



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234
Office of P-12

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To: District Superintendents
Superintendents
Principals of Charter School and Nonpublic Schools
Transportation Directors

November 21, 2012

From: Chuck Szuberla, Assistant Commissioner
Ira Schwartz, Assistant Commissioner

Charles A. Szuberla
Ira Schwartz

cc: Roberto Reyes, Director of Title I
Mary Sansaricq, State Director of Pupil Transportation

Re: Extreme Weather Events: Hurricane Sandy/Nor'easter and Transportation for Nonpublic,
Homeless and Charter School Students

Over the course of the past few weeks, many communities across our state have been hit with extraordinary weather events resulting in extensive destruction of property and infrastructure, injuries, and even loss of life. As the affected communities strive towards a return to normalcy, we have received numerous inquiries about the extent to which school districts are required to provide transportation for displaced students who attend nonpublic schools. The following guidance is intended to answer questions Department staff have been asked and also provide districts with information regarding legal requirements pertaining to transportation of nonpublic school students. The Department expects that LEA and school staff will work closely with families to provide needed transportation services to students who have been affected by these events.

Transportation for Resident Students Attending Nonpublic Schools

In most cases, students temporarily displaced from their residences from one school district to another school district because of the recent weather events will still be considered residents of their home school district because these students' absence from their permanent homes is temporary and these students have not established residence in another district or abandoned their permanent district residence.

Under Education Law §3635, transportation between home and school must be provided for resident students for a distance of up to 15 miles.¹ With approval of the voters, school district policy may provide transportation beyond 15 miles. In addition, centralized transportation for

¹ Please note that Education Law §3635 contains certain exceptions to the transportation requirements for city school districts.

resident students attending nonpublic schools may be available under certain circumstances (Education Law §3635[1][b]). All the rules relating to regular transportation continue to apply to resident students temporarily displaced from their homes. Thus, a student attending a nonpublic school who is not temporarily displaced, but rather established permanent residence in a new school district as a result of a natural disaster must be provided transportation services as described in Education Law §3635.

Transportation for Homeless Students Attending Public Schools

McKinney-Vento applies to students who lack a fixed, regular and adequate nighttime residence, including students in temporary living situations such as shelters and emergency or transitional housing; students living in hotels, motels, trailer parks, or camp grounds due to lack of alternative adequate housing; and students sharing the housing of other persons due to loss of housing, economic hardship or a similar reason (42 USC §11434a[2]; Education Law §3209[1]). Pursuant to McKinney-Vento, States must ensure that all homeless students have equal access to the same free, appropriate public education, including a public preschool education (42 USC §11431). In addition, a school district's homeless liaison must ensure that homeless children are identified and receive the educational services for which they are eligible, including preschool programs administered by the district (42 USC §11432[g][6][A]).

In some cases, students who have been displaced due to recent weather events may be homeless. Homeless determinations must be made on a case-by-case basis. In non-regulatory guidance, USDE has stated:

When children and their families are displaced from their housing as a result of a natural disaster, there is often a period of instability in which various private organizations and local, State, and Federal agencies provide assistance. SEAs and LEAs should determine such children's eligibility for McKinney-Vento services on a case-by-case basis. In making this determination, they should take into consideration the services that are available through these other sources.

Following a disaster, one of the LEA's first priorities is to re-open impacted schools as soon as possible and take steps to normalize school routines. LEAs should then proceed to examine whether children who have been displaced by the natural disaster are eligible for McKinney-Vento services on a case-by-case basis. In such circumstances, the Department would provide technical assistance and other assistance, as available, to help the LEA (see "Education for Homeless Children and Youth Program, Title VII-B of the McKinney-Vento Homeless Assistance Act," Question G-11 at: <http://www2.ed.gov/programs/homeless/guidance.pdf>).

If a student seeks enrollment or services as a homeless student under McKinney-Vento, a district is required to immediately admit the student even if he or she is unable to produce records normally required for enrollment, such as academic records, medical records, immunization records, proof of residency or other documentation (Education Law §3209[2][e][1]; 8 NYCRR §100.2[x][4][ii]) and must provide the student with access to all of the district's programs,

activities and services – including transportation – to the same extent as they are provided to resident students (42 USC §11432[g][4]; Education Law §3209[2][e][2]; 8 NYCRR §100.2[x][4][iii]). Thereafter, if a district disputes that a student is homeless, it must follow the dispute resolution procedures established in Commissioner’s regulations (8 NYCRR §100.2[x][7]).

Transportation for Homeless Students Attending Nonpublic Schools

USDE has stated that “[s]tudents in private schools do not receive services under the McKinney-Vento Act” (see “Guidance on McKinney-Vento Homeless Children and Youth Program Funds Made Available Under the American Recovery and Reinvestment Act of 2009,” Question E2 at: <http://www2.ed.gov/policy/gen/leg/recovery/guidance/homeless.pdf>). Accordingly, McKinney-Vento does not require that school districts provide transportation services to homeless students attending nonpublic schools.

Transportation for Homeless Students Attending Public Charter Schools

In the case of charter school students, the district designated as the school district the student is entitled to attend (district of current location or district of origin) is obligated to provide transportation to such students under Education Law §3209(4). USDE has confirmed that public charter schools are included within the definition of “school of origin” under McKinney-Vento. Where the district of origin is the designated school district, such district must provide transportation to and from the student’s temporary housing location and the charter school (Education Law §3209[4][c]). Where the district of current location is designated, such district must provide transportation on the same basis as a resident student (Education Law §3209[4][c]).

District staff and McKinney-Vento liaisons must ensure that parents of McKinney-Vento eligible students are informed of the availability of transportation and work with parents to ensure that transportation is arranged in accordance with state and federal law. If you have further questions regarding McKinney-Vento please contact Melanie Faby, McKinney-Vento Program Associate at (518) 473-0295 or mfaby@mail.nysed.gov.

SED strongly recommends that districts work together to share bus routes and other transportation resources, consistent with Education Law and Commissioner’s Regulations, to help students maintain educational stability during this most trying of times.

For more information please see:

<https://stateaid.nysed.gov/trans/nonpublic.htm>

<http://www.p12.nysed.gov/nonpub/handbookonservices/transportation.html>

http://www.p12.nysed.gov/schoolbus/education_law/Education_Law_3635-1e.html

We appreciate the challenges you face and the work that you are doing to ensure that students continue to receive the education that they need and deserve. If you have additional questions regarding transportation issues for displaced students or need additional assistance from the Department, please contact: Mary Sansaricq, State Director of Pupil Transportation, at (518) 473- 2833 or msansari@mail.nysed.gov.