



# **EDUCATION RIGHTS OF HOMELESS STUDENTS**

## **A GUIDE FOR ADVOCATES**

There is no question that students who experience homelessness, like all students, are entitled to be educated. A federal law, known as the McKinney-Vento Homeless Assistance Act, requires states to provide homeless children and youth with the same access to free appropriate public education as is available to other students. The Act also requires states to review and revise barriers to the identification, enrollment, attendance or success in school of homeless students, to avoid the segregation of homeless students from the mainstream school environment, and to provide access to the education and services needed to ensure that homeless students have an opportunity to meet the same challenging academic achievement standards to which all students are held.<sup>1</sup> The federal Every Student Succeeds Act (ESSA), aimed at ensuring all students access to a high-quality education, requires states and local school districts to annually publish data about the academic achievement of various subgroups of students; homeless students are now a separate subgroup for which such data (including high school graduation rates) must be reported annually, enhancing the accountability of school districts serving these students.<sup>2</sup>

Parents and school administrators will sometimes disagree over whether a student is in fact homeless, or, more frequently, where the student should be educated while homeless. As part of its obligation under the McKinney-Vento Act to ensure the education of homeless children and youth, the State of New Jersey has developed a series of procedures that are used to determine which school district(s) should pay for the student's education and transportation. The purpose of these procedures is to ensure speedy enrollment and continuity of education for children who experience homelessness.

This publication is designed to help parents, guardians, caregivers, and youth understand the circumstances that are considered "homelessness" under the school enrollment laws and the legal concepts, procedures, and rights involved in disputes over the enrollment of homeless students in local public schools.<sup>3</sup> This publication provides useful information for parents whose children have been enrolled in a school district but who are experiencing homelessness. It is also intended to be of assistance to homeless parents whose children are not currently enrolled in school, as well as to homeless youth not living with a parent or guardian ("unaccompanied youth"). In reading this information, please remember that the requirements of both the McKinney-Vento Act and the State regulations concerning the education of homeless students are intended to minimize interruptions in schooling when a student experiences homelessness. Therefore, any time that a school district does not follow these rules and procedures, the problem should be brought immediately to the

attention of the Homeless Education Program in the Office of Supplemental Educational Programs, New Jersey Department of Education.<sup>4</sup> The telephone number for that program is (609) 984-4974, and the email address is [homeless@doe.state.nj.us](mailto:homeless@doe.state.nj.us).

The state regulations applicable to homeless students in New Jersey are found in New Jersey Administrative Code, Title 6A, Chapter 17 (N.J.A.C. 6A:17). All school districts and public schools – including all charter schools<sup>5</sup> -- must follow these regulations. New Jersey students are further entitled to the protections offered by the federal McKinney-Vento Act; nothing in state regulations may limit student rights or school district responsibility imposed by this federal law.<sup>6</sup>

***What are the residency requirements for school enrollment in New Jersey and how do the rules for homeless students differ from these general rules?***

While free public education is a fundamental right under the New Jersey Constitution,<sup>7</sup> it is well known that parents may not simply choose the school district that they wish their children to attend: the general rule is that school districts are responsible for providing a free education to children “domiciled” within the school district.<sup>8</sup> “Domicile” refers to one’s fixed or permanent home; the place to which he or she intends to return if away and from which he or she has no intention of moving soon. Statutory and regulatory provisions, discussed in Education Law Center’s publication, *Understanding Public School Residency Requirements: A Guide for Advocates*,<sup>9</sup> provide additional rules determining

which school district shall be responsible for providing a free education under a variety of special circumstances. Among these provisions are special rules governing the education of students whose parents live separately in two different districts,<sup>10</sup> who live with someone other than a parent or guardian,<sup>11</sup> whose parents have been called to active military service,<sup>12</sup> or who have moved as a result of certain types of "family crisis" specified in the law.<sup>13</sup>

School districts in New Jersey, facing per pupil costs averaging over \$19,000 per year,<sup>14</sup> have taken drastic measures to ensure that only students satisfying applicable residency requirements are enrolled in the district; districts have employed investigators to track residency and have even offered rewards for information about students illegally attending district schools.<sup>15</sup> Families sending their children to school in violation of residency rules face not only removal of the children from school but a tuition bill for the period of "ineligible attendance."<sup>16</sup>

The protections offered to homeless students and their parents under the federal McKinney-Vento Act and New Jersey's corresponding state law represent an exception to otherwise applicable residency rules: in contrast to the basic premise that students must change schools when they leave a school district, the laws protecting homeless students generally allow parents the choice to keep their children enrolled in their original school district if the parents relocate to another school district "as the result of being homeless."<sup>17</sup> This special protection for homeless students is founded on evidence that school stability and continuity

of education leads to improved academic outcomes and the chance to “break the cycle of homelessness and poverty.”<sup>18</sup>

***When is a student considered “homeless” for the purposes of enrollment in public schools?***

In considering the special rules applicable to homeless students and their parents, it is important to keep in mind that “homelessness,” for this purpose, is a broader term than one might assume at first: the term encompasses situations beyond the stereotype of individuals living in shelters or outdoors. A common scenario is the situation in which a family moves in with another family -- this situation, known as being “doubled-up,” accounts for over 70% of homeless students documented by the New Jersey Department of Education in data published as of the date of this publication.<sup>19</sup>

Under the federal McKinney-Vento Act and New Jersey’s corresponding law, the term “homeless” refers to individuals who lack a fixed, regular, and adequate residence.<sup>20</sup> New Jersey law provides that a child or youth is considered “homeless” for the purposes of enrollment if that student lives in: (1) a shelter designed to provide temporary living accommodations, including hotels, motels, congregate shelters, transitional housing, and homes for adolescent mothers; (2) a public or private place not designated for or ordinarily used by people for regular sleeping accommodations, such as cars or other vehicles including mobile homes, tents, or temporary shelters, parks, abandoned buildings, bus or train stations, or temporary shelters provided to migrant

workers; (3) the residence of relatives or friends where the homeless student resides out of necessity because his or her family lacks a regular or permanent residence of its own; or (4) substandard housing.<sup>21</sup> Children and youth abandoned in hospitals are also treated as “homeless” under federal law.<sup>22</sup>

While the New Jersey regulations, as of the date of this publication, include within the definition of “homeless” those students living in a temporary location “awaiting foster care placement,” federal law has been amended so as to delete this category from the definition of “homeless” in view of the different issues arising for students served by state child welfare agencies.<sup>23</sup> Separate federal laws protect the educational rights of these students,<sup>24</sup> and New Jersey likewise has a specific set of statutory rules governing the school district placement/tuition of students living in “resource family homes.”<sup>25</sup>

The determination of whether a student is considered “homeless” -- triggering the protections for homeless students available under the law -- is very fact-sensitive. In one New Jersey case, for example, a school district argued that students who lived with their parents in the grandparents’ home were no longer “homeless” where they had lived there for over a year. The family prevailed in their argument that they were still “homeless” in part because 5 people occupied “the bottom floor of the house, which floor has no shower, sink or kitchen....” This was considered to be “less than a regular and adequate nighttime residence.”<sup>26</sup> Similarly, in a Pennsylvania case, the court was persuaded to find homelessness where a child and the grandmother who was

raising him “share[d] a bedroom, and ...must live by the rules of the house, including a rule that they are not allowed to go to the lower level of the house after bedtime,”<sup>27</sup> conditions referred to in a later case as “less than ideal.”<sup>28</sup>

In determining whether a student is considered “homeless” for purposes of education rights, the amount of time that the student has spent in a particular location is not the sole determining factor: there is no “time limit” on homelessness.<sup>29</sup> Instead, the student’s “living conditions, and the resources and intentions of the parents or custodians are relevant.”<sup>30</sup> The circumstances under which a family becomes homeless (that is, whether the family bears some responsibility, as in the case of an eviction for cause), have no bearing on the homeless status of the student.<sup>31</sup> Finally, the fact that a family must pay for their accommodations (as in the case of families living in commercial motels or in certain transitional facilities charging a reduced rent) does not mean that they will not be considered “homeless;” there is no indication in federal law that temporary housing “must be free in order for occupants to qualify as homeless.”<sup>32</sup>

***What steps should be taken by a parent if the family becomes homeless?***

As explained above, the question of who is “homeless” for purposes of school enrollment laws is not always easy to answer. Notwithstanding this potential uncertainty, if a parent or social worker helping the family believes or suspects that a child’s circumstances may constitute homelessness as described above, the parent or social worker<sup>33</sup> should immediately contact the school district where the child is currently residing and ask for the name and phone

number of the district's **homeless liaison** (pronounced "lee-a-zon"). Unaccompanied youth experiencing homelessness should also seek the assistance of the homeless liaison. A list of homeless liaisons by school district, including their names, telephone numbers and email addresses, is also available on the website of the New Jersey Department of Education at <http://www.state.nj.us/education/students/homeless/liaison.htm>. Every school district (and charter school) is required to have a homeless liaison,<sup>34</sup> who is responsible for ensuring that a homeless child residing in the district is enrolled and attending school.<sup>35</sup> The parent or other individual contacting the homeless liaison should provide the liaison with the child's name, age, grade, school last attended, address prior to becoming homeless, and current address.

Within 24 hours of receiving notification about a homeless child living in the school district, the liaison of the child's current residence must notify the liaison of the school district in which the parent last resided prior to becoming homeless – this "pre-homelessness" district is known, in the New Jersey regulations, as the "school district of residence" (see discussion below).<sup>36</sup> Responsibility then falls upon the liaison of the "school district of residence" to **immediately** coordinate procedures for the enrollment of the homeless student in school, based on the student's best interest and on the district enrollment rules described below.<sup>37</sup>

It is critically important that a parent who has moved from one school district to another in a situation that may be considered "homelessness" under



the law contact the homeless liaison of the school district where the student now resides. This step triggers the legal rights and parent-favorable procedures described in the remainder of this publication and protects families from potentially costly claims of ineligible attendance resulting from application of the general school district residency requirements. Homeless parents whose children are not currently attending school should also contact the homeless liaison for assistance in securing school enrollment and other services. Homeless liaisons are responsible under State and federal law for providing significant assistance to homeless families and unaccompanied youth, including: ensuring that homeless families and students receive educational services for which they are eligible, including Head Start, Even Start, public preschool programs and early intervention services; referring homeless families and students to medical, dental, mental health, and other appropriate services; informing parents of educational and related opportunities available to their children and providing parents with meaningful opportunities to participate; ensuring dissemination of public notice of the educational rights of homeless students in appropriate locations such as shelters, public libraries, soup kitchens and schools; ensuring resolution of enrollment disputes; informing parents and unaccompanied youth of transportation services and assisting them in accessing those services; assisting parents in obtaining their homeless child's medical records or required immunizations; ensuring that school personnel serving homeless students receive professional development and other support; and

ensuring equal educational opportunities for unaccompanied youth, including informing such youth of their status as independent students for purposes of college financial aid.<sup>38</sup>

***Are All Homeless Students Eligible for the Special Protections Described in this Publication? What are the Applicable Age Ranges?***

The New Jersey regulations offering special protections to homeless students are applicable to “district boards of education providing **general education services to students in preschool through grade 12** and **special education services to students ages three through 21.**”<sup>39</sup>

ESSA includes new provisions aimed at assisting preschool-aged homeless children, who represent a “major share of the overall homeless population.”<sup>40</sup> While not all school districts have universal public preschool, ESSA ensures that public preschool students who move from a school district as a result of becoming homeless are entitled to the same presumptive right to remain enrolled in the school they attended before becoming homeless (or school of last enrollment) as students in elementary school and above.<sup>41</sup>

Students with disabilities receiving special education services or accommodations are also eligible for the special protections described in this publication in the event they become homeless. As described more fully at pages 15-16 of this publication, federal law indicates that local school districts must “coordinate the provision of services” under McKinney-Vento with the provision of programs for children with disabilities.<sup>42</sup>

### ***What is the “District of Residence”?***

The New Jersey regulations define a homeless student’s “school district of residence” as the district where the student’s parent or guardian last resided before becoming homeless, going on to clarify *that this may not be the same school district in which the student currently resides.*<sup>43</sup> The regulations further note that “school district of residence” has the same meaning as “school district of origin” in the federal McKinney-Vento Act; the federal term is more descriptive in pointing to the school that a student attended before experiencing homelessness or the last school in which the student was enrolled.<sup>44</sup>

It is important to determine the “school district of residence” because of the legal obligations imposed on such district under federal and New Jersey law.

The district of residence is responsible for:

- (1) determining the district in which the student will be enrolled in consultation with the parent;
- (2) paying the cost of tuition when the student attends school in another district; and
- (3) providing or paying for transportation for the homeless student in accordance with State transportation regulations.<sup>45</sup>

While the school district of residence remains the district of residence for as long as the parent of the student remains homeless,<sup>46</sup> this district is relieved of financial responsibility for tuition and transportation costs under certain circumstances, most notably when a family lives in another school district for a full year or longer. (See “***Time limitations on financial responsibility of***

***district of residence***” at pages 26-27.)

***How is the district enrollment of a homeless student decided?***

***Immediate Enrollment Rule: No Delay***

The laws regarding education rights of homeless students are designed to ensure school stability and lack of interruption in educational services. Consistent with this purpose, the chief school administrator of the school district of residence or his designee must, upon notification of a need for enrollment, **immediately** determine a homeless child’s school district enrollment after consultation with the parent and **immediately** enroll the student.<sup>47</sup> A homeless student may not be excluded from school even if the student is unable to produce records normally required for enrollment, such as previous academic records, records of immunization and other required health records, or proof of residency or other documentation,<sup>48</sup> or based on having missed application or enrollment deadlines during any period of homelessness.<sup>49</sup> Even disputes cannot delay immediate enrollment: as discussed below, in the case of a dispute or appeal, the student must be enrolled in the school in which enrollment is sought until the dispute or appeal has been resolved, including all available appeals.<sup>50</sup>

***“Best Interest” Determination***

Enrollment decisions must be based on the “best interest of the child.”<sup>51</sup> Fundamental to the federal law in this area is the presumption that it is best for a homeless child to remain enrolled in the school he or she attended before

experiencing homelessness or the last school in which he or she was enrolled;<sup>52</sup> under federal law, these two choices make up the definition of “school of origin.”<sup>53</sup> In the case of a student who has completed the final grade level served by the school of origin, the designated receiving school for students from this school (e.g., a middle school receiving students from several elementary schools) is treated as the student’s school of origin and given first preference.<sup>54</sup>

Under the New Jersey regulations, homeless students should be enrolled in the “school district of residence” (defined as the school district in which the parent resided before becoming homeless) to the extent feasible except when doing so is contrary to the wishes of the homeless student’s parent.<sup>55</sup> If the parent is opposed to enrollment in the school district of residence, there are two additional choices for enrollment. One is to continue the student’s education in the school district where he or she last attended school if different from the district of residence; the other is to enroll the student in the school district where he or she currently resides.<sup>56</sup> As between these two additional choices, federal law indicates a preference for the former – the school district of last attendance/enrollment – consistent with the overarching goal of maintaining school stability.

In making an enrollment decision based on the student’s “best interest,” New Jersey regulations direct the chief school administrator of the school district of residence or his designee to consider:

- (1) the enrollment of the student in the school district of residence to the extent feasible, except when contrary to the wishes of the parent;

- (2) the continuity of the student's educational program
- (3) eligibility of the student for special instructional programs such as bilingual, gifted and talented, special education, early childhood, and career and technical education programs; and
- (4) distance, travel time, and safety in transporting the student from his or her current residence to the school.<sup>57</sup>

The U.S. Department of Education suggests that additional factors be taken into account in determining the "best interest" of a homeless preschool student. These include the child's attachment to preschool teachers and staff, the impact of school climate on the child, including the school's safety, and the availability and quality of services to meet the child's comprehensive needs, including social-emotional needs.<sup>58</sup>

The district of residence is required to provide written documentation that it consulted with the student's parent when making its decision, and that it informed the parent of the right to appeal the enrollment decision.<sup>59</sup> The district of residence is also required to provide the student's parent with a written explanation of any decision to enroll the homeless student in a school district other than the district of residence or district requested by the parent.<sup>60</sup> Enrollment determinations must continue in effect for the duration of a family's homelessness, including through the remainder of any academic year during which the homeless student becomes permanently housed.<sup>61</sup>

***Other Enrollment Rules:***

***Students with Disabilities:*** As noted above, the McKinney-Vento Act requires

school districts to “coordinate” the provision of services for homeless students with the provision of programs for students with disabilities.<sup>62</sup> While the Individuals with Disabilities Education Act (IDEA) mandates that students with disabilities receive a “free and appropriate public education” in the “least restrictive environment,”<sup>63</sup> McKinney-Vento and New Jersey’s corresponding law use a “best interest” standard<sup>64</sup> to determine placement of a homeless student, with a presumption in favor of remaining in the school attended before experiencing homelessness (or school of last enrollment), unless contrary to the request of the parent.<sup>65</sup>

While the legal standards governing homeless students and students with disabilities are different, it appears that a student with disabilities who is also experiencing homelessness may benefit from the protections offered by McKinney-Vento and IDEA without contradiction. Under the New Jersey regulations, a homeless child’s eligibility for special education services is to be taken into account in making the “best interest” determination about the school district of enrollment.<sup>66</sup> Case law, moreover, suggests that the rationale for having a homeless student remain in the school he or she attended before becoming homeless is even stronger in the case of a student with disabilities whose needs have been met in such school over time.<sup>67</sup>

Notwithstanding the apparently strong preference for keeping a homeless student with a disability in the school district of residence, it is possible that such a student will be enrolled in another district. In this event, the New Jersey

regulations provide that the student will be treated as a “transfer student” under the special education regulations.<sup>68</sup> Transfer students must, without delay, be provided with a program comparable to the program set forth in the current Individualized Education Program (IEP); within 30 days of placement, the new school district must review and revise the student’s IEP in accordance with the State special education regulations, unless the parents and new district agree to implement the current IEP.<sup>69</sup> Disputes over the services being provided over time to a homeless student with a disability are governed by the special education regulations,<sup>70</sup> which offer options including mediation and due process hearings to parents dissatisfied with such services.<sup>71</sup>

***Unaccompanied Youth:*** While the discussion above has generally referred to the rights and preferences of the parent or guardian of a homeless child, federal law makes it clear that in the case of an “unaccompanied youth,” that is, a youth not in the physical custody of a parent or guardian, **the requests and preferences of the youth himself or herself** are given priority in enrollment determinations.<sup>72</sup>

***Inability to Determine District of Residence:*** Whenever a district of residence cannot be determined for a particular student, the chief school administrator of the district in which the student is currently residing shall enroll the child immediately in that district or in the district where the student last attended school.<sup>73</sup>



***Special Rule for Students Rendered Homeless due to Terrorism or Natural***

***Disaster:*** A special statutory rule allows students who have moved from one school district to another as a result of becoming homeless due to an act of terrorism or natural disaster resulting in the declaration of a state of emergency or disaster by the state or federal government to continue to enroll in the school district in which the parent resided before becoming homeless for up to two full school years after the act of terrorism or natural disaster. This rule provides for tuition-free attendance and transportation so long as the student's parent remains homeless during this two-year period.<sup>74</sup>

***Special Enrollment Rule for Family Crisis:*** Under a separate New Jersey rule falling outside of the statutes and regulations protecting homeless students, a student who moves out of a school district as a result of domestic violence, sexual abuse, or other "family crisis" may remain enrolled in that school district for the remainder of the school year and receive transportation services if the student lives remote from school.<sup>75</sup> "Family crisis" is defined in the regulations to include a "disruption to the family unit caused by death of a parent or guardian" or an "unplanned displacement from the original residence such as fire, flood, hurricane, or other circumstances that render the residence uninhabitable."<sup>76</sup> The original school district of residence may request and review supporting documentation from the parent about the reason for the move without interrupting the student's continued enrollment;<sup>77</sup> if the parent or the relevant documentation indicates that the child is in fact "homeless," the homeless liaison shall assume

coordination of enrollment procedures and all of the rules for enrollment of homeless students described in this publication shall apply.<sup>78</sup>

***How are disputes resolved?***

***Disputes regarding homelessness:*** If there is a dispute over whether or not a student is homeless, the school district(s) or parent(s) involved must immediately notify the executive county superintendent,<sup>79</sup> and the executive county superintendent (in consultation with the New Jersey Department of Education's McKinney-Vento Homeless Education Coordinator or his/her designee) must immediately decide whether or not the student qualifies as homeless. The parties involved may appeal the executive county superintendent's determination regarding homelessness to the Commissioner of Education by filing an appeal with the Office of Controversies and Disputes pursuant to N.J.A.C. 6A:3.<sup>80</sup> For information on filing a petition of appeal, contact the Office of Controversies and Disputes at (609) 376-9078.

***Disputes regarding school district of residence:*** The New Jersey regulations state that "the determination of a homeless child's school district of residence shall be made by the chief school administrator of the school district of residence or designee ... based upon information received from the parent, the Department of Human Services of the Department of Children and Families, a shelter provider, another school district, an involved agency or a case manager."<sup>81</sup>

The New Jersey regulations attempt to ensure that disputes between school districts be resolved swiftly. If the school districts involved cannot agree

which district is the “district of residence,” then they must immediately notify the executive county superintendent(s) for the districts involved, who must make a determination immediately, if possible, but not later than within 48 hours, as to the student’s district of residence.<sup>82</sup> A district disputing an executive county superintendent’s determination may appeal to the Department of Education.<sup>83</sup> Most importantly for parents, a dispute between school districts may not delay the student’s immediate or continued enrollment in school. Pending resolution of a dispute or appeal, the student must be enrolled in the school district in which enrollment is sought by the parent.<sup>84</sup>

***Disputes regarding enrollment:*** If there is a dispute regarding the enrollment decision made by the district of residence, the school district(s) or parent(s) involved must immediately notify the executive county superintendent,<sup>85</sup> who, in consultation with the Department of Education’s McKinney-Vento Homeless Education Coordinator or his or her designee, must immediately decide the student’s status.<sup>86</sup> ELC recommends that a parent, guardian, or unaccompanied youth who objects to a school district’s enrollment decision should call the executive county superintendent of schools for the county where the district of residence is located and, if possible, confirm the objection in writing. A list of executive county superintendents and their contact information is contained in the Appendix to this publication.

As in the case of disputes regarding homelessness, the parties involved may appeal the executive county superintendent’s determination to the

Commissioner of Education by filing an appeal with the Office of Controversies and Disputes pursuant to N.J.A.C. 6A:3.<sup>87</sup> For information on filing a petition of appeal, a parent may contact the Bureau of Controversies and disputes at (609) 376-9078. Further assistance may also be obtained by contacting the Department of Education's Homeless Education Program at (609) 984-4974.

Where the procedures described above are followed, starting with the involvement of the homeless liaison, both federal and New Jersey law require that a homeless student be immediately enrolled in the school in which enrollment or continued enrollment is sought by the parent until a dispute over school selection or enrollment can be resolved. Thus, while a decision by the executive county superintendent or an appeal to the New Jersey Commissioner of Education is pending, a homeless student is entitled to be immediately enrolled in the school in which enrollment is sought by the parent;<sup>88</sup> the right to remain enrolled there continues through "all available appeals."<sup>89</sup> Transportation must also be provided while a dispute is pending.<sup>90</sup>

For students or parents whose dominant language is a language other than English, school districts must provide translation and interpretation services in connection with all stages of the dispute resolution process.<sup>91</sup>

***A note of caution regarding ineligible attendance claims:***

Parents who move from a school district under conditions of hardship but continue to send their children to their original school district may face claims of ineligible attendance and accompanying tuition charges if there has been no

participation by a homeless liaison, confirmation of homeless status, and determination of enrollment under the rules above. Where a school district makes a claim of ineligible attendance, parents may claim homelessness as a defense but bear the burden of proving their homelessness in legal proceedings.<sup>92</sup> In the event that a parent loses an ineligible attendance case on appeal to the Commissioner of Education, the parent may be charged tuition for up to one year of ineligible attendance prior to the appeal being filed (including the 21-day period to file the appeal), plus tuition for the period during which the hearing and decision on appeal were pending.<sup>93</sup> While federal law places an obligation on states and school districts to “identify” homeless children and youth so as to ensure their enrollment in school,<sup>94</sup> **parents are advised to be proactive in contacting the homeless liaison so as to avoid claims of ineligible attendance.**

A 2010 ineligible attendance case<sup>95</sup> illustrates the legal risk to parents who keep their children in a school district they have left as a result of financial hardship without seeking the assistance of a school district homeless liaison. In this case, a student’s mother became seriously ill, leading to medical bills in collection, while the father received a pay cut and ultimately lost his job. The parents missed a mortgage payment on their home and were financially unable to remain in the home. They sold the home and moved in with the student’s grandparents in a nearby school district, keeping their son in his original school as “they found he was doing very well there and did not want to disrupt his

educational setting.” The father found a new job several hours away, and any initial hopes that the parents had to quickly move back to the school district became unrealistic. On appeal of the school district’s decision to disenroll the student, the parents raised “homelessness” for the first time (rather than initially seeking the involvement of the county superintendent of schools under the special rules for homeless students). Finding that the parents had failed to prove they were living with relatives “out of necessity,” and noting that the parents had failed to thoroughly explore options to remain in their original school district, the Administrative Law Judge (and Commissioner of Education on further appeal) denied the parents’ claim of homelessness and ordered the parents to pay tuition to their original school district of approximately \$3700 for their son’s 62 days of ineligible attendance after moving to the grandparent’s home.

The type of harsh result described above would have been avoided had the parents contacted the homeless liaison of the school district where the grandparents resided upon moving to the grandparent’s home. Had this step been taken, the homeless liaison would have been responsible for starting a process under which the parents, the school districts involved, and the executive county superintendent, if necessary, would have determined enrollment as well as the school district financially responsible for educating the student. While it is possible that the parents in this case may not ultimately have succeeded in keeping their son enrolled in his original school for as long as desired, operation of the special rules for homeless students would have foreclosed the possibility

of their personal liability for tuition while allowing the student to remain enrolled in their choice of school pending resolution of any dispute.<sup>96</sup>

A 2008 decision<sup>97</sup> raises one additional caution and suggestion about ineligible attendance claims. In this case, a mother was forced to leave her apartment in a school district under court order and thereafter lived for about 5 months at her place of business, a beauty salon. For the next 11 months, the mother and her son moved about, living for short periods of time in other school districts at the homes of various friends and a relative; the son continued to attend school in his original school district. The mother then rented her own new apartment during the summer between school years in a new school district with rental assistance. The unfortunate outcome of this case -- another case in which the parent apparently never sought the participation of a homeless liaison -- was that the parent was charged tuition at a rate of \$67.20 per day for the period after she moved to her new apartment, through the time of the court decision concluding that her son must leave his school. While the court found the student homeless and entitled to attend his original school prior to rental of the new apartment, the mother still faced tuition liability for the approximately 4 months of ineligible attendance during the new school year after she rented her new apartment; on further appeal, the Commissioner of Education refused to order forgiveness of the tuition assessment based on financial hardship. This case indicates that even students who have been found to be homeless may face the risk of residency claims if family circumstances change; as stated in a

more recent case, “the notion that homelessness has no maximum duration must be applied with caution.”<sup>98</sup> Accordingly, parents should promptly notify their children’s schools and district homeless liaisons of changes in their living circumstances. While federal and New Jersey law allow a homeless student to continue to attend the school he is enrolled in for the remainder of the academic year if he becomes permanently housed during the academic year,<sup>99</sup> the student in the 2008 decision became permanently housed during the summer and was ineligible to attend his original school for the subsequent school year.

***Who pays tuition and transportation costs?***

***Tuition rules:*** When homelessness occurs, the district of residence is initially responsible for all tuition costs, no matter where the homeless student is living and going to school.<sup>100</sup> Special rules exist for students impacted by domestic violence, terrorism, or natural disaster: (1) in the case of students residing outside the district of residence for more than one year in certain emergency shelters or transitional living facilities due to domestic violence, the State assumes financial responsibility for tuition;<sup>101</sup> (2) as noted above, students rendered homeless as a result of terrorism or natural disaster resulting in the declaration of a state of emergency or disaster by the state or federal government may, for up to two full school years after such event, attend tuition-free the school district in which the parent resided before becoming homeless.<sup>102</sup> The State is initially responsible for tuition costs if the school district of residence cannot be determined or if the school district of residence is outside



of the State.<sup>103</sup>

**Transportation rules:** The district of residence is similarly responsible for paying for transportation for its homeless students.<sup>104</sup> Homeless students are entitled to transportation within the district of residence without regard to distance requirements.<sup>105</sup> Thus, parents should challenge any district or state decision to restrict transportation to those homeless students who live remote from school. Even in school districts which do not ordinarily bus their students, homeless students are entitled, under federal law, to transportation to and from the “school of origin” upon parental request;<sup>106</sup> and homeless liaisons are responsible for informing parents and unaccompanied youth of this right.<sup>107</sup> While much of this publication has focused on the rights of students who have relocated to a *different* school district as a result of homelessness, this entitlement to transportation can represent a significant benefit to students who have become homeless but *still live within the school district*. Parents and unaccompanied youth who have become homeless but remain within the same school district should contact the homeless liaison of their district for assistance.

Homeless preschoolers are entitled to transportation to the school of origin so long as remaining in this school is in the child’s best interest, even if the school district does not provide transportation for other preschoolers and even if they currently reside in a school district that does not provide preschool.<sup>108</sup> In considering the transportation needs of homeless students, school districts must adhere to the “overarching obligation to ‘remove barriers to the enrollment and

retention of homeless students' which may require them to go above and beyond what is provided to permanently housed students."<sup>109</sup>

If a homeless student is enrolled in school outside the district of residence, the actual transportation must be provided by the district where the student is enrolled, but the district of residence remains responsible for the cost of that transportation.<sup>110</sup> If the student attends school in his or her district of residence while temporarily residing in another school district, the district of residence must provide for the transportation.<sup>111</sup> Where the district of residence cannot be determined and the State has assumed fiscal responsibility for tuition costs, the district where the homeless student is enrolled must provide transportation.<sup>112</sup> In providing transportation to homeless students, school districts are required to explore alternatives and to choose the most economical and safe mode of transportation.<sup>113</sup>

***Time limitations on financial responsibility of district of residence:*** While case law establishes that there is no "maximum duration" (time limit) on homelessness,<sup>114</sup> there are certain time limits on the financial responsibility of the district of residence for students experiencing homelessness. Several court decisions have held that where a homeless family lives in another district for a full year or longer, financial responsibility shifts from the district of residence to that other district; current regulations are in accord with those rulings.<sup>115</sup> A 2017 amendment to New Jersey law, however, provides that in the case of a child living in a "homeless shelter" outside the district of residence for more than one

year, the State, rather than the school district in which the shelter is located, must assume responsibility for tuition costs.<sup>116</sup> This amendment is consistent with the rules noted above for students living in certain emergency shelters or transitional living facilities due to domestic violence, and, like those rules, aims to avoid placing too high a fiscal burden on school districts in which shelters and similar facilities are located.<sup>117</sup>

Irrespective of whether financial responsibility for a homeless student shifts to another school district or to the State, the student retains the right to remain enrolled in his/her original school district so long as remaining there reflects the student's "best interest."<sup>118</sup>

### ***What Other Programs Are Available to Homeless Preschoolers?***

Preschool children who are homeless are automatically eligible for Head Start, a preschool program for low-income children. This means that parents do not have to prove eligibility through income verification and the like.<sup>119</sup> Homeless children may attend Head Start programs "for up to 90 days or as long as allowed under state licensing requirements, without immunization and other records, to give the family reasonable time to present these documents."<sup>120</sup> While waiting lists can be a problem in obtaining Head Start services, Head Start programs have been directed to prioritize homeless children for enrollment and may reserve enrollment slots for such children.<sup>121</sup>

Homeless children are also automatically eligible to attend Title I - funded preschool programs (which may be coordinated with Head Start programs)

without meeting the “at risk” requirement for eligibility.<sup>122</sup> Parents of preschoolers should seek the assistance of homeless liaisons in accessing all available services for their children.

***How Does the Law Promote the Ability to Graduate and College Readiness for Homeless High School Students?***

ESSA requires school districts to have procedures to ensure that homeless students who have transferred schools will receive “appropriate credit for full or partial coursework satisfactorily completed while attending a prior school,”<sup>123</sup> so as to avoid the situation where a student finds himself “in danger of not graduating due to differing class and credit requirements.”<sup>124</sup> The U.S. Department of Education, recognizing the “physical and mental stress caused by homelessness” and the need of homeless students to “balance school with other pressing responsibilities,” has suggested procedures and strategies for school districts to support homeless students in accruing and recovering credits toward graduation. These procedures and strategies include, among others, awarding credits for all courses satisfactorily completed at a prior school even if the school was in a different district or state, informally or formally evaluating students’ current mastery of courses partly completed in a prior school, offering credit recovery courses, complementing regular classes with independent study programs, and connecting with after school networks that may allow after-school time to count toward classroom credit.<sup>125</sup>

In an effort to assist homeless students in accessing post-secondary

education, federal law now mandates that guidance counselors advise these students to improve their readiness for college.<sup>126</sup> Homeless liaisons should work along with guidance counselors and other staff involved in college preparation to ensure that homeless high school students receive all necessary information and individualized counseling relevant to the college application process.<sup>127</sup> In the case of unaccompanied youth, homeless liaisons must notify these students of their status as “independent students” for federal financial aid application purposes and assist them in verifying this status so that college financial aid may be calculated “without the expectation of parental financial support.”<sup>128</sup>

***May School Districts Segregate Homeless Students in Separate Schools or Separate Programs within a School?***

No. The McKinney-Vento Homeless Assistance Act states that “[h]omelessness is not a sufficient reason to separate students from the mainstream school environment”<sup>129</sup> and is prohibited.<sup>130</sup> School districts must “adopt policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless”<sup>131</sup> and must remove barriers to their participation in academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, where such programs are otherwise available.<sup>132</sup> Under the New Jersey regulations discussed herein, the term “enroll” or “enrollment” -- which represents the basic

and immediate right of a homeless student -- is defined as “attending classes *and participating fully in school activities.*”<sup>133</sup>

In general, homeless students must be provided with services in the same setting as non-homeless students. A limited exception applies for supplementary services for homeless students designed to expand upon or improve regular academic services.<sup>134</sup> If a school district provides supplementary services for homeless students, it should be careful not to name or refer to such services in a way that stigmatizes homeless youth. For instance, a shelter-based evening tutoring program should not be called “the shelter tutoring program” but could be called the “Homework Club.”<sup>135</sup> The McKinney-Vento Act also provides privacy protection for the living situation of a homeless student; this information is treated as part of the student’s record covered by the federal privacy law, and school staff should incorporate practices to protect its privacy, such as holding conversations in private locations.<sup>136</sup> Finally, in the area of school discipline, schools should avoid bias against students experiencing homelessness by considering issues relating to homelessness prior to taking disciplinary action (for example, when a student is frequently absent or late for school), and should use disciplinary removal from school (e.g., suspension) only as a last resort.<sup>137</sup>

### ***Who monitors compliance?***

The New Jersey Department of Education is responsible for monitoring school districts to make sure that they follow the State rules on the education of

homeless students. Any violations of these rules should be brought immediately to the attention of the executive county superintendent or the Homeless Education Program in the Office of Supplemental Educational Programs, New Jersey Department of Education (telephone number: (609) 984-4974; email address: [homeless@doe.state.nj.us](mailto:homeless@doe.state.nj.us)).

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## **APPENDIX**

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***Note that all superintendents listed in this Appendix have been appointed on an interim basis as of the date of this publication.***

## ENDNOTES

<sup>1</sup> 42 U.S.C.A. §11431.

<sup>2</sup> The requirement to separately report data about the achievement and graduation rates of homeless students begins with the 2017-2018 school year. U.S. Department of Education, *Education for Homeless Children and Youths Program Non-Regulatory Guidance* (July 27, 2016, updated August 2018) (hereinafter referred to as the “*Federal Guidance*”), available at <https://www2.ed.gov/programs/homeless/legislation.html> (under Policy Guidance, Non-regulatory Guidance) (M-9); 20 U.S.C.A. §6311(h)(1-2).

<sup>3</sup> Under the State law which applies to the education of homeless children, the word “parent” means natural or adoptive parent, legal guardian, foster parent, surrogate parent or person acting in place of a parent such as the person with whom the child legally resides or a person legally responsible for the student’s welfare. N.J.A.C. 6A:17-1.2. Thus, the word “parent” will be used throughout this publication to refer to the parent, guardian, or other caregiver of a homeless student.

<sup>4</sup> Federal law requires state coordinators responsible for the education of homeless students to respond to inquiries from parents. 42 U.S.C.A. §11432(f)(7).

<sup>5</sup> New Jersey classifies each charter school as a local education agency under the McKinney-Vento Act, meaning that charter schools must fulfill all of the same responsibilities as traditional school districts with regard to homeless students. A charter school’s obligations extend to both students who become homeless while attending the charter school as well as homeless students who wish to enroll in that school.

<sup>6</sup> N.J.A.C. 6A:17-2.1

<sup>7</sup> N.J.S.A. Const., Art. 8, §4, ¶ 1.

<sup>8</sup> N.J.S.A. 18A:38-1(a).

<sup>9</sup> [http://www.edlawcenter.org/assets/files/pdfs/publications/Residency\\_RequirementsGuide.pdf](http://www.edlawcenter.org/assets/files/pdfs/publications/Residency_RequirementsGuide.pdf).

<sup>10</sup> N.J.A.C. 6A:22-3.1(a)(1)(i-ii).

<sup>11</sup> N.J.S.A. 18A:38-1(b)(1); N.J.A.C. 6A:22-3.2(a).

<sup>12</sup> N.J.S.A. 18A:38-1(b); N.J.A.C. 6A:22-3.2(b).

<sup>13</sup> N.J.S.A. 18A:38-1.1; N.J.A.C. 6A:22-3.2(h). The “family crisis” provision is discussed at pages 17-18 of this publication.

<sup>14</sup> New Jersey Department of Education, *Taxpayers’ Guide to Education Spending 2016*, <http://www.state.nj.us/cgi-bin/education/csg/16/csg1a.pl?string=%20&maxhits=1000>.

<sup>15</sup> *See Stealing education: families fake residency for school* (app.com 9/14/2015); *Bayonne district still on lookout for out-of-town students registered as residents* (nj.com 11/29/2013); *On the Lookout for Out-of-District Students* (NY Times 1/13/2008).

<sup>16</sup> N.J.S.A. 18A:38-1(b); N.J.A.C. 6A:22-6.1 - 6.3 (if no appeal is filed by parent, tuition may be assessed for only “up to one year of a student’s ineligible

attendance”).

<sup>17</sup> N.J.S.A. 18A:38-1(f) (free public school for “any person whose parent or guardian moves from one school district to another school district as a result of being homeless...); N.J.A.C. 6A:22-3.2(d) (“A student is eligible to attend the school district ... if the student’s parent or guardian moves to another school district as the result of being homeless...); N.J.S.A. 18A:7B-12(c) (“district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless”); N.J.A.C. 6A:17-2.5(a)(1) (enrollment “in the school district of residence to the extent feasible, except when doing so is contrary to the wishes of the homeless child’s parent or guardian”). As noted below, in the case of an unaccompanied youth, the request of the youth is given priority.

<sup>18</sup> *NO BARRIERS: A Legal Advocate’s Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act* (hereinafter, “*NO BARRIERS*”), <https://www.nlchp.org/documents/NoBarriers> (2nd Ed. Nov. 2016) at page 10.

<sup>19</sup> <http://www.state.nj.us/education/students/homeless/count.htm> (breakdown of “primary nighttime residence” for 2014-15 school year). Not every family that “doubles up” with another family is considered homeless. Homeless status is more likely to be found if the family that has moved in is relegated to a separate part of the home, lacking basic amenities. By contrast, where all members of a household “seamlessly co-habit and share the expenses and amenities of the home” as a “cohesive unit,” the mere fact of being “doubled-up” does not, on its own, automatically trigger a finding of homelessness. State Operated School Dist. Of the City of Camden v. C. Ann Volk, Executive County Superintendent, <https://www.nj.gov/education/legal/commissioner/2017/jun/172-17R.pdf> (Comm’r of Educ. June 20, 2017).

<sup>20</sup> Federal law refers to the lack of an adequate “nighttime” residence. 42 U.S.C.A. §11434a (referring to 42 U.S.C.A. §11302(a)(1)); N.J.S.A. 18A:7B-12(c); N.J.A.C. 6A:17-1.2.

<sup>21</sup> N.J.A.C. 6A:17-1.2 (definition of “homeless child”); N.J.A.C. 6A:17-2.2(a). The term “substandard housing” has caused confusion because standards for adequate housing vary by locality. In determining whether a student is living in “substandard housing,” a school district may consider whether the dwelling lacks basic utilities, is infested with vermin or mold, lacks basics such as a working kitchen or toilet, or presents unreasonable dangers. Local laws may also define substandard housing. *Federal Guidance (A-3)*.

<sup>22</sup> 42 U.S.C.A. §11434a(2)(B)(i). While the New Jersey regulations do not include a reference to students abandoned in hospitals, these regulations should not be interpreted as limiting any rights of homeless students under federal law; both the New Jersey definition and the slightly different federal definition are relevant to the determination of whether a student is considered “homeless.” N.J.A.C. 6A:17-2.1.

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<sup>23</sup> See *Federal Guidance (A-2)* (regarding children awaiting foster care placement). While children awaiting foster care placement were automatically treated as “homeless” under prior law, these children can still qualify for McKinney-Vento protection if they fit into one of the other categories currently making up the definition of “homeless.”

<sup>24</sup> See U. S. Department of Education and U.S. Department of Health and Human Services, *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (June 23, 2016). <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>.

<sup>25</sup> N.J.S.A. 30:4C-26(c) (tuition payable by “district of residence”); N.J.S.A. 18A:7B-12(a) (district of residence for student in resource family home); N.J.S.A. 30:4C-26b (presumption of continuing enrollment in school currently attending; best interest determination).

<sup>26</sup> M.O’K. and S.O’K o/b/o K.O’K, A.O’K. and C.O’K. v. Bd. of Educ. of the Borough of Creskill and Bd. of Educ. of the Borough of Little Ferry, 2014 WL 12844658, OAL No. 14830-13, Agency No. 214-9/13 (N.J. Comm’r of Educ. Aug. 12, 2014); aff’d, 2016 WL 4699166 (N.J. Sup. Ct. App. Div. Sept. 8, 2016).

<sup>27</sup> L.R. v. Steelton-Highspire School District, 54 IDELR 155 (M.D. Pa. 2010).

<sup>28</sup> M.O’K., *supra* note 26 (quoting Comm’r of Educ. decision).

<sup>29</sup> G.S. by J.S. v. Rose Tree Media School Dist., 2018 WL 7108010 (3d Cir. Nov. 6, 2018) (where school district initially treated student in “doubled-up” arrangement as homeless, and his living conditions remained unchanged over nearly four year period, student continued to qualify as homeless; student lived in home with ten people and slept on cot in living room, kitchen or basement); L.R. v. Steelton-Highspire, *supra* note 27. In amending the regulation defining homeless status in 2014, the New Jersey Department of Education replaced the term “the residence of relatives or friends with whom the homeless child *is temporarily residing* out of necessity” with “the residence of relatives or friends *where the homeless child resides* out of necessity,” recognizing that “the use of temporarily implies there is a finite time period upon which homelessness ends. This is contrary to the federal McKinney-Vento Act, which places no timeline on homelessness as long as the individual continues to lack a fixed, regular, and adequate primary nighttime residence.” *Memorandum from Christopher D. Cerf to State Board of Education* (April 11, 2014) at page 5. The new language is found at N.J.A.C. 6A:17- 2.2(a)(3).

<sup>30</sup> M.O’K., *supra* note 26; compare Camden v. Volk, *supra* note 19 (executive county superintendent’s finding of homelessness overturned absent evidence that grandmother’s home, inhabited for over five years, was not an “adequate” residence; a temporary residence may become one’s regular residence; homelessness found to end at time parent “stopped looking for another place to live”); Bd. of Educ. of the Borough of Hawthorne v. Bd. of Educ. of the Borough of Prospect Park and New Jersey State Dept. of Educ., OAL No. 16270-13, Agency No. 247-10/13, 2014 WL 1383915 (N.J. Adm. March 26, 2014) (no finding of homelessness where temporary stay at grandparents’ home was not forced upon parent by necessity but was part of voluntary plan to move

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to Florida); Englewood Cliffs Bd. of Educ. v. E.S. and W.S. o/b/o A.S. and E.S. and Twp. of Teaneck Bd. of Educ., OAL No. 11601-09, Agency No. 184-8/09, 2010 WL 2039640 (N.J. Adm. May 20, 2010), aff'd, 2010 WL 5624397 (Comm'r of Educ. June 30, 2010) (fact that house was “in need of repairs” did not make family homeless; family had lived there for over 17 months, had annual gross income over \$100,000 per year, and had paid private school tuition in advance for one child).

<sup>31</sup> Bd. of Educ. of Twp of Belleville, Essex County, v. Y.D. o/b/o S.D., N.D., Z.B. and Z.B. and State-Operated School Dist. of Newark, OAL No. 01319-06, Agency No. 315-11/05, 2007 WL 3011084 (N.J. Adm. October 3, 2007), aff'd, 2007 WL 4794088 (Comm'r of Educ. November 19, 2007) (in case involving multiple evictions, homelessness found where no intention or ability to stay at series of temporary residences). In the case of an unaccompanied homeless youth (a youth not in the physical custody of a parent or guardian), “eligibility must be evaluated based on the nature of his or her current nighttime living arrangement, not the circumstances that caused him or her to leave home.” *NO BARRIERS* at page 45. Unaccompanied homeless youth are discussed at page 16.

<sup>32</sup> *NO BARRIERS* at page 14.

<sup>33</sup> The New Jersey regulations note the following persons and organizations as those who would notify school district homeless liaisons of the presence of a homeless student within the district: “the parent, the Department of Human Services or the Department of Children and Families, a shelter director, an involved agency, or a case manager.” N.J.A.C. 6A:17-2.4(b).

<sup>34</sup> N.J.A.C. 6A:17-2.4(a).

<sup>35</sup> N.J.A.C. 6A:17-2.4(a)(2).

<sup>36</sup> N.J.A.C. 6A:17-2.4(b).

<sup>37</sup> N.J.A.C. 6A:17-2.4(c).

<sup>38</sup> N.J.A.C. 6A:17-2.4(a)(1-9); 42 U.S.C.A. § 11432(g)(6)(A)(i-x).

<sup>39</sup> N.J.A.C. 6A:17-2.1(scope of rules).

<sup>40</sup> *Federal Guidance* (page 2 and N-1 – N-5)

<sup>41</sup> *Federal Guidance* (N-4 – N-5); *The Most Frequently Asked Questions on the Education Rights of Children and Youth in Homeless Situations*, [https://www.nlchp.org/documents/McKinney-Vento\\_FAQs](https://www.nlchp.org/documents/McKinney-Vento_FAQs) (hereinafter, “*Most Frequently Asked Questions*”) (Questions 116,119).

<sup>42</sup> 42 U.S.C.A. § 11432(g)(5)(D).

<sup>43</sup> N.J.A.C. 6A:17-1.2; N.J.S.A. 18A:7B-12(c). Given that “school district of residence” is defined by reference to a parent’s place of residence, a school district of residence may be identified even if the student was not yet enrolled in school at the time homelessness occurred.

<sup>44</sup> The federal statute actually uses the term “school of origin,” rather than “school district of origin.” “School of origin” is defined in the McKinney-Vento Act as the school (including a preschool) that the student attended before becoming homeless, or school of last enrollment; the term includes receiving schools that a student would attend after completing the final grade level of the school of origin.

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42 U.S.C.A. §11432(g)(3)(l). While the New Jersey regulations state that “school district of residence” is synonymous with “school district of origin” in federal law, the two terms actually appear to operate somewhat differently, as “school of origin” is defined by McKinney-Vento to include the school of last enrollment if different from the school the student attended before becoming homeless. New Jersey’s enrollment rules, discussed below, distinguish “school district of residence” from “school district of last attendance,” while allowing for enrollment in either school. See N.J.A.C. 6A:17-2.5(a); N.J.S.A. 18A:7B-12.1. As noted above, the New Jersey regulations are not intended to limit student rights or school district responsibilities under the McKinney-Vento Act. N.J.A.C. 6A:17-2.1.

<sup>45</sup> N.J.S.A. 18A:7B-12.1; N.J.A.C. 6A:17-2.3(a); N.J.A.C. 6A:27-6.2.

<sup>46</sup> N.J.A.C. 6A:17-2.3(c)

<sup>47</sup> N.J.A.C. 6A:17-2.5(c).

<sup>48</sup> N.J.A.C. 6A:17-2.5(g); 42 U.S.C.A. §11432(g)(3)(C)(i)(l); 42 U.S.C.A. §11432(g)(1)(H).

<sup>49</sup> 42 U.S.C.A. §11432(g)(3)(C)(i)(ll); the *Federal Guidance* (at I-5) indicates that enrollment must occur even if the homeless student has outstanding fees; see also 42 U.S.C.A. §11432(g)(1)(l) (remove barriers due to outstanding fees, fines, or absences). Homeless students are also automatically eligible for free school meals without parents completing the application or proving income. *NO BARRIERS* at page 31(citing Child Nutrition and WIC Reauthorization Act of 2004).

<sup>50</sup> 42 U.S.C.A. § 11432(g)(3)(E)(i); N.J.A.C. 6A:17-2.7(c).

<sup>51</sup> N.J.S.A. 18A:7B-12.1; N.J.A.C. 6A:17-2.5(b); 42 U.S.C.A. § 11432(g)(3)(A)-(B).

<sup>52</sup> See *NO BARRIERS* at pages 12-15; 42 U.S.C.A. § 11432(g)(3)(B)(i) (in determining best interest of child, school districts must presume that keeping the child in the school of origin is in best interest except when contrary to request of parent or unaccompanied youth).

<sup>53</sup> 42 U.S.C.A. § 11432(g)(3)(l)(i). See also *NO BARRIERS* at page 49 (where, due to natural disaster, it is impossible to continue attending school attended before becoming homeless, attendance at a new school close to where the student is temporarily living creates a new “school of origin” under federal law).

<sup>54</sup> 42 U.S.C.A. § 11432(g)(3)(l)(ii).

<sup>55</sup> N.J.A.C. 6A:17-2.5(a)(1). The preference for enrolling a student in the school of origin (as defined in federal law) applies even when the student becomes homeless during the summer. 42 U.S.C.A. § 11432(g)(3)(A)(i)(l).

<sup>56</sup> N.J.S.A. 18A:7B-12.1; N.J.A.C. 6A:17-2.5(a)(2) - (3); 42 U.S.C.A. § 11432(g)(3)(A)(ii)(choice of enrolling student “in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend”).

<sup>57</sup> N.J.A.C. 6A:17-2.5(b). The federal statute directs school districts to “consider student-centered factors related to the child’s or youth’s best interest,



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including factors related to the impact of mobility on achievement, education, health and safety of homeless children and youth, giving priority to the request of the child's or youth's parent or guardian or (in the case of an unaccompanied youth) the youth." 42 U.S.C.A. §11432(g)(3)(B)(ii).

<sup>58</sup> *Federal Guidance* (N-3). The *Federal Guidance* (at I-3) also suggests that the school placement of siblings be taken into account in making all "best interest" determinations.

<sup>59</sup> N.J.A.C. 6A:17-2.5(c)(2).

<sup>60</sup> N.J.A.C. 6A:17-2.5(c)(3). Written explanations should be in a form understandable to the parent, 42 U.S.C.A. § 11432(g)(3)(B)(iii), "using language and formatting appropriate for low-literacy, limited vision readers, and individuals with disabilities." Translation and interpretation services should also be provided as needed. *Federal Guidance* (K-4). In the case of unaccompanied youth, discussed below, federal law provides that written explanations, including information regarding appeal, must be provided to the youth himself or herself. 42 U.S.C.A. §11432(g)(3)(B)(iii), (iv).

<sup>61</sup> N.J.A.C. 6A:17-2.5(h); 42 U.S.C.A. § 11432(g)(3)(A)(i)(II).

<sup>62</sup> 42 U.S.C.A. § 11432(g)(5)(D).

<sup>63</sup> 20 U.S.C.A. §1412(a)(1)(A),(a)(5); 34 C.F.R. §§300.101(a),114(a); N.J.A.C. 6A:14-1.1(b)(1),(5).

<sup>64</sup> 42 U.S.C.A. § 11432(g)(3)(A)-(B); N.J.S.A. 18A:7B-12.1; N.J.A.C. 6A:17-2.5(b).

<sup>65</sup> 42 U.S.C.A. § 11432(g)(3)(B)(i); N.J.A.C. 6A:17-2.5(b)(1).

<sup>66</sup> N.J.A.C. 6A:17-2.5(b)(3).

<sup>67</sup> L.R. v. Steelton-Highspire, *supra* note 27 (school district had in-depth knowledge of student's needs and had met such needs for years); M.O'K., *supra* note 26 (rationale for Commissioner's decision to keep children enrolled in Cresskill is "particularly supported by the fact that the O'K. children have special needs and had been receiving special educational programs in Cresskill for many years...").

<sup>68</sup> N.J.A.C. 6A:17-2.5(e).

<sup>69</sup> N.J.A.C. 6A:14-4.1(g).

<sup>70</sup> N.J.A.C. 6A:17-2.7(d).

<sup>71</sup> N.J.A.C. 6A:14-2.6 - 2.7. Requests for mediation or due process are made to the Director, Office of Special Education Programs, New Jersey Department of Education, PO Box 500, Trenton, NJ 08625-0500, (609) 292-0147. For further information on special education disputes, see ELC's publication, *The Right to Special Education in New Jersey: A Guide for Advocates*, [http://www.edlawcenter.org/assets/files/pdfs/publications/Rights\\_SpecialEducation\\_Guide%20TL.pdf](http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf).

<sup>72</sup> 42 U.S.C.A. § 11432(g)(3)(B),(E); N.J.A.C. 6A:17-2.4(a)(9) (duty of liaison to assist unaccompanied youth).

<sup>73</sup> N.J.A.C. 6A:17-2.5(f).

<sup>74</sup> N.J.S.A. 18A:7B-12.3.

<sup>75</sup> N.J.S.A. 18A:38-1.1.

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76 N.J.A.C. 6A:22-3.2(h)(1)(ii-iii).

77 N.J.A.C. 6A:22-3.2(h)(2).

78 N.J.A.C. 6A:22-3.2(h)(3). If the parent asserts a “family crisis” but the school district disagrees and the parent loses on appeal, the parent may be charged for the cost of transportation provided during the period of ineligible attendance. N.J.A.C. 6A:22-3.2(h)(4).

79 N.J.A.C. 6A:17-2.7(a). The executive county superintendent of schools is responsible for the initial resolution of many of the disputes involving homeless children. The executive county superintendent is a State Department of Education employee charged with monitoring and assuring compliance with the school laws for the districts within the county. See Appendix for a list of executive county superintendents.

80 N.J.A.C. 6A:17-2.7(a)

81 N.J.A.C. 6A:17-2.3(b).

82 N.J.A.C. 6A:17-2.7(b).

83 N.J.A.C. 6A:17-2.7(b).

84 N.J.A.C. 6A:17-2.7(c); 42 U.S.C.A. § 11432(g)(3)(E)(i). The regulations are silent as to the procedure a parent would follow in contesting a “district of residence” determination, but, like any other school law decision, this determination should be subject to review by the Commissioner of Education upon the filing of an appeal through the Bureau of Controversies and Disputes pursuant to N.J.A.C. 6A:3. Specific procedures for a parent to follow to dispute an enrollment determination are discussed below.

85 N.J.S.A. 18A:7B-12.1.

86 N.J.A.C. 6A:17-2.7(a).

87 N.J.A.C. 6A:17-2.7(a). Federal law requires that in the case of any dispute regarding eligibility for McKinney-Vento protection, school selection or school enrollment, the parent, guardian or unaccompanied youth must be provided with “a written explanation of any decisions related to school selection or enrollment ... including the rights of the parent, guardian, or unaccompanied youth to appeal such decisions.” 42 U.S.C.A. § 11432(g)(3)(E)(ii).

88 N.J.A.C. 6A:17-2.7(c); 42 U.S.C.A. § 11432(g)(3)(E)(i); L.R. v. Steelton-Highspire, *supra* note 27 (memorandum explaining grant of preliminary injunction; McKinney-Vento provides for immediate enrollment in event of dispute). The requirement that a student be enrolled in the school in which enrollment is sought until all appeals are resolved is “commonly referred to as the ‘pendency’ requirement.” *NO BARRIERS* at page 21. The federal statute clarifies that in the case of an unaccompanied youth, the request of the youth himself or herself is given priority. 42 U.S.C.A. §11432(g)(3)(B). In the event of a dispute, “the liaison shall ensure that the youth is immediately enrolled in the school in which the youth seeks enrollment pending resolution of such dispute.” 42 U.S.C.A. § 11432(g)(3)(E)(iv).

89 42 U.S.C.A. § 11432(g)(3)(E)(i).

90 *Federal Guidance* (J-4). The dispute resolution process for homeless students should be “as informal and accessible as possible, including not

requiring unnecessary notarization or authentication of documents...” *Federal Guidance* (K-7).

<sup>91</sup> *Federal Guidance* (K-4).

<sup>92</sup> S.J. o/b/o V.J. v. Bd. of Educ. of South Orange-Maplewood School Dist., OAL No. 5656-07, Agency No. 121-5/07, 2008 WL 384126 (N.J. Adm. Jan. 22, 2008); aff’d, 2008 WL 2941746 (N.J. Comm’r of Educ. March 3, 2008); J.G. and D.G. o/b/o J.T.G. v. Bd. of Educ. of the Borough of Point Pleasant, OAL No. 4688-10, Agency No. 95-5/10, 2010 WL 3867065 (N.J. Adm. Sept. 23, 2010), aff’d, 2010 WL 5691963 (N.J. Comm’r of Educ. Dec. 27, 2010); N.J.S.A. 18A:38-1(b)(2).

<sup>93</sup> A school district asserting ineligible attendance may also attempt to collect the tuition from the school district which it claims is the true district of residence. See, e.g., Englewood Cliffs v. E.S. and W.S., *supra* note 30 (in light of finding that family was not “homeless,” district where family currently resided was ordered to reimburse district student had continued to attend). Tuition charges to parents may be reduced if it is determined that ineligible attendance was due to a school district’s error. N.J.A.C. 6A:22-6.3(b).

<sup>94</sup> 42 U.S.C.A. §11432(g)(1)(B), (g)(6)(A)(i).

<sup>95</sup> J.G. and D.G., *supra* note 92.

<sup>96</sup> L.R. v. Steelton-Highspire, *supra* note 27 (rejecting school district’s argument that its obligation to immediately enroll student did not exist because student was “no longer homeless;” student must be immediately enrolled in event of a dispute).

<sup>97</sup> S.J. o/b/o V.J., *supra* note 92.

<sup>98</sup> Camden v. Volk, *supra* note 19 (where executive county superintendent properly found student homeless in 2014, but homeless status ended in 2016, school district may seek reimbursement from parent of any excess cost incurred for 2016-17 school year; homeless status found to end at time parent “stopped looking for another place to live”).

<sup>99</sup> 42 U.S.C.A. § 11432(g)(3)(A)(i)(II); N.J.A.C. 6A:17-2.5(h).

<sup>100</sup> N.J.A.C. 6A:17-2.3(a)(2); N.J.A.C. 6A:17-2.8(a); N.J.S.A. 18A:7B-12.1.

<sup>101</sup> N.J.S.A. 18A:7B-12(d); N.J.S.A. 18A:7B-12.1; N.J.A.C. 6A:17-2.8(c)(3); N.J.S.A. 18A:7B-12.2; N.J.A.C. 6A:17-1.2 (definition of “transitional living facility”). A 2017 amendment to New Jersey law, discussed below, extends State fiscal responsibility to students residing in “homeless shelters” outside the district of residence for more than one year.

<sup>102</sup> N.J.S.A. 18A:7B-12.3.

<sup>103</sup> N.J.A.C. 6A:17-2.8(c)(1) – (2); N.J.S.A. 18A:7B-12(d).

<sup>104</sup> N.J.A.C. 6A:17-2.3(a)(3); N.J.A.C. 6A:27-6.2(a) – (c).

<sup>105</sup> N.J.A.C. 6A:27-6.2(b); 42 U.S.C.A. § 11432(g)(1)(J)(iii)(I).

<sup>106</sup> *Federal Guidance* (J-6). As noted above, “school of origin” is defined as the school the student attended before becoming homeless, or school of last enrollment, including receiving schools at the next grade level in the case of students who have completed the final grade level of the school of origin. 42 U.S.C.A. §11432(g)(3)(I).

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107 42 U.S.C.A. § 11432(g)(6)(A)(viii); N.J.A.C. 6A:17-2.4(a)(7).  
108 *Federal Guidance* (N-5); *Most Frequently Asked Questions* (Questions  
116, 119).  
109 *NO BARRIERS* at page 18.  
110 N.J.A.C. 6A:27-6.2(a).  
111 N.J.A.C. 6A:27-6.2(c); N.J.S.A. 18A:7B-12.1.  
112 N.J.A.C. 6A:27-6.2(d).  
113 N.J.A.C. 6A:27-6.2(e).  
114 See note 29, supra.  
115 Bd. of Educ. of the Twp. of Egg Harbor v. Bd. of Educ. of the Mainland  
Regional High School Dist. and New Jersey Dept. of Educ., OAL No. 6680-09,  
Agency No. 170-7/09, 2010 WL 4105223 (N.J. Adm. Oct. 15, 2010), aff'd, 2010  
WL 5691969 (N.J. Comm’r of Educ. Dec. 30, 2010) (“one year rule” provides a  
“logical and straight forward mechanism for allocating cost” and applies even if a  
family lives in motels in the school district for over one year; local ordinances  
prohibiting year-round tenants at motels are irrelevant to this conclusion); A.M.  
and M.S. o/b/o A.S. and L.S. v. Bd. of Educ. of the Town of Dover, OAL No.  
9780-10, Agency No. 546-9/10 (N.J. Comm’r of Educ. Jun. 14, 2011),  
<http://www.nj.gov/education/legal/commissioner/2011/jun/222-11.pdf> (N.J.S.A.  
18A:38-1(d) “imposes a limit upon how long a former district of domicile is  
financially responsible for the education of homeless children”); M.O’K., *supra*  
note 26; N.J.A.C. 6A:17-2.3(c) and N.J.A.C. 6A:17-2.8(a) (both referring to  
N.J.S.A. 18A:38-1(d)).  
116 N.J.S.A. 18A:7B-12(d); N.J.S.A. 18A:7B-12.1-12.2.  
117 Senate Budget and Appropriations Committee Statement, Assembly Bill  
No. 3785, L. 2017, c. 83; Governor’s Conditional Veto Message, Assembly Bill  
No. 3164, L. 2012, c. 80.  
118 A.M. and M.S. v. Bd. of Educ. of the Town of Dover, *supra* note 115  
 (“reassignment of financial responsibility for the children’s education ...did not  
inexorably require that the children change schools....continuity of educational  
program is an objective of the Regulations”); M.O’K., *supra* note 26.  
119 *Most Frequently Asked Questions* (Question 123) (“homeless status,  
rather than income, qualifies a family for Head Start.”)  
120 *NO BARRIERS* at page 26.  
121 *Most Frequently Asked Questions* (Question 124); *NO BARRIERS* at  
pages 25-27.  
122 Elementary and Secondary Education Act §1115(b)(2)(E); *Serving  
Preschool Children Through Title I Part A of the Elementary and Secondary  
Education Act of 1965, as Amended, Non-Regulatory Guidance*, U.S. Dept. of  
Educ., <https://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf>.  
(Questions B-4, B-5, B-8, F-1, F-2, F-3).  
123 42 U.S.C.A. §§11432(g)(1)(F)(ii).  
124 *Federal Guidance* (O-1).  
125 *Federal Guidance* (O-1 - O-3).  
126 42 U.S.C.A. §11432(g)(1)(K).

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- <sup>127</sup> *Federal Guidance* (Q-1).
- <sup>128</sup> 42 U.S.C.A. § 11432(g)(6)(A)(x)(III); *Federal Guidance* (Q-2).
- <sup>129</sup> 42 U.S.C.A. §11431(3).
- <sup>130</sup> 42 U.S.C.A. §11432(e)(3).
- <sup>131</sup> 42 U.S.C.A. §11432(g)(1)(J)(i).
- <sup>132</sup> 42 U.S.C.A. §11432(g)(1)(F)(iii); *Federal Guidance* (I-6) (outstanding fines, fees or absences should not prevent participation); NO BARRIERS at page 17 (“It is important to ensure that students experiencing homelessness have access to [extracurricular] activities, which may mean that schools may need to provide fee waivers to facilitate access to school programs, regardless of whether they are formally operated by the school or by an outside vendor. Students cannot be excluded from participation because of the student’s inability to pay fees.”)
- <sup>133</sup> N.J.A.C. 6A:17-1.2.
- <sup>134</sup> 42 U.S.C.A. §§11433(a)(2)(B)(ii), (a)(2)(A)(iii), (a)(3).
- <sup>135</sup> *Federal Guidance* (B-1, B-2, F-2); 42 U.S.C.A. §11433(d)(14) (use of funds for services at non-school facilities).
- <sup>136</sup> *Federal Guidance* (A-6 – A-8); NO BARRIERS at page 23 (living situation of homeless student may not be shared without the consent of parent, guardian or unaccompanied youth).
- <sup>137</sup> *Federal Guidance* at pages 33-34.