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purposes only*

August 25, 2017

SENT VIA E-MAIL – ESSA@cde.ca.gov

Tom Torlakson
State Superintendent of Public Instruction
California Department of Education
1430 N Street
Sacramento, CA 95814-5901

RE: Comments on McKinney-Vento Section of the California ESSA State Plan

Dear Superintendent Torlakson,

Thank you for the opportunity to comment on California Department of Education's ("CDE") state plan required under the Every Student Succeeds Act of 2015 ("ESSA"). I am submitting comments on behalf of the National Law Center on Homelessness & Poverty ("Law Center") and the California Homeless Youth Project, based on their experience with previous implementation of the Education for Homeless Children and Youth Program under Title VII-B of the McKinney-Vento Homeless Assistance Act ("McKinney-Vento"), existing case law, the emerging educational needs of homeless children and youth, and ESSA's recent amendments to McKinney-Vento.

The Law Center is the only national organization dedicated solely to using the power of the law to end and prevent homelessness and to enforce the rights of homeless children and youth to educational continuity and stability, through training, policy advocacy, impact litigation, and public education. Recently, the Law Center launched its Housing Not Handcuffs campaign to end and prevent the criminalization of homelessness.¹

The Law Center commends California for including foster youth and homeless children and youth in its accountability system. However, there are additional areas where California can, and should, improve the state plan. What follows are the Law Center's recommendations on what and how to do so. The Law Center advises CDE to incorporate in the state plan tips and recommendations in the U.S. Department of Education's Education for Homeless Children and Youths Program Non-Regulatory Guidance ("ED Guidance"), which are largely consistent with and track the recent ESSA amendments to McKinney-Vento.²

¹ <http://housingnohandcuffs.org/>

² Available at <https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716updated0317.pdf>.
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The state plan should address the need to prevent and end the criminalization of homeless children and youth in schools.

Across the United States, there has been a growing trend of criminalizing homelessness in schools through status offenses, zero-tolerance school discipline policies, and over reliance of schools on law enforcement and courts to discipline students. California accounts for more than one-fifth (28 percent) of the nation's homeless population, with the largest number of unaccompanied homeless youth and young adults in any state in the country.³ Addressing the school to prison pipeline for homeless students should be one of California's highest priorities, as recommended by homeless youth and stakeholders like the California Homeless Youth Project.⁴ CDE and local educational agencies must coordinate and consult with state and local policymakers and other stakeholders to ensure education-related legislation and policies do not create barriers for the education of these homeless children and youth, as part of their ongoing obligation to review and revise such barriers.⁵ The ED Guidance also makes clear that the obligation to address issues regarding criminalization of homelessness extends beyond the school building.⁶ Laws, policies, and practices that criminalize homelessness in schools can make it more difficult for homeless families and youth to get to school ready to learn, succeed, and end the intergenerational cycle of homelessness and poverty.⁷

The current draft of the state plan does not provide specific strategies to address problems with respect to the education of homeless children and youth resulting from enrollment delays that are caused by guardianship issues, residency requirements, or uniform or dress code requirements. The Law Center advises CDE to delineate its responses in Question 5 of the McKinney-Vento section of the state plan and provide specific strategies to address enrollment delays caused by documentation requirements, guardianship issues, and dress code requirements. On the issue of dress code requirements, the Law Center advises CDE to include measures that would prevent homeless students from being stigmatized, disciplined, or criminalized because of their housing status.⁸ The state plan should also describe steps LEAs should take to monitor the impacts criminalizing ordinances have on their students and their families, and work with their local community government to eliminate these ordinances and practices. Given that criminalization of homelessness is a barrier to homeless children and youth gaining access to schools, the Law Center advises CDE to also "gather and make publicly available reliable, valid, and comprehensive information on . . . the nature and extent of" this problem and the progress made by CDE and local educational agencies in addressing such problem.⁹

CDE should include plans to collaborate and coordinate with providers, organizations, and other stakeholders to ensure that children and youth exiting the juvenile and criminal justice systems are not released to homelessness and are guaranteed equal access to free appropriate public

³ See Dep't of Housing & Urban Dev., The 2016 Annual Homeless Assessment Report to Congress, at 27, 46 (Nov. 2016), available at <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf>.

⁴ See e.g., Nell Bernstein & Lisa Foster, Voices from the Street: A Survey of Homeless Youth by Their Peers (2008), available at <http://www.library.ca.gov/crb/08/08-004.pdf>

⁵ 42 U.S.C. §11431(2); see also ED Guidance at E-8.

⁶ ED Guidance at E-8.

⁷ *Id.*

⁸ 42 U.S.C. §11432(g)(1)(J)(i); see also ED Guidance at B-1, F-2, F-4, and J-12.

⁹ 42 U.S.C. §11432(f)(1); see also ED Guidance at E-1, E-5, and F-4.

education. The Law Center also encourages CDE to continue working with stakeholders and advocates that represent homeless youth, including the California Homeless Youth Project, which has been a leader in educating policymakers, opinion leaders, and other stakeholders about the needs of homeless youth, including how criminalization of homelessness uniquely affects youth. The California Homeless Youth Project brings directly affected youth to the table and conversation in an authentic way that is empowering for the youth and helps inform policy toward better solutions.

The state plan should clarify the procedural safeguards available under CDE’s dispute resolution procedures.

McKinney-Vento requires state and local educational agencies (“LEAs”) to have a dispute resolution process in place to be used if a dispute arises over eligibility, school selection, or enrollment of a student experiencing homelessness.¹⁰ *California’s dispute resolution process is currently out of date and the Law Center strongly advises CDE to take immediate action to revise it.* As part of CDE’s ongoing obligation to review and revise laws, policies, and practices “that may act as a barrier to the identification of, or the enrollment, attendance, or success in school of, homeless children and youths,” CDE should clarify in the state plan and in the revised dispute resolution process the procedural safeguards necessary to ensure that it is prompt, fair, equitable, and accessible and to better protect the rights of homeless students to educational continuity and stability.¹¹ In order for the state plan and the CDE dispute resolution process to comport with federal law, the procedures must, among other things, reflect the revised definition of the school of origin including preschools and receiving schools in feeder school systems,¹² clarify the use of best interest standard and presumption of staying in the school of origin,¹³ recognize the privacy rights of homeless students and their families,¹⁴ and refer them to legal services and other critical service providers.¹⁵ The state must also have a mechanism or process in place to receive inquiries from homeless youth, parents, or guardians, including a process to report noncompliance by LEAs.¹⁶

It is critical that homeless students and their families successfully navigate the dispute resolution to ensure they have access to free appropriate public education. To foster greater transparency and to fulfill CDE’s statutory obligations under McKinney-Vento, the Law Center advises CDE to “gather and make publicly available reliable, valid, and comprehensive information on” how disputes are resolved.¹⁷ This will assist the state’s efforts in identifying and making publicly available information on “the nature and extent of the problems of homeless children and youth have in gaining access to public . . . schools.”¹⁸

¹⁰ 42 U.S.C. § 11432(g)(3)(C); 42 U.S.C. § 11434A(1); *see also* ED Guidance at K-1 et seq.

¹¹ 42 U.S.C. § 11431(2).

¹² 42 U.S.C. § 11432(g)(3)(I)

¹³ 42 U.S.C. § 11432(g)(3)(B) et seq.

¹⁴ 42 U.S.C. § 11432(g)(3)(G); 20 U.S.C. § 1232g.

¹⁵ ED Guidance at K-3, Tips for Establishing an Effective Dispute Resolution Process at 33.

¹⁶ 42 U.S.C. § 11432(f)(7); ED Guidance at E-1.

¹⁷ 42 U.S.C. § 11432(f)(1); *see also* ED Guidance at E-1, E-5.

¹⁸ *Id.*

In addition to including these recommendations in the state plan, the Law Center advises CDE to work with multiple stakeholders, including the Law Center, in making these revisions to ensure that the resolution of disputes concerning homeless students comport with federal law. The Law Center advises CDE to follow and adopt the procedural safeguards included in the ED guidance, which are largely consistent with and track the recent ESSA amendments to McKinney-Vento.¹⁹

The state plan should specify practices and steps undertaken by CDE to facilitate homeless students' access to California public preschools.

Access to early childhood education programs remains limited and the educational needs of younger children experiencing homelessness are rarely matched with sufficient services.²⁰ ESSA amended McKinney-Vento to ensure homeless children attending public preschools have the right to equal access to free appropriate public education and the right to educational continuity and stability.²¹ Consistent with CDE's responsibility to "gather and make publicly available reliable, valid, and comprehensive information on . . . the nature and extent of the problems of homeless children . . . have in gaining access to public preschool programs," the Law Center advises CDE collect and share data on homeless preschoolers including barriers to their identification, enrollment, attendance, and educational success.²² The state plan should provide greater specificity on how education systems in California share and use such data to coordinate and collaborate in ensuring young homeless children and their families are identified and provided protections, supports, and services under McKinney-Vento. Doing so will complement the state's efforts to providing young children access to safe and healthy learning environments.

The state plan should elaborate on how CDE will expand the capacity of LEA liaisons and the state coordinator to ensure full compliance with McKinney-Vento.

California's efforts to ensure homeless children and youth are identified and accorded equal access to appropriate supports and services will not achieve results if the state coordinator, LEA liaisons, and other school personnel working with homeless children and youth do not have the capacity to sufficiently carry out their legal duties under McKinney-Vento.²³ A recent GAO study found that lack of capacity for the state coordinator and LEA liaisons tasked with implementing McKinney-Vento obligations is a serious challenge and contributes to under-identification of homeless students.²⁴ Over 90 percent of liaisons across the country report that they work in another official capacity other than as homeless liaison within their school district, and 89 percent say they spend half of their time or less on their responsibilities as homeless liaison.²⁵ The LEA's ability to identify all students experiencing homelessness is vital because the students will not receive appropriate services and resources if they are not identified. The

¹⁹ ED Guidance at K-1 et seq.

²⁰ Nat'l Law Ctr. on Homelessness & Poverty, Homeless Students Count, *available at* <https://www.nlchp.org/documents/Homeless-Students-Count>.

²¹ *See e.g.*, 42 U.S.C. §11432(f)(1)(B), 42 U.S.C. §11432(g)(3)(I).

²² 42 U.S.C. §11432(f)(2).

²³ 42 USC 11432(d)(3), 42 USC 11432(g)(6).

²⁴ U.S. Gov't Accountability Office, Education of Homeless Students – Improved Program Oversight Needed (July 2014), *available at* <http://www.gao.gov/assets/670/665185.pdf>.

²⁵ Erin S. Ingram, et al., Hidden in Plain Sight (2016), <http://civicenterprises.net/MediaLibrary/Docs/HiddeninPlainSightOfficial.pdf>.

Law Center advises CDE to specify practices and steps undertaken by it to ensure the Office of the State Coordinator and the LEA liaisons have sufficient capacity and training to fulfill all their legal obligations under McKinney-Vento.²⁶ Fulfilling this requirement is likely to lead to higher levels of compliance, improve the identification of homeless children and youth, improve McKinney-Vento program monitoring and oversight, and complement California's efforts to heighten the awareness of school personnel on the needs of homeless students. In addition to expanding the capacity of LEA liaisons and the state coordinator, CDE should also incorporate trauma-informed practices in training and professional development materials designed to heighten the awareness of school personnel of the specific needs of homeless children and youth.

The state plan should specify practices and steps undertaken by CDE to facilitate homeless students' access to extracurricular activities including varsity sports.

Sports and extracurricular activities are vital for all children and youth, but those experiencing homelessness often don't have adequate opportunities for safe, active play. CDE and its school districts have specific obligations under McKinney-Vento to ensure that students experiencing homelessness do not face barriers to accessing and participating fully in academic, extracurricular and other school activities.²⁷

The Law Center urges CDE to coordinate with the California Interscholastic Federation ("CIF") and its LEA members to ensure that CIF's and CDE's rules and bylaws comport with federal law. In particular, we advise CDE and CIF to undertake steps to review and revise any and all policies that create requirements or definitions that contradict federal law and to eliminate burdensome documentation requirements and deadlines as well as any other requirements or policies that may create barriers to homeless students' access to sports. Furthermore, the Law Center advises CDE to "gather and make publicly available reliable, valid, and comprehensive information on" the barriers to accessing extracurricular activities, including varsity sports.²⁸

The state plan should address the rights of foster care students to educational continuity and stability.

ESSA made changes to Title I, Part A of the Elementary and Secondary Education Act ("ESEA") to provide educational continuity and stability to children and youth in foster care.²⁹ CDE must ensure that a student in foster care will remain in their school of origin if it is in their best interest or will be immediately enrolled in a new school even if the student is unable to produce records normally required for enrollment.³⁰ Given the significant overlap between homelessness and the foster care system, we advise CDE to also include in the state plan information about how it will meet the ESSA requirements pertaining to students in foster care, and how it will work to improve coordination and collaboration between CDE, LEAs, and child

²⁶ ED Guidance, Tips for Ensuring that State Coordinators and Local Liaisons Have Sufficient Capacity and Knowledge at 15.

²⁷ 42 U.S.C. § 11431(2), 42 U.S.C. § 11432(g)(1)(F)(3), 42 U.S.C. § 11434a(1); *see also* ED Guidance at I-6, J-11.

²⁸ 42 U.S.C. § 11432(f)(1).

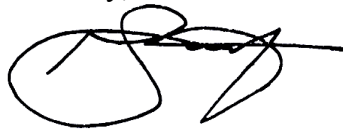
²⁹ *See* ESEA §§ 111(g)(1)(E), 1112(c)(5)(B).

³⁰ ESEA § 111(g)(1)(E).

welfare agencies to ensure these students receive the supports and services they need and deserve.³¹

We strongly advise that CDE take into account our comments and concerns in developing the state plan as required by law.³² These recommendations are consistent with CDE's efforts to align state and federal policies and to maximize flexibility afforded to it and local educational agencies under ESSA. We look forward to seeing a plan that provides for equitable access to education for all students, including ensuring that homeless children and youth are not criminalized or disciplined because of their homelessness.³³ If the Law Center can be of further assistance, please do not hesitate to contact us at 202-638-2535.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Santos", with a large, stylized loop at the end.

Michael Santos
Staff Attorney

cc: California Homeless Youth Project

³¹ See e.g., ESEA § 1112(c)(5)(B).

³² 20 U.S.C. § 6311(a)(8).

³³ 20 U.S.C. § 7113(c)(2)(C)(iii).