**DISPUTE RESOLUTION PROCESS FOR FAMILIES AND YOUTH EXPERIENCING HOMELESSNESS**

BACKGROUND INFORMATION

The McKinney-Vento Homeless Assistance Act (also referred to as the Act or the McKinney-Vento Act), as amended by the Every Student Succeeds Act (ESSA), mandates basic protections and procedures be in place when a dispute arises “over eligibility, school selection or enrollment in a school” [42 U.S.C. § 11432(g) (3) (E)].

These protections and procedures must be available to address disputes related to whether a student has the right to enroll in a particular school based on eligibility, school selection, and enrollment, while upholding all the rights that the McKinney-Vento Act provides to children and youth experiencing homelessness.

As such, the New Mexico Public Education Department (NMPED) has developed a dispute resolution process as required by the McKinney-Vento Act.

The Act acknowledges that disputes may arise between the Local Education Agency (public school, charters school, or district) and students experiencing homelessness and their parents, or unaccompanied youth, when the LEA seeks to place a student in a school other than the school of origin or the school requested by the parent or unaccompanied youth.

The Act includes dispute resolution among the required duties of the UNM Middle College High School Homeless Liaison.

New Mexico Charter School law requires that admission to MCHS be decided by a lottery drawing. Charter Schools are not permitted to deny lottery admission to students experiencing homelessness. The Lottery Application form is available online at <https://www.mchsgallup.com/admission>.

The lottery drawing is open to the public and takes place during the regularly scheduled MCHS Governing Council meeting on the last Wednesday in March. The deadline for applications is 5:00 pm on the day prior to this meeting. At the start of the meeting, the Governing Council will randomly draw the names of applicants. All names recorded will remain confidential until after the lottery selection process. After student names have been randomly selected, names will continue to be randomly selected and added to a waiting list. Should space become available, students from the waiting list shall be notified and given an opportunity to enroll, starting with the first name on the waiting list. Students selected by the lottery will be officially notified, beginning on the first day after the lottery drawing, and be given an opportunity to enroll. Students who do not confirm acceptance or respond within ten (10) calendar days of the lottery will be removed from the list of accepted candidates, releasing their spot to the next student on the list. The waiting list will be retained for the duration of the academic year for which the applicant has applied. The list will not be maintained into the subsequent academic year. Students who are not admitted during the year for which they have applied must update their applications if they wish to be included in the lottery for the subsequent year.

**Sibling Enrollment Policy**: Siblings of currently enrolled MCHS students are granted sibling preference and will be placed first in any open spots at each grade level. Siblings of currently enrolled students who wish to attend MCHS must submit an application by the time of the school’s lottery drawing. A sibling waiting list will be created if there are more siblings than spaces available in each grade. If a parent does not enter their sibling student in the lottery, that student will be placed at the bottom of the sibling waiting list. A sibling is defined as a brother or sister of a student attending MCHS School at the time of the lottery who:

• is living in the same household and has one or both parents in common;

• is a half-sibling or step-sibling living in the same household as a currently enrolled student; or is a child under court-ordered legal guardianship of parent(s) of a student currently attending MCHS. Verification of sibling status is required.

MCHS enrollment policy adheres to NMAC 6.80.4.12.D.4, and further affirms:

According to NMAC 6.80.4.12.D.4, a charter school will give enrollment preference to previously properly admitted students who remain in attendance and siblings of students already admitted to or attending the school.

This rule allows for the mitigation of hardships that could arise with respect to family transportation if students were attending separate schools in separate locations. As such, specific parameters apply to this rule:

1. Siblings may only be granted enrollment if each of them will be in attendance during the same academic year (if one will be graduating prior to the other’s entry into the school, the rule does not apply), and;
2. Siblings must meet the aforementioned Admissions Requirements of the school, as outlined in Section 5.01 and must submit all required enrollment documentation prior to the application deadline for the academic year in which they become eligible to enroll. A sibling who becomes eligible beyond the application deadline will be given enrollment preference for the next available opening.
3. Siblings who decline or withdraw from enrollment forfeit their place to the next student on the waiting list and would be required to resubmit a lottery form for any future consideration.

Disputes related to the school placement and enrollment of children and youths experiencing homelessness shall be resolved within the parameters of the federal McKinney-Vento Act as amended by the ESSA. The dispute resolution process for the school placement of children and youths experiencing homelessness shall not be used in an effort to circumvent or supersede any part of the federal McKinney-Vento Act.

These include issues related to:

• the definition of homelessness;

• the responsibilities of the LEA to serve children and youth experiencing homelessness;

• and/or the explicit rights of children and youth experiencing homelessness as addressed in the McKinney-Vento Act.

The following procedures are specified in the McKinney Vento Act:

**Enrollment**: Children or youth experiencing homelessness must be immediately enrolled in the school in which enrollment is sought, whether it be the school of origin, or the school in the attendance area, regardless if they are missing school records, proof of residency, immunization and other health records, lack of a parent or legal guardian, or if they have unpaid fees. Immediate enrollment includes attending classes and participating fully in school activities (and includes free meals), provided that enrollment does not exceed the school’s PED-authorized enrollment cap.

If a dispute arises over school selection or enrollment in a school which is not already oversubscribed, the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute, and must be immediately referred to the Homeless Liaison. In the case of an unaccompanied youth, the Homeless Liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute.

**Written Explanation:** The LEA must provide a written explanation of the school placement decision to the parent or, in the case of an unaccompanied youth, to the unaccompanied youth. The written explanation must include a copy of this description of the parent’s or unaccompanied youth’s right to appeal the decision.

**Liaison**: The designated LEA Homeless Liaison is assigned to carry out the dispute resolution process in an expeditious manner.

**Responsibility**: The LEA’s Homeless Liaison is responsible to inform the parent of the student(s) experiencing homelessness or the unaccompanied youth of the dispute resolution process.

**OVERVIEW**

In a case where a dispute occurs regarding the enrollment of a homeless child or youth, the following process must be used:

• Level I: The initial appeal is made to the school’s Homeless Liaison. If unresolved at this level, then proceed to Level II,

• Level II: The case is appealed to the School’s Director. If the dispute continues to be unresolved, then proceed to Level III,

• Level III: The case is appealed to the School’s Governing Council. If the dispute continues to be unresolved, then proceed to Level IV.

• Level IV: The final appeal is to the PED’s State Coordinator of Education for Homeless Children and Youth Resolution.

Every effort must be made to resolve the complaint or dispute at the local level before it is brought to NMPED.

**THE INITIATION OF THE DISPUTE RESOLUTION PROCESS**

If the LEA seeks to place a child or youth experiencing homelessness in a school other than the school of origin, or the school requested by the parent or unaccompanied youth, the child’s/youth’s parent or the unaccompanied youth shall be informed in a language and format understandable to the parent or unaccompanied youth of their right to appeal the decision made by the LEA and be provided the following:

•Written contact information for the school Homeless Liaison and State Coordinator, with a brief description of their roles.

•A simple, printed form that parents, guardians, or unaccompanied youth can complete and turn in to the school to initiate the dispute process. The LEA should copy:

•the form and return the copy to the parent, guardian, or youth for their records when it is submitted.

•A written step-by-step description of how to dispute the LEA’s decision.

•Written notice of the right to enroll immediately in the school of choice pending resolution of the dispute provided enrollment does not violate the charter school’s PED-authorized enrollment cap.

•Written notice of the right to an appeal process, including an appeal to the state if the local-level resolution is not satisfactory.

•Written timelines for resolving LEA and state-level appeals.

**Level I: School Homeless Liaison Communication**

If a parent or unaccompanied youth wishes to appeal the school’s decision related to a student’s placement:

1.The parent or unaccompanied youth must file a request for dispute resolution with the school’s Homeless Liaison by submitting a form that initiates the dispute resolution process. The request for dispute resolution must be submitted by the parent or the unaccompanied youth to the LEA’s Homeless Liaison within fifteen (15) business days of receiving notification that the LEA intends to enroll the student in a school other than that requested by the family or the unaccompanied youth.

2.The parent or unaccompanied youth may submit the request directly to the Homeless Liaison or they may submit the request to the school where the dispute is taking place. If the request is submitted to the school where the dispute is taking place, the school shall immediately forward the request to the school’s Homeless Liaison. In the event that the Homeless Liaison is unavailable, a MCHS designee may receive the parent's or unaccompanied youth's request to initiate the dispute resolution process.

3.The Homeless Liaison must log their receipt of the complaint, including the date and time, with a written description of the situation and the reason for the dispute, and a copy of the complaint must be forwarded to the Director.

4.Within five (5) business days of their receipt of the complaint, the Homeless Liaison must make a decision on the complaint and inform the parent or unaccompanied youth in writing of the result. It is the responsibility of the LEA to verify the parent’s or unaccompanied youth’s receipt of the written notification regarding the Homeless Liaison’s Level I decision.

5. If the parent or unaccompanied youth disagrees with the decision made at Level I and wishes to move the dispute resolution process forward to Level II, the parent or unaccompanied youth shall notify the school’s Homeless Liaison of their intent to proceed to Level II within ten (10) business days of receipt of notification of the Level I decision.

6.If the parent or unaccompanied youth wishes to appeal the LEA’s Level I decision, the Homeless Liaison shall provide the parent or unaccompanied youth with an appeals package containing:

a. A copy of the parent’s or unaccompanied youth’s complaint which was filed with the school’s Homeless Liaison at Level I,

b. The decision rendered at Level I by the Homeless Liaison, and

c. Any additional information from the parent, unaccompanied youth, and/or homeless liaison.

**Level II:**

MCHS director: If the dispute remains unresolved after a Level I appeal:

1. If a parent disagrees with the decision rendered by the school’s Homeless Liaison at Level I, the parent or unaccompanied youth may appeal the decision to MCHS Director, or their designee, (the designee shall be someone other than the school’s Homeless Liaison) using the appeals package provided at Level I.

2. The Director, or their designee, will arrange for a personal conference to be held with the parent or unaccompanied youth. The personal conference will be arranged within five (5) business days of the parent or unaccompanied youth’s notification to the school of their intent to proceed to Level II of the dispute resolution process. Once arranged, the meeting between the Director, or their designee, and the parent or unaccompanied youth is to take place as expeditiously as possible.

3. The Director, or their designee, will provide a decision in writing to the parent or unaccompanied youth with supporting evidence and reasons, within five (5) business days of the Director’s, or their designee’s, personal conference with the parent or unaccompanied youth. It is the responsibility of the school to verify the parent’s or unaccompanied youth’s receipt of the written notification regarding the Directors’ or Designee’s Level II decision.

4. A copy of the appeals package, along with the written decision made at Level II is to be shared with the district’s homeless liaison.

5. If the parent or unaccompanied youth disagrees with the decision made at Level II and wishes to move the dispute resolution process forward to Level III, the parent or unaccompanied youth shall notify the MCHS Homeless Liaison of their intent to proceed to Level III within ten (10) business days of receipt of notification of the Level II decision.

6. If the dispute remains unresolved, the process then moves to Level III.

**Level III:**

MCHS Governing Council: If the dispute remains unresolved after a Level II appeal:

1. MCHS Director shall forward all written documentation and related paperwork to the School’s Governing Council within five (5) business days of notifying the parent or unaccompanied youth of the decision rendered at Level II.

2. The entire dispute package including all documentation and related paperwork is to be submitted to the Governing Council in one consolidated and complete package. It is the responsibility of the Director to ensure that dispute packages are complete and ready for review at the time they are submitted to the Governing Council.

3. The Governing Council will provide a decision in writing to the parent or unaccompanied youth with supporting evidence and reasons, within five (5) business days after the next regularly scheduled meeting of the Governing Council, or special meeting of the Governing Council, if situationally warranted. It is the responsibility of the Governing Council President, or the GC President’s designee, to verify the parent’s or unaccompanied youth’s receipt of the written notification regarding the Governing Council’s Level III decision.

4. A copy of the appeals package, along with the written decision made at Level III is to be shared with the district’s homeless liaison.

5. If the parent or unaccompanied youth disagrees with the decision made at Level III and wishes to move the dispute resolution process forward to Level IV, the parent or unaccompanied youth shall notify the MCHS Homeless Liaison of their intent to proceed to Level IV within ten (10) business days of receipt of notification of the Level III decision.

6. If the dispute remains unresolved, the process then moves to Level IV.

**Level IV:**

PED’s State Coordinator of Education for Homeless Children and Youth Resolution: If the dispute remains unresolved after a Level III appeal:

1. The GC President or Designee shall forward all written documentation and related paperwork to the State Coordinator of Education for Homeless Children and Youth for review within five (5) business days of notifying the parent or unaccompanied youth of the decision rendered at Level III.

2. The entire dispute package including all documentation and related paperwork is to be submitted to State Coordinator for the Education of Homeless Children and Youth in one consolidated and complete package via hard copy mail delivery. Documents submitted separately from the dispute package, documents submitted after the fact, or documents submitted outside of the dispute package in an attempt to extend the dispute timeframe or impact a pending dispute outcome may not be reviewed. It is the responsibility of the LEA to ensure that dispute packages are complete and ready for review at the time they are submitted to State Coordinator.

3. The State Coordinator for the Education of Homeless Children and Youth shall make a final decision within fifteen (15) business days of receipt of the complaint.

4. The final decision will be forwarded to the school’s Homeless Liaison for distribution to the parent and the LEA.

5. The decision made by the State Coordinator of Education for Homeless Children and Youth shall be the final resolution for placement of a homeless child or youth in the school.

6. The office of the school Director shall maintain a record of all disputes related to the placement of homeless children and youth. These records shall include disputes resolved at Level I, Level II, and/or Level III and shall be made available to the State Coordinator of the Education for Homeless Children and Youth upon request.

**INTER-SCHOOL DISPUTES**

If a dispute arises over school selection or enrollment in a school, the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute, provided enrollment does not violate the school’s PED-authorized enrollment cap. In the case of an unaccompanied youth, the Homeless Liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute, provided enrollment does not violate the school’s PED-authorized enrollment cap.

Disputes arising between school districts (LEAs) regarding the placement of a homeless child or youth should be resolved between the districts at the local level in the best interest of the child and according to the law.

Disputes between LEAs that remain unresolved shall be forwarded in writing by either of the disputing districts to the state homeless education coordinator, or designee.

A decision will be made by the state homeless coordinator, or designee, along with a committee of NMPED staff within ten (10) business days of the receipt of the dispute and will be forwarded in writing to the MCHS Director, and the MCHS’s homeless liaison and the parent(s) of the homeless child, or the homeless youth. The decision made by the state coordinator shall be the final resolution between the disputing LEAs for placement of a homeless child or youth in a district.

“Homeless children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

1)children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

2)children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4) migratory children (as such term is defined in Section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

“School of origin” means the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

 “LEA” means local education agency. “Title IX” means Title IX of the Education Amendments of 1972, codified as 20 US Code Sections 1681 et seq, which provides in part that, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. 12-31-98; 6.10.3.7 NMAC -Rn, 6 NMAC 1.5.1.7 & A, 11-30-00; A, 10-17-05; A, 11-30-06]6.10.3.8

**FILING A COMPLAINT**:

A: The NMPED will accept and investigate complaints from organizations or individuals with respect to applicable or covered programs. The complaint must:

(1) be written;

(2) be signed by the complaining party or his or her designated representative; (3) contain a statement that the department or an agency or consortium of agencies has violated a requirement of a federal statute or regulation that applies to the program;

(4) contain a statement of the facts on which the complaint is based and the specific requirement alleged to have been violated; and

(5) in the case of Title IX, must contain a statement that the department or any of its employees, has discriminated against the complainant on the basis of sex in regard to an education program or activity operated or managed by the department given that the department is a recipient of federal financial assistance.

In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act relating to a dispute not resolved at the district level, the LEA shall forward the department’s dispute resolution process form along with the MCHS Charter School’s written explanation of the school’s decision to the department’s homeless liaison within 5 calendar days of the MCHS’s final decision; The filing of these documents shall be deemed to satisfy the requirements of Paragraphs (1) through (4) of Subsection A of this section.

The parent, guardian or student may also initiate the appeal by providing copies of these documents to the department’s homeless liaison. [12-31-98; 6.10.3.8 NMAC -Rn, 6 NMAC 1.5.1.8 & A, 11-30-00; A, 10-17-05; A, 11-30-06]6.10.3.9

**COMPLAINTS AGAINST AN AGENCY OR CONSORTIUM OF AGENCIES:**

**A. Impartial review.**

Upon receipt of a complaint which meets the requirements of Section 6.10.3.8 of this rule, the department will:

(1) acknowledge receipt of the complaint in writing;

(2) provide written notice to the agency or consortium of agencies against which the violation has been alleged;

(3) conduct an impartial investigation which shall include a review of all relevant documentation presented and may include an independent on-site investigation, if determined necessary by the department;

(4) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and

(5) review all relevant information and make an independent determination as to whether the agency or consortium of agencies is violating a requirement of an applicable federal statute or regulation.

**B. Decision**.

A written decision, which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint, shall be issued by the secretary of education or designee and mailed to the parties within sixty (60) calendar days of receipt of the written complaint. In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act, the decision must be issued within thirty (30) calendar days. Such decision will further include:

(1) procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and, if corrective action is required, such action shall be designated and the decision shall include the timeline for correction and the possible consequences for continued noncompliance;

(2) a statement of the right to request the secretary of the United States department of education to review the final decision at the secretary's discretion; complaints regarding participation by private school children must be appealed to the secretary no later than thirty (30) days after the department issues its decision; an appeal regarding participation by private school children must be accompanied by a copy of the decision and a complete statement of reasons supporting the appeal.

**C. Failure or refusal to comply.**

 If the agency or consortium of agencies fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be affected by the department by any means authorized by state or federal statute or regulation. The department will retain jurisdiction over the issue of noncompliance with the law or regulations and will retain jurisdiction over the implementation of any corrective action required.

**D. Informal resolution.**

1. Nothing herein shall preclude the availability of an informal resolution between the complainant and the agency or consortium of agencies, nor shall this rule preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation. In the case of a complaint filed pursuant to the McKinney-Vento Education for Homeless Children and Youth Act, each district shall have a written policy for concerned parties to resolve disputes, and every effort should be made to resolve the dispute at the district level. The district level procedure must adhere to the following parameters:

(a) The dispute resolution process shall be as informal and accessible as possible and the process should be able to be initiated directly at the school of choice as well as at the district level or with the LEA homeless liaison.

(b) When a dispute arises over school selection or enrollment, pending resolution of the dispute, the homeless child or youth must be immediately enrolled in the school in which the child or youth is seeking enrollment and provided all services to which the student is entitled, so long as enrollment does not violate the school’s PED-authorized enrollment cap.

(c) The district must create and provide a simply stated notice of rights and provide that notice of rights to the student, parent or guardian, in a language the student, parent or guardian can understand.

1. Every LEA is required to have a homeless liaison. The notice of rights shall contain: (i) contact information for the LEA homeless liaison and the state coordinator, with a brief description of their roles; (ii) a step by step description of how to make use of the dispute resolution process; (iii) notice of the right to immediately enroll in the school of choice pending resolution of the dispute and notice that immediate enrollment includes full participation in all school activities, provided enrollment does not violate the school’s PED-authorized enrollment cap; (iv) notice of the right to obtain the assistance of advocates or attorneys; (v) notice of the right to appeal to the department if the district-level resolution is not satisfactory; (vi) the timelines for resolving district and department-level appeals; (vii) notice of the right to provide written or oral documentation to support their position; and (viii) a simple form that parents, guardians or the student can complete and return to the school to initiate the process.
2. The school with the dispute must provide notice of the dispute to the LEA’s homeless liaison using the department’s dispute resolution process form.
3. Complaints regarding participation by private school children must be appealed to the secretary no later than thirty (30) days after the decision is issued. An appeal regarding participation by private school children must be accompanied by a copy of the decision and a complete statement of reasons supporting the appeal.
4. Nothing herein shall preclude the availability of an informal resolution between the complainant and the department, nor shall this rule preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation. [12-31-98; 6.10.3.10 NMAC -Rn, 6 NMAC 1.5.1.10 & A, 11-30-00; A, 10-17-05]6.10.3.11 EXTENSION OF TIME LIMIT: An extension of the time limit under 6.10.3.9 NMAC and 6.10.3.10 NMAC of this rule will be permitted by the secretary of education or designee only if exceptional circumstances exist with respect to a particular complaint. [12-31-98; 6.10.3.11 NMAC -Rn, 6 NMAC 1.5.1.11 & A, 11-30-00; A, 10-17-05]6.10.3.12
5. **NOTICE TO PARENTS:** Public school districts, charter schools and agencies will disseminate, free of charge, adequate information about the complaint procedures to parents of students, and appropriate private school officials or representatives. [6.10.3.12 NMAC -N, 11-30-00; A, 10-17-05]6.10.3.13
6. **CONFLICTS:** If any statute or regulation governing any federal program subject to this rule affords procedural rights to a complainant exceeding those set forth in this rule, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of the complaint in such a case, the secretary of education or designee shall identify the procedures applicable to that complaint. [12-31-98; 6.10.3.13 NMAC -Rn, 6 NMAC 1.5.1.12 & A, 11-30-00; A, 10-17-05] HISTORY OF 6.10.3 NMAC: PRE-NMAC HISTORY: The material in this Part is derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 85-1, Complaint Procedure, filed April 17, 1985 and State Board of Education (SBE) Regulation No. 94-4, Complaint Procedure, filed October 3, 1994.