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

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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 regarding the February 2018 amendments to Chancellor's Regulation A-101. For more than 45 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. As such, we are well positioned to comment on the proposed amendments.

We are pleased with a number of the proposed amendments, including clarifying that parents can initiate transfers to schools that have bilingual programs for English Language Learners; adding the 3-K for All admissions process; changing the wording of the sibling priority to show consistently that sibling includes a student in a District 75 school co-located with the school to which the student is applying; and replacing the Placement Exception Requests process with a broader category of "transfers for other situations," including transfers that are not based on a documented hardship. At the same time, we have a few concerns with the proposed amendments and have recommendations for strengthening certain provisions of A-101. We provide our comments in more detail below.

***English Language Learner Program Transfers* – IV.A.3**

We support the addition of language to section IV.A.3 indicating that parents may initiate a transfer of an English Language Learner (ELL) to a Dual Language or Transitional Bilingual Education (TBE) program through the student's school or the Family Welcome Center (FWC). We have a few recommendations to strengthen this new language.

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 (SIFE). In our experience, families of ELLs 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.

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.

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. Without the instruction and support they need, ELLs are too often left behind. For example, in 2017, only 30 percent of ELLs graduated high school in four years.

Therefore, in previous comments, we had recommended that the DOE amend Chancellor's Regulation A-101 to state explicitly that parents have the right to seek a transfer to a school that has the program for ELLs that their children need. We are pleased that the DOE has added language to this effect.

We recommend further strengthening the proposed amendment in three ways to address the concerns we have experienced in our casework.

First, we recommend that A-101 state the process and timeline for the ELL transfer process when a parent initiates the transfer request. Having a clearly delineated process would provide important guidance to parents, school staff, and other professionals who are assisting families. We recommend that the DOE create a form, available in at least the ten most common languages, for parents seeking an ELL transfer to complete and return to the principal of the student's school or the FWC. We recommend that the DOE review the documentation, make a decision, and, in cases where the DOE grants the transfer, offer a new school placement within ten business days of the parent's request.

Second, we recommend that the DOE broaden the language of the transfer in order to encompass the full spectrum of programming the DOE offers for ELLs. The DOE offers a variety of programs for ELLs including Dual Language programs, TBE programs, programs for newcomers, and programs for SIFE. However, the current language of A-101 limits the transfer for ELLs to schools that have Dual Language or TBE programs.

Third, we recommend moving the new language from section IV.A.3 to section IV.B. Section IV.B delineates specific types of transfers that parents can request, including safety transfers and sports transfers, and the process for requesting such transfers. Schools, advocates, and parents reading A-101 often look to section IV.B to see the transfer options available to students and families.

We recommend the following language:
IV.B.10 English Language Learner (ELL) Program Transfers: A parent may request a transfer for an English Language Learner (ELL) into a school that has a Dual Language program, a Transitional Bilingual Education program, a program for students with interrupted formal education (SIFE), or another program that specializes in serving ELLs. Families can request an ELL program transfer by completing the DOE's ELL transfer form, with assistance from school staff or Family Welcome Center staff as needed, and submitting it to the principal of the student's current school or to the Family Welcome Center. If the parent submits the form to the school principal, the principal must forward the form to the Family Welcome Center Executive Director within one business day. The Division of English Language Learners and Student Support, the Field Support Center Director of ELLs, and the Superintendent must review the request, make a determination, and, where applicable, identify a new school placement within ten business days of the date the parent submitted the ELL transfer form.

A clearly defined ELL transfer mechanism under section IV.B, inclusive of the process and timeline, would help to ensure that parents are able to exercise their right to transfer their children to schools with bilingual programs and other programs specializing in serving ELLs.

***Transfers for Other Situations* - IV.C**

We support the DOE's amendments to the transfer procedures that allow for transfers without documentation on a case-by-case basis. There are instances where documentation cannot be obtained or requesting or requiring documentation could lead to retaliation or fear of retaliation. We also support the DOE's creation of the new transfer category of "Transfers for Other Situations." There are instances where a student needs to transfer to another school to make appropriate progress, but the student's situation does not fit squarely into a specific transfer category.

However, we strongly recommend that the DOE revise Section IV.B.5., addressing safety transfers, and Chancellor's Regulation A-449 on safety transfers, to allow for

safety transfers due to bullying, intimidation, or harassment without documentation on a case-by-case basis. First, Section IV.B.5 specifically lists complaints of bullying, intimidation, or harassment as a basis for a safety transfer, so directly modifying this provision will make it clear to students, families, and DOE staff that safety transfers based on these complaints will be considered without documentation on a case-by-case basis. Second, keeping all transfers due to bullying, intimidation, and harassment within the same transfer category – safety transfers – will result in more accurate data collection on safety transfers. This, in turn, will enable the DOE to examine the data for trends and allocate resources to make changes where they are needed.

***Registering Students for School* – VI.B.1**

We are concerned about the proposed amendments to section VI.B.1 regarding who can register a student for school. The amendment would require students to be accompanied by a birth or adoptive parent, step parent, legally appointed guardian, or foster parent when registering for school, unless the student is an emancipated minor, student 18 years of age or older, or unaccompanied youth. The proposed list of people who can register a student for school is far narrower than the list of people who may fall under the definition of "parent" in footnote 1 of A-101 and far narrower than what the regulation currently allows.

New York Education Law section 3212 requires the "person in parental relation" to the child to submit certain paperwork for school enrollment and ensure that the child attends school. Yet, the proposed amendment to A-101 would allow schools to turn away students accompanied by a person in parental relation who is not a birth or adoptive parent, step parent, legally appointed guardian, or foster parent.

We recognize that the intent of the amendment may be to separate out the category of persons in parental relation who are required to *submit an affidavit* when registering their child for school. However, the plain language of the proposed amendment to section VI.B.1 would not allow anyone other than a birth or adoptive parent, step parent, legally appointed guardian, or foster parent to register a child for school.

Thus, we recommend maintaining the original language of section VI.B.1 and ensuring that A-101 continues to state that a student must be accompanied by a person in parental relation when registering for school.

Furthermore, we have particular concerns regarding students in foster care. While foster parents accompany students in foster care when registering for school in some

cases, foster care case planners and education specialists register students for school in other cases. Furthermore, some students in foster care live in group homes and, therefore, do not have a foster parent to enroll them in school. The regulation should make clear that foster care agency employees are among those who may accompany students when registering for school.

We recommend adding the following language to section VI.B.1:
<u>For students in foster care, an employee of the agency responsible for the child's day-to-day care may also register the student in school.</u>

***Verification of Residency* – VII.A.4**

The proposed amendment to section VII.A.4 does not comport with federal and state requirements regarding the rights of students who are homeless. Federal and state law require that school districts immediately enroll children and youth experiencing homelessness even if they do not have the documents normally needed for enrollment. 42 U.S.C. § 11432(g)(3)(C)(i); N.Y. Education Law § 3209(2)(f)(2). In our experience, schools often ask families in temporary doubled-up housing situations to produce notarized affidavits verifying their shared housing situation as a condition of enrollment, in violation of federal and state law. While parts of A-101 state correctly that students in temporary housing have the right to immediate enrollment even without the documentation normally required, proposed section VII.A.4 and the Parent Affidavit of Residency (Attachment No. 3) state only that the *primary leaseholder* does not need to sign the affidavit, implying that the *parent* still needs to produce a signed and notarized affidavit. The regulation must make clear that such shared housing affidavits are not required for students protected by the McKinney-Vento Act.

We recommend the following changes to bring A-101 into compliance with the federal McKinney-Vento Act and related state law:
Section VII.A.4:
~~For s~~<u>S</u>tudents in temporary housing and students in foster care~~, the Primary Leaseholder/Tenant is~~ <u>are</u> not required to submit an Affidavit of Residency.

Parent Affidavit of Residency, Attachment No. 3:
In accordance with Chancellor's Regulation A-101, if a parent is subletting an apartment or home, or if more than one family shares a living space and there is only one leaseholder or homeowner, the parent must present a notarized "Address Affidavit" signed both by the primary leaseholder as well as the parent affirming that the family is residing in this home, and must attach the lease or deed. If a parent is

homeless, he or she does not need to ~~may~~ submit this form ~~without the primary leaseholder's affirmation and signature~~.

***Students in Temporary Housing* – VIII.D**

Section VIII.D.3.a
The language in section VIII.D.3.a regarding the placement of a student in temporary housing during a dispute does not comport with the federal McKinney-Vento Act. Under the McKinney-Vento Act, if a dispute regarding a student in temporary housing arises over eligibility, school selection, or enrollment, "the child or youth shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals." 42 U.S.C. § 11432(g)(3)(E). In contrast, the A-101 amendments state that, in the event of a dispute, the student should *either* remain at the school of origin or be immediately enrolled in the school in which enrollment is sought.

We recommend the following change to section VIII.D.3 in order to comport with federal law:
If there is a dispute or disagreement as to whether the student should remain in the school of origin or transfer to a new school which the student is eligible to attend based on entrance criteria, the student shall ~~either remain in the school of origin or~~ be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute. If the requested school does not have seat availability and/or is capped, the student will be enrolled in the designated overflow school or another school nearby.

Section VIII.D.4
We continue to be concerned that the current language of section VIII.D.4 does not align with the information that the Office of Pupil Transportation (OPT) needs in order to assign bus routes for students living in domestic violence (DV) shelters. OPT requires that the P.O. Box for the DV shelter be entered into ATS before routing a student for busing. Moreover, the school needs the shelter's P.O. Box to send mail to the parent. However, A-101 states: "The address of a student living in a domestic violence residence is to be kept confidential…by creating an address using the two-digit district number, followed by the letters 'DV' and by the county, borough, state and zip code. For example, District 1 = Box 01DV, New York, New York 10002." If a school were to enter the student's address as directed in A-101, OPT would refuse to bus the student and the school wouldn't have an accurate address where mail could be sent for the parent.

We recommend the following change in order to allow students in DV shelters to receive busing, which is critical for their school attendance:
"The address of a student living in a domestic violence residence is to be kept confidential by entering a post office address provided by the parent by entering the P.O. Box for the "House No," and "NONAME" for the "Street" in ATS. For example:

House No.: Box 3126
Street: NONAME
City: Bronx
State: NY
Zip: 10475

~~, or by creating an address using the two-digit district number, followed by the letters "DV" and by the county, borough, state and zip code. For example, District 1 = Box 01DV, New York, New York 10002~~."

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

Section VIII.E.1.b
We strongly recommend that the DOE delete the second sentence of the definition of "school of origin" for students in foster care, in order to promote school stability for students in foster care and align this definition with the definition of "school of origin" for students in temporary housing in section VIII.D.1.c. Federal and state law and regulations do not provide a definition of school of origin for students in foster care. However, given the important goal of maintaining a student's educational continuity and ties to the school community when the student is placed in foster care, there is a strong policy rationale for ensuring that students in foster care who change foster care placements can attend either the school they attended when placed in foster care or the school they last attended (or a new school if determined to be in the student's best interests).

The first sentence of the definition states that a school of origin means the school the student attended at the time of placement in foster care or the school in which the student was last enrolled, including a pre-K program. We support this definition. However, the second sentence states that, if a student's foster care placement changes, the school of origin would only be the school in which the child is enrolled at the time of placement change. This limitation is harmful to students in foster care.

For example, there may be a student who is placed in a foster home very far away from his or her original school (school #1) upon entry into foster care. Based on a

best interests determination, the student may be enrolled in a new school closer to the foster home (school #2). However, a few months later, the student may be moved to a new foster home that is closer to the student's original school (school #1) and far away from the current school (school #2). Under the DOE's proposed amendment, this student would have the right to attend the current school (school #2) or a new school (school #3), but would not have the right to return to the original school (school #1) because it is no longer considered a school of origin. However, the student may have attended the original school (school #1) for a much longer period of time and may have far stronger ties to school #1 than to school #2. We recommend that the school of origin include the original school so that the student retains the right to return to the school the student attended upon entry into foster care regardless of how many foster care placement changes the student undergoes.

We recommend the following definition for "school of origin" in section VIII.E.1.b: School of origin means the school the student attended at the time of placement in foster care or the school in which the student was last enrolled, including a pre-K program. ~~If a student's foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of placement change.~~

Section VIII.E.2.a

We continue to be concerned about the language in section VIII.E.2.a regarding the process for determining the best interests of a student in foster care. In New York State, *child welfare agencies*, not school districts, make the best interests determinations regarding the school placement of students in foster care. Since the DOE does not have the authority to make these determinations, we strongly recommend that the DOE delete section VIII.E.2.a.

Neither the federal Every Student Succeeds Act (ESSA) nor the federal Fostering Connections Act specifies who makes the best interests determination or the process for making this determination. However, New York State issued field memos in 2012, 2015, and 2016 clearly granting decision-making authority in this area to *child welfare agencies* in New York. In 2012, the New York State Education Department (NYSED), in conjunction with the New York Office of Children and Family Services (OCFS) and the New York State Office of Court Administration (OCA), issued a Field Memo entitled "Education Stability Guidance," stating: "The [Local Department of Social Services] LDSS or [Voluntary Agency] VA is vested with the responsibility for deciding when it is in the best interests of a child in foster care to stay in the current school." The memo is available at **http://nysteachs.org/media/INF_SED_EdStabilityGuidance2012.pdf**.

The memo makes clear that if the child welfare agency determines that it is in the child's best interests to remain at the school of origin, the school district must continue the child's enrollment in that school regardless of residency requirements, and if the child welfare agency determines that it is in the child's best interests to switch schools, the school district must immediately enroll the student in a new school. The memo also lists more than 20 factors the child welfare agency may consider when making this determination. Under the state guidance, the agency must consider input from the child's parent, when he or she is available, the child, when developmentally appropriate, and the child's case planner. The state guidance also encourages the agency to consult with school personnel.

More recently, in December 2016, NYSED and OCFS issued new guidance on educational stability for children in foster care based on the requirements of ESSA. It states that the law "requires child welfare agencies to collaborate with school districts to keep children in foster care in the same school in which they are enrolled when entering foster care or changing foster care placements, *unless the child welfare agency determines* that it is in the best interest of the child to transfer schools." *See* **http://www.nysteachs.org/media/FosterCareMemo_12_2_16_FINAL.pdf** (emphasis added).

New York State policy consistently makes clear that the child welfare agency is responsible for best interests determinations regarding school selection for students in foster care. As currently written, Section VIII.E.2 conflicts with state policy and creates confusion and uncertainty for students in foster care.

Therefore, we recommend deleting section VIII.E.2.a.

In addition, we recommend revising section VIII.E.2.b as follows:
If the child welfare agency ~~it is~~ determines~~d~~ that it is in the best interests of the student to change schools, the Family Welcome Center Executive Director or Director will effectuate a transfer to a school for which the student is eligible. The school shall immediately enroll the student, even if the student cannot produce records normally required for enrollment, and shall immediately contact the school last attended by the student to obtain relevant academic and other records.

Finally, we recommend revising section VIII.E.2.c as follows:
For high school students in foster care who change foster care placement, the student may be transferred to a school closer to the new foster home without being required to meet the threshold for a travel hardship transfer if ~~it is~~ the child welfare agency determine~~d~~s it to be in the best interests of the child to transfer schools.

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,

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cc: Panel for Educational Policy