

Improving the Educational Outcomes of Students in Foster Care: Recommendations Based on an Analysis of Data from New York City¹

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1. This article is adapted with permission from a report published by Advocates for Children of New York in January 2023. ADVOC. FOR CHILD. OF N.Y., *BUILDING ON POTENTIAL: NEXT STEPS TO IMPROVE EDUCATIONAL OUTCOMES FOR STUDENTS IN FOSTER CARE* (2023), <https://www.advocatesforchildren.org/policy-resource/building-on-potential/>. All of the figures in this article originally appeared in that report. The figures are based on analysis by Sarah Part from Advocates for Children of data prepared by local and state government agencies. Ms. Part and Erika Palmer were the principal authors of the report. Citations to the report are provided for reference. The authors would like to thank former AFC interns Max Weinstein and Cora Wolfinger for their help with this article.

Introduction

In 2021, there were nearly 300,000 preschool- and school-age children and youth in foster care in the United States.² When children are removed from their home and placed in the foster system, they are separated from their parents, and possibly from siblings, pets, and other loved ones; they may be placed in an unfamiliar neighborhood with caregivers who are complete strangers; and they may have to change foster homes multiple times.³ No matter the circumstances prompting the removal, this is a deeply disruptive and traumatic event in a young person's life, and one over which they have little to no control.⁴ In taking such drastic action, the state has a moral obligation to ensure these children's needs are being met and, at a bare minimum, to avoid causing further harm.⁵ The public school system, in particular, has a critical role to play in supporting youth in the foster system.⁶ Federal law provides students in foster care with special protections that recognize their unique needs, including the right to remain in their school, even if their foster care placement is in another school district;⁷ access to Education and Training vouchers, which help current and former foster youth up to age 26 pay for college, career school, or training;⁸ and the ability for child welfare agencies to access students' education records without parental release, in order to address students' educational needs.⁹

2. Includes all children ages 3–20 who were in foster care on September 30, 2021, including those who were not enrolled in school. U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., AFCARS REP. No. 29, at 1 (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf>.

3. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 4.

4. *See, e.g.*, Elysia V. Clemens et al., *The Voices of Youth Formerly in Foster Care: Perspectives on Educational Attainment Gaps*, 79 CHILD. & YOUTH SERVS. REV. 65 (2017), <https://doi.org/10.1016/j.chilyouth.2017.06.003>; Caitlin Papovich, *Trauma & Children in Foster Care: A Comprehensive Overview*, CONCORDIA ST. PAUL (July 10, 2019), <https://www.csp.edu/publication/trauma-children-in-foster-care-a-comprehensive-overview/>; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 4.

5. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 4.

6. *See, e.g.*, Clemens et al., *supra* note 4; Indra M. Townsend et al., *Systematic Review of the Educational Experiences of Children in Care: Children's Perspectives*, 111 CHILD. & YOUTH SERVS. REV. 104835, at 9 (2020), <https://doi.org/10.1016/j.chilyouth.2020.104835>.

7. 42 U.S.C. § 675(1)(G); 20 U.S.C § 6311(g)(1)(E).

8. John H. Chafee Foster Care Program for Successful Transition to Adulthood, 42 U.S.C. § 677(i)(3).

9. Uninterrupted Scholars Act, Pub. L. No. 112-278, 126 Stat. 2480 (2013).

Though few in number relative to the entire student population,¹⁰ children in foster care have some of the most complex educational needs and bleakest academic outcomes of any student group: They experience frequent school changes and have high rates of chronic absenteeism; are more likely than their peers to be suspended from school, qualify for special education services, or be retained in a grade; and are less likely to score proficient on standardized tests, graduate from high school, or complete college.¹¹ As the nation's largest school district,¹² New York City offers a compelling case study of these challenges.¹³ More than 7,000 New York City students spend time in foster care each year.¹⁴ In line with national trends, students in foster care comprise less than one percent of

10. There are more than 49.4 million public school students in grades pre-K–12 in the United States (inclusive of Puerto Rico and U.S. territories), making students in foster care roughly 0.6% of the population. *Tbl. 203.40, Enrollment in Public Elementary and Secondary Schools, by Level, Grade, and State or Jurisdiction: Fall 2021*, U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT., DIGEST OF EDUC. STAT. (2022), https://nces.ed.gov/programs/digest/d22/tables/dt22_203.40.asp.

11. For a summary of these issues at the national level, see LEGAL CTR. FOR FOSTER CARE & EDUC., ABA CTR. ON CHILD. & THE LAW, EXPLORING EDUCATION OUTCOMES: WHAT RESEARCH TELLS US 4–5 (2022), <https://static1.squarespace.com/static/63dcf65b8d0c56709027332e/t/6454f86f0f4c483811518c22/1683290224435/Education+Outcomes+final.pdf>; LEGAL CTR. FOR FOSTER CARE & EDUC., ABA CTR. ON CHILD. & THE LAW, FAST FACTS: FOSTER CARE AND EDUCATION DATA AT A GLANCE 1 (2022), <https://static1.squarespace.com/static/63dcf65b8d0c56709027332e/t/6454f88fa66ab34124a03df4/1683290255678/Foster+Care+and+Education+Fast+Facts+final.pdf>. For more information and links to these reports and other national data, see *Data & Information Sharing*, LEGAL CTR. FOR FOSTER CARE & EDUC., <https://www.fostercareandeducation.org/overview/data-information-sharing> (last visited Dec. 12, 2023).

12. *Tbl. 215.30, Enrollment, Poverty, and Federal Funds for the 120 Largest School Districts, by Enrollment Size in 2019: 2018–19 and Fiscal Year 2021*, U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT., DIGEST OF EDUC. STAT. (2021), https://nces.ed.gov/programs/digest/d21/tables/dt21_215.30.asp.

13. Like some other large and medium-sized cities, New York City's public schools operate under mayoral control; there is not a separately elected school board. The mayor appoints the Chancellor of the New York City Department of Education (DOE) and 13 of the 23 voting members of the Panel for Educational Policy (PEP), which operates similarly to a Board of Education in other school districts. While there are 32 geographic school districts, two specialized school districts, and 11 high school superintendencies in New York City, all of these districts and superintendencies fall under one Department of Education. See *District Leadership*, NYC PUB. SCHS., <https://www.schools.nyc.gov/about-us/leadership/district-leadership> (last visited Sept. 20, 2023); *Panel for Educational Policy*, NYC PUB. SCHS., <https://www.schools.nyc.gov/about-us/leadership/panel-for-education-policy> (last visited Sept. 20, 2023).

14. For example, 7,416 New York City students spent time in foster care during the 2020–21 school year. N.Y.C. Dep't of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data) (on file with authors) [hereinafter Students in Foster Care Data, F18,237].

the total public school population¹⁵ and have frequently been overlooked, seemingly invisible within the City’s sprawling public school system.¹⁶

Our organization, Advocates for Children of New York (AFC), works to ensure a high-quality education for students in New York who face barriers to academic success; for over 50 years, AFC has focused on serving students from low-income backgrounds who have disabilities, are learning English as a new language, are experiencing homelessness, or are involved in the foster care or juvenile/criminal legal systems.¹⁷ Since 2002, AFC’s Project Achieve has partnered with foster care agencies across New York City to enhance their ability to address the educational needs of the children they serve; provided free advice, technical assistance, and legal representation to individual students and families involved in the foster system; and advocated for policy changes to improve educational experiences and outcomes for youth in foster care.¹⁸

At the beginning of the 2022–23 school year, in response to sustained advocacy by AFC and many other legal services providers and foster care

15. A total of 1,094,138 students were enrolled in public schools in New York City in 2020–21 (of whom 955,490 attended schools managed by the DOE and 138,648 attended public charter schools). Demographic Snapshot—Citywide, Borough, District, and School: SY 2017–18 to 2021–22—All Grades, Excel file (June 7, 2023), *Information and Data Overview*, NYC PUB. SCHS. INFOHUB, <https://infohub.nyced.org/reports/students-and-schools/school-quality/information-and-data-overview#jump-to-heading-2> [hereinafter *DOE Demographic Snapshot*].

16. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 3; ADVOCS. FOR CHILD. OF N.Y. & THE LEGAL AID SOC’Y, BUILDING A NETWORK OF SUPPORT: THE CASE FOR A DOE OFFICE FOR STUDENTS IN FOSTER CARE 4 (2021), <https://www.advocatesforchildren.org/policy-resource/building-a-network-of-support/>; N.Y.C. ADMIN. FOR CHILD.’S SERVS., REPORT OF THE INTERAGENCY FOSTER CARE TASK FORCE 29 (2018), <https://www.nyc.gov/assets/acs/pdf/testimony/2018/TaskForceReport.pdf>; ADVOCS. FOR CHILD. OF N.Y., EDUCATIONAL NEGLECT: THE DELIVERY OF EDUCATIONAL SERVICES TO CHILDREN IN NEW YORK CITY’S FOSTER CARE SYSTEM 9 (2000), <https://www.advocatesforchildren.org/policy-resource/educational-neglect>.

17. See *About AFC*, ADVOCS. FOR CHILD. OF N.Y., <https://www.advocatesforchildren.org/about/>.

18. For more on Project Achieve, see ADVOCS. FOR CHILD. OF N.Y., MEETING THE EDUCATIONAL NEEDS OF STUDENTS IN THE CHILD WELFARE SYSTEM: LESSONS LEARNED FROM THE FIELD (2012), <https://www.advocatesforchildren.org/policy-resource/project-achieve-2012/>; ADVOCS. FOR CHILD. OF N.Y., ADVOCATES FOR CHILDREN’S PROJECT ACHIEVE: A MODEL PROJECT PROVIDING EDUCATION ADVOCACY FOR CHILDREN IN THE CHILD WELFARE SYSTEM (2005), <https://www.advocatesforchildren.org/policy-resource/project-achieve-2005/>.

agencies,¹⁹ the New York City Department of Education (DOE)²⁰ took an important step forward by hiring a small team of staffers dedicated to supporting students in foster care.²¹ The creation of such an office was first recommended by the City's Interagency Foster Care Task Force in March 2018.²² This office is now tasked with providing support and training to school staff with respect to the educational rights of children in foster care and their families, reviewing data to ensure schools are meeting the needs of students in foster care, and developing and implementing policies to improve educational experiences and outcomes for this population.²³

19. See, e.g., ADVOCS. FOR CHILD. & THE LEGAL AID SOC'Y, *supra* note 16, at 2; Erika Palmer, Supervising Att'y, Advoc. for Child. of N.Y., *Testimony to Be Delivered to the N.Y.C. Council Comm. on Gen. Welfare Re: Foster Care Task Force Progress* (Nov. 24, 2020), <https://www.advocatesforchildren.org/policy-resource/afc-testifies-on-foster-care-task-force-progress/>; Axel Turcios, *New York City Schools Create Office for Foster Care Students*, SCRIPPS NEWS (Sept. 20, 2022, 8:09 PM), <https://scrippsnews.com/stories/new-york-city-schools-create-office-for-foster-care-students/>.

20. In this article, we refer to the local education agency for New York City as the New York City Department of Education (DOE). While the agency began using the public-facing name New York City Public Schools (NYCPS) during the 2022–23 school year, the data discussed here are from school years preceding this rebranding. For simplicity's sake, and because the entity's legal name remains unchanged, we have chosen to exclusively refer to it as the DOE throughout this article.

21. While the City committed to creating such a team in late 2021, hiring was delayed and the office did not launch until late summer 2022, with hiring completed in fall 2022. Prior to August 2022, there was not a single staff member at the DOE focused solely on students in the foster system. See ADVOCS. FOR CHILD. OF N.Y. & THE LEGAL AID SOC'Y, *supra* note 16, at 4; *Advocates for Children of New York, Legal Aid Commend the NYC Department of Education for Announcing New Team to Serve Children*, ADVOCS. FOR CHILD. OF N.Y. (Dec. 20, 2021), <https://www.advocatesforchildren.org/policy-resource/afc-legal-aid-commend-doe-new-foster-care-team/>; Erika Palmer, Advoc. for Child. of N.Y., *Testimony to Be Delivered to the N.Y.C. Council Comm. on Educ. Re: Students in Foster Care in the DOE System* (Apr. 20, 2022), <https://www.advocatesforchildren.org/policy-resource/afc-testifies-on-the-educational-needs-of-students-in-foster-care/>; Cayla Bamberger, *NYC Council, Advocates Call for DOE to Support Students in Foster Care*, N.Y. POST (Apr. 20, 2022, 9:17 PM), <https://nypost.com/2022/04/20/nyc-council-advocates-call-for-doe-to-support-students-in-foster-care/>; *NYC Department of Education to Kick-Start New Office for Foster Care Students*, NEWS12 THE BRONX (July 11, 2022, 12:33 PM), <https://bronx.news12.com/nyc-department-of-education-to-kick-start-new-office-for-foster-care-students/>; Sarah Belle Lin, *Report: Foster Care Students in NYC Plagued by Chronic Absenteeism, Suspensions, Dropouts*, AMNY (Jan. 31, 2023), <https://www.amny.com/news/foster-care-students-nyc-absenteeism-suspensions-dropouts/> (explaining that the DOE had hired 8 of 9 foster care team members as of November 2022); ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 3.

22. N.Y.C. ADMIN. FOR CHILD.'S SERVS., *supra* note 16, at 29; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 3.

23. See N.Y.C. Dep't of Educ., *Students in Temp. Hous., Off. of Foster Care*, at 8 (May 2023) (PowerPoint Presentation) (on file with the authors); *Students in Foster Care*, NYC PUB. SCHS., <https://www.schools.nyc.gov/school-life/special-situations/students-in-foster-care> (last visited June 15, 2023); ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 3.

This article aims to provide a broad overview of the state of education for students in foster care in New York City at the time of this office's inception. It analyzes DOE data from the 2016–17 through 2020–21 school years obtained by AFC pursuant to a Freedom of Information Law (FOIL) request,²⁴ supplemented with publicly available data from the New York City Administration for Children's Services (ACS)²⁵ and other sources; our findings mirror those seen elsewhere in the country with respect to attendance, receipt of special education services, exclusionary discipline, academic achievement, and school stability. Based on this analysis and our organization's decades of experience working with students in the foster system, we make recommendations for how municipalities can better support students in foster care and highlight some recent promising practices from New York City and elsewhere.²⁶

Part I of this article lays out the findings from our analysis of the DOE's response to our FOIL request. Part I.A summarizes our findings related to student demographics and school enrollment; Part I.B looks at attendance and chronic absenteeism among students in foster care; Part I.C considers suspensions; and Part I.D examines academic outcomes among students in foster care as compared to other students, including their performance on standardized tests and graduation rates. Part I.E examines school stability and the impact of school transfers on academic performance. Part II discusses our recommendations.

24. N.Y. PUB. OFF. LAW §§ 84–90 (Freedom of Information Law); ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 3. The original FOIL request and raw data are both on file with the authors. Students in Foster Care Data, F18,237, *supra* note 14.

25. When a child is placed in foster care in New York City, ACS is the agency that obtains temporary legal custody of the child. N.Y.C. ADMIN. FOR CHILD.'S SERVS., A GUIDE FOR PARENTS OF CHILDREN IN FOSTER CARE 16 (2022), http://www.nyc.gov/assets/acs/pdf/parent_handbook.pdf; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 3.

26. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 3–4.

I. Findings

A. Demographics and School Enrollment

Children and youth in foster care in New York City are disproportionately Black and from low-income communities.²⁷ For example, of preschool- and school-age children in foster care in December 2021, over half (51%) were Black, though less than a quarter of all 3- to 20-year-olds living in the five boroughs are Black.²⁸ The percentage of children in foster care who are Latinx (38%) is roughly proportional to the overall population, while White and Asian children are notably underrepresented (comprising just under five percent and about two percent, respectively, of those in the foster system).²⁹ Although students in foster care are spread out across the City, they are particularly concentrated in high-poverty neighborhoods in the Bronx, central and east Brooklyn, and southeast Queens, as shown in

27. See, e.g., Angela Butel, *Data Brief: Child Welfare Investigations and New York City Neighborhoods*, CTR. FOR N.Y.C. AFFS. AT THE NEW SCH. (June 2019), <http://www.centernyc.org/data-brief-child-welfare-investigations>; N.Y.C. CTR. FOR INNOVATION THROUGH DATA INTEL. (CIDI), *EDUCATION OUTCOMES OF NYC YOUTH IN FOSTER CARE 6* (2022), https://www.nyc.gov/assets/cidi/downloads/pdfs/Education_Outcomes_May19_2022.pdf; N.Y.C. ADMIN. FOR CHILD.'S SERVS., *LOCAL LAW 174 REPORTING FOR THE JULY 1, 2021 REPORT 4* (2021), <https://www.nyc.gov/assets/operations/downloads/pdf/reporting/LL174-July-2021-Submission.pdf>; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 5.

28. Includes all children and youth ages 3 to 20 in foster care as of December 31, 2021. N.Y.C. ADMIN. FOR CHILD.'S SERVS., *ACS REPORT ON YOUTH IN FOSTER CARE, 2021* (report pursuant to Local Law 145), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2021/ReportOnYouthInFC2021.pdf>. Population demographics were estimated using data from the American Community Survey 2017–2021 five-year sample: 22% of 3- to 20-year-olds living in the five boroughs are Black, 35% are Hispanic/Latinx, 26% are White, and 12% are Asian. Steven Ruggles et al., *IPUMS USA: Version 13.0*, IPUMS (2023), <https://doi.org/10.18128/D010.V13.0> (2017–2021, American Community Survey five-year sample) <https://doi.org/10.18128/D010.V13.0>. The overrepresentation of Black children in the foster system in New York City mirrors well-documented and longstanding national trends; for more, see, e.g., Frank Edwards et al., *Contact with Child Protective Services Is Pervasive but Unequally Distributed by Race and Ethnicity in Large US Counties*, 118 *PNAS* e2106272118 (July 19, 2021), <https://www.pnas.org/doi/full/10.1073/pnas.2106272118>; Christopher Wildeman & Natalia Emanuel, *Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000–2011*, 9 *PLOS ONE* e92785 (Mar. 26, 2014), <https://doi.org/10.1371/journal.pone.0092785>; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 5.

29. N.Y.C. ADMIN. FOR CHILD.'S SERVS., *supra* note 28; Wildeman & Emanuel, *supra* note 28; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 5.

Figure 1.³⁰ In addition, more than a third (34%) of 13- to 20-year-olds in foster care in New York City identify as LGBTQIA, notably higher than in the general population of NYC youth.³¹

Students in the foster system span the grade levels: Of the 6,604 students in foster care in 2020–21 for whom grade-level data are available, 7.0% were in pre-K, 23.1% were in kindergarten through second grade, 20.2% were in grades 3–5, 17.2% were in middle school (grades 6–8), and 32.6% were in high school (grades 9–12).³² At every grade level, students in the foster system made up between 0.5 and 0.8% of total New York City Public Schools 2020–21 enrollment.³³ Students in foster care are *less* likely than New York City students as a whole to attend charter schools; during the 2020–21 school year, for example, 8.1% of students in the foster system attended charters,³⁴ compared to 12.7% of all students Citywide.³⁵

30. N.Y.C. ADMIN. FOR CHILD’S SERVS., CHILDREN IN FOSTER CARE BY BOROUGH/CD OF FOSTER CARE PLACEMENT (Dec. 31, 2021), <https://www.nyc.gov/assets/acs/pdf/data-analysis/2021/InFosterCareDec2021.pdf>. According to data from the American Community Survey (2017–2021 five-year sample), an estimated 35% of children (ages 0–18) in the Bronx live below the federal poverty line, as do 33% of children in Brownsville and East New York in Brooklyn. By comparison, the Citywide poverty rate is 23%. *Population Fact Finder*, NYC PLANNING, <https://popfactfinder.planning.nyc.gov/> (select a “location”; choose “2017-2021” in the data source dropdown; for topic, select “Economic”) (last visited Sept. 20, 2023).

31. N.Y.C. ADMIN. FOR CHILD’S SERVS., LGBTQAI+ ACTION PLAN 3 (2021), <https://www1.nyc.gov/assets/acs/pdf/about/2020/LGBTQActionPlan.pdf>.

32. Includes students in foster care attending both DOE schools and charter schools. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 5.

33. Calculated using Citywide enrollment data from the *DOE Demographic Snapshot*, *supra* note 15, and Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 5.

34. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 5.

35. Calculated using enrollment data from the *DOE Demographic Snapshot*, *supra* note 15; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 5.

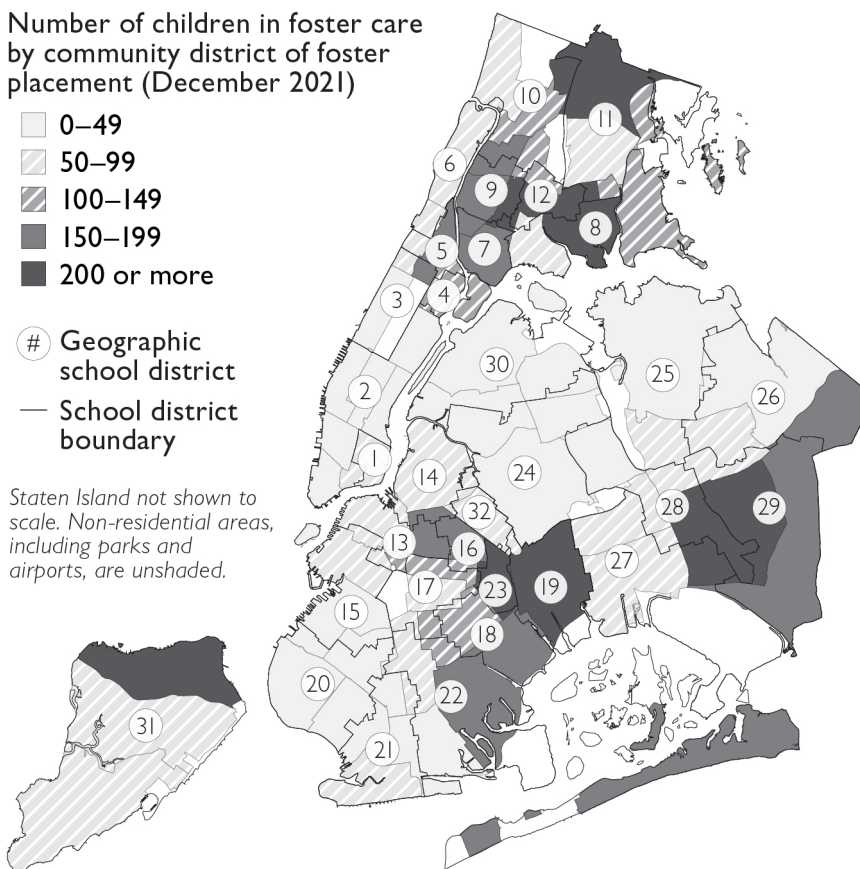
Figure 1. There are particularly large numbers of children placed in foster care in Jamaica and Hollis in Queens (parts of school districts 27, 28, and 29); East New York and Brownsville in Brooklyn (school districts 19 and 23); Williamsbridge, Parkchester, and Morrisania in the Bronx (parts of districts 8, 9, 11, and 12); and St. George and Stapleton on Staten Island (part of district 31).

Includes all children who were in foster care in New York City on December 31, 2021, for whom community district is available (n=6,040), including those not enrolled in school (e.g., toddlers too young for 3-K and older youth who already graduated or dropped out). Source: N.Y.C. ADMIN. FOR CHILD'S SERVS., CHILDREN IN FOSTER CARE BY BOROUGH/CD OF FOSTER CARE PLACEMENT (Dec. 31, 2021).

Number of children in foster care by community district of foster placement (December 2021)

- 0–49
- ▨ 50–99
- ▩ 100–149
- 150–199
- 200 or more
- # Geographic school district
- School district boundary

Staten Island not shown to scale. Non-residential areas, including parks and airports, are unshaded.



1. STUDENTS IN FOSTER CARE RECEIVE SPECIAL EDUCATION SERVICES AT HIGHER RATES THAN THE GENERAL STUDENT POPULATION AND ARE OVERREPRESENTED IN THE MOST SEGREGATED SETTINGS.

During each school year from 2016–17 to 2020–21, between 43.9 and 48.3% of students in foster care in New York City were classified as students with disabilities, with a five-year average of 46.6%³⁶—*more than double* the Citywide special education classification rate of 20.5% (See Figure 2 for 2020–21 data).³⁷ Moreover, students in the foster system who have Individualized Education Programs (IEPs) are less likely than other students with IEPs to be learning in inclusive settings alongside their peers without disabilities.³⁸ As of May 2021, approximately half (49.7%) of students with disabilities in foster care were recommended for self-contained special education classes, in which students with disabilities are segregated from their nondisabled peers; by comparison, roughly 30% of students with disabilities not in foster care had this IEP recommendation.³⁹

Similarly, students in the foster system are overrepresented in District 75, the Citywide special education district that serves students with the

36. Students in Foster Care Data, F18,237, *supra* note 14; analysis by Advocates for Children; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 7.

37. DOE Demographic Snapshot, *supra* note 15; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 7.

38. The federal Individuals with Disabilities Education Act, or IDEA, guarantees every eligible child with a disability the right to a free appropriate public education (FAPE). 20 U.S.C. §§ 1400–19. The primary vehicle for providing FAPE is through a document called an Individualized Education Program (IEP), which lays out the special education and related services the child will receive and must be based on the individual needs of the child. *See Topic Areas, Individualized Education Program*, U.S. DEP'T OF EDUC., IDEA, <https://sites.ed.gov/idea/topic-areas/#IEP> (last visited Aug. 7, 2023). For an overview of the IDEA, see Richard Marsico, *The Intersection of Special Education and Family Law: Thoughts for Family Law Attorneys in Divorce and Custody Cases*, 57 FAM. L.Q. 193, 194–208 (2023–24).

39. *Foster Care Students in the DOE System: Oversight Hearing Before the Comm. on Educ.*, N.Y.C. Council Transcript of the Minutes at 82, <https://on.nyc.gov/3IWBMSS> (testimony of John Hammer, Chief Exec. Dir., Special Educ. Off., N.Y.C. Dep't of Educ. (Apr. 20, 2022); ADVOCS. FOR CHILD. OF N.Y., *supra* note 1 at 7.

most significant needs.⁴⁰ During each of the 2016–17 through 2020–21 school years, more than one in five students in foster care with an IEP (between 21.3 and 23.7%, depending on the year)⁴¹ were in a District 75 placement, compared to a five-year average of only 11% for all City students with disabilities. (See Figure 2 for 2020–21 data).⁴²

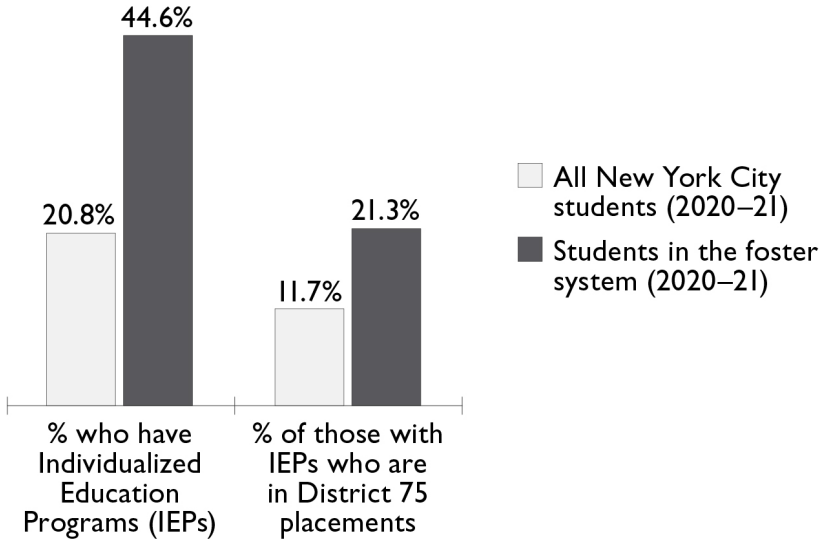
40. For more on District 75, see *District 75*, NYC PUB. SCHS., www.schools.nyc.gov/D75 (last visited June 27, 2023). The majority of students placed in District 75 have a classification of autism, emotional disability, or intellectual disability. CHERI FANCSALI, RSCH. ALL. FOR N.Y.C. SCHS., SPECIAL EDUCATION IN NEW YORK CITY: UNDERSTANDING THE LANDSCAPE 12 fig.7, 13 (2019), https://steinhardt.nyu.edu/sites/default/files/2021-03/Special_Education_in_New_York_City_final.pdf. These students are also disproportionately Black, from low-income backgrounds, and learning English as a new language. DOE *Demographic Snapshot*, *supra* note 15. Lastly, students in District 75 are disproportionately subject to police intervention and handcuffing when in emotional crisis. ADVOCS. FOR CHILD. OF N.Y., POLICE RESPONSE TO STUDENTS IN EMOTIONAL CRISIS (2021), <https://www.advocatesforchildren.org/policy-resource/police-response-to-students-in-emotional-crisis/>. For a discussion of the unusual structure and organization of District 75, in comparison to other large urban school districts, as well as the high level of segregation from nondisabled peers, low expectations, and poor academic outcomes experienced by students attending District 75 schools, see COUNCIL OF THE GREAT CITY SCHS., IMPROVING SPECIAL EDUCATION IN NEW YORK CITY’S DISTRICT 75 (2008), <https://www.uft.org/sites/default/files/attachments/nyc-cgcs-report.pdf>.

41. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 7.

42. Calculated using enrollment data from the DOE *Demographic Snapshot*, *supra* note 15; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 7.

Figure 2. Over 40% of students in foster care are classified as students with disabilities, more than twice the Citywide rate. Of students in care with IEPs, more than one out of five is in a District 75 special education school, a placement type in which students have little to no interaction with peers who do not have disabilities.

Source: N.Y.C. Dep’t of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (*Students in Foster Care Data*); Demographic Snapshot—Citywide, Borough, District, and School: SY 2017–18 to 2021–22—All Grades.



2. YOUTH IN THE FOSTER SYSTEM ATTEND ALTERNATIVE SCHOOLS AND PROGRAMS AT HIGHER RATES THAN CITY STUDENTS OVERALL.

In 2020–21, 18% of 9th–12th graders in foster care were overage for their grade level,⁴³ meaning they had been held back at least once and/or were behind on earning credits; by comparison, roughly 7.7% of all high school students were overage that year.⁴⁴ Perhaps unsurprisingly, then, students in foster care attend transfer schools—alternative schools designed to serve older youth who have dropped out or fallen behind on

43. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 7.

44. Citywide rate for all high school students estimated using data from the 2020–21 School Quality Reports for high schools and transfer high schools, available at *School Quality Report Citywide Data Archives*, NYC PUB. SCHS. INFOHUB, <https://infohub.nyced.org/reports/students-and-schools/school-quality/school-quality-reports-and-resources/school-quality-report-citywide-data>; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 7 & n.6.

credits⁴⁵—at more than double the Citywide rate. In each of the five school years for which data are available, more than one in 10 high schoolers in foster care (an estimated 10.2 to 11.8%, depending on the year) were enrolled in a transfer school, compared to 4.2% of all New York City students in grades 9–12.⁴⁶ Youth in the foster system are also significantly more likely to be in programs that prepare students to take the GED exam to earn a high school equivalency diploma: In each of the 2016–17 through 2020–21 school years, an estimated 6.1 to 7.3% of 9th–12th graders in care were enrolled in DOE-run GED programs, compared to only about 1.1% of high school students Citywide.⁴⁷

Overall, 4.4% of *all* students in foster care were in District 79, New York City’s alternative school district, which includes GED and other nontraditional programs,⁴⁸ at the end of the 2020–21 school year, more than six times the rate of City students overall (approximately 0.7% of whom were enrolled in District 79).⁴⁹ In prior years, this disparity was even more dramatic: During the 2016–17, 2017–18, and 2018–19 school

45. The DOE describes transfer schools as “small, full-time high schools designed to re-engage students” who “need to catch up on credits and/or Regents exams to graduate.” *Transfer High Schools*, NYC PUB. SCHS., <https://www.schools.nyc.gov/enrollment/other-ways-to-graduate/transfer-high-schools> (last visited Sept. 20, 2023).

46. Total transfer school enrollment was calculated using data from the *DOE Demographic Snapshot*, *supra* note 15, and is based on the October 31 audited register for each year (except for 2020–21, when counts were based on the November 13 register to account for the delay in the start of the school year). Foster youth enrollment, calculated using data obtained via Students in Foster Care Data, F18,237, *supra* note 14, is as of the *end* of each school year. Given this discrepancy in dates, the finding that students in care attend transfer schools at more than twice the Citywide rate should be considered an estimate rather than a precise comparison. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 8 & n.7.

47. Students in Foster Care Data, F18,237, *supra* note 14; *DOE Demographic Snapshot*, *supra* note 15; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 8. See *supra* note 46 regarding the limitations of comparing Citywide rates with those for students in foster care.

48. District 79 programs help students get back on track to earn a high school or high school equivalency diploma, build skills for post-secondary opportunities, and gain social-emotional skills. Programming includes GED programs; settings for overage eighth graders; mental/behavioral health and substance abuse treatment; free childcare for parenting students; services for court-involved youth; instruction for students serving long-term suspensions; and Young Adult Borough Centers (YABCs) that offer afternoon and evening classes for older students. See *District 79*, NYC PUB. SCHS., <https://infohub.nyced.org/in-our-schools/programs/district-79> (last visited Sept. 20, 2023).

49. Students in Foster Care Data, F18,237, *supra* note 14; *DOE Demographic Snapshot*, *supra* note 15; analysis by Advocates for Children; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 8. See *supra* note 46 regarding the limitations of comparing Citywide rates with those for students in foster care.

years, foster youth were in District 79 at more than 12 times the Citywide rate (5.5–6.2% versus 0.4–0.5%).⁵⁰

B. Attendance and Chronic Absenteeism

Roughly half of all New York City students in foster care are chronically absent, defined as missing at least one out of every 10 school days.⁵¹ Many are *severely* chronically absent: In 2020–21, for example, roughly one in every six students in foster care (17.0%) had an attendance rate below 50%, meaning they missed over half the school year (see Figure 3).⁵² By comparison, slightly more than a quarter of all City students were chronically absent during each of the 2016–17 through 2020–21 school years (between 25.1 and 29.7%, depending on the year).⁵³ As shown in Figure 4, absenteeism is especially alarming among older youth: During these five school years, less than a quarter of 16- to 20-year-old students in foster care attended school regularly (at least 90% of the time), while more than one in three (38.1%) had an attendance rate below 50%.⁵⁴

50. Students in Foster Care Data, F18,237, *supra* note 14; DOE Demographic Snapshot, *supra* note 15; ADVOC. FOR CHILD. OF N.Y., *supra* note 1, at 8. See *supra* note 46 regarding the limitations of comparing Citywide rates with those for students in foster care.

51. N.Y.C. DEP'T OF EDUC., CHANCELLOR'S REGUL. NO. A-210 § III.D (2017), <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-210-english>; see also N.Y.S. EDUC. DEP'T, OFF. OF ACCOUNTABILITY, UNDERSTANDING THE NEW YORK STATE ACCOUNTABILITY SYSTEM UNDER THE EVERY STUDENT SUCCEEDS ACT (ESSA) FOR 2022–2023 ACCOUNTABILITY STATUSES BASED ON 2021–2022 RESULTS 2 (2023), <https://www.nysed.gov/sites/default/files/programs/accountability/22-23-sy-haw-final.pdf>; ADVOC. FOR CHILD. OF N.Y., *supra* note 1, at 8.

52. N.Y.C. ADMIN. FOR CHILD.'S SERVS., EDUCATIONAL CONTINUITY OF CHILDREN IN FOSTER CARE, SCHOOL YEAR 2020–2021, <https://www.nyc.gov/assets/acs/pdf/data-analysis/2021/LL142SY20202021.pdf>; ADVOC. FOR CHILD. OF N.Y., *supra* note 1, at 8. Due to the COVID-19 pandemic, most N.Y.C. students were learning remotely some or all of the time in 2020–21. Chronic absenteeism rose both for students in foster care as well as for students overall. Data on the attendance of students in foster care come from *Educational Continuity of Children in Foster Care* reports created by ACS for SY 2016–17 through SY 2020–21, which are available at *Reports Archive*, NYC CHILD., <https://www.nyc.gov/site/acs/about/reports-archive.page> (last visited Dec. 13, 2023); the analysis is by Advocates for Children.

53. ADVOC. FOR CHILD. OF N.Y., *supra* note 1, at 8. Citywide rates do not include students attending charter schools, District 79 programs, NYC Early Education Centers (NYCEECs), or District Pre-K Centers, and are therefore not fully comparable to rates for students in foster care. Citywide attendance data for the 2017–18 through 2020–21 school years are available in N.Y.C. DEP'T OF EDUC., END-OF-YEAR ATTENDANCE AND CHRONIC ABSENTEEISM DATA: 2017–18 THROUGH 2021–22, which can be downloaded at *End-of-Year Attendance and Chronic Absenteeism Data*, NYC PUB. SCH. INFOHUB, <https://infohub.nyced.org/reports/school-quality/information-and-data-overview/end-of-year-attendance-and-chronic-absenteeism-data> (last visited Sept. 20, 2023). Data from 2016–17 is on file with the authors.

54. *Educational Continuity of Children in Foster Care* reports, *supra* note 52; analysis by Advocates for Children; ADVOC. FOR CHILD. OF N.Y., *supra* note 1, at 9.

Figure 3. During each of the 2016–17 through 2020–21 school years, roughly half of all students in foster care (48.0 to 54.5%, depending on the year) were chronically absent. Between one in six and one in nine students in care attended school less than half the time.

Includes all students between the ages of five and 20 in foster care as of June 30 of each school year for whom attendance data are available. Given the COVID-19 pandemic and the shift to remote learning, 2019–20 attendance only reflects the school year up to mid-March and is not fully comparable to other years. Source: Educational Continuity of Children in Foster Care reports created by the New York City Administration for Children’s Services for SY 2016–17 through SY 2020–21; N.Y.C. DEP’T OF EDUC., END-OF-YEAR ATTENDANCE AND CHRONIC ABSENTEEISM DATA: 2017–18 THROUGH 2021–22.

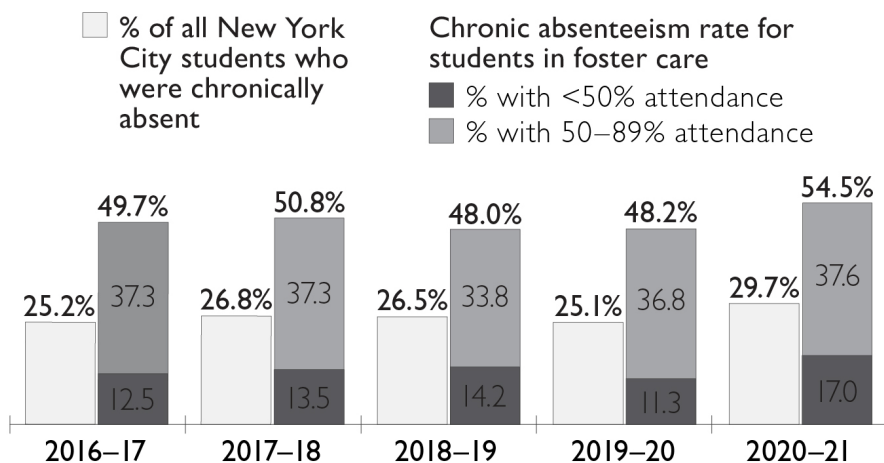
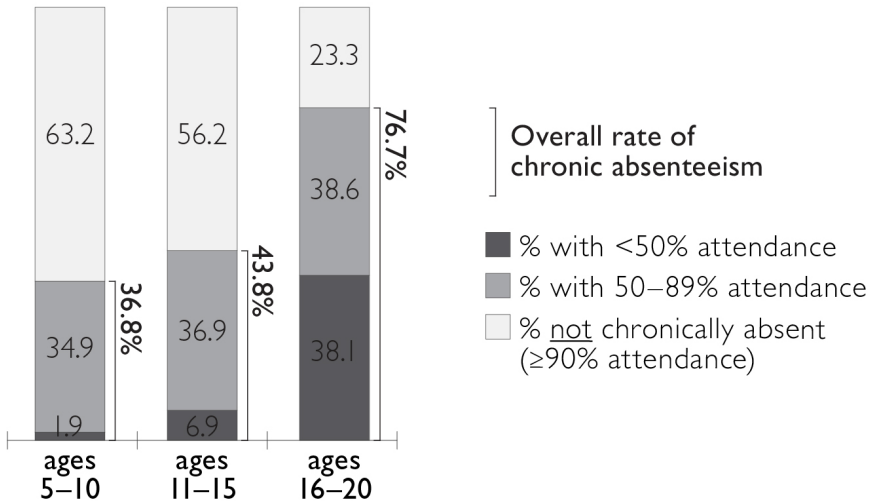


Figure 4. Three out of four 16- to 20-year-old students in the foster system (76.7%) were chronically absent between 2016–17 and 2020–21; of those students, roughly half missed more days of school than they attended.

Includes all students in foster care as of June 30 of each school year for whom attendance data are available. Source: Educational Continuity of Children in Foster Care reports created by the New York City Administration for Children’s Services for SY 2016–17 through SY 2020–21.



The consequences of chronic absenteeism are self-evident: Students who are frequently absent have fewer opportunities to learn. Regardless of whether a child is involved in the foster system, missing instructional time makes it more difficult to stay on track with the curriculum and succeed academically, and students who are not present every day also miss out on opportunities to socialize with peers, build relationships with teachers, and develop social-emotional skills. High rates of absenteeism have been linked with lower math and reading achievement, reduced odds of graduating from high school or enrolling in college, poorer executive

functioning, higher rates of internalizing and externalizing behavior problems, and disengagement from school.⁵⁵

C. Suspensions and the School-to-Prison Pipeline

Students in the foster system are suspended from New York City public schools at disproportionately high rates.⁵⁶ As shown in Figure 5, the DOE issued between 123 and 141 suspensions for every 1,000 students in foster care during each of the 2016–17, 2017–18, and 2018–19 school years, depending on the year.⁵⁷ By comparison, the Citywide rate was 33–36 suspensions per 1,000 students enrolled in DOE schools.⁵⁸ Overall, roughly one in every 13 DOE students in foster care was suspended during each of these three school years (7.9% of students in foster care at DOE schools received at least one suspension in 2016–17; 8.3% in 2017–18; 7.4% in 2018–19).⁵⁹

Disparities are particularly extreme with respect to long-term suspensions, those in excess of five school days.⁶⁰ Combining the three pre-pandemic school years (2016–17, 2017–18, and 2018–19), the DOE issued long-term suspensions to students in foster care at more than five times the rate at which it issued suspensions of six or more days to City students overall (48.2 long-term suspensions per 1,000 students in foster care versus 9.3 for every 1,000 DOE students).⁶¹

55. See Arya Ansari & Michael A. Gottfried, *The Grade-Level and Cumulative Outcomes of Absenteeism*, 92 CHILD DEV. e548 (July/Aug. 2021), <https://doi.org/10.1111/cdev.13555>; Michael A. Gottfried, *Chronic Absenteeism and Its Effects on Students' Academic and Socioemotional Outcomes*, 19 J. EDUC. FOR STUDENTS PLACED AT RISK 53 (2014), <https://doi.org/10.1080/10824669.2014.962696>; Jing Liu, Monica Lee & Seth Gershenson, *The Short- and Long-Run Impacts of Secondary School Absences*, 199 J. PUB. ECON. 104441 (July 2021), <https://doi.org/10.1016/j.jpubecon.2021.104441>; ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 9.

56. ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 9 & n.12. Suspension data do not include students attending charter schools due to limitations in DOE reporting.

57. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 9 & n.13. As some students received multiple suspensions, the total number of suspensions issued to students in care is higher than the number of youth in care who were suspended.

58. N.Y.C. Dep't of Educ., Annual Reports on Student Discipline (2016–17 through 2020–21), *Suspension Reports*, NYC PUB. SCHS. INFOHUB, <https://infohub.nyced.org/reports/government-reports/suspension-reports> (data files available for downloading); ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 9.

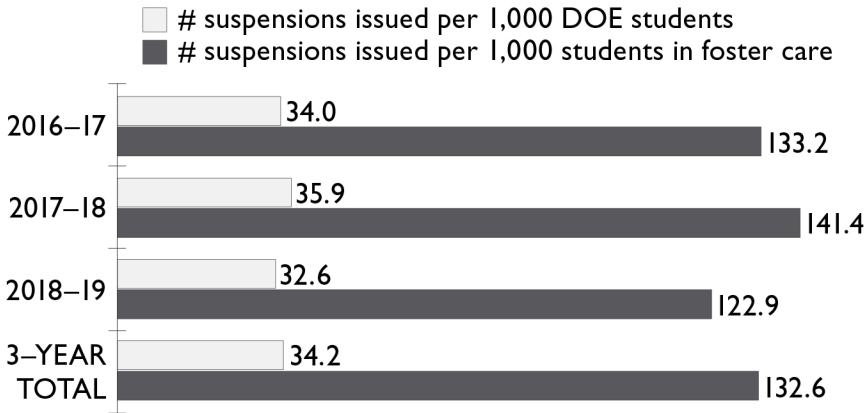
59. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 9.

60. N.Y. EDUC. LAW § 3214(c).

61. Students in Foster Care Data, F18,237, *supra* note 14; Annual Reports on Student Discipline (2016–17 through 2018–19), *supra* note 58; ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 9.

Figure 5. The DOE issued 133 suspensions for every 1,000 students in foster care between 2016–17 and 2018–19, almost four times the rate at which it issued suspensions to City students overall.

The below graph includes both short- and long-term suspensions. Source: N.Y.C. Dep’t of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data); New York City DOE Annual Reports on Student Discipline.



These high rates of removal from the classroom are especially concerning when viewed in the context of the grim attendance rates for youth in foster care,⁶² as they represent even more lost instructional time and may similarly lead to disengagement from school. Numerous studies on exclusionary discipline have found that suspensions are linked with a range of negative outcomes. Students who are suspended have higher rates of absenteeism, perform worse on standardized tests, are less likely

62. *See supra* Part I.B.

to graduate from high school, and have an increased likelihood of future contact with the juvenile or criminal legal system.⁶³

For students in foster care, suspensions likely compound other risk factors (including a history of abuse or neglect) that lead to their overrepresentation among court-involved youth.⁶⁴ Consistent with past studies of New York City youth with both child welfare and juvenile legal systems involvement,⁶⁵ students in foster care are overrepresented at Passages Academy, which generally serves youth ages 17 and younger who are detained or incarcerated.⁶⁶ Similarly, students in foster care are overrepresented at East River Academy, which generally provides educational programming to 18- to 21-year-olds incarcerated on Rikers

63. See, e.g., Elizabeth M. Chu & Douglas D. Ready, *Exclusion and Urban Public High Schools: Short- and Long-Term Consequences of School Suspensions*, 124 AM. J. EDUC. 479 (2018), <https://www.journals.uchicago.edu/doi/10.1086/698454>; TONY FABELO ET AL., *BREAKING SCHOOLS' RULES: A STATEWIDE STUDY ON HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT* xi–xii, 54–72 (Council of State Gov'ts Just. Ctr. & Pub. Pol'y Rsch. Inst. 2011), https://csgjusticecenter.org/wp-content/uploads/2020/01/Breaking_Schools_Rules_Report_Final.pdf; Johanna Lacoë & Matthew P. Steinberg, *Do Suspensions Affect Student Outcomes?*, 41 EDUC. EVALUATION & POL'Y ANALYSIS 34, 35–38 (2019), <https://doi.org/10.3102/0162373718794897>; Joel Mittleman, *A Downward Spiral? Childhood Suspension and the Path to Juvenile Arrest*, 91 SOCIO. EDUC. 183, 183–85 (2018), <https://doi.org/10.1177/0038040718784603>; Thomas Mowen & John Brent, *School Discipline as a Turning Point: The Cumulative Effect of Suspension on Arrest*, 53 J. RSCH. IN CRIME & DELINQ. 628 (2016), <https://doi.org/10.1177/0022427816643135>; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 10.

64. J. J. Cutuli et al., *From Foster Care to Juvenile Justice: Exploring Characteristics of Youth in Three Cities*, 67 CHILD. & YOUTH SERVS. REV. 84, 91 (2016), <https://doi.org/10.1016/j.childyouth.2016.06.001>.

65. *Id.* at 87, 88 tbl.2 (finding that 11.1% of New York City children born in 1994 and 1995 who experienced at least one foster care placement also became involved in the juvenile justice system); Denise C. Herz et al., *Dual System Youth and Their Pathways: A Comparison of Incidence, Characteristics and System Experiences Using Linked Administrative Data*, 48 J. YOUTH & ADOLESCENCE 2432, 2437, 2440 (2019), <https://doi.org/10.1007/s10964-019-01090-3> (finding that, of the 1,272 10- to 15-year-olds in New York City who received their first court petition in 2013 or 2014, 70.3% also had contact with the child welfare system).

66. See *Court-Involved Youth: Passages Academy*, NYC PUB. SCHS., <https://www.schools.nyc.gov/school-life/special-situations/court-involved-youth> (last visited Dec. 17, 2023).

Island.⁶⁷ Approximately 15.3% of *all* young adults enrolled at East River Academy at the end of the 2020–21 school year were students in the foster system,⁶⁸ as were an estimated 46.9% of students at Passages Academy.⁶⁹ As noted above, students in foster care make up less than one percent of the public school population in New York City.⁷⁰

D. Academic Outcomes

Students in foster care are at risk for lower academic achievement, as measured by standardized test scores and high school graduation rates, than their peers.⁷¹ Moreover, past studies from elsewhere in the country have shown that these disparities are not simply a function of who is placed in foster care in the first place; while there are also well-documented disparities in test performance based on socioeconomic status, and children from low-income families are disproportionately likely to have contact with the foster system, gaps between students with and without foster care

67. See *Court-Involved Youth: East River Academy*, NYC PUB. SCHS., <https://www.schools.nyc.gov/school-life/special-situations/court-involved-youth> (last visited Dec. 17, 2023). Importantly, young people incarcerated on Rikers Island often see their educational progress stymied: Students are sometimes unable to attend class at all due to lockdowns and a shortage of staff escorts; well-documented violence and chaos make for an environment that is not conducive to learning; and East River Academy does not always provide mandated special education services. See Liz Rosenberg, *Rikers Lockdowns and Other Restrictions Stifle Attendance at Its East River Academy*, CHALKBEAT N.Y. (Dec. 21, 2022, 2:50 PM), <https://ny.chalkbeat.org/2022/12/21/23520921/rikers-lockdowns-east-river-academy-chronic-absenteeism>; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 10 & n.18.

68. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 10 & n.19. Total June 2021 enrollment at East River Academy comes from N.Y.C. DEP'T OF EDUC. DIST. 79, RIKERS ISLAND EDUCATION REPORT: EDUCATIONAL PROGRAMMING FOR ADOLESCENTS AND YOUNG ADULTS AT RIKERS ISLAND—LOCAL LAW 168 OF 2017, at 1 (2021), <https://infohub.nyced.org/docs/default-source/default-document-library/local-law-168-d79-sy20-21.pdf>.

69. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 10 & n.20. Total enrollment at Passages Academy comes from the *DOE Demographic Snapshot*, *supra* note 15, and is based on the November 13 register; data on the enrollment of students in foster care, obtained via FOIL request, is as of the *end* of the 2020–21 school year, Students in Foster Care Data, F18,237, *supra* note 14. Both are snapshots in time, rather than cumulative counts; given the discrepancy in dates, the percentage of students at Passages who are also in the foster system is a rough estimate, and the true percentage may be higher or lower.

70. See *supra* Part I.A.

71. See, e.g., VANESSA X. BARRAT & BETHANN BERLINER, THE INVISIBLE ACHIEVEMENT GAP, PART 1: EDUCATION OUTCOMES OF STUDENTS IN FOSTER CARE IN CALIFORNIA'S PUBLIC SCHOOLS 1–2 (Ctr. for the Future of Teaching & Learning, WestEd 2013), <https://www.wested.org/resources/the-invisible-achievement-gap-of-education-outcomes-of-students-in-foster-care-in-californias-public-schools-part-1/>; Kristine Piescher et al., *Child Protective Services and the Achievement Gap*, 47 CHILD. & YOUTH SERVS. REV. 408 (2014), <https://doi.org/10.1016/j.childyouth.2014.11.004>.

involvement cannot be explained by differences in socioeconomic status alone.⁷²

1. GRADES 3–8 READING AND MATH PROFICIENCY

In each of the 2016–17, 2017–18, and 2018–19 school years, roughly 2,300 students in grades 3–8 who were in foster care took the New York State math and English Language Arts (ELA) exams.⁷³ Combining results from all three years, only 15.4% of students in the foster system were proficient (scoring level 3 or 4) in math, while almost 60% received the lowest possible score (level 1).⁷⁴ In ELA, more than twice as many students in foster care were at level 1 (45.8%) than were reading at a proficient level (19.8%).⁷⁵

For both tested subjects, the lower proficiency rates for students in foster care as compared to students Citywide are primarily a reflection of the fact that students in foster care are more likely to receive the lowest possible score (see Figure 6). For example, students in foster care scored a level 2 in math at roughly the Citywide rate (25.3% of students in foster care versus 25.9% Citywide), but there is a difference of more than 25 percentage points in the proportion of students scoring level 1 (59.3% of students in foster care as compared to 30.2% Citywide).⁷⁶ This pattern suggests that students in the foster system are more likely than their peers to be performing *significantly* below grade level; it is not the case that low proficiency rates for this population are because students are falling just below the cutoff for passing.⁷⁷

72. See, e.g., Lawrence M. Berger et al., *Children's Academic Achievement and Foster Care*, 135 PEDIATRICS e109, 109–10 (2015), www.pediatrics.org/cgi/doi/10.1542/peds.2014-2448; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 11.

73. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 11.

74. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 11.

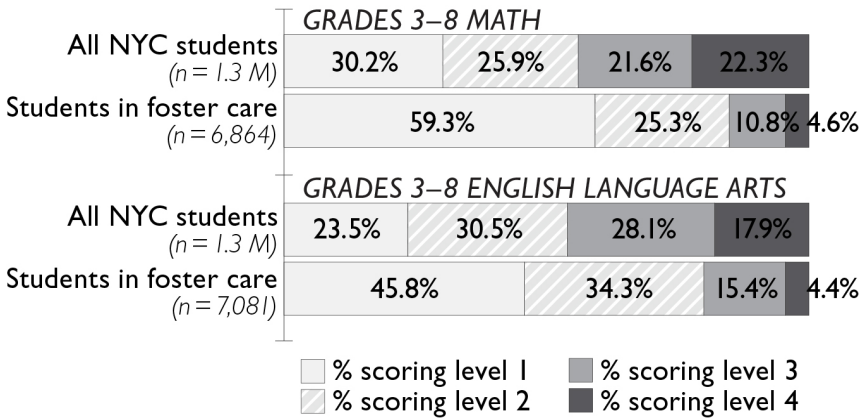
75. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 11.

76. Citywide proficiency rates include both DOE and charter schools and reflect the sum of county-level results from the New York State Education Department (NYSED) 3–8 Assessment Databases for 2016–17, 2017–18, and 2018–19. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 11 & n.22. These databases are available on the New York State Education Department website at *Downloads*, data.nysed.gov, <https://data.nysed.gov/downloads.php> (last visited Sept. 21, 2023) [hereinafter *NYSED 3–8 Assessment Database*].

77. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 11–12.

Figure 6. According to the grades 3–8 New York State tests, nearly 85% of students in foster care are not proficient in math and four out of five are not reading proficiently.

The below graph combines results from the 2017, 2018, and 2019 test administrations and includes both DOE and charter schools. Levels 3 and 4 are considered proficient. Source: N.Y.C. Dep’t of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data); NYSED 3–8 Assessment Database (2016–17, 2017–18, and 2018–19).



Without access to student-level data, we are unable to control for other variables—such as socioeconomic status, race/ethnicity, and disability status—that are correlated with both child welfare involvement and lower scores on standardized math and reading tests.⁷⁸ In other words, we cannot tease out the extent to which the above proficiency rates are a reflection of broader inequities—the fact that the students most likely to be placed in foster care are those who are already marginalized and thus less likely to have access to a high-quality education—versus the extent to which students in the foster system are struggling *above and beyond* their similarly situated peers.⁷⁹

78. For more information regarding factors that correlate with performance on standardized tests, see, for example, THE EDUC. OPPORTUNITY PROJECT AT STANFORD UNIV., <https://edopportunity.org/> (last visited Sept. 22, 2023) (choose “menu” and select “2019–2022 Education Recovery Explorer” on the left, select “Region,” and click on New York State to view test scores for each subject); see also Gloria Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools*, 35 EDUC. RESEARCHER 3, 3–5 (2006), <https://doi.org/10.3102/0013189X035007003>; Kenneth Shores, Ha Eun Kim & Mela Still, *Categorical Inequality in Black and White: Linking Disproportionality Across Multiple Educational Outcomes*, 57 AM. EDUC. RSCH. J. 2089 (2020), <https://doi.org/10.3102/0002831219900128>.

79. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 12.

Nevertheless, aggregate proficiency rates suggest that students in foster care in New York City constitute a *unique* subgroup that demands targeted attention.⁸⁰ For example, as shown in Figure 7, there is a gap of 20 percentage points in reading proficiency rates between 3rd–8th graders in foster care and all 3rd–8th grade students who are eligible for free or reduced-price lunch or other public benefits⁸¹ (a subgroup somewhat more comparable to students in foster care than City students as a whole).⁸² Math proficiency rates for all low-income students are more than double those of students in foster care (38.2% versus 15.4%).⁸³ Results for students with disabilities in foster care also trail the already-low proficiency rates for students with disabilities Citywide. Combining results from the 2017, 2018, and 2019 test administrations, just 7.7% of 3rd–8th graders with IEPs in foster care were proficient in math and only 8.1% were reading proficiently, compared to proficiency rates of 16.8% (math) and 15.5% (reading) for all New York City students with disabilities.⁸⁴

80. *Id.*

81. Students in Foster Care Data, F18,237, *supra* note 14; *NYSED 3–8 Assessment Database*, *supra* note 76.

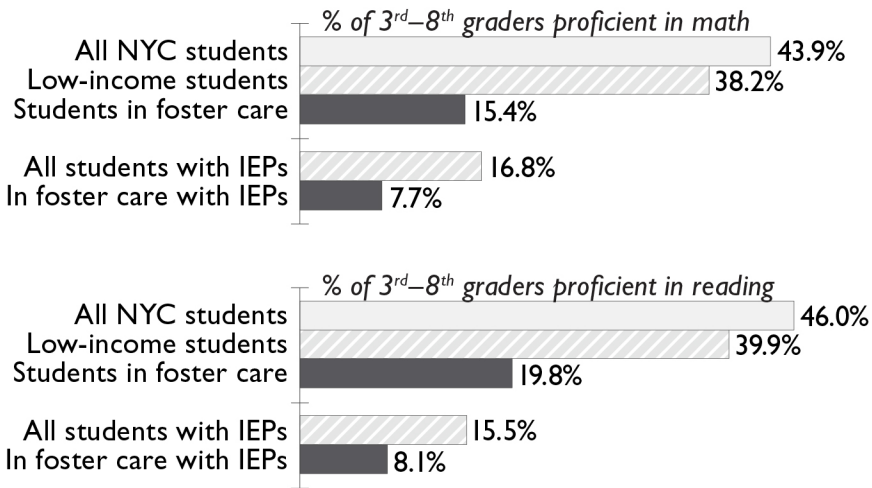
82. Berger et al., *supra* note 72, at e110.

83. Students in Foster Care Data, F18,237, *supra* note 14; *NYSED 3–8 Assessment Database*, *supra* note 76; *ADVOC. FOR CHILD. OF N.Y.*, *supra* note 1, at 12.

84. Students in Foster Care Data, F18,237, *supra* note 14; *NYSED 3–8 Assessment Database*, *supra* note 76; *ADVOC. FOR CHILD. OF N.Y.*, *supra* note 1, at 12.

Figure 7. Math and reading proficiency rates for students in foster care—who are disproportionately from low-income communities—significantly trail those for all students who are economically disadvantaged. Likewise, students with disabilities in foster care are even less likely than students with disabilities Citywide to score proficient on the state tests.

The below graph combines results from the 2017, 2018, and 2019 test administrations and includes both DOE and charter schools. Source: N.Y.C. Dep’t of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data); NYSED 3–8 Assessment Database (2016–17, 2017–18, and 2018–19).



2. HIGH SCHOOL GRADUATION RATES

Only 40.2% of students who started ninth grade in 2017 and spent time in foster care while in high school graduated in four years, compared to a Citywide graduation rate of 81% (see Figure 8).⁸⁵ One in five students

85. Students in Foster Care Data, F18,237, *supra* note 14; N.Y. STATE EDUC. DEP’T, 2020–21 GRADUATION RATE DATABASE, <https://data.nysed.gov/downloads.php> (files available for downloading); ADVOC. FOR CHILD. OF N.Y., *supra* note 1, at 13. The graduation rate for students in foster care reported here is lower than that reported by NYSED because it reflects outcomes for a larger cohort of students: Data obtained via FOIL request include all students who spent time in foster care at any point during high school ($n = 752$ for the class of 2021), whereas NYSED publicly reports graduation outcomes for students who were in foster care during the school year in question ($n = 433$ in 2021). Citywide graduation rates include both DOE and charter schools and reflect the sum of county-level results from NYSED’s Graduation Rate Databases, which, as noted above, can be downloaded at *Downloads*, data.nysed.gov. ADVOC. FOR CHILD. OF N.Y., *supra* note 1, at 13 n.23.

in this cohort who had foster care experience during high school (20.5%) dropped out by August 2021, more than four times the Citywide dropout rate of 4.6%.⁸⁶ These disturbing numbers actually represent an improvement over previous cohorts: Data obtained by AFC show that of students who entered ninth grade in 2016 and spent time in the foster system while in high school, only 32.7% graduated by August 2020 (see Figure 9),⁸⁷ while a recent study by the NYC Center for Innovation through Data Intelligence (CIDI) reported that only one in four students with foster care experience graduated on time in 2019.⁸⁸

As with performance on the state tests, graduation outcomes are even more abysmal for students with disabilities in foster care than for students in the foster system overall. Of students with IEPs who spent time in foster care while in high school, only 29.7% of those who started ninth grade in 2017 earned a diploma by August 2021, roughly half the Citywide graduation rate for all New York City students with disabilities in the cohort (57.9%).⁸⁹ Students with disabilities who were in the foster system during high school dropped out at more than three times the Citywide rate for all students with IEPs (23.3% versus 6.8%).⁹⁰

86. Students in Foster Care Data, F18,237, *supra* note 14; N.Y. STATE EDUC. DEP'T, 2020–21 GRADUATION RATE DATABASE, *supra* note 85; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 13.

87. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 13.

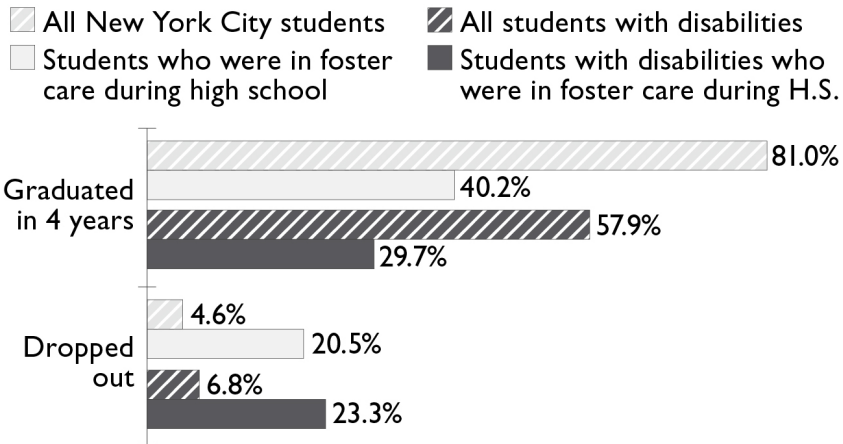
88. N.Y.C. CTR. FOR INNOVATION THROUGH DATA INTEL., *supra* note 27, at 4.

89. Students in Foster Care Data, F18,237, *supra* note 14; N.Y. STATE EDUC. DEP'T, 2020–21 GRADUATION RATE DATABASE, *supra* note 85; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 13.

90. Students in Foster Care Data, F18,237, *supra* note 14; N.Y. STATE EDUC. DEP'T, 2020–21 GRADUATION RATE DATABASE, *supra* note 85; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 13.

Figure 8. The four-year graduation rate for students who entered ninth grade in 2017 and spent time in foster care while in high school was less than half that for all New York City students, while youth with foster care experience dropped out of high school at more than quadruple the Citywide rate.

The below graph includes both DOE and NYC charter schools. Source: N.Y.C. Dep’t of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data); NYSED Graduation Rate Database (2020–21). The graduation rate for students in foster care reported here is lower than that reported by NYSED because it reflects outcomes for a larger cohort of students: Data obtained via FOIL request include all students who spent time in foster care at any point during high school (n = 752 for the class of 2021), whereas NYSED publicly reports graduation outcomes for students who were in foster care during the school year in question (n = 433 in 2021).



In both 2020 and 2021, students in foster care were also more likely than City students as a whole to earn a high school equivalency diploma or to leave school with a New York State Skills and Achievement Commencement Credential (SACC), a non-diploma certificate for students

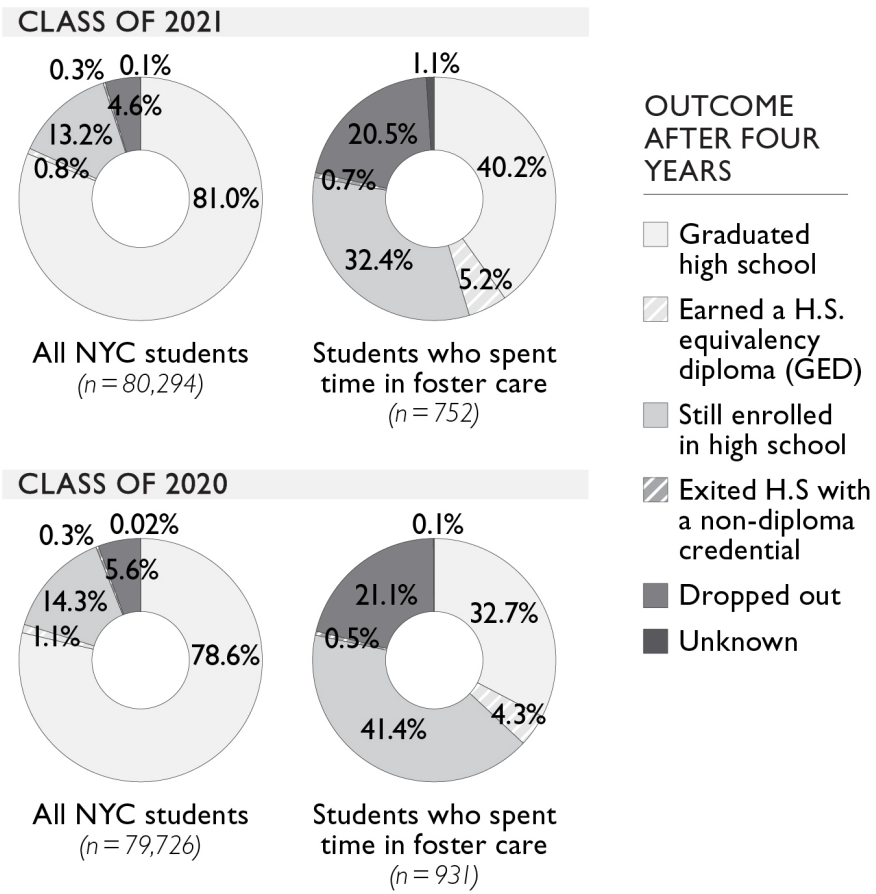
with disabilities.⁹¹ These patterns likely reflect the overrepresentation of students in foster care in GED programs and District 75, respectively.⁹²

91. Students in Foster Care Data, F18,237, *supra* note 14; N.Y. STATE EDUC. DEP'T, 2020–21 GRADUATION RATE DATABASE & 2019–20 GRADUATION RATE DATABASE, *supra* note 85; ADVOC. FOR CHILD. OF N.Y., *supra* note 1, at 15. The SACC is an exit credential reserved for students with “severe disabilities,” as defined by the state of New York, who have completed at least 12 years of schooling (not including kindergarten); it is based on achievement of alternate academic standards and is not considered a regular high school diploma for federal accountability purposes. *See* JAMES P. DELORENZO, N.Y. STATE EDUC. DEP'T, SPECIAL EDUCATION FIELD ADVISORY: SKILLS AND ACHIEVEMENT COMMENCEMENT CREDENTIAL FOR STUDENTS WITH SEVERE DISABILITIES (Apr. 2012), <https://www.p12.nysed.gov/specialed/publications/SACCmemo.htm>.

92. District 75 high schools are not diploma-granting and must partner with other schools for the relatively few standardly assessed students who attend to have the opportunity to earn a diploma. *See* COUNCIL OF THE GREAT CITY SCHS., *supra* note 40, at 44.

Figure 9. In 2020 and 2021, well under half of students who spent time in foster care during high school graduated, while more than 20% dropped out.

The below graph includes both DOE and charter schools. The “unknown” category reflects the difference between the total number of students in the cohort and the sum of the number who graduated, dropped out, earned an equivalency diploma or non-diploma certificate, or were still enrolled; among those with foster care experience, there was one such student in the class of 2020 and eight students in 2021. Source: N.Y.C. Dep’t of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data); NYSED Graduation Rate Database (2019–20 and 2020–21). The graduation rate for students in foster care reported here is lower than that reported by NYSED because it reflects outcomes for a larger cohort of students: Data obtained via FOIL request include all students who spent time in foster care at any point during high school (n = 752 for the class of 2021), whereas NYSED publicly reports graduation outcomes for students who were in foster care during the school year in question (n = 433 in 2021).



E. School Stability

When children enter foster care or change foster care placements, they may transfer schools, sometimes because the new placement is further away from the school they had attended and is closer to a different school. When children transfer schools when they enter foster care or change foster placements, they are forced to adjust to a new curriculum, new teachers and classmates, and a new physical environment at the same time as they are coping with the separation from their home and family.⁹³ Being the “new kid” in class can be difficult under the best of circumstances; for students in the foster system, unexpected school transfers can sever relationships with friends and caring adults at a time when they need that support the most.⁹⁴ Conversely, when students have a consistent school placement while in foster care, school can serve as a safe haven and a source of stability amid enormous stress, upheaval, and uncertainty.⁹⁵

Federal and state laws provide students in foster care with special protections that recognize the critical importance of school stability: School districts and foster care agencies are required to keep students in their original schools when they enter care or change foster homes, unless it is in a student’s best interest to transfer to a new school.⁹⁶ Yet prior to the pandemic and the shift to remote and hybrid learning, more than one in four students in foster care in New York City transferred schools each year.⁹⁷ In 2018–19—the last full school year unaffected by COVID-19—at least 20.7% of students in care (1,604 students) switched schools once and another 8.5% (656 students) transferred two or more times.⁹⁸ By 2020–21, these numbers had dropped to 10.9% (one school transfer)

93. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 15.

94. *Id.*

95. *Id.* at 15–16. For a discussion of the critical role of school as a “safe haven” for youth in the foster system, as well as the negative impact of school mobility on students’ sense of belonging, academic performance, and ability to form supportive relationships with teachers and peers, see, for example, Clemens et al., *supra* note 4; Royel M. Johnson, Terrell L. Strayhorn & Bridget Parler, “I Just Want to Be a Regular Kid”: A Qualitative Study of Sense of Belonging Among High School Youth in Foster Care,” 111 CHILD. & YOUTH SERVS. REV. 104832 (Apr. 2020), <https://doi.org/10.1016/j.childyouth.2020.104832>; Townsend, Berger & Reupert, *supra* note 6.

96. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008); 20 U.S.C. §§ 6311(g)(1)(E), 6312(c)(5); N.Y. EDUC. LAW § 3244 (McKinney 2018).

97. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 16.

98. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 16.

and 3.5% (two or more transfers),⁹⁹ but much of this decline is likely attributable to the fact that the majority of New York City students were participating in remote learning because of the pandemic, which obviated the need to change schools when moving to a new home in a different neighborhood.¹⁰⁰

Frequently changing schools disrupts both academic learning and socialization, and numerous studies have found that, for students both inside and outside the foster system, school mobility is associated with increased risk of grade retention, a decline in reading and math achievement, and lower educational attainment.¹⁰¹ As the figures below make clear, data from New York City follow this pattern: Students in foster care who transfer schools midyear, especially those who transfer multiple times, perform worse on the grades 3–8 New York State tests and are less likely to graduate high school in four years.¹⁰²

For example, combining results from the 2017, 2018, and 2019 test administrations, math and reading proficiency rates for 3rd–8th graders in foster care who did *not* transfer schools were more than five percentage

99. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 16 & n.28. The DOE provided the number of students in care who transferred schools zero, one, or two or more times; the sum of the number of students in each of these three categories is less than the total number of students who spent time in foster care during the year in question. In other words, there is a not-insignificant number of students (4.1% of all youth in care in 2018–19 and 11.3% in 2020–21) for whom data on school transfers is missing. If this subset of students is removed from the denominator, 30.5% of students in care transferred schools one or more times in 2018–19 and 16.2% transferred in 2020–21.

100. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 16. Regarding student participation in remote learning, see, for example, OFF. OF THE N.Y. STATE COMPTROLLER, NYC DEPARTMENT OF EDUCATION RESPONSE TO THE COVID-19 PANDEMIC, REP. NO. 8-2022 (Sept. 2021), <https://www.osc.state.ny.us/files/reports/osdc/pdf/report-8-2022.pdf>.

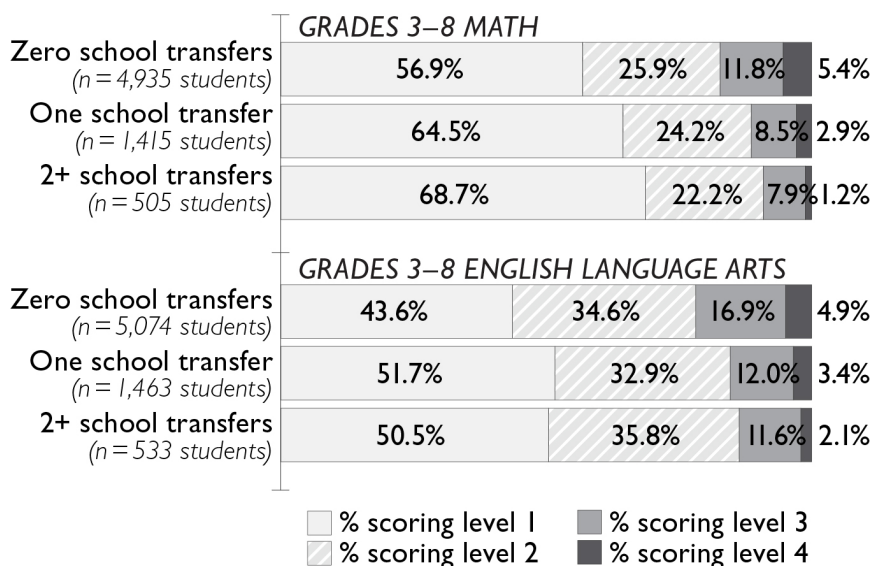
101. Regarding school mobility and negative educational outcomes in the general population, see, for example, Dan Goldhaber et al., *Using Longitudinal Student Mobility to Identify At-Risk Students*, 8 AERA OPEN 1 (Jan.–Dec. 2022), <https://doi.org/10.1177/23328584211071090>; Richard O. Welsh, *School Hopscotch: A Comprehensive Review of K–12 Student Mobility in the United States*, 87 REV. EDUC. RSCH. 475 (June 2017), <https://doi.org/10.3102/0034654316672068>. Regarding the impact of school transfers on students in foster care in particular, see, for example, Elysia V. Clemens et al., *The Effects of Placement and School Stability on Academic Growth Trajectories of Students in Foster Care*, 87 CHILD. & YOUTH SERVS. REV. 86 (Apr. 2018), <https://doi.org/10.1016/j.chilyouth.2018.02.015> (finding that a co-occurring change in a student’s foster home and their school is associated with an average 3.7-percentile-point decline in academic growth in reading and a 3.5-point decline in math); Elysia V. Clemens, Trent L. Lalonde & Alison Phillips Sheesley, *The Relationship Between School Mobility and Students in Foster Care Earning a High School Credential*, 68 CHILD. & YOUTH SERVS. REV. 193 (Sept. 2016), <https://doi.org/10.1016/j.chilyouth.2016.07.016> (finding that the more frequently a student changes schools, the lower their odds of leaving the K–12 education system with a diploma, and the higher the odds of earning a GED or dropping out without any credential).

102. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 16.

points higher than those for students in foster care who changed schools once during the year they were tested and eight percentage points higher than those for youth with two or more school transfers (see Figure 10).¹⁰³

Figure 10. According to the New York State tests, 3rd–8th grade students in foster care who transfer schools during the year are less likely to be proficient in math and reading than their peers in care who do not change schools.

The below graph combines results from the 2017, 2018, and 2019 test administrations. Levels 3 and 4 are considered proficient. Source: N.Y.C. Dep’t of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data).



Similarly, of students who started ninth grade in 2017 and spent time in the foster system during high school, those who stayed at the same school through senior year had a four-year graduation rate of 68.1%, while only 18.2% of those who changed high schools two or more times earned a diploma by August 2021 (see Figures 11, 12).¹⁰⁴ The 2021 dropout rate for students in foster care who transferred twice (or more) while in high

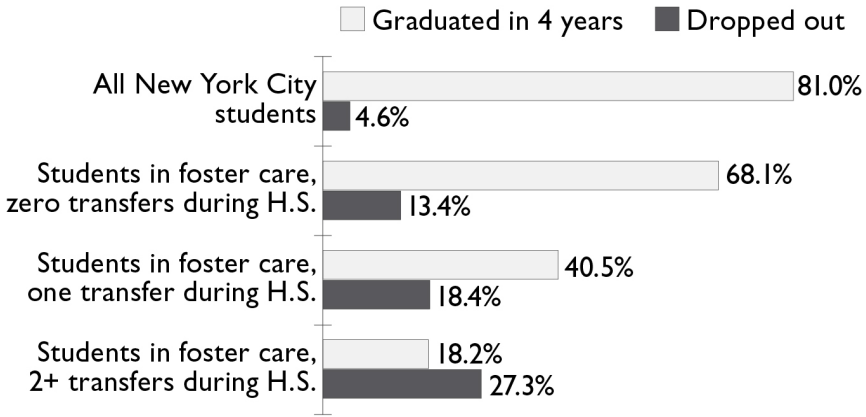
103. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 16.

104. Students in Foster Care Data, F18,237, *supra* note 14; ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 16.

school was 27.3%, more than double that of youth in care with zero school transfers (13.4%) and nearly six times the Citywide dropout rate (4.6%).¹⁰⁵

Figure 11. The four-year August graduation rate for students who started ninth grade in 2017, spent time in foster care while in high school, and transferred schools two or more times was just 18.2%—60 percentage points lower than the Citywide rate.

Source: N.Y.C. Dep’t of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data); NYSED Graduation Rate Database (2020–21).



As discussed previously, we do not have access to student-level data and thus cannot control for other variables associated with earning a diploma to isolate the impact of transferring schools. However, our findings mirror those of the NYC Center for Innovation Through Data Intelligence (CIDI); their recent study, which included data on 11,000 youth in foster care who started high school between 2005 and 2015, controlled for a range of educational and child welfare indicators (e.g., eighth grade ELA and math scores, cumulative time spent in foster care) and found a statistically significant difference in the probability of graduating high school between students who attended one school and those who attended two or more schools.¹⁰⁶

105. Students in Foster Care Data, F18,237, *supra* note 14; N.Y. STATE EDUC. DEP’T, 2020–21 GRADUATION RATE DATABASE, *supra* note 85; ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 16.

106. N.Y.C. CTR. FOR INNOVATION THROUGH DATA INTEL., *supra* note 27, at 4–5, 8, 14, 18; ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 16.

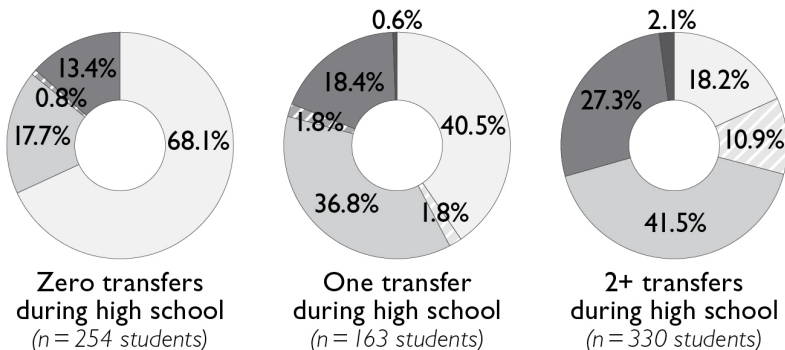
Figure 12. Students in the foster system who transfer schools two or more times during high school drop out at higher rates than they earn a diploma; they are also significantly more likely than their peers in foster care who do *not* transfer schools to earn a GED rather than a traditional high school diploma.

Source: N.Y.C. Dep't of Educ. Response to FOIL Request F18,237 (Apr. 28, 2022) (Students in Foster Care Data).

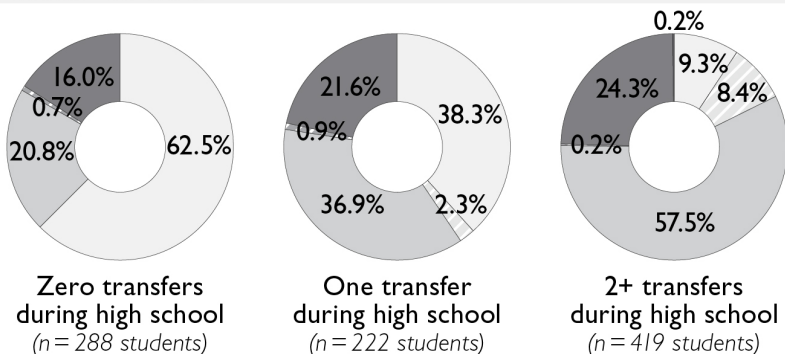
OUTCOME AFTER FOUR YEARS

- Graduated high school
- ▨ Exited H.S. with a non-diploma credential
- ▩ Earned a H.S. equivalency diploma (GED)
- Dropped out
- Still enrolled in high school
- Unknown

CLASS OF 2021



CLASS OF 2020



II. Recommendations

The findings in this article are sobering. In the context of New York City’s massive public school system, the more than 7,000 students in foster care comprise a relatively small group; as a result, they have historically been overlooked.¹⁰⁷ Yet if these students were to comprise their own school district, it would be a district roughly the size of White Plains (a suburb of New York City)¹⁰⁸ and larger than 95% of all other school districts in New York State.¹⁰⁹ This district would be one in which barely one in five students is reading proficiently, less than half graduate high school in four years, and 38% of older youth are absent from school more often than they attend.¹¹⁰ While this article focuses on students in New York City, studies from around the country demonstrate that New York City is not alone among school districts in delivering disparate outcomes for students in the foster system.¹¹¹ In light of these ongoing inequities, we respectfully make the following recommendations for local education agencies (LEAs).

A. Train Schools on the Unique Needs and Legal Rights of Students in Foster Care and Their Families

A top priority for LEAs should be ensuring schools have the information and skills they need to support students in foster care and their families.¹¹² LEAs can partner with local departments of social services and other child welfare professionals to provide training for educators and school staff that increases their capacity to understand and address the unique needs of youth in the foster system; such training should explain, for example:

- How the foster care system works, including what happens after a call to child protective services from the perspective of families and children, and information about the key players (e.g., case planners, parents’ and children’s legal representatives, etc.) with

107. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 19.

108. *Id.* There were 6,713 K–12 students enrolled in White Plains City School District during the 2021–22 school year. N.Y. State Educ. Dep’t, *White Plains City School District Enrollment (2021–22)*, data.nysed.gov, <https://data.nysed.gov/enrollment.php?year=2022&ins tid=800000034913>.

109. Of the more than 650 school districts in New York State (not including New York City), in the 2021–21 school year, only 32 enrolled more than 7,000 students in grades K–12. N.Y. STATE EDUC. DEP’T, 2021–22 ENROLLMENT DATABASE, <https://data.nysed.gov/downloads.php> (files available for downloading).

110. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 19; *see supra* Part I.

111. *See, e.g.,* BARRAT & BERLINER, *supra* note 71 (using data from California); Berger et al., *supra* note 72 (using data from Wisconsin); Piescher et al., *supra* note 71 (using data from Minnesota).

112. *See* ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 19.

whom school staff must be familiar to communicate effectively about students in foster care;¹¹³

- The rights of parents whose children are in foster care, such as those around receiving education records,¹¹⁴ attending school meetings, making educational decisions, and participating in the special education process,¹¹⁵ as well as best practices for engaging parents in their children's education while children are in foster care;¹¹⁶
- The rights of students in foster care with respect to enrollment and school stability, including students' right to remain in their school of origin and their right to transportation while in foster care;¹¹⁷
- The unique social-emotional needs of youth in the foster system, including the importance of confidentiality and maintaining family ties and connections, and how to implement trauma-informed practices and maintain sensitivity to differences in children's family dynamics and experiences;¹¹⁸ and
- Where school staff can turn for assistance when complicated questions arise related to the above rights and needs (for example,

113. *See id.*

114. *Id.*; see N.Y.C. DEP'T OF EDUC., STUDENT RECORDS 6 (Sept. 2019) (explaining that the parent or legal guardian of a student in foster care maintains their right to access their child's education records when their child enters foster care) (on file with the author).

115. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 19; see N.Y.C. DEP'T OF EDUC., FOSTER CARE GUIDE 2 (updated Oct. 30, 2020), <https://cdn-blob-prd.azureedge.net/prd-pws/docs/default-source/default-document-library/guidance-for-supporting-students-in-foster-care.pdf>; see also 34 C.F.R. § 300.30(b)(1) (defining the presumptive "parent" for special education purposes to be the biological or adoptive parent, when attempting to act as the parent, unless they do not have legal authority to make educational decisions for the child); N.Y. COMP. CODES R. REGS. tit. 8, § 200.1(ii) (defining "parent" for special education purposes to be the birth or adoptive parent, unless they do not have legal authority to make educational decisions for the student, and clarifying that a public agency that provides education or care for the student, or a private agency that contracts with a public agency for such purposes, cannot act as the parent).

116. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 19. For tips on involving parents in their children's education while children are in foster care, see ADVOCS. FOR CHILD. OF N.Y. & SCO FAM. SERVS., EMPOWERING PARENTS SO CHILDREN SUCCEED: A TOOLKIT TO SUPPORT PARENT INVOLVEMENT IN EDUCATION WHEN THEIR CHILDREN ARE IN FOSTER CARE (2017), <https://www.advocatesforchildren.org/policy-resource/project-achieve-parent-toolkit/>.

117. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 19; 20 U.S.C. §§ 6311(g)(1)(E), 6312(c) (5).

118. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 19 & n.31. Past qualitative research has found that students often face stigma and marginalization at school because of their foster care status, are inappropriately "outed" as being in the foster system by school personnel, or feel teachers and school staff lack understanding of their experiences and of the impact of trauma; some current and former foster youth describe skipping class or disengaging academically in response to negative and alienating experiences at school. See also Johnson, Strayhorn & Parler, *supra* note 95, at 6.

determining who should consent to special education evaluations and services in a specific student’s case).¹¹⁹

B. Improve Communication Between Schools, Families, and Child Welfare Professionals and Ensure Parents, Foster Parents, and Child Welfare Staff All Have Timely Access to Educational Information

In addition to training school staff, LEAs can directly support schools in forming effective partnerships with families of students in foster care¹²⁰ and with local departments of social services. LEAs must ensure that parents, foster families, and foster care case planners have timely access to all education-related information, including school notices, student education records, and any online portals or apps used to facilitate communication with families.¹²¹ To this end, LEAs should:

119. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 19. In our experience, confusion and misinformation regarding parental consent for students in foster care can often lead to delays in students with disabilities getting the support they need to learn. *Id.* at 20. Students in foster care often go months without special education evaluations because “schools lack clarity on who can provide consent for the evaluations. . . .” ADVOCS. FOR CHILD. OF N.Y. & THE LEGAL AID SOC’Y, *supra* note 16, at 7. To help address this confusion, the New York City DOE, in collaboration with ACS and the advocacy community, developed a surrogate parent manual that outlines the policies and procedures for special education decision-making in cases where a student is living apart from their parents or does not have a parent or legal guardian to consent to special education evaluations and services. NYC PUB. SCHS., GUIDELINES AND PROCEDURES FOR THE ASSIGNMENT OF SURROGATE PARENTS (2022), <https://infohub.nyced.org/docs/default-source/default-document-library/surrogate-parent-manual-and-appendix.pdf>.

120. *See* ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 20.

121. *Id.* For example, in New York City, the DOE uses an online platform called New York City Schools Account (NYCSA) to give parents access to real-time education information, including their child’s attendance, promotion status, special education services, and school bus route. For students in foster care, typically only the foster parent can access this platform, despite it containing information to which parents are legally entitled and that foster care agencies need to support children in their care. *Id.* While the DOE acknowledges that schools should generate “creation codes” to give agency staff and birth parents access to a student’s NYCSA account, N.Y.C. DEP’T OF EDUC., FAMILY ACCESS MANAGEMENT (FAM) & NYC SCHOOLS ACCOUNT (NYCSA): TECHNICAL GUIDE FOR SCHOOLS AND SUPPORT STAFF 4–5 (2022), <https://infohub.nyced.org/docs/default-source/default-document-library/technical-guide-for-family-access-management-and-nyc-schools-account.pdf>, we have found that schools simply do not know how to do this, resulting in unnecessary and duplicative work and delays for all involved. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 20. For more information on NYCSA, see *NYC Schools Account*, NYC PUB. SCHS., <https://www.schools.nyc.gov/learning/student-journey/nyc-schools-account> (last visited Dec. 10, 2023).

- Issue clear policies and guidelines so that parents can access their children's educational records when they are in foster care.¹²²
- Issue clear policies and guidelines so that foster care case planners and other child welfare staff can access the school records of students in their care.¹²³
- Ensure schools make efforts to involve and engage parents while their children are in foster care, unless they no longer maintain their rights, so that parents can continue to be involved in their

122. The DOE's website makes clear that parents retain the right to access their child's education records when their child enters foster care, unless otherwise provided by a court order. *Students in Foster Care*, NYC PUB. SCHS., <https://www.schools.nyc.gov/school-life/special-situations/students-in-foster-care> (last visited Sept. 10, 2023). However, the local regulation on student education records, Chancellor's Regulation A-820, includes no mention of the protocols for parents whose children are in foster care. See N.Y.C. DEP'T OF EDUC., CHANCELLOR'S REGUL. NO. A-820 (2009), <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-820-6-29-2009-final-combined-remediated-wcag2-0>. This omission has contributed to confusion among school personnel and district-level staff about parents' rights. See ADVOC. FOR CHILD. OF N.Y. & LEGAL AID SOC'Y, *supra* note 16, at 6–8.

123. In 2013, Congress enacted the Uninterrupted Scholars Act (USA), which amended the Family Educational Rights and Privacy Act of 1974 (FERPA) to allow child welfare agencies to access education records for students in their care without the written consent of the child's parent. Uninterrupted Scholars Act, Pub. L. No. 112-278, § 2, 126 Stat. 2480 (2013) (codified at 20 U.S.C. § 1232g(b)(1)(L)). Some localities have gone even further to facilitate the sharing of real-time data between schools and child welfare agencies. For example, Pennsylvania's Allegheny County "has established a data sharing program between the school system and the Department of Human Services that enables . . . child welfare staff to easily access the educational records of foster youth. This collaboration has led to the inclusion of an 'education page' in the electronic child welfare case record for each child involved in the child welfare system." NAT'L WORKING GRP. ON FOSTER CARE & EDUC., FOSTERING SUCCESS IN EDUCATION: NATIONAL FACTSHEET ON THE EDUCATIONAL OUTCOMES OF CHILDREN IN FOSTER CARE 4 (2014), <https://bettercarenetwork.org/sites/default/files/Fostering%20Success%20in%20Education%20-%20National%20Factsheet%20on%20the%20Educational%20Outcomes%20of%20Children%20in%20Foster%20Care.pdf>; see also ALLEGHENY CNTY. DEP'T OF HUM. SERVS., IMPROVING EDUCATIONAL AND WELL-BEING OUTCOMES: SCHOOL-DHS DATA SHARING IN ALLEGHENY COUNTY (2015), <https://www.alleghenycountyanalytics.us/wp-content/uploads/2016/06/Improving-Educational-and-Well-Being-Outcomes-8-19-15.pdf>. The Kids in School Rule! (KISR!) program, a partnership between Cincinnati Public Schools (CPS), Hamilton County Job and Family Services (JFS), the Legal Aid Society of Greater Cincinnati, and the Hamilton County Juvenile Court, has developed a shared dashboard that allows Legal Aid and JFS employees real-time access to aggregate data and individual student education records for students enrolled in the KISR! program. Students are added to the dashboard promptly upon entering foster care. Data include attendance and discipline records, enrollment logs, performance on standardized tests, and special education documents. Additionally, KISR! hosts quarterly meetings between JFS, Legal Aid, and staff from all the CPS high schools, where participants review data and troubleshoot educational concerns for individual students. Conversation by Erika Palmer with Stephanie Moes, Managing Att'y, & Meredith Hayden, Paralegal Advoc., Legal Aid Soc'y of Greater Cincinnati (Aug. 11, 2023). For more information about KISR!, see *Kids in School Rule! (KISR)*, HAMILTON CNTY. JOB & FAM. SERVS., <https://www.hcjfs.org/initiatives/kids-in-school-rule-kisr/> (last visited Dec. 12, 2023).

children’s education and are prepared for when their children return home.¹²⁴ This includes ensuring that all notices are sent to the student’s parent(s) and child welfare agency—not solely to the current foster parent—including notices related to a student’s special education needs or any disciplinary concerns, and that parents continue to be invited to parent-teacher conferences and other school events (e.g., a field day or winter concert) while their children are in care, assuming no limiting court orders are in place.¹²⁵

C. Guarantee Door-to-Door Transportation for Students in Foster Care So They Can Continue to Attend School Without Interruption

The first step to succeeding in school is getting there in the first place. LEAs and local child welfare agencies must collaborate to guarantee door-to-door transportation, including bus service or a comparable alternative, for students in foster care so they do not have to transfer schools unnecessarily.¹²⁶

As discussed above, federal law requires state and local education agencies and child welfare agencies to work together to ensure that students in foster care receive prompt, cost-effective transportation whenever needed to maintain enrollment in their school of origin.¹²⁷ In some states, like New York, the school district of attendance must provide students in foster care with transportation from their foster care placement to their school of origin.¹²⁸ Despite these legal obligations, however, many students in foster care do not get the transportation they need to preserve their school placement.¹²⁹ For example, the NYC DOE allows students in foster care who do not meet other busing criteria to complete an “exceptions request” ticket and will provide bus service if a student can be added to an existing route.¹³⁰ The DOE provides public transportation

124. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 20. Nationally, 47% of children who exit foster care are reunified with their parent(s) or primary caregiver(s). AFCARS REP. NO. 29, *supra* note 2, at 3.

125. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 20.

126. See *id.* at 21.

127. 20 U.S.C § 6312(c)(5).

128. N.Y. EDUC. LAW § 3244(4) (McKinney 2018).

129. Daniel Heimpel, *Analysis: 11 States Struggle to Meet Federal Education Requirements for Foster Youth*, IMPRINT (Jan. 17, 2018, 1:39 PM), <https://imprintnews.org/analysis/analysis-11-states-struggle-meet-federal-education-requirements-foster-youth/29482>.

130. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 21.

passes to other students,¹³¹ even though many children in foster care may be too young to safely take public transit by themselves.¹³² As a result, students who cannot travel to school on their own have been forced to transfer schools, or even transfer foster homes.¹³³

Even when students do receive busing, delays in routing and inconsistent transportation can be hugely destabilizing to students who are already in crisis.¹³⁴ Therefore, LEAs and child welfare agencies must identify solutions that will allow students to be transported to their school of origin promptly upon placement in foster care or a change in foster homes.¹³⁵ In cases in which busing cannot be arranged quickly or where a comparable mode of transportation would be more effective, LEAs and child welfare agencies must provide an alternative that does not require the student's foster parent or agency staff to accompany the student to and from school.¹³⁶ Possible solutions include offering prepaid car service or rideshare with a chaperone to accompany the child (e.g., an aide or

131. See N.Y.C. DEP'T OF EDUC., SCHOOL TRANSPORTATION: AGENCY STAFF QUICK REFERENCE GUIDANCE (2023) (on file with the authors), for an explanation of the process for requesting transportation for students in foster care in New York City. See also *Transportation Rights, Students in Foster Care*, NYC PUB. SCHS., <https://www.schools.nyc.gov/school-life/transportation/transportation-rights> (last visited Sept. 10, 2023).

132. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 21.

133. *Id.*; ADVOCS. FOR CHILD. OF N.Y. & THE LEGAL AID SOC'Y, *supra* note 16, at 10–11; see also *Oversight Hearing on School Bus Transportation Services Before the N.Y.C. Council Comm. on Educ. & N.Y.C. Council Comm. on Oversight & Investigations* (Nov. 21, 2022) (testimony of Anna Arkin-Gallagher, Supervising Att'y & Pol'y Couns., Educ. Prac., Brooklyn Def. Servs.), <https://bds.org/assets/files/School-Transportation-Written-Testimony-11.21.22.cleaned.pdf>.

134. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 21; see, e.g., *Preliminary Budget Hearing on Education Before the N.Y.C. Council Comm. on Educ.* (Mar. 15, 2023) (testimony of Dr. Brenda Triplett, Dir. of Educ. Achievement & P'ships, Children's Aid), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6028025&GUID=A0FC5002-23DF-4140-BC28-4A11AB211CC2&Options=&Search=> (describing incredibly early and late pick-up times for students in foster care due to busing, resulting in students arriving to school late, tired, and hungry and missing valuable instruction); *id.* (testimony of Fariha Sattar, Educ. Advoc., Children's Aid) (describing a foster family where a member risked unemployment because they had to escort children to school for three months while awaiting busing, and another foster child who missed out on remedial academic support because she was arriving to school late).

135. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 21.

136. See *id.* at 21 & n.32. NYSED guidance makes clear that if a foster parent is unable to accompany a child on public transportation, then the school district “must provide an alternate form of transportation that is viable for the student.” N.Y.S. OFF. OF CHILD. & FAM. SERVS. & N.Y.S. EDUC. DEP'T, STUDENTS IN FOSTER CARE TOOL KIT FOR LOCAL EDUCATION AGENCIES AND LOCAL DEPARTMENTS OF SOCIAL SERVICES REVISED 2021, PUB. 5221, at 39 (2022), <https://www.p12.nysed.gov/sss/documents/FosterCareToolkit3.17.22.pdf>. The guidance also states that the school district must complete and commence an individual transportation plan for a student in foster care within 2–3 business days for in-district transportation or 5–7 business days for out-of-district transportation. *Id.* at 7.

childcare worker) or contracting with companies that use smaller vehicles with vetted drivers to transport students in foster care,¹³⁷ provided LEAs work out the logistics of school staff escorting the child to and from the vehicle.¹³⁸

D. Collaborate with Families, Local Departments of Social Services, and Foster Care Agencies to Promote School Attendance

Addressing the alarmingly high rates of chronic absenteeism among students in foster care should be a top priority for LEAs and child welfare agencies.¹³⁹ Student caregivers and child welfare agency staff must have access to real-time attendance information so that families and agencies know when students miss school and can intervene early—before absences start to compound.¹⁴⁰ When attendance first starts to become a concern for a particular student in the foster system, schools should immediately reach out to the student’s support network—including their current foster parent, parent(s), and case planner or other child welfare agency staff—to identify

137. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 21. Regarding the use of alternative school transportation solutions, see, for example, Maggie Bryan, *Colorado Springs School District 11 Hires Rideshare Company to Combat Bus Driver Shortage*, KOAA NEWS5 (Oct. 10, 2022), <https://www.koaa.com/news/covering-colorado/local-school-district-hires-rideshare-company-to-combat-bus-driver-shortage>; Michael B. Horn, *Beyond the Big Yellow Bus*, EDUC. NEXT, Summer 2023, at 76, <https://www.educationnext.org/beyond-the-big-yellow-bus-can-transportation-apps-reinvent-how-students-get-to-school/>.

138. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 21.

139. See *id.* at 22.

140. See *id.* The N.Y.C. DOE and ACS have had an interagency agreement that allows them to share attendance and other individual student education data at regular intervals for over two decades. See Memorandum of Understanding, N.Y.C. Admin. for Child.’s Servs. & N.Y.C. Bd. of Educ. (dated Dec. 7, 2001; signed Dec. 14, 2001); “Project School Success”: Addendum to Memorandum of Understanding Dated December 7, 2001, N.Y.C. Admin. for Child.’s Servs. & N.Y.C. Dep’t of Educ. (Feb. 5, 2008) (on file with the authors). Until recently, however, the data were at least six weeks old by the time they got into the hands of foster care agency staff working directly with students, and there were often inaccuracies, especially for students who attend charter schools. The DOE has since started sharing attendance data with ACS and foster care agencies twice per month; they should continue to work together to further improve consistent sharing of data for students in foster care with agency staff. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 22.

the underlying causes and develop targeted solutions.¹⁴¹ In New York City, we have already seen several promising examples in which a foster care community coordinator on the DOE's Foster Care Team flagged troubling attendance data for a foster care agency and worked collaboratively with agency staff and the student's family to identify and resolve the barriers resulting in absences from school.¹⁴²

LEAs and local departments of social services should work together to identify systemic barriers that lead to absences for students in the foster system and address those challenges. For example, school staff and child welfare agencies should encourage families and case planners to schedule family visits, court appearances, doctor's appointments, and other obligations outside of the school day whenever possible so that students in care are not forced to miss class. If an appointment must be scheduled during school hours, schools should work with families and child welfare staff to ensure the student gets their assignments and has an opportunity to make up their work. Additionally, child welfare agencies should support foster parents with transportation so the child can attend school before the appointment and return to school afterwards, rather than missing the entire day.¹⁴³

141. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 22. The joint N.Y.C. DOE-ACS Tiered Response Protocol, which has been in effect for seven years, requires schools to notify the foster care agency immediately when a student in grades pre-K to eight has three consecutive unexcused absences. Memorandum from Gladys Carrión, Comm'r, N.Y.C. Admin. for Child.'s Servs. & Carmen Farina, Chancellor, N.Y.C. Dep't of Educ. to Admin. for Child.'s Servs. & Dep't of Educ. Staff, Re: Joint Statement Introducing a Tiered Response Protocol for High-Risk Cases of Educational Neglect and Unexplained Absence (Oct. 29, 2016) (on file with authors). However, we consistently hear from foster care agencies that schools rarely follow this protocol. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 22.

142. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 22.

143. See *id.* Two promising programs to improve attendance among students in foster care include FosterEd Arizona and Mission West Virginia's Bridge program. See JENNIFER LAIRD & SIRI WARKENTIEN, RTI INT'L, FOSTERED ARIZONA: YEAR 2 EVALUATION OF STATEWIDE EXPANSION vi (2020), <http://foster-ed.org/wp-content/uploads/2017/01/FosterEd-AZ-Year-2-Evaluation-of-Statewide-Expansion-Final-Report.pdf> (showing that students who received intensive services from the program had on average 13 fewer unenrolled days and an average of five fewer out-of-school days (either absent or unenrolled) than students who didn't receive intensive services during the 2018–2019 school year); MISSION W. VA., 2022 ANNUAL REPORT 10, <https://static1.squarespace.com/static/5845d2d703596e15cdfb091b/t/6463d3add98f2b31bc5eb46c/1684263866883/annual+report+-+2022+final.pdf> (documenting a 93% decrease in absences and a 60% decrease in suspensions among students served by the Bridge program).

E. Revise Policies to Remove Barriers That Limit the Full Participation and Success of Students in Foster Care

LEAs must ensure that students in foster care have access to the same educational programs, services, and opportunities as their peers who are not in foster care.¹⁴⁴ To this end, LEAs need to know how their policies, practices, and systems impact students in foster care and whether they may create special barriers for students in the foster system.¹⁴⁵ For example, LEAs can track rates of participation in summer programming, gifted and talented classes, specialized programs for students with disabilities, extracurricular activities, and Career and Technical Education (CTE) programs by foster care status.¹⁴⁶ Where disparities emerge, LEAs should work with students, families, and child welfare agencies to identify barriers to full inclusion—assessing, for example, what is explicitly or implicitly required for students to enroll in and attend a service or program—and design responsive solutions that will support students’ participation and attendance.¹⁴⁷

One example from New York City is the free, full-day, voluntary summer enrichment program called Summer Rising, which is open to all NYC residents in grades K–8.¹⁴⁸ When the program first began in 2021, enrollment took place on a first-come, first-serve basis, and many of the seats filled in a matter of days or even hours, effectively locking out many vulnerable students.¹⁴⁹ For Summer 2023, the DOE extended the enrollment period for the approximately 110,000 available seats by over two weeks, simplified the online registration process, and prioritized admission for students in temporary housing, students in foster care, and students with special education needs who require 12-month classes.¹⁵⁰ They also set aside over 500 seats for students placed in temporary housing

144. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 23.

145. *Id.*

146. *Id.*

147. *Id.*

148. See *Summer Rising*, NYC PUB. SCHS., <https://www.schools.nyc.gov/enrollment/summer/grades-k-8> (last visited Sept. 10, 2023); Reema Amin, *Summer Rising Applications Are Now Open. Here’s Everything You Need to Know.*, CHALKBEAT N.Y. (Apr. 14, 2023), chalkbeat.org/newyork/2023/4/14/23683865/nyc-summer-rising-school-enrichment-academics/.

149. Amin, *supra* note 148; Amy Zimmer, *What to Know About the Hottest Ticket in NYC, Summer Rising*, CHALKBEAT N.Y. (May 4, 2022, 3:35 PM), <https://ny.chalkbeat.org/2022/5/2/23054129/nyc-schools-summer-rising-enrollment>.

150. See N.Y.C. Dep’t of Educ., *Summer Rising 2023 PowerPoint 4–6* (Apr. 2023) (on file with the authors).

or foster care after the enrollment deadline had passed.¹⁵¹ As a result, the number of students in foster care registered for Summer Rising rose from just over 100 students in 2022, to more than 2,100 students in 2023.¹⁵²

Following any such changes in policies or programming, LEAs should track progress in participation rates and continue to assess disparities between students in foster care and their peers. In addition, as LEAs announce new programs and initiatives, they should consider the unique needs and situations of students in foster care, ensuring such programs will be accessible to students in the foster system.¹⁵³

F. Ensure Students in Foster Care Have Access to a Comprehensive, Integrated System of Behavioral and Mental Health Services and Are Proactively Supported Through Trauma-Informed Practices and Other Alternatives to Suspension

1. LEVERAGE NEW AND EXISTING MENTAL HEALTH SUPPORTS FOR STUDENTS IN FOSTER CARE

Students in foster care face unique challenges as they change home and family environments and experience the impacts of trauma.¹⁵⁴ As

151. Email from Christopher Tan, Assistant Comm'r for Educ. Initiatives, N.Y.C. Admin. for Child.'s Servs., Re: Summer Rising—Slots Still Available for Students in Foster Care! (May 9, 2023, 10:32 AM) (on file with the authors); Email from Brittany Taylor, Exec. Dir., Students in Temp. Hous., N.Y.C. Dep't of Educ., to Jennifer Pringle, Dir., Project LIT—Learners in Temp. Hous., Advoc. for Child. of N.Y., Re: Summer Rising Email (May 9, 2023, 4:02 PM) (on file with the authors).

152. N.Y.C. Admin. for Child.'s Servs. Education Forum—Back to School, Presentation by Wayne Trigg, Consultant, N.Y.C. Dep't of Educ. (Aug. 29, 2023).

153. See ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 23.

154. In addition to trauma stemming from the foster care experience itself, past studies have found that children and youth in the foster system are significantly more likely than other young people to have had multiple adverse childhood experiences (e.g., exposure to violence, the incarceration of a parent, substance abuse by a household member) and have higher rates of ADHD, depression, post-traumatic stress, and other mental and behavioral health challenges. *Id.* at 23 & n.33; see, e.g., Papovich, *supra* note 4; Amy M. Salazar et al., *Trauma Exposure and PTSD Among Older Adolescents in Foster Care*, 48 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 545 (2013), <https://doi.org/10.1007/s00127-012-0563-0>; Kristin Turney & Christopher Wildeman, *Mental and Physical Health of Children in Foster Care*, 138 PEDIATRICS (2016), <https://doi.org/10.1542/peds.2016-1118>; Kristin Turney & Christopher Wildeman, *Adverse Childhood Experiences Among Children Placed in and Adopted from Foster Care: Evidence from a Nationally Representative Survey*, 64 CHILD ABUSE & NEGLECT 117 (2017), <https://doi.org/10.1016/j.chiabu.2016.12.009>. With respect to the impact of trauma on school functioning, see, for example, Michelle M. Perfect et al., *School-Related Outcomes of Traumatic Event Exposure and Traumatic Stress Symptoms in Students: A Systematic Review of Research from 1990 to 2015*, 8 SCH. MENTAL HEALTH 7, 9 (2016), <https://doi.org/10.1007/s12310-016-9175-2>.

such, LEAs must collaborate with child welfare, mental health, and other agencies to ensure that students in foster care receive the direct behavioral and mental health support they need to remain in school.¹⁵⁵ In addition, expanding inclusive program options and providing more robust behavioral and mental health supports to students in foster care in their local schools could help reduce overreliance on restrictive, out-of-district special education placements.¹⁵⁶ LEAs overall should help families and child welfare staff understand the range of behavioral and mental health services available in different schools in their community so that they can make informed choices when enrolling students in school or making best interest determinations about a student’s school placement.¹⁵⁷

2. CREATE HEALING-CENTERED SCHOOLS BY EDUCATING ALL MEMBERS OF THE SCHOOL COMMUNITY ABOUT THE IMPACT OF TRAUMA AND IMPLEMENTING TRAUMA-INFORMED AND RESTORATIVE PRACTICES TAILORED TO STUDENTS’ INDIVIDUAL NEEDS

Teachers and school staff who do not understand how trauma can manifest in a school setting may misjudge a child’s behavior and respond in a manner that is ineffective or that causes further harm.¹⁵⁸ LEAs must shift to a preventive model that recognizes social-emotional well-being is essential for learning and that identifies and supports—instead of punishes—students who are experiencing the impacts of trauma.¹⁵⁹ LEAs should improve how they train school staff and give them the tools to proactively recognize and empathetically respond to the effects of trauma, especially as they relate to the foster care experience specifically, and build schools’ capacity to use inclusive, culturally responsive, and restorative practices to support students in the foster system.¹⁶⁰ Indeed, schools that

155. See *ADVOCS. FOR CHILD. OF N.Y.*, *supra* note 1, at 23–24; Johnson, Strayhorn & Parler, *supra* note 95; see also Gottfried, *supra* note 55.

156. See *ADVOCS. FOR CHILD. OF N.Y.*, *supra* note 1, at 24.

157. See *id.*

158. See, e.g., Clemens et al., *supra* note 4; Papovich, *supra* note 4; SUSAN F. COLE ET AL., *TRAUMA & LEARNING POL’Y INITIATIVE, HELPING TRAUMATIZED CHILDREN LEARN—VOLUME 2: CREATING AND ADVOCATING FOR TRAUMA-SENSITIVE SCHOOLS* (Mass. Advocs. for Child. & Harv. L. Sch. 2013), <https://traumasensitiveschools.org/wp-content/uploads/2013/11/HTCL-Vol-2-Creating-and-Advocating-for-TSS.pdf>; U.S. DEP’T OF EDUC., *GUIDING PRINCIPLES FOR CREATING SAFE, INCLUSIVE, SUPPORTIVE, AND FAIR SCHOOL CLIMATES* (Mar. 2023), <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

159. See *ADVOCS. FOR CHILD. OF N.Y.*, *supra* note 1, at 24; see also COLE ET AL., *supra* note 158; NAT’L CTR. ON SAFE SUPPORTIVE LEARNING ENVIRONMENTS, <https://safesupportivelearning.ed.gov/> (last visited Dec. 11, 2023).

160. See *ADVOCS. FOR CHILD. OF N.Y.*, *supra* note 1, at 24.

use healing-centered practices can help reverse the effects of trauma, boost academic engagement, and promote social-emotional well-being.¹⁶¹

3. PARTNER WITH STUDENTS, FAMILIES, AND CHILD WELFARE AGENCIES TO TAILOR SERVICES FOR STUDENTS IN FOSTER CARE AND CREATE SUPPORTIVE ENVIRONMENTS THAT KEEP THEM IN SCHOOL

Interventions for students experiencing trauma must be responsive to a student's specific needs and targeted toward keeping the student engaged in learning.¹⁶² By building collaborative relationships with families and child welfare agencies and maintaining two-way communication, schools can proactively identify moments when a student may need additional support, such as during a transition to a new foster care placement, immediately before or after family visits, or when a permanency goal is changed from return to parent to adoption.¹⁶³ School staff should work collaboratively with students, families, and agency support staff to identify triggers for behavioral challenges and develop support plans that keep students in the classroom.¹⁶⁴ When a school does suspend a student in foster care, it should be only as a last resort and limited in duration.¹⁶⁵ Furthermore, schools must communicate with a student's family and child welfare agency immediately, including by providing written notice of any

161. *Id.* For more on healing-centered schools, see *The Healing-Centered Schools Working Group*, LEGAL SERVS. NYC, <https://www.legalservicesnyc.org/what-we-do/practice-areas-and-projects/access-to-education/community-roadmap-to-healing-centered-schools> (last visited Dec. 10, 2023); *Education & Opportunity*, N.Y.C. PUB. ADVOC. JUMAANE D. WILLIAMS, <https://pubadvocate.nyc.gov/education-opportunity/education-resources/healing-centered-schools> (last visited Dec. 10, 2023); see also Julie C. Avery et al., *Systematic Review of School-wide Trauma-Informed Approaches*, 14 J. CHILD & ADOLESCENT TRAUMA 381 (2021), <https://doi.org/10.1007/s40653-020-00321-1>.

162. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 24.

163. *See id.*

164. *See id.* The IDEA requires IEP teams to consider the use of positive behavioral interventions and supports when a student's behavior impedes their learning or the learning of others. 20 U.S.C. § 1414(d)(3)(B)(i). In New York State, behavior intervention plans must be based on the results of an individualized, functional behavioral assessment and include "a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs[,] and intervention strategies" to address the behavior. 8 N.Y. COMP. CODES R. & REGS. § 200.1(mmm). For more information on Positive Behavioral Interventions and Supports (PBIS), a tiered, school-wide system for supporting student behavioral and emotional health, see CTR. ON PBIS, <https://www.pbis.org/> (last visited Dec. 11, 2023).

165. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 24.

disciplinary meetings or hearings,¹⁶⁶ and should take proactive steps to re-engage the student and ensure they feel welcomed and supported upon their return to school.¹⁶⁷

G. Strengthen Pathways to College, Careers, and Post-secondary Programs, Particularly for Students on Alternative Routes to Graduation

The data show that students in foster care disproportionately attend alternative high schools and participate in GED programs.¹⁶⁸ As such, LEAs should increase supports for students to successfully complete these programs and earn a high school diploma or equivalency following a disruption or setback in school.¹⁶⁹ Given the high percentage of students in foster care who have disabilities,¹⁷⁰ it is especially critical to ensure that nontraditional schools and programs can provide special education services; in our experience, students whose IEPs recommend self-contained classes often experience barriers to entry to alternative programs

166. *Id.* at 24–25; see also *Foster Care Students in the DOE System: Oversight Hearing Before the Comm. on Educ.*, N.Y.C. Council Transcript of the Minutes at 138–39 (Apr. 20, 2022), <https://on.nyc.gov/3IWBMSs> (testimony of Melinda Andra, Att’y, Educ. Advoc. Project, Legal Aid Soc’y Juv. Rts. Practice) (describing how parents and foster care agencies rarely receive proper notice when students in foster care receive suspensions). Because of this issue, the DOE’s new foster care office has been training school staff to notify all parties when students are suspended. See N.Y.C. Dep’t of Educ., *Students in Temp. Hous.*, *supra* note 23, at 26.

167. ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 25. For more information on engaging students, see, for example, *Practices*, RESTORATIVE PRACTICES, <https://nycdoeerestorativepractices.org/practices/> (last visited Dec. 21, 2023); *Toolkit & Infographic: What Are Restorative Practices?*, SCHOTT FOUND. FOR PUB. EDUC., <https://schottfoundation.org/restorative-practices/> (last visited Dec. 21, 2023).

168. ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 25. For example, in New York City, youth in the foster system are more likely to attend transfer schools (high schools designed for students who have fallen behind on credits) and GED programs. See *supra* Part I.A.2. With respect to increased odds of earning a GED in lieu of a traditional high school diploma, see also Peter J. Pecora et al., *Assessing the Educational Achievements of Adults Who Were Formerly Placed in Family Foster Care*, 11 CHILD & FAM. SOC. WORK 220 (2006), <https://doi.org/10.1111/j.1365-2206.2006.00429.x>.

169. See ADVOCs. FOR CHILD. OF N.Y., *supra* note 1, at 25.

170. See *supra* Part I.A.1; see also Kevin A. Gee, *Predictors of Special Education Receipt Among Child Welfare-Involved Youth*, 114 CHILD. & YOUTH SERVS. REV. 105018 (July 2020), <https://doi.org/10.1016/j.childyouth.2020.105018> (finding that youth in foster care had 2.7 times higher odds of receiving special education services relative to children in the care of a biological or adoptive parent).

that might otherwise be a good fit.¹⁷¹ The types of trainings described in the previous recommendations will also be particularly important for staff at alternative high schools and GED programs to ensure they are aware of and sensitive to the unique needs of older youth in the foster system.¹⁷² For example, program staff should continue to collaborate with trusted adults from the youth's foster care agency to provide maximum support for students, even when they are over the age of 18, particularly youth who may not have a strong attachment to their foster parent or may live in a group home setting.¹⁷³

LEAs should also ensure that students graduating from nontraditional high schools and equivalency programs have clear pathways to college and careers.¹⁷⁴ LEAs should develop bridges between alternative schools and vocational program offerings and work closely with students and child welfare agencies to set students up to meet their post-secondary goals.¹⁷⁵ For students with disabilities graduating from alternative schools and programs, LEAs should strengthen connections between these alternative pathways and vocational rehabilitation programs and other post-secondary supports.¹⁷⁶

One promising practice in New York is the Fair Futures program, which funds child welfare agencies to hire tutors, middle school specialists, college specialists, and coaches to support youth in foster care ages 11 to 26.¹⁷⁷ The program, which was launched systemwide in 2019, is based on 1:1 coaching practices piloted at two New York City foster care agencies over the course of over nine years, during which over 90% of coached participants achieved a high school diploma or equivalency by age 21, and

171. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 25; *see also* N.Y. STATE EDUC. DEP'T, OFF. OF SPECIAL EDUC., NEW YORK CITY DEPARTMENT OF EDUCATION COMPLIANCE ASSURANCE PLAN 14 (2019) (describing a DOE policy requiring students to waive their right to special education services when enrolling in a DOE GED program, in violation of federal and state laws) (on file with the authors).

172. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 25.

173. *Id.*

174. *See id.*

175. *See id.*

176. *See id.* Under the Rehabilitation Act of 1973, states receive federal funding for vocational rehabilitation (VR) services that help people with disabilities get and keep jobs, consistent with their strengths and interests. *See State Vocational Rehabilitation Services Program*, REHAB. SERVS. ADMIN., <https://rsa.ed.gov/about/programs/vocational-rehabilitation-state-grants> (last visited Dec. 11, 2023). Most students who received special education services in high school will qualify for services from their state's VR program.

177. *See A Case Study: The NYC Fair Futures Story*, CTR. FOR FAIR FUTURES, <https://www.fairfuturesny.org/about/case-study> (last visited July 3, 2023); CTR. FOR FAIR FUTURES, FAIR FUTURES CASE STUDY (2023), <https://resources.fairfuturesny.org/2023-case-study>.

nearly all enrolled in the workforce or a post-secondary education setting by age 26.¹⁷⁸ As part of the model, specialists and coaches are trained to work closely with schools to help youth achieve their academic, career development, and independent living goals.¹⁷⁹ The Fair Futures model expanded into the Buffalo, NY, region in 2022.¹⁸⁰

H. Publicly Report Educational Data About Students in Foster Care

Shining a light on the inequities students in the foster system face is the first step toward developing solutions to address their unique needs.¹⁸¹ Following the passage of the federal Every Student Succeeds Act (ESSA) in 2015, school districts nationwide were required to report on the graduation rates and state test scores of students in foster care for the first time,¹⁸² and the results were sobering: In New York City, students in foster care consistently have the lowest four-year graduation rate of any student group.¹⁸³ As our findings in this article make clear, students in foster care face many barriers to achieving educational parity to students not in foster care.

Improved access to data about the educational outcomes and experiences of students in foster care is needed so that policymakers and advocates

178. *A Case Study: The NYC Fair Futures Story*, *supra* note 177.

179. For more information, see FAIR FUTURES, FAIR FUTURES PROGRAM MANUAL: A COMPREHENSIVE MODEL SERVING FOSTER YOUTH FROM 6TH GRADE–AGE 26, at 23, 45–46 (2023), https://resources.fairfuturesny.org/_Fair-Futures-Program-Manual-2020.

180. *Fair Futures Model & Outcomes*, CTR. FOR FAIR FUTURES, <https://www.fairfuturesny.org/about/overview> (last visited Aug. 25, 2023). The model is currently being evaluated by Chapin Hall at the University of Chicago. *Id.*

181. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 25. For a discussion of the education data New York State currently tracks regarding students in foster care, and recommendations to improve data collection based on best practices in other states, see Chantal Hinds, *Why Data Matters for New York Students in the Foster System*, NEXT100 (Aug. 11, 2022), <https://thenext100.org/why-data-matters-for-new-york-students-in-the-foster-system/>.

182. 20 U.S.C. § 6311(h)(1)(C)(ii)–(iii).

183. ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 25; *see, e.g.*, N.Y. State Educ. Dep't, *NYC Public Schools Graduation Rate Data: 4 Year Outcome as of August 2022*, [data.nysed.gov](https://data.nysed.gov/gradrate.php?year=2022&instid=7889678368), <https://data.nysed.gov/gradrate.php?year=2022&instid=7889678368>; N.Y. State Educ. Dep't, *NYC Public Schools Graduation Rate Data: 4 Year Outcome as of August 2021*, [data.nysed.gov](https://data.nysed.gov/gradrate.php?year=2021&instid=7889678368), <https://data.nysed.gov/gradrate.php?year=2021&instid=7889678368>; N.Y. State Educ. Dep't, *NYC Public Schools Graduation Rate Data: 4 Year Outcome as of August 2020*, [data.nysed.gov](https://data.nysed.gov/gradrate.php?year=2020&instid=7889678368), <https://data.nysed.gov/gradrate.php?year=2020&instid=7889678368> (showing students in foster care with a four-year graduation rate of 45%, 43%, and 42%, respectively). For a recent comparison of graduation rates for students in foster care across eight states, see *Resources, Data-Sharing Snapshots (March 2023)*, U.S. DEP'T OF EDUC., OFF. OF ELEMENTARY & SECONDARY EDUC., <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/students-foster-care/resources/> (last visited Aug. 7, 2023).

can monitor disparities, identify appropriate intervention points, develop targeted solutions, and measure the effectiveness of any new programs or initiatives.¹⁸⁴ In October 2023, the New York City Council passed Local Law 147, which amended existing education data reporting laws regarding enrollment, school discipline, and special education to require the DOE to disaggregate education data by foster care status, alongside other factors like student race/ethnicity, gender, disability status, and English Language Learner (ELL) status. The law went into effect on November 5, 2023.¹⁸⁵

III. Conclusion

Youth in the foster system have enormous potential that too often goes unrealized because the systems charged with their care and education fail to meet their needs, and even compound the challenges they face. But the troubling trends in attendance, exclusionary discipline, and academic achievement laid out in this article are by no means inevitable. By adopting the above recommendations and focusing support specifically on students in foster care, as we have begun to do in New York City, municipalities across the nation can begin to turn the tide and transform schools into a source of support for students in foster care. Youth in foster care deserve nothing less.

184. See ADVOCS. FOR CHILD. OF N.Y., *supra* note 1, at 25.

185. A Local Law to Amend the Administrative Code of the City of New York, in Relation to Expanding Disaggregated Data in Department of Education Reporting, Including Metrics on Students in Foster Care and Students in Temporary Housing, No. 2023/147, N.Y.C. Council, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5971636&GUID=80A14220-57D5-41B7-BB4E-5BEC0F11BD1E&Options=&Search=>; *Comm. Report of the Legis. Div. Comm. on Educ.* 5–6, N.Y.C. Council (June 21, 2023), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5971636&GUID=80A14220-57D5-41B7-BB4E-5BEC0F11BD1E&Options=&Search=>.