



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL



New York State
EDUCATION DEPARTMENT
Knowledge > Skill > Opportunity

NEW YORK STATE EDUCATION DEPARTMENT

BETTY A. ROSA
COMMISSIONER OF EDUCATION

February 16, 2021

Dear Colleagues,

During the 2019-2020 school year, an estimated 143,500 students experienced homelessness across the State of New York.¹ This number has likely increased due to the COVID-19 pandemic, yet identifying children experiencing homelessness has become more difficult because many schools across the state are delivering instruction remotely.² Despite these obstacles, ensuring that children experiencing homelessness are connected to their education, and other support, has never been more important. The New York State Office of the Attorney General (“OAG”) and the New York State Education Department (“SED”) write today to reaffirm New York’s commitment to ensure children experiencing homelessness have equal access to education; remind local education agencies (“LEAs”) of their obligations under state and federal law with respect to these children; and provide LEAs with an overview of resources available to assist them during this challenging time.

The McKinney-Vento Act, as well as New York Education Law § 3209 and its implementing regulations, require LEAs to ensure that homeless children and youth have equal access to education.³ Children and youth are homeless if they lack a fixed, regular, and adequate night-time residence.⁴ Under federal and state law, LEAs have various affirmative responsibilities to ensure that they meet the needs of children experiencing homelessness, including:

¹ [New York State Education Department Data on Student Homelessness in NYS](#)

²*Id.*; *See also*, SchoolHouse Connection & Poverty Sols. Univ. Mich., [LOST IN THE MASKED SHUFFLE & VIRTUAL VOID: CHILDREN AND YOUTH EXPERIENCING HOMELESSNESS AMIDST THE PANDEMIC](#) (Nov. 19, 2020).

³ 42 U.S.C. § 11431 *et seq.*; N.Y. Educ. Law § 3209 *et seq.*

⁴ 42 U.S.C. § 11434A(2)(A); N.Y. Educ. Law § 3209(1)(a). This includes homeless children and some housing insecure children, including children who are: living in homeless shelters or transitional housing for homeless youth; sharing housing with others because of a loss of housing (e.g., moving in with friends or family); living in hotels, motels, trailer parks or camping grounds because of a lack of alternative housing; living in substandard housing; or sleeping in public or private areas that are not normally intended to serve as regular sleeping accommodations for human beings. 42 U.S.C. § 11434A(2)(B); N.Y. Educ. Law § 3209(1)(a).

- ***Ensuring children have the opportunity to continue education in their school of origin.*** LEAs must ensure that a child experiencing homelessness is offered the opportunity to continue their education in their school of origin for the duration of their homelessness.⁵ An LEA must permit a child experiencing homelessness to enroll in public school at their school of origin or their school of current location per the discretion of the appropriate designator (usually the child’s parent or guardian).⁶ This is true regardless of whether the school of current location is in the same school district as the school of origin.⁷ There is an initial presumption that remaining in the school of origin is in the best interest of the child, except when doing so is contrary to the request of the child or their designator.⁸

An LEA must permit a homeless child to attend the school of their designator’s choice that is consistent with the student’s best interests, until the student finds permanent housing.⁹ If a child obtains permanent housing during the school year, the child has the right to stay in their current school until the end of the school year.¹⁰

- ***Providing transportation.*** In most instances, LEAs must provide transportation for a homeless child to and from the child’s temporary housing location and their school of origin or school they legally attend.¹¹ If the child is entitled to transportation to and from school because they are entitled to emergency assistance, then such emergency support

⁵ 42 U.S.C. § 11432(g)(3)(A)(i); N.Y. Educ. L. § 3209(2)(b)(3); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(2)(iii).

⁶ N.Y. Educ. Law § 3209(1)(b); N.Y. Educ. Law § 3209(2); N.Y. Comp. Codes R. & Regs. Tit. 8, § 100.2(x)(2)(ii).

⁷ N.Y. Educ. Law § 3209(2)(a); N.Y. Comp. Codes R. & Regs. Tit. 8, § 100.2(x)(2)(i).

⁸ 42 U.S.C. § 11432(g)(3)(B)(i); N.Y. Educ. Law § 3209(2)(f)(3)(i); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(4)(iii)(a).

⁹ 42 U.S.C. § 11432(g)(3)(A); N.Y. Educ. Law § 3209(2)(c); N.Y. Comp. Codes R. & Regs. tit. 8, §§ 100.2(x)(2)(iii)-(vi).

¹⁰ 42 U.S.C. § 11432(g)(3)(A)(II); N.Y. Educ. Law § 3209(2)(c)(1); N.Y. Comp. Codes R. & Regs. tit. 8, §§ 100.2(x)(2)(iii)-(vi). Additionally, students in New York may remain in their current school for one additional year if that year constitutes the child’s terminal year of instruction in such building. N.Y. Educ. Law § 3209(2)(c)(1); N.Y. Comp. Codes R. & Regs. tit. 8, §§ 100.2(x)(2)(iii)-(vi).

¹¹ 42 U.S.C. § 11432(e)(3)(E)(i)(III). If transportation exceeds fifty miles each way to and from school, the Commissioner of Education must certify that such transportation is in the best interest of the child. N.Y. Educ. Law § 3209(4)(c).

services will be provided by the student’s social services district.¹² If the child is living in a residential program for runaway and homeless youth, then such services will be provided by the Division of Youth, to the extent that funds are made available.¹³ In all other cases, the child shall be provided transportation by the designated school district of attendance (either the district of origin or the district of current location, as applicable).¹⁴

In some cases, the district of attendance may determine that transportation of a student by the parent or guardian in the parent or guardian’s vehicle is the most cost-effective means of transportation; in such cases, the district may enter into a contract with the parent or guardian and the parent or guardian may be reimbursed for transportation expenses.¹⁵

- ***Affirmatively identifying and assisting children experiencing homelessness.*** LEAs are responsible for identifying homeless children and youth through affirmative outreach efforts.¹⁶ For example, to identify children and youth who need assistance, an LEA receiving Title I funds must include a Housing Questionnaire as the first page of its enrollment packet for newly enrolling students and provide the Housing Questionnaire to all students/families any time they report a change of address.¹⁷ SED encourages all other LEAs to use this questionnaire, as well.¹⁸ In addition, LEAs should distribute materials to educate the school community about supports and services available under state and federal law for children experiencing homelessness. For example, New York State Technical and Education Assistance Center for Homeless Students (“NYS-TEACHS”), which contracts with SED to offer technical assistance to LEAs on serving homeless children and youth, offers free McKinney-Vento posters in 10 languages, as well as brochures in English and Spanish to LEAs.¹⁹ These brochures and posters include information about which children

¹² N.Y. Educ. Law § 3209(4)(a); N.Y. C.L.S. Soc. Serv. § 350-j.

¹³ N.Y. Educ. Law § 3209(4)(b); N.Y. Exec. Law § 19(H).

¹⁴ N.Y. Educ. Law § 3209(4)(c); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(6).

¹⁵ N.Y. Educ. Law § 3209(4)(c); N.Y. Educ. Law § 3622-a; N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(6)(viii).

¹⁶ 42 U.S.C. § 11432(g)(6)(A)(i); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(7)(iii)(a)(2).

¹⁷ NYS-TEACHS, [Housing Questionnaire](#), (last visited Feb. 9, 2021).

¹⁸ [Revised State Template for the Consolidated State Plan: The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act](#) (Jan. 12, 2018) 199; *see also*, [U. S. Department of Education, Education for Homeless Children and Youths Program Non-Regulatory Guidance](#) (July 26, 2016).

¹⁹ NYS-TEACHS, [Posters & Brochures](#) (last visited Feb. 9, 2021).

and youth may be McKinney-Vento eligible. Further, LEAs are directed to post information on the educational rights of homeless children in locations frequented by families experiencing homelessness, including shelters, public libraries, and soup kitchens.²⁰ LEA liaisons' contact information should be clearly reflected on these materials, and should also be publicly and prominently displayed on LEA websites to ensure that anyone seeking services and supports can identify the appropriate contact.²¹

LEAs should coordinate with other entities and agencies, including social services agencies that serve individuals who are homeless, to identify homeless children and youth who may need assistance.²²

- ***Ensuring children experiencing homelessness are immediately enrolled.*** LEAs have an obligation under McKinney-Vento to ensure that homeless children and youth are enrolled immediately, attend classes, and fully participate in school activities.²³ Where a child who is homeless attends a preschool that is a publicly funded pre-k program administered by the State Education Department or an LEA, and that preschool is a student's school of origin, the child is entitled to continued enrollment and transportation to that preschool.²⁴

LEAs have a further obligation to ensure that no laws, regulations, practices, or policies—including those relating to outstanding fees or fines, or absences—act as a barrier to enrollment for homeless children and youth.²⁵ Additionally, LEAs must identify and

²⁰ See 42 U.S.C. § 11432(g)(6)(A)(vi).

²¹ See 42 U.S.C. § 11432(g)(1)(j)(ii); N.Y. Educ. Law § 3209(2-a); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(7)(iii).

²² See 42 U.S.C. § 11432(g)(5) (explaining that LEAs must coordinate with other agencies, including local social services agencies, housing agencies, and other agencies that provide services to homeless children and youths and their families, to ensure that all homeless children and youth are “promptly identified”).

²³ 42 U.S.C. § 11432(e)(3)(E)(i); *id.* § 11434a(1).

²⁴ School districts may also have to provide transportation in connection with summer school programs. Transportation to summer school is required if the designated school district of attendance has recommended that the student who is homeless attend a summer educational program and the lack of transportation poses a barrier to the student's participation. See N.Y. Educ. Law § 3209(4)(e).

²⁵ 42 U.S.C. § 11432(e)(3)(E)(i).

remove barriers that prevent homeless children and youth from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school.²⁶

LEAs must immediately enroll a homeless child even if a student is “unable to produce records normally required for enrollment” such as academic transcripts, immunizations, proof of residency, or other documentation, or if a student “has missed application or enrollment deadlines during any period of homelessness.”²⁷ LEAs are required to immediately contact the last school the student attended to obtain any relevant records, and to the extent the student needs to obtain immunizations or other required health records, the LEA should refer the student to the McKinney-Vento liaison for further assistance.²⁸

- ***Providing comparable and additional supports.*** Children and youth experiencing homelessness are also entitled to services comparable to those received by other students.²⁹ These include transportation services; educational services, such as those provided under Title I of the Elementary and Secondary Education Act of 1965 or similar State or local programs; educational programs for children with disabilities; educational programs for English learners; and school nutrition programs, among others.³⁰ LEAs should ensure that homeless children and youth receive referrals to additional supports and services to which they may be entitled, including health care and dental services, mental health and substance abuse services, and housing services.³¹
- ***Maintaining a dispute resolution process.*** All LEAs are required to maintain processes to promptly address disputes related to a child’s eligibility under the McKinney-Vento Act, including, but not limited to, disputes regarding a student’s status as a homeless child or unaccompanied youth, school selection, and transportation.³² At the initiation of any

²⁶ 42 U.S.C. § 11432(g)(1)(F)(ii).

²⁷ 42 U.S.C. § 11432(g)(3)(C)(i); N.Y. Educ. Law § 3209(2)(f)(2); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(4)(ii).

²⁸ 42 U.S.C. § 11432(g)(3)(C)(ii)-(iii); N.Y. Comp. Codes R. & Regs. tit. 8, §§ 100.2(x)(4)(v)-(vi).

²⁹ 42 U.S.C. § 11432(g)(4); N.Y. Educ. Law § 3209(9); N.Y.C.R.R. Section 100.2(x)(7)(i)(d).

³⁰ 42 U.S.C. § 11432(g)(4); N.Y. Educ. Law § 3209(9); N.Y.C.R.R. Section 100.2(x)(7)(i)(d).

³¹ 42 U.S.C. § 11432(g)(6)(iv); N.Y.C.R.R. Section 100.2(x)(7)(iii)(a)(3).

³² 42 U.S.C. § 11432(g)(1)(c) and (3)(E); N.Y. Educ. Law § 3209(5)(a); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(7)(ii).

dispute under this process, the LEA must immediately enroll the child in the school for which enrollment is sought, pending resolution of the dispute, including all available appeals.³³

Parents and guardians must be provided with a written statement about an LEA's determination regarding the child's school selection and eligibility under the McKinney-Vento Act. This written statement must also include information about how to appeal the LEA's decision and contact information for the LEA's McKinney-Vento liaison, who is required to provide assistance in navigating the appeals process.³⁴

- ***Using federal education funds to support students experiencing homelessness.*** LEAs may use Title I, Part A funds to provide a wide variety of services to homeless students. In some situations, allowable use of Title I, Part A funds may include expenditures related to helping these students overcome barriers to education that are related to the Covid-19 pandemic.

Two principles govern the use of Title I, Part A funds to provide services to homeless students.³⁵ First, the services must be reasonable and necessary to assist homeless students in taking advantage of educational opportunities.³⁶ Second, Title I, Part A funds must be used only as a last resort when funds or services are not available from other public or private sources, such as public health clinics or local discretionary funds (sometimes provided by the PTA) used to provide similar services for economically disadvantaged students.³⁷ Thus, for example, during the Covid-19 pandemic, if personal protective equipment (PPE) is required for students to attend classes or participate fully in school activities, and if the school does not already generally provide PPE for all students, then the LEA should provide PPE to McKinney-Vento students using Title I, Part A funds or McKinney-Vento subgrant funds (where available).³⁸

³³ 42 U.S.C. § 11432(g)(3)(E)(i); N.Y. Educ. Law § 3209(5)(c); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(7)(ii)(c).

³⁴ 42 U.S.C. § 11432(g)(3)(E)(ii); N.Y. Educ. Law § 3209(5)(b); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(x)(7)(iii)(b).

³⁵ New York State Education Department, [TITLE I, Part A: Homeless Set-aside Guidance on Allowable and Unallowable Expenditures](#) (last visited Feb. 9, 2021).

³⁶ *Id.*

³⁷ *Id.*

³⁸ SchoolHouse Connection "FAQ on COVID-19 and Homelessness," (July 27, 2020) available at <https://www.ncceh.org/media/files/files/de824db9/faq-on-covid-19-and-homelessness.pdf>.

More guidance on use of Title I, Part A funds during the Covid-19 pandemic can be found in the SchoolHouse Connection “[FAQ on COVID-19 and Homelessness](#).”

Additionally, LEAs are encouraged to contact the NYSED Office of ESSA-Funded Programs at conappta@nysed.gov to investigate how their use of other federal program funds, including, Title IV, Part A; Title I School Improvement Grants; and Rural Education Achievement Program funds, may be used to help our schools’ most vulnerable during this challenging time. The federal government has granted districts more flexibility in how they can use these funds during the pandemic for items needed to support students, including for such items as emergency food, PPE, social-emotional support, technology, and virtual tutoring sessions.^{39, 40}

To ensure that children experiencing homelessness receive the equal access to education to which they are entitled during this challenging time, we also encourage LEAs to reference the following documents for assistance, strategies, and best practices:

General Resources:

- [NYS-TEACHS COVID-19 & Student Homelessness Q&A](#), which is frequently updated.
- [NYS-TEACHS Check-in Checklist: Connecting with Families During Hybrid and Remote Instruction](#)
- [NYS-TEACHS Posters & Brochures to raise awareness and promote educational access for students experiencing homelessness](#)

Identification Resources:

- [Housing questionnaire](#)
- [SchoolHouse Connection resources on identifying student experiencing homelessness through during school closures](#)
- [SchoolHouse Connection “One-pager” on the signs of potential homelessness in a virtual world](#)

³⁹ New York State Education Department, Flexibility in the Use of Title IV, Part A Funds Associated with Approved 2020-21 Consolidated Applications for ESSA-Funded, Programs (Jan. 22, 2021), available at <http://www.nysed.gov/memo/essa/flexibility-use-title-iv-part-funds-associated-approved-2020-21-consolidated-applications>.

⁴⁰ New York State Education Department, ESSA Guidance for Schools and Districts, <http://www.nysed.gov/essa/guidance> (last visited Feb. 9, 2021).

Enrollment Resources:

- [National Center for Homeless Education Issue Brief: Enrolling Children and Youth Experiencing Homelessness in School](#)
- [NYS-TEACHS landing page for resources on enrollment and school selection](#)
- [NYS-TEACHS McKinney-Vento enrollment checklist](#)
- [NYS-TEACHS Sample Enrollment Process that school districts may follow for immediately enrolling students experiencing homelessness](#)
- [NYS-TEACHS tip sheet for school secretaries and enrollment personnel](#)

For further information about McKinney-Vento, the rights of students in temporary housing, and strategies that schools can implement to meet students' needs, please visit the NYS-TEACHS website, www.nysteachs.org, or contact NYS-TEACHS toll-free at 1-800-388-2014. Additional information may also be obtained through SED's Homeless Education Program Office in Albany, New York at (518) 473-0295.

Sincerely,



Letitia James
Attorney General



Dr. Betty A. Rosa
Commissioner of Education