

**Testimony of NYC Department of Education
on Educational Programming in Jails and Juvenile Detention**
April 21, 2021

Introduction

Good morning Chairs Treyger, Powers, and Levin, and all the Members of the Committees on Education, Criminal Justice, and General Welfare here today. My name is Dr. Tim Lisante, Executive Superintendent of ACCESS Schools, which includes District 79 (D79), the district for alternative schools and programs at the New York City Department of Education (DOE). I am joined by Robert Zweig, Superintendent for D79, and Nick Marinacci, Deputy Superintendent for Alternative Schools as well as other colleagues from the Administration for Children’s Services (ACS) and the Department of Corrections (DOC). We are pleased to be here today to discuss our work to provide educational programming to detained and incarcerated youth and young adults.

One of D79’s central missions is to provide high-quality educational programs in residential and correctional facilities serving New York City students. To this end, D79 operates two schools: Passages Academy, in partnership with ACS; and East River Academy (ERA), in collaboration with DOC. Providing education to these students is both a legal and moral obligation that we continue to invest in and work hard to improve. While the COVID pandemic has posed several operational challenges, we have worked closely with both ACS and DOC to provide students with instruction and support during this challenging time.

The DOE provides placed and detained students with access to the same courses and many similar extracurricular activities as their peers in traditional schools. We assign certified teachers, principals, assistant principals, guidance counselors, social workers, and psychologists to provide academic and social-emotional support to young people and adults in detention and secure environments. Curriculum is all standards-based and aligned to each student’s educational pathway. Class sizes are small and personalized as part of our continued efforts toward knowing students well so that we may better meet students’ individualized academic and social-emotional needs.

At both DOC and ACS facilities, we provide robust supports for our students. At Passages Academy, we have 20 student-support staff for 175 students, which is about a 9-to-1 ratio of students to support staff; and at ERA, we have 14 staff dedicated to student support and transition for 233 students, for a ratio of 16-to-1.

To ensure our students are prepared for and supported upon their exit from detention, we employ transition counselors, whose primary responsibilities center on supporting young people and adults when they are released. Additionally, we partner with other community-based organizations such as GOSO (Getting Out Staying Out), Friends of Island Academy, and Future Now, located on the campus of Bronx Community College. We also assign DOE staff to support youth and adults with education and counseling when they return to their communities. Unlike other jurisdictions in New York State, both of these programs remain a part of the New York City school system and provide students with the automatic right

to return to their home school upon release. The true benefit of our structure at D79 is that it encompasses both these programs as well as our transfer high schools, consortium, and international schools. This means that when students transition out of Passages Academy or ERA, they can remain within the same school district that already knows them.

From day one of this pandemic, we committed to supporting our students in detention as they continue their education. Both during the pandemic and in general, our overarching challenge is how to most effectively balance safety and security requirements with providing a high quality education in these settings. Our commitment remains to provide each student with the personalized learning experiences and support systems they need to achieve success in school and beyond.

Let me provide more detail about Passages Academy and then East River Academy:

ACS – Passages Academy

Passages Academy is a multi-site school that provides middle and high school academic instruction and supports for students who were arrested for crimes they were alleged to have committed prior to turning age 18 and who were ordered to be detained pending trial or placed in a residential setting following trial. Students receive instruction from certified New York State teachers at a facility or attend a Passages Academy site, depending on their court-ordered setting in detention or Close to Home. This school year, Passages has 175 enrolled students across the seven Passages sites.

All Passages Academy sites provide a full day of classes using a trimester system.

Passages Academy provides licensed subject area and special education teachers, counselors, and school leaders to meet the educational needs of these students. It has 82 teachers serving the 175 students, ensuring a highly personalized educational experience for students. The coursework, as at any high school in the City, is aligned to State instructional standards, provides college-ready supports, and follows the New York State high school graduation requirements. Teachers are held to the same standards as their colleagues in district schools.

Our results during this administration demonstrates the real commitment we made to this program and these students. Over the last eight years, the middle school promotion rate at Passages Academy has increased by 36 percent. Because of the small class sizes and individual attention we are able to provide, the course pass rate in the three years pre-pandemic was over 80 percent for all students, including students with disabilities and English Language Learners. On average, students earned nearly 6 credits during their time at Passages, even though the median length of enrollment was just 35 school days.

We have redoubled our efforts throughout the pandemic, working closely with our partners at ACS to deliver meaningful education to our students despite the many challenges caused by this health crisis. Last summer and fall we formed a school reopening committee comprised of district and school leaders, ACS, and our union partners to proactively address the barriers posed by the pandemic and this unique population of students.

Understanding the need for our students to connect to remote learning, we collaborated with ACS to distribute Chromebooks to all our Passages students so that they would have access to technology for instructional purposes. At the same time, we restructured our curriculum to make it more digitally accessible. We have been pleased to implement blended learning for youth in ACS’s care, just as students citywide have also been able to participate in blended learning. We are hopeful that there will be further opportunities for in-person learning in the fall, as soon as it is safe to resume. We continue to meet with ACS regularly to monitor progress of our processes and student outcomes while troubleshooting any issues that arise.

Of course, families are key partners in this work. Like district schools, Passages has two full-time parent coordinators and one full-time family and community engagement liaison. We convene regular parent-teacher conferences to ensure communication with parents. With our students dealing with the hardships of the pandemic, family engagement during this time has been critical and we have continued to pursue strong communication efforts through educational planning meetings with parents and our partners at ACS.

Additionally, we offer significant guidance and services when it comes to transitioning our students out of Passages Academy when they leave. Transition specialists —typically social workers and counselors— develop transition plans with students while they are in Passages. Those include short-term goals, and, most importantly, immediate next steps after leaving Passages. The specialists engage with students and their families about the key decision to either return to their previous school or to transfer to a different one. These specialists continue to follow up with former Passages students for the first six months after their transition back into the community.

DOC – East River Academy

Now let’s turn to East River Academy (ERA), which is a program operated by DOE in partnership with DOC.

ERA is overseen by one principal and fully staffed by 65 certified NYS teachers and 59 other staff, including counselors, administrators, and support staff. ERA serves students being detained between the ages of 18 and 21 on Rikers Island. Educational services on Rikers Island are not mandatory for students because our young adults from ages 18 to 21 have discretion about attending school. Currently, ERA has enrolled 233 students. We are proud that the City provides far more than the three hours of educational instruction required in jails by State educational law.

In an effort to continually improve student outcomes, we collaborate with the DOC on a system that identifies the educational needs of each young person upon admission as part of their orientation, and to have their educational goals and needs factored into their housing placement. Much like Passages Academy, a small student to teacher ratio of six to one ensures a more personalized approach.

All students enrolled in ERA pursue either a high school or a high school equivalency pathway, depending on their age, accumulated credits, and preference. Students on a high school pathway take high school

courses and earn credits. Students on a high school equivalency pathway focus on preparing for the Test Assessing Secondary Completion (TASC) exam, which is required to earn a high school equivalency diploma in New York State.

Due to the health and safety concerns presented by the pandemic, we have unfortunately not been able to administer high school equivalency examinations. However, now that we have been able to transition to blended learning, starting next month we will be able to resume monthly testing for those who are eligible and interested.

Again, once the pandemic hit New York City, DOE convened with our agency and union partners to develop a plan that would address our goals of providing a high-quality education while ensuring that security and health and safety concerns are met. At the beginning of this school year, ERA started entirely with remote learning in light of health and safety issues. DOE partnered with DOC to provide paper packets, curated by our teachers in all core academic subjects, to students in their housing areas. Teachers then collected and reviewed them for feedback and further instruction on a bi-weekly basis. Students also had access to their teachers and counselors by phone through hotlines dedicated for this purpose.

In addition to the packets, DOC provided us with access to computer tablets that they provide to the population to supplement programming. Our teachers and students were able to use the tablets to upload educational content and video, carry out assignments, and interact about student questions. Now, we are happy to report that beginning April 5th, teachers and support staff are providing both onsite and remote learning services for ERA students at RNDC and RMSC.

ERA staff also engage in family support in a number of ways. The school holds parent-teacher conferences regularly, just as other DOE schools do. ERA also convenes a monthly parent support group at LaGuardia Community College, where parents of current and former students gather under the facilitation of a clinical social worker to help manage the complex issues connected to an incarcerated child. Students can also attend this support group with their families after they are released. Despite the many obstacles presented by the pandemic, we have continued our parent engagement efforts through Zoom meetings with parents and our family connection newsletters.

Similar to Passages, we also have ten transition specialists at ERA who work with the 233 students at ERA to help them plan well in advance for their next educational program. As mentioned earlier, because this program is part of the D79 network, students have the opportunity to access a seamless transition to a range of different educational programs while remaining part of a district that they are familiar with and has familiarity with them.

Looking Ahead

The pandemic provided us with an opportunity to learn new ways to engage with our students and reinforce our best practices when it comes to educational programming in residential and correctional facilities. As we did prior to the pandemic, we continue to work closely with our agency partners at ACS and DOC to ensure we are meeting the educational needs of our students. The past year showed us that

using technology within these spaces is a powerful tool, and we will continue to innovate and build on the lessons we are learning.

Like the rest of the educational system, we are looking forward to providing even more in-person instruction. And similarly, we are also planning on increased summer programming that includes not only academics, but also enrichment, SEL programs, and summer youth employment opportunities where possible.

Proposed Legislation

Let me briefly now turn to the proposed legislation. Intro No. 1224 amends local law related to reporting on educational programming for juvenile delinquents, juvenile offenders, and adolescent offenders. We support the goals of this bill and look forward to working with Council to ensure that the reporting requirements align with our current programming model and practices.

Conclusion

Throughout my career doing this work at the DOE, I have witnessed the marked improvements we have made to educational programming in jails and juvenile facilities. Our city has a unique, unified district dedicated not only to supporting the education of our students in detention but also designed to promote smoother and more thoughtful pathways to transitioning to high schools and continuing education upon reentry.

The pandemic has certainly created immense hardships for our students, their families, staff, and our educational processes. But despite those new challenges, our commitment to providing high quality education and supports to our students remains unwavering and we continue to work diligently with our agency partners towards those goals.

Thank you for holding this important hearing and we look forward to taking your questions.



Advocates for Children of New York

Protecting every child's right to learn

April 26, 2021

Honorable Mark Treyger, Chair
Committee on Education

Honorable Stephen Levin, Chair
Committee on General Welfare

Honorable Keith Powers, Chair
Committee on Criminal Justice

New York City Council
City Hall
New York, NY 10007

Re: Educational Programming in Jails and Juvenile Detention

Int. 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.

Dear Chairs Treyger, Levin, and Powers,

Advocates for Children of New York, Inc. ("AFC") appreciates the opportunity to provide written testimony to the New York City Council Committees on Education, General Welfare, and Criminal Justice related to the jointly held hearing on April 21, 2021 on *Educational Programming in Jails and Juvenile Detention* and the Committee on Education's hearing on Intro. No. 1224, a local law requiring the Department of Education ("DOE"), the Administration for Children's Services ("ACS"), and the Department of Correction ("DOC") to report on educational programming for juvenile delinquents, juvenile offenders, and adolescent offenders. AFC strongly supports Intro. No. 1224 to ensure transparency, monitoring, and accountability of education provided to children and youth in court-ordered settings.

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Our testimony focuses on ensuring that children and youth are provided high-quality education in court-ordered settings and upon their return to the community.

For nearly 50 years, Advocates for Children 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. We speak out for students whose needs are often overlooked, such as students involved in the juvenile or criminal justice system, students with disabilities, students with mental health needs, students from immigrant families, and students who are homeless or in foster care. AFC's School Justice Project provides education advocacy and legal representation for youth involved, or at risk of being involved, in the juvenile or criminal justice system. Our perspective comes from our daily contacts with children, youth, and their families, and also from our frequent interactions with defense providers, alternative to incarceration providers, and city agencies.

Court-involved youth are an extremely vulnerable population in New York City and nationally. Many court-involved youth have complex educational and mental health needs that have been inadequately addressed prior to their arrest. A disproportionate number of these students are over-age, under-credited, and reading and performing far below grade level. More than 65% of youth in juvenile detention and placement attending school at Passages Academy are students with disabilities who have Individual Education Programs ("IEPs") and about half of all youth in adult jails attending school at East River Academy are students with IEPs.

Young people in juvenile detention, juvenile placement, and adult jails desperately need intensive and targeted educational services and therapeutic interventions. Education in court-ordered settings is of paramount importance to ensure rehabilitative programming while in custody, as well as successful reintegration to the community upon release. Yet, we have heard numerous stories of students in juvenile justice facilities and incarcerated on Rikers Island who have had limited to no access to technology, teachers, and instruction in person or remotely during the pandemic. While the DOE has reported a number of improvements in juvenile justice facilities that give students better access to education, we understand that the DOC has continued to significantly limit young people's access to education on Rikers Island.

In order to ensure educational equity, effectively integrate children and youth in the juvenile and criminal legal systems into the community, and prevent recidivism, we make the following recommendations:



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1. Launch an All-Out Effort to Improve Literacy

Many students in the juvenile and criminal legal systems are much farther behind where they should be when it comes to basic academic skills, including reading, either because they have an unidentified learning disability or have not had access to high-quality literacy programs. It is critical that incarcerated students receive intensive instruction in literacy using research-based methodologies to gain the basic level of literacy required to do middle school, high school or high school equivalency level work, engage in vocational training, graduate from high school, and obtain employment.

The City should ensure the DOE uses evidence-based, culturally responsive reading curricula for core instruction when teaching students in Passages Academy and East River Academy. Passages Academy and East River Academy should have a menu of curricular options from which to choose and fund the purchase of the materials and training necessary for successful implementation to ensure every student receives explicit, systematic instruction in foundational literacy skills—phonemic awareness, phonics, fluency, vocabulary, and comprehension—as outlined in the report of the National Reading Panel.¹ There is a mountain of scientific evidence on how to teach students to read, but what happens in the classroom is often not in line with the science, so too many children and youth struggle to read. We recommend one-on-one or small group support for students in custody who need it.

The City should invest in literacy coaches to help DOE teachers working in Passages Academy and East River Academy improve their literacy instruction. The DOE should pair students struggling with reading with educators trained in evidence-based reading instruction. The DOE should match small groups of students in Passages and East River Academy who need help in reading with educators trained in effective interventions. Such support can be provided in-person or remotely to ensure that students can get support regardless of the staff available in their school.

2. Offer Intensive One-on-One or Small-Group Tutoring

The City should ensure students in Passages Academy and East River Academy get “high-dosage” one-on-one or small-group tutoring multiple times per week to ensure students get the individualized support they need to get back on track academically. Tutoring should be embedded into the school day for all students (for example, a period each day) and complement regular classroom instruction, with additional

¹ See <https://www.nichd.nih.gov/research/supported/nrp>.



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options offered before or after school, on weekends, and over the summer and other school breaks. Tutors should be trained in research-based approaches including how to work with students with disabilities, receive ongoing support, and work with a consistent cohort of students with whom they build relationships. All programming must include specialized support for students with disabilities, English Language Learners (“ELLs”), and all other students in the juvenile and criminal justice system who need it. Tutoring is a high-impact approach to learning acceleration, if done well and based on the research.²

3. Improve Special Education Services

Given that a large percentage of incarcerated youth are entitled to special education services, the City should focus more attention and resources on improving educational services, programs, and outcomes for students with disabilities in court-ordered settings. The City should develop a plan with benchmarks for improving the educational outcomes of students with disabilities, ensuring they receive the instruction and services to which they are entitled and ensuring families receive information about their rights and options. While the DOE creates Special Education Plans (“SEPs”) for students with disabilities who have IEPs, the DOE must still comply with the requirements of the IDEA. The City must ensure that the DOE has sufficient funding and resources to provide incarcerated students with disabilities appropriate special education services, delivered by certified special education teachers, that are individualized and enable students to make meaningful progress.

4. Provide Additional, Targeted Support for English Language Learners

Youth in juvenile justice facilities and adult jails who are ELLs need access to bilingual instruction with teachers certified in providing instruction to ELLs. Furthermore, the DOE should provide ELLs with additional, targeted support so they can start to make up for services denied during the pandemic. ELLs have a legal right to receive bilingual instruction or “English as a New Language” instruction, and it is likely that ELLs in custody have not received all the instruction to which they are entitled. Given the immense challenges ELLs face in participating meaningfully in remote learning and the lack of language support, the City’s educational recovery effort should include a

² See, e.g., https://studentsupportaccelerator.com/sites/default/files/Accelerator_Research_Agenda.pdf, <https://studentsupportaccelerator.com/tutoring>, <https://learningpolicyinstitute.org/blog/covid-getting-tutoring-right>, <http://resources.aasa.org/Accelerating-Learning-Tutoring-April-20-2021.pdf>, <https://www.nber.org/papers/w27476>, and <https://www.sagaeducation.org/blog/2021/3/8/saga-is-highly-effective>.



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targeted plan to provide ELLs in court-ordered settings with the instructional support they have missed during the pandemic.

5. Provide Compensatory Education for Missed Instruction

The DOE must provide make-up services to students with disabilities in juvenile justice facilities and adult jails who did not receive their legally mandated instruction and services during the pandemic so they can start to catch up. Under federal law, students with disabilities have the right to “compensatory services” to make up for any instruction and therapies they missed. The DOE needs to create a system for quickly determining and delivering compensatory educational services to all students with disabilities who did not receive the full amount of special education services to which they were entitled during the COVID-19 period, including students at Passages Academy and East River Academy. Given that youth with and without disabilities have had limited to no access to education in juvenile detention and placement and in adult jails, the DOE should provide all students in court-ordered settings with additional, targeted support so they can start to make up for instruction missed during the pandemic.

6. Offer Extended Eligibility for 21-Year-Old Students

We appreciate that the DOE is allowing most students who age out of school this school year but were unable to earn their diplomas or get needed transition services to return for the 2021-2022 school year. It is critical that the DOE and DOC provide the same opportunity to 21-year-old students in DOC custody in the 2021-2022 school year.

7. Improve Access to High School Equivalency Programs and TASC Testing

Since implementation of Raise the Age legislation, the average age of students at Passages Academy has risen. A number of these youth, including AFC's clients, have expressed interest in obtaining a high school equivalency diploma. AFC and other advocates have been discussing with the DOE opportunities to expand accessibility for young people to prepare for and take the TASC exam (high school equivalency exam) while in custody to keep them engaged in learning. We ask the City Council to help support such expansion so that youth can return to the community prepared to engage in higher education, vocational programs, or employment.



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8. Improve Access to Career and Technical Education, Vocational, and College Programs

Many youth and young adults with court involvement are interested in job training and employment opportunities. These young people need access to high-quality Career and Technical Education (“CTE”) and college programs that will provide them with practical skills relevant to the labor market. The DOE runs several very successful vocational programs in schools in the community, such as Co-op Tech, that provide students with marketable skills. However, these programs are not accessible to incarcerated students. We recommend that the DOE expand or replicate these programs in Passages Academy and look to other jurisdictions for models that offer incarcerated students CTE courses and college credits, individualized transition services provided by a Career Coach, and state-approved pre-apprenticeship programs in the trades upon release.³ Youth would benefit tremendously from this expanded programming and transition services, as they would gain marketable skills and access to higher education and college credits, post-release CTE, training, supports, and services.

The PEACE (Program, Education and Community Engagement) Center provides educational and workforce programs to young people on Rikers Island giving them the tools they need to help them get jobs upon release. However, many young people have reported that the DOC has failed to bring them to the PEACE Center to access these services. We ask the City Council to hold DOC accountable for transporting all young people to the PEACE Center and East River Academy who wish to take advantage of educational and employment programs while on Rikers Island.

9. Improve Reentry and Continued Engagement in School

School engagement is a crucial component of successful reentry programming. Yet, for too many youth, juvenile detention, juvenile placement, or incarceration is the place they become reengaged in school after a long period of disengagement. Sadly, disengagement from school is unsurprising. Research indicates that when behavioral and academic supports are not provided to youth in school and students face school suspension for their behavior, there is an increase in the likelihood that students—particularly Black and Latinx students and students with disabilities—will be held back a grade, not graduate, drop out of school, receive another suspension, and

³ See, e.g., Perkins Collaborative Resource Network, *The Juvenile Justice Reentry Education Program: Opening Doors to College and Careers through Career and Technical Education*, <https://cte.ed.gov/initiatives/juvenile-justice-reentry-education-program> (accessed on April 25, 2021).



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become involved in the juvenile or criminal justice system, thereby feeding the school-to-prison-pipeline.

Despite the efforts of DOE Transition Specialists assisting youth reentering the community from Passages Academy and East River Academy, court-involved youth are often inadequately supported—academically and emotionally—within the under-resourced schools they return to or enter for the first time. We see firsthand that formerly incarcerated students often attend schools that do not provide the academic and mental health support they need to be successful in school, often leading to their disengagement from school. Indeed, we have heard informally that the percentage of young people with a record of involvement in the juvenile justice system who graduate with a high school diploma is in the single digits. When compared with 78.8% of students in New York City's general population who received their high school diploma, this should be seen as nothing short of a crisis.

With passage of Intro. No. 1224, the DOE would be required to annually report school attendance rates of youth six months and one year after their release from ACS or DOC custody. The DOE would also be required to report on plans to ensure the educational progress of youth released from custody. Requiring this publicly reported information is critical to hold the DOE accountable for improving educational engagement and outcomes of court-involved youth.

10. Annually Report Graduation and Dropout Rates of Youth Who Attended Passages Academy and/or East River Academy At Any Time in Their Academic Career

We appreciate that Intro No. 1224 requires the DOE to report the number of juvenile delinquents, juvenile offenders, and adolescent offenders who graduated from high school while in custody. We recommend that the bill go further and also require the DOE to annually report the 4-year, 5-year and 6-year high school graduation and dropout rates for students who attended Passages Academy at *any* time in their educational history. The report should include disaggregated and cross-sectional data related to race, disability, gender, and ELL status.

Pursuant to New York City Administrative Code § 9-151, Local Law 168 of 2017, the DOE is required to annually report data related to educational programming provided at East River Academy to young people 18-21 years old incarcerated on Rikers Island and post the data on the DOE website. However, the DOE posted this data on the



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DOE website only for the 2017-2018 school year.⁴ We ask the City Council to monitor the DOE's reporting on this important information. Additionally, we recommend amending Local Law 168 of 2017 to require the DOE to annually report the 4-year, 5-year and 6-year high school graduation and dropout rates for students who attended East River Academy, as well as those who attended Passages Academy or East River Academy. at *any* time in their educational history. The report should include disaggregated and cross-sectional data related to race, disability, gender, and ELL status.

Thank you again for the opportunity to provide testimony on this important matter. We look forward to working with the City Council, city agencies, affected youth and families, and other stakeholders to ensure that youth involved in the juvenile or criminal justice system are fully supported while in custody and upon reentry to the community and can succeed in school and life.

Sincerely,

Dawn Yuster, Esq.
Director, School Justice Project

⁴ See <https://infohub.nyced.org/reports/government-reports/east-river-academy-reports>.

**The Bronx
Defenders**

**Redefining
public
defense**

**New York City Council
Committee on Education
Committee on Criminal Justice
Committee on General Welfare
Oversight - Educational Programming in Jails and Juvenile Detention**

April 21, 2021

**Written Testimony of The Bronx Defenders
By Crystal Baker-Burr**

Thank you Chairs Treyger, Powers, and Levin, and Members of the Committees. My name is Crystal Baker-Burr and I am the Education Attorney at The Bronx Defenders (“BxD”).¹ Thank you for the opportunity to testify today.

INTRODUCTION

Today, we share the experience of a student at Rikers Island who gave us permission to share his story. John’s story is important because it demonstrates many of the problems that young adults have experienced at Rikers over the last year. John, a student with a disability, has not had even one in-person or synchronous virtual class in over a year. He has been denied his right to an education.

¹ The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

John's experience illustrates a number of serious issues:

- Unreasonable delay in student enrollment at East River Academy;
- Paper Packets are not adequate teaching instruments without accompanying in-person teacher instruction;
- Students with disabilities have been denied a Free and Appropriate Public Education (FAPE), and the accompanying Due Process Rights afforded such students;
- Student special education evaluations are almost non-existent;
- Lack of access to remote learning devices, such as tablets or chrome books; and a
- Lack of access to HSE classes and coursework, and advancement examinations and other vocational programming.

We urge the Council to take immediate action.

A. Unreasonable Delay in Enrollment at East River Academy

When John was first incarcerated on Rikers Island prior to the pandemic shutdown, BxD reached out to staff at East River Academy and requested that John be enrolled in the high school. At the time, John was housed in a unit that had been turned into a de facto solitary confinement unit. He had no access to peers and he was struggling mentally and emotionally. He wanted to progress in school and have access to learning, to keep his mind occupied and focus on something positive, but he was not given that opportunity. We reached out to East River Academy in February of 2020, but it wasn't until September of 2020, well over six months before John was given the paperwork to enroll in any educational programming. Even though John has been completing packets of educational work, has been given a tablet for brief periods of time, and completed the enrollment paperwork for school over eight months ago, we recently learned that he still has not been enrolled.

John's experience is not unusual. Young people who want to enroll in educational services on Rikers Island have to request that a correction officer provide them with a 3503B form and make a request for a tablet, which, as we know from testimony by DOC staff, are currently not being made available to students. There are often long delays in this process, and students miss out or lose their motivation. Some students are given tablets and believe they are doing work to earn educational credits, only to learn months later that they were never enrolled in school and won't get credit for the work they did.

B. Paper Packets are Not Adequate Teaching Instruments, Especially Without Accompanying In-Person Teacher Instruction

It wasn't until November 2020, well into the school year, when John was finally given a paper packet of educational materials in various subjects and told that this paper packet was the entirety of his education. John is a student with a disability and struggles with literacy. He has been out of school for some time. The paper packet was intimidating. John had no teacher, no peers, not a single person to go to with his questions, and he was still being held in a de facto solitary confinement unit at the time. John said that he was given a number to call a teacher, but he was not going to call it because he didn't know who would be on the other side of the phone. He didn't know how to formulate some of his questions, especially for some of the math work. He couldn't explain what he was struggling with because he didn't understand any of it. For a time, he did have access to a tablet, but he was not given his sign-on information and he could not access educational materials. He had been trying to complete his OSHA classes on the tablet, but lost access to that on the tablet as well. At one point, John said, "You have us sitting here for . . . years not going to school. [We] can't better ourselves and explore our futures. They need to be delivering the services that they know will help us leave here with a chance."

C. Students with Disabilities Have Been Denied a Free and Appropriate Public Education (FAPE), and the Accompanying Due Process Rights Afforded Such Students;

Moving to RNDC did not improve John's access to education or educational services. John still had no regular access to a remote learning device, no opportunity for synchronous virtual classes, no in-person classes, and no related services. John had been out of school for some time and required special education services. The school district had an opportunity to identify his needs, but never did.² Our office filed an IDEA Due Process Complaint on John's behalf in November, 2020, alleging the complete denial of a Free and Appropriate Public Education, but the complaint was rejected by the Impartial Hearing Office, along with a recommendation that John enroll in the local public school, a ridiculous response. Not only was John being deprived of his education, but he was also likely denied his State and Federal Due Process Rights under 8 N.Y.C.R.R. § 200.5(i), and the Individuals with Disabilities Education Act (IDEA).

D. Student Special Education Evaluations Are Non-Existent

East River Academy and District 79 are not complying with their responsibilities under the "Child Find" provisions of the IDEA, nor are they meeting their responsibilities to conduct

² "The 'Child Find' provisions of the IDEA establish that the state must have 'policies and procedures to ensure that' '[a]ll children with disabilities ... in need of special education and related services[] are identified, located, and evaluated and [that] a practical method [must be] developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.'" 20 U.S.C. § 1412(a)(3)(A)." *Handberry v. Thompson*, 446 F.3d 335, 347 (2d Cir. 2006)

student special education evaluations. Even though there is a school psychologist employed at East River Academy, special education evaluations are not being conducted. The District cannot meet the needs of its students if it doesn't know what those needs are. Even if the "Special Education Plans" are being developed by East River Academy for every student with a disability, it is not clear what information is being used to inform these plans. Incarcerated students are still entitled to a FAPE. There are limited exceptions, but in no way is the District relieved of its responsibility to identify, and meet the needs of their students. Currently, students' needs are not being identified, and there is not an appropriate plan to identify those needs.

E. Lack of Access to Remote Learning Devices

John was given a tablet to complete work, but he didn't find it that much more instructive than the paper packet. John needed a teacher. While an in-person teacher was not an option for most students this past Spring, school districts across the country found ways to bring in person learning, and synchronous virtual learning to students this past Fall. Students at Rikers, however, were left behind. Tablets were given and taken away at will, without notice; students who were in the middle of assignments had their tablets taken away and lost their progress. The tablets were replaced with packets, with different material than they had been working on in some cases, and in other cases, the tablets weren't replaced with any education materials. Some students recalled being told by correction officers that there would be no education services for months.

F. Lack of Access to HSE Classes and Coursework, and Advancement Examinations and Other Vocational Programming.

Older students, like the students at East River Academy, need a different curriculum or a different educational track altogether. Pre-pandemic, East River had a robust HSE course curriculum. During the pandemic, however, that curriculum became inaccessible. Paper packets are not a substitute for teachers, and the tablets were provided sporadically. While the tablets did have other vocational course opportunities like OSHA licensing courses, the issues with connectivity, providing proper usernames and passwords, and the concerns about the tablets being used as incentives, made that programming almost impossible to access.

CONCLUSION

Unfortunately, John is not alone. We have interviewed a number of incarcerated clients throughout the pandemic, and not a single young person has received anything remotely resembling an education. In one instance, a client received a packet and was told to ask questions about the material to a *correction officer*. These are the Department of Education's most vulnerable and marginalized students and the harm falls disproportionately on Black and Latinx students, and English Language Learners (ELLs). These students do not have access to their

family members. They do not have meaningful access to books, to writing implements, or to the internet. Education and programming is key to the very survival of young people in the often violent and chaotic environment of Rikers Island. For the Department of Education (DOE) and the Department of Corrections (DOC) to abandon these students is simply unconscionable.

The DOC and the DOE have to do better to give students access to actual in-person instruction, appropriate special education services, and HSE classes. Although some students have just recently begun blended learning, with two days of in-person instruction, and some tablets have been returned, there is still no feasible plan for students in the more restrictive housing units, and no real plan to account for the year of education that was lost.

Students that have been or will be released should be given free tutoring or other comp-ed services for the time that was stolen from them. They should be guaranteed seats at other D79 schools and given priority to attend vocational programs. This time stolen from them cannot be given back, but the City can take informed actions to give these young students educational opportunities now and in the future and acknowledge the harm that has been done.

TESTIMONY

**Testimony of
The Legal Aid Society
On**

Oversight: Educational Programming in Jails and Juvenile Detention

**Submitted to
The New York City Council's Committees on Education,
Criminal Justice, and General Welfare**

April 21, 2021

Prepared by:

Nancy Ginsburg
nginsburg@legal-aid.org
Stefen R. Short
sshort@legal-aid.org
Mary Lynne Werlwas
mlwerlwas@legal-aid.org

The Legal Aid Society
Criminal Defense Practice
Prisoners' Rights Practice
199 Water Street
New York, NY 10038

The Legal Aid Society is the nation's oldest and largest provider of legal services to low-income families and individuals. As you know, from offices in all five boroughs, the Society annually provides legal assistance to low-income families and individuals in more than hundreds of thousands of legal matters involving civil, criminal, and juvenile rights issues. The Criminal Practice has a specialized unit of lawyers and social workers dedicated to representing many of our youngest clients prosecuted in the criminal system. The Adolescent Intervention and Diversion Project provides enhanced representation for our most vulnerable clients who are often involved in many systems in addition to being court-involved: foster care, special education, mental health, substance abuse.

The Prisoners' Rights Project ("PRP") of The Legal Aid Society has addressed systemic and institutional problems in the New York City jails for more than 40 years. It is class counsel in *Nuñez et. al. v. City of New York, et al.*, 11-cv-5845 (LTS)(JCF), in which the City committed to reduce excessive force in the City jails and revamp its treatment of younger incarcerated people, and in *Handberry v. Thompson*, No. 96-cv-6161 (S.D.N.Y.) (GDB), which secures general and special education for high-school eligible youth confined by the New York City Department of Correction ("DOC"). Each week PRP receives and investigates numerous requests for assistance from individuals incarcerated in the City jails.

Because of the breadth of The Legal Aid Society's representation, we are uniquely positioned to address the issue before you today.

Introduction

We are at a moment of crisis in the care and custody of young adults on Rikers Island. Although today's hearing is focused on education, it is our position that a meaningful conversation about delivery of school services cannot happen until security is restored in RNDC, the building that holds the young men. NYC spends over \$1 billion a year on jail operations and parents have been reduced to calling 311 to ensure their family members' needs are met. This cannot stand.

Over the last two and half months it has come to our attention, through repeated conversations with our clients and their family members, in addition to press reports, that RNDC has become alarmingly dangerous. This caps a pattern of DOC withdrawal from years of commitment to a young adult model based on age appropriate services delivered by specially trained officers. This model was developed after the City settled the *Nuñez* lawsuit, in 2015, brought specifically to address the rampant violence young people faced on Rikers Island.

We recognize that COVID has presented many challenges in the past year. Nevertheless, we observed commitment during this time to work with the young people in RNDC under difficult circumstances. Efforts to mediate conflict resulted in improved conditions in the building. Despite these advances, the Department removed the Warden engaged in this work and installed new leadership. That change precipitated an almost immediate downward slide, resulting in increased incidents, daily alarms, and deprivation of services.

Our clients report not having access to daily recreation, programming, medical and mental health care. Individuals are moved from housing unit to housing unit and some have been

told they were intentionally being placed in harm's way. Creating unnecessary conflict has led to record high numbers of young people transferred to restrictive housing. Our clients have not been produced for counsel visits and court appearances based on false representations by officers that the clients refused.

The Department's assertions that the violence is a result of the presence of gang affiliated young people conveniently absolves itself of the responsibility to support an environment where there are prosocial alternatives for the young people in custody. Access to programming, education, personal hygiene, health care and recreation are minimum requirements that the DOC is required to meet. Additionally, the Department has the ongoing responsibility to place qualified staff who are dedicated to working with young people and have the skills to effectively mediate conflict, coach ongoing growth and support young people's needs.

In addition to increasing the amount of time sequestered in their housing areas, the decision was made to take away the tablets from all young adults. Further exacerbating these conditions, during a time when the building is closed to the public, K2 and other illicit drugs are being brought into RNDP, causing some of our clients to suffer serious, adverse reactions.

In 2016, the Department created an advisory board comprised of service providers, advocates and DOC personnel. This advisory board focused on service delivery and safety for adolescents and young adults, meeting monthly until 2019. This group engaged in meaningful collaboration to identify appropriate service providers, develop systems of incentives and consequences and address education and mental health issues among the youngest population incarcerated on Rikers. Unfortunately, the Department retreated from its commitment to collaborate in this manner and meetings became more infrequent and less productive until they altogether ceased. We call on the Council to create an advisory board comprised of service providers and advocates to improve transparency and service delivery for incarcerated young adults.

The Crisis in Violence In the Jails

A window into DOC's recent challenges and performance can be found in the reports of the independent monitor appointed in *Nuñez v. City of New York*.¹ The most recent report depicts a Department in a downward spiral of incompetence and abuse, turning a historically low jail census into historically high use of force rates—the highest rates since monitoring began over five years ago.

Most notably, the federal monitor has criticized the Department for initiating and escalating conflicts with incarcerated individuals. As the Tenth Monitor's Report describes:

A pattern of unprofessional conduct and lack of efforts to de-escalate situations including at times hyper-confrontational Staff behaviors, a lack of adequate and quality supervision, an overreliance on alarms and the Probe Team, the misuse of OC spray, and the use of painful escort

¹ The ten reports are available at:
<https://www1.nyc.gov/assets/doc/downloads/pdf/10thMonitorsReport102320AsFiled.pdf>.

techniques have all plagued the agency's use of force practices since the Effective Date.²

The Monitor further describes that problematic Staff behavior in greater detail elsewhere in the Report:

Often, the Staff's aggressive demeanor and lack of skills in de-escalation contributes to the event [resulting in a use of force], as does the prevalent failure to implement basic safety protocols (e.g., leaving doors unsecured, being off post). The Monitoring Team also finds that use of force incidents are frequently poorly managed, which escalates the incident and the risk of injury...Staff's tendency to use unnecessarily painful escort techniques (e.g., bending wrists or twisting arms) on an otherwise compliant person, which leads to resistance.³

This persists because DOC leadership cannot or, will not enforce basic correctional practice through supervision and discipline. The failures of management are legion:

Too often, on-site Supervisors (typically Captains), rather than taking deliberate and thoughtful actions to solve problems, opt for the immediate deployment of hands-on force, usually via a Probe Team. In most incidents, the Tour Commander (ADW) is not present (either because they are not called or do not come to the site of the incident), allowing the Captains to pursue a course that only escalates the events. Even when a Tour Commander is present, their failure to properly manage the event too often transforms a commonplace situation into a dangerous, major event. Once physical intervention is deployed, the event immediately becomes unpredictable and containment and control are compromised. In other situations, Captains become directly involved in the use of force instead of supervising and managing the incident. In other words, on-site Supervisors, many of whom act precipitously, end up contributing to or catalyzing the poor outcomes that are of concern.⁴

Collectively, the Monitor consistently has found the Department non-compliant with the most important and fundamental provisions of the *Nuñez* court order: following a use of directive, conducting fair investigations, and holding staff accountable for malfeasance and poor outcomes. The failure of accountability could not be starker.

Issues Facing Incarcerated Young People

Young people incarcerated in our City jails have profound needs and are in desperate need of services and therapeutic interventions. Social scientists posit that young people who are court-involved are not on a trajectory to become lifelong criminals, but incarceration can push them in that direction. Adolescence is a critical developmental stage and placement in a

² Tenth Report of the *Nuñez* Independent Monitor (October 23, 2020), at 25 available at <https://www1.nyc.gov/assets/doc/downloads/pdf/10thMonitorsReport102320AsFiled.pdf> *Id.* at 13.

³ *Id.* at 22.

⁴ *Id.* at 27-28.

correctional setting can disrupt educational and social development. Significantly, the age of 18 is not a fixed point when adolescents become fully mature adults. Neurobiology and psychology research suggest that cognitive skills and emotional intelligence continue to develop into a person's mid-20s.⁵ Disruptions in this developmental path can undermine prospects for pursuing an academic path, finding a job and rejoining or creating their own families. Studies show that successful programs, during incarceration and elsewhere, follow the lessons of developmental psychology by providing young adults with supportive social contexts, authoritative adult figures and help to acquire the skills necessary to change problem behavior and to become psychologically mature.⁶

Prior Neglect and Abuse

We have found that close to one third of our clients in the criminal system are, or have been, in foster care. Many of these youth have been in multiple foster care placements by the time they reach their mid-teens. Some feel disconnected from a system which has not met their needs. The transitional planning services often fall short of ensuring a stable entry into adulthood. Some have emotional disabilities stemming from neglect or abuse which are not identified or addressed. Many youngsters who were victims of sexual abuse suffer from mental illness or low self-esteem and can turn to substance abuse to dull the memories and the resulting pain. A percentage of these young people turn to other self-destructive behaviors which further exposes them to trauma and violence.

Mental Health Needs

Many incarcerated young people struggle with mental health issues. The most prevalent diagnoses of court-involved youth are attention deficit disorder, post-traumatic stress disorder, and depression. Young people with these diagnoses may respond disproportionately to actions that they perceive as aggressive. Their symptomatic behavior, which seems justifiable to them, is often solely interpreted as hostile or aggressive. Without consistent treatment, structure and services, these teens cannot complete their education or hold meaningful jobs. Additional treatment resources in the community, including residential options will reduce the number of incarcerated youth.

Trauma

According to a study conducted by the VERA Institute, “[approximately 85 percent of young people assessed in secure detention reported at intake at least one traumatic event, including sexual and physical abuse, and domestic or intimate partner violence. Furthermore, one in three young people screened positive for Post-Traumatic Stress Disorder (PTSD) and/or depression.”⁷ ACS reports that 40% of youth in detention were referred for mental health

⁵https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA_Emerging_Adult_Justice_Issue_Brief_0.pdf

⁶ Elizabeth S. Scott and Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *Future of Children*, Juvenile Justice 25-27, (Fall 2008) (available at www.futureofchildren.org.)

⁷ Innovations in NYC Health and Human Services Policy: Juvenile Detention Reform, Vera Institute of Justice, January 2014. available at <http://www.vera.org/sites/default/files/transition-brief-juvenile-detention-reform.pdf>.

services.⁸ OCFS reports a similar number in the population admitted in 2014, noting that 42% of admitted youth had mental health service needs.⁹

A history of trauma can also affect brain development and increase the harm to youth from isolated confinement. Exposure to trauma can create a near-constant state of fight-or-flight mode for anyone. For traumatized youth, this survival mode supersedes typical brain development. These traumatized youth are thus even less able to control their mood swings and impulses.¹⁰

Inconsistent Family Support

Often, lack of family support is due to serious parental mental illness, addiction or incarceration. These young people have inadequate support systems to turn to and once they become court-involved, struggle with stability in the community and often face incarceration as a result.

Goals of programming in jail and detention

Programming for incarcerated young people serves a number of functions: improving behavior and decision-making skills in facilities and upon release, reducing idle time, building academic and literacy skills, and teaching workforce skills. Additionally, the provision of programming, particularly by individuals from the community, provides an opportunity for young people to build positive, ongoing relationships with adults who can help in navigating the stressors of incarceration and potentially aid the transition once released.

Programming options should include a variety of interests and take into consideration the wide range of functional levels within the population. Broad programming creates an environment in which as many people as possible can be engaged. Options should include: education, games, arts (including written, visual, music and theater), individual and group counseling, athletic options, behavioral therapy, credible messenger led activities, parenting skills, culinary, horticulture, and more advanced workforce skills where certificates can be earned and applied upon release.

The environment must support the delivery of programming services

As a result of the settlement of the *Nuñez* case, the City committed to providing a spectrum of meaningful programming for adolescents and young adults. We worked closely with

⁸ 2018 Mayor's Management Report, Administration for Children's Services, p. 183.

⁹ NYS Office of Children and Family Services, Division of Juvenile Justice and Opportunities for Youth, 2016 Annual Report Youth In Care.

¹⁰ American Academy of Pediatrics, Policy Statement: Health Care for Youth in the Juvenile Justice System, 128 PEDIATRICS 1219, 1223-24 (2011), available at <http://pediatrics.aappublications.org/content/early/2011/11/22/peds.2011-1757.full.pdf> (reviewing the literature on the prevalence of mental health problems among incarcerated youth); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, NATURE AND RISK OF VICTIMIZATION: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT 4 (June 2013), available at <http://www.ojjdp.gov/pubs/240703.pdf> (finding that 56 percent of youth in custody experience one or more types of victimization while in custody, including sexual assault, theft, robbery, and physical assault).

the Department of Correction to help inform the process of choosing the most appropriate services for this population. While we appreciate the efforts made to establish a wide menu of services, these programs are only as effective as the jail setting allows. Before COVID, there were increasing issues in the various jails where young people are housed.

We have heard repeated reports that young people are not informed of the services by all officers in all housing units; long delays occur in escorting the young people to programs even when there is no apparent security reason for the delay; some officers do not support the environment necessary to deliver the services. Delays reduce the level of programming available to the young people: services that are supposed to last for an hour, can be reduced to twenty minutes. Despite the City's professed commitment to the provision of services, providers faced unnecessary obstacles in delivery.

The closing of the George Motchan Detention Center (GMDC) on Rikers Island in summer 2018 exacerbated this problem. GMDC was the jail holding the 18-21 year old male youth. DOC had spent considerable time and resources to create space in GMDC that was conducive to the delivery of programming, and to engage staff to support programming. But those physical spaces were not available in the buildings where the youth were transferred once GMDC closed. This has led to a situation where programming is often pushed into the housing areas. However, despite the fact that there is a set schedule for programming, some officers do not support it. They talk during programming and create other distractions. Televisions blare in the areas while providers are trying to run groups.

Incarceration itself is an unsettling experience, to say the least, for young people and programming provides a sense of normalcy and relationship for those deprived of that by the jail setting. Creating unnecessary interruption in these services exacerbates an already unstable environment. In the past few months, we have seen a halt of almost all programming. Our clients report having their tablets taken away, not being taken to recreation, the PEACE center and school. Despite the legal requirement that an hour of recreation be provided to incarcerated individuals¹¹, we have received consistent reports since February, that weeks can go by without access to the yard and when they are taken, it is often for far less than the required hour. The PEACE Center in RNDC provides access to vocational training to which the young people look forward and the City spent a great deal of money to build. Many of our clients report having no access to these services.

Another obstacle in the delivery of services, is the security division of the Department of Correction appears to determine which young people are eligible for services, and to decide what programming individuals should receive. We strongly believe that these decisions should be made collaboratively with the program providers who have a history of assessing the need for the type of services, in delivering programs in the facilities and have developed a relationship with the young people. Additionally, the voice of those incarcerated should be considered in this process. It appears that certain housing areas receive a wealth of programming, while others receive little to none. Additionally, young people are constantly moved from one housing area to another, creating interruptions in service provision and relationship building with adults who

¹¹ Minimum Standard § 1-06, <https://www1.nyc.gov/site/boc/jail-regulations/jail-regulations.page>

provide those services. Maintaining positive relationships should be a security concern as well and given that idle time creates even more security issues, we urge that all young people have access to some programming options.

Personal Hygiene

The Minimum Standards required for personal hygiene mandate access to daily showers, personal health care items, the ability to shave, obtain haircuts.¹² Our young adult clients and their family members have reported lack of access to showers for up to a week, deprivation of barbering services, and lack of access to basic personal health care items such as deodorant, soap and shampoo. Some of these deprivations have occurred because of unexplained restrictions to commissary.

Housing Decisions and Violence

We have heard repeatedly since February, that our young adult clients have been moved from housing unit to housing unit and placed with individuals with whom they have known conflict. We have reports of approximately ten clients who have suffered significant injuries after being moved into hostile housing arrangements. Clients who requested protective custody were denied. Clients have been told not to report these actions or they would suffer retaliation and one client was called a snitch after his mother called 311 to report conditions.

These housing decisions appear to have been made knowingly and with intention by DOC leadership, creating unacceptably dangerous conditions for the young people in custody. The increase in orchestrated violence has led to almost constant alarms in RNDC since February. This contributes to a heightened state of anxiety, stress, reduced movement in the building which ultimately leads to further deprivations of programming, school, medical and mental health services.

Overuse of Restrictive Housing and Deprivations Within

A result of the increasing fights in RNDC based on housing decisions of staff is a much higher than usual number of young adults transferred out of RNDC to restrictive housing units. In addition to the concern that too many young adults are exposed to these transfers, we have received concerning reports about conditions in these units including: Insufficient staffing, lack of presence of staff at all times, insufficient blankets and sheets, lack of access to mental health, health services, school and programming.

Overuse of Lock-In

We have received multiple reports from clients in RNDC and in restrictive housing that they have been locked in their cells for days at a time in violation of Minimum Standard §1-05. This results in other deprivations of minimum standards such as access to phone calls, showers, recreation, school and programming.

¹² Minimum Standard §1-03

Access to Mental Health and Health Services

Our clients have reported unexplained delays in providing access to mental health and medical services. Clients report having to wait between three and seven days before being taken to requested clinic assessments. These delays interrupt medication regimes, and on-going treatment. Such deprivations violate Chapters 2 and 3 of the minimum standards. **Presence of Illicit Drugs in RNDC**

Clients are also reporting, which we have confirmed through medical records and conversations with staff in RNDC, that there is an alarming presence of K2 and fentanyl in the building at a time when public access has been almost entirely restricted. Despite arrests of officers in 2020¹³ and 2021¹⁴, it appears that this disturbing pattern continues. In the past few months, we have had at least two clients in RNDC who have suffered side effects of K2 including enhanced anxiety, confusion, extended periods in a trance-like state.¹⁵

Access to Phones and Counsel Visits

Clients have reported not being produced for counsel visits when DOC staff have represented to lawyers that the clients refused. Such refusal to produce clients for counsel visits violates Minimum Standard §1-08. We have received reports that clients could not access a phone in violation of Minimum Standard §1-10. Parents have reported having to call 311 in order to ensure their son had access to a phone to call home.

Training

During the post-*Nuñez* period of reform in the DOC when the adolescent advisory board was sitting, officers who were assigned to RNDC were specially trained to work with a younger population. We have reason to believe that this training is no longer provided to officers working with the young adult population. And the disclosure earlier this week, that basic lifesaving training is not being provided to officers¹⁶, raises this alarm even higher.

New York should train all DOC, DOHMH and DOE staff members in Think Trauma, a program in use in the juvenile secure facilities in NYC and available from the National Child Traumatic Stress Network. Mental health professionals from Bellevue Hospital have trained staff and youth in the juvenile secure detention facilities run by ACS/DYFJ in this curriculum. This training provides an overview for staff of how to work towards creating a trauma-informed setting which is a process that requires not only knowledge acquisition and behavioral modification, but also cultural and organizational paradigm shifts, and ultimately policy and

¹³ <https://www.justice.gov/usao-edny/pr/11-members-and-associates-bully-gang-charged-narcotics-conspiracy-illegal-weapons>

¹⁴ <https://nypost.com/2021/02/25/guards-smuggled-k-2-drugs-into-rikers-for-gang-prosecutors/>

¹⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3470439/>

¹⁶ <https://www.nydailynews.com/new-york/ny-correction-department-training-suicide-prevention-fire-safety-rikers-island-20210418-mqzfxnwowfhz7a6odazue2smla-story.html>

procedural change at every level of the facility.¹⁷ This curriculum helped the staff to better relate to the youth, and helped to identify a greater number of youth in need of mental health services.

Our treatment of young people in our justice system should reflect our understanding of these differences and the ways they affect behavior and well-being. For example, because of the impulsivity of youth, the threat of punishment will not have the same deterrent effect on a young person as it would on a fully developed adult. It is critical that the correction officers who have daily contact with incarcerated young people understand their needs and have the tools to interact with teenagers in a constructive way. Jail is an inherently stressful environment. Implementation of meaningful training and supervision to such training would create a safer environment for the young people and the officers.

The value of credible messengers and mentoring

Credible messengers are community members with relevant life experience and that give them the authority to challenge and transform the thinking, attitudes, and behavior of others. Credible messengers function in jail and detention as mentors whose life experiences enhance their ability form meaningful personal connections. They are from similar backgrounds and able to equip young people with the tools to change their lives while providing them with a living example of hope and transformation.¹⁸

Credible messengers serve a number of roles in jail and detention settings. From the point of view of the young people, they serve as trustworthy adults who truly understand their perspective. Because of this relationship, credible messengers have provided critical support in the facilities in intervening and heading off conflict, helping the young people to develop skills to negotiate differences and disagreements that may be challenging for them. This leads to less violence and important skill building.

The DOC has demonstrated variable commitment to supporting this model. The model of credible messengers relies on the provision of services by people who have criminal histories. These individuals have committed themselves to taking the lessons they have learned and helping those younger than themselves make better decisions and avoid the mistakes they made. These interactions can only occur if the credible messengers are allowed into the facilities.

Other jurisdictions have used this model with great success. Connecticut created a specialized unit for young adults, modeled on a similar program in Germany, where adult mentors were brought in to work with the younger population. The officers in the unit also receive additional training. This matching of older and younger prisoners has proven to be a successful model of service delivery to the young adults and has resulted in decreases in violence and increased success in programming.¹⁹ In California, Prison of Peace functions in multiple

¹⁷ <http://www.nctsnet.org/products/think-trauma-training-staff-juvenile-justice-residential-settings>

¹⁸ http://home2.nyc.gov/html/prob/html/messaging/cm_whatish.shtml

¹⁹ <https://www.themarshallproject.org/2018/05/08/the-connecticut-experiment>
<https://theconversation.com/a-prison-program-in-connecticut-seeks-to-find-out-what-happens-when-prisoners-are-treated-as-victims-111809>

prison and jail locations to provide conflict mediation by training incarcerated men and women. The results speak for themselves: Over 84% report significantly enhanced abilities to manage strong emotions, 97% of participants found Prison of Peace workshops useful, and 99% reported that the workshop introduced them to new skills for use in solving problems or conflicts in their lives and/or communities.²⁰

The Council should take particular note of the state of Maine, where Commissioner Brann spent most of her career, also embraces the use of credible messengers with its incarcerated population.²¹

In New York City, credible messengers are achieving impressive outcomes in the Department of Probation and the City's Cure Violence model.²² The success of these models in New York City and the history of funding of mentoring services delivered by credible messengers made the removal of the RNDC warden earlier this year for creating a similar model all the more alarming.²³ We urge the Department of Correction to make the same commitment to the model to foster conflict resolution and improved decision making among our incarcerated young people.

Recommendations

- Create a legally required advisory board comprised of stakeholders addressing the needs of young adults in custody.
- Expand the young adult ombudsman program to facilitate improved communication for young adults in custody
- Mandate specialized training for officers assigned to the young adult population
- Mandate steady staff assignments for the young adult population.
- Expansion of credible messenger and mentoring programs for the young adult population
- Continued funding for programming
- Expanded oversight of the DOC's support of programming

²⁰ <https://www.prisonofpeace.org/the-results>

²¹ <https://www.maine.gov/corrections/juvenile-services/credible-messenger-movement>

²² https://www.urban.org/research/publication/arches-transformative-mentoring-program/view/full_report; <http://cureviolence.org/results/scientific-evaluations/nyc-evaluation-johnjay/>; <https://johnjayrec.nyc/2017/03/16/databit201701/>

²³ <https://www.thecity.nyc/2020/11/16/21557117/rikers-island-young-adult-jail-correction-officers-nyc>

- Accountability to ensure age appropriate programming is provided to incarcerated young adults.
- Enhanced screening of officers for illicit drugs.

Education on Rikers Island

In recognition of the power of education, New York State Law requires the City to provide education to eligible individuals in DOC custody.²⁴ In 1996, The Legal Aid Society filed *Handberry* on behalf of people under age 21 at Rikers Island, challenging DOC and the Department of Education’s (“DOE”) failure to provide the educational programming mandated by law. At the time of filing, fewer than half of eligible individuals at Rikers received educational programming.²⁵ As a direct result of *Handberry*, a substantially larger percentage of jailed youth were offered educational services, including special educational services. But over the last twenty-plus years, this progress has been intermittent and fragile. Schooling has remained deficient for young adults ages 18 to 21; students who are eligible for special education services; students in restrictive housing like Enhanced Supervision Housing (“ESH”) or the Secure Unit; and students who demonstrate behaviors that impede learning.

In July 2018, Dr. Peter Leone, the court-appointed monitor in *Handberry* and a recognized expert in correctional education, found that the City had failed to comply with significant provisions of the *Handberry* remedial order for young adults.²⁶ Dr. Leone found that only “some” enrolled young adults actually received the three hours of educational services to which they were entitled.²⁷ The state of affairs was even worse for young adults in restrictive housing, particularly those with disabilities.²⁸ Dr. Leone’s report reflected his findings from his spring 2018 compliance assessment.²⁹

These deficiencies were exacerbated later that year, when the youngest students were moved off Rikers Island, as required by the Raise the Age law. For the young adults left behind on Rikers Island, the problems worsened. On June 30, 2018, DOC closed the jail in which young adults had principally been housed and attended school.³⁰ After years of touting its “Young Adult Plan” and the creation of “school dorms” for high school enrolled students at the George Motchan Detention Center (“GMDC”), the City dispersed youth ages 18 to 21 throughout the remaining DOC jails. Oversight authorities found that young adults had “no access to classes”

²⁴ New York Education Law § 3202(7).

²⁵ See Complaint, *Handberry v. Thompson*, No. 96-CV-6161 (S.D.N.Y.) (Dkt. No. 1).

²⁶ Peter E. Leone, Ph.D., *Third Report on the Status of Education Services for Youth Aged 16-21 at Rikers Island 2*, (July 2, 2019), *Handberry v. Thompson*, No. 96-CV-6161 (GBD) (Dkt. No. 273-2) (hereinafter “Leone Report”).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 3.

³⁰ Rosa Goldensohn, *With Rikers closure still years off, de Blasio backs away from young adult reforms*, POLITICO, Sept. 6, 2018, available at <https://www.politico.com/states/new-york/albany/story/2018/09/05/with-rikers-closure-still-years-off-de-blasio-backs-away-from-young-adult-reforms-594152>.

after they were moved from GMDC.³¹ As of March 8, 2021, DOC housed young adults in multiple housing areas in nine different facilities.³²

The ongoing COVID-19 pandemic has also significantly impeded educational programming for young adults on Rikers Island. Early in the pandemic DOE staff vacated Rikers, leaving to DOC the task of facilitating access to remote educational programming.³³ *Handberry* class members report that although the City has implemented telephone- and tablet-based education programming in the jails, this programming has been unreliable, due in part to DOC's failure to facilitate access to it. Some class members have reportedly gone without education programming since the beginning of the pandemic due to the City's failure to provide information about eligibility and enrollment. Many of those who have enrolled have gone without meaningful instruction or consistent contact with teachers. Students similarly report that special education services have been largely discontinued during the pandemic.

Young adult students have represented that since March 2020, the City has all but ignored the *Handberry* order's requirement that students receive three hours of educational services per day. Despite these serious allegations, the City has failed to disclose meaningful information about its implementation of the *Handberry* order during the pandemic. It is imperative that City Council investigate these alleged failures and push the City to remediate them. Without the intervention of lawmakers, education lost today is unlikely to be regained later.

The Department of Correction's Failure to Prioritize Education

In 2015, Dr. Leone identified the core problem with education programming on Rikers Island, finding that the "culture" on Rikers Island does not prioritize education.³⁴ As a result, only "some youth on Rikers Island receive education services to which they are entitled."³⁵ These issues have persisted. Dr. Leone's July 2018 report states that "institutional culture shapes the quality of and access to education," and that although the education program had improved during the prior two years, "access to education for inmates age 18 to 21 is a persistent problem."³⁶

Prior to the pandemic, many factors contributed to continued failings in the provision of education to young adults, including DOC's maintenance of policies and practices which impede

³¹ *Id.* ("Board of Correction member Bryanne Hamill, a retired family court judge, toured Rikers Wednesday and was disturbed to encounter young adults who said they no longer had access to classes. 'I spoke to kids who, since they've been moved from GMDC, have not been able to attend classes and programming like in GMDC,' she said.")

³² Young Adult Housing Monthly Progress Report, New York City Department of Correction, March 2021, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/march-2021-ya-progress-report.pdf>

³³ Rosa Goldensohn, *Students on Rikers Island Locked Out of Remote Learning Video Chat with Teachers*, THE CITY, Dec. 16, 2020, available at <https://www.thecity.nyc/education/2020/12/16/22179869/students-on-rikers-island-locked-out-of-remote-learning-video>.

³⁴ Peter E. Leone, Ph.D., *On the Status of Educational Services for Inmates Aged 16-21 at Rikers Island 2* (May 11, 2015) *Handberry v. Thompson*, No. 96-CV-6161 (GBD) (Dkt. No. 231-4).

³⁵ *Id.*

³⁶ Leone Report at 3.

access to educational programming. For example, DOC has chosen to require escorts for all movement within the jails. This is a significant barrier to access to school. Young adults have repeatedly reported to us that they cannot or do not participate in school due to a dearth of escorts. Others report that they consistently arrive at school late due to delays in escorts. Similarly, increasing jail “lockdowns,” which cut into the already minimal school day, further hamper consistent access to school.³⁷

Dr. Leone has confirmed these reports. His July 2018 monitoring report finds that while access to instruction had improved over the prior two years, it remained inconsistent due to a lack of access to DOC escorts.

Inmates I interviewed during my visits . . . reported that on some days, escorts did not come to their units to take them to school or arrived more than an hour after the scheduled start of school. On other units, staff reported incorrectly that school had been canceled on one of the days I visited when in fact, school was in session.³⁸

Scheduling conflicts also dissuade enrolled young adults from attending educational programming. In 2015, Dr. Leone found that some institutional jobs conflicted with school.³⁹ In July 2018, Dr. Leone found continued conflicts between “the school schedule and the schedule for commissary, recreation, and services provided by outside contractors.”⁴⁰ For chiefly these reasons, Dr. Leone characterized attendance among young adults as “highly variable.”⁴¹ These scheduling issues deter studious young adults who also may wish to take advantage of other limited programs offered in the jails. The City’s abandonment of the Young Adult Plan has exacerbated these issues. Notably, Dr. Leone found significantly higher attendance among young adults housed in jails that either incentivized attendance or provided success houses/school dorms – interventions the City has abandoned.⁴²

Young adults also report that DOC ignores repeated requests for access to school.⁴³ Prior to the pandemic, PRP received frequent complaints from students who were denied access to educational programming. For example, one school-eligible incarcerated student was reportedly denied access to education for an entire week because DOC did not “feel like” escorting him to the educational setting. PRP received another complaint from another young adult who reported that, over the span of three weeks, his frequent requests for educational services were ignored. Without committed Criminal Defense practitioners and without PRP’s intervention, these

³⁷ See, e.g., Letter from Stanley Brezenoff, Chair of the New York City Board of Correction, to Joseph Ponte, Commissioner of the New York City Department of Correction (Nov. 2, 2016) (on file with PRP), available at <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/November-2016/Letter%20from%20Chair%20Brezenoff%20to%20Commr%20Ponte%20re%20violation%20of%20minimum%20standards%2011%202%2016.pdf>.

³⁸ Leone Report at 13.

³⁹ *Id.* at 5.

⁴⁰ *Id.*

⁴¹ *Id.* at 4.

⁴² See Goldensohn, *supra* note 7.

⁴³ Leone Report at 7.

refusals to provide educational services would have persisted for much longer, as has occurred repeatedly throughout the *Handberry* litigation.

The situation is most precarious for young adults held in restricted housing units. For decades, DOC and DOE relegated youth held in these units to pedagogically useless “cell study.” In the wake of the abolition of punitive segregation for this age group, and the subsequent introduction of a plethora of alternative, highly restrictive housing units in its stead—ESH, Secure Unit, Second Chance Housing, to name only a few—the status of the provision of education to these vulnerable youth is even murkier. In July 2018, Dr. Leone found that services for young adults in restrictive housing were not compliant with the *Handberry* order.⁴⁴ Although the City has eliminated cell study as the main method of instruction for these students, students still do not receive meaningful instruction. Dr. Leone found that due to persistent problems with escorts, students received on average only one-and-a-half hours of instruction per day.⁴⁵

These deficiencies have reportedly worsened during the pandemic. For example, *Handberry* class members report that DOC simply refuses to facilitate access to the meager educational opportunities available during the pandemic. Some students have repeatedly asked to enroll in educational programming but have been rebuked by DOC staff. Others remain ignorant of their eligibility for educational services because DOC fails to provide the requisite information. Prior to the pandemic, DOE staff visited housing units to encourage young adults to enroll in the education program.⁴⁶ Without DOE staff on Rikers Island, this intervention has not been provided, further suppressing young adult participation in educational programming. It is imperative that as DOC and DOE address these deficiencies as they re-introduce in-person educational programming on Rikers Island.

Youth with Disabilities Are Denied Their Educational Rights

Young people confined in Department custody have a high rate of disability⁴⁷ and thus require education tailored to their specific needs, as mandated by the Individuals with Disabilities in Education Act, 20 U.S.C§ 1400 *et. seq.* Students lose their IDEA eligibility at age 21. It is therefore crucial that DOE comply with the requirements of IDEA expeditiously. Unfortunately, Dr. Leone has found problems with the Department’s special education services delivery system for young adults in restrictive housing.⁴⁸

Dr. Leone has been clear that young adults confined to restrictive housing do not receive three hours of education per day and thus do not receive special education services to which they are entitled.⁴⁹ Based on Dr. Leone’s July 2018 Report and class members’ complaints, there is no question that the restrictive housing model is antithetical to the sound provision of special

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 9.

⁴⁶ *Id.* at 6.

⁴⁷ As of October 31, 2015, 14.4% of pupils citywide were enrolled in special education. *See* New York City Department of Education, *Statistical Summaries*, available at <http://schools.nyc.gov/AboutUs/schools/data/stats/default.htm>. As of July 2018, Dr. Leone found that 28% of East River Academy students were enrolled in special education, a difference of 13.6%. *See* Leone Report at 13.

⁴⁸ Leone Report at 9.

⁴⁹ *Id.*

education services. Restrictive housing facilitates violations of the IDEA and renders Individualized Education Plans (“IEPs”) meaningless.

Similarly, it remains unclear whether the Department has developed adequate positive behavioral interventions to mitigate behavioral incidents that impede learning. Dr. Leone’s reports have been uniformly silent on the DOC and DOE’s school-wide behavioral model, to the extent they have created one. Similarly, Dr. Leone’s reports do not address whether the DOE has conducted functional behavioral assessments (“FBA”) or developed behavioral intervention plans (“BIP”) for eligible students. The New York State Education Department has issued detailed guidance about FBAs and BIPs, and the United States Department of Education’s Office of Civil Rights has published data which demonstrates that, without proper behavioral intervention, students with disabilities are susceptible to discipline and poor educational outcomes.⁵⁰ So long as the Department does not implement the proper behavioral model, behavioral incidents such as assaults and uses of force are likely to pervade the education setting. Additionally, DOE and DOC should regularly communicate and coordinate behavioral plans for the adolescents and young adults across the residential and school settings.

Finally, these deficiencies have worsened since the pandemic began. First, Committees on Special Education (“CSE”) have not met. Therefore, many students are being educated pursuant to outdated evaluations of their present levels of performance, individual needs, and measurable goals. Second, critical special education staff have not visited East River Academy since March 2020. Therefore, students with disabilities have received stripped down related services facilitated via telephone or tablet. Some have been left without services altogether. For students who are scheduled to age out of educational eligibility, these problems are particularly dire. Again, it is imperative that the council investigate these deficiencies. DOE has committed to extending eligibility for students who are scheduled to age out at the conclusion of this academic year.⁵¹ The council must ensure that DOE extends eligibility for incarcerated students, as well.

Recommendations

1. The Department of Correction should resume the Young Adult Plan to address the needs of young adults in its custody.
2. The Department of Correction must facilitate youth access to the school buildings in each facility by [a] informing young adults of their eligibility for educational programming,

⁵⁰ New York State Education Department, Functional Behavioral Assessments (May 2011) (on file with PRP), available at <http://www.p12.nysed.gov/specialed/publications/topicalbriefs/FBA.htm>; New York State Education Department, Behavioral Intervention Plans (May 2011) (on file with PRP), available at <http://www.p12.nysed.gov/specialed/publications/topicalbriefs/BIP.htm>. United States Department of Education Office of Civil Rights, *Data Snapshot: School Discipline*, (March 2014) (on file with PRP), available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

⁵¹ Alex Zimmerman, *NYC Students Set to ‘Age Out’ of School May Stay an Extra Year*, Chalkbeat, Apr. 15, 2021, available at https://ny.chalkbeat.org/platform/amp/2021/4/15/22386434/nyc-age-out-21-special-ed?__twitter_impression=true.

[b] consistently escorting enrolled students to the education setting, and [c] facilitating prompt access to the telephone and tablets where applicable.

3. The Department of Correction should be held accountable for security decisions that interfere with high school students' access to full school programming—such as escort policies or placement in restrictive housing units—and should report to the City Council the number of high school eligible youth affected by these security decisions.
4. Youth placed in restrictive housing areas by the Department of Correction should not suffer educationally, but rather must continue to be provided with robust, meaningful, educational programming by DOE teachers, including provision of special education services.
5. The Department of Education should be held accountable for ensuring that all eligible youth with disabilities receive the services they are entitled under federal and state law.
6. The Department of Education should immediately convene Committees on Special Education for students with disabilities to update Individualized Education Plans and ensure students are being provided a Free and Appropriate Public Education.
7. In consideration of the City's failure to educate incarcerated students during the COVID-19 pandemic, the Department of Education should provide all Rikers Island students with additional educational eligibility.
8. The Council should require the Departments of Correction and Education to report on their compliance with the foregoing recommendations.
9. The Council should require the Departments of Correction and Education to report on their compliance with state and federal education law during the COVID-19 pandemic and their plan for the reintroduction of in-person educational programming for young adults on Rikers Island.

Conclusion

We thank the Committees for this public forum. The City Council plays and must continue to play an important role in understanding, monitoring and tracking the conditions of confinement for young adults incarcerated in the City jail and detention system. We encourage the Council to hold the Department of Correction to the reforms that are necessary to safeguard incarcerated young people.

Good Morning. My name is Caleen Loban. I was hoping to testify in person, but I have to work, so I am submitting my statement about my son who is 20 years old. He has been on Rikers Island for three years. He has been in different building on the Island and in many different housing areas.

Last year, he went to RNDC when Warden Caputo was running the building. That was the best time he spent since being locked up. He went to recreation, played basketball, and had access to programming. After the new warden came, he did not get recreation and his commissary was taken away. He spent all day long doing nothing. After a while of having nothing to do, the kids began to fight.

My son was then transferred to restrictive housing in GRVC where he is now. For three days, I had no contact with him. I called 311 every day. My son told me there is one phone in his housing area that gets passed around. If the others don't want to give the phone up, he does not get a call. This causes a lot of fights. Since being in GRVC, he has not been getting all his meals and often not at the right time. He got dinner at 10pm and breakfast at noon. He was not allowed to take a shower for two days. I have called 311 every day to get him phone access. The officers tell me he is refusing his phone time, but I know that is not true. In three years, he has never refused a call.

The other problem is he is housed next to his co-defendant. The court ordered that they be separated. His lawyer has called asking that they be separated. The prosecutor called asking that they be separated. But they are still housed in the same area.

I am afraid for my son and I strongly believe that DOC should be taking better care of him and all the young men locked up with him. I am asking you, since I have nowhere else to turn, to help my son transfer from GRVC to NIC where I believe he will be safer. When he was held there in the past, he did not experience the same safety risks as he currently faces. Thank you for listening.

4/21/2021

Caleenloban35@gmail.com

John K. Carroll
President

Richard J. Davis
Chairperson of the Board

Janet E. Sabel
*Attorney-in-Chief
Chief Executive Officer*

**Testimony of
The Legal Aid Society
On
Oversight: Educational Programming in Jails and Juvenile Detention**

**Submitted to
The New York City Council's Committees on Education,
Criminal Justice, and General Welfare**

April 21, 2021

199 Water Street
New York, NY 10038
(212) 577-3300

Prepared by:

Melinda Andra

Lisa Freeman

The Legal Aid Society submits this testimony and thanks City Council for inviting our thoughts on educational programming in jails and juvenile detention facilities.

The Legal Aid Society (“Legal Aid”) is the nation’s oldest and largest private not-for-profit organization, providing free legal services to low-income individuals and families for over 140 years. From offices in all five boroughs, the Society annually represent clients throughout New York City in over 300,000 matters annually. The Legal Aid Society’s Criminal Defense Practice (“CDP”) provides indigent criminal defense to individuals as young as 13 charged in adult court, includes the Adolescent Intervention and Diversion Project. Many thousands of CDP’s clients are school age teenagers and young adults. The Juvenile Rights Practice (“JRP”), provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children’s rights and welfare. The Legal Aid Society provides educational advocacy including in the areas of special education, school discipline, school placement and programming. In addition to representing these children each year in administrative, trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

Our perspective comes from our daily contacts with children, adolescents, and their families, and also from our frequent interactions with the courts, social service providers, and city agencies including the NYC Department of Education (DOE), NYC Department of Health and Mental Hygiene (DOHMH), Administration for Children's Services (ACS) and the NYC Department of Correction. The Legal Aid Society supports the City Council’s efforts to provide adequate funding and oversight for the DOE. In particular, we appreciate the City Council’s attention to the needs of children and youth who are incarcerated and who are

among the most vulnerable of New York City’s children. The Legal Aid Society represents youth in the many different settings created as a result of New York State’s juvenile and criminal legal systems. These include children and youth held in ACS custody in non-secure and secure detention (including Crossroads and Horizon); held in non-secure and limited secure placement (the juvenile system’s analog for sentenced youth) under ACS supervision; held NYS Office of Children and Family Services secure placement; and held in NYC DOC custody on Rikers Island.

Not surprising to the seasoned observer, the vast majority of youth charged as juvenile delinquents, adolescent offenders or young adults are vulnerable youth who have experienced adverse childhood experiences and trauma.¹ The COVID pandemic has provided additional stressors, causing detained and placed youth to suffer hardship and to be further isolated from family and community. Many of the youth held in detention and placement come from the communities most devastated by the pandemic. In addition, over the past year, youth held in Crossroads and Horizon, as well as non-secure detention facilities, have been subject to mandatory quarantining to reduce COVID-19 outbreaks. Mandatory, weeks-long quarantines have prevented these young people from having necessary, stabilizing visits with their families and loved ones. Restricting visits with their families and supports during this difficult, anxiety-producing time has increased the emotional toll associated with their detention.

Youth in the legal system not only have suffered a disproportionate number of adverse childhood experiences, a very significant proportion of these youth have education related

¹ According to the Vera Institute, in 2014 “approximately 85 percent of young people assessed in secure detention intake reported at least one traumatic event, including sexual and physical abuse, and domestic or intimate partner violence. Furthermore, one in three young people screened positive for Post-Traumatic Stress Disorder (PTSD) and/or depression.” https://www.vera.org/downloads/Publications/innovations-in-nyc-health-and-human-services-policy-juvenile-detention-reform/legacy_downloads/transition-brief-juvenile-detention-reform.pdf at 12. See also, <https://www.nctsn.org/trauma-informed-care/trauma-informed-systems/justice/essential-elements>

disabilities and are eligible to receive special education services under the Individuals with Disabilities Education Act (IDEA). Nationally it is estimated that one out of every three incarcerated youth have been identified as having disabilities that affect their learning and would be eligible to receive some level of special education services in their home schools.² This is at least twice the rate of children identified as having a disability among the general public.³ One study found that the percentage of students identified as having a disability among incarcerated youth was as four to five times higher than that of the general population.⁴ Many more youth involved in the juvenile or criminal legal systems are academically behind, but have not been identified as having a disability – often because they have never been evaluated. We have provided national numbers in this testimony because the public no longer has access to New York City-specific numbers. Although the DOE used to publish annual reports that included the number of students with disabilities attending each school on its website, it stopped providing this information for Passages Academy and Island Academy several years ago. We support Introduction No. 1224, a bill requiring reporting of this information in order to provide increased transparency by the DOE and enable better oversight by City Council with respect to this population of students.

Although youth in detention and placement face significant challenges, positive, targeted interventions can make a tremendous difference in their future academic and work lives.

² “Improving Outcomes for Youth with Disabilities in Juvenile Corrections: Educational Practices.” Washington, DC: U.S. Department of Education. https://osepideasthatwork.org/sites/default/files/JJ-TIB-13_12_EducationalPractices-508.pdf ; Council of State Governments Justice Center. 2015. “Locked Out: Improving Educational and Vocational Outcomes for Incarcerated Youth,” p. 1. New York: Council of State Governments Justice Center. https://csgjusticecenter.org/wp-content/uploads/2015/11/LOCKED_OUT_Improving_Educational_and_Vocational_Outcomes_for_Incarcerated_Youth.pdf.

³ National Center for Education Statistics 2020 Annual Report on The Condition of Education https://nces.ed.gov/programs/coe/indicator_cgg.asp#:~:text=In%202018%E2%80%939319%2C%20the%20number,percent%20had%20specific%20learning%20disabilities.

⁴ David E. Houchins, Joseph C. Gagnon, Holly B. Lane, Richard G. Lambert & Erica D. McCray (2018) The efficacy of a literacy intervention for incarcerated adolescents, *Residential Treatment for Children & Youth*, 35:1, 60-91, p. 60. <https://www.tandfonline.com/doi/full/10.1080/0886571X.2018.1448739>

Effects of the COVID-19 Pandemic on Students at Passages Academy

The COVID pandemic has put unprecedented pressure on both the juvenile legal system and the Department of Education, and it has had a disproportionate effect on incarcerated youth. Many students throughout the City have had decreased access to educational services during the pandemic, but incarcerated youth have suffered increased challenges. From March 16, 2020 through the summer of 2020, students attending Passages Academy⁵ did not have any contact with their teachers. Instead, their education was comprised solely of worksheets and computerized assignments. Not surprisingly, this was especially inadequate to serve students with special education needs, or those who needed individualized help to complete assignments.

By September 2020, students at Passages Academy were able to see and hear their teachers. While this was an improvement, it still denied students the ability to ask questions, other than by text, and deprived teachers of the opportunity to speak in real time with their students and check for understanding.

Throughout the 2020-2021 school year, administrators at Passages have worked with advocates to improve this situation. Community partners were brought in to provide tutoring to youth in November 2020. By February 2021, students at Passages were finally able to speak with their teachers through the microphones in their devices.

Students at Passages Academy are now receiving hybrid instruction, meaning they are able to receive in person instruction for approximately 2 ½ hours a couple of days per week. The rest of their educational services are delivered via remote instruction. Although Passages Academy has come a long way since the early days of the pandemic, students at Passages received no

⁵ Passages Academy is the New York City public school that provides instruction to children in secure and non-secure detention placement settings. Passages Academy is administered by District 79 and has several sites including locations within the Crossroads and Horizons juvenile detention facilities.

instruction (either synchronous or asynchronous) from March to Sept. 2020 so there is reason to believe that these students suffered even more learning loss than students at other New York City public schools. We therefore ask that the City Council do its utmost to remediate the learning loss by ensuring that: 1) the DOE provide all students in detention with five hours per day of in person instruction; 2) funding is provided to ensure continuation of tutoring programs beyond the 2020-21 school year, either through community partnerships, or through the DOE itself; and 3) the DOE a create system for quickly determining and delivering compensatory educational services to all students with disabilities who did not receive the full amount of special education services to which they were entitled during the COVID-19 period, including students at Passages Academy and Island Academy.

Ensuring Meaningful Educational Programming for Incarcerated Youth

As advocates for our clients, The Legal Aid Society knows that our clients, like other young people, want to achieve educationally and become contributing members of the community. Unfortunately, our incarcerated clients have not been provided with the tools they need. In order effectively integrate youth in the juvenile and criminal legal systems into the community and ensure future educational and vocational opportunities, thereby preventing recidivism, incarcerated youth need specific and targeted interventions including: 1) access to intensive research based literacy programs; 2) services for English Language Learners; 3) full access to special education services for students who have been identified as students with disabilities under the IDEA, including certified teachers and related service providers; 4) access to high school equivalency programs and TASC testing while incarcerated; and 5) access to high quality vocational or certification programs that are relevant to the labor market. Integral to each of these areas is improved access to tutoring and continued access to technology.

Access to Intensive Research Based Literacy Programs

Many students involved in the juvenile legal system are far behind where they should be when it comes to basic academic skills, including reading, either because they have an unidentified learning disability or have not had access to high quality literacy programs.⁶ There is a large amount of data supporting the efficacy of specific programs to help students catch up in reading, such as Orton Gillingham, Lindamood Bell, and Wilson. Many incarcerated students need intensive instruction in literacy using research based methodologies in order to function in our society and to reach their goals –to have the basic level of literacy required to do high school level work, enroll in high school equivalency classes, and to obtain employment.

Bilingual or English Language Learners

Youth in detention who are English Language Learners need access to bilingual instruction with teachers certified in providing instruction to English Language Learners.

Access to Specialized Instruction for Youth with Disabilities

Although a large percentage of incarcerated youth and young adults are entitled to special education services, it is not clear that incarcerated youth receive these needed services. In particular, it is unclear whether students whose IEP's require specialized instruction are receiving instruction from certified special education teachers. The DOE should be required to report on their compliance with IEPs, including class sizes, whether instruction is provided by certified special education teachers when required, and the provision of related services by certified staff.

Access to High School Equivalency Programs and TASC Testing

Since Raise the Age, the average age of students at Passages Academy has risen. Those youth, are often interested in obtaining their high school equivalency diplomas. Advocates have

⁶ See Houchins, Gagnon, Lane, Lambert & McCray, p. 61.

been discussing opportunities to expand accessibility to prepare for and to take the TASC exam with the DOE, and ask the Council to help support such expansion so that youth can return to the community prepared to continue to higher education, vocational programs, or employment.

Access to Vocational Programs

Many youth and young adults with court involvement are interested in joining the labor force. These youth need access to high quality vocational programs that will provide them with practical skills that are relevant to the labor market. The DOE runs several very successful vocational programs such as Co-op Tech that provide students with marketable skills. We recommend that the DOE expand or replicate these programs into Passages Academy. This would be a tremendous benefit to youth who would then have marketable skills upon their release.

CONCLUSION

We thank you for holding this hearing in order to address this important topic. We look forward to continuing to work with the City Council and are happy to answer any questions you have.

Contact:

Melinda Andra

(646) 866-4057

Email: mlandra@legal-aid.org



Testimony of

Gisele Castro
Executive Director

Before the
New York City Council
Committees on Education, Criminal Justice,
and General Welfare

April 21st, 2021

Testimony before the Committee on Education, Criminal Justice, and General Welfare

Good Morning Chairs Treyger, Powers, and Levin, and the members of the Education, Criminal Justice, and General Welfare Committees and all Council Members, thank you for the opportunity to testify today on educational programming in jails and juvenile detention. I am Gisele Castro, the Executive Director of Exalt Youth (*exalt*), a non-profit organization that engages court-involved youth ages 15-19 in a program focused on educational advancement and workforce development, to elevate their expectations of themselves, move them away from the criminal justice system and onto a successful path.

exalt works with 15-19 year olds on the spectrum of justice-system involvement. We only serve court-involved youth, many of whom are facing serious charges such as assault and gun possession. We intervene to move their trajectories permanently away from deeper involvement in the system. Since *exalt's* inception in 2006, we have played a critical role in re-engaging youth with their education. Through our Socratic teaching and rigorous curriculum, our approach is intended not only to ignite participants' interest in our programming, but to highlight the important role education plays in their personal trajectory.

I have been in this field for 20 years. There is an abundance of research that supports the link between educational success and criminal justice avoidance. In our experience, the best thing that can be done to support a young person that is in placement or detention to ensure they do not return to the criminal justice system once released, is to provide quality educational opportunities. A young person's stay in detention, no matter how short, should never interfere with their educational progression. .

Last March, due to Covid-19, we adapted our curriculum to a fully virtual model. As a result of this transition, for the first time, we were able to offer our programming to participants currently placed in Close-to-Home facilities. In the last year, we have worked with over 20 participants in placement that have been extremely responsive to our programming, which has underscored how valuable a specialized educational program is in these spaces.

We know we can only improve outcomes for our youth when we understand fully how we all, in partnership, are doing. We also know that transparent reporting encourages accountability. For those reasons, I applaud Council Members Dromm, Cumbo, and Ampry-Samuel for introducing Int. 1224 and support consistent reporting done at the agency level on educational programming for detained youth.

I want to once again thank the committees for holding this hearing and I look forward to continuing to work with you and our partners in city agencies, to bring programming to detained youth and ensure they have access to quality education.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gisele Castro". The signature is fluid and cursive, with a prominent initial "G" and a long, sweeping underline.

Gisele Castro
Executive Director



**Testimony of Girls for Gender Equity For the New York City Council
Committees on Education, Criminal Justice, and General Welfare
Oversight - Educational Programming in Jails and Juvenile Detention
April 21, 2021**

Thank you Chair Treyger, Chair Powers, Chair Levin, and the members and staff of the Council Committees on Education, Criminal Justice, and General Welfare for the opportunity to comment on access to education in the city's adult and youth jails.

Girls for Gender Equity (GGE) is an intergenerational advocacy and youth development organization that is committed to the physical, psychological, social, and economic development of girls and young women. GGE works to challenge structural forces, including racism, sexism, transphobia, homophobia, and economic inequality, which constrict the freedom, full expression, and rights of girls and gender-expansive youth of color.

Overview

We sincerely thank the Council for the leadership shown since March 2020 and the pressure directed at the administration to decarcerate during the pandemic. Short of discontinuing sending young people to jail, the City must ensure that youth obtain the education that they are entitled to under law.

In 2016, when Council convened an oversight hearing on this issue, the discussion of compromised access to education included the use of pepper spray in East River Academy classrooms with educators being supplied with gas masks, and speakers sharing stories of students becoming physically ill as a result of DOC staff releasing gas into classrooms.¹ We thank the Council for these continued efforts to bring desperately needed transparency to city jail conditions for young people and the proposed amendments to Introduction 1148-2016.

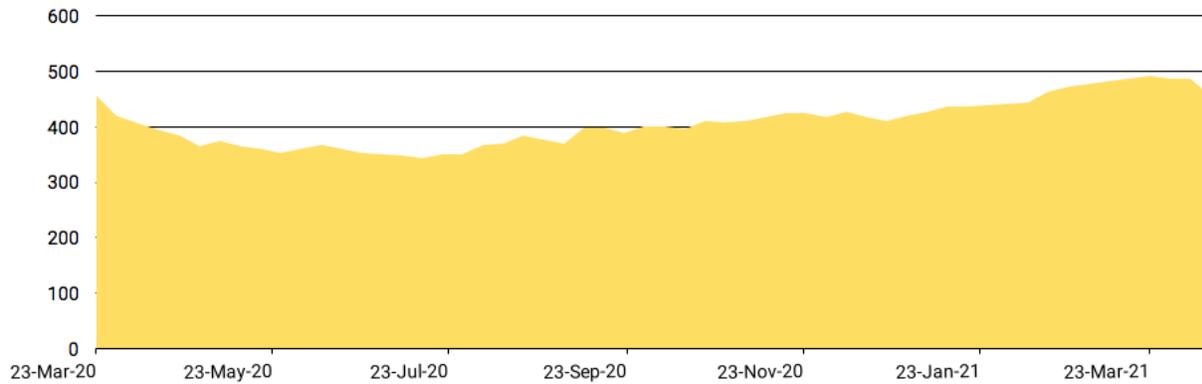
Weekly for the last year, GGE has been tracking the shifting population of young people incarcerated in the city's adult and youth jail systems, and as the below charts illustrate,² the total population of young people potentially eligible for educational services is also returning to

¹ See Hearing Transcript, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2864769&GUID=CDFD5A0E-E41D-4DFD-809E-3990064BE692&Options=&Search=>

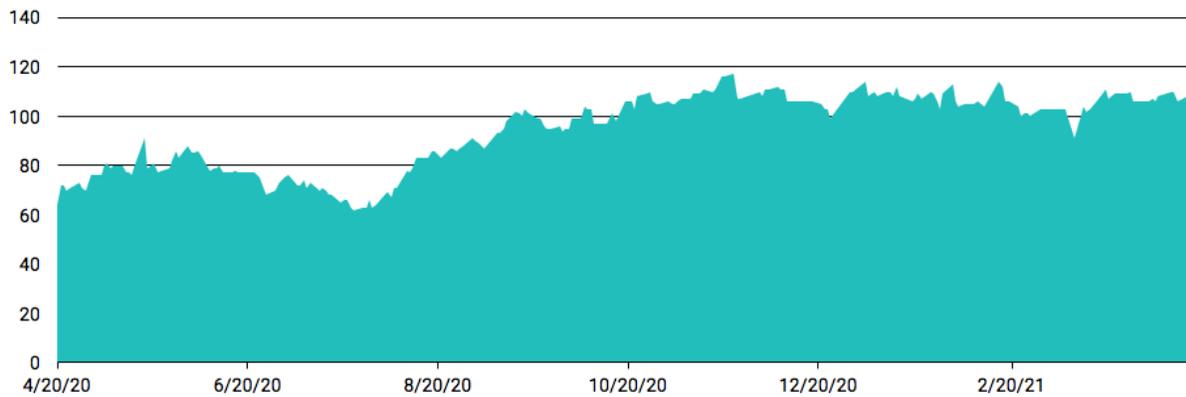
² "Daily Inmates in Custody." NYC OpenData. Analysis by GGE. See <https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb>; see also "Juvenile Detention Facilities - SD/SSD Census," NYS OCFS, <https://ocfs.ny.gov/programs/youth/detention/census.php>.

pre-pandemic levels, heightening the urgency to address issues of educational quality and access:

Young People ≤21 Incarcerated in DOC Facilities



Young People Incarcerated in Crossroads & Horizon



While young people in New York City who are 18 to 21 are not required to go to school, they have the right to go and work towards a high school diploma until the end of the year in which they turn 21. Further, the Department of Education (DOE) announced last Thursday that New York City students who are turning 21 this school year, and who would otherwise age out of the school system, will be allowed to stay for an additional year. We are now grappling with the impact of the pandemic on chronic absenteeism and awaiting enrollment numbers, attrition rate or the number of students who have left the system before graduation from the City and DOE.

We strongly encourage the Council to continue to hold the DOE accountable to supporting incarcerated young people particularly those newly disconnected from schooling due to the pandemic, economic crisis, and resulting pushout.

Introduction 1224-2018

We strongly support Introduction 1224-2018 and expanding the scope of Local Law 168-2017 (Introduction 1148-2016) to include ACS facilities and creating more transparency in the provision of education to young people in all of New York City's jails. Our experience has shown that timely information about conditions of confinement is necessary to inform public policy but is sorely lacking.

According to the 2019-2020 school year report pursuant to Local Law 168-2017, the Department of Correction (DOC) posted that 48 students – a jump from 17 students in the 2017-2018 school year – were prevented from attending educational programming due to “behavioral issues or assault.”³ **We ask that the proposed Intro. 1224 be clarified to describe the number of instances, similar to the ways the total number of classroom removals or suspensions are reported, so we are able to know the number of days, instances, and kinds of exclusions.** Seeing also in the 2019-2020 report that 53% of all “infractions” were categorized as “classroom disruptions” we call on Council to clarify the “Discipline Code’s” consequences per infraction category. The DOE’s Discipline Code, for example, offers a range of responses beginning with a student/teacher conversation, rather than the denial of educational services.⁴

We also ask that you include “cell study” meaning educational services provided in-cell, in a housing area or non-congregate setting, without the presence of a teacher. We encourage the Council to also incorporate into these transparency efforts specific attention to educational access in all jail facilities, inclusive of RMSC and the young people incarcerated there, as generalizations presented by DOC often neglect to identify disparities in access for young people incarcerated at Rosies. We have also heard that certain housing units are prevented from accessing educational programming, such as “commingled” units.

Considering all forms of exclusionary discipline would ensure that removals and suspensions, even if employed under a different name, are captured, as part of the totality of circumstances young people can be disciplined, for example the number of young people who did not attend educational programming at any time due to lack of escorts, or the number of educational hours canceled due to facility lockdowns or the use of gas in classrooms.

Finally, thinking of the Student Safety Act’s capturing of arrests in schools, we’d ask that this data also include the number of arrests made of students in East River and Passages Academies. As we’ve seen with the Student Safety Act, data transparency motivates reform.

³ Retrieved from https://www1.nyc.gov/assets/doc/downloads/pdf/Annual_2020_Education_Report.pdf.

⁴ See page 32, for example, <https://www.schools.nyc.gov/docs/default-source/default-document-library/discipline-code-grade-6-12-english>

Administration for Children's Services Facilities

In March of 2020, when pressed on efforts to reduce the population of incarcerated young people, the Mayor remarked, *"Obviously, the focus has been on addressing the issues around adults in our jail system, particularly those who are older or had preexisting conditions. That's where our focus has honestly been."*⁵ This early inattention to incarcerated young people was unacceptable. Attention to the health and safety of young people must include attention to the health and safety of incarcerated young people, and we continue to call for the City to shift away from youth incarceration as a response to social, economic, and educational inequities.

We are extremely concerned about conflicting reports of mask distribution, quality of and youth engagement in remote learning – including access to electronic devices and live educators in lieu of packets – access to phones and tablets, and family video conferencing. In light of sustained press attention,⁶ and as acknowledged in the Committee Report, ACS responded publicly to the concern that students in detention were unable to be seen or heard by their educators during class, relegated to a "text-messaging feature" during live instruction or phone after school hours, without a specific commitment to a timeline for the implementation of a voice communications system. ACS testified in May that they have not seen kids leaving as quickly during the pandemic as is typical, leading to a slowly increasing population. The Mayor's Preliminary Budget Management Report, released January 2021, now indicates that there was a 65% increase in length of stay from 23 to 38 days during the first four months of Fiscal Year 2021.⁷ **Again, according to our tracking, the population of young people in detention has jumped from 60s in April 2020 to over 110 in April 2021 – a jump of 76%.**

The Department of Education (DOE) is experiencing tremendous resource and staffing challenges due to the blended learning model underway citywide, in which case we encourage the Council to again advocate that the City pursue decarceration as a solution to compromised access to education.

Department of Correction Facilities

The December meeting of the Board of Correction (BOC) brought the public an update from DOC staff that, nine months into the pandemic and nine months after the first shift to remote learning, city jails had yet to set up virtual learning for incarcerated students. Instead, young people were being forced to rely on paper packets and a student/educator text function on tablets in lieu of in-person schooling.⁸

⁵ Transcript: Mayor de Blasio Holds Media Availability on COVID-19, March 26, 2020, Available at <https://www1.nyc.gov/office-of-the-mayor/news/193-20/transcript-mayor-de-blasio-holds-media-availability-covid-19>.

⁶ See Grench, E. (2020, December 11). NYC moves to take students off mute in juvenile lockups, but due date elusive. THE CITY. Retrieved from <https://ny.chalkbeat.org/2020/12/11/22169561/nyc-juvenile-detention-remote-learning-coronavirus>.

⁷ Preliminary Mayor's Management Report: Administration for Children's Services (January 2021). Retrieved from <https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/acs.pdf>.

⁸ 2020-12-16 NYC Board of Correction Public Meeting. At 01:14:50 <https://youtu.be/64UqYdouGOW?t=4487>.

With this information, we were left with further questions about the student/educator text function:

- Is instruction happening live?
- What are the response times?
- When, where, and how often is the function available?
- Given citywide educator shortages, is this a designated or assigned educator building a relationship over time? Is the educator with the East River Academy or a substitute or with the teacher reserve?

The Department of Education (DOE) is experiencing tremendous resource and staffing challenges due to the changing learning models underway citywide, in which case we again encourage the Council to advocate that the City pursue decarceration as a solution to compromised access to education.

Following the December meeting of the BOC, THE CITY, the independent newsroom, reported a statement from DOC that on-site staff will be provided once middle and high schools reopen for in-person instruction.⁹ At that time, it remained unclear whether the city would reopen middle and high schools for in-person learning any time soon. At the same time, Pre-K, 3-K, K through 5, and District 75 schools had been identified as needing accommodations and are open for in-person instruction. Knowing that, we questioned the justification for linking or tying together these desperately needed educational supports to the citywide timeline for middle and high schools. With February 25 and March 22 marking the reopening of middle and high schools respectively, we look forward to DOC's update.

We'll also note that the Mayor's own explanation of his reasoning for the delay is specific to different factors, such as scaling up testing capacity:

"The amount of testing is a crucial piece of the equation. So, since we're moving to weekly testing, that's going to take a lot of capacity. We wanted to make sure we can do that consistently and well, and that's why it's important to go by phases. Also, again, the need levels for District 75, for younger kids, the need is even more intense to be there in school, and we know that the health realities for the youngest kids have been the most favorable. So, all of those reasons are why we're doing it. Now we look forward to the day when we can move to middle and high school, but we're just not able to do that yet."¹⁰

We ask that the Council seek the explicit reasoning for delaying access to live instruction or video capability. DOC staff stated that the DOE has "been working to try to set up video classrooms,"¹¹ and deferred questions to the DOE, to which we encourage the Council to proactively verify. Specifically, how is the DOE measuring efficacy, academic engagement and achievement during this time of packet work? What metrics can be publicly reported? Further,

⁹ Rosa Goldensohn. "Students on Rikers Island Locked Out of Remote Learning Video Chat With Teachers." Retrieved from <https://www.thecity.nyc/education/2020/12/16/22179869/students-on-rikers-island-locked-out-of-remote-learning-video>.

¹⁰ Transcript: Mayor de Blasio Holds Media Availability November 29, 2020. Available at <https://www1.nyc.gov/office-of-the-mayor/news/818-20/transcript-mayor-de-blasio-holds-media-availability>.

¹¹ 2020-12-16 NYC Board of Correction Public Meeting. At 01:14:50 <https://youtu.be/64UqYdouGOW?t=4487>.

we are concerned with what this might mean for students with individualized education plans (IEPs). Students with IEPs have the right to special education services that are similar to what is on their IEPs when they attend school at East River Academy. We encourage the Council to inquire about educational accommodations under these circumstances.

The Restrictive Housing Rulemaking

Many factors contribute to compromised access to education, including DOC's maintenance of policies and practices which impede access to educational programming, such as the continued use of restraint desks. Today also marks the deadline for public comment as part of the BOC's rulemaking to create solitary by another name – "RMAS" or the "Risk Management Accountability System."

The rule states that "DOC plans to expand the structurally restrictive housing units at North Infirmity Command (NIC)" as the design for RMAS "Level 1" – with NIC known already for brutal conditions – and describes the Secure unit at GRVC for RMAS "Level 2." Though we await the DOC's "renderings," photos obtained via FOIL shared by a speaker during the April 14th public hearing showed cages inside other cages, with a thin corridor parallel to the cages.

The rule outlines that "DOC shall also [e]nsure that young adults are offered and are able to access three hours of educational services per day." Without any definitions or further protections, "educational services" can mean a worksheet to be completed while isolated in a cell. As has been the case, programming could simply involve program staff briefly speaking with a person at a cell door. Because of the nature of isolation, people will have to rely on DOC staff for everything. Further, the rule mandates an undefined level of participation in programming in order to progress through restrictive levels, combined with DOC making the determination around compliance, that determination is being set up to be used to prevent a person from progressing out of that unit.

In January of 2015 the BOC revised the minimum standards with the reasoning that a new housing cohort for 18-21 year-olds would ultimately provide for "age-appropriate" programming and services,¹² explicitly including a revision that "provides that housing for [young adults] must provide age-appropriate programming, and requires the Department to report on its efforts to develop such programming."¹³ The new rule makes no mention of how programming will be facilitated between Levels 1 and 2. Based on the photographs, it is our understanding that people will be confined to the cell and cage and program staff will only access the slim corridor.

¹² New York City Board of Correction. (2015, January). Open Meeting. Available at [http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20\(1.13.15\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20(1.13.15).pdf).

¹³ New York City Board of Correction. (2015, January). Notice of Adoption of Rules. Available at http://www1.nyc.gov/assets/boc/downloads/pdf/boc_rules_governing_correctional_facilities_fr.pdf.

No matter the final form the restrictive housing rulemaking takes, we encourage the Council to take into account the changing landscape and diversity of restrictive settings and how these developments could limit access to education or participation in educational services.

Budget Implications

The Council has another reason to reduce confinement of young people and provide better support for those who remain in their communities: the tremendous cost of incarceration. The most recent Mayor's Management Report (MMR) specifies the average daily cost per youth per day in ACS detention at \$2,064 – up from \$1,651 in the prior fiscal year reported (amounting to a 25% growth). At that price, **we estimate that the total cost of incarcerating girls in secure detention during the pandemic has reached nearly two million dollars per year, per young person.**

Similarly, a recent report from the Office of Comptroller estimates the average annual cost of DOC incarcerating one person to reach \$447,337.¹⁴ At that price, **we estimate that the total cost of incarcerating young women in adult jails during the pandemic has reached over thirteen million dollars.**

As girls of color are persistently disproportionately represented in the population of incarcerated young women as compared to their representation in New York City, **the City is disproportionately placing young girls of color at risk by neglecting to expedite their release from the city's jail systems.**

Conclusion

Incarceration even under pre-pandemic operations all but ensured serious health and safety risks to young people, who experience administrative and physical violence and immediate and long-term health impacts of confinement. There remains significant work to be done.

We thank the Council for their oversight and attention to these issues, and for the opportunity to testify. For more information, please contact: Charlotte Pope, Director of Policy, at cpoppe@ggenyc.org.

¹⁴ See https://comptroller.nyc.gov/wp-content/uploads/documents/Watch_List_DOC_FY2022.pdf.



NEIGHBORHOOD DEFENDER SERVICE OF HARLEM

New York City Council

**Committee on Education (Jointly with the Committee on Criminal Justice
and the Committee on General Welfare)**

Board Chair
Matthew Mazur

**Oversight Hearing on Educational Programming in Jails and Juvenile
Detention**

Board Members
Jonathan Abady
Damaris Hernández
Miriam Gohara
Melody Rollins-Downes
David Sanford
Elinor Tatum

April 21, 2021

**Written Testimony of the Neighborhood Defender Service of Harlem by
Ariana Brill, Equal Justice Works Fellow/Education Attorney, Criminal
Defense Practice**

Executive Director
Rick Jones

Managing Director
Alice Fontier

The Neighborhood Defender Service of Harlem represents low-income residents of Northern Manhattan—including East, Central, and West Harlem, Washington Heights, and Inwood—who have been charged with a crime, or are subject to an eviction, child removal, or other civil matter. We also provide education advocacy and representation to our clients, some of whom are incarcerated at Rikers Island.

Lack of Access to Educational Services at Rikers

For much of the past year, students at East River Academy (ERA) on Rikers Island have had—at best—extremely limited access to educational services. This is deeply concerning not only because students have a legal right to attend school,¹ but also because ERA students are often in the greatest need of educational services. Students who are incarcerated are disproportionately students with disabilities. Our clients are often over-age and under-credited and have frequently experienced exclusionary school discipline, discriminatory treatment, and school pushout prior to incarceration. Because young people at Rikers are disproportionately Black and Latinx, the lack of services overwhelmingly prevents students of color from accessing an education.

We recognize that the DOE has made significant efforts to respond to challenging conditions and meet the needs of students during the COVID-19 pandemic. Still, the past year has deepened existing inequality in New York City schools. Although young people across the city are struggling to access an education, some of the most basic supports available to students in the

¹ Under New York Education Law § 3202, students have the right to attend school through the end of the school year in which they turn 21.



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community are completely inaccessible to students in jail. Our clients' participation in school can be a positive experience and a high school diploma can create new opportunities—but these benefits will not be realized absent significant changes to current programming.

Inadequacy of Packets and Tablets

Throughout the pandemic, the absence of educational services has made it very difficult for students to make any progress toward High School Equivalency or high school diplomas. Non-incarcerated students are entitled to free devices and can receive synchronous (“live”) instruction. In contrast, in the beginning of the pandemic, it does not appear that *any* educational services were offered to students at ERA. Currently, many ERA students only have access to paper packets. The students who are provided with tablets can “chat” with their teachers but will not receive an immediate response, cannot engage in any real-time communication, and do not receive synchronous instruction. Even when tablets are theoretically available to certain housing units, the devices may be confiscated for “security issues” for weeks at a time and replaced with paper packets. There is also a telephone hotline, which allows students to call teachers and counselors from unit phones at designated times. However, because the DOE cannot make calls to students on the unit phones, students who are unaware of the hotline or hesitant to make calls are denied the opportunity to communicate with school staff. It is unreasonable to place all responsibility on students to initiate contact with teachers. It is also difficult to imagine how any student—even one who is highly motivated—can advance in school without regular communication with teachers and counselors.

The lack of access to an education is especially harmful because it prevents students from making progress during a critical time. If students are working toward a high school diploma, they must fulfill their graduation requirements before they age out of the school system. In addition, young people who might otherwise be interested in pursuing an education may be discouraged because of the daunting prospect of navigating school with minimal supports. We have witnessed young people who were actively engaged in school prior to the pandemic or eager to re-engage in school lose motivation. After going many months without receiving any contact from teachers or staff; attempting to enroll in school multiple times without being provided services; or being forced to complete paper packets without any instruction—students understandably feel discouraged and disengaged.

Failure to Provide Special Education Services

Students with disabilities have not received all of the services and supports to which they are entitled under the Individuals with Disabilities Education Act (IDEA). While many students in the community have also gone without



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mandated special education services, non-incarcerated students can receive services by video or phone, as well as schedule regular sessions with providers. In contrast, students at Rikers have been limited to initiating calls to DOE staff using the unit phones—and it is unclear which services, if any, are offered during these calls. Some of our clients with disabilities have struggled to even begin engaging in remote work; they have had difficulty understanding how to use devices or complete work without scaffolding or individualized support.

Return of In-Person Instruction

East River Academy staff returned to Rikers Island in April 2021. The return of ERA staff is a positive development, as their dedicated instruction and guidance can help students succeed. However, it is not clear that DOC is actually transporting students to in-person school each day, how many students are entirely excluded from in-person learning, how many hours of instruction each student receives per week, and which barriers will persist as COVID-19 continues to spread throughout Rikers.

Recommendations

Data

The DOE must release data about student attendance and engagement at East River Academy, including information about the number of students who have accrued credits or made progress toward a HSE diploma; the number of students who are receiving education through different modalities (in-person learning, tablets, paper packets); the number of students who are utilizing the telephone hotline and the length of these phone calls; the total number of students eligible to participate in school; and which mandated special education services have not been provided since March 2020. At the April 21 hearing, the DOE testified that attendance information from East River Academy was not available from March 2020 to April 2021. However, information about the completion of paper packets, as well as how many students actually used and completed work on tablets, is crucial to understanding the extent to which these students have been deprived of an education. Additionally, more information is needed about how often students' tablets are confiscated by DOC and replaced with paper packets.

Improved Access to Educational Services

If students at ERA are to get the same, basic access to education as students in the community, young people must be enrolled in school immediately upon their request. They must be offered in-person instruction. If in-person instruction is not available five days per week, students must be offered synchronous instruction and the ability to communicate in real-time with their teachers, counselors, and other support staff. Students must receive all of the mandated special education services that they are entitled to under federal law. Finally, DOC should not impede the educational progress of students. DOC should



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transport students to school each school day and should avoid confiscating tablets. Because DOC officials testified at the April 21 hearing that, 13 months into the pandemic, “connectivity issues” were a major reason that tablets were not offered to all students—any technological barriers preventing the distribution of tablets should be immediately addressed.

Compensatory Services

We strongly recommend that the DOE offer compensatory services to students to make-up for the loss of educational services at East River Academy since March 2020. The DOE should determine the degree to which students have not been provided with mandated special education services and offer services to address this loss. We also recommend that compensatory services be made available to every student who attended ERA since March 2020—and not only to students with disabilities—given the widespread deficiencies in educational services for all students.

Young people have a far better chance of making progress at schools in their communities rather than in detention centers, jails, and prisons. Still, if New York City continues to incarcerate people and subject them to inhumane conditions at Rikers, students should not also be denied their right to educational services.

We thank the Committee on Education, the Committee on Criminal Justice, and the Committee on General Welfare for holding this oversight hearing and for their dedication to improving education for youth who are incarcerated. Should you have any questions, please contact Ariana Brill at abrill@ndsny.org or (646) 357-6831.



Testimony of

Nikki D. Woods

Senior Trial Attorney – Juvenile Defense Unit

New York County Defender Services

Before the

Committee on Education

Jointly with the Committee on Criminal Justice and the Committee on General Welfare

Oversight – Education Programming in Jails and Juvenile Detention

&

Intro. 1224-2018

April 21, 2021

My name is Nikki Woods and I am a Senior Trial Attorney with the Juvenile Defense Unit at New York County Defender Services (NYCDS). We are a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year, and our Juvenile Defense Unit represents children in felony “Raise the Age” cases in both Supreme Court and Family Court. While I am currently a juvenile public defender, I have been advocating for the educational rights of children for a decade. Thank you to Chairs Treyger, Powers and Levin for holding this hearing on Education Programming in Jails and Juvenile Detention.

My team represents some of the most vulnerable people in our city – children charged with crimes, some of whom are incarcerated, and many of whom are in dire need of educational support, vocational services, and career-development resources. Raise the Age has allowed for older youth to be incarcerated in juvenile detention facilities and jails, but these facilities do not offer enough access to age-appropriate educational and vocational programs. First, NYCDS calls on City Council to increase educational offerings in juvenile detention and placement facilities, as well as city jails, to include college courses. Second, for all students, but particularly those who may not be college-bound, there is a need for enhanced vocational training, career planning services and information about and access to career opportunities. Third, students with special needs also require and should be afforded one-on-one tutoring services and additional supports. Finally, we support Int. 1224, Council Member Dromm’s reporting bill, and urge the Council to pass it.

New York County Defender Services

100 William St, 20th Floor, New York, New York 10038 | t: 212.803.1500 | f: 212.571.6035 | nycds.org

I. Current Educational Services for Raise the Age Youth

Raise the Age has changed who is in juvenile detention and placement facilities. We are now more than two years past the implementation of Raise the Age, and with that, there are now many youths who are 18 and over in detention and Close-to-Home placements. Many of these older youth entering detention or placement have not regularly attended school for months or even years prior to their detention. To address that, Passages Academy offers two educational paths for youth in custody: a traditional path towards a High School diploma and a path to earn a High School Equivalency (“HSE”) Diploma. I have had several clients who have entered secure detention or a Close-to-Home placement after having been totally disenfranchised from their public school, and after time spent in Passages Academy, have made meaningful progress towards a traditional or HSE diploma. I have one client who entered Crossroads at the age of 17. Prior to his incarceration, this client had not attended school for more than two years, and when he was there last, he was in 7th grade. Once incarcerated, my client was enrolled in Passages Academy, and in the span of about 11 months, he was able to earn enough credits to “move up” to high school. Once in high school, my client was then eligible to enroll in an HSE program, which was a path better suited for his needs because of his age. I have also had several clients with similar experiences in Close-to-Home placement (“CTH or placement”). Some of these clients have been released from custody prior to earning all of their credits for graduation or before they took their TASC exam, but because they had a positive educational experience while incarcerated, they are much more likely to continue their education in the community when they are released than they would have been had they not been enrolled at Passages Academy. For these students, Passages Academy is working, but there are limits to what Passages offers these young learners.

II. Incarcerated Youth Deserve Access to College Courses

While there may be some young people earning their traditional or HSE diplomas while incarcerated, this is the educational ceiling for most older youth in juvenile detention, placement or jail because older youth have little to no access to college courses in those penal settings. Children should not be in jail, but so long as our current systems continue to incarcerate young people, age-appropriate educational, vocational and career-development services must be made available to all young people in custody. Offering college courses to incarcerated youth is not just a cost for the city, it is an investment in our future. Because of Raise the Age, youth serving state sentences remain in secure detention until the age of 21. If they, or their peers in other placement facilities, are able to spend that time earning college credits, and possibly even a degree, they will be in a much better position to get a job when they are released to the community which can drastically reduce recidivism rates and provide these young people with greater access to financial stability. For those youth serving longer sentences in secure detention, they will eventually be transferred to DOC custody to finish their sentence. Not all DOC facilities allow inmates to access college courses. If our older youth have access to college in secure juvenile detention, juvenile defenders and advocates will have a better chance to advocate that these youth be transferred to a DOC prison that offers college courses because of their previous enrollment in college courses in juvenile detention. Young people need access to higher education, vocational training and career development programs in order to ensure a more successful reintegration to their communities.

Offering college access to older incarcerated youth in detention and jails is not only the right thing to do for these children and their families but it makes economic sense for our city.

III. Incarcerated Youth Should Be Afforded Access to Vocational Skills Training and Career Planning

Not all older youth are college bound. While there is some vocational programming available to youth in secure detention, there are little to no on-site vocational programs available to youth in non-secure detention or close-to-home placement. The setting that is most lacking in these services is non-secure detention. Besides Passages Academy, there are few if any other educational or vocational programs available to older youth in non-secure detention. There must be an expansion of vocational programming available to older youth in non-secure detention. Without this, the time these youth spend in detention will in no way offer them a chance to improve their lives when they are released. There must also be an expansion of career planning services and career opportunities available to older youth leaving Close-to-Home placements and going on Aftercare. When a 19-year-old leaves placement with either a high school or HSE diploma, they are not guaranteed employment, and without that financial stability, a successful reentry is questionable. Many older youths released from placement do not go back to live with their family. Aftercare services must specifically address the needs of these older youth by creating partnerships with more age-appropriate community organizations that connect them with jobs upon their release so that they can be financially stable. These older youth need access to age-appropriate re-entry services. Aftercare planning must include services that help them not only access jobs, but also provide them access to higher education and vocational training and certification programs. Without these supports, our older youth will flounder once back in the community.

IV. Additional Supports are Needed for Youth with Special Needs

One final area where educational programming in detention and jails is lacking is its near failure to provide substantive one-to-one tutoring and other specialized educational services for youth with special needs in detention and jails. Many youth in detention and jails have an Individualized Education Program (“IEP”). Under Federal Law, schools in juvenile detention centers and in jails that house people up through the age of 21, like public schools, are required to identify, locate and evaluate all children with disabilities who may need special education and related services. 20 U.S.C Sec.1412(a)(30)(A). So many young people enter detention and jail after years of disengagement from school, and it is the responsibility of jails and juvenile detention centers to assess and evaluate all students that they believe may have special needs. This is not happening at all in Rikers and it is rarely happening in Crossroads and Horizons. Indeed, many of these youth have failed to receive appropriate educational services in the past. They are vastly under-credited for their age and many have tremendous learning deficits. These students with identified learning challenges may struggle in a traditional classroom settings. Greater access to one-to-one tutoring will provide these young learners who are struggling in Passages Academy individualized educational instruction, which is required by law, and will make their time spent in custody more meaningful to their future.

V. **Int. 1224-2018 - 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**

NYCDS strongly supports Intro. 1224-2018 and urges the Council to pass it. Accountability and transparency through data reporting is one of the most effective ways for the City to implement real changes to the educational services provided to our system-involved youth. Intro. 1224 will help to produce data that will show how existing educational and vocational programs in juvenile detention and jails must change to accommodate the needs of an older population of youth in custody. The report would also include statistics on educational programming enrollment, available services, rates of violence for such delinquents and offenders, and other related indicators. This data will enable educators and juvenile advocates to identify deficiencies in the current educational programming available to incarcerated youth which will allow for the creation of specifically tailored educational programming that addresses the needs of older youth in custody. This law will also expose the violence that our youth suffer while incarcerated because the rate at which our young people are subjected to violence in juvenile detention and jails is vastly underreported. Exposing this violence, whether at the hands of peers or detention staff, is crucial to creating better systems of accountability, and for building programming that immediately addresses violence in detention and jail.

VI. **Conclusion**

Increasing youth access to age-appropriate education, vocational and reentry services while they are in detention or jail will most certainly build stronger, safer communities and families. By building on existing educational and vocational programs, creating more opportunities for youth to receive one-on-one tutoring, and expanding access to college, we can achieve more positive outcomes for our incarcerated youth. Nearly all of my clients are male-identifying, black and brown young people. Virtually all of my clients have experienced intergenerational trauma, oppression and violence through systemic racism, and generational poverty, but, nevertheless, they are incredibly resilient. If our young people are given access to more meaningful educational and vocational services while they are incarcerated, there may be no limit to what they can achieve in the future.

Thank you again for your attention to this important issue for our city's most vulnerable young people. If you have any questions about my testimony, please contact me at nwoods@nycds.org.



TESTIMONY OF:

Stephany Betances – Mitigation Specialist, Adolescent Representation Team

BROOKLYN DEFENDER SERVICES

Presented before the New York City Council

Committees on Education, Criminal Justice, and General Welfare

Oversight Hearing on Educational Programming in Jails and Juvenile Detention

April 21, 2021

My name is Stephany Betances. I am a Mitigation Specialist on the Adolescent Representation Team and Education Practice at Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services for nearly 30,000 people in Brooklyn every year. We thank the City Council Committees on Education, Criminal Justice, and General Welfare and Chairs Treyger, Powers, and Levin for holding this important hearing on educational programming in jails and juvenile detention.

BDS is fortunate to have the support of the City Council to supplement the services we provide as a public defender office in Brooklyn. Through specialized units of the office, we provide extensive wrap-around services that meet the needs of traditionally under-served clients in a comprehensive way. This includes helping young people and their families navigate the public education bureaucracy during and after contact with the criminal legal and family court systems.

BDS's Adolescent Representation Team works to eliminate contact and involvement within the criminal legal system for court-involved youth aged 21 and under. Our specialized attorneys, social workers, and youth advocates provide legal representation, advocacy, and social services in youth proceedings in Brooklyn's Criminal Court, Supreme Court and Family Court, collaborating across BDS's practices to provide comprehensive support on behalf of youth and guidance to their families. Our Education Unit delivers legal representation and informal advocacy to our school-age clients and to parents of children in New York City schools, including youth detained at Rikers, Horizon and Crossroads. A significant number of the

students we work with qualify as “over-age and under-credited” and have been retained at least one grade. More than half of the students we work with are classified as students with disabilities. As an interdisciplinary legal and social work team, we work to improve our clients’ access to education, and a significant portion of our advocacy relates to special education, school discipline, reentry, and alternative pathways to graduation.

Educational access in NYC jails

We believe that children learn best when they are in their homes, and not behind bars. The best way to provide educational supports to the young people we serve would be to avoid putting them in detention and focus on diverting them from the criminal legal system all together. But, as long as the City continues to incarcerate or detain school-age children and young people, there are many ways that the education provided to them can be improved.

Young people—particularly those on Rikers Island—struggle to access educational services. Before the COVID-19 pandemic, young people often reported to our staff that they were not aware education services were available, were not made aware of their eligibility for school, or were not brought to school after enrolling. This has been exacerbated during the COVID-19 pandemic. Youth on Rikers, who are entitled to receive educational services at East River Academy (ERA), went without *any* educational services for nearly the entire spring of 2020 following the shutdown. When school services did begin again, educational programming was being provided either through tablets with a chat function—but no live instruction—or through generic paper packets brought to housing units. While many students enter ERA with IEPs from their last school, our clients at Rikers have told us that they do not currently receive special education supports. And more recently, students report not receiving tablets on which to do work.

BDS applauds ERA staff for working to find ways to deliver services during a challenging time period when they were not physically present on Rikers Island. School staff set up a hotline that would allow students to call in to speak with teachers directly when DOE staff was unable to travel to Rikers Island. Still, many of the young people we work with report being unaware of this hotline, or even that school services were available at all.

Over a year after the pandemic began, there are still students in multiple facilities on Rikers who are receiving work only through standard paper packets that are picked up only once every two weeks, and who have *never* spoken to a teacher. Staff from our office has spoken with many young people who are understandably feeling unmotivated to engage with school, some of whom have decided to wait until leaving Rikers to pursue their education. In the meantime, they are left with little to do in cells and dorms with no other programming available and making no progress towards obtaining high school diplomas or equivalency certificates.

Educational access in secure and nonsecure juvenile detention

Students who attend Passages Academy at Crossroads Juvenile Center, Horizon Juvenile Center, and in nonsecure detention have also struggled to access education during the pandemic. While they have recently been able to access live instruction, for many months students were only able

to communicate with their teachers through the chat feature on their tablets. We are pleased to hear now that high schools have reopened, Passages is able to provide some in-person instruction to students. However, in-person instructional time is still limited, and interrupted by frequent quarantines, which means online instruction still accounts for a significant portion of each student's week.

In some cases, students have also struggled to access the curriculum at Passages and have not been given the transitional support they need to reintegrate into their home schools when they leave detention. We have worked with students who have not always been able to access the specific classes they need to earn credits. At the start of the pandemic in March 2020, we worked with a student who needed only a few credits to graduate. However, the student's counselor informed us that two classes she needed to be taking as a 12th grader, Geometry and Earth Science, could not be offered to her due to lack of course availability, and so she was placed in Algebra and Living Environment—two courses she had already taken and passed. Because Passages was unable to offer her the credits she needed, her progress towards graduation was delayed. When it came time for this student to leave Passages, it took a team of advocates from our office to ensure the student was able to enroll in a transfer high school convenient to her home so she could progress to graduation more quickly. Between her education attorney, criminal defense attorney, mitigation specialist, the student, her father and case manager from non-secure placement, we were ultimately able to secure her spot at the alternative school. But Passages did not make the transition easy or seamless for this young person, between enrolling her in classes she had already passed and failing to help her enroll in a school that was more appropriate and convenient to where she was living. Thus, her transition back into the community was met with a number of challenges.

Another student we work with was out of school for almost a month after leaving Crossroads, as his school required updated grades from the time he spent at Passages. While he was ultimately able to reenroll in the high school he attended before Passages and obtain full credit for the work he did while detained, he risked missing out on credits by virtue of the time he spent out of school.

Recommendations

Students at both Passages Academy and East River Academy have been ill-served by the educational services they have received (or, in many cases, failed to receive) during the pandemic. As the City moves toward increased in-person learning, there is an opportunity to prioritize the needs of the young people in jails and detention centers who have been disproportionately impacted by gaps in access to school this year. In an effort to ensure that the educational needs of young people in jail and detention are prioritized, we offer the following suggestions:

1. DOC Must Ensure Consistent Access to Educational Services at Rikers

DOE and DOC must work together to create a plan to provide the opportunity for regular, live instruction for students at Rikers. Even prior to the COVID-19 pandemic, the young people we serve reported having difficulty accessing the education to which they are entitled. Many

students were brought to school by DOC staff so infrequently that they gave up trying to attend; others were placed in facilities—such as AMKC—that did not have school services available; still others were never given information about how they could sign up for school. We also heard reports of frequent, sometimes multiple day lockdowns, where all students were denied school access. All young people at Rikers who wish to attend school in person must be able to do so.

a. *Ensure In-Person Learning – Including Required Special Education Services – Is Available to All Students at Rikers.*

The educational services that have been provided to students at Rikers during the pandemic are severely lacking, and few—if any—special education services are being offered to those who require them. Now that DOE staff have returned to Rikers Island, DOC and DOE must work together to create a plan to make students aware that educational services are being offered, and DOC must transport every student interested in attending school to the school floor every day during which school is offered.

b. *Make Learning Tablets Available to All Students at Rikers Island.*

While tablets should not be used as a substitute for in-person learning, tablets should be made available to all students at Rikers. Access to tablets has encouraged some of our clients to remain engaged in school. Some of the young people we serve have reported that they enjoy having the flexibility to learn at their own pace.

Access to tablets is not universal. Students at several facilities – including GRVC and OBCC – have been without tablets throughout the pandemic. More recently, we have heard reports that tablets are not being given to young people even in facilities where these devices had previously been made available. This technology should continue to be provided to supplement in-person learning—or for those students who do not wish to travel to the school—and expanded to be available to students in all facilities on Rikers.

c. *Extended Eligibility and Compensatory Services.*

We are pleased that the Department of Education has allowed 21-year-old students—who would ordinarily be aging out of eligibility for school—to attend school for an additional year. The DOE should ensure targeted supports are provided to students both inside and outside of custody to allow them to maximize that opportunity. Due to the gap in educational services during the pandemic, make-up services—in the form of tutoring or compensatory education—should be offered to current and former ERA students to help address the lapse in services they were entitled to receive. The City Council should ensure the DOE has sufficient funding to offer these services to students who desire them.

d. *DOC should be required to create a school in any facility where youth are held.*

BDS frequently works with young people who are placed in facilities at Rikers that do not have any educational services available. While these young adults are eligible for school, and many are interested in preparing for their High School Equivalency or Regents Diploma, East River Academy is not available to them. Prior to the pandemic, we worked with several young people who were housed at AMKC or parts of OBCC who have reported that they

want to attend school but have chosen to remain where they are—rather than request a transfer to a facility with school—because of violence concerns. Other young people have requested transfers to facilities with schools but have not been moved. DOE should be required to create a school in any facility where young people are held. Our clients should not have to choose between safety and school opportunity.

2. Expand Educational Offerings at Passages Academy.

While students at Passages Academy have had more access to educational services during the pandemic, there are still a number of areas where students have been met with difficulties—whether as a result of a delayed transition into or out of Passages or the lack of appropriate programming. ACS and DOE should work to ensure every student at Passages has access to varied and engaging educational services and programming, as well as the supports they need to be successful in school.

a. *Create Additional Programming at Passages*

One of the challenges of running a school inside detention is that students will necessarily enter at varying levels: some students may require intensive remediation, while others need upper-level courses. We also hear from many young people at Crossroads and Horizon—even those who have not yet graduated high school—that they would like the opportunity to engage in vocational programs, to learn job readiness skills, and to obtain technical certifications that will help them find employment in adulthood.

For those students who graduate high school while at Passages, or who are capable of accessing college-level work, credit-bearing college courses should be consistently made available at Passages. Allowing students to access these programs at Passages would have the added benefit of positioning those who are sentenced and sent to long-term placements the opportunity to take advantage of college programming in those long-term facilities.

DOE and ACS should also work together to create vocational programs and technical certification programs at Crossroads and Horizon. While students should of course continue to receive academic instruction, increased vocational programming should also be available to students who are interested, so they have the opportunity to leave the facilities with valuable work credentials.

b. *Improve Literacy Services and Other Targeted Interventions*

Many of the young people we serve struggle in school because their reading skills are far below grade level. Reading is the building block of learning, and without it, young people are at a deficit that fosters disengagement, not opportunity. Passages Academy can be an opportunity to re-engage students in school and provide them with the building blocks to succeed. In order to break the cycle of incarceration and poverty, our clients need access to interventions that will provide additional and targeted support in reading. The City Council should fund intensive, research-based remedial reading instruction, including additional staffing such as reading specialist positions, at Passages Academy, to ensure all the youth who attend have the opportunity to improve their basic reading skills.

c. ***Ensure High School Equivalency Programming Is Available to Students at Passages.***
Every student at Passages who wants to work towards a traditional high school diploma should have the opportunity to do so. Many young people who enter Passages having accrued few high school credits and may prefer to obtain a High School Equivalency (HSE) certificate should know it is an available option. For those students who are eligible for HSE programming, Passages should create a robust HSE program to give students the skills that they need to prepare for the HSE examination.

d. ***Continue In-Person Tutoring Programs at Crossroads and Horizon.***
During the COVID-19 pandemic, several organizations have provided in-person tutoring services to students at Crossroads and Horizon. Tutors have been able to coordinate with DOE staff to help students complete assignments, reinforce what they are learning in class, and make significant progress towards graduation. The City Council should ensure these organizations have the funding necessary for them to continue providing tutoring services to all students who are interested in obtaining tutoring at Passages.

e. ***Ensure Continued Availability of Tablets and Other Technology to Allow Students to Access Supplemental Learning Opportunities.***
While online learning cannot substitute for live, in-person instruction, many young people have reported to us that they appreciate having the opportunity to do self-guided work on the Chromebooks that have been made available to them during the pandemic. As students hopefully return to fulltime in-person learning in the near future, ACS and DOE should work together to make online learning available to students who are interested in engaging in additional credit-bearing work, or who may benefit from computer-based remediation tools.

f. ***Ensure Appropriate Transition Services into and out of Passages***
As noted above, we have worked with students who have entered Passages Academy and who have been either erroneously programmed for classes they have already taken, or who have not been able to access particular classes at Passages. When a student enters detention, the DOE must work to quickly evaluate which classes an entering student needs to graduate and ensure that any class needed by a student to make progress towards graduation is available.

We have also worked with students who have struggled to reenroll in school after leaving Passages, and who have lost the opportunity to earn credits as a result of delayed reenrollment. The DOE must ensure all students leaving Passages have updated copies of all their school records, and coordinate with the receiving school to ensure a seamless transition for entering students.

Conclusion

Thank you for holding this important hearing and for your consideration of our comments. BDS is grateful to the Council for the opportunity to testify about the challenges incarcerated young

people face in accessing educational services on Rikers Island and in juvenile detention. If you have any additional questions, please reach out to Supervising Education Attorney and Policy Counsel Anna Arkin-Gallagher at aarkingallagher@bds.org.



Trinity Church Wall Street - Testimony - City Council Criminal Justice, Education, and General Welfare Hearing

April 21, 2021 | Subject: Educational Programming in Jails and Juvenile Detention

Good afternoon Chair Powers, Chair Treyger, Chair Levin, and members of the Committee on Criminal Justice, General Welfare, and Education. My name is Cheavenese Diedrick and I am Program Officer for Racial Justice at Trinity Church Wall Street. Thank you for providing Trinity with the opportunity to testify at today's oversight hearing.

Trinity Church Wall Street is an active Episcopal church just down the street from City Hall with more than 1,600 parishioners, who represent all five boroughs and form an ethnically, racially, and economically diverse congregation. In addition to our ministry, we have an established grants program that provides more than \$20 million in annual funding to critical partners, including the Osborne Association, Fortune Society, and Exodus Transitional Community to address racial justice by ending mass incarceration and homelessness. Our grantee partners include organizations specifically focused on youth empowerment at these intersections, from the Alliance for Quality Education (AQE)'s Schools Not Jails campaign to the Children's Defense Fund, to Make the Road New York and the Youth Justice Network (formerly known as Friends of Island Academy).

Last year, Trinity Church helped to form the Faith Communities for Just Reentry campaign, a coalition of over 40 faith leaders from across the City that seeks to address the urgent needs of justice-involved individuals leaving City jails, as well as improve the City's support and services for our fellow New Yorkers reentering society following incarceration.

Some of our partners will be testifying at today's hearing and will share their experiences providing transitional and educational programming to justice-involved individuals, especially amid the pandemic. These providers can speak powerfully to what has been lost as they were unable to access jails over the past year. However, we wanted to briefly discuss the topic and provide some of our recommendations for how the City can better support New Yorkers that participate in these programs while in Rikers and other City jails as well as upon reentry from these facilities and State prisons.



As many of you may already know, a majority of incarcerated individuals in New York City jails and state prisons do not have a high school diploma or GED, and a quarter of those incarcerated do not have either credential due to myriad factors that have marginalized and excluded them from receiving a quality education. The intersection between incarceration and barriers to education can cause significant harm for justice-involved individuals who seek to find full-time employment and stability in their lives when they re-enter society. [Recent data](#) demonstrate that formerly incarcerated individuals faced an unemployment rate of 27 percent even prior to COVID-19, and criminal justice advocates and policy experts estimate that the pandemic and its economic fallout have further exacerbated the barriers to employment for justice-involved individuals.

We applaud the work of criminal justice reform advocates, service providers, and elected officials who have called attention to this issue and helped establish programs that provide educational and vocational support to those incarcerated throughout New York, such as the City's "[Jails to Jobs](#)" Initiative and many of the correctional education programs run by New York City's higher education institutes, including [NYU](#), [John Jay College](#), and [Columbia University](#). We also commend the work of advocates and City elected officials to secure [hundreds of millions](#) of dollars of promised investments to provide more comprehensive programming and reentry services throughout City jails as part of the City's plan to close Rikers Island and replace it with a system of borough-based jails.

While New York City has made notable strides to improve correctional education and reentry services for justice-involved New Yorkers, we believe that it must do more to provide comprehensive support to incarcerated individuals in the process of reentry and remove the barriers to ensuring a successful and stable readjustment following incarceration.

We believe that the City should establish a centralized office or agency that reports directly to the Mayor to coordinate all of the City's reentry services. The City currently relies on a number of agencies, including MOCJ, DOC, and DOHMH to oversee reentry services, in partnership with the City's network of nonprofit service providers. We believe that a high-level office dedicated to reentry in New York City would facilitate stronger communication and coordination between agencies and providers, deliver holistic services for justice involved individuals, ranging from education and job training programs,



housing and healthcare, and accessing benefits, and ensure accountability such as Los Angeles County's Office of Diversion and Reentry.

We also urge the City to enact policies to address some of the key challenges that can hinder individuals from successfully gaining employment and educational opportunities following their incarceration.

Trinity calls on the City to ensure that justice-involved individuals have access to safe, stable, and affordable housing by passing Intro 2047 to prohibit housing discrimination on the basis of arrest or criminal record, as well as Intro 146 to raise the value of CityFHEPS vouchers to fair market values. In addition, we urge the City Council to introduce and pass legislation to require the City to issue IDNYC cards to individuals prior to release from jail, given the importance that IDs play in accessing employment and educational opportunities, as well as ensuring that individuals receive continuous Medicaid and coverage and health care services to avoid further disruptions to their wellbeing.

Another key issue relates to NYCHA. Until recently, if a 16-year old was so much as arrested, NYCHA reserved the right to initiate a termination of tenancy procedure against their household. Families could retain their housing by promising to "permanently exclude" their justice-involved family member. NYCHA recently committed to raising the age of exclusion under these conditions to 18, among other changes. But these are not enough. NYCHA must eliminate its permanent exclusion policy to increase access to affordable housing for young people and others to advance their education and ensure stability.

We believe that the City's correctional education programming, in tandem with the recommendations made above, would make meaningful steps in improving City's reentry system and the lives of justice-involved individuals.

Thank you for allowing us to have the opportunity to testify today. I am more than happy to answer any questions.