



Advocates for Children of New York

Protecting every child's right to learn

March 5, 2021

Michael Hilton
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007

Via email: A701@schools.nyc.gov

Re: Proposed Amendments to Chancellor's Regulation A-701 – School Health Services

Dear Mr. Hilton:

Advocates for Children of New York (AFC) appreciates the opportunity to submit comments regarding the proposed amendments to Chancellor's Regulation A-701 – School Health Services. 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. We speak out for students whose needs are often overlooked, such as students with disabilities, students who are homeless, students in foster care, and students with mental health needs. 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 appreciate the DOE's efforts to update and revise A-701. We are focusing our comments on a few recommendations for strengthening A-701, including several areas where the DOE must make changes to comport with federal and state law.

II.A.2.a – Special Education Evaluations

The proposed amendments to section II.A.2.a (“Special Education Evaluations”) do not comport with federal and state requirements regarding the rights of students with disabilities. Under federal and state law, the NYC Department of Education has an obligation to conduct special education evaluations to determine whether a student has a disability and the extent of their needs. 20 U.S.C. §1414(a)(1); N.Y. Educ. Law § 4402(1)(b)(1); 8 N.Y.C.R.R. § 200.1(aa). These special education evaluations must

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include a physical examination and must be done “at no cost to the parent.” 8 N.Y.C.R.R. § 200.1(aa), § 200.4(b)(1).

Yet, the proposed amendments to A-701 suggest that the DOE would merely be responsible for requesting that the parent get a physical examination form completed by a physician. Furthermore, the proposed amendments would add language explicitly eliminating the possibility for a DOE Office of School Health (OSH) physician to conduct the physical examination portion of a special education evaluation. These amendments would place the responsibility solely on parents to obtain a physical examination as part of a special education evaluation, despite the DOE’s legal obligation. While some parents may choose to provide a form from a student’s primary care provider to the DOE as part of a special education evaluation, the DOE is ultimately responsible for ensuring the completion of evaluations, including physical examinations, at no cost to parents and cannot merely ask parents to find a doctor to complete a physical examination form. This legal requirement helps ensure that access to special education evaluations and services is not dependent on a family’s resources or ability to get forms completed by professionals outside the school system. Under the proposed amendments, recognizing that families may have difficulty obtaining documentation of medical examinations, OSH physicians would continue to perform physical examinations, when needed, *for new entrants to school outside the context of special education evaluations (see II.A.1)*, but inexplicably would not perform physical examinations legally required as part of a special education evaluation (*see II.A.2*).

Since the DOE is responsible for completing special education evaluations, including physical examinations, the DOE must reject the proposed amendments to section II.A.2 shifting the responsibility for physical examinations from the DOE to parents and should add the following language to the end of the paragraph:
These examinations may be performed by OSH physicians.

III.B.4 – Students in Temporary Housing

We are recommending changes to the proposed paragraph regarding students in temporary housing in proposed section III.B.4 to better align A-701 with Chancellor’s Regulation A-780, N.Y. Education Law § 3209, and the federal McKinney-Vento Act, all of which require that the enrolling school allow the student in temporary housing to fully participate in school while the necessary documentation is obtained. 42 U.S.C. § 11432(3)(C); N.Y. Educ. Law § 3209(2)(f)(2); Chancellor’s Regulation A-780(III)(A)(1)(a)(vi). These laws also make clear that it is the enrolling school’s responsibility, not the parent’s responsibility, to request the records from the prior school attended. *Id.*



Therefore, we recommend revising the proposed paragraph about students in temporary housing so that it reads:

Pursuant to the McKinney-Vento Act, as well as Chancellor’s Regulation A-780, a student in temporary housing (STH) shall be immediately enrolled in school even if the student is unable to provide documentation that they meet immunization requirements. A student in temporary housing must be allowed to participate fully in school activities while necessary documentation is gathered. The enrolling school must immediately contact the school last attended by the student to obtain relevant immunization records. ~~The school must assist the parent to help obtain such documentation.~~ If immunization records cannot be obtained, the parent, in consultation with the School-Based STH Liaison(s), should be referred to a walk-in immunization clinic for assistance.

III.B – Students in Foster Care

We urge the DOE to amend section III.B to include the rights of students in foster care. The federal Every Student Succeeds Act requires school districts to immediately enroll students in foster care when it is in their best interest to change schools, even if the student cannot produce the records normally required. 20 U.S.C. § 6311. Section VII.C.2 of Chancellor’s Regulation A-101 also addresses enrollment for students in foster care, stating: “The school shall immediately enroll the [student in foster care], even if the child cannot produce records normally required for registration and enrollment, and shall immediately contact the school last attended by the child to obtain relevant academic and other records.” However, while the proposed amendments to A-701 include the right of students in temporary housing to enroll in school even without documentation of immunization requirements, the proposed regulations do not include any information about students in foster care. Therefore, we strongly recommend adding a paragraph to proposed section III.B that affirms the enrollment rights of new students in foster care, similar to students in temporary housing.

We recommend adding a new subsection (5) to section III.B:

5. Pursuant to the Every Student Succeeds Act, as well Chancellor’s Regulation A-101, a student in foster care shall be immediately enrolled in school even if the student is unable to provide documentation that they meet immunization requirements. A student in foster care must be allowed to participate fully in school activities while necessary documentation is gathered. The enrolling school must immediately contact the school last attended by the student to obtain relevant immunization records. If immunization records cannot be obtained, the parent, foster parent, or agency should be referred to a walk-in immunization clinic for assistance.



Section V – Emergency Medical Situations

We agree that A-701 should be amended to update first aid and emergency care protocols, including protocols for calling 911 and transporting students to the hospital. However, A-701 fails to mention the protocols schools must follow during medical emergencies related to students experiencing emotional or behavioral crises. We urge the DOE to include a cross-reference to Chancellor’s Regulation A-411 within A-701 section V (“Emergency Medical Situations”) to ensure that schools follow DOE policy and procedures regarding intervention and de-escalation and contacting 911 for students experiencing behavioral crises. Students experiencing emotional or behavioral crises should be supported by school staff with the clinical knowledge and skills necessary to manage the situations without unnecessary law enforcement or Emergency Medical Services (EMS) intervention or transport. In addition, we strongly recommend that the DOE update and monitor implementation of Chancellor’s Regulation A-411 to clarify procedures schools must follow prior to calling 911 or EMS for student behavior that can and should be addressed by school-based mental health professionals, trained school staff, School Response Clinicians, or mobile crisis teams.

We propose adding a new subsection (5) to section V.B of A-701:

5. When a student experiences an emotional or behavioral crisis, the school must follow the protocols found in Chancellor’s Regulation A-411 “BEHAVIORAL CRISIS DE-ESCALATION/INTERVENTION AND CONTACTING 911.”

I.B/ II.C. – Hearing Screenings

We are also concerned about the proposal to remove hearing screenings from A-701 and recommend that the DOE maintain the language about hearing screenings.

Thank you for the opportunity to comment on the proposed amendments to A-701. Please do not hesitate to contact us if you have any questions.

Respectfully,

A handwritten signature in black ink that reads "Randi Levine".

Randi Levine

Policy Director

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