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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

March 15, 2023

David C. Banks  
Chancellor  
New York City Department of Education  
52 Chambers Street  
New York, NY 10007

Re: Compliance With Special Education  
Regulations for the Provision of  
Services  
Report 2022-F-27

Dear Chancellor Banks:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 8 of the General Municipal Law, we have followed up on the actions taken by officials of the New York City Department of Education to implement the recommendations contained in our audit report *Compliance With Special Education Regulations for the Provision of Services* (Report [2018-N-5](#)).

**Background, Scope, and Objective**

Pursuant to New York State Education Law, the Commissioner of Education has promulgated regulations regarding the education of children with disabilities (Regulations). Generally, the Regulations set standards for providing special education and related services designed to meet students' unique needs and to prepare them for further education, employment, and independent living. They stipulate procedural requirements for the referral, evaluation, Individualized Education Program (IEP) development, and placement of students in special education.

The New York City Department of Education (DOE) – the nation's largest school system, comprising 32 school districts and two citywide districts – served approximately 900,000 students at its more than 1,500 elementary, middle, and high schools (excludes charter schools/students) in the 2021-22 school year, and provided special education services to approximately 192,000 of these students. The DOE is responsible for evaluating students to determine their eligibility for special education services and for ensuring eligible students receive appropriate services. Toward this end, DOE follows a multi-step evaluation and placement process. The provision of special education services – the focus of the initial audit report – includes both arranging for students' placement and delivering those services. The Regulations require that DOE arrange for the placement of eligible students in special education services and programs within 60 school days of receipt of parental consent to evaluate. Any delay in services could adversely impact students' educational growth.

The objective of our initial audit report, issued September 30, 2020, was to determine whether DOE arranged special education services and programs for students within the

required time frames and provided students with all of the recommended special education services and programs outlined in their IEP. We also assessed the time frames for students to commence receiving services and programs. The audit scope covered the period of July 1, 2016 through January 21, 2020, and included all students who were initially referred for special education during school year 2016-17. Our audit found that the DOE was not adequately managing this process as it did not track or calculate its compliance with the required time frame for arranging services, nor did it calculate or track other critical performance measures or take corrective actions.

The objective of our follow-up was to assess the extent of implementation, as of February 16, 2023, of the five recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

DOE officials have made progress in addressing the issues we identified in the initial audit report. Of the initial report's five audit recommendations, three were partially implemented and two were not implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

*Calculate and track compliance with the 60-school days requirement for arranging special education services.*

Status – Partially Implemented

Agency Action – DOE officials provided information for a sample of schools that shows they are calculating compliance with the 60-school days requirement. However, they have not provided information to support that they are also tracking their compliance.

#### **Recommendation 2**

*Assess the reasons for non-compliance with the 60-school days requirement for arranging services for eligible students, and take appropriate action(s).*

Status – Partially Implemented

Agency Action – DOE officials provided information for a sample of schools that shows they assessed the reasons for non-compliance with the 60-school days requirement for arranging services. However, they have not provided information to support actions they have taken to address the reasons for non-compliance.

#### **Recommendation 3**

*Develop guidelines for the length of time it should take for students to start receiving recommended related services and special education programs. Similar to the analysis presented in this report, track compliance with these guidelines and take corrective action when lengthy time frames are identified.*

Status – Not Implemented

Agency Action – DOE officials do not believe it is necessary to develop guidelines for the length of time it should take for students to start receiving recommended related services

and special education programs or to track compliance thereof. We stand by our recommendation and believe that developing such guidelines and tracking compliance will be beneficial to the DOE in identifying lengthy time frames and subsequently taking corrective action.

**Recommendation 4**

*Ensure that students receive all special education services listed on their IEP.*

Status – Partially Implemented

Agency Action – Officials provided us with the DOE’s *Special Education Data Report – September 2022*, issued in October 2022, which indicates there was an increase of 1.5% in the delivery of special education programs and an increase of 2.5% in the provision of related services from June 2021 to June 2022. This report also indicates that, as a result of these improvements, 88% of students received all of their recommended special education programs and services as of June 2022. However, this report does not address those students who did not receive all the recommended programs and services listed on their IEP.

**Recommendation 5**

*Ensure that parental consent to services is obtained prior to service provision.*

Status – Not Implemented

Agency Status – In response to this recommendation, DOE official stated that a new special education data system, to be implemented in summer 2024, will replace SESIS and will capture and link the parental consent dates with the assessment dates as part of the evaluation stage. However, this expected action will not ensure that parental consent is obtained before students are provided with services. Moreover, obtaining parental consent to provide services to students should be done regardless of the data system being used.

Major contributors to this report were Rita Verma-Kumar, Manna Zhen, Alcides Ortiz, and Gabriela Grateraux.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the DOE for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,

Sheila Jones  
Audit Manager

cc: Danya Labban, DOE  
Todd Middler, DOE  
Robert Sosa, DOE  
Doug Giuliano, Mayor’s Office of Risk Management and Compliance  
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