



Testimony of

**Coalition for the Homeless**

and

**The Legal Aid Society**

on

Oversight - Youth in Shelter and the School System

submitted to

The New York City Council's Committees on Education and General Welfare

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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 Committees on Education and General Welfare pertaining to students in shelter.

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

Homeless students already faced daunting challenges prior to the pandemic, but the past year has exacerbated the educational disparities for this vulnerable population. In the 2019-20 school year, there were an estimated 111,600 children in NYC district or charter schools experiencing homelessness, including those living in doubled-up housing situations.<sup>1</sup> Of these children, 32,700 were living in shelters,<sup>2</sup> with most in shelters operated or contracted by the Department of Homeless Services (DHS). The staggering scale of student homelessness in New York City demands robust investments in permanent affordable housing to help prevent more families from falling into homelessness and to enable more New Yorkers to move out of shelters. No child should have to grow up in a shelter, but for too long New York has failed to invest in proven solutions to address homelessness that would enable these families to thrive in homes of their own. At the very least, it is imperative that the City ensure that homeless students have the same educational opportunities as their stably housed peers. This is also an issue of racial justice: Children of color are disproportionately represented among the homeless population. With Federal stimulus funding on the way, we urge the City to prioritize necessary supports for homeless students and to ensure they have equitable access to programs and services in the coming months.

At the start of the COVID-19 pandemic, remote learning became the new norm, and therefore adequate internet access became a basic requirement for receiving an education. 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. Although many schools offer blended and in-person learning programs, remote learning remains the only option available for a large number of students staying in shelters because so many homeless children are assigned to shelters far from their schools. Even for schools that continue blended and in-person learning, all students need reliable internet access on the days they are not scheduled for in-person instruction. Moreover, the lack of access to internet coverage is not simply a short-term issue for homeless children, who spend an average of 443 days in DHS shelters with their families.<sup>3</sup> The switch to remote learning left homeless students at risk of missing significant portions of the academic year without intervention. 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.

### ***E.G. v. The City of New York, et.al.: Guaranteeing Internet Access for Students Sleeping in Shelters***

Throughout the past year, The Legal Aid Society and the Coalition for the Homeless have advocated with the City to ensure that homeless students sleeping in shelters are able to access the digital classroom – efforts that culminated in litigation. 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 Department of Education (DOE) partnered with

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<sup>1</sup> As reported December 3, 2020, by New York State Technical and Education Assistance Center for Homeless Students (NYS-TEACHS), a project of Advocates for Children of New York (AFC), at <https://advocatesforchildren.org/node/1675>.

<sup>2</sup> *Id.*

<sup>3</sup> [https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/2021\\_pmmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/2021_pmmr.pdf)

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. Even when most of the iPads arrived the following week, students were left struggling to find areas in their shelters with cellular service to make up for their missed week of classes. Students who lived in shelters without internet access reported they scrambled 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. Some parents paid for private hotspots, taking much-needed funds from other areas of their budgets to provide a solution where the City provided none. Coalition for the Homeless and The Legal Aid Society began requesting information from DHS leadership about how the agency and City were planning to better support remote learning going forward.

Absent any discernable movement from the City to develop a comprehensive plan to address these issues, in July 2020, the 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 were cellular enabled. Furthermore, both agencies (DOE and DHS) disregarded recommendations to set up guest WiFi networks in shelters with existing internet to allow students to access classes while T-Mobile – the iPad cellular carrier – worked to address the general connectivity issues. The connectivity issues were 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.<sup>4</sup> Yet, even as the new school year began, DOE and DHS continued to skirt accountability as they failed to coordinate to address those critical issues directly.

On October 8, 2021, the Coalition for the Homeless, along with counsel at The Legal Aid Society and Milbank LLP, sent a letter to then-DOE Commissioner Carranza and DHS Administrator Carter outlining ongoing concerns and demanding an immediate remediation plan to address the total lack of internet access in many shelters that affected thousands of homeless students. This letter threatened imminent litigation absent a specific plan. Despite expressing a desire to provide reliable internet access to students residing in shelters generally by the following summer, the City did not share any specific plan in response to this letter, and the Coalition for the Homeless and counsel moved forward with litigation.

On September 16, 2020, Comptroller Stringer sent a letter to Mayor de Blasio and DOE Chancellor Carranza requesting information and immediate action to address the learning difficulties for all students in temporary housing, including programs overseen by the Department of Youth and Community Development (DYCD), as well as DHS and the Human Resources Administration (HRA).<sup>5</sup> By the time of the New York City Council's October 13<sup>th</sup> Committee on Technology and Subcommittee on Zoning and Franchises hearing regarding access to the internet, the City still had not provided an accurate assessment to Legal Aid and the Coalition of how many shelters lacked adequate internet services, nor data on how many students had been affected, despite the Comptroller's request. Legal Aid and the

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<sup>4</sup> <https://www.citybarjusticecenter.org/wp-content/uploads/2020/05/Homeless-Need-Internet-Access-to-Find-a-Home-2020-Report.pdf>

<sup>5</sup> <https://comptroller.nyc.gov/newsroom/comptroller-stringer-school-reopening-plans-must-provide-direct-support-to-100000-students-experiencing-homelessness-in-new-york-city/>

Coalition had even less information about how families and students living in shelters for survivors of domestic violence, youth, or single adults fared during the pandemic with regard to internet access.

On October 26, 2020, Mayor de Blasio announced during a press conference that “every shelter gets WiFi,” and that he instructed the City Law Department and the Department of Social Services “to send teams out to literally go shelter by shelter and simply ensure that, not just for that student but for the whole shelter, WiFi is in place.”<sup>6</sup> The Legal Aid Society and Milbank followed-up with a subsequent letter to DOE and DHS requesting additional information, which was largely ignored. Without any detailed information about a specific plan – and with an alarming number of students who still could not reliably connect to the internet to complete their schoolwork – three families and the Coalition for the Homeless (acting as representatives for the class of impacted people) sued the City of New York, as well as leadership from DOE, DSS, DHS, HRA, and the Department of Information Technology and Telecommunications (DOITT) on November 24, 2020.<sup>7</sup>

The lawsuit alleged that the lack of reliable internet access for students living in shelters denied a core tenet of educational opportunity for these young people. Not only is every student in the city entitled to equal access to a 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. In fact, as school was conducted remotely, it was as essential as transportation, which is a subject of the hearing today.

After the Court ordered the parties to exchange discovery in anticipation of a limited evidentiary hearing on Plaintiffs’ preliminary injunction motion, the parties exchanged hundreds of documents and took depositions of various parties and experts, ultimately leading to a settlement agreement.<sup>8</sup> As of April 1, 2021, the City has installed WiFi in approximately 75 percent of family shelters and, per the settlement, will complete all required installation no later than August 31, 2021. The City is obligated to ensure that, in the interim, all students with cellular-enabled iPads have reliable access to the internet, which may include replacing faulty equipment or installing interim measures. Shelter providers must post and provide information to residents and students about how to report technical issues as they arise and must support the families as they continue to navigate remote learning. Perhaps most importantly, WiFi will remain installed in the shelters beyond the terms of the settlement’s enforcement, enabling families to benefit from this essential service beyond the pandemic.

### **Shelter Eligibility**

Families applying for shelter have long faced challenges proving their homelessness to DHS in order to be found eligible for shelter. The lengthy and bureaucratic application process requires families to provide a two-year housing history and document reasons they can no longer return to places they have lived in the past – a task that is much more difficult during a pandemic. Disturbingly, the shelter

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<sup>6</sup> <https://www.nydailynews.com/new-york/ny-homeless-shelters-wifi-daily-news-reporting-student-remote-learning-20201026-qpuq3xcycjfo3eukwom7h3zqtq-story.html>

<sup>7</sup> A copy of the *E.G. v. The City of New York, et al.* complaint can be found at <https://legalaidnyc.org/wp-content/uploads/2020/11/E.G-v.-City-of-New-York.pdf>.

<sup>8</sup> A summary of the *E.G. v. The City of New York, et al.* settlement terms can be found at <https://legalaidnyc.org/news/las-secures-working-wifi-for-homeless-students-at-200-city-shelters/>.

eligibility rate for homeless families with children has dropped substantially since the pandemic began. In February 2020, 41 percent of families with children who applied for DHS shelter were found eligible. In February 2021, just 24 percent of families with children who applied for shelter were found eligible, the lowest eligibility rate since Mayor de Blasio took office. Many families who are found ineligible for shelter are forced to reapply again and again in hopes of making their case satisfactorily to DHS. During the eligibility process, families are given conditional placements. School-age children in conditional placements face unique challenges to their education and often miss school because their shelter placement is unstable, although DHS has made some changes to these policies during the pandemic. During the arduous eligibility process, families often struggle to access benefits and supports – particularly transportation to school.

### **Int. 150-2018**

Coalition for the Homeless and Legal Aid support the purpose of Int. 150 but join other advocates, specifically Advocates for Children, in suggesting substantial edits to further strengthen the bill. We believe creating a task force to better serve students living in temporary housing is an important measure to ensure these particularly vulnerable students are not further denied their right to physically access school. Prior to the codification of Mayor de Blasio’s move to guarantee busing for students in kindergarten through sixth grade more than five years ago, it was extremely difficult to support students moved into temporary housing whose Federally mandated right to remain in their prior school required bus transportation. Despite this improvement, many students still experience interruptions due to busing issues, and a large group of homeless students are still left out of these protections: students living in domestic violence shelters, students in conditional shelter placements, 3-K and pre-K students living in shelters, and students living in shelters who wish to participate in after-school or summer programs. Moreover, there are currently numerous vacancies in DOE’s Office of Students in Temporary Housing, thus reducing the number of staff available to assist with transportation issues. These positions must be filled so that they can work with the proposed task force to implement recommendations.

In addition to representing students living in shelters, The Legal Aid Society represents students who are currently residing in foster care through our Education Advocacy Project, which is housed within the Juvenile Rights Practice. In 2015, the Every Student Succeeds Act (ESSA) was passed. Among its provisions is the requirement that Local Education Agencies collaborate with child welfare agencies to create plans to ensure that children in foster care receive transportation to maintain school stability. Shortly thereafter, New York State Education Law §3244(4)(a) was enacted, requiring the school district where the child attends school to provide transportation between the foster care placement location and the school of attendance when needed by the youth in foster care to maintain school stability. Although for several years, the law has required the DOE to provide students in foster care with transportation to enable them to remain in their schools of origin, this group of students continues to deal with extensive transportation problems. We ask that the Committees on Education and General Welfare work with education advocates that serve this population and introduce legislation that would create a similar task force for students in foster care. The Legal Aid Society is willing to work with the Council on this legislation.

### **Int. 139-2018**

Coalition for the Homeless and Legal Aid support Int. 139, as we do other reporting bills that will provide context and valuable insight into the link between housing and health care.

## **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. Our Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our Juvenile Rights staff represented more than 33,000 children. At the same time, our Criminal Practice handled nearly 220,000 cases for clients accused of criminal conduct last year. Many thousands of our clients with criminal cases in Criminal Court and Supreme Court are school-age teenagers and young adults. Annually, our Civil Practice works on more than 52,500 individual legal matters, including advocacy for families with school-age children.

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, 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. As detailed in this testimony, Legal Aid has continued to litigate on behalf of thousands of New Yorkers experiencing homelessness during the COVID-19 pandemic, including in *E.G.* where we ensured WiFi access for students in DHS and HRA shelters as well *Fisher* where we continue to litigate to protect the rights of individuals living in de-densification hotels during the pandemic.

Additionally, Legal Aid is well-suited to represent the needs of students. Our Criminal, Civil, and Juvenile practices engage in educational advocacy for our clients, in the areas of special education, school discipline, and school placement and programming. In addition to representing these children each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

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 (1-888-358-2384) 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.