

THE RIGHT TO EDUCATION UNDER STATE CONSTITUTIONS AS APPLIED TO JUVENILE DELINQUENTS

Laurenne Ferber-Kaufman[†]

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[†] J.D. Candidate, May 2022, Benjamin N. Cardozo School of Law; Articles Editor, Cardozo Journal of Equal Rights & Social Justice, Vol 28.; B.A. Psychology, Judaic Studies and Crime and Justice, University of Michigan Class of 2018. Laurenne would like to thank Professor Alexander A. Reinert for acting as her Note advisor. She would also like to thank her fiancé, family, and friends for supporting and encouraging her throughout Law School and the note writing process.

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I. INTRODUCTION

Education is one of the greatest gifts a person can receive. It aids individuals in how to learn, think, feel, and behave and prepares individuals for life experiences. In addition, education paves the way in obtaining a good career, a good status within society, and having self-confidence.¹ Despite how important education is, the Constitution provides no fundamental right to education for its people.² Nevertheless, each state has recognized the impact education has on a person and has provided their own right to education in their state constitutions, with 14 out of the 50 states providing the right to children.³ Within these states’ constitutions, there is a “basic public expectation that all children have a right to attend public school and be treated with dignity and social equality.”⁴

¹ Abdulghani Al-Shuaibi, *The Importance of Education* (Jan. 13, 2014), https://www.researchgate.net/publication/260075970_The_Importance_of_Education.

² San Antonio Indep. Sch. Dist. v. Rodriguez, 93 S. Ct. 1278 (1973); Valerie Strauss, *Federal Court Delivers Holy Grail of Education Advocacy: A Fundamental Right to Basic Education*, WASH. POST (Apr. 29, 2020), <https://www.washingtonpost.com/education/2020/04/29/federal-court-delivers-holy-grail-education-advocacy-fundamental-right-basic-education-dont-count-supreme-court-uphold-it/>.

³ Molly A. Hunter, *State Constitution Education Clause Language*, EDUC. L. CTR., <https://edlawcenter.org/assets/files/pdfs/State%20Constitution%20Education%20Clause%20Language.pdf>; EDUC. COMM’N OF THE STATES, *CONSTITUTIONAL OBLIGATIONS FOR PUBLIC EDUCATION* (2016), <https://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf>.

⁴ Marsha Weissman, et al., *The Right to Education in the Juvenile and Criminal Justice Systems in the United States*, ACLU (Dec. 31, 2008), https://www.aclu.org/sites/default/files/field_document/asset_upload_file164_38663.pdf.

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Many children are provided their right to education through private or public schools but those who enter the juvenile justice system struggle to obtain the education that they are entitled to because states have failed to meaningfully meet the right in prison and jails.⁵ Edwin, who spent time at Highland Residential Center which is one of New York's 28 prisons for youth, stated that during his time there "he feared for his safety, received little counseling and left no better prepared for life outside than when he arrived there."⁶ Unfortunately Edwin's experience at Highland Residential Center is representative for almost all those involved in the juvenile justice stem.

This Note argues that in states recognizing a child's right to education, like New York, juvenile offenders in jails and prisons are also entitled to this right and thus must be provided the basic, but adequate, right to education that all other children in the state are afforded. This Note will propose that New York should amend its education provision in order for the right to education to be strictly enforced within the juvenile justice system.

Part II discusses the importance of a right to education, the history of the right to education in state constitutions, the right to education in New York and Texas's state constitutions, and education within the juvenile justice system. It explains that even though there is no federal constitutional right to education, every state has implemented some sort of right to education within their own state constitution. Specifically, both New York and Texas's educational provisions are addressed along with their textual similarities and differences. Part III explains that the level of education that is currently provided to juveniles within the New York prison system does not meet the general state standards for public schools and violates New York's education clause by comparing it to Texas's system. This section argues that there are numerous studies and reports that highlight the inadequate educational system available to juveniles within the system which consists of constant overcrowded, understaffed, and infrequent classes with deficit curriculums. Part IV proposes that New York should amend its educational clause to become stronger and stricter in order to ensure that all children be provided with their constitutional right to an adequate education. The argument is that New York is in violation of their state educational

⁵ Weissman, et al., *supra* note 4; COAL. FOR JUV. JUST., AIN'T NO PLACE ANYBODY WOULD WANT TO BE: CONDITIONS OF CONFINEMENT FOR YOUTH 29 (1999); Douglas E. Abrams, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability and Public Safety*, 84 OR. L. REV. 1001 (2005); Letter from Bradley J. Schlozman, Acting Assistant Attorney Gen., to the Honorable Mitch Daniels, Governor of Ind. 19-20 (Sept. 9, 2005), available at http://www.usdoj.gov/crt/split/documents/split_indiana_plainfield_juv_findlet_9-9-05.pdf; HUMAN RIGHTS WATCH, HIGH COUNTRY LOCKUP: CHILDREN IN CONFINEMENT IN COLORADO at 37-8 (1997).

⁶ Nicholas Confessore, *A Glimpse Inside a Troubled Youth Prison*, N.Y. TIMES, (Feb. 12, 2010), <https://www.nytimes.com/2010/02/14/nyregion/14juvenile.html>.

provision and not only needs to repair the educational system within the juvenile justice system but amend the constitutional language in order to provide significant measures to ensure a high-quality public education system.

II. BACKGROUND

A. The Importance of a Right to Education

The United States Constitution is the supreme law of the land.⁷ Since its ratification in June 21, 1787, the Constitution has provided individuals with certain fundamental rights.⁸ The most basic rights include the freedom of speech, freedom of religion, the right to keep and bear arms, the freedom of assembly and the freedom to petition.⁹ Although there are a mass amount of rights incorporated both explicitly and implicitly into the Constitution, education is not among the rights protected under the Federal Constitution.¹⁰ Despite this fact, all fifty states of the United States have implemented language into their own state constitutions that requires the establishment of a public education system.¹¹ In *Brown v. Board of Education*, Justice Warren stated, “[t]oday, education is perhaps the most important function of state and local governments.”¹² He wrote that the enactment of school laws

demonstrate our recognition of the importance of education to our democratic society... it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment...it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹³

Brown v. Board of Education was thus the landmark case where the Supreme Court proclaimed the importance for children to be given the opportunity of an education and for the states that provide this to make education available to all equally.¹⁴

⁷ U.S. CONST. art. VI, cl. 2.

⁸ *Observing Constitution Day*, NAT’L ARCHIVE (Aug. 21, 2016), <https://www.archives.gov/education/lessons/constitution-day/ratification.html>.

⁹ U.S. CONST. amend. I.

¹⁰ *Rodriguez*, 93 S. Ct. at 1281; Strauss, *supra* note 2.

¹¹ Hunter, *supra* note 3; EDUC. COMM’N OF THE STATES, *supra* note 3.

¹² *Brown v. Bd. of Educ. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 493 (1954).

¹³ *Brown*, 347 U.S. at 493.

¹⁴ *Id.*

B. The History of the Right to Education in State Constitutions

As Professor Paul L. Tractenberg, a nationally-known expert in public education from Rutgers Law School explains, there are four broad stages in United States history in which education provisions in state constitutions have been passed.¹⁵ The introductory stage, from 1776 to 1934, reflected the uncertainty among states about the constitutionalization of education, which resulted in only half the states enacting educational clauses.¹⁶ The initial provisions in state constitutions recognized the importance of an educated society and began to impose onto legislatures an obligation to provide for a general system of free public education to all.¹⁷ The foundational stage, from 1835 to 1912, was the most active for state educational provisions, which placed responsibility on the states and their legislatures concerning the establishment, funding, and administration for a free public education.¹⁸ During this time the number of states that added provisions into their constitutions doubled and those entering the union adopted educational clauses into their constitutions.¹⁹ In addition, those who had not had educational provisions added them to their state constitutions.²⁰ The quiescent stage, from 1913 to mid-20th century, involved expansion of the financial and administrative aspects of the public education system.²¹ Lastly, the rights stage, from mid 20th century to the present, is notable for its legal and advocacy efforts during desegregation, funding equity and educational adequacy litigation.²² The education provisions during this time reflect an enforceable right on behalf of students and seek to define the rights included.²³

¹⁵ Paul Tractenberg, *Education Provisions in State Constitutions: A Summary of a Chapter for the State Constitutions for the Twenty-First Century Project*, at 2, <https://statecon.camden.rutgers.edu/sites/statecon/files/subpapers/tractenberg.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

C. The Rights Included in State's Right to Education Provision

The right to education is structured differently in each state's own constitution. States including Colorado,²⁴ Idaho,²⁵ Illinois,²⁶ Kentucky,²⁷ Maryland,²⁸ Minnesota,²⁹ New Jersey,³⁰ Ohio,³¹ Pennsylvania,³² Texas,³³ and West Virginia³⁴ describe public or common schools as “thorough” and or “efficient” in their state constitution,³⁵ whereas Arizona,³⁶ Idaho,³⁷ Indiana,³⁸ Minnesota,³⁹ North Carolina,⁴⁰ Oregon,⁴¹ South Dakota,⁴² and Wyoming⁴³ use “general and uniform” to describe public or common schools.⁴⁴ Wyoming,⁴⁵ South Dakota,⁴⁶ Rhode Island,⁴⁷ North Carolina,⁴⁸ New Hampshire,⁴⁹ Montana,⁵⁰ Massachusetts,⁵¹ and Arkansas⁵² include in their education provision a promise to “secure the people the advantages and opportunities of education” or similar language.⁵³ Of the 50 states, 14 states mention the right of education in regard to children.⁵⁴ These states are:

²⁴ COLO. CONST. art. IX, § 2.

²⁵ IDAHO. CONST., art. IX, § 1.

²⁶ ILL. CONST., art. VII, § 1.

²⁷ KY. CONST., § 183.

²⁸ MD. CONST. art. VIII, § 1.

²⁹ MINN. CONST. art. XIII, § 1.

³⁰ N.J. CONST. art. VIII, § 4, para. 1.

³¹ OHIO CONST., art. VI, § 3.

³² PA. CONST., art. III, § 14.

³³ TEX. CONST., art. VII, § 1.

³⁴ W.V. CONST., art. XII, § 1.

³⁵ Hunter, *supra* note 3.

³⁶ ARIZ. CONST., art. XI, § 1.

³⁷ IDAHO. CONST., art. IX, § 1.

³⁸ IND. CONST., art. VIII, § 1.

³⁹ MINN. CONST. art. XIII, § 1.

⁴⁰ N.C. CONST., art. IX, § 2.

⁴¹ OR. CONST., art. VIII, § 3.

⁴² S.D. CONST., art. VIII, § 1.

⁴³ WYO. CONST., art. VII, § 1.

⁴⁴ Hunter, *supra* note 3.

⁴⁵ WYO. CONST., art. VII, § 1.

⁴⁶ S.D. CONST., art. VIII, § 1.

⁴⁷ R.I. CONST., art. XII, § 1.

⁴⁸ N.C. CONST., art. IX, § 2.

⁴⁹ N.H. CONST., part 2, art. 83.

⁵⁰ Mont. CONST. art. X, § 1.

⁵¹ Mass. CONST. pt. 2, ch. V, § 2.

⁵² Ark. CONST. art. 14, § 1.

⁵³ Hunter, *supra* note 3.

⁵⁴ *Id.*

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Alabama,⁵⁵ Alaska,⁵⁶ Florida,⁵⁷ New Jersey,⁵⁸ New Mexico,⁵⁹ New York,⁶⁰ North Dakota,⁶¹ Oklahoma,⁶² South Carolina,⁶³ Utah,⁶⁴ Virginia,⁶⁵ Washington,⁶⁶ West Virginia,⁶⁷ and Wisconsin.⁶⁸ In these states' constitutions, there is a basic public expectation that all children have a right to attend public school and be treated with social equality.⁶⁹ In addition, all individuals are afforded an enforceable right to education.⁷⁰

Within the right to education is a basic public expectation that all children have a right to attend public school and have equal access to social goods and social services.⁷¹ The specifics of this right vary across states where some states take more significant measures than others to ensure the right to a high-quality education system.⁷² However, all 50 states do provide some type of right to public education.⁷³ For example, Washington's state constitution's right to education goes beyond reading, writing, and arithmetic, and includes broad educational opportunities needed to equip children for their futures.⁷⁴ New Jersey's State Constitution places a duty on the state "to maintain and support a thorough and efficient system of free public schools" and the delegation of that duty must fulfill this obligation.⁷⁵

⁵⁵ Ala. CONST. art. XIV, § 256.

⁵⁶ Alaska CONST. art. VII, § 1.

⁵⁷ Fla. CONST. art. IX, § 1.

⁵⁸ N.J. CONST. art. VIII, § 4, para. 1.

⁵⁹ N.M. CONST. art. XII, § 1.

⁶⁰ N.Y. CONST. art. XI, § 1.

⁶¹ N.D. CONST. art. VIII, § 1.

⁶² Okla. CONST. art. XIII, § 1.

⁶³ S.C. CONST. art. XI, § 3.

⁶⁴ Utah CONST. art. X, § 1.

⁶⁵ Va. CONST. art. VIII, § 1.

⁶⁶ Wash. CONST. art. IX, § 2.

⁶⁷ W.V. CONST., art. XII, § 1.

⁶⁸ Wis. CONST. art. X, § 3; Hunter, *supra* note 3.

⁶⁹ Weissman, et al., *supra* note 4.

⁷⁰ Roni R. Reed, Education and the State Constitutions: Alternatives for Suspended and Expelled Students, 81 CORNELL L. REV. 582, 593 (1996).

⁷¹ Weissman, et al., *supra* note 4.

⁷² Nat'l Paralegal College, *The Basic Structure of Education Law- Module 1 of 4*, LAW SHELF EDUC. MEDIA, <https://lawshelf.com/videocoursesmoduleview/the-basic-structure-of-education-law/>; Scott Dallman & Anusha Nath, *Education Clauses in State Constitutions Across the United States*, FED. RESRV. BANK OF MINNEAPOLIS (Jan. 8, 2020), <https://www.minneapolisfed.org/~media/assets/articles/2020/education-clauses-in-state-constitutions-across-the-united-states/education-clauses-in-state-constitutions-across-the-united-states.pdf?la=en>.

⁷³ Nat'l Paralegal College, *supra* note 72; Dallman & Anusha, *supra* note 72.

⁷⁴ Reed, *supra* note 70 at 595.

⁷⁵ N.J. CONST. art. VIII, § 4, para. 1.

D. The Right to Education in New York and Texas State Constitutions

New York's and Texas's right to education provisions provide different rights.⁷⁶ New York's provision explicitly mentions children and states, "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."⁷⁷ The explicit mention of children demonstrates that New York offers a right to education specifically to children. In contrast, Texas's provision does not explicitly mention children and states, "[a] general diffusion of knowledge being essential to the preservation of the liberties and right of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."⁷⁸ Texas's state constitution differs from New York's in that it does not provide a general right to education for its children. Thus, by comparing how both New York and Texas provide their right to education to children, it can be determined whether New York is violating their right because if Texas is providing a more adequate education to their children, New York will be in violation of the fundamental right to education in which they provided for all children within their state.

1. New York's Right to Education

Although the Federal Constitution does not guarantee a fundamental right to education, the New York education provision ensures "all children" a sound basic education.⁷⁹ New York recognizes that "education has a fundamental role in maintaining the fabric of society"⁸⁰ and is constitutionally protected.⁸¹ The provision imposes a duty on the legislature to ensure the availability of a sound, basic education to all children of New York, in which the courts are responsible for adjudicating the nature of the duty.⁸² Every single child in the state of New York has the right to attend school, until the age of 21 or completion of a high school diploma.⁸³

In *Campaign for Fiscal Equity, Inc. v. State*, the New York Court of Appeals made clear the standard and held that "the system in place must at

⁷⁶ Hunter, *supra* note 3; TEX. CONST., art. VII, § 1; N.Y. CONST. art. XI, § 1.

⁷⁷ Hunter, *supra* note 3.

⁷⁸ *Id.*

⁷⁹ Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326 (N.Y. 2003); Dallman & Anusha, *supra* note 72.

⁸⁰ Plyler v. Doe, 102 S. Ct. 2382, 2397 (1982).

⁸¹ N.Y. CONST. art. XI, § 1.

⁸² 94 SCHOOLS, UNIVERSITIES, AND COLLEGES, N.Y. JURIS. 2D § 8 (Thompson West, 2004); Campaign for Fiscal Equity, Inc., 655 N.E.2d. at 666.

⁸³ N.Y. EDUC. LAW § 3202 (McKinney 2021).

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least make available an ‘education’” which should consist of “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.”⁸⁴ If adequate facilities, services, and resources are made available “to provide children with the opportunity to obtain these essential skills, the State will have satisfied its constitutional obligation.”⁸⁵ Further, the Court of Appeals held that “accomplishing a basic education requires minimally adequate physical facilities, and basic learning resources, as well as being taught up-to-date curricula by adequately trained teachers.”⁸⁶ New York’s education provision also provides that a person over five and under twenty-one years old who has not received a high school diploma has the ability to attend public school without paying tuition.⁸⁷

2. Texas’s Right to Education

As mentioned above, Texas’s education provision does not explicitly mention children.⁸⁸ Texas’s education provision provides a duty to the legislature to support and maintain “an efficient system of public free schools.”⁸⁹ In *Edgewood Independent School District v. Kirby (Edgewood I)*, the Texas Supreme Court makes clear that the legislatures have an “affirmative duty to establish and provide for the public free schools” which is “not committed unconditionally to the legislature’s discretion, but instead is accompanied by standards.”⁹⁰ The framers used the term “efficient” when describing the right to education, and did not use words such as “economical,” “inexpensive,” or “cheap.”⁹¹ In defining the meaning of “efficient” the court turned to both the dictionary and what must have been the framers intent.⁹² The dictionary used by the framers defined efficient as “[c]ausing effects; producing results; actively operative; not inactive, slack or incapable; characterized by energetic and useful activity....”⁹³ The court stated that the framers “purpose of an efficient system was to provide a ‘general diffusion of knowledge’” and that the current system provides for a

⁸⁴ *Campaign for Fiscal Equity, Inc.*, 655 N.E.2d at 665-66.

⁸⁵ *Id.* at 666.

⁸⁶ *Campaign for Fiscal Equity et al. v. State of New York et al.* 719 N.Y.S. 2d 475, ESCR-Net (Aug. 2015) <https://www.escr-net.org/caselaw/2006/campaign-fiscal-equity-et-al-v-state-new-york-et-al-719-nys2d-475>.

⁸⁷ Educ. § 3202.

⁸⁸ TEX. CONST., art. VII, § 1; Hunter, *supra* note 3.

⁸⁹ TEX. CONST., art. VII, § 1.

⁹⁰ *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989).

⁹¹ *Id.* at 395.

⁹² *Id.*

⁹³ *Id.*

diffusion that is limited and unbalanced which is “directly contrary to the constitutional vision of efficiency.”⁹⁴

Edgewood I holds that Texas’s education provision requires the school funding system to provide a “thorough and efficient system...so that each student...shall have access to programs and services... that are substantially equal to those available to any similar student, notwithstanding varying economic factors.”⁹⁵ The court stressed that no matter where a child lives, whether in a rich or poor district, they must be afforded a substantially equal opportunity and if the legislatures did not support and maintain the system this way the constitution would be violated.⁹⁶

In conclusion, as stated by the aforementioned cases, New York and Texas appear to articulate their right in different ways. New York’s constitution guarantees every child a “sound basic education” which consists of at least the basic literacy, calculating, and verbal skills necessary for productive civic engagement in minimally adequate physical facilities with up-to-date curricula taught by adequately trained teachers.⁹⁷ On the other hand, Texas’s constitution requires the legislatures to create an efficient and equal system for financing public education in so that everyone would be provided a quality public education, just as the framers intended.⁹⁸

E. Education Within the Juvenile Justice System

1. The Juvenile Justice System

In an attempt to divert youthful offenders from the destructive punishments of the criminal justice system’s courts, the juvenile justice system was established in the United States.⁹⁹ Many believed that treating children as adult criminals was not only unnecessarily harsh, but ultimately resulted in their own corruption.¹⁰⁰ It was said by a reformer¹⁰¹, that “the main reason for the establishment of the juvenile court was ‘to prevent children from being treated as criminals.’”¹⁰² This separate juvenile justice

⁹⁴ *Id.*

⁹⁵ *Id.* at 397.

⁹⁶ *Id.*

⁹⁷ *Id.* at 665-666; Campaign for Fiscal Equity et al. v. State of New York et al. 719 N.Y.S. 2d 475, *supra* note 86.

⁹⁸ *Kirby*, 777 S.W.2d at 395.

⁹⁹ JOAN L. McCORD ET AL., *JUVENILE CRIME, JUVENILE JUSTICE* 154 (2001).

¹⁰⁰ *Id.* at 157.

¹⁰¹ A reformer is one who seeks to end harsh policies and racial inequities within the criminal justice system. Criminal Law Reform, ACLU, (last visited Oct. 14, 2021), <https://www.aclu.org/issues/criminal-law-reform>.

¹⁰² McCORD ET AL., *supra* note 99 at 157.

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system focuses on rehabilitating each juvenile based on their individual need, not based on their offense.¹⁰³

The juvenile justice system differs from the criminal justice system in that the courts within the juvenile justice system intervene on behalf of the child's best interest, which gives the judge extensive discretion.¹⁰⁴ These courts have jurisdiction over children charged with offenses and children suffering with hardships, such as abuse or neglect.¹⁰⁵ Unlike the courts which prosecute adults within the criminal justice system, the juvenile courts do not grant children the criminal procedural protections of jury trials, lawyers, the right to know the charges brought against one, and the right to confront one's accuser.¹⁰⁶ Even the language used in the juvenile justice system is different: juveniles are charged with delinquencies, not crimes, found adjudicated delinquent, instead of found guilty, and are sent to training school or reformatory, instead of prison.¹⁰⁷ All in all, there has been ongoing tension within the juvenile justice system between focusing on the best interest of the child versus focusing on punishment and protecting the best interest of society.¹⁰⁸

The juvenile justice system includes juvenile correctional facilities and juvenile detention, which are both meant to maintain public safety, provide rehabilitation, address treatment needs, and successfully reintegrate youths into society.¹⁰⁹ Juvenile correctional facilities are long-term programs, typically ranging from a few months to a year or more, and are meant to house adjudicated delinquents due to the offenses they committed, which would be considered a crime if they were adults.¹¹⁰ In contrast, juvenile detention facilities are meant to provide a short-term confinement for pre-adjudicated youth.¹¹¹ Juvenile detention is defined as "the temporary and safe custody of juveniles who are accused of conduct subject to the jurisdiction of the court who require a restricted environment for their own or the community's protection while pending legal action."¹¹² The processes and components of

¹⁰³ *Id.* at 154.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 157.

¹⁰⁶ *Id.* at 154.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Pam Clark, Types of Facilities, NATIONAL INSTITUTE OF CORRECTIONS (2021) <https://info.nicic.gov/dtg/node/4#types-of-02>; Juvenile Justice, YOUTH.GOV, <https://youth.gov/youth-topics/juvenile-justice> (last visited Oct. 14, 2021)..

¹¹⁰ Clark, *supra* note 109.

¹¹¹ Clark, *supra* note 109.

¹¹² Clark, *supra* note 109.

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juvenile correctional facilities vary from state to state.¹¹³ State governments are responsible for overseeing juvenile facilities, but do not regularly monitor the educational programs.¹¹⁴

2. The Failings of Education Within the Juvenile Justice System

Nation-wide research has shown that the educational rights of children who serve time in the juvenile justice system are often ignored, and are no longer a priority to the state, due to these children being “hidden” and not enrolled in local district schools.¹¹⁵ Despite those within the juvenile justice system being the ones in the greatest need of academic, emotional, and behavior supports, data suggests that they receive less than those who are not in confinement.¹¹⁶ The juvenile justice system is disproportionately made up of students with disabilities and those who have always performed poorly in school.¹¹⁷ While the median age of those within this system is 15.5 years old, which is roughly a tenth grader, the average reading level is that of a fourth-grader, who is roughly 10 years old.¹¹⁸ The teachers hired to educate these youth are often not in possession of advanced degrees, trained in special education, or instructed on how to teach within the system.¹¹⁹ In addition, compared to teachers in public school, teachers who work in the justice facility are more likely to be absent.¹²⁰ Further, estimates received from language teachers in juvenile facilities found that “32 percent of students read

¹¹³ Clark, *supra* note 109.

¹¹⁴ U.S. GOV'T ACCOUNTABILITY OFF., RESIDENTIAL FACILITIES: IMPROVED DATA AND ENHANCED OVERSIGHT WOULD HELP SAFEGUARD THE WELL-BEING OF YOUTH WITH BEHAVIORAL AND EMOTIONAL CHALLENGES (May 2008).

¹¹⁵ P.E. Leone & S. Meisel, *Improving education services for students in detention and confinement facilities*, 17 CHIL'D.'S LEGAL RTS. J. 1, 2 (1997); *Protecting the Civil Rights of Students in the Juvenile Justice System*, U.S. DEP'T OF EDUC. (2016), <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-juvenile-justice.pdf>.

¹¹⁶ *Protecting the Civil Rights of Students in the Juvenile Justice System*, *supra* note 115.

¹¹⁷ Harriet R. Morrison & Beverly D. Epps, *Warehousing or Rehabilitation? Public Schooling in the Juvenile Justice System*, 71 J. NEGRO EDUC. 218, 220-21 (2002); Daniel Karpowitz & Max Kenner, *Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility for the Incarcerated*, BARD PRISON INITIATIVE, 2-3 (1997) https://www.prisonpolicy.org/scans/crime_report.pdf; Christopher A. Mallett, *Seven Things Juvenile Courts Should Know About Learning Disabilities*, A.B.A. (Jan. 9, 2018), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol_31/may_2012/seven_things_juvenilecourtjudgesshouldknowaboutlearningdisabilit/; see *NDTAC Factsheet: Youth with Special Education Needs in Justice Settings*, U.S. DEP'T OF EDUC. (2014), https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Special_Ed_FS_508.pdf.

¹¹⁸ Karpowitz & Kenner, *supra* note 117.

¹¹⁹ HUM. RTS. WATCH, *supra* note 5 at 38; Barbara A. Moody, *Juvenile Corrections Educators: Their Knowledge and Understanding of Special Education*, 45 J. CORR. EDUC. 105, 105 (2003); Dimitria D. Pope & Sylvia Martinez, *Tex. Youth Comm'n, COKE CNTY. JUV. JUST. CTR. AUDIT 10* (2007); McCORD ET AL., *supra* note 99.

¹²⁰ *Protecting the Civil Rights of Students in the Juvenile Justice System*, *supra* note 115.

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at or below a 4th-grade level, 27 percent at 5th- or 6th-grade level, 20 percent at 7th- or 8th-grade level, and 21 percent at or above 9th grade level.”¹²¹ Juvenile facilities are also less likely to offer essential courses, such as math and science, than public high schools.¹²² For example, only 28% of justice facilities offer Algebra II, compared to 78% of all high schools and only 8% of justice facilities offer Physics, compared to 60% of all high schools.¹²³ The U.S. Government Accountability Office (“GAO”) noted that the U.S. Department of Justice investigations of juvenile facilities found a lack of adequate education, including other civil rights violations, in various facilities.¹²⁴ In addition, GAO found that there was a lack of coordination between the state education agencies and the juvenile facilities which contributed to the ongoing poor education quality within the facilities. Students were also unable to transfer the credits completed to schools within their communities when released from custody.¹²⁵

Although education is a critical aspect of rehabilitation, it has been inadequately supplied and, unfortunately, often not even provided by many states to those within the juvenile justice system.¹²⁶ Overcrowding, abuse, and inadequate services are said to be the norm rather than the exception in juvenile detention facilities.¹²⁷ Depending on the facility, some juveniles receive no education for extended periods of time or meet sporadically for classes with no curriculum for a fraction of the state mandated time.¹²⁸ Countless juvenile detention facilities have no libraries, books, separate classrooms or adequate teachers.¹²⁹ The reality is that there are very few children within juvenile detention facilities who have received an adequate education, which has left many to file class action lawsuits claiming that the inadequate education practices in these facilities violate the youth’s statutory rights to education services.¹³⁰

¹²¹ McCORD ET AL., *supra* note 99 at 189.

¹²² *Protecting the Civil Rights of Students in the Juvenile Justice System*, *supra* note 115.

¹²³ *Id.*

¹²⁴ U.S. GOV’T ACCOUNTABILITY OFF., 2007; HUM. RTS. WATCH, *supra* note 5 at 45-47 (it was found that Mount View Youth Services Center in Denver, Colorado did not follow a written curriculum).

¹²⁵ U.S. GOV’T ACCOUNTABILITY OFF., 2007; Weissman, et al., *supra* note 4.

¹²⁶ COAL. FOR JUV. JUST., *supra* note 8 at 29; Abrams, *supra* note 5; *See* Letter from Bradley J. Schlozman to Hon. Mitch Daniels, *supra* note 5.

¹²⁷ Abrams, *supra* note 5; COAL. FOR JUV. JUST., *supra* note 8 at 19-20 (describing conditions at the Giddings State Home and School in Texas).

¹²⁸ *See* Letter from Bradley J. Schlozman to Hon. Mitch Daniels, *supra* note 5; HUM. RTS. WATCH, *supra* note 5 at 37-38.

¹²⁹ HUM. RTS. WATCH, *supra* note 5 at 38.

¹³⁰ P.E. LEONE & S. MEISEL, *supra* note 115 at 2-12; *Protecting the Civil Rights of Students in the Juvenile Justice System*, *supra* note 115.

3. Statutory Protections that Directly Apply to the Right to Education in Juvenile Detention

The Individuals with Disabilities Education Act (“IDEA”)¹³¹ and the No Child Left Behind Act (“NCLBA”)¹³² are the two most important federal statutes that apply to the right to education within the juvenile justice system. The IDEA, passed in 1975, establishes that “disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society” and thus improving education for those disabled is essential for ensuring equal opportunity.¹³³ Before the IDEA was enacted children with disabilities were not offered proper education because there was a lack of rehabilitation services, speech therapy, counseling, and certified special education teachers.¹³⁴ After the enactment, children with disabilities were successful in obtaining a “free appropriate public education” and their educational results improved.¹³⁵ The IDEA obligates states that receive Federal funding for disabled students to identify, refer, and evaluate children who may have a disability and create an Individualized Education Program (“IEP”) for them.¹³⁶ Although this is required from the IDEA, the educational services actually provided fall short of these requirements as demonstrated by a study done of southern correctional facilities which found that although roughly 70 percent of children qualified for special education services, only 30 percent received them.¹³⁷

The purpose of the No Child Left Behind Act (“NCLBA”),¹³⁸ passed in 2001, is to “provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”¹³⁹ The NCLBA requires that states that receive federal education funding monitor and improve the correctional education services by implementing transition services, employing “highly qualified” teachers, performing program evaluations, and conducting outcome and assessment

¹³¹ 20 U.S.C. §§ 1400-1482 (2000).

¹³² 20 U.S.C. §§ 6301-7941 (Supp. V 2005).

¹³³ §§ 1400-1482.

¹³⁴ *Id.*; Letter from R. Alexander Acosta, Assistant Att’y Gen., to Hon. Janet Napolitano, Governor of Ariz. 18-19 (Jan. 23, 2004); Letter from Wan J. Kim, Assistant Att’y Gen., to Hon. Robert L. Ehrlich, Governor of Md. 23 (Aug. 7, 2006).

¹³⁵ §§ 1400-1482.

¹³⁶ Sue Burrell & Loren Warboys, *Special Education and the Juvenile Justice System 2*, (Juv. Just. Bull., U.S. Dep’t of Just., Off. of Juv. Just. and Delinquency Prevention, July 2000), <http://www.ncjrs.gov/pdffiles1/ojjdp/179359.pdf>.

¹³⁷ Harriet R. Morrison & Beverly D. Epps, *supra* note 117.

¹³⁸ §§ 6301-7941.

¹³⁹ *Id.*

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testing.¹⁴⁰ Although the NCLBA sets out these requirements, studies have shown that states are only showing minimal progress in implementing them within the juvenile justice system.¹⁴¹ States are not providing technical assistance to low-performing juvenile programs¹⁴² and are not enforcing the teacher qualification standards.¹⁴³ Not only are there few consequences for violating the requirements, because eighteen states have imposed no state-implemented consequences,¹⁴⁴ but there is also no private cause of action to redress the harm.¹⁴⁵ As to a potential enforcement mechanism, withholding funds from non-complying states may be the best avenue.¹⁴⁶ Although these two statutes do provide nationally applicable standards, they are both limited tools for reforming the educational system within the juvenile justice system because individuals are not employing the statutes to improve education.

III. PROBLEM

The level of education that is currently provided to juveniles within the New York prison system does not meet the general state standards for public schools and violates New York's education clause.¹⁴⁷ There are numerous studies, reports, and more that highlight the inadequate education available to juveniles within the system such as the constant overcrowded, understaffed, and infrequent classes with deficit curriculums. These studies evaluate practices, such as combining varying educational levels and needs into one understaffed room, which leads youth to become either intellectually under stimulated or extremely overwhelmed.¹⁴⁸ Imagine students sitting shoulder to shoulder, fifty per classroom, with only one uncertified teacher,

¹⁴⁰ *Id.*; 2003 ANNUAL REPORT TO THE FLORIDA DEPARTMENT OF EDUCATION: JUVENILE JUSTICE EDUCATIONAL ENHANCEMENT PROGRAM 187 (2004), <https://criminology.fsu.edu/sites/g/files/upcbnu3076/files/2021-03/JJEEP-2003-2004-Annual-Report.pdf>.

¹⁴¹ *See* 2003 ANNUAL REPORT TO THE FLORIDA DEPARTMENT OF EDUCATION: JUVENILE JUSTICE EDUCATIONAL ENHANCEMENT PROGRAM, *supra* note 140 at 96.

¹⁴² *Id.* at 94.

¹⁴³ *Id.* at 87-88; Moody, *supra* note 119 at 105.

¹⁴⁴ 2003 ANNUAL REPORT TO THE FLORIDA DEPARTMENT OF EDUCATION: JUVENILE JUSTICE EDUCATIONAL ENHANCEMENT PROGRAM, *supra* note 140 at 94.

¹⁴⁵ *Assn. of Community Orgs. For Reform Now v. N.Y. City Dept. of Educ.*, 269 F. Supp. 2d 338, 347 (S.D.N.Y. 2003); *Fresh Start Acad. v. Toledo Bd. of Educ.*, 363 F. Supp. 2d 910, 916 (N.D. Ohio 2005).

¹⁴⁶ Kimberly A. Murakami, Annotation, Construction and Application of No Child Left Behind Act, Pub. L. No. 107-110, 115 STAT. 1425 (2002).

¹⁴⁷ NAT'L JUV. JUST. NETWORK, IMPROVING EDUCATIONAL OPPORTUNITIES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM (Mar. 2016), http://www.njjn.org/uploads/digital-library/NJJN_Educational%20Re-entry-snapshot_Mar2016_FINAL.pdf?phpMyAdmin=14730ab3483c51c94ca868bccffa06ef.

¹⁴⁸ Areto A. Imoukhuede, *The Right to Public Education and the School to Prison Pipeline*, 12 ALB. GOV'T L. REV. 52 (2019).

teaching basic fifth-grade level math, meant for students who are ten and eleven, even though the students in the class range from ages ten to seventeen. For juveniles serving longer sentences, this is their last opportunity to receive education as provided to them under New York's education provision which is why it is extremely important for them to receive it. These practices are not in line with New York's guarantee of a "sound basic education" because it deprives juvenile delinquents of minimally adequate physical facilities and up-to-date curricula taught by adequately trained teachers.¹⁴⁹ In addition, the Office for Civil Rights ("OCR") and the U.S. Department of Justice ("DOJ") have reminded justice facilities "that the Federal civil rights law, regulations, and guidance that prohibit discrimination against students in traditional public schools also apply to educational services and supports offered or provided to youth in the justice facilities."¹⁵⁰ Thus, due to its lack of adequate educational opportunities available for juvenile delinquents, New York is in violation of its own educational provision.

A. Education Applied in New York Juvenile Justice System

Agencies that are responsible for incarcerated and detained youth in New York consist of the Office of Children and Family Services ("OCFS"), the Department of Corrections and Community Supervision ("DOCCS"), and county and municipal jails.¹⁵¹ OCFS has direct responsibility for the educational services for those under the age of 21 and the Division of Juvenile Justice and Opportunities for Youth within the OCFS is responsible for supervising and treating youth placed in court.¹⁵² The educational programs in OCFS must be of comparable length to other public schools, employ certified professional educational staff, and prepare a long-range educational plan.¹⁵³ DOCCS is responsible for the confinement and habilitation of those held at various facilities who are sentenced to terms that exceed one year.¹⁵⁴ The educational programs in DOCCS should include adult basic education, at least five hours of actual classroom instruction during the weekdays, literacy incentives, and programs that are realistic and relevant to the needs

¹⁴⁹ *Campaign for Fiscal Equity, Inc.*, 655 N.E.2d at 665-666; *Campaign for Fiscal Equity et al. v. State of New York et al.* 719 N.Y.S. 2d 475, *supra* note 86; AMERICAN CIVIL LIBERTIES UNION (ACLU), CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK'S JUVENILE PRISONS FOR GIRLS (2006).

¹⁵⁰ *Protecting the Civil Rights of Students in the Juvenile Justice System*, *supra* note 115.

¹⁵¹ NEW YORK STATE BOARD OF REGENTS, EDUCATIONAL PROGRAMS FOR INCARCERATED AND DETAINED YOUTH (2016) <https://www.regents.nysed.gov/common/regents/files/P-12%20Incarcerated%20Youth.pdf>.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

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and requirements of the current labor market.¹⁵⁵ Counties and jails are responsible for those 16 and older who are waiting adjudication or have been sentenced to a term of one year or less whereas the facility's corresponding school district is responsible for providing educational services to student inmates.¹⁵⁶ Educational programs in county managed facilities require each school district to annually update the educational programs plans with information on instructional programs available, qualifications of staff, length of program, and coordination procedures.¹⁵⁷

Despite the responsibility to supply children with their right to education being allocated to these departments, offices, counties and jails, proper education is not being provided and is not being adequately monitored. The American Civil Liberties Union's report in 2006¹⁵⁸ found that New York did not hold by its constitutional provision ensuring that "all the children of this state may be educated."¹⁵⁹ The ACLU's report found that New York's juvenile prisons for girls, specifically the Tyron and Lansing facilities, provide inadequate educational services.¹⁶⁰ These inadequate educational services consist of no schooling during the first two weeks of incarceration, a shortage of qualified staff, grouping of different educational levels into one classroom, a deprivation of necessary individualized instruction and vocational training inferior to what is offered to the boys.¹⁶¹ One of the few options the girls have to right this wrong is to file a written grievance which is described as a frustrating and ineffective process because the women's grievances are most commonly ignored.¹⁶² This leaves the girls in the Tyron and Lansing facilities with ineffective mechanisms for seeking redress.¹⁶³

1. The Struggle of Reentering the New York State Educational System

In addition to juvenile facilities not providing adequate education, juveniles are delayed, given excuses, or flat-out refused the ability to reenter the public school system once they leave juvenile detention.¹⁶⁴ For those who

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 3.

¹⁵⁹ Hunter, *supra* note 3.

¹⁶⁰ AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 3.

¹⁶¹ *Id.* at 80.

¹⁶² *Id.* at 7.

¹⁶³ *Id.*

¹⁶⁴ NAT'L JUV. JUST. NETWORK, *supra* note 147; Hailly T. N. Korman & Lisa Pilnik, Opinion, How Does Education in the Juvenile-Justice System Measure Up? It Doesn't, EDUCATIONWEEK (Oct. 25, 2018), <https://www.edweek.org/leadership/opinion-how-does-education-in-the-juvenile-justice-system->

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were able to enter back into the system, they were offered to come back to school in the wrong grade or wrong GED programs.¹⁶⁵ Juveniles leave the system disadvantaged due to the diminished educational opportunities available to them and continue to be disadvantaged due to the struggle to now re-enter into the education system they were previously in.¹⁶⁶ The major lack of coordination between facilities and schools has a direct correlation to the fact that two-thirds of high school aged youths who leave juvenile facilities do not re-enter regular public high schools.¹⁶⁷ This lack of communication also causes juveniles to not always receive their credits because they are not transferred back to their home schools once they leave the system.¹⁶⁸ It is said that those who do successfully re-enroll, few of them will actually go on to graduate from high school.¹⁶⁹ The reason for this is simple – “when kids are locked up, they have less access to educational opportunities than their peers.”¹⁷⁰

In *J.G. v. Mills*, court-involved youth who did not receive adequate educational services while in detention in New York City claimed that they had been denied timely re-enrollment in New York City schools.¹⁷¹ They stated that “court-involved youth were regularly denied the opportunity to return to school or were warehoused in alternative settings where they were segregated, and adequate educational services were not provided.”¹⁷² As stated in *Brown v. Board of Education*, “where the state has undertaken to provide [education], [it] is a right which must be made available to all on equal terms.”¹⁷³ Despite the court mandating equality, juvenile delinquents

measure-up-it-doesnt/2018/10; Nancy Rosenbloom & Nancy Ginsburg, *Championing the Education Rights of Court-Involved Youth*, A.B.A. (Jan. 14, 2014), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2014/championing-education-rights-court-involved-youth/>.

¹⁶⁵ Rosenbloom & Ginsburg, *supra* note 164.

¹⁶⁶ Korman, *supra* note 164; *J.G. v. Mills*, *ADVOCATES FOR CHILDREN OF NEW YORK* (Oct. 18, 2021), https://www.advocatesforchildren.org/litigation/class_actions/jg_vs_mills (“The students claimed that court-involved youth were regularly denied the opportunity to return to school or were warehoused in alternative settings where they were segregated and adequate educational services were not provided.”).

¹⁶⁷ See AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 3, 6; See also Lisa F. Grumet, *Court-to-School Pipelines: Meeting Special Education Needs for Students on Juvenile Probation in New York*, 63 N.Y.L. SCH. L. REV. 73, 74 (2019).

¹⁶⁸ MARSHA WEISSMAN, VIDHYA ANANTHAKRISHNAN & VINCENT SCHIRALDI, *MOVING BEYOND YOUTH PRISONS: LESSONS FROM NEW YORK CITY’S IMPLEMENTATION OF CLOSE TO HOME* (Columbia University Justice Lab ed. Feb. 2019), <https://justicelab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%20C2H.pdf>.

¹⁶⁹ Korman, *supra* note 164.

¹⁷⁰ *Id.*

¹⁷¹ *J.G. v. Mills*, *supra* note 166.

¹⁷² *Id.*

¹⁷³ *Brown*, 347 U.S. at 493.

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experience these obstacles while children within the public school system do not.¹⁷⁴ Thus, the barriers that juveniles exiting the system have to deal with to re-enroll into schools further denies them of an equal and adequate education.

Juveniles are further provided inadequate education due to the limited amount of classes available to them and the difficulties they experience in transferring completed credit to their schools.¹⁷⁵ Many juveniles were often not given credit for the classes that they had completed and thus had to start over.¹⁷⁶ The inability to transfer their education records from one school to the next disadvantages them even more.¹⁷⁷ To provide education inside the system and for it not to transfer to public schools does nothing to help juveniles continue where they left off.

2. The Absence of Education While in Solitary Confinement

Lastly, solitary confinement further denies juveniles their right to education.¹⁷⁸ In Syracuse, New York, at the Onondaga County Justice Center, more than 80 juveniles were regularly locked in solitary confinement between the years of 2015 and 2016.¹⁷⁹ Their schooling during their time in solitary confinement consisted of photocopied pages of high-school equivalent workbooks which were never supervised or reviewed.¹⁸⁰ Juveniles in “solitary confinement experience gaps in their education that can leave them unprepared to return to school upon release – if they return at all.”¹⁸¹ Many juveniles within the system already are at risk for developing learning disabilities or other educational struggles, and it is made “far worse by not only not giving them the interventions that they need, but not even providing basic educational attention.”¹⁸² In conclusion, throughout the different stages in the juvenile justice system, from serving a sentencing,

¹⁷⁴ *J.G. v. Mills*, *supra* note 166; NAT'L JUV. JUST. NETWORK, *supra* note 147; Korman, *supra* note 164; Rosenbloom & Ginsburg, *supra* note 164.

¹⁷⁵ Rosenbloom & Ginsburg, *supra* note 164.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Julia L. Davis & Raysa S. Rodriguez, *Keep Our Children Healthy. End the Use of Solitary Confinement*, THE NEW SCHOOL: CENTER FOR NEW YORK CITY AFFAIRS (Nov. 26, 2019), <http://www.centernyc.org/keep-our-children-healthy-end-use-of-solitary-confinement>; Molly McCluskey, *What If This Were Your Kid?*, THE ATLANTIC (Dec. 24 2017), <https://www.theatlantic.com/politics/archive/2017/12/juvenile-solitary-confinement/548933/>.

¹⁷⁹ McCluskey, *supra* note 178.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* (Quoting Dr. Louis Kraus).

sitting in solitary confinement, and re-entering society, juveniles in the New York Prison system are not provided adequate education.¹⁸³

B. Education Applied in Texas Juvenile Justice System

In contrast to New York's education provision, which explicitly provides a right to education for children, Texas's education provision does not.¹⁸⁴ Evidence has shown that juvenile detention facilities in Texas provide a similar or better level of education than those in New York.¹⁸⁵ In a 2000 study, the Youth Commission was held to be responsible for administering services within the juvenile justice system in Texas.¹⁸⁶ All teachers employed are required by the Youth Commission to be certified by the state education agency.¹⁸⁷ The Youth Commission operates a special school district which serves youth in the commissions operated facilities and halfway houses.¹⁸⁸ Youth who are not in state operated programs such as juvenile detention centers, receive child welfare and mental health placements as provided by the local education agency.¹⁸⁹ The Texas youth Commission received state education agency funds and federal funds for education.¹⁹⁰ Education programs were monitored by the state education agency and on a three-year cycle by the staff of the Texas Youth Commission.¹⁹¹ In regard to the details of the education being provided, approximately forty percent of youth who were in the Youth Commissions programs had an active individual education plan and the school day was only four hour days, which is two hours short of the six hour mandated school day.¹⁹² Nevertheless, the Youth Commission provided a 245-day school year which exceeded the state minimum requirement and mandated a maximum teacher to student ratio of 1 to 13, which is lower than Texas's public school's ratio.¹⁹³ Lastly, the Youth

¹⁸³ *Id.*; Rosenbloom & Ginsburg, *supra* note 164; *J.G. v. Mills*, *supra* note 166; AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 3, 6, 80; NAT'L JUV. JUST. NETWORK, *supra* note 147.

¹⁸⁴ Hunter, *supra* note 3.

¹⁸⁵ AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 3, 80; ACLU, A BLUEPRINT FOR MEETING THE NEEDS OF GIRLS IN TYC CUSTODY: REPORT AND RECOMMENDATIONS TO THE TEXAS YOUTH COMMISSION (May 22, 2007), <http://www.aclu.org/womensrights/crimjustice/29876prs20070524.html>.

¹⁸⁶ BRUCE I. WOLFORD, JUVENILE JUSTICE EDUCATION: WHO IS EDUCATING THE YOUTH 41 (May 2000), http://www.edjj.org/Publications/educating_youth.pdf.

¹⁸⁷ *Id.* at 5, 41.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 42.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

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Commission participates in mandated assessment processes provided by the state education agency.¹⁹⁴

Further studies have also shown that Texas has done a sufficient job in providing education.¹⁹⁵ The Giddings State Training School (“Giddings”), which is a Texas Youth Commission secure facility, provides a wide range of programs in well-kept settings.¹⁹⁶ Giddings has modern educational facilities wired with the internet, offers high school-like classes and vocational training, intensive treatment for drug abusers, sexual offenders, and capital offenders.¹⁹⁷ These settings, materials, and programs allow for juveniles to learn and succeed while in juvenile facilities.

On the other hand, a 2008 report by the Office of the Independent Ombudsman found that, youths under the custody of the Texas Youth Commission were not being provided adequate educational services.¹⁹⁸ Students were being placed in classrooms based on correctional, rather than educational needs, and the disciplinary policies of the prison negatively impacted the student’s quality of education.¹⁹⁹ Again, imagine sixty girls placed together in a small room, all of different grade and maturity levels, learning together only because of their living proximity within the same facility, not their level of education. Children in the Texas Youth Commission custody do not receive sufficient individualized educational attention or classroom instruction because the student-to-teacher ratio is much lower than in ordinary schools. These girls are also bunched into groups with students of varying educational levels.²⁰⁰ In addition, the ACLU shared findings that girls in Texas’s juvenile system were not getting the adequate institutional culture they needed.²⁰¹ The system puts punishment before treatment.²⁰² While punishment is necessary within the criminal justice system to deter crime and decrease recidivism, there are times where treatment and or education are more appropriate. This suggests that despite Texas not providing an explicit fundamental right to education for children, they are providing the same or better level of education than what is mandated

¹⁹⁴ *Id.*

¹⁹⁵ McCORD ET AL., *supra* note 99 at 187.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ MICHAEL P. KREZMIEN & OFF. OF THE INDEP. OMBUDSMAN, A REVIEW OF EDUCATION PROGRAMS FOR STUDENTS IN THE TEXAS YOUTH COMMISSION STATE SCHOOLS (2008), https://www.prisonlegalnews.org/media/publications/review_of_education_programs_for_students_in_the_texas_youth_commission_state_schools_office_of_the_independent_ombudsman_2008.pdf.pdf.

¹⁹⁹ *Id.*

²⁰⁰ ACLU, *supra* note 185 at 10.

²⁰¹ *Id.*

²⁰² *Id.* at 5, 10.

by New York under their state constitution. This indicates that New York is in violation of its children's fundamental right to education.

C. New York is in Violation of their Right to Education

Research has shown that New York has done a poor job in providing an adequate education to children within the juvenile justice system. As a result, the state is violating each juvenile's fundamental and constitutional right to education. When a state fails in its obligation to meet minimum constitutional standards of educational quality, a cause of action may be brought under the right of education in the state constitution.²⁰³ This claim requires two elements: deprivation of a sound basic education and causes attributable to the states.²⁰⁴ This deprivation of the right to adequate education is attributable to the states because state governments are the ones responsible for overseeing juvenile facilities, thus their failure to monitor the quality of educational programs in these facilities is attributable to the respective state.²⁰⁵

Current solutions to right the wrong of inadequate education within the juvenile justice system is not working when looking at the juvenile justice system as a whole. Reports show that 75 percent of students in the custody of the juvenile justice system advance less than a full grade level per year while in custody.²⁰⁶ This is due to the extreme lack and inadequacy of teachers, classrooms, and materials.²⁰⁷ Further, due to the rigid restrictions on what is allowed to be brought into juvenile detentions, science classes are taught without beakers, Bunsen burners, and microscopes.²⁰⁸ Homework, which is a daily assignment in public schools, is rarely, if ever, assigned.²⁰⁹ It is thus readily apparent that reforms are needed in the detention center level and the administrative level in order to provide juvenile delinquents a meaningful opportunity to become educated.²¹⁰

²⁰³ Schools, Universities, and Colleges, *supra* note 82; N.Y. Civ. Liberties Union v. New York, 4 N.Y.3d 175 (N.Y. 2005).

²⁰⁴ Schools, Universities, and Colleges, *supra* note 82; N.Y. Civ. Liberties Union v. New York, 4 N.Y.3d.

²⁰⁵ U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 114 at 1, 42.

²⁰⁶ McCORD ET AL., *supra* note 99 at 190.

²⁰⁷ McCluskey, *supra* note 178; AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149; NAT'L JUV. JUST. NETWORK, *supra* note 147.

²⁰⁸ McCluskey, *supra* note 178.

²⁰⁹ McCluskey, *supra* note 178.

²¹⁰ Katherine Twomey, *The Right to Education in Juvenile Detention Under State Constitutions*, 94 VA. L. REV. 765, 773 (2008).

IV. PROPOSAL

A. Providing a Right to Education Leads to Benefits

One of the main goals of the prison system is to educate those incarcerated in order to successfully reintegrate them into society. Juvenile detention facilities have the potential to create a tremendous negative impact on youths.²¹¹ It is thus essential that these juveniles receive their fundamental right to education because it is at this point in their lives that an adequate education is most necessary.²¹² Additionally, education is consistent with the purpose of confinement and has shown to be linked with reduced recidivism²¹³ rates and successful reintegration²¹⁴ into society.²¹⁵

Providing adequate education to juvenile delinquents directly benefits the lives and futures of those incarcerated. Multiple studies and reports have shown that incarcerated individuals can really grasp the information that they are taught and grow intellectually when given the opportunity.²¹⁶ This is especially true for juveniles since they are younger and more easily able to learn than adults.²¹⁷ One study submits that incarcerated youths experience fewer disciplinary problems throughout the juvenile facility when engaged in educational programming.²¹⁸ In addition, juvenile delinquents exposed to early school experience have shown academic achievement,²¹⁹ and are twenty percent or more likely to not reoffend when involved in quality education programs.²²⁰ There are also societal benefits that result from providing education in juvenile detentions.²²¹ Juveniles who receive education while

²¹¹ Clark, *supra* note 109.

²¹² Clark, *supra* note 109.

²¹³ The tendency of a convicted criminal to reoffend. Recidivism, *DICTIONARY OF PUBLIC HEALTH* (1st ed. 2007).

²¹⁴ The action or process of integrating someone back into society. Reintegration, *OXFORD DICTIONARY OF ENGLISH* (3d ed. 2015).

²¹⁵ STEPHEN J. STEURER, LINDA SMITH, & ALICE TRACY, OCE/CEA THREE STATE RECIDIVISM STUDY 39-41, 48-49 (2001), <https://www.govinfo.gov/content/pkg/ERIC-ED465886/pdf/ERIC-ED465886.pdf>; Thomas G. Blomberg, Janine Blomberg, Gordon P. Waldo, George Pesta & Jon Bellows, *Juvenile Justice Education, No Child Left Behind, and the National Collaboration Project*, *CORRS. TODAY* 143 (2006), https://criminology.fsu.edu/sites/g/files/upcbnu3076/files/2021-03/Juvenile_justice_news_CorrectionsToday_20061.pdf.

²¹⁶ COAL. FOR JUV. JUST., *supra* note 5 at 29.

²¹⁷ *Why the Young Learn More Easily*, BBC NEWS, <http://news.bbc.co.uk/2/hi/health/6172048.stm> (Nov. 23, 2006).

²¹⁸ DAVID W. ROUSH, NAT'L JUVENILE DETENTION ASS'N, & CTR. FOR RSCH. & PRO. DEV. MICH. STATE UNIV., *DESKTOP GUIDE TO GOOD JUVENILE DETENTION PRACTICE: RESEARCH REPORT 111* (1996).

²¹⁹ *Id.* at 10.

²²⁰ COAL. FOR JUV. JUST., *ABANDONED IN THE BACK ROW: NEW LESSONS IN EDUCATION AND DELINQUENCY PREVENTION 3* (2001).

²²¹ Twomey, *supra* note 210 at 773.

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in detention are more likely to return to school²²² and those who complete their GED and a vocational program are three times more likely to become employed upon their release.²²³ Further, receiving high-quality educational services and support is essential during adolescence in order for them to successfully transition into adulthood.²²⁴ These children are young and vulnerable and are removed from their parents, who in most cases, are the ones to keep them safe, provide for their well-being, and make sure they succeed educationally.²²⁵

In addition to benefiting the lives of each juvenile delinquent, providing adequate education also directly benefits society. New York spends \$892,206.00 a year to incarcerate one youth, which is the most out of all the states.²²⁶ The money and resources needed to incarcerate a juvenile delinquent would be better off going towards in-state tuition which costs \$8,430.00 per year.²²⁷ Due to the extreme price that is paid towards incarcerating youths, the Coalition for Juvenile Justice has estimated that society saves millions of dollars per juvenile who does not return to prison.²²⁸ This thus displays that society benefits long term by saving costs when education is provided to incarcerated individuals.

B. New York should Amend its Constitutional Language of the Right to Education Provision to be More Like Florida and Virginia, Which Provide a Right to Education for Children and Strictly Enforce it

Constitutional language matters, which is why it is extremely important for New York to accurately define, describe, and reflect its right to education in a way that it will be properly enforced. New York, Florida, and Virginia are three of the fourteen states that explicitly mention children in their provision establishing a right to education in their state constitutions.²²⁹ Although New York has established guidelines and has allocated the enforcement of this right to different units, juvenile delinquents are still very

²²² Blomberg et al., *supra* note 215.

²²³ James H. Keeley, *Will Adjudicated Youth Return to School After Residential Placement? The Results of a Predictive Variable Study*, 57 J. OF CORR. EDU. 65, 67 (2006).

²²⁴ Blomberg, T. G. et al., *Incarceration, education and transition from delinquency*. J. CRIM. JUST., 39(4), 355 (2011), <https://www.sciencedirect.com/science/article/pii/S0047235211000559>.

²²⁵ *Id.*

²²⁶ JUST. POL'Y INST., *Sticker Shock: The Cost of Youth Incarceration* (July 30, 2020), <https://justicepolicy.org/research/policy-brief-2020-sticker-shock-the-cost-of-youth-incarceration/>.

²²⁷ *Id.*

²²⁸ COAL. FOR JUV. JUST., *supra* note 220 at ix; Karpowitz & Kenner, *supra* note 117 at 2-3.

²²⁹ Hunter, *supra* note 3.

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much lacking the opportunity of adequate education.²³⁰ New York should learn from the actions Florida and Virginia have taken in order to provide adequate education to the children of their state.

Through constitutional amendments and changes to the education system, Florida has improved its education enforcement for its children.²³¹ Florida mandates “that it is a ‘paramount duty of the state’ to provide for high-quality education.”²³² The fact that Florida mandates this as a duty makes the enforcement of this right that much more serious, important, and respected. Moreover, Virginia’s language in its education clause is more explicit in its standard of quality because it requires the legislative or executive body to define the academic standards.²³³ Their right to education is also applied to “all children.”²³⁴ By implementing changes like those taken by Florida and Virginia, New York’s educational clause would become stronger and stricter, ensuring that it is enforced and monitored.

Moreover, Florida and Louisiana, Louisiana being a state that does not explicitly provide a right of education to children, are two states that illustrate that “constitutional amendments can be drivers of change.”²³⁵ Both states implemented institutional changes to their educational systems which resulted in improved outcomes for the children in their respective states.²³⁶ Florida’s education clause, which is the strongest education clause in the country, recognizes that “‘education of children is a fundamental value of the people’ and requires adequate provision to be made by law for a ‘uniform, efficient, safe, secure and high-quality system of free public schools.’”²³⁷ Additionally, Florida mandates “that it is a ‘paramount duty of the state’ to provide for high-quality education.”²³⁸ Louisiana’s 2003 amendment allowed the state to take over failing schools which resulted in substantial achievement gains for the low-income student population.²³⁹ Adopting changes such as Louisiana did in 2003 could potentially result in substantial education achievement in juvenile facilities if that state is entitled to take over. New York’s current language is not accurately portraying the importance of this right nor describing what this right consists of. With these

²³⁰ McCluskey, *supra* note 178; AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 80; NAT’L JUV. JUST. NETWORK, *supra* note 147.

²³¹ Dallman & Anusha, *supra* note 72 at 6.

²³² *Id.*

²³³ *Id.* at 2.

²³⁴ *Id.*; Hunter, *supra* note 3.

²³⁵ Dallman & Anusha, *supra* note 72.

²³⁶ *Id.* at 12.

²³⁷ *Id.* at 1.

²³⁸ *Id.*

²³⁹ *Id.* at 9.

amendments, New York's right to education will be held more accountable by the legislatures and there will be more rigid standards that they will understand need to be provided. New York should follow Florida's and Louisiana's lead and amend its education clause and take more significant measures to ensure a high-quality public education system.

C. More Recommendations

There are multiple recommendations that, if adopted, could help New York City regulate and adequately provide an education to those within the juvenile justice system as afforded by its state constitution. These recommendations include adopting an agency that promotes high quality educational services for delinquent youth, adopting promising practices, and more.

1. Adopt an Agency that Promotes High Quality Educational Services for Delinquent Youth Such as Kentucky

New York should adopt Kentucky's practices. Kentucky has the most extensive education delivery system for both at risk and delinquent youth where all "state agency children" are provided educational services by local school districts.²⁴⁰ In an effort to reform education in Kentucky, the Kentucky Educational Collaborative for State Agency Children ("KECSAC") was created and since has become an effective voice for high quality educational services for delinquent youth.²⁴¹ New York should adopt an extensive education delivery system and create a local education agency, like Kentucky, to enforce and monitor juvenile delinquents' right to adequate education. Adopting an agency like the KECSAC could help with the struggles juvenile delinquents experience while trying to reenter back into society and school. Many students are discouraged due to the barriers they experience and assigning an agency to help navigate recently released juveniles could make a big difference in the coordination between facilities and schools, such as successful transfer of credit, admission into the correct grade, and even a higher percentage of graduated students.

2. Adopt Promising Practices

There have been a number of promising practices that have been adopted in the United States that appear to be efficient and effective. When it comes to administration, New York should adopt some of these promising practice which include: (1) a flexible system which allows for contracting of

²⁴⁰ WOLFORD, *supra* note 186 at i, 5.

²⁴¹ *Id.* at 15.

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educational services; (2) a system that has the ability to grant transferable credit; (3) employing certified educators with flexible assignments; (4) address the educational needs among a wide range of juvenile justice placements; (5) strong involvement with public schools; (6) formal external governance and advisory mechanisms; (7) opening new programs only when state educational standards are met; and (8) providing education throughout calendar year.²⁴²

Further, when it comes to financing, it would be wise for New York to adopt “a funding formula that factored in the extended school year, smaller class size, student turnover and economies of scale” and “based education funding on program capacity not average daily attendance or average daily membership.”²⁴³ Adopting these types of systems would ensure that the proper money needed for an adequate education system is factored into the cost based on the specific needs within the juvenile justice system such as the smaller classes, extended school years, and total of juvenile students.

Lastly, in order to assure a quality education New York should adopt the use of an external education monitoring process, have mandatory professional development requirements for educators, have a formal assessment process that is measured with non-juvenile justice populations, incentives that foster inter and intra agency collaboration between juvenile justice and educational professionals, and have mandatory maximum student-to-adult ratios in the classrooms.²⁴⁴ Providing multiple classes and programs for juvenile delinquents without assuring the quality does little to nothing in furthering the right of an adequate education for these juveniles. It is thus crucial that these programs and classes are of good quality and are constantly being monitored.

Practices that New York should avoid include employing educators as traditional staff members within the juvenile justice system and including the education budget as part of the overall cost of care.²⁴⁵ Implementing these two practices will further the efficiency and effectiveness of providing an adequate education within the juvenile justice system. All in all, it is most important for the focus to be on the education and juvenile justice professionals working together collectively to meet the needs of the youth.²⁴⁶ The needs of the youth should be the driving force for the types of programs and classes, and the manner in which they are being offered, when trying to provide them with their fundamental right to an adequate education.

²⁴² *Id.* at 20-21.

²⁴³ *Id.* at 21.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

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3. Adopt the Practices of Communities In Schools (“CIS”) and Apply them Within the Juvenile Justice System

Communities In Schools (“CIS”) models how communities may ensure that all youth benefit from an excellent education by providing safe environments, mentors, and community connections.²⁴⁷ CIS is operated in Columbia, South Carolina, ““behind the fence”” in the state’s juvenile correctional facility.”²⁴⁸ The program provides for 600 students and uses positive reinforcement, individualized attention, and small class sizes.²⁴⁹ With these practices the national re-offense rate for juvenile offenders, which is currently between sixty and eighty-four percent, can be reduced by twenty percent or more.²⁵⁰ CIS succeeds in ensuring that all youth benefit from an excellent education thus New York should adopt these practices in order to better their education system, keep their youths in school, and reduce recidivism.²⁵¹

4. Adopt the Coalition for Juvenile Justice’s (“CJJ”) Targeted Recommendations

The Coalition for Juvenile Justice (“CJJ”) proposed multiple recommendations to provide youth with a well-deserved education “that fully taps and develops their abilities, so that they will become productive members of society.”²⁵² These recommendations include: (1) Congress supporting innovations and programs to assist school systems in educating their youth in addition to acknowledging the strong connection between educational failure and delinquency, poverty, and substance abuse;²⁵³ (2) getting rid of rigid expulsion practices, such as Zero Tolerance²⁵⁴ policies which automatically expel students for drugs and weapon violations as well as infractions like graffiti, and be open to taking alternative paths, such as safe providing safe environments, mentors, a sense of connection to their communities, and positive reinforcement, to provide for those with

²⁴⁷ COAL. FOR JUV. JUST., *supra* note 220 at 3.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ Rigid expulsions policies implemented in classrooms to increase safety. *Id.* at 4.

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behavioral issues and;²⁵⁵ (3) the support of parents towards the school and teachers by contributing resources, time, and through emotional support.²⁵⁶ With the help of federal funding, disposing of harsh practices, and parental support, New York could provide adequate classes, programs, and opportunities to their youth within the juvenile justice system.

V. CONCLUSION

Brown v. Board of Education emphasizes how important it is for state and local governments to provide education because “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”²⁵⁷ The court further goes on to state that such an opportunity for education “where the state has undertaken to provide it, is a right which must be available to all on equal terms.”²⁵⁸ As stated in this Note, although there is no federal right to education, New York provides a right to education in their state constitution for all children, which includes those in juvenile detention.²⁵⁹ Given that New York has undertaken to provide this right, they have a duty to provide it equally to all children.²⁶⁰ Living in juvenile detention does not make these children any less human, or any less deserving of their basic rights.

The research stated in this note displays that many New York juvenile facilities provide inadequate education to juveniles thus violating their own constitution.²⁶¹ This inadequacy includes no schools during the first two weeks of incarceration, shortage of qualified staff, grouping by age not ability into one classroom, deprivation of necessary individualized instruction, gaps in education while in solitary confinement, barriers re-entering the school system once they are out, and difficulties and delays transferring credits.²⁶² The problem is that the type of education that juvenile’s in the system experience is of a way lower standard than those in the public school system and in no way equal.²⁶³ This lack of adequate education is grounds for juveniles within the system to bring a claim because of the constitutional

²⁵⁵ *Id.* at 3-4.

²⁵⁶ *Id.* at 4.

²⁵⁷ *Brown*, 347 U.S. at 493.

²⁵⁸ *Id.*

²⁵⁹ N.Y. CONST., art. XI, § 1; Strauss, *supra* note 2.

²⁶⁰ N.Y. CONST. art. XI, § 1; *Brown*, 347 U.S. at 493.

²⁶¹ N.Y. CONST. art. XI, § 1; *J.G. v. Mills*, *supra* note 166; McCluskey, *supra* note 178; AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 3.

²⁶² McCluskey, *supra* note 178; AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 80; NAT’L JUV. JUST. NETWORK, *supra* note 147.

²⁶³ McCluskey, *supra* note 178; NAT’L JUV. JUST. NETWORK, *supra* note 147.

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violation.²⁶⁴ In comparing New York and Texas's educational system within their respective juvenile justice systems, where the later provides an explicit right to children and the former does not, research shows that Texas's educational system was the same or more beneficial than New York's.²⁶⁵ This indicates that New York is in violation of their constitutional right to education since Texas provides both the same and a more enhanced educational system.²⁶⁶

In order for New York to properly adhere to their right to provide adequate education too all children on equal terms this Note proposes that New York should amend its constitutional language in order to hold the legislatures more accountable. New York should state that it is the legislatures paramount duty to provide and support the educational system and provide standards of quality in order for there to be a clear understanding of what needs to be provided. In addition, recommendations should include: (1) local school districts providing educational services to delinquent youth just like Kentucky, which has the most extensive education delivery system²⁶⁷; (2) implementing CIS's practices of safe environments, mentors, community connections, reinforcement individualized attention, and; (3) small class sizes in juvenile correctional facilities.²⁶⁸ These changes would help New York City regulate and adequately provide an education to those within the juvenile justice system as afforded by its state constitution because other states, such as Florida, Virginia and Kentucky, and organizations, such as CIS, have taken these steps and have improved education enforcement for their children.²⁶⁹

²⁶⁴ Schools, Universities, and Colleges, *supra* note 82; N.Y. Civ. Liberties Union v. New York, 4 N.Y.3d; *Brown*, 347 U.S. at 493; AMERICAN CIVIL LIBERTIES UNION (ACLU), *supra* note 149 at 3, 80.

²⁶⁵ McCORD ET AL., *supra* note 99 at 187.

²⁶⁶ McCORD ET AL., *supra* note 99 at 187; AIN'T NO PLACE ANYBODY WOULD WANT TO BE, *supra* note 5.

²⁶⁷ WOLFORD, *supra* note 186 at 5.

²⁶⁸ COAL. FOR JUV. JUST., *supra* note 220 at 3-4.

²⁶⁹ Dallman & Anusha, *supra* note 72 at 1-2.