



EDUCATION RIGHTS OF HOMELESS STUDENTS

A GUIDE FOR ADVOCATES

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About Education Law Center

Founded in 1973, Education Law Center (ELC) is the nation's legal defense fund for public education rights. ELC is widely recognized for successfully advancing equal educational opportunity and justice in New Jersey and states across the country. ELC pursues advocacy work through litigation, public engagement, policy development, research, and communications.

ELC's legal and policy advocacy, which includes the landmark court rulings in the *Abbott v. Burke* litigation, has significantly advanced the provision of fair school funding, high quality preschool and school facilities improvements, especially for students from low-income families and students of color. ELC's mission is to ensure all students receive a high-quality public education effectively preparing them to participate as citizens in a democratic society and as valued contributors to a robust economy.

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Disclaimer

The information contained in this guide is for educational and informational purposes only. It does not constitute legal advice, nor is it intended to be a substitute for legal counsel. If you have questions about any legal matter specific to your case, or if you require legal advice, you should consult with a licensed attorney.

INTRODUCTION

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.¹ 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 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.²

Parents and school administrators will sometimes disagree over whether a student is in fact homeless and where the student should be educated. 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. 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 state law 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 executive county superintendent, regional office responsible for the education of homeless students, or the New Jersey Department of Education (NJDOE) Homeless Education Program (in the Office of Supplemental Educational Programs). Contact information for these offices is listed in the Appendix to this publication.³

The state regulations applicable to homeless students are found in the New

Jersey Administrative Code, Title 6A, Chapter 17 (N.J.A.C. 6A:17). All school districts and public schools – including all charter schools⁴ -- 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.⁵

1. *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,⁶ 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.⁷ “Domicile” refers to one’s fixed or permanent home; the place to which a person intends to return if away and from which they have 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*,⁸ 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,⁹ who live with someone other than a parent or guardian,¹⁰ whose parents have been called to active military service,¹¹ or who have moved as a result of certain types of “family crisis” specified in the law.¹²

School districts in New Jersey, facing per pupil costs averaging over \$19,000 per year,¹³ have taken strict 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.¹⁴ 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."¹⁵

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."¹⁶ 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."¹⁷

2. 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 in New Jersey based on data available as of the date of this publication.¹⁸

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.¹⁹ 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.²⁰ Children and youth abandoned in hospitals are also treated as homeless under federal law.²¹

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 five 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.”²² 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.”²³

A different result (that is, no finding of homelessness) was reached in a case where a family that resided with the student’s grandmother “enjoy[ed] occupancy and use of the entire ... residence,” as opposed to being “relegated to a portion of the home that would otherwise be considered inadequate.” In that case, the fact that the sleeping arrangements may have been “less than ideal” was insufficient to find homelessness. The court explained:

Homelessness ... is best viewed in a continuum... when a homeless family moves into a relative’s home that is adequate – and the adults in the family are sufficiently employed with the financial means to find alternate housing, and the family continues to live in the home for an extended period of time without any imminent or foreseeable risk of losing their place in that home, and they share the space as a cohesive unit – a finding of homelessness would be improper.²⁴

The circumstances of a family’s relocation from their original residence are relevant to a determination of homelessness; as described by one court, “[h]omeless connotes a situation of immediacy and is usually a matter of emergent circumstances.”²⁵ This analysis was applied in denying homeless status in a case

in which the parents chose to purchase a home in another school district that required major repairs and renovations to make it habitable. The parents registered the children to attend school in the new district, but the family spent only a brief time in the uninhabitable home, failed to complete needed repairs, and ultimately returned to the grandparents' home, which had a "mother-daughter" layout with a separate kitchen. The totality of the circumstances was found not to be "the kind of emergency" or "abrupt change of circumstances" typically experienced by homeless families,²⁶ and the children were determined not entitled to free attendance in the new school district.

A situation of eviction, by contrast, is the type of emergency typically triggering a finding of homelessness. In a case in which the parent maintained her children's enrollment in their original school district despite multiple evictions from apartments in that school district and multiple short stays with relatives outside the district, the court allowed continued attendance under the homelessness rules, strongly refuting the school district's argument that the parent was "responsible for relocating to affordable housing outside of [the district] and could have located housing at lower monthly rentals than in [the district], which would have prevented the multiple evictions."²⁷ When a family is evicted, a child's entitlement to remain in the original school district under the homelessness rules should not be denied by ascribing "fault" to the parent for failure to pay rent or to find a permanent dwelling elsewhere.²⁸

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.²⁹ Instead, the totality of the circumstances, including the student’s “living conditions, and the resources and intentions of the parents or custodians are relevant.”³⁰ 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.”³¹

3. 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 worker³² 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-ay-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 available on the website of the New Jersey Department of NJDOE at <https://nj.gov/education/homeless/liaison.shtml>.

Every school district (and charter school) is required to have a homeless

liaison,³³ who is responsible for ensuring that a homeless child residing in the district is enrolled and attending school.³⁴ 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).³⁵ 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.³⁶

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 reduces the risk of potentially costly claims of ineligible attendance. 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, 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.³⁷

4. 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.**”³⁸

ESSA includes provisions aimed at assisting preschool-aged homeless

children, who represent a “major share of the overall homeless population.”³⁹ 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.⁴⁰

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 in Section 6(C) 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.⁴¹

5. 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 parent⁴² last resided before becoming homeless, going on to clarify *that this may not be the same school district in which the student currently resides*.⁴³ 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.⁴⁴

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) making an initial determination of homeless status;⁴⁵
- (2) determining the district in which the student will be enrolled in consultation with the parent;
- (3) paying the cost of tuition when the student attends school in another district; and
- (4) providing or paying for transportation for the homeless student in accordance with state transportation regulations.⁴⁶

While the school district of residence remains the district of residence for as long as the parent of the student remains homeless,⁴⁷ 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 Section 8 below).

6. How is the district of enrollment of a homeless student decided?

A. 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.⁴⁸ 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,⁴⁹ or based on having missed application or enrollment deadlines during any period of homelessness.⁵⁰ 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.**⁵¹

B. “Best interest” determination

Enrollment decisions must be based on the “best interest of the child.”⁵² 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 they attended before experiencing homelessness or the last school in which they were enrolled;⁵³ under federal law, these two choices make up the definition of “school of origin.”⁵⁴ 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 (such as a middle school receiving students from several elementary schools) is treated as the student’s school of origin and given first preference.⁵⁵

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.**⁵⁶ 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 the student last attended school if different from the district of residence; the other is to enroll the student in the school district where the student currently resides.⁵⁷ 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.⁵⁸

The U.S. Department of Education suggests considering **additional factors** 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 complete needs, including social-emotional needs.⁵⁹

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.⁶⁰ 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.⁶¹ 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.⁶²

C. 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.⁶³ 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,"⁶⁴ McKinney-Vento and New Jersey's corresponding law use a "best interest" standard⁶⁵ 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.⁶⁶

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.⁶⁷ Case law, moreover, suggests that the rationale for having a homeless student remain in the school they 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.⁶⁸

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.⁶⁹ 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.⁷⁰ Disputes over the services being provided over time to a homeless student with a disability are governed by the special education regulations,⁷¹ which offer options including mediation and due process hearings to parents dissatisfied with such services.⁷² For more information about the rights of students with disabilities, see ELC's publication, *The Right to Special Education in New Jersey: A Guide for Advocates*.

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** are given priority in enrollment determinations.⁷³

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.⁷⁴ (As noted below, the State becomes responsible for tuition where the district of residence cannot be determined.⁷⁵)

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.⁷⁶

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.⁷⁷ “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.”⁷⁸

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.⁷⁹ 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 the rules for enrollment of homeless students described in this publication shall apply.⁸⁰

7. How are disputes resolved?

A. Disputes regarding homelessness

If there is a dispute over whether a student is homeless, the school district(s) or parent(s) involved must immediately notify the executive county superintendent,⁸¹ and the executive county superintendent (in consultation with NJDOE’s McKinney-Vento Homeless Education Coordinator or the Coordinator’s 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:3.⁸² Information on filing a petition of appeal is available on the Office's website at <https://www.nj.gov/education/cd/>; a parent may contact the Office of Controversies and Disputes at (609) 376-9079.

B. Disputes regarding school district of residence

The New Jersey regulations state that the chief school administrator (or designee) "of the school district of residence" must determine a homeless child's or youth's school district of residence "based upon information received from the parent, a shelter provider, another school district, or an involved agency."⁸³

The New Jersey regulations attempt to ensure that disputes between school districts are 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, and, when necessary, in consultation with the Department's Homeless Education Coordinator, or the Coordinator's designee.⁸⁴ A district disputing an executive county superintendent's determination may appeal to the Department of Education.⁸⁵ 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.**⁸⁶

C. 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,⁸⁷ who, in consultation with NJDOE's McKinney-Vento Homeless Education Coordinator or his or her designee, must immediately decide the student's status.⁸⁸ ELC recommends that a parent, guardian, or unaccompanied youth who objects to a school district's enrollment decision 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' offices 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:3.⁸⁹ Information on filing a petition of appeal is available on the Office's website at <https://www.nj.gov/education/cd/>; a parent may contact the Office of Controversies and Disputes at (609) 376-9079. Further assistance may also be obtained by contacting the NDOE's Homeless Education Program or the regional office for the relevant county or counties. Contact information for these offices is contained in the Appendix of this publication.

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;⁹⁰ the right to remain enrolled there continues through “all available appeals.”⁹¹ Transportation must also be provided while a dispute is pending (to the extent it would be required if there were no dispute).⁹²

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.⁹³

D. 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.⁹⁴ 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.⁹⁵ 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,⁹⁶ **parents are advised to be proactive in contacting the homeless liaison so as to avoid claims of ineligible attendance.**⁹⁷

A 2010 ineligible attendance case 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 homeless liaison). 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 continue residing 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 grandparents' home. The Administrative Law Judge reasoned that "[h]omeless connotes a situation of immediacy and is usually a matter of emergent circumstances. In the current matter, petitioners were not evicted from their home, it was not foreclosed upon or destroyed in a disaster."⁹⁸

A 2008 decision⁹⁹ highlights the risk that occurs where a family's circumstances change over time. 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. Throughout this time, 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.”¹⁰⁰ 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,¹⁰¹ 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.

As noted above, federal law provides that in the case of a dispute under the homeless education rules regarding “eligibility, school selection or enrollment,” the student is entitled to enrollment in the school sought by the parent “pending final resolution of the dispute, including all available appeals.”¹⁰² Given this rule, one would assume that a parent is shielded from *any* risk of financial liability for attendance in the chosen school once the dispute resolution processes described above have begun. Two New Jersey cases, however, have muddled this issue.

In these cases, where a dispute results in a finding that the student is no longer homeless, but the student has continued to attend school outside the school district fiscally responsible for the student, the Commissioner of Education has ruled that the parent may be forced to pay the “excess costs” of out-of-district attendance.¹⁰³ “Excess costs” are “any costs that exceed the cost [the responsible district] would have incurred to educate the children in its own schools”¹⁰⁴; parental liability for a share of transportation costs would appear to be a risk in this scenario. ELC believes that the imposition of excess costs on the parents in this context is contrary to the language and policy of McKinney-Vento and hopes to advocate for future revisions to New Jersey regulations to rule out the possibility of such results.

8. Who pays tuition and transportation costs?

A. Tuition rules

When homelessness occurs, the district of residence is initially responsible for all tuition costs, no matter where the homeless student is living or going to school.¹⁰⁵ **While there is no maximum duration (time limit) on homelessness,¹⁰⁶ there are time limits on the financial responsibility of the district of residence.** Notably, where a homeless family lives in another district for a full year or longer, financial responsibility generally shifts from the district of residence to that other district.¹⁰⁷ In the case of a child living in a domestic violence shelter, homeless shelter, or transitional living facility located in a school district other than the school district of residence for more than one year, the State, rather

than the school district in which the shelter or transitional living facility is located, must assume responsibility for tuition costs.¹⁰⁸ This rule aims to avoid placing too high a fiscal burden on school districts in which shelters and similar facilities are located.¹⁰⁹ The State is also initially responsible for tuition where the school district of residence cannot be determined or if the school district of residence is outside of the State.¹¹⁰

Even if financial responsibility for a student shifts to another school district or to the State, the student, so long as they are still “homeless” within the rules discussed above, retains the right to remain enrolled in their original school district if remaining there reflects the student’s “best interest.”¹¹¹ In other words, while living consistently in a particular school district (or in certain facilities) for a full year switches tuition responsibility to that other district or to the State, this switch in financial responsibility does not in itself signify an end to the student’s homeless status.

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.¹¹²

B. Transportation rules

Federal law provides that homeless students are entitled to transportation to and from the “school of origin”¹¹³ and that homeless liaisons must inform parents and

unaccompanied youth of this right.¹¹⁴ Federal guidance indicates that homeless preschoolers should receive 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.¹¹⁵

State transportation regulations define the roles of each school district where a homeless student attends school in a district other than the one in which they reside.¹¹⁶ Under these regulations, 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.¹¹⁷ (As noted above, fiscal responsibility shifts to a different district where a student resides in that other district for a full year or more.¹¹⁸) If the homeless student attends school in the student's district of residence while living in another school district, the district of residence must provide for the transportation.¹¹⁹ 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.¹²⁰ In providing transportation to homeless students, school districts are required to explore alternatives and to choose the most economical and safe mode of transportation.¹²¹

While much of the discussion in this publication presumes that a family relocates to a different school district upon becoming homeless, there may be

situations in which a family becomes homeless yet remains within their original district. In this scenario, the student is entitled to continue attending their original school within the district. Transportation to this original school, however, is not guaranteed if the homeless student resides in a location that would not otherwise qualify for transportation based on its distance from the school -- more than two miles from the school for students in preschool through grade 8, and more than two and a half miles from the school for grades 9-12.¹²²

In a recent New Jersey decision, a school district's denial of transportation for homeless students, ages 5 and 7, was upheld where the students continued to reside in their original school district - in transitional housing - less than two miles from the school. Because no transportation was provided to non-homeless children living within two miles of school, and in the absence of any allegation that the children's route to school would be dangerous, the court denied the mother's request for busing for her children.¹²³ This decision is apparently grounded in language from the federal statute stating that homeless students must be provided with transportation services "comparable to services offered to other students,"¹²⁴ although other provisions in the statute and New Jersey regulations, as well as federal guidance, appear to mandate transportation for homeless students irrespective of the transportation policies applicable to other students.¹²⁵ 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 where the absence of transportation creates barriers to school

attendance (as, for example, where walking to school would be dangerous or where other factors necessitate transportation to allow the student to attend school).¹²⁶

9. *What additional 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.¹²⁷ 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.”¹²⁸ 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.¹²⁹

Homeless children are also automatically eligible to attend Title I - funded preschool programs (which should be coordinated with Head Start programs) without meeting the “at risk” requirement for eligibility.¹³⁰ Parents of preschoolers should seek the assistance of homeless liaisons in accessing all available services for their children.

10. *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,”¹³¹ so as to avoid the situation where a student finds himself “in danger of not graduating due to differing class and credit requirements.”¹³² 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.¹³³

In an effort to assist homeless students in accessing post-secondary education, federal law mandates that guidance counselors advise these students to improve their readiness for college.¹³⁴ 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.¹³⁵ 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.”¹³⁶

11. *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”¹³⁷ and is (with very limited exception) prohibited.¹³⁸ 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”¹³⁹ 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.¹⁴⁰ 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.*”¹⁴¹

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.¹⁴² 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.”¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵

12. Who monitors compliance?

The NJDOE is responsible for monitoring school districts to make sure that they follow the state and federal 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 state or regional office responsible for homeless education. **Contact information for these offices is contained in the Appendix below.**

APPENDIX

CONTACT INFORMATION FOR STATE AND REGIONAL OFFICES FOR HOMELESS EDUCATION AND EXECUTIVE COUNTY SUPERINTENDENTS

NJDOE Homeless Education Program, Office of Supplemental Educational Programs

mckinney.vento@doe.nj.gov

(609) 376-9080

Interim State Coordinator - Leslie Franks McRae

Regional Offices (listed at <https://www.nj.gov/education/homeless/grantees/>):

Bergen, Hunterdon, Passaic, Somerset, Sussex, Warren	Diahann De Ruggiero, MSW, M.Ed. diader@bergen.org (201) 343-6000 ext. 6588
Essex, Hudson, Morris, Union	Pheobie Thomas, M.Ed. p.thomas@eresc.com (973) 405-6262 ext. 246
Mercer, Middlesex, Monmouth, Ocean	Alan Ferraro aferraro@moesc.org spotter@moesc.org (732) 695-7800 ext. 7805
Atlantic, Burlington, Camden, Gloucester	Kathleen Monti kmonti@gcecnj.org (856) 468-6530 ext. 1053
Cape May, Cumberland, Salem	Diane Cioffi cioffi.d@woodstown.org (856) 769-0144 ext. 66247

Offices of Executive County Superintendents / County Offices of Education
(complete information available at <https://www.nj.gov/education/about/counties/>)

Atlantic County Office of Education
609-625-0004

Bergen County Office of Education
201-336-6875

Burlington County Office of Education
609-265-5060

Camden County Office of Education
856-401-2400

Cape May County Office of Education
609-465-1283

Cumberland County Office of Education
856-451-0211

Essex County Office of Education
973-621-2750

Gloucester County Office of Education
856-686-8370

Hudson County Office of Education
201-369-5290

Hunterdon County Office of Education
908-788-1414

Mercer County Office of Education
609-588-5877

Middlesex County Office of Education
732-249-2900

Monmouth County Office of Education
732-431-7810

Morris County Office of Education
973-285-8332

Ocean County Office of Education
732-929-2078

Passaic County Office of Education
973-569-2110

Salem County Office of Education
856-339-8611

Somerset County Office of Education
908-541-5700

Sussex County Office of Education
973-579-6996

Union County Office of Education
908-654-9860

Warren County Office of Education
908-689-0497

ENDNOTES

¹ 42 U.S.C.A. §11431.

² 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).

³ The website of New Jersey’s Education for Homeless Children and Youth Program is at <https://nj.gov/education/homeless/>. 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).

⁴ 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. A U.S. Department of Education Monitoring Report dated December 2022 indicated concerns about the low rates of identification of homeless students by charter schools despite high rates of student poverty. https://oese.ed.gov/files/2022/12/nj_ehcy-arp-hcy-monitoring-report_final_12522.pdf.

⁵ N.J.A.C. 6A:17-2.1.

⁶ N.J.S.A. Const., Art. 8, §4, ¶ 1.

⁷ N.J.S.A. 18A:38-1(a).

⁸ This publication is available at <https://edlawcenter.org/publications/>.

⁹ N.J.A.C. 6A:22-3.1(a)(1)(i-ii).

¹⁰ N.J.S.A. 18A:38-1(b)(1); N.J.A.C. 6A:22-3.2(a).

¹¹ N.J.S.A. 18A:38-1(b); N.J.A.C. 6A:22-3.2(b).

¹² N.J.S.A. 18A:38-1.1; N.J.A.C. 6A:22-3.2(h). The “family crisis” rules are discussed in Section 6(C) of this publication.

¹³ See *Murphy Administration Releases 2023 Taxpayers’ Guide to Education Spending*, <https://nj.gov/education/news/2023/MurphyAdministrationReleases2023TaxpayersGuidetoEducationSpending.pdf> (October 2, 2023).

¹⁴ 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* (New York Times 1/13/2008).

¹⁵ 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”).

¹⁶ 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.

¹⁷ *NO BARRIERS: A Legal Advocate’s Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act* (hereinafter, “*NO BARRIERS*”), <https://homelesslaw.org/wp-content/uploads/2018/10/NoBarriers.pdf> (2nd Ed. Nov. 2016) at page 10.

¹⁸ For the 2021-2022 school year, approximately 71% of all homeless students attending public schools in New Jersey were “doubled-up”; the percentage is over 80% for unaccompanied homeless youth. See New Jersey Consolidated State Performance Report, section 1.6.1.2, <https://www.nj.gov/education/title1/accountability/docs/22/Consolidated%20State%20Performance%20Report%20Part%20I%20.pdf>. 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).

¹⁹ 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.

²⁰ 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).

²¹ 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.

²² 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 Cresskill and Bd. of Educ. of the Borough of Little Ferry, OAL No. 14830-13, Agency No. 214-9/13, 2014 WL 12844658 (Comm’r of Educ. Aug. 12, 2014), aff’d, 2016 WL 4699166 (N.J. Sup. Ct. App. Div. Sept. 8, 2016).

²³ L.R. v. Steelton-Highspire Sch. Dist., 54 IDELR 155 (M.D. Pa. 2010).

²⁴ Camden v. Volk, *supra* note 18.

²⁵ 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), adopted, 2010 WL 5691963 (Comm’r of Educ. Dec. 27, 2010), discussed in detail in Section 7(D) of this publication.

²⁶ A.T. o/b/o K.T. & P.T. v. Bd. of Educ. of the Twp. of Sparta, OAL No. 00306-21, Agency No. 2-1/21, 2021 WL 7629587 (N.J. Adm. Aug. 5, 2021), adopted, <https://www.nj.gov/education/legal/commissioner/2021/276-21.pdf> (Comm’r of Educ. Oct. 28, 2021), aff’d, 2023 WL 2620056 (N.J. Super. Ct. App. Div. Mar. 24, 2023), certif. denied, 255 N.J. 504 (2023) (purchasing an uninhabitable home may not be used to “bootstrap” a finding of homelessness).

²⁷ 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), adopted, 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 in Section 6(C) of this publication.

²⁸ See Nat’l L. Ctr. on Homelessness & Poverty, R.I. v. New York, 224 F.R.D. 314 (E.D.N.Y. 2004) (homeless children should not be penalized because of the “misfortunes or misdeeds of their parents”).

²⁹ 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 23; Bd. of Educ. of the Bordentown Reg'l Sch. Dist. v. Raymond Marini et al., <https://www.nj.gov/education/legal/commissioner/2022/oct/269-22.pdf> (Comm'r of Educ. Oct. 19, 2022) (rejecting ALJ decision that had focused on length of time family resided with grandparents - notably, five years - in determining that they were no longer homeless). In amending the regulation defining homeless status in 2014, NJDOE 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 amended language is found at N.J.A.C. 6A:17- 2.2(a)(3).³⁰ M.O'K., *supra* note 22; *compare* Camden v. Volk, *supra* note 18 (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., Twp. of Pennsauken v. Lovell Pugh-Bassett et al., OAL No. 00744-21, Agency No. 94-5/19, OAL No. 16086-19 (on remand), 2022 WL 2288949 (N.J. Adm. Mar. 24, 2022), *aff'd*, <https://www.nj.gov/education/legal/commissioner/2022/jun/122-22.pdf> (Comm'r of Educ. June 16, 2022)(finding mother and daughter no longer homeless where each had her own bedroom in grandmother's home, there was no evidence of any attempt to relocate, and mutually-beneficial living arrangement had become fixed); 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 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), *adopted*, 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).

³¹ *NO BARRIERS* at page 14.

32 The New Jersey regulations list “the parent, a shelter director, or an involved agency” as those who would notify a school district homeless liaison of the presence of a homeless student within the district. N.J.A.C. 6A:17-2.4(b).

33 N.J.A.C. 6A:17-2.4(a).

34 N.J.A.C. 6A:17-2.4(a)(2).

35 N.J.A.C. 6A:17-2.4(b).

36 N.J.A.C. 6A:17-2.4(c).

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

38 N.J.A.C. 6A:17-2.1(scope of rules).

39 *Federal Guidance* (page 2 and N-1 – N-5).

40 *Federal Guidance* (N-4 – N-5); *The Most Frequently Asked Questions on the Education Rights of Children and Youth in Homeless Situations* (Sept. 2016), https://homelesslaw.org/wp-content/uploads/2018/10/McKinney-Vento_FAQs.pdf (hereinafter, “*Most Frequently Asked Questions*”) (Questions 116,119).

41 42 U.S.C.A. §11432(g)(5)(D).

42 Note that the New Jersey regulations governing homeless students define “parent” as the child’s “natural or adoptive parent, legal guardian, resource family care parent, surrogate parent, or person acting in the place of a parent, such as the person with whom the child legally resides or a person legally responsible for the child’s welfare.” N.J.A.C. 6A:17-1.2. Care should be taken to interpret the word “parent” in the regulations accordingly.

43 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.

44 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. 42 U.S.C.A. §11432(g)(3)(I). While the New Jersey regulations state that “school district of residence” is synonymous with “school district of origin” in federal law (see N.J.A.C. 6A:17-1.2), 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.

⁴⁵ N.J.A.C. 6A:17-2.2(a).
⁴⁶ 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.
⁴⁷ N.J.A.C. 6A:17-2.3(c).
⁴⁸ N.J.A.C. 6A:17-2.5(c).
⁴⁹ N.J.A.C. 6A:17-2.5(g); 42 U.S.C.A. §11432(g)(3)(C)(i)(I); 42 U.S.C.A. §11432(g)(1)(H).
⁵⁰ 42 U.S.C.A. §11432(g)(3)(C)(i)(II); 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)(I) (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).
⁵¹ 42 U.S.C.A. §11432(g)(3)(E)(i); N.J.A.C. 6A:17-2.7(c).
⁵² 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).
⁵³ 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).
⁵⁴ 42 U.S.C.A. §11432(g)(3)(I)(i). See also NO BARRIERS at page 49 (where, due to natural disaster, it is impossible to continue in the 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).
⁵⁵ 42 U.S.C.A. §11432(g)(3)(I)(ii).
⁵⁶ 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)(I).
⁵⁷ 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 non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend”).
⁵⁸ 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, 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).
⁵⁹ *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.

60 N.J.A.C. 6A:17-2.5(c)(2).
61 N.J.A.C. 6A:17-2.5(c)(3). Written explanations, including information about the right to appeal, should be in a form understandable to the parent (or unaccompanied youth). 42 U.S.C.A. §11432(g)(3)(B)(iii). The *Federal Guidance* states (at K-4) that all decisions and notices “should be drafted using language and formatting appropriate for low-literacy, limited vision readers, and individuals with disabilities” and that translation and interpretation services should be provided as needed.
62 N.J.A.C. 6A:17-2.5(h); 42 U.S.C.A. § 11432(g)(3)(A)(i)(II).
63 42 U.S.C.A. §11432(g)(5)(D).
64 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).
65 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).
66 42 U.S.C.A. §11432(g)(3)(B)(i); N.J.A.C. 6A:17-2.5(b)(1).
67 N.J.A.C. 6A:17-2.5(b)(3).
68 L.R. v. Steelton-Highspire, *supra* note 23 (school district had in-depth knowledge of student’s needs and had met such needs for years); M.O’K., *supra* note 22 (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...”).
69 N.J.A.C. 6A:17-2.5(e).
70 N.J.A.C. 6A:14-4.1(g).
71 N.J.A.C. 6A:17-2.7(d).
72 N.J.A.C. 6A:14-2.6 - 2.7. Information about special education dispute resolution is available on the NJDOE website at <https://www.nj.gov/education/specialed/policy/disputeresolution/>.
73 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).
74 N.J.A.C. 6A:17-2.5(f).
75 N.J.A.C. 6A:17-2.8(c)(1) (State’s fiscal responsibility continues until the parent establishes permanent residence or is “deemed domiciled” under N.J.S.A. 18A:38–1(d)).
76 N.J.S.A. 18A:7B-12.3.
77 N.J.S.A. 18A:38-1.1. “Remote” is defined as more than two miles from the school for students in preschool through grade 8, and more than two and a half miles from the school for grades 9-12. N.J.A.C. 6A:27-1.3(a)(1).
78 N.J.A.C. 6A:22-3.2(h)(1)(ii-iii).
79 N.J.A.C. 6A:22-3.2(h)(2).
80 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).

⁸¹ 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 an employee of the NJDOE 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' offices.

⁸² N.J.A.C. 6A:17-2.7(a).

⁸³ N.J.A.C. 6A:17-2.3(b). In referring to the chief school administrator's "designee," the regulation cites N.J.A.C. 6A:17-2.4, which describes the school district's homeless liaison.

⁸⁴ N.J.A.C. 6A:17-2.7(b).

⁸⁵ Appeals regarding district of residence may be made to NJDOE's Division of Finance if such appeals do not include a determination of homelessness and/or school district of enrollment. N.J.A.C. 6A:17-2.7(b)(1). If issues of homelessness and/or district of enrollment are included in the appeal, the appeal must be made to the Commissioner of Education by filing an appeal with the Office of Controversies and Disputes pursuant to N.J.A.C. 6A:3. N.J.A.C. 6A:17-2.7(b)(2).

⁸⁶ 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.

⁸⁷ N.J.S.A. 18A:7B-12.1.

⁸⁸ N.J.A.C. 6A:17-2.7(a).

⁸⁹ 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).

⁹⁰ 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 23 (memorandum opinion 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 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).

⁹¹ 42 U.S.C.A. §11432(g)(3)(E)(i).

⁹² *Most Frequently Asked Questions* (Question 49); *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).

⁹³ *Federal Guidance* (K-4).

⁹⁴ S.J. o/b/o V.J. v. Bd. of Educ. of South Orange-Maplewood Sch. Dist., OAL No. 5656-07, Agency No. 121-5/07, 2008 WL 384126 (N.J. Adm. Jan. 22, 2008); adopted, 2008 WL 2941746 (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), adopted, 2010 WL 5691963 (Comm'r of Educ. Dec. 27, 2010); N.J.S.A. 18A:38-1(b)(2).

⁹⁵ 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).

⁹⁶ 42 U.S.C.A. §11432(g)(1)(B), (g)(6)(A)(i).

⁹⁷ See Homeless students needed help. Schools showed them the door., Center for Public Integrity, <https://publicintegrity.org/education/unhoused-and-undercounted/pennsylvania-homeless-students-schools-disenroll/> (Aug. 29, 2023).

⁹⁸ J.G. and D.G., *supra* note 94. It should be noted that the parents in this case did not dispute that the family was no longer domiciled in the original school district.

⁹⁹ S.J. o/b/o V.J., *supra* note 94.

¹⁰⁰ Camden v. Volk, *supra* note 18 (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").

¹⁰¹ 42 U.S.C.A. §11432(g)(3)(A)(i)(II); N.J.A.C. 6A:17-2.5(h).

¹⁰² 42 U.S.C.A. §11432(g)(3)(E)(i). N.J.A.C. 6A:17-2.7(c) similarly states that

“[a]ny dispute or appeal shall not delay the homeless child's or youth's immediate enrollment or continued enrollment in the school district. The homeless child or youth shall be enrolled in the school district in which enrollment or continued enrollment is sought by the parent, pending resolution of the dispute or appeal.” See also L.R. v. Steelton-Highspire, *supra* note 23 (rejecting school district's argument that its obligation to immediately enroll student did not exist because student was “no longer homeless”; under federal law, student must be immediately enrolled in event of a dispute).

¹⁰³ Camden v. Volk, *supra* note 18 (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 2016-2017 school year); J.G. o/b/o T.G. and C.G. v. Bd. of Educ. of the Township of Edison and Bd. of Educ. of the Borough of Milltown, <https://www.nj.gov/education/legal/commissioner/2020/125-20.pdf> (Comm'r of Educ. June 15, 2020)(where students were found to be no longer homeless for school year at issue, new school district of residence could seek reimbursement from parent of excess costs, including transportation costs, associated with students' attendance at school outside the district even though parent's appeal was pending during this school year).

As explained in J.G. o/b/o T.G., “the purpose of the McKinney-Vento Act and the related state law is to ensure that a homeless child is not denied a free public education; it is not meant to enable a child to receive an education in a school district of preference by circumventing residency requirements.” While a school district is financially responsible for the education of students domiciled therein, it is “not responsible for paying any excess cost of sending the children to another district.”

¹⁰⁴ J.G. o/b/o T.G., *supra* note 103.

¹⁰⁵ 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.

¹⁰⁶ See note 29, *supra*.

¹⁰⁷ N.J.S.A. 18A:38-1(d); N.J.A.C. 6A:17-2.3(c); N.J.A.C. 6A:17-2.8(a); Bd. of Educ. of the Twp. of Egg Harbor v. Bd. of Educ. of the Mainland Reg'l High Sch. 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), adopted, 2010 WL 5691969 (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, <http://www.nj.gov/education/legal/commissioner/2011/jun/222-11.pdf> (Comm'r of Educ. Jun. 14, 2011) (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 22; Bd. of Educ. of the Twp. of Springfield v. Bd. of Educ. of the City of Newark, OAL No. 06696-19, Agency No. 71-4/19, 2022 WL 7777169 (N.J. Adm. June 8, 2022), remanded on other grounds, <https://www.nj.gov/education/legal/commissioner/2022/sep/222-22.pdf> (Comm’r of Educ. Sept. 7, 2022) (responsibility shifted from Springfield to Newark as family resided in Newark for more than one year); Bd. of Educ., Twp. of Pennsauken v. Lovell Pugh-Bassett et al., *supra* note 30 (financial responsibility shifted to Pennsauken after one year).

¹⁰⁸ N.J.S.A. 18A:7B-12(d); N.J.S.A. 18A:7B-12.1-12.2; N.J.A.C. 6A:17-2.8(c)(3); N.J.A.C. 6A:17-1.2 (definition of “transitional living facility”); City of Salem Bd. of Educ. v. Bordentown Reg’l Sch. Dist., OAL No. 10173-21, Agency No. 211-11/21, 2023 WL 9380511 (N.J. Adm. Dec. 15, 2023), adopted, <https://www.nj.gov/education/legal/commissioner/2024/57-24.pdf> (Comm’r of Educ. Jan. 22, 2024).

¹⁰⁹ 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.

¹¹⁰ N.J.A.C. 6A:17-2.8(c)(1) - (2); N.J.S.A. 18A:7B-12(d).

¹¹¹ A.M. and M.S. v. Bd. of Educ. of the Town of Dover, *supra* note 107 (“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 22.

¹¹² N.J.S.A. 18A:7B-12.3.

¹¹³ 42 U.S.C.A. §11432(g)(1)(J)(iii); *Federal Guidance* (J-6). As stated 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).

¹¹⁴ 42 U.S.C.A. §11432(g)(6)(A)(viii); N.J.A.C. 6A:17-2.4(a)(7).

¹¹⁵ *Federal Guidance* (N-5); *Most Frequently Asked Questions* (Questions 116, 119).

¹¹⁶ N.J.A.C. 6A:17-2.3(a)(3); N.J.A.C. 6A:27-6.2(a) - (c).

¹¹⁷ N.J.A.C. 6A:27-6.2(a).

¹¹⁸ N.J.A.C. 6A:27-6.2(a)(1) (citing N.J.S.A. 18A:38-1(d)).

¹¹⁹ N.J.A.C. 6A:27-6.2(c); N.J.S.A. 18A:7B-12.1.

¹²⁰ N.J.A.C. 6A:27-6.2(d).

¹²¹ N.J.A.C. 6A:27-6.2(e).

¹²² N.J.A.C. 6A:27-1.3(a)(1).

¹²³ D.S. o/b/o E.K.-S. & S.K.-S. v. Bd. of Educ. of the Twp. of Westhampton, OAL No. 11041-23, Agency No. 256-9/23, 2023 WL 9380514 (N.J. Adm. Dec. 5, 2023), aff’d, <https://www.nj.gov/education/legal/commissioner/2024/84-24.pdf>

(Comm'r of Educ. Jan. 26, 2024).

¹²⁴ 42 U.S.C.A. §11432(g)(4)(A). A district court in the District of Columbia, applying an earlier version of the federal statute and guided by a U.S. Department of Education memorandum, took the position that school districts must provide more than merely “comparable” transportation to homeless students. See Lampkin v. D.C., 879 F. Supp. 116 (D.D.C. 1995) (describing “comparability” as “an incomplete standard” and requiring school district to eliminate delays in the distribution of transportation tokens to homeless students living more than 1.5 miles from school and to make tokens available to a parent or other designated adult escort to accompany the child to school). For a New York State administrative decision applying the comparability standard see Appeal of K.M., o/b/o her child O.M., from action of the Bd. of Educ. of the Island Park Union Free Sch. Dist. regarding residency and transportation, 2017 WL 2691453 (New York State Comm'r of Educ. June 1, 2017) (homeless child not entitled to transportation to out-of-district child care location as non-homeless children were not provided such transportation).

¹²⁵ 42 U.S.C.A. §11432(g)(1)(J)(iii)(I); N.J.A.C. 6A:27-6.2(b); *Federal Guidance* (J-6). See also 42 U.S.C. §§ 11432(g)(1)(I), (g)(7) (obligation to remove barriers for homeless students).

¹²⁶ *NO BARRIERS* at page 18. Under the principle that barriers to school participation must be removed, districts should also provide transportation to and from extracurricular activities where necessary to allow a homeless student to participate. *Federal Guidance* (J-11).

¹²⁷ *Most Frequently Asked Questions* (Question 123) (“homeless status, rather than income, qualifies a family for Head Start.”)

¹²⁸ *NO BARRIERS* at page 26.

¹²⁹ *Most Frequently Asked Questions* (Question 124); *NO BARRIERS* at pages 25-27.

¹³⁰ 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://oese.ed.gov/files/2024/02/Title-I-Preschool-Early-Learning-Guidance-Revised-2023-FINAL.pdf> (Feb. 2024) (Questions B-2, B-8, F-1, F-2, F-3).

¹³¹ 42 U.S.C.A. §§11432(g)(1)(F)(ii).

¹³² *Federal Guidance* (O-1).

¹³³ *Federal Guidance* (O-1 - O-3).

¹³⁴ 42 U.S.C.A. §11432(g)(1)(K).

¹³⁵ *Federal Guidance* (Q-1).

¹³⁶ 42 U.S.C.A. §11432(g)(6)(A)(x)(III); *Federal Guidance* (Q-2);

Unaccompanied Homeless Youth Determinations – Update,
<https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-04-14/unaccompanied-homeless-youth-determinations-update>.

¹³⁷ 42 U.S.C.A. §11431(3).

¹³⁸ 42 U.S.C.A. §11432(e)(3).

¹³⁹ 42 U.S.C.A. §11432(g)(1)(J)(i).

¹⁴⁰ 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.”)

¹⁴¹ N.J.A.C. 6A:17-1.2.

¹⁴² 42 U.S.C.A. §§11433(a)(2)(B)(ii), (a)(2)(A)(iii), (a)(3).

¹⁴³ *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).

¹⁴⁴ *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).

¹⁴⁵ *Federal Guidance* at pages 33-34. But see *Homeless and suspended in California*, Center for Public Integrity, <https://publicintegrity.org/education/unhoused-and-undercounted/homeless-and-suspended-in-california/> (Sept. 27, 2023).