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TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

Presented Before

The New York City Council Committee on Education

DOE's Provision of Special Education Services

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My name is Anna Arkin-Gallagher, and I am the Associate Director of the Civil Justice Practice at Brooklyn Defender Services (BDS), where I oversee our office's education work. BDS is a public defense office, representing approximately 22,000 people each year who are accused of a crime, facing the removal of their children, or at risk of deportation. We thank the Committee on Education and Chair Joseph for the opportunity to address the Council about the special education system in New York City Public Schools.

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. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff, all of whom are experts in their respective fields.

BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with the educational needs of our clients or their children, housing and benefits advocacy, and immigration advice and representation. BDS's Education Practice 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-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. We also have expertise in educational

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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. As an interdisciplinary legal and social work team, we work to ensure that our clients can remain active in their children's education, even when those children are removed from their care, and that their children receive the educational support to which they are entitled.

While we work with families and young people who encounter a variety of problems with the DOE's special education system, we want to focus specifically on two areas where we see our clients encountering issues as they interact with the DOE's special education services: the exclusion of parents from special education decision-making when their children are placed into the foster system, and the special education services provided to young people in carceral settings.

The Foster System and Special Education

In our role as educational advocates for families directly impacted by the foster system, we often encounter situations where parents are completely excluded from educational decision-making – including special education decision-making – for their children who have been placed in the foster system.

The Department of Education (DOE), the Administration for Children's Services (ACS), and foster agencies often exclude parents from their children's educational lives when families are separated by the foster system. This often happens because schools wrongly believe that the presence of ACS or a foster agency means that parents are no longer permitted to remain involved in their children's educations. In fact, a parent remains the educational decisionmaker for their children who have been placed in the foster system unless there is a court order expressly stripping them of the right to make these decisions.¹ Parents are often incorrectly told by DOE staff that they may not speak with school staff or teachers, that they may not participate in IEP meetings, and that they may not make special education decisions for their children. ACS and foster agencies often fail to pass along information that they receive from schools to parents and rarely encourage schools to reach out to parents directly. Schools then communicate primarily or solely with the foster parent or foster agency. Our office must regularly call school administrators and explain that parents have the right to be informed and make decisions about their children's educations.

¹ New York City Public Schools, "Students in Foster Care," *available at* <https://www.schools.nyc.gov/school-life/special-situations/students-in-foster-care>.

The lapse of communication between schools and parents is particularly harmful for the more than 40% of children in the foster system who are students with disabilities.² For those students, their parents' participation, contributions, and consent to special education services are essential for their educational progress. This is not just because the vast majority of parents remain their children's educational decision-makers when their children are in foster placements, but also because children change agency case planners and foster placements frequently, meaning that often the only person with knowledge of a child's entire educational history is their parent.³ Parents' deep understanding of their children is essential to developing appropriate special education programs. Additionally, the strategies that service providers use to support and guide children with disabilities are often most effective when reinforced at home, and the majority of children return home from the foster system.⁴ When children return home, their parents' knowledge of what happened with their education while they were separated is also critical to their educational success going forward.

We recently represented a parent of a child with numerous special education needs who was entering kindergarten in the fall while living in a foster placement. Given the child's developmental and educational needs and the transitions he had already experienced, his mother was eager to be involved in settling him into his new school setting. For several weeks prior to the start of the school year the parent had not been informed by the DOE or a school about where her child was attending school. When our office finally received the child's school assignment, we contacted the principal and the parent coordinator of the school prior to the start of the school year, explaining that our client remained the educational decisionmaker for her son, and asking that she receive all communications from the school. Despite our efforts, the school did not comply with the law. For weeks, BDS attempted to ensure that our client was receiving updates from her child's teachers, enlisting the assistance of the DOE Office for Students in Foster Care. When our client was finally able to speak with her child's teacher several months into the school year, she learned that he has been struggling in school this year, and the school had been considering changing his special education placement without her knowledge. We have now been advocating for new evaluations of her son so that he can get the appropriate support he needs to be successful in school. Yet even months of

² Advocates for Children, "Building on Potential: Next Steps to Improve Educational Outcomes for Students in Foster Care," at 3 (January 2023), *available at*

https://www.advocatesforchildren.org/sites/default/files/library/building_on_potential.pdf?pt=1.

³ Nearly one in five children in the foster system ends up changing schools during a single school year, sometimes more than once. Advocates for Children and The Legal Aid Society, "Building a Network of Support: The Case for a DOE Office for Students in Foster Care," at 4 (May 2021), *available at*

https://www.advocatesforchildren.org/sites/default/files/library/foster_care_office_report_52021.pdf?pt=1.

⁴ Administration for Children's Service, "FY 2021 Foster Care Strategic Blueprint Status Report," at 7 (July 2020-June 2021), *available at*, <https://www.nyc.gov/assets/acs/pdf/data-analysis/2021/FCStrategicBlueprintFY2021.pdf>.

advocacy, the foster parent’s name remains erroneously printed on all the special education documentation.

This parent’s story is not unique. Nearly every week we speak with parents who has been excluded from special education decision-making for their children because their child is not in their custody, and it often requires navigating the labyrinthine bureaucracy of the DOE to ensure that parents can exercise their rights to be involved in their children’s education. While we appreciate the DOE Office for Students in Foster Care, and their assistance when we encounter these issues, by the time we learn of these issues and contact that office, a parent may have already been excluded from their child’s education – for weeks or months or even years. We urge the City Council to ensure that the DOE upholds the special education rights of parents with children in the foster system.

Education Access in Jails and Detention

Education Access on Rikers Island

Young people on Rikers Island have a right to educational services through the school year in which they turn 21,⁵ and should be enrolled in school within 10 days of requesting educational services.⁶ Nevertheless, school-aged youth on Rikers Island – including many students with special education needs – continually struggle to access educational services. For years, BDS clients being held at Rikers 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, were not permitted to enroll in school at all, and did not receive the special education services they require.

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 often not adequate to meet their learning needs. In instances when our clients have been able to attend school consistently, they fail to receive any or all the special education services to which they are entitled.

⁵ 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)).

⁶ City of New York Department of Correction, Directive # 3503R, “Inmate Access to Board of Education Services” (effective date July 1, 1999).



We represent one young special education student who requested to go to school when he arrived on Rikers Island. It took him months to even be enrolled in school. And over the several years that he spent on Rikers Island, he never attended school for more than a week or two at a time. Every time he began attending school, he was transferred to another unit and only able to return to school after significant advocacy. But even when he was able to attend school, he never received the special education services that he requires, and which had been included on his Individualized Education Program (IEP) prior to his incarceration.

Another student we represent entered school on Rikers Island several years below grade level. Nevertheless, he was excited about the possibility of reengaging with school. Unfortunately, he never received the special education services that he required to make educational progress and described himself as feeling confused in his classes at East River Academy. Frustrated by his failure to progress, he ended up skipping school more and more often, unconvinced that there was any point to his attending.

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 that DOC is preventing them from doing so. 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, and students must receive their special education services.

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 special education 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.

We have worked with many students with disabilities fail to receive the special education services to which they are entitled. We recently represented a young person who had received special education services for years before arriving at Passages, and who was supposed to be receiving his mandatory triennial evaluations while enrolled at Passages. These evaluations did not occur, and the barebones Special Education Plan (“SEP”) that was created failed to account for his complex learning disabilities. This student failed to make academic progress while at Passages and once released dropped out of school entirely.

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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.

If you have any questions about this testimony, please feel free to contact me at aarkingallagher@bds.org.