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

February 24, 2020

Anthony Harrison
Office of Student Enrollment
New York City Department of Education
52 Chambers Street
New York, NY 10007

Via email: RegulationA-101@schools.nyc.gov

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

Dear Mr. Harrison:

Advocates for Children of New York (AFC) appreciates the opportunity to submit comments regarding the proposed amendments to Chancellor's Regulation A-101. For nearly 50 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 families navigate the education system. As such, we are well positioned to comment on the proposed changes to the regulation.

We are pleased with a number of the proposed amendments, including the revisions clarifying the pendency protections for students in temporary housing and the addition of language stating that students in temporary housing and students in foster care who move to a permanent home outside of New York City have the right to remain enrolled in their school of origin for the remainder of the school year, and one additional year if it is their terminal year at the school. We also appreciate that the DOE has taken steps towards codifying the Chancellor's December 2018 announcement providing students with accessibility needs admissions priority at accessible schools.

At the same time, we have a number of recommendations for further strengthening and clarifying certain provisions of A-101. We are providing our comments below.

Accessibility in Admissions (Section V.C)

We appreciate the addition of new language stating that in the kindergarten, middle, and high school admissions processes, students with verified accessibility needs will be awarded first priority at schools that meet their accessibility needs, provided they meet the admissions criteria of the program. Students with physical disabilities and their families have historically found it nearly impossible to make the same use of the City's school choice system as their peers without disabilities, given that fewer than one in five schools is fully accessible. In our experience, students with accessibility needs are often required to leave their neighborhoods and travel significant distances to school, are forced to make difficult trade-offs regarding school programming and curriculum due to limited options, or are matched with schools at which they are unable to access portions of the building, blocking them from full membership in the school community. The proposed amendments are an important step towards ameliorating these inequities while the DOE works to renovate and improve the accessibility of more City schools.

However, given the current dearth of fully accessible schools in many neighborhoods, we recommend strengthening this provision to better support the ability of children with accessibility needs to attend schools appropriately close to home. Many young children applying to 3-K, Pre-K, and kindergarten are zoned to schools that cannot meet the needs of students with physical disabilities; for such students, being awarded admissions priority within the zoned applicant pool will not result in an offer to a school that they can access.

To help ensure that children with accessibility needs entering 3-K, Pre-K, and kindergarten receive an offer through the admissions process to an accessible school within (or as close as possible to) the neighborhood where they live, we strongly recommend amending A-101 to give first priority to zoned *and in-district* applicants with accessibility needs applying to accessible schools and Pre-K Centers. Without this language, we worry that many children with accessibility needs will continue to match only with their inaccessible zoned school through the 3-K, Pre-K, and kindergarten admissions processes, causing significant frustration and disappointment for families. Students with accessibility needs should have sufficient priority to ensure they have equal access to—and can match with an accessible school through—the admissions processes.

With respect to middle and high school admissions, we urge the DOE to modify the proposed amendments to state that students with accessibility needs have admissions priority to all accessible options *regardless of their zone or district of residence*, in accordance with the policy announced by Mayor de Blasio and Chancellor Carranza

in December 2018. We were very pleased that the December 2018 announcement included the policy that "All accessible middle and high schools will prioritize students with accessibility needs regardless of zone or district of residence." Without our suggested clarification, the proposed regulation's requirement that students "meet the admissions criteria of the program" could be interpreted as meaning the student must live in the zone/district, if it is a zoned program. As such, it could be construed as rolling back the announcement that excited so many students, families, and advocates. For middle and high school, the DOE should, at a minimum, codify the December 2018 policy.

We recommend revising Section V.C as follows:

> In the 3-K, pre-K, and kindergarten admissions processes, children with a verified accessibility need will be awarded first priority for admissions at schools within their district of residence identified by DOE as meeting their accessibility needs, regardless of their zone of residence. In the middle and high school admissions processes, children with a verified accessibility need, who meet the admissions criteria of the program, will be awarded first priority for admissions at schools identified by DOE as meeting their accessibility needs, regardless of their zone or district of residence.

Finally, we urge the DOE to consider parental needs for accessible school locations. Parents with physical disabilities are often forced to choose between their own ability to enter and access all portions of the school building and the educational interests of their children, leaving them unable to participate in parent-teacher conferences, attend school performances and activities, and otherwise be part of the school community. We suggest the regulation be amended to include a priority for student enrollment at accessible schools when a child's parent/guardian has accessibility needs that must be met in order for them to be able to participate in their child's education.

Students in Foster Care (Section VII.C)

We are pleased to see the proposed addition of Section VII.C.3, which clarifies that students who are discharged from foster care to a permanent home outside of New York City have the right to remain in their school of origin for the remainder of the school year and one additional year, if that additional year is their terminal grade in the school. This change will align this provision of the Chancellor's Regulation with NYS Education Law §3244 and help support permanency for students and their families as they transition out of foster care.

Section VII.C.1.b — School of Origin

We are also pleased about the proposed additional language in this sub-section, which would allow a student in foster care to request any school in which they had been previously enrolled, should it be determined that they need to change schools. The possibility of returning to a previous school, rather than being forced to enroll in their zoned or local school, could be hugely beneficial to a student in foster care, particularly students who change foster care placements multiple times. However, under the proposed language, the student's ability to enroll in a previous school would be contingent on "eligibility and seat availability." Given this significant qualification, we continue to believe that the DOE's definition of school of origin in A-101 conflicts with state education law and needs to be changed so that a student in care has the right to attend the school they attended at the time of their placement in foster care.

In April 2018, New York State enacted a law clarifying that a child's school of origin includes the school they attended at the time of placement in foster care. Section 3244.1.g of the state education law reads, "The term 'school of origin' shall mean a public school that a child or youth attended at the time of placement into foster care, or the school in which the child or youth was last enrolled, including a preschool or a charter school." The New York City Chancellor's Regulations must comport with state law. We therefore urge the DOE to delete the second sentence of the definition of "school of origin" for students in foster care in Section VII.C.1.b in order to align the definition with the definition of "school of origin" in NYS Education Law §3244, align this definition with the definition of "school of origin" for students in temporary housing, and promote school stability for students in foster care. Furthermore, as a policy matter, students who have had to change schools due to their placement in foster care should not be forced to enroll in yet another school when they return home or change foster homes if the school they previously attended, although considered full by the DOE, is a feasible option.

We recommend the following definition for "school of origin":

> b. School of origin means the school the child attended at the time of placement in foster care or the school in which the child was last enrolled, including a preschool program. ~~If a child'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. However,~~ ~~o~~ Once a best interest determination has concluded that the child should transfer to a new school, any schools in which the child was previously enrolled can be requested and will be considered, pending eligibility and seat availability.

We also recommend the following change to subsection VII.C.2, to make it clear that a student in foster care can *return* to their school of origin, and not just remain there:

> 2. Students in foster care who change foster care placements are entitled to ~~remain in~~ attend their school of origin, even if they move to another school zone, district, city, or state, unless a determination is made that it is not in their best interest to do so.

Section VII.C.2 — Best Interest Determination

We recommend that the DOE revise its description of who determines which school a child in foster care will attend, based on the child's best interests, to align the Chancellor's Regulations with the requirements of state law, the DOE's own foster care guidance, guidance from New York State, and current practice in New York City.

Under the current Chancellor's Regulations, the Administration for Children's Services (ACS) makes the best interest determination in collaboration with the DOE. However, state law squarely puts the best interest determination on the social services district (ACS, in New York City) or the foster care agency, not the school district. Section 3244.1.g of the state education law reads:

> 2. Choice of district and school. a. Notwithstanding any other provision of law to the contrary, the social services district, in consultation with the appropriate local educational agency or agencies, shall designate either the school district of origin or the school district of residence within which the child in foster care shall be entitled to attend in accordance with *a best interest determination made by the applicable social services district or voluntary authorized agency*… (emphasis added).

In addition, the DOE's recently released **Foster Care Guide** states that the best interest determination "should be made by the foster care agency case planner, with input from the school of origin, in conference with the ACS child protective specialist, the parent, and the student." Unfortunately, the proposed amendments do not correct the language of A-101 to clarify that ACS/the foster care agency is the entity with authority for this decision.

Furthermore, the Chancellor's Regulations contradict state guidance, and continue to include the foster parent as one of the people whose input must be sought in making the best interest determination. The Recommended Best Interest Determination

Document, included in the State's **Students in Foster Care: Tool Kit for Local Education Agencies and Local Social Services Agencies**, lists whose input *must* be included in the best interest determination, as well as who should be *consulted*. Input from the child's caseworker, parent(s), school, and the child themselves, if developmentally able, must be sought in making the best interest determination. Others involved in the child's life, including the foster parent, child's attorney, teachers and other significant adults may be involved. The form goes on to list a number of factors to consider when making a best interest determination, including the child's and the parent's preferences, but not the foster parent's. This distinction makes sense, given that the child will have just entered foster care or moved foster homes, and, unless they are a relative, the foster parent likely knows nothing about the child, their school performance, or their previous school setting, and may have a bias toward enrolling the child in their local school. It is important that school staff understands these differences and the limited role foster parents should play in school placement decisions when children first enter their home.

Given state law, this guidance from the city and state, and the current practice in New York City, where foster care agencies make the best interest determination (unless the child is at the Children's Center or in another pre-placement setting, and a foster care agency has yet to be assigned) and get approval for school transfers from ACS, with input from the child, the child's parent(s), and school personnel, we recommend that the regulation be changed to read as follows:

> The determination should be made by the foster care agency and/or ACS, ~~in collaboration with the DOE~~, with input from the school of origin, the caseworker, ~~foster care agency~~, ~~the foster parent,~~ the child, and the birth or adoptive parent or person with educational decision-making rights, as appropriate.

We also recommend that the DOE revise the language used in Section VII.C.3 regarding a student's permanent placement outside of New York City. The phrase "permanent placement" should replace the phrase "non-foster care situation," in keeping with common terminology used in the child welfare context. Thus, the section should read as follows:

> 3. If a child in foster care is currently enrolled in the grade preceding the terminal grade of the school and moves to a ~~non-foster care situation~~ permanent placement outside of NYC, they have the right to remain enrolled through the end of that terminal grade in their school of origin without paying non-resident enrollment tuition.

Finally, we recommend that the DOE add a Section VII.C.4 to the Chancellor's Regulations, stating that students in foster care are entitled to protections in the 3-K, pre-K, kindergarten, middle school, and high school admissions processes, similar to the protections for students in temporary housing enumerated in Section VII.B.6. This addition would help clarify geographic admissions priority for students in foster care, especially students completing middle and high school applications who elect to continue attending school in their community school district or borough of origin.

We recommend adding a new Section VII.C.4 that says:

> 4. Students in foster care participating in admissions processes for articulating grades (3-K, pre-K, kindergarten, 6th grade, and 9th grade):
>
> a. Are to be afforded equal admissions priority as other children living in the same area; and
>
> b. Retain the same level of geographic admissions priority to the school or program even if their foster care placement is at an address that would otherwise render them ineligible to apply or be placed at that school, even if they move to a foster care placement outside of NYC.

Safety Transfers (Section IV.B.5)

We appreciate the DOE's work in recent years to strengthen the safety transfer provisions in A-101. These amendments have provided important guidance to families, DOE offices, and school communities on the process for seeking such a transfer. However, we continue to echo our prior recommendation that the DOE provide a few additional examples of documents that families may submit that can help the DOE determine whether to grant a safety transfer. Given that Section IV.B.5.b[1] lists the docket number or court documentation as documents that schools may provide in requesting safety transfers, we recommend adding these documents as examples of documents that families may provide when requesting a safety transfer. Second, we recommend adding hospital or other medical records since these are records that families may have that would shed light on the need for a safety transfer. Finally, given the rise of social media, any threats of harm made via electronic or other communications should be considered and should be listed as examples of documentation that families may provide.

[1] In the proposed amendments to the regulation posted on the DOE website, Section IV.B.5 is missing sub-part (b); it skips directly from (a) to (c). In our comments, we use the numbering scheme from the June 2019 version of the regulation, which is correct.

We recommend modifying Section IV.B.5.a.ii[2] 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 or medical records, social media or other communications, a written statement by the child or parent, or other documentation supporting the transfer request.

In addition, we recommend that the DOE 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.5.b, we recommend that the DOE add the following bullet point:

> Other documentation, such as hospital or medical records, social media communications, or a statement by the child or parent, if any of these documents is applicable and available.

We appreciate that, in a prior amendment of A-101, the DOE added language to clarify that a family can request a safety transfer for an incident(s) that took place around but not on school grounds, or for which the school has no occurrence reports or other records, but the family believes that the child's continued presence in the school is unsafe for the child, including allegations of bullying or harassment. There are instances in which a student's vulnerability is not documented or requesting documentation could lead to retaliation or fear of retaliation. We appreciate that the DOE is encouraging Family Welcome Centers and District 75 Offices to work with the family to process transfer requests in these instances.

However, we continue to strongly recommend that transfer requests in situations in which a family believes the child's continued presence in school is unsafe for the child be processed as safety transfers, even without documentation. Keeping all transfers related to safety, including bullying, intimidation, and harassment, within the same transfer category—safety transfers—will result in more accurate data collection on safety transfers. This will give the DOE more accurate data to allocate resources to make changes when they are needed. We recommend that the language of the first sentence in Section IV.B.5.f be amended to make clear that Family Welcome Centers and District 75 Offices can process a safety transfer request if the school has record of the incident(s) but does not have an occurrence report or other documentation.

[2] Similarly to the problem described in FN 1, Section IV.B.5.a is missing sub-parts (i) and (ii); numbering starts with (iii) and this language thus appears as IV.B.5.a.iv.

We recommend modifying IV.B.5.f in the following way:

> If the child or family is requesting a safety transfer for incident(s) that took place around but not on school grounds or for which the school has no occurrence reports or records, but the family presents other information indicating ~~believes~~ that the child's continued presence in the school is unsafe for the child, the Family Welcome Center Executive Director or Director or the District 75 Office may ~~work with the family to submit a different type of transfer request, such as a Guidance Transfer (see Section IV.B.9) or Other Transfer (see Section IV.C), and arrange the transfer~~ grant a safety transfer based on information provided by the family. This situation may include allegations of incidents of bullying or harassment of which the school has no record. Nothing precludes the Family Welcome Center Executive Director or Director or the District 75 Office from working with the family to submit a different type of transfer request, such as a Guidance Transfer (see Section IV.B.8) or Other Transfer (see Section IV.C), and arrange the transfer.

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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