



**MEMORANDUM**

Date: December 16, 2016

To: Advocates for children and families who are homeless

From: Anna Levine, Senior Staff Attorney, Child Care Law Center

RE: **Eligibility of Homeless Children and Youth for California Child Care Programs**

I. **Child Care Can Help Children and Families Affected By California’s Homeless Crisis**

Homelessness presents a significant and growing threat to young children in California. One in eleven California children under age six experiences homelessness.<sup>i</sup> Our state accounts for nearly half of all unsheltered people in the country.<sup>ii</sup> The stresses and instability of homelessness during early childhood have been shown to have a negative impact on social emotional development and later success in school. Child development programs are known to help children undergoing such stresses, while supporting their parents’ efforts to achieve greater permanency for their families.<sup>iii</sup>

II. **California’s State Child Care Programs**

The California Department of Education (CDE), through its Early Education and Support Division (EESD), administers all statewide child care programs in California, with the exception of CalWORKs Stage 1 Child Care, which is administered by the California Department of Social Services. CDE contracts with more than 700 public and private agencies to provide child care to nearly 500,000 children, statewide, indirectly through Alternative Payment Program administered vouchers, and directly through publically funded child care centers and family child care homes. Families must both fall into an eligible category, and meet need criteria, to participate in state child care programs.<sup>iv</sup>

III. **AB 982 Makes Children Who Are Homeless Categorically Eligible For State Child Care Programs**

In 2015, California passed AB 982 (Eggman), which amended California’s child care eligibility laws to ease homeless children’s enrollment in child care programs. The new law, effective January 1, 2016, (1) adds "being homeless" as a category of need for child care programs; and (2) specifies that local educational agency liaisons for homeless children and youths, Head Start programs, and emergency and transitional shelters are among a list of entities that can identify a child as homeless, and thereby confer eligibility for child care programs.

A. **What Changed: That A Family May “Need” Child Care Solely Because They Are Homeless**

Prior to 2016, while homelessness sufficed to meet *eligibility* criteria under the California Education Code, it did not suffice to meet *need* criteria. To obtain child care, homeless families had to establish

that their child was identified by a legal, medical, or social services agency or emergency shelter as being a recipient of protective services or being (or at risk of being) abused, neglected or exploited; or, that the parents were employed, seeking employment, engaged in vocational training, seeking permanent housing for family stability, or incapacitated.

B. What Changed: Who Can Identify A Homeless Child for Child Development Services

The former Education Code did not specify who could identify a child as homeless. It specified that a legal, medical, or social services agency, or emergency shelter could identify a child as needing child care because the child receives protective services, is neglected, abused, or exploited, or is at risk of neglect, abuse, or exploitation. Cal. Educ. Code §§ 8263(a)(2)(A)(i) and (ii). AB 982 amended this language to allow any of these entities also to identify a child as needing care because the child is *homeless*. Educ. Code § 8263(a)(2)(A)(iii). AB 982 further adds Head Start programs and local education agency liaisons for homeless children and youths to the list of actors who may identify children for services on the basis of homelessness.

The McKinney-Vento Act requires each local educational agency to designate a staff person as a liaison for homeless children and youth, and carry out specific duties, such as ensuring immediate enrollment, access to educational opportunities offered to other students, and providing notice of the rights of homeless youth.<sup>v</sup> Addition of McKinney-Vento liaisons and Head Start programs can ease child care enrollment for children and families isolated by homelessness who may have contact with few or no other agencies.

IV. Who Is Homeless For Purposes of Eligibility for California Child Care Programs?

The California Education Code does not define homelessness for the purposes of establishing eligibility for child care programs. Rather, the statute defers to the judgment of the professionals it authorizes to identify children as homeless.<sup>vi</sup>

The entities authorized by the Education Code to identify children and youths as homeless generally use the McKinney-Vento definition of homelessness for their own programs. According to section 725(2) of McKinney-Vento, the term “homeless children and youths” includes all children or youth who “lack a fixed, regular, and adequate nighttime residence...” and also fit any one of the following definitions:

- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).<sup>vii</sup>

The McKinney-Vento definition of homelessness is broader than the older definition in title 5 of the California Code of Regulations (“Title 5”), which governs state child care programs. The narrower definition in Title 5 requires children to be in shelters or temporary housing programs, or in a place not designed for/usually used as, a regular sleeping accommodation:

(h) “Homeless” means a person or family that lacks a fixed, regular, and adequate night-time residence and has a primary night time residence that is:

(1) A supervised publicly or privately operated shelter, transitional housing, or homeless support program designed to provide temporary living accommodations; or

(2) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.<sup>viii</sup>

A number of child care advocates have suggested aligning the definition of “homeless” in the California Code of Regulations with the definition in McKinney-Vento to avoid administrative confusion and make it easier for child care programs to serve homeless families.

## **V. Priority Status**

In a system in which it is estimated that hundreds of thousands of children are on waiting lists for public child care programs, priority for services can be the difference between receiving timely assistance and not receiving assistance, at all. Depending on circumstances, some homeless children may fall within a first priority status, for example, if they are identified as at risk of abuse and neglect. Most homeless families are relatively low-income relative to other eligible families, which raises their priority for services, as the law directs contracting agencies to serve families with lower incomes before those with higher incomes. Homelessness is not, on its own, a first priority child care status.

## **VI. Documentation**

California Code of Regulations section title 5, section 18090 provides the requirements for documentation of homelessness. It provides that families must submit *either* a written referral from an emergency shelter or other legal, medical or social service agency; *or* a written parental declaration that the family is homeless and a statement describing the family’s current living situation. Given the disjunctive “or” in the regulation, homeless families should only be asked to file a parental declaration if they do not have a written referral.

Families who are homeless do not need to document residency. Generally, families seeking child care services need to document California residency, such as through evidence of a street address or post office address in California. A person identified as homeless pursuant to section 18078(h)(2) is exempted from this requirement. Instead the family submits a declaration of intent to reside in California.<sup>ix</sup>

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<sup>i</sup> U.S. Department of Health and Human Services, Administration for Children and Families, *Early Childhood Homelessness in the United States: 50-State Profile* (Jan. 2016) at 13 (visual overview and statistics on early childhood homelessness in California).

<sup>ii</sup> U.S. Department of Housing and Urban Development, *The 2016 Annual Homeless Assessment Report (AHAR) to Congress* (Nov. 2016) at p. 12, available at <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf> (last accessed Dec. 9, 2016).

<sup>iii</sup> *Id.* at 2 (summarizing research on early childhood development and homelessness).

<sup>iv</sup> The limited exception to this general rule is California’s part-day state preschool program, for which families do not have to meet need criteria.

<sup>v</sup> 42 U.S.C. § 11432(g)(1)(j)(ii).

<sup>vi</sup> Educ. Code § 8263(a)(2)(B)(i)(III).

<sup>vii</sup> As the guidance for federal Head Start programs, which require use of the McKinney-Vento definition, explain, the following are some reasons that the definition is “intentionally broad”:

- Shelters are often full; shelters turn families away, or put families on waiting lists.
- Shelters do not exist in many suburban and rural areas.
- definition conditions of shelters often exclude families with boys over the age of 12.
- Shelters often have 30-, 60-, or 90- day time limits.
- Motels may not be available, or may be too expensive.
- Families may turn to friends or family after initial eviction, living in over-crowded, temporary, and sometimes unsafe environments.
- Families may be unaware of alternatives, fleeing in crisis.
- Families fear child welfare involvement if they are on the street or otherwise unsheltered.

<sup>viii</sup> Cal. Code Regs., tit. 5, § 18078(h)

<sup>ix</sup> Cal. Code Regs. tit. 5 § 18107(b).