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NYS FIELD MEMO
NCLB McKinney-Vento
02 – 2011

July 19, 2011

TO: District Superintendents
Superintendents of Public Schools
Charter School LEA Administrators
Homeless Education Liaisons

FROM: Roberto Reyes

SUBJECT: LEA Requirements for Implementing McKinney-Vento Homeless Student Dispute Resolution Process

Recently, SED has received several 310 Appeals in which homeless eligibility was being disputed, but the McKinney-Vento liaisons (also known as the LEA liaisons or homeless liaisons) did not comply with all applicable filing requirements. The failure to submit all forms in connection with a 310 Appeal can interfere with the rights of both the LEA (Local Education Agency, Charter School, or BOCES) and the petitioner (parent, guardian, or youth) on whose behalf the appeal is being made. Failure to submit all required forms can also create delays in the resolution of disputes. For these reasons, the following guidance is being provided to assist LEAs and McKinney-Vento liaisons in navigating the appeal process and to ensure compliance with timelines for submission of the required forms.

Appeal Documents and Timeline for Filing an Appeal

Name of Form:	Completed by:	Given to:	Due date:	Form available at:
Form Notice of Petition	Parent, guardian, or unaccompanied youth (“the petitioner”)	McKinney-Vento Liaison , who then either accepts service or delivers the petition to the designated person who can accept service for the LEA. The LEA then sends the Petition to SED .	Parent, guardian or unaccompanied youth must submit the completed Petition to the McKinney-Vento liaison within 30 calendar days of receiving the LEA’s written decision. The LEA must submit the completed Petition and Affidavit of Service (see below) to SED within 5 calendar days of the LEA’s acceptance of the Petition.	http://www.nysteachs.org/media/INF_SED_310App_FormNotice.pdf This form includes the Petition, Statement of Petition, and the request for immediate relief (also known as the stay request).

Name of Form:	Completed by:	Given to:	Due date:	Form available at:
Affidavit of Service (personal or by mail)	McKinney-Vento Liaison	SED	LEA must submit to SED the completed Affidavit of Service and Petition (see above) within 5 calendar days of the LEA's acceptance of the Petition.	http://www.nysteachs.org/media/INF_SED_310App_AffidServMail.doc or http://www.nysteachs.org/media/INF_SED_310App_AcceptServ.doc
Form for Verification of Receipt and Transmittal of Petition	McKinney-Vento Liaison	Petitioner	Not specified.	http://www.nysteachs.org/media/INF_SED_FormforVerification.doc
Affidavit of Opposition (to the request for immediate relief)	LEA	Petitioner and SED	LEA must give the petitioner its Affidavit of Opposition within 3 business days after the district accepts the Petition. It must also deliver a copy of the Affidavit to SED within 24 hours of the petitioner's acceptance of it.	There is no template/form available for this document.
Answer	LEA	Petitioner and SED	Within 20 calendar days of the LEA's acceptance of the Petition, the LEA must serve the Answer on the petitioner or serve it on the liaison to give to the petitioner. LEA must submit the completed Answer and Affidavit of Service (see above) to SED within 5 calendar days of the petitioner's acceptance of the Answer.	There is no template/form available for this document.
Reply (this is not a required document)	Petitioner	McKinney-Vento Liaison, who then either accepts service or delivers the petition to the designated person who can accept service for the LEA. The LEA then sends the Petition to SED.	If the petitioner wants to submit a Reply, she/he must submit it to the McKinney-Vento liaison within 10 calendar days of accepting the Answer. The LEA must submit the completed Reply and Affidavit of Service (see above) to SED within 5 calendar days of the LEA's acceptance of the Reply.	There is no template/form available for this document.

The following is a more detailed explanation of the documents and procedures mentioned above.

McKinney-Vento Liaison Dispute Resolution Responsibilities: McKinney-Vento Liaisons must assist the parent, guardian or youth in commencing a 310 Appeal, including:

- providing the parent, guardian, or youth with the form petition;
- helping the parent, guardian, or youth fill out the form petition;
- making copies of the form petition and any supporting documents at no cost to the parent, guardian, or youth;
- accepting service of the form petition, supporting documents, and any other pleadings;
- giving or sending the parent, guardian, or youth verifications that the liaison has served the appeal and will file it with the SED;
- making sure the petition and any other subsequent pleadings are properly filed with SED within five days of service;
- maintaining a record of all appeals; and
- informing school personnel, service providers, and advocates working with families who are homeless of the duties of the McKinney-Vento Liaison.

LEA's Written Decision: If a dispute arises about whether a student should be considered homeless under Education Law 3209, about a homeless student's choice of school, or about a homeless student's access to transportation, the LEA must issue a **written decision** to the parent, guardian, or youth that includes:

- a statement regarding the right to appeal the LEA's decision to the Commissioner with the State Education Department;
- the name, post office address, and telephone number of the McKinney-Vento Liaison; and
- the petition form used to file an appeal with the Commissioner.

The LEA must immediately enroll the student in the school in which enrollment is sought and/or provide transportation pending resolution of the dispute. Within **30 calendar days** of receiving the written decision, the parent, guardian or unaccompanied youth may file an appeal to the Commissioner.

Petitioner: The parent, guardian, or unaccompanied youth who files an appeal with the Commissioner.

Form Notice of Petition for an Appeal Involving a Homeless Child or Youth (also referred to as the Petition): This form must be completed by the parent, guardian, or unaccompanied youth to challenge a school district's denial of enrollment and/or transportation **within 30 calendar days** of receiving the written decision. The McKinney-Vento Liaison is responsible for helping the parent, guardian or youth complete this document. In an appeal to the Commissioner, ***the petitioner must prove*** that the student is homeless under McKinney-Vento and must produce evidence to support the particular facts and circumstances of his or her appeal. NYS-TEACHS' Sample Evidence Memo available at:

http://www.nysteachs.org/media/INF_Appeal_Sample_Evidence.pdf provides guidance about what a petitioner may include in an appeal in order to establish that a student is homeless under McKinney-Vento. Wherever possible, a petitioner should also provide detailed statements that

explain any evidence included in an appeal. The Petition includes the Statement of Petitioner, as well as a request for immediate relief (also known as a stay request). The Stay Request can be found on Page 7 of the Petition and contains a request that the Commissioner allow the student continued enrollment and/or transportation while the Commissioner makes a final decision on the appeal. If the Stay is granted the student can continue attending the same school and/or receive transportation. If the Stay is denied, the LEA may exclude and/or discontinue enrollment and/or transportation for the student. After the LEA has accepted service of the completed Petition, it must **send it to SED within 5 calendar days** along with a completed Affidavit of Service (see below). The LEA must also give the petitioner an acknowledgement verifying that it received the petition and will send it to SED (see below).

Affidavit of Service: The McKinney-Vento Liaison must complete one of the Affidavits of Service (either by Mail or by Personal Service) and send the original with the completed Petition to SED's Office of Counsel **within 5 calendar days**. The affidavit verifies that the school district properly received the completed Petition. The Affidavits of Service are linked below at:

[Form for Affidavit of Service by Mail by Local Educational Agency Liaison for Homeless Children and Youth](#): This form should be completed by the McKinney-Vento Liaison to verify that the individual has been served with the petition and is mailing it to the school district employee who has been designated to accept service on behalf of the school district.

[Form for Affidavit of Acceptance of Personal Service by Local Educational Liaison for Homeless Children and Youth](#): This form should be completed by the McKinney-Vento Liaison or the person who has been designated by the board of education to accept service on behalf of the school district. This form affirms that the individual who completed the form has accepted the petition on behalf of the named respondents in the school district.

[Verification of Receipt and Transmittal of Petition and Materials by Local Educational Agency Liaison](#): This form must be completed by the McKinney-Vento Liaison and given to the parent, guardian, or unaccompanied youth to verify that the liaison has received the petition and will mail it to the Office of Counsel, New York State Education Department.

Affidavit of Opposition: If the LEA wants to oppose the petitioner's request for immediate relief, it will complete an Affidavit of Opposition explaining its reasons. The LEA must serve the Affidavit of Opposition on the petitioner within **3 business days** after the LEA accepts the Petition. The LEA also has to deliver the Affidavit to SED within **24 hours** of service on the petitioner. SED typically will issue a decision on the stay request within a week. If the stay request is granted and Affidavit of Opposition is denied, the student may continue enrollment in the same school and/or receive transportation. If the stay request is denied and the Affidavit of Opposition is granted, the LEA may exclude the student and/or discontinue transportation.

Answer to the Petition: The LEA must draft an Answer to the Petition to explain its side of the appeal. The LEA must serve its Answer on the petitioner or serve it on the liaison to give to the petitioner within **20 calendar days** of the LEA's acceptance of the Petition. The LEA must also send its Answer to SED with an Affidavit of Service within **5 calendar days** after the petitioner's acceptance of the Answer.

Reply: The Petitioner can respond to the LEA's Answer, but doesn't have to. If the Petitioner would like to submit a response, she/he must draft a Reply and give it to the McKinney-Vento Liaison within **10 calendar days** of acceptance of the LEA's Answer. The McKinney-Vento Liaison must then follow the same procedure it did for the Petition: complete an Affidavit of Service and Verification, give the Verification to the petitioner, and send the Reply and Affidavit of Service to SED.

Should you have any questions about this process, please consult SED's Office of Counsel's Homeless Appeal webpage at: <http://www.counsel.nysed.gov/appeals/homeless.htm> and NYS-TEACHS' Dispute Resolution/Appeal Process webpage at: <http://www.nysteachs.org/info-topic/dispute-appeal.html>. Both of these websites contain information regarding the McKinney-Vento liaison's appeal-related duties.

c: Ira Schwartz
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