



September 28, 2021

U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg.  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Re: Complaint on behalf of students housed at District of Columbia Department of Youth Rehabilitation Services' Youth Services Center

To Office of Civil Rights:

Disability Rights DC<sup>1</sup> at University Legal Services brings this complaint against the District of Columbia Public Schools,<sup>2</sup> the District of Columbia Department of Youth Rehabilitation Services,<sup>3</sup> and the District of Columbia Office of the State Superintendent of Education<sup>4</sup> for their collective and ongoing discrimination against students with disabilities housed

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<sup>1</sup> Disability Rights DC is the designated protection and advocacy agency for individuals with disabilities in the District of Columbia. Disability Rights DC represents the rights of people with disabilities, including children with mental health and developmental disabilities. Under federal law, Disability Rights DC is responsible for the “monitoring compliance with respect to the rights and safety of individuals with . . . disabilities[.]” 45 C.F.R. § 1326.27(c)(2)(ii) (PADD); 42 C.F.R. § 51.42(c)(2) (PAIMI). This monitoring authority allows Disability Rights DC unaccompanied access to residents of facilities that provide mental health treatment, including minors. 42 C.F.R. § 51.42(c) (PAIMI); 45 C.F.R. § 1326.27(c). Through this authority, Disability Rights DC has discussed education at Youth Services Center with several young people who are housed there. The factual allegations in this complaint are drawn primarily from these young people’s experiences.

<sup>2</sup> DC Public Schools is a public school district and the Local Educational Agency (LEA) for Youth Services Center. Exhibit N at 2; *see generally* Exhibit B. DC Public Schools receives federal funds under the IDEA and must therefore comply with the requirements of the IDEA and Section 504 of the Rehabilitation Act. 20 U.S.C. § 1412(a); 34 C.F.R. § 300.2.

<sup>3</sup> The Department of Youth Rehabilitation Services is the juvenile justice agency for the District of Columbia. Exhibit B at 3. The Department runs the Youth Services Center, the District of Columbia’s detention center for young people who have been placed in secure detention by court order from the DC Superior Court Family Court Division. *Youth Services Center*, DEP’T OF YOUTH REHABILITATION SERVICES, <https://dyrs.dc.gov/service/youth-services-center>, (last visited Sept. 27, 2021). The Department also runs the New Beginnings Youth Development Center, a secure residential facility for system-involved youth. *New Beginnings Youth Development Center*, DEP’T OF YOUTH REHABILITATION SERVICES, <https://dyrs.dc.gov/service/new-beginnings-youth-development-center> (last visited Sept. 27, 2021).

<sup>4</sup> As the District’s State Education Agency (SEA), D.C. CODE §38-2601(d), the Office of the State Superintendent of Education receives federal funds under the IDEA and must therefore comply with the requirements of the IDEA and Section 504 of the Rehabilitation Act. 20 U.S.C. § 1412(a); 34 C.F.R. § 300.2. Under the IDEA, the Office of the State Superintendent of Education is responsible for ensuring that FAPE is made available to all eligible District residents with disabilities and that all programs administered by District agencies meet District educational standards. See 20 U.S.C. § 1412(a)(11). As defined by the IDEA, the duty to provide FAPE means the provision of

at the Youth Services Center.<sup>5</sup> Since March 2020, these students have been repeatedly denied the free and appropriate public education (FAPE) promised them by both the Individuals with Disabilities Education Act (“IDEA”) and Section 504 of the Rehabilitation Plan of 1973 (“Section 504”). On behalf of these students and their families, we request that the Office for Civil Rights (OCR) take immediate action to remedy this wrong.<sup>6</sup>

## I. Facts

### a. Summer 2020 Advocacy and Ensuing Lawsuit

In March of 2020, the Department of Youth Rehabilitation Services responded to the COVID-19 health crisis by instituting a lock-down at the District of Columbia’s youth detention center, Youth Services Center. Exhibit D at 1. According to information received from youth at the facility, their family members, and other advocates who regularly met with the youth, the students stopped receiving education from special education teachers or related service providers. *See id.*; Exhibit C at 2. Instead of the synchronous<sup>7</sup> virtual learning offered to students living in the community, students at Youth Services Center received only paper work packets for the first several months of the lock-downs. Exhibit C at 2; Exhibit D at 1. Students were isolated in their rooms during this period, and they received work packets through the doors of their individual rooms.<sup>8</sup> Even when a student’s Individualized Education Plan specifically stated that the young person needed synchronous redirection and coaching in order to access education, the only schooling received came through these asynchronous packets. *See generally* Exhibit A. Students were expected to complete the packets without the guidance of an educator, special education teacher, or a related services provider. Exhibit C at 2; Exhibit D at 1. The packets were collected from the students and replaced with new packets as infrequently as once every two weeks. Exhibit

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“special education and related services” that, in relevant part, “are provided in conformity with the individualized education program required[.]” 20 U.S.C. § 1401(9)(D). If the SEA determines that the LEA “is unable to establish and maintain programs of free appropriate public education that meet the requirements of [the IDEA],” then the Office of the State Superintendent of Education, as the SEA, must provide “special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible.” 20 U.S.C. § 1413(g)(1)(B).

<sup>5</sup> *See supra* note 3.

<sup>6</sup> As detailed in a separate complaint submitted concurrently with this letter to OCR, Disability Rights DC filed a complaint with the Office of the State Superintendent of Education’s State Complaint Office, describing this provision of packets and detailing how the practice violated both the IDEA and Section 504 of the Rehabilitation Act. *See* Exhibit A at 2-5. The State Complaint Office made no findings against DC Public Schools or the Office of the State Superintendent of Education for compensatory education, holding the LEA provided education to the “greatest extent possible” due to the circumstances of COVID-19. Exhibit N at 3. The State Complaint Office also held the SEA’s inaction was sufficient. *See generally* Exhibit P. The only remedy the Office of the State Superintendent for Education provided was against the Department of Youth Rehabilitation Services for 300 minutes of missed behavioral support services. Exhibit O at 4. Because of this stunning inaction, Disability Rights DC brings this complaint directly to OCR.

<sup>7</sup> For the purposes of this complaint, “synchronous” instruction means the student has live access to an educator or related service provider. Synchronous instruction enables the student and the educator to interact during the learning process, allowing for real-time conversation and educational interventions. Asynchronous instruction requires the student to self-guide, self-pace, and self-teach inert material without the benefit of an educator present. The work packets EH received at Youth Services Center and in quarantine at New Beginnings were asynchronous.

<sup>8</sup> This statement is based upon the reports of children’s advocates who work with the students housed at Youth Services Center.

D at 1. After students submitted their packets, the packets were often not returned to them; students had no opportunity to review their past work or learn their areas of strength or weakness. *Id.* at 1, 5. Functionally, these young people received no instruction at all.

In May 2020, Disability Rights DC wrote a letter to the Department of Youth Rehabilitation Services, DC Public Schools, and the District’s Office of the State Superintendent of Education detailing these practices and explaining how they violated the IDEA and Section 504. *See* Exhibit C. None of the agencies responded. Exhibit A at 4. The letter explained that while students at Youth Services Center were not receiving synchronous education at Youth Services Center, their peers in the community were. Exhibit C at 4. When the COVID-19 school closures began, DC Public Schools initially sent a notice to all students and families that it would provide self-guided work packets for all grade levels, Exhibit E, but shortly thereafter, the District announced its Empowered Learners Initiative, which purported to deliver “more than 16,400 technology devices to students across all eight wards,” Exhibit F at 1. An April 29 email from Dr. Lewis Ferebee, the DC Public Schools Chancellor, stated that the District would “distribut[e] thousands of technology devices and mobile hotspots to students in need of a computer or reliable internet at home.” Exhibit G at 1. As early as Spring 2020, DC Public Schools had found ways to provide consistent synchronous learning to students living in the community. For students living at Youth Services Center, those same solutions never materialized.

In August 2020, a group of advocates wrote a similar letter to the DC Public Schools Chancellor and the District’s State Superintendent of Education demanding the agencies discontinue use of the undifferentiated work packets and instead “take immediate measures to ensure that detained students . . . receive the special education and related services to which they are entitled.” Exhibit D at 1. When DC Public Schools and the Office of the State Superintendent of Education did not respond, the advocates filed a class action lawsuit on behalf of students detained at the District’s Department of Corrections.<sup>9</sup> *See* Exhibit H. In June 2021, a district court judge granted a preliminary injunction against the District of Columbia, DC Public Schools, and the Office of the State Superintendent of the Education. *See* Exhibit I. The court held that the defendants had not followed the IDEA “to the greatest extent possible” because they failed to plan for and implement synchronous virtual or in-person learning plans for the students with special education needs housed at the Department of Corrections, relying instead on asynchronous work packets. *Id.* at 7.

#### *b. March 2021 State Complaint and Response*

In March 2021, Disability Rights DC filed a complaint with the Office of the State Superintendent of Education’s Division of Special Education – State Complaint Office on behalf of a sixteen-year-old who lost critical educational opportunities while housed at Youth Services Center during the COVID-19 lock-downs. *See* Exhibit A. The student’s IEPs state that he needs

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<sup>9</sup> The *Charles H.* case is limited to students incarcerated at the Department of Corrections, whereas this complaint concerns students housed at Youth Services Center. However, the two sets of facts are nearly identical. In both facilities, students received asynchronous work packets instead of FAPE. For both Youth Services Center and the Department of Corrections, DC Public Schools is the LEA and the Office of the State Superintendent for Education is the SEA. *See* Exhibit N at 2; *see generally* Exhibit B. In both facilities, students with disabilities have missed critical opportunities to access their education due to the agencies’ actions.

synchronous education and related services to access his education, but he was denied these needs during the several months he was detained at Youth Services Center in 2020. *Id.* The complaint detailed how Disability Rights DC had brought the packet issue to the attention of both DC Public Schools and the Office of the State Superintendent of Education. *Id.* at 3-4. The complaint also cited this student’s reports that he received no instruction beyond these paper work packets during the Spring of 2020. *Id.* at 2-3. He explained that students were expected to complete these work-packets without the benefit of any type of instruction or feedback. *Id.* Once the 2020-2021 school year began at Youth Services Center in Fall 2020, the student again said that he was only getting paper packets for school. *Id.* at 4. He commented that students had synchronous education through virtual instruction in the last week of September for a few days, but then they were given paper packets again the following week due to what they were told were technical issues with the laptops. *Id.* Whereas his access to synchronous education at Youth Services Center was nonexistent during the Spring semester, his access to synchronous school at Youth Services Center in the Fall was at best sporadic. The complaint described how, as the local education agency (LEA) responsible for providing FAPE to students who attend Youth Services Center, DC Public Schools is responsible for providing FAPE under D.C. and federal law. *Id.* at 1, 7-8. It further depicted how the Office of the State Superintendent of Education’s dereliction of its duty as the state education agency (SEA) through its failure to ensure DC Public Schools complied with federal law. *Id.* at 7-8.

DC Public Schools conceded in response letters to the complaint that “[b]etween April 2020 and August 2020, teachers and related service providers did not have direct access to students and students did not have access to laptops[, and w]hile [the student] was placed at Youth Services Center, specialized instruction was administered through student work packets.” Exhibit A at 4. DC Public Schools claimed that these work packets sufficed to provide “specialized education” because “[g]eneral education teachers and special education teachers co-planned and provided consultation to ensure that the student work packets were modified . . .”<sup>10</sup> *Id.* This education strategy was fundamentally inadequate. As Disability Rights DC countered in its reply, even if these packets were differentiated, they could not provide the student with the “verbal redirection and reinforcement, modeling and coaching” he needed to access his education. Exhibit A at 5.

Confronted with these clear denials of FAPE, the Office of the State Superintendent for Education’s State Complaint Office declined to act. Instead, the Complaint Office found that DC Public Schools “provided specialized instruction . . . to the greatest extent possible within the restrictions placed on students at Youth Services Center during the COVID-19 pandemic.” Exhibit N at 3. The Complaint Office acknowledged that students “did not have direct access . . . [to] in-person instruction, . . . nor did students have access to technology to receive virtual instruction,” and “DC Public Schools provided instruction through student learning packets.” *Id.* The State Complaint Office conceded that these packets were used in Fall 2020 as well, due to the fact that DC Public Schools’ provision of virtual, synchronous instruction “was not consistent.” *Id.* However, the Complaint Office determined that these packets were sufficient to supply FAPE

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<sup>10</sup> Reports from both this student and other similarly situated students at Youth Services Center do not align with this finding. As is discussed in this complaint, none of the young people we met at Youth Services Center described differentiated packets. These students stated that these packets are not only undifferentiated for students’ special education needs, but they are also undifferentiated as to *grade level*. They explained that students in ninth grade receive the same packets as students in twelfth grade, and they rarely benefit from the presence of a teacher or tutor to help them with their work. They said that they receive neither feedback nor grades on their work. Several students stated that they do not feel they have received education since COVID-19 began.

based on its finding that they contained personalized notes, highlighted or bolded instructions, and teachers' contact information.<sup>11</sup> *Id.*

The State Complaint Office also found that Office of the State Superintendent of Education “fulfilled its obligation to monitor DC Public Schools/Youth Services Center and Department of Youth Rehabilitation Services/New Beginnings” and sufficiently enforced the requirements of the IDEA simply by attending cross-agency work groups where the educational issues were discussed. Exhibit P at 5. The State Complaint Office acknowledged that the Office of the State Superintendent of Education did not step in to enforce the IDEA, despite Disability Rights DC and multiple other advocacy organizations demanded that the SEA act. *Id.* But the State Complaint Office found that the Office of the State Superintendent of Education did enough in its role as SEA when it “defer[red] to DC Public Schools and Department of Youth Rehabilitation Services on the issues raised [by advocates],” choosing to allow DC Public Schools and Department of Youth Rehabilitation Services to “continue their problem-solving efforts . . . before Office of the State Superintendent of Education needed to provide direct oversight.” *Id.*

*c. September 2021 Monitoring and Ongoing FAPE Denial*

Two staff members from Disability Rights DC returned to Youth Services Center on September 15, 2021, to perform outreach to students and monitor the facility's treatment of students with disabilities. During that visit, Disability Rights DC gave presentations to three groups of young people ranging in number from three to six students. When we spoke with students individually after the presentations, one student shared that he is still receiving paper packets without the benefit of synchronous education or related services.<sup>12</sup> This student has been housed at the Youth Services Center since October of 2019, so he has experienced the entire period of education at Youth Services Center during the COVID-10 lock-downs. The student confirmed that he had received exclusively paper packets during the Spring semester of 2020. He also corroborated Disability Rights DC's client's testimony that Fall 2020 brought more packets and only sporadic access to synchronous virtual learning through laptops. This student went on to explain that the problems he and other students experienced in Fall 2020 have continued to the present day. Since the beginning of the 2020-2021 school year, he only had access to laptops occasionally—less than half of the days in each week. When he and the other students do receive laptops for synchronous education, they only have the laptops for 1-2 hours, and then the devices are taken away again. During those short periods of time with the laptops, no teachers or aides are physically present to help the students.

Based on the statements of the detained students, throughout the copious amount of time when they do not have the laptops, they are “just getting straight packets.” The sole distinction between these packets is that each one is marked with the name of the student who will receive it, but they are otherwise undifferentiated in any way. The packets are not only indistinguishable from student to student regardless of his or her special education needs, but they are also undifferentiated as to *grade level*. Multiple students confirmed that they are receiving identical packets, regardless of whether they are in ninth, tenth, eleventh, or twelfth grade. Teachers and tutors are rarely present

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<sup>11</sup> Again, reports from students bely this finding. *See supra* note 10.

<sup>12</sup> This statement and the ones following are drawn from reports of young people Disability Rights DC met during our monitoring visit to Youth Services Center on September 15, 2021.

in the classrooms when the students work on these packets, and when the educators are present, “they don’t teach.” In a five-day week, students estimate teachers are typically present two of the days and absent the other days. Most of the time, there is only one tutor present to assist six students with their packets, and multiple students confirmed that they do not receive individualized help from the tutors. Disability Rights DC has also confirmed that none of the staff from DC Public Schools at the Youth Services Center are certified to teach special education.

Finally, the detained youth complained that while the students have been told that they are receiving grades at the end of each week, they are not told what grades they have earned, and they are given no opportunity to review their graded work. Once they submit their packets, they never see them again. They are receiving no feedback on their work, and they lack even the opportunity to see which of their answers were right or wrong. One student told Disability Rights DC staff, “I want to get my work back. I want to know what I got right or wrong.”

Multiple students corroborated these stories of the educational offerings at Youth Services Center since the beginning of the pandemic. All of them expressed frustration. At the end of one such conversation, a student shared, “I feel like I’m not getting enough schooling.”

## II. Discrimination on the Basis of Disability<sup>13</sup>

### *a. DC Public Schools’ failures*

DC Public Schools’ treatment of its students housed at Youth Services Center constitutes discrimination under Section 504 of the Rehabilitation Act. Pursuant to Section 504 of the Rehabilitation Act, a recipient of federal funds that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified person with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. 29 U.S.C. § 794. Further, an “appropriate education” is one that is (i) designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without a disability are met and (ii) satisfy the procedural requirements of Section 504. 34 C.F.R. § 104.33(a)(b). Section 504 provisions regarding educational settings state that if a “recipient . . . operates a facility that is identifiable as being for persons [with disabilities], the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.” 34 C.F.R. § 104.34(c).

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<sup>13</sup> This complaint describes the failures of DC government entities to provide FAPE to students housed at the Youth Services Center. In June 2021, a D.C. district court granted a preliminary injunction against the District of Columbia, DC Public Schools, and the Office of the State Superintendent of the Education for their same treatment of similarly situated students housed at the District’s Department of Corrections. *See Charles H. v. D.C.*, No. 1:21-CV-00997 (CJN), 2021 WL 2046127, at \*1 (D.D.C. June 16, 2021) attached as Exhibit I. The court held that the defendants had not followed the IDEA “to the greatest extent possible” because they failed to plan for and implement synchronous virtual or in-person learning plans for the students with special education needs housed at the Department of Corrections, relying instead on asynchronous work packets. *Id.* at 7. For both Youth Services Center and the Department of Corrections, DC Public Schools has been providing the educational services in the role of the LEA and the Office of the State Superintendent for Education is the SEA. In both facilities, students with disabilities have missed critical opportunities to access their education due to the agencies’ actions and have been denied FAPE.

The students housed at Youth Services Center did not lose their right to FAPE when they were detained. In 2016, the Department of Education partnered with the Department of Justice to issue guidelines which explicitly acknowledge the need to provide a high quality education to this youth population.<sup>14</sup> These “guiding principles” acknowledge that “there are disproportionately more students with disabilities in the adjudicated youth population,” and therefore, there is a heightened need for facilities to develop education plans for each student under IDEA and Section 504, to provide individualized services to students with disabilities in compliance with the IDEA, and to ensure the provision of FAPE to students with disabilities under IDEA or Section 504.<sup>15</sup> The guidelines state that despite “their location in a facility, secure care classrooms should not be considered lesser learning environments where outdated materials and busy work are the norm. Instead, instructional tools and approaches employed by teachers in juvenile justice settings should be aligned closely with instructional practices in today’s community schools, including differentiated instruction . . . and the use of technology-enhanced learning with appropriate teacher and staff support.”<sup>16</sup> They stress the importance of “integrating technology-enhanced learning in the secure care classroom” as “critical to achieving positive outcomes for youths in these settings.” While “security concerns have been identified as potential barriers to high-quality education that includes Internet-based coursework and supplemental materials, many facilities have identified strategies to implement technology-enhanced learning while maintaining a secure learning environment.”<sup>17</sup>

Moreover, the public health emergency caused by the COVID-19 pandemic did not relieve the District’s LEAs and SEA of their responsibility to provide students at Youth Services Center the special education and related services they need to receive a FAPE.<sup>18</sup> Nor did it release these

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<sup>14</sup> U.S. Dep’t of Educ. and U.S. Dep’t of Just., *Guiding Principles for Providing High Quality Education in Juvenile Justice Secure Care Settings*, dated Dec. 2014, <https://www2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf>.

<sup>15</sup> *Id.* at 17.

<sup>16</sup> *Id.* at 17.

<sup>17</sup> *Id.* at 17-18.

<sup>18</sup> In March 2020, the U.S. Department of Education issued guidance to States, including the District, on providing services to students with disabilities during the COVID-19 pandemic: “SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504))” Exhibit J at 2. In September 2020, the Department of Education reiterated this point: “no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities. If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA . . . all children with disabilities must continue to receive FAPE and must have ‘the chance to meet challenging objectives.’” Exhibit K at 2-3 (citing *Andrew F. v Douglas County School District Re-1*, 137 S. Ct. 988, 1000 (2017)). The Office of the State Superintendent of Education has also acknowledged this ongoing responsibility. In July 2020, the Office of the State Superintendent of Education issued guidance to all LEAs in the District concerning the provision of FAPE for students with disabilities during the COVID-19 pandemic. “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. LEAs should continue to consider the availability of remote learning materials through multiple modalities[.]” Exhibit L at 4.

agencies from their obligation to provide the compensatory education they owe these students for their loss of FAPE while under the agencies' care.<sup>19</sup>

Under Section 504, LEAs that provide educational opportunities to the general student population during a school closure must also ensure that students with disabilities have equal access to the same opportunities, including the provision of FAPE through technology and other means.<sup>20</sup> For DC Public School students with special education needs living in the community, school under the COVID-19 lock-downs entailed synchronous virtual learning with access to online tools that facilitated two-way videoconference classes and feedback. Exhibit C at 4. This synchronous format enabled students living in the community the opportunity to meaningfully engage in distance learning and interact with teachers, other students, related service providers, and mandated reporters of child abuse or neglect. *Id.* But the same instruction and resources have not been extended to students with disabilities at Youth Services Center. Since March 2020, these particularly vulnerable students have been left with no real education.

Because DC Public Schools has failed and continues to fail to provide to the students housed at Youth Services Center education in line with their special education needs, the District is denying them FAPE. The District has a responsibility to these students, and neither their placement in Youth Services Center nor even the pandemic gives DC Public Schools license to shirk this responsibility. The students with disabilities at Youth Services Center are entitled to significant compensatory education and services to account for the District's failure.

*b. Office of the State Superintendent of Education's failures*

As the District of Columbia's SEA,<sup>21</sup> the Office of the State Superintendent for Education is responsible for ensuring that FAPE is available to all students with disabilities residing in the state. 20 U.S.C. § 1412. The SEA is also responsible for the LEAs it oversees, including DC Public Schools. 20 U.S.C. §1413(g)(1)(B). IDEA requires an SEA to intercede if the LEA "is unable to establish and maintain programs of free appropriate public education that meet the requirements of ...[IDEA]." 20 U.S.C. §1413(g)(1)(B). A provision of FAPE extends beyond going through procedural motions: "[I]n order to satisfy its obligations, the District [can]not simply meet programmatic requirements[, but instead must] show that its policies, procedures, and practices were working effectively." *D.L. v. Dist. of Columbia*, 194 F. Supp. 3d 30, 85 (D.D.C. 2016), *affirmed*, 860 F.3d 713 (D.C. Cir. 2017) (citations omitted). "As defined by the IDEA, the state's role amounts to more than creating and publishing some procedures and then waiting for the phone to ring. The IDEA imposes on the state an overarching responsibility to ensure that the rights created by the statute are protected, regardless of the actions of local school districts . . . The state must assure that in fact the requirements of the IDEA are being fulfilled." *Id.* at 84.

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<sup>19</sup> The U.S. Department of Education further explained in its March 2020 guidance, if a student does not receive services after an extended period of time, the student's IEP Team, or appropriate personnel under Section 504, must make an individualized determination whether and to what extent compensatory services are needed consistent with the respective applicable requirements, including to make up for any skills that may have been lost. Exhibit J at 7.

<sup>20</sup> 34 CFR §§ 104.4, 104.33 (Section 504).

<sup>21</sup> See *supra* note 4.



When confronted with Disability Rights DC’s allegations of inaction in its March 2021 complaint, the Office of the State Superintendent of Education explained that after attending working groups where the FAPE denials at Youth Services Center were discussed, it had chosen to “defer[] to DC Public Schools and Department of Youth Rehabilitation Services on the issues raised [by advocates],” choosing to allow DC Public Schools and Department of Youth Rehabilitation Services to “continue their problem-solving efforts . . . before Office of the State Superintendent of Education needed to provide direct oversight.” Exhibit P at 4. But the time has long since passed for deference. As of the writing of this complaint, students housed at Youth Services Center have gone without FAPE for 19 months. The Office of the State Superintendent of Education has made no meaningful effort to correct its LEA’s FAPE denials to incarcerated students and ensure compensatory education. By declining to demand that DC Public Schools fulfill the IDEA obligations to provide students at Youth Services Center with FAPE, the Office of the State Superintendent for Education discriminated against these students on the basis of their disability.

### III. Requests for Relief

Since the beginning of the Fall 2020 semester, the District has demonstrated that it *can* provide students synchronous education and related services through virtual or in-person education—it has simply declined to do so for students housed in Youth Services Center. There is no excuse for these young people’s education to *still* consist of undifferentiated packets after 19 months of COVID-19. There is no excuse for these students not receiving the opportunity to review their past work. There is no excuse for such sporadic access to laptops and teachers, much less the failure to provide access to any certified special education teachers or services required to by the students’ IEPs. DC Public Schools has declined to perform the planning or implementation necessary to service these students with equitable educational opportunities or to provide FAPE, and the Office of the State Superintendent of Education has declined to hold DC Public Schools accountable for this failure. For this reason, Disability Rights DC asked OCR to investigate and take immediate action.

Disability Rights DC requests that OCR exercise its regulatory authority set forth in 34 C.F.R. § 104.612 to initiate an investigation into DC Public Schools, Department of Youth Rehabilitation Services, and the Office of the State Superintendent for Education for their collective ongoing denial of FAPE to students housed at Youth Services Center. Disability Rights DC requests that OCR find that, by shirking their respective duties under federal and state law, these entities are discriminating against these students on the basis of their disabilities. Disability Rights DC requests that OCR demand that the DC Public Schools immediately provide to students housed at Youth Services Center:

1. Differentiated instruction for each student with a disability housed at Youth Services Center needed to provide FAPE and required by either the Individualized Education Plan or 504 Plan;
2. Tutors and teachers, including teachers certified in special education and highly qualified in subject material needed to provide FAPE;
3. At a minimum, five-day per week schedule for synchronous education, either through in-person lessons or virtual learning;

4. Access to all related service providers needed to provide FAPE;
5. Instructional material and student work designed to meet the individualized needs of each youth with a disability and timely feedback on that work to ensure the provision of FAPE; and
6. Clear reporting to each youth explaining the student's current status and progress toward completion of graduation requirements.

We ask that these changes be made as swiftly as possible.<sup>22</sup> As made clear by the *Charles H.* decision in granting a preliminary injunction for the District's failure to provide FAPE to youth with disabilities at the District's jail, *see* Exhibit K, the civil rights of these youth have been denied to their serious detriment, and the consequences of this discrimination must be addressed quickly to prevent further loss.

Furthermore, Disability Rights DC requests that OCR:

1. require the Department of Youth Rehabilitation Services create a list of all students with IEPs or 504 Plans who were housed at the Youth Services Center from March, 2020 to the present and the length of time each student was at the facility,
2. require the Office of the State Superintendent of Education to fund<sup>23</sup> both independent educational assessments of these students and the compensatory education recommended in these assessments,<sup>24</sup>
3. require the Office of the State Superintendent of Education to affirmatively contact each of these youth and communicate the availability of independent educational assessments and recommended compensatory education, and
4. require the Office of the State Superintendent of Education to ensure that students who accept the evaluations and compensatory education receive them.

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<sup>22</sup> It is the understanding of Disability Rights DC that Maya Angelou Academy will replace DC Public Schools as the LEA responsible for students at Youth Services Center on October 1, 2021. However, we ask that OCR open an immediate investigation into the rights violations DC Public Schools and the Office of the State Superintendent of Education have perpetrated against students at Youth Services Center since March 2020. While DC Public Schools may be leaving the facility, its successor will inherit an educational system in complete disarray. Because of these entities' failures, Maya Angelou Academy will face multiple technological and structural barriers to providing FAPE to Youth Services Center students. Moreover, the Office of the State Superintendent of Education will remain the SEA for Youth Services Center. Without OCR's intervention, the past and ongoing failures of DC Public Schools and the Office of the State Superintendent of Education will continue to infect the education provided to students housed at Youth Services Center.

<sup>23</sup> Since March 2020, many of the students impacted by these FAPE denials may have transitioned from Youth Services Center to other facilities or to living in the community. DC Public Schools may no longer be their LEA, and Office of the State Superintendent of Education may no longer be their SEA. Disability Rights DC requests that the identified agencies be financially responsible for these students' independent evaluations and compensatory education, with the understanding that another educational entity may provide those services.

<sup>24</sup> Such a remedy is appropriate and has been ordered for FAPE denials in the past. *See Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 522 (D.C. Cir. 2005) (holding "under the theory of 'compensatory education,' courts and hearing officers may award educational services . . . to be provided prospectively to compensate for a past deficient program.") (internal citations omitted). *See also* Exhibit M; *Brown v. D.C.*, No. CV 17-348 (RDM), 2019 WL 1924245, at \*1 (D.D.C. Apr. 30, 2019); *Buckley v. State Corr. Inst.-Pine Grove*, 98 F. Supp. 3d 704 (M.D. Pa. 2015).

Finally, Disability Rights DC requests that Office of the State Superintendent of Education be made to perform and publish an audit of this process and ensure that each of these youth receive the relief owed to them. Additionally, it should be required to monitor the Youth Services Center at least once a month for the next year to ensure that effective synchronous education is taking place and students with disabilities are receiving FAPE.

Respectfully submitted,

/s

Kelsey A. Woodford, Esq.  
she/her/hers  
Staff Attorney

Mary Nell McGarity Clark  
Managing Attorney  
Disability Rights DC at University Legal Services  
Protection and Advocacy Program  
220 I Street, N.E., Suite 130  
Washington, D.C. 20002  
(202) 547-0198 ext. 142  
(202) 547-2662 (fax)  
(202) 547-2657 (tty)  
kwoodford@uls-dc.org