the length of time it takes students to receive their services. Our rejoinders to certain DOE comments are embedded in the DOE response.

Within 180 days of the final release of this report, we request that the Chancellor of the New York City Department of Education report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

# Exhibit A



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community  
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# Exhibit B

## List of DOE School Districts, by Borough\*

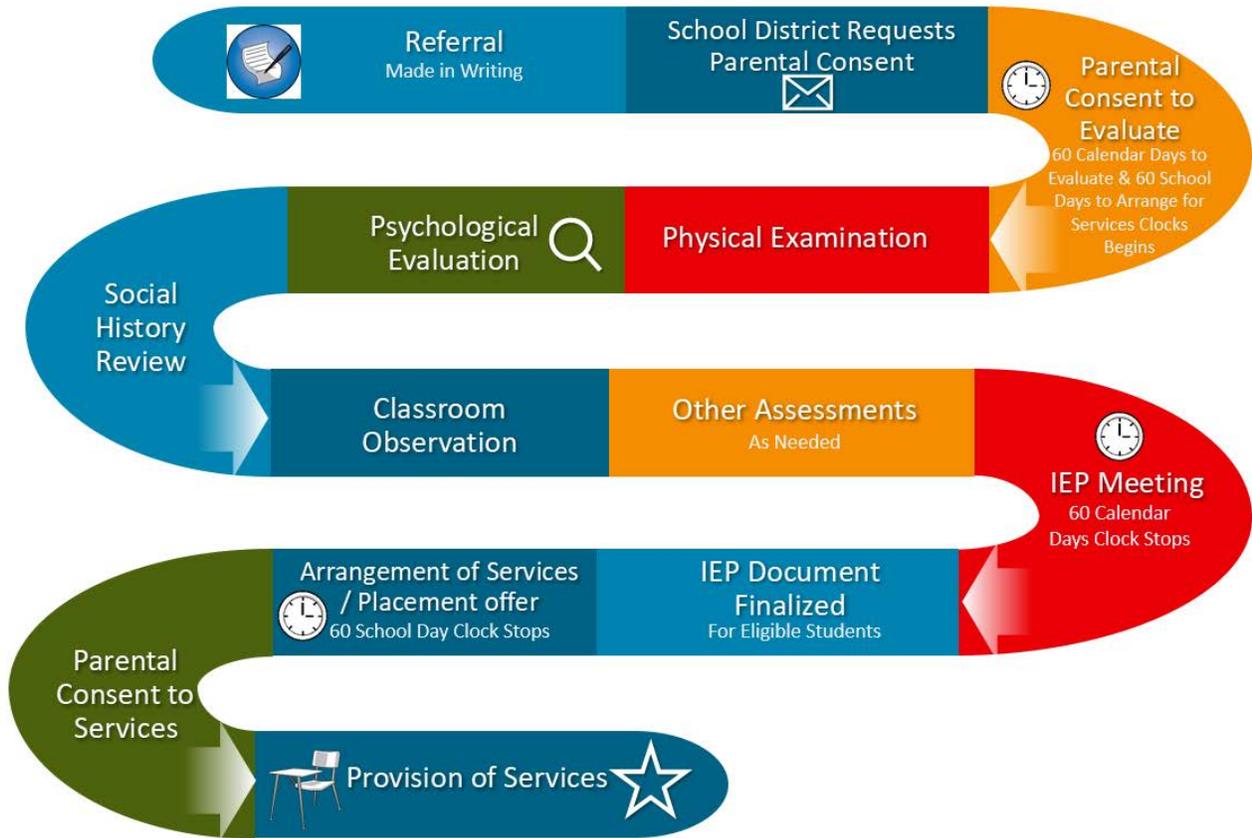
| District         | Location/Neighborhood   |
|------------------|---|
| <b>Manhattan</b> |   |
| 1                | East Village, Lower East Side, Chinatown  |
| 2                | Chinatown, Battery Park, SoHo, Tribeca, West Village, Chelsea, Flatiron, Union Square, Gramercy Park, Stuyvesant Town, Cooper Village, Murray Hill, Kips Bay, Midtown South, Clinton, Turtle Bay, East Midtown, Lenox Hill, Upper East Side, Carnegie Hill, Yorkville |
| 3                | Morningside Heights, Central Harlem South, Upper West Side, Lincoln Square  |
| 4                | East Harlem South, East Harlem North  |
| 5                | Manhattanville, Morningside Heights, Central Harlem North, Polo Grounds, East Harlem South  |
| 6                | Manhattanville, Hamilton Heights, Washington Heights South, Washington Heights North, Marble Hill, Inwood   |
| <b>Bronx</b>     |   |
| 7                | Hunts Point, Mott Haven, Port Morris, Longwood, Melrose South, Mott Haven North, Morrisania, Melrose, East Concourse, West Concourse, Rikers Island   |
| 8                | Morrisania, Melrose, Longwood, Hunts Point, Soundview, Bruckner, Castle Hill, Clason Point, Port Harding Park, Westchester, Unionport, Schuylerville, Throgs Neck, Edgewater Park, Pelham Bay, Country Club, City Island  |
| 9                | Morrisania, Highbridge, Morris Heights, Tremont, Mount Hope, East Concourse, West Concourse, Claremont, Bathgate  |
| 10               | Belmont, Claremont, Bathgate, Mount Hope, University Heights, Morris Heights, Fordham South, Kingsbridge Heights, Bedford Park, Fordham North, Van Cortlandt Village, Norwood, Spuyten Duyvil, North Riverdale, Fieldston, Riverdale                                  |
| 11               | Parkchester, Westchester, Van Nest, Morris Park, Baychester, Williamsbridge, City Island, Eastchester, Wakefield, Woodlawn, Pelham Parkway, Allerton, Pelham Gardens, Bronxdale, Co-Op City   |
| 12               | East Tremont, West Farms-Bronx River, Parkchester, Crotona Park East, Soundview-Bruckner, Longwood, Hunts Point, and Morrisania-Melrose   |
| <b>Brooklyn</b>  |   |
| 13               | Brooklyn Heights-Cobble Hill-Dumbo-Downtown Brooklyn, Fort Greene, Clinton Hill, Bedford, Prospect Hill   |
| 14               | Williamsburg, East Williamsburg, Bedford, Bushwick South, North Side-South Side, Greenpoint   |
| 15               | Carrol Gardens, Columbia, Red Hook, Dumbo-Downtown Brooklyn, Park Slope-Gowanus, Sunset Park West, Sunset Park East, Borough Park, Windsor Terrace, Kensington-Ocean Parkway  |
| 16               | Stuyvesant Heights, Crown Heights North   |
| 17               | Crown Heights North, Crown Heights South, Prospect-Lefferts Gardens-Wingate, Erasmus  |
| 18               | East Flatbush, Farragut, Rugby-Remsen Village, Canarsie, Flatlands, East New York   |
| 19               | East New York, Bushwick South, Cypress Hill-City Line, Starrett City  |
| 20               | Bay Ridge, Kensington-Ocean Parkway, Borough Park, Sunset Park West, Sunset Park East, Bensonhurst West, Bath Beach, Dyker Heights  |

|                          |  |
|--------------------------|--|
| 21                       | Midwood, Ocean Parkway South, Bensonhurst East, Gravesend, Homecrest, Brighton Beach, West Brighton, Sea Gate-Coney Island   |
| 22                       | Midwood, Flatbush East, Flatbush, Flatlands, Madison, Sheepshead Bay, Gerritsen Beach, Georgetown, Marine Park, Bergen Beach, Mill Basin   |
| 23                       | Ocean Hill, Brownsville  |
| 32                       | Bushwick North, Bushwick South   |
| <b>Queens</b>            |  |
| 24                       | Sunnyside-Woodside, Ridgewood, Middle Village, Glendale, Elmhurst-Maspeth, Elmhurst, Corona  |
| 25                       | Fort Totten-Bay Terrace-Clearview, Murray Hill, Whitestone, College Point, Fresh Meadows-Utopia, Jamaica Estates-Holliswood, Flushing, East Flushing, Queensboro Hill, Pomonok-Flushing Heights-Hillcrest, Kew Gardens   |
| 26                       | Pomonok-Flushing Heights-Hillcrest, Auburndale, Fresh Meadows-Utopia, Bayside-Bayside Hills, Oakland Gardens, Jamaica Estates-Holliswood, Queens Village, Bellerose, Glen Oaks, Floral Park-New Hyde Park, Douglas Manor, Douglaston, Little Neck  |
| 27                       | Woodhaven, Ozone Park, Lindenwood-Howard Beach, Richmond Hill, South Ozone Park, Baisley Park, Springfield Gardens North, Far Rockaway-Bayswater, Hammels-Arverne-Edgemere, Breezy Point-Belle Harbor-Rockaway Park  |
| 28                       | Rego Park, Forest Hills, Briarwood-Jamaica Hill, Jamaica, Jamaica Estates-Holliswood, South Jamaica, St. Albans  |
| 29                       | Jamaica Estates-Holliswood, Pomonok-Flushing Heights-Hillcrest, Jamaica, South Jamaica, St. Albans, Queens Village, Springfield Gardens South-Brookville, Rosedale, Laurelton, Cambria Heights   |
| 30                       | Astoria, East Elmhurst, Jackson Heights, Woodside, Hunters Point-Sunnyside-Maspeth, Queensbridge-Ravenwood-Long Island City, Astoria, Old Astoria, Ditmars-Steinway  |
| <b>Staten Island</b>     |  |
| 31                       | Charleston-Richmond Valley-Tottenville, Annadale-Huguenot, Prince's Bay, Eltingville, Great Kills, Rossville-Woodrow, Arden Heights, Oakwood, Todt Hill-Emerson Hill-Heartland Village-Lighthouse Hill, New Dorp-Midland Beach, Old Town-Dongan Hills-South Beach, Grasmere-Arrochar-Fort Wadsworth, Stapleton-Rosebank, West New Brighton, New Brighton-St. George, New Brighton-Silver Lake, Westerleigh, Port Richmond, Mariners Harbor-Graniteville, New Springville-Travis-Bloomfield, Grymes Hill-Clifton-Fox Hill |
| <b>Various Locations</b> |  |
| 75**                     | Citywide Special Education Programs  |
| 79**                     | Citywide - Alternative Schools and Programs  |

\*Data compiled from the DOE website district map.

# Exhibit C

## Evaluation and Special Education Process



# Agency Comments and State Comptroller's Comments

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Office of the Chief Academic Officer  
52 Chambers Street | New York, NY 10007

September 23, 2020

Mr. Thomas P. DiNapoli, State Comptroller  
Office of the New York State Comptroller  
Division of State Government Accountability  
110 State Street, 11th floor  
Albany, NY 12236

**Re: New York City DOE's Compliance  
with Special Education Requirements  
for the Provision of Services (2018-N-5)**

Dear Comptroller DiNapoli,

This letter constitutes the formal response of the New York City Department of Education (DOE) to the recommendations made by the Office of the State Comptroller (Comptroller) in its draft audit report on the DOE's Compliance with Special Education Requirements for the Provision of Services (2018-N-5).

We are committed to meeting the needs of our students with disabilities. This commitment includes ensuring that we are providing the special education programs and services that are recommended on a student's Individualized Education Program (IEP) in a timely manner. In review of the Comptroller's audit and recommendations, we offer responses focused on the following issues:

- The audit protocols identified by the Comptroller are not supported by law, regulation, or reasonable standards, and they appear to be chosen to overstate the amount of time taken to arrange for services by, among other things:
  - Measuring time in calendar days, which are not relevant to the regulatory provision on arranging services and include days when services cannot be provided (most notably the summer, when programs/services for students are generally not provided for the subset of students included in the analysis), wildly distorting wait times; and
  - Including this calculation regardless of an IEP team's decision to, in consultation with and upon consent by a parent/guardian, defer a placement to a later date (*e.g.*, the start of the following school year).

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**State Comptroller's Comment** – Our protocols are supported by the Education Law, Regulations, and reasonable standards, and were chosen to assess DOE's compliance in determining and providing required special education programs and services. Our analysis used both school days and calendar days. We used school days to measure the arrangement of services as required by the Regulations. However, calendar days provide a true indication of the length of time it takes DOE to provide programs and services. We considered holidays and summer months when calculating the school days. Moreover, DOE could not provide evidence to show that parents/guardians consented to deferring placements to a later date, such as the start of the following school year. Further, we are aware that DOE has previously provided special education services during the summer.

- The DOE has over the past several years deployed sophisticated business intelligence tools and associated practices to monitor and ensure the timely provision of special education programs and related services to all students with IEPs. These tools are essential components of the DOE's data-driven special education management strategy, which has been demonstrably effective in improving service delivery citywide. Over the course of both audits, despite oral and written explanations of this strategy by the DOE, which included sharing examples of internal management reports, the Comptroller continues to misrepresent and understate the DOE's capacity in this area and the effectiveness of its strategy. We detail these efforts below, and reiterate our rejection of the Comptroller's primary assertion regarding the most constructive metrics for tracking special education program and service delivery.

**State Comptroller's Comment** – While DOE may have deployed sophisticated tools and associated practices to monitor provision of programs and services, these tools and practices are not used to calculate or track compliance with the 60-school day requirement. As our analysis indicates, it still takes a considerable amount of time to place eligible students and to provide them with the required services. We urge DOE to create metrics, similar to those in our report, to track program and service delivery.

- Despite repeated correction by the DOE, the Comptroller's report continues to include inaccurate graphics and descriptions of special education terms and processes, and information and data points of unclear relevance to the scope of their audit, all of which are likely to mislead, rather than inform, the public.

**State Comptroller's Comment** – Our graphics, descriptions of special education terms and processes, and information and data points are accurate and not meant to mislead. Rather, they serve to give the reader of our report a clear understanding of DOE's special education processes, practices, and outcomes. Moreover, we shared our graphics, descriptions, information, and data points with DOE officials for their input. We included DOE's suggestions and corrections, to ensure accuracy.

The audit report is missing a clear disclosure of the criteria used to evaluate its objective and determine compliance. Throughout the audit process, the DOE was informed that Sections 200.4

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and 200.2 of the NYS Commissioner’s Regulations were the primary basis of the audit criteria. It is important to point out that Section 200.2 covers “*the Board of education responsibilities*”, which includes Census and register of students with disabilities, written policy, and approval of service. The DOE has established procedures in all of those areas that exceeds the requirements of the Regulation. Further, Section 200.4 covers “*Procedures for referral, evaluation, individualized education program (IEP) development, placement and review*” and the audit specifically noted placement as the relevant section of the regulation that the auditors were testing. However, the auditors measured compliance using benchmarks that are inconsistent with the regulation: the first date of provision of service, instead of the date of arrangement of the service. In fact, the auditor acknowledged that the Regulations does not cover the metric of the first day of service (*see About the Program*) and it still chose to use that erroneous metric.

**State Comptroller’s Comment** – DOE’s assertions are incorrect. We calculated DOE’s compliance using the date of the arrangement of the services as well as the length of time for delivery of those services using the first date of provision of service. As cited in this report, our audit determined DOE’s compliance with Section 200.4 (b) of the Regulations. This criteria was shared on multiple occasions during our meetings with DOE officials and staff. Although provided with many opportunities during the audit, DOE did not question the accuracy of our calculations as they relate to its compliance with Section 200.4 (b).

The report’s fundamental misconception is summarized by the auditor’s statement that “*DOE does not calculate or track compliance with this critical requirement even though the data is readily available in SESIS and easily calculable on a large scale. Without tracking this compliance, DOE is unable to make informed decisions when allocating staffing resources where they are most needed or take other appropriate actions. We performed our own analysis using DOE data....*” The report correctly notes that the data is available for each student, but offers at no point any basis for the assertion that calculating this on a mass scale would support deployment of staffing resources.

**State Comptroller’s Comment** – We stand by our assertion that, by not tracking or calculating compliance, DOE is unable to make informed decisions that would enhance its compliance with the Education Law and Regulations. Without tracking compliance with Section 200.4 (b), it is unclear how DOE measures progress against its goals and makes data-driven decisions about the impact of actions taken.

The DOE in fact extensively tracks information on the need for special education evaluations, special education programs, and related services. The relevant data reports are reviewed and analyzed constantly for the purposes of optimal staff allocation. As a direct result of the data-driven management approach to special education service delivery initiated by the DOE beginning in 2016, the number of students reflected in the DOE’s annual public special education data report as not receiving their special education programs decreased by 52% from the 2016-17 to the 2018-19 school year. Though the DOE’s strategy was underway during the entire course of the audit and the Comptroller was informed of it, the Comptroller chose to not include in its review of the DOE’s approach, or acknowledge its existence. This has lead the Comptroller to make erroneous sweeping

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generalizations in the report by wrongly implying the existence of system-wide compliance issues. The Comptroller is only focusing its audit on placement following initial referrals for school-age students, which represent a small fraction of services that must be arranged for all students every year (including for continuing students over the course of the year as existing IEPs change).

**State Comptroller's Comment** – DOE's assertion is incorrect. We reviewed the annual data reports DOE is required to submit to the City Council per Local Law 27 of 2015. While these reports contain relevant information, they do not include crucial information such as the percent of students whose services have been arranged in 60 school days, as required by the Education Law and Regulations, nor do they include time frames for determining how long it takes for students to receive their services. Without this information, DOE cannot make informed decisions on how to use and deploy its resources. In addition, we repeatedly informed DOE officials that our audit would focus solely on students who were initially referred for special education programs and services during school year 2016-17. Further, the information contained in the Local Law reports is publicly reported due to City Council mandate.

The DOE tracks evaluation and service delivery needs separately, as they largely involve different personnel and services. It reviews, identifies, and responds to such needs according to the specific services and staff involved. To track compliance via a single metric would provide both an inaccurate picture of compliance, obfuscate delays and our ability to address them and, more importantly, would negatively affect service delivery and crucial feedback with respect to deployment of resources. Accordingly, the DOE's management strategy focuses separately on three tasks: the completion of evaluations and IEP meetings, the delivery of special education programs, and the delivery of related services.

**State Comptroller's Comment** – DOE's strategy fails to see the forest for the trees – nothing in the report precludes DOE from implementing both a metric for overall provision of service and also assessing each individual component. Rather, that is the preferred strategy for providing metrics to indicate whether significant problems exist holistically as well as within components, with sufficient detail to understand root cause.

Tracking initial evaluations from consent for evaluation to placement involves a process that, by design, often does not follow a direct line. A student may be found ineligible for services, meaning no placement is needed. For a student who is recommended for services, an additional parental consent is required prior to initiation of services; and placement is often deferred to the start of the following school year, to avoid disruption. The DOE disagrees with the Comptroller's assertion that aggregating the time involved in these separate processes from an overview level, without regard to the details of each stage, would shed light on specific issues that result in delayed service provision. Tracking this multi-faceted process as a single compliance item would obscure, rather than elucidate, the specific issues that may be leading to delays. Of note, the DOE's separate tracking of evaluation and service provision is consistent with New York regulatory authority: The New York State Education Department only requires an annual data reports from local school districts on compliance with the consent-evaluation timeline.

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**State Comptroller's Comment** – DOE has an obligation to arrange for services in compliance with federal and State law and to track and take appropriate actions when compliance is not met. We urge DOE to add a metric to track this multi-faceted process, thus shedding light on specific issues that could result in delays in the provision of services.

**The DOE Has a Robust System of Internal Management Reports for Special Education**

Over the past four years, through extensive efforts to leverage data available from the Special Education Student Information System (SEGIS), the DOE has deployed internal data dashboards (through the use of Microsoft Power BI) to support management of the major components of the special education process. These dashboards provide managers at every level of the DOE data on the provision of IEP-recommended special education programs and related services to students in their schools. The data can be analyzed at the level of individual students and to support specific action—including filtering by school level (*e.g.*, elementary, high school, K-8) and student grade, ethnicity and multilingual learner/English Language Learner (MLL/ELL) status. Further, the ability to sort and filter the data allows for trends and comparisons analysis, which allow us to identify areas in need of improvement. Among other things, Power BI allows the user to review and fully analyze the data of the students' service and programs delivery status:

- For special education programs (*i.e.*, special class, integrated co-teaching, special education teacher support services (SETSS)), this report shows data based on the linkage of SEGIS and the Student Transcript and Academic Reporting System (STARS). This report shows students' program delivery status, including whether students are fully receiving, partially receiving, or not receiving their program services. At every management level—Executive Superintendents, BCOs, Superintendents, and schools—this report is used to identify schools/areas in which they might need to push for greater compliance with students' IEP program recommendations.
  - The Power BI reporting platform is an extensive and powerful reporting and visualization tool that enables the DOE to quickly identify potential issues in the provision of services to students at the citywide, borough, district, and school levels. This is accomplished via graphical dashboards, including “heat maps”, that facilitate for all levels of management the identification of areas of strong vs. weak service performance by the merging of IEP-recommend programs data (from SEGIS) to students programs data (from STARS), which can be displayed by subject, grade, ELL status, district, etc. The heat maps and accompanying data play a critical role in making data-driven decisions. This includes enabling schools (or other organizational levels) to better identify and direct resources to ensure that the special education programs on students' IEPs are being provided in all areas, not only English Language Arts (ELA), Math, Sciences, and Social Studies. This supports targeting improved hiring practices and the provision of these programs to students.

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- For related services (*e.g.*, counseling, occupational therapy (OT), physical therapy (PT) and speech), Power BI reports show whether a student’s service encounter was recorded in line with the student’s IEP related services recommendation, thus, it captures the provision of service in compliance with the IEP’s recommendation.

In addition to the Power BI dashboards, the DOE distributes reports to each school on the provision of related services and programs for each of its students on a weekly basis. These reports, which are distributed throughout the school year, enable schools to identify students for whom current data does not reflect service provision in line with their IEP recommendations. These initiatives optimize our ability to allocate resources to districts and schools to ensure that they are able to implement students’ special education programs and services. The DOE has taken these steps to ensure the provision of programs and services not only for students who are receiving their programs and services after their initial referral evaluation, but for *all* students who are recommended to receive special education programs and services.

**State Comptroller’s Comment** – We acknowledge the systems and reports DOE has in place. However, we believe these are insufficient to ensure that programs and services comply with the Education Law and Regulations. For example, while the dashboards may provide important information on individual students, schools, and boroughs, they do not provide the type of performance measurements needed to adequately identify and address systemic deficiencies. Further, these systems do not calculate, track, or report on DOE’s timelines for the delivery of related and program services. We note that, even with these systems in place, 18 percent of referred students were not placed in compliance with the Education Law and Regulations.

The Comptroller has stated, among other things, that:

- “Our audit found that DOE is not adequately managing this process as it does not track or calculate compliance with the required time frame for arranging services, nor does it calculate or track other critical performance measures or take corrective actions. Remarkably, according to DOE officials, knowing this information does not add value to their process, although we believe it is relevant to DOE’s compliance with federal and State requirements.”
- “DOE deprives itself of critical performance data by not calculating or tracking its compliance with the 60-school days requirement for arranging the placement of students in special education services and programs.”
- “In response to our preliminary findings, DOE indicated that district-level compliance with the Regulations and a metric for its responsiveness in arranging for recommended special education services for sampled students are not useful as they do not add value to the process. DOE also indicated that our school-level analysis is misleading since it did not

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account for the recommended programs and services for these students, which can vary in complexity, type, frequency, and duration. We strongly believe that performing such analysis is the responsibility of DOE’s management. However, DOE provided no evidence that it performed such analysis on a school, district, or system-wide level. Such analysis can identify delays in completing the placement process.”

However, through working with the Comptroller’s audit team extensively through the course of this audit, we have repeatedly explained the effective way that we utilize the Power BI dashboards, program services reports, and related services reports, and upon request provided them with copies of our management reports.<sup>1</sup> At many stages of this audit, we explained that the most effective way of identifying how to provide all programs and services and supporting hiring and contracting efforts is to not limit the focus on the timeline from referral, but instead to expand the focus to any student in the school who is recommended to receive these programs and services. The view set forth by the Comptroller that DOE should manage this process by focusing more strictly on compliance with timelines from initial referral and receipt of parental consent to evaluate would, as the DOE stated previously, not be helpful to our efforts to arrange for services to all identified students and would provide a very limited view of our obligation to serve students. The DOE’s efforts continually bear fruit in identifying areas in need of management support, staffing resources, or professional development. The Comptroller’s approach results in no substantive recommendation on any such matter.

**State Comptroller’s Comment –** We acknowledge that DOE’s use of dashboards at the school and district levels is important; however, it is insufficient to systematically track and manage the provision of related and program services. DOE has an obligation to ensure services are provided in a timely manner, and, as our report indicates, DOE has not developed and does not track, at a minimum, the time frame for service delivery. We did an analysis that shows these services are not provided to students in a timely manner, especially in certain parts of NYC; thus, our recommendations are warranted. Had DOE performed the type of analysis we are recommending, it would have known that almost one third of the placements in Bronx District 9 were not in compliance with required time frames and would have been able to describe to us the steps taken to improve compliance.

Our public reports describe these efforts and display the resulting substantial improvement in the rate of delivery of special education programs and services. These efforts have been underway across the period of the audit and are based on metrics most useful for management of special education evaluations and program and service provision. The Comptroller’s report “*found that DOE is not adequately managing this process as it does not track or calculate compliance with*

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<sup>1</sup> In meetings with the Staten Island and Bronx Borough/Citywide Offices (BCOs) on July 16 and 17, 2019 (respectively) the directors of special education explained how the BCOs and schools utilize Power BI, program services reports, and related services reports extensively to focus on various areas of service provision. In several other meetings with Special Education Office (SEO) staff, including at the Exit Conference on March 3, 2020, SEO staff also explained the use of these management reports. DOE also repeatedly describes these efforts in their public reports over the last several years, explaining the detailed reporting dashboards and regular school-level monitoring that is implemented.

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*the required time frame for arranging services, nor does it calculate or track other critical performance measures or take corrective actions. Remarkably, according to DOE officials, knowing this information does not add value to their process, although we believe it is relevant to DOE's compliance with federal and State requirements.”* The Comptroller's ignoring of these efforts is remarkable, particularly because the audit has rejected the opportunity to review the DOE's strategy, in detail, and contribute to the DOE's strategy and tactics.

**State Comptroller's Comment –** We disagree. We did not ignore information DOE officials provided to us that showed efforts made regarding the delivery of special education programs and services. In fact, it is DOE officials who continuously discounted our analysis outlined in this report. Our analysis gave DOE an opportunity to improve its processes to identify and take corrective action when delivery of services is not found to be timely.

**The Comptroller's Focus on Calendar Days Creates a Misleading and Inaccurate Narrative of When Services Are Provided**

The Comptroller's audit focus is unclear and the audit criteria on which they base their conclusions are not premised on any law or regulation they cite. The report does not reference any established benchmark and is silent on the threshold of what the auditors are using to measure compliance and to evaluate timeliness. While they reference the IDEA and state regulations regarding the timeline for provision of services, the Comptroller then focuses throughout the report on identifying the number of calendar days – in addition to the number of school days – before the services were provided. The use of calendar days is simply wrong.

The state regulations that the Comptroller cited as the basis of this audit focus on school days, not calendar days. Section 200.4(d) of the Commissioner's Regulations state: “For a student not previously identified as having a disability, the committee on special education shall provide a recommendation to the board of education which shall arrange for the appropriate special education programs and services to be provided to the student with a disability within 60 *school days* of the receipt of consent to evaluate” (emphasis added).

The focus on calendar days distorts any reasonable analysis of the provision of service by mischaracterizing timely provision of service and exaggerating apparent delays. When this issue was discussed with representatives from the Office of State Comptroller, they indicated that they thought that this was relevant despite the fact that the calculation includes weekends and holidays and (most notably) days over the summer, when services could not and should not have been provided to students.

Additionally, the Comptroller's focus on calculating the days until programs/services are implemented does not appear to contemplate (or pull out of the calculation) students for whom the placement was properly deferred until the start of the next school year. In some instances, IEP teams (which include the parent) will determine that it is in the student's best interest to defer the placement until the beginning of the next school year. The Comptroller's focus on calendar and

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school days despite the student’s placement being deferred, makes it appear as if there are unreasonable delays for a program to be implemented, when in fact, it was determined by the IEP team to be in the student’s best interest to wait until the start of the next semester or school year to transition into a different class, program, or school.

**State Comptroller’s Comment** – DOE’s assertions that the audit focus is unclear are inaccurate. First, at the beginning and throughout the audit, we shared with DOE officials the audit’s objectives. In addition, as required by the Education Law and Regulations, our report calculated the time frames for arrangement of services based on “school days” – a measurement that DOE does not calculate or track, although required. Furthermore, the fact that neither the Education Law nor Regulations require DOE to develop and track time frames for the start of provision of related and program services does not negate DOE’s responsibility to do so. Because DOE failed to develop or track this important measurement, our report presents analyses – in both school days and calendar days – showing the length of time to deliver services. Moreover, showing calendar days does not distort the occurrence of reasonable analysis and, in fact, gives parents and students a more realistic picture of how long they can expect to wait before services start. Where DOE provided sufficient documentation, our analysis took into account the deferment of start of services until the next school year.

**The Audit Report Includes Additional Information of Questionable Relevance to the Scope of their Audit**

At points in the report, the Comptroller’s audit points out information that is inaccurate, leading the reader to an unsupported conclusion. Further, this information is not relevant to the subject of timely provision of services by the DOE.

*First*, the Comptroller’s report cites a report issued in August 2019 by New York University/Steinhardt’s Research Alliance for New York City Schools. The Comptroller relies on this report to state that only 5% of students in “some school districts” have an IEP. This is not accurate. While the report cited states that “the percentage of students with IEPs varied greatly by census tract, ranging from less than 5 percent in some parts of the City (e.g., District 26 in Queens)”, in fact, state reporting shows that approximately 16% of students in District 26 have IEPs. In any event, this data does not appear relevant to the underlying audit focused on the timeliness of provision of services.

**State Comptroller’s Comment** – We disagree and believe the information we cited from the New York University/Steinhardt’s Research Alliance report is relevant. This report shows that the percentage of students with special education needs varies across school districts – similar to what we found in the analyses detailed in this report. Further, knowledge of this information is another factor that may help DOE to identify and address delays in provision of services in these districts.

*Second*, Figure 1 (Race/Ethnicity of Students for Whom Services Were Arranged) appears in this report without apparent context or relevance. The race/ethnicity of the students was not an area of

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focus of the audit. The auditor’s review of the timeliness of provision of services did not include any data analysis that would allow the auditors to investigate whether or not the race/ethnicity of students was connected with any different patterns in the delivery of service. This graph is highly likely to be misinterpreted as an indication that there is an over-referral or over-identification of students from certain race/ethnicity groups; or, that there is more of a delay in providing services to certain race/ethnicity groups. However, the audit has not focused on this nor evaluated this. This figure is very likely to lead to misinterpretation of data that is not the subject of this audit and including this figure without any more context is confusing and potentially prejudicial.

**State Comptroller’s Comment –** We disagree. Annually, DOE prominently and publicly displays student demographic (race/ethnicity) data on its website. Figure 1 simply applies demographic data to the students for whom special education services were arranged.

*Third*, Figure 3 emphasizes the non-compliance rate for DOE to arrange services for kindergarteners, at 24%. The auditors do not provide any context on whether they reviewed the obligations and practices of the DOE with respect to the “Turning Five process”. When a student is referred for an initial referral and they are turning five during the calendar year, their school-age special education services will all be deferred to the beginning of their kindergarten school year. The DOE is required to comply with certain timelines in the identification and the development of the IEP for such students, but no conclusions should be reached from the fact that programs and services could not be implemented prior to their eligibility for kindergarten.

In introducing Figure 3, the auditors also emphasize the point that “kindergarten students – who are beginning their post-preschool education – represent the largest number of initial referrals.” This statement is not remarkable and seems to imply a problem when none exists.

**State Comptroller’s Comment –** The statement we make in this report regarding kindergarten students representing the largest number of referrals (along with 9th graders) is accurate based on our analysis of DOE data. Regardless of the grade, it is crucial that DOE be proactive in ensuring that all students receive services timely.

*Fourth*, the DOE has repeatedly informed the auditors that Figure 5 (Average Calendar Days to Start Related Services) is an inaccurate and confusing representation of the special education referral, evaluation, and provision of services process. It does not describe any adherence or lack of it to the purported audit standards. The figure further uses average calendar days from each event until the start of related services. As addressed above, the use of calendar days is not connected with any legal, regulatory, or articulated audit standard related to the implementation of special education services. Moreover, it is artificially inflated by inclusion of weekends, holidays, and summers and exaggerates the time it takes to provide services.

**State Comptroller’s Comment –** We disagree. Figure 5 is neither inaccurate nor confusing; instead, it is intended to give the reader a clear representation of the average calendar days it took for students to start related services. To present the full picture, the report offers analyses on both the average calendar days and the average school days. However, calendar days

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represent a more realistic picture of the amount of time experienced by parents and students as they anticipate and await the commencement of needed related services.

Despite repeated correction by the DOE, the Comptroller’s Exhibit C continues to display a visualization of the special education process that include such errors as: it contains a misleading graphic that fails to show that parents as well as the DOE can make an initial referral; it incorrectly places the social history (misabeled “social history review”) after parental consent; it presents the evaluation as a sequence of consecutive assessments, when in fact it is a stage entailing various assessments that may take place in any order; it incorrectly refers to the IEP meeting (instead of the evaluation) as the conclusion of the 60 day timeline for evaluation; and, lastly it lists finalization of the IEP as a stage of the special education process for families when in fact is a just mechanical step that reflects the conclusion of development of the IEP.

**State Comptroller’s Comment** – It is incorrect for DOE to assert that the visualization of its special education process in Exhibit C contains errors. The graphic is not misleading, as it shows that the referral is the first stage in the process, regardless of who makes the initial referral. Further, Section 200.4 (b) of the Regulations requires DOE to obtain parental consent before it can perform individual assessments, including a social history. Additionally, during our prior audit of DOE’s Compliance With Special Education Requirements – Evaluations (Report 2017-N-3), we established with DOE officials, that, due to their system’s inefficiencies and inability to record the end of the evaluation process, it was appropriate to use the date of the IEP meeting as the date of evaluation. Furthermore, while DOE may refer to the finalization of the IEP as just a mechanical step, this finalization often does not occur on the same date as the IEP meeting, thus creating undue delays in the commencement of special education services for eligible students.

In addition, the report incorrectly identifies students as not receiving SETSS. Over the past several years, as described to the auditors, the DOE has been focused on improving the usage of STARS for recording student program data. With respect to SETSS in particular, there was, through the 2017-18 school year, a system constraint that limited the schools’ ability to record the program in a manner that would demonstrate compliance, even if the service was in fact delivered at the frequency and duration, and for the appropriate subject as the IEP recommendation. During that time, many SETSS providers recorded service provision through the Encounter Attendance functionality in SESIS. This record evidenced that the service recommended on the IEP was followed, but the Comptroller does not appear to have credited this documentation. As a result, the conclusion reached by the audit regarding SETSS is inaccurate and not reliable for the purpose of determining actual compliance with the IEP recommendations.

**State Comptroller’s Comment** – We stand by our conclusion and also acknowledge SETSS system constraints during the 2017-18 school year. Further, we reviewed the available documentation provided to us regarding SETSS service provision in Encounter Attendance; however, the documentation was incomplete and therefore not acceptable.

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Response to Recommendations

**Recommendation 1. *Calculate and track compliance with the 60-school days requirement for arranging special education services.***

**Response.** The DOE agrees with this recommendation only to the limited extent that it already does in fact calculate and track the required date for arrangement of services for each student referred for initial evaluation or reevaluation, on an individual level. The DOE disagrees with the recommendation to institute management practices or aggregate reports around this data, for the reasons described above. The fact that there is a regulatory timeframe applicable to individual students does not mean aggregate tracking of this timeframe would be a useful performance metric (and implementing it as one would per se entail deemphasizing other performance metrics that have proven to be valuable).

**State Comptroller's Comment –** DOE's assertion that the implementation of a new metric that assesses compliance with federal and State law, and which could be calculated using data that DOE not only maintains, but shared with our staff, would "entail deemphasizing other performance metrics that have proven to be valuable" implies that DOE is either unable or unwilling to use all resources at its disposal to manage a multi-billion-dollar program.

**Recommendation 2. *Assess the reasons for non-compliance with the 60-school days requirement for arranging services for eligible students, and take appropriate action(s).***

**Response.** The DOE agrees with the recommendation to the extent that it already does in fact identify delays in the evaluation process and in service delivery, assesses reasons for these issues, and takes action to remediate them.

**Recommendation 3. *Develop guidelines for the length of time it should take for students to start receiving recommended related services and special education programs. Similar to the analysis presented in this report, track compliance with these guidelines and take corrective action when lengthy time frames are identified.***

**Response.** The DOE disagrees with this recommendation because the DOE's policy and procedures are based on the principle that services should be delivered to students as soon as possible, regardless of regulatory allowances. The DOE does not intend to create arbitrary timelines, which would violate this principle and be contrary to law. As noted above, the DOE utilizes data dashboards and reports to track and manage the provision of related services and special education programs.

**State Comptroller's Comment –** We stand by our recommendation. DOE's development of guidelines regarding the length of time for service provision, as well as for tracking compliance with such guidelines, would be a prudent – not an arbitrary – process that is necessary to identify when corrective action is needed. Also, as previously stated, we acknowledge DOE's use of data dashboards at the school and district level; however, it is insufficient to systematically track and manage the provision of related services and special education programs.

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***Recommendations 4. Ensure that students receive all special education services listed on their IEP.***

**Response.** The DOE agrees with this recommendation, which is consistent with its practice and longstanding policy.

***Recommendation 5. Ensure that parental consent to services is obtained prior to service provision.***

**Response.** The DOE agrees with this recommendation, which is consistent with its practice and longstanding policy.

We take seriously the timeliness of provision of special education programs and services to all students and have been transparent on our efforts in this area. While we value the opportunity to continue to evaluate and strengthen our process, the audit overlooks the DOE's existing special education support mechanisms and procedures, including our use of Power BI, as well as the program and related services management reports provided to schools. We appreciate the Comptroller's consideration of our concerns.

Sincerely,



Linda P. Chen  
Chief Academic Officer  
New York City Department of Education

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