



# Advocates for Children of New York

Protecting every child's right to learn

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### Re: **Comments Regarding the ACS-DOE Joint Policy on the Reporting and Investigating of Educational Neglect**

Advocates for Children of New York (AFC) appreciates the opportunity to submit comments to the draft ACS-DOE Joint Policy on the Reporting and Investigating of Educational Neglect. For 50 years, AFC has worked to ensure a high-quality education for New York City students who face barriers to academic success, focusing on students from low-income backgrounds. Since 2001, AFC's Project Achieve has advocated for educational opportunities for students involved with the child welfare system, and each year, we collaborate closely with provider agencies and birth and foster parents to advocate on behalf of hundreds of students and families involved with ACS. Our Education Hotline gets dozens of additional calls each year from parents facing allegations of educational neglect, as well as schools and service providers tasked with supporting students struggling with chronic absences. As such, we are well positioned to comment on the draft policy and welcome the chance to do so.

Comments are provided below. Suggested deletions are noted by ~~strikethrough~~; additions are noted by underlining.

## POLICY

### A.2 – School Attendance

This section explains the compulsory school age in New York City, but does not accurately reflect NY Education Law § 3205(2)(c)(i) or Chancellor's Regulation A-210. Both require five-year-old children to attend school on a full-time basis *only* if their parent elects to enroll them in kindergarten. The parent can choose to enroll their



child in first grade the following September. This distinction is critically important for school and CPS staff to understand, so they don't inappropriately flag a parent for educational neglect if they have a five-year-old child who is not enrolled in school. As such, this subsection should be amended to read:

Each minor child from five (5) to seventeen (17) years of age in New York City is required to attend school on a full-time basis. Children who turn five (5) on or before December 31 of the school year are required to attend school at the beginning of that school year, unless their parents elect to enroll them in first grade the following school year. Students who turn seventeen (17) on or after July 1 must complete the school year in which they turn seventeen (17)....

### **B.1 – Educational Neglect**

We have several recommended changes to this section of the draft policy. In the first paragraph, we have plain language suggestions to make the content simpler for the reader to understand. We recommend amending this paragraph to read:

Educational Neglect is ~~considered to be~~ the impairment or imminent danger of impairment ~~as a result of the failure of~~ caused by a parent or person legally responsible (PLR)'s failure to provide their child with full-time education instruction, and to ensure their child's prompt and regular attendance, notwithstanding the efforts of the school district or child protective agency to ameliorate such alleged failure prior to the filing of the petition.

Our recommended changes in Section B.1.a come from our experience advocating on behalf of students with attendance challenges, often due to their unmet educational needs. We commonly see instances of school avoidance because students are struggling academically, need mental health services, or are experiencing social-emotional concerns such as bullying. Providing interventions like tutoring, behavioral supports, or mentoring may address attendance issues in many instances and should be a part of the policy.

We also suggest changes to the language in this paragraph to distinguish situations where a student needs a transfer because of distance or safety concerns from situations where a child may need a different school setting entirely, such as a bilingual program, transfer school, or new special education setting. Given how challenging it can be for families to get a transfer or navigate these processes on their own, the policy should direct schools to help families secure a new school placement directly, rather than simply exploring other schools, if that would address the student's or family's underlying needs. Finally, we recommend including electronic communications as a



suggested form of outreach to parents, as referenced in Section III.G of Chancellor’s Regulation A-210, as well as coordination with DOE Students in Temporary Housing staff. Therefore, Section B.1.a of this draft policy should be revised as follows:

Examples of efforts include but are not limited to: letters, or calls, and/or electronic communications from the school to the parents; school conferences; provision of at-risk or intervention services (e.g., Academic Intervention Services (AIS), Response to Intervention (RTI), tutoring, or counseling); attempts to change busing or identify alternative transportation options; mentoring supports; home visits by school personnel; linkage to medical or mental health care, if appropriate; helping families secure exploration of alternative school placements or school transfers; coordination with shelter staff, DOE Students in Temporary Housing staff, or Community Based Organizations (if applicable); seeking assistance from other family members; and referrals to ACS preventive agencies.

#### **B.2.**

We recommend including a footnote at the beginning of this section, right after the phrase *[i]n addition to excessive unexcused absences or tardiness*, that gives examples of what is meant by “excessive” unexcused absences. The footnote should state:

For examples of how many unexcused absences may be “excessive,” see the situations that trigger a Form 407 attendance investigation under Section IV of Chancellor’s Regulation A-210, particularly sections IV.B.2 and IV.B.3.

#### **C.2 – School Personnel as Mandated Reporters**

We recommend deleting the second sentence in Section C.2. This sentence restates the meaning of educational neglect, which is defined in Part B above, but leaves out the important caveat that the school district must attempt to ameliorate the attendance problem. We recommend amending this section to read:

Mandated reporters are required to make a report of educational neglect to the SCR when there is reasonable cause to suspect educational neglect, as described above. A call must be made to the SCR whenever a parent or PLR fails to ensure their child’s prompt attendance in school or keeps the child out of school for impermissible reasons and the unexcused, excessive absences are the direct cause of impairment or imminent impairment to the child’s educational progress.

#### **D.1 – ACS Investigation of Education Neglect Cases**



Section D.1.a lists the documents CPS should review when investigating an educational neglect allegation. The recent ACS Interim Policy in Effect, *School Continuity and Stability for Children in Child Welfare Foster Care Placements*, also includes a list of education records CPS are encouraged to gather at the start of an investigation. We recommend adding language to this draft policy so that it more closely matches the language in the School Continuity policy. Furthermore, the draft Educational Neglect policy uses the term “Individual Education Plan” when the correct term under 8 N.Y.C.R.R. § 200.1(y) is “Individualized Education Program.” As such, this section should state:

... Part of this assessment must include interviews with relevant DOE personnel, as well as reviewing the collection of reports and other documentation from DOE. This may include, but is not limited to, reviewing the attendance record (RISA), iLog, report cards, current transcript (for high school students), Individualized Education ~~Plan~~ Program (IEP) or 504 Plan and supporting documents, and blue cards.

Additionally, we suggest making the following changes to Section D.1.b. to simplify the language:

In many reports of educational neglect, the child may return to school once ACS begins its investigation. Regardless, the report must ~~still~~ be fully investigated to determine if the underlying cause for the child missing school is still present and, therefore, creating continued risk of impairment to the child’s education. The child’s return to school does not necessarily mean that the allegation ~~is to~~ should be unsubstantiated. If the investigation reveals that all four elements of Educational Neglect are present, the allegation of Educational Neglect must be substantiated, and the SCR report ~~be~~ indicated.

### **D.3 – Contacting the DOE Designated Liaison or Other Resources**

Our recommended revisions to this section are meant to facilitate communication between the school, CPS, and other stakeholders supporting the family; include the school’s responsibility to try to ameliorate the attendance issues, as required by §1012(f)(1)(a) of the Family Court Act; and align Section D.3.c with Section V.B of Chancellor’s Regulation A-750.

As currently written, the policy directs CPS to gather documentation of the school’s efforts to contact the family as part of an educational neglect investigation; however, Section B.1 of the policy makes clear that merely contacting the family is not enough – the school also must make efforts address the underlying causes of the student’s absences. We recommend including language in the policy to that effect. Furthermore,



the draft policy states that the Designated Liaison is responsible for facilitating communication between the school, CPS, and foster care agency, but it seems equally likely that the family being investigated would be working with a preventive agency. Although Chancellor's Regulation A-750 Section V.A only directs Designated Liaisons to facilitate communication with foster care agencies, we recommend that this policy include both types of agencies. Therefore, Section D.3.a of the draft policy should be amended to read:

...The Designated Liaison will collect and provide all relevant school documentation, including ~~the~~ efforts made by the school to contact the family regarding the child's absence and documentation of any efforts made by the school to address barriers to school attendance. The Designated Liaison will also assist in facilitating inter-agency communication and the sharing of information between the school, CPS, and any preventive or foster care agencies working with the family.

We further recommend adding a time frame to Section D.3.b to provide guidance to CPS – and a deadline for Designated Liaisons – on what is considered a “reasonable” amount of time for the Liaison to get in touch with the CPS before CPS contacts the Principal's office. Directing Designated Liaisons to respond in two school days, for example, should help CPS progress with their investigation and provide some accountability to the Liaison.

Finally, we recommend changes to paragraph c of this section to better align it with Section V.B of Chancellor's Regulation A-750, which makes the Director for Student Services at the Borough Offices (not the Executive Directors or a designee) responsible for supporting schools in child abuse and maltreatment matters. The policy as drafted also references the position of “Deputy Director,” but we do not see this position listed in current BCO staff lists. It is our understanding that there have been staff reductions at the BCOs this year; therefore, we suggest checking with the DOE to confirm this paragraph of the draft policy accurately reflects current BCO staffing and job responsibilities. We recommend amending Section D.3.c to read:

In addition to Designated Liaisons in schools, there are Borough Citywide Offices (BCOs) to provide additional support in responding to child abuse and maltreatment matters. The BCO Directors for Student Services, and designee(s), are responsible for serving as liaisons with the DOE Citywide Coordinator for Child Abuse and Neglect Prevention, SCR, CPS, community agencies, and other service providers, as well as providing provide support to school administrators, the Designated Liaisons, and School Child Abuse and Maltreatment Prevention and Intervention Teams. ~~Every district has a BCO~~



~~Deputy Director to provide support for the schools in that district.~~

Section D.3.c.b refers the reader to the online BCO Directory to find contact information for Directors of Student Services. We suggest listing the Borough/Citywide Offices look-up website, rather than the BCO Directory, since staff outside the DOE may not know which BCO supports a particular school. The lookup site is available at <https://sites.google.com/a/strongschools.nyc/contacts/>.

### **E – ACS & DOE Collaboration During the Investigation**

Footnote 20 in paragraph 1 of this section references the full hyperlink for the BCO Directory; however, it should cite to Section II.A of Chancellor’s Regulation A-750.

### **F.1 – Continuing the Investigation**

This section explains the “preponderance of the evidence” standard and advises CPS to distinguish between truancy and educational neglect when making their deliberations. We recommend adding further information advising CPS to distinguish educational neglect from truancy and school avoidance/refusal/phobia. All reflect different circumstances and require very different interventions. We recommend revising this paragraph as follows:

... While investigating educational neglect allegations, CPS must make sure to distinguish educational neglect from truancy, school avoidance, school refusal, or school phobia. Truancy is a situation where a child is refusing to attend school despite the parent or caretaker’s appropriate and reasonable attempts to ensure that the child attends school on a regular basis. See “Section G” below for more on Truancy. School avoidance, school refusal, or school phobia refer to situations where a child experiences such significant anxiety around attending school that they may repeatedly avoid attending school or staying there.

### **F.2**

As currently drafted, it appears this section of the policy intends to highlight the fact that students with poor attendance may be missing needed IEP services as a result of not being in school. It’s also common, however, for students not to receive their mandated IEP services because of a shortage of specialized staff. Last school year, 17% of students with IEPs in DOE schools were not in the correct classroom setting for at least part of the school day,<sup>1</sup> and many more did not receive all their mandated related services. Other students may need to be referred for a re-evaluation for

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<sup>1</sup> NYC Department of Education InfoHub, Special Education Reports, *School-Aged Children Special Education Data Report* (Nov. 2, 2020), at <https://infohub.nyced.org/reports/government-reports/special-education-reports>.



additional or different services if their current program is no longer appropriate. This lack of services or placement in the wrong setting can compound the impact of a student's disability and may contribute to attendance difficulties. It's important the draft policy reflects these mitigating factors as well. We therefore recommend amending Section F.2 of the policy to read:

When a CPS is investigating an allegation of educational neglect, it is critical for the CPS to determine and document if the child is a special education student with an Individualized Education ~~Plan~~-Program (IEP). A student with an IEP ~~and~~ who is reported to be excessively absent or late, may not be getting the services required by the IEP (e.g., speech therapy, mental health counseling, etc.), either because they are missing their related services sessions or because the school has a shortage of providers. They may also need to be re-evaluated for additional services or a different program if their current supports are no longer appropriate. Additionally, the fFailure to consent to ~~provide~~ special education services is *not* a basis for a finding of educational neglect, as parents have an affirmative right under the Individuals with Disabilities Education Act (IDEA) to withhold and/or withdraw consent to such services. If the CPS discovers a child is not receiving medically necessary services due to excessive absenteeism or lateness, an allegation of Lack of Medical Care may be added to the report.

### **F.3**

This paragraph directs the CPS to consider the parent's actions in response to their child's absences when determining if there is sufficient evidence to substantiate the educational neglect allegation. It does not, however, direct them to consider the school's response to the absences, as required by §1012(f)(1)(a) of the Family Court Act and explained in Section B.1 of this draft policy. We therefore recommend revising Section F.3 of this policy so it reads:

...The CPS must consider whether the parent/PLR knew or should have known about the child's absenteeism, ~~and~~ whether the parent/PLR failed to take reasonable action to resolve the issue, and whether the school made efforts to ameliorate the student's absences.

### **F.4**

We further recommend changes to Section F.4 of the draft policy, so the adverse effects described related to literacy can apply broadly to students of all ages.

...Each child is different and the potential for educational harm varies according to the age, developmental abilities, and intellectual capacity of the





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child. Examples of adverse effect include, but are not limited to:

- a. Failure to acquire basic skills for the grade level in question (e.g., significantly delayed literacy skills ~~functional illiteracy~~)
- b. Retention at the same grade level due to failure to acquire basic skills
- c. Failing grades at the end of a marking period

### **G.1 – Truancy**

Consistent with the rest of our comments, we recommend plain language edits to section G.1 of the draft policy to read:

Truancy is ~~considered to be~~ a child's refusal to attend school despite the parent's appropriate and reasonable attempts to ensure that the student attends school on a prompt and regular basis.

Thank you again for considering our recommendations. Please feel free to contact Erika Palmer, Supervising Attorney at Advocates for Children of New York, at [epalmer@advocatesforchildren.org](mailto:epalmer@advocatesforchildren.org) if you have any questions or would like additional information.