



NEW YORK CITY COMPTROLLER
BRAD LANDER

Course Correction

Expanding and strengthening special education services improves student outcomes and reduces costly due process claims

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Executive Summary

Special education services – including speech and occupational therapy, specialized individual instruction, and a wide array of other tailored services – are critical to ensuring students with disabilities have the supports they need to learn and grow. Under federal and state law, the City of New York is legally mandated to provide special education services to all children with disabilities in the City. Where the City fails to provide these services directly, families can file “due process claims” which can result in a legal judgment or settlement requiring the City to provide services or pay the costs to families to arrange these services. Unfortunately, many of the City’s approximately 283,000 children with disabilities are missing out on

the special education services they need to learn and thrive, even as the cost of due process claims has skyrocketed. The Comptroller's office conducted an assessment of special education services in New York City and the City's spending on associated due process claims.

Key Findings

Many students in NYC public schools wait for months for the Department of Education (DOE) to find an appropriate therapist, teacher, or classroom seat, or do not receive these mandated supports at all. Discrepancies in the provision of special education services across neighborhoods corresponds with racial and income inequalities.

- In the 2021-22 school year, 13,800 IEP recommendations for related services such as speech therapy, physical therapy, occupational therapy, or counseling for K-12 students went unfulfilled. Nearly 10,000 preschool students with disabilities missed out on their full mandated services.¹
- In predominantly Black and Hispanic school districts, IEP related service recommendations for K-12 students were more likely to be only partially fulfilled by DOE or not fulfilled at all, as compared to school districts with a larger percentage of white and Asian students.
- As levels of school district poverty increase, so does the likelihood that related service recommendations for K-12 students will not be fully provided.

In order to secure critical special education services for their children, a growing number of families, in public and non-public schools alike, have filed due process complaints against DOE in recent years. While due process claims often seek private school tuition reimbursement, the City's spending on special education service claims (in which families request payment for specific services rather than tuition), has grown dramatically in recent years:

- Between FY12 and FY22, City spending on special education service due process claims grew from \$33 million to \$372 million, a more than ten-fold increase over a decade.
- In FY22 issues involving educational services were cited by parents 8 times more than tuition, and 10 times as frequently as transportation in due process claims.
- In FY23, educational service claim payments represent 58% of all payments to date (up from 20% a decade ago).

In addition to the growing cost, the increase in special education service claims brings with it a lack of accountability and opportunities for fraud. Unlike providers contracted or hired by the City, service providers paid via due process claims judgments or settlements are not subject to qualification standards and security measures in place for City-contracted vendors.

- For over 90% of the more than 900 special education service providers paid by DOE in FY22 as the result of due process claims, there appears to be no safety clearance, accreditation check, or responsibility determination prior to payment.

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Recent investigations revealed concerning and costly examples of fraud among some special education service providers, making evident the lack of oversight for this growing segment of special education payments.²

Recommendations

To reduce due process claims filed against the City – and more importantly, to ensure that all children with disabilities in New York City get the services they need and have a legal right to, **DOE should make a substantial investment to expand the network of high-quality, multilingual providers, hired or contracted by the City, to provide special education services to all students with disabilities** in public schools, charter schools, community-based preschool programs, and non-public schools. To create that system, the City should:

- **Utilize the “Pay for Success” model to expand the network of providers** and make a seed investment of \$100 million (representing 25% of what the City likely will spend on due process claims for services in FY23) to establish an expanded network of multilingual special education services which can increasingly meet students’ need. Over time, the investment will reduce the need and legal justification for due process claims, thus improving services and saving the City money in the long term.
- **Ramp up recruitment and retention efforts at DOE.** DOE must expand the number of therapists and special education teachers employed by DOE to provide SETSS, SEIT services, and related services to students in DOE schools, preschools, charter schools, and private schools.
- **Offer competitive provider contract rates and pay providers in a timely manner.** DOE’s existing contracts are failing to pay special education service providers competitively, contributing to an urgent shortage of special education teachers and service providers available to the city’s students with disabilities (which, in many cases, ultimately leads the City to pay much higher rates via due process claims).
- **Improve access to services when there are no DOE or contracted providers available.** When DOE is unable to assign a DOE-employed or contracted provider to a child, having a functioning voucher system as a stopgap measure would reduce the number of due process complaints filed against the City, and ensure that children get mandated services faster.
- **Restructure DOE’s evaluation and provision of special education services.** Increase the capacity of the Committees on Special Education (CSE) offices to coordinate service provision and enhance accountability by re-establishing a Deputy Chancellor for Special Education.
- **Create service provider standards to increase accountability and help reduce fraud.** New York State should establish accreditation and background check requirements for service providers retained by families as a result of due process claims to provide some measure of oversight, ensure that DOE is only paying for professionals qualified to provide the needed services, and prevent misappropriation of City funds.

The consolidated system of special education services proposed in this report will not only help ensure that students with disabilities have access to the special education services to which they are legally entitled, but by doing so with greater cost-effectiveness and oversight, will reduce the costs and risks incurred by the City from special education due process claims.

Overview: Special Education Services in New York City

In FY23, nearly 283,000 children in New York City were eligible for special education services in either public or non-public school settings.³ This includes roughly 209,000 public school students—more than 1 in 5 public school students—who have disabilities that impact their educational experiences and a corresponding Individualized Education Program (IEP) to address their specific needs. An IEP is the written blueprint developed by DOE in consultation with families for the specific services DOE is required to provide to the student.

IEP mandated special education services can take many forms. In public schools, some children require more restrictive settings that operate outside of general education classrooms and serve only students with disabilities. That setting could take the form of a special class in a self-contained classroom within a community district school, or placement in a District 75 program, a non-geographic district established for students whose needs cannot be met in community district schools. Some children with disabilities attend classes in a public school within a community school district or contracted preschool program and receive their special education services in a general education or integrated co-teaching (ICT) class, or a preschool special class in an integrated setting (SCIS), via therapists, special education teachers and paraprofessionals who support them in the classroom or elsewhere in the school. IEP mandated services more specifically include related services (e.g., speech or occupational therapy, mobility services, etc.), Special Education Teacher Support Services (SETSS) or, at the preschool level, Special Education Itinerant Teacher (SEIT) services, paraprofessional services, and compensatory services which are described in Table 1. A student's IEP may contain recommendations for one or more of these services.

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Table 1: Types of IEP Mandated Services

Related Services	A therapist, nurse or other practitioner (either monolingual or bilingual) works with students to improve skills necessary to educational goals and quality of life, and ensure health and safety. Can include services to children in special classes or push in or pull out services for children in general education classrooms. Also includes forms of assistive support for mobility, vision and hearing disabilities including:
	Speech/Language Therapy
	Physical Therapy
	Occupational Therapy
	Counseling
	Hearing Services
	Vision Services
	Assistive Technology Services
	Mobility Services
	Sign Language Interpretation
School Nurse Services	
Paraprofessional Services	An aide who provides assistance to students. It may be to an entire class or to an individual student. It can be for all, or part, of a school day. IEP may recommend the support of a paraprofessional in: behavior support, health, transportation, orientation and mobility, toileting.
Special Education Teacher Support Services (SETTS)	A special education teacher directly or indirectly provides specially designed instruction part-time to a group of up to eight children. This may be in a general education classroom or somewhere else in the school. When indirect SETTS is recommended, the provider works with the classroom teacher to support the special needs of the student.
Special Education Itinerant Teacher Services (SEIT)	A Special Education Itinerant Teacher provides specialized individual or group instruction and/or indirect services to preschool students with IEPs. Services are provided on an itinerant basis, meaning the SEIT travels to the childcare or educational setting the child attends during the day. SEIT services may be provided alone or in combination with one or more related services.
Compensatory Services	IEP mandated specialized instruction or related services to address gaps in progress or skill regression caused by an inability to benefit from remote instruction or missed services due to the pandemic.

Source: New York City Department of Education

Although DOE offers the services detailed above, there are significant gaps that leave many children in public schools without the services mandated by their IEP. In the 2021-22 school year (the most recent year for which these data are available), 38% of preschool special education students (nearly 10,000 students) were not receiving all of the services mandated by their IEPs by the end of the school year.⁴ Of those students, 1,600 were never provided any special education services at all. Those numbers appear to have increased according to recently published data for the 2022-23 school year.⁵

For K-12 students in district schools, 13,800 IEP recommendations for related services such as speech therapy, physical therapy, occupational therapy, or counseling were unfulfilled by DOE in the 2021-22 school year. Additionally, the DOE failed to fully provide nearly 20,000 K-12 students with SETSS or placement in an ICT or special class. For English language learners the situation is even more dire: while 88% of students citywide received their mandated SETSS or special class, a mere 36% of English language learners fully received the bilingual SETSS, ICT, or Special class DOE is legally required to provide to them.⁶

Table 2: Number and Percent of K-12 Related Service Recommendations Fulfilled by DOE by District in 2021-22

District	Full Services*	Partial Services	No Services	Partial / No Services	Percent Partial / No Services
1	3,776	0	155	155	4%
2	15,799	56	956	1,012	6%
3	6,232	0	330	330	5%
4	4,291	0	210	210	5%
5	5,913	6	553	559	9%
6	5,637	10	277	287	5%
7	6,353	0	531	531	8%
8	8,019	0	634	634	7%
9	7,826	16	489	505	6%
10	15,296	7	754	761	5%
11	13,319	18	728	746	5%
12	9,013	16	491	507	5%
13	6,148	20	573	593	9%
14	5,735	17	514	531	8%
15	11,846	25	886	911	7%
16	1,794	0	125	125	7%
17	5,988	16	449	465	7%
18	2,976	0	179	179	6%
19	7,269	27	504	531	7%
20	11,512	76	215	291	2%
21	11,005	63	420	483	4%

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District	Full Services*	Partial Services	No Services	Partial / No Services	Percent Partial / No Services
22	8,455	0	296	296	3%
23	3,808	0	277	277	7%
24	19,285	125	729	854	4%
25	7,942	65	190	255	3%
26	12,558	89	250	339	3%
27	9,745	0	316	316	3%
28	9,179	65	518	583	6%
29	4,924	0	147	147	3%
30	6,783	10	167	177	3%
31	26,356	67	489	556	2%
32	2,350	0	110	110	4%
Missing	3,690	140	332	472	11%
Totals	277,132	794	13,462	14,256	5%

* DOE does not include the actual number of students receiving related services in grades K-12 in the DOE Annual Special Education Data Report. This table aggregates DOE's district level data on the number and percentage of related service *recommendations* resulting in a full encounter, partial encounter, or no encounter. Individual students may have more than one recommendation. Because the district level data is incomplete, the totals in this table do not match DOE totals in the annual report. For example, the total for "No Services" here is 13,462 while DOE's total for no encounter is 13,794.

Source: New York City Department of Education

Gaps in Special Education Services Reflect Racial and Economic Inequalities

As demonstrated in Table 2, there is also significant variability across school districts in access to special education services. When comparing the percent of IEP recommendations for services which were not fully implemented in the 2021-22 school year to the racial and economic composition of those districts, clear patterns of racial and income inequality emerge. As evident in Charts 1-3, IEP related service recommendations for K-12 students in districts with a larger percentage of white and Asian students were more likely to be fulfilled by DOE than in districts with fewer white and Asian students. This is true for districts with substantial numbers of Asian students regardless of income. The opposite is true of predominantly Black and Hispanic districts, where IEP related service recommendations for students were more likely to be fulfilled partially or not at all. When examining a district's Economic Needs Index (ENI), a measure of the percentage of students living in poverty, a similar pattern is revealed. As the district ENI rises, so too does the likelihood that related service recommendations for those students will not be fully provided.

Chart 1: Predominately Black & Hispanic Districts More Likely to Receive Partial or No Services

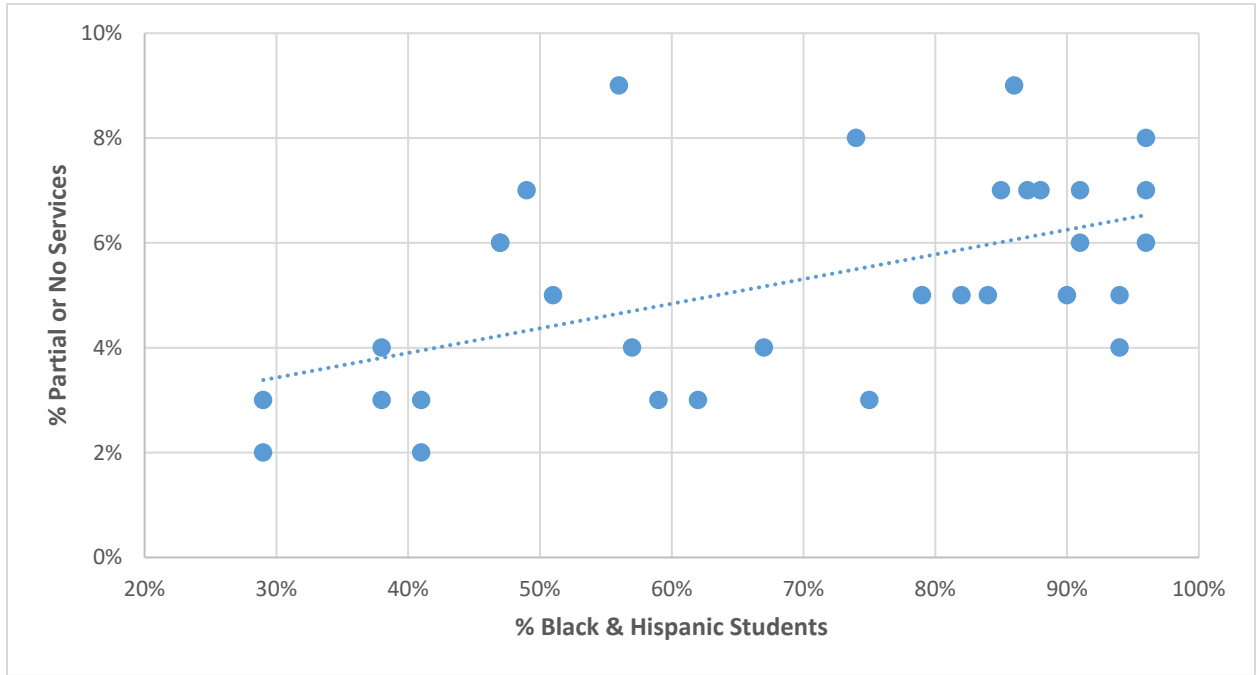


Chart 2: Majority White & Asian Districts Receive Partial or No Services Less Often

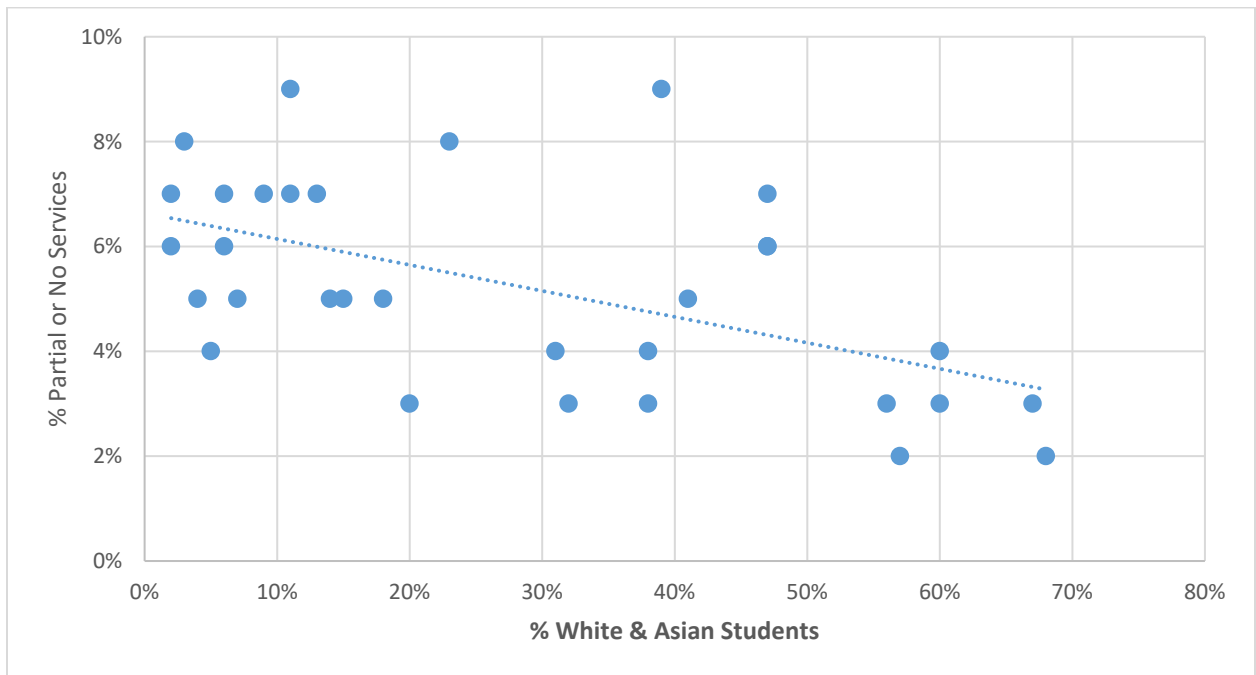
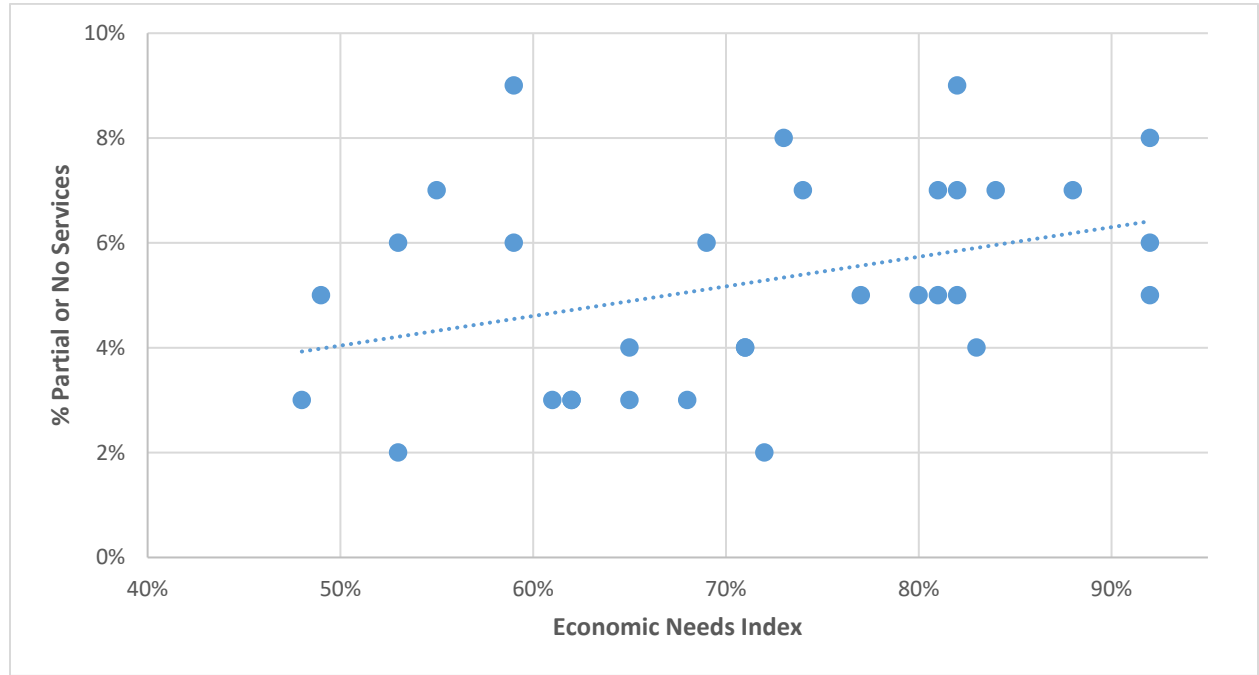


Chart 3: Districts with High Economic Needs Index Receive Incomplete Services More Often



Special Education Due Process Claims

Most children with an IEP that do not receive their mandated services are often left to wait for those services to become available. However, there is another option available to families. The landmark federal 1975 Individuals with Disabilities Education Act (IDEA) establishes the requirement that school districts must provide a free appropriate public education (FAPE) in the least restrictive environment to students with disabilities. These requirements include the evaluation process that results in the IEP, which specifies the specialized instruction and services the child needs to make educational progress and has the right to receive. Families who are concerned that the DOE is failing to provide an appropriate education to their child can file a due process complaint against DOE. This complaint is a request for an impartial hearing, the formal legal process by which a determination on whether DOE has provided FAPE is made, as well as the potential awarding of special education school placement or services to meet the student’s educational needs, or reimbursement for school placement or services obtained by the family.

The complaint can produce several different outcomes. It can result in a non-monetary settlement if the agency and family agree to corrective action (e.g. the child can be offered a placement in a different program, or mandated services can be provided pursuant to the settlement), or it can lead to a monetary settlement with DOE for the payment of private school tuition or services. If DOE and the parents cannot agree on a settlement, the complaint will move to an impartial hearing which also can result in a monetary or non-monetary award. These claims are often referred to as “Carter Cases”

after the 1993 Supreme Court ruling in *Florence County School District Four v. Carter* that established the right to reimbursement for non-public educational costs under IDEA.⁷

DOE is also responsible for providing special education services to children who attend non-public schools for reasons unrelated to FAPE. This responsibility is rooted in an amendment to New York State education law introduced in 2007, which requires school districts to provide mandated services and due process rights to children who voluntarily attend independent schools due to the religious or programmatic preferences of their family. The law gives *public* school districts responsibility for identifying children with disabilities placed in non-public schools for reasons unrelated to FAPE, and for developing an Individual Education Service Program (IESP, comparable to an IEP) for these students. If DOE cannot provide those services, even in the non-public school setting, families can file a due process claim with the City for those services. This state education law requirement is above and beyond the requirements of the federal IDEA in these cases, as IDEA provides no individual entitlement to special education and related services to students placed in private schools for reasons unrelated to FAPE.⁸

Growth in Due Process Claims and Related Spending

Overall, DOE's estimated programmatic special education budget (the amount the Department spends on special education programs *within* the public school system) increased from \$4.8 billion to \$6.9 billion between FY12 and FY22, a 43% increase in a decade. During the same period, City spending on special education due process claims (which includes tuition, transportation, and legal services in addition to special education services) increased from \$161 million to \$918 million, a 500% increase. That trend is projected to continue—DOE anticipates at least 20,000 new filings in FY23 and more than \$1 billion in due process claim payments¹.

The City's spending on claims is dramatically higher than other cities and states. An analysis by the Center for Appropriate Dispute Resolution in Special Education (CADRE) found that New York City claims represented more than 60% of all special education due process claims filed in the United States in FY21. That year, there were a total of 22,759 claims filed nationwide; 14,618 of those claims were filed in New York State.⁹ Of those 14,618 claims filed in New York State, 98% were filed in New York City.¹⁰ A comparison to other states and municipalities is beyond the scope of this report; it is noteworthy that not every state has an education law granting individual entitlements to students in private schools for non-FAPE reasons. Several other large states (e.g. California, Massachusetts) rely much more heavily on mediation processes, and some states utilize controversial payment systems such as vouchers to help families pay for special education services or tuition.

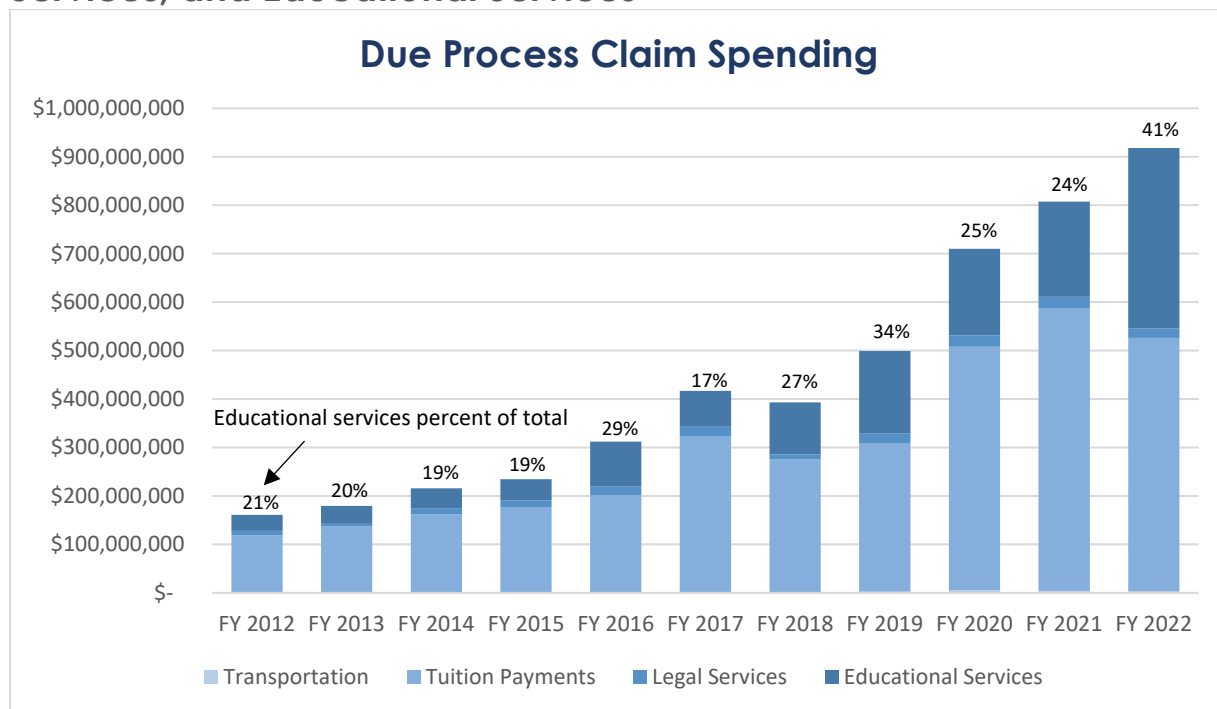
Prior to the last decade, most special education due process cases were claims for non-public school tuition. In FY12, tuition represented 74% of all due process payments. In recent years, however, special education service claims have been a rapidly growing share of the City's special education due process

¹ Because claims can take so long to process and adjudicate or settle, due process payments in FY23 do not necessarily represent the complaints filed in FY23 and can represent claims filed in previous years.

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claim payments. Between FY12 and FY22, spending for educational services climbed from 21% of all payments (\$33 million) to 41% of payments (\$372 million) in FY22. So far in FY23, services increased to 58% of the total year to date payments.

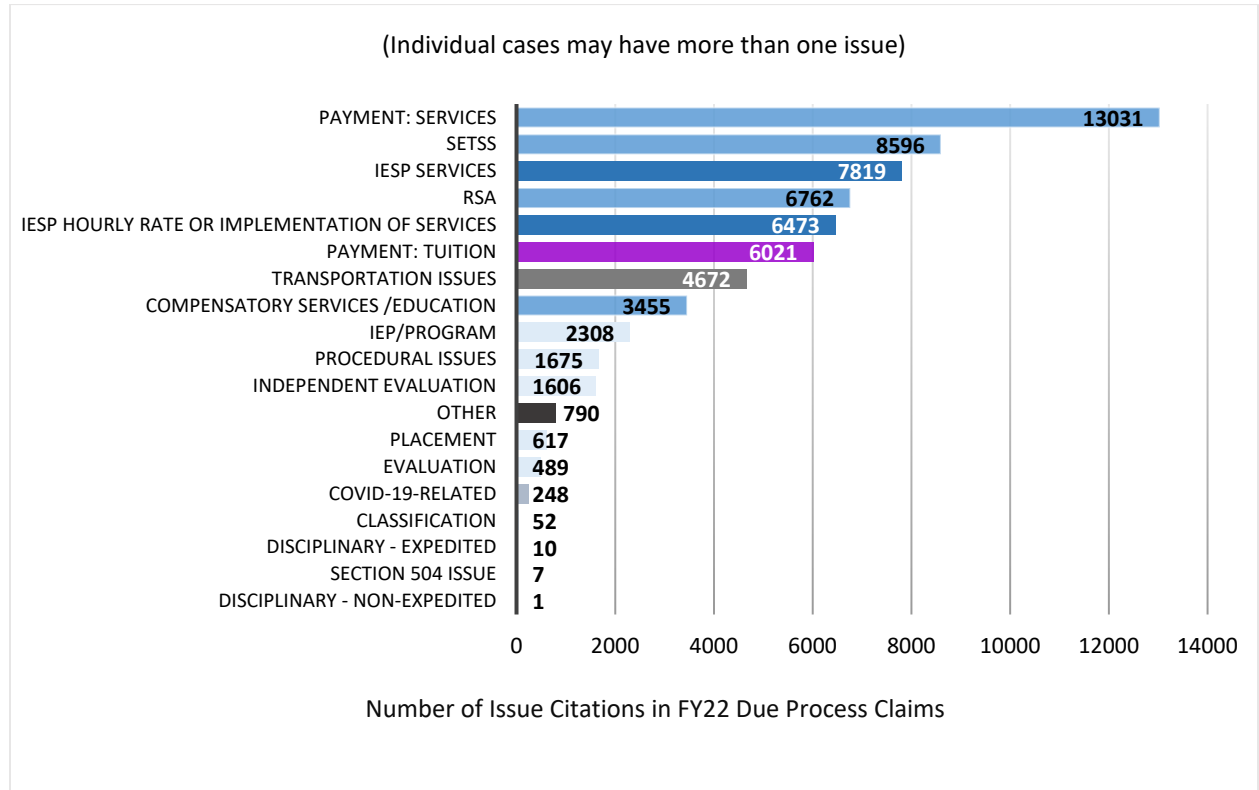
Chart 4: Overall Change in Due Process Claim Spending 2012-2022 Broken Down by Type: Transportation, Tuition Payments, Legal Services, and Educational Services



Source: New York City Comptroller’s Office

To better understand the rise in special education service due process claims, the Comptroller’s office analyzed DOE data which tracks the issues parents identify when filing a due process complaint. A claim can involve more than one issue, and some issues are resolved through non-monetary means—for example by providing a new IEP evaluation. Several of the issue types listed in Chart 5 correlate with services. While there is not a direct relationship between these data and total payments, it is notable that in FY22 issues involving educational services including SETSS, compensatory services, and IESP services, were cited by parents 8 times more than tuition, and 10 times as frequently as transportation in due process claims, demonstrating the outsized demand for services by families filing claims. IESP services are specific to students whose families have elected to enroll them in private schools for non-FAPE reasons. When combined, the two categories involving IESPSPs make up the single largest issue cited in due process claims in FY22. According to DOE, claims for services for students attending non-public schools for non-FAPE reasons currently represent the greatest share in the overall growth in claims.¹¹ In addition, as noted in a recent New York Times investigation, special education service claims from neighborhoods where a high percentage of students attend Orthodox Hasidic yeshivas now make up over half of all due process claims, up significantly from a decade ago.¹²

Chart 5: FY22 Due Process Complaint Issues Cited by Families



Source: New York City Department of Education

No Oversight for the Growing Number of Service Providers

When a special education due process claim for services results in a settlement or impartial hearing judgment in favor of the student, parents are able to select services for their child through whatever provider is agreed upon in the settlement or judgment. Because parents select the vendor as a result of settlement or impartial hearing determination, due process claims are not processed as traditional procurements. As such, these service providers are not subject to DOE procurement rules, responsibility determination or registration by the Comptroller’s Office. While DOE maintains its own screened independent service provider list, parents are not obligated to use vendors on that list.

Beyond the vetting required by the contracting process, NY State law, procurement rules and Chancellor’s regulations require that DOE use an additional layer of security clearance for individuals and organizations that come into contact with students, including vendors, Community Based Organizations (CBOs), student teachers, and service providers on DOE’s independent provider list. In addition to fingerprinting, this clearance process also requires service vendors to provide evidence of New York State license, registration, and/or certification for all staff in contact with students.

This vetting is not required for due process service providers chosen by parents. While the IDEA and New York State Education Law require that the placement chosen by parents appropriately enable the student to receive education benefits, there are not specific standards that must be met. As a result, unlike providers contracted or hired directly by the City, service providers secured via due process claims are not subject to qualification standards and security measures in place for City-contracted vendors.

Additionally due process service payments represent monetary outlays to a very broad set of vendors. The Comptroller's Office estimates that DOE paid 944 individual service providers in FY22 for due process claims, compared to 368 vendors paid for service-related claims in FY12. By comparison, for transportation there were an estimated 28 payees in FY22.

The dominant form of payment employed by DOE for due process payees is the non-contractual miscellaneous payment request (PRM1). Some due process vendors may be on the provider list or contracted by DOE for other services and therefore subject to some measure of oversight. Of the estimated 944 individual special education related service due process service vendors paid in FY22, the Comptroller's Office estimates that 84, or 9%, were also paid out of other budget codes which makes it possible that they might be vetted through procurement or by inclusion on the provider list. However, for the remaining 91% of the due process service providers paid by DOE in FY22, there are seemingly no controls, such as safety clearance, accreditation check, or responsibility determination, other than the review of invoices completed by the DOE Implementation Unit prior to payment and affidavits from the providers themselves, creating increasing opportunities for fraud as the number of claims and providers increase.

The recent investigation by the New York Times revealed concerning and costly examples of fraud among special education service providers, making evident the lack of oversight for this growing segment of special education payments.

Recommendations:

Make a substantial investment to expand the network of high-quality, multilingual providers, hired or contracted by the City, to provide special education services to all students with disabilities.

Though just one of many educational challenges that confront students with disabilities and their families, the lack of access to timely, high-quality, language-appropriate special education services in New York City is a systemic problem. If DOE were able to adequately provide special education services to all children who need them, hundreds of thousands of children would have improved opportunities to learn and thrive. The need, legal justification for, and the cost of service-related due process claims would also be significantly diminished.

Given the DOE’s legal obligation to provide mandated services to students with disabilities and the importance of these services to students’ education, DOE should make a substantial investment now to ensure there is a sufficient number of high-quality, multilingual service providers directly employed by and/or contracted with DOE to serve children in DOE schools, charter schools, private and religious schools, and preschool programs throughout the City. To implement this plan DOE should:

1. Utilize the “Pay for Success” model to expand the network of providers

The Comptroller’s Office estimates that FY23 costs for special education due process claims will likely surpass the \$372 million already spent for FY22. To shift from the current system – which this report has shown is inequitable, excessively costly, and lacks accountability – to a more equitable, accountable, and effective system of service provision, the City should utilize the “Pay for Success” (PFS) model. In a PFS approach, government makes an upfront investment in services that will ultimately bring down long-term costs and keeps track over time of programmatic and financial outcomes to determine continued investment.¹³

For special education services, a PFS investment of 25% of what likely will be spent on due process service claims in FY23 would translate to \$100 million to roll out an expansive network of skilled, licensed, multilingual service providers who can meet the needs of 3K-12 students with unmet service needs in FY24. DOE would then track programmatic and financial outcomes, aiming to phase in systemic implementation by 2030. Over the course of that timeline, spending reductions in due process service claims can fund increased investment in services for all children throughout the City.

2. Ramp up recruitment and retainment efforts at DOE

DOE must expand the number of therapists and special education teachers employed by DOE to provide SETSS, SEIT services, and related services to students in DOE schools, preschools, charter schools, and private schools. This effort must ensure a diverse network of special education providers and teachers is available to children in every neighborhood, including adequate access to bilingual teachers and providers, especially those who speak Spanish, Yiddish and Mandarin. DOE reported hiring 244 new occupational, speech and physical therapists in the 2022-23 school year, a quarter of whom have been placed in districts the Bronx. This is a good start to expanding school-based services in areas of need. DOE should further expand its current recruitment efforts and employment incentives for DOE teachers and therapists to include improved outreach to CUNY undergraduate and graduate programs, paid student internship programs, financial assistance with graduate school, licensure and certification, clinical and teaching fellowships, increased alternative training programs, and clear opportunities for career and compensation advancement. Annual salaries on [Indeed.com](https://www.indeed.com) for child psychologists in and around the city often start at \$90,000 a year—a salary that in-house school psychologists at DOE might earn only after 6 years of service.¹⁴

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3. Make DOE contracts more attractive to contracted providers

In addition to the therapists and special education teachers employed by DOE directly, DOE contracts a mix of agencies and individual service providers for their special education service staffing needs. For preschool SEIT services, DOE relies exclusively on agency contracts but these contracts are not currently meeting the City's needs. Current SEIT agencies contracted by DOE often do not have a SEIT available for preschool special education students who are mandated to receive that service. As recently as this past spring, 10,580 preschoolers who were supposed to get speech, physical or occupational therapy were not yet receiving those services and 1,970 preschool students who were mandated for SEIT services had received none.¹⁵

DOE's existing contracts are failing to pay special education service providers competitively, contributing to an urgent shortage of special education teachers and service providers available to the city's students with disabilities. Private speech therapy rates in New York City run as high as \$300/hour. According to DOE's Related Service Authorization Question and Answer form, the current rate DOE offers for individual monolingual speech therapy is \$45 for a 30-minute session—clearly uncompetitive with the market.¹⁶ Similarly, a quick search of the employment website Indeed.com returns counseling/child psychology listings in the tristate area, with the opportunity for remote work for up to \$60 per half hour. DOE's maximum allowable rate for independent non-DOE licensed psychologists, both monolingual and bilingual is \$45 for 30 minutes. DOE must raise its rates to make contracts competitive and attractive to private providers and agencies (n.b. even with a significant increase, rates would still be significantly lower than what the City is paying for many due process claims).

If DOE cannot hire enough therapists and special education teachers to meet the need, DOE must offer incentives beyond market rates to attract private providers to this newly expanded network. This includes emphasizing MWBEs in the special education service contracting process, and offering a premium rate to bilingual providers and those who can work in underserved neighborhoods and ensuring timely payments to contracted providers. Creative solutions should include issuing Requests for Proposals (RFPs) to solicit and ultimately contract targeted providers and/or agencies directly for specific needs. A current example for how DOE can begin building increased service capacity is DOE's new Multiple Task Award Contract (MTAC) R1417 which solicits related service providers (occupational and speech therapists) for Brooklyn and Bronx public and charter schools with Yiddish or English as the specified languages. This related services pilot contract has a two-year value of only up to \$2.9 million highlighting the need for additional investment and expansion of this type of contract.¹⁷

4. Improve access to services when there are no DOE or contracted providers available

DOE has a legal obligation to assign service providers to work with children in their schools and meet their IEP mandates. However, when DOE does not have the staff needed to provide required special education services at a K-12 school, DOE's Related Service Authorization (RSA) provides parents with a voucher for an independent related service provider. Similarly, a P4 is a voucher used specifically for a special education teacher when DOE cannot provide SETSS.

Although DOE is supposed to issue RSAs and P4s to parents of eligible students automatically when DOE has been unable to assign a provider to meet a child's service mandate, this often does not happen. Furthermore, once DOE issues the voucher, although DOE is supposed to continue to help the parent find a provider, in practice, the parent must find a provider to accept the voucher on their own. Finding a provider has become increasingly difficult because DOE has not increased the rate for RSA/P4 providers in at least 20 years and is failing to pay the providers in a timely manner. While parents can call providers on DOE's independent provider list when they receive an RSA or P4, the list is outdated and inaccurate, with many providers who will not accept the voucher. The list is also available only in a Word document that is hard to sort; or, in a complex, online search engine, making it difficult to use. It is even more difficult to find a bilingual provider. Unfortunately, many parents who receive a voucher are simply unable to use it, and some parents file an impartial hearing to get an increased rate or a "pay memo" so that providers can be paid more quickly. As evident in Chart 5 in the 2021-22 school year "RSA" was one of the largest issue types cited in claims—noted on nearly 6,800 complaints— more than tuition payments. Furthermore, even if parents can find an available provider who accepts the voucher, the provider may require the family to bring their child to the provider's office. Traveling across the City to reach service providers can be logistically difficult for working parents and students with disabilities, as well as cost prohibitive, as families need to front the cost of traveling and then file for reimbursement.

While DOE works to expand the number of DOE providers and contracted providers working in schools, DOE must also improve the RSA/P4 process when they are unable to provide services. To increase the number of providers who accept the vouchers, DOE should increase the payment rate for RSA/P4 providers, including a significant increase for bilingual providers, and ensure timely payment to providers. DOE should also improve the process for automatically distributing RSAs and P4s to eligible families and tracking their use; maintain an accurate and easy to access, up to date list of providers who have agreed to take the RSAs/P4s; and help parents identify available and appropriate providers. In addition, for services that do not take place in the child's school or home, DOE should provide direct transportation to the child or upfront payment for transportation in cases where the parent is willing and able to transport the child.

When DOE is unable to assign a DOE-employed or contracted provider to a student, having a functioning voucher system as a stopgap measure would reduce the number of due

process complaints filed against the City, and ensure that children get mandated services faster.

5. Restructure DOE's Evaluation and Provision of Special Education Services

Ten Committees on Special Education (CSEs) and Committees on Preschool Special Education (CPSEs) are tasked by New York State Education Law with much of the work of obtaining an evaluation, developing the IEP or IESP and coordinating services for preschool students and students attending charter schools and private schools. CSEs include a chairperson and a small staff of DOE administrators and community coordinators who oversee IEP evaluations and service requests for students from three or four school districts, including children in preschool, as well as students attending charter schools or private schools.

The ten CSE offices provide critical support to families seeking special education services, but are often understaffed, have high levels of staff turnover and there can be district level disparities in staffing, language accessibility and training. Parents report that CSEs lack staff with the language skills necessary to discuss complex issues and decisions with parents that do not speak English.

Given these staffing and resource challenges, many CSEs are overwhelmed by their caseloads. The FY24 budget for CSEs is approximately \$82 million, a cut of 8% since FY22 according to Comptroller's Office estimates. While federal pandemic stimulus funding had led to increases in the CPSE administrator and community coordinator positions growing from 115 total positions prior to the pandemic to 188 now, it is unclear given the impending loss of stimulus funding and the recent PEG announcements whether even sustaining this level of CSE staffing will be supported.¹⁸ Additionally there is insufficient oversight or assessment of CSEs or tracking of outcomes for the students they serve.

DOE should maintain and expand current CSE staffing levels and improve CSE training and staff retention. Additionally, DOE should establish a dedicated CPSE chair for each CPSE to increase specific administrative accountability for preschool students. CSE/CPSE chairs currently report into the central CSE Director. The CSE Director should report directly to a re-established Deputy Chancellor for Special Education creating clear and direct lines of oversight and accountability for the work of CSEs. Prior to a 2018 restructuring, the senior DOE staff person focused on special education was a Deputy Chancellor level appointment; in 2018, the position was downgraded to Deputy Chief Academic Officer for Special Education. In supporting more than 20% of public school students in New York City, it makes good sense for the head of Special Education to be a Deputy Chancellor, and report directly to the Chancellor in order to increase her authority and accountability for programming and budgeting decisions.

6. Create service provider standards to increase accountability and help reduce fraud

The due process system exists to provide families with the services their children are legally entitled to receive when DOE fails to provide them. However, providers retained as a result of a due process settlement or impartial hearing are alone in their lack of oversight amongst special education teachers and therapists employed by DOE, contracted providers, RSA providers and those on the DOE's provider list. New York State should establish accreditation and background check requirements for service providers retained by families as a result of due process claims to provide some measure of oversight. These requirements are already mandated for special education teachers, therapists, counselors and paraprofessionals that work with DOE per New York State Education Law, Chancellor's Regulations and DOE procurement rules. Requiring that service providers retained by families as a result of their due process claims meet these same types of eligibility criteria, including documentation of minimum requirements for education attainment, competency, and/or registration, licensure, or certification by the State, and well as fingerprinting and a background check will ensure that DOE is only paying for professionals qualified to provide the needed services and help prevent misappropriation of City funds.

Conclusion

In the past year, Chancellor David Banks has announced an encouraging set of initiatives to improve access to special education programs and services that students need.³ The increased investment of \$410M in programs such as PATH, ASD Nest, SEED, and dyslexia/literacy programs are a strong start.¹⁹ Additionally this past spring the Panel for Educational Policy approved multiple new D75 co-locations that will bring an additional 1700 D75 seats to areas of seat need in the Bronx, Queens and Brooklyn this fall. DOE has also begun more aggressive hiring of special education teachers and therapists to fill staffing shortages. To improve related service delivery, DOE reports hiring 244 occupational, speech and physical therapists in the past school year, a quarter of whom have been placed in districts the Bronx.

"Scaling what works" is one of the Chancellor's four pillars for New York City public schools.²⁰ Rapidly scaling multilingual special educational services to all children who need them, where they need them, is something DOE can and should start building today. The recommendations in this report would help the City achieve that goal, putting us on a path to creating a true universal service program that would help ensure children with disabilities get the services they need and have a legal right to receive and help drive down the costs to the city for special education due process claims.

18 Course Correction: Expanding and strengthening special education services improves student outcomes and reduces costly due process claims

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Appendix 1: District level FY22 due process complaint and demographic data

Home District	Total Enrollment	Students with Disabilities	Percent of district students with disabilities	Percent of students citywide with disabilities	Percent of students citywide	FY22 DPCs	Percent of total DPCs	Claims per capita	ENI	Percent Black	Percent Hispanic	Percent White	Percent Asian
1	10,327	2,355	23%	1%	1%	324	2%	0.14	65%	15%	42%	18%	20%
2	57,900	10,364	18%	6%	5%	1032	6%	0.10	53%	14%	33%	25%	22%
3	19,766	3,745	19%	2%	2%	501	3%	0.13	49%	19%	32%	31%	10%
4	11,567	2,781	24%	1%	1%	76	0%	0.03	81%	24%	58%	6%	9%
5	9,341	2,340	25%	2%	1%	142	1%	0.06	82%	47%	39%	7%	4%
6	19,424	4,012	21%	2%	2%	196	1%	0.05	80%	8%	82%	6%	1%
7	16,032	3,922	24%	3%	2%	104	1%	0.03	92%	27%	69%	2%	1%
8	24,338	5,362	22%	3%	2%	97	1%	0.02	82%	20%	65%	6%	7%
9	28,491	6,316	22%	3%	3%	69	0%	0.01	92%	27%	69%	1%	1%
10	48,016	9,429	20%	6%	5%	239	2%	0.03	82%	15%	69%	6%	8%
11	34,491	6,736	20%	5%	3%	108	1%	0.02	77%	35%	44%	9%	9%
12	18,091	4,037	22%	3%	2%	61	0%	0.02	92%	24%	70%	1%	3%
13	20,269	2,749	14%	2%	2%	405	3%	0.15	59%	38%	18%	18%	21%
14	16,673	3,535	21%	2%	2%	980	6%	0.28	73%	20%	54%	17%	6%
15	29,777	6,218	21%	4%	3%	979	6%	0.16	55%	13%	36%	30%	17%
16	5,970	1,391	23%	1%	1%	38	0%	0.03	81%	69%	22%	4%	2%
17	20,128	3,722	18%	2%	2%	1332	8%	0.36	74%	71%	17%	6%	3%
18	12,068	2,352	19%	1%	1%	101	1%	0.04	69%	82%	9%	4%	2%
19	19,959	4,081	20%	3%	2%	46	0%	0.01	84%	41%	46%	2%	9%
20	50,411	8,248	16%	4%	5%	3384	21%	0.41	72%	2%	27%	25%	43%
21	36,618	6,630	18%	4%	3%	1881	12%	0.28	71%	12%	26%	34%	26%
22	32,524	5,664	17%	3%	3%	1346	8%	0.24	61%	26%	15%	33%	23%
23	7,863	1,812	23%	1%	1%	34	0%	0.02	88%	72%	24%	1%	1%
24	54,197	9,025	17%	6%	5%	169	1%	0.02	71%	2%	65%	12%	19%
25	37,197	5,423	15%	3%	4%	340	2%	0.06	62%	6%	32%	11%	49%

Home District	Total Enrollment	Students with Disabilities	Percent of district students with disabilities	Percent of students citywide with disabilities	Percent of students citywide	FY22 DPCs	Percent of total DPCs	Claims per capita	ENI	Percent Black	Percent Hispanic	Percent White	Percent Asian
26	30,859	4,463	14%	4%	3%	128	1%	0.03	48%	11%	18%	13%	54%
27	41,502	7,286	18%	4%	4%	363	2%	0.05	68%	21%	41%	10%	22%
28	39,396	5,827	15%	4%	4%	299	2%	0.05	59%	18%	29%	16%	31%
29	24,266	3,861	16%	2%	2%	79	0%	0.02	62%	56%	19%	2%	18%
30	37,664	5,551	15%	3%	4%	117	1%	0.02	65%	6%	53%	18%	20%
31	61,838	14,529	23%	8%	6%	513	3%	0.04	53%	12%	29%	42%	15%
32	11,181	2,024	18%	1%	1%	390	2%	0.19	83%	15%	79%	3%	2%
75	25,937	25,624	99%	100%	2%	1	0%	0.00	89%	34%	41%	12%	10%
79	5,055	1,199	24%	0%	0%	6	0%	0.01	85%	37%	46%	7%	9%

Source: New York City Comptroller's Office; New York City Department of Education

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