Advocates for Children of New York
Protecting every child's right to learn

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Jodi Sammons
Office of School Enrollment
NYC Department of Education
52 Chambers Street
New York, NY 10007
Via Email: RegulationA-101@schools.nyc.gov



**Re: Comments Regarding Proposed Amendments to Chancellor's Regulation A-101**

Advocates for Children of New York (AFC) appreciates the opportunity to submit comments on the proposed changes to Chancellor's Regulation A-101. For more than 40 years, AFC has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Every year, we help thousands of New York City parents navigate the education system, including the admissions and transfer procedures for students from Pre-K through high school. As such, we are well positioned to comment on the proposed amendments.

We are very pleased that the DOE is proposing to make several important changes that will have a positive impact on the educational experiences of students and parents, including the addition of guidance transfers for students who would benefit from a fresh start at a new school due to academic or social issues; the expansion of the sibling priority to include students attending District 75 schools that are co-located in the same building as the school to which the family is applying; the addition of transfers for a child when the child's parent has a disability that prevents the parent from physically accessing the school; and the addition of provisions to help schools achieve greater diversity. At the same time, some of the proposed amendments would make it harder for students to enroll or reenroll at school and some provisions would violate state or federal law. We provide our comments in more detail below.

We must note that we are disappointed that the DOE did not make available to the public a version of the proposed amendments that showed the specific additions and deletions being proposed. In order to give the public an opportunity to provide meaningful comments, we urge the DOE to include a version highlighting the specific changes proposed in the future.

**TRANSFERS – SECTION IV**

***Transfers of English Language Learners* – IV.A.3**

We support the addition of language to section IV.A recognizing the authority of the Division of English Language Learners and Student Support, the Field Support Center Deputy Director of ELLs, and Superintendents to approve transfers of English Language Learners (ELLs) into dual language and transitional bilingual programs. We recommend that the Regulation go even further and provide for an English Language Learner (ELL) transfer mechanism under section IV.B. There are a number of schools across the City that provide targeted programming and supports for ELLs, including bilingual programs, programs for newcomers, and programs for students with interrupted formal education. In our experience, immigrant families often do not learn of these programs at the time of admissions or enrollment. In addition, a student's needs may not be readily apparent at that time. In the absence of a clearly articulated transfer process, families of ELLs struggle to transfer their children to schools that can better serve their needs. As a result, students who desperately need tailored ELL supports are not able to take advantage of the specialized ELL programs that the DOE offers. An ELL transfer mechanism would allow ELLs to take advantage of the full range of programs that the DOE offers to meet their needs. In addition, a transfer would allow ELLs to take advantage of new programs as they open or as their specific needs are identified.

Moreover, under New York State Commissioner's Regulations Part 154-2, the DOE is required to provide ELLs with the opportunity to transfer to schools that offer bilingual programs. However, in our experience, many parents of ELLs are not aware of their right to transfer to a school that offers bilingual programs, and when parents attempt to exercise their right, they often encounter resistance and misinformation. A clearly defined ELL transfer mechanism under section IV.B would help to ensure that parents are able to exercise their right to transfer their children to schools with bilingual programs.

***Transfers*** – IV.B

We appreciate several of the proposed transfer amendments under section IV.B, especially the addition of guidance transfers. To make all potential transfers as meaningful as possible and maximize the likelihood of a successful transfer, we recommend that the Office of Student Enrollment offer two to three potential schools whenever possible when a transfer is approved.

We recommend adding the following language to section IV.B:
"If the transfer request is approved, the Office of Student Enrollment will provide the family with two to three school options that have a comparable program (e.g., bilingual program, Integrated Co-Teaching) to the program the student was attending, whenever possible."

***Medical Transfers/Reasonable Accommodations*** – IV.B.3

We support the proposed amendment to add reasonable accommodations to the category of medical transfers. In addition, we strongly support the proposed amendment to allow a parent to request a transfer for a child when the child's parent has a disability that prevents the parent from physically accessing the child's school. The DOE should ensure that parents with physical disabilities are able to access their children's schools.

We have two recommendations to further strengthen this language. First, while we appreciate that the proposed amendment, in line with federal law, makes clear that a parent may request a transfer for a child to address a need for a "reasonable accommodation for a disability," including a medical condition, we are concerned about replacing the term "medical condition" with the term "disability" in the first clause, as some parents may not realize that their child's medical condition is considered a disability under the law. Therefore, we suggest that section IV.B.3 begin with the following language:
"A parent may request a transfer for a child to address a medical condition or a need for a reasonable accommodation for a disability…"

Second, we suggest adding a "medical provider's script" to the list of documents as an alternative to a medical provider's letterhead since many doctors use their script to indicate a patient's needs. We recommend that the sentence about documentation begin:
"The parent must provide documentation signed by an appropriate healthcare or rehabilitation professional on the medical provider's letterhead or the medical provider's script, stating…"

Finally, while we are pleased that the DOE is clarifying that the "medical" transfer is applicable to students with physical disabilities who need an accessible school placement, we are disappointed that the DOE is not doing more to assist students who need accessible school placements. Currently, the DOE does not consider a student's need for an accessible placement during the Pre-K, kindergarten, middle school, or high school admissions processes. As a result, students with physical disabilities who need an accessible site may receive a placement through the admissions process that

is *not* accessible. Later in the process (often many months later), the DOE provides these students with notice of the accessible school they can attend through the transfer process. The number of accessible NYC school buildings is limited in the first place. By failing to consider students' need for accessible placements during the admissions processes, the DOE essentially denies these students and their families the ability to have the DOE consider their school preferences in the way that the DOE considers the school preferences of other families. The DOE should build into the admissions processes consideration of students' need for accessible school buildings and give priority to these students for admission to accessible school buildings. For example, if a kindergarten student needs an accessible school building and their zoned school is not accessible, the student's parent should have the option of explaining the need for an accessible building through the kindergarten admissions process and should receive priority in the admissions process for an accessible building.

***Safety Transfers*** – IV.B.4

We support the DOE's clarification of the procedures related to safety transfers. We have several recommendations to further strengthen and clarify the language to ensure that students can transfer when needed.

We are pleased that the proposed amendments would allow families to submit a safety transfer request directly instead of relying on the school to make the request for them. We recommend that the DOE modify the language regarding the documentation that needs to be provided for consideration of a safety transfer. The current proposed amendment lists police reports as the only example of documentation that a family may provide. Non-ESSA transfer requests will typically not involve police intervention, and, therefore, a police report will not be available. The documents that schools would submit under section IV.B.4.b should be listed as other examples of documents that families can provide. With the rise of social media, students are receiving electronic threats of harm that should be considered in the determination as to whether to grant a safety transfer, and such communication should also be listed as examples of documentation. Finally, the DOE should adopt the recommendation of the Mayor's Leadership Team on School Climate and Discipline to accept a written statement by the student or parent supporting the transfer request. *See* **http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf** (page 34). We recommend modifying section IV.B.4.a.ii in the following way:
"Families can request a safety transfer by visiting the Family Welcome Center and submitting documentation, such as a police report, Docket number, court documentation, hospital records, social media or other communications, or a written statement by the student or parent supporting the request."

We recommend that the DOE also add additional documents to the list of documents that a school must provide to the Family Welcome Center when such documents are available and applicable. In section IV.B.4.b, we recommend that the DOE add the following bullet point:
"-Other documentation, such as hospital records, social media communications, or a statement by the student or parent, if any of these documents is applicable and available and if not previously submitted by the family."

We also recommend that the Family Welcome Center provide the family with documentation of the family's request for the safety transfer, including contact information for the family to check on the status of the request. We recommend adding the following language to section IV.B.4.a:
"iii. When a family submits a safety transfer request, the Family Welcome Center will provide the family with documentation confirming the parent's request for a safety transfer including contact information for the family to check on the status of the request for the safety transfer."

To maximize the potential for the transfer to be successful, we recommend that the DOE offer multiple school placements whenever possible and that the placements have any programs comparable to the program in which the student was participating. We recommend adding the following language to section IV.B.4.e:
"The Office of Student Enrollment will provide the family with two to three school options that have a comparable program (e.g., bilingual program, Integrated Co-Teaching) to the program the student was attending, whenever possible."

Finally, we support the five-day timeframe listed for a decision on the safety transfer request and recommend the following clarification to section IV.B.4.e:
"In all cases, the review and determination should take no more than 5 business days from the date of the school's or the family's request for a safety transfer."

***Guidance Transfers*** – IV.B.8

We strongly support the addition of guidance transfers, allowing parents or students to seek a transfer if a student is not progressing or achieving academically or socially and an alternative placement would address these concerns. We have worked on a number of cases where the ability to give a student a new start in a different school has made a significant difference in the student's school trajectory. Unfortunately, in recent years, such transfers have been available primarily through the suspension offices when students have faced superintendent's suspensions. We are pleased that the DOE has recognized that the value of such transfers and is making these transfers available outside of the context of suspensions.

We have a few recommendations for strengthening this proposal. First, it would be helpful for the DOE to clarify any documentation that should accompany the request and how to submit the request.

Second, while we are pleased that the proposed amendment makes clear that the guidance transfer process is a voluntary process and is entirely distinct from the involuntary transfer process, we recommend that the DOE amend section IV.B.8.c to state that the transfer process is to be utilized only by "parents or students" (instead of only "parents") for consistency with section IV.B.8.a, which states that a "parent or student" may request a guidance transfer.

Third, for guidance transfers, it is particularly important for the Office of Student Enrollment to offer more than one school option to try to find an appropriate match. Therefore, we recommend adding the following language: "If the transfer request is approved, the Office of Student Enrollment will provide the family with two to three school options that have a comparable program (e.g., bilingual program, Integrated Co-Teaching) to the program the student was attending, whenever possible."

**INTRODUCTION – SECTION I**

***Definition of Parent*** – I.A.16

The proposed amendments would move the footnote defining "parent" from section I.A.8 to section I.A.16. It is not clear why this definition is being moved down. We suggest defining the term "parent" within the text of I.A toward the beginning of A-101 since this term appears many times throughout A-101 or, at a minimum, inserting a footnote defining the term "parent" the first time that the term "parent" appears in A-101.

In addition, the definition of "parent" in the proposed footnote accompanying the text of section I.A.16 differs from the definition of parent in section VI.B.1, causing confusion. The DOE should use a consistent definition of "parent" that aligns with the definition in state education law. NY Education Law § 3212 states: "As used in this article, a person in parental relation to another individual shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because, they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown."

For consistency with section VI.B.1 and state law, we recommend that the DOE use the following language:
"Parent as used in this regulation means the student's ~~parent or guardian or any person in a parental or custodial relationship to the student, or the student if s/he~~ birth or adoptive parent, stepparent, legally appointed guardian, or custodian. A person is regarded as the custodian of another individual if s/he has assumed the charge and care of such student. Evidence of legal guardianship is not required to register a student. A parent need not accompany the student if the student is an emancipated minor or is 18 or older."

Finally, in defining "parent" in section VI, we recommend that the regulations state explicitly that a court order is not necessary for a parent or person in parental relation to enroll a child in school. We have received calls from families who have had difficulty enrolling their children in school because the school is insisting that a court order is needed, unnecessarily and illegally delaying a child's entry into school.

***Timeline for Arranging Placement*** – I.A.14

We oppose the proposed amendment in section I.A.14 that would change the timeline for the arrangement of placement for a school-aged student seeking admission at a school or Family Welcome Center from "by the next school day, if possible, but in no event later than 5 school days" to "within 5 school days." This change would violate state regulations, which state: "When a child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and shall begin attendance on the next school day, or as soon as practicable…" 8 N.Y.C.R.R. § 100.2(y)(3). When a student has no place to go to school, the DOE should treat the situation urgently and arrange a placement immediately. In most cases, it should not take 5 school days to locate a school placement for a student. We recommend maintaining the current language of A-101, requiring the DOE to arrange placement "by the next school day, if possible, but in no event later than 5 school days."

***List Transfers*** - I.A.19

Section I.A.19 states that students in temporary housing may not be transferred for poor attendance. Recognizing the importance of school stability, the federal Every Student Succeeds Act (ESSA) gives students in foster care the right to remain in their school of origin, even if the student has moved outside of the school's attendance zone, outside of the school district, or outside of the City or the State, unless doing so is not in the student's best interests. The best interests determination is made by the

agency with responsibility for the foster care placement or by the Family Court. As such, the DOE should add to section I.A.19 that students in foster care may not be transferred for poor school attendance.

In addition, there is an incorrect reference in the first sentence of section I.A.19. It should refer to section I.A.18, not to section I.A.17.

## ADMISSIONS POLICIES – SECTION II

### *Expanded Sibling Priority* – II.A.1.b

We strongly support the proposed amendment to section II.A.1.b that would extend the sibling priority in admissions decisions to students who have siblings currently enrolled in District 75 programs co-located in the same buildings as the schools to which students are applying. This amendment would help families of children entering non-District 75 schools for Pre-K or kindergarten who currently have very little chance of being placed in the same building as their siblings who attend District 75 programs to have the same sibling priority as other families.

While we are very pleased that the DOE is proposing to add this language in section II.A.1.b, this change should also be incorporated into the specific Pre-K admissions priorities listed in II.B and the specific Kindergarten admissions priorities listed in II.C. In the amended version proposed by the DOE, the regulations governing Pre-K and Kindergarten admissions priorities continue to state that they give priority to students "whose verified siblings are pre-registered or enrolled at the time of application submission and will be in grades K-5 in the school at the start of the following September" with no indication that the sibling priority also applies to students who have siblings currently enrolled in District 75 programs co-located in the same buildings as the schools to which students are applying.

In order to clarify the new sibling priority, we recommend either adding the language about District 75 each time the sibling priority appears or adding a footnote the first time it appears in the Pre-K Admissions section (II.B) and Kindergarten Admissions section (II.C) stating:
"<u>The sibling priority also applies to students who have siblings currently enrolled in District 75 programs co-located in the same buildings as the schools to which students are applying.</u>"

In addition, we recommend that the DOE further amend the regulations to require District 75 to prioritize placing students who require District 75 programs at schools

co-located in the same building as the schools in which their siblings are pre-registered or enrolled.

***Admissions Priorities to Achieve Greater Diversity*** – II.B.4, II.C.3

We support the proposed amendments that would allow schools to use other admissions priorities to achieve greater diversity, provided these priorities are approved by the Division of Early Childhood Education (for Pre-K programs), Office of Student Enrollment, and Office of General Counsel and that families receive notice of any additional priorities prior to the application processes. These amendments take a step toward promoting diversity in NYC schools and may encourage schools to think creatively about admissions priorities in order to create more diverse student bodies.

***Admission to Zoned Elementary and Middle Schools*** – II.D

In section II.D, footnote 5 cross references incorrect sections. It reads: "The policies in Section II.C govern admission to zoned elementary and middle schools with the exception of admission into pre-kindergarten which is governed by the policies set forth in Section II.A.2 above." However, it should instead read: "The policies in Section II.D govern admission to zoned elementary and middle schools with the exception of admission into pre-kindergarten which is governed by the policies set forth in Section II.B above."

***Capping Policies*** – II.G.3

In section II.G.3, we recommend clarifying the policy that schools must follow when a student seeks to enroll at the student's zoned elementary school when the school has capped enrollment. Given that a student is being denied the opportunity to attend his or her zoned school, we also recommend that the Office of Student Enrollment offer two or three school placements, whenever possible. We recommend replacing the language in section II.G.3.b with the following language:
"<u>In cases where students seek to enroll in a zoned school that has been approved for a grade level cap, the school shall enroll the student and notify the parent in writing that the school enrollment has been capped and that the student is being enrolled temporarily until the student has been assigned to a different school. The school shall notify the Office of Student Enrollment to identify a new school assignment. The Office of Student Enrollment will provide the family with two to three school options,</u>

whenever possible. The parent may visit a Family Welcome Center to determine other available options."

***Right of Return to Matched School Following Discharge from NYC Public Schools*** – II.H.3-4

The proposed amendments to sections II.H.3-4 address the right of a student who has been discharged from the NYC public school system to enroll in the middle school or high school where the student matched as a result of the middle school or high school admissions process. These sections would allow students who have been discharged from the NYC public school system and have been matched to a school as the result of the middle school or high school admissions process to enroll in the school to which they were matched at any time during the school year for which they were matched provided that they have not completed the academic year at another school. We recommend that the DOE allow more flexibility for students who are discharged from the NYC public school system in order to attend substance abuse, mental health, or other treatment programs so that students and families do not have to choose between seeking necessary treatment and keeping their middle school or high school match.

We recommend adding the following language to section II.H.3 and section II.H.4: "Students who complete the academic year at a substance abuse, mental health, or other treatment program have the right to be enrolled at the school to which they were matched until the end of the semester following their discharge from the treatment program."

**READMISSIONS – SECTION III**

***Readmission to School Upon Return to NYC Public Schools*** – III.A

We oppose the proposed amendment in section III.A that would replace the current right of students to return to their prior school following discharge from the NYC public schools "within one calendar year of discharge" with the right to return to their prior school "within the academic year of discharge." We are concerned that this change would provide no window of opportunity for reenrollment for students discharged, sometimes inappropriately, toward or at the end of the school year. We are also concerned that this policy change would create barriers to enrollment for students who are discharged from NYC public schools to participate in short-term treatment programs. We recommend that the DOE replace the proposed amendment with the following language:

"In general, students returning to NYC public schools ~~within the academic year of discharge from a NYC public school~~ have the right to return to their prior school following discharge from the NYC public schools until the end of the academic year that follows the academic year in which they were discharged in accordance with the following guidelines:"

At a minimum, the DOE should retain the language in the current version of A-101: "In general, students all have the right to return to their prior school following discharge from the NYC public schools within one calendar year of discharge in accordance with the following guidelines:" or should at least allow students one additional academic term to return after the academic term in which the student is discharged.

Similarly, we are concerned that the proposed amendment to section III.A.3 would give discharged students the right to return to their high school only "until the conclusion of the academic year that he/she was discharged, provided the student has not completed the academic year at another school." We have worked with students who have been discharged at the end of the year, sometimes inappropriately, and wish to return to their prior school the following school year. For example, we have worked with students discharged under codes 35/39 without proper notice and a Planning Interview whose families did not even learn about the discharge until after the end of the school year. We have also worked with students who have been placed for a brief period of time in foster care outside of New York City and have switched schools, but wish to return to their original school upon their return. In addition, students experiencing mental health, behavioral health, substance abuse, or other medical issues may need to be discharged from NYC schools on a short-term basis to participate in a treatment program. Under the proposed amendment, a student who left NYC public schools in May, for example, to participate in a 60-day treatment program would lose his or her right to return to the student's high school. Students and families should not be forced to forgo or delay necessary treatment until the end of a school year for fear of losing their child's seat in high school.

We have a few recommendations to address these concerns. First we recommend that section III.A.3 reference the DOE's Transfer, Discharge and Graduation Guidelines and Chancellor's Regulation A-240. Second, we recommend giving students the right of return until the conclusion of the academic year that follows the academic year in which the student was discharged. Third, we recommend special provisions for students who are getting needed treatment.

We recommend the following language for section III.A.3.a:
"A student who has been discharged in accordance with the DOE's Transfer, Discharge and Graduation Guidelines and Chancellor's Regulation A-240 from the NYC public school system has the right to return to his/her previous high school (including the specialized high schools, transfer schools and schools for newcomers and English Language Learners) until the conclusion of the academic year ~~that he/she was discharged, provided the student has not completed the academic year at another school~~ that follows the academic year in which the student was discharged. Students participating in a substance abuse, mental health, or other treatment program have the right to return to their previous school until the end of the academic year that follows the academic year in which the student was discharged or until the end of the semester following their discharge from the treatment program, whichever comes later."

***Right to Return to Gifted & Talented Programs*** – III.A.2

We appreciate that the proposed amendments clarify the right of return for students who were previously enrolled in Gifted & Talented programs, are discharged from NYC public schools, and return to NYC public schools. While these provisions are very helpful for children who move outside NYC and then return, they do not help young children who move within NYC. For example, a young student who enrolled in a Gifted & Talented program in Queens and then has to move to the Bronx may not be able to stay enrolled in Queens, particularly without transportation. We recommend that the DOE add regulations to give students who move within NYC the right to transfer to a Gifted & Talented program within the new district of residence if a seat is available or in another nearby district if a seat is not available in the new district of residence. Such provisions would be particularly beneficial to highly mobile students, including students who are homeless and students in foster care, who may need to move in the middle of the school year and should not lose the ability to participate in a Gifted & Talented program due to the distance from their new home to their original school.

**DETERMINATION OF RESIDENCE – SECTION VI**

***Affidavit from Unaccompanied Minors*** – VI.B.2

In section VI.B.2, which describes the requirement of certain individuals to provide an affidavit when seeking to register a student, the DOE is proposing to eliminate the sentence: "Unaccompanied minors are not required to submit this notarized statement or affidavit (see Section VIII.D)." We oppose this deletion and recommend that the

DOE retain the current language to make clear that schools should not be requiring unaccompanied minors seeking to enroll in school to submit affidavits.

## VERIFICATION OF RESIDENCY – SECTION VII

***Third Party Affidavits*** – VII.A.2

We oppose the proposed amendment to eliminate third party affidavits as a means of proving residency in section VII.A.2. This amendment would violate state regulations.

Under state regulations, documents that can be used to prove residency for school enrollment include a "statement by a third party relating to the parent(s)' or person(s) in parental relation's physical presence in the district." 8 N.Y.C.R.R. § 100.2(y)(3)(i)(b)(3). Last year, in response to this addition to the state regulations, the DOE updated A-101 to include third party affidavits. Now, the DOE is proposing to eliminate all references to third party affidavits. In order to comply with state regulations, the DOE must allow third party affidavits as proof of residency and should not require parents to produce two proofs of address in addition to a third party affidavit. Many children and youth in New York City, especially unaccompanied immigrant youth, live in shared living spaces where their caretaker is not the primary leaseholder or owner and cannot obtain a signed Address Affidavit from the primary leaseholder or owner. Therefore, it is important that the DOE accept a statement from a third party who has knowledge of the child or youth's housing arrangement as proof of residency in accordance with the Commissioner's Regulations.

Instead of eliminating the references to third party affidavits, the DOE should include the following language as the last sentence of VII.A.2:
"<u>If the parent is unable to obtain this type of Address Affidavit, the parent may submit a written statement by a third party attesting to the fact that the parent resides at a particular address ("Third-Party Affidavit", see Attachment 8).</u>"

***Verification of Residency for Students in Temporary Housing and Students in Foster Care*** – VII.A.5, VII.B.1

In section VII.A.5, the DOE is proposing to add "as defined by the McKinney-Vento Act" in the sentence "The Primary Leaseholder/Tenant need not submit an Affidavit of Residency for students who are homeless, as defined by the McKinney-Vento Act." This is the only mention of students who are homeless within the proof of

address section. In order to comply with the McKinney-Vento Act, this section should make clear that students in temporary housing do not need to submit proof of address to enroll in school. We recommend replacing the language of section VII.A.5 with the following language:
"Students in temporary housing do not need to submit proof of address to enroll in school pursuant to the McKinney-Vento Act. If there is a question about a student's temporary address or there is suspicion that the temporary address was falsified, the school may initiate an address verification investigation in accordance with Section VII.B of this Regulation."

As noted in our comments regarding section VIII below, under the federal Every Student Succeeds Act (ESSA), students in foster care also do not need to submit proof of address to enroll in school. We recommend that the DOE also include the following language in section VII.A:
"Students in foster care do not need to submit proof of address to enroll in school pursuant to the Every Student Succeeds Act. If there is a question about a student's address or there is suspicion that the address was falsified, the school may initiate an address verification investigation in accordance with Section VII.B of this Regulation."

In the Falsification and Investigation of Residency section, the DOE has proposed amending section VII.B.1 to add the following footnote (Footnote 11): "For students in temporary housing, this investigation and requirement of address documentation is subject to the safeguards set forth in McKinney-Vento." While we appreciate the DOE's acknowledgement of the need to comply with the federal McKinney-Vento Act, the DOE could provide far more clarity to schools and parents by including a brief statement of these safeguards. We recommend replacing the language of proposed Footnote 11 with the following language:
"For students in temporary housing where there is a question about the student's temporary address, the Field Support Center may verify the student's temporary address by conducting a home visit but shall not require submission of documentation as a condition of continued enrollment."

**SPECIAL SITUATIONS – SECTION VIII**

***Definition of Student who is Homeless*** – VIII.D.1.a

In section VIII.D.1.a, in the definition of a "homeless child," the DOE should add a footnote to the term "awaiting foster care placement" noting: "As of December 10, 2016, the McKinney-Vento Act definition of a student who is homeless will no longer include students "awaiting foster care placement.""

***Students in Foster Care*** – VIII.E

The DOE should amend A-101 to comply with the provisions related to students in foster care in the federal Every Student Succeeds Act (ESSA). *See* 20 U.S.C. §§ 6311(g)(1)(e) and 6312(c). For example, the DOE must permit students in foster care to remain in their school of origin unless a determination is made that it is not in the child's best interest to do so, even if the student has moved outside of the school's attendance zone, outside of the school district, or outside of the City or State. The DOE must also ensure that students in foster care can immediately enroll in a new school if remaining in the school of origin is not in their best interests, even if the student is unable to produce records normally required for enrollment.

We recommend that the DOE modify section VIII.E in the following ways to comply with ESSA:
"Students in foster care who change foster care placements ~~homes~~ are entitled to remain in their school of origin if it is in their best interests, even if they move to another school zone, school district, city, or state. If it is not in a student's best interest to remain at the student's school of origin, the student is ~~or are~~ entitled to enroll in any other ~~a~~ school ~~for which~~ that the student is geographically eligible to attend based on his/her new address. Students in foster care are entitled to immediate enrollment, even if they do not have the documents that are typically required for enrollment. The enrolling school must immediately ensure that the student's records are transferred from the previous school. For foster care students in high school who change foster care placements, ~~residence, if travel from the new foster home to his/her school presents a hardship~~, the student may be transferred to ~~a~~ any other school ~~closer to the new foster home~~ that the student is geographically eligible to attend based on the student's new address without being required to meet the threshold for a travel hardship transfer if it is in the student's best interest to transfer."

***Students Returning from Custody*** - VIII.G

We recommend that the DOE adopt the recommendations of the Mayor's Leadership Team on School Climate and Discipline to amend A-101 to ensure that high school students exiting detention, placement, or jail have the right either to enroll in their previous school or to choose from any other school with available seats and that middle school students have the right either to enroll in their previous school or to choose from any other school in their district with available seats. *See* **http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf** (page 32). The Leadership Team proposed these changes recognizing that students returning from such placements often experience difficulty when forced to return to

their previous schools and that access to transfers are needed to promote more engagement of students returning from custodial settings.

We recommend that the DOE make the following changes to section VIII.G:
"As with other students being readmitted to NYC public schools, students returning from a custodial facility within or outside of NYC ~~may~~ have the right to return to the school he/she attended prior to adjudication until the end of the academic year that follows the academic year in which the student entered the custodial facility ~~within the calendar year~~ in accordance with enrollment policies referenced in this document. ~~The Office of Student Enrollment, in consultation with the student and parent, may determine that the prior school is not appropriate and may therefore identify a different placement.~~ If a high school student returning from a custodial facility does not wish to return to the previous school placement, the student is entitled to choose from any other school with available seats. If a middle school student returning from a custodial facility does not wish to return to the previous school placement, the student is entitled to choose from any other school in the geographic district where the student lives that has available seats."

Thank you for the opportunity to comment on the proposed amendments to A-101. Please do not hesitate to contact us if you have any questions.

Respectfully,

Kim Sweet

Kim Sweet
Executive Director
(212) 822-9514
ksweet@advocatesforchildren.org

cc: Panel for Educational Policy