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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 17, 2005

Mr. Joel Klein
Chancellor
New York City Department of Education
52 Chambers Street
New York, NY 10007

Re: Services Rendered to Special
Education Students
Report 2004-N-2

Dear Chancellor Klein:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 33 of the General Municipal Law, we audited the New York City Department of Education's (DoE) delivery of special education related services to seriously disabled school-age children served by District 75 in New York City. Our audit covered the period July 1, 2002 through June 30, 2004.

A. Background

Section 4402 of the State Education Law requires school districts to identify and evaluate all students with disabilities within their area, and to ensure such students receive appropriate educational services in the least restrictive environment, consistent with their needs. In New York City, the DoE arranges special education services for about 150,000 students at a cost of \$3 billion annually. In addition to providing special education services in each of its ten regions, the DoE established District 75 to meet the special needs of about 20,000 students with severe disabilities, such as autism, emotional disturbance, mental retardation and multiple disabilities. These students have a learning style that requires a structured, twelve-month learning environment to maintain developmental levels. District 75 has 56 self-contained schools and about 300 "schools within a school" that provide support services.

School districts are required to create an Individualized Education Program (IEP) for every student who receives special education services. The IEP lists the specific educational goal for the student and the types and frequency of the special education services the student should receive to reach that goal. In addition to classroom instruction, special education students, depending on their individual needs, often receive various related services, such as physical therapy, occupational therapy, speech therapy, crisis management and psychological counseling. Although districts are required to annually update the IEP to meet changing student needs, districts often update student

IEPs more than once a year. DoE arranges to deliver IEP-prescribed related services using (1) its own staff; (2) an agency under contract to the DoE, if DoE staff are not available; or (3) an appropriately licensed independent non-DoE provider (if neither DoE nor contract staff are available) obtained by the child's parents at DoE expense. Regardless of how services are provided, school principals are ultimately responsible for ensuring the implementation of a student's IEP.

A special education student can receive several different related services. The student's IEP prescribes both the type(s) and the frequency of related services needed to help the student to meet his or her educational goals. DoE requires that related service providers document the related services they deliver on related service cards. A separate card should be maintained for each service the student receives, and schools should keep these cards so they will be available to demonstrate compliance with the student's IEP requirements. DoE policies further state that schools should maintain attendance records to indicate, among other things, that students were actually present to receive the related services recorded on related service cards.

DoE uses the Child Assistance Program System (CAP) to track the therapy and counseling services that special education students require and receive. CAP is a computerized database, which identifies students who were referred for evaluation; students who are awaiting special education services; and students who are currently receiving those services, and are assigned to special education programs based on recommendations in students' IEPs. CAP provides DoE management with a snapshot of the overall progress of the implementation of a student's IEP.

B. Audit Scope, Objective and Methodology

We audited DoE's delivery of special education related services to the seriously disabled students served by District 75. The objective of our performance audit was to assess the extent to which school-age students in District 75 receive the special education related services as prescribed by their IEPs. Our audit covered the period July 1, 2002 through June 30, 2004.

To accomplish our objective, we interviewed DoE officials and staff and reviewed applicable laws, policies and procedures for the provision of related services to special education students. Further, we sought to obtain and review documentation of related services for sampled students, as well as these students' IEPs. We also reviewed the accuracy and completeness of CAP data.

In testing the extent to which prescribed related services were provided to District 75 students during the 2003-04 school year, we judgmentally selected 2 of the 56 self contained schools with a large number of severely handicap children that had attended school for the entire year to obtain a sample of special education students who received several related services from either contract consultants or DoE staff. (We did not include students who received services from non-contract providers because students' parents bear the primary responsibility for the scheduling and delivery of such services.) From a total population of 102 students at these two schools, we selected a sample of 97 students, 50 students from one school and 47 from the other school. In selecting the 97 students, we selected all students who received related services from contract consultants and randomly selected the remaining students who received their related services from DoE staff. We requested the related service cards for all 97 students. We tested the extent to which these two schools maintained related service cards to document the delivery of the services to our sample of students. To determine whether the related services delivered corresponded to the related services

prescribed on students' IEPs, we attempted to locate and review IEPs for all 97 sampled students. To test whether related services, as documented on related service cards, were provided when students were actually present at school, we compared related service cards for these 97 students to student attendance records. Finally, we verified the accuracy and completeness of DoE's CAP information, including whether students were currently receiving related services, by comparing CAP data to IEPs for the students.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those DoE operations included within our audit scope. Further, these standards require that we understand the DoE's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations which are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

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, several of which are performed by the Division of State Services. 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.

C. Results of Audit

Officials at the two District 75 schools we visited could not locate much of the documentation they are required to keep to show what services should be provided and if the services were provided to special education students. Also, when information was available, we noted significant error and inconsistencies. In addition, we found that the CAP system, which DoE officials use to manage and monitor the provision of services, contained out-of-date and inaccurate information about special education students. We recommend that DoE officials enforce document retention policies; consider converting the IEP to an electronic format; and improve the accuracy of the CAP system.

1. Documentation Supporting Services Rendered

To determine the extent to which students received the related services that were prescribed on their IEPs, we visited two schools and requested: the student IEPs; related service cards; student class schedules; and student attendance records, for the 97 students from our sample. Student IEPs list all the educational and related services the student is required to receive. Therefore, IEPs for the entire school year should be maintained at the student's school for ready reference. However, we were not able to obtain IEPs for 10 of the 97 students. School officials explained that these ten students transferred out of the school, and that their IEPs - all maintained in paper form - were

transferred with them. Although we requested these missing documents, school officials could not produce them by the time we completed our audit field work. In addition, school officials did not have IEPs for the entire school year in the folders of 33 of the remaining 87 students' records we tested. The available IEPs for these 33 students covered only a few months of the 2003-2004 school year; the previous IEPs, which were in effect for the earlier part of the school year, were missing. Neither school nor District 75 officials were able to locate the prior IEPs; in fact, school officials told us some of the missing IEPs may never be located.

When IEPs for the entire year are not available, or when the IEP is missing altogether, the related services these special education students should receive may be delayed, or simply not delivered. We believe the schools' lack of complete IEP data for the above 43 students is attributable, in part, to the fact that DoE does not adequately enforce the State Education Department's record retention policies. These policies require that DoE retain such things as a student's IEP, attendance records and related services documentation for at least six years. We also believe that maintaining the IEP exclusively in paper form is problematic. DoE officials and providers must all be able to access this critical document to provide the services the DoE is required to deliver. In our opinion, DoE should consider maintaining the IEP in electronic format - in addition to maintaining the original IEP in paper format - to facilitate retrieval and to help ensure a student's IEP is available when needed.

Using the IEPs available for 87 students, we compared students' IEPs to a total of 229 related service cards that documented the services actually provided to these students. (For the 33 students who's IEPs covered only part of the 2003-04 school year, we matched the services documented as delivered to the IEP requirements in effect for the relevant period.) Our test determined that 60 of these 87 students did not receive services that conformed to their IEPs, as noted below.

- We found that 12 students (12 services) received more services than were prescribed by their IEPs. For example, one student received speech therapy twice a week rather than once a week, as prescribed.
- Wrong services were delivered to 10 students (10 services). To illustrate, one of the ten students received Hearing Education for the entire year, although the IEP did not prescribe any hearing services.
- For 12 students (13 services), students received none of a specific prescribed service. In one case, we found that a student whose IEP required occupational therapy received none of this therapy, according to the records.
- For 26 students (40 services), providers delivered fewer services than required. One such student received speech therapy twice a week, rather than three times a week, as the IEP required.

We also tested whether the related services recorded on related service cards were actually delivered. The provider is required to note the date each service is rendered on the card for that related service. The objective of this test was to verify that students were present when providers stated they delivered services (not to test for compliance with IEP requirements, as in the above test). For all 97 students at the two schools we visited, we compared the dates of service recorded on

the 229 related service cards to the school calendar and the student's attendance records. Our test found numerous instances in which providers claimed to have rendered related services when the student was reported absent, or during weekends and school holidays, when service delivery was unlikely. Details of this test follow:

- On 89 (39 percent) related service cards, which documented services to 57 students, providers reported delivering services on a total of 214 days when the students in question were absent; one student was absent on 20 occasions when services were reportedly provided.
- On 57 (25 percent) related service cards, which documented services to 46 students, providers recorded delivering services on a total of 87 instances when the dates of service occurred on a school holiday or a weekend; one student reportedly received services on holidays and/or weekends on six occasions.

In the above examples, the providers either recorded the dates of service incorrectly, or simply did not deliver the service to the students. District officials and school principals are responsible for the proper delivery of IEP-prescribed services, and related service cards represent the evidence that those services were provided. To help ensure related service cards contain correct data, and to reliably demonstrate that students are receiving the services they need, the DoE should require that providers record accurate information on related service cards, and develop a process for periodically verifying that related services, as documented, were actually provided.

DoE officials stated they are aware that students are awaiting the provision of special education services: as of June 2004, the DoE reported that at least 15.8 percent of special education students were awaiting therapy and counseling special education services. In responding to this report, DoE officials acknowledged that problems existed in providing special education students with all the related services they needed. Officials believed that students are underserved primarily because there was a severe shortage of related service providers, such as speech therapists, counselors, physical and occupational therapists. DoE stated it was trying to recruit such providers.

2. Management Information System

Management needs accurate and reliable information to help ensure that programs, such as special education, achieve their goals. Out-of-date information and missing records severely hinder management's ability to ensure students receive the services prescribed on their IEPs. Thus, the DoE needs CAP, the database system it uses to track service delivery, to accurately identify the IEP-prescribed related services students should receive; the status of service delivery (receiving, awaiting or no longer receiving services); and the services actually rendered, as documented on related service cards. Without accurate CAP data, DoE cannot reliably assess compliance with a student's IEP requirements, and disabled students may not make the progress necessary to reach their educational goals.

To test the reliability of CAP data, we compared IEP information for 87 of the 97 sampled students at the two schools we visited (IEPs were missing for the remaining 10 students) to CAP data for these students. We found that, for 18 students, information in CAP did not match students' IEPs. As a result, CAP incorrectly reported the special education services that the 18 students should have received. Referring to the related service cards for these students, we found that only 2 of the 18 students received the type of services required in their IEPs. The remaining 16 students did not receive the correct services, as noted below:

- Four students' IEPs prescribed certain services that were not listed in CAP. There was no indication on related service cards that the students received these services.
- For another four students, CAP listed as required certain services that were not prescribed on the students' IEPs. According to related service cards, the students received these services that were not prescribed.
- The IEP requirements for four more students changed during the school year, but CAP did not reflect the revised services. Related service cards showed these students received the wrong type or frequency of services because CAP information was outdated. For example, one student's IEP was changed in January 2004, but the student received two speech therapy sessions per week (instead of one) and one counseling session per week (instead of two).
- For four additional students, IEP required services were incorrectly recorded on CAP. Related service cards showed the students received the wrong services. For example, although one student's IEP required speech therapy, CAP data stated that counseling was required. Related service cards showed the student actually received counseling rather than the speech services that the student needed.

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Incorrect CAP data hinders DoE's monitoring of special education services, and jeopardizes the educational progress of students who depend on related services to improve their skills. DoE officials should continue efforts to improve the accuracy of data on CAP, and to replace this system as soon as possible.

DoE officials recognize that CAP data is not as reliable as it should be. In August 2003, DoE's Office of the Auditor General (OAG) issued a report that identified problems with the reliability of CAP information, primarily because CAP information was not regularly updated. For instance, the OAG found that over one-third of the students that CAP reported as awaiting related services were actually receiving them. DoE officials told us that, during the 2004-2005 school year, they made some changes to improve CAP data, such as requiring schools to enter IEP information directly into CAP, and scanning attendance data into CAP. DoE officials also said they have begun the process of replacing CAP.

Recommendations

1. *Enforce policies for retaining documents, such as related service cards, which support the provision of services to special education students.*
2. *Consider maintaining Individualized Education Programs electronically so that complete information is available on-line.*
3. *Follow up with the two schools that we visited to locate missing or prior Individualized Education Programs.*
4. *Continue to improve the CAP system to enhance the integrity of system data concerning services DoE provides to special education students.*
5. *Instruct related service providers about the importance of recording accurate information on related service cards.*
6. *On a periodic basis, review a sample of related service cards to verify that services, as recorded, were actually provided to students.*

We provided DoE officials with draft copies of this report for their review and comment. Their comments have been considered in the preparation of this report, and are included as Appendix A. DoE officials did not specifically respond to each recommendation, but officials indicated that they have already implemented a number of the draft audit report recommendations. DoE is developing a new management information system so that special education information is up-to-date and available on-line. While this system is being implemented, officials continue efforts to improve CAP, especially concerning data entry. Also, officials continue to stress to school principals the importance of retaining documents related to providing special education services.

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

Major contributors to this report were Kenrick Sifontes, Brian Mason, Bill Clynes, Marc Geller, Irina Kovaneva, Katrina Lau and Nancy Varley. We wish to thank the management and staff of the New York City Department of Education for the courtesies and cooperation extended to our auditors during the audit.

Very truly yours,

Steven E. Sossei
Audit Director

cc: Mr. Brian Fleischer
Mr. Nader Francis
Mr. George Davis



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

Office of the Deputy Chancellor for Teaching and Learning
52 Chambers Street, New York, NY 10007

August 31, 2005

Steven E. Sossei
Audit Director
Office of the State Comptroller
110 State Street
Albany, New York 12236

Dear Mr. Sossei:

We have reviewed your draft audit report on the delivery of special education related services at two District 75 sites (2004-N-2) dated August 2, 2005. We appreciate the opportunity to review the draft. Please find below our comments regarding the draft audit report. We have provided general comments as well as some specific points in closing.

The replacement of the special education student information system (i.e. Child Assistance Program) is a high priority of the special education reorganization efforts undertaken by the Department of Education. We have, therefore, already implemented a number of the draft recommendations made in the audit based upon our own internal audits of the data system.

The Department of Education has begun development of a new special education management information system. Several components of the new Student Information System are already operational. For example, in 2004, a new Student Information Page became available to principals via the Department's intranet. This Student Information page details all biographical and service recommendation data for students with disabilities in user-friendly, code-free language. The new system is available through the entire city and enables principals to have access to their students' service recommendations. Thus, while we recognize the importance of principals having copies of their student's paper Individualized Education Programs (IEPs), and continue to enforce our record transfer policies, principals can now know their students' service needs and begin service immediately.

An IEP is indeed an important document that provides service delivery information required to provide appropriate related services to students with disabilities. The Report indicates that 10 IEPs for the 97 students in the cohort were not obtained. School officials explained that these 10 students had transferred out of their school and their student records, including their IEPs, were forwarded to their new schools. This is consistent with Department policy of ensuring that the receiving school has all the records required to appropriately provide services to the student.

The report refers to 33 missing "IEPs for the entire school year" for the cohort of 87 students. IEPs are completed on a "rolling basis" during the school year based upon the date of the student's previous IEP. Parents and school personnel may also request a re-evaluation at any time. Due to these circumstances, a current IEP often does not cover an entire year. The absence of an IEP that covers the entire school year, then, does not mean that the student has been without appropriate service, as the school must implement services per the latest IEP.

While we are aware of document retention requirements, the IEP itself is a fluid document, with changes to it occurring sometimes more than once a year. While it is important for audit purposes to maintain copies of prior IEPs when a new IEP has been developed either through re-evaluation or annual review (33 out of the remaining 87 students,) it appears that there was a current IEP available for all 87 students, 100% of the students who were actually attending the audited sites at the time of the audit. This is a significant fact that should not be overlooked.

Any mistakes in reporting related service attendance data are unacceptable, and 214 errors are far too many. It is important, nevertheless, to consider that the related service sessions for those 87 students were being recorded for students who were receiving multiple levels of services and/or a combination of two, three or more services for multiple sessions per week for the entire school year. Thus, the number of errors is not as large of a percentage as it may appear when compared to the overall number of required entries. However, we have recommended that the providers listed as serving these students receive additional training, so that we may substantially reduce the number of errors.

Additionally, we have already implemented improvements in the related service attendance system starting in September, 2004. Providers now record related service attendance on scan sheets which are collected on a monthly basis and scanned into the special education database as opposed to entering it manually. We provided professionally produced video directions to every single school, contractual agency and independent provider of related services. Data entry mistakes have been significantly curtailed. In order to further refine the system and more accurately and quickly record related service first attend dates, which are important for maximizing provider caseloads and the number of students receiving service, the Department will utilize an Integrated Voice Response (IVR) system beginning in September, 2005. This system requires providers to phone in first service start dates for their students, which in turn automatically updates this information in the new web based computer system.

Your report states that 38 students are not receiving a prescribed service, or fewer sessions than required. While we acknowledge that improvement must be made in this area, it is crucial to note that these students, who are un-served or partially served, are prioritized and known to us and receive services as providers become available.

The Department continues to make unprecedented efforts to upgrade data systems and technology and continues intensive recruitment efforts to address many of the audit findings. Since the reorganization, there has been a 9.8% increase in the number of students receiving Physical Therapy and a 6.7% increase in the number of students receiving Occupational Therapy, two areas that represent national shortage areas. We are continuing with our recruitment efforts, including international recruitment, the continuation of scholarship programs for students working toward degrees in the identified shortage areas and a formally instituted system approved by the New York City Conflicts Board that allows Department of Education employees to provide shortage area services before and after school outside of their employment district.

Specific Comments:

The Report states that District 75 provides support services such as resource room. While District 75 provides specialized learning environments for students with severe disabilities, resource room is not a service provided. (Page 1)

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Note

The Report states that a psychological evaluation is a related service, which is inaccurate. While a psychological evaluation may be used in making the determination of whether a student requires a related service such as counseling, the evaluation itself is not a related service. (Page 1)

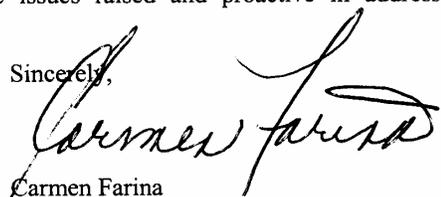
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Note

(1) In paragraph C1 on Page 3, the Report refers to student schedules. We are unclear as to what specifically you are referring (e.g., their class schedule?)

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Note

I think you will agree that the Department has been open to the issues raised and proactive in addressing recommendations made in the audit. Thank you.

Sincerely,



Carmen Farina
Deputy Chancellor for Teaching & Learning

CF:ja
Attachment
C: Joel I. Klein
Michael Best

* State Comptroller's Notes – Changes have been made to the report based upon these comments.