

Milbank

GRANT R. MAINLAND

Partner

55 Hudson Yards | New York, NY 10001

T: 212.530.5251

gmainland@milbank.com | milbank.com

October 30, 2020

VIA EMAIL

The Honorable Bill de Blasio
Mayor
The City of New York
City Hall
New York, NY 10007

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

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

Ms. Jessica Tisch
Commissioner
New York City Department of Information
Technology and Telecommunications
255 Greenwich Street
New York, NY 10007

Mr. Steven Banks
Commissioner
New York City Department of Social Services
150 Greenwich Street
New York, NY 10007

Re: WiFi Access for School-Age Children Residing in New York City Shelters

Dear Mayor de Blasio, Mr. Carranza, Mr. Banks, Ms. Carter, and Ms. Tisch:

We, together with The Legal Aid Society, represent the Coalition for the Homeless. We write further to our letter to Mr. Carranza and Ms. Carter, dated October 8, 2020, in which we expressed serious concerns regarding the lack of WiFi access for school-age children residing in Department of Homeless Services (“DHS”) shelters, including, but not limited to, the Flatlands Family Residence in Brooklyn. New York City’s response to our October 8 letter and related press reports has been equivocal at best. Meanwhile, an additional three weeks have passed—taking us half way to the December school recess—and the City appears no closer to an acceptable solution. Indeed, the latest indication from the Department of Social Services (“DSS”) is that WiFi cannot

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be expected in the City's shelters *until the summer of 2021 at the earliest*—effectively writing off the 2020-21 school year for thousands of children residing in shelters who have been unable to reliably access the internet in any other way. The DSS proposal is not only a moral and policy abdication; it is a violation of state and federal law protecting homeless youth's equal access to a sound basic education. In the absence of a solution that takes seriously the scale and urgency of the problem, we will have no choice but to take legal action to remedy these violations.

As we have explained, reliable internet connectivity is a necessity, not a luxury, for the City's students during the COVID-19 pandemic. Without it, students who attend school fully remotely—estimated at more than three quarters of all New York City students as of this week—are effectively locked out of the classroom. Students who have a hybrid schedule are unable to participate when they are not onsite.

At the outset of the pandemic, the City made laudable efforts to address the issue by distributing iPads equipped with T-Mobile cellular plans. For months, however, those efforts have proven insufficient, largely due to cellular “dead zones” at Flatlands and numerous other shelters across the City. Installing WiFi at the City's shelters is the best solution to ensure that the door to the virtual classroom will be open to all.

Fortunately, Mayor de Blasio appears to agree with this assessment. As the Mayor stated at press conference earlier this week:

[T]he instruction I have given to the Law Department and to Social Services is to ensure that every shelter gets WiFi, 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. We've got to stop this and make sure everyone has what they need.

Unfortunately, the Mayor's instruction is not being heeded with anything close to the urgency that is required. Yesterday, two days after the Mayor's press conference, we received correspondence from DSS indicating an “aggressive goal” of installing WiFi at all 240 shelters “this summer”—that is, after the 2020-21 school year is over—with 27 “priority sites” targeted for completion sometime “this winter.” This means that even those shelters designated as priority sites will not be able to ensure reliable remote access to school for the children who live there until more than half of the school year is over.

This foot-dragging is of a piece with the City's prior conduct. In a telephone call just days before the Mayor's press conference, representatives of DHS and the Department of Education (“DOE”) refused to acknowledge that WiFi in shelters was necessary to ensure reliable internet access for children participating in remote education. These representatives instead spoke in vague terms about feasibility studies and system-wide surveys. When asked whether a technician had been sent to the Flatlands shelter referenced in our October 8 letter to determine whether there was any feasibility issue at all, the answer was no. When asked to describe the nature of the contemplated informational survey regarding connectivity issues—including whether it would be an electronic or hard-copy survey—we were told the survey was still being designed.

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We are grateful that Mayor de Blasio has changed course, putting an end to unproductive debates about whether WiFi is even necessary in shelters. At the same time, however, it is an egregious failure of planning and judgment to have reached this conclusion only now—into the second month of the school year and almost eight months after the pandemic effectively shut down New York City. This is especially so given that the Coalition and Legal Aid have been sounding the alarm bells about this issue since *last spring*. And even after the Mayor’s course correction, the pattern of recalcitrance by agency officials charged with implementing WiFi installation has only continued, as reflected in DSS’s declaration of an “aggressive goal” of completing WiFi installation for the vast majority of DHS shelters after the school year is over.

The City’s refusal to provide WiFi in DHS shelters on a meaningful timetable violates the New York Constitution’s guarantee of a “sound basic education” to all children in the state regardless of their circumstances. *See* N.Y. Const. art. XI § 1; *see also Bd. of Educ. v. Nyquist*, 57 N.Y.2d 27, 48 (1982) (interpreting the Education Clause of the New York Constitution as requiring a “sound basic education”); *Campaign for Fiscal Equity, Inc. v. New York*, 86 N.Y.2d 307, 315-16 (1995) (“sound basic education” requires resources that are “adequate to provide children with the opportunity to gain... essential skills”). Indeed, unlike prior “sound basic education” cases in which the issue was whether educational standards and resources were *sufficient*, here many of the affected children are receiving *no education at all*, with no clear end in sight.

This failure in turn violates federal law. The McKinney-Vento Homeless Assistance Act prohibits “practices” or “policies” that “may act as a barrier to the . . . attendance, or success in school of, homeless children and youths.” 42 U.S.C. § 11431. The City’s practices and policies have clearly acted as such a barrier here.¹

Litigation should be unnecessary to remedy this issue, especially in light of the Mayor’s acknowledgment that the status quo is unacceptable. Yet we have received no assurance that the status quo will meaningfully change any time soon. While we remain open to discussions, the time to avoid judicial intervention is running short. The Coalition reserves all rights and remedies.

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
Corporation Counsel of the City of New York

Joshua Goldfein & Beth Hofmeister
Staff Attorneys
Homeless Rights Project, The Legal Aid Society

¹ These federal statutory rights (and related remedies) are individually enforceable. *See, e.g., Nat’l Law Center on Homelessness and Poverty, R.I. v. New York*, 224 F.R.D. 314 (E.D.N.Y. 2004) (“[T]he McKinney Act . . . evidences a clear and unambiguous intent of Congress to create individually enforceable rights.”); *N.J. v. New York*, 872 F. Supp.2d 204 (E.D.N.Y. 2011) (granting injunctive relief to homeless children for violations of McKinney-Vento Act).