



# City of New York

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## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## MANAGEMENT AUDIT

**Marjorie Landa**

Deputy Comptroller for Audit

Audit Report on the Educational  
Services Offered by the Departments of  
Correction and Education to Young  
Inmates at Rikers Island

ME16-066A

**March 28, 2017**

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
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NEW YORK, NY 10007

SCOTT M. STRINGER  
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March 28, 2017

To the Residents of the City of New York:

My office has audited the New York City Department of Correction (DOC) and Department of Education (DOE) to determine whether DOC offered and DOE provided educational services to young inmates at Rikers Island (Rikers), particularly to those with special educational needs. We perform audits such as this to ensure that City agencies are meeting their responsibilities.

The audit concluded that DOC failed in its efforts to ensure that all young inmates eligible for educational services were advised of the opportunity to receive them. DOC provided insufficient evidence to demonstrate that inmates 18-21 years of age admitted to Rikers during Fiscal Year 2015 were consistently informed of the opportunity to request and receive educational services, as required by New York State regulations. Similarly, DOE provided insufficient evidence to demonstrate that inmates 18-21 years of age were consistently provided educational services by the 11<sup>th</sup> day following its receipt of requests for educational services, as required by New York State regulations. In addition, DOE provided insufficient evidence that it consistently prepared Special Education Plans for enrolled inmates with special educational needs during Fiscal Year 2015.

To address these and other issues, the audit made nine recommendations, including that DOC ensure that all inmates 18-21 years of age complete the Request for Educational Services form; that DOC maintain a log indicating when it provides DOE with completed request forms; that DOE record the dates it receives the request forms from DOC; and that DOE ensure that it prepares Special Education Plans for all students with special educational needs at Rikers.

The results of the audit have been discussed with DOC and DOE officials, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
Audit Findings and Conclusion .....	2
Audit Recommendations.....	3
Agency Response.....	3
<b>AUDIT REPORT .....</b>	<b>4</b>
Background .....	4
Objective.....	5
Scope and Methodology Statement.....	5
Discussion of Audit Results with DOC and DOE Officials.....	5
<b>FINDINGS AND RECOMMENDATIONS.....</b>	<b>6</b>
DOC Failed to Ensure That Educational Services Were Offered to Eligible Inmates 18-21 Years of Age, as Required .....	7
Recommendations .....	8
DOC Has No Assurance that It Provides Completed Request for Educational Services Forms to DOE in a Timely Manner for Inmates 18-21 Years of Age.....	8
Recommendations .....	9
DOE Does Not Ensure that Inmates 18 to 21 Years of Age Are Provided Educational Services in a Timely Manner .....	9
Recommendations .....	10
DOE Did Not Consistently Develop Special Education Plans for Students with Special Educational Needs.....	10
Recommendations .....	11
<b>DETAILED SCOPE AND METHODOLOGY.....</b>	<b>12</b>
<b>ADDENDUM I – DEPARTMENT OF CORRECTION</b>	
<b>ADDENDUM II – DEPARTMENT OF EDUCATION</b>	

# THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

## Audit Report on the Educational Services Offered by the Departments of Correction and Education to Young Inmates at Rikers Island

ME16-066A

### EXECUTIVE SUMMARY

The objective of the audit was to determine whether the Department of Correction (DOC) and the Department of Education (DOE) offered and provided educational services, respectively, to young inmates at the Rikers Island facility (Rikers), particularly to those with special educational needs.<sup>1</sup> The audit scope was Fiscal Year 2015 (July 1, 2014, through June 30, 2015).

DOC provides for the daily custody, control and care of persons accused of crimes and persons convicted and sentenced to one year or less of jail time in New York City (the City). People incarcerated at Rikers can be as young as 16.

Under New York State regulations, an inmate is eligible to receive educational services if he/she is under 21 years of age, has not received a high school diploma, and has been (or can reasonably be expected to be) incarcerated in a correctional facility for 10 or more calendar days. The regulations further require that DOC, within 10 days of admission, advise eligible inmates 16-21 years of age of the availability of educational services. In addition, according to a DOC Directive entitled *Inmate Access to Board of Education Services*, new admission inmates under 22 years old are required to complete and sign a Rikers Island Schools Request for Educational Services form.<sup>2</sup> Moreover, under New York State regulations, correctional facility staff must submit requests for educational services to the school district by the end of the next school day after the inmates complete the form.

DOE is the largest school district in the United States, serving 1.1 million students in over 1,800 schools. Pursuant to the abovementioned State regulations and the decision of the Second

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<sup>1</sup> According to the federal Individuals with Disabilities Education Act, schools must provide special education and related services to students who, by reason of their disabilities, need such services. 20 U.S. Code §1414.

<sup>2</sup> NYC Department of Education, Chancellor's Regulation A-210, Minimum Standards for Attendance Programs (2013) provides, among other things, that "each minor from 5 to 17 years of age in New York City is required to attend school on a full time basis" and that "students who turn 17 on or after July 1 must complete the school year in which they turn 17 years of age." The regulation creates an exception for minors who have graduated from high school. DOC officials told us that because it is mandatory for 16 and 17 year-old minors to attend school unless they are high school graduates, DOC does not distribute the Request for Educational Services forms to those inmates but, rather, simply escorts them to the East River Academy, the school that the New York City Department of Education operates for eligible students incarcerated on Rikers Island.

Circuit Court in *Handberry v. Thompson*, DOE provides educational services on Rikers to eligible inmates through its East River Academy (ERA).<sup>3</sup>

State regulations further provide that instruction for incarcerated students must begin no later than 11 school days after the school district receives a request for educational services. Based on the ERA Staff Handbook, a Special Education Plan (SEP) must be developed and implemented within 30 school days of a student with special educational needs commencing participation in a DOE school or program.<sup>4</sup> The SEP outlines the special services to be provided to a student with special educational needs. It is based on the Individualized Education Program (IEP) previously prepared by the last school attended by the student, modified to the extent necessary so that it can be implemented in a correctional facility. The SEP is also based on classroom observations at ERA and on student performance.

## Audit Findings and Conclusion

The audit identified weaknesses in DOC's efforts to ensure that all young inmates eligible for educational services are advised of their opportunity to receive them. The audit also found weaknesses in DOE's efforts to prepare SEPs for all ERA students with special educational needs within 30 school days of their first day of attendance at ERA.

The evidence reviewed during the audit indicated that all 16-17 year olds admitted to Rikers during Fiscal Year 2015 were provided educational services as mandated by law. However, DOC provided insufficient evidence to demonstrate that inmates 18-21 years of age admitted to Rikers during Fiscal Year 2015 were consistently informed of the opportunity to request and receive educational services as required by State regulations. DOC was unable to provide us with signed Request for Educational Services forms for 68 percent of the 92 18-21 year-old inmates in our sample.<sup>5</sup> DOC's inability to provide that documentation raises serious questions as to whether young inmates are consistently being advised of the opportunity to receive educational services. DOC also does not maintain a log or any other record showing when it provides signed Request for Educational Services forms to DOE. As a result, DOC has no assurance that its staff members are informing DOE of inmates' requests for educational services by the end of the next school day, as required.

DOE, similarly, provided insufficient evidence to demonstrate that inmates 18-21 years of age were consistently provided educational services by the 11<sup>th</sup> day following its receipt of requests for educational services. Since DOE neither date-stamps the Request for Educational Services forms it receives from DOC nor maintains a log of their receipt, DOE is unable to demonstrate that it is providing educational services by the 11<sup>th</sup> day following its receipt of the forms, as required by State regulations.

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<sup>3</sup> On August 14, 1996, *Handberry v. Thompson* was filed by inmates who did not have a high school diploma, were between 16 and 21 years of age, and in the custody of DOC. The plaintiffs claimed DOC and DOE failed to offer and provide, respectively, adequate general and special education services to young inmates in violation of federal and New York State law. A decision was issued in the case in 2002 by the District Court for the Southern District of New York. In 2006, the Court of Appeals for the Second Circuit affirmed some portions of the District Court ruling and vacated others. *Handberry v. Thompson*, 446 F.3d 335 (2d Cir. 2006).

<sup>4</sup> Insofar as this report cites *Handberry v. Thompson* as authority, the relevant portion of the ruling by the District Court, which ordered DOE to develop and implement a special education plan for each special education student within 30 school days of the student's commencing participation in school at Rikers, was affirmed by the Second Circuit. *Handberry v. Thompson*, 446 F.3d 335, 356 (2d Cir. 2006).

<sup>5</sup> We randomly selected 100 inmates from DOC's Inmate Information System dataset of inmates 16-21 years of age who were admitted to Rikers during Fiscal Year 2015. Of the 100 inmates in our sample, 8 were 16-17 years of age when they were admitted to Rikers. Since educational services are mandated for this age group and DOC escorts such inmates to the East River Academy rather than requiring them to complete Request for Educational Services forms, we therefore exclude these 8 inmates from our sample for purposes of testing whether inmates eligible for educational services had received the abovementioned request forms.

In addition, DOE provided no evidence that it prepared SEPs for 9 (36 percent) of our sample of 25 enrolled inmates with special educational needs during Fiscal Year 2015. Moreover, DOE did not consistently complete those SEPs that were prepared within 30 school days of the students' enrollment in ERA, as required. Of the remaining 16 students in our sample, the SEPs for 3 were prepared more than 30 school days after the students began receiving educational services at ERA.

Finally, neither the two responsible agencies (DOC and DOE) nor the auditors could be assured that all of the eligible individuals were advised of the opportunity to receive educational services or that all who accepted such services received the services in a timely manner or at all.

## **Audit Recommendations**

To address these issues, the audit recommends, among other things, that:

- DOC should ensure that all inmates 18-21 years of age complete the Request for Educational Services form.
- DOC should maintain completed Request for Educational Services forms for a sufficient length of time to facilitate reviews of detention center compliance in this area.
- DOC should maintain a log indicating when it provides DOE with completed Request for Educational Services forms.
- DOE should record the dates it receives Requests for Educational Services forms from DOC and notify DOC when the forms are not provided to DOE by the end of the next school day based on the dates that the request forms were completed.
- DOE should ensure that it prepares SEPs for all students with special educational needs and that they are prepared on a timely basis.

## **Agency Response**

In their responses, DOC agreed with three of the audit's four recommendations directed to DOC and partially agreed with one, while DOE agreed with the audit's five recommendations directed to DOE. However, DOC specifically disputed "the overall finding that 'DOC does not ensure that eligible inmates 18-21 years of age are advised of the opportunity to receive educational services'" and DOE generally objected to the focus of the report.

# AUDIT REPORT

## Background

DOC provides for the daily custody, control and care of persons accused of crimes and persons convicted and sentenced to one year or less of jail time in the City. Among other things, in accordance with applicable laws and rules, DOC advises young eligible inmates 16-21 years old of the opportunity to receive educational services.

Under New York State regulations, an inmate is eligible to receive educational services if he/she is under 21 years of age, has not received a high school diploma, and has been (or can reasonably be expected to be) incarcerated in a correctional facility for 10 or more calendar days.<sup>6</sup> Further, “[w]ithin 10 days after admission of a youth eligible for educational services . . . such youth shall be apprised by the correctional facility of the availability of educational services.”<sup>7</sup> According to a DOC Directive entitled *Inmate Access to Board of Education Services*, “[a]ll new admission inmates, who are identified as under 22 years old, shall complete and sign a Rikers Island Schools Request for Educational Services . . . form.” Moreover, under New York State regulations, “[w]henver an eligible youth indicates his desire to access educational services . . . facility staff shall submit a request for such services to the school district . . . by the end of the next school day.”<sup>8</sup>

DOE is the largest school district in the United States, serving 1.1 million students in over 1,800 schools. Pursuant to the abovementioned State regulations and a decision by the Second Circuit Court in *Handberry v. Thompson*, DOE provides educational services on Rikers to eligible inmates through its ERA.

State regulations further provide that “[I]nstruction [for incarcerated students] shall commence not later than the 11<sup>th</sup> school day following the school district’s receipt of a request for educational services.”<sup>9</sup> Based on the ERA Staff Handbook, an SEP must be developed and implemented within 30 school days of a student with special educational needs commencing participation in a DOE school or program. The SEP outlines the special services to be provided to a student with special educational needs. It is based on the IEP previously prepared by the last school attended by the student, modified to the extent necessary so that it can be implemented in a correctional facility. The SEP is also based on classroom observations at ERA and on student performance.

According to a list provided by DOC, 1,782 inmates 16-21 years of age with unsealed records remained incarcerated at Rikers for 10 or more days during Fiscal Year 2015.<sup>10</sup> Of those inmates, 184 (10.3 percent) were 16-17 years of age and had an average length of stay of 145 days, and 1,598 inmates (89.7 percent) were 18-21 years of age and had an average length of stay of 126 days. DOC could not identify which of its inmates had been special or general education students before their admission to Rikers because DOC does not have access to that information.

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<sup>6</sup> New York Code of Rules and Regulations (N.Y.C.R.R.) Title 8 §118.1 (2016) and Title 9 §7070.4(b)(1) (2016).

<sup>7</sup> N.Y.C.R.R. Title 8 §118.5 (2016).

<sup>8</sup> N.Y.C.R.R. Title 9 §7070.4(g) (2016).

<sup>9</sup> N.Y.C.R.R. Title 8 §118.4(c) (2016).

<sup>10</sup> Not included in this list were 1,498 young inmates who had lengths of stay of less than 10 days and 4,824 young inmates whose criminal records had been sealed. Thus, while DOC provided the list of 1,782 inmates noted above, the total number of young inmates incarcerated at Rikers during our scope period was 8,104.

DOE provided us with a dataset of 1,563 students who were enrolled in ERA during Fiscal Year 2015, consisting of 735 special education students and 828 general education students.<sup>11</sup>

## Objective

To determine whether DOC offered and DOE provided educational services to young inmates at Rikers, particularly to those with special educational needs.

## Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope period was Fiscal Year 2015. The Detailed Scope and Methodology section at the end of this report describes the specific procedures and tests that were conducted.

## Discussion of Audit Results with DOC and DOE Officials

The matters covered in this report were discussed with DOC and DOE officials during and at the conclusion of this audit. A preliminary draft report was sent to DOC and DOE on January 11, 2017 and was discussed at an exit conference held on January 31, 2017. On February 24, 2017, we submitted a draft report to DOC and DOE with a request for written comments. We received written responses from DOC and DOE on March 10, 2017. In their responses, DOC agreed with three of the audit's four recommendations directed to DOC and partially agreed with one, while DOE agreed with the audit's five recommendations directed to DOE.

In their responses, DOC and DOE officials state that in addition to DOC making new eligible inmates aware of the availability of educational services (which, as the report states, was inadequately documented by DOC), DOE also conducts orientations of new inmates to encourage them to receive educational services. However, neither DOC nor DOE ever provided us with any documentary evidence to show that DOE orientations were consistently offered and provided to new inmates. Without DOC and/or DOE documentation showing that new eligible inmates were consistently offered educational services, neither DOC nor DOE management can be assured that this responsibility is being met.

The full texts of the DOC and DOE responses are included as addenda to this report.

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<sup>11</sup> The lists provided by DOC and DOE of students were not consistent with each other. One reason for this appears to be that the 1,563 students on the list provided by DOE included 117 young inmates whose lengths of stay were less than 10 days. In addition, DOE's list appears to have included inmates with sealed records, who would not have been included on DOC's lists of young inmates because their records were eventually sealed. DOE did not, however, know which of its ERA students eventually had their records sealed. Inconsistencies between the DOC and DOE lists also likely occurred because some young inmates were admitted to Rikers during Fiscal Year 2014 but did not enroll in ERA until Fiscal Year 2015 and so would have appeared on DOE's Fiscal Year 2015 list and not on DOC's.



## FINDINGS AND RECOMMENDATIONS

The audit identified weaknesses in DOC's efforts to ensure that all young inmates eligible for educational services are advised of the opportunity to receive them. In addition, the audit identified weaknesses in DOE's efforts to prepare SEPs for all ERA students with special educational needs within 30 school days of their first day of attendance at ERA.

The evidence reviewed during the audit indicated that all 16-17 year olds admitted to Rikers during Fiscal Year 2015 were offered and provided educational services. However, DOC provided insufficient evidence to demonstrate that inmates 18-21 years of age admitted to Rikers during Fiscal Year 2015 were consistently informed of the opportunity to request and receive educational services as required by State regulations. DOC was unable to provide us with signed Request for Educational Services forms for 63 (68 percent) of the 92 18-21 year-old inmates in our sample. DOC's inability to provide that documentation raises serious questions as to whether young inmates are consistently being advised of the opportunity to receive educational services.<sup>12</sup>

DOC also does not maintain a log or any other record showing when it provides signed Request for Educational Services forms to DOE. In addition, DOC's written procedures do not explain how the completed forms should be transmitted to DOE. As a result, DOC has no assurance that it is informing DOE of inmates' requests for educational services by the end of the next school day, as required.

DOE, similarly, provided insufficient evidence to demonstrate that inmates 18-21 years of age were consistently provided educational services by the 11<sup>th</sup> day following its receipt of requests for educational services. Since DOE neither date-stamps the Request for Educational Services forms it receives from DOC nor maintains a log of their receipt, DOE is unable to demonstrate that it is providing educational services by the 11<sup>th</sup> day following its receipt of the forms, as required by State regulations. Furthermore, DOE has no written procedures concerning the receipt of requests for educational services.

In addition, DOE provided no evidence that it prepared SEPs for 9 (36 percent) of our sample of 25 enrolled inmates with special educational needs during Fiscal Year 2015. Moreover, DOE did not consistently complete those SEPs that were prepared within 30 school days of the students' first day of attendance at ERA, as required. Of the remaining 16 students in our sample, the SEPs for 3 were prepared more than 30 school days after the students began receiving educational services at ERA.

Finally, neither the two agencies nor the auditors could be assured that all of the eligible individuals were advised of the opportunity to receive educational services or that all who accepted such services received the services in a timely manner or at all.

These matters are discussed in greater detail in the following sections of this report.

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<sup>12</sup> Of our sample of 100 inmates, 25 were enrolled in the ERA, consisting of all 8 of the 16-17 year-old inmates required to enroll and 17 of the 92 inmates in the 18-21 year-old age group, for whom enrollment is optional.

## DOC Failed to Ensure That Educational Services Were Offered to Eligible Inmates 18-21 Years of Age, as Required

DOC does not ensure that eligible inmates 18-21 years of age are advised of the opportunity to receive educational services.

According to the DOC Directive entitled *Inmate Orientation*, “Every new admission inmate must receive an orientation presentation. . . . The Programs Officer shall read Form #3503A, ‘Inmate’s Right to Educational Services,’ and then distribute Form #3503B ‘Request for Educational Services’ to all inmates 18-21 years of age for their completion.” As stated previously, inmates must be advised, within 10 days of their admission to a correctional facility, of the opportunity to receive educational services.

With regard to 16-17 year olds, since it is mandatory for them to attend school unless they are high school graduates, DOC officials told us that they do not distribute the request forms to these inmates but rather simply escort them to the ERA. We were able to verify that all 16-17 year olds admitted to Rikers during Fiscal Year 2015 were provided with educational services based on DOE’s ERA enrollment data and on information contained in DOE’s ATS (Automate the Schools) database.

However, with regard to 18-21 year olds, DOC did not maintain evidence that inmate orientations (at which the availability of educational services should have been discussed) were consistently provided to them or that Request for Educational Services forms were consistently distributed.<sup>13</sup> Each correctional facility is required to maintain its own inmate orientation logbook. However, DOC was only able to provide us with two complete inmate orientation logbooks for the seven detention centers into which the 92 sampled 18-21 year-old inmates were admitted. DOC was unable to provide logbooks for four of the other five detention centers and was only able to provide an incomplete logbook for the fifth center. As a result, DOC has insufficient evidence that inmate orientations were consistently provided in a timely manner or at all. In total, 49 (53 percent) of the 92 inmates in our sample resided in detention centers for which DOC was unable to provide logbooks. Of the remaining 43 inmates residing in detention centers with logbooks, the logbooks contained no evidence that inmate orientation was provided to 19 (44 percent) of them.

Furthermore, for the three logbooks that were provided (one of which was incomplete in that it did not cover all of Fiscal Year 2015), we found that only one of the three orientation logbooks contained the inmates’ signatures and that none of the logbooks had the program officers’ signatures and shield numbers required by the *Inmate Orientation* directive.

The problem of nonexistent and incomplete log books is compounded by the fact that DOC could not provide evidence that 63 (68 percent) of the 92 sampled 18-21 year-old inmates completed the Request for Educational Services form to indicate whether they accepted or rejected educational services. Because we were not provided with the forms for most of the inmates in our sample selection, we have no assurance that 18-21 year-old inmates were consistently advised of the opportunity to receive educational services. For the 29 forms we did receive, the inmate’s signature was missing on seven forms; the date of the inmate’s signature was missing

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<sup>13</sup> Although a primary focus of this audit is students with special educational needs, since DOC cannot identify which of its inmates were special or general education students either before admission to Rikers or, where applicable, while enrolled in the ERA, due to a lack of access to this information, and since DOC follows the same procedures for all eligible inmates, our audit test results for our sample of 100 inmates, which includes both special and general education students, are equally applicable to both types of students.

on two forms; the correction officer's signature was missing on 17 forms; and the educational boxes for indicating acceptance or rejection of educational services were not checked on eight forms.

Since DOC did not consistently maintain evidence that the request forms were distributed to the inmates, DOC management cannot be assured that it is in compliance with NYS regulations. Moreover, these results cast doubt as to whether DOC has consistently provided inmate orientation to eligible inmates and whether it has consistently fulfilled its obligation to advise those inmates of the opportunity to receive special or general educational services. The results also cast doubt on DOC management's monitoring of this activity. As Comptroller's Directive 1, §4.5, states, "[a] sound internal control system must be supported by ongoing activity monitoring occurring at various organizational levels and in the course of normal operations. Such monitoring should be performed continually and be ingrained throughout an agency's operations."

## Recommendations

1. DOC should ensure that all inmates 18-21 years of age complete the Request for Educational Services form.

**DOC Response:** "DOC cannot ensure that all inmates 18-21 years of age will complete the Request for Educational Services form 3503B because some inmates in this age group may refuse to sign the form. DOC will provide the Request for Educational Services form 3503B to every 18-21 year old inmate and document if the inmate refuses to sign the form."

**Auditor Comment:** We agree with DOC that it should document instances in which inmates refuse to sign the form.

2. DOC should maintain inmate orientation logbooks and copies of completed Request for Educational Services forms for a sufficient length of time to facilitate reviews of detention center compliance in this area.

**DOC Response:** "DOC will coordinate with its Records Management Unit to discuss a retention schedule for maintaining inmate orientation logbooks. On a going forward basis Request for Educational Services Forms (3503B) will be stored electronically."

## DOC Has No Assurance that It Provides Completed Request for Educational Services Forms to DOE in a Timely Manner for Inmates 18-21 Years of Age

There is no evidence that DOC provided Request for Educational Services forms completed by inmates to DOE by the end of the next school day, as required by State regulation. According to DOC officials, the agency does not maintain a log or any other record indicating when it provides DOE with the forms completed by the inmates. In addition, DOC's written procedures do not explain how the completed forms should be transmitted to DOE.

Since DOC did not maintain evidence that these forms were provided to DOE by the following school day, DOC management cannot be assured that it is in compliance with NYS regulations. Failure to provide the Request for Educational Services forms to DOE in a timely manner could delay the provision of educational services to the inmates who request such services.

## Recommendations

3. DOC should maintain a log indicating when it provides DOE with completed Request for Educational Services forms.

**DOC Response:** “DOC will implement a procedure and modify DOC Directive 3503B: Inmate Access to Educational Services to outline the procedure that indicates how DOC will log the transmittal of form 3503B (Request for Educational Services) to DOE.”

4. DOC’s written procedures should specify how completed request forms should be transmitted to DOE.

**DOC Response:** “DOC will implement a procedure and modify DOC Directive 3503B: Inmate Access to Educational Services to outline the procedure by which DOE will receive access to form 3503B (Request for Educational Services).”

## DOE Does Not Ensure that Inmates 18 to 21 Years of Age Are Provided Educational Services in a Timely Manner

DOE has no assurance that it is providing educational services to special or general education students at Rikers in a timely manner. DOE neither date stamps the Request for Educational Services forms it receives from DOC nor does it maintain a log of their receipt. In fact, DOE was only able to provide us with 13 of the request forms completed by the 54 18-21 year olds in our sample of ERA enrollees. DOE is required to provide educational services by the 11th school day following its receipt of an inmate’s request for educational services. Because DOE does not record information on its receipt of request forms from DOC, DOE management is unable to determine whether educational services are being provided in a timely manner to the inmates who request such services.

DOE’s policies and procedures do not explain the steps to be taken concerning the receipt of completed Request for Educational Services forms from DOC. Absent written policies and procedures detailing the steps to be taken concerning the receipt of inmates’ requests for educational services, DOE cannot be assured that all eligible inmates (both special and general education students) receive mandated or requested educational services in a timely manner.

At the exit conference, DOE claimed that there is an alternative method by which inmates can request educational services. According to DOE officials, the agency asks on a daily basis that those inmates who did not request educational services during the DOC orientation be escorted by DOC to ERA to attend a DOE orientation.<sup>14</sup> Those who express an interest in attending ERA during this orientation are enrolled in ERA. However, DOE provided no evidence to show that it reviews inmates’ requests for educational services (however they are received), enrollments, and attendance in order to determine whether inmates are provided educational services by the 11<sup>th</sup> school day following the receipt of inmates’ requests.

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<sup>14</sup> While DOE contends in its audit response that its daily orientation for 18-21 year old inmates should have been more prominently featured in this report, DOE failed to provide us with sufficient documentation showing that it consistently provides such orientations to all new eligible inmates. An observation of one such session (which did not occur due to mutual scheduling issues) and any documents generated in connection with it would not have been sufficient to make up for this lack of documentation.

## Recommendations

5. DOE should record the dates it receives Requests for Educational Services forms from DOC and notify DOC when the forms are not provided to DOE by the end of the next school day based on the dates that the request forms were completed.
6. DOE should prepare written policies and procedures detailing the steps to be taken concerning the receipt of requests for educational services to ensure the timely provision of such services.

**DOE Response to Recommendations 5 & 6:** “DOE managers will work with DOC to develop a standardized process for timely transmittal and receipt of hardcopy DOC forms. The DOE will designate a point of contact to receive, date stamp, and maintain the forms. DOE intends to memorialize these processes.

“Further, to ensure that inmates are given the ongoing opportunity to enroll in school while incarcerated, DOE also will continue to identify inmates eligible for educational services and use call-down lists, which currently are maintained in a central locations within the facilities.”

## DOE Did Not Consistently Develop Special Education Plans for Students with Special Educational Needs

DOE did not ensure that SEPs were developed for all students who were designated by DOE as having special educational needs. According to the ERA Staff Handbook, “The SEP process must begin by the 20th school day and shall be completed by the 30th day, not after.” Of a sample of 25 special education students who had been enrolled in ERA for at least 30 school days, DOE did not prepare SEPs for 9 (36 percent) of them during Fiscal Year 2015.<sup>15</sup> Of the remaining 16 students with SEPs, DOE did not prepare SEPs for 3 (19 percent) of them within 30 school days of enrollment, as required. Instead, the three SEPs were prepared 35, 45, and 67 school days after the students’ enrollment dates.

These results cast doubt on DOE management’s monitoring of this activity. As noted above, Comptroller’s Directive 1, §4.5, emphasizes the importance of “ongoing activity monitoring occurring at various organizational levels and in the course of normal operations.” Although the ERA Staff Handbook calls for “regular audits” by DOE of SEPs to ensure quality and compliance, DOE officials informed us that they have never performed audits of its SEPs. Had DOE performed the audits as required, it might have identified the inmates with special educational needs who were not provided with SEPs on a timely basis or at all.

The focus of special education programs is to provide students with special educational needs with an appropriate education that maximizes their ability to achieve academic and career success. Special education plans are used to facilitate academic progress by tailoring instruction in recognition of the individual’s special educational needs. Without this specialized education plan, the student’s disability may limit his or her opportunity to develop necessary life skills.

On a related matter, of the 20 students with special educational needs in our sample for whom IEPs were available, the IEPs for 8 of them stated that the students needed summer school. The

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<sup>15</sup> There is also no record of DOE having prepared IEPs for five students when they were students in City high schools prior to their admission to Rikers.

ERA Staff Handbook states that the school provides special education services during July and August “for students with disabilities to prevent substantial regression during the extended school year.” However, only one SEP developed by ERA for these 8 students even acknowledged that the IEP required the provision of summer school services. For three students, the “no” box on the SEP form was erroneously checked in response to the question as to whether the IEP required the provision of summer school services; for three students, neither the “yes” nor the “no” box on the SEP form was checked in response to this question; and for one student, ERA was unable to provide us with an SEP. Even for the one student for whom the SEP stated that the IEP called for the provision of summer school services, the SEP was silent on whether such services would be provided to the student at ERA. At the exit conference, DOE officials claimed that in June of each year, ERA determines which students have IEPs that mandate a 12-month program. However, DOE provided no documentary evidence to support this claim.

## Recommendations

7. DOE should ensure that it prepares SEPs for all students with special educational needs and that they are prepared on a timely basis.

**DOE Response:** “DOE will continue its efforts to prepare SEPs timely for all students with disabilities. Managers recently have implemented an electronic system in other District 79 programs to track progress made in completing a SEP. The DOE intends to implement that system for ERA students beginning in spring 2017.”

8. DOE should ensure that regular audits of SEPs are conducted at ERA.

**DOE Response:** “Once the SEP tracking system referred to in the response to Recommendation 7 is operational in ERA, timeliness reports can be generated for District 79 administrative review and follow-up as appropriate.”

9. DOE should ensure that ERA properly reviews IEPs and prepares SEPs so that students’ needs for summer school services are effectively addressed.

**DOE Response:** “The DOE agrees that it must determine whether a student’s IEP reflects the need for summer school services. The tracking system referred to in the response to Recommendation 7 will facilitate efforts in that regard.”

## DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope period of the audit was Fiscal Year 2015.

To obtain an understanding of DOC's and DOE's role in the provision of educational services to eligible inmates, we requested and reviewed relevant DOC and DOE written procedures and guidelines, including DOC Directives, DOC command level orders, DOE's Special Education Plan, and the ERA Staff Handbook. We also reviewed New York State Codes, Rules and Regulations related to the provision of educational services to inmates and the *Handberry v. Thompson* decision. Further, we reviewed Comptroller's Directive 1, *Principles of Internal Control*, to identify relevant audit criteria.

We interviewed DOC personnel, including the Executive Director of Educational Services; the Deputy Commissioner of Youthful Offender Programming; Correction Officers (including Program, Cell-Study, and Housing Area Officers); a Deputy Warden of Adolescent Operations; and a Deputy Warden of Operations. To enhance our understanding of DOC's inmate orientation process and the general operation of Rikers facilities, we observed an inmate orientation and received a tour in the Eric M. Taylor Center (EMTC), including the housing and school areas of the facility. We also interviewed DOE's Senior Executive Director for Youth Justice Education and Treatment Programs and the Principal of the East River Academy.

We received a dataset from DOC's Inmate Information System (IIS), which included a population of 1,782 inmates 16-21 years of age with unsealed records who were admitted to Rikers during Fiscal Year 2015. In addition, we received a dataset from DOE's ATS computer system, which included a population of 1,563 general and special education students enrolled in the East River Academy for the same period. We ran various sorts and queries on both datasets to identify potential anomalies, including blank fields, duplicate names, duplicate identification numbers, and other unusual entries. To assess the reliability of the datasets for audit testing purposes, we compared selected inmate/student information (i.e., name and birthdate) recorded in the two datasets to 35 DOC hardcopy Request for Educational Services forms and 96 DOE hardcopy enrollment forms provided to us by the respective agencies. Although our testing was limited because of the accessibility and availability of source documentation, based on the results of our tests, we determined that the data were sufficiently reliable for the purposes of audit testing.

To determine whether DOC advised eligible youths of the opportunity to receive educational services, as required, we randomly selected a sample of 100 inmates from the population of 1,782 inmates 16-21 years of age. For the sampled inmates, we asked for their Requests for Educational Services forms and the inmate orientation logbooks for the facilities to which they were admitted. For those request forms that DOC provided to us, we determined whether the request forms were signed and dated by inmates and program officers and whether the educational boxes on the forms were checked indicating the inmates' acceptance or rejection of educational services. For those inmate orientation logbooks that DOC provided to us, we determined whether they contained the inmates' and program officers' signatures and signing

dates and the program officers' shield numbers, as required by the DOC Directive entitled *Inmate Orientation*.

To determine whether the 100 inmates in our sample were advised, within 10 days of their admission to Rikers, of the opportunity to receive educational services, we identified the dates inmates were admitted to Rikers from DOC's IIS dataset and compared the admission dates to the dates the inmates were provided orientation based on the logbooks.

To determine the number of days required by DOC to provide completed Request for Educational Services forms to DOE, we ascertained whether DOC maintained a log of the submittal of the request forms to DOE.

To determine whether the population of 16-17 year-old inmates received mandatory educational services, we compared DOC's IIS dataset of those inmates 16-17 years of age admitted to Rikers during Fiscal Year 2015 to DOE's ATS dataset of those enrolled in ERA during the same time period to determine whether all inmates within this age group were provided educational services.

To determine whether DOE provided educational services to inmates no later than the 11<sup>th</sup> school day following ERA's receipt of the requests for educational services, we randomly selected a sample of 100 special education students from the ATS dataset and requested from DOE the Request for Educational Services forms DOE received from DOC for these students. We reviewed the request forms provided to us by DOE and determined whether DOE date stamped them or maintained a log of when they were received from DOC. Since DOE neither date stamped them nor maintained a log of their receipt, we were unable to determine the number of days that elapsed between receipt of the forms and the provision of educational services.

To determine whether DOE provided special education services to inmates with special educational needs, we randomly selected a sample of 25 special education students who were enrolled in ERA for more than 35 school days during Fiscal Year 2015. For the 25 inmates selected, we reviewed information in DOE's Special Education Student Information System to determine whether IEPs and SEPs existed, as required, for inmates who were classified as special education students and who were enrolled in ERA for 30 or more school days. To determine whether DOE had prepared SEPs for students with special educational needs within 30 days of their first day of attendance at ERA, we calculated the number of school days from the dates the inmates first attended ERA to the SEP conference dates reflected on the SEPs that were signed and dated by the inmates' parents/guardians.

Although the results of our sampling tests were not statistically projected to their respective populations, these results, together with the results of our other audit procedures and tests, provide a reasonable basis for us to determine whether DOC and DOE offered and provided educational services, respectively, to eligible inmates at Rikers, particularly to young inmates with special educational needs.





NEW YORK CITY DEPARTMENT OF CORRECTION  
Joseph Ponte, Commissioner

Patricia Feeney, Acting Deputy Commissioner  
Quality Assurance and Integrity  
17-41 Hazen Street  
East Elmhurst, NY 11370

718 • 546 • 3090  
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March 10, 2017

*Via email*

Marjorie Landa  
Deputy Comptroller for Audit  
The City of New York  
Office of the Comptroller  
One Centre Street  
New York, NY 10007-2341

**Re: Draft Audit Report on the Educational Services Offered by the  
Departments of Correction and Education to Young Inmates at Rikers  
Island (ME16-066A)**

Dear Deputy Comptroller Landa,

This letter, with the attached response to recommendations, is the formal response of the New York City Department of Correction (“DOC”) to the City of New York Office of the Comptroller’s (“Comptroller”) draft audit report listed above (“Draft Report”).

DOC recognizes the Comptroller’s findings during the audit period for Fiscal Year 2015 (July 1, 2014 through June 30, 2015) concerning DOC; however, DOC disputes the overall finding that “DOC does not ensure that eligible inmates 18-21 years of age are advised of the opportunity to receive educational services.” Although the Comptroller acknowledged that eligible inmates ages 18-21 years old are informed of the opportunity to attend educational services at new admission orientation, the Draft Report failed to capture the additional process by which both the Departments of Education (“DOE”) and DOC collaborate to ensure that eligible inmates ages 18- 21 years old are informed (a second time) of the opportunity to attend educational services. Understanding both procedures provides the appropriate and comprehensive overview of how 18-21 year old inmates are informed of their opportunity to attend educational services. The Comptroller failed to document the secondary process which is outlined below:

In the morning of each school day, DOE staff receives a report printed from DOC’s Inmate Information System (referred to as the “IIS Report for 16-21 year olds”). From that report, and, most significantly, without regard to whether any of them had filled out a DOC Request for Educational Services form, DOE staff prepares a list of inmates ages 18 - 21 who are eligible for education services and housed in facilities with school areas. That “call down” list immediately is submitted to a DOC officer for communication with DOC staff in the housing areas. Inmates who agree to leave the housing areas thereupon report (are escorted by DOC) to the DOE’s school areas. Those already enrolled attend their

assigned classes. The others are provided with information about East River Academy's ("ERA") educational services at an orientation led by DOE staff. Those who express an interest in attending immediately complete an enrollment form and are registered in ERA. Inmates who had refused to leave their housing areas (including those who are enrolled in ERA) remain on the call-down list.

To recap, DOC conducts new admission orientation which includes information about the availability of and how to access education services while incarcerated. In addition to the new admission orientation, DOC coordinates with DOE to make every effort to provide 18-21 year olds with the opportunity to meet with staff members from the DOE to accept or refuse educational services during the DOE's internal orientation process conducted within the school setting.

The Draft Report also failed to adequately describe the different methods by which DOC informs inmates' ages 18-21 years old of their right to request access to educational services. In particular, DOC does the following:

1. Upon admission to DOC custody, inmates are provided with an "Inmate Handbook" (this handbook is available in both English and Spanish). The handbook has a section that advises inmates about their right to request access to educational services.
2. DOC posts signs in the housing areas and other congregate program areas, whereby inmates ages 18-21 are informed that they have the right to request access to educational services.

Furthermore, DOC has developed and implemented practices to increase enrollment and participation in school, especially for "eligible" young adults' ages 18-21 years old, who can legally choose not to attend educational services. Members from the Division of Youthful Offender Programming regularly conduct focus groups and surveys with adolescents and young adults to assess their interest and determine how best to strengthen services that would result in the acquisition of tangible and transferrable skills for them to have and use once reintegrated into our communities. In fact, these focus groups and surveys have afforded DOC the opportunity to incorporate services based on the youths' interests. A few examples are:

1. Success Program House (July 2016): A model which targets 18-21 year olds who do not possess high school diplomas or their equivalent. These young adults, are housed together for the purpose of ensuring their participation and attendance in school, while receiving the support and additional programmatic services by a DOC Program Counselor and providers.
2. Expansion of Career and Technical Education (September 2016): Development and Implementation of Trading Futures and Industry Recognized Training. Some examples of vocational trainings recommended by youth during focus groups and surveys are: Cosmetology, Carpentry, Culinary Arts, Basic Electric, Digital Literacy, Plumbing, OSHA Construction, OSHA Maintenance, OSHA Scaffold, Flagging, CPR/First Aid/AED and Food Protection, to name a few.
3. Incentives: Different types of incentives have been successfully linked to eligible inmates' attendance, positive behavior and participation in school. Some samples are: commissary credit, family days, field days, tournaments, free haircuts, food (Breakfast for Champions and Weekly Soups Initiative), games, extended visits, movie days, and special guest speakers.

**NEW YORK CITY DEPARTMENT OF CORRECTION'S RESPONSE TO FINDINGS AND RECOMMENDATIONS**

***Recommendation One: DOC should ensure that all inmates 18-21 years of age complete the Request for Educational Services form.***

**Response:** DOC cannot ensure that all inmates 18-21 years of age will complete the Request for Educational Services form 3503B because some inmates in this age group may refuse to sign the form. DOC will provide the Request for Educational Services form 3503B to every 18-21 year old inmate and document if the inmate refuses to sign the form. DOC will continue to provide hardcopies of IIS reports (DOC's jail management system) for 16-21 year olds to DOE in order to identify the inmates that are ages 18-21 years old, thereby allowing DOE to meet with these individuals to determine if they want to attend educational services.

***Recommendation Two: DOC should maintain inmate orientation logbooks and copies of completed Request for Ed Services forms for a sufficient length of time to facilitate reviews of detention center compliance in this area.***

**Response:** DOC will coordinate with its Records Management Unit to discuss a retention schedule for maintaining inmate orientation logbooks. On a going forward basis Request for Educational Services Forms (3503B) will be stored electronically.

***Recommendation Three: DOC should maintain a log indicating when it provides DOE with completed Request for Educational Services forms.***

**Response:** DOC will implement a procedure and modify DOC Directive 3503B: Inmate Access to Educational Services to outline the procedure that indicates how DOC will log the transmittal of form 3503B (Request for Educational Services) to DOE.

***Recommendation Four: DOC's written procedures should specify how completed request forms should be transmitted to DOE.***

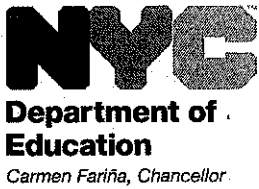
**Response:** DOC will implement a procedure and modify DOC Directive 3503B: Inmate Access to Educational Services to outline the procedure by which DOE will receive access to form 3503B (Request for Educational Services).

If you have any further questions, please contact me at 718-546-3090.

Very truly yours,



Patricia Feeney



Dorita Gibson  
Senior Deputy Chancellor

52 Chambers St  
New York, NY 10007

March 10, 2017

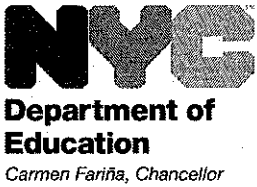
Marjorie Landa  
Deputy Comptroller for Audit  
The City of New York  
Office of the Comptroller  
One Centre Street, Room 1100  
New York, NY 10007-2341

**Re: Audit Report on the Educational Services Offered by the Department of Correction and Education to Young Inmates at Rikers Island (ME16-066A)**

Dear Ms. Landa:

This letter and the attached Response to Recommendations (collectively, "Response") comprise the New York City Department of Education's ("DOE") formal response to the City of New York Office of the Comptroller's ("Comptroller") draft audit report titled *Audit Report on the Educational Services Offered by the Department of Correction and Education to Young Inmates at Rikers Island* ("Report"). It is our understanding that the New York City Department of Correction ("DOC") will submit a separate response. Matters that pertain to both agencies may be addressed in each response.

The DOE is dedicated to providing all students at East River Academy ("ERA") with a high-quality education through access to the same level of instruction that their peers in traditional schools in New York City receive. The DOE seeks to provide critical context around the systemic work the DOE has been doing to improve enrollment processes for inmates ages 18-21 that are at the center of the findings. Due to the Report's exclusive focus on recordkeeping, it fails to address adequately the systemic processes in place for enrolling eligible



inmates ages 18-21 and identifying students whose Individualized Education Program ("IEP") includes a recommendation for summer school.

## **INTRODUCTION AND OVERVIEW**

With the active cooperation of the DOC, the DOE operates ERA,<sup>1</sup> a school fully staffed by a principal, four assistant principals, certified teachers and other support personnel including counselors and administrative staff serving individuals between the ages of 16 and 21 who are detained on Rikers Island and are eligible for educational services. N.Y. Education Law § 3202(7)(a). All students enrolled<sup>2</sup> in ERA pursue either a high school or a high school equivalency pathway depending on their age, accumulated credits and preference, and remain a part of the New York City school system

An inmate is eligible to receive DOE-provided educational services if s/he<sup>3</sup>:

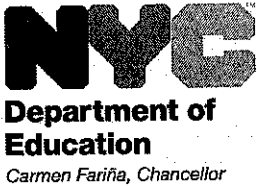
- a. is incarcerated at a DOC correctional facility; and
- b. has been incarcerated for 10 or more calendar days, or in the judgment of the warden of the inmate's facility, is reasonably likely to be incarcerated for ten or more calendar days, plus an additional twelve school days; and
- c. has not received a high school diploma or its equivalent; and
- d. is under 21 years of age on September 1 of the applicable school year; and
- e. if the inmate is 18-21 years of age, has indicated a desire to receive DOE-provided educational services while incarcerated at a DOC correctional facility.

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<sup>1</sup> ERA implements the requirements of New York State Education Law § 3202(7). The statutory scheme is fleshed out by regulations issued by the State Commissioner of Education (8 NYCRR Part 118), which are supported by regulations issued by the State Commissioner of Corrections (9 NYCRR Part 7070).

<sup>2</sup> As used in this Response, an "enrolled" student is one who is registered to attend ERA and has established a first date of attendance.

<sup>3</sup> N.Y. Education Law § 3202(7); 8 NYCRR 118.1, 118.4(c); 9 NYCRR 7070.2(a)(1), 7070.2(a)(2), 7070.4(g)



Additionally, as discussed elsewhere in this Response, certain aspects of the provision of special education services to ERA-enrolled students with disabilities, *i.e.*, students who have an IEP, are controlled by provisions in *Handberry v. Thompson*, a currently active federal class action case.<sup>4</sup> It is of note that the *Handberry* courts have recognized that educational services provided to eligible inmates at local correctional facilities may be less than and different from educational services provided to students in New York City community schools. Moreover, students with disabilities may have a Special Education Plan ("SEP") developed for them, rather than an IEP, while enrolled at ERA.

## ENROLLMENT IN ERA

School attendance is compulsory for 16 and 17 year old eligible inmates, and the Report correctly confirms that all 184 in the auditors' dataset had been enrolled in ERA. Therefore, this Response focuses on that other group of inmates, the 18-21 year olds, for whom enrollment in ERA is voluntary, and outlines the DOE's implementation of protocols to provide them with educational opportunities.

The Report refers to those protocols: "At the exit conference, DOE *claimed* that there is an alternative method by which inmates can request educational services." (Emphasis added). The brief description of the "alternative method" that follows the opening sentence is prefaced with "according to DOE officials," implying that managers had waited for the exit conference to offer self-serving representations about its engagement of eligible inmates in the educational process.<sup>5</sup>

However, ERA, as well as DOC managers, discussed the DOE's orientation process with the auditors who, had they taken the opportunity that was offered to them, would have witnessed its implementation and been provided with supporting documentation, during a site visit.<sup>6</sup>

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<sup>4</sup> 446 F.3d 335 (2d Cir. 2006). The *Handberry* plaintiffs have challenged the adequacy of educational services provided by the DOE to certain inmates at DOC jails.

<sup>5</sup> Report, page 9.

<sup>6</sup> During the fieldwork phase of the audit, ERA managers had arranged for the auditors to come to the DOE's school facility on Rikers Island to witness an orientation for eligible inmates conducted by DOE staff. The DOE's call-down lists had been copied for submission to the audit team on the date of the visit. The auditors canceled that visit and did not re-schedule it. The preliminary report of findings failed to include any reference to the DOE's orientation process. Since that omission was deemed critical in light of the negative conclusions drawn about the provision of opportunities for eligible inmates to partake of educational service, DOE managers raised those concerns at the exit



**Department of  
Education**

*Carmen Fariña, Chancellor*

The DOE' orientation process is this: In the morning of each school day, DOE staff receives a report printed from DOC's Inmate Information System (referred to by DOC as the "IIS Report for 16-21 year olds"). From that report, and, most significantly, *without regard to whether any had filled out a DOC Request for Educational Services form*, DOE staff prepares a list of inmates ages 18-21 who are eligible for education services and housed in facilities with school areas. That "call down" list immediately is submitted to a DOC officer for communication with DOC staff in the housing areas. Inmates who agree to leave the housing area thereupon are escorted by DOC officers to the DOE's school area. Those already enrolled attend their assigned classes. The others are provided with information about ERA's educational services at an orientation led by DOE staff. Those who express an interest in attending immediately complete an enrollment form and are registered in ERA. Inmates who had declined to leave their housing area remain on the call-down list.

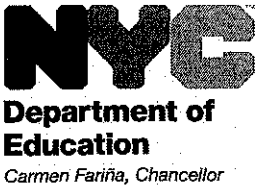
When an inmate not already enrolled in school elects to leave the housing area to be escorted to the school area, the inmate meets with an orientation team (guidance counselor and community associate) that provides information about the school programs available at ERA, reviews the student's transcript and educational history, and offers information regarding students' rights and post-discharge transition. The student is given the Test of Adult Basic Education ("TABE") to determine, among other things, the student's academic strengths and weaknesses and functional grade level.

For those inmates who choose to enroll in school, DOE reviews its computerized records to determine whether (s)he is a student with a disability. Based on the initial review of those records and the TABE results, ERA creates an initial program of classes for the student, which s/he is eligible to begin that same school day.

## **SERVICES FOR ENROLLED STUDENTS WITH DISABILITIES**

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conference. The auditors' response bears reciting in this Response. In substance, the DOE managers in attendance were told that the meeting was cancelled because one of the team was ill that day, then it was summer, and that anyway, no one could assure them that what they had been invited to witness would not have been staged. The implication by the auditors that managers of two city agencies would engage in a collusive conduct that involved inmates was without basis and inappropriate.



The DOE is dedicated to meeting the needs of students with disabilities. If it appears that an eligible inmate is a student with a disability based on an initial interview with a DOE counselor, ERA provides services to the student in the same manner as it has for many years. When the student enrolls, s/he is placed in a program that is supported by certified special education teachers and paraprofessionals. ERA staff also reviews the information on the student in DOE's Special Education Student Information System ("SEIS")<sup>7</sup> first, to confirm that the student is a student with an IEP, and, second, to determine whether an electronic IEP is readily accessible. If a student's IEP is not in SEIS, ERA will request the student's IEP from his/her prior educational placement. It is judicially recognized that an IEP may be modified consistent with legitimate penal objectives.<sup>8</sup>

ERA will review the student's IEP and create a SEP setting forth the special education program to be implemented at ERA. A conference, which the parent is invited to attend, is held to determine which services will be provided to the student and to finalize the SEP; the SEP is faxed into SEIS and maintained in the student's file. Creation and use of the SEP, which functions in lieu of the student's IEP during incarceration, was approved in the *Handberry* litigation and has been in effect for at least the past eighteen years.

Under *Handberry*, the SEP should be finalized within 30 days of the student's enrollment (*i.e.*, commencing participation in class) in ERA. Since the Report notes certain instances of the DOE's non-compliance with that timeline and SEP requirements, it is worth stating that the development of the SEP is not the starting point for provision of special education program and support services, which actually begin before SEP completion. That said, the DOE is working to improve oversight of SEP development.

## SUMMER SCHOOL

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<sup>7</sup> SEIS is a DOE computer system that pertains to students with disabilities.

<sup>8</sup> *Handberry v. Thompson*, 219 F.Supp.2d 525, 548, Injunction Order ¶24 (S.D.N.Y. 2002), *affirmed as amended following rehearing*, 446 F.3d 335, 356 (2d Cir. 2006)





**Department of  
Education**

*Carmen Fariña, Chancellor*

ERA offers a summer school program to eligible inmates, including students with disabilities. As it has for many years, ERA held summer school in summer 2015. Two hundred sixty-four students were enrolled that summer, of which twenty were students with disabilities who had extended school year services recommendations on their IEPs.

The Report recites that for the audited sample of students whose IEPs recommended summer school, for the most part, their SEPs did not indicate such. However, the lack of a notation of a 12-month program on a SEP is not dispositive of whether the student is required (16 and 17 year-olds) or may voluntarily (18-21 year-olds) attend a 12-month program since ERA managers do not rely on SEPs for that purpose. Rather, in June of each school year, the DOE reviews the information in SESIS for inmates enrolled in ERA to determine which students have IEPs that mandate a 12-month program. To close the loop on the sampled students, we are reporting that none of the students identified by the auditors as having a 12-month program IEP recommendation had been incarcerated during that summer.

## **CLOSING COMMENTS**

As the substantial portion of the Report is devoted to citing paperwork failures in a school year that is almost two years in the past, the DOE is concluding its response with information that will provide the public with an accurate view of the services the DOE and DOC provide on Rikers Island with respect to incarcerated youth.

We start by noting that the median length of enrollment in ERA was 38 instructional days during the audited year; the well-documented high turnover of eligible inmates and short duration of incarceration for the vast majority of eligible inmates are an ongoing challenge. That situation notwithstanding, the DOE, with support from DOC, continues to provide educational opportunities during incarceration and strategies that may ease the transition from ERA to community schools.

On November 30, 2016, representatives of New York City agencies responsible for overseeing institutions and services for court-involved youth appeared before Members of New York City Council Committees on Education, Juvenile Justice, and Fire and Criminal Justice Services. At that time, DOE



**Department of  
Education**

*Carmen Fariña, Chancellor*

officials spoke to the educational programming provided at residential and correctional facilities for detained and placed youth, including Rikers Island. Following are certain of the points raised.

In seeking to improve ERA student outcomes, the DOE has engaged in partnerships and initiatives to further that goal.

- As a part of a collaborative effort, DOC and DOE are:
  - Developing a system to factor in the educational needs of each eligible inmate upon admission, and have it reflected in the inmate's initial housing placement; and,
  - Expanding Career and Technical Education offerings in carpentry, computer, culinary arts, and electrical systems.
  
- On its own initiative, the DOE has:
  - Adopted Common Core-aligned ELA curriculum, and increased professional development opportunities for educators by partnering with Teachers College around literacy instruction and the Institute for Student Achievement for math training; and began monthly "learning walks" with central DOE staff to assess the implementation of professional development and improvement plans for ERA;
  - Created classroom libraries with social justice titles aimed at engaging students in reading; and,
  - Provided technology that allows students to participate in reading intervention and other educational programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Dorita Gibson".

Dorita Gibson

Senior Deputy Chancellor

## **NEW YORK CITY DEPARTMENT OF EDUCATION RESPONSE TO RECOMMENDATIONS**

This Response to Recommendations, with the attached cover letter signed by New York City Department of Education ("DOE") Dorita Gibson, Senior Deputy Chancellor, comprises the DOE's response to the City of New York Office of the Comptroller's draft audit report titled *Audit Report on the Educational Services Offered by the Department of Correction and Education to Young Inmates at Rikers Island* ("Report") (ME16-066A).

This Response to Recommendations addresses only those recommendations that the Report directs to the DOE.

**RECOMMENDATION 5.** *DOE should record the dates it receives Requests for Educational Services forms from DOC and notify DOC when the forms are not provided to DOE by the end of the next school day based on the dates that the request forms were completed.*

**RECOMMENDATION 6.** *DOE should prepare written policies and procedures detailing the steps to be taken concerning the receipt of requests for educational services to ensure the timely provision of services.*

**RESPONSE TO RECOMMENDATIONS 5 AND 6.** DOE managers will work with DOC to develop a standardized process for timely transmittal and receipt of hardcopy DOC forms. The DOE will designate a point of contact to receive, date stamp, and maintain the forms. DOE intends to memorialize these processes.

Further, to ensure that inmates are given the ongoing opportunity to enroll in school while incarcerated, DOE also will continue to identify inmates eligible for educational services and use call-down lists, which currently are maintained in a central locations within the facilities.

**RECOMMENDATION 7.** *DOE should ensure that it prepares SEPs for all special needs students and that they are prepared on a timely basis.*

**RESPONSE:** DOE will continue its efforts to prepare SEPs timely for all students with disabilities. Managers recently have implemented an electronic system in other District 79

programs to track progress made in completing a SEP. The DOE intends to implement that system for ERA students beginning in spring 2017.

However, notwithstanding the date by which a SEP is completed, eligible inmates who are students with disabilities and are enrolled in ERA are provided with special education instruction and support while their SEPs are being developed. For example, eligible inmates who had IEPs or SEPS prior to incarceration are provided with appropriate instruction and support based on the information known to date including instruction from special education certified teachers and related services.

**RECOMMENDATION 8.** *DOE should ensure that regular audits of SEPs are conducted at ERA.*

**RESPONSE:** Once the SEP tracking system referred to in the response to Recommendation 7 is operational in ERA, timeliness reports can be generated for District 79 administrative review and follow-up as appropriate.

**RECOMMENDATION 9.** *DOE should ensure that ERA properly reviews IEPs and prepares SEPs so that students' needs for summer school services are effectively addressed.*

**RESPONSE:** The DOE agrees that it must determine whether a student's IEP reflects the need for summer school services. The tracking system referred to in the response to Recommendation 7 will facilitate efforts in that regard.

However, because ERA managers do not rely on SEPs to identify students who are recommended to attend a 12-month program (which includes summer school), the lack of a SEP notation indicating summer school is not dispositive of whether the student must or may attend. Rather, in June of each school year, the DOE reviews the information in SESIS for inmates enrolled in ERA to determine which students have IEPs that mandate a 12-month program. For students ages 16 and 17 with that IEP recommendation summer school attendance is compulsory; those between 18 and 21 are offered the opportunity to attend.