Committee on Education

Malcom M. Butehorn, Senior Legislative Counsel

Jan Atwell, Senior Policy Analyst

Kalima Johnson, Senior Policy Analyst

Chelsea Baytemur, Financial Analyst

 Masis Sarkissian, Financial Analyst

Committee on General Welfare

Aminta Kilawan, Senior Legislative Counsel

Crystal Pond, Senior Policy Analyst

Natalie Omary, Policy Analyst

Dan Kroop, Senior Financial Analyst

Committee on Criminal Justice

Agatha Mavropoulos, Legislative Counsel

Kieshorne Dennie, Policy Analyst

Jack Storey, Financial Analyst



**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF the Human Services Division and Justice DIVISION**

Jeffrey Baker, Legislative Director

Andrea Vazquez, Deputy Director, Human Services Division

Brian Crow, Deputy Director, Justice Division

**COMMITTEE ON EDUCATION**

Hon. Mark Treyger, Chair

**COMMITTEE ON GENERAL WELFARE**

Hon. Stephen Levin, Chair

**COMMITTEE ON CRIMINAL JUSTICE**

Hon. Keith Powers*,* Chair

**April 21, 2021**

**Oversight: Educational Programming in Jails and Juvenile Detention**

**INT NO. 1224:** By Council Members Dromm, Cumbo and Ampry-Samuel

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education, the administration for children's services and the department of correction to report on educational programming for juvenile delinquents, juvenile offenders and adolescent offenders

**ADMINISTRATIVE CODE:** Adds a new section 21-919 to title 21-A

Table of Contents

[**Introduction** 2](#_Toc69722641)

[**Background** 2](#_Toc69722642)

[Federal Laws Regarding Education Services for Detained, Placed, and Incarcerated Youth 2](#_Toc69722643)

[New York State and New York City Laws Regarding Detained, Placed, and Incarcerated Youth 5](#_Toc69722644)

[*New York State* 5](#_Toc69722645)

[Raise the Age 7](#_Toc69722646)

[Juvenile Justice within ACS Division of Youth and Family Justice 7](#_Toc69722647)

[**Education Services Provided to Detained, Placed, and Incarcerated Youth by DOE’s District 79** 9](#_Toc69722648)

[Services in DOC Facilities 10](#_Toc69722649)

[Services in DYFJ and some ACS Detention Facilities 10](#_Toc69722650)

[Services in OCFS and some ACS Detention Facilities 11](#_Toc69722651)

[**Longstanding Use of Force Concerns** 12](#_Toc69722652)

[Use of Restraint Desks 12](#_Toc69722653)

[Disciplinary Issues 13](#_Toc69722654)

[**COVID-19 Pandemic’s Impact on Student Learning** 14](#_Toc69722655)

[**Conclusion** 17](#_Toc69722656)

[**Bill Analysis** 18](#_Toc69722657)

[Introduction No. 1224 18](#_Toc69722658)

# **Introduction**

On April 21, 2021, the Committee on Education, chaired by Council Member Mark Treyger, together with the Committee on General Welfare, chaired by Council Member Stephen Levin and the Committee on Criminal Justice, chaired by Council Member Keith Powers, will hold an oversight hearing on *Educational Programming in Jails and Juvenile Detention*. The Committee on Education will also hear Introduction No. 1224, sponsored by Council Member Dromm, a local law in relation to requiring the Department of Education, the Administration for Children's Services and the Department of Correction to report on educational programming for juvenile delinquents, juvenile offenders, and adolescent offenders. The Committees expect to receive testimony from the Department of Education (DOE), the Administration for Children’s Services (ACS), the Department of Correction (DOC), the Board of Correction (BOC or Board), students, parents, advocates, and other key stakeholders.

# **Background**

## Federal Laws Regarding Education Services for Detained, Placed, and Incarcerated Youth

There are primarily two federal laws regarding education services for detained, placed, and incarcerated youth: the Every Student Succeeds Act (ESSA) and the Juvenile Justice and Delinquency and Prevention Act (JJDPA). Both ESSA and JJDPA provide federal grants to state and local juvenile justice programs.

ESSA was passed in 2015 and reauthorized the Elementary and Secondary Education Act (ESEA).[[1]](#footnote-2) Title I, Part D of ESSA provides federal funding to state educational agencies to implement or improve educational programs for “neglected, delinquent, or ‘at-risk’ children and youth.”[[2]](#footnote-3) In order to receive this funding, local correctional facilities and local education agencies (LEA) must ensure the coordination between school districts and placement facilities to support juveniles academically as they enter and exit their placement facilities.[[3]](#footnote-4) Local correction facilities are required to:

* Coordinate with the student's previous school;
* Notify the LEA if a student is identified as in need of special education services while in the correctional facility;
* Provide support programs to encourage those who have dropped out of school to reenter and attain a high school diploma;
* Assist in the transition back to school, including coordination of services for the family, counseling, assistance in accessing drug and alcohol abuse prevention programs, tutoring, and family counseling;
* Staff the facility with teachers and other qualified staff who are trained to work with children and youth with disabilities;
* Ensure that educational programming helps students meet State academic standards;
* Coordinate Title I, Part D programs with activities funded under JJDPA;
* Facilitate the student’s entry and exit from the correctional facility by sharing relevant and appropriate academic records and plans with the LEA; and
* Continue coordination after discharge with the LEA to minimize disruption to the student’s achievement.[[4]](#footnote-5)

New York State currently receives Title I, Part D funding and therefore must comply with these provisions.[[5]](#footnote-6)

 JJDPA was most recently reauthorized in 2018 and added specific requirements regarding the transition from juvenile justice facilities to schools. In order to receive grants, states must assure that the state agency receiving funds under JJDPA collaborates with the state educational agency receiving assistance under Title I, Part A of ESEA[[6]](#footnote-7) to develop and implement a plan to ensure that in order to support educational progress:

* Student records are transferred in a timely manner from the educational program in the correction facility to the student’s subsequent school;
* Credits are transferred; and
* Adjudicated juveniles receive full or partial credit toward high school graduation for coursework completed before and during the student’s time in custody, regardless of the LEA or entity from which the credits were earned.[[7]](#footnote-8)

New York State receives funding under JJDPA and therefore must comply with these provisions.[[8]](#footnote-9)

Absent a specific exemption, detained, placed, and incarcerated students with special education needs are also protected by the Individuals with Disabilities Education Act,[[9]](#footnote-10) which requires that states receiving funding for students with disabilities provide these students with a free appropriate public education in the least restrictive environment.[[10]](#footnote-11) Schools must also identify and evaluate students with disabilities and develop an individualized education plan for students who are identified as having a disability.[[11]](#footnote-12)

In a 2014 Dear Colleagues letter, the U.S. Department of Justice and the U.S. Department of Education made clear that “Federal civil rights laws, regulations, and guidance that prohibit race, color, national origin, sex, religion, and disability discrimination against students in traditional public schools also apply to educational services and supports offered or provided to youth in juvenile justice residential facilities.”[[12]](#footnote-13) Thus, the following civil rights laws protect such students from discrimination:

* Title VI of the Civil Rights Act of 1964 (Title VI) (prohibiting discrimination based on race, color, or national origin by recipients of Federal financial assistance);[[13]](#footnote-14)
* Title IX of the Education Amendments of 1972 (Title IX) (prohibiting discrimination based on sex by recipients of Federal financial assistance);[[14]](#footnote-15) and
* Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) (both prohibiting discrimination based on disability, the former by recipients of Federal financial assistance, the latter by public entities, regardless of whether they receive Federal funds).[[15]](#footnote-16)

## New York State and New York City Laws Regarding Detained, Placed, and Incarcerated Youth

### *New York State*

New York State Education Law § 3202(7) grants educational services to incarcerated individuals under the age of 21 who do not have a high school diploma. Additionally, it is the responsibility of the school district that the youth facility is in to provide such educational services.[[16]](#footnote-17) The district may seek aid from the State in educating these students, and moreover, New York State Education Department (NYSED) interprets this provision of state education law to mean that any incarcerated student who has a high school equivalency diploma is still entitled to a free and public education to obtain a high school diploma.[[17]](#footnote-18)

Pursuant to state law, NYSED has promulgated regulations that outline the specific instructional program components that school districts must follow in providing education to incarcerated students.[[18]](#footnote-19) NYSED requires that instructional time:

* Be made available on the same days the school district is in session;
* Need not be required in July and August;
* Be no less than three hours per day, for a minimum of 15 hours per week;
* Shall include no less than 10 hours of instructional time each week in reading, mathematics and oral and written communication instruction;
* Be provided by a certified or licensed teacher;
* Be provided through small group or individual instruction;
* Be individually paced;
* Be designed to increase a student's level of achievement in the areas of reading, mathematics, and written and oral communication; and
* Prepare a student to pass the high school equivalency diploma examination;
* Provides tutorial support to a student who is expected to return to a school district or Boards of Cooperative Educational Services program of instruction upon release from incarceration; or
* Provides employment preparation education, which builds upon the student's interests, aptitudes, and skills.[[19]](#footnote-20)

*New York City*

DOE Chancellor's Regulation A-210 requires individuals younger than 18 years old, who have not obtained a high school diploma or high school equivalency, to attend school full time (those aged 18-21 may attend school full time but are not required to by the Regulation).[[20]](#footnote-21) The only exception to this requirement is minors who completed high school and students aged 16 to 17 who have a full-time employment certificate.[[21]](#footnote-22) Detained, placed, or incarcerated youth under the age of 18 are not exempt from this requirement.

## Raise the Age

In April 2017, New York State adopted legislation that raised the age of criminal accountability to 18 years old, amending state laws that automatically processed 16- and 17-year-olds as adults in the criminal justice system.[[22]](#footnote-23) As a result, the City was required to move all 16- and 17-year-olds who were housed on Rikers Island into the City’s juvenile detention centers.[[23]](#footnote-24) This process started with 16-year-olds in October 2018 and then a year later with 17-year-olds.[[24]](#footnote-25) The transition process was completed at the end of 2019[[25]](#footnote-26) resulting in ACS obtaining custody of 16- and 17-years-olds. ACS is responsible for providing and coordinating structured programming to these individuals. ACS seeks to provide 5.5 hours of educational programs each weekday and three hours of structured programming, seven days per week.[[26]](#footnote-27) According to the tenth report of the independent court-appointed monitor as mandated by the Consent Judgment in *Nunez v. City of New York*, from January to February 2020, ACS reported that youth had the opportunity to attend school full-time.[[27]](#footnote-28) However, the report stressed that it “did not reassess [ACS] previously documented struggle to ensure timely arrival of residents to school.”[[28]](#footnote-29)

## Juvenile Justice within ACS Division of Youth and Family Justice

The New York State Family Court Act gives Family Courts exclusive original jurisdiction to hear juvenile delinquency cases.[[29]](#footnote-30) A “juvenile delinquent” is a youth who is over seven but less than 18 years of age, who commits an act that would be a crime if they were an adult.[[30]](#footnote-31) During the pendency of juvenile delinquency cases, juveniles are either supervised by the New York City Department of Probation (DOP) or detained in facilities overseen by the Division of Youth and Family Justice (DYFJ).[[31]](#footnote-32) Adjudicated youth who receive a disposition of placement in a secure setting are placed in facilities overseen by the New York State Office of Children and Family Services (OCFS).[[32]](#footnote-33)

The DYFJ is the primary entity responsible for coordinating the City’s youth detention services and overseeing youth remanded to the City’s juvenile justice system. The DYFJ provides a wide range of services and programs for youth at every stage of the juvenile justice process, with the goals of building stronger communities; preventing juveniles from entering the juvenile justice system; providing services to youth in custodial care; and helping juveniles develop the tools to prosper once they leave the system.[[33]](#footnote-34) Juveniles over seven, but under 18 years of age who are detained in DYFJ facilities include alleged juvenile delinquents and offenders whose cases are pending before the courts, and those whose cases have been adjudicated and are awaiting transfer to New York City or New York State placement facilities.[[34]](#footnote-35) The total number of admissions to New York City detention facilities in Fiscal Year 2020 was 1,442, a slight decrease from the prior year (1,449).[[35]](#footnote-36) Notably, from Fiscal Year 2019 to Fiscal Year 2020, after years of decline, there were significant increases in the average daily population in detention (from 71 to 129 youth) and average length of stay (from 17 to 29 days).[[36]](#footnote-37) Lastly, the recidivism rates have remained around 57 percent for Fiscal Year 2018 to Fiscal Year 2020.[[37]](#footnote-38) The DYFJ manages two full-service secure detention facilities: Horizon Juvenile Center (“Horizon”), located in the Mott Haven section of the Bronx, and Crossroads Juvenile Center (“Crossroads”), located in Brownsville, Brooklyn.[[38]](#footnote-39) The DYFJ also operates two non-secure facilities and contracts with providers for non-secure facilities,[[39]](#footnote-40) limited-secure placement,[[40]](#footnote-41) and aftercare programs.[[41]](#footnote-42)

# **Education Services Provided to Detained, Placed, and Incarcerated Youth by DOE’s District 79**

 District 79 provides alternative educational services to students experiencing an interruption in their education, including juveniles, adolescents and young adults who are in the justice system.[[42]](#footnote-43) District 79 serves over 50,000 students annually, including those from six weeks old to 96 years old.[[43]](#footnote-44) According to DOE, District 79 helps students to:

* Stay on track to earn a high school or high school equivalency diploma;
* Build the skills to succeed in post-secondary opportunities; and
* Gain the social-emotional skills necessary to become confident and productive members of society.[[44]](#footnote-45)

## Services in DOC Facilities

Students who are 18 years old or older on Rikers Island can attend East River Academy, a New York City alternative school operated by District 79.[[45]](#footnote-46) Students are entitled to educational services if they:

* Are under 21 as of September 1st of that school year (or under 22 if the student gets special education services);
* Do not have a high school diploma or High School Equivalency (HSE) diploma; and
* Have been in jail, or expect to be in jail, for 10 or more days.

Students who are 18 years old or older and are entitled to educational services must “opt in” to get those services.[[46]](#footnote-47)

The academic programming at East River Academy is designed to support students with achieving a high school diploma or a high school equivalency diploma.[[47]](#footnote-48) East River Academy has a trimester grading system, so students receive credits based on their coursework during a trimester.[[48]](#footnote-49) If a student leaves East River Academy before the end of the trimester, they are supposed to be placed into classes that they were enrolled in at East River Academy at their transfer school. [[49]](#footnote-50)

## Services in DYFJ and some ACS Detention Facilities

Middle school and high school students in DYFJ detention and some juvenile placement facilities operated by ACS attend Passages Academy, a full-time educational program, consisting of schools on multiple sites that is operated by District 79.[[50]](#footnote-51) Students attending Passages Academy must be given grade-level work and be able to take citywide exams for promotion.[[51]](#footnote-52) High school students enrolled in Passages Academy are required to take State Regents exams.[[52]](#footnote-53)

Like East River Academy, Passages Academy operates on a trimester grading system, and if a student leaves Passages Academy before the end of the trimester, they should be placed into classes that they were enrolled in at Passages Academy at their transfer school. [[53]](#footnote-54)

## Services in OCFS and some ACS Detention Facilities

Middle school students and high school students in OCFS and some ACS juvenile facilities do not attend school at Passages Academy as they are temporarily “discharged” from the DOE.[[54]](#footnote-55) These students receive educational services at their placement facility, not DOE, so their earned credits are not automatically transferred to their DOE transcript.[[55]](#footnote-56) DOE school principals review credits granted by these facilities and decide what credit should be transferred.[[56]](#footnote-57) Notably, students in these facilities must be able to take any promotional tests and Regents exams, and such results are required to be transferred to the student’s DOE transcript. [[57]](#footnote-58)

# **Longstanding Use of Force Concerns**

## Use of Restraint Desks

In November 2016, DOC introduced restraint desks in Enhanced Supervised Housing (ESH) Level 1 for young adults (18 to 21 years-old) who have engaged in serious acts of violence.[[58]](#footnote-59) Young adults in ESH Level 1 have their ankles shackled to a desk during out-of-cell programming and school[[59]](#footnote-60) and attend school three hours per day[[60]](#footnote-61) while those in ESH Levels 2 and 3 have separate school sessions that do not involve the use of restraint desks.[[61]](#footnote-62) Since 2017, however, the number of young adults in ESH units with restraint desks declined significantly. As of October 2020, there were three young adults in ESH Level 1 units. This is down from August 2017, when there were 14 young adults in ESH units with restraint desks.[[62]](#footnote-63) Likewise, the amount of time young adults spend in ESH units with restraint desks declined since 2017. Young adults spent an average of 27 total days in ESH Level 1 in August 2019 compared to an average of 190 total days in August 2017.[[63]](#footnote-64) The decline in the use of ESH units with restraint desks led the Board to vote in November 2020 to discontinue the non-individualized use of restraints, including restraints desks, by April 2021.[[64]](#footnote-65)

## Disciplinary Issues

During the 2019-2020 school year, there were a total of 62 infractions meted out to young adults at DOE facilities controlled by DOC.[[65]](#footnote-66) Of those, about 74 percent were for grade two offenses, such as disrupting institutional services, fighting with an incarcerated individual causing no injury, and failure to follow facility rules.[[66]](#footnote-67) This number suggests a need for support services to address the behavioral needs of young adults. This is further underscored by the number of young adults who were prevented from attending education programming due to behavioral problems. Per DOC’s education report, 48 young adults were unable to attend educational programming during the 2019-2020 school year due to behavioral concern.[[67]](#footnote-68)

However, the behavioral challenges of young adults, which stem from the “uneven development between the frontal lobe and limbic system [that] underlies their impulsivity,”[[68]](#footnote-69) have been met with an increase in the use of force, including the use of chemical agent. According to the Tenth *Nunez* Report, the average use of force rates for young adults increased by 374 percent since 2016.[[69]](#footnote-70) During a November 2016 City Council hearing on education in jails, advocates charged that DOC used pepper spray in school areas far too liberally as a matter of first resort.[[70]](#footnote-71) These advocates also charged that the use of pepper spray disrupted school session and movement.[[71]](#footnote-72)

# **COVID-19 Pandemic’s Impact on Student Learning**

In response to the COVID-19 pandemic, schools were closed on March 16, 2020, and on March 23, 2020, DOE transitioned to full-time remote learning for all students, which allowed educators to deliver lessons virtually and students to complete assignments, projects, and exams online.[[72]](#footnote-73) To support students learning remotely, NYC public schools initially loaned 175,000 devices from school supplies to their students, and DOE Central also ordered 300,000 internet-enabled iPads to loan to public school students in need.[[73]](#footnote-74) However, the Mayor announced that only the first 25,000 iPads out of the 300,000 ordered would be distributed the week of March 23.[[74]](#footnote-75) The remaining iPads were to be delivered on a staggered basis with new shipments arriving from Apple each week and then sent to IBM for “staging,” which means connecting them to the internet, adding all necessary applications, and enabling content filtering, before being assigned to individual students.[[75]](#footnote-76) This process meant that the distribution of devices to students citywide took many weeks, leaving many students at a significant disadvantage and falling further behind their peers.[[76]](#footnote-77)

A lack of devices also impacted students in jails and juvenile detention facilities at the outset of the pandemic and well into May 2020, according to advocates who testified at a Council Education Committee hearing on May 27, 2020.[[77]](#footnote-78) Testimony from Brooklyn Defender Services indicated that students on Rikers Island went weeks without receiving any educational services whatsoever and had no ability to communicate with teachers or other educational staff to get support with their learning, having to rely on packets of paper worksheets instead.[[78]](#footnote-79) In October 2020, DOE responded to questions from the May Council hearing stating that students in juvenile facilities had been issued Chromebooks “to complete needed coursework.”[[79]](#footnote-80)

In that communication, DOE also reported other steps taken to assist students in juvenile facilities including: provided access to both teacher and counselor hotlines to support students with the work; built a secure website where students could only see authorized pages and established a system where assignments are posted on this website; and uploaded written feedback for students to a shared drive with ACS so that ACS providers could share the feedback with students.[[80]](#footnote-81) DOE also reported that they had been working with ACS since spring 2020 to identify which students are not completing work and to develop intervention plans most appropriate for those students.[[81]](#footnote-82) Additionally, DOE stated that they had collaborated with ACS to form a “school reopening committee” including school, district, and union representation, to plan for the fall semester.[[82]](#footnote-83) In addition to focusing on health and safety guidelines and protocols, the committee was “tasked with strengthening systems and structures to facilitate use of technology and high quality remote teaching and learning.”[[83]](#footnote-84)

Nevertheless, problems persisted for students in jails and juvenile detention facilities in terms of adequate access to instruction. Even when devices are available, access to technology for detained youth is dependent on behavior as devices can be taken away as punishment.[[84]](#footnote-85) When that happens, they are assigned lessons in paper packets according to ACS.[[85]](#footnote-86)

Further, while students in detention facilities with access to devices were finally able to see and hear their teachers beginning in September, students could not be seen or heard by their teachers, as they were kept off camera and on mute during remote learning.[[86]](#footnote-87) Instead, they could only communicate with their instructors via text chat.[[87]](#footnote-88) This was reportedly due to ACS concerns about safety and confidentiality issues raised by using two-way video connections.[[88]](#footnote-89) According to a Passages Academy teacher, officials “were concerned that the kids identities could get out or the kids might be able to use one of the platforms to reach the outside and communicate.”[[89]](#footnote-90)

In December 2020, after highlighting concerns that students may use online voice and video technology to communicate with people other than teachers or counselors, ACS and DOE said they were working together to test new ways to bring audio and possibly even video communication to students.[[90]](#footnote-91) A DOE spokesperson said they were “working quickly to add video and audio capabilities” for the students, but no timetable for the secure communication rollout was provided and any changes would need to be approved by the state, according to DOE.[[91]](#footnote-92)

Due to increases in COVID-19 transmission, DOE temporarily closed all school buildings citywide on November 19, 2020 and again transitioned to full remote learning.[[92]](#footnote-93) The closure also affected juvenile facilities, with detainees receiving “packets of information” in place of teaching at those facilities and Rikers.[[93]](#footnote-94) DOE anticipated that remote video classes for detainees would resume when high schools reopened for in-person learning and were working to add video and audio capabilities for students at the same time.[[94]](#footnote-95) New York City high schools reopened on March 22, 2020 for the first time since November,[[95]](#footnote-96) but there has been no update on the status of education programs in juvenile detention facilities.

# **Conclusion**

At today's hearing, the Committees would like to learn more about educational programming provided in jails in juvenile detention. The Committees want details regarding the impact efforts to maintain safety has on educational programming and the steps taken to address education disparities caused by COVID-19. The Committees also look forward to hearing testimony regarding the legislation being considered.

# **Bill Analysis**

## Introduction No. 1224

**A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education, the administration for children's services and the department of correction to report on educational programming for juvenile delinquents, juvenile offenders and adolescent offenders**

The proposed legislation would require DOE, ACS, and DOC to issue annual reports on educational programming for juvenile delinquents, juvenile offenders and adolescent offenders and to post these reports on their respective websites. This reporting would include statistics on educational programming enrollment, available services, rates of violence for such delinquents and offenders, and other related indicators. This reporting would cover adolescent individuals phased out of Rikers Island, the City’s main jail complex. This concern is relevant, since Governor Andrew Cuomo signed legislation in April of 2017 that raises the age of criminal responsibility in the State to 18 years of age and accordingly aims to provide young people with age-appropriate facilities (“Raise the Age Law”), like those operated by ACS and DOC. The proposed legislation would take effect immediately.

*(page left intentionally blank)*

Int. No. 1224

By Council Members Dromm, Cumbo and Ampry-Samuel

..Title

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the department of education, the administration for children’s services and the department of correction to report on educational programming for juvenile delinquents, juvenile offenders and adolescent offenders

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§ 21-919 Education report for juvenile delinquents, juvenile offenders and adolescent offenders. a. Definitions. For the purposes of this section, the following terms have the following meanings:

ACS division. The term “ACS division” means the ACS division of youth and family justice.

Adolescent offender. The term “adolescent offender” means any individual who is charged pursuant to the criminal procedure law as an adolescent offender, as such term is defined in subdivision 44 of section 1.20 of the criminal procedure law, and who is in custody.

Assault. The term “assault” means any action taken with intent to cause physical injury to another person.

Compulsory educational programming. The term “compulsory educational programming” means educational programming required pursuant to part 1 of article 65 of title 4 of the education law.

Custody. The term “custody” means the holding of an individual by the ACS division or the department of correction through detainment, placement or sentencing.

Department of education site. The term “department of education site” means any site (i) that is operated by the department of education that offers educational programming to individuals aged 21 years or younger who are in custody pursuant to a court order on a juvenile delinquency, juvenile offender or adolescent offender matter and (ii) that is located on property that is either under the control of the department of education, ACS or the department of correction or that is subcontracted by the department of education, ACS or the department of correction.

Department of education staff. The term “department of education staff” means any employee of the department of education assigned to work at a department of education site.

Detainment. The term “detainment” means the remand of a juvenile delinquent in the custody of the ACS division, the remand or holding on bail of a juvenile offender in the custody of the ACS division or the remand or holding on bail of an adolescent offender in the custody of the ACS division or the department of correction.

Educational programming. The term “educational programming” means any educational services that the department of education offers to juvenile delinquents, juvenile offenders and adolescent offenders in custody.

High school equivalency diploma test. The term “high school equivalency diplomacy test” means any test that the New York state education department offers for the purpose of establishing the equivalent of a high school diploma, including but not limited to a general education development test or the test assessing secondary completion.

Individualized education program. The term “individualized education program” has the same meaning as is set forth in paragraph (1) of subsection (d) of section 1414 of title 20 of the United States code and any regulations promulgated thereto.

Juvenile delinquent. The term “juvenile delinquent” means any individual in the custody of the ACS division who is charged pursuant to the family court act as a juvenile delinquent, as such term is defined in subdivision 1 of section 301.2 of the family court act.

Juvenile offender. The term “juvenile offender” means any individual in the custody of the ACS division who is charged pursuant to the criminal procedure law as a juvenile offender, as such term is defined in subdivision 42 of section 1.20 of the criminal procedure law.

Placement. The term “placement” means the court ordering of any juvenile delinquent to a placement pursuant to section 353.3 of the family court act.

Sentencing. The term “sentencing” means the conviction of any adolescent offender resulting in a period of incarceration not greater than one year, pursuant to section 70.20 of the penal law.

b. The department of education, ACS and the department of correction shall each produce an annual report on educational programming for juvenile delinquents, juvenile offenders and adolescent offenders in ACS division or department of correction facilities who have been detained, placed or sentenced. No later than 90 days after the final day of the 2018-2019 school year and no later than 90 days after each subsequent school year, the department of education, ACS and the department of correction shall post the reports on their respective websites and provide links in each such report to the reports of the other two agencies.

c. The department of education report shall include, but need not be limited to, the following information, provided that no information shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of information respecting juvenile delinquents, juvenile offenders or adolescent offenders or that would interfere with law enforcement investigations or otherwise conflict with the interests of law enforcement. If a category contains between 1 and 5 such delinquents or offenders, or allows another category to be narrowed to between 1 and 5 such delinquents or offenders, the number shall be replaced with a symbol. The report shall include data about juvenile delinquents, juvenile offenders and adolescent offenders, in total and disaggregated by category.

1. The number and percentage of juvenile delinquents, juvenile offenders and adolescent offenders enrolled in educational programming at department of education sites. Such number and percentage shall be reported for each month. Such percentage shall be calculated on the final day of each month by dividing the number of juvenile delinquents, juvenile offenders and adolescent offenders enrolled in educational programming by the respective number of juvenile delinquents, juvenile offenders and adolescent offenders in custody on such date.

2. The number of hours of compulsory educational programming offered to juvenile delinquents, juvenile offenders and adolescent offenders on each school day and the curriculum subject areas included in educational programming.

3. The number of juvenile delinquents, juvenile offenders and adolescent offenders whose educational programming is designed for the regents diploma and the number of juvenile delinquents, juvenile offenders and adolescent offenders whose educational programming is designed for a high school equivalency diploma test.

4. The number of juvenile delinquents, juvenile offenders and adolescent offenders who completed elementary school program requirements for matriculation to middle school while in custody.

5. The number of juvenile delinquents, juvenile offenders and adolescent offenders who completed middle school program requirements for matriculation to high school while in custody.

6. The number of juvenile delinquents, juvenile offenders and adolescent offenders who graduated from high school while in custody.

7. The number of juvenile delinquents, juvenile offenders and adolescent offenders to whom a high school equivalency diploma test was administered while in custody.

8. The number of juvenile delinquents, juvenile offenders and adolescent offenders who passed a high school equivalency diploma test while in custody.

9. The average functional level of juvenile delinquents, juvenile offenders and adolescent offenders on tests such as the STAR assessment, the test of basic adult education or similar testing. The average functional level may be calculated by adding the percentage results achieved by juvenile delinquents, juvenile offenders and adolescent offenders on the last such test administered each school year and dividing this sum by the respective number of juvenile delinquents, juvenile offenders and adolescent offenders to whom such last test was administered. This data about juvenile delinquents, juvenile offenders and adolescent offenders shall be disaggregated by category and not reported in total.

10. The number and percentage of juvenile delinquents, juvenile offenders and adolescent offenders who are enrolled in educational programming and have individualized education programs. Such number and percentage shall be reported for each month. Such percentage shall be calculated by dividing the number of juvenile delinquents, juvenile offenders and adolescent offenders so enrolled on the final day of each month by the respective number of juvenile delinquents, juvenile offenders and adolescent offenders in custody on such date.

11. The number of juvenile delinquents, juvenile offenders and adolescent offenders who have individualized education programs and are receiving the full range of special education services indicated in their individualized education programs. This information shall be further disaggregated by whether such juvenile delinquents, juvenile offenders and adolescent offenders have been detained, placed or sentenced.

12. The number and percentage of juvenile delinquents, juvenile offenders and adolescent offenders enrolled in educational programming whom the department of education identifies as having an English language learner status. Such number and percentage shall be reported for each month. Such percentage shall be calculated by dividing the number of juvenile delinquents, juvenile offenders and adolescent offenders so enrolled on the final day of each month by the respective number of juvenile delinquents, juvenile offenders and adolescent offenders in custody on such date.

13. The number of full-time equivalent teachers working at department of education sites, in total and disaggregated by general education teachers and special education teachers assigned to teach juvenile delinquents, juvenile offenders and adolescent offenders.

14. The number of department of education staff other than teachers assigned to work at department of education sites, in total and disaggregated by staff role and by those working with juvenile delinquents, juvenile offenders and adolescent offenders.

15. The average class size for educational programming that the department of education provides to juvenile delinquents, juvenile offenders and adolescent offenders. This information shall be further disaggregated by facility location.

16. The number of juvenile delinquents, juvenile offenders and adolescent offenders participating in department of education vocational training, the nature of such training, including whether it constitutes career and technical education, and the number of juvenile delinquents, juvenile offenders and adolescent offenders who complete such training.

17. The average and median number of credits that juvenile delinquents, juvenile offenders and adolescent offenders enrolled in high school educational programming accumulate while in custody. This paragraph only applies to those juvenile delinquents, juvenile offenders and adolescent offenders who are in custody for a sufficient period during the reporting period to have earned credits.

18. The number of juvenile delinquents, juvenile offenders and adolescent offenders enrolled in physical education.

19. The average and median rate of attendance in a department of education school for juvenile delinquents, juvenile offenders and adolescent offenders upon six months after their release from custody and upon one year post-release.

20. The plans, if any, of the department of education to ensure the educational progress of juvenile delinquents, juvenile offenders and adolescent offenders released from custody.

d. The ACS and department of correction reports shall include, but need not be limited to, the following information, provided that no information shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of information respecting juvenile delinquents, juvenile offenders or adolescent offenders or that would interfere with law enforcement investigations or otherwise conflict with the interests of law enforcement. If a category contains between 1 and 5 such delinquents or offenders, or allows another category to be narrowed to between 1 and 5 such delinquents or offenders, the number shall be replaced with a symbol. The reports shall provide data about juvenile delinquents, juvenile offenders and adolescent offenders, in total and disaggregated by category.

1. The number of juvenile delinquents, juvenile offenders and adolescent offenders that ACS or the department of correction prevented from attending educational programming because of a behavioral issue or assault.

2. The number of incidents of use of physical restraints at a department of education site, in total and disaggregated by whether such physical restraints were used on a juvenile delinquent, juvenile offender or adolescent offender.

3. The number of incidents of use of mechanical restraints at a department of education site, in total and disaggregated by whether such mechanical restraints were used on a juvenile delinquent, juvenile offender or adolescent offender.

4. The number of incidents of use of chemical restraints, including pepper spray and other chemical agents, at a department of education site, in total and disaggregated by whether such chemical restraints were used on a juvenile delinquent, juvenile offender or adolescent offender.

5. The number of juvenile delinquents, juvenile offenders and adolescent offenders who participate in educational programming while placed in mechanical restraints, including but not limited to restraint desks or shackles, and the number of days each such juvenile delinquent, juvenile offender or adolescent offender is so restrained.

§ 2.This local law takes effect immediately.

JJ/JJ

LS #11442/Int. 1762-2017

LS #5993 03/29/2018 4:43PM

1. “Every Student Succeeds Act (ESSA).” U.S. Department of Education, [www.ed.gov/essa?src=rn](http://www.ed.gov/essa?src=rn). [↑](#footnote-ref-2)
2. 20 U.S.C.A. Ch, 70, subch. I, Pt. D. [↑](#footnote-ref-3)
3. “What the Every Students Succeeds Act Means for Youth in and Returning from the Juvenile Justice System” (Jan 2016), *available at* <http://www.jlc.org/sites/default/files/ESSAJJ_Factsheet_FinalWebinarVersion_Jan262016.pdf>. [↑](#footnote-ref-4)
4. 20 U.S.C.A. § 6455. [↑](#footnote-ref-5)
5. “Title I, Part D - Neglected & Delinquent Education.” New York State Education Department, [www.nysed.gov/essa/title-i-part-d-neglected-and-delinquent-education](http://www.nysed.gov/essa/title-i-part-d-neglected-and-delinquent-education). [↑](#footnote-ref-6)
6. 20 U.S.C.A. § [↑](#footnote-ref-7)
7. 34 U.S.C.A. § 11133(a)(32). [↑](#footnote-ref-8)
8. “New York.” Office of Juvenile Justice and Delinquency Prevention, <https://ojjdp.ojp.gov/states/new-york#sncxcl>. [↑](#footnote-ref-9)
9. “Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities.” U.S. Department of Education, Office of Special Education and Rehabilitative Services, 5 Dec. 2014, <https://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>. [↑](#footnote-ref-10)
10. 20 U.S.C. §§ 1400–1482 (2000). [↑](#footnote-ref-11)
11. *Id.* [↑](#footnote-ref-12)
12. “Dear Colleague Letter on the Civil Rights of Students in Juvenile Justice Residential Facilities.” U.S. Department of Education, The U.S. Department of Education, Office for Civil Rights and the U.S. Department of Justice, Civil Rights Division, 8 Dec. 2014, <https://www2.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf>. [↑](#footnote-ref-13)
13. 42 U.S.C. §§ 2000d–2000d-7. [↑](#footnote-ref-14)
14. 20 U.S.C. §§ 1681 – 1688. [↑](#footnote-ref-15)
15. 29 U.S.C. § 794; 42 U.S.C. §§ 12131 –12134. [↑](#footnote-ref-16)
16. New York State Ed Law section 3202(7)(b). [↑](#footnote-ref-17)
17. New York State Education Department, “Incarcerated Youth Placements,” accessed at: <http://www.oms.nysed.gov/stac/schoolage/schoolage_placement_summary/incarcerated_youth/home.html#:~:text=Under%20Section%203202.7%20of%20the,eligible%20to%20receive%20educational%20services.&text=This%20district%20can%20apply%20to,aid%20in%20educating%20these%20students>. [↑](#footnote-ref-18)
18. 8 CRR-NY 118.4. [↑](#footnote-ref-19)
19. *Id.* [↑](#footnote-ref-20)
20. New York City Department of Education, Regulation of the Chancellor A-210, “Standards for Attendance Programs,” September 28, 2017, accessed at <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-210-english>. [↑](#footnote-ref-21)
21. *Id.* [↑](#footnote-ref-22)
22. New York City Mayor’s Office of Criminal Justice, Raise the Age in New York City Report (Oct. 2019), p. 4, available at <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City__.pdf>. [↑](#footnote-ref-23)
23. *Id.* [↑](#footnote-ref-24)
24. *Id.* [↑](#footnote-ref-25)
25. Steve J. Martin et. al, Tenth Report of the Nunez Independent Monitor (Oct. 2020), p. 222, available at <https://www1.nyc.gov/assets/doc/downloads/pdf/10thMonitorsReport102320AsFiled.pdf>. [↑](#footnote-ref-26)
26. *Id.* at p. 229*.* [↑](#footnote-ref-27)
27. *Id.* [↑](#footnote-ref-28)
28. *Id.* [↑](#footnote-ref-29)
29. N.Y. Fam. Ct. Act §115(a)(vi). [↑](#footnote-ref-30)
30. N.Y. Fam. Ct. Act §301.2(1). [↑](#footnote-ref-31)
31. DOP plays a significant role in New York City’s juvenile justice system. After the initial arrest, DOP interviews the youth and other stakeholders to determine whether the case should be dismissed, adjusted (diverted from court) or referred to the Law Department for prosecution in the Family Court. *See* Mayor’s Office of Criminal Justice, October 2019 Report “Raise the Age in New York City,” available at: <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City__.pdf>. [↑](#footnote-ref-32)
32. N.Y. Fam. Ct. Act §353.3. [↑](#footnote-ref-33)
33. New York City’s (NYC) Administration for Children’s Services. *Mission and Organization: ACS Divisions*. Available at <https://www1.nyc.gov/site/acs/about/acs-divisions.page#14>. [↑](#footnote-ref-34)
34. *See* N.Y. Exec. Law §502(3). [↑](#footnote-ref-35)
35. Fiscal 2020 Mayor’s Management Report, available at <https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/acs.pdf>. [↑](#footnote-ref-36)
36. *Id.* [↑](#footnote-ref-37)
37. *Id.* [↑](#footnote-ref-38)
38. NYC Administration for Children’s Services. *Juvenile Justice, Secure Detention*. Available at <http://www1.nyc.gov/site/acs/justice/secure-detention.page>. [↑](#footnote-ref-39)
39. NYC Administration for Children’s Services. *Juvenile Justice, Non-Secure Detention*. Available at <https://www1.nyc.gov/site/acs/justice/non-secure-detention.page>. [↑](#footnote-ref-40)
40. NYC Administration for Children’s Services. *Juvenile Justice, Limited Secure Detention*. Available at <https://www1.nyc.gov/site/acs/justice/limited-secure-placement.page>. [↑](#footnote-ref-41)
41. NYC Administration for Children’s Services. *Juvenile Justice, Alternatives*. Available at <https://www1.nyc.gov/site/acs/justice/alternatives.page>. [↑](#footnote-ref-42)
42. DOE website, “District 79” accessedat: <https://infohub.nyced.org/in-our-schools/programs/district-79> (last visited Apr. 15, 2021). [↑](#footnote-ref-43)
43. “District 79” accessed at: <https://sites.google.com/d-79.com/nyc-doe-district-79/home>. [↑](#footnote-ref-44)
44. DOE website, “District 79” accessedat: <https://infohub.nyced.org/in-our-schools/programs/district-79> (last visited Apr. 15, 2021). [↑](#footnote-ref-45)
45. “About East River Academy,” accessed at: <https://sites.google.com/d-79.com/east-river-academy-home/home> (last visited Apr. 15, 2021). [↑](#footnote-ref-46)
46. *Id.* [↑](#footnote-ref-47)
47. *Id.* [↑](#footnote-ref-48)
48. *Id.* [↑](#footnote-ref-49)
49. Advocates for Children, “Court-Involved Students,” (2019), accessed at: <https://www.advocatesforchildren.org/sites/default/files/library/court_involved_youth_guide.pdf?pt=1>. [↑](#footnote-ref-50)
50. Passages Academy, accessed at: <http://passagesacademy.org/?p=5972> . [↑](#footnote-ref-51)
51. Advocates for Children, “Court-Involved Students,” (2019), accessed at: <https://www.advocatesforchildren.org/sites/default/files/library/court_involved_youth_guide.pdf?pt=1>. [↑](#footnote-ref-52)
52. *Id.* [↑](#footnote-ref-53)
53. *Id.* [↑](#footnote-ref-54)
54. *Id.* [↑](#footnote-ref-55)
55. *Id.* [↑](#footnote-ref-56)
56. *Id.* [↑](#footnote-ref-57)
57. *Id.* [↑](#footnote-ref-58)
58. New York City Board of Correction, Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities (2021), p. 43, at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/2021.03.05-Proposed-Rule.pdf>. [↑](#footnote-ref-59)
59. *Id.* [↑](#footnote-ref-60)
60. Steve J. Martin et. al, Tenth Report of the Nunez Independent Monitor (Oct. 2020), p. 256, available at <https://www1.nyc.gov/assets/doc/downloads/pdf/10thMonitorsReport102320AsFiled.pdf>. [↑](#footnote-ref-61)
61. New York City Board of Correction, Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities (2021), p. 44, at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2021-Restrictive-Housing/2021.03.05-Proposed-Rule.pdf>. [↑](#footnote-ref-62)
62. *Id.* [↑](#footnote-ref-63)
63. *Id.* [↑](#footnote-ref-64)
64. *Id.* [↑](#footnote-ref-65)
65. New York City Department of Correction, Annual Report on Incidents related to Adolescents and Young Adults located within Department of Education Sites (2020), available at <https://www1.nyc.gov/assets/doc/downloads/pdf/Annual_2020_Education_Report.pdf> [↑](#footnote-ref-66)
66. *Id.* [↑](#footnote-ref-67)
67. *Id.* [↑](#footnote-ref-68)
68. Steve J. Martin et. al, Tenth Report of the Nunez Independent Monitor (Oct. 2020), p. 33, available at <https://www1.nyc.gov/assets/doc/downloads/pdf/10thMonitorsReport102320AsFiled.pdf> [↑](#footnote-ref-69)
69. *Id.* [↑](#footnote-ref-70)
70. See, Testimony of The United Federation of Teachers before New York City Council Committees on Education, Fire and Criminal Justice Services, and Juvenile Justice on Educational Services for New York City’s Detained, Placed, and Incarcerated Youth, Adolescents, and Young Adults (Nov. 30, 2016), pp. 21-26, at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2864769&GUID=CDFD5A0E-E41D-4DFD-809E-3990064BE692&Options=Advanced&Search=>; Testimony of Brooklyn Defender Services before New York City Council Committees on Education, Fire and Criminal Justice Services, and Juvenile Justice on Educational Services for New York City’s Detained, Placed, and Incarcerated Youth, Adolescents, and Young Adults (Nov. 30, 2016), pp. 33-39, at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2864769&GUID=CDFD5A0E-E41D-4DFD-809E-3990064BE692&Options=Advanced&Search=> [↑](#footnote-ref-71)
71. *Id.* [↑](#footnote-ref-72)
72. Office of the Mayor press release, “New York City to Close All School Buildings and Transition to Remote Learning,” March 15, 2020, accessed at https://www1.nyc.gov/office-of-the-mayor/news/151-20/new-york-city-close-all-school-buildings-transition-remote-learning. [↑](#footnote-ref-73)
73. Annalise Knudson, “240K devices for remote learning will be distributed to NYC students by end of April,” *SILive.com*, Apr 14, 2020, accessed at <https://www.silive.com/coronavirus/2020/04/240k-devices-for-remote-learning-will-be-distributed-to-nyc-students-by-end-of-april.html>. [↑](#footnote-ref-74)
74. Office of the Mayor press release, “New York City to Close All School Buildings and Transition to Remote Learning,” March 15, 2020, accessed at https://www1.nyc.gov/office-of-the-mayor/news/151-20/new-york-city-close-all-school-buildings-transition-remote-learning. [↑](#footnote-ref-75)
75. Annalise Knudson, “240K devices for remote learning will be distributed to NYC students by end of April,” *SILive.com*, Apr 14, 2020, accessed at <https://www.silive.com/coronavirus/2020/04/240k-devices-for-remote-learning-will-be-distributed-to-nyc-students-by-end-of-april.html>. [↑](#footnote-ref-76)
76. Zimmerman, A. and Gould, J., “5 weeks into online learning, NYC is still racing to get thousands of devices to students,” *Chalkbeat*, Apr 25, 2020, accessed at <https://ny.chalkbeat.org/2020/4/25/21236279/students-lack-devices-nyc-schools-coronavirus>. [↑](#footnote-ref-77)
77. See testimony of Anna Arkin-Gallagher, Brooklyn Defender Services, May 27, 2020, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4541193&GUID=D0AAD374-FA76-4C9C-BD7E-E509B6453156&Options=Advanced&Search>. [↑](#footnote-ref-78)
78. *Id.* [↑](#footnote-ref-79)
79. DOE, “Remote Learning Hearing Follow-Up,” 10/16//2020, on file with Education Committee staff. [↑](#footnote-ref-80)
80. *Id.* [↑](#footnote-ref-81)
81. *Id.* [↑](#footnote-ref-82)
82. *Id.* [↑](#footnote-ref-83)
83. *Id.* [↑](#footnote-ref-84)
84. Eileen Grench, “Stuck on Mute: Kids in Juvenile Lockups Can’t Be Seen or Heard by Teachers During Remote Learning,” *The City*, Nov 19, 2020, accessed at <https://www.thecity.nyc/2020/11/19/21578814/kids-in-juvenile-lockups-cant-be-seen-or-heard-by-teachers-during-remote-learning>. [↑](#footnote-ref-85)
85. *Id.* [↑](#footnote-ref-86)
86. *Id.* [↑](#footnote-ref-87)
87. *Id.* [↑](#footnote-ref-88)
88. *Id.* [↑](#footnote-ref-89)
89. *Id.* [↑](#footnote-ref-90)
90. Eileen Grench, “City Moves to Take Students Off Mute in Juvenile Lockups, But Due Date Elusive,” *The City*, Dec 10, 2020, accessed at <https://www.thecity.nyc/2020/12/10/22168850/juvenile-lockups-to-be-unmuted-but-due-date-remains-elusive>. [↑](#footnote-ref-91)
91. *Id.* [↑](#footnote-ref-92)
92. NYC Department of Education, “November 18, 2020: System-wide Building Closure - Update for Families,” accessed at <https://www.schools.nyc.gov/about-us/news/chancellor-s-message-for-families>. [↑](#footnote-ref-93)
93. Rosa Goldensohn, “Students on Rikers Island Locked Out of Remote Learning Video Chat With Teachers,” *The City*, Dec 16, 2020, accessed at <https://www.thecity.nyc/education/2020/12/16/22179869/students-on-rikers-island-locked-out-of-remote-learning-video>. [↑](#footnote-ref-94)
94. *Id.* [↑](#footnote-ref-95)
95. Erin Durkin, “New York City high schools reopen,” *Politico*, 03/22/2021, accessed at <https://www.politico.com/news/2021/03/22/new-york-city-high-schools-reopen-477569>. [↑](#footnote-ref-96)