

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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E.G., individually and as parent and natural  
guardian of A.I. and L.I., minor children;  
M.M., individually and as parent and natural  
guardian of E.H., L.H., Ev.P., and E.P.,  
minor children; O.M., individually and as  
parent and natural guardian of A.M., a minor  
child; and COALITION FOR THE  
HOMELESS, on behalf of themselves and  
all others similarly situated,

Index No. 20-CV-9879

Plaintiffs,

-against-

THE CITY OF NEW YORK; NEW YORK  
CITY DEPARTMENT OF EDUCATION;  
RICHARD A. CARRANZA, as Chancellor of  
the New York City Department of Education;  
NEW YORK CITY DEPARTMENT OF  
SOCIAL SERVICES; STEVEN BANKS, as  
Commissioner of the New York City  
Department of Social Services; NEW YORK  
CITY DEPARTMENT OF HOMELESS  
SERVICES; JOSLYN CARTER, as  
Administrator of the New York City  
Department of Homeless Services; NEW  
YORK CITY HUMAN RESOURCES  
ADMINISTRATION; GARY JENKINS as  
Administrator of the New York City Human  
Resources Administration; NEW YORK CITY  
DEPARTMENT OF INFORMATION  
TECHNOLOGY AND  
TELECOMMUNICATIONS; and JESSICA  
TISCH, as Commissioner of the New York  
City Department of Information Technology  
and Telecommunications,

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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Plaintiffs E.G., M.M., O.M., and Coalition for the Homeless, by their attorneys, The Legal Aid Society and Milbank LLP, respectfully submit this Memorandum of Law in Support of Plaintiffs’ Motion for a Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

### **INTRODUCTION**

Plaintiffs M.M., E.G., and O.M. are parents of school-aged children who currently reside in New York City shelters and have been unable, since the onset of the COVID-19 pandemic, to meaningfully participate in school due to the City’s failure to provide adequate internet access at the shelters where they reside. Plaintiff E.G. lives in a family shelter in Manhattan; Plaintiff M.M. lives in a confidential domestic violence shelter in New York City; and Plaintiff O.M. lives in a family shelter in Brooklyn. With schools currently closed for in-person learning, Plaintiffs’ children are unable to attend school in person. And none of Plaintiffs’ children have been able to consistently attend school “virtually”—that is, through a computer, tablet, or other electronic device—because the shelters where they live lack reliable internet service for residents. They accordingly seek, together with Plaintiff Coalition for the Homeless and on behalf of themselves and all others similarly situated, a preliminary injunction remedying this unlawful situation.

Both state and federal law grant and protect homeless children’s right to an education. The New York State Constitution guarantees a “sound basic education” for each child residing in the State. *See* N.Y. Const. art. XI, § 1; *see also Campaign for Fiscal Equity, Inc. v. New York*, 655 N.E.2d 661, 665 (N.Y. 1995). New York State Education Law (“NYSEL”) § 3209 provides, among other things, that indigent children must be provided the necessary tools to attend school. N.Y.S. Educ. L. § 3209(7). Federal law commands the same result through the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435 (the “McKinney-Vento Act”), and the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1.

True, none of these laws speaks specifically in terms of internet access. But it can hardly be disputed that such access is a basic prerequisite to school attendance under the conditions of the COVID-19 pandemic, in which the City's public schools have been operating substantially remotely and, as of the time of this filing, are now again operating entirely remotely. Indeed, Defendants here—the City of New York, various responsible agencies, and their respective administrators—do not dispute the importance of adequate internet access. Mayor de Blasio himself recently instructed City officials to install “WiFi” (wireless access, via routers or access points, to a building's wired internet connection) at all shelters across the City. Thus, Plaintiffs' ability to establish a likelihood of success on the merits of their claims is clear.

There can also be no doubt that the ongoing harm of being unable to attend school is irreparable. As set forth in more detail below, courts in this Circuit have recognized that disruption of a child's education, even when temporary, threatens irreparable injury. *See, e.g., Orozco by Arroyo v. Sobol*, 674 F. Supp. 125, 128 (S.D.N.Y. 1984) (“Interruption of a child's schooling[,] causing a hiatus not only in the student's education but also in the other social and psychological development processes that take place during the child's schooling, raises a strong possibility of irreparable injury.”). So has Congress in passing the McKinney-Vento Act, which aims to prevent the disruption to a child's education that occurs when obstacles posed by homelessness intervene. *See, e.g.,* 42 U.S.C. § 11431(2) (guarding against “regulations, practices, or policies” that “may act as a barrier to the . . . attendance or success in school of . . . homeless children and youths”).

Finally, the equities tip decidedly in favor of an injunction. Without such relief, Plaintiffs' children and other students living in shelters will miss most, if not all, of the 2020-2021 school year, as Defendants' current plan is to complete installation of WiFi at all shelters housing students next summer at the earliest, and even that deadline assumes Defendants are able to meet what they

deem an “aggressive goal.” For many homeless students, school is the rare bright spot of stability in the midst of otherwise highly unsettled circumstances. This is especially so during the COVID-19 pandemic, which has disproportionately impacted indigent Black and Hispanic/Latinx New Yorkers. By contrast, the only burden Defendants can point to is that the injunction will cause them to treat the situation with the urgency it so plainly requires.

In sum, Plaintiffs easily satisfy the standards for preliminary injunctive relief. Accordingly, Plaintiffs respectfully request that the Court issue a preliminary injunction ordering Defendants to equip all shelters housing school-aged children with reliable WiFi access as soon as is reasonably practicable, but in no event later than January 4, 2021, so that the students living in those shelters can regain access to their education.

### **FACTUAL BACKGROUND**

In March 2020, the COVID-19 pandemic transformed the school experience for all students from in-person learning to instruction online. (Compl. ¶¶ 33–35.) Since March, students in New York City public schools have required internet access to join class, receive assignments, complete coursework, and communicate with their classmates and teachers through an online portal. (*Id.* ¶ 34-35.) To help facilitate the transition to the virtual classroom, the New York City Department of Education (“DOE”), a Defendant here, distributed approximately 300,000 iPads to students in need. (*Id.* ¶ 36-38.) DOE also contracted with T-Mobile to provide cellular plans for these iPads so that, in theory, all students could connect to the virtual classroom regardless of their location or circumstances. (*Id.* ¶ 38.)

That theory, however, quickly collided with reality, at least for Plaintiffs and other students residing in the City’s shelters. That is because the shelters where Plaintiffs reside—and countless other shelters around the City—do not provide WiFi access to their residents. (*Id.* ¶¶ 40-58.) The only way for these children currently to attend class is by connecting to the internet through cellular

service. (*Id.* ¶¶ 40-41, 44, 47, 51-52.) Yet, as anyone who uses a cell phone while commuting throughout New York City knows well, service can vary considerably depending on location, ranging from lightning fast speeds to “dead zones” in which it is impossible to access the internet at all. Unfortunately, the shelters at which Plaintiffs reside and many others fall into the latter category. (*Id.* ¶¶ 41-42, 47, 51-52.) As a result, Plaintiffs and other members of the Class (as defined in paragraph 116 of the Complaint) have effectively been locked out of the classroom.

As early as the spring of 2020, Plaintiff Coalition for the Homeless (the “Coalition”) informed Defendants that students in shelters were unable to attend class remotely due to a lack of reliable internet access. (*Id.* ¶¶ 59-61; *see also* Ex. A.<sup>1</sup>) Throughout the summer and into the fall, the Coalition continued communicating with the City in hopes that the City would take action to ensure students living in shelters like Plaintiffs and other Class Members were able to attend school. (Compl. ¶¶ 67-68; *see also* Exs. B & C.) In response, Defendants acknowledged the urgency of the situation but failed to put in place a plan to address it expeditiously, despite the high probability that the 2020-2021 school year would be conducted, at least in part, remotely, and the many months Defendants had to prepare for this eventuality. (Compl. ¶¶ 64-66.)

The Coalition was not the only party to express concerns to Defendants. Both the New York City Bar Association and New York City Comptroller Scott Stringer wrote letters to Mayor de Blasio and other City officials raising concerns about the inability of homeless students to access WiFi for the purposes of education. (Exs. D & E.) Despite these expressions of concern and Defendants’ awareness that the iPads provided to students often were rendered unusable by

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<sup>1</sup> “Ex.   ” refers to the exhibits attached to the Declaration of Grant R. Mainland in Support of Plaintiffs’ Motion for Preliminary Injunction, filed contemporaneously herewith.

cellular dead zones—making WiFi essential—Defendants still neglected to provide such service in shelters. (Compl. ¶¶ 44-45, 47-48, 53-56.)

After months of Defendants’ prolonged inaction, counsel for Plaintiffs served Defendants with a letter in October demanding that WiFi be installed in the Flatlands shelter in particular and also at shelters throughout the City more generally. (Ex. F.) Defendants, however, continued to deny that WiFi installation was necessary, arguing that cellular-based connectivity—which had months of demonstrable failings—was sufficient. (Ex. G.) Only after this letter raised sufficient public and media scrutiny that Mayor de Blasio instructed City officials to install WiFi at all shelters did Defendants begin to acknowledge that students like Plaintiffs needed WiFi in order to be able to consistently and reliably access their education. (Compl. ¶¶ 81–82.)

While Defendants have finally acknowledged the problem, their delay in resolving the lack of WiFi in shelters persists and requires the injunctive relief sought by this motion. Following Mayor de Blasio’s directive, Defendant New York City Department of Homeless Services (“DHS”) communicated that it intends to complete WiFi installation at 27 “priority sites”—out of a total of 240 shelters requiring WiFi installation—at some undetermined time “this winter” (*i.e.*, potentially as late as March 20, 2021). (Ex. H.) As for the remaining 213 shelters, DHS stated that installation would be complete in the summer of 2021 (*i.e.*, after the 2020-2021 school year), and even then, only if it was able to meet what it characterized as an “aggressive goal.” (*Id.*) Thus, for many students in shelters, a virtual lockout from school that began in March 2020 will not be remedied by Defendants until September 2021—a year-and-a-half later—at the earliest. (*Id.*)

In an attempt to communicate the insufficiency of this solution, counsel for Plaintiffs served Defendants with a second letter at the end of October reiterating the need for immediate action. (Ex. I.) In their response, which came more than two weeks later, Defendants yet again

refused to provide concrete details on when shelters throughout the City could expect to have WiFi, and attempted to shift the blame for the connectivity issues onto Plaintiffs and other Class Members. (Ex. J.)

The need to end this lockout by installing WiFi in New York City's shelters has become even more urgent given Defendant Carranza's recent announcement that the City's public schools are once again closing indefinitely and moving to a fully remote learning model, with no plan in place to resume any in-person learning. Now, without a reliable WiFi connection, Plaintiffs' children and other members of the Class may not receive any education whatsoever.

### **ARGUMENT**

The children of Plaintiffs E.G., MM, and O.M., and all other members of the Class, are entitled to receive a sound basic education notwithstanding their lack of a fixed and regular nighttime residence. That entitlement arises under multiple sources of law: Article XI § 1 of the New York State Constitution, NYSEL § 3209, the McKinney-Vento Act, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Since the COVID-19 pandemic closed the physical doors to New York City schools, Plaintiffs have been denied this right. This Court should grant a preliminary injunction that would reopen the virtual door to school for Plaintiffs and other Class members by providing reliable and consistent internet access in the City's shelters.

#### **I. PLAINTIFFS AND OTHER CLASS MEMBERS ARE ENTITLED TO A PRELIMINARY INJUNCTION RESTORING THEIR ACCESS TO A SOUND BASIC EDUCATION.**

An applicant for a preliminary injunction must demonstrate "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 406 (2d Cir.

2011) (citation and quotation marks omitted); *Orozco v. Sobol*, 674 F. Supp. 125, 127-28 (S.D.N.Y. 1987). Although the burden of proof is higher on a party that seeks “a mandatory preliminary injunction that alters the status quo by commanding some positive act,” *Cacchillo*, 638 F.3d at 406, that heightened standard does not apply where, as here, an injunction requires a party to do only what it “should have done earlier.” *Li v. Certain Underwriters at Lloyd’s*, 183 F. Supp. 3d 348, 361 (E.D.N.Y. 2016) (quoting *Johnson v. Kay*, 860 F.2d 529, 541 (2d Cir. 1988)); see also *In re WorldCom, Inc. Sec. Litig.*, 354 F. Supp. 2d 455, 463 (S.D.N.Y. 2005). Plaintiffs easily satisfy the standards for the preliminary injunctive relief sought herein.

**A. Plaintiffs and Other Class Members Will Suffer Irreparable Harm Without an Injunction.**

Irreparable harm is “the single most important prerequisite for the issuance of a preliminary injunction.” *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 233-34 (2d Cir. 1998). Irreparable harm is established where, absent a preliminary injunction, the plaintiff “will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm.” *Singas Famous Pizza Brands Corp. v. New York Advert. LLC*, 468 F. App’x 43, 45 (2d Cir. 2012).

Here, the harm caused by Defendants’ long-running failure to provide WiFi access to Plaintiffs and other school-aged residents of the City’s shelters is plainly irreparable because it has caused, and is continuing to cause, a significant disruption in Plaintiffs’ and other Class members’ education. That disruption is not a mere inconvenience, but a significant setback in Plaintiffs’ and other Class members’ learning. The academic literature shows that even a **2-month cessation** in learning during summer break can result in a meaningful regression in a child’s core competencies as compared to the end of the preceding school year, and that low-income Black and Hispanic/Latinx students fare worse than higher income peers. See David M. Quinn & Morgan

Polikoff, *Summer learning loss: What is it and what can we do about it?* The Brookings Institution (Sept. 14, 2017), available at [www.brookings.edu/research/summer-learning-loss-what-is-it-and-what-can-we-do-about-it/](http://www.brookings.edu/research/summer-learning-loss-what-is-it-and-what-can-we-do-about-it/).<sup>2</sup> Here, Class members face the prospect of as much as an **18-month cessation**, extending from the closure of schools in March 2020 to the beginning of the school year in September 2021, when WiFi installation will finally be complete according to DHS's purportedly "aggressive goal." Indeed, even the small percentage of shelters (11.25%) that DHS has designated as "priority sites" may not have functional WiFi until March 2021, such that children in the shelters with the biggest connectivity problems will likely face a **1-year cessation**. This lost time is unrecoverable. At best, it may require repeating a year of school for many of these children, delaying their pursuit of higher education and/or entry into the workforce.

The harm is not only educational in nature, but also psychological. For children living in shelters, school serves as a rare source of stability in otherwise unstable lives and personal circumstances. For many children in the dire circumstances of homelessness, public schools provide a support system whose benefits cannot be calculated, ranging from teachers and administrators tracking students' academic and developmental progress, extracurricular sports and enrichment activities, active friendships with classmates, and more. By denying Plaintiffs and other Class members the WiFi access that is necessary to enter the virtual classroom, Defendants are denying them these critical physical, developmental, and emotional benefits that go well beyond the essentials of literacy and math.

The irreparable nature of the harm suffered by children when their education is disrupted or impeded has been recognized by Congress, the U.S. Supreme Court, and the courts of this

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<sup>2</sup> The City's Fiscal Year 2020 Mayor's Management Report cites an 85% attendance rate for school-age children who live in the DHS-run shelters, placing them at an additional disadvantage even pre-pandemic. See Mayor's Management Report, Fiscal 2020, The City of New York (dated Sept. 2020), available at [www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020\\_mmr.pdf](http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf).

Circuit and District. Indeed, the McKinney-Vento Act was passed precisely because Congress appreciated the irreparable nature of the harm that homelessness can cause children if it is allowed to function as an impediment to their education. In passing the McKinney-Vento Act, Congress specifically observed that disruptions to a homeless student's education have injurious effects on the development of homeless children. *See, e.g.*, H.R. Conf. Rep. No. 100-174, at 69 (1987). Congress also recognized that interference with homeless students' education can impede them from achieving the educational success necessary to break the cycle of homelessness. *Id.* This is the reason that the McKinney-Vento Act mandates that State and local agencies "review and undertake steps to revise" any "regulations, 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(2).

The United States Supreme Court has also observed:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

*Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954); *see also Cox v. Brown*, 498 F. Supp. 823, 828-29 (D.D.C. 1980) ("[A]bsent injunctive relief, [plaintiffs] will suffer the irreparable harm of lacking each day of their young lives an appropriate education . . .").

The courts of this Circuit likewise have recognized that even a brief disruption of a child's education can have grave effects. "Interruption of a child's schooling[,] causing a hiatus not only

in the student's education but also in the other social and psychological development processes that take place during the child's schooling, raises a strong possibility of irreparable injury.” *Orozco by Arroyo* 674 F. Supp. at 128; *see also Cronin v. Bd. of Educ. of E. Ramapo Cent. Sch. Dist.*, 689 F. Supp. 197, 204 (S.D.N.Y. 1998) (disruption in schooling constitutes irreparable harm because of the accompanying loss of education, vocational, and social development); *N.J. v. New York*, 872 F. Supp. 2d 204, 214 (E.D.N.Y. 2011) (“Interruption of a child's schooling causing a hiatus not only in the student's education but also in other social and psychological developmental processes that take place during the child's schooling, raises a strong possibility of irreparable injury.”) (quoting *Ross v. Disare*, 500 F.Supp. 928, 934 (S.D.N.Y.1977)); *V.W. v. Conway*, 236 F. Supp. 3d 554, 588-89 (N.D.N.Y. 2017) (“[D]eprivation of education services by . . . defendants hinder[ed] important aspects of [plaintiffs'] adolescent development.”). Thus, children such as Plaintiffs who reside in shelters, and who lack the stable home environment that many other students enjoy, have a particular need for continuity in their education. This need cannot wait until the end of a trial to resolve disputes over the merits; at that point, it will plainly be too late to avoid the harm that could be stopped, or at least mitigated, through immediate injunctive relief. *Cf. Martinez v. Cuomo*, 459 F. Supp. 3d 517, 526 (S.D.N.Y. May 12, 2020) (concluding irreparable harm to Deaf plaintiffs where plaintiffs were denied of “timely access to critical information”).

**B. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.**

As an initial matter, Plaintiffs need not show likelihood of success on the merits to be afforded injunctive relief; rather, because the balance of hardships so plainly tips in Plaintiffs' favor, as set forth in Point I.C *infra*, Plaintiffs need only show “sufficiently serious questions going to the merits to make them a fair ground for litigation.” *Cacchillo*, 638 F.3d at 406. But even if the Court were not to resolve the balance of equities in Plaintiffs' favor, Plaintiffs are nonetheless likely to succeed on the merits of their claims.

Defendants' conduct in this case is not merely an arguable or technical violation of law; it is a wholesale abdication of their legal obligations under federal and state constitutional and statutory regimes, many of which are specifically intended to protect homeless students such as Plaintiffs from this sort of neglect. Indeed, by conceding that WiFi should be installed in all shelters across the City, Mayor de Blasio himself apparently recognized that the status quo does not comport with the City's legal obligations. Nor have Defendants argued otherwise in response to correspondence from Plaintiffs' counsel, focusing entirely on the proposed remedy rather than what they implicitly recognize to be unlawful. This is understandable, as at least four different legal violations are clear.

First, Article XI § 1 of the New York Constitution, as interpreted by the New York Court of Appeals, requires the New York State and its instrumentalities to provide a "sound basic education" to all students within the state. *Bd. of Educ. v. Nyquist*, 439 N.E.2d 359, 369 (N.Y. 1982). This means that all students in New York City, including homeless students, must be given "the opportunity for a meaningful high school education . . . [that] prepares them to function productively as civic participants." *Campaign for Fiscal Equity, Inc. v. New York*, 801 N.E.2d 326, 332 (N.Y. 2003). Here, the issue is not the *soundness* of the education New York City is providing to Plaintiffs and other Class members, but the fact that ***it is not providing them with any education at all***. Defendants' failure to provide students living in shelters with the WiFi necessary to access their virtual classrooms thus directly contravenes the New York Constitution.

Second, Defendants have violated their duties under New York State Education Law § 3209. Under § 3209(6)(b), officials must review and revise any policies or practices "that may act as barriers to the enrollment or attendance of homeless children." Officials must also provide homeless children with "necessaries to enable them to attend" school. § 3209(7). Defendants'

inexcusable delay in installing WiFi in shelters is a clear barrier to homeless students' ability to attend school. Absent injunctive relief, that barrier threatens to persist for as long as 18 months from the March 2020 onset of the COVID-19 pandemic, in violation of New York State Education Law § 3209.

Third, the McKinney-Vento Act protects Plaintiffs' and other Class members' rights to have access to, and succeed in, "the same free, appropriate public education . . . as provided to other children and youths." 42 U.S.C. § 11431(1). The Act also requires local educational agencies to review and revise any policies that "may act as a barrier to the . . . attendance or success in school of . . . homeless children and youths." *Id.* § 11431(2). The McKinney-Vento Act confers enforceable rights upon its beneficiaries, who may sue to enforce these rights under 42 U.S.C. § 1983. *See Nat'l Law Ctr. on Homelessness & Poverty v. New York*, 224 F.R.D. 314, 319 (E.D.N.Y. 2004); *Lampkin v. District of Columbia*, 27 F.3d 605, 612 (D.C. Cir. 1994). Defendants' failure to provide WiFi in shelters has prevented Plaintiffs and other Class members from receiving their guaranteed free and appropriate education. For eight months, Defendants delayed installing WiFi in shelters notwithstanding the numerous complaints they received from students in shelters who were unable to connect to the virtual classroom. For eight months, while other students enjoyed the opportunity to connect and participate with their instructors, submit assignments, and receive feedback, students in shelters were denied the same opportunity as a direct result of Defendants' actions. And although Defendants now admit the need to install WiFi in shelters throughout the City, they are content to do so on a timeline that will involve a continuing and profound disruption to Class members' education in the meantime—a burden borne uniquely by children living in shelters. This conduct runs afoul of the McKinney-Vento Act.

Finally, the Fourteenth Amendment to the U.S. Constitution requires states to provide to all people within their jurisdiction “the equal protection of the laws.” U.S. Const. amend. IV, § 1. The Equal Protection Clause has been held to apply to state policies or practices that interfere with homeless students’ access to public school education, and such policies and practices are subject to a heightened standard of review. *E.g.*, *Nat’l Law Ctr. on Homelessness & Poverty* 224 F.R.D. at 321-22; *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982). Under that heightened standard, Defendants have failed to provide Plaintiffs and other Class members with the equal protection of the laws by imposing upon them, through their policies and practices, impediments to educational access that children outside of shelters generally do not face.

Plaintiffs’ allegations plainly show sufficiently serious questions going to the merits of these constitutional and statutory claims to make them a fair ground for litigation, which is all Plaintiffs must show given that the balance of hardships weigh in favor of Plaintiffs, as set forth in the next section. Even if the Court were to balance the hardships differently, however, Plaintiffs are likely to succeed on the merits; indeed, Defendants do not appear to dispute them.

**C. The Balance of Hardships Weighs in Favor of Plaintiffs.**

Given Plaintiffs’ likelihood of success on the merits, Plaintiffs need not show that the balance of hardships weighs in their favor. *See Cacchillo*, 638 F.3d at 406 (movant showing irreparable harm and likelihood of success on the merits is entitled to preliminary injunctive relief without need for balance of hardships analysis). But even if that were not the case, the balance of hardships analysis is not a difficult one here.

Should the Court decline to issue an injunction, Plaintiffs’ children would miss a significant amount of school, fall further behind in their studies, and miss opportunities to develop intellectually and socially. Each additional day that Plaintiffs are denied access to their education disrupts their development and puts them at greater risk of low educational achievement. During

a global pandemic that has upturned their lives, Plaintiffs’ children should not have to endure the additional stress of being unable to get online to attend school each day due to Defendants’ unwillingness to remedy the issue in a timely manner.

By contrast, any burden on Defendants is minimal. The only “harm” to Defendants would be the cost and effort of providing WiFi in the City’s shelters—something they are already constitutionally and statutorily obligated to do under the conditions of the pandemic. Many shelters that already have some form of WiFi installed have made it only accessible to the staff operating those shelters. Consequently, providing students in these shelters with access to WiFi would require no more than expansion of this network, which should be a quick and relatively low-cost undertaking in the context of New York City’s annual budget. In setting forth their patently indefensible timeline for City-wide WiFi installation at shelters, Defendants have at no time articulated why installation would take so long.

Public policy also strongly favors the issuance of an injunction. Fair administration of public schools in a manner that does not discriminate against or disadvantage homeless children is an important public goal. *See Lavelle v. Quinones*, 679 F. Supp. 253, 259 (E.D.N.Y. 1988) (“[M]aintenance of public confidence in the integrity of the administration of the schools is of concern to the entire city.”). Defendant DOE has pledged its commitment to “providing every single child, in every classroom, in every New York City public school, with a rigorous, inspiring, and nurturing learning experience.” *See Equity and Excellence for All*, N.Y.C DEPARTMENT OF EDUCATION, available at <https://www.schools.nyc.gov/about-us/vision-and-mission/equity-and-excellence>. As DOE has emphasized, “[t]hat is true **regardless of family income**, race, nationality, disability, language spoken at home, sexual orientation, or gender identification.” *Id.* (emphasis

added). The injunctive relief sought herein would hold not “harm” DOE, but rather hold it to its own commitments.

Finally, homelessness is a societal problem, and the public interest is served by breaking the cycle of poverty that leads to homelessness. As Congress has acknowledged, education plays a key role in breaking this cycle. *See, e.g.*, H.R. Conf. Rep. No. 100-174, at 69 (1987). If an injunction is issued, and Plaintiffs and other Class members are given a fair opportunity for educational achievement, New York City’s interest in assisting its most vulnerable and defenseless citizens will be advanced. The incremental cost of providing this opportunity to Plaintiffs and other Class members—a cost that Congress has subsidized through grants under the McKinney-Vento Act—pales in comparison.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant a preliminary injunction in their and other Class members’ favor.

Dated: November 23, 2020  
New York, New York

#### **THE LEGAL AID SOCIETY**

/s/ Susan J. Horwitz

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*Attorneys for Plaintiffs*



**DECLARATION OF GRANT R. MAINLAND IN SUPPORT OF PLAINTIFFS’  
MOTION FOR A PRELIMINARY INJUNCTION**

I, Grant R. Mainland, hereby declare as follows:

1. I am a partner at the law firm Milbank LLP, counsel to Plaintiffs in the above-captioned action. I am a member in good standing of the bar of the State of New York and of this Court. I submit this Declaration in support of Plaintiffs’ Motion for a Preliminary Injunction.

2. Attached to this Declaration as **Exhibit A** is a true and correct copy of a letter sent by, among others, Plaintiff Coalition for the Homeless to Richard A. Carranza, Chancellor of the New York City Department of Education, dated March 20, 2020.

3. Attached to this Declaration as **Exhibit B** is a true and correct copy of a letter sent by, among others, Plaintiff Coalition for the Homeless to Mayor Bill de Blasio, dated August 4, 2020.

4. Attached to this Declaration as **Exhibit C** is a true and correct copy of a letter sent by, among others, Plaintiff Coalition for the Homeless to Mayor Bill de Blasio, dated September 16, 2020.

5. Attached to this Declaration as **Exhibit D** is a true and correct copy of a letter sent by Sheila S. Boston, President of the New York City Bar Association, to Mayor Bill de Blasio, Steven Banks, Commissioner of the New York City Department of Homeless Services, and J. Phillip Thompson, Deputy Mayor for Strategic Policy Initiatives, dated August 14, 2020.

6. Attached to this Declaration as **Exhibit E** is a true and correct copy of a letter sent by Scott M. Stringer, Comptroller of the City of New York, to Mayor Bill de Blasio and Richard A. Carranza, Chancellor of the New York City Department of Education, dated September 16, 2020.

7. Attached to this Declaration as **Exhibit F** is a true and correct copy of a letter sent by Grant R. Mainland of Milbank LLP and Susan J. Horwitz of The Legal Aid Society to Richard A. Carranza, Chancellor of the New York City Department of Education, and Joslyn Carter, Administrator of the New York City Department of Homeless Services, dated October 8, 2020.

8. Attached to this Declaration as **Exhibit G** is a true and correct copy of a letter sent by Howard Friedman, General Counsel for the New York City Department of Education to Grant R. Mainland of Milbank LLP and Susan J. Horwitz of The Legal Aid Society, dated October 14, 2020.

9. Attached to this Declaration as **Exhibit H** is a true and correct copy of a letter sent by Martha Calhoun, General Counsel of the New York City Department of Homeless Services to Grant R. Mainland of Milbank LLP and Susan J. Horwitz, Joshua Goldfein, and Beth Hofmeister of The Legal Aid Society, dated October 28, 2020.

10. Attached to this declaration as **Exhibit I** is a true and correct copy of a letter sent by Grant R. Mainland of Milbank LLP and Susan J. Horwitz of The Legal Aid Society to Mayor Bill de Blasio, Richard A. Carranza, Chancellor of the New York City Department of Education, Joslyn Carter, Administrator of the New York City Department of Homeless Services, Steven Banks, Commissioner of the New York City Department of Social Services, and Jessica Tisch, Commissioner of the New York City Department of Information Technology and Telecommunications, dated October 30, 2020.

11. Attached to this declaration as **Exhibit J** is a true and correct copy of a letter sent by Georgia Pestana, an attorney for the City of New York Law Department, to Grant R. Mainland of Milbank LLP and Susan J. Horwitz of The Legal Aid Society, dated November 16, 2020.

12. Attached to this declaration as **Exhibit K** is a true and correct copy of a Declaration of Plaintiff O.M., dated November 23, 2020.

13. Attached to this Declaration as **Exhibit L** is a true and correct copy of a Declaration of Plaintiff M.M., dated, dated November 23, 2020.

14. Attached to this Declaration as **Exhibit M** is a true and correct copy of a Declaration of Plaintiff E.G., dated November 23, 2020.

15. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 23rd day of November 2020.

/s/ Grant R. Mainland

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GMainland@milbank.com

*Attorney for Plaintiffs*

# EXHIBIT A

March 20, 2020

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

**Re: Access to Regional Enrichment Centers for Students who are Homeless**

Dear Chancellor Carranza:

As organizations working with children and families experiencing homelessness in New York City, we write to ask that you ensure students who are homeless have access to the Regional Enrichment Centers when they open next week.

Rapidly transitioning 1.1 million students to remote learning is an unprecedented challenge for City schools, and we appreciate the Department of Education's efforts thus far. While we do not question the decision to close schools in light of the current public health emergency, we are deeply concerned about the disproportionate impact long-term closures are likely to have on the more than 100,000 City students who are homeless. This population already has some of the most abysmal educational outcomes of any student sub-group; for example, 17 percent of students who are homeless dropped out of high school in 2019, a rate 10 percentage points higher than that for permanently housed students. Schools are a crucial source of stability and social-emotional support for students who are homeless, and we fear that the COVID-19 outbreak will further exacerbate existing inequities, with long-lasting and potentially devastating consequences.

While remote learning will likely prove challenging for many students, this is *especially* true for those who lack permanent housing. All children need adequate space to learn, but families who are homeless may have multiple children of varying ages, grade levels, and learning needs confined to a single small room. Family shelters and commercial hotels are generally not appropriate educational environments, and many are not set up to provide access to remote learning. Moreover, parents of students who are homeless are already struggling to make ends meet and are particularly at risk for job loss without a reliable source of child care. Parents who are forced to stay home because they cannot send their children to school, have no one else to watch them, and are not employed in a sector that lends itself to working remotely will likely lose their source of income—making it that much harder for them to get back on their feet. For families who are doubled-up, having multiple children in over-crowded living situations for the entirety of the day may place unmanageable strain on already-tenuous shared housing situations and thus accelerate entry into an over-burdened shelter system at a particularly difficult time for the City.

Finally, the Regional Enrichment Centers must be able to accommodate the children of shelter staff along with the children of first responders, healthcare workers, and transit workers. Shelter staff are essential employees; those who lack alternative sources of child care must be able to

continue to work so that City shelters can maintain fully operational for the duration of the COVID-19 outbreak.

We appreciated your statement that the Regional Enrichment Centers will serve “our most vulnerable student populations.” We also recognize that the DOE’s new document on Regional Enrichment Centers states: “As we move forward we will seek to include additional other essential service providers and children in shelter.” However, with remote learning going into effect next week, families who are homeless and shelter staff need to know with certainty that their children will have access to the Regional Enrichment Centers when they open next week.

Access to a quality education is imperative if young people are to have any chance at breaking the cycle of homelessness. We strongly urge you to ensure students who are homeless are able to attend the Regional Enrichment Centers while schools are closed beginning next week.

Respectfully,

Advocates for Children of New York

Citizens’ Committee for Children of New York

Coalition for the Homeless

Committee for Hispanic Children & Families

Enterprise Community Partners, Inc.

Gateway Housing

Good Shepherd Services

Homeless Services United

The Legal Aid Society

New Destiny Housing

New York Junior League

Win

# EXHIBIT B

August 4, 2020

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

**Re: School Reopening Plan for Students Experiencing Homelessness**

Dear Mayor de Blasio:

As organizations working with children and families experiencing homelessness in New York City, we write to ask you to prioritize the educational needs of students who are homeless as you continue making plans for the reopening of schools this fall. For families opting to have their children return to school, we urge you to **offer students who are homeless full-time in-person instruction or, at a minimum, ensure they have a space conducive to learning where they can access remote instruction and adult support on days when they cannot be in school, and to provide transportation to school as legally required.**

Even before the pandemic, significant disparities existed between the City's students who are homeless—85% of whom are Black or Latinx—and their permanently housed peers. Fewer than a third of New York City students who are homeless are reading proficiently, rates that are 20 percentage points lower than students in permanent housing. Only 60 percent of all NYC students who are homeless graduate from high school. For NYC students living in shelters, the outcomes are even more stark—fewer than half graduate from high school and two-thirds are chronically absent from school.

The pandemic has only magnified these inequities. While we appreciate that the DOE prioritized providing iPads with data to students who are homeless, some students continued to struggle to access their instruction, assignments, and services due to poor cell phone reception in shelter units, low digital literacy, or other technological barriers. Other students had difficulty focusing on schoolwork while trying to complete assignments in a small room that they shared with their parents and multiple siblings of varying ages, grade levels, and needs. Many students received limited live instruction, requiring students and their parents to learn the material without the support of a trained educator. Furthermore, the trauma of housing loss or domestic violence that many students who are homeless have experienced was compounded by trauma related to the pandemic.

As students start to return to school, the City should be prioritizing the needs of the students who had the most difficulty with remote learning, including students who are homeless, to help address the learning loss and trauma they experienced during the closure of schools and help them catch up. **We are disappointed that the City's school reopening plan does not prioritize students who are homeless for in-person instruction and will be unworkable for many families experiencing homelessness, who are not permitted to leave their children in shelters during the day while they work or address other urgent family needs.**

The City's plan would give students access to school for only one to three days per week without addressing the significant difficulties with remote instruction that students who are homeless experienced this spring. Making matters worse, under current city policy, students under the age of 18 are not allowed to be in a family shelter unaccompanied by a parent – even on days when students have remote instruction and cannot be in school buildings. While we appreciate that the City is creating “Learning Bridges” programs that will allow 100,000 students to have a safe space to engage in remote instruction and receive support and enrichment on days when they aren't in school, these seats are currently available only to students from preschool through the 8<sup>th</sup> grade, leaving teenagers living in shelter with nowhere to engage in remote learning while their parents work, search for jobs and permanent housing, or attend required social service appointments. Furthermore, the City has not yet announced how it will prioritize assigning students to the seats available. **Students who are homeless need a space where they can engage in learning five days per week. We urge the City to allow students who are homeless to attend school, including early childhood settings, in person full time if their parents want this option or, at a minimum, to ensure that all students who are homeless, including high school students, have access to the City's Learning Bridges child care programs.**

The City must also work across agencies to ensure that every student who is homeless is participating in school and receiving any needed special education services – in-person or remotely – this fall. **For students who are not participating, staff must reach out to families using a non-punitive, strengths-based approach; identify barriers; and develop individualized solutions.** Without an interagency plan, we worry that we will continue to see students unable to participate meaningfully in coursework.

In addition, we are concerned that the Department of Education, in their statements to the press about priorities for transportation, has not mentioned students who are homeless, who have a legal right to transportation. More than half of families entering shelter are placed in a different borough from where their youngest child attends school. Each year, thousands of students who are homeless rely on bus service to get to school. We recognize the challenges of transporting children in light of the need for social distancing, but without a viable, door-to-door transportation plan, many students who are homeless will not be able to get to school this fall. **The City must uphold the legal rights of students who are homeless and let parents know the plan to provide transportation to students this fall.**

Access to a high-quality education is imperative if young people are to have a chance at breaking the cycle of homelessness. With students having already experienced months of learning loss, the City must create a plan to ensure that students experiencing homelessness no longer slip through the cracks.

Sincerely,  
Advocates for Children of New York  
Alliance for Quality Education  
Barrier Free Living Family of Companies  
Brooklyn Community Board #7  
Children's Aid

Children's Defense Fund-New York  
Citizens' Committee for Children of New York  
Coalition for the Homeless  
Committee for Hispanic Children & Families (CHCF)  
D28 Equity Now  
District 29Q Presidents' Council  
E4E-NY  
El Puente  
Expanded Schools  
Good Shepherd Services  
Henry Street Settlement  
HERE to HERE  
Legal Services NYC  
NAACP New York State Conference  
National Association of Social Workers-NYC Chapter  
New Destiny Housing  
New York Immigration Coalition  
New York Lawyers for the Public Interest  
NYU School of Law Education Advocacy Clinic  
O.P.I.N. (Other People In Need)  
The Legal Aid Society  
The New York Junior League  
The Opportunity Network  
The Partnership for the Homeless  
Win  
Zone 126

# EXHIBIT C

September 16, 2020

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

**Re: Urgent Educational Needs of Students Experiencing Homelessness**

Dear Mayor de Blasio:

As organizations working with children and families experiencing homelessness in New York City, we are writing to urge you to develop a coordinated interagency plan to address the barriers that students who are homeless are facing as the school year begins. The City must designate a point person to lead this effort and ensure that every student who is homeless can participate in learning this year.

The urgent unresolved issues that the City must address include the following concerns:

- Although the City is expecting students to learn remotely from two to five days per week, there are city shelters where **no children have access to online learning** due to lack of connectivity and other shelters where connectivity is limited. While we appreciate that the City prioritized distributing iPads with free cellular data to students living in shelters, the iPads do not work in some shelters because they do not have adequate cellular reception or WiFi.
- Under city policy, **students under 18 cannot remain in shelter units** without a parent, but there is no child care plan for days of remote learning when parents need to work. While we are pleased that Learning Bridges will give priority to students who are homeless, among other groups of students, we understand the programs will have very limited capacity and that seats are open only to students through 8<sup>th</sup> grade. Furthermore, we do not know if any of the programs will be located near shelters.
- Many families in shelter have **not received information about bus service** despite the legal obligation to provide transportation to students who are homeless. While the City finally announced, on September 9<sup>th</sup>, that bus service would be in place this school year, we are concerned that the DOE usually needs more time to get bus routes in place for students whose shelters are far from their schools and, even last year, there were significant delays in starting bus service for students in shelter. If busing is not in fact in place by the start of the school year, the only alternatives the DOE has offered are Metrocards, which may not be viable for the many families in shelter whose routes require multiple buses and subways, and transportation reimbursement, which assumes that families can afford to lay out money in advance and wait for the DOE to reimburse them. Without viable transportation options in place, students experiencing homelessness whose parents want them to go to school in person may not be able to get there. Additionally, for the first time, bus route information will only be available online

through families' NYC Schools Account (NYCSA). Parents will not receive letters with bus route information as they have in previous years. Families who are homeless, especially those in shelter, often have limited internet access and may need additional support so their children don't miss out on school either because busing is not in place or because parents don't have information about busing.

- While the DOE has not disclosed the number of students experiencing homelessness who participated in remote learning in the spring, we know that students who are homeless are more likely to be chronically absent than their peers when school buildings are open – and that **students and families who are homeless faced a range of barriers preventing them from accessing remote learning** and special education services in the spring. Although the City oversees the shelters where thousands of students live, the City has done little work to address these barriers and ensure that students are able to participate in learning this year. For example, many families in shelter had difficulty accessing remote learning due to language barriers, low literacy or digital literacy, or lack of familiarity with technology or because they did not receive an e-mail outlining steps they needed to take. Some shelter staff have tried to assist, but shelter providers have not received the resources or information needed to effectively support students in accessing education.

We know the City has an enormous amount of work to do as it prepares for the start of the school year, but that does not excuse the lack of attention focused on addressing the barriers facing students who are homeless. We are confident these issues are solvable if only the City would task someone with working across agencies to tackle them. Over the past six years, your Administration has brought increased attention and resources to improving the education of students who are homeless. At a time when students who are homeless have already experienced significant learning loss and trauma, please do not leave these students behind.

Sincerely,

Advocates for Children of New York

Alliance for Quality Education

Barrier Free Living

Children's Aid

Children's Defense Fund-New York

Citizens' Committee for Children of New York

Coalition for the Homeless

Committee for Hispanic Children & Families (CHCF)

Educators For Excellence - New York

El Puente

Enterprise Community Partners

Gateway Housing

Good Shepherd Services

Henry Street Settlement

Homeless Services United

Legal Services NYC

National Association of Social Workers-NYC Chapter

New Destiny Housing

New York Immigration Coalition

New York Lawyers for the Public Interest, Inc.

NYU School of Law Education Advocacy Clinic

O.P.I.N. (Other People In Need) Inc

Partnership with Children

RiseBoro Community Partnership

Safe Horizon

Settlement Housing Fund

The Legal Aid Society

The Opportunity Network

The Partnership for the Homeless

Win

Zone 126

# EXHIBIT D



NEW YORK  
CITY BAR

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KATHARINE DEABLER-MEADOWS  
CHAIR  
SOCIAL WELFARE LAW COMMITTEE  
deabler@nclej.org

August 14, 2020

Hon. Bill de Blasio  
Mayor of the City of New York  
City Hall  
New York, NY 10007

Hon. J. Phillip Thompson  
Deputy Mayor for Strategic Policy Initiatives  
City Hall  
New York, NY 10007

Commissioner Steven Banks  
New York City Department of Social Services  
150 Greenwich Street, 40<sup>th</sup> Floor  
New York, NY 10007

**Re: Ensuring Internet Access to Homeless New Yorkers**

Dear Mayor de Blasio, Deputy Mayor Thompson and Commissioner Banks:

On behalf of the New York City Bar Association and its Social Welfare Committee, we are writing regarding the recent announcement that the City will accelerate broadband deployment in all five boroughs, prioritizing public housing communities, which have suffered disproportionately during the COVID-19 pandemic.<sup>1</sup> We appreciate the extraordinary efforts the City is taking to respond to the crisis - the pandemic has, and will continue to, expose the cracks in our systems that disadvantage our most vulnerable populations. We applaud the broadband access announcement prioritizing New Yorkers hardest hit by COVID-19 and urge you to ensure that the thousands of New Yorkers who are homeless and residing in shelters are included in these plans.<sup>2</sup>

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<sup>1</sup> Mayor de Blasio and Taskforce on Racial Inclusion and Equity Announce Accelerated Internet Master Plan to Support Communities Hardest-Hit by COVID-19, July 7, 2020, available at <https://www1.nyc.gov/office-of-the-mayor/news/499-20/mayor-de-blasio-taskforce-racial-inclusion-equity-accelerated-internet-master> (all cites last visited August 5, 2020).

<sup>2</sup> This includes all properties and temporary housing facilities (including hotels) that are maintained by the New York City Department of Social Services (DSS), including DSS's two administrative units, the Human Resources Administration (HRA) and Department of Homeless Services (DHS).

In the midst of an unprecedented public health emergency and resulting economic freefall, New York City continues to experience a homelessness crisis. As of May 2020, there were 59,308 homeless people, including 13,523 homeless families with 20,044 homeless children, sleeping each night in the New York City municipal shelter system.<sup>3</sup> While state regulations require that certain services be provided to shelter clients, DSS shelters are overwhelmingly lacking in one essential service which could reduce the length of residents' stay and facilitate their exit into permanent housing -- access to technology. The need to communicate through internet-based applications is particularly acute right now, as in-person access to everything from city offices and classrooms to real estate listings is accessible online, and such online access is preferred given the continuing public health risks of unnecessary in-person contact.

Yet thousands of shelter residents lack access to the internet, even during this unprecedented time of need. The City Bar has documented this problem. In May 2020, the City Bar Justice Center (CBJC) released a Report titled "Homeless Need Internet Access To Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters" (the Report). This report and its recommendations have been endorsed by a wide range of organizations, including law firms, legal services providers and community groups. A copy of the report and an endorsement list is annexed hereto for your reference.<sup>4</sup> The Report lays bare the devastating consequences of New York City's stark digital divide on the lives of our unhoused neighbors. Because shelter residents do not have reliable internet access, individuals and families are unable to search and apply for permanent housing, search and apply for jobs, participate in remote classrooms and complete assigned homework, apply for government benefits, stay connected to friends and family, access basic entertainment, or obtain necessary medical care.

Allowing the lack of access to remain unaddressed is unacceptable, especially as our communities continue to deal with the pandemic and access becomes an urgent issue of public health. The pandemic has significantly exacerbated the barriers resulting from the City's digital divide, raising the stakes to literally life-or-death. This is a public health emergency, and it is clear that the City must act quickly in order to meet its basic responsibilities to its unhoused residents.

Ensuring internet access for homeless New Yorkers is also an issue of racial justice. New Yorkers of color are disproportionately represented among those experiencing homelessness. Eighty-six percent of homeless single adults and 93 percent of heads-of-household in family shelters identify as Black or Hispanic – significantly higher than the 53 percent of New York City's population overall who identify as Black or Hispanic.<sup>5</sup> And Black and Hispanic New Yorkers generally, and homeless New Yorkers specifically, have been disproportionately impacted by COVID-19. Any policy that enables homeless New Yorkers to prevent increased exposure to COVID by affirmatively bridging the digital divide they face, is an essential step to address racial disparities in New York City.

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<sup>3</sup> "Basic Facts About Homelessness: New York City," Coalition for the Homeless, <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/>.

<sup>4</sup> Report available online at <https://www.citybarjusticecenter.org/news/homeless-need-internet-access-to-find-a-home-the-city-bar-justice-center-documents-lack-of-technology-in-nyc-homeless-shelters/>; list of endorsing organizations available at <http://documents.nycbar.org/files/CBJCInternetAccessHomelessSheltersEndorsingOrgs.pdf>.

<sup>5</sup> State of the Homeless 2020, Coalition for the Homeless, March 2020, available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2020/03/StateofTheHomeless2020.pdf>.

## New York City Must Commit to Providing Access to Homeless New Yorkers

New York City has long been a leader in ensuring that its homeless residents have access to shelter, and these times demand that the City now lead the way in providing technology access to its shelter residents. The initial city-wide plan to increase the availability of Internet throughout its five boroughs was not directed toward its homeless population and did not include a single reference to DSS shelters or the unique access needs of our City's unhoused residents.<sup>6</sup> And while the recent announcement indicated that the program will now prioritize NYCHA facilities, it does not explicitly indicate that DSS-funded properties will be included.

In light of the above, we seek your commitment to include DSS properties in your plans to prioritize those City residents most impacted by the pandemic and to provide access to the following in every City shelter:

- Reliable Wi-Fi connections available to all shelter residents;
- Updated Internet-ready computers, tablets, or other word processing devices;
- Wireless or Bluetooth printers, or printers that maintain connections with the shelter's computers, tablets or other word processing devices.

This must be a sustained commitment and we strongly urge the City to consult with all stake holders as it devises a plan to provide internet access in shelters.

We would welcome the opportunity to discuss the access issues uncovered by the Report and to discuss how we can be of assistance. Please contact Elizabeth Kocienda, the City Bar's Director of Advocacy at [ekocienda@nycbar.org](mailto:ekocienda@nycbar.org) or 212-382-4788 if you would like to discuss further. Thank you for your service to New Yorkers during these challenging times. We look forward to working with you to help meet this moment.

Respectfully,



Sheila S. Boston  
President

*/s/ Katharine Deabler-Meadows*

Katharine Deabler-Meadows  
Chair, Social Welfare Law Committee

Cc: Mr. John Paul Farmer, New York City Chief Technology Officer

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<sup>6</sup> The New York City Internet Master Plan, NYC Mayor's Office for Technology, Jan. 2020, available at <https://www1.nyc.gov/assets/cto/#/project/internet-master-plan>.



CITY BAR  
JUSTICE  
CENTER

# HOMELESS NEED INTERNET ACCESS TO FIND A HOME

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How Access to Internet and Technology  
Resources Can Support Homeless Families  
Transition out of Homeless Shelters

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MAY 2020



CITY BAR  
JUSTICE  
CENTER

City Bar Justice Center  
42 West 44th Street  
New York, NY 10036  
[www.citybarjusticecenter.org](http://www.citybarjusticecenter.org)

## ABOUT THE CITY BAR JUSTICE CENTER

The City Bar Justice Center (CBJC), the largest division of the City Bar Fund which is the nonprofit affiliate of the New York City Bar Association, increases access to justice for low-income and disadvantaged New Yorkers by leveraging the volunteered time and expertise of the New York City legal community through an effective pro bono model. CBJC responds to the emerging needs of underserved communities, assisting over 25,000 New Yorkers annually through limited and direct legal representation, community outreach, and education efforts on a wide range of civil-justice matters including: homelessness, immigration, veterans assistance, small business development, consumer issues, planning and estates, cancer advocacy, and elderlaw. A dozen core projects led by experts in the field, over 1,500 pro bono attorneys trained and mentored by staff, and the largest free civil legal hotline in New York enable the CBJC to protect the rights, safety, and security of people without the means or support necessary to navigate our justice system.

## ACKNOWLEDGEMENTS

This report is a project of the City Bar Justice Center's Legal Clinic for the Homeless ("LCH") which is responsible for its content. It represents a collective effort that would not have been possible but for the generous contributions of CBJC and LCH Leadership and Staff, as well the generous contributions of our volunteers, including several members of the Legal Department of BNY Mellon, listed below, who assisted significantly to the research and writing of the report. Below is a list of individuals who contributed to the content of the report:

- Lisa Pearlstein, Legal Clinic for the Homeless, Project Director
- Kyara Martinez, Legal Clinic for the Homeless, Project Coordinator
- Cheryl Lopez, City Bar Justice Center, Communications and Development Manager

### Volunteers

- Kevin Baumann
- Deirdre Cunnane
- Jason Friedman
- Seema Phekoo
- Paul Winke
- Patricia Wong

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<b>13</b>	WORKS CITED

## EXECUTIVE SUMMARY

In New York City (“NYC”) during the 2018 fiscal year, 133,284 different homeless men, women, and children slept in the NYC municipal shelter system, including over 45,600 different homeless NYC children.[1] As recently as September 2019, an average of 62,391 homeless people, including 14,962 homeless families with 22,083 homeless children, slept each night in the NYC municipal shelter system. While NYC homeless shelters provide temporary housing for these individuals, the ultimate goal of the NYC Department of Homeless Services (“DHS”) is to prevent homelessness, to help residents regain permanent housing, and to reduce residents' lengths of stay in a shelter.[2]

However, NYC shelters are currently lacking one very basic and essential service that would help shelter residents to secure permanent housing and reduce their lengths of stay in a shelter: access to technology. Today, access to the Internet is considered a basic human right that includes the technology that will enable it.[3] Access to the Internet and the required technology to do so is critical for shelter residents to locate permanent housing and job opportunities, and to access applications for housing, government benefits[4] and other services.

In 2019, the City Bar Justice Center (“CBJC”) conducted a client survey of current and former NYC family-shelter residents in Manhattan and the Bronx. They found that if shelter residents had access to the Internet while in the shelter, they would use the Internet for the following purposes: finding permanent housing (70%), finding a job (60%), finding medical care (63%), accessing other benefits such as unemployment, Supplemental Security Income (SSI), food stamps, Medicaid (45%), access to email (67%) and social networking (74%). Survey respondents indicated that access to the Internet would positively impact their lives.



Respondents also confirmed that the lack of Internet access led to further isolation and frustrated attempts to search for permanent housing, jobs, and other essential benefits.

Cities across the United States have recognized that Internet access is critical for shelter residents. A synopsis of their efforts and how it can be applied in NYC is discussed below. An investment by NYC and DHS in enhancing access to technology (including Wi-Fi, Internet-ready devices and printers) in NYC shelters could lead to a reduction in the overall homeless population and a reduction in other costs associated with housing NYC's homeless population. This report outlines the ways in which DHS's mission can be better achieved.

## SUMMARY OF RECOMMENDATIONS

The City Bar Justice Center recommends that New York City provide access to the following in every City shelter: (1) reliable Wi-Fi connections, (2) updated Internet-ready computers, tablets, or other word processing devices, and (3) Wireless or Bluetooth printers, or printers that maintain connection with the shelter's computers, tablets or other word processing devices. Access means that the Wi-Fi and devices must be made available to residents and in working order. Access also includes availability for individuals with both traditional and non-traditional school or work schedules, as well as all tools that are essential for use, such as paper and ink for printers, adequate charging facilities for Internet-ready devices, and word processing software.



## IMPORTANCE OF ACCESS TO TECHNOLOGY FOR HOMELESS SHELTER RESIDENTS

DHS oversees approximately 580 shelter facilities across the five boroughs.[5] On each night in December 2019, these shelters housed an average of 62,590 homeless people.[6] In 2017, NYC spent \$1.3 billion on family and single adult shelter services, a sum larger than outlays on libraries and parks combined.[7] This amount excludes hundreds of millions of additional dollars spent on homeless prevention efforts aimed at reducing the number of people entering shelters and rental-subsidy programs to facilitate exits from shelters.[8] In total, it is estimated that NYC is currently spending in excess of \$2 billion on these services.[9]

While NYC homeless shelters provide temporary housing for individuals, the mission of DHS is to prevent homelessness and to help NYC residents regain independent living in the community.[10] In a recent “Mayor’s Management Report,” DHS stated that one of its overarching goals is to “help individuals and families transition to permanent housing and self-sufficiency.”[11] This means that the agency must not only ensure that “all temporary shelters for homeless individuals and families are clean, safe,

“and well-run,” but also that it “[f]acilitate exits and minimize clients’ length of stay in shelters.”[12]

Despite that goal, statistics show that between December 2017 and September 2019, the number of adults and children in shelters increased by 2,458, or 4.1%.[13] In addition, as of December 2017, single adults were staying in a shelter approximately 100 days longer than they were, on average, in January 2014; and 37 days in the case of adult families (couples without children).[14]

Both family and single adult shelter clients must develop, with the provider staff, an Independent Living Plan (ILP).[15] The ILP forms are the core of a client’s “[shelter] exit plan and an individualized pathway towards sustainable permanency.”[16] But while state regulations require that certain services be provided to shelter clients, shelters are overwhelmingly lacking in one essential service for shelter residents which could reduce the length of residents’ stay and facilitate their exit: access to technology.

A vital component to independent living in today’s world is the Internet,

and NYC and DHS should strive to provide resources to homeless shelters to ensure that homeless men, women, and children in NYC are able to access the Internet. Internet access should be provided through Internet-ready mobile devices, computers and printers, as well as through shelter-based publicly available Wi-Fi, at no extra cost to maximize opportunities for the homeless population to regain independence.

NYC residents now use the Internet for almost every aspect of their daily life—to communicate with others (whether family or friends, or for educational or work purposes), to search for jobs, to create resumes for jobs, to apply for jobs, to search for housing, to apply for housing, to access government benefits and services, to search for educational opportunities, to complete applications for schools, to perform school work, to find medical providers, to access banking services, and much more. Widespread Internet use pervades all social and income classes and is particularly needed by the homeless, who lack a permanent address and landline telephone and require, perhaps more than others, the stability that is provided by Internet access.

Shelter residents need to be able to access the Internet to search for jobs, housing, medical care, and other benefits.

Shelter residents with children, who are a large percentage of the overall homeless population, need the Internet to help their children enroll and remain in school and perform schoolwork. In March 2020, the impact that lack of Internet access has on children in homeless shelters was further evidenced and exacerbated when, in response to the COVID-19 pandemic, NYC public schools implemented remote learning. Unfortunately, over 100,000 students living in shelters or unstable housing in NYC were not able to benefit from this set up due to limited access to technology.[17] While the Department of Education is working to provide Internet – enabled devices with cellular technology, such as iPads, students have lost weeks of remote learning time waiting for such a device. [18]

The Internet is an invaluable resource for helping homeless residents return to self-sufficiency. Its potential uses and benefits are innumerable. A modest investment by NYC in enhanced Internet access could lead to a reduction in the overall homeless population and a reduction in other costs associated with housing NYC's homeless population. NYC needs to provide more resources to homeless shelter residents to access technology by providing access to Internet-ready mobile devices, computers and printers, and shelter-based publicly available Wi-Fi.

We propose that NYC set aside funds for enhanced technology access for shelter residents to facilitate the overarching goal of NYC homeless shelters—that they provide a temporary stopping point on a path toward self-sufficiency and independence.

## SURVEY RESULTS

During the summer of 2019, the CBJC conducted a survey of current and former NYC homeless shelter residents to obtain information about their access to and use of Internet-ready devices and Wi-Fi while living in NYC shelters (“2019 CBJC Survey”). The results of the 2019 CBJC Survey are summarized below and confirm, among other things, that (1) NYC shelters do not currently provide adequate access to the Internet (in fact, the majority do not provide any access to either Internet-ready devices or Wi-Fi), (2) most shelter residents are not able to otherwise regularly access the Internet on their own and when they do, it requires them to self-fund costly cellular plans with funds that could be put to better use elsewhere, and (3) all shelter residents confirmed that improved access to the Internet would enable them to improve their living conditions and return to self-sufficiency.

**In total, CBJC surveyed 84 current and former NYC family-shelter residents in Manhattan and the Bronx. The surveyed residents had the following to say:**

**67%**

**WANTED TO  
BUT HAD NO  
REGULAR  
ACCESS TO  
INTERNET**

56 survey respondents (67% of those surveyed) indicated that there were times when they wanted to access the Internet while in shelters, but were unable to do so, because the shelters did not provide Internet access and the residents were not able to get access via other means. Only 10 respondents reported having regular (i.e., daily) access to the Internet while staying in the shelter.

**6%**

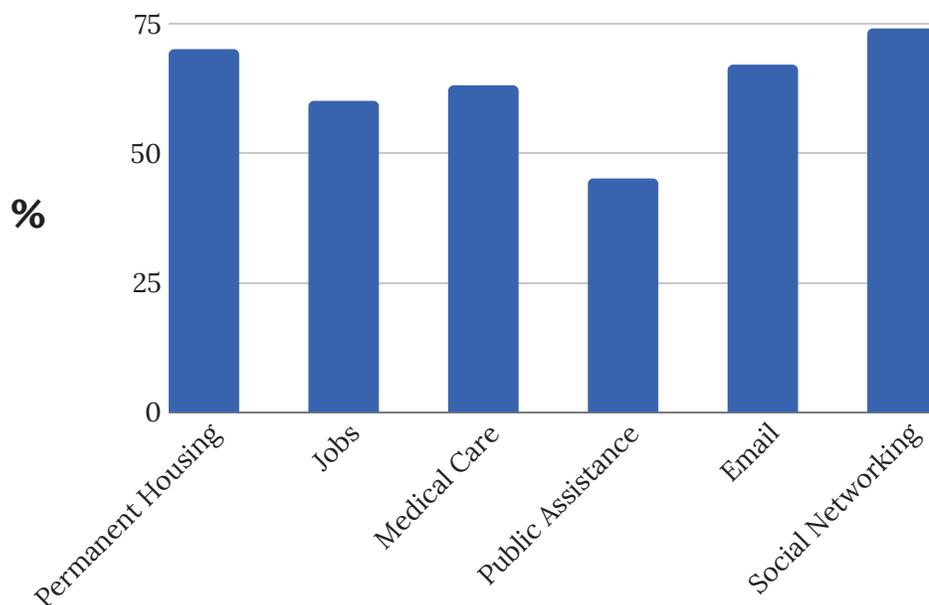
**WERE ABLE TO  
ACCESS THE  
INTERNET  
THROUGH  
THEIR  
SHELTER**

Only 5 respondents (6% of those surveyed) reported being able to access the Internet through the NYC homeless shelter(s) in which they stayed. In contrast, to the extent that respondents were able to access Internet at certain points, the majority did so through a self-paid cellular plan (64 respondents, or 76% of those surveyed, reported having such a plan at some point or another) or through publicly available Wi-Fi, e.g., Wi-Fi available in NYC public spaces, libraries, or restaurants like McDonald’s and Starbucks. For those residents with smart phones and self-paid cellular plans, 18% of those surveyed reported having limits on minutes or data for those plans that sometimes restricted their ability to access the Internet, despite having an Internet-ready device.

**75%****AGREED  
INTERNET ACCESS  
WOULD IMPROVE  
THEIR  
CIRCUMSTANCES**

The overwhelming majority of survey respondents (63 respondents, or 75% of those surveyed) agreed that regular or otherwise improved access to the Internet for shelter residents would enable shelter residents to improve their circumstances, assisting in their efforts to find permanent housing, jobs, and other benefits (discussed further below). The CBJC Survey established that an overwhelming majority of respondents indicated that they were comfortable using the Internet, affirming its relevance in their daily lives.

Based on their familiarity with the Internet, respondents said that if they had access to the Internet while in NYC shelters, they would use the Internet for the following purposes:

**What Respondents Would Use Internet For**

The 2019 CBJC Survey results present a clear picture of the current state of technology access at NYC homeless shelters: NYC shelters do not provide adequate (and in most cases, any) access to the Internet for NYC shelter residents. NYC shelter residents are in a constant struggle to find ways to access the Internet through other means, including spending what little funds they do have on Internet access. This lack of Internet access denies shelter residents of the many benefits that Internet access could bring, including resources that could help residents on the road to self-sufficiency and independence and to help residents retain some sense of normalcy and permanence in the midst of what is a very stressful experience.

As part of the 2019 CBJC Survey, CBJC also solicited personal anecdotes from the respondents describing how regular and improved access to the Internet would positively impact their lives. Respondents confirmed that the lack of Internet led to further isolation and frustrated their attempts to search for permanent housing, jobs, and other benefits. One respondent noted that “the Internet is no longer a luxury; it is a necessity.” Respondents noted that shelter residents “need the Internet in order to search for apartments” and “need the Internet to find a job.” Residents indicated that with Internet access, they “might have been living in an apartment sooner,” and “having Internet service would have helped [them] get access to a better job.” One respondent actually noted that “the only reason [they] got out of shelter was because [a self-funded Wi-Fi] HotSpot let [them] find out about Housing Connect [19], [but] a lot of shelter residents don’t even know that exists.”

In contrast, the lack of Internet limits those opportunities. One resident noted that the lack of Internet potentially cost them a job, stating, “It’s like living in the dark ages here. I had interviews at [a company] and they were saying I was unresponsive but I wasn’t. The issue was that I did not have Internet.” As one resident put it, Internet access would provide a round-the-clock resource for information and assistance:

*“Internet would give you access to everything you need whenever you want. Some case workers only work 9 to 5 so if I needed to search stuff at night to ask them about I could not. I learned how to get out of my situation by reading blogs and joining forums after I got [out]of the shelter. Unfortunately, people in shelter don't have access to that and it's sad.”*

Some residents reported being unable to pay for their own Internet service, meaning that without the assistance of the shelter or finding a place with publicly available Wi-Fi, it would be impossible for them to access the Internet. But even for those residents who could afford to pay for Internet access, the need to pay for Internet on their own deprived them of valuable funds that they could have put to other vital uses, like housing. Respondents reported using their very limited public assistance benefits intended for food and other essential items to pay for internet-enabled phones. Respondents noted that “it would be nice to get free Internet so [they] wouldn’t have to use the little funds [they] have” on Internet access,” and “access to Internet at the shelter would have saved [them] money because then [they] would not need to pay for a data plan.” Because money is always a struggle for shelter residents, there are inevitably times when they cannot pay for Internet access and, as a result, cannot access

the Internet. One respondent noted, “I would run out of funds to pay my phone bill so I would not have Internet.”

Beyond the benefits in terms of exit strategy and financial savings, residents also commented on the inability of their children to complete homework assignments while in the shelters due to the lack of adequate technology access, including Internet and printers that are needed for schoolwork. For example, one resident noted:

*“Internet in shelter would help me do homework with my child. And it would also help because sometimes I need to print out forms but I can't do that and the case workers are not always available.”*

Another respondent said something similar:

*“My husband and I were discussing Internet service in the shelter a few days ago and wondered if the social worker would be kind enough to give us the Wi-Fi password so we could help our kids do homework.”*

Based on the survey results and sample anecdotes summarized above, it is clear that more must be done in terms of technology access at NYC's homeless shelters. As discussed further below, we believe that NYC and DHS should enhance access to technology at NYC homeless shelters through both Internet-ready devices and publicly available Wi-Fi, as well as access to wireless or Bluetooth printers, or those that are connected to the shelter's functioning and accessible computers.

## WHAT OTHER CITIES ARE DOING

NYC has long been a leader in providing temporary shelter to homeless residents. NYC now has an opportunity to lead the way in modernizing those efforts by providing technology access to its residents through the provision of Internet-ready devices and Wi-Fi to all municipal shelter residents. Similar efforts have begun in a limited number of cities across the United States, which recognize that technology access can be a turning point for homeless residents and which can serve as a start for efforts in the five boroughs. Below are a few examples of what other cities have done. More is needed and NYC can be a leader in these efforts.

In other U.S. cities, the views of homeless shelter residents with respect to technology access largely mirror the results of the 2019 CBJC Survey.

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## San Francisco

Shelter residents in San Francisco, particularly younger shelter residents, for example, cite smartphones and Internet access as the reason for shortened periods of homelessness.[20] Technology is used for connecting with social services, job searches, and finding permanent housing. One non-profit shelter, NextDoor, was able to get online for only \$6,000 (approximately) of equipment supplied by a local Internet provider.[21] In 2016, a former NextDoor resident who spearheaded the initiative to get the shelter online co-founded a nonprofit, ShelterTech, to further help underserved communities get technology access and accelerate out of homelessness.[22] In 2017, ShelterTech received a grant of \$97,454 for three years from the San Francisco government. ShelterTech is using the funds to provide various technology services to shelters and single room occupancy hotels.

ShelterTech focuses on three programs: (1) Shelter Connect, a program that works with Internet service providers to provide free Wi-Fi in shelters and transitional housing facilities, (2) an online housing and human services directory, and (3) step-by-step guides addressing common issues faced by homeless or at-risk individuals. [23]

ShelterTech expanded its Wi-Fi installations by 228% in 2018 and provided Wi-Fi access to 3,000 people through 7 Wi-Fi installations (including at 3 emergency shelters) and 200 portable chargers. ShelterTech's website indicated costs of only \$50 per month to provide Wi-Fi to one shelter and \$0.02 for Wi-Fi for one person for one night.[24]

Some residents of Wi-Fi connected shelters in San Francisco have credited their ability to find and obtain jobs online to simply having access to websites like Indeed.com and Craigslist.com.[25] Residents would not have known that some of these jobs existed without the Internet, as many jobs are posted solely online.[26]

## Austin

Austin is another city that has sought to expand the services that it provides to its homeless population through the use of technology. According to the Ending Community Homeless Coalition ("ECHO"), a non-profit organization that plans and implements strategies to end homelessness in Austin and surrounding Travis County, over 7,000 individuals experienced homelessness in Travis County in 2018.[27]

In an effort to improve the lives of its homeless residents, the City of Austin's Office of Design, Technology, and Innovation Projects (the "Innovation Office") developed the MyPass Platform ("MyPass").[28] The project utilizes blockchain in order to give homeless people the ability to digitally store their vital documents, such as social security cards, health data and driver licenses, which "will positively impact homelessness services by helping them gain efficiency".[29] The Innovation Office's website states that its parameters of success for MyPass are efficiency of social service delivery, increased control and agency for homeless people, and to assist with benefit eligibility determinations for homeless residents.[30] The Innovation Office received a grant from the Robert Wood Johnson Foundation in June 2019 to develop MyPass over the course of one year.[31] Though MyPass undoubtedly will provide essential autonomy over to Austin's homeless residents, it is important to recognize that the use of this service assumes that its users already have access to Internet.

### **What NYC is Currently Doing**

NYC has made a city-wide plan to increase the availability of Internet throughout its five boroughs, though this effort was not directed toward its homeless population. There is no current requirement for NYC homeless shelters, or for NYC itself, to provide access to technology to its homeless residents. In 2016, Mayor de Blasio announced the public launch of LinkNYC, which would transform the thousands of old payphones in NYC into hubs for free public Wi-Fi, phone calls, and device charging as well as tablet access to city services, maps and directions.[32] Though the stated goal of LinkNYC is "leveling the playing field and providing every New Yorker with access to the most important tool of the 21st century,"[33] within months after launch, "repeated complaints"[34] arose from NYC's sheltered residents because "some users"(35) were "monopolizing" the LinkNYC browsers for their personal use. The web browsers that were initially installed on the LinkNYC kiosks were subsequently disabled, and the extent of LinkNYC's permissible browsing currently is for "maps and city services".[36]

As the LinkNYC website describes, "[t]here are millions of people in New York City who don't have access to high-speed internet... LinkNYC's advertising platform also generates millions of dollars in revenue for New York City." [37] Providing a most basic service, access to technology, to homeless shelters would not generate millions of dollars in revenue for NYC, but it would give NYC's homeless population a chance to maintain autonomy over their lives. Moreover, the ability to use the provided technology to search and apply for housing, employment and government benefits would reduce these residents' stay in homeless shelters over time.

Perhaps then Mayor de Blasio's goal of "leveling the playing field[38] could be achieved.

Additionally, as discussed below, free public Wi-Fi alone, while helpful, is not sufficient. The cost of providing NYC homeless shelters with up-to-date technology available to all residents is greatly outweighed by the benefits and can often be the key difference in a person's path out of homelessness.

## RECOMMENDATIONS

To enable homeless shelter residents to secure permanent housing and significantly reduce the length of stay in a shelter, NYC should supply every shelter with reliable Wi-Fi, modern and accessible Internet-ready devices, and wireless, Bluetooth or otherwise connected printers. Access to technology means that Wi-Fi and the devices must be available to residents and in working order. Access also includes availability for individuals with both traditional and non-traditional school or work schedules, as well as all tools that are essential for use, such as paper and ink for printers, adequate charging facilities for Internet-ready devices, and word processing software.

### Access to technology furthers the goals of NYC and DHS:

- 01 BASIC NEEDS**  
Including food, shower, safety, Internet
- 02 HOUSING**  
Ultimate goal is to find permanent accommodations
- 03 JOB**  
A job and access to financial resources ensures they won't lose permanent accommodations once they find it [36]
- 04 WELL-BEING (PHYSICAL AND PSYCHOLOGICAL HEALTH):**  
Use of Internet for social interaction and entertainment (for parents, entertained children enables them to look for housing/jobs)

Access to technology cannot be limited only to Wi-Fi, onsite Internet-ready devices or printers, as each prong alone is not sufficient. As outlined in the 2019 CBJC Survey, while many shelter residents have smartphones through savings, phone-sharing, and programs like Lifeline[40], they often do not have access to sufficient data plans.[41] Without adequate data plans, users are unable to fully leverage the Internet and Internet-based applications.

Smartphones and Wi-Fi availability are not sufficient for many homeless shelter residents. Residents experience difficulty in completing applications on handheld devices and certain websites are not fully available on mobile devices. Furthermore, smartphones offer limited options to word processing applications needed to create resumes or complete homework assignments. Shelter residents also lack the ability to print applications that cannot be submitted online and

homework to submit to school where Internet-ready devices, Wi-Fi and printers are unavailable.

## CONCLUSION

As homelessness has continued to grow in the past decade, NYC and DHS can no longer focus only on temporary housing. Efforts must be made to reduce the time spent in shelters and the costs associated with longer periods of homelessness. Our recommendation that NYC should provide access day and evening hours to (1) reliable Wi-Fi, (2) updated Internet-ready devices, and (3) wireless or Bluetooth printers, or printers that are otherwise connected to Internet-ready devices, in every shelter is in line with the goals of NYC and DHS and the needs voiced by shelter residents. This is an opportunity for NYC to tackle the homeless epidemic in a non-traditional way and be a leader on this frontier.



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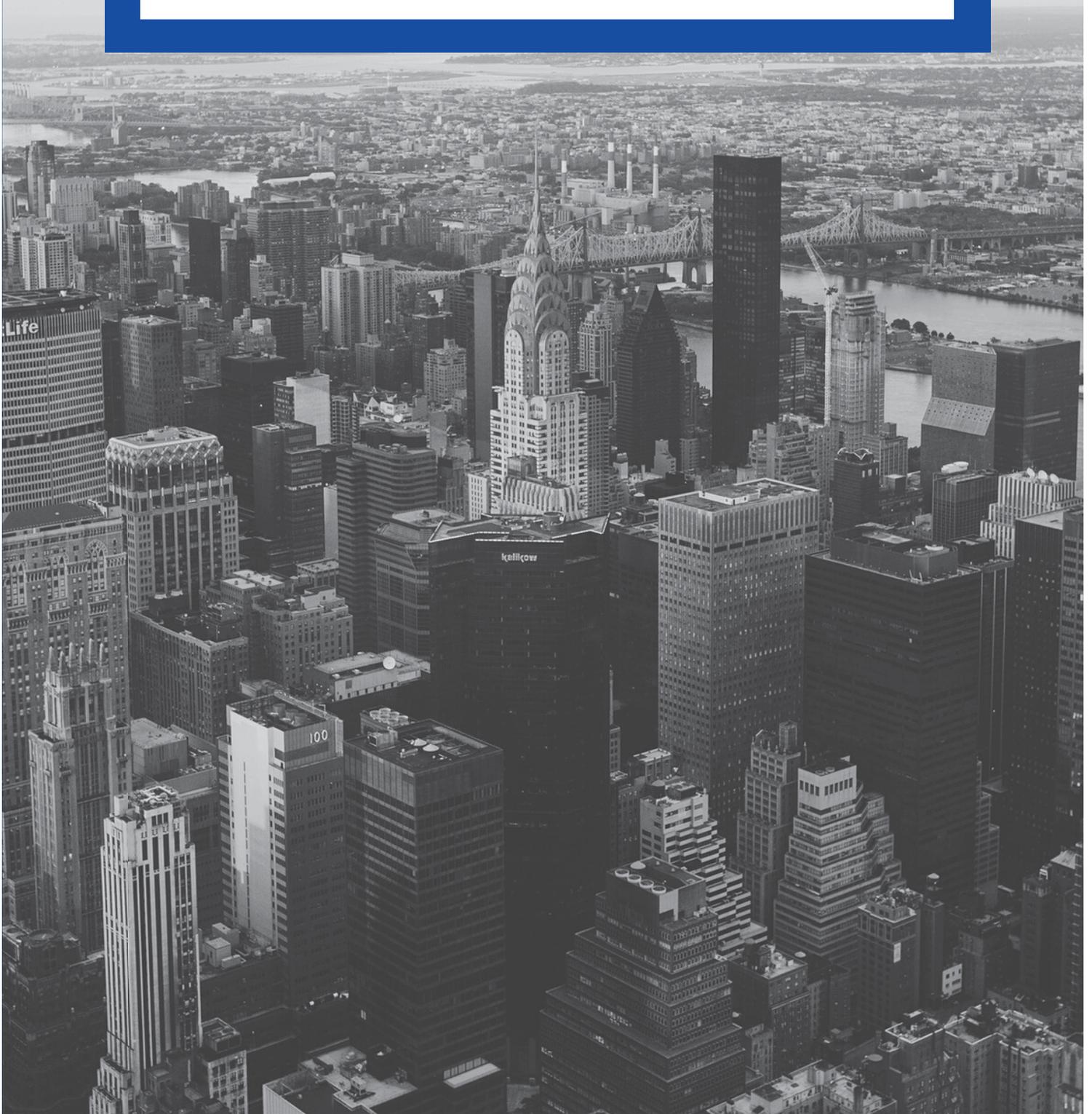
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To learn more about the City Bar Justice Center, visit us at:

**CITY BAR  
JUSTICE  
CENTER**

[www.citybarjusticecenter.org](http://www.citybarjusticecenter.org)



# HOMELESS NEED INTERNET ACCESS TO FIND A HOME

## How Access to Internet and Technology Resources Can Support Homeless Families Transition out of Homeless Shelters

A Report from the City Bar Justice Center | May 2020

### Endorsing Organizations

- Advocates for Children of New York
- The Bronx Defenders
- Brooklyn Defender Services
- Citi
- Citizens' Committee for Children of New York
- Coalition for the Homeless
- Community Service Society of New York
- Covenant House
- Davis Wright Tremaine LLP
- Federation of Protestant Welfare Agencies
- Freshfields Bruckhaus Deringer US LLP
- Herrick, Feinstein, LLP
- Hunton Andrews Kurth
- Katten Muchin Rosenman LLP
- Kramer Levin Naftalis & Frankel LLP
- The Legal Aid Society
- Legal Services NYC
- Mobilization for Justice
- Morrison & Foerster LLP
- Neighbors Together
- New Destiny Housing
- New York City Bar Association
- New York Legal Assistance Group
- Pillsbury Winthrop Shaw Pittman LLP, New York Office
- Reed Smith
- Riders Alliance
- Safety Net Activists at the Urban Justice Center
- Sheltering Arms Children and Family Services
- Sidley Austin, LLP
- VOCAL-NY Homelessness Union
- Willkie Farr & Gallagher LLP
- Win
- Withers Bergman LLP

# EXHIBIT E



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

September 16, 2020

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

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

**Re: Educational Needs for Students in Temporary Housing**

Mayor de Blasio and Chancellor Carranza:

With the many tasks before you in the complicated work of reopening schools this fall, I am deeply concerned that the City's most vulnerable students – over 100,000 children who experience homelessness each year – are once again being overlooked. While these most vulnerable students and their families are never the loudest voices in the room, there are several substantial issues that directly impact their educational experiences and that require prompt attention. Most immediately, **I urge you to designate an interagency Director of Students in Temporary Housing with the authority to help address many of the issues outlined below**, all of which require the Department of Education to communicate effectively with the Department of Homeless Services and other agencies. This does not need to be a new position —in fact, it should not be — it simply needs to be someone within the DOE with the authority to work across agencies on behalf of students in temporary housing.

Outlined below are some of the issues that I believe deserve immediate action. Please provide responses to my office, pursuant to my office's authority under Chapter 5 of the City Charter, to all numbered questions laid out below by **September 29, 2020**.

### **Unreliable internet and cellular service at the City's shelters**

In the earliest days of the pandemic, the decision to purchase internet-enabled devices with free cellular data and to prioritize distribution to students living in shelters was well considered, given that many city shelters lack wireless connections. Unfortunately, I have been alarmed by increasing reports that the cellular signal in certain shelters is also weak or non-existent, making remote learning – and certainly live, synchronous instruction – all but impossible for many of the roughly 15,000 school-aged children currently in DHS shelters.

Some shelter providers have been quick to respond to learning needs of children living in the residences they operate. For example, BronxWorks, which operates three family residences, wired its shelters for internet when school closed so that students could access the lessons their teachers were posting online. All family shelter providers should be provided with guidance and support to do the same, and to work to break down barriers to learning – especially operational problems like cell service or internet access.

**1. Please provide my office with an assessment of how many shelters lack adequate cell and internet reception, as well as the number of students who live in those shelters, and detail steps that are being taken to correct this urgent situation.** Failing to provide a reliable cell signal at a time when remote learning is a part of every school is tantamount to denying these children their right to a free education and must be avoided at all costs.

### **Need to locate Learning Bridge sites near family shelters**

The launch of the Learning Bridges program is a positive first step to supporting families' need for reliable child care for children on their remote learning days. While I am encouraged that students in temporary housing will be among the groups of students prioritized for the limited spaces at Learning Bridge sites, if these sites are not located near shelters, many students who most need these spaces may not be able to access them.

**2. Please provide my office with details on how students in temporary housing will be served under Learning Bridge,** including the number of students in shelter provided Learning Bridge seats for the start of the school year (September 21), and whether any consideration has been given to siting Learning Bridge facilities near family shelters.

### **Providing high school students with appropriate space if parents are at work and appointments**

As currently configured, it is my understanding that Learning Bridge programs will not accommodate high school students. However, City policy prohibits any child under the age of 18 from remaining in a shelter unit without a parent. Given these conflicting

policies, it seems obvious that some accommodation needs to be made for high school students on remote learning days. Perhaps space could be made available for them within shelter facilities, at Learning Bridge sites, or shelter providers could locate other sites in the community that are safe and provide ready access to the internet.

**3. Please provide my office with details as to how space and internet access will be provided on remote learning days for high school students living in shelters, who already face severe challenges in graduating.**

### **Shelter placements closer to schools**

Fewer than half of shelter placements are in the same borough as where the youngest child goes to school for families in shelters overseen by DHS. DOE and DHS must work together to ensure that those families who want to be closer to their children's schools are prioritized for shelter transfers. This would make in-person instruction more accessible by minimizing lengthy (and costly) bus arrangements. And greater access to in-person instruction would help address the connectivity issues faced by many families in shelter.

**4. Please provide my office with an update on the current plan to offer shelter transfers for families who wish to be closer to their children's school.**

All of these issues underscore the fact that there continues to be a disturbing lack of coordinated problem-solving when it comes to our students experiencing homelessness. These young people face myriad challenges in navigating their days, and without interagency collaboration and effective follow-up by DOE officials, these barriers will likely remain unaddressed, leaving students to fall further behind. A stark example of that was revealed by a 2018 audit by my office, which found significant gaps in how the Department of Education supports regular attendance for students who live in shelters. The audit found that despite established regulations to reduce chronic absenteeism, there was no evidence that the Department of Education attempted outreach to families regarding 75 percent of the student absences in the cases sampled in the audit. It would be a tragedy to allow these oversights to continue today, with so much at stake for our most vulnerable students.

**To help address these and other issues that will undoubtedly emerge, I urge you to consider designating an Interagency Director of Students in Temporary Housing with authority to trouble-shoot large system-level problems across agencies.** Students whose housing is unstable or who experience homelessness face a litany of barriers to their education, as their families navigate numerous systems across various city agencies to access needed supports. Yet there is currently no one person with the authority necessary to seamlessly deliver the supports these students so desperately need from multiple agencies. To maximize effectiveness, such an interagency position should be empowered to cut through bureaucratic red tape and force decision making so that students in temporary housing get what they need when they need it, and that schools and

shelter providers have the mechanisms in place to ensure students are able to remain engaged and learning.

As a City, we cannot allow these students to be left behind. Though the work currently underway to safely reopen schools is immensely important, it is not complete without detailed planning for the most vulnerable among us.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer". The signature is fluid and cursive, with the first name "Scott" and last name "Stringer" clearly distinguishable.

Scott M. Stringer  
New York City Comptroller

Cc. Stephen Banks, Commissioner, Department of Social Services  
Bill Chong, Commissioner, Department of Youth and Community Development

# EXHIBIT F

# Milbank

**GRANT R. MAINLAND**

*Partner*

55 Hudson Yards | New York, NY 10001

T: 212.530.5251

gmainland@milbank.com | milbank.com

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).

MILBANK LLP

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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  
Corporation Counsel of the City of New York

Steven Banks  
Commissioner  
New York City Department of Social Services

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

# EXHIBIT G



**Howard Friedman**  
*General Counsel*

**VIA EMAIL**

October 14, 2020

Grant R. Mainland  
Partner  
Milbank LLP  
5 Hudson Yards  
New York, NY 10001

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

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

Dear Mr. Mainland and Ms. Horwitz:

I am the General Counsel of the New York City Department of Education and am writing in response to your letter of October 8, 2020, addressed to Chancellor Richard Carranza and Joslyn Carter, the Administrator of the New York City Department of Homeless Services.

Thank you for your letter. Please understand that Mr. Carranza, Ms. Carter, and the staff of DOE and DHS share your concerns. As you know, our agencies have been working hard to ensure that all of our students, especially those in shelters, continue to receive a sound education. In an effort to continue this critical work, I would like to let you know steps that have been taken just this week:

- DOE technical teams visited the three shelters mentioned in your letter to test connectivity in the buildings. The strength of the signal for both T-Mobile and Verizon was tested in all three buildings and the teams confirmed that all remote learning apps performed satisfactorily using Verizon service. As a result of these tests, DOE will be replacing T-Mobile service with Verizon service on the iPads of students living in these buildings. This will be done individually with each iPad to ensure that the service is sufficient for the applications required for schoolwork. This work will begin immediately; completing the switch to Verizon should be done by the end of next week.
- As these three shelters are completed, we will continue the same testing process in additional shelters, prioritizing those that have expressed the highest need. DOE technicians will be onsite at three additional shelter sites this week. We will be prepared to switch service providers where necessary.
- Effective this Monday, DOE will establish an IT phone help desk, with a dedicated team focused on students in DHS shelters. This help desk will operate from 6:00 a.m. to 5:00 p.m.
- DHS has sent communications to families at the Flatlands, Regent and Children's Rescue shelters advising them the DOE technical teams will be onsite from 11:00 a.m. to 4:00 p.m., this week, to help address any issues with their devices; the teams are at Flatlands today, and will be at the other two shelters starting tomorrow. Another communication will be sent to all families with children in shelters advising them of the availability of the DOE IT help desk.

Finally, we understand that your preferred solution is that we switch from cellular service to wi-fi for these purposes. We are actively exploring the possibility, including technical requirements and cost. We hope to be able to respond to you about this point in the near future.

Please let us know if you have any questions. We are available at your convenience to further discuss these matters. Thank you.

Sincerely,

*Howard Friedman*

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Howard Friedman

cc: Richard Carranza, Chancellor, DOE  
Joslyn Carter, Administrator, DHS  
Steven Banks, Commissioner, DSS  
James Johnson, NYC Corporation Counsel  
Joshua Goldfein, The Legal Aid Society  
Beth Hofmeister, The Legal Aid Society

# EXHIBIT H



Human Resources  
Administration

Department of  
Homeless Services

Office of the  
General Counsel

Steven Banks  
Commissioner

Martha A. Calhoun  
General Counsel

150 Greenwich Street  
New York, NY 10007

929 221 7327

October 28, 2020

**Via Electronic Mail**

Susan Horwitz  
Supervising Attorney of the Education Law Project  
The Legal Aid Society  
199 Water Street  
New York, NY 10038

Joshua Goldfein  
Beth Hofmeister  
Homeless Rights Project  
The Legal Aid Society  
New York, NY 10038

Grant R. Mainland  
Milbank, LLP  
5 Hudson Yards  
New York, NY 10001

Re: Internet Access for School-Age Children in Shelters

Dear Counsel:

I am writing on behalf of the City of New York and its agencies in further response to your October 8, 2020 letter and questions posed in an email from Mr. Goldfein on October 14, 2020. This letter supplements previous responses from DOE and DHS, dated October 14 and October 19.

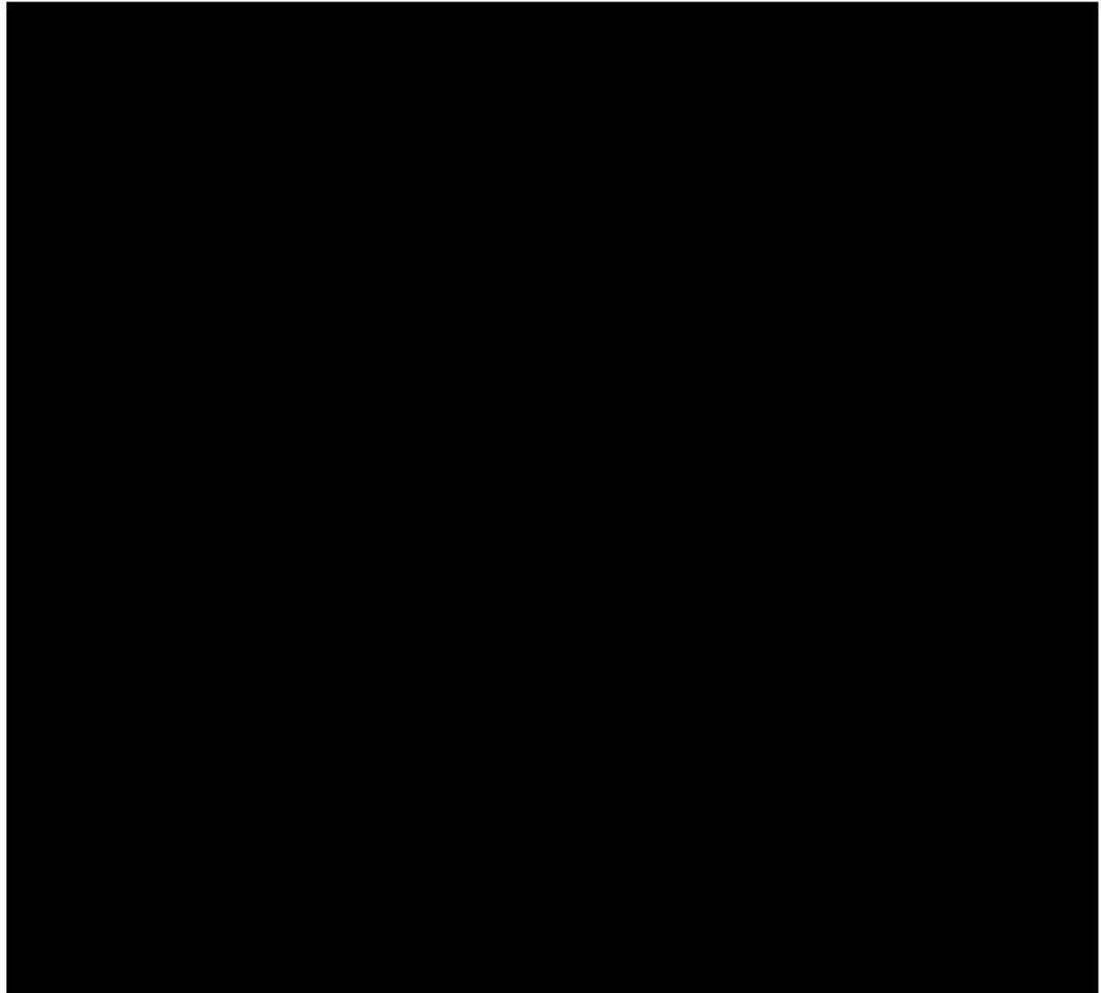
The City is working with Charter and Altice to provide WiFi service to all existing DHS shelters that serve families with children that are expected to be in use beyond 2021, as well as 22 planned new shelters. The existing DHS shelters for families with children serve approximately 12,000 school-age children in about 8,000 apartments in 160 buildings. In addition, we will provide WiFi service to apartments in approximately 50 HRA domestic violence shelters, serving approximately 1,000 school age children. To ensure quality service, the WiFi will be installed in each family's apartment.

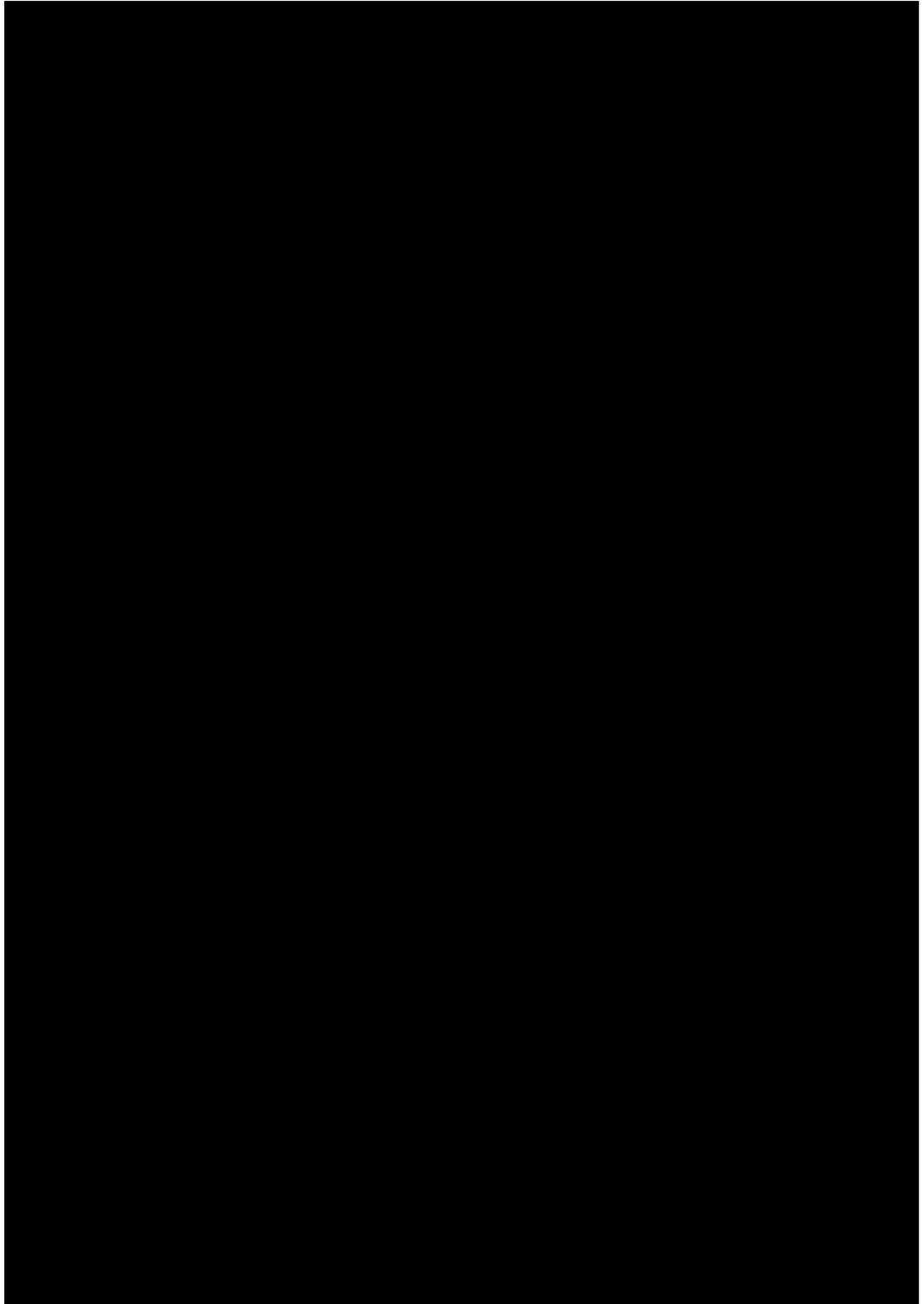
Each of the sites differs, in terms of the availability of in-building infrastructure to support running the cable to each apartment, and the existence of the cable in the building itself.

The sites that neither have cable run to the building, nor the in-building infrastructure to support WiFi cabling, will require much more work than the sites that have both in place. Unfortunately, early surveys, which commenced last week, have found that the former is more often the case.

In that context, the complexity of each build will drive timeline, and we cannot offer a defined timeframe until detailed site surveys of all approximately 240 sites (current sites and sites that are opening) are complete. The aggressive goal is to have all sites complete this summer, and 27 priority sites (selected on the basis of reports of connectivity problems) complete this winter. For context, under normal circumstances, a massive build-out like this could easily take over two years to complete.

The list of the 27 priority DHS sites is below. Please note that the names and addresses of shelters are confidential and should not be publicly disclosed.



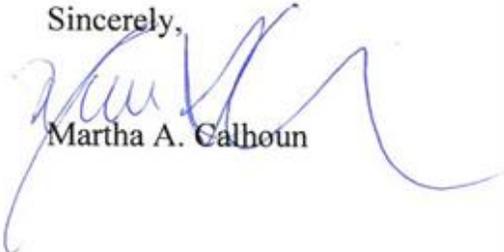




As has been discussed, to address immediate issues, DOE created a dedicated IT Help Desk for students residing in shelters to address connectivity or any other issues with iPads. Any student or family residing in a shelter who reports a connectivity problem to the DOE Help Desk will be switched to Verizon service within 24 hours. Verizon service has been found to be superior to T-Mobile service in a number of shelters reporting connectivity problems. DSS is actively messaging the availability of the Help Desk in the family shelters, including by having flyers posted on each apartment door.

Please do not hesitate to contact me with any questions.

Sincerely,



Martha A. Calhoun

cc: Howard Friedman, Esq,  
(via electronic mail)

# EXHIBIT I

# Milbank

## GRANT R. MAINLAND

*Partner*

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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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October 29, 2020

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.

October 29, 2020

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.<sup>1</sup>

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

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<sup>1</sup> 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).

# EXHIBIT J



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

**James E. Johnson**  
*Corporation Counsel*

**GEORGIA PESTANA**  
*First Assistant Corporation Counsel*  
(212) 356-2400

November 16, 2020

By Email

Grant R. Mainland  
Milbank, LLP  
5 Hudson Yards  
New York, NY 10001

Susan Horwitz  
Supervising Attorney of the Education Law Project  
The Legal Aid Society  
199 Water Street  
New York, NY 10038

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

Dear Mr. Mainland and Ms. Horwitz:

Setting aside the mischaracterizations of the City's efforts in your October 29 letter to the Mayor, the Chancellor and commissioners at the Department of Information Technology and Telecommunications (DoITT), Department of Social Services (DSS) and Department of Homeless Services (DHS), I write to provide a further update to the City and DOE's plans to provide internet access to students residing in DHS family shelters and HRA domestic violence shelters.

Installation of WiFi has already begun at the Flatlands Family Residence. As of the end of last week, surveys of almost half of the shelter sites have been completed by Altice and Charter and we expect installation work to begin at several additional shelters soon.

Connectivity issues being experienced by families may not all be due to lack of cellular or WiFi service. Some may result from the individual device, human error, or other issues. To assist families with these issues, DOE has engaged temporary technical support assistants to provide on-site help at 35 DHS family shelter sites. They will also be able to replace T-Mobile service with Verizon when needed. This initiative began last week and will be fully ramped up

this week. Families are being notified of the on-site availability of DOE technical assistance by shelter staff and the technicians will also be escorted by shelter staff to knock on the doors of families.

DOE will, of course, continue to staff a helpdesk dedicated to students living in shelters and remains committed to switching students with T-Mobile service to Verizon service within 24 hours of receiving a call to the helpdesk regarding cell service.

As reported in the City's October 28, 2020 letter, installing WiFi in buildings that do not have in-building infrastructure or cable running to each unit is complex and time-consuming. The City and DOE are exploring other options, including creating WiFi hotspots, for providing access to education for the students in the shelters with connectivity issues until WiFi is available in each unit.

The dedication and efforts by the Mayor, the Chancellor and the Commissioners of DoITT, DSS and DHS to improving the education and circumstances of children, particularly children in families experiencing homelessness, are not new. Please be mindful of their longstanding and deep commitment to this vulnerable population as well as the unprecedented circumstances they have had to manage through during the pandemic, and consider the tone of any further correspondence on these issues.

Very truly yours,

/s/

Georgia M. Pestana

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

# EXHIBIT K

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

E.G., individually and as parent and natural guardian of A.I. and L.I., minor children; M.M., individually and as parent and natural guardian of E.H., L.H., Ev.P., and E.P., minor children; O.M., individually and as parent and natural guardian of A.M., a minor child; and COALITION FOR THE HOMELESS, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF EDUCATION; RICHARD A. CARRANZA, as Chancellor of the New York City Department of Education; NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES; STEVEN BANKS, as Commissioner of the New York City Department of Social Services; NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES; JOSLYN CARTER, as Administrator of the New York City Department of Homeless Services; NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; GARY JENKINS as Administrator of the New York City Human Resources Administration; NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS; and JESSICA TISCH, as Commissioner of the New York City Department of Information Technology and Telecommunications,

Defendants.

-----X

Index No. 20-CV-9879

**DECLARATION of O.M.**

I, O. M., hereby declare as follows:

1. I am the father of a child enrolled in a New York City Department of Education (“DOE”) public school, and a Plaintiff in this case. My family and I reside in a family shelter in Brooklyn overseen by the New York City Department of Homeless Services (“DHS”).

2. I make this Declaration in support of Plaintiffs’ Motion for Preliminary Injunction. I am using my initials, rather than my full name, to protect my child’s privacy rights protected by the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11432(g)(3)(G), and the Family Education Rights and Privacy Act incorporated therein, 20 U.S.C. § 1232g(b).

3. I live with my wife and our 15-year-old son, A.M., who is a freshman at a DOE high school.

4. In March, when the schools shut down in response to the COVID-19 pandemic, A.M. was a student in a middle school across the street from our shelter. The school gave A.M. a Chrome Book computer so he could complete his schoolwork. In order to access the internet, A.M. used my cell phone as a hot spot since the shelter does not offer an available WiFi network. But the hotspot only worked intermittently.

5. Approximately a month later, in April, the middle school gave A.M. an iPad with T-Mobile cellular service, but the internet was still not reliable.

6. After graduating middle school in June, A.M advanced to ninth grade.

7. When school began this fall, my wife and I decided to keep A.M. home for fully remote learning because I am at risk for severe complications if I get sick with COVID-19 due to my medical conditions. The high school provided another Chrome Book computer for A.M. to use, but we still had the same problems with the internet cutting out when he used my cell phone as a hotspot.

8. A few weeks ago, A.M. was given a new DOE iPad with Verizon cellular service because the DOE iPad with T-Mobile service did not provide consistent internet access. Even with the Verizon DOE iPad, the connectivity issues remain. A.M. constantly loses internet access during class; it usually happens at least once a day and sometimes many times a day. In addition, the DOE devices block certain websites he needs to access to complete his schoolwork.

9. I have contacted the DOE technology support line many times over the past few months, but the issues have not improved.

10. When I asked shelter staff when the shelter would have WiFi access, I was told that it would not occur until next year at the earliest.

11. The school understands that A.M.'s internet access is unreliable and inconsistent, but that does not change the fact that he is clearly falling behind in school through no fault of his own. I am trying to be a good parent to my son but it is difficult to help him succeed in school with these constant internet glitches.

12. My son is also frustrated and depressed about not being able to participate in school. He has an Individualized Education Program and gets extra instruction because he has a learning disability. The more school he misses, the farther behind he gets.

13. If the shelter where we live had internet access through WiFi, I believe my son could attend school without interruption, and he would not be at risk of falling behind.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 23rd day of November, 2020.

  
O.M.  



# EXHIBIT L

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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E.G., individually and as parent and natural guardian of A.I. and L.I., minor children; M.M., individually and as parent and natural guardian of E.H., L.H., Ev.P., and E.P., minor children; O.M., individually and as parent and natural guardian of A.M., a minor child; and COALITION FOR THE HOMELESS, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF EDUCATION; RICHARD A. CARRANZA, as Chancellor of the New York City Department of Education; NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES; STEVEN BANKS, as Commissioner of the New York City Department of Social Services; NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES; JOSLYN CARTER, as Administrator of the New York City Department of Homeless Services; NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; GARY JENKINS as Administrator of the New York City Human Resources Administration; NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS; and JESSICA TISCH, as Commissioner of the New York City Department of Information Technology and Telecommunications,

Defendants.

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Index No. 20-CV-9879

**DECLARATION of M.M.**

I, M.M., hereby declare as follows:

1. I am the parent of four elementary school students, all enrolled in a New York City Department of Education (“DOE”) public school, and a seven-month-old. I am a Plaintiff in this case. I currently reside with my children in a confidentially located domestic violence shelter, which is run by the Human Resources Administration (“HRA”).

2. I make this Declaration in support of Plaintiffs’ Motion for Preliminary Injunction. I am using my initials, rather than my full name, to protect my child’s privacy rights protected by the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11432(g)(3)(G), and the Family Education Rights and Privacy Act incorporated therein, 20 U.S.C. § 1232g(b), and because I am a survivor of domestic violence with an active order of protection against my abuser and fear for my safety, and my children’s safety, if my identity were to be revealed.

3. My two oldest children attend fourth grade and my two younger children attend first grade and kindergarten, respectively. All of my children are enrolled at the same public elementary school in Manhattan.

4. Last March, when my children’s school was closed in response to the COVID-19 pandemic, DOE gave each of my children an iPad with a cellular plan to enable them to participate in remote schooling.

5. The shelter in which my children and I live does not provide broadband internet service or “WiFi” access to its residents. The only way to connect to the internet from the shelter is through cellular technology. My experience, in attempting to use a cell phone and my children’s iPads, is that cellular access at the shelter is inconsistent and often non-existent. On a regular basis, it is impossible for me and my children to connect to the internet at all.

6. From the very beginning, my children and I had trouble connecting the iPads to the internet consistently when we tried to use them from our shelter residence, which is where we

spend the vast majority of our time due to earlier government “stay at home” orders and general concern about COVID-19. I notified the school that there were problems and talked to the school’s technology support teacher. He helped me change the settings and restart the iPads, but nothing got better.

7. The elementary school my children attend did not provide any live instruction during the spring. We were able to connect to the internet only briefly – just long enough to download assignments and submit them to the teachers.

8. In September, at the start of the 2020-2021 school year, I decided to keep my children home from school to avoid exposure to the coronavirus. I informed their school that all four of my children would attend school remotely.

9. Since the start of school in September, the problems connecting to the internet on the DOE iPads have become even worse. Unlike in the spring when they only had to complete and submit assignments, now my children are expected to log in and participate in live classes through Zoom every day. But the iPads we were provided either do not connect, or keep dropping the connection during the Zoom sessions.

10. For the first few weeks of school in September and October, the technology teacher again tried to help me with resetting the devices, and sometimes we were able to connect for a day or two. This solution never lasted very long, though. For example, during the second week of November, none of my children could connect to the internet at all for two consecutive days.

11. I recently participated in parent teacher conferences where my children’s teachers told me that my children would fail this year if they were not online every day.

12. My children are missing school every day and falling further and further behind. They should not have to miss out on school, and risk their academic success, because we do not have internet in the shelter.

13. I did not want to force my children to go to school in person and risk potential exposure to the coronavirus. Now that all the schools are closed, that is not even an option. If we had working, reliable WiFi, my children would be able to fully participate in school.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 23rd day of November, 2020.

DocuSigned by:  
  
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M.M.

# EXHIBIT M

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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E.G., individually and as parent and natural guardian of A.I. and L.I., minor children; M.M., individually and as parent and natural guardian of E.H., L.H., Ev.P., and E.P., minor children; O.M., individually and as parent and natural guardian of A.M., a minor child; and COALITION FOR THE HOMELESS, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF EDUCATION; RICHARD A. CARRANZA, as Chancellor of the New York City Department of Education; NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES; STEVEN BANKS, as Commissioner of the New York City Department of Social Services; NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES; JOSLYN CARTER, as Administrator of the New York City Department of Homeless Services; NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; GARY JENKINS as Administrator of the New York City Human Resources Administration; NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS; and JESSICA TISCH, as Commissioner of the New York City Department of Information Technology and Telecommunications,

Defendants.

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Index No. 20-CV-9879

**DECLARATION of E.G.**

I, E.G., hereby declare as follows:

1. I am the mother of four children, two of whom are enrolled in New York City Department of Education (“DOE”) public schools, and a Plaintiff in this case. My family and I live in a shelter in Harlem, which is overseen by the New York City Department of Homeless Services (“DHS”).

2. I make this Declaration in support of Plaintiffs’ Motion for Preliminary Injunction. I am using my initials, rather than my full name, to protect my child’s privacy rights protected by the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11432(g)(3)(G), and the Family Education Rights and Privacy Act incorporated therein, 20 U.S.C. § 1232g(b), and because I am a survivor of domestic violence with an active order of protection against my abuser and fear for my safety, and my children’s safety, if my identity were to be revealed. My family lived in a domestic violence shelter before we moved to our current location.

3. I live with my four children who are 3 years old, 11 years old, 13 years old, and 19 years old. L.I, my 11-year-old daughter, attends fifth grade at a DOE elementary school in Manhattan. A.I, my 12-year-old daughter, attends sixth grade at a DOE middle school in Manhattan.

4. In March 2020, when the schools closed down due to the coronavirus pandemic, DOE gave L.I. and A.I. iPads that included T-Mobile cellular service so that they could participate in remote education. Right away, we had problems connecting to the internet for their online classes. During April, I sent text messages to my daughters’ teachers and emailed their principals asking for help. I also called the DOE support phone line and submitted online support forms. Two or three times, I talked to DOE technical support staff on the phone. They helped me by resetting the iPads and changing some of the settings, but we still could not connect to the internet.

Each time, they also told me someone else would contact me to investigate the problems more, but no one ever called me back.

5. When the DOE was not able to help us, I asked the shelter staff for help and they gave me the password for the WiFi network used by the shelter's employees. The DOE iPads worked a little better on the shelter WiFi network, but the service still was not reliable. The shelter staff said that the reach of the WiFi was limited because it was only intended to help the staff do their work, not to provide access to residents.

6. Most of the time my daughters had to take turns using my phone to log in to school, but my cell service was not always strong enough to connect to Zoom classes or the other applications where they could access their homework assignments. I also had to use my phone to connect to my youngest child's Early Intervention services, and I kept running out of data. I even bought them laptops and got help at one of their schools with setting them up, but I did not realize that they would not work without an internet connection.

7. When school started again in the fall, I decided to keep my daughters at home for fully remote learning. I did not want to risk exposing our family to the coronavirus. My daughters had the same problem as in the spring: the iPads usually didn't connect to the internet. When I tried to log on to the shelter WiFi network, it said I used the wrong password. But when I asked the shelter staff for the new password, they told me they had not changed it. I cannot afford to buy more phone data, and even if I could, one phone does not work for two children to attend school remotely and for the youngest to get her Early Intervention services.

8. Since September, I have called the DOE helpline 8 to 10 times, but I always get the same response. They tell me to how to reset the tablet, and when that does not solve the problem, they say someone will call me back to follow up. The last time I called was about two weeks ago

and DOE still could not fix the problem. They did not offer to replace the iPads or change the cellular service to a different provider.

9. I always send text messages or call my daughters' schools when they cannot connect to the internet. A.I.'s school has been very understanding about this problem. She used to be a strong student but now she is getting failing grades because she cannot connect to school for classes or to do her work.

10. The staff at L.I.'s school have not been as understanding. Her teachers said they might have to report the attendance problems to the Administration for Children's Services ("ACS"). The school tried to convince me to send her to school in-person a few days a week because of our internet problems. They also said L.I. could transfer to a school closer to home so she could walk and attend school in-person a few days a week. But L.I.'s school already had some positive cases this fall and I did not want to be forced to send her in-person to any school just because the technology provided by DOE and DHS is preventing my daughter from reliably and safely attending school remotely from the shelter. Now that all the schools are closed, we do not even have that option.

11. I am scared that my daughters will fail school and have to repeat fifth and sixth grade. I am scared that I will have an ACS case because they have been absent from school so much, through no fault of my own. I am scared that if school reopens, they will have to go to school in person and get sick.

12. If the shelter where we live had reliable internet access through a strong WiFi network, my daughters could attend school remotely every day using the iPads provided by the DOE or the laptops I bought them.

13. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 23rd day of November, 2020.

E.G. 