



New York State Comptroller
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Compliance With Special Education Requirements – Evaluations

New York City Department of Education

Report 2017-N-3 | May 2019

Spotlight on Education



Audit Highlights

Objective

To determine if the New York City Department of Education evaluated students for special education services within required time frames. Our audit scope covers the period of July 1, 2016 through March 9, 2018, and includes all students initially referred for evaluations during the school year ended June 30, 2017.

About the Program

The Individuals with Disabilities Education Act (IDEA) ensures that a free appropriate public education is made available to eligible children¹ with disabilities who require special education services to meet their educational and developmental needs. In New York State, the Regulations of the Commissioner of Education (Regulations) 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 – serves approximately 1.1 million students at its more than 1,800 elementary, middle, and high schools in 34 school districts, and provides special education services to approximately 190,000 of these students. The DOE is responsible for evaluating students to determine their eligibility for special education services and ensuring eligible students receive appropriate services. Toward this end, the DOE follows a multi-step evaluation and placement process. The evaluation component – the focus of this audit² – includes the following:

- Referral: A parent/guardian,³ school personnel, or interested stakeholder submits a written request for an evaluation.
- Parental consent: The school/district obtains written consent from the parent to conduct the evaluation.
- Assessments: The DOE performs a series of student assessments, including a social history review, classroom observation, psychological/psychoeducational assessment (hereafter referred to as “psychoeducational”), and physical examination, as required by the Regulations, and other assessments as needed. Assessments cannot begin until written parental consent is received.
- IEP meeting: The IEP team reviews the results of the various assessments with the parent and, in consultation with the parent, determines the student’s eligibility for special education services.

Consistent with IDEA, Section 200.4 of the Regulations requires the initial evaluation (encompassing the various assessments) to be completed within 60 calendar days of receipt

1 The terms “child(ren)” and “student(s)” are used interchangeably in this report.

2 The placement component will be addressed in a separate audit.

3 The terms “parent” and “guardian” are used interchangeably in this report.

of parental consent unless extended by mutual agreement of the parent. According to the DOE, due to system limitations, the agency is not able to calculate the completion date of the evaluation in a reliable manner. Therefore, the DOE uses the date of the IEP meeting as a proxy for the evaluation completion date. The DOE's methodology was used for purposes of determining compliance with the required time period.

New York City Local Law 27 of 2015 requires the DOE to annually report statistical measures, including the disposition of all initial referrals received during the school year,⁴ to the New York City Council. The DOE compiles its Local Law 27 of 2015 Annual Reports on Special Education (Annual Reports) based on data in its Special Education Student Information System (SEGIS), which the DOE uses to record and track student referrals, evaluations, and placement information. According to DOE data for SY 2016-17, which was also used for the Annual Report, 22,266 students in kindergarten through 12th grade were initially referred for special education evaluation. Based on our analysis of these data, we found that, as of October 2, 2017, of these 22,266 referrals, 3,745 closed before an IEP meeting was held, 17,454 culminated in an IEP meeting, and 1,067 were still open or awaiting consent (i.e., parental consent not yet given or IEP meeting not yet held).

Key Findings

The DOE had difficulty meeting the 60-calendar-day time frame requirement for completing evaluations, resulting in potential delays in the provision of services for affected students. Any delay in services could adversely impact students' educational growth.

- Based on DOE data for SY 2016-17, and using the DOE's methodology for determining completion of the evaluation, of the 17,454 students whose referral culminated in an IEP meeting, 5,102 (29.2 percent) were not evaluated within the required time frame as of October 2, 2017. For these 5,102 students, the evaluations took an average of 96 calendar days to be completed.
- There was wide variation across school districts in their ability to complete evaluations timely, ranging from a low of 51 percent to a high of 86 percent.
 - Students from 13 school districts were more significantly impacted by delayed evaluations: School Districts 3, 4, and 5 in Manhattan; 9 and 12 in the Bronx; 13, 16, 19, 20, and 32 in Brooklyn; and 24, 29, and 30 in Queens, where non-compliance averaged 38 percent compared with 24 percent for the other 21 districts.
 - Based on the DOE's Annual Reports for other school years, for certain of these districts, non-compliance has been a persistent problem.
- Our detailed analysis of SEGIS data for a random sample of 158 referrals from SY 2016-17 found a higher rate of non-compliance (40 percent) and identified specific factors that contribute to delays:

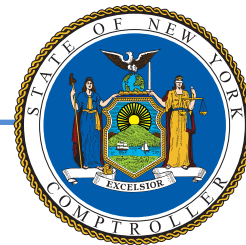
⁴ A school year (SY) encompasses the period July 1 to June 30.

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- Within the evaluation process, students' psychoeducational and speech and language assessments were significant causes of delays.
 - We also identified system shortcomings that hinder the DOE from properly monitoring the evaluation process.

Notably, in spite of the high – and in some cases persistent – rates of non-compliance with the 60-calendar-day evaluation completion requirement, the DOE itself has not performed similar detailed analyses or taken appropriate action to identify and address factors that impede timely completion. Furthermore, despite our repeated requests, DOE officials did not provide information on actions planned or in place to improve compliance citywide as well as for school districts where it is more problematic.

Key Recommendations

- Assess the reasons for non-compliance with the 60-calendar-day requirement and take appropriate actions, especially where significant non-compliance has been consistently identified.
- For each assessment type, develop controls that will allow analysis of the time frames for completion, similar to the analysis presented in this report, and take corrective action where significant delays are identified.
- Develop data integrity controls to provide greater assurance of the accuracy and completeness of data.



Office of the New York State Comptroller Division of State Government Accountability

May 16, 2019

Mr. Richard A. Carranza
Chancellor
New York City Department of Education
Tweed Courthouse
52 Chambers Street
New York, NY 10007

Dear Chancellor Carranza:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Compliance With Special Education Regulations – Evaluations*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Abbreviation	Description	Identifier
IDEA	Individuals with Disabilities Education Act	<i>Act</i>
Regulations	Regulations of the Commissioner of Education	<i>Key term</i>
Annual Reports	Local Law 27 of 2015 Annual Reports on Special Education	<i>Report</i>
DOE	New York City Department of Education	<i>Agency</i>
IEP	Individualized Education Program	<i>Program</i>
IEP meeting	The point at which a student's eligibility for special education services is determined	<i>Key term</i>
SEGIS	Special Education Student Information System	<i>System</i>
SY	School Year – from July 1 to June 30	<i>Key term</i>

Background

The Individuals with Disabilities Education Act (IDEA) ensures that all children⁵ with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. To be eligible, a child’s school performance must be “adversely affected” by 1 of the 13 disability categories specified in IDEA (e.g., specific learning disability, health impairment, autism). IDEA requires schools to conduct “appropriate evaluations” of students who are suspected of having a disability to ensure they meet eligibility criteria. In New York State, the Regulations of the Commissioner of Education (Regulations) stipulate 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 – serves approximately 1.1 million students at its more than 1,800 elementary, middle, and high schools in 34 school districts, and provides special education services to approximately 190,000 of these students (see Exhibit A). 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, the DOE follows a multi-step evaluation and placement process (see Exhibit B). The evaluation component – the focus of this audit⁶ – includes the following:

- Referral: A parent/guardian,⁷ school personnel, or interested stakeholder submits a written request (referral) for an evaluation.
- Parental consent: The school/district obtains written consent from the parent to conduct the evaluation.
- Assessments: The DOE performs a series of student assessments, including a social history review, classroom observation, psychological/psychoeducational assessment (hereafter referred to as “psychoeducational”), and physical examination, as required by the Regulations, and other assessments as needed. Assessments cannot begin until written parental consent is received.
- IEP meeting: The IEP team reviews the results of the various assessments with the parent and, in consultation with the parent, determines the student’s eligibility for special education services. If the student is deemed eligible, an IEP of recommended programs and services is developed by the IEP team, tailored to the student’s specific educational needs.

5 The terms “child(ren)” and “student(s)” are used interchangeably in this report.

6 The placement component will be addressed in a separate audit.

7 The terms “parent” and “guardian” are used interchangeably in this report.

Special education services are provided after the student’s placement has been determined and consented to by the parent.

Section 200.4 of the Regulations requires the initial evaluation to be completed within 60 calendar days of receipt of parental consent unless extended by mutual agreement of the parent. Due to system limitations, the DOE is not able to calculate the completion date of the evaluation in a reliable manner. Therefore, the DOE calculates compliance with the 60-calendar-day requirement based on the time from receipt of parental consent up to the IEP meeting date (when the evaluation process has been completed and the student’s educational needs have been determined). The DOE’s methodology was used for the purposes of determining compliance with the required time period. In cases where “the parent ... *repeatedly fails or refuses* [emphasis added] to produce the student for the evaluation,” the 60-calendar-day time frame does not apply. The Regulations do not provide for additional time to complete the evaluation for other delays.

Pursuant to New York City Local Law 27 of 2015, the DOE annually reports statistical measures, including the number of initial referrals, their disposition, and the number of resulting IEP meetings held during the school year,⁸ to the New York City Council. The DOE generates Local Law 27 of 2015 Annual Reports on Special Education (Annual Reports) based on data in its Special Education Student Information System (SESIS), which the DOE uses to record and track students’ information, including referrals, evaluations, and placement. However, in both its Annual Report for SY 2016-17 and a May 2016 SESIS Assessment Report, the DOE acknowledged shortcomings with SESIS, including deficiencies in its design for capturing, processing, and storing information, that negatively affect its ability to reliably report on specific compliance metrics. The DOE also identified areas for remediation and enhancement, and reported actions that either had been or will be taken to improve its performance.

The DOE’s Annual Reports for the four school years ended June 30, 2018 showed that, for each year, a significant percentage of initial referrals did not result in IEP meetings (which the DOE uses as a proxy for the completion date of the evaluation) within 60 calendar days of parental consent, as follows:

School Year	Percentage
2014-15	30.5%
2015-16	29.0%
2016-17	27.8%
2017-18	27.5%

⁸ A school year (SY) encompasses the period July 1 to June 30.

Audit Findings and Recommendations

Section 200.4 of the Regulations requires the initial evaluation to be completed within 60 calendar days of receipt of parental consent unless extended by mutual agreement of the parent. Timeliness of evaluations is critical to ensure that students receive the services they need and reap the benefits of special education instruction and services as IDEA intended. However, as evidenced in its own Annual Reports, the DOE was not fully compliant with the evaluation time frame requirements of IDEA and the Regulations for SY 2016-17 – or other most recent school years. A significant number of initial referrals did not result in IEP meetings within 60 calendar days of parental consent, potentially delaying services for these students. For example, based on the SY 2016-17 data as of October 2, 2017 that the DOE provided to us:

- For 5,102 (29.2 percent) of the 17,454 students whose referral culminated in an IEP meeting, the evaluation process exceeded the required time frame (using the IEP meeting as a proxy for completion of the evaluation) – averaging 96 calendar days.
- There was wide variation across school districts in their ability to complete evaluations timely, ranging from a low of 51 percent to a high of 86 percent.
- Students from 13 school districts, listed below (and further illustrated in Exhibit C), were more significantly impacted by delays in completing evaluations, with non-compliance averaging 38 percent compared with 24 percent for the other 21 districts. Notably, for certain of these districts, higher-than-average non-compliance rates are not unique to SY 2016-17. Based on the DOE’s Annual Reports, non-compliance has been a persistent problem across other school years. (See Exhibit A for a full list of DOE school districts by borough.)
 - Manhattan School Districts 3, 4, and 5 (Morningside Heights, Central Harlem South, Upper West Side, Lincoln Square; East Harlem South, East Harlem North; Manhattanville, Morningside Heights, Central Harlem North, Polo Grounds, East Harlem South)
 - Bronx School Districts 9 and 12 (Morrisania, Highbridge, Morris Heights, Tremont, Mount Hope, East Concourse, West Concourse, Claremont, Bathgate; East Tremont, West Farms-Bronx River, Parkchester, Crotona Park East, Soundview-Bruckner, Longwood, Hunts Point, Morrisania-Melrose)
 - Brooklyn School Districts 13, 16, 19, 20, and 32 (Brooklyn Heights-Cobble Hill-Dumbo-Downtown Brooklyn, Fort Greene, Clinton Hill, Bedford, Prospect Hill; Stuyvesant Heights, Crown Heights North;

East New York, Bushwick South, Cypress Hill-City Line, Starrett City; Bay Ridge, Kensington-Ocean Parkway, Borough Park, Sunset Park West, Sunset Park East, Bensonhurst West, Bath Beach, Dyker Heights; Bushwick North, Bushwick South)

- Queens School Districts 24, 29, and 30 (Sunnyside-Woodside, Ridgewood, Middle Village, Glendale, Elmhurst-Maspeth, Elmhurst, Corona; Jamaica Estates-Holliswood, Pomonok-Flushing Heights-Hillcrest, Jamaica, South Jamaica, St. Albans, Queens Village, Springfield Gardens South-Brookville, Rosedale, Laurelton, Cambria Heights; Astoria, East Elmhurst, Jackson Heights, Woodside, Hunters Point-Sunnyside-Maspeth, Queensbridge-Ravenwood-Long Island City, Astoria, Old Astoria, Ditmars-Steinway)

A detailed analysis of SESIS data enabled us to identify specific factors that contribute to delays as well as system shortcomings that limit the DOE's ability to properly monitor the evaluation process. In particular, despite the DOE's reported plans for system upgrades and enhancements, SESIS still lacks the necessary functionality to be a reliable management tool. While SESIS records data, it does not report them in a way that can be analyzed to determine where delays are occurring.

Notably, in spite of the high – and in some cases persistent – rates of non-compliance with the 60-calendar-day evaluation completion requirement, the DOE itself has not performed detailed analyses, similar to the one we performed, or taken appropriate action to identify and address factors that impede timely completion. Furthermore, despite our repeated requests, DOE officials did not provide information on actions planned or in place to improve compliance citywide as well as for school districts where it is more problematic.

Compliance With 60-Calendar-Day Requirement

For purposes of this audit, the DOE provided us with the special education data for SY 2016-17, which included the status of the 22,266 initial referrals as of October 2, 2017. The same data was used for the DOE's actual Annual Report, which reflects data as of June 30, 2017, the end of the school year. Based on our analysis of these data, and using the DOE's methodology for determining completion of the evaluation, we found that, as of October 2, 2017, of the 22,266 students initially referred, IEP meetings were held for 17,454.⁹ Of the remaining referrals, 3,745 were closed and 1,067 were either open or awaiting parental consent. ("Closed" referral indicates a decision was

⁹ The Annual Report for that school year, in contrast, reports a student count of 16,612. The discrepancy is due to the timing of data analysis because the evaluation process is dynamic.

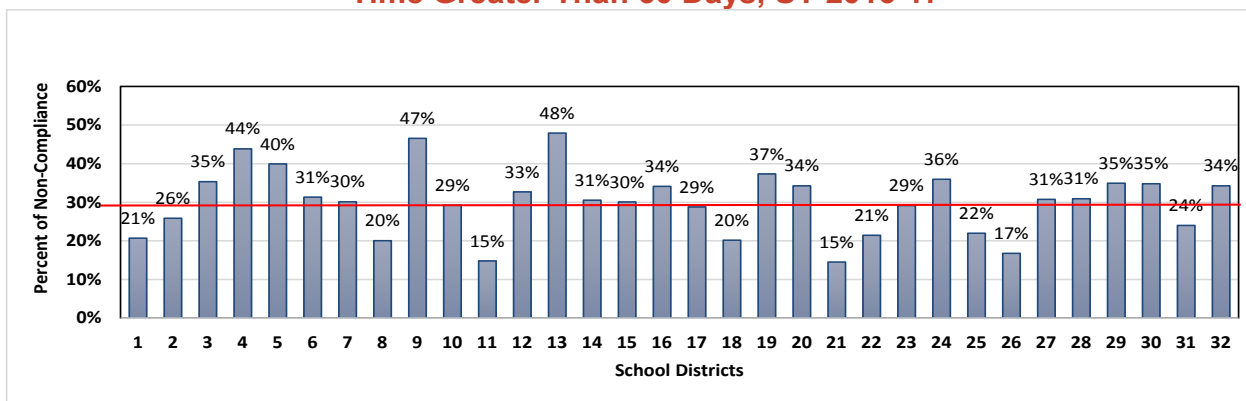
made to terminate the case before an IEP meeting was held. “Open” referral indicates that the DOE has received parental consent for the student to be evaluated, but the IEP meeting has not yet been held. “Awaiting” indicates that parental consent has not been obtained.) We determined that, for 5,102 of the 17,454 students (29.2 percent), the evaluation process took more than 60 calendar days after parental consent was received – an average of 96 calendar days. We also noted that the DOE did not recalculate the compliance rate to account for initial referrals made during the school year but that did not result in an IEP meeting until after June 30, 2017, the end of the school year.

As shown in Figure 1, the percentage of students whose evaluation process took more than 60 calendar days varied widely among school districts, ranging from a low of 15 percent (School District 11 in the Bronx and School District 21 in Brooklyn) to a high of 48 percent (School District 13, also in Brooklyn). (See Exhibit C.) Thirteen school districts account for the highest rates of non-compliance:

- School Districts 3, 4, and 5 in Manhattan;
- School Districts 9 and 12 in the Bronx;
- School Districts 13, 16, 19, 20, and 32 in Brooklyn; and
- School Districts 24, 29, and 30 in Queens.

The average rate of non-compliance for these 13 districts was 38 percent compared with the significantly lower average rate of 24 percent for the other 21 districts.

Figure 1 – Students With Evaluation Completion Time Greater Than 60 Days, SY 2016-17



Note: Based on SESIS data as of October 2, 2017. Data for School Districts 75 and 79 are included based on the geographic district where the school or program is physically located.
 *29.2% is the overall non-compliance for the 32 school districts.

Based on reviews of Annual Reports data for the four school years ended June 30, 2018, we determined that, for certain of these districts, higher-than-average rates are a persistent problem (see Exhibit D). It is disconcerting that, in the face of its own historical evidence, the DOE did not take action in the ensuing years to effectively mitigate non-compliance among these school districts. Furthermore, despite our repeated requests, DOE officials did not provide any information on actions planned or in place to improve compliance citywide as well as for school districts where it is more problematic.

Our analysis of compliance at the school level showed that, of 1,554 schools that had initial referrals, only 289 (19 percent) completed all the evaluations within the 60-calendar-day time frame (see Exhibit E). The other 1,265 schools showed widely ranging degrees of non-compliance. For example:

- At P.S. 75 (School District 3), 46 of the 51 (90 percent) students who were initially referred were not evaluated within the required 60 calendar days.
- At P.S. 76 (School District 30), 25 of the 30 (83 percent) students who were initially referred were not evaluated within the required 60 calendar days.
- At P.S. 134 (School District 12), 27 of the 36 (75 percent) students who were initially referred were not evaluated within the required 60 calendar days.
- At P.S. 40 (School District 28), 22 of the 31 (71 percent) students who were initially referred were not evaluated within the required 60 calendar days.

Our analysis by grade level identified a similarly wide range of compliance. For example, it took the DOE an average of 63 calendar days to complete evaluations for 9th-grade students compared with 54 calendar days for 11th-grade students.

Detailed Analysis of SESIS Data for a Sample of Students

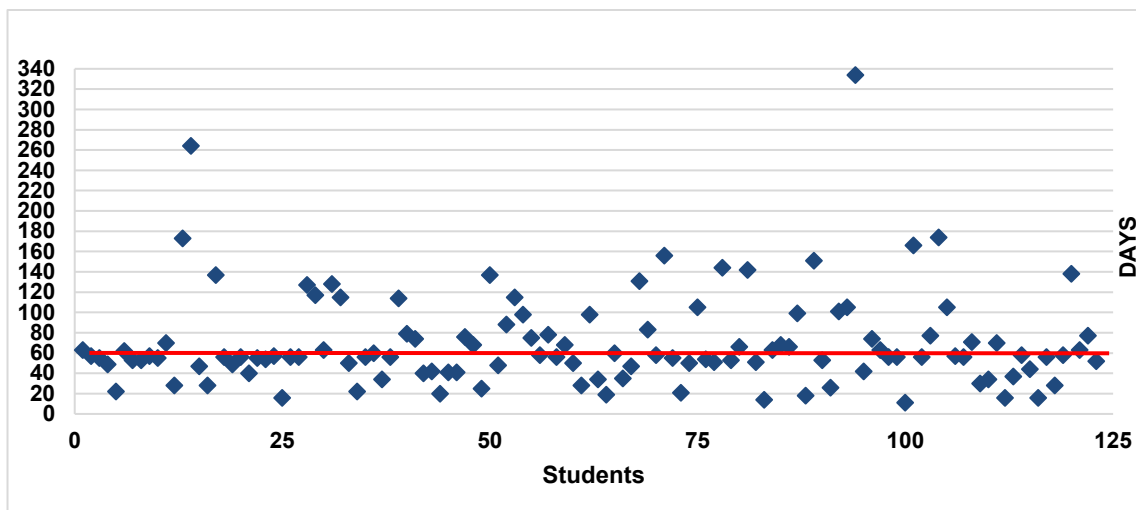
Overall Results

Because the DOE only provided overall timeliness statistics, we performed an analysis of SESIS data (e.g., referrals, assessments) and event documentation for deeper context to identify possible areas of the process that impede timely completion, causing delays. For this purpose, we selected a random sample of 158 students who were initially referred in SY 2016-

17 and reviewed documentation in SESIS to determine the length of the evaluation process for each student and the length of time to complete each assessment.

As of March 9, 2018, when we last reviewed data, SESIS showed that evaluations were completed (i.e., using the IEP meeting date as a proxy for completion of the evaluation) for 123 of the 158 cases. (Of the remaining 35 cases, 7 were still open and 28 had closed before the IEP meeting was held.) Based on the date of parental consent and the date of the IEP meeting, we determined it took between 11 and 334 calendar days, and an average of 70 calendar days, for the DOE to complete the evaluation process for the 123 students. For 50 of the 123 students (41 percent), the process took more than 60 calendar days to complete (see Figure 2).

Figure 2 – Range of Calendar Days to Complete Evaluation for 123 Sampled Students



Assessments

IDEA and the Regulations do not specify how long each individual assessment should take or the order in which they should occur, nor do they require the assessments to be conducted one at a time.

We found that 117 of the 123 social history assessments (95 percent) and 111 of the 123 classroom observation assessments (90 percent) occurred within 60 calendar days of the receipt of parental consent. However, we found that the psychoeducational and speech and language assessments were often delayed, contributing to the evaluation process taking more than 60 calendar days.

Our detailed analysis also highlighted several system deficiencies that make it difficult for the DOE to properly monitor the evaluation process and ensure timely completion. Namely:

- The DOE does not have a system for recording reasons for the delays in SESIS. We are unaware as to whether SESIS can systematically identify and quantify non-DOE-related delays.
- Further, the DOE does not document or flag instances of parental delay (i.e., non-cooperation) that would exempt cases from the 60-calendar-day requirement (“the parent ... *repeatedly fails or refuses* [emphasis added] to produce the student for the evaluation), nor does SESIS have a feature (e.g., drop-down menu or checkbox) that allows the DOE to indicate whether a case meets the 60-calendar-day time frame requirements under IDEA and the Regulations.
- SESIS does not have controls to require that completion dates be entered for every assessment, and does not have controls to flag problematic dates (e.g., dates indicating an assessment was completed before receipt of parent consent).

Social History

A social history provides a long-term perspective of a student’s development, changes in skill level, family circumstances, and prior intervention strategies. During the social history assessment, the social worker explains the steps in the evaluation process to the parent and informs the parent that he/she is a member of the IEP team and is allowed to fully participate in all decisions regarding the student’s eligibility, program, and service recommendations. The social worker also informs the parent that the evaluation process is required to be completed within 60 calendar days of parental consent.

We found that 48 of the 123 social history assessments were completed on the date parental consent was received. Of the remaining 75 assessments, 73 were completed between 1 and 75 calendar days after parental consent was received, and 2 were completed approximately one week before the DOE had received parental consent, according to the dates entered in SESIS.

Classroom Observation

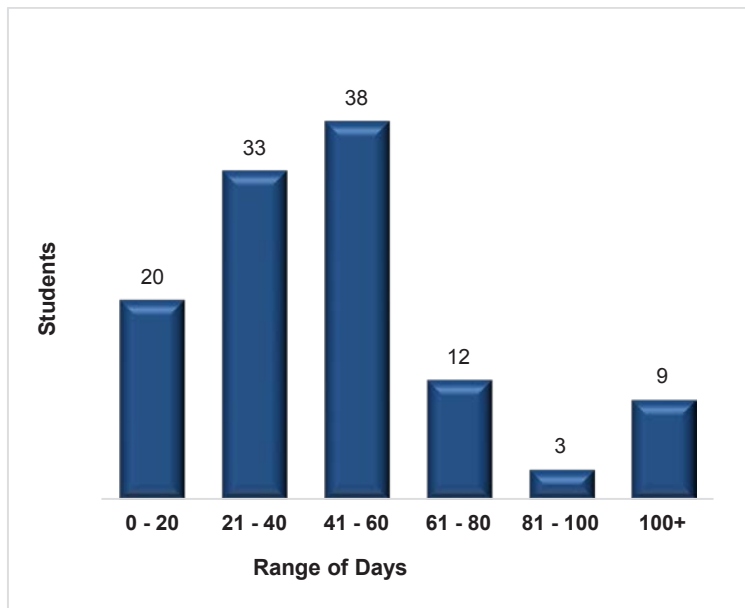
During the evaluation process, the school social worker or designated DOE staff must conduct a classroom observation of the student, giving special attention to academic performance and/or the behavioral issues that precipitated the referral. For a student in a bilingual classroom, the evaluation must be conducted by someone fluent in the language of instruction. For

119 of the 123 students, classroom observations occurred an average of 30 calendar days after parental consent was received. For 3 of the remaining 4 students, we do not know if classroom observations were performed as no dates were entered in SESIS. For the fourth student, the assessment date in SESIS indicates that the classroom observation took place before parental consent was received.

Psychoeducational Assessment

Psychoeducational assessments explore and systematically study the development of the student’s academic skills, intellectual functioning, cognitive/learning, and social, emotional, behavioral, and adaptive functioning. They include the student’s aptitude (intelligence quotient), academic functioning, social and self-help skills, physical and motor development, behavior, personality, and emotional functioning. Psychoeducational assessments for 115 of the 123 students occurred between 3 and 184 calendar days – an average of 48 calendar days – after parental consent was received (see Figure 3). According to SESIS, psychoeducational assessments for the remaining 8 students were conducted prior to the date of parental consent.

Figure 3 – Psychoeducational Assessment Time Frames



Physical Examination

A physical examination, including hearing and vision screenings and the resultant medical report, is a required component of the evaluation process.

During this assessment, the social worker or designated DOE staff gives the parent a Request for Physical Examination Form with instructions to have the student examined by a physician and to return the completed form to the social worker. For 47 of the 123 students, no assessment dates were entered in SESIS showing that the physical examinations had either been performed or reviewed. Without dates documenting that these physical examinations had, in fact, been done, the DOE has no assurance that these assessments were factored into the eligibility determinations.

Other Assessments

Speech and language, occupational therapy (OT) and physical therapy (PT), and vocational assessments may be requested by the parent and/or school personnel. They are conducted when the IEP team determines they are needed. Speech and language assessments address the student's communicative competence (i.e., the ability to comprehend, express, and exchange information and the impact of these abilities on learning). OT assessments provide information on participation restrictions related to, among other areas, activities of daily living, movement/accessibility, and management of classroom materials/tools. PT assessments provide insight on how a student's gross motor skills may impact access and participation in various areas of the school. Vocational assessments explore vocational aptitudes, skills, expressed interests, and occupational exploration history. Among other findings, we determined that:

- Speech and language assessments for 39 students occurred between 13 and 121 calendar days, an average of 55 calendar days after parental consent was received. For 2 students, the date of the assessment recorded in SESIS was before the date of the consent.
- Vocational assessments for 20 students occurred up to 89 calendar days after parental consent was received; and
- OT assessments for 9 students occurred between 10 and 144 calendar days, an average of 48 calendar days after parental consent was received. According to dates in SESIS, for 1 student, the assessment was performed before parental consent was received.

The DOE attributed delays in conducting bilingual and monolingual speech assessments and OT assessments to personnel shortages.

IEP Meeting

Following completion of the assessments, an IEP meeting, including the parent, the evaluation team (e.g., general education teacher, special

education teacher, school psychologist, school social worker), and the student (if appropriate), is held to discuss the results of the assessments and the student's eligibility for special education services. If the student is deemed eligible, an IEP of recommended programs and services is developed, tailored to the student's specific educational needs. We found that, for 46 of the 50 students whose evaluation exceeded 60 calendar days, the IEP meeting occurred an average of 29 calendar days after the last date recorded for an assessment – a seemingly lengthy post-assessment period of time. For these cases, details explaining the delays were not documented in SESIS. For the remaining 4 students, the date of an assessment recorded in SESIS was after the date of the IEP meeting.

DOE officials point to parental delay as a factor in evaluations not being completed within 60 calendar days. As we previously noted, cases involving parental delays – except where the parent has repeatedly failed or refused to produce the student for the evaluation – are still subject to the 60-calendar-day requirement, according to IDEA and the Regulations. However, because the DOE does not record reasons for the delays, such cases are not identifiable in SESIS.

Recommendations

1. Assess the reasons for non-compliance with the 60-calendar-day requirement and take appropriate actions, especially for the districts/schools and grades where significant non-compliance has been consistently identified.
2. Calculate school year compliance rates based on actual disposition dates for all initial referrals made during the school year (annual initial referral cohort), in addition to the information provided in the Annual Reports.
3. For each assessment type, develop controls that will allow analysis of the time frames for completion, similar to the analysis presented in this report, and take corrective action where significant time lapses are identified.
4. Develop data integrity controls to provide greater assurance of the accuracy and completeness of data. This could include logic controls for the dates in student records (e.g., to flag instances where mandated assessments occurred before parental consent, after the IEP meeting, or not at all).

Audit Scope, Objective, and Methodology

The objective of this audit was to determine whether the DOE evaluated students for special education services within required time frames. The audit scope covers the period of July 1, 2016 through March 9, 2018, and includes all students who were initially referred for evaluations during SY 2016-17.

To achieve this objective, we reviewed relevant laws, regulations, and DOE guidance. We met with key DOE personnel to obtain an understanding of the DOE's efforts to comply with special education regulations. We assessed the DOE's internal controls as they relate to the evaluation of students for special education services. We analyzed data provided by the DOE for SY 2016-17. The data we were provided showed the status of the 22,266 initial referrals for SY 2016-17 as of October 2, 2017. For our random sample of 158 students referred in SY 2016-17, we reviewed student records in SESIS and compared the assessment dates as of October 2, 2017. For this purpose, we reviewed event logs, written consents, and referral documents. Of the sample of 158 initial student referrals, evaluations and IEP meetings were held for 123 students, 28 initial referrals were closed, and 7 were still open as of our review of the student records in SESIS. The results of our sample were not projected.

As part of audit procedures, the audit team used Geographic Information Systems (GIS) software for geographic analysis. As part of the geographic analysis, we developed visualizations (see Exhibit C) to improve understanding of our report.

Statutory Requirements

Authority

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

We conducted our audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objective.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to affirm that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They further affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials will not provide representation letters in connection with our audits. As a result, we lack assurance from DOE officials that all relevant information was provided to us during the audit.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

A draft copy of this report was provided to DOE officials for their review and comments. Their comments were considered in preparing this final report and are included in their entirety at the end of it.

The DOE generally agreed with our recommendations, indicating that it has issued a Request for Proposal for a new special education data management system that will capture assessment dates and accurately link them to their associated referral/consent dates. The response describes certain actions to address the timely completion of evaluations, and takes issue with the methodology we employed to reach our conclusions. As described in our report, we used the data available to us to perform our analysis, using the IEP meeting date as a consistently applied proxy for the end of the evaluation process. This method is consistent with what is prescribed in the DOE's Standard Operating Procedures Manual and by the New York City Council, is in line with the reporting method used by the DOE to report compliance information to the State Education Department, and provides a consistently applied basis to assess the DOE's performance on this critically important function. The DOE has failed to develop a means to determine compliance with the 60-calendar-day evaluation requirement using dates other than the IEP meeting date, and has not made any efforts at calculating such for the largest school system in the country. We expect the DOE to take our results as a strong indication that improvements are needed. Furthermore, we strongly encourage the DOE to proactively manage the data it has on the evaluation process, and to expeditiously put in place a system that can capture the data fields that the DOE says are needed to calculate compliance. Our rejoinders to certain DOE comments are embedded in the DOE's response.

Within 90 days of the final release of this report, we request that the Chancellor of the New York City Department of Education report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Exhibit A

List of DOE School Districts by Borough*

District	Location/Neighborhood
Manhattan	
1	East Village, Lower East Side, Chinatown
2	Chinatown, Battery Park, SoHo, Tribeca, West Village, Chelsea, Flatiron, Union Square, Gramercy Park, Stuyvesant Town, Cooper Village, Murray Hill, Kips Bay, Midtown South, Clinton, Turtle Bay, East Midtown, Lenox Hill, Upper East Side, Carnegie Hill, Yorkville
3	Morningside Heights, Central Harlem South, Upper West Side, Lincoln Square
4	East Harlem South, East Harlem North
5	Manhattanville, Morningside Heights, Central Harlem North, Polo Grounds, East Harlem South
6	Manhattanville, Hamilton Heights, Washington Heights South, Washington Heights North, Marble Hill, Inwood
Bronx	
7	Hunts Point, Mott Haven, Port Morris, Longwood, Melrose South, Mott Haven North, Morrisania, Melrose, East Concourse, West Concourse, Rikers Island
8	Morrisania, Melrose, Longwood, Hunts Point, Soundview, Bruckner, Castle Hill, Clason Point, Port Harding Park, Westchester, Unionport, Schuylerville, Throgs Neck, Edgewater Park, Pelham Bay, Country Club, City Island
9	Morrisania, Highbridge, Morris Heights, Tremont, Mount Hope, East Concourse, West Concourse, Claremont, Bathgate
10	Belmont, Claremont, Bathgate, Mount Hope, University Heights, Morris Heights, Fordham South, Kingsbridge Heights, Bedford Park, Fordham North, Van Cortlandt Village, Norwood, Spuyten Duyvil, North Riverdale, Fieldston, Riverdale
11	Parkchester, Westchester, Van Nest, Morris Park, Baychester, Williamsbridge, City Island, Eastchester, Wakefield, Woodlawn, Pelham Parkway, Allerton, Pelham Gardens, Bronxdale, Co-Op City
12	East Tremont, West Farms-Bronx River, Parkchester, Crotona Park East, Soundview-Bruckner, Longwood, Hunts Point, and Morrisania-Melrose
Brooklyn	
13	Brooklyn Heights-Cobble Hill-Dumbo-Downtown Brooklyn, Fort Greene, Clinton Hill, Bedford, Prospect Hill
14	Williamsburg, East Williamsburg, Bedford, Bushwick South, North Side-South Side, Greenpoint
15	Carrol Gardens, Columbia, Red Hook, Dumbo-Downtown Brooklyn, Park Slope-Gowanus, Sunset Park West, Sunset Park East, Borough Park, Windsor Terrace, Kensington-Ocean Parkway
16	Stuyvesant Heights, Crown Heights North
17	Crown Heights North, Crown Heights South, Prospect-Lefferts Gardens-Wingate, Erasmus

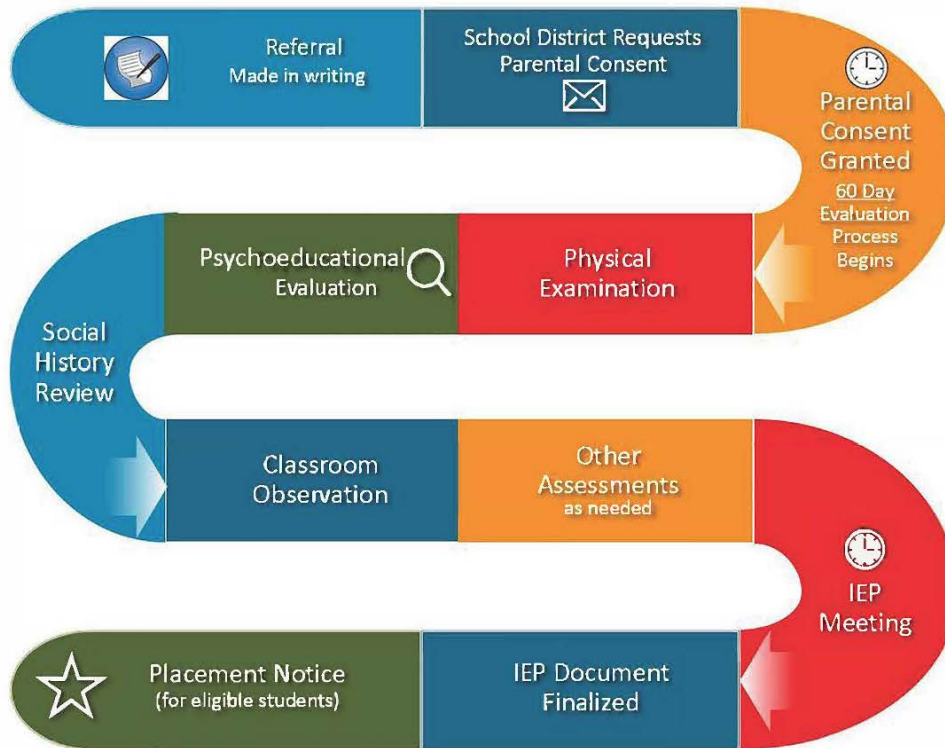
18	East Flatbush, Farragut, Rugby-Remsen Village, Canarsie, Flatlands, East New York
19	East New York, Bushwick South, Cypress Hill-City Line, Starrett City
20	Bay Ridge, Kensington-Ocean Parkway, Borough Park, Sunset Park West, Sunset Park East, Bensonhurst West, Bath Beach, Dyker Heights
21	Midwood, Ocean Parkway South, Bensonhurst East, Gravesend, Homecrest, Brighton Beach, West Brighton, Sea Gate-Coney Island
22	Midwood, Flatbush East, Flatbush, Flatlands, Madison, Sheepshead Bay, Gerritsen Beach, Georgetown, Marine Park, Bergen Beach, Mill Basin
23	Ocean Hill, Brownsville
32	Bushwick North, Bushwick South
Queens	
24	Sunnyside-Woodside, Ridgewood, Middle Village, Glendale, Elmhurst-Maspeth, Elmhurst, Corona
25	Fort Totten-Bay Terrace-Clearview, Murray Hill, Whitestone, College Point, Fresh Meadows-Utopia, Jamaica Estates-Holliswood, Flushing, East Flushing, Queensboro Hill, Pomonok-Flushing Heights-Hillcrest, Kew Gardens
26	Pomonok-Flushing Heights-Hillcrest, Auburndale, Fresh Meadows-Utopia, Bayside-Bayside Hills, Oakland Gardens, Jamaica Estates-Holliswood, Queens Village, Bellerose, Glen Oaks, Floral Park-New Hyde Park, Douglas Manor, Douglaston, Little Neck
27	Woodhaven, Ozone Park, Lindenwood-Howard Beach, Richmond Hill, South Ozone Park, Baisley Park, Springfield Gardens North, Far Rockaway-Bayswater, Hammels-Arverne-Edgemere, Breezy Point-Belle Harbor-Rockaway Park
28	Rego Park, Forest Hills, Briarwood-Jamaica Hill, Jamaica, Jamaica Estates-Holliswood, South Jamaica, St. Albans
29	Jamaica Estates-Holliswood, Pomonok-Flushing Heights-Hillcrest, Jamaica, South Jamaica, St. Albans, Queens Village, Springfield Gardens South-Brookville, Rosedale, Laurelton, Cambria Heights
30	Astoria, East Elmhurst, Jackson Heights, Woodside, Hunters Point-Sunnyside-Maspeth, Queensbridge-Ravenwood-Long Island City, Astoria, Old Astoria, Ditmars-Steinway
Staten Island	
31	Charleston-Richmond Valley-Tottenville, Annadale-Huguenot, Prince's Bay, Eltingville, Great Kills, Rossville-Woodrow, Arden Heights, Oakwood, Todt Hill-Emerson Hill-Heartland Village-Lighthouse Hill, New Dorp-Midland Beach, Old Town-Dongan Hills-South Beach, Grasmere-Arrochar-Fort Wadsworth, Stapleton-Rosebank, West New Brighton, New Brighton-St. George, New Brighton-Silver Lake, Westerleigh, Port Richmond, Mariners Harbor-Graniteville, New Springville-Travis-Bloomfield, Grymes Hill-Clifton-Fox Hill
Various Locations	
75**	Citywide Special Education Programs
79**	Citywide - Alternative Schools and Programs

* Data compiled from the DOE website district map.

** Data for School Districts 75 and 79 are included based on the geographic district where the school or program is physically located.

Exhibit B

Special Education Evaluation Process



Note: The focus of this audit is the evaluation process; the placement component will be addressed in a separate audit. Our ordering of the five assessments (physical examination, psychoeducational evaluation, social history review, classroom observation, and “other”) is for illustration purposes only; the assessments can be performed in any order and not necessarily one at a time.

Exhibit C

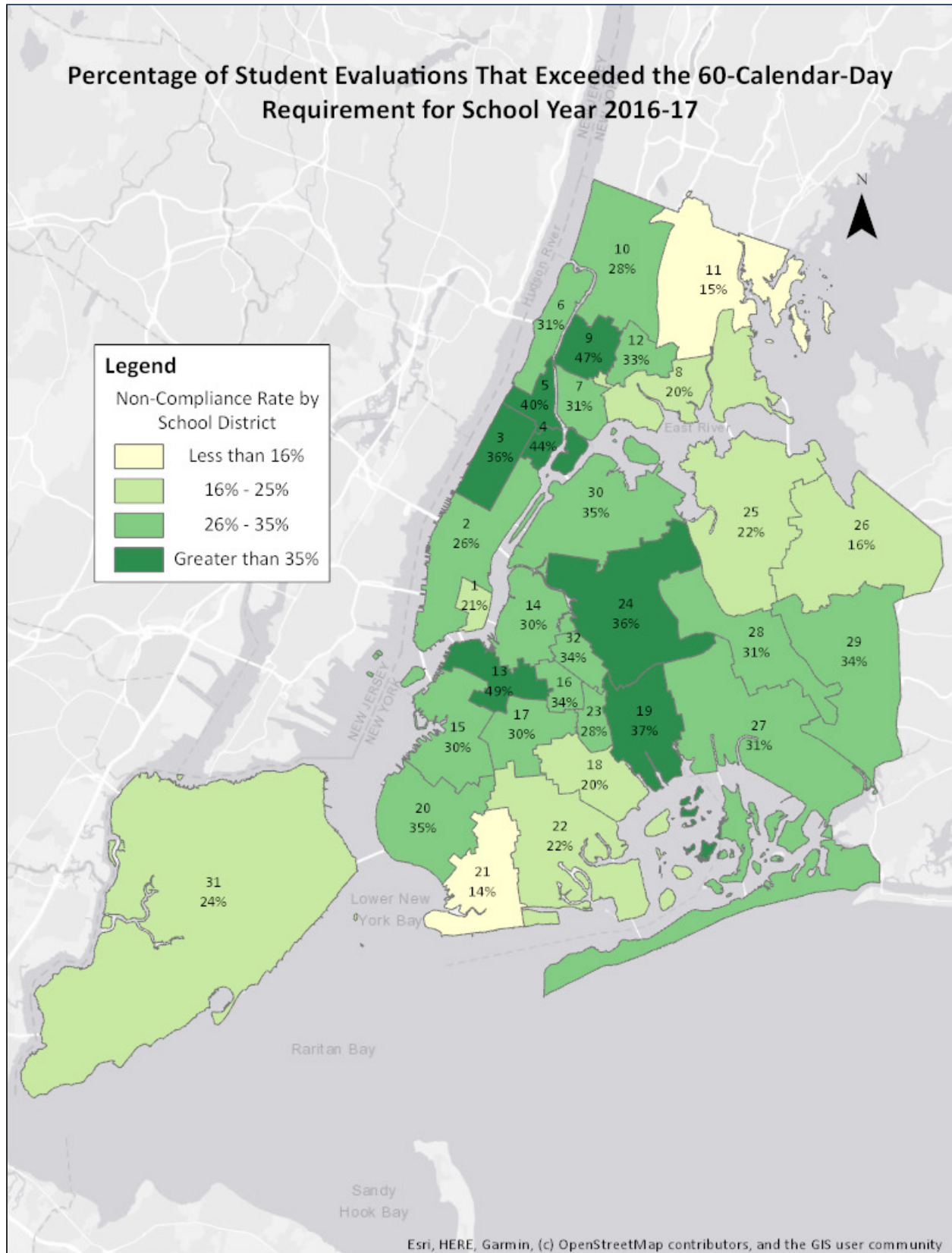
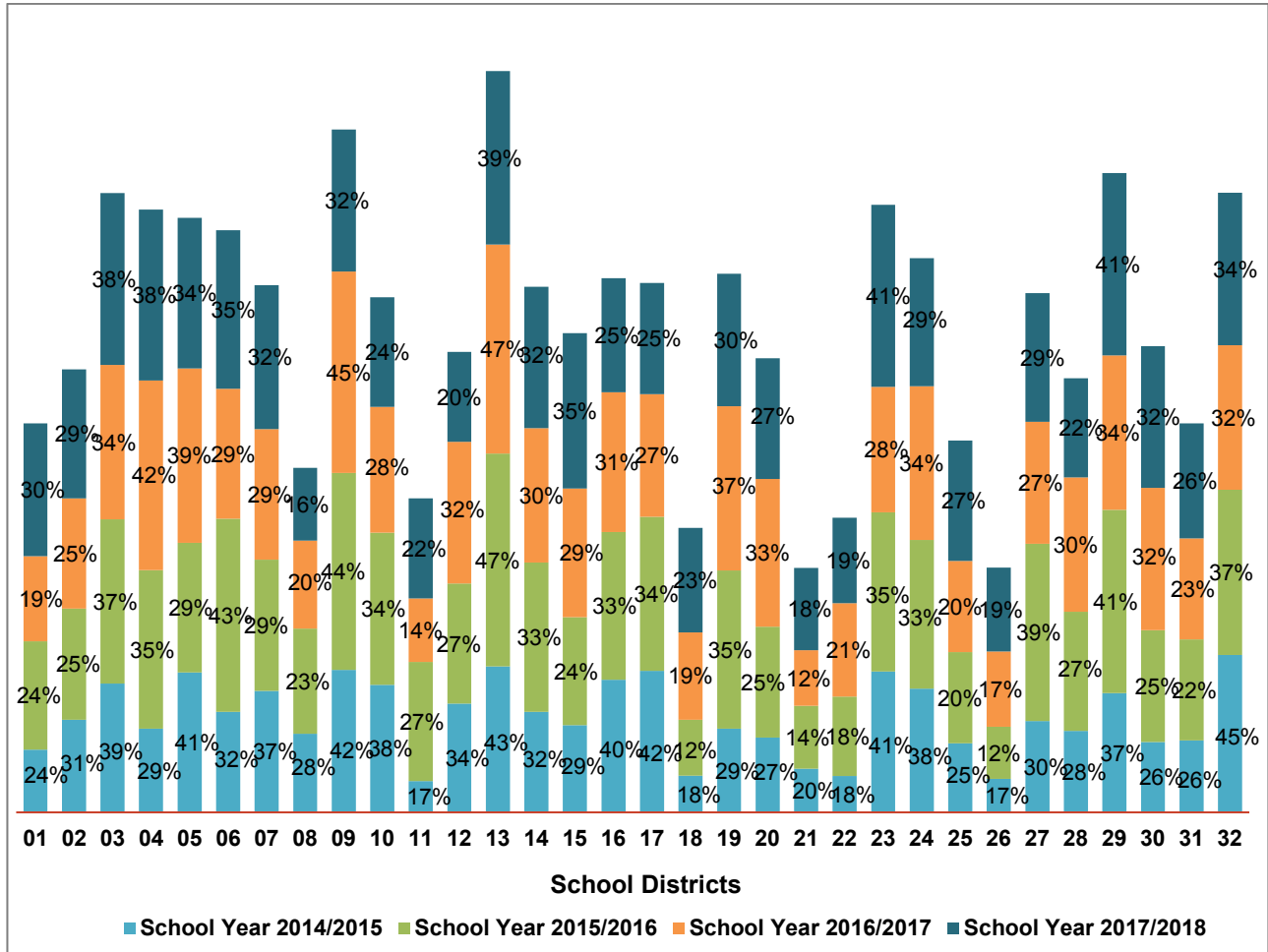


Exhibit D

Non-Compliance Rates by District: SY 2014-15 Through SY 2017-18 Annual Reports



Note: Data for School Districts 75 and 79 are included based on the geographic district where the school or program is physically located.

Exhibit E

Breakdown of Compliance by School District for SY 2016-17 as of October 2, 2017

School District	Schools With Initial Referrals	Number of Referrals	Schools With All Evaluations Completed Within 60 Calendar Days	Schools With All Evaluations Not Within 60 Calendar Days
1	26	277	10	16
2	104	992	28	76
3	44	546	12	32
4	30	318	2	28
5	29	385	2	27
6	46	595	4	42
7	41	542	7	34
8	55	907	10	45
9	70	1,038	10	60
10	83	1,353	17	66
11	61	1,125	20	41
12	52	768	14	38
13	39	409	6	33
14	38	469	5	33
15	46	854	6	40
16	26	252	4	22
17	48	556	7	41
18	34	416	12	22
19	50	691	12	38
20	42	709	1	41
21	38	565	10	28
22	39	651	7	32
23	27	371	4	23
24	53	1,090	5	48
25	42	612	6	36
26	31	432	6	25
27	58	952	9	49
28	47	717	11	36
29	46	719	5	41
30	45	602	5	40
31	71	1,541	13	58
32	24	289	6	18
75	65	496	13	52
79	4	27	0	4
Totals	1,554*	22,266	289	1,265

Note: Initial referrals cannot be generated by Districts 75 and 79. Data for these districts should be reflected in the 32 other districts. The DOE did not break out the number of initial referrals in this manner. *According to the DOE, there are 1,800 schools in New York City; however, initial referrals were only made in 1,554 schools.

Agency Comments and State Comptroller's Comments



Office of the Chief Academic Officer
52 Chambers Street | New York, NY 10007

April 10, 2019

Mr. Thomas P. DiNapoli, State Comptroller
Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th floor
Albany, NY 12236

**Re: New York City Department of Education's
Compliance with Special Education
Requirements - Evaluations (2017-N-3)**

Dear Comptroller DiNapoli,

This letter constitutes the formal response of the New York City Department of Education (Department) to the recommendations made by the Office of the State Comptroller (Comptroller) in its draft audit report on the Department's Compliance with Special Education Requirements - Evaluations (Report).

We are committed to meeting the needs of our students with disabilities, and this includes timely completion of special education evaluations. Toward this end, the Department has committed to three major initiatives in the past year:

- Increasing the staffing level of Individual Education Program (IEP) teams citywide by more than 300 school psychologists, school social workers and special education teachers over the current and upcoming fiscal year;
- Deploying a sophisticated business intelligence tool for monitoring key special education data, including analyzing the timeliness of Initial Evaluations¹; and
- Issuing a Request for Proposals (RFP) for a new special education data management system.

These initiatives are working in tandem. Enhanced data collection and analysis will enable us to allocate resources to districts and schools with the greatest need and to manage caseloads and staff at all levels as efficiently as possible in service of families.

The Department has already made strides in being transparent in its efforts to improve special education data management, compliance and service delivery, and it will continue to accelerate this work. In fact, the data reviewed by the Comptroller for this Report was publicly released by the Department. However, we note that the Comptroller used the summary data, which does not align

¹ An initial evaluation consists of assessments used to determine if a student has a disability and is eligible for special education services.



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with the referenced New York State Commissioner Regulation, for its audit. In doing so, the audit's primary findings use an incorrect measurement - the date of the IEP meeting that follows the initial evaluation, instead of the date of completion of the last assessment. The Comptroller's use of the IEP meeting date is inconsistent with the state and federal regulations that governs this process and therefore we believe this report mischaracterizes the current state and progress that the Department has made on timely evaluations.

State Comptroller's Comment – We did not analyze summary data. To perform our analysis, we asked DOE officials to provide us with data for all students who were initially referred for special education services during the 2016-17 school year. The DOE's Standard Operating Procedures Manual (SOPM), issued in February 2009 and covering the scope of our audit, states, "The mandated timeframe for completing all necessary assessments and convening an IEP Meeting is **60 calendar days** from the receipt of parental consent to evaluate the student." Further, DOE officials informed us that, due to system limitations, they are unable to reliably calculate when the evaluation is completed. They further informed us that the DOE uses the date of the IEP meeting "as a proxy for" the completion date of the evaluation. This practice is consistent with the SOPM, the DOE's guidance, and the method the DOE used to report compliance information to the State Education Department (SED).

It is important to provide this appropriate lens to readers of this report so they can understand the standards used by the Comptroller to assess compliance, and to ensure that the Report reflects the progress the Department has made in timely service of students with. The Report references several laws and regulations, but it does not explicitly identify audit criteria². When asked to clarify the criteria, the Comptroller responded that Section 200.4(b) of the New York State Commissioner Regulation (Regulations)³ was the criteria applied and any reference to New York City Council Local Law 27 of 2015 (Local Law) was provided for informational purposes. Below is a summary of key provisions of the laws referenced in the Report:

State Comptroller's Comment – Our audit determined the DOE's compliance with Section 200.4(b) of the Regulations of the Commissioner of Education (Regulations). This criteria was shared on multiple occasions during our meetings with DOE officials and staff.

- The Regulations require that the Initial Evaluation⁴ of a student be completed within 60 calendar days of receipt of the parent's consent, unless extended by mutual agreement of the parents and the IEP team. The Initial Evaluation timeline starts once the parent's consent is received. The timeline ends when the last assessment needed to make a

² The Government Auditing Standards, section 6.37 states that, "Auditors should identify criteria. Criteria represent the laws, regulations, contracts, grant agreements, standards, specific requirements, measures, expected performance, defined business practices, and benchmarks against which performance is compared or evaluated."

³ The Department references the Regulations throughout its response, and, in doing so, it is only referring to the section of New York State Commissioner's Regulations that have been selected as the criteria for this audit.

⁴ An initial evaluation is an evaluation to determine if a student has a disability and is eligible for special education services.



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determination has been completed. The U.S. Department of Education⁵ issued guidance in support of this understanding of the 60 calendar day timeline, and affirmed that the IEP meeting does not need to have been held within 60 calendar days of the receipt of the parent’s consent. Thus, per the U.S. Department of Education guidance, it is the last assessment needed that concludes the Initial Evaluation timeline and not the IEP meeting.

State Comptroller’s Comment – In their response, DOE officials state, “The Initial Evaluation timeline starts once the parent’s consent is received. The timeline ends when the last assessment needed to make a determination has been completed.” This statement is inconsistent with DOE’s SOPM, which states, “The mandated timeframe for completing all necessary assessments and convening an IEP Meeting is **60 calendar days** from the receipt of parental consent to evaluate the student.” Moreover, the DOE was unable to provide the dates of last assessments for the 22,266 students who were initially referred during school year 2016-17 or for initial referrals in prior school years. Consistent with the DOE’s SOPM, guidance, and practice, we used the date of the IEP meeting as a proxy for the completion of initial evaluations.

- Local Law 27 of 2015 does not impose a requirement that the IEP meeting be conducted within 60 calendar days of the receipt of the parent’s consent. Local Law 27 is a reporting provision only, under which the Department reports on the number of Initial Evaluations that were conducted. Pursuant to Local Law 27, the Department shares the Annual Report on Special Education (Annual Report) publically and available on the Department’s website.

The Report’s audit objective was “to determine if the New York City Department of Education evaluated students for special education services within required time frames.” Based on that objective, the Department expected the Report to reflect tests of the Department’s compliance with Section 200.4(b) of the New York State Commissioner Regulation, which is aligned to Federal requirements, in conducting Initial Evaluations and not reporting requirements from a City Council Local Law designed to share summary data. That is to say, the expectation was that the auditors would analyze the length of time from the receipt of the parent’s consent to the conclusion of the final assessment needed to make an eligibility determination. Instead, the Report determined compliance on the basis of summary data from the DOE’s Annual Report to City Council, which requires DOE to report on date of the IEP meeting and does not contain assessment-specific timelines. This approach identifies students who had their Initial Evaluations completed timely as out of compliance with the Regulation because the IEP meeting may have taken place after 60 calendar days.

State Comptroller’s Comment – Our report reflects the DOE’s compliance, or lack thereof, with Section 200.4(b) of the Regulations. We reported on the status, as of October 2, 2017, of those students who were referred for initial evaluations (initial referrals) in school year 2016-17. Any reference to the Annual Report was for background and/or comparison purposes. In its response,

⁵ The Federal guidance states, “Public agencies are not required to make the eligibility determination, obtain parental consent for the initial provision of special education and related services, conduct the initial meeting of the IEP Team, to develop the child’s IEP, or initially provide special education and related services to a child with a disability during the IDEA 60-day initial evaluation timeline.”

the DOE states “the expectation was that the auditors would analyze the length of time from the receipt of the parent’s consent to the conclusion of the final assessment needed to make an eligibility determination.” However, we found that the DOE, because of the limitations in SESIS, was unable to perform this analysis. Moreover, DOE management has failed to implement a system to determine and track compliance with this 60-calendar-day evaluation timeline. This weakness requires reliance on the IEP meeting dates as a proxy for the completion dates of initial evaluations (final/last assessments) and is inconsistent with the SOPM.

Upon receiving a draft of the Report, the Department immediately engaged the Comptroller to bring to their attention the error of using the IEP meeting date to determine compliance with the 60 calendar day timeline. The Department had previously explained to the Comptroller our concerns with using the Annual Report data in our response to the preliminary findings in August 2018. The Department repeatedly met and shared information with the auditors to explain the Regulation and the prescribed evaluation timeline. At that time, we also shared the guidance issued by U.S. Department of Education that supported our position. The Comptroller responded by updating the language in the draft Report, stating that the Department used the IEP meeting date as a “proxy date” to mark the completion of an Initial Evaluation. This assertion is false. The IEP meeting date is a reporting criteria required by Local Law 27, but it is not a “proxy” for the completion of the evaluation. The Comptroller’s use of the IEP meeting date as the culminating event of completing an Initial Evaluation is inconsistent with the State and Federal regulations that governs this process and therefore invalidates any meaningful results of the audit findings and associated conclusions.

State Comptroller’s Comment – DOE officials assert that the auditors erred in using the IEP meeting date to determine compliance with the 60-calendar-day timeline. However, we find this assertion to be disingenuous since DOE officials previously advised that, due to “system limitations,” they are unable to reliably calculate the completion date of the evaluation. These same officials advised that the date of the IEP meeting is used as “a proxy” for the completion date of the evaluation. Moreover, it is of concern to us that DOE officials were not aware of the mandated time frame in their SOPM for completing all necessary assessments and convening the IEP meeting.

As the Department has noted in its Annual Reports, the Special Education Student Information System (SEGIS) has limitations in its ability to compile citywide reports that can tie referrals to all their associated assessments (including any that may be submitted to the IEP team by the parent) and their individual dates of completion. Notwithstanding those limitations, the Comptroller should not have applied the selected methodology to the Annual Report data, since that approach of using a data set lacking the assessment information prevents them from reaching their objective of assessing compliance with the Regulations. A substantial section of the Report is devoted to the testing of 158 students for whom the auditors reviewed all components of their Initial Evaluations, including the dates that each assessment was completed in SESIS. Even though the Comptroller had individual assessment data for these 158 students to measure the Department’s compliance with the Regulations, they nevertheless chose to report on the IEP meeting date.

State Comptroller’s Comment – We commend DOE officials for acknowledging the flaws in and limitations of its multimillion-dollar system (SEGIS). Despite being repeatedly informed that our

analysis was based on the data provided to us in response to our request for all students who were initially referred for special education services during the 2016-17 school year, DOE officials continue to assert that we used Annual Report data. We can only conclude that DOE officials provided the same data to us that they used for the Annual Report because that data represented the same cohort of students. As described in our report, SESIS did not record the dates of certain mandated assessments for some of the 158 students in our sample. In some other instances, assessments were recorded as having occurred after the IEP meetings were held. Consequently, like the DOE, we could not consistently or reliably determine the date of the last assessment. Therefore, based on the requirements in the SOPM as well as the DOE's guidance, the date of the IEP meeting was used as a "proxy" for the end of the evaluation process and is in line with the method used by the DOE to report compliance information to SED.

We have arranged the rest of our response to mirror the relevant sections of the Report, and we are hoping that the information provided in this response will be evaluated by the Comptroller and will result in changes and a more accurate and meaningful Report.

Background

The background section of the Report includes inaccuracies that should be corrected to prevent misinforming the reader. As discussed above, the Report incorrectly identifies the IEP meeting as a component of the Initial Evaluation. The Report, then, labels the initial evaluation data included in the Annual Reports for school years 2014-2015 through 2017-2018 as demonstrating noncompliance with the Regulations, without any testing or analysis of the underlying final assessment data. We strongly recommend that any reference or analysis of the Annual Report data be removed or corrected to reflect the accurate purpose of the data as described in the Local Law and the process we are following pursuant to Federal guidance, and we request that any conclusory statements derived from applying the regulatory standards to this data be removed or amended to reflect the guidance we are following.

State Comptroller's Comment – We stand by the information in our report, which is consistent with the Regulations, the SOPM, and the DOE's guidance.

Audit Findings and Recommendations

The Report's Audit Findings and Recommendation bullets contain incorrect assertions with respect to the number of days that it took the Department to complete Initial Evaluations. As previously stated, the data analyzed by the auditors were missing the assessment data that would be required to assess compliance with the Regulations. The underlying data for the Annual Report data reports on the number of initial evaluations that had IEP meeting dates within 60 calendar days and the number that were beyond 60 calendar days. These statistics—broken down by school districts and other characteristics—are useful to the Department and stakeholders such as the New York City Council. However, the Comptroller should not add labels of 'non-compliance' to these statistics without conducting any tests of the actual assessment data and without clearly referencing the time elapsed to conclude assessments, which is the process the Department is following to comply with Federal guidance on initial evaluations.

State Comptroller’s Comment – We conducted comprehensive reviews and analyses of the data provided to us by DOE officials. Consequently, we stand by our conclusions, which are consistent with the Regulations, the SOPM, and the DOE’s guidance.

The Report incorrectly states that the Department has not conducted any type of similar analysis on initial evaluations within our system, when in fact we regularly monitor and analyze real time data of on-going evaluations, using management dashboards developed and deployed through Microsoft Power BI (Power BI). Power BI is a sophisticated business intelligence tool used to create customized reports and dashboards to manage special education data such as current status of evaluation in progress—unconstrained by the school year of referral—and enables a manager to view data and compliance down to the individual school and student level. The implementation of these dashboards through Power BI has substantially improved the Department’s ability to monitor and act as needed to ensure the timely completion of Initial Evaluations, including identifying trends and sources of delays on a real-time basis, rather than retrospectively. These improvements bear out in the data we reported to City Council under the Local Law, evidenced in the data most recently reported in October 2018 for School Year 2017-18. Further, contrary to the Comptroller’s assertion that “despite [the Comptroller’s] repeated requests, Department officials did not provide information on actions planned or in place to improve compliance”, the Department already provided this information responsive to this request to the Comptroller.

State Comptroller’s Comment – Despite our repeated requests, DOE officials did not share similar analyses of initial referrals, nor did they provide documentation to show what steps, if any, were taken or planned to improve compliance. In fact, in response to our queries, DOE officials told us that the Annual Reports are their only internal or external reports on initial referrals.

Starting in the spring of 2018, these dashboards were made available through Power BI to the Department’s special education managers in charge of school psychologist supervisors, and access has been expanded to include regional administrators in charge of supervising compliance in schools (*i.e.*, superintendents, executive superintendents, Borough/Citywide Office directors of special education). As of March 2019, the dashboards are available to supervisors of school psychologists. Use of these dashboards has been critical in systemwide special education work, helping Department officials at the school, field, and central levels – including the Chancellor – to understand progress and improvements in timely initial evaluations.

State Comptroller’s Comment – Our audit began prior to spring 2018. Therefore, it is commendable that our audit and interactions with DOE officials and staff may have been the catalyst for the sharing of dashboards with special education managers and supervisors. However, based on available descriptions, the use of dashboards is not the same as performing ongoing central analyses to identify districts/schools that were experiencing delays in completing initial evaluations.

Compliance with 60-Calendar-day Requirement

The Department firmly objects to all assertions of non-compliance made in this section of the Report. As we have previously stated, the Comptroller used the data compiled for the 2016-2017 Annual Report, which does not include assessment data, without any further modification or



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conducting tests. As a result, any conclusion regarding the Department's compliance with the Regulations is factually incorrect.

State Comptroller's Comment – We stand by the conclusions in our report. Moreover, because we were aware that our audit report and the DOE's Annual Report were based on the same cohort of students – that is, all initial referrals for evaluations for the school year ended June 30, 2017 – we specifically asked DOE officials if there was any difference in the two sets of data. DOE officials indicated that there was no difference.

The Report states that “the DOE did not recalculate the compliance rate to account for initial referrals made during the school year but (*sic*) did not result in an IEP meeting until after June 30, 2017, the end of the school year.” This statement is untrue. The Department's supervisors use tools like Power BI (mentioned above) to monitor the real-time statuses of these evaluations. Thus, the Department uses up-to-date information in order to monitor and ensure compliance with the Regulations. The Annual Report data reviewed by the Comptroller reflects a point in time at the end of the school year, but the data used by the Department for internal monitoring and compliance purposes is not limited by the end of the school year or any other point in time. The progress monitoring the Department is engaged in is occurring in real time; suggesting otherwise overlooks the regular work Department officials are doing.

State Comptroller's Comment – We agree that our analysis of initial referrals reflected a point in time. Therefore, we extended our analysis to include actions taken by DOE officials as of October 2, 2017. Since the evaluation process is dynamic, with events occurring after the mandated reporting period of June 30, we suggest that DOE officials prepare reports calculating how many evaluations took place after 60 calendar days for time periods after June 30. Using the cohort approach for each year's initial referrals could provide a better view of trends in the DOE's ability to meet its students' needs.

We do not see any basis to the Report's claim that some school districts “persistently” have higher than average rates of non-compliance than other school districts or that “... the DOE did not take action in the ensuing years to effectively mitigate non-compliance among [certain] school districts.” First, these conclusions are premised on the erroneous usage of IEP meeting date to determine compliance with the Regulations. Second, the Comptroller did not comprehensively conduct the required analysis of student assessment data nor consider other factors across different school districts (such as the rates of need for bilingual assessments, especially for lower-instance languages, and for more specialized assessments). Third, the Comptroller did not fully consider or incorporate into the Report any of the Department's actions taken to improve compliance across the City, including in these particular school districts. This additional context is requisite to understanding the differing timeframes for holding an IEP meeting across districts and the reasons for doing so.

State Comptroller's Comment – Our reviews and analyses of the initial referrals and the actions taken by DOE officials and staff were comprehensive. Despite their protestations, DOE officials did not provide information on actions they took to improve compliance. Moreover, DOE officials are responsible for conducting their own comprehensive analyses of student assessment data and for the day-to-day supervision of the evaluation process. Therefore, they should have periodically

conducted such analyses in order to efficiently and effectively allocate resources, including school-based teams, to ensure that the provision of needed special education services is not unnecessarily delayed. Moreover, it is quite clear from the data in the DOE's Annual Reports that certain districts, such as School Districts 3, 9, 13, and 29, struggled more than others in holding IEP meetings within 60 calendar days.

Detailed Analysis of SESIS Data for a Sample of Students

The Department respectfully asks the Comptroller to utilize the data collected during the audit to perform a review of the 158 students sampled with its methodology corrected to reflect the final assessments as the conclusion of the initial review, rather than the first IEP meeting

State Comptroller's Comment – Due to the systemic weaknesses in SESIS, as outlined by both the DOE and OSC, performing a review of the 158 students was not possible with any certainty. Based on the results of our sample of 158 students, date fields in SESIS for mandated assessments were often left blank or represented assessments that occurred before parental consent or after the date of the IEP meeting. It was therefore not possible to know, with any degree of certainty, the date of the last/final assessment.

The Report presents an inconsistent accounting of the number of days that it took to complete certain assessments. For instance, it highlights the number of social histories conducted on the same date that the parent consent was obtained. This may lead a reader to assume that this is inappropriate, when, in fact, it is long-standing and appropriate practice. The Department has regularly informed parents in person about the special education process and sought the parent's informed consent for evaluation at the social history meeting, prior to conducting the social history interview. This way, parents have an opportunity to ask questions and discuss any concerns about the process so that they may make a truly informed decision on whether to proceed.

State Comptroller's Comment – Our report did not take issue with the DOE conducting social history meetings on the days parental consents were obtained. We simply reported the results of our analysis. We compliment the DOE on its outreach to parents.

Additionally, the Report misleadingly states that SESIS “does not have controls to flag problematic dates (e.g., dates indicating an assessment was completed before receipt of parent consent).” There is no basis to suggest that an assessment completed prior to receipt of parental consent for the referral in question is “problematic” when the Department is following practice and protocol has elaborated in the Regulations. The regulations require assessments conducted prior to the parent's consent to be considered when determining what additional assessment data is needed as a part of the initial evaluation. See 8 NYCRR §§ 200.4(b)(5)(i) and (ii). Additionally, if a parent shares a privately obtained assessment, the IEP team must consider it, if it meets the school district's criteria, in decision-making. See 8 NYCRR § 200.5(vi). Assessments conducted prior to the receipt of parental consent could be the result of a previous referral and evaluation, an evaluation conducted by a student's former school district, or private assessments provided to the IEP team by the parent, for example.

State Comptroller’s Comment – We do not take the position that DOE officials cannot utilize assessments conducted prior to receiving parental consent. Rather, since the date fields for assessments are free-form, we are pointing out that there is a risk that dates entered out of the normal sequence may not be systematically flagged for review.

The Report identifies instances in which assessments were completed outside the regulatory time frame. In doing so, the Report treats all assessments as simple compliance tasks equally susceptible to completion in the same time frame. This approach fails to consider students for whom an initial assessment indicates a need for more complex or specialized testing; students who require bilingual assessment in low-instance languages for which there are shortages of qualified bilingual professionals; and families for whom scheduling or keeping assessment appointments may be more complicated for a variety of reasons. The families and communities of New York City are diverse and face complex circumstances; the Department regularly encounters obstacles like these and others that provide challenges to the regulatory time frame. It does not serve the parent or child’s interest for the Department to rush forward just to meet a regulatory timeline in these circumstances. Thus, even under ideal conditions, there are assessments that may extend beyond 60 days. The Comptroller’s reference to “full compliance” lacks regard for this important context.

State Comptroller’s Comment – We did not suggest that DOE officials “rush forward” just to meet a regulatory timeline, nor do we dismiss the complexities that the DOE faces in this process. In fact, it is due to these factors that we are surprised the DOE has not performed the type of in-depth analysis of the process to assess where the most significant impediments are and worked to devise strategies to address those impediments. As previously noted, any delays in completing assessments and holding IEP meetings delay the issuance of the placement notice – and likely the initiation of needed services. We are especially concerned that the delays seem to disproportionately affect certain districts in the City.

We also found errors with some of the findings in the Detailed Analysis section of the Report as follow:

- The Report claims that for three students, the auditors did not find any dates recorded in SESIS for the classroom observations. Our review of SESIS data found that all three classroom observations noted as missing were, in fact, completed prior to the IEP meeting and recorded in SESIS.
- The Report claims that, for 47 students, the date of the physical examination was not recorded in SESIS. Our review found that 17 of those students had physical examinations uploaded, with the corresponding dates of those examinations recorded in SESIS.

State Comptroller’s Comment – We sat with DOE staff as they accessed student information in SESIS. The information in the above bullets reflects our observation of the dates recorded in SESIS for our sampled students. At no time did the individual who accessed SESIS in our presence tell us that the information was incorrect. We are concerned that either the date for the required physical exams for 30 of the 123 (24 percent) sampled students was not entered into SESIS, or the results of said exams may not have been available to the IEP teams when making their determinations. In either case, critical missing dates would make it that much more difficult to

assess the DOE’s compliance using the date of last assessment, as the DOE suggests.

- One student was reported as having a psychoeducational assessment completed 291 days after parental consent was obtained. Our review of SESIS data found that the evaluation used two prior assessments. Additionally, we were unable to find the assessment referenced in the Report, and we can only assume that the Comptroller made a mistake in collecting the data for this student. We have previously informed the auditors of this mistake.

State Comptroller’s Comment – We modified our report accordingly.

- The report states that “[f]or 2 students, the date of the [speech and language] assessment recorded in SESIS was after the date of the IEP meeting.” Our review of SESIS found that in both cases (██████████ and ██████████), the assessments were conducted prior to the IEP meetings and the assessment information was referenced in the students’ IEPs.

State Comptroller’s Comment – We modified our report. However, we note that the two assessments were conducted before parental consent was obtained. The students’ ID numbers, as shown in the DOE’s response, have been redacted to maintain the students’ confidentiality.

IEP Meeting

In addition to addressing the fact that the IEP meeting is not a component of the Initial Evaluation, the Report provided no basis or standard for its conclusion that IEP meetings that occur on average of 29 calendar days after the last assessment are “a lengthy post assessment period of time.” In fact, IEP meetings should not be scheduled immediately following the evaluation, because IEP meetings must be scheduled a sufficient time after completion of the evaluation for the parent to have received and reviewed copies of all the assessment reports. In addition, the meeting is scheduled for a date and time that is convenient to the parent and the other members of the student’s IEP team, so they can be available to participate in the determination of the student’s eligibility and, for a student determined to be eligible, the development of an IEP that reflects the student’s needs and recommends appropriate special education programs and related services.

State Comptroller’s Comment – We are not advocating that the DOE hold IEP meetings on dates that are not convenient to parents and the other members of the IEP teams. Rather, we maintain that the DOE should analyze how long it takes to hold an IEP meeting after the date of the last assessment so it can take proactive actions to potentially shorten this critical time frame.

Response to Recommendations

Although we take issue with the data tested and the associated audit findings, our responses below address the substance of the recommendations made:

Recommendation 1. *Assess the reasons for non-compliance with the 60-calendar-day requirement and take appropriate actions, especially for the districts/schools and grades where significant non-compliance has been consistently identified.*

Response. The Department agrees with this recommendation in so much as it constitutes current practice.

The Department already analyzes real-time data on an ongoing basis to manage the completion of evaluations as timely and effectively as possible, and to guide the allocation of resources as needed. As the Department noted to the Comptroller during the course of the audit, the Department uses business intelligence tools to monitor the status of evaluations (and other special education activities) in real time and target interventions when needed.

Recommendation 2. *Calculate school year compliance rates based on actual disposition dates for all initial referrals made during the school year (annual initial referral cohort), in addition to the information provided in the Annual Reports.*

Response. The Department agrees with this recommendation in so much as it constitutes current practice.

As noted in the response above, the Department already reviews real-time and historical data that allow us to identify issues and implement appropriate interventions in support of our compliance efforts. Identifying evaluations “not yet completed” in the Annual Report is necessary and appropriate to comply with the reporting obligations under Local Law. This does not mean that the Department has stopped monitoring these evaluations; instead, the Department continues to monitor all open evaluations on an on-going basis, without constraint to a particular school year.

Recommendation 3. *For each assessment type, develop controls that will allow analysis of the time frames for completion, similar to the analysis presented in this report, and take corrective action where significant time lapses are identified.*

Response. We take your recommendation under advisement. The Department has released a RFP for a new special education data management system; in this process, the Department will seek proofs of concept, including the capability to capture assessment dates and accurately link them to their associated referral/consent dates.

Recommendation 4. *Develop data integrity controls to provide greater assurance of the accuracy and completeness of data. This could include logic controls for the dates in student records (e.g., to flag instances where the mandated assessments occurred before parental consent, after the IEP meeting, or not at all).*

Response. We take your recommendation under advisement, since, as discussed above, we will be evaluating new data systems with enhanced case management functionality for the entire special education process.

As to current evaluation data, the Department has instituted a series of data integrity controls, including requiring the date-stamping of referrals received from parents. However, the Report appears to question the accuracy of the data based on entries that indicate that any assessment conducted prior to the date of initial consent is incorrect. As noted throughout the Department’s



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response, there is nothing inappropriate about using assessments that predate the receipt of the parent's consent; in fact, the Regulations require that existing assessment data and private assessments presented by the parent be considered.

We appreciate the Comptroller's consideration of our concerns. We take seriously the timeliness of evaluations and services to all students. We are hopeful that you can incorporate the amendments and context provided in this response so that the progress, commitment, and resolve the Department has dedicated to this issue can be adequately portrayed represented in the final Report that the Comptroller releases.

Sincerely,

A handwritten signature in black ink that reads 'Linda P. Chen'.

Linda P Chen
Chief Academic Officer
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