

R.J. v. Jones: The ACLU Demands the Illinois Department of Juvenile Justice Provide Adequate Educational Services to Incarcerated Juveniles

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The Illinois Department of Juvenile Justice (“IDJJ”) must provide adequate general and special education to all incarcerated juvenile offenders to reduce recidivism rates, help children-offenders successfully re-enter the community, improve educational infrastructure statewide, and better the community. In September of 2012, the ACLU filed a class-action lawsuit in the Northern District of Illinois – *R.J. v. Jones* – on behalf of five incarcerated juveniles against the Director of the Illinois Department of Juvenile Justice.¹ The plaintiffs allege IDJJ violated the Due Process Clause of the Fourteenth Amendment for failing to provide adequate education and mental health services, subjecting juveniles to solitary confinement and violent living conditions.²

Instead of litigating the lawsuit, the parties chose to work with each other under court supervision so, in 2012, the court entered a Consent Decree, followed by a Remedial Plan in April of 2014 outlining the necessary steps to ensure IDJJ offers juveniles detainees with adequate educational opportunities.³ To confirm IDJJ follows the Remedial Plan and makes the changes necessary to improve educational conditions in juvenile prisons, data on the implementation of the Remedial Plan must be made available to the public and watchdog groups, like the John Howard Association of Illinois, must continue to conduct regular independent investigations detailing IDJJ’s compliance with the Remedial Plan. Intra-department data review coupled with independent-outside review will help assure the IDJJ complies with the Remedial Plan so it can strive to meet its mission of rehabilitating youth offenders.

Background of the Illinois Department of Juvenile Justice

The Illinois Department of Juvenile Justice (“IDJJ”) was created by statute in 2006 to separate the oversight of adult and juvenile correctional facilities.⁴ The IDJJ is “an independent agency charged with providing individualized services to youth in contact with the law – recognizing that they have different needs than adults – to help them return successfully to their communities.”⁵ The mission statement of IDJJ is to “enhance public safety and positive youth outcomes by providing strength based individualized services to youth in a safe learning and treatment environment so that they may successfully reintegrate into their communities.”⁶ The mission and objectives of the IDJJ complement the court’s Remedial Plan to provide incarcerated juveniles with adequate educational services: the more educated the child, the better the chance the child will successfully re-enter society and give back to his or her community.

The IDJJ houses juvenile inmates at one of its eight Illinois Youth Centers (“IYC”) including two facilities in the Chicago-land area, one in western Illinois, three in northern Illinois, and two in southern Illinois.⁷ A juvenile offender is sent to an IYC if they are adjudicated delinquent⁸, which means they have been adjudged guilty of committing a misdemeanor or felony criminal offense. Children can be incarcerated at IDJJ if the child was at least 13 years old at the time of the offense but not older than 18.⁹ In April 2015 there were 700 children incarcerated in IYC facilities and 1,180 on parole or in aftercare programs.¹⁰ Most children are in IDJJ for nine months.¹¹ Given the number of children under supervision of the IDJJ at any given time and the relatively short duration of their stay shows that thousands of children cycle through the IDJJ of the course of just a few years. With thousands of children under the watch of the IDJJ, it must provide adequate educational services or risk high rates of recidivism, lack of motivation to obtain an education and enter the workforce. Due to the constant turnover of juvenile inmates, it is even more essential that IDJJ successfully implement education aspects of the Remedial Plan in a way that each child who enters an IYC facility is given an adequate opportunity to learn.

R.J. v. Jones: The Complaint and Consent Decree

Juvenile prisoners, as a class with a subclass of prisoners with special education needs, brought suit against the director of the IDJJ in September 2012 alleging the IDJJ does not provide the class with “minimally adequate education services,” classes are regularly cancelled “due to teacher absences,” and there are vacancies in core subjects which youth must take to earn a high school diploma.¹² The subclass of Plaintiffs, prisoners with special education needs, also allege that half of the youth prisoners need special education services, the IDJJ fails to provide these prisoners with adequate special needs education services, and in

January 2009, the Illinois State Board of Education (“ISBE”) found that the IDJJ lacks sufficient certified special education personnel, fails to provide special education in accordance with IEPs [Individualized Education Programs], and fails to provide special education in accordance with IEPs, fails to develop IEPs, and fails to identify all youth eligible for special education services.¹³

Finally, Plaintiffs assert that most inmates with a GED or diploma “are not eligible to participate in the vocational education opportunities” located at IYCs.¹⁴ About 1/8 of all juvenile offenders, those with a GED or high school diploma” are deprived of all education opportunities and “[i]nstead, these youth spend the vast majority of their waking hours walking idle.”¹⁵

The lawsuit brought the conditions of juvenile prison facilities to the forefront of juvenile justice reform, exposing the myriad of defects within the IDJJ since its implementation, and calling for the State to provide its incarcerated children with adequate educational opportunities. Not only did the lawsuit call on the IDJJ to reform its educational system, it initiated two reviews of educational opportunities for juvenile inmates in IYCs, one performed by the court-appointed expert and the other a product of the John Howard Association of Chicago. These groundbreaking reports are just the tip of the iceberg; it is imperative for both the IDJJ and watchdog associations to conduct regular reviews of the IDJJ’s compliance with the Remedial Plan.

In response to the lawsuit, the IDJJ chose to negotiate and work with the ACLU, with the court's supervision, instead of "batting it out in court."¹⁶ On December 6, 2012 the court entered a Consent Decree outlining the creation of a Remedial Plan and evaluating the IDJJ's compliance with the Remedial Plan.¹⁷ The court appointed expert witnesses to investigate, *inter alia*, general and special education services requiring the IDJJ to compensate the experts for their time and expenses.¹⁸ The court appointed Peter E. Leone, Ph.D., Professor in the Department of Special Education from the University of Maryland to investigate the IYC facilities and prepare and file with the court a written report detailing his findings including the adequacy of conditions and services.¹⁹ This report spearheaded the John Howard Association's report, which also found the IDJJ offered inadequate and, at times, non-existent educational opportunities for juvenile inmates.²⁰ Intra-departmental reports coupled with watchdog-outside reports are essential to evaluating the adherence to the Remedial Plan, pushing for compliance with the Plan, and advancing the IDJJ's mission to assist its youth in re-entering society and re-integration into their communities.

In Part B of the Consent Decree, the court outlines the substance of the remedial plan. It provides the following guidelines for reforming education in IDJJ:

General Education. The remedial plan shall ensure adequate general education services to all youth, regardless of their status or security classification, including but not limited to: an appropriate number of hours of instruction per week; appropriate instruction in all subjects where youth must earn credit to graduate from secondary education; and appropriate vocation education.

Special Education. The remedial plan shall ensure adequate special education services to all youth with special education need, regardless of their status or security classification, including but not limited to: identification of youth with special education needs by the IDJJ's own screening and by conferring with each youth's home school district; developing and implementing an appropriate IEP for each qualifying youth; and providing appropriate special education services.

Youth with a diploma or GED. The remedial plan shall ensure, during school hours, for youth at all IYCs who have a high school diploma or a

GED, regardless of their status or security classification, adequate constructive, supervised programming reasonably directed towards rehabilitation, such as vocational education and post-secondary education, to ensure that such youth are not idle.²¹

The requirements under the remedial plan are not insurmountable. The court is primarily concerned with ensuring incarcerated juveniles requiring a general education attend an appropriate number of school classes per week and that there are teachers in the facilities to educate the children. As to special education services, the court instructs IDJJ to use its resources to identify children with special needs and implement and IEP for each child. These basic needs – adequate school days and presence of teachers – are vital to IDJJ goal of helping its offenders successfully re-enter the community. To ensure the children are in school on school days and that there are teachers present, it is vital that the IDJJ and independent watchdog groups regularly record data to prove IDJJ's compliance or non-compliance with the Remedial Plan. Compliance with the remedial plan is crucial to fulfilling IDJJ's mission statement.

Appointed Education Expert Peter Leone's Report

Peter E. Leone, Ph.D. submitted his report on September 20, 2013 and found that the educational programming in each IYC under direction of the IDJJ is inadequate.²² Mr. Leone opined that “[t]he program operates far below minimally accepted standards at comparable facilities across the county, does not appear to meet minimal standards for education as specified in the Illinois School Code, does not meet the needs of students with disabilities, and appears to violate both State regulations and Federal legislation.”²³ Mr. Leone visited five IYC facilities, interviewed 51 students, and observed 37 classrooms.²⁴ Mr. Leone's ability to interview students and observe classroom activity allowed him to thoroughly evaluate the needs of the children, from the perspective of the children as well as from the perspective of an educational professional. Juvenile inmates should be interviewed by the IDJJ and outside watchdog associations during

investigatory and reporting periods to understand the needs as perceived by the children so as to best help the children successfully re-enter society and positively contribute to his or her community – ultimately fulfilling the mission statement.

Before outlining his findings, Mr. Leone noted that

Incarcerated youth are among the least academically proficient individuals in society. While incarcerated, youth must have the opportunity to develop knowledge and skills that will assist them in remaining crime free and out of the juvenile and criminal courts following their release. Further, the skills they develop while in custody can increase the likelihood that they will continue their education or training and enter the workforce as productive citizens.²⁵

Given this finding it is even more crucial that incarcerated youths are given every opportunity possible to attend school while in prison. Providing adequate educational facilities to incarcerated children will reduce recidivism rates and encourage post-imprisonment employment, which will improve neighborhoods while simultaneously protecting a child’s right to education.

In Chicago, Mr. Leone found that parole violators “who may have been returned to custody for failure to keep curfew or attend school, received no education services when returned to IYC Chicago.”²⁶ These children were outright denied an opportunity to attend school while in prison on a technical parole violation. Denying a child the right to an education because he or she missed class after being paroled is detrimental to the child and society. Mr. Leone observed these children “completing crossword puzzles, watching TV, and playing cards.”²⁷ Denying a child the opportunity to attend class is inconsistent with the IDJJ mission statement. Indeed, this procedure is counterintuitive to successfully rehabilitating youth, which is the primary focus of the IDJJ.

At the IYC facility in Harrisburg, Mr. Leone observed the impact of an insufficient number of teachers for the program and the methods of instruction, which were at used at the time of the visits.²⁸ He found that “With the exception of the career and technical education classes, all instruction at Harrisburg is web-based.” When Mr. Leone asked students about their teaching-

method preference some students “reported that they like being able to work at their own pace” while other “complained bitterly about the lack of direct instruction and their teachers’ inability to assist them.”²⁹ A consistent method of education, with teachers present to help the child regardless of whether the instruction is web-based is essential to reforming access to education in IYCs.

In the recommendation section of his report Mr. Leone identified six areas and recommendation for reform including (1) “leadership, autonomy, and accountability,” (2) “fiscal structure,” (3) “professional culture and support,” (4) “services, instruction, and programs,” (5) “external support and partnerships,” and (6) “quality assurance and sustainability.”³⁰ In devising its Remedial Plan, the court largely deferred to the judgment of Mr. Leone focusing, as discussed below, on ensuring children are in school and that there are enough teachers to staff the IYCs.

John Howard Association of Illinois Visits IYC-Harrisburg

The John Howard Association (“JHA”) visited Harrisburg on December 11, 2013 – after the consent decree was entered but before the Remedial Plan was devised.³¹ The JHA found that Harrisburg employed 15 teachers with 9 vacancies. “Teaching staff noted that getting youth’s school records can be difficult, sometimes taking several phone calls. Duties that could be handles by an administrative assistant, such as tracking down records, testing, or compiling data, often fall on teaching staff or a facility psychologist, taking [the teachers] away from teaching duties.”³²

JHA observed that IYC-Harrisburg uses volunteer tutors to help provide adequate educational services to its juvenile offenders.³³ However, JHA found, as did Mr. Leone, that some students were frustrated with the online education programs. The JHA’s independent review of IDJJ IYCs is necessary to provide an objective view of how the Remedial Plan is progressing in youth facilities.

***R.J. v. Jones*: Remedial Plan for Reforming Educational Services in the IDJJ**

In April 2014, the court entered its remedial plan after the experts submitted their reports in September of 2013.³⁴ In Part III, the court delineates what the IDJJ must do to meet the demands of the ACLU and provide its incarcerated juveniles with adequate educational services. First and foremost, IDJJ must provide full-time, full day instruction – five hours of schooling per each scheduled school day including at least two and one half hours instruction for youths who have a high school diploma or GED.³⁵ This is the first and arguably most important step to providing adequate educational opportunities, which is essential to fulfilling the mission statement of the IDJJ.

One year after the court entered the order for the Remedial Plan, the IDJJ must create and fill additional teacher positions to “ensure student to teacher ratios of 10:1 or lower for a general classroom setting and 6:1 or lower for students with intensive needs.”³⁶ The court ordered IDJJ to “create and implement a plan to provide for certified substitute teachers in its facilities to minimize the impact of teacher absences on instruction in its schools.”³⁷

As to instruction and the curriculum, the court ordered IDJJ to provide “both traditional classroom instruction and web-based instruction, individually tailored to students’ needs.”³⁸

Specifically, the

DJJ shall provide an academic curriculum sufficient to make available, to every youth without a high school diploma or GED, instruction in: (a) all subjects in which they must earn credit under state law in order to earn a high school diploma; (b) all subjects they need in order to prepare to take the GED exam; and (c) career and technical education programs for which high school credit can be earned. DJJ shall also offer vocational programming in which youths who already have a high school diploma or GED, or who are not on a diploma track, can earn vocational certification. Within one year of entry of this remedial plan, DJJ shall offer at least two vocational programs at each facility (except that facilities with fewer than 50 youths need only have one), and the DJJ shall ensure that at least one vocational program at each facility leads to certification. DJJ shall provide intensive literacy instruction to all youths who score below the 25th percentile on standardized readings tests upon DJJ admission.

Since the implementation of the Remedial Plan, over one year ago, there are very limited published public data reports indicating whether IDJJ is in compliance. However, under Part III of the Consent Decree the court requires that by the 1st of July every year, IDJJ will file with the court “an annual report describing in detail the specific actions the defendant will undertake during the following fiscal year, and that the defendant undertook during the prior fiscal year, to comply with the remedial plan and this consent decree.” Thus, the first official court-ordered update report should be filed by July 1, 2015.

Where Are We Now?

The only readily available data since the court entered the Remedial Plan order are monthly youth profiles which delineates the number of youths incarcerated, race, sex, age, offense class, and education - how many students are enrolled in school, obtained a GED or high school diploma.³⁹ In April 2015, of the 700 incarcerated youths there were 506 students enrolled in school, 459 of those students were enrolled in online education.⁴⁰ In April 2014, of the 757 incarcerated youths, 565 were enrolled in school, 551 of which were enrolled in online school.⁴¹ In July 2013, the earliest available monthly statistics report indicated that of the 873 incarcerated youths, 660 were enrolled in school with 527 enrolled in online programs.⁴² The figures show a decrease in the number of incarcerated youths but a consistently high percentage of students enrolled in school were doing so as part of an online program. Due to the lack of meaningful data as to the IDJJs compliance with the Remedial Plan, the watchdog groups are more needed now than ever before.

In addition to the monthly statistics report, the IDJJ released its first Annual Report in December of 2014, eight months after the court entered the Remedial Plan, and eight years after the creation of the IDJJ.⁴³ In its report the IDJJ notes that it recently hired a new superintendent “and is working to make necessary improvements.”⁴⁴ As to the specific points outlined in the

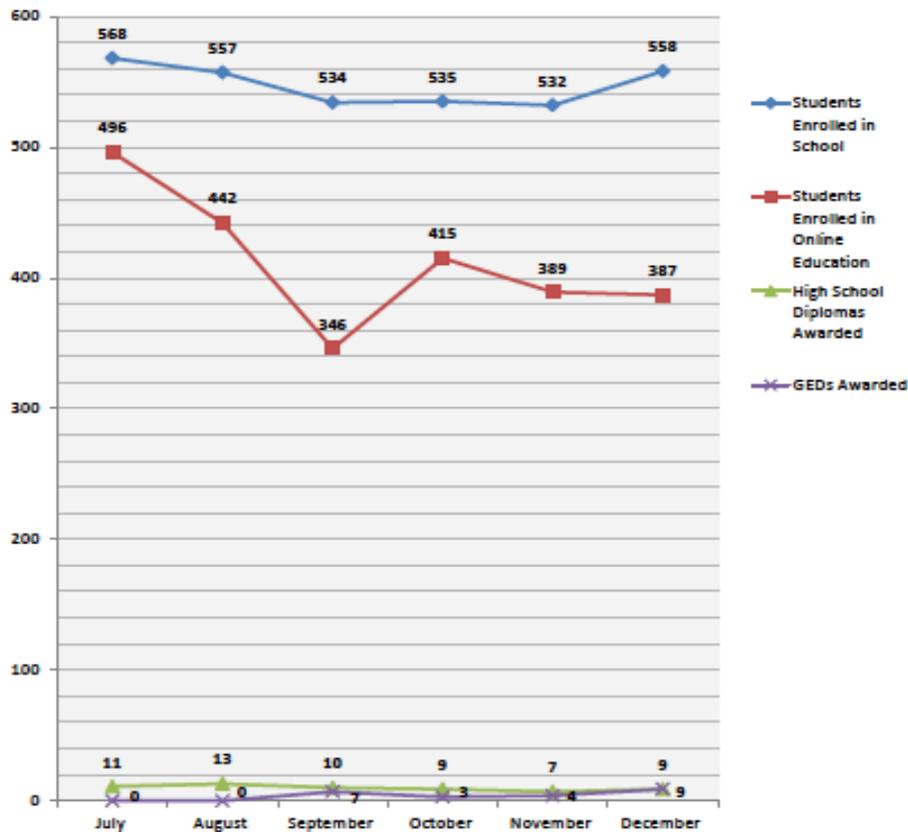
remedial plan the IDJJ’s report is largely silent. It does, however, discuss its reporting abilities, which fall short of providing the data needed to evaluate whether the IDJJ is complying with the Remedial Plan. The IDJJ says that a substantial amount of information pertaining to the needs of youth served, and the services provided to them during their commitment to IDJJ is not automated.⁴⁵ The IDJJ’s current data systems date back to the 1980s and “are not capable of generating the various data reports that the Department needs to measure outcomes.”⁴⁶ In 2012, the IDJJ hired a data analyst to “manually pull data from the historic IDJJ tracking systems and generate reports as part of a grant through Northwestern University.”⁴⁷

Adequate educational opportunities for juvenile offenders are imperative to reducing recidivism rates and helping offenders re-enter and re-integrate into society. While the Remedial Plan stemming from the *R.J. v. Jones* class action lawsuit is a huge step towards reforming the juvenile justice system, including educational opportunities for incarcerated children, the IDJJ and outside watchdog organization like the John Howard Association must regularly generate reports which provide the court and the public with hard data as to whether the IDJJ is complying with the Remedial Plan. Compliance with the Remedial Plan will ensure the IDJJ is carrying out its mission of rehabilitating juvenile offenders so they can successfully re-enter the community.

Graph 1:

The graph below shows the number of students enrolled in school compared with the number of students who receive a diploma or GED while incarcerated.

**IDJJ Institutional Population by Education
July - December 2014**



Note: Students Enrolled in Online, GEDs Awarded and High School Diplomas Awarded are all subsets of Students Enrolled in School.

¹ *R.J. v. Jones*, Complaint.

² *Id.*

³ *R.J. v. Jones*, Consent Decree, Remedial Order

⁴ Illinois Department of Juvenile Justice Annual Report (“IDJJ Report”), December 1, 2014

⁵ *Id.*

⁶ *Id.*

⁷ *R. J. v. Jones*, Complaint ¶ 18

⁸ IDJJ Report at 3.

⁹ *Id.*

¹⁰ <https://www.illinois.gov/idjj/Documents/Monthly%20Profile%20April%202015.pdf>

¹¹ IDJJ Report at 3.

¹² *R.J. v. Jones*, Complaint, at ¶¶ 25-27.

¹³ *Id.* at ¶¶ 28-30.

¹⁴ *Id.* at ¶¶ 32-36.

¹⁵ *Id.* at ¶ 36.

¹⁶ <http://illinoisissues.uis.edu/archives/2014/06/kids.html>

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- ¹⁷ *R.J. v. Bishop* Consent Decree, No. 1-12-CV-7289, Dec. 6, 2012.
- ¹⁸ *Id.* at ¶ 6.
- ¹⁹ *Id.* at ¶ 7.
- ²⁰ John Howard Association of Illinois, 2013 Monitoring Visit to IYC-Harrisburg, p. 1.
- ²¹ *Id.* at ¶¶ 18-21.
- ²² Peter E. Leone, Education Services and Supports for Students in the Illinois Department of Juvenile Justice, Sept. 20, 2013, at 2.
- ²³ *Id.*
- ²⁴ *Id.* at 3.
- ²⁵ *Id.*
- ²⁶ *Id.* at 4.
- ²⁷ *Id.*
- ²⁸ *Id.* at 5.
- ²⁹ *Id.*
- ³⁰ *Id.* at 12-15.
- ³¹ John Howard Association of Illinois, 2013 Monitoring Visit to IYC-Harrisburg, p. 1.
- ³² *Id.* at 5.
- ³³ *Id.* at 6.
- ³⁴ *R.J. v. Jones*, Remedial Plan, at 1.
- ³⁵ *Id.* at 4.
- ³⁶ *Id.* at 5.
- ³⁷ *Id.*
- ³⁸ *Id.*
- ³⁹ <https://www.illinois.gov/idjj/Pages/AboutUs.aspx>
- ⁴⁰ <https://www.illinois.gov/idjj/Documents/Monthly%20Profile%20April%202015.pdf>
- ⁴¹ <https://www.illinois.gov/idjj/Documents/Monthly%20Profile%20April%202014.pdf>
- ⁴² <https://www.illinois.gov/idjj/Documents/Monthly%20Profile%20July%202013.pdf>
- ⁴³ <https://www.illinois.gov/idjj/Pages/AboutUs.aspx>
- ⁴⁴ IDJJ Annual Report, p. 17.
- ⁴⁵ *Id.* at 19.
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*