

Setting Higher Standards
For Special Education In New York City

A Report of the Citizens Budget Commission
December 2002

Foreword

Founded in 1932, the Citizens Budget Commission (CBC) is a nonpartisan, nonprofit civic organization devoted to influencing constructive change in the finances and services of New York State and New York City governments. This report was prepared under the auspices of the CBC's Technology and Public Services Committee, which we co-chair. The other members of the Committee are: Paul F. Balsler, Marc H. Bell, Alan M. Berman, Mark Brossman, Lawrence B. Bittenwieser, Morton Egol, Kenneth D. Gibbs, Peter C. Hein, Brian T. Horey, Jerome E. Hyman, David B. Kelso, Barbara Shattuck Kohn, Hugh R. Lamle, James L. Lipscomb, Stanley Litow, William F. McCarthy, Frank J. McLoughlin, David I. Moskovitz, Steven M. Polan, Jules Polonetsky, Carol Raphael, Edward L. Sadowsky, Lee S. Saltzman, Larry A. Silverstein, Joan Steinberg, Robert W. Strickler, Robert V. Tishman, W. James Tozer, Jr., Ronald G. Weiner, Howard Wilson, and Eugene J. Keilin, ex-officio.

The Technology and Public Services Committee has a mandate to review the delivery of municipal services and recommend ways that these services can be delivered more efficiently and effectively. Since 1997 the Committee has emphasized the use of information technology to change the way government operates and improve the productivity of State and City agencies. In 1998 it issued its first report pursuing this theme, *Opportunities to Improve Municipal Revenue Collection by Using Information Technology*. That report identified ways that revenue collection could be simplified in order to save the City administrative costs, and provide even greater savings to private firms and households in reduced time required to file tax forms and other paperwork.

In 2000 the Committee released a review of the New York State Department of Correctional Services, *Making More Effective Use of New York State's Prisons*, which considered alternative sentencing policies as well as some technological innovations in prison management. The annual savings from the recommendations in that report were estimated at nearly \$100 million annually. Also in 2000 this Committee joined forces with the CBC's Budget Policy Committee to issue two reports focusing on the then-current round of collective bargaining between the City and its unions—*Using Collective Bargaining to Improve Public Education* and *The Citizens' Stakes in Collective Bargaining*. While examining a wide range of measures to improve productivity, these reports recommended bargaining strategies that would facilitate technological changes to make possible the Commission's goal of a smaller and better-paid municipal workforce.

As the City's fiscal and economic situation deteriorated in 2001 and 2002, the need for a more efficiently managed municipal budget became more urgent. In response, the Committee embarked on a research plan to identify additional opportunities to increase productivity and efficiency in the City's operations. These opportunities can be found not only in collective bargaining but also in other areas of the budget.

This research plan has led to five projects in 2002 to assist the City to develop a plan to improve productivity in all City agencies. First, the Committee released a report outlining how better use of information technology could save the City \$200 million per year by streamlining the procurement process. That report, *No Small Change: Opportunities for Streamlining Procurement in New York City*, appears to have helped spawn a Mayoral procurement reform initiative in fiscal year 2003.

This report suggests how to provide more effective and efficient special education services to the 160,000 students who currently receive them. New York City should finally comply with the federal requirement that these students be educated with their non-disabled peers to the maximum extent possible. Preventive services to students at risk of being classified as disabled due to problem behaviors and academic failure should be intensified. Moreover, City leaders should take steps to streamline the provision of non-instructional services, such as transportation and administration. Together, these initiatives are estimated to save more than \$260 million per year.

The remaining three projects in this effort address reform of the City's energy conservation program, more efficient deployment of personnel in the Police Department, and extension of the workweek for the City's civilian employees to 40 hours. This report was prepared in conjunction with a conference organized by the Citizens Budget Commission to help the City of New York develop policies to balance its budget. The conference and related material were made possible by generous support from the Charles H. Revson Foundation, the Rockefeller Foundation, and the Nathan Cummings Foundation. The views expressed are solely the responsibility of the Commission.

A preliminary draft of this report was reviewed by the following individuals: Carmen Alvarez, Jill Chaifetz, Rebecca Cort, Dorothy Lipsky, Maggie Moroff, Dorothy Siegel, and Linda Wernikoff. Their willingness to review the report does not necessarily imply endorsement of the recommendations. The comments and suggestions based on their careful readings enabled the Commission to correct errors of fact and interpretation and to clarify the reasoning behind our recommendations. We thank all the reviewers for their invaluable efforts.

Elizabeth Lynam, Senior Research Associate, prepared this report. Sheila Spiezio, Research Consultant, provided research assistance on the transportation section. Charles Brecher, Director of Research, provided editorial assistance. Nikki Macdonald, Publications Coordinator, prepared the report for publication. An electronic version of the report is available on the CBC's website at www.cbcny.org.

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Executive Summary

Special education in New York City has three distinguishing features: (1) It reaches many children—about 168,000. (2) It is expensive, costing about \$18,919 annually per child for a total of \$3.2 billion. (3) It does not work well for most students. Only one of every six of these students eventually receives a diploma.

The Nature of The Problem

The dismaying situation is caused by three factors—the City relies too heavily on the most restrictive settings for conducting special education, the City has too many students classified as needing special education, and the City provides support services inefficiently.

Heavy Reliance on Restrictive Settings

The unique features of New York City's pattern of placements are an unusually high proportion of students spending more than 60 percent of the time outside regular classrooms and an unusually small percentage spending between 21 and 60 percent outside the regular classroom. The share of the City's students in the more restrictive settings (44 percent) is more than double the national figure; the miniscule proportion in the middle range settings (just over 1 percent) is way behind the national figure (29 percent). Districts in the rest of New York State have a proportion of students in the more restrictive settings that is close to the national average (21 versus 20 percent). The rest of the state also has a share in the middle range that is much closer to the national average (20 versus 29 percent) and nearly thirty times the proportion in New York City.

Too Many Special Education Placements

Although New York City's share of students in special education is not extremely high, it is higher than the average for comparable districts. Among 23 comparable large, urban districts, the median share of students in special education is 10.8 percent. New York City's share is a higher 11.6 percent, ranking it seventh.

New York City has been identified by federal and State governments as a district with a high representation of minorities in special education. The main concern has been overuse of the emotional disturbance classification, where an absence of clear-cut diagnostic criteria leads to subjective judgments. An emotional disturbance disability classification is more damaging than others, because these children do more poorly than other disabled students and are less likely to return to or be integrated into the general education classroom.

Inefficiencies in Non-Instructional Services

In New York City special education services are made more expensive by inefficient practices in the way the City provides non-instructional services. This is evident in transportation services, administration, and student evaluations.

Transportation. The Department of Education is responsible for providing transportation to and from school for regular and special education students who require it. For special education students, determining their transportation needs is part of the evaluation process, and some require special busing. Providing this service costs about \$384 million annually, or an average of \$6,146 per student transported.

Part of the high cost of these transportation services may be unavoidable. Some students are physically disabled and severely emotionally disturbed, requiring attendants, as well as drivers, to help them. Other students, mainly in private schools, can only receive services at facilities far from their homes, requiring transportation out of the city on a daily basis.

However, transportation costs have become expensive for two reasons. First, heavy reliance on separate, centralized placements require that many students be bused from home to the centralized placement. Second, many students served locally are bused when they could be assisted in using other modes along with regular students. The share of special education students assigned to special routes has grown from 54 to 75 percent between 1990 and 2001.

Administration and Evaluation. New York's high staffing levels for administrators and evaluators suggest inefficiencies in these areas. Three examples help to explain the numbers. First, New York City has a large number of evaluators. In many jurisdictions these positions do not exist. Instead, special education teachers serve on evaluation committees and provide relevant expertise. Second, New York City's practice of maintaining both a district evaluation committee and school-based evaluation team bloats staffing. Third, New York City evaluators recommend related services, such as counseling, speech therapy, and occupational therapy, more frequently than do their counterparts in other districts.

Recommendations

In order to improve the outcomes for its special education students, the Department of Education should aggressively implement three basic reforms.

1. Move students from more restrictive to less restrictive environments.

The most important problem in New York City's special education program is an over-reliance on segregated, "self-contained" classrooms. The share of students in these restrictive settings is more than twice the national average, and there are virtually no options for

students in the middle of the special education continuum. The Department should promote a full spectrum of teaching arrangements, and give priority to options in the middle of the continuum that are practical for system-wide application. Affordable models that support special and general education students in integrated environments should be relied upon most heavily.

The development of diverse options for integration is best accomplished at the school level under the leadership of committed principals. Recent studies document the importance of the principal in promulgating new pedagogy and developing collaborative student support teams. In order to accomplish similar changes in New York City, principals should be given more responsibility for special education students and for providing them with effective services in inclusive settings. Among the necessary measures are:

A. Train principals in the methods necessary to implement inclusion successfully. As the leaders of their schools, principals need to understand how to facilitate the necessary collaboration between general and special education personnel.

B. Give responsibility for more special education students to the principal of their neighborhood school. Currently, 21,000 students are in a citywide district serving special education students. To the maximum extent possible, these students should be returned to their home schools, but the students should not be shifted to community districts with inadequate support. The significant experience of the central district's personnel should be strategically leveraged in the community school districts to help develop local capacity.

C. Hold principals accountable for the outcomes of special education. Test outcomes for special education students should be incorporated in the Department's principal review process. Other measures of student outcomes, such as graduation rates and participation in school-to-work transition programs, should also be used in principal performance evaluations.

While the public schools should be the focus of efforts to shift students to less restrictive environments, private school placements are also a relevant concern. Private schools are expensive and restrictive, and they should be relied upon only in the most extreme cases. In order to reduce private school placements, the Department of Education should improve its ability to design suitable placements and develop parental confidence in its capacity to do so.

2. Reduce placements by using more preventive services.

The Department of Education should prevent some placements in special education. This does not mean that students who need special services should be arbitrarily rejected; instead the Department should support students with problems more effectively in the general education classroom. The key to maintaining successfully at-risk students in the general classroom is training teachers to individualize curriculum and to manage problem behavior.

Since effective teaching methods are critical, teacher training is important. But professional development for teachers in New York is poor relative to other states. The Department of Education should prepare and train general education teachers to meet individual needs.

Best practice appears to be a program initiated in Chicago. Its application in New York would let about 6,400 students receive preventive services in regular classrooms rather than in special education.

3. Provide Non-instructional Services More Efficiently.

Transportation, student evaluations, and administrative support are characterized by inefficient practices. In each case it is possible to provide these services at a reduced cost.

A. Reduce transportation costs. Transportation costs for special education students can be reduced in two ways. Some students who now have special arrangements should be given the training and support necessary to enable them to use conventional modes. This not only saves money, it also equips the children with a valuable life skill. Returning a portion of students from centralized placement to their home schools also will save transportation costs.

B. Streamline the Evaluation Process. Although federal law dictates many elements of student evaluations, New York State and City have added features that are unnecessary and costly. The primary source of duplication is the Department's maintenance of a School Based Support Team (SBST) at every school. SBST's could cover more than one school, or the number of positions funded in each school could be reduced. Equally important, SBST workloads would be reduced with fewer referrals due to greater use of preventive services.

In addition, more flexible staffing arrangements can reduce the need for some evaluation personnel. The presence of a special education teacher and an evaluator at mandated annual and triennial service plan reviews is duplicative. Only the student's special education teacher need attend.

C. Reduce administrative staff to national norms. New York's high ratio of administrators to students should be brought in line with national averages. This can be accomplished along with educational improvements by using information technology more effectively. The Department of Education should automate the cumbersome and time-consuming tasks of tracking the status of and services provided to special education students.

Fiscal Implications

The special education reforms described above would provide better services to students while reducing costs. The total net savings are \$267 million per year.

Moving students into less restrictive settings has fiscal as well as educational benefits. Reducing New York City's share of students (44 percent) spending more than 60 percent of their

time in special education to the average share for the rest of the State (21 percent) would move about 33,000 students to a less restrictive setting and save a total of \$118 million annually.

Although the share of New York City students in special education is not strikingly high relative to comparable large school districts, there is room for improvement. These students are likely to require some additional resources even while in general education settings, but the savings would still reach about \$49 million annually. In addition, if the City can keep the growth of private school payments flat by meeting all procedural requirements, it can save more than \$10 million.

More efficient transportation arrangements would save \$35 million annually. These savings arise in two ways. First, reassigning a portion of the students in central placements to their home districts will reduce transportation needs. This would save \$28 million annually. Second, transportation efficiencies are also possible for special education students currently served at their local school district. Many of the students now receiving special busing ought to have some assistance with transportation, including special training to help adjust to alternative arrangements, but could be transported without special busing. This initiative would save \$7 million annually.

As prevention measures in general education are enhanced and the number of referrals to special education go down, the SBST's should be restructured. The estimated savings, based on eliminating half the current positions, is \$83 million annually.

Streamlining administration would save \$22 million. Better use of technology and the implementation of an electronic case folder model for tracking students is likely to reduce administrative costs at least 10 percent, or about \$8 million per year. Moving a portion of the students in centralized placements to local school settings will reduce central administrative costs by an estimated \$14 million annually.

Finally, in order to make the recommended changes work effectively, some of the savings should be invested in more extensive training for principals and teachers. As general education teachers are asked to adapt their teaching methods to accommodate students with disabilities and to work collaboratively with special education professionals, they should be given suitable support. An average investment of \$50,000 per school would require about \$50 million. This would bring the net savings from special education reform to \$267 million.

Introduction

Special education refers to the services provided to students classified as disabled. The nature of their disabilities and their service needs vary widely. Three basic facts make a strong case for giving priority to improving special education in New York City.

First, it involves many children. Nearly 168,000 children receive some form of special education support.

Second, they are expensive. The average annual cost per child is about \$18,919 making total annual expenditures reach \$3.2 billion.

Third, and most important, they do not work well for most students. The educational outcomes for children in special education are too often highly disappointing. Only one of every six of these students eventually receives a diploma; fully 61 percent drop out of school and another 21 percent continue in school, but reach maturity without obtaining a diploma. Only about two in ten is able to pass any Regents exam in mathematics or in English. (See Table 1.) These results are unacceptable not just as an absolute standard, but also relative to other areas. In the four other large cities of New York State, nearly twice as many students get diplomas; in the rest of the state as a whole, 57 percent earn a diploma.

Table 1
Outcomes for Special Education Students
New York State, Large City Districts, and New York City

<u>School District</u>	<u>Exit Status^a</u>				<u>Pass Regents Exam^b</u>	
	<u>Receive Regents or Local Diploma/GED</u>	<u>Receive Special Ed Diploma/Certificate</u>	<u>Drop Out</u>	<u>Aged Out at 21</u>	<u>English</u>	<u>Math</u>
New York City	17.6%	18.1%	61.2%	3.0%	18.7%	18.0%
Large City Districts	32.2%	27.8%	39.1%	0.8%	14.9%	10.4%
Rest of State (Excludes "Big 5")	57.3%	18.7%	22.7%	1.3%	42.2%	45.5%

Source: State of New York, The State Education Department, *New York: The State of Learning, A Report to the Governor and the Legislature on the Educational Status of the State's Schools*, June 2002.

Notes: ^a Data are for 2000-01 school year. ^b Regents exam results are as of June 2001 for the cohort of students entering high school in 1997 and taking the exam since then.

This report analyzes the causes of such poor performance in New York City's special education services and recommends measures to improve them. The remaining five sections of the report: (1) present background information on the nature of special education; (2) define and document more fully the nature of the problem in New York City; (3) describe recent actions by the State and City of New York to address the problem; (4) make recommendations for additional improvements; and, (5) consider the fiscal implications of those recommendations. The measures suggested, if done well, would significantly improve the educational outcomes for children while *saving* more than \$260 million annually.

Evolution of Special Education

The current, local system of special education is grounded in federal requirements that date from legislation initially passed in 1975 and subsequently amended. The federal requirements are supplemented by New York State law, Commissioner's regulations, and judicial decisions in cases filed against the New York City Board of Education and the State Education Commissioner. These legal requirements, together with local policy decisions, have created a highly structured and complex process for determining the services to be provided to needy children.

The Federal Context

Before 1975 children with disabilities were routinely excluded from public schools. Compulsory education laws, in place since 1918, were largely ignored for this population or explicitly excluded them. Parents were encouraged to keep their children at home or place them in institutions.

In 1975 the federal government heeded calls for change from parents and enlightened educators. The Education for All Handicapped Children Act, also known as Public Law 94-142, required schools to provide children age 5-21 with a broad range of disabilities—including physical limitations, mental retardation, language problems, emotional problems, and learning disabilities—with a “free appropriate public education in the least restrictive environment possible.” Amendments in 1986 extended the requirement to preschool age children (3-5) with the intention that early intervention would reduce the need for special services during the children's later educational careers. (See Table 2.)

The federal law was re-authorized and renamed the Individuals with Disabilities Act (IDEA) in 1990. That legislation also added requirements for transitional services from school to post-school for disabled youth aged 18 to 21. The IDEA was re-authorized in 1997 with stronger provisions requiring that public schools enable special education students to progress in the same curriculum offered other students. The intention was to encourage inclusion of disabled students in instructional activities with their counterparts in the general education program. Thus, current federal law requires public schools to offer students from age 3 to 21 with special needs an individually tailored program that takes place in the least restrictive environment possible and that enables them to participate with and learn the same material as other students to the maximum extent feasible.

Table 2
Summary of Legal Actions Relating to Special Education

<u>Jurisdiction and Action</u>	<u>Date</u>	<u>Provisions</u>
Federal		
The Education for All Handicapped Children Act (EAHCA), Public Law 94-142	1975	* Free, appropriate education for all children w/ disabilities (5-21) * Required Individualized Education Plan * Stressed delivery of service in the Least Restrictive Environment (LRE) possible
Amendment to EAHCA, Public Law 99-457	1986	* Extended services to Pre-k (ages 3-5) * Required an Individualized Family Service Plan for Pre-k
Individuals with Disabilities Education Act (IDEA), Public Law 101-476	1990	* Reauthorized PL 94-142 * Required transitional services from school to work for ages 18-21
Reauthorization of IDEA	1997	* Requires that students with disabilities progress in the "general curriculum" taught to all students
New York City/New York State		
<i>Jose P. v. Ambach</i>	1979	* Consolidated three class-action lawsuits. * Consent decree required Board of Education to: 1. Increase resources for timely evaluation and placement 2. Develop informational materials for parents 3. Reduce physical barriers that kept children with physical disabilities out 4. Eventually expanded to specify remedies for parents whose rights were violated 5. Eventually expanded to include bilingual education services 6. Eventually expanded to shift focus to placements in the LRE
MOU between Board of Education and the U.S. Office of Civil Rights (OCR)	1997	* Sought remedy to the overrepresentation of English Language Learners and minorities in special ed referral, certification, and placement in restrictive settings * MOU has expired.
New York Education Law Section 4403 (21) & (22). ("Chapter 405")	1999	* Required NYS Educational to identify districts with high rates of identification, low rates of declassification, high rates of placement in restricted settings, and significant racial or ethnic disparity in these statistics. * NYC received a Chapter 405 citation in Spring of 2001
<i>Ray M. v. New York State Department of Education</i>	1999	* Requires State and City to place preschool children in the LRE * Ray M. requirements have ended.

Sources: Rafferty, Yvonne, *Creating High Quality Inclusion Programs for Preschoolers with Disabilities in New York City, A Guide for Preschool Providers* (NY: Advocates for Children of New York, Inc., February 2002), p. 16; The Least Restrictive Environment Coalition, *Still Waiting, After All These Years. . . Inclusion of Children with Special Needs in New York City Public Schools*, November 2001.

As a result of these mandates, special education has become a major national enterprise. When PL 94-142 first took effect, 3.9 million children were in special education. In 2000, about 6.2 million students received special education services at a cost of \$50 billion.¹ The total cost of educating these children, including the regular education services they receive, was \$78 billion. This represents 22 percent of all public expenditures for education in the United States.²

¹ Jay G. Chambers, Tom Parrish and Jenifer J. Harr, American Institutes for Research for the U.S. Department of Education, Office of Special Education Programs, *What Are We Spending on Special Education Services in the United States, 1999-2000?*, March 2002, p. v.

² *Ibid.*, p. v.

New York City's Experience

At the start of the 1970s, the New York City Board of Education had 184 special education classes serving about 1,000 children, a small fraction of those in need.³ To account for the under-served population, the Board kept a “Medical Discharge Register” that listed the students excluded from school because of a disability.

Special education reform efforts accelerated after conditions at the Willow Brook State School in Staten Island were exposed. In 1972 the journalist Geraldo Rivera brought to national television an exposé on the appalling treatment of Willow Brook residents, mostly disturbed and disabled children. They were filmed living in their own filth in a state of utter neglect and abuse. The documentary enraged the public, mobilized parents and advocates, and set off a wave of lawsuits that challenged policies extending from residential services to public education.

In 1973 the New York State Commissioner of Education ordered the City to remedy delays in the evaluation and placement of children. But the Board of Education proved inadequate to the task. After passage of PL 94-142 in 1976 conditions worsened, as the Board tried to cope with new mandates in the midst of a fiscal crisis. Litigation followed.

In 1979 a federal class action suit, known as *Jose P. v. Ambach*, was filed in Brooklyn. Two other lawsuits were filed at the same time: *United Cerebral Palsy v. Board of Education* and *Dyrcia S., et al. v. Board of Education* focused on the problems of mobility-impaired and Spanish-speaking students, respectively. The three cases were eventually consolidated and are known as *Jose P.*

Judge Eugene Nickerson appointed a special master to “make recommendations as he deems appropriate as to what decree the Court should enter to provide the requisite public education to handicapped children of the City of New York.”⁴ Thus began a system of court oversight and management of the City’s special education program that continues to the present day.

The system for managing special education has five steps, each prescribed in detail. The first step is referral for special education services. A referral is a written request that the school district evaluate a child to determine whether or not the child is disabled and if so, what if any, special services may be required. The referral is addressed to a school principal or to the chairperson of the school district’s Committee of Special Education (CSE), or Committee of Preschool Special Education (CPSE) in the case of a young child. A referral can be generated by a parent, the child’s teacher, a professional in the child’s school, a doctor, a judicial officer (such as a family court judge or a probation officer), or a designated person in a public agency.

³ The Least Restrictive Environment Coalition, *Still Waiting, After All These Years...Inclusion of Children with Special Needs in New York City Public Schools*, November 2001, p. 20.

⁴ *Ibid.*, p. 21.

After referral, the second step is evaluation. A parent or guardian is asked to give written consent for the evaluation. If consent is refused for a preschool child, the evaluation cannot go forward. If consent is refused for a school age child, the school district can request an impartial hearing with an officer certified to conduct hearings by the State Education Department and may go forward with the evaluation if the parent's objections are overruled.

The evaluation must be provided at no cost to the parent and must include: (1) a physical examination; (2) a psychological evaluation (if determined appropriate for school age children, but mandatory for preschool children); (3) a social history; (4) an observation of the child in his or her current educational setting; and, (5) other tests or assessments deemed appropriate, such as a speech and language assessment. If the child is 12 or older, then the evaluation also includes a vocational assessment. A parent who disagrees with the evaluation or believes it to be inappropriate can obtain, and request that the school district pay for, an independent educational evaluation.

After the evaluation is completed, the third step is an eligibility determination. In New York City the district CSE often makes this decision or it may delegate it to a sub-committee called a School Based Support Team (SBST), which operates at a school rather than district level. The CSE or SBST meets to determine whether the child is disabled. To be deemed eligible, the child must have one or more conditions specified by New York State based on federal guidelines. These conditions are—autism, deafness, deaf-blindness, emotional disturbance, hearing impairment, learning disability, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, speech or language impairment, traumatic brain injury, or visual impairment.

If a child is classified as disabled, the fourth step is developing an appropriate Individualized Education Program (IEP). This is done by the SBST or CSE. The IEP sets goals for the student and specifies what services, including accommodations, the child needs to achieve those goals. The IEP also specifies where those services will be provided. Federal law requires that the placement be in the least restrictive environment (LRE) feasible. To the maximum extent appropriate a child with a disability must be educated with children without disabilities. Removal from general education should only occur when the nature or severity of the disability is such that satisfactory education in regular classes with supports is not possible. In addition, a LRE placement should be as close as possible to the child's home, preferably in the school the child otherwise would have attended.⁵

The fifth step is an annual review of the IEP and a triennial reevaluation. The IEP may be modified annually to ensure that appropriate services are being provided and to revise the student's goals accordingly. Every third year the student's eligibility for special education services is reevaluated. Additional reevaluations can be initiated in the intervening years at the request of a parent or teacher.

⁵ The Least Restrictive Environment Coalition, *The Law on Special Education Services in The Least Restrictive Environment for New York City Students*, <www.lrecoalition.org/02__LawsOnLRE/index.htm> (May 13, 2002).

Throughout the process parents have due process rights protected by State and federal laws. They must receive written notice in their primary language, they must give written consent for certain actions, and if they disagree with the decisions of the CSE or SBST they can ask for mediation and/or impartial hearings to resolve disagreements. The laws, regulations, and court also set standards for timeliness in decision-making. A child being evaluated for special education services for the first time must be placed in an appropriate program within 60 school days from the date the school district received consent to evaluate the child. For children already receiving special education services, a similar deadline applies for the annual review.

Complying with the federal laws and judicial oversight has led to an enormous increase in the scale of special education in New York City. About 60,000 children were in special education in the late 1970s; by the mid-1990s the number exceeded 150,000. (See Table 3.) Special education enrollment continued to increase from 1996 to 2000, exceeding 168,000 in the later year. In 2001 special education enrollment declined, albeit slightly, for the first time in recent history.

Of the approximately 168,000 special education students, about 77,000 are in “more restrictive” placements. This refers to a relatively small number who are taught at home or in a hospital, and a much larger group (over 75,000) who are placed in “self-contained” classrooms. These are classes consisting only of special education students, taught by teachers specializing in this type of service. The classes are typically smaller than regular classes, and the students spend little or no time during the school day outside this setting. About four-fifths of these classes are located in existing public schools and are under the jurisdiction of the principal at that school; about one-fifth are at locations under the jurisdiction of a separate citywide school district, known as District 75, which serves only special education students. District 75 operates separate schools and programs in community school district facilities. Generally students referred to District 75 have more serious problems than those in other settings.

About 70,000 special education students are in “less restrictive” settings. This group spends the majority of their school day in a regular classroom. Of the types of service they receive, a large majority, about 46,000, get “resource room” for a part of the day. This supplemental instruction is provided in a separate classroom for special education students, or to a small group in the general education classroom. About 18,000 students spend more time in a regular classroom, but receive special instruction or supportive services (such as speech therapy or counseling) during a part of the day. Another 6,000 students are in “integrated” classrooms that are designed to deliver services without removing the student from general education for any portion of the day.

The remainder of the special education students—some 20,000—are taught, at public expense, in private settings. About 14,000 are in preschool programs. Because of space constraints, many school districts opt to use non-profit contractors to operate preschool programs. These organizations typically specialize in special education services. Finally, about 5,600 school-age special education students are in private schools. The Department of Education pays for these private placements under three circumstances. First, the CSE has recommended a State-approved private school as uniquely suited to meet the child's needs. In this situation the

State pays about 80 percent of the tuition. Second, the parent has demonstrated through an impartial hearing that the public system is unable to provide an appropriate program for the child. Third, the Department has failed to meet the child's needs in a timely way and the parent initiated the private placement. About 4,500 private school students fall into the first category, and 1,100 are in the latter two categories.

Table 3
New York City General Education and Special Education Enrollment
Fiscal Years 1996 to 2001

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
TOTAL PUBLICLY SUPPORTED ENROLLMENT	1,074,510	1,093,890	1,102,365	1,111,674	1,119,865	1,125,093
Publicly Funded Special Education Enrollment	151,419	161,006	164,232	166,401	168,172	167,787
Less Restrictive Environment	57,608	62,778	65,300	67,369	69,362	70,415
Related Service	9,986	12,585	13,590	14,817	15,765	16,705
Consultant Teacher	523	740	1,047	1,442	1,746	1,780
Resource Room	46,436	48,506	48,733	47,854	46,985	45,608
Integrated Preschool	315	455	582	615	581	672
Integrated School Age	348	492	1,348	2,641	4,285	5,650
More Restrictive Environment	76,645	79,943	80,510	80,429	79,257	77,324
Regional Self-Contained Classroom	58,114	60,960	61,517	60,799	59,345	58,123
Citywide Self-Contained Classroom	15,583	15,878	16,144	16,665	17,001	17,013
Home Instruction	1,790	1,843	1,894	1,967	2,138	1,445
Hospital/Agency Program	1,158	1,262	955	998	773	743
Nonpublic Programs Supported with Public Funds	17,166	18,285	18,422	18,603	19,553	20,048
Preschool	NA	NA	13,332	13,458	14,154	14,430
School Age	NA	NA	5,090	5,145	5,399	5,618
Publicly Funded Special Education as a % of Total Public Enrollment	14.1%	14.7%	14.9%	15.0%	15.0%	14.9%

Source: City of New York, Mayor's Office of Operations, *Mayor's Management Report*, Volume II: Agency and Citywide Indicators, fiscal year 1996 to 2001 editions.

The large and growing special education population consume a sizable share of the public schools' resources. From fiscal year 1996 to 2001, spending for special education grew 37 percent and in the later year represented 26 percent of the total or about \$3.2 billion. (See Table 4.) Spending for a special education student averaged \$18,919 annually, compared to \$8,944 for a regular education student.⁶ Among special education students, the cost is greater for those in the more restrictive settings (about \$28,810), and is greatest for those in the citywide self-contained classrooms (about \$42,599).

Most of the money goes for personnel, and the special education workforce is also a large share of the total. (See Table 4.) Special educators, administrators, and support service workers comprised 23.7 percent of the Department's total employees, while special education represents 14.9 percent of the Department's students.

⁶ City of New York, Board of Education, *School Based Expenditure Reports, Fiscal Year 2000-2001*, Systemwide Summary, January 2002.

Table 4
New York City
Special Education Expenditures and Personnel
Fiscal Years 1996 to 2001

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Special Education Spending (\$ in millions) ^a	\$2,282	\$2,362	\$2,569	\$2,716	\$2,945	\$3,174
as a share of total education spending	27.4%	27.8%	27.4%	26.8%	26.9%	26.3%
Per Pupil	\$15,070	\$14,669	\$15,640	\$16,325	\$17,513	\$18,919
Special Education Personnel	26,427	27,412	31,392	33,561	34,936	32,798
Community School District Instruction	9,948	10,477	12,284	13,579	14,701	12,782
High School Instruction	3,487	3,531	3,899	4,067	4,219	4,288
Citywide Instruction	8,184	8,226	9,786	10,409	10,206	10,207
Support Services	3,531	3,746	3,864	3,767	3,888	3,904
Administration	775	735	694	657	726	762
School-based Administration	502	697	865	1,082	1,196	855
Non Special Ed Personnel	86,966	89,342	97,451	98,122	101,949	105,733
Special Ed. as a % of Total Personnel	23.3%	23.5%	24.4%	25.5%	25.5%	23.7%

Source: Expenditures for special education are based on City of New York, Office of the Comptroller, *Comprehensive Annual Financial Report of the Comptroller*, fiscal year 1995 to 2001 editions; personnel and enrollment totals are from City of New York, Mayor's Office of Operations, *Mayor's Management Report*, Volume II: Agency and Citywide Indicators, fiscal year 1996 to 2001 editions; categorical spending reflected in the total is based in City of New York, Board of Education, *School Based Expenditure Reports, Fiscal Year 2000-01*, Systemwide Summary, January 2002.

Note: ^a Special education spending totals are calculated by totaling units of appropriation for special education as presented in the Comptroller's report cited above and the share of the citywide expenses of pension, fringe benefits, and debt service associated with the share of personnel dedicated to special education in the first two instances, and the share of enrollment that special education comprises in the last instance.

The Nature Of The Problem

Why does New York have a special education program that is simultaneously ineffective and expensive? Three factors explain the doubly daunting paradox. First, and most important, the City relies too heavily on the most restrictive settings for conducting special education. Many students in these expensive, and separate, classes would do better if supported in well-designed interaction with other students. Second, the City places too many children, specifically too many minority children with behavioral problems, in special education rather than treating the difficulties with preventive services before they become too difficult for regular education teachers to handle. Third, the City has unique practices in its staffing and provision of support services, which add costs without concomitant educational benefit.

Heavy Reliance on Restrictive Settings

New York City relies more heavily on the most restrictive settings than do school districts in the rest of New York State and than do districts in other states across the country. As shown in Table 5, the federal Department of Education classifies special education placements as either in a separate setting—meaning in a distinct institution only serving disabled students—or in a

public school system. Placements within a school system are classified in three ways: as spending less than 21 percent of the time outside a regular education classroom, between 21 and 60 percent of the time outside the regular classroom, or more than 60 percent of the time in separate environments. Nationally, about 4 percent of the special education students are in separate settings; about 20 percent spend more than 60 percent of the time in a separate classroom; about 29 percent spend between 21 and 60 percent of their time outside the regular classroom; and 47 percent are outside the regular classroom less than 21 percent of the time.

Table 5
Special Education Placements by Type, United States, New York State and New York City
(Percent Distribution)

Placement Type In Public School Time Outside General Education	United States	New York State, Excluding NYC		New York City
		Percentage	50-State Rank	Percentage
20 percent or less	47.39%	52.90%	20	46.31%
21-60 percent	28.51%	20.25%	43	1.40%
More than 60 percent	20.06%	21.37%	15	43.83%
Separate Settings^a	4.04%	5.48%	11	8.46%

Sources: Data for United States are for school year 1998-99 and is from U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *23rd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2001*, <www.ed.gov/pubs/edpubs.html> (August 18, 2002); New York State data are for 2000 from State of New York, State Education Department, *New York: The State of Learning*, June 2002, p. 109; New York City data for December 2001 are provided by the New York City Department of Education.

Note: ^aIncludes children placed in public separate facilities, private separate facilities, public residential facilities, private residential facilities, and in-home or hospital programs.

The unique features of New York City's pattern of placement are an unusually high proportion of students spending more than 60 percent of the time outside regular classrooms and an unusually small percentage spending between 21 and 60 percent outside the regular classroom. The share of the City's students in the more restrictive settings (44 percent) is more than double the national figure; the miniscule proportion in the middle range settings (1 percent) is far behind the national figure (29 percent).

This distinctive New York City pattern also is evident in comparisons with the rest of New York State. Districts in the rest of the state have a proportion of students in the more restrictive setting that is far closer to the national average (21 versus 20 percent) than New York City's 44 percent. The rest of the state also has a share in the middle range placements that is much closer to the national average (20 versus 29 percent) and nearly thirty times the proportion in New York City.

The federal data indicate that New York State (exclusive of New York City) ranks relatively high in the share of students in the most restrictive settings—15th among the 50 states and the District of Columbia. It also ranks relatively low in the share in the middle range settings—43rd among the 51 jurisdictions. If New York City were viewed as a separate

jurisdiction compared to the other states, it would rank last in the proportion of middle range settings, and highest in the proportion of most restrictive settings.

While relatively few special education students are placed in separate institutions, it is worth noting that both New York State and New York City rely relatively heavily on these types of settings. The share of students in these settings in the rest of New York State is higher than the national figure (5.5 versus 4.0 percent), and the share in the City is an even higher 8.5 percent.

Recent educational studies indicate that New York City's heavy reliance on more restrictive settings is counterproductive. Although older studies found that students with learning disabilities did better academically in segregated settings,⁷ more recent studies conclude that students with learning disabilities do better in integrated settings. Students with emotional disturbances also benefit from successful interaction with peers in general education, facilitating that successful interaction reduces problem behavior in those students. In both cases, and for other disabilities, the new emphasis in special education is giving strong support to students to enable them to participate in general education. The probabilities of success are greater if the child is given proper support in an integrated environment.⁸

The benefits of inclusion extend to students in general education. Students without disabilities benefit academically from integrated settings when the presence of a greater number of pedagogical staff reduces the student-to-staff ratio.⁹ Also numerous studies point to the social benefits of increasing diversity in the classroom.¹⁰ At the very least, the academic performance of regular education students is not negatively impacted.¹¹

Too Many Special Education Placements

The primary factor behind New York City's poor performance is the over-reliance on restrictive placements. However, the City has had a history of placing too many children in special education, adding expenses and avoiding the more effective educational alternatives.

⁷ Hocutt, Anne M., "Effectiveness of Special Education: Is Placement the Critical Factor?," *The Future of Children: Special Education for Students with Disabilities*, Volume 6, spring 1996, p. 81.

⁸ Patricia J. Rea, Virginia L. McLaughlin, and Chriss Walther-Thomas, "Outcomes for Students with Learning Disabilities in Inclusive and Pullout Programs," *Exceptional Children*, Volume 68, Number 2, pp. 203-223, 2002.

⁹ Lew, M., Mesch, D., Johnson, D.W., and Johnson, R. (1986), "Components of Cooperative Learning: Effects of Collaborative Skills and Academic Group Contingencies on Achievement and Mainstreaming," *Contemporary Educational Psychology*, 11, pp. 229-239, as cited in The Least Restrictive Environment Coalition, "Benefits of LRE," <www.lrecoalition.org/04_benefitsOfLRE/index.htm> (September 3, 2002).

¹⁰ Helmstetter, E., Peck, C.A., and Giangreco, M.F. (1994), "Outcomes of Interactions with Peers with Moderate or Severe Disabilities: A Statewide Survey of High School Students," *Journal of the Association for Persons with Severe Handicaps*, 19, pp. 263-276; and Peck, C.A., Donaldson, J., and Pezzoli, M. (1990), "Some Benefits Adolescents Perceive for Themselves from Their Social Relationships with Peers who Have Severe Disabilities," *Journal of the Association for Persons with Severe Handicaps*, 15, pp. 241-249, as cited in The Least Restrictive Environment Coalition, "Benefits of LRE," <www.lrecoalition.org/04_benefitsOfLRE/index.htm> (September 3, 2002).

¹¹ Caroline Moore and Debra Gilbreath, Western Regional Resource Center, *Educating Students with Disabilities in the General Education Classroom: A Summary of the Research*, <<http://interact.uoregon.edu/wrrc/AKInclusion.html>> (August 23, 2002).

The data regularly collected by the federal Department of Education on special education placements relate to states rather than individual school districts. These data, summarized in Table 6, show that New York State ranks 12th among the states in the share of the school age population placed in special education with a rate of 9.8 percent. This figure is about 10 percent above the national average.

Table 6
Percent of Children Ages 6-21 with Disability Classification,
United States and New York State
School Year 1999-2000

Disability Classification	New York State		United States	NYS as a % of U.S.
	Percent	Rank		
Multiple Disabilities	0.53%	3	0.18%	294.4%
Emotional Disturbance	1.14%	10	0.74%	154.1%
Other Health Impairments	0.56%	20	0.40%	140.0%
Hearing Impairments	0.15%	2	0.11%	136.4%
Autism	1.30%	9	1.00%	130.0%
Visual Impairments	0.05%	4	0.04%	125.0%
Specific Learning Disabilities	5.27%	8	4.50%	117.1%
Speech or Language Impairment	1.45%	36	1.72%	84.3%
Orthopedic Impairments	0.07%	24	0.15%	46.7%
Mental Retardation	0.41%	48	0.95%	43.2%
All Disabilities	9.78%	12	8.92%	109.6%

Source: U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *23rd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2001*, <www.ed.gov/pubs/edpubs.html> (August 18, 2002).

Although federal law specifies the disabilities that qualify for special education services, there is great variability in how states and school districts apply these classifications. New York State ranks relatively low in the rate at which speech impairment and mental retardation are diagnosed, and relatively high in the rates for hearing impairment, visual impairment, and multiple disabilities. The latter category may often include emotional disturbance, a category in which New York State also ranks relatively high.

More detailed analysis of data from New York City and other large city school districts shows that although New York City's share of students in special education is not extremely high, there still is room for improvement. Table 7 presents the share of students in special education for 23 large city school districts. These districts are selected from among the 100 largest in the nation, and include all the districts with at least 65 percent of their students from families with incomes low enough to qualify for the subsidized school lunch program. The data are adjusted to eliminate preschool age enrollment and to reflect private school enrollments. Calculations of the share of children in special education should include private school enrollment in the denominator, because private schools account for a significant share of the total

enrollment in many cities but the private schools typically do not serve a significant share of a locality's special education students. In New York City, the share of students in private schools (19 percent) ranked tenth among the 21 districts, with Boston at the top with 25 percent.

Table 7
Special Education Enrollment as a Share of Total Enrollment
New York City and Other Large Districts^a
School Year 2000-01

	Public School Enrollment	Private School Enrollment	Share of Students in Private School	Percentage of Students Eligible for Free/Reduced Lunch	Number of Students with IEPs	Percentage of Students with IEPs	Rank
Buffalo City School District	45,721	11,265	19.8%	74.5%	9,222	17.1%	1
Boston School District	63,024	20,600	24.6%	72.0%	12,446	15.1%	2
Baltimore City Public School System	99,859	29,625	22.9%	71.5%	16,859	13.9%	3
Milwaukee School District	97,985	25,392	20.6%	68.9%	16,091	13.2%	4
Cleveland City School District	75,684	23,873	24.0%	80.1%	12,727	13.0%	5
District of Columbia Public Schools	68,925	20,988	23.3%	70.0%	10,580	12.9%	6
Detroit City School District	162,194	13,407	7.6%	65.1%	20,286	11.6%	7
New York City Public Schools	1,066,516	246,622	18.8%	71.9%	149,525	11.6%	7
Minneapolis	48,834	9,692	16.6%	65.6%	6,547	11.5%	9
Dade County School District (Miami)	368,625	47,626	11.4%	59.4%	40,831	11.5%	9
San Bernardino City Unified	52,031	2,107	3.9%	74.8%	6,087	11.2%	11
Los Angeles Unified	721,346	49,110	6.4%	73.5%	83,033	10.8%	12
Fresno Unified	79,007	4,084	4.9%	71.5%	8,885	10.7%	13
Memphis City School District	113,730	21,537	15.9%	NA	13,342	10.2%	14
City of Chicago School District	435,261	90,926	17.3%	NA	51,800	10.1%	15
Philadelphia City School District	201,190	62,211	23.6%	66.7%	22,760	9.0%	16
Houston Independent School District	208,462	34,191	14.1%	70.7%	20,647	8.7%	17
El Paso Independent School District	62,325	7,731	11.0%	66.9%	5,752	8.3%	18
Santa Ana Unified	60,643	7,661	11.2%	73.4%	5,370	7.9%	19
Orleans Parish School Board (New Orleans)	77,610	21,988	22.1%	74.6%	7,330	7.6%	20
Dallas Independent School District	161,548	26,647	14.2%	70.7%	13,130	7.1%	21
Long Beach Unified	93,694	6,871	6.8%	68.7%	7,022	7.0%	22
Atlanta City School District	58,230	17,592	23.2%	76.4%	4,024	5.9%	23
Median - All Districts Shown	93,694	21,537	16.6%	71.5%	12,727	10.8%	

Sources: Public school enrollment figures, percentage of students eligible for free/reduced lunch, and number of students with Individual Education Plans (IEPs) are from U.S. Department of Education, National Center for Education Statistics, *Characteristics of the 100 Largest Public Elementary and Secondary School Districts in the United States: 2000-01*, <www.nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002351> (September 6, 2002); private school enrollment for all districts except Boston is from U.S. Department of Education, National Center for Education Statistics, *Private School Universe Survey*, <www.nces.ed.gov/surveys/pss/privateschoolsearch/> (September 6, 2002); and private school enrollment for Boston is provided by the Boston Public Schools, <<http://boston.k12.ma.us/bps/bpsglance.asp>> (August 20, 2002). Enrollment figures exclude preschool enrollment.

Notes: ^a Only districts that fell within the 100 largest in the United States with a percentage of eligible students for free/reduced lunch of 65 percent or more were selected for comparison with New York City.

Among the set of comparable districts the median share of students in special education is 10.8 percent. New York City's share is a higher 11.6 percent, ranking it seventh among the 23. The highest-ranking district is Buffalo, another New York State district, with 17.1 percent. Atlanta has the smallest share, 5.9 percent.

Nationally and in New York City, cultural biases may play a role in the misuse of special education classifications. Members of racial minorities represent a greater share of the population in special education than they do in the population at large. Nationally, the mental retardation classification is disproportionately applied to minorities; in New York State the most suspect classification is emotional disturbance.

The federal Department of Education's Office of Civil Rights (OCR) is responsible for monitoring special education placements and helping local districts avoid and rectify discrimination. In the mid-1990s the OCR completed a study of New York City and concluded that minority students were disproportionately referred to special education. In response, New York City entered into a Memorandum of Understanding with OCR to remedy the over-

representation of minorities (and English Language Learners) in special education referral, certification, and placement in restrictive, segregated settings.¹²

New York State has also sought to deal with discrimination in special education. In 1999 the legislature passed Chapter 405 of the State education law, which conforms to federal requirements. It requires the State Education Department to monitor the use of special education by local districts and requires local districts to report the relevant data to the Department. The Department must identify districts with high rates of identification, low rates of declassification, high rates of placement in segregated settings, and significant racial or ethnic disparity in these statistics. New York City received a Chapter 405 citation in the spring of 2001.

An indication of the magnitude of New York City's over-reliance on the diagnosis of emotional disturbance is presented in Table 8. It presents the diagnosis rates for types of disabilities for New York City and six other cities, the only ones among the 23 selected earlier with comparable detailed data. New York City's relatively high overall disability rate is attributable to its excessively high rate for the diagnosis of emotional disturbance. Its rate of 14.5 per 1,000 students is triple that of Los Angeles and even further out of line with the other, smaller California districts. Only Washington comes close to New York, and its rate is only about four-fifths that of New York City.

Table 8
Disability Classification Comparison for Select Jurisdictions
Ages 6 to 21, 2000-01 School Year

District	Classification Rate (per 1,000 students)							Total
	Autism	Emotionally Disturbed	Learning Disabled	Mentally Retarded	Speech Impaired	Other Health Impaired	All Other	
New York City	2.18	14.51	57.40	5.00	22.65	1.97	6.90	110.62
City Comparisons								
Los Angeles Unified	2.57	4.54	61.70	5.67	9.16	4.16	18.09	105.89
Long Beach Unified	1.72	3.91	34.12	3.92	15.73	0.55	9.88	69.83
Fresno Unified	0.53	1.30	58.68	7.09	23.38	2.33	13.61	106.93
Santa Ana Unified	0.35	0.45	45.03	4.89	13.92	1.49	12.47	78.62
San Bernardino City Unified	1.09	3.64	62.06	7.41	24.25	2.18	11.80	112.43
Washington, D.C.	0.72	12.00	43.82	16.38	7.13	7.71	9.98	97.74

Sources: New York City data are from The Least Restrictive Environment Coalition, *Still Waiting, After All These Years...Inclusion of Children with Special Needs in New York City Public Schools*, November 2001, p. 23; California urban district data are from State of California, Department of Education, Special Education Division, Reporting Cycle December 2000, <www.data1.cde.ca.gov/dataquest/SpecEd3.asp?> (July 25, 2002); and Washington, D.C. data are from U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *23rd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2001*, <www.ed.gov/pubs/edpubs.html> (August 18, 2002).

¹² The Least Restrictive Environment Coalition, *Still Waiting, After All These Years...Inclusion of Children with Special Needs in New York City Public Schools*, *op. cit.*

The overuse of the emotionally disturbed classification is damaging to students. Teachers are more sensitive to classroom behavior than any other aspect of a student's learning style.¹³ General education teachers and students tend to view a student with an emotionally disturbed classification unfavorably.¹⁴ These children do more poorly than other disabled students and are less likely to return to or be integrated into the general education classroom.¹⁵ In addition, a student with problem behavior is more likely to be behind academically, because these students spend less time engaged in instruction.¹⁶ And since academic failure is a reliable predictor of problem behavior, the child becomes part of a vicious cycle of failure and response to failure.¹⁷

Data compiled by a coalition of advocacy groups in New York City called the Least Restrictive Environment Coalition raises questions about New York City's reliance on the emotionally disturbed classification. The Coalition found that black students are twice as likely as white students to be classified as emotionally disturbed and make up 53 percent of the 20,000 students classified this way.¹⁸ An advocate with long experience in the system observed that for a child diagnosed with Attention Deficit Disorder—for which there is no clear-cut special education classification—parents of white children are more likely to get the child classified as “other health impaired,” while parents of children of color tend to end up with the more damaging emotionally disturbed classification.¹⁹ Black students also are 40 percent more likely to be classified as mentally retarded. Latino students are 25 percent more likely to be classified as speech/language impaired than other students, suggesting that evaluators react to English language skills rather than disability. White students, on the other hand, are more than 3 times more likely than black or Latino students to be classified with the less stigmatizing diagnosis of “other health impaired.”²⁰

In addition, the emotionally disturbed student in New York City spends less time in the general education classroom than he or she does elsewhere. In 1997-98, 87.5 percent of the emotionally disturbed students in New York City spent more than 60 percent of their time outside of general education, compared to 76.0 percent in New York State, and 51.7 percent nationally.²¹

¹³ Hocutt, *op. cit.*, p. 83.

¹⁴ Timothy J. Lewis, David Chard, and Terrence M. Scott, “Full Inclusion and the Education of Children and Youth with Emotional and Behavioral Disorders,” *Behavioral Disorders*, Volume 19, Number 4, August 1994, pp. 277-293.

¹⁵ U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *23rd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2001*, <www.ed.gov/pubs/edpubs.html> (August 18, 2002), p. I-33.

¹⁶ *Ibid.*, p. I-33.

¹⁷ *Ibid.*, p. I-36.

¹⁸ *Ibid.*, p. I-32.

¹⁹ Donald A. Lash, Metropolitan Parent Center, *Special Ed in the City: A Guide for Parent Advocacy in New York City* (NY: Sinergia, Inc., 2002), p. 40.

²⁰ The Least Restrictive Environment Coalition, *Still Waiting, After All These Years...Inclusion of Children with Special Needs in New York City Public Schools*, *op. cit.*, p. 31.

²¹ *Ibid.*, p. 32.

A second factor contributing to a high rate of placement in special education is financial incentives. Most local districts receive a significant share of their funds from their state government, and the formulas through which this aid is distributed tend to provide more money for special education students than regular education students, and more money for the more restrictive settings than for the less restrictive settings. Even though the districts must also spend more to receive the increased aid, they have tended to respond to the financial incentives created by state aid programs.

The federal government has recognized the state aid formulas as a problem. Under the 1997 IDEA reauthorization, a state must ensure that its funding formulas do not favor the most restrictive placements. Recent state reforms have focused on designing school aid formulas that are neutral with regard to disabling condition and placement.²²

New York State has been slow to change its aid system. In 1997 the federal government identified New York State as a state with a problem meeting the LRE requirement. The U.S. Department of Education believed the funding formulas were a contributing factor and placed New York State under special consideration. In 1999 the federal government threatened to withhold \$355 million in aid. Under pressure, the Legislature changed the formula to one that favors less restrictive placements, but delayed its implementation for several years.

Finally, it should be noted that family income plays a role in special education placement rates. Relatively high family income and wealth is associated with high placement rates.²³ To illustrate, in Greenwich, Connecticut, where the average price of a house is more than \$1 million, about 18 percent of the students receive special education services, nearly double the big city average shown earlier in Table 7.²⁴ In these wealthy communities, parental expectations of individualized educational programs for their children may extend special education services to children who are not really disabled.

Inefficiencies in Non-Instructional Services

In New York City special education services are made more expensive by inefficient practices incorporated in the way the City provides non-instructional services to these students. This is evident in transportation services and in the process of student evaluation.

²² Parrish, Thomas B. and Montgomery, Deborah L., "State Analysis Series: The Politics of Special Education Finance Reform in Three States," American Institutes for Research, March 1995.

²³ Parrish, Tom, "Disparities in the Identification, Funding, and Provision of Special Education," American Institutes for Research, Center for Special Education Finance, Draft paper submitted to The Conference on Minority Issues in Special Education in Public Schools, November 6, 2000.

²⁴ Joetta Sack, "Special Ed Designation Varies Widely Across the Country," *Education Week*, June 24, 1998.

Transportation. The Department of Education is responsible for providing transportation to and from school for regular and special education students who require it. For regular education students, transportation is provided to those who live 1.5 miles or farther from their school.²⁵ The arrangement may be simply to purchase MetroCards for students that enable them to use mass transit or, where mass transit is not available, to contract with private companies for bus service. For regular education students, about 11 percent require transportation services and the average cost of transportation last year was \$132 per student.²⁶

For special education students, determining their transportation needs is part of the evaluation process and transportation services may be specified in the IEP. Some may have no special needs. They can walk to school, use mass transit, or ride buses along with regular education students. About 60 percent of the special education students are in one of these categories.²⁷

The remaining 40 percent, about 63,000 students, including about 20,000 who attend District 75 programs, have been judged to require special busing. Providing this service costs about \$384 million annually, or an average of \$6,146 per student transported.²⁸

Part of the high cost of these transportation services may be unavoidable. Some students are physically disabled and severely emotionally disturbed, requiring attendants, as well as drivers, to help them. Other students, mainly in private schools, can only receive services at facilities far from their homes, requiring transportation out of the city and, for some, out of the state, on a daily basis. State law requires the Department of Education to pay for private school transportation for special education students for a 50-mile radius around New York City. As shown in Table 9, 21 students have their own bus service (with an escort), and 18 of them go to institutions outside the city. The average cost for this transportation service approaches \$100,000 annually.

However, another significant part of the high transportation costs may be avoidable if two inefficient practices were revised. First, some students who are assigned to special transportation services might not require the more expensive mode, especially if they were better prepared, and perhaps initially assisted, in using mass transit. Between 1990 and 2001 the share of special education students assigned to special transportation arrangements grew from 54 to 75 percent, suggesting a tendency of evaluators to prescribe this service with greater frequency.²⁹ And once prescribed, there is little attention paid to providing training or assistance that might subsequently eliminate the need.

²⁵ Office of the State Deputy Comptroller for the City of New York, *New York City Board of Education: Transportation AID Claimed in 1991 and 1992 for Franchise Carrier Services*, Report A-16-93, January 31, 1995.

²⁶ City of New York, Board of Education, *School Based Expenditure Reports*, *op. cit.*

²⁷ City of New York, Mayor's Office of Operations, *Mayor's Management Report, Volume II: Agency and Citywide Indicators*, fiscal years 1990-2001 editions (NY: Mayor's Office of Operations, 1990-2001).

²⁸ Data provided by the Board of Education of the City of New York, Office of Pupil Transportation.

²⁹ City of New York, Mayor's Office of Operations, *Mayor's Management Report, Volume II: Agency and Citywide Indicators*, *op. cit.*

Table 9
New York City Special Education Transportation Services

<u>Pupils/Bus</u>	<u>Number of Buses</u>	<u>Number of Pupils</u>	<u>Cost</u>	<u>Cost/Pupil</u>
1	21	21	\$2,039,457	\$97,117
2 to 6	653	2,979	\$63,417,401	\$21,288
7 to 10	737	6,306	\$71,575,229	\$11,350
11 to 16	1,179	15,609	\$114,500,943	\$7,336
17 to 22	376	7,200	\$36,515,992	\$5,072
23 to 56	988	30,360	\$95,951,596	\$3,160
TOTAL	3,954	62,475	\$384,000,618	\$6,146

Source: Data provided by the New York City Department of Education, Office of Pupil Transportation.

Second, the large role of the centralized District 75 creates high transportation costs. Most District 75 students must be transported to programs not located at their neighborhood school and sometimes not in their school district. They often require busing on routes with fewer than ten students per bus. Transportation costs for District 75 students average \$5,957 per year,³⁰ compared to \$3,160 for other special education students being bused in larger groups. (See Table 9.)

Administration and Evaluation. New York’s high staffing levels for administrators and evaluators suggest inefficiencies in these areas. As shown in Table 10, New York State and New York City have relatively low student-to-staff ratios for all special education personnel—about 4.4-to-1 and 4.6-to-1, respectively—compared to a national average of 7.1 students per staff member. Most of this difference is explained by the low ratio for teachers, and this is attributable to New York’s heavy reliance on self-contained classes with low student-teacher ratios. Nonetheless, New York also has a relative abundance of administrators and evaluators. The student-staff ratio in New York for administrators is the second lowest among the 50 states and nearly triple the national average for these occupations. For evaluators, New York ranks seventh and has almost twice as many as the national average.

The relative abundance of evaluators, and selected clinicians, such as social workers, psychologists, and therapists, in New York State is largely a function of practices in New York City. Three examples of unusual staffing patterns help to explain the numbers.

³⁰ City of New York, Board of Education, *School Based Expenditure Reports*, *op. cit.*

First, New York City has a large number of evaluators on staff. The education evaluator position has its origins in the early rulings in the *Jose P.* case. In many jurisdictions these positions do not exist. Instead, special education teachers serve on the evaluation committees and provide the relevant expertise. However, when New York City had a large backlog of placement referrals, the court mandated that the Board of Education hire a specified number of evaluators in order to clear the backlog. Subsequent union negotiations set a cap on the workload of the evaluators, a provision that was not eliminated until the 2001 contract. In addition, evaluators were, and still are, assigned to work on annual and triennial case reviews as well as initial assessments, despite the fact that the child's special education teacher also serves on the annual review. As a result of these often duplicative practices, the City employs 1,113 evaluators at an average salary of \$66,000³¹ and a total annual cost including fringe benefits of about \$92 million.³²

Second, New York City's practice of maintaining a Committee on Special Education (CSE) for each district and a SBST at each school bloats staffing. In fiscal year 2002 the CSE's had a budget of \$90 million, and the SBST's a \$166 million budget. Each CSE has a team consisting of a chairperson, placement officer, vocational assessment teacher, information manager, health facilitator, speech and language evaluator, a school psychologist, school social worker, and an education evaluator. In addition, the CSE's have 95 review teams consisting of a school psychologist, a social worker, and an education evaluator. The SBST's employ another 3,000 personnel, including 960 school psychologists, 572 social workers, 960 education evaluators, and 490 family workers. Together the two types of teams employ 4,671 personnel, for a student-to-staff ratio of 36 to 1.³³

Third, New York City evaluators recommend related services, such as counseling, speech therapy, and occupational therapy, more frequently than do their counterparts in other districts. The State Education Department reports that New York City evaluators recommend counseling services for more than 60 percent of students, compared to about 5 percent in the rest of the state.³⁴ The heavy use of related services begins at the preschool level, where the payment rates for clinicians is relatively generous. By the time students are of school age, their parents have come to expect high levels of related services.

³¹ City of New York, Board of Education, Division of Budget Operations and Review, *BOR Allocation Memorandum No. 2, FY 2002*, August 8, 2001. According to the allocation formula, each district is funded for 1 Ed Evaluator position per Fixed CSE team and per Review team. The average salary per position is \$66,000. The 32 Community School Districts have 32 Fixed team positions and 79 Review team positions; the 5 Citywide districts have 5 Fixed team positions and 16 Review team positions; and the 5 high school districts have 5 Fixed team positions and 16 Review team positions for a total of 153 positions. School Based Support Teams are funded for 960 Ed Evaluator positions.

³² Fringe benefits add about 25 percent to the cost of each position.

³³ See Table 10 for sources. This ratio is calculated by dividing the number of students in special education by the number of evaluators, social workers, and psychologists described in City of New York, Board of Education, Division of Budget Operations and Review, *BOR Allocation Memorandum No. 2, FY 2002*, August 8, 2001, excluding the Committee on Preschool Special Education allocations. If the numerator in the calculation is changed to the total of all public and private school children in New York City, the ratio is 305 to 1, still nearly twice as high as the ratio for the rest of the state, which is 512 to 1.

³⁴ Interview by Elizabeth Lynam with Rebecca Cort, New York State Education Department, November 15, 2002.

Table 10
Student-to-Staff Ratio for Special Education Occupations
New York State and National Averages
1998-99

Major Occupations	New York State		National
	Ratio	Rank	Average
Teachers	11.8	4	16.2
Social Workers	133.4	3	389.5
Occupational Therapists	242.2	3	642.5
Physical Therapists	398.5	2	1,137.2
Teacher Aides	25.6	33	22.3
Supervisors/Administrators	148.9	2	405.9
Other Professional Staff	23.4	1	154.6
Psychologists	103.0	1	236.0
Diagnosticians/Evaluators	305.0	7	494.8
Counselors	205.6	7	507.0
Speech Therapists	93.8	10	163.0
Non Professional Staff	121.9	6	238.6
Physical Education Teachers	291.9	2	1,028.4
Total Staffing	4.4	4	7.1
New York City	4.6	NAP	7.1

Source: U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *23rd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2001*, <www.ed.gov/pubs/edpubs.html> (August 18, 2002).

Note: ^a Major occupations are those employing at least 5,000 people nationally, not listed are Recreational and Therapeutic Recreation Specialists (384 employed in the United States), Audiologists (1,226), Work-Study Coordinators (2,097), Vocational Education Teachers (4,712), Rehabilitation Counselors (671), and Supervisors/Administrators with SEA (1,080 employed). Together these titles represent 1.2 percent of special educators.

New York State regulations also make the evaluation process particularly cumbersome. Although federal rules give parents the recourse of impartial hearing if they believe an appropriate placement has not been provided, New York State adds a second appeal opportunity. If a New York City parent seeks an impartial hearing and the hearing officer rules in favor of the Department of Education, the parent can appeal the ruling to a State Review Officer. New York State's double review process is rare; only 10 other states have two-tier review. In most other states, the next step after an impartial hearing is to seek judicial review.

New York State also goes beyond federal regulations by mandating that a “parent member” serve on the evaluation team. The parent member must be the parent of a child with disabilities who lives in the school district. The parent member receives a stipend for attending the team meetings. Some Community School Districts in New York City keep what amounts to a full-time parent member on staff because if a district does not provide the required parent member, it can lose on procedural grounds at the impartial hearing and be charged for private school tuition.

Recent State And City Initiatives

Both State and City leaders are aware of the shortcomings of their special education services. And reform efforts have been launched at both levels of government in recent years. However, without the preparation of and cooperation among the people that have to be involved in changing the system, the reforms have proceeded at an unacceptably slow pace.

State Action

As noted earlier, federal revisions of the IDEA in 1997 recognized that many states were funding special education in a way that encouraged costly placements. New York was one such state, and it began to revise its practices when the new federal requirements were established.

Under the old formula, the payment to a district for a child receiving special education in a segregated class more than 60 percent of the day was 2.7 times the “base aid” per pupil (that is, the amount paid for a regular education student). Children receiving segregated services for between 21 percent and 60 percent of the day were weighted at 1.9, and children who spent 20 percent or less of their time outside the classroom were weighted at 1.13.

After delays and increased federal pressure, the State revised the formula in the 2000 legislative session. Under the new formula, a district receives a payment of 2.7 times the base weight for a student outside the general education classroom more than 60 percent of the day in the first year, but for one year only. In subsequent years, the payment is reduced to 2.68 and then 2.65. In addition, if a district provides services for that child in a class with non-disabled peers, the weighting is increased from 2.7 to 3.2.

The new formulas were slated to begin in the 2000-01 school year. Because statewide some districts were confused about how many students were eligible for the new aid, the formula changes were deferred to 2001-02. The following year the much-delayed passage of a “bare-bones” budget in the middle of the State's 2001-02 fiscal year interfered with implementing the formula changes. Consequently, the current 2002-03 school year is the first for which New York City can receive aid under the new scheme.

Given New York State's poor progress in reforming its overall school aid formulas, and the fact that any increase in school aid for special education is likely to reduce general operating aid for New York City and other high need districts, it is too early to celebrate progressive action. The special education formula should be changed in the context of more far reaching reform of New York State's inequitable school finance system.

City Action

In the wake of federal reforms and in response to growing pressure from the State Education Department and advocates, Mayor Rudolph W. Giuliani created a task force to recommend special education reforms. In January of 1998 the task force released its report, *Reforming Special Education in New York City: An Action Plan*, and the recommended strategy was embraced by the Mayor and the Board of Education.³⁵

The first phase of reform began in September 1998. Responsibility for the evaluation and placement of students was transferred from a unit at the central board to Community School District and High School superintendents. At the same time, additional resources for early intervention and prevention services were given to the schools in order to help lower the referral rate to special education.

June of 2001 marked the start of a second phase of reform. The Board adopted a service model called the "new continuum." The new continuum was formulated to bring general and special education closer in a unified service delivery model. Instead of maintaining a rigid system of placements the Board would offer a more flexible range of services designed first to support a student with difficulties in the general education classroom. To support the flexibility of the new model and reverse financial incentives that might predispose a district to implement more restrictive placements, the Board adopted a new internal funding formula. The new formula created district block grants that permit greater discretion in the use of funds. Table 11 presents a summary comparison of the new and old models.

Under the new continuum students are no longer classified by disability levels and age into Modified Instructional Services (MIS) or Specialized Instructional Environments (SIE) with standardized staffing ratios. MIS programs were separate classes in community schools for students with mild disabilities and ranged in maximum size from 15 to 18 students. SIE programs were separate classes typically outside the community school setting for children with more severe disabilities and ranged in size from 6 to 12 students.

The new continuum focuses first on maintaining a student in general education and avoiding referral to special education. When a child is identified as having social, academic, or physical difficulty a "Pupil Personnel Team" at the school designs supports and interventions to assist the child in the general classroom. The new continuum also provides declassification support services for up to one year to assist a child in transition from special education to a new placement in general education.

³⁵ City of New York, Mayor's Office of Operations, Mayor's Management Report, *Reengineering Municipal Services*, 1994-2001, Fiscal Year 2001 Supplement, September 2001, p. 155.

Table 11
A Comparison of the Old and New Continuums

Old Continuum	New Continuum
No Prevention	Pupil Personnel Team Intervention Services to Maintain Students in General Education (remedial instruction, behavioral support, social skills training)
General Education with Related Services	Declassification Support Services General Education with Related Services (related services include speech, occupational therapy, and counseling)
Supplemental Instructional Services (Resource Room)	General Education with Special Education Teacher Support Services (combines consultant teacher and resource room) Collaborative Team Teacher Services General Education Part-time & Special Class Support Part-Time in Community School Districts/High Schools
Special Class Services --Modified Instructional Services (MIS) classes --Specialized Instructional Environment (SIE) classes	Special Class Full-Time in Community School Districts/High Schools Special Class Full-Time in Specialized Public Schools
Non-Public School Day	Non-Public School Day
Non-Public School Residential	Non-Public School Residential
Home/Hospital Instruction	Home/Hospital Instruction

Sources: City of New York, Board of Education, *Special Education Services, a Part of a Unified Services Delivery System*, June 2001; and Donald A. Lash, Metropolitan Parent Center, *Special Ed in the City: A Guide for Parent Advocacy in New York City* (NY: Sinergia, Inc., 2002).

In the middle of the new continuum are new options that rely more heavily on consulting teachers, and related services in the classroom such as speech and occupational therapy. Also part of the new design are “collaborative team teaching classes” involving a mix of several special education students and regular education students and taught jointly by a regular education and special education teacher.

The new continuum initiative has yielded some progress. The number of students moved from more to less restrictive environments increased from 4,606 in fiscal year 1996 to 21,876 in fiscal year 2001. Over the same period, the number of students returned from special to general education grew from 3,345 to 5,511. (See Table 12.)

Table 12
Movement Through the Special Education Continuum
Fiscal Years 1996 to 2001

	1996	1997	1998	1999	2000	2001
Number of Students Moved to Different Programs						
Into Less Restrictive Environment	4,606	4,991	8,668	10,607	19,051	21,876
Into More Restrictive Environment	NA	NA	7,075	6,937	7,863	7,788
Into Regular Classroom	3,345	3,854	4,667	5,186	5,190	5,511
Composition of Special Education Enrollment						
LRE as a % of Special Education Enrollment	38.0%	39.0%	39.8%	40.5%	41.2%	42.0%
MRE as a % of Special Education Enrollment	50.6%	49.7%	49.0%	48.3%	47.1%	46.1%
Non-Public as a % of Special Education Enrollment	11.3%	11.4%	11.2%	11.2%	11.6%	11.9%
Decertifications as a % of Special Education Enrollment	2.2%	2.4%	2.8%	3.1%	3.1%	3.3%

Source: City of New York, Mayor's Office of Operations, *Mayor's Management Report*, Volume II: Agency and Citywide Indicators, fiscal year 1996 to 2001 editions.

This progress must be judged slowly, however, considering how far out of line New York City is with national norms. Responsibility for implementing the changes rests primarily with local school district superintendents and school principals, and they have not always been enthusiastic about the intended changes. Some advocates report that district administrators are reluctant to give students new continuum placements.³⁶ In the face of this reluctance, some parents have been obliged to seek appeals at impartial hearings in order to obtain new continuum services. Bolder leadership is needed to speed the pace at which children are moved from more restrictive to less restrictive settings.

Part of the reason for the slow pace of change is that school leadership teams and special education administrators, who are charged with implementing the new continuum, need more training on how to develop and support inclusive placements. The experience of model districts, such as District 15 in Brooklyn, has not been sufficiently replicated. In the absence of a major push to develop a full range of new continuum services, one model, called "co-teaching," has been favored. The teachers' union strongly supports this model because, as it is being implemented, it lowers the class size for general education students.

The co-teaching model combines in one classroom (a) a small number of special education students (usually 12) and a special education teacher with (b) a regular education teacher and a number of regular education students that is significantly less than the current average class size for these students (12 versus 28). Thus, two teachers previously serving 40 students now serve 24. The intended benefits are a smaller average class size for regular education students and an integrated setting for special education students. The Department of Education has established about 900 such classes since the beginning of the new continuum.³⁷

³⁶ Lash, *op. cit.*

³⁷ Data provided by the New York City Department of Education.

The problem with this model, and the reason it cannot be implemented more broadly, is that it is expensive. General education students are taught in a model that requires lower student-to-teacher ratios (and hence more teaching personnel) than does the model under which they are currently taught. Alternative models that permit more integration of special education students, but do not require so large an increase in staffing, are available and could be used to implement the new continuum for more students. Especially in the current difficult fiscal environment, greater integration should not be delayed because this expensive model is the only one educators and administrators are familiar with and are willing to adopt.

Recommendations

In order to improve the outcomes for its special education students, the Department of Education should aggressively implement three basic reforms. Each addresses one of the three issues identified as an underlying reason for the current paradox that highly expensive services yield unacceptably poor educational results.

1. Move students from more restrictive to less restrictive environments.

The most important problem in New York City's special education program is an over-reliance on segregated, “self-contained” classrooms. The share of students in these restrictive settings is more than twice the national average, and there are virtually no options for students in the middle of the special education continuum. The new continuum initiative identified the correct strategy for reform, but its implementation has lacked the investment necessary to prepare principals and teachers to use effectively the new tools available to them. Consequently, there has been too much emphasis on a single alternative, the co-teaching model.

The Department should promote a full spectrum of teaching arrangements in the middle of the continuum that are practical for system-wide application. Affordable models that support special and general education students in integrated environments should be relied upon most heavily. These alternatives, possible under the new continuum, include:³⁸

- a) *Parallel Teaching*—a special education teacher works with a small group of students from a selected student population in a section of the general education classroom.
- b) *Co-Teaching Consultant*—a special education teacher operates a “pull-out program” like a resource room, but also co-teaches in the general education classroom several hours per week.
- c) *Team Teaching*—a special education teacher works with one or more regular education teachers to form a team, which is responsible for all of the children in the classroom or at a particular level.

³⁸ Harvard Education Letter, Research Online, *Inclusion Terms*, < www.edletter.org/research/rf-inclusion.shtml > (September 11, 2002).

- d) *Methods and Resources Teacher*—a special education teacher, whose students are distributed in general classes, works with the general education teachers.

Supporting children in more inclusive settings requires intensive collaboration among the staff. *The 23rd Annual Report to Congress on the Implementation of IDEA* cautioned, “To be successful, positive behavioral supports must be implemented as a system wherein all personnel take equal responsibility for planning, implementation, and evaluation of student progress.”³⁹ In order to support effectively students in the classroom, ownership of student problems must be shifted from an expert model to a collaborative model.⁴⁰

The development of diverse options for integration is best accomplished at the school level under the leadership of committed principals. This guideline was recognized in a recent settlement of a class action suit against the Chicago public schools. In this case, first filed in 1992, the Court ruled that “students with disabilities in the Chicago Public Schools were being illegally segregated and were not being educated in compliance with the LRE mandate, that teachers in the Chicago Public Schools did not understand the LRE mandate and were not adequately prepared to teach Chicago’s students in the LRE...”⁴¹ A settlement reached in 1999 recognized the importance of the principals’ leadership in eliminating barriers between special and general education. Under the settlement the Chicago Board must carry out a school-by-school restructuring process to place students in the least restrictive setting. Each school has been given a three-year grant of \$110,000 to help fulfill its mandate.

In order to accomplish similar changes in New York City, multiple steps should be taken to enable principals to take responsibility for special education students and to provide them with effective services in inclusive settings. Recent studies document the importance of the principal in promulgating new pedagogy and developing collaborative student support teams.⁴²

Among the necessary measures are:

A. *Train principals in the methods necessary to implement inclusion successfully.* As the leaders of their schools, principals need to understand how to facilitate the collaboration between general and special education personnel. A successful approach is one that mobilizes all the resources available in the school community to provide effective services in the general education classroom.⁴³

³⁹ U.S. Department of Education, *op. cit.*

⁴⁰ Christine L. Salisbury and Gail McGregor, “The Administrative Climate and Context of Inclusive Elementary Schools,” *Exceptional Children* (VA: The Council for Exceptional Children, 2002), pp. 259-274.

⁴¹ Sharon Weitzman Soltman, Esq., Consulting Attorney, and Donald R. Moore, Ed.D., Executive Director Designs for Change, *Ending Illegal Segregation of Chicago’s Students with Disabilities: Strategy, Implementation, and Implications of the Corey H. Lawsuit*, prepared for the Conference on Minority Issues in Special Education, The Civil Rights Project of Harvard University, November 17, 2000.

⁴² Salisbury and McGregor, *op. cit.*, pp. 259-274.

⁴³ Alan Gartner and Dorothy Kerzner Lipsky, *Inclusion: A Service, Not a Place, A Whole School Approach* (Port Chester: Dude Publishing, 2002); Salisbury and McGregor, *op. cit.*, pp. 259-274.

B. Give responsibility for more special education students to the principal of their neighborhood school. Currently, the major exceptions to this guideline are the 21,000 students in citywide District 75, about 20,000 of which are in the most restrictive full-time special education settings. To the maximum extent possible these students should be returned to their home schools. Care should be taken to make sure that the students and parents served in the District 75 programs are not shifted to community districts with inadequate support. Educators and clinicians in District 75 have significant experience serving the most severely disabled students. District 75 also operates a successful inclusion program that serves about 1,100 students. This experience should be strategically leveraged in the community school districts to help develop local capacity.

C. Hold principals accountable for the outcomes of special education. Until recently scores of special education students were excluded from the standardized testing data that is used to assess performance of schools and their principals. The State is now using this data in its annual review of school performance, and it is being used in School Under Registration Review (SURR) determinations. Data on test outcomes for special education students should be incorporated in the Department's principal review process. Other measures of student outcomes, such as graduation rates and participation in school-to-work transition programs, should also be collected and used to hold principals accountable for the results of their special education efforts.

While public schools should be the focus of efforts to shift students to less restrictive environments, private school placements are also a relevant concern. Private schools are expensive and restrictive, and they should be relied upon only in the most extreme cases. Yet private school placements have been increasing in New York City.

A school-age special education student in private school becomes entitled to public funds in one of three ways. First, the student's CSE determines that a private school setting is the most appropriate placement. Second, the public school fails to place a child appropriately in a timely manner, and the parents act on their own to make a private school placement. They may then seek public payment at an impartial hearing. Third, if parents can demonstrate in an impartial hearing that the public schools cannot offer a placement appropriate to the child's needs, and that an available private school can, then the public school must pay for the private placement. This last process is called a "Carter" reimbursement, based on a federal Supreme Court case arising in South Carolina. The process has no requirement that a child attend a public school before being placed in a private school.

Because of the way the federal and State regulations have been interpreted, a parent can prevail at an impartial hearing with a case based solely on procedural violations rather than the appropriateness of the private school placement. If the "parent member" of a CSE meeting required by State law is absent or the notification timeline for the parent of the student with a disability is off by a day, the Department can be ordered to pay for private school. In these cases it is the letter, and not the spirit, of the law that is followed.

In New York City, the Carter argument is of growing importance in the rising number of private school placements. Parents do not feel the public system can offer an appropriate placement. Although New York City has about 33 percent of the State's special education students, more than 80 percent of the impartial hearings originate in the City.⁴⁴ In April 2002 then-Chancellor Harold Levy testified to a federal commission that the Board of Education reimbursed the tuition of close to 1,000 students attending private school under Carter, and that the number of students applying for this benefit annually grew from 210 in 1995 to more than 1,200.⁴⁵ This represents annual growth of 28 percent. In order to reduce private school placements, the Department of Education must improve its ability to design suitable placements and develop parental confidence in its capacity to do so. In addition, when IDEA is considered for reauthorization next year, State and City officials should urge changing the grounds for legal action from minor procedural violations to substantive questions relating to the appropriateness of the service. State leaders in particular should be prevailed upon to eliminate the two-tier review at the State Education Department where the decisions of City-based impartial hearing officers are frequently overruled.

2. Prevent special education placements by providing supplemental services to students with difficulties in general education.

A second goal of the Department of Education should be to prevent placements in special education. This does not mean that students who need special services should be arbitrarily rejected; instead, the Department should support students with problems more effectively in the general education classroom. The key to maintaining successfully at-risk students in the general classroom is training teachers to individualize curriculum and to manage problem behavior.

Teacher preparation is critical. Since behavior problems are frequently triggered by failure—academically and socially—teachers can learn to modify a student's environment to promote success and reinforce positive behavior. However, in traditional classrooms teachers tend to be more sensitive to student study behaviors than to how well they actually learn taught material.⁴⁶ Innovations in pedagogy encourage students to develop higher-order problem solving skills.⁴⁷ This process of learning requires a teacher to adapt the curriculum to develop a student's cognitive abilities.

Many tools can be used to tailor curriculum to individual needs. Cooperative learning—where students solve problems and learn in groups—is one powerful model. Peer teaching—where a student with particular talents reinforces his skills by teaching others—is another.⁴⁸ A technique called Functional Behavioral Assessment can help identify the etiology of problem behaviors in the classroom. A behavioral intervention plan developed from this

⁴⁴ Lash, *op. cit.*

⁴⁵ Yilu Zhao, "Rich Disabled Pupils Go to Private Schools at Public Expense, Levy Says," *The New York Times*, April 17, 2002.

⁴⁶ Hocutt, *op. cit.*, p. 81.

⁴⁷ *Ibid.*, p. 97.

⁴⁸ Alice Udvari-Solner and Jacqueline S. Thousand, "Promising Practices Than Foster Inclusive Education," *Creating an Inclusive School*, edited by Richard A. Villa and Jacqueline S. Thousand, p. 17.

assessment can provide a teacher with preventive guidance.⁴⁹ Computer activities can be designed to augment the learning of at-risk students.⁵⁰ Computer work in small groups also encourages friendships between disabled students and their non-disabled peers.⁵¹ The WatchMe! Read Program was used successfully in Philadelphia to supplement instruction and increase interest in reading.⁵² Speech-to-text computer programs support deaf and hearing-impaired students in general education classes.⁵³

Since effective teaching methods are critical, teacher training is important. But professional development for teachers in New York State is poor relative to other states. New York teachers are less likely to have worked with students with disabilities in their classrooms, report more frequently that problem behavior disrupts their classrooms, and receive less training in how to work with students with disabilities. (See Table 13.) In addition, schools in New York State are less likely to offer supplemental programs for students with problem behaviors. And at the elementary level, where early intervention is critical, New York State ranks last among all the states in the percentage of schools that offer programs for students with problem behavior.

3. Provide Non-instructional Services More Efficiently.

Transportation, student evaluations, and administrative support are characterized by inefficient practices. In each case it is possible to provide these services at a reduced cost.

A. Reduce transportation costs. Transportation costs for special education students can be reduced in two ways. First, some students who now have special arrangements should be given the training and support necessary to enable them to use conventional modes. This not only saves money, it also equips the children with a valuable life skill. A reasonable goal is to return the proportion of students requiring special busing arrangements to the 1999 rate. (That is, from the current 75 percent of those in full-time placements to 69 percent.)

⁴⁹ U.S. Department of Education, *op. cit.*, p. I-33.

⁵⁰ Joy F. Xin, Bethanie Gorny, Venice DeGregorio, Bernadette Druding, and Patricia Vespe, "A Success Story: Combining Three Powerful Learning Strategies in an Inclusive Classroom, *Classroom Leadership*, February 1999, <[www.ascd.org/reading room/classlead/9902/4feb99.html](http://www.ascd.org/reading_room/classlead/9902/4feb99.html)> (September 11, 2002); Udvari-Solner and Thousand, *op. cit.*, p. 22.

⁵¹ Tim Hobbs, Lori Bruch, John Sanko, and Cheryl Astolfi, "Friendship on the Inclusive Electronic Playground," *Teaching Exceptional Children* (VA: The Council for Exceptional Children, July/August 2002), p. 46.

⁵² Susan M. Williams, Vanderbilt University, *What Students Learn with WatchMe! Read*, IBM's Reinventing Education Initiatives, Implementation Report, March 27, 2001.

⁵³ Lisa Elliot, Susan Foster, and Michael Stinson, "Student Study Habits Using Notes from a Speech-to-Text Support Service, *Exceptional Children*, 2002, Volume 69, Number 1, pp. 25-40.

Table 13
Indicators of Teacher Preparedness and Supports for Students with Problem Behaviors
New York State and Other States, 1999-2000 School Year

	<u>New York State</u>		<u>National Average</u>
	<u>Percent</u>	<u>Rank</u>	
Teachers			
That taught students with an IEP	76.3%	46	82.0%
With IEP students who had 8 or more hours of training in the last 3 years on how to teach special ed students	27.1%	38	31.0%
Who report that student misbehavior interferes with their teaching	43.2%	11	40.8%
Who reported participating in professional development activities in the past 12 months in student discipline and management in the classroom	30.9%	45	41.2%
Schools			
That offered a program for students with discipline or adjustment problems at the elementary level	25.6%	51	43.7%
That offered a program for students with discipline or adjustment problems at the secondary level	52.3%	44	60.7%

Source: U.S. Department of Education, National Center for Education Statistics, *Schools and Staffing Survey, 1999-2000: Overview of the Data for Public, Private, Public Charter, and Bureau of Indian Affairs Elementary and Secondary Schools*, May 2002.

Second, returning students from District 75 to their home schools will also save transportation costs. As noted earlier, average per pupil transportation cost for District 75 students is nearly \$6,000 annually, substantially higher than the cost for special education students served by community school districts.

B. Streamline the Evaluation Process. Although federal law dictates many elements of student evaluations, New York State and City have added features that are unnecessary and costly. As discussed earlier, the ratio of students to evaluators in New York City is 36 to 1; for the rest of New York State, excluding New York City, the ratio is 63 to 1.⁵⁴ The primary source of duplication is the Department's maintenance of an SBST at every school. SBST's could cover more than one school, or the number of positions funded in each school could be

⁵⁴ The social worker, psychologist, and diagnosticians/evaluator categories shown in Table 10 have been added together for New York State to compare with New York City's CSE and SBST structure.

reduced. If supplemental evaluative services are needed because a school or a district is experiencing a high rate of referral, these services could be procured from private providers on contract. Equally important, SBST workloads will be reduced with fewer referrals due to greater use of preventive services.

More flexible staffing arrangements can reduce the need for some evaluation personnel. The IDEA mandates the participation of a special education teacher in the evaluation team. Typically, the student's special education teacher performs this function, except when the student is an initial referral and does not have a special education teacher. In New York City education evaluators fulfill the requirement for initial cases and then sit with the special education teacher for annual and triennial reviews. The presence of a special education teacher and an evaluator at annual and triennial review is duplicative. Only the student's special education teacher need attend.

The IDEA mandates that a social history be part of a student's evaluation, but it does not require that a social worker take the social history. A school psychologist, nurse, guidance counselor, or special education teacher could prepare the social history. Another streamlining measure would be to eliminate the requirement for a parent member (in addition to the child's parent) on the team.

C. Reduce administrative staff to national norms. New York's high ratio of administrators to students should be brought in line with national averages. This can be accomplished along with educational improvements by using information technology more effectively. Specifically, an electronic case folder model can eliminate paperwork, track students and help coordinate service delivery.

In 2000, the San Francisco Unified School District implemented a model called a "Student Success Team" with an automated case management component. The system combines electronic case file management with a best practice database. Teachers and other support staff can access comprehensive information on dozens of academic, behavioral, and health resources and strategies in both the school district and the larger community. Early benefits of the program include more timely and effective intervention for students before referral to special education, more teacher time spent on instruction rather than paperwork, and better parent and community participation.⁵⁵

New York City has improved its student information systems, but it does not have an electronic case folder for special education students. The Department of Education should automate the cumbersome and time-consuming tasks of tracking the status of and services provided to special education students.

⁵⁵ Every Child Can Learn Foundation, San Francisco, California, *The Student Success Team Support Tool, Project Completion Report*, July 2000.

Change in special education, even change that clearly will lead to improved outcomes, is a complex process. There are multiple stakeholders, strong emotions, large economic and personal stakes, and endless opportunities for controversy. As the Mayor, the Chancellor, and other educational leaders seek to implement reforms, they should have a proactive strategy, anticipating objections and involving interested parties in the planning. The Court must be assured that the City will honor its obligation to provide appropriate and timely service. Parents and their advocacy groups must be engaged and actively work to support the efforts. State officials must be convinced of the merits of desired regulatory changes. Finally, work rule and other contract changes that become necessary to support more inclusive settings and flexible assessment procedures must be a priority in collective bargaining with the United Federation of Teachers.

Fiscal Implications

The special education reforms described above would provide better services to students while reducing costs. As summarized in Table 14, the total net savings are \$267 million per year.

Moving students into less restrictive settings has important fiscal as well as educational benefits. Reducing New York City's share of students spending more than 60 percent of their time in special education (44 percent) to the average share for the rest of the State (21 percent) would move about 33,000 students to a less restrictive setting. This would benefit the children and save about \$3,600 per student, or a total of \$118 million annually.⁵⁶

Although the share of New York City students in special education is not strikingly high relative to other large school districts with similar concentrations of low-income students (refer to Table 5), there is room for improvement. If New York City were to utilize aggressively preventive measures in general education to bring its public school special education classification rate to that of Chicago, where a model program exists, then about 6,400 fewer students would be in special education programs.⁵⁷ These students are likely to require some additional resources even while in general education settings, but the savings would still reach about \$49 million annually.

⁵⁶ In fiscal year 2000-01 the per-pupil cost for the instructional portion of full-time special education was \$22,720 and the per-pupil cost of part-time special education, less than 20 percent of the day spent outside general education, was \$15,543, a difference of \$7,181. Based on these figures, it is estimated that a part-time program, between 20 and 60 percent of the day outside the general education classroom would cost \$19,127 per pupil, a savings of \$3,593 per student. The cost of a part-time program is from *School Based Expenditure Report*. Fiscal year 1999-2000 is the most recent year for which this data are available.

⁵⁷ The classification rates are from U.S. Department of Education, *National Center for Education Statistics, Characteristics of the 100 Largest Public Elementary and Secondary School Districts in the United States: 2000-01*, August 2002. The rate in New York City is 12.5 percent and in Chicago its 11.9 percent. Reported total enrollment in New York City is 1,066,945.

In fiscal year 2001, more than 20,000 special education students were in private programs. About 14,400 were preschoolers in programs run by nonprofit organizations under contract with the City. (Refer to Table 3.) The other 5,600 students are of school age. According to Chancellor Harold Levy's testimony before a presidential commission in 2001, about 1,200 are in private schools because their parents prevailed at impartial hearing. With baseline growth of 28 percent in this type of placement, for which the City is largely financial liable, this category of placement will increase by more than 300 students per year. If the City can keep the growth rate flat by meeting all procedural requirements while it works to change State and federal regulations, it can save more than \$10 million.⁵⁸

Table 14
Fiscal Implications of Special Education Recommendations
(dollars in millions)

Initiative	
Shift to More Inclusive Settings	\$118
Reduce Placements with Preventive Services	\$49
Reduce Private School Placements	\$10
More Efficient Support Services	\$140
* Reduce transportation costs	35
* Restructure evaluation process	83
* Streamline administration	22
Invest in Principal and Teacher Training	(\$50)
Net Savings	\$267

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Sources: See text.

More efficient transportation arrangements would save \$35 million annually. These savings arise in two ways. First, returning a portion of District 75's students to their home schools will reduce transportation needs. If half of the students could be bused on a more efficient route and half of the students maintain the average package of services then per-pupil transportation costs would be reduced from the District 75 average of \$5,957 to an estimated \$4,500 per pupil. This would save the Department \$28 million.⁵⁹

⁵⁸ This calculation is based on a reduction in private school placements of 340. The savings per student are \$29,400, based on instructional savings of \$8,000 and transportation costs of \$21,400. The instructional savings are the difference between estimated private school tuition of \$25,000 and public school placement of \$17,000. The transportation savings are the average cost for the three most expensive groups in Table 9.

⁵⁹ The calculation is based on an approximate enrollment of 20,000.

Transportation efficiencies are also possible for special education students currently served at their local school district. The average per-pupil cost for transportation for these students is \$3,516 annually.⁶⁰ If the rate at which special education students requiring specially arranged busing could be lowered to that of 1999 (69 percent), then 3,748 fewer students would need this service. Many, if not all, of these students ought to have some assistance with transportation, including special training to help adjust to alternative arrangements. This initiative is estimated to save \$7 million annually.⁶¹ Together, these transportation efficiencies would save \$35 million per year.

The evaluation process in New York City can be made more efficient for savings of \$83 million. As prevention measures in general education are enhanced and the number of referrals to special education go down, the SBST should be restructured. SBST's might serve more than one school and a reduced number of people per team might be needed for evaluation. The estimated savings are based on eliminating half the current positions at SBST's. It is important to note that if this were implemented, New York City's ratio of evaluation staff to students would be 1 to 53, still lower than elsewhere in the State.

Streamlining administration would save \$22 million. Returning a portion of District 75 students to their neighborhood schools would eliminate the need for administrators in some programs run by District 75. Based on current per-pupil administrative costs of \$1,400 per pupil annually, this savings would be \$14 million. Greater use of technology and the implementation of an electronic case folder model for tracking students are likely to reduce administrative costs at least 10 percent, or about \$8 million per year.⁶²

Finally, in order to make the recommended changes work effectively, some of the savings should be invested in more extensive training for principals and teachers. As general education teachers are asked to adapt their teaching methods to accommodate students with disabilities and to work collaboratively with special education professionals, they should be given suitable support. The recently negotiated contract with the teachers created time for such professional development activities. With the time available, the Department should allocate funds to provide expertise on which the teachers and principals can draw. An average investment of \$50,000 per school would require about \$50 million. This would bring the net savings from special education reform to \$267 million.

⁶⁰ This is the average cost of transporting a part-time special education student as reflected in City of New York, Board of Education, *School Based Expenditure Reports, Fiscal Year 2000-2001*, Systemwide Summary and Citywide Special Education Programs, January 2002.

⁶¹ This calculation assumes that the savings, after allowing for special training, is half the current rate.

⁶² This calculation is based on current administrative costs of \$594 per pupil for special education. See City of New York, Board of Education, *School Based Expenditure Reports, Fiscal Year 2000-2001*, Citywide Special Education Programs, January 2002.