

January 13, 2016

The Honorable Brad Lander
Councilmember
New York City Council
456 Fifth Avenue, 3rd Floor
Brooklyn, NY 11215

Re: 2015 Report on Demographic Data in New York City Public Schools

Dear Councilmember Lander:

We write to congratulate you on the New York City Department of Education's ("DOE's" or "the Department's") recent publication of its "Report on Demographic Data in New York City Public Schools in Response to Local Law No. 59" ("Report"). The Report is a treasure trove of data on current demographics in the city's schools and has instantly become the starting point for anyone wishing to understand the related phenomena of segregation and gentrification in schools. The data provided by the Report are sure to lead to important insights and new research that will deepen our understandings of these issues. You, Councilmember Torres, and the rest of the City Council deserve enormous credit for your leadership in passing and enacting into law the groundbreaking and nationally important School Diversity Accountability Act. Thank you.

As with any first effort of this kind, however, there are deficiencies in the Report – some very serious. We also write to call attention to areas where the Report fell short of the clear letter and spirit of the reporting law. As always, New York Appleseed raises its concerns in the form of constructive criticism, and we stand by to assist the City Council and the DOE in addressing these issues.

Variables by Grade (§§ 21-957 and 21-958)

We are dismayed by the legalistically narrow interpretation of the Reporting requirements taken by DOE in this Report and the resulting vastly curtailed scope of the data reported. Int. 511-A, as it existed at the time of the December 2014 City Council hearing, and until it was amended shortly before passage in May of 2015, was unambiguous in requiring all variables to be reported *by grade* as well as in the aggregate. Obtaining data on variables such as race by grade is critical for understanding the way in which segregation and demographic change are occurring in schools. Our understanding is that it had always been the intent of the City Council to require reporting by grade before and after the May 2015 amendments. This was also New York Applesseed's understanding of the law at the time of passage, and remains, we would argue, the most reasonable interpretation of the language of Local Law 59.

Using an apparently hairsplitting interpretation of the May 2015 amendments as an excuse for not reporting all data by grade is unfortunate and runs counter to the spirit of an informed public debate under which the law was passed and signed. We very much hope that DOE will reconsider its approach if requested to do so.

Special Programs (§21-957)

While we greatly appreciate the extraordinary efforts by DOE staff to assemble data on "special programs" on the eve of the deadline, we are troubled that a key provision of the law was nearly passed over entirely in the Report. Moreover, we are concerned that the Report even now fails to comply with the reporting requirements established by the law.

Section 21-957 of the law requires the Department to report on demographics of "special programs" within schools. "Special programs" are defined by the law to mean "academic programs including *but not limited to* gifted and talented programs ... and dual language programs" [emphasis ours]. Our understanding is that the City Council's intent with this requirement was to track *all* of the ways by which segregation of students is occurring within individual schools.

The Department, however, did in fact limit its reporting to the two special programs used as examples in the law's definition. The law does not report on ICT programs within individual schools. The law also fails to report on programs that are not official G&T programs, but nevertheless operate to separate children either by standards of ability or other criteria.¹ For obvious reasons, such unofficial programs with segregative effects that are administered at the school level with minimal oversight raise significant concerns. If DOE does not currently

¹ For an example of such a program, see Sarah Darville, "Uproar continues over ending 'gifted' classes at Ditmas Park's P.S. 139, though program an outlier," *Chalkbeat New York*, February 7, 2014, <http://ny.chalkbeat.org/2014/02/07/uproar-continues-over-ending-gifted-classes-at-ditmas-parks-p-s-139-though-program-an-outlier/#.VoU6rfkrLmE>.

maintain records on such special programs, the School Diversity Accountability Act now requires the Department to begin collecting and reporting such data. DOE must provide data on all special programs in future reports and should be asked to explain why they did not do so in this Report.

Admissions Process, Criteria, and Methods (§§ 21-957(d) and 21-958(d))

The law requires the Department to report the following information for K-12 schools:

- 1. the admissions process used by such school or special program, such as whether admission to such school or special program is based on a lottery, a geographic zone, a screening of candidates for such school, or a standardized test; and*
- 2. whether other criteria or methods are used for admission, including but not limited to waitlists or a principal's discretion. (§§ 21-957(d) and 21-958(d))*

The Report, however, failed to provide the admissions process used by special programs as required by the law. Although the admissions process for DOE's G&T programs is somewhat uniform, the admissions processes for dual language programs across the city have historically been anything but uniform – even after the advent of Kindergarten Connect.

Second, while we can agree that the very broad categories used by the Department to describe admissions are probably sufficient to meet the requirements of subsection (d)(1) in both §§ 21-957 and 21-958, we believe that the Report ignores the requirement of subsection (d)(2) to provide “other criteria or methods used for admission.” A number of schools have special admissions criteria, the specificity of which is not reflected in the Report (e.g., auditions, screened for language, etc.). PS 133 and The Brooklyn New School, for instance, are simply listed as “non-zoned” despite having important “other criteria or methods used for admission.” The reference to “waitlists, over-the-counter, and transfers” in the notes section of the Report does not allow the DOE to ignore this requirement or to fail to report schools for which waitlists and over-the-counter admissions served as important “criteria or methods used for admission.”

Presentation

Although Local Law 59 does not require any particular format for the annual report, we were surprised by the stinting presentation of the qualitative information in an Excel spreadsheet. Although it still has a long way to go, the DOE made some significant strides in implementing solutions to school segregation in 2015. The annual report provides DOE with an important opportunity to take credit for and promote public understanding of the important steps it has taken to reduce school segregation. At a minimum, the DOE should have provided a narrative presentation of the steps that DOE has taken with information such as schools affected, expected results, links to more information, and next steps.

Even the presentation of quantitative data suffers from lack of proper explanation. The categories provided by DOE raise a number of questions:

- How do the racial/ethnic data take into consideration the fact that “Hispanic” is not typically deemed a race? Does this category represent non-white Hispanic?
- How has the DOE defined “other” ethnicity in the Report?
- How ethnicity is determined (including for those students whose parents do not identify)?
- The “attend school outside of district of residence” is confusing: does this category describe children who live in the subject district and attend school outside their home district or children attending school in the subject district, but who reside in other districts?
- For that matter, which students are included in the category “all students” and which are not?

Basic explanations on these and other questions consistent with the standards used in Independent Budget Office reports are needed.

Viewed in conjunction with the issues we have already raised, we cannot help but note that (even if this was not the intent) the Report as a whole *appears* more as an exercise in begrudging compliance than the product of an agency ready to offer leadership on a matter of great public concern. In that sense, this Report was a missed opportunity to inspire public confidence; DOE owes more to itself, to the City Council, and to the residents of New York City.

Even with the failings we have outlined above, the Report represents a significant achievement both for the City Council and the DOE, the benefits of which we will be seeing in research and analysis for years to come. We congratulate you on this important success and look forward to working with you to correct these problems both in the 2015 Report and in future reports.

Yours sincerely,

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