



Data Brief

Advocates for Children of New York
Protecting every child's right to learn

OCTOBER 2018

ACCESS DENIED

SCHOOL ACCESSIBILITY IN NEW YORK CITY

ELIJAH, age 8, could not join his neighbors, who walked together down the block to get to their zoned school; instead he spent an hour each morning on a school bus to get to a school that could accommodate his wheelchair.

EMELY was excited to match with her first-choice high school, categorized by the New York City Department of Education (DOE) as a "partially accessible" school, only to learn that there was no way for her to get to the second and third floors, where all the core classes were held.

ANA was devastated when a DOE staff member insisted that her daughter had no choice but to enroll in her zoned school, meaning that Ana would never be able to attend her daughter's parent-teacher conferences or school plays because, due to her disability, she could not get up the staircase leading to the entrance.

The 1990 Americans with Disabilities Act (ADA) prohibits discrimination based on disability and obligates state and local governments to provide equitable access to services and facilities, including education. But for many New York City students, families, and teachers with mobility, hearing, and vision needs, finding a school that they can access remains a significant challenge. In June 2018, Mayor de Blasio and the City Council took a big step by including \$150 million over three years in the city budget to make more schools accessible. While they deserve credit for

- » Only 18.4% of the City's schools are fully accessible (335 out of 1,818 schools).
- » In 28 of the City's 32 school districts, less than one-third (33%) of schools are fully accessible.
- » In seven districts, less than 10% of schools are fully accessible.
- » Three districts have no fully accessible elementary schools; four districts have no fully accessible middle schools; and six districts have no fully accessible high schools. District 16 in Brooklyn has no fully accessible schools at any level.
- » Only 27% of the school buildings housing the City's District 75 classes—specialized programs designed for certain students with disabilities—are fully accessible (103 out of 382 schools).

this important investment, the Mayor, the Chancellor, and the City Council Speaker have all acknowledged that far more work remains.

In December 2015, Preet Bharara, then United States Attorney for the Southern District of New York, found the DOE to be in violation of the ADA following an investigation of the accessibility of the City's elementary schools. Based on the "abysmally low percentage" of accessible schools, the U.S. Attorney found that the City's elementary schools were not "readily accessible to and usable by individuals with disabilities," in violation of the law.² Among other requirements, the U.S. Attorney stated that the DOE must develop a "system-wide remediation plan to address the lack of accessibility" and must end the practice of "ignoring the ADA" when making alterations to schools.³

Yet, twenty-eight years after the passage of the ADA—and nearly three years after the U.S. Attorney's findings—this data brief finds that equitable access to the City's schools for students with physical disabilities remains a distant promise. Currently, fewer than one in five schools is fully accessible, and eight of the City's 32 school districts offer no fully accessible schools at one or more school level (elementary, middle, or high school).

Given the lack of fully accessible schools, the DOE often points parents and the public to the schools it categorizes as "partially accessible." However, the level of accessibility of "partially accessible" schools varies significantly. In fact, nearly a quarter of the "partially accessible" schools that the DOE recently surveyed have no accessible bathrooms or classrooms.⁴ Other "partially accessible" schools offer limited elevator access, or key rooms—such as cafeterias, science labs, auditoriums, or libraries—are inaccessible for people who use a wheelchair.

In a city that prides itself on providing educational choices to students, many families with children who require an accessible school see their options significantly curtailed.

Thus, in a city that prides itself on providing educational choices to students, many families with children who require an accessible school see their options significantly curtailed. Often, elementary and middle school students cannot attend their zoned school or other nearby schools and must travel far from home to get to a school they can access. Many students and families are forced to forgo their preferred high school, placing the student's interests and talents behind the need for an accessible building.

Every five years, the DOE develops a Capital Plan that—following review and approval from the Mayor, City Council, and the City's Panel for Educational Policy—establishes funding levels for education-related capital spending citywide, with projects ranging from new schools to school renovations to school technology enhancements.

² Preet Bharara, "Letter To New York City Department of Education About Noncompliance With ADA," Letter, December 21, 2015, available at: <https://www.justice.gov/usao-sdny/pr/statement-us-attorney-preet-bharara-letter-new-york-city-department-education-about>.

³ Bharara, "Letter To New York City Department of Education About Noncompliance With ADA."

⁴ NYC Department of Education data; analysis by Advocates for Children of New York.

The Fiscal Year 2015-2019 DOE Capital Plan originally included \$100 million over five years for school accessibility projects.⁵ While \$100 million may sound like a substantial amount of funding, it represented less than one percent of the funding in the 2015-2019 DOE Capital Plan. As the U.S. Attorney noted in December 2015, the accessibility program in the 2015-2019 Capital Plan was “woefully insufficient.”⁶

Recognizing the inadequacy of this funding, Mayor de Blasio and the City Council added \$150 million over three years for school accessibility projects in the budget adopted in June 2018 (\$50 million for FY 19, FY 20, and FY 21). The Mayor and City Council deserve credit for acknowledging and taking a big step to address the need to make more schools accessible. As City Council Speaker Corey Johnson stated when announcing this investment: “Access [to school] should not be limited to children because they are different or disabled.” The funding provided will allow the DOE to continue making progress on school accessibility and will help create more opportunities for students with physical disabilities.

However, even with the addition of this funding, the funding allocated for school accessibility still accounts for less than one percent of the City’s \$17.2 billion budget for education capital projects from Fiscal Years 2015-2019.⁷

This fall, the DOE will propose its Fiscal Year 2020-2024 Capital Plan. While the City should commit to making every school fully accessible, we recommend that, at a minimum, the City include a major investment to make at least one-third of schools in each school district fully accessible to students, parents, and teachers with physical disabilities. We estimate that reaching this target would require an additional \$750 million over five years (for a total of \$850 million with the \$100 million already allocated for FY 20 and FY 21).

Importantly, setting this ambitious and attainable benchmark for school accessibility will help put the City on track to providing equitable school access to students with physical disabilities, while helping fulfill an important and often overlooked component of school integration. The persistent scarcity of fully accessible schools all but guarantees that students with mobility, hearing, and vision needs will continue to be concentrated in some schools and excluded from others. As the City engages in an important conversation about inclusion and diversity, the DOE should not tolerate a school system that excludes students with physical disabilities from the vast majority of schools.

The persistent scarcity of fully accessible schools all but guarantees that students with mobility, hearing, and vision needs will continue to be concentrated in some schools and excluded from others.

⁵ “Proposed FY 2015-2019 Five-Year Capital Plan” (New York City Department of Education, November 2013), https://dnnhh5cc1.blob.core.windows.net/portals/0/Capital_Plan/Capital_plans/110113_15-19_CapitalPlan.pdf?sr=b&si=DNNFileManagerPolicy&sig=u0GuDNWXEaLwBcUpUGOzPW711NQTuenvxs96HpK%2FrYM%3D.

⁶ Bharara, “Letter To New York City Department of Education About Noncompliance With ADA.”

⁷ The DOE Fiscal Year 2015-2019 Five-Year Capital Plan that was adopted by the City Council in June 2018 included \$16.5 billion. In addition to the funding reflected in the adopted Five-Year Plan, the DOE Fiscal Year 2019 Adopted Capital Budget included \$700 million in Council and Mayoral funding for education capital projects.

FINDINGS

The DOE designates each New York City school as fully accessible, partially accessible, or not accessible. “Partially accessible” schools do not meet the requirements of the Americans with Disabilities Act (ADA) and vary significantly in the level of access provided to students with physical disabilities. In fact, the bar for what constitutes a “partially accessible” school is surprisingly low. And while the DOE is in the process of rating the level of accessibility of partially accessible buildings, these ratings currently apply to an entire building, making it difficult to ascertain the accessibility of specific schools within each building.

While “fully accessible” schools should generally give students with disabilities access to all school spaces, we should note that not all schools categorized by the DOE as “fully accessible” comport with ADA requirements. In the DOE’s data, 81 schools currently listed as “fully accessible” have Building Accessibility Profile scores of 8 or 9 (out of 10), indicating general access to all floors, but with minor barriers or limited areas that are not accessible. The DOE listed most of these schools as “partially accessible” as recently as two years ago, prior to the completion of the building surveys.⁸

However, given the substantial variability among “partially accessible” schools, this brief focuses on “fully accessible” as the primary metric for examining school accessibility. While imperfect, this designation is presently the most meaningful indicator for families that a school meets or comes close to meeting ADA standards and will be a feasible option for their children.

School Accessibility System-wide

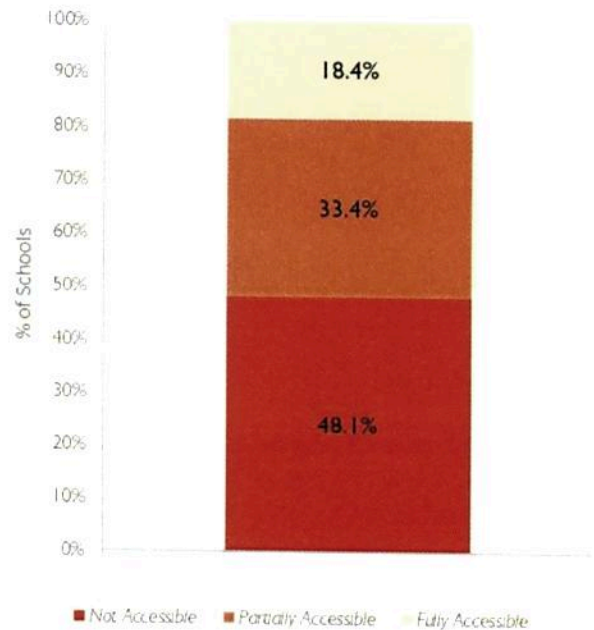
According to city data, there are 1,818 public schools across the City serving children from kindergarten through 12th grade. These schools include district and charter schools serving all grade levels,⁹ transfer high schools (which primarily serve students behind in credits), and District 75 schools (which offer highly specialized programs for certain students with disabilities).

⁸ Confusingly, other schools had BAP scores of 8, 9 or 10, but were still listed as “Partially Accessible” (see “What Does Partially Accessible Mean?” on page 5).

⁹ To better represent school options available to families at each level, all school grade span configurations are totaled for each of the three primary articulation levels: “Elementary Schools” include Early Childhood (K-2 or K-3), K-5, K-6, K-8 and K-

FIGURE 1

NYC DOE School Accessibility, 2018



SOURCE: New York City Department of Education, 2018; Advocates for Children Analysis

WHAT DOES “PARTIALLY ACCESSIBLE” MEAN?

To help address some of the ambiguity of the “partially accessible” designation, the DOE recently started publishing “Building Accessibility Profiles” (BAPs), which assign a scaled score (1-10) for partially accessible buildings and describe the accessibility of different parts of the building.* The DOE began by developing BAPs for partially accessible buildings containing high schools and is now working to survey buildings with elementary or middle schools. The BAPs are an important step toward helping families determine which schools might be feasible options for their children. However, when it comes to co-located schools, each school in the building receives the same score as the building overall, and the BAPs do not state which schools in the building are affected by identified barriers.

- » Of the City’s 608 “partially accessible” schools, 318 (51%) are in buildings that have a BAP. The DOE plans to conduct a BAP of each school building.
- » About 45% of schools designated “partially accessible” have a BAP score of 5 or lower. According to the DOE, such schools are in buildings that “may not include access to all floors in the building, and they may not include additional accessible bathrooms or classrooms other than on the ground floor.”
- » About 24% (77) of the partially accessible schools in buildings that have BAPs received a score of 1 or less. According to the DOE, buildings that score a 1 have “no accessible bathrooms or classrooms.”

Partially Accessible Schools with BAPs

| BAP Score | # of Schools | Cumulative % |
|-----------|--------------|--------------|
| 0 | 1 | 0.3% |
| 0+ | 3 | 1.3% |
| 1 | 73 | 24.2% |
| 2 | 1 | 24.5% |
| 3 | 31 | 34.3% |
| 4 | 20 | 40.6% |
| 5 | 14 | 45.0% |
| 6 | 53 | 61.6% |
| 7 | 43 | 75.2% |
| 8 | 55 | 92.5% |
| 9 | 21 | 99.1% |
| 10 | 3 | 100.0% |
| Total | 318 | |

* See <https://www.schools.nyc.gov/school-life/buildings/building-accessibility>.

Our analysis found that fewer than one in five schools is fully accessible.

CITYWIDE:

- » Only 335 (18.4%) of the City’s 1,818 schools are fully accessible.
- » Of the 1,483 schools that are not fully accessible, 875 (48.1% of all schools) are not accessible at all and 608 (33.4% of all schools) are partially accessible.

BY DISTRICT:

While there is some variation in school accessibility from district to district, our analysis revealed deficiencies in the vast majority of school districts across the City:¹⁰

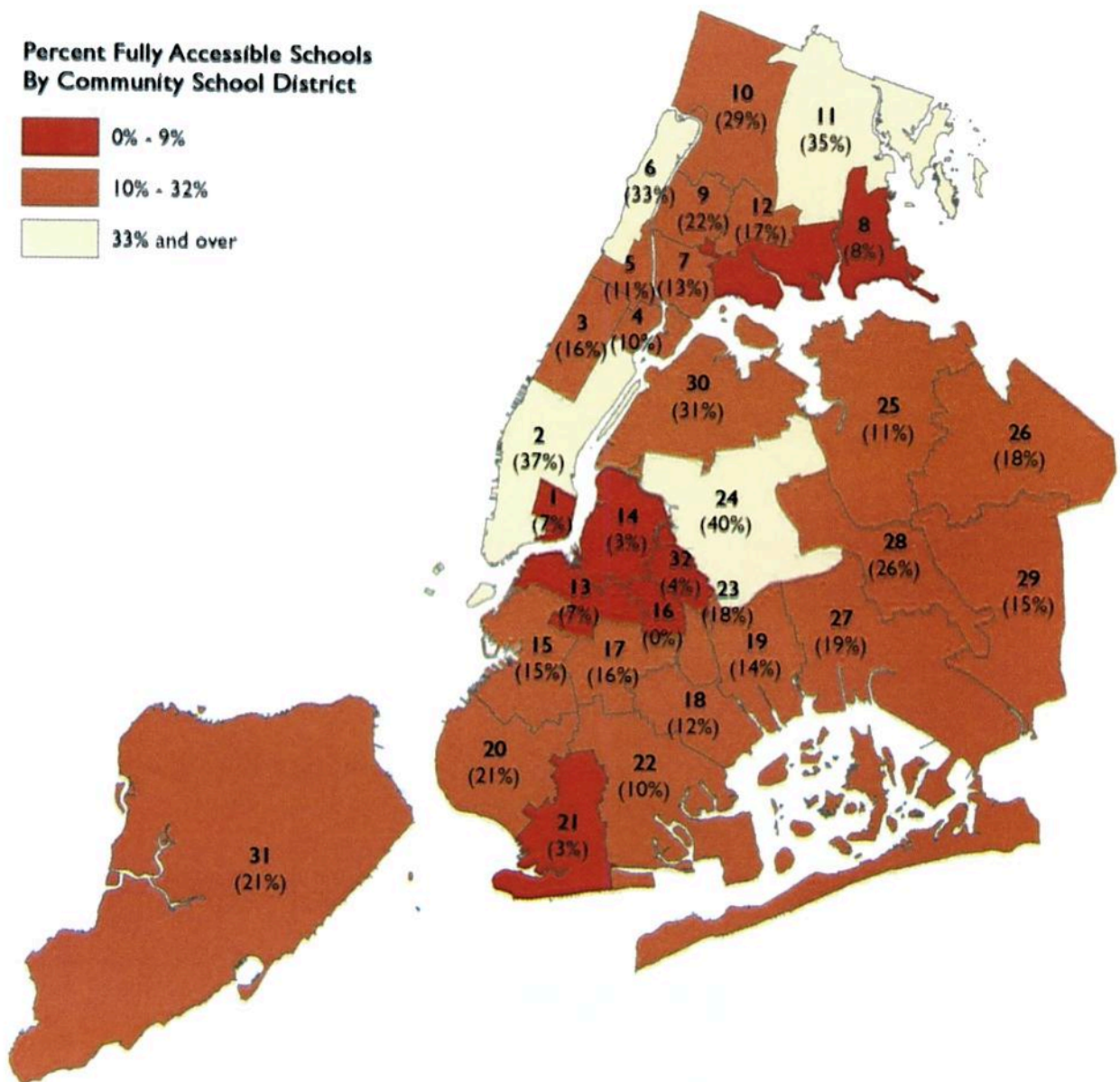
- » In 28 of the City’s 32 school districts, less than one-third (33%) of schools are fully accessible.
- » In seven of the City’s 32 school districts, less than 10% of schools are fully accessible.

¹² schools; “Middle Schools” include K-8, 6-8, and 6-12 schools; and “High Schools” include K-12, 6-12, and 9-12 schools. Some schools’ grade span configurations (e.g., K-12) fall into multiple categories and are therefore duplicated.

¹⁰ These figures include only DOE District 1-32 schools. We address District 75 schools and charter schools separately below.

- » District 16, which covers much of Bedford-Stuyvesant in Brooklyn, has no fully accessible schools at all.
- » **ELEMENTARY SCHOOLS:** Three districts (12, 16, and 21) have no fully accessible elementary schools.
- » **MIDDLE SCHOOLS:** Four districts (7, 14, 16, and 32) have no fully accessible middle schools.
- » **HIGH SCHOOLS:** Six districts (14, 16, 18, 20, 21, and 32) have no fully accessible high schools.

FIGURE 2
Percent Fully Accessible Schools by Community School District



SOURCE: New York City Department of Education, 2018; Advocates for Children Analysis

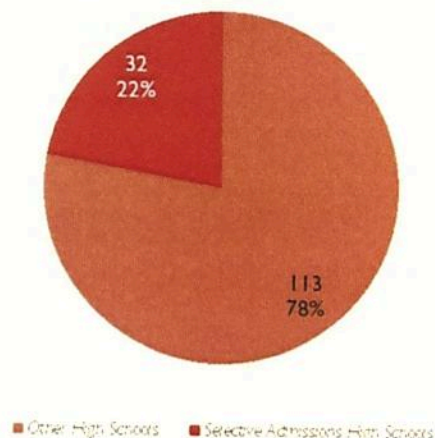
ADMISSIONS CRITERIA MAY FURTHER LIMIT FULLY ACCESSIBLE HIGH SCHOOL OPTIONS

Although a higher percentage of high schools are fully accessible than elementary or middle schools, some fully accessible high schools are off limits to certain students because of their admissions criteria. In fact, of the 145 fully accessible high schools, 32 utilize highly selective admissions methods—tests, auditions, or other screens—thereby removing about 22% of the fully accessible options for any student who cannot meet these criteria.

By the same token, students with physical disabilities who meet the criteria for selective high schools but need fully accessible schools also have limited options. Only 38.6% of the 83 schools that use these highly selective admissions criteria are fully accessible.

FIGURE 3

Fully Accessible High Schools by Admissions Method, 2018



SOURCE: New York City Department of Education, 2018; Advocates for Children Analysis

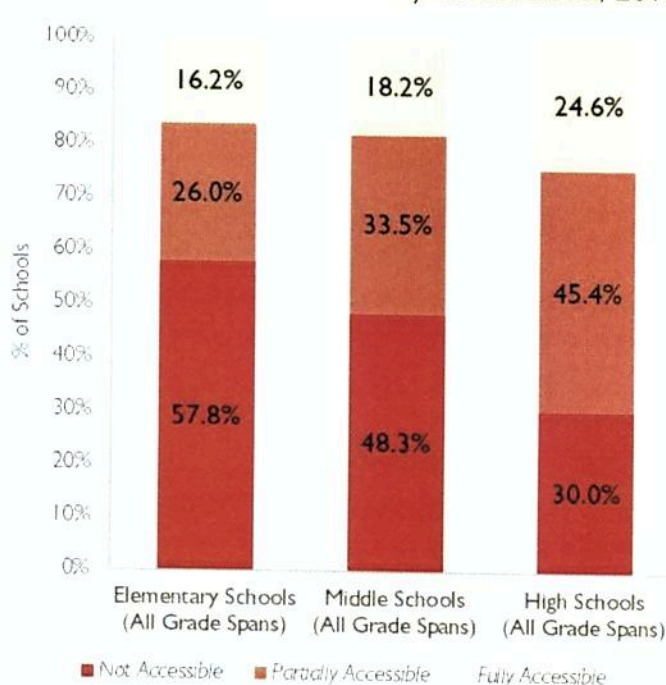
BY SCHOOL LEVEL:

While the City has a severe shortage of fully accessible schools at all grade levels, the problem is worse at the elementary and middle school levels. The shortage of schools at the elementary and middle school levels means that, too often, young students cannot attend the same schools as their neighborhood peers and are forced to travel long distances to get to school.

- » **ELEMENTARY SCHOOLS:** Only 164 out of the 1,015 schools serving elementary school grades (16.2%) are fully accessible.
- » **MIDDLE SCHOOLS:** Only 121 out of the 665 schools serving middle school grades (18.2%) are fully accessible.
- » **HIGH SCHOOLS:** Only 145 out of the 590 schools serving high school grades (24.6%) are fully accessible.

FIGURE 4

NYC DOE School Accessibility by School Level, 2018



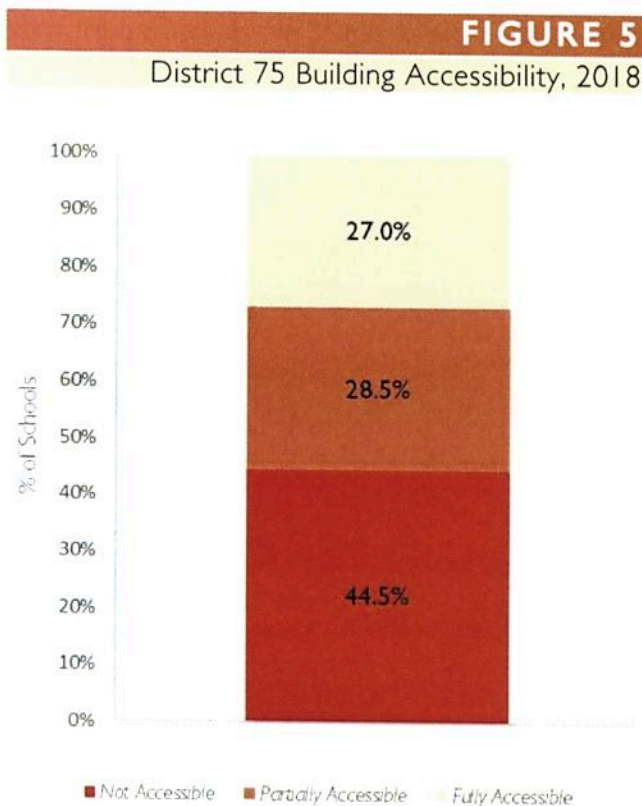
SOURCE: New York City Department of Education, 2018; Advocates for Children Analysis

District 75 Accessibility

The DOE operates 60 specialized schools for students with disabilities, known as “District 75” schools, which serve students in need of more intensive special education services than a District 1-32 school typically provides. While not all students who are recommended for placement in District 75 schools have physical disabilities necessitating fully accessible schools, some students are recommended for District 75 schools because they have significant cognitive and physical disabilities.

A single District 75 school may have classes in several school buildings, with sites in different districts, serving different grade levels, or specializing in serving students with certain disabilities. As of the summer of 2018, the 60 schools that are part of District 75 operate out of 382 separate buildings across the City. We analyzed District 75 schools’ accessibility by both primary location and by building. Our analysis found that District 75 has a significant shortage of fully accessible schools:

- » Of the 60 school buildings listed as the primary locations for District 75 schools, only 11 (18.3%) are fully accessible.
- » Of the 382 school buildings housing District 75 classes, only 103 (27%) are fully accessible.



SOURCE: New York City Department of Education, 2018; Advocates for Children Analysis

MIA

Mia, age 9, has Cerebral Palsy and a muscular disorder and has attended a partially accessible District 75 school since kindergarten. This year, most of her peers moved together to another floor. Since there is no elevator, Mia, who uses a wheelchair and is unable to go up or down stairs, was unable to join them. Her family didn't think she should be prevented from advancing with her peers based solely on her need for an accessible classroom. Although Mia's mother has been an advocate for other families in the school, she was unable to come to an agreement with the school about Mia's placement in the lead-up to the school year.

Eventually, with AFC's intervention, officials from the DOE's central office visited the school to explore possible solutions, but determined that even installing a lift—easier and faster than an elevator project—was not possible. With no other options and the school year beginning, Mia was forced to remain on the first floor, joining a new class instead of moving up with the majority of her peers. Because her peers this year will likewise move together to the upper floor next year, Mia will very likely experience the same problem a year from now.

Charter School Accessibility

While a small number of the 237 charter schools in New York City rent or own their spaces, the vast majority are housed in buildings operated by the NYC Department of Education. The below analysis examines the accessibility of charter schools in DOE buildings compared with DOE District 1-32 schools:

- » With only 26 fully accessible schools out of 223¹¹ schools, charter schools overall have a lower percentage (11.7%) of fully accessible schools than DOE district schools (19.6%).
- » Likewise, a higher percentage of charter schools have accessibility designations of “Not Accessible”—67.3% of charter schools vs. 44.9% of district schools.
- » At every school level, there is a smaller percentage of fully accessible charter schools than DOE district schools: elementary schools (11.8% vs. 17.2%); middle schools (14.3% vs. 19.6%); and high schools (17.8% vs. 26.4%).

Although charter schools began opening in New York in 1999, nine years after the passage of the Americans with Disabilities Act, most charter schools have opened in schools that are not fully accessible. Thus, while a key purpose of charter schools is to provide families with choice, the vast majority of charter schools are not options for students, parents, and teachers with physical disabilities who need fully accessible schools.

TAYLONI

Tayloni became paralyzed by a stray bullet when she was in elementary school. She now uses a wheelchair and requires help from a nurse at school. When applying to high school, she and her family made a prioritized list of schools, ruling out schools that were not fully accessible, including a number that otherwise matched her academic interests. She was ultimately matched with High School for Law, Advocacy, and Community Justice, a fully accessible high school about 70 blocks from her home.

The distance quickly became a problem. Too far to wheel herself, she relied on DOE busing, which too often came late or not at all. Some afternoons, she had to leave early due to bus schedule mix-ups. Combined with other issues with in-school supports, she and her family made the difficult decision to withdraw her from the school and pursue home instruction for her 10th grade year.

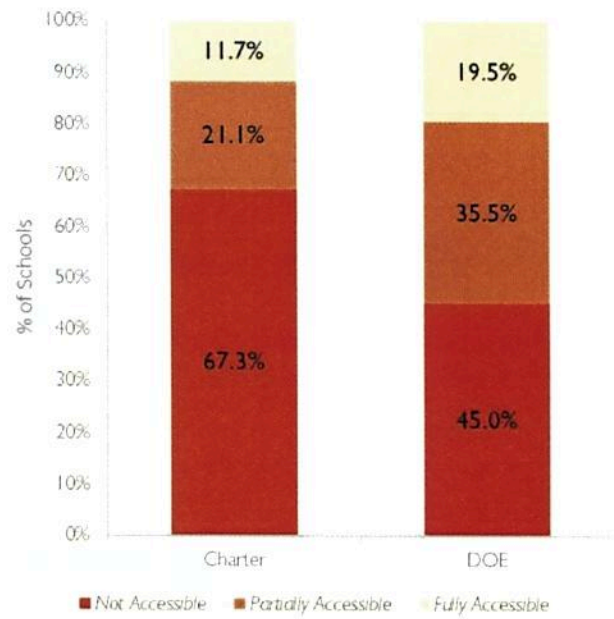
In the lead-up to her junior year, Tayloni and her family started looking for a school closer to home, considering both fully and partially accessible schools. She was interested in three nearby charter schools, but found out about them too late to meet their application deadlines. Other schools had wheelchair ramps in dark or isolated areas of the school, raising safety concerns.

Tayloni and her family continued to work through the DOE’s application and interview process over the summer, but, given the limited number of accessible schools that would meet her needs, Tayloni was unable to begin her junior year on time.

¹¹ As of the summer of 2018, 14 charter schools occupied privately-procured spaces. The accessibility of these schools appears as “Not Available” on the DOE’s website. These schools are not included in this comparative analysis.

FIGURE 6

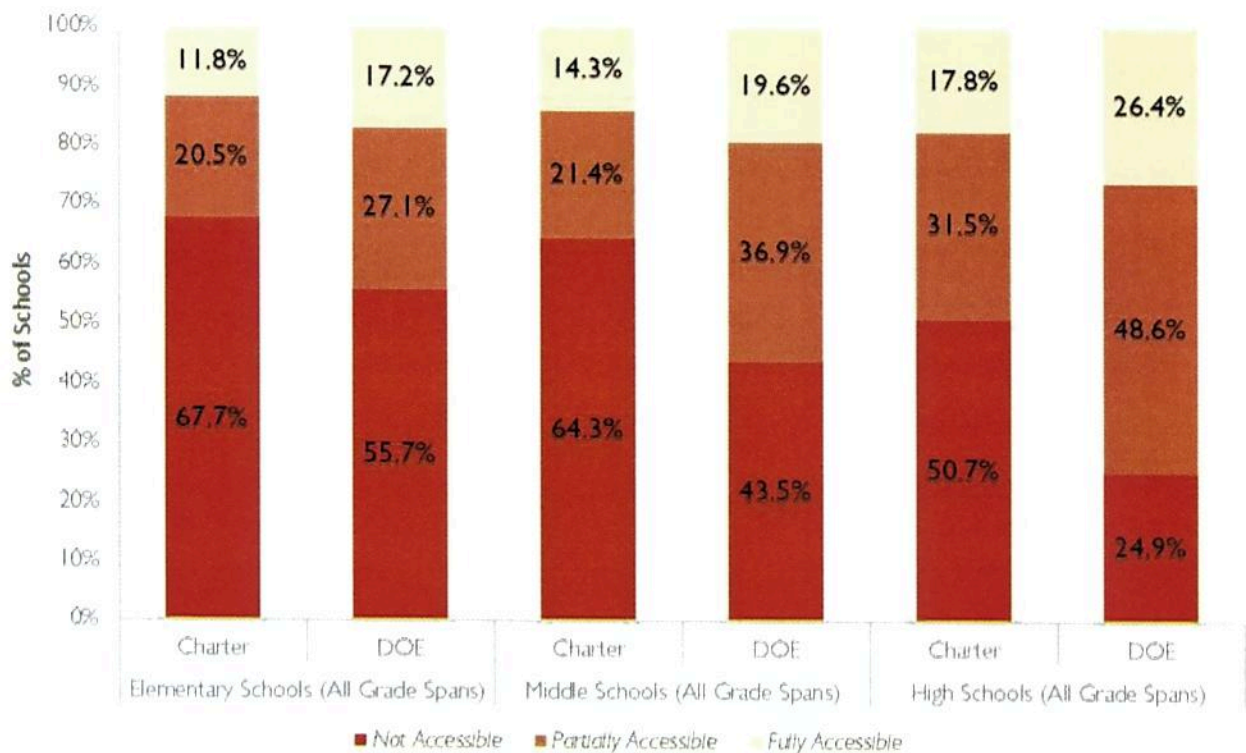
NYC Charter School vs. DOE School Accessibility, 2018



SOURCE: New York City Department of Education, 2018; Advocates for Children Analysis

FIGURE 7

NYC Charter School vs. DOE School Accessibility by School Level, 2018



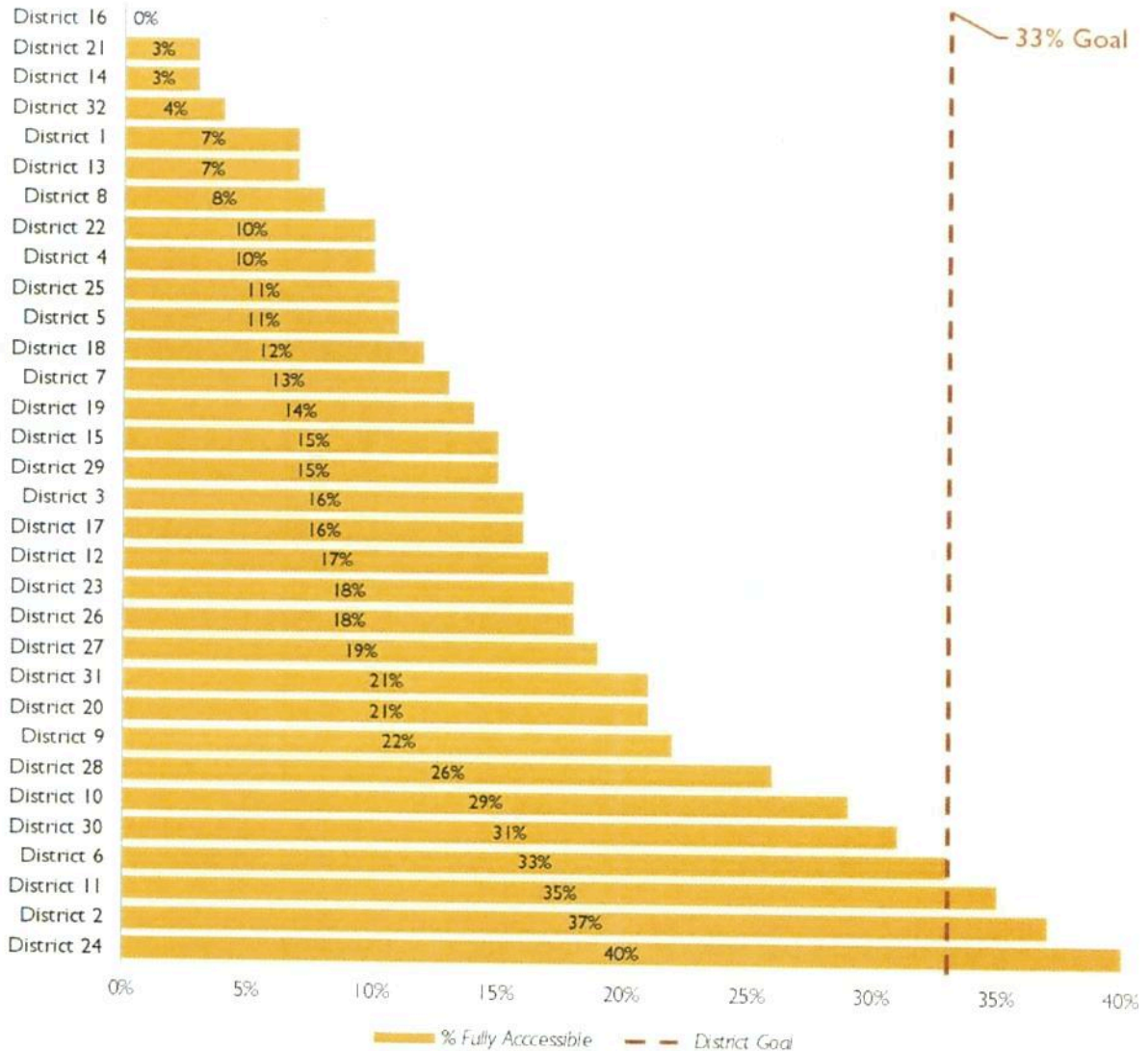
SOURCE: New York City Department of Education, 2018; Advocates for Children Analysis

CONCLUSION & RECOMMENDATIONS

The best and only way to ensure that students with physical disabilities have equitable access to public education is to ensure that 100% of public schools in New York City are fully accessible. Realizing this outcome will be a multi-year endeavor, the City should set and pursue ambitious district-specific goals to ensure that students in all parts of the City have fully accessible school options near their homes. As part of its forthcoming FY 2020-24 Department of Education Five-Year Capital Plan, the City should commit to making, at a minimum, one-third (about 33%) of the schools in every district (including District 75) fully accessible. Currently, 28 of the 32 districts fall short of this threshold (see Figure 8).

FIGURE 8

Fully Accessible Schools, Fall 2018
Actual % vs. 33% Goal Per District



SOURCE: New York City Department of Education, 2018; Advocates for Children Analysis

RECOMMENDATIONS

- » The Mayor and Chancellor should issue a joint public statement that the City intends to make all public schools fully accessible in the coming years.
- » The City should include a major investment in the FY 2020-2024 DOE Five-Year Capital Plan to make at least one-third of schools in each district fully accessible to students, parents, and teachers with physical disabilities. To reach this target, in addition to the \$100 million already budgeted for this period, the City should allocate \$750 million in new funding for accessibility projects, for a total of \$850 million.
- » The City should, by policy, ensure that any new space rented or purchased by the DOE be ADA compliant before using it as a school space.
- » Until the NYC public school system is 100% ADA compliant, families with accessibility needs should get additional assistance in the admissions processes. While the school application process can be difficult for any family, families that require an accessible school face far more limited options and must often consider complicated trade-offs. Priority tours and extra weight to admissions requests would help make the process equitable for families with accessibility needs.
- » The DOE should publish clear, detailed, and accurate descriptions of accessibility for every public school in the City, so that families can make informed decisions when searching for and applying to schools for their children.
 - » The DOE should complete Buildings Accessibility Profiles for every partially accessible school in the City.
 - » The DOE should better publicize the Building Accessibility Profiles. Links to the surveys should be clearly noted not only on the “building accessibility” page of the DOE website, but also other relevant locations, including the dropdown menus for enrollment, school life, and special education, as well as the individual school webpages, the DOE’s SchoolFinder app, and the school directories.
 - » The BAP surveys should be fine-tuned to provide families with scores and descriptions of individual schools that are co-located in shared buildings, rather than for the entire building. Access can vary from school to school within in a single building depending on the program layout of the building, and the current format can result in families pursuing schools with serious accessibility issues or ruling out others that may be viable options.
 - » The DOE should likewise conduct BAPs for all schools currently considered not accessible and all schools designated fully accessible built before 1992 (when ADA-compliant construction standards took effect) to determine the accuracy of these designations.
- » The DOE should require fully accessible schools and partially accessible schools to accommodate visits from families with accessibility needs and offer additional support during tours and open houses. All fully accessible schools and schools with BAPs of 7, 8, 9, or 10 should hold at least one open house explicitly available for families with accessibility needs.

- » All school fairs, whether run centrally by the DOE or by community school districts, must be held in fully accessible locations. This year, as in past years, the DOE is holding some of its high school fairs in partially accessible school buildings that do not provide full access to students and families with physical disabilities.

ACKNOWLEDGEMENTS

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ABOUT ADVOCATES FOR CHILDREN

For more than 45 years, Advocates for Children of New York has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds who are at greatest risk for failure or discrimination in school because of their poverty, disability, race, ethnicity, immigrant or English Language Learner status, sexual orientation, gender identity, homelessness, or involvement in the foster care or juvenile justice systems. AFC uses four integrated strategies: free advice and legal representation for families of students; free trainings and workshops for parents, communities, and educators and other professionals, to equip them to advocate on behalf of students; policy advocacy to effect change in the education system and improve education outcomes; and impact litigation to protect the right to quality education and compel needed reform.

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