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**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION**

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**COMMITTEE ON EDUCATION**

Hon. Mark Treyger, *Chair*

**Oversight: Meeting the Needs of Students with Disabilities in the COVID Era**

**November 18, 2021**

**Preconsidered Res. \_\_\_:** By Council Members Treyger, Rivera and the Public Advocate (Mr. Williams)

**Title:** Resolution calling upon the New York State Legislature to pass and the Governor to sign S.7381/A.8283, to require any public school located in a city with a population of one million or more to provide a remote learning option when community transmission of COVID-19 is at a substantial or high level

**Introduction**

On November 18, 2021, the Committee on Education, chaired by Council Member Mark Treyger, will conduct an oversight hearing on “Meeting the Needs of Students with Disabilities in the COVID Era.” The Committee will also hear Preconsidered Res. \_\_\_, sponsored by Council Member Mark Treyger, Council Member Rivera and the Public Advocate (Mr. Williams), calling upon the New York State Legislature to pass and the Governor to sign S.7381/A.8283, to require any public school located in a city with a population of one million or more to provide a remote learning option when community transmission of COVID-19 is at a substantial or high level. Witnesses invited to testify include representatives of the New York City (NYC or the City) Department of Education (DOE or the Department), students, parents, educators, unions, advocates, and other interested stakeholders.

**Background**

Students with disabilities comprise a large portion of the New York City public school population. During the 2020-21 school year, there were 227,105 students with disabilities, including both school-age and pre-school students, representing 20.8 percent of the city’s public school enrollment.[[1]](#footnote-1)

Before the Spring 2020 transition to remote learning, many students with disabilities were already not receiving all of the services to which they were entitled. According to the DOE’s data report for the 2018-19 school year, 84.3 percent of school-aged students with individualized education programs (IEPs) in DOE schools fully received their recommended services, while 13.8 percent received partial services and 1.9 percent, or 3,496 students, received none of their recommended services.[[2]](#footnote-2) Notably, this data does not include pre-school students with disabilities or those in charter schools, transfer schools, or alternative high schools.[[3]](#footnote-3)

Although there has been some improvement in the performance of students with disabilities in recent years, there is still a wide achievement gap when compared with general education students. On the 2019 State English Language Arts (ELA) exam, only 16.1 percent of city students with disabilities in grades 3 through 8 scored at or above proficient, compared to 56.2 percent for students without disabilities.[[4]](#footnote-4) Similarly, on the 2019 State math test, only 17.5 percent of students with disabilities in grades 3 through 8 scored at or above proficient, compared to 53.4 percent for students without disabilities.[[5]](#footnote-5)

Graduation rates for students with disabilities in City schools have also historically been much lower than those for their peers in general education. According to DOE, in 2019, only 52.6 percent of students with disabilities graduated within four years of entry into high school, compared to 83 percent of general education students.[[6]](#footnote-6)

**Impact of COVID-19 on Students with Disabilities**

The transition from in-school learning to remote learning amidst the COVID-19 pandemic raised a myriad of issues for students with disabilities, families, teachers and related services providers.[[7]](#footnote-7) Many of the approximately 200,000 NYC public school students with disabilities suffered learning loss during this pandemic.[[8]](#footnote-8) As related services, like speech, occupational and physical therapy moved to virtual teletherapy sessions without teachers, paraprofessionals or other skilled professionals on hand, parents were “forced to assume the roles of part-time special-service providers.”[[9]](#footnote-9) Additionally, in recognition of difficulties resulting from a shift to remote learning, city, state and federal guidance relaxed certain requirements to allow schools to provide what is required in a student’s IEP “to the greatest extent possible.”[[10]](#footnote-10) Under this revised guidance, schools could, for example, reduce the amount of targeted help students receive from special education teachers, a service known as “Special Education Teacher Support Services” (SETSS), such as small group instruction in specific subjects like reading or math.[[11]](#footnote-11)

On September 16, 2020, the DOE began the 2020-21 school year remotely for all students[[12]](#footnote-12) and on September 17th, the administration announced it would reconvene in-person learning according to the following schedule:

* Monday, September 21st: Blended learning students in grades 3-K and Pre-K, as well as all grades in District 75;
* Tuesday, September 29th: Blended learning students enrolled in K-5 and K-8 schools;
* Thursday, October 1st: Blended learning students enrolled in middle schools, high schools, secondary schools (schools spanning grades 6-12), and transfer schools/adult education.[[13]](#footnote-13)

However, parents and advocates continued to have concerns about DOE’s ability to support students with disabilities, including the system’s ability to ensure that students receive their mandated services, and these concerns were validated by the DOE’s special education data report, which showed that, as of November 2, 2020 just 54 percent of school-aged students with IEPs fully received their recommended services, while 37 percent received partial services and 9 percent received none of their recommended services.[[14]](#footnote-14) By January 18, 2021, while still well below pre-pandemic levels, the proportion of IEP students fully receiving their recommended services had grown to 76 percent, with 20 percent receiving partial services and 4 percent receiving none of their recommended services.[[15]](#footnote-15)

Furthermore, advocates contend that academic achievement gaps were exacerbated during remote learning, as many parents of students with disabilities indicated that their children regressed due to the lack of in-person assistance during the pandemic.[[16]](#footnote-16) Advocates also testified at prior Education Committee hearings about pandemic-related problems experienced by students with disabilities, including, for example: students in remote classes with double or triple the number of students mandated in their IEP; students whose IEPs mandate Integrated Co-Teaching classes but were being taught only by a general education teacher; students being pulled out of their live instruction for remote related services; and families who chose blended learning so their children could finally get related services in person only to learn that, due to staffing shortages, their school could only provide the services remotely.[[17]](#footnote-17)

**Department of Education Academic Recovery Efforts for Students with Disabilities**

To address learning loss resulting from the COVID-19 pandemic, Mayor de Blasio announced a new initiative, the “New York City Academic Recovery Plan" on July 8, 2021.[[18]](#footnote-18) As part of the Academic Recovery Plan, all DOE students, including students with disabilities, will receive additional support and programs during the 2021-22 school year.[[19]](#footnote-19) The Academic Recovery Plan lists the following efforts to better support students with Individualized Education Programs (IEPs):

* The DOE will launch afterschool and Saturday programs for students with IEPs to receive additional instruction and related services.
* DOE will add 800 Special Education Pre-K seats and expand Committees on Preschool Special Education to review more IEP requests.
* DOE will provide eligible students ages 21+ with either continued instruction toward their diploma or other credential, or consultation about plans for college and career readiness.
* DOE will also continue to provide family workshops and information sessions through the Beyond Access Series, which supports families of students with disabilities by providing sessions on topics related to special education.[[20]](#footnote-20)

Additional information was provided in an October 2021 letter to families of students with IEPs, which stated “Beginning this fall, every DOE school will offer an afterschool or Saturday program (or a combination of the two) to deliver Special Education Recovery Services.”[[21]](#footnote-21) Special Education Recovery Services are additional specialized instruction and related services that are made available to students with IEPs to help close gaps caused by the pandemic’s disruption to learning.[[22]](#footnote-22) Recovery services are intended to supplement, not replace, a student’s IEP programs and services and “are targeted to each student’s individual needs, based on progress monitoring and other information on the student’s learning experience since March 2020, including family input.”[[23]](#footnote-23) According to DOE’s website, during the fall, schools will reach out to the family of every student with an IEP to discuss the services and incorporate the family’s input into an individualized plan, which will be sent to the family.[[24]](#footnote-24) The website further states that services will be delivered in the fall and winter, with start dates and schedules determined by the school individually for each student.[[25]](#footnote-25) The letter sent to families states that, “[a]ccepting these services does not waive any rights your child may have to additional services, including compensatory services” and that they will be contacted later in the school year to discuss whether further services will be needed, based on their child’s progress and services that have been provided since March 2020.[[26]](#footnote-26)

**Issues and Concerns**

Although DOE promised to launch afterschool and Saturday programs for students with disabilities to receive additional instruction and related services, these programs have not yet begun. According to DOE’s letter to families of students with IEPs, Special Education Recovery Services will begin in “November or December”[[27]](#footnote-27) but additional details have recently surfaced. According to a November 9th article in *Chalkbeat*, DOE officials have divided students with IEPs into three priority groups with staggered timelines for launching the recovery services, with the highest-need students receiving services first.[[28]](#footnote-28) The article states that the Special Education Recovery program was originally scheduled to begin in October or early November and then pushed back to November 15, but it is now slated to begin as late as December 6th for just the highest-need students, with students in the other two priority groups to begin receiving services at some later date.[[29]](#footnote-29) December 6th is less than three weeks before the December 24th start of winter break, and nearly three months into the school year, raising concerns about the potential negative impact on students of the long wait for these recovery services designed to mitigate the pandemic-related learning loss.[[30]](#footnote-30)

The latest information indicates that the recovery services, consisting of small group instruction as well as services such as speech and occupational therapy, will be offered in cycles of 10 or 13 weeks, and students will be offered additional cycles if they don’t make up enough ground.[[31]](#footnote-31) Families and advocates are frustrated that the program’s rollout has been so disorganized, with little communication about specific services that will be provided and other key details still up in the air.[[32]](#footnote-32) Some parents also question how DOE will provide recovery services to students with disabilities who are unable to attend programs afterschool or on Saturday.[[33]](#footnote-33)

Staffing issues have also emerged as a major hurdle in implementing the afterschool and Saturday Special Education Recovery programs, with principals experiencing great difficulty finding enough staff who are willing to work overtime in these programs.[[34]](#footnote-34) DOE guidance reportedly states that the program’s small-group instruction should include a maximum of six students, requiring a significant amount of staff to serve all students in grades K through 12 who have IEPs.[[35]](#footnote-35) According to Mark Cannizzaro, head of the principals’ union, “[t]here are not enough teachers, especially special education teachers, to staff these positions.”[[36]](#footnote-36) As a result, in a break from the city’s original plan, schools are now allowed to hire educators who are not certified in special education for the program, according to DOE guidance sent to principals.[[37]](#footnote-37) In another last-minute change, despite the requirement that students attend school in-person this year, city officials are allowing schools to offer the recovery program virtually, which could be helpful in recruiting staff. [[38]](#footnote-38)

Equally concerning are reports from advocates that they’re hearing from families of students with disabilities who do not currently have their *mandated* services in place, due to a shortage of certified special education teachers and one-on-one paraprofessionals.[[39]](#footnote-39)

Transportation for afterschool and Saturday Special Education Recovery programs is another unresolved issue. Recovery services for some students with disabilities are supposed to start in mid-November, but parents have still not heard anything about how transportation will work and whether or not bus service will be available.[[40]](#footnote-40) Many students will only be able to access recovery services if they have bus service, but in the past, bus service has not been available after school or on weekends.[[41]](#footnote-41)

Busing concerns are not restricted to afterschool and Saturday service. Some students whose IEPs mandate specialized transportation still have not been assigned a bus route.[[42]](#footnote-42) Others have a route, but no driver, matron or IEP-mandated paraprofessional.[[43]](#footnote-43) And some students whose buses do show up are facing erratic pickups or hours-long rides.[[44]](#footnote-44)

**Conclusion**

Today’s hearing will provide an opportunity for the Committee to examine the current status of DOE’s efforts to address the needs of students with disabilities in the wake of the COVID-19 pandemic. More specifically, the Committee will explore how DOE is providing recovery programs to mitigate learning loss as well as mandated services amid staffing shortages and other issues. Additionally, students, parents, teachers, unions and other educational stakeholders will have an opportunity to raise their concerns about the DOE’s ability to provide needed supports to students with disabilities in the wake of the pandemic.

Preconsidered Res. No.

Resolution calling upon the New York State Legislature to pass and the Governor to sign S.7381/A.8283, to require any public school located in a city with a population of one million or more to provide a remote learning option when community transmission of COVID-19 is at a substantial or high level

By Council Members Treyger, Rivera and the Public Advocate (Mr. Williams)

Whereas, A new coronavirus, SARS-CoV-2, first emerged in late 2019 and spread rapidly around the world, with the World Health Organization declaring COVID-19, the disease caused by SARS-CoV-2, a public health emergency of international concern on January 30, 2020; and

Whereas, The first case of COVID-19 in New York City was confirmed on March 1, 2020 and spread quickly across the City in the following weeks; and

Whereas, In an effort to limit the spread of the virus, public schools across New York City and New York State were closed in mid-March and, on March 23, 2020, the New York City Department of Education (DOE) transitioned to remote learning for all students, providing online instruction to students at home for the remainder of the school year; and

Whereas, For the 2020-21 school year, in order to minimize potential exposure to COVID-19, the DOE offered students either a hybrid model, consisting of a combination of in-school instruction and remote learning for students, or a fully remote option; and

Whereas, When schools reopened in September 2020, only about one quarter of students attended in-person instruction due to concerns by many parents about the possible spread of COVID-19 in schools, according to an October 26, 2020 *Gothamist* article; and

Whereas, Subsequently, the DOE gave parents another chance to opt for in-person classes for the rest of the school year, but the number choosing to return to classes in person only increased to roughly a third of the City’s public school students, according to a Nov 20, 2020, *Chalkbeat* article, leaving approximately two-thirds of students learning remotely all year; and

Whereas, Last May, when COVID-19 was on the wane in New York City and throughout the nation, Mayor de Blasio announced a full return to in-person learning for all students in September 2021, with no remote option; and

Whereas, However, starting in June and continuing throughout the summer months, the far more contagious Delta variant of COVID-19 was on the rise in the City, as well as nationally, prompting the Mayor to announce a mandate in late July that the entire city workforce, including DOE employees, would have to either get vaccinated by September 13th, the first day of school, or get tested for COVID-19 once a week; and

Whereas, As the threat from the Delta variant increased, on August 23rd the Mayor, Chancellor and Health Commissioner jointly announced a new mandate requiring all DOE employees, as well as DOE contractors who work in school-based settings, to provide proof of a first dose of vaccination by September 27th, without an alternative option for weekly testing; and

Whereas, Despite the vaccine mandate for school staff and other safety measures, many parents remained unconvinced that it was safe for students to return to classrooms and planned to boycott schools and keep their children home until the DOE offered a remote learning option, according to a September 10, 2021, *Chalkbeat* article; and

Whereas, While the DOE has declined to provide actual numbers of students attending school until sometime after their October 31st census date, the department posts daily attendance percentages on its website, with citywide attendance rates hovering around 85 % since the start of the school year; and

Whereas, According to DOE’s website, there are 1,094,138 students in the NYC school system, of which 138,648 are in charter schools, so an 85 % attendance rate would mean that more than 140,000 students are absent on any given day, excluding charter schools, and it is unknown how many of those students are long-term absentees or have not attended since the start of the school year; and

Whereas, Currently, the DOE does not offer a remote instruction option for students, except for what is known as “home instruction” for students with medical conditions, according to DOE’s September 2021 Homecoming Health and Safety Guide; and

Whereas, This means that any students who have not attended in-person since the start of the school year, but do not have a medical condition that qualifies them for home instruction, may have had no access to any formal instruction to date, and their parents risk being charged with educational neglect; and

Whereas, The concerns of some parents about potential exposure to COVID-19 in schools, whether because their children are not yet eligible for vaccination or due to immunocompromised family members or other risk factors, are not unfounded since there have been 5,386 confirmed COVID-19 cases in NYC public schools, including 3,998 students and 1,388 staff, as of October 19, 2021 according to DOE’s website; and

Whereas, A remote learning option would significantly decrease the risk and possible spread of COVID-19 in schools and in the community at large; and

Whereas, S.7381, sponsored by Senator Liu, and its companion bill A.8283, sponsored by Assemblymember Fernandez, would require any public school located in a city with a population of one million or more to provide a remote learning option when such public school is located in a county where community transmission of COVID-19 is at a substantial or high level, as determined by the federal centers for disease control and prevention; and

Whereas, The legislation further stipulates that such remote learning option shall remain available until the federal centers for disease control and prevention determines that community transmission in such county is at a low or moderate level; and

Whereas, Companion bills S.7381 and A.8283 would ensure that a remote learning option is available in New York City public schools to protect students and their vulnerable family members due to continued risks related to the COVID-19 pandemic; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass and the Governor to sign S.7381/A.8283, to require any public school located in a city with a population of one million or more to provide a remote learning option when community transmission of COVID-19 is at a substantial or high level.

LS# 18158, 18159, 18160

JA

11/8/21

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