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**NYS FIELD MEMO**  
**NCLB McKinney-Vento**  
**#07-2015**

**TO:** District Superintendents  
Superintendents of Public Schools  
Title I Coordinators  
McKinney-Vento Homeless Education Liaisons

**FROM:** Ira Schwartz *Ira Schwartz*  
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**DATE:** October 21, 2015

**RE:** Determining McKinney-Vento Eligibility for Students in Direct Placements

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Recently, the NYS Education Department (SED) has received requests for clarification on whether students who have been removed from their home by child welfare officials but not placed in foster care are eligible under the McKinney-Vento Act. The purpose of this field memo is to assist Local Child Education Agencies (LEAs) and McKinney-Vento liaisons (also known as LEA liaisons or homeless liaisons) with McKinney-Vento eligibility determinations when a student has been removed from his/her home because of an allegation of abuse or neglect and the child welfare agency arranges for a relative or family friend to assume temporary custody of the student, rather than place the student in foster care. In most of these cases, at least initially, the student should be considered homeless and therefore protected under the McKinney-Vento Act and related state law.

**Background:**

If, after receiving a report of possible abuse or neglect, a child welfare agency determines there is an immediate danger to a child, it must remove the child from his or her home. The child welfare agency must then determine whether there are any relatives who can care for the child. If a suitable relative is identified, that relative may become a foster parent or the child welfare agency may arrange for the relative to assume custody of the child. If a suitable relative cannot be found, the child is placed in foster care. [N.Y. Family Court Act § 1017]. If a child is placed in foster care either with a relative or non-relative, the department of social services will assume the care and custody of the child. If the child is directly placed with a relative, the relative assumes custody of the child. Please note, whether a child living with a relative after removal from his/her home by a child welfare agency is considered in foster care depends on whether child welfare agency has custody and control of the child. There are some cases where a child living with a relative may be considered in foster care, because that relative is his/her foster

parent, and in other cases, the child may not be considered in foster care, because the relative has custody of the child.

Cases where the child is not in foster care and the child welfare agency has directly placed the child with a relative who has assumed custody of the child are often referred to as direct placements or intervenor placements. In most direct placements, initially, the relative has temporary custody only.

### **Determining Eligibility for McKinney-Vento Services:**

Under the McKinney-Vento Act, school district liaisons are required to identify students experiencing homelessness. The law considers students who lack a nighttime residence that is fixed, regular, and adequate to be homeless. [42 U.S.C. §11434a(2)(A); Education Law § 3209(1)]. Most children in foster care are not protected under the McKinney-Vento Act,<sup>1</sup> however, children awaiting foster care placement are. [42 U.S.C. §11434a(2)(B); Education Law § 3209(1)(a)(iv)]. McKinney-Vento eligibility determinations should be made on a **case-by-case basis**, and school district liaisons should consider the unique circumstances of the student when making such determinations. Students eligible under the McKinney-Vento Act are entitled to continued enrollment in the same school and transportation to that school of origin, or immediate enrollment in the local school. [42 U.S.C. § 11432(g)(3)(A)&(C); N.Y. Educ. Law § 3209(2)].

Most students who have been directly placed will likely be eligible under the McKinney-Vento Act, at least initially, because their housing typically is not “regular.” In other words, when the child is first directly placed with the relative, there often is some question as to whether the housing arrangement will be a long-term, consistent housing arrangement. See National Center for Homeless Education, “Determining Eligibility for Rights and Services Under the McKinney-Vento Act,” available at [http://center.serve.org/nche/downloads/briefs/det\\_elig.pdf](http://center.serve.org/nche/downloads/briefs/det_elig.pdf) (page 5). If the McKinney-Vento liaison determines that the student is eligible, it is recommended that the liaison re-examine the determination at the end of the school-year and consider whether the relative has taken steps, for example, to obtain permanent custody or guardianship, become a foster parent, or demonstrate in some other way that he/she is committed to providing the child with permanent housing. Note that the McKinney-Vento Act does not have a time limit as to a student’s eligibility as homeless.

In addition to considering the regularity of the child’s housing arrangement, McKinney-Vento liaisons are encouraged to consider the following factors when making eligibility determinations:

- the length of time the child is expected stay with the relative,
- the adequacy of the living situation (whether it meets the child’s physical and psychological needs),
- the relative’s intent to care for the student, and
- the student’s “permanency planning goal”<sup>2</sup> as outlined by the child welfare agency.

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<sup>1</sup> Students in foster care are protected under the Fostering Connections to Success and Increasing Adoption Act. 42 U.S.C. §§ 670 et seq., which offers similar protections to the McKinney-Vento Act. For more information about Fostering Connections, please see [http://nysteachs.org/media/INF\\_SED\\_EdStabilityGuidance2012.pdf](http://nysteachs.org/media/INF_SED_EdStabilityGuidance2012.pdf).

<sup>2</sup> If a child has been directly placed with a relative and a court has ordered that the child welfare agency provide supervision, the agency must develop a permanency planning goal for the child. (All children in foster care must also have permanency plans.) In the overwhelming majority of cases, the initial permanency planning goal is that child be returned to his or her parent after the parent receives the services he/she needs. See e.g., NYS Office of Children and Family Services, Administrative Directive, “*Planning for a Successful Adulthood: Another Planned*

McKinney-Vento liaisons are strongly encouraged to collaborate with child welfare agency staff, as such collaboration is vital to ensuring educational stability and continuity for students in direct placements.

The following chart details some of the different types of out-of-home placements where there is child welfare involvement:

| Housing Status  | Placement/Custody Status   | Type of Placement:                                   | Eligible under McKinney-Vento? (Y/N) <sup>3</sup>  |
|---|--|--|--|
| Removed from the home by Child Protective Services (CPS) and residing with a relative who has temporary custody.  | Child is directly placed with a relative and is <u>not</u> under the care and custody of the child welfare agency. | Direct placement or intervenor placement             | Likely   |
| Removed from the home by CPS and temporarily placed in a foster home, group residence, youth shelter, or respite care facility while the child welfare agency seeks a more permanent foster care placement. | Child is under the care and custody of the child welfare agency.   | Could be considered “awaiting foster care placement” | Maybe<br>(Contact NYS-TEACHS Toll Free Hotline: 800-388-2014 to discuss specific scenarios.) |
| Removed from the home by CPS and is living with a relative who is the child’s kinship foster parent.  | Child is under the care and custody of the child welfare agency.   | Kinship foster care placement                        | Probably not   |
| Removed from the home by CPS and is living in a foster home.  | Child is under the care and custody of the child welfare agency.   | Foster care  | Probably not   |

*Permanent Living Arrangement with a Permanency Resource (APPLA) for Youth 16 Years of Age and Older,* 15-OCFS-ADM-19 (September 11, 2015) (“The preferred permanent placement for most youth in foster care is return to parent, and support services to promote this goal should be part of the case plan.”), available at: [http://ocfs.ny.gov/main/policies/external/OCFS\\_2015/ADMs/15-OCFS-ADM-19%20Planning%20for%20a%20Successful%20Adulthood%20-%20Another%20Planned%20Permanent%20Living%20Arrangement%20with%20a%20Permanency%20Resource%20\(APPLA\)%20for%20Youth%2016%20Years%20of%20Age%20and%20Older.pdf](http://ocfs.ny.gov/main/policies/external/OCFS_2015/ADMs/15-OCFS-ADM-19%20Planning%20for%20a%20Successful%20Adulthood%20-%20Another%20Planned%20Permanent%20Living%20Arrangement%20with%20a%20Permanency%20Resource%20(APPLA)%20for%20Youth%2016%20Years%20of%20Age%20and%20Older.pdf).

<sup>3</sup> The examples in this chart are provided for informational purposes only and do not represent official determination(s) or interpretation(s) by the State Education Department. While the school district makes the initial decision about whether a student is eligible under McKinney-Vento, such decision may be the subject of an appeal to the Commissioner of Education under section 310 of the Education Law; as a result, the information contained herein is advisory only and does not necessarily represent an official legal opinion of the Commissioner of Education or of the State Education Department. School districts should consult with their school attorneys regarding specific legal questions.

**Additional Information:**

For further information about McKinney-Vento, the rights of students in temporary housing, and strategies that schools can implement to meet students' needs, please visit the NYS-TEACHS website, [www.nysteachs.org](http://www.nysteachs.org), or contact NYS-TEACHS toll-free at **1-800-388-2014**.

For more information about Fostering Connections and requirements related to the educational stability of children in out-of-home care please see our 2012 Guidance Memo on Education Stability [http://nysteachs.org/media/INF\\_SED\\_EdStabilityGuidance2012.pdf](http://nysteachs.org/media/INF_SED_EdStabilityGuidance2012.pdf).

Additional information may also be obtained through our Department's Homeless Education Program Office in Albany, New York by contacting Melanie Faby, Homeless Education Program Associate, at (518) 473-0295.

Thank you for your attention to this important issue.

cc: Student Support Services