

# State Education Department

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## Access to Preschool Special Education Services

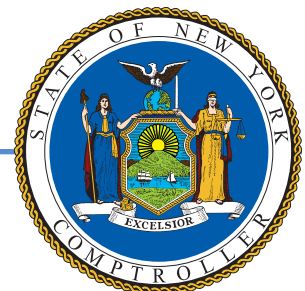
Report 2023-S-1 | December 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine if the State Education Department (SED) is effectively overseeing preschool special education in compliance with all applicable laws and regulations to promote timely access to services for children across New York State. The audit covered the period from July 2018 through January 2024.

## About the Program

One of the most critical periods of growth in a child's development occurs during the first 5 years of life. Quality early education programs can make a difference and increase a child's opportunity for successful learning and later life accomplishments. Providing special education programs and services at an early age helps prepare a child with a disability to enter school ready to learn.

Preschool special education is overseen by SED's Office of Special Education (OSE), which works to promote educational equity and excellence for students with disabilities. Preschool special education services for children 3 to 5 years of age can include but are not limited to: speech pathology and language therapy, occupational therapy, physical therapy, specialized instruction, parent training, and counseling. As of October 5, 2022, SED reported 40,846 children in the State were receiving preschool special education programs and services.

The special education process begins when a child suspected of needing special education services is referred, in writing, to the school district in which the child resides. The child must next be evaluated by an SED-approved agency or a school district's evaluation team after the district receives parental consent. Initial evaluations must be completed within a time frame that allows the Individualized Education Program (IEP), which details recommended services to be provided, to be developed within 60 calendar days of parental consent to evaluate a child not previously identified as having a disability. Every child has the right to receive all the services prescribed in their IEP, and services must begin as soon as possible following the development of the IEP, and within 60 school days of the receipt of consent to evaluate the child.

OSE's Special Education Quality Assurance (SEQA) regional offices conduct reviews of compliance with the 60-day timeline for evaluations of preschool-age children and evaluate whether children transitioning from Early Intervention with an IEP have it implemented by their third birthday. These reviews cover 1/6 of the State's school districts on a 6-year rotational basis to assess compliance with regulation requirements (i.e., every year, 1/6—approximately 118 of the 710 school districts—are reviewed).

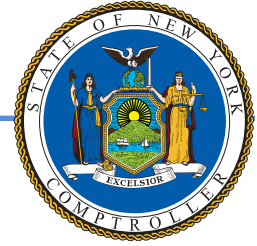
## Key Findings

- Preschool special education students may not be receiving all required services within required time frames or, in some cases, may not be receiving them at all. Students are waitlisted for services that districts are unable to furnish due to a lack of providers. We conducted a survey of school districts and found, of the 550 responses received, 455 (83%) school districts reported they maintain a waitlist for services. Of the 40 school districts we visited, 21 (53%) stated they maintain waitlists. Further, SED cannot adequately perform its oversight responsibilities to ensure that all preschool students with disabilities have access to their recommended services, as it is not aware of the current number of students enrolled in the preschool special education program, the services those students are receiving in real time, or how many school districts maintain waitlists for services.

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- While SEQA retroactively reviews compliance with some time frames in the special education process, these reviews address only 1/6 of the State’s school districts per year, providing outdated data that may come too late to help students in need of immediate services.
  - Discrepancies among various SED data systems and sources result in unreliable information regarding services provided, and lack of analysis of the information it does have limits SED’s ability to monitor when school districts are having issues such as unserved students or evaluations that are not occurring promptly due to a lack of providers.

## **Key Recommendations**

- Develop a strategy to address the statewide shortage of preschool special education service providers and work with school districts to identify ways to obtain the necessary services.
- Increase monitoring of school districts, including but not limited to:
  - Timeliness of preschool special education events (i.e., evaluations).
  - Resolutions of potential non-compliance (i.e., waitlists and ensuring IEP implementation for all students).
  - Determining regional need for providers on a real-time basis.
- Develop and implement a risk-based method to identify school districts that warrant immediate review.
- Develop data integrity controls to provide greater assurance of the accuracy and completeness of data.



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

December 5, 2024

Betty A. Rosa, Ed.D.  
Commissioner  
State Education Department  
89 Washington Avenue  
Albany, NY 12234

Dear Dr. Rosa:

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 *Access to Preschool Special Education Services*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance 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

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<b>Term</b>	<b>Description</b>	<b>Identifier</b>
SED	State Education Department	<i>Auditee</i>
CPSE	Committee on Preschool Special Education	<i>Key Term</i>
IDEA	Individuals with Disabilities Education Act	<i>Law</i>
IEP	Individualized Education Program	<i>Key Term</i>
OSE	Office of Special Education	<i>Auditee Office</i>
Performance Plan	State Performance Plan/Annual Performance Report	<i>Key Term</i>
SEQA	Special Education Quality Assurance regional offices	<i>Auditee Office</i>
SIRS	Student Information Repository System	<i>Key System</i>

# Background

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One of the most critical periods of growth in the development of a child occurs during the first 5 years of life. A child's interest in and love for learning is shaped during the preschool years. Quality early education programs can make a difference and increase a child's opportunity for successful learning and later life accomplishments. Providing special education programs and services at an early age helps prepare a child with a disability to enter school ready to learn.

Preschool special education is overseen by the State Education Department's (SED) Office of Special Education (OSE), which works to promote educational equity and excellence for students with disabilities. Preschool special education services for children 3 to 5 years of age can include but are not limited to: speech pathology and language therapy, occupational therapy, physical therapy, specialized instruction, parent training, and counseling. Services can be delivered in various ways, such as through special classes or through itinerant teachers who travel to the child to provide services. As of October 5, 2022, SED reported 40,846 children in the State were receiving preschool special education programs and services.

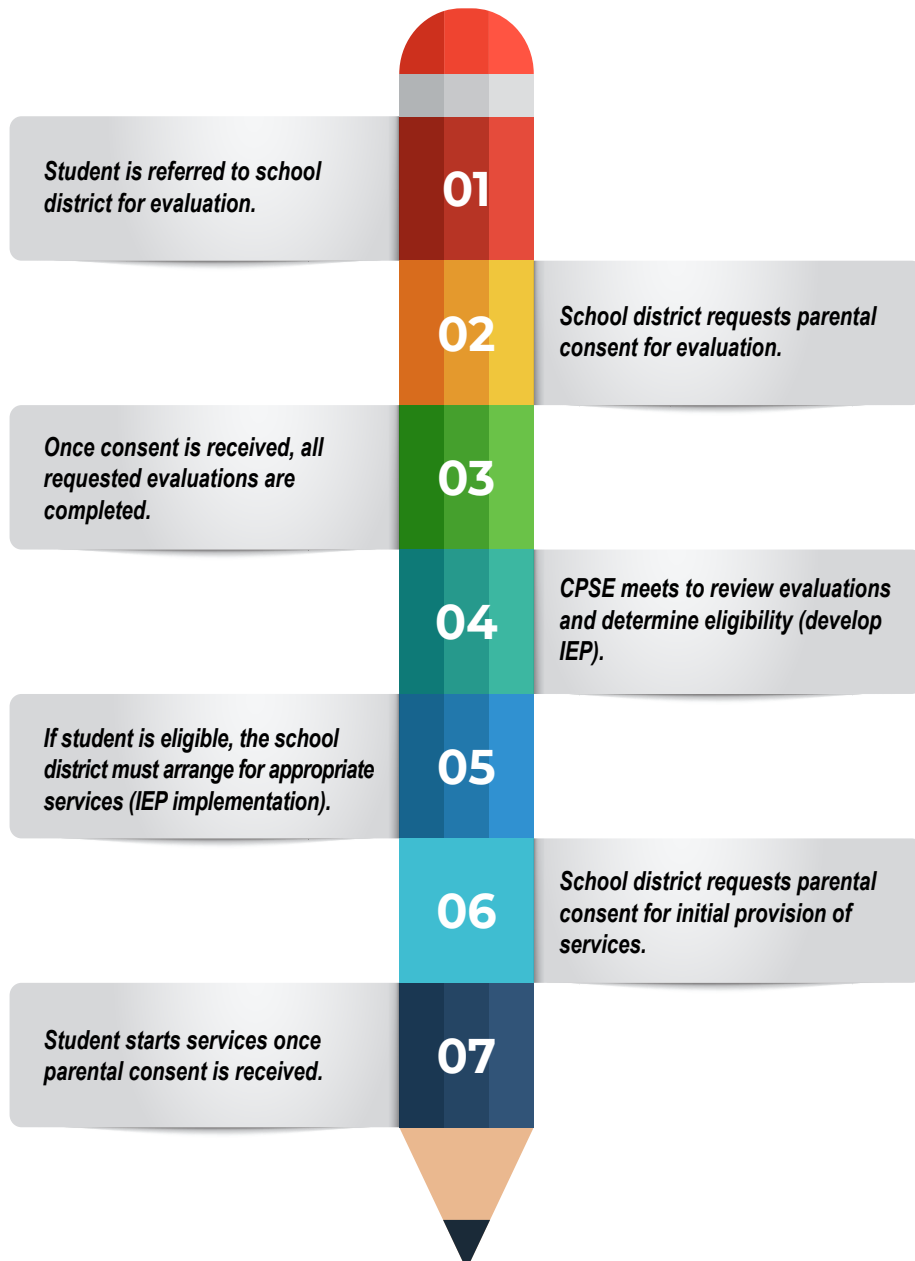
OSE oversees all public and private schools approved to serve preschool students with disabilities, including schools' compliance with federal and State laws and policies pertaining to the delivery of special education programs and services to preschool students with disabilities. Within OSE, the Preschool Policy Unit provides technical assistance and guidance relating to preschool special education and oversees the coordination of applications for approval to operate a preschool special education program. OSE's Special Education Quality Assurance (SEQA) regional offices perform quality assurance reviews to monitor compliance with program approval criteria and quality standards; conduct monitoring reviews to assess district compliance with State Performance Plan/Annual Performance Report (Performance Plan) indicators and other federal and State special education law and regulation requirements; and provide technical assistance to parents, school districts, and private providers.

Every school district has a Committee on Preschool Special Education (CPSE) that coordinates the special education process. The process begins when a child suspected of needing special education services is referred in writing to the school district in which they reside. Once a referral is received, State laws and regulations require school districts to meet certain time frames, such as requesting parental consent to initiate an evaluation within 10 school days. After the district receives parental consent, children must be evaluated by an SED-approved agency or a school district's evaluation team. Initial evaluations must be completed within a time frame that allows the Individualized Education Program (IEP), which details recommended services to be provided, to be developed within 60 calendar days of receiving parental consent to evaluate a child not previously identified as having a disability. The CPSE team then reviews the evaluation to determine the student's eligibility for special education services and their specific needs.

If the child is eligible for special education services, the CPSE members develop an IEP detailing the recommended services to be provided, how often, and for how long. Per the federal Individuals with Disabilities Education Act (IDEA), every child has the

right to receive all the services prescribed in their IEP. School districts must arrange for the provision of programs and services to begin as soon as possible following the development of the IEP, and within 60 school days of the receipt of parental consent to evaluate the child (see Figure 1).

**Figure 1 – Preschool Special Education Eligibility Process**



The IDEA guarantees access to a free appropriate public education in the least restrictive environment to all eligible children with disabilities through several general supervision responsibilities, including monitoring school districts' compliance with the IDEA's requirements. The IDEA's implementing regulations require the State to have



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in effect policies and procedures to ensure that all children with disabilities residing in the State who are in need of special education and related services, regardless of the severity of their disability, are identified, located, and evaluated. However, if districts are unable to provide services, preschool special education students are entitled to compensatory services (e.g., extending the school day, providing tutoring before and after school, or providing additional services during regular school hours).

According to NYS Education Law §4403, SED is required to maintain a statistical summary of the number of children with disabilities who reside within the State and the nature of their disabilities and use all means and measures necessary to adequately meet the physical and educational needs of these children. Additionally, it is SED's duty to provide technical assistance to school districts for appropriate evaluation and assessment, developing criteria for placement in special education and criteria for reviewing the ability of a pupil to participate in regular education.

The State is required to annually submit a Performance Plan to the U.S. Department of Education that evaluates the State's efforts to implement the requirements and purposes of the IDEA. The Performance Plan must be made publicly available and contains 17 indicators that outline the various data analysis activities to evaluate performance and compliance in specified areas. Several Performance Plan indicators are related to preschool special education, including evaluating school district compliance with the 60-day timeline for evaluations of preschool-age children and evaluating children transitioning from Early Intervention with an IEP implemented by their third birthday.

SED approves preschool special education programs pursuant to section 4410 of the State Education Law. SED maintains a list on its website of approved 4410 special education programs (preschool and school age) including the provider name, region served, and the type of program approved. SED maintains a separate list of approved preschool special education programs on its website, which also includes the same type of information such as the provider name, region served, and the type of program approved.

According to New York State Archives' Records Management retention policy, a student's special education records, including but not limited to student progress reports, referral form, evaluations, CPSE meeting minutes, and IEPs, must be retained for 6 years regardless of whether the student is declassified from special education.

# Audit Findings and Recommendations

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Preschool special education students may not be receiving all required services within required time frames and, in some cases, may not be receiving them at all. Despite the requirement that there may be no delay in implementing a student's IEP, districts are placing students on waitlists for some services when providers are unavailable. According to SED, this practice is not contemplated by the law. As a child's interest in learning is shaped in the preschool years, delays in receiving special education services can have long-term impacts on these students' academic futures.

Further, because SED is not aware of the current number of students enrolled in the preschool special education program, the services they are receiving in real time, or the number of districts using waitlists, it is also not aware of the regional need for preschool special education providers across the State. Additionally, while SED monitors the timing of some steps of the special education process, it does not monitor all steps, including IEP development, or whether students are actually receiving all services to which they are entitled.

## District and Regional Needs

### District Needs and Waitlists

When a child is deemed eligible for special education services, CPSE members develop an IEP detailing the recommended services to be provided, their frequency, and their duration. After the IEP is adopted, the school district must fully implement recommended IEP services. However, we found instances where school districts were not able to provide students with all services recommended on their IEPs due to a lack of provider availability and placed the students on a waitlist for those services.

To determine the extent of school districts' use of waitlists for preschool special education services, in addition to site visits to 40 districts, we sent a survey to 636 school districts (excluding NYC and the 40 at which we conducted site visits):

- 455 (83%) of the 550 school districts that responded to our survey reported they maintain a waitlist for services
- 21 (53%) of the 40 school districts we visited stated they maintain waitlists

While we were unable to obtain waitlists for the 455 surveyed schools, we found 301 students on waitlists at the 21 schools we visited that maintained waitlists. With the large number of school districts maintaining waitlists for preschool special education services, it is apparent that there is a lack of providers in many areas of the State, yet SED is unaware of all the waitlists in use and how many students are on those waitlists.

SED does not collect any information on waitlists to identify potential need issues at the districts, nor does it monitor how school districts select students from waitlists to ensure selection for services or program placement is fair. SED officials stated a waitlist is in violation of the requirement that students with disabilities receive the IEP programs and services to which they are entitled and is not contemplated by

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the law. However, without knowing how many waitlists are in use across the State or how long those waitlists are, SED does not know how many students are not receiving required services. Further, SED officials stated it would be improper for SED to monitor how school districts select students from waitlists to receive services because every student is equally entitled to receive their IEP services.

However, until SED can ensure all students receive recommended services, SED could monitor how school districts are resolving non-compliance, and the service availability issues and the CPSEs' consideration of compensatory services that may be required as a result. For example, compensatory services are used/required by districts to provide a student with a disability with "appropriate services" during the time the student was entitled to a free appropriate public education and was denied appropriate services. The compensatory services offered must be directly linked to the service denied and must address lack of progress toward the student's IEP goals and ability to participate and progress in the general education curriculum, and must be reasonably calculated to enable the student to make appropriate progress in light of their circumstances. Without information regarding service availability issues, SED is unable to determine what types of services are needed in which districts and what student needs are not being met because of provider shortages.

We also found school districts did not document unavailable services consistently. For example, in one school district, it was recommended that a student receive speech, physical, and occupational therapy; however, there were not any approved physical therapy providers in the district. The student received speech and occupational therapy services but was placed on a waitlist for physical therapy while the district tried to find an approved provider. SED officials stated this IEP would not be considered fully implemented because the student was not receiving the recommended physical therapy services even though they were receiving speech and occupational therapy. However, another school district stated 10 students were recommended for center-based programs but did not receive placement. That district amended the students' IEPs by removing the center-based program requirements and added other services that they did receive (which would show the district as compliant). These 10 students were also placed on a waiting list for a center-based program. Because SED does not monitor how many school districts have waitlists or how districts otherwise document the unavailable services, it is not aware if students receive all recommended services or if their IEPs are adjusted to reflect only available services.

## Regional Needs

SED also does not continuously assess statewide regional need for program services, nor does it collect regional need data projections for upcoming school years to identify locations where the need for program services exceeds the availability of providers.

To determine regional need and provider shortages in the State, we sent a survey to 636 school districts asking them about the programs they operated, whether they

conducted their own evaluations, and if they had a provider shortage. Of the 550 school districts that responded to the survey:

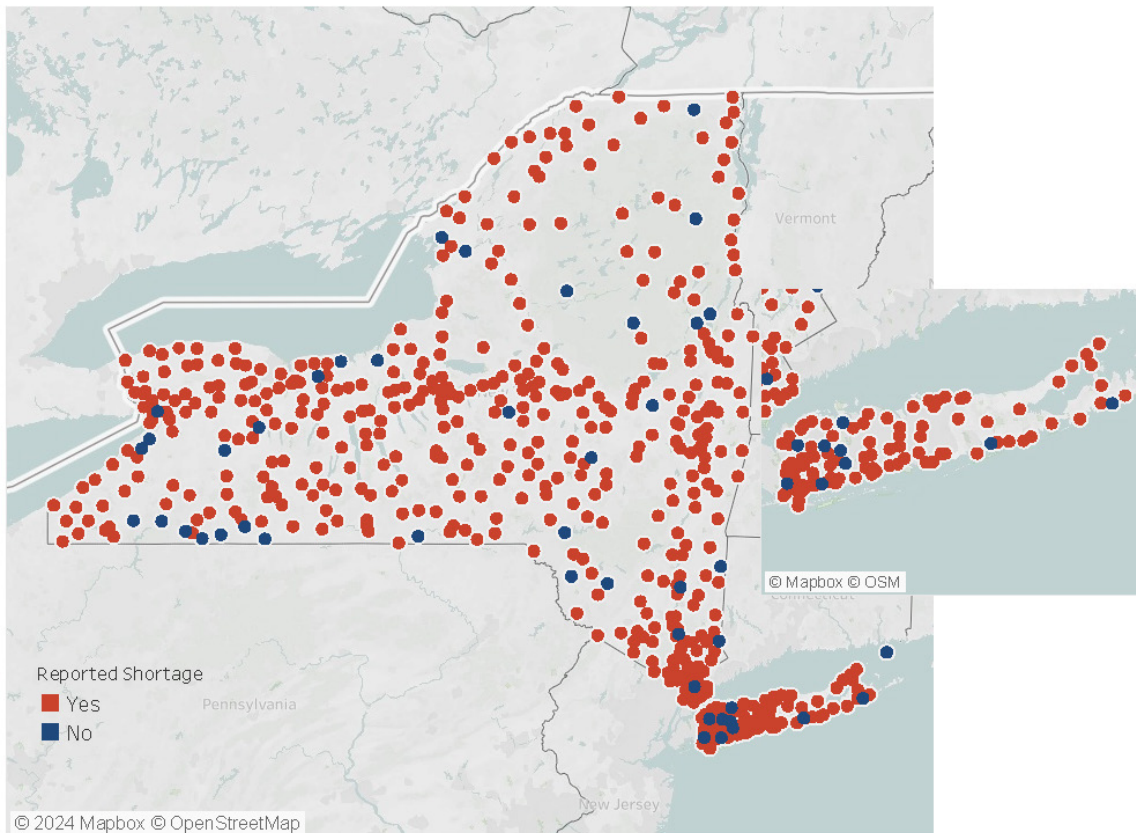
- 511 (93%) noted a provider shortage
- 179 (33%) conducted their own evaluations
- 166 (30%) operated their own preschool programs (i.e., Special Education Itinerant Services, Special Class in an Integrated Setting, and Special Class)

Our site visit to 40 school districts confirmed what we found with the survey. Of the 40 school districts we visited:

- 34 (85%) noted a provider shortage
- 12 (30%) conducted their own evaluations
- 7 (18%) operated their own preschool programs (i.e., Special Education Itinerant Services, Special Class in an Integrated Setting, and Special Class)

See Figure 2 depicting provider shortages reported by the school districts based on our survey and visits to the school districts.

**Figure 2 – School Districts’ Reporting of Provider Shortages**



This map was created from three separate data sets: SED’s Active School Districts Director of Special Education Contact Information (November 2023), School District Survey Responses (December 2023), and School District Meetings Results (November 2023).

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We found the application process—one of the few points in the special education process where providers communicate regional need—may take so long to complete that needs change and the request no longer reflects the current reality. Prior to submitting an initial application for SED approval to operate a preschool special education and/or multidisciplinary evaluation program, the applicant must provide the SEQA office with documentation of a demonstrated need for the expansion of preschool services in the geographic region of the State in which the program is located.

The applications include a point-in-time survey conducted by a school district or provider of different school districts in the area to determine how many students need services. Several school districts stated this is a tedious and lengthy application process. Additionally, the applications do not take into account whether the level of need increases or decreases during the long approval process, which school districts said could take up to 1 year. However, in 2017, SED established that all school districts can provide evaluation services to preschool students with disabilities without applying for approval, but we found many school districts are not aware of this or choose not to provide evaluation services due to lack of funding.

Further, SED monitors regional needs on a continual basis only for the NYC region due to the large number of students enrolled. A region's needs are only communicated to and assessed by SED when a provider applies to expand services or create a new program within that region. SED officials stated they are in the process of developing a streamlined application for school districts to obtain approval to operate inclusive preschool programs (Special Education Itinerant Services and Special Class in an Integrated Setting). However, beyond the application process, SED does not currently analyze regional need to identify statewide needs, nor does it know if there is an unfulfilled need for preschool special education providers based on the current regional need procedures. Without awareness of the regional need for providers or what schools currently have waitlists for services, SED is unable to identify which areas of the State may need help offering preschool special education services.

SED officials did submit a proposal for \$15.5 million in additional funding for the 2024-25 State budget for a special education data system. OSE has begun work on a new real-time data system that SED believes will help SED, local school districts, counties, and parents identify programs that can support the needs of students with disabilities around the State. According to officials, implementation of the long-term project would result in a comprehensive and fully integrated system to support and evaluate the programmatic and administrative goals of the State's special education delivery system. For this work, both a project team and capital construction funds are needed. However, the proposal was not approved and, therefore, plans for the new system are at a standstill.

Through the survey and our site visits, we learned many school districts are not conducting their own initial evaluations of preschool students potentially in need of special education services and are instead contracting this out to providers. School districts' responses to the survey indicated a lack of staffing at the districts as well as

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a low reimbursement rate as reasons the school districts did not conduct evaluations. Delays in evaluations lead to delays in services for preschool special education students. When students are not receiving the services they are entitled to when needed, it can affect their education moving forward.

Districts that do not operate their own preschool programs also contract out to providers. However, SED is not aware of or proactively seeking information about how many schools are operating their own programs or whether those programs are meeting all needs.

Without proactively collecting data on regional need, SED cannot ensure that all preschool students with disabilities have access to needed services. In addition, SED officials stated they have requested rate increases for preschool evaluations in recent years; however, none of the funding increases have been approved.

## **Monitoring of Special Education Services**

SED does not monitor the current number of students enrolled in the preschool special education program or the services they are receiving in real time. Instead, SED retroactively evaluates compliance with the 60-day time frame for evaluations of preschool-age children and evaluates whether children transitioning from Early Intervention with an IEP have it implemented by their third birthday. SED is only monitoring the 60-day evaluation time frame and Early Intervention transitions and isn't measuring whether the other steps in the process (such as CPSE meetings, IEP development, or service placements) are occurring in a timely manner. Further, it isn't monitoring whether students are actually receiving all services they are entitled to.

SEQA conducts annual reviews of compliance indicators for 1/6 of the State's school districts on a 6-year rotational basis to assess compliance with regulation requirements. In other words, every year, only 1/6 (approximately 118 of the 710 school districts) are reviewed. The purpose of the review is to determine compliance with federal and State special education laws and regulations. If it is determined that a district reported less than 100% compliance, SEQA will issue a compliance assurance plan and monitor the completion of all necessary corrections. All information related to reviews, such as review results, noted instances of compliance or non-compliance, and compliance assurance plan status, is recorded in the Special Education Quality Assurance Information System. However, the system does not distinguish whether SEQA monitoring or State complaints received are for preschool or school-age services to assess associated risks; therefore, SED cannot distinguish between issues in preschool or school-age services, nor could we perform any analysis on preschool compliance assurance plan statuses.

Because the SEQA reviews are conducted using data submitted by school districts through September following the close of the prior school year, and the review of a school district is conducted only once every 6 years, there is a delay in addressing issues with student eligibility and enrollment and SED's identification of provider shortages. Many of the school districts reported increases in the number of students

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seeking preschool special education services in the last year; however, SED would not be aware of this increased need for providers in some areas until up to 6 years later.

Furthermore, SED does not collect, assess, or run reports of program referrals on a statewide basis. District CPSEs receive referrals, which are then stored at the school-district level. Additionally, SED does not monitor statistics for the number of children evaluated versus the number of children deemed eligible or ineligible. During the 2018-19 through 2021-22 school years, out of 22,456 referrals, we identified 182 instances where a student was referred for services at least twice within the same school year. We reached out to two of the school districts with higher counts of repeat referrals to ask about the reasoning behind and process for handling situations when a student is referred multiple times within the same school year. Both districts cited that delays in receiving parental consent for evaluation could result in new referrals to restart the timeline. While there are legitimate reasons for new referrals, such as when a child did not meet eligibility requirements during the initial referral but was later found eligible for services, school districts could also use new referrals inappropriately to reset the clock on the required time frames. However, without monitoring student data, SED would not be aware of when this new referral to reset the clock is occurring.

Further, because SED did not actively collect statistics on the number of children evaluated versus the number of children deemed eligible or ineligible (as it only obtains that information through a SEQA review), several years passed without data being district-certified as accurate or reviewed by SED for compliance as part of proactive monitoring. However, SED officials state that, beginning with the 2023-24 school year, the collection and certification periods have changed, with all school districts reporting four times per year, subject to monitoring based on a new sample schedule.

Without frequent collection and monitoring of data on which program services are needed, SED cannot identify where program needs surpass provider supply, nor can it ensure that all preschool students with disabilities have access to their recommended services. There is a risk that a lack of provision of services could lead to a violation of an eligible child's right to a free appropriate public education. There is also a risk that school districts could report full compliance in cases where that is inaccurate, and SED would accept the data at face value. By the time an issue in the data may be identified, a student could have entered kindergarten or beyond without receiving their recommended services.

## **Preschool Special Education Data**

SED relies on its Student Information Repository System's (SIRS) data to measure compliance with preschool special education requirements. However, we found that the SIRS data was not always reliable and varied from data in the school districts' management systems and student paper files. Furthermore, we found inconsistencies between SED's list of State-approved section 4410 preschool special

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education programs and school districts approved to run preschool special education programs reported by the school districts in the State. Inaccurate data hinders SED's ability to monitor issues, such as when students in need of services are unserved or evaluations are not occurring promptly due to a lack of providers.

## SIRS Data

Preschool special education data is stored in multiple data systems, including local school management systems and SIRS. Local school management systems are used to enter all student-level information, including but not limited to student demographics, contact information, evaluations, special education events (e.g., referral date, parental consent date, CPSE meeting date), and IEPs at the district level. School districts upload this student-level information to SIRS only once every 6 years depending on SEQ's 1/6 sampling schedule.

During the 2018-19 through 2021-22 school years, a total of 22,456 student referrals were reported in SIRS (excluding NYC and Special Act schools) as required by the 1/6 rotational sampling schedule. A review of the SIRS data showed that CPSE meeting dates were not reported for 958 (4%) of the referrals that had received parental consent to evaluate. Further, an IEP implementation date was not reported for 3,165 (69%) of the 4,602 referrals for students transitioning from Early Intervention who were determined to be eligible. There may be various reasons for the absence of an IEP implementation date, such as ineligibility for preschool special education or reporting of the IEP implementation date outside the reporting timeline set by SED. According to SED officials, they do not verify the accuracy of this data, as it is the responsibility of the school districts to certify it as accurate.

We judgmentally selected 40 school districts across the State, excluding NYC, based on various factors, including geographic location. We used the student-level data reported in SIRS for the 2018-19 through 2021-22 school years to review a sample of 1,340 of a total of 2,730 students for the 40 school districts. We visited the sampled school districts to compare students' paper files to the districts' school management systems and reported SIRS data to ensure timeline compliance requirements were met.

We assessed the 60-calendar-day timeline compliance of all student files reviewed during site visits and determined there were inconsistencies between the data in SIRS, the local school management system, and the students' paper documents (see Table 1). Of the 1,340 student files reviewed, the number of files in compliance varied between the three data sources. For instance, the number of students who went beyond the required 60-day timeline for evaluations were:

- 184 (14%) in the SIRS data
- 235 (18%) in the school management system
- 257 (19%) in paper documents/document repositories



Additionally, there were students for whom we were unable to determine compliance due to the school management systems or paper files missing key dates (i.e., consent for evaluation or CPSE meeting), as well as CPSE meeting dates not reported to SIRS. Reasons for not reporting a student’s CPSE meeting date included: the meeting did not occur because the student’s referral was withdrawn or the meeting did not occur until the following school year. In these instances, the reporting period to SIRS had closed and the dates were not updated to reflect continuation of the preschool special education process. The number of undetermined student files also varied, with the paper files showing 420 (31%) students—six times higher than the 70 students in the SIRS data.

**Table 1 – Compliance With the Evaluation Requirement Timeline**

Timeline Compliance	SIRS	Local School Management System	Paper Files/Document Repository
Greater than 60 days (did not comply)	184	235	257
Less than/equal to 60 days (complied)	1,086	1,066	663
Undetermined	70	39	420
<b>Totals</b>	<b>1,340</b>	<b>1,340</b>	<b>1,340</b>

While SED relies on SIRS data to measure compliance with special education requirements, our review found that SIRS was not entirely reliable. SIRS data showed that 254 of the 1,340 (19%) student files were not in compliance or were undetermined, while the schools’ management systems showed the number of students not in compliance or undetermined was higher, at 274 (20%) students. Further, we have found SIRS data to be unreliable on past audits, including our audit of the English Language Learners Programs ([2022-S-30](#)).

Due to the lag in data submission to SIRS, SED does not know if a school district is non-compliant with the 60-day timeline until after the close of the school year. Further, for several years, district program data was neither district-certified as accurate nor reviewed by SED for compliance due to the 1/6 sampling schedule.

SED officials noted that, beginning with the 2023-24 school year, all school districts were required to report special education event dates in SIRS quarterly, based on new requirements issued in November 2023 in an effort to monitor and support school districts in complying with federal and State regulations.

## Student Files

We also assessed the reliability of the SIRS data for the 1,340 preschool special education students sampled by reviewing student files (paper and electronic) during our site visits, and determined that only 223 student files (17%) matched the SIRS data download. The remaining 1,117 student files (83%) did not match the SIRS data. Either the SIRS data was inaccurate or we could not make a determination due to instances where a student’s referral was withdrawn, the paper file was missing, or

the information was not available (see Table 2). For example, we reviewed a student file where the referral date was reported as July 21, 2020 in SIRS; as August 11, 2020 in the local school management system; and as July 15, 2020 in the paper file. Additionally, the date of parental consent for evaluation was recorded as July 28, 2020 in the paper file compared to August 13, 2020 in the local school management system and SIRS.

**Table 2 – Data Reliability of Sampled Student Files (Paper and Electronic)**

	<b>Number of Sampled Students</b>	<b>Percent of Students Reviewed</b>
Accurate	223	17%
Inaccurate	833	62%
Undetermined	284	21%
<b>Totals</b>	<b>1,340</b>	<b>100%</b>

There were various reasons for the high amount of differences in the data. We found that school districts were tracking different dates for the same milestones in their local school management system. For example, one school district would record the date the parental consent for evaluation was signed and another school district would record the date the parental consent was received by the school district.

In addition, many school districts were using student-tracking software that does not store historical student records—they only store data from the most recent school year. As required, this information should be kept for 6 years. SED officials stated they are working with the student-tracking software vendor to implement changes to ensure each district will have the capacity to submit data according to the new requirements to report quarterly issued in November 2023. Therefore, SED should ensure that school districts are aware that school management systems should retain documentation for the required time period.

Poor data can hinder SED’s ability to determine issues such as unserved students or evaluations not occurring in a timely manner due to a lack of providers in their area. Further, because some school districts failed to retain data, we could not confirm that the special education information that was reported was even accurate. Consequently, the inadequate data, coupled with SED’s failure to properly monitor special education programs, shows SED’s inability to ensure that all preschool students with disabilities have access to required and needed services.

## Special Education Provider Data

According to Education Law §4410, all school districts in the State are approved to conduct their own Preschool Multidisciplinary Evaluations. Further, school districts can run their own preschool special education programs (i.e., Special Education Itinerant Services, Special Class in an Integrated Setting, and Special Class).

To compare information regarding special education programs run by school districts, we obtained a list of SED’s reported State-approved 4410 preschool special education programs and the self-reported responses of these special

education programs from the 40 school districts we visited and the 550 school districts that participated in our survey. We found a large difference in the number of special education programs between the State-approved list of approved providers maintained by SED and the responses from the school districts (see Table 3).

**Table 3 – State-Approved Preschool Special Education Programs vs. Sampled/Visited School Districts’ Self-Reported Information**

	<b>NYS-Approved 4410 Preschool Special Education Programs</b>	<b>School Districts</b>	<b>Difference</b>
Preschool Multidisciplinary Evaluation	32	203	171
Special Education Itinerant Services	60	82	22
Special Class in an Integrated Setting	45	71	26
Special Class	26	49	23

SED officials attributed discrepancies between these sources to school district confusion rather than inaccurate reporting on SED’s website. If this information is not kept accurate by SED, it cannot determine which programs are being operated by each school district in the State. As a result, school districts could be operating programs without SED approval. Furthermore, some school districts require parents to find the special education providers. If SED’s list is not accurate, it could impede parents’ ability to find services for their child.

## Recommendations

1. Develop a strategy to address the statewide shortage of preschool special education service providers and work with school districts to identify ways to obtain the necessary services.
2. Review and identify ways to improve the application review process for program approval.
3. Increase monitoring of school districts, including but not limited to:
  - Timeliness of preschool special education events (i.e., evaluations, CPSE meetings).
  - Resolutions of potential non-compliance (i.e., waitlists and ensuring IEP implementation for all students).
  - Determining regional need for providers on a real-time basis.
4. Develop and implement a risk-based method to identify school districts that warrant immediate review.
5. Develop data integrity controls to provide greater assurance of the accuracy and completeness of data.
6. Remind school districts of the documentation retention requirements.
7. Provide clarification on the available preschool special education programs and reporting mechanisms currently operating in the State.

# Audit Scope, Objective, and Methodology

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The objective of our audit was to determine if SED is effectively overseeing preschool special education in compliance with all applicable laws and regulations to promote timely access to services for children across New York State. The audit covered the period from July 2018 through January 2024.

To accomplish our objective and assess related internal controls, we reviewed applicable laws, policies, procedures, and documentation provided by SED that related to its oversight of access to preschool special education services. We interviewed officials from SED to gain an understanding of preschool special education services in New York State, as well as SED's role in overseeing compliance. We also met with officials from 40 school districts to gain an understanding of their responsibilities related to preschool special education, as well as reviewed a sample of their special education preschool students' files.

We used a non-statistical sampling approach to provide conclusions on our audit objective and to test internal controls and compliance. We selected both judgmental and random samples. However, because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations, even for the random samples. Our samples, which are discussed in detail in the body of our report, include:

- A judgmental sample of 40 of 676 school districts (excluding New York City and Special Act districts) based on various combinations of Needs Resource Category, geographic location, and ethnic make-up, with a split of 20 school districts reporting compliance with the 60-day timeline for evaluations of preschool-age children and 20 school districts reporting children transitioning from Early Intervention to CPSE with an IEP implemented by their third birthday.
- A random sample of 50 students referred for preschool special education services at 14 selected school districts to test whether those students were provided services.

We used the student-level data reported in SIRS for the 2018-19 through 2021-22 school years to select a sample of 1,316 students for review out of a total of 2,730 students for the 40 school districts.

We visited the sampled school districts to compare students' paper files to the districts' school management systems and reported SIRS data to ensure timeline compliance requirements were met. Ultimately, we reviewed 1,340 student files due to some school districts providing additional files not reported in SIRS during the selected school year.

We obtained data from SED's SIRS and from local school management systems and assessed the reliability of that data by reviewing existing information, interviewing officials knowledgeable about the system, and tracing to and from source data. We found instances where information contained within them could not be relied upon as it was either inaccurate, incomplete, or both. Therefore, we deemed the data to be unreliable. We limited our reliance on the data to support our audit findings,

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using hard copy records wherever possible, and qualified the reliability of the data in the report when it was used. Certain other data in our report was used to provide background information. Data that we used for this purpose was obtained from the best available sources, which were identified in the report. Generally accepted government auditing standards do not require us to complete a data reliability assessment for data used for this purpose.

As part of audit procedures, the audit team used Tableau data visualization software to enhance the understanding of our report by creating a map of reported provider shortages. To improve ease of use, some minor locational changes were made to this visualization. The changes do not materially affect the accuracy or interpretation of the underlying data or visualization. Colors were selected from <https://colorbrewer2.org/> by Cynthia A. Brewer, Geography, Pennsylvania State University.

# Statutory Requirements

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## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those 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 provides a reasonable basis for our findings and conclusions based on our audit objective.

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. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of SED's oversight and administration of access to preschool special education services.

## Reporting Requirements

We provided a draft copy of this report to SED officials for their review and formal written comments. We considered their response in preparing this final report and have included it in its entirety at the end of the report. SED officials generally agreed with the recommendations and have indicated actions they will take to address them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the State Education Department shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

# Agency Comments

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October 11, 2024

Nadine Morrell  
Audit Director  
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Dear Nadine Morrell:

The following is the New York State Education Department's (NYSED) response to the draft audit report, 2023-S-1, *State Education Department Access to Preschool Special Education Services*.

As a State Educational Agency (SEA) under Part B of the federal Individuals with Disabilities Education Act (IDEA), NYSED is deeply committed to fulfilling its responsibility to ensure that the requirements of the Act are carried out and that a free appropriate public education (FAPE) in the least restrictive environment (LRE) is made available to all children residing in New York State between the ages of 3 through 21, inclusive. As part of fulfilling this responsibility, Local Educational Agencies (LEAs or school districts) are monitored for their compliance with the IDEA, including but not limited to compliance with child find requirements, early childhood transition, individualized education program (IEP) development, and IEP implementation. When it is identified, noncompliance in these areas must be resolved from a student-specific and/or systemic perspective, as applicable. Toward this end, NYSED is updating its coordinated intervention monitoring and professional development activities for the 2025-26 school year to include more embedded supervision and support, which will include additional oversight in the areas referenced in this report.

NYSED shares many of the concerns raised in this report and has conveyed them to elected officials repeatedly. The findings regarding challenges with access to required preschool special education services in New York State echo our own concerns. As the report suggests in several places, availability of providers is an issue around the state. To address this concern, for several years, NYSED advanced additional funding requests to the Governor and legislature as a Board of Regents priority. These funding requests have included parity in funding to keep pace with expense increases caused by inflation; flexibility to provide reimbursement rates at the beginning of the school year with approved growth; and relief from cost screens that have failed to reflect increases in appropriate expenses. The Board of Regents and NYSED continues to support additional interim measures (funding increases and rate-setting flexibility) to maintain and expand programs and services to preschool students with disabilities while it also conducts a comprehensive study of alternative tuition rate-setting methodologies. A primary objective of the rate-setting methodology study due in July of 2027 will be to recommend alternative methodologies that reflect the actual cost of mandated

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programs and services and ensure that preschool students with disabilities are able to receive a FAPE in the LRE.

In addition, years ago, NYSED acknowledged the need to strengthen its data infrastructure and technology solutions. The report findings confirm our own analyses. To address this gap, NYSED has taken several action steps in this area, with additional work ongoing – and a plan to request a substantial investment in improved infrastructure. This includes significantly expanding the data collection with respect to child find and early childhood transition, utilizing the NYSED business portal to streamline applications for preschool approval, publishing additional program approval information on the NYSED webpage, and enhancing the rate-setting and reimbursement data platform to modern technology. As referenced in the report, NYSED has identified a need for a statewide special education data system to enable the collection, analysis, and publication of regional need for preschool special education programs and services. Until such time as a statewide system is in place, each school district continues to monitor and track its provision of FAPE in the LRE at the local level to achieve compliance with the IDEA for all resident preschool students with disabilities.

The findings reported here provide useful feedback, and our responses to the individual recommendations are below. Taken overall, we appreciate that the Office of the New York State Comptroller (OSC) audit findings confirm several of the real needs that we have repeatedly identified to the Governor and legislature, and we look forward to successful advocacy that will result in better services for our young students with disabilities.

OSC Recommendation 1:

*Develop a strategy to address the statewide shortage of preschool special education service providers and work with school districts to identify ways to obtain the necessary services.*

NYSED Response:

We agree with this recommendation. NYSED already has two primary initiatives for responding to the concerns raised in the report regarding the preschool provider shortage. First, as part of funding received in the enacted New York State budget, NYSED is conducting a comprehensive study of alternative tuition rate-setting methodologies for providers operating approved school-age and/or preschool special education programs, including preschool special class and special class in an integrated setting programs operating under section 4410 of the New York State Education law. This study will consider alternative approaches to reimbursement to ensure preschool students with disabilities receive education and related services in accordance with their IEPs. Through continuing stakeholder engagement throughout New York State, NYSED is hearing of challenges within the existing preschool continuum of services. In parallel with other state initiatives to increase and support the educator and related service professional workforce, stakeholders stressed the importance for the tuition methodology study to represent the actual cost of services, including compensation comparable to certified and licensed professionals employed by school districts to ensure the preschool mixed-service delivery system is able to respond to the IEP needs of preschool students with disabilities.



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This work is paramount in New York State's efforts in meeting the requirements of the IDEA for FAPE in the LRE. As part of tuition methodology redesign, NYSED is evaluating the existing regulatory preschool continuum of services to identify more options and flexibility in preschool program models to better support programs and services to preschool students with disabilities in the LRE.

Secondly, NYSED is working closely with school districts, both through a monitoring and technical assistance capacity, to assist school districts in opening programs in response to resident student needs. To the extent programs within the existing mixed-service delivery system are not available or equipped to provide preschool special education programs and services, school districts are ultimately responsible for IEP implementation which may be accomplished through partnering with local early childhood programs or through school district operated programs. As school districts are required to ensure preschool students with disabilities have equal access to enroll and attend the school district's Universal Prekindergarten (UPK) program, NYSED has [issued guidance](#) to assist school district efforts in leveraging its UPK program to fulfill its obligations for the provision of FAPE in the LRE. School district special education representatives are also encouraged to meet with representatives from other local early childhood programs (such as approved preschool special education programs, Head Start programs, or childcare centers) to discuss how preschool special education services may be delivered or expanded in these settings. For approved programs operated by a school district, school districts may decide to send its employees into early childhood settings on an itinerate basis, may collaborate with early childhood programs to send employees to deliver services on a half-day or full-day basis, or may elect to create its own center-based programs at school district locations. To support these efforts, NYSED is streamlining the application process for school district approval to operate special education programs; however, just as school districts are not required to obtain approval to conduct preschool evaluations, NYSED recommends that section 4410 of the New York State Education law be amended to deem school districts approved to provide preschool special education programs and services without having to obtain separate NYSED approval.

NYSED would also note that, since our last discussions with the auditors, a 5 percent increase was approved by the Division of the Budget for preschool evaluation rates for the 2024-25 school year and a 4.3% funding increase was provided for the special education itinerant teacher, preschool special class, and preschool special class in an integrated setting programs. We are hopeful that this will provide some relief for the provider shortages that have plagued this program.

OSC Recommendation 2:

*Review and identify ways to improve the application review process for program approval.*

NYSED Response:

We agree with this recommendation. While the rigor of the existing application for preschool special education programs and services is intended to ensure program quality and compliance with applicable regulatory requirements, and we know that OSC's recommendation would surely not be to eliminate these standards, NYSED believes that efficiencies may be adopted to maintain quality and compliance standards while reducing the administrative burden for filing and reviewing applications. For example, NYSED will issue an application for school

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district preschool programs which will significantly reduce the documentation required for submission as school districts are legally responsible for the provision of FAPE to resident preschool students with disabilities and NYSED has other methods for obtaining this documentation. For private programs, NYSED is in the process of reviewing application standards to also reduce documentation submission requirements for program modifications and remove items that are duplicative to documentation required for a program's license issued by the New York State Office of Children and Family Services (OCFS) or New York City Department of Health and Mental Hygiene (DOHMH), as applicable. For both public and private programs, NYSED intends to pivot to an online application format for program modifications and the online publication of program approval to reduce administrative burden and increase access and utility of information relating to approved programs and services for preschool students with disabilities.

As previously stated, as school districts are ultimately responsible for ensuring the provision of FAPE in the LRE, NYSED recommends that section 4410 of the New York State Education law be amended to deem school districts approved to provide preschool special education programs and services without having to obtain separate NYSED approval. This is an unhelpful statutory requirement which creates a burden that reduces our ability to monitor in areas where there is real concern.

OSC Recommendation 3:

*Increase monitoring of school districts, including but not limited to: Timeliness of preschool special education events (i.e., evaluations, [Committee on Preschool Special Education] CPSE meetings); Resolutions of potential non-compliance (i.e., waitlists and ensuring IEP implementation for all students); Determining regional need for providers on a real-time basis.*

NYSED Response:

We agree with this recommendation. As referenced in the report, NYSED submitted a proposal for additional funds to develop a special education data system to enable the collection, analysis and publication of regional need for preschool special education programs and services. As regional need for programs and services is based on individual student needs and program capacity/availability, NYSED requires data infrastructure and data solutions to complete a comprehensive and fully integrated system to support and evaluate programmatic and administrative goals of New York State's special education delivery system. Absent this investment, NYSED is not able to collect and integrate the data elements necessary to conduct continuous student needs assessments (IEP program and service needs on a student-level basis), comprehensively evaluate IEP implementation (including waitlists for services) or identify where additional program and service investments are required (deficiencies in the current provider capacity).

As noted in the report, failure to implement student IEPs is noncompliance with the requirements of the IDEA. Therefore, current guidance does not reflect the practice of waitlists or the provision of "partial" or "interim" services. It is also improper for school districts to amend student IEPs to reflect what is available instead of the services the student requires for FAPE in the LRE based on the student's individualized needs. NYSED will be updating its guidance regarding compensatory services and the prohibition of amending IEPs to reflect only the

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programs and services that are available and not the programs and services recommended based on the student's individualized needs.

NYSED will be increasing its monitoring efforts with respect to child find and early childhood transition as it relates to its new methodology for identifying school districts determined to need assistance or need intervention in implementing the requirements and purposes of the IDEA. This accountability aspect of general supervision results in coordinated intervention comprised of required professional development and targeted technical assistance embedded through a team approach designed to promote systemic improvement. Coordinated intervention also includes monitoring of current school year activities to ensure the reasons for the school district's determination are being addressed. As a result, those school districts determined to need assistance or need intervention due to a higher occurrence of noncompliance with child find and early childhood transition requirements will be subject to additional monitoring of special education events for students referred in the same school year. As coordinated intervention is designed to be responsive to the reasons the school district received its IDEA determination, the monitoring activities may also include embedded review of Committee on Preschool Special Education (CPSE) process, IEP development, and IEP implementation.

OSC Recommendation 4:

*Develop and implement a risk-based method to identify school districts that warrant immediate review.*

NYSED Response:

We agree with this recommendation. As previously noted, NYSED is implementing a new methodology for identifying school districts determined to need assistance or need intervention in implementing the requirements and purposes of the IDEA. In addition to other criteria, school district performance in timely evaluation and early childhood transition are components of this methodology. As a result, these factors will be aspects of coordinated intervention activities which consists of monitoring, technical assistance, and professional development provided in response to the identified areas of concern. Those school districts determined to need assistance or need intervention due to a higher occurrence of noncompliance with child find and early childhood transition requirements will be subject to additional monitoring of special education events for students referred in the same school year.

OSC Recommendation 5:

*Develop data integrity controls to provide greater assurance of the accuracy and completeness of data.*

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NYSED Response:

We agree with this recommendation. As noted in the report, in November of 2023, NYSED issued communication to school districts titled [Notification to School Districts of the New Requirements for the Submission and Certification of Special Education Events Data for State Performance Plan \(SPP\) Indicators 11 \(Child Find\) and 12 \(Early Childhood Transition\)](#). Pursuant to this communication, all districts will be required to submit and verify Special Education Events Data four times a year. This greatly expands prior reporting of student-level information, and therefore it is no longer accurate to state that Special Education Events Data is uploaded in SIRS only once every six years. As noted in the report, the annual data submission will enable greater efforts for monitoring and supporting school districts in compliance with regulatory requirements.

The new methodology for identifying school districts determined to need assistance or need intervention in implementing the requirements and purposes of the IDEA will also include a component to score school district's submission of timely and accurate data. Those school districts that fail to certify data as accurate will be flagged as not meeting the criteria for this component and the school district will also be ineligible from receiving credit in any measure where the associated data was not certified as timely or accurate. NYSED plans to develop additional protocols relating to data validation and implement a "Timely and Accurate School District Data Rubric" as part of the district-level IDEA determination to further monitor the accuracy, completeness, and consistency of certified data.

For children receiving early intervention services who did not transition to preschool special education services by age three, NYSED would like to clarify that it is not accurate to assume that 69% of the referenced cohort did not transition due to school district noncompliance. This is because historically a majority of children do not have reported IEP dates because New York State law allows parents to elect to continue to receive early intervention services until a designated entry point in the preschool school year (i.e., July, September, or January). In fact, during this period in school districts outside of New York City, 52% of parents elected to continue early intervention services. As this flexibility is reflected in New York State law and recognized by the United States Department of Education as an appropriate family option, if a child continues to receive early intervention services, NYSED would not find it improper that an IEP implementation date is not reported.

OSC Recommendation 6:

*Remind school districts of the documentation retention requirements.*

NYSED Response:

We agree with this recommendation. NYSED will review the findings in the report and incorporate retention requirements in upcoming guidance to school districts.

OSC Recommendation 7:

*Provide clarification on the available preschool special education programs and reporting mechanisms currently operating in the State.*

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NYSED Response:

We agree with this recommendation. To address confusion among school districts and the field regarding the number of approved preschool special education programs, NYSED is in the process of developing a web-based posting of all program approval information. This posting will be continuously updated to reflect current approvals and contain more program descriptions/information than is currently on the webpage as this posting is intended to replace paper approval letters. It will also contain search capabilities to allow greater ease in identifying approved programs within a geographic area. The intent is to have better information for school districts, counties, parents, and families in terms of approved program and service providers in New York State.

Additionally, as part of the new methodology for identifying school districts determined to need assistance or need intervention in implementing the requirements and purposes of the IDEA, NYSED is conducting stakeholder engagement with school district representatives (including superintendents, data managers, and special education directors) regarding school district data, the reporting mechanisms, and coordinated intervention as part of oversight and monitoring. This new accountability structure emphasizes compliance with the IDEA, including but not limited to requirements for the certification of timely and accurate data, and will result in additional review and scrutiny of information and reporting at the school district level.

If you have any questions regarding this response, please contact Associate Commissioner Christopher Suriano, at [Christopher.Suriano@nysed.gov](mailto:Christopher.Suriano@nysed.gov).

Sincerely,



Sharon Cates-Williams

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