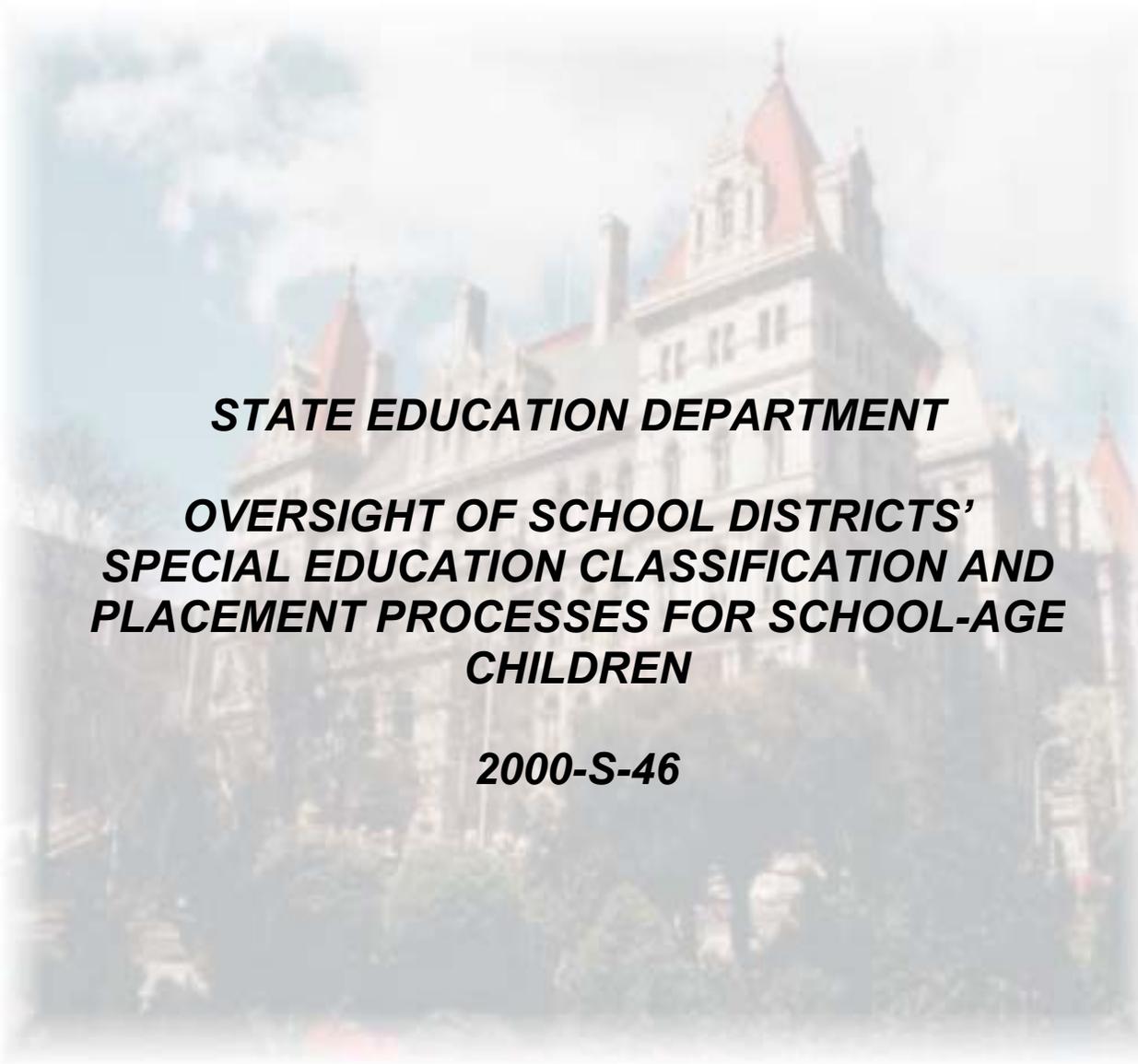


NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

**H. Carl McCall
STATE COMPTROLLER**



**STATE EDUCATION DEPARTMENT
OVERSIGHT OF SCHOOL DISTRICTS'
SPECIAL EDUCATION CLASSIFICATION AND
PLACEMENT PROCESSES FOR SCHOOL-AGE
CHILDREN**

2000-S-46

**DIVISION OF MANAGEMENT AUDIT AND
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H. Carl McCall
STATE COMPTROLLER

Report 2000-S-46

Mr. Richard P. Mills
Commissioner of Education
New York State Education Department
Albany, New York 12234

Dear Mr. Mills:

The following is our report on the State Education Department's oversight of school districts' special education classification and placement processes for school-age children.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article 2, Section 8 of the State Finance Law. We list major contributors to this report in Appendix A.

Office of the State Comptroller
Division of Management Audit
and State Financial Services

June 11, 2002

Division of Management Audit and State Financial Services

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EXECUTIVE SUMMARY

STATE EDUCATION DEPARTMENT OVERSIGHT OF SCHOOL DISTRICTS' SPECIAL EDUCATION CLASSIFICATION AND PLACEMENT PROCESSES FOR SCHOOL-AGE CHILDREN

SCOPE OF AUDIT

The State Education Department's (Department) Office of Vocational and Educational Services for Individuals with Disabilities (VESID) is charged with meeting the needs of people with disabilities from early childhood through adulthood, including overseeing special education services for school-age students in school districts statewide. VESID's mission includes promoting educational equity and excellence for students with disabilities while ensuring they receive the rights and protections to which they are entitled. These rights include the provision of a free appropriate public education in the least restrictive environment, as mandated by the Federal Individuals with Disabilities Education Act (IDEA) and related State laws and regulations. For the 1998-99 school year, there were 393,000 special education students in the State's 724 school districts, including the New York City Board of Education. Special education learning disabled (LD) and emotionally disturbed (ED) students represent about 63 percent of the State's special education population.

Our audit addressed the following questions about the Department's oversight of districts' special education classification and placement processes for school-age LD and ED children for the period July 1, 1998 through May 30, 2001:

- Does VESID provide sufficient oversight to ensure school districts comply with relevant Federal and State laws and regulations for special education services?
- Do districts' policies and practices provide sufficient assurance that students are placed in appropriate special education programs?

AUDIT OBSERVATIONS AND CONCLUSIONS

We concluded that VESID oversight may not be sufficient because it is not adequately targeting formal reviews of special education programs to those

districts that pose the highest risk of noncompliance with applicable laws and/or program underperformance. In the meantime, however, VESID conducted formal reviews at districts having less risk in these areas. We further concluded that VESID should maintain current data analyses to identify and rank the potential for deficiencies in districts' special education programs. This information should be used to assess risk and to target districts for formal review. We found VESID had not done this type of data analyses and risk assessment since 1997. We analyzed selected data for LD and ED students (e.g., classification rates, drop out rates, students in more restrictive environments) and found VESID had not reviewed 23 of the 39 districts statewide with the highest risk of deficiencies in their programs for LD and ED students. We also found that the six districts we visited generally had adequate processes, policies and procedures for classifying and placing special education students, but student files often lacked certain required assessments, evaluations and service plans. (See pp. 7-12)

For the 150 LD or ED students we sampled at the 6 districts that we visited, we found that the files of 51 (34 percent) were missing one or more of the required special education documents. At individual districts, the number of sampled students with incomplete files ranged from 12 percent to 60 percent. These information gaps may diminish district ability to most effectively meet the needs of special education students. VESID should follow up with the districts we visited to require them to correct documentation deficiencies that we noted and to remind these districts to maintain required items of documentation in the future. (See pp. 15-18)

We also found that VESID does not use the review process to formally question the propriety of districts' classification and placement decisions, or a student's need for related services. In reviewing documentation for sampled special education students at the six districts we visited, an education consultant working with us noted examples of inconsistencies between documentation and program placement. We recommend that VESID use the opportunity of a formal review to assess the propriety of district decisions, particularly when there is no documentation to support those decisions. (See pp. 11-12)

COMMENTS OF DEPARTMENT OFFICIALS

Department officials generally agree with our recommendations and indicate that actions have been or will be taken to implement them.

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Exhibit B

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Appendix A

Major Contributors to This Report

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INTRODUCTION

Background

Children may exhibit a range of disabilities including significant physical handicaps, emotional handicaps, learning disabilities and attention deficit disorder. In accordance with the Federal Individuals with Disabilities Act (IDEA), such children are entitled to a free appropriate public education in the least restrictive environment to prepare them to compete and succeed in school and beyond. Therefore, to the maximum extent possible, children with disabilities should be taught with general education children, rather than in separate learning environments.

The State Education Department's (Department) Office of Vocational and Educational Services for Individuals with Disabilities (VESID) oversees special education services for students aged three to twenty-one in public and private schools, and vocational rehabilitation services for individuals aged sixteen and older. For example, VESID is responsible for monitoring school districts' special education programs for their timely and appropriate service delivery and their compliance with Federal and State laws and regulations.

School districts are required to evaluate and place students with disabilities into appropriate special education programs in a timely manner. Section 4402 of the State Education Law requires each of the State's school districts to have a Committee on Special Education (CSE) to ensure this timely evaluation and placement. The CSE must initiate a formal evaluation of any child referred for special education services, at no cost to the child's parents. If the CSE recommends that a child receive special education services, and the Board of Education approves the recommendation, the CSE must prepare an Individualized Education Program (IEP) for the child, indicating the type of disability, the type(s) of service(s) needed and the program the child should be placed in. The CSE should evaluate a child's placement at least annually to determine whether the previous classification, placement and related services should be revised. Children who make substantial progress may receive progressively less intensive services and

eventually be declassified to return to full-time general education classes.

Nationally, New York State has more special education students than all but two other states, Texas and California. Further, New York's number of special education students has more than doubled over the past two decades, increasing from about 182,000 students during the 1978-79 school year to about 393,000 students during the 1998-99 year. During the same period, New York's total student population actually declined, from about 3.6 million students to about 3.3 million students.

According to the United States Department of Education, about 12 percent of the State's students aged six through seventeen were placed in special education programs as of December 1998. Nationwide, the placement rate for students in this age group as of that date was slightly lower, at about 11 percent. However, according to the Department, 44 percent (or about 170,000) of New York's special education students were placed in more restrictive environments (classes separate from regular education settings 60 percent or more of the time). This is 18 percent higher than the nationwide rate of 26 percent for placements in more restrictive environments.

The State's funding methodology may have contributed to New York's higher rate. Districts receive additional weighting for the calculation of State aid for students who receive more intensive special education services. Often, the more intensive services are provided in more restrictive environments. In recent years, a major objective of the State Legislature and the Department has been to reduce the proportion of students placed in more restrictive environments. Thus, the weighting has been reduced somewhat in recent years, lessening but not eliminating the incentive to place students in more intensive programs. Department officials also advised us that the most recent aid formulas include an incentive if a student's special education services, for 60 percent or more of the day, are provided in the general education environment (as opposed to a separate setting.)

Educating special education students is much more expensive than educating general education students, and the costs of programs in more restrictive environments are generally higher than the costs of programs in less restrictive environments. Department statistics for the 1997-98 school year show the

annual average instructional cost (excluding administrative, transportation, debt service and other miscellaneous costs) for a special education student is \$12,733 or about 126 percent higher than the annual average instructional cost of \$5,625 for a general education student. State school districts spent about \$4.9 billion on special education during the 1997-98 year. For a district of average wealth, the State reimburses about 49 percent of these costs. In addition, for the 2000-01 year, the State budgeted about \$1.8 billion in Excess Cost Aid to help districts finance their portion of special education program costs.

IDEA and State regulations define 13 categories of student disability. Of the 393,000 students in special education programs in New York State during the 1998-99 year, 53 percent (about 209,000 students) were classified as learning disabled (LD), and 9.6 percent (about 38,000) were classified as emotionally disturbed (ED). The Department defines LD as a disorder in one or more of the basic psychological processes involved in understanding or using language (spoken or written), which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. A student may be ED if he or she is unable to build or maintain satisfactory interpersonal relationships with peers and teachers and/or is generally unhappy or depressed. However, since these definitions can be interpreted broadly, districts may vary in their classification of students as LD or ED.

Audit Scope, Objectives and Methodology

We audited the Department's oversight of school districts' special education classification and placement processes for school-age LD and ED students for the period from July 1, 1998 through May 30, 2001. The objectives of our performance audit were to determine whether Department officials provide sufficient oversight to ensure that school districts comply with relevant Federal and State laws and regulations for providing special education services to school-age children, and whether school districts' policies and practices provide sufficient assurance that school-age students with disabilities are placed in appropriate special education programs. Our audit was limited to special education programs for school-age children and did not include preschool special education.

To accomplish our objectives, we reviewed Federal and State laws and regulations and Department policies and procedures

for monitoring school districts' special education programs. For districts outside of New York City, we evaluated whether the Department selected school districts for formal review based on an adequate assessment of risk. The Department scheduled formal reviews of special education programs within the New York City Board of Education based on a cycle approach. We did not evaluate whether this approach reflected an adequate assessment of risk because available data necessary for making this evaluation about the Board of Education had limitations. Specifically, the data showed where special education students were enrolled, but did not identify any other location where such students may have been actually receiving special education services. Consequently, we concluded that we would not be able to use the available data to readily reach meaningful conclusions about whether or not the cycle approach adequately addressed risk.

We also judgmentally selected the Guilderland Central School District (Guilderland), the Elmira City School District (Elmira), the Buffalo City School District (Buffalo), the Longwood Central School District (Longwood) the New York City Board of Education Community School District Number 15 and the New York City Board of Education Community School District Number 20 for site visits. In making these selections, we chose Elmira, Buffalo, and Longwood based on their comparatively high proportions of students placed in special education programs. We chose Guilderland to include a district with a comparatively low proportion of students in special education. We selected the New York City Community School Districts because VESID had not conducted reviews of these districts in recent years.

At each of the visited districts, we interviewed staff and reviewed special education documentation for a random sample of 25 LD and ED students. These reviews determined if documentation supported selected requirements of IDEA, the State Education Law and Department regulations. For example, we determined whether the documentation supported that the CSE included required members, that the CSE annually reviewed Individual Education Programs (IEPs) and that student classifications and placements were correct.

We also engaged Dr. James Burns, an expert in the field of special education, to assist us in assessing the propriety of district classification and program placement decisions, given

the available documentation. Dr. Burns received his PhD in Educational Psychology and Special Education from the University of Minnesota and is currently a Full Professor of Special Education at the College of Saint Rose. He has written a number of publications and conducted presentations on Special Education.

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 operations of the Department that are included within the audit scope. Further, these standards require that we understand the Department's internal control structures and 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 that supports 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.

We use a risk-based approach to select activities for audit. We therefore focus our audit efforts on those activities we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made. We devote little audit effort to reviewing operations that may be relatively efficient or effective. As a result, we prepare our audit reports on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

Response of Department Officials to Audit

We provided a draft copy of this report to Department officials for their review and formal comment. We considered their comments in preparing this report and have included them as Appendix B. The Department's response includes comments from the Buffalo Public Schools, Greece Central School District, and Elmont and Center Moriches Union Free School Districts.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

MONITORING DISTRICT SPECIAL EDUCATION PROGRAMS

In recent years, VESID has actively monitored districts' special education programs to ensure compliance with applicable Federal and State laws. VESID has also modified its monitoring processes to help broaden the coverage that regional staff can provide to the districts. However, for districts outside of New York City, we found that VESID has not targeted its reviews of special education programs to those districts that pose the highest risk of noncompliance with laws or program underperformance. In the meantime, however, VESID conducted detailed reviews in districts having less risk. We believe that VESID should more thoroughly analyze relevant data to identify the highest risks for deficiencies in districts' special education programs and use this information to target districts to review. In addition, we found that VESID needs to verify that districts maintain the support required to justify their classification and placement decisions.

Identifying and Scheduling Districts for Reviews

VESID monitors district special education performance through the relatively new Chapter 405 surveys and four different formal review processes of varying complexity which VESID has used since 1996. Chapter 405 of the Laws of 1999 requires the Department to identify school districts that do not meet certain special education performance benchmarks. Indicators of special education performance problems at a district include a high special education classification rate, which could indicate students are over classified; a low declassification rate, which could mean students are not transitioning back into the general education environment; and a disproportionately high rate of special education placement for certain racial or ethnic groups, which could indicate certain racial or ethnic groups are over-classified as special education students. Based on data that districts are required to submit to the Department, VESID asks districts that did not meet selected benchmarks to identify the underlying causes of their comparatively poor performance. In response, VESID staff

provides districts with technical assistance, either individually or through regional training. VESID also requests certain districts to conduct self-assessments or reviews. Both the technical assistance and self-assessments are designed to help districts identify policy and procedural changes that will resolve problems. VESID further requires districts to document the resolution of these problems. While all of the steps involved in a Chapter 405 survey are designed to assist a district to identify special education performance issues and take corrective action, these steps generally do not involve visits from VESID staff or require VESID staff to verify that the corrective action has, in fact, taken place and that identified problems have been resolved.

VESID has four formal review processes including Verification Review, Focused Review, Collaborative Review, and Performance Review. According to VESID officials, the Verification Review, the least intensive of these reviews, consists of verifying special education student data submitted to the Department and a desk audit of district policies and procedures for compliance with State and Federal regulations. The Focused Review examines a specific area of district compliance with Federal and State regulations, such as placement in the least restrictive environment. The Collaborative Review is a comprehensive review of a district's compliance with Federal and State regulations, including reviews of district policies and procedures and student records. The Collaborative Review also includes: verification of district-reported data; discussions about the implications of district-reported data; surveys of parents and district staff; and determinations of effective district practices and areas in need of improvement. The Performance Review is a scaled-down version of the Collaborative Review. VESID officials told us that these reviews have evolved over the years in response to the need to perform more reviews with limited staff resources.

To select districts outside of New York City for formal reviews, VESID officials told us that they use a risk-based approach that identifies the districts most likely to benefit from such reviews. For example, VESID officials explained that they examine districts' Key Performance Indicators (KPI-program characteristics such as classification rates, integration rates into general education classrooms, under/over-representation rates of minority placements and numbers and types of diplomas awarded) to assess districts' relative special education program

performance. This information along with other factors, such as formal complaints submitted by parents and advocates, time elapsed since last review and the results of the Chapter 405 surveys enables VESID to identify which districts have the greatest risk of poor and/or noncompliant program performance.

We analyzed KPI data for districts outside of New York City as of December 1998, to determine whether VESID selected for formal review those districts having the highest risk of underperformance and noncompliance. For our analysis, we used 19 KPI for LD and ED students. The indicators we selected included classification rate, drop-out rate, students in restrictive placements, and the proportion of minority students.

Based on our analyses, we identified 39 districts that had the highest risk of underperformance for 6 or more of the 19 indicators we used. However, we found that VESID had not reviewed, or planned to review, 23 (59 percent) of these 39 districts (See Exhibit A). The results of our analyses showed that these 23 districts had potential deficiencies in at least 6 and possibly as many as 13 of the 19 indicators analyzed. Specifically, we determined that 14 of the 23 districts had placed LD and ED students in more restrictive environments (i.e., taught in classes separate from regular students 60 percent or more of the time) at rates exceeding the statewide averages of 31 percent and 63 percent, respectively. We found that 5 of the 14 districts placed 50 percent or more of their LD students in more restrictive environments, thus exceeding the statewide average of 31 percent by 19 percent or more. Also, 10 of the 14 districts placed 70 percent or more of their ED students in more restrictive environments, thus exceeding the statewide average of 63 percent by 7 percent or more. We further noted that, for 22 of the 23 districts, a disproportionately high percentage of minority students were placed in more restrictive environments. As mentioned previously, educating special education students is more expensive than educating general education students, and the cost of programs in more restrictive environments are generally higher than the costs of programs in less restrictive environments.

We also determined that during the five-year period from 1997-1998 through 2001-2002, a total of 227 formal reviews were conducted or were planned for districts other than the 23 districts we identified as having the highest risk of poor performance. VESID officials told us that these 23 districts were

among the 364 districts identified for further action as part of the Chapter 405 survey process. However, Chapter 405 surveys provide VESID with data self-reported rather than comprehensive information gathered first-hand by VESID staff. Moreover, the Chapter 405 reviews do not include VESID follow up to verify that problems have been resolved. VESID officials also advised that they have limited resources for formal reviews. We acknowledge this limitation and conclude that this makes it all the more important for VESID to ensure that available resources for formal reviews are directed to those districts that pose the highest risk for noncompliance with related laws and/or underperformance in special education programs.

Districts identified as having poor special education performance indicators pose a higher risk of programmatic and regulatory noncompliance and untimely and inappropriate delivery of services. For example, the Special Education expert whose services we used during this audit, reviewed the special education records at one of the 23 high-risk districts not formally reviewed by VESID. This review disclosed that district special education officials often did not prepare required functional behavioral assessments and/or psychological evaluations for students who were classified as LD or ED. Such noncompliance with IDEA and State regulations can result in misclassification of students or in giving them inappropriate or unnecessary services.

VESID publishes an annual Performance Report that presents KPI data for every district in the State. At the time of our fieldwork, however, VESID did not have a current listing of school districts ranked by KPI and other pertinent information to support the selection of districts that have been reviewed and/or are scheduled for review. We found that VESID officials had not prepared a formal analysis of the KPI and other relevant factors since 1997. This may explain why we found higher risk school districts were not identified for formal review.

Based on our discussion with VESID officials, they agreed that the 23 districts in question are higher risk districts and indicated that these districts would be scheduled for reviews in the future. Moreover, officials indicated that they plan to develop a more formalized process to identify districts for review.

Assessing District Classification and Placement Decisions

A major purpose of VESID's Collaborative Review is to determine if the required documentation is present in the files of special education students. The Collaborative Review also includes steps to determine if students receive the services they need based on the information in their files. However, VESID does not use the Collaborative Review, or any of its other reviews, to formally question the propriety of districts' placement decisions, including a student's need for specific related services. The officials told us that if a question about placement is raised during a review, it is handled informally with the district, and no record is made of the outcome of the inquiry. VESID officials told us they do not have the legal authority to overrule the determinations made by a CSE unless there is a clear-cut violation of law or regulation. We acknowledge this limitation, but we maintain that VESID's authority includes assessing the propriety of classifications and placements based upon available documentation, and advising district officials of any apparent inconsistencies between the placements and the supporting documentation. Moreover, if VESID does not consistently exercise its authority to review and question the appropriateness of the classification and placement determinations made by CSEs, there is increased risk that students may be improperly placed, provided with unnecessary services or not given services they do need.

For example, while our consultant found that files for all the students we selected for one upstate district that we visited were essentially complete, he questioned whether one student should be classified as a special education student at all. District officials agreed that the student's disability could be considered mild and said they will consider removing the student from special education at the next reevaluation of the student's IEP. At the same district, our consultant questioned a second student's placement in a special education classroom for tutorial and language arts skills because this student was above grade in reading, but well below grade in mathematics. Therefore, the placement did not address the student's most noted academic deficit, which was in math.

The consultant also noted minor to moderate inconsistencies between the available documentation and the program placement of six students in the three other upstate districts we visited. For three of these students, the consultant concluded

that less intensive programs could have been more appropriate than special education placement, based on the students' test scores, as documented in their files. Specifically, two (of these three) students were placed part-time in separate special education programs, with 15 students per teacher. According to our consultant, these two students could have remained full-time in regular education settings with assistance provided from resource room staff. The third student was placed in a resource room program. However, our consultant concluded that this student only required (even less intense) consultant teacher services or declassification support services. Regarding the other three students, our consultant concluded that their placements in special education programs might have been warranted. However, the need for (and/or description of) their placements was not well documented.

Recommendations

1. Annually perform a formal risk assessment, using KPI data analyses and other appropriate factors, to identify the school districts most in need of formal reviews.

(Department officials agreed with recommendation number 1 and stated that a formula-driven, data-based system for ranking districts will be used to develop the review schedule for the 2002-03 year.)

2. Target available formal review resources to those districts with the highest risk.

(Department officials agreed with recommendation number 2 with modification. Specifically, they indicated that they plan to focus the majority of their resources on the higher risk districts, while maintaining some presence in other types of districts.)

Recommendations (Cont'd)

3. During on-site district reviews, assess the propriety of special education classifications and placements, particularly if they are not adequately supported by available documentation. Formally advise district officials of any questionable classifications and placements identified during review and request explanations to clarify these classifications.

(Department officials agreed with recommendation number 3 with modification. They noted that CSE determinations are sometimes influenced by factors that may not be documented in the students' files. Thus, VESID staff question a student's placement recommendation only when it is egregiously divergent from the results of the student's evaluations, as documented in the files.)

SCHOOL DISTRICT POLICIES AND PRACTICES

According to IDEA, State Education Law and Department regulations, certain information must be in the student's IEP and the classification process must happen in a timely manner. At the six school districts we visited, we interviewed district officials to determine the process by which students are classified and placed in special education programs. We also reviewed a sample of the IEPs and other required files documenting 150 LD and ED students (25 students at each of 6 visited districts) to determine whether the IEPs were current and whether all required items were available. Our consultant reviewed certain of the available documentation to assess whether decisions for students' classifications and program placements were properly supported.

We concluded that the school districts we visited generally had adequate processes in place to classify and place students in special education programs. However, we also noted that certain required documents, such as functional behavior assessments, current psychological evaluations, related service evaluations, transitional service plans and evidence of fully attended CSE meetings were not available. For the 150 students in our sample, the files of 51 (34 percent) did not comply with one or more of the aforementioned documentation requirements. At the six visited districts, we noted that required items of documentation were missing for 12 to 60 percent of the students. (See Exhibit B.) The missing documentation represents information gaps that may diminish district ability to most effectively meet the needs of special education students.

Functional Behavioral Assessments

According to Department regulations and policy memos, a student's evaluation should include a variety of items, including a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others. The functional behavioral assessment should ascertain the physical, mental, behavioral and emotional factors that contribute to a student's suspected disabilities. The purpose of the functional behavior assessment is to observe a student's

interaction with his or her environment and to identify the student's specific problem behaviors. Based on this assessment, CSE officials develop a behavior intervention plan to prescribe support services and changes to the student's education program to help prevent problem behavior and avoid its consequences. This plan also provides support and assistance to the general education teacher by addressing the student's problem behavior in the classroom. Without these plans, the student's problem behaviors may interfere with his or her own academic performance and that of others.

At the six districts we visited, the overall noncompliance rate for functional behavioral assessments was 25 percent, as 38 students who should have had such an assessment did not receive it. District officials generally attributed the lack of functional behavioral assessments to a lack of staff training. They further indicated that special education staff recently received training on functional behavior assessments.

Psychological Evaluations

A formal psychological evaluation describes a student's developmental, learning, behavioral and other personality characteristics. A psychological evaluation is critical to determine if a student has special education needs and what programs and related services that student should receive. State regulations allow the school psychologist to determine when a psychological evaluation is needed. However, at one of the districts that we visited, we found that 6 of the 25 student files we reviewed did not include current psychological evaluations. Four students were missing evaluations altogether, and two had evaluations that were more than five years old at the time of our review.

Because timely psychological evaluations were not available for the six students in question, our consultant could not determine if these students were appropriately classified, placed and provided with appropriate related services. Subsequent to this site visit, district officials advised us they were making a concerted effort to bring the district's psychological evaluations up to date. Specifically, district management informed district psychologists of all outstanding evaluations. Officials also told us they would design a monitoring system to ensure that all necessary data is contained in students' files. District

management plans to include a checklist in each student file to help ensure all required records are prepared.

Related Service Evaluations

The CSE should ensure that a related service evaluation is prepared, when necessary, to help determine if a student needs speech/language and/or occupational therapies. If the evaluation indicates that any or all of these therapies are needed, the CSE typically recommends that these services be provided. Department regulations leave the determination of the need for related service evaluations to the discretion of the CSE. However, for seven of the students we selected for review, our consultant concluded that the need for related services could not be reliably confirmed due to the lack of supporting evaluations. Without a related service evaluation to justify the services provided, the potential exists for a student to receive unnecessary services. Also, if these evaluations are not done, students might not receive services they actually do need.

For several students, our consultant indicated that the absence of related service evaluations was significant. For example, the consultant found that one particular student had received the related service of speech/language therapy, however, a speech/language evaluation was not included in the student's IEP file. Officials of this student's district subsequently provided us with documented test scores identifying weaknesses in the speech/language area, however, without the related service evaluation, the district does not have adequate assurance that the student received services that were genuinely needed.

Transitional Service Plans

Department regulations require that a transitional service plan be prepared for special education students beginning at age 14. A transitional service plan is a coordinated set of activities for a student with a disability, designed to promote movement from school to post-school activities, including, post-secondary education, vocational training, employment (including supported employment), continuing and adult education, adult services, independent living or community participation. Without such planning, the student may not be adequately prepared to meet challenges after graduation from high school. For four of the students in our sample, the IEP did not include required

transitional service plans. At one district, officials advised us the district would complete a transitional service plan by the end of the 2000-01 school year. Officials in other districts where students did not have transitional service plans should also act to ensure that such plans are prepared timely.

Committee on Special Education Meetings

According to Department regulations, a CSE should include: a child's regular education teacher; a representative of the district who is qualified to provide, administer or supervise special education; a school psychologist; a school physician; a parent of a handicapped child residing in the district; and such other persons as designated by the district's board of education. Each member of the team has a specific area of expertise, which is an integral part of the development of each special education student's IEP. If a member of this team is not in attendance, the propriety of a CSE's decisions may be compromised. However, for seven of the students in our sample we found that a general education teacher was not in attendance at the CSE's annual review meeting. In these cases, the input of the general education teacher could have been significant because the students spent a portion of their days in regular education settings. Officials at the district where we noted most of these exceptions stated that district policy is to invite the general education teacher to the CSE meetings. However, their attendance is not always possible because of scheduling conflicts. Nonetheless, without the appropriate general education teachers present at CSE meetings, a district is not in compliance with State regulations. Moreover, districts should take steps to ensure that all members of the CSE are present for such meetings to minimize the risk of inappropriate classifications and/or placements of special education students.

Recommendations

4. Formally remind school districts to:
 - a. Prepare functional behavioral assessments for any student whose behavior impedes his or her learning or that of others;

Recommendations (Cont'd)

- b. Maintain sufficiently current psychological evaluations for all special education students;
- c. Prepare related service evaluations, when appropriate, for students for whom speech/language, occupational and/or physical therapies are considered;
- d. Develop and update transitional service plans for all special education students 14 years old and older; and
- e. Ensure that a regular education teacher, familiar with a student's regular education experience, attends the CSE meeting for each special education student.

(Department officials agreed with recommendation number 4 with modification. For example, they noted that districts are not required to perform psychological evaluations for all students with disabilities. Officials further noted that the statewide rates of non-compliance were 5 percent or less for four of the five items included in the recommendation. Nonetheless, officials acknowledged that non-compliance was more significant in certain districts we visited, and the lack of functional behavioral assessments is a significant statewide issue. Thus, the Department will review options to communicate this matter to the districts.)

- 5. Follow up with districts we visited to ensure they address the deficiencies detailed in this section of the audit report.

(Department officials agreed with recommendation number 5. They indicated that our report will be reviewed with VESID's Regional Supervisors who will instruct their staffs to address the deficiencies noted with the districts we identified.)

Districts With Potential Deficiencies Not Visited or Scheduled To Be Visited During the Five Years Ending 2002

School District	Number of LD Students	Number of ED Students	% of LD Students in MRE ¹	% of ED Students in MRE ¹	Proportionally More Minority Students in MRE ¹	Total Performance Indicators for Risk Met
Newburgh	796	111	39%	84%	Yes	13
Haverstraw-Stony Point	708	194			Yes	11
Longwood	806	210	38%	65%	Yes	10
Albany	833	314	45%	68%	Yes	9
Amityville	225	50	46%	70%	Yes	9
Beacon Hill	295	54	51%	70%	Yes	9
Elmira	493	131	39%	80%	Yes	9
Greece ²	1425	127	43%	70%	Yes	9
Monroe-Woodbury	650	80	57%	67%	Yes	9
William Floyd	855	145	67%	65%	Yes	9
Deer Park	166	16	37%		Yes	7
Lindenhurst	516	77	32%		Yes	7

Districts With Potential Deficiencies Not Visited or Scheduled To Be Visited During the Five Years Ending 2002 (Cont'd)

School District	Number of LD Students	Number of ED Students	% of LD Students in MRE ¹	% of ED Students in MRE ¹	Proportionally More Minority Students in MRE ¹	Total Performance Indicators for Risk Met
Mount Vernon	778	86	70%	85%	Yes	7
Ossining	162	71			Yes	7
Rush-Henrietta	477	83			Yes	7
South Orangetown	227	15		67%	Yes	7
Troy	360	69	47%	94%	Yes	7
Utica	596	52	52%	90%	Yes	7
Brewster	204	68				6
Center Moriches	113	28	37%		Yes	6
Elmont	144	22	38%	85%	Yes	6
Huntington	283	50			Yes	6
Valley Stream CHSD	252	51	39%	95%	Yes	6
NYS Average			31%	63%		

¹ MRE=More Restrictive Environment.

² In commenting on the draft report, the Greece Central School District provided data for the 2001-02 year (see Appendix B-7). The data in this exhibit is from December 1998.

Note: Blank Boxes indicate that the percentage of LD and ED students in more restrictive environments was below the statewide average.

Summary of Missing Requirements by District							
School District	Current Psych Evaluation	Functional Behavioral Assessment	Related Service Evaluation	Transitional Service Plan	All Team Members at CSE Meeting	Students Affected ¹	Percent of District Students Affected ²
Buffalo	0	5	0	1	6	11	44%
Elmira	6	13	1	0	0	15	60%
Guilderland	0	5	3	0	1	8	32%
Longwood	0	7	2	2	0	8	32%
CSD #15	0	5	1	1	0	6	24%
CSD #20	0	3	0	0	0	3	12%
Total	6	38	7	4	7	51	34%
Non Compliance Rate ³	4%	25%	5%	3%	5%	34%	NA

¹ Some students' files had more than one deficiency noted.

² This figure show the percentage of district students affected by one or more missing requirement in the 25-file sample at each district.

³ This rate shows the percentage of noncompliance for each requirement for the total 150-file sample at all 6 districts.

MAJOR CONTRIBUTORS TO THIS REPORT

Jerry Barber
Brian Mason
Karen Bogucki
Bob Elliott
Jerry Steigman
Adrean Vinson
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Nancy Varley



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY
12234

CHIEF OPERATING OFFICER
Tel. (518) 474-2547
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May 1, 2002

Mr. Jerry Barber
Audit Director
Office of the State Comptroller
110 State Street
Albany, New York 12236

Re: 2000-S-46

Dear Mr. Barber:

I have attached a response to your draft audit report (2000-S-46) on the State Education Department's oversight of school districts' special education classification and placement processes for school-age children. In addition, for your information, we have attached responses received from the Buffalo Public Schools, Greece Central School District and Elmont and Center Moriches Union Free School Districts.

If you have any questions, please contact Rebecca H. Cort at (718) 722-4558.

Sincerely,

Richard H. Cate

Attachment

cc: Lawrence Gloeckler
Rebecca Cort
Daniel Johnson

Appendix B

SED Response to Draft OSC Audit Report: 2000-S-46

Recommendation #1

Annually perform a formal risk assessment, using KPI data analyses and other appropriate factors, to identify the school districts most in need of formal reviews.

We agree with the recommendation. A formula-driven, data-based system for assigning point values and ranking school districts for the appropriate types of program review is being developed and will be used as the major factor when determining the review schedule for 2002-2003. The data are district key performance indicators which are related to VESID's strategic plan. The formula assigns weightings to these data in accordance with priorities assigned to the KPI categories. The end result of this process will be a program review schedule for each region of the State that will include the districts and other programs to be reviewed during school year 2002-03 and the type of program review each will undergo.

Recommendation #2

Target available formal review resources to those districts with the highest risk.

We agree with the recommendation with modification. While it is VESID's intention to assign most of its monitoring resources to those school districts whose data reflect the greatest deficiencies, it would be neither appropriate nor consistent with our federally mandated responsibilities to review only high risk districts to the exclusion of all others. Federal regulations require us to ensure that all programs comply with regulatory requirements. Targeting high risk districts only each year would result in many school districts in the State, whose KPI data are not widely variant with established goals, never being reviewed. In addition, regional staffing variations and limitations, especially given the current prohibition on filling vacant lines, delay the review of certain high risk districts if many are clustered in one area of the State.

What VESID has developed is a menu of program reviews that reflects and corresponds to the wide range of reported data. The lowest performing districts receive a collaborative review, while the highest performing districts receive a verification review. Average districts receive a performance review. Each regional schedule will reflect a small number of each of these types of reviews. The majority of next year's reviews, however, will be focused reviews, a new review type developed this year to address specific systemic problems (e.g., poor student achievement outcomes or placements in overly restrictive settings) identified through reported KPI data. Our intention is to focus the majority of our resources on the high risk districts, while still maintaining a monitoring presence each year in other types of districts.

Recommendation #3

During on-site district reviews, assess the propriety of special education classifications and placements, particularly if they are not adequately supported by available documentation. Formally advise district officials of any questionable classifications and placements identified during review and request explanations to clarify these classifications.

We agree with the recommendation with modification. The auditors acknowledge in this report that VESID officials "do not have the legal authority to overrule the determinations made by a CSE unless there is a clear-cut violation of law or regulation." These determinations are made by a multidisciplinary team and formalized at a meeting of the full Committee on Special Education (CSE), including the parents. VESID staff do not take part in the individual evaluation process, do not participate in CSE or other meetings related to a student and are not privy to preferences expressed by the parents. All of these are important factors in the process that results in a formal recommendation, and no written record is an adequate substitute for this kind of direct involvement. Therefore, even though VESID Quality Assurance staff does regularly review the relationship between individual evaluations and IEP recommendations, noncompliance can be identified only when the program or placement recommendation for a particular student is egregiously divergent from results of that student's evaluation, or when district summary data appear to indicate systemic noncompliance. However, regulatory violations that are directly related to the concerns identified above (e.g., missing evaluations, failure to consider less restrictive placement recommendations) are identified and cited by VESID. These violations result in the development of a Compliance Assurance Plan requiring corrective action to be taken by the district to resolve the issue(s). In addition, other concerns with various aspects of the evaluation/recommendation process are frequently discussed with district officials, even if they cannot be characterized as compliance issues.

Recommendation #4

Formally remind school districts to:

- a) Prepare functional behavioral assessments for any students whose behavior impedes his or her learning or that of others;
- b) Maintain sufficiently current psychological evaluations for all special education students;
- c) Prepare related service evaluations, when appropriate, for students for whom speech/language, occupational and/or physical therapies are considered;

- d) Develop and update transitional service plans for all special education students 14 years old and older; and
- e) Ensure that a regular education teacher, familiar with a student's regular education experience, attends the CSE meeting for each special education student.

We agree with the recommendation with modification. Regarding recommendations (b) & (c), school districts are not required to perform psychological evaluations for all students with disabilities nor are recent related service evaluations required for every student receiving such services. A school psychologist makes the determination of whether or not to conduct a psychological evaluation following an assessment of the student. Similarly, related service providers may complete annual reports that summarize the status and progress of the student. It would then be the responsibility of the CSE to determine whether an additional assessment was needed. Regarding recommendation (e), there are rare circumstances where a general education teacher is not a required member of the CSE, but we agree that in most instances this is a requirement.

It should be noted that in only one of the issues cited (Functional Behavioral Assessments), was the statewide finding of non-compliance greater than 5%. In general, we would not consider 95% compliance to represent a systemic problem requiring widespread corrective action. However, we recognize that the level of non-compliance was more significant in particular districts and we agree with Recommendation 5 below. We also agree that the lack of Functional Behavioral Assessments is a significant statewide issue. Subsequent to the changes in the reauthorized IDEA, VESID issued a field memo to all districts reminding them of their responsibilities in this area. We will review possible options for re-communicating this message.

Recommendation #5

Follow up with districts we visited to ensure they address the deficiencies detailed in this section of the audit report.

We agree with this recommendation. The full report will be reviewed with Regional Supervisors who will instruct regional staff to share the report and address the deficiencies noted in Exhibit B with each identified district.

Corrections

We would recommend that lines one and two of page two of the draft report be amended in the following manner: ". . . eventually be declassified to return to the general education curriculum" should instead read, ". . . eventually be declassified to return full time to general education classes." This reflects the requirement that all

* Note 1

* See State Comptroller's Note, Appendix B-5

students with disabilities, regardless of placement, have access to the general education curriculum.

Also on page two, lines 21 to 32, the report misrepresents the impact of state aid on placement by stating that "districts received additional weighting for the calculation of state aid claims for students in restrictive settings" when referring to students placed in classes separate from regular education settings 60 percent or more of the time. In fact, the funding methodology provides additional aid based on the intensity of services provided to pupils with disabilities regardless of the setting in which those services are provided. In addition, the most recent excess cost formulas have included an incentive if special education services for 60% or more of the day are provided in the general education environment.

*
Note
1

* State Comptroller's Note:

1. Certain matters addressed in the draft report were revised or deleted in the final report. Therefore, some Department comments included in Appendix B may relate to matters no longer contained in this report.



Marion Cañedo
Superintendent

BUFFALO PUBLIC SCHOOLS
712 CITY HALL
BUFFALO, NY 14202
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April 24, 2002

Mr. Thomas E. Sheldon
Associate Commissioner for Planning and Policy Development
New York State Education Department
89 Washington Ave.
Albany, NY 12234

Dear Mr. Sheldon,

The Buffalo School District is in receipt of a draft copy of the audit report from the State Comptroller's Office regarding the State Education Department's monitoring of school districts' practices to classify and place students in special education programs. The Buffalo Public Schools were found to have missing documentation in three areas: *Functional Behavioral Assessments*, *Transitional Service Plan* and *All team members at Committee on Special Education (CSE) meeting*.

Buffalo has procedures to ensure functional behavioral assessments are part of psychological evaluations when appropriate. The district's practice was to incorporate the functional behavioral assessment within their psychological report. The consultant reviewing the district felt that it should be a separate report. The school psychologist now has a separate form to complete and this form will be maintained in the folder with the students' s psychological evaluation.

The transitional service plan is now incorporated into our IEP. The IEP was changed this school year as a result of our Collaborative Review. Training on the proper completion of the transition plan with staff is scheduled this spring and early fall.

Finally our IEP's did have signatures of appropriate members attending the Committee meetings. Their titles however, were not indicated. We now require that team members at the CSE meeting sign their name and write their title. The majority of our CSE meetings are being held at the schools to ensure attendance by the general education teachers.

We appreciate being given the opportunity to respond to the audit report.

Sincerely,


Marion Cañedo
Superintendent

/dmi



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585.621.1000

DR. STEVEN L. WALTS
Superintendent of Schools

April 12, 2002

Mr. Thomas E. Sheldon
Associate Commissioner for Planning and Policy Development
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Mr. Sheldon:

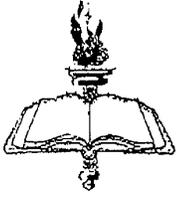
I am writing in response to the draft audit report we recently received where Greece Central School District is referenced. This letter is intended to correct the data listed on Exhibit A. The corrected data are:

School District	Number of LD Students	Number of ED Students	% of LD Students in MRE	% of ED Students in MRE
Greece - total district	1039	119	29%	61%
Greece - in district	1014	87	26%	33%

We appreciate these corrections being made. Thank you.

Sincerely,

Steve Walts
Superintendent



Elmont Union Free School District

REACHING AND TEACHING FOR EXCELLENCE

MARIA PALANDRA, Ph.D.
Superintendent of Schools

BARBARA SCHWARTZ
*Director of Pupil
Personnel Services*

April 22, 2002

Mr. Thomas E. Sheldon
Associate Commissioner
For Planning and Policy Development
New York State Education Department
89 Washington Avenue
Albany, NY 12236

Dear Mr. Sheldon:

I am in receipt of the draft audit report on the State Education Department's monitoring of school districts' practices to classify and place students in special education programs. The information contained in the report has been reviewed.

In the data presented, Elmont School District had 144 students classified as learning disabled with 38% in a more restrictive environment and 22 students classified as emotionally disturbed with 85% in a more restrictive environment. There was also proportionally more minority students in a more restrictive environment.

Upon examination of the BEDS data as of September 28, 2001 and the PD 1/4 dated December 3, 2001, there has been a change in the number of learning disabled students who are in a more restrictive environment. Using Report 3: Report of Students with Learning Disabilities Placed as of December 3, 2001, there are a total of 176 learning disabled students, 33 of these students are in a more restrictive environment. This equates to 18.75%, which is much lower than the New York State average of 31%.

Administrative Offices

135 Elmont Road • Elmont, NY 11003-1609 • 516 326-5500, Ext. 36 • Fax: 516 488-9079

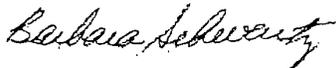
The percentage of emotionally disturbed students remains consistent. One of our goals is to establish a committee to examine our programs for emotionally disturbed students. Our goal is to provide an appropriate education for these students in the least restrictive environment.

The Elmont School District currently has a 68.5% minority population. In a more restrictive environment, the minority population is 73.8%. This is 5.3% higher than the district's minority population.

The Elmont School District is a suburban community composed of single family dwellings. Many times these single-family dwellings are occupied by multiple families. There are also a large number of foster children in the district. These two factors contribute to the school district having a large number of transient students.

We are currently making every effort to provide an appropriate education for each student in the least restrictive environment.

Sincerely,



Barbara Schwartz
Director
Pupil Personnel Services

cc: Dr. Maria Palandra

BS/map
(NYS minority placement)

Center Moriches Union Free School District

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Superintendent of Schools

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April 24, 2002

Mr. Thomas E. Sheldon
Associate Commissioner for Planning and Policy Development
New York State Education Department
89 Washington Avenue
Albany, NY 12234

Dear Mr. Sheldon:

The Center Moriches Union Free School District has been cited under Chapter 405 in several areas based on the 1998-99 data. I became the Director of Special Services in the Center Moriches Union Free School District in September 1999 and identified similar difficulties. We have worked to remedy these issues and have made significant gains over the past 2½ years. The following data indicates what has been accomplished to date.

Problem Area #1: High special education classification rate.

Data Source	PD-1; BEDS
1998-99	17.5%
1999-00	16.7%
2000-01	16.3%
2001-02	13.9%

Problem Area #2: Low preschool declassification rate.

1998-99	12%
1999-00	8.3%
2000-01	33.3%

Problem Area #3: Low school-age declassification rate.

1998-99	4.0%
1999-00	3.7%
2000-01	7%

Problem Area #4: High rate of school-age students (Ages 6-21) in separate education settings outside of the district (BOCES).

1998-99	18.1%
1999-00	16.0%
2000-01	14.0%
2001-02	12.7%

Problem Area #5: Disproportionate overrepresentation based on race/ethnicity, in the identification of school-age SWD; or in the identification of students by particular disabilities.

Date	Am. Indian	Black	Hispanic	Date	LD	ED
				1998-99	112	28
1999-00	25	31	11	1999-00	112	16
2000-01	23	23	20	2000-01	118	18
2001-02	27	18	17	2001-02	104	14

We are responsible for educating the Unkechaug Indian Nation. Due to the presence of this reservation, we have a higher number of Native Americans in the district and special education.

Over the past three years, Long Island has experienced high Hispanic immigration. The number of Hispanic students within the district has risen as follows:

	District	Sp. Ed.
1999-00	52	11
2000-01	71	20
2001-02	79	18

Many of the Hispanic students are from the rural areas of Latin America have not attended school consistently.

In addition, many students move into our district already classified. For example 2000-01, 17 classified students entered the Center Moriches Union Free School District.

Although we are not where we want to be, we have demonstrated *significant improvement* since the 1998-99 school year, on which the Chapter 405 report was based.

If you require further information, please contact my office.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Cunningham".

Patricia Cunningham
Director of Special Services

PC:mj