



# Waiting for Special Education

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- More than 180,000 New York City school children were enrolled in special education programs during the 2006-2007 school year.
- Each school year, the DOE receives between 100,000 and 115,000 requests to evaluate students for special education.
- The number of students in the evaluation process for more than 30 school days nearly doubled after a reorganization in 2003.
- Last year, a monthly average of 4,549 students remained in the evaluation process for more than 30 school days, including 2,464 for more than 60 school days.
- Last year, a monthly average of 14,479 students did not attend a recommended program within 60 school days, and more than half of those cases were in the placement process for more than 80 school days. (Students who require services in a language other than English are delayed more often.)
- More than half of all students receiving new placements in special education during the 2006-2007 school year (2,251 students) waited longer than 60 school days for a program placement.
- The number of requests for related services (e.g., speech therapy) grew from 197,004 in June 2003 to 230,627 by June 2007, an increase of 17 percent.
- The number of unfilled recommendations for related services more than doubled from 28,624 in June 2003 to 64,897 in June 2007.

Each year in New York City, more than 100,000 public and private school children between the ages of 5 and 21 are referred (by teachers or parents) to the New York City Department of Education (DOE) to be evaluated for their needs for continued or new special education services.

While the DOE completes most evaluations within the time frames required pursuant to a federal consent decree, a significant number of evaluations take longer to complete. Last year, for example, a monthly average of 4,549 students (14 percent of the total) waited longer than 30 school days for their evaluations to be completed, and more than half of those students waited longer than 60 school days.

Completion of an evaluation, however, is no guarantee that a student will receive recommended services. Last year, a monthly average of 2,251 students waited longer than 60 school days for the DOE to make an offer of placement in a recommended special education program.

An average of 12,228 students did not begin their recommended program within 60 school days for other reasons, despite receiving an offer of placement by the DOE. Nearly 8,000 students, for example, did not receive services because their parents did not respond to an offer of placement or because they did not attend the program arranged for them by the DOE.

Also, many students do not receive recommended support services, such as speech or physical therapy. In June 2007, for example, nearly 65,000 recommendations for related services went unfilled—twice the level in June 2003.

While a school system as large and diverse as New York City's poses unique challenges, the DOE must make greater efforts to ensure that children with special education needs receive recommended services on a timely basis.

## Background

### *Jose P. Order*

In February 1979, plaintiffs filed the federal lawsuit *Jose P. v. Ambach* on behalf of New York City students with disabilities. The plaintiffs contended that the New York State Department of Education had failed to assure access to a free and appropriate public education for school-age students with disabilities, and that the DOE had failed to evaluate and place students in appropriate special education services in a timely manner, as required by federal law.

In December 1979, the court ruled for the plaintiffs and ordered the DOE to reform its policies and procedures for the evaluation and placement of students with disabilities, and to develop an operating procedures manual. (The DOE informed us that this manual was only recently finalized with the plaintiffs.) The *Jose P.* order also required the DOE to submit various reports on its progress toward the timely and appropriate provision of services—including the “*Jose P.* Monthly Compliance Report.”

The *Jose P.* report tracks the DOE’s timeliness in evaluating and arranging special education services for students that attend both public and private schools. Each month, the report tracks the number of cases in the evaluation and placement processes. The report also tracks the provision of “related services,” such as speech, vision, and hearing therapies, and counseling.

The Office of the State Comptroller (OSC) used the *Jose P.* data to review and report on trends in the timeliness of evaluation and placement for school-age students (between the ages of 5 and 21) who seek special education services.

### *Evaluation and Placement*

Pursuant to the consent decree issued in 1979 and amended in 1988, the *Jose P.* order requires that the DOE complete each new or “initial” evaluation within 30 school days of receiving parental consent to evaluate or within 40 school days of receiving a request to evaluate, whichever is earlier. A student must then be offered appropriate services within 60 school days of receipt of parental consent to evaluate or within 70 school days of the request to evaluate, whichever is earlier. Students already receiving special

education services and who need modifications to their service plans must be evaluated within 30 school days of the request to evaluate, and must be offered a placement within 60 school days of the request to evaluate.<sup>1</sup>

### *Information Management System*

To fulfill a requirement in the *Jose P.* order for routine reporting on its efforts to provide timely and appropriate services, the DOE developed a computerized data system, the Child Assistance Program (CAP). The CAP remains the only source of data on special education evaluation and placement in New York City, and it is still used to produce the *Jose P.* compliance reports. According to the DOE, the CAP is a legacy system that was designed in 1984 and is arcane by current standards.

In December 2007, the DOE released a request for proposals to replace the CAP with a secure, web-based system. Nevertheless, until the replacement is designed, operational, and tested, the CAP remains the central repository for data that is used, among other purposes, to inform the public and the *Jose P.* court and litigants.

In the 2007-2008 school year, the DOE began using a new interim system to track the provision of related services, instead of the CAP. The system, referred to as the Special Education Component (SEC), features voice recognition to transmit data from phones to a computerized database. Providers of related special education services are required to call the system upon the initiation of services to students.

Also in 2007, to comply with recent federal regulations, New York State began reporting on school districts’ timeliness in evaluating school-age children for special education. In the 2005-2006 school year, nearly 82 percent of school-age students referred for evaluation in New York City were evaluated on a timely basis, below the State’s goal of 100 percent.

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<sup>1</sup> Federal and New York State law establish time frames that are different in certain respects from the consent decree; however, these timeliness standards do not supersede those contained in the consent decree.

## Reorganization and Reform

The DOE reformed its management structure early in the 2003-2004 school year. The reorganization included the creation of ten administrative regions to encompass the traditional community school districts and high school districts, and the redeployment of staff responsible for evaluating and placing students in special education.

According to the DOE, the changes associated with the reorganization required extensive professional development in early 2003-2004. One of the consequences was a marked decline in the DOE's ability to complete evaluations within the *Jose P.* time frames. In subsequent years, the DOE marginally improved its performance, but the number of cases delayed remained at historically high levels.

In January 2007, the DOE announced that it would eliminate the ten administrative regions and redistribute their functions to central administrative offices or borough-level administrative offices. No changes to the evaluation and placement process for special education services were announced.

## Special Education

Students who receive special education services have a wide range of disabilities. In a census of December 1, 2006, the DOE reported that 153,367 students between the ages of 4 and 21 had one or more disabilities. Of these students, 63,563 (41 percent) were classified with a learning disability; 43,043 (28 percent) were reported to have a speech or language impairment; 17,964 (12 percent) were classified as emotionally disturbed; and 8,275 (5 percent) had other unspecified health impairments.

The remaining categories (a total of 14 percent) include such conditions as mental retardation, identified in 6,401 students; autism, identified in 5,680 students; deafness or other hearing impairments (2,521 students); orthopedic impairments (1,177 students); visual impairments (754 students); and traumatic brain injuries (257 students). Multiple disabilities were reported in 3,732 students.

## Budget

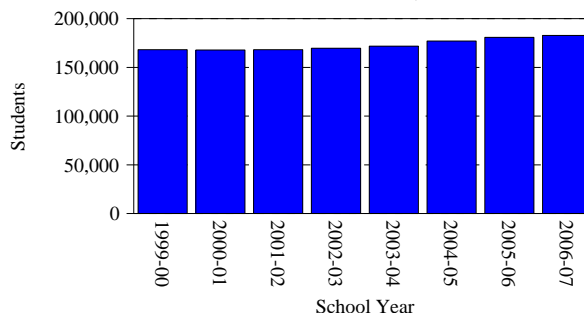
Between the 1996-97 and 2006-2007 school years, the DOE budget for special education grew by 75 percent, from an estimated \$2.5 billion to an estimated \$4.4 billion, excluding pension contributions and debt service. Of the amount spent in the 2006-2007 school year, \$916 million (21 percent) paid for preschool and school-age students to receive privately provided special education services.

## Enrollment

Enrollment in special education programs in New York City increased from 168,172 during the 1999-2000 school year to 182,730 during the 2006-2007 school year (see Figure 1), an increase of 8.7 percent. Most of the students enrolled in special education programs attended the City's public schools, but a significant portion received services in private schools.

In recent years, the DOE has placed greater emphasis on placing students in less restrictive educational environments to maximize the time they spend in general education classrooms. The percentage of students enrolled in less restrictive classroom settings increased from 41 percent of total special education enrollment during the 1999-2000 school year to 47 percent during the 2006-2007 school year. Conversely, enrollment in more restrictive classroom settings declined from 47 percent of total special education enrollment to 38 percent. (About 15 percent of special education students attend private schools and most are enrolled in more restrictive educational settings.)

Figure 1  
Special Education Enrollment  
In New York City



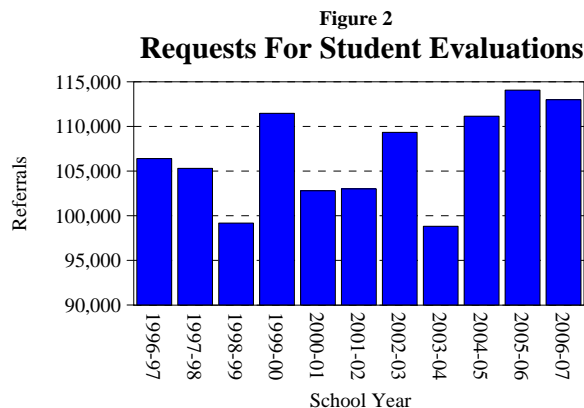
Sources: Mayor's Management Reports

## The Evaluation Process

Each year, the DOE receives between 100,000 and 115,000 requests to evaluate students' needs for special education. When a referral is received, Individualized Education Program (IEP) teams assess students' abilities and needs, recommend services or changes to existing service plans as appropriate, and prepare IEPs (i.e., service plans) that describe the accommodations and services to be provided for each student.

Each student referred is considered a "case." Cases are either initial (first-time students who are new to the evaluation and placement process), review (students who already receive special education services but require a review to determine whether to modify the IEP), or triennial (all special education students are subject to a State-mandated review of progress every third year to determine whether to modify services). Initial cases account for about 30 percent of the referrals received each year, review cases account for about 40 percent, and triennial cases account for about 30 percent.

Despite a large drop-off in the number of requests for evaluations that coincided with the 2003-2004 management reorganization, the number of referrals reached a ten-year high in the 2005-2006 school year (see Figure 2).<sup>2</sup>

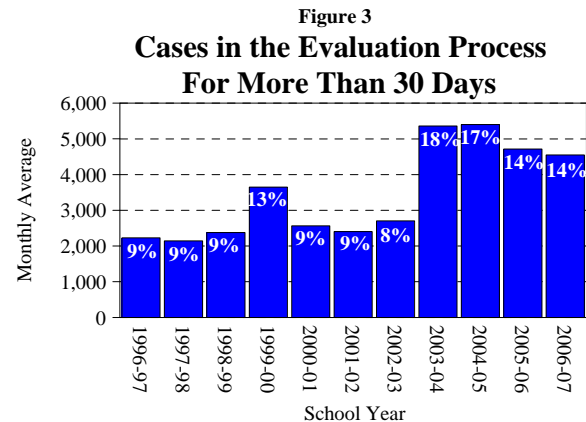


Sources: NYC Department of Education; OSC analysis

<sup>2</sup> According to the DOE, the increase in special education referrals beginning in the 2004-2005 school year is largely attributable to a shift in policy promoting the inclusion of students with disabilities in general education settings, which resulted in an increased number of evaluations.

## Timeliness

The number of cases in the evaluation process each month can range from 9,000 to 45,000. From the 1996-97 school year through the 1998-99 school year, the DOE had an average of 25,142 cases in the evaluation process each month, and completed 22,891 within 30 school days.<sup>3</sup> In each month of those school years, an average of 2,251 cases were in the evaluation process for more than 30 days (see Figure 3).



Sources: NYC Department of Education; OSC analysis

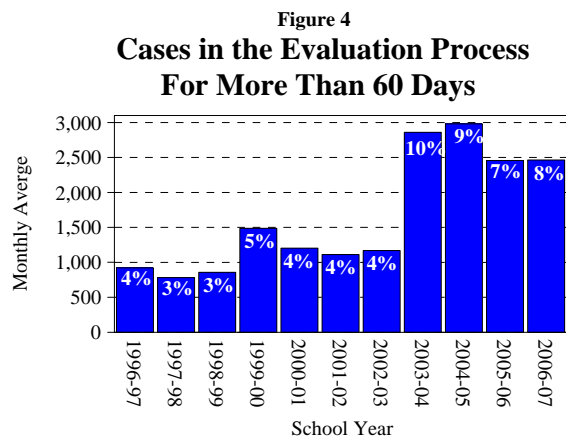
During the 1999-2000 school year, the number of cases in the evaluation process each month increased to 29,055. That year, an average of 3,650 cases each month were in the evaluation process for more than 30 days (13 percent of the total monthly average). By the 2002-2003 school year, the monthly average of cases in the evaluation process for more than 30 days had declined to 2,704 (8 percent).

After the DOE's management reorganization in the 2003-2004 school year, the monthly average of cases in the evaluation process for more than 30 days nearly doubled, to 5,361 (18 percent of the average monthly number of cases in the process).

During the 2006-2007 school year, the monthly average of cases in the evaluation process for more than 30 days declined to 4,549 (14 percent of the average monthly number of cases in the process).

<sup>3</sup> Throughout the remainder of this report, the use of "days" indicates school days.

The DOE's performance improves when it is assessed against a 60-day benchmark. In most years, the monthly average of cases in the evaluation process for more than 60 days is less than half of the average for cases in the process for more than 30 days (see Figure 4). Even by this standard, in each month of the past two years about 2,500 cases were in the evaluation process for more than 60 days, on average.



Sources: NYC Department of Education; OSC analysis

### Timeliness by Case

The DOE's timeliness regarding evaluations varies by type of case (initial, review, or triennial). Initial cases typically take longer. More than 20 percent (nearly 1,600) of the initial evaluations have been in the evaluation process, on average, for more than 30 days, and 8 percent (550 cases) have been in the process for more than 60 days. Since the 2003-2004 school year, the percentages of review and triennial cases in the evaluation process for more than 30 days and for more than 60 days have declined (see Figures 5 and 6).

**Figure 5**  
**Percentage of Cases in the Evaluation Process For More Than 30 Days, by Type of Review**

School Year	Initial	Review	Triennial
2003-04	24%	16%	16%
2004-05	23%	15%	14%
2005-06	21%	13%	11%
2006-07	22%	13%	11%

Sources: NYC Department of Education; OSC analysis

**Figure 6**  
**Percentage of Cases in the Evaluation Process For More Than 60 Days, by Type of Review**

School Year	Initial	Review	Triennial
2003-04	8%	7%	12%
2004-05	8%	7%	11%
2005-06	7%	6%	8%
2006-07	8%	6%	9%

Sources: NYC Department of Education; OSC analysis

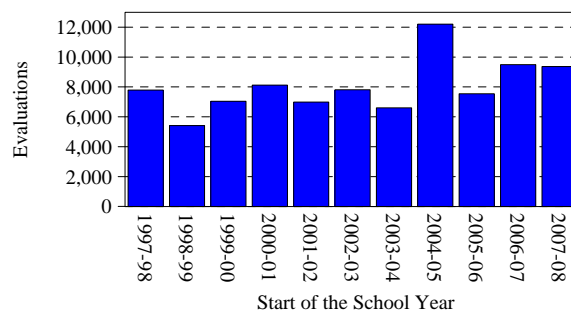
### Carryover

The DOE ends each school year without completing all the evaluation cases started that year. For example, cases referred in May and June might still be open when the year draws to an end. These cases are often still in process in September, so that the DOE begins each school year with a "carryover" from the previous year.

Evaluations can be carried over to the next school year for a number of reasons. While the DOE continues to conduct evaluations during the summer, for many students the IEP meeting cannot take place because the students' teachers, who are required members of the IEP team, are not available. In addition, many students are not available during the summer.

The carryover grew from 7,791 at the start of the 1997-98 school year to 12,205 at the start of the 2004-2005 school year (see Figure 7). While the DOE reduced the number of carryover evaluations to 7,539 by the start of the 2005-2006 school year, one year later the number rose again, to 9,500 cases—and it has remained close to that level for the current school year.

**Figure 7**  
**Cases in the Evaluation Process Carried Over to the New School Year**



Sources: NYC Department of Education; OSC analysis

### Other Productivity Measures

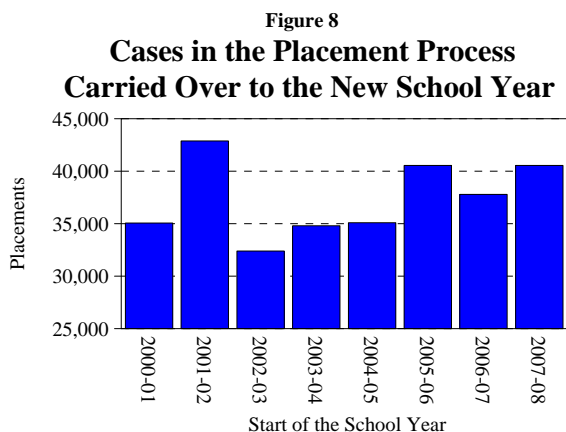
The DOE also tracks its performance by measuring the number of completed evaluations as a percentage of the number of cases in the evaluation process. Between the 2002-2003 and 2006-2007 school years, the DOE achieved a consistent productivity rate of about 94 percent, despite an increase in the number of requests for evaluations.

### The Placement Process

The DOE places between 100,000 and 135,000 students in full-time or part-time special education programs each school year (i.e., the primary program placement). The number of cases in the placement process can range from 14,000 to 41,000 each month. In addition, students may receive related services, such as speech therapy; these services are discussed later in this report.

#### Placement Carryover

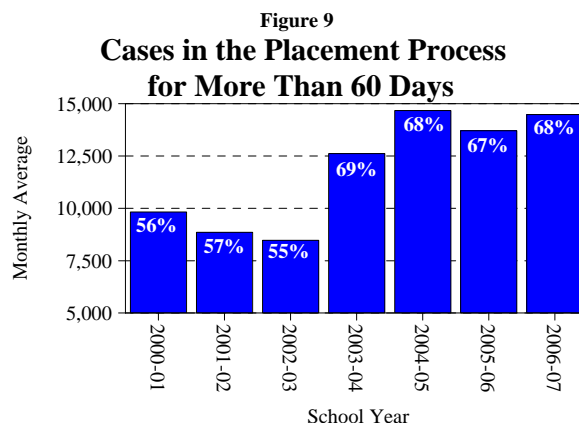
As with evaluations, for a number of reasons the DOE begins each school year with a carryover of cases that were not placed in services during the previous school year. The DOE reduced the number of cases carried over from 42,870 at the beginning of the 2001-2002 school year to 32,387 at the start of the 2002-2003 school year, but since the 2003-2004 reorganization the number of cases carried over has remained above 35,000 annually—and it exceeded 40,000 at the beginning of the 2007-2008 school year (see Figure 8).



Sources: NYC Department of Education; OSC analysis

### Timeliness

In each of the past four years, more than two thirds of the cases were in the placement process—and thus were not receiving recommended services—for more than 60 days. Both the number and percentage of students in the placement process for more than 60 days have increased significantly since the 2002-2003 school year (see Figure 9). In each month of last year, an average of 14,479 cases were in the placement process for more than 60 days, and more than half of those cases were in the placement process for more than 80 days.



Sources: NYC Department of Education; OSC analysis

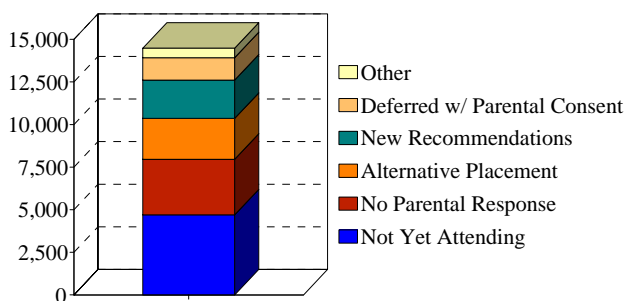
#### Reasons for Placement Delays

Delays can occur for a variety of reasons. As shown in Figure 10, of the 14,479 average monthly cases in the placement process for more than 60 days during the 2006-2007 school year, 55 percent were not receiving services either because students did not attend the program placement arranged for them by the DOE (4,696 students) or because parents did not respond to an offer of placement (3,266 students).<sup>4</sup>

<sup>4</sup> According to the DOE, it can implement changes in student service plans without parental approval for students who already receive special education services, but it chooses to obtain parental approval before providing services. DOE officials also state that though the DOE can close cases with new program recommendations after 30 days if parental approval is not obtained, it chooses to keep these cases open in an effort to obtain parental consent.

According to the DOE, the parents of nearly 26 percent of the students shown in Figure 10 consented to alternative services to those recommended (2,397 students), or consented to defer services (1,311 students). Some parents agreed to delay services until an appropriate placement was found or until the following school year, to avoid changing the student's placement during the school year. (The DOE did not have sufficient information for another 558 students to determine their status.)

**Figure 10**  
**Cases in the Placement Process**  
**For More Than 60 Days**  
**2006-2007 School Year**

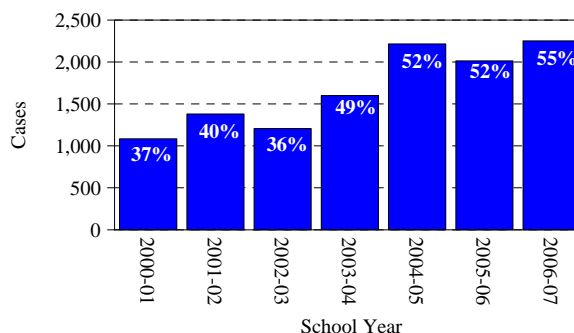


Sources: NYC Department of Education; OSC analysis

Another 2,251 students were recommended for new program placement but were in the placement process for more than 60 days because the DOE had not made an offer of services. According to the DOE, this group best represents the DOE's performance under the *Jose P.* court order. These cases include new students and students with major changes recommended to their existing IEPs.

In the 2000-2001 school year, the number of new program recommendations in the placement process for more than 60 days averaged 1,085—more than one third of the total in the placement process (see Figure 11). By the 2004-2005 school year, the monthly average more than doubled, to 2,215. This was more than half of all cases with a new program recommendation; in recent years, the average has remained at that level.

**Figure 11**  
**New Program Recommendations in the**  
**Placement Process For More Than 60 Days**



Sources: NYC Department of Education; OSC analysis

### *Timeliness by Language*

Nearly 170 languages are spoken in the homes of New York City public school students. While more than half of City students live in homes where English is the primary language, 29 percent live in homes where Spanish is the primary language, and 15 percent live in homes where other languages are spoken.

Among all the students who receive special education, 25 percent have IEPs recommending that services be provided in a language other than English. These students are more often delayed than students whose primary language is English. In April 2007, for example, 50 percent of English speakers had been in the placement process for more than 60 days, compared to 69 percent of Spanish speakers.

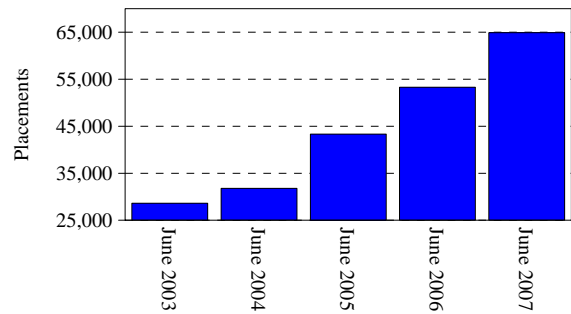
### **Related Services**

Related services are supportive services that are intended to provide students who have disabilities with the assistance necessary to obtain the benefits of their instructional programs. These services include speech therapy, counseling, physical therapy, occupational therapy, and other services, and can be provided by DOE employees, agencies under contract to the DOE, or independent providers selected by the parents.

The demand for related services has been increasing in recent years. Since June 2003, the number of requests for related services grew from 197,004 to 230,627 by June 2007.<sup>5</sup> In a 2005 audit performed by OSC, the DOE acknowledged that it faced a “severe shortage” of speech therapists, counselors, and physical and occupational therapists, and that it was trying to recruit such providers.

While the DOE has arranged related services for about 167,000 public and private students each year, Figure 12 shows that the number of unfilled recommendations for related services has more than doubled from 28,624 in June 2003 to 64,897 in June 2007.<sup>6</sup> Moreover, the DOE counts a request for related services as filled when it is only partially filled (e.g., when one service has been filled, though some students may be waiting for multiple services). In September 2007, 11 percent of the requests for related services that were reported by the DOE as filled were only partially filled.<sup>7</sup>

**Figure 12**  
**Recommendations For Related Services That Have Gone Unfilled**



Sources: NYC Department of Education; OSC analysis

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<sup>5</sup> Students may receive more than one related service.

<sup>6</sup> According to the DOE, it often arranges for services that are not used. In June 2007, for example, the DOE reports that there were 4,299 instances in which services were arranged but the students did not attend.

<sup>7</sup> In the 2007-2008 school year, the DOE began using its interim information management system, SEC, to track the provision of related services. Since this system does not contain historical data, it cannot be used to discern historical trends. According to the SEC data, 36,578 recommendations for related services for public school students were unfilled as of June 2007, which represented 22.5 percent of the total number of such requests. The June 2007 SEC data does not include data on students attending private schools, although the DOE is responsible for arranging related services for them.