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**THE COUNCIL OF THE CITY OF NEW YORK**

###### **COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION**

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##### COMMITTEE ON EDUCATION

#### Hon. Mark Treyger, *Chair*

**December 17, 2019**

**PROPOSED INTRODUCTION NO. 559-A:** By Council Members Treyger, Levin, Rose, Lander, Kallos, Lancman and Rosenthal

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to provide school-level data regarding compliance rates for students' individualized education programs

**ADMINISTRATIVE CODE:** Amends subdivisions a, b and d of section 21-955 of chapter 5 of title 21-A

**PROPOSED INTRODUCTION NO. 900-A:** By Council Members Kallos, Levin, Rose, Lander, Lancman and Rosenthal

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to report on the provision of special educations services tri-annually and to expand the services on which the department is required to report

**ADMINISTRATIVE CODE:** Amends section 21-955 of chapter 5 of Title 21-A

**PROPOSED INTRODUCTION NO. 1380-A:** By Council Members Rosenthal, Treyger, Dromm, Levine, Ampry-Samuel, Brannan, Levin, Rose, Adams, King, Kallos, Ayala, Lander, Powers, Grodenchik, Chin and Lancman

**TITLE:** A Local Law in relation to requiring the department of education to annually report on certain claims for payment for tuition or services

**PROPOSED INTRODUCTION NO. 1406-A:** By Council Members Dromm, Treyger, Levin, Rosenthal, Brannan, Chin, Rose, Lander, Kallos and Lancman

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring reports on preschool special education and early intervention services

**ADMINISTRATIVE CODE:** Amends subdivisions a and b of section 21-955 of chapter 5 of Title 21-A and adds a new section 17-199.12 to chapter 1 of title 17

**PROPOSED RESOLUTION NO. 749-A:** By Council Members Treyger, Brannan, Rosenthal, Levin and Rose

**TITLE:** Resolution calling upon the New York City Department of Education to establish a chief compliance officer position to ensure compliance with Individualized Education Programs and other requirements for students in special education.

**INTRODUCTION**

 On Tuesday, December 17, 2019, the Committee on Education, chaired by Council Member Mark Treyger, will hold a a hearing on:

* *Proposed Introduction Number 559-A*, sponsored by Council Member Treyger, relating to requiring the department of education to provide school-level data regarding compliance rates for students' individualized education programs;
* *Proposed Introduction Number 900-A*, sponsored by Council Member Kallos, relating to requiring the department of education to report on the provision of special educations services tri-annually and to expand the services on which the department is required to report;
* *Proposed Introduction Number 1380-A*, sponsored by Council Member Rosenthal in relation to requiring the department of education to annually report on certain claims for payment for tuition or services;
* *Proposed Introduction Number 1406-A*, sponsored by Council Member Dromm in relation to requiring reports on preschool special education and early intervention services; and
* *Proposed Resolution Number 749-A*, sponsored by Council Member Mark Treyger calling on the New York City Department of Education to establish a czar position to ensure compliance with Individualized Education Programs and other requirements for students in special education.

The legislation was previously heard on DATE. At that hearing, the Committee heard testimony from the Department of Education (DOE), parents, students, educators, advocates, unions, and other members of the public.

**BACKGROUND**

Students with disabilities comprise a large and growing portion of the New York City public school population. In the 2013-14 school year, there were 205,793 students with disabilities, including both school-age and pre-school students, representing 18.6 percent of the City’s public school enrollment.[[1]](#footnote-1) By 2017-18 the number of students with disabilities in City public schools increased to 224,160 representing 19.7 percent of enrollment.[[2]](#footnote-2)

Many students with disabilities are not receiving all of the services to which they are entitled. According to the DOE’s latest data report, in the 2017-18 school year, 78.4 percent of school-aged students with individualized education programs (IEPs) in DOE schools fully received their recommended services, while 19.1 percent received partial services and 2.5 percent received none of their recommended services.[[3]](#footnote-3) It’s important to note that this data does not include pre-school students with disabilities or those in charter schools, transfer and alternative high schools.[[4]](#footnote-4)

Although there has been some improvement in the performance of students with disabilities in recent years, there is still a wide achievement gap with non-disabled students. On the 2018 State English Language Arts (ELA) exam, only 15.8 percent of City students with disabilities in grades 3 through 8 scored at or above proficient (up from 5.7 percent in 2013), compared to 55.2 percent for their non-disabled peers (up from 31.3 percent in 2013).[[5]](#footnote-5) Similarly, on the 2018 state math test, only 15.4 percent of students with disabilities in grades 3 through 8 scored at or above proficient (up from 8.4 percent in 2013), compared to 50.3 percent for non-disabled students (up from 34.6 percent in 2013).[[6]](#footnote-6)

Graduation rates for students with disabilities in City schools have also historically been much lower than those for their peers in general education. According to DOE, in 2018, only 50.4 percent of students with disabilities graduated within four years of entry into high school (up from 37.5 percent in 2013), compared to 81.6 percent of non-disabled students (up from 70.6 percent in 2013).[[7]](#footnote-7)

To address this achievement gap and improve academic outcomes for students with disabilities, the DOE initiated a number of efforts to restructure and improve special education over the years.[[8]](#footnote-8) The most recent effort, launched in September 2012, was a multi-year special education reform plan to improve education for students with disabilities by enrolling them in their neighborhood school and mainstreaming them alongside general education students as much as possible. [[9]](#footnote-9)

 This reform plan was launched by DOE in conjunction with the New York State Education Department (NYSED).[[10]](#footnote-10) The plan, *Shared Path Framework*, focused on “increased access to schools, quality IEPs, behavior, and transition.”[[11]](#footnote-11) The results of this effort have led to a dramatically improved shift in service delivery and improved student outcomes.[[12]](#footnote-12) Due to New York City’s successes, the state has used the City as an example for the state’s other four large urban districts to improve special education outcomes across the state.[[13]](#footnote-13)

Federal Law

The education of students with disabilities is governed by the Federal Individuals with Disabilities in Education Act (IDEA), which guarantees access to a “free appropriate public education” (FAPE) in the “least restrictive environment” (LRE) to every child with a disability.[[14]](#footnote-14) LRE means that, to the maximum extent appropriate, children with disabilities must be educated with children who are not disabled.[[15]](#footnote-15) The IDEA ensures that all children with disabilities have access to special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.[[16]](#footnote-16)

The IDEA governs how states and public agencies provide early intervention, special education, and related services to eligible infants, toddlers, children, and youth with disabilities. IDEA Part C addresses early intervention services for infants and toddlers, birth through age 2, while Part B covers special education and related services for children and youth ages 3 through 21. [[17]](#footnote-17)

In addition, the IDEA authorizes formula grants to states to support early intervention services for infants and toddlers, and special education and related services for children and youth ages 3 through 21.[[18]](#footnote-18) The IDEA also authorizes discretionary grants to state educational agencies, institutions of higher education, and other nonprofit organizations to support research, technical assistance, technology development, personnel preparation and development, and parent-training and information centers.[[19]](#footnote-19)

**NYC DEPARTMENT OF EDUCATION SPECIAL EDUCATION SYSTEM**

In order for a child in New York City to receive special education services, the DOE must follow a four-step process: (1) referral and consent; (2) evaluation; (3) the development of the Individualized Education Program (IEP); and (4) placement and services.[[20]](#footnote-20)

*Step 1: Referral & Consent* - A referral for special education services can only be made in writing by a parent/legal guardian or school district designee, usually the principal or assistant principal, or Committee on Special Education (CSE) Chairperson.[[21]](#footnote-21) However, certain others, including selected school staff, a licensed doctor, a judge, public officials, or a student over 18 or emancipated, can request that a student be referred for an initial evaluation. Once a referral is made, the DOE must obtain the parent’s written consent for the evaluation process to begin.[[22]](#footnote-22)

*Step 2: Evaluation* - After the DOE receives parental consent to evaluate a child, they have 60 calendar days to complete the evaluations.[[23]](#footnote-23) A child must be evaluated in all areas of suspected disability, and an initial evaluation must at least include: a social history; a psycho-educational evaluation (including IQ and academic testing); a classroom observation; and a recent physical evaluation (if not available from the student’s doctor, the DOE must arrange for a physical).[[24]](#footnote-24) Other possible evaluations include: a physical/occupational therapy or speech and language evaluation; a neurological or neuropsychological exam; an assistive technology evaluation; a psychiatric evaluation; and a vision or hearing exam, including a central auditory processing evaluation.[[25]](#footnote-25)

*Step 3: IEP Development* - In order for a child in New York City to receive special education services, an IEP team must find the child eligible for one of the following 13 disability classifications:

* Autism
* Deaf-Blindness
* Hearing Impairment
* Intellectual Disability
* Orthopedic Impairment
* Speech or Language Impairment
* Emotional Disturbance
* Deafness
* Visual Impairment, including Blindness
* Learning Disability
* Multiple Disabilities
* Other Health Impairment
* Traumatic Brain Injury [[26]](#footnote-26)

The IEP team must include the child’s parent; a special education teacher and/or related service provider; a general education teacher (if a child is, or may be, participating in a general education class); a school psychologist (or other who can explain the meaning of the evaluations); the child (if age 15 or older); and a district representative. Others may also be included, such as a physician or anyone the parent wishes to invite for support.[[27]](#footnote-27)

The IEP outlines a child’s educational needs and the services they are entitled to receive, including:

* Present levels of educational and social/emotional performance;
* Measurable annual goals;
* Program recommendations and/or related services;
* The extent to which the child may participate in general education classes, extracurricular and non-academic activities;
* Participation in testing, testing accommodations and modifications;
* Promotional criteria; and
* A transition plan to prepare the student for life after high school for students 15 and older.[[28]](#footnote-28)

All IEPs in New York City are created using DOE’s electronic Special Education Student Information System (SESIS), therefore an IEP is not “finalized” until the information discussed at the IEP meeting is entered into the document electronically.[[29]](#footnote-29)

*Step 4: Placement and Services* - Decisions about a child’s placement are made by the IEP team and should be reviewed annually. If a child is receiving special education services for the first time, the DOE must arrange for placement and services within 60 school days from receiving parental consent to evaluate the child. Parents should receive a written placement offer by mail and have the right to visit the proposed classroom/school placement and may accept or reject the proposed placement.[[30]](#footnote-30)

**Pre-K Special Education**

DOE provides preschool special education services free of charge for children ages 3-5 who have disabilities or developmental delays that impact their ability to learn.[[31]](#footnote-31) The four-step process of referral and consent; evaluation; development of the IEP; and placement and services is the same for pre-k as for school-age children, except that the process is conducted by the local Committee on Preschool Special Education (CPSE), which is part of the CSE.[[32]](#footnote-32)

**Special Education Services and Supports**

The DOE provides a continuum of special education services for students with disabilities, which are listed below in order from less restrictive (designed to help a student remain in general education classes) to more restrictive (self-contained settings):

* General Education with Supplementary Aids and Services – Students are educated in a general education class with additional support. Supplementary aids and services include, but are not limited to:
* Related Services - These include speech and language therapy, physical therapy, occupational therapy, counseling and some other services that may be provided individually or in a small group.
* Special Education Teacher Support Services (SETSS) - A student is either removed from class and taught in a smaller class for a portion of the day (pull-out) or a teacher may come into the classroom to work with the student, a small group of students, or the classroom teacher during the regular lesson (push-in).
* Paraprofessionals - (also called aides or paras) can be assigned to students to meet individual management needs, such as behavior management, health, and interpretation services.
* Integrated Co-Teaching (ICT) - This is an integrated classroom where general education students (about 60 percent of the class) and students with disabilities (about 40 percent of the class) are taught together by a full-time general education teacher and a full-time special education teacher.
* Special Class in a Community School - Students are in a small, “self-contained” class of special education students, grouped by age and functional ability, in a neighborhood school that also has general education classes. DOE offers the following student-to-teacher ratios in these self-contained classrooms:
* 12:1 (elementary and junior/middle school only)
* 15:1 (high school only) for students with academic and/or behavior management needs
* 12:1:1 for students with academic and/or behavioral management needs who require extra adult support and specialized instruction.
* Special Class in a Specialized School (District 75) - District 75 is a separate school district intended for students with severe needs that require more intensive support. Some District 75 programs are located in buildings with general education schools, while others are in buildings consisting only of District 75 special classes and students. A small number of District 75 Inclusion programs integrate students with disabilities into general education classes for part of the day, with supports from District 75 staff, such as paraprofessionals, special education teachers, and speech therapists. District 75 classes offer the following student-to-teacher ratios:
* 12:1:1 for students with academic and/or behavioral management needs who require extra adult support and specialized instruction;
* 8:1:1 for students whose needs are severe and require intensive supervision, significant individual attention, intervention, and intensive behavior management;
* 6:1:1 for students with very significant needs, including academic, social and/or interpersonal development, physical development, and management needs. Students’ behavior may be aggressive, self-abusive, or extremely withdrawn. Students may have severe difficulties with language and social skills. Many students in 6:1:1 classes are on the autism spectrum.
* 12:1:4 for students with severe and multiple disabilities and limited functioning in all areas. This program primarily provides habilitation and treatment, including training in activities of daily living (ADL) and the development of communication skills.
* Specialized Programs - The DOE also offers several specialized programs in some community schools, including:
* Autism Spectrum Disorder (ASD) Nest: An integrated class setting in a community school for high functioning students on the autism spectrum;
* ASD Horizon: A self-contained special class in a community school for students on the autism spectrum.
* Barrier Free: A school building that is accessible to students who have limited mobility, serious health issues, or use a wheelchair or other mobility device.
* Bilingual Special Education: A special class for students who are recommended to receive services in a bilingual classroom.
* Academic, Career, and Essential Skills (ACES) Special Class for Students with Intellectual Disabilities: A special class in a community school for students who are classified as intellectually disabled and who are being alternately assessed. [[33]](#footnote-33)

There are also placement options outside of a public school, such as temporary Home Instruction or Hospital Instruction for students with medical needs, or placement in a non-public school for students whose educational needs cannot be met in a public school program.[[34]](#footnote-34) Non-public school placement is discussed in further detail below.

**Non-Public Special Education Schools**

NYSED recommends state approved private schools for students whose special educational needs cannot be met in a public school setting.[[35]](#footnote-35) There are also state-supported schools that offer intensive special education services to students who are deaf, blind or have severe physical or emotional disabilities and who the CSE determines qualify for such programs.[[36]](#footnote-36) Some state-approved schools are residential and provide a structured living environment on a school’s campus for students who require 24-hour support.[[37]](#footnote-37) If there is not an appropriate residential school for a student, the state may recommend the student for an out-of-state school.[[38]](#footnote-38)

DOE also funds state approved private special education schools for students through a voucher from CSE, known as a “P-1” or “Nickerson” letter.[[39]](#footnote-39) DOE is required to provide parents with a P-1 letter if it fails to place a student in the appropriate special education program within their IEP mandated timeframe.[[40]](#footnote-40) When these vouchers are issued, the CSE provides parents with a list of eligible private special education schools to select and apply to, but if a parent is unable to find a non-public school placement, DOE is still required to provide an appropriate placement for the student.[[41]](#footnote-41)

Lastly, the state provides payments for special education private schools when a parent proves that the DOE failed to provide their child with a free and appropriate education during an impartial hearing.[[42]](#footnote-42) Parents can receive reimbursement or pre-imbursement for private day or residential schools, including schools that are not on the state approved list, if they are able to prove that the chosen school is appropriate for their child’s special education needs. A Carter hearing occurs if a parent is seeking reimbursement for special education services, and a Connors hearing occurs when they are seeking pre-imbursement for special education services.[[43]](#footnote-43)

**Spending on Special Education**

Fair Student Funding (FSF) is the primary formula used to fund schools. Under the FSF formula, students receiving special education services receive a weight corresponding to additional funding, depending on the level of services they receive and their grade level. The FSF weights and corresponding dollar amounts for students receiving special education services in the current year are listed in Table 1 below. Students with disabilities are also eligible for grade level, poverty, English language learners (ELL) and academic intervention FSF weights.[[44]](#footnote-44)

**Table 1**

|  |  |  |
| --- | --- | --- |
| **Special Education Need** | **Weight** | **FY19 Per Capita** |
| Single Service <=20 percent | 0.56 | $2,287.74 |
| Multi-Service 21 percent-59 percent | 1.25 | 5,108.38 |
| K-8 Self-Contained (SC) >=60 percent | 1.18 | 4,823.41 |
| 9-12 Self-Contained (SC) >=60 percent | 0.58 | 2,385.87 |
| K Integrated Co-Teaching (ICT) >= 60 percent | 2.09 | 8,529.96 |
| 1-12 Integrated Co-Teaching (ICT) >= 60 percent | 1.74 | 7,108.13 |
| K-12 Post IEP Support | 0.12 | $490.18 |

Fair Student Funding does not impact District 75, related services (including mandated speech and counseling services), IEP teachers, IEP paraprofessionals, adaptive physical education teachers, assistive technology, and other special education programmatic allocations. Schools are provided with additional allocations outside of FSF for these needs.[[45]](#footnote-45)

Funding for K-12 special education in public schools is included across three major program areas, shown with actual spending in the last fiscal year and budgeted spending in the current and next fiscal year in the chart below. Special Education Instruction includes services provided directly in traditional K-12 public schools; Citywide Special Education includes funding for District 75 schools and home and hospital instruction; and Special Education Instructional Support includes funds for centrally-managed special education related services such as occupational therapy, physical therapy, and nurses, as well as evaluations of students performed by school-based support teams. Spending on these areas is budgeted at $3.79 billion in Fiscal 2019. The DOE uses both employees and contractual providers to deliver mandated services to students. Funding for “related services” is budgeted across the three special education program areas, and reflected in Table 2. Of the $3.79 billion budget for K-12 special education in Fiscal 2019, $1.27 billion is for related services.

Other smaller program areas include some funding for special education: some of categorical programs (federal and State funds that are allocated for specific purposes) are for reimbursable support for special education instruction; some funding for school support organizations (field-based support centers) goes toward special education administration and the CSE; and some funding in central administration is for special education initiatives. These actual and budgeted costs are also listed in Table 2 below.

**Table 2**

|  |
| --- |
| **Spending on K-12 Special Education in Public Schools** |
| **Program** | **FY18 Actual** | **FY19 Budgeted** | **FY20 Budgeted** |
| Special Education Instruction | $1,873,379,792 | $1,968,034,993 | $1,940,127,900 |
| Citywide Special Education | 1,132,545,365 | 1,200,417,037 | 1,178,841,485 |
| Special Education Instructional Supports | 624,002,692 | 620,813,425 | 620,778,996 |
| **Total** | **$3,629,927,849** | **$3,789,265,455** | **$3,739,748,381** |
| *Related Services* | *$1,576,166,777* | *$1,273,161,599* | *$1,277,938,805* |
| Reimbursable Support for Special Education Instruction | $405,721,265  | $375,166,294  | $375,877,817  |
| Committee on Special Education  | 67,067,564  | 69,281,027  | 70,032,226  |
| Special Education Administration | 18,438,507  | 27,378,512  | 31,741,020  |
| Special Education Initiatives | $6,167,811  | $7,675,885  | $7,734,358  |

Funding for special education services is growing largely due to two factors: increased headcount and increased costs for special education teachers and paraprofessionals (per collective bargaining agreements); and planned increases in spending on specific programs, including ACES, ASD, and Bilingual Special Education (note additional funding for these three programs was included in the Fiscal 2017 Executive Financial Plan). However, the DOE recognized savings in costs for ACES and bilingual special education programs in Fiscal 2018 and 2019 due to DOE’s inability to recruit staff for the full number of programs they expected to open (savings were recognized in the Fiscal 2019 Preliminary Financial Plan). The savings were not baselined as DOE works to recruit and hire teachers to open the planned classes. Civilian and pedagogical headcount across the special education program areas is shown in Table 3.

**Table 3**

| **Special Education Headcount** |
| --- |
| **Program** | **FY18 Actual** | **FY19 Budgeted** | **FY20 Budgeted** |
| Special Education Instruction - Civilian | 4  | 9  | 9  |
| Citywide Special Education - Civilian | 1,026  | 711  | 711  |
| Special Education Instructional Support - Civilian | 2,255  | 2,192  | 2,186  |
| **Total Full-Time Positions - Civilian** | **3,285**  | **2,912**  | **2,906**  |
| Citywide Special Education - Pedagogical | 14,821  | 13,050  | 12,333  |
| Special Education Instruction - Pedagogical | 28,580  | 28,747  | 29,343  |
| Special Education Instructional Support - Pedagogical | 734  | 1,011  | 1,011  |
| **Total Full-Time Positions - Pedagogical** | **44,135**  | **42,808**  | **42,687**  |
| **TOTAL** | **47,420**  | **45,720**  | **45,593**  |

**Public-Funded Special Education in Private School Settings**

Actual and budgeted spending on Contract Schools, Carter Cases, Foster Care, and Blind and Deaf schools is shown in Table 4 below. While the Fiscal 2019 Preliminary Budget reflects a $100 million decline in spending on Carter Cases from Fiscal 2018 to 2019, the Council expects the Executive Budget to reflect additional resources for Carter Cases more in-line with recent spending in this area. The Fiscal 2019 Executive Financial Plan added $80 million to the Fiscal 2018 budget for Carter Cases, but no funding was added in Fiscal 2019 or the outyears.

**Table 4**

| **Spending on Special Education Students in Private Settings**  |
| --- |
| **Program** | **FY18 Actual** | **FY19 Budgeted** | **FY20 Budgeted** |
| Blind & Deaf Schools | $125,772,792 | $59,000,000 | $59,000,000 |
| Carter Cases | 393,336,986 | 293,228,313 | 306,691,035 |
| Contract Schools (in state) | 273,176,965 | 312,232,705 | 324,659,833 |
| Contract Schools (out of state) | 34,002,486 | 32,699,946 | 32,699,946 |
| Non-resident Tuition/Foster Care | 15,271,841 | 17,805,241 | 17,805,241 |
| TL Match for Chapter 683\* | 17,418,072 | 17,509,457 | 17,509,457 |
| **Total** | **$858,979,143** | **$732,475,662** | **$758,365,512** |

\* Chapter 683 is a District 75 program that provides year-round instruction to District 75 severely disabled students.

**Pre-K Special Education**

The DOE provides special education instructional services and related therapeutic services to pre-kindergarten aged children through contracts with non-public schools and private providers. None of these services are directly provided by the DOE. Actual and projected spending on these services is shown in Table 5 below. State reimbursement for special education pre-K will support approximately 69 percent of the total cost in Fiscal 2019.

**Table 5**

| **Funding for Special Education Pre-K Contracts** |
| --- |
| **Program** | **FY18 Actual** | **FY19 Budgeted** | **FY20 Budgeted** |
| Tuition | $436,932,327  | $474,752,254  | $472,482,376  |
| Transportation | 93,514,561  | 107,343,315  | 105,073,438  |
| Professional Services | 213,211,727  | 276,877,212  | 299,607,334  |
| **Total** | **$743,658,616**  | **$858,972,781**  | **$877,163,148**  |

**SESIS**

Over the course of the de Blasio Administration, additional resources have been added to DOE’s budget to support SESIS. These additional resources total $17.3 million in Fiscal 2019 (note the funding was added in the Fiscal 2016 Executive Financial Plan, Fiscal 2017 Executive Financial Plan, and Fiscal 2018 Preliminary Financial Plan).

**Funding Sources**

IDEA is the most significant source of federal funding for special education services; IDEA funding for Fiscal 2019 is projected to be $287.8 million. The State also provides funding for special education services through:

* High cost aid, which supports public school programs for students with disabilities;
* Private excess cost aid, which supports special education students in private school settings;
* Summer school age handicapped aid, which funds services during July and August;
* Funding for pupils with disabilities residing in Office of Mental Health (OMH) psychiatric centers;
* Funding for deaf and blind schools; and
* Funding for pre-K special education (as mentioned above).

**ISSUES AND CONCERNS**

Parents of students with disabilities have long complained that their children are not receiving all of the services to which they are entitled. According to the most recent data from DOE, in the 2017-18 school year just 78.4 percent of IEP students received all of their mandated services.[[46]](#footnote-46) This means that 22 percent, nearly 40,000 IEP students are receiving only partial or none of their mandated services. While this reflects an improvement over prior years, DOE has acknowledged that “it’s unclear how much of the year-over-year changes are due to improvements to its data systems versus better service delivery.”[[47]](#footnote-47)

The DOE has long had difficulty keeping up with the demand for “related services,” which include speech therapy, occupational therapy, physical therapy and intensive counseling, among others. When a child’s school does not have adequate staff to provide all of the needed services, the DOE refers the parent to one of several agencies under contract, and if none of the agencies can provide the service, the DOE issues a Related Service Authorization (RSA) to allow a family to secure an independent provider paid for by the DOE.[[48]](#footnote-48) However, a backlog in payments to related service providers may be exacerbating an already serious shortage of providers. According to an expose by *NY1*, many therapists have gone for months without being paid for services they provided to students with disabilities.[[49]](#footnote-49) Parents and advocates also maintain that the loss of a therapist that has worked with a student for years can be very disruptive for a child with disabilities.

Another factor that may contribute to a shortage of related service providers in schools is the existing pay disparities with other DOE positions, despite having similar education and job eligibility requirements. For example, physical and occupational therapists who work in New York City schools narrowly approved a new contract, with pay inequities cited as a major issue.[[50]](#footnote-50) In an open letter to Chancellor Richard Carranza and Mayor Bill de Blasio, some of these therapists wrote, "Publicly employed OTs and PTs in most major cities including Los Angeles, Washington D.C., Chicago, and Boston earn the same as teachers and other professionals who serve students in Special Education. New York City is a glaring exception. At the top of the pay scale, OTs and PTs who work for the DOE earn $27,000 less per year and have far fewer benefits than our counterparts in the speech therapy, social work, counseling and school psychology departments."[[51]](#footnote-51)

An additional area of concern is the provision of bilingual special education services for ELLs. In 2017-18, DOE reported that almost 38,000 (just over 19 percent) of students with IEPs were ELLs.[[52]](#footnote-52) Just as DOE has a shortage of bilingual teachers for ELLs in general education classes, they also have a shortage of bilingual related services providers. For the 2017-18 school year, DOE reported that 17.2 percent of “bilingual” counseling sessions and 17.4 percent of “bilingual” speech-language therapy sessions were not held in the recommended language due to shortages of bilingual providers.[[53]](#footnote-53)

Another concern related to special education for ELLS is the failure of DOE to provide translations of IEPs to parents who need them. Parents are legally entitled to translation services for the special education process, including translations of IEPs, but many parents, do not know they have the right to request a translation.[[54]](#footnote-54) This year, DOE launched a pilot program to centralize the translation process instead of relying on individual schools to manage such requests. Beginning in September 2018, schools in District 9 in the Bronx, District 24 in Queens, and the citywide special education District 75 have been able to ask DOE’s translation department to handle the request.[[55]](#footnote-55) As of early January 2019, DOE had handled 100 requests to convert learning plans into Arabic, Bengali, Chinese, Korean, Russian, and Spanish.[[56]](#footnote-56)

One longstanding issue of concern is SESIS, DOE’s data system for tracking students’ special education services. Rolled out in 2011 at a cost of $130 million, SESIS was plagued with technical problems from the start.[[57]](#footnote-57) Special education teachers and service providers are required to enter information into SESIS about each student’s IEP, including details about evaluations, services provided, and any changes made to the plan.[[58]](#footnote-58) Glitches with the system led to increased overtime costs for school staff and charges by the city comptroller that problems with the system kept the city from collecting millions of dollars in federal Medicaid reimbursements for low-income students with disabilities, leading then-Public Advocate Letitia James to file a lawsuit against DOE in 2016 over $356 million in lost Medicaid dollars over several years.[[59]](#footnote-59) Since that time, DOE has acknowledged serious problems with SESIS and conceded that their initial data reports in 2016 on special education services were not “fully reliable” due to SESIS flaws.[[60]](#footnote-60) Starting in fiscal year 2018, the mayor has committed funding for needed improvements to SESIS.[[61]](#footnote-61) The Committee hopes to learn more about the status of these improvement efforts.

**ANALYSIS OF PROPOSED INT. NO 559-A**

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to provide school-level data regarding compliance rates for students' individualized education programs

The proposed legislation would amend Local Law 27 of 2015 to require the DOE to disaggregate by school its report on individualized education program compliance rates. The bill would take effect immediately after it becomes law.

**Update to A version:** Further levels of disaggregation were added in addition to school to include service recommendation and community school district. Further, Proposed Int. 559-A requires DOE to provide a narrative description of the provision of special education services for students enrolled in District 79 schools and programs. The enactment date is now tied to Proposed Introduction Number 1406-A.

**ANALYSIS OF PROPOSED INT. NO 900-A**

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to report on the provision of special educations services tri-annually and to expand the services on which the department is required to report.

The proposed legislation would amend Local Law 27 of 2015 to require the DOE to report on its provision of special education services to students tri-annually, and would also add assistive technology services and special transportation services to the services on which DOE is required to report. The bill would take effect immediately after it becomes law.

**Update to A version:** The tri-annual reporting dates were changed, but it remains tri-annual and the bill also updates the privacy provision so that now categories that contain zero students are reported as such and suppression will be for categories that contain between one and five students. Additionally, the enactment date is now tied to Proposed Introduction Number 1406-A.

**ANALYSIS OF PROPOSED INT. NO 1380-A**

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education to annually report on claims for payment for tuition or services.

The proposed legislation would require the DOE to annually report on several indicators regarding how DOE responds to requests for payment for private school tuition or tutoring from parents or guardians who believe their child is not receiving appropriate special education services in public school. The bill would take effect immediately after it becomes law and be deemed repealed seven years thereafter.

**Update to A version:** The data elements in the bill, from the ten-day notice or due process complaint being received by the DOE to when a payment is actually made, now conforms to the DOE’s internal checklist process how each case is tracked by their systems. Additional reporting added to the bill includes the number of impartial hearing officers, their annual compensation, and the number of cases they recuse themselves from. The bill would still take effect immediately but is now deemed repealed after five years, down from seven years.

**ANALYSIS OF PROPOSED INT. NO 1406-A**

A Local Law to amend the administrative code of the city of New York, in relation to requiring reports on preschool special education and early intervention services.

The proposed legislation would require the DOE to annually report on several indicators regarding its provision of special education services to preschool-age children. The bill also requires the City’s Department of Health and Mental Hygiene (“DOHMH”) to annually report on several indicators regarding its provision of early intervention services to eligible children ages zero to three. The bill would take effect immediately after it becomes law.

**Update to A version:** Technical changes were made to some of the definitions to the bill to properly capture how information is collected by the DOE and DOHMH. Where DOHMH receives information from the New York State Early Intervention System (NYEIS), in recognition that data in NYEIS is not always accurately collected, information was included in the proposed legislation to provide flexibility to DOHMH in reporting information to the extent practicable.

**UPDATE:** On Tuesday, December 17, 2019, the Committee on Education, chaired by Council Member Mark Treyger, will hold a vote on:

* *Proposed Introduction Number 559-A*, sponsored by Council Member Treyger, relating to requiring the department of education to provide school-level data regarding compliance rates for students' individualized education programs;
* *Proposed Introduction Number 900-A*, sponsored by Council Member Kallos, relating to requiring the department of education to report on the provision of special educations services tri-annually and to expand the services on which the department is required to report;
* *Proposed Introduction Number 1380-A*, sponsored by Council Member Rosenthal in relation to requiring the department of education to annually report on certain claims for payment for tuition or services;
* *Proposed Introduction Number 1406-A*, sponsored by Council Member Dromm in relation to requiring reports on preschool special education and early intervention services; and
* *Proposed Resolution Number 749-A*, sponsored by Council Member Mark Treyger calling on the New York City Department of Education to establish a czar position to ensure compliance with Individualized Education Programs and other requirements for students in special education

Proposed Int. No. 559-A

By Council Members Treyger, Levin, Rose, Lander, Kallos, Lancman and Rosenthal

..Title

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the department of education to provide district-level data regarding compliance rates for students’ individualized education programs

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 21-955 of the administrative code of the city of New York, as amended by introduction number 1406-A for the year 2019, is amended by adding a new definition of “service recommendation” in alphabetical order to read as follows:

Service recommendation. The term “service recommendation” means the type of services outlined in an individualized education program, including consultant teacher services, resource room programs, integrated co-teaching services, and special class as such terms are defined in section 200.1 of title 8 of the New York codes, rules and regulations.

§ 2. Paragraphs 12 and 13 of subdivision b of section 21-955 of the administrative code of the city of New York, as added by local law number 27 for the year 2015, are amended to read as follows:

12. the number and percentage of students, disaggregated by service recommendation, school and community school district, who were receiving special education services:

(i) in full compliance with their IEPs by the end of the academic period; and

(ii) in partial compliance with their IEPs by the end of the academic period;

13. the number and percentage of students, disaggregated by service recommendation, school and community school district, who, by the end of the academic period, were receiving in full the services enumerated in subparagraphs [(i)] (a) through [(viii)] (h) of this paragraph as recommended on their IEPs, the number and percentage of students who as of the end of the academic period were receiving in part such services, and the number and percentage of students who were awaiting the provision of such services:

[(i) monolingual] (a) Monolingual speech therapy;

[(ii) bilingual] (b) Bilingual speech therapy;

[(iii) monolingual] (c) Monolingual counseling;

[(iv) bilingual] (d) Bilingual counseling;

[(v) occupational] (e) Occupational therapy;

[(vi) physical] (f) Physical therapy;

[(vii) hearing] (g) Hearing education services; [and]

[(viii) vision] (h) Vision education services;

§ 3. Paragraph 14 of subdivision b of section 21-955 of the administrative code of the city of New York, as added by local law number 27 for the year 2015, is renumbered as paragraph 15, and a new paragraph 14 is added to such subdivision to read as follows:

14. The number and percentage of students, disaggregated by service recommendation, school and community school district, who have a behavioral intervention plan; and

§ 4. Subdivision d of section 21-955 of the administrative code of the city of New York, as amended by local law number 89 for the year 2018, is amended to read as follows:

d. [No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of student information or that would interfere with law enforcement investigations or otherwise conflict with the interests of law enforcement. If a category contains between 1 and 5 students, or allows another category to be narrowed to between 1 and 5 students, the number shall be replaced with a symbol.] The report required by subdivision b of this section shall also include, to the extent practicable, a narrative description of the provision of special education services for students enrolled in district 79 schools and programs.

§ 5. This local law takes effect on the same date as a local law amending the administrative code of the city of New York, in relation to requiring reports on preschool special education and early intervention services, as proposed in introduction number 1406-A for the year 2019, takes effect, except that section 3 of this local law takes effect January 1, 2022.

SMD/MMB

LS# 3172

12/11/19; 6:40 p.m

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Proposed Int. No. 900-A

By Council Members Kallos, Levin, Rose, Lander, Lancman and Rosenthal

..Title

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the department of education to report quarterly on compliance with students’ individual education programs and to expand the services on which the department is required to annually report

..Body

Be it enacted by the Council as follows:

Section 1. The heading of section 21-955 of the administrative code of the city of New York, as added by local law number 27 for the year 2015, is amended to read as follows:

§ 21-955 [Annual reporting] Reporting on special education services.

§ 2. Subdivision a of section 21-955 of the administrative code of the city of New York, as amended by introduction number 1406-A for the year 2019, is amended by adding a new definition of “reporting period” in alphabetical order to read as follows:

Reporting period. The term “reporting period” means, as applicable, the period between July 1 of the prior calendar year until and including October 31 of the prior calendar year, for the report due on February 1; the period between November 1 of the prior calendar year until and including March 31 of the current calendar year, for the report due on June 1 and the period between April 1 of the current calendar year and June 30 of the current calendar year, for the report due on September 1 of the current calendar year.

§ 3. Paragraph 13 of subdivision b of section 21-955 of the administrative code of the city of New York, as amended by introduction number 559-A for the year 2019, is amended by adding new subparagraphs (i) and (j) to read as follows:

 (i) Assistive technology services; and

(j) Special transportation services.

§ 4. Section 21-955 of the administrative code of the city of New York, as amended by local law number 89 for the year 2018, is amended by adding a new subdivision e to read as follows:

e. Beginning on September 1, 2020, the department shall also submit to the speaker of the council and post on the department's website a report regarding the provision of special education services during the applicable reporting period, including but not limited to the following information:

1. The number and percentage of students who were receiving special education services: (i) in full compliance with their IEPs by the end of the reporting period; and (ii) in partial compliance with their IEPs by the end of the reporting period;

2. The number and percentage of students who, by the end of the reporting period, were receiving in full the services enumerated in subparagraphs (a) through (j) of this paragraph as recommended on their IEPs, the number and percentage of students who as of the end of the reporting period were receiving in part such services, and the number and percentage of students who were awaiting the provision of such services:

(a) Monolingual speech therapy;

(b) Bilingual speech therapy;

(c) Monolingual counseling;

(d) Bilingual counseling;

(e) Occupational therapy;

(f) Physical therapy;

(g) Hearing education services;

(h) Vision education services;

(i) Assistive technology services; and

(j) Special transportation services.

The information required to be reported pursuant to this subdivision shall be submitted and posted no later than September 1, February 1and June 1 of each year.

§ 5. Section 21-955 of the administrative code of the city of New York, as added by local law 27 for the year 2015, is amended by adding a new subdivision f to read as follows:

f. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of student information or that would interfere with law enforcement investigations or otherwise conflict with the interests of law enforcement. If a category contains between one and five students, or allows another category to be narrowed to between one and five students, the number shall be replaced with a symbol. A category that contains zero students shall be reported as zero, unless such reporting would violate any applicable provision of federal, state or local law relating to the privacy of student information.

§ 6. This local law takes effect on the same date as a local law amending the administrative code of the city of New York, relating to requiring reports on preschool special education and early intervention services, as proposed in introduction number 1406-A for the year 2019, takes effect.

SMD/MMB

LS #4625

12/11/19; 9:30 p.m.

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Proposed Int. No. 1380-A

By Council Members Rosenthal, Treyger, Dromm, Levine, Ampry-Samuel, Brannan, Levin, Rose, Adams, King, Kallos, Ayala, Lander, Powers, Grodenchik, Chin and Lancman

A LOCAL LAW

..Title

TTIn relation to requiring the department of education to annually report on certain claims for payment for tuition or services

..Body

Be it enacted by the Council as follows:

Section 1. Annual reporting on requests for payment for tuition or services from parents of students with disabilities. a. Definitions. For purposes of this section, the following terms have the following meanings:

Comptroller. The term “comptroller” means the office of the New York city comptroller.

Department. The term “department” means the New York city department of education.

Due process complaint notice. The term “due process complaint notice” has the same meaning as set forth in subdivision i of section 200.5 of title 8 of the New York codes, rules and regulations.

Parent. The term “parent” has the same meaning as set forth in subsection (23) of section 1401 of title 20 of the United States code.

Referred for settlement. The term “referred for settlement” means when, following receipt and investigation of a ten-day notice or due process complaint, the department notifies the parent that it is willing to engage in settlement negotiations.

Student with a disability. The term “student with a disability” has the same meaning as set forth in subdivision 1 of section 4401 of the education law.

Ten-day notice. The term “ten-day notice” means a written notice in which a parent states an intent to enroll a student with a disability in a private school pursuant to subparagraph (C) of paragraph (10) of subsection (a) of section 1412 of title 20 of the United States code.

Written settlement agreement. The term “written settlement agreement” means an agreement between the department and a parent of a student with a disability in which the department agrees to pay for tuition or services, in an amount agreed to by the parties and approved by the comptroller, to resolve claims raised in a ten-day notice or due process complaint notice.

b. No later than November 1, 2020, and on or before November 1 annually thereafter, the department shall submit to the speaker of the council and post on the department’s website an annual report regarding claims for payment for tuition or services that were made by parents of a student with a disability pursuant to a due process complaint notice filed during the preceding academic year or a ten-day notice filed for the preceding academic year, and that resulted in a written settlement agreement. The data contained in the annual report shall, where applicable, be organized in a manner that includes one row referencing each such unique claim settled by the department, with each row containing, but not limited to, the following information:

1. Whether the student was represented by an attorney, represented by an advocate or other individual other than an attorney, or was not represented;

2. The student’s community school district of residence;

3. The date on which the department received the due process complaint notice or ten-day notice that was the basis for the written settlement agreement;

4. The date the department referred for settlement such notice;

5. The date that the parent and the department agreed to a proposed written settlement agreement that is subject to additional required approvals;

6. The date on which the department has received all approvals and authority necessary to sign a written settlement agreement;

7. The date the department receives from the parent a proposed written settlement agreement signed by the parent;

8. The date the department approved for payment each written settlement agreement; and

9. The date the department issued a first payment pursuant to each written settlement agreement, where applicable.

c. The report required pursuant to subdivision b of section 1 of this local law shall also include the following information:

1. The total number of impartial hearing officers certified by the state education department to cover the city of New York during the preceding academic year;

2. The number of impartial hearing officers who resigned, whose certification was revoked by the state education department or whose certification was suspended by the state education department during the preceding academic year in total and disaggregated by resignations, certification revocations and certification suspensions;

3. The annual compensation for each such officer from highest to lowest, the total number of cases assigned to each such officer during the preceding academic year and the total number of cases from which each such officer recused themselves during the preceding academic year;

4. A list of all documents the department may require parents to submit prior to signing a written settlement agreement, whether pursuant to a ten-day notice or a due process complaint notice. Notwithstanding the foregoing, nothing in this section shall prohibit the department from requiring parents to submit documents that are not on such list. Beginning with the report due on November 1, 2021, and annually thereafter, the department shall also be required to report, to the extent practicable, any additional documents that the department required any parent to submit during the preceding academic year that were not on the list submitted by the department pursuant to this subdivision in the prior annual report; and

5. The following information regarding claims for payment for tuition or services for the preceding academic year that result in a written settlement agreement:

(a) The percentage of instances in which a written settlement agreement was approved for payment by the department (i) within 15 calendar days of the date by which the department received all approvals necessary to enter into a written settlement agreement, (ii) between 16-45 calendar days after such date and (iii) 46 or more calendar days after such date;

(b) The percentage of instances in which a written settlement agreement was approved for payment by the department (i) within 15 calendar days of the date by which the department received the signed written settlement agreement from the parent, (ii) between 16-45 calendar days after such date and (iii) 46 or more calendar days after such date;

(c) The percentage of instances in which such written settlement agreement was approved for payment by the department (i) within 90 calendar days of the date the department referred the notice for settlement, (ii) between 91-180 calendar days after such date, and (iii) 181 or more calendar days after such date; and

(d) The percentage of instances in which the department issued a first payment pursuant to a written settlement agreement (i) within 30 calendar days of the date such written settlement agreement was approved for payment by the department, (ii) between 31-60 calendar days after such date and (iii) 61 or more calendar days after such date.

d. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of student information or other personally identifying information.

§ 2. This local law takes effect immediately, and expires and is deemed repealed five years after it becomes law.

DFC/MMB

LS # 8510

12/11/19; 9:25 p.m.

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Proposed Int. No. 1406-A

By Council Members Dromm, Treyger, Levin, Rosenthal, Brannan, Chin, Rose, Lander, Kallos and Lancman

..Title

A A A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring reports on preschool special education and early intervention services

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 21-955 of the administrative code of the city of New York, as added by local law number 27 for the year 2015, is amended to read as follows:

a. For the purposes of this section, the following terms [shall] have the following meanings:

[1. “Academic period” shall mean] Academic period. The term “academic period” means the period beginning July 1 of the current calendar year until and including June 30 of the following subsequent calendar year.

Committee on preschool special education. The term “committee on preschool special education” has the same meaning as set forth in section 200.1 of title 8 of the New York codes, rules and regulations.

[2. “Committee on special education” shall have] Committee on special education. The term “committee on special education” has the same meaning as set forth in section 200.1 of title 8 of the [official compilation of the] New York codes, rules and regulations [of the state of New York].

[3. “Date of consent” shall mean] Date of consent. The term “date of consent” means the date on which the department received written consent to conduct an initial evaluation from the parent or person in parental relation.

[4. “Date of referral for reevaluation” shall mean] Date of referral for reevaluation. The term “date of referral for reevaluation” means the date on which the department received a referral or referred a student with a disability for a reevaluation.

Home language. The term “home language” means the language most frequently used in the student’s home, as indicated by the response provided by the parent or person in parental relation on the home language questionnaire as that term is defined in section 154-2.2 of title 8 of the New York codes, rules and regulations.

Individualized education program. The term “individualized education program” or “IEP” has the same meaning as set forth in section 200.1 of title 8 of the New York codes, rules and regulations.

[5. “IEP meeting” shall mean] IEP meeting. The term “IEP meeting” means a meeting of the committee on special education or committee on preschool special education for the purpose of determining whether the student is a student with a disability and for the purpose of developing an IEP for any such student with a disability.

[6. “Initial evaluation” shall mean] Initial evaluation. The term “initial evaluation” means an evaluation to determine if a student is a student with a disability, conducted pursuant to sections 4401-a [and], 4402 and 4410 of the education law and section 200.4 of title 8 of the [official compilation of the] New York codes, rules and regulations [of the state of New York].

Integrated special class program. The term “integrated special class program” has the same meaning as set forth in section 200.9 of title 8 of the New York codes, rules and regulations.

Preschool student. The term “preschool student” means a child aged three to five who is not enrolled in kindergarten.

Preschool student with a disability. The term “preschool student with a disability” has the same meaning as set forth in section 200.1 of title 8 of the New York codes, rules and regulations.

[7. “Reevaluation” shall mean] Reevaluation. The term “reevaluation” means an evaluation of a student with a disability conducted pursuant to section 4402 of the education law and section 200.4 of title 8 of the [official compilation of the] New York codes, rules and regulations [of the state of New York], provided that such term shall not include a three-year reevaluation.

Related services. The term “related services” has the same meaning as set forth in section 200.1 of title 8 of the New York codes, rules and regulations.

[8. “School” shall mean a school of the city school district of the city of New York] School. The term “school” means any elementary, middle or high school within the jurisdiction of the New York city department of education and in any educational facility owned or leased by the city of New York, holding some combination thereof, including, but not limited to, district 75 schools.

[9. “Special class” shall have] Special class. The term “special class” has the same meaning as set forth in section 200.1 of title 8 of the [official compilation of the] New York codes, rules and regulations [of the state of New York].

Special education itinerant services. The term “special education itinerant services” has the same meaning as set forth in paragraph (k) of subdivision 1 of section 4410 of the education law.

[10. “Student” shall mean] Student. The term “student” means any pupil under the age of twenty-one as of September first of the academic period being reported, who does not have a high school diploma and who is enrolled in a school as school is defined in this subdivision, not including a pre-kindergarten student or a preschool child as preschool child is defined in section 4410 of the education law.

Student in temporary housing. The term “student in temporary housing” means a student who has been identified by the department as a “homeless child” as such term is defined in section 100.2 of title 8 of the New York codes, rules and regulations.

[11. “Student with a disability” shall have] Student with a disability. The term “student with a disability” has the same meaning as set forth in section 4401 of the education law [, provided that student with a disability shall not include a pre-kindergarten student or a preschool child].

[12. “Three-year reevaluation” shall mean] Three-year reevaluation. The term “three-year reevaluation” means a reevaluation that occurs at least once every three years unless otherwise agreed as set forth in section 200.4 of title 8 of the [official compilation of the] New York codes, rules and regulations [of the state of New York].

§ 2. The opening paragraph of subdivision b of section 21-955 of the administrative code of the city of New York, as added by local law number 27 for the year 2015, is amended to read as follows:

b. The department shall submit to the speaker of the council and post on the department’s website an annual report regarding the evaluation of students, not including preschool students, for special education services and the provision of such services during the preceding academic period, which shall include, but shall not be limited to the following information:

§ 3. Section 21-955 of the administrative code of the city of New York is amended by adding new subdivisions e and f to read as follows:

e. The department shall submit to the speaker of the council and post on the department’s website an annual report regarding the evaluation of preschool students for special education services and the provision of such services during the preceding academic period. To the extent such information is available, such report shall include, but shall not be limited to the following information, each disaggregated by community school district, eligibility for the free and reduced price lunch program, race/ethnicity, gender, recommended language of instruction or services, home language and status as a student in temporary housing:

1. The number of referrals for initial evaluations pursuant to section 200.4 of title 8 of the New York codes, rules and regulations;

2. The number of initial evaluations conducted, including the number of such evaluations that resulted in a determination that the child was a preschool student with a disability;

3. The number of requests for referral for an initial evaluation pursuant to section 200.4 of title 8 of the New York codes, rules and regulations, for which the department has not received consent from the parent or person in parental relation;

4. The number of IEP meetings that were convened less than or equal to 60 calendar days from the date of consent for initial evaluations;

5. The number of IEP meetings that were convened more than 60 calendar days from the date of consent for initial evaluations;

6. The total number of preschool students with a disability who have an IEP as of June 30 of the reported academic period;

7. The number and percentage of preschool students with a disability for whom appropriate special education programs and services were arranged to be provided within 60 school days from the date of consent for initial evaluations pursuant to section 200.4 of title 8 of the New York codes, rules and regulations;

8. The number and percentage of preschool students with a disability who, by the end of the academic period, have an IEP that recommends the following enumerated services:

(a) Related services only;

(b) Monolingual special education itinerant services;

(c) Bilingual special education itinerant services;

(d) Monolingual full-day integrated special class program;

(e) Monolingual half-day integrated special class program;

(f) Bilingual full-day integrated special class program;

(g) Bilingual half-day integrated special class program;

(h) Monolingual full-day special class, disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio;

(i) Monolingual half-day special class, disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio;

(j) Bilingual full-day special class, disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio; and

(k) Bilingual half-day special class, disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio.

8. The number and percentage of preschool students with a disability who were receiving special education services in full compliance with their IEPs by the end of the academic period and in partial compliance with their IEPs by the end of the academic period;

9. The number and percentage of preschool students with a disability who, by the end of the academic period, were receiving in full the services enumerated in subparagraphs (a) through (s) of this paragraph as recommended in their IEPs; the number and percentage of preschool students with a disability who, as of the end of the academic period, were receiving in part such services; and the number and percentage of preschool students with a disability who, as of the end of the academic period, were awaiting the provision of such services:

(a) Monolingual speech therapy;

(b) Bilingual speech therapy;

(c) Monolingual counseling;

(d) Bilingual counseling;

(e) Occupational therapy;

(f) Physical therapy;

(g) Hearing education services;

(h) Vision education services;

(i) Special transportation services;

(j) Monolingual special education itinerant services;

(k) Bilingual special education itinerant services;

(l) Monolingual full-day integrated special class program;

(m) Monolingual half-day integrated special class program;

(n) Bilingual full-day integrated special class program;

(o) Bilingual half-day integrated special class program;

(p) Monolingual full-day special class, disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio;

(q) Monolingual half-day special class, disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio;

(r) Bilingual full-day special class, disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio; and

(s) Bilingual half-day special class, disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio;

10. The number and percentage of preschool students with a disability enrolled in 3-K or Pre-K for All programs at the end of the academic period, disaggregated by grade level where available;

11. The number and percentage of preschool students with a disability enrolled in 3-K or Pre-K for All programs who receive full services at the 3-K or Pre-K for All program where they are enrolled;

12. The number of preschool integrated special class programs in 3-K and Pre-K for All;

13. The number of non-public preschool special education programs approved by the state education department;

14. The number of preschool special classes administered by the department in 3-K and Pre-K for All, including programs in district 75 schools, in total and disaggregated by the following student-to-teacher-to-aid ratios:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio; and

15. The number of non-public preschool special education programs approved by the state education department in total and disaggregated by the following student-to-teacher-to-aid ratio:

(1) 6:1:2;

(2) 8:1:2;

(3) 12:1:2; or

(4) Other ratio.

f. The annual report required by subdivision e of this section shall be submitted and posted no later than November 1.

§ 4. The administrative code of the city of New York is amended by adding a new section 17-199.12 to read as follows:

§ 17-199.12 Report of early intervention services. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

Early intervention services. The term “early intervention services” has the same meaning as set forth in section 69-4.1 of title 10 of the New York codes, rules and regulations.

Evaluation. The term “evaluation” has the same meaning as set forth in section 69-4.1 of title 10 of the New York codes, rules and regulations.

Individualized family service plan. The term “individualized family service plan” or “IFSP” has the same meaning as set forth in section 69-4.1 of title 10 of the New York codes, rules and regulations.

IFSP meeting. The term “IFSP meeting” means a meeting for the purpose of developing a written plan for providing early intervention services to a child determined to be eligible for the early intervention program pursuant to section 69-4.11 of title 10 of the New York codes, rules and regulations.

Initial evaluation. The term “initial evaluation” means an evaluation to determine a child’s initial eligibility for the early intervention program.

Referral. The term “referral” means referral of child less than three years of age who is suspected of having a disability, which includes a developmental delay or a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, pursuant to section 69-4.3 of title 10 of the New York codes, rules and regulations.

Reporting period. The term “reporting period” means the period beginning July 1 of the current calendar year until and including June 30 of the following subsequent calendar year.

Student in temporary housing. The term “student in temporary housing” has the same meaning as that of the term “homeless child” as such term is defined in section 100.2 of title 8 of the New York codes, rules and regulations.

b. Report. No later than November 1 of each year, the department shall submit to the speaker of the council and post on the department’s website an annual report regarding children receiving early intervention services from the department. To the extent such information is available to the department, such report shall include, but shall not be limited to the following information, disaggregated by zip code, race/ethnicity, child’s dominant language, status as a student in temporary housing and gender:

1. The number of referrals for initial evaluations in total and disaggregated by referral source, including, but not limited to, referrals from parents, health professionals, child care providers, homeless shelters or nonprofits;

2. The number of initial evaluations conducted, including the number of such evaluations that resulted in a determination that the child was eligible for the early intervention program;

3. The number of IFSP meetings convened less than or equal to 45 calendar days from the date of referral;

4. The number of IFSP meetings that were convened more than 45 calendar days from the date of referral;

5. The total number of children who have an active IFSP (i) during the reporting period and (ii) as of June 30 of the reporting period;

6. The average number of calendar days between the date of the initial IFSP meeting and the date children begin receiving early intervention services;

7. The number and percentage of children with IFSPs who, (i) during the reporting period and (ii) as of June 30 of the reporting period, have IFSPs that recommend the following enumerated services as such services are defined in section 69-4.1 of title 10 of the New York codes, rules and regulations:

(a) Assistive technology services;

(b) Applied behavior analysis;

(c) Audiology;

(d) Family training, counseling, home visits or parent support groups;

(e) Medical services;

(f) Nursing services;

(g) Nutrition services;

(h) Occupational therapy;

(i) Physical therapy;

(j) Psychological services;

(k) Service coordination;

(l) Sign language or cued language services;

(m) Social work services;

(n) Special instruction;

(o) Speech-language pathology;

(p) Vision services;

(q) Health services; and

(r) Transportation services; and

8. The number and percentage of children with IFSPs who were, during the reporting period, receiving in full the early intervention services enumerated in subparagraphs (a) through (r) of paragraph 7 of this section as recommended in their IFSPs within 30 days of the meeting pursuant to section 69-4.11 of title 10 of the New York codes, rules and regulations; the number and percentage of children with IFSPs who were receiving in part such services within 30 days of such meeting and the number and percentage of children with IFSPs who were awaiting the provision of such services after 30 days of such meeting.

c. No information that is required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of information. If a category contains between one and five children, or allows another category to be narrowed to between one and five children, the number shall be replaced with a symbol. A category that contains zero children shall be reported as zero, unless such reporting would violate any applicable provision of federal, state or local law relating to personally identifiable information.

§ 5. This local law takes effect immediately.

DFC/MMB

LS # 3252, 7502, 7503

12/11/19; 9:34 p.m.

Res. No. 749-A

Resolution calling upon the New York City Department of Education to establish a chief compliance officer position to ensure compliance with Individualized Education Programs and other requirements for students in special education

By Council Members Treyger, Brannan, Rosenthal, Levin and Rose

Whereas, The Federal Individuals with Disabilities Education Act (IDEA) guarantees a free appropriate public education to eligible children with disabilities in the U.S. and ensures special education and related services to those children; and

Whereas, The IDEA also governs how states and school districts provide early intervention, special education, and related services to eligible children and youth with disabilities; and

Whereas, As mandated by the IDEA, the New York City Department of Education (DOE) provides special education services to students with disabilities, defined as any child with an Individualized Education Program (IEP); and

Whereas, According to DOE, in the 2018-19 school year, there were more than 227,000 students with disabilities, approximately 20% of the total 1.1 million student enrollment, in City public schools; and

Whereas, However, not all students with disabilities in City public schools receive all of the services to which they are entitled under IDEA; and

Whereas, In response to concerns expressed by parents and educators that many students were not receiving all of their special education services, the Council enacted Local Law 27 of 2015, later amended by Local Law 183 of 2017 and Local Law 89 of 2018, requiring the DOE to produce an annual report comprised of data on special education services provided to students; and

Whereas, Reports received pursuant to these local laws confirm that many students with disabilities have not received all of the services to which they are entitled; and

Whereas, According to DOE’s latest report, for the 2018-19 school year, only 84.3% of students with disabilities were receiving full program services; and

Whereas, Further, the four-year graduation rate of students with disabilities was just 50.4% in school year 2017-18, the latest year for which data is available; and

Whereas, While the percentages of students with disabilities receiving full program services as well as the percentages graduating in four years have increased over the past several years, the numbers are still unacceptably low; and

Whereas, Data in the DOE special education reports clearly show that students with disabilities in City public schools are not receiving all of the services to which they are entitled under IDEA; and

Whereas, Creating a special education chief compliance officer position could provide the needed focus and accountability to ensure that students with disabilities receive all of the services required in their IEPs; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York City Department of Education to establish a chief compliance officer position to ensure compliance with IEPs and other requirements for students in special education.

LS# 9732

JA

12/10/19

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3. DOE InfoHub webpage, Special Education Reports, “Annual Special Education Data Report — School Year 2017-18: Report 12 - Number & Percentage of Students Receiving Recommended Special Education Services” accessed 2/15/19 at <https://infohub.nyced.org/reports-and-policies/government/intergovernmental-affairs/special-education-reports>. [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. DOE, “NYC Results on the New York State 2013-2018 ELA Test (Grades 3–8): Citywide Summary, Results by Disability Status,” accessed 2/7/19 at <https://infohub.nyced.org/reports-and-policies/citywide-information-and-data/test-results>. [↑](#footnote-ref-5)
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11. *Id*. [↑](#footnote-ref-11)
12. *Id*. [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. U.S. Department of Education website, “About IDEA: History of the IDEA,” accessed 2/7/19 at <https://sites.ed.gov/idea/about-idea/#IDEA-History>. [↑](#footnote-ref-14)
15. IDEA §612(a)(5). [↑](#footnote-ref-15)
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18. *Id.* [↑](#footnote-ref-18)
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20. Advocates for Children of New York, *AFC’s Guide to Special Education*, June 2016, at 6, accessed at <https://www.advocatesforchildren.org/sites/default/files/library/special_ed_guide.pdf?pt=1>. [↑](#footnote-ref-20)
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23. *Id.,* at 9. [↑](#footnote-ref-23)
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25. *Id.* [↑](#footnote-ref-25)
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27. *Id.,* at 13. [↑](#footnote-ref-27)
28. *Id.,* at 12. [↑](#footnote-ref-28)
29. *Id.,* at 14. [↑](#footnote-ref-29)
30. *Id.,* at 16-17. [↑](#footnote-ref-30)
31. Advocates for Children of New York, *AFC’s Guide to Preschool Special Education*, September 2016, at 5, accessed at <https://www.advocatesforchildren.org/sites/default/files/library/preschool_special_ed_guide.pdf?pt=1>. [↑](#footnote-ref-31)
32. *Id.,* at 6. [↑](#footnote-ref-32)
33. Advocates for Children of New York, *AFC’s Guide to Special Education*, June 2016, at 23-25, accessed at <https://www.advocatesforchildren.org/sites/default/files/library/special_ed_guide.pdf?pt=1>. [↑](#footnote-ref-33)
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40. *Id.* [↑](#footnote-ref-40)
41. *Id.* [↑](#footnote-ref-41)
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43. WNYC, “Guide: Your Special Education Child,” accessed on 2/15/19, at <https://www.wnyc.org/schoolbook/guides/guide-your-special-education-child/>. [↑](#footnote-ref-43)
44. Fiscal 2019 Fair Student Funding Guide, available at: https://www.nycenet.edu/offices/finance\_schools/budget/DSBPO/allocationmemo/fy18\_19/fy19\_docs/FY2019\_FSF\_Guide.pdf [↑](#footnote-ref-44)
45. Id. [↑](#footnote-ref-45)
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