



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE
EDUCATION AND THE LAW COMMITTEE
AND SOCIAL WELFARE LAW COMMITTEE**

S.2508-B (Budget Article VII) – Part FFF

Enacts into law major components of legislation necessary to implement the state transportation, economic development and environmental conservation budget for the 2021-2022 state fiscal year; to amend the education law, the tax law, the state finance law and the public service law, in relation to ensuring all children have access to the delivery of technology through high-quality broadband internet connectivity in support of the constitutional education obligations of the state; and providing for the repeal of such provisions upon expiration thereof (Part FFF)

E-Let's Expand Access to Remote Now (E-LEARN) Act¹

THIS BUDGET PROVISION IS SUPPORTED

The New York City Bar Association, through its Education and the Law Committee and Social Welfare Law Committee, support the inclusion of the E-Let's Expand Access to Remote Now (“E-LEARN”) Act in the final 2021-22 New York State Budget. The E-LEARN Act will ensure that all children have access to broadband internet for their schooling for the remainder of the COVID-19 pandemic.² This is a critical resource for students participating in remote or blended learning and is a particular need for homeless students, who lack reliable internet access in homeless shelters. While we fully support the Act’s goal of providing high-speed internet access to all children in New York, our report focuses on the particular needs of homeless students.³

¹ A standalone version of this provision is currently pending as A.5180 / S.3184, sponsored by Assembly Member Benedetto and Senator Mayer. We support adoption of the E-LEARN Act either through the budget or by passing A.5180/S.3184.

² On March 19, 2021, Governor Cuomo announced the launch of ConnectED NY, an emergency fund to provide approximately 50,000 students in economically disadvantaged school districts with free internet access through June 2022; see <https://www.governor.ny.gov/news/governor-cuomo-announces-launch-connected-ny-fund-provide-no-cost-internet-access-50000#> (all websites last visited March 25, 2021). The initiative will be financed through private foundations. While we applaud this initiative, we support the adoption of the E-Learn Act as it will ensure all children have internet access and expressly addresses the needs of homeless children.

³ The City Bar supports the policy goals of the E-LEARN Act and the approach taken to achieve those goals but is not commenting on the Act’s precise bill language.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

The digital divide is not a new problem, but it has only grown more dire since the outbreak of the COVID-19 pandemic. Thousands of homeless shelter residents lack access to the internet, even during this unprecedented time of need. In May 2020, the City Bar Justice Center released a report titled “Homeless Need Internet Access To Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters” (the Report). The Report and its recommendations have been endorsed by a wide range of organizations, including law firms, legal services providers and community groups.⁴ The Report lays bare the devastating consequences of New York City’s stark digital divide on the lives of shelter residents. As a result of the findings of the Justice Center’s Report, the City Bar launched a #Wifi4Homeless campaign, which seeks to engage the public and partner organizations in raising awareness on the issue of lack of internet access and essential technology resources in New York City homeless shelters and urge the inclusion and prioritization of homeless shelters in any plans to expand broadband internet access for low-income New Yorkers.⁵ The campaign includes a number of resources, highlights the harms the digital divide inflicts on homeless New Yorkers, and has given particular focus to the plight of homeless students.⁶ The City Bar’s support for the E-LEARN Act is based on the findings of the Justice Center’s Report and our campaign.

The Report found that only 6% of the homeless residents surveyed had internet access through their homeless shelter.⁷ Approximately one-third of New York’s homeless students live in shelters.⁸ The overwhelming lack of reliable internet and the technology issues facing homeless students are extensive; while this was a significant problem prior to the pandemic, the lack of reliable internet or technology over the last year has severely disrupted students’ ability to participate in remote learning. Even for those students in New York City who received a cellular-enabled iPad from the Department of Education, internet connectivity has been grossly unreliable and insufficient to sustain remote learning activities. Parents living in shelters reported having to rely on costly self-paid cellular data plans, LinkNYC, or other publicly available Wi-Fi (i.e. at a library or restaurant) to connect their children to remote learning. Those free public options offer only spotty connectivity depending on the time of day or the weather. They have also become harder to access since the pandemic (if they are accessible at all).

⁴ Report available online at <https://www.citybarjusticecenter.org/news/homeless-need-internet-access-to-find-a-home-the-city-bar-justice-center-documents-lack-of-technology-in-nyc-homeless-shelters/>; list of endorsing organizations available at <http://documents.nycbar.org/files/CBJCInternetAccessHomelessSheltersEndorsingOrgs.pdf>.

⁵ See “Close the Digital Divide! Help Ensure Internet Access for Homeless New Yorkers,” Updated Jan. 2021, <https://www.nycbar.org/media-listing/media/detail/nyc-digital-divide-lack-of-internet-access-in-shelters>.

⁶ See *id.* for a list of resources; in particular, “Barrier to Education: How Homeless Students Are Being Impacted By Remote Learning,” http://documents.nycbar.org/files/2020744-InternetAccessHomelessShelters_EducationFactSheet.pdf.

⁷ “Facts About Shelter Internet Access,” New York City Bar Association, http://documents.nycbar.org/files/2020744-InternetAccessHomelessShelters_FactSheet.pdf.

⁸ Mihir Zaveri, “As N.Y.C. Reopens Schools, Homeless Families Face New Challenges,” N.Y. Times, Sept. 14, 2020, <https://www.nytimes.com/2020/09/14/nyregion/nyc-schools-homeless-students.html>.

As a result, homeless parents have been forced to risk their child's health and safety for the sake of their education or subject them to a subpar educational experience with either limited or inconsistent access to remote learning. With no internet access in shelters and unreliable internet-enabled devices, Wi-Fi, and connections, in person learning has been the only viable option for their children to receive an education.⁹ And even as schools begin to reopen, more students return for in-person learning, and the ConnectED NY emergency fund is implemented¹⁰- the need for internet access will not subside. Some level of remote instruction will remain for the foreseeable future (e.g. if schools need to go remote to address a COVID outbreak, for those students unable to opt in to in-person learning or students who choose to remain remote) and may remain a resource for schools post-pandemic. Aside for remote learning, homeless students will continue to need internet access to study, complete homework assignments, sign up for programs or testing, etc.

In January, we issued a joint letter with Council Member Mark Treyger, Chair of the New York City Council's Education Committee, to then-New York City Schools Chancellor Richard A. Carranza that highlighted some of the difficulties facing New York City's homeless student.¹¹ As is further outlined in the letter, the learning loss anticipated by experts due to remote learning is significant and while the numbers are disquieting to say the least, the impacts will likely be much worse for students who are without internet access. Prior to the pandemic, 87% of the students who experienced homelessness were more likely to drop out of school.¹² Only 62% of New York City's homeless students graduated from high school last year.¹³ While this represented an increase from the 2018-19 school year, the change is likely attributable to the lax graduation policies the NYSED implemented in light of COVID-19.¹⁴

There is also a racial justice component to this issue. Last year, nearly 85% percent of homeless students in New York City were Black or Hispanic. Moreover, Black and Hispanic New Yorkers generally, and homeless New Yorkers specifically, have been disproportionately impacted by COVID-19. It has been well documented that there are extensive racial disparities in New York

⁹ Eliza Shapiro, "These Families Feel Forgotten as N.Y.C. Pushes to Open Schools," The N.Y. Times, Sept. 21, 2020, <https://www.nytimes.com/2020/09/14/nyregion/homeless-school-reopening-nyc.html>.

¹⁰ *Supra* note 2.

¹¹ Letter from City Bar President & NYC Council Member Treyger to NYC Schools Chancellor Regarding Lack of Internet Access for Homeless Students, Jan. 28, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/homeless-students-internet-access-for-continued-education>.

¹² Jessica Fregni, "What Homeless Students Lose When Schools Go Digital," Teach for America, July, 1, 2020, <https://www.teachforamerica.org/stories/what-homeless-students-lose-when-schools-go-digital>.

¹³ Samantha M. Shapiro, "The Children in the Shadows: New York City's Homeless Students," N.Y. Times Magazine, Sept. 9, 2020, <https://www.nytimes.com/interactive/2020/09/09/magazine/homeless-students.html>.

¹⁴ Reema Amin, "Number of Homeless NYC Students Remains Stubbornly High," The City (Republished from Chalkbeat), Oct. 29, 2019, <https://www.thecity.nyc/education/2019/10/29/21210727/number-of-homeless-nyc-students-remains-stubbornly-high> ("Fifty-seven percent of New York City's homeless students graduate from high school, according to Advocates — compared to 76% of all city students, homeless and not."); Susan Edelman, "NYC launches 'Operation Graduation' to pass as many kids as possible amid coronavirus," N.Y. Post, April 11, 2020, <https://nypost.com/2020/04/11/nyc-trying-to-graduate-as-many-kids-as-possible-amid-coronavirus/>; "Regents Examination and Graduation Requirements Questions Related to COVID-19 Closure," NYS Education Dept., Updated May 26, 2020, <http://www.nysed.gov/common/nysed/files/programs/coronavirus/nysed-covid-19-regents-grad-req-faq.pdf>.

City’s public school system.¹⁵ Any policy that affirmatively bridges the digital divide and provides homeless students equal access to remote learning is an essential step to addressing racial disparities in New York City.

For all these reasons, it is critical that the State act swiftly to get internet access to all homeless students. New York has long been a leader in ensuring that its homeless residents have access to shelter, and these times demand that the State now lead the way in providing technology access. This is a public health emergency, and the State must act to meet its basic constitutional responsibilities to unhoused students.¹⁶ The City Bar supports the adoption of the E-LEARN Act to achieve this goal in the short-term.¹⁷ We further urge the Legislature consider the long-term needs of all New York State residents who lack internet access.

Education and the Law Committee

Jarienn A. James, Co-Chair

Evan S. Rosenberg, Co-Chair

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March 2021

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¹⁵ See *i.e.* Reema Amin, “NYC’s remote learning attendance shows persistent racial disparities,” Chalkbeat, Oct. 15, 2020, <https://ny.chalkbeat.org/2020/10/15/21518705/racial-disparities-nyc-school-attendance>; see also Emma Dorn, Bryan Hancock, Jimmy Sarakatsannis, and Ellen Viruleg, “COVID-19 and student learning in the United States: The hurt could last a lifetime,” McKinsey & Company, June 1, 2020, <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime#>.

¹⁶ The New York Constitution provides that “[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” N.Y. Const. art. XI, § 1. The New York Court of Appeals has found that Art. XI, § 1 requires the State to provide “a sound basic education” to all students within the state. *Bd. of Educ. v. Nyquist*, 439 N.E.2d 359, 369 (N.Y. 1982). This means that the State must afford “New York City schoolchildren the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants.” *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 332 (N.Y. 2003).

¹⁷ We also note that while reliable, high-speed internet is critical for students, consideration should also be given to the devices that are needed to access the internet. Many student lack access to updated technology that would allow them to access remote learning (this includes updated Internet-ready computers, tablets, or other devices with keyboards; and wireless or Bluetooth printers with scanners, or printers that maintain connections with those devices). This technology is crucial for students and all of their education needs. We urge the Legislature to consider what additional steps might be taken to ensure students have access to this technology.