



**Brooklyn Defender Services**  
177 Livingston St, 7<sup>th</sup> Fl  
Brooklyn, NY 11201

Tel (718) 254-0700  
Fax (718) 254-0897  
info@bds.org

**TESTIMONY OF:**

Anna Arkin-Gallagher – Supervising Attorney and Policy Counsel, Education Practice

**BROOKLYN DEFENDER SERVICES**

**Presented before the New York City Council**

**Committees on Education, General Welfare and Criminal Justice**

**Oversight Hearing on Educational Programming in Detention Facilities.**

**October 13, 2023**

My name is Anna Arkin-Gallagher, and I am a Supervising Attorney and Policy Counsel in the Education Practice at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. We thank the City Council Committees on Education, General Welfare, and Criminal Justice and Chairs Joseph, Ayala, and Rivera for holding this important hearing on educational programming in detention facilities.

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

Our Education Unit delivers legal representation and informal advocacy to our school-age clients and to parents of children in New York City schools. Many of the people we serve are involved in the criminal legal system or in family court proceedings. A significant number of the students we work with qualify as “over-age and under-

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credited” and have been retained at least one grade, and more than half of the students we work with are classified as students with disabilities. We also represent parents in Article 10 proceedings in family court and advocate for their children to access educational resources while placed in the foster system. As an interdisciplinary legal and social work team, we work to improve our clients’ access to education and that of their children. A significant portion of our advocacy is to ensure youth have access to the special education services they are entitled to as well as to defend youth in school discipline proceedings to ensure they have access to an education. We also have expertise in educational matters related to those who are in detention and jails and work to ensure our clients who are incarcerated or leaving incarceration are able to access the education to which they are entitled or alternative pathways to graduation.

We believe that children and young adults learn best when they are in their homes, and not behind bars. The best way to provide educational supports to the young people we serve would be to avoid putting them in detention and focus on diverting them from the criminal legal system all together.

### **Education Access in NYC jails**

Young people on Rikers Island have a right to educational services through the school year in which they turn 21,<sup>1</sup> and should be enrolled in school within 10 days of requesting educational services.<sup>2</sup> Nevertheless, school-aged youth on Rikers Island continually struggle to access educational services. For years, young people have reported to our staff that they were not aware education services were available on Rikers Island, were not told of their eligibility for school, were not brought to school after enrolling, were inconsistently escorted to school, or were not permitted to enroll in school at all. Every week, we learn of more students who wish to attend school and are unable to do so. Some young people are placed in facilities on Rikers Island that do not have school services available to them. Others are housed in facilities that do have educational services, but are not being housed in one of the units where people are permitted to attend school. Some of our clients on these “non-program units” have requested to transfer into a program unit, and have not been moved for weeks – or ever. Others are faced with the difficult decision of transferring into a new, unknown unit in order to attend school, or staying in more familiar surroundings and continuing to be

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<sup>1</sup> Every school-aged person on Rikers Island – including students in restrictive housing – must be provided at least three hours of educational services each school day. *Handberry v. Thompson*, No. 96CIV6161GBDJCF, 2015 WL 10570793 (S.D.N.Y. Dec. 2, 2015), *report and recommendation adopted*, No. 96CIV6161GBDJCF, 2016 WL 1268265 (S.D.N.Y. Mar. 31, 2016) (citing *Handberry v. Thompson*, 446 F.3d 335, 347–51, 355 (2d Cir. 2006)).

<sup>2</sup> City of New York Department of Correction, Directive # 3503R, “Inmate Access to Board of Education Services” (effective date July 1, 1999).

prevented from going to school. Recently we have heard that there is a blanket restriction on anyone living in restrictive housing units from attending school.

One 18-year-old we work with – a special education student – requested to go to school immediately upon his arrival on Rikers Island by filling out a paper form to request educational services, and then repeatedly making verbal requests to DOC correction officers and program staff to attend school. He was on Rikers Island for the entirety of last school year and attended approximately one week of school. Another young person was attending school and making progress towards earning his GED when DOC transferred him into a non-program unit. After advocacy from our office, he was finally offered the chance to switch into a program unit to attend school. However, having experienced a number of safety issues while on Rikers Island, he was too scared to leave a unit with which he was familiar to move into a new housing area. He ultimately declined to transfer units, and was thus not permitted to attend school and earn his GED. Yet another young person we have worked with – a special education student who is reading and writing on an elementary school level – has wanted to go to school since arriving on Rikers Island last fall. However, DOC has continually moved him into and out of program units, and he has never been able to attend school for more than a week or two at a time. He is eager to return to school, telling us that he believes attending school on Rikers Island will be his last opportunity to earn his GED. In the last few weeks, we learned that DOC is detaining several of our school-aged clients in the new Enhanced Supervision Housing at RMSC (RESH), and DOC staff has told our clients that they are not able to access any educational services until they leave these units.

These stories are not outliers. We hear constantly from the young people we serve at Rikers that they want to use their time on Rikers Island to further their education and DOC is preventing them from doing so. Coupled with the cuts to programming on Rikers Island, the people we represent are increasingly spending time on Rikers with nothing productive to do. DOE and DOC must work together to create a plan to provide the opportunity for regular instruction for students at Rikers. All young people at Rikers who wish to attend school must be able to do so, including students placed in restrictive housing units.

While lack of access to *any* educational services on Rikers Island remains the most serious concern regarding education in New York City jails, when young people are enrolled in school at East River Academy, the services these students receive are not always adequate to meet their learning needs. While many students enter ERA with IEPs from their last school, our clients at Rikers have told us that they do not always receive special education supports, and that the required Special Education Plans (“SEP”s) are not always timely created.

## **Educational Services in Secure and Nonsecure Juvenile Detention**

Students who attend Passages Academy at Crossroads Juvenile Center, Horizon Juvenile Center, and in nonsecure detention also struggle to access high-quality educational services – and sometimes have trouble accessing educational services at all. Young people have reported to us occasions in which individual students – and sometimes even entire units – have been prevented from attending school for disciplinary reasons or due to staff shortages, and have not received adequate alternative instruction, as required by law.

At Passages, students attend classes based on what housing unit they are placed in. This often results in students working at many different grade levels being placed in classes together. We have worked with some students who have entered Passages Academy and who have been enrolled in classes they have already taken, or who have not been able to access the classes they need to graduate. Other students have reported feeling disengaged in classes where students are performing on vastly different grade levels, either unable to keep up with coursework or bored by work at too low a level. Finally, we have seen a number of students with disabilities fail to receive the special education services to which they are entitled. ACS and DOE must work to ensure every student at Passages has access to varied and engaging educational services and programming, as well as the supports they need to be successful in school. When a student enters detention, the DOE must quickly evaluate which classes an entering student needs to graduate and ensure that any class needed by a student to make progress towards graduation is available.

Students at Passages are also often not given the transitional support they need to reintegrate into their home schools or transfer into appropriate schools when they leave Passages and return home. We have worked with a number of students who have been unable to seamlessly reenroll in their former school after leaving Passages. When students are released from detention, DOE is supposed to immediately place these students back on the roster of their home school, but we have seen some cases in which this did not happen, and students were thus unable to attend school until the DOE corrected this issue. In other cases, students have desired to switch schools upon returning home – either to enroll in a credit-recovery school or to obtain a new start in a different school than that which they attended before their incarceration – and were left on their own to figure out how to transfer schools. In all of these cases, students have missed days or weeks of school while waiting to begin school again, and in some cases have lost the opportunity to earn credits as a result of delayed reenrollment. Our office recently worked with a student who wanted to transfer high schools after being released from a detention facility, but who was initially provided no support in securing this transfer by the Department of Education. It was only after our office assisted with connecting him to the DOE enrollment office that a new placement was issued for the student. Dedicated school staff at Passages should work with students before their



release to plan for education upon their return home, and assist students in securing their desired educational placement to minimize any disruption for students.

### **Int. 542**

BDS supports Int. 542, which will help to address the lack of data reporting focused on education in New York City's juvenile detention facilities, and allow for increased transparency to improve educational programming and services in these facilities.

We recommend strengthening reporting requirements regarding special education services, programming for English language learners, and instances in which students miss school for disciplinary reasons, staff shortages or other issues.

Specifically, we propose adding reporting requirements for the special education services students receive, including the classroom placement and related services recommendations for students with Individualized Education Programs (IEPs), the number and percentage of students who receive the classroom placement and/or related services recommended in their IEPs, and the number and percentage of students who receive special education evaluations while in custody.

Similarly, we also propose adding data reporting related to programming for English language learners, including the number and percentage of students identified as having English language learner status who are receiving language services.

Finally, we suggest adding reporting requirements that will reflect the number of students prevented from attending educational programming, disaggregated by the reason the student was prevented from attending programming (whether for medical reasons, behavioral reasons, staff shortages, or due to another issue).

### **Conclusion**

Students at both East River Academy and Passages Academy have been ill-served by the educational services they have received (or, in many cases, failed to receive) and the city must ensure that every young person entitled to receive educational services can consistently access high-quality educational services. Thank you for holding this important hearing and for your consideration of our comments. If you have any questions, please feel free to contact me at [aarkingallagher@bds.org](mailto:aarkingallagher@bds.org) or (646) 971-2719.