



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** P-12 Education Committee  
Higher Education Committee

**FROM:** Angélica Infante-Green *Angélica Infante - Green*  
John D'Agati *John L. D'Agati*

**SUBJECT:** Students Displaced By Recent Hurricanes

**DATE:** October 12, 2017

**AUTHORIZATION:** *MaryEllen Eise*

### **SUMMARY**

#### **Issue for Discussion**

Staff will provide an update on the guidance document to support local education agencies (LEAs<sup>1</sup>) to enroll and serve students displaced by recent hurricanes to New York State.

#### **Reason(s) for Consideration**

For information.

#### **Proposed Handling**

This item will come before the P-12 Education and Higher Education Committees for discussion at the October 2017 Regents meeting.

#### **Background Information**

Hurricanes Harvey, Irma, and Maria battered Texas, Florida, Puerto Rico, the U.S. Virgin Islands, and several other countries in the Caribbean, leaving thousands of children and families displaced. The New York State Education Department (NYSED, or the Department) has issued a guidance document to support LEAs to appropriately

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<sup>1</sup> LEAs include school districts, charter schools, and BOCES.

enroll and serve schoolchildren from the impacted areas who are displaced to New York State (NYS). The field memo (Attachment 1) sets forth information and resources for LEAs regarding the rights of and services available to students displaced by these natural disasters, as summarized below.

### **McKinney-Vento Act**

Students who are temporarily displaced due to disaster are likely protected by the McKinney-Vento Homeless Education Assistance Act, a federal law that details the educational rights of students in temporary housing. The definition of homelessness under this Act is broad and covers children and youth who lack a fixed, regular, and adequate nighttime residence, including those who, for example, are doubling up with friends or family due to loss of housing; living in motels or hotels; and children who have a primary nighttime location such as a shelter, vehicle, substandard housing, and other temporary arrangements.<sup>2</sup> The Act also protects unaccompanied youth who are youth living apart from their parents in a temporary housing situation.

McKinney-Vento protects students, for example, who are temporarily housed in New York because they lost their housing in a different state such as Florida or Texas, in a U.S. territory such as Puerto Rico or the U.S. Virgin Islands, or a different country. School districts must make eligibility determinations on a case-by-case basis. Under the McKinney-Vento Act, students in temporary housing can enroll immediately in a school in the school district where they are temporarily living even if they don't have the documents normally needed for enrollment and even if they have missed application or enrollment deadlines during any period of homelessness, if applicable.<sup>3</sup> The field memorandum, attached, sets forth procedures, obligations and resources for LEAs under McKinney-Vento.

### **Students with Disabilities (SWDs)**

Consistent with guidance from the Office of Special Education Programs (OSEP) of the United States Department of Education (USDOE) regarding flexibility relating to a district's responsibilities for special education, NYSED is not authorized to provide waivers to the requirements of federal law and rulemaking, nor may the United States Department of Education. However, in an emergency where a natural disaster prevents a school district from meeting the requirements of the Individuals with Disabilities Education Act (IDEA), the field memo clarifies that NYSED will not issue findings of noncompliance when it is evident that the failure to comply is the direct result of the disaster emergency.

The field memo further clarifies the Department's recognition that LEAs may experience difficulty in meeting all of the recommendations in an incoming hurricane-displaced student's Individualized Education Program (IEP), and sets forth procedures, obligations, and resources for LEAs to address this challenge.

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<sup>2</sup> See 42 U.S.C. §11434a[2]; Education Law §3209[1][a]

<sup>3</sup> See 42 U.S.C. §11432[g][3][C]; Education Law §3209[2][f][2]; and 8 NYCRR §100.2[x][4][ii].

## **English Language Learners/Multilingual Learners (ELLs/MLLs)**

Pursuant to Commissioner's Regulations Part 154, all newly enrolled students (including those who reenter New York State public schools after a two-year absence) must go through the ELL/MLL identification process within ten (10) school days. Commissioner's Regulations §154-2.3(a) describes this identification process. The field memo directs LEAs that experience a large influx of ELLs/MLLs due to displacement by recent hurricanes to contact the [Office of Bilingual Education and World Languages](#) for guidance and technical assistance in serving timely such students, and further identifies other procedures, obligations, and resources for LEAs to appropriately serve ELLs/MLLs displaced by these recent hurricanes.

## **Possible incoming teachers from Puerto Rico**

The field memo directs certified teachers displaced from Puerto Rico to NYS to email the [Office of Teacher Certification](#) with the subject line of "Teacher from Puerto Rico" to inquire about teaching opportunities in NYS.

## **Office of Student Support Services**

The Office of Student Support Services promotes positive school climate and school improvement by focusing on social and emotional development and learning through programs, services, and activities that emphasize family engagement, strong community partnerships, and additional supports for students and families. The field memo identifies resources for hurricane-displaced students available on the [Student Support Services website](#), including but not limited to information on student registration and enrollment, trauma-sensitive strategies for school success, pupil personnel services, and mental health and health services.

Attachment

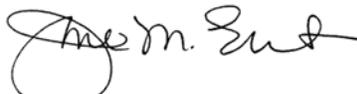


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October 12, 2017

TO: District Superintendents  
 Superintendents of Schools  
 Public School Administrators  
 Nonpublic School Administrators

FROM: Jhone M. Ebert 

SUBJECT: Students Displaced by Recent Hurricanes

Recently, Hurricanes Harvey, Irma, and Maria battered Texas, Florida, Puerto Rico, the U.S. Virgin Islands, and several other countries in the Caribbean, leaving thousands displaced. The Board of Regents and the New York State Education Department (NYSED) are deeply concerned about the mounting scope of these tragedies and what it means, in particular, for schoolchildren in the impacted areas.

Some families from these impacted areas, and their school-aged children, have relocated to New York State and many more may relocate in the coming weeks and months. The Department stands ready to help school districts with this process. This Field Memorandum provides information and resources for local educational agencies (LEAs)<sup>1</sup> regarding the rights of and services available to students displaced by these natural disasters.

### **McKinney-Vento Act**

Students who are temporarily displaced due to disaster are likely protected by the McKinney-Vento Homeless Education Assistance Act, a federal law that details the educational rights of students in temporary housing. The definition of homelessness under this Act is broad and covers children and youth who lack a fixed, regular and adequate nighttime residence, including those who, for example, are doubling up with friends or family due to loss of housing; living in motels or hotels; and children who have a primary nighttime location such as a shelter, vehicle, substandard housing and other temporary arrangements.<sup>2</sup> The Act also protects unaccompanied youth who are not in the physical custody of their parents or legal guardian and are living in a temporary housing situation. McKinney-Vento protects students, for example, who are temporarily housed in New York because they lost their housing in a different state such as Florida

<sup>1</sup> LEAs include school districts, charter schools, and BOCES.

<sup>2</sup> See 42 U.S.C. §11434a[2]; Education Law §3209[1][a].

or Texas, in a U.S. territory such as Puerto Rico or the U.S. Virgin Islands, or a different country. School districts must make eligibility determinations on a case-by-case basis. Under the McKinney-Vento Act, students in temporary housing can **enroll immediately in a school in the school district where they are temporarily living even if they don't have the documents normally needed for enrollment and even if they have missed application or enrollment deadlines during any period of homelessness, if applicable.**<sup>3</sup> Students are also automatically eligible for free school meals.<sup>4</sup> Below is more information about how LEAs can ensure that students displaced by these storms have timely access to public education.

- **McKinney-Vento Liaison:** Federal and State laws require that each school district, charter school and BOCES have a McKinney-Vento liaison to serve as the primary contact between families experiencing homelessness and school staff, district personnel and local social services agencies and other programs providing services to students who are homeless. McKinney-Vento liaisons are responsible for ensuring, among other things, that students who are homeless are identified by school personnel and through coordinated activities with other entities and/or agencies; enrolled in and have a full and equal opportunity to succeed in school; and receive education services for which they are eligible and are referred to as appropriate to health, mental health, dental and other services.<sup>5</sup> For more information about the role of the liaison, visit [McKinney-Vento liaison responsibilities](#). For more information on locating the contact information for a McKinney-Vento liaison, visit [McKinney-Vento liaison contact search](#).
- **Identification and the Housing Questionnaire:** One of the most effective ways of identifying students experiencing homelessness is by using a housing questionnaire. All LEAs that receive Title I funds are required to administer a housing questionnaire to all students seeking enrollment and to students seeking a change of address. The purpose of the form is to help LEAs determine which students are temporarily housed and which are permanently housed. Visit the [Housing Questionnaire](#) to view the complete the form.
- **Immediate Enrollment and School Records:** As mentioned previously, students in temporary housing are entitled to *immediate enrollment in school even if they are unable to produce records normally required for enrollment*, such as academic records, special education records, medical records, immunization records, proof of residency, or other documentation.<sup>6</sup> Such students must also be immediately enrolled even if they have missed application or enrollment deadlines during any period of homelessness, if applicable. Enrollment means attending classes and fully participating in school activities.<sup>7</sup> In addition, students

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<sup>3</sup> See 42 U.S.C. §11432[g][3][C]; Education Law §3209[2][f][2]; and 8 NYCRR §100.2[x][4][iii].

<sup>4</sup> See 42 U.S.C. §§11432[g][3][C], Education Law §3209[2][f][2], and 8 NYCRR §100.2[x][4][ii]; 42 U.S.C. §1758[b][12][A][iv] and Education Law §3209[9].

<sup>5</sup> See 42 U.S.C. §11432[g][1][J][ii] & [g][6][A]; Education Law §3209[2-a]; 8 NYCRR §100.2[x][7][iii].

<sup>6</sup> See 42 U.S.C. §§11432[g][3][C]; Education Law §3209[2][f][2]; 8 NYCRR §100.2[x][4][ii].

<sup>7</sup> See 42 U.S.C. §11434a[1].

in temporary housing must have access to all of the LEA's programs, activities and services to the same extent as they are provided to resident students.<sup>8</sup>

It is the enrolling school's responsibility to request the records from the school that the student in temporary housing previously attended.<sup>9</sup> If the records are not immediately available, as may be the case with some of the students who have been displaced by recent hurricanes, schools must still immediately enroll the child and ensure full participation. For more information about enrollment without records, visit the National Center for Homeless Education's issue brief, "[Prompt and Proper Placement: Enrolling Students without Records.](#)"

- **Immunization and Health Requirements:** Students displaced by the hurricanes may have up-to-date immunizations but may not have proof of immunizations. Again, it is the enrolling school's responsibility to request a copy of the immunization records from the school previously attended. Generally, an unvaccinated student cannot attend school in New York State in excess of 14 days unless: (1) the student is transferring from out-of-state or from another country and can show a good faith effort to get the necessary certification or other evidence of immunizations, in which case the 14-day period may be extended to not more than 30 days; or (2) the student has been legally exempted for medical reasons or because the child's parents hold genuine and sincere religious beliefs which are contrary to vaccination practices.<sup>10</sup>

If a student in temporary housing needs to obtain immunizations and/or required school physicals, the enrolling school must immediately refer the student's parent/guardian to the McKinney-Vento liaison. The liaison must assist the student's parent/guardian in obtaining the necessary immunizations, physical exam, or medical records.<sup>11</sup> If a student is unable to obtain a physical through their personal medical provider, the district medical director must provide a school physical at no cost to the parent/guardian.<sup>12</sup>

Although students in temporary housing may enter school without the required health documents, students can be assessed by a school nurse for the presence of any acute condition and should not be in school if clearly ill (just like any other student in the district).

- **Unaccompanied Youth:** Youth who are not in the physical custody of their parents or legal guardian and are living in a temporary housing arrangement are also protected under McKinney-Vento.<sup>13</sup> This may include youth whose parents have sent them to temporarily live with relatives in New York because of damage to the parents' homes as a result of the hurricanes. Such youth are considered

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<sup>8</sup> See Education Law §3209[2][f][4] & [9]; 8 NYCRR §100.2[x][4][iv].

<sup>9</sup> See Education Law §3209[2][f][5]; 8 NYCRR §100.2[x][4][v], [x][7][i][e].

<sup>10</sup> See Public Health Law §2164[7][a], [8], [9]; Education Law §914[1]; 10 NYCRR §66-1.3.

<sup>11</sup> See 8 NYCRR §100.2[x][4][vi].

<sup>12</sup> See Education Law §904, 8 NYCRR § 136.3[d][2].

<sup>13</sup> See 42 U.S.C. §11434a[6]; Education Law §3209[1][a][1][v]; 8 NYCRR §100.2[x][1][iii][6].

homeless and are entitled to immediate enrollment and full participation in school and do not need parental consent to enroll in school.

If an unaccompanied youth has a disability and needs special education services, and the parent, including any person in parental relation, is unavailable (i.e. after reasonable efforts, the whereabouts of the parent or person in parental relation is unknown), the board of education or other appropriate body shall select a surrogate parent from the school district's list of individuals who are eligible and willing to serve as surrogate parents in order to ensure that the rights of a student are protected. Additional information on the requirements of section 200.5(n) of the Regulations of the Commissioner of Education relating to surrogate parents, includes the qualification of persons selected as surrogate parents and the procedures for assigning surrogates.

- **Title I, Part A:** All LEAs that receive Title I, Part A funds must reserve funds to support students who are homeless.<sup>14</sup> Because students in temporary housing often have unique needs that differ from the needs of permanently housed students, Title I, Part A set-aside funds may be used for services not ordinarily provided by Title I, including school supplies; school clothes; eyeglasses; fees associated with getting a birth certificate needed by the school; counseling to address, for example, exposure to traumatic events that impacts the student's learning; and funding for the McKinney-Vento liaison and transportation.<sup>15</sup> For more information, please see [M-5 of the March 2017 Federal Non-Regulatory Guidance for the Education of Homeless Children and Youths Program](#).
- **Free Meals:** All students in temporary housing are eligible to receive free school meals.<sup>16</sup> Students experiencing homelessness can get free school meals without submitting an application: the McKinney-Vento liaison can give a letter to the food service director with a list of the names of the students who have been designated as homeless and the effective date of the students' eligibility determination (the date they were designated homeless), along with the liaison's signature. For guidance about students in temporary housing and school nutrition programs, please visit the [Eligibility Effective Date for Directly Certified Students Memo](#).

## **Resources**

- **Connecting Displaced Families and Students with Services:** Families in need of assistance should be encouraged to register with FEMA for aid. To do so, call (800) 621-3362 or TTY (800) 462-7585 or register online at [Disaster Resistance](#). For more information about resources related to:
  - [FEMA Resource Page for Puerto Rico](#)
  - [FEMA Resource Page for U.S. Virgin Islands](#)

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<sup>14</sup> See 20 U.S.C. §6313[c][3][A][i]

<sup>15</sup> See 20 U.S.C. § 6313[c][3][C][ii]

<sup>16</sup> See 42 U.S.C. §1758[b][12][A][iv].

- [FEMA Resource Page for Texas](#) and
- [FEMA Resource Page for Florida](#)
- The Department's homeless education technical assistance center, **NYS-TEACHS**, has many resources available to LEAs, including outreach posters and brochures, and a hotline available to answer your questions Monday - Friday from 9 am to 5 pm, **800-388-2014**. In addition, the National Center for Homeless Education also has several resources including:
  - **A McKinney-Vento Toolbox: Constructing a Robust and Rigorous Homeless Education Program, In Case of Disaster and Every Day** is designed to help school districts implement the McKinney-Vento Act fully and contains information and practical lessons learned and resources developed during the recovery process following the 2005 Gulf Coast hurricanes. For further information, visit the complete [McKinney-Vento Toolbox](#);
  - [Connecting Schools and Displaced Students Handbook Series](#) are printable handbooks that relay disaster-related school information to parents, relief agencies, and school districts.
  - The [Disaster Preparation and Response Resource Page](#) includes several resources for working with students who have been affected by a natural disaster.
- For additional information please contact, [Melanie Faby](#), State Homeless Program Coordinator or call at 518-473-0295 or New York State Technical and Education Assistance Center for Homeless Students (NYS-TEACHS) at 800-388-2014.

### **Guidance specifically for Students with Disabilities (SWDs)**

Consistent with guidance from the Office of Special Education Programs (OSEP) of the United States Department of Education (USDE) regarding flexibility relating to a district's responsibilities for special education in the aftermath of Hurricane Katrina, NYSED is not authorized to provide waivers to the requirements of federal law and rulemaking, nor may USDE.<sup>17</sup>

We understand that these recent disaster emergencies will result in students with disabilities transferring from outside of New York State (NYS) to in-State school districts. In some cases, the receiving school districts may experience difficulty in meeting all of the recommendations in a student's IEP. In these cases and in accordance with the Regulations of the Commissioner of Education, Part 200, the receiving school district must:

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<sup>17</sup> A [letter from USDE's Office of Special Education and Rehabilitative Services](#) describes the provisions made for Hurricane Katrina in 2005.

- Provide the student with a free appropriate public education, including special education programs and services comparable to those described in the previously held IEP, in consultation with the parent(s), until the school district conducts an individual evaluation (if determined necessary by the school district), makes an eligibility determination, and develops a new IEP, if appropriate.
- Take reasonable steps to promptly obtain the IEP and any other records relating to the provision of special education programs and services to the child.
- Develop a temporary IEP with the agreement of the parent or guardian if an IEP is not immediately available, but it is understood that a student is a student with a disability in need of special education and related services. If a parent or guardian is not in agreement with a temporary IEP, the student should be enrolled in a regular school program until appropriate evaluations and eligibility determinations can be made.<sup>18</sup>
- Provide parent(s) a copy of the procedural safeguards notice that indicates the legal rights of parents under federal and State law regarding students with disabilities. The procedural safeguards notice must be provided in the native language of the parent or other mode of communication, unless it is clearly not feasible to do so. For more information, view a copy of the [procedural safeguards notice](#).

To assist in the placement of these students with disabilities in situations when a school district and/or NYSED approved special education preschool or school-age program needs to temporarily exceed a special class size, integrated co-teaching class size, resource room size, and/or caseloads for resource room and/or consultant teachers, the Office of Special Education (OSE) will take steps to expedite these variance requests.

NYSED's 14 [Special Education Parent Centers](#) are available to assist families of students with disabilities impacted by these emergency disasters in the transition of their children to NYS school districts. The Special Education Parent Centers can provide information regarding the Committee on Preschool Special Education and Committee on Special Education processes to ensure students with disabilities receive the services to which students are entitled.

Please email the [Office of Special Education](#) or call (518) 473-2878 if you have any questions regarding the special education information contained in this memorandum. School districts should discuss district-specific concerns that are a direct result of these emergency disasters with the respective regional NYSED Special Education Quality Assurance Office at:

Central Regional Office: (315) 428-4556  
 Eastern Regional Office: (518) 486-6366

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<sup>18</sup> A [letter from USDE's Office of Special Education and Rehabilitative Services](#) describes the provisions made for Hurricane Katrina in 2005.

Hudson Valley Regional Office: (518) 473-1185  
Long Island Regional Office: (631) 952-3352  
New York City Regional Office: (718) 722-4544  
Western Regional Office: (585) 344-2002  
Nondistrict Unit: (518) 473-1185

### **Guidance specifically for English Language Learners (ELLs)**

Pursuant to Commissioner's Regulations Part 154, all newly enrolled students (including those who reenter New York State public schools after a two-year absence) must normally go through the ELL identification process within ten (10) school days. Commissioner's Regulations §154-2.3(a) describes this identification process. A Home Language Questionnaire (HLQ) is administered by qualified personnel.<sup>19</sup> If the HLQ reflects that a language other than English is spoken at home, qualified personnel must conduct an individual interview in English and the student's home language, at which the student's prior work in English and the home language is reviewed if available.<sup>20</sup> Based on information gathered at the informal interview, the qualified personnel determines if the student will take the New York State Identification Test for English Language Learners (NYSITELL). The student's NYSITELL score determines if he or she is an ELL (and if so, the student's level of English language proficiency).<sup>21</sup> If a newly enrolled student is identified as an ELL pursuant to the above procedure, such student is to be provided a final program placement in a Bilingual Education (BE) or English As a New Language (ENL) program within ten (10) school days. For more information, read the memorandum on [Guidance Regarding Bilingual Programs and English Language Learner \(ELL\) Parent Information Resources in New York State \(NYS\)](#).

Districts that experience a large influx of ELLs due to displacement by recent hurricanes may contact the [Office of Bilingual Education and World Languages](#) for guidance and technical assistance in providing timely and appropriate services for such students.

NYSED also encourages districts that experience an increase in their ELL populations to utilize supports and technical assistance offered by eight (8) [Regional Bilingual Education Resource Networks \(RBERNs\)](#) throughout the State, which include seven (7) regional RBERNs and one (1) Statewide Language RBERN.

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<sup>19</sup> Under §154-2.2(u), qualified personnel is defined as a certified Bilingual Education or ESOL teacher or a certified teacher trained in cultural competency, language development, and the needs of ELLs and who is proficient in the student's/parent's home language or uses a qualified interpreter/translator of the language or mode of communication the student or parent or person in parental relation best understands.

<sup>20</sup> For students with disabilities, please see Subpart 154-3 regarding the process by which it is determined whether such students shall take the NYSITELL, with or without accommodations.

<sup>21</sup> Under § 154-2.3(b), this determination may be reviewed within forty-five days and modified if it is determined that the designation should be changed.

- NYSED works in partnership with the RBERNs to offer regional, high quality, professional development opportunities to build capacity in districts and schools in order to address the needs of ELLs.
- The RBERNs provide invaluable support and assistance to all districts and schools across NYS, to educators, leaders, support persons, families and students.
- The RBERNs can provide hands-on assistance and professional development opportunities to districts in areas such as:
  - Student Identification/placement
  - Translations and interpretations
  - Socio-emotional support
  - Parent/guardian involvement
  - Access to community-based organizations

Finally, NYSED encourages districts to reach out to and work in partnership with community-based organizations in their geographic regions that provide advocacy and services to the immigrant and refugee community. Due to these organizations' extensive expertise working with immigrants and refugees, such organizations are invaluable partners in ensuring that ELLs needs are met both in and out of school.

### **Guidance for possible incoming teachers from Puerto Rico**

If a teacher who was displaced from Puerto Rico contacts you about teaching in New York State, you may direct them to email the [Office of Teacher Certification](#) with the subject line of Teacher from Puerto Rico.

### **Guidance from the Office of Student Support Services**

The Office of Student Support Services promotes positive school climate and school improvement by focusing on social and emotional development and learning through programs, services and activities that emphasize family engagement, strong community partnerships, and additional supports for students and families. Resources are available on the Student Support Services website, and include information on student registration and enrollment, trauma-sensitive strategies for school success, pupil personnel services, and mental health and health services, among others.

- Enrollment information can be found in [A Guide To Understanding The New Rules for School Registration](#).
- Residency information covering who can enroll students within the schools of a district, the evidence that can be used to support a claim of residency, and the process of denial and appeal can be found in the [Residency section](#) of the Office of Student Support Services webpage.
- **Trauma-Sensitive Strategies for School Success:** When it comes to success in school, students living in temporary housing have immediate needs that range from transportation to supplies. However, many students also have other unique

needs that stem from stress and/or trauma that need to be addressed in order for them to thrive academically and socially. There is much evidence to suggest that creating a safe and supportive school environment, building secure attachments, and developing a student's non-cognitive skills can lead to student stability and success. Visit [NYS-TEACHS' Trauma-Sensitive Strategies for School Success webpage](#) for information and resources that can help you both understand and address the impact of toxic stress and trauma as well as implement trauma-sensitive strategies that will ultimately lead to school success.

- Educators may also find information regarding mental health by viewing guidance at [Mental Health Resources for Educators](#).
- Resources on school health are available at the [New York State Center for School Health](#).

For further assistance regarding enrollment and school health services, please [email](#) the Office of Student Support Services or call (518) 486-6090.