



**Testimony of Girls for Gender Equity For the New York City Council
Committees on Education, Criminal Justice, and General Welfare
Oversight - Educational Programming in Jails and Juvenile Detention
April 21, 2021**

Thank you Chair Treyger, Chair Powers, Chair Levin, and the members and staff of the Council Committees on Education, Criminal Justice, and General Welfare for the opportunity to comment on access to education in the city's adult and youth jails.

Girls for Gender Equity (GGE) is an intergenerational advocacy and youth development organization that is committed to the physical, psychological, social, and economic development of girls and young women. GGE works to challenge structural forces, including racism, sexism, transphobia, homophobia, and economic inequality, which constrict the freedom, full expression, and rights of girls and gender-expansive youth of color.

Overview

We sincerely thank the Council for the leadership shown since March 2020 and the pressure directed at the administration to decarcerate during the pandemic. Short of discontinuing sending young people to jail, the City must ensure that youth obtain the education that they are entitled to under law.

In 2016, when Council convened an oversight hearing on this issue, the discussion of compromised access to education included the use of pepper spray in East River Academy classrooms with educators being supplied with gas masks, and speakers sharing stories of students becoming physically ill as a result of DOC staff releasing gas into classrooms.¹ We thank the Council for these continued efforts to bring desperately needed transparency to city jail conditions for young people and the proposed amendments to Introduction 1148-2016.

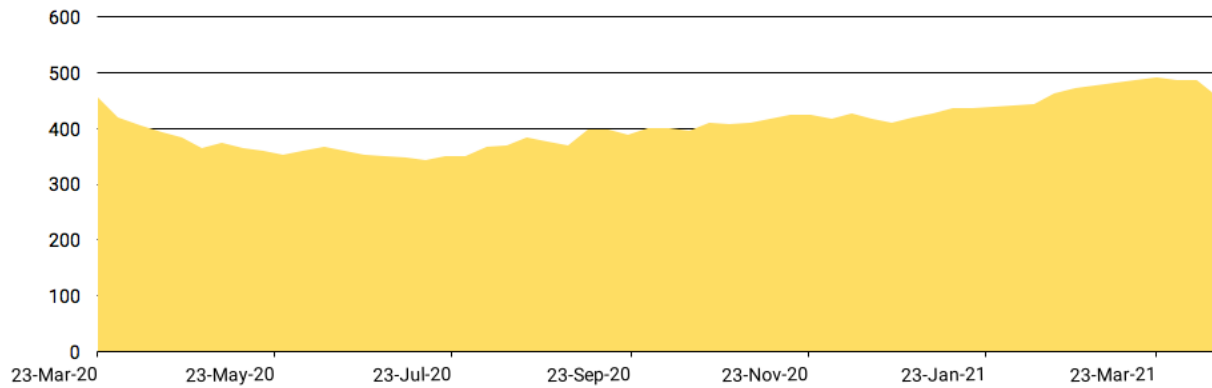
Weekly for the last year, GGE has been tracking the shifting population of young people incarcerated in the city's adult and youth jail systems, and as the below charts illustrate,² the total population of young people potentially eligible for educational services is also returning to

¹ See Hearing Transcript, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2864769&GUID=CDFD5A0E-E41D-4DFD-809E-3990064BE692&Options=&Search=>

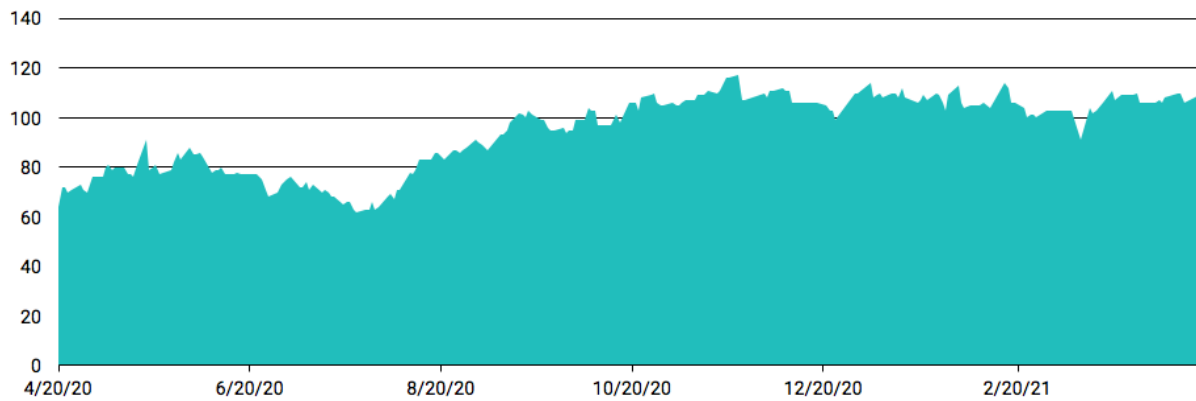
² "Daily Inmates in Custody." NYC OpenData. Analysis by GGE. See <https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb>; see also "Juvenile Detention Facilities - SD/SSD Census," NYS OCFS, <https://ocfs.ny.gov/programs/youth/detention/census.php>.

pre-pandemic levels, heightening the urgency to address issues of educational quality and access:

Young People ≤21 Incarcerated in DOC Facilities



Young People Incarcerated in Crossroads & Horizon



While young people in New York City who are 18 to 21 are not required to go to school, they have the right to go and work towards a high school diploma until the end of the year in which they turn 21. Further, the Department of Education (DOE) announced last Thursday that New York City students who are turning 21 this school year, and who would otherwise age out of the school system, will be allowed to stay for an additional year. We are now grappling with the impact of the pandemic on chronic absenteeism and awaiting enrollment numbers, attrition rate or the number of students who have left the system before graduation from the City and DOE.

We strongly encourage the Council to continue to hold the DOE accountable to supporting incarcerated young people particularly those newly disconnected from schooling due to the pandemic, economic crisis, and resulting pushout.

Introduction 1224-2018

We strongly support Introduction 1224-2018 and expanding the scope of Local Law 168-2017 (Introduction 1148-2016) to include ACS facilities and creating more transparency in the provision of education to young people in all of New York City's jails. Our experience has shown that timely information about conditions of confinement is necessary to inform public policy but is sorely lacking.

According to the 2019-2020 school year report pursuant to Local Law 168-2017, the Department of Correction (DOC) posted that 48 students – a jump from 17 students in the 2017-2018 school year – were prevented from attending educational programming due to “behavioral issues or assault.”³ **We ask that the proposed Intro. 1224 be clarified to describe the number of instances, similar to the ways the total number of classroom removals or suspensions are reported, so we are able to know the number of days, instances, and kinds of exclusions.** Seeing also in the 2019-2020 report that 53% of all “infractions” were categorized as “classroom disruptions” we call on Council to clarify the “Discipline Code’s” consequences per infraction category. The DOE’s Discipline Code, for example, offers a range of responses beginning with a student/teacher conversation, rather than the denial of educational services.⁴

We also ask that you include “cell study” meaning educational services provided in-cell, in a housing area or non-congregate setting, without the presence of a teacher. We encourage the Council to also incorporate into these transparency efforts specific attention to educational access in all jail facilities, inclusive of RMSC and the young people incarcerated there, as generalizations presented by DOC often neglect to identify disparities in access for young people incarcerated at Rosies. We have also heard that certain housing units are prevented from accessing educational programming, such as “commingled” units.

Considering all forms of exclusionary discipline would ensure that removals and suspensions, even if employed under a different name, are captured, as part of the totality of circumstances young people can be disciplined, for example the number of young people who did not attend educational programming at any time due to lack of escorts, or the number of educational hours canceled due to facility lockdowns or the use of gas in classrooms.

Finally, thinking of the Student Safety Act’s capturing of arrests in schools, we’d ask that this data also include the number of arrests made of students in East River and Passages Academies. As we’ve seen with the Student Safety Act, data transparency motivates reform.

³ Retrieved from https://www1.nyc.gov/assets/doc/downloads/pdf/Annual_2020_Education_Report.pdf.

⁴ See page 32, for example, <https://www.schools.nyc.gov/docs/default-source/default-document-library/discipline-code-grade-6-12-english>

Administration for Children's Services Facilities

In March of 2020, when pressed on efforts to reduce the population of incarcerated young people, the Mayor remarked, *"Obviously, the focus has been on addressing the issues around adults in our jail system, particularly those who are older or had preexisting conditions. That's where our focus has honestly been."*⁵ This early inattention to incarcerated young people was unacceptable. Attention to the health and safety of young people must include attention to the health and safety of incarcerated young people, and we continue to call for the City to shift away from youth incarceration as a response to social, economic, and educational inequities.

We are extremely concerned about conflicting reports of mask distribution, quality of and youth engagement in remote learning – including access to electronic devices and live educators in lieu of packets – access to phones and tablets, and family video conferencing. In light of sustained press attention,⁶ and as acknowledged in the Committee Report, ACS responded publicly to the concern that students in detention were unable to be seen or heard by their educators during class, relegated to a "text-messaging feature" during live instruction or phone after school hours, without a specific commitment to a timeline for the implementation of a voice communications system. ACS testified in May that they have not seen kids leaving as quickly during the pandemic as is typical, leading to a slowly increasing population. The Mayor's Preliminary Budget Management Report, released January 2021, now indicates that there was a 65% increase in length of stay from 23 to 38 days during the first four months of Fiscal Year 2021.⁷ **Again, according to our tracking, the population of young people in detention has jumped from 60s in April 2020 to over 110 in April 2021 – a jump of 76%.**

The Department of Education (DOE) is experiencing tremendous resource and staffing challenges due to the blended learning model underway citywide, in which case we encourage the Council to again advocate that the City pursue decarceration as a solution to compromised access to education.

Department of Correction Facilities

The December meeting of the Board of Correction (BOC) brought the public an update from DOC staff that, nine months into the pandemic and nine months after the first shift to remote learning, city jails had yet to set up virtual learning for incarcerated students. Instead, young people were being forced to rely on paper packets and a student/educator text function on tablets in lieu of in-person schooling.⁸

⁵ Transcript: Mayor de Blasio Holds Media Availability on COVID-19, March 26, 2020, Available at <https://www1.nyc.gov/office-of-the-mayor/news/193-20/transcript-mayor-de-blasio-holds-media-availability-covid-19>.

⁶ See Grench, E. (2020, December 11). NYC moves to take students off mute in juvenile lockups, but due date elusive. THE CITY. Retrieved from <https://ny.chalkbeat.org/2020/12/11/22169561/nyc-juvenile-detention-remote-learning-coronavirus>.

⁷ Preliminary Mayor's Management Report: Administration for Children's Services (January 2021). Retrieved from <https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/acs.pdf>.

⁸ 2020-12-16 NYC Board of Correction Public Meeting. At 01:14:50 <https://youtu.be/64UqYdouGOW?t=4487>.

With this information, we were left with further questions about the student/educator text function:

- Is instruction happening live?
- What are the response times?
- When, where, and how often is the function available?
- Given citywide educator shortages, is this a designated or assigned educator building a relationship over time? Is the educator with the East River Academy or a substitute or with the teacher reserve?

The Department of Education (DOE) is experiencing tremendous resource and staffing challenges due to the changing learning models underway citywide, in which case we again encourage the Council to advocate that the City pursue decarceration as a solution to compromised access to education.

Following the December meeting of the BOC, THE CITY, the independent newsroom, reported a statement from DOC that on-site staff will be provided once middle and high schools reopen for in-person instruction.⁹ At that time, it remained unclear whether the city would reopen middle and high schools for in-person learning any time soon. At the same time, Pre-K, 3-K, K through 5, and District 75 schools had been identified as needing accommodations and are open for in-person instruction. Knowing that, we questioned the justification for linking or tying together these desperately needed educational supports to the citywide timeline for middle and high schools. With February 25 and March 22 marking the reopening of middle and high schools respectively, we look forward to DOC's update.

We'll also note that the Mayor's own explanation of his reasoning for the delay is specific to different factors, such as scaling up testing capacity:

"The amount of testing is a crucial piece of the equation. So, since we're moving to weekly testing, that's going to take a lot of capacity. We wanted to make sure we can do that consistently and well, and that's why it's important to go by phases. Also, again, the need levels for District 75, for younger kids, the need is even more intense to be there in school, and we know that the health realities for the youngest kids have been the most favorable. So, all of those reasons are why we're doing it. Now we look forward to the day when we can move to middle and high school, but we're just not able to do that yet."¹⁰

We ask that the Council seek the explicit reasoning for delaying access to live instruction or video capability. DOC staff stated that the DOE has "been working to try to set up video classrooms,"¹¹ and deferred questions to the DOE, to which we encourage the Council to proactively verify. Specifically, how is the DOE measuring efficacy, academic engagement and achievement during this time of packet work? What metrics can be publicly reported? Further,

⁹ Rosa Goldensohn. "Students on Rikers Island Locked Out of Remote Learning Video Chat With Teachers." Retrieved from <https://www.thecity.nyc/education/2020/12/16/22179869/students-on-rikers-island-locked-out-of-remote-learning-video>.

¹⁰ Transcript: Mayor de Blasio Holds Media Availability November 29, 2020. Available at <https://www1.nyc.gov/office-of-the-mayor/news/818-20/transcript-mayor-de-blasio-holds-media-availability>.

¹¹ 2020-12-16 NYC Board of Correction Public Meeting. At 01:14:50 <https://youtu.be/64UqYdouGOW?t=4487>.

we are concerned with what this might mean for students with individualized education plans (IEPs). Students with IEPs have the right to special education services that are similar to what is on their IEPs when they attend school at East River Academy. We encourage the Council to inquire about educational accommodations under these circumstances.

The Restrictive Housing Rulemaking

Many factors contribute to compromised access to education, including DOC's maintenance of policies and practices which impede access to educational programming, such as the continued use of restraint desks. Today also marks the deadline for public comment as part of the BOC's rulemaking to create solitary by another name – "RMAS" or the "Risk Management Accountability System."

The rule states that "DOC plans to expand the structurally restrictive housing units at North Infirmity Command (NIC)" as the design for RMAS "Level 1" – with NIC known already for brutal conditions – and describes the Secure unit at GRVC for RMAS "Level 2." Though we await the DOC's "renderings," photos obtained via FOIL shared by a speaker during the April 14th public hearing showed cages inside other cages, with a thin corridor parallel to the cages.

The rule outlines that "DOC shall also [e]nsure that young adults are offered and are able to access three hours of educational services per day." Without any definitions or further protections, "educational services" can mean a worksheet to be completed while isolated in a cell. As has been the case, programming could simply involve program staff briefly speaking with a person at a cell door. Because of the nature of isolation, people will have to rely on DOC staff for everything. Further, the rule mandates an undefined level of participation in programming in order to progress through restrictive levels, combined with DOC making the determination around compliance, that determination is being set up to be used to prevent a person from progressing out of that unit.

In January of 2015 the BOC revised the minimum standards with the reasoning that a new housing cohort for 18-21 year-olds would ultimately provide for "age-appropriate" programming and services,¹² explicitly including a revision that "provides that housing for [young adults] must provide age-appropriate programming, and requires the Department to report on its efforts to develop such programming."¹³ The new rule makes no mention of how programming will be facilitated between Levels 1 and 2. Based on the photographs, it is our understanding that people will be confined to the cell and cage and program staff will only access the slim corridor.

¹² New York City Board of Correction. (2015, January). Open Meeting. Available at [http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20\(1.13.15\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20(1.13.15).pdf).

¹³ New York City Board of Correction. (2015, January). Notice of Adoption of Rules. Available at http://www1.nyc.gov/assets/boc/downloads/pdf/boc_rules_governing_correctional_facilities_fr.pdf.

No matter the final form the restrictive housing rulemaking takes, we encourage the Council to take into account the changing landscape and diversity of restrictive settings and how these developments could limit access to education or participation in educational services.

Budget Implications

The Council has another reason to reduce confinement of young people and provide better support for those who remain in their communities: the tremendous cost of incarceration. The most recent Mayor's Management Report (MMR) specifies the average daily cost per youth per day in ACS detention at \$2,064 – up from \$1,651 in the prior fiscal year reported (amounting to a 25% growth). At that price, **we estimate that the total cost of incarcerating girls in secure detention during the pandemic has reached nearly two million dollars per year, per young person.**

Similarly, a recent report from the Office of Comptroller estimates the average annual cost of DOC incarcerating one person to reach \$447,337.¹⁴ At that price, **we estimate that the total cost of incarcerating young women in adult jails during the pandemic has reached over thirteen million dollars.**

As girls of color are persistently disproportionately represented in the population of incarcerated young women as compared to their representation in New York City, **the City is disproportionately placing young girls of color at risk by neglecting to expedite their release from the city's jail systems.**

Conclusion

Incarceration even under pre-pandemic operations all but ensured serious health and safety risks to young people, who experience administrative and physical violence and immediate and long-term health impacts of confinement. There remains significant work to be done.

We thank the Council for their oversight and attention to these issues, and for the opportunity to testify. For more information, please contact: Charlotte Pope, Director of Policy, at cpoppe@ggenyc.org.

¹⁴ See https://comptroller.nyc.gov/wp-content/uploads/documents/Watch_List_DOC_FY2022.pdf.