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August 29, 2017

SENT VIA E-MAIL – essa@tea.texas.gov

Commissioner Mike Morath
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas, 78701

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

Dear Commissioner Morath,

Thank you for the opportunity to comment on Texas Education Agency's ("TEA") 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 (the "Law Center") and the undersigned organizations, based on our 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

There are a few areas where Texas can, and should, improve its state plan. What follows are our recommendations on what and how to do so. We advise TEA 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 Law Center's own recommendations and more importantly 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. Addressing the school to prison pipeline should be one of Texas's highest priorities as recommended by stakeholders like Texas Appleseed, National Center for Youth Law, and Disability Rights Texas.³ TEA and local educational agencies ("LEAs") 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 homeless children and youth, as part of their ongoing obligation to review and revise such barriers.⁴ The ED Guidance also makes clear that the obligation to address issues regarding criminalization of homelessness extends beyond the school building.⁵ 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.⁶

The state plan should provide more strategies to address problems with respect to the education of homeless children and youth, including problems resulting from enrollment delays that are caused by residency requirements or uniform or dress code requirements. Texas recently legislated to decriminalize truancy, prevent school districts from referring homeless students to truancy court, and require the provision of additional counseling if the truancy is the result of homelessness.⁷ We advise TEA to include truancy prevention measures in the state plan to reflect Texas' commitment to preventing the criminalization of homeless students. The state plan should also include assurances that homeless students are not stigmatized and disciplined because they are unable to meet uniform or dress code requirements.⁸ The state plan should describe steps LEAs should take to monitor the impacts criminalizing ordinances have on 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, we advise TEA 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 TEA and local educational agencies in addressing such problem.⁹

TEA 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

³ See e.g., Disability Rights Texas, et. al., Letter re: Advocates Urge Texas Education Agency to Strengthen Rules On Truancy Prevention Measures and Sanctions (Oct. 17, 2016), *available at* https://www.texasappleseed.org/sites/default/files/Oct17_2016_PRESS_RELEASE_Comments-Complaint_Final.pdf.

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

⁵ ED Guidance at E-8.

⁶ *Id.*

⁷ Tex. Educ. Code § 25.0915 et seq.

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.

are not released to homelessness and are guaranteed equal access to free appropriate public education.

The state plan should specify steps undertaken to coordinating a response to the educational needs of displaced students.

Just a few days ago, Hurricane Harvey pummeled south Texas with deadly winds and heavy rains, potentially leaving many in the Gulf Coast region displaced for an uncertain amount of time. For those recovering from Harvey or from any man-made or natural disaster, TEA and LEAs must coordinate efforts with other stakeholders and advocates to ensure displaced students are promptly identified, are able to access appropriate educational services, and are provided with educational continuity and stability. We advise TEA to specify in the state plan specific steps undertaken to coordinating a response to the educational needs of displaced students, including how to protect the education rights of students affected by Hurricane Harvey.¹⁰

The state plan should clarify the procedural safeguards available under TEA's dispute resolution procedures.

McKinney-Vento requires state educational agencies and 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.¹¹ As part of TEA'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," TEA should clarify in the state plan the procedural safeguards necessary to ensure that the process is prompt, fair, equitable, and accessible and to protect the rights of homeless students to educational continuity and stability.¹² In order for the state plan and the TEA dispute resolution process to comport with federal law, the procedures must reflect the revised definition of the school of origin including preschools and receiving schools in feeder school systems,¹³ clarify the use of best interest standard and presumption of staying in the school of origin,¹⁴ recognize the privacy rights of homeless students and their families,¹⁵ and refer them to legal services and other critical service providers.¹⁶ 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 local educational agencies.¹⁷

¹⁰ See e.g., Nat'l Law Ctr. on Homelessness & Poverty, *Homeless Education Advocacy Manual: Disaster Edition* (2013), available at https://www.nlchp.org/Homeless_Education_Advocacy_Manual_Disaster_Edition. This guide remains relevant even though it has not yet been updated to reflect ESSA amendments. For updated information on compliance with the reauthorized statute, please see the Law Center's *No Barriers: A Legal Advocate's Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act*, available at <https://www.nlchp.org/documents/NoBarriers>.

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

¹² 42 U.S.C. § 11431(2).

¹³ 42 U.S.C. § 11432(g)(3)(I).

¹⁴ 42 U.S.C. § 11432(g)(3)(B) et seq.

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

¹⁶ ED Guidance at K-3, *Tips for Establishing an Effective Dispute Resolution Process* at 33.

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

It is critical that homeless students and their families successfully navigate the dispute resolution process to ensure they have access to free appropriate public education. To foster greater transparency and to fulfill TEA's statutory obligations under McKinney-Vento, we advise TEA to "gather and make publicly available reliable, valid, and comprehensive information on" how disputes are resolved.¹⁸ 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."¹⁹

In addition to including these recommendations in the state plan, we advise TEA to work with multiple stakeholders, including the Law Center and the Texas Network of Youth Services, in making these revisions to ensure that the resolution of disputes concerning homeless students comport with federal law. We advise TEA 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.²⁰

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

Access to early childhood education programs remains limited and the educational needs of young children experiencing homelessness is rarely matched with sufficient services. 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 guaranteed under federal law.²¹ Consistent with TEA'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," we advise TEA 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 Texas 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 TEA will expand the capacity of LEA liaisons and the state coordinator to ensure full compliance with McKinney-Vento.

Texas'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

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

¹⁹ *Id.*

²⁰ ED Guidance at K-1 et seq.

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).

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. We advise TEA 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 Texas's efforts to heighten the awareness of school personnel on the needs of homeless students. Additionally, increasing capacity would improve coordination between the office of the State Coordinator, LEAs, and child welfare agencies to meet the educational needs of homeless children and youth who are and who have been in contact with the foster care system. In addition to expanding the capacity of LEA liaisons and the state coordinator, TEA 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 TEA 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. TEA 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

We urge TEA to coordinate with the University Interscholastic League ("UIL") and its LEA members to ensure that UIL's and TEA's rules and bylaws comport with federal law. In particular, we advise TEA and UIL 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, we advise TEA to "gather and make publicly available reliable, valid, and comprehensive information on" the barriers to accessing extracurricular activities, including varsity sports.²⁸

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>.

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).

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 TEA 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 TEA 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 improve coordination and collaboration between TEA, LEAs, and child welfare agencies to ensure these students receive the supports and services they need and deserve.³¹

We strongly advise that TEA take into account our comments and concerns in developing the state plan as required by law.³² These recommendations are consistent with TEA’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,

National Law Center on Homelessness & Poverty
National Association of Counsel for Children
StandUp for Kids
Texas Network of Youth Services
University of Houston Law Center – Center for Children, Law & Policy

cc: Texas Homeless Education Office
Region 10 ESC

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

³⁰ ESEA § 111(g)(1)(E).

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).