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NYS FIELD MEMO
ESSA McKinney-Vento
#02-2017

TO: District Superintendents
Superintendents of Public Schools
Charter School LEA Administrators
McKinney-Vento Liaisons

FROM: Ira Schwartz, Assistant Commissioner of Accountability *Ira Schwartz*

SUBJECT: Implementation of Changes to Education Law §3209 and Commissioner's Regulation §100.2(x), Education of Children and Youth Experiencing Homelessness

DATE: September 6, 2017

This Field Memo provides important information about recent changes to Education Law §3209 and Commissioner's regulation §100.2(x) impacting how New York State school districts and charter schools provide services to students experiencing homelessness. The federal McKinney-Vento Act requires that local educational agencies (LEAs)¹ ensure that children and youth experiencing homelessness have access to the same free, appropriate public education, including public preschool education, as other children and youth; have access to educational and other services needed so that these children and youth can be successful in school; and are not separated from the mainstream school environment (42 U.S.C. §11431; see also Education Law §3209). On October 1, 2016, sweeping changes to the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431 et seq.) went into effect as a result of the 2015 enactment of the Every Student Succeeds Act (ESSA). A summary of those changes can be found in this September 29, 2016 Field Memo, available here: http://nysteachs.org/media/NYSFieldMemo_ESSA_10_2016.pdf.

On April 20, 2017, Governor Cuomo signed into law amendments to Education Law §3209 that align State law with the new federal requirements. These amendments went into effect immediately. At the May 2017 Board of Regents meeting, the Board of Regents took emergency action to amend Commissioner's regulation §100.2(x) and those changes go into effect on July 1, 2017 (<https://www.regents.nysed.gov/common/regents/files/517p12a2.pdf>). The following is a summary of the key changes to Education Law §3209 and to Commissioner's regulation §100.2(x):

- **Elimination of "awaiting foster care placement" from the definition of homeless:** In conformance with the federal law, students "awaiting foster care placement" are no longer considered homeless unless they otherwise meet the revised definition of "homeless children and youths."

¹ LEAs include school districts, charter schools, and Boards of Cooperative Educational Services (BOCES).

- **School of origin protections, including transportation, for children who attend preschool:** Where a child who is homeless attends a preschool (e.g., a publicly funded pre-k program administered by the State Education Department or an LEA) and that preschool is a student's school of origin, that child is entitled to continued enrollment and transportation to that preschool.
- **School selection and best interest decision-making:** A parent of a child who is homeless must designate a school and school district where they would like their child to attend. Afterwards, the school district must decide whether the designation is in the best interest of the child and must presume that keeping the child in the same school (school of origin) is in the child's best interest unless the parent disagrees. Districts are required to train the liaison or his/her designee on making such best interest determinations.
- **Duration of enrollment in the same school:** Students who are homeless can stay in the same school (school of origin) for the duration of homelessness, through the remainder of the school year in which they become permanently housed, and possibly one additional year if it is the student's terminal grade in the school, provided that the placement is consistent with the best interest determination.
- **Designation forms and the local department of social services:** The local department of social services must ensure that a designation form is completed for all students it places in temporary housing and that the completed forms are given to the McKinney-Vento liaison immediately but no later than two business days from the earlier of the date in which the child or youth sought enrollment or was placed in a temporary housing facility or residential facility for runaway and homeless youth.
- **Immediate enrollment and missed application deadlines:** Districts must immediately enroll students who are homeless even if they have missed application or enrollment deadlines during any period of homelessness. With respect to enrollment in charter schools and pre-kindergarten programs where the lottery application deadline for seats has passed but the lottery has not been held yet, the child or youth who is homeless should be entered into the lottery. If the lottery has been held, such child or youth should be placed on the school's waitlist, if one exists, comparable to other students in the district and consistent with any applicable laws, regulations, or policies.
- **Reimbursement for preschool:** In some cases, districts may be reimbursed for providing preschool services to children who are homeless and come from another school district and may receive transportation aid for preschool transportation expenses for children who are homeless. The Department will issue additional guidance about how reimbursement will be calculated.
- **Transportation requirements for local departments of social services:** Where the local department of social services is responsible for transportation and it requests that the school district provide the transportation, the school district must provide or arrange for the transportation and the local department of social services must fully and promptly reimburse the school district.
- **Transportation requirements for summer school and extracurricular activities:** Transportation to summer school is required if the designated school district of attendance has recommended

that the student who is homeless attend a summer educational program and the lack of transportation poses a barrier to the participation of a student who is homeless. The designated school district of attendance (or social services district) must provide transportation to extracurricular or academic activities if the homeless student participates or would like to participate in the activity, meets the relevant criteria for the activity, and the lack of transportation poses a barrier to the student's participation.

- **Transportation requirements for remainder of the school year and terminal grade:** Districts are required to provide transportation to the school of origin for the duration of the student's homelessness, through the remainder of the school year in which the student becomes permanently housed, and possibly an additional year if it is the child's terminal grade in the school. After the student becomes permanently housed, the designated district of attendance can seek reimbursement for transportation costs from the district where the student is now permanently housed for the remainder of the school year and one additional year if it is the student's terminal year in the school.
- **Dispute resolution:** LEAs must continue enrollment and transportation during any dispute involving eligibility, school selection, enrollment, or transportation pending final resolution of the dispute, including all available appeals. Parents no longer have to request temporary stays in McKinney-Vento-related appeals to the Commissioner pursuant to Education Law §310, and school districts must continue enrollment in the designated school and provide transportation until the Commissioner issues a final decision.
- **Privacy of information about students who are homeless:** Information about a homeless student's living situation, including the student's address and temporary housing status must be treated as a student educational record and may not be treated as directory information. LEAs may therefore not disclose this information to a third party without the consent of the parent.
- **Responsibilities of McKinney-Vento liaisons:** All LEAs must continue to appoint a staff person as the McKinney-Vento liaison who is able to carry out the federally mandated duties of the liaison. These duties have been expanded as a result of ESSA and are detailed below.

At the end of this Field Memo is an Attachment with a more detailed description of the changes to Education Law §3209 and Commissioner's regulation §100.2(x) related to the education of children and youth experiencing homelessness.

School districts and charter schools are reminded that they are required to develop, review, and revise policies to remove barriers to the identification, enrollment, and continued enrollment and attendance of children and youth experiencing homelessness (42 U.S.C. §§11432[g][1][I]), 11432[g][7][A]) and are advised to consult with their attorneys to ensure compliance with the recent changes to Education Law §3209 and Commissioner's regulations §100.2(x) detailed in this memo as well as other changes to the McKinney-Vento Act as detailed in the Department's September 29, 2016 Field Memo (http://nysteachs.org/media/NYSFieldMemo_ESSA_10_2016.pdf).

The Department will provide further updates to the field as we move through the implementation process. For questions related to the recent amendments to Education Law §3209 and Commissioner's regulation §100.2(x), please contact Melanie Faby, State Coordinator for Homeless Education, (518) 473-0295, melanie.faby@nysed.gov or SED's NYS Technical and Education Assistance Center for Homeless

Students (NYS-TEACHS), 800- 388-2014, info@nysteachs.org.

ATTACHMENT:

Changes to Education Law § 3209 and Commissioner’s Regulation § 100.2(x)

The recent amendments to Education Law §3209, which went into effect on April 20, 2017 (pursuant to Part C of Ch. 56 of the Laws of 2017), and the amendments to Commissioner’s regulation §100.2(x), which will go into effect on July 1, 2017, address the following topics:

1. Elimination of awaiting foster care placement from definition of homeless and addition of unaccompanied youth;
2. Definition of school district of origin includes preschool;
3. Definition of school of origin;
4. Definition of feeder school and receiving school;
5. Definition of preschool;
6. School selection and best interest decision-making;
7. Duration of enrollment in the same school;
8. Designation forms and the local department of social services;
9. Immediate enrollment and missed application deadlines;
10. Clarifying language about charter schools;
11. Reimbursement for preschool;
12. Transportation requirements for local departments of social services;
13. Transportation and runaway and homeless youth shelters;
14. Transportation requirements for summer school and extracurricular activities;
15. Transportation requirements for remainder of the school year and terminal grade;
16. Inter-state arrangements;
17. Dispute resolution;
18. Privacy of information about students who are homeless;
19. Comparable services; and
20. Responsibilities of LEAs and McKinney-Vento liaisons.

Each of these topics is discussed in more detail below.

1. Elimination of awaiting foster care placement from definition of homeless and addition of unaccompanied youth

“Awaiting foster care placement” is no longer included in the definition of a “homeless child” in State law because of the changes in federal law.² Students who were identified as “awaiting foster care placement” are no longer considered homeless and are therefore not eligible for McKinney-Vento services unless they otherwise meet the revised definition of “homeless children and youths.”³ Please note children and youth in foster care are not considered homeless.⁴ For more information about educational stability for children in foster care, see the December 2, 2016 Field Memo from the State Education Department (the Department), available here:

² Education Law §3209(1)(a); 8 NYCRR §100.2(x)(1); see also 42 USC §11434A(2)(B)(i); U.S. Department of Education’s Education for Homeless Children and Youths Program Non-Regulatory Guidance (Non-Regulatory Guidance), Question A-2, available here: <https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716updated0317.pdf>.

³ Non-Regulatory Guidance, Question A-2.

⁴ Education Law § 3209(a-1); 8 NYCRR §100.2(x)(1).

In addition, “unaccompanied youth” was added to the definition of “homeless child” in Education Law,⁵ which is defined as a homeless child or youth not in the physical custody of a parent or guardian.⁶

2. Definition of school district of origin includes preschool

The definition of the school district of origin in State law was amended to reflect that preschool-age children experiencing homelessness are now protected under McKinney-Vento, consistent with the changes in federal law. The amendments also clarify which district should be considered a school district of origin for children entering preschool or kindergarten.

Under the updated definition, the school district of origin is the district in which the child was residing when the child became homeless if the child was eligible to apply, register, or enroll in public preschool or kindergarten at the time the child became homeless.⁷ For example, if the child registered for kindergarten or preschool in the spring in District A, became homeless over the summer, and is now temporarily residing in District B, the school district of origin for that child would be District A. In addition, the school district of origin includes the school district where a child was residing when the child became homeless if the child was living with a school-aged sibling who attended school in that district.⁸

3. Definition of school of origin

Education Law §3209 now includes a definition of “school of origin,” which is defined as the school attended when the student was last permanently housed or the school where the student was last enrolled.⁹ The “school of origin” includes preschool and receiving schools, which are discussed below, as required by federal law.¹⁰

4. Definition of feeder school and receiving school

State law was amended to include definitions of feeder schools and receiving schools.¹¹ A feeder school is a school, including a preschool, whose students are entitled to attend a specified or group of specified elementary, middle, intermediate, or high schools upon completion of the terminal grade of such school; or a school that sends its students to a receiving school in a neighboring school district pursuant to Education Law §2040.¹² Similarly, a receiving school is a school that enrolls students from a specified or group of preschools, elementary, middle, intermediate schools, or high schools; or a school enrolls students from a feeder school in a neighboring school district pursuant to Education Law § 2040.¹³ If a student who is homeless attends a feeder school, the student may attend the receiving

⁵ Education Law §3209(1)(a). The definition of “unaccompanied youth” is not new. It was in the McKinney-Vento Act prior to ESSA, and was and continues to be included within the Commissioner’s regulations (see 42 USC §11434A(6); 8 NYCRR §100.2(x)[1][iii][a][6]).

⁶ 42 USC §11434A(6); see also Education Law §3209(1)(a); 8 NYCRR §100.2(x)(1)(iii)(a)(6).

⁷ Education Law §3209(1)(c); 8 NYCRR §100.2(x)(1)(viii).

⁸ Id.

⁹ Education Law §3209(1)(i); 8 NYCRR §100.2(x)(1)(ix); see also 42 U.S.C. §11432(g)(3)(I).

¹⁰ Id.; see also Non-Regulatory Guidance, Section O, Questions I-1, N-4, N-5.

¹¹ Education Law §§3209(1)(f), 3209(1)(h); 8 NYCRR §§100.2(x)(1)(ii), 100.2(x)(1)(v).

¹² Education Law §3209(1)(f); 8 NYCRR §100.2(x)(1)(ii).

¹³ Education Law §3209(1)(h); 8 NYCRR §100.2(x)(1)(v).

school upon completion of the terminal grade of the feeder school, even if the temporary housing location is in a different district.

5. Definition of preschool

State law defines preschool as publicly-funded pre-kindergarten programs administered by the Department or a local educational agency (LEA),¹⁴ Head Start programs administered by an LEA, and/or preschool services under the Individuals with Disabilities Education Act (IDEA) (for example, a program recommended by a committee on preschool special education).¹⁵ Where a child who is homeless attends a preschool and that preschool is a school of origin, that child is entitled to continued enrollment and transportation to that preschool. For example, if a child was attending a pre-k program in District A, has become homeless, and is temporarily living in District B, that child is entitled to continued enrollment in and transportation to the pre-k program consistent with the best interests of the child, even if transportation is not available to permanently housed children who attend the same program.¹⁶

If a district does not offer a pre-kindergarten program, it is neither obligated to pay for a child who is homeless to attend a pre-kindergarten program in another district nor to open a pre-kindergarten classroom to serve that child. In such circumstances, McKinney-Vento liaisons must refer families to local Head Start programs (Head Start Locator: <http://eclkc.ohs.acf.hhs.gov/hslc/HeadStartOffices>)¹⁷ and may also refer such families to subsidized child care programs through the local Child Care Resource and Referral (CCRR) agency (directory of county CCRRs: <http://www.ocfs.state.ny.us/main/childcare/referralagencys.asp>).¹⁸

6. School selection and best interest decision-making

Under State law, the parent, guardian, or youth (in the case of unaccompanied youth) must designate a school district of attendance. This provision remains unchanged. The recent amendments to State law require that the parent, guardian, or youth (in the case of unaccompanied youth) also designate the school the child will attend, which can either be the school of origin or any school that children and youth who are not homeless who live in the attendance area in which the child or youth is actually living are eligible to attend, including a preschool.

After the parent, guardian, or youth makes the designation, the designated school district must determine whether the designation is consistent with the best interest of such child or youth by:

- presuming that keeping such child or youth in the school of origin (the school a child or youth attended when last permanently housed or in which the child or youth was last enrolled, including a preschool) is in the child's or youth's best interest, except when doing so is contrary to the request of the child's parent or guardian, or in the case of an unaccompanied youth, the

¹⁴ LEAs include school districts, charter schools, and BOCES.

¹⁵ Education Law §3209(1)(g); 8 NYCRR §100.2(x)(1)(iv).

¹⁶ Education Law §§3209(1), 3209(2), 3209(4).

¹⁷ McKinney-Vento liaisons must “**ensur[e] that homeless families and homeless children and youths have access to** and receive educational services for which such families, children and youths are eligible, including **services through Head Start programs (including Early Head Start programs)**, early intervention services under Part C of the IDEA, and other preschool programs administered by the local educational agency” (42 USC §11432[g][6][A][iii]; 8 NYCRR §100.2[x][7][iii][a][5]) (emphasis added).

¹⁸ For more information about connecting children who are homeless with early childhood programs, see the Department's 2015 Field Memo, available at http://nysteachs.org/media/INF_SED_UPK2015.pdf.

youth; and

- considering student-centered factors, including but not limited to factors related to the impact of mobility on achievement, education, the health and safety of the child or youth, giving priority to the request of the child's or youth's parent or guardian or the youth in the case of an unaccompanied youth.¹⁹

The school district must designate and train an employee who can, but need not, be the McKinney-Vento liaison, to make best interest determinations according to the above criteria.²⁰ If the employee from the designated school district determines that it is not in the child's or youth's best interest to attend the school of origin or the school designated by the parent, guardian, or youth (in the case of an unaccompanied youth), the school district must provide a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth, and the explanation must also include information regarding the right to appeal.²¹ Despite such determination, the child or youth must be immediately enrolled in the school in which enrollment is sought by the parent, guardian, or unaccompanied youth during the pendency of all available appeals.²²

7. Duration of enrollment in the same school

The amendments to State law clarify that students who are homeless are entitled to stay in the same school (school of origin) for the duration of homelessness, through the remainder of the school year in which they become permanently housed, and possibly one additional year if it is the student's terminal grade in the school, provided that the placement is consistent with the best interest determination.²³

8. Designation forms and the local department of social services

All students identified as homeless must have a completed designation form indicating where they would like to go to school. Education Law has required that the local department of social services make designation forms available to families it placed in emergency or temporary housing. The Education Law now also requires that the local department of social services ensure that the designation form is completed and is given to the McKinney-Vento liaison from the designated school district.²⁴ Additionally, the amendments to the Commissioner's regulations, which went into effect on July 1, 2017, require that the local department of social services give the completed designation form to the McKinney-Vento liaison immediately but no later than two business days from the earlier of the date on which the child or youth sought enrollment or was placed in a temporary housing facility or a residential facility for runaway and homeless youth.²⁵

¹⁹ Education Law § 3209(2)(f)(3); 8 NYCRR §100.2(x)(2)(ii); see also 42 USC §11432(g)(3)(B); Non-Regulatory Guidance, Questions I-3 & I-4. Prior to the recent amendments to Education Law §3209, federal law and the Commissioner's regulations required LEAs to ensure that children who were homeless maintained enrollment in the school of origin consistent with the children's best interests. Please note that the factors used to make best interest decisions were amended as a result of ESSA.

²⁰ 8 NYCRR §100.2(x)(7)(i)(b); see also 42 USC §11432(g)(6)(A)(vii).

²¹ Education Law §3209(2)(f)(3); 8 NYCRR §100.2(x)(7)(ii); see also 42 USC §11432(g)(3)(B)(iii).

²² Id.; see also 42 USC §11432(g)(3)(E); Non-Regulatory Guidance, Questions I-3 & I-4.

²³ Education Law §§3209(2)(c), 3209(2)(d); 8 NYCRR §§100.2(x)(2)(iii), 100.2(x)(2)(iv), 100.2(x)(v), 100.2(x)(2)(vi).

²⁴ Education Law §3209(2)(e).

²⁵ 8 NYCRR §100.2(x)(3)(i)(b).

9. Immediate enrollment and missed application deadlines

State law now requires that districts immediately enroll students who are homeless even if they have missed application or enrollment deadlines during any period of homelessness, in accordance with the ESSA amendments to the McKinney-Vento Act.²⁶ With respect to enrollment in charter schools and pre-kindergarten programs, the amendments to Commissioner's regulation §100.2(x), which went into effect July 1, 2017, provide:

[I]f a child or youth seeks enrollment in a charter school or preschool and the lottery application deadline for seats in such school or program has passed but the lottery has not yet been held, such child or youth should be entered into the lottery. If the lottery has been held, such child or youth should be placed on the school's waitlist, if one exists, comparable to other students in the district and consistent with any applicable laws, regulations or policies.²⁷

Charter schools and prekindergarten programs may not displace children already enrolled in such schools and programs in order to enroll children who are homeless. However, nothing in the regulation prevents a charter school, prekindergarten program, or school district from creating policies that help to facilitate enrollment in charter schools or pre-kindergarten programs for children and youth experiencing homelessness. The U.S. Department of Education explained in its Non-Regulatory Guidance that "LEAs should anticipate and accommodate the needs of McKinney-Vento-eligible students to enter charter schools, magnet schools, and other schools, programs, and activities despite missing application and enrollment deadlines due to a period of homelessness. In addition, LEAs should consider giving homeless children and youths priority if there is a waitlist for these schools, programs, and activities."²⁸

10. Clarifying language about charter schools

State law was amended to specify that the designated district for a student who is homeless who attends a charter school has fiscal responsibility (e.g., is responsible for charter school tuition) and programmatic responsibility (e.g., has committee on special education responsibilities) and is responsible for transportation if not otherwise provided by a local department of social services.²⁹ This amendment to State law clarifies what districts were already doing in accordance with a previously issued Field Memorandum.³⁰

11. Reimbursement for preschool

The recent amendments to Education Law §3209 allow for tuition reimbursement for preschool.³¹ In addition, Education Law §3209 and the amendments to the Commissioner's regulations

²⁶ Education Law §3209(2)(f); 8 NYCRR §100.2(x)(4)(ii); see also 42 USC §11432(g)(3)(C); Non-Regulatory Guidance, Questions I-5 & I-6. Education Law §3209(2)(f) was also amended to require that districts immediately enroll students who are homeless even if they do not have the documents normally needed, such as school records, proof of immunization, or proof of residency. This amendment does not reflect a change in practice; the immediate enrollment requirement was already mandated per federal law predating ESSA (42 USC §11432[g][3][C]) and was included in Commissioner's regulation §100.2(x)(4)(ii).

²⁷ 8 NYCRR §100.2(x)(4)(ii).

²⁸ Non-Regulatory Guidance, Question I-6.

²⁹ Education Law §3209(2)(h); 8 NYCRR §100.2(x)(4)(viii).

³⁰ See http://www.nysteachs.org/media/NYSED_Charter%20School%20Guidance.pdf.

³¹ Education Law §3209(3).

that went into effect on July 1, 2017 allow districts to receive transportation aid for preschool transportation expenses.³² The Department will issue additional guidance about how tuition and transportation reimbursement will be calculated.

12. Transportation requirements for local departments of social services

Prior to the April 20, 2017 amendments to State law, State law assigned responsibility for transportation to the local department of social services where:

- The local department of social services places a student in temporary housing located outside of the school district where the student is enrolled, and
- The student is eligible for Emergency Assistance for Families.³³

This provision remains unchanged. The amendments to Education Law clarify that the local department of social services is responsible for transporting students with individualized education programs (IEPs) if the two above conditions are met, and expands the obligation of local departments of social services to transport children who attend preschool if the two above conditions are met.³⁴

The amendments to Education Law §3209(4) also state that where a local department of social services is responsible for arranging for transportation and it requests that the school district provide the transportation, the designated school district must provide or arrange for the transportation and the local department of social services must fully and promptly reimburse the designated school district for the cost as determined by the school district.³⁵ In such circumstances, the school district must designate the student as a non-allowable pupil for purposes of transportation aid pursuant to Education Law 3602(7). For a sample transportation protocol for school districts and local departments of social services, see: <http://nysteachs.org/media/Sample%20Transportation%20Protocol.docx>.

13. Transportation and runaway and homeless youth shelters

Where a student is being transported from a runaway and homeless youth shelter to school and the shelter is located outside of the designated school district, the school district can be reimbursed for the transportation expenses by the Department to the extent that funds are provided for such purpose as determined by the Director of Budget. Such reimbursement is available from the Department, not the division for youth.³⁶ The amendments to Education Law §3209 codify the existing practice for transportation reimbursement for students in runaway and homeless youth shelters, and should not represent a change in practice.

14. Transportation requirements for summer school and extracurricular activities

To align with the changes in federal law,³⁷ the amendments to State law require that districts

³² 8 N.Y.C.R.R. § 100.2(x)(6)(viii).

³³ Education Law §3209(4)(a).

³⁴ Id.

³⁵ Id.

³⁶ Education Law §3209(4)(b).

³⁷ The federal McKinney-Vento Act as amended by ESSA requires that school districts ensure that students who are homeless and who meet the relevant eligibility criteria, do not face barriers to accessing academic and extracurricular activities, including magnet schools, summer school, career and technical education, advanced placement courses, online learning and charter schools (42 USC §11432[g][1][F][iii]; Non-Regulatory Guidance, Question I-6). The U.S. Department of Education in its Non-Regulatory guidance further specified that “to the extent that lack of access to transportation is a barrier to extracurricular activities for a particular student, an LEA would be required to

provide transportation to summer school if:

- the student has been recommended to participate in summer school, and
- the lack of transportation poses a barrier to the student's participation.³⁸

Similarly, transportation for extracurricular activities must be provided by the designated school district or the local department of social services where:

- a student who is homeless is participating or would like to participate in an extracurricular activity,
- the student meets the relevant eligibility criteria for the activity, and
- the lack of transportation poses a barrier to the student's participation.³⁹

15. Transportation requirements for remainder of the school year and terminal grade

Under McKinney-Vento, school districts have been required to provide transportation to the school of origin for the duration of the student's homelessness.⁴⁰ Because of recent amendments to State and federal law, districts are now also required to provide transportation to the school of origin through the remainder of the school year in which the student becomes permanently housed and possibly an additional year if it is the child's terminal grade in the school.⁴¹ Local departments of social services are not obligated to arrange for transportation after students become permanently housed.⁴²

If the student is not entitled to transportation from the local department of social services, the designated school district of attendance (i.e., the district where the student is enrolled) is responsible for arranging transportation. The designated district of attendance is eligible for transportation aid for the transportation costs.⁴³ After the student becomes permanently housed, the designated district of attendance can seek reimbursement for the transportation costs not reimbursable through transportation aid from the school district in which the student is now permanently housed. The designated district of attendance may seek transportation reimbursement for the remainder of the school year in which the student becomes permanently housed and one additional year if that year constitutes the student's terminal year in the designated school.⁴⁴

If a local department of social services is responsible for arranging for transportation while the student is homeless and the student maintains enrollment in the same school after becoming permanently housed, the responsibility for arranging transportation for the remainder of the school year and possibly one additional year if it is the terminal grade shifts to the designated school district of attendance.⁴⁵ The school district of attendance may bill the new district of residence for the cost of the transportation.

provide this student with transportation to or from extracurricular activities" (Non-Regulatory Guidance, Question J-11).

³⁸ Education Law §3209(4)(e); 8 NYCRR §100.2(x)(6)(v). This does not reflect a change in practice. The Department has required transportation in such circumstances for several years per annual Field Memoranda.

³⁹ Education Law §3209(4)(f); 8 NYCRR §100.2(x)(6)(vi).

⁴⁰ 42 USC §11432(g)(1)(J)(iii).

⁴¹ 42 USC §§11432(g)(1)(J)(iii), 11432(g)(3)(A)(i)(II); Education Law §§3209(2)(c), 3209(2)(d), 3209(4)(i); 8 NYCRR §§100.2(x)(2), 100.2(x)(6)(iv); Non-Regulatory Guidance, Question J-5.

⁴² Education Law §3209(4)(i).

⁴³ Education Law §3209(4)(c); 8 NYCRR §100.2(x)(6)(viii).

⁴⁴ Education Law §3209(4)(i).

⁴⁵ Id.

16. Inter-state arrangements

The amendments to State law clarify that school of origin protections extend to inter-state arrangements, such as where a child is temporarily housed in a contiguous state and maintains enrollment in a New York school district, or where a child is temporarily housed in New York and maintains enrollment in a school located in a contiguous state.⁴⁶ In such circumstances, the New York school district must collaborate with the out-of-state school district to arrange transportation, consistent with federal law requirements.⁴⁷

17. Dispute resolution

State law was amended to include the federal law requirements governing McKinney-Vento-related disputes, including the requirement that LEAs continue enrollment and transportation during any dispute involving eligibility, school selection, enrollment, or transportation pending final resolution of the dispute, including all available appeals.⁴⁸ This means that parents, guardians and youth (in the case of an unaccompanied youth) no longer have to request temporary stays in McKinney-Vento-related appeals to the Commissioner under Education Law §310, and school districts must continue enrollment in the designated school and transportation until all available appeals are final.⁴⁹

18. Privacy of information about students who are homeless

State law was amended to reflect the new federal law that requires LEAs to treat information about the living situation of a student who is homeless (e.g., homeless status, temporary address) as a student educational record not subject to disclosure as directory information pursuant to the federal Family Educational Rights and Privacy Act (FERPA).⁵⁰ This means that LEAs may not disclose the address where the student is temporarily living or the temporary housing status of a student who is homeless to a third party without the consent of the parent.

19. Comparable services

State law was amended to conform to the federal law that requires LEAs to offer comparable services to students who are homeless.⁵¹ However, this conforming amendment should not result in a change in practice for school districts, because this requirement has existed in federal law for many years.⁵²

⁴⁶ Education Law §§3209(2)(c)(2),3209(2)(c)(3); 8 NYCRR §100.2(x)(2)(v).

⁴⁷ Education Law §§3209(4)(g), 3209(4)(h); see also 42 USC §11432(g)(1)(J)(iii)(II); Non-Regulatory Guidance, Question J-2.

⁴⁸ Education Law §3209(5); 8 NYCRR §100.2(x)(7)(ii); see also 42 USC §11432(g)(3)(E)(i); Non-Regulatory Guidance, Question J-4 & Section K.

⁴⁹ 8 NYCRR §100.2(x)(7)(ii). Previously, parents, guardians, and youth (in the case of unaccompanied youth) could apply for a temporary stay of a school district's decision until the Commissioner rendered a final decision on an appeal pursuant to Education Law §310. As a result of the amendments to the federal law, petitioners are no longer required to request a stay at the time the appeal is filed (see <http://www.counsel.nysed.gov/common/counsel/files/homelessform-revised2016.pdf>) and such requirement was eliminated from Commissioner's regulation 100.2(x)(7)(ii)(c) effective July 1, 2017.

⁵⁰ Education Law §3209(8); 8 NYCRR §100.2(x)(7)(vi); see also 42 USC §11432(g)(3)(G); Non-Regulatory Guidance, Questions A-6, A-7, A-8.

⁵¹ Education Law §3209(9); 8 NYCRR §100.2(x)(7)(i)(d).

⁵² 42 USC §11432(g)(4).

20. Responsibilities of LEAs and McKinney-Vento liaisons

Amendments to Commissioner's regulation §100.2(x) were made to mirror existing LEA responsibilities from federal and State law. These changes include:

- Requiring that students identified as homeless receive free school meals;⁵³
- Requiring that the enrolling school district immediately contact the previous school attended to request the records for the student who is homeless;⁵⁴ and
- Detailing the responsibilities of the McKinney-Vento liaison.⁵⁵

⁵³ 8 NYCRR §100.2(x)(5).

⁵⁴ 8 NYCRR §100.2(x)(7)(i)(e). Under Education Law §3209(2)(f)(5), it is the enrolling district's responsibility, not the parent's, to request the records from the school district where the child previously attended. The amendments to Education Law §3209 that were effective on April 20, 2017 did not change this requirement.

⁵⁵ Each LEA must appoint a McKinney-Vento liaison who is able to carry out the following responsibilities:

- (1) ***ensuring that school personnel providing services under the McKinney-Vento Act receive professional development and other support;***
- (2) ensuring that homeless children and youths are identified by school personnel through ***outreach and*** coordination activities and that homeless families;
- (3) ensuring that homeless children and youths and their families receive referrals for health care services, dental services, mental health and ***substance abuse services, housing services,*** and other appropriate services;
- (4) ensuring that homeless children and youth are enrolled in, and have full and equal opportunity to succeed in, the school or schools of the local educational agency;
- (5) ensuring that homeless families and homeless children and youths have access to and receive educational services for which such families, children and youths are eligible, including services through Head Start programs (***including Early Head Start programs***), ***early intervention services under Part C of the IDEA,*** and other preschool programs administered by the local educational agency;
- (6) ensuring that enrollment disputes are mediated in accordance with the requirements of the McKinney-Vento Act, including where if a dispute arises over eligibility, school selection, or enrollment in a school, the child shall be enrolled;
- (7) ensuring that parents and guardians and unaccompanied youths are fully informed of all transportation services, including transportation to and from the school of origin and are assisted in assessing transportation services;
- (8) ensuring that public notice of the educational rights of homeless children and youths is disseminated in locations frequented by parents or guardians of such youth, and unaccompanied homeless youths, including schools, shelters, ***public libraries,*** and soup kitchens, ***in a manner and form that is understandable;***
- (9) assisting the parent or guardian of the child or youth (or in the case of an unaccompanied youth) the youth with obtaining any necessary immunizations or screenings, or immunization or other required health records; and
- (10) ***in the case of unaccompanied youth, ensuring that such youths are enrolled, have opportunities to meet the same challenging State academic standards as the State establishes for other children and youths and are informed of their status as independent students under section 480 of the Higher Education Act of 1965 (20 U.S.C. section 1087(vv)) and their right to receive verification of this status from the local educational agency McKinney-Vento liaison.***
- (11) ensuring that parents and guardians of homeless children and youths 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.

(8 NYCRR §100.2[x][7][iii][a]; see also 42 USC §11432[g][6][A]; Non-Regulatory Guidance, Section F & Questions L-3, Q-2). The responsibilities that are ***bolded and italicized*** above were added to the McKinney-Vento Act as a result of ESSA. The McKinney-Vento liaison must also inform 1) parents and guardians of students who are homeless and

Other changes

There are several other amendments to the federal McKinney-Vento Act made by ESSA which were described in the Department's September 29, 2016 Field Memo (http://nysteachs.org/media/NYSFieldMemo_ESSA_10_2016.pdf), that address the following topics:

- **Award full or partial credit for completed coursework:** LEAs must remove barriers that prevent homeless youth from receiving appropriate full or partial credit for coursework completed while attending a prior school.⁵⁶
- **Eliminate barriers related to outstanding fees, fines, or absences:** LEAs must review and revise policies to remove barriers to identification, enrollment, and retention of children and youth who are homeless, including barriers to enrollment and retention due to outstanding fees or fines or absences.⁵⁷
- **Improve college readiness:** LEAs must provide youth who are homeless with assistance from counselors to advise such youth and improve their readiness for college.⁵⁸
- **Affirm eligibility for Department of Housing and Urban Development (HUD) homeless assistance:** McKinney-Vento liaisons who have received training on the HUD definition of homeless may affirm eligibility for students and their families for homeless assistance programs funded by HUD if the liaison has determined that they are homeless under HUD's definition.⁵⁹
- **Coordinate special education services:** LEAs must coordinate special education services for students protected under the McKinney-Vento Act and the Individuals with Disabilities Education Act.⁶⁰
- **Improve the identification of children and youth experiencing homelessness:** LEAs must review and revise policies that may act as barriers to the identification of children and youth experiencing homelessness (in addition to barriers to enrollment of such children and youth, which previously was included in the McKinney-Vento Act prior to ESSA)⁶¹ and give special attention to ensure the identification of children and youth experiencing homelessness who are not currently attending school (in addition to giving special attention to the enrollment and attendance of such children and youth, which previously was included in the McKinney-Vento Act prior to ESSA).⁶²

2) children and youth experiencing homelessness of the duties of the McKinney-Vento liaison (in addition to informing school personnel, services providers, and advocates working with families who are homeless, who were already listed in the law prior to the enactment of ESSA) (8 NYCRR §100.2[x][7][iii][e]; see also 42 USC §11432[g][6][B]).

⁵⁶ 42 USC §11432(g)(1)(F)(ii); Non-Regulatory Guidance, Section O.

⁵⁷ 42 USC §11432(g)(1)(I); Non-Regulatory Guidance, Questions A- 4, I-5, I-6 and Tips for Promoting Supportive Discipline and a Positive School Climate for Homeless Students and Tips on Ensuring Access to Extracurricular Activities.

⁵⁸ 42 USC §11432(g)(1)(K); Non-Regulatory Guidance, Section Q.

⁵⁹ 42 USC §11432(g)(6)(D); Non-Regulatory Guidance, Questions L-4 & L-5.

⁶⁰ 42 USC §11432(g)(5)(D).

⁶¹ 42 USC §11432(g)(7)(A); Non-Regulatory Guidance, Questions A-4, J-1.

⁶² 42 USC §11432(g)(7)(C).