



"20 years of advocating for the rights of children"

1002 Russell Street  
Covington, KY 41011  
Phone (859) 431-3313  
Fax (859) 655-7553  
Email: info@childrenslawky.org

**BOARD OF DIRECTORS**

Louise Roselle, Esq.  
*President*  
James Kruer, Esq.  
*Vice President*  
Kathryn Stephens  
*Treasurer*  
Cathy M. Jackson, Esq.  
*Secretary*

Julie Roesel Belton  
Dr. Frank Biro, MD  
Tonya Burns, Esq.  
Peggy Casey  
Naima R. Clarke, Esq.  
Marcus E. Coleman, Esq.  
Mary Ellen Elsbernd  
Ellie Houston, Esq.  
Jennifer Lawrence, Esq.  
Paul Long  
Elizabeth Malloy, Esq.  
Michael Marker  
Kevin L. Murphy, Esq.  
Joseph Nava, JD  
Jeffrey Raines, Esq.  
Rhonda Schechter, Esq.  
Carrie Shufflebarger, Esq.  
Peggy St. Amand  
Alice Sparks  
Andrew Stout, CFA  
Kimberly Turner Brennen, Esq.  
Rachel Votruba  
Stephen Walker, Ed.D.  
Michael Whiteman, Esq.  
Stephen Worth, Esq.

Kim Brooks Tandy, Esq.  
*Executive Director*

April 3, 2012

Attn: Wendy Stoica  
Assistant Director of Specialized Services and Procedural Safeguards  
Office for Exceptional Students  
Ohio Department of Education  
25 South Front Street  
2<sup>nd</sup> Floor, MS 202  
Columbus, Ohio 43215

*In Re: Individual and Class Administrative Complaint on behalf of [REDACTED], [REDACTED], and All Similarly Situated and/or Similarly Treated Students who are placed within Franklin County Correctional Center II and who are eligible for specially designed instruction and related services, provided by the Columbus City School District or Focus Learning Academy.*

Dear Ms. Stoica:

The undersigned file this Individual and Class Administrative Complaint on behalf of [REDACTED] and [REDACTED], who have been students in the Columbus City School District (CCSD) and who were entitled to specially designed instruction and related services and other protections under the Individuals with Disabilities Education Improvement Act (IDEIA), provided by CCSD and/or the Focus Learning Academy while detained within the Franklin County Correctional Center II, Jackson Pike Facility (FCCCII), and on behalf of all similarly situated students for violations by CCSD and/or the Focus Learning Academy of the Individuals with Disabilities in Education Improvement Act (IDEA), 20 U.S.C. § 1400 *et seq.* and the corresponding federal and state regulations.

We request that the Ohio Department of Education (ODE) appoint an independent team to investigate the policies and practices of CCSD and Focus Learning Academy regarding provision of special education and related services to students who are attending FCCCII. Furthermore, the Complainants request that the ODE order CCSD to institute a remedial plan designed to correct, as set forth in this Complaint, each and every violation found, and to order a compensatory educational plan for each and every student found who has been denied appropriate educational services under IDEA.

## I. FACTS LEADING TO COMPLAINT FOR [REDACTED]

[REDACTED], born June 2, 1992, was identified as a student with an Emotional Disturbance who qualifies for special education services through a multi-factored evaluation dated September 3, 2003. See 2010 Multi-Factored Reevaluation Report from Focus Learning Academy, App. 1. The evaluation also revealed that he has a Composite I.Q. score of 82. See App. 1. Upon entering Starr Commonwealth, a treatment center for troubled youth, in 2004, [REDACTED] had a history of behavior problems. See 2005-2006 IEP from Hilliard City Schools, App. 2. Hilliard City Schools provided special education services while [REDACTED] attended Starr Commonwealth. But because his teachers at Starr Commonwealth had no behavior concerns at the time they reviewed his Individualized Education Program (IEP) in 2005, his revised IEP provided for math and reading goals, but no behavior goals. See App. 2. [REDACTED]'s accommodations included extended time, having tests read to him, and small group settings. See App. 2. The specially designed instruction portion of his IEP provided an intervention specialist and a "specialized learning program" in addition to the accommodations listed above. See App. 2.

In his ninth grade year, [REDACTED] enrolled at South High School in CCSD, his school district of residence at the time in 2006. See Student Enrollment Information printout, App. 3. There, his CCSD IEP team extended his Hilliard IEP goals, adding accommodations for state testing. See 2006-2007 IEP from CCSD, App. 4. [REDACTED]'s CCSD IEP also did not include behavior goals, even though the IEP team indicated that his behavior impeded his learning. See App. 4. Pursuant to the CCSD IEP, [REDACTED] received services outside the regular classroom for at least 21% of his school day. See App. 4.

[REDACTED] finished his ninth grade year at Indian River High School in the Massillon, Ohio Department of Youth Services (DYS) facility, where the Buckeye United School District provides educational services to students. [REDACTED] was reevaluated for special education services in 2007. See 2010 Multi-factored Reevaluation Report from Focus Learning Academy, App. 1 & Louis Bromfield High School Transcript, App. 5. The 2007 reevaluation team concluded their report with the following statement:

While [REDACTED]'s maladaptive behaviors have improved substantially since the previous multifactored evaluation in September 2003, there are several undesirable behaviors that are still present in some settings to a marked degree and have been apparent over a long period of time. These behaviors indicate the continued presence of an inability to learn which cannot be explained by intellectual, sensory, or health factors, and inappropriate types of behavior and feelings under normal circumstances. These behaviors have an adverse effect on educational performance. See App. 1.

[REDACTED] began his tenth grade year at Louis Bromfield High School in the Perrysville, Ohio DYS facility. Buckeye United School District also provides educational services to students at this facility. During his time in the DYS facilities, [REDACTED]'s IEP provided a math goal, as well as transitional goals, and allowed for extended time, a small group setting, and re-cuing of directions. These services were provided in the resource classroom and the general education

classroom with services and supports. See 2008-2009 IEP from Buckeye United School District, App. 6.

██████████ exited DYS on October 15, 2008 when he was 16 years old. He was arrested on January 9, 2009, bound over as an adult on March 4, 2009, and sentenced on June 26, 2009 to 12 months to the Department of Rehabilitation and Corrections (DRC) with 187 days of jail credit. See Case Detail printout, App. 7. He was also arrested March 13, 2009, bound over as an adult on June 8, 2009, and sentenced on September 17, 2009 to DRC for 8 months with 135 days of jail credit, to be served concurrently with the prior 12 month sentence. See Case Detail printout, App. 8. During some of this time, ██████████ was detained the FCCCII. ██████████ reports attending GED classes while incarcerated; however, in 2009, ██████████ reports that he was told he was longer permitted to attend the GED classes because he had an IEP. ██████████ reports that some time after this, GED classes were eliminated for all youth incarcerated in the facility.

Once released, ██████████ enrolled at the Focus Learning Academy, a charter school in Columbus, on August 31, 2010. The intervention specialist at Focus Learning Academy conducted a reevaluation of ██████████'s educational needs on November 10, 2010. See App. 1. Based on the results, the evaluation team determined that ██████████ continued to meet the criteria for inclusion in special education services as a student with an Emotional Disturbance. See App. 1. ██████████'s IEP at Focus Learning Academy contained transitional goals, an attendance goal, and a behavior goal. See 2011-2012 IEP from Focus Learning Academy, App. 9. ██████████'s specially designed instruction included the teaching of modified strategies for reading comprehension, an interactive reader program, and realistic strategies for study and organization. See App. 9.

██████████ was scheduled to graduate from the Focus Learning Academy in June of 2012. He was arrested on November 18, 2011, and was again detained in the FCCCII. See Case Detail printout, App. 10. ██████████ reports that there was no education provided at the jail. Columbus City School District has since reported that it does not provide education services at the FCCCII. See Letter from CCSD, App. 11. ██████████ was held until February 9, 2012, accumulating over two months of jail time with no special education or related services, nor with any type of regular education.

**A. COLUMBUS CITY SCHOOL DISTRICT AND FOCUS LEARNING ACADEMY FAILED TO DEVELOP, REVISE, OR IMPLEMENT ██████████'S INDIVIDUALIZED EDUCATION PROGRAM WHILE HE WAS DETAINED IN THE FRANKLIN COUNTY CORRECTIONAL CENTER II, JACKSON PIKE FACILITY.**

During the time that ██████████ was detained at the FCCC II, he was entitled to receive a free and appropriate public education (FAPE) as a student in need of special education and related services.<sup>1</sup> The minimal services he received at the Facility fall significantly short of meeting the educational services outlined in ██████████'s IEP.

---

<sup>1</sup> Ohio Admin. Code § 3301-51-02 (B) (1). Each school district shall make FAPE available to all children between the ages of three and twenty-one, inclusive, including children with disabilities who have been suspended or

The Ohio Administrative Code § 3301-51-02 requires local educational agencies (ie, school districts) to have written policies and procedures for implementing FAPE for each and every child located within the district.<sup>2</sup> The school district in which a child's parents reside is considered his or her school district of residence, and is responsible for ensuring the child receives a FAPE.<sup>3</sup> Additionally, if a child is enrolled in a community or charter school, the that school is the school district of residence, responsible for ensuring the child receives a FAPE.<sup>4</sup> Even if a school district is not a child's school district of residence, the school district in which the child "lives" is required to make available special education and related services to children with disabilities.<sup>5</sup> The responsibility of the school district in which a child with a disability "lives" to provide special education and related services extends to children detained in a state facility located within the school district.<sup>6</sup> Finally, a student with a disability who transfers school districts within the same academic year is entitled to a FAPE, including services comparable to those described in the previous school's IEP.<sup>7</sup>

In ██████'s case, Focus Learning Academy, the charter school where he was enrolled at the time of his 2011 detention, was his school district of residence, and therefore had a responsibility to ensure he received a FAPE at his new placement. At the same time, the FCCCII is located within CCSD. Thus, CCSD, as the district in which ██████ lived while detained at the FCCC II, had a responsibility to implement ██████'s IEP while he was detained at the facility.

---

expelled from school, as provided for in rule 3301-51-05 of the Administrative Code, for whom the school district is the child's school district of residence.

<sup>2</sup> Ohio Admin. Code § 3301-51-02 (A). Each school district shall adopt and implement written policies and procedures, approved by the Ohio department of education, office for exceptional children, ensuring that a free appropriate public education (FAPE) is made available to all children with disabilities between the ages of three and twenty-one, inclusive, including children with disabilities who have been suspended or expelled from school, for whom the school district is the child's school district of residence...

<sup>3</sup> Ohio Admin. Code § 3301-51-01 (54). "School district of residence" means: (a) The school district in which the child's parents reside; (b) If the child is enrolled in a community school, the community school is considered to be the "school district of residence"; (c) If the school district specified in paragraph (B)(54)(a) or (B)(54)(b) of this rule cannot be determined, the last school district in which the child's parents are known to have resided if the parents' whereabouts are unknown...

<sup>4</sup> *Id.*

<sup>5</sup> Ohio Admin. Code § 3301-51-01 (A)(3)(a). Each school district is responsible for serving a child with a disability who is living in its school district, even though the school district is not the child's school district of residence... ; Ohio Admin. Code § 3301-51-01 (A)(3)(b). "Serving a child with a disability" means educating the child which includes making special education and related services available to the child.

<sup>6</sup> Ohio Admin. Code § 3301-51-01 (A)(3)(b)(i). The responsibility to serve a nonresident child with a disability living in the school district includes, but is not limited to, a child with a disability placed in a juvenile justice facility, institution, hospital, agency, department, home as defined in section 3313.64 of the Revised Code, or other facility or entity located in the school district.

<sup>7</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I). Transfer within the same State In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

During his 2009 detention in the FCCFII, ██████'s IEP included specially designed instruction to help him “improve his math skills so he can earn credits needed to graduate from high school or to learn skills in order to pass the GED.” See App. 6. Instead of receiving special education in this area, however, ██████ has reported that his GED classes were discontinued, and that he never received the accommodations or other special instruction outlined in his IEP.

During ██████'s 2011 detention in the FCCCII, his IEP included specially designed instruction to help him achieve a school attendance goal and a behavior goal in addition to reading and organization goals. See App. 9. However, ██████ has indicated that he received no education at all during this second detention. ██████'s report was verified through an open records request to CCSD, to which CCSD responded that it does not provide education services, much less special education services to students detained at the FCCCII. See App. 11.

Therefore, Focus Learning Academy and CCSD violated IDEA by not properly implementing ██████'s IEP or providing a FAPE while he was detained in the FCCCII in 2011.

**B. COLUMBUS CITY SCHOOL DISTRICT AND FOCUS LEARNING ACADEMY FAILED TO PROVIDE A PROGRAM FOR ██████ THAT WAS REASONABLY CALCULATED TO ENABLE HIM TO RECEIVE EDUCATIONAL BENEFITS.**

Columbus City Schools and Focus Learning Academy denied ██████ an educational program reasonably calculated to confer an educational benefit as required by IDEA.<sup>8</sup> The Supreme Court has held that the requirement to provide a FAPE is satisfied when a state provides personalized instruction with sufficient support services to permit a child with a disability to benefit educationally from that instruction.<sup>9</sup> The Sixth Circuit applied this standard in *Nack ex rel. Nack v. Orange City Sch. Dist.*, articulating a two-part test for determining when IDEA standards are met.<sup>10</sup> First, the school system must comply with the procedures set forth in the IDEA; second, the IEP developed through those procedures must be reasonably calculated to enable the child to receive educational benefits.<sup>11</sup>

During ██████'s time at the FCCCII, CCSD made no attempts to construct an educational program for ██████ that would provide him with an educational benefit. His IEP prior to his 2009 detention provided a course of instruction that would enable him to graduate from high school. In ██████'s tenth grade year with Buckeye United School District, just before his arrest that placed him in the FCCCII, he earned all A's and B's, earning a cumulative total of 9.875 credits toward graduation. Not only did CCSD fail to implement the Buckeye United IEP once ██████ was detained, but it also failed to amend the plan to accommodate his new placement with respect to his goals for graduating from high school. The GED classes

---

<sup>8</sup> See *Bd. of Educ. of Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176 (1982).

<sup>9</sup> *Id.* at 201.

<sup>10</sup> 454 F.3d 604, 609 (6th Cir. 2006); see also *Grine v. Sylvania City Sch. Bd. of Educ.* 2007-Ohio-1526, No. L-06-1191(OHCA6) (citing *Nack ex rel. Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 608 (6th Cir. 2006) (citing *Bd. of Educ. Of Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176 (1982))).

<sup>11</sup> *Id.* (Citing *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 853-54 (6th Cir. 2004)).

offered for a short time at the jail were not specially designed to meet [REDACTED]'s unique individual needs, and ultimately [REDACTED] was prohibited from attending those classes altogether.

During [REDACTED]'s 2011 detention at the FCCCII, his IEP from Focus Learning Academy also provided for individualized instruction to help [REDACTED] graduate from high school. This time, CCSD and Focus Learning Academy offered no education at all. See App. 11. Because [REDACTED] was deprived of an IEP or any education plan reasonably calculated to enable [REDACTED] to receive educational benefits, CCSD and Focus Learning Academy completely denied [REDACTED] a FAPE for more than two months while he was detained at the FCCCII.

### **C. RELIEF SOUGHT FOR [REDACTED]**

[REDACTED] was denied a FAPE between November 18, 2011 and February 9, 2012, more than a two month period, while he was housed at the FCCCII, where CCSD and Focus Learning Academy were responsible for his regular and special education services. During that time, neither his IEP nor any education plan was implemented, and as a result, he was denied a FAPE and an education plan reasonably calculated to confer an educational benefit. In such a highly controlled setting, it is unacceptable that [REDACTED] could not be provided specialized instruction outlined in his IEP, nor that he was denied an IEP reasonably calculated to provide him with an educational benefit. Therefore, he seeks the following remedies:

- 1) [REDACTED] is entitled to compensatory education for the period of November 18, 2011 through February 9, 2012 from Focus Learning Academy and CCSD, with an allocation of responsibility to be determined by the Ohio Department of Education;
- 2) [REDACTED] should be given the opportunity, through compensatory education, to continue earning credits toward graduation or other meaningful educational benefits he did not have the opportunity to obtain during the time he was detained.

## **II. FACTS LEADING TO COMPLAINT FOR [REDACTED]**

[REDACTED], born November 17, 1994, has had a transient educational experience. Upon requesting records on numerous occasions from each of his known school districts, his educational record comes together piecemeal as follows:

[REDACTED] enrolled in the Columbus City School District in 2000, and he attended Brentnell Elementary School (now closed). See Student Permanent Record from CCSD, App. 12. [REDACTED] educational record indicates that he attended a school called "Special Education/ Countable" from March 15, 2004 until June 4, 2004, [REDACTED] third grade year, and again for one day of his fourth grade year. See App. 12. The school designation "Special Education/ Countable" is unclear, and CCSD was unable to provide meaning for this designation upon several requests.

From the beginning of fourth grade in 2004 until June of 2008, ██████ attended Africentric Early College in CCSD. See App. 12. Some transcripts have been recovered, beginning with the 2007-2008 school year, ██████ seventh grade year, which he spent at Africentric. See Official Transcript from Linden McKinley STEM Arcadia, App. 13. ██████ reports that he remembers working one-on-one with an instructor, Mr. Hamilton at Africentric. ██████ also reports being medicated for ADHD and bipolar disorder. In March of 2007, the Intervention Assistance Team (IAT) at Africentric conducted a Determination of Suspected Disability. See Determination of Suspected Disability from CCSD, App. 14. The district refused to initiate an evaluation and referred ██████ back to the IAT process, noting that the IAT would reconvene “in the event ██████ begins to have significant difficulty.” See App. 14. Since 2007, however, CCSD has indicated that ██████ was never a student who was evaluated for or received special education services while enrolled in CCSD. See Letter from CCSD Educational Services and Resources, App. 15. This is despite the many difficulties ██████ had in CCSD after the 2007 determination, as outlined below.

It is unclear where ██████ spent the 2008-2009 school year, but he did attempt credits at Medina Middle School (CCSD) in the 2009-2010 school year. There, he accumulated a discipline record that ultimately led to expulsion. See Student Discipline Record from CCSD, App. 16. After Medina Middle School, ██████ enrolled in Abraxas Ohio, a substance abuse residential treatment center in Shelby, Ohio. See Student Transcript from Abraxas Ohio, App. 17. Abraxas made a request to Medina Middle School for ██████ records, which they never received from CCSD. ██████ spent three months at Abraxas Ohio, during which time he was not identified for special education, see letter from Abraxas Ohio, App. 18, and where he completed the eighth grade. See App. 17. ██████ was enrolled for a brief period of time at Brookhaven High School (CCSD) in the 2010-2011 school year. See Withdraw Clearance from CCSD, App. 19. It is unclear from his records whether he completed work towards credits during that enrollment.

From October 18, 2010 until November 4, 2010, ██████ was detained at the Franklin County Juvenile Detention Facility where he completed some work in core subject areas. See App. 19. He then enrolled at Linden-McKinley STEM (Science, Technology, Engineering, and Math) on November 8, 2010, where he attended for 16 days before he was expelled. See App. 16. From December 9, 2010 until April 14, 2011, ██████ was detained in the Franklin County Juvenile Detention Facility, where he again completed some work in core subject areas. See App. 19. ██████ was bound over to the adult system April 14, 2011, and reports that he has received no education since his placement at the FCCCII. See Case Detail printout, App. 20.

**A. COLUMBUS CITY SCHOOL DISTRICT FAILED TO LOCATE AND EVALUATE ██████ AS A STUDENT WITH A SUSPECTED DISABILITY EITHER BEFORE HE WAS DETAINED OR WHILE HE WAS DETAINED IN THE FRANKLIN COUNTY CORRECTIONAL CENTER II, JACKSON PIKE FACILITY.**

IDEA and the Ohio Administrative Code require school districts to locate each and every child with a disability residing in the district for evaluation.<sup>12</sup> The Office for Exceptional Children's guidance document provides:

Some children are particularly difficult to locate. Special care is taken to identify ways of locating children who move frequently, who have no permanent address, whose parents cannot be located, whom the courts have placed in state custody or detention or prison centers, who are in a home-school program or in nonpublic chartered or nonchartered schools or who may be progressing in school but may be in need of special education and related services.<sup>13</sup>

Thus, districts are responsible for collaborating with other agencies in the community to disseminate information about identifying children with disabilities, including behavioral and emotional disabilities.<sup>14</sup> ██████████ self-reported ADHD and Bipolar diagnoses, his history of low achievement, his history of behavior problems, and his decreases in attendance should have alerted CCSD to a potential disability, for which CCSD should have evaluated ██████████, particularly because the CCSD IAT team noted in 2007 that it would reconvene upon finding that ██████████ continued to have significant difficulties in school. The declines in behavior, attendance, and achievement are each factors in ██████████ educational history post 2007 that were at least indicative of a suspected disability.

**B. COLUMBUS CITY SCHOOL DISTRICT FAILED TO PROVIDE A PROGRAM FOR ██████████ THAT WAS REASONABLY CALCULATED TO ENABLE HIM TO RECEIVE EDUCATIONAL BENEFITS.**

Columbus City School District denied ██████████ an educational program reasonably calculated to confer an educational benefit as required by IDEA.<sup>15</sup> The requirement to provide a FAPE applies toward all students, regardless of whether the student has an identified disability. FAPE is satisfied when a state provides personalized instruction with sufficient support services to permit a child with a disability to benefit educationally from that instruction.<sup>16</sup>

During ██████████ time at the FCCCII, CCSD made no attempts to construct an educational program for ██████████ that would provide him with an educational benefit. ██████████ reports that his mother has brought him GED practice books, but that he needs to be taught how to do some of the problems in the books. In addition, these books were taken away from ██████████ during his time in the jail and have not been returned. He reports that he feels like he is getting "dumber" in the jail. ██████████ educational transcript indicates that he has completed coursework through the eighth grade, even though he should be in eleventh grade at his current age. Particularly because ██████████ educational transcript is so sparse with high

---

<sup>12</sup> Ohio Admin. Code § 3301-51-03.

<sup>13</sup> Ohio Department of Education, Office for Exceptional Children, *Procedures and Guidance for Ohio Educational Agencies Serving Children with Disabilities*, available at <http://www.edresourcesohio.org>

<sup>14</sup> *Id.*

<sup>15</sup> See *Bd. of Educ. of Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176 (1982).

<sup>16</sup> *Id.* at 201.



school credits, and because those credits have been earned through several different educational placements, ██████ needs an educational program that will allow him to continue to make progress toward completing his high school credits during his detention at FCCCII.

### **C. RELIEF SOUGHT FOR ██████.**

██████ has been denied an education while housed at the FCCCII since April 14, 2011, nearly a year long period, where CCSD was responsible for providing his education. During that time, ██████ was never evaluated for special education services, despite an educational history indicative of a student with a disability. Nor was he provided with an education plan reasonably calculated to confer an educational benefit. In such a highly controlled setting, it is unacceptable that ██████ could not be provided education services. Therefore, he seeks the following remedies:

- 1) Columbus City School District should evaluate ██████ for special education services through a multi-factored evaluation, and, if identified as a student with a disability, CCSD should develop and implement an appropriate IEP for ██████;
- 2) ██████ should be given the opportunity, through compensatory education, to continue earning credits toward graduation or other meaningful educational benefits he did not have the opportunity to obtain during the time he was detained;
- 3) ██████ is entitled to compensatory education from CCSD for the period of time since April 14, 2011 until the filing of this complaint.

### **III. BASIS FOR EXTENDING SYSTEMIC RELIEF TO OTHER STUDENTS IN NEED OF SPECIALLY DESIGNED INSTRUCTION AND RELATED SERVICES IN THE FRANKLIN COUNTY CORRECTIONAL CENTER II.**

#### **A. YOUTH WITH DISABILITIES UP TO THE AGE OF 22 ARE OVER-REPRESENTED AT THE FRANKLIN COUNTY CORRECTIONAL CENTER II AND DENIED ACCESS TO EDUCATION.**

Youth with disabilities are disproportionately represented within the juvenile justice system both in Ohio and nationally. While only about 10% of youth in public school systems receive special education services, this number ranges conservatively between 30% - 50% of youth who are in juvenile detention or correctional facilities.<sup>17</sup> This over-representation of youth with disabilities is particularly manifest among youth with emotional and behavioral disorders, attention deficit hyperactivity disorder (ADHD), specific learning disabilities, mild mental retardation, or a combination of these.<sup>18</sup> A 2006 review of research found that 70% or more of

---

<sup>17</sup> Casey, K. & Keilitz, I. (1990). Estimating the prevalence of learning disabled and mentally retarded juvenile offenders: A meta-analysis. In P.E. Leone (Ed.), *Understanding troubled and troubling youth* (pp. 82-101). Newbury Park, CA: Sage.

<sup>18</sup> Rutherford, R.B., Nelson, C.M., & Wolford, B.I. (1986). Special education programming in juvenile corrections. *Remedial and Special Education*, 7.

youth securely detained in residential juvenile justice facilities may suffer from mental health and related disorders and that more than 20% of these youth suffer disorders so severe that their ability to function is significantly impaired.<sup>19</sup> Other disabilities such as traumatic brain injury and speech and language disorders are found among incarcerated youth, but are less common.

Delinquent behavior is not caused by disabling conditions; however, some behaviors associated with disabilities may also be associated with delinquent behaviors. In other words, there is no cause-effect relationship between a child's disability and his or her delinquency, but disabilities sometimes manifest themselves through maladaptive behaviors. Research suggests that youth with disabilities may engage more frequently with the juvenile justice system than their peers because mental disorders can manifest themselves in symptoms "involving impulsiveness, anger, and cognitive confusion."<sup>20</sup> Certainly, the overrepresentation of youth with disabilities in correctional facilities correlates with school failure, marginal literacy, poorly developed social skills, and inadequate school and community supports.<sup>21</sup>

Youth who are eligible for bindover to adult court are generally placed into adult jails or correction facilities to await the disposition of the case and any resulting sentence. The Ohio Department of Youth Services maintains data on the number of youth per county who are bound over from the juvenile to the adult system. These youth, after a bindover decision has been made, but before they are sentenced in adult court, are typically transferred from a juvenile detention facility to an adult jail. In Franklin County, this jail is the Franklin County Correctional Center II. The FCCCII is located at 2460 Jackson Pike. According to the facility's 2007 Annual Report (the most recent listed) it is a minimum/maximum security facility which has one thousand six hundred and eighty-eight (1688) beds.<sup>22</sup> Data from 2006 and 2007 indicates that the facility was at capacity or exceeds capacity regularly.<sup>23</sup>

For calendar years 2001 – 2010, DYS reports a total of 345 youth were bound over to be tried as adults Franklin County, an average of 34 per year.<sup>24</sup> These youth all came from the juvenile system originally; thus, it is predictable that the same over-representation of youth with disabilities in the juvenile system is present regarding the percentage of youth with special needs detained in adult jails.

But this is only part of the picture. This number does not represent other youth who are between the ages of 18 – 22, and whose cases originated in adult court as well as youth ages 18-

---

<sup>19</sup> Shufelt, J. & Coccozza, J. (June 2006). Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study. National Center for Mental Health and Juvenile Justice, Research and Program Brief (pp. 1, 4), available at <http://www.ncmhjj.com/pdfs/publications/PrevalenceRPB.pdf>. See also Teplin, L. A., Abram, K. M., McClelland, G. M., Dulcan, M. K., & Mericle, A. A. (2002). Psychiatric Disorders in Youth in Juvenile Detention. *Archive of General Psychiatry*, 59, 1122-1143; Abram, K. M., Teplin, L. A., McClelland, G. M., & Dulcan, M. K., (2003). Comorbid Psychiatric Disorders in Youth in Juvenile Detention. *Archive of General Psychiatry*, 60, 1097-1108; and The National for Mental Health and Juvenile Justice (2007). *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*. Delmar, NY: Skowrya and Coccozza.

<sup>20</sup> Grisso, T. (2008). "Adolescent Offenders with Mental Disorders." *The Future of Children*, 18(2), 143-164.

<sup>21</sup> Rutherford at 27-33.

<sup>22</sup> <http://sheriff.franklincountyohio.gov/assets/pdf/annual-report-2007.pdf>, page 37.

<sup>23</sup> Id.

<sup>24</sup> <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=TvYoEX0%2fpok%3d&tabid=117&mid=890>

21 who are under the jurisdiction of the juvenile court and who are given time in the jail by the juvenile court. These youth, if they have not graduated or received a GED, may be entitled to specially designed instruction and related services if they have previously had an Individual Education Plan, or should have been identified through Child Find services. It is logical to assume that a high percentage of these students as well are entitled to educational services while at the FCCCII.

**B. YOUTH WITH DISABILITIES WHO ARE HOUSED IN ADULT JAILS ARE ENTITLED TO RECEIVE SPECIAL EDUCATION AND RELATED SERVICES AS PROVIDED BY THE IDEA AND OHIO LAWS.**

The IDEA requires states that receive federal funding for students with disabilities to ensure that all eligible students receive a FAPE in the least restrictive environment (LRE).<sup>25</sup> Accordingly, states have the obligation to put in place policies and procedures to (1) identify and evaluate children with suspected disabilities; and (2) to create and implement an individualized education plan (IEP) outlining specially designed instruction for each child identified with a disability, ensuring each child receives an appropriate educational benefit.<sup>26</sup> Related services are also required where appropriate. Accordingly, the Ohio Department of Education has promulgated administrative regulations paralleling these requirements of the IDEA for local educational agencies in the state.<sup>27</sup> Additionally, pursuant to IDEA requirements, Ohio has put in place a State Performance Plan (SPP) outlining Ohio's targets and indicators of compliance with IDEA.<sup>28</sup> The Ohio Department of Education regularly updates a guidance document for Ohio educational agencies serving children with disabilities.<sup>29</sup> Through this document, the Office for Exceptional Children provides guidance and interpretation regarding important provisions of IDEA, including the Child Find and Evaluation requirements, and IEP development and implementation.<sup>30</sup>

The state and local educational agencies' obligations to identify, evaluate, and serve all children with disabilities throughout the state apply not only to students enrolled in traditional public schools, but also to youth detained in adult correction facilities.

**1. State and Local Education Agencies' Child Find and Evaluation Obligations Apply Toward Students Detained in Adult Correction Facilities.**

---

<sup>25</sup> 20 U.S.C.A. § 1412(a)(1)(A). A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

<sup>26</sup> 20 U.S.C.A. § 1414.

<sup>27</sup> See Ohio Admin. Code § 3301-51-01, *et seq.*

<sup>28</sup> 20 U.S.C.A. § 1416.

<sup>29</sup> See Ohio Department of Education, Office for Exceptional Children, *Procedures and Guidance for Ohio Educational Agencies Serving Children with Disabilities*, available at <http://www.edresourcesohio.org/ogdse/home> (updated October 2011).

<sup>30</sup> See *Id.*

IDEA and the Ohio Administrative Code require school districts to locate each and every child with a disability residing in the district for evaluation.<sup>31</sup> It is worth reiterating that the Office for Exceptional Children's guidance document includes child find provisions for students "whom the courts have placed in state custody or detention or prison centers."<sup>32</sup>

Accordingly, districts are responsible for collaborating with other agencies in the community to disseminate information about identifying children with disabilities, including behavioral and emotional disabilities.<sup>33</sup> In light of the probability that students with disabilities are overrepresented in adult correction facilities, districts in which such facilities are located are required to have in place careful practices and procedures to ensure students with disabilities in those facilities are located, evaluated, and identified.

## **2. State and Local Education Agencies' Obligations to Provide a Free Appropriate Public Education Applies to Students Detained in Adult Correction Facilities.**

For children already identified with disabilities, the school district of residence must cooperate with "other districts, county boards, MR/DD, and with educational agencies that serve children with disabilities in institutions or other care facilities" to ensure that these children receive a free appropriate public education as specified in the IEP.<sup>34</sup> As discussed earlier in this Complaint, a child's school district of residence is usually the school district in which his or her parent resides,<sup>35</sup> but the school district in which the child "lives" is also responsible for ensuring the child receives a FAPE.<sup>36</sup>

Although school districts are exempt from certain IDEA requirements with respect to children in adult prisons,<sup>37</sup> the exemptions are diminutive.<sup>38</sup> At the same time, deliberate language indicates that those exemptions do not apply to adult correction facilities where children with disabilities are placed *prior* to sentencing.<sup>39</sup>

Accordingly, prior to conviction, while students with disabilities are detained, they remain entitled to receive a FAPE in compliance with an IEP outlining individualized specially designed instruction. School districts in which adult detention facilities are located are not relieved of the obligation to service students with disabilities held in those facilities.

---

<sup>31</sup> Ohio Admin. Code § 3301-51-03.

<sup>32</sup> Ohio Department of Education, Office for Exceptional Children, *Procedures and Guidance for Ohio Educational Agencies Serving Children with Disabilities*, available at <http://www.edresourcesohio.org>

<sup>33</sup> *Id.*

<sup>34</sup> Ohio Admin. Code § 3301-51-07 (D).

<sup>35</sup> Ohio Admin. Code § 3301-51-01 (54)(a).

<sup>36</sup> Ohio Admin. Code § 3301-51-01 (A)(3)(a).

<sup>37</sup> See Ohio Admin. Code § 3301-51-07 (L)(4)(a).

<sup>38</sup> If a child is sentenced to an adult prison, school districts are relieved of the obligations to include accommodations for statewide assessments in the IEP and to provide a statement of transition goals and services for children who will age out of special education eligibility before they will be eligible to be released from prison. Ohio Admin. Code §§ 3301-51-07 (L)(4)(a); 3301-51-07 (H)(1)(g); 3301-51-07 (H)(2).

<sup>39</sup> Ohio Admin. Code § 3301-51-07 (L)(4)(a). "[These] requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons..."

**C. COLUMBUS CITY SCHOOL DISTRICT ADMITTEDLY PROVIDES NO EDUCATIONAL SERVICES TO STUDENTS IN THE FRANKLIN COUNTY CORRECTIONAL CENTER II, AS REQUIRED BY STATE AND FEDERAL LAW, INCLUDING YOUTH WITH DISABILITIES WHO ARE OR SHOULD BE ELIGIBLE FOR SPECIALLY DESIGNED INSTRUCTION AND RELATED SERVICES.**

Columbus City School District should be providing educational services to youth who reside at the FCCCII. However, CCSD has indicated that it does not provide any education at the facility, denying special education students services to which they are entitled. See App. 11. It is therefore requested that an investigation of CCSD policies, procedures and practices also include whether students similarly situated to [REDACTED] and [REDACTED] are being denied special education services.

[REDACTED] experiences in the FCCCII make clear that CCSD has no policies in place to adequately locate, evaluate, and identify youth with disabilities who are placed in the facility. Because his circumstances in combination with CCSD's admission that it provides no special education services at FCCCII suggest a pattern and practice of violations, it is requested that an investigation also include similarly situated youth with disabilities housed in the FCCCII.

[REDACTED] and [REDACTED] experiences also suggest that CCSD has no policies or procedures in place to convene IEP meetings to revise or review plans for youth with disabilities who are placed in the FCCCII. It is therefore requested that any investigation also include similarly situated youth with disabilities housed in the FCCCII.

Additionally, both [REDACTED] and [REDACTED] experiences in the FCCCII make clear that CCSD has no policies in place to provide specially designed instruction and related services to youth with disabilities who are placed in the facility. Because these individuals' circumstances suggest a pattern and practice of violations, it is requested that an investigation also include similarly situated youth with disabilities housed in the FCCCII.

**D. SYSTEMIC RELIEF SOUGHT ON BEHALF OF SIMILARLY SITUATED STUDENTS WITH DISABILITIES.**

Based on the above, it is requested that the Ohio Department of Education conduct an investigation into the policies and practices of Columbus City School District for its failure to provide educational services to students housed at the Franklin County Correctional Center II. Specifically, the relief should include the following:

- 1) A written determination that the Columbus City School District has the responsibility to provide specially designed instruction and related services to students up to the age of 22 that are housed in that facility;
- 2) Assurance that the Policies and Procedures for the provision of special education as adopted by the Columbus City School District, and as approved by the Ohio Department of Education, is

fully implemented at the Franklin County Correctional Center II for all students who are or who may be determined to be eligible for specially designed instruction and related services;

- 3) Establishment of a corrective action plan which details a timeline for the establishment of such services, with such services to begin within 30 days of the date of such findings;
- 4) Identification of adequate facility space for educational programming for eligible students, including space for specially designed instruction;
- 5) Assurance that adequate personnel are assigned to provide educational services;
- 6) Assurance that an adequate system is in place which will properly identify students admitted to the facility who are entitled to special education and related services, and that such students receive services within a timely manner as established by law;
- 7) A plan for the timely transfer of student records to and from the facility, including the student's current IEP;
- 8) A provision for compensatory education services to be provided to those students identified in the last year which have been denied special education services to which they have been entitled while being housed in the Franklin County Correctional Center II.

#### IV. CONCLUSION

Despite being on track to graduate in June of 2012, [REDACTED] lost more than two months of education while at the Franklin County Detention Center II because of the failure of Columbus City Schools and Focus Learning Academy to provide him with a free appropriate public education. Likewise, [REDACTED] lost nearly a year of education during his detention at the Franklin County Detention Center II because of the failure of CCS to evaluate [REDACTED] as a student with a suspected disability, or to provide him with any educational benefit. These students' circumstances suggest a broader problem in the provision of special education and regular education services in this facility, affecting many other students with special education needs. A prompt and thorough investigation into these matters is requested. More information can be obtained through the undersigned, through [REDACTED], through [REDACTED], and through the parent of [REDACTED].

Respectfully Submitted,

---

Kimberly Brooks Tandy  
Executive Director  
Children's Law Center, Inc.  
1002 Russell Street  
Covington, Kentucky 41011  
859-431-3313

---

Angela Chang  
Attorney  
Children's Law Center, Inc.  
1002 Russell Street  
Covington, Kentucky 41011  
859-431-3313

