



# Advocates for Children of New York

Protecting every child's right to learn

**Testimony to be delivered to the New York City Council  
Committee on Education, Committee on General Welfare,  
and Committee on Criminal Justice**

**RE: Oversight: Educational Programming in Detention Facilities and  
Int. No. 542-2022 Requiring DOE, ACS and DOC to report on educational  
programming for students in court-ordered settings.**

**October 13, 2023**

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My name is Elisabeth Bernard, and I am a Staff Attorney for the School Justice Project at Advocates for Children of New York. For over 50 years, Advocates for Children has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. We speak out for students whose needs are often overlooked, such as students with disabilities, students from immigrant families, students who are homeless, students with mental health needs, court-involved youth, and students in foster care. As an attorney on the School Justice Project, I represent court-involved youth as they navigate the significant challenge of receiving educational services and special education services both while they are in placement and as they are transitioning out of placement.

In recent years, we have seen an effort to improve the educational services that youth receive while in juvenile detention and placement. Despite these efforts, a high number of youth within these facilities and youth reentering communities continue to face barriers to receiving an education due to a lack of school stability for youth in the juvenile legal system, the poor quality of education programs offered at many juvenile facilities, and a lack of infrastructure and supports in the juvenile and education systems to ensure youth successfully re-enter schools in the community.

We see these issues every day in our work with young people. Recently, we assisted youth with and without Individualized Education Programs (IEPs) being held at Crossroads Juvenile Center, disengaged from school for weeks and often months at a time due to a lack of staff and COVID-19 related incidents. As a result, these students are left without IEP-mandated services and other specialized services they are entitled to receive. For example, in April 2023, a student housed at Crossroads was out of school for more than three weeks due to being exposed to COVID-19. Although he did not have COVID, he did not receive any of his instruction or IEP-mandated services during this time; nor was he allowed to leave his unit for any academic-



related activities. As a result, he shared that he no longer saw a point in going to school while in detention; this isolation not only leads to a lack of school engagement while in detention but can also result in a lack of interest in reenrolling once students reenter their communities.

It is clear that young people in both juvenile placement and detention are in desperate need of targeted academic support and services that help meet their individualized needs. More than half of youth in juvenile detention have been classified with disabilities, so it is critical they receive appropriate academic, special education, and mental health services. However, instead we often see students who are not provided with access to education or IEP-mandated services while they are in detention or placement.

We have also seen youth forced to engage in course work that they already completed while in their schools before entering detention, causing youth to reenter their communities as over-aged and under-credited students. Even if students are engaged in education services, those services are not tailored to meet their academic needs. For example, a student we worked with housed at Crossroads would have been considered a rising eleventh grader in his original school. However, while at Crossroads, he was forced to take subjects which he had already completed during his ninth-grade year. Upon reentry, he was behind and did not meet the credit criteria to be placed in his appropriate grade. He lost nearly a year of schooling due to the inappropriate educational services while in detention.

Further, many youth who re-enter their communities from detention are left with no school placement, which causes further delays in their academic progress and delays in receiving IEP-mandated services. This year, we worked with a parent whose son served 10 months at Crossroads. When he was released in August 2023, he was not given a school placement letter or provided with any assistance to ensure a smooth academic transition. This was despite the fact that engagement in school was a condition of his release. Instead, he was connected to AFC in September through a partnering Alternative to Incarceration (ATI) program that was struggling to find him a school placement after he was released. We were able to quickly assist once we learned about this situation, but the student missed weeks of school in the meantime. His mother later shared that he had not had an IEP meeting in over a year, did not take grade-appropriate classes, and received no IEP-mandated services during his 10 months at Crossroads. This is a systemic issue that needs attention as numerous families experience similar challenges.

Int. 542's requirement that agencies report on educational programming will help address the lack of data reporting focused on this population, allow for public access to this information, and create an avenue to assess what changes need to be made to improve educational programming and services in these facilities. Given the continued systemic issues outlined above, AFC strongly supports Int. 542 to ensure transparency, monitoring, and accountability of children and youth in court-ordered settings. We, along with other advocates in this field, have a number of suggested recommendations to make the bill stronger and to allow for the data to be better utilized for systemic change. We are attaching our recommendations to our written testimony. Thank you for the opportunity to testify. I would be happy to answer any questions you may have.

Int. No. 542

By Council Members Narcisse, Hanks, Williams, Cabán, Abreu, Louis, Ung, Gutiérrez, Restler, Won and Sanchez

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of education, the administration for children’s services and the department of correction to report on educational programming for juvenile delinquents, juvenile offenders and adolescent offenders

Be it enacted by the Council as follows:

1           Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is  
2 amended by adding a new section 21-922 to read as follows:

3           § 21-922 Education report for juvenile delinquents, juvenile offenders and adolescent  
4 offenders. a. Definitions. For the purposes of this section, the following terms have the following  
5 meanings:

6           ACS division. The term “ACS division” means the ACS division of youth and family  
7 justice.

8           Adolescent offender. The term “adolescent offender” means any individual who is charged  
9 pursuant to the criminal procedure law as an adolescent offender, as such term is defined in  
10 subdivision 44 of section 1.20 of the criminal procedure law, and who is in custody.

11           Assault. The term “assault” means any action taken with intent to cause physical injury to  
12 another person.

13           Children and youth in ACS division facilities. The term “children and youth in ACS  
14 division facilities” shall include all children between the ages of 13 and 22 who are in custody  
15 pursuant to a court order on a juvenile delinquency, juvenile offender, or adolescent offender  
16 matter and that is run by or overseen by the ACS division.

17

1 Compulsory educational programming. The term “compulsory educational programming”  
2 means educational programming required pursuant to part 1 of article 65 of title 4 of the education  
3 law.

4 Custody. The term “custody” means the holding of an individual by the ACS division or  
5 the department of correction through detainment, placement or sentencing.

6 Department of education site. The term “department of education site” means any site (i)  
7 that is operated by the department of education that offers educational programming to individuals  
8 who are entitled to receive a public education pursuant to NY Educ. Law 3202 and New York City  
9 Chancellor's Regulation A-101(I)(C)(5) ~~aged 21 years or younger~~ who are in custody pursuant to  
10 a court order on a juvenile delinquency, juvenile offender or adolescent offender matter and (ii)  
11 that is located on property that is either under the control of the department of education ~~or, ACS~~  
12 ~~or the department of correction~~ or that is subcontracted by the department of education ~~or, ACS or~~  
13 ~~the department of correction.~~

14 Department of education staff. The term “department of education staff” means any  
15 employee of the department of education assigned to work at a department of education site.

16 Detainment. The term “detainment” means the remand of a juvenile delinquent in the  
17 custody of the ACS division, the remand or holding on bail of a juvenile offender in the custody  
18 of the ACS division or the remand or holding on bail of an adolescent offender in the custody of  
19 the ACS division ~~or the department of correction.~~

20 Educational programming. The term “educational programming” means any educational  
21 services that the department of education offers to juvenile delinquents, juvenile offenders and  
22 adolescent offenders in custody.

1 High school equivalency diploma test. The term “high school equivalency diplomacy test”  
2 means any test that the New York state education department offers for the purpose of establishing  
3 the equivalent of a high school diploma, including but not limited to a general education  
4 development test or the test assessing secondary completion.

5 Individualized education program. The term “individualized education program” has the  
6 same meaning as is set forth in paragraph (1) of subsection (d) of section 1414 of title 20 of the  
7 United States code and any regulations promulgated thereto.

8 Juvenile delinquent. The term “juvenile delinquent” means any individual in the custody  
9 of the ACS division who is charged pursuant to the family court act as a juvenile delinquent, as  
10 such term is defined in subdivision 1 of section 301.2 of the family court act.

11 Juvenile offender. The term “juvenile offender” means any individual in the custody of the  
12 ACS division who is charged pursuant to the criminal procedure law as a juvenile offender, as  
13 such term is defined in subdivision 42 of section 1.20 of the criminal procedure law.

14 Placement. The term “placement” means the court ordering of any juvenile delinquent to a  
15 placement pursuant to section 353.3 of the family court act.

16 Sentencing. The term “sentencing” means the conviction of any adolescent offender  
17 resulting in a period of incarceration not greater than one year, pursuant to section 70.20 of the  
18 penal law.

19 b. The department of education and ~~ACS~~ ~~and the department of correction~~ shall each  
20 produce an annual report on educational programming for ~~children and youth under the age of 22~~  
21 ~~charged with being~~ juvenile delinquents, juvenile offenders and adolescent offenders ~~in ACS~~  
22 ~~division or department of correction facilities~~ who have been detained, placed or sentenced ~~in ACS~~  
23 ~~division facilities~~. No later than 90 days after the final day of the 202318-202419 school year and

1 no later than 90 days after each subsequent school year, the department of education and, ACS and  
2 ~~the department of correction~~ shall post the reports on their respective websites and provide links  
3 in each such report to the reports of the other two agencies.

4 c. The department of education report shall include, but need not be limited to, the  
5 following information, provided that no information shall be reported in a manner that would  
6 violate any applicable provision of federal, state or local law relating to the privacy of information  
7 respecting ~~juvenile delinquents, juvenile offenders or adolescent offenders~~ children and youth  
8 placed in ACS division facilities or that would interfere with law enforcement investigations or  
9 otherwise conflict with the interests of law enforcement. If a category contains between 1 and 5  
10 ~~such delinquents or offenders~~ such children and youth, or allows another category to be narrowed  
11 to between 1 and 5 such ~~delinquents or offenders~~ children and youth, the number shall be replaced  
12 with a symbol. A category that contains zero shall be reported as zero, unless such reporting would  
13 violate any applicable provision of federal, state or local law relating to the privacy of student  
14 information. The report shall include data about children and youth placed in ACS division  
15 facilities ~~juvenile delinquents, juvenile offenders and adolescent offenders~~, in total and  
16 disaggregated by category.

17 1. The number and percentage of ~~juvenile delinquents, juvenile offenders and adolescent~~  
18 ~~offenders~~ children and youth enrolled in educational programming at department of education  
19 sites, both in total and disaggregated by age. Such number and percentage shall be reported for the  
20 entire school year and for each month. Such percentage shall be calculated on the final day of each  
21 month by dividing the number of ~~juvenile delinquents, juvenile offenders and adolescent~~  
22 ~~offenders~~ children and youth -enrolled in educational programming by the respective number of

1 ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children and youth in custody on  
2 such date.

3 2. The number of hours of compulsory educational programming offered to ~~juvenile~~  
4 ~~delinquents, juvenile offenders and adolescent offenders~~ children and youth in ACS division  
5 facilities on each school day and the curriculum subject areas included in educational  
6 programming.

7 3. The number of children and youth in ACS division facilities whose educational  
8 programming is designed to meet elementary school program requirements.

9 4. The number of children and youth in ACS division facilities whose educational  
10 programming is designed to meet middle school program requirements.

11 5. The number of ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children  
12 and youth in ACS division facilities whose educational programming is designed for the Skills and  
13 Achievement Commencement Credential, the number of children and youth in ACS division  
14 facilities whose educational programming is designed for a local or Regents diploma, and the  
15 number of children and youth in ACS division facilities ~~juvenile delinquents, juvenile offenders~~  
16 ~~and adolescent offenders~~ whose educational programming is designed for a high school  
17 equivalency diploma test.

18 46. The number of children and youth in ACS division facilities ~~juvenile delinquents,~~  
19 ~~juvenile offenders and adolescent offenders~~ who completed elementary school program  
20 requirements for matriculation to middle school while in custody.

21 57. The number of children and youth in ACS division facilities ~~juvenile delinquents,~~  
22 ~~juvenile offenders and adolescent offenders~~ who completed middle school program requirements  
23 for matriculation to high school while in custody.

1 68. The number of children and youth in ACS division facilities ~~juvenile delinquents,~~  
2 ~~juvenile offenders and adolescent offenders~~ who graduated or exited from high school while in  
3 custody, in total and disaggregated by the number of children and youth who received a Skills and  
4 Achievement Commencement Credential, a Local Diploma, or a Regents Diploma..

5 79. The number of children and youth in ACS division facilities ~~juvenile delinquents,~~  
6 ~~juvenile offenders and adolescent offenders~~ to whom a high school equivalency diploma test was  
7 administered while in custody.

8 810. The number of children and youth in ACS division facilities ~~juvenile delinquents,~~  
9 ~~juvenile offenders and adolescent offenders~~ who passed a high school equivalency diploma test  
10 while in custody.

11 11. The number of youth in ACS division facilities who are enrolled in college level  
12 coursework.

13 9142. The average functional level of children and youth in ACS division facilities~~juvenile~~  
14 ~~delinquents, juvenile offenders and adolescent offenders~~ on tests such as the STAR assessment,  
15 the test of basic adult education or similar testing. The average functional level may be calculated  
16 by adding the percentage results achieved by ~~juvenile delinquents, juvenile offenders and~~  
17 ~~adolescent offenders~~ children and youth in ACS division facilities on the last such test administered  
18 each school year and dividing this sum by the respective number of children and youth in ACS  
19 division facilities ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ to whom such  
20 last test was administered. This data about children and youth in ACS division facilities~~juvenile~~  
21 ~~delinquents, juvenile offenders and adolescent offenders~~ shall be disaggregated by category and  
22 not reported in total.



1 10132. The number and percentage of children and youth in ACS division facilities;juvenile  
2 delinquents, juvenile offenders and adolescent offenders who are enrolled in educational  
3 programming and have individualized education programs. Such number and percentage shall be  
4 reported for the full school year as well as for each month. Such percentage shall be calculated by  
5 dividing the number of children and youth juvenile delinquents, juvenile offenders and adolescent  
6 offenders so enrolled on the final day of each month by the respective number of juvenile  
7 delinquents, juvenile offenders and adolescent offenderschildren and youth in custody on such  
8 date.

9 14. The number of children and youth in ACS division facilities who, as of the date of  
10 enrollment in educational programming, had an individualized education program  
11 recommendation of:

- 12 (i) related services only;
- 13 (ii) special education teacher support services;
- 14 (iii) integrated co-teaching services;
- 15 (iv) special class in a community school;
- 16 (v) special class in a specialized school; or
- 17 (vi) non-public school placement.

18 1415. The number and percentage of children and youth who have Special Education  
19 Plans (SEPs) created for them within 30 days of enrolling in educational programming.

20 165. The number and percentage of children and youth juvenile delinquents, juvenile  
21 offenders and adolescent offenders who have individualized education programs and are receiving  
22 the classroom placement indicated in their individualized education programs. full range of special  
23 education services indicated in their individualized education programs. This information shall be

1 further disaggregated by whether such children and youth ~~juvenile delinquents, juvenile offenders~~  
2 ~~and adolescent offenders~~ have been detained, placed or sentenced.

3 1517. The number and percentage of children and youth who have individualized education  
4 programs and are receiving the related services indicated in their individualized education  
5 programs. This information shall be further disaggregated by each related service, and whether  
6 such children and youth have been detained, placed or sentenced.

7 1618. The number and percentage of children and youth who have individualized  
8 education programs and have received special education evaluations, while in custody. This  
9 information shall be further disaggregated by the type of evaluation (initial evaluation, mandated  
10 triennial reevaluation or related service evaluation), and whether such children and youth have  
11 been detained, placed or sentenced.

12 121964. The number and percentage of ~~juvenile delinquents, juvenile offenders and~~  
13 ~~adolescent offenders~~ students enrolled in educational programming whom the department of  
14 education identifies as having an English language learner status. Such number and percentage  
15 shall be reported for the full school year as well as for each month. Such percentage shall be  
16 calculated by dividing the number of ~~juvenile delinquents, juvenile offenders and adolescent~~  
17 ~~offenders~~ children and youth so enrolled on the final day of each month by the respective number  
18 of ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children and youth in custody  
19 on such date.

20 1520. The number and percentage of children and youth in ACS division facilities enrolled  
21 in educational programming who are identified as having an English language learner status who are  
22 receiving language services, in total and disaggregated by the type of instruction (whether services

1 by a certified English as a New Language teacher, bilingual education, bilingual special education  
2 programs, or language specific high school equivalency test preparation).

3 13216. The number of full-time equivalent teachers working at department of education  
4 sites, in total and disaggregated by general education teachers ~~and, English as a new language~~  
5 teachers, and special education teachers assigned to teach ~~juvenile delinquents, juvenile offenders~~  
6 ~~and adolescent offenders~~ children and youth in ACS division facilities.

7 142276. The number of department of education staff other than teachers assigned to work  
8 at department of education sites, in total and disaggregated by staff role and by those working with  
9 ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children and youth in ACS  
10 division facilities.

11 15823. The average class size for educational programming that the department of  
12 education provides to ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children  
13 and youth in ACS division facilities. This information shall be further disaggregated by facility  
14 location.

15 16924. The number of ~~juvenile delinquents, juvenile offenders and adolescent~~  
16 ~~offenders~~ children and youth in ACS division facilities participating in department of education  
17 vocational training, the nature of such training, including whether it constitutes career and  
18 technical education, and the number of ~~juvenile delinquents, juvenile offenders and adolescent~~  
19 ~~offenders~~ children and youth who complete such training.

20 1719205. The average and median number of credits per semester that ~~juvenile delinquents,~~  
21 ~~juvenile offenders and adolescent offenders~~ children and youth in ACS division facilities who are  
22 enrolled in high school educational programming accumulate while in custody. This paragraph

1 only applies to those ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children and  
2 youth who are in custody for a sufficient period during the reporting period to have earned credits.

3 182610. The number of ~~juvenile delinquents, juvenile offenders and adolescent~~  
4 ~~offenders~~ children and youth in ACS division facilities enrolled in physical education.

5 19272. The average and median rate of attendance in a department of education school for  
6 ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children and youth in ACS  
7 ~~division~~ facilities while in custody, upon six months after their release from custody and upon one  
8 year post-release, both overall and disaggregated by student age.

9 202382. The plans, if any, of the department of education to ensure the educational progress  
10 of ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ students who are released  
11 from custody.

12 d. The ACS ~~and department of correction~~ reports shall include, but need not be limited to,  
13 the following information, provided that no information shall be reported in a manner that would  
14 violate any applicable provision of federal, state or local law relating to the privacy of information  
15 respecting ~~juvenile delinquents, juvenile offenders or adolescent offenders~~ children and youth in  
16 ACS division facilities or that would interfere with law enforcement investigations or otherwise  
17 conflict with the interests of law enforcement. If a category contains between 1 and 5 such  
18 ~~delinquents or offenders~~ children or youth, or allows another category to be narrowed to between  
19 1 and 5 such delinquents or offenders, the number shall be replaced with a symbol. A category that  
20 contains zero shall be reported as zero, unless such reporting would violate any applicable  
21 provision of federal, state or local law relating to the privacy of student information. The reports  
22 shall provide data about ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children  
23 and youth in ACS division facilities, in total and disaggregated by category.

1           1. The number of ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children  
2 and youth in ACS division facilities that ACS ~~or the department of correction~~ prevented from  
3 attending educational programming, in total and disaggregated by reason the student was  
4 prevented from attending programing (including, but not limited to, days a student was prevented  
5 from attending school due to a behavioral issue of the student, staff shortages, quarantines, or other  
6 issues.)

7           2. The number of incidents of use of physical restraints at a department of education site,  
8 in total and disaggregated by whether such physical restraints were used on a juvenile delinquent,  
9 juvenile offender or adolescent offender.

10           3. The number of incidents of use of mechanical restraints at a department of education  
11 site, in total and disaggregated by whether such mechanical restraints were used on a juvenile  
12 delinquent, juvenile offender or adolescent offender.

13           4. The number of incidents of use of chemical restraints, including pepper spray and other  
14 chemical agents, at a department of education site, in total and disaggregated by whether such  
15 chemical restraints were used on a juvenile delinquent, juvenile offender or adolescent offender.

16           5. The number of ~~juvenile delinquents, juvenile offenders and adolescent offenders~~ children  
17 and youth in ACS division facilities who participate in educational programming while placed in  
18 mechanical restraints, including but not limited to restraint desks or shackles, and the number of  
19 days each such juvenile delinquent, juvenile offender or adolescent offender is so restrained.

20           6. The number of incidents resulting in injuries to children and youth in custody at a  
21 department of education site.

22  
23           § 2. This local law takes effect immediately.

Session 12

IP

LS #8465

5/23/22 3:12pm

Session 11

JJ

LS #5993

Int. #1224-2018