Informational Document

for

South Dakota School Districts

on

McKinney-Vento Dispute Resolution

**District Responsibility**

At the conclusion of the dispute process at the district level, a parent, guardian or unaccompanied youth must be informed of the right to appeal the decision to the state level.

The parent, guardian, or unaccompanied youth must be provided with this description of the state level process and be offered assistance by the district liaison.

**Dispute Process at the SD DOE level**

* **Record**. Upon receipt of a written appeal of a district decision where the parent, guardian or unaccompanied youth did not agree with the decision, a record of the source and nature of the dispute will be initiated.
* When a dispute is received, SD DOE will notify the district homeless liaison that a dispute was filed. A request that all related documentation, including the dispute resolution record and any other information the school board used in its decision-making, is submitted to the SD DOE within 5 business days. The homeless liaison will provide information to SD DOE about the local dispute resolution process that was conducted and any other information that pertains or is requested by the State Coordinator of Homeless Education.
* **Investigation**. The SD DOE will initiate an investigation within 10 business days, which will be concluded within 30 business days from receipt of the appeal. Such investigation may include a site visit if the SD DOE determines that an on-site investigation is necessary. By stipulation of all concerned, this investigation may be continued beyond the 30 business day limit. Dispute resolution will be considered a priority and will be resolved in the minimum time possible.
* **SD DOE’s Written Decision.** SD DOE’s decisionwill be sent by letter electronically and in hard copy to the parent, guardian, or unaccompanied youth who filed the dispute; the local school district’s homeless liaison; and the local superintendent.
* SD DOE’s decision is final and no further appeal on this decision will be reviewed.
* The parent, guardian, or unaccompanied youth may consult with their private attorney about legal action.

**District Procedures from US ED Non-Regulatory Guidance**

**and US ED Education Briefs**

**Notice:** Local liaisons must make sure that families are aware of the educational and related opportunities available to their children (including transportation) [42 U.S.C. § 11432(g)(6)(A)(v)] and must post public notice of the educational rights of homeless children and youths [42 U.S.C. § 11432(g)(6)(A)(vi)]. Posters, such as the ones available from the National Center for Homeless Education (NCHE), technical assistance center for US ED, and other information translated into languages represented in the community must be placed where homeless families and youths receive services. It is also a good practice to provide all parents with a written statement of McKinney-Vento rights at the time of enrollment, post such a statement on the LEA website, and include it as part of parent/student handbooks. NCHE provides sample informational materials for parents on its website.

**Immediate Referral to District Liaison:** The child, youth, parent, or guardian must be referred to the local homeless liaison, who will carry out the dispute resolution process as quickly as possible [42 U.S.C. § 11432 (g) (3)(E)(iii)]. The local homeless liaison must be familiar with the state’s McKinney-Vento dispute resolution policy and follow all procedures outlined therein.

**Written and Oral Explanation:** To ensure that McKinney-Vento dispute procedures are accessible to them, procedures should be as informal and streamlined as possible, consistent with impartial and complete review. Parents, guardians, and unaccompanied youth must receive clear and simple information about their right to dispute decisions, how to initiate the dispute, how the procedure will unfold, whom in the school district and SD DOE they can contact with questions, and the timeline for the process. Schools should provide this information in writing, but the local liaison (or a designee trained in the McKinney-Vento Act and skilled at effective communication with parents and youth) should also explain the process orally to ensure parents, guardians, and youth understand.

**Location to Initiate Dispute:** In addition, the parents, guardians, and unaccompanied youth should be able to initiate the dispute resolution process directly at the school they choose, as well as at the district or local liaison’s office. Most homeless families and unaccompanied youth struggle with transportation. They may not have a way to travel to a particular office to initiate the dispute process. The need to travel may delay them initiating the dispute. If timelines are short, the family or youth may be unable to initiate the dispute within the time frame. To eliminate transportation barriers, parents, guardians, and youth should be provided the maximum flexibility to initiate the dispute and submit appeals documents at the most convenient school or district office.

**Minimize Paperwork:** The paperwork necessary to initiate a dispute also should be minimal, to eliminate barriers to parents and students accessing the process. For example, when a school or school district provides written notice of a decision to a parent, guardian, or unaccompanied youth, the written notice could include a space where the parent, guardian, or youth indicates whether he or she agrees with the decision. If the parent, guardian, or youth indicates disagreement, that should trigger a conversation about the dispute process. A particularly effective process is for the liaison or trained designee to explain the grounds for the dispute and the dispute process, ask the parent, guardian, or youth if he or she wishes to dispute the decision, and initiate the dispute immediately. The liaison or designee can check the appropriate box on the form that indicates a dispute has been initiated. This can be accomplished via telephone, if it is difficult for the parent, guardian, or youth to get to a school site.

**Written Explanations**: Any time a student is sent “to a school other than the school of origin or the school requested,” the LEA must provide a written explanation of its decision and an explanation of the right to appeal, whether or not the placement is disputed [42 U.S.C. § 11432 (g)(3)(B)(ii)]. In the case of an unaccompanied homeless youth, the notice explaining the decision and the right to appeal are provided directly to the youth [42 U.S.C. § 11432 (g)(3)(B)(iii)]. (See Best Interest Considerations)

**Best Interest Considerations:** In determining the best interest of the child or youth, the LEA staff shall:

(i) presume that keeping the 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 or youth's parent or guardian, or (in the case of an unaccompanied youth) the youth;

(ii) consider student-centered factors related to the child’s or youth’s best interest, including factors related to the impact of mobility on achievement, education, health, and safety of homeless children and youth, giving priority to the request of the child’s or youth’s parent or guardian or (in the case of an unaccompanied youth) the youth;

(iii) if, after conducting the best interest determination based on consideration of the presumption in clause (i) and the student-centered factors in clause (ii), the local educational agency determines that it is not in the child’s or youth’s best interest to attend the school of origin or the school requested by the parent or guardian, or (in the case of an unaccompanied youth) the youth, provide the child's or youth's parent or guardian or the unaccompanied youth with a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth, including information regarding the right to appeal under subparagraph (E); and

(iv) in the case of an unaccompanied youth, ensure that the local educational agency liaison designated under paragraph (1)(J)(ii) assists in placement or enrollment decisions under this subparagraph, gives priority to the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E). [42 U.S.C. § 11432(g)(3)(B)]

**Helpful Strategies for District Liaisons During the Dispute Process:** Provide parents, guardians, and unaccompanied youth assistance as needed with the dispute process by

* Offering to assist parents, guardians, or unaccompanied youth with gathering information and providing referrals to advocates or attorneys;
* Ensuring that parents, guardians, or unaccompanied youth understand the timeline and can meet deadlines and being flexible with deadlines when necessary;
* Allowing parents, guardians, or unaccompanied youth to submit written and/or oral documentation to support their position;
* Allowing parents, guardians, or unaccompanied youth to submit their documentation for the dispute at the school to minimize any inconvenience that would occur by requiring them to go to other offices;
* Gather information in ways that do not harass or intimidate parents, guardians, or unaccompanied youth and do not violate confidentiality or the Family Education Rights and Privacy Act;
* Keep thorough documentation of all communication with parents, guardians, or unaccompanied youth related to the dispute;
* During the dispute process, follow up with the school in which the parents or guardians want their child to attend, or the unaccompanied youth wishes to attend, to ensure that the child or youth is enrolled and receiving all services, including transportation if the dispute is over attendance at the school of origin; and
* Follow up with the parent, guardian, or youth and school once a decision is rendered to assist with the implementation of the decision. This is especially important when the decision is not what the parents, guardians, or youth wanted; the liaison can play a key role in helping them accept the decision and to put supports in place for transitioning the child or youth to a new school.

**Sample District Dispute Procedure**

Disputes filed with the district are to be investigated and attempted to be resolved according to the locally developed and adopted procedures provided such procedures ensure timely resolution and provide for the items listed below. In the case where the district procedure does not meet these timelines, the procedures below will be used.

* District/M-V Liaison takes an action pertaining to the eligibility, enrollment or school placement.
* Parent, guardian or unaccompanied youth should file a dispute within 10 district business days, (suggested), of written notice of the eligibility, enrollment, or school placement decision by the district.
* The district may have two levels of hearings; one through the superintendent and one to the school board. Because the district’s liaison for homeless students has the role of assisting and supporting the parent, guardian, or unaccompanied youth during the dispute process, he or she should not be named as the superintendent’s designee for this purpose.
* Disseminating procedures to the district school board.
* Notifying the SD DOE within 5 district business days of receipt of written disputes concerning McKinney-Vento complaints is considered a necessary information sharing mechanism.
* The district must conduct timely investigation and processing of disputes within 10 district business days, with an additional 5 district business days, if exceptional conditions exist.
* Disseminating written dispute findings and resolutions to all parties to the dispute and the district school board. Privacy is a priority.
* Appealing to the South Dakota Department of Education within 15 district business days is a right of the parent, guardian or unaccompanied youth.