



U.S. Department of Education
Office for Civil Rights

PROTECTING THE CIVIL RIGHTS OF STUDENTS IN THE JUVENILE JUSTICE SYSTEM

One of the first steps to successful reentry of youth to the community is ensuring that they have uninterrupted access to high quality education while in confinement. The Department of Education's Office for Civil Rights (OCR) has made significant efforts to ensure that youth being educated in justice facilities that receive Federal funds from the Department – such as correctional facilities, detention centers, jails, and prisons – are not subjected to discrimination on the basis of race, color, national origin (including status as English learners), sex, or disability.¹ The following efforts are discussed below:

- OCR's biennial survey of public schools, the Civil Rights Data Collection (CRDC), collected data from approximately 630 justice facility educational programs in the 2013-14 school year to measure the educational conditions for youth in confinement.²
- OCR (in conjunction with the U.S. Department of Justice (DOJ)) issued guidance in 2014 to justice facilities to remind them that the Federal civil rights laws, 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 justice facilities.³
- OCR investigates justice facilities to ensure compliance with civil rights laws and enters into strong resolution agreements when violations are found.

This document spotlights key data that inform OCR's understanding of the quantity and quality of educational programs for youth in confinement across the country, and summarizes applicable civil rights guidance and a recent resolution agreement related to these issues.

Measuring Educational Conditions in Justice Facility Programs for Youth in Confinement

Although youth in confinement are often the students in the greatest need of academic, emotional, and behavioral supports, the data reported by justice facilities to the CRDC regarding the 2013-14 school year indicate that these students often receive less support than their peers who are not in confinement.

The number of hours and days of educational programming vary widely in justice facility educational programs.

- On average, justice facilities report offering 26 hours per week of educational programming during their regular school year. But more than one in seven justice facilities (15%) offers less than 20 hours per week during the school year – which is less than four hours each day in a five-day week.
- While state requirements for public schools vary, the majority of states require 180 days of school instruction. More than one in five justice facilities (21%) reports having fewer than 180 days in a regular school year, and one in 20 justice facilities (5%) reports having fewer than 170 days. By contrast, 24% of justice facilities report having more than 230 days in a regular school year, reflecting the year-round nature of these facilities.

Teachers who work in justice facility educational programs are more likely to be absent than teachers in public schools. While 27% of teachers nationally are absent more than 10 school days per year for reasons unrelated to school activities, 35% of teachers at justice facilities are absent more than 10 days per year.

Justice facilities are less likely to offer essential math and science courses than public high schools.⁴

- 65% of justice facilities offer Algebra I, compared to 88% of all high schools.
- 48% of justice facilities offer Geometry, compared to 84% of all high schools.
- 28% of justice facilities offer Algebra II, compared to 78% of all high schools.
- 8% of justice facilities offer Physics, compared to 60% of all high schools.

Gender and racial disparities are apparent in justice facility educational programs.⁵

- **Most youth enrolled in justice facility educational programs are boys.** Boys represent 51% of all public school students nationwide, but 86% of students in justice facility educational programs.
- **Black girls and boys are disproportionately enrolled in justice facility educational programs.** Black students represent 16% of enrolled students in public schools, but 42% of students enrolled in justice facility educational programs.
- **American Indian or Alaska Native and Native Hawaiian or other Pacific Islander youth are disproportionately enrolled in justice facility educational programs. This is true for both boys and girls.** American Indian or Alaska Native students represented 1% of enrolled students in public schools, but 2% of all boys and 4% of all girls enrolled in justice facility educational programs. Native Hawaiian or other Pacific Islander students represent 0.4% of enrolled students in public schools, but 1% of all boys and 4% of all girls enrolled in justice facility educational programs.
- **Asian, Hispanic, multiracial, and white youth were not disproportionately represented in justice facility educational programs compared to their enrollment in public schools.⁶**

FIGURE 1: Student enrollment in justice facility educational programs, by sex

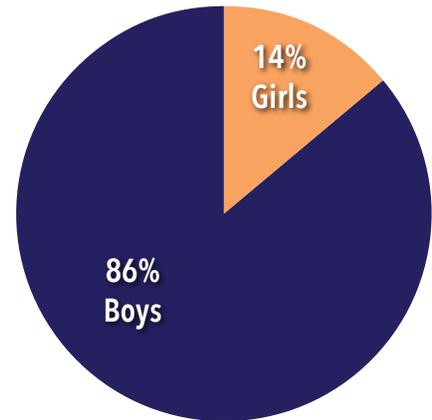
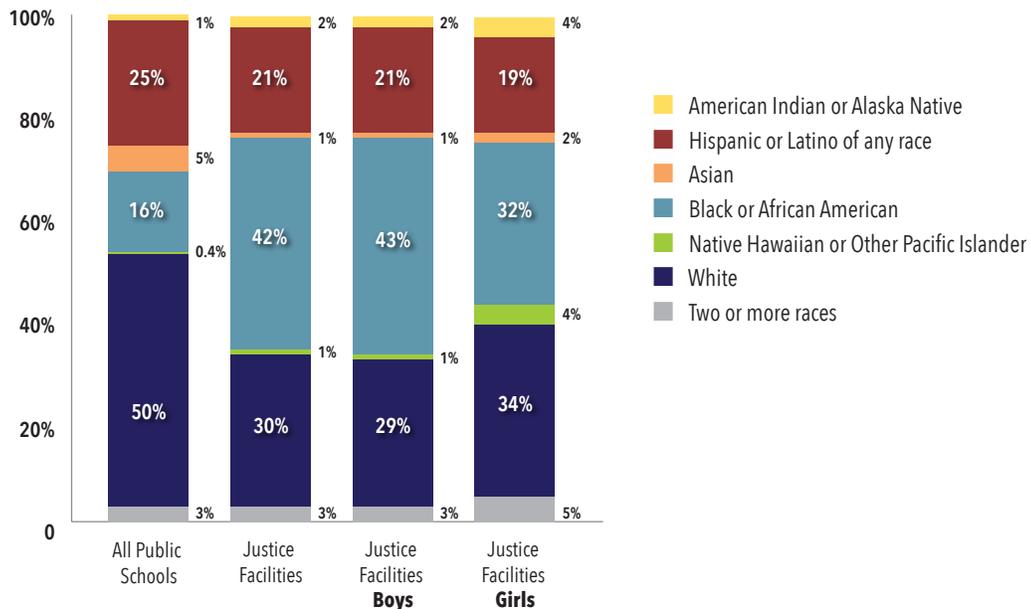


FIGURE 2: Student enrollment for all public schools and justice facility educational programs, by race/ethnicity



Youth enrolled in justice facility educational programs were more likely to be identified as students with disabilities and English learners.

- While students with disabilities represent 12% of all students in public high schools served by the Individuals with Disabilities Education Act (IDEA), they represent 23% of students enrolled in justice facility educational programs.
- English learners constitute 5% of all students in public high schools, but justice facilities reported that 6% of students enrolled in their educational programs were English learners.

Issuing Guidance on the Rights of Youth in Justice Facilities to Equal Educational Opportunities and Enforcing Those Rights

The 2014 OCR and DOJ guidance addressed various issue areas that impact youth involved in the juvenile justice system, including:

- **Providing equal access to academic coursework and career and technical education;**
- **Meeting the needs of English learner students so they can participate meaningfully in educational programs;**
- **Providing a free appropriate public education (FAPE) to all eligible students with disabilities** (see Enforcement Spotlight);
- **Avoiding discriminatory discipline on the basis of race, color, national origin, sex, or disability** (see Enforcement Spotlight);
- **Responding promptly and effectively to violence and harassment based on race, color, national origin, sex, or disability; and**
- **Providing auxiliary aids and services to ensure effective communication for students with hearing, vision, or speech disabilities.**

OCR Enforcement Spotlight: San Bernardino County Office of Education

After an investigation, OCR found in 2016 that the San Bernardino County Office of Education had unlawfully discriminated against students with disabilities in alternative and juvenile court schools.

OCR found the county neglected to provide an adequate system for identifying and evaluating students suspected of having disabilities, failed to implement specialized instruction and related services required in students' Individualized Education Programs (IEPs), and relied on paraeducators instead of special education teachers to provide specialized instruction to students with disabilities.

OCR also found that the county provided a predetermined amount of specialized instructional time a student would receive rather than basing the amount on the individualized needs of the student, and it failed to train staff on aiding and accommodating students with disabilities under Section 504 of the Rehabilitation Act of 1973.

OCR and the county entered into a resolution agreement under which the county agreed to ensure that students suspected of having a disability are appropriately identified and evaluated; to develop a comprehensive monitoring system for the provision of special education and related services; and to review existing IEPs or Section 504 plans of current students to assess whether IEPs/504 plans were changed without following proper procedures and/or without making an individualized determination about student needs. The county also committed to hire a project manager to help develop a needs assessment and action plan for addressing the issues identified in the investigation; implement a recordkeeping system for timely provision of records for students entering and exiting its schools; and conduct training for paraeducators regarding their duties and responsibilities.

In the same investigation discussed above, OCR identified a concern that students with disabilities who were not provided with necessary services and supports to address disability-related behavioral issues may be susceptible to suffering unfair exclusionary school discipline. The county agreed to develop a system to ensure that students with disabilities are not being referred for discipline, removed, suspended or expelled on the basis of disability, or more frequently receiving harsher punishments than students without disabilities, and that they are receiving positive behavior intervention and other restorative alternatives to maximize their time in class.⁷

Endnotes

- ¹ Students with limited English proficiency (LEP) are referred to as English learners in this document.
- ² For purposes of the CRDC, justice facilities are short- and long-term public or private facilities (including correctional facilities, detention centers, jails, and prisons) that confine (before or after adjudication or conviction) juveniles under 18 years of age, adults who are 18 years of age and older, or both; however, the CRDC included data only from justice facilities confining individuals up to 21 years of age. For more information about the CRDC, please visit crdc.ed.gov. Although OCR seeks to identify all schools serving justice facilities and have them report accurate data, the CRDC may not include all educational programs in juvenile justice facilities. DOJ estimates there were approximately 60,000 young people in juvenile justice residential facilities on October 23, 2013. See U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Juveniles in Residential Placement, 2013*, 3 (National Report Series Bulletin, May 2016), www.ojjdp.gov/pubs/249507.pdf. The CRDC, however, counted only 41,000 enrolled in justice facility educational programs.
- ³ www.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf.
- ⁴ When noted, this document compares justice facility education programs to public high schools because 95% of justice facility education programs report offering grades 10, 11, or 12, or are ungraded but have mainly high school age students.
- ⁵ The gender and racial/ethnic population reported to the CRDC in justice facility educational programs is roughly consistent with gender and racial/ethnic breakdowns in the confined juvenile population reported to DOJ. See U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Juveniles in Residential Placement, 2013*, 11-12 (National Report Series Bulletin, May 2016), www.ojjdp.gov/pubs/249507.pdf.
- ⁶ DOJ reports that Hispanic youth are disproportionately represented in residential placement facilities compared to white youth, as are black and American Indian and Alaska Native youth. See U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Juveniles in Residential Placement, 2013*, 13 (National Report Series Bulletin, May 2016), www.ojjdp.gov/pubs/249507.pdf. DOJ did not report similar comparisons for multiracial or Native Hawaiian or other Pacific Islander youth.
- ⁷ The full text of the resolution letter and agreement are available at <http://www.ed.gov/ocr/docs/investigations/more/09145002-a.pdf> and <http://www.ed.gov/ocr/docs/investigations/more/09145002-b.pdf>.

United States Department of Education

John B. King, Jr., Secretary

Catherine E. Lhamon, Assistant Secretary for Civil Rights

Lyndon Baines Johnson Building

Department of Education

400 Maryland Avenue, SW, Washington, DC 20202-1100

Telephone: 800-421-3481 | FAX: 202-453-6012

TDD: 877-521-2172

Email: OCR@ed.gov | www.ed.gov/ocr



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