

Education Rights of Homeless Students

A G U I D E F O R A D V O C A T E S
Second Edition



Education Law Center



Sponsored by New Jersey State Bar Foundation

ABOUT THE NEW JERSEY STATE BAR FOUNDATION

The New Jersey State Bar Foundation, founded in 1958 as the charitable and educational arm of the New Jersey State Bar Association, is an organization dedicated to promoting free law-related education and giving all New Jersey residents a basic understanding of the legal system. Programs sponsored by the Foundation include seminars on such topics as wills, landlord-tenant matters, divorce, special education, real estate, disability law and health issues. Dedicated to providing programs for children and teachers, the Foundation sponsors mock trial competitions for elementary, middle and high school students, and training sessions for teachers on conflict resolution and peer mediation, as well as teasing and bullying. For students, the Foundation publishes a legal newspaper for kids, titled *The Legal Eagle*, and a newsletter promoting tolerance, called *Respect*. Both publications are produced three times a year.

Other publications and pamphlets produced by the Foundation include *Consumer's Guide to New Jersey Law*; *Domestic Violence: The Law and You*; *Law Points for Senior Citizens* (second edition); *Disability Law: A Legal Primer* (fifth edition), cosponsored with the Essex County Bar Association; *Students' Rights Handbook*, cosponsored with the American Civil Liberties Union of New Jersey; and *Educational Guide for Trial Jurors* (second edition). Some of these publications are available in Spanish and all are available in alternative formats for individuals with disabilities. For more information or copies of program materials, visit the Foundation online at www.njsbf.org or call 1-800 FREE LAW.

Acknowledgments

This manual was written by the attorneys at Education Law Center and was revised and updated by Elizabeth Athos, senior attorney at Education Law Center.

About the Education Law Center

Education Law Center (ELC) was established in 1973 to advocate on behalf of New Jersey's public school children for access to an equal and adequate education under state and federal laws. ELC works to improve educational opportunities for low-income students and students with disabilities, through public education, policy initiatives, research, communications, and when necessary, legal action.

ELC is the only legal services program in New Jersey, and one of very few across the country, that specializes in education law. ELC currently operates two projects to improve education for New Jersey's children: the Student Rights Project (SRP) and the Abbott Schools Initiative (ASI). SRP provides free legal representation to school children who are denied access to an adequate or appropriate public education. The types of cases accepted by SRP include: special education for children with disabilities, school discipline, school district admissions, and other violations of individual student rights.

The Abbott Schools Initiative (ASI) works to assure the full, effective, and timely implementation of the programs and reforms ordered by the New Jersey Supreme Court in the landmark *Abbott v. Burke* rulings. ELC represents the plaintiffs in the *Abbott* case — more than 350,000 preschool and school-age children in 31 urban school districts across the state. *Abbott* has been called “the most significant education case since the Supreme

Court's desegregation ruling nearly 50 years ago" (*NY Times*, 2002) and, along with *Brown v. Board of Education*, the most important court ruling in New Jersey in the 20th century (*NJ Lawyer*, 2000).

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There is no question that students who are homeless, 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 public education as is available to other students. The Act also requires states to eliminate barriers to the 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

Parents and school administrators will sometimes disagree over whether a student is in fact homeless or, more frequently, where the student should be educated while homeless. As part of its obligation under the McKinney 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 should educate and transport a homeless student, and which school district should pay for the student's education and transportation. The purpose of these procedures is to ensure speedy enrollment and continuity of education, for students who are homeless.

This pamphlet is designed to help parents, guardians and caregivers understand the legal concepts and procedures involved in disputes over the enrollment of homeless students in local public schools, and to inform them of their legal rights.² In reading this information, please remember that the requirements of the McKinney Act and of the state regulations concerning the education of

homeless students are intended to minimize interruptions in schooling when a student becomes homeless. 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 Homeless Education Program in the Office of Specialized Populations, New Jersey Department of Education. The phone number for that program is (609) 292-8777.

The rules governing the education of homeless students in this state are found in the New Jersey Administrative Code, Title 6A, Chapter 17 (N.J.A.C. 6A:17). These are state regulations that all school districts must follow.

WHEN IS A STUDENT CONSIDERED “HOMELESS” FOR THE PURPOSES OF ENROLLMENT IN PUBLIC SCHOOLS?

The term “homeless” refers to individuals who lack a fixed, regular, and adequate residence.³ New Jersey law provides that a child or youth in preschool through grade 12 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, tents, or temporary shelters for migrant workers; (3) the residence of relatives or friends with whom the homeless student is temporarily residing out of necessity because the family lacks a regular or permanent residence of its own; and (4) any temporary location where a student is awaiting a foster care placement.⁴

The circumstances under which a family becomes homeless, such as by an eviction, have no bearing on the homeless status of the student.

If a student meets any one of the descriptions listed above, he or she should be considered “homeless.” If there is a dispute over whether or not a student is homeless, the school district(s) or parent(s) involved must immediately notify the county superintendent of schools,⁵ and the county superintendent must immediately decide whether or not the student qualifies as homeless.⁶ The county superintendent’s determination regarding a family’s status as “homeless” can be appealed to the commissioner of education. See discussion on dispute resolution below.

WHAT HAPPENS IF A STUDENT BECOMES HOMELESS?

If a student becomes homeless, the student’s parent, or a social worker helping the family, should immediately contact the school district where the student is temporarily residing and ask for the name and phone number of the school district’s **homeless liaison** (pronounced “lee-ai-zon”). Every school district is required to have a homeless liaison.⁷ This person is responsible for ensuring that a homeless child or youth residing in the district is enrolled and attending school.⁸ In filling this role, the liaison needs to make sure that a “school district of origin” is determined and that timely school enrollment is made in accordance with the student’s best interests.

The liaison of the school district in which the student is presently residing should be notified as soon as possible that the student is homeless, and should be provided information

including the student's name, age, grade, school last attended, address prior to becoming homeless and current, temporary address. The liaison of the student's temporary residence is responsible for notifying the school district liaison of the "school district of origin" **within 24 hours** of the need for educational services for the student.⁹

The liaison of the "school district of origin" is responsible for **immediately** coordinating 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.¹⁰

All school district liaisons are responsible for communicating and cooperating with other school districts involved and for developing systems to make sure that homeless students are enrolled in and attending school.¹¹

School district liaisons must fulfill additional obligations such as ensuring that homeless students receive educational services for which they are eligible, including Head Start, Even Start, and preschool programs, referring homeless students to medical, dental, mental health, and other appropriate services, informing parents of educational opportunities available to their children, ensuring dissemination of public notice of the educational rights of homeless students, informing parents of transportation services and assisting them in accessing those services, and assisting parents in obtaining their homeless child's medical records or required immunizations.¹²

Finally, district liaisons have special duties to assist homeless youth who are not accompanied by parents in securing their rights under the McKinney Act.¹³

A homeless student’s “school district of origin” is the district where the student’s parent last resided before becoming homeless, even if the student was not yet enrolled in school at the time the homelessness occurred.¹⁴ The chief school administrator or designee of the school district(s) involved will determine which is the school district of origin based upon information received from the parent, the Department of Human Services or the Department of Children and Families, a shelter provider, another school district, or an involved agency or case manager.¹⁵

The school district identified as the school district of origin for a homeless student remains the school district of origin for as long as the parent of the student remains homeless.¹⁶ The school district of origin is responsible for:

- (1) educating the homeless student;
- (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 transportation for the homeless student in accordance with state transportation regulations.¹⁷

Once the school district of origin is identified, that district is required to act immediately to see that a homeless student is enrolled in the school where his or her best interest will be met.¹⁸ See discussion on enrollment below.

If the school districts involved cannot agree which district is the “school district of origin,” then they must immediately contact the county superintendent(s) for the school districts involved.¹⁹ The county

superintendent(s) must make a determination immediately as to the student's school district of origin. A district disputing a county superintendent's determination may appeal to the Department of Education.²⁰

See discussion on dispute resolution below.

HOW IS THE DISTRICT ENROLLMENT OF A HOMELESS STUDENT DECIDED?

A parent is entitled to a decision on his or her child's enrollment **immediately** after the school district of origin is notified that the student is homeless.²¹ This decision is made by the chief school administrator of the school district of origin, or his/her designee.

However, the school district of origin is required to consult with the parent before the chief school administrator makes a decision.²²

In addition, the school district of origin must follow certain rules in deciding a homeless student's district enrollment. **The first choice for enrollment is to enroll the homeless student in the school of origin except when doing so is contrary to the wishes of the homeless student's parent.**²³

If the parent is opposed to enrollment in the school of origin, there are two additional choices for enrollment. One is to continue the student's education in the school district where he or she last attended school if different from the school district of origin; the other is to enroll the student in the school district where he or she is temporarily living.²⁴

The choice of enrollment must be based on the student's "best interest."²⁵ A decision as to the student's best interest must consider:

- (1) Enrolling the homeless student in the school of origin except when doing so is contrary to the wishes of the parent;
- (2) 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 vocational programs; and
- (4) Distance, travel time, and safety in transporting the student from his or her temporary residence to the school.²⁶

Once a decision is made by the school district of origin, the student must be enrolled **immediately**.²⁷ The school district of origin 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.²⁸ The district of origin is also required to provide the student's parent with a written explanation of any decision to enroll the homeless student in a school other than the school of origin or the school requested by the parent.²⁹ Enrollment determinations must continue in effect for the duration of a family's homelessness, including through the remainder of any academic year in which the homeless student becomes permanently housed.³⁰

Whenever a district of origin cannot be determined for a particular student, the chief school administrator of the district in which the student is temporarily residing shall enroll the child immediately in the district of temporary residence or the district where the student last attended school.³¹

If a homeless student with a disability is enrolled in a district other than the school district of origin, he or she must be placed in a program consistent with the goals and objectives of the current Individualized Education Program (IEP). Within 30 days of placement, the district where the student is

placed must review and revise the student's IEP in accordance with N.J.A.C. 6A:14 (the state special education regulations).³²

If a student is enrolled in a district other than the district of origin, the chief school administrator of the district of origin or designee must forward all relevant school and health records to the new district.³³ The enrolling district has an independent obligation to immediately contact the last school attended to obtain academic and immunization or medical records, and to immediately refer the parent to the district's homeless liaison for assistance in obtaining missing immunizations or records.³⁴ **A homeless student may not be excluded from school based on an inability to produce records normally required for enrollment, such as previous academic records, medical records or proof of residency.**³⁵

Any dispute or appeal (see section below) shall not delay the homeless student's immediate entrance into school. 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.³⁶

HOW ARE DISPUTES RESOLVED?

While most disputes regarding the education of homeless students are resolved at the county level through the county superintendent, parents are not always satisfied with the county superintendent's determination, and may want to appeal the decision further. The state has developed the following procedures for appealing determinations of homelessness and decisions regarding the student's enrollment.

Determination of homelessness:

When a dispute arises as to whether a student is homeless, the chief school administrators of the districts involved or the parent of the child must notify the county superintendent, who in turn, must issue a decision on the student's status **immediately**.³⁷ The parties involved may appeal the county superintendent's determination to the commissioner of education by filing an appeal with the Bureau of Controversies and Disputes pursuant to N.J.A.C. 6A:3. For information on filing a petition of appeal, contact the Bureau of Controversies and Disputes at (609) 292-5705.

Determination of school district of origin: Disputes over district of origin determinations, like disputes over homelessness determinations, are decided in the first instance by the county superintendent. The districts involved must notify the county superintendent immediately, who must then make a determination **immediately**.³⁸ A district who disputes the county superintendent's decision may appeal to the Department of Education through special procedures referenced in the regulations.³⁹ The regulations are silent as to the right of parents to appeal a school district of origin determination, but, like any other school law decision, if contested by the parents, 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.

Determination of district enrollment:

A parent who disagrees with the enrollment decision made by the district of origin has the right to appeal that decision to the county superintendent.⁴⁰ ELC recommends that a parent who objects to an enrollment decision notify the county superintendent directly of

that objection and his or her desire to appeal that decision by calling the New Jersey Department of Education's county superintendent of schools for the county where the district of origin is located and, if possible, confirming the objection in writing. In addition, the school district of origin's chief school administrator or designee is required to notify the county superintendent immediately of any objection to its enrollment decision made by the parent or other involved party.⁴¹ The county superintendent must then immediately determine where the homeless student shall be enrolled based on the student's "best interest" as set forth above.⁴²

If a parent disagrees with a decision of the county superintendent, then he or she may request mediation to see whether an agreement can be reached on the appropriate district of enrollment for the homeless student.⁴³ A request for mediation must identify the issues in dispute and what result the parent seeks. Requests for mediation must be made in writing to the following office:

Homeless Education Program
Office of Specialized Populations
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

A mediation conference must be held within five school days of the request at a time and place reasonably convenient to all parties in the dispute.⁴⁴ The mediator is there to help the parties figure out why they disagree and to identify options that could resolve the dispute.

If the mediation conference does not result in an agreement, then the parent should contact the Homeless Education Program again to request assistance in filing an appeal to the state commissioner of education under N.J.A.C. 6:3.

Federal law requires that a homeless student be immediately admitted to the school in which enrollment is sought, until a dispute over school selection or enrollment can be resolved.⁴⁵ Thus, while an appeal to the county superintendent, a request for mediation, or an appeal to the state 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.⁴⁶

WHO PAYS TUITION AND TRANSPORTATION COSTS?

The school district of origin is responsible for all tuition costs, no matter where the homeless student is living and going to school, except in those cases where the state assumes fiscal responsibility for the tuition of a homeless student.⁴⁷

The district of origin is similarly responsible for providing transportation to its homeless students.⁴⁸ If the homeless student is enrolled in school outside the district of origin, the actual transportation must be provided by the district where the student is enrolled, but the district of origin remains responsible for the cost of that transportation.⁴⁹ Where the state has assumed fiscal responsibility for tuition costs, the district where the homeless student is enrolled must provide transportation.⁵⁰

In providing transportation to homeless students, school districts are required under the state's transportation regulations to explore alternatives and to choose the most economical and safest mode of transportation.⁵¹

14 WHO MONITORS COMPLIANCE?

The New Jersey Department of Education is responsible for monitoring school districts to make sure that they follow the state rules on the education of homeless students. Any violations of these rules should be brought immediately to the attention of the county superintendent or the Homeless Education Program in the Office of Specialized Populations, New Jersey Department of Education.

ENDNOTES

- 1 42 U.S.C.A. §11431.
- 2 Under the state law which applies to the education of homeless children, the word “parent” means natural or adoptive parent, legal guardian, foster parent, surrogate parent, person acting in place of a parent and/or person legally responsible for a student’s welfare. N.J.A.C. 6A:17-2.2. Thus, the word “parent” will be used throughout this publication to refer to the parent, guardian, or other caregiver of a homeless student.
- 3 42 U.S.C. § 11302(a)(1); N.J.S.A. 18A:7B-12(c); N.J.A.C. 6A:17-2.2.
- 4 N.J.A.C. 6A:17-2.3(a)(1)-(4).
- 5 The county superintendent of schools is responsible for the initial resolution of many of the disputes involving homeless children. The county superintendent is a State Department of Education employee charged with monitoring and assuring compliance with the school laws for the districts within the county. See Appendix for a list of County Superintendents.
- 6 N.J.A.C. 6A:17-2.8(a).

- 7 N.J.A.C. 6A:17-2.5(a).
- 8 N.J.A.C. 6A:17-2.5(a)(2).
- 9 N.J.A.C. 6A:17-2.5(b).
- 10 N.J.A.C. 6A:17-2.5(c).
- 11 N.J.A.C. 6A:17-2.5(a)1-2.
- 12 N.J.A.C. 6A:17-2.5(a)(3) - (8).
- 13 42 U.S.C. § 11432(g)(3)(B)(iii), (E)(iv);
N.J.A.C. 6A:17-2.5(a)(9).
- 14 N.J.A.C. 6A:17-2.2.
- 15 N.J.A.C. 6A:17-2.4(b).
- 16 N.J.A.C. 6A:17-2.4(c).
- 17 N.J.A.C. 6A:17-2.4(a). Homeless students are entitled under federal law to transportation to and from their school of origin, **upon request**, without regard to distance requirements. 42 U.S.C. 11432(g)(1)(J)(iii)(I). Thus, parents should challenge any district or state decision to restrict transportation to those homeless students who live remote from school.
- 18 N.J.A.C. 6A:17-2.5(c); N.J.A.C. 6A:17-2.6.
- 19 N.J.A.C. 6A:17-2.8(b).
- 20 N.J.A.C. 6A:17-2.8(b).
- 21 N.J.A.C. 6A:17-2.6(c)(1).
- 22 N.J.A.C. 6A:17-2.6(c).
- 23 N.J.A.C. 6A:17-2.6(a)(1). The preference for enrolling a student in the school of origin applies even when the student becomes homeless during the summer. 42 U.S.C. 1432 (g)(3)(A)(i)(I).
- 24 N.J.A.C. 6A:17-2.6(a)(2) - (3).
- 25 N.J.A.C. 6A:17-2.6(b).
- 26 N.J.A.C. 6A:17-2.6(b).
- 27 N.J.A.C. 6A:17-2.6(c)(1).
- 28 N.J.A.C. 6A:17-2.6(c)(2).
- 29 N.J.A.C. 6A:17-2.6(c)(3).
- 30 N.J.A.C. 6A:17-2.6(h).
- 31 N.J.A.C. 6A:17-2.6(f).
- 32 N.J.A.C. 6A:17-2.6(e).
- 33 N.J.A.C. 6A:17-2.6(d).
- 34 42 U.S.C. § 11432(g)(3)(C)(ii) - (iii);
N.J.A.C. 6A:17-2.6 (i); N.J.A.C. 6A:17-2.5

(a)(8).

- 35 N.J.A.C. 6A:17-2.6(g).
- 36 N.J.A.C. 6A:17-2.8(e).
- 37 N.J.A.C. 6A:17-2.8(a).
- 38 N.J.A.C. 6A:17-2.8(b).
- 39 N.J.A.C. 6A:17-2.8(b).
- 40 N.J.A.C. 6A:17-2.8(c). If a homeless student is disabled, then any disagreement involving the services provided to that student should be resolved using the procedures for mediation or due process hearings found in N.J.A.C. 6A:14. (N.J.A.C. 6A:17-2.8(e).) Those requests are made to the Director, Office of Special Education Programs, New Jersey Department of Education, P.O. Box 500, Trenton, NJ 08625-0500, (609) 984-1286. For further information on special education disputes, see ELC's publication, *The Right to Special Education in New Jersey: A Guide for Advocates*.
- 41 N.J.A.C. 6A:17-2.8(c).
- 42 N.J.A.C. 6A:17-2.8(c).
- 43 N.J.A.C. 6A:17-2.8 (c)(1).
- 44 N.J.A.C. 6A:17-2.8(c)(1)(iii).
- 45 42 U.S.C. § 11432(g)(3)(E)(i).
- 46 N.J.A.C. 6A:17-2.8(d).
- 47 N.J.A.C. 6A:17-2.9.
- 48 N.J.A.C. 6A:17-2.4(a)(3).
- 49 N.J.A.C. 6A:27-6.2(a).
- 50 N.J.A.C. 6A:27-6.2(d).
- 51 N.J.A.C. 6A:27-6.2(e).

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