



New York State Education Department

Office of Special Education

New York City Department of Education Compliance Assurance Plan

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Overview

Purpose

As of February 21, 2019, the New York City Department of Education (NYDOE) has received 7,448 due process complaints related to the provision of special education and related services for the 2018-19 school-year. This surpasses the total number of due process complaints filed with NYCDOE for the 2017-18 school-year (i.e., 7,144).

In addition, NYCDOE has multiple outstanding findings of noncompliance involving the requirements to ensure proper procedural safeguards to students and parents, and the provision of programs and services to preschool and school-age students with disabilities. For the past 13 school years, the New York State Education Department (NYSED) has been addressing the resolution of this noncompliance through the issuance of multiple separate compliance assurance plans aligned to specific schools and/or Community School Districts and meeting monthly with representatives from the NYCDOE Division of Specialized Instruction and Student Support for the provision of technical assistance. While this approach has led to progress in the resolution of some local school or district-specific areas of noncompliance, it has not resulted in the systemic change necessary to sustain compliance and/or scale-up effective approaches to ensuring compliant policies, procedures, and/or practices in the identified areas.

When a public agency has a policy, procedure, or practice applicable to a group of children that is inconsistent with Part B of the Individuals with Disabilities Education Act (IDEA) or the Part B regulations that implement IDEA, this is evidence of systemic noncompliance.¹

This document provides a detailed report of NYCDOE's provision of a free appropriate public education (FAPE) for students with disabilities and protection of parental and student rights and contains required actions to be taken by NYCDOE to correct noncompliance.

Background

NYSED has the responsibility under federal law to have a system of general supervision that monitors the implementation of IDEA by local educational agencies (LEA), including NYCDOE. The system must be accountable for enforcing the requirements of IDEA and for ensuring continuous improvement. As identified in section 616 of IDEA, the primary focus of federal and State monitoring activities must be on improving educational results and functional outcomes for all students with disabilities and ensuring that states meet the program requirements under Part B of IDEA, with emphasis on those requirements that are

¹ United States Department of Education, Office of Special Education Programs: [Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act \(Part B\)](https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (Page 20) (https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf)

most closely related to improving educational results for students with disabilities. IDEA requires each state to have in place a State Performance Plan (SPP) that evaluates its efforts to implement the requirements and purposes of Part B of IDEA and describes how the state will improve such implementation. The SPP, submitted every six years, includes measurable and rigorous targets for the indicators established under three monitoring priority areas [1. FAPE in the Least Restrictive Environment (LRE); 2. Disproportionality; and 3. General Supervision Part B, including Child Find, Effective Transition, and Effective General Supervision].

Each state is required to make annual determinations about the performance of each public school district based on its annual performance relating to SPP indicators [34 CFR §300.600]. These determinations must be made in consideration of information obtained through monitoring visits, other public information made available, including any audit findings, and whether the data submitted by the district is valid, reliable, and timely. NYSED must consider compliance and may consider other performance indicators in relation to the state's targets for improvement for these indicators. Based upon this information, NYSED makes one of four determinations for each district: meets the requirements and purposes of IDEA, needs assistance in implementing the requirements of IDEA, needs intervention in implementing the requirements of IDEA, or needs substantial intervention in implementing the requirements of IDEA (34 CFR 300.603). NYSED makes its annual IDEA determinations based on consideration of both a district's performance outcomes and compliance status. Additional information on the criteria used for the current IDEA determinations is available in NYSED's *New York State Education Department 2018 Criteria for School District Determinations under the Individuals with Disabilities Education Act (IDEA)*.²

NYCDOE has been identified as not meeting the requirements of IDEA for 13 consecutive years due to performance and/or compliance outcomes for the subgroup of students with disabilities and was recently notified of its 2018-19 school year identification as a district that needs intervention in implementing these requirements.³ In response to these identifications, NYSED has worked with NYCDOE in the development of a special education strategic action plan to support the implementation of effective school teams and Committees on Special Education (CSE) through a focus on Access, Quality Individualized Education Programs (IEP), Behavior, and Transition.⁴ Additionally, NYSED and NYCDOE continue to collaborate to address the shortage of appropriately qualified staff to provide the necessary bilingual special education programs and services for students with disabilities.

NYSED has also documented that parents/guardians of students with disabilities are not being provided timely access to an impartial hearing upon the filing of a due process complaint notice with NYCDOE. This is based upon several reasons, many of which are

² Appendix A, *New York State Education Department 2018 Criteria for School District Determinations under the Individuals with Disabilities Education Act (IDEA)*.

<http://www.p12.nysed.gov/specialed/spp/nysdeterminations/documents/determination-criteria-2018.pdf>

³ Appendix B, Letter from Christopher Suriano, Assistant Commissioner, to Richard Carranza, Chancellor (February 15, 2019) regarding 2018 Accountability Status under Part B of the Individuals with Disabilities Education Act (IDEA).

⁴ Appendix C, School Communities Inclusive of All Students Action Plan 2018-19.

described in the attached report, “An External Review of the New York City Impartial Hearing Office.”⁵ Under NYCDOE’s new leadership, NYSED has recently met with members of the NYCDOE Office of School Planning and Development responsible for the operation and management of the due process hearings to discuss and resolve challenges highlighted within the external review. Not to be overlooked among the reasons cited in the report is the sheer volume of due process complaints filed against NYCDOE by parents, as well as thousands of other settlements in which NYCDOE engages with parents of students with disabilities under their 10-Day Notice reimbursement procedure.⁶ New York State has more special education due process complaints filed annually than any other state, and over 90 percent of those complaints in school year 2017-18 (94 percent) were filed in New York City.

⁵ Appendix D, “An External Review of the New York City Impartial Hearing Office.”

⁶ Appendix D page 13, footnote 33

Section I: Provision of a Free Appropriate Public Education to Preschool Students with Disabilities

NYCDOE fails to provide a free appropriate public education (FAPE) to students with disabilities, aged 3 through 5 (20 U.S.C. §§1419, 1416(a)(3)(A); 34 CFR §300.101; Educ. Law §4410; 8 NYCRR §§200.4(e)(7), 200.16(f)[6]).

New York State's measurable and rigorous targets pursuant to its SPP, and other objective reviews of NYCDOE data identified the following noncompliance with respect to NYCDOE's obligations to preschool students with disabilities:

1. Failure to complete timely evaluations pursuant to Child Find requirements;
2. Failure to effectively transition children from early intervention (EI) services to preschool special education services;
3. Failure to provide special education services and programs as required by students' individualized education program (IEP); and
4. Failure to provide special education services and programs in the LRE.

While these findings are systemic in nature, it must be noted that this does not mean that the noncompliance affects all children's receipt of FAPE.

Timely Evaluations

Initial Eligibility Preschool Evaluations and Early Childhood Transition

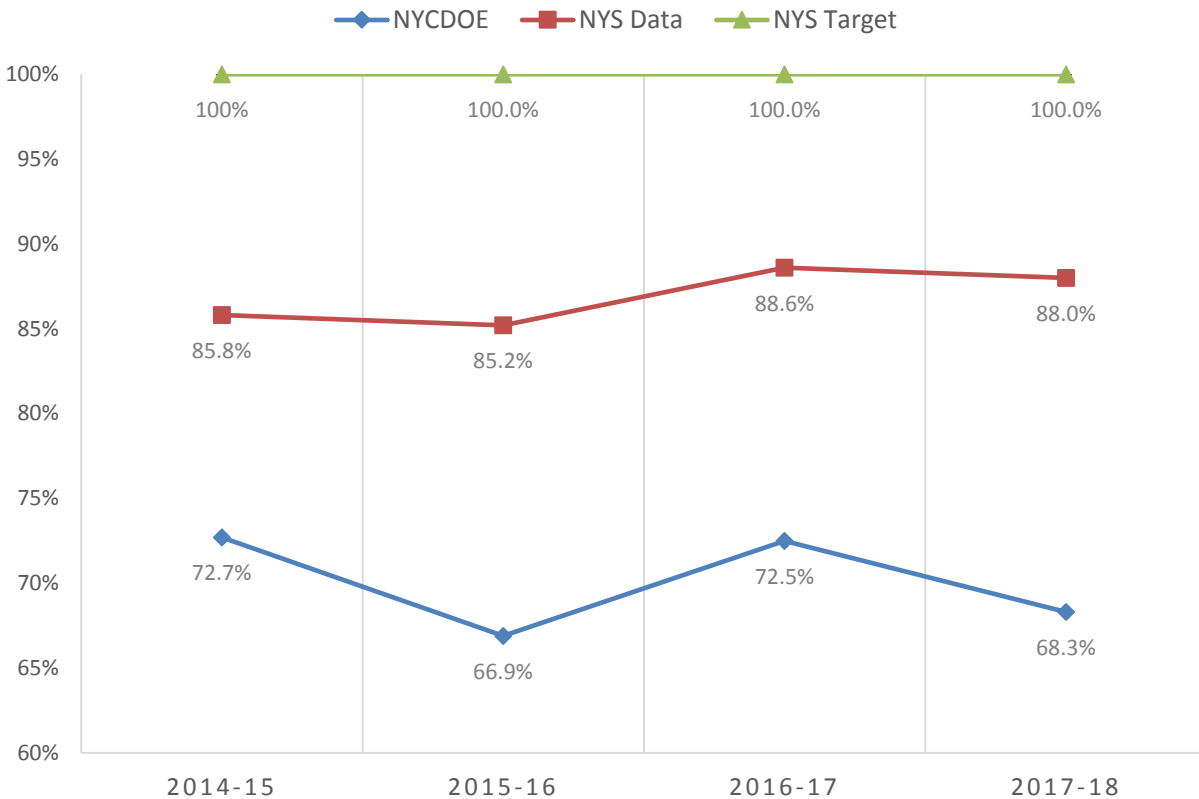
NYCDOE fails to timely evaluate children for eligibility for preschool special education programs and services in accordance with 20 U.S.C. §1416(a)(3)(B); 8 NYCRR §200.16(c), (e), and (f); see also Performance and/or Compliance Indicator 11 from the SPP.

NYCDOE fails to timely transition children from EI (Part C of IDEA) to preschool special education programs and/or services (Part B of IDEA) in accordance with 20 U.S.C. §1416(a)(3)(B); 8 NYCRR §200.16(c), (e), (f); see also Performance and/or Compliance Indicator 12 from the SPP.

Description of Noncompliance: Initial Eligibility Preschool Evaluations

NYCDOE annually submits Special Education Verification Report data under SPP Indicator 11 regarding the timeliness of initial evaluations for preschool-age students with disabilities to determine eligibility for special education. NYCDOE has not demonstrated significant improvement in meeting performance targets for the percentage of children with parental consent to evaluate, who were evaluated and whose eligibility was determined within State-established timelines.

SPP INDICATOR 11 PRESCHOOL COMPLIANCE RATE



Monthly data reports provided by NYCDOE from July through October 2018 indicate that an average of approximately 1,360 open committee on preschool special education (CPSE) cases citywide exceeded the mandated timelines set forth in SPP Indicator 11. For the 10 regional CSEs, which encompass the 32 CPSEs, four of the 10 had an average of over 100 cases per month where initial evaluations were not completed within 60 days of parental consent (one regional CSE had an average of 391 outstanding cases per month in excess of the 60-day timeline).

Description of Noncompliance: Early Childhood Transition

New York State Early Childhood Transition data is impacted by the number of children continuing in EI after their third birthday. When this factor is not counted toward noncompliance, the compliance rate for timely early childhood transition increases. While consideration of this factor improves the NYCDOE compliance rate, NYCDOE data submitted in the Special Education Verification Report for SPP Indicator 12 regarding effective transition of children referred from EI (Part C) to CPSE (Part B) demonstrates that NYCDOE's number of records with noncompliant reasons for failure to meet applicable timelines account for almost all such noncompliance statewide.

SPP Indicator 12 Data	2014-15	2015-16	2016-17	2017-18
NYCDOE Number of Records with Noncompliant Reasons	73	63	50	123
Number of Records with Noncompliant Reasons Statewide	97	80	54	130
NYCDOE Compliance Rate*	90.9%	92.3%	92.9%	85.4%
Percent of Noncompliance Attributed to NYCDOE	94.8%	91.3%	92.6%	96.9%

*This calculation method includes continuation in EI in the compliance rate.

For the 10 regional CSEs, which encompass the 32 CPSEs, the following CSEs, including impacted community school districts, have the highest rate of late eligibility determinations and/or IEP implementation dates: CSE 7 (Community School Districts 20, 21, 31); CSE 4 (Community School Districts 24, 27, 30); CSE 8 (Community School Districts 13, 14, 15, 16); CSE 9 (Community School Districts 1, 2, 4); and CSE 1 (Community School Districts 7, 9, 10).

As identified in meetings between NYSED and NYCDOE, failure of NYCDOE to meet SPP Indicator 11 and/or SPP Indicator 12 performance targets from school year 2015-16 to the present was attributed to:

1. An insufficient number of CPSE administrators to schedule and conduct CPSE meetings;
2. An insufficient number of administrative support staff to input assessment reports from evaluators, eligibility determinations, and IEPs into NYCDOE's data collection and monitoring system - Special Education Student Information System (SESIS); and
3. An insufficient number of available seats to accommodate mandated enrollment in special classes and integrated classes/programs to allow for timely IEP implementation.

Programs and Services in the Least Restrictive Environment

Regional Need for Preschool Special Education Programs

NYCDOE fails to provide preschool special education programs and services in accordance with 20 U.S.C. §1419; Educ. Law §4410; 8 NYCRR §§200.4(e)(7), 200.16(f)(6).

Description of Noncompliance:

Regional need data examined jointly by NYSED and NYCDOE demonstrates that the current demand for preschool special education programs and services significantly exceeds the existing number of programs and providers available to appropriately serve the IEPs of preschool students with disabilities residing in New York City. Based on the multiple measures used to evaluate the regional need data and the high level of systemic and continuing unresolved needs, it is determined that NYCDOE is failing to provide special education programs and services in conformity with student IEPs as required by FAPE standards.

NYCDOE supplies multiple data factors to project both current and anticipated placement needs for each of the 32 community school districts. These factors consider capacity of existing programs, trends in the number and type of CPSE placement recommendations, NYCDOE's list of students "awaiting placement" and receiving "partial services," the number of children transitioning from EI, children transitioning to kindergarten and factors attributed to existing placements which may indicate that alternative program options could be utilized, and alignment with bilingual education and related service needs.

NYCDOE's regional need list for preschool special education programs is posted on [NYSED's website](#).⁷ NYSED also electronically notifies relevant stakeholders. Developing a comprehensive list and publicly sharing this information allows interested private providers to identify opportunities to create new programs and informs NYCDOE's strategic planning for expanding preschool programs in its community school district-operated classrooms. However, NYCDOE-operated program expansions in recent years have not consistently aligned with the identified published regional need.

Least Restrictive Environment

NYCDOE fails to ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes (SC), separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. §1412(a)(5); 34 CFR §§300.114, 300.115; Educ. Law §4410; 8 NYCRR §200.16(e)(3)(i); see also Performance and/or Compliance Indicator 6 from the SPP.

Description of Noncompliance: Separate Setting

NYCDOE annually reports data under SPP Indicator 6 relating to the educational setting in which students with disabilities receive their special education and related services. This data is calculated for SPP Indicator 6B, the percentage of children aged 3 through 5 with IEPs who attend a separate special education class, separate school, or residential facility (separate setting). As these percentages include students 5 years of age, Indicator 6B is based on both preschool-age and school-age student data.

NYCDOE data for students aged 3 through 5 with IEPs attending a separate special education class, separate school, or residential facility exceeds the State's targets in the SPP Indicator 6B:

⁷ <http://www.p12.nysed.gov/specialed/publications/preschool/regional-need.html>

SPP Indicator 6B Data: Separate Setting	2016-17	2017-18	2018-19
New York State target for students aged 3 through 5 in a separate setting	20% or less	19% or less	18% or less
NYCDOE % students aged 3 through 5 in a separate setting	31.1%	29.5%	31.2%
NYCDOE % preschool students only in a separate setting	45.8%	50.4%	52.3%

The number of preschool students with disabilities attending a separate setting LRE data is at odds with the significant investments being made by the State and City to expand early learning opportunities for preschool-aged children. Data and information reported by NYCDOE demonstrates that not all preschool students with disabilities have the same access to the benefits of the State-administered prekindergarten programs which are afforded to other students residing in New York City.

New York State Prekindergarten Final Program Report	2017-18
Number of preschool students who received related services only or SEIS while enrolled in NYCDOE State-administered prekindergarten programs	5,247
Number of preschool students who received SCIS programming in a classroom co-located with a NYCDOE State-administered prekindergarten program	317

NYCDOE enrolls preschool students with disabilities in its State-administered prekindergarten programs when its CPSE has recommended related service only or special education itinerant services (SEIS). Although it is a longstanding practice in New York City to enroll and fund students receiving a special class in an integrated setting (SCIS) programming separate and apart from its State-administered prekindergarten programs, this practice is now leading to inconsistent and limited early learning inclusion opportunities for those preschool students with disabilities who need more than itinerant services but are recommended to receive special education services within an early childhood program with their typically developing peers. For example, while the historic annual enrollment for the SCIS program in NYCDOE is approximately 4,000 students, as demonstrated above, only 317 such students were co-located in a State-administered prekindergarten classroom in 2017-18.

Furthermore, the NYCDOE historic annual enrollment for preschool children recommended for special class is approximately 10,000 students. As it pertains to LRE, this number reflects the need for more comprehensive supports within the early childhood programs administered by NYCDOE to enable the full participation and success of children with disabilities in inclusive settings.

The number of preschool students with disabilities attending a separate setting, combined with the limited preschool inclusion options (i.e., lack of available seats, disparity in length of school day, and restricted school site options), contradicts NYCDOE's continued implementation of separate program eligibility and funding structures for preschool students with disabilities. Failure to provide increased access for preschool students with

disabilities to participate in the early childhood programs operated by NYCDOE violates the requirements of LRE and is not supported by the State-administered prekindergarten program principles and objectives to benefit children of all abilities.

Required Corrective Action

Preschool Special Education

As part of this Compliance Assurance Plan, by June 3, 2019, NYCDOE must provide to NYSED for review and approval a corrective action plan to correct its failure to provide a free appropriate public education to preschool students with disabilities. At a minimum, the corrective action plan must address and/or include:

1. Root cause analysis for each noncompliance item: Child Find, Early Childhood Transition, Provision of Special Education Services and Programs, and LRE.
2. Immediate action steps to address each noncompliance item which must sufficiently describe NYCDOE efforts, provide an implementation timeline, and include the measurable goals and objectives expected to be achieved.
3. Description of how NYCDOE plans to monitor its progress of the corrective action plan.
4. Identification of NYCDOE office and specific NYCDOE staff responsible for the implementation of each step/action item included in the corrective action plan.
5. Process by which the corrective action plan will be adjusted and/or amended, with NYSED approval.
6. The action steps to address Child Find and Early Childhood Transition noncompliance must include, at a minimum:
 - a. An increase in the allocation of staffing resources, including additional CPSE administrators to schedule and conduct CPSE meetings, and additional administrative staff to input data into SESIS.
 - b. The corrective action plan should be specific to each of the 10 regional CSEs, with immediate action steps identified for the community school districts with the highest rates of noncompliance.
 - c. A trend analysis of the last two years; and going forward, the yearly case volume per regional CPSE, including number of cases assigned and completed by each administrator and the number of cases closed by each administrator.
7. The action steps to address the Provision of Special Education Programs and Services in LRE must include, at a minimum:
 - a. A preschool programming action plan which fully addresses the outstanding monolingual and bilingual programs required to ensure the full implementation of preschool students' IEPs within required timelines and in alignment with the continuum of special education services.
 - b. An increase in the allocation of staff assigned to oversee strategic planning and development of preschool program creation and expansions as identified on the February 7, 2019 regional need publication, and any subsequent regional need publication.

- c. Plan for bi-annual reporting to NYSED staff of the following items relating to regional need, to be disaggregated by community school district and borough:
 - i. Overall number of children residing in each community school district and known to be enrolled in a preschool program.
 - ii. Overall number of preschool students with disabilities per community school district and the percentage of those students enrolled in SCIS, the percentage of those students enrolled in SC, and the percentage of those students receiving SEIS.
 - iii. Number of students transitioning from EI to CPSE (children turning age 3) during the current school year and the prior school year and the resulting net increase/decrease.
 - iv. Number of students transitioning from CPSE to kindergarten (children turning age 5) during the current school year and prior school year and the resulting net increase/decrease.
 - v. Net change in the number of preschool students with disabilities when comparing Turning-3 and Turning-5 data for the current school year.
 - vi. Number of SCIS classroom seats per community school district, identifying whether the seats are in a monolingual or bilingual program, and the corresponding number of students with a variance attending each program type for the current school year and prior school year.
 - vii. Number of SC classroom seats per community school district per ratio (6, 8, 12, other) identifying whether the seats are in a monolingual or bilingual program and the corresponding number of students with a variance attending each program type for the current school year and prior school year.
 - viii. Number of classroom seats gained via program approval and number of classroom seats lost via program closures per ratio and noting whether the classroom seats were for monolingual or bilingual programs, from the date of the last regional need public posting.
 - ix. Number of impending program closures and the corresponding number of the current student enrollment per ratio in the programs to be closed.
 - x. Number of students with SEIS exceeding a frequency of 20 sessions per week.
 - xi. Number of preschool students in classes of 8 and 12 with a 1:1 aide.
 - xii. Number of students per ratio on NYCDOE's "partial services" list, identifying whether monolingual or bilingual (specifying the language) programs are being sought.
 - xiii. Number of students per ratio that NYCDOE has coded as "placement delayed due to lack of available seats," identifying whether monolingual or bilingual (specifying the language) programs are being sought; and
 - xiv. Report per borough summarizing the Chairpersons' recommendations regarding the need in their specific districts for multidisciplinary evaluation (MDE) and SEIS, including bilingual program needs.
- d. Assurances and processes to ensure that preschool students with disabilities receive appropriate special education programs and services while enrolled in NYCDOE State-administered prekindergarten programs. This must include plans

to incorporate SCIS program offerings within NYCDOE State-administered prekindergarten classrooms and eliminate any barrier to preschool students recommended to receive SCIS also enrolling in NYCDOE State-administered prekindergarten programs and receiving the full program benefits offered to all children.

Section II: Provision of a Free Appropriate Public Education (FAPE) for School-Age Students with Disabilities

NYCDOE fails to provide a free appropriate public education to students with disabilities, aged 5 through 21 (20 U.S.C. §1412 (a)(1); 34 CFR §300.101).

New York State's measurable and rigorous targets pursuant to its SPP, and other objective reviews of NYCDOE data, identified the following noncompliance with respect to NYCDOE's obligations to school-aged students with disabilities:

1. Failure to timely evaluate children for eligibility for school-age special education programs and services;
2. Failure to provide special education programs and services as specified on the IEPs of students with disabilities; and
3. Failure to provide related services.

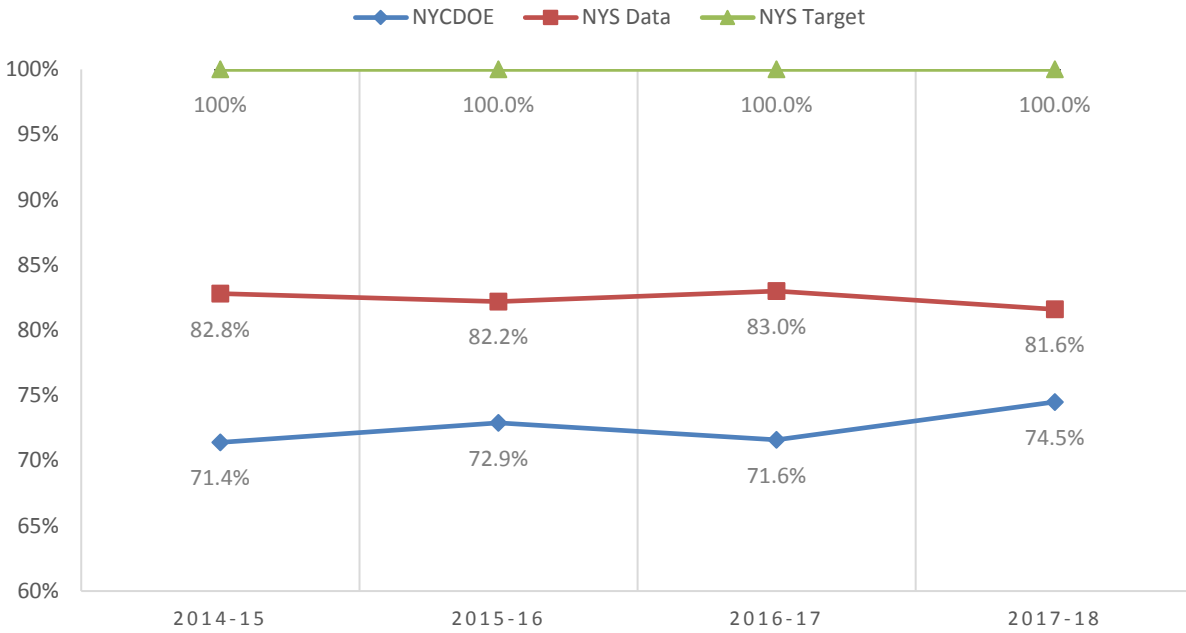
Timely Evaluations

NYCDOE fails to timely evaluate children for eligibility for school-age special education programs and services in accordance with 20 U.S.C. §1416(a)(3)(B); 34 CFR §300.301; 8 NYCRR §200.4 (b); see also Performance and/or Compliance Indicator 11 from the SPP.

Description of Noncompliance:

NYCDOE annually reports data under SPP Indicator 11 regarding the timeline for initial evaluations for school-age students with disabilities to determine eligibility for special education. Over the last four reported years, NYCDOE has not demonstrated improvement in meeting performance targets for the percentage of children with parental consent to evaluate, who were evaluated and whose eligibility was determined within State-established timelines.

SPP INDICATOR 11 SCHOOL AGE COMPLIANCE RATE



Percentage of Children with Parental Consent to Evaluate, who were Evaluated and Eligibility Determined Within State Established Timelines

Monthly data reports generated for July through October 2018 show that, at any given time, there were an average of approximately 1,132 open school-age cases that had exceeded SPP Indicator 11 timelines. Two of the 10 regional CSEs had an average exceeding 290 cases per month where initial evaluations were not completed within 60 days of parental consent.

Programs and Services

NYCDOE fails to provide special education programs and services as specified on the IEPs of students with disabilities, including students who attend community schools, District 79, and charter schools. NYCDOE fails to ensure the provision of FAPE to these students in accordance with their IEPs [20 U.S.C. §1414(d)(2)(A), (d)(3); 34 CFR §§300.323, 300.324(a)(2); Educ. Law §§4402(2)(a), 2851(2)(s) and 2853(4); 8 NYCRR §200.4(e)(7)].

Community School Districts

NYCDOE self-reports data documenting that it fails to provide programs and services to students attending community school districts in violation of 20 U.S.C. §§1412(a)(1), 1414(d)(2)(A); 34 CFR §§300.101, 300.323; Educ. Law §4402 (2)(a); 8 NYCRR §200.4 (e)(7).

Description of Noncompliance:

In November 2018, NYCDOE released its NYCDOE Local Law of 2015 Annual Report on Special Education, School Year 2017-18 (Annual Report)⁸. The Annual Report indicated that:

- 143,394, students (78.4 percent) were fully receiving their mandated IEP special education programs and services;
- 34,906 students (19.1 percent) were only partially receiving their mandated IEP special education programs and services; and
- 4,495 students (2.5 percent) were not receiving any of their mandated IEP special education programs and services.

District 79

NYCDOE requires that students attending the Pathways to Graduation program waive their right to IEP-mandated special education services in violation of 20 U.S.C. §§1412(a)(1), 1414(d)(2)(A); 34 CFR §§300.101, 300.323; Educ. Law §4402 (2)(a); 8 NYCRR §200.4 (e)(7).

Description of Noncompliance:

By letter dated March 14, 2013, NYSED's Counsel instructed NYCDOE that school districts and State agencies that provide alternative high school equivalency programs (AHSEP) and high school equivalency programs (HSEP) are required to provide special education programs and services to students with disabilities enrolled in such programs. Additionally, when seeking program approval, school districts are required to assure NYSED that special education services are being provided to students with disabilities attending these programs.

By letter dated February 29, 2016, NYSED instructed NYCDOE to revise its policies and procedures requiring that students waive their right to special education when enrolling in the Pathways to Graduation (P2G) program, formerly known as GED+. NYCDOE responded on March 17, 2016, stating that they were reviewing the matter with their general counsel. NYCDOE reports that as of January 31, 2019, there were 1,631 students with disabilities attending P2G programs. To date, NYCDOE continues to require that students waive their right to special education programs and services upon enrolling in the P2G program.

⁸ NYCDOE Local Law of 2015 Annual Report on Special Education, School Year 2017-18 (Annual Report) https://drive.google.com/file/d/1FIWLiNlqzdm1_Ypw6WJ_HYyBntJqQvr/view

Charter Schools

NYCDOE fails to ensure that students with disabilities who attend charter schools are receiving mandated IEP programs and services in accordance with Education Law 20 U.S.C. §§1412(a)(1), 1414(d)(2)(A); §§34 CFR 300.101, 300.323; Educ. Law §§2851(2)(s), 2853(4) and 4402 (2)(a); 8 NYCRR §200.4 (e)(7).

Description of Noncompliance:

Based upon the findings of multiple State complaints filed on behalf of students attending charter schools in New York City and the corresponding compliance assurance plans, NYSED determined that NYCDOE failed to adequately demonstrate the implementation of administrative procedures that demonstrate the actions taken by the CSE to ensure:

1. Students are receiving mandated IEP programs and services in charter schools;
2. timely follow-up actions are taken upon notification that mandated IEP programs and services are not being provided; and
3. Progress monitoring of students with disabilities attending charter schools is occurring, including convening the CSE to review, and if appropriate, reevaluate the student.

Failure to Provide Related Services as Required on Students' IEPs

NYCDOE fails to provide related services to students with disabilities as recommended on students' IEPs in accordance with 20 U.S.C. §§1412(a)(1), 1414(d)(2)(A); 34 CFR §§300.101, 300.323; Educ. Law §4402(2)(a); 8 NYCRR §§200.2(d), 200.4(e)(7).

Description of Noncompliance:

The November 2018, NYCDOE Local Law of 2015 Annual Report on Special Education, School Year 2017-18 (Annual Report), referenced above, indicated that:

- 274,209 (95.7 percent) related service mandates had a matching encounter recorded by a provider in SESIS;
- 10,481 (3.7 percent) related service mandates had no matching encounter recorded by a provider in SESIS; and
- 1,718 (.6 percent) related service mandates had only a partially matching encounter recorded by a provider in SESIS.

Required Corrective Action

Provision of Services to School-Age Students with Disabilities

As part of this compliance assurance plan, by June 3, 2019, NYCDOE must provide to NYSED for review and approval a corrective action plan to correct its failure to provide a free appropriate public education to school-age students with disabilities. At a minimum, the corrective action plan must address and/or include:

1. Root cause analysis for each noncompliance item: Timely Evaluations; Provision of Special Education Services and Programs in community school districts, District 79, and charter schools.
2. Immediate action steps to address each noncompliance item which must sufficiently describe NYCDOE efforts, provide an implementation timeline, and include measurable goals and objectives expected to be achieved.
3. Description of how NYCDOE plans to monitor its progress of the corrective action plan.
4. Identification of NYCDOE office and specific NYCDOE staff responsible for the implementation of each step/action item included in the corrective action plan.
5. Process by which the corrective action plan will be adjusted and/or amended, with NYSED approval.
6. The action steps to address timely evaluations noncompliance must include, at a minimum:
 - a. An increase in the allocation of staffing resources, including additional CSE administrators to schedule and conduct CSE meetings, and additional administrative staff to input data into SESIS.
 - b. The corrective action plan should be specific to each of the 10 regional CSEs, with immediate action steps identified for the community school districts with the highest rates of noncompliance.
 - c. A trend analysis of the last three years analyzing the yearly case volume per regional CSE, including number of cases assigned to each administrator and the number of cases closed by each administrator, broken down monthly.
7. The action steps to address the Provision of Special Education Programs and Services must include, at a minimum:
 - a. An audit of all students with disabilities with outstanding delivery of programs and related service mandates and next steps to ensure the full delivery of all IEP programs and mandated related services within required timelines and in alignment with the continuum of special education services.
 - i. Provide quarterly reports on the use of Related Service Authorizations (RSA) and submit a plan to reduce the use of RSAs.
 - b. With respect to community school districts, the corrective action plan must include, at a minimum:
 - i. Borough, community school district, and school location of all outstanding programs and related services with specific caseload data.
 - ii. Program and related service types.
 - iii. Schedule of field support center (FSC) meetings with managers of school psychologists and related service providers and executive and community school district superintendents to review and develop corrective steps in resolving the outstanding programs and related services.
 - iv. A complete list of all schools that have unserved and/or partially served students which identifies each student and the IEP mandates that are either not being provided or only partially being provided. For each school on the list, a school-specific plan that identifies reasons for the unserved and/or partially served students, the action steps that will be taken to address any

- failure to fully implement these IEPs, and the date of fulfillment of all IEP programs and related services mandates.
- c. With respect to District 79, the corrective action plan must include, at a minimum:
 - i. List of District 79 program locations with their outstanding programs and related services with specific caseload data.
 - ii. Schedule of meetings with District 79 leadership and principals to review all special education programs and related services mandates.
 - iii. Administrative procedures for obtaining IEPs of students enrolled in alternative schools and programs and for ensuring students with disabilities enrolled in alternative schools and programs have timely IEP reviews and receive CSE-recommended special education programs and services.
 - iv. A complete list of all District 79 students who are unserved and/or partially served and the IEP mandates that are either not being provided or only partially being provided.
 - v. Evidence that NYCDOE no longer requires that students waive their right to special education programs and services upon enrolling in the P2G program.
 - d. With respect to charter schools, the corrective action plan must include, at a minimum:
 - i. Administrative procedures ensuring charter schools document the provision of special education programs and services and that the CSE can demonstrate the provision of these services;
 - ii. Administrative procedures describing the actions the CSE must take, including timelines, to proactively ensure that the IEPs of students with disabilities enrolled in charter schools are implemented without delay at the beginning of the school year and following an initial evaluation or reevaluation of the educational needs of a student;
 - iii. Administrative procedures, including timelines, describing the actions the CSE must take when notified that a charter school is unable to provide a special education program or service recommended in the IEP of an enrolled student;
 - iv. Documentation of the professional learning activities provided to the staff responsible for the development, review, and implementation of IEPs for students with disabilities enrolled in charter schools;
 - v. Schedule and calendar of topics of the above-referenced professional learning activities and assurance that a list of all participants will be maintained; and
 - vi. Documentation provided to each charter school serving NYC resident students with disabilities in the jurisdiction of NYCDOE that administrative procedures requiring a shared responsibility with charter schools to ensure the implementation of mandated IEP services occurs and student progress is monitored.

Section III: Affording Students with Disabilities and Their Parents All the Rights and Procedural Safeguards Required by Federal and State Law and Regulations

Pursuant to its general supervisory responsibility and authority under IDEA, NYSED is responsible for ensuring that the requirements of Part B of IDEA are followed, including ensuring that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of 34 CFR §§300.500 through 300.536. NYCDOE fails to afford students with disabilities and their parents with required procedural safeguards. Data indicates that NYCDOE receives the largest number of due process complaints filed with an LEA in the United States. NYCDOE fails to provide parents access to adequate due process after a complaint has been filed, fails to provide access to due process data, fails to ensure access to mediation, and fails provide prior written notice (PWN) (20 U.S.C. §1415(a), (b)(3), (e), (f); 34 CFR §§300.500, 300.503, 300.506, 300.511; Educ. Law §§ 4402, 4404; 8 NYCRR §§200.5(a), (h), (j) and 200.16(h).

NYSED identified the following noncompliance with respect to NYCDOE's obligations to maintain a functioning due process hearing system:

1. Fails to provide parents access to adequate due process after a complaint has been filed;
2. Fails to provide access to due process data to NYSED;
3. Fails to ensure access to mediation; and
4. Fails to provide prior written notice.

Maintenance of a Functional Due Process Hearing System

Failure to Provide Due Process to Parents

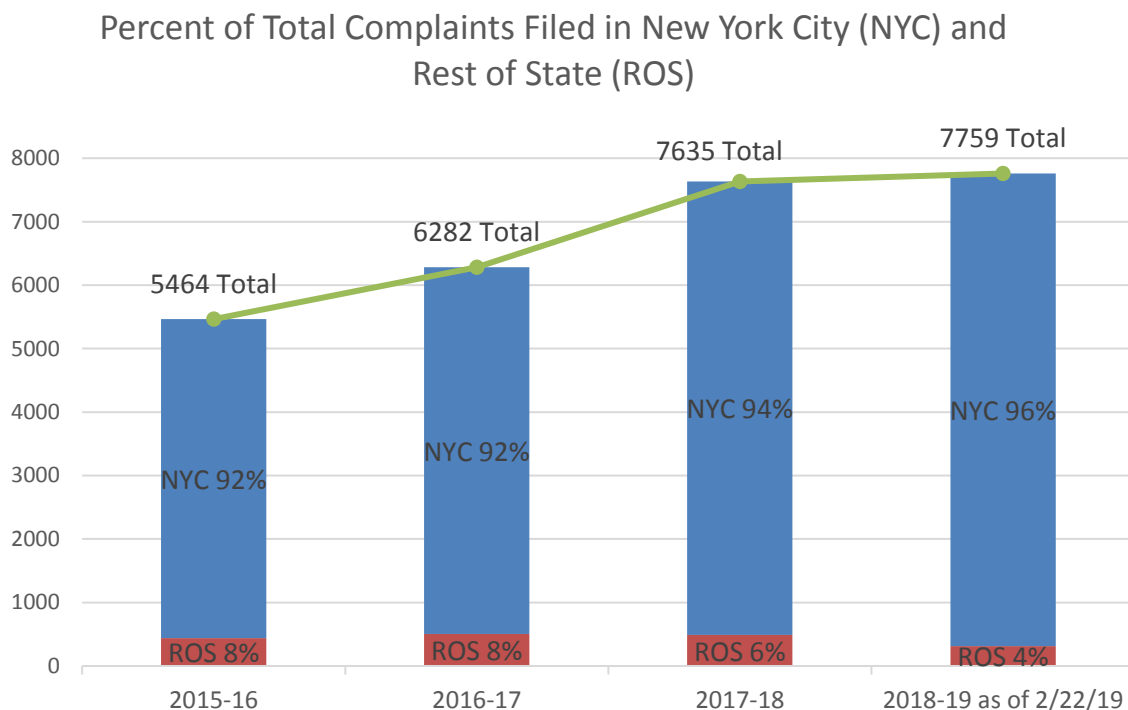
Parents may file a due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of their child or the provision of FAPE. Once a due process complaint is filed, an Impartial Hearing Officer (IHO) must immediately be appointed, but not later than two business days after receipt of the complaint, and the hearing or prehearing conference must commence within 14 days after any resolution period, if not earlier. [20 U.S.C. §1415(a); 34 CFR §300.500 et seq.; Educ. Law §4404; 8 NYCRR §§200.5(e), (j); 200.5(j)(3), 200.5(m)].

Description of Noncompliance:

Data indicates that NYCDOE has received an increasing number of due process complaints over recent years:

Total Number of NYCDOE Due Process Complaints Filed	
2015-16	5,026
2016-17	5,779
2017-18	7,144
2018-19 (July 1, 2018 – February 22, 2019)	7,448

Significantly more due process hearings are filed in NYCDOE as compared to districts in the rest of the State.



NYSED has documented that NYCDOE requires a hearing or IHO determination for pendency, even when a student's pendency is not in dispute, unnecessarily adding to the number of due process complaints filed. In addition, NYCDOE does not defend numerous cases at hearing, but rather admits that it did not provide FAPE and does not offer to settle these cases, adding to the unacceptable number of due process complaints filed.ⁱ

An independent report commissioned by NYSED and attached hereto (Appendix D), has documented that IHOs, certified by NYSED to serve in New York City, are subject to a convoluted compensation policy, effectively paying them at a rate of \$40 per hour for many tasks, although the State-authorized maximum compensation rate is up to \$100 per hour. Part of the explanation for the reduced pay is that NYCDOE's Impartial Hearing Office (NYCIHO) processes and distributes IHO decisions rather than the IHOs themselves. Because of shortages in staff at NYCIHO, however, this practice has resulted in hearing decisions being

issued after the compliance date. Additionally, IHOs are often not paid for months at a time because inadequate funds are allocated to the payment of IHOs.

The report further documented that:

- NYCISO's physical space is limited and inadequate;
- Hearings are only held in NYCDOE's Brooklyn North FSC location and not in the other boroughs in New York City;
- Hearings are not scheduled for a full day and may be limited to one hour due to limited space availability;
- There are 10 hearing rooms with, on average, 122 calendared matters per day for those rooms;
- There is inadequate waiting room space for parents, attorneys, and witnesses, and the lunch room also serves as the holding room for NYCDOE's reassigned teachers;
- Hearing spaces are uncomfortably hot or cold requiring doors to remain open during hearings, violating the confidentiality of students, there is limited access to amenities, and the space is unkempt.

NYCISO utilizes an automatic IHO appointment process, whereby an IHO is granted access to a case file before his/her availability is confirmed. Under this process, NYSED has documented that IHOs frequently recuse themselves from cases to maintain manageable caseloads and because of their unwillingness to handle certain hearing matters. NYCISO had 5,634 recusals during the 2017-18 school year and already has over 7,000 for the 2018-19 school year. This practice results in a process at NYCISO where many parents are not receiving an appointed IHO who will maintain the case long enough to commence the hearing process within the required timeframes.

Failure to Provide Due Process Data

NYCDOE is required to regularly provide data, as well as copies of rendered IHO decisions, to NYSED in order for NYSED to maintain accurate due process data [8 NYCRR 200.5(j)(3)(xvi), 200.5(j)(5)].

Description of Noncompliance:

NYSED has documented that NYCISO has failed to timely enter data to NYCISO's Impartial Hearing System for download to NYSED's data system and has failed to mail NYSED copies of IHO decisions. Of the 1,754 decisions rendered in calendar year 2018, only 168 have been provided to NYSED.

Failure to Ensure Access to Mediation

NYCDOE is required to ensure that mediation procedures are established and implemented so that disputes may be resolved outside of the hearing process [20 U.S.C. §1415(e); 34 CFR §§300.508, 300.148; 8 NYCRR §§200.5(h), 200.5 (j)].

Description of Noncompliance:

NYCDOE’s Standard Operating Procedure Manual (SOPM) does not allow mediation of issues pertaining to unilateral placements in non-NYSED-approved schools. Additionally, NYCDOE’s SOPM and “[Resolving Issues](#)” webpage⁹ inform parents that requests for mediation may be made directly to the Community Dispute Resolution Center or Parent Centers; however, NYSED’s guidance and the procedural safeguards notice (PSGN) state that requests must be made to the district or CSE (CPSE). NYCDOE is not resolving or attempting to resolve enough matters through mediation, considering the large number of due process complaints filed, and its policies discourage mediation.

Total Number of NYCDOE Mediations	Requested	Held
2014-15	244	133
2015-16	258	129
2016-17	231	115
2017-18	214	126

Prior Written Notice (PWN)

NYCDOE fails to consistently provide parents PWN on the form prescribed by the Commissioner of Education as required by 8 NYCRR §200.5(a) and a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student in accordance with 20 U.S.C. §§1412(a)(6) and 1415(b)(3); 34 CFR §300.503; 8 NYCRR §§200.5(a) and 200.16(h)(1).

Description of Noncompliance:

As part of a monitoring review conducted during the 2017-18 school year, NYCDOE was required to submit PWNs for a selected sample of students. Upon review, NYSED identified the following procedural and/or substantive issues with NYCDOE's PWNs:

1. NYCDOE failed to provide PWN to parents within a reasonable time before the school district proposed or refused to initiate or change the identification, evaluation, educational placement of students, or the provision of FAPE to students to provide parents a reasonable time to consider and respond to the action before it is implemented;
2. NYCDOE provided parents PWN using its own templates, not the State’s mandatory PWN form as required by 8 NYCRR §200.5(a)(1). NYCDOE’s form failed to inform parents of the information they need and are entitled to have under 34 CFR §300.503 and 8 NYCRR §200.5(a)(3).
3. For preschool students with disabilities, through monthly meetings during the 2017-18 school year with CSE chairpersons and review of case studies, it was determined that the CPSEs within the 10 regional CSEs did not consistently utilize PWN at the

⁹ <https://www.schools.nyc.gov/special-education/help/resolving-issues>

required times, consistent with the requirements of 8 NYCRR §200.16(h)(1), specifically:

- a. For initial evaluations, PWNs were not sent to parents in the evaluation packets.
 - b. For initial evaluations, multi-disciplinary evaluation agencies/sites send emails to CPSEs requiring additional evaluations, and PWNs were not provided to parents when additional evaluations were to be conducted.
 - c. For requested IEP reviews and annual reviews, CPSEs used NYCDOE's Final Notice of Recommendation form in lieu of the State's mandatory PWN form.
4. CSE and CPSE administrators have reported insufficient professional development and guidance regarding the use of PWN and have reported that the State's required form is not accessible in SESIS.

Required Corrective Action

As part of this compliance assurance plan, by June 3, 2019, NYCDOE must:

1. Increase the number of staffing resources to NYC IHO.
2. Procure additional hearing space and improve the existing hearing space in appearance, ventilation and amenities, including a separate area for NYCDOE reassigned teachers.
3. Address how it will ensure that allocation of resources is adequate to ensure regular, prompt payment to IHOs.

By June 17, 2019, NYCDOE must provide to NYSED a corrective action plan to correct its failure to provide students with disabilities and their parents all the rights and procedural safeguards required by federal and State law and regulations. At a minimum, the corrective action plan will address and/or include:

1. Provide a plan to revise its IHO compensation policy, subject to NYSED approval.
2. Immediate action steps to address each noncompliance item which must sufficiently describe NYCDOE efforts, provide an implementation timeline, and include measurable goals and objectives expected to be achieved.
3. Description of how NYCDOE plans to monitor its progress of the corrective action plan.
4. Identification of NYCDOE office and specific NYCDOE staff responsible for implementation of each step/action item included in the corrective action plan.
5. Process by which the corrective action plan will be adjusted and/or amended, with NYSED approval.
6. With respect to failure to maintain a functioning due process system, the corrective action plan must include, at a minimum, the following additional action steps:
 - a. Root cause analysis of the specific reasons for due process requests, including, but not limited to, the volume of cases in which NYCDOE concedes its failure to provide FAPE and why it does not or is unable to provide FAPE, and whether those cases should be resolved through settlement processes, broken down by community school district.
 - b. How it will increase the use of mediation and IEP facilitation.
 - c. How it will reduce its volume of due process impartial hearing requests.

- d. Eliminate NYC IHO's role in processing and distributing hearing decisions for IHOs. IHOs will be responsible for completing, dating redacting and sending their own decisions.
 - e. Ensure IHO availability before appointment. If within 24 hours an IHO fails to respond or is unreachable after reasonable efforts by NYCDOE (which must be documented), each successive IHO whose name appears next on the rotational appointment list shall be offered appointment until such appointment is accepted.
 - f. Ensure uncontested pendency matters are not brought before IHOs.
 - g. Ensure that staff representing NYCDOE at due process hearings are authorized to enter into settlement or may do so subject to approval, which approval will take no longer than 30 days after request for approval, which request will be made no later than 5 days after agreement has been reached.
7. With respect to PWN, the corrective action plan must include, at a minimum, the following additional action steps:
- a. Administrative procedures must be instituted to ensure that all PWNs are provided to parents on the State's mandatory PWN form, including documentation of the directive to all CSEs, CPSEs, and Subcommittees requiring the use of the State's mandatory form.
 - b. Administrative procedures must be instituted to ensure that PWN is issued within a reasonable time before NYCDOE proposes to or refuses to initiate or change the identification, evaluation, educational placement of students, or the provision of FAPE to students.
 - c. A schedule for the updates to SESIS to ensure that all generated PWNs are in compliance with 8 NYCRR §200.5(a); and
 - d. A schedule and supporting documentation of the Inclusive Schools Learning Collaborative professional training activities provided to all staff responsible for the issuance of the prior written notices.

Verification of Compliance

Technical Assistance and Support

NYSED will work in collaboration with NYCDOE to provide ongoing and targeted support to assist NYCDOE in developing a plan to address the issues identified in this compliance assurance plan and achieve the prescribed corrective actions. Support will be provided by NYSED's Office of Special Education leadership and staff from its Central Office and Special Education Quality Assurance New York City Regional Office, as well as its funded technical assistance partners to support NYCDOE in reviewing and revising policies, identifying improvement strategies, and implementing practices necessary to ensure compliance with IDEA requirements and improved results for students with disabilities.

Monthly Progress Status Reports

NYSED's Office of Special Education leadership will schedule progress monitoring meetings at least monthly with NYCDOE special education leadership to review the status of corrective action steps.

At these monthly meetings, a schedule of which is attached hereto as Appendix E, NYCDOE must present a written status update regarding the initial drafting and/or amendment of the corrective action plans, as well as the progress of those corrective action plans, including, at a minimum:

1. Immediate action steps to address each noncompliance item, which must sufficiently describe NYCDOE efforts, provide an implementation timeline, and include the measurable goals and objectives expected to be achieved.
2. Description of how NYCDOE plans to monitor its progress of the corrective action plan.
3. Identification of NYCDOE office and specific NYCDOE staff responsible for the implementation of each step/action item included in the corrective action plan.
4. Documentation that demonstrates the completion of the immediate action steps required by June 3, 2019, as documented in the "Failure to Afford Students with Disabilities and Their Parents All the Rights and Procedural Safeguards Required by Federal and State Law and Regulations" above.
5. Technical assistance and review of requested CAP deliverables from the previous month's monitoring meeting.

Appendices

1. Appendix A, New York State Education Department 2018 Criteria for School District Determinations under the Individuals with Disabilities Education Act (IDEA). <http://www.p12.nysed.gov/specialed/spp/nysdeterminations/documents/determination-criteria-2018.pdf>
2. Appendix B, Letter from Christopher Suriano, Assistant Commissioner, to Richard Carranza, Chancellor (February 15, 2019) regarding 2018 Accountability Status under Part B of the Individuals with Disabilities Education Act (IDEA).
3. Appendix C, School Communities Inclusive of All Students Action Plan 2018-19.
4. Appendix D, “An External Review of the New York City Impartial Hearing Office.”
5. Appendix E, Compliance Assurance Plan Monthly Progress Status Report.

Related Documents of Interest

1. State Performance Plan/Annual Performance Report, Indicator Results;
<https://data.nysed.gov/lists.php?type=district>
2. Annual IDEA district determinations;
<http://www.p12.nysed.gov/specialed/spp/nysdeterminations/home.html>
3. Special Education Preschool Regional Need List;
<http://www.p12.nysed.gov/specialed/publications/preschool/regional-need.html>
4. NYCDOE Standard Operating Procedures Manual (SOPM);
<https://infohub.nyced.org/partners-and-providers/special-ed-partners/standard-operating-procedures-manual>
5. Prior Written Notice Form;
<http://www.p12.nysed.gov/specialed/formsnotices/PWN/home.html>
6. NYCDOE Local Law of 2015 Annual Report on Special Education, School Year 2017-18 (Annual Report)
https://drive.google.com/file/d/1FIWLiNlqzdm1_Ypw6WJ_HYyBNtJlqQvr/view
7. United States Department of Education, Office of Special Education Programs: Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B)
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>

Acronyms and Abbreviations

CSE	Committee on Special Education
CPSE	Committee on Preschool Special Education
EI	Early Intervention
FAPE	Free Appropriate Public Education
FSC	Field Support Center
IHO	Impartial Hearing Officer
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
ISLC	Inclusive Schools Learning Collaborative
LEA	Local Educational Agency
LRE	Least Restrictive Environment
MDE	Multidisciplinary Evaluation
NYCDOE	New York City Department of Education
NYCIHO	New York City Impartial Hearing Office
NYSED	New York State Education Department
PSGN	Procedural Safeguards Notice
PWN	Prior Written Notice
ROS	Rest of State
SC	Special Class
SCIS	Special Class in an Integrated Setting
SEIS	Special Education Itinerant Services
SEIS	Special Education Student Information System
SOPM	Standard Operating Procedures Manual
SPP	State Performance Plan

ⁱ *M.M. v. New York City Dep't of Educ.*, 2017 WL 1194685, at *4 (S.D.N.Y. Mar. 30, 2017) (“At the April 8, 2014 hearing, both parties proposed evidence on the record ... Defendants conceded that they had failed to provide [the student] a FAPE and did not call any witnesses.”)

L.K. v. New York City Dep't of Educ., 2016 WL 899321, at *4 (S.D.N.Y. Mar. 1, 2016), *aff'd in part, remanded in part*, 674 F. App'x 100 (2d Cir. 2017) (“On March 19 and March 26, 2014, a[n] ...IHO held a hearing on the Parents' Due Process Complaint. The Department conceded at the hearing that it had not provided [the student] a FAPE for the 2013-14 school year.”) (internal citations omitted)

M.W. v. New York City Dep't of Educ., 2015 WL 5025368, at *4 (S.D.N.Y. Aug. 25, 2015) (“Defendants concede they failed to provide [the student] with a FAPE for eleven years. This was not a deviation from an IEP, it was a catastrophic oversight”)

A.R. ex rel. F.P. v. New York City Dep't of Educ., No. 12 CIV. 4493 PAC, 2013 WL 5312537, at *3 (S.D.N.Y. Sept. 23, 2013) (“DOE concedes that it did not offer the Student a FAPE for the 2010–11 school year”)

M.F. v. New York City Bd. of Educ., 2013 WL 2435081, at *2 (S.D.N.Y. June 4, 2013) (“Here, DOE conceded at the impartial hearing that the placement it offered to [the student] was not appropriate ... Given DOE’s concession that it did not offer [the student] a FAPE for the 2010–11 school year, the first prong of the Burlington/Carter test is satisfied.”) (internal citations omitted)

S.H. v. New York City Dep’t of Educ., 2011 WL 609885, at *5 (S.D.N.Y. Feb. 18, 2011) (“At the hearing, DOE conceded that it had not provided [the student] with a FAPE for the 2008–09 school year”)

E. Z.-L. ex rel. R.L. v. New York City Dep’t of Educ., 763 F. Supp. 2d 584, 590 (S.D.N.Y. 2011), *aff’d sub nom. R.E. v. New York City Dep’t of Educ.*, 694 F.3d 167 (2d Cir. 2012) (“At the impartial hearing, the DOE conceded that it failed to offer a FAPE to the child ...”)

R.B. v. New York City Dep’t of Educ., 713 F. Supp. 2d 235, 241 (S.D.N.Y. 2010) (“At the hearing, the DOE conceded that, by not offering C.Z. a placement for the 2007–2008 school year, it had failed to provide C.Z. with a FAPE”)

Stevens ex rel. E.L. v. New York City Dep’t of Educ., 2010 WL 1005165, at *4 (S.D.N.Y. Mar. 18, 2010) (“At the impartial hearing, the defendant conceded that it had not provided a FAPE for the Student for the 2007–08 school year.”)

N.R. ex rel. T.R. v. Dep’t of Educ. of City Sch. Dist. of City of New York, 2009 WL 874061, at *4 (S.D.N.Y. Mar. 31, 2009) (“At an impartial hearing requested by Plaintiff, the Department conceded its failure to provide a free and appropriate education”)