

February 9, 2021

Sheila Poole
Acting Commissioner
NYS Office of Children and Family Services
52 Washington Street
Rensselaer, New York 12144
Via email: Sheila.Poole@ocfs.ny.gov

Re: New York State Office of Children and Family Services (OCFS) Guidance Summary for COVID-19 Vaccine Access in Residential Programs:

Dear Commissioner Poole,

As you know, The Legal Aid Society's Juvenile Rights Practice ("Legal Aid") provides comprehensive representation as attorneys for children who appear before the New York City Family Courts in abuse, neglect, and other proceedings affecting children's rights and welfare. Along with our Civil Practice's Homeless Rights Project, we also advocate on behalf of runaway and homeless youth across the City. In addition, the Adolescent Intervention and Diversion Project of our Criminal Defense Practice represents youth placed in Office of Children and Family Services ("OCFS") Division of Juvenile Justice and Opportunities for Youth ("DJJOY") secure facilities. As representatives for most of the New York City children and young adults who are currently placed in OCFS overseen congregate care facilities (through the foster care system, and juvenile and criminal legal systems), as well as runaway and homeless youth ("RHY") shelters, we write to request amendments to the recent vaccine guidance issued by OCFS to include all our client populations that have been permitted by the NYS Department of Health ("DOH") to receive vaccines in Phase 1b. We are also requesting that OCFS outline a plan for educating Local Departments of Social Services ("LDSS") LDSS staff about the vaccine itself and providing guidance on how LDSS and authorized agencies should engage families and provide information around this issue.

New York State has included "[r]esidents and staff at nursing homes and other congregate care facilities" among New Yorkers currently eligible to receive the COVID-19 vaccine.¹ In January, DOH included OCFS "licensed or certified residential programs staff and eligible residents" in Phase 1b of vaccine administration – making residents of OCFS authorized facilities eligible for vaccination as early as January 11, 2021.² On January 19, 2021, DOH issued further guidance regarding eligibility.³ This guidance provides that eligibility for the vaccine includes "Health care or

¹ See <https://covid19vaccine.health.ny.gov/phased-distribution-vaccine>

² See <https://www1.nyc.gov/site/doh/covid/covid-19-vaccine-eligibility.page>

³ See DOH's Guidance for the New York State COVID-19 Vaccination Program, available at <https://coronavirus.health.ny.gov/system/files/documents/2021/01/covid19guidanceforfacilitiesreceivingvaccine1.19.211046.pdf>

other high-risk essential staff who come into contact with residents/patients working in LTCFs and long-term, congregate settings overseen by OPWDD, OMH, OCFS and OASAS, and **residents in congregate living situations**, run by the OPWDD, OMH, OCFS and OASAS.” (emphasis added). The guidance also includes “[I]ndividual[s] living in a homeless shelter where sleeping, bathing or eating accommodations must be shared with individuals and families who are not part of your household.”⁴ The guidance also requires vaccine distribution to be conducted equitably and mandates a “fair distribution among the priority groups now eligible to ensure fair treatment and proportionate allocations both by group and by region.”⁵

Notwithstanding the DOH guidance clarifying that vaccine priority should be provided to staff and residents, OCFS issued guidance on January 11, 2021, stating that prioritization will only be given to **staff** working in congregate foster care programs, juvenile detention facilities, and runaway and homeless youth programs – excluding by implication the residents of those programs.⁶

We are concerned about OCFS’s guidance, as our reading of the guidance from the State, the City and DOH is that youth over 16 years of age who are living in congregate foster care placement, juvenile detention facilities, DJJOY facilities, and RHY programs are included in priority group 1b and should be afforded the option of seeking a COVID-19 vaccine if they wish to be vaccinated. This week, the American Academy of Pediatrics (“AAP”) has issued a recommendation that anyone 16 years of age and older who meets criteria for prioritization should receive the COVID-19 vaccine.⁷ The AAP is composed of 67,000 medical professionals directly responsible for the medical well-being of children around the country and has described any undue delay in providing children and young people with the potentially life-saving vaccine to be “unconscionable.”⁸ Their recommendation is noteworthy and particularly timely as January saw the highest spike in pediatric infections since the start of the pandemic.⁹ The virus has also had a disproportionate impact on Black and Latinx children, who have experienced a higher number of infections, as well as other detrimental impacts of the pandemic.¹⁰ Black and Latinx children and young adults make up the majority of youth held in OCFS overseen congregate care facilities through child welfare and juvenile and criminal legal proceedings, as well as those relying on RHY facilities.

⁴ Id.

⁵ Id.

⁶ See OCFS Guidance Summary for COVID-19 Vaccine Access in Residential Programs Licensed or Certified by the New York State Office of Children and Family Services (OCFS), January 11, 2021.

⁷ See <https://www.aapublications.org/news/2021/02/02/aap-covid-vaccine-guidance-020221>;
<https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/interim-guidance-for-covid-19-vaccination-in-children-and-adolescents/>

⁸ See <https://services.aap.org/en/news-room/news-releases/aap/2020/covid-vaccine-trials-should-begin-including-children-now-says-american-academy-of-pediatrics/>

⁹ See <https://www.aapublications.org/news/2021/01/19/pediatric-covid-cases-weekly-record-011921>

¹⁰ Id.

Residential Treatment Centers (“RTCs”) and other congregate group settings are long-term congregate care facilities overseen by OCFS. Youth in foster care are often consigned to these spaces for years, living and being raised among a rotating cast of congregate care staff and residents. By physical design, congregate foster care facilities, like other congregate facilities, house youth in close quarters, with shared dining rooms, common recreational areas, communal bathrooms and showers. Residents share facility computers, phones, utensils, and recreational equipment, among other objects. Approximately 50% of all youth in congregate care engage in unplanned absences (AWOL) from their programs, increasing the likelihood of exposure for all of the residents placed together. Congregate foster care facilities are also staffed by rotating shifts of workers who commute from heavily infected neighborhoods across the city by public transportation daily.¹¹ Staff at congregate care facilities have described the high risk of working in the congregate care setting throughout the pandemic.¹²

As you know, our clients in RTC and other congregate foster care facilities have suffered numerous restrictions on their movement, severe limitations on contact with their families, and significant disruptions and setbacks as a result of the COVID-19 virus. They have been exposed to the virus through other residents and staff at their facilities, and have been frequently required to isolate and quarantine, sometimes off-site and surrounded by strangers. They have been required intermittently to shelter-in-place for weeks at a time. They have been forced to forego visits to their family homes or in-person visitation at their facilities. They have been subject to delays in discharge planning that have resulted from the disruptions and confusion exacerbated by the virus. While every New Yorker has made sacrifices during the pandemic, these vulnerable and isolated young people, desperate for a sense of stability and security, have had to spend the year not knowing if they would be able to see their families for the next month or if they would be required to isolate and to delay their return home.

Young people held in juvenile detention are held in environments similar to youth in congregate foster care, but with more restricted movement. Detained youth have limited freedom of movement and no control over the movements of others with whom they are required to congregate on a daily basis. All youth in New York City in secure detention are held in either the Crossroads or Horizon Juvenile Centers, operated by the NYC Administration for Children’s Services Division of Youth and Family Justice (“DYFJ”). Youth in non-secure detention are held in one of eight facilities run by non-profit organizations under contract with DYFJ. Both secure and non-secure detention facilities confine the youth in close quarters with shared common day rooms and communal bathrooms and showers. They have faced an increase in time spent in their housing areas as

¹¹ Michael Fitzgerald, Foster Care Workers Face Coronavirus Risk With Uncertain Hazard Pay, https://chronicleofsocialchange.org/news-2/foster-care-coronavirus-covid-hazard-pay-testing/43249?utm_medium=email&utm_source=govdelivery, The Chronicle of social Change (May 11, 2020) (describing a youth placed in a Good Shepherd facility who tested positive for the virus after her first night in the facility – highlighting the difficulty of effectively identifying infected and contagious person).

¹² Id.

communal school and programming have been shut down. At both secure and non-secure detention centers, the population continually changes, with new detained youth entering and others being discharged. Youth also regularly interact with staff members who travel to and from the facility daily. As a result, youth in detention are continuously exposed to new detained youth, as they are to different staff members who alternate from shift to shift. New York City's youth detention facilities have witnessed both detained youth and staff testing positive for the virus, and at least one staff member has died from the virus.

Over the past year, youth held in Crossroads and Horizon, as well as non-secure detention facilities, have been subject to mandatory quarantining to reduce COVID-19 outbreaks. Mandatory, weeks-long quarantines have prevented these young people from having necessary, stabilizing visits with their families and loved ones. Restricting visits with their families and supports during this difficult, anxiety-producing time has increased the emotional toll associated with their detention.

Youth in OCFS secure placement have been subject to similar conditions. They live in close quarters with staff who enter and leave the facility daily, some of whom, we believe, have fallen ill with COVID. Further compounding the harms, the vast majority of youth in juvenile detention and placement are Black or Latinx and come from poor communities in New York City¹³ - the same communities so starkly impacted by the virus.

Young adults who live in RHY crisis shelters and transitional independent living programs have had to deal with frequent service changes and inconsistent messaging throughout the pandemic. RHY programs, which in New York City are overseen by the Department of Youth and Community Development ("DYCD"), have dealt with a myriad of difficulties including temporary shutdowns of almost all the drop-in centers throughout the City, effectively closing the front door to the system. Programs had to move residents to accommodate required quarantines and attempt to shift their programming to ensure these vulnerable youth were safe and given an opportunity for stability.

Currently, residents of the Department of Homeless Services ("DHS"), whose population overlaps with those who reside in RHY shelters, have been given access to de-densification hotels, regular policy and guidance updates, and COVID-19 vaccines. Legal Aid finds it troubling that our clients who live in DHS single adult shelters have access to potentially life-saving vaccines while young adults who live in DYCD-run shelters are unable to access the same treatment simply because their shelter system is overseen by a different state agency.

¹³ In fiscal year 2018, 66.9% of all NYC youth admitted to secure detention facilities in 2018 self-identified as black and 28.5% identified as Hispanic; similarly, 67% of those admitted to non-secure detention facilities identified as black and 26% as Hispanic. <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44DDRFY19.pdf>. Children from only 15 zip codes in NYC make up more than a third of all youth admitted to secure detention. <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44DDRFY19.pdf>.

There is no doubt that the COVID-19 pandemic has had a disproportionate impact on the low-income communities of color that our clients come from. These clients are at higher risk of infection due to being placed in or relying on the congregate care facilities described above, and many of them also suffer from co-morbidities. The State's designation of equitable distribution of vaccines as a guiding principle is a recognition of earlier failings during this pandemic. Depriving young people in congregate care settings who have been deemed eligible by the Department of Health of the opportunity to receive the COVID-19 vaccine flies in the face of that principle. We urge you to amend the OCFS guidance to allow these young people age 16 and older to receive the vaccine, and to provide further information about how OCFS plans to educate LDSS staff, children, and their families regarding the vaccine.

Given the urgency and time sensitive nature of this critical issue, we request a response to this letter within two weeks. We look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink that reads "Dawne Mitchell". The signature is written in a cursive style with a large, looped "M" and a long, sweeping underline.

Dawne A. Mitchell