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

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**October 23, 2020**

**OVERSIGHT: Reopening NYC Public Schools: Impact on Students with Disabilities**

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## I. Introduction

On October 23, 2020, the Committee on Education, chaired by Council Member Mark Treyger, and the Committee on Mental Health, Disabilities and Additions, chaired by Council Member Diana Ayala, will conduct a joint oversight hearing on “Reopening NYC Public Schools:

Impact on Students with Disabilities.” Witnesses invited to testify include representatives of the Department of Education (DOE), students, parents, educators, mental health experts, unions, advocates, and other interested stakeholders.

## II. Background

### *COVID-19: Background*

A novel coronavirus, called SARS-CoV-2, first emerged in late 2019 and spread rapidly around the world.<sup>1</sup> As of October 22, 2020, there have been 41,830,585 confirmed cases of COVID-19, the disease caused by SARS-CoV-2, and more than 1,140,033 deaths worldwide, including 8,614,116 cases and 227,745 deaths in United States.<sup>2</sup> New York State (NYS) and New York City (NYC) have been hit particularly hard by this pandemic. As of October 22, there have been more than 490,000 confirmed cases<sup>3</sup> in the State,<sup>4</sup> including 250,489 cases, 19,299 confirmed deaths, and 4,656 probable deaths in New York City.<sup>5</sup>

In response to the rapid increase of COVID-19 cases in NYC, on March 16, 2020, the City closed its school buildings and transitioned 1.1 million students to remote learning.<sup>6</sup> All students were negatively impacted by the DOE’s transition to remote learning; however, students with

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<sup>1</sup> Axios, “The COVID-19 Tracker.” Accessed at: <https://www.statnews.com/feature/coronavirus/covid-19-tracker/>.

<sup>2</sup> Worldometer, “COVID-19 Coronavirus Pandemic.” Accessed at: <https://www.worldometers.info/coronavirus/>.

<sup>3</sup> NYS DOH COVID-19 Tracker, “Persons Tested Positive by County.” Accessed at: <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n>.

<sup>4</sup> New York State Department of Health COVID-19 Tracker, “Fatalities.” Accessed at: <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n>.

<sup>5</sup> New York City Department of Health and Mental Hygiene, “COVID-19: Data.” Accessed at: <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

<sup>6</sup> Mayor Bill de Blasio Press Release. “New York City to Close All School Buildings and Transition to Remote Learning,” March 15, 2020. Accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/151-20/new-york-city-close-all-school-buildings-transition-remote-learning>

disabilities – who already endured hardships within the education system prior to the outbreak - were especially vulnerable to this transition.

### *Longstanding Issues within NYC's Special Education Services*

Students with disabilities comprise a large portion of the New York City public school population. During the 2019-20 school year, there were 230,983 students with disabilities, including both school-age and pre-school students, representing 20.4 percent of the city's public school enrollment.<sup>7</sup>

Before the Spring 2020 transition to remote learning, many students with disabilities were already not receiving all of the services to which they were entitled. According to the DOE's latest data report, in the 2018-19 school year, 84.3 percent of school-aged students with individualized education programs (IEPs) in DOE schools fully received their recommended services, while 13.8 percent received partial services and 1.9 percent, or 3,496 students, received none of their recommended services.<sup>8</sup> Notably, this data does not include pre-school students with disabilities or those in charter schools, transfer, and alternative high schools.<sup>9</sup>

Although there has been some improvement in the performance of students with disabilities in recent years, there is still a wide achievement gap when compared with general education students. On the 2019 State English Language Arts (ELA) exam, only 16.1 percent of city students with disabilities in grades 3 through 8 scored at or above proficient, compared to 47.4 percent for

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<sup>7</sup> New York City Department of Education (DOE) website, "Demographic Snapshot – Citywide, Borough, District, and School: SY 2013-14 to 2019-20," accessed 10/20/20 at <https://infohub.nyced.org/reports-and-policies/citywide-information-and-data/information-and-data-overview>.

<sup>8</sup> DOE InfoHub webpage, Special Education Reports, "Annual Special Education Data Report — School Year 2019-20: Report 12 - Number & Percentage of Students Receiving Recommended Special Education Services" accessed 10/20/20 at <https://infohub.nyced.org/reports-and-policies/government/intergovernmental-affairs/special-education-reports>.

<sup>9</sup> *Id.*

students without disabilities.<sup>10</sup> Similarly, on the 2019 state math test, only 17.5 percent of students with disabilities in grades 3 through 8 scored at or above proficient, compared to 45.6 percent for students without disabilities.<sup>11</sup>

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 2019, only 52.6 percent of students with disabilities graduated within four years of entry into high school, compared to 83 percent of general education students.<sup>12</sup>

### *Covid-19 Impact on Special Education*

The transition from in-school learning to remote learning amidst the COVID-19 pandemic raised myriad of issues for students with disabilities, families, teachers and related services providers.<sup>13</sup> Students with disabilities, especially those with cognitive, physical, and/or emotional challenges often receive special services in school, including direct educational services from trained staff. At the onset of DOE’s transition to remote learning more than 7,000 related service providers transitioned to teletherapy to support students with special needs.<sup>14</sup> Teletherapy left families, who have no training, trying to figure out how to support their child’s education needs.<sup>15</sup>

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<sup>10</sup> DOE, “NYC Results on the New York State 2013-2019 ELA Test (Grades 3–8): Citywide Summary, Results by Disability Status,” accessed 10/20/20 at <https://infohub.nyced.org/reports-and-policies/citywide-information-and-data/test-results>.

<sup>11</sup> DOE, “NYC Results on the New York State 2013-2020 Math Test (Grades 3–8): Citywide Summary, Results by Disability Status,” accessed 10/20/20 at <https://infohub.nyced.org/reports-and-policies/citywide-information-and-data/test-results>.

<sup>12</sup> DOE, “Graduation Rate Report: City Graduation Rate Students with Disabilities,” accessed 10/20/20 at <https://infohub.nyced.org/reports-and-policies/citywide-information-and-data/graduation-results>.

<sup>13</sup> American Bar Association. “Learning for Students with Disabilities in the Time of COVID-19.” April 22, 2020. Accessed at [https://www.americanbar.org/groups/crsj/events\\_cle/program-archive/covid-students-with-disabilities/](https://www.americanbar.org/groups/crsj/events_cle/program-archive/covid-students-with-disabilities/).

<sup>14</sup> DOE Weekly Elected Official Briefing- June 1, 2020. Topic: *Supporting Students with Disabilities and Multilingual Learners and their Families*

<sup>15</sup> Nicole Chung. “My Child Has a Disability. What Will Her Education Be Like This Year?” Sept. 15, 2020. (NY Times). Accessed at: <https://www.nytimes.com/interactive/2020/09/10/magazine/special-education-covid.html>.

Additionally, this transition left students with disabilities, many of whom already struggle to focus in a classroom, with a steeper challenge to focus on remote instruction.<sup>16</sup>

On September 16, 2020, the DOE began the school year remotely for all students<sup>17</sup> and on September 17<sup>th</sup>, the administration announced it would reconvene in-person learning according to the following schedule:

- Monday, September 21st: Blended learning students in grades 3-K and Pre-K, as well as all grades in District 75;
- Tuesday, September 29th: Blended learning students enrolled in K-5 and K-8 schools;
- Thursday, October 1st: Blended learning students enrolled in middle schools, high schools, secondary schools (schools spanning grades 6-12), and transfer schools/adult education.<sup>18</sup>

Parents and advocates continue to have growing concerns about DOE's ability to support students with disabilities. These concerns include the system's ability to ensure that students receive their mandated services, that their mental health is supported, and that DOE is working to close the academic achievement gap. Furthermore, advocates contend that the academic achievement gaps have been exacerbated during remote learning, as parents of students with disabilities have indicated that their children have regressed due to the lack of in-person assistance during the pandemic.<sup>19</sup>

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<sup>16</sup> <https://www.nytimes.com/interactive/2020/09/10/magazine/special-education-covid.html>

<sup>17</sup> Mayor Bill de Blasio Press Release, "Mayor de Blasio, Chancellor Carranza, and Labor Reach Agreement to Reopen New York City Schools," September 1, 2020. Accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/627-20/mayor-de-blasio-chancellor-carranza-labor-reach-agreement-reopen-new-york-city-schools#/0>.

<sup>18</sup> Office of the Mayor press release, "Mayor de Blasio, Chancellor Carranza, UFT and CSA Announce School Reopening Schedule and Staffing Plan," September 17, 2020. Accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/661-20/mayor-de-blasio-chancellor-carranza-uft-csa-school-reopening-schedule-staffing>.

<sup>19</sup> Jillian Jorgensen, "Some Parents Want Special Needs Students to Return to Schools," June 13, 2020, *NY 1*, accessed at <https://www.ny1.com/nyc/all-boroughs/education/2020/06/13/some-parents-want-special-needs-students-to-return-to-school>.

### III. Federal and State Guidance on Reopening Schools

#### *Individuals with Disabilities Education Act (IDEA)*

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.<sup>20</sup> LRE means that, to the maximum extent appropriate, children with disabilities must be educated with general education children.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup>

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.<sup>24</sup> 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

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<sup>20</sup> U.S. Department of Education website, “About IDEA: History of the IDEA.” Accessed at: <https://sites.ed.gov/idea/about-idea/#IDEA-History>.

<sup>21</sup> IDEA §612(a)(5).

<sup>22</sup> U.S. Department of Education website, “About IDEA: IDEA Purpose.” Accessed at: <https://sites.ed.gov/idea/about-idea/#IDEA-Purpose>.

<sup>23</sup> U.S. Department of Education website, “About IDEA.” Accessed at: <https://sites.ed.gov/idea/about-idea/>.

<sup>24</sup> *Id.*

and information centers.<sup>25</sup> COVID-19 has not, in the eyes of the United States Department of Education, changed any of the core tenets of IDEA.

In March 2020, the United States Department of Education released a Q&A document for districts on providing services to students with disabilities during the COVID-19 pandemic.<sup>26</sup> The Department made clear that if school districts provide “educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE.”<sup>27</sup>

### *Special Education Waivers*

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was a \$2.2 trillion economic stimulus bill passed by Congress and signed into law by President Donald Trump on March 27, 2020.<sup>28</sup> The bill was passed in response to the COVID-19 pandemic. Part of this stimulus package included a number of provisions on education that cover primary, secondary and post-secondary education.<sup>29</sup> Specifically, the CARES Act charged the Secretary of Education with providing recommendations on changes to federal special education mandates, no later than 30 days after enactment of the CARES Act.<sup>30</sup> Following enactment of the Act, an intense lobbying effort ensued from parents, disability advocates, school administrators and others.<sup>31</sup> School

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<sup>25</sup> *Id.*

<sup>26</sup> U.S. Education Department, “Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak.” March 2020. Accessed at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> John Parkinson, “Senate scrambles to strike deal on \$1T pandemic relief for businesses, families.” *ABC News*. March 20, 2020. Accessed at: <https://abcnews.go.com/Politics/senate-scrambles-strike-deal-1t-pandemic-relief-business/story?id=69713460>.

<sup>29</sup> Public Law 116-136, Title III, Subtitle B, Section 3511. Accessed at: <https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> Carolyn Jones, “Federal special education law must stay intact during school closures, DeVos says.” *EdSource*. April 27, 2020. Accessed at: <https://edsources.org/2020/federal-special-education-law-must-stay-intact-during-school-closures-devos-says/630298>.

districts wanted greater flexibility with restrictions being placed on schools districts, including school closures, because of COVID-19, whereas disability and education advocates did not want to see any waivers granted, fearing it would lead to further weakening of federal requirements under IDEA.<sup>32</sup>

On April 27, 2020, following 30 days of comments from the public, Secretary of Education Betsy DeVos announced that “school districts must comply with federal special education laws during the school closures.”<sup>33</sup> In a statement announcing her decision to not recommend Congress pass any additional waiver authority concerning the core tenets of IDEA, the FAPE and LRE requirements, Secretary DeVos held “that individualized education must take place for all students, including students with disabilities [and] there is no reason that a student's access to FAPE cannot continue online, through distance education or other alternative strategies.”<sup>34</sup> Secretary De Vos did recommend minor changes to Congress. Those include:

- A waiver for the deadlines for children to transition from early childhood programs to regular schools to ensure that children with disabilities can continue receiving services after they turn 3 if the pandemic delays an evaluation that’s supposed to happen at that juncture;
- That Congress defer the work or repayment requirements or allow credit to be given for the service obligation for recipients of IDEA personnel preparation grants (personnel development scholarships) if employment was interrupted by COVID-19; and
- Recommendations relating to providing flexibility for vocational rehabilitation funding.<sup>35</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> U.S. Education Department, “Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA.” April 27, 2020. Accessed at: <https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-seek-congressional-waivers-fape-lre-requirements-idea>.

<sup>35</sup> U.S. Education Department, “Recommended Waiver Authority Under Section 3511(d)(4) of Division A of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). April 27, 2020. Accessed at: <https://www2.ed.gov/documents/coronavirus/cares-waiver-report.pdf>.

## *New York State Guidance on School Reopening*

Recognizing how quickly the coronavirus spreads,<sup>36</sup> during the onset of the first case reaching NYS, Governor Andrew Cuomo took measures to curb the spread including requiring non-essential businesses, organizations, and institutions to close their buildings, with many choosing to operate remotely.<sup>37</sup> While the Governor signed an executive order on March 16, 2020 to close school buildings for two weeks beginning on March 18,<sup>38</sup> NYC's public school system closed its school buildings to students on March 16, 2020, shifting the City's 1.1 million students to fully remote learning.<sup>39</sup> On April 7, 2020, Governor Cuomo signed Executive Order No. 202.14, which extended and directed schools to stay closed through April 29.<sup>40</sup> The Governor's final action with relation to keeping school buildings closed was on May 17, 2020, when he signed Executive Order No. 202.28, which mandated that all schools in the state would remain closed for the remainder of the 2019-20 school year.<sup>41</sup> Additionally, the Governor set forth a four phase reopening plan for the state, with phase four permitting the reopening of higher education and pre-K to grade 12 schools.<sup>42</sup>

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<sup>36</sup> The coronavirus primarily spreads from person to person through respiratory droplets emitted when an infected individual sneezes or coughs.

<sup>37</sup> Governor Andrew M. Cuomo Press Release, "Governor Cuomo Signs the 'New York State on PAUSE' Executive Order," March 20, 2020. Accessed at: <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

<sup>38</sup> Governor Andrew M. Cuomo Press Release, "Governor Cuomo Signs Executive Order Closing Schools Statewide for Two Weeks," March 16, 2020. Accessed at: <https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-closing-schools-statewide-two-weeks>.

<sup>39</sup> Mayor Bill de Blasio Press Release, "New York City to Close All School Buildings and Transition to Remote Learning," March 15, 2020. Accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/151-20/new-york-city-close-all-school-buildings-transition-remote-learning>

<sup>40</sup> Executive Order No. 202.4 (signed March 16, 2020) ordered all schools in New York State closed until April 1. Executive Order No. 202.11 (signed March 26, 2020) extended the school closure until April 15. Executive Order No. 202.14 (signed April 7, 2020) extended the school closure until April 29. Executive Order No. 202.18 (signed April 16, 2020) extended the school closure until May 15. See <https://www.governor.ny.gov/executive-orders>.

<sup>41</sup> *Id.*

<sup>42</sup> The State of New York, "Phase Four Industries." Accessed at: <https://forward.ny.gov/phase-four-industries>.

One of the most pertinent questions facing every school district in the country was whether or when school buildings would reopen for in-person instruction in the 2020-21 school year. Reopening options have ranged from fully reopening school buildings to a hybrid model which mixes in-person learning and remote learning, and finally, full remote instruction.<sup>43</sup> There has been contentious debate in the city from educators, parents, students and advocates about how and whether NYC public school buildings should have reopened.<sup>44</sup>

### *State Education Department and New York State Board of Regents*

The New York State Board of Regents conducted four virtual regional reopening task force meetings between June 15 and June 24.<sup>45</sup> From these meetings, the Regents, in collaboration with the New York State Education Department (NYSED), created a framework to provide schools “with the flexibility they will need to develop and implement creative solutions to their unique, local circumstances.”<sup>46</sup> This framework, which was released on July 13, 2020, considered in-person instruction, remote instruction and a combination of the two.<sup>47</sup> The framework was incorporated into guidance that include actions that schools are required to take and best practice recommendations.<sup>48</sup> Topics covered include but are not limited to:

- Health and safety;
- Facilities;
- Nutrition;
- Social-emotional well-being;
- School schedules;
- Budget and fiscal;

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<sup>43</sup> Eliza Shapiro, “N.Y.C. Schools, Nation’s Largest District, Will Not Fully Reopen in Fall.” *The New York Times*. July 8, 2020. Accessed at: <https://www.nytimes.com/2020/07/08/nyregion/nyc-schools-reopening-plan.html>.

<sup>44</sup> News 4 New York, “NYC School Reopening Debate Rages On.” August 21, 2020. Accessed at: <https://www.nbcnewyork.com/on-air/as-seen-on/nyc-school-reopening-debate-rages-on/2579070/>.

<sup>45</sup> New York Education Department, “School Reopening Plans.” Accessed at: <http://www.nysed.gov/reopening-schools/school-reopening-plans>.

<sup>46</sup> New York State Education Department, “Recovering, Rebuilding, and Renewing: The Spirit of New York’s Schools Reopening Guidance.” Accessed at: <http://www.nysed.gov/common/nysed/files/programs/reopening-schools/nys-p12-school-reopening-guidance.pdf>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

- Attendance and chronic absenteeism; and
- Special Education.<sup>49</sup>

Schools had to meet the requirements as outlined by the Regents and NYSED, and also ensure that plans met the requirements as outlined by the State’s health officials.<sup>50</sup>

Under the special education heading in the guidance document, NYSED reaffirmed the legal mandate that each school and school district has:

“to provide a Free Appropriate Public Education consistent with the need to protect the health and safety of students with disabilities and those providing special education and services; meaningful parental engagement regarding the provision of services to their child; collaboration between the Committee on Preschool Special Education/Committee on Special Education (CPSE/CSE) and program providers representing the variety of settings where students are served; access to the necessary instructional and technological supports to meet the unique needs of students; and documentation of programs, services and communications with parents.”<sup>51</sup>

In fact, NYSED recommended that in-person learning services be a priority for students with disabilities.<sup>52</sup> It is well recognized by education advocates that students with disabilities “depend on schools for a range of specialized services and therapies—some of which can be quite challenging, if not impossible, to deliver remotely—in addition to academic instruction.”<sup>53</sup> Indicators for this past spring support that assertion; when the DOE went to full remote learning for all NYC public school students, students with disabilities academically fell behind their peers because they did not have consistent services and a structured school day.<sup>54</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> New York State Education Department, “Recovering, Rebuilding, and Renewing: The Spirit of New York’s Schools Reopening Guidance.” Accessed at: <http://www.nysed.gov/common/nysed/files/programs/reopening-schools/nys-p12-school-reopening-guidance.pdf>.

<sup>52</sup> *Id.*

<sup>53</sup> Advocates for Children, “Recommendation for Improving the Education of New York City Students with Disabilities During the Pandemic. August 2020. Accessed at: [https://www.advocatesforchildren.org/sites/default/files/on\\_page/special\\_ed\\_reopening\\_recommendations\\_8.2020.pdf?pt=1](https://www.advocatesforchildren.org/sites/default/files/on_page/special_ed_reopening_recommendations_8.2020.pdf?pt=1).

<sup>54</sup> *Id.*

NYSED's guidance cautioned that not only are students with special needs at risk of not maintaining social distancing measures or wearing masks, which would require planning and coordination, but equally important that schools and districts would need to recognize that families with students with disabilities are "already under significant stress and COVID-19 has made their situations more critical."<sup>55</sup>

The State set forth several mandatory requirements for schools and school districts' reopening plans:

- The school reopening plan, whether services are provided in-person, remote, and/or through a hybrid model, must address the provision of FAPE consistent with the need to protect the health and safety of students with disabilities and those providing special education and services;
- The school reopening plan must address meaningful parent engagement in the parent's preferred language or mode of communication regarding the provision of services to his/her child to meet the requirements of the IDEA;
- The school reopening plan must address collaboration between the committees on preschool special education (CPSE) and committees on special education (CSE) and program providers representing the variety of settings where students are served to ensure there is an understanding of the provision of services consistent with the recommendations on individualized education programs (IEPs), plans for monitoring and communicating student progress, and commitment to sharing resources;
- The school reopening plan must ensure access to the necessary accommodations, modifications, supplementary aids and services, and technology (including assistive technology) to meet the unique disability related needs of student; and
- The school reopening plan must address how it will document the programs and services offered and provided to students with disabilities as well as communications with parents, in their preferred language or mode of communication.<sup>56</sup>

The guidance also recommended, similar to the U.S. Department of Education's recommendations, that school and school districts consider in-person services a priority for high-needs students.<sup>57</sup> Consistent with messaging from the federal government, NYSED indicated that

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<sup>55</sup> New York State Education Department, "Recovering, Rebuilding, and Renewing: The Spirit of New York's Schools Reopening Guidance." Accessed at: <http://www.nysed.gov/common/nysed/files/programs/reopening-schools/nys-p12-school-reopening-guidance.pdf>.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

the COVID-19 pandemic is not an opportunity for schools and districts to shirk their responsibilities with respect to students with disabilities simply because many districts are engaged in some sort of remote learning in combination with in-person learning.<sup>58</sup> Messaging from government and education advocates was that COVID-19 requires schools and districts to think critically and innovatively in ensuring that students with disabilities are receiving the same educational opportunities as their general classroom peers in addition to the services as outlined in their IEPs to the greatest extent practical.

## IV. New York City Department of Education’s Reopening Plan as it Relates to Students with Disabilities

### *General Reopening Plan*

On Wednesday, July 8, 2020, Mayor Bill de Blasio and Chancellor Richard Carranza unveiled their school reopening plan, “Blended Learning,” for NYC public schools.<sup>59</sup> The plan called for blended learning, a combination of onsite instruction and remote learning for students.<sup>60</sup> The plan also detailed the use of personal protective equipment (PPE) and social distancing requirements for schools.<sup>61</sup> According to the plan, all schools would be provided with PPE, including face masks, hand sanitizer, and disinfectant, at no cost to the individual school; every school would be deep cleaned each night with electrostatic sprayers; HVAC inspection and improvement would occur prior to school reopening; and isolation rooms would be created for students who become sick.<sup>62</sup> In releasing these plans, the Mayor also announced that, if the COVID-19 positivity rate in the city reaches 3 percent or more, school buildings will close again,

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<sup>58</sup> *Id.*

<sup>59</sup> ABC 7 Eyewitness News, “Reopen News: Mayor, chancellor outline NYC Schools reopening plan for fall,” July 8, 2020. Accessed at: <https://abc7ny.com/new-york-city-schools-reopen-school-nyc-coronavirus/6306451/>.

<sup>60</sup> New York City Department of Education Elected Official Briefing – Schools Reopening Plan, July 8, 2020.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

and 100% of learning will be remote for every student.<sup>63</sup> In July, DOE launched a parent survey to understand whether families preferred in-person or remote learning. As of October 9, approximately 525,520—or 52 percent—chose full remote learning.<sup>64</sup> When surveyed earlier in the summer on families’ learning preference, DOE received approximately 400,000 responses—75% of which indicated a desire to return to in-person learning.<sup>65</sup> Two weeks later, on July 16, the Mayor announced that the City would be providing free childcare for 100,000 children in the fall to “provide relief for families who cannot stay home or find alternate care for their children on days they are not in school buildings.”<sup>66</sup> The Mayor and Chancellor set a school reopening date of September 10, 2020.<sup>67</sup>

On Tuesday, September 1, 2020, Mayor de Blasio, Chancellor Carranza and labor leaders including United Federation of Teachers (UFT) president, Michael Mulgrew, Council of School Supervisors & Administrators (CSA) President Mark Cannizzaro, and DC 37 Executive Director Henry A. Garrido, announced a delay to the reopening of NYC public schools.<sup>68</sup> According to the deal reached, the start of in-person learning for the 2020-21 school year would be moved from Thursday, September 10 to Monday, September 21, and on Wednesday, September 16 all students would begin remote orientation for the new school year.<sup>69</sup> Teachers were to report to buildings on

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<sup>63</sup> New York City Department of Education, “Update for Families on Health and Safety Protocols,” August 3, 2020. Accessed at: <https://www.schools.nyc.gov/about-us/news/chancellor-s-message-for-families>.

<sup>64</sup> New York City Department of Education, “Update on Family Learning Preference Survey,” October 14, 2020. Information on file with committee staff. *Note: In the remote learning survey, DOE made the no response - default choice blended learning. Therefore there is an unknown bias towards blended learning (source: City Council Data Analytics Team).*

<sup>65</sup> *Id.*

<sup>66</sup> Mayor Bill de Blasio Press Release, “Mayor de Blasio Announces Free Childcare for 100,000 Students in the Fall,” July 16, 2020. Accessed at: <https://www1.nyc.gov/office-of-the-mayor/news.page>.

<sup>67</sup> PIX 11, “NYC schools develop plan to reopen,” June 11, 2020. Accessed at: <https://www.pix11.com/news/local-news/nyc-schools-develop-plan-to-reopen>.

<sup>68</sup> Mayor Bill de Blasio Press Release, “Mayor de Blasio, Chancellor Carranza, and Labor Reach Agreement to Reopen New York City Schools,” September 1, 2020. Accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/627-20/mayor-de-blasio-chancellor-carranza-labor-reach-agreement-reopen-new-york-city-schools#0>.

<sup>69</sup> *Id.*

September 8 as originally scheduled and would have six total citywide professional development days to coordinate, collaborate, and prepare for blended and remote learning.<sup>70</sup> Finally, with respect to testing, there would be a medical monitoring program with mandatory monthly testing of a random 10-20% sample of students participating in blended learning as well as on-site staff.<sup>71</sup> Further, the announcement stated that, in addition to the City's free medical testing program for all NYC residents, students, teachers, and DOE school-based staff would have prioritized access to testing at 34 sites across the city, with results available within 24-48 hours.<sup>72</sup>

Yet another change to the school reopening schedule was announced on September 17, when a teacher shortage led the City to phase-in reopening over a two-week period.<sup>73</sup> Under the revised plan, students in full remote programs would start full-day instruction on Monday, September 21, as planned, while students in blended learning programs would return to school according to the following schedule:

- Monday, September 21st: Blended learning students in grades 3-K and Pre-K, as well as all grades in District 75;
- Tuesday, September 29th: Blended learning students enrolled in K-5 and K-8 schools;
- Thursday, October 1st: Blended learning students enrolled in middle schools, high schools, secondary schools (schools spanning grades 6-12), and transfer schools/adult education.<sup>74</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Christina Veiga and Alex Zimmerman, "How a staffing crunch months in the making threw NYC's school reopening plans into chaos," *Chalkbeat*, September 18, 2020, accessed at <https://ny.chalkbeat.org/2020/9/18/21445996/staff-shortage-delay-school-reopening>.

<sup>74</sup> Office of the Mayor press release, "Mayor de Blasio, Chancellor Carranza, UFT and CSA Announce School Reopening Schedule and Staffing Plan," September 17, 2020. Accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/661-20/mayor-de-blasio-chancellor-carranza-uft-csa-school-reopening-schedule-staffing>.

Further, the statement announced that 2,500 additional teachers would be brought on to fill staffing needs at 3-K, Pre-K, District 75, K-5 and K-8 schools on top of the 2,000 additional teaching staff that the Mayor announced earlier that week.<sup>75</sup>

The hybrid schedule set forth below includes five models adopted by NYC public schools—two of these models are exclusively for District 75 schools.

### *Student Group Rotation Models*

- **Model 1:** Alternating days with rotating Mondays, two in-person student groups and one fully remote student group. It assumes that a school can accommodate 50 percent of its student population who participate in in-person learning. Results in five days of in-person instruction for each student over the course of two weeks.
- **Model 2:** One to two days per week in alternating weeks, three in-person student groups. This model assumes that a school can accommodate one third of its students who participate in in-person learning. Students will receive in-person instruction 1-2 days per week for a total of 5 days every 3 weeks.
- **Model 3:** Six day rotation with one to two days per week, three in-person student groups. Assumes that a school can accommodate one third of its students participating in in-person learning. This model uses a six day rotation schedule, allowing students to receive in-person learning two days and remote learning four days in a six day cycle.
- **Model 4:** Every other week, two in-person student groups and available to District 75 schools only. It assumes that a school can serve at least half of its students who participate in in-person learning. This model has students in school every other week, with a potential for some groups to be in-person five days a week every week dependent on student need. Students will receive in-person instruction for five days every other week.<sup>76</sup> An optional third group will receive in-person instruction every week in-person.
- **Model 5:** Two to three days per week (rotating Monday), two in-person student groups. Like model 4, model 5 is available to District 75 schools only. In this model, there are two in-person student groups and one fully remote student group, and a potential for a fully in-person group. Students will receive in-person learning on two consecutive days per week—Tuesdays and Wednesdays for one group and Thursdays and Fridays for the other group—with groups alternating Mondays. Students who receive two in person instruction days per week will receive additional in-person time on alternating Mondays.<sup>77</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> New York City Department of Education. “School Scheduling Models.” Accessed at: <https://www.schools.nyc.gov/school-year-20-21/district-school-reopening-plan-submission-to-nysed/school-scheduling-models>.

## *Students with Disabilities in NYC Public Schools*

As previously noted, as of the 2019-20 school year, there were more than 230,000 students with disabilities in City public schools, comprising 20.4% of total student enrollment.<sup>78</sup> Of these, just over 26,000 are students with the most significant challenges, served in District 75.<sup>79</sup> Students with disabilities in the New York City public school system are served in a variety of settings, including:

- **General Education with Related Services** - students with disabilities are educated in the same classroom as non-disabled peers and receive related services, such as physical therapy or counseling, in the classroom or in a separate location.
- **General Education with Special Education Teacher Support Services** - students with disabilities are educated in the same classroom as non-disabled peers and receive Special Education Teacher Support Services (SETSS) from a special education teacher.
- **Integrated Co-Teaching Services (ICT)** – ICT classrooms include students with IEPs (no more than 40 percent) and students without IEPs. There are two teachers, a general education teacher and a special education teacher, who work together to adapt materials and modify instruction to make sure the entire class can participate.
- **Special Class Services** - Special Class (SC) services are provided in a self-contained classroom where all students have IEPs with needs that cannot be met in a general education classroom and are taught by special education teachers who provide specialized instruction. Special classes have up to 12 students in elementary and middle school, and up to 15 students in high school.
- **District 75 Specialized Programs** - District 75 provides highly specialized instructional support for students with significant challenges in a wide variety of settings and locations around NYC.<sup>80</sup>

## *School Reopening Changes for Students with Disabilities*

With regard to DOE’s school reopening plan, students with disabilities, like all public school students, were required to choose either fully remote or blended instruction.<sup>81</sup> Under either

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<sup>78</sup> DOE InfoHub website, “Information and Data Overview: Demographic Snapshot 2015-16 to 2019-20,” accessed on October 20, 2020 at <https://infohub.nyced.org/reports/school-quality/information-and-data-overview>.

<sup>79</sup> *Id.*

<sup>80</sup> DOE website, “Special Education in NYC,” accessed on October 19, 2020 at <https://www.schools.nyc.gov/learning/special-education/preschool-to-age-21/special-education-in-nyc>.

<sup>81</sup> DOE website, “Special Education in Blended and Remote Settings,” accessed on October 19, 2020 at <https://www.schools.nyc.gov/learning/special-education/special-education-in-blended-and-remote-settings>.

option, students would receive instruction by a Special Education teacher.<sup>82</sup> Students choosing a blended model were to receive in-person instruction resembling a typical school day, while on their remote days, students would receive a combination of synchronous and asynchronous learning activities.<sup>83</sup>

All students with IEPs were to receive a Special Education Program Adaptations Document (PAD), that summarizes the programs and services recommended on the student's IEP, and describes how they will be adapted for the blended and remote learning environments.<sup>84</sup> The PAD, which is developed by the special education teacher in consultation with parents, does not replace or alter the IEP and can be updated as needed.<sup>85</sup>

According to DOE, some of the ways that the remote and blended learning models will impact instruction for students with disabilities are as follows:

- **ICT classes** - both fully remote and in-person, will have a co-teaching pair to provide instruction and will have no more than 40% students with IEPs.
  - *Fully Remote ICT* - A fully remote ICT class will be taught remotely by a co-teaching pair, using a combination of synchronous and asynchronous learning activities to deliver instruction.
  - *Blended ICT* - A blended ICT class will be taught by an in-person co-teaching pair and a blended remote teacher, who may be a special education teacher or a general education teacher. The three teachers will work collaboratively to deliver instruction and coordinate instruction daily.
- **Special Education Teacher Support Services (SETSS)**
  - *Direct SETSS* - SETSS will be delivered through direct instruction by a special education teacher, both remotely and in-person. For blended learning, some or all SETSS sessions will be provided remotely, and some may be provided in-person at school. In both settings, if a child's IEP recommends SETSS during general education instruction, it may instead be delivered separately.
  - *Indirect SETSS* - Indirect SETSS means a special education teacher is working with the general education teacher to adjust the learning environment and modify

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

instruction to meet a child’s needs, and will continue in both blended and fully remote settings.

- **Special Class** - Both remotely and in-person, the special class will be taught by a special education teacher and will be composed according to the class size and staffing ratio set out by the IEP. Remote learning will include a combination of synchronous and asynchronous activities, and a paraprofessional may assist remote students, as directed by the teacher, in a number of different ways, such as individual or small group instruction, and check-ins with students or parents.
- **Related Services**
  - *Blended learning* - some or all related service sessions will be provided remotely, and some or all may be provided in-person at school. However, in-person services may be delivered in a location different from what is recommended on the IEP to minimize health risks.
  - *Remote learning* - it may be more effective to deliver related services in an environment different from what is recommended on the IEP. For example, if the IEP recommends services in the classroom, the provider may instead schedule separate remote sessions.<sup>86</sup>

According to the plan, during this period, IEP meetings will continue to be held remotely, either by phone or videoconference.<sup>87</sup> Similarly, special education evaluations will be conducted using remote methods, with in-person assessment only when necessary.<sup>88</sup> School psychologists will use a “comprehensive data-driven model” and conduct socially distanced classroom observations and clinical interviews, if needed.<sup>89</sup> If a face-to-face assessment is deemed necessary, the school psychologist will conduct only the testing needed to identify a disability, to avoid prolonged interactions.<sup>90</sup>

Additionally, students age 21+, who would ordinarily have aged out of the school system, but who were unable to complete the credits needed for a diploma due to the spring school closure and transition to remote learning will be invited back to school.<sup>91</sup> This applies to all students with

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

33 or more credits, as well as other students who would be able to graduate if they were given up to one more year.<sup>92</sup> Further, as a result of the transition to remote learning, students with IEPs who have missed instruction and/or services, who are showing signs of regression and have not met their IEP goals, or do not have postsecondary plans in place, will also be eligible to be invited to continue school to receive instruction and/or related services.<sup>93</sup>

## V. COVID's Impact on Services

### *Occupational Therapy, Physical Therapy, and Speech-Language Pathology*

For many students with disabilities, essential services such as occupational therapy (OT), physical therapy (PT), and speech-language therapy (SLT) were disrupted at the onset of the pandemic, as many students receive these services through their school settings.<sup>94</sup> Most of these services were moved to virtual platforms, which required not only devices and high-speed internet access – resources unavailable to many students – but also required “caregivers who can devote significant time, almost daily, to support their children,” due to the physical support that many of such services necessitate.<sup>95</sup> Additionally, the move to tele-services<sup>96</sup> has been disruptive to students with disabilities, as many services for individuals with disabilities require expensive equipment (e.g., digital magnifiers for students with blindness), hands-on approaches (e.g., occupational or physical therapy), or specialized spaces (e.g., a rehabilitation gym for physical therapy) that most individuals do not have at home.<sup>96</sup> Additionally, many children with disabilities or special needs are unable to sit in front of a computer screen, telephone, or other device for long periods of time,

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *See, e.g.*, “As Schools Close to Coronavirus, Special Educators Turn to Tele-Therapy,” Education Week, March 31, 2020, available at <https://www.edweek.org/ew/articles/2020/03/31/as-schools-close-to-coronavirus-special-educators.html>.

<sup>95</sup> *Id.*

<sup>96</sup> *See, e.g.*, “A Mother In Wonderland: Securing Services For My Blind Child,” Health Affairs, Oct. 2020, available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00140>.

and require in-person education.<sup>97</sup> Most experts agree that for children with disabilities, remote learning and tele-health services are not as robust, comprehensive, and effective as in-person services.<sup>98</sup> In fact, research demonstrates that tele-therapy is often less effective than brick-and-mortar therapy since much of PT, OT, and SLT requires a hands-on, in-person approach, and the shift to virtual therapy requires a steep learning curve and training that many therapists do not have.<sup>99</sup> Particularly, services that require physical movement are much more challenging to carry out in a virtual setting.<sup>100</sup> The move to remote learning and tele-health services are highlighted here through one parent’s experience with her child:

The COVID-19 pandemic has added a new wrinkle to our story, only underlining the degree to which we rely on schools for services for children with disabilities. When schools closed in the spring because of COVID-19, my son’s school provided remote occupational therapy and remote Braille instruction until the end of the school year. We worked by phone, by video, and in person over the summer with Braille teachers we paid out of pocket, and we used our health insurance for virtual occupational therapy. Despite our best efforts, we could not duplicate the educational benefits of the services he was getting during the year. My son has lost most of his kindergarten year’s gains in Braille, and there is no way he will be able to read Braille at a first-grade level this fall.<sup>101</sup>

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<sup>97</sup> *Id.*

<sup>98</sup> *See, e.g.*, “As Schools Close to Coronavirus, Special Educators Turn to Tele-Therapy,” *Education Week*, March 31, 2020, available at <https://www.edweek.org/ew/articles/2020/03/31/as-schools-close-to-coronavirus-special-educators.html>.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *See, e.g.*, “A Mother In Wonderland: Securing Services For My Blind Child,” *Health Affairs*, Oct. 2020, available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00140>.

Additionally, a recent lawsuit filed by a nonprofit called Brain Injury Rights Group alleges that New York City public schools have improperly collected federal education subsidies intended for funding services such as PT, OT, and SLT.<sup>102</sup> The suit alleges that by failing to provide these services in person, schools are not meeting the minimum requirements underlying the federal funding.<sup>103</sup> According to the lawsuit, many families have claimed that their children have not received in-person, or even virtual, services that they were previously receiving, though the City schools have not stopped accepting the aforementioned federal funds, which totaled \$89 million for special education services reimbursed through Medicaid last fiscal year.<sup>104</sup> The DOE claims that they are still in the process of submitting claims for tele-health services.<sup>105</sup> A spokesman for the Brain Injury Rights Group explained, “Do I think you can provide three, four, five, six months of physical therapy without ever touching a child? That’s preposterous... I think the New York City Department of Education fraudulently accepted federal funds for services that were not provided to these students.”<sup>106</sup>

### *Transportation*

Among the first students scheduled to return to school for in-person learning this year were 14,000 of the approximately 25,000 students from District 75.<sup>107</sup> While the NYC DOE’s website announced that school buses for all grades in District 75 schools would begin operation on

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<sup>102</sup> See, e.g., “NYC Accused of Defrauding Special Education Students During Pandemic,” NBC New York, Sept. 22, 2020, available at <https://www.nbcnewyork.com/investigations/nyc-accused-of-defrauding-special-education-students-during-pandemic/2630397/>.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Khan, Yasmeen (September 23, 2020) *Gothamist.com*, “NYC Schools Devoted to Special Ed Students Open With Revised Routines, No More Hugs.” Available at <https://gothamist.com/news/nyc-schools-devoted-special-ed-students-open-revised-routines-no-more-hugs>

September 21,<sup>108</sup> many students were not able to access their mandated transportation services due to the absence of their DOE nurse or paraprofessional.<sup>109</sup> A parent on the busing committee for District 75 noted, “Buses are a priority for District 75, even over related services, and for most families — families in poor neighborhoods, parents working three jobs — busing is access. For a lot of parents, if the para or nurse doesn’t show up, the child will be stuck at home.”<sup>110</sup> Transportation is thus critical to these students receiving their education.

As indicated by student’s IEPs, paraprofessionals and nurses are required to accompany some District 75 students while riding buses to and from school.<sup>111</sup> Advocates have long reported issues with the already-arduous IEP application process and this year’s pandemic created additional barriers, including a missed end-of-summer mailing notice to parents about the scheduling of paraprofessionals and nurses, which for some, contributed to more confusion and delays.<sup>112</sup> In late August, *Chalkbeat* reported that despite “planning to reopen its buildings at the start of the academic year,” the DOE had yet to finalize contracts with school bus companies that “typically transport over 150,000 students.”<sup>113</sup> However, DOE’s then-Chief Operating Officer Ursulina Ramirez acknowledged that among the highest priority students to receive yellow bus services, would be “students with disabilities.”<sup>114</sup>

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<sup>108</sup> NYC Department of Education, “What’s New in Student Transportation This Year” available at <https://www.schools.nyc.gov/school-life/transportation/transportation-overview/whats-new>

<sup>109</sup> Kirsch, Z. (September 25, 2020) “The First Day of School Came and Went for NYC Special Needs Students Stranded Without a Nurse or Other Adult Required to Ride the Bus With Them,” *The74*, available at <https://www.the74million.org/article/the-first-day-of-school-came-and-went-for-nyc-special-needs-students-stranded-without-a-nurse-or-other-adult-required-to-ride-the-bus-with-them/>

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Zimmerman, A. and Gonen, Y. (August 28, 2020) NYC still has no yellow bus contract, raising alarms as the school year quickly approaches. *Chalkbeat*, available at <https://ny.chalkbeat.org/2020/8/28/21406253/school-bus-contract-nyc>

<sup>114</sup> *Id.*

The DOE’s bus service is built upon a “patchwork of service providers” who were already struggling to provide reliable service at the beginning of the school year “without the [added] pressure of a pandemic.”<sup>115</sup> As schools shut down in March due to COVID, “officials faced enormous pressure to stop paying bus contracts as the vehicles sat idle, [which] they eventually did,” resulting in bus companies scrambling to re-engage furloughed employees and allocate services to significantly more complex bus routes, based on the full extent of the needs of students in response to the pandemic.<sup>116</sup> It was also unclear just how many buses would be needed as fewer students were opting to attend in-person classes and, with social distancing requirements, buses would be operating at a reduced capacity of just 25 percent.<sup>117</sup> While the Mayor continued to assure everyone that “school bus service would be available to all who need it,” the DOE told parents that it was “unclear whether transportation would be in place on time.”<sup>118</sup> To date, there is still much to be resolved including the question of when the requisite number of paraprofessionals and nurses will be available to provide services to children who need them on the school bus.<sup>119</sup>

In 2019, the 12,060 school buses designated to provide transportation to NYC special needs students were delayed on average 500 times per day, representing nearly twice the number of delays per day as had been reported in the preceding year.<sup>120</sup> Historically, parents and guardians of District 75 school children have lodged complaints about the bus service ranging from lack of

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Zimmerman, A. (September 9, 2020). De Blasio says school buses will be in place by the start of school. Some students with disabilities have already started without them. *Chalkbeat*. Available at <https://ny.chalkbeat.org/2020/9/9/21429366/school-bus-nyc-special-education>

<sup>119</sup> *See Id.* 122.

<sup>120</sup> Zimmer, A. and Gonen, Y. (October 17, 2019) “Special Needs Students are Plagued by an Increasing Number of School Bus Delays.” *Chalkbeat*, available at <https://ny.chalkbeat.org/2019/10/17/21109079/special-needs-students-are-plagued-by-an-increasing-number-of-school-bus-delays>

service reliability and punctuality, interminable rides resulting in missed classes and bathroom accidents, and numerous incidents of bullying and assaults.<sup>121</sup>

Data on bus delays aggregated by the New York City Council reflects the following:<sup>122</sup>

### **Overall Bus Delays 2020**

- There were 1247 school bus delays during the first 4 weeks of school (Sept 21-Oct 12).
  - Out of the 1247 school bus delays, 868 (68.8%) were for special education services
  - More specifically, 634 (50.8%) of delays were during the special education am run and 224 (18%) were during the special education pm run.<sup>123</sup>

### **Special Education Only**

- For special education bus delays, the most common reason for delay is traffic (count=443, 51.6%).
- During the first 4 weeks of school in 2020, 232 (27%) of special education bus services delays lasted between 16-30 mins.
- During the first week of school, special education bus services delays averaged 22 minutes.<sup>124</sup>

### **Average delays for 2019-2020 Compared to 2020-2021**

- Weekly average delay (in minutes) for the SY 2019-2020 are higher than SY 2020-2021 when comparing the first 4 weeks of school. This is probably due to less school buses/traffic on the road for 2020-2021.<sup>125</sup>

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<sup>121</sup> *Id.*

<sup>122</sup> New York City Open Data, October 20, 2020 Available at <https://data.cityofnewyork.us/Transportation/Bus-Breakdown-and-Delays/ez4e-fazm/data>

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

## VI. Spending on Special Education

In this last Fiscal Budget cycle, Department of Education presented \$1.07 billion in savings across Fiscal 2020 and Fiscal 2021, between the Fiscal 2021 Preliminary Budget and the Fiscal 2021 Adopted Budget.<sup>126</sup> Of the \$1.07 billion in savings, \$738.1 million, or 5.35 percent of the DOE's total City Tax Levy (CTL) funding, impact the Fiscal 2021 budget.<sup>127</sup> While the savings identified in the aforementioned Financial Plans do not exclusively impact the Department's budget for Special Education, which makes up an estimated 21 percent of the Departments Fiscal 2021 Adopted Budget, the DOE has historically under-budgeted for related services and it remains unclear how the COVID-19 Pandemic has impacted this area of spending. In response to the COVID-19 Pandemic DOE has reported incurring spending obligations of over \$122.8 million in Fiscal 2021, \$81.6 million of which has been liquidated as of September, but has yet to identify which programmatic areas relate to these incurred costs.<sup>128</sup> Furthermore, the Adopted Plan does not clearly reflect any of this spending, and while it does account for CARES Act and FEMA revenue to support various COVID-19 related expenditures such as \$136 million for Regional Enrichment Center (REC) spending, \$26 million for Adult food, and \$30.8 million for custodial services, it does not show any shifts in COVID-19 related expense or revenue for Special Education.<sup>129</sup>

Funding for K-12 special education in public schools is included across three major program areas, shown with actual spending in fiscal year 2019, Adopted and Current budget for fiscal year 2020, and the current fiscal year budget in the table 2.<sup>130</sup> Special Education Instruction

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<sup>126</sup> June 2020, Adopted Budget Fiscal Year 2021. Available: <https://www1.nyc.gov/site/omb/publications/finplan06-20.page>

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

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 \$4.09 billion in Fiscal 2021, an increase of \$326.2 million when compared to the Fiscal 2020 Adopted budget and an increase of \$63.7 million when compared to the current budget for Fiscal 2020.<sup>131</sup> 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 \$4.09 billion budget for K-12 special education in Fiscal 2021, \$1.34 billion is for related services, a decrease of \$278.1 million when compared to actual spending for related services in Fiscal 2019.<sup>132</sup> This is of note as the Department continues to spend more in related services than it budgets, however as these costs are legally mandated, it is anticipated that the budget will increase in these areas in the Financial Plans to come.

Fair Student Funding (FSF) is the primary formula used to fund school budgets. Under the FSF formula, students receiving special education services receive a weight corresponding to additional funding per student, depending on the level of services they receive and their grade level.<sup>133</sup> The FSF weights and corresponding dollar amounts for students who received special education services in Fiscal 2019 and the dollar amounts for students who have received special education services in Fiscal 2020 are listed in Table 1 below.<sup>134</sup> As demonstrated in the Table the

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<sup>131</sup> *Id*

<sup>132</sup> *Id*

<sup>133</sup> Fiscal 2020 Fair Student Funding Guide, available at: [https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fy19\\_20/FY20\\_docs/FY2020\\_FS\\_F\\_Guide.pdf](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy19_20/FY20_docs/FY2020_FS_F_Guide.pdf).

<sup>134</sup> *Id*

cost per capita has slightly increased in Fiscal 2020, when compared to Fiscal 2019. Students with disabilities are also eligible for grade level, poverty, English language learners (ELL) and academic intervention FSF weights.<sup>135</sup>

<b>Special Education Need</b>	<b>Weight</b>	<b>FY19 Per Capita</b>	<b>FY20 Per Capita</b>
Single Service <=20 percent	0.56	\$2,288	\$2,301
Multi-Service 21 percent-59 percent	1.25	\$5,108	\$5,139
K-8 Self-Contained (SC) >=60 percent	1.18	\$4,823	\$4,852
9-12 Self-Contained (SC) >=60 percent	0.58	\$2,386	\$2,400
K Integrated Co-Teaching (ICT) >= 60 percent	2.09	\$8,530	\$8,581
1-12 Integrated Co-Teaching (ICT) >= 60 percent	1.74	\$7,108	\$7,150
K-12 Post IEP Support	0.12	\$490	\$493

Whereas FSF acts as the primary source of school level funding, FSF 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.<sup>136</sup> Schools are provided with additional programmatic allocations outside of FSF for these needs.<sup>137</sup> These programmatic allocations are awarded to schools via School Allocation Memoranda (SAMs) and are restricted in use for specific purposes. SAM allocations for special education are further broken out into two categories: other special education funds and internally restricted funds.<sup>138</sup>

Other special education funds pay for mandated special education support that supplements core classroom instruction services.<sup>139</sup> This includes funding for mandated services such as speech

<sup>135</sup> Fiscal 2020 Fair Student Funding Guide, available at: [https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fy19\\_20/FY20\\_docs/FY2020\\_FS\\_F\\_Guide.pdf](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy19_20/FY20_docs/FY2020_FS_F_Guide.pdf).

<sup>136</sup> New York City Council Finance Division Report on the Fiscal 2021 Preliminary Budget. Available at: <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/04/040-DOE.pdf>

<sup>137</sup> *Id.*

<sup>138</sup> Fiscal 2020 Fair Student Funding Guide, available at: [https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fy19\\_20/FY20\\_docs/FY2020\\_FS\\_F\\_Guide.pdf](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy19_20/FY20_docs/FY2020_FS_F_Guide.pdf).

<sup>139</sup> Other Special Education Funds, FY21, SAM. Available at: [https://www.nycenet.edu/offices/finance\\_schools/budget/DSBPO/allocationmemo/fy20\\_21/am\\_fy21\\_osef1.htm](https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy20_21/am_fy21_osef1.htm).

counseling, occupational, and physical therapy, school based IEP team staff, and supports for citywide special education.<sup>140</sup> The current total allocation for other special education category SAMs in Fiscal 2021 is \$2.59 billion, and is composed of both City-Tax Levy funding and State revenue.<sup>141</sup> Internally restricted funds pay for Department set initiatives and are allocated for specific purposes such as paraprofessionals and gifted and talented programs. This category of SAM allocations grow throughout the Fiscal year and do not exclusively support special education 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.<sup>142</sup> These actual and budgeted costs are also listed in Table 2 below.

<b>Table 2. Spending on K-12 Special Education in Public Schools</b>				
<b>Program</b>	<b>FY19 Actual</b>	<b>FY20 Adopted</b>	<b>FY20 Current</b>	<b>FY21 Adopted</b>
Special Education Instruction	2,088,345,085	1,940,640,322	2,099,145,391	2,170,281,932
Citywide Special Education	1,323,224,645	1,181,464,766	1,264,029,643	1,246,319,715
Special Education Instructional Supports	646,573,845	642,228,161	663,568,221	673,887,101
<b>Total</b>	<b>\$4,058,143,575</b>	<b>\$3,764,333,249</b>	<b>4,026,743,255</b>	<b>4,090,488,748</b>
<i>Related Services</i>	<i>\$1,613,426,164</i>	<i>\$1,282,455,962</i>	<i>\$1,282,429,788</i>	<i>\$1,335,279,141</i>
Categorical Programs	354,382,094	380,604,199	352,296,164	391,959,600
Committee on Special Education	71,691,791	93,557,875	93,735,123	93,975,568
Special Education Administration	25,474,270	33,408,138	33,421,818	32,859,762
Special Education Initiatives	7,100,816	7,798,186	7,805,150	7,912,282
<b>Total</b>	<b>\$458,648,970</b>	<b>\$515,368,398</b>	<b>\$487,258,255</b>	<b>\$526,707,212</b>

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

Funding for special education services in Fiscal 2021 is growing largely due to an increase in headcount and planned investments in Special Education Initiatives. A \$33.4 million baselined investment introduced in the Fiscal 2020 Executive Financial Plan, was associated with an increase in headcount for teachers, paraprofessionals, school psychologists, speech teachers, Carter Case attorneys, social workers, physical therapists, and community coordinators.<sup>143</sup> Civilian and pedagogical headcount across the special education program areas is shown in Table 3.

<b>Table 3. Special Education Headcount</b>				
<b>Program</b>	<b>2019 Actuals</b>	<b>2020 Adopted</b>	<b>2020 Current</b>	<b>2021 Adopted</b>
Special Education Instruction - Civilian	4	9	9	9
Citywide Special Education - Civilian	1,026	719	719	719
Special Education Instructional Support - Civilian	2,288	2,196	2,196	2,377
<b>Total Full-Time Positions - Civilian</b>	<b>3,318</b>	<b>2,924</b>	<b>2,924</b>	<b>3,105</b>
Citywide Special Education - Pedagogical	15,255	12,385	14,385	14,806
Special Education Instruction - Pedagogical	29,133	29,346	29,346	30,540
Special Education Instructional Support - Pedagogical	1,156	1,071	1,071	1,071
<b>Total Full-Time Positions - Pedagogical</b>	<b>45,544</b>	<b>42,802</b>	<b>44,802</b>	<b>46,417</b>
<b>Total</b>	<b>48,862</b>	<b>45,726</b>	<b>47,726</b>	<b>49,522</b>

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 2021 Adopted Budget reflects a \$127.6 million decline in spending on Carter Cases when compared to the Fiscal 2020 Current Budget, the Council expects the Fiscal 2022 Preliminary Financial Plan to reflect additional resources for Carter Cases more in-line with recent spending in this area. The Fiscal 2021 Adopted Budget added \$149.5 million to the Fiscal 2020 budget for Carter Cases, but no funding was added in Fiscal 2021 or the outyears.

<sup>143</sup> New York City Council Finance Report on the Fiscal 2020 Executive Financial Plan, Department of Education, available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/05/DOE-SCA.pdf>.

<b>Program</b>	<b>FY19 Actual</b>	<b>FY20 Budgeted</b>	<b>FY20 Current</b>	<b>FY21 Adopted</b>
Blind & Deaf Schools	\$59,000,000	\$59,461,605	\$59,000,000	\$59,000,000
Carter Cases	\$499,254,776	\$390,241,035	\$540,241,035	\$405,575,587
Contract Schools (in state)	\$285,707,824	\$324,659,833	\$324,659,833	\$331,050,833
Contract Schools (out of state)	\$32,259,952	\$32,699,946	\$32,699,946	\$33,353,945
Non-resident Tuition / Foster Care	\$17,783,384	\$17,805,241	\$17,805,241	\$17,805,241
TL Match for Chapter 683*	\$17,392,910	\$17,509,457	\$17,509,457	\$17,509,457
<b>Total</b>	<b>\$911,398,845</b>	<b>\$842,377,117</b>	<b>\$991,915,512</b>	<b>\$864,295,063</b>

\* 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 63 percent of the total current cost in Fiscal 2020.

<b>Program</b>	<b>FY19 Actual</b>	<b>FY20 Adopted</b>	<b>FY20 Current</b>	<b>FY21 Adopted</b>
Tuition	\$441,721,704	\$442,482,376	\$442,482,376	\$452,832,901
Transportation	97,139,442	105,073,438	105,073,438	112,266,176
Professional Services	195,517,304	299,607,334	299,607,334	299,607,334
<b>Total</b>	<b>\$734,378,450</b>	<b>\$847,163,148</b>	<b>\$847,163,148</b>	<b>\$864,706,411</b>

### *Funding Sources*

IDEA is the most significant source of federal funding for special education services; IDEA funding for Fiscal 2020 and Fiscal 2021 is projected to be \$269.8million, a decrease of \$18 million when compared to projected IDEA funding for Fiscal 2019. 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).

## X. Other Issues

There are a number of other issues that disproportionately impact students with disabilities.

- **Teacher Shortage.** It is well known that there is a shortage of teachers to cover all of the in-person and remote classes required under the hybrid and fully remote learning models.<sup>144</sup> This shortage will particularly impact many students with disabilities whose IEP requirements will not be met, such as those in ICT classes which must be taught by two teachers—one general education and one special education.<sup>145</sup> However, due to the staffing shortage, many students are in classes taught by a single general education or special education teacher, rather than both as required by their IEP.<sup>146</sup>
- **Masks.** Guidance from the federal government and the State, recognizes that consistent use of masks can present challenges for students with disabilities.<sup>147</sup> NYSED in its reopening guidance document recommends “mask breaks” for students whom wearing a face covering would prove challenging.<sup>148</sup>
- **Backlog special education evaluations.** As reported by Advocates for Children, the DOE did not conduct any psycho-evaluations, either in person or remotely this past spring, during the onset of the closure of the NYC school system.<sup>149</sup> DOE will need to not only identify the special education needs of students with disabilities now that schools have reopened on a hybrid model, but also identify the “unfinished learning” from those students experienced this past spring as a result of all of the issues providing remote learning presented to the department.<sup>150</sup>

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<sup>144</sup> Christina Veiga and Alex Zimmerman, “How a staffing crunch months in the making threw NYC’s school reopening plans into chaos,” *Chalkbeat*, September 18, 2020, accessed at <https://ny.chalkbeat.org/2020/9/18/21445996/staff-shortage-delay-school-reopening>.

<sup>145</sup> Jessica Gould, “Parents: NYC Teacher Shortage Hurts Special Ed Students The Most,” *Gothamist*, October 15, 2020, accessed at <https://gothamist.com/news/parents-nyc-teacher-shortage-hurts-special-ed-students-most>.

<sup>146</sup> *Id.*

<sup>147</sup> Centers for Disease Control and Prevention, “Guidance for K-12 School Administrators on the Use of Masks in Schools,” Updated August 11, 2020, accessed at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/cloth-face-cover.html>.

<sup>148</sup> New York Education Department, “School Reopening Plans.” Accessed at: <http://www.nysed.gov/reopening-schools/school-reopening-plans>.

<sup>149</sup> Advocates for Children, “Recommendation for Improving the Education of New York City Students with Disabilities During the Pandemic, August 2020, accessed at [https://www.advocatesforchildren.org/sites/default/files/on\\_page/special\\_ed\\_reopening\\_recommendations\\_8.2020.pdf?pt=1](https://www.advocatesforchildren.org/sites/default/files/on_page/special_ed_reopening_recommendations_8.2020.pdf?pt=1).

<sup>150</sup> *Id.*

## XI. Conclusion

Today's hearing will provide an opportunity for students, parents, teachers, mental health experts, unions, and other educational stakeholders to raise their concerns about DOE's reopening plan and whether it adequately provides for the needs of students with disabilities.

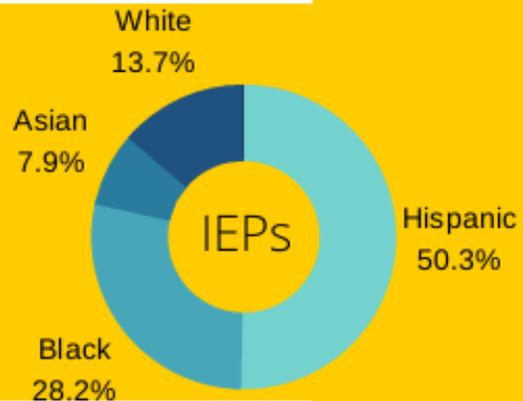
# NYC SPECIAL EDUCATION DATA

prepared by Staff of the Committee on Education

## DATA AT A GLANCE (SY 2018-19)



**1.1M students**  
**20.8% SWD**  
**197,880 students w/IEPs**



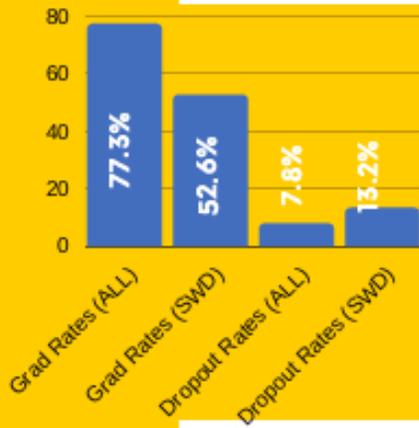
## REMOTE LEARNING ENGAGEMENT



Overall, the interaction rates for SWDs were comparable to those of non-SWDs (86% for SWDs vs. 90% for non-SWDs). But schools with substantial SWD populations (25% or more of the student body) were about **twice** as likely to experience low interaction rates as schools without substantial SWD populations (31% vs. 15%)

<sup>151</sup> SWD = Students with disabilities. Defined by DOE as any child receiving an Individualized Education Plan (IEP) as of the end of school year. The IEP number reflects data for students who were enrolled in a New York City DOE school in grades K-12. See: New York City Department of Education, "Special Education Reports," accessed on 10/21/20 at <https://infohub.nyced.org/reports/government-reports/special-education-reports>. Note: School year 2018-19 data was used because the next special education report by the department is due on November 1, 2020.

## EDUCATIONAL ACHIEVEMENT



- 197,880 students with IEPs (130,885 male students; 66,995 female students)
- Only 84.3% of students are receiving their IEP services in full
- Only 16% of SWD are reading proficiently

## ISSUES AND CONCERNS



- Lack of consistent in-person learning
- Backlog in special education evaluations
- Lack of proper technology, including specialized equipment
- COVID testing of D.75 students
- Teacher shortage