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# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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## **New Mexico State Procedures – Dispute Resolution Under the McKinney-Vento Act**

According to the McKinney-Vento Homeless Assistance Act, a Local Education Agency (“LEA”) must continue educating the child or unaccompanied youth in the school of origin for the duration of homelessness when the homelessness occurs between or during an academic year; or for the remainder of the academic year if the child or unaccompanied youth becomes permanently housed during that academic year; or enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is living are eligible to attend (McKinney-Vento Act § 722(3)(A)(i)(ii)). If a dispute arises over school selection or enrollment, the LEA must immediately enroll the student in the school in which enrollment is sought pending resolution of the dispute (§ 722(3)(E)(i)). Similar provisions apply to the placement of unaccompanied youths.

### **Step One: School Enrollment**

The McKinney-Vento Program, also known as the Education for Homeless Children and Youth (EHCY) program in New Mexico, provides assistance to LEAs to ensure that all homeless children and youth have equal access to the same free, appropriate public education, including public preschool education, that is provided to other children and youth. The EHCY program requires schools to register homeless children even if they lack normally required documents, such as proof of residence; and school districts are required to provide transportation to homeless students' school-of-origin when reasonable and feasible. While the original school-of-origin is the preferred placement school, the student is also entitled to enrollment in the district in which they are actually physical located. Parent and or student preference should be considered in a placement decision.

### **Step Two: Enrollment Dispute**

If a dispute arises over any issue covered in New Mexico’s EHCY policy, the child or youth in transition will be admitted immediately to the school in which enrollment is sought, pending final resolution of the dispute. The student will also have the rights of a student in transition to all appropriate educational services, transportation, free meals, and Title I, Part A, services while the dispute is pending.

The school where the dispute arises will provide the parent or unaccompanied youth with a written explanation of its decision and the right to appeal and will refer the parent or youth to the local liaison immediately. The local liaison will ensure that the student is enrolled in the requested school and receiving other services to which he or she is entitled and will resolve the dispute as expeditiously as possible. The parent or unaccompanied youth will be given every opportunity to participate meaningfully in the resolution of the dispute. The local liaison will keep records of all disputes in order to determine whether particular issues or schools are delaying or denying the enrollment of children and youth in transition repeatedly.

Each district shall have a written policy for concerned parties to resolve disputes, and every effort should be made to resolve the dispute at the district level. The district level procedure must adhere to the following parameters:

The dispute resolution process shall be as informal and accessible as possible and the process should be able to be initiated directly at the school of choice as well as at the district level or with the LEA homeless liaison. Every LEA is required to have a homeless liaison.

The district must create and provide a simply stated notice of rights and provide that notice of rights to the student, parent or guardian, in a language the student, parent or guardian can understand. The notice of rights shall contain:

- contact information for the LEA homeless liaison and the state coordinator, with a brief description of their roles;
- a step by step description of how to make use of the dispute resolution process;
- notice of the right to immediately enroll in the school of choice pending resolution of the dispute and notice that immediate enrollment includes full participation in all school activities;
- notice of the right to obtain the assistance of advocates or attorneys;
- notice of the right to appeal to the department if the district-level resolution is not satisfactory;
- the timelines for resolving district and department-level appeals;
- notice of the right to provide written or oral documentation to support their position; and
- a simple form that parents, guardians or the student can complete and return to the school to initiate the process.

The school with the dispute must provide notice of the dispute to the LEA's homeless liaison using the department's dispute resolution process form which requires the following information:

- school name, address, phone and fax number;
- student's name, identification number, grade, and address;
- parent, guardian or complaining party's name, relationship to student, address, and phone number;
- whether student lives in a shelter;
- name of school child or youth chooses to be enrolled in pending resolution of dispute;
- whether school enrolled in is school of origin;
- reason for complaint;
- signature of parent guardian or complaining party; and
- (ix) the principal's actions on the complaint.

The district will have 10 calendar days to review its initial determination and make a final decision as to the position taken.

The district's final decision must be in writing and must state all factual information upon which it is based and the legal basis in support thereof. If the final decision of the district is adverse to the parent, guardian or student, the decision, along with the department's dispute resolution process form, must be forwarded by the LEA homeless liaison to the department's homeless liaison within 5 calendar days of issuing its final decision.

(<http://www.ped.state.nm.us/sfsb/tools/dl10/6.10.3%20PED%20HOMELESS%20DISPUTE%20POLICY.pdf> )

### **Step Three: Appeal Process**

The New Mexico Public Education Department (NMPED) will accept and investigate complaints from organizations or individuals with respect to applicable or covered programs. In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act relating to a dispute not resolved at the district level, the LEA shall forward the department's dispute resolution process form along with the LEA's written explanation of the school's decision to the department's homeless liaison within 5 calendar days of the LEA's final decision.

The parent, guardian or student may also initiate the appeal by providing copies of these documents to the department's homeless liaison.

Upon receipt of a complaint, the NMPEDt will:

- acknowledge receipt of the complaint in writing;
- provide written notice to the LEA against which the violation has been alleged;
- conduct an impartial investigation which shall include a review of all relevant documentation presented and may include an independent on-site investigation, if determined necessary by the department;
- give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
- review all relevant information and make an independent determination as to whether the agency or consortium of agencies is violating a requirement of an applicable federal statute or regulation.

A written decision, which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint, shall be issued by the Secretary of Education or designee within thirty (30) calendar days. Such decision will further include:

- procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and, if corrective action is required, such action shall be designated and the decision shall include the time line for correction and the possible consequences for continued noncompliance;

- a statement of the right to request the Secretary of the United States Department of Education to review the final decision at the secretary's discretion.

(<http://www.ped.state.nm.us/sfsb/tools/dl10/6.10.3%20PED%20HOMELESS%20DISPUTE%20POLICY.pdf> )

**Dispute process and Timeline for Filing a Dispute/Appeal**

<b>Procedural Step:</b>	<b>Completed by:</b>	<b>Given to:</b>	<b>Due Date:</b>
<b>Initial Written Enrollment decision, Notice of Rights</b>	School where student is attempting to enroll	Parent, guardian or unaccompanied youth	None specified
<b>Dispute Form</b>	Parent, guardian or unaccompanied youth	School where student is attempting to enroll	None Specified
<b>Dispute Resolution Process Form</b>	School who's decision is being disputed	LEA Homeless Liaison	None specified
<b>Decision</b>	LEA Homeless Liaison	Parent, guardian or unaccompanied youth	10 days after receipt of dispute form
<b>Complaint</b>	Parent, guardian or unaccompanied youth or the LEA Homeless Liaison	New Mexico Public Education Department Homeless Liaison	5 days after Final Decision
<b>Final Decision</b>	Secretary of Education or designee	Parent, guardian or unaccompanied youth	30 days after filing Complaint

**Additional Information:**

NM Public Education Department (NMPED)– main page : <http://ped.state.nm.us/ped/index.html>

NMPED Complaint

Procedures: <http://ped.state.nm.us/sfsb/tools/dl10/6.10.3%20PED%20HOMELESS%20DISPUTE%20POLICY.pdf>

**How to find your District's Homeless Liaison:**

The link below is to the most recent list available from the State of New Mexico:

<http://ped.state.nm.us/sfsb/programs/dl10/2009-10%20Homeless%20Education%20Liaison%20List.pdf>