



**Testimony for the New York City Council  
Committee on Education  
Committee on Fire and Criminal Justice Services  
Committee on Juvenile Justice**

**Oversight: Educational Services for New York City's Detained, Placed, and Incarcerated  
Youth, Adolescents, and Young Adults**

**November 30, 2016**

Good Afternoon. My name is Charlotte Pope and I am the Youth Justice Policy Associate with the Children's Defense Fund - New York (CDF-NY). Thank you to Chair Dromm, Chair Crowley, Chair Cabrera, and the members and staff of the City Council Committee on Education, Committee on Fire and Criminal Justice Services, and Committee on Juvenile Justice for this opportunity to comment.

The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. CDF-New York's unique approach to improving conditions for children combines research, public education, policy development, community organizing and statewide advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood and juvenile justice.

**Overview**

One of many recommendations issued in the Phase II report of the Mayor's Leadership Team on School Climate and Discipline, of which CDF-NY is a part, urged the city to "Enhance educational services for youth in incarceratory settings." According to that report, in school year 2015, attendance rates for students returning to school from Rikers decreased 13.5 percentage points (from 48.6 percent to 35.1 percent).<sup>1</sup> We are committed to ensuring youth in all settings are receiving barrier-free access to education, and we support the many recommendations of the Mayor's Leadership Team that are needed to strengthen access and quality:

- Improve educational information sharing and transition planning, and, more specifically, establish mechanisms and procedures, with oversight, to ensure that relevant student records are transmitted from sending schools to the education programs in incarceratory settings, and back to receiving schools;
- Expand intensive, research-based remedial reading and math instruction and resources for students with extreme delays, and train all ACS, provider agency and DOE staff who work with students in detention, placement and jail in Collaborative Problem Solving;
- Facilitate appropriate school transfers for court-involved youth; and
- Create and expand appropriate education options for court-involved youth, as well as providing systemic supports to schools accepting students from incarceratory settings at various points throughout the school year.

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<sup>1</sup> Mayor's Leadership Team on School Climate and Discipline, "Maintaining the Momentum: A Plan for Safety and Fairness in Schools," *City of New York*, 2016, [http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT\\_Report\\_7-21-16.pdf](http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf).

Through increased transparency, solution-oriented collaboration and the targeted provision of supports to schools, we can and must improve outcomes for students. In today's testimony we address Introduction 1148, requiring the DOC to issue a "Rikers Island Education Report," and share our concerns with what we understand to be barriers to accessing education for adolescents and young adults on Rikers Island.

Over the past year, CDF-NY has vigilantly monitored the rollout of the Department of Correction's (DOC's) Young Adult Plan, a management strategy coordinated alongside the elimination of punitive segregation for young adults. We appreciate the significance of the end of punitive segregation for adolescents and young adults and we continue to push for alternatives to restrictive housing units and urge the DOC to limit and monitor the use of currently existing restrictive housing. At present, CDF-NY is concerned about the continuing use of restrictive housing for adolescents and young adults on Rikers Island and we have previously submitted testimony regarding this before the City Council. No matter the form the final Young Adult plan 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.

### ***Int 1148-2016***

CDF-NY supports Int 1148 and we applaud this effort to bring transparency to educational programming for adolescents and young adults on Rikers Island. Improving public reporting gives the city an important and much needed tool to measure the ongoing progress in schools serving detained youth. East River Academy serves students in multiple locations on Rikers Island and, as we will elaborate, some of these classrooms are located within restrictive housing units or otherwise outside of the main school. For this reason we encourage Int 1148 to disaggregate data by location and bring light to the relationship between restrictive housing and the many context-specific educational indicators to be collected, such as use of force and teacher-student ratios.

Int 1148 has the potential to fully consider all forms of exclusionary discipline including what the Department of Education's (DOE's) Student Code of Conduct would title a classroom removal, suspension, and expulsion, in addition to DOC removals in response to DOC infractions as stipulated in the Inmate Rule Book. According to the Student Safety Act data reported by the Department of Education (DOE), there were zero classroom removals and suspensions issued at East River Academy in the 2015-2016 school year. We can compare this reporting with the DOC's most recent three-month adolescent security indicators report where, while not disaggregated by incident location, there were 432 fight infractions written against adolescents in RNDC, who have an average daily population of 190 people.<sup>2</sup> 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 adolescents can be disciplined.

Beyond the number of departmental infractions issued during educational programming, we recommend the inclusion of reporting on the number of students removed from the classroom during educational programming, as well as a metric of adolescent attendance, for whom education is compulsory. Regular attendance is essential to providing students with opportunities to learn, and these opportunities are lost when students do not attend school. Access to accurate, timely data about whether adolescents regularly attend school is critical to making instructional choices and guiding the design of interventions intended to improve attendance and student achievement. With this data we could better explore barriers to attendance and the conditions under which adolescents are denied, removed from, or not brought to school. Again using the Student Safety Act as a reporting standard, the Act requires the NYPD to report on summons, arrest and violation activity by department personnel disaggregated by school building and we find it imperative to also know the number of arrests made of students in East River Academy. It is our understanding that the frequency of re-arrests while incarcerated is a growing concern among the adolescent and young adult population, and as we have seen with the impact of the Student Safety Act in schools not in incarceratory settings, data transparency motivates reform.

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<sup>2</sup> New York City Department of Correction, "4<sup>th</sup> Quarter FY2016 Adolescent Reporting Bill With Population," *Author*, Accessed November 2016, [http://www1.nyc.gov/assets/doc/downloads/pdf/4th\\_QTR\\_FY2016\\_ADOLESCENT.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/4th_QTR_FY2016_ADOLESCENT.pdf).

Without adequate reporting about what happens in our schools, the city's ability to create effective policy and offer protections to students is weakened. If there is no mechanism to accurately monitor education access at Rikers, there can be no meaningful collaboration or oversight. Access to data is a first step, and we encourage the Council to respond to data that indicates infringements on students' access to education, and reform the policies that influence them.

### **Education in Restrictive Settings**

Board of Correction (BOC) Minimum Standards require, as of January 1, 2016, the exclusion of inmates ages 18 through 21 from punitive segregation. That deadline was delayed on multiple occasions for the purpose of implementing the newly created Young Adult Plan. The original Young Adult Plan, first shared publically in January 2016, called for "progressively more restrictive alternative housing unit pilots and complete elimination of punitive segregation for young adults" with three levels of alternative housing: Transitional Restorative Units (TRU), Second Chance Units (SCHU), and Secure Units.<sup>3</sup>

During the March 2016 public meeting of the BOC, the Board shared with the public that young adults housed in SCHU were not attending school. The response from DOC was that "it's voluntary" and "none have agreed to go to school."<sup>4</sup> In June 2016 DOC began to pilot the "Secure Unit," one of the most restrictive of the DOC's "tiered-response young adult housing structure" with a common area composed of floor-to-ceiling cages. As of the November 15, 2016 meeting of the Board of Correction, there were nine young adults housed in the Secure Unit, with six in school, and only two with "consistent attendance."<sup>5</sup> Because these restrictive housing units hold young adults pending factors like "consistent satisfactory behavior,"<sup>6</sup> it is imperative that DOC ensure people are provided barrier-free access to educational services that allow them to exhibit whatever criteria of behavior grants passage to the least restrictive environment.

In October of 2016 the Board of Correction approved the use of Enhanced Supervision Housing (ESH) for the 19-21 year old population as well as the opening of a designated 18-21 year old ESH. As of the November Board of Correction public hearing, only two of eight young adults in the Young Adult ESH and only three of seven young adults in the comingled ESH had chosen to go to school, and it was shared as evidence of the unit's success that the latter three had "not previously engaged in services."<sup>7</sup> CDF-NY calls for barrier-free access to education and continuous opportunity for educational reengagement as the varying degrees of participation by settings highlights the need to continually offer and explore obstacles or participation disincentives to better meet the needs of young adults. In the new Young Adult ESH, there are eight young adults, with two attending school. After much advocacy to encourage school participation, young adults in ESH are given two additional hours of out-of-cell time to attend school, in a unit with seven hours of out of cell time (where the Minimum Standards guarantee fourteen hours out-of-cell for those not housed in Board-approved restrictive housing units).<sup>8</sup> There is much work to be done, as this age group is entitled under state law to a high school education if they have not already completed it. We encourage the Council to exercise oversight to ensure that placement in alternatives to punitive segregation does not affect the schooling of those who are still completing their high school education.

The Board of Correction found last month that the West Facility was in violation of multiple minimum standards that regulate conditions of confinement. Many advocates have insisted that West, a contagious disease isolation unit, is operating as an illegal isolated confinement unit. West facility is highly restrictive,

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<sup>3</sup> New York City Department of Correction, "NYC Department of Correction – Young Adult Plan Update 2016," *Author*, January 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/NYC%20Department%20of%20Correction%20-%20Young%20Adult%20Plan%20Update%202016.pdf>.

<sup>4</sup> New York City Board of Correction, "Meeting 3 8 16 HD," YouTube video, 01:42:52, Posted [2016, March 11], <https://youtu.be/XSM53rNG928?t=1300>.

<sup>5</sup> New York City Board of Correction, "2016 11 15 NYC Board of Correction Meeting," YouTube video, 02:34:50, Posted [2016, November 17], <https://youtu.be/QgebeB7rl-U?t=7067>.

<sup>6</sup> New York City Department of Correction, "Six (6) month limited variance," *Author*, April 27, 2016, <http://www1.nyc.gov/assets/boc/downloads/pdf/Limited%20Variance%20Request%20-%20Establishment%20of%20Secure%20Unit%20for%20Young%20Adults%204.27.16.pdf>.

<sup>7</sup> New York City Board of Correction, "2016 11 15 NYC Board of Correction Meeting," YouTube video, 02:34:50, Posted [2016, November 17], <https://youtu.be/QgebeB7rl-U?t=6953>.

<sup>8</sup> New York City Board of Correction, "2016 11 15 NYC Board of Correction Meeting," YouTube video, 02:34:50, Posted [2016, November 17], <https://youtu.be/QgebeB7rl-U?t=7035>.

lacks procedural due process, and, as reported in the Second Report of the *Nunez* Monitor has the highest rate of use of force incidents in the city jails.<sup>9</sup>

It was shared during the October 11, 2016 public meeting of the BOC that there were, at that time, three young adults housed in the West Facility (as well as three young adults housed in NIC),<sup>10</sup> including an 18 year old who “can’t get school,”<sup>11</sup> and the October 15, 2016 Young Adult Census lists two young adults in the West Facility.<sup>12</sup> As of the October elimination of punitive segregation for 19-21 year olds, any substantial limitation on lockout must explicitly exclude all people between the ages of 16 and 21. Further, any placement of high school eligible youth must not affect the education of any of those who are still completing their education. We appreciate the Council’s attention to this area of concern and we hope the Council will continue this essential oversight.

### **Chemical Agents**

The most recent monitoring period of the *Nunez* settlement committed attention to the “excessive and/or unnecessary use of chemical agents.” The monitor noted the “high frequency of unnecessary uses of chemical agents” and made a number of recommendations including adoption of a method to track the amount of spray used in a given incident.<sup>13</sup> In June 2015 it came to the attention of the BOC that there had been an increased use of chemical agents in the main school and that “it’s having a detrimental effect and impact on the inmates, the teachers, the staff and the classes.”<sup>14</sup> It was shared by the DOC that the use of chemical agents would cause the whole classroom to be evacuated.<sup>15</sup>

Explanations for the increased use included the Chancellor’s request to extend school hours from 3 to 5.5 hours on a daily basis, and adolescents were “not accustomed to being in the classrooms this long”<sup>16</sup> – as “once they are in class they are there all day.”

“This year we went to extended school hours at the request of the Chancellor and one of the things that we found was by introducing all of the children on the school floor at one time it did present a challenge because the kids were running out of the classes, engaging in fights on the school floor because now they see more kids that they wouldn’t normally see when we had the separation with the two school periods. So basically what’s happening is again we had more incidents. As a result of that we were utilizing chemical incidents at a greater rate. The teachers did express concern because they wanted to know was there any long term affects to the chemical agents which was being used... There are no long-term effects to the use of chemical agents.”<sup>17</sup>

It is our understanding that as a solution the DOC began “piloting” a chemical agent gel, a more “individualized” chemical agent.<sup>18</sup> As the Mayor’s Leadership Team report notes, youth in incarceratory settings are, on average, several years behind in their reading and math levels, which greatly hinders their self-confidence as learners, and contributes to disruptive behavior in school out of frustration.<sup>19</sup> CDF-NY remains concerned by the increase in the use of chemical agents in school – whether gas or gel – as this practice compromises the rights of students to an education and is contrary to fostering a positive learning environment. We ask that the DOC be invited to report on guidelines for the use of chemical agents, along with a demonstration that other reasonable efforts to resolve the situation have failed whenever chemical agents are utilized. We were surprised to hear that the DOC assured teachers that

<sup>9</sup> The *Nunez* Monitoring Team, “Second Report of the *Nunez* Independent Monitor,” *Author*, October 31, 2016, <https://www.exiger.com/sites/default/files/Second%20Report%20of%20the%20Nunez%20Independent%20Monitor%20-10-31-16%20-%20Filed%20with%20Appendix.pdf>

<sup>10</sup> NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” YouTube video, 3:29:35, Posted [2016, October 13], <https://youtu.be/k0rAO4dQc30?t=10441>.

<sup>11</sup> NYC Board of Correction, “2016.10.11 NYC Board of Correction Meeting,” YouTube video, 3:29:35, Posted [2016, October 13], <https://youtu.be/k0rAO4dQc30?t=11158>.

<sup>12</sup> NYC Department of Correction, “Young Adult Census (Facility/Housing Unit) – October 15, 2016,” *Author*, November 2016, [http://www1.nyc.gov/assets/boc/downloads/pdf/young\\_adult\\_census\\_by\\_facilityhousing\\_unit\\_10.15.2016.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/young_adult_census_by_facilityhousing_unit_10.15.2016.pdf).

<sup>13</sup> “Second Report of the *Nunez* Independent Monitor”

<sup>14</sup> NYC Board of Correction, “2016.06.14 NYC Board of Correction Meeting,” YouTube video, 2:49:08, Posted [2016, June 16], <https://youtu.be/flq4Tlvr2cM?t=7971>.

<sup>15</sup> “2016.06.14 NYC Board of Correction Meeting,” <https://youtu.be/flq4Tlvr2cM?t=8392>.

<sup>16</sup> “2016.06.14 NYC Board of Correction Meeting,” <https://youtu.be/flq4Tlvr2cM?t=8013>.

<sup>17</sup> “2016.06.14 NYC Board of Correction Meeting,” <https://youtu.be/flq4Tlvr2cM?t=8013>.

<sup>18</sup> “2016.06.14 NYC Board of Correction Meeting,” <https://youtu.be/flq4Tlvr2cM?t=8056>.

<sup>19</sup> “Maintaining the Momentum”

there are no long term effects from the use of chemical agents and we welcome evidence of this claim, particularly in regard to prolonged exposure by adolescents. It is our hope that Int 1148, in combination with Council oversight, will enable all East River Academy locations to become safer and more welcoming learning environments for the students and staff alike.

***Conclusion***

CDF-NY looks forward to working with the DOE, DOC, and the Council to ensure that all students can access a meaningful education. We ask that city efforts to reform school climate in New York City schools and increase school climate supports system-wide include school-level data collection and supports for students in court-ordered settings. It is important to comply with the rights youth have to access a sound education – regardless of their legal status – and to recognize the essential role of education and the impact of positive school experience on student outcomes. Thank you for the opportunity to speak about this significant issue and thank you for your support in these efforts.