

# **DISPUTE RESOLUTION PROCESS FOR FAMILIES AND YOUTH EXPERIENCING HOMELESSNESS**

## **BACKGROUND INFORMATION**

**The McKinney-Vento Homeless Assistance Act (also referred to as the Act or the McKinney-Vento Act), as amended by the Every Student Succeeds Act (ESSA), mandates basic protections and procedures be in place when a dispute arises “over eligibility, school selection or enrollment in a school” [42 U.S.C. § 11432(g) (3) (E)].**

These protections and procedures must be available to address disputes related to whether a student has the right to enroll in a particular school based on eligibility, school selection, and enrollment, while upholding all the rights that the McKinney-Vento Act provides to children and youth experiencing homelessness, parents, and guardians. As such, the New Mexico Public Education Department (NMPED) has developed a dispute resolution process as required by the McKinney-Vento Act.

The Act acknowledges that disputes may arise between the Local Education Agency (public school, charters school, or district) and students experiencing homelessness and their parents, or unaccompanied youth, when the LEA seeks to place a student in a school other than the school of origin or the school requested by the parent or unaccompanied youth. The Act includes dispute resolution among the required duties of the McCurdy Charter School Homeless Liaison.

**New Mexico Charter School law requires that admission to McCurdy Charter School be decided by a lottery drawing. Charter Schools are encouraged but not required to give preference in lottery admission to students experiencing homelessness. The Lottery Application form is available online at [www.mcsk12nm.org](http://www.mcsk12nm.org) from approximately November 1 through February 15.**

**The lottery drawing** is open to the public, and will take place mid-February. Lottery numbers for each grade are assigned to each lottery applicant by a computer-based random number generator. Attendance at the lottery drawing is optional and does not affect your child’s chances of acceptance. You will be notified by phone, email and/or mail if we reach your child’s lottery number. Please contact the school immediately if your contact information changes. McCurdy is not responsible for incorrect contact information. You must sign and return the acceptance letter within three school days of notification of acceptance. If we do not receive a signed acceptance letter, the space will be offered to the next student on the waiting list.

**If an enrollment opening becomes available during the school year**, we notify each family on the waiting list until the opening is filled. If your student is not accepted, you must enter the

lottery the following year. Waiting lists do not carry over from year to year.

**Sibling Enrollment Policy:** Siblings of currently enrolled McCurdy students are granted sibling preference and will be placed first in any open spots at each grade level. Siblings of currently enrolled students who wish to attend McCurdy must be entered in the online lottery. A sibling waiting list will be created if there are more siblings than spaces available in each grade. If a parent does not enter their sibling student in the lottery, that student will be placed at the bottom of the sibling waiting list. A sibling is defined as a brother or sister of a student attending McCurdy Charter School at the time of the lottery who:

- is living in the same household and has one or both parents in common;
- is a half-sibling or step-sibling living in the same household as a currently enrolled student; or is a child under court-ordered legal guardianship of parent(s) of a student currently attending McCurdy. Verification of sibling status is required.

Disputes related to the school placement and enrollment of children and youths experiencing homelessness shall be resolved within the parameters of the federal McKinney-Vento Act as amended by the ESSA. The dispute resolution process for the school placement of children and youths experiencing homelessness shall not be used in an effort to circumvent or supersede any part of the federal McKinney-Vento Act.

***Issues related to:***

- ***the definition of homelessness;***
- ***the responsibilities of the LEA to serve children and youth experiencing homelessness;***
- ***and/or the explicit rights of children and youth experiencing homelessness***

***are addressed in the McKinney-Vento Act.***

**The following procedures are specified in the McKinney Vento Act:**

**Enrollment:** Children or youth experiencing homelessness must be immediately enrolled in the school in which enrollment is sought, whether it be the school of origin, or the school in the attendance area, regardless if they are missing school records, proof of residency, immunization and other health records, lack of a parent or legal guardian or have unpaid fees. Immediate enrollment includes attending classes and participating fully in school activities (includes free meals).

If a dispute arises over school selection or enrollment in a school, the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute and must be immediately referred to the Homeless Liaison. In the case of an unaccompanied youth, the Homeless Liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute.

**Written Explanation:** The LEA must provide a written explanation of the school placement

decision to the parent or, in the case of an unaccompanied youth, to the unaccompanied youth. The written explanation must include a description of the parent's or unaccompanied youth's right to appeal the decision.

**Liaison:** The designated LEA Homeless Liaison is assigned to carry out the dispute resolution process in an expeditious manner.

**Responsibility:** The LEA's Homeless Liaison is responsible to inform the parent of the student(s) experiencing homelessness or the unaccompanied youth of the dispute resolution process.

## **OVERVIEW**

In a case where a dispute occurs regarding the enrollment of a homeless child or youth, the following process must be used:

- Level I: The initial appeal is made to the school's Homeless Liaison. If unresolved at this level, then proceed to Level II,
- Level II: The case is appealed to the Director. If the dispute continues to be unresolved, then proceed to Level III,
- Level III: The final appeal is to the Office of the State Coordinator for the Education of Homeless Children and Youth. If there is a complaint against the final appeal with the State Coordinator, then proceed to Level IV.
- Level IV: If the complaint concerns a violation by the state department and meets the applicable requirements of 6.10.3.8.

**Every effort must be made to resolve the complaint or dispute at the local level before it is brought to NMPED.**

## **THE INITIATION OF THE DISPUTE RESOLUTION PROCESS**

**If the LEA seeks to place a child or youth experiencing homelessness in a school other than the school of origin, or the school requested by the parent or unaccompanied youth, the child's/youth's parent or the unaccompanied youth shall be informed in a language and format understandable to the parent or unaccompanied youth of their right to appeal the decision made by the LEA and be provided the following:**

- Written contact information for the school Homeless Liaison and State Coordinator, with a brief description of their roles.
- A simple, written detachable form that parents, guardians, or unaccompanied youth can complete and turn in to the school to initiate the dispute process. The LEA should copy the form and return the copy to the parent, guardian, or youth for their records when it is submitted.
- A written step-by-step description of how to dispute the LEA's decision.
- Written notice of the right to enroll immediately in the school of choice pending resolution

of the dispute.

- Written notice of the right to appeal to the state if the local-level resolution is not satisfactory.
- Written timelines for resolving LEA and state-level appeals.

### **Level I: School Homeless Liaison Communication**

#### **If a parent or unaccompanied youth wishes to appeal the school's decision related to a student's placement:**

1. The parent or unaccompanied youth must file a request for dispute resolution with the school's Homeless Liaison by submitting a form that initiates the dispute resolution process. The request for dispute resolution must be submitted by the parent or the unaccompanied youth to the LEA's Homeless Liaison within fifteen (15) business days of receiving notification that the LEA intends to enroll the student in a school other than that requested by the family or the unaccompanied youth.
2. The parent or unaccompanied youth may submit the request directly to the Homeless Liaison or they may submit the request to the school where the dispute is taking place. If the request is submitted to the school where the dispute is taking place, the school shall immediately forward the request to the school's Homeless Liaison. In the event that the Homeless Liaison is unavailable, a McCurdy Charter School designee may receive the parent's or unaccompanied youth's request to initiate the dispute resolution process.
3. The Homeless Liaison must log their receipt of the complaint, including the date and time, with a written description of the situation and the reason for the dispute, and a copy of the complaint must be forwarded to the Director.
4. Within five (5) business days of their receipt of the complaint, the Homeless Liaison must make a decision on the complaint and inform the parent or unaccompanied youth in writing of the result. It is the responsibility of the LEA to verify the parent's or unaccompanied youth's receipt of the written notification regarding the Homeless Liaison's Level I decision.
5. If the parent or unaccompanied youth disagrees with the decision made at Level I and wishes to move the dispute resolution process forward to Level II, the parent or unaccompanied youth shall notify the school's Homeless Liaison of their intent to proceed to Level II within ten (10) business days of receipt of notification of the Level I decision.
6. If the parent or unaccompanied youth wishes to appeal the LEA's Level I decision, the Homeless Liaison shall provide the parent or unaccompanied youth with an appeals package containing:
  - a. A copy of the parent's or unaccompanied youth's complaint which was filed with the school's Homeless Liaison at Level I,

- b. The decision rendered at Level I by the school, and
- c. Any additional information from the parent, unaccompanied youth, and/or homeless liaison.

### **Level II: McCurdy Director**

#### **If the dispute remains unresolved after a Level I appeal:**

1. If a parent disagrees with the decision rendered by the school's Homeless Liaison at Level I, the parent or unaccompanied youth may appeal the decision to McCurdy's Director, or their designee, (the designee shall be someone other than the school's Homeless Liaison) using the appeals package provided at Level I.
2. The Director, or their designee, will arrange for a personal conference to be held with the parent or unaccompanied youth. The personal conference will be arranged within five (5) business days of the parent or unaccompanied youth's notification to the school of their intent to proceed to Level II of the dispute resolution process. Once arranged, the meeting between the Director, or their designee, and the parent or unaccompanied youth is to take place as expeditiously as possible.
3. The Director, or their designee, will provide a decision in writing to the parent or unaccompanied youth with supporting evidence and reasons, within five (5) business days of the Director's, or their designee, personal conference with the parent or unaccompanied youth. It is the responsibility of the school to verify the parent's or unaccompanied youth's receipt of the written notification regarding the superintendent's Level II decision.
4. A copy of the appeals package, along with the written decision made at Level II is to be shared with the district's homeless liaison.
5. If the parent or unaccompanied youth disagrees with the decision made at Level II and wishes to move the dispute resolution process forward to Level III, the parent or unaccompanied youth shall notify the McCurdy's Homeless Liaison of their intent to proceed to Level III within ten (10) business days of receipt of notification of the Level II decision.
6. If the dispute remains unresolved, the process then moves to Level III.

### **Level III: Office of the State Coordinator for the Education of Homeless Children and Youth. (If the dispute remains unresolved after a Level II appeal)**

1. McCurdy's Director shall forward all written documentation and related paperwork to the State Coordinator for the Education of Homeless Children and Youth for review, within five (5) business days of notifying the parent or unaccompanied youth of the decision rendered at Level II.
2. The entire dispute package including all documentation and related paperwork is to be submitted to State Coordinator for the Education of Homeless Children and Youth in one

consolidated and complete package via hard copy mail delivery. Documents submitted separately from the dispute package, documents submitted after the fact, or documents submitted outside of the dispute package in an attempt to extend the dispute timeframe or impact a pending dispute outcome may not be reviewed. It is the responsibility of the LEA to ensure that dispute packages are complete and ready for review at the time they are submitted to OSPI.

3. The State Coordinator for the Education of Homeless Children and Youth shall make a final decision within fifteen (15) business days of receipt of the complaint.
4. The final decision will be forwarded to the school's Homeless Liaison for distribution to the parent and the LEA.
5. The decision made by State Coordinator for the Education of Homeless Children and Youth shall be the final resolution for placement of a homeless child or youth in the district.
6. The office of the school Director shall maintain a record of all disputes related to the placement of homeless children and youth. These records shall include disputes resolved at Level I, Level II, and/or Level III and shall be made available to State Coordinator for the Education of Homeless Children and Youth upon request.

## **INTER-SCHOOL DISPUTES**

**If a dispute arises over school selection or enrollment in a school, the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute. In the case of an unaccompanied youth, the Homeless Liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute.**

Disputes arising between school districts (LEAs) regarding the placement of a homeless child or youth in should be resolved between the districts at the local level in the best interest of the child and according to the law. Disputes between LEAs that remain unresolved shall be forwarded in writing by either of the disputing districts to the state homeless education coordinator, or designee. A decision will be made by the state homeless coordinator, or designee, along with a committee of NMPED staff within ten (10) business days of the receipt of the dispute and will be forwarded in writing to the districts' superintendents and McCurdy's Director, the districts' and McCurdy's homeless liaisons and the parent(s) of the homeless child, or the homeless youth.

The decision made by the state coordinator shall be the final resolution between the disputing LEAs for placement of a homeless child or youth in a district.

"Homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

- 1) children and youth who are sharing the housing of other persons due to loss of housing, economic

hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

- 2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- 3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- 4) migratory children (as such term is defined in Section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

“School of origin” means the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

“LEA” means local education agency.

“Title IX” means Title IX of the Education Amendments of 1972, codified as 20 US Code Sections 1681 et seq, which provides in part that, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. [12-31-98; 6.10.3.7 NMAC - Rn, 6 NMAC 1.5.1.7 & A, 11-30-00; A, 10-17-05; A, 11-30-06]

### **6.10.3.8 FILING A COMPLAINT:**

A. The NMPED will accept and investigate complaints from organizations or individuals with respect to applicable or covered programs. The complaint must:

- (1) be written;
- (2) be signed by the complaining party or his or her designated representative;
- (3) contain a statement that the department or an agency or consortium of agencies has violated a requirement of a federal statute or regulation that applies to the program;
- (4) contain a statement of the facts on which the complaint is based and the specific requirement alleged to have been violated; and
- (5) in the case of Title IX, must contain a statement that the department or any of its employees, has discriminated against the complainant on the basis of sex in regard to an education program or activity operated or managed by the department given that the department is a recipient of federal financial assistance.

B. In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act relating to a dispute not resolved at the district level, the LEA shall forward the department’s dispute resolution process form along with the McCurdy Charter School’s written explanation of the school’s decision to the department’s homeless liaison within 5 calendar days of the McCurdy Charter School’s final decision; The filing of these documents shall be deemed to satisfy the requirements of Paragraphs (1) through (4) of Subsection A of this section. The parent, guardian or student may also

initiate the appeal by providing copies of these documents to the department's homeless liaison. [12-31-98; 6.10.3.8 NMAC - Rn, 6 NMAC 1.5.1.8 & A, 11-30-00; A, 10-17-05; A, 11-30-06]

### **6.10.3.9 COMPLAINTS AGAINST AN AGENCY OR CONSORTIUM OF AGENCIES:**

A. Impartial review. Upon receipt of a complaint which meets the requirements of Section 6.10.3.8 of this rule, the department will:

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

B. Decision. A written decision, which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint, shall be issued by the secretary of education or designee and mailed to the parties within sixty (60) calendar days of receipt of the written complaint. In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act, the decision must be issued within thirty (30) calendar days. Such decision will further include:

- (1) procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and, if corrective action is required, such action shall be designated and the decision shall include the time line for correction and the possible consequences for continued noncompliance;
- (2) a statement of the right to request the secretary of the United States department of education to review the final decision at the secretary's discretion; complaints regarding participation by private school children must be appealed to the secretary no later than thirty (30) days after the department issues its decision; an appeal regarding participation by private school children must be accompanied by a copy of the decision and a complete statement of reasons supporting the appeal.

C. Failure or refusal to comply. If the agency or consortium of agencies fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal statute or regulation. The department will retain jurisdiction over the issue of noncompliance with the law or regulations and will retain jurisdiction over the implementation of any corrective action required.

D. Informal resolution.

(1) Nothing herein shall preclude the availability of an informal resolution between the complainant and the agency or consortium of agencies, nor shall this rule preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation.

(2) In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act, each district shall have a written policy for concerned parties to resolve disputes, and every effort should be made to resolve the dispute at the district level. The district level procedure must adhere to the following parameters:

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

(b) When a dispute arises over school selection or enrollment, pending resolution of the dispute, the homeless child or youth must be immediately enrolled in the school in which the child or youth is seeking enrollment, and provided all services to which student is entitled.

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

(i) contact information for the LEA homeless liaison and the state coordinator, with a brief description of their roles;

(ii) a step by step description of how to make use of the dispute resolution process;

(iii) notice of the right to immediately enroll in the school of choice pending resolution of the dispute and notice that immediate enrollment includes full participation in all school activities;

(iv) notice of the right to obtain the assistance of advocates or attorneys;

(v) notice of the right to appeal to the department if the district-level resolution is not satisfactory;

(vi) the timelines for resolving district and department-level appeals; (vii) notice of the right to provide written or oral documentation to support their position; and

(viii) a simple form that parents, guardians or the student can complete and return to the school to initiate the process.

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

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

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

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

[12-31-98; 6.10.3.9 NMAC - Rn, 6 NMAC 1.5.1.9 & A, 11-30-00; A, 10-17-05, A, 11-30-06]

### **6.10.3.10 COMPLAINTS AGAINST THE NEW MEXICO DEPARTMENT OF PUBLIC EDUCATION:**

A. If the complaint concerns a violation by the department and meets the applicable requirements of 6.10.3.8 NMAC, the secretary of education or designee will appoint an impartial person or impartial persons to conduct an investigation.

B. Investigation. The person or persons appointed pursuant to this section will:

- (1) acknowledge receipt of the complaint in writing;
- (2) undertake an impartial investigation which shall include a review of all relevant documentation presented and may include an independent on-site investigation, if necessary;
- (3) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
- (4) review all relevant information and make an independent determination as to whether the department is violating a requirement of an applicable federal statute or regulation.

C. Decision. A written decision, including findings of fact, conclusions, and the reasons for the decision and addressing each allegation in the complaint, shall be issued by the person or persons appointed pursuant to this section and mailed to the parties within sixty (60) calendar days of receipt of the written complaint. The decision will include a statement of the right to request the secretary of the United States department of education to review the final decision at the secretary's discretion.

Complaints regarding participation by private school children must be appealed to the secretary no later than thirty (30) days after the decision is issued. An appeal regarding participation by private school children must be accompanied by a copy of the decision and a complete statement of reasons supporting the appeal.

D. Nothing herein shall preclude the availability of an informal resolution between the complainant and the department, nor shall this rule preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation. [12-31-98; 6.10.3.10 NMAC - Rn, 6 NMAC 1.5.1.10 & A, 11-30-00; A, 10-17-05]

**6.10.3.11 EXTENSION OF TIME LIMIT:** An extension of the time limit under 6.10.3.9 NMAC and 6.10.3.10 NMAC of this rule will be permitted by the secretary of education or designee only if exceptional circumstances exist with respect to a particular complaint. [12-31-98; 6.10.3.11 NMAC - Rn, 6 NMAC 1.5.1.11 & A, 11-30-00; A, 10-17-05]

**6.10.3.12 NOTICE TO PARENTS:** Public school districts, charter schools and agencies will disseminate, free of charge, adequate information about the complaint procedures to parents of students, and appropriate private school officials or representatives. [6.10.3.12 NMAC - N, 11-30-00; A, 10-17-05]

**6.10.3.13 CONFLICTS:** If any statute or regulation governing any federal program subject to this rule affords procedural rights to a complainant exceeding those set forth in this rule, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of the complaint in such a case, the secretary of education or designee shall identify the procedures applicable to that complaint. [12-31-98; 6.10.3.13 NMAC - Rn, 6 NMAC 1.5.1.12 & A, 11-30-00; A, 10-17-05]

HISTORY OF 6.10.3 NMAC: PRE-NMAC HISTORY: The material in this Part is derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 85-1, Complaint Procedure, filed April 17, 1985 and State Board of Education (SBE) Regulation No. 94-4, Complaint Procedure, filed October 3, 1994.