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May 18, 2020

The Honorable Sam Abed, Secretary
Maryland Department of Juvenile Services
217 East Redwood Street
Baltimore, MD 21202

Dear Mr. Secretary:

In the past few days, 26 youth and 13 staff members at Rite of Passage's Silver Oak Academy (SOA) have tested positive for COVID-19. I am writing to express my serious concern about the safety and wellbeing of the children housed in Department of Juvenile Services (DJS) facilities and DJS contracted facilities, most of whom are represented by the Maryland Office of the Public Defender (OPD). The constant flow of both staff and youth in and out of these facilities—where large numbers of children are housed in close proximity—means that a powerful virus like COVID-19 can take over quickly and easily.

Sadly and predictably, that is what happened at Silver Oak. Pursuant to and consistent with our ethical responsibilities, OPD on April 23 and May 4 raised concerns directly with DJS headquarters' staff, as reported to OPD by our clients, concerning SOA's failure to properly protect youth from COVID-19. DJS concluded investigations concerning our clients' reports in less than 24 hours each time. We have grave concerns with the failure of the DJS Office of Licensing and Monitoring to properly and fully vet concerns raised by OPD clients at Silver Oak.

OPD told DJS in April, as reported by our clients, there was a lack of PPE being utilized, that children were still playing contact sports, that bathrooms were locked so that students had to seek out staff before being able to wash their hands, that students were living and sleeping in small rooms in close proximity to one another, that children who reported symptoms were not having their temperatures checked or being seen promptly by nursing staff, that young people were eating meals in close proximity to one another, that food was being served cafeteria style, that young people were waiting in lines close to one another at every meal, that youth were not physically distanced during school hours, that staff had displayed symptoms, that youth were holding hands at end-of-day community meetings, and that SOA staff had been quarantined without SOA reporting their potential illness to DJS. These complaints were inadequately and belatedly addressed.

Currently two-thirds of DJS detention centers and the largest DJS run committed facility—Victor Cullen—have had staff, youth, or both test positive for COVID-19. To protect our clients, DJS staff, private facility staff, and the communities where these facilities are located, the Office of the Public Defender is requesting that DJS proactively test for COVID-19 all youth housed in DJS detention facilities and all youth committed to DJS and placed in any public or private facility within the state of Maryland or out-of-state. Widespread testing is essential for our clients, their families, and the citizens of Maryland to have an accurate and unequivocal indication of how extensively COVID-19 has infiltrated any facility where Maryland youth are detained by DJS or where DJS committed youth are housed.

Despite the uncontroverted medical opinion that jails are incubators for COVID-19 because of the inability to socially isolate and provide adequate opportunity for handwashing, the Department has failed to require testing of all children and staff. DJS' current testing protocols fail to take into consideration the large number of asymptomatic carriers who can infect others and spread the virus. This is clearly indicated by the sudden spike in positive cases noted among asymptomatic youth at Silver Oak and at Mingus Mountain in Arizona (an out-of-state placement used by DJS) once universal testing was ordered at those facilities.

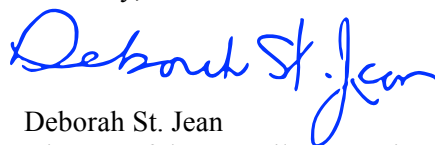
While DJS refuses to test all youth in its care, the Department is clearly aware of and concerned about asymptomatic transmission. Currently, when children in DJS facilities are exposed to youth or staff who are positive for COVID-19 they are placed on "medical isolation." Interviews with our clients demonstrate that medical isolation is just solitary confinement by another name. Children in medical isolation have been placed in cells for nearly 23 hours a day. When OPD has expressed concerns noting the documented dangers of isolation/seclusion, DJS' response has been to argue that the isolation door is not locked. Having a staff member stand guard at a door, rather than using a physical lock, does not change the fundamental nature of seclusion nor the limitations and reporting requirements outlined in Md. Corr. Services Article §9-614.1 wherein the Legislature mandates daily physical and mental assessments.

There are currently children who have been exposed to COVID-19 in solitary confinement at the Baltimore City Juvenile Justice Center, Charles Hickey School, and Cheltenham Youth Facility. Solitary confinement—irrespective of what euphemism the Department assigns to it—is a traumatic experience for young people who are still developing cognitively, emotionally, and physically. Solitary confinement has been proven to cause anguish, provokes serious mental and physical health problems, and works against rehabilitation for teenagers. Solitary confinement exacerbates short-term and long-term mental health problems and makes it more likely that such problems will develop.

The Department's refusal to test all young people in its care is puzzling. On April 29th Governor Hogan ordered that all nursing home residents and staff were to be tested for the virus regardless of whether or not they had exhibited any symptoms of the virus based on the threat of an imminent outbreak. Further, the Governor's executive order requires that the nursing homes have a physician, nurse practitioner, physician's assistant or registered nurse evaluate all residents on a daily basis. Do the children in the care of the Department deserve less?

If DJS continues to refuse to test all young people in its care, we ask that DJS at least test those children it knows have been exposed to staff and youth who have tested positive for COVID-19 and are as a result being held in solitary confinement. The alternative—telling a child that they have been exposed to a deadly and terrifying pandemic that is killing people across the globe and then locking them alone in cells for 23 hours a day—is cruel and does little to protect anyone.

Sincerely,



Deborah St. Jean
Director of the Juvenile Protection Division

CC: Members of the DJS State Advisory Board
Members of the Juvenile Justice Reform Council
Delegates Debra Davis, Charlotte Crutchfield, and David Moon
Senator Will Smith
Nick Moroney (Juvenile Justice Monitoring Unit)