



Testimony of

**Coalition for the Homeless**

and

**The Legal Aid Society**

on

Broadband and the Digital Divide

submitted to

The New York City Council's Committee on Technology and Subcommittee on Zoning and Franchises

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The Coalition for the Homeless and The Legal Aid Society welcome this opportunity to submit written testimony to the New York City Council's Committee on Technology and Subcommittee on Zoning and Franchises regarding broadband internet access, specifically how it affects school-age children in shelters.

### **Homelessness and School-Age Children in NYC**

The coronavirus pandemic has highlighted that internet access is an indisputable necessity for all New Yorkers who are trying to safely social distance. However, homeless New Yorkers are too often denied such access, which can have devastating consequences, especially for school-age children trying to access remote learning from shelters. In the 2018-19 school year, there were an estimated 114,000 children in NYC public schools experiencing homelessness, including those living in doubled-up housing situations. Of these children, 34,471 were living in shelters, with most in shelters operated or contracted by the Department of Homeless Services (DHS). At the start of the COVID-19 pandemic, remote learning became the new norm, and so adequate internet access became a basic requirement for receiving an education. Even though many schools now offer "blended" learning programs, given that so many homeless children are in shelters far from their schools, and given that many schools in Brooklyn and Queens are switching back to offering only remote learning as a result of the uptick in COVID-19 cases in certain neighborhoods, remote learning is the only option available for a large number of students in shelters. Even for schools that continue blended learning, all students need reliable internet access on the days they are not scheduled for in-person instruction.

However, while students have been provided with iPads issued by the Department of Education (DOE), many shelters do not have reliable or stable cellular coverage, and so the iPads cannot connect to the internet. Many families live in shelters, such as the Flatlands Family Residence in Brooklyn, that are located in "dead zones" for service from T-Mobile, the DOE's wireless internet provider, and therefore have no way to connect. The lack of access to internet coverage is not simply a short-term issue for homeless children, who spend an average of 428 days in DHS shelters with their families. Students are thus at risk of missing significant portions of the academic year if internet access issues are not immediately resolved. Research documenting the impacts of chronic absenteeism not only warns of the potential negative effects on short-term academic performance, but also illustrates the detrimental impact on longer-term achievement outcomes – only further contributing to the cyclical nature of poverty.

### **Internet Access and Learning Obstacles for Students in DHS Shelters**

On March 23, 2020, the New York City public school system began offering only remote learning, requiring students to attend virtual classes and adhere to online homework submission deadlines. While the DOE partnered with Apple to provide students with iPads, a large number of the City's 150 DHS shelters for families with children had not received their shipment of iPads by the first day of school. By the next week, when most of the iPads arrived, students were left struggling to find areas in their shelters with cellular service to make up for their missed week of classes. The City still has not provided an accurate assessment of how many shelters lack adequate internet services, nor data on how many students have been affected, despite a request by the Comptroller on September 16<sup>th</sup> to the Mayor and the DOE Chancellor. There is even less available information about how families and students living in shelters for survivors of domestic violence, youth, or single adults have fared during the pandemic.

Students who live in shelters without internet access have had to scramble to find local, publicly accessible businesses with free WiFi, or connect to alternate sources of WiFi like NYC Link stations, in order to connect to the internet. One mother, *CB*, lives with her 9-year-old daughter in a DHS shelter in Manhattan. She reported that when her daughter's DOE-provided iPad does connect, it only connects to 4G service rather than LTE, causing her connection to be very slow. The shelter did not allow her to install a router for the free internet services she receives by attending BMCC, so she must work around the dead-zone that her shelter is in. Her daughter has to sit outside of the shelter to connect to NYC Link stations on the three days per week that she does remote learning, often resulting in whole days spent trying to connect without success. With colder weather approaching, the family worries that they will no longer be able to access the internet at all.

Now, one month into the new school year, DOE and DHS continue to skirt accountability as they fail to coordinate to address these critical issues directly. In July, Coalition for the Homeless provided DHS and DOE with the names of students who had trouble accessing the internet with their DOE-provided iPads. DHS refused to take any responsibility for addressing the problem, insisting that providing WiFi or any broadband internet access was unnecessary because the iPads are cellular-enabled. Furthermore, both agencies disregarded recommendations to set up a guest WiFi network and install extenders to allow students to access classes while T-Mobile works to address the general connectivity issues. The connectivity issues are not a new problem: During the summer of 2019, the City Bar Justice Center interviewed 84 residents of NYC family shelters in Manhattan and the Bronx, finding that only 6 percent were able to access the internet through their shelters.

The lack of internet service for students who so desperately need it is, of course, a solvable problem. Some shelter providers wired their buildings with internet before school closures last year. The City should ensure that all homeless students across all shelter systems have internet access. Due to the unpredictable nature of this pandemic, even schools with in-person instruction may be quickly ordered to close, which will leave thousands more students without consistent access to their classes. This failure further exacerbates the disparities that already put homeless children at such an educational disadvantage, and so must be addressed by the City at once.

The lack of reliable internet access for students living in shelters inhibits the core tenet of educational opportunity for these students. Not only is every student in the city entitled to equal access to free public education until the age of 21, but Federal law also guarantees "homeless youth and children of homeless individuals equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths" (42 U.S.C. § 11431). During this pandemic, a reliable internet connection is the most fundamental resource needed to access education. Homeless students in DHS-run family shelters are currently missing countless days of instruction because the DOE and DHS have failed to provide them a way to access it. There are likely hundreds of other students in shelters run by the Human Resources Administration and the Department of Youth and Community Development who are similarly missing instruction as a result of unreliable or unavailable internet service. The City has put students in an unacceptable position, and must immediately provide a solution to these access issues.

We have informed the City that unless reliable internet service is provided to students at the Flatlands Family Residence and all other families with children shelters, we will be forced to pursue appropriate

legal remedies to safeguard their right to an education. A copy of our October 8<sup>th</sup> letter to DHS and DOE is attached to this testimony.

**Conclusion**

We thank the Council for the opportunity to provide written testimony, and we look forward to opportunities for further advocacy to address the needs of all homeless New Yorkers.

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## About The Legal Aid Society and Coalition for the Homeless

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform. This dedication to justice for all New Yorkers continues during the COVID-19 pandemic.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of more than 2,000 attorneys, social workers, paralegals, and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal, and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits more than 1.7 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

The Legal Aid Society is uniquely positioned to speak on issues of law and policy as they relate to homeless New Yorkers. The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the *Callahan* and *Eldredge* cases. The Legal Aid Society is also counsel in the *McCain/Boston* litigation in which a final judgment requires the provision of lawful shelter to homeless families. The Society, in collaboration with Patterson Belknap Webb & Tyler, LLC, filed *C. W. v. The City of New York*, a federal class action lawsuit on behalf of runaway and homeless youth in New York City. The Society, along with institutional plaintiffs Coalition for the Homeless and Center for Independence of the Disabled – NY, settled *Butler v. City of New York* on behalf of all disabled New Yorkers experiencing homelessness.

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless and at-risk New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness, which is now in its fourth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term, scalable solutions and include: Permanent housing for formerly homeless families and individuals living with HIV/AIDS; job-training for homeless and low-income women; and permanent housing for formerly homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen, which usually distributes about 900 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx, is now regularly serving more than 1,100 meals per night and distributing PPE and emergency supplies during the COVID-19 pandemic. Finally, our Crisis Services Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries. In response to the pandemic, we are operating a special Crisis Hotline (212-776-2177) for homeless individuals who need immediate help finding shelter or meeting other critical needs.

The Coalition was founded in concert with landmark right-to-shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence of the Disabled – New York, and homeless New Yorkers with disabilities were represented by The Legal Aid Society and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws.

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October 8, 2020

**VIA EMAIL**

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Re: Internet Access for School-Age Children in Department of Homeless Services Shelters

Dear Mr. Carranza and Ms. Carter:

We, together with The Legal Aid Society, represent the Coalition for the Homeless. We write to convey the Coalition's grave concerns regarding the lack of internet access for school-age children in Department of Homeless Services shelters, including, but not limited to, the Flatlands Family Residence in Brooklyn. In light of the COVID-19 pandemic, internet access is not a luxury; it is a basic prerequisite to entering the "virtual classroom" that has been necessitated by the virus. By neglecting to ensure that homeless children can connect to the internet, the City is in violation of its constitutional obligation to provide a "sound basic education," and the Department of Education is failing its stated mission of providing a "rigorous, inspiring, and nurturing learning experience" to "every single child."<sup>1</sup> Instead, it is providing them with no education at all. It is

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<sup>1</sup> See *Equity and Excellence for All*, N.Y.C. Dep't of Educ., available at [www.schools.nyc.gov/about-us/vision-and-mission/equity-and-excellence](http://www.schools.nyc.gov/about-us/vision-and-mission/equity-and-excellence).

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critical that DOE and DHS, or both agencies working together, take immediate action to comply with their legal obligations.

When the City's schools closed earlier this year upon the rapid onset of the pandemic, students were left with no option but to continue their education remotely. The rushed transition to remote learning presented new obstacles for everyone involved—students, teachers, and caregivers alike. But those obstacles were especially steep for students in shelters who lacked the technology necessary to meaningfully participate (or participate at all) in their virtual classrooms. We understand that the City partnered with Apple to provide students in shelters with iPads to attend virtual classes and complete online assignments. We also understand that the City contracted with T-Mobile to provide cellular data for these iPads so that students could participate in their remote education no matter their location.

However laudable at the time, the City's efforts to provide equal access to the classroom through these devices and services soon proved to be of little or no use to many children. Although T-Mobile provides students with cellular data access for their iPads, it is not possible for many children at the Flatlands shelter—to take one example—to access the internet on the provided devices, due to unreliable or nonexistent cell service inside the building. DHS has repeatedly failed to facilitate access to Flatlands so that T-Mobile technicians could test their cellular connectivity inside the building. And even if T-Mobile staff were permitted to enter the building, data maps show that Flatlands—like many other areas of the City where shelters are located—is rife with “dead zones,” such that students are unable to connect to the cellular service.

Reports from school-age children residing in other shelters, such as the Regent Family Residence and Children's Rescue Fund House East, confirm that this unacceptable deficiency is not limited to the Flatlands facility. Families in those shelters also report slow connectivity speed and frequent shut-downs, which require the DOE-provided iPads to be fully reset. Some families report using WiFi at fast food restaurants to ensure that they can participate in important meetings or classes. Even in shelters that offer WiFi to residents, the signal strength is inadequate to ensure consistent, reliable coverage throughout the facilities.

To receive an education during the pandemic, students are expected to stream live classes, download homework, and submit their assignments online. Without internet access, many homeless children simply cannot do so. This problem is particularly acute for families that have opted for fully remote instruction, and in light of this week's school closures in COVID hotspot neighborhoods, there is a very real possibility that all students will ultimately be forced to attend remotely. The situation is further compounded for students with disabilities who receive special education services pursuant to Individualized Education Plans. A device that should grant students in shelters the same educational opportunities as other students serves no educational purpose without the proper connectivity. Students in shelters are effectively locked out of their virtual classrooms unless and until the City chooses to take action.

Over the summer, recognizing that the forthcoming school year was likely to be substantially if not entirely remote, the Coalition and Legal Aid raised the problems with connectivity in shelters with both DHS and DOE. Neither agency offered or accepted a solution;



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instead, they made unsupported assertions that WiFi access was unnecessary because the iPad cellular-based services were adequate. Now, nearly a month into the school year, those assertions have proven baseless, and it remains the case that no effective measures have been taken to address this continuing harm to students in shelters. Indeed, instead of remedying the issue—which should be easily manageable both from a budgetary and logistical perspective—DOE and DHS have reacted by finger-pointing, each disclaiming responsibility. The result is that the students themselves—day by day and week by week—continue to lose essential instructional time.

In the course of failing its most vulnerable children, the City and the agencies through which it acts are also violating the law. *See* 42 U.S.C. § 11431 (“Each child of a homeless individual and each homeless youth [is entitled to] equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.”); N.Y. Const. art. XI, § 1 (creating constitutional right to “sound basic education”); *Campaign for Fiscal Equity, Inc. v. New York*, 86 N.Y.2d 307, 315-16 (1995) (“sound basic education” requires “resources made available under the present system” that are “adequate to provide children with the opportunity to gain . . . essential skills”).

Litigation should be unnecessary when the basic educational rights of children living in DHS shelters—children who face unimaginable challenges even in the absence of a pandemic—are at stake. Nonetheless, the Coalition is prepared to seek expedited judicial intervention should the City’s unfortunate pattern of interagency buck-passing continue.

We are prepared to discuss these issues with representatives of DOE or DHS, or both, at any time. In the meantime, we expect and appreciate a response no later than October 15, 2020. The Coalition reserves all rights and remedies in respect of this urgent matter.

Sincerely,

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