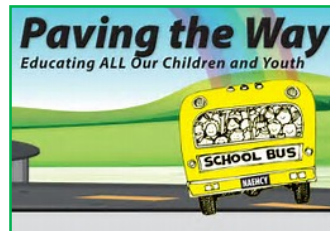


Student Success and Wellness Bureau

New Mexico Educational Stability Guidelines for Students Experiencing Homelessness



Every Student Succeeds Act (ESSA)



“NEW MEXICO RISING”

see the state’s Every Student Succeeds Act (ESSA) plan at:
http://ped.state.nm.us/ped/ESSA_docs/FINAL_NMESSAPlan.pdf

The McKinney-Vento Homeless Assistance Act (also referred to as the Act or the McKinney-Vento Act), as amended by the Every Student Succeeds Act (ESSA), mandates basic protections and procedures be in place when a dispute arises “over eligibility, school selection or enrollment in a school” [42 U.S.C. § 11432(g) (3) (E)].

These protections and procedures must be available to address disputes related to whether a student has the right to enroll in a particular school based on eligibility, school selection, and enrollment, while upholding all the rights that the McKinney-Vento Act provides to children and youth experiencing homelessness, parents, and guardians.

The Act acknowledges that disputes may arise between the Local Education Agency (LEA)/State Charter School and students experiencing homelessness and their parents or guardians, or unaccompanied youth, when the LEA/State Charter School 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 as one of the duties of the LEA's/State Charter School's Homelessness Liaison.

LEAs should keep in mind that disputes related to school selection or enrollment should be initiated at the request of the parent or unaccompanied youth and not at the request or convenience of the LEA/State Charter School. Additionally, issues related to the definition of homelessness, the responsibilities of the LEA/State Charter School to serve children and youth experiencing homelessness, and/or the explicit rights of children and youth experiencing homelessness are addressed in the McKinney-Vento Act.

Disputes related to the school placement and enrollment of children and youths experiencing homelessness shall be resolved within the parameters of the federal McKinney-Vento Act as amended by the ESSA. The dispute resolution process for the eligibility, school selection, enrollment and transportation of children and youths experiencing homelessness shall not be used in an effort to circumvent or supersede any part of the federal McKinney-Vento Act.

The processes described in these procedures apply in the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act relating to a dispute not resolved at the district level. The applicable disputes are those involving the eligibility, school selection/enrollment, participation or transportation of a homeless child or youth. Schools must check periodically throughout the school term for updates on these procedures issued by the Public Education Department. Refer to Rule 6.10.3.8 NMAC for other forms of complaints which may be submitted with the Department.

Definitions used in these procedures

“Department” means the New Mexico Public Education Department (PED).

Section 725 of the McKinney Vento Act defines **“Homeless children and youth”** as individuals who lack a fixed, regular, and adequate nighttime residence, the term includes:

- Children and youth who are:
 - sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as “doubled-up”);
 - 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; or

- are abandoned in hospitals.
- Children and youth 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;
- Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described above.

“**LEA**” means local education agency. In New Mexico, this can be a school district or a state chartered charter school.

“**Liaison**” The designated LEA/State Charter School Homeless Liaison assigned to carry out specific duties under the act including the dispute resolution process in an expeditious manner.

“**School of origin**” means the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including preschool (Section 722(g)(3)(I)(i)). When a child or youth completes the final grade level served by the school of origin, the school of origin includes the designated receiving school at the next grade level for all feeder schools (such as when an elementary school feeds into a middle school). (Section 722(g)(3)(I)(i))

“**State Charter School**” means a charter school authorized by the department.

“**Student who has experienced disruption in the student’s education**” means a student who experiences one or more changes in school or school district during a single school year as the result of homelessness as defined in the federal McKinney-Vento Homeless Assistance Act as determined by the school or school district. Section 22-12-10(A)(1) NMSA 1978.

ESSA and NMSA School Stability Provisions

The following provisions are specified under ESSA, New Mexico Statutes Annotated (NMSA) and the New Mexico Administrative Code (NMAC):

Immediate Enrollment and Eligibility

Children or youth experiencing homelessness must be immediately enrolled in the school in which enrollment is sought, whether it be the school of origin, or the school in the attendance area, regardless if they are missing school records, proof of residency, immunization and other health records, lack of a parent or legal guardian or have unpaid fees. Immediate enrollment includes attending classes and participating fully in school activities, including extracurricular

activities. Students experiencing homelessness are to be directly certified for free school meals for the entire school year.

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 and must be immediately referred to the Homelessness Liaison. In the case of an unaccompanied youth, the Homelessness Liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute. The dispute resolution process is described in detail below.

School Selection and Best Interest

To ensure the stability of students experiencing homelessness, the LEA/State Charter School must make school placement decisions on the basis of the “best interest” of the student based on student-centered factors. (Section 722(g)(3)(B)). Using this standard, the LEA/State Charter must:

- Continue the student’s education in the school of origin for the duration of the homelessness when a family becomes homeless between academic years or during an academic year, and for the remainder of the academic year even if the student becomes permanently housed; or
- Enroll the student in any public school that non-homeless students who live in the attendance area in which the student is actually living are eligible to attend. (Section 722(g)(3)(A))

When determining the student experiencing homelessness best interest, the LEA/State Charter School must consider the following factors:

- Request of the student’s parent or guardian or unaccompanied youth
- Impact of the mobility on student achievement
- Education
- Health
- Safety
- Placement of siblings

Participation and Removal of Barriers

The LEA/State Charter School has an obligation to remove barriers to enrollment and retention of the student experiencing homelessness. (See sections 721(2), 722(g)(1)(I)). A school selected on the basis of the student’s best interest must enroll the student immediately even if the student is unable to produce the records normally required for enrollment (such as previous academic records, records of immunization and other health-related records, proof of residency, proof of guardianship, birth certificates of other documents), has missed application or enrollment deadlines during the period of homelessness, or has outstanding fees.

School Enrollment: School records, vaccinations and immunizations

Pursuant to the McKinney-Vento Homeless Assistance Act (42 USC § 11432(g)(3)(C)), children experiencing homelessness must be able to enroll in school immediately, even if they are unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation. In accordance with 7.5.3.10 of the NMAC, if the child needs to obtain immunizations, or medical or immunization records, the enrolling school must immediately refer the parent or guardian of the child or youth to the designated local educational agency liaison, who must assist in obtaining necessary immunizations, or immunization or medical records.

Transfer of Records

When students who have experienced disruption in their education, including children and youth experiencing homelessness, transfer to a new public school or school district, the receiving school or school district shall communicate with the sending school within two days of the student's enrollment. The sending school or school district shall provide the receiving school or school district with any records within two days of having received the receiving school's or school district's communication. 22-12-10(B) NMSA, 1978.

Placement in Classes

Students experiencing disruption in their education, including children and youth experiencing homelessness, shall have:

- Priority placement in classes that meet state graduation requirements; and
- Timely placement in elective classes that are comparable to those in which the student was enrolled at the student's previous school or schools as soon as the school or school district receives verification from the student's records. 22-12-10 (C) NMSA, 1978.

Remedial Programs

Indigent identification and guidelines, Section N of 6.29.1.9 of the NMAC

(1) A student who has been deemed eligible for free or reduced-price school meals, or a student who has been identified by the children, youth and families department as being in the custody of the state, shall be deemed indigent for the purposes of remediation programs and damage of instructional materials, as discussed in Sections 22-2C-6 and 22-15-10 NMSA 1978.

(2) A parent or guardian of a student who has not applied for free or reduced-price school meals shall be notified in writing by the local school board or governing body of a charter school of the availability of remediation at no charge upon an eligibility determination for free or reduced-price school meals.

This includes students experiencing homelessness since the students are categorically eligible for free school meals.

High School Enrollment

For high school students who have experienced disruption in their education at any time during their high school enrollment, a school district and public schools shall ensure:

- Acceptance of the student's state graduation requirements for a diploma of excellence pursuant to the Public School Code [Chapter 22 NMSA 1978];
- Equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;
- Timely assistance and advice from counselors to improve the student's college or career readiness; and

That the student receives all special education services to which the student is entitled. 22-12-10(D) NMSA, 1978.

Transportation

Section J of 6.41.4.9 of the NMAC includes specific provisions regarding the transportation of students experiencing homelessness and unaccompanied youth.

Provisions of transportation for homeless children and youth:

(1) LEAs are responsible for reviewing and revising transportation policies that may act as barriers to the identification, enrollment, attendance or success in schools of homeless children and youth.

(2) McKinney-Vento Act requires homeless children and youth to receive transportation that is comparable to what is available to non-homeless students.

(3) LEAs shall adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian or in the case of the unaccompanied youth, the liaison, to and from the school of origin in accordance with the following requirements.

(a) If the child or youth continues to live in the area served by the LEA in which the school of origin is located, that LEA shall provide or arrange for the child's or youth's transportation to and from the school of origin.

(b) If the child or youth continues their education in the school of origin but begins living in an area served by another LEA, the LEA of origin and the LEA in which the homeless child or youth is living must agree upon a method to apportion the responsibility and costs for providing the child or youth with transportation to and from the school of origin. If the LEAs cannot agree upon a method, the responsibility and costs for transportation are to be shared equally, pursuant to 6.42.2 NMAC.

(4) LEAs may use McKinney-Vento subgrant funds or Title I funds to defray the excess costs of transporting homeless children and youth to and from their school of origin.

(5) LEAs are required to provide adequate and appropriate transportation for homeless children and youth to and from the school of origin while enrollment disputes are being resolved.

(6) LEAs shall continue to provide transportation to and from the school of origin to formerly homeless children and youth who have become permanently housed for the remainder of the academic year during which the child or youth becomes permanently housed.

LEAs/State Charter Schools must adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or, in the case of an unaccompanied youth), to and from school in accordance with the following requirements:

- If the child or youth continues to live in the area served by the LEA/State Charter School in which the school of origin is located, that LEA/State Charter School must provide or arrange for the child's or youth's transportation to or from the school of origin. (Section 722(g)(1)(J)(iii)(I))
- If the child or youth continues his or her education in the school of origin but begins living in an area served by another LEA/State Charter School, the LEA/State Charter School of origin and the LEA in which the child or youth experiencing homelessness is living must agree upon a method to apportion the responsibility and costs for providing the child or youth with transportation to and from the school of origin. If the LEAs cannot agree upon a method, the responsibility and costs for transportation are to be shared equally. (Section 722(g)(1)(J)(iii)(II)).

Transportation must be arranged promptly to ensure immediate enrollment and so as not to create barriers to students experiencing homelessness attendance, retention, and success. (Sections 721(2), 722(g)(1)(I)).

Students experiencing homelessness and unaccompanied youth shall be provided adequate and appropriate transportation to and from the school of origin while disputes are being resolved. LEAs and State Charter Schools shall work with unaccompanied youth liaisons, parents and guardians to resolved disputes at the lowest level possible (Subsection K(3) 6.41.4.9 NMAC). If disputes are unable to be resolved at the local level, applicable parties may access dispute resolution procedures available the department including those pursuant to 6.10.3 NMAC.

Using Sport Utility Vehicles (SUVs) to Transport Students Experiencing Homelessness

Those students experiencing homelessness or unaccompanied youths whose residence is beyond the boundaries of the LEA, or less than five miles from the school, may be transported to and from school in a SUV only if those students require the SUV transportation as part of the best interest determination. As part of the best interest determination, if the LEA elects to use a SUV to transport students, the LEA shall follow all of the requirements for using SUVs to transport students under 6.41.4.14 NMAC.

The “Standard For Providing Transportation For Eligible Students” rule is available in its entirety at See (<http://www.nmcpr.state.nm.us/uploads/nmac/06/06.041.0004.pdf>).

Discipline of Students Experiencing Homelessness and Unaccompanied Youth

Section H of 6.11.2.10 NMAC includes provisions for the discipline of students experiencing homelessness. Removing students experiencing homelessness from school shall be used only as a last resort, pursuant to the requirements in 42 U.S.C. 11431 et seq., the McKinney-Vento Homeless Assistance Act.

(1) Public schools shall develop discipline policies and procedures that are reviewed at least annually and align with local school board or governing body policies. Policies and procedures shall:

(a) through professional development activities, create an awareness among educators and administrators of the types of behaviors that students experiencing homelessness may exhibit due to homelessness and provide strategies and supports to address the behaviors through the student assistance team process in accordance with Subsection D of 6.29.1.9 NMAC;

(b) take into account the issues related to a student's homelessness by talking with the student and applicable staff and families prior to taking disciplinary action;

(c) consult with school behavior response teams or other applicable personnel to assign appropriate discipline related to the behavior;

(d) implement discipline alternatives to out of school suspensions or expulsions or classroom removals, if possible; and

(e) connect students with mental health services as needed.

(2) Public schools shall review school discipline records and data of students experiencing homelessness in order to identify any patterns in disciplinary actions that indicate an unfair bias against the students. The collection and review of such records shall be in compliance with the Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

Direct Certification for Free School Meals

Students experiencing homelessness are categorically eligible for free meals as part of the United States Department of Agriculture's (USDA's) Community Eligibility Provision (CEP). When a student experiencing homelessness enrolls in a new school or remains in the school of origin, the school's principal or designee or POC shall notify the school food authority (SFA) director within one school day. The SFA director will directly certify the student for free school meals.

The SFA director will notify the LEA's/State Charter School's Student Teacher Accountability Reporting System (STARS) coordinator to update the student's demographics and enter them as categorically eligible.

LEA/State Charter School Minimum Procedures for Resolving Disputes

When a dispute arises over eligibility, school selection, enrollment in a school or transportation, the LEA/State Charter School must:

- Immediately enroll the child or youth in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals. [42 U.S.C. § 11432(g)(3)(E)(i)].
- Immediately enroll the unaccompanied youth, in the school in which the youth seeks enrollment pending the resolution of the dispute. [42 U.S.C. § 11432(g)(3)(E)(iv)].
 - In the case of an unaccompanied youth, the LEA/State Charter School must ensure that the local liaison assists in placement or enrollment decisions and gives priority to the views of such unaccompanied youth.
- Allow students to participate fully in school and receive all services to which they are entitled, including transportation, while disputes are pending. [42 U.S.C. § 11434a(1)].
- Provide the parent or guardian of the child or youth or the unaccompanied youth a written explanation of any decisions related to school selection or enrollment made by the school or LEA/state charter school.
- Notice and written explanation from the LEA/State Charter School about the reason for its decision, at a minimum, should include the following:
 - An explanation of how the school reached its decision regarding eligibility, school selection or enrollment, which should include:
 - A description of the action proposed or refused by the school;
 - An explanation of why the action is proposed or refused;
 - A description of any other options the school considered;
 - The reasons why other options were rejected;
 - A description of any other factors relevant to the school's decision and information related to the eligibility or best interest determination including the facts, witnesses, and evidence relied upon and their sources;
 - Appropriate timelines to ensure any relevant deadlines are not missed; and
 - Contact information for the local liaison and State Coordinator of Education for Homeless Children and Youth (ECHY) and a brief description of their roles.
- Ensure all decisions and notices are drafted using language and formatting appropriate for low literacy, limited vision readers and individuals with disabilities.
- Provide translation and interpretation services in connection with all stages of the dispute resolution process for children and youth and/or their parents or guardians who are English Learners or whose dominant language other than English.
- Provide electronic written notice to parents/guardians and unaccompanied youth who have email and follow up with the notice in person or by mail.
- Provide the rights of the parent, guardian, or unaccompanied youth to appeal such decisions. [42 U.S.C. § 11432(g)(3)(E)(ii)].

If a dispute arises over eligibility, or school selection or enrollment in a school, the parent, guardian or unaccompanied youth shall be referred to the LEA/State Charter School liaison who shall carry out the dispute resolution process as expeditiously as possible after receiving notice of such dispute. [42 U.S.C. § 11432(g)(3)(E)(iii)].

Procedures to Ensure that Parents, Guardians and Unaccompanied Youth Know their Rights

LEA/State Charter School liaisons must make sure that Parents, Guardians and Unaccompanied Youth are aware of the educational and related opportunities available, including transportation [42 U.S.C. § 11432(g)(6)(A)(v)] and must post public notice of the educational rights of homeless children and youths. [42 U.S.C. § 11432(g)(6)(A)(vi)]. Posters and other information about rights and services, translated into languages represented by the community, must be placed where homeless families and youths receive services.

The following information should be included in the LEA's/State Charter School's notice regarding the dispute resolution process:

- Right to file a complaint, raise a complaint issue or file an appeal.
- Right to provide written or oral documentation to support the parent/guardian or unaccompanied youth's position.
- Step-by-step description of how to appeal the school's decision that includes a simple form parents, guardians or unaccompanied youths can complete and submit to the school to initiate the dispute process.
- If the parent, guardian or unaccompanied youths are English learners, use of a native language other than English, or need additional supports because of a disability, translators, interpreters, or other support services will be made available without charge.
- Right to be enrolled immediately in the school in which enrollment is sought pending the final resolution of the dispute.
- Right to immediate enrollment includes receiving adequate and appropriate transportation to and from the school of origin and the ability to fully participate in all school activities.
- List of legal and advocacy service providers in the area that can provide additional assist during any part of the process.
- Contact information for the local liaison and State Coordinator, with a brief description of their roles.
- Timelines for resolving district and state-level appeals.

Overview of Dispute Resolution Process

**Every effort must be made to resolve the complaint or dispute at the local level before it is submitted to the PED.*

In a case where a dispute occurs regarding the eligibility, school selection/enrollment, participation or transportation of a homeless child or youth, the following process must be followed:

Level 1: School of Choice Informal Resolution

Level 2: LEA/State Charter School Homelessness Liaison Resolution

Level 3: PED's State Coordinator of Education for Homeless Children and Youth (ECHY) Resolution

Level 1: School of Choice Informal Resolution

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

1. Each LEA/State Charter School shall have a written policy for concerned parties to resolve disputes and every effort should be made to resolve the dispute at the LEA/State Charter School level. The LEA/State Charter School procedure must adhere to the following parameters:
 - a. The dispute resolution process shall be as informal and accessible as possible and the process should be able to be initiated directly at the school of choice as well as at the district level or with the LEA/State Charter School homelessness liaison. Every LEA/State Charter School is required to have a homelessness liaison.
 - b. When a dispute arises over school selection or enrollment, pending resolution of the dispute, the homeless child or youth must be immediately enrolled in the school in which the child or youth is seeking enrollment, and provided all services to which student is entitled.
2. The district must create and provide a simply stated notice of rights and provide that notice of rights to the student, parent or guardian, in a language the student, parent or guardian can understand. The notice of rights shall contain:
 - a. contact information for the LEA/State Charter School homelessness liaison and the state coordinator, with a brief description of their roles;
 - b. a step-by-step description of how to make use of the dispute resolution process;
 - c. 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;
 - d. notice of the right to obtain the assistance of advocates or attorneys;
 - e. notice of the right to appeal to the department if the district-level resolution is not satisfactory;
 - f. the timelines for resolving district and department-level appeals;
 - g. notice of the right to provide written or oral documentation to support their position; and
 - h. a simple form that parents, guardians or the student can complete and return to the school to initiate the process.

Note: Nothing shall preclude the availability of any administrative hearing opportunities provided for by Federal statute or regulation.

Level 2: LEA/State Charter School Homelessness Liaison Resolution

1. The school with the dispute must provide notice of the dispute to the LEA's/State Charter School's homelessness liaison using the department's dispute resolution process form which requires the following information:
 - a. school name, address, phone and fax number;
 - b. student's name, identification number, grade, and address;

- c. parent, guardian or complaining party's name, relationship to student, address, and phone number;
 - d. whether student lives in a shelter;
 - e. name of school child or youth chooses to be enrolled in pending resolution of dispute;
 - f. whether school enrolled in is school of origin;
 - g. reason for complaint;
 - h. signature of parent guardian or complaining party; and
 - i. the principal's actions on the complaint.
2. The LEA/State Charter School will have ten (10) calendar days to review its initial determination and make a final decision as to the position taken.
 3. The LEA's/State Charter School's final decision must be in writing and must state all factual information upon which it is based and the legal basis in support thereof.

Level 3: PED's State Coordinator of Education for Homeless Children and Youth (ECHY) Resolution

If the dispute remains unresolved after a Level 2 resolution, parties may proceed to a Level 3 resolution:

1. If the final decision of the LEA is adverse to the parent, guardian or student, the decision, along with the PED's dispute resolution process form, must be forwarded by the LEA's/State Charter School's homelessness liaison to the PED's ECHY State Coordinator within five (5) calendar days of issuing its final decision. This will initiate the appeal to Level 3.
2. The parent, guardian or student may also initiate the appeal. To initiate the appeal themselves, the parent or unaccompanied youth shall notify the LEA's/State Charter School's Homelessness Liaison of their intent to proceed to Level 3 within ten (10) business days of notification of the Level 2 decision, and shall provide copies of the dispute resolution process form to the department's homelessness liaison. The parent, guardian, or student shall also complete the dispute resolution form and send it to the State's ECHY Coordinator at the address listed on the form.
3. Upon receipt of a dispute resolution form, the department will:
 - a. acknowledge receipt in writing;
 - b. provide written notice to the agency or consortium of agencies against which the violation has been alleged;
 - c. conduct an impartial investigation which shall include a review of all relevant documentation presented and may include an independent on-site investigation, if determined necessary by the department;
 - d. give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
 - e. review all relevant information and make an independent determination as to whether the agency or consortium of agencies is violating a requirement of an applicable federal statute or regulation.
4. Decision. A written decision, which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint, shall be

issued by the secretary of education or designee and mailed to the parties within thirty (30) calendar days. Such decision will further include: procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and, if corrective action is required, such action shall be designated and the decision shall include the time line for correction and the possible consequences for continued noncompliance.

Failure or refusal to comply.

If the agency or consortium of agencies fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal statute or regulation. The department will retain jurisdiction over the issue of noncompliance with the law or regulations and will retain jurisdiction over the implementation of any corrective action required.

Resources Available

Documents or other resources referenced as being available on-line may also be obtained in hard copy, printed form. If you would like to obtain a copy of the documents referenced in these guidelines, you may contact the Student Success and Wellness Bureau at (505) 827-1821.