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SECRETARY OF EDUCATION

BILL RICHARDSON  
Governor

January 11, 2005

**MEMORANDUM**

**TO:** Superintendents  
Special Education Directors  
Charter School Administrators  
REC Directors

**FROM:** Dr. Veronica C. García, Ed. D. (Signature on File)  
Secretary of Education

**RE: IDEA 2004: REQUIREMENTS REGARDING HOMELESS CHILDREN AND YOUTH**

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This memorandum provides information regarding one portion of the newly reauthorized Individuals with Disabilities Education Improvement Act (IDEA) of 2004. On August 1, 2005, some of this information was disseminated by the NMPED to Special Education Directors, Charter School Directors, Regional Educational Cooperatives, and school principals as part of the non-regulatory guidance on the IDEA 2004.

The IDEA 2004 includes the following new provisions regarding the provision of relevant services to homeless children and youth:

**Definition of Homeless Children:** The term 'homeless children' has the meaning given by the *McKinney-Vento Homeless Assistance Act* (42 U.S.C. §11434a(2)), which includes an individual

- who lacks a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); or
- includes:
  - children and youth 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;

- 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 42 U.S.C. §11302(a)(2)(C));
- children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- migratory children (as such term is defined in 20 U.S.C. §6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described above.

**State Educational Agency (SEA) Supervisory Responsibility:** In carrying out its general supervisory responsibilities under the IDEA with respect to homeless children, the NMPED shall ensure that the requirements of the *McKinney-Homeless Assistance Act* are met, including requirements regarding maintenance of special education records, provision of special education evaluations, and provision of special education and related services for eligible students who are homeless.

**State Advisory Panel:** The State's advisory panel, established under the IDEA for the purpose of providing policy guidance with respect to special education and related services to students with disabilities, must include State and local education officials, including officials who carry out activities under subtitle B of title VII of the *McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)*.

**Procedural Safeguards:** LEAs must establish and maintain procedures for the appointment of a surrogate parent in the case of an unaccompanied homeless youth, defined by the *McKinney-Vento Homeless Assistance Act* as "a youth not in the physical custody of a parent or guardian." Such procedures must ensure that the surrogate is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child. The NMPED is required to make reasonable efforts to ensure that a surrogate is assigned not more than 30 days after there is a determination by the agency that the child needs a surrogate.

In addition, in accordance with the IDEA 2004, the NMPED has established procedures that require a petitioner who files a due process hearing request to include, in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending.

VCG/js

cc: Dr. Catherine Cross-Maple, Deputy Secretary Learning and Accountability  
Dr. Patricia Parkinson, Assistant Secretary  
New Mexico IDEA State Advisory Panel