

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ZAKUNDA-ZE HANDBERRY, et al.,

Plaintiffs,

-against-

96 Civ. 6161 (GBD)

WILLIAM C. THOMPSON, JR. et al.,

Defendants.

-----X

**PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR MODIFICATION OF THE JUDGMENT
UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)(5)**

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TABLE OF AUTHORITIES

Cases

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Barrett v. Maciol, No. 92-CV-537, 2022 WL 130878 (N.D.N.Y. Jan. 14, 2022) 25

Benjamin v. Fraser, 156 F. Supp. 2d 333 (S.D.N.Y. 2001) 24

Brown v. Plata, 563 U.S. 493 (2011)..... 25

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

Handberry v. Thompson, No. 96-CV-6161, 2015 WL 10570793 (S.D.N.Y. Dec. 2, 2015) 3, 24

Handberry v. Thompson, No. 96-CV-6161, 2016 WL 1268265 (S.D.N.Y. Mar. 31, 2016) 3, 24

Handberry v. Thompson, No. 96-CV-6161, 2019 WL 5203666 (S.D.N.Y. Sept. 27, 2019). passim

Horne v. Flores, 557 U.S. 433 (2009) 2, 16, 17, 22

Juan F. By & Through Lynch v. Weicker, 37 F.3d 874 (2d Cir. 1994)..... 23

Rufo v. Inmates of Suffolk Cnty Jail, 502 U.S. 367 (1992)..... passim

Still’s Pharmacy, Inc. v. Cuomo, 981 F.2d 638 (2d Cir. 1992) 17, 23

United States v. ILA Loc. 1588, 77 F. App’x 542 (2d Cir. 2003)..... 23

United States v. Sec’y of Hous. & Urb. Dev., 239 F.3d 211 (2d Cir. 2001) 23

Statutes

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Other Authorities

BOC, *About*, www.nyc.gov/site/boc/about/about.page 6

BOC, *Recent Trends in Lockdowns in N.Y.C. Dep’t of Corr. Facilities*, Oct. 24, 2022..... 11

BOC, *Young Adult Frequently Asked Questions: Timelines*, www.nyc.gov/site/boc/jail-regulations/timelines.page 5, 12

Decl. of First Dep. Comm’r Francis Torres dated Mar. 13, 2024, *Nunez v. City of N.Y.*, 11-CV-5845 (S.D.N.Y.), ECF No. 689-10 6

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DOC Reports, “Young Adult Enhanced Supervision Housing Compliance Audit” 13

DOC, Facilities Overview, www.nyc.gov/site/doc/about/facilities.page 10

DOC, *Inmate Handbook* (Dec. 2007) 12

DOC, *Leadership at DOC*, www.nyc.gov/site/doc/about/leadership-at-doc.page 6

DOC, *Population Demographics Report – FY24 Q2*,
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DOC, *Q. Emergency Lock-In Rep. CY2022 Annual (Jan. 1st – Dec. 31st, 2022)* 11, 19

DOC, *Q. Emergency Lock-In Rep. CY2023 Annual (Jan. 1st – Dec. 31st, 2023)* 11, 19

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DOC, *Secure Unit Compliance Audit – Nov. 2021* 13

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DOC, *Secure Unit Compliance Audit – Oct. 2022* 13

DOC, *Secure Unit Compliance Audit – Sept. 2021* 13

DOC, *Secure Unit Compliance Audit – Sept. 2022* 13

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DOC, *Young Adult Hous. Monthly Progress Rep.: Jan. 2024*..... 10

DOC, *Young Adult Hous. Monthly Progress Rep.: July 2023*..... 12

DOC, *Young Adult Hous. Monthly Progress Rep.: June 2023*..... 12

DOC, *Young Adult Hous. Monthly Progress Rep.: Mar. 2023*..... 12

DOC, *Young Adult Hous. Monthly Progress Rep.: Sept. 2022*..... 12

John Nutell, Linda Hollmen & E. Michele Staley, *The Effect of Earning a GED on Recidivism Rates*, 54 J. of. Corr. Educ. 90 (Sept. 2003) 1

Letter from Christopher B. Connard, DOC Records Appeals Officer (May 18, 2023)..... 10

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Lois M. Davis, Jennifer L. Steele, Robert Bozick, Malcolm V. Williams, Susan Turner, Jeremy N.V. Miles, Jessica Saunders & Paul S. Steinberg, *How Effective is Correctional Education, and Where Do We Go From Here? The Results of a Comprehensive Evaluation*, Rand Corporation, 2014 1

Monitor’s Fifth Rep. on the Conditions of Confinement for 16- and 17-Year-Old Adolescent Offenders at the Horizon Juvenile Center, Nunez v. City of N.Y., Oct. 25, 2023, 11-CV-5845 (S.D.N.Y.)..... 2

Sarah Mervosh, Claire Cain Miller & Francesca Paris, *What the Data Says About Pandemic School Closures, Four Years Later*, N.Y. Times, Mar. 18, 2024 2

Status Rep. on DOC’s Action Plan by the Nunez Indep. Monitor, Oct. 5, 2023, *Nunez v. City of N.Y.*, 11-CV-5845 (S.D.N.Y.)..... 12

Testimony of Dep. Comm’r Patrick Benn at BOC Meeting, YouTube (Feb. 28, 2024)..... 9

Testimony of DOC Comm’r Louis A. Molina before the N.Y.C. Council Comm. on Crim. Just., Apr. 29, 2022 9

The Council of the City of N.Y., Comm. Rep. and Briefing Paper of the Legis. Div., *Oversight: Educ. Programming in Det. Facilities*, Oct. 13, 2023 11

Tom Kane & Sean Reardon, *Parents Don't Understand How Far Behind Their Kids Are in School*, N.Y. Times, May 11, 2023 2

U.S. Dep't of Just., Off. of Just. Programs, Bureau of Just. Statistics, *Disabilities Reported by Prisoners* 21

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PRELIMINARY STATEMENT

Earning a high school diploma or its equivalent while incarcerated can dramatically improve a young adult’s trajectory.¹ Many of New York City’s incarcerated young adults are motivated to better their futures by pursuing a high school education. In 2016, nearly two decades after confirming that incarcerated young adults have a right to that education, this Court issued an order (the “Order”) directing Defendants New York City Department of Correction (“DOC”) and New York City Department of Education (“DOE”) to effectuate that right.²

In 2018, a court-appointed monitor found that defendants were violating several aspects of the Order, deeming access to education for these young adults “a persistent problem.”³ Since 2018, defendants’ violations have dramatically worsened. As the monitor found in 2018, defendants still do not consistently provide young adults enrolled in school with the required amount of schooling per week or with timely escorts to school. But, even worse, defendants now prevent many young adults, in both general and restrictive housing—including those with special education needs—from even enrolling in school.

This Court’s intervention is urgently needed. It should reappoint a monitor for a term of two academic years to assess defendants’ compliance and to help guide the parties and the Court

¹ See, e.g., Lois M. Davis, Jennifer L. Steele, Robert Bozick, Malcolm V. Williams, Susan Turner, Jeremy N.V. Miles, Jessica Saunders & Paul S. Steinberg, *How Effective is Correctional Education, and Where Do We Go From Here? The Results of a Comprehensive Evaluation*, Rand Corporation, 2014, at 14–15 (finding that people who participated in correctional education programs had 43 percent lower odds of recidivating and were 13 percent more likely to obtain postrelease employment than those who did not); John Nutell, Linda Hollmen & E. Michele Staley, *The Effect of Earning a GED on Recidivism Rates*, 54 J. of. Corr. Educ. 90, 92 (Sept. 2003) (“40% of young offenders who earned their GED while in custody returned to custody within 36 months compared with 54% of young inmates who did not earn their GED [in New York State prisons]”), available at static.prisonpolicy.org/scans/nydocs/NYDOCS_2003_effect_of_ged_on_recidivism.pdf.

² Mar. 31, 2016 Order, ECF No. 250, Ex. 1 (“Order”), ¶¶ 1–5. Exhibits to the Declaration of Lauren Stephens-Davidowitz dated Apr. 3, 2024 (“Stephens-Davidowitz Decl.”) are cited as “Ex.” On June 6, 2016, plaintiffs voluntarily dismissed their claims against the Commissioner of the New York State Education Department, who also had been a defendant. ECF No. 255.

³ Peter E. Leone, Ph.D., Third Report on the Status of Education Services for Youth Aged 16-21 at Rikers Island, July 2, 2018, ECF No. 273-2, Ex. 2 (“Leone Report”), at 3.

on the necessary next steps. Under Federal Rule of Civil Procedure 60(b)(5), there has been “a significant change [] in factual conditions” that warrants this modification to avoid “detriment[] to the public interest.” *See Horne v. Flores*, 557 U.S. 433, 447 (2009) (internal quotation marks omitted). Class members are on the cusp of aging out of their entitlement to a high school education, and education lost is rarely regained.⁴

RELEVANT PROCEDURAL HISTORY

Plaintiffs filed this class action in 1996 to protect the educational rights of young people in DOC custody. The class originally consisted of 16- to 21-year-olds without a high school diploma. In 2019, the class narrowed to 18- to 21-year-olds (“young adults”) because the City moved 16- and 17-year-olds (“adolescents”) out of DOC custody.⁵ While high school education is not mandatory for young adult class members, defendants must provide it to any class member who wishes to enroll in school.⁶

This Court summarized the lengthy history of this case in a Memorandum Decision and Order dated September 27, 2019. *Handberry v. Thompson*, No. 96-CV-6161, 2019 WL 5203666, at *1–4 (S.D.N.Y. Sept. 27, 2019). Relevant here, in 2016, adopting a Report and Recommendation (“R&R”) of Magistrate Judge James C. Francis, *Handberry v. Thompson*, No.

⁴ *See* Sarah Mervosh, Claire Cain Miller & Francesca Paris, *What the Data Says About Pandemic School Closures, Four Years Later*, N.Y. Times, Mar. 18, 2024, www.nytimes.com/2024/03/18/upshot/pandemic-school-closures-data.html (during the Covid-19 pandemic, students who missed in-person school, even for a short time, experienced significant learning loss and remain behind); Tom Kane & Sean Reardon, *Parents Don’t Understand How Far Behind Their Kids Are in School*, N.Y. Times, May 11, 2023, www.nytimes.com/interactive/2023/05/11/opinion/pandemic-learning-losses-steep-but-not-permanent.html?action=click&login=email&auth=login-email (“When students fall behind, they don’t just catch up naturally. [After] a school district’s test scores suddenly declined or suddenly rose in a particular grade. . . . [s]tudents resumed learning at their prior pace, but they did not make up the ground they lost or lose the ground they gained. Years later, the affected cohorts remained behind or ahead.”).

⁵ *Monitor’s Fifth Rep. on the Conditions of Confinement for 16- and 17-Year-Old Adolescent Offenders at the Horizon Juvenile Center*, *Nunez v. City of N.Y.*, Oct. 25, 2023, 11-CV-5845 (S.D.N.Y.), ECF No. 587, at 4–5 & n.2.

⁶ *Handberry v. Thompson*, 92 F. Supp. 2d 244, 248 (S.D.N.Y. 2000).

96-CV-6161, 2015 WL 10570793 (S.D.N.Y. Dec. 2, 2015), the Court issued a short Order that includes these five paragraphs:

1. All eligible inmates shall be provided a minimum of 3 hours of educational services every school day.⁷
2. Placement in a restricted housing unit does not change an eligible inmate's entitlement to educational services under any provision of this Order.
3. Unless stated explicitly to the contrary, any and all requirements set forth in this Order shall apply to all of the schools, educational programs, and methods of instruction operated by DOE in DOC facilities.
4. DOC shall ensure that each eligible inmate is provided access to educational services consistent with this Order in a timely manner, including if necessary providing escorts for travel to and from his or her place of educational instruction.
5. Inmates who are disabled and identified as in need of special education or related services shall receive such services, including when placed in a restricted housing unit or method of instruction. If necessary, an Individualized Education Plan ("IEP") or Special Education Plan ("SEP") may be modified in accordance with 20 U.S.C. § 1414(d) and 34 C.F.R. § 300.324, consistent with legitimate penal objectives. In the event this occurs, such modifications shall be the least restrictive necessary to accommodate the security needs of the jail.

Order, ¶¶ 1–5; see *Handberry v. Thompson*, No. 96-CV-6161, 2016 WL 1268265, at *1 (S.D.N.Y. Mar. 31, 2016) (adopting Judge Francis's R&R in full).

The Court simultaneously appointed Dr. Peter Leone as its expert and monitor for a two-year term, directing him to “assess the DOE and DOC's compliance with this Order and provide this Court with semi-annual reports specifically identifying any areas of non-compliance” and allowing him to “recommend specific changes in DOE and DOC policies and procedures.”

⁷ In this memorandum, plaintiffs use the terms “educational services” and “school” interchangeably. Defendants have previously asserted that “DOE does not operate schools in DOC facilities; DOE only operates school *programs* in DOC facilities.” *Handberry*, 2015 WL 10570793, at *9. Judge Francis called this “a hyper-technical gripe” and observed that defendants own submissions used the term “school” to describe their operations in the DOC. *Id.*

Order, ¶ 6. The Order further allowed “any party [to] seek modification of this Order if there has been a material change in circumstances[.]” *Id.*, ¶ 9.

In his third and final report dated July 2, 2018 (“Leone Report”), Dr. Leone found defendants non-compliant with several of the Order’s requirements.⁸ He found, in violation of Paragraph 1, that defendants did not afford many enrolled class members with consistent access to education because of scheduling conflicts or staff miscommunication.⁹ He further found that defendants were violating Paragraph 2 because students in restrictive housing “consistently arrived late for class, were dismissed early, and in general did not receive three hours of education services” and, in some cases, were “not called down for classes” at all.¹⁰ And Dr. Leone deemed defendants only partially compliant with Paragraph 4 because school escorts sometimes arrived late or not at all.¹¹

Dr. Leone found defendants substantially compliant with Paragraphs 3 and 5.¹² He noted that DOC “on occasion” placed people in facilities without education programs and failed to transfer them to those with such programs, but it was “not a systemic problem.”¹³

On November 2, 2018, plaintiffs filed objections to the Leone Report.¹⁴ On December 18, 2018, defendants moved for an order overruling those objections and adopting Dr. Leone’s findings of substantial compliance.¹⁵ On September 27, 2019, the Court granted defendants’

⁸ Leone Report at 4–15. Dr. Leone issued two previous reports—on February 1, 2017, ECF No. 257-1, and on December 19, 2017, ECF No. 273-1.

⁹ *Id.* at 4–5.

¹⁰ *Id.* at 9–11.

¹¹ *Id.* at 13.

¹² *Id.* at 11–12, 13–15.

¹³ *Id.* at 12.

¹⁴ ECF No. 284. Plaintiffs also objected to his second report. *Id.*

¹⁵ ECF No. 293.

motion, adopting Dr. Leone’s findings to the extent they were factual in nature and had not been controverted by plaintiffs. *Handberry*, 2019 WL 5203666, at *1.¹⁶

In their opposition to defendants’ motion, plaintiffs sought Dr. Leone’s reappointment for another two-year term. *Id.* at *9.¹⁷ They cited, among other things, that adolescents had been moved off of Rikers Island. *Id.* at *3. The Court denied plaintiffs’ request, reasoning:

If Plaintiffs believe that the transfer of Adolescent Inmates off of Rikers Island, the closure of [the George Motchan Detention Center (“GMDC”), where 18- to 21-year-old class members were concentrated],¹⁸ or other events constitute material changes in circumstances that warrant Dr. Leone’s reappointment, Plaintiffs may seek modification of the 2016 Order. ([Order] ¶ 9.) Because Plaintiffs have not sought modification of the 2016 Order and [] Defendants have not responded to Plaintiffs’ request that Dr. Leone be reappointed for two years, Plaintiffs’ request for Dr. Leone’s reappointment is denied without prejudice.

Id. at *9 (cleaned up).

Plaintiffs now renew this request. The record described below demonstrates that circumstances have not just materially changed, but dramatically worsened.

STATEMENT OF FACTS

Declarations from 29 class members detailing their recent efforts to access education, a DOC official’s own statements, and DOC reports show noncompliance wider in scope and greater in magnitude than what Dr. Leone described in 2018. For over three years, plaintiffs have attempted to address defendants’ non-compliance with the Order by emailing defense counsel with discovery requests and complaints about individual class members.¹⁹ Defendants have

¹⁶ On September 28, 2018, defendants moved for an order terminating prospective relief as to the DOE and 16- and 17-year-old class members. ECF No. 271. They later withdrew this motion. ECF No. 287.

¹⁷ Pls.’ Mem. of Law in Opp’n to City Defs.’ Mot. for Partial Confirmation of the Third Monitoring Rep., and Opp’n to Pls.’ Objs., ECF No. 298, at 1 (Feb. 1, 2019).

¹⁸ DOC closed the George Motchan Detention Center on June 30, 2018. New York City Board of Correction (“BOC”), *Young Adult Frequently Asked Questions: Timelines*, www.nyc.gov/site/boc/jail-regulations/timelines.page (last visited Mar. 27, 2024).

¹⁹ Declaration of Stefen R. Short dated Apr. 3, 2024 (“Short Decl.”), ¶¶ 2–14; Stephens-Davidowitz Decl., Exs. 34–51.

rarely responded to these emails substantively, leaving plaintiffs with no choice but to seek court intervention to ensure that class members' educational rights are protected.

I. Defendants' Implementation of Their Educational Services System Prevents Many Class Members in General Population from Accessing Educational Services

In testimony before the New York City Board of Correction ("BOC")²⁰ on November 14, 2023, Francis Torres, then DOC's Deputy Commissioner of the Division of Programs and Community Partnerships,²¹ admitted that DOC did not have "the necessary space to be able to embrace all of the students or all of the potential students that are requesting educational services."²² In general population, defendants currently offer education only to young adults whom DOC houses at the Rose M. Singer Center ("RMSC") or places in a "program house" at the Robert N. Davoren Complex ("RNDC").²³ This number represents a fraction of young adults who have requested educational services.

A. At RNDC, Defendants Educate Only Those Class Members DOC Places in a "Program House"

DOC houses most young men in its custody in 25 housing units in RNDC.²⁴ In November 2021, it designated a subset of these units "program houses."²⁵ Today, defendants offer educational services only to class members whom DOC has housed in a program house, and it does not house every class member who requests schooling in a program house.

²⁰ BOC is a "non-judicial oversight board that regulates, monitors, and inspects" the DOC's jails. BOC, *About*, www.nyc.gov/site/boc/about/about.page (last visited Mar. 26, 2024).

²¹ In February 2024, Deputy Commissioner Torres was appointed First Deputy Commissioner. DOC, *Leadership at DOC*, www.nyc.gov/site/doc/about/leadership-at-doc.page (last visited Mar. 26, 2024).

²² See Testimony of Dep. Comm'r Francis Torres at BOC Meeting, YouTube (Nov. 14, 2023), www.youtube.com/watch?v=tjqdCa1p0w ("Torres Testimony"), at 1:26:04.

²³ See *id.* at 1:24:25 ("For this year we have targeted our educational efforts – meaning granting access to educational services – at RNDC and Rose M. Singer.").

²⁴ DOC, *Young Adult Hous. Monthly Progress Rep.: Feb. 2024*, www.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/february_2024_ya_monthly_progress_report_v2.pdf, at 1, 3 (on February 29, 2024, 426 of the 526 young adults in DOC custody were housed in RNDC).

²⁵ Decl. of First Dep. Comm'r Francis Torres dated Mar. 13, 2024, ¶ 4, *Nunez v. City of N.Y.*, 11-CV-5845 (S.D.N.Y.), ECF No. 689-10. Program houses are also referred to as "school houses." See *id.*

Elijah Tracey's attempts to access education in RNDC highlight the problems with DOC's implementation of its program house model. After his arrest in February 2022, Mr. Tracey submitted three Requests for Educational Services, the form DOC created for individuals to request school enrollment.²⁶ He also made numerous verbal requests to DOC staff to attend school.²⁷ On top of this, advocates at Mr. Tracey's public defender's office frequently contacted DOC and BOC officials asking for Mr. Tracey's transfer to a program house.²⁸ But it was not until April 10, 2023, nearly 14 months after Mr. Tracey entered DOC custody, that DOC transferred him to a program house, and Mr. Tracey began attending school.²⁹

Mr. Tracey's experience is common. When **Jahmyre Bennett, Dior Castillo, Zyaire Crumbley, Diego Diaz, Julien Johnnie, Angel Rodriguez, Devante Russel, Jose Paniagua, Dewayne Wiggins, and Isaiah Vasquez** asked to enroll in school while housed at RNDC, defendants denied their requests because they were not in a program house.³⁰ And they did not respond to these class members' requests by transferring them to a program house or providing them with guidance about the transfer process.³¹

²⁶ Declaration of Elijah Tracey dated July 14, 2023, Ex. 12 ("Tracey Decl."), ¶¶ 2, 8; DOC Directive #3503R, July 1, 1999, www.nyc.gov/assets/doc/downloads/directives/3503R_n.pdf.

²⁷ Tracey Decl., ¶ 7.

²⁸ Declaration of Natalie Fiorenzo dated July 11, 2023, Ex. 11 ("Fiorenzo Decl."), ¶¶ 8–18; Declaration of Rachel Sznajderman dated June 28, 2023, Ex. 8 ("Sznajderman Decl."), ¶¶ 7–19.

²⁹ Tracey Decl., ¶ 11. Defendants enrolled Mr. Tracey in school one week after class counsel submitted a complaint on Mr. Tracey's behalf. *See* Stephens-Davidowitz Decl., Ex. 34.

³⁰ Declaration of Jahmyre Bennett dated September 4, 2024, Ex. 21 ("Bennett Decl."), ¶ 5; Declaration of Dior Castillo dated Sept. 14, 2023, Ex. 22 ("Castillo Decl."), ¶ 7; Declaration of Zyaire Crumbley dated Sept. 19, 2023, Ex. 24 ("Crumbley Decl."), ¶ 5; Declaration of Diego Diaz dated June 2, 2023, Ex. 6 ("Diaz Decl."), ¶ 8; Declaration of Julien Johnnie dated Mar. 10, 2024, Ex. 28 ("Johnnie Decl."), ¶ 6; Declaration of Jose Paniagua dated Aug. 9, 2023, Ex. 19 ("Paniagua Decl."), ¶ 12; Declaration of Angel Rodriguez dated Sept. 14, 2023, Ex. 23 ("Rodriguez Decl."), ¶¶ 5, 9; Declaration of Devante Russel dated May 18, 2022, Ex. 3 ("Russel Decl."), ¶¶ 13–15; Declaration of Isaiah Vasquez dated Dec. 28, 2023, Ex. 26 ("Vasquez Decl."), ¶ 7; Declaration of Dewayne Wiggins dated July 26, 2023, Ex. 14 ("Wiggins Decl."), ¶¶ 6, 8.

³¹ In July 2023, after Mr. Vasquez had been in DOC custody for about two months, defendants transferred him to a program house after his friends advocated for the transfer while Mr. Vasquez was recovering in the hospital from an assault. Vasquez Decl., ¶ 8.

DOC often transfers class members out of program houses unexpectedly, immediately terminating their schooling. Mr. Wiggins submitted at least three Requests for Educational Services and asked DOC officials to enroll him at least 10 times.³² DOC finally transferred him to a program house where his schooling began during November 2022, only to abruptly transfer him to a non-program house in RNDC—and terminate his schooling—two weeks later.³³ **Jamel Johnson** had a similar experience. During the 2022–23 school year, he attended school for just one week in March 2023, when DOC housed him in a program house.³⁴ Defendants otherwise deprived Mr. Johnson of schooling, ignoring his repeated written and verbal requests to enroll as well as requests on his behalf from his public defender’s office.³⁵

Defendants have relied on other excuses to deny education to class members housed in RNDC. They cited general security concerns, such as having been identified as a member of a Security Risk Group (“SRG”)—which currently applies to over 12 percent of the population³⁶—to justify denying education to **Darryl Burnett, Lloyd Francis, Lashajuan Glasgow, Oscar Olivencia, Mr. Rodriguez, Mr. Tracey, and Quazeer Young-Taylor.**³⁷ They told **Alaijah Carr** they could not educate him because DOC had placed him in protective custody after he had been

³² Wiggins Decl., ¶¶ 5–6.

³³ *Id.*, ¶¶ 7–8.

³⁴ Declaration of Jamel Johnson dated Aug. 16, 2023, Ex. 20 (“Johnson Decl.”), ¶¶ 5–13.

³⁵ *Id.*; see also Castillo Decl., ¶ 7; Crumbley Decl., ¶ 5, Diaz Decl., ¶ 8; Fiorenzo Decl., ¶¶ 8–11; Declaration of Jahrell Madison dated June 26, 2023, Ex. 7 (“Madison Decl.”), ¶¶ 11–12; Paniagua Decl., ¶ 12; Rodriguez Decl., ¶¶ 5, 9; Russel Decl., ¶¶ 5, 7–8, 13–16; Sznajderman Decl., ¶¶ 8–16; Tracey Decl., ¶¶ 7–9; Vasquez Decl., ¶ 7; Wiggins Decl., ¶¶ 6, 8.

³⁶ DOC, *Population Demographics Rep. – FY24 Q2*,

www.nyc.gov/assets/doc/downloads/pdf/Population%20Demographics%20Report%20-%20FY24%20Q2.pdf.

³⁷ Declaration of Darryl Burnett dated Aug. 9, 2023, Ex. 17 (“Burnett Decl.”), ¶ 7 (gang affiliation); Declaration of Lloyd Francis dated Mar. 11, 2024, Ex. 30 (“Francis Decl.”), ¶ 5 (SRG status); Declaration of Lashajuan Glasgow dated June 29, 2023, Ex. 9 (“Glasgow Decl.”), ¶ 6 (same); Declaration of Oscar Olivencia dated Feb. 8, 2024, Ex. 27 (“Olivencia Decl.”), ¶ 5 (same); Rodriguez Decl., ¶¶ 5, 9 (high classification); Fiorenzo Decl., ¶ 13 (“commingling” or “security issue”); Declaration of Quazeer Young-Taylor dated Mar. 11, 2024, Ex. 33 (“Young-Taylor Decl.”), ¶ 6 (classification status was too high). Mr. Rodriguez attended school for a week or two before officers transferred him out of the program house, claiming that “other inmates weren’t acting up before you got here.” Rodriguez Decl., ¶ 7.

stabbed.³⁸ They told Mr. Crumbley they could not educate him because he had been placed in a mental observation unit.³⁹

Defendants have also repeatedly cited a lack of space or teachers.⁴⁰ Officers told **Michael Dwyer**, for instance, that, although he was in a coveted program house, he could not attend school because there was no room on the school floor.⁴¹ And they told Mr. Olivencia and Mr. Glasgow that they had to wait for a new school facility to open to enroll.⁴² After defendants had denied his requests to enroll, Mr. Olivencia began studying for the GED exam on his own.⁴³

At a February 28, 2024 BOC meeting, Patrick Benn, DOC Deputy Commissioner of Facilities and Fleet Administration, reported that DOC had recently opened MOD 9 in RNDC, which created more room for classrooms.⁴⁴ Two weeks later, class members housed in RNDC continued to be denied access to school. Specifically, as of March 11, 2024, defendants had not provided a single day of education to **Avery Crawford**, who had been incarcerated since the summer of 2023, and **Sirmarcus Saunders**, who had been incarcerated since mid-November 2023, despite their multiple requests to enroll.⁴⁵

³⁸ Declaration of Alaijah Carr dated May 8, 2023, Ex. 4 (“Carr Decl.”), ¶ 9.

³⁹ Crumbley Decl., ¶ 6. Mental observation units are non-punitive and provide “structured support and more frequent observation” to people in custody with mental health needs. Testimony of DOC Comm’r Louis A. Molina before the N.Y.C. Council Comm. on Crim. Just., Apr. 29, 2022, www.nyc.gov/site/doc/media/carolina-rivera.page.

⁴⁰ Crawford Decl., ¶ 6 (low on school staff); Johnson Decl., ¶ 5 (school was too crowded); Glasgow Decl., ¶ 6 (not enough teachers); Rodriguez Decl., ¶ 9 (the list of people interested in school is long).

⁴¹ Declaration of Michael Dwyer dated Sept. 9, 2023, Ex. 25 (“Dwyer Decl.”), ¶ 4.

⁴² Glasgow Decl., ¶ 7; Olivencia Decl., ¶ 9.

⁴³ Olivencia Decl., ¶ 10. Defendants finally enrolled Mr. Olivencia in February 2024, after he had been in custody for one year. *Id.*, ¶¶ 8–11.

⁴⁴ Testimony of Dep. Comm’r Patrick Benn at BOC Meeting, YouTube (Feb. 28, 2024), www.youtube.com/watch?v=UXGx1Kij1K4&ab_channel=NYCBOARDOFCORRECTION (at 1:04:15).

⁴⁵ Declaration of Avery Crawford dated Mar. 11, 2024, Ex. 29 (“Crawford Decl.”), ¶¶ 4–7; Declaration of Sirmarcus Saunders dated Mar. 11, 2024, Ex. 32 (“Saunders Decl.”), ¶¶ 4–7.

B. Defendants House Class Members in DOC Facilities Without School

DOC houses people in eight different facilities on Rikers Island.⁴⁶ Yet, as Deputy Commissioner Torres explained, defendants offer schooling only to people housed in two of them—RNDC and RMSC, which houses women (and some men in a separate Enhanced Supervision Unit, *discussed infra* p. 12).⁴⁷ As of February 29, 2024, DOC housed 46 young adults in other facilities.⁴⁸ And, as recently as January 2024, it had dedicated an entire housing area at the North Infirmery Command (“NIC”) to young adults.⁴⁹

DOC does not keep records of the young adults in its custody with a high school diploma or GED so it is impossible to know how many of those housed in facilities other than RNDC and RMSC are class members.⁵⁰ But Deputy Commissioner Torres’ statement, coupled with the experience of Mr. Paniagua, indicate that the lack of school access in other facilities likely results in schooling denials.⁵¹ When DOC housed Mr. Paniagua in the Otis Bantum Correctional Center (“OBCC”) and NIC, defendants told him they could not educate him because they did not offer school in these facilities.⁵²

II. Defendants Often Fail to Provide Class Members Enrolled in School with Three Hours of Schooling Each Day

Defendants fail to provide class members with three hours of schooling each school day. During the brief periods in which **Francisco Bengochea, Jahrell Madison, and Mr. Russel** were fortunate enough to be enrolled in school, defendants provided Mr. Bengochea with

⁴⁶ DOC, *Facilities Overview*, www.nyc.gov/site/doc/about/facilities.page.

⁴⁷ Torres Testimony at 1:24:25.

⁴⁸ *Young Adult Hous. Monthly Progress Rep.: Feb. 2024*, at 1.

⁴⁹ DOC, *Young Adult Hous. Monthly Progress Rep.: Jan. 2024*, www.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/January-2024-YA-Monthly-Progress-Report.pdf, at 1.

⁵⁰ See Letter from Christopher B. Connard, DOC Records Appeals Officer (May 18, 2023), Ex. 52.

⁵¹ Torres Testimony at 1:24:25.

⁵² Paniagua Decl., ¶¶ 8, 11. When he was in the Anna N. Kross Center, defendants told Mr. Paniagua that they could not provide him with school because he had turned 22 and because there was no school in that building. *Id.*, ¶ 15.

instruction for one hour twice a week, Mr. Madison with instruction for one hour and 45 minutes every other school day, and Mr. Russel with two hours of instruction on school days.⁵³

DOC's frequent and prolonged lock-ins (also called lockdowns) of entire housing units or even facilities, during which students receive no schoolwork, also result in students not getting to school.⁵⁴ In an October 2022 report, BOC detailed DOC's increasing use of emergency lock-ins, particularly at RNDC, where DOC houses most young adults.⁵⁵ According to the report, DOC declared 64 emergency lock-ins in September 2022, 34 of which occurred between 7:00 a.m. and 3:00 p.m., the hours when school is offered on school days.⁵⁶ The DOC itself reported that school was cancelled 33 times and delayed 49 times in 2022, and cancelled 14 times and delayed 52 times in 2023, because of an emergency lock-in.⁵⁷

Class members confirm that lock-ins reduce their already limited access to education. During the approximately one month that defendants allowed **Mr. Castillo** to attend school, DOC locked down his housing unit three times for about three days each.⁵⁸ DOC curtailed **Mr.**

⁵³ Declaration of Francisco Bengochea dated June 2, 2023, Ex. 5 ("Bengochea Decl."), ¶ 5; Madison Decl., ¶ 5; Russel Decl., ¶ 8. Mr. Tracey, Mr. Paniagua, and Jaquan Kincaid often did not receive three hours of schooling each day because escorts arrived late. Tracey Decl., ¶ 13; Paniagua Decl., ¶ 7; Declaration of Jaquan Kincaid dated June 29, 2023, Ex. 10 ("Kincaid Decl."), ¶ 6.

⁵⁴ See *Oversight: Educ. Programming in Det. Facilities* at 15 ("Lock-ins are used to reduce violence but they impede the provision of mandatory services, including education."); Bengochea Decl., ¶ 6; Castillo Decl., ¶ 5; Tracey Decl., ¶ 12.

⁵⁵ See BOC, *Recent Trends in Lockdowns in N.Y.C. Dep't of Corr. Facilities*, Oct. 24, 2022, www.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Report-on-Recent-Trends-in-Lockdowns-October-2022.pdf, at 2.

⁵⁶ *Id.* at 6; The Council of the City of N.Y., Comm. Rep. and Briefing Paper of the Legis. Div., *Oversight: Educ. Programming in Det. Facilities*, Oct. 13, 2023, at 15, available at nyc.legistar.com/View.ashx?M=F&ID=12362857&GUID=DB62EF5B-C065-40F4-97EF-E9B12B1DB78D&G=2FD004F1-D85B-4588-A648-0A736C77D6E3.

⁵⁷ DOC, *Q. Emergency Lock-In Rep. CY2022 Annual (Jan. 1st – Dec. 31st, 2022)*, www.nyc.gov/assets/doc/downloads/pdf/Annual_2022_Emergency_Lock-in_Report.pdf, at 8; DOC, *Q. Emergency Lock-In Rep. CY2023 Annual (Jan. 1st – Dec. 31st, 2023)*, www.nyc.gov/assets/doc/downloads/pdf/CY2023%20Annual%20Emergency%20Lock-In%20Report%20.pdf.

⁵⁸ Castillo Decl., ¶ 5.

Tracey's brief enrollment when it locked down his unit for two days on two different occasions, and further limited Mr. Bengochea's schooling with lockdowns that lasted up to six days.⁵⁹

III. Defendants Provide Either No or Limited Schooling in Restrictive Housing

Starting in 2016, DOC housed young adults charged with disciplinary infractions in a variety of restrictive housing units such as the Transitional Restorative Unit ("TRU"), the Secure Unit, and Enhanced Supervision Housing ("ESH").⁶⁰ DOC stopped placing young adults in TRU around September 2022⁶¹ and in the Secure Unit in April 2023.⁶² In June 2023, it moved ESH from the George R. Vierno Center ("GRVC") to a separate part of RMSC; DOC refers to ESH in RMSC as "RESH."⁶³ Individuals housed in ESH are limited to seven hours of out-of-cell time per day, as opposed to the 14 hours offered in general population.⁶⁴ ESH consists of two program levels, each operated in a separate housing unit; an individual must complete Level I and then Level II before being eligible for release to general population.⁶⁵

The BOC required DOC to assess the logbooks for its now defunct Secure Unit on four random dates each month.⁶⁶ Between September 2021 and March 2023, defendants did not

⁵⁹ Tracey Decl., ¶ 12; Bengochea Decl., ¶ 6; *see also* Johnnie Decl., ¶ 7; Kincaid Decl., ¶ 8; Paniagua Decl., ¶ 9.

⁶⁰ BOC, *Young Adult Frequently Asked Questions: Timelines*.

⁶¹ The last DOC report showing young adults in TRU is from September 2022, DOC, *Young Adult Hous. Monthly Progress Rep.: Sept. 2022*, www.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/September-2022-YA-Monthly-Progress-Report.pdf, at 2, but reports from October and November 2022 are unavailable. *See* "Young Adult Hous. Monthly Rep.," www.nyc.gov/site/boc/reports/department-of-correction-reports.page.

⁶² *Compare* DOC, *Young Adult Hous. Monthly Progress Rep.: Apr. 2023*, www.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/April-2023-YA-Monthly-Progress-Report.pdf, at 2 *with* DOC, *Young Adult Hous. Monthly Progress Rep.: Mar. 2023*, www.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/March-2023-YA-Monthly-Progress-Report.pdf, at 2.

⁶³ *See Status Rep. on DOC's Action Plan by the Nunez Indep. Monitor*, Oct. 5, 2023, *Nunez v. City of N.Y.*, 11-CV-5845 (S.D.N.Y.), ECF No. 581, at 6; *compare* DOC, *Young Adult Hous. Monthly Progress Rep.: July 2023*, www.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/July-2023-YA-Monthly-Progress-Report.pdf, at 10 *with* DOC, *Young Adult Hous. Monthly Progress Rep.: June 2023*, www.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/June-2023-YA-Monthly-Progress-Report.pdf, at 1.

⁶⁴ DOC Directive 4491, IV(K)(10)(a), Mar. 29, 2023, www.nyc.gov/assets/doc/downloads/directives/4491_Enhanced_Supervision_Housing.pdf; DOC, *Inmate Handbook 25* (Dec. 2007), www.nyc.gov/assets/doc/downloads/pdf/inmate_hand_book_english.pdf.

⁶⁵ DOC Directive 4491, IV(G).

⁶⁶ DOC Reports, "Secure Unit Compliance Audit," www.nyc.gov/site/boc/reports/department-of-correction-reports.page (last visited Mar. 27, 2024).

provide *any* student with three hours of educational services on *any* of the audit dates.⁶⁷

Similarly, Mr. Madison was not provided with schooling while in TRU in 2022.⁶⁸

During the last two academic years, defendants' failure to provide school in restrictive housing has persisted. During the 2022–23 school year, they did not provide any schooling to **Mr. Bengochea, Mr. Diaz, Mr. Glasgow, Mr. Johnson, Jaquan Kincaid, Mr. Rodriguez, Moquease Mendez, and Mr. Wiggins** in ESH.⁶⁹ And DOC staff told Mr. Kincaid, Mr. Rodriguez, and Mr. Wiggins that defendants did not offer school there.⁷⁰

Likewise, at the beginning of the 2023–24 school year, defendants did not provide education to **Mr. Dwyer, Mr. Francis, and Mr. Olivencia** in RESH.⁷¹ In February and March 2024, while in Level I, Mr. Francis, **Jonathan Sanchez, and Mr. Young-Taylor** received

⁶⁷ Specifically, on every audit date in September and October 2021, defendants offered no school, and on every such date between November 2021 and January 2022, they offered no in-person school. DOC, *Secure Unit Compliance Audit – Jan. 2022*; DOC, *Secure Unit Compliance Audit – Dec. 2021*; DOC, *Secure Unit Compliance Audit – Nov. 2021*; DOC, *Secure Unit Compliance Audit – Oct. 2021*; DOC, *Secure Unit Compliance Audit – Sept. 2021* **Error! Bookmark not defined.** They offered the handful of students who attended in-person schooling on audit dates between February and May 2022, on average, an hour of instruction. DOC, *Secure Unit Compliance Audit – May 2022*; DOC, *Secure Unit Compliance Audit – Apr. 2022*; DOC, *Secure Unit Compliance Audit – Mar. 2022*; DOC, *Secure Unit Compliance Audit – Feb. 2022*. Defendants offered no educational services on any of three of the four audit dates in June 2022. DOC, *Secure Unit Compliance Audit – June 2022*. They offered the few students who attended in-person school on audit dates between September 2022 and March 2023, on average, 55 minutes of instruction. DOC, *Secure Unit Compliance Audit – Mar. 2023*; DOC, *Secure Unit Compliance Audit – Feb. 2023*; DOC, *Secure Unit Compliance Audit – Jan. 2023*; DOC, *Secure Unit Compliance Audit – Dec. 2022*; DOC, *Secure Unit Compliance Audit – Nov. 2022*; DOC, *Secure Unit Compliance Audit – Oct. 2022*; DOC, *Secure Unit Compliance Audit – Sept. 2022*. (These reports are available under the tab called “Download DOC’s Secure Unit Compliance Audits” at www.nyc.gov/site/boc/reports/department-of-correction-reports.page.)

⁶⁸ Madison Decl., ¶ 9.

⁶⁹ Bengochea Decl., ¶ 7; Diaz Decl., ¶ 9; Glasgow Decl., ¶ 6; Johnson Decl., ¶¶ 10–11; Kincaid Decl., ¶ 10; Rodriguez Decl., ¶ 8; Wiggins Decl., ¶ 9; Declaration of Moquease Mendez dated Aug. 9, 2023, Ex. 18 (“Mendez Decl.”), ¶ 7. As it does with the Secure Unit, BOC requires DOC to assess the logbooks for ESH on four random dates each month. DOC Reports, “Young Adult Enhanced Supervision Housing Compliance Audit,” www.nyc.gov/site/boc/reports/department-of-correction-reports.page (last visited Apr. 2, 2024). Available reports stop in May 2022. *Id.* But those from the 2021–22 school year reveal that defendants did not provide *any* student with three hours of school on *any* audit date. (The reports are available under the tab called “Download DOC’s Young Adult ESH Compliance Audits” at www.nyc.gov/site/boc/reports/department-of-correction-reports.page.)

⁷⁰ Kincaid Decl., ¶ 10; Rodriguez Decl., ¶ 8; Wiggins Decl., ¶ 9; *see also* Bengochea Decl., ¶ 7.

⁷¹ Dwyer Decl., ¶ 5; Francis Decl., ¶ 5; Olivencia Decl., ¶ 8. During the summer of 2023, a DOC officer told Mr. Rodriguez that defendants did not offer school in RESH. Rodriguez Decl., ¶ 8. Mr. Paniagua is the only class member to submit a declaration who did access school in restrictive housing—in the Secure Unit in GRVC in 2020 and in 2022, and in ESH in GRVC in 2021. Paniagua Decl., ¶¶ 8–13. But he had no access to school in ESH in OBCC in 2020 and in ESH in GRVC in 2022. *Id.*, ¶¶ 8, 13.

sporadic schooling from one teacher.⁷² Defendants provided Mr. Francis with about one hour of instruction on one day; Mr. Sanchez with about an hour and a half three days a week; and Mr. Young-Taylor with about 30 minutes on those school days when he advocated to be escorted to school.⁷³ When Mr. Young-Taylor was in Level II, defendants stopped escorting him to school.⁷⁴

IV. Defendants Often do not Provide Education to Class Members in a Timely Manner, Including by Failing to Provide Escorts

As discussed in detail above, defendants regularly fail to provide timely access to education to class members after they request it.⁷⁵ They have also failed to provide escorts to enrolled students. At RNDC, a lack of escorts repeatedly caused **Brandon Almonte, Mr. Castillo, Mr. Kincaid, Mr. Madison, Mr. Paniagua, and Mr. Tracey** to either arrive late or not attend school altogether.⁷⁶ When **Mr. Johnnie** was enrolled in school in RNDC, DOC often failed to escort him there, including from February 26 to March 11, 2024.⁷⁷ At RMSC, the same failure resulted in **Jaida Horton** and **Kurtisa Voliton** missing school frequently.⁷⁸ At other times, officers refused to escort Ms. Horton if they did not think she was being respectful or wearing appropriate footwear.⁷⁹

Moreover, defendants do not consistently notify class members of their right to access school. While they have provided some class members with “Request for Educational Services”

⁷² Francis Decl., ¶ 7; Declaration of Jonathan Sanchez dated Mar. 11, 2024, Ex. 31 (“Sanchez Decl.”), ¶ 6; Young-Taylor Decl., ¶ 7.

⁷³ *Id.*

⁷⁴ Young-Taylor Decl., ¶ 7.

⁷⁵ Bennett Decl., ¶¶ 4-8; Castillo Decl., ¶ 7; Crumbley Decl., ¶ 5; Diaz Decl., ¶ 8; Paniagua Decl., ¶ 12; Rodriguez Decl., ¶ 5, 9; Russel Decl., ¶¶ 5, 13-15; Tracey Decl., ¶¶ 7-9; Kincaid Decl., ¶ 6; Vasquez Decl., ¶ 7; Johnnie Decl., ¶ 6; Wiggins Decl., ¶¶ 6, 8-9.

⁷⁶ Declaration of Brandon Almonte dated Aug. 9, 2023, Ex. 16 (“Almonte Decl.”), ¶ 4; Castillo Decl., ¶ 5; Johnnie Decl., ¶ 7; Kincaid Decl., ¶ 6; Madison Decl., ¶ 7; Paniagua Decl., ¶ 7; Tracey Decl. ¶ 13. While he was in ESH in 2021, DOC also caused Mr. Paniagua to miss school because there was no escort. Paniagua Decl., ¶ 9.

⁷⁷ Johnnie Decl., ¶¶ 7-11.

⁷⁸ Declaration of Jaida Horton dated July 26, 2023, Ex. 13 (“Horton Decl.”), ¶¶ 6, 10; Declaration of Kurtisa Voliton dated July 26, 2023, Ex. 15 (“Voliton Decl.”), ¶ 8.

⁷⁹ Horton Decl., ¶ 10.

forms or asked them if they wished to attend school,⁸⁰ they do not do so consistently. They never informed **Mr. Burnett, Mr. Carr**, Mr. Castillo, Ms. Horton, **Mr. Mendez**, or Ms. Voliton of their right to attend school in DOC custody.⁸¹

V. Defendants Deprive Class Members of Special Education Services and Support

Before they were in DOC custody, **Mr. Bennett, Mr. Carr, Mr. Crumbley, Mr. Dwyer, Ms. Horton, Mr. Johnnie, Mr. Johnson, Mr. Kincaid, Mr. Mendez, Mr. Paniagua, Mr. Rodriguez, Mr. Russel, Mr. Sanchez, Mr. Tracey, Mr. Vasquez**, and **Ms. Voliton** received special education services through IEPs.⁸² During their incarceration, each of these students requested educational services, and each either received no educational services or limited educational services, including, in turn, special education services.⁸³

Additionally, when they did attend school, Ms. Horton, Mr. Johnnie, Mr. Johnson, Mr. Sanchez, and Ms. Voliton do not believe they received any special education services.⁸⁴

⁸⁰ Bennett Decl., ¶ 4; Crawford Decl., ¶ 4; Glasgow Decl., ¶ 5; Johnson Decl., ¶ 5; Vasquez Decl., ¶ 6; Wiggins Decl., ¶ 5.

⁸¹ Burnett Decl., ¶ 5; Carr Decl., ¶¶ 6–7; Castillo Decl., ¶ 4; Horton Decl., ¶ 8; Mendez Decl., ¶¶ 6–7; Voliton Decl., ¶ 7.

⁸² Bennett Decl., ¶ 3; Carr Decl., ¶ 5; Crumbley Decl., ¶ 3; Dwyer Decl., ¶ 3; Horton Decl., ¶ 5; Johnnie Decl., ¶ 3; Johnson Decl., ¶ 4; Kincaid Decl., ¶ 3; Mendez Decl., ¶ 5; Paniagua Decl., ¶ 5; Rodriguez Decl., ¶ 4; Russel Decl., ¶ 11; Sanchez, ¶ 8; Tracey Decl., ¶ 5; Vasquez Decl., ¶ 5; Voliton Decl., ¶ 5. Mr. Diaz and Mr. Young-Taylor do not know they received such services. Diaz Decl., ¶ 4; Young-Taylor Decl., ¶ 4.

⁸³ See Bennett Decl., ¶¶ 4–7; Carr Decl., ¶¶ 6–9; Crumbley Decl., ¶¶ 5–11; Dwyer Decl., ¶¶ 3–5; Horton Decl., ¶¶ 12; Johnnie Decl., ¶¶ 6–11; Johnson Decl., ¶¶ 5–12; Kincaid Decl., ¶¶ 6–12; Mendez Decl., ¶¶ 6–7, 9; Paniagua Decl., ¶¶ 7–16; Rodriguez Decl., ¶¶ 5–10; Russel Decl., ¶¶ 5, 8, 12, 14–15; Tracey Decl., ¶¶ 7–16; Vasquez Decl., ¶¶ 7–8; Voliton Decl., ¶ 8.

⁸⁴ Horton Decl., ¶ 12; Johnnie Decl., ¶ 11; Johnson Decl., ¶ 8; Sanchez Decl., ¶ 8; Voliton Decl., ¶ 9.

ARGUMENT

I. This Court Should Modify the Order to Reappoint a Monitor for a Two-Year Term

Eight years ago, this Court issued a narrow, straightforward Order to secure education for high schoolers in New York City jails. Recently, defendants' compliance with the Order has regressed drastically. Consistent and sufficient education is sporadically provided to, or completely out of reach for, many class members eager to take advantage of their right to a high school education while in jail.

This Court appointed a monitor in 2016 to assess defendants' compliance for two years with the implied expectation that they would thereafter comply with the Order without Court oversight. The Court, however, recognized that the reappointment of a monitor eventually may be needed. *See Handberry*, 2019 WL 5203666, at *9 (denying plaintiffs' request to reappoint the monitor without prejudice); *see also* Order, ¶ 9 ("any party may seek modification of the Order if there has been a material change in circumstances"). That time has come. The record shows that, in the absence of independent oversight, defendants are playing by their own rules, not the Court's, and that defendants' rules result in persistent and flagrant violations of the Order.

Rule 60(b)(5) provides relief from a judgment where "applying it prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). While Rule 60(b)(5) motions cannot challenge prior legal conclusions, "a party can ask a court to modify or vacate a judgment or order if 'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest.'" *Horne*, 557 U.S. at 447 (quoting *Rufo v. Inmates of Suffolk Cnty Jail*, 502 U.S. 367, 384 (1992)). Such motions are to be expected in "institutional reform litigation." *See Rufo*, 502 U.S. at 380. Because judgments in these cases "often remain in place for extended periods of time, the likelihood of significant changes occurring during the life of the

decree is increased.” *Id.*; *accord Horne*, 557 U.S. at 447–48. Courts must take a “flexible approach” to Rule 60(b)(5) motions, as such an approach “is often essential to achieving the goals of reform litigation.” *Rufo*, 502 U.S. at 381; *accord Horne*, 557 U.S. at 450.

Courts analyze a request for modification of a judgment under Rule 60(b)(5) in two steps. First, the moving party “bears the burden of establishing that a significant change in circumstances warrants revision of the [judgment].” *Rufo*, 502 U.S. at 383. “[A] critical question . . . is whether the objective of the . . . order . . . has been achieved.” *Horne*, 557 U.S. at 450–51. “[O]nce a party carries this burden, a court abuses its discretion when it refuses to modify an injunction . . . in light of such changes.” *Id.* at 447 (internal quotation marks omitted).

Second, the Court must inquire as to whether the moving party’s “proposed modification is suitably tailored to the changed circumstances.” *Rufo*, 502 U.S. at 383; *Still’s Pharmacy, Inc. v. Cuomo*, 981 F.2d 632, 638 (2d Cir. 1992). The modification must satisfy three conditions: it “must not create or perpetuate a constitutional violation,” it “must be tailored to resolve the problems created by the change in circumstances,” and it must respect federalism concerns with judicial interference in local government administration. *Rufo*, 502 U.S. at 391–92.

A. A Significant Change in Factual Conditions Warrants Modification

In his July 2018 report, the most recent independent review of defendants’ compliance with the Order, the monitor, Dr. Leone, found defendants non-compliant in many respects and deemed defendants’ provision of education to young adults “a persistent problem.”⁸⁵ Class members, Deputy Commissioner Torres, and DOC reports describe a state of affairs that is significantly worse than the already problematic one Dr. Leone described in 2018. For example, in 2018, Dr. Leone found that most class members who requested schooling received it.⁸⁶ Today,

⁸⁵ Leone Report at 3.

⁸⁶ *Id.* at 12.

class members' access to education is arbitrary, inconsistent, and regularly non-existent.

Defendants' current violations of the Order strike at the foundation upon which the Order was built, and they require action from this Court.

1. Defendants' Restriction of Education to Class Members in General Population Who are Housed in RNDC's Program Houses and RMSC Violates the Order

Paragraphs 1 and 3 of the Order encapsulate its most fundamental requirement—that defendants offer educational services to any class member who requests them, no matter where DOC chooses to house that class member. Paragraph 1 requires defendants to provide *all* eligible incarcerated individuals with at least three hours of educational services every school day, and Paragraph 3 establishes that the Order's requirements apply to all DOC locations. In 2018, Dr. Leone found defendants substantially compliant with Paragraph 3 because “[f]ailure to place eligible inmates in jails with services occur[ed] but . . . [was] not a systemic problem.”⁸⁷

Circumstances have dramatically worsened. In 2018, DOC ran educational programs for young adults in five facilities.⁸⁸ Today, for class members in general population, defendants provide access to education only to class members housed either in RNDC's program houses or RMSC.⁸⁹ And, as Deputy Commissioner Torres herself admitted, DOC does not have enough space in program houses to accommodate all those who wish to attend school.⁹⁰ Defendants are thus implementing their educational services system in a way that systemically violates the Order. And none of the reasons defendants have offered to exclude class members from school—*e.g.*, a lack of space or someone's placement in protective custody—is valid under that Order.⁹¹

⁸⁷ *Id.* at 12.

⁸⁸ *Id.* at 4, 6–7 (Eric M. Taylor Center, GMDC, GRVC, NIC, OBCC, and RMSC).

⁸⁹ *See* Torres Testimony at 1:24:25.

⁹⁰ *Id.* at 1:26:04.

⁹¹ *See supra* p. 8-9.

2. Even for Students in RNDC’s Program Houses and RMSC, Defendants are Violating the Court’s Order that They Provide Three Hours of Educational Services Per School Day

Even for students fortunate enough to be enrolled in school, defendants are violating the Order’s requirement that they provide at least three hours of educational services per school day. In 2018, Dr. Leone found defendants in partial compliance with this requirement because, while school was available for at least three hours on school days, 18- to 21-year-old students regularly did not attend it for all the required hours.⁹² He also noted that defendants cancelled school occasionally because of lockdowns or other specialized activities.⁹³

The record here describes violations of the three-hours-per day requirement significantly more serious than those Dr. Leone found. Defendants provided Mr. Bengochea, Mr. Madison, and Mr. Russel with well under 15 hours of school per week.⁹⁴ Also, DOC’s use of lockdowns, which often cancel or delay school, has increased of late, as confirmed by class members.⁹⁵

3. Defendants are Violating the Requirement to Provide Educational Services in Restrictive Housing

Defendants are flagrantly violating the Order’s requirement that they provide class members in restrictive housing the same access to education as those in other housing units. In 2018, Dr. Leone deemed defendants in partial compliance with this mandate, explaining that, although school was available for three hours each day, 18- to 21-year-old students in restrictive

⁹² Leone Report at 4, 8.

⁹³ *Id.* at 5 n.8

⁹⁴ Bengochea Decl., ¶ 5 (attended an educational program that met for one hour two days per week); Madison Decl., ¶ 5 (attended school for 1 hour and 45 minutes on every other school day); Russel Decl., ¶ 8 (attended school for two hours per school day).

⁹⁵ DOC, *Q. Emergency Lock-In Rep. CY2023 Annual (Jan. 1st – Dec. 31st, 2023)*; DOC, *Q. Emergency Lock-In Rep. CY2022 Annual (Jan. 1st – Dec. 31st, 2022)*, at 8; BOC, *Recent Trends in Lockdowns in N.Y.C. Dep’t of Corr. Facilities*, at 2; Bengochea Decl., ¶ 6; Castillo Decl., ¶ 5; Johnnie Decl., ¶ 7; Kincaid Decl., ¶ 8; Paniagua Decl., ¶ 9; Tracey Decl., ¶ 12.

housing generally did not receive three hours of instruction every school day, and that their learning environment was not conducive to learning.⁹⁶

The record shows violations of a different magnitude. Dr. Leone encountered a jail system that was *trying* to educate students in restrictive housing. But, according to DOC's own reporting, in the now-closed Secure Unit and in ESH in the 2021–22 school year, defendants consistently offered class members well under three hours of education each school day, and often provided no education on school days.⁹⁷ In the 2022–23 and 2023–24 school years, defendants provided no education to **at least** eight class members in ESH or RESH.⁹⁸ And in February and March 2024, they provided some school to class members in RESH's Level I, but it was inconsistent and well under the required three hours on every school day.⁹⁹

4. Defendants are Routinely Violating the Requirement that They Provide Educational Services in a Timely Manner, Including Through the Use of Escorts

The Order requires defendants to ensure the timely provision of educational services to class members, including by using escorts when necessary. Dr. Leone deemed access to school “inconsistent,” explaining that escorts did not always arrive, arrived over an hour after school started, or misinformed students that school had been cancelled.¹⁰⁰ According to class members' recent reports, defendants' frequently fail to provide timely escorts or to provide escorts at all, causing class members to regularly miss school.¹⁰¹

⁹⁶ Leone Report at 8–10.

⁹⁷ *See supra* n. 67, 69.

⁹⁸ Bengochea Decl., ¶ 7; Diaz Decl., ¶ 9; Dwyer Decl., ¶ 5; Glasgow Decl., ¶ 6; Johnson Decl., ¶¶ 10–12; Kincaid Decl., ¶¶ 10–11; Rodriguez Decl., ¶ 8; Wiggins Decl., ¶¶ 9–10.

⁹⁹ Francis Decl., ¶ 7 (received one hour on one day); Sanchez Decl., ¶ 6 (received one and a half hours three days a week); Young-Taylor Decl., ¶ 7 (received 30 minutes on some school days).

¹⁰⁰ Leone Report at 13.

¹⁰¹ Almonte Decl., ¶ 4; Castillo Decl., ¶ 5; Kincaid Decl., ¶ 6; Madison Decl., ¶¶ 5, 7; Paniagua Decl., ¶¶ 7, 9; Tracey Decl., ¶ 13.

5. Defendants are Violating the Requirement that They Offer Special Education to Students with Disabilities

People with special educational needs are overrepresented in jails and prisons.¹⁰² As this Court recognized in Paragraph 5 of the Order, for these youth, defendants fulfill their obligation to provide them with education only if they provide class members with appropriate special educational services. Indeed, “[s]upporting effective and accountable education for incarcerated and at-risk youth can result in cost savings to the public and enable troubled youth to obtain an education and enhance their future employment options and life choices.”¹⁰³

In 2018, Dr. Leone deemed defendants substantially compliant with Paragraph 5.¹⁰⁴ That is no longer the case. Every time defendants deny a student with disabilities access to education, they deny the student access to special education. The record contains at least 16 such students whom defendants denied education to, in whole or in part.¹⁰⁵ In addition, based on their previous experience receiving special education services, five of those students doubted that, when they were in school, DOE offered them any special education.¹⁰⁶

* * *

¹⁰² See, e.g., U.S. Dep’t of Just., Off. of Just. Programs, Bureau of Just. Statistics, *Disabilities Reported by Prisoners*, at 5 (Mar. 2021), bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf (over 25 percent of state prisoners reported that they had attended special education classes).

¹⁰³ Letter from Melody Musgrove, Dir., Off. of Special Educ. Programs, U.S. Dep’t of Educ., & Michael K. Yudin, Acting Assistant Sec’y, Off. of Special Educ. and Rehab. Serv., U.S. Dep’t of Educ. (Dec. 5, 2014), at 1, sites.ed.gov/idea/files/idea-letter.pdf.

¹⁰⁴ Leone Report at 14–15.

¹⁰⁵ Bennett Decl., ¶¶ 4–7; Carr Decl., ¶¶ 5–9; Crumbley Decl., ¶¶ 3–11; Dwyer Decl., ¶¶ 3–5; Horton Decl., ¶ 12; Johnson Decl., ¶¶ 4–12; Kincaid Decl., ¶¶ 6–12; Mendez Decl., ¶¶ 5–7, 9; Paniagua Decl., ¶¶ 5–16; Rodriguez Decl., ¶¶ 4–9; Russel Decl., ¶¶ 5–8, 14–15; Tracey Decl., ¶¶ 7–16; Voliton Decl., ¶ 8; Johnnie Decl., ¶¶ 6–11. Sanchez Decl., ¶ 8; Vasquez Decl., ¶¶ 7–8. Both Mr. Diaz and Mr. Young-Taylor are not sure if they received special education services prior to their incarceration. Diaz Decl., ¶ 4; Young-Taylor Decl., ¶ 4.

¹⁰⁶ Horton Decl., ¶ 12; Johnnie Decl., ¶ 11; Johnson Decl., ¶ 8; Sanchez Decl., ¶ 8; Voliton Decl., ¶ 9. When class counsel asked defense counsel for Jamel Johnson’s SEP, they never provided it, preventing class counsel from determining whether Mr. Johnson was receiving any special education services. See Stephens-Davidowitz Decl., Ex. 38.

Relying on a record replete with violations of every paragraph of the Order, plaintiffs have met their burden to show that the factual circumstances in this case have changed such that modification of the Order is required. *See Horne*, 557 U.S. at 447.

B. Reappointment of a Monitor for a Term of Two Academic Years is a Suitably Tailored Modification of the Judgment

As described above, the moving party’s proposed modification “must not create or perpetuate a constitutional violation,” it must be “tailored to resolve the problems created by the change in circumstances,” and it must respect federalism concerns with judicial interference in local government administration. *Rufo*, 502 U.S. at 391–92. Reappointment of a monitor for a term of two academic years satisfies these three conditions.

Like Dr. Leone, the monitor will have broad access to documentation and information concerning defendants’ provision of educational services, can speak freely and frequently to class members, and will be able to observe the instruction taking place in DOC facilities.¹⁰⁷ Using their expertise, the monitor can also determine whether the DOE is providing appropriate special education services to the relevant class members. The monitor can both assess the extent of defendants’ compliance with the Order and make recommendations to help defendants remediate any non-compliance. After receiving reports from the monitor, the Court can determine what, if any, actions to take to protect class members’ rights.

1. The Proposed Modification Will Help Cure the Constitutional Violations that Formed the Basis for the Remedial Order

Plaintiffs’ proposed modification will help cure—rather than perpetuate—the constitutional violations that gave rise to the Order. *See Rufo*, 502 U.S. at 391. Class members

¹⁰⁷ *See* Order, ¶ 7 (granting Dr. Leone “the same access to Rikers Islands, to plaintiffs and defendants, and to relevant documents . . . as set forth in this Court’s June 10, 2014 Order”); June 10, 2014 Order, ECF No. 203, ¶¶ 13, 17 (allowing Dr. Leone to communicate with people from whom he is soliciting information without notifying counsel or the Court and allowing him to request documents from the Court or the parties).

describe serious and systemic violations of the Order that this Court implemented to protect their constitutional and statutory rights. In response, plaintiffs propose that the Court modify the Order solely to reappoint a monitor to carefully assess defendants' compliance and recommend any actions the Court should take to ensure compliance. Inaction risks perpetuating the constitutional violations that the Order seeks to remedy, whereas granting plaintiffs' motion is the first step in curing them. *See United States v. Sec'y of Hous. & Urb. Dev.*, 239 F.3d 211, 217–18 (2d Cir. 2001) (affirming consent decree modification where continued enforcement without modification would not achieve decree's goals of desegregating Yonkers school and housing); *see also Juan F. By & Through Lynch v. Weicker*, 37 F.3d 874, 879 (2d Cir. 1994) (“*Rufo*’s flexibility is designed to permit details in [] decrees . . . to be adapted to changing conditions so that the public interest can be preserved.”). Indeed, faced with the record before it, this Court must act to fulfill its “affirmative duty to protect the integrity of its decree . . . where [a] party threatens to frustrate the purposes of the decree.” *United States v. ILA Loc. 1588*, 77 F. App’x 542, 546 (2d Cir. 2003) (internal quotation marks omitted).

2. Reappointing a Monitor is Suitably Tailored to Resolve the Problem and does not Rewrite the Order as a Whole

Reappointment of the monitor for a two-year term is suitably tailored to resolve the problems the record reveals. *See Rufo*, 502 U.S. at 391; *Still’s Pharmacy*, 981 F.2d at 638 (a modification must be suitably, not necessarily narrowly, tailored to accommodate the changed circumstances). Plaintiffs merely request that a neutral party with greater access to class members and school records assess defendants’ compliance. Given that the Order itself appointed a monitor, plaintiffs’ request is entirely reasonable.

The request does not rewrite the Order. To the contrary, it is consistent with the Order’s provision that “any party may seek modification . . . if there has been a material change in

circumstances[.]”¹⁰⁸ Indeed, in 2019, this Court recognized that reappointment of a monitor would be appropriate if there were “material changes in circumstances.” *See Handberry*, 2019 WL 5203666, at *9.

3. Reappointment of a Monitor will not Implicate Federalism Concerns

Lastly, reappointment of the monitor will not implicate federalism concerns, as it will not alter any of the requirements the Order places on defendants. *See Rufo*, 502 U.S. at 392.

Reappointment simply will help to ensure defendants’ compliance with their existing obligations.

4. The Prison Litigation Reform Act’s Prospective Injunctive Relief Limitations Do Not Prevent Reappointment of the Monitor

The Prison Litigation Reform Act (“PLRA”) bars courts from issuing prospective injunctive relief in prison condition cases without a finding that “such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(1)(A). Judge Francis issued this finding in his 2015 R&R, *Handberry*, 2015 WL 10570793, at *12, which this Court adopted. *Handberry*, 2016 WL 1268265, at *1. The Court is not required to issue a new finding here because plaintiffs’ requested modification—a monitorship—is not “prospective injunctive relief” under the PLRA and is thus not subject to the PLRA’s prospective injunctive relief limitations. *See Benjamin v. Fraser*, 156 F. Supp. 2d 333, 342–43 & n.11 (S.D.N.Y. 2001), *aff’d*, 343 F.3d 35 (2d Cir. 2003) (“[M]onitoring itself, independent of the conditions to be monitored, cannot be relief. Monitoring merely informs the court and the parties where the defendants are in the process of providing the ordered relief. To find otherwise would be to conflate relief with the means to guarantee its provision.”).

¹⁰⁸ Order, ¶ 9.

Even if a monitorship were subject to § 3626(a)(1)(A), plaintiffs would easily satisfy this standard. “Narrow tailoring requires a ‘fit’ between the remedy’s ends and the means chosen to accomplish those ends.” *Brown v. Plata*, 563 U.S. 493, 531 (2011) (cleaned up). In other words, “[t]he scope of the remedy must be proportional to the scope of the violation, and the order must extend no further than necessary to remedy the violation.” *Id.* Here, having presented evidence that defendants are routinely violating the Order, plaintiffs merely seek the appointment of a neutral party to thoroughly assess defendants’ compliance with each of the Order’s five paragraphs. The monitoring, which will be limited to two academic years, will not interfere with defendants’ operations. Indeed, this Court already found two-year monitoring appropriate in 2016,¹⁰⁹ and expressed openness to reappointing a monitor in 2019, *Handberry*, 2019 WL 5203666, at *9. Notably, courts have found much more intrusive remedies compliant with § 3626(a)(1)(A). *See, e.g., Brown*, 563 U.S. at 530–34 (an order to release people to reduce overcrowding); *Allen v. Koenigsmann*, No. 19-CV-8173 (LAP), 2023 WL 8113230, at *3–6 (S.D.N.Y. Nov. 22, 2023) (an order to, among other things, comply with prison policy on chronic pain medication, train current staff, create programming to train new staff, develop systems to identify certain patients, conduct individualized assessments of patients, and produce regular documentation to plaintiffs); *see also Barrett v. Maciol*, No. 20-CV-537, 2022 WL 130878, at *9 (N.D.N.Y. Jan. 14, 2022) (preliminary injunction to move females in custody to particular housing complies with identical test under § 3626(a)(2)).

¹⁰⁹ Order, ¶ 6.

CONCLUSION

The Court should modify the Order to reappoint a monitor for a term of two academic years.¹¹⁰

Dated: New York, New York
April 3, 2024

Respectfully submitted,

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¹¹⁰ Plaintiffs have submitted a proposed modified Order to the Court. Stephens-Davidowitz Decl., ¶ 3, Ex. 54.