
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

New Jersey State Procedures – Dispute Resolution under McKinney-Vento Act

According to the McKinney-Vento Homeless Assistance Act, a Local Education Agency (LEA) must continue educating the child or unaccompanied youth in the school of origin for the duration of homelessness when the homelessness occurs between or during an academic year; or for the remainder of the academic year if the child or unaccompanied youth becomes permanently housed during that academic year; or enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is living are eligible to attend (McKinney-Vento Act § 722(3)(A)(i)(ii)). If a dispute arises over school selection or enrollment, the LEA must immediately enroll the student in the school in which enrollment is sought pending resolution of the dispute (§ 722(3)(E)(i)). Similar provisions apply to the placement of unaccompanied youths.

New Jersey's state education law is codified at N.J.A.C. §6A. Chapter 17 specifically deals with the education for homeless children and students in state facilities. The determination of homeless status is codified at N.J.A.C. 6A:17-2.3. The section that deals with school district enrollment is N.J.A.C. 6A:172.6. The chief school administrator of the school district of origin or designee shall decide in which school district the homeless child shall be enrolled. The disputes and appeals process is codified at N.J.A.C. 6A:17-2.8. Further appeals are codified at N.J.A.C. 6A:3, Controversies and Disputes.

The New Jersey Administrative Code provides a detailed policy for dealing with disputes and appeals.

Step One: School Enrollment

Any dispute or appeal shall not delay the homeless child's immediate entrance into school. The homeless child shall be enrolled in the school in which enrollment is sought, pending resolution of the dispute or appeal.

Step Two: Dispute

There are two different procedures that are followed depending on the origin of the dispute:

1. When the dispute involves the determination of homelessness, the chief school administrators of the involved school district(s) or designee(s) or the parent(s) of the child shall immediately notify the county superintendent of schools, who shall decide the status of the child immediately. If a dispute remains between the parent and the involved school district(s) following the county superintendent's determination, the parent or the involved district board(s) of education may appeal to the Commissioner of Education.

2. When a dispute occurs regarding the determination of the school district of enrollment made by the school district of origin, the chief school administrator of the school district of

origin¹ or designee shall immediately notify the county superintendent of schools. The county superintendent shall immediately determine where the child shall be enrolled based on the child's best interest. The child's best interests include consideration of enrollment in the school district of origin, except when doing so is contrary to the wishes of the child's parent or guardian; the continuity of the child's educational program; the eligibility of the child for special instructional programs²; and the distance, travel time, and safety factors in coordinating transportation services from the temporary residence to the school.

If the county superintendent's decision is disputed, the Department of Education shall provide for mediation as follows:

- i. The request shall be made to the Department of Education in writing;
- ii. Requests for mediation shall cite the issues in dispute and the relief sought;
- iii. A mediation conference shall be conducted within five school days after the request is made at a time and place reasonably convenient to all parties in the dispute; and
- iv. If the mediation does not result in agreement, appeal may be made to the Commissioner of Education.

Step Three: Appeal Process

In order to appeal to the Commissioner of Education the parent or guardian must prepare a petition of appeal on behalf of the minor which conforms to the requirements of N.J.A.C. 6A:3-1.4. The petition must be filed within 90 days from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing. The petition must be served on each respondent, together with any supporting papers the petitioner may include with the petition. Proof of service must be filed on each respondent, the telephone numbers (and fax and email addresses where available) of the petitioner and each respondent, and the original petition and supporting materials, if any, with the Commissioner c/o the Director, Bureau of Controversies and Disputes, New Jersey Department of Education (N.J.A.C. 6A:3-1.3).

An answer is due by the respondent within 20 days after receipt of the petition. Once the petition and answer are received the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the matter, or transmit the matter for hearing before the Office of Administrative Law (OAL). A written decision will be issued, which sets forth findings of fact, conclusions of law and an appropriate order pursuant to applicable rules of OAL. Any decision of the Commissioner is appealable to the Appellate Division of the Superior Court.

¹ The school district of origin is defined as the school district in which the parent last resided prior to becoming homeless.

² Special Education Programs include, but are not limited to, bilingual, gifted and talented, special education, and early childhood and vocational programs.

Additional Resources

<http://www.state.nj.us/education/students/homeless/>

<http://www.state.nj.us/education/code/current/title6a/chap17.pdf>

<http://www.state.nj.us/education/code/current/title6a/chap3.pdf>

Instructions to Locate Your Local District Liaison

The following instructions provide access to the Homeless Liaison List for the State of New Jersey. This is a list of school district personnel assigned to this program.

1. Go to the New Jersey Homeless Liaison page:
<http://www.state.nj.us/education/students/homeless/liaison.htm>
2. Click on the drop down menu under "Find A Liaison" to select the County. A list of all liaisons is also available under the "Download" link.
3. Click the "**Search**" button.
4. Find the appropriate city

The Liaison is listed under each city with the person's name, their e-mail address, and phone number. If the liaison is not listed, there is a link at the top of the box that will refer to the educational specialist in the county, with a link to the county offices of education.

Procedural Step:	Completed by:	Given to:	Due Date:
Dispute Over Determination of Homelessness	Parent or Guardian	County Superintendent of Schools. If still disputed then may be appealed to the Commissioner of Education	Notification must happen immediately and a decision by the Superintendent will be made immediately.
Dispute Over Determination of School District of Enrollment	Parent or Guardian	Chief school administrator of the school district of origin or designee who will notify the county superintendent of schools.	County superintendent will immediately determine where the child shall be enrolled. Mediation conference

		<p>If dispute the Department of Education shall provide mediation in writing.</p> <p>If dispute still remains then an appeal may be made to the Commissioner of Education</p>	<p>will occur within five school days after the request is made.</p>
Written Petition	Parent or Guardian	Commissioner c/o the Director, Bureau of Controversies and Disputes, New Jersey Department of Education	<p>Petition must be filed within 90 days from the date of receipt of notice of a final decision by the county superintendent or the Department of Education.</p> <p>A written decision will be provided to the parties of record. Any person aggrieved by the decision may appeal to the Appellate Division of the Superior Court.</p>