



# ALBUQUERQUE SCHOOL OF EXCELLENCE

13201 Lomas Blvd. NE Albuquerque, NM 87112 ♦ Phone: 505.312.7711 ♦ Fax: 505.312.7712

## DISPUTE RESOLUTION PROCESS SCHOOL DISTRICT PLACEMENT OF CHILDREN AND YOUTHS IN HOMELESS SITUATIONS

### McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act (also referred to as the Act or the McKinney-Vento Act) acknowledges that disputes may arise between the school district and homeless students and their parents, or unaccompanied youth, when the district seeks to place a student in a school other than the school of origin or the school requested by the parent or unaccompanied youth. The Act includes dispute resolution among the required duties of the local education agency (LEA) liaison.

The Albuquerque School of Excellence (ASE) is committed to ensuring that homeless students have equal access to the same free, appropriate public education and services, including public preschool education, as provided to other children and youth in ASE in accordance to the provisions of the McKinney-Vento Homeless Education Act, 42 U.S.C. § 11431 *et seq.*

### Definitions

“Homeless student” shall have the same meaning as the term “homeless children and youths,” defined by 42 U.S.C. § 11434a(2) as:

Individuals who lack a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

This definition includes:

- children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;



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- children and youths who have a primary nighttime residence that is a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings;
- children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
- unaccompanied youth; and
- migratory children (as such term is defined in 20 U.S.C. § 11302(a)(2)(C) who qualify as homeless for the purposes of this part because the children are living in circumstances described above).
- “School of origin” means the school that the student attended when permanently housed or the school in which the student was last enrolled.
- “Unaccompanied youth” means a youth not in the physical custody of a parent or guardian.
- “Homeless Liaison” means the staff person designated by the Superintendent as the person responsible for carrying out the duties assigned by the McKinney-Vento Homeless Assistance Act to local education agencies.

**Enrollment:** If a dispute arises over school selection or enrollment in a school, the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute. In the case of an unaccompanied youth, the homeless liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute.

To determine the homeless student’s “best interest”, the District shall (1) to the extent feasible, keep a homeless student in the school of origin, except when doing so is contrary to the wishes of the student’s parent or guardian; (2) provide a written explanation, including a statement regarding the right to appeal, to the homeless student’s parent or guardian, if the District sends such student to a school other than the school of origin or a school requested by the parent or guardian; and (3) in the case of an unaccompanied youth, ensure that the Homeless Liaison assists in placement or enrollment decisions, considers the views of such unaccompanied youth, and provides notice to such youth of the right to appeal.

**Written Explanation:** The district must provide a written explanation of the school placement decision to the parent or, in the case of an unaccompanied youth, to the unaccompanied youth. (The written explanation must include a description of the parent’s or unaccompanied youth’s right to appeal the decision.)



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**Liaison:** The designated LEA homeless liaison is assigned to carry out the dispute resolution process in an expeditious manner.

**Responsibility:** The school district, usually the district's homeless liaison, is responsible to inform the parent of the homeless student(s) or the unaccompanied youth of the dispute resolution process.

**Educational Services.** A homeless student shall be provided the services offered to other students, including, without limitation, transportation services, educational services (including services provided under Title I, IDEA, and educational programs for students with limited English proficiency), program in vocational and technical education, programs for gifted and talented students, and school nutrition programs.

**Homeless Liaison.** The Superintendent shall appoint a Homeless Liaison who shall ensure that:

- homeless students are identified by school personnel and through coordination activities with other entities and agencies;
- homeless students enroll in, and have full and equal opportunity to succeed in, the District;
- homeless families and students receive educational services for which such families and students are eligible, including programs administered by the District, and referrals to health care services, dental services, mental health services, and other appropriate services, and the parent, guardian, or unaccompanied youth is fully informed of these educational services;
- public notice of the educational rights of homeless students is disseminated where such students receive services, such as schools, family shelters, and soup kitchens;
- the parent or guardian of a homeless student, and any unaccompanied youth, is fully informed of all transportation services, including transportation to the school of origin, and is assisted in accessing transportation to the school that is selected by the student;
- coordinate with local social services agencies and other agencies or programs providing services to homeless students and their families, and with other school districts on inter-district issues, such as transportation or the transfer of school records;
- assist a homeless student in obtaining necessary immunizations or records;
- monitor and carry out the enrollment dispute resolution process as expeditiously as possible after receiving notice of the dispute; and
- develop procedures by which the District and the Homeless Liaison will implement and comply with this Policy.



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## Dispute Resolution Overview

**Every effort must be made to resolve the complaint or dispute at the local level before it is submitted to the New Mexico Public Education Department (NMPED).**

Disputes addressing the enrollment, transportation, and other barriers to education of children and youth experiencing homelessness may be initiated by parents, guardians or unaccompanied youth by submitting a complaint on the school's dispute resolution form. Pending resolution of the dispute, the student shall be immediately enrolled in the school in which enrollment is sought and the student shall be provided services for which he/she qualifies.

In a case where a dispute occurs regarding the enrollment of a homeless child or youth, the following process must be used:

- Level I: School of Choice Informal Resolution by the school's Homeless Liaison, if unresolved, proceed to Level II,
- Level II: The case is appealed to the school's Principal. If the dispute continues to be unresolved, then proceed to Level III,
- Level III: The case is appealed to the school's Superintendent. If the dispute continues to be unresolved, then proceed to Level IV,
- Level IV: The case is appealed to the school's Governing Council. If the dispute continues to be unresolved, then proceed to Level V,
- Level V: The case is appealed to the NMPED's State Coordinator of Education for Homeless Children and Youth (ECHY).

### Written Notice.

Written notice shall be provided to the parent or guardian of a homeless student or the unaccompanied youth at the time any homeless student seeks enrollment in the District that,

- shall be signed by the parent or guardian or the unaccompanied youth;
- sets forth the general rights provided to the homeless student;
- specifically states the choice of schools homeless students are eligible to attend; that no homeless student is required to attend a separate school for homeless children or youths;



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- that homeless children and youths shall be provided comparable services, including transportation services, educational services, and meals through school meals programs;
- homeless students should not be stigmatized by school personnel;
- provides contact information for the Homeless Liaison and the New Mexico Coordinator for Education of Homeless Children and Youths;
- describes the dispute resolution procedures that a parent, guardian or unaccompanied youth may follow to initiate a complaint with the school principal or District Homeless Liaison in the event that there is a that there is a dispute over enrollment, services, or other rights arising under the McKinney-Vento Act; and
- is provided in a manner and form understandable to such parent or guardian or unaccompanied youth, including, if necessary and to the extent feasible, in the native language of such parent or guardian or youth.
- The notice also shall include a simple dispute resolution form that the parent, guardian or unaccompanied youth may use to initiate a complaint with the school or District Homeless Liaison.

If a parent, guardian or unaccompanied youth wishes to appeal a school's initial decision related to eligibility, school selection, enrollment, participation or transportation:

A. The complaint must be (i) written; (ii) signed by the complaining party or his/her designated representative; (iii) contain a statement that the District has violated a requirement of federal statute or regulation; (iv) contain a statement of the facts on which the complaint is based and the specific requirement alleged to have been violated; and (v) the relief being requested.

B. Upon receipt of the formal complaint, the school shall provide the complaining party with written confirmation of the receipt of the complaint and a notice of rights. The notice of rights should include:

- i. contact information of the District's Homeless Liaison, school Principal, the Superintendent, the Governing Council, and the PED Homeless Liaison, along with a brief description of their roles;
- ii. a step-by-step description of how to follow the dispute resolution process;
- iii. notice of the right to immediately enroll in the school of choice pending resolution of the dispute and notice that immediate enrollment includes full participation in all school activities;
- iv. notice of the right to obtain the assistance of advocates or attorneys;
- v. notice of the right to appeal to the New Mexico Public Education Department (PED) if the district-level resolution is not satisfactory;
- vi. the timeliness for resolving district and PED-level appeals; and
- vii. notice of the right to provide written or oral documentation to support their position.



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C. If the school's Homeless Liaison is not able to informally resolve an issue of eligibility, the Principal shall investigate the formal complaint and provide a written decision within ten (10) calendar days from the receipt of the complaint. The written decision, if adverse to the complaining party, shall inform the complaining party that he or she may appeal the determination to the school's Superintendent by providing a written statement appealing the decision within three (3) school days from the date of the Principal's decision. Upon receipt of a party's notice of appeal, the principal shall promptly forward the following information to the Superintendent:

- i. the school name, address, phone and fax number;
- ii. the student's name, identification number, grade, and address;
- iii. parent, guardian or complaining party's name, relationship to student, address and phone number;
- iv. name of school child or youth chooses to be enrolled in pending resolution of the dispute;
- v. reason for complaint;
- vi. whether school enrolled in is school of origin;
- vii. signature of parent, guardian or complaining party; and
- viii. the Principal's decision on the complaint.

D. The Superintendent shall then investigate the formal complaint and provide a written decision within ten (10) calendar days from the receipt of the complaint. The written decision, if adverse to the complaining party, shall inform the complaining party that he or she may appeal the determination to the school's Governing Council by providing a written statement appealing the decision within three (3) school days from the date of the Superintendent's decision. Upon receipt of a party's notice of appeal, the Superintendent shall promptly forward the following information to the Governing Council:

- i. the school name, address, phone and fax number;
- ii. the student's name, identification number, grade, and address;
- iii. parent, guardian or complaining party's name, relationship to student, address and phone number;
- iv. name of school child or youth chooses to be enrolled in pending resolution of the dispute;
- v. reason for complaint;
- vi. whether school enrolled in is school of origin;
- vii. signature of parent, guardian or complaining party; and
- viii. the Superintendent's decision on the complaint.



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E. Upon receipt of the complaint or appeal from a determination by the school Superintendent, the Governing Council shall investigate the complaint and provide the complaining party with a written determination within ten (10) calendar days. The Governing Council's decision shall be the District's final decision. The written decision shall include all factual information upon which the determination is based and the legal basis in support thereof. If the decision is adverse to the complaining party, the decision and all supporting documentation shall be forwarded to the New Mexico PED's Homeless Liaison within five (5) calendar days from the date of issuing the District's final decision. The complaining party may choose to appeal to the PED directly within five (5) calendar days of the District's final decision.



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**McKinney-Vento Homeless Education Act of 2001**  
**42 U.S.C. §§ 11431, et. seq. (Chapter 119), as amended by the**  
***No Child Left Behind Act.***

## **POLICY STATEMENT**

### **Section 721(1)(2) of the McKinney-Vento Homeless Education Act:**

The following is the policy of the Congress:

- (1) Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.
- (2) In any State that has a compulsory residency requirement as a component of the State's compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, the State will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.
- (3) Homelessness alone is not sufficient reason to separate students from the mainstream school environment.
- (4) Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State student academic achievement standards to which all students are held.

## **DEFINITIONS**

**Homeless Children and Youths:** According to Section 725(2) of the McKinney-Vento Homeless Education Act, "the term 'homeless children and youths'--

- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)) [*'one who (1) lacks a fixed, regular, and adequate residence or (2) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill), an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for,*





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or ordinarily used as, a regular sleeping accommodation for human beings.']; and

(B) includes--

- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));
- (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii)."

Section 103(c) of the Act specifically excludes from the definition of homeless individuals any person who is imprisoned or otherwise detained by Act of Congress or State law.

**Unaccompanied Youth:** Section 725(6) of the Act indicates that the term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian." Youth living on their own in any of the homeless situations described in the law, are covered by the law.

**Fixed Residence:** A residence that is stationary, permanent, and not subject to change.

**Regular Residence:** A residence which is used on a regular (i.e., nightly) basis.

**Adequate Residence:** A residence which is sufficient for meeting both the physical and psychological needs typically met in home environments.

**Parent:** For the purpose of this policy, a parent means a parent, legal guardian, or person having legal custody of a child.

**School of Origin:** The school of origin, as defined in the McKinney-Vento Homeless Education Act, Section 722 (g)(3)(G), is the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

**Enrollment:** The terms “enroll” and “enrollment” include attending classes and participating fully in school activities.