

August 20, 2020

Chancellor Lewis Ferebee
District of Columbia Public Schools
1200 First Street NE, 10th floor
Washington, DC 20002
By email: lewis.ferebee@dc.gov

State Superintendent Hanseul Kang
Office of the State Superintendent of Education
1050 First Street NE
Washington, DC 20002
By email: Hanseul.kang@dc.gov

Re: Denial of Educational Services to the District's Detained Young People

Dear Chancellor Ferebee and Superintendent Kang:

D.C. students with disabilities detained in the District's correctional facilities are being denied the education to which they are entitled under the Individuals with Disabilities in Education Act (IDEA) and Section 504 of the Rehabilitation Act. Since the beginning of the COVID-19 pandemic, District of Columbia Public Schools (DCPS) has failed to provide students with disabilities at the Youth Services Center (YSC) and in the Inspiring Youth Program (IYP)¹ special education or related services. We recognize the challenges faced by school districts across the nation confronted with COVID-19. However, it is necessary that District students in facilities receive their critically needed special education services to safeguard their social and intellectual development, to satisfy the District's legal obligations, and to ensure that they can make academic progress. We write to demand that the District take immediate measures to ensure that detained students will receive the special education and related services to which they are entitled in the 2020-2021 school year beginning on August 31, 2020.

For the last six months, students at YSC and IYP only received generic, hard-copy work packets distributed and collected by correctional staff. The worksheets within these work packets were not differentiated according to individual students' needs. These packets were often distributed and collected inconsistently, with some students complaining of not receiving new packets for many weeks. Students have not had access – virtual or otherwise – to teaching professionals since March. Students were required to submit their completed worksheets on a regular basis, but did not receive any feedback on these assignments. Students with disabilities did not receive appropriate specialized instruction or related services as mandated by their individualized education programs

¹ IYP serves students detained in the Central Detention Facility and the Correctional Treatment Facility.

(IEPs). Also, four students who graduated from IYP were denied an opportunity to participate in their virtual graduation ceremony. This troubling narrative depicts a complete cessation of special educational services to perhaps the most vulnerable student population that DCPS serves.

As you well know, pursuant to the IDEA, students with disabilities, including those detained in juvenile and adult correctional facilities, are entitled to receive a free appropriate public education (FAPE). *See* 20 U.S.C. §1414(d)(7) (youth in adult jail are entitled to receive FAPE with some modifications). FAPE is an educational program, individualized to a specific child, that meets the child’s unique needs, meets grade-level standards, and provides an educational benefit. *Id.* at §1401(9). A key component of the provision of FAPE is that students receive an education that conforms to their IEPs. 20 U.S.C. §1414(d). Each student’s IEP specifies the unique services and instruction that the student requires to “advance appropriately towards attaining the annual goals . . . make progress in the general educational curriculum . . . [and] . . . be educated and participate with other children with disabilities and nondisabled children[.]” *Id.* at §1414(d)(1)(A)(i)(IV). The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017) (rejecting the Tenth Circuit’s establishment of a rule that an IEP is adequate as long as it is calculated to confer an “educational benefit [that is] merely . . . more than *de minimis*,” and stating that the standard is “more demanding”).

The federal government² and the District’s Office of the State Superintendent of Education³ (OSSE) have been clear: local education agencies like DCPS are obligated to provide students with disabilities with FAPE at all times, including when the schools are operating virtually due to COVID-19. OSSE explicitly provides that:

An LEA continues to have the obligation to provide FAPE to a student with a disability during extended closures resulting in distance or blended-learning models arising from a local or national emergency. LEAs should continue to provide, to the greatest extent possible, the special education and related services identified in students’ individualized education programs (IEPs) and any needed modifications or alternatives to make the curriculum and services accessible to students with disabilities.[⁴]

² U.S. Department of Education. *Questions and Answers of Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 2020), available at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

³ Office of the State Superintendent of Education. *IDEA, Part B Provision of FAPE: Guidance Related to Remote and Blended Learning* (July 21, 2020), available at https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/COVID-19%20-%20Guidance%20Related%20to%20Distance%20and%20Blended%20Learning%207.20.20.pdf.

⁴ *Id.*

In March 2020, DCPS transitioned to a virtual learning model. At that time, students enrolled in DCPS schools in the community began receiving their education through virtual communication with their teachers and feedback on work packets that were either downloaded or distributed by each school. DCPS also provided computers and internet connectivity to some students in the community in order for them to access their education. Unfortunately, detained students did not receive equitable educational services. As described above, students at YSC and IYP were given one size fits all generic work packets distributed and collected by correctional staff. We understand that some of the students detained at YSC were unable to complete these worksheets without the specialized instruction required by their IEPs and therefore received “incompletes” in many of their classes. We also understand that while there were attempts made to provide these students with laptops to complete their work, the technology did not function correctly and, despite requests from advocates, DCPS has not fixed these technological issues such that students at YSC can access their education virtually. Students at IYP have not yet been provided with any technology. Detained youth need and deserve better educational services than what has been provided to them during this COVID-19 pandemic and they are entitled to more under federal law.

Students in special education are entitled to specialized instruction, related services, and accommodations in order to access education and receive FAPE. 20 U.S.C. §1414(d)(1)(A)(i)(IV). However, the detained students did not receive appropriately differentiated work packets nor any accommodations to allow them to meaningfully access their education. The detained students did not interact, virtually, telephonically, or in person, with educational staff, therapists, or other trained professionals to assist them in accessing their education. In short, DCPS failed to provide students at YSC and IYP with the most basic components of specialized instruction and related services required under the law.

As described above, under DCPS’ virtual learning program, students with disabilities at YSC and IYP began receiving a drastically different educational program than the one proscribed by their IEPs. Since March, DCPS staff has failed to implement students’ IEPs, which require a wide variety of specialized instruction from qualified teachers, related services such as speech-language therapy, occupational therapy, behavioral therapy, and transition services.

Moreover, we understand that DCPS staff has not complied with procedural safeguards required under federal and District law that exist to protect students from having their educational programs changed. *See* 20 U.S.C. §1415; D.C. Code §38-2571.03. For example, DCPS staff has not convened IEP team meetings to propose changes to the IEP or placement, 20 U.S.C. §1414(d)(4), or provided students’ guardians with prior written notice about these changes, 20 U.S.C. §1415(b)(3). And, despite OSSE guidance,⁵ DCPS staff has not created adequate distance learning plans,

⁵ *Id.*, p. 4 (“As appropriate, IEP teams should consider including distance learning plans in a student’s IEP that could be triggered and implemented during an extended school closure arising from a local or national emergency. Creating such a contingency plan before an extended student absence or school dismissal gives

contingency learning plans, or otherwise addressed the unique needs of students with disabilities who are detained during this pandemic.⁶

The COVID-19 pandemic has exposed a broken education program that fails to provide for the individual needs of detained students. Prior to the pandemic, many detained youth at YSC and IYP were not given the full measure of services they needed and were entitled to under the law. And, since the pandemic began, students in these facilities continue to be left behind. COVID-19 has put in tragic relief these longstanding inequities at YSC and IYP. As of today, these youth are simply being warehoused by DCPS without meaningful attempts to provide FAPE.

Advocates in the District have been raising the alarm about the deprivation of education to detained students since March 2020. School Justice Project and the Public Defender Service for the District of Columbia repeatedly raised these concerns in email and telephone communications with YSC and IYP staff, DCPS Central Office staff, and Office of the General Counsel staff. In May, Disability Rights DC sent a letter to DCPS, OSSE, and Department of Youth Rehabilitation Services (“DYRS”) about the lack of instruction at YSC. Yet no improvements have been made to the educational programming offered to YSC and IYP students.

DCPS students who are detained are entitled to more from DCPS. The failure of DCPS to account for the needs of this highly vulnerable population of students will cause them irreparable harm. A high-quality education has the potential to be life-changing for individuals involved in the juvenile and criminal legal system, and providing appropriate education services can ground young people in their community and prevent further marginalization. DCPS and OSSE, in conjunction with DYRS and the Department of Corrections (DOC), must take immediate steps to ensure that YSC and IYP students receive FAPE by the first day of school, August 31, 2020, and that students receive compensatory education for the past failures of DCPS to provide FAPE.⁷

We request that, by August 25, 2020, DCPS produce a written comprehensive plan to provide FAPE to its detained students. This plan must include a description of the policies and practices by which the necessary individually-tailored addendums will be added to each detained student’s IEP. For the 2020-2021 school year, DCPS must provide a virtual or in-person learning experience that include daily instruction from qualified teachers and opportunities for students to interact with and receive

the student’s service providers and the student’s parents an opportunity to reach agreement as to what circumstances would trigger the use of the student’s remote learning plan and the services that would be provided during the dismissal.”).

⁶ Even if DCPS staff had complied with the procedural safeguards and implemented revised IEPs, the educational program that YSC and IYP offers falls drastically below what is needed to provide FAPE. And, any “IEP revisions should be based on student-specific needs, not services available through an LEA’s distance or blended learning program.” *Id.*, p. 8.

⁷ *Id.*, p. 8 (“The inability to provide services required by a student’s IEP, including limitations due to an LEA’s distance or blended learning program, should be addressed through discussions related to compensatory education upon return to school.”).

individualized instruction and feedback from their teachers. Students in special education must receive instruction and accommodations tailored to their IEPs. Students entitled to receive related services must have a regular schedule of those services, and an opportunity to engage with their providers in a confidential space. To the extent DCPS is providing any of these opportunities virtually, students at YSC and IYP must also be provided with the devices and technology required to engage. In addition, we request that DCPS commit to a process by which compensatory education will be determined for those detained students who did not receive FAPE from March to July 2020.

If DCPS and OSSE do not promptly meet the educational needs of detained students, we intend to prepare litigation to enforce the rights of these vulnerable students. If you would like to discuss the issues raised in this letter, please contact Kaitlin Banner, Deputy Legal Director, Washington Lawyers' Committee for Civil Rights and Urban Affairs, at kaitlin_banner@washlaw.org or 202-319-1000 ext. 117. We look forward to your response.

Sincerely,

Washington Lawyers' Committee for Civil Rights and Urban Affairs
Terris, Pravlik & Millian, LLP
School Justice Project
Georgetown Juvenile Justice Initiative
Advocates for Justice and Education, Inc.

CC: Mayor Muriel Bowser, Mayor of the District of Columbia
Karl Racine, Attorney General for the District of Columbia
Paul Kihn, Deputy Mayor for Education for the District of Columbia
Clinton Lacey, Director, Department of Youth Rehabilitation Services
Quincy Booth, Director, Department of Corrections
Chairman Phil Mendelson, Council of the District of Columbia
Councilmember David Grosso, Chair, Education Committee, Council of the
District of Columbia
LaShunda Hill, Executive Director, Students in the Care of D.C.