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NYS FIELD MEMO
McKinney-Vento
#04 - 2014

DATE: November 2014

TO: District Superintendents
Superintendents of LEAs and Charter Schools
Title I Coordinators
McKinney-Vento Liaisons

FROM: Ira Schwartz, Assistant Commissioner

SUBJECT: Required Local Educational Agency (LEA) Policy Relating to the McKinney-Vento Homeless Assistance Act

The New York State Education Department (NYSED or “the Department”) must ensure that the children of homeless individuals and homeless youths have equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths. As many LEAs have been facing the challenges associated with providing services to undocumented minors and other groups of students who may be residing in temporary housing, the Department is issuing this important guidance pertaining to the services students are entitled to receive under the McKinney-Vento Homeless Assistance Act (McKinney-Vento).

This guidance is intended to inform LEAs of the legal requirements of McKinney-Vento and New York Education Law § 3209, which pertains to students in temporary housing. The enclosed “Sample Local Educational Agency Education of Homeless Children Policy” is intended to help LEAs to ensure that their policies are fully in compliance with state and federal laws and address the problems that students in temporary housing face in enrolling, attending, and succeeding in school. The sample policy may also be downloaded here: http://www.nysteachs.org/media/INF_SED_SampleLEAPolicy2014.pdf.

Please note that this sample policy is provided for guidance/informational purposes only. LEAs should consult with their school attorneys when developing policies. LEAs are encouraged to incorporate, as appropriate, the provisions of the sample policy into existing LEA policy manuals and post the policy to LEA websites to ensure that the rights of students in temporary housing are widely known and fully protected.

Students in temporary housing have important education rights that differ from those of their permanently housed peers, in areas such as immediate enrollment in school, access to free meals and Title I services, transportation across district boundaries to maintain school stability, and prompt resolution of disputes in accordance with federal and state law. LEAs are required by law to review and revise policies that create barriers to the McKinney-Vento rights of students in temporary housing (see: 42 U.S.C. § 11432(g)(1)(I)).

NYSED periodically monitors all LEAs in New York State and may review your LEA's policies pertaining to students in temporary housing. We encourage you to ensure that your written policies are in full compliance with state and federal law.

Should you have any questions or need additional information about the rights of students in temporary housing, please contact Melanie Faby at (518) 473-0295 or NYS-TEACHS, NYSED's McKinney-Vento technical assistance center, at 1-800-388-2014, Monday-Friday, 9 a.m. - 5 p.m. or email: info@nysteachs.org.

Thank you for your attention to this important issue.

Attachment

cc: Cosimo Tangorra, Jr.
Maxine Meadows-Shuford
Melanie Faby
Jennifer Pringle
Michelle Frank

Sample Local Educational Agency (“LEA”) Policy on the Education of Students in Temporary Housing¹

IDENTIFICATION OF STUDENTS IN TEMPORARY HOUSING²

Under the McKinney-Vento Act, it is the obligation of all districts to affirmatively identify all students in temporary housing. Therefore, it is the policy of this local educational agency (“LEA”)³ (*insert LEA Name here*) to determine whether there are students in temporary housing within the LEA by using an enrollment/residency questionnaire to determine the nighttime residence of all newly enrolled students and all students whose address changes. Not all students in temporary housing can be identified through social service agencies or shelters, as children may be sharing the housing of other persons, such as family or friends, due to loss of housing, economic hardship, or other similar reason. For this reason, (LEA Name) uses an enrollment form/residency questionnaire that asks for a description of the current living arrangements of the child or youth in order to determine whether the child or youth meets the definition of a homeless child under the McKinney-Vento Homeless Education Assistance Act (42 U.S.C. § 11434a(2)) (“McKinney-Vento”) and New York Education Law § 3209(1)(a).⁴

In addition to using the residency questionnaire, (Insert LEA Name Here) will also contact our local department of social services (http://www.health.state.ny.us/health_care/medicaid/ldss.htm) to identify students in temporary housing, as well as the local runaway and homeless youth shelter (http://www.ocfs.state.ny.us/main/youth/runaway_homeless_services.pdf) and any other shelters located within the LEA boundaries to ensure all students in temporary housing are properly identified and served.

DEFINITION OF HOMELESS CHILD AND UNACCOMPANIED YOUTH

Pursuant to McKinney-Vento 42 USC § 11434a(2), Education Law § 3209(1)(a), and 8 NYCRR § 100.2(x)(1)(i) a homeless child is defined as:

- (1) a child who lacks a fixed, regular, and adequate nighttime residence, including a child or youth who is:
- (i) sharing the housing of other persons due to loss of housing, economic hardship or similar reason (sometimes referred to as “doubled-up”);
 - (ii) living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
 - (iii) abandoned in hospitals;

¹ This sample policy is provided for guidance/informational purposes only. School districts should consult with their school attorneys when developing district policies.

² The terms “homeless child” and “student in temporary housing” are used interchangeably throughout this sample policy.

³ Please note that “LEA” and “school district” are used interchangeably throughout this sample policy.

⁴ NYSED’s sample Residency Questionnaire can be found here: <http://www.nysteachs.org/info-forms/nysed/>

- (iv) awaiting foster care placement; or
- (v) a migratory child who qualifies as homeless because he or she is living in circumstances described above; or
- (2) a child or youth who has a primary nighttime location that is:
 - (i) a supervised publicly or privately operated shelter designed to provide temporary living accommodations including, but not limited to, shelters operated or approved by the state or local department of social services, and residential programs for runaway and homeless youth; or
 - (ii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, including a child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train stations or similar setting.

An unaccompanied youth is defined as a homeless youth who is not in the physical custody of a parent or guardian.

42 USC § 11434a(6); 8 NYCRR §100.2(x)(1)(vi)

DUTIES OF THE MANDATED MCKINNEY-VENTO LIAISON

Every LEA, regardless of whether it receives a McKinney-Vento subgrant, is required to designate a local liaison for homeless children and youth (“McKinney-Vento liaison”). The McKinney-Vento liaison for (LEA Name Here) serves as one of the primary contacts between families experiencing homelessness and school staff, district personnel, shelter workers, and other service providers. The McKinney-Vento liaison coordinates services to ensure that homeless children and youth enroll in school and have the opportunity to succeed.

The McKinney-Vento liaison must ensure that:

- Students in temporary housing are identified by school personnel and through coordination activities with other entities and agencies;
- Students in temporary housing enroll in, and have full and equal opportunity to succeed in, the schools of (LEA Name);
- Students in temporary housing and their families receive educational services for which they are eligible, including Head Start, Even Start, and preschool programs administered by the LEA, and referrals to health, mental health, dental, and other appropriate services;
- Parents or guardians of students in temporary housing are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- Parents and guardians of students in temporary housing, and unaccompanied youth, are fully informed of all transportation services, including transportation to and from the school district of origin and are assisted in accessing transportation services;
- Disputes regarding school selection, enrollment and/or transportation are mediated in accordance with the requirements of McKinney-Vento;
- Assistance in commencing an appeal pursuant to Education Law §310 of a final determination regarding enrollment, school selection and/or transportation is provided

- to the students in temporary housing's parent or guardian or the unaccompanied youth in accordance with the provisions of 8 NYCRR §100.2(x)(7)(iii);
- Public notice of the educational rights of students in temporary housing is posted in locations where such students receive services, such as schools, shelters, and soup kitchens;
 - A record is maintained of all appeals of enrollment, school selection and transportation; and
 - School personnel, service providers and advocates working with students in temporary housing are informed of the duties of the McKinney-Vento liaison.

42 USC §11432(g)(6)(A); 8 NYCRR §100.2(x)(7)(iii)

SCHOOL OF ORIGIN

The McKinney-Vento Act defines school of origin as “the school that the child or youth attended when permanently housed or the school in which the child or youth last enrolled.”

42 USC §11432(g)(3)(G)

THE DESIGNATOR HAS RIGHT TO CHOOSE THE SCHOOL DISTRICT THE STUDENT IN TEMPORARY HOUSING WILL ATTEND

(LEA Name Here) understands that the “designator” decides which school district a student in temporary housing will attend. A designator is:

- the parent or person in parental relation (guardian) to a student in temporary housing; or
- the student in temporary housing, together with the McKinney-Vento liaison, in the case of an unaccompanied youth; or
- the director of a residential program for runaway and homeless youth, in consultation with the student in temporary housing, where such student is living in such program.

See, NY Education Law §3209(1)(b); 8 NYCRR §100.2(x)(1)(ii)

The designator has the right to designate one of the following as the school district within which a student in temporary housing shall be entitled to attend upon instruction:

- **School district of current location** - the public school district within the State of New York in which the hotel, motel, shelter or other temporary housing arrangement of a student in temporary housing or the residential program for runaway and homeless youth is located;
- **School district of origin** - the public school district within the State of New York in which the student in temporary housing was attending a public school on a tuition-free basis or was entitled to attend when circumstances arose that caused such child to become homeless. If the school district of origin is designated, the student in temporary housing is entitled to return to the school building where previously enrolled;

- **School district participating in a regional placement plan** - a regional placement plan is a comprehensive regional approach to the provision of educational placements for homeless children, which must be approved by the Commissioner of Education.⁵

Please note: Students who have designated the district of current location and move to another temporary housing location outside of such district, or to a different attendance zone or community school district within such district, shall be entitled to continue the prior designation to enable the student to remain in the same school building for the duration of homelessness and through the end of the school year in which the student becomes permanently housed. The student may be able to remain in the same district for one additional year, if the year constitutes the student’s terminal year in such building.

42 USC §11432(g)(3)(A); NY Education Law §§3209(1)(c)-(e) & (2); 8 NYCRR §100.2(x)(1)(iii)-(v) & (2)

DESIGNATION/STAC 202 FORM

(LEA Name Here) will identify all students in temporary housing, and a designation form will be completed by the designator for all such students and any other student who claims homelessness. Designations must be made on the STAC 202 form provided by the Commissioner. A copy of the form is available at http://www.nysteachs.org/media/INF_SED_STAC202_Form.pdf.

- The appropriate designator must complete the designation form. (LEA Name Here) makes designation forms available to a student in temporary housing who seeks admission to school or to the parent or person in parental relation who seeks to enroll such child in school.
- Where a parent or person in parental relation or a child who is neither placed in a temporary housing facility by the local department of social services nor housed in a residential program for runaway homeless youth, designates (LEA Name Here) as the school district of current location, (LEA Name Here) will forward to the New York State Education Department (the “Department”) a completed designation form and a statement of the basis for its determination that the child is a homeless child entitled to attend the schools of the district.

NY Education Law §3209(2)(d); 8 NYCRR §100.2(x)(3)

UPON RECEIPT OF THE DESIGNATION/STAC 202 FORM

Upon identification of a child who is homeless and/or receipt of a completed designation form, (LEA Name Here) will:

- immediately review the designation form to assure that it has been completed and admit the student in temporary housing even if the child or youth is unable to produce records

⁵ This provision is applicable only to certain school districts in Westchester County.

normally required for enrollment, such as previous academic records, medical records, immunization records, proof of residency or other documentation;

- provide the child with access to all of (LEA Name Here)'s programs, activities and services to the same extent as they are provided to resident students;
- immediately contact the school district where the child's records are located in order to obtain a copy of such records and coordinate the transmittal of records for students with disabilities pursuant to section 200.4(e)(8)(iii) of the Commissioner's regulations;
- immediately refer the parent or guardian of the student in temporary housing to the McKinney-Vento liaison who must assist in obtaining necessary immunizations or immunization or medical records if the child or youth needs to obtain immunizations or immunization or medical records;
- forward the STAC 202 form to the Commissioner and the school district of origin, where applicable. In all cases, the (LEA Name Here) will give a copy of the completed STAC 202 to the designator and keep a copy of the STAC 202 form for the LEA's records.

42 USC §11432(g)(3)(C)&(g)(4); NY Education Law §3209(2)&(2-a); 8 NYCRR §100.2(x)(3)&(4)

UPON RECEIPT OF A REQUEST FOR RECORDS

Within five days of receipt of a request for school records from a new school, (LEA Name Here) will forward, in a manner consistent with state and federal law, a complete copy of the student in temporary housing's records, including, but not limited to, proof of age, academic records, evaluations, immunization records, and guardianship papers, if applicable. *NY Education Law §3209(2)(f); 8 NYCRR §100.2(x)(5)*

TUITION REIMBURSEMENT

(LEA Name Here) is eligible to request reimbursement from the Department for the direct costs of educational services to students in temporary housing that are not otherwise reimbursed under special federal programs, when:

- the district is either the school district of current location or a school district participating in a regional placement plan,
- the district is designated as the school district of attendance, and
- the school district of origin for the student in temporary housing is within New York State.

All claims for reimbursement will be made on the STAC 202 form prescribed by the Commissioner of the State Education Department. *NY Education Law §3209(3)(a)*

TRANSPORTATION RESPONSIBILITIES

- A social services district is responsible for providing transportation to students in temporary housing who are eligible for benefits under Social Services Law §350-j and placed in temporary housing arrangements outside their designated districts.

- To the extent funds are provided for such purpose, the Office of Children and Family Services (“OCFS”) provides transportation for each student in temporary housing who lives in a residential program for runaway youth and homeless youth located outside of the designated school district. The social services district or OCFS may also contract with (LEA Name Here) or with our local board of cooperative educational services (“BOCES”) to provide such transportation. If the runaway and homeless youth shelter is not capable of transporting or contracting for transportation, (LEA Name Here) will provide transportation and will seek reimbursement. The costs for transportation will be reimbursed by the State Education Department with the submission of a Runaway and Homeless Youth Act Transportation Program Form. Where (LEA Name Here) provides transportation for a student living in an Runaway and Homeless Youth (“RHY”) facility, the LEA will promptly request reimbursement using the Runaway and Homeless Youth Act Transportation Form which is available from the Homeless Education Program Office (518-473-0295) and online at www.nysteachs.org
- (LEA Name Here) will transport any student in temporary housing where it is the designated district of attendance and the student in temporary housing is not entitled to receive transportation from the Department of Social Services or OCFS. *NY Education Law §3209(4); 8 NYCRR §100.2(x)(6)*
- When (LEA Name Here) is designated as the school district of current location for a student in temporary housing, (LEA Name Here) will provide transportation on the same basis as it is provided to resident students. *NY Education Law §3209(4)(d); 8 NYCRR §100.2(x)(6)(iii)*
- If the student in temporary housing designates (LEA Name Here) as the school district of origin or a district participating in a regional placement plan, transportation will not exceed 50 miles each way, unless the Commissioner of the State Education Department determines that it is in the best interest of the child. *NY Education Law §3209(4)(c); 8 NYCRR §100.2(x)(6)(ii)*
- (LEA Name Here) shall delay for 30 days the implementation of a final determination to decline to transport a student in temporary housing or unaccompanied youth. *8 NYCRR §100.2(x)(7)(ii)(c)*

DISPUTE RESOLUTION PROCESS

(LEA Name Here) has established the following procedures for the prompt resolution of disputes regarding school selection or enrollment of a homeless child or youth:

- (LEA Name Here) will provide a written explanation, including a statement regarding the right to appeal, to the parent or guardian of a student in temporary housing, or to an unaccompanied youth if (LEA Name Here) declines to either enroll and/or transport such child or youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth.
- (LEA Name Here) will delay for 30 days the implementation of a final determination to decline to either enroll in and/or transport the student in temporary housing to the school of origin or a school requested by the parent or guardian or unaccompanied youth.
- If the parent or guardian of a student in temporary housing or unaccompanied youth commences an appeal to the Commissioner with a stay application within 30 days of such

final determination, the student will be permitted to continue to attend the school he or she is enrolled in at the time of the appeal and/or receive transportation to that school until the Commissioner renders a decision on the stay application.

- If the Commissioner grants the stay request and issues a stay order requiring continued enrollment and/or transportation, the student in temporary housing can continue attending the school and/or receiving transportation until the Commissioner issues an appeal decision. However, if the Commissioner denies the stay request, the student in temporary housing can be asked to leave the school and/or discontinue transportation immediately.
- If the Commissioner sustains the appeal and issues a decision requiring continued enrollment and/or transportation, student can continue attending the school at issue and/or receiving transportation. However, if the Commissioner dismisses the appeal, the student can be asked to leave the school and/or discontinue transportation immediately.

42 USC §11432(g)(3)(E); 8 NYCRR §100.2(x)(7)(ii); U.S. Department of Education, Education for Homeless Children and Youth Program, Non-Regulatory Guidance (July 2004)

MCKINNEY-VENTO LIAISON'S DISPUTE RESOLUTION RESPONSIBILITIES

- (LEA Name Here)'s McKinney-Vento liaison must assist the student in temporary housing's parent or guardian or unaccompanied youth in bringing an appeal to the Commissioner under Education Law §310 of a final school district decision regarding enrollment, school selection and/or transportation.
- The McKinney-Vento liaison must provide the parent or guardian or unaccompanied youth with a copy of the form petition, which is available at: <http://www.counsel.nysed.gov/appeals/petition.htm>.
- The McKinney-Vento liaison must assist the parent or guardian or unaccompanied youth in completing the form petition, including the section requesting interim relief (stay provision).
- The McKinney-Vento liaison must arrange for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth.
- The McKinney-Vento liaison must accept service of the form petition and supporting papers on behalf of any school district employee or officer named as a party or the school district if it is named as a party or arrange for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of the superintendent who has been designated by the board of education to accept service on behalf of the school district.
- The McKinney-Vento liaison must provide the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the McKinney-Vento liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or officer or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of the superintendent who has been designated by the board of education to accept service on behalf of the school district.

- The McKinney-Vento liaison must transmit on behalf of the parent or guardian or unaccompanied youth, within five days after the service of, the form petition or any pleading or paper to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.
- The McKinney-Vento liaison must provide the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the McKinney-Vento liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.
- The McKinney-Vento liaison must accept service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects. The liaison must also make such correspondence available to the parent or guardian or unaccompanied youth.
- The McKinney-Vento liaison must maintain a record of all appeals of enrollment, school selection, and transportation determinations.

42 USC §11432(g)(3)(E)(iii); 8 NYCRR §100.2(x)(7)(iii)(c)

COORDINATION

- (LEA Name Here) will coordinate the provision of services described above with local social services agencies and other agencies or programs providing services to students in temporary housing and their families, including services and programs funded under the Runaway and Homeless Youth Act.
- (LEA Name Here) will coordinate with other school districts on inter-district issues, such as transportation or transfer of school records.
- (LEA Name Here) will coordinate implementation of the above provision of services with the requirements of the Individuals with Disabilities Education Act (IDEA) for students with disabilities.

42 USC §11432(g)(5); 8 NYCRR §100.2(x)(7)(vi)

COORDINATION WITH TITLE I (For districts that receive Title I Funds)

(LEA Name Here) acknowledges that students in temporary housing are eligible for services under Title I, Part A, whether or not they live in a Title I school attendance area or meet the academic requirements required of other children. (LEA Name Here) will ensure that:

- Title I, Part A funds are set aside as are necessary to provide students in temporary housing who do not attend participating schools with services comparable to those provided to children in Title I, Part A funded schools, including providing educationally related support services to children in shelters and other locations where students in temporary housing may live.
- (LEA Name Here), receiving Title I, Part A funds, will include in its local plan a description of how the plan is coordinated with McKinney-Vento.
- The local plan will describe services provided to students in temporary housing.

- If (LEA Name Here) reports that there are no students in temporary housing or unaccompanied youth in non-Title I schools, the LEA will describe the efforts it made to identify students in temporary housing and unaccompanied youth. Such efforts will include contacting the local department of social services or OCFS to verify that there are no students in temporary housing in the LEA.

(LEA Name Here) will also document that its enrollment form/residency questionnaire asks about the living arrangements of the child or unaccompanied youth, including asking if he or she is living in a shelter; with relatives or others due to loss of housing or economic hardship; in an abandoned apartment/building; in a motel/hotel, camping ground, car, train/bus station or other similar situation due to the lack of alternative, adequate housing; or awaiting an OCFS permanent foster care placement. Documentation of the LEA's efforts to identify students in temporary housing will be maintained on file and a copy of the LEAs enrollment form/residency questionnaire which asks the above questions will also be kept on file.

REPORTING

(LEA Name Here) will collect and transmit to the Commissioner, at such time and in such manner as the Commissioner may require, reports containing such information as the Commissioner determines is necessary, including the numbers of homeless students, their grade, and their nighttime residence.

8 NYCRR §100.2(x)(7)(vii)

ACCESS TO FREE MEALS (only for districts participating in the federal free/reduced meal program)

(LEA Name Here) will provide free meals to all children identified as homeless. They do not have to complete a free or reduced-price meal application. When the McKinney-Vento liaison or a shelter director provides a child's name to the (LEA Name Here)'s school food service office, free school meals will commence immediately.

42 USC §1758(b)(12)(A)

Questions about this policy or the protections available to students in temporary housing can be directed to the McKinney-Vento Liaison. (Insert Liaison's name and contact information here.) Questions can also be directed to NYS-TEACHS at (800) 388-2014.