



Testimony by the New York Legal Assistance Group (NYLAG) on

Immigrant Students in New York City Public Schools

Before the New York City Council Committees on Immigration and Education

November 29, 2023

Chairs Hanif and Joseph, Council Members, and staff, good afternoon and thank you for the opportunity to testify regarding Immigrant Students in New York City Public Schools. My name is Jessica Selecky, and I am the Director of the Special Education Unit at the New York Legal Assistance Group (NYLAG). NYLAG uses the power of the law to help New Yorkers in need combat social, racial, and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, veterans, as well as others in need of free legal services.

For more than twenty years, NYLAG's Special Education Unit ("SEU") has advocated on behalf of low-income children with disabilities. Our lawyers collaborate with families to ensure that students receive the educational services to which they are entitled. Our advocacy includes representing students at IEP meetings, impartial hearings, and appeals to the State Review Office and Federal Court; securing appropriate school placements and related services; and obtaining independent educational evaluations. The Special Education Unit also provides education advocacy through partnerships with other NYLAG units and community-based organizations. Through this work, we ensure that families are well-informed and have advocates to help them navigate the

complexities of the special education system. Further, we partner with NYLAG's Special Litigation Unit in bringing impact litigation seeking systemic change to NYC's education system. Our unit serves many immigrant families and many families for whom English is not their first language.

NYLAG's programming also includes an Immigrant Protection Unit (IPU) and the Shelter Advocacy Initiative, which SEU works collaboratively with. IPU provides New York City's low-income immigrant communities with comprehensive and multifaceted consultations, direct legal representation, legal clinics and an array of educational workshops and presentations. The IPU provides a wide range of immigration legal services including assistance with applications for citizenship, adjustment of status, relief under VAWA, U-visas, asylum, removal defense, and many other areas. Through its services, the IPU seeks to broaden and improve access to quality legal representation and, through an integrated approach with other internal programs, to address the social welfare needs of New York's immigrant communities experiencing low-income. The cornerstone of the IPU's outreach, education, and advocacy efforts is to empower and help New York's immigrant communities to overcome their unique hardships. The Shelter Advocacy Initiative provides legal services and advocacy to low-income people residing in and trying to access homeless shelter placements in New York City. The Shelter Advocacy Initiative works to ensure that every New Yorker has a safe place to sleep by offering legal advice and representation throughout each step of the shelter application process and assists and advocates for clients who are already in shelter as they navigate the transfer process, seek adequate facility conditions and resources for their needs. Working closely with the newest wave of immigrants in New York City, the Shelter Advocacy Initiative has firsthand knowledge of the barriers immigrant children face when trying to access education in New York City.

We appreciate the opportunity to testify to the Immigration and Education Committees regarding immigrants in New York City Public Schools (“NYCPS”). NYLAG is proud to operate in a City that values its immigrant community and supports much-needed services to them. As a ‘sanctuary city’ with innovative and responsive programming and services for our immigrant communities, NYC serves as a model to the nation. Almost 30,000 newly arrived immigrant children have entered NYCPS since the spring of 2022.¹ Indeed, the NYCPS reported an 8,000 student increase in overall enrollment—the first enrollment increase in eight years.² Simultaneously, NYCPS is confronting imminent and severe budget reductions amounting to nearly \$550 million.³ NYLAG is very concerned that these budget cuts will exacerbate existing inequities in an already ailing NYCPS, which routinely fails to provide legally mandated supports and services to our most vulnerable student populations, including immigrant children, children with disabilities, and children living in poverty.

The Special Education Landscape

New York City is home to approximately 283,000 students with disabilities⁴, not including students with disabilities that have yet to be identified. Over 20% of NYCPS students are identified as having a disability, which is higher than the national average. Students who have been

¹ Jones, Athena. “New York City schools are seeing an influx of students. Here’s how they’re handling the immigration crises.” *CNN*, Oct. 19, 2023. <https://www.cnn.com/2023/10/19/us/nyc-schools-immigrants/index.html#:~:text=More%20than%20120%2C000%20migrants%20have,to%20the%20city's%20public%20schools>.

² Campanile, Carl. “NYC adds 8k students thanks to immigrant crises after years of decline.” *NY Post*, Nov. 15, 2023. <https://nypost.com/2023/11/15/metro/nyc-adds-8k-students-amid-migrant-crisis-after-years-of-decline/>

³ Elsen-Rooney, Michael and Zimmerman, Alex. “Eric Adams axes \$547 million from NYC Education Department Budget, more cuts on the way.” *Chalkbeat*, Nov. 16, 2023. <https://www.chalkbeat.org/newyork/2023/11/16/nyc-education-department-loses-547-million-in-eric-adams-cuts/#:~:text=New%20York%20City's%20Education%20Department,expected%20to%20take%20effect%20immediately>.

⁴ Lander, B. (2023, August 28). *NYC Comptroller Report Finds DOE Fails to Deliver Mandated Special Education Services to Thousands of Children Even As Claims Spending Surged Tenfold*. <https://comptroller.nyc.gov/newsroom/nyc-comptroller-report-finds-doe-fails-to-deliver-mandated-special-education-services-to-thousands-of-children-even-as-claims-spending-surged-tenfold/>

identified as disabled have long faced harmful delays and obstacles in receiving necessary evaluations, programs, and services. According to the State’s 2019 Compliance Assurance Plan, the City had been violating federal law governing students with disabilities for 13 consecutive years and failed to initiate the “systemic change necessary to sustain compliance.”⁵ Unfortunately, compliance has not improved since 2019 and the failure of NYCPS to provide mandated services has been particularly detrimental to impoverished children, students of color, and English language learners. In districts primarily composed of Black and Hispanic students, recommendations for IEP-related services in grades K-12 were more likely to be only partially fulfilled or not fulfilled at all by the DOE, in contrast to districts with a higher proportion of white and Asian students. For English language learners, the situation was even more concerning: while 88% of students citywide received their mandated SETTS or special class, only 36% of English language learners received the bilingual SETSS, ICT, or Special class.⁶ Despite having a legal right to appropriate bilingual special education evaluations, programs and services, the DOE routinely requires non-English speaking families to choose between getting the services their children require to progress at all and receiving those services in their child’s native language.⁷ NYLAG client, C.R.’s, story illustrates this dilemma:

- C.R., a young man with severe nonverbal autism spectrum disorder and inherent intellectual disability, has been NYLAG's client since 2019. In 2019, C.R.'s mother came to NYLAG with a feeling that "something was wrong with C.R.'s special education" because the school called her nearly every day to pick him up. She was a recent immigrant and her primary language is Spanish. C.R. was placed in a small bilingual classroom of six students.

⁵ [NYCDOE-Compliance-Assurance-Plan-May-2019.pdf \(documentcloud.org\)](https://documentcloud.org/NYCDOE-Compliance-Assurance-Plan-May-2019.pdf)

⁶ Lander, B. (Aug. 28, 2023). NYC Comptroller Report Finds DOE Fails to Deliver Mandated Special Education Services to Thousands of Children Even As Claims Spending Surged Tenfold. Available at: <https://comptroller.nyc.gov/newsroom/nyc-comptroller-report-finds-doe-fails-to-deliver-mandated-special-education-services-to-thousands-of-children-even-as-claims-spending-surged-tenfold/>

⁷ NYLAG clients who are non-English speaking students consistently report that their children are being taught in English and not provided access to translation.

At the time C.R.'s mother reached out to NYLAG, several informal assessments had recently been conducted, but she was not provided with a Spanish translation. None of C.R.'s IEP meetings were fully interpreted to her in Spanish. C.R.'s mother remained silent while others discussed her child in English. All that she was told in Spanish were the program recommendations at the end of the meeting. Contrary to the law's requirements, C.R.'s mother was unable to be a full participant in the development of her child's IEP.

During an early 2019 IEP meeting, C.R.'s mother was suddenly informed that C.R. could no longer be placed in a small bilingual classroom because the school did not offer the small bilingual classroom setting for C.R.'s grade level. There were never any educational evaluations or language assessment finding that C.R. was ready to transition to a larger or monolingual classroom. C.R.'s mother was told that she had no other options but to choose between a larger bilingual classroom and a small English monolingual classroom. Although she acknowledged that both classroom settings would be detrimental for C.R., she was forced to choose a larger bilingual classroom. As a result, C.R. experienced significant educational regression.

The disparity between the quality of services provided to English speaking students and non-English speaking students was evident even before the recent surge of newly arrived immigrant students. Considering the influx non-English speaking students, it is hard to imagine that these disparities will not widen.

The IDEA's complex protocols and mandates disproportionately benefit wealthy, well-educated, English-speaking parents, who can deftly and aggressively navigate the due process system with the aid of private counsel. Because of education, language or income barriers, potential time off work, the majority of low-income and/or non-English speaking parents cannot obtain representation, afford to pay for it, or advocate effectively for their children.⁸ This fact is born out in the city's reported data on who files due process complaints ("DPCs") to enforce their children's special education rights.

⁸ Pudelski, S. (Apr. 2013). *Rethinking Special Education Due Process*. The School Superintendents Association. <https://www.aasa.org/docs/default-source/resources/reports/aasarethinkingspecialduedueprocess.pdf>

Despite a special education system that disadvantages students of color and non-English speaking students, in 2021 only 69 DPCs were filed in District 9, of which 92% of their students live in poverty and 96% of their students identify as Black or Hispanic. In contrast, 3,384 DPCs were filed on behalf of students living in District 20. District 20 has only a 2% Black population, with the majority being White and Asian. There were 0.41 complaints filed per student in District 20. Districts 7, 9, and 23 have the highest poverty index in NYC and more than 95% of their residents are Black or Hispanic. While the city-wide average DPC per capita is 0.1, the data shows that on average, only 0.01 DPC was filed per one student with a disability living in Districts 7, 9, and 23.

This gap in the amount of DPCs filed is further amplified by the fact that about 76% of students identified with disabilities are Black or Hispanic. Of added concern is that these inequalities existed in an environment of enormous increases in NYCPS spending. Overall, DOE's estimated programmatic special education budget increased by 43% in the last decade.⁹ During the same period, City spending on special education due process claims increased 500%.¹⁰ Contemplating a continued substantial influx of vulnerable non-English speaking children entering the school system, combined with draconian cuts to the NYCPS budget—is terrifying.

Unique and Foreseeable Issues Specific to the Newly Arrived Immigrant Population

1. Lack of Outreach to Vulnerable Population Leading to Lack of Provision of Services

NYLAG's five-attorney SEU has an open and active intake line where families call every day seeking legal advice and representation in obtaining the special education services, programs,

⁹ Lander, B. (Aug. 28, 2023). NYC Comptroller Report Finds DOE Fails to Deliver Mandated Special Education Services to Thousands of Children Even As Claims Spending Surged Tenfold. Available at: <https://comptroller.nyc.gov/newsroom/nyc-comptroller-report-finds-doe-fails-to-deliver-mandated-special-education-services-to-thousands-of-children-even-as-claims-spending-surged-tenfold/>

¹⁰ *Id.*

and school placements their children require to progress in school. Since October 2023, we have received 77 calls looking for help. Only one of these callers identified as a recently arrived immigrant family.¹¹ In a city where more than 20% of children have disabilities that require special education services, where we know the provision of appropriate services is disproportionately denied to children of color, low income children, and non-English speakers—the only rational conclusion is that the city is not conducting sufficient outreach or providing needed support to recently arrived immigrant families with school aged children to educate them on their children’s right to education, bilingual education, special education, and bilingual special education services. Non-profit legal services and other community-based organizations can try and bridge that information gap; however, new immigrant families are largely unaware and unable to access our services due to organizational capacity constraints. Legal service organizations’ education law units are few, small, and severely underfunded to support outreach and respond to the community needs.

Additionally, recently arrived immigrant children face distinctive hardships. First, many of these children have experienced significant trauma in their home countries and on their journeys to the U.S. Trauma can profoundly affect a child's cognitive, emotional, and social development. This can manifest in various ways, including behavioral challenges, difficulty concentrating, heightened anxiety, or developmental delays. The effects of trauma often intersect with educational needs, potentially leading to difficulties in learning, maintaining focus in the classroom, or forming healthy relationships with peers and teachers. As a result, many children who have undergone trauma may qualify for special education support and services. Besides not speaking English and needing language supports, students arrive here in NYC with varying levels of education,

¹¹ SEU does, however, receive many intakes from non-English speaking families. Our intake callers frequently report that their children returned home with bruises, scratches, missing teeth, or broken fingers with no information about what happened at the school that resulted in these injuries. Many non-English speaking intake callers report to us that they feel they are excluded and ignored by their child’s school because they do not speak English.

sometimes having missed months or years of school.¹² It is crucial that these children be evaluated and identified, as required by federal and state education law, so that they can receive the programs they require to thrive in school. An illustrative example of the unique challenges an asylum-seeking immigrant student may face is the experience of NYLAG’s client, G.B.:

- G.B. was born in Sierra Leone into the indigenous Mende tribe. There, G.B. experienced incredible trauma from a young age, including witnessing his home burn down. When G.B. was eight years old, he, his mom, and his sister fled to the U.S. After experiencing further abuse at the hands of family members here in NYC, G.B.’s family entered the shelter system. G.B. received no formal education in Sierra Leone. G.B.’s mother spoke no English. She spoke a rare native dialect of Sierra Leone. G.B. enrolled in NYCPS shortly after arriving here but was not evaluated or deemed eligible for special education services until the end of the following school year. The NYCPS’s recommended program for G.B. was inadequate and never revised despite his failure to make any progress year after year—as he continued to perform on a second to third grade level in 2021 as an eighth grader. G.B.’s mother remained largely unaware of her son’s struggles due to NYCPS’s failure to provide her required translation and interpretation. G.B.’s mother only became aware of his struggles when G.B., after years of stagnation, began to act out behaviorally and was suspended from school over and over again. Yet, G.B. did not receive a comprehensive evaluation by an evaluator trained to evaluate children who have experienced complex trauma until he began working with NYLAG in 2021. Then we filed a due process petition on his behalf seeking an appropriate independent neuropsychological evaluation, which ultimately recommended extensive remedial services and a specialized therapeutic placement—eight years after G.B. had initially enrolled in NYCPS.

Even challenges far simpler than those faced by G.B. that recently arrived immigrant families experience are not being addressed by the city. Many recently arrived immigrant children do not have the information they need to enroll in school at all, often because New York City has segregated recent immigrants into a newly created, sub-standard shelter system solely for new immigrants. These emergency relief shelters fail to meet the minimum standards for shelter in New

¹² Jones, Athena. “New York City schools are seeing an influx of students. Here’s how they’re handling the immigration crises.” *CNN*, Oct. 19, 2023. <https://www.cnn.com/2023/10/19/us/nyc-schools-immigrants/index.html#:~:text=More%20than%20120%2C000%20migrants%20have,to%20the%20city's%20public%20schools.>

York City and do not provide the supports of the traditional shelter system that help homeless children access education. Take for instance, one family NYLAG represents, the P. family:

- The P family has a 4-year-old daughter and a 1- year-old son. After a difficult journey to the United States from Nicaragua, followed by time spent in ICE detention, they arrived in New York and were placed at an emergency relief shelter on November 2. The P. family’s birth certificates were taken by United States Custom and Border Patrol and not returned. Because of this, shelter staff incorrectly informed the family that their children could not be enrolled in school. The P. family repeatedly requested shelter staff help to enroll the 4-year-old in school and were incorrectly told it was not possible without a birth certificate.

The P. family had been living at the emergency relief shelter for over a month before they were connected with NYLAG. This family was particularly concerned with enrolling their daughter in Pre-K so that she would have the opportunity for proper schooling and not fall too far behind. Luckily, NYLAG was able to advocate for this family so that they could enroll their daughter in school. However, the emergency relief shelter was aware of this situation for over a month and did nothing to address this critical issue. In contrast, the traditional shelter system has caseworker staff in its shelters tasked with supporting residents with these types of issues and many more. This failure would be very unlikely to occur in New York City’s traditional shelter system due to the availability of these supports. And this problem is all too common, as NYLAG represents numerous families living in emergency relief shelters who have reported to us that they have been unable to enroll their children in school without NYLAG’s assistance.

2. A Current and Impending Transportation Disaster

NYLAG’s SEU is also acutely concerned about if and how the growing influx of recently arrived immigrant children living in the city’s shelter system will be transported to school—especially when 60-day eviction notices begin being issued to families late next month. These notices could potentially force up to 4,000 families to move in the middle of the school year.¹³ Homeless students have a legal right to stay in their current school or choose to attend a zoned school. They

¹³ Hogan, Gwynne. “Migrant Parents Work, Save and Worry as Shelter Eviction Looms.” *The City*, Oct. 23, 2023. <https://www.thecity.nyc/2023/10/23/migrants-families-row-shelters-eviction-schools-eric-adams/>

also have a right to free transportation provided by NYCPS, including the right to any required transportation medical accommodations due to disability.

However, NYCPS is already falling horrifically short on its obligations to provide legally required transportation to and from school for students with disabilities. Indeed, on behalf of seventeen families, and along with six other nonprofit legal services and community-based groups, NYLAG recently filed a complaint with the Office of Civil Rights of the federal U.S. Department of Education over disability discrimination in busing services. We alleged in that complaint that, for decades, NYCPS has engaged in systemic discrimination against students with disabilities by routinely denying them access to legally required bus transportation and other accommodations, in violation of federal civil rights law, causing students to lose out on valuable class time and after-school programs, and endure unreasonably long transit times, among other injuries.

As of November 2022, 150,000 DOE students rode school buses each day.¹⁴ The DOE's Office of Pupil Transportation (OPT) oversees all aspects of DOE busing. When their child's bus doesn't show up, comes home hours late, or gets into repeated accidents, parents of students with disabilities have reported being forced into an endless loop of redirection: after calling OPT to learn what route their child is on, for instance, they may be told to call the school, and vice versa; other times, OPT may instruct parents of students with disabilities to speak with the private bus company contracting with OPT, the school, or others. The ways the DOE has offered to resolve the ongoing busing issues remain woefully insufficient for the vast majority of families. For instance, rather than fixing the constant busing issues, the DOE has instead offered to pay families' fares for rideshare services provided by companies such as Uber or Lyft in some instances. However, these options require parents of young children with disabilities to take time off from work

¹⁴ <https://abc7ny.com/nyc-bus-transportation-issues/12478329/>

to accompany their child. They also may require a parent of a student with a disability to travel all the way to a child's school at pickup time, just to accompany them on a rideshare back home. Parents of students with disabilities have become so desperate that at least one private company, Special Needs Logistics, was created specifically due to busing delays for students with disabilities. However, in order for families to access the services of Special Needs Logistics, they have historically had to seek funding through the impartial hearing process, which can be lengthy, time consuming, and expensive in and of itself if the family does not have access to pro bono legal assistance.

NYCPS is also failing to transport new-immigrant students without recognized disabilities. Currently, new-immigrant families who are able to enroll their children in school have a minimum 60-day wait before a school bus is provided, Parents, most of whom do not speak English and have no familiarity with New York City, are handed metro cards and told to take their children to school themselves. However, many such parents have several children in several different schools, sometimes located over an hour away from their assigned shelter. It is almost impossible for these families to get their children to school in a consistent and timely manner.

Given the school transportation crises as it exists now and has for many decades, it is unfathomable that the system as it stands will not collapse under the pressure of a continuing influx of new immigrant families, many of whom may soon require school transportation to and from new shelters and/or new schools. And for these families, with little to no financial means to otherwise pay for their children to get to school, it is unclear if and how these students will continue to get to school on time or at all. For families without advocates, these transportation problems can feel insurmountable.

As an initial matter, the City must repeal the 60-day stay limit for families in shelters so that vulnerable children are not required to move, which is very likely to create uncertainty and

inconsistency in their educations. Additionally, the growing legal needs of a large and expanding population of newly arrived immigrants continue to crystallize. These needs certainly include immigration assistance and representation, but these families also face a myriad of other challenges beyond that—including needing help to access their children’s education and special education services. We ask that the City Council support efforts to do outreach and education to empower immigrant family communities to understand the services and resources available as well as their children’s educational rights, and to access support, legal assistance, and guidance as it relates to their children’s right to a public education. Support, through flexible funding, could enable organizations to respond to the myriad of needs that immigrant communities are facing in order to help these communities thrive. We thank the committees on immigration and education for the work they have done to facilitate services for vulnerable new New Yorkers and for holding this hearing. I hope NYLAG can be a resource for you going forward.

Respectfully submitted,

Jessica L. Selecky

New York Legal Assistance Group