



SENT VIA CERTIFIED MAIL

March 18, 2015

Ohio Department of Education
Office for Exceptional Students
Dispute Resolution Section
25 South Front Street, Mail Stop 409
Columbus, Ohio 43215

In Re: Individual and Class Administrative Complaint on Behalf of J.C. and all Similarly Situated Students who have been placed within the Cuyahoga County Juvenile Detention Center and who are or were Eligible for Specially Designed Instruction and Related Services Provided by the Cleveland Metropolitan School District, Warrensville Heights City School District, or Education Alternatives-Bedford.

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Dear Ms. Stoica:

The undersigned files this Individual and Class Administrative Complaint on behalf of [REDACTED] ("J.C.") and all similarly situated students who were entitled to, and denied, special education services, individualized instruction, and other related educational services while detained at the Cuyahoga County Juvenile Detention Center ("CCJDC"). Pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. § 1400 *et seq.*, § 3301-51-01 of the Ohio Administrative Code, and the corresponding federal and state regulations, *all* students with disabilities between three and twenty-one years of age are entitled to a free and appropriate public education ("FAPE"). This is true even while the student is detained at a juvenile detention center.

J.C., who during her detention at CCJDC, was a student in the Warrensville Heights City School District ("Warrensville"), and at Education Alternatives-Bedford ("Education Alternatives"), was at all times entitled to specially designed instruction and related services. As the following facts show, J.C. did not receive appropriate educational services consistent with her Individualized Educational Program ("IEP") while she was detained at CCJDC for nearly twenty-two months. From these facts it is also apparent that the other students with disabilities who are detained at CCJDC do not receive proper special education services.

We request that the Ohio Department of Education ("ODE") appoint an independent team to investigate the policies and practices of Cleveland Metropolitan School District ("Cleveland"), Warrensville, and Education Alternatives (and any other school districts that have children currently or previously housed within the past two years in CCJDC) regarding the provision of

special education and related services to students housed in CCJDC. Furthermore, the complainants request that the ODE order Cleveland, Warrensville, and Education Alternatives (and all other similarly situated school districts in Cuyahoga County) to institute a remedial plan designed to correct, as set forth in this Complaint, each and every violation found, and to order a compensatory educational plan for each and every student who has been denied appropriate educational services under IDEIA.

I. J.C.'s COMPLAINT

A. J.C. Was Eligible to Receive Special Education Services During Her Detainment at CCJDC

J.C. currently resides at [REDACTED] and is presently in the twelfth grade at [REDACTED]. On [REDACTED] J.C. was detained at the CCJDC, and she remained at CCJDC until [REDACTED]. Subsequently, J.C. was held at CCJDC again from [REDACTED] until [REDACTED]. In total, J.C. was detained at CCJDC for nearly twenty-two months. As shown below, she should have received special education services during this entire period.

J.C., who was born on [REDACTED] has a well-documented history of educational and behavioral concerns, starting when she was in the first grade at Warrensville Eastwood Elementary School. Most recently, Warrensville Heights City School District outlined J.C.'s educational and behavioral disabilities in her 2011 Evaluation Team Report ("ETR") and her 2012 IEP.¹ According to J.C.'s ETR, she was eligible for special education services because of an "identified emotional disturbance."² In J.C.'s 2011 ETR, Warrensville also determined that, despite the fact that J.C. was in the eighth grade, she was operating at a fourth-to-sixth grade spelling level, and was below grade level in mathematical assessments.³ As such, in order to provide J.C. with a FAPE, the ETR indicated that she "[would] benefit[t] from small and individual group lessons. . . [and] needs small group setting with an emphasis on behavior management and social skill acquisition."⁴ J.C.'s ETR was issued on June 1, 2011, and would thus remain in effect for at least three years—through June 2014—unless a new ETR was issued during that time.

In J.C.'s 2012 IEP, Education Alternatives verified that her word reading was in the 7th percentile and that she was only reading at a seventh-grade level.⁵ J.C.'s IEP, which was issued on June 1, 2012, remained in effect *at least* through May 31, 2013.⁶ Despite the fact that J.C.'s 2012 IEP indicated that her IEP review would take place on or before May 30, 2013, she was never issued a new IEP⁷.

¹ See J.C. Evaluation Team Report (2011) (Ex. 1); J.C. Individualized Education Plan (2012) (Ex. 2).

² J.C. Evaluation Team Report 15 (2011) (Ex. 1).

³ *Id.* at 12.

⁴ *Id.* at 13.

⁵ Ex 2 pg 5

⁶ J.C. 2012 IEP (Ex. 2).

⁷ To this date, J.C.'s mother indicated that her current school follows her 2012 IEP, and has not implemented a new IEP.

Pursuant to 34 CFR § 300.323(e), whenever a student with a disability transfers to a new public agency in the same state within the same school year, the new agency must provide the student with a FAPE that includes services comparable to the requirements described in the student's IEP. The new agency must continue to provide the comparable FAPE until the new agency either adopts the student's existing IEP or issues a new one for the student.⁸ Therefore any state agency that was responsible for providing J.C. with special education services was required to provide her with a FAPE comparable to her 2012 IEP.

Despite the fact that, as a state agency, CCJDC was responsible either to provide J.C. with a FAPE comparable to her 2012 IEP or to issue a new IEP for her, CCJDC failed to do either. Instead, CCJDC failed to provide any special education services of any kind to J.C.

B. Warrensville, Cleveland, Education Alternatives, and CCJDC all Failed to Provide J.C. With a FAPE and Services Comparable to Her IEP.

The entire twenty-two months during which J.C. was detained, CCJDC, Cleveland, Warrensville, and Education Alternatives were all responsible for providing J.C. with free and appropriate public education. But all four of these state agencies failed to implement appropriate procedures under the IDEIA. Accordingly, J.C. is eligible for compensatory education.

i. Requirements Under Individuals with Disabilities Education Improvement Act and Corresponding Federal and State Regulations

Under the IDEIA, the federal government provides funds to assist state and local educational agencies to provide students with disabilities with the proper education.⁹ The federal government conditions these funds on states enacting policies and procedures to ensure that *every* student (between the ages of 3 and 21) with a disability receives a FAPE.¹⁰ Indeed, states receiving federal funds under IDEIA are required to provide a FAPE to a student with a disability even if that student has been suspended or expelled from school.¹¹ The IDEIA explicitly includes "state and local juvenile and adult correctional facilities" among the state subdivisions expressly under the purview of this requirement.¹² Courts have repeatedly read this provision to require juvenile detention facilities to provide students who have disabilities with educational services that comply with IDEIA.¹³ In other words, if a student has been expelled from school, or is detained at a juvenile detention center, IDEIA mandates that the detention center is required to provide the student with a FAPE.

⁸ 34 CFR § 300.323(e).

⁹ 20 U.S.C. §§ 1400 et seq.

¹⁰ *Id.* at § 1412(a)(1).

¹¹ *Id.*

¹² 34 C.F.R. § 300.2(b)(1)(iv).

¹³ See, e.g., *Cnty of Los Angeles v. Smith*, 74 Cal App. 4th 500, 513 (1999) (finding that all children held in local juvenile correctional facilities in jurisdictions that receive funds from the IDEIA must be given a FAPE that emphasizes special education and related services designed to meet their unique needs); accord *In re C.S.*, 804 A.2d 307, 314 (D.C. 2002).

Under the IDEIA, a FAPE requires prescribed special education and related services, which include “specially designed instruction, at no cost to parents, to *meet a disabled student’s unique needs*,” as well as any corrective and rehabilitative services, including: counseling, psychological services, school social work services, speech-language pathology, and physical and occupational therapy.¹⁴ Specially designed instruction includes instruction conducted in the classroom, at home, in hospitals or institutions, or in any other designated settings.¹⁵

Among other requirements, the IDEIA mandates that states and their subdivisions comply with specified procedures for identifying and evaluating disabled students, assuring appropriate educational placements for disabled students, and developing and/or issuing an IEP for each disabled student.¹⁶ The IEP must detail the special education and related services that an agency must provide during the period covered by the IEP.¹⁷ The Supreme Court of the United States has held that the word “individualized” as used in the statute requires that the IEP must be tailored to the unique needs of each student.¹⁸

The Supreme Court of the United States has further held that the requirement to provide a FAPE is satisfied only when a district provides personalized instruction with sufficient support services to permit a child with a disability to benefit educationally from that instruction.¹⁹ In *Nack ex rel Nack v. Orange City Sch. Dist.*, the Sixth Circuit applied this standard and developed a two-part test to determine whether IDEIA standards are met.²⁰ The two-part test requires a court to first determine that the school system has complied with the procedures set forth in the IDEIA and then to determine whether the IEP developed under those procedures was reasonably calculated to enable the child to receive educational benefits.²¹ Here, because J.C. did not receive *any* specialized education services while she was detained at CCJDC, she was unable to receive the education benefits to which she was entitled. As such, CCJDC, Warrensville, Cleveland, and Education Alternatives are all clearly liable under at least part one of the two-part test.

ii. **Warrensville, Cleveland, CCJDC, and Education Alternatives Were All Required to Ensure that J.C. Received Instruction Pursuant to her IEP.**

The question of which agency is responsible for providing special education services is a matter of state law. Pursuant to section 3301-51-02 of the Ohio Administrative Code, a school district is required to have written policies and procedures for implementing a FAPE for all children with disabilities between the ages of three and twenty-one located within the district.²² The school district in which a child’s parents reside is considered the child’s school district of residence. The

¹⁴ 20 U.S.C. §1401(29); 20 U.S.C. §1401(26)(A).

¹⁵ 20 U.S.C. §1401(14); 20 U.S.C. §1401(26)(A).

¹⁶ 20 U.S.C. § 1414.

¹⁷ 20 U.S.C. § 1401(14); 34 C.F.R. § 300.39(a)(1)(i).

¹⁸ *Bd. of Edu. Of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty v. Rowley*, 458 U.S. 176, 181 (1982).

¹⁹ *Id.* at 201.

²⁰ 454 F.3d 604, 609 (6th Cir. 2006); *see also Grine v. Sylvania City Sch. Bd. of Educ.* No. L-06-1191(OHCA6) (citing *Nack ex rel Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 608 (6th Cir. 2006) (citing *Bd. of Educ. Of Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176 (1982))).

²¹ *Nack* at 609 (citing *Deal v. Hamilton Cnty Bd. of Educ.*, 392 F.3d 840, 853 (6th Cir. 2004)).

²² Ohio Admin. Code § 3301-51-02.

child's school district of residence is responsible, in all instances, for ensuring that a FAPE is provided to that child, *regardless* of whether services are provided by another school district, other educational agency, juvenile justice facility, or other facility, agency, department, or entity.²³ If, however, a child is enrolled in a community or charter school, then that school would be considered the school district of residence, and is responsible for ensuring the child receives a FAPE.

At all times during J.C.'s detention at CCJDC, J.C.'s mother resided in Warrensville. As such, Warrensville was J.C.'s district of residence, and was responsible for continuing to provide J.C. with the special education services outlined in her IEP even while she was detained at the CCJDC.²⁴

As a further safeguard to ensure that children with disabilities are given access to appropriate educational services, Ohio regulations mandate that if a child is physically living in a school district other than his or her school district of residence, that school district is responsible for making special education and related services available to the child.²⁵ This responsibility to provide education and related services extends to children detained in a state facility, including a juvenile justice facility, located within the school district.²⁶ The Cuyahoga County Juvenile Detention Center is located within the Cleveland Metropolitan School District; therefore, the Cleveland Metropolitan School District ("Cleveland") is required to provide special education and related services to every student with a disability detained at CCJDC unless the child is already being served by another school district. In other words, unless Cleveland can show that the students detained in facilities within the district are being provided special education services from their school district of residence through the duration of their detainment, Cleveland is required to provide such services.

Pursuant to 34 CFR § 300.323(e), if a child with a disability transfers to a new public agency in the same state within the same school year, that new agency must provide the child a FAPE comparable to those described in his or her IEP. The new agency must continue to provide this comparable FAPE until the new agency either adopts the child's IEP or implements a new IEP for the child.²⁷ As discussed *supra*, the IDEIA includes "state and local juvenile and adult correctional facilities" among the state agencies that are required to provide students with FAPEs.²⁸ As such, as a state agency, CCJDC was responsible either to provide J.C. with a FAPE comparable to her 2012 IEP, or to implement a new IEP for her. CCJDC failed to do either, or to provide any special education services at all to J.C.

Lastly, because J.C. was a student of Education Alternatives at the time of her detention, Education Alternatives was required to continue to provide her with special education services

²³ Ohio Admin. Code § 3301-51-01-(A)(2)(a); *see also* Ohio Admin. Code. § 3301-51-05(D)(1)(c).

²⁴ *See* Ohio Admin. Code § 3301-51-02

²⁵ *See* Ohio Admin. Code § 3301-51-01(A)(3).

²⁶ *Id.*

²⁷ 34.CFR § 300.323(e)

²⁸ *See supra* section I(B)(i); 34 C.F.R. § 300.2(b)(1)(iv); *See, e.g., Cnty of Los Angeles v. Smith*, 74 Cal App. 4th 500, 513 (1999) (finding that all children held in local juvenile correctional facilities in jurisdictions that receive funds from the IDEIA must be given a FAPE that emphasizes special education and related services designed to meet their unique needs);

pursuant to her IEP: Pursuant to Ohio Admin. Code § 3301-51-01, a community school, which is "a public school independent of a school district and part of the state's program of education," is considered a school district for the purpose of this chapter. Thus, Education Alternatives-Bedford was responsible for ensuring that J.C. received education under her IEP, just as Warrensville was.

iii. J.C. Did Not Receive Education Comparable to her IEP

Here, J.C.'s IEP explicitly states that J.C. should be instructed in small group settings, and should be seated in areas relatively free from distraction. According to J.C.'s mother, while J.C. was detained at the CCJDC, she was placed with the general student population, and did not receive any small group instruction.²⁹ Furthermore, J.C.'s IEP mandates that she should have received several additional accommodations, ranging from providing her with frequent breaks; allowing her to complete assignments in a separate area and receive oral instructions for assignments and tests; and permitting her to have extended time to complete her coursework.³⁰ Again, however, J.C. did not receive any of the accommodations mandated in her IEP and was placed instead in general instruction with the other students.

C. RELIEF SOUGHT FOR J.C.

J.C. was denied a FAPE between [REDACTED] through [REDACTED] and [REDACTED] to [REDACTED] a period of more than twenty months, while she was housed in the CCJDC, where Cleveland, Warrensville, and Education Alternatives were responsible for her regular and special education needs. Pursuant to the CCJDC's Policy No 17.2 Regarding its Academic Program, the CCJDC's class schedule follows the Cleveland Metropolitan School District's schedule.³¹ During the twenty-two months that J.C. was detained at CCJDC and, she was denied roughly three semesters of the education reasonably calculated to confer upon her an educational benefit.³² In such a highly controlled setting, it is unacceptable that J.C. was not provided the specialized instruction outlined in her IEP, nor is it acceptable that she was denied an IEP reasonably calculated to provide her with an educational benefit. This lapse of critical education likely caused irreparable damage not only to J.C.'s educational progress but also to her life development, which can never be restored. However, the law requires the state, at the very least, to provide her with compensatory education. Therefore, J.C. now seeks compensatory education equivalent to that which she should have received while attending school in her least restrictive environment for the time period in which she was denied a FAPE while she was housed in the detention center.

In Fiscal Year 2013, the Instructional Expenditure Per Pupil combined with the Pupil Support Expenditure Per Pupil for CMSD was \$9, 219.97.³³ While this average per pupil expenditure does

²⁹ Ex. 2, pg. 9

³⁰ *Id.*

³¹ CUYAHOGA COUNTY JUVENILE COURT DETENTION SERVICES DEPARTMENT, POLICY NO. 17.1 ACADEMIC PROGRAM 1 (2013) (Ex. 3).

³² See *Bd. of Educ. Of Hendrick Hundson Cent. Sch. Dist., Westchester Cnty v. Rowley*, 458 U.S. 176, 181 (1982).

³³ OHIO DEPT OF EDU. CENTR. FOR SCHOOL FINANCE, *FY2013 District Profile Report: Cleveland Municipal School District* (2014), available at <http://odevax.ode.state.oh.us/htbin/F2013-DISTRICT-PROFILE.COM?im=043786>.

take into consideration the additional costs of student counseling and psychological services, it does not take into consideration the additional costs of special education. As such, the costs of the services that J.C. was eligible to receive likely exceeds this amount. J.C. lost nearly three semesters of appropriate education while she was detained at CCJDC. Thus, if the district had been providing J.C. with appropriate instruction, it would have expended *at least* \$12,579.55 on her instruction, and likely significantly more because special education costs are higher than district-wide average per-pupil costs. In the event that J.C. has already completed her high school education at the time of adjudication, the district should award J.C. this amount in damages so that she may continue her education at a community college, or, if she so chooses, enroll in either a SAT or ACT prep course. (J.C. is eligible to receive this compensatory education in order to attempt to place her into the position she would have been in had she continued to receive special education services calculated to reach the goals identified in her IEP and ETF³⁴)

J.C. also requests that the CCJDC implement new policy and procedures to ensure that every incoming student's education history is reviewed in order to determine if he or she is entitled to specialized education pursuant to an IEP and to make sure that such services are provided promptly. These new policies and procedures should include, but are not limited to: contacting a student's previous school within 72 hours of his or her admission in order to determine if the student will require special education services, and employing teachers who are certified in special education to establish appropriate lesson plans to provide students with education pursuant to their IEP.

II. BASIS FOR CLASS CLAIM TO EXTEND SYSTEMIC RELIEF TO OTHER STUDENTS WITH DISABILITIES IN NEED OF SPECIALLY DESIGNED INSTRUCTION AND RELATED SERVICES IN THE CUYAHOGA COUNTY JUVENILE DETENTION CENTER.

A. YOUTH WITH DISABILITIES ARE DISPROPORTIONATELY REPRESENTED WITHIN THE JUVENILE JUSTICE SYSTEM BOTH IN OHIO AND NATIONALITY.

Youth with disabilities are disproportionately represented within the juvenile justice system. While only about 10% of youth in this country's public school system receive special education services, 30-50% of youths in juvenile detention or correctional facilities are eligible for special education services.³⁵ In fact, in Ohio there are more than three times the number of special education students in the Ohio Department of Youth Services facilities (44%) than in the general Ohio public school population (14%) and over four times the number nationally (10%).³⁶ Youth with emotional and behavioral disorders, attention deficit hyperactivity disorder, specific

³⁴ See Ex. 1 & 2.

³⁵ Casey, K. & Keilitz, I. Estimating the Prevalence of Learning Disabled and Mentally Retarded Juvenile Offenders: A Meta-Analysis. In P.E. Leone (Ed.), Newbury Park, CA; Sage, *Understanding Troubled and Troubling Youth*, 82-101 (1990).

³⁶ The Children's Law Center, Inc., *Services for Students with Disabilities in Ohio Detention Facilities: A Report to the Ohio Coalition for the Education of Children with Disabilities*. (2005), available at <http://www.childrenslawky.org/wp-content/uploads/2012/07/ServicesOhioDetention.pdf>.

learning disabilities, mild mental retardation, or a combination of these disorders are particularly over-represented in the juvenile justice system.³⁷ Indeed, according to the Ohio Department of Youth Services, almost half of the incarcerated youth with special education needs are emotionally disturbed, roughly 24% have a specific learning disability, and 22% have cognitive disabilities.³⁸ A 2006 review found that 70% or more of youth securely detained in residential juvenile justice facilities may suffer from mental health and related disorders and that more than 20% of these youth suffer disorders so severe that their ability to function is significantly impaired.³⁹ Other disabilities, including traumatic brain injury and speech and language disorders are found among incarcerated youth, but are less common.

Although delinquent behavior is not caused by disabling conditions, some behaviors associated with disabilities may also be associated with delinquent behaviors. In other words, there is no cause-effect relationship between a child's disability and his or her delinquency, but disabilities sometimes manifest themselves through maladaptive behaviors. Accordingly, youth with learning disabilities or an emotional disturbance are arrested at higher rates than their non-disabled peers.⁴⁰ Experts propose that one reason for this over-representation of youth with disabilities in the juvenile justice system is that many youth with disabilities lack the communication and social skills required to present themselves well to arresting officers or intake probation officers. Behavior that may be interpreted as hostile, impulsive, unconcerned, or otherwise inappropriate may be a reflection of the youth's disability.⁴¹ Certainly, the overrepresentation of youth with disabilities in correctional facilities correlates with school failure, marginal literacy, poorly developed social skills, and inadequate school and community support. Because of this overrepresentation of children with disabilities in the juvenile detention center, it is critical that the juvenile detention centers, and the school districts responsible for these students, ensure that each and every student with a disability is receiving a FAPE in accordance with his or her IEP.

³⁷ See S. Burrell & L. Warboy, U.S. Dep't of Jus., *Special Education and the Juvenile Justice System* 2, 8 (2000) (Office of Juvenile and Delinquency Prevention Bulletin No. 179359).

³⁸ OCECD. *Students with Disabilities Over-represented in Juvenile Justice System: Does Disability – Delinquency?*, Vol. XXII, Issue 4, 2 (Nov./Dec. 2004) available at www.oecd.org/h_docs/04_1112.pdf.

³⁹ Shufelt, J. & Coccozza, J. (June 2006). Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study. National Center for Mental Health and Juvenile Justice, Research and Program Brief (pp. 1, 4), available at <http://www.ncmhjj.com/pdfs/publications/PrevalenceRPB.pdf>. See also Teplin, L. A., Abram, K. M., McClelland, G. M., Dulcan, M. K., & Mericle, A. A. (2002). Psychiatric Disorders in Youth in Juvenile Detention. *Archive of General Psychiatry*, 59, 1122-1143; Abram, K. M., Teplin, L. A., McClelland, G. M., & Dulcan, M. K., (2003). Comorbid Psychiatric Disorders in Youth in Juvenile Detention. *Archive of General Psychiatry*, 60, 1097-1108; The National for Mental Health and Juvenile Justice (2007). *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*. Delmar, NY: Skowrya and Coccozza; and NAMI Ohio. (April 2005) *To Lift the Burden: Reducing the Costs of Untreated Mental Illness in Ohio While Improving Care*, 3-4.

⁴⁰ U.S. Dept. of Justice at 1. (citing Chesapeake Institute, Washington D.C., U.S. Dept. of Educ, *National Agenda for Achieving Better Results for Children and Youth with Serious Emotional Disturbance* (1994).

⁴¹ U.S. Dept. of Justice at 8. See also Rutherford, R.B., Nelson, C.M., & Wolford, B.I. Special education programming in juvenile corrections. *Remedial and Special Education*, 27-33 (1986). Research suggests that youth with disabilities may engage more frequently with the juvenile justice system than their peers because mental disorders can manifest themselves in symptoms "involving impulsiveness, anger, and cognitive confusion."

B. YOUTH WITH DISABILITIES IN THE CCJDC ARE ROUTINELY DENIED ACCESS TO A FREE AND APPROPRIATE PUBLIC EDUCATION.

Between September of 2012 and October 31, 2013, the CCJDC housed 541 juveniles eligible for special education services.⁴² According to the CCJDC, the detention center provides some specialized instruction for math and reading, but does not provide any speech, occupational therapy, or physical therapy.⁴³ In 2005, the Children's Law Center issued a report on services for students with disabilities in Ohio detention facilities.⁴⁴ This report included a survey of 36 of the 40 facilities in Ohio.⁴⁵ The survey found that, although general education services are provided in all of Ohio's detention centers, special education based on students' IEPs are consistently provided in only a few facilities.⁴⁶ Furthermore, the survey revealed that only twenty facilities use a formalized educational assessment tool to determine student educational abilities upon admission, and sixteen rely only on informal assessments.⁴⁷ These brief assessments cannot begin to provide the valuable information that is found in the Multi-Factored Evaluations, IEPs, and ETRs.⁴⁸

The survey further noted that record access and retrieval between local school districts and most facilities is a significant problem; as such, most facilities never receive any special education-related documents regarding their students with disabilities.⁴⁹ Facility directors were asked the number of students who require special education services at their facilities, and most facilities could only estimate the number as they do not consistently ask for and/or receive identifying records, such as IEPs.⁵⁰ Only four facilities likely have accurate figures because they obtain IEPs of their students.⁵¹ Likewise, only fourteen facility teachers reported that they actually integrate parts of the IEP into their instruction, and thirteen facilities report that they never see a student's IEP.⁵² With the exception of students in one facility, which has a self-contained special education classroom, all special education students are educated in the same classrooms as non-disabled students.⁵³

Moreover, the surveyors asked facilities whether the facilities conducted IEP team meetings to redraft IEP for students with disabilities housed at the facilities. Only two facilities answered "yes," and four additional facilities responded "rarely".⁵⁴ Only eleven facilities reported having

⁴² See Ex. 4 (Records Related to the Number of CCJDC Juveniles with Special Education Needs for the 2012-2013 and 2013-2014 school year.)

⁴³ *Id.*

⁴⁴ The Children's Law Center, Inc., *Services for Students with Disabilities in Ohio Detention Facilities*, A Report to the Ohio Coalition for the Education of Children with Disabilities (2005), available at <http://www.childrenslawky.org/wp-content/uploads/2012/07/ServicesOhioDetention.pdf>.

⁴⁵ *Id.* at 1. (Four of the facilities in Ohio declined to participate.)

⁴⁶ *Id.* at 2.

⁴⁷ *Id.*

⁴⁸ *Id.* at 40.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 44.

⁵¹ *Id.*

⁵² *Id.* at 46.

⁵³ *Id.* at 26.

⁵⁴ *Id.* at 48.

one or more teachers who were certified in special education.⁵⁵ Without access to the students' IEPs, however, the facilities are unable to fully utilize the expertise even of these teachers. Furthermore, twenty-six of the facilities have only general education classrooms without special education support.⁵⁶ The remaining facilities have general education classrooms with some educational support, which is defined as providing access to the special education teacher in the facility.⁵⁷ Lastly, the survey reveals that the related services listed in the students' IEPs are generally not provided, while only a few facilities noted that some services are available through the local educational agency (e.g. local school districts).⁵⁸

Education is critical to rehabilitation for troubled youth, and it is considered the foundation for programming in most juvenile institutions.⁵⁹ Helping youth acquire educational skills is an essential component of the prevention of delinquency and the reduction of recidivism. Youth with disabilities who do not receive appropriate special education and related services may receive more disciplinary infractions for alleged misbehavior and be more vulnerable to exclusion from the correctional education program.⁶⁰ As discussed *supra*, children with disabilities are disproportionately represented within the juvenile justice system; therefore, the apparent inadequate procedures in place to ensure that students with disabilities continue to receive special education services throughout their detainment is especially troublesome.

III. CONCLUSION

J.C. lost roughly three semesters of her education due to the failure of CCJDC, Cleveland, Warrensville, and Education Alternatives to ensure that her IEP was implemented and used while she was held at CCJDC. Her circumstances exemplify a broader problem in the provision of special education and regular education services in CCJDC, which affects a great many other students with special education needs. Thus, we respectfully request a prompt and thorough review and investigation into the policies and practices of Cleveland, Warrensville, and Education Alternatives (and any other school districts that have children currently housed, or previously housed in the past two years, in CCJDC) regarding provision of special education and related services to students while they are housed in CCJDC. We also request a personal meeting with either the Superintendent of Public Instruction and/or the President of the Ohio State Board of Education. Additionally, the Complainants request that ODE order Cleveland, Warrensville, and Education Alternatives (and all other similarly situated school districts in Ohio) to instate a remedial plan designed to correct each and every violation found, and to order an appropriate compensatory educational plan for each and every student discovered to have been denied appropriate educational services under IDEIA.

⁵⁵ *Id.* at 50.

⁵⁶ *Id.* at 51.

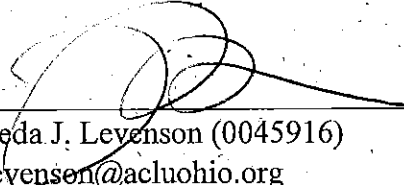
⁵⁷ *Id.*

⁵⁸ *Id.* at 52.

⁵⁹ Office of Juvenile Justice and Delinquency Prevention, *Conditions of Confinement: Juvenile Detention and Corrections Facilities* 29, Washington D.C. (1994).

⁶⁰ K. Brooks et al, *The Special Needs of Youth in the Juvenile Justice System: Implications for Effective Practice*, Ch. 7, 121 (2001) (citing Peter Leone, *Education Services for Youth with Disabilities in a State-Operated Juvenile Correctional System: Case Study and Analysis*, 28 J. of Spec. Edu., 43-58 (1994)).

Respectfully submitted,



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