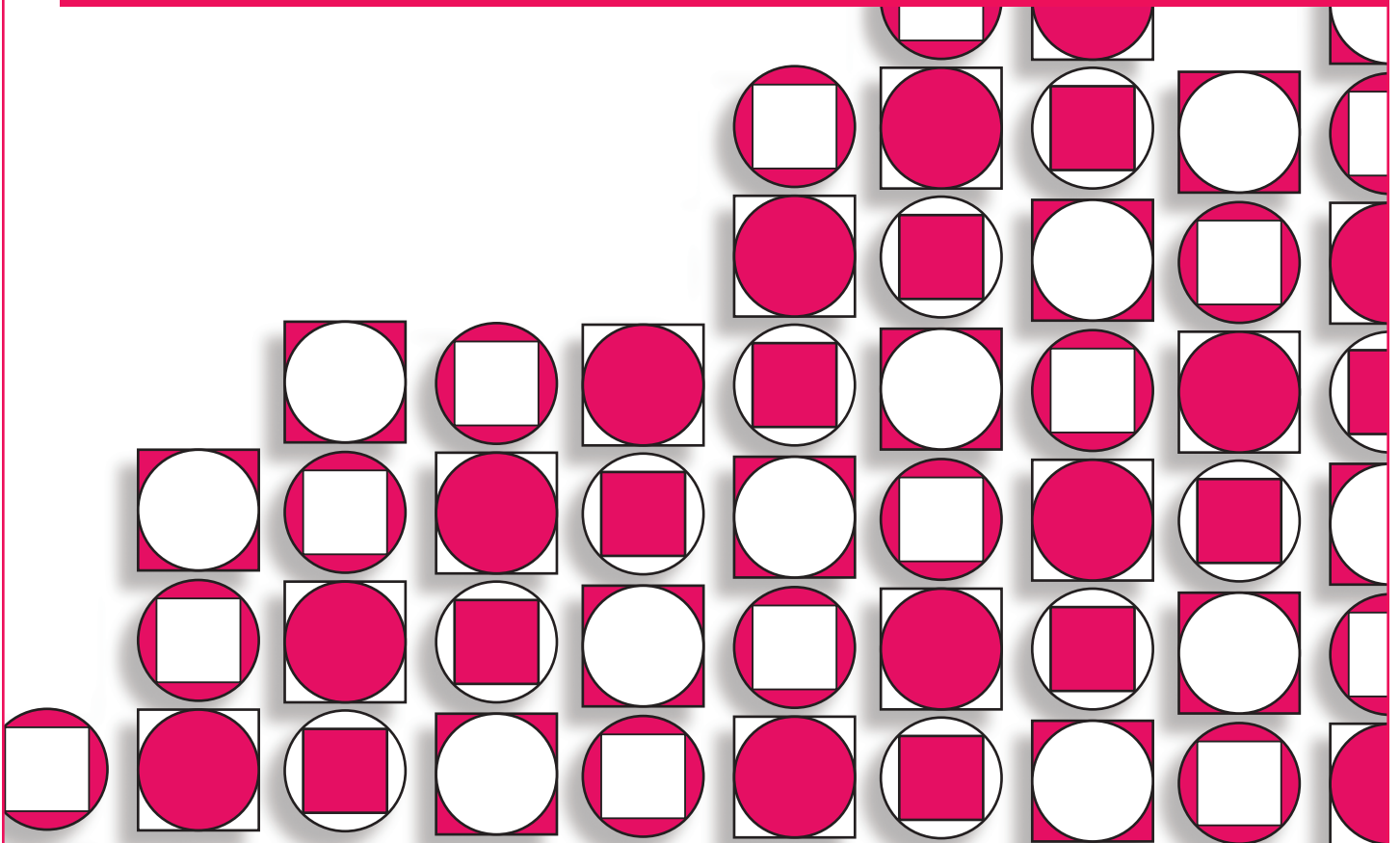


EDUCATE! INCLUDE! RESPECT!

A Call for School System Reform to
Improve the Educational Experiences of
Students with Disabilities in New York City

A Report Issued by the ARISE Coalition • www.arisecoalition.org
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I. EXECUTIVE SUMMARY

In 2002, Michael Bloomberg, the newly elected Mayor of New York City (NYC), declared his commitment to sweeping reform of the New York City public schools. Since that time, no fewer than eight reports from a variety of independent organizations, as well as consultants hired by the New York City Department of Education (DOE) itself, have recommended changes to the special education system to address the lagging performance of students with disabilities, the failure of the DOE to provide mandated services, and the frustrations of students and their families as they strive to get the services the youth need. As this administration embarks on a possible third reorganization of the special education bureaucracy, it has yet to address well-documented and long-standing issues related to the treatment and performance of over 160,000 students with disabilities in New York City's public schools.¹

In this report, the ARISE Coalition calls upon the DOE to build a school system that educates, includes, and respects students with disabilities.² We review the Children First Reforms of Mayor Bloomberg as they apply to this population and examine their effects on the progress and day-to-day experiences of these students and their families. We conclude with concrete recommendations and with a plea for the DOE to commit at least the same system-wide attention and resources to students with disabilities as have been devoted to developing, implementing and fine-tuning programs for students in the general education population.

1. For the purposes of this report, statistics describing "students with disabilities" or "students with special needs" refer to students who have been classified as disabled under the Individuals with Disabilities Education Act and have Individualized Education Programs (IEPs) that dictate the special education programs and services they are supposed to receive. There are many students who have disabilities who do not require any special education programs or services; although they are not included in the data we present, they, too, are affected by barriers to full inclusion such as inaccessible buildings or discriminatory treatment.
2. The members of the ARISE Coalition are parents, educators, advocates, and service providers who have come together to provide a collective and powerful voice on behalf of students with disabilities in the New York City schools. We seek to compel systemic reform to improve special education, promote greater transparency and accountability of the education system, and most critically, assure more positive outcomes and options for all students. The members of the ARISE Coalition include: Advocates for Children of New York; AHRC New York City; Cathy Albisa; David C. Bloomfield, Brooklyn College, CUNY; Brooklyn Center for the Independence of the Disabled; Center for the Independence of the Disabled of New York; The Cooke Center for Learning and Development; Richard and Lora Ellenson; Families Helping Families; Ben Fox; Carol A. Greenburg; Paul Hutchinson; Aurelia Mack; Diana Mendez; The Mental Health Association of New York; Metropolitan Parent Center of Sinergia, Inc.; National Economic and Social Rights Initiative; New Alternatives for Children; New York Branch of the International Dyslexia Association; New York Lawyers for the Public Interest; New York Performance Standards Consortium; Parents for Inclusive Education; Parent to Parent of New York State; Parent to Parent of Staten Island; Raphael Rivas; Resources for Children with Special Needs; Cathy Rikhye, Ed. D., Department of Curriculum and Teaching, Teachers College, Columbia University; Jo Anne Simon, P.C.; United Cerebral Palsy of New York City; United Federation of Teachers; United We Stand; and RueZalia Watkins.



Marline is a parent in Brooklyn who has a five-year-old son diagnosed with Down's syndrome. This past September, her son began kindergarten, and the transition from preschool was extremely difficult. Her son's Individualized Education Program [IEP] arrived in the mail recommending a ten-month program, instead of the twelve-month program that had been discussed. She wrote the Committee on Special Education [CSE] a letter explaining that he is supposed to go to school twelve months. At that point, the CSE sent a letter requesting that she come to another meeting to make the changes already agreed upon. Then the waiting began. She had to wait to find out what school he would attend. She kept calling and visiting the CSE to ask what was happening and why he did not have a school, but was repeatedly told, "Go home and we will call you." She waited and waited, and eventually the DOE was able to find placement. However, she had to wait more because her son had not been routed for a bus. Marline went back to the CSE and asked to speak to a supervisor, who told her that all that they could do was log that she had made a complaint. She would have to wait for the bus to go into effect. She then went to her son's school and had them get involved. Finally, after another two weeks of working with the school and waiting, he received a bus. She would like to know why everything had to be so difficult.

Our Findings

New York City's DOE continues to leave large numbers of students with disabilities behind. In particular:

- Parents continue to report that their children with disabilities are denied equal access to school facilities or excluded from programs and activities, such as field trips and celebrations.
- The DOE has yet to focus comprehensively on improving instruction for students with disabilities in its schools. In 2003, it introduced two promising programs — the Wilson reading program and the All Kinds of Minds approach to working with every student as an individual learner. The results of these programs have not been tracked or documented. The programs are, at best, a first step and do not appear to be part of a coherent strategy for addressing the classroom experiences of this diverse population.
- The DOE has failed to utilize fully its own Continuum of Special Education Services, instead investing heavily in the Collaborative Team Teaching (CTT) model to the exclusion of other alternatives that may work better for many students.
- Students with disabilities in NYC have made slight gains in graduation rates, but less than the increase in overall rates of graduation that the DOE has reported for the city's schools. The slight gains have not changed the fact that less than one in every five New York City students classified as having a disability graduates in four years from high school.
- Students with disabilities in self-contained, special education classrooms are still not receiving the supports and services needed to enable them to stay in school and graduate. Graduation rates for students in self-contained, special education classes have declined to less than 5%, and drop out rates for these students remain more than two-and-a-half times higher than students in other special education settings. At the middle and high school levels, Black and Latino males are still more likely than their peers to be placed in self-contained, special education classrooms.
- Black and Latino students continue to receive a disproportionately large share of the City's IEP diplomas, which are available only to special education students and provide no access to college, the military or any job requiring a high school diploma. In all, over 90% of students graduating with IEP diplomas in 2007 were Black or Latino, although Black and Latino students make up only 70% of all students in the class of 2007.
- Students with disabilities were largely excluded from the signature high school reform effort of this administration: the creation of new, small high schools. Even now, when the numbers of students with disabilities have increased in many of the small high schools, this population remains under-represented in a number of these new schools.
- Many students with disabilities in New York City endure long waits before they receive the special education supports and services that all have agreed necessary for their progress, and some never in fact receive those supports and services.
- Reports and test results published by the DOE to promote transparency and accountability do not accurately reflect schools' failure to educate significant numbers of students with disabilities, including those who take alternate assessments.
- Parents of students with disabilities continue to feel disenfranchised and under-informed – often having to turn to a multitude of places within and without the DOE for answers to their questions and to fight for supports and services to which their children have a right.

Our Recommendations

Now is the time to address these problems comprehensively. We have an experienced administration with the possibility of a third term in office. The new American Recovery and Reinvestment Act of 2009 promises to “provide an unprecedented opportunity ... to implement innovative strategies to improve outcomes for infants, toddlers, children, and youths with disabilities while stimulating the economy.”³ Families, advocates, and educators are coming together to demand that students with disabilities receive the support they need and deserve.

The ARISE Coalition calls upon the DOE to take the following concrete actions to reform the way New York City educates students with disabilities:

1. The DOE should create a task force to conduct a systematic study of instruction of students with disabilities in the city’s public schools. The task force should use objective data and classroom observation to identify quality programs and practices that meet the academic, social, and emotional needs of their students and should develop recommendations that will make New York City a model for educators around the country. The task force should include researchers and experts in education of students with disabilities, as well as parents, students past and present, teachers, and advocates. The task force should consider, among other things:
 - Investing in a diversity of successful models to meet the needs of the wide range of students with disabilities;
 - Maximizing the potential of technology to further instructional goals;
 - Increasing opportunities for inclusion and access to the mainstream curriculum by incorporating principles of universal design for learning⁴;
 - Increasing the use of positive behavioral supports to create safe and orderly environments in schools and classrooms; and
 - Expanding access to summer programs for students with disabilities who attend self-contained, special education classes in their community schools.
2. The Chancellor should issue a directive to the schools that discrimination against students with disabilities is prohibited and will no longer be tolerated. The directive should be written in conjunction with the advocacy community, concerned parents and educators and should provide examples of prohibited actions to clarify its reach. The Chancellor should then develop a plan for taking corrective action against schools that break this policy.



Maria is a mother of two children with disabilities in Brooklyn. One of her sons is a fifth-grade student in a District I5 CTT classroom. Maria is extremely concerned with her son’s transition to middle school. She feels that not only are the special education middle school CTT programs limited in number, but the process for the children with disabilities is different from their typically developing peers, which she feels is grossly unfair. She told us that last June, when the fifth graders graduated at her son’s school and students in special education were sitting side by side with the general education students from the same CTT classroom, the general education students knew where they would go for school in the fall, but the special education students still had no idea.

3. American Recovery and Reinvestment Act of 2009, IDEA Recovery Funds for Services to Children and Youth with Disabilities (March 2009), available at <http://www.ed.gov/policy/gen/leg/recovery/factsheet/idea.html>.

4. Universal Design for Learning provides a blueprint for creating flexible goals, methods, materials, and assessments that accommodate learner differences and can be used to teach to all students. For more information see <http://www.cast.org/research/udl/index.html>.

3. The DOE should identify all schools and programs across the city that do not have the capacity to award Regents or local diplomas to students with disabilities. It then must ensure access to these diploma options for all students in these programs who have the will and ability to achieve to that level.
4. The DOE should improve counseling to students and families on the diploma options available and provide more meaningful support to work with students to achieve their diploma goals. The DOE should consider supplementing the transition page on students' Individualized Education Programs (IEPs) with a signature page for parents and students acknowledging explanation and understanding of the various diploma options and their implications and providing referrals to advocacy organizations when parents and students continue to have concerns.
5. The DOE should make public an inventory of all existing programs and any barriers to making them fully accessible to people with physical disabilities. The DOE should then develop and release a plan for achieving full program and communications access.
6. The DOE should thoroughly and immediately assess the potential for using federal stimulus money for modifying existing buildings to improve accessibility and then report publically on its findings.
7. The Chancellor should provide clear and unequivocal direction to all schools and principals that all IEPs must be fully implemented. There should be consequences for failure to adhere to this directive.
8. The DOE should make information on programs, services, and resources more easily accessible and understandable to families of students with disabilities. The following changes will move the DOE in the right direction:
 - Making its website a hub for families of students with disabilities to locate all relevant information on DOE programs and services. The information must be easily searchable and written in plain English, with translated versions in the eight languages most commonly spoken in New York City.
 - Helping parents of students with disabilities to find and interpret school Progress Reports, Special Education Service Delivery Reports, and the Annual School Report Cards by providing links from the special education hub as well as better summaries of the goals of each report and explanations of how they overlap and differ.
 - Working with parents and advocates to determine how school Progress Reports can best reflect success in educating and including the full range of students with disabilities, including those who participate in alternate assessment.
 - Including more specific statistical criteria in the Special Education Service Delivery Reports. Those reports should, for example, make distinctions between students who have received all supports and services identified on their IEPs and those who have received only some of those supports and services.
 - Reporting publicly student outcomes for District 75 schools to at least the same extent that student outcomes are reported for other schools.
 - Informing parents at the beginning of every IEP team meeting how decisions will be made at the meeting. Parents should be specifically informed of the District Representative's responsibility to: facilitate an open discussion regarding eligibility for services and development or revision of the IEP; provide information about the full continuum of supports and services, including those avail-

able in the child's school and those available in other schools in the district; ensure that all program and service options are considered; and build consensus among team members.

- Expanding its collaborations with parents and advocacy organizations to offer families of children with disabilities workshops each year on their options, rights, and responsibilities throughout the educational process, including transitions from early intervention to preschool and school-aged years, elementary school to middle school, middle school to high school, and high school to life after school.⁵
- Providing direct access for families of students with disabilities to individuals or offices that have the knowledge and the authority to help them with problems that cannot be resolved at the school level.

With these steps, the DOE can begin to tackle the problems that have long plagued special education and move beyond bureaucratic re-shuffling to create a school system where all children have a chance to learn and succeed.

⁵ As an example of some collaborative work already happening between the DOE, parents, and advocates, the DOE's Office of Special Education Initiatives runs a regular meeting of the Parent Advisory Committee, where the Executive Director meets with and updates advocates and parents from representational agencies about on-going advances, issues and campaigns in special education.

II. INTRODUCTION

One hundred and sixty thousand of the over one million students in New York City public schools have special education needs, representing almost 15% of all students.⁷ Yet, throughout the Children First education reforms of Mayor Bloomberg and Chancellor Klein, children with disabilities have rarely been more than an afterthought. Stories abound of isolation, segregation, and degradation of students with disabilities and their families. Outcomes for these youth are nowhere near where they ought to be to afford them a meaningful, productive adult life.

Since this administration has come to power, no fewer than eight reports from a variety of organizations and consultants have recommended systemic changes to special education services in New York City.⁸ Proposals have focused on more flexible service delivery models; increased dissemination of meaningful, disaggregated data to ensure accountability; improved staff development and training; improved compliance with legally mandated procedures and delivery of IEP-mandated services; enhanced preventive and pre-referral services; and increased capacity at community schools as well as within District 75 programs to meet the needs of all students with disabilities in a variety of settings. Twice this administration has reorganized, but it has yet to develop a comprehensive reform program to address these long-acknowledged needs. Recently, in January 2009, the DOE announced its plan to review and refine the

6. District 75 is a city-wide district charged with educating students with more profound needs.

7. PowerPoint from the DOE's Office of Special Education Initiatives, New York City Department of Education Special Education Services Review (OSEI PowerPoint) (December 2008), available at www.arisecoalition.org.

8. See Comm. On Education, The New York City Council, Too Little Too Late (August 2003), available at <http://www.uft.org/chapter/teacher/special/spedreport.pdf>; Advocates for Children, Leaving School Empty-Handed: A Report on Education and Dropout Rates for Students Who Receive Special Education Services (June 2005), available at www.advocatesforchildren.org/pubs/2005/spedgradrates.pdf; The Thomas Hehir, et al., Comprehensive Management Review and Evaluation of Special Education (September 2005), available at <http://schools.nyc.gov/NR/rdonlyres/BB43599E-F0AE-48E2-B657-5E392D3968D9/0/FinalHehirReport092005.pdf>; Kim Sweet, New York Lawyers for the Public Interest, Small Schools, Few Choices: How NYC's High School Reform Effort Left Students with Disabilities Behind (October 2006), available at http://www.nylpi.org/images/FE/chain234siteType8/site203/client/DLC%20-%20Education%20-%20High_School_Report.pdf; City-Wide Council on Special Education, Left in the Dark (June 2007), available at <http://pubadvocate.nyc.gov/policy/documents/CCSEREPORTRFINALWEB.pdf>; Advocates for Children, Transitioning to Nowhere: An Analysis of the Planning and Provision of Transition Services to Students with Disabilities in NYC (September 2007), available at http://www.advocatesforchildren.org/pubs/Transitioning_to_nowhere_final_report.pdf; New York City Office of the Comptroller, Audit Report on the Monitoring and Tracking of Special Education Services for Elementary School Students by the Department of Education (June 2007), available at http://www.comptroller.nyc.gov/bureaus/audit/PDF_FILES/MD06_073A.pdf (hereinafter Comptroller Audit Report); Strategic Support Team, Council of the Great City Schools, Improving Special Education in New York City's District 75 (June 2008), available at <http://www.arisecoalition.org/District75Report.pdf>.



Noreen from Queens has a daughter who attends a regular class in a community school with support provided by District 75⁶. She told us, “One of the hardest problems to overcome was when my daughter was denied participation in graduation. Anne passed all of her seventh and eighth grade classes with hardly any modifications and her conduct was excellent. I went to all the meetings and felt very welcome. When we sat down with the general education teachers and really talked to them, they were all very open to discussion and helping Anne. But when we got to the graduation ceremony, we learned that Anne’s name was not on the commencement program. My husband went up to the podium before the ceremony and spoke to the principal who knew nothing about it and said we should talk to the assistant principal. Anne’s name was never called that day. The school ‘fixed’ the problem three days later by sending me a new booklet with Anne’s name in it, but it was too late. Her moment had been taken away for no reason. She was all dressed in her cap and gown, and her grandparents were there. It was unacceptable. She graduated, and she earned it — as much as every other child. The same type of exclusion happened with the graduation dance. I emailed the general education assistant principal, asking if Anne could please attend. I even offered to have an adult with her to chaperone. Anne had her dress and she wanted to go with her friends. The principal wrote back and said, ‘No.’ Anne was devastated and cried for four days. Our kids go through so much discrimination every day of their lives, and it is heart breaking when they experience it during those times that really mean something to them. I’m not asking for better treatment – just that Anne feels like an equal.”

special education system once again. An internal efficiency and effectiveness study will be conducted, with little information available yet as to the specifics.⁹

Mayor Bloomberg has indicated that he will run for a third term next fall.¹⁰ As we face the possibility of four more years with the same Mayor and potentially the same Chancellor at the helm of the city's schools, we use this report to look back on their first two terms. We analyze where we are now and what has been tried so far. We conclude with specific recommendations to bring about essential change.

Throughout this report you will find sidebars with stories about real families' experiences with the special education system during the Children First years. The stories were provided by families who communicated with us on our website or testified at a series of parent speak-outs we co-sponsored with Parents for Inclusive Education at the end of 2008 and early 2009. These families explain in their own words how excluded they and their children have felt in the current system and how they have struggled to assert their children's right to an appropriate public education, as guaranteed under federal and state law.



Luisa, a mother of a District 75 student in Queens, told us, “My son goes to school in Maspeth. I was so happy because they advertised that they had mainstreaming [in his local school], but once the children with special needs are there, they cannot use the library and they do not go on fieldtrips. The teacher only talks to me in November during conferences. When I want to see the class, they say there is a confidentiality law that will not let me. My main concern is that I want to know what he’s doing in class. He’s nonverbal. I want him mainstreamed so he can hear other kids talking, but they say he has to be able to talk to be mainstreamed. I feel like it’s a trap and I’m very upset.”

9. See Phillisa Cramer, *A Total Review of Special Education to Begin Soon at the DOE*, Gotham Schools (January 15, 2009), available at <http://gothamschools.org/2009/01/15/a-total-review-of-special-education-to-begin-soon-at-the-doe/>.

10. See Sewell Chan, *Bloomberg Says He Wants a Third Term as Mayor*, N. Y. Times (October 2, 2007), available at <http://www.nytimes.com/2008/10/02/nyregion/03bloomberg.html?scp=3&sq=bloomberg+term+limits&st=nyt>.

III. CHILDREN FIRST REFORMS

Over the past six years, Mayor Bloomberg and Chancellor Klein have made enormous changes to the structure and organization of the New York City school system under a reform agenda they call Children First. This section looks at how the Children First reforms affected students with disabilities.

Prior to Children First, the city's school system was organized by districts. There were thirty-two community school districts, five borough-wide high school superintendencies, a citywide district for alternative education, and a citywide district called District 75 for students with intensive special education needs. Each community school district and borough high school superintendency had a separate Committee on Special Education (CSE), charged with evaluating children with disabilities, determining their special education needs, and placing them in appropriate schools and classrooms. Each school had a School-Based Support Team (SBST), which included a school psychologist, an educational evaluator, a social worker and a family worker.

The initial system-wide restructuring under Children First involved a centralization of the school system, consolidating the districts into ten instructional divisions or "regions." During the second major wave of reform in 2007, those ten regions were largely abandoned for another, less centralized system, placing power in the hands of individual principals and invoking the goals of school-based empowerment, leadership, and accountability.

A. System-Wide Reorganization

In January 2003, the new Mayor addressed the New York Urban League detailing his school reform proposals. In an extensive discussion of his planned reforms, he made slight mention of students with disabilities, saying only that he would articulate his plans for special education at a later date.

In May of 2003, the Mayor unveiled his proposal to restructure special education. The Mayor acknowledged that reform in this area was desperately needed, saying:

"The need for comprehensive reform of the special education system in our public schools is manifest – for too long, the system has failed shamefully to help our children learn and raise their levels of expectation and achievement both in the classroom and in life. We will no longer tolerate a largely segregated and largely failing system that unmercifully ravages the lives and future of our children. Today's reforms reflect our commitment to providing first-rate instruction and high-quality services for those children with special learning needs in the classroom. By prioritizing the needs and interests of our children and eliminating unnecessary bureaucracies, we will increase the level of accountability for improved special education where it matters most – in the public schools of NYC."¹¹

Despite the rhetoric, the actual proposals focused more on the re-organization of bureaucracy and reduction of staff than on ending segregation or improving instruction in the classroom. As a result of this first reorganization, special education personnel were cut dramatically. Educational evaluators were transferred from the SBSTs into the classrooms, leaving school psychologists to do a greater share of the special education referral and evaluation work.¹² Special education supervisors at each school were eliminated. CSEs were reduced from one per school district to one per region. At the same time the DOE created the new position of Regional Administrators for Special Education (RASEs). Five RASEs in each region were

11. HEHIR ET AL., *supra* note 8 at page 18.

12. See Overworked, Underutilized: How the Department of Education's Reorganizations of Special Education Turned School Psychologists From Mental Health Professionals Into Paper Pushers (November 2008), available at <http://www.pubadvocate.nyc.gov/policy/documents/SchoolPsychologistsWebFinal.pdf>.

charged with ensuring the delivery of special education programs and services in their regions. The RASEs and the CSE chairpersons both reported directly to the Regional Superintendent, who had authority over the individual principals.

In terms of curricular supports, the DOE pledged to train “thousands” of the approximately 79,000 teachers in New York City in the Wilson reading program (discussed below), one of a number of programs designed to teach struggling students how to read.¹³ The DOE also announced it would model special education after the Schools Attuned Program (also discussed below), a system for supporting the individual learning styles of students. To support these changes, the DOE trained its Instructional Support Specialists – two hundred for the entire system – and asked them to train, facilitate and provide on-going support to the rest of the city’s special education teachers.¹⁴

In July 2004, almost one-and-a-half years into the Children First agenda, The New York Times reported that special education in the city’s schools had imploded. Columnist Michael Winerip wrote:

“In hundreds of interviews over the last six months, principals, school psychologists, regional supervisors, teachers, legal advocates, as well as the administrative judges who conduct hearings on special education services, all say the same thing: they have never seen the system in such disarray.”¹⁵

Winerip further wrote about critical records for students with disabilities that had been lost during the year. He reported that compliance with special education laws had fallen further behind. With regard to the trainings in Wilson and Schools Attuned, so grandly touted months earlier, he wrote that many teachers reported receiving insufficient professional development and on-going support to put the new methodologies into effect.¹⁶

After this initial foray into special education, the topic virtually disappeared from the DOE’s public agenda for the next several years. Of the many documented press releases, public speeches, and announcements about Children First Reforms made over the years by Mayor Bloomberg, Chancellor Klein or their top staff, few made any mention of students with disabilities.

In January 2007 the Mayor announced a second major restructuring of the educational bureaucracy since taking office. This restructuring decentralized much of the DOE’s work by putting a great deal of power into the hands of individual principals and again incorporated students with disabilities mostly as an afterthought. The DOE eliminated the ten regions so recently created and moved much of the administrative responsibility for special education from the ten CSEs to personnel in the five new Integrated Service Centers (ISCs), one in each borough. CSEs remained aligned with the Regional Offices, a unit of governance that no longer existed, and were stripped of a number of functions. The citywide Office of Student Enrollment, Planning and Operations (OSEPO)¹⁷ assumed responsibility for placement of students with disabilities whose needs could not be met in their current schools.¹⁸

13. For a list of other research-based programs see the National Right to Read Foundation website at http://www.nrrf.org/rdg_teacher_trng.htm.

14. Joseph Wardenski, *Proposed Changes in Special Education*, Gotham Gazette (May 2003), available at <http://www.gothamgazette.com/article/education/20030515/6/389>.

15. Michael Winerip, *The Lost Year: Classes in Crisis; City Retools Special Educations But Pupils Slip Through Cracks*, N.Y. Times (July 4, 2004), available at <http://www.nytimes.com/2004/07/04/nyregion/lost-year-classes-crisis-city-retools-special-education-but-pupils-slip-through.html?sec=health&&fta=y>.

16. Id.

17. OSEPO has recently been renamed as the Office of Student Enrollment (OSE).

18. See New York City Dep’t of Educ., *Children First: A Guide to Special Education for Principals* (May 2007), available at <http://schools.nyc.gov/NR/rdonlyres/E8BD811F-1607-465A-850E-F82C04B5A6A8/22459/PrincipalsGuidetoSpecialEducationMay2007.pdf>; New York City Dep’t of Educ., *New York City Family Guide 2008-2009*, available at http://schools.nyc.gov/NR/rdonlyres/E29F4CE3-5CEE-4E70-991C-158075BD29DA/0/7554FamilyGuide_English.pdf; New York City Dep’t of Educ., *Special Education Fact Sheet 2008-2009*, available at <http://schools.nyc.gov/NR/rdonlyres/2BCCCF14-9EAE-4506-BD3E-42E9789BCE99/42329/SpecEdFactSheet200884v2.pdf>.

During this second restructuring, principals were freed from the supervision of the superintendents. Instead, they were asked to choose from one of three types of school support organizations (SSOs) for assistance with curriculum support, professional development and a range of other services, including support around special education issues. Along with the virtual eradication of the regions and the reduction in power of superintendents, the DOE eliminated the 50 RASEs and replaced them with five Deputy Executive Directors of Special Education. However, unlike the RASEs, the Deputy Executive Directors were given no authority to guarantee special education services.¹⁹

B. Signature Initiatives

a. Parent Engagement and Support

As part of Children First, the DOE established a two-tiered structure for addressing the concerns and needs of all parents, including parents of students with disabilities. First, the DOE set up parent coordinators in every school charged with handling parent outreach, encouraging development of parent organizations, addressing parents' problems, and making the school friendly to parents. Parent coordinators work onsite and are hired by the schools' principals. Under the direction of the DOE's Office of Family Engagement and Advocacy (OFEA), each Community School District then hired District Family Advocates (DFAs) to assist parents when problems arise. The DOE initially posited that between the parent coordinator and the DFAs, parents of students with disabilities had ample opportunity to obtain the information and assistance they needed. Parents of students with disabilities, however, still reported feeling lost and frustrated.

In July 2007, the DOE's central Office of Special Education Initiatives (OSEI) established the Special Education Call Center (Call Center). The Call Center, initially set up to address questions from school personnel about special education supports and services, was not made available to families. Eventually, recognizing that the Parent Coordinators and DFAs were not equipped to resolve many of the concerns of parents of students with special education needs, OSEI announced that parents could reach the Call Center if they called the City's 311 hotline. The DOE declined to publish the number for parents, insisting that families go through 311 instead.

The DOE reports that the Call Center received nearly one thousand calls from parents between July 2007 and November 2008 (a period of sixteen months).²⁰ However, New York City's Public Advocate released a report in the spring of 2008 finding that the 311 operators did not know where to direct parents of students with disabilities with concerns about their children's special education supports and services. The report suggests that many more parents than those who got through to the Call Center may have been trying to reach them for assistance. The report summarized its findings as follows:



Al from Manhattan says, "Nobody, inside or out of the DOE, knows what is going on. As a result, for the first time, I feel I have to hire an advocate to represent my son and my family. It's heartbreaking. I can't do this for myself and my son."



Joanne, a parent from the Bronx, talked to us about a number of days she had spent trying to arrange services for her son. Earlier that day, she had gone to the ISC [Integrated Service Center] in the Bronx to get a RSA [related service authorization] letter – paperwork that she needed to arrange occupational therapy services for him that were not available in his school. When she got to the ISC, there wasn't enough space for all the parents who were there. "Parents were packed in like cattle in a cattle car." Another day, she went to the ISC, and there was no one there with the authority to process her request. When she contacted the school to see if they could assist in securing the necessary paperwork for the service to begin, the person at the school said she had tried twice already and would not waste her own time trying again.

19. See <http://schools.nyc.gov/NR/rdonlyres/51A7C088-CC06-48E3-8FF8-B0C47BFC3C30/42576/FactsheetSpecialEducation.pdf>.

20. OSEI PowerPoint, *supra* note 7.

“Public Advocate staffers, posing as parents of children with special needs, called 311 and asked questions about special education. Surveyors placed a total of 100 phone calls to 311, asking one of ten different special education questions for each call. Each question was asked a total of ten times. The survey found that:

- 311 referred callers to 33 different entities in response to the 10 special education questions - an average of 3.3 different referrals per question.
- One question—about getting assistive technology for a blind student—resulted in 6 different referrals from 311.
- 311 had particular difficulty handling calls about related services, such as occupational therapy, speech therapy, and physical therapy. The 3 different service questions (30 calls total), resulted in 14 different referrals from 311—an average of more than 4 different referrals per question.
- Only 1 of the 100 calls placed to 311 was referred to the Department of Education’s Special Education Call Center.”²¹

b. High School Reform

The creation of small high schools has been a highly touted piece of the Children First reform.²² Small schools appeal to many at-risk populations. They have the potential to provide a more engaging and inclusive setting for students lost in the crowds at larger schools. For the same reasons, small schools are particularly attractive to students with disabilities and their families.²³

Under Children First, the DOE opened hundreds of new small schools, but permitted these schools to operate for two years before admitting students with disabilities and English Language Learners (ELLs) who required more than a minimal level of support.²⁴ The exclusion covered students who required any type of special education classroom – integrated or self-contained.²⁵

In the spring of 2006, Parents for Inclusive Education (PIE) surveyed 29 small high schools that opened in 2003, 2005, and 2006 to determine whether they planned to have special education services or classes available in September of 2006 for students with IEPs. The responses varied dramatically. Thirteen of the schools surveyed did not respond to the inquiry; six responded that they planned to provide only Special Education Teacher Support Services (SETSS)²⁶ and resource room services, but no special classes; two schools said they planned to provide some type of special class, either integrated or self-contained; and four schools specifically responded that they had no plans to provide special education services at all.²⁷

21. Public Advocate for the City of New York, *Mixed Signals: 311 Fails to Provide Consistent Information to Parents of Children with Special Needs* (June 2008), available at <http://www.pubadvocate.nyc.gov/policy/documents/311-spedialedReport-WEBFINAL.pdf>.

22. See *New Visions for Public Schools, Reforming High Schools: Lessons from the New Century High Schools Initiative* (2007), available at http://www.newvisions.org/schools/downloads/reforming_high_schools.pdf.

23. See “AFC Testimony” February 16, 2007, available at http://www.advocatesforchildren.org/press/Small_schools_testimony_2-07.pdf.

24. Sweet, *supra* note 8. See also Hehir, *supra* note 8 at page 66.

25. In 2006, the Citywide Council on High Schools, a parent group, filed a complaint against the policy with the United States Department of Education’s Office of Civil Rights (“OCR”), arguing that the DOE had acted illegally to discriminate against students with special needs and students who were English Language learners (“ELLs”) by excluding them from new small high schools in the first two years. In January 2009, OCR issued a letter dismissing the complaint, stating in part, “Although the NYCDOE maintains a discretionary policy that does not require new small high schools to admit disabled students requiring [special classes] in their first and second years of operation, there is insufficient evidence to conclude that these students are excluded from new small high schools of their choice.” United States Department of Education, Office of Civil Rights, letter to David Bloomfield (January 15, 2009).

26. Special Education Teacher Support Services, an inclusive option for students with disabilities offered in the DOE’s Continuum of Special Education Services, refers to additional support from a special education teacher for some part of the school day.

27. See Sweet, *supra* note 8.

For this report, we looked at the Special Education Service Delivery Reports for 2007–2008 school year and 2008–2009 school year for those same 29 schools to determine the extent to which they now serve students with disabilities. We found that on average, these schools reported that students with special education needs comprised less than 10% of their student population in 2007–2008, and only 11.5% in 2008–2009.²⁸ Compare those percentages to the fact that students with disabilities make up 13.7% of the general high school population. Moreover, some schools clearly take more than their proportionate share of students with disabilities, while others remain, in effect, off limits to this population. In 2008–2009, three of these schools had over 20% students with IEPs, representing significantly higher numbers than occur naturally,²⁹ but one school still had no students with disabilities. In addition, a significant question exists as to whether the small schools that have taken on increasing numbers of students with disabilities³⁰ have actually provided the special education services laid out on the students’ IEPs.

c. Accountability Initiatives

i. Progress Reports

Since 2007, the DOE has released Progress Reports for the city’s individual public schools. These Progress Reports give letter grades to schools based on a number of criteria, including students’ academic achievement and progress, overall student attendance, and the results of annual parent, teacher, and student surveys about the schools’ learning environment. The Progress Reports for each public school provide an overall grade as well as sub-grades in specific areas. Schools earning low grades (D-F) may be subject to consequences, including leadership changes or closure.³¹ The DOE has presented these Progress Reports as a central component of its efforts to develop high expectations for its public schools and to “promote school empowerment and accountability.”³²

However, the DOE does not issue Progress Reports for District 75 schools.³³ In addition, Progress Reports rely heavily on standardized test scores so do not reflect whether a school is making progress with



Petra, a mother from Brooklyn with a fifteen-year-old daughter, Shawna, with cerebral palsy and developmental delays, told us that her daughter is now attending a high school inclusion program. Shawna has been in inclusive classrooms since middle school, but ran into several issues during her transition from junior high to high school. Petra wanted to find an appropriate high school program that was wheelchair accessible and not too far from home. When she visited a nearby program, however, the inclusion teacher told her the school was “not ready for wheelchair students.” As she lacked a better alternative, Petra enrolled her daughter anyway. The school did not arrange bus service before Shawna started. As a result, Shawna missed several critical days at the beginning of the school year with no way of getting to school. When Shawna finally reached the school and began classes, Petra realized the staff had not received adequate training in sensitivity and inclusive teaching. They were so unprepared that they had no idea what inclusion meant or how to treat children with special needs with dignity.

28. See New York City Department of Education at <http://schools.nyc.gov> for links to individual school pages to access the Special Education Service Delivery reports.

29. Special Education Service Delivery Reports for Facing History School, Lower Manhattan Arts Academy, and School for Community Research and Learning, available at <http://schools.nyc.gov/SchoolPortals/02/M303/AboutUs/Statistics/default.htm>, <http://schools.nyc.gov/SchoolPortals/02/M308/AboutUs/Statistics/default.htm>, and <http://schools.nyc.gov/SchoolPortals/08/X540/AboutUs/Statistics/default.htm>.

30. Special Education Service Delivery Report for New World High School, available at <http://schools.nyc.gov/SchoolPortals/11/X513/AboutUs/Statistics/default.htm>.

31. New York City Department of Education press release, *Mayor, Chancellor Release 2008 Progress Reports on Elementary, Middle, and K-8 Schools* (September 16, 2008), available at http://print.nycenet.edu/Common/Templates/PostingTemplate/CommonPostingTemplate.aspx?NRMODE=Published&NRNODEGUID=%7bC0B9DBA7-EB73-4AFC-9D89-0079233F758B%7d&NRORIGINALURL=%2fOffices%2fmediarelations%2fNewsandSpeeches%2f2008-2009%2f20080916_pr%2ehtm&NRCACHEHINT=Guest.

32. New York City Dep’t of Educ., *Educator Guide to the New York City Progress Report, Elementary/Middle School* (September 2008), available at http://schools.nyc.gov/NR/rdonlyres/DF48B29F-4672-4D16-BEEA-0C7E8FC5CBD5/43571/ProgressReportEducatorGuide_EMS_091608.pdf.

33. See New York City Department of Education, *NYC School Survey District 75*, <http://schools.nyc.gov/Accountability/SchoolReports/Surveys/district75.htm>.

students with disabilities who are exempted from standardized tests and permitted to take alternate assessments instead.³⁴ In 2008, the DOE announced that it was “doing more to reflect the challenge that schools undertake by serving special education and other high-need students.”³⁵ Now, community schools can achieve additional credit towards the Progress Reports if they demonstrate that their high-needs students, including those with disabilities, make exemplary gains. Schools do not lose points when their students with IEPs fail to make notable progress, or make negative progress.³⁶



ii. Special Education Service Delivery Reports

In May 2008 the DOE began posting on its website reports on special education service delivery. Service Delivery Reports for every school were posted on the web once more since then – the most recent set reflects data from the first semester of the 2008-2009 school year.³⁷ The reports are intended to provide public, school-by-school information on enrollment, special education evaluation, initial referral rates, provision of special education services, and movement of students to more integrated settings.

The reports include a number of helpful indicators, but more information is needed to determine how well an individual school is doing to provide special education evaluations and services in a timely manner. For example, reports do not show whether students recommended for CTT programs are awaiting placement. Nor do they show whether English Language Learners are waiting longer for some services than their peers. Also, for each service a student is supposed to receive, a school looks like it is in compliance as long as it provides the service in part. For example, if a student is supposed to receive speech therapy three

34. Annual standardized tests and subject-based Regents exams are mandated for most students in New York State. Many students with disabilities participate in those standardized exams, some with testing accommodations (e.g., a separate room for testing, additional time for testing, or instructions read aloud). However, some students with IEPs receive alternate assessments to determine their individual progress. In those instances, how that student will be assessed must be specifically identified in his or her IEP.

35. See New York City Dep’t of Educ., *Parents’ Guide to Progress Reports 2008-2009* (2009), available at <http://schools.nyc.gov/NR/rdonlyres/51A7C088-CC06-48E3-8FF8-B0C47BFC3C30/42580/ProgressReportsFactsheet.pdf>.

36. See “Mayor, Chancellor Release 2008 Progress Reports on Elementary, Middle, and K-8 Schools,” *supra* note 31.

37. To find the Special Education Service Delivery reports, go to the DOE website <http://schools.nyc.gov> for links to individual school pages, once on each school’s page, click on “statistics” and follow links to the reports.

times a week and receives it only once a week, that student will be counted as “receiving” services for the purpose of these reports.

NYC
Department of Education
City of New York

02X540 (SCHOOL FOR COMMUNITY RESEARCH AND LEARNING)

SPECIAL EDUCATION SERVICE DELIVERY REPORT

Enrollment

General Education	292				
Special Education Total	88	Pct. of School 33.2%	No.	Pct.	Num-ELL
Less Restrictive Environment (LRE)					
Students with disabilities in the school educated alongside their nondisabled peers for the majority of their school day					
	82		70.5%	51	11
More Restrictive Environment (MRE)					
Students with disabilities in the school educated in a self-contained special education class					
	28		25.5%	17	0

Timely Evaluation

		No.	Pct. Completed in 60 Calendar Days
Initial Evaluations			
Completed within 60 calendar days from parental consent for evaluation	1		100.0%

C. Curriculum Developments

As previously stated, the Children First reforms have not focused on instruction for students with disabilities. However, they did include the adoption of two curriculum programs intended mainly to aid this population. These programs are the Wilson reading program, derived from the Orton-Gillingham approach to teaching reading to students with reading difficulties, and the Schools Attuned Program, designed by the not-for-profit All Kinds of Minds. Although the adoption of these two programs by no means signified a comprehensive approach to improving instruction of students with disabilities in the city’s schools, both of these programs held promise for improving the education of significant numbers of students, if implemented correctly.

No data is available on the implementation or effectiveness of either of these programs in the city’s schools. With respect to All Kinds of Minds, we have not been able to determine the extent to which it has actually been implemented. With respect to Wilson, implementation appears to have been spotty, and there is no apparent mechanism for matching students who need Wilson to schools that have that capacity. Moreover, teachers report that they are often not allowed to deliver Wilson reading instruction during the time allocated for Balanced Literacy, and there is not enough time to deliver Wilson effectively in the remainder of the school day – unless, as is done in some schools, students receiving Wilson are segregated from their peers for reading instruction.³⁸

D. Collaborative Team Teaching

Collaborative Team Teaching (CTT), as it is labeled in the New York City Continuum of Special Education Services, or Integrated Co-Teaching, as it is called in the State’s continuum, is one of a number of classroom models in which students with disabilities and their typically developing peers learn side-by-

³⁸. Interview with Mindy Karten Bormemann, Chapter Leader Speech Improvement, United Federation of Teachers (Feb. 19, 2009).

side. CTT requires two educators: one general education teacher to deliver academic curriculum, and one special education teacher to modify and adapt the curriculum so that all students in the class, including those with disabilities, progress. In New York City, as many as 40% of the students in a CTT class may have special education needs.³⁹ Under State regulations, a class may have no more than 12 students with IEPs.⁴⁰

CTT is a model that works well for many students, but not for all students. The state has developed criteria for determining which students are best served in CTT classes,⁴¹ but there is no evidence to show that the DOE has adopted them. While the DOE claims that students enrolled in CTT classes in grades 3 through 8 do significantly better on standardized tests than students enrolled in all other special education settings,⁴² our requests for back up data went unheeded. Even assuming that the DOE's claim is correct, it tells us little about why these students, as a whole, are out-performing their peers. There has been no analysis of how the model has been implemented across the system, or why some classes appear to be successful while others do not.

One teacher with whom we spoke identified CTT as the “flavor of the month.” She told us that students with disabilities are placed in CTT classes with no consideration of their prior IEPs or their individualized needs – and no attention to whether they were previously receiving SETSS or placed in a self-contained setting. There are, she said, ramifications to such unfounded decisions. While some students thrive, many do not, and instead they flounder and fail. She suggested that problems for students thrown into CTT classes are compounded by the fact that teachers with the least training in co-teaching and reading IEPs are routinely assigned to CTT classes.⁴³

The United Federation of Teachers reports that it has received countless complaints from members specifically related to CTT classes, the majority of which relate to staffing. The complaint they hear most frequently involves CTT classes without the required special education teacher. When classes are fully staffed, teachers also complain that they are provided no time to collaborate and plan as promised in the DOE's Continuum of Special Education Services.⁴⁴

39. Office of Special Education Initiatives, New York City Dep't of Educ., Special Education Services as Part of a Unified Service Delivery System (The Continuum of Services for Students with Disabilities), available at <http://schools.nyc.gov/NR/rdonlyres/C7A58626-6637-42E7-AD00-70440820661D/0/ContinuumofServices.pdf>. Viewed on April 1, 2009.

40. 8 NYCRR Sec. 200.6(g)(1); New York State Education Department, Continuum of Special Education Services for School-Age Children with Disabilities. Memorandum from James DeLorenzo (April 2008), available at <http://www.vesid.nysed.gov/specialed/publications/policy/schoolagecontinuum.html>.

41. Memorandum from James DeLorenzo, supra.

42. OSEI PowerPoint, supra note 7.

43. Interview with a teacher from large comprehensive high school (Feb. 19, 2009).

44. Interview with Elizabeth Truly, Consultant on Special Education Law and Policy, United Federation of Teachers (March 24, 2009).



Jonathan, a parent in Manhattan, said, “My son is a freshman in high school. His IEP states that he should be given extended time on tests and should be put in a CTT class. There are two general education teachers in the class, no special education teachers, and he has not been given any extended time on tests. It is not the school's fault. They are trying very hard to work with what they have. They just don't have any outside help.”



Paula is the mother of an eight-year-old daughter with autism named Antoinette. Paula explained that Antoinette has made great strides, but it has been a battle. Antoinette started school in a self-contained classroom with children with autism of all different levels and abilities. In first grade, they wanted to put Antoinette in a CTT class, but Paula was not sure her daughter would do well in such a large setting. Paula then became “the squeaky wheel” when she pulled out the book that describes the DOE's services [the Continuum] and found that they can offer mainstreaming. Thus Antoinette's IEP was changed so that she attended regular classes for main subjects and returned to a self-contained class for downtime. This worked extremely well. Unfortunately, the class was split up, and Antoinette's new teacher was not well trained. The school tried to put Antoinette back into a self-contained class full-time, but she just didn't fit the box. Paula said she does not understand why programs cannot be more individualized. We all have scattered skills, not just children with special needs.

In the DOE's devotion to CTT, it has chosen a model of inclusion that puts students with disabilities in a distinct place, however integrated that place is, as opposed to bringing intensive services to students with disabilities in general education classrooms. Not all schools have CTT classes; students with disabilities recommended for CTT therefore find their choices limited when applying for middle or high school.

IV. PERFORMANCE DATA

Despite reports of progress from the DOE, the New York City school system continues to leave significant numbers of students with special needs behind. Graduation and drop out rates, although better than in the past, remain abominable. Test scores for students with disabilities are too low, and students requiring special education supports and services continue to experience delays in service delivery, or not receive services at all. Confusion, isolation, and a culture allowing students with disabilities and their families, as well as teachers and other personnel working with students with disabilities, to be treated as second-class citizens continue to exist. What follows is a review and analysis of data collected from reports released by the DOE or the New York State Education Department (NYSED), other elected officials, or governmental agencies and offices that monitor the DOE's performance. Altogether, this data paints a picture of a system that is still failing too many of its students.

A. Graduation rates⁴⁵

Since the Children First reforms were first instituted, the graduation rates of students receiving special education services have risen with those of their general education peers, albeit at slower rates. They still trend significantly below the state special education graduation rates. From 2005 to 2007, the four-year graduation rate for students with disabilities in New York City's schools increased from 17.1% to 19.8%, while the four-year graduation rate for the general population increased from 46.5% to 52.2%.⁴⁶ The increase in the graduation rate for the city's students with disabilities does not come anywhere near the target rate of 37% that the State says the City should be meeting.⁴⁷ It also falls far short of the 41.3% graduation rate for students with disabilities throughout New York State.⁴⁸

Chart 1 is based on information released by the DOE in a presentation to the Panel on Education Policy in December 2008.⁴⁹ It compares the percentage of students with disabilities in each of four service settings who graduated in 2005, 2006 and 2007.⁵⁰ It does not reveal the number of students in each setting, or indicate what sort of diploma or certificate the students completed – a Regents Diploma, a Local Diploma, or an IEP Diploma. Nevertheless, it shows that the slight increase in overall graduation rates for students with disabilities in New York City was experienced across the major service areas, with the notable exception of self-contained classes. The graduation rate for students in self-contained classes actually fell between 2005 and 2007. For the 12,365 middle and high school students currently in self-contained settings (in the community districts and District 75),⁵¹ the chances of graduating are now less than 5%.

45. Students in New York State have several types of diplomas that they can work to obtain — an Advanced Regents Diploma, a Regents Diploma, or a Local Diploma. A fourth document, called an IEP Diploma, is available only to students with disabilities. It requires only that the student meets his or her own, individual goals and has little-to-no value towards post-secondary education or employment. For more information see <http://www.emsc.nysed.gov/ciai/gradreq/intro.html>.

46. See Research and Policy Support Group, New York City Dep't of Educ., *Graduation Rates Class of 2007 (August 2008)*, available at http://schools.nyc.gov/NR/rdonlyres/062C7D9B-EC9C-4ABC-B634-43C3A448728C/42240/PUBLIC_REPORT_GraduationRates_Release_81108.pdf [hereinafter *Graduation Rates*]. This data includes only students who graduated with a Regents or local diploma.

47. See New York State Educ. Dep't, *Special Education School District Data Profile for New York City Public Schools for 2005-06*, available at <http://eservices.nysed.gov/sepuprep/mainservlet?f=pdf&school=300000010000>.

48. *Id.*

49. OSEI PowerPoint, *supra* note 7.

50. The four service settings are (i) related services only, (ii) Special Education Teacher Support Services (SETSS), (iii) Collaborative Team Teaching (CTT), and (iv) Special Class. "Related services only" applies to students in general education classrooms who are supposed to receive services such as speech therapy or occupational therapy during the school day. SETSS is assistance from a special education teacher – either in the general education classroom or in a separate resource room – for part of the school day. CTT is an integrated classroom that is taught by a full-time general education teacher and a full-time special education teacher. Special classes, also called self-contained classes, are classes comprised solely of students with special needs.

51. New York City Department of Education Statistical Summaries (Statistical Summaries), available at <http://schools.nyc.gov/AboutUs/data/stats/Register/default.htm>.

CHART 1

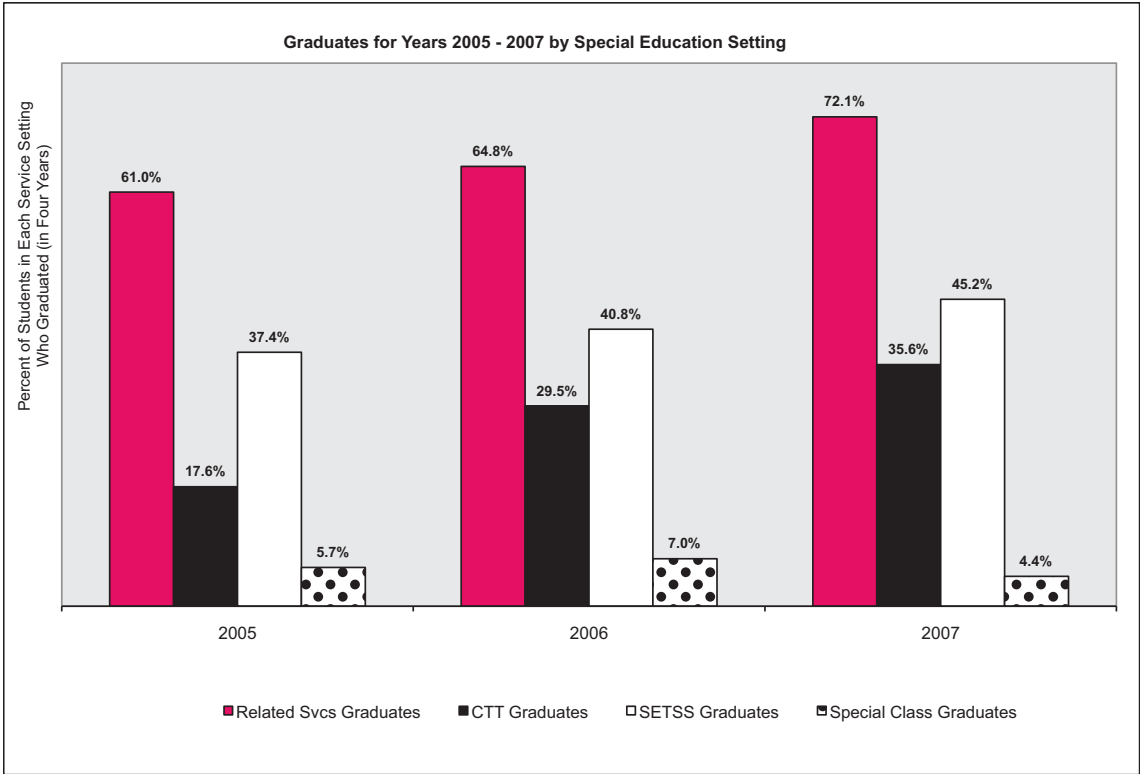


CHART 2

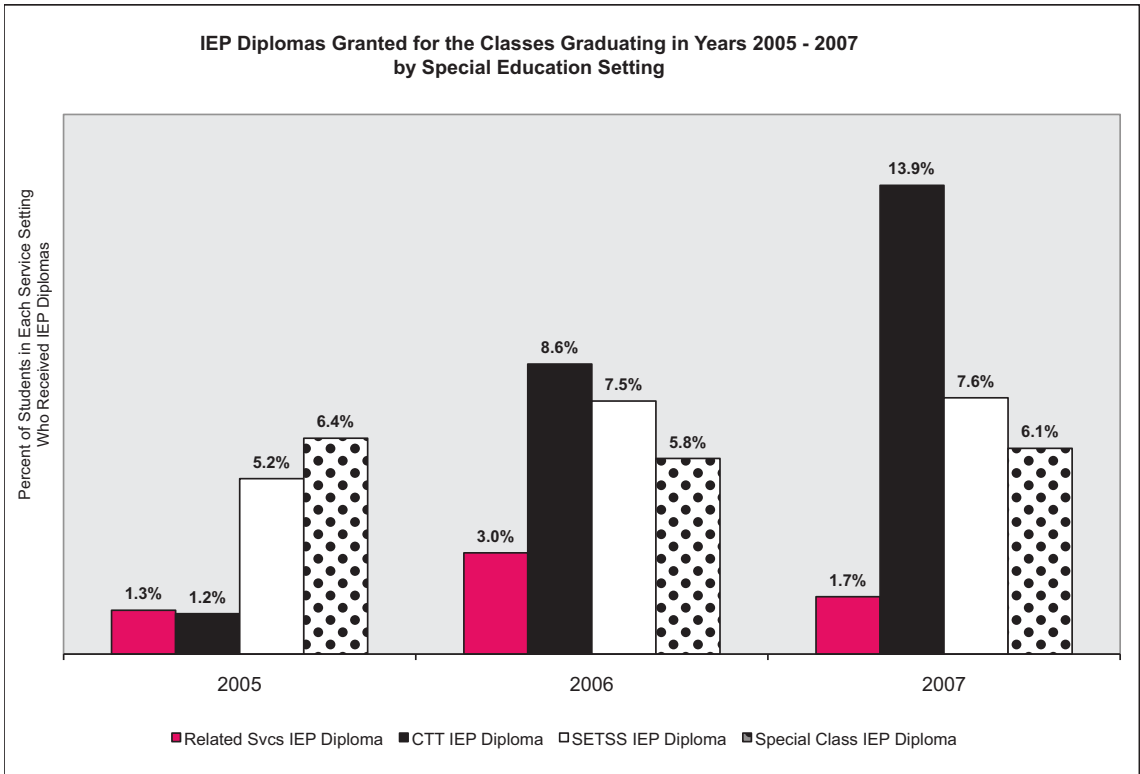


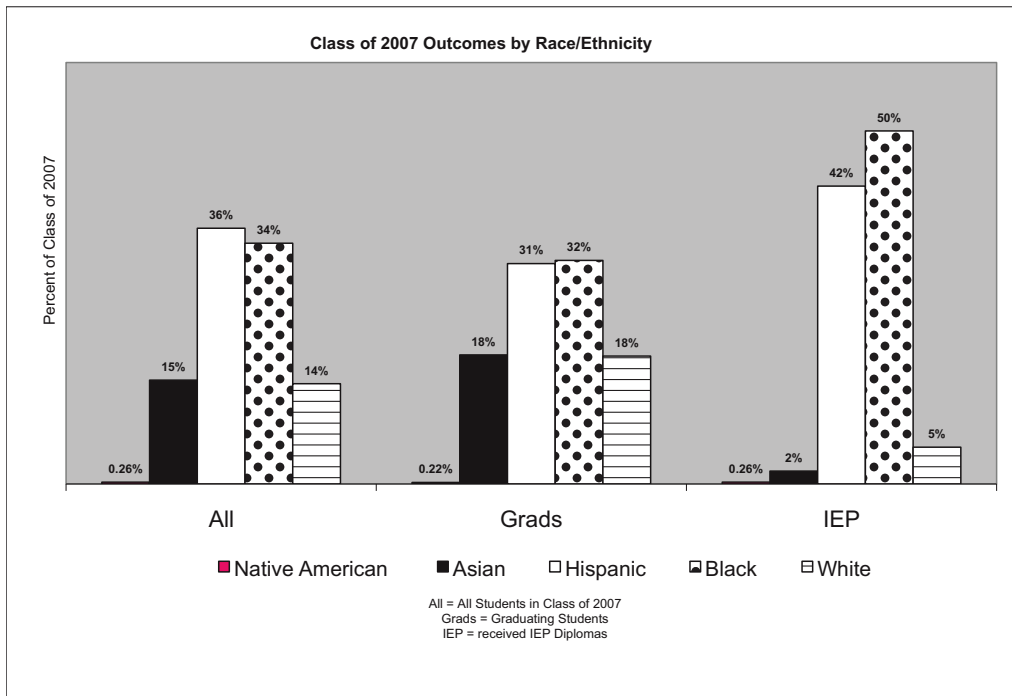
Chart 2, on the previous page, is also based on information released by the DOE, shows the percentage of students with disabilities in each setting who earned IEP Diplomas in the years 2005-2007. IEP Diplomas do not qualify recipients to go to college, get most types of jobs, or join the military. They do not signify mastery of any standardized criteria, but only that the student has met his or her own, individualized goals. Therefore, it is clearly a good sign that in 2007, there was a drop in the share of students receiving related services in general education settings who earned IEP Diplomas, as a student who receives only related services is typically capable of doing the higher level work required for the Regents or Local Diploma. Conversely, it is potentially disturbing that the DOE's own data shows that the percentage of students in CTT classes receiving IEP Diplomas rose significantly over the years. It is similarly unsettling that there was a net increase from 2005 to 2007 in the share receiving IEP Diplomas for the students receiving SETSS.



Tanya, a parent in the Bronx, told us, “I am an educator, but I’m a parent first. I am an educational assistant in a self-contained special education classroom. It is very hard to help these kids. Teachers are not equipped. Teachers want to help, but the school system won’t support them. I have a son who is now twenty three. He was put into special education because he had a speech impairment, but they put him in as emotionally disturbed. Now he has to get a GED because of his IEP Diploma. Why don’t they tell you that an IEP Diploma doesn’t mean anything?”

The racial/ethnic breakdown of the students who receive IEP Diplomas provides further cause for concern.⁵² As Chart 3 illustrates, Black and Latino students are clearly over-represented among this certificate’s recipients.⁵³ Black and Latino students represented 70% of all students in the Class of 2007, 62% of all graduates — including those who graduated with Local, Regents and IEP Diplomas, and 92% of all those who earned IEP Diplomas.⁵⁴

CHART 3



52. Office of Accountability, New York City Dep’t of Educ., The Class of 2007 Four-Year Longitudinal Report and 2006-2007 Event Dropout Rates (August 2008), available at http://schools.nyc.gov/Accountability/Reports/Data/GDReports/The_Class%20of%202007_Four-Year_Longitudinal_Report.pdf (hereinafter Dropout Rates Report).

53. Id.

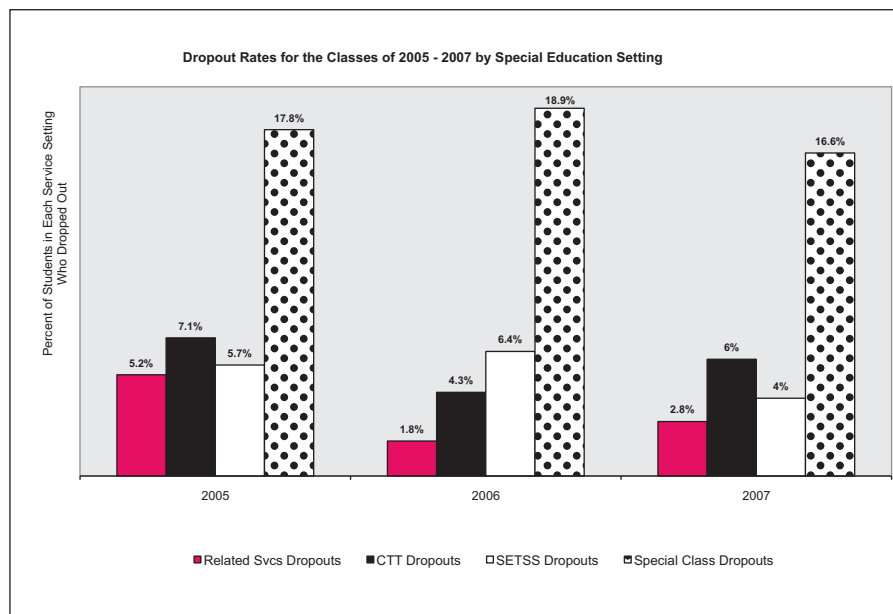
54. Id. Based on data at p. 11, Table 5.

B. Drop-Out Rates

DOE data indicates a significant decrease in the drop out rate for students with disabilities in New York City - from 31.5% in 2005 to 18.9% in 2007.⁵⁵ Chart 4, however, shows that if we look closely at data provided by the DOE's Office of Special Education Initiatives last December, and break it down by the four special education service settings, progress was far from steady. To the contrary, drop out rates for each group fluctuated, both increasing and decreasing within the two-year span.⁵⁶ Moreover, even though the percentage of students educated in special classes who drop out has decreased by 1.2% during that time period, the drop out rate for these students remains high and significantly exceeds their peers in more integrated settings.

It is important to note that we are using drop out numbers provided by the DOE, which did not include students considered "discharged" from the school system. According to the DOE's three-year follow-up study on the Class of 2004, counting discharged students as dropouts would have doubled the rate.⁵⁷ Discharges are defined as "students who left the school system primarily to enroll in another educational program or setting."⁵⁸ Students who aged out of the school system (reached the age of twenty one), and students who died before completing high school are also counted in this category.⁵⁹ It is possible that many of those counted as discharged are actually dropouts, whom the DOE has not verified as enrolled in other educational settings.⁶⁰

CHART 4



C. Racial/Ethnic Disparities in Placement

Black and Latino males have been over-represented in the special education system for many years. Black and Latino students currently comprise 72.7% of the population of middle and high school students, in

55. Graduation Rates, *supra* note 46 at page 9.

56. OSEI PowerPoint, *supra* note 7.

57. Research & Policy Support Group, New York City Dep't of Educ., The Class of 2004 Final Longitudinal Report: A Three-Year Follow-Up Study (September 2008), available at http://schools.nyc.gov/NR/rdonlyres/062C7D9B-EC9C-4ABC-B634-43C3A448728C/47362/Classof2004_shortversion.pdf. See also Posting of Phillisa Cramer to Gotham Schools Blog, <http://gothamschools.org/2008/08/27/doe-62-percent-of-class-of-2007-graduated-on-time/> (August 27, 2008, 11:36).

58. *Id.*

59. OSEI PowerPoint, *supra* note 7.

60. See Advocates for Children and The Public Advocate Of New York City, Pushing Out At-Risk Students: An Analysis Of High School Discharge Figures (November 2002), <http://www.advocatesforchildren.org/pubs/2005/discharge.pdf>.

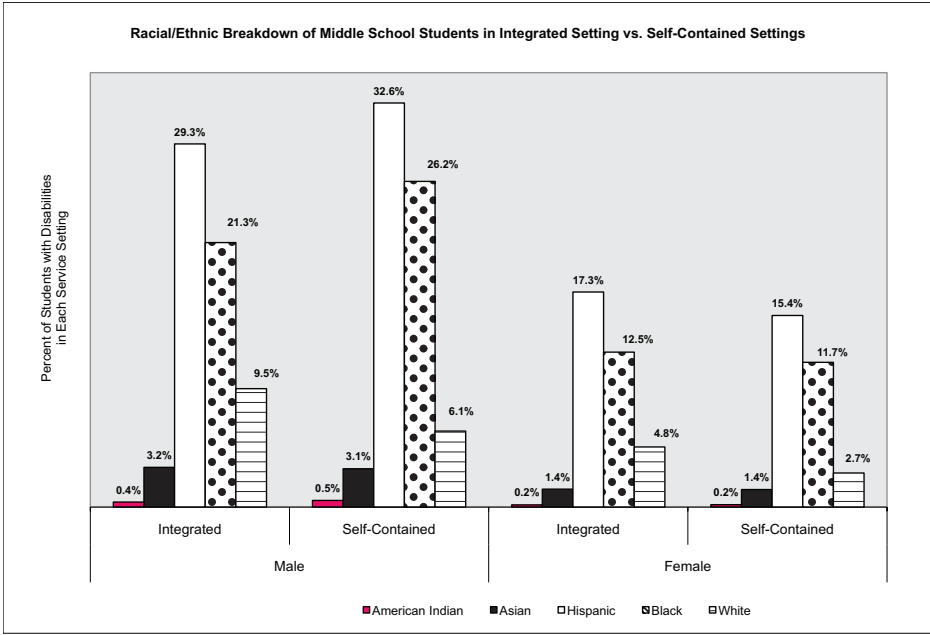
general and special education. Based on the DOE’s own data, however, Latino and Black students, male and female, comprise 85.97% of the special education population at the middle and high school levels.⁶¹ Also of note, the percentage of Latino and Black male students receiving special education services increases as they move from grade school to high school. At present, Latino and Black males represent 56.6% of the special education population in grades K-5, and 59.5% of the special education population in high schools.⁶²

Charts 5 and 6 examine the correlation between the race or ethnicity and gender of middle and high school students requiring special education services and the type of special education setting in which these students have been placed.⁶³ Chart 5 represents the racial/ethnic breakdown of students in integrated or self-contained special education settings for middle school students. Chart 6 represents the same data at the high school level. This data, compiled from information available on the DOE’s website, does not include students educated in self-contained District 75 settings. Chart 7 presents data on the racial/ethnic composition of students in secondary District 75 settings.

In charts 5 and 6, we see that Black and Latino males with disabilities are more likely to be placed in self-contained settings than their peers. In middle school, Black and Latino boys represent 50.6% of the students in integrated settings, but 58.8% of the students in self-contained settings. In high school, they represent 56.8% of those students with disabilities in integrated settings, but 60.9% of those in self-contained settings. Black and Latino males also make up 59.3% of the middle and high school students in the largely segregated District 75.

While there are students with profound disabilities who continue to require the environments and supports found only in self-contained settings, these racial/ethnic disparities in placement are cause for concern, particularly in light of the previous sections showing that students in self-contained settings graduate with more IEP Diplomas than their peers and drop out of school at significantly higher rates.

CHART 5



61. Statistical Summaries, *supra* note 51.

62. *Id.*

63. *Id.*

CHART 6

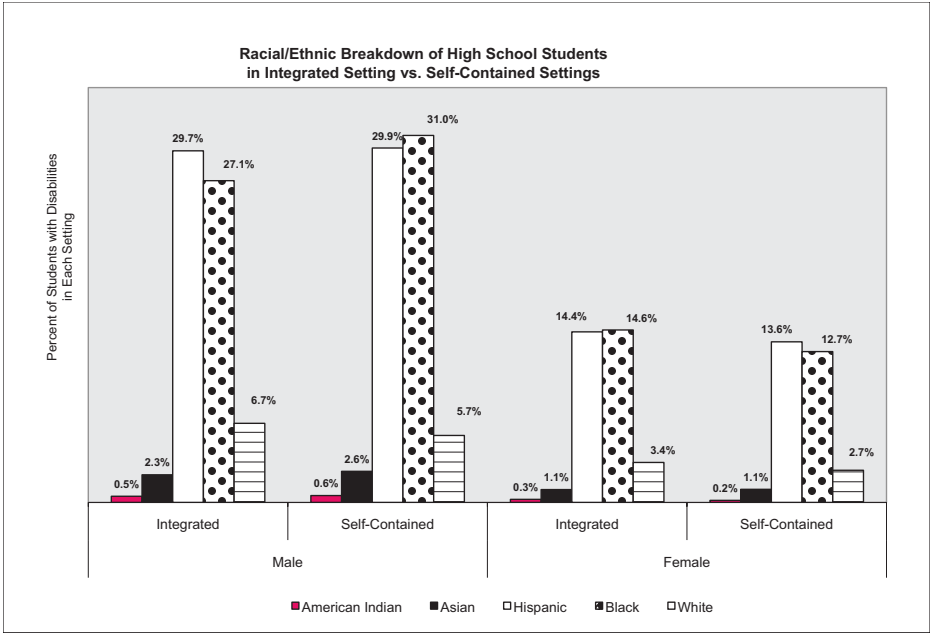
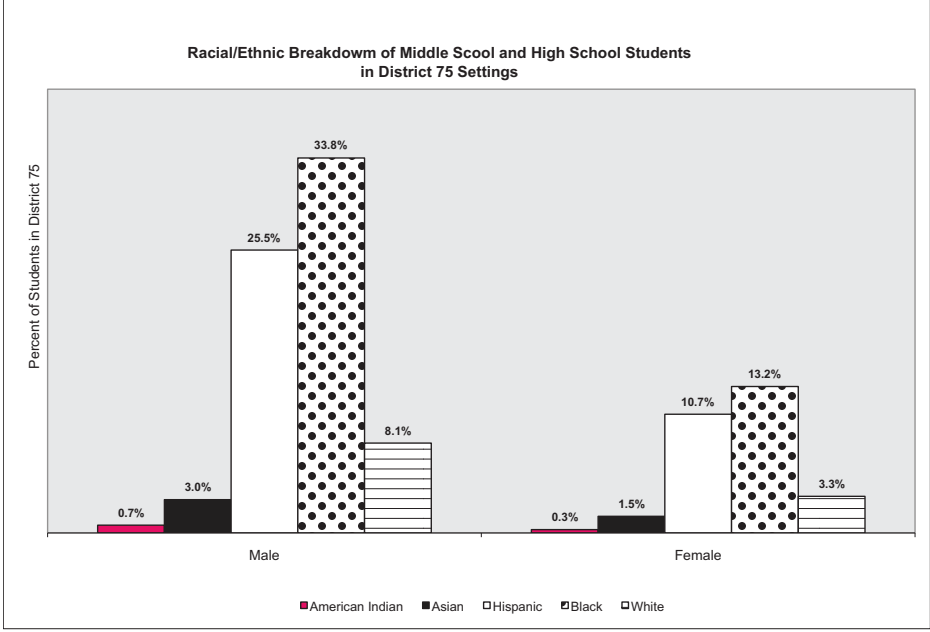


CHART 7



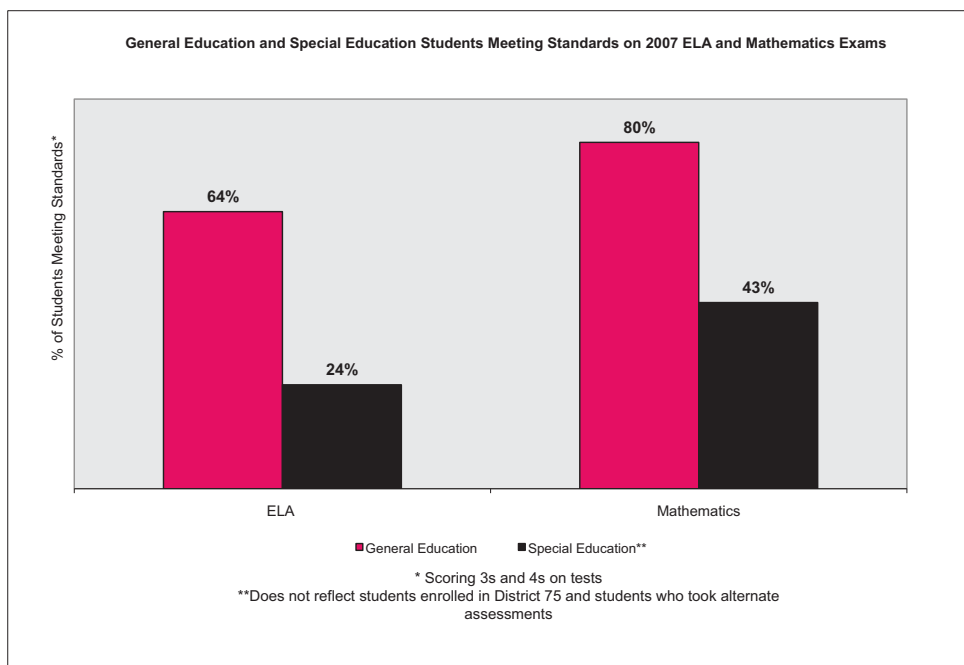
D. Student Test Results

In June 2008, the DOE released its 2007 test results for grades three through eight.⁶⁴ It did not initially include data for students with disabilities. Only after advocates and parents complained did the DOE publish information to show how students with disabilities had fared. There was an increase over all, but students

64. New York City Dep't of Educ., 2008 Results of the New York State Mathematics AND ENGLISH Language Arts Tests (Grades 3-8): Results for Students with Disabilities (June 2008), available at http://schools.nyc.gov/accountability/Reports/Data/TestResults/2008/ELA/2006-2008_Math_ELA_Test_Results_SPED_GE.pdf.

with disabilities lagged behind their peers.⁶⁵ The data, illustrated in Chart 8, showed that while 80% of general education students were at or above grade level in mathematics (i.e., they received 3s and 4s on their test results as compared to 1s and 2s), only 43% of students with disabilities, not including students who took alternate assessments or were enrolled in District 75, were at or above grade level. With regard to English Language Arts, 64% of general education students met standards, while only 24% of students with disabilities, not including students who took alternate assessments or were enrolled in District 75, met those same standards.

CHART 8



E. Delays and Failure to Deliver Special Education Services

In 2007, New York City’s Office of the Comptroller looked at the DOE’s monitoring, tracking, and documentation of special education services provided to students in inclusive settings. Their analysis included a sampling of students with special education needs being educated alongside their more typically developing peers while receiving related services or SETSS or sitting in a CTT classroom. In an audit report entitled, “On the Monitoring and Tracking of Special Education Services for Elementary School Students by the DOE,” the Comptroller found that New York City fails to adequately monitor, track or document the provision of IEP-mandated services, and as such, the DOE was unable to demonstrate the extent to which any of the 89 students whose records were audited received the services to which they were entitled.⁶⁶

The DOE has acknowledged this monitoring problem publicly and recently announced it will be developing a new online database to track services for students with disabilities. The database is intended to im-

⁶⁵ Id.

⁶⁶ See Comptroller Audit Report, *supra* note 8.

prove the DOE's ability to track special education evaluation, placement and service delivery. It will allow for electronic record keeping and should improve school personnel and family access to special education records.⁶⁷ Until the DOE constructs and implements this new system, its reports on the delivery of special education services must be viewed with some caution.

In 2008, the New York State Comptroller's Office released a report based upon data provided by the DOE entitled, "Waiting for Special Education." In the Comptroller's study, he found that New York City fails to complete a number of important steps in the provision of special education services in a timely way.⁶⁸ Significantly, special education-related evaluations are long-delayed, as are the delivery of related services and special education placements. Some of the Comptroller's most troubling findings include:

- the number of students awaiting evaluation for more than thirty school days almost doubled after the 2003 reorganization;
- the number of recommendations for related services that went unmet more than doubled from 2003 to 2007; and
- English Language Learners with special education needs waited even longer for needed programs than other special education students.⁶⁹

When the DOE cannot deliver the related services (such as speech and language therapy, counseling, occupational therapy, or physical therapy) that a child needs to make educational progress, the child is entitled to receive a Related Services Authorization (RSA). The RSA obligates the DOE to pay for the service privately, assuming the family can locate a private provider to take the job. In January 2008, the Bronx Borough President's office conducted a survey by calling the phone numbers on a list of related service providers given out by the DOE to families who receive RSAs.⁷⁰ Parents are expected to use the DOE's lists to find providers. For the Borough President's survey, a total of 260 calls were made off the lists for occupational therapy and speech therapy. Only 4% of the calls were returned. The results clearly demonstrate how difficult it can be



Evelyn, a mother from Staten Island, told us, "I have a child. He's seven years old and is enrolled in a District 75 classroom. He is not receiving speech therapy this year, nor is he receiving occupational therapy, and for two years I have been trying to get the . . . paraprofessional promised to us on his IEP."



Gwen, from the Bronx, told us, "I am the guardian of my little cousin and have been since he was six weeks old. He has an IEP, and when I addressed to the teacher that he wasn't getting what he needed, she said she didn't know about that and said that I might be mistaken. But then when she realized that I knew what I was doing and I wasn't giving up, she finally made sure he got his services."



Marcos, another parent said, "I have a sixth grader with Asperger disorder. Since he has transitioned into sixth grade at a new school, he has regressed a great deal. He is in a general education program [inclusion] with supports. Unfortunately the school does not have a good enough understanding of his disorder. He therefore has withdrawn more and is shutting down a lot. He also has severe processing delays. He has an FM unit [for hearing assistance] on his IEP, but still does not have a working unit in school. Schools need to be trained properly to know how to handle children with disabilities."

67. See New York City Department of Education press release, *Chancellor Announces New Online Database to Track Services for Students with Disabilities* (January 14, 2009), available at http://schools.nyc.gov/Offices/mediarelations/NewsandSpeeches/2008-2009/20090114_sesis.htm.

68. The UFT cautions that failure to provide needed services is often under-reported, as teachers fear adverse job consequences for identifying schools' failures to provide those services.

69. See New York State Office of the Comptroller, *Waiting for Special Education* (June 2008), available at <http://www.osc.state.ny.us/osdc/rpt3-2009.pdf>.

70. Office of the Bronx Borough President Related Services Survey. Released to The Panel for Educational Policy (December 2007).

for a parent to find needed supports for their children. Furthermore, of the independent providers reached by the Borough President's Office, many expressed their own discontent and frustrations with a system that often fails to pay them in a timely way.



Rena, a parent from Staten Island, told us, “I am not satisfied with the quality of my daughter’s education. My daughter is seven years old and is severely disabled. She is diagnosed with cerebral palsy, reflux, and seizure disorder. She is in a District 75 school in a [self-contained] classroom. There are not enough therapists in the schools. Therefore, my daughter’s services have been cut many times. The school tries to hire contract therapists, but that takes weeks if you’re lucky, or possibly months. When the services can’t be filled at the school or your child requires more therapy, then they give you an RSA. It is very difficult to find RSA therapists. This is because the therapists usually don’t get paid on time. I have one therapist who did not get paid for three months of working with my daughter. First we were not able to receive the packet to sign. The therapist, my service coordinator, and I called numerous times. There were many excuses. They couldn’t find the signed documents. They sent the wrong amount. The computers were down, etc.... I also have a problem with the inconsistency of treatments. Some therapists cut sessions to fifteen minutes instead of seeing her for thirty minutes. Therapists make schedules, but then forget. So I would like to leave you with what happens to those children who don’t have a voice to speak out for them?”

V. RECOMMENDATIONS

Recently, the DOE acknowledged the need for significant changes to special education by appointing Garth Harries, who formerly led the Department's new school development process, to assess the system for effectiveness and efficiency. Mr. Harries is very forthcoming about the fact that he has no experience in special education and thus far, has provided little detail publicly regarding his intentions.

The ARISE Coalition urges the DOE to take this opportunity to target resources and attention to improving instruction for children with disabilities in New York City's schools. Another re-structuring of the bureaucracy may resolve some problems, but it is likely to create others and also cause significant disruption. It will not provide the multitude of students being failed by the system with the academic, social, and emotional support they need. Throughout the city's schools, there are pockets of success – schools and classrooms, both public and private - that enable students with disabilities to reach their potential. The DOE needs to evaluate what makes those programs successful and what makes others fail. It should cull the best of what is happening in our school system and elsewhere and expand the excellence to reach more children, while identifying the pitfalls and barriers to replication in other settings.

Action Item: The ARISE Coalition calls upon the DOE to create a task force to conduct a systematic study of instruction of students with disabilities in the city's public schools. The task force should use objective data and classroom observation to identify quality programs and practices that meet the academic, social, and emotional needs of their students and should develop recommendations that will make New York City a model for educators around the country. The task force should include researchers and experts in education of students with disabilities, as well as parents, students past and present, teachers, and advocates. The task force should consider, among other things:

- Investing in a diversity of successful models to meet the needs of the wide range of students with disabilities;
- Maximizing the potential of technology to further instructional goals;
- Increasing opportunities for inclusion and access to the mainstream curriculum by incorporating principles of universal design for learning;
- Increasing the use of positive behavioral supports to create safe and orderly environments in schools and classrooms; and
- Expanding access to summer programs for students with disabilities who attend self-contained, special education classes in their community schools.

Throughout this report, we have published parents' stories and other data describing how children with disabilities have been excluded from DOE programs and activities, ranging from graduation ceremonies to admissions processes to general education classrooms throughout the city. Attitudes of intolerance and exclusion start from the top. The Chancellor should make clear through his words and his deeds that students with disabilities will be included in all new DOE initiatives and are presumptively able to participate in all DOE programs and activities.

Action Item: The Chancellor should issue a directive to the schools that discrimination against students with disabilities is prohibited and will no longer be tolerated. The directive should be written in conjunction with the advocacy community, concerned parents and educators and should provide examples of prohibited actions to clarify its reach. The Chancellor should then develop a plan for taking corrective action against schools that break this policy.

The DOE needs to make sure that on a system-wide level, all students with disabilities have a meaningful opportunity to achieve a Regents or local diploma, including those students in self-contained classes in the community schools and in District 75.

Action Item: The DOE should identify all schools and programs across the city that do not have the capacity to award Regents or local diplomas to students with disabilities, It then must ensure access to these diploma options for all students in these programs who have the will and ability to achieve to that level.

Action Item: The DOE should improve counseling to students and families on the diploma options available and provide more meaningful support to work with students to achieve their diploma goals. The DOE should consider supplementing the transition page on students' IEPs with a signature page for parents and students acknowledging explanation and understanding of the various diploma options and their implications and providing referrals to advocacy organizations when parents and students continue to have concerns.

As large schools are closed and replaced with specialized, smaller ones, the DOE needs to re-examine the issue of physical accessibility across the spectrum of its programs and identify ways to make programs and buildings more accessible.

Action Item: The DOE should make public an inventory of all existing programs and any barriers to making them fully accessible to people with physical disabilities. The DOE should then develop and release a plan for achieving full program and communications access.

Action Item: The DOE should thoroughly and immediately assess the potential for using federal stimulus money for modifying existing buildings to improve accessibility and then report publically on its findings.

Children across the city are not receiving their IEP mandated programs and services. Principals are not held accountable for compliance with IEPs. No one in the system can or will tell principals that they must provide the supports and services on students' IEPs. The IEP documents the DOE's commitment to providing a free appropriate public education to students with disabilities. Failure to implement students' IEPs violates the law.

Action Item: The Chancellor must provide clear and unequivocal direction to all schools and principals that all IEPs must be fully implemented. There must be consequences for failure to adhere to this directive.

Finally, families of students with disabilities require easy access to meaningful information to determine the best schools and programs to meet their needs. Families also require more comprehensive information prior to all meetings that will affect the supports and services their children will receive so they do not feel compelled to become the "squeaky wheel" or to hire advocates and attorneys to work with them. Families need to know where they can seek help when they are unable to obtain the information they need.

Action Item: The DOE should make its website a hub for families of students with disabilities to locate all relevant information on DOE programs and services. The information must be easily searchable and written in plain English, with translated versions in the eight languages most commonly spoken in New York City.

Action Item: The DOE should help parents of students with disabilities to find and interpret school Progress Reports, Special Education Service Delivery Reports, and the Annual School Report Cards by providing links from the special education hub as well as better summaries of the goals of each report and explanations of how they overlap and differ.

Action Item: The DOE should work with parents and advocates to determine how school Progress Reports can best reflect success in educating and including the full range of students with disabilities, including those who participate in alternate assessment.

Action Item: The DOE should include more specific statistical criteria in the Special Education Service Delivery Reports. Those reports should, for example, make distinctions between students who have received all supports and services identified on their IEPs and those who have received only some of those supports and services.

Action Item: The DOE should publicly report student outcomes for District 75 schools to at least the same extent that it reports student outcomes for other schools.

Action Item: The DOE should fully inform parents at the beginning of every IEP team meeting how decisions will be made at the meeting. Parents should be specifically informed of the District Representative's responsibility to: facilitate an open discussion regarding eligibility for services, and development or revision of the IEP; provide information about the full continuum of supports and services, including those available in the child's school and those available in other schools in the district; ensure that all program and service options are considered; and build consensus among team members.

Action Item: The DOE should continue to expand its collaborations with parents and advocacy organizations to offer families of children with disabilities workshops each year on their options, rights, and responsibilities throughout the educational process, including transitions from early intervention to preschool and school-aged years, elementary school to middle school, middle school to high school, and high school to life after school.

Action Item: The DOE should provide direct access for families of students with disabilities to individuals or offices that have the knowledge and the authority to help them with problems that cannot be resolved at the school level.

VI. CONCLUSION

We are poised at a critical point in this administration. We have had seven years of Children First reforms, and we now face the possibility of five more. The potential continuity of leadership gives this administration the opportunity to tackle the challenging problems plaguing special education and build a system that works for all children, with and without disabilities.

As Mayor Bloomberg observed six years ago, “The need for comprehensive reform of the special education system in our public schools is manifest.”⁷¹ This observation still applies today. We urge the DOE to act on our recommendations to educate, include, and respect students with disabilities striving to obtain a quality education in our city’s schools.



Judy, a parent of a pre-teen in the Bronx, told us, “My son was diagnosed with autism at one-and- a-half years old. To be honest, I felt autistic, too. I didn’t understand the complicated IEP process. I was so angry I was behaving badly. I was having temper tantrums like I had autism. After I got past his diagnosis, I finally decided to fight and advocate. It was not easy. It is a horrible thing to think that your child is going to be sick. It has been ten years, and I’ve changed. I’m a part of my community, and I get group support. There’s potential to fix the system, but we still have a long way to go. I’ve been treated badly by staff from school - security, teachers, and principals – all of them. When a teacher sees autism, they automatically give up. Many families fight for private school, but working with other parents, we can fix the public schools. We need better classes, better teachers, and we need the budget to get these things.”

GLOSSARY OF TERMS AND ACRONYMS

CSE

Committee on Special Education. The ten Committees on Special Education (CSEs) store all students' special education records and are responsible for opening initial referrals for all students. CSEs handle Committee on Pre-School Education (CPSE) issues as well as all aspects of the special education process for students in non-public schools, private schools, and charter schools, and for students who do not attend school. Functions include evaluating students, developing the individualized education programs (IEPs) and handling disputes.

CTT

Collaborative Team Teaching. CTT is a type of classroom that integrates students with disabilities and their non-disabled peers. It is staffed by a general education teacher and a special education teacher, both of whom work in the classroom full time.

DFA

District Family Advocate. Formerly known as "parent support officers," the DFAs are officials in each of the community school districts whose job it is to support families. They report to the central Office of Family Engagement and Advocacy (OFEA).

District 75

Citywide district for students with the most profound special education needs.

DOE

The New York City Department of Education.

ELA

English Language Arts. The study of reading and writing.

ELL

English Language Learners. ELLs are people whose native language is not English and who are not proficient in English.

IDEA

The Individuals with Disabilities Education Act. The IDEA is a federal law under which school districts are required to provide a free appropriate public education to students with disabilities. The IDEA was formerly known as the Education for All Handicapped Children ACT (EAHCA), which was initially signed into law in 1975.

IEP

Individualized Education Program. The IEP is a document revised at least annually that sets forth, among other things, the special education program and services that each child is entitled to receive, as well as any necessary classroom or testing accommodations.

ISC

Integrated Service Center. These centers provide mandated and operational services to all schools in a borough. Services include those related to human resources, payroll, budget and procurement, transportation, food services, facilities and extended use, grant management, technology, health and safety, student suspensions, youth development, and some elements of special education. ISCs are intended to provide assistance and support to principals.

ISS

Instructional Support Specialist. ISSs served primarily to support special education teachers in teaching a standardized curriculum. ISS positions were eliminated in the most recent reorganization.

NCLB

No Child Left Behind. NCLB is the federal law intended to improve education for all students. NCLB and the IDEA are supposed to be aligned on issues critical to the progress of students with disabilities.

OFEA

Office of Family Engagement and Advocacy. OFEA is the office in the DOE charged with supporting families by helping them to find answers and resolve problems.

OSEI

Office of Special Education Initiatives. The Office of the DOE charged with promoting positive educational outcomes for students with disabilities.

OSE/OSEPO

Office of Student Enrollment, formerly the Office of Student Enrollment and Planning Operations. OSE is the DOE office currently responsible for elementary, middle and high school admissions, gifted and talented program admissions, and enrollment for those students receiving special education services in community schools. Although OSE will not place students from District 75, they are charged with working with the Placement Officers from District 75 to find school seats for those students as well.

PROGRESS REPORTS

Issued annually for each school, Progress Reports include a letter grade of A, B, C, D, or F based largely on the school's success in helping students learn during the previous school year. The Progress Report evaluates schools in three areas: school environment, student performance, and attendance.

RASE

Regional Administrator for Special Education. RASEs were the people charged at one phase of the Children First reorganizations with guaranteeing the delivery of special education in each region. They reported to the Regional Superintendents.

RSA

Related Services Authorization. When the DOE is unable to provide the related services a child is entitled to receive under his/her IEP, the family should receive an RSA, a letter from the DOE that entitles the family to seek services outside the DOE at the expense of the DOE.

SBST

School Based Support Team. The multidisciplinary, school-based members of the IEP team responsible for timely and appropriate evaluation, placement within the school, and IEP development for students ages 5 through 21 who may require special education services or have already been determined to require special education services and are either already registered in their respective schools, or are incoming kindergartners zoned for their schools. While this term is still widely used by school personnel, it is no longer used by the DOE.

SETSS

Special Education Teacher Support Services. SETSS refers to additional support from a special education teacher (other than the classroom teacher) for some part of the school day. This support may be provided inside the classroom or in a separate location.

SPECIAL EDUCATION SERVICE DELIVERY REPORTS

Web-based Special Education Service Delivery Reports indicate the timeliness of special education evaluations and service delivery for each school in New York City. The reports are available by going through each individual school's web page.

SSO

School Support Organization. SSOs are the organizations that supply curriculum support and professional development as well as a range of other services to schools. There are three types of SSOs: Empowerment, Learning, and Partnership. Principals may choose which SSO to join regardless of geographical location.