



Office of
Bill de Blasio
PUBLIC ADVOCATE FOR THE CITY OF NEW YORK



ROCKY START: PROBLEMS WITH “TURNING FIVE”

THE DEPARTMENT OF EDUCATION’S MISMANAGEMENT OF THE TURNING FIVE PROCESS FOR STUDENTS WITH DISABILITIES

EXECUTIVE SUMMARY

In recent weeks, it has become clear that the Department of Education (The Department) has thoroughly mismanaged the placement of thousands of rising kindergartners with disabilities—complicating what is known as the Turning Five process. Due to the Department’s failure of planning, 2,500 students with disabilities¹ and their families are being directed to Non Public School (NPS) programs that do not have the space to accommodate them and would cost taxpayers millions of additional dollars if they did. Correspondence between Public Advocate Bill de Blasio’s office and the Department shows that the agency has yet to take the necessary steps to resolve the current problem by holding relevant departments within the agency accountable for their mistakes and reforming its procedures to ensure these errors are not repeated in the future.

An analysis of the Department’s actions in this year’s Turning Five Process conducted by Public Advocate de Blasio’s office reveals three substantial problems that impact both parents and City taxpayers:

- **Not Enough Space in NPS Programs:** Research by de Blasio’s office reveals that available NPS programs clearly

¹ As of June 15th, the Department of Education placed only 9,000 out of 11,500 children in the Turning Five process, leaving 2,500 students without placements. The Department of Education has until June 15th to find placements for children already receiving special education pre-school services and those students referred for special education services prior to March 1st. If the Department misses the June 15th deadline, it is required by law to issue a Nickerson Letter (also called a P-1 Letter), which enables parents to send their child to a State-approved Non-Public School (NPS) at the cost of the Department and New York City taxpayers. Details can be found in: *Turning 5: A Guide to the Transition from Preschool Special Education to Kindergarten*, Advocates for Children of New York 21 (2010), available at www.advocatesforchildren.org/Turning%205%20Guide%2010.2010.pdf [hereinafter *Turning 5 Guide*].

do not have the space to accommodate even a majority of the 2,500 rising kindergarteners. These programs can only serve a maximum of 2,484 students ranging across all grades, not just kindergarten, and are already populated with students.² With these limitations, it is clear the available NPS programs cannot accommodate thousands of new kindergarteners with special needs.

- **Potential increased cost to taxpayers:** The Department is now required by law to cover the cost of attendance for those students who successfully enroll in approved NPS placements at the taxpayers' expense. Even with limited space, if just 50% of affected families decide to utilize the NPS programs, the added cost to taxpayers will be over \$10 million.³
- **Confusion for Parents:** As the parents of these 2,500 children with disabilities try to navigate securing one of the limited NPS placements, they are simultaneously waiting anxiously for a public school placement, which many of them prefer. Given the lack of room at NPS programs and the Department's refusal to state publicly by what deadline they will have public school placements for the remaining students, thousands of parents have limited options and information on where their children will attend school.

This policy brief examines the above problems and recommends that the Department:

- 1) Commit to working cooperatively with de Blasio's office to provide an objective external review of this year's Turning Five process and hold accountable any sections within the Department that are responsible for these mistakes;
- 2) Publicly release a plan with specific achievable deadlines to provide public placement options for all 2,500 students by July 15th;
- 3) Disclose the Department's history of NPS placements from the last three years to study what classifications of students are granted Nickerson letters and subsequently enrolled in NPS placements, and use this information to improve public school special education services.

BACKGROUND ON THE ISSUE

In accordance with national policy, New York City has a commitment to educating all children, including children with disabilities, alongside their general education peers whenever possible.⁴ Students with needs unable to be served within general education setting are often placed in District 75 school programs or self-contained community settings, which are designed to better accommodate their needs through small classroom sizes and the supplemental teaching support of paraprofessionals.⁵

Each year, the City of New York conducts IEP meetings to determine individual students' special needs, and how best to accommodate those needs. A parent with a son or daughter receiving special education pre-school services who turns five by December 31st receives a "Notice of Referral for Review of Individualized Education Program."⁶ Following receipt of this

² This figure was calculated by totaling the maximum capacity enrollment figures for schools that, according to the DOE's summarized enrollment data, do not serve children aged 5 and above.

³ De Blasio's Office calculated these figures using the base group of the 2,500 students who had not received placements by June 15th, and the average cost on non public school placements in its sample of non public school placements that serve children ages five and up.

⁴ *A Parent's Guide to Special Education Services for School-Age Children*, New York City Department of Education, pg. 19

⁵ *Turning 5 Guide*, available at www.advocatesforchildren.org/Turning%205%20Guide%2010.2010.pdf

⁶ *Turning 5: A Guide to the Transition from Preschool Special Education to Kindergarten*, Advocates for Children of New York 21 (2010), available at www.advocatesforchildren.org/Turning%205%20Guide%2010.2010.pdf

letter, the Department holds an IEP meeting for the child between March and May of the following year to determine his or her eligibility for special education services in kindergarten and what options best fit his or her needs.

If the Department fails to assess rising kindergarteners and assign placements by the recently expired June 15th deadline, it is required to issue Nickerson letters to the families of unplaced students. Nickerson letters guarantee that the Department will cover the cost of NPS programs if families secure placements in those settings. However, Nickerson letters do not guarantee placement at NPS programs, leaving many parents to wait for the Department to find appropriate public school placements for their children.

BACKGROUND ON PUBLIC ADVOCATE DE BLASIO'S REQUEST FOR INFORMATION FROM THE DEPARTMENT OF EDUCATION

As this year's high number of unplaced students and correspondence between de Blasio's office and the Department shows, the Department of Education was thoroughly unprepared for this year's Turning Five process.⁷ On June 10th, Public Advocate de Blasio wrote to the Department, inquiring about the problems in this year's placement process and asking for data on the amount of Nickerson letters issued to parents over the last three years. On June 17th, the Department responded with a brief letter from Chancellor Walcott, which contained extremely limited information.⁸

In its response, the Department attributed the blame for this year's disastrous placement process on the implementation of "transformative improvements" to its services for students with disabilities. Specifically, the Department attributed the recent problems to the development of and transition to the New York State Education Department's new IEP, the Department's new data system, Special Education Student Information System (SESIS), and an increase in the number of children referred for evaluation. The high volume of as yet unplaced students makes clear that the Department did not address how these simultaneous changes would affect the children and families currently undergoing the Turning Five process.

Public Advocate de Blasio also requested details regarding the divisions at the Department responsible for the complications in this year's Turning Five process, as well as when the Department realized the severity of this year's backlog. In the Department's response, it did not specify when the delays were realized, but did state that five divisions within the Department are responsible for placements in the Turning Five process. According to the Department, the breakdown of responsibility is as follows:

- The Division of Students with Disabilities and English Language Learners oversees the completion of IEPs for roughly 40% of the total students in the Turning Five process.
- The Office of School Support within the Division of Achievement, Performance and Support oversees the City's Children First Networks and school psychologists, which manage 60% of the total students in the Turning Five process.
- The Office of Student Enrollment within the Division of Portfolio Management implements placements for many of the students in the Turning Five process.
- The Division of Finance oversees the SESIS development and contractual issues related to SESIS.
- The Division of the Chief Operating Officer manages day-to-day operations of the SESIS program.

To date, the Department has refused to clearly state what specific missteps led to this year's backlog, including how each aforementioned division was involved in the backlog. However, it is clear that the Department relied on Nickerson letters as a fallback.

⁷ Letter from Public Advocate Bill de Blasio to the Department of Education, June 10, 2011. Please see attached appendices.

⁸ Letter from the Department of Education Public Advocate Bill de Blasio, June 17, 2011. Please see attached appendices.

Nickerson Letters were instituted to remedy the City of New York's ineffectiveness in "achieving appropriate education for the handicapped in New York City...expeditiously,"⁹ and should certainly be used to that effect.¹⁰ They were not intended to be used as a Plan B for systematic failures by the Department. The Department has yet to demonstrate that it understands the limited space availabilities in NPS placements, and that delivering thousands of Nickerson letters will cause parents to search in vain for a placement at a school that may not have room for their child.

Public Advocate de Blasio also asked the Department for the amount of Nickerson letters given to students over the past three years, to which the Department did not respond. Lastly, Public Advocate de Blasio asked that the Department agree to a joint review of this year's Turning Five placement process. The Department did not respond to this request. Copies of the correspondence between de Blasio's office and the Department can be found in the appendices of this report.

FINDINGS: THE COST OF NON-PUBLIC SCHOOLS

In accordance with State law, the Department is required to issue 2,500 Nickerson letters to the rising kindergarteners not yet assigned appropriate public school placements. Yet, as data reviewed by de Blasio's office reveals, the NPS system simply cannot accommodate this group of students — even in the absence of additional applicants. Of the 60 state-approved programs, just 41 offer placements for children over five. In total, those programs can enroll a maximum of 2,484 students.^{11 12} Still further, the total available seats represent placements spanning kindergarten through 12th grade. As they reach capacity, the schools will prove unable to accommodate all 2,500 rising kindergarteners.¹³

The large-scale issuance of Nickerson letters in this year's process will likely increase the cost to City taxpayers, even if only a small percentage of these students find placements. Data researched and analyzed by de Blasio's office shows that if 50% of the 2,500 children were to find placements with their Nickerson letters, the City would spend \$43.6 million to educate these students—a cost that is over \$10 million more than the Department would pay for a public school program.¹⁴

To estimate the costs attached to Nickerson letters, de Blasio's office contacted state-approved NPSs to request their respective costs of attendance. The Office received tuition information from 35 of the 60; of those 60 schools, 41 offer programs to students aged five and above. The Office received relevant tuition information for 25 of those programs; their median tuition is \$34,286.¹⁵

The City spent \$26,551 in special education costs per pupil during the 2008-2009 school year¹⁶. Based on this figure, de Blasio's office estimated that this year, the City will spend an additional \$8,611 for every child that finds a NPS placement.¹⁷

⁹ *Jose P.*, 669 F.2d at 869 (N.Y. 1982).

¹⁰ *Jose P., et al. v. Ambach*, 669 F.2d 865 (N.Y. 1982). In this case, the Appellate Division affirmed the lower court decision by Judge Nickerson that to address inefficient delays in placements violating the Education of All Handicapped Children Act (EHA), 20 U.S.C. §§ 1401-1461, section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

¹¹ The list of the 60 state-approved non-public schools, updated March 30, 2011 is available here: <http://www.p12.nysed.gov/specialed/privateschools/853nycqs.htm#q1>.

¹² This figure was calculated by totaling the maximum capacity enrollment figures for schools that, according to the DOE's summarized enrollment data, do not serve children aged 5 and above.

¹³ *Ibid.*

¹⁴ This figure was calculated by multiplying the average cost for NPS placements that serve children five and up by 1,250 (half the 2,500-member cohort).

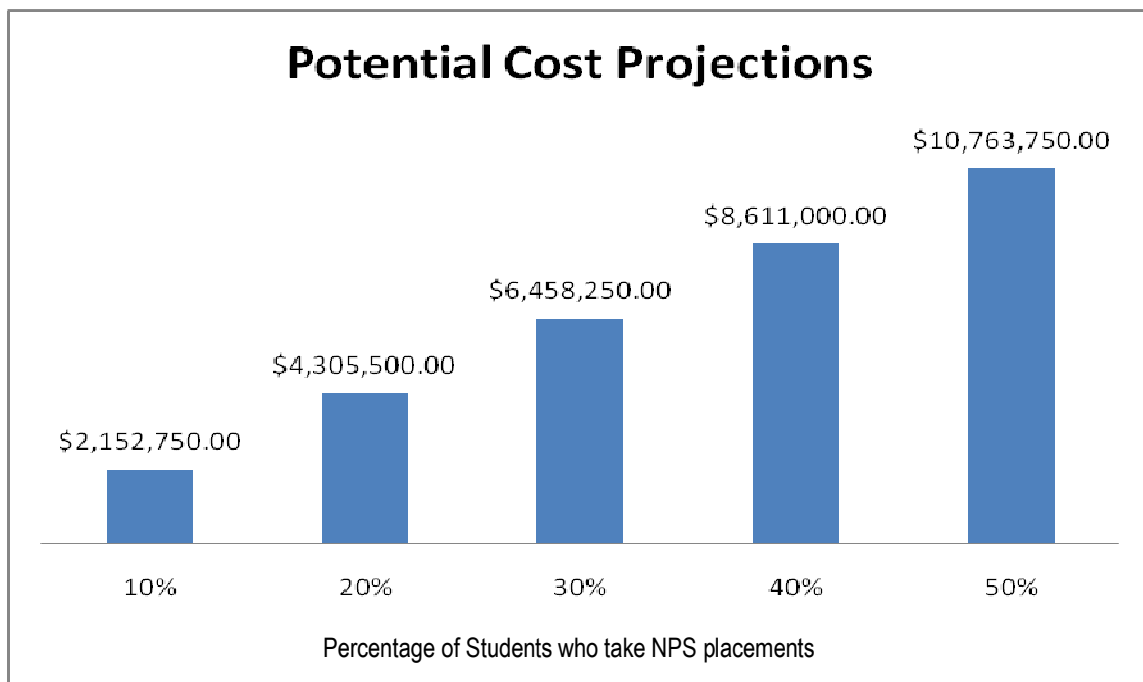
¹⁵ This figure was calculated by finding the median cost among NPS placements that serve children ages five and up. Please see the attached appendices for more details.

¹⁶ Special education costs per pupil during the 2008-2009 school year at <http://www.p12.nysed.gov/irs/reportcard/2011/supplemental/300000010000.pdf>

Table 1: Additional Costs Associated with NPS Placements

Summary		
Min tuition	Laboure Special Education Program: Sacred Heart	\$ 17,100
Max tuition	John A. Coleman School	\$ 57,024
Median tuition	The Shield Institute	\$ 34,286
Average tuition		\$ 35,162
NY Taxpayer expenditure on special education per pupil (2008-2009)		\$ 26,551
Discrepancy		\$ 8,611

The chart below illustrates the varying cost the City would incur if all or just a percentage of the 2,500 children find placements in a NPS. As demonstrated below, if 50% of the 2,500 children successfully find placements, the City will spend over \$10 million.



This conservative estimate does not factor in transportation costs. NPS locations are not only located throughout the City, but in neighboring states; some locations exist as far away as Bergen County, New Jersey.¹⁸ When transportation for longer commutes is factored in, the cost to City taxpayers could be substantially higher than current estimates.¹⁹

¹⁷ This figure was calculated by subtracting the average taxpayer expense on special education per pupil, which was \$26,551 in 2008-2009 from the average cost of NPS special education, which was \$35,162. The average cost of NPS special education programs was calculated based on the data compiled in an inquiry conducted by de Blasio's office in June of 2011.

¹⁸ *Approved Private Day Schools in New York City*, *supra* note 15.

¹⁹ *Turning Five Guide*, available at

www.advocatesforchildren.org/Turning%205%20Guide%2010.2010.pdf [hereinafter *Turning 5 Guide*].

RECOMMENDATIONS

- 1) The Department should commit to working cooperatively with de Blasio's office to provide an objective, external review of this year's Turning Five process to ensure that the problems in this year's process are not replicated in the upcoming school year, and that City taxpayers' dollars are utilized efficiently. Specifically, the Department should work with de Blasio's office to:
 - a. Compile all documents related to the procedural guidelines for this year's Turning Five Process;
 - b. Outline the suggested timeline guiding the Turning Five process in comparison to the realized timeline for this year's process;
 - c. Isolate the factors leading to discrepancies between the established guidelines and this year's process.

The Department should commit to completing this work by July 15th to ensure that it is prepared for next year's process.

- 2) Although parents are entitled to use their Nickerson letters, the Department has a moral and fiscal responsibility to find appropriate public school placements as soon as possible to prevent unnecessary anxiety for parents, and ensure that additional taxpayers' funds are appropriately reserved for those students whose needs cannot be appropriately met within the public school system. By July 15th, the Department should inform all parents awaiting placements of:
 - a. The date by which their child will have a placement;
 - b. A phone number parents can call to inquire about their child's placement.
- 3) The Department must disclose how many Nickerson letters have been granted over the last three years and subsequently used to secure NPS placements. The Department should study what classifications of students are granted Nickerson letters and later enrolled in NPS placements, and use this data to improve public school special education services.

**Costs of Attendance for 25 of the 41 Approved Non Public Schools with Age
Appropriate Programs**

School	Cost
John A. Coleman School	\$ 57,024
AABR New York Child Learning Institute	\$ 50,611
Guild School	\$ 49,365
Reece School	\$ 48,560
Northside Therapeutic Early Childhood Center Program	\$ 42,647
Eden II School for Autistic Children	\$ 39,508
Gillen Brewer School	\$ 39,361
QCP of Queens	\$ 39,001
Learning Springs Elementary	\$ 38,902
Leake and Watts School	\$ 37,296
Gate School of New York	\$ 36,832
The League School Program	\$ 35,681
The Shield Institute	\$ 34,286
The Heartshare Education Center Program	\$ 33,003
Parkside School	\$ 31,793
QSAC, Inc. Program	\$ 30,713
Lorge School	\$ 29,864
Brooklyn Heights Montessori Middle School	\$ 29,500
Brooklyn Heights Montessori Elementary Upper Grade	\$ 29,000
Brooklyn Heights Montessori Elementary Lower Grade	\$ 28,000
Block Institute School	\$ 27,774
Herbert G. Birch School for Exceptional Children	\$ 27,655
State Francis Cabrini School	\$ 24,107
The Life Skills School Program	\$ 21,470
Laboure Special Education Program: Sacred Heart	\$ 17,100



THE PUBLIC ADVOCATE FOR THE CITY OF NEW YORK
Bill de Blasio – PUBLIC ADVOCATE

June 9, 2011

Dennis Walcott, Chancellor
City of New York
Department of Education
52 Chambers Street
New York, NY 10007

Dear Chancellor Walcott:

I am writing to express concern and request information regarding the New York City Department of Education's (Department) lack of planning in this year's transition process for rising kindergartners with disabilities. A June 5, 2011 New York Daily News article highlighted the flaws in this year's process, and noted that the Department must now rush to find seats for approximately 15,500 students entering kindergarten in the upcoming school year. If these students are not given placement by June 15th, the Department is required to cover their tuition at private schools at the taxpayer's expense. At a time when the Mayor plans to lay-off 4,000 teachers, it is unacceptable for our education budget to incur additional unnecessary expenses due to internal errors and poor planning.

My office is formerly requesting basic information on the scope and cause of this problem. In addition we are requesting that your Department commit to working cooperatively with us on a joint review of the causes of this problem in order to prevent the same mistakes from being made next year.

Overall, I am deeply troubled by the complications in this year's transition process for incoming kindergartners, also known as the "Turning 5" process. After the June 15th deadline, it is expected that a portion of the 15,500 students in this process will receive Nickerson letters, providing a guarantee that the Department will cover private tuition costs for their families. I am very concerned about the costs that will accrue given the potential increase in Nickerson letters. According to a Wall Street Journal article dated August 18, 2010, in 2009 the Department spent \$116 million in tuition and legal expenses to cover special-education student's education in private schools. There are times when Nickerson letters are appropriate, but they were not intended to be used as a Plan-B for systemic failures in the placement process.

In order to ensure accountability to the taxpayers and minimize any unnecessary spending I have very specific questions and information requests that the Department should be able to easily respond to within one week:

- Please provide my Office with information that explains how these delays occurred, including:
 - What divisions were involved in this year's "Turning 5" process?
 - What were each divisions responsibilities in the "Turning 5" process?

- When in this year's "Turning 5" transition timeline did the Department realize there were going to be large delays in placing students?
- How delayed was the Department in sending cases to zoned schools for observations and evaluations?
- How many Nickerson letters were given to students in 2010, 2009, 2008?
- At the time you are sending this letter, how many of the 15,500 students have a placement for the upcoming school year?
- At the time you are sending this letter, how many students are still without a placement for the upcoming school year?
- How many more Nickerson letters does the Department anticipate sending out due to this year's procedural delays?

Upon receipt of this information and analysis from Office, I would like to provide an external review of this year's "Turning 5" process to ensure that the problems in this year's process are not replicated in the upcoming school year. As the City's watchdog, I urge the Department to coordinate with my office on this review in order to ensure objectivity.

Far too often, parents of children with disabilities must fight the hardest to ensure that their children receive a quality education that meets their needs. This year's lack of planning causes unnecessary stress on families and has the potential to cost the City. I am asking for your immediate attention to my requests and would like answers to the aforementioned questions and data requests by June 15, 2011. It is my intention to understand the issue and work with the Department in a review to ensure that this year's mistakes are not replicated in the upcoming school year.

Sincerely,



Bill de Blasio

Public Advocate for the City of New York



**Department of
Education**

Dennis M. Walcott, Chancellor

June 17, 2011

Hon. Bill de Blasio
Public Advocate, City of New York
1 Centre Street
New York, NY 10007

Dear Mr. de Blasio:

Thank you for your recent letter regarding your concerns about this year's Turning 5 (T-5) evaluation and placement process for New York City's students with disabilities.

As you may be aware, the Department of Education (DOE) is in the midst of a transformative improvement in the way we serve our students with disabilities. These changes, which emphasize student performance, student success, and personalized support, should result in significant gains in student achievement and postsecondary outcomes. While these changes have affected the timeline for this year's T-5 process, we are confident that this transition will better serve our students with disabilities.

Earlier this year, the New York State Education Department (NYSED) introduced a new Individualized Education Program (IEP) form in an effort to ensure that schools consider all of the resources they have available in order to address the unique needs of their students with disabilities. As such, these State-mandated changes to IEP forms require more complex and detailed information about each student, therefore requiring more time to develop IEPs and recommend services. We applaud this effort by the State, and we have taken steps—both operational and technical—to accomplish this goal.

Additionally, as part of the DOE's special education reform initiative, we have implemented new guidelines and a new system, called SESIS (Special Education Student Information System), for data capture and IEP development. SESIS empowers our staff members to provide our students with disabilities with more thoughtful and flexible programming. As one can expect when implementing a new system, we are experiencing some delays as our employees work to familiarize themselves with SESIS.

Ultimately, once our development and transition to SESIS and the new State IEP is complete, it will revolutionize the way we track and serve our students with disabilities.

The T-5 process is a cross-functional priority that involves several divisions within the DOE:

- **The Division of Students with Disabilities and English Language Learners** has oversight of Committees on Special Education, oversees the completion of IEPs for roughly 40% of the total T-5 population, advises on the implementation and development of SESIS, and assists with the deployment, training, communication and support of the SESIS end-user community.
- **The Office of School Support within the Division of Achievement, Performance, and Support** has oversight of the City’s Children First Networks and school psychologists, who govern IEP development teams (public schools manage evaluations for roughly 60% of the T-5 population), and coordinates the deployment of SESIS.
- **The Office of Student Enrollment within the Division of Portfolio Management** devises and implements placement offers for many T-5 students.
- **The Division of Finance** is the project sponsor for the SESIS development and implementation project, and oversees all contractual aspects concerning SESIS.
- **The Division of the Chief Operating Officer** is the day-to-day project manager of the SESIS project.

Given all the factors referenced, we anticipated that this system-wide work would be more intensive and time-consuming than in years past. In addition to our transition issues, we also experienced an increase in the number of students referred for evaluation this year, which coincides with the overall increase we are seeing in the number of families seeking Kindergarten placement throughout the City. Regardless, we remain committed to evaluating and identifying appropriate placements for all of our T-5 students.

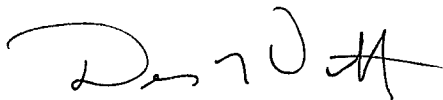
As of June 15, we have evaluated and offered placements to approximately 9,000 of the 11,500 T-5 students referred to special education prior to March 1 who are entitled to placement offers by June 15. We will fulfill our legal obligation and issue “Nickerson” letters to eligible students.

While these letters provide a commitment for payment if admitted to an appropriate State-approved, non-public school, we expect that the majority of parents who receive Nickerson letters will choose to send their child to a public school in September.

Our special education reform reinforces our desire to serve a majority of families in their locally zoned school. We will continue working to ensure that these children are evaluated and served properly, and that their families have the information they need to make the best decisions for their children this fall and beyond.

Thank you again for writing to us on behalf of your constituents, and for your advocacy on behalf of New York City's public school students. We appreciate your input.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis M. Walcott". The signature is fluid and cursive, with a large initial "D" and a stylized "W".

Dennis M. Walcott
Chancellor