

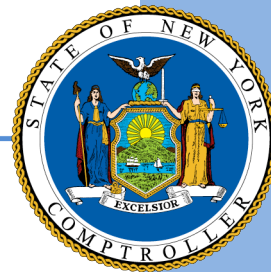
# Disruption to Special Education Services: Closing the Gap on Learning Loss from COVID-19

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OFFICE OF THE NEW YORK STATE COMPTROLLER

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Thomas P. DiNapoli, State Comptroller



September 2021

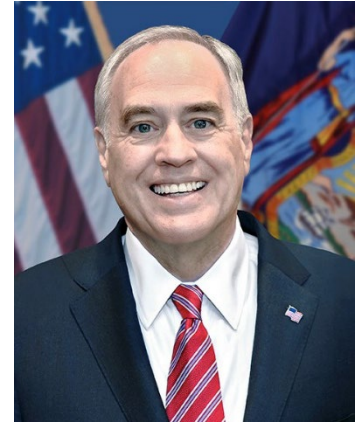


# Message from the Comptroller

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September 2021

When the COVID-19 pandemic gripped New York in March 2020, New York's schools took on the extraordinary challenge of quickly shifting teaching to remote formats. School buildings stayed closed for the remainder of the 2019-20 school year, turning homes into makeshift classrooms. Our educational leaders developed reopening plans for the 2020-21 school year to protect the health and safety of students and staff, as well as to address the complex challenge of catching up on months of lost in-person instruction.



As the 2020–21 school year progressed, districts used hybrid, remote and in-person learning to balance the need to keep students and staff safe with the need to provide an effective learning environment. While educators, parents and students made the best of this prolonged period of disruption and remote learning, they had to contend with multiple schedule and staff changes, interrupted services and altered curriculum, technical difficulties and sudden life changes. Those who face special challenges living with a disability encountered even greater hardships, going at times without the services and supports needed to receive a sound basic education, which likely resulted in greater learning losses.

Now, as we move into the third school year affected by the COVID-19 pandemic, our State continues to recover from the intertwined public health and economic crisis: vaccinations are widely available, employment is rebounding, State and local governments and school districts have received necessary federal aid, and schools are planning for a return to full in-person instruction. An essential part of this year's reopening plans should be focused on supporting students with disabilities. School districts must establish processes to enable educators, working in partnership with students and parents, to make individualized determinations on the extent of services needed to compensate for learning loss suffered, and ensure provision of all special education programs and services necessary to make up for lost ground during the pandemic.

Special education programs fulfill a great need, providing a quality learning experience that accommodates the individual differences and needs of students with disabilities. Particular attention must be paid to those students who receive special education services in order to remedy the educational hardships experienced because of the COVID-19 pandemic and allow these young New Yorkers to succeed in their educational goals.

Thomas P. DiNapoli  
State Comptroller



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# I. Executive Summary

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The State Education Department (SED) oversees special education programs that provide services to students with disabilities between the ages of 3 and 21 in New York State. The most recent SED figures show that nearly half a million students in New York State have a disability, representing 18 percent of the total K-12 student population. To provide these children with an appropriate public education as required by federal law, schools collaborate with service providers and the student's family to create an individualized education program (IEP) that meets the student's unique learning needs.

During the COVID-19 crisis, many factors associated with remote learning led to a reduction in special education programs, supports and related services that students with disabilities need to meet their educational goals. New York City, which educates almost half the State's students with disabilities, reported in November 2020 that as many as 46 percent of City students with disabilities received only part of the interventions specified in their IEPs or none at all.

Remote learning also reduced the effectiveness of special education services that were being provided that ordinarily require a hands-on or face-to-face approach or specialized equipment that was unavailable at home. School districts and teachers acknowledged that staff reallocation, shortened school days and reliance on home caregivers to assist in providing specialized instruction all contributed to significant difficulty in providing special education in a manner that meets the unique needs of each student with a disability.

As a result, parents, practitioners, and researchers agree that the circumstances of the pandemic resulted in learning loss and will exacerbate pre-existing achievement gaps, especially for students with disabilities. With the substantial influx of federal pandemic relief funding and other fiscal resources currently available for education, school districts should make spending on special education a priority. Evidence-based interventions should be implemented in the upcoming school year to address the disparate levels of learning loss as well as the social and emotional well-being of students with disabilities who have been impacted by the pandemic.

## II. Educating Students with Disabilities

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New York State's Constitution establishes a public school system "wherein all the children of this state may be educated."<sup>1</sup> The federal Individuals with Disabilities Education Act (IDEA) requires public school districts to provide children with disabilities a "free appropriate public education" (FAPE) that includes supports and services necessary to meet a child's unique needs and prepares him or her for further education, employment, and independent living.<sup>2</sup> Most school-age students with disabilities in New York receive their educational services from public school districts.

The definition of a "disability" for educational purposes is broad and can include learning challenges such as dyslexia, hearing or visual impairments, autism, emotional disturbances or severe developmental and/or physical challenges.<sup>3</sup> School districts assess students with disabilities, and school administrators, educators, and the student's family collaborate to develop an Individualized Education Program (IEP) that specifies how a FAPE is to be provided.<sup>4</sup> IEPs include a summary of the student's present levels of academic achievement and functional performance, annual goals, and specific plans for special education instruction and related services needed to attain those goals.<sup>5</sup>

Services provided under an IEP vary greatly depending on the needs of the student. The IDEA requires that students with disabilities be educated in the least restrictive environment possible. Therefore, to the extent feasible, SED's policy is to have students participate in the general education curriculum and to offer supports, such as more time on tests or additional educational aides in the classroom, and related services, such as speech-language therapy or audiology services, interpreting services, psychological counseling and/or physical and occupational therapy.<sup>6</sup> Instruction for students with more severe disabilities may require separate classroom instruction with smaller teacher-pupil ratios or even specialized schools.

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<sup>1</sup> New York State Constitution, Article XI, § 1.

<sup>2</sup> U.S. Department of Education (US DOE), *IDEA: Topic Areas*, at <https://sites.ed.gov/idea/topic-areas/#IEP>; and Section 504 of the Rehabilitation Act of 1973 and implementing regulations (29 U.S.C. § 794; 34 C.F.R. Part 104).

<sup>3</sup> US DOE, IDEA Regulations, Part B, Section 300.8, *Child with a Disability*, at <https://sites.ed.gov/idea/regs/b/a/300.8>.

<sup>4</sup> US DOE, Office of Special Education and Rehabilitative Services, *A Guide to the Individualized Education Program*, July 2000, at <https://www2.ed.gov/parents/needs/speced/iepguide/index.html>.

<sup>5</sup> U.S. Government Accountability Office (GAO), *Distance Learning: Challenges Providing Services to K-12 English Learners and Students with Disabilities During COVID-19 (Distance Learning)*, GAO-21-43, November 2020, at <https://www.gao.gov/products/gao-21-43>.

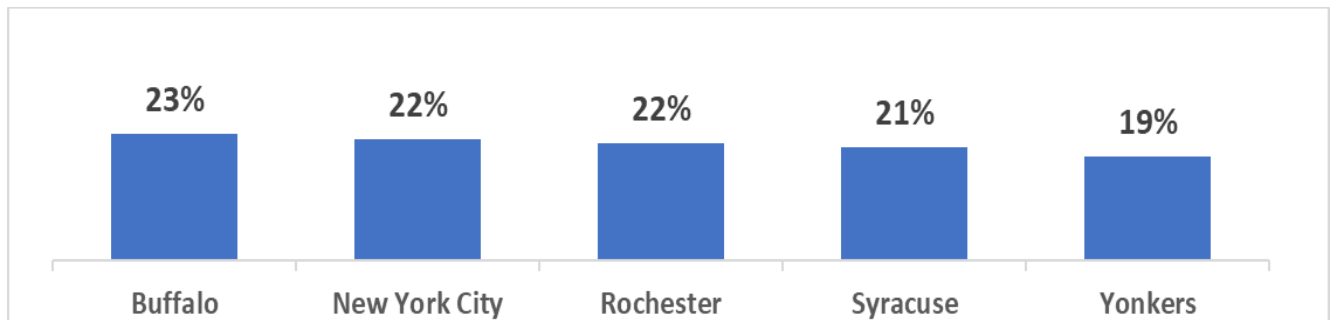
<sup>6</sup> New York State Education Department (SED), *Special Education: Individualized Education Program Guidance*, 2011, at <http://www.p12.nysed.gov/specialed/publications/iepguidance/intro.htm>.

## Special Education Enrollment

During the 2019-20 school year, SED reported more than 464,400 students in New York public schools had a disability, constituting 18 percent of total K-12 enrollment, higher than the national rate of 14 percent.<sup>7</sup>

As shown in Figure 1, the “Big Five” city school districts have greater shares of students receiving IEP services than the rest of the State: Buffalo is highest at 23 percent, followed by New York City and Rochester at 22 percent, Syracuse at 21 percent and Yonkers at 19 percent.

**Figure 1**  
Share of K-12 Enrollment with Disabilities in the “Big Five” School Districts,  
School Year 2019-20



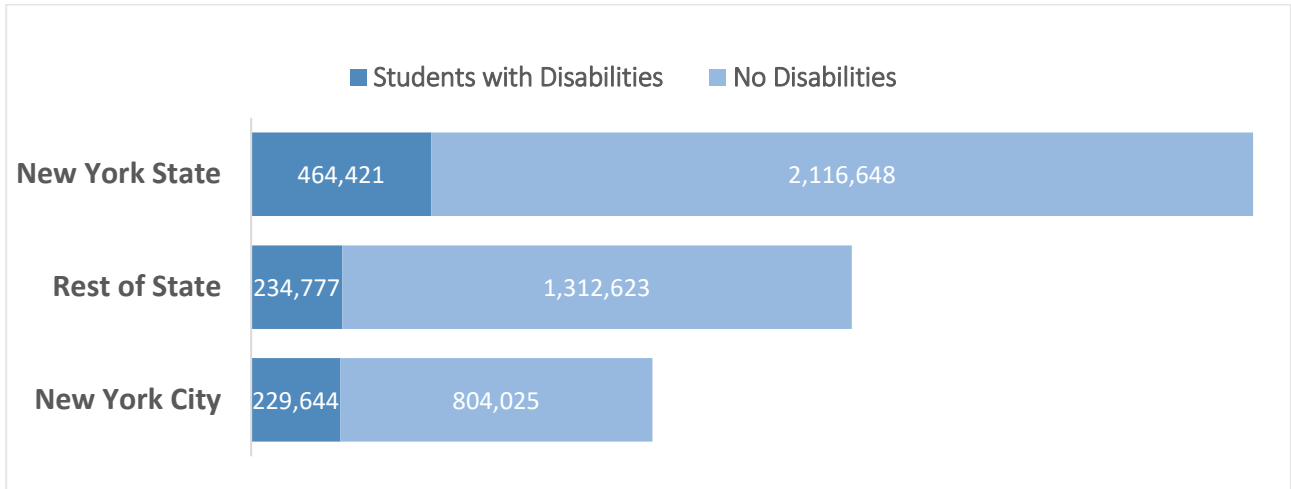
Source: New York State Education Department (SED) data; OSC calculations.

As shown in Figure 2, New York City public schools educate 49.4 percent of students with disabilities statewide, a total of 229,644 in the 2019-2020 school year, nearly the same amount as school districts in the rest of the State combined.

<sup>7</sup> SED, *New York State Public School Enrollment: 2019-2020*, accessed June 1, 2021, at <https://data.nysed.gov/enrollment.php?year=2020&state=yes>; and US DOE, Institute for Education Sciences, National Center for Education Statistics, *Annual Reports: Students with Disabilities*, last updated May 2021, at <https://nces.ed.gov/programs/coe/indicator/cgg>.



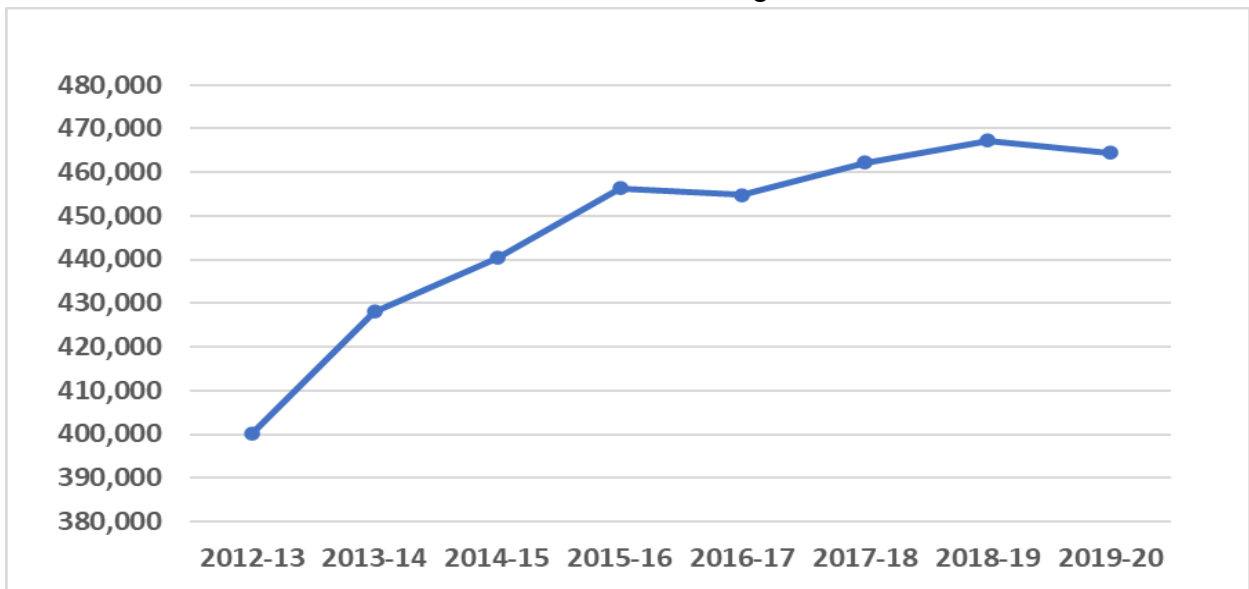
**Figure 2**  
New York State K-12 Enrollment, Students With and Without Disabilities,  
School Year 2019-20



Source: SED data; OSC calculations.

The number of students with a disability has increased by nearly 65,000 since school year 2012-13, even as total K-12 enrollment has declined by more than 75,000. As a result, the percentage of students classified as having a disability has increased statewide, from 15 percent to 18 percent from school years 2012-13 to 2019-20. (See Figure 3.)

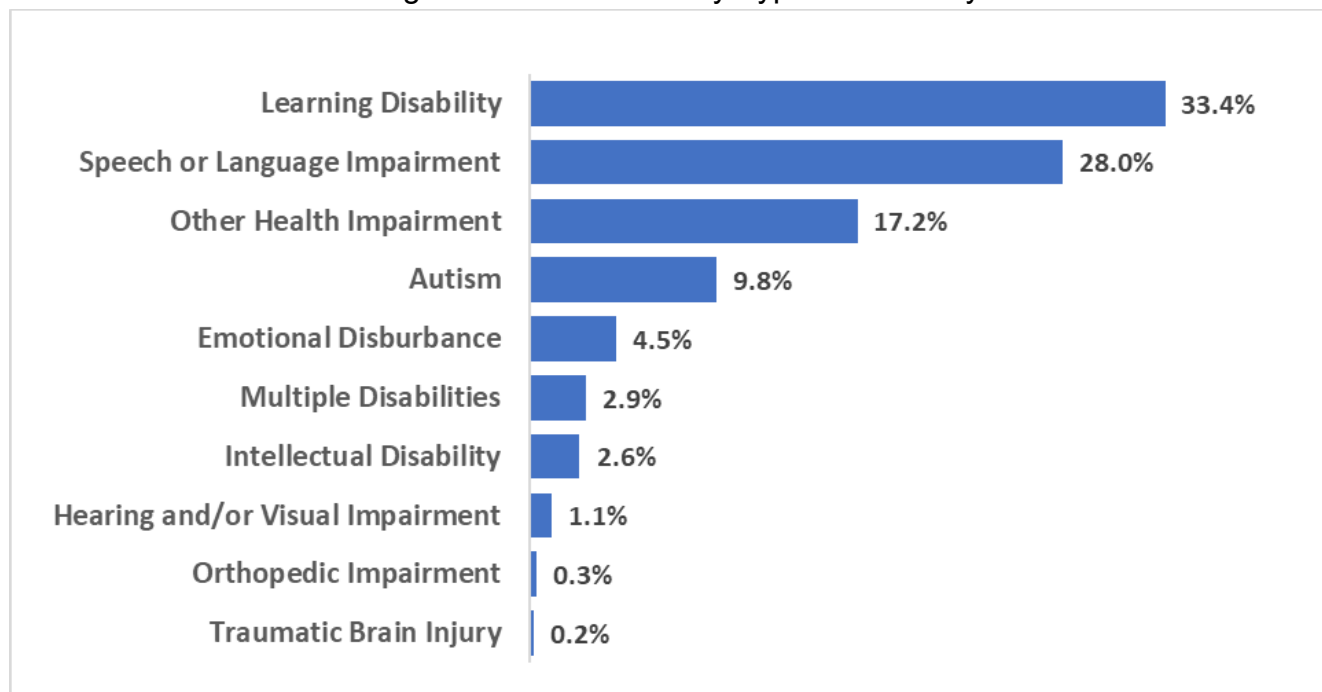
**Figure 3**  
Number of New York Students with Disabilities,  
School Years 2012-13 Through 2019-20



Source: SED data; OSC calculations

The IDEA defines 13 disability categories. One-third of New York State students who receive special education services were classified as having a learning disability as of October 2019. A specific learning disability affects the child’s ability to read, write, listen, speak or do math.<sup>8</sup> While other disability classifications can also include these challenges, the largest share of children with IEPs in the State are classified with a learning disability alone (33 percent), as shown in Figure 4. Speech or language impairments, which impact a student’s ability to understand or express verbal communication, account for the second largest share of students receiving IEP services (28 percent), followed by the “Other Health Impairment” classification (17 percent), which includes conditions like Attention Deficit Hyperactivity Disorder. Autism is the fourth largest classification, accounting for nearly 10 percent of students with IEPs.

**Figure 4**  
**New York State Students with Disabilities Receiving Special Education Programs and Services by Type of Disability**



Note: Hearing and/or Visual Impairment combines visual impairment, including blindness, hearing impairment, deafness and deaf-blindness. Ratios based on Total School Age Number: 498,491, as of October 2, 2019. Source: SED, Information and Reporting Services.

<sup>8</sup> IDEA Regulations, Part B, Section 300.8(c)(10), at <https://sites.ed.gov/idea/regs/b/a/300.8/c/10>.

### III. Impact of COVID-19

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#### ***Shift to Remote and Hybrid Instruction***

When schools were suddenly shut down during the last quarter of the 2019-20 school year, school administrators and educators quickly adapted to a model of remote instruction under highly uncertain circumstances, facing challenges posed by the health crisis, economic disruption, changed family dynamics, and deployment and use of new technology. A survey of educators conducted by SED in the 25 counties hardest hit by COVID-19 found two-thirds of teachers rated student engagement at the lowest levels during the first wave of the pandemic in Spring 2020, when distance learning was being used extensively and many students were not receiving live instruction.<sup>9</sup> Research generally indicates that greater levels of student engagement directly correspond with improved student outcomes, both academic and social-emotional.<sup>10</sup>

During this time, many students with disabilities were unable to receive IEP-mandated supports in the manner they were intended. For example, specialized classroom settings and small-group instruction were often not possible. Related services and therapies that typically require hands-on, face-to-face interaction or specialized equipment – like occupational or physical therapy – had to be provided remotely, which may have limited their effectiveness.<sup>11</sup> A May 2020 survey conducted by an advocacy organization of more than 1,500 families nationwide found that only 20 percent of parents with children with IEPs reported they were receiving all of their services, while 39 percent of parents reported their children were not receiving any services at all.<sup>12</sup> Parents of children with IEPs were more than twice as likely than parents of children without IEPs to say that their child was doing little to no remote learning (35 percent to 17 percent) and that distance learning was not going well (40 percent to 19 percent).<sup>13</sup>

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<sup>9</sup> For purposes of its assessment, SED defined the “hardest-hit” counties by multiplying the total percentage of the county population that has tested positive for COVID-19 by the percentage of economically disadvantaged students within the county. See SED, *American Rescue Plan (ARP): Elementary and Secondary School Emergency Relief (ESSER) State Plan [ESSER Plan]*, pg. 10, at <https://oese.ed.gov/files/2021/06/New-York-ARP-ESSER-Application.pdf>. SED’s plan was approved by US DOE on August 5, 2021.

<sup>10</sup> See, e.g. Katharina Schnitzler, et al., “All Better than Being Disengaged: Student Engagement Patterns and Their Relations to Academic Self-Concept and Achievement,” *European Journal of Psychology of Education*, 2020, pp. 1-26.

<sup>11</sup> US DOE, Office for Civil Rights, *Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students (Disparate Impacts)*, June 2021, pg. 25, at <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>.

<sup>12</sup> Survey of 1,594 parents conducted via Facebook Messenger by ParentsTogether Foundation. See ParentsTogether Action, “Survey Reveals Remote Learning Is Failing Our Most Vulnerable Students (ParentsTogether Survey),” May 27, 2020, at <https://parentstogetheraction.org/2020/05/27/parentstogether-survey-reveals-remote-learning-is-failing-our-most-vulnerable-students-2/>.

<sup>13</sup> Ibid; US DOE, *Disparate Impacts*, op. cit., pg. 25.

In the 2020-21 school year, remote learning continued either fully or partially for most students in New York, and social distancing requirements for in-person learning often resulted in a redistribution of instructional staff and other resources. As a result, disruptions in the provision of special education programs and services continued in many school districts.<sup>14</sup>

SED reports that in October 2020, a minority of schools and students had reopened with full in-person learning: only 453 schools, or 10 percent, reported full-time in-person instruction (serving 174,597 students, or 7 percent of total statewide enrollment). (See Figure 5.) In contrast, more than three-fourths of students were enrolled in schools that reported using a hybrid model offering both in-person and remote instruction (1,813,434 students). 664 schools reported continuing fully remote or online-only instruction (serving 372,999 students, or 16 percent of enrollment).<sup>15</sup> With most schools at least partially reopened, SED’s teacher survey found improved student engagement during this time.<sup>16</sup>

**Figure 5**  
New York State Instructional Modes for All Students, 2020-21 School Year

<b>Reopening Mode</b>	<b>Number of schools</b>	<b>Percentage of schools</b>	<b>Number of students</b>	<b>Percentage of students</b>
<b>Fully In-Person</b> – school buildings open with full-time in-person instruction	453	10%	174,597	7%
<b>Remote or online only</b>	664	15%	372,999	16%
<b>Hybrid</b> - school buildings open with both remote/online and in-person instruction	3,293	75%	1,813,434	77%

Note: Based on Basic Educational Data System (BEDS) Day Enrollment as of October 7, 2020.  
Source: SED, ESSER Plan.

<sup>14</sup> SED, Office of Special Education, “Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic,” June 2021, at <http://www.p12.nysed.gov/specialed/publications/2021-memos/compensatory-services-for-students-with-disabilities-result-covid-19-pandemic.pdf>.

<sup>15</sup> To arrive at these numbers, SED took information submitted in school reopening plans by local education agencies (LEAs) and applied it to student enrollment counts based on the Basic Educational Data System (BEDS) Day Enrollment. It is unclear whether every LEA submitted a reopening plan with information regarding instructional mode for the 2020-21 school year, and SED notes its calculations do not include roughly 220,000 students out of the total K-12 public school student enrollment. Therefore, the percentages calculated do not account for this number of total K-12 enrollment. See SED, ESSER Plan, op. cit., pg. 6.

<sup>16</sup> During the 2020-2021 school year, only 22 percent of teachers rated student engagement at the lowest levels, down from 66 percent in the spring of 2020. Ibid, pg. 10.

SED guidance advised school districts to prioritize a return to in-person learning for students with disabilities; however, it does not appear that students with disabilities were receiving in-person learning at a rate higher than other students. As shown in Figure 6, while 7 percent of students statewide had access to full in-person learning, only 6 percent of students with disabilities returned to in-person instruction. Eighty percent of students with disabilities continued to learn in hybrid instructional models, compared to 77 percent of students statewide. Critically, economically disadvantaged students and English language learners had even lower rates of in-person instruction.

**Figure 6**  
New York State Instructional Modes by Percentage Served by Subgroup,  
2020-21 School Year

<b>Student Group</b>	<b>Percentage Hybrid</b>	<b>Percentage In-Person</b>	<b>Percentage Remote</b>
<b>All Students</b>	77%	7%	16%
<b>Students with Disabilities</b>	80%	6%	14%
<b>Economically Disadvantaged</b>	81%	4%	15%
<b>English Language Learners</b>	83%	3%	14%

Note: Based on BEDS Day Enrollment as of October 7, 2020.  
Source: SED State Plan, at pg. 6.

### ***Special Education in New York City During the Pandemic***

SED has not published data on how the provision of services mandated under IEPs was disrupted by the pandemic and remote instruction; however, the New York City Department of Education (NYC DOE), which educates nearly half the special education students in the State, released data during the 2020-21 school year that illustrates the impact of the pandemic on special education in New York. Beginning in September 2020, NYC DOE was required to report on the number of students who were receiving special education programs and services in full compliance with their IEPs. These reports are to be published each school year in September, February and June.<sup>17</sup>

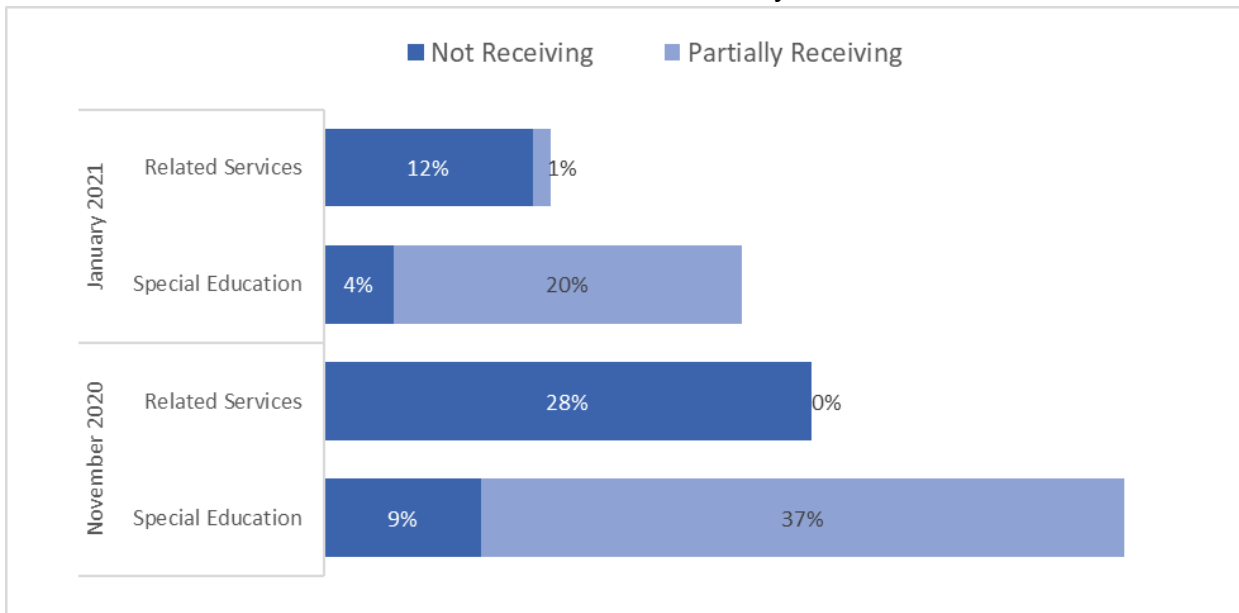
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<sup>17</sup> As of the date of this report, NYC DOE had not published the June 2021 report. See New York City Administrative Code § 21-955, *Reporting on Special Education Services*, at <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-130193>.

According to the most recent figures published by NYC DOE (published in February 2021 and showing data as of January 18, 2021), nearly a quarter of the city’s students with special needs (roughly 54,000 students) were not receiving all special education programs mandated under their IEPs. As shown in Figure 7, about 4 percent of students with disabilities (roughly 9,000) were reported as not receiving *any* items under their IEP at all, such as correct class settings, teacher supports or assistive technology.

**Figure 7**

Share of New York City Special Education Students Partially or Not Receiving Services, November 2020 and January 2021



Source: NYC DOE InfoHub.

These data showed improvements from more troubling figures earlier in the school year. In November 2020, NYC DOE reported that 46 percent of city students with disabilities (roughly 104,000 students) received only part of the interventions on their IEP or none at all.

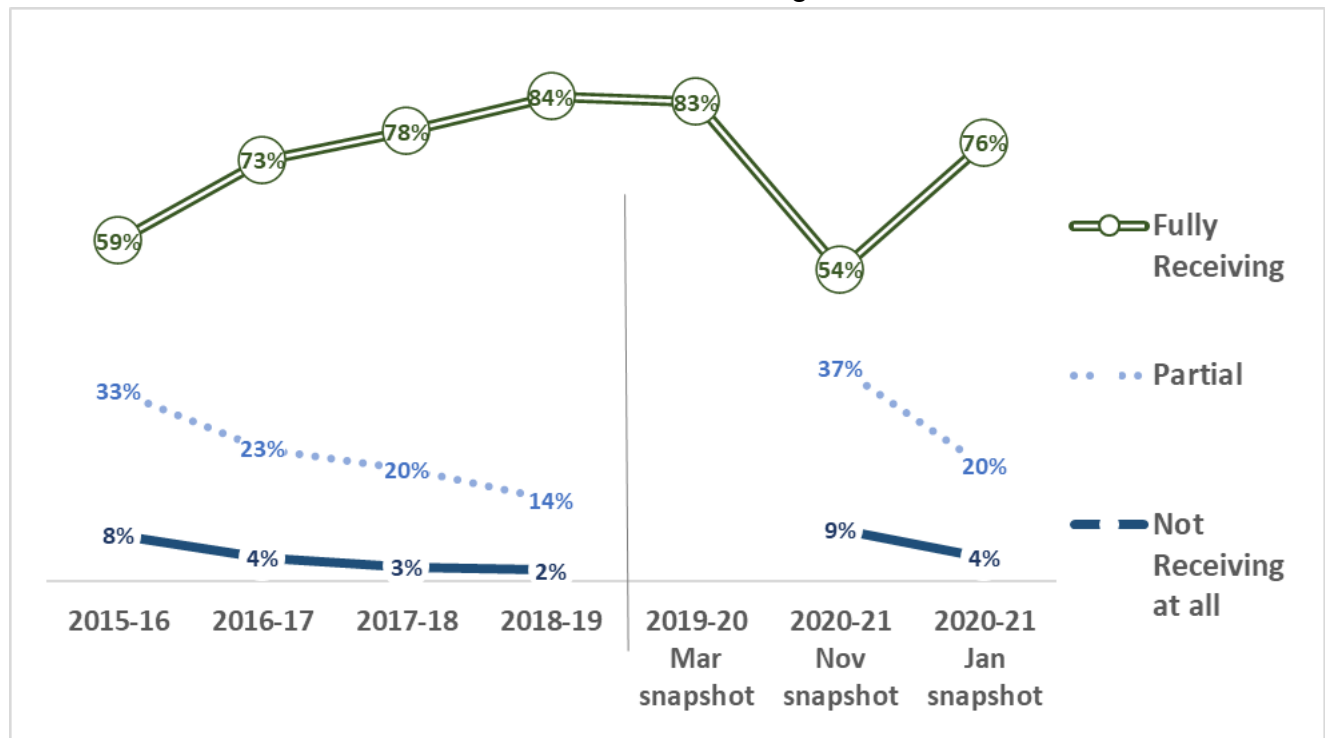
New York City’s figures also show whether students were receiving their related services, such as counseling services and speech, occupational or physical therapies. In January 2021, 13 percent of students were not receiving or partially receiving their related supports, down from 28 percent in November 2020.

The data also demonstrated that disabled students who needed bilingual services suffered the greatest losses, with 41 percent of students entitled to bilingual counseling not fully receiving those services as of January (down from 56 percent in November) and 22 percent of students entitled to bilingual speech-language therapy not receiving those services in January (down

from 35 percent in November).<sup>18</sup> In contrast, more commonly used related services, such as occupational therapy, physical therapy and speech-language therapy, and hearing education services, were reported as being fully provided at the highest frequencies during the COVID-19 pandemic.

Fully providing all mandated IEP services had been challenging even prior to the pandemic; however, NYC DOE reported an improving trend with 84 percent of students with disabilities receiving their full special education programs for the 2018-19 school year, up from 59 percent in the 2015-16 school year. (See Figure 8.) In 2018-19, only 2 percent of students did not receive any services to which they were entitled.<sup>19</sup> The City has not yet returned to pre-pandemic levels of IEP service provision.

**Figure 8**  
New York City Special Education Services Provided,  
School Years 2015-16 Through 2020-21



Source: NYC DOE InfoHub.

<sup>18</sup> NYC DOE, *Special Education Reports: School-Age Special Education Data Report - February 2021*, at <https://infohub.nyced.org/reports/government-reports/special-education-reports>.

<sup>19</sup> NYC DOE, *Special Education Reports: Annual Reports for School Years 2015-16 and 2018-19*, at <https://infohub.nyced.org/reports/government-reports/special-education-reports>.

The pandemic also resulted in changes that may affect future special education caseloads and service provision. During the 2019-20 school year, the number of students who were referred for special education services in New York City fell nearly 27 percent to about 16,000 students from 22,000 in the prior year. In addition, 20 percent of students who were referred for special education services had their cases closed without a formal IEP meeting, up from 15 percent in 2018-19. The IEP meeting helps determine if a student is entitled to services and, if so, which ones. These reductions could indicate that the pandemic led to fewer parents requesting evaluations or fewer teachers referring students for testing, potentially causing NYC DOE to miss new students who would otherwise benefit from special education services. This may amplify the challenges some students face as they return to school.

### ***Challenges in Providing Special Education Services Remotely***

In addition to the fact that many students with disabilities were not receiving their full program of IEP services, there is also evidence that the quality of special education services that were provided was negatively impacted during the pandemic. Numerous reports by major media outlets describe individual families' experiences. While some children with disabilities thrived in a remote setting, most anecdotal reports detail struggles and signs of regression.<sup>20</sup> Teachers and school administrators also acknowledge the negative impact of COVID-19 on special education delivery.<sup>21</sup>

School districts surveyed by the GAO in fall 2020 reported "a variety of logistical and instructional factors" that lessened the quality of special education services during the pandemic, such as shortened school days (lessening the amount of time available for special needs) and the limited capacity of home caregivers to assist in providing specialized instruction and related services. In addition to these issues, the GAO noted "concerns about students not receiving services in the same manner as they did prior to distance learning, including

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<sup>20</sup> See Hannah Natanson, Valerie Strauss and Katherine Frey, "How America failed students with disabilities during the pandemic," *Washington Post*, May 21, 2021, at <https://www.washingtonpost.com/education/2021/05/20/students-disabilities-virtual-learning-failure/>; Anya Kamenetz, "Families of Children with Special Needs Are Suing in Several States. Here's Why," *National Public Radio*, July 23, 2020, at <https://www.npr.org/2020/07/23/893450709/families-of-children-with-special-needs-are-suing-in-several-states-heres-why/>; Perry Stein and Valerie Strauss, "Special education students are not just falling behind in the pandemic—they're losing key skills, parents say," *Washington Post*, August 7, 2020, at [https://www.washingtonpost.com/local/education/special-education-students-are-not-just-falling-behind--theyre-losing-key-skills-parents-say/2020/08/05/ec1b91ca-cffd-11ea-9038-af089b63ac21\\_story.html](https://www.washingtonpost.com/local/education/special-education-students-are-not-just-falling-behind--theyre-losing-key-skills-parents-say/2020/08/05/ec1b91ca-cffd-11ea-9038-af089b63ac21_story.html); and Jacqueline Neber, "Persistence Is Key: NYC Families of Students with Disabilities Share Stories of Their Pandemic Year," *Chalkbeat New York*, May 5, 2021, at <https://ny.chalkbeat.org/2021/5/5/22422075/students-with-disabilities-pandemic-advocacy/>.

<sup>21</sup> See, e.g., American Institutes for Research, *National Survey of Public Education's Response to COVID-19: Research Brief - Spotlight on Students with Disabilities* (October 2020) at <https://www.air.org/sites/default/files/COVID-Survey-Spotlight-on-Students-with-Disabilities-FINAL-Oct-2020.pdf>; and Alina Tugend, "Teachers of Special-Needs Students Struggle with Feelings of Helplessness," *The New York Times*, April 23, 2020, at <https://www.nytimes.com/2020/04/23/education/learning/coronavirus-teachers-special-needs-students.html>.



occupational and physical therapy that involved hands-on instruction from therapists or required specialized equipment unavailable in students' homes.”<sup>22</sup>

School districts tended to deal with those difficulties by modifying students' goals and services in IEPs – not necessarily in furtherance of the student's academic goals, but to accommodate the limitations of distance learning.<sup>23</sup> One-half of New York teachers surveyed by SED stated that they did not have the tools and skills necessary to address the needs of students with disabilities in remote learning environments, as shown in Figure 9.<sup>24</sup>

**Figure 9**  
Teachers' Self-Reported Preparedness for Remote/Hybrid Instruction, Fall 2021

<b>To what extent do you agree that you have the tools and skills necessary to:</b>	<b>Percent “Disagreed” or “Strongly Disagree”</b>
Address the needs of students with disabilities in remote/hybrid learning environments	50%
Address the needs of English Language Learners in remote/hybrid learning environments	46%
Integrate social-emotional learning in remote/hybrid learning environments	28%
Engage with families in remote/hybrid learning environments	28%
Promote culturally responsive and sustaining education in remote/hybrid learning environments	27%
Promote student learning in the shift to teaching online	22%

Source: SED, ESSER Plan

<sup>22</sup> GAO, *Distance Learning*, op. cit., pp. 14-16.

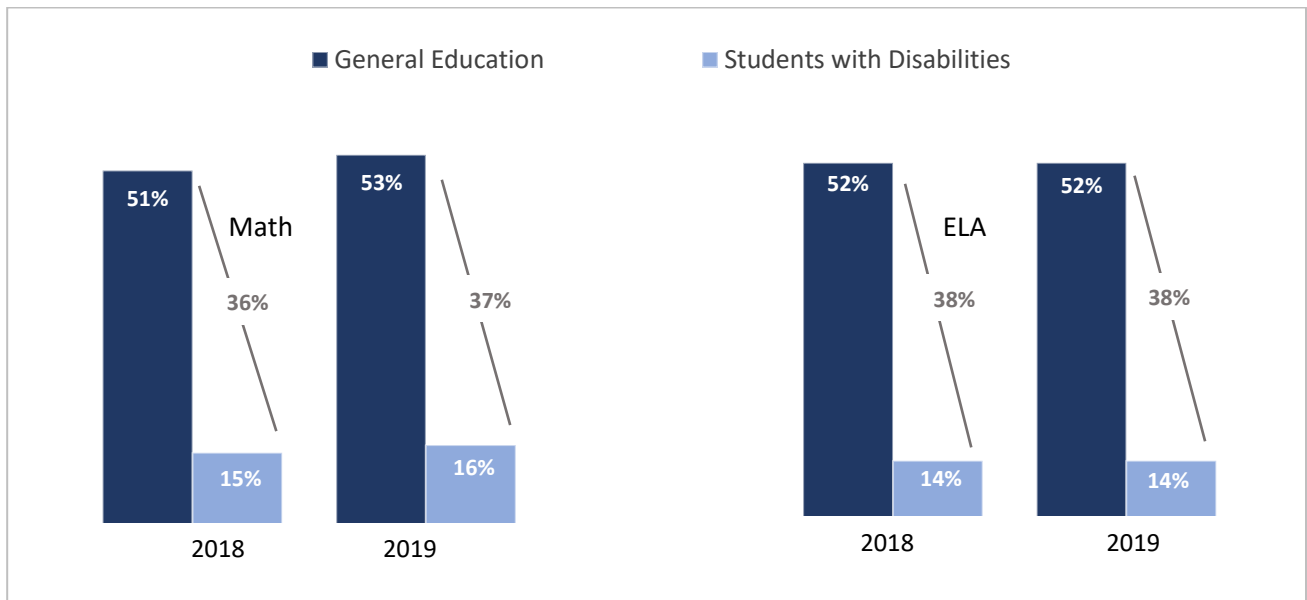
<sup>23</sup> Ibid, pg. 17.

<sup>24</sup> SED, ESSER Plan, p. 10. In addition, a national survey by the RAND Corporation found most teachers felt they did not receive sufficient guidance for conducting remote teaching with students receiving special education services; and Education Week reports that a majority of teachers struggled to satisfy the requirements of students' IEPs during remote instruction. See Melissa Kay Diliberti and Julia H. Kaufman, “Will This School Year Be Another Casualty of the Pandemic?” RAND Corporation, at [https://www.rand.org/pubs/research\\_reports/RRA168-4.html](https://www.rand.org/pubs/research_reports/RRA168-4.html); and Sara D. Sparks, “Most Students With Disabilities Still Attend Remotely. Teachers Say They’re Falling Behind,” *EdWeek*, April 8, 2021, at <https://www.edweek.org/teaching-learning/most-students-with-disabilities-still-attend-remotely-teachers-say-theyre-falling-behind/2021/04>.

## ***Projected Impacts of Learning Loss for Students with Disabilities During COVID-19***

An achievement gap has long existed for students with disabilities, and the loss of services during the pandemic threatens to exacerbate this gap. The statewide four-year graduation rate for students with disabilities in 2020 was 62 percent compared to about 89 percent for general education students. On 2019 Grade 3-8 English Language Arts (ELA) state assessments, 52 percent of general education students met or exceeded the proficiency standard compared to just 14 percent of students with disabilities, a proficiency gap of 38 percentage points, as shown in Figure 10. Similarly, the proficiency gap was 37 percentage points on 2019 Grade 3-8 Math state assessments.

**Figure 10**  
Proficiency Gap on Math and ELA State Assessments  
General Education Students and Students with Disabilities, 2018 and 2019



Source: SED data.

A study published by McKinsey & Company in July 2021 analyzed learning loss for K-12 students resulting from COVID-19 and found students lagged on average five months in mathematics and four months in reading at the end of the 2020-21 school year.<sup>25</sup> Research indicates learning loss may be even greater for students with disabilities, and achievement

<sup>25</sup> The study analyzed more than 1.6 million elementary school students in over 40 states; however, it is likely to understate the magnitude of the impact because it excluded students who remained remote throughout the entire school year. See Emma Dorn, et al., "COVID-19 and Education: The Lingering Effects of Unfinished Learning (Lingering Effects)," McKinsey & Co., July 2021, at <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-education-the-lingering-effects-of-unfinished-learning>.

gaps are likely to widen.<sup>26</sup> A June 2020 brief published by the Annenberg Institute for School Reform at Brown University noted the importance of additional face-to-face instructional time for students with disabilities, and found, “Students with disabilities are one of the student populations likely to have regressed the most during COVID-related distance learning.”<sup>27</sup> Data compiled by the U.S. Department of Education (US DOE) from several school districts in fall 2020 show sharp spikes in the number of students with disabilities that are failing their classes.<sup>28</sup>

In addition to academic harm, the pandemic has taken a toll on the emotional well-being of students, which can directly impact a student’s attendance and overall ability to complete school work.<sup>29</sup> The 2021 McKinsey study found 35 percent of parents said they were very or extremely concerned about their child’s mental health, and that clinical diagnoses of anxiety and depression in their children had increased by 5 and 6 percentage points, respectively, since before the pandemic.<sup>30</sup> A May 2020 survey indicated that students with disabilities may have been facing more mental health challenges than their peers, with their parents being almost twice as likely to say they were concerned about their child’s mental health (40 percent compared to 23 percent for those without IEPs).<sup>31</sup>

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<sup>26</sup> See, e.g., Jessica Toste, et al., “‘Eye Opening and Chaotic’: Resilience and Self-Determination of Secondary Students with Disabilities Amidst the COVID-19 Pandemic,” *Journal of Education for Students Placed at Risk* 26:2, 2021, pp. 157–183.

<sup>27</sup> Nathan Jones, Sharon Vaughn and Lynn Fuchs, *Academic Supports for Students with Disabilities*, Annenberg Institute for School Reform at Brown University, EdResearch for Recovery, June 2020, at [https://annenberg.brown.edu/sites/default/files/EdResearch for Recovery Brief 2.pdf](https://annenberg.brown.edu/sites/default/files/EdResearch%20for%20Recovery%20Brief%202.pdf).

<sup>28</sup> US DOE, *Disparate Impacts*, op. cit., at pg. 26.

<sup>29</sup> Dorn, “Lingering Effects,” op. cit., citing Shannon M. Suldo, et al., “The Impact of School Mental Health on Student and School-Level Academic Outcomes,” *School Mental Health*, 6:2, 2014, pp. 84–98.

<sup>30</sup> Dorn, “Lingering Effects,” op. cit.

<sup>31</sup> Parents Together Survey, op. cit.; US DOE, *Disparate Impacts*, pg. 26.

## IV. Looking Ahead

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Conditions for learning have improved for students with disabilities since the start of the pandemic. School districts are expected to return to in-person learning this fall, and students who continue to participate remotely may benefit as schools have had more time to adapt curriculum, train teachers and find ways to increase engagement with students and families. Traditional statewide assessments are being reinstated, providing evaluative data necessary to identify and address the progress of students.

Substantial new resources available over the next four years provide an opportunity to address the learning losses suffered during the pandemic and to advance the State's commitment to provide a FAPE for students with disabilities. State education aid will increase by \$8.4 billion over the next few years; in this fiscal year alone, over \$1 billion in State Aid will be provided to school districts for reimbursable costs specific to educating students with disabilities.<sup>32</sup>

In addition, New York was allocated over \$15 billion in federal emergency education aid under three relief packages, as shown in Figure 11. Conditions attached to these funds provide wide latitude for allowable uses of the funds, including all programs under the IDEA.<sup>33</sup> US DOE has approved SED's plan for use of Elementary and Secondary School Emergency Relief (ESSER) funding under the most recent American Rescue Plan (ARP) Act. The ARP Act requires the State to reserve at least 5 percent of its ESSER allocation to address the impact of lost instructional time (and 20 percent must be reserved from each local ESSER distribution),<sup>34</sup> and funding may go toward increasing the salaries of educators or hiring new staff to perform these additional services or toward providing more intensive support to students.<sup>35</sup> It is estimated that ARP will also provide New York State with \$184 million in supplemental funding specifically for IDEA programs.<sup>36</sup>

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<sup>32</sup> This figure includes the two major State funding streams for special education: Public Excess Cost High Cost Aid (\$664 million) and Private Excess Cost Aid (\$434 million). See New York State Division of the Budget, 2021-22 State Aid Projections, at <https://www.budget.ny.gov/pubs/archive/fy22/en/2021-22-enacted-schoolaid-runs.pdf>.

<sup>33</sup> US DOE, *Frequently Asked Questions: ESSER Programs and GEER Programs* (US DOE Guidance), May 2021, p. 31, at [https://oese.ed.gov/files/2021/05/ESSER.GEER\\_FAQs\\_5.26.21\\_745AM\\_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf](https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf).

<sup>34</sup> ARP Act §§ 2001(e)(1), 2001(f)(1).

<sup>35</sup> US DOE Guidance, op. cit. at pg. 29.

<sup>36</sup> This represents a portion of more than \$3 billion in targeted emergency IDEA funding under ARP. See US DOE, Fact Sheet: ARP and IDEA, 2021, at <https://www2.ed.gov/policy/speced/leg/arp/arp-idea-fact-sheet.pdf>; and US DOE, "Estimated American Rescue Plan IDEA Supplemental Grant Allocations," March 15, 2021, at <https://www2.ed.gov/policy/speced/leg/arp/arp-idea-allocations.html>.

**Figure 11**  
New York State Allocations of Federal Pandemic Relief (In Millions)

	<b>Coronavirus Aid, Relief, and Economic Security Act (CARES)</b>	<b>Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA)</b>	<b>American Rescue Plan Act (ARP)</b>
<b>Elementary and Secondary School Emergency Relief (ESSER)</b>	\$1,037.0	\$4,002.4	\$8,995.3
<b>Governor’s Emergency Education Relief (GEER)</b>	\$164.3	\$322.9	
<b>IDEA</b>			\$184.1
<b>Emergency Assistance to Non-Public Schools (ARP)</b>			\$252.5
<b>ESSER Homeless Children and Youth (ARP)</b>			\$58.9
<b>Total</b>	<b>\$1,201.3</b>	<b>\$4,325.3</b>	<b>\$9,490.8</b>

Source: U.S. Department of Education

SED’s plan for use of ESSER funding recognizes the challenges faced by students with disabilities and identifies mitigating learning loss and closing performance gaps for students who were most impacted by the COVID-19 shutdown, including children with disabilities, as a top priority.<sup>37</sup> School districts should consider approaches for prioritizing spending State and federal aid on special education programs and related services, which represent an urgent need. These funds can and should help to address short-term setbacks and longstanding inequities for students with disabilities.

SED’s mandatory reopening requirements with respect to special education specify school reopening plans must: ensure access to the necessary accommodations, supplementary aids and services, and technology necessary to meet the needs of disabled students; document programs and services offered to students with disabilities; make “individualized determinations” on the extent of services needed to compensate for learning loss; have contingency plans for continuation of service if schools must close; and consider, implement,

<sup>37</sup> SED, ESSER Plan, at pp. 9, 11.

and maintain new forms of documenting evolving student needs and progress made by students with disabilities.<sup>38</sup>

Federal guidance provides options for implementing these directives, encouraging use of evidence-based interventions that include extended school-day and structured after-school programs, weekend school, tutoring and summer school programs.<sup>39</sup> US DOE also recommends leveraging technology to provide diagnostic and curriculum-embedded assessments and differentiated instruction (a teaching approach that tailors instruction to students' different learning needs) to address learning loss.

Some additional recommendations from US DOE include:

- Employing additional evaluators or virtual evaluation platforms to decrease evaluation backlogs;
- Providing positive behavioral interventions and mental health services for children with disabilities, including hiring more counselors and procuring resources to support social-emotional learning;
- Increasing use of assistive technology devices in the general education classrooms for children with disabilities;
- Developing programs to help children with disabilities transition into post-secondary activities;
- Hiring additional special education teachers and related service providers to reduce caseloads;
- Improving programming for children with disabilities who have been expelled from school or are incarcerated;
- Increasing the number of high-need children with disabilities who are funded with State aid; and
- Expanding opportunities for parent and family engagement.<sup>40</sup>

A renewed focus on collection of educational performance data will directly support SED's efforts to better understand the pandemic's impact on students with disabilities and to identify appropriate solutions where State and federal aid can be best spent. In addition to restoring State assessments, SED and school districts should consider a system for aggregating and reporting the results of periodic evaluations of progress made on IEP goals, which are currently

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<sup>38</sup> SED, *Recovering, Rebuilding and Renewing: The Spirit of New York's Schools – Reopening Guidance*, July 2020, pp. 112-21, at <http://www.nysed.gov/common/nysed/files/programs/reopening-schools/nys-p12-school-reopening-guidance.pdf>.

<sup>39</sup> US DOE Guidance, op. cit. at pg. 29; see also SED, ESSER Plan, op. cit. at pg. 40; and Dorn, "Learning Loss," op. cit.

<sup>40</sup> US DOE Guidance, op. cit. at pp. 32-33.

conducted on a case-by-case basis. An analysis of aggregate data on IEP outcomes will provide a better lens to identify the categories of greatest post-pandemic need.

Both State and local education agencies should keep these and other initiatives in sight as they continue to address the unique needs of students with disabilities in recovering from the pandemic. Thoughtful, collaborative and sustained efforts are needed for New York to achieve its objective of providing education that enables all students to realize their fullest potential.

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