



**Department of
Education**

Carmen Fariña, Chancellor

**Testimony of the New York City Department of Education
on Educational Services for Detained and Placed Youth**

**Before the New York City Council Committees on Education,
Juvenile Justice, and Fire and Criminal Justice Services**

November 30, 2016

Good Morning Chairs Dromm, Cabrera, and Crowley, and all the Members of the Committees on Education, Juvenile Justice, and Fire and Criminal Justice Services here today. My name is Laura Feijoo, Senior Supervising Superintendent in the Division of School Support at the New York City Department of Education (DOE). I am joined by Dr. Timothy Lisante, Superintendent for District 79 (D79), the DOE's district for alternative schools and programs.

We are pleased to be here today to discuss our work to provide educational programming to court-involved youth. Under this Administration, we have implemented several new initiatives and made targeted investments to improve instruction and help students develop a successful transition plan.

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 the NYC Administration for Children Services (ACS) and East River Academy in collaboration with the NYC Department of Correction (DOC). DOE provides placed and detained students with access to the same courses and many similar extracurricular activities as their peers in traditional schools.

Passages Academy is a multi-site school that provides middle and high school academic instruction and supports for students who were arrested prior to age 16. Students receive instruction from certified New York State teachers at a facility or attend a Passages Academy site, depending on their type of placement—secure, limited secure, or non-secure. Last school year, Passages enrolled 1,058 students across all sites with an average daily enrollment of 270 students.

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. The coursework, as at any high school in the City, is Common Core-aligned, and 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.

In a model that is unique nationally, students placed in a non-secure residential facility after their legal case has been decided are transported to one of two Passages Academy sites for instruction—Belmont School in Brooklyn or Bronx Hope—depending on the location of their



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group home. These schools follow the same instructional requirements as district schools. Students take State Math and English Language Arts and sit for the State Regents examinations as required or appropriate. Additionally, students have access to after-school programs focusing on sports, the arts, and leadership through a partnership with the Department of Youth and Community Development (DYCD). All Passages students, regardless of placement, have the opportunity to participate in enrichment programs, such as visual arts, drama, chorus, and numerous physical activities. In addition, Passages has a long-standing relationship with Carnegie Hall and CUNY colleges that has provided opportunities for students to perform at Carnegie Hall and receive tutoring from Bronx Community College and Medgar Evers College students.

A recent State initiative, Close to Home (C2H), ensures that students in limited secure placements are newly assigned or continue to reside in group homes located near their communities. There are two of these facilities in the Bronx, one in Queens, and one in Dobbs Ferry, Westchester, at the Children's Village campus. Previously, many of these students would have been sent to facilities located upstate. This initiative allows these students to continue to be served by the Passages staff embedded at their residential facility.

This also means that students never leave the City's public school system, creating continuity in curriculum and credit accumulation. In Passages Academy, at the end of each trimester, credits are added to the student's official school transcript, which upon re-entry to high school, is electronically accessed by the home school. Prior to C2H, students were sent into upstate facilities administered by the State Office of Children and Family Services, which separated them from their families and their schools. This new initiative has resulted in students earning and receiving more high school credits than the previous system, which places them more firmly on a path to achieving a high school diploma.

DOE works closely with ACS, and we are particularly proud of our efforts to regularly share relevant student data as we work together to improve student outcomes. In partnership with ACS, Passages students are now able to use the internet while they are in school. This allows teachers to not only differentiate instruction for students, but also gives these students the same opportunities to access technology as their peers in district schools. For example, this summer, students in all Passages sites were able to take computer science courses as part of our Computer Science for All Initiative, utilizing Google's programs.

Parents are, of course, key partners in this work, and, like district schools, Passages has two full-time parent coordinators and one full-time family and community engagement liaison. There are regular family days and parent-teacher conferences. DOE counselors are present with parents, ACS staff, and community-based organization (CBO) staff at many of the discharge planning meetings that occur as students are being released from placement.

Last year, we started a new transition specialist initiative to better support students in their transition back to the community. Under this initiative, transition specialists, typically social workers and counselors, develop transition plans with students while they are in Passages,



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including short-term goals, and, most importantly, their immediate next step 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 school. These specialists continue to follow up with former Passages students for the first six months after their transition back into the community.

We are pleased to report that this important initiative is showing strong signs of progress: the percentage of students who increased their attendance by 10 percent or more increased by 14 percent in the first year of the initiative. Students regularly attend school once they have transitioned out of Passages more often than they had before their placement. This means fewer students are at risk of becoming disconnected and more have an opportunity to achieve a high school diploma and career skills.

I would now like to turn to East River Academy (ERA), which is operated by DOE in partnership with the DOC.

ERA is a DOE program also 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 between the ages of 16 and 21 who are detained on Rikers Island. Educational services on Rikers Island are mandated for students under age 18, but young adults from ages 18 to 21 can opt to attend school. During the 2015–2016 school year, ERA enrolled 1,710 students. This is down from 2,516 students in the 2013–2014 school year. On an average day in 2015–2016, 506 students were enrolled. Students attend class for a full school day, and we should be proud that the City provides far more than the three hours of educational instruction required in jails per State educational law.

To help improve student outcomes, we are collaborating with the DOC to develop a system to identify 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. 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, earn credits, and take Regents exams. Students on a high school equivalency pathway focus on preparing for the Test Assessing Secondary Completion (TASC) exam, the exam needed to earn a high school equivalency diploma in New York State. The TASC is administered monthly on Rikers Island, and students with disabilities receive the testing accommodations to which they are entitled.

It is important to note, however, that more than 95 percent of the 16- and 17-year-olds at ERA are awaiting trial. In fact, New York is the only state other than North Carolina that detains children who are 16 years old in adult correctional facilities. The City has urged State lawmakers to pass legislation that would treat those under the age of 18 as juveniles, but, unfortunately, the proposal has been stalled in Albany.



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As part of this Administration's commitment to Equity and Excellence for All students, ERA has recently embarked on several new initiatives, including:

- Assigned a Master Principal to support leadership development of the current principal and assistant principals. The Master Principal also facilitates inter-visitations with traditional schools to observe best practices in both supervision and instruction;
- Adopted Common Core-aligned ELA curriculum, and increased professional development opportunities for educators by partnering with Teachers College around literacy instruction and the Institute for Student Achievement for math training; and began monthly "learning walks" with central DOE staff to assess the implementation of professional development and improvement plans for ERA;
- Created classroom libraries with social justice titles aimed at engaging students more in reading;
- Purchased tablets with limited internet access that allows students to participate in reading intervention and other educational programs. Teachers were also able to use the tablets to supplement their instruction.

This year, we have expanded Career and Technical Education (CTE) offerings with support from the DOC by hiring carpentry, computer, culinary arts, and electrical teachers at GMDC, the facility for 18-to-21-year-old, male, detained students. This program was designed by DOC in collaboration with D79's School of Cooperative Technical Education. Each of these courses are designed to be continued in the community if students choose to do so. These CTE programs greatly expand opportunity for students, and provide an added incentive for 18-to-21-year-olds, who are not required to attend school, to enroll in school and participate in these programs.

ERA staff engages in family support in a number of ways. The school holds parent-teacher conferences regularly, just as other DOE schools do. ERA also holds 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 of having a child who is incarcerated. Students can also attend this support group with their families after they are released.

Similar to Passages, we also started the transition specialist initiative at ERA. Unlike other jurisdictions in New York State, students on Rikers Island remain a part of the New York City school system and have the automatic right to return to their home school upon release.

Currently, about one third of the students who leave ERA each year are discharged to State prisons. The remaining two-thirds return to the community, where they have several options: if they were enrolled in a school when they were arrested they can return to that school or they can seek a transfer to a different school. Transition specialists provide support with either of these decisions. If the student was not connected to a school when they were arrested (usually because they had dropped out), a transition specialist will support their return to a high school, or if appropriate, a high school equivalency program.



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We are pleased to report that the percentage of students who increased their attendance by 10 percent or more after leaving ERA and returning to their home school increased by nearly 20 percent in the first year of this initiative. Preliminary data from this school year shows that this number continues to increase.

Educational programming and transition planning is particularly important for this student population. Students come into these programs disconnected and often disengaged from education. Our goal is to help students re-engage in their education while at Passages and ERA. While we have made tremendous progress and are far ahead of the curve nationally when it comes to serving students in detention, we know there is a lot of work to be done to ensure our students are on track to graduate college or career ready.

Lastly, with respect to Intro 1148, we support the City Council's goal for increased transparency regarding court-involved students. We would like to work with the City Council to ensure that the reporting requirements align with the information we currently capture and the frequency of that information.

We look forward to the City Council's ongoing support and advocacy on behalf New York City's students. Before we turn it over to DOC, Tim Lisante will share some data from Passages and ERA. Thank you again for inviting us to participate in the hearing.



DISTRICT 79

Alternative Schools & Programs

NYC Department of Education
New York City Council Hearing
November 30, 2016

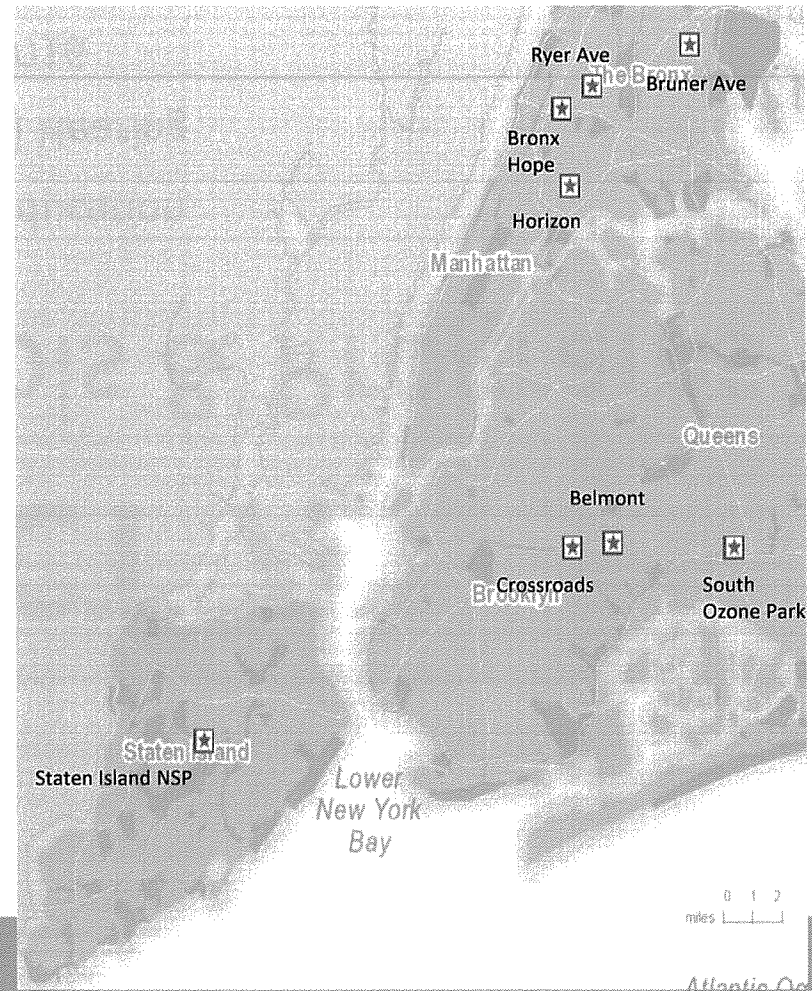
Passages Academy

Site Locations and Active Enrollment

October 2016

Bronx Hope	68
Belmont	65
Horizon	34
Crossroads	28
Staten Island	6
South Ozone Park	8
Bruner Avenue	6
Ryer Avenue	2
Dobbs Ferry (Westchester)	8
TOTAL	225

- 9 sites with 1 principal
- 137 total staff (includes administration, 5 APs, 81 teachers, 12 counselors)
- In collaboration with ACS Division of Youth & Family Justice



East River Academy

Active Enrollment and Site Locations at Rikers Island

October 2016

EMTC	35
GMDC - Main	84
GMDC - Annex	69
NIC	1
OBCC	9
RMSC	30
RNDC - Main	118
RNDC - Annex	46
GRVC	7
TOTAL	399

- 9 sites with 1 principal/ 5 APs
- Embedded in 7 NYC Department of Correction jail facilities on Rikers Island
- 124 total staff (includes administration, 65 teachers, 15 counselors)



Background of Students

October 2016

Passages Academy

Gender %		Demographics %	
Male	79	Black	57
Female	21	Latino	33
Average Age		White	8
16 years old		Asian	1
Students with Disability %		Other	1
SWD	64	Prior School Engagement %	
ELL	7	Prior Attendance Rate	45
		Gap in Enrollment	15

East River Academy

Gender %		Demographics %	
Male	89	Black	56
Female	11	Latino	35
Average Age		White	5
19 years old		Asian	1
Students with Disability %		Other	3
SWD	53	Prior School Engagement %	
ELL	10	Prior Attendance Rate	34
		Gap in Enrollment	49

Notes: Data are reported for all students enrolled in the two programs during the 2016-17 school year through October 31st, 2016.

Improving Students Outcomes

Comparing School Years 2013-14 to 2015-16

Passages Academy

Regents Pass Rate:

13 percentage point increase

Regents Pass Rate for Students with Disabilities:

21 percentage point increase

Percentage of Students Earning 10 or More Credits:

2 percentage point increase

Percentage of Students with Post-Attendance

10% Points Higher than Before Arrest:

12 percentage point increase

East River Academy

Regents Pass Rate:

4 percentage point increase

Regents Pass Rate for Students with Disabilities:

17 percentage point increase

Percentage of Students Earning 10 or More Credits:

3 percentage point increase

Percentage of Students with Post-Attendance

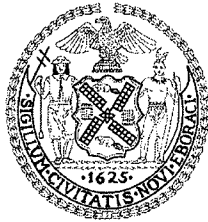
10% Points Higher than Before Arrest:

12 percentage point increase

Initiatives for Court-Involved Youth

- **Advisory Class / Restorative Practices / Social Emotional Learning**
- **Coherent Youth Development Framework / Staff Training**
- **Tablets / Blended Learning**
- **Enhanced Mental Health Services**
- **Out of School Time: SONYC / Saturday Academies**
- **Internships / Career and Technical Education**
- **Identify Primary Support Networks/ NY Re-Entry Network (NYREN)**
- **Web-Based Plan To Succeed**
- **Parent / Family Support Group**
- **Transition Specialists in Facilities & Community
(Provide 6-months follow up)**

NYCTM
**Administration for
Children's Services**



**The New York City Council,
Committee on Fire and Criminal Justice Services,
Committee on Juvenile Justice,
Committee on Education
November 30, 2016**

***“Oversight: Educational Services for New York City’s Detained, Placed and Incarcerated
Youth, Adolescents, and Young Adults”***

Testimony by

**Felipe Franco, Deputy Commissioner
New York City Administration for Children’s Services
Division of Youth and Family Justice**

Good morning Chair Crowley, Chair Cabrera, Chair Dromm, and members of the Committees on Fire and Criminal Justice Services, Juvenile Justice, and Education. I am Felipe Franco, Deputy Commissioner of the Division of Youth and Family Justice (DYFJ) within the Administration for Children's Services. I would like to thank you for the opportunity to offer testimony about the educational programs and services that are provided to young people in our secure and non-secure detention facilities, and in our non-secure and limited secure placement residences.

Overview of the Court Process

Before I discuss educational services in DFYJ residential care, I would like to give you an overview of how young people come to the attention of the juvenile justice system.

Typically, youth first encounter the justice system as the result of an arrest or due to a warrant. Depending on the time of day that the arrest occurs, the youth will immediately be taken to court or to a secure detention facility until court is in session. In court, the judge assesses the nature and severity of the allegations, as well as the likelihood that the youth will appear in court on the next adjourn date. Depending on that assessment, the judge will either release the young person or remand the youth to detention.

A young person between the ages of 7-15 who commits a crime is considered a "Juvenile Delinquent" and his or her case is heard in the Family Court. Dispositions on Family Court delinquency cases may include treatment, probation, restitution, conditional discharge, or placement (for NYC children, placement is with ACS in Close to Home). A child who is 13, 14 or 15 years old and commits a more serious or violent act – such as murder, manslaughter, assault, sexual assault, attempted murder, burglary, arson, or kidnapping- may be treated as an adult and is considered a "Juvenile Offender." These cases are typically heard in the Criminal

Term of the Supreme Court, but may sometimes be transferred to the Family Court if a judge determines the transfer to be in the interest of justice. A youth who is adjudicated a Juvenile Offender is subject to more serious penalties than a Juvenile Delinquent. Due to the nature of their charges, Juvenile Offenders in New York City are solely remanded to secure detention facilities.

Criminal Court processes Juvenile Offender cases in special parts heard by one dedicated judge within the borough. Upon conclusion of the proceedings, the Court can dismiss the case, parole the young person to a community-based alternative program, or send the young person to a residential juvenile placement facility operated by the New York State Office of Children and Family Services. For Juvenile Offenders, the most severe consequence is a sentence to an upstate secure placement facility. In the rare event that a Juvenile Offender turns 18 years old while in secure detention, they will transition to Rikers Island to await the conclusion of their Criminal Court case.

Overview of DYFJ Residential care

The Division of Youth and Family Justice oversees a continuum of services and programs for youth at every stage of the juvenile justice process, with a strong mission to improve outcomes for young people who come into our care. We strive to accomplish this goal by partnering with contracted provider agencies to support youth in community-based alternative programs, secure and non-secure detention facilities, and non-secure placement residences.

DYFJ directly operates two secure facilities (Horizon Juvenile Center in the Bronx and Crossroads Juvenile Center in Brooklyn). DYFJ also oversees 11 not-for-profit provider agency-operated non-secure detention (NSD) group homes across the City. Generally the detention length of stay for some juvenile delinquents is relatively short (on average 24 days as of

November 29, 2016), whereas Juvenile Offenders tend to stay for longer due to the more prolonged progress of cases in Criminal Court (on average 149 days as of November 29, 2016). Given the relatively short length of stay for most young people in detention, the mission for this population is to ensure on time court appearances and expose young people to positive programming and services to encourage them to get on the right path upon discharge from residential care.

New York City's juvenile justice placement system, Close to Home, allows New York City youth who are adjudicated Juvenile Delinquents by the Family Court to be placed in residential programs closer to their families and home communities. A judge may order a youth to be placed in a residential placement program if the judge finds that the youth committed an offense and is in need of rehabilitative services. The Family Court generally places youth in Close to Home for 12- or 18-month periods, thus our non-profit partners offer a lengthier timeline of intensive and therapeutic programming to youth in placement, including aftercare services. Under Close to Home, young people receive therapeutic services at small group homes in or near the five boroughs where they are close to resources that can support their treatment and transition back into their communities. Currently, ACS contracts with seven non-profit partners who operate 24 non-secure placement (NSP) residences, and five limited secure placement (LSP) residences.

Educational Services Overview

ACS works closely with the NYC Department of Education (DOE) to provide educational programs and services to all youth in juvenile justice residential care through the DOE's Passages Academy. ACS, DOE, the NYC Department of Youth & Community Development (DYCD) and our contracted providers work hard to create normalizing experiences

as much as possible for youth attending schools in detention and placement. Families are invited to parent-teacher nights to discuss their children's educational progress, and we hold promotion ceremonies for youth. Our youth participate in sports tournaments such as the Olympics and basketball competitions, both at the facilities or in City parks, and they routinely perform their original music at concerts attended by families, teachers and staff. DOE educational transition counselors work with youth in detention and placement to develop educational transition plans, identify appropriate schools for youth to return to upon their release, and help young people obtain education-related services needed to support their educational engagement. The counselors continue to work with youth for 6 months after release from detention or placement. ACS staff and contracted providers collaborate with the educational transition counselors to integrate treatment plans and to coordinate education-related planning and support while in placement and during aftercare.

Educational Services for Detained Youth

Passages Academy sites are embedded within each of our secure detention facilities. DOE schoolteachers execute a standard curriculum that includes English language arts, mathematics, science and social studies, and enables youth to earn credits toward graduation. Each class is comprised of approximately eight students who share similar levels of academic need. The school day consists of eight periods, including lunch, and each period lasts 45 minutes. In addition to providing tutoring sessions, DOE teachers work with high school students to help them prepare for Regents and English Language Arts examinations.

We are pleased to share that the DOE has launched computer technology programs for youth in detention through blended learning initiatives, to supplement classroom instruction and maximize content learning, credit accumulation and development of academic skills. Through

this innovative model, teachers are able to work with youth on the blended learning programs during the school day and during afterschool hours to ensure that youth remain on pace with their peers at their community school. Additionally, ACS' case managers and Juvenile Counselors-- direct care staff that assist, coach and engage young people in every aspect of their day-- work with youth to provide the encouragement and support that young people need while in detention so that there is no lapse in their education.

Non-secure detention offers a less restrictive residential setting than secure detention, so young people are able to leave NSD residences under strict staff supervision to attend school. NSD residents travel to one of two stand-alone Passages Academy community sites that solely serve juvenile justice-involved youth: Belmont in Brooklyn and Bronx Hope in the Bronx. Daily transportation to and from school is provided by the NSD residence. As with their peers in secure detention, youth in NSD receive full academic instruction and accumulate DOE credits towards graduation.

Educational Services for Placed Youth

As with NSD, young people in non-secure placement are able to leave the residence under staff supervision to attend school, and also attend classes at either Belmont or Bronx Hope. Transportation to and from school is provided by the placement residence.

In contrast, limited-secure placement residences feature enhanced security features and all programming and services, including education, are provided to young people on site. Young people in NSP and LSP receive individualized educational services that are accredited by the DOE. This allows academic credits earned in placement to count towards a high school diploma. After school tutoring is also available to young people in NSP through the DOE, and they

participate in a wide range of after school recreational activities through the School's Out in New York City (SONYC) program, which is offered through partnership with DYCD.

Close to Home Aftercare and Community Support

The goal of Close to Home aftercare is to build on the skills youth acquire while in placement to help them develop a network of support that will allow them to succeed in the community. We work with an extensive network of evidence-based family therapy programs which provide necessary support to youth and families, such as those provided through the Center for Court Innovation. In addition, our youth participate in youth employment programs in partnership with DYCD, as well as targeted gang prevention services through the Cure Violence initiative, made possible through funding from the New York City Council. These efforts to develop the emotional and cognitive skills of our youth to help them move away from negative influences are only sustainable within the context of providing a supportive educational environment for our young people. All of these partners are critical in helping our youth succeed educationally while in Passages Academy and beyond.

Conclusion

Thank you for the opportunity to discuss educational services for young people in ACS juvenile justice residential care. Educational continuity is a key component to the success of a young person's transition from the juvenile justice system back to their community, and we are proud of our partnership with DOE which enables this important work. We appreciate the Council's ongoing support as we continue to strive toward improving services for the City's most vulnerable youth. I, as well as the other city agencies represented today, am happy to take your questions.



Testimony of

**Assistant Commissioner Francis Torres,
New York City Department of Correction**

before the

**New York City Council committees on
Education, Fire and Criminal Justice Services, and Juvenile Justice**

regarding

Educational Services for Detained and Placed Youth

November 30, 2016

Good morning Speaker Mark-Viverito, Chairs Dromm, Crowley, and Cabrera, and members of the City Council committees on Education, Fire and Criminal Justice Services, and Juvenile Justice. I am Francis Torres, Assistant Commissioner of Education and Youth Advocacy Services at the Department of Correction (DOC).

DOC is responsible for the care, custody, and control of all people aged sixteen and older who are issued bail or remanded to custody while awaiting trial in New York City, as well as a small population of individuals who are sentenced to a year or less. In New York, sixteen and seventeen year olds are considered adults in the criminal justice system, so any sixteen and seventeen year old who is arrested in New York City, regardless of the charge, is processed through the adult system and may come to DOC custody.

As the Council is aware, a major focus of the Department in the last few years has been to manage young people according to their unique needs. This includes providing access to age-appropriate education services to adolescents (sixteen and seventeen year olds) and young adults (eighteen through twenty-one year olds). These education services are provided by the New York City Department of Education.

East River Academy

The Department of Education operates the East River Academy (ERA) in eight DOC facilities. Under District 79, ERA provides high school instruction and educational services for students ages sixteen through twenty-one. All adolescents must go to school. School is optional for young adults, but DOC strongly encourages that young adults attend school if they have not graduated from high school already.

Other Educational Services

In addition to the services provided by DOE, DOC partners with several organizations to provide educational services to youth, including:

- **Inside-Out Program:** Designed after Temple University's "Inside Out Prison Model," this program is available for individuals who are eighteen years or older and have a high school diploma or equivalency. Undergraduate students from the partner college/university and an equal number of selected "inside students" take the class at Rikers Island. Upon completion, inside students who meet the class requirements are admitted to the college upon release.
- **College and Community Fellowship (CCF):** A College Transition Counselor from CCF meets monthly with participants. The CCF counselor provides general information on the college application process and provides a workshop on financial literacy. Once released, CCF guides participants through the college application process and provides support throughout their college life. Once accepted to college, students are given an academic stipend upon completion of 12 credits and 2.5 GPA.
- **College Way:** Volunteer educators provide a college readiness class on key components of successful college life, college admissions tests, and college mathematics. Professors and Adjunct Lecturers from various institutions provide lectures on mathematics, business, and other subjects.
- **Career and Technical Education Skills (CTE):** For many years the DOC has supported the DOE's Barbering, Culinary Arts, and OSHA training programs. Since 1986, the Department has sponsored horticulture therapy to the sentenced population; this year the program has been expanded to include adolescents and young adults. Moreover, we have a workforce development initiative that offers a comprehensive portfolio of CTE programming and community-based support.
- **Petey Greene Mentoring Program:** Petey Greene supplements educational programming in correctional institutions by providing individualized tutoring. It works to promote academic achievement in jail classrooms to support the future success of individuals in jail and to build stronger communities. Trained volunteer tutors are partnered with specific staff and then work one-on-one or in small groups with students in different areas.
- **Skills Development:** Through various partnerships and volunteers, we facilitate creative arts (CUNY Creative Arts Team and NYU's Lyrics on Lockdown), writing and theater workshops (Stella Adler) and a film editing class (Tribeca Film Institute) to name a few.

Legislation

I would like to comment on Introduction 1148, which would require DOC to report on the education system for incarcerated adolescents and young adults. DOC echoes DOE's support of transparency around the adolescents in our custody and will work with the Council to ensure that the report meets this goal.

Thank you for the opportunity to testify today. I am happy to answer any questions that you have.



United Federation of Teachers
A Union of Professionals

TESTIMONY OF
THE UNITED FEDERATION OF TEACHERS

BEFORE THE
NEW YORK CITY COUNCIL
COMMITTEE ON FIRE AND CRIMINAL JUSTICE
HELD JOINTLY WITH THE COMMITTEE ON EDUCATION
AND THE COMMITTEE ON JUVENILE JUSTICE

REGARDING EDUCATIONAL SERVICES FOR INCARCERATED YOUTH

NOV. 30, 2016

Good morning. My name is Sterling Roberson and I am the Vice President for Career and Technical Education for the United Federation of Teachers. With me are Patricia Crispino, the UFT representative for alternative high schools and programs, and Suzanne Ribeiro, a teacher and UFT chapter leader at Rikers. I would like to acknowledge the three committees before us, the Committee on Fire and Criminal Justice, the Committee on Education, and the Committee on Juvenile Justice, and thank their respective chairs, Chairwoman Elizabeth Crowley, Chairman Fernando Cabrera, and Chairman Daniel Dromm for allowing us to share our testimony regarding educational services for incarcerated youth. Among our 200,000 members are 90 intrepid educators who staff the classrooms on Rikers Island. We're here today to help you better understand the work they do and the challenges they face. We welcome the Council's interest in this topic, and we thank you for the support you've shown our members.

It's important to note that we have been engaged in a series of productive meetings with both the Department of Corrections (DOC) and the Department of Education (DOE) to improve the working and learning conditions on the island. Everyone at the table has shown a willingness to collaborate, and positive changes already have been made. We look forward to continuing those conversations in the months ahead.

I want to begin by giving you some background and context about working at the schools on Rikers Island, which collectively are known as East River Academy. It's important for you to get a glimpse of how the schools are structured and what a typical day looks like for our members and their students.

First and foremost, the educators on Rikers Island unequivocally love their jobs. They want you to know that. Many have been working there for more than a decade, and they take pride in the family atmosphere they have tried to create with their DOE and DOC colleagues and in their classrooms. When the students are in their classrooms, they know them as students only and are their advocates. After being shuttled in and out of court proceedings to address the criminal charges that brought them to the island, school is a respite for these children.

You can't help being touched by the attitude of these dedicated professionals. At times when many of us would despair, these educators remain hopeful, courageous and passionate about their work. They believe they can help the kids who pass through their classrooms, even if it's only for a few weeks or months. Everyone you speak with is eager to share a success story about a life he or she has helped turn around.

Make no mistake: Working on Rikers is an immense challenge. Crossing the bridge to the prison compound and entering its grim world is an experience that's hard to forget. Something as innocuous as a lost ID badge sets into play "lockdown" – guards race through the halls while alarms blare overhead. Gangs are prevalent and powerful, and fights are an everyday occurrence. Youth in jails are unfortunately at a much greater risk of physical violence and sexual assault.

What's more, that violence often spills over into the schools and, despite every precaution, injuries can and do happen. Sadly, the repeated use of concentrated pepper spray in classrooms to break up fights has caused injuries to our members.

The island is larger than you might imagine; thousands of people work there. Dozens of buildings dot the featureless landscape, and with its labyrinth of winding streets and layer upon layer of security checkpoints, just getting to and from the classrooms is a process.

East River Academy is part of District 79, which is the umbrella for all alternative high schools. The school has been around since 1959. Our members are spread out among several different buildings across the island. Sixteen- and 17-year-old boys are housed in the Robert N. Davoren Center while boys 18-21 are in the George Motchan Detention Center. Girls of all ages live in the Rose M. Singer Center. Classrooms are set up in each of these three main buildings, as well as in several other facilities on the island.

Within each facility, inmates are grouped in small housing units, and they stay together with members of their "house" 24/7 for meals, recreation and school. Inmates are grouped by age as well as gang affiliation and other safety-related criteria. The UFT and its members are working hard to persuade the DOE and the DOC to begin a concerted effort to group the kids by academic levels as well and we have another meeting to discuss this and other issues in December. Grouping by academic levels has worked in the past, when the rules were different. Educators used to be able to focus instruction and pace lessons based on students' needs, which vary widely. By engaging students at their level of ability, they're more likely to be interested and focused in school, and more likely to succeed.

Most inmates rotate on and off Rikers in a matter of weeks, but some are there for months or even years. DOE chancellor regulation A-210 requires minors up to 17 years old to attend school on a full-time basis. School is voluntary for those 18-21 and, sadly, most do not choose to attend.

The vast majority of students are awaiting trial, though there is also a small number who are serving a year or less after being convicted. Many have been in and out of foster care, detention centers, drug abuse programs and group homes. The racial composition of the student inmates on the island is overwhelmingly black and Latino. They wear brown prison uniforms everywhere they go. Sometimes, they are brought to and from their classrooms in shackles, and there are reports that circumstances have led to students being shackled to their desks.

The classrooms are located within the same jail complex in which students live and are subject to disruptions of all kinds. Fights and lockdowns can effectively halt classes at any time. Our students often miss class to meet with lawyers, or to travel to and from court.

The school facilities for boys and girls are starkly different, although security in school areas is equally tight. "School" is more or less a dedicated hall. The entrance to the hallway is a barred gate. Each classroom has windows facing the corridor, and a guard is positioned inside each classroom door. Additional guards are stationed in the hallways. Everyone you talk to is polite, courteous and welcoming, but alert at all times. In the boys' facility, the hallways are dark and the rooms are cramped. They have been stripped of most furniture; desks are bolted to the floor. Until recently, the roof leaked in some of the classrooms. There are a handful of fliers adorning the walls, advertising programs or providing inspirational quotes. Everything is painted varying shades of institutional gray and green. While school may provide some respite from life in prison, it is difficult to forget where you are.

The girls' facility is much newer. The hallways and classrooms are bright and large, and the walls are adorned with colorful bulletin boards, inspirational posters and meaningful quotes. Everything about this space is designed to be warm and welcoming.

The day is highly structured for boys. Each morning, guards bring groups of inmates from their cells to school between 7:30 and 8 a.m. Each housing unit group is brought to a specific classroom where the "house" spends the day. Everything — even gym and lunch — takes place in that same classroom. Teachers rotate between classrooms, taking their materials — including laptops and iPads — with them. The students use stubby golf pencils to do their work.

School is eight periods. Each period is 46 minutes and teachers have one minute between classes to rotate. Classes include the core subjects — math, English language arts, science and social studies — as well as chess, barbering and gym.

On the girl's side, the atmosphere is slightly more flexible, with the girls rotating between classes much the way it's done in a regular high school. In addition to their core classes, the girls attend classes to learn trade skills, including culinary arts.

The teachers work hard to make a difference and to help their students understand that they matter and they are too young to give up on life. After all, they will have a future once they get out, so getting a student working toward a GED or earning credits toward graduation are big victories. Learning self-respect and confidence is an added bonus.

The schools desperately need additional resources and support, both for the educators and the students they serve. Here are a few suggestions we believe might make these schools more successful:

- **MOVEMENT:** The kids spend up to eight hours, minus a bathroom break in the morning and afternoon, at a desk in one room. Most adults couldn't sit for that length of time without at least getting up to occasionally take a short walk, to say nothing of teenagers full of energy, frustration and, let's admit it, anger. We are working with the city and the DOC to allow the kids access to a separate lunchroom.
- **EXERCISE:** The kids also have gym in the same classroom where they are instructed and eat lunch. Desks are bolted to the floor so movement is limited. We think they should be taken to the facility's gyms to help them let off steam. Besides being a change of pace and a more appropriate setting for exercise, we believe this will encourage them to sit down and focus when they return to the classroom.

- **FOOD:** The kids often are hungry during the course of the school day. They need snacks and drinks during the day. As everyone knows, teenagers can be ravenous. They, like most of us, get testy and ill-tempered when they are hungry.
- **GROUPING BY ACADEMIC ABILITY:** As we previously stated, the inmates are not grouped by academic ability, which leads to huge disparities in the classroom. Students with a second-grade reading ability are in the same class with students who read at a 12th-grade level. It's impossible to teach phonics to one student and Hamlet to another within a 46-minute period.
- **GROUPING BY LENGTH OF STAY:** The DOE at one point proposed a special program for kids who are on Rikers for a short stay. It makes sense to attempt to group those students together. Teachers could design lesson units appropriate for the length of stay; that also would limit the comings and goings in the other classes, a challenge even in the best of schools.
- **SPECIAL EDUCATION SERVICES:** A significant portion of students who attend East River Academy already have or would qualify for Individualized Education Plans, but the school lacks the funds or staff to provide those services. The staff does its best to create special education plans for students, but those plans are limited in scope.
- **MENTAL HEALTH SERVICES:** The most disruptive students are often the ones who need mental health interventions. East River Academy simply doesn't have enough staff to meet this growing need. We must provide out-of-cell treatment for students with serious mental illness to reduce violence. We also must provide more training about mental illness for everyone who works on the island and we must teach everyone de-escalation and positive reinforcement techniques as well.
- **COUNSELING FOR STUDENTS:** All the East River Academy students need counseling and therapy. Their lives are unfolding tragedies. The social workers, psychologists and peer counselors who are there now help them through everything from low self-esteem to substance abuse problems. The more services we can give these kids, the more likely it will be that they won't go back to jail once they're out. Without help, many of them will be back.
- **COUNSELING FOR EDUCATORS:** Students are not the only ones who need counseling. Working behind bars takes an emotional and physical toll on UFT members. They report times of extreme anxiety, intense stress or bleak depression. Although they love their work and do experience success, they often watch students in a downward spiral from which there's no return. They witness fights, cruelty and, sometimes, injustice. They don't want to leave their jobs; they want support while doing them.
- **CTE PROGRAMS:** CTE programs in our public high schools successfully engage students in classwork while teaching them job skills. No group of students needs these programs more than the group on Rikers. Strong options used to exist for the students, including CTE programs such as computer programming, carpentry, plumbing and even a poetry magazine club. Today, while some CTE programs are available to those who are 18 and older, limited choices exist for younger students.
- **INCENTIVES:** Rikers inmates are awarded special privileges for good behavior, including phone calls, visits, recreation time and funding for the commissary. Likewise, inmates lose those privileges for bad behavior. These incentives do not extend to a student's work in the classroom. We believe they should. It's an obvious way to incentivize students.
- **DISCIPLINE:** The elimination of solitary confinement remains a controversial move. No one doubts the adverse mental and physical toll solitary confinement can have on a person, but removing it as a consequence of bad behavior without putting other systems in place is not a long-term solution. The

DOC needs to come up with alternative consequences of bad behavior, both in the housing units and, with DOE/UFT input, in the school settings. Some experts have suggested inmates be given a cooling-off period, perhaps restricting them to their cells, or moving them to different housing areas or away from the general population without complete isolation. Where behavioral issues are concerned, the UFT urges the agencies working on Rikers Island to emphasize more counseling and mental health support, more training for staff on conflict resolution and better communication and coordination between DOE and DOC staff.

- **PEPPER SPRAY:** We continue to push for a new protocol to govern the use of pepper spray in the school areas, restricting its use to extreme situations in which a corrections officer reasonably believes it is necessary to protect himself or others. There also is an opportunity here to train everyone in therapeutic crisis intervention techniques that could be used to help reduce the number of pepper spray incidents.
- **COMMUNICATION:** Rikers educators, unfortunately, don't get much information about their students. They have a hard time tracking down academic files and IEPs from a student's previous school. And they don't receive any information about how their students are faring behind bars when they are not in class. That's important because during those off-school hours, a lot can happen in the life of an inmate, and that information could be useful from both practical and safety standpoints. For example, two students involved in a bruising fight inside their housing area may wind up seated next to each other in class. In a traditional high school, no teacher would allow that. So, it's critical that we find some way to get information from corrections staff to our members on a systemic and daily basis.
- **PROTECTIVE CUSTODY:** We need to provide counseling to teenagers who identify as LGBTQ, and we also need to provide them with protective custody if it's needed. These teens are incredibly vulnerable in regular schools. The risk to their well-being increases exponentially behind bars.
- **MODERNIZING THE FACILITIES:** We know there's no money for rebuilding the boys' facilities. But a little paint would go a long way toward improving the relentlessly grim atmosphere of the boys' classrooms. Some efforts to humanize them, as was done with the girls' classrooms, would help, too.
- **ASKING KIDS WHAT THEY NEED:** In an environment as restrictive as jail, it is understandable that student inmates have little control over what their day looks like and what programming they receive. This does not mean they don't have ideas about what programming they would like to receive. Asking students what interests them — such as art, music or other creative outlets — is a way to give them control over a small part of their world. Additionally, if there are robust enrichment programs, there is the ability to take away these programs as a consequence of bad behavior.
- **TRANSITIONAL SUPPORT:** When students leave Rikers, there is little or no consistent transitional support to ensure community-based services are in place and students can re-enter their home schools. The reports vary widely as to the level of support available to kids leaving the island. If we do not want to set them up for failure, there should be a system in place to ensure their smooth transition back into society through mental health and academic support, case management and family or individual therapy, as needed.

Solutions like these and other positive changes are within our grasp, and it's important that stakeholders keep talking.

On a related subject, we also want to comment on City Council Intro #1148, which proposes to improve transparency and stronger accountability on behalf of schools and communities. We've been proponents

of both since our union's inception. While Intro #1148 would require more data collection and reporting out from East River Academy, the legislation is flawed for the following reasons:

- **VARIABLE POPULATION:** The population changes constantly. Some kids are there for a few days, others for a few weeks or months. A quarterly snapshot probably would show a relatively stable population number but the kids counted on a particular day wouldn't be the same as those counted several weeks later.
- **OPERATIONAL CONTROL:** We can't emphasize this enough: The Department of Education does not have operational control over the schools on Rikers. The island is under the control of the Department of Corrections. The DOC's first priority, and rightly so, is maintaining a safe and secure facility.
- **TRACKING:** This legislation calls for reporting that could violate the Federal Educational Rights and Privacy Act (FERPA). In addition, it's a logistical nightmare. Students are out of class all the time, meeting with their lawyers and families and making court appearances. Who's going to keep track of that? As for the average and median number of accumulated credits, it's not realistic that students staying for short periods will earn credits. We can engage students, make sure their education continues and advocate for them in any appropriate way. But the fact remains that educational progress can't be statistically captured by data drawn from such short periods of time.

A few important things to note:

- The proposals on corporal punishment and feminine hygiene products duplicate the city's administrative codes.
- Any reference to "vocational training" should be updated to read "career and technical education, or CTE."
- Students do not graduate from East River Academy, and the city does not have a system in place to track student outcomes after they leave.

In closing, when we talk about making changes to improve the school, we are obviously not suggesting the city or the Department of Corrections do anything to jeopardize anyone's safety on Rikers Island. We know most students at East River Academy are in serious trouble. UFT members and their DOC colleagues are doing their very best to make it a more livable and viable facility.

Our educators speak of providing students with some respite in their jailhouse classrooms: a place where, for a little while, they can be teenagers again, doing ordinary activities; a place to discuss a book or play a game of chess. Our members work on the island because they refuse to abandon these children as someone else's problem. A vast majority of these students will be rejoining their communities after a short stay. There is an opportunity for their time in jail to encourage positive social interactions and provide hope that they can live as contributing members of society. We, as educators, are asking for policies and program supports that allow us to provide such an environment.

Many of these young people did not attend school regularly before their stay on Rikers. We can work together in making school a pleasant experience, one they might continue upon their release, which can make all the difference in their lives. We believe our recommendations will help turn around lives. We could calculate the dollars saved on future incarceration, but one of our core values at the UFT is that you can't put a value on saving a life.

Thank you

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

**Testimony to be delivered to the New York City Council Committees
on Fire and Criminal Justice Services jointly with the Committee on
Juvenile Justice and the Committee on Education**

**RE: Oversight - Educational Services for New York City's Detained,
Placed, and Incarcerated Youth, Adolescents, and Young Adults**

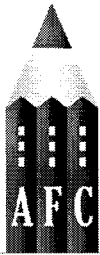
**Alyssa Perrone, Staff Attorney, School Justice Project
Advocates for Children of New York
November 30, 2016**

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Thank you for the opportunity to speak with you today. My name is Alyssa Perrone and I am an attorney with the School Justice Project at Advocates for Children of New York where I provide education advocacy and legal representation for youth involved, or at risk of being involved, with the juvenile or criminal justice systems. My testimony today focuses on the educational needs of New York City's court-involved youth while in detention, placement, and incarceration, and after their release from these settings.

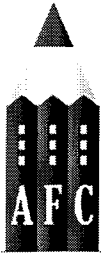
Court-involved youth are an extremely vulnerable population of students in New York City and nationally. Many court-involved students have complex educational and mental health needs that have been inadequately addressed prior to their arrest. Over half of all court-involved youth are students with disabilities, and many are over-age, under-credited and performing far below grade level.



This data clearly demonstrates the need, in all settings – including juvenile placement and detention and adult correctional facilities, as well as in schools in their communities – for high-quality education services, individually tailored to address the unique and complex needs of the students they serve. Furthermore, high-quality education in correctional settings has been shown to measurably reduce re-incarceration rates and associated costs. In December 2014, the United States Departments of Education and Justice issued guidance and technical assistance materials to help local and state leaders provide high-quality education to youth in justice facilities, including guiding principles, promising practices, and Dear Colleague Letters.¹ In July 2016, Mayor Bill de Blasio’s Leadership Team on School Climate and Discipline released a report that contains recommendations to improve supports for students in and coming out of juvenile and criminal justice settings.² We strongly recommend that leaders working in the Department of Corrections, the Administration for Children’s Services, the Department of Education, and the Department of Health and Mental Hygiene give serious consideration to these local and federal guidance materials and use them to make creative, coordinated, and

¹ U.S. Department of Education and Department of Justice, Guidance Package on Correctional Education in Juvenile Justice Facilities, December 2014, http://www2.ed.gov/policy/gen/guid/correctional-education/index.html?utm_source=Youth.gov&utm_medium=Announcements&utm_campaign=Reports-and-Resources.

² The Mayor’s Leadership Team on School Climate and Discipline, Phase Two Recommendations, “Maintaining Momentum: A Plan for Safety and Fairness in Schools,” July 2016, http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf.

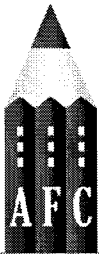


strategic plans to improve the quality of education for youth in and returning from these facilities. The rest of our testimony includes some specific recommendations.

First, we strongly recommend that all facilities serving court-involved youth provide a safe, supportive environment that prioritizes education and provides the necessary academic and behavioral supports to address the individual needs of all students, including those with disabilities, and allow them to make meaningful academic progress. In order to be conducive to learning, facilities must create a safe climate where students feel free from physical and emotional harms or threats, both in the classroom and the facility as a whole, by fostering an environment where students can establish trusting relationships with peers and adults. Towards that end, we strongly recommend that facilities train all staff working with youth in therapeutic crisis intervention and other evidence-based techniques to enable them to safely and appropriately address the behavioral needs of students in their care, many of whom have experienced numerous incidents of trauma.

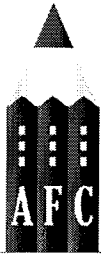
Additionally, because most court-involved youth enter juvenile and criminal justice facilities performing well below grade level, we strongly recommend that these facilities provide intensive, research-based remediation services in math and reading and extend schooling to twelve months to help these students catch up academically.

The data and AFC's experiences also reflect the continued need for better transition planning and more viable educational options for students leaving



placement, detention, or jail to ensure continuity in education and reduce the likelihood of recidivism. The Department of Education's Transition Specialists in Passages Academy and East River Academy are part of a promising initiative that aims to do more than merely help youth leaving facilities enroll in school. To effectuate the promise of helping students locate an appropriate school placement and create and implement an effective transition plan that enables students to stay connected and succeed in school, we strongly recommend that the city increase funding to hire more Transition Specialists and provide them with necessary training and resources.

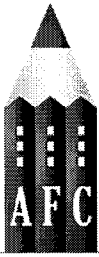
At present, there are not enough schools in New York City that can successfully address the unique and significant education-related challenges facing many court-involved youth. Although many students leaving court-ordered settings would benefit from alternative programs such as transfer schools, ReStart Academies, or Career and Technical Education programs, many are unable to attain admission. The current school-by-school admissions process at transfer schools poses a significant barrier to enrollment for many students and lacks transparency. As such, we recommend that transfer schools be moved under a single superintendency, such as District 79, to allow for better oversight, coordination, and transparency. Additionally, since many students are unable to attend these alternative programs due to limited capacity, we strongly recommend that the city commit to funding and expanding these programs



for over-age, under-credited students, particularly for those who have fewer than 10 credits or who are age 18 or older.

For students leaving juvenile placement, it is important that all Administration for Children's Services (ACS) aftercare workers incorporate education planning into transition planning months before the student is released. In our work, we have seen some ACS aftercare workers do this well. However, we have also seen some ACS workers who have refused to get involved in any education planning. We strongly recommend better oversight and training of ACS workers and coordination with the Department of Education (DOE) and other relevant agencies to plan for students' educational placement upon discharge.

Comprehensive, coordinated, and advance educational planning is particularly critical for students with disabilities with significant needs that cannot be met in DOE schools and require a non-public special education school. Sadly, we have seen some of these students get released from juvenile placements without any educational plan in place. In those instances, students were forced to attend inappropriate "interim community school placements" for several months upon release. Since the process to determine and secure the appropriate special educational placement requires significant time and planning, we strongly recommend that ACS aftercare workers collaborate with the family, the juvenile justice facility, and the DOE well in advance of the student's discharge from the juvenile facility to develop and implement an education plan.



We look forward to working with the City Council, city agencies, affected youth and families, and other stakeholders to ensure that court-involved students are provided quality education in court-ordered settings and upon their return to the community. Thank you.



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Keren Farkas – Supervising Attorney, Education Unit

BROOKLYN DEFENDER SERVICES

**Presented before
The New York City Council Committees on Juvenile Justice, Education, and
Fire and Criminal Justice Services
Oversight Hearing
on
Educational Services for Detained and Placed Youth**

November 30, 2016

My name is Keren Farkas. I am the head of Brooklyn Defender Services (BDS) education unit. BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for tens of thousands of clients in Brooklyn every year. I thank the City Council Committees on Juvenile Justice, Education, and Fire and Criminal Justice Services for the opportunity to testify today about the quality of educational services for detained and placed youth.

BDS is fortunate to have the support of the City Council, as well as other elected officials and the Office of Court Administration, to supplement the services we provide as a public defender office in Brooklyn. We have developed a model of specialization to best represent certain types of clients, including adolescents. Through specialized units of the office, we provide extensive wrap-around services that meet the needs of these 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 justice and family court system.

BDS' Education Unit provides legal representation and informal advocacy to our school-age clients. We work with young people impacted by the child welfare and criminal justice systems, including youth detained at Rikers, Horizons and Crossroads. As a legal and social work team, we work to improve our clients' access to education, and a significant portion of our advocacy relates to school discipline, special education, reentry and alternative pathways to graduation.

BDS is grateful to the City Council and Councilmember Dromm for introducing a new piece of legislation, Int. No. 1148, that would require the Department of Education to report to City Council about East River Academy. We support the legislation and hope the enhanced transparency will lead to better educational services and outcomes for youth at Rikers. I will conclude my testimony with several brief recommendations that we believe will strengthen Int. No. 1148. First, however, my comments will highlight the education barriers that we see our school age clients at Rikers Island experience.

Educational Services for Youth Incarcerated on Rikers Island

The best way that the City could help our youth would be to avoid sending them to Rikers, the horrors of which are well documented, and focus on diverting them from the criminal justice system altogether. However, in the interim, the City can do better to ensure that our young people obtain the education that they are entitled to under law.

First, I want to emphasize that we continuously find the Department of Education staff at East River Academy on Rikers Island to be caring and dedicated. We see them treat our clients with respect and strive to do the very best that they can, particularly given the challenges that educating young people in a jail environment pose. Further, we are encouraged by the various improvements at East River Academy over the past year. These developments include enrollment increases among 18-21 year olds, greater access to vocational education, and targeted resources to address the school reentry challenges our clients face. We also understand that, starting next quarter, students at East River Academy can earn up to five, rather than three and half, credits per quarter. We attribute these improvements to DOE's District 79 Leadership as well as collaboration from the DOE Adolescent Advisory Board, of which BDS is a member. That said, the following are our six areas of particular concern:

Problem 1: DOC Interference with Education Access

The majority of BDS' 18-21 year old clients at Rikers are detained in the George Motchan Detention Center (GMDC). Young people at GMDC regularly report to us that they are not transported to school. We understand that corrections officers are required to call for each enrolled student in their housing unit and transport the student to the school floor. However, we often hear of breakdowns in this system. For instance, some clients have reported that the Corrections Officers do not call for students at all or pick up students late in the school day so they miss class time. Others report of frequent, sometimes multiple day, lock-downs, where all students are denied school access. Because DOC is not

transparent about the frequency of the lock-downs, we cannot assess the extent that our clients are denied school hours, but we are concerned that it is significant.

We are also appalled that DOC deducts class time from out-of-cell time allotment for adolescents in Enhanced Supervision Housing (ESH), a highly restrictive new form of solitary confinement. This practice discourages youth in the ESH from pursuing their education.

We have also heard that DOC staff discourages clients from attending school due to concerns of violence between inmates during transport or at school. While there is an acknowledged problem of violence at Rikers that must be addressed, particularly at GMDC. DOC interference with the student's decision to participate in school is neither appropriate nor the right solution to the problem. As an example, I will share a client story from last week:

A is serving a year sentence on Rikers Island. A explained to her BDS social worker that she feels frustrated because she feels as though DOCS is trying to push her out of school. Just last week they brought her paperwork to "sign herself out" of school. She told her social worker that she refused to sign them and continues to tell them that she wants to attend school. Apparently, DOCS has determined that her housing unit has problems with another unit. Because of this "beef" they won't allow A's housing unit to move when the other unit's residents are on the school floor or in the hall. A was called last week for school but hasn't been called since. She is frustrated as she is extremely motivated to attend school while she is in for the next several months, but will not be able to get an education, even though she has the time, if the guards refuse to take her to the school. A already has 15 credits towards her Regents Diploma.

We also have clients at GMDC who choose not to go to school at all because they are concerned about violence. Notably, our 16- and 17-year-old clients housed at the Robert N. Davoren Complex (RNDC) do not report similar barriers attending school, likely due in large part, to the fact that school attendance is mandatory for this age range.

Solution: The City should call upon DOC and DOE to decentralize the schools, particularly at GMDC, and allow young people who want to learn the opportunity to do so in their units.

Problem 2: Youth at OBCC do not even have a school that they can attend

BDS still has 18-21 year old clients at Otis Bantum Correctional Center (OBCC). While these young adults are school-age and many are interested in preparing for their High School Equivalency or Regents Diploma, East River Academy is not available at OBCC. Recently, several clients housed at OBCC have reported that they want to attend school, but have chosen to remain at OBCC, rather than

transfer to GMDC, because of concerns of violence. In several instances, they were explicitly discouraged from transferring to GMDC by DOC staff, but not provided with an educational alternative at OBCC. Our clients should not have to choose between safety and school opportunity.

Solution: DOC should be required to create a school in any facility where youth are held, including OBCC.

Problem 3: Too many of our clients are significantly behind in their reading and math levels and require intervention to succeed in school

Many of our clients struggle in school because their reading and math skills are far below grade level. Reading is the building block of learning, and without it, our clients are at a terrible deficit that fosters recidivism, not opportunity. Likewise, limited math skills contribute to low self-confidence, leading to truancy and school disengagement. East River 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 and math skills. We are hopeful that the data that will be provided per Int. No. 1148 will help inform the need to allocate resources to fund these interventions.

Solution: The City Council should fund intensive, research-based remedial reading and math instruction, including additional staffing such as reading specialist positions at East River Academy, to ensure that all of the youth who attend have the opportunity to improve their basic reading and math skills.

Problem 4: Difficult for youth to accrue credits

The East River Academy can be an extremely positive motivator for our clients incarcerated on Rikers Island. When they learn a new skill or receive a certificate of achievement in school, they are proud of their accomplishments and feel excited to continue their education.

However, too many of our clients leave East River Academy empty handed, without academic credits despite participation in class and coursework. We find that this problem occurs for a variety of reasons. Sometimes transcripts are not appropriately or timely updated with notations of full or partial course completion. Difficulties also arise when students return to the community mid-year, because the community school system uses a two semester system while East River Academy now uses trimesters. The timing of a student's arrival at East River Academy and return to the community can then dictate whether they will receive credits, even if they accrued a substantial amount of seat time. This is harmful as it confuses and discourages the youth. It also becomes wasted time that could have been spent working towards their high school diploma. Another problem students face is that foreign language and elective courses do not appear

to be regularly offered. We hope that the additional resources targeted at reentry support will address this problem.

Solution: The City Council should direct the DOE to create guidelines on mid-year credit accumulation and make it possible for youth at East River Academy to obtain partial credits , even if a young person does not complete a module in its entirety.

Problem 5: Youth are often tracked or encouraged to pursue high school equivalency (HSE) courses, even if they are strong candidates for high school diplomas

BDS's education team works diligently to place our clients in schools that meet their individual needs to ensure future academic success and end the cycle of poverty and incarceration. This advocacy includes our clients on Rikers Island. We have helped many students enroll in community schools after finishing their time on Rikers, even those that are over-age and under credited.

While at East River Academy, we find that many of our clients are tracked or encouraged to pursue the HSE, rather than obtain their high school diploma. While we appreciate that HSE may be the appropriate choice for a significant number of students, many of our clients express that they would prefer to pursue their high school diploma. With the credit recovery options in the community, including transfer schools, Young Adult Boroughs Centers and some specialized charter schools, it is possible for an over-age under credited student to earn a Regents Diploma. Further, we find that our clients who are connected with the specialized credit recovery schools upon reentry find supportive school settings that can be critical in helping the youth to forge a new path for herself when she returns to the community.

Solution: The counselors at East River Academy should be encouraged to discuss the benefits of high school diplomas with all enrolled students. The City should collaborate with the newly launched Youth Reentry Network to ensure that all youth at East River Academy have access to reentry services, including support and encouragement to continue their education upon return to their communities.

Problem 6: Guards use pepper spray against our clients in the classroom

BDS staff has received multiple reports of students in East River Academy being sprayed with MK9 pepper spray by guards. Our clients report that the spray spreads through the entire school, disrupting class and movement. School counselors have complained as well. It is our experience that MK9 pepper spray

can be harmful and is used far too liberally as a matter of first resort, rather than once all other options for managing a situation have been considered.

Solution: The City Council should ban the use of pepper spray in all DOC facilities, or at the very least, correction staff should not be allowed to use MK9 in East River Academy. Pepper spray is harmful to the students and staff and not conducive to a healthy school environment that inspires learning.

Int. 1148

BDS supports Int. No. 1148. The bill will go a long way towards improving DOE reporting to provide the Council and the public with important information about the quality and parity of education that youth receive at the East River Academy.

We have several brief suggestions to strengthen the Bill:

Suggestions 1: Specifying Use of Force – In Sections 8-11, the bill requires the DOE to report on incidents of use of force during educational programming. As currently written, the definitions of use of force within a single category vary widely. For example, use of force A can mean a chipped tooth or a ruptured spleen, which are very different injuries. Instead of reporting “use of force A” the DOE should be required to report the injury with greater specificity. *See 9-141(b)(8-11).*

Suggestion 2: Diploma vs. High School Equivalency Track – We appreciate the request for information regarding achievement of HSE and Regents Diploma in Sections 12-14. We suggest modifying the language in Section 12 to specify whether a Regents Diploma was achieved and whether one of the “safety net” options were utilized. Additionally, the DOE should report the percentage of adolescents and young adults, respectively, on the Regents Diploma vs. HSE track.

Suggestion 3: Attendance and Participation- The information requested regarding enrollment in sections 1-2 and 16-17 will be illuminating. We ask the DOE to also report on attendance of enrolled adolescents and young adults. Sections 18-19 reference to “participation” may be encompassing attendance. If so, we suggest “participating” be clearly defined in the Definitions section.

Suggestion 4: Teacher to student ratio – In addition to data regarding teacher to student ratio, as noted in Section 22, the DOE should be required to report on the absolute number and ratios of special education teachers, paraprofessionals, reading specialists and related service providers.

Suggestion 5: Credit Accrual – We appreciate the request for data about credit accumulation in Section 25. Because credit accrual has historically been a confusing and difficult matter for students at East River Academy, we ask that

“sufficient period of time,” be defined. We also ask that the DOE report on the average and median seat time accrued by students who were not present for the “sufficient period of time.”

Suggestion 6: Special Education at East River Academy – Greater transparency regarding special education services is certainly needed. In addition to the information already requested, which should be updated to refer to Special Education Plan (SEP), we ask the DOE to specify the (1) the number of students entering with an IEP, (2) the number of students who received an initial special education evaluation while at East River Academy, (3) the number of students recommended for specific services, including classroom settings and related services, and (4) the classifications of students at East River Academy. We hope this information will help ensure the appropriate resources are provided to meet the needs of special education students at East River Academy.

Conclusion

Thank you for your consideration of my comments. I am grateful to the Council for inviting me to testify about the challenges that my incarcerated youth clients find in accessing educational services on Rikers. Please do not hesitate to reach out to me with any questions about these or other issues at (718) 254-0700 (ext. 292) or kfarkas@bds.org.

FOR THE RECORD

TESTIMONY

**Oversight: Educational Services for New York City's Detained,
Placed, and Incarcerated Youth, Adolescents, and Young Adults**

The Council of the City of New York

Committee on Juvenile Justice
Fernando Cabrera, Chair

Committee on Fire and Criminal Justice Services
Elizabeth Crowley, Chair

Committee on Education
Daniel Dromm, Chair

November 30, 2016
New York, New York

The Legal Aid Society
199 Water Street
New York, NY 10038

Submitted by Lisa A. Freeman, Esq.
Special Litigation and Law Reform Unit
Juvenile Rights Practice

The Legal Aid Society thanks Chairperson Cabrera and the Committee on Juvenile Justice as well as Chairperson Crowley and the Committee on Fire and Criminal Justice Services and Chairperson Dromm and the Committee on Education for inviting us to provide testimony about the important topic of education services for New York City's detained, placed, and incarcerated youth.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low income families and individuals. The Legal Aid Society's 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. Last year, our staff represented some 34,000 children, including approximately 3,500 who were charged in Family Court with juvenile delinquency, some of whom spent time in facilities run by or under the aegis of the New York City Administration for Children's Services' (ACS) Division for Youth and Family Justice (DYFJ) as well as the New York State Office of Children and Family Services (OCFS). JRP's Kathryn A. McDonald Education Advocacy Project provides individual client representation and systemic advocacy to ensure that JRP's clients have access to the educational services they require. In addition to representing many thousands of children each year in trial and appellate courts, The Legal Aid Society also pursues impact litigation and other law reform initiatives on behalf of our clients.

The JRP represents the majority of children under the age of 16 who are charged in delinquency proceedings and prosecuted in NYC Family Court. These children, if detained or placed, are held in the custody of ACS' Division for Youth and Family Justice or its contract agencies. With the exception of children held in non-secure placement in Westchester by

Children's Village or the Jewish Child Care Association, these children attend DOE Passages Academy schools.¹

The Legal Aid Society's concern with the educational needs of children in the juvenile justice system is longstanding. In 2004, along with Advocates for Children of New York and Dewey Ballantine LLP, we brought a federal class action lawsuit on behalf of New York City students ages 7-21 who were detained or placed in custody as a result of involvement with juvenile or adult court systems. The lawsuit, known as *J.G. v. Mills*, alleged that when these students were released from a court-ordered setting, they were denied timely re-enrollment in New York City schools or were warehoused in alternative settings and provided inadequate educational services. The complaint also alleged that court-involved youth with disabilities did not receive adequate educational services while in detention in New York City. Although the process has taken longer than we would like, the settlement of this lawsuit has helped to bring significant improvements to the educational services provided for court-involved youth in New York City.

The JG settlement, entered in 2011, required the DOE to promptly enroll all students returning from placement; create and implement appropriate education plans for students with Individualized Education Program (IEPs) in DOE schools in detention and placement; ensure students with IEPs returning to DOE from court-ordered settings receive timely and appropriate special education services and placements; request the student's educational records from the non-DOE court-ordered setting, if those records have not been provided; and, evaluate any transcripts or attestations of credit accumulation for returning high school students and award

¹ Children in placement with St. John's School for Boys attend a stand-alone D75 school, which is a DOE school, but not part of Passages Academy.

such credits towards a high school diploma. Despite significant improvements, more needs to be done to address the needs of detained and placed children.

In July 2016, the Mayor's Leadership Team on School Climate and Discipline, of which The Legal Aid Society was a part, issued its Phase Two Recommendations, many of which addressed the educational needs of this population. We thank the Leadership Team for taking this on, and for tackling many of the issues we see as most pressing. We wish to highlight a few of these recommendations that are particularly important for our detained and placed clients, both while they are incarcerated and when they transition back to the community.

First, many children in detention and placement are over-age and under-credited, and are in dire need of remedial education services. As we understand it, Passages lacks on-site staff to provide these remedial services, placing these children at further risk of educational failure.

Second, we are concerned that despite the small class sizes at Passages, there are students who are not receiving the full menu of special education services that they need and to which they are entitled. The Individuals with Disabilities Act ("IDEA") requires the full implementation of students' IEPs, including students who are incarcerated in juvenile facilities. See Fed. Reg. Vol 71, #156, p.46686 (August 14, 2006). In order to comply with the federal law and regulations and meet the needs of its students, the DOE should enhance its staff and curriculum at Passages to provide these important mandated services.

In addition to the concerns we have regarding the education that students receive while incarcerated, we also wish to raise a few key issues regarding students' transitions from Passages to their community schools. As part of an ongoing agreement with the DOE arising from the JG monitoring, we will be receiving data similar to that required by the proposed legislation.

Because we believe such information is useful in identifying problematic policies and practices, we encourage the City Council to enact similar legislation with respect to the provision of educational services to youth in the juvenile justice system.

Despite the successes achieved through *J.G.*, a number of improvements still need to be made for youth returning home from detention and placement. We ask that the DOE ensure that “receiving” community schools offer supplemental services to students who are typically entering mid-year or mid-semester, and need extra support to address the frequent inconsistencies between their curriculum in detention or placement and that of the receiving school. Relatedly, we ask that the receiving school be required to make every effort to match the student with classes that resemble the curriculum they were following at Passages Academy when they left. And finally, although Passages has made great efforts to grant “partial credits” for work whenever possible, the fact is that for many students these “partial credits” are of limited utility, since a student must have both sufficient seat time and pass the requisite exam at the end of the semester to actually get full credit for completing a course. We ask that the DOE require receiving schools to make every effort to give students the benefit of the work they performed while incarcerated. For example, portfolio items and grades for tests and quizzes taken at Passages could be weighted into a student’s final grade. We also ask that the DOE work with ACS to build flexibility into its release planning so that students can complete coursework and achieve credits whenever possible. Specifically, we encourage the early release of students from placement so that they can begin a semester or school year with their classmates at their community school. We also support—at the behest of the youth only—ACS and DOE working together to briefly extend a student’s placement so that students can finish up a course or attain a credit that is within reach.

In addition, the DOE now requires that any student who spends time in Passages be assigned a “transition specialist” while they are in detention or placement. The transition specialist’s role is intended to facilitate the transition of students from detention or placement and into his or her community school or other appropriate school setting. These transition specialists have tremendous potential to improve the school re-entry process for students leaving detention and placement, but their role and responsibilities still seem to be evolving. In our experience, these transition specialists could be significantly more engaged in the details surrounding school re-entry. For example, they should be visible and vocal participants in every discharge planning conference. They are also ideally situated to identify differences between the Passages curriculum and that of the receiving school, and ensuring that appropriate supports are put in place.

Finally, although the majority of New York City youth who are placed through the juvenile justice system receive educational services through the DOE, some children placed at the Children’s Village and at Pleasantville Cottage in Westchester County, do not. These children face unique challenges when they return home and have to re-enroll with the DOE. Although some efforts have been made, such as the creation of a DOE e-mail box for these children’s records to be collected and delivered to the appropriate receiving school, we continue to hear that re-enrollment, credit transfer, and assimilation all continue to be difficult for these youth. We ask that the DOE devote special attention to these young people to ensure they receive the same support and services as those who remained in the DOE system throughout their placement.

Thank you again to Chairperson Cabrera, Chairperson Crowley, and Chairperson Dromm and the committees for the opportunity to testify about this important topic. We urge the Council

to continue its oversight to ensure that youth in DYFJ detention and placement settings receive the education services they need.

Contact: Tamara Steckler, Attorney-in-Charge,
Special Litigation and Law Reform Unit, Juvenile Rights Practice
Phone: 212-577-3300



TESTIMONY

The New York City Council

Committee on Fire and Criminal Justice
Committee on Education
Committee on Juvenile Justice

Public Hearing on

Proposed Legislation: Int. No. 1148 – In relation to requiring the department of correction to report on educational programming for adolescents and young adults

November 30, 2016
New York, New York

Prepared by:

Mary Lynne Werlwas, Director, Prisoners' Rights Project
Nancy Ginsburg, Director, Adolescent Intervention and Diversion Project
Dori Lewis, Supervising Attorney, Prisoners' Rights Project
Stefen R. Short, Staff Attorney, Prisoners' Rights Project
The Legal Aid Society
199 Water Street
New York, New York 10038
(212) 577-3530

INTRODUCTION

Thank you for the opportunity to testify about the proposed legislation to create more transparency in the provision of education to adolescents and young adults in New York City jails. We submit this testimony on behalf of The Legal Aid Society Criminal Defense Practice, and thank Chair Elizabeth S. Crowley, Chair Daniel Dromm, Chair Fernando Cabrera, the Committee on Fire and Criminal Justice, the Committee on Education, the Committee on Juvenile Justice, and the other sponsors of this bill for inviting our thoughts on the subject.

The Legal Aid Society's Prisoners' Rights Project ("PRP") has addressed systemic and institutional problems in the New York City jails for more than 40 years. As counsel in a class action lawsuit, *Handberry v. Thompson* ("*Handberry*"), No. 96-cv-6161 (S.D.N.Y.) (GDB), PRP has successfully sued to improve and facilitate access to general and special education for high-school eligible youth confined by the New York City Department of Correction ("DOC").

The Legal Aid Society's Adolescent Intervention and Diversion Project's dedicated team of lawyers, social workers, and investigators address the unique needs of adolescents charged in adult court. The project uses an interdisciplinary approach to meet the complex needs of its clients. It provides legal representation to children who are prosecuted in the Criminal and Supreme Courts, and advocacy in furtherance of their educational programming needs. All of the project's clients are entitled to an education under New York State Law, and approximately two-thirds have known or undetected special education needs. Years of experience, including daily contact with individuals involved in the criminal and Family courts, and with incarcerated individuals and their families, has given The Legal Aid Society a firsthand view of the problems in the criminal justice system and in the New York City jails,

We write in support of Proposed Legislation: Int. No. 1148, as our experience has shown us that timely information about the provision of education in the jails is necessary to inform public policy, but is sorely lacking. Education is a powerful tool with which to prevent recidivism and improve carceral outcomes.¹ We applaud the Council for its continued introduction of legislation to improve programming and increase accountability and transparency in New York City jails.

We are not proposing substantive legislation regarding provision of education at Rikers Island beyond the reporting requirements of Proposed Int. No. 1148, because of the present posture of *Handberry*. The federal monitor in that case is due to file a report shortly, and in our role as class counsel we think it prudent to await that report's information before commenting further. Nonetheless, because *Handberry* informs our response to the instant legislation, and sets the groundwork for understanding the provision of education at Rikers, we address it briefly here.

¹ LOIS M. DAVIS ET AL., EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION: A META-ANALYSIS OF PROGRAMS THAT PROVIDE EDUCATION TO INCARCERATED ADULTS 27 (2013), available at http://www.rand.org/pubs/research_reports/RR266.html.

Lessons from *Handberry v. Thompson* and the Provision of Education in New York City Jails

In recognition of the power of education, New York State Law requires the City to provide education to eligible individuals in DOC custody.² In 1996, The Legal Aid Society filed *Handberry v. Thompson*, a class action lawsuit on behalf of young people under age 21 at Rikers Island, challenging the Department of Correction's and the Department of Education's failure to provide the educational programming mandated by law. At the time of filing, less than half of eligible individuals at Rikers received educational programming.³ Of those fortunate enough to go, most were denied the special education services to which they were entitled.⁴ The federal court found that this sorry state of affairs violated the Constitution and federal law.⁵

As a direct result of *Handberry*, a substantially larger percentage of jailed youth now attend school and more receive at least some special educational services. But this progress has been intermittent and fragile. For specific populations, particularly students who are eligible for special education services, students in punitive segregation or restrictive housing, and students who demonstrate behaviors that impede learning, the Department's educational programming is inadequate. Additionally, the Department has implemented policies that force many young adults to choose between educational programming to which they are legally entitled, and other programming.

At present, a court-appointed monitor, Dr. Peter Leone, a recognized expert in correctional education, is assessing the City's compliance with the federal court's remedial order in *Handberry*. In his May 2015 report, Dr. Leone found that the "culture" on Rikers Island does not prioritize education.⁶ As a result, only "some youth on Rikers Island receive education services to which they are entitled"⁷ while young people in special housing units—many of whom are disabled—receive only pedagogically useless cell study.

Many factors contribute to continued failings in the provision of education to young people, one of which is the Department's maintenance of policies and practices which impede access to educational programming. For example, DOC now 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.⁸

² New York Education Law § 3202(7).

³ See Complaint, *Handberry v. Thompson*, No. 96-cv-6161 (S.D.N.Y.).

⁴ *Id.*

⁵ *Handberry v. Thompson*, 92 F.Supp.2d 244 (S.D.N.Y. 2000).

⁶ Peter E. Leone, Ph.D., *On the Status of Educational Services for Inmates Aged 16-21 at Rikers Island 2* (May 11, 2015) (on file with PRP) (hereinafter "Leone Report").

⁷ *Id.*

⁸ 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->

Scheduling conflicts also dissuade young adults from enrolling in educational programming. Dr. Leone found that some institutional jobs conflict with school.⁹ PRP has received complaints that other institutional programs, such as commissary or recreation, often also conflict with schooling. These scheduling issues—which the Department has largely refused to remedy—deter studious young adults who also may wish to take advantage of other limited programs offered in the jails.

Young adults also report that the Department ignores repeated requests for access to school.¹⁰ PRP recently received a complaint from a school-eligible prisoner who was reportedly denied access to education for an entire week because the department 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 failures to provide educational services would have persisted for much longer, as has occurred repeatedly throughout the *Handberry* litigation.

The situation is even more precarious for adolescents or young adults held outside of general population. For decades, DOC and DOE historically have relegated youth held in special housing units such as punitive segregation or administrative segregation to pedagogically useless “cell study.” In the wake of the abolition of punitive segregation for this age group over the last year and a half, and the subsequent introduction of a plethora of alternative, highly restrictive housing units in its stead—Enhanced Supervision Housing, Secure Unit, Second Chance Housing, to name only a few—the status of provision of education to these vulnerable youth is even murkier. Dr. Leone found that, at the time of his visits, nearly 30% of young adult students had been placed in restricted housing units.¹¹ Those students received educational programming in “cell study,” an instructional method Dr. Leone characterized as “ineffective and inefficient.”¹² Young adult class members have described cell study as “worthless.” Judge Motley, in ruling in *Handberry* almost fifteen years ago, characterized the provision of cell study as “pathetic,” “abysmal” and a “sorry state of affairs.”¹³ Unfortunately, little appears to have changed in that regard.

These factors, among others, combine to severely impede young adult participation in the education program. Dr. Leone found that the rate of participation in educational services among young adults is “extremely low.”¹⁴ As of his report, only 30% of the young adult population was enrolled in education programming on Rikers Island.¹⁵ Not only is the rate of school enrollment low, but so is the rate of school attendance.¹⁶

2016/Letter%20from%20Chair%20Brezenoff%20to%20Commr%20%20Ponte%20re%20violation%20of%20minimum%20standards%2011%20%202016.pdf.

⁹ Leone Report at 6.

¹⁰ See Leone Report at 7.

¹¹ Leone Report at 2.

¹² *Id.*

¹³ See *Handberry v. Thompson*, 219 F.Supp.2d 525, 545 (S.D.N.Y. 2002).

¹⁴ Leone Report at 8.

¹⁵ Leone Report at 2.

¹⁶ Leone Report at 8.

Attendance and service delivery problems are not limited to the young adult, population, however. Even adolescents—who are statutorily mandated to attend education programming—do not always receive the education to which they are entitled. Dr. Leone found that, due to the Department’s movement restriction practices, adolescents often arrive late to class.¹⁷ Due to these latenesses, it is unclear whether all adolescents are receiving full amount of instruction to which they are entitled.

Special Education for Students with Disabilities

Young people confined in Department custody have a high rate of disability¹⁸ 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, as special education lost today is unlikely to be regained later. Unfortunately, Dr. Leone found several problems with the Department’s special education services delivery system.¹⁹

Dr. Leone was very clear that young adults confined to punitive segregation were not receiving special education services to which they are entitled.²⁰ Based on Dr. Leone’s Report and class members’ complaints that we continue to receive, there is no question that the cell study model is antithetical to the sound provision of special education services. The cell study model facilitates violations of the IDEA and renders Individualized Education Plans (“IEPs”) meaningless. A similar dynamic may well exist in the other new restricted housing units designed to house adolescents and young adults. These were not addressed in Dr. Leone’s earlier report, but we anticipate will be covered in his forthcoming report.²¹

Lastly, it is unclear whether the Department has developed adequate positive behavioral interventions to mitigate behavioral incidents that impact learning. Dr. Leone’s report is silent on the Department’s school-wide behavioral model, to the extent it has created one. Similarly, Dr. Leone’s report does not address whether the Department 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.²² So long as the Department does not

¹⁷ Leone Report at 5.

¹⁸ 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 November 1, 2014, Dr. Leone found that 39% of East River Academy students were enrolled in special education, a difference of 26.4%. See Leone Report at 9.

¹⁹ See Leone Report at 9-13.

²⁰ Leone Report at 12.

²¹ *Id.*

²² 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

implement the proper behavioral model, behavioral incidents such as assaults and uses of force are likely to pervade the education setting. Additionally, the Department of Education and the Department of Correction should regularly communicate and coordinate behavioral plans for the adolescents and young adults across the residential and school settings.

Our Proposed Amendments to the Proposed Legislation

The Legal Aid Society supports Int. No. 1148 – In relation to requiring the department of correction to report on educational programming for adolescents and young adults. This bill requires DOC to take additional steps toward transparency and accountability in its responsibility to educate people in its custody. Without transparency and accountability, it is unlikely that the foregoing problems will be remedied.

However, we think several amendments are in order to achieve the purposes of the bill more efficiently. The bill is reprinted below in blue, with our specific proposals for additions to the bill in bold face, and our recommended deletions crossed out. We provide a brief explanation for the material changes immediately before each section.

By Council Members Dromm, Chin, Rose, and Cohen.

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction to report on educational programming for adolescents and young adults.

Be it enacted by the Council as follows:

§ 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-14 to read as follows:

9-14 Rikers Island Education Report. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

Adolescent. The term "adolescent" means any individual in the custody of the department who is 16 or 17 years old.

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

Behavioral Intervention Plan. The term “behavioral intervention plan” has the same meaning as is set forth in section 200.1(mmm) of title 8 of the Compilation of Codes, Rules, and Regulations of the State of New York.

Cell Study. The term “cell study” means educational services provided in-cell, in a housing area or in a non-congregate setting, without the presence of a teacher.

East River Academy. The term "East River Academy" means any facility operated by the department of education, on property that is under the control of the department, intended to offer educational programming to incarcerated individuals, including but not limited to adolescents.

Functional Behavioral Assessment. The term “functional behavioral assessment” has the same meaning as is set forth in section 200.1(r) of title 8 of the Compilation of Codes, Rules, and Regulations of the State of New York.

High school equivalency diploma test. The term "high school equivalency diploma test" means any test offered by the department of education for the purpose of establishing the equivalent of a high school diploma, including but not limited to, a general education development test or test assessing secondary completion.

Individualized educational plan. The term "individualized educational plan" has the same meaning as is set forth in section 1401 of title 20 of the United States code and any regulations promulgated thereto. (i) **Community individualized education plan.** The term “community individualized education plan means an individualized education plan developed and/or implemented by

Educational programming. The term "educational programming" means any educational services offered to incarcerated individuals by the department of education.

Staff. The term "staff" means anyone, other than an incarcerated individual, working at a facility operated by the department.

Use of force A. The term "use of force A" means a use of force by staff on an incarcerated individual resulting in an injury that requires medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid, including those uses of force resulting in one or more of the following treatments/injuries: (i) multiple abrasions and/or contusions; (ii) chipped or cracked tooth; (iii) loss of tooth; (iv) laceration; (v) puncture; (vi) fracture; (vii) loss of consciousness, including a concussion; (viii) suture; (ix) internal injuries, including but not limited to, ruptured spleen or perforated eardrum; and (x) admission to a hospital.

Use of force B. The term "use of force B" means a use of force by staff on an incarcerated individual which does not require hospitalization or medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid, including the following: (i) use of force resulting in a superficial bruise, scrape, scratch, or minor swelling; and (ii) the forcible use of mechanical restraints in a confrontational situation that results in no or minor injury.

Use of force C. The term "use of force C" means a use of force by staff on an incarcerated individual resulting in no injury to staff or an incarcerated individual, including incidents where oleoresin capsicum spray results in no injury, beyond irritation that can be addressed through decontamination.

~~Use of force P. The term "use of force P" means a use of force by staff on an incarcerated individual that is not defined in the section as use of force A, use of force B, or use of force C.~~

Young adult. The term "young adult" means any individual in the custody of the department who is between the ages of 18 and 21 years old.

b. The commissioner shall coordinate with the chancellor of education to create a quarterly report on educational programming in department facilities. Beginning July 1, 2016, and quarterly thereafter, the department shall post this report on its website containing information for the prior quarter. Such information shall also be compared to the previous two quarters, and available data for all previous quarters shall be maintained on the department's website. Such quarterly report shall include, but not be limited to, the following information.

Dates Certain (throughout the legislation): Because jail populations are highly dynamic, it can be difficult to interpret from gross numerical data how many individuals were (or were not) provided services during a given period. It can also be difficult to discern if youth who were enrolled in services actually attended those services during a given period. In part to mitigate this difficulty, and to standardize a reporting format, we propose adding a date certain to several provisions of the legislation to ensure that DOC can more easily report data, and that the public can more easily use that data to gauge the department's performance. We believe that the aim of this legislation is best achieved by requiring DOC to report data "as of the first of every month" in its quarterly reports, as follows:

1. The total number and percentage of adolescents enrolled in educational programming, **and the total number attending, on the first day of each month.**
2. The total number and percentage of young adults enrolled in educational programming, **and the total number attending, on the first day of each month.**

Physical Education, § 1(b)(3): We recommend that the Council mandate the disclosure of information related to the provision of physical education. New York State Law mandates that all students receive physical education, but we have received complaints that physical education is rarely made available due to DOC constraints on movement.²³

3. The number of hours of mandated educational programming each adolescent receives, and the number of hours offered in each subject area **(including physical education) as of the first day of each month.**
4. The number of hours of optional educational programming each young adult receives, and the number of hours offered in each subject area **as of the first of each month.**

²³ 14 NYCRR § 135.4.

5. The number of hours of optional educational programming each adolescent is offered, and the number of hours of optional educational programming each young adult is offered **as of the first day of each month.**

Departmental Infractions and Assaults on Inmates, §§ 1(b)(6), (7): We understand the preceding two sections to require the disclosure of data which relates to safety in the educational setting. To accomplish that, we believe that the requirements that use of force data (already required to be disclosed) combined with our recommendation (below) that data on inmate-inmate assaults be collected will provide a more accurate picture. Simply collecting infraction-related data may be misleading. Because infractions run the gamut from relatively minor to relatively serious, a given infraction may have no impact upon the safety of the educational setting. Moreover, the number of infractions has little utility, as that does not tell us how many separate individuals received infractions, nor the conduct on which the infraction was based. We therefore recommend the elimination of this subdivision from the bill.

We also recommend an addition to subdivision seven. To capture useful information on the safety of the educational setting, the council must amend the bill to mandate that the department disclose data on incidents of inmate-on-inmate assault. Not only will this better capture the risk of violence to staff and persons in custody in the school area, but if students do not feel safe in the educational setting, educational outcomes will suffer.

6. ~~The number of departmental infractions issued to adolescents during educational programming, and the number of departmental infractions issued to young adults during educational programming.~~
7. The number of **incidents of assault** assaults on staff **or inmates** during educational programming, in total and disaggregated by whether such assault was committed by an adolescent or young adult.

Use of force Categories: §1(b)(11): While we believe it appropriate to require reporting on use of force data, we recommend eliminating requiring data regarding Use of force P data. "P" means that a use of force categorization is "Pending," and is a transitory category. After about a 24-hour period, a "use of force P" typically is classified as a use of force A, B, or C. Therefore, this paragraph is extraneous, and further does not capture useful information.²⁴

²⁴ We similarly recommend the elimination of the definition of "Use of force P" from § 1(a).

8. The number of incidents of use of force A during educational programming, in total and disaggregated by whether such use of force was used on an adolescent or young adult.
9. The number of incidents of use of force B during educational programming, in total and disaggregated by whether such use of force was used on an adolescent or young adult.
10. The number of incidents of use of force C during educational programming, in total and disaggregated by whether such use of force was used on an adolescent or young adult.
11. ~~The number of incidents of use of force P during educational programming, in total and disaggregated by whether such use of force was used on an adolescent or young adult.~~

Graduation Data and Test Administration – Disaggregation, §§ 1(b)(12)-(15): We recommend that the Council mandate the disaggregation of all testing and degree completion data by housing unit. We have received complaints from class members that certain housing units are prevented from accessing educational programming and therefore suffer poor educational outcomes. Therefore, we believe disaggregation by housing unit may produce useful data on trends. Due to the vast differences in ability of students and time spent in the East River Academy, we believe that comparing their test outcomes to schools in the community would create an unnecessary burden on the DOE and would not provide useful information to the Council. Since many students have low functional levels in math and reading, we suggest asking for the testing outcomes of the STAR and TABE metrics for the students attending ERA. These are those proposed amendments:

12. The number and percentage of adolescents who graduated high school, **disaggregated by housing unit**, and the number and percentage of young adults who graduated high school, **disaggregated by housing unit**.
13. The number and percentage of adolescents to whom a high school equivalency diploma test was administered, **disaggregated by housing unit**, and the number and

percentage of young adults to whom a high school equivalency diploma test was administered, **disaggregated by housing unit.**

14. The number and percentage of adolescents who passed the high school equivalency diploma test, **disaggregated by housing unit**, and the number and percentage of young adults who passed a high school equivalency diploma test, **disaggregated by housing unit.**

15. The median and average score of adolescents and young adults on any standardized test and the metrics such as the TABE and the STAR test to determine functional levels of students.

East River Academy Enrollment – Disaggregation, §§ 1(b)(16), (17): We again recommend that the Council mandate the disaggregation of all enrollment data by housing unit. For youth aged 18 and over, for whom school is optional, the culture in the particular jail or housing area can strongly influence the decision whether to attend school. Moreover, some facilities and areas may pose such barriers to school enrollment, such as conflicts in scheduling, or outright refuse to facilitate school enrollment. Properly disaggregated data can demonstrate the areas of the jails that require attention to such issues. We further suggest additional reporting requirements that will provide much needed information on how many youth are kept from attending the school area itself for security-based reasons, such as placement in an alternative housing unit, *ad hoc* lockdowns, or other reasons.

16. The number and percentage of adolescents not enrolled in East River Academy **as of the first of every month, disaggregated by housing unit**, and the reason any such adolescent is not enrolled.

17. ~~The number and percentage of young adults 18 year-old incarcerated individuals enrolled in East River Academy as of the first of every month, disaggregated by housing unit.~~ **The number and percentage of adolescents and young adults receiving “cell study” or any other educational services outside the educational setting, on the first of every month, disaggregated by housing unit.**

17.1. The number and percentage of adolescents excluded, expelled, or otherwise removed from educational services for security reasons during the previous month, disaggregated by housing unit.

17.2. The number and percentage of adolescents who were suspended from educational services, disaggregated by housing unit.

17.3. The number and percentage of adolescents for whom educational services were reduced for security reasons, disaggregated by housing unit.

17.4. The number and percentage of young adults excluded, expelled, or otherwise removed from educational services for security reasons, disaggregated by housing unit.

17.5. The number and percentage of young adults who were suspended from educational services, disaggregated by housing unit.

17.6. The number and percentage of young adults for whom educational services were reduced for security reasons, disaggregated by housing unit.

17.7. The number and percentage of adolescents who did not attend educational programming at any time due to lack of escorts, disaggregated by housing unit.

17.8. The number and percentage of young adults who did not attend educational programming at any time due to lack of escorts, disaggregated by housing unit.

17.9. The number of educational hours canceled due to facility lockdowns, disaggregated by date, facility and housing unit.

~~[FORMERLY PARA 18] The number and percentage of 18-year-old incarcerated individuals participating in any educational programming, and the number and percentage not participating. For those not participating, the number and percentage who (a) have a high school diploma or (b) have passed a high school equivalency diploma test.~~

~~[FORMER PARA 19] The number and percentage of young adults participating in any educational programming, and the number and percentage not participating. For those not participating, the number and percentage who (a) have a high school diploma or (b) have passed a high school equivalency diploma test.~~

18. [FORMER PARA 20] The number and percentage of (a) adolescents, (b) 18 year-old incarcerated individuals, and (c) 19-21 year old incarcerated individuals for whom individualized education plans have been developed.

~~[FORMER PARA 21] The number and percentage of (a) adolescents, (b) 18-year-old incarcerated individuals, and (c) 19-21-year-old incarcerated individuals who have individualized education plans and who are receiving services (a) in full compliance with their individualized education plan; (b) in partial compliance with their individualized education plan; and (c) not in compliance with their individualized education plan.~~

19. **The number and percentage of adolescents provided the following services on their community individualized education plan, as of the first of every month:**
(a) occupational therapy, (b) physical therapy, (c) speech and language therapy, (d) individual counseling, (e) counseling, (f) resource room, (g) Special Education

Teacher Support Services (SETSS) (e.g. direct and indirect special education teacher support services).

20. The number and percentage of young adults provided the following services on their department special education plan, as of the first of every month: (a) occupational therapy, (b) physical therapy, (c) speech and language therapy, (d) individual counseling, (e) counseling, (f) resource room, (g) SETSS.
21. The number and percentage of adolescents for whom a functional behavioral assessment was conducted prior to incarceration, and/or for whom a behavioral intervention plan was developed prior to incarceration, as of the first of every month, disaggregated by educational placement.
22. The number and percentage of young adults for whom a functional behavioral assessment was conducted prior to incarceration, and/or for whom a behavioral intervention plan was developed prior to incarceration, as of the first of the month, disaggregated by educational placement.
23. The number and percentage of adolescents for whom a functional behavioral assessment was conducted during incarceration, and/or for whom a behavioral intervention plan was developed during incarceration, as of the first of every month, disaggregated by educational placement.
24. The number and percentage of young adults for whom a functional behavioral assessment was conducted during incarceration, and/or for whom a behavioral intervention plan was developed during incarceration, as of the first of every month, disaggregated by educational placement.

- 25. The number of full time equivalents of the following assigned to East River Academy, as of the first of the month: (a) occupational therapists; (b) physical therapists; (c) speech and language therapists; (d) counselors; (e) school psychologists; (f) teaching aids; (g) teaching assistants; (h) special education teachers; (i) behaviorists; (j) reading specialists; (k) math specialists.**

Staffing and Class Size, § 1(b)(22) and New Subdivisions: We agree that teacher-to-student ratio, which is addressed in paragraph 22, is an important predictor of learning outcomes. However, we believe that class size is an equally important predictor of such outcomes, and should not be omitted from any disclosure requirement. We also recommend that the Council mandate the disaggregation of class size data by educational placement (e.g. general versus special education) to aid in a determination of whether DOE is providing an appropriate continuum of placements.

- 26. [FORMER PARA 22] The teacher-to-student ratio in all education programming, in total and disaggregated by such ratio for adolescents and young adults.**

26.1. The average class size on the first of every month, disaggregated by general education classes and special education classes.

Vocational Programming, § 1(b)(23), New Subdivisions: We recommend that the Council mandate the disaggregation of this data both by facility and by the nature of the programming. The proper disaggregation will enhance the utility of this data.

- 27. [FORMER PARA 23] The number and percentage of adolescents participating in vocational educational programming, and the nature of such programming,**

disaggregated by facility and nature of programming.

- 28. [FORMER PARA 24] The number and percentage of young adults participating in vocational educational programming, and the nature of such programming,**

disaggregated by facility and nature of programming.

Transition and Discharge, § 1(b)(25), New Subdivisions: Transition workers aid in the successful and seamless reentry into community education programming. We have received reports that class members are often negatively impacted by a dearth of transition workers. We therefore recommend that the Council mandate the disclosure of both census information related to the

number of eligible incarcerated individuals released from department custody, and the number of transition workers available to serve that population. We further recommend the elimination of the disclosure requirement related to credits (paragraph 25), as the burden to the department outweighs the utility of disclosure.

~~[FORMER PARA 25] The average and median number of credits accumulated by adolescents, and the average and median number of credits accumulated by young adults enrolled in educational programming. This paragraph shall only apply to those adolescents and young adults who had been in custody for a sufficient period of time during the reporting period to have earned credits, and the information in this subdivision shall be listed in total and by dividing the number of credits accumulated by the number of such adolescents and young adults.~~

29. [FORMER PARA 26] The average and median rate of adolescent and young adults, upon their release from the custody of the department, in the following categories: (i) school attendance; (ii) high school equivalency diploma test passage; and (iii) high school graduation.

29.1. The number of adolescents enrolled in educational services who were released.

29.2. The number of young adults enrolled in educational services who were released.

29.3. The number of transition workers in the employ of the department on the first of every month.

§ 2. This local law takes effect 90 days after it becomes law.

CONCLUSION

Thank you for holding this hearing and for requesting the presence and input of The Legal Aid Society. We are confident that the passage of Int. No 1148 will increase the department's transparency, and improve educational outcomes for the people we serve.

NY AT REENTRY
COALITION
PUBLIC SAVINGS, PUBLIC SAFETY

NOVEMBER 30, 2016

TESTIMONY BEFORE NEW YORK CITY COUNCIL
COMMITTEE ON EDUCATION
COMMITTEE ON FIRE & CRIMINAL JUSTICE SERVICES
COMMITTEE ON JUVENILE JUSTICE

JOINT OVERSIGHT HEARING ON
EDUCATIONAL SERVICES FOR DETAINED AND PLACED YOUTH
&
INT. 1148: A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, IN
RELATION TO REQUIRING THE DEPARTMENT OF CORRECTION TO REPORT ON EDUCATIONAL
PROGRAMMING FOR ADOLESCENTS AND YOUNG ADULTS

**WRITTEN TESTIMONY SUBMITTED THE FOLLOWING MEMBERS OF THE
NEW YORK ALTERNATIVES TO INCARCERATION / REENTRY COALITION**

CENTER FOR ALTERNATIVE SENTENCING AND EMPLOYMENT SERVICES (CASES)

CENTER FOR COMMUNITY ALTERNATIVES (CCA)

CENTER FOR EMPLOYMENT OPPORTUNITIES (CEO)

EAC/TASC

FORTUNE SOCIETY

GREENBURGER CENTER FOR SOCIAL AND CRIMINAL JUSTICE

LEGAL ACTION CENTER

OSBORNE ASSOCIATION

URBAN YOUTH ALLIANCE INTERNATIONAL (BRONX CONNECT)

WOMEN'S PRISON ASSOCIATION (WPA)

Good afternoon,

My name is Rob De Leon. I am the Associate Director of Youth Programs at the Center for Alternative Sentencing and Employment Services (CASES) and I am here today to testify on behalf of the ATI/Reentry Coalition which is comprised of the following ten NYC based non-profit service organizations:

- Center for Alternative Sentencing and Employment Services (CASES)
- Center for Community Alternatives (CCA)
- Center for Employment Opportunities (CEO)
- EAC/TASC
- Fortune Society
- Greenburger Center for Social and Criminal Justice
- Legal Action Center
- Osborne Association
- Urban Youth Alliance International, Inc. (aka Bronx Connect)
- Women's Prison Association (WPA)

Thank you to Committee Chairs Daniel Dromm, Elizabeth Crowley and Fernando Cabrera and to the entire NYC Council for the opportunity to speak with you about the Coalition's work and specifically to share an overview of some of the transformative educational programs the Coalition offers to criminal justice involved youth living in all five-boroughs. All of the programs I will speak about today are made possible in part thanks to the Council's support for the Coalition's services through the FY17 Alternatives to Incarceration (ATI) Initiative.

The City Council has been a key partner throughout the Coalition's 20+ year history, providing critical funding that enables the Coalition to meet its mission to reduce crime, strengthen families, and bring hope and opportunity to New York City's most troubled communities. Thanks to the Council's annual support, Coalition members are able to provide a full spectrum of services for individuals from all 51 Council Districts who are involved in each stage of the criminal justice continuum, from initial detention and court hearings to incarceration to reentry into the community.

The Coalition's services play a critical role in supporting program participants of all ages however, ATI/reentry programs can be particularly important for engaging young people who experience early involvement in the criminal justice system. These young people often cycle in and out of prison during much of their 20s and early 30s, a period when their peers are finishing college, accumulating job experience, beginning families, and reaching other traditional markers of the transition to responsible adulthood.¹ Incarceration disrupts this course of youth and young adult development. The incarceration of a young person significantly decreases his or her likelihood of graduating high school and significantly increases the likelihood of future incarceration for violent crimes.² Involvement in the criminal justice system is also closely interwoven with factors including race, neighborhood of residence, and poverty—with low-income young males of color who drop out of high school being more likely at any future point in their lives to be incarcerated than employed.³

On the other hand, providing access to resources, services and opportunities in the early stages of a young person’s criminal justice involvement can have a transformative effect on the individual participants, their families, and communities. Recognizing this opportunity, the members of the Coalition provide a wide range of education and engagement programs tailored to meet the diverse needs of our City’s high-risk young people including the few examples outlined below.

.....

CASES’ Court Employment Project (CEP) provides a 6-12 month alternative to incarceration (ATI) for young people age 16-24 that would otherwise face jail or prison as the result of felony convictions. The program operates in the Bronx, Brooklyn, Manhattan, and Queens Supreme Courts and annually serves up to 275 young people. 89% of CEP graduates have no new conviction within two years of completing the program.

CEP youth participants tend to be far behind their age-level peers in education, have little to no employment experience, and have high rates of substance abuse and mental health disorders including depression and traumatic stress. CEP helps participants to build academic and work-readiness skills while addressing their unique risks and needs (including as related to behavioral health). Within CEP, City Council funding specifically supports education and employment services, including onsite high school equivalency (HSE) exam preparation and testing along with job-readiness and job placement services.

.....

CCA’s Client Specific Planning Program (CSP) is a community-based alternative-to-placement program for young people age 15 years or under who have been charged with a crime and, or classified as a juvenile delinquent in Family Courts located in Brooklyn, the Bronx, Manhattan and Queens. The CSP Program endeavors to address participants’ court –involvement by emphasizing personal empowerment, self-respect and concern for one's community. Through a combination of (a) enriching youth development workshops and (b) supportive-intensive case management provided by Case Managers, young people are provided with daily individual and family support, as well as community supervision to increase the likelihood that they will reach their goal of avoiding incarceration and living safe lives in their communities. CSP services include:

- Youth Development Workshops and Enrichment Activities such as:
 - Academic Tutoring and Assistance
 - Onsite Youth Computer Lab
 - Technology & Art Workshops
 - Entrepreneurship & Job Readiness Workshops
 - Ongoing Internship and Job Assistance
 - Weekly Civic Engagement and Volunteer Opportunities
- Supportive-intensive case management services including:
 - Academic Support including School Re-enrollment and Engagement
 - School Attendance Monitoring
 - Educational and Vocational Counseling

.....

CEO provides reentry employment services to individuals involved in the criminal justice system who face the highest risk of continued involvement and incarceration and have the greatest need for employment assistance. Approximately 43% of those served by CEO’s programs are young adults (ages 18-25) and like all CEO participants, these young people are

unemployed and in need of immediate income to regain stability for themselves and in many cases their families. CEO seeks to meet young people where they are in their journey to job readiness. Younger participants tend to have less experience and exposure to the demands of work, and therefore take longer to become job-ready. As a result, CEO has prioritized examining internal data to better understand patterns of young-adult program participation and to devise new strategies to keep youth engaged in CEO’s job readiness and educational services until they are able to be connected to a first job.

CEO’s program model provides job readiness training/coaching and educational services including:

- High School Equivalency testing
- Computer Training
- Scaffold Training
- OSHA 10 Hour
- Warehouse / Forklift Training
- Sanitation Training Program

.....
The Greenburger Center for Social and Criminal Justice (GCSCJ) has developed a first-of-its-kind secure, voluntary Alternative to Incarceration (“ATI”) model for young adults between eighteen and thirty-five years of age, with serious mental illness and co-occurring substance abuse, facing a multi-year sentence to a NYS prison and not eligible for any currently existing ATI program. Beginning in the 4th quarter of 2018, GCSCJ will conduct a 6-year pilot of its model at a facility it owns in Bronx, New York to be called Hope House on Crotona Park (“Hope House” or “HHCP”). GCSCJ is currently developing the HHCP model and shaping the programming component of the ATI program.

.....
BronxConnect was founded in 2000 and to date has served 1,900+ youth and young adults in a Bronx-based, faith-based and community-based Alternative-to-Incarceration (ATI) and Alternative-to-Detention (ATD) program for court-involved high-risk youth. Participants receive services including:

- Afterschool activities
- Educational advocacy
- Leadership development
- Mentoring
- Tutoring
- Workforce development
- Wrap-a-round case management

.....
Thank you again for this opportunity to testify on behalf of the ATI/Reentry Coalition today and to share a brief overview of just some of the youth services offered by the Coalition member organizations. We are grateful for the Council’s continued support of our work and we look forward to continuing to partner with you to ensure that New York City’s communities have access to these critical and life changing programs.

NY ATI/Reentry Coalition Members & Leadership

Joel Copperman
President and CEO
CASES

Elizabeth Gaynes
President and CEO
Osborne Association

Marsha Weissman
Executive Director
Center for Community Alternatives (CCA)

Georgia Lerner
Executive Director
Women's Prison Association

Sam Schaeffer
CEO and Executive Director
Center for Employment Opportunities (CEO)

Cheryl Roberts
Executive Director
Greenburger Center

JoAnne Page
President and CEO
Fortune Society

Paul Samuels
Director and President
Legal Action Center (LAC)

Lance W. Elder, President/ CEO; and
Tania Peterson Chandler, NYC Regional Director
NY TASC & Mental Health Programs (EAC)

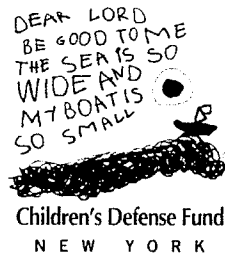
Rev. Wendy Calderon-Payne
Executive Director
Urban Youth Alliance (Bronx Connect)

References:

¹ Raphael, S. & Stoll, M.A. (2014). A new approach to reducing incarceration while maintaining low rates of crime. Washington, D.C.: The Hamilton Project, The Brookings Institute. Retrieved from http://www.brookings.edu/~media/research/files/papers/2014/05/01-reduce-incarceration-maintain-low-crime-raphaels-stollm/v5_thp_raphaelstoll-discpaper.pdf ^

² Harris, B.H., Jacome, E., Kearney, M.S., & Parker, L. (2014, May). Ten economic facts about crime and incarceration in the United States. Washington, D.C.: The Hamilton Project, The Brookings Institute. Retrieved from <https://www.brookings.edu/research/ten-economic-facts-about-crime-and-incarceration-in-the-united-states/> ^

³ Ibid. ^



**Testimony for the New York City Council
Committee on Education
Committee on Fire and Criminal Justice Services
Committee on Juvenile Justice**

Oversight: Educational Services for New York City's Detained, Placed, and Incarcerated Youth, Adolescents, and Young Adults

November 30, 2016

Good Afternoon. My name is Charlotte Pope and I am the Youth Justice Policy Associate with the Children's Defense Fund - New York (CDF-NY). Thank you to Chair Dromm, Chair Crowley, Chair Cabrera, and the members and staff of the City Council Committee on Education, Committee on Fire and Criminal Justice Services, and Committee on Juvenile Justice for this opportunity to comment.

The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. CDF-New York's unique approach to improving conditions for children combines research, public education, policy development, community organizing and statewide advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood and juvenile justice.

Overview

One of many recommendations issued in the Phase II report of the Mayor's Leadership Team on School Climate and Discipline, of which CDF-NY is a part, urged the city to "Enhance educational services for youth in incarceratory settings." According to that report, in school year 2015, attendance rates for students returning to school from Rikers decreased 13.5 percentage points (from 48.6 percent to 35.1 percent).¹ We are committed to ensuring youth in all settings are receiving barrier-free access to education, and we support the many recommendations of the Mayor's Leadership Team that are needed to strengthen access and quality:

- Improve educational information sharing and transition planning, and, more specifically, establish mechanisms and procedures, with oversight, to ensure that relevant student records are transmitted from sending schools to the education programs in incarceratory settings, and back to receiving schools;
- Expand intensive, research-based remedial reading and math instruction and resources for students with extreme delays, and train all ACS, provider agency and DOE staff who work with students in detention, placement and jail in Collaborative Problem Solving;
- Facilitate appropriate school transfers for court-involved youth; and
- Create and expand appropriate education options for court-involved youth, as well as providing systemic supports to schools accepting students from incarceratory settings at various points throughout the school year.

¹ Mayor's Leadership Team on School Climate and Discipline, "Maintaining the Momentum: A Plan for Safety and Fairness in Schools," *City of New York*, 2016, http://www1.nyc.gov/assets/scit/downloads/pdf/SCLT_Report_7-21-16.pdf.

Through increased transparency, solution-oriented collaboration and the targeted provision of supports to schools, we can and must improve outcomes for students. In today's testimony we address Introduction 1148, requiring the DOC to issue a "Rikers Island Education Report," and share our concerns with what we understand to be barriers to accessing education for adolescents and young adults on Rikers Island.

Over the past year, CDF-NY has vigilantly monitored the rollout of the Department of Correction's (DOC's) Young Adult Plan, a management strategy coordinated alongside the elimination of punitive segregation for young adults. We appreciate the significance of the end of punitive segregation for adolescents and young adults and we continue to push for alternatives to restrictive housing units and urge the DOC to limit and monitor the use of currently existing restrictive housing. At present, CDF-NY is concerned about the continuing use of restrictive housing for adolescents and young adults on Rikers Island and we have previously submitted testimony regarding this before the City Council. No matter the form the final Young Adult plan 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.

Int 1148-2016

CDF-NY supports Int 1148 and we applaud this effort to bring transparency to educational programming for adolescents and young adults on Rikers Island. Improving public reporting gives the city an important and much needed tool to measure the ongoing progress in schools serving detained youth. East River Academy serves students in multiple locations on Rikers Island and, as we will elaborate, some of these classrooms are located within restrictive housing units or otherwise outside of the main school. For this reason we encourage Int 1148 to disaggregate data by location and bring light to the relationship between restrictive housing and the many context-specific educational indicators to be collected, such as use of force and teacher-student ratios.

Int 1148 has the potential to fully consider all forms of exclusionary discipline including what the Department of Education's (DOE's) Student Code of Conduct would title a classroom removal, suspension, and expulsion, in addition to DOC removals in response to DOC infractions as stipulated in the Inmate Rule Book. According to the Student Safety Act data reported by the Department of Education (DOE), there were zero classroom removals and suspensions issued at East River Academy in the 2015-2016 school year. We can compare this reporting with the DOC's most recent three-month adolescent security indicators report where, while not disaggregated by incident location, there were 432 fight infractions written against adolescents in RNDC, who have an average daily population of 190 people.² 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 adolescents can be disciplined.

Beyond the number of departmental infractions issued during educational programming, we recommend the inclusion of reporting on the number of students removed from the classroom during educational programming, as well as a metric of adolescent attendance, for whom education is compulsory. Regular attendance is essential to providing students with opportunities to learn, and these opportunities are lost when students do not attend school. Access to accurate, timely data about whether adolescents regularly attend school is critical to making instructional choices and guiding the design of interventions intended to improve attendance and student achievement. With this data we could better explore barriers to attendance and the conditions under which adolescents are denied, removed from, or not brought to school. Again using the Student Safety Act as a reporting standard, the Act requires the NYPD to report on summons, arrest and violation activity by department personnel disaggregated by school building and we find it imperative to also know the number of arrests made of students in East River Academy. It is our understanding that the frequency of re-arrests while incarcerated is a growing concern among the adolescent and young adult population, and as we have seen with the impact of the Student Safety Act in schools not in incarceratory settings, data transparency motivates reform.

² New York City Department of Correction, "4th Quarter FY2016 Adolescent Reporting Bill With Population," *Author*, Accessed November 2016, http://www1.nyc.gov/assets/doc/downloads/pdf/4th_QTR_FY2016_ADOLESCENT.pdf.

Without adequate reporting about what happens in our schools, the city's ability to create effective policy and offer protections to students is weakened. If there is no mechanism to accurately monitor education access at Rikers, there can be no meaningful collaboration or oversight. Access to data is a first step, and we encourage the Council to respond to data that indicates infringements on students' access to education, and reform the policies that influence them.

Education in Restrictive Settings

Board of Correction (BOC) Minimum Standards require, as of January 1, 2016, the exclusion of inmates ages 18 through 21 from punitive segregation. That deadline was delayed on multiple occasions for the purpose of implementing the newly created Young Adult Plan. The original Young Adult Plan, first shared publically in January 2016, called for "progressively more restrictive alternative housing unit pilots and complete elimination of punitive segregation for young adults" with three levels of alternative housing: Transitional Restorative Units (TRU), Second Chance Units (SCHU), and Secure Units.³

During the March 2016 public meeting of the BOC, the Board shared with the public that young adults housed in SCHU were not attending school. The response from DOC was that "it's voluntary" and "none have agreed to go to school."⁴ In June 2016 DOC began to pilot the "Secure Unit," one of the most restrictive of the DOC's "tiered-response young adult housing structure" with a common area composed of floor-to-ceiling cages. As of the November 15, 2016 meeting of the Board of Correction, there were nine young adults housed in the Secure Unit, with six in school, and only two with "consistent attendance."⁵ Because these restrictive housing units hold young adults pending factors like "consistent satisfactory behavior,"⁶ it is imperative that DOC ensure people are provided barrier-free access to educational services that allow them to exhibit whatever criteria of behavior grants passage to the least restrictive environment.

In October of 2016 the Board of Correction approved the use of Enhanced Supervision Housing (ESH) for the 19-21 year old population as well as the opening of a designated 18-21 year old ESH. As of the November Board of Correction public hearing, only two of eight young adults in the Young Adult ESH and only three of seven young adults in the comingled ESH had chosen to go to school, and it was shared as evidence of the unit's success that the latter three had "not previously engaged in services."⁷ CDF-NY calls for barrier-free access to education and continuous opportunity for educational reengagement as the varying degrees of participation by settings highlights the need to continually offer and explore obstacles or participation disincentives to better meet the needs of young adults. In the new Young Adult ESH, there are eight young adults, with two attending school. After much advocacy to encourage school participation, young adults in ESH are given two additional hours of out-of-cell time to attend school, in a unit with seven hours of out of cell time (where the Minimum Standards guarantee fourteen hours out-of-cell for those not housed in Board-approved restrictive housing units).⁸ There is much work to be done, as this age group is entitled under state law to a high school education if they have not already completed it. We encourage the Council to exercise oversight to ensure that placement in alternatives to punitive segregation does not affect the schooling of those who are still completing their high school education.

The Board of Correction found last month that the West Facility was in violation of multiple minimum standards that regulate conditions of confinement. Many advocates have insisted that West, a contagious disease isolation unit, is operating as an illegal isolated confinement unit. West facility is highly restrictive,

³ New York City Department of Correction, "NYC Department of Correction – Young Adult Plan Update 2016," *Author*, January 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/NYC%20Department%20of%20Correction%20-%20Young%20Adult%20Plan%20Update%202016.pdf>.

⁴ New York City Board of Correction, "Meeting 3 8 16 HD," YouTube video, 01:42:52, Posted [2016, March 11], <https://youtu.be/XSM53rNG928?t=1300>.

⁵ New York City Board of Correction, "2016 11 15 NYC Board of Correction Meeting," YouTube video, 02:34:50, Posted [2016, November 17], <https://youtu.be/QqebeB7rl-U?t=7067>.

⁶ New York City Department of Correction, "Six (6) month limited variance," *Author*, April 27, 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/Limited%20Variance%20Request%20-%20Establishment%20of%20Secure%20Unit%20for%20Young%20Adults%204.27.16.pdf>.

⁷ New York City Board of Correction, "2016 11 15 NYC Board of Correction Meeting," YouTube video, 02:34:50, Posted [2016, November 17], <https://youtu.be/QqebeB7rl-U?t=6953>.

⁸ New York City Board of Correction, "2016 11 15 NYC Board of Correction Meeting," YouTube video, 02:34:50, Posted [2016, November 17], <https://youtu.be/QqebeB7rl-U?t=7035>.

lacks procedural due process, and, as reported in the Second Report of the *Nunez* Monitor has the highest rate of use of force incidents in the city jails.⁹

It was shared during the October 11, 2016 public meeting of the BOC that there were, at that time, three young adults housed in the West Facility (as well as three young adults housed in NIC),¹⁰ including an 18 year old who “can’t get school,”¹¹ and the October 15, 2016 Young Adult Census lists two young adults in the West Facility.¹² As of the October elimination of punitive segregation for 19-21 year olds, any substantial limitation on lockout must explicitly exclude all people between the ages of 16 and 21. Further, any placement of high school eligible youth must not affect the education of any of those who are still completing their education. We appreciate the Council’s attention to this area of concern and we hope the Council will continue this essential oversight.

Chemical Agents

The most recent monitoring period of the *Nunez* settlement committed attention to the “excessive and/or unnecessary use of chemical agents.” The monitor noted the “high frequency of unnecessary uses of chemical agents” and made a number of recommendations including adoption of a method to track the amount of spray used in a given incident.¹³ In June 2015 it came to the attention of the BOC that there had been an increased use of chemical agents in the main school and that “it’s having a detrimental effect and impact on the inmates, the teachers, the staff and the classes.”¹⁴ It was shared by the DOC that the use of chemical agents would cause the whole classroom to be evacuated.¹⁵

Explanations for the increased use included the Chancellor’s request to extend school hours from 3 to 5.5 hours on a daily basis, and adolescents were “not accustomed to being in the classrooms this long”¹⁶ – as “once they are in class they are there all day.”

“This year we went to extended school hours at the request of the Chancellor and one of the things that we found was by introducing all of the children on the school floor at one time it did present a challenge because the kids were running out of the classes, engaging in fights on the school floor because now they see more kids that they wouldn’t normally see when we had the separation with the two school periods. So basically what’s happening is again we had more incidents. As a result of that we were utilizing chemical incidents at a greater rate. The teachers did express concern because they wanted to know was there any long term affects to the chemical agents which was being used... There are no long-term effects to the use of chemical agents.”¹⁷

It is our understanding that as a solution the DOC began “piloting” a chemical agent gel, a more “individualized” chemical agent.¹⁸ As the Mayor’s Leadership Team report notes, youth in incarceration settings are, on average, several years behind in their reading and math levels, which greatly hinders their self-confidence as learners, and contributes to disruptive behavior in school out of frustration.¹⁹ CDF-NY remains concerned by the increase in the use of chemical agents in school – whether gas or gel – as this practice compromises the rights of students to an education and is contrary to fostering a positive learning environment. We ask that the DOC be invited to report on guidelines for the use of chemical agents, along with a demonstration that other reasonable efforts to resolve the situation have failed whenever chemical agents are utilized. We were surprised to hear that the DOC assured teachers that

⁹ The *Nunez* Monitoring Team, “Second Report of the *Nunez* Independent Monitor,” *Author*, October 31, 2016, <https://www.exigee.com/sites/default/files/Second%20Report%20of%20the%20Nunez%20Independent%20Monitor%20-10-31-16%20-%20Filed%20with%20Appendix.pdf>

¹⁰ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” YouTube video, 3:29:35, Posted [2016, October 13], <https://youtu.be/k0rAO4dQc30?t=10441>.

¹¹ NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” YouTube video, 3:29:35, Posted [2016, October 13], <https://youtu.be/k0rAO4dQc30?t=11158>.

¹² NYC Department of Correction, “Young Adult Census (Facility/Housing Unit) – October 15, 2016,” *Author*, November 2016, http://www1.nyc.gov/assets/boc/downloads/pdf/young_adult_census_by_facilityhousing_unit_10.15.2016.pdf.

¹³ “Second Report of the *Nunez* Independent Monitor”

¹⁴ NYC Board of Correction, “2016.06.14 NYC Board of Correction Meeting,” YouTube video, 2:49:08, Posted [2016, June 16], <https://youtu.be/flq4Tlvr2cM?t=7971>.

¹⁵ “2016.06.14 NYC Board of Correction Meeting,” <https://youtu.be/flq4Tlvr2cM?t=8392>.

¹⁶ “2016.06.14 NYC Board of Correction Meeting,” <https://youtu.be/flq4Tlvr2cM?t=8013>.

¹⁷ “2016.06.14 NYC Board of Correction Meeting,” <https://youtu.be/flq4Tlvr2cM?t=8013>.

¹⁸ “2016.06.14 NYC Board of Correction Meeting,” <https://youtu.be/flq4Tlvr2cM?t=8056>.

¹⁹ “Maintaining the Momentum”

there are no long term effects from the use of chemical agents and we welcome evidence of this claim, particularly in regard to prolonged exposure by adolescents. It is our hope that Int 1148, in combination with Council oversight, will enable all East River Academy locations to become safer and more welcoming learning environments for the students and staff alike.

Conclusion

CDF-NY looks forward to working with the DOE, DOC, and the Council to ensure that all students can access a meaningful education. We ask that city efforts to reform school climate in New York City schools and increase school climate supports system-wide include school-level data collection and supports for students in court-ordered settings. It is important to comply with the rights youth have to access a sound education – regardless of their legal status – and to recognize the essential role of education and the impact of positive school experience on student outcomes. Thank you for the opportunity to speak about this significant issue and thank you for your support in these efforts.

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Name: Stefen R. Short

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I represent: Legal Aid Society

Address: 197 Water Street NY NY 10039

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Name: Francis Torres

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I represent: and Youth Advocacy Services

Address: Dept. of Correction

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Name: Felipe Franco, Deputy Commissioner

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I represent: NYC Administration for Children's Services

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I represent: CENTER FOR COMMUNITY ALTERNATIVES

Address: 25 CHAPEL STREET, BROOKLYN

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I represent: Union Fed. of Teachers

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