



**BROOKLYN
DEFENDER
SERVICES**

COMMENTS RESPECTFULLY SUBMITTED BY:

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**Presented to
The New York City Department of Education**

**Regarding: Proposed Amendments to
Chancellor's Regulation A-210
and
Chancellor's Regulation A-750**

December 20, 2016

Dear Chancellor Carmen Farina:

Thank you for the opportunity to submit formal written comments on the proposed amendments to the Regulations of the Chancellor of Education relating to Minimum Standards for Attendance Programs (A-210) and Child Abuse Prevention (A-750).

BDS is a public defender organization that provides inter-disciplinary, holistic, client-centered representation in the areas of criminal, family, and immigration defense, as well as civil legal services, for tens of thousands of clients every year. The BDS Family Defense practice represents almost 2,000 respondents in child welfare cases every year and has helped thousands of children remain safely at home with their families or leave foster care and safely reunite with their families. Our attorneys, social workers and parent advocates are in the field every day interacting directly with the Administration for Children's Services, foster care agency workers and, when necessary, school personnel. BDS' civil attorneys offer collateral support to our clients in the areas of housing, public

benefits and education. Our Education Unit provides legal representation and informal advocacy, largely in the areas of special education and school discipline. The education attorneys and social workers also work to maintain our clients' involvement in their child's education throughout child welfare involvement, including court ordered supervision, removal or reunification.

BDS recognizes the enormity and complexity of the Administration for Children's Services' (ACS) charge to protect the safety of children while also working to preserve families. Likewise, we acknowledge that schools are a centerpiece of a child's life, and school officials have a unique vantage point into the well-being of its students. In light of recent tragedies, this is understandably a time where ACS wants to reflect on its practices. That said, singling out horrific cases and focusing on increased surveillance of families rarely results in the kind of thoughtful reforms that keep children safe and families strong. We expect that any changes that will come from these amendments will be coupled with intensive and ongoing training to ensure school officials understand that reasonable cause to suspect child abuse or neglect is a prerequisite to any call to the New York State Central Register (SCR), independent of a student's absences.¹

While we recognize the worthy intentions of these amendments, we are concerned that, as written, the new guidance may encourage school officials to alert the SCR or ACS in unwarranted situations. We are concerned that the amendments ask school officials to take on CPS-like monitoring responsibilities, which seems inconsistent with the role of a school official. Clearly, strong and trusting relationships between families and school staff are crucial towards supporting a child's education. The proposed requirements may lead parents, namely Tier 2 parents, to feel scrutinized and untrusted by their child's school. A breakdown in the parent-school relationship can not only impact the child's education and stability, but also discourage open communication between parents and the school. This only worsens outcomes for children and families.

We ask that the Chancellor consider the following points in this effort to create a policy that keeps students safe without further reinforcing the vulnerability of families presently or previously involved in the child welfare system.

(1) The Proposed Changes to A-210 and A-750 Improperly Place Functions of ACS onto DOE Staff

The proposed changes to A-210 and A-750 require schools to take on a number of additional tasks and roles. Some changes expand existing responsibilities. For instance, schools already have attendance programs, including designated coordinators responsible for documenting attendance and reaching out to parents. A-210 and A-750's recommended changes, however, specify an enhanced and graded monitoring protocol exclusively for

¹ New York Social Services Law § 413.

families currently or previously involved in the child welfare system.² To implement the protocol, schools will receive a monthly list of its child-welfare involved students.³

Although we oppose the proposal, if this protocol is implemented, we expect that the monthly list of students will only be shared with staff formally responsible for attendance tracking. School officials may think a family's current or past ACS involvement indicates issues of abuse even though the vast majority of child welfare cases involve allegations of neglect.⁴ In addition, almost all child welfare cases are related to poverty and the stress that poverty brings to families.⁵ However, knowledge of child-welfare involvement may lead school staff to treat these families differently with undue hyper vigilance, leading to lack of trust and breakdown of vital relationship building between teacher and parent. Accordingly, to prevent alienating these families, the information should only be shared with those staff responsible for monitoring attendance.

Presumably, the increased focus on attendance is to verify a child's whereabouts and safety. However, A-750's proposed protocol does not end at checking attendance. A-750 III.C.3 also asks schools to conduct ongoing monitoring of child-welfare involved students. We recognize that, as mandated reporters, school officials are required to report suspected abuse or neglect of children when presented with reasonable cause to suspect. However, the mandated reporter role does not have a monitoring or investigatory component. The proposed amendment to A-750 imparts a new function on school staff by requiring school leadership to "assign a school-based point" to students in all Tiers who must "make regular inquiries of classroom teachers and the school health office and update the ILOG records of these students with pertinent information about school progress or issues that arise."

A-750's proposed request for targeted monitoring is troubling. Monitoring a family seems at odds with educating a child. Monitoring and investigating a child's welfare is solely under the purview of ACS. Moreover, ACS is only allowed to engage in those functions when specific legal requirements are met. The proposed monitoring is seemingly asking DOE to take on an ACS function. Schools are a separate entity from ACS, and their functions should reflect that. Confusing the roles could compromise open school cultures between staff and families, while also potentially leading to unnecessary and harmful interventions for poor families.

We also want to note that DOE's proposed new functions are, in part, duplicative of the responsibilities of ACS and foster care agency caseworkers. When families are under ACS supervision, caseworkers are already required to monitor a child's education and progress. At many junctures, including conferences and court appearances, the caseworker

² Chancellor's Regulation A-210 § III.D; Chancellor's Regulation A-750 § III.

³ Chancellor's Regulation A-750 § III.

⁴ New York City, KEEPING TRACK ONLINE: THE STATUS OF NEW YORK CITY CHILDREN (2013), available at <http://data.cccnewyork.org/profile/location/1/city#1/new-york-city/1/1193.1194/a/a>.

⁵ Id.

is expected to provide updated information on school matters. We understand that this responsibility has typically been executed in collaboration with the DOE. Likewise, we acknowledge that caseworkers sometimes fall short of this responsibility. The proposed protocol, however, seems to be putting the onus of the responsibility on DOE, rather than putting the emphasis on improving ACS' training and accountability.

Recommendations:

- ACS and DOE should only share the list of ACS-involved students with staff responsible for monitoring attendance. Strict procedures should be implemented to ensure the information is otherwise kept confidential.
- The proposed change, A-750 III.C.3, requiring ongoing monitoring, should be removed.
- ACS and DOE should provide comprehensive training to DOE staff to understand the general trajectory of an ACS case and the ramifications of a call to the SCR. Beyond the general training, DOE staff should be instructed about the complexities of ACS involvement from parents involved in ACS proceeding.

(2) The proposed changes to A-210 and A-750 could result in an unlawful extension of supervision over families with closed cases, potentially resulting in unnecessary ACS involvement

A-750's new "Policies and Procedures for Escalating Absence Concerns Regarding Students Involved with the Administration for Children's Services" requests oversight over families no longer involved with ACS. Specifically, Tier II includes families who were "the subject of an ACS investigation" that was substantiated within the current or prior school year.⁶ From the day they receive the case, ACS has 60 days to complete an investigation. At the conclusion of the investigation, ACS determines whether the allegations are indicated or unfounded. If the allegations are substantiated, ACS may file a court case, offer voluntary preventive services, or close the case. A court order is the only avenue to extend supervision against a family's consent.

All Tier 2 families have closed ACS cases. The cases are closed because there was no indication or legal basis to keep them open. The families are then no longer subject to involuntary supervision from ACS or, presumably, any city agency. By including Tier 2 families in the tiered response protocol, however, school officials are essentially being asked to continue supervision of these families without cause, which is inappropriate. Although we recognize that school officials are mandated reporters, the inclusion of Tier 2 families in the protocol unnecessarily takes school officials beyond that role.

⁶ Chancellor's Regulation A-750 § III.B.2(b).

We fear the implications of this policy because it puts a mark on families who, presumably, already cooperated with ACS, engaged in services, or otherwise merited discontinued ACS involvement regardless of what's happening with the family. This monitoring also stigmatizes the family. Neither DOE nor ACS has put forward evidence that these families are more likely to abuse or neglect their children in the future. The policy's design, however, has the capacity to alienate these families and build distrust between schools, its families and its students. At the extreme, we are also concerned it will lead to repeated and unnecessary ACS involvement.

Recommendation:

- Families who are no longer under involuntary ACS supervision, or Tier 2 Families, should not be included in the proposed protocol under Chancellor's Regulation A-750 § III.

(3) Proposed Amendments to A-210 and A-750 may lead to an influx of SCR calls

Mandated reporters are required to call the SCR whenever there is reasonable cause to suspect child abuse or maltreatment. While A-750 refers to the reasonable cause standard, the language and framing of the protocol will likely confuse a lay person as to whether reasonable cause remains the threshold requirement to call the SCR. Further, because the proposed changes single out child-welfare involved families, it calls to reason that schools will apply increased vigilance and suspicion over these families, leading to more calls to the SCR.

An influx of unwarranted calls to the SCR can have detrimental impacts on the overall system and individual families. More calls to SCR do not necessarily enhance child safety. Rather, it can backlog the already overburdened system, depriving those families most in need of attention and support. For the individual family, it can result in unnecessary and potentially harmful intervention. It may also lead to a breakdown in the relationship between the family and the school.

Needless to say, this policy will also disparately impact families of color. Racial disparities in the child welfare system are well documented. Implicit bias in mandated reporting results in over reporting of families of color to ACS for suspected abuse or neglect.⁷ This phenomenon occurs without any evidence to suggest that children of color are more likely to be abused or neglected. Implicit bias at the point of referral, investigation and substantiation is already a problem plaguing our child welfare system.⁸ Accordingly, if school personnel are being asked to conduct more in depth monitoring of students, beyond

⁷ Jina Lee, et al., "Implicit Bias in the Child Welfare, Education and Mental Health Systems," Nat'l Center for Youth Law [2-5]

⁸ Id.

their role as mandated reporters, and fulfill the policy's protocol, DOE and ACS should provide the necessary bias training to prevent disparate impact on families of color. For instance, DOE staff should be required to attend training around implicit bias and cultural competency to help minimize the potential of racial bias in reporting and monitoring of families.

After calling the SCR or identifying an attendance issue, the tiered response protocol and A-750 III.D. also instructs DOE to reach out to the appropriate ACS entity.⁹ In several instances, the protocol directs DOE and ACS to convene meetings. For instance, if DOE calls the SCR regarding a Tier 1 family, ACS is directed to conduct a safety assessment and possibly a school conference.¹⁰ Given that these families may have existing court cases, the protocol should require ACS to contact the parent's attorney and other attorneys on the matter before scheduling a conference in these cases. For Tier 3 families, the protocol also suggests that case planners schedule a meeting with the school to address the child's absences.¹¹ As these children are in foster care, we ask that case planners notify the parents of any school meetings to ensure their involvement in educational decision-making.

The tiered response protocol also appears to ask schools to contact ACS when the reasonable cause standard is not met. For instance, even when schools are satisfied with a family's explanation for a child's absence, the protocol instructs schools to contact ACS when they believe "further intervention and coordination with ACS would address the reasons for absence."¹² This guidance applies to families without active ACS involvement. Specifically, for Tier 2 families, it directs schools to contact ACS' Office of Education Support and Policy Planning.¹³ Then, ACS is instructed to work with the school to determine whether there is an open preventive services case and, if not, whether it is feasible to call the SCR. ACS will also coach schools on what information to provide to the SCR.¹⁴

There are certainly scenarios where well-meaning school officials want to involve ACS to help a family get support. We recommend that any such decision, however, be made in collaboration with the family. Preventive services are indeed a valuable way to connect families with services so that ACS involvement is unnecessary. However, preventive services are most effective when they remain voluntary and community based. Schools should be connected with community-based organizations that provide families with support. Additionally, they should only be utilized when there is a palpable way that the

⁹ Although not included in the proposed changes Chancellor's Regulation A-750 or Chancellor's A-210, this guidance is included in the ACS and DOE October 29, 2016 "Joint Statement Introducing a Tiered Response Protocol for High-Risk Cases of Educational Neglect and Unexplained Absence," disseminated to all ACS and DOE staff.

¹⁰ See "Joint Statement Introducing a Tiered Response Protocol for High-Risk Cases of Educational Neglect and Unexplained Absence," Commissioner, NYC ACS & Chancellor, NYC DOE, III.E.ii.c.i (October 29, 2016)

¹¹ Id. III.E.vi.

¹² Id. III.B.iv.b.

¹³ Id. III.E.iii.

¹⁴ Id. III.E.iii.b.

agency could support the family. When the reasonable cause standard is not met, schools should not be encouraged to reach out to ACS without consulting the family first.

An overreliance on preventive services- often only to provide additional monitoring of families- has caused major backlogs and delays in families receiving preventive services whether mandated or voluntary. This clogged pipeline makes it even more difficult for families who really need and want preventive services to get them. We have testified extensively about preventive services before the New York City Council. The testimonies can be found online at <http://bds.org/bds-family-defense-social-work-supervisor-kaela-economos-testifies-before-the-new-york-city-council-committee-on-general-welfare-on-preventive-services/> and at <http://bds.org/wp-content/uploads/3.17.15-NYC-Council-Committee-on-General-Welfare-Testimony.pdf>.

Recommendations:

- ACS and DOE should provide comprehensive training to DOE staff to understand the required standards for calling the SCR, as well as implicit bias and cultural competency.
- When the reasonable cause standard is not met, DOE staff should be required to consult with families and get consent before contacting ACS.

Conclusion

While we understand DOE's and ACS' earnest intention with in developing this policy, we have questions about its likely implications. Specifically, we are concerned that it is overreaching and could lead to unnecessary intrusions into the lives of poor families, without having a palpable impact on the safety of children in New York City. We hope the DOE will consider our suggestions in finalizing the language of Chancellor's Regulations A-750 and A-210.

Please do not hesitate to reach out to Keren Farkas, Supervising Attorney, at kfarkas@bds.org or (718) 254-0700, or Kaela Economos, Social Work Supervisor at keconomos@bds.org or (347) 592-2554 with any questions.