

# Milbank

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October 8, 2020

**VIA EMAIL**

Mr. Richard A. Carranza  
Chancellor  
New York City Department of Education  
52 Chambers Street  
New York, NY 10007

Ms. Joslyn Carter  
Administrator  
New York City Department of Homeless Services  
33 Beaver Street  
New York, NY 10004

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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Mr. Richard A. Carranza  
Ms. Joslyn Carter  
October 8, 2020

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;

Mr. Richard A. Carranza  
Ms. Joslyn Carter  
October 8, 2020

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,

/s/ Grant R. Mainland  
Partner  
Milbank LLP

/s/ Susan J. Horwitz  
Susan J. Horwitz  
Supervising Attorney of the Education Law Project  
The Legal Aid Society

cc: James E. Johnson  
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New York City Department of Social Services

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Homeless Rights Project, The Legal Aid Society