



TO: The Honorable the Members of the Board of Regents

FROM: Jhone M. Ebert

SUBJECT: Proposed Amendment to Section 100.2(x) of the Commissioner's Regulations to Implement the Provisions of the McKinney-Vento Homeless Assistance Act for the Education of Homeless Children and Youths, as Reauthorized by the Every Student Succeeds Act

DATE: November 9, 2017

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt, as an emergency action, the proposed amendment to §100.2(x) of the Regulations of the Commissioner of Education to implement the provisions of McKinney-Vento Homeless Assistance Act for the education of homeless children and youths, as amended by the Every Student Succeeds Act of 2015 (ESSA)?

Reason(s) for Consideration

Required by the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431 et seq.), as amended by Title IX of the Every Student Succeeds Act of 2015 (Public Law 114-95) and Part C of Chapter 56 of the Laws of 2017.

Proposed Handling

The proposed rule is being presented to the Full Board for adoption as a third emergency rule and for permanent adoption at the November 2017 Regents meeting. A copy of the proposed amendment and a Statement of Facts and Circumstances Justifying the Emergency Adoption are included as Attachments A and B, respectively.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 24, 2017. Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment, however, the Department has made one substantive amendment to the regulation, which will require that the regulation be re-published in the State Register for a 30-day public comment period. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on October 4, 2017. Supporting materials are available upon request from the Secretary to the Board of Regents. Following the 30-day public comment period required under the State Administrative Procedure Act for a revised rulemaking, the Department received no comments on the proposed amendment.

Background Information

The Education for Homeless Children and Youth program is administered under Title VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) (“McKinney-Vento”), which was originally authorized in 1987 and most recently re-authorized in December 2015 by ESSA. Under McKinney-Vento, State educational agencies must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youths.

Several changes were made to the McKinney-Vento Act as a result of ESSA, including, but not be limited to:

1. Removes “awaiting foster care placement” from the definition of homeless as of December 10, 2016;
2. Expands the definition of “school of origin” to include preschool and feeder schools;
3. Requires continued enrollment and transportation during any enrollment dispute pending final resolution of the dispute, including all available appeals;
4. Expands transportation to the school of origin through the remainder of the school year in which the student becomes permanently housed;
5. Requires that all State educational agencies (SEAs) and local educational agencies (LEAs) have policies to remove barriers to identification, enrollment and retention of children and youth who are homeless, including barriers to enrollment and retention due to outstanding fees or fines or absences;
6. Requires SEAs to have procedures that ensure that students who are homeless and who meet the relevant eligibility criteria do not face barriers to accessing academic and extra-curricular activities, including magnet schools, summer school, career and technical education, advanced placement courses, online learning and charter schools;
7. Requires that the State Plan describe how youth who are homeless will receive assistance from counselors to advise such youth and improve their readiness for college;

8. Requires that the State Plan ensure appropriate access to secondary education, including procedures to remove barriers that prevent youth from receiving appropriate for full or partial coursework completed while attending a prior school;
9. Requires LEAs to immediately enroll children and youth who are homeless even if they have missed application or enrollment deadlines during any period of homelessness;
10. Allows LEA liaisons to refer students and their families to needed housing services and to affirm eligibility for students and their families for homeless assistance programs funded by the United States Department of Housing and Urban Development if the liaison has received training; and
11. Requires that information about a homeless child's living situation (e.g., homeless status, temporary address) be treated as a student education record and not be deemed to be directory information.

In general, while State educational agencies and local educational agencies were required to begin implementing the new requirements by October 1, 2016, unless otherwise noted above, states are not required to submit State plans that conform to all of the new ESSA provisions until September 2017. In September 2016, the Department issued guidance to the field regarding implementation of the changes to McKinney-Vento (<http://www.p12.nysed.gov/accountability/homeless/docs/MVESSAFMEMO.pdf>).

In order to conform State law to the ESSA-related changes in McKinney-Vento, the Legislature and the Governor passed Part C of Chapter 56 of the Laws of 2017 amending Education Law §3209.

The proposed amendment to the Commissioner's regulations conforms to the new federal and State statutory provisions by revising the definitions section of the regulation to:

- a. Define feeder school and receiving school;
- b. Eliminate "awaiting foster care placement" from the definition of homeless child as of December 10, 2016;
- c. Define preschool; and
- d. Define school of origin to include feeder schools and preschools.

To be consistent with the recent McKinney-Vento changes, the proposed amendment allows the parent or guardian, or in the case of an unaccompanied youth, the youth (known as the designator) to make the initial designation of the school district and school he/she wants his/her child to attend and upon receipt of such designation, the school district will be required to determine whether the designation made by the designator is consistent with the best interests of the homeless child or youth.

In determining a homeless child's best interest, the school district must presume that keeping the homeless child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the designator.

When making a best interest determination, the school district must consider student-centered factors, including but not limited to factors related to the impact of mobility on achievement, education, the health and safety of the homeless child, giving priority to the request of the child's or youth's parent or guardian or the youth in the case of an unaccompanied youth.

If after considering student-centered factors, the LEA determines that it is not in the homeless child's best interest to attend the school of origin or the school designated by the designator, the local educational agency must provide a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth. The information must also include information regarding the right to a timely appeal. The homeless child or youth must be enrolled in the school in which enrollment is sought by the designator during the pendency of all available appeals.

To conform to the new federal changes, the proposed amendment also requires the designated school district to immediately enroll the homeless child even if the child or youth is unable to produce records of immunization and/or other required health records and/or even if the child has missed application or enrollment deadlines during any period of homelessness, if applicable. However, the amendment does not require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Education Law §906 because of a communicable or infectious disease that imposes a significant risk to others.

The proposed amendment also requires that a student be allowed to maintain enrollment in the same school for the duration of homelessness, through the remainder of the school year in which the student becomes permanently housed, and possibly one additional year if it is the terminal grade for the student in that school.

The proposed amendment further requires that local departments of social services give completed designation forms to school districts and eliminates the requirement that school districts submit designation forms to the New York State Education Department (NYSED or "the Department") for all students identified as homeless, only those for whom the district is seeking tuition reimbursement (which is consistent with current practice).

The proposed amendment also makes the following revisions to the transportation provisions:

- a. Clarifies that transportation beyond 50 miles is subject to a best interest determination using the same factors that school districts must use in reviewing school designations; and
- b. Requires transportation to the school of origin, which includes preschool, through the remainder of the school year in which the student becomes

permanently housed and for one additional year if it is the student's terminal year in the school.

The provisions relating to the responsibilities of LEAs is also revised to:

- a. Require continued enrollment and transportation during any enrollment dispute pending final resolution of all available appeals, including those commenced pursuant to Education Law §310 (i.e., elimination of the stay provision);
- b. Ensure that homeless children are provided with services comparable to services offered to other students in the designated district of attendance including preschool and other educational programs or services for which a homeless student meets the eligibility criteria, such as programs for students with disabilities, English language learners, after-school programs, school nutrition programs and transportation, career and technical education, and programs for gifted and talented students, and to the extent such child or youth is eligible, services under ESSA;
- c. Include the updated LEA McKinney-Vento Liaison responsibilities in ESSA; and
- d. Require that information about a homeless child's living situation (e.g., homeless status, temporary address) be treated as a student education record and not be deemed to be directory information.

After publication in the State Register and the 45-day public comment period required under the State Administrative Procedure Act, the Department made the following one substantive change to the regulation that was adopted by the Board of Regents at its May meeting:

One of the McKinney-Vento liaison responsibilities was inadvertently left out of the list in §100.2(x)(7)(iii)(a). Under McKinney-Vento, the liaison must ensure that "the parents or guardians of homeless children and youths are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children" (42 USC 11432(g)(6)(A)(v)). The proposed amendment has been amended to conform to the federal law and include this responsibility and the Department published the revised rule in the State Register. The Department received no comments on the proposed rule.

Related Regents Items

http://www.regents.nysed.gov/common/regents/files/1016p12d2_0.pdf

<http://www.regents.nysed.gov/common/regents/files/Full%20Board%20McKinney-Vento.pdf>

<https://www.regents.nysed.gov/meetings/2008Meetings/May2008/0508emscca1.htm>

<http://www.regents.nysed.gov/meetings/2008Meetings/March2008/0308emscd1.htm>

<http://www.regents.nysed.gov/common/regents/files/517p12a2.pdf>

<http://www.regents.nysed.gov/common/regents/files/917p12a5.pdf>

Recommendation

Staff recommends that the Regents take the following actions:

VOTED: That §100.2(x) of the Regulations of the Commissioner be amended, as submitted, effective November 18, 2017, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately adopt the proposed amendment to timely implement the changes to Education Law §3209, as amended by Chapter 56 of the Laws of 2017, for the 2017-2018 school year and the McKinney Vento Homeless Act, as amended by the Every Student Succeeds Act, and to ensure that the revised rule adopted at the September Regents meeting remains continuously in effect until it takes effect as a permanent rule; and

VOTED: That §100.2(x) of the Regulations of the Commissioner of Education be amended, as submitted, effective November 29, 2017.

Timetable for Implementation

If adopted at the November Regents meeting, the proposed amendment will become effective as an emergency measure on November 18, 2017 and as a permanent rule on November 29, 2017.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 215, 305, 3202, 3209 and 3713 and Title VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. section 11431), as reauthorized by the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq., (Public Law 114-95, title ix, section 9302, 129 STAT. 1802).

1. Paragraph (1) of subdivision (x) of section 100.2 of the Regulations of the Commissioner of Education shall be repealed and a new paragraph (1) shall be added to subdivision (x) of section 100.2 of the Regulations of the Commissioner of Education, to read as follows:

(1) Definitions. For purposes of this subdivision:

(i) Designator means:

(a) the parent or person in parental relation to a homeless child; or

(b) the homeless child, together with the McKinney-Vento liaison designated under subparagraph (iii) of paragraph (7) of this subdivision, where applicable, in the case of an unaccompanied youth; or

(c) the director of a residential program for runaway and homeless youth established pursuant to Article 19-H of the Executive Law, in consultation with the homeless child, where such homeless child is living in such program.

(ii) Feeder school means:

(a) a preschool whose students are entitled to attend a specified elementary school or group of elementary schools upon completion of that preschool;

(b) a school whose students are entitled to attend a specified elementary, middle, intermediate, or high school or group of specified elementary, middle, or high schools upon completion of the terminal grade of such school; or

(c) a school that sends its students to a receiving school in a neighboring school district pursuant to Education Law section 2040.

(iii) Homeless child means:

(a) a child or youth who lacks a fixed, regular, and adequate nighttime residence, including a child who is:

(1) sharing the housing of other persons due to a loss of housing, economic hardship or a similar reason;

(2) living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodations;

(3) living in emergency or transitional shelters;

(4) abandoned in hospitals;

(5) a migratory child, as defined in section 1309(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. section 6399(2), (Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234), who qualifies as homeless under any of the provisions of subclauses (1) through (4) of this clause or clause (b) of this subparagraph;

(6) an unaccompanied youth, as defined in section 725 of subtitle B of Title VII of the McKinney-Vento Homeless Act, which includes a homeless child or youth not in the

physical custody of a parent or guardian. The term “unaccompanied youth” shall not include a child or youth who is residing with someone other than a parent or legal guardian for the sole reason of taking advantage of the schools of the district; or

(b) a child or youth who has a primary nighttime location that is:

(1) a supervised, publicly or privately operated shelter designed to provide temporary living accommodations including, but not limited to, shelters operated or approved by the State or local department of social services, and residential programs for runaway and homeless youth established pursuant to Article 19-H of the Executive Law; or

(2) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, including a child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train stations or similar setting;

(c) the term “homeless child” shall not include a child in foster care, including a child awaiting foster care on or after December 10, 2016, or receiving educational services pursuant to Education Law section 3202 (4), (5), (6), (6-a) or (7) or pursuant to Articles 81, 85, 87 or 88.

(iv) Preschool means publicly funded:

(a) pre-kindergarten programs administered by the Department or a local educational agency,

(b) Head Start programs administered by a local educational agency, and/or

(c) preschool services under the Individuals with Disabilities Education Act administered by a local educational agency.

(v) Receiving school means:

(a) a school that enrolls students from a specified or group of preschools, elementary schools, middle schools, intermediate schools, or high schools; or

(b) a school that enrolls students from a feeder school in a neighboring local educational agency pursuant to Education Law section 2040.

(vi) Regional placement plan means a comprehensive regional approach to the provision of educational placements for homeless children that has been approved by the commissioner.

(vii) School district of current location means the public school district within the State of New York in which the hotel, motel, shelter or other temporary housing arrangement of a homeless child, or the residential program for runaway and homeless youth, is located, which is different from the school district of origin.

(viii) School district of origin means the school district within the State of New York in which the homeless child was attending a public school or preschool on a tuition-free basis or was entitled to attend when circumstances arose that caused such child to become homeless, which is different from the school district of current location. School district of origin shall also mean the school district in the state of New York in which the child was residing when circumstances arose that caused such child to become homeless if such child was eligible to apply, register, or enroll in public preschool or kindergarten at the time such child became homeless, or the homeless child has a sibling who attends a school in the school district in which the child was residing when circumstances arose that caused such child to become homeless.

(ix) School of origin means the public school that a child or youth attended when permanently housed, or the school in which the child or youth was last enrolled, including a preschool or charter school. Provided that, for a homeless child or youth who completes the final grade level served by the school of origin, the term “school of origin” shall include the designated receiving school at the next grade level for all feeder schools. Where the child is eligible to attend school in the school district of origin because the child becomes homeless after such child is eligible to apply, register, or enroll in the public preschool or kindergarten or the child is living with a school-age sibling who attends school in the school district of origin, the school of origin shall include any public school or preschool in which such child would have been entitled or eligible to attend based on such child’s last residence before the circumstances arose that caused such child to become homeless.

2. Paragraphs (2) through (7) of subdivision (x) of section 100.2 of the Regulations of the Commissioner of Education shall be amended, to read as follows:

(2) Choice of district and school.

(i) The designator shall have the right to designate one of the following as the school district within which a homeless child shall be entitled to attend upon instruction:

(a) the school district of current location;

(b) the school district of origin; or

(c) a school district participating in a regional placement plan.

(ii) The designator shall also have the right designate one of the following as the school where a homeless child seeks to attend for instruction:

(a) the school of origin; or

(b) any school that nonhomeless children and youth who live in the attendance area in which the child or youth is actually living are eligible to attend, including a preschool.

(iii) Where the school district in which a homeless child is temporarily housed is the [same district the child attended on a tuition-free basis or was entitled to attend when circumstances arose which caused the child to become homeless] school district of origin, the child shall be entitled to attend the schools of such district without the payment of tuition for the duration of homelessness and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building, subject to a best interest determination in accordance with subparagraph (iii) of paragraph (4) of this subdivision. In lieu of attending the school serving the attendance zone in which the child is temporarily relocated, such child may choose to remain in the [public] school building he or she previously attended for the duration of homeless and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building.

[(iii)] (iv) A homeless child who designates the school district of current location as the district of attendance and who relocates to another temporary housing arrangement outside of such district, or to a different attendance zone or community school district within such district, shall be entitled [to maintain the prior designation] to continue attendance in the same school building [until the end of the school year and for one additional year if the year constitutes the child's terminal year in such building] or designate any school that nonhomeless children and youth who live in the attendance

area in which the child or youth is actually living are eligible to attend, including a preschool, subject to a best interest determination in accordance with subparagraph (iii) of paragraph (4) of this subdivision, for the duration of homeless and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building.

[(iv)] (v) Where the school district of origin [public school or school district] that a homeless child was attending on a tuition-free basis or was entitled to attend when circumstances arose which caused the child to become homeless is located [outside the] in the State, [the homeless child shall be deemed a resident of the school district in which the child is temporarily located and shall be entitled to attend the schools of such district without payment of tuition. Such district of residence shall not be considered the school district of origin or the school district of current location for purposes of this section.] and the homeless child's temporary housing arrangement is located in a contiguous state, the homeless child shall be entitled to attend the school of origin or any school that nonhomeless children and youth who live in the attendance area in which the child or youth is actually living are eligible to attend, including a preschool, subject to a best interest determination in accordance with subparagraph (iii) of paragraph (4) of this subdivision, for the duration of the homelessness and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building.

[(v)](vi) [Whenever the school district of origin is designated, the child shall be entitled to return to the school building where previously enrolled. Whenever the school district of current location is designated, the child shall be entitled to attend the school

that is zoned for his or her temporary location or any school that nonhomeless students who live in the same attendance zone in which the homeless child or youth is temporarily residing are entitled to attend.] Where the child's temporary housing arrangement is located in New York State, the homeless child shall be entitled to attend the school of origin or any school that nonhomeless children and youth who live in the attendance area in which the child or youth is actually living are eligible to attend, including preschool, subject to a best interest determination in accordance with subparagraph (iii) of paragraph (4) of this subdivision, for the duration of the homelessness and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building.

[(vi)] (vii) Prior to the end of the first semester of attendance or within 60 days of commencing attendance at a school pursuant to the designation made in accordance with this subdivision whichever occurs later, the designator may change the designation if the designator finds the original designation to be educationally unsound.

(3) (i) A designation form provided by the commissioner shall be completed by the [appropriate] designator as defined in subparagraph [(1)(ii)] (i) of paragraph (1) of this subdivision. Such form shall be completed in full. All school districts, temporary housing facilities operated or approved by a local social services district, and residential facilities for runaway and homeless youth shall make such forms available to a homeless child who seeks admission to school or to the parent or person in parental relation who seeks to enroll such child in school and shall ensure that the completed designation forms are given to the local educational agency McKinney-Vento liaison for the local educational

agency in which the designated school is located immediately, but no later than two business days from the earlier of the date on which the child or youth either:

(a) sought enrollment in school; or

(b) was placed in a temporary housing facility or residential facility for runaway and homeless youth.

(ii) Where the homeless child is located in a temporary housing facility operated or approved by a local social services district or a residential facility for runaway and homeless youth, the director of the facility or a person designated by the social services districts, shall[, within two business days of entry into such facilities,] assist the designator to ensure that the form is properly completed and assist the child, where necessary, to enroll in the designated school [district] and shall forward the completed designation form to the local educational agency McKinney-Vento liaison for the local educational agency in which the designated school is located immediately, but no later than two business days of entry into such facilities.

[(ii) Where a parent or person in parental relation or a child who is neither placed in a temporary housing facility by the local department of social services nor housed in a residential program for runaway homeless youth established pursuant to Article 19-H of the Executive Law, designates the school district of current location, the school district shall forward to the department a completed designation form and a statement of the basis for its determination that the child is a homeless child entitled to attend the schools of the district.]

(4) Upon receipt of a designation form, the designated local educational agency[school district] shall immediately:

(i) review the designation form to assure that it has been completed;

(ii) admit the homeless child even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, [medical records], records of immunization and/or other required health records, proof of residency or other documentation and/or even if the child has missed application or enrollment deadlines during any period of homelessness, if applicable. Provided that if a child or youth seeks enrollment in a charter school or preschool and the lottery application deadline for seats in such school or program has passed but the lottery has not yet been held, such child or youth should be entered into the lottery. If the lottery has been held, such child or youth should be placed on the school's waitlist, if one exists, comparable to other students in the district and consistent with any applicable laws, regulations or policies. Provided further that nothing herein shall be construed to require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Education Law section 906 because of a communicable or infectious disease that imposes a significant risk of infection of others;

(iii) determine whether the designation made by the designator is consistent with the best interests of the homeless child or youth. In determining a homeless child's best interest, a local educational agency shall:

(a) presume that keeping the homeless child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the child's parent or guardian, or in the case of an unaccompanied youth, the youth;

(b) consider student-centered factors, including but not limited to factors related to the impact of mobility on achievement, education, the health and safety of the homeless

child, giving priority to the request of the child's or youth's parent or guardian or the youth in the case of an unaccompanied youth;

(c) if after considering student-centered factors and conducting a best interest school placement determination, the local educational agency determines that it is not in the homeless child's best interest to attend the school of origin or the school designated by the designator, the local educational agency must provide a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth. The information must also include information regarding the right to a timely appeal in accordance with clause (b) of subparagraph (ii) of paragraph (7) of this subdivision. The homeless child or youth must be enrolled in the school in which enrollment is sought by the designator during the pendency of all available appeals.

[(iii)] (iv) provide the child with access to all of its programs, activities and services to the same extent as they are provided to resident students;

[(iv)] (v) immediately contact the school district where the child's records are located for a copy of such records and coordinate the transmittal of records for students with disabilities consistent with section 200.4(e)(8)(iii) of this Title;

[(v)] (vi) if the child or youth needs to obtain immunizations or immunization or medical records, the school admitting such child or youth shall immediately refer the parent or guardian of the homeless child or youth to the local educational agency McKinney-Vento liaison designated under subparagraph [(7)](iii) of paragraph (7) of this subdivision who shall assist in obtaining necessary immunizations, screenings, or immunization or medical records in accordance with section 42 U.S.C. section

11432(g)(3)(C) and (D) ([Public Law 107-110, title X, section 1032, 115 STAT. 1998] Every Student Succeeds Act of 2015, 20 U.S.C. section 6399(2), (Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; [2002] 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234); and

[(vi)] (vii) forward a copy of the designation form to [the commissioner, and] the school district of origin, where applicable.

(viii) arrange for transportation pursuant to Education Law section 3209(4) and paragraph 6 of this subdivision; provided, however, that where the school of origin is a charter school, the school district designated pursuant to this section shall be deemed to be the school district of residence of such child for purposes of fiscal and programmatic responsibility under Article 56 of the Education Law and shall be responsible for transportation of the homeless child if a social services district is not otherwise responsible; and

(ix) arrange for free school meals pursuant to the Richard B. Russell National School Lunch Act, 42 U.S.C. section 1758(b).

(5) Within five days of the receipt of a request for school records, the school district shall forward a complete copy of the homeless child's records including, but not limited to, proof of age, academic records, evaluations, immunization or medical records, and guardianship papers, if applicable.

(6) Transportation for any homeless child or youth shall be provided in accordance with this paragraph. Any homeless child not entitled to receive transportation pursuant to Education Law, section 3209(4) from a social services district [the Department of Social

Services or from the Division for Youth, to the extent funds are provided for such purpose as determined by the Director of the Budget,] shall be transported by the designated school district of attendance consistent with this paragraph.

(i) The designated school district of attendance shall immediately provide or arrange in the most cost-effective manner for transportation to and from the child's temporary housing location and the school the child legally attends consistent with subparagraphs (ii) through (vi) below.

(ii) Where such transportation is in excess of 50 miles one way, such transportation shall only be provided where the commissioner certifies that such transportation is in the best interest of the child in accordance with subparagraph (iii) of paragraph (4) of this subdivision to the extent applicable, on a form and timeline prescribed by the commissioner.

(iii) Where a homeless child designates the school district of current location as the district the child will attend and such child does not attend the school of origin, such district shall provide transportation to such child on the same basis provided to resident students.

(iv) [If] Where a homeless child [chooses to continue attendance in the public school building where he or she previously attended pursuant to subparagraph (2)(ii) or (iii) of this subdivision] attends the school of origin, the designated school district of attendance shall provide transportation to and from the child's temporary housing location and the school the child legally attends [if such temporary housing is located in a different attendance zone or community school district within such district] for the duration of homelessness and through the end of the school year in which the child becomes

permanently housed and one additional year if that year constitutes the child's terminal year in the designated school.

(v) Where the designated school district of attendance has recommended that the homeless child attend a summer educational program and the lack of transportation poses a barrier to such child's participation in the summer educational program, the designated school district of attendance shall provide transportation.

(vi) The designated school district of attendance, or the social services district if such child is eligible for transportation from the social services district pursuant to Education Law, section 3209(4), shall provide or arrange for transportation to extracurricular or academic activities where:

(a) the homeless child participates or would like to participate in an extracurricular or academic activity, including an after-school activity at the school;

(b) the homeless child meets the relevant eligibility criteria for the activity; and

(c) the lack of transportation poses a barrier to such child's participation in the activity.

[(v)] (vii) Expenditures for the transportation of a parent accompanying a transported homeless child shall be eligible for transportation aid pursuant to section 3602(7) of the Education Law under the following circumstances:

(a) where the homeless child is being transported using public transportation, transportation of the child with an accompanying parent has been determined by the school district responsible for transporting the child to be the most cost-effective means of transportation, and the school district has determined that public transportation unaccompanied by the parent is inappropriate because of the child's age, the distance to

be traveled, the complexity of the transportation arrangement, the need to transport the child through a high crime area, or a combination of such factors; or

(b) where the homeless child is a student with a disability whose individualized education program (IEP) includes the services of a transportation aide or attendant, and providing transportation with the parent serving as the transportation aide or attendant for the child is the most cost-effective means of transportation; or

(c) where transportation by the parent in the parent's vehicle is the most cost-effective means of transportation.

[(vi)] (viii) For purposes of determining the maximum amount of aidable transportation expense of regular transportation for a homeless child pursuant to section 3209(4)(c) of the Education Law, the transportation service provider or school district shall demonstrate that the costs of such transportation are based on an appropriate unit cost determined by dividing the grand total of transportation expenditures for the preceding school year of all regular transportation services provided to students of the district by the service provider or school district by the number of vehicles, passengers, miles traveled or other appropriate transportation service units represented by all such transportation services. For purposes of determining the maximum amount of aidable transportation expense of transportation pursuant to section 3209(4)(c) of the Education Law for a homeless child who attends a preschool as defined under subparagraph (iv) of paragraph (1) of this subdivision that is the school of origin, the transportation service provider or school district shall demonstrate that the costs of such transportation are based on an appropriate unit cost not otherwise reimbursed under federal programs.

(7) School district responsibilities.

(i) Enrollment. Each school district shall:

(a) ensure that homeless children and youth are not segregated in a separate school, or in a separate program within a school, based on their status as homeless;

(b) [to the extent feasible and consistent with the requirements of paragraphs (2) and (4) of this subdivision, keep a homeless child or youth in the school of origin except when doing so is contrary to the wishes of the child's or youth's parent or guardian] designate and train an employee, who may also be the local educational agency McKinney-Vento liaison, who will be responsible for making best interest determinations in accordance with the requirements of subparagraph (iii) of paragraph (4) of this subdivision;

(c) ensure that a student with a disability as defined in section 200.1(zz) of this Title, who transfers school districts within the same academic year, is provided with a free appropriate public education, including services comparable to those described in the previously held individualized education program (IEP) pursuant to section 200.4(e)(8) of this Title[.];

(d) ensure that homeless children are provided with services comparable to services offered to other students in the district of attendance designated pursuant to this subdivision including preschool and other educational programs or services for which a homeless student meets the eligibility criteria, such as programs for students with disabilities, English language learner services, after-school programs, school nutrition programs and transportation, career and technical education, and programs for gifted and talented students, and to the extent such child or youth is eligible, services provided under Title I of the Elementary and Secondary Education Act of 1965 as amended by the Every

Student Succeeds Act of 2015, (20 U.S.C 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802.);

(e) immediately contact the school last attended by the homeless child or youth to obtain relevant academic and other records.

(ii) Dispute resolution. Each school district shall:

(a) establish procedures, in accordance with 42 U.S.C. section 11432(g)(3)(E), for the prompt resolution of disputes regarding school selection or enrollment of a homeless child or youth ([Public Law 107-110, title X, section 1032, 115 STAT. 1998] Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; [2002] 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234), including, but not limited to, disputes regarding transportation and/or a child's or youth's status as a homeless child or unaccompanied youth;

(b) provide a written explanation, including a statement regarding the right to appeal pursuant to 42 U.S.C. section 11432(g)(3)(E)(ii), the name, post office address and telephone number of the local educational agency McKinney-Vento liaison and the form petition for commencing an appeal to the commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation, to the homeless child's or youth's parent or guardian, if the school district declines to either enroll and/or transport such child or youth to the school of origin or a school requested by the parent or guardian ([Public Law 107-110, title X, section 1032, 115 STAT. 1998] Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.;

Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; [2002] 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234); and

(c) [delay for 30 days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the commissioner pursuant to Education Law, section 310 with a stay application within 30 days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the commissioner renders a decision on the stay application] immediately enroll the child or youth in the school in which enrollment is sought and/or provide transportation pending final resolution of the dispute over the school district's final determination of the child's or youth's homeless status and all available appeals, including appeals within the local educational agency and the commissioner pursuant to the provisions of Education Law section 310.

(iii) Local educational agency McKinney-Vento liaison. Each school district shall:

(a) designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local educational agency McKinney-Vento liaison for homeless children and youth to carry out the duties described in 42 U.S.C. section 11432(g)(6) ([Public Law 107-110, title X, section 1032, 115 STAT. 2000] Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402-9328; [2002] 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234). Such duties shall include but not be limited to:

(1) ensuring that school personnel providing services under the McKinney-Vento Act receive professional development and other support;

(2) ensuring that homeless children and youths are identified by school personnel through outreach and coordination activities and that homeless families;

(3) ensuring that homeless children and youths and their families receive referrals for health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;

(4) ensuring that homeless children and youth are enrolled in, and have full and equal opportunity to succeed in, the school or schools of the local educational agency;

(5) ensuring that homeless families and homeless children and youths have access to and receive educational services for which such families, children and youths are eligible, including services through Head Start programs (including Early Head Start programs), early intervention services under Part C of the IDEA, and other preschool programs administered by the local educational agency;

(6) ensuring that enrollment disputes are mediated in accordance with the requirements of the McKinney-Vento Act, including where if a dispute arises over eligibility, school selection, or enrollment in a school, the child shall be enrolled;

(7) ensuring that parents and guardians and unaccompanied youths are fully informed of all transportation services, including transportation to and from the school of origin and are assisted in assessing transportation services;

(8) ensuring that public notice of the educational rights of homeless children and youths is disseminated in locations frequented by parents or guardians of such youth, and unaccompanied homeless youths, including schools, shelters, public libraries, and soup kitchens, in a manner and form that is understandable;

(9) assisting the parent or guardian of the child or youth (or in the case of an unaccompanied youth) the youth with obtaining any necessary immunizations or screenings, or immunization or other required health records;

(10) in the case of unaccompanied youth, ensuring that such youths are enrolled, have opportunities to meet the same challenging State academic standards as the State establishes for other children and youths and are informed of their status as independent students under section 480 of the Higher Education Act of 1965 (20 U.S.C. section 1087(vv)) and their right to receive verification of this status from the local educational agency McKinney-Vento liaison; and

(11) ensuring that the parents or guardians of homeless children and youths are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children.

(b) in the case of an unaccompanied youth, ensure that the local educational agency McKinney-Vento liaison assists in placement or enrollment decisions under this paragraph, including coordination with the committee on special education for students with disabilities pursuant to section 200.4 of this Title, considers the views of such unaccompanied youth, and provides notice to such youth of the right to appeal pursuant to 42 U.S.C. section 11432(g)(3)(E)(ii) ([Public Law 107-110, title X, section 1032, 115 STAT. 1998] Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.;

Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; [2002]2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234) and provides the form petition for commencing an appeal to the commissioner pursuant to Education Law, section 310 of a final determination regarding enrollment, school selection and/or transportation;

(c) require the local educational agency McKinney-Vento liaison to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal to the commissioner pursuant to Education Law, section 310 of a final determination regarding eligibility, enrollment, school selection and/or transportation by:

(1) providing the parent or guardian or unaccompanied youth with the form petition;

(2) assisting the parent or guardian or unaccompanied youth in completing the form petition;

(3) arranging for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth;

(4) accepting service of the form petition and supporting papers on behalf of any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(5) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or officer or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf of the school district;

(6) transmitting on behalf of the parent or guardian or unaccompanied youth, within five days after the service of, the form petition or any pleading or paper to the Office of Counsel, Education Department, State Education Building, Albany, NY 12234;

(7) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, Education Department, State Education Building, Albany, NY 12234; and

(8) accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects related to the appeal on behalf of the parent or guardian or unaccompanied youth and making such correspondence available to the parent or guardian or unaccompanied youth;

(d) ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations; and

(e) inform school personnel, service providers, [and] advocates working with homeless families, parents and guardians of homeless children and youths, and homeless children and youths of the duties of the local educational agency McKinney-Vento liaison.

(iv) Coordination. Each school district shall coordinate:

(a) the provision of services provided pursuant to subtitle B of title VII of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended, (42 U.S.C. sections 11431 et seq.) with local social services agencies and other agencies or programs providing services to homeless children and youths and their families, including services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C. sections 5701 et seq.);

(b) with other school districts on interdistrict issues, such as transportation or transfer of school records; and

(c) implementation of this subdivision with the requirements of the individuals with Disabilities Education Act (20 U.S.C. sections 1400 et seq.).

(v) Reporting. Each school district shall collect and transmit to the commissioner, at such time and in such manner as the commissioner may require, a report containing such information as the commissioner determines is necessary to assess the educational needs of homeless children and youths within the State.

(vi) Privacy. Information about a homeless child's or youth's living situation shall be treated as a student education record, and shall not be deemed to be directory information, under section 444 of the General Education Provisions Act (20 U.S.C. section

1232g; Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802).

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING THE EMERGENCY

The proposed amendment to section 100.2(x) of the Regulations of the Commissioner of Education is necessary to timely implement the statutory changes to Education Law §3209, as amended by Chapter 56 of the Laws of 2017, to implement changes to McKinney-Vento made at the federal level as a result of the Every Student Succeeds Act.

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 24, 2017. Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment. However, the Department decided to make one substantive amendment to the proposed amendment. As a result a Notice Emergency Adoption and Revised Rule Making was published in the State Register on October 4, 2017. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for in the State Administrative Procedure Act (SAPA) for a proposed rulemaking, would be the November 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be November 29, 2017, the date a Notice of Adoption would be published in the State Register. The emergency rule adopted at the September Regents meeting will expire on November 17, 2017. Emergency adoption action is therefore necessary for the preservation of general welfare to conform to the provisions of the new law for the 2017-2018 school year and to provide school districts in

New York State with sufficient notice of the new requirements so that they can make educational placement decisions for homeless children and unaccompanied youth in the 2017-2018 school year and to ensure that the revised rule remains continuously in effect until it can be adopted as a permanent rule.