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NYS FIELD MEMO
ESSA McKinney-Vento
#03-2016

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

FROM: Ira Schwartz *Ira Schwartz*
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SUBJECT: Implementation of Changes to McKinney-Vento Homeless Act as a Result of Passage of Every Student Succeeds Act

DATE: September 29, 2016

This Field Memo provides critical information about how New York State school districts must implement the changes to the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.) as a result of the enactment of the Every Student Succeeds Act (ESSA) in December 2015.¹ In general, while States will not be required to submit State plans which conform to all of the new ESSA provisions until 2017, ESSA requires that State educational agencies and local educational agencies begin implementing the new McKinney-Vento requirements by October 1, 2016, unless otherwise noted below.

These sweeping new federal requirements are critical to protecting the rights of students experiencing homelessness, and the Department recognizes that these changes must be implemented quickly. We also recognize that there are a series of steps that are required as the State and school districts begin to implement these changes. First, this Field Memo is being issued so that school districts are aware of the changes **that must be implemented by school districts by October 1, 2016** (unless otherwise noted). Second, the Department is examining potential changes to the Education Law and Commissioner's regulations to conform to the recent changes to McKinney-Vento.

The Department will provide further updates to the field as we move through the implementation process. School districts are advised to consult with their attorneys to ensure compliance with McKinney-Vento.

¹ On July 27, 2016, the U.S. Department of Education issued "Education for Homeless Children and Youths Program Non-Regulatory Guidance" (Non-Regulatory Guidance), which is available at: <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf>.

Background

The McKinney-Vento Act is designed to ensure that students experiencing homelessness have access to school and the supports needed to be successful in school. Students who are homeless face unique challenges associated with not having stable housing that often lead to higher rates of absenteeism and school transfers, which are associated with a host of negative academic outcomes. To address these challenges the McKinney-Vento Act requires that state and local educational agencies (LEAs) 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 they have the opportunity to be successful in school; and are not separated from the mainstream school environment (42 U.S.C. § 11431). It also requires that states review and revise laws, regulations, practices and policies that may act as barriers to the identification, enrollment, attendance, or success of children youth experiencing homelessness (42 U.S.C. § 11431(2)), and requires that states and LEAs develop, review and revise policies to remove barriers to the identification, enrollment and retention of homeless children and youths (42 U.S.C. §§ 11432(g)(1)(I) & 11432(g)(7)(A)). The amendments to the McKinney-Vento Act strengthen these core principals and are detailed more fully below.

In general, while State educational agencies and local educational agencies must begin implementing the new requirements by October 1, 2016, unless otherwise noted above, States will not be required to submit State plans which conform to all of the new ESSA provisions until 2017.

Major Changes to McKinney-Vento Relating to New School District Responsibilities

The McKinney-Vento Act as reauthorized by ESSA has several important changes related to the following topics:

1. School of Origin Includes Preschool and Feeder Schools
2. School Selection Best Interest Determination
3. Children Awaiting Foster Care Placement
4. Enrollment Deadlines
5. Ensure Continued Enrollment Pending Final Resolution of Dispute
6. Award Full or Partial Credit for Completed Coursework
7. Ensure Access to Academic and Extra-Curricular Activities
8. Eliminate Barriers Related to Outstanding Fees, Fines, or Absences
9. Provide Transportation for the Remainder of the School Year
10. College Readiness
11. Student Privacy
12. McKinney-Vento Liaison Responsibilities
13. Affirm Eligibility for HUD Homeless Assistance
14. Coordinate Special Education Services
15. Collect Data
16. Improve the Identification of Children and Youth Experiencing Homelessness

Each of these changes is discussed in more detail below.

1. School of Origin Includes Preschool and Feeder Schools

Pursuant to the amendments to the McKinney-Vento Act, the definition of “school of origin”² includes preschool and feeder schools (42 U.S.C. § 11432[g][3][I]; U.S. Department of Education’s Education for Homeless Children and Youths Program Non-Regulatory Guidance [Non-Regulatory Guidance], Section O, Questions I-1, N-4, N-5, available here: <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf>). In New York State, preschool means a publicly-funded education program provided to preschool children that is either administered by the Department or an LEA, including a pre-kindergarten program or a Head Start program administered by an LEA. A feeder school includes a preschool whose students are entitled to attend a specified elementary school or group of elementary schools upon completion of that preschool, where such specified school or schools exist; a school whose students are entitled to attend a specified elementary, middle, intermediate, or high school 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 section 2040.

2. School Selection Best Interest Determination

Currently, parents, guardians, and youth (in the case of unaccompanied youth) in New York State designate a school district of attendance (Education Law §3209[2]). Under the amended McKinney-Vento Act, the designated LEA must determine whether the designation made by the parent, guardian, or youth (in the case of an unaccompanied youth) about where the child or youth who is homeless will attend school 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 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 (42 U.S.C. § 11432[g][3][B]; Non-Regulatory Guidance, Questions I-3 & I-4).

The U.S. Department of Education also encourages LEAs to consider the school placement of siblings when making this determination (Non-Regulatory Guidance, Question I-3).

Under existing federal law, a student who is homeless is entitled to continued enrollment in the school of origin for the duration of homeless and through the remainder of the school year in which the student becomes permanently housed in accordance with the student’s best interest (42 U.S.C. § 11432[g][3][A][i]). This requirement is unchanged under ESSA.

² “School of origin” is defined as “the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool....When the child or youth completes the final grade level served by the school of origin, ... the term ‘school of origin’ shall include the designated receiving school at the next grade level for all feeder schools” (42 U.S.C. § 11432[g][3][I]) (additions to the definition as a result of ESSA are underlined).

If the LEA 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 LEA 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 (42 U.S.C. §11432[g][3][B][3]). 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 (42 U.S.C. § 11432[g][3][E]; Non-Regulatory Guidance, Questions I-3 & I-4). If, at the conclusion of all available appeals, the parent's, guardian's or youth's original designation is not upheld, the parent, guardian or youth may be required to designate another district of attendance.

3. Children Awaiting Foster Care Placement

As of December 10, 2016, the term "homeless child" will not include a child "awaiting foster care placement" (42 U.S.C. § 11434a[2][B][i]; Non-Regulatory Guidance, Question A-2). Students who are identified as "awaiting foster care placement" on or after December 10, 2016 will no longer be considered homeless and will therefore not be eligible for McKinney-Vento services unless they otherwise meet the revised definition of "homeless children and youths" (Non-Regulatory Guidance, Question A-2). Please note under Education Law section 3209(a-1) children and youth in foster care are not considered homeless.

4. Enrollment Deadlines

LEAs must immediately enroll children and youth who are homeless even if they have missed application or enrollment deadlines during any period of homelessness (42 U.S.C. § 11432[g][3][C]; Non-Regulatory Guidance, Question I-5).

With respect to enrollment in charter schools and pre-kindergarten programs, Question F-3 of the Non-Regulatory Guidance explains that an "LEA must provide services to each homeless child and youth that are comparable to services offered to other students in the LEA. (Section 722(g)(4)). These services include public preschool programs and other educational programs or services for which a homeless student meets the eligibility criteria, such as programs for children with disabilities, programs for English learners, programs in career and technical education, programs for gifted and talented students, before-and after-school programs, school nutrition programs, and transportation. (Section 722(g)(4))." Because charter schools and pre-kindergarten programs have limited numbers of seats, they often use lotteries for admission. In such situations, children and youth experiencing homelessness must be offered comparable access to such schools and programs. Charter schools and pre-kindergarten programs may not displace children already enrolled in such schools and programs. However, if a child or youth seeks enrollment in a charter school or pre-kindergarten program 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 or program's waitlist, if one exists, comparable to other students in the district.

5. Ensure Continued Enrollment Pending Final Resolution of Dispute

LEAs must continue enrollment and transportation during any dispute involving eligibility, school selection, or enrollment pending final resolution of the dispute, including all available appeals (42 U.S.C. § 11432[g][3][E][i]; Non-Regulatory Guidance, Question J-4 & Section K). Currently, pursuant to section 100.2(x) of the Commissioner’s regulations, parents, guardians, and youth (in the case of unaccompanied youth) may apply for a temporary stay of a school district’s decision until the Commissioner renders a final decision on an appeal pursuant to Education Law section 310. In accordance with the amended McKinney-Vento Act, as of October 1, 2016, parents, guardians and youth will no longer be required to request temporary stays in McKinney-Vento-related appeals to the Commissioner and school districts must continue enrollment and transportation in the designated school and district until all available appeals are final.

6. 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 (42 U.S.C. § 11432[g][1][F][ii]; Non-Regulatory Guidance, Section O).

7. Ensure Access to Academic and Extra-Curricular Activities

LEAs must ensure that students who are homeless and meet the relevant eligibility criteria do not face barriers to accessing academic and extra-curricular activities, including magnet schools, summer school, career and technical education, advanced placement courses, online learning and charter schools (42 U.S.C. § 11432[g][1][F][iii]; Non-Regulatory Guidance, Question I-6).

8. 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 (42 U.S.C. § 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).

9. Provide Transportation to the School of Origin for the Remainder of the School Year

LEAs must provide transportation to the school of origin through the remainder of the school year in which the student becomes permanently housed (42 U.S.C. §§ 11432[g][1][J][iii] & 11432[g][3][A]; Non-Regulatory Guidance, Question J-5)..³

10. College Readiness

LEAs must provide youth who are homeless with assistance from counselors to advise such youth and improve their readiness for college (42 U.S.C. § 11432[g][1][K]; Non-Regulatory Guidance, Section Q. Please see also the “McKinney-Vento Liaison Responsibilities” section below, which pertains to expanded responsibilities for McKinney-Vento liaisons).

³ Transportation has been required to the school of origin for the duration of homelessness under existing federal law (42 U.S.C. §§ 11432[g][1][J][iii]), and under ESSA will also be required for the remainder of the school year in which the student becomes permanently housed (42 U.S.C. §§ 11432[g][1][J][iii] & [g][3][A][i][II]; Non-Regulatory Guidance, Question J-5).

11. Student Privacy

LEAs must 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 Family Educational Rights and Privacy Act (FERPA) (42 U.S.C. § 11432[g][3][G]; Non-Regulatory Guidance, Questions A-6, A-7, A-8). 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.

12. McKinney-Vento Liaison Responsibilities

The responsibilities of the LEA liaison, also referred to as the McKinney-Vento liaison, were expanded by the amendments to McKinney-Vento to now include:

- Connecting young children experiencing homelessness to additional early care and education programs such as Head Start or Early Intervention;
- Providing referrals to housing services and substance abuse services (in addition to health care, dental, mental health, and other appropriate services);
- Posting public notice of the educational rights of students who are homeless in a manner and form that is understandable;⁴
- Training other school district staff on McKinney-Vento; and
- Ensuring that unaccompanied youth are enrolled in school and are informed of their independent status and receive verification of such status from the liaison for the Free Application for Federal Student Aid (FAFSA) (42 U.S.C. § 11432[g][6][A]; Non-Regulatory Guidance, Section F & Questions L-3, Q-2).⁵

⁴ Please note that McKinney-Vento posters and brochures are available free of charge through the Department's homeless education technical assistance center, NYS-TEACHS (<http://nysteachs.org/materials/order.html>).

⁵ Below is a full list of liaison responsibilities under the McKinney-Vento Act as amended by ESSA:

Each local educational agency liaison for homeless children and youths...shall ensure that—

- (i) homeless children and youths are identified by school personnel through outreach and coordination activities with other entities and agencies;
- (ii) homeless children and youths are enrolled in, and have a full and equal opportunity to succeed in, schools of that local educational agency;
- (iii) 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) under the Head Start Act (42 U.S.C. 9831 et seq.), early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and other preschool programs administered by the local educational agency;
- (iv) homeless families and homeless children and youths receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;
- (v) the parents or 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;
- (vi) public notice of the educational rights of homeless children and youths is disseminated in locations frequented by parents or guardians of such children and youths, and unaccompanied youths, including schools, shelters, public libraries, and soup kitchens, in a manner and form understandable to the parents and guardians of homeless children and youths, and unaccompanied youths;

The McKinney-Vento liaison must also inform 1) parents and guardians of students who are homeless and 2) children and youth experiencing homelessness of the duties of the McKinney-Vento liaisons (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) (42 U.S.C. § 11432[g][6][B]).

13. Affirm Eligibility for HUD Homeless Assistance

McKinney-Vento liaisons who have received training on the Department of Housing and Urban Development's (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 (42 U.S.C. § 11432[g][6][D]; Non-Regulatory Guidance, Questions L-4 & L-5).

14. 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 (42 U.S.C. § 11432[g][5][D]).

15. Collect Data

LEAs must collect and provide data to the Department on students experiencing homelessness (42 U.S.C. § 11432[g][6][C]).

16. 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) (42 U.S.C. § 11432[g][7][A]; Non-Regulatory Guidance, Questions A-4, J-1) 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) (42 U.S.C. § 11432[g][7][C]).

(vii) enrollment disputes are mediated in accordance with paragraph (3)(E);

(viii) the parent or guardian of a homeless child or youth, and any unaccompanied youth, is fully informed of all transportation services, including transportation to the school of origin, as described in paragraph (1)(J)(iii), and is assisted in accessing transportation to the school that is selected under paragraph (3)(A).

(ix) school personnel providing services under this subtitle receive professional development and other support; and

(x) unaccompanied youths—

(I) are enrolled in school;

(II) (have opportunities to meet the same challenging State academic standards as the State establishes for other children and youth, including through implementation of the procedures under paragraph (1)(F)(ii); and

(III) are informed of their status as independent students under section 480 of the Higher Education Act of 1965 (20 U.S.C. 1087vv) and that the youths may obtain assistance from the local educational agency liaison to receive verification of such status for purposes of the Free Application for Federal Student Aid described in section 483 of such Act (20 U.S.C. 1090)

(42 U.S.C. § 11432[g][6][A]).

Resources

For questions related to the ESSA amendments to the McKinney-Vento Act, please contact:

- Melanie Faby, State Coordinator for Homeless Education, (518) 473-0295, melanie.faby@nysed.gov
- NYS Technical and Education Assistance Center for Homeless Students (NYS-TEACHS), 800-388-2014 or info@nysteachs.org

For additional information about the ESSA amendments to the McKinney-Vento Act, please see:

- U.S. Department of Education's Education for Homeless Children and Youths Program Non-Regulatory Guidance available here: <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf>
- Notice of Rights and Protections for Homeless Children and Youths under the McKinney Vento-Act to all Federal agencies and their local grant recipients that serve homeless children and youth from the U.S. Department of Education, available here: <http://www2.ed.gov/policy/elsec/guid/secletter/160726.html>
- Fact Sheet for school staff, teachers, and principals, on the impacts of homelessness, key rights of homeless students under the McKinney-Vento Act, and tips for how school staff can support the homeless students and families they may serve from the U.S. Department of Education, available here: <http://www2.ed.gov/policy/elsec/leg/essa/160315ehcyfactsheet072716.pdf>
- National Association for the Education of Homeless Children and Youth's ESSA Resources and Tools, available here <http://naehcy.org/educational-resources/essa>, including:
 - Redline (strike-through) of the McKinney-Vento Act amendments in ESSA: <http://naehcy.org/sites/default/files/dl/legis/mvstrikethrough.pdf>
 - Legislation, Guidance, and Regulations (<http://naehcy.org/essa-legislation-bill-summaries-text-and-us-department-education-guidance-and-regulations>)
 - Training and Professional Development Resources (<http://naehcy.org/essa-training-and-professional-development-resources>)
 - Implementation, Best Practice, and Other Technical Assistance Tools (<http://naehcy.org/essa-implementation-best-practice-and-other-technical-assistance-tools>)
- National Center for Homeless Education's ESSA Webpage: <http://nche.ed.gov/legis/essa.php>