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TESTIMONY

The Legal Aid Society
to
The New York City Council
Committee on Education
And
Committee on Children and Youth

Oversight:
Educational Access in NYC's Juvenile Detention Centers.

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Justice in Every Borough.

I. Introduction

The Legal Aid Society welcomes the opportunity to testify and thanks Chairs Joseph and Stevens, along with the Committees on Children and Youth and Education for their leadership on crucial education issues affecting New York City young people. We especially thank the committee for focusing today on the educational needs of young people in New York City's Juvenile Detention Facilities.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. Throughout our 150-year history, The Legal Aid Society (LAS) has been a tireless advocate for those least able to advocate for themselves. The Legal Aid Society is built on one simple but powerful belief: that no New Yorker should be denied the right to equal justice. From offices in all five boroughs, the Society annually provides legal assistance to low-income families and individuals in nearly 200,000 legal matters each year, including education advocacy for school-age children and youth. We seek to be a beacon of hope for New Yorkers who feel neglected -regardless of who they are, where they come from, or how they identify. Our practice encompasses three practice areas: the Criminal Defense Practice, the Civil Practice and the Juvenile Rights Practice.

The Criminal Defense Practice is the premier public defender program in the country, handling 125,000 criminal matters in a typical year. Our victories in and out of the courtroom protect the constitutional rights of our clients and strive for greater humanity in the criminal legal system. Many thousands of our clients with criminal cases in Criminal Court and Supreme Court are school-age

teenagers and young adults who need and are legally entitled to receive educational services and many of them are young parents with children who also require educational services.

The Civil Practice provides specialized, comprehensive, legal assistance across a range of civil legal practice areas that benefits more than 135,000 New Yorkers each year. Through our efforts, we secure essentials of life such as ensuring our clients have stable housing, family law assistance, access to health care, life-changing immigration law assistance, and public benefits so our clients can effectively care for themselves and their families. Many clients of the civil practice are parents of children who attend New York City Public Schools.

The Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear in New York City's Family Court due to involvement with the family regulation system, the juvenile legal system, and other proceedings affecting children's rights and welfare. Our Juvenile Rights staff typically represents a total of more than 30,000 children each year. Our work with these most vulnerable New Yorkers keeps them safe and makes our city's families and communities stronger.

Our Civil, Juvenile Rights, and Criminal Defense Practices engage in educational advocacy for our clients, in the areas of special education, school discipline, and school placement and programming through the Education Advocacy Project in the Juvenile Rights and Criminal Defense Practices and the Education Law Project in the Civil Practice. In addition to representing these children each year in administrative hearings, appeals, and court proceedings, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

Our perspective comes from our daily contacts with children, youths, and their families as well as our frequent interactions with courts, social service providers, and NYC agencies, including the New York City Public Schools (NYCPS), the Department of Health and Mental Hygiene (DOHMH), and the Administration for Children’s Services (ACS) and their contract agencies.

II. Youth in New York City Juvenile Detention and Placement Facilities

Youth with court involvement are a particularly vulnerable population. They are disproportionately Black or brown youth living in communities affected by poverty.¹ Youth with disabilities are overwhelmingly overrepresented in the population of youth who are held in juvenile detention and placement. Out of the 824 youth who were enrolled at Passages Academy in the 2024-2025 School year, 506 (61.4%) were youth with documented disabilities.² In reality, the percentage of incarcerated youth with disabilities is likely higher, given their appallingly low levels of academic achievement as reported by the DOE. We see many young people involved in the juvenile legal system who are very far behind academically, but who have never been formally evaluated to determine whether they require special education services (a likely violation of the NYCPS’ child find obligations under the Individuals with Disabilities Education Act (IDEA)). Many of these young

¹ Ending the Poverty to Prison Pipeline, FWPA, April 2019, reported that 80 percent of incarcerated persons self-identified as living in poverty, <https://www.fpwa.org/wp-content/uploads/2023/05/FPWAs-Ending-the-Poverty-to-Prison-Pipeline-Report-2019-FINAL.pdf> (citing “Who Pays: The True Cost of Incarceration on Families, a 2018 study by the Ella Baker Center available at <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-FINAL.pdf>)

² Local Law 21 of 2024 Report for SY 2024-2025: Educational Programming for New York City Juvenile Delinquents, Juvenile Offenders and Adolescent Offenders, 9/25/30 (hereinafter will be referred to as “LL21 Report”), <https://infohub.nyced.org/docs/default-source/default-document-library/local-law-21-d79---09-29-25.pdf>

people have never received appropriate educational interventions or mental health services in their communities. Many have become disengaged from their education, often because they were poorly served.

When a judge detains a youth charged as a juvenile delinquent, juvenile offender or adolescent offender,³ those youth are held in an ACS-run facility.⁴ Most of these youth are entitled to educational services through NYCPS. These services are provided under the umbrella of Passages Academy (Passages), a New York City public school. Passages has four primary sites. Two are located in ACS secure detention facilities, Crossroads Juvenile Detention Center in Brooklyn and Horizons Juvenile Detention Center in the Bronx. The other two, Belmont Academy and Bronx Hope, are located in the community and serve youth who are remanded to nonsecure detention and youth “placed” (the juvenile equivalent of sentencing) in non-secure Close to Home facilities.⁵ ACS’s contract agency running these facilities are responsible for providing daily transportation to Belmont or Bronx Hope.

³ Juvenile Delinquents (JD) are youth who are charged with having committed an offense when they were 7 through 17 years old that if committed by adults, would be a crime. Adolescent Offenders (AO) are youth who are charged with committing a felony offense when they were 16 or 17 years old. Juvenile Offenders (JO) are youth who are charged with having committed a serious felony offense when they were 13 through 15 years old.

⁴ In recent years, New York City has reduced the availability of effective programs providing community-based interventions as alternatives to juvenile detention and placement. See written testimony of The Legal Aid Society submitted to the New York City Council Committee on Criminal Justice for its Oversight Hearing: Alternatives to Detention and Incarceration in New York City, held November 30, 2023.

⁵ Youth in limited secure placement are provided teachers in their facilities. 01:25:34

Notably, most youth placed in detention and placement facilities live with a cohort that is determined by ACS based on the current population and needs of the facility or system. They attend classes with their peers in their housing unit or facility and are not sorted based on grade level or special education needs. As a result, when they are taken to a classroom, the teacher is required to try to address students with varying levels of education attainment and need at the same time. Needless to say, this makes the challenge of teaching youth who are being incarcerated and facing the myriad stresses of their circumstances even more challenging.

III. Lack of Access to Education to Youth in NYC Juvenile Detention Facilities

The Legal Aid Society represents approximately 90% of New York City youth who are involved in the juvenile or adult legal systems through either its Juvenile Rights or Criminal Defense Practices. As such, we have frequent contact with many young people who are held in secure or non-secure detention facilities and in non-secure or limited secure placement facilities. Although these young people stand to greatly benefit from engaging or re-engaging in the education, all too often, they are being denied consistent access to education.

According to the reporting required by the City Council under Local Law 21 of 2024, approximately 824 young people cycled through Passages Academy from September to June of the 2024-2025 school year. While some of those youth were in the program for a short period of time, others were there for months, or for the entire school year. The DOE documented 6,863 absences, of

which 4,049 (59%) were not due to youth being ill, taking exams or having court dates, but rather "Due to Host Agency" (meaning that ACS or their contract agency simply failed to bring them).⁶

Legal Aid Society staff hear complaints, primarily from teen-aged clients in secure detention, that they are not taken to school even though they would like to attend. Clients frequently tell our staff that if one or two people in their housing unit refuse to attend, no one in the unit is taken to school. Our clients report that when they do not go to school, they instead stay in their hall where they talk, watch tv or play video games. They report that sometimes when they are not taken to school, ACS staff gives them packets of work, which no one ever explains, corrects, or goes over with them. Some youth in secure detention have also reported being taken to school for just one or two periods and then being returned to their residence hall (possibly so they could be counted as "present").

On one occasion, Legal Aid staff visited a secure detention facility for an organized tour only to find that *no one* is in school that day. When we inquired, we were told this was due to a security incident in one of the residence halls. No one explained why, even if an incident had to be deescalated or investigated in one unit, that should prevent youth in the other units from attending school. On another occasion, Legal Aid staff visited another secure detention facility at 10:00 to find that no one was in school. When we asked, we were told that they would be brought later because it was a Friday.

The experience of one 17-year-old Legal Aid client provides a distressing example of the ramifications of the lack of access to school. \This young man, who had been working toward earning his Regent's diploma, recently told his attorney that although he asked to go to school every day, he

⁶ LL21 Report, p. 13.

was never taken. Eventually one of the staff members working in his housing unit suggested to him that instead of asking to go to school, he should enroll in the high school equivalency program because they would take him to that program more regularly. Presumably, this advice was given because the GED programs are conducted by computer, rather than live instruction, and therefore the facility has greater flexibility in scheduling this programming. As a result, this eager student opted to drop out of high school to enroll in the GED program instead.

Two of our lawyers reported that in the youth part, poor school attendance while youth were in secure detention, was used as a reason for the prosecutor to recommend placement at the disposition of a case, even though the youth had no control over whether he was brought to school or not.

One likely reason for the lack of consistent access is the egregious overcrowding that is currently occurring in secure detention. At present, Crossroads and Horizon are almost 30% over their capacity. Due to overcrowding, many young people held in secure detention (Horizons or Crossroads) are not assigned to a housing unit and are sleeping on plastic “boats”⁷ on the floors in classrooms, hallways, or other offices. These youth are called “travelers” by detention staff. Many of these youth report not having been enrolled in school or assigned to a classroom at all.

One 13 year old Legal Aid client, who was a voracious reader, placed at Crossroads reported to his lawyer that he was always tired because as a traveler he was assigned to sleep in a hallway where staff made noise and where he could never feel safe enough to sleep. During that time, he was not

⁷ ACS provides many of these youth with “Barker Bunks,” a plastic base with a foam pad on top. See www.bobbarker.com/barkerbunk

assigned to a classroom and did not attend school for approximately a month. Once he was assigned to a housing unit, he began attending school and slept more, but was still tired because he was being woken at 5:00 a.m. and told to vacate his bed so that one of the “travelers” could sleep for a few hours. He also complained that the other young people who were told to sleep in his room would take his books.

In addition, our young clients in non-secure juvenile detention or placement report that they are routinely brought to school late, so that they miss one or more class periods at the start of the day. We therefore suggest that in addition to requiring ACS and the NYCPS to fully comply with Local Law 21 of 2024 by resubmitting the 2024-2025 report with all required data, that the reporting requirements be amended to require further disaggregation of data regarding whether youth are in secure detention, non-secure detention, or placement.

ACS must meet its most basic obligation of providing students in its care with access to education.

IV. Systematic Denial of FAPE for NYCPS Students Attending Passages Academy

New York City is not only failing to provide students in juvenile detention and placement access to school, it is also systematically failing to provide special education services to the many children with disabilities in these facilities even though the law is clear that these students are entitled to the full protections of the IDEA.

The failure of the DOE to provide the services that students in detention and placement are entitled to sadly has a long history. In 2004, The Legal Aid Society and Advocates for Children filed a lawsuit known as *J.G. et al. v. Mills* against the New York City DOE and NYS Education

Department.⁸ The lawsuit alleged that court-involved youth with disabilities did not receive adequate educational services while in detention in New York City and addressed the issue of education transitions of students returning to the community after placement with ACS or the Office of Child and Family Services (OCFS). Under the terms of that settlement, when a student enrolled in Passages, the program was required to create Education Plans within five school days of admission, determine whether the student needed an annual IEP review or mandatory triennial evaluation (and begin that process for any youth there more than 60 days), and provide all related services in a student's most recent IEP unless there was a documented basis for a change in services. The District was also required to ensure timely transitions for youth returning to the community or going to the custody of OCFS. Monitoring of the *J.G.* Settlement ended in 2016. We are distressed to see the same problematic and deficient services again occurring.

As mentioned above, the law is clear. In 2014, the United States Department of Education Office of Special Education Programs and Rehabilitative Programs ("OSEP") issued guidance that confirmed that youth in correctional facilities are entitled to all the protections of the Individuals with Disabilities Education Act ("IDEA") (20 U.S.C. § 1400 et al.) and Section 504 of the Rehabilitation Act of 1973 ("Section 504").⁹ According to OSEP guidance "[w]hen a student with an existing

⁸ *J.G. et al. v. Mills*, 995 F. Supp. 2nd 109 (E.D.N.Y. 2004).

⁹ "Dear Colleague" Letter from Director Office of Special Education Programs and Assistant Secretary for Office of Special Education and Rehabilitative Services, U.S. Dep't of Educ. (Dec. 5, 2014), <https://sites.ed.gov/idea/idea-files/osep-dear-colleague-letter-on-the-individuals-with-disabilities-education-act-for-students-with-disabilities-in-correctional-facilities/>, citing 20 U.S.C. § 1400 et. seq. and 29 U.S.C. § 794, 34 C.F.R. § 104.

[Individualized Education Plan] IEP from another public agency arrives in a correctional facility in the same State, the facility either must implement the existing IEP or hold an IEP Team meeting to modify the contents of the IEP (34 CFR §300.323(e)).”¹⁰

Despite the J.G. settlement and the clear guidance of the U.S. Department of Education, NYCPS continues to fail to provide appropriate special education services to youth attending NYCPS schools in juvenile detention and placement.

a. Child Find Violations

The IDEA requires local education agencies, including NYCPS, to actively identify, locate and evaluate all children with disabilities through age 21. Passages Academy is conducting STAR assessments (computer based standardized assessments designed to show whether a student is meeting the expected achievement for their grade). These assessments show a median reading level on the 12th percentile, and a median math level on the 11th percentile amongst all Passages students.¹¹ Yet, NYCPS systematically fails to use that information to identify which students require initial evaluations in all areas of suspected delay and conduct those evaluations. These evaluations are necessary in order to determine whether the young person has a disability requiring special education services. While the District is eager to represent the STAR assessment as a dyslexia screening tool, when the STAR assessment reveals that a student has a low reading level, the District takes no action to conduct the follow up evaluations that would determine the reason for the low reading level, and to

¹⁰ Id.

¹¹ LL21 Report at p.3.

develop an Individualized Education Program (IEP) to ensure that the student receives the services they need in either Passages, or, following their discharge, in the community school.

In the LL21 Report, NYCPS reported that “fewer than 5” initial evaluations were completed of youth in juvenile detention and placement.¹² It is our understanding and experience that this is because Passages does not conduct such legally mandated evaluations, even if a parent requests them.

b. Failure to Conduct Annual or Triennial Reviews

Not only does NYCPS fail to conduct initial special education evaluations of youth in Passages, but it also fails to routinely conduct annual and triennial special education reviews. The IDEA (20 U.S.C. § 1400 et al.) requires that local education agencies find and identify children between the ages of 0 and 21 who may have a disability, complete comprehensive evaluations in all areas of suspected delay, create individualized education plans, and provide a free and appropriate education to children with disabilities. In response to Local Law 21 detailed reporting requirement for “the number and percentage of children and youth in ACS division facilities who have individualized education programs and have received special education evaluations while in custody, disaggregated by (i) the type of evaluation, including initial evaluation, mandated triennial reevaluation, or related service evaluation and (ii) whether such children and youth have been detained in secure or non-secure facilities,” NYCPS’ entire response was “less than 5.”

Rather than complying with the requirements of the IDEA when a young person is enrolled at Passages Academy, NYCPS has adopted the practice of substituting the existing IEP with a Special

¹² Id. at 6.

Education Plan (“SEP”). The process around the SEP is opaque and upon information and belief, the entire IEP team is not included in their creation. Frequently, parents are not included as full participants in these meetings (if they are lucky, they may receive a phone call informing them of the outcome). The resulting SEPs often remove services that the student’s home school had identified as required to ensure provision of a free and appropriate public education (FAPE), and do not include measurable goals or the frequency and duration of services. In short, the SEPs are neither individualized, nor reasonably calculated to meet the needs of the student.

Indeed, the NYCPS Local Law 21 report effectively confirms this practice. While the Local Law requires NYCPS to report on the provision of these IEP services in detail,¹³ the District reported that fewer than 5 students identified with disabilities (out of the 506 students with disabilities attending Passages) received IEP reviews during their time at Passages.¹⁴

The result is a system in which youth do not receive a free and appropriate public education as mandated by the IDEA during their time in juvenile detention and placement. Nor do youth leave the facility with an appropriate and timely recommendation as to the educational setting and services they will require upon their return to the community. Instead, our young people are pushed through a revolving door, in which children with disabilities are underserved, which results in behaviors that

¹³ NYCPS must report “the number and percentage of children and youth in ACS division facilities who have individualized education programs and have received special education evaluations while in custody, disaggregated by (i) the type of evaluation, including initial evaluation, mandated triennial reevaluation, or related service evaluation and (ii) whether such children and youth have been detained in secure or non-secure facilities.” Local Law 21.

¹⁴ Local Law 21 of 2024 Report at p. 6.

result in legal system involvement, and then they are returned to their home schools with no assessment or plan as to how their needs could be better met, too often resulting in disengagement from school and additional legal system involvement.

c. Failure to Provide Access to Certified Special Education Teachers

Although roughly 61% of the young people who attend Passages are identified as youth with disabilities, the program employs only 13 teachers with special education certifications. Four of those special education teachers are placed at Horizon and five at Crossroads. The remaining four special education teachers are split between the Bronx Hope and Belmont Passages sites.

Many Passages students whose IEPs mandate full time instruction by a special education teacher (such as in an integrated or self-contained class) are not receiving that support.

d. Failure to Provide Students with Disabilities with Required Related Services

Students with disabilities attending Passages are routinely deprived of the related services to which they are entitled. The LL21 Report for school year 2024-2025 states that of the 506 students identified as having disabilities, 223 received some amount of counseling services (75 in secure detention and 148 in non-secure detention).¹⁵ It is not clear whether having a “related service encounter” means that the student received one session or was fully served.

Although 36 students were classified as Speech or Language Impaired (and presumably others had a mandate to receive speech and language services in their IEPs) only five students in secure

¹⁵ LL21 Report at p.6.

detention received any amount of speech and language therapy. Twenty-four students in non-secure detention received this service.¹⁶ The report does not indicate that any related service therapists (including speech and language therapists) are assigned to Passages Academy sites.¹⁷ To our knowledge, none of our clients who were previously mandated to receive para-professional support, occupational or physical therapy have continued to receive those services while attending Passages Academy. While the LL21 Report does not give exact figures, it does report that “fewer than five” Passages students received hearing education, paraprofessional support, or any other supplementary aid or service and the report does not mention *any* student receiving occupational therapy or physical therapy while enrolled at Passages. One Legal Aid staff member was told that “Passages South” (Crossroads and Belmont Passages sites) did not offer occupational or physical therapy because those services are “only for younger students,” although this is simply not true.

In addition, parents of children with disabilities are impeded in their attempts to advocate for their children while they are in juvenile detention or placement. They have limited input into SEPs, and full IEP reviews are almost never held at Passages. The legal remedies usually used by parents of a child with a disability (such as using due process procedures to request a non-public school placement or compensatory services) are not available as effective remedies because the parents do not have the option of taking their children to private providers.

V. Effective Transitions

¹⁶ Id. at p. 6.

¹⁷ Id. at p. 7.

One issue our clients frequently report that negatively affects their reengagement with their home school communities is the lack of communication around transitions upon discharge from detention or placement. NYCPS did not respond fully to LL21 inquiry #25 by providing attendance figures for both six months and one year post release.¹⁸ However, the limited response the District did give (that that students with disabilities will have a 40% post program attendance and students without disabilities will have 45% attendance after 60 days)¹⁹ clearly documents the need for better transition planning and post-dispositional supports for youth.

Many students are discharged from Passages without knowing whether they can return to their home schools or whether they can attend a new school. Sometimes our clients tell us they have attempted to return to their home schools only to be turned away because they are still on the Passages roster. One parent reported to us that she waited weeks after her child was released to her to hear which school he should attend. No one reached out until her child's attorney intervened. As a result, her son missed too much of the summer session to earn credits for his work.

Students with disabilities face an additional hurdle. Because Passages is not doing regular IEP reviews, students with disabilities leave the program without a current IEP that accurately describes their needs. As a result, these students return to programs that failed to adequately address their needs prior to entering detention or placement.

¹⁸ Id. at 9.

¹⁹ Id.

The Assistant Principal in Charge of Transitions at Passages has been helpful in securing a placement when we have escalated cases to her, but sometimes a young person's experience of being turned away is enough to discourage them, particularly when they are already struggling with school reengagement. After the J.G. settlement was reached, Passages hired transition coordinators who assisted students with their transitions back to their community schools. That position no longer exists. We understand that in some cases, social workers are now filling this role, but too often our clients and their families leave Passages not knowing the child's school plan. Passages staff should have a thoughtful conversation with every young person leaving the program and their family about the transition plan, and each student returning to the community should leave with a current IEP--if they have disabilities--and a letter clearly stating where they will attend school the next day.

VI. Conclusion

ACS and Passages Academy have a unique opportunity to help young people who have legal system involvement reengage with school, receive needed supports, and return to their communities with appropriate plans to provide them with the education services they need. This starts with ACS ensuring regular access to school, and with NYCPS ensuring appropriate evaluations and IEPs of all students suspected or known to have a disability, providing special education services when needed, and assisting with thoughtful, timely transition services back to their communities. This is not only a requirement of the law, but it is the right thing to do for New York City youth. It is past time to meet this essential need.

We thank Chairs Joseph and Stevens, as well as the Committees on Education and the Committee on Children and Youth for their concern for one of our most vulnerable student populations and for the opportunity to provide testimony. We are happy to answer any questions you may have.

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