

Congress of the United States
Washington, DC 20515

July 29, 2020

Attorney General Barr
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Secretary Betsy DeVos
United States Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Attorney General Barr and Secretary DeVos,

We write to you with grave concern about the recent court decision in Michigan that sentenced a 15-year-old girl to juvenile detention in the midst of the COVID 19 pandemic. We call on the Department of Education's Office of Civil Rights to immediately open an investigation into 15-year-old "Grace's"¹ case. Additionally, we call on the Department of Justice to immediately review the court's initial May 14, 2020 decision and the latest denied motion for early release issued on July 20, 2020.²

A child who is grappling with the stress of an unprecedented pandemic, coupled with a history of mental health issues and living with disabilities, should never be criminalized for her lack of participation in an online learning program. While Grace has faced many personal challenges in her young life, it was her lack of completion in online coursework that the judge cited as the definitive reason for sentencing Grace to juvenile detention. This is simply unacceptable.

Furthermore, Members of Congress have continued to express to the Administration our persistent concerns about congregate settings including nursing homes, detention centers and prisons and their inability to manage COVID-19 spread. Tragically we have already seen individuals who are incarcerated, in detention centers and in nursing homes across the nation lose their lives as COVID-19 has rapidly spread through these facilities. Citing these grave public health concerns, a March 29 Michigan Executive Order, since extended, strongly encourages "[e]liminating any form of juvenile detention or residential facility placement for juveniles unless a determination is made that a juvenile is a substantial and immediate safety risk to others."³ Researchers at the Sentencing Project have been compiling public reports of positive COVID-19 cases in juvenile detention and just this week reported that more than 1,300 incarcerated children and more than 1,550 staff working in these detention settings have tested positive for the virus.⁴ Due to a lack of consistent COVID-19 data reporting, these public reports likely represent a small fraction of actual cases.

Furthermore, a Dear Colleague jointly released by your agencies just a few years ago, reaffirmed the critical civil rights and education rights of students in juvenile detention, emphasizing the shared goal of

¹ The 15-year-old has been referred to in media by her middle name, Grace.

² The Detroit News, "Judge: Teen detained after incomplete schoolwork should 'follow through' treatment," July 20, 2020, <https://www.detroitnews.com/story/news/local/oakland-county/2020/07/20/teen-jailed-over-schoolwork-appear-before-oakland-county-judge/5470454002/>.

³ Mich. Exec. Order No. 2020-29, March, 29, 2020 https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523422--,00.html.

⁴ Joshua Rovner, *The Sentencing Project*. <https://www.sentencingproject.org/publications/covid-19-in-juvenile-facilities/>

continuing to rapidly reduce the number of children detained.⁵ Undoubtedly Grace is not the only child that has faced this type of unjust incarceration. In fact the criminalization of Black girls specifically, is a well-documented crisis. Black girls are 7 times more likely to be suspended from school and 4 times more likely to be arrested at school, compared to white girls.⁶ Even as early as preschool, where Black girls make up only 20 percent of all girls enrolled in school, they make up more than half of all out of school suspensions.⁷ Black girls with disabilities, like Grace, are disproportionately suspended at even higher rates. In 2012, Black girls made up 12 percent of all girls suspended from school. Black girls with disabilities represented nearly 1 in 4 girls with disabilities that were suspended. These stark disparities in exclusionary discipline persist.

While this case points to deeply entrenched systemic issues, Grace's case is the first publicly reported incident where a judge has cited a lack of online school participation as grounds for incarceration during the COVID 19 pandemic. Furthermore, cases like this could present threats to students' protected IDEA rights as well as circumvent the obligation to provide free, appropriate public education. School districts have documented tens of thousands of students who failed to log in or complete their schoolwork across the nation.⁸ Particularly as schools ready for the upcoming academic year, we must be clear that our children should be provided with additional supports and services, they should not be criminalized for their lack of engagement in online instruction. We must intervene now to address this dangerous precedent that would disproportionately harm Black and brown students and students with disabilities.

It has become clear that this pandemic has disrupted every aspect of life in our nation with one glaring exception – systemic racism. Black youth with disabilities account for 50 percent of students with disabilities in youth prisons. Grace's case is part of a pattern of criminalizing Black girls with disabilities for minor behaviors related to their disability. Grace was punished because of her ADHD, a disability which often makes it difficult to keep track of and complete homework, impacts impulsivity, and can even influence sleep patterns. Simultaneously, reports indicate that none of her accommodations, which are guaranteed by federal law, were in place. Additionally, according to public reporting, the judge denied her special education teacher the ability to testify in support of Grace.⁹

As it stands currently, Grace will not see another day in court until September. She has a supportive home to return to and services that meet her educational and health needs will be more safely and effectively delivered if she is not incarcerated. The Americans with Disabilities Act and Section 504 of the Rehabilitation Act require that services be provided in the least restrictive setting. Grace's ongoing detention presents persistent threats to her health and wellbeing as well as her civil rights.

⁵ Department of Education & Department of Justice, "Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities" <https://www2.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf>

⁶ National Black Women's Justice Institute, "End School Pushout for Black Girls and Other Girls of Color," (Sept. 2019) https://static.wixstatic.com/ugd/0c71ee_7d6b6469aa144b0397a4d7cd5d0f8051.pdf

⁷ Center for American Progress, "From Preschool to Prison: The Criminalization of Black Girls," (Dec. 2017) <https://www.americanprogress.org/issues/race/news/2017/12/08/443972/preschool-prison-criminalizationblack-girls/>

⁸ ProPublica, "A Teenager didn't do her online homework. So a judge sent her to juvenile detention." <https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention>

⁹ ProPublica, "A Teenager didn't do her online homework. So a judge sent her to juvenile detention." <https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention>

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We request a detailed response in writing by August 7th, 2020 pertaining to actions the Department of Education and Department of Justice will take related to Grace's case specifically.

Sincerely,

Ayanna Pressley
Member of Congress

Andy Levin
Member of Congress

Debbie Dingell
Member of Congress

Brenda Lawrence
Member of Congress

Rashida Tlaib
Member of Congress

Haley Stevens
Member of Congress