





TO: P-12 Education Committee

FROM: Jhone M. Ebert 

SUBJECT: Provision of Educational Programs to Incarcerated and Detained Youth

DATE: January 4, 2016

AUTHORIZATION(S): 

SUMMARY

Issue for Discussion

This is an item for discussion about the educational programs provided to youth who have committed offenses determined by the criminal justice system to warrant removal from the community.

Reason(s) for Consideration

Review of policy.

Proposed Handling

This issue will come before the Regents P-12 Education Committee for discussion at the January 2016 meeting.

Background Information

Students under the age of 21 who commit offenses determined by the criminal justice system to warrant the students removal from the community are most often remanded to the custody of the New York Department of Corrections and Community Supervision (DOCCS); the New York State Office of Children and Family Services (OCFS); Rikers Island, which serves as the county jail for New York City; or jails operated by other counties.

Individuals who are incarcerated at a DOCCS facility are mandated to attend educational programming, if they do not have a high school diploma or a high school equivalency diploma. A student suspected of having a disability must be evaluated by an appointed Committee on Special Education and provided an appropriate educational program that is consistent with Part 200 of the Commissioner's Regulations. DOCCS currently serve an estimated 2,000 student inmates under the age of 21.

OCFS has direct responsibility for the care, custody and educational services of individuals up to age 21, while DOCCS oversees the New York State prison system and is responsible for the care, custody and educational services and programs of individuals who are sentenced to periods of confinement that exceed one year. For county and New York City-operated programs, each school district submits an annual plan to the Department that describes the content and scope of the educational programs and services available to students in each correctional facility.¹ The New York City Department of Education provides educational services to students up to 21 years of age who are placed at East River Academy, the academic program for youth detained on Rikers Island.

More than 500 incarcerated youth participate in educational programs, such as secondary and alternative high school educational course work at the eleven non-secure, limited-secure, and secure sites operated by OCFS. Individuals who are confined at OCFS sites are required to attend educational programming, if they lack a high school diploma or high school equivalency diploma. OCFS also is responsible for certification and monitoring of 41 detention programs (8 secure detention facilities and 33 non-secure detention facilities). These programs provide care and maintain custody of youth ages 8 through 18 during the court process, including pre-adjudication and disposition by family and/or criminal courts.

Educational programs and services for children in full-time residential care in homes or facilities operated or supervised by a State Department or agency or political subdivision, such as OCFS, are subject to the provisions of Part 116 of Commissioner's Regulations and Part 200 of the Commissioner's Regulations in terms of the provision of services to students with disabilities. Among the key provisions of Part 116 are:

- An educational evaluation will be completed within 10 days of a youth's admission for the purpose of providing an immediate educational program pending further evaluation. The initial evaluation should be administered in the student's dominant language and assess the student's development in reading, mathematics, and receptive and expressive language.
- Instruction is expected to be comparable and equivalent to that required by Part 100 of Commissioner's Regulations, except that high school

¹ The provisions of sections 118.2, 118.3 and 118.6 relating to annual program plans, educational evaluations and notice of services requested of the school district by the correctional facility do not apply to a city school district that operates an academy or alternative high school and opts not to receive incarcerated youth aid.

equivalency instruction shall be provided in accordance with applicable regulations.

- The length of the school day shall be comparable to that for other public school students.
- Except for staff who provide physical education and health education, professional staff are required to be certified pursuant to Part 80 of Commissioner's Regulations.
- Each facility must prepare a long-range educational plan and update the plan on an annual basis using a form approved by the Commissioner. This plan must be maintained by the chief administrator of the home of the facility.
- Each facility must have a committee whose membership and responsibilities is comparable to the committee on special education and services to students with disabilities must be provided in accordance with Section 200.6 of Commissioner's Regulations. An Individualized Education Program (IEP) describing the programs and services must be developed and implemented for each student with a disability.

Under Section 116, OCFS is also authorized to operate high school equivalency programs for students ages 18 to 21 under the same requirements as those that apply to school districts and BOCES. Pursuant to Section 116.4 of Commissioner's Regulations, homes or facilities providing educational programs and services to populations that are small in number and either transient or confined may provide alternative programs and services with the approval of the Commissioner. Alternative programs must provide a minimum of three hours of instruction that must be provided by certified teachers, except if a variance is granted upon a finding that personnel providing instruction are qualified and it is not feasible to employ appropriately certified teachers.

There are sixty county jails and holding facilities across the state. For students in the custody of county or New York City operated jails, educational programs are operated pursuant to Education Law §3202(7) and Part 118 of the Commissioner's Regulations and Part 200 of the Commissioner's Regulations. This statute and regulations provide that the school district where a county or municipal jail is located is responsible for the education of student inmates, and is eligible to receive incarcerated youth aid under Education Law §3602(13) [formerly §3602(35)]. The public school district either provides educational services directly or as often is the case, contracts for services through a Board of Cooperative Educational Services (BOCES). Whether or not educational programs are mandatory varies by county. If educational programs are offered, a minimum of three hours must be provided.

Key provisions of Part 118 include:

- The provisions of the Regulations apply to persons under the age of 21 who do not have a high school diploma who have either been incarcerated

for ten or more days or can reasonably be expected to be incarcerated for ten or more days.

- The provisions of sections 118.2, 118.3 and 118.6 relating to annual program plans, educational evaluations and notice of services requested of the school district by the correctional facility do not apply to a city school district that operates an academy or alternative high school and opts not to receive incarcerated youth aid. New York City Department of Education operates an academy or alternative high school at Riker's Island and has opted not to receive incarcerated youth aid to date.
- An educational evaluation will be completed within 10 days of a youth's admission for the purpose of providing an immediate educational program pending further evaluation. The evaluation should be administered in the student's dominant language and assess the student's development in reading, mathematics, and receptive and expressive language. However, information obtained from the schools previously attended by the student, from the student's pre-sentencing report or other comparable sources, if less than three years old, may be substituted in whole or part for the required educational evaluation.
- Within 10 days after admission, a youth eligible for educational services must be apprised of the availability of these services, and if the youth request such services, the correctional facility will so inform the school district required to provide these services.
- Each school district must annually provide the Department with an educational plan that includes such information as:
 - Evaluation procedures used;
 - Instructional programs available;
 - Qualifications of staff;
 - Whether the program will be a full-day or half-day;
 - Procedures for coordination of educational services with other support services provided by the county;
 - Procedures for notifying school districts responsible for the educational costs of the students; and
 - Procedures for assisting the correctional facility in providing youth who are discharged or released with information about the educational or other services available to them.

DOCCS also provides oversight by setting minimum requirements and program accessibility for educational programs provided by the correctional facilities themselves. These requirements are enumerated in 9 N.Y.C.R.R. Sections 7677.4 and 7677.6. Program accessibility, as described in Part 7677.6 requires that each inmate receive pertinent information in regard to the facility's academic educational program such as the types of educational programs available, the eligibility requirements, and the procedures for requesting to participate in educational programs.

Key provisions of Part 7677.4 require that at a minimum, educational programs include:

- Adult basic education;
- Standardized instruction required for completion of the exam leading to a high school equivalency diploma;
- Special education;
- Bilingual programs;
- At least five hours of actual classroom instruction each weekday;
- Literacy incentives;
- Necessary skills instruction for each vocational program offered; and
- Programs that are realistic and relevant to the needs and requirements of the current labor market.

In recent years there has been considerable evolution in New York's approach to juvenile justice, which has led to a significant reduction in the number of youth placed in OCFS facilities. Under the "Close to Home" juvenile justice reform initiative, New York City youth adjudicated as juvenile delinquents, whom Family Court has determined do not require a secure placement, are placed in the custody of the New York City Administration for Children's Services (ACS) for residential services and aftercare.

Keeping youth closer to their families has become a core principle of New York State's juvenile justice program. The Close to Home initiative consists of two phases. Phase I, which has been completed, involved youth adjudicated as juvenile delinquents in non-secure levels of placement. Phase II involves youth adjudicated as juvenile delinquents who committed more serious offenses and have been placed in limited secure facility placements.

New York State is one of only two states in the nation that automatically prosecutes 16- and 17-year olds as adults. Currently in New York, youth are detained with the adult population in local jails while awaiting trial. If convicted as adults, these teenagers are then matriculated into the greater adult prison population.

Governor Cuomo has asked the state legislature to pass legislation to "Raise the Age," so that 16- and 17-year olds will be processed as juveniles for all crimes except for crimes of serious violence and all minors will have access to rehabilitation services. If this initiative were to be enacted it would have a significant impact on which agencies will be responsible for the provision of educational services to detained and incarcerated youth under the age of 18.

Challenges Regarding the Education of Detained and Incarcerated Youth

Addressing a population with these significant needs would be challenging for any provider of educational services and is frequently further exacerbated by the conditions of incarceration, including:

- The security needs of facilities typically take precedence over the educational needs of students. Consequently students who may have very different educational needs may be assigned to a class based on the security needs of the facility. In addition, the educational day may be disrupted by the scheduling of non-educational activities or the scheduling of educational activities are inconsistent with our knowledge of how teenagers learn.
- Although these students typically need additional instruction in order to catch up with their peers, their instructional day is often shorter than that provided to students in public schools. Instruction during times when public school is not in session may also be limited or non-existent, even though this is an additional opportunity for “catch up.”
- Particularly in smaller facilities, it may be extremely difficult to have instruction in core subjects provided by appropriately certified staff. In addition, few institutions provide training to their correctional staff in how to support the educational program, thus significantly underutilizing a potential classroom resource.
- Access to enrichment activities and career and technical education programs is often limited.
- The population is extremely transient and their length of time in a facility is often unpredictable, making programming and scheduling challenging.
- Facilities often do not have up-to-date equipment, and access to educational technology may be limited or even nonexistent.
- Under Section 118.5 as it currently exists, youth can choose not to request educational services from the local district and no distinction is made between youth of compulsory school age and those over compulsory school age in this regard. There are no consequences for refusing to request educational services.
- Students may not receive adequate transitional support upon their release, resulting in students either not returning to school or not being successful upon transition.

Next Steps

With the agreement of the Board of Regents, staff will engage with stakeholders for the purpose of developing recommendations regarding changes to Commissioner’s Regulations including, but not limited to instructional time, professional development, the development of educational plans, enrichment activities and CTE, and/or state law for consideration by the Board of Regents later in 2016.