EDUCATIONAL RIGHTS
of children affected by
HOMELESSNESS
and/or DOMESTIC VIOLENCE

Massachusetts Advocates for Children:
Children's Law Support Project

In collaboration with the Trauma and Learning Policy Initiative
and the Task Force on Children Affected by Domestic Violence

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Mission
Massachusetts Advocates for Children’s (MAC’s) mission is to be an independent and effective voice for children who face significant barriers to equal educational and life opportunities. MAC works to overcome these barriers by changing conditions for many children, while also helping one child at a time. For over 30 years, MAC has responded to the needs of children who are vulnerable because of race, poverty, disability, or limited English.

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The Educational Rights of Children Affected by Homelessness and/or Domestic Violence: A Comprehensive Manual for Advocates in Massachusetts ("Advocates Manual") is a guide for advocates who work with children and their families who are homeless, children and their families who have experienced domestic violence, or both. It contains information on the rights all homeless children have to educational stability through the McKinney-Vento Homeless Assistance Act. This manual also provides ways to use McKinney and other laws, such as those involving restraining orders and school records, to ensure that a child who is fleeing domestic violence, whether homeless or not, is made safe at school from those who might cause harm.

It describes the particular protections afforded by the special education laws for students with disabilities who are homeless and/or fleeing domestic violence, since being uprooted from home and/or the consequent trauma of being exposed to violence sometimes can exacerbate learning, behavioral, and emotional problems. Finally, because the rights to a stable education can be undermined if families who are homeless must move far away from their child’s home school, this manual provides information and tools to advocate for shelter close to a child’s school of origin.

This manual is published by the Massachusetts Advocates for Children ("MAC") through its Children’s Law Support Project ("CLSP"), which provides statewide advocacy and support on behalf of children to the Massachusetts civil legal aid system. The authors are all members of the Domestic Violence and School Safety ("DVASS") Working Group of the Task Force on Children Affected by Domestic Violence ("Task Force").

The manual is a prime example of how a multi-disciplinary approach within legal services can be instrumental in addressing problems faced by low-income children and
their families. Children’s educational stability and success is a pre-condition for the parents’ own ability to find and keep the employment and housing that will enable them to become more self-sufficient and support their family.

Concurrent with the publication of this Advocates Manual, MAC and the Task Force, in collaboration with Harvard Law School’s Hale and Dorr Legal Services Center, through the Trauma and Learning Policy Initiative (TLPI), have published a companion document, Helping Traumatized Children Learn (HTCL), which proposes an agenda directed to policy makers and educators. The goal of HTCL is to encourage systemic support for schools to develop environments in which children traumatized by exposure to family violence and/or children who are homeless, can learn in a calm and safe environment. Together, Helping Traumatized Children Learn and this Advocates Manual provide a framework for advocates at the individual family level and at the policy level to work together to enable children exposed to family violence and/or homelessness to achieve in school at their highest levels.

The work of two coalitions has been instrumental in the development of the material for the Advocates Manual. DVASS, chaired by Attorneys Jeffrey Wolf of Massachusetts Law Reform Institute and Dana Kandel Sisitsky of Greater Boston Legal Services, is composed of education and family lawyers. It has explored ways the law can be utilized to make children affected by domestic violence feel physically and emotionally safe at school. For this manual, DVASS provided the family law expertise, developed through representing families in domestic violence situations and in education matters, and through numerous trainings of court-based and other domestic violence advocates and school personnel.

The second coalition, MAEHCY (Massachusetts Advocates for the Education of Homeless Children and Youth), chaired by Massachusetts Appleseed Center for Law and Justice, has advocated for the rights of homeless children to a stable education. CLSP and MAEHCY played a leadership role advocating at the legislature to establish a formal state-wide collaboration to carry out the education mandate of the McKinney-Vento Act. The resulting steering committee, composed of state agencies and advocacy organizations, has been instrumental in assisting the Massachusetts Department of Education in issuing advisories to school districts clarifying relevant regulations, conducting trainings to school-based homeless liaisons, and convincing the federal Department of Education to change a punitive federal regulation excluding foster children in emergency placements from coverage under the Act.

Attorney Susan Cole, a senior program manager at MAC, was in the pivotal position as director of CLSP, member of the McKinney Steering Committee, chair of the Task Force,
and long-time advocate for children with special education needs. While serving as lead writer of *Helping Traumatized Children Learn*, she and the members of DVASS envisioned a manual that could assist advocates, social workers and others to use the McKinney-Vento Act, special education laws, and family law protections to help homeless children, including those fleeing domestic violence, to be successful in school.

To accomplish this task, MAC engaged Attorney Michelle Lerner, a former legal services attorney with outstanding expertise in benefits, housing and homelessness (representing homeless families at shelter hearings). Michelle broadened the vision to include shelter advocacy and took the lead role in synthesizing the body of knowledge concerning the rights of children in housing, education, and family law in order to write this manual. Members of the DVASS work group contributed their body of research, writing, and editing skills. The leadership role and contributions of all of the above in producing this document is very much appreciated.

We would like to thank the funders of CLSP, particularly the Massachusetts Legal Assistance Corporation, for its support of both MAC as a statewide program and the CLSP as a vehicle for developing a legal agenda on behalf of low income children in the Commonwealth. We also thank the Massachusetts Bar Foundation and the Boston Bar Foundation, whose funding supports access to justice for underrepresented populations and greater involvement of the private bar.

We appreciate the commitment and leadership of the Massachusetts Department of Education’s Office for the Education of Homeless Children and Youth (OEHCY), in particular its director Peter Cirioni and Sarah Slatterback, for working to ensure that Massachusetts children receive the educational benefits required by the McKinney-Vento Homeless Assistance Act.

We hope that this manual, and the subsequent trainings CLSP, the Task Force and DVASS plan to offer, will be a valuable tool for legal services and pro-bono attorneys, as well as for other advocates in the education and human services fields, as they strive to protect and assure equal justice for their low-income clients in Massachusetts.

Jerry Mogul
MAC Executive Director
As an advocate for low-income parents, children, or families in Massachusetts, you are bound to be confronted with clients who are homeless, affected by domestic violence, or both. In the United States, over 1.3 million women annually experience violence by a current or former partner. Each year in Massachusetts, 5.5 percent of women between the ages of eighteen and fifty-nine experience domestic violence and an estimated 43,000 children are named on restraining orders, suggesting that they have been exposed to violence between family members. Many women and children become homeless as a direct or indirect result of domestic violence. In one Massachusetts study, 41 percent of all homeless mothers reported having been battered.

Clients who are homeless and clients affected by domestic violence tend to have multiple intertwined legal issues. It is often difficult for advocates to separate out all of these issues and help clients resolve them, especially when the issues span different areas of law and require familiarity with different agencies and resources.

This manual is intended to help you, as an advocate, understand and enforce education-related rights so that homeless children and children who have experienced domestic violence can be safe and secure at school and achieve at their highest levels. We use the term “domestic violence” to describe violence between intimate partners. Children may have watched or overheard violence between their caregivers and may live with its consequences (e.g., parental depression or a parent with physical injuries, such as bruises). Children may also become directly involved in a violent event by trying to stop the abuse or by trying to call the police.

Some of the information in this manual is specific to children affected by domestic violence, whether or not these children are homeless. Other information is specific to children who are homeless, whether or not they are affected by domestic violence.
The entire manual is useful for the significant population of children who are affected by both domestic violence and homelessness, and contains advocacy suggestions specific to helping these children. The manual briefly covers the effects that the traumas of domestic violence and homelessness can have on children in school, and then describes in detail what advocates can do to mediate these effects.

This manual is a companion to Helping Traumatized Children Learn (HTCL). HTCL is a report and policy agenda that the Trauma and Learning Policy Initiative of Massachusetts Advocates for Children and the Hale and Dorr Legal Services Center of Harvard Law School will pursue, along with the Task Force on Children Affected by Domestic Violence. The goal of the policy agenda is to support schools to create trauma-sensitive environments in which traumatized children can focus, behave appropriately, and learn. This requires training for teachers and mental health support staff and funding for school-wide approaches.

This Advocates Manual covers the following:

- Children’s and parents’ rights under the McKinney-Vento Homeless Assistance Act;
- Working with school district McKinney liaisons;
- Using the McKinney-Vento Act to choose the safest school placement for a child;
- School enrollment of children who do not have proper documentation due to fleeing domestic violence;
- Accessibility to safe transportation for children within and between school districts;
- Using restraining orders to protect children at school;
- Understanding school records law as it applies to domestic violence situations;
- Accessing appropriate special education services for children with disabilities traumatized by domestic violence or homelessness; and
- Appealing shelter placements that are too far from children’s schools.

Notes

1 Findings from the National Violence Against Women (NVAW) Survey cited in the National Education Association’s Children Exposed to Domestic Violence: A Teacher’s Handbook to Increase Understanding and Improve Community Responses (2002), available at http://www.lfcc.on.ca/teacher-us.PDF.


It is estimated that at any one time between three and ten million children in the United States are living in homes where violence occurs. Children who witness, or who are themselves targets of family violence, become keenly aware of their lack of control over the perpetrator’s dangerous outbursts. These children often face unpredictable danger and incomprehensible anxiety in their own homes, the very place where society tells them they should be most secure. As a result of having so little security in the place they are told they should feel most secure, they often begin to view their entire world as a threatening place filled with danger and pain. Scrutinizing each situation for privately understood signals of danger, they may respond to the world defensively, with their forays into community life encumbered by their struggle with the psychological and physical effects of their traumatic experiences.

Schools, as communities for children, offer an optimal setting for children to overcome their negative views of adults and peers. Yet children who enter the classroom in a persistent state of fear often struggle with cognitive difficulties and behavior problems that impede their academic performance and ability to respond appropriately to the social demands of the classroom setting.

Trauma can affect both how children process new information and their “attentiveness” to classroom tasks and instructions. Traumatic experiences can thwart children’s linguistic and communicative development, as well as the abilities to organize and remember new information, grasp cause-and-effect relationships, and develop a coherent sense of self—in short, how they process new information. Such experiences can also undermine children’s
ability to focus on classroom activities, regulate and differentiate their emotional states, and be “available” for learning. In addition, when children move through the school day in a persistent state of fear, the parts of their brains that control language and abstract cognition—those most important for academic learning—may be less active.

Moreover, children often develop secondary responses to trauma such as depression, aggression towards others and oneself, decreased self-esteem, disturbances in identity, difficulty in interpersonal relationships, guilt and shame. These result from their failure to control volatile situations and subsequent feelings of vulnerability. Because children struggling with the traumatic effects of exposure to violence may be unable to express their suffering in ways that adults can readily understand, many “act out” their suffering in ways that evoke negative responses from adults and peers alike. These negative responses can exacerbate their suffering, and lead to the development of increasingly intense symptoms that thwart their developmental achievements.

For children who become homeless as a result of violence, the experience of homelessness adds yet another element of trauma. Homelessness by itself can cause children to develop trauma responses such as depression, lack of self-esteem, social isolation, and learned helplessness. For homeless children, even those not affected by violence, “feelings of safety and connection are essential. . . to attain the emotional security necessary to develop self-reliance, autonomy, and self-esteem” and to succeed academically. Such feelings of safety and connection are understandably even more important for homeless children who are affected by violence.

It is therefore essential to the well-being of children who are affected by domestic violence, homelessness, or both, that schools do the following:

- assist them with maintaining the social connections they have with teachers and other children whom they know;
- provide them with as much stability as possible;
- give them a sense of safety from physical harm;
- provide those who qualify with special education services that can accommodate the symptoms that may be consequences of their traumatic experience;
- provide them with access to psychological and other support services; and
- advocate systemically for school-wide environments that can enable traumatized children to focus, behave appropriately, and learn. (See Helping Traumatized Children Learn, available online at www.massadvocates.org.)
Notes


6 Goodman et. al. at 1220.

7 See Id. at 1223.
A. A Brief Introduction to the McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act ("the Act" or "McKinney-Vento Act"), as reauthorized by the No Child Left Behind Act of 2002, gives children the right to a stable education even when they have unstable housing. The Act gives students the right to remain in one school throughout their homelessness, and to receive the services that they need from that school in order to succeed academically. The McKinney-Vento Act requires local school districts to: identify the children in their school districts who are covered by the Act; allow these children to stay in their “schools of origin” throughout the period of homelessness or switch to the schools in the towns where they are temporarily staying, at their families’ discretion; and provide the children with the services necessary to enable them to enroll in that school and succeed in that school, including transportation, special education, and referrals to medical and social services.

The federal regulations implementing the McKinney-Vento Homeless Assistance Act say that school districts must ensure that “[c]hildren and youth experiencing homelessness enroll in, and have a full and equal opportunity to succeed in, school[].” In order to succeed in school, children affected by domestic violence may need more assistance than other homeless children. Realizing this, the federal government has stated that schools may use McKinney-Vento funds to pay for “[a]ctivities to address the particular needs of homeless children and youths that may arise from domestic violence.”
B. Which children are covered by the McKinney-Vento Act?

The McKinney-Vento Act applies to all homeless children, and it defines homelessness broadly. Basically, any child who is living somewhere temporarily due to the family’s inability to secure permanent housing is considered “homeless” under the McKinney-Vento Act and is eligible for the rights provided by the law. More specifically, children are covered by this law if they are living in any of the following situations:

1) **Emergency shelters** “Emergency shelters” in Massachusetts include domestic violence shelters (commonly referred to as “battered women’s shelters”) as well as emergency shelters funded by the state’s Department of Transitional Assistance. Some emergency shelter programs place families in separate apartments managed and paid for by the programs, rather than in congregate shelters. These separate accommodations, called “scattered site shelters,” are still considered emergency shelters and are covered by the McKinney-Vento Act.

2) **Staying with friends or family members** The McKinney-Vento Act covers “children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.” Domestic violence is clearly a “similar reason” envisioned by the Act, so children whose families are doubled up with friends or family as a result of domestic violence are considered homeless and have the same right to services under the McKinney-Vento Act as children living in shelters. This is an important concept, because a large percentage of families who leave their homes due to domestic violence move in temporarily with family or friends rather than going to emergency shelters.

3) **Transitional shelters** The McKinney-Vento Act also defines children living in “transitional shelters” as being homeless and entitled to rights and services. Many families affected by domestic violence live in transitional shelters set up specifically for domestic violence victims. These programs, sometimes called “transitional housing programs” rather than transitional shelters, are usually run by non-profit organizations and accept families who have reached their time limits in emergency domestic violence shelters or have run out of other temporary housing options. Some transitional programs are congregate shelters where multiple families live in one building, while others are networks of apartments managed by the non-profit organization running the program. All transitional programs have time limits of some sort, from
a few months up to a year or two. At least one federal court has found that children living in transitional housing programs for as long as two years are still covered by the McKinney-Vento Act as homeless children entitled to services.

4) **Motels and hotels** The McKinney-Vento Act covers children who live in motels or hotels due to lack of alternate accommodations. Some families fleeing domestic violence stay in hotels and motels temporarily because there is no other shelter space available or because they do not want to enter a shelter. The Department of Transitional Assistance sometimes uses motels and hotels to shelter families due to an inadequate stock of congregate and scattered site shelters. Children living in motels and hotels due to domestic violence are covered under the McKinney-Vento Act regardless of whether the accommodations are paid for by their family, by the Department of Transitional Assistance, by a church, or by some other entity.

5) **Trailer parks and campgrounds** Children living in seasonal trailer parks and camp grounds due to lack of safe alternative housing are considered homeless under the McKinney-Vento Act.

6) **Awaiting foster care placement** Some children are removed from their homes by the Department of Social Services. While these children are awaiting long-term foster care placements, they are considered homeless under the McKinney-Vento Act. Children in this situation may be living in shelters, hotline homes, or temporary foster care placements. (See MADOE Homeless Education Advisory 2004 - 9: Children and Youth in State Care or Custody in Appendix.)

7) **Living in substandard housing, cars, parks, abandoned buildings, or other public or private places not normally used as residences** Children who live in any of these situations are considered homeless under the McKinney-Vento Act and are entitled to services.

8) **Unaccompanied youth** Children who have left their homes and are living apart from their parents are covered by the McKinney-Vento Act if they are living in one of the above situations, i.e., in a shelter, with friends or family members, in a hotel, in a public place, etc. (See MADOE Homeless Education Advisory 2004 - 8: Unaccompanied Youth in Appendix.)
C. School district liaisons

The McKinney-Vento Act requires every school district covered by the Act (i.e. every school district which receives federal funding) to appoint an individual to serve as the homeless liaison. It is the liaison’s responsibility to identify and assess the needs of all of the homeless children in the school district, to help them select the most appropriate schools, to ensure that they are properly enrolled in those schools, to help them obtain necessary documentation, transportation, access to special education services, and referrals to social and medical services.

When you have a client who is or has a homeless child in need of services and protections at school, the place to start your advocacy is with the relevant school district’s homeless liaison, sometimes referred to as the “McKinney liaison.” You should be able to find the name and contact information of this person by contacting the school district’s administrative offices. If you are unable to find the appropriate person in this way, there is a list of all of the liaisons in Massachusetts at http://www.doe.mass.edu/hssss/program/homeless.asp. You can also call the Department of Education’s Office for the Education of Homeless Children and Youth (OEHCY).

If you or your client have trouble getting a particular liaison to provide the necessary assistance, you also can call OEHCY to request intervention and assistance. The numbers to call are (781) 338-6330 (Sarah Slautterback) and (781) 338-6924 (Peter Cirioni).

D. School districts’ responsibility to identify homeless children, including those affected by domestic violence

The McKinney-Vento Act requires school district liaisons to identify homeless children in their district and assess their special needs, and specifies that liaisons should do this by collaborating with community agencies.” If, as an advocate, you want to improve a school district’s identification of homeless children and in the process get more help for your clients, you should contact the local districts’ homeless liaisons and try to work out a relationship by which you can regularly refer students and parents to them. In addition, you can make suggestions to the liaisons about ways to better identify homeless families affected by domestic violence in your area, such as the following (as an advocate, you can also take on some of these tasks yourself in order to inform your client population about their rights):

1) Contact all of the shelters and transitional housing programs in the school district’s region of the state, including those specific to domestic violence.
Liaisons should call area shelters to alert them to children’s rights under the McKinney-Vento Act and to offer assistance to children in the shelter coming from or entering their school districts. It is important that liaisons call and/or write to shelters and transitional programs both within and outside of their town or city, because children from their town or city may go to a shelter in another town for safety or logistical reasons. Not every town has a domestic violence shelter, so families from one school district who are affected by domestic violence may have to go to shelters in the next town, city, or county when they flee their homes. If a school district is near a state boundary, families fleeing violence in that district may even need to cross state lines in order to find a domestic violence shelter. Even if there is a shelter within a district, a family may choose to go to a shelter outside the district because it is safer for them to be further away from the abuser. Because the children in some of these families may want to continue attending the schools in the original district, liaisons should learn where shelters within a reasonable distance from their district (i.e., an hour’s drive) are located. This is something that you, as an advocate, can help them with—see www.janedoe.org for listings. If you find that liaisons are not regularly contacting shelters and housing programs, you can also contact these organizations yourself to share information about the children’s McKinney rights and the relevant liaisons’ contact information. You can also offer posters to the shelters and housing programs detailing this information (see below).

2) Hang posters in medical clinics and other accessible locations detailing the education rights of homeless children. Many families affected by domestic violence stay with family and friends, and as such are difficult to identify as homeless. These families often do not know that their children have the right to stay in and be transported to their original schools. The only practical way of identifying these families is to educate all families about these rights so that those who are doubled up will know to identify themselves as such to the relevant school district liaison. The MADOE’s state plan implementing the McKinney-Vento Act requires liaisons to ensure that “public notice of the educational rights of homeless children and youths is disseminated where such children and youths receive services under this Act, such as
schools, family shelters, and soup kitchens. One way to do this is for liaisons to hang posters in accessible locations around town, encouraging families to contact them for assistance. The posters should clearly state that children who are temporarily doubled up with family or friends or are staying in shelters, hotels, or similar accommodations have the right to stay in their current or last school or, if they prefer, to enroll in the school in the district where they are temporarily staying. The posters should also make clear that transportation between school districts is available. Liaisons’ phone numbers should be on the posters with an invitation to call for assistance. Good places to hang the posters are medical clinics, food pantries, community action agencies, faith-based organizations, local Department of Social Services (DSS) and Department of Transitional Assistance (DTA) offices, and weekly low-cost motels and campgrounds. As an advocate working with low-income clients, you can prepare these posters yourself and hang them in these locations, thereby ensuring that word gets out without having to rely exclusively on the liaison in your district. You can find ready-made posters, which only require insertion of the liaison’s name and phone number, on the following websites: The National Center for Homeless Education (www.serve.org/nche); the Massachusetts Appleseed Center for Law and Justice (www.appleseeds.net/ma); and the National Law Center on Homelessness and Poverty (www.nlchp.org). There is also a poster in the Appendix to this manual, which you can copy and enlarge, that was developed by a group of advocates in conjunction with the Department of Education’s Office for the Education of Homeless Children and Youth (OEHCY) and that focuses on the rights of children in doubled-up families.

3) Make sure that the people in the district who register students recognize when children’s addresses indicate homelessness, and that the registrars know to refer these families to the liaison for assistance. When children enroll for school, their addresses sometimes indicate that they are homeless. If the registrars are familiar with the addresses of shelters and hotels in the area, including addresses given out by domestic violence shelters, and if they keep an eye out for situations in which two families live at the same address, they will be able to help identify homeless children. Registrars should be instructed not say anything to the children about their homelessness, since this could upset or stigmatize a child, but instead to simply alert the liaison of the situation so that the liaison can reach out to the families in a sensitive manner.
E. How to use McKinney to help parents select the safest and most appropriate school for their child

The McKinney-Vento Act gives parents and guardians of homeless children the choice of keeping their children in their “school of origin,” defined as “the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled,”9 or enrolling them in the school district where they are temporarily staying.

When a family is affected by domestic violence and becomes homeless, there are two questions that they must face in making this decision: 1) where will the children be safest, given the domestic violence, and 2) where will the children have the most stability and access to the most appropriate services?

While McKinney liaisons are required to provide support to parents making these decisions, it is ultimately the parents who have the right to answer these questions and select their children’s schools. The parent is most familiar with the safety issues affecting her family and is therefore in the best position to make safety-related decisions, though hopefully she will have the assistance of a domestic violence counselor trained in assessing dangers and developing short-term and long-term “safety plans.” School district liaisons should respect the parent’s assessment as to which school is likely to be safest and help the parent enroll her child in that school.

It is also the parent’s right to make the decision as to which school will offer the most emotional and academic stability to her child. If safety concerns do not dictate otherwise, the McKinney-Vento Act presumes that children will have the most stability, and therefore the least psychological trauma, by remaining in the school which they already have been attending.

This presumption was written into the law because sociological research has shown that children who change schools frequently do not score well on standardized tests,10 and that even non-mobile children perform worse on standardized tests when there is a high rate of student mobility in and out of their schools.11 Because of this research, the McKinney-Vento Act states that a child should remain in the school of origin “to the extent feasible” unless the parent requests otherwise.12
After a parent has decided whether to keep the child in the school of origin or enroll the child in the new school, the child has the right to stay in the selected school until the end of the school year in which the child becomes permanently housed. This means that if a child is homeless for two years, the child has the right to remain in the selected school throughout the entirety of those two years and then until the end of the academic year in which she moves into stable housing.\textsuperscript{11}

However, if the family needs to keep moving from town to town while still homeless, the parent has the right to decide at each move whether to leave the child in the school he or she is attending or move the child to the school in the new town. In domestic violence situations, parents may decide more frequently than other homeless parents that they need to move their children from one school to another due to safety concerns.

A school district can object to a parent’s choice regarding school selection if such choice is not “feasible.” However, the school only can decide that a parent’s choice is not feasible based on a detailed written analysis concluding that the school selection is not in the best interests of the child. The U.S. Department of Education explains that “[t]he placement determination should be a student-centered individualized determination. Factors that [a district] may consider include the age of the child or youth; the distance of a commute and the impact it may have on a student’s education; personal safety issues; a student’s need for special instruction (e.g., special education and related services); the length of the anticipated stay in temporary shelter or other temporary location; and the time remaining in the school year.”

**Important note**

School selection rights under the McKinney-Vento Act also apply to private schools that children attend for special education reasons, where the schooling is paid for by the original school district. If a school district has been paying for a child to attend a private school, it must continue paying for this school even after the child becomes homeless and is no longer staying in that district, if the child’s parent elects to keep the child in the private school. This is because the private school is the child’s “school of origin” under the McKinney-Vento Act. Just as the child would have the right to remain in a public school within the original school district, the child has the right to remain in a private school paid for by the original school district due to a lack of appropriate services within that district.
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year.” As one analyst has noted, “[t]he option for the child to remain in the school of origin is the centerpiece of the McKinney-Vento Act’s mandate for school stability,” and school districts must remember this presumption when analyzing the child’s interests.

If a school district objects to a parent’s decision regarding school choice, the district must begin a formal dispute resolution process and enroll the child while that process is pending (see section on Dispute Resolution below).

As an advocate, there are several things that you can do to help your client utilize the school selection rights provided by the McKinney-Vento Act:

1) You can give your client a note to present to the school when the child goes to enroll, explaining the child’s right to enroll in that school (or stay in that school) under the McKinney-Vento Act. A note like this can go a long way toward smoothing the enrollment process.

2) You can contact the school district’s liaison to connect the liaison with the child and let him or her know the family’s school selection.

3) If the school district disputes the child’s right to stay in or enroll in the selected school, you can ensure that the school enrolls the child pending resolution of the dispute, as is required under the Act (see section on Dispute Resolution below). You can then provide the school with additional information and arguments concerning the feasibility of the school selection and the child’s best interests, and if necessary provide this information to the MADOE Office for the Education of Homeless Children and Youth, which is charged with resolving disputes between schools and homeless families concerning school placement.

F. Immediate and safe enrollment for students lacking records

Many families on the verge of homelessness, especially those fleeing domestic violence, are unable to pack all of their belongings or gather all of their important documents before leaving their homes. Thus, children frequently arrive in school districts without school records, birth certificates, custody papers, or immunization records. The McKinney-Vento Act requires school districts to enroll homeless students immediately and let them attend all school activities (including after-school programs and meal
programs), even if the students can not produce the records that the district normally requires for enrollment. The enrolling school must then obtain the necessary records and help children get any needed immunizations.

The homeless liaison is the person responsible for assisting children with immediate enrollment. When a homeless child arrives in a school district without the necessary documents or immunizations, it is the liaison’s responsibility to ensure that the registrar allows the child to enroll and participate in all school activities without delay. Once a child presents for enrollment and describes a living situation that falls into one of the categories constituting homelessness under the McKinney-Vento Act, the presumption is that the child is eligible for school in the district and should be immediately enrolled, even while missing documentation. Once a child is enrolled, it is the liaison’s responsibility to obtain the child’s records from the last school and medical facility and help the child get any immunizations she or he needs. If the school district then disputes the child’s eligibility for enrollment, the school district must follow the dispute resolution process outlined in the section of this manual beginning on page 20, keeping the child enrolled while this process is being followed.

If a child moves suddenly from one district to another district, the liaison at the school of origin must, to the best of her or his ability, forward all school records to the second school district without delay.

If you have a client whose child is enrolling in a new school without all of the necessary documents, it will help smooth the process considerably if you write a letter for the client to bring to the registrar outlining the school’s obligation under the McKinney-Vento Act to enroll the child without such documentation and then assist with obtaining it. The liaison at the new school should contact the liaison at the school of origin to obtain all necessary records and documents. If the school does not comply, you or the child’s parent can contact the new school’s liaison and ask for assistance. If this effort does not result in immediate enrollment, you or the child’s parent can contact the Massachusetts Department of Education’s Office for the Education of Homeless Children and Youth (OEHCY). (See p. 8 for contact information.)
As an advocate, there are a few things you can do to assist your client with the safe transfer of school and medical records:

1) Discuss with your client the possible safety risks involved with obtaining records in the usual way. Help your client to assess whether or not he or she should use an intermediary. If your client would like to use the MADOE OEHCY as an intermediary, assist him or her with contacting that office and requesting this, or with asking the liaison in the new school district to contact OEHCY.

2) If your client would like to use a different intermediary, brainstorm together the best intermediary to use. Ideally, it should be someone who does not live in the town where the family is currently located, so that the family cannot be traced through the person obtaining the records. It should also be someone that the custodial parent trusts to get any necessary records from the child’s last school or medical clinic without disclosing the child’s new location. Some people ask schools to send records to relatives, although this means the relative, if traced through the school, may be pressured to share the family’s location.

Safety concerns and the role of the advocate

Where domestic violence is involved, there are special safety concerns about the transmittal of records from one district to another. A family affected by violence may be in hiding from the abuser and may need to keep their new location secret. In such a situation, a liaison could create danger for the family by letting people in the last town know the family’s whereabouts, e.g., by telling the liaison in the school of origin that the child has moved to the new district. Ideally, in this type of situation the liaison should talk to the custodial parent before requesting the records from the old school, to ask if he/she would rather obtain the records through an intermediary. The MADOE Office for the Education of Homeless Children and Youth is willing to serve as an intermediary in such cases, requesting the records from the first school district without disclosing the family’s new location and forwarding them to the second district. If a parent is not comfortable with this route either, he or she may want to ask a friend or family member of the child or a social worker or other provider who already knows the current whereabouts of the family.
3) Once the need for such precaution is identified and one or more intermediaries are suggested, you can contact the liaison at the school district requesting the records to alert her or him to the need for going through an intermediary and suggestions for how to go about it. If your client wants the liaison to obtain records through an intermediary other than the OEHCY, the intermediary will probably need a release from your client providing authorization to obtain such records. If you are an attorney, you can draft such a release for the third party to use. If you are not an attorney, you can suggest that the liaison ask the school district’s attorney to draft an appropriate release.

4) If you and your client deem it best, you yourself can obtain the records and forward them to the school, or you can arrange for another intermediary to do so. You might be able to arrange for records to be sent to a legal services agency or other service organization in the town of the original school, and then pick the records up there or have them faxed to you to give to your client or to the new school.

Another concern is that children staying in domestic violence shelters may not be able to write the street address of the shelters on any form that will be placed in their records, for safety reasons. Each school district should have a safety plan that describes how it handles situations like this. If your client or your client’s child is told to disclose the confidential address of a shelter, you should alert the school district’s liaison to the safety concerns and ask your client to consult the school district’s safety plan. If the liaison is not familiar with the district’s plan or believes none exists, you should contact the school district’s attorney to request that a plan be drafted and that, in the meantime, your client’s safety be protected.

G. Obtaining safe and adequate transportation between and within school districts

The McKinney-Vento Act requires school districts to provide homeless children with transportation back to their school of origin, if that is where they will remain enrolled. If the child’s temporary residence is still within the same school district as the school of origin and the child simply needs transportation within the district, that district is responsible for paying the transportation costs. If the child is staying outside the school district and needs transportation between two districts, the original school district and the school district where the child is temporarily staying must agree on a formula for paying for this transportation. If the school districts can not agree on a formula, then
they must split the costs evenly.\textsuperscript{17} Under no circumstances may a school district refuse to provide transportation due to an inability to work out transportation costs with the other district, or require that the child’s family pay for part or all of the transportation.\textsuperscript{18}

There are several ways that a school can provide a child with transportation. It can re-route one of its existing buses or, if the child is being transported between districts, ask the other school district to do so (and either pay for this or split the costs with the other district). It can hire a bus or van or car service specifically to transport the child. Where public transportation is an option and the child is old enough, the district can provide the child with bus or train tokens or passes. If the child’s family has a car and a member who can drive the child to and from school, or the youth is able to drive herself or himself, the district can reimburse the family for driving expenses (gas and mileage).

If a school district contests a child’s right to receive transportation, it must provide the transportation while initiating the dispute resolution process outlined below in subsection H. As an advocate, you can assist your client with obtaining transportation

\textbf{Transportation & Safety Concerns}

In domestic violence situations, there may be safety concerns that dictate which kind of transportation should be used, and the school should be sensitive to this. Some parents may not feel safe driving their children back to their old school or allowing their children to take public transportation, for fear of interference by the abusive parent. In other cases, a parent may only feel safe driving or accompanying the child to school so that he or she can keep an eye on the child and try to ward off any potential problems with the abuser. To help ensure the safety and comfort of children and parents affected by domestic violence, schools should try to individualize the way that they address transportation needs for these families and be open to any safety concerns that parents may have.

Another safety concern is the need that some families have to keep their location confidential. If the school sends a bus loaded with children to pick up a child at a domestic violence shelter or at a private residence where the child is temporarily staying with family or friends, many people will potentially know where the child lives and this may compromise the child’s and parent’s safety. There are two ways to prevent this. One is for the school to arrange with the parent for the child to be picked up at another agreed-upon location. The other is for the school to schedule the child as the first to be picked up and the last to be dropped off, so that none of the other children can see where the child lives (though the bus driver will still know). The need to resort to one or both of these strategies will depend on the level of danger facing a particular family.
by sending a note to the school district’s homeless liaison describing the transportation
needed and the citations to the sections of the McKinney-Vento Act requiring provision
of this transportation (see footnotes to this section). If the school district refuses to
provide the transportation, you or the parent can call the OEHCY for assistance and
intervention.

As an advocate for your client, you can alert the school district liaison to the relevant
safety concerns and request that the school provide a particular form of transportation
or otherwise arrange transportation in such a way that accommodates a family’s specific
safety concerns. If the school refuses and you and your client believe the refusal will
endanger him or her and/or the child, you should contact MADOE’s Office for the
Education of Homeless Children and Youth and request their assistance negotiating these
issues with the school.

H. Resolution of disputes between parents and school districts

A school district may disagree with the way that a parent exercises her or his rights
under the McKinney-Vento Act, claiming that a child does not have the right to enroll in
its school or that it is not feasible to transport the child to or from a particular district.

In such cases, the McKinney-Vento Act makes clear that the school district must
immediately enroll the child in the school selected by the parent and provide
transportation to and from that school pending resolution of the dispute. The school
must also provide a written explanation of the school’s decision that includes the parent’s
right to appeal the decision. The school district is not entitled to simply refuse to enroll
or transport the child—it must enroll and transport the child while a formal resolution is
worked out, and allow the parent time to appeal.

The Massachusetts Department of Education (MADOE) recently issued instructions for
school districts on how to formally resolve such disputes. In *Homeless Education Advisory
2003-7* (included in Appendix), MADOE states that schools must adhere to the following
steps:

1) The school challenging the parent’s decision must allow the child to enroll
and must provide transportation while the following dispute resolution steps
are followed.

2) On the day that the school challenges the parent’s or guardian’s decision, or
the child’s decision in the case of an unaccompanied youth, the school must
provide the liaison for that school with a notice that includes the following information:

- An explanation of what is being challenged, written on the MADOE form prescribed for such notices.

- Notice of the right to appeal the challenge, with an attached MADOE appeal form to be completed by the parent who decides to appeal. (See Homeless Education Advisory 2203-7B, included in Appendix.) Within that same day, the liaison must provide these notices and forms to the parent and ensure that they are clear and easy to understand. According to the McKinney-Vento Act, this means that they must be written in or translated into the language of the home if that language is not English. The liaison also must add language to the notice, if it is not already included, informing the parent or guardian of the right to obtain independent information about parents’ rights and a list of several Massachusetts Advocates for the Education of Homeless Children and Youths (MAEHCY) contacts with their addresses, telephone numbers, and email addresses. A list of current contacts can be obtained by calling the Massachusetts Coalition for the Homeless hotline at (800) 308-2145; by contacting Alan Jay Rom, Esq., Massachusetts Appleseed Center for Law and Justice, Inc., (617) 482-8686, ajrom@appleseed.net or by contacting Steve Valero, Esq., Greater Boston Legal Services, (800) 323-3205 x1654, svalero@gbls.org.

3) Within that same day, the liaison must notify MADOE of the challenge and provide MADOE with copies of all notices given to the parent or guardian.

4) The school district then has two working days to review its initial decision and make a final decision as to whether it will continue to challenge the right of the student to be enrolled, transported, etc. During this time, MADOE may contact the school district and provide technical assistance by notifying the school of its obligations under federal and state laws.

5) By the end of these two working days, the school’s superintendent must make a final decision and put it in writing, including all factual information on which the decision was based and the legal basis for the decision.
6) On the same day this decision is made, it must be given to the liaison. The liaison is required to provide the decision to the parent, guardian, or unaccompanied youth within that same day.

7) The Commissioner of MADOE will then have two days following the receipt of the appeal by the parent, guardian, or unaccompanied youth to decide whether to uphold or overturn the school’s decision. The MADOE policy makes clear that the Commissioner will be guided in his or her decision by the McKinney-Vento Act’s preference for keeping children in their school of origin unless doing so is contrary to the wishes of the parent, guardian, or unaccompanied youth.

8) Parents, guardians, and unaccompanied youth also have the right to bring disputes directly to the MADOE. Liaisons must let parents, guardians, and unaccompanied youth know that they have this right.

As an advocate, you can assist your client by making sure that the above steps are followed, contacting the Office of Education for Homeless Children and Youth if there is a problem, and supplying both the school and the OEHCY with information, documentation, and arguments concerning why it is in the child’s best interests to attend the school selected by the family and/or receive the requested transportation.

I. **Referrals to medical, counseling, and social services**

Children who are homeless and children who have suffered or witnessed domestic violence are often in need of basic services like mental health counseling, medical care, dental care, food programs, and social work services. Their parents are often in need of referrals to domestic violence programs and legal services. When families do not receive these services, they have more difficulty stabilizing and the children are often unable to function sufficiently to progress in school. For this reason, the McKinney-Vento Act requires homeless liaisons to provide homeless families in their district with referrals to these kinds of programs. Specifically, the Act states that “[e]ach local educational agency liaison for homeless children and youths…shall ensure that…homeless families, children, and youth receive…referrals to health, mental health, dental, and other appropriate services.” MADOE’s state plan for
implementing the McKinney-Vento Act includes the same language. School districts can use McKinney-Vento Act funding to develop lists of referral resources and provide such referrals.

The services that homeless families and families affected by domestic violence are most likely to need are trauma counseling, domestic violence counseling (including development of safety plans), medical and dental care, food program assistance, and legal assistance. As an advocate, you can share your knowledge of such services with local school district liaisons in order to help them provide appropriate referrals to homeless families in their service area. If you are looking for such services for your client and need help locating them, you can ask the liaison for help, and/or try the following websites and printed resources: www.janedoe.org for a list of organizations serving victims of domestic violence; www.state.ma.us/mdaa/vawa/resources-state.html for domestic violence-related resources; www.masslegalhelp.org for legal services organizations; and the brochure in the Appendix to this manual called “Domestic Violence Can Affect Your Child At School,” put out by Parents’ PLACE, the Task Force on Children Affected by Domestic Violence and Massachusetts Advocates for Children, which includes a list of facilities around the state that focus on providing counseling to children affected by trauma. You can find many other resources by calling your local United Way.

On occasion, a child may need a service that is not available for free or low enough cost in the community. In these circumstances, the school district can use McKinney-Vento Act funds to provide the needed service to the child. The Act specifically allows for use of McKinney-Vento funds for “[t]he provision of other extraordinary or emergency assistance needed to enable homeless children and youths to attend school.” As an advocate, you can contact the school and request that the school provide or pay for a needed service that a child can not otherwise access.

Notes

1 An excellent resource on the requirements of the reauthorized McKinney-Vento Act is Patricia Julianelle’s article, “The McKinney-Vento Act: Stable Schooling Despite Unstable Housing,” Clearinghouse Review (Jan-Feb 2004). See also “Educational Rights of Children and Youths in Homeless Situations: A Practical Guide to McKinney-Vento for School Personnel, Advocates, and Service Providers in Massachusetts” (Massachusetts Appleseed Center for Law and Justice, 2002). Both articles were valuable sources of information and ideas for this section of this manual.

2 67 Federal Register 1099, emphasis added. This mandate is also included verbatim in the Massachusetts Department of Education (MADOE) Homeless Education State Plan (2002), p.8.

3 42 U.S.C. 11433(d)(13).

Over 50,000 Massachusetts families are doubled up with family members at any given time due to lack of housing. The number of children in this situation rose by 488 percent between 1980 and 2000. Michael D. Goodman and James Palma, “Winners and Losers in the Massachusetts Housing Market” (Citizens’ Housing and Planning Association and Massachusetts Housing Partnership, 2001), p. 2.


MADOE’s “Homeless Education State Plan” at p.15.


See, e.g., The Educational Consequences of Mobility for California Students and Schools, 1 PACE Policy Brief, May 1999.

42 U.S.C. 11432(g)(3)(B)(i). See also MADOE’s “Homeless Education State Plan” (2002) at p.5, which states that MADOE will ensure that “in determining ‘best interest,’ school districts, to the extent feasible, keep children/youth in the school of origin, unless it is against the wishes of the parent/guardian.”

But see section on transportation rights, below, concerning limited rights to transportation after obtaining permanent housing.


Julianelle at 503.

42 U.S.C. 11432(g)(3)(C) and 11434(a)(1).


The U.S. Department of Education has interpreted the McKinney-Vento Act’s transportation provisions as not mandating schools to pay for transportation for any child once the child is permanently housed. While the McKinney-Vento Act clearly requires schools to allow a child to continue attending through the end of the school year in which she or he becomes permanently housed, the U.S. DOE has issued policy guidance informing schools that they do not have to pay for transportation once the child is permanently housed. This caveat undermines the right to stay in the same school through the end of the school year, since by definition the affected children are from very low-income families who would have trouble paying for transportation costs themselves. What the U.S. DOE says to try to address this is that schools still have the discretion to continue funding transportation for these students through the end of the school year, and that if they choose to do so they can use Title I, Title V, and/or McKinney subgrant funds, which they are not allowed to use for transporting children who are currently homeless. See “Guidance/Policy issue for Homeless Education Program on Districts’ obligation for transporting formerly homeless students” and “Guidance/Policy issue for Homeless Education Program on Districts’ use of Federal funds to pay the excess costs of transporting formerly homeless students,” in the Appendix.

42 U.S.C. 11432(g)(3)(E). Technically, the MADOE’s state plan does not actually require the parent to appeal a negative decision by a school, but rather puts the onus on the school to initiate a dispute resolution process through the DOE if it contests a parent’s selection. However, DOE policy currently requires parents to affirmatively appeal negative decisions by school districts in order to trigger the dispute resolution process. Until this policy is amended, you as an advocate can help your client access and complete the forms for appealing the school district’s decision.


Regarding the right of parents, guardians, and unaccompanied youth to take disputes directly to MADOE, see MADOE’s “Homeless Education State Plan” (2002) at p. 7: “Nothing stated above . . . shall be construed to abridge the right of a parent, guardian, unaccompanied youth or advocate from bringing a dispute directly to the MADOE.”

23 MADOE “Homeless Education State Plan” at p. 15.
Once it has been decided where a homeless child affected by domestic violence will be enrolled, there are a number of measures that can be taken to keep that child safe at school. In domestic violence situations, children can face various kinds of danger from an abusive parent. An abusive parent might intimidate or harass the child or otherwise place the child in fear or at risk of harm at school, try to gain access to the abused parent at the school, unlawfully remove the child from the school, interfere with the child’s education by sabotaging school meetings and other events, or get information from the school in an attempt to locate the abused parent. An abusive parent also might try to intimidate or harass school personnel. There are measures that parents and schools can take to prevent these things from happening and protect children at school.

A. Safety Plans in General

Many school districts already have procedures in place for protecting children affected by violence. These procedures are often called “safety plans,” but they may be called something else. Whatever they are called, these procedures normally consist of steps that school employees must follow in order to enforce restraining orders, protect information in school records (such as addresses), and otherwise understand and meet the safety needs of individual children.

You should be able to find out if such a protocol exists in a particular school district by calling the homeless liaison or, if that fails, by calling the superintendent’s office or the school district’s attorney. If such a plan exists, being familiar with it will make you better able to advise your clients on how to go about ensuring that available protections are put in place for their children. If you find that no district-wide or school-wide safety plan exists, or that the plan does not include sufficient information about restraining orders,
school record protection, or individualized safety plans (see below), you should advise
the school district’s attorney or superintendent of the need to create or revise the plan. If
there is no district-wide or school-wide plan, it may take more work on your part or your
client’s part to put necessary precautions in place.

B. Using Restraining Orders to Protect Children at School

1. 209A restraining orders in general

A restraining order, also called an “abuse prevention order” or a “209A order” (because
these restraining orders are obtained under Chapter 209A of the Massachusetts General
Laws), is a court order issued to protect a person from being abused. Parents can obtain
209A orders to protect themselves or their children against a spouse or ex-spouse, the
other parent of the child, another relative of herself or her child, or someone the parent
has lived with or dated seriously. To get the order, the petitioning parent must show a
court that the other parent (or the petitioning parent’s spouse, ex-spouse, or boyfriend/
girlfriend) has caused or attempted to cause physical harm to the parent or the child,
created fear of imminent serious physical harm, or used force or threats to cause the
parent or the child to engage in involuntary sexual relations.

Restraining orders are issued by the District Courts and Probate and Family Courts
serving the city or town where the parent or child lives or lived prior to leaving to avoid
abuse. When courts are closed and there is a substantial likelihood of immediate danger
of abuse, a person can also seek a restraining order by going to a police department or
other law enforcement agency, which will then contact a judge by telephone to issue a
temporary order that will last until the courts open.

2. School-related protections that may be included in restraining orders

A restraining order can protect a minor child at school in several ways. First, if the
abusive person is one of the child’s parents and there is no other court order concerning
custody, a restraining order can grant sole custody and decision-making authority to the
non-abusive parent—including

non-abusive parent—including

the sole right to make school-
related decisions for the child. Second, a restraining order can
include a “no-contact” provision prohibiting the abusive parent from contacting the
child, which can extend to all locations where the child may be, including the school.
Such “no-contact” provision usually also prohibits the abuser from contacting the parent
and/or child through third parties, and as such forbids the abuser from attempting to
gain information about the child or custodial parent, or pass messages to them, through
contacting school personnel—even if contact with school staff is not expressly prohibited
by the order. Third, a judge may specifically order that the abusive parent must stay
away from a child’s home, school, and/or daycare facility. Finally, a restraining order
may contain additional, more specific protections to ensure that children are safe in
school or day care, such as an order explicitly prohibiting the abusive parent from going
to the school, from gaining access to the child’s school records, from meeting with school
personnel, or generally from becoming involved in the child’s school or education.
However, restraining orders lacking such specific language often still provide such
protections through the more general provisions mentioned above.

Sample Restraining Order

The sample District Court restraining order on the following pages includes several general
provisions that protect children at school. Note the following:

1) Custody determinations are written in section 6.

2) No-contact orders are written in sections 2 and 7. These no-contact orders state
that the abusive parent (the “defendant”) is not allowed to contact the custodial
parent (the “plaintiff”) or the children either directly or “through someone
else.” The language concerning contact “through someone else” prohibits the
abusive parent from using school personnel to gain information about the
custodial parent or the children, and from trying to contact the children or
leave messages for them at school. Until the law is clari
fied it is best to check
section 7. By doing so, the order does not have to explicitly forbid the abusive
parent from contacting the school or accessing records; the abusive parent is
automatically prohibited from doing these things.

3) Sections 2 and 7 also order the abuser to stay at least 100 yards away from
the custodial parent and children. This means that while the children are in
school the abusive parent can not be within 100 yards of the school. Section 7
also specifically orders the abusive parent to stay away from the children’s
school. Note that even if the school were not separately listed, the abusive
parent would still prohibited by the “100 yard” provision from going near
the school while the children are there. Also note that a real order might not
include the actual name or address of the school for safety reasons (i.e., so the
abusive parent, who gets a copy of the order, will not be able to use the order to discover the children’s whereabouts).

4) Section 8 provides space for restrictions on visitation, which would automatically deny access to school records. (See discussion of school records law below.)

5) Section 13 provides space for further prohibitions. A judge may include specific language here prohibiting access to school records or school meetings. However, such language, while helpful in clarifying the more general provisions, is not necessary. The no-contact provisions discussed above, if they include the children, by their nature prohibit the abusive parent from contacting school personnel, getting access to records or leaving messages for children.

3. What advocates can do

a) If your client has a restraining order, educate school personnel about how to enforce it. If your client already has a restraining order with relevant provisions, it is a good idea to advise him or her to provide at least one copy to the school and to ensure that school personnel recognize the abusive parent by providing them with photographs. It may also be necessary to educate school personnel on how to read the restraining order and to point out which provisions limit the abusive parent’s access to the school. Some school officials are familiar with reading restraining orders, but many are not. If your client has a restraining order with general provisions that limit the abusive parent’s access to the children, the school, and/or school records, you should contact the school to ensure that these provisions are understood and that the school knows how to enforce them. A good place to start is the homeless liaison, but it may also be a good idea to contact the child’s teachers, the records keeper, and someone in school administration.

As noted above, the school district may already have a safety plan which addresses how to enforce a restraining order at school, i.e., who at the school should have copies of the order, what other information should be given to school employees about the child’s situation, and what to do if a restraining order is violated at school. Whether or not such a plan exists, there are some general recommendations and requests that you can make when you contact the school:
### ABUSE PREVENTION ORDER
(G.L. c. 209A) Page 1 of 2

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<tr>
<th>PLAINTIFF'S NAME</th>
<th>DEFENDANT'S NAME &amp; ADDRESS</th>
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<td>0000</td>
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<tbody>
<tr>
<td>Doe</td>
<td>Doe</td>
<td>Smith</td>
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</tr>
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</table>

**VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.**

**A. THE COURT IS ISSUING THE FOLLOWING ORDERS TO THE DEFENDANT:**

1. **YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF:**
   - by acting alone or in concert with others in a manner that is intended to cause the Plaintiff to fear physical harm to herself, her family members, or her movables.

2. **YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF:**
   - by contacting the Plaintiff in person, by telephone, by writing, or in any other manner.

3. **YOU ARE ORDERED TO IMMEDIATELY LEAVE AND STAY AWAY FROM THE PLAINTIFF’S RESIDENCE:**
   - and other places specified in this Order.

**B. THE COURT ORDERS THAT THE ADDRESS OF THE PLAINTIFF'S RESIDENCE is to be unsealed by the Clerk/Magistrate or Registrar of Probate so that it is not disclosed to you, your attorney, or the public.**

**C. YOU ARE ORDERED NOT TO CONTACT THE CHILDREN LISTED ABOVE:**

<table>
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<tr>
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</tbody>
</table>

**D. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.**

**E. THE COURT ORDERS THAT THE ADDRESS OF THE PLAINPITF'S RESIDENCE is to be unsealed by the Clerk/Magistrate or Registrar of Probate so that it is not disclosed to you, your attorney, or the public.**

**F. YOU ARE ORDERED TO STAY AWAY FROM ANY CHILDREN LISTED ABOVE:**

<table>
<thead>
<tr>
<th>NAME</th>
<th>DATE OF BIRTH</th>
<th>RELATION TO PLAINTIFF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lisa Doe</td>
<td>8/5/95</td>
<td>Daughter</td>
</tr>
<tr>
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<td>10/6/97</td>
<td>Son</td>
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**G. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.**

**H. THE COURT ORDERS THAT THE ADDRESS OF THE PLAINTIFF'S RESIDENCE is to be unsealed by the Clerk/Magistrate or Registrar of Probate so that it is not disclosed to you, your attorney, or the public.**

**I. YOU ARE ORDERED TO COMPLY WITH THE FOLLOWING TERMS:**

1. **(A) To surrender all keys to the residence to the Plaintiff.**
2. **(B) To surrender all keys to the Plaintiff.**

**J. YOU ARE ORDERED TO IMMEDIATELY LEAVE AND STAY AWAY FROM THE PLAINTIFF’S RESIDENCE:**

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**K. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.**

**L. THE COURT ORDERS THAT THE ADDRESS OF THE PLAINTIFF'S RESIDENCE is to be unsealed by the Clerk/Magistrate or Registrar of Probate so that it is not disclosed to you, your attorney, or the public.**

**M. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINPITF’S WORKPLACE:**

**N. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF’S WORKPLACE:**

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**P. THE COURT ORDERS THAT THE ADDRESS OF THE PLAINTIFF'S RESIDENCE is to be unsealed by the Clerk/Magistrate or Registrar of Probate so that it is not disclosed to you, your attorney, or the public.**

**Q. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF’S WORKPLACE:**

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**R. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.**

**S. THE COURT ORDERS THAT THE ADDRESS OF THE PLAINTIFF'S RESIDENCE is to be unsealed by the Clerk/Magistrate or Registrar of Probate so that it is not disclosed to you, your attorney, or the public.**

**T. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF’S WORKPLACE:**

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**U. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.**

**V. THE COURT ORDERS THAT THE ADDRESS OF THE PLAINTIFF'S RESIDENCE is to be unsealed by the Clerk/Magistrate or Registrar of Probate so that it is not disclosed to you, your attorney, or the public.**

**W. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF’S WORKPLACE:**

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**X. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.**

**Y. THE COURT ORDERS THAT THE ADDRESS OF THE PLAINTIFF'S RESIDENCE is to be unsealed by the Clerk/Magistrate or Registrar of Probate so that it is not disclosed to you, your attorney, or the public.**

**Z. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF’S WORKPLACE:**

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</table>
ABUSE PREVENTION ORDER  
(G.L. c. 209A) Page 2 of 2

14. Police reports are on file at the Police Department.

15. OUTSTANDING WARRANTS FOR THE DEFENDANT’S ARREST:  

☐ 16. An imminent threat of bodily injury exists to the petitioner. Notice issued to Police  

Department(s) by ☐ telephone ☐ other  


B. NOTICE TO LAW ENFORCEMENT.  

1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons), and make return of service to this Court. If this box is checked, service may instead be made by leaving such copies at the Defendant’s address shown on Page 1 but only if the officer is unable to deliver such copies in hand to the Defendant.

☐ 2. Defendant Information Form accompanies this Order.

☐ 3. Defendant has been served in hand by the Court’s designee: Name:  

Date:  

DATE OF ORDER TIME OF ORDER A.M. EXPIRATION DATE OF ORDER NEXT HEARING DATE: 7/5/05  

6/21/05 11:30 ☒ P.M. 7/5/05 at 4 P.M. at 8:30 X A.M. ☐ P.M. in Courtroom, 4  

The above and any subsequent Orders expire on the expiration date indicated. Hearings on whether to continue and/or modify Orders will be held on dates and times indicated.

SIGNATURE NAME OF JUDGE:

C. PRIOR COURT ORDER EXTENDED.  

After a hearing at which the Defendant ☐ appeared ☐ did not appear, the Court has ORDERED that the prior Order of 6/21 ☒ 20, 05 shall continue in effect until the next expiration date below ☒ without modification  

☐ with the following modification(s): Paragraph 7 is vacated.

☐ Return of items ordered surrendered or suspended in A 12 on Page 1 presents a likelihood of abuse to the Plaintiff.

DATE OF ORDER TIME OF ORDER A.M. EXPIRATION DATE OF ORDER NEXT HEARING DATE: 7/5/06  

7/5/05 10:45 ☒ P.M. 7/5/06 at 4 P.M. at ☒ 8:30 A.M. ☐ P.M. in Courtroom.

SIGNATURE NAME OF JUDGE:

D. FURTHER EXTENSION.  

After a hearing at which the Defendant ☐ appeared ☐ did not appear, the Court has ORDERED that the prior Order of 7/5/05 ☒ 20 shall continue in effect until the next expiration date below ☒ without modification  

☐ with the following modification(s):

☐ Return of items ordered surrendered or suspended in A 12 on Page 1 presents a likelihood of abuse to the Plaintiff.

DATE OF ORDER TIME OF ORDER A.M. EXPIRATION DATE OF ORDER NEXT HEARING DATE:  

7/5/05 at ☒ 8:30 A.M. ☐ P.M. in Courtroom.

SIGNATURE NAME OF JUDGE:

E. PRIOR COURT ORDER MODIFIED.  

Upon motion by the ☐ Plaintiff ☐ Defendant and after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear, the Court has ORDERED that the prior Order of 7/5/05 ☒ 20 shall be modified as indicated below:

☐ Return of items ordered surrendered or suspended in A 12 on Page 1 presents a likelihood of abuse to the Plaintiff.

DATE OF ORDER TIME OF ORDER A.M. EXPIRATION DATE OF ORDER NEXT HEARING DATE:  

7/5/05 at ☒ 8:30 A.M. ☐ P.M. in Courtroom.

SIGNATURE NAME OF JUDGE:

F. PRIOR COURT ORDER VACATED.  

This Court’s prior Order is vacated. Law enforcement agencies shall destroy all records of such Order.

☐ VACATED AT PLAINTIFF’S REQUEST.

SIGNATURE NAME OF JUDGE:

DATE OF ORDER TIME OF ORDER ☐ A.M. ☐ P.M.

WITNESS: FIRST OR CHIEF JUSTICE: Neil J. Walker  

A true copy, sheet (Asst.) Clerk Magistrate/ (Asst.) Register of Probate.

FA 2a (95)
• In general, the child’s classroom teachers and someone in the school administration should have copies of the restraining order. These staff members should be instructed, by you or by school administration, as to how to read the order and the specific things that the abusive parent is prohibited from doing. It is also a good idea for these staff members to be given a photograph of the abusive person to help with identification.

• School personnel should be told that violations of “no abuse,” “no contact,” and “stay away” provisions of a restraining order are criminal offenses. You or your client should explain whether and under what circumstances school personnel should call the police concerning a violation. The school also should be told to alert the custodial parent to any violation.

• It is helpful to put a note in the child’s school file about the possibility of the abusive person requesting information.

• Teachers and other staff should be instructed not to release any information about a child, or even confirm that a child attends the school in question, without the custodial parent’s consent.

• Relevant staff members should be informed if a particular child should not be allowed to go home with anyone absent prior authorization from the custodial parent.

b) How to get a restraining order with provisions that will protect the child at school. If your client is considering getting a restraining order and you are not a lawyer or domestic violence counselor, you should refer your client to a legal services office (listed at www.masslegalhelp.org) or domestic violence shelter (listed at www.janedoe.org). The following is general information about where and how to get restraining orders that include provisions protecting the child(ren) at school.

1. Where to get the order: Restraining orders can be sought in District Court or in Probate and Family Court, but there are a few differences of which you should be aware. District Courts are not permitted to
address the issue of visitation between an abusive parent and his child(ren). A District Court can make custody and child support orders if there are no current custody or support orders from a Probate and Family Court, even though it can not make orders about visitation. However, many District Court judges are unwilling to consider the issue of child support, even though they are permitted to do so. If a prior child support or custody order from a Probate and Family Court is in effect, a District Court cannot issue any orders concerning custody or child support. In these cases, a District Court can still issue a restraining order protecting an individual from an abusive person and may also order the abusive person not to contact the individual. However, if an individual wants the restraining order to contain provisions about visitation, or if there already are custody or visitation orders issued by a Probate and Family Court and the individual wants the specific issues of custody and/or child support reconsidered in the restraining order, the request for a restraining order must be filed in a Probate and Family Court.

2. **Which forms to complete:** The forms that need to be filled out are:
   - Complaint for Protection from Abuse
   - Affidavit Form
   - Affidavit Disclosing Care or Custody Proceedings
   - Defendant Information Form in Restraining Order Cases
   - Confidential Information Form

   All the above listed forms are available in the office of the court clerk. They are also attached in the Appendix of this manual. Some courts may have additional paperwork which they require complainants to fill out prior to filing for a restraining order.

3. **How to fill out the complaint:** The Complaint for Protection from Abuse and the Affidavit are the main documents that will tell the judge why a restraining order is needed. Each Complaint has two pages. A sample Complaint is included at the end of this section. The first page asks for information about the abused party (the complainant) and the abusive parent. It also asks the complainant to check off the sorts of safety protections he or she wants the court to order. The second page of the Complaint requests information about the abused individual’s children and asks which protections the
complainant wants the court to provide for the children. Some of the more important points to include on the Complaint are:

- If an individual is asking for any relief on page two of the Complaint (relief on behalf of his or her children) check Box 8 in Section K on page one.
- If an individual wants custody of the children, check the box in Section C on page two and provide the names and dates of birth of the children.
- If an individual does not want the abusive parent contacting the children, check the box in Section D on page two, and provide the names of the children.
- If an individual is in Probate and Family Court and wants a specific visitation schedule ordered between the children and the abusive parent, check the appropriate boxes in Section E on page two, and provide the required information.

4. How to fill out the affidavit in order to get school-related protections: The affidavit form is located on the back of page one of the Complaint. In the affidavit, the complainant should write the latest and the worst instances of abuse committed by the abusive person, information about any history of abuse, any specific threats the abusive person has made towards the complainant or the children, and instances that show why the complainant or the children are or have reason to be afraid of the abusive person. If the complainant does not want any contact between the abusive person and the children and does not want him or her having access to their school information, he or she should list in detail the reasons why these protections are needed to protect the children from harm.

Important Note about School and Day Care

The Complaint does not have a specific place to indicate that an individual wants the abusive parent to stay away from the children’s school(s) or day care. Therefore, the complainant should insert this information in the following places to make sure the judge knows that this relief is requested:

1) In Box 5, Section K on page one of the Complaint, write down the complainant’s workplace address that he or she wishes the abusive parent to stay away from. The complainant should also note in that space that he or she would like the abusive parent to stay away from the children’s school(s) or day care and give the appropriate addresses of each place. If the abusive parent who will be served with the restraining order currently does not know the exact names and/or locations of the children’s school(s) or daycare, it may be wise to request that the judge order that the abusive parent must stay away from those places without listing the specific school names and addresses. Continued.
5. **What to say at the hearing:** The most important thing is for the complainant to tell the judge exactly what is needed and why it is needed. If the complainant wants the abusive person to be ordered explicitly to stay away from the children’s school(s) and/or daycare, he or she must specifically ask for this. If the complainant does not ask for it, the judge will probably not make that order. The complainant should be very specific with the judge about what protections are needed in the restraining order.

C. **School records law protections for children affected by domestic violence**

A child affected by domestic violence, and his or her custodial parent, may be endangered by the possibility of the abusive parent gaining access to any part of the student’s record. If allowed access, an abusive parent can use school records to obtain information about how to locate the child and the custodial parent and how to interfere with the child’s schooling. “School records” include the transcript and the temporary record, including all information—recording and computer tapes, microfilm, microfiche,
or any other materials—regardless of physical form or characteristics concerning a student that is organized on the basis of the student’s name or in a way that such student may be individually identified, and that is kept by the public schools of the Commonwealth.”

Non-custodial parents’ access to school records in Massachusetts is governed by General Laws, Chapter 71, Section 34H. Section 34H, added to the General Laws in 1998, was designed to standardize the process by which public elementary and secondary schools provide student records to parents who do not have physical custody of their children. This statute presumes that non-custodial parents are eligible to request and receive records by using approved procedures. However, the statute precludes such access in cases where domestic violence and safety concerns for the parent or child have resulted in certain court orders.

The regulations governing access to records by non-custodial parents are found at 603 Code of Massachusetts Regulations 23.07(5). The regulations (see “Alert”), current as of this writing in the form of emergency regulations, are available on page 38. However, be sure to check for further changes if you are relying on this information to represent a client, as the statute may be amended so as to require additional changes in the regulations.

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On July 28, 2005, the Massachusetts Department of Education issued emergency regulations easing non-custodial parents’ access to school records. Under the emergency regulations, non-custodial parents will no longer be required to document that they are eligible to have access to the records. The emergency regulations retain the following requirements of current law, discussed below: that non-custodial parents request records in writing, that the school notify custodial parents of such requests, and that there be a 21-day waiting period before a non-custodial parent is provided with access to records (giving the custodial parent time produce or obtain a court order requiring that access be denied). The regulations simply place the burden of documentation on the custodial parent, whereas the statute and the previous regulations placed it on the non-custodial parent. On October 25, 2005, the Board of Education approved these amended regulations.

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23.07: Access to Student Records
(as approved by the Board of Education October 25, 2005)

(5) Access Procedures for Non-Custodial Parents. As required by M.G.L. c. 71, § 34H, a non-custodial parent may have access to the student record in accordance with the following provisions.

(a) A non-custodial parent is eligible to obtain access to the student record unless:

1. the parent has been denied legal custody based on a threat to the safety of the student or to the custodial parent, or
2. the parent has been denied visitation or has been ordered to supervised visitation, or
3. the parent’s access to the student or to the custodial parent has been restricted by a temporary or permanent protective order, unless the protective order (or any subsequent order modifying the protective order) specifically allows access to the information contained in the student record.

(b) The school shall place in the student’s record documents indicating that a non-custodial parent’s access to the student’s record is limited or restricted pursuant to 603 CMR 23.07(5)(a).

(c) In order to obtain access, the non-custodial parent must submit a written request for the student record to the school principal.

(d) Upon receipt of the request the school must immediately notify the custodial parent by certified and first class mail, in English and the primary language of the custodial parent, that it will provide the non-custodial parent with access after 21 days, unless the custodial parent provides the principal with documentation that the non-custodial parent is not eligible to obtain access as set forth in 603 CMR 23.07 (5)(a).

(e) The school must delete the electronic and postal address and telephone number of the student and custodial parent from student records provided to non-custodial parents. In addition, such records must be marked to indicate that they shall not be used to enroll the student in another school.

(f) Upon receipt of a court order which prohibits the distribution of information pursuant to G.L. c. 71, §34H, the school shall notify the non-custodial parent that it shall cease to provide access to the student record to the non-custodial parent.
school’s administrative office. If the schools in your school district have not designated staff members to be in charge of implementing school records laws and/or do not have a protocol for protecting records in situations involving domestic violence, consider recommending to school authorities that the district appoint the necessary staff and develop appropriate protocol, and in the meantime consider asking the principal or superintendent whom you can contact.

Under the statute and regulations currently in effect (see “Alert” on page 37), a non-custodial parent does not have the right to access a child’s school records in the following three situations:

1) The parent does not have access to the school records if he has been denied “legal custody” of the child due to a threat to the safety of the child or the custodial parent. “Legal custody” is “the right and responsibility to make major decisions regarding the child’s welfare including matters of education, medical care and emotional, moral and religious developments” (as opposed to “physical custody” which has to do with where a child resides). Legal custody can be shared. Shared legal custody means “continued mutual responsibility and involvement by both parents to make major decisions regarding the child’s welfare including matters of education…” (General Laws Chapter 208, section 31). Legal custody can be awarded to one parent and denied to the other. If a court has denied one parent “legal custody” of a child due to abuse, then the school also must deny that parent access to the child’s school records. A parent who does not have legal custody does not, for that reason alone, lose rights of access to school records.

2) The parent does not have access to a child’s school records if he has been denied visitation with the child or has been ordered to have supervised visitation. Courts rarely deny visitation to a parent, and do so only when there is some danger associated with the parent visiting the child. Sometimes courts will order limited visitation between an abusive parent and his child, such as visitation only under the supervision of a social worker or other person. In such situations, the abusive parent does not have the right to access the school records of the child.

3) The parent does not have access to a child’s school records if the parent has had his access to the student or to the custodial parent restricted by a temporary or permanent restraining order. If there is such a restraining order, the school must not allow the abusive parent access to the child’s
records unless the order specifically allows access to the information contained in the student records.\textsuperscript{10}

If a parent is in one of these categories of ineligibility to receive school records under section 34H, the parent also is ineligible to access school staff for purposes of discussing student information or “participate in proceedings and decisions regarding the child’s welfare which are not granted though the award of custody.”\textsuperscript{11}

At the time of this writing, Section 34H and 603 CMR 23.07(5) require schools to withhold records and all the other information listed above from a non-custodial parent who requests it unless that parent has been denied legal custody due to a safety threat or that there are court orders prohibiting unsupervised visitation with the child, and a restraining order protecting the custodial parent or the child is in effect. These statutory requirements are under review and may be changed. (The web version of this manual will be updated to reflect any changes in the law.)

If a custodial parent has a restraining order or a court order denying legal custody to the other parent for safety reasons or denying unsupervised visitation, the custodial parent should notify the school and provide copies of the orders as soon as possible. Once the school has such an order on file, it should be clear that the non-custodial parent’s requests for access to the child’s records, or even information as to whether or not the child attends the school, should be denied.

There may be situations where records are distributed inappropriately or the orders to prevent record disclosure are not yet in place. To minimize the impact of such occurrences, the law also requires that any records that are turned over have the custodial parent’s contact information removed (whited out).\textsuperscript{12} Any records distributed to a non-custodial parent also should contain reference to the statutory language stating that receipt of record information in and of

\textbf{The law requires that any records that are turned over have the custodial parent’s contact information removed (whited out).}

\textbf{Additional safety note:}

School records law does allow schools to publish “directory” information about students, including students’ names and telephone numbers.\textsuperscript{14} If it is not safe to have this information published, you or your client need to specifically ask the school to refrain from publishing it.
itself does not mandate or authorize participation in any proceeding which requires notification or involves decisions regarding the child’s welfare which are not granted through an award of custody.\(^{13}\)

If a non-custodial parent seeks school records while a restraining order is in place, such attempt to get access to the records may constitute a violation of the restraining order. The custodial parent can take action against such a violation by reporting it to the police or seeking criminal or civil enforcement of the order in a proper court.\(^{15}\)

### Notes

1. See also Kandel-Sisitsky, D., Wolf, J., and Brunt, C., *How to protect children at school from domestic violence using a restraining order* (Domestic Violence and School Safety Workgroup, 2003), available at www.masslegalservices.org/cat/999 (Masslegalservices.org > Education > Domestic Violence). In addition to this chapter, the authors also developed a set of Frequently Asked Questions (FAQ) on keeping children safe at school.

2. See Massachusetts General Laws (M.G.L.) c. 209A § 3(d).

3. See M.G.L. c. 209A § 3(b), (h).

4. See M.G.L. c. 209A § 3.

5. See ALERT in this section. In June, 2005, the Legislature began the process of amending the school records law to make it easier for non-custodial parents to access school records. The Education Committee held hearings on June 23 and indicated that this process would be expedited. On July 28, 2005, the Massachusetts Department of Education issued emergency regulations easing non-custodial parents’ access to school records. Check ongoing publications of the Acts and Resolves of Massachusetts, 2005, for enactments amending M.G.L. c. 71, § 34H. As of this writing, the law has not yet been amended. The web version of this manual will be updated with any changes; also see www.masslegalservices.org for announcements of changes in the law.

6. 603 Code of Massachusetts Regulations (C.M.R.) 23.02; M.G.L. c. 208 § 31

7. These parents are defined in 23.02 as “Any parent who by court order does not have physical custody of the student, is considered a non-custodial parent for purposes of M.G.L. c. 71, § 34H and 603 C.M.R. 23.00.”

8. 603 C.M.R. 23.05(1).


10. M.G.L. c. 71, § 34H(a); 603 C.M.R. 23.07 (5)(a)

11. 603 CMR 23.07(2)(c), implementing M.G.L. c. 71, § 34H(a), says that only “eligible” students or parents “shall have the right to request to meet with professionally qualified school personnel and to have any of the contents of the school record interpreted.”

12. This is required by M.G.L. c. 71 § 34H(e) and 603 C.M.R. 23.05.


14. See 603 C.M.R. 23.05(a).

15. M.G.L. c. 71 § 34H(g); M.G.L. c. 209A.
Many children who are homeless and traumatized by exposure to domestic violence will have disabilities that qualify them for special education services. Statistics show that abused children exposed to family violence will have high rates of diagnoses for disabilities, conduct disorder, oppositional-defiant disorder, and major depression. Researchers report that abused children are more likely to be in special education, have below-grade-level achievement scores, have poor work habits, and are 2.5 times more likely to fail a grade. The McKinney-Vento Act mandates that homeless children be given access to special education services, and it provides homeless children with additional rights and options, such as assistance with transferring existing Individual Education Plans to new schools and access to expedited assessments. It should be noted that some children who experience the traumas of domestic violence and homelessness will not need special education services, so they should not be presumptively labeled as needing these services.

A. The right to special education services

The federal Individuals with Disabilities Education Act (IDEA) and Massachusetts special education laws mandate that schools provide each child who qualifies for special education with a “free and appropriate education,” including the services that disabled students need to make “meaningful educational progress.”

The list of disabilities that can qualify a child for special education include emotional impairment, communication impairment, physical impairment, health impairment, specific learning disability, autism, developmental delay, intellectual impairment, sensory impairment (hearing, vision, deaf-blind), and neurological impairment. In order for a child to qualify for special education, there must be a determination that the disability is interfering with the child’s effective progress, defined as “documented...
growth in the acquisition of knowledge and skills, including social/emotional, within the general educational program, with or without accommodations according to the chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district." The child’s schoolwork and social/emotional status are evaluated within the context of all of these variables. A student could qualify, for example, if the impairment interferes with her or his ability to progress effectively in developing relationships with peers and teachers, behaving, or focusing at school, even if the child is doing well on tests. Being “smart” does not disqualify a student from receiving special education services.

Special education services are defined as specially designed instruction to meet the unique needs of the eligible student or related services necessary to access the general curriculum. This involves adapting the content, methodology, or delivery of instruction in areas such as:

- academics (general curriculum),
- social/emotional, behavioral,
- communication, nonacademic activities, vocational training, travel training, self help, mobility, limited English proficiency, participation with non-disabled peers, and other needs as determined by the child’s special education team. These services must meet the child’s individual and unique needs and take place in the least restrictive environment appropriate for the child. Depending on the child’s need, the specialized instruction may be provided in the regular education classroom, a resource room, a separate classroom, day school, residential school, a shelter, a hospital, an after school program, or a summer program.

In addition, both the IDEA and Massachusetts special education laws entitle children to additional services, known as “related services.” Related services are considered to be supportive services. They can include services such as transportation, speech-language pathology, audiology, interpreting services, assistive technology, parent training, psychological services, physical and occupational therapy, recreation, social work, orientation and mobility services, classroom aides, and certain medical and other services. There are specific requirements that children with disabilities must be included in all general state and district-wide assessment programs (including MCAS), and that appropriate accommodations (such as extended time, readers, frequent breaks, etc) must be provided as appropriate.

The IDEA also mandates that schools have special education “teams” to determine and coordinate the special education programs and services needed by each child. These
Teams must develop an “Individualized Education Program” (IEP) for each child at a Team meeting composed of the child’s participating parents, the child’s educators, and special education experts. The IEP sets forth the child’s present level of performance, the goals the child is to achieve, the objectives for achieving these goals, how progress will be measured, the special education services that the child is to receive, and the location or placement where these services will be delivered.

Children in Massachusetts are entitled to services and programs that enable them to make “meaningful educational progress” in learning the material established through the state curriculum frameworks and the school district’s curriculum. Children also are entitled to make meaningful progress in the areas of social and emotional growth, even if their academic progress is not affected by the disability.

B. The right of homeless children to retain their special education services when they move

When homeless students move between school districts, they have the right to retain any special education services that they already were receiving. If a homeless student moves within the state of Massachusetts, his or her new school must immediately begin implementing services comparable to those listed in the child’s IEP until such time as the school develops its own IEP for the child. If a student moves into Massachusetts from another state, the child’s new school must immediately begin implementing services comparable to those in his or her IEP until the new school either accepts the old IEP or conducts a new evaluation of the student and develops a new IEP if appropriate.

The McKinney-Vento Act requires liaisons to assist with the transmittal of school records and the coordination of services for homeless children. This provision in the McKinney-Vento Act applies to IEPs as well as to general academic records and programs. Therefore, when a student transfers from one school to another due to homelessness, the liaisons at both schools have the responsibility of immediately seeing to the transfer of student records, including the IEP, to the new school. The IDEA also contains provisions that require schools to take reasonable steps to obtain the records of a child eligible for special education including the IEP from the previous school. In addition the previous school has an obligation to respond promptly.
to such a request. Finally, the IDEA requires that, if a student changes schools in a year during which he or she is being evaluated for special education, both the new and the old school coordinate to ensure that a full evaluation is completed in an expeditious manner.

The student’s new school may eventually seek to re-evaluate the student and/or propose changes to his or her IEP. If the parent disagrees with the new evaluation and/or the new IEP, a powerful provision in the IDEA called the “stay put” rule can help the parent challenge the new school’s proposal. Generally, the “stay put” rule states that a child’s placement and services cannot be changed without parental consent until the school complies with all procedural protections set forth in statute and regulation. This means that if the parent disagrees with the new proposal, the school must continue to implement the old IEP until the dispute is settled.

One thing that you as an advocate should be aware of is that schools do not always observe the “stay put” rule. Although this rule provides students with the right to continue the services included in their IEPs until the school district goes through proper procedures to try to change them, in reality parents and advocates often must affirmatively assert this right in order to achieve actual continuation of services. One way to assert this right is through a written letter to the school district and the special education department. If the school district does not comply, the parent or advocate may file a complaint at the Department of Education Program Quality Assurance division. The parent may also request a formal mediation or a due process proceeding/impartial hearing before the Board of Special Education Appeals (BSEA) to obtain injunctive relief allowing the student to retain a particular service or placement while the school goes through the process of trying to change the IEP. Parents can also seek to join (add as parties to the hearing) state agencies involved with their child if additional services are necessary to receive a free and appropriate education (FAPE) in the least restrictive setting. Please note that these administrative proceedings can be complicated and where possible parents should seek legal assistance.

Claims for compensatory education are also available if a denial of FAPE has occurred. Though some exceptions apply, the IDEA now generally requires that a parent request a hearing within two years of the date when they knew or should have known about the alleged action which forms the basis of their complaint.
C. The right of homeless children to expedited evaluations

Children who are not already receiving special education services have the right to be evaluated under special education law upon the request of a parent or other caregiver or professional. Children who already are receiving special education services have the right to re-assessment to determine if their services need to change.

1) Requesting an evaluation under special education law. If a parent suspects a disability or has a concern about her child’s development, the parent can ask for a special education evaluation. Other persons in a caregiving or professional role concerned with the student’s development can request one as well. (For example, this could include a child advocate employed by a shelter, a teacher, or a probation officer.) Upon this request (verbal or in writing), the school must send evaluation consent forms to the family within 5 school days. While a number of people can request the evaluation, the person who is considered the parent or guardian must sign consent for the evaluation.

As an advocate, you can make the process go much more quickly if you fax or bring a written, signed and dated request from the parent for the evaluation to the school, and if you then work with the homeless liaison to obtain the consent form immediately, without having to wait the 5 school days. Once the consent form is signed you can save more valuable days by faxing the consent form directly to the special education department or other designated location at the child’s school.

Sample forms for requesting an evaluation are included in the Appendix to this manual, but consent forms are provided by the school. The consent form will usually list the kinds of testing available to the parent. This includes psychological testing, educational, classroom observation, home visit, speech, and occupational therapy. It will also leave a space for the parent to fill in other kinds of testing such as a behavioral assessment at home or at school. It is very helpful to talk with the parent to be sure she/he has checked off all areas of concern. If the child could be suffering from trauma, it may be helpful to ask for a neuropsychological evaluation and a more specialized assessment of the trauma. Oftentimes language and behavior can be impacted by trauma, so a speech and language assessment and a functional behavioral assessment can be very helpful. A functional behavioral assessment can be invaluable for understanding ways to respond to a child.
who is having behavioral difficulties at home and school. The school may recommend or the parent may request, in addition, a comprehensive health assessment. Home assessments are available, although advocates should consult with homeless families who may not wish a home assessment to occur for safety or other reasons.

2) Expedited evaluations for homeless children under McKinney-Vento. The McKinney-Vento Act states that one way for schools to carry out the purposes of the Act is to use funds provided under the Act to implement “expedited evaluations” of homeless children’s “needs and eligibility for programs and services (such as educational programs for...children with disabilities[.]”32

Since schools normally have to evaluate children for special education needs within 30 school days after receiving a consent form from a parent, an expedited evaluation under McKinney-Vento would need to happen more quickly than 30 school days.33

The expedited assessment provision in the McKinney-Vento Act is especially important for homeless children who have been affected by domestic violence. Families fleeing violence may not stay in one school district for very long, so it is important for evaluations to be expedited in order to prevent the family from traveling from school to school without ever completing the evaluation process. As an advocate, you can alert a school to the expedited assessment language in the regulations and help your client to request an expedited assessment.

Once begun, an expedited evaluation can travel with the child as he/she transfers schools, so that each new school can start out further along in the process of determining the special education needs of the child. When a child moves after one school has already started an evaluation, the law does not require that the second school complete the evaluation in the original timeline that would have applied if the child had stayed in the same school. However, the IDEA does state that if the child moves after an evaluation has begun, the new school must make “sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school [must] agree to a specific time line when the evaluation
will be completed. It may require advocacy to ensure that the parent and the new school agree on a timeline and that the resumed evaluation moves expeditiously. The process can go more quickly if the new school is willing to rely on partial testing results from the prior school. In order for this to be considered, the prior testing data and results must be in writing, must “travel” to the new school, and must be acceptable to the psychologist employed by the new school who would otherwise perform her own battery of tests. These needs should be explored, and the necessary releases should be obtained at the beginning of any expedited evaluation so that partial testing results can be shared with a new school district should the family move before the evaluation is complete.

A parent who disagrees with the school’s evaluation of the child and wishes for more information has the right under Massachusetts special education law to request an independent evaluation in any areas already assessed by the school. For this evaluation to be funded by the school, the parent’s request must be made within 16 months after the date of the school’s evaluation. The parent must also meet income eligibility guidelines for a publicly-funded evaluation. Families with incomes less than 400% of the poverty level and children in the custody of the state receive free evaluations. A sliding scale applies to incomes between 400% and 600% of the federal poverty level. Within 10 school days from the date the school district receives the independent evaluation, the team must reconvene to consider it and whether a new or amended IEP is appropriate.

As an advocate, you can help the parent locate an appropriate evaluator, write a letter to the school requesting an independent evaluation, and argue for a higher reimbursement rate. Note also that if the evaluation needed can be justified as diverging from a typical psychological or neuropsychological evaluation because of a highly specialized concern, there may be an option under the “exceptional circumstances” section of the regulation to seek a higher reimbursement. As an advocate, you can be very helpful in locating evaluators who may be appropriate to further investigate the child’s needs. The agencies listed at the end of this section can make helpful suggestions. Often the child needs an evaluator who has experience with
trauma as well as with the suspected disability. For example, it might be obvious that the child has a reading or behavior problem, but less obvious that there may be a traumatic component that is contributing to the problem.

Once a child is evaluated and an IEP developed, the school district must review the IEP and progress of each eligible child annually. Every 3 years, the school district must, with parent consent, conduct a full three-year re-evaluation. However, the parent has a right to request a re-evaluation sooner if he or she feels it is necessary. If a re-evaluation is necessary due to homelessness that the child has experienced, the expedited assessments available under McKinney-Vento should be triggered regardless of where in the three-year cycle the traumatic event occurs.

D. The right not to be penalized for disability-related behavior problems

Some children affected by homelessness and violence develop behavior problems that result in school discipline. If a child qualifies for special education services and her or his behavior is related to the disability, there are federal protections against suspension and expulsion from the classroom or school. Although a child can now be removed from his placement for violations of school disciplinary codes under some circumstances discussed in this section, no child who qualifies for special education services can be denied an education.

If removal is allowable, the child’s education should continue in another setting. Moreover, it is important to remember that the rules allowing removal apply only when a child violates a code of student conduct. They do not apply, and removal is not allowed, when a school has a concern that does not involve the student code. Recent changes in the federal law concerning removal are new and can be complicated. Thus if your client is facing removal from school it is very important to speak with a special education advocate or agency such as those listed at the end of this section.

If a child qualifies for special education and his behavior is related to his disability, there are federal protections against suspension and expulsion.

Preventing behavior problems before they start is the best way to avoid later suspensions or expulsions. Requesting evaluations prior to a behavior code violation and helping a parent express concern to the administration that her child may be in need of special education will trigger the protections of the IDEA.
The IDEA requires that if a child has a disability whose behavior “impedes her learning or that of others,” long before disciplinary action becomes necessary, the child’s team must consider adding to the IEP positive behavior interventions, strategies, and supports.\textsuperscript{44} Appropriate services may include psychological or social work services, which can include group and individual sessions for the child and/or parent as well as parent training. The risk of extended removal from school can be dramatically reduced by advocating for the placement of social, emotional and behavioral objectives and supports in the IEP before a violation of a school disciplinary code occurs.

The general rule is that the school cannot make any changes to the child’s placement without first providing notice to the parent and conducting evaluations, team meetings, eligibility determinations, re-evaluations, and all other enumerated procedures.\textsuperscript{45} However, the IDEA has new exceptions to this rule for students who violate a code of student conduct.

Under federal law, school personnel may remove children with disabilities from their regular educational placement (i.e., suspend or order an appropriate interim placement for such children) for up to 10 school days for violating the school’s code of conduct.\textsuperscript{46} If a school wishes to remove a student with disabilities for more than 10 days, it must conduct what is called a Manifestation Determination within 10 school days of making such a decision. This is a hearing where the school, including members of the student’s IEP Team, decides whether the behavior was a manifestation of the student’s disability.\textsuperscript{47} If the Team finds that the behavior was a manifestation, then the student must be returned to his or her regular placement, at which point the IEP Team must conduct a functional behavioral assessment, implement a behavioral intervention plan, or review an existing behavioral intervention plan and make modifications as needed. If the child’s behavior is not found to be a manifestation, then the student can be disciplined in the same manner and for the same length of time as a non-disabled student;\textsuperscript{48} however, the child still has the same rights to receive a functional behavioral assessment and to receive intervention services and modifications that are designed to address the behavior so that it does not recur.\textsuperscript{49} Moreover, if the child is removed from placement due to the behavior, the new “interim” placement is to be determined by the IEP Team.\textsuperscript{50} This new placement should contain all the elements of a free and appropriate education (FAPE),
even though the student may be in another setting which should be “interim” in nature.\textsuperscript{51} If the student brings a weapon to school; possesses, uses, buys or sells drugs at school; or seriously injures another person at school, the school may remove that student for up to 45 school days without conducting a Manifestation Determination.\textsuperscript{52} However, to continue the removal from the regular placement for longer than 45 school days, the Team would have to convene to make a Manifestation Determination.

If a parent disagrees with any action taken by the school, including the decision of any Manifestation Determination or the Team’s choice of interim placement for the child, he or she may file an appeal with the Bureau of Special Education Appeals.\textsuperscript{53} However, the student will remain in an interim alternative setting selected by the Team pending the decision of the hearing officer.\textsuperscript{54} Parents should be made aware that they have the right to an expedited hearing in these circumstances.\textsuperscript{55} Note that a child not yet identified as eligible for special education may also access these protections.

Such children may be referred for evaluations and receive all the protections of the IDEA. If the behavior occurred after the parent requested an evaluation or wrote to the administrative or supervisory personnel about his or her concerns that the child might need special education, you should seek the assistance of a special education lawyer as the child may have the right to remain in his or her placement pending the completion of the full evaluation and Manifestation Determination.\textsuperscript{56}

If the school did not have knowledge that the child was a child with a disability prior to the suspension or expulsion from school, the child is still entitled to an expedited evaluation and, if found to be eligible, then he or she is entitled to all the rights under the IDEA. However, during the evaluation, the child remains in the “educational placement determined by school authorities.”\textsuperscript{57}

The relationship between all of these rights and procedures is complicated. When a child with a disability is suspended repeatedly or at risk of expulsion, the parent or advocate should contact a special education specialist.
E. **Accommodations that must be given to children with disabilities who are not eligible for special education**

Some children affected by homelessness and violence have disabilities that do not affect their academic or social progress enough to make them need special education services, but which do affect them to the extent that they need some form of special accommodation. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) prohibits any department or program receiving federal financial assistance from discriminating on the basis of disability. The federal regulations that implement this law within the Department of Education specifically protect the right of students with disabilities to receive a Free Appropriate Education including “regular or special education and related aides and services.”

Section 504 has broader eligibility requirements than the IDEA and thus more students will qualify for services under Section 504 than under the IDEA. Most children who qualify under the IDEA will also qualify under 504 and these students will benefit from the dual protections afforded by both statutes.

To qualify under Section 504, a student must have or have had a “physical or mental impairment which substantially limits one or more major life activities” or be regarded as disabled by others. Children might be eligible because of chronic health problems, emotional impairments, physical disabilities, speech and language impairments, hearing, and Attention Deficit Disorders even if these impairments do not adversely affect educational performance. Programs and services such as medical assistance, reasonable accessibility accommodations, Braille, MCAS accommodations, physical therapy, and speech therapy and sometimes even residential programs may be available under Section 504 for these students.

In addition, the U.S. Department of Education’s regulations implementing Title I of the Elementary and Secondary Education Act of 1965 require schools to provide accommodations for students with disabilities when they take tests to assess their academic achievement – including placement tests when children enter new schools, MCAS exams, etc. Eligible students affected by the traumas...
of domestic violence and/or homelessness may also have attention difficulties or other diagnoses such as Post-Traumatic Stress Disorder, Attention Deficit Disorder, anxiety, and/or depression. As a result, they may have difficulty focusing on exams. Appropriate accommodations to offer such children may include separate quiet rooms in which to take examinations, frequent breaks, tutoring before examinations, and counseling concerning their trauma. The school also must have one or more alternate assessments available to students with disabilities who have difficulty with the format of the generally available examination.41

F. Assistance for Advocates

There are five statewide organizations with hotlines that you can call upon for help in a special education cases.

- **Massachusetts Advocates for Children:** (617) 357-8431 x 224 (statewide, located in Boston)
- **Children’s Law Center of Massachusetts:** (888) 543-5298 (statewide, located in Lynn)
- **Disability Law Center:** (800) 872-9992 (voice), (800) 381-0577 (TTY) (statewide, offices in Northampton and Boston)
- **Federation for Children with Special Needs:** (800) 331-0688 (offices in western and central MA and Boston)
- **Center for Public Representation:** (413) 586-6024 (Northampton office), (617) 965-0776 (Newton office)

In addition, certain local legal services offices provide advice and limited representation:

- **South Middlesex Legal Services:** (508) 620-1830 (serving southern Middlesex County)
- **Southeastern Massachusetts Legal Assistance Corporation:** (508) 676-6265 (serving parts of Southeast MA)
- **Merrimack Valley Legal Services:** (978) 458-1465 (serving Essex and northern Middlesex Counties)
- **Hale and Dorr Legal Services Center:** (617) 390-2737 or 2550 (serving families in the Boston area who have been traumatized by exposure to violence)
Notes

1 Caution on special education: The Individuals with Disabilities Education Act (IDEA) has been reauthorized with significant changes that took effect on July 1, 2005. Final regulations implementing the reauthorized IDEA have not been promulgated as of this writing and thus citations to federal regulations continue to be the regulations that were in effect prior to changes in the law. Proposed federal regulations, published in the Federal Register on June 21, 2005, can be found at www.ed.gov/policy/speced/guid/idea/idea2004.html. As of this printing the new regulations have still not been finalized.


3 “Each homeless child or youth to be assisted under this subtitle shall be provided services comparable to services offered to other students in the school selected . . . including . . . educational programs for children with disabilities.” 42 U.S.C. 11432(g)(4)(B). See also MADOE’s “Homeless Education State Plan” (2002) at p.5: “MADOE will work with school districts to ensure that homeless children and youth are provided with services comparable to those received by other students in the school selected, including . . . programs for students with disabilities (SPED/IDEA)].” Note that the same provisions also require that homeless children who need them be given access to programs for students with limited English proficiency.

4 20 U.S.C. 1400 et seq. Implementing regulations at 34 CFR 300 et seq.

5 M.G.L. c. 71B and implementing regulations at 603 C.M.R. 28.00.

6 In re: Arlington, 8 MSER 187 (2002).

7 603 C.M.R. 28.02(7). The definitions of disabilities in Massachusetts are in some areas broader than federal law.

8 603 C.M.R. 28.02(18).


11 603 C.M.R. 28.06.

12 20 U.S.C. 1401(26) requires that related services be provided when necessary to help a child with a disability “benefit from special education.” Massachusetts law is more expansive; it requires the provision of related services that “are necessary for the student to benefit from special education or that are necessary for the student to access the general curriculum” 603 C.M.R. 28.02(9) (emphasis added).

13 20 U.S.C. 1412(16)(A)(i)(B) For students who can not participate in the regular assessments with accommodations, an alternative assessment aligned with the states challenging academic standards is to be provided. 20 USC 1412(16)(C)


16 See Massachusetts Department of Education Administrative Advisory SPED 2002-1 (available online at http: www.doe.mass.edu/sped/advisories/02_1.html) and In re: Arlington Public Schools, 8 MSER 187 (2002).

17 603 C.M.R. 28.02(17).


24 The phone number for the Department of Education is (781) 338-3300. Press 0 and ask for PQA (Program on Quality Assurance).

25 603 C.M.R. 28.08(3)(a).
The term parent has a broad definition and means, “father, mother, guardian, person acting as a parent of the child, or an educational surrogate parent...” 603 C.M.R. 28.02(15). Sometimes, for example, children may be raised by a grandparent who is responsible for their education and this person may sign the consent form. A surrogate parent is appointed for children who are wards of the state.

603 C.M.R. 24.04(2)(a) and (b).

42 USC 11433(d)(2).

See also 603 CMR Sec 28.05.

20 USC 1414(a)(1)(C)(ii).


603 C.M.R. 28.04(5)(c). Parents above 600% follow the procedure in federal regulations.

603 C.M.R. 28.04(5)(f).

The regulations governing rates for special education evaluations can be found at 114.3 CMR 30.00.

114.3 C.M.R. 30.04 (2).

20 USC 1414(a)(2)(B) and 20 USC 1414(d)(4)(A)(B).


20 USC 1412(a)(1)(A).


20 U.S.C. 1415(k)(1)(E). A behavior is a manifestation if the conduct in question was caused by, or had a direct and substantial relationship to the child disability; or if the conduct was the direct result of a failure to implement the IEP.


The length of time that an “interim” placement can last has not been defined.


20 U.S.C. 1415(k)(1)(5)(A)(B)(C). The school also is determined to have knowledge if the teacher or other personnel express concerns about a pattern of behavior to the director of special education or to other supervisory personnel.


34 C.F.R. 104.33.

34 C.F.R. 104.3(j).
n 34 C.F.R. 200.6.

n Ibid.
Children’s rights under the McKinney-Vento Act are important to their education and their emotional stability, but they can not be accessed when children are placed in shelter too far away from their schools of origin for transportation there to be feasible. Homeless families in Massachusetts who receive state-funded shelter benefits through the Department of Transitional Assistance (DTA) are not able to choose their shelter placements. They are at the mercy of the agency, which sometimes sends families out of their communities and half-way across the Commonwealth, often much too far to be able to stay in same school even if they so desire. Being moved far away can be especially problematic for families affected by domestic violence because it tears family members away from their domestic violence counselors, therapists, medical providers, and lawyers, as well as family and friends and other sources of support (though in some cases families may want to be placed far away for safety reasons). It is important to know that these far-away shelters placements and transfers can be appealed, and that there are numerous grounds on which to appeal them and multiple forums in which to challenge them. If you are not an attorney, you should try to refer your client to an attorney for help with such an appeal. You can find the nearest legal services office on www.masslegalhelp.org. If you can not find an attorney to help, you may still be able to help your client file an appeal or other action opposing a particular placement or transfer and help her argue her case.

A. Background on the Emergency Assistance program

Pursuant to the provisions of M.G.L. c.18 §2(D), the Department must provide Emergency Assistance (“EA”) temporary shelter to needy homeless families and pregnant women who have no feasible alternative housing available. M.G.L. c.18

B. Legal claims for requiring DTA to place a family near the child’s school

There are several state statutes, federal statutes, and agency regulations that either explicitly dictate that children should be placed near their schools or that can be used to argue that a particular child should be placed nearby. All of these sources of law can be utilized persuasively in administrative advocacy, litigation, and/or seeking help from local lawmakers’ constituent services offices. These include the following:

1) Statutory and regulatory language mandating that DTA prioritize placing families with school-age children near the children’s school(s) In the FY2006 budget provision concerning emergency shelter services, the legislature included the following provision: “the department shall make every effort to insure that children receiving services from this item are able to continue attending school in the community in which they lived prior to receiving services funded from this item.” This budget provision also requires the Department of Transitional Assistance to promulgate a regulation implementing this mandate. As of the writing of this manual, the Department still has not promulgated such regulation, but it should be forthcoming.¹

This provision can be raised as a basis for asserting a family’s right to be placed near their child’s school in the following ways:

- **To DTA in administrative advocacy.** You can contact John Shirley, the DTA Director of Housing and Homeless Services at the agency’s headquarters in Boston, and/or the agency’s Legal Department to request that your client be placed near her child’s school. The main number for the headquarters is (617) 348-8500. In doing so, you can point out this statute mandating that such concerns be prioritized, and the regulation if it has been promulgated.

- **To a hearing officer in a “fair hearing” at the Department of Transitional Assistance** (See below for details on getting such a hearing.) If the Department has promulgated a regulation
implementing this statutory mandate, use the regulation as a basis for your appeal. If not, use the statute. Hearing officers must interpret DTA’s regulations consistently with state statutes to the extent that they can. The existing 20 mile regulation (see below) should be interpreted as incorporating the preference for placement near a child’s school, in accordance with the statute, until the school-specific regulation is promulgated. The burden should be on the Department to prove that it made every effort to place the family near the school, and that no shelter spaces closer to the school are available.

- **To a judge, if an administrative hearing officer denies the appeal** When the Department promulgates a regulation, it will be enforceable in court through appeals of administrative hearing denials. The statutory language in the budget is also directly enforceable in court in appeals of administrative hearing denials.²

- **To a state legislator or city counselor** You or your client can contact elected officials to complain of being sent far away and point out the legislature’s mandate that DTA prioritize placing children near their schools.

2) **Statutory and regulatory language mandating placement within 20 miles**

The legislature has also included in the budget for the past several years language which requires DTA to place families as near to their home communities as possible, and no further than 20 miles, unless lack of available shelter necessitates that accommodations be provided elsewhere temporarily. Specifically, the statutory language states that “eligible households shall be placed in shelters as close as possible to their home community, unless a household requests otherwise; provided further, if the closest available placement is not within 20 miles of the household’s home community, the household shall be transferred to an appropriate shelter within 20 miles of its home community at the earliest possible date, unless the household requests otherwise.”³
DTA has implemented this language with the regulation found at 106 C.M.R. 309.040(C)(3), which states that “[t]he Department-approved family shelter shall be located within 20 miles of the EA [Emergency Assistance] assistance unit’s home community, unless the EA assistance unit requests otherwise.” The regulation also mandates that, if shelter space is not available within 20 miles, the family can be moved to an interim placement but must be moved back within 20 miles as soon as a placement becomes available.1

However, DTA sometimes does not place families within 20 miles—or even 40 miles—of their home communities. First of all, the state does not have enough shelter placements located in some areas, so that when the shelter system is full there may not be sufficient shelter space in or near families’ home communities. While the Department used to place overflow families in local motels temporarily, it no longer does so. However, until August 2005, DTA did not have a system for tracking families who have been moved to an interim placement farther than 20 miles from their home communities and want to be moved back. DTA recently established a tracking system (see Field Operations Memo 2005-35 in Appendix for details on the new system), but it is unclear at this time how well this system will work. In the past, families have sometimes languished in distant placements for months or even years with no effort by DTA to move them back. A third problem, which has been reported anecdotally, is that families are sometimes discouraged from applying for shelter benefits in the first place by DTA social workers who threaten to send the family far from its home community and the children’s schools.

The 20-mile rule can be used to advocate for a family’s right to shelter in or near its home community and the child’s current school. See the section immediately above, concerning the statutory provision regarding placement near a child’s school, for instructions on engaging in informal advocacy. If informal advocacy fails, the 20-mile rule is enforceable through administrative appeal and judicial review. Appellants have been able to win individual administrative hearings and lawsuits under the 20-mile rule. Several sample administrative hearing decisions are included in the Appendix to this manual. If you are assisting a client who has been moved outside of the 20 mile radius and wants to be moved back, be sure to check

If informal advocacy fails, the 20-mile rule is enforceable through administrative appeal and judicial review.
with the local DTA office whether the family has been included in the new tracking system mentioned above.

3) **Reasonable accommodation for a disabled child or parent under the ADA and Section 504** Title II of the federal Americans with Disabilities Act requires public agencies to provide reasonable accommodations to persons with disabilities when necessary to allow them to participate fully in the Department’s programs. Section 12132 of the Act states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.” The implementing regulations state that public entities “shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.” Public entities must make “reasonable modifications” in policies, procedures, and practices when “necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.”

Likewise, Section 504 of the Rehabilitation Act and its implementing regulations require that disabled persons be given equal opportunity to benefit from public programs administered by agencies receiving federal funds. Because DTA receives federal funds through the Temporary Assistance for Needy Families (TANF) block grant, Section 504 of the Rehabilitation Act applies to DTA. The implementing regulations state explicitly that “[i]n providing…welfare, or other social services or benefits, a recipient [of federal funds] may not, on the basis of handicap,…[p]rovide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons,” and that services afforded to disabled individuals “must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s
needs."

"[I]n order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of non-handicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary."

DTA’s own regulations at 106 C.M.R. 701.390 require that “no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the Department, or be subjected to discrimination by the Department.” It further provides that “[t]he Department shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Department can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”

DTA has recently created “reasonable accommodation teams” at each local office to assess reasonable accommodation requests, but as of this writing it is unclear how frequently these teams are utilized or how well they function. To be safe, a request for accommodation should be faxed to the Director of the local office, to the Director of Housing and Homeless Services, and to the Director of Equal Opportunity. A reasonable accommodation request form is included in the Appendix as part of Field Operations Memo 2003-19. However, it is a good idea to write your own accommodation request in the form of a letter specifying in detail the nature of the disability and the reason that the disability requires that the family stay in the proximity of their home community (need to be near school, family, and/or medical providers, stress of moving far away would exacerbate condition, etc.), and attach a letter from a doctor, psychiatrist, or psychologist. If the request for accommodation is denied, you or your client can appeal the denial administratively or go right to court. A favorable DTA administrative hearing decision overturning a reasonable accommodation request for a family to be placed near their children’s school.
is attached in the Appendix. If your client goes to court—instead of filing an administrative appeal, while the appeal is pending, or in order to obtain judicial review of an unfavorable administrative hearing decision—it is wise to request a temporary restraining order to stop DTA from making the transfer while the court reviews the matter. A sample court complaint and request for a temporary restraining order is attached in the Appendix.

C. How to appeal administratively

Inappropriate shelter placements and transfers are grounds for administrative appeal. To file an appeal, be sure to do the following:

1) Write an appeal either by filling out the appeal notice on the back of the form indicating the placement or transfer, or on another piece of paper. Be sure to include name, phone number, social security number, current placement, the Department action being appealed, and the date of the notice of adverse action being appealed.

2) If your client wants to continue in his or her current placement pending the appeal, write on the appeal that he or she is requesting “aid pending” and wants to remain in the current placement pending the hearing. DTA’s regulations at 106 C.M.R. 309.070(B)(6) allow for this, stating that “[t]he EA assistance unit may remain in the temporary shelter placement location occupied on the date of the appeal pending the fair hearing decision with the approval of the shelter provider.” The fair hearing regulations also state that assistance is to be continued pending appeals that are filed in a timely manner. 106 C.M.R. 343.250. However, DTA has repeatedly asserted that neither of these regulations apply to shelter transfers. In a number of cases, advocates have successfully convinced judges otherwise and obtained aid pending through judicial review.

3) Fax the appeal and the notice being appealed to the DTA Division of Hearings at (617) 348-5311 and keep the fax machine’s report that the fax went through. The appeal deadline is 21 days from the date on the notice of placement or transfer. 106 C.M.R. 309.070(B)(2). However, in order to get “aid pending” on a transfer appeal, i.e. to ensure that the client is allowed to remain at her current placement pending appeal, be sure to fax the appeal before the date of the transfer—which may be only one or two days after the notice of transfer is received.
4) While waiting for the hearing date, contact the local office director and, if necessary, the DTA Director of Housing and Homeless Services or DTA Legal to try to resolve the placement. If there is a disability-related reason to oppose the placement or transfer, write a request for reasonable accommodation (see above) and ask that the placement or transfer be put off until the request is decided.

5) If you are a legal services lawyer or paralegal, look on www.masslegalservices.org for relevant hearing decisions, model letters requesting reasonable accommodation, etc. If you are an advocate but are not a legal services employee with access to the full database, contact Massachusetts Law Reform Institute at (617) 357-0700 to request copies of relevant documents from the website.

D. **Going to court**

If your client appeals administratively and loses the hearing, or has requested a reasonable accommodation and is denied, he or she can seek judicial review pursuant to Massachusetts General Law c. 30A and/or the federal Americans with Disabilities Act. The complaint should be filed either in the Housing Court or in the Superior Court. If there is a pending transfer, it is wise to request that the court enjoin the transfer with a temporary restraining order.

E. **Filing a complaint at the U.S. Department of Health and Human Services Office for Civil Rights**

Because DTA receives funding from the U.S. Department of Health and Human Services for some of its programs, it is under the jurisdiction of that agency’s Office for Civil Rights (OCR). Any person deprived of a federal civil right by DTA can therefore file a complaint with OCR. This includes individuals who are unable to get reasonable accommodations under the ADA or Section 504 of the Rehabilitation Act. If your client is refused a reasonable accommodation in shelter placement, one advocacy option is to file a complaint with OCR. However, this option should be exercised concurrently with other advocacy options such as administrative advocacy, an administrative hearing, and/or litigation. OCR investigates its complaints slowly and is unable to issue findings quickly enough to prevent an inappropriate shelter placement or transfer. However, filing an OCR complaint can put added pressure on DTA to resolve your client’s shelter placement. Moreover, it is helpful for OCR to know about individual civil rights...
violations occurring at DTA, since it has been involved for years in investigating and attempting to resolve class complaints concerning disability rights violations at that agency. If OCR does find that discrimination has occurred, it will produce findings and attempt to reach a negotiated resolution with DTA. OCR has the power to enforce compliance by DTA through cutting off all federal funding to the agency and/or referring the case to the Department of Justice for prosecution through litigation. In reality, however, OCR is highly unlikely to take either of these extreme paths, and is more likely just to put pressure on DTA and try to reach a resolution.

Notes

1 The citation to this language in the FY 2006 budget is Chapter 45 of the Acts of 2005, line item 4403-2120.
2 Id. The 2006 FY budget language states that this language is unenforceable in court if there is a deficiency in the budget, but is otherwise enforceable.
3 Id.
4 See 106 C.M.R. 309.04©(4): “The EA assistance unit will be placed in an interim placement, such as shelter beyond 20 miles or a hotel/motel, only if appropriate Department-approved family shelter space is not available. During this interim placement, the EA assistance unit must attend the family shelter interview(s) at family shelter(s) specified by the Department. The assistance unit shall be advised at the time of placement that: (a) it will be transferred from a shelter beyond 20 miles into an appropriate Department-approved family shelter within 20 miles of its community at the earliest possible date unless the EA assistance unit requests otherwise; or (b) it will be transferred from another interim shelter into an appropriate Department-approved family shelter at the earliest possible date.
5 42 U.S.C. 12132; 28 C.F.R. 35.130(b)(7).
6 28 C.F.R. 35.130(b)(8).
7 28 C.F.R. 35.130(b)(7).
8 29 U.S.C. § 794, 45 CFR 84.1 et seq.
9 45 C.F.R. 84.52(a)(4).
10 42 C.F.R. 84.4(b)(2)
11 45 C.F.R. Part 84 Appendix A(6).
12 The fax number for the Director of Equal Opportunity is (617) 348-5191.
13 See, for instance, Mitchell v. Department of Correction, 190 F. Supp. 2d 204 (D Mass 2002), citing and discussing cases standing for the proposition that agencies can not require administrative exhaustion of ADA claims. The court could not find even one contradictory case on this matter.
14 A complaint can be in the form of a letter and sent to Office for Civil Rights, Region I, JFK Federal Building, Room 1875, Government Center, Boston, MA 02203-0002.
Children who face homelessness, the effects of domestic violence, or both, are in dire need of stability, safety, and support. As an advocate, you have an opportunity to help these children get what they need to survive, progress, and flourish. It is our hope that this manual will provide you with some of the tools that you need to do this, whether you use the information in your own representation of your clients or you use it to learn how to spot issues and provide your clients with further referrals.
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APPENDIX A

Brochure: “Domestic Violence Can Affect Your Child at School”

DOMESTIC VIOLENCE CAN AFFECT YOUR CHILD AT SCHOOL

sammy worried about me all day at school...
he’d temper tantrum until the teachers would call to have me bring him home.

Continued
CHILDREN are exposed to domestic violence when they live in a home where their primary caregiver is being abused or assaulted or where they are the direct targets of abuse.

### HAS YOUR CHILD BEEN EXPOSED TO DOMESTIC VIOLENCE?

**Does your child:**
- Feel afraid of trying new things or meeting new people?
- Become tense or frustrated?
- Have a hard time dealing with changes in surroundings?
- Have trouble making choices?
- Act as if she doesn’t care about the future?
- Have trouble paying attention or following rules at home?
- Take unreasonable risks or try to test limits?
- Not trust adults?
- Have trouble making friends?
- Feel guilty and embarrassed about the violence occurring at home?
- Struggle with depression or thoughts of suicide?
- Have physical problems (particularly younger children), such as insomnia, sleepwalking, nightmares, stomachaches, headaches, diarrhea, ulcers, or asthma?
- Have trouble expressing himself?
- Have a hard time remembering new information yet remembers things adults find unimportant?

### AT SCHOOL, MANY CHILDREN EXPOSED TO VIOLENCE CAN SEEM TO:

- Always be on the lookout for danger.
- Be unmotivated both in and out of class.
- Be a “people-pleaser” or “overachiever.”
- Have trouble following rules.
- Be tense and fearful at drop-off time or be afraid to go to school at all.
- Have difficulty understanding teacher’s instructions.
- Have trouble communicating his needs.
- Have difficulty reading, writing, or expressing herself.
- Have unrealistically high expectations and become upset if he fails to achieve his goals. (Some of these children become perfectionists.)
- Have attention or behavior problems.
- Struggle with feelings of powerlessness that cause aggressive behavior or withdrawal.
- Challenge teacher’s authority to compensate for feelings of vulnerability or lack of self-control.
- Overreact to minor conflicts, slights, and misunderstandings.
- Be “impulsive.”

**Some or all of these may be symptoms of trauma.**

### THESE SYMPTOMS CAN OCCUR EVEN IF:

- Children are not in the same room when violent episodes occur (for example, if they are in their bedrooms and overhear fighting).
- Children were very young when violent episodes occurred. These children are least able to express their suffering and have the fewest coping skills; they are more likely to develop the physical problems described above.
- Children are no longer in an abusive environment. Their emotional and/or behavior problems may even get worse for a while when they enter a safe environment, a phenomenon known as the “Safe Harbor Syndrome.”
- Children themselves were never physically or sexually abused.
- Children’s symptoms are not disruptive or obvious.

Continued
ADULTS can misunderstand THESE SYMPTOMS:

- Many children with undiagnosed disabilities who are not exposed to domestic violence will also exhibit these behaviors.
- Some children exposed to domestic violence will not exhibit these behaviors.

THESE BEHAVIORS COULD BE THE RESULT OF TRAUMA AND/OR UNDIAGNOSED DISABILITIES

- Diagnoses such as Attention Deficit Hyperactivity Disorder, Conduct Disorder and Oppositional-Defiant Disorder; Major Depression, as well as reading and language disabilities can be present in children exposed to chronic violence.
- Such children may be entitled to special education services that address their individual needs.

YOU CAN GET HELP. If your child has been exposed to any kind of violence, he or she may need services to aid his or her emotional, physical, and educational adjustment. These services are available to low-income families at low- or no-cost.

| SafeLink 24 hour statewide domestic violence hotline | Brockton Family and Community Resources (Brockton) | South Shore Women's Center, Inc. (Plymouth) |
| 1-877-785-2020 | 508-583-2045 | 508-746-2664 |

| 617-414-4244 | 508-791-3261 | 617-354-2275 |

| Children's Charter/Key Trauma Clinic | Holy Family Hospital (Lawrence) | Women's Crisis Center of Greater Newburyport (Newburyport) |
| Project We Can Talk About (Waltham) | 978-687-0156 | 978-465-0999 |

| Berkshire County Kids' Place & Violence Prevention Center Inc. (Pittsfield) | Community Health Programs at Massachusetts General Hospital (Chelsea) | YWCA of Western MA (Springfield) |
| 413-499-2800 | 617-887-4305 | 413-732-3121 |

For advice on how to work with the school if your child is having academic or behavioral problems, please contact your local legal services office or:

| The Federation for Children with Special Needs | Disability Law Center | Massachusetts Advocates for Children (formerly Max. Advocacy Center) | Children's Law Center |
| 617-236-7210 | 800-872-9992 Voice, 800-381-0577 TTY | 888-KID LAW8 (888-543-5298) | 888-KID LAW8 |

MY CHILD
witnessed violence
at home and he can’t
sit still or pay attention.
HE’S OFTEN GETTING
INTO TROUBLE...

MY DAUGHTER
makes great grades
and behaves perfectly.
But when her schoolwork
is too hard, she
JUST FALLS APART.

MY SON
is constantly told he is not
trying hard enough.
THEY SAY HE’S
SMART, BUT HE
JUST DOESN’T CARE.
I know that’s not true.
WHAT DO I DO?
Family & Community 》 Students & Families 》

Health, Safety and Student Support Services

Homeless Education Advisory 2004 - 9: Children and Youth in State Care or Custody

This advisory is intended to provide guidance to local school districts and social service providers in Massachusetts as they implement the provisions of the federal McKinney-Vento Homeless Education Act (McKinney-Vento) regarding the identification, enrollment, attendance, and success in school of children and youth who are in the care of the state while awaiting foster care placement and who are therefore designated as being homeless.

**Definition:** As stated in Homeless Education Advisory 2002 - 1: Definitions, the Massachusetts Department of Education has adopted Section 725(2) of McKinney-Vento regarding the definition of homeless children and youth. Included in this definition of homeless are children and youth awaiting foster care placement. In collaboration with the Department of Social Services, the Massachusetts Department of Education has determined that children and youth in state care or custody who have been placed out of their homes into temporary, transitional, or emergency living placements are awaiting foster care placement and therefore homeless. This would include students living in programs referred to as “shelters,” “hotline homes,” “bridge” homes, and diagnostic placements since such programs, by design, provide temporary, transitional or emergency housing. Additionally, there may be other instances in which children may be placed in residences that are not temporary by design (for example, a foster home used as a short term placement) but are emergency, transitional, or temporary placements for the child in question.

**Identification:** Which children and youth in state care or custody are awaiting foster care placement and therefore should be identified as homeless shall be determined by the homeless liaison based on the above definition in consultation with the students’ social worker. **Note:** children and youth living in shelters, hotline homes, bridge homes or diagnostic placements are considered homeless for purposes of McKinney-Vento; other children and youth in care or custody who may be awaiting foster care must be identified on a case-by-case basis, taking into consideration whether their living situation is an emergency, transitional, temporary placement or is intended as a long term, foster care living arrangement.

For students who age out of state care and are unable to secure permanent housing, refer to Homeless Education Advisory 2004-8: Unaccompanied Youth.

**Enrollment:** Homeless children and youth in state care or custody must either remain in their school of origin or be immediately enrolled in the school where they are temporarily residing like any other homeless student. They may be enrolled by the social worker or the parent/guardian. As stated in Homeless Education Advisory 2002 - 1: Definitions: enrollment shall mean attending classes and participating fully in school activities.

**Attendance and Success:** Children and youth in state care or custody who are identified as homeless have the same rights as other homeless students to fully attend and participate in all school activities, classes, educational opportunities, meals, social and athletic events, clubs, teams, and other services.

When necessary, the district shall seek the designation of an educational surrogate parent (ESP) for a student with a disability or suspected of having a disability. Lack of an ESP may not impede enrolling a student. Individual Education Plans shall be promptly implemented and team meetings called.

**Dispute Resolution:** Should an enrollment dispute arise with the district, the social worker shall be afforded the rights of a parent under McKinney-Vento, and the student shall remain in the selected school while the dispute is being resolved. (See Advisories 2003 - 7, 7A, and 7B.)

Students in state care or custody who are awaiting foster care and therefore determined to be homeless are entitled to the same educational rights and services, including transportation, under McKinney-Vento as any homeless child or youth in the care of their parent(s)/guardian(s).
**APPENDIX C**

**MADOE Homeless Education Advisory 2004-8**

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**Homeless Education Advisory 2004 - 8: Unaccompanied Youth**

This advisory is intended to provide guidance to local school districts and social service providers in Massachusetts regarding the identification, enrollment, attendance, and success in school of unaccompanied youth as required by the federal McKinney-Vento Homeless Education Act.

**Definition:** The Massachusetts Department of Education defines unaccompanied youth as:

- A youth who is homeless;
- A youth who is not in the physical custody of a parent, guardian; and
- A youth not in the custody of a state agency.

This definition includes youth living in runaway shelters, in abandoned buildings, cars, on the street or in inadequate housing, youth denied housing by their families, those who have left home voluntarily, even when their parent/s want them to return home, and youth doubled up with friends or relatives.

For youth who are in the care of the state (Department of Social Services) please see Homeless Education Advisory 2004-9: Children and Youth in State Care or Custody.

**Identification:** Homeless liaisons must strive to identify unaccompanied youth, inform them of their educational rights, enroll them in school, and coordinate the services necessary to ensure their success.

**Enrollment:** Unaccompanied youth must be immediately enrolled in school like any other homeless student. They may enroll themselves or be enrolled by a parent, non-parent caretaker, older sibling, a caseworker, or the homeless liaison. Unaccompanied youth have the right to remain in either their school of origin or enroll in the school where they are temporarily residing. A school cannot refuse to enroll an unaccompanied youth who does not have a parent or guardian.

**Attendance and Success:** Unaccompanied youth have the same rights as other homeless students to fully attend and participate in all school activities, classes, educational opportunities, meals, social and athletic events, clubs, teams, and other services. The coordination of services for unaccompanied youth should include programs funded under the Runaway and Homeless Youth Act. The fact that a student has an Individual Education Plan (IEP) may not be used to delay the student's enrollment or attendance, and such IEP shall be promptly implemented.

**Dispute Resolution:** Should a dispute arise with the district, the homeless liaison must serve as the advocate for an unaccompanied youth. In addition, the youth shall remain in the selected school while the dispute is being resolved.

**Policy Review:** Policies covering class scheduling, tardiness, absenteeism, flexible school hours, credit-for-work programs, vocational education, MCAS remediation, and course credit must be updated to eliminate barriers to unaccompanied youth succeeding in school.

Unaccompanied youth are entitled to the same educational rights and services, including transportation, under the McKinney-Vento Homeless Education Assistance Act as homeless youth accompanied by parents/guardians.
**APPENDIX D**

Poster on Mc-Kinney-Vento Rights

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**Worried about where you’re going to sleep tonight?**

**Concerned about your education or your child’s?**

If you, your family, or someone you know...

- Usually sleeps on someone’s couch or in a car or an abandoned building
- Lives with relatives or friends
- Lives in a temporary trailer park or campground
- Lost or left your/his/her home

...then there are some things you should know about.

**Students without a permanent place to live have the right to:**

- Go to school, including public pre-school
  - No matter where they live or how long they’ve lived there.
  - Continue to go to the school they attended before they left their permanent home, if that is their choice and it is feasible.
  - Without giving a permanent address.
  - While the school arranges for the transfer of school and immunization records.
  - Even while the school and the student resolve disputes over enrollment.

- Obtain free lunch (and breakfast, if offered)

- Receive transportation, if requested
  - To the school they attended last, if they request.
  - To school and to school programs.

- Participate in school programs (like athletics and other student activities)

- Receive the same support and services provided to all other students, as needed.

*For more information, contact [Contact Information]*

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**Peter Cirioni (781-338-6294) or Sarah Slatterback (781-338-6330)**
Subject: Recent guidance on McKinney-Vento

Colleagues:
From time to time the Department will have an opportunity to address broad issues that were not included in the published draft guidance. Please find below items that have been reviewed internally by the Department as guidance to the field:

**Guidance/Policy issue for Homeless Education Program on Districts’ obligation for transporting formerly homeless students.**

States have inquired, based on Section 722(g)(3) Local Educational Agency Requirements, if an LEA makes a best interest determination to transport a homeless students to the school of origin and the student may continue to attend for the remainder of the year, even after they become permanently housed, does the LEA have an obligation to continue to provide transportation to the school of origin after it is determined that the student is no longer homeless?

The McKinney-Vento Act expressly requires LEAs to provide or arrange transportation for homeless students to and from their school of origin at the request of a parent or guardian (based on child’s best interest and feasibility). ED’s homeless guidance reinforced this by stating that as a statutory requirement, transportation to school of origin cannot be paid for using other Federal funds (no supplanting requirement).

Additionally, McKinney-Vento allows students who become homeless between or during academic years to continue in the school of origin for the remainder of the academic year if the student becomes permanently housed during an academic year. However, there is no statutory definition of permanently housed. The statute refers to fixed, regular and adequate nighttime housing.

Discussions on this issue with the Office of General Council and the OESE Senior Policy Group it was determined that the provision of transportation to the school of origin is based on a student’s status as homeless. The provision to remain in the school of origin during the remainder of the year is to provide for school stability. However, the transportation provision is for homeless students only. Once a student becomes permanently housed and chooses to remain in their school of origin, it is at the district’s discretion to continue to provide or arrange transportation, as appropriate. The district is under no statutory obligation.

**Guidance/Policy issue for Homeless Education Program on Districts’ use of Federal funds to pay the excess costs of transporting formerly homeless students.**

States have inquired in a similar vein to the prior question: if a student is no longer homeless and would otherwise qualify for Title I, A services, may districts use Title I funds reserved
under Section 1113(c)(3)(A), other Title I or Title V funds to pay for the excess costs of transportation to the school of origin?

ED Homeless education program guidance states: LEAs may not use funds under Title I, Part A or Title V, Part A to transport homeless students to or from their school of origin. Transportation services to the school of origin are mandated under the McKinney-Vento Act’s legislation. The supplanting provisions in Title I and Title V prohibit such funds from being used to support activities that the LEA would otherwise be required to provide.

Homeless children and youth are automatically eligible for services under Title I, Part A. An LEA must reserve funds for homeless children who do not attend participating Title I schools and may, for instance, provide support services to children in shelters and other locations where homeless children live.

However, the legislation is silent on the education support needs of formerly homeless students who become permanently housed during the academic year. The McKinney-Vento Act permits formerly homeless students to remain in their school of origin despite residential instability, yet lack of transportation can prevent them from doing so. Given that transportation has been one of the foremost enrollment barriers, States are asked to highlight in guidance to districts the new transportation responsibilities of LEAs under the reauthorized McKinney-Vento legislation. It is equally important for the Department to encourage school districts to prevent fragmentation of school services for formerly homeless students who may not be able to maintain the continuity of their education in the school of origin once transportation support is no longer provided under the statute.

School districts should be encouraged to adopt a number of options to aid formerly homeless students to remain in the school of origin for the remainder of the school year. If a homeless child or youth becomes permanently housed during an academic school year, school districts may wish to use Title I funds reserved under 1313(c)(3)(A), other Title I funds, Title V or where available, McKinney-Vento subgrant funds, to cover the excess costs of transportation to the school of origin for the remainder of the school year. This practice will assist students who are in the highest economically disadvantaged category to receive appropriate education and support services uninterrupted by sudden changes in housing status that is often not in their control.

While this is an unintended gray area of the legislation, school districts may use such funds to assist a formerly homeless student to remain in their school of origin. Homelessness and transition to more permanent housing are often fragile periods for families. While the use of Title I and Title V funds for transportation is unallowable for homeless students, formerly homeless students would not create an issue of supplanting. The use of such funds may be viewed as appropriate for students who were homeless during the school year in which they became permanently housed. Therefore, district may use funds, as appropriate, reserved under Section 1313(c)(3)(A), other Title I funds, Title V or where available, McKinney-Vento subgrant funds to assist a formerly homeless student to remain in their school of origin for the remainder of the academic year, if they become permanently housed. The
recommendation to LEAs is permissive and is not a mandatory condition of services or implied burden.

Preschool Programs Operated by an SEA or LEA

Recently questions have come up about district obligations for transporting preschoolers to the school of origin. Information on this topic was recently shared by partner organizations desiring to assist in interpreting the statute. It is the Department’s position that compulsory education and access to pre-school educational services — even if provided by a State or local governmental agency — can not be held to the same standard. The entire authorization and reauthorization of ESEA is based on students receiving FAPE based on compulsory attendance. There is no concept for a ‘school of origin’ for a voluntary pre-school educational service. Most state compulsory education laws stem from statutes written in the 19th or early 20th century which makes minimum school age of 6 with permission for 5 year olds to enter into this system. Parents can be subject to legal actions for violating state compulsory education attendance laws. Only special education requires pre-school education for 3-5 year olds — and this is by Federal law. It would be a gross misapplication of the McKinney-Vento statute to impose upon States an obligation to set requirements for public pre-school education other than the existing comparability and coordination language.

Gary Rutkin
Student Achievement and School Accountability Programs
U.S. Department of Education
400 Maryland Ave, SW
Washington, D.C. 20202
Tel: 202-260-4412
Fax: 202-260-7764
Continued

**Health, Safety and Student Support Services**

**Homeless Education Advisory 2003 - 7: McKinney-Vento Homeless Education Dispute Resolution Process**

This advisory is intended to provide school officials with guidance as they implement the federal McKinney-Vento Homeless Education Assistance Act requirement that State and local school districts develop "procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths."

The Massachusetts Department of Education (MADOE) adopts the following principles as the basis of its McKinney-Vento Dispute Resolution Process:

1. A student must be allowed to attend the school whose district is challenging the student’s right to attend until the Commissioner of Education or the Commissioner’s designee makes a final decision regarding the dispute. The challenging school district must continue to provide transportation and other school services to the student until the dispute is resolved.

2. The dispute resolution process begins at the time a school/district challenges the right of either a parent or guardian to enroll a child or to continue a child’s enrollment in school, or in the case of an unaccompanied youth, the youth’s right to enroll or to continue enrollment in school.

3. When a school or school district challenges the enrollment of the child or unaccompanied youth, the school or school district must:
   a. Provide notice of the challenge to the district Homeless Education Liaison (Liaison) and the parent, guardian, or unaccompanied youth, through the Liaison, on the day of the challenge using a form prescribed by the MADOE (see *Homeless Education Advisory 2003 - 7A: School District Notification of Enrollment Decision*).
   b. Provide notice of the right to appeal the challenge to the parent, guardian, or unaccompanied youth, through the Liaison. This notice must include a form to be completed by the parent, guardian, or unaccompanied youth should he or she decide to appeal the school district’s enrollment decision. (See *Homeless Education Advisory 2003 - 7B: Appeal of School District’s Enrollment Decision*).
   c. Notify MADOE of the challenge on the day of the challenge and provide MADOE with copies of all notices given to the parent, guardian, or unaccompanied youth.

4. The Liaison will provide the parent, guardian, or unaccompanied youth with written notice in clear, easy-to-understand language detailing the dispute resolution process. The notice must inform the parent, guardian, or unaccompanied youth of the option to obtain independent information and must list several Massachusetts Advocates for the Education of Homeless Children and Youths (MAEHCY) contacts, their addresses, telephone numbers and email addresses.

5. A school district will have two working days to review its initial decision and make a final decision as to the position taken, i.e. whether it will continue to challenge the right of the student to be enrolled. During this time, MADOE may provide technical assistance to the school district regarding its decision, by notifying the school district as to the requirements of McKinney-Vento and other applicable state and federal laws.

6. The final decision of the school district must be made in writing and must be made by the school district superintendent. The decision must state all factual information upon which it is based and the legal basis in support thereof.
7. If the final decision by the school district is adverse to the position of the parent, guardian, or unaccompanied youth, a copy of this written decision must be provided to MADOE, the Liaison and through him/her to the parent or guardian on the same day it is made (no later than the end of the two working days from the initial determination).

8. The Commissioner shall have two working days following receipt of the appeal by the parent, guardian, or unaccompanied youth to issue a decision. The decision of the Commissioner shall be final.

In making determinations regarding enrollment and the subsequent provision of transportation if necessary, the Commissioner will be guided by the following excerpts from the U.S. Department of Education (USDOE) Non-Regulatory Guidance:

- "Best interest of the child" shall be determined utilizing the guidance provided in G-2: "In determining a child or youth's best interest, an LEA must, to the extent feasible, keep a homeless child or youth in the "school of origin" unless doing so is contrary to the wishes of the child or youth's parent or guardian, or unaccompanied youth."
- "Feasibility" shall be determined utilizing the guidance provided in G-4: "As stated above, to the extent feasible, a district must educate a homeless child or youth in his or her school of origin, unless doing so is contrary to the wishes of the parent or guardian (unaccompanied youth). The placement determination should be a student-centered, individualized determination."
MASSACHUSETTS DEPARTMENT OF EDUCATION
Homeless Education Advisory 2003 7A: School District Notification of Enrollment Decision

This form is to be completed when a school/district denies the school enrollment choice of a parent, guardian, or unaccompanied youth who is seeking to enroll in school under the McKinney-Vento Homeless Education Assistance Act and is required by the Massachusetts Department of Education McKinney-Vento Dispute Resolution Process.

Date: ___________
Person Completing Form: ___________________________ Title: ___________________
School: __________________________  District:________________

In compliance with Section 722(g)(3)(E) of the McKinney-Vento Homeless Education Assistance Act of 2001, this written notice of denial of school enrollment is provided to:

Parent/Guardian: ____________________________________________________________

Student(s): ________________________________________________________________

After reviewing the request to enroll the above student(s), the school enrollment request is denied for the following reasons:

________________________________________________________________________

________________________________________________________________________

You have the right to appeal this decision by contacting the district’s Homeless Education Liaison who will assist you in the appeal process.

Liaison’s Name: __________________________  Phone #: __________________________

In addition:

□ Until the Commissioner of Education of the Massachusetts Department of Education, or the Commissioner’s designee, makes a final decision regarding your appeal, the above student will be allowed to attend the school of choice and the school district will provide transportation and other school services.

□ You may provide either written or verbal reasons for your appeal of this decision. An appeal form is attached.

□ You may contact the Massachusetts Department of Education Office for the Education of Homeless Students:
   Peter D. Cirioni @ 781-338-6294  Sarah Slatterback @ 781-338-6330

□ You may seek the assistance of advocates or attorneys.

□ A copy of this written notice of denial of school enrollment is being forward to:
   Office for the Education of Homeless Students, Massachusetts Department of Education, 350 Main Street, Malden, MA 02148
MASSACHUSETTS DEPARTMENT OF EDUCATION

Homeless Education Advisory 2003  7B: Appeal of School District Enrollment Decision

You should complete this form if you are a parent, guardian or unaccompanied youth who disagrees with a school enrollment decision. The District Homeless Education Liaison will assist you with this form, and may take the information verbally if you wish.

Date: __________

Parent/Guardian: ________________________________________________________________

Student(s): _________________________________________________________________

Phone #: __________________________________

I wish to appeal the enrollment decision made by: ________________________________

School: ___________________________ District: ____________________

I have been provided with the following:

✓ a copy of the School District Notification of Enrollment Decision and the Massachusetts Department of Education (MA DOE) Dispute process; and

✓ contact information for the district Homeless Education Liaison [the MA DOE Office for the Education of Homeless Students contact information is printed below].

I disagree with the enrollment decision for the following reason(s):

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

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____________________________________________________________________________

____________________________________________________________________________

I know that I may contact the MA DOE Office for the Education of Homeless Students:

Peter D. Cirioni @ 781-338-6294    Sarah Slatterback @ 781-338-6330

I know that I may seek the assistance of advocates or attorneys.

I want a copy of this written notice of appeal of school enrollment to be forwarded to:

Office for the Education of Homeless Students, Massachusetts Department of Education, 350 Main Street, Malden, MA 02148

Signed: ___________________________________________ Date: / / /
APPENDIX H

Sample Complaint for Protection from Abuse

[Image of a Sample Complaint for Protection from Abuse form]

[Text continues on the next page]

continued
**COMPLAINT FOR PROTECTION FROM ABUSE**  
(G.L. c.209A) Page 2 of 2

**ISSUES PERTAINING TO CHILDREN**

A. RELATED PROCEEDINGS. Is there any proceeding that the Plaintiff knows of or has participated in which it pending or has been concluded in any Court in the Commonwealth or any other state or country involving the care or custody of the child or children of the parties?  
         □ YES  X NO  
If Yes, the Plaintiff shall complete and file with this Complaint an Affidavit Disclosing Care or Custody Proceedings as required by Trial Court Uniform Rule IV, and provide copies of documents required by the Rule. This Affidavit and related information are available from the office of the Clerk-Magistrate or Register of Probate of the Court.

B. RELATED PROCEEDINGS. Are there any prior or pending court actions in any state or country involving the Plaintiff and the Defendant for paternity?  
         □ YES  X NO

C. CUSTODY.  
The Plaintiff may not obtain an Order from the Boston Municipal Court or a District or Superior Court for custody if there is a prior or pending Order for custody from the Probate and Family Court or Juvenile Court.  
X I request custody of the following minor child or children of the parties:

<table>
<thead>
<tr>
<th>NAME</th>
<th>DATE OF BIRTH</th>
<th>NAME</th>
<th>DATE OF BIRTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lisa Doe</td>
<td>5/5/95</td>
<td>Michael Doe</td>
<td>10/5/97</td>
</tr>
</tbody>
</table>

D. CONTACT WITH CHILDREN. I ask the Court to order the Defendant not to contact the following child or children unless authorized to do so by the Court:

<table>
<thead>
<tr>
<th>NAME</th>
<th>NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lisa Doe</td>
<td>Michael Doe</td>
</tr>
</tbody>
</table>

The specific reasons for this request are: **I do not want the Defendant contacting the children or accessing their school records because he has abused both the children and me. He is a danger to us.**

If the Plaintiff alleges that the Defendant has abused the above-named child or children, a separate Complaint may be filed on behalf of each child.

E. VISITATION. If the Plaintiff is filing this Complaint in the Probate and Family Court, the Plaintiff may request a Visitation Order. Such Orders are not available in other Courts. Regarding visitation, I ask the Court to

□ permit visitation.  
☐ order no visitation between the Defendant and our minor child or children.
☐ permit visitation only at the following visitation center:
   - to be paid for by

☐ permit only visitation supervised by
   - at the following times:
   - to be paid for by

☐ order visitation only if a third party
   - picks up and drops off our minor child or children.

F. TEMPORARY SUPPORT.  
The Plaintiff may not obtain an Order from the Boston Municipal Court or a District or Superior Court for temporary support if there is a prior or pending Order for support from the Probate and Family Court or Juvenile Court.  
X I ask the Court to order the Defendant, who has a legal obligation to do so, to pay temporary support for any children in my custody.

DATE 07/21/03

PLAINTIFF'S SIGNATURE

[Signature]

COURT COPY
Sample Affidavit that accompanies Complaint for Protection from Abuse

<table>
<thead>
<tr>
<th>AFFIDAVIT</th>
<th>Describe in detail the most recent incidents of abuse. The judge requires as much information as possible, such as what happened, each person's actions, the dates, location, any injuries, and any medical or other services sought. Also describe any history of abuse, with as much of the above detail as possible.</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or about</td>
<td>2000, the Defendant</td>
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</tbody>
</table>

If more space is needed, attach additional pages and check this box.

I declare under penalty of perjury that all statements of fact made above, and in any additional pages attached, are true.

<table>
<thead>
<tr>
<th>DATE SIGNED</th>
<th>PLAINTIFF'S SIGNATURE</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

WITNESSED BY

<table>
<thead>
<tr>
<th>PRINTED NAME OF WITNESS</th>
<th>TITLE/RANK OF WITNESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>x</td>
<td></td>
</tr>
</tbody>
</table>
Sample Affidavit Disclosing Care or Custody Proceedings

AFFIDAVIT DISCLOSING CARE OR CUSTODY PROCEEDINGS

Pursuant to Trial Court Rule IV

Tryal Court of Massachusetts

Name of Case Doe v. Doe

DOCKET NUMBER

☐ Boston Municipal Court ☐ District Court ☐ Juvenile Court ☐ Probate & Family Court ☐ Superior Court

☐ Division ☐ Division ☐ Division ☐ Division

Section 1 I, Jane Doe, hereby declare, to the best of my knowledge, information and belief that all the information on this form is true and complete:

The names of the child(ren) whose care or custody is at issue is (are):

A. Jane Doe

B. Lisa Doe

C. Michael Doe

Section 2 Use only the letter appearing in front of the child’s name above when referring to that child when completing the remaining sections.

Section 3 The address(es) of the above-named child(ren) whose care or custody is at issue in this case is/are:

CHILD A. 123 Main Street, Lowell, MA

CHILD B. 123 Main Street, Lowell, MA

CHILD C. 123 Main Street, Lowell, MA

Section 4 My address is: 123 Main Street, Lowell, MA

Section 5

Section 6

Section 7

If the box at the right is checked, this affidavit discloses the adoption of one or more of the above-named child(ren) and I am requesting the court to impound this affidavit. See instructions.

Signed this 21st day of June, 2003, under the penalties of perjury.

X Jane Doe

THE PARTY FILING THIS AFFIDAVIT MUST FURNISH A COPY OF IT TO ALL OTHER PARTIES TO THIS ACTION.
## Sample Defendant Information Form

**ATTENTION: PLEASE PROVIDE AS MUCH INFORMATION AS POSSIBLE. IF A PROTECTIVE ORDER IS ISSUED, THIS INFORMATION WILL HELP POLICE FIND THE DEFENDANT AND SERVE THE DEFENDANT WITH A COPY OF THE ORDER.**

### Home Address

**Number** ____________  **Street** ____________  **City** ____________  **State** ____________  **Zip** ____________

**IMPORTANT:** Apartment No. ____________  Floor No. ____________  Name on Door/Mailbox ____________

### Work Address

**Name of Company/Employer** ____________________________________________________________________________

**Number** ____________  **Street** ____________  **City** ____________  **State** ____________  **Zip** ____________

**Department** ____________  **Title** ____________________________________________________________________

**Telephone No.** (__________)  **Work Hours** ____________________________________________________________________

### Other Places Defendant May Be Found

(Friends, bars, relatives, hangouts)

**BEST PLACE TO FIND DEFENDANT** _______________________________________________________________________

**BEST TIMES** _______________________________________________________________________________________

### Defendant Understands English?

☐ Yes  ☐ No  

**IF NO, WHAT LANGUAGES?:** ________________________________________________________________________

### Description for Purposes of Service

**Male** ☐  **Female** ☐  **Race** _______________________________________________________________________

**Eyes** ____________  **Hair** ____________  **Height** ____________  **Weight** ____________  **Build** ____________

**Other** ____________________________________________________________________________________________

(Beard, glasses, scars, tattoos, acne, hairstyle)

### Photograph Available?

☐ Yes  ☐ No  

(Photographs are very helpful to police in identifying Defendants.)

### Motor Vehicle

**License Plate #** ____________  **Year** ____________  **Make** ____________  **Model** ____________  **Color** ____________

### Does Defendant Have: (describe very briefly)

1. A history of violence towards police officers?  ☐ No  ☐ Yes
2. A history of using/abusing drugs or alcohol?  ☐ No  ☐ Yes  **What kind?**
3. Access to guns, a license to carry, or possess a gun?  ☐ No  ☐ Yes  **What kind?**
4. Psychiatric/Emotional Problems? (Treated/Hospitalized)?  ☐ No  ☐ Yes  **What kind?**

### Any Other Information Which Might Be Helpful in Locating the Defendant

**Plaintiff’s Name** ________________________________________________________________________

**Date** ____________  **Plaintiff’s Signature** ____________

---

**APPENDIX K**

Sample Defendant Information Form
CONFIDENTIAL INFORMATION
Statute 2000, Chapter 236, §24

1. Plaintiff's name: ______________________________________________________________

2. Plaintiff's residential address: __________________________________________________
   ____________________________________________________________________________

3. Plaintiff's residential telephone number: _________________________________________

4. Plaintiff's workplace name: _____________________________________________________
   ____________________________________________________________________________

5. Plaintiff's workplace address: _________________________________________________
   ____________________________________________________________________________

6. Plaintiff's workplace telephone number: _________________________________________

7. Persons authorized by the plaintiff to obtain access to this confidential information:
   ____________________________________________________________________________
   ____________________________________________________________________________
   ____________________________________________________________________________

The information that you provide above is confidential and will be provided only to persons authorized by you in #7 above, to certain individuals if necessary in the performance of their duties and to the defendant and his or her attorney, as the law may require. Your residential address and workplace address will appear on the court order and be accessible to the defendant and the defendant’s attorney unless you specifically request that this information be withheld from the order. At your request, the court may also impound certain information in this case. Access to impounded information would be determined by the court. Please ask the staff of the Clerk Magistrate or Register of Probate of the court in which you are filing a Complaint For Protection From Abuse if you would like to request impoundment of certain information.

Plaintiff’s Signature ____________________ Date ________________

Interim Form – November 2000
April 20, 2005

Dear Principal Smith:

I am the mother of Andre Martinez, a third grade student at your school. I am writing to express concern about Andre’s development. I would like to request a Special Education evaluation for my son.

I understand that I am to be sent a consent form within 5 school days of your receipt of this letter.

Thank you for your attention to this matter. Please contact me at (617) 555-1234 with any questions or concerns.

Sincerely,

Rosa Martinez
April 20, 2005

Dear Principal Smith,

Be advised that I am representing Rosa Martinez in the matter of her son Andre’s special education needs. In order to represent her, it is necessary that I have copies of Andrea’s entire student record during the time that he has been enrolled in your school system. This includes, but is not limited to, all regular and special education records, discipline records, and health records, as well as any notes, correspondence and test scores.

I understand that this information will be made available to me within 10 days of this request. An authorization giving me access to these records is attached to this letter.

Thank you for your prompt attention to this matter.

Sincerely,

Mary Smith, Esq.

Cc: Director of Special Education
Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Transitional Assistance  
600 Washington Street • Boston, MA 02111

Field Operations Memo 2005-35  
August 10, 2005

To: Transitional Assistance Office Staff
From: Cescia Derderian, Assistant Commissioner for Field Operations
Re: Temporary Emergency Shelter Placement – 20-mile Rule

Background
An EA household needing temporary emergency shelter must be placed within 20 miles of their home community unless they request otherwise or such shelter is unavailable or inappropriate. When a temporary emergency shelter is not available within the 20 mile limit, temporary emergency shelter will be provided in another Department-approved temporary emergency shelter as an interim measure.

Purpose of Memo
This memo:
- introduces the new Declination of Transfer form (Attachment A); and,
- describes TAO responsibilities regarding the tracking and reporting of each family placed beyond 20 miles of their home community using the Active EA AUs – Beyond 20 Mile Placements Excel spreadsheet.

TAOs will no longer be required to complete or submit the TES-20 forms for families placed beyond 20 miles.

TAOs should not include families placed in Substance Abuse and Domestic Violence shelters in their 20 mile reporting.

Continued
The Active EA AUs Beyond 20 Mile Placements Excel spreadsheet will be the method for reporting families beyond the 20-mile limit. On a monthly basis, the latest update of this spreadsheet will be emailed to TAOs for review. It will list every family reported to be beyond 20 miles of their home community.

Any case not identified on the spreadsheet must be added if the family meets the following criteria:

- the family is placed in a shelter beyond 20 miles of their home community; and
- the family wishes to return to within 20 miles of their home community.

As part of the review, the Director/designee must ensure that the data in BEACON accurately reflects the case circumstances. Any corrections must also be made on the spreadsheet e.g., Shelter Name, Shelter Entry Date, Shelter Exit Date.

If a family residing in a shelter beyond 20 miles of their home community has been offered a transfer and has declined the transfer using the Declination for 20-mile Rule Transfer form, the Director or designee must note this on the spreadsheet by placing an X in the Does not need to be relocated field.

If a family has declined transfer because of existing extenuating circumstances, the Director/designee must note this on the spreadsheet by selecting Extenuating Circumstances under the TAO Priority field.

Updated spreadsheets must be emailed to Julie Noble by the fifth working day of each month. (In addition, throughout the month, the Central Office Housing and Homeless Services unit (H&HS) will inform Julie Noble by email of any additional EA AUs placed beyond 20 miles of their home communities.) The master spreadsheet will be updated with all of the information submitted from H&HS and TAOs and returned to H&HS to facilitate the process of relocating each family to their home community.

Note: All issues that may affect the placement of each family must be identified prior to relocation so that problems do not arise when Housing and Homeless Services attempts to relocate them.

**Continued**
Report Fields

The *Active EA AUs Beyond 20 Mile Placements* spreadsheet lists the following:

- New Addition by H&HS
- TAO
- AUM First
- AUM Last
- AU First Name
- AU Last Name
- AU SSN
- Shelter Name
- Shelter Entry Date
- Shelter Exit Date
- Beyond 20 Miles
- Originating TAO
- Placement Date
- HH Size
- Household Composition
- Special Circumstances
- Shelter Restrictions
- TAO Priority
- Future Transfer Date
- Change in information Yes or No
- Does not need to be relocated

For explanations of these fields, please refer to the attached Q&A sheet (Attachment B).

---

Homeless Coordinator/AU Manager Responsibilities: Offer of Transfer

The Central Office Field Operations unit provides a copy of the reporting spreadsheet to the Housing and Homeless Services unit (H&HS). H&HS then reviews the spreadsheet to identify appropriate shelter vacancies for families who wish to return to within 20 miles of their home communities.

If an appropriate placement is found:

- H&HS will contact the Homeless Coordinator/AU Manager to make him/her aware of the placement opportunity;
- the Homeless Coordinator/AU Manager must contact the family and offer them the transfer from their current shelter to the shelter within 20 miles of their home community. The family then has two working days to accept or decline the transfer placement.
If the family declines the transfer, the Homeless Coordinator/AU Manager must consult with the family to determine their reason for declining the transfer.

1. If the family is requesting only a temporary hold on the transfer because of acceptable extenuating circumstances, which are education, employment, and/or medical issues, but they wish to move to shelter within twenty miles of their home community sometime in the near future, the family must verify their extenuating circumstances in writing. The Homeless Coordinator/AU Manager must note these circumstances in the AU case record and the BEACON Narratives tab, as well as annotate the reporting spreadsheet, indicating a future date when transfer will become appropriate;

2. If the family does not wish to return to their home community, the Homeless Coordinator/AU Manager must:
   a. explain that declining the transfer will result in removal of the family from further consideration for transfer;
   b. fill out the Declination of Transfer form, identifying the family’s current shelter and the city in which it is located, as well as the proposed transfer shelter and city;
   c. give the form to the family for signature. If the family refuses to sign, the worker should note this on the form.
   d. give a copy to the family;
   e. fax the completed form to the Central Office Housing and Homeless Services unit at 617-348-5585;
   f. file the original in the AU case record.

3. If the family does not respond within two working days, the Homeless Coordinator/AU Manager must:
   a. fill out the Declination of Transfer form, identifying the family’s current shelter of residence and the city in which it is located, as well as the proposed transfer shelter and city;
   b. note on the form that the family could not be contacted;
   c. mail a copy to the family;
   d. fax the completed form to the Central Office Housing and Homeless Services unit at 617-348-5585;
   e. file the original in the AU case record.
For families who wish to return within 20 miles of their home communities, established transfer procedures must be followed, as described on pages VI-2 to VI-3 of the *EA User's Guide, Follow-up on Temporary Emergency Shelter*.

**Note:** Please make sure to update the Self-Sufficiency Plan with any relevant changes.

---

FO Memo 98-32, FO Memo 98-48, and form TES-20 are now obsolete.

---

If you have any questions, please have your Hotline designee call the Policy Hotline at (617) 348-8478.
DATE: ____/____/________

I do not want to accept the Department of Transitional Assistance’s offer to transfer my Emergency Assistance shelter placement from ____________________________________________________ in __________________ to _______________________________ in ________________________.

I do not want to accept this transfer because I want my family to remain in its present location.

I understand that because I have declined this transfer, the Department will stop its efforts to place my family in a temporary emergency shelter closer to my prior home community.

Recipient Name: _________________________________ SSN:  ________________________

Other Adult Name: _______________________________ SSN:  ________________________

Recipient Signature: ______________________________ Date:  ________________________

Shelter Address:  ___________________________________________________________________

City:  __________________________________________  Contact Phone:(____)________________

TAO Worker’s Signature: _________________________________   Date:_________________

TAO Worker: __________________________________________   TAO:_________________

☐ Check here if the family did not respond within two working days.

☐ Check here if the family refused to sign.

Comments:

EA_20Mile_Decline (8/2005)
13-225-0005-05
Q&A

Q1. Do I need to set a priority for every case?
A1. Yes, a case priority level needs to be established for every family that is still in shelter beyond 20 miles and who wishes to return.

Q2. How do I indicate the priority for each case? What do I enter in the “TAO Priority” field?
A2. This field contains a drop-down box from which to choose a priority (“Critical,” “Preference,” or “Extenuating Circumstances”). TAOs should use this field to identify that the family situation either represents a critical need of being relocated to their home community, the need is not critical but the family prefers to be relocated, or that the family prefers to be relocated but cannot because of extenuating circumstances.

Q3. What do I enter onto the spreadsheet if the family is granted a temporary hold on the transfer because of acceptable extenuating circumstances?
A3. Select “Extenuating Circumstances” from the “TAO Priority” drop-down field and enter a date in the “Future Transfer Date” field. This date would be the expected date that the family’s extenuating circumstances would be resolved. When the extenuating circumstances no longer prevent the family from being transferred to a shelter within 20 miles of their home community, the priority should be changed to either “Critical” or “Preference,” depending on the case circumstances, and the date in the “Future Transfer Date” field must be removed, as well.

Q4. Do I need to report back to Central Office if there are not any changes to the cases?
A4. Yes, TAOs are required to report on every case listed on the report and must indicate with a Yes or No in the field titled “Change in Information Yes or No” if there was a change from the last month’s report.

Q5. How do I indicate that the family does not want to be relocated to their home community?
A5. Place an “X” in the field titled “Does not need to be relocated.”

Q6. What type of information do I put in the field titled “Shelter Restrictions”?
A6. Use this field to indicate the type of shelter/facility that the family needs (such as Substance Abuse, Domestic Violence, handicapped accessible). This field is also used to indicate if a family cannot be relocated to a specific shelter because they were terminated from that shelter.

Q7. The case is no longer in my TAO: what do I enter on the report?
A7. All fields still must be completed. If the case has been transferred, you must also change the information in the first field, entitled “TAO,” to reflect the TAO # in which the case now resides. The case will then appear on the list the following month for the TAO to which the case is assigned.

Q8. What do I enter on the report if it is discovered that the calculation of 20 miles was incorrect and the family was not really placed beyond 20 miles of the originating TAO?
A8. In the “Beyond 20 Miles” field change the ‘Y’ to an ‘N’.

Q9. Do I still need to complete and submit to Central Office the TES-20 form?
A9. No, this form and reporting requirement are obsolete.

Q10. How do I easily find the cases for my office or that are residing in a shelter in my office coverage area?
A10. At the top of the report, there are drop-down arrows for every field. You can use these drop-down areas to select your specific TAO in the “TAO” field or you can select a specific shelter in the “Shelter Name” field.

Q11. What do I do when I see an entry in the “New Addition by H&HS” field?
A11. Complete and/or update all fields, being sure to follow all instructions in FO Memo 2005-35 and attachments.
MASSACHUSETTS DEPARTMENT OF TRANSITIONAL ASSISTANCE

APPEAL DECISION: Approved
AO: Revers

APPEAL NO: 296599, 296757

SS No:

CATEGORY: 02

DECISION DATE: SEP 28 2004

NAME
ADDRESS:

FILING DATES: 08/30/04, 09/07/04
HEARING DATE: 09/23/04

DEPARTMENT REPRESENTATIVE:
Leonor Figueiredo

JURISDICTION:

Notice dated 08/27/04 was sent to the appellant stating that the Department would transfer the appellant to Prospect House in Springfield because, "your present shelter placement has been terminated by your current shelter provider" (106 CMR 309.640(F)(4) (Exhibit 1)).

The appellant filed an appeal on 08/30/04, and therefore, it is timely (106 CMR 343.140).

The transfer is grounds for appeal when the appellant believes that the Department has failed to comply with its requirements of making all reasonable efforts to locate temporary emergency shelter that will accommodate the physical composition of the assistance unit, or to place the assistance unit within 20 miles of its home community.

Notice dated 08/30/04 was sent to the appellant stating that the Department would terminate her Emergency Assistance on 09/09/04 because, "you failed to appear at a designated shelter placement without good cause" (106 CMR 309.040(F)(1)(c)) (Exhibit 2).

The appellant filed an appeal on 09/07/04, and therefore, it is timely (106 CMR 343.140).

Since the appeal of the termination was filed within the advance notice period, the appellant is entitled to and has been receiving a continuation of the former level of benefits pending the outcome of this hearing subject to recoupment by the Department (106 CMR 343.250/367.275).

Since the two appeal requests involve common issues of fact, the two appeals are consolidated into one fair hearing.

SEP 28 2004

296599, 296757-1

Continued
ACTIONS BY THE DEPARTMENT:
The Department transferred the appellant’s assistance unit to a temporary emergency shelter more than 20 miles from her home community.

The Department plans to terminate the appellant’s Emergency Assistance temporary emergency shelter benefits.

ISSUES:
Was the transfer of the appellant’s shelter benefits a permissible transfer under the EA regulations?

Did the appellant fail without good cause to appear at the designated shelter placement in Springfield on 08/27/04?

SUMMARY OF EVIDENCE:
The appellant was represented by an attorney from Legal Services who objected to the fact that the hearing was being conducted telephonically. He did not state a basis for the objection. The Division of Hearings (DOH) arranged for interpreter services at the appellant’s request. The parties were given a fax number to forward exhibits for inclusion in the record (Exhibits 3-6).

The Department representative testified that the appellant has been receiving Emergency Assistance (EA) temporary emergency shelter benefits. Her family had been placed in the Boston area at Millennium House shelter. Millennium House informed the Department that the appellant had been asked to leave the shelter on 08/26/04 due to health and safety issues (Exhibit 3). On 08/27/04 a Notice of Transfer was faxed to the shelter to be delivered to the appellant. The notice advised the appellant that her shelter benefits would be continued at Prospect House in Springfield (Exhibit 1). The case manager said that the fax cover contained a notation that transportation was available if the appellant needed it. A contact telephone number was given (Exhibit 6).

The case manager said that the appellant did not appear at the designated placement and the Department issued a Notice of Termination on 08/30/04 (Exhibit 2). The case manager said that the appellant came to the local office on 08/31/04 requesting placement while her appeals were pending. The appellant was placed at Crittenden Hastings Shelter in Mattapan. The case manager said that the appellant’s current placement is not at issue because it is a better placement for the appellant and her family. The case manager was asked if she had evidence that there were no shelter placements available in the appellant’s home community as of 08/27/04. The case manager said she had no knowledge of that issue. She explained that the Central Office staff assigns the placements and the Department’s policy is to keep families in their home communities if possible.

The appellant testified that she was not informed by the staff at Millennium House that transportation to Springfield was available. She said that she did not receive a copy of the fax cover (Exhibit 6).

The appellant’s attorney stipulated to the fact that the appellant was asked to leave Millennium House, but stated that the appellant did not stipulate to the underlying facts. He argued that the appellant had good cause for failing to go to Prospect Shelter in Springfield. He said that the appellant went to South Station 296599, 296757-2

Continued
Continued

and attempted to purchase bus tickets. She purchased one for herself, but did not have enough money to purchase one for her child (Exhibit 4). He said that the appellant would not have spent her own limited funds on a bus ticket if she had been aware that transportation was available. The appellant's attorney also argued that the Springfield placement was not appropriate because the appellant's son was scheduled for surgery within two weeks of the placement (Exhibit 6).

FINDINGS OF FACT:

1. The appellant and her child are receiving EA temporary emergency shelter benefits.

2. Prior to 08/26/04 the appellant and her child were placed in the Boston area at the Millennium Shelter (Testimony).

3. It was undisputed by the parties that the appellant's home community is Boston (Testimony).

4. On 08/27/04 Millennium House notified the Department that the appellant and her son were being asked to leave the shelter due to an alleged incident involving the appellant's son and a shelter staff person (Exhibit 3).

5. On 08/27/04 the Department notifies the appellant that her EA benefits would be continued at Prospect House in Springfield (Exhibit 1).

6. The Department representative testified that the notice of transfer was sent via fax to Millennium House on 09/27/04 with a request that it be hand delivered to the appellant.

7. The Department submitted a fax cover sheet dated 08/27/04 from the Department's Placement Unit. The cover sheet contains a notice advising the appellant that if she needs transportation to her shelter placement, the Department would make arrangements. A telephone contact number is given (Exhibit 6).

8. Prospect House is located more than 20 miles from the appellant's home community (Testimony).

9. The appellant filed a request for a fair hearing to dispute the transfer (See appeal request in folder).

10. No evidence or testimony was submitted by the Department verifying that there were no family shelter placements available within 20 miles of the appellant's home community on 08/27/04.

11. The appellant's son was scheduled to be admitted to Shriners Hospital for Children for surgery during the period of 09/16/04 to 09/17/04 (Exhibit 5).

12. It is unclear if the Placement Unit was aware of the medical problems of the appellant's son (Testimony).

13. The appellant did not appear for a fair hearing on 08/27/04 Testimony).

296599, 296757-3 SEP 28 2004

Continued
14. On 08/20/04 the Department notified the appellant that her EA benefits would be terminated because she failed without good cause to appear at a designated shelter placement (Exhibit 2).

15. The appellant requested a fair hearing (See appeal request in folder).

16. The appellant testified credibly that she did not receive the fax cover page with the information regarding transportation assistance. Her testimony is supported by the fact that the appellant traveled to South Station in Boston and purchased an adult bus ticket to Springfield (Exhibit 4).

17. The appellant also testified credibly that she did not have sufficient funds to purchase a second bus ticket for her child.

18. On 08/31/01 the Department placed the appellant at the Crittenden Hastings shelter in Mattapan (Testimony).

19. All parties agree that this placement is more appropriate for the appellant’s assistance unit (Testimony).

CONCLUSIONS OF LAW:

At the outset of the hearing, the appellant’s attorney objected to the fact that the hearing was being conducted telephonically. He did not state any basis for the objection. The Fair Hearing Rules allow the Department to conduct hearings face to face, by videoconferencing, and telephonically (106 CMR 343.120). A challenge to the Department’s regulations is beyond the scope of administrative review and must be litigated in a Court of appropriate jurisdiction (106 CMR 343.610(C)(7)).

The appellant has been receiving EA temporary emergency shelter benefits. The appellant had been placed at the Millennium House shelter. It is undisputed that the appellant’s home community is the Boston area. On 08/27/04 the Department was notified that the appellant was being asked to leave Millennium House due to an alleged incident involving the appellant’s son and a member of the shelter staff. The Department’s Placement Unit issued a notice to the appellant advising her that her last day at Millennium House was 08/26/04 and her shelter benefits would be continued at Prospect House in Springfield as of 08/27/04.

Under the regulations, the Department has an affirmative obligation to place families within 20 miles of their home community whenever possible (106 CMR 309/040(2)(J)). In the appellant’s case, the transfer to Prospect House was more than 20 miles from the appellant’s home community. The Department representative who attended the hearing asked if she had any evidence or knowledge of the lack of available family shelter placements in the Boston area as of 08/27/04. The representative said that she had no knowledge of how the Placement Unit made their decision, but presumed that there was no space available. The fair hearing rules require the Department to submit at the hearing all evidence on which any decision at issue is based and present and establish all relevant facts and circumstances by oral testimony and documentary evidence (106 CMR 343.420(A)(F)). The Department representative’s presumption that there was no family shelter space available in the Boston area is not evidence and is undermined by the fact that the appellant was able to be placed in the Boston area on 08/31/04. The Department representative also testified that the appellant’s current placement in Mattapan is a much better placement for the appellant’s assistance unit.

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SEP 09 2004

Continued
The Department’s regulations allow the Department to terminate EA shelter benefits if the EA assistance unit either fails to appear at the designated placement without good cause as defined in 106 CMR 701.380: Good Cause Criteria and 106 CMR 309.021(D) or refuses the available placement (106 CMR 309.040(F)(1)(c)). Transportation issues are specifically addressed in the good cause criteria set forth at 106 CMR 309.021.

The Department determined that the appellant failed without good cause to accept a shelter placement because the Department presumed that the appellant received the fax cover sheet advising her that the Department would arrange transportation to Springfield if she requested assistance. The appellant testified credibly that she was unaware that transportation was available. As her attorney points out, her testimony is supported by the fact that she went to South Station in Boston and purchased an adult bus ticket to Springfield. When the appellant attempted to purchase a ticket for her child, she discovered that she had insufficient funds. The appellant would not have spent $22.00 on a bus ticket if she did not intend to attempt to accept the shelter placement in Springfield. The appellant therefore has shown good cause for failing to accept a shelter placement.

Based on the evidence and testimony presented, the Department failed to establish that there was no family shelter space available within 20 miles of the appellant’s home community when the notice of transfer was issued on 08/27/04. Without evidence of lack of shelter space available within 20 miles of the appellant’s home community, the transfer is not permissible. In addition, the record does not support the Department’s determination that the appellant failed without good cause to accept an available shelter placement. The appeals are consequently approved.

**ACTION FOR THE DEPARTMENT:**

The appellant has been placed in the Boston area and does not dispute this placement.

Void planned termination.

cc: Steve Valero, Esq.
GBLS
197 Friend Street
Boston, MA

296599, 296757-5

Continued
DEDICATION

APPEAL DECISION: Approved
AO: Lowell
APPEAL NO:

NAME: c/o Michelle Lerner
ADDRESS: GBLS 197 Friend Street Boston, MA. 02114
FILING DATE: OCT 11 2012

DEPARTMENT REPRESENTATIVE(S):
D. O'Connell, S. Smith, M. Kuras.

JURISDICTION:
The appellant received a notice dated 09/12/02 stating: The Department of Transitional Assistance is informing you and the eligible members of your EA assistance unit of a transfer to another temporary emergency shelter. Your EA shelter benefits are being continued at effective 9/12/02.

Your last night at is 9/12/02. This transfer is made pursuant to 106 CMR 309.070(A) and subject to the terms of 106 CMR 309.040(C). All shelter placements and transfers are made for the efficient administration of the EA program and in the best interests of needy EA families. G.L. C. 18 section 2 (Exhibit 1).

The appellant filed this appeal on 09/12/02 and therefore, it is timely (106 CMR 343.140(B), 367.100) (Exhibit 2).

The appellant also received a notice dated 09/16/02 stating: Your request for Emergency Assistance is terminated effective 09/26/02. Reason and Manual Citation: You have abandoned the Temporary Shelter Site at the 9/13/02, 106 CMR 309.040 (Exhibit 3).

The appellant filed this appeal on 09/16/02 and therefore, it is timely (106 CMR 343.140(B), 367.100) (Exhibit 4). Since the appeal was filed prior to the date of the planned termination of assistance, the appellant has continued to receive benefits pending the outcome of the appeal which are subject to recoupment (106 CMR 343.230 (A)(1)).

The termination of assistance is grounds for appeal (106 CMR 343.230, 367.025).

OCT 11 2012

Continued
ACTION TAKEN BY THE DEPARTMENT:

The Department intends to terminate the appellant's EA shelter for abandoning her EA shelter by refusing to transfer to a new EA site.

ISSUE:

Has the Department properly determined the appellant is not eligible for shelter under the Emergency Assistance program?

SUMMARY OF THE EVIDENCE:

The Department Representative testified they were contacted by the on 09/11/02 to request a shelter transfer for recipient. The management indicated the appellant was in conflict with another resident and they believed for her own safety the appellant should be moved. The Department located a shelter placement at the and arranged for the appellant and her children to take a van to the bus station where they would be transported to and be met by a cab to take her to the new shelter. The appellant indicated she would find her own way to the shelter in.

On 09/16/02 the Department was informed the appellant had refused to accept the shelter placement in and indicated a closing of the case for abandonment of shelter placement at the

The Department contacted the appellant to inform her she would be terminated if she did not accept the shelter and the appellant indicated she was going to live with her sister in . The Department testified that they expended no funds for either the appellant's transportation to or the

The Department submitted into evidence: EA Placement Request dated 09/16/02 (Exhibit 5); Fax from dated 09/11/02 (Exhibit 6); Fax from dated 09/11/02 (Exhibit 7); case worker notes (Exhibit 8); Recipient's Responsibilities While in a Temporary Emergency Shelter dated 06/24/02 (Exhibit 9); EA application dated 06/17/02 (Exhibit 10); and relevant rules and regulations (Exhibit 11).

The appellant was represented by M. Lerner and D. Lawrence of Merrimack Legal Services and Attorney S. Cole of Massachusetts Advocacy Center. The appellant's representative argued the Department notice was inadequate as the appellant did not abandon her EA shelter she refused to accept the transfer to a new shelter. In addition, the Department offers the manual citation of 106 CMR 309.040 as justification for the termination which lacks the specificity required under the regulations. The appellant's representative maintains that when the appellant requested a transfer she was informed by the manager of the inn that there was a vacancy at the in which is also an EA shelter. 

The appellant felt it was unmanageable for her gather her children between (ages of months and years) and their belongings and transport them by bus to so she requested a friend to drive her to the

When she arrived the appellant testified she was confronted by several men smoking marijuana and drinking beer. The appellant contacted the Department and informed them she was unwilling to stay at the

as she feared for her safety and the safety of her children. The appellant returned to and went to the and her friend paid the room. On 09/16/02 the Department began paying for the

The appellant's representative stated the Community Service Network Inc. (CSN) is contracted with the Department to locate rooms for homeless families. CSN was contacted by the Department to locate a room for the transfer of the appellant and her family. The CSN did not inform the Department of the availability of the

Continued
not transferring an EA recipient from one hotel to another owned by the same parent company (Exhibit 11) and are owned by the CSN. The appellant's representative argues the CSN rule is not Department policy and therefore there was a shelter within the 20 mile rule and the appellant was incorrectly transferred. The appellant submitted into evidence: Appeal Decision #8 (Exhibit 11); affidavit of M. Operations Manager of (Exhibit 12); affidavit of S. Herbeck Executive Director of CSN (Exhibit 13); fax from dated 09/25/02 (Exhibit 14); and the McKinney-Vento Homeless Assistance Act (Exhibit 15).

The Department was given additional time to present verification that there were no shelter vacancies within the 20 mile radius.

The record remained open until 10/08/02 for the Department to submit the required documentation.

The Department submitted a document on 10/08/02 indicating there was no other verification available (Exhibit 17).

**FINDINGS OF FACT:**

The record shows and I so find by a preponderance of the evidence:

1. The Department intends to terminate the appellant's EA shelter because the appellant's temporary emergency shelter placement (Exhibit 1).

2. The appellant is a member of a household of (the appellant and children ages months to years, two of which attend school in (Exhibit 10).

3. On 09/11/02 and 09/13/02 a request was made from the appellant and the in CNS the housing agent for the Department that the appellant be transferred from the as she was having an issue with another hotel guest (Exhibit 6, 7).

4. On 09/13/02 the Department transferred the appellant to the in (Exhibit 1)

5. The Department's agent CNS verified there was a shelter placement for the appellant within the 20 mile radius, but it was not offered to the Department because of an internal CSN policy of not transferring a EA recipient from one hotel to another owned by the same parent company (Exhibit 15).

6. An EA assistance unit shall be placed in a shelter beyond 20 miles only if appropriate Department-approved family shelter space is not available (See 106 ChMR 309.046(C)(3)(4)).
CONCLUSIONS OF LAW:

The EA assistance unit will be placed in an interim placement, such as shelter beyond 20 miles, only if appropriate Department-approved family shelter space is not available.

106 CMR 309.040: Homlessness Due to Lack of Feasible Alternative Housing

(C) Temporary Emergency Shelter Placements

An EA-eligible assistance unit homeless due to the lack of feasible alternative housing in accordance with 106 CMR 309.040(A)(C) shall be approved for temporary emergency shelter. Any temporary emergency shelter placement must be approved by the Transitional Assistance Office Director or designee. Such approval for placement may be withdrawn or temporary emergency shelter benefits terminated if feasible alternative housing subsequently becomes available. A temporary emergency shelter placement shall also be subject to the following provisions:

(3) The Department-approved family shelter shall be located within 20 miles of the EA assistance unit’s home community unless the EA assistance unit requests otherwise;

(4) The EA assistance unit will be placed in an interim placement, such as shelter beyond 20 miles or a hotel/motel, only if appropriate Department-approved family shelter space is not available. During this interim placement, the EA assistance unit must attend the family shelter interview(s) at family shelter(s) specified by the Department. The assistance unit shall be advised at the time of placement that:

There is credible evidence that a vacancy in a Department-approved family shelter within the required 20 mile radius was available at the time of the applicant’s transfer request, therefore this appeal is approved.

ACTION FOR THE DEPARTMENT:

Rescind termination.

cc: Michelle Lerner
Merrimack Legal Services
35 John Street
Suite 302
Lowell, MA. 01852

[Signature]
Brooke A. Padgett
Hearing Officer

Oct 11, 2014
Sample Housing Court Complaint and Motion for TRO

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

ESSEX, ss.

HOUSING COURT
NORTHEAST DIVISION
DOCKET NO:

J.S.,
Plaintiff,

vs.

JOHN WAGNER, COMMISSIONER
DEPARTMENT OF TRANSITIONAL
ASSISTANCE,
Defendant

INTRODUCTION

Plaintiff J.S. is a sixty-year-old refugee from Cambodia. He, along with his wife and their five children, have been in the Department of Transitional Assistance (DTA) Emergency Assistance Shelter Program since January, 2004. The five children range in age from 11 to 17. The family has lived in Lynn since 1986. Both parents are disabled and receive SSI Disability Benefits.

On July 22, 2004, the family was notified that their shelter placement would be moved to Springfield, Massachusetts effective on Monday, July 26, 2004. The family is not being penalized for any action or inaction on their part but DTA has decided that they want to move another family into the unit occupied by Mr. S. and his family.

Moving to Springfield would be a great hardship to the S. family. The family is very upset about being told to move 100 miles to a strange community. Mr. S. and his family have never been to Springfield and do not know anyone in the area. To their knowledge, there is no Cambodian immigrant population in that area. The five children attend Lynn public schools. Both disabled parents get their medical care in Lynn from providers who speak their language. Such a move will disrupt their medical care, their children’s schooling and the cultural connections to the Cambodian community in Lynn. They bring this action seeking to enjoin DTA from implementing the proposed move.

PARTIES

1. Plaintiff, J.S. is a homeless father living in a homeless shelter program with his wife and 5 minor children. The family has lived in Lynn since 1996 and is currently residing in a shelter program unit at 257 Boston Street in Lynn.

2. Defendant, John Wagner is the Commissioner of the Department of Transitional Assistance (DTA). His office is at 600 Washington Street, Boston, MA. As Commissioner he is responsible for the oversight and control of DTA.

JURISDICTION
20. On information and belief, the DTA transfer of Mr. S.'s family is not a result of any action or inaction on the part of anyone in his family.

21. On information and belief, the shelter provider did not initiate the move and in fact was opposed to moving this family to Springfield.

22. On information and belief, the DTA move of Mr. S.'s family is the result of DTA's efforts to move homeless families out of motel placements and into shelters. DTA wishes to move another family into the unit occupied by the S.'s. Therefore DTA notified the S. family that they must move to Springfield, 100 miles from their home community.

FIRST CAUSE OF ACTION
Violation of State Law

1. DTA's proposed move of the S. family violates DTA regulations on shelter placement. The regulations specify that a homeless family shall be placed in a family shelter when such shelter is available. 106 CMR 309.040(C)(2)(a).

2. The regulations further state that the family shelter shall be located within 20 miles of the family's home community unless the family requests otherwise. 106 CMR 309.040(C)(3). The family will be placed in an interim placement, such as shelter beyond 20 miles, only if appropriate Department-approved family shelter space is not available. 106 CMR 309.040(C)(3)(emphasis added).

3. Shelter space is clearly available within the S. family's home community, since they currently occupy a Department approved family shelter space and therefore, a transfer out of the home community violates DTA's shelter placement regulation.

SECOND CAUSE OF ACTION
Violation of Americans With Disabilities Act (ADA)

1. The DTA's proposed removal of the S. family would be a violation of the Americans With Disabilities Act (ADA) in that forcing the family to move to a new community 100 miles away that does not offer the same level of Cambodian resources that their current community offers would deprive them of crucial medical and therapeutic services. The language and cultural differences would create a barrier to them receiving appropriate treatments.

PRAYERS FOR RELIEF

Wherefore, Plaintiff J.S. requests that this court:

1. Issue a Restraining Order, Temporary and Permanent Injunction prohibiting DTA from transferring Mr. S. to the Springfield shelter placement.


Continued
3. Jurisdiction is conferred upon this Court pursuant to G.L. c. 30A, c.185c §2, c. 231A and c. 214 B1.

FACTS

4. J.S. is a homeless father residing with his wife and five children in a Department of Transitional shelter program in Lynn.

5. The family has lived in Lynn since 1986 after they fled war-torn Cambodia.

6. Neither Mr. S. nor his wife speak English.

7. Both Mr. S. and his wife, K.Y. receive SSI Disability Benefits. They both suffer from mental impairments as the result of traumatic experiences in Cambodia. Ms. Yon has a diagnosis of post-traumatic stress disorder as she continues to suffer from nightmares and flashbacks.

8. After becoming homeless, Mr. S. applied for Emergency Assistance Shelter benefits from DPA.

9. Mr. S. and his family were found eligible for Emergency Assistance Shelter benefits and were initially placed in a motel in Danvers on or about January 5, 2004.

10. On or about February 12, 2004 the family was transferred to a family shelter placement in Lynn. The placement is a Scattered Site apartment, which is leased by the shelter provider, Serving People in Need (SPIN). The apartment is located at 297 Boston Street in Lynn.

11. Mr. S. and his family have significant ties to the Lynn community.

12. All of Mr. S.’s children attend Lynn Public Schools.

13. Both Mr. S. and his wife receive medical care from providers in Lynn who can treat them in their native language of Khmer (Cambodian). They also have a Khmer-speaking therapist at Lynn Community Health Center.

14. Mr. S. suffers from high blood pressure, high cholesterol, neck and back pain, and dizzy spells. He visits his doctor at least three times a month for related problems. His doctor’s office has Cambodian staff members.

15. His doctor has told him he cannot drive on the highway due to the dizzy spells he suffers.

16. Mr. S. and his wife attend bi-weekly therapy sessions at the Lynn Community Health Center near their home. Their therapist, Sophor Chhour is Cambodian and speaks Khmer.

17. In addition, K.Y. attends individual therapy sessions two to three times a month with Ms. Chhour.

18. A local Cambodian community leader visits Mr. S. and his wife every week to help with reading the mail and other business they may have.

19. On July 22, 2004, Mr. S. received a notice from the Department of Transitional Assistance informing him that he must leave the shelter unit in Lynn and transfer to a shelter placement in Springfield. Mr. S. was given 24 hours’ notice that he must leave the unit in Lynn.
Order such further relief as it deems necessary and proper.

Signed under the pains and penalties of perjury,

Date

J.b.

Respectfully Submitted,

Date

Andrea Bopp Stark
BB0# 637357
Merrimack Valley Legal Services
170 Common Street, Suite 301
Lawrence, MA 01840
(978) 687-1177
Field Operations Memo 2003-19
August 15, 2003

To: Transitional Assistance Office Staff

From: Cecilia Derderian, Assistant Commissioner for Field Operations

Re: Department Obligations Under the Americans With Disabilities Act (ADA)

Introduction

The Department has certain obligations towards applicants and recipients under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. Section 504 makes it illegal for public agencies receiving federal funds to discriminate against individuals with disabilities. Title II of the ADA prohibits discrimination on the basis of disability by states and government entities. Generally, the Department must provide an individual equal opportunity to participate in or benefit from its programs. The Department’s ADA regulations can be found at 106 CMR 701-390 for the cash assistance and Emergency Assistance programs, and 106 CMR 306.250 for the food stamp program.

Purpose of Memo

The purpose of this memo is to review current ADA policies and introduce TAO Accommodation Teams for handling and reviewing ADA-related issues including requests for ADA accommodations. This memo should reinforce and add to information TAO staff have received in mandatory ADA training. This memo also obsoletes Field Operations Memo 98-50.

Continued
ADA Definition of Disability

ADA defines disability as:

- a physical or mental impairment that substantially limits one or more major life activities;
- having a record of such an impairment; or
- being regarded as having such an impairment.

Major life activities include caring for oneself, walking, performing manual tasks, seeing, hearing, breathing, learning and working.

Disability under the ADA can include “hidden” disabilities such as learning disabilities or psychological impairments.

Note: A person may be qualified for an ADA accommodation without qualifying for a disability exemption for a Department program. The ADA has different standards for determining disability than the standard used to determine exemption eligibility.

ADA and Reasonable Accommodation

DTA must provide ADA accommodations to “qualified individuals with disabilities” allowing them to meet Department requirements and to utilize Department services. Examples of ADA accommodations could be:

- arranging to hold an administrative hearing in a wheelchair-accessible room for a recipient with mobility limitations;
- providing special learning aids in an ESP training program for an individual with a learning disability; or
- waiving in-office face-to-face interviews for individuals whose disabilities prevent traveling.

To be protected under the ADA, applicants and recipients must be “qualified individuals with disabilities,” which means being able to meet all of the essential eligibility requirements for the Department’s programs and services, either with or without an ADA accommodation. ADA accommodations should not fundamentally alter the nature of services or activities of the affected programs.

For example, a recipient whose disability has resulted in a foster placement for her only child will not meet one of the essential elements of TAFDC which requires that the dependent child live with the parent. Nor would it be an ADA accommodation to entirely waive the housing search requirement for a disabled EA recipient, because to waive housing search would fundamentally alter the EA program by changing it from a temporary emergency shelter program to a permanent housing program.

Continued
Note: Agencies that contract with the Department such as shelters or ESP providers also have ADA obligations. If an AU Manager feels that the contractor is not meeting its obligations, that issue should be raised to the TAO Accommodation Team.

TAO Accommodation Teams will be in charge of handling all aspects of ADA requests including helping the applicant or recipient submit an ADA request, assisting with verifications, if necessary, consulting with colleagues on how to handle requests, approving or denying ADA requests, etc. Each TAO will have a TAO Accommodation Team composed of three members. There will be two fixed members per office, usually the TAO Director and a Supervisor and a revolving member who is the AU Manager assigned to the applicant or recipient requesting the ADA accommodation. TAO Accommodation Teams will meet on a case by case basis whenever necessary and appropriate.

AU Managers should be alert to situations where it appears an applicant or recipient is having difficulty with a Department service, activity, rule or requirement because of a disability. If such a situation arises, they should inform the individual of the opportunity to request an ADA accommodation. They should not, however, assume an individual has a disability unless the condition is obvious, for example, an individual uses a wheelchair, or the individual has informed the AU Manager of the disability.

If an applicant or recipient communicates to the AU Manager that the applicant or recipient has a physical or mental disability that prevents meeting Department requirements or from utilizing Department services, that individual may be requesting an ADA accommodation. There are no “magic words” and any such communication should be acted upon.

Accordingly, requests for ADA accommodations can be made either orally or in writing to the AU Manager, TAO Accommodation Team or Director of Equal Opportunity. An ADA accommodation may be requested at any time.
The Accommodation Process

Each ADA accommodation request must be considered individually as the decision to approve or deny the request is based upon the particular facts of each case. If an ADA accommodation is warranted, deciding the particular accommodation is usually an interactive process between the applicant or recipient, the applicant’s or recipient’s authorized representative, the Department and possibly the applicant’s or recipient’s medical providers. AU Managers are encouraged to discuss ADA accommodations with the Director of Equal Opportunity prior to making a determination if help is needed.

AU Managers are responsible for completing the ADA-1 accommodation request form (Attachment A) as well as ensuring approved accommodations are implemented. Once a decision is reached, document it on the ADA-1 and send copies to the TAO Accommodation Team, the Director of Equal Opportunity and retain the original in the AU record.

If a requested ADA accommodation is something the AU Manager would and could do regardless of whether a disability exists, then the AU Manager does not need to submit the request to the TAO Accommodation Team for approval, but should, alone or with the supervisor, implement the accommodation, complete the ADA-1 and place it in the AU record. A copy of the ADA-1 must still be forwarded to the TAO Accommodation Team so it can be documented in their records as well.

Example: An applicant requests an afternoon appointment so she can attend therapy for her back disability in the morning. As the AU Manager would and could approve this request for a reason unrelated to disability, it should be approved without referring the applicant to the TAO Accommodation Team.

If a requested ADA accommodation is something the AU Manager would not normally do, or if no accommodation readily presents itself, then the AU Manager must submit the request on the ADA-1 to the TAO Accommodation Team to determine an appropriate response.

If the TAO Accommodation Team approves an ADA accommodation, then the AU Manager must document it on the ADA-1, inform the applicant or recipient and implement the approved accommodation as soon as possible.

Example: A recipient says she needs more than ten days to provide documentation needed to verify her continuing TAFDC eligibility because her depression has incapacitated her. Because she is requesting a modification of the Department verification policy, this request should be referred to the TAO Accommodation Team. The AU Manager should also offer to assist the recipient in obtaining these verifications while the ADA request is pending.
The Accommodation Process (continued)

If the ADA accommodation is denied or a different accommodation is approved than the one requested, the applicant or recipient must receive written notice in the form of the completed ADA-1 which informs him or her of the TAO Accommodation Team’s decision as well as the right to contact their worker to request reconsideration of the decision. AU Managers must also send the applicant or recipient a multi-lingual notice with the completed copy of the ADA-1.

Reconsideration of Accommodation and Appeal Rights

If the TAO Accommodation Team denies the ADA accommodation request, or offers an ADA accommodation different from the original request, the individual can request reconsideration by the Central Office Accommodation Appeal Committee. The AU Manager must ensure a copy of the completed ADA-1 is faxed to the Director of Equal Opportunity at 617-348-5191 to begin the reconsideration process.

If the Central Office Accommodation Appeal Committee approves the applicant or recipient’s original ADA accommodation request, then implementation of the ADA accommodation must begin immediately.

If the Central Office Accommodation Appeal Committee upholds the denial or upholds the ADA accommodation the applicant or recipient originally refused, written notice in the form of the ADA-2 (Attachment B) must be sent by a central office representative to the applicant or recipient stating the denial and the individual’s right to a Fair Hearing. The ADA-2 also informs the individual of his or her right to file a claim with the Massachusetts Commission Against Discrimination and/or the Office for Civil Rights of the U.S. Department of Health and Human Services and must be accompanied by a multi-lingual notice.

Request for Modification

If, after implementing an ADA accommodation, a request for modification of the accommodation is made, it must be (re)submitted to the TAO Accommodation Team for approval. A new ADA-1 must be completed indicating the applicant or recipient is requesting a modification of the initial ADA accommodation request. The procedures used for requesting modification of an ADA accommodation are the same used for requesting an ADA accommodation.

Questions

If you have any questions, please have your Hotline designee call the Policy Hotline at 617-348-8478.
REQUEST FOR AN ADA ACCOMMODATION

Attachment A

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Tao

Applicant/Recipient Name

Street Address/City/ZIP

Reason for ADA Accommodation Request

Requested ADA Accommodation

Applicant/Recipient Signature Date AU Manager Signature Date

Decision:  □ Approved  □ Denied

Approved Accommodation (if any):

This decision was reached

IMPORTANT: If you disagree with the decision reached by the TAO Accommodation Team you have the right to reconsideration by the Central Office Accommodation Appeal Committee. Please contact your worker to request a reconsideration.

Department Representative Signature Date

ADA-1-9/2003
15-200:0803-05

Continued
Massachusetts Department of Transitional Assistance

CENTRAL OFFICE ACCOMMODATION APPEAL COMMITTEE REVIEW FORM

TAO

Date

Applicant/Recipient Name

SSN

Street Address/City/ZIP

This is to inform you that the Central Office Accommodation Appeal Committee has reviewed your request for a Reasonable Accommodation and have:

☐ Approved your request for an ADA Accommodation.
☐ Denied your request for an ADA Accommodation.

If the ADA Accommodation request was denied or a different ADA Accommodation was granted than the one requested, the reason for this decision is:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

If you disagree with the decision reached by the Central Office Accommodation Appeal Committee you have the right to a Fair Hearing. Please contact your worker to request a Fair Hearing. You also have the right to file a claim with the Massachusetts Commission against Discrimination and/or the Office for Civil Rights of the U.S. Department of Health and Human Services. You may also contact your local legal services office for more information about your rights.

Accommodation Team Representative Signature

Date

ADA-2 (8/2003)
15-202-0803-05
APPENDIX S

DTA Hearing Decision concerning Reasonable Accommodation under the ADA

MASSACHUSETTS DEPARTMENT OF TRANSITIONAL ASSISTANCE

APPEAL DECISION
Approved in Part
Denied in Part

AO: Lovell

APPEAL NO. 289874

SS No:

CATEGORY: EA

DECISION DATE: AUG 21 2003

NAME: 

ADDRESS: 

FILING DATE: 7/21/03

HEARING DATE: 9/5/03

DECISION DATE: 

DEPARTMENT REPRESENTATIVES(S): Lorraine Woodson, Dan O'Connor

JURISDICTION:

Notice dated 7/1/03 was sent to the applicant in response to a request for an accommodation under the Americans with Disabilities Act approving the applicant's request that she be moved from a congregate shelter. The Department offered a placement in a scattered site shelter in Lynn, rather than place her in the Towne Place Suites in Tewksbury as requested by the applicant. (Exhibit 1)

The appellant filed the appeal on 7/21/03, and, therefore, it is timely. (106 CMR 343.140) (Exhibit 2)

The denial of a request for an accommodation under the Americans with Disabilities Act is grounds for appeal (106 CMR 343.250)

ACTION FOR DEPARTMENT:

The Department offered the appellant placement at a scattered site shelter in Lynn as a reasonable accommodation under the Americans with Disabilities Act.

ISSUE:

Does the offer of a scattered site shelter in Lynn comply with the Americans with Disabilities Act?

Would the placement of the appellant and her children in the Towne Place Suites in Tewksbury be a reasonable accommodation?

AUG 21 2003
SUMMARY OF EVIDENCE:

The Lowell DTA Assistant Director first testified for the Department. He stated the appellant was first placed in shelter at the Towne Place Suites on 8/21/03. On 2/9/03 the appellant was transferred to Merrimack House which is a congregate shelter. The representative testified that the applicant's children were having adjustment problems and the Department looked for medical support. They received a doctor's note that recommended a transfer back. A case conference was held on 4/3/03. Mental health problems and more privacy were discussed, and Merrimack House was identified as a possible placement. The assistant director stated Merrimack House has small rooms and addressed noise and privacy issues. Another note was received from the doctor and Central Office was consulted.

The Director of the Department's Office of Equal Opportunity next testified for the Department. She testified that she first met with the regional director on 5/3/03 to talk about the accommodations that had been made. A packet of information was received on or around 6/14/03 concerning the children's medical, noise, and privacy. She stated the applicant's sister-in-law had called and talked to the assistant director. The Department was concerned about permanent housing and housing search. The OEO Director talked about the children and the program manager said they were adjusting, and they asked for a woman to help. She said she asked if there was a staff person available to help with the children and take them outside and said there was not a lot of noise. The OEO Director also testified that the Department tried to find a scattered site. She said the applicant said she would not go to the scattered site shelter in Lynn at her interview on 6/27/03 because of the distance from the medical provider. The Director stated that the scattered site would alleviate the noise and privacy issues, and the applicant had a car for transportation. The Director also stated a hotel is a temporary placement.

The Department submitted a letter from the Director of SPIN shelter, a referral for the applicant's shelter interview, federal and DTA regulations regarding the VDA. (Exhibit 3, 4, 5, 6)

An attorney from the Department's legal division next spoke for the Department. She stated that the applicant's attorney wanted to resolve the issue by placing the applicant back at Towne Place Suites. She stated the applicant was first offered a scattered site shelter on 6/18/03 as a reasonable accommodation. The parties have been to Northeast Housing Court where the applicant requested a temporary restraining order which was not issued and there was an injunction hearing on 7/1/03. The attorney also stated that we spoke with the children's shelter on 7/1/03 and the Department still felt the applicant was not required to be in a motel. She said that the shelter and the applicant are fragile and do not handle change well. She also stated that there are no contracts with motels, it is not stable, and there are no services at motels. The attorney also states the parties went to housing court on 7/1/03 and the judge denied a request for an injunction because it was not an emergency and there were other avenues for the applicant. The Department also offered the applicant placement at Trinity, a scattered site shelter in Malden.

The applicant's attorney next spoke on behalf of the applicant. She stated the applicant's son and daughter are severely disabled and each takes seven separate medications for their psychiatric problems. She stated that allowing the applicant to remain at the Towne Place Suites is necessary and reasonable, and does not fundamentally alter the EA program. She stated the children's doctor says it is medically necessary and the applicant is already in the motel and there are other families staying in motels for extended periods. The attorney cited letters from the applicant's psychiatrist and a special education teacher, and stated that it is necessary that the children be placed at the motel. She stated the same number of families would be in Department care. Continued
Continued

be placed in the walker instead. The attorney stated the applicant has to do housing search and is also eligible for other services that other EA families receive.

The applicant's attorney submitted a Memorandum of Law, letters dated 1/31/03 from the children's psychiatrist (the Marilie Middle School in Billerica and Billerica High School), a letter dated 2/4/03 from the applicant's son's special education teacher, a letter dated 3/14/03 from the children's psychiatrist to the director of Pawtucket House, Progress Report from The Billerica schools, a letter dated 4/27/03 for a letter dated 11/17/03 to DTA, Assistant Director, a letter dated 7/20/03 from DTA, Associate Director, a letter dated 4/1/03 to the assistant director, a letter dated 6/18/03 to DTA, Legal, an affidavit from the children's psychiatrist, an affidavit from the special education teacher, a letter dated 8/27/03 from the transportation director at The Billerica Public Schools, procedural memos from UMass DES, a letter dated 7/10/03 from Community Service Network to the applicant's attorney, a letter dated 7/10/03 from the General Manager at Towne Place Suites to the applicant's attorney, and the attorney's affidavit (Exhibits 7-24).

The applicant testified that her children's psychiatric problems started in 1999. She stated she lost her home in July 2002 and was placed in shelter in August 2002. The applicant described her children's symptoms which include being upset, panic attacks, crying, feeling closed in, closing of the throat, and heart palpitations. She testified that when they were placed at Towne Place Suites the children became relaxed; the motor was soundproofed and they are hyper sensitive to noise. She said they originally had panic attacks once a week at the motel, but they were reduced to once a month. She was able to take them for a ride which would calm them down. The children are in special education classes and were able to continue at their schools and it was only a 15-20 minute ride in a van.

The applicant further testified that when they moved to Pawtucket House the children had trouble sleeping and were crying. Her daughter withdrew, did not want to eat in the dining room, and had panic attacks once or twice a week. The children were experiencing side effects from medication and were falling asleep while having trouble in school, their self esteem went down, and their grades went down. The applicant stated the shelter had a crisis and she could not leave after 5:00 to take the children outside to calm them down, but later she was able to take them out. She stated the children see their psychiatrists regularly once a month but there have been several visits in between.

The applicant testified that there was a recent argument with another shelter resident who said things to upset her daughter. They recently were placed back at the motel and her daughter was happy to go back because she would feel safe. They are in the Billerica schools for five years and it would be traumatic to change schools, she stated. The applicant also testified that her son has trouble on car rides, including rides to Mass. General and she sometimes has to stop and give him extra medication. She stated a 5:45 AM bus ride from town to town, Billerica would be stressful and her son is hard to wake up because of his medications.

The applicant further testified that her car has 230,000 miles and is not reliable; it did not start that morning and her attorney drove her to the hearing. She stated her son goes to the Boy's Club after school and she (his dad) picks him up. She said the staff works well with him and the doctor says the Boy's Club is important. She said it would be hard to visit the psychiatrist who is in North Chelmsford. The applicant stated she goes to Mass. General every three months for her son's Grave's Disease.
The appellant testified that she is doing her weekly house cleaning search and is number 3 on the list at Bedford Village. Her children started school in Bedford schools and they have friends in Bedford. She had applied to all housing authorities on her list, but accepting housing would depend on the area, noise, and special education programs. She stated only Bedford has made an eligibility review. She testified that it would be traumatic and difficult to accept housing outside the area, and it would be more difficult to make two changes (before finding permanent housing).

**FINDINGS OF FACT**

The record shows and finds:

The appellant is receiving emergency shelter benefits for a household of three. The appellant's home community is Billerica (Testimony).

The appellant's 16 year old son is diagnosed with Asperger's Disorder, Attention Deficit Hyperactivity Disorder, and Bipolar Disorder. His prescribed medications are Seroquel, Neurontin, Tricyclic, Paxil, Adderall, and Trazodone (Exhibits 8, 10, 12). He also has Grave's Disease.

The appellant's 12 year old daughter is diagnosed with Major Depression, Generalized Anxiety and Attention Deficit Hyperactivity Disorder. Her prescribed medications are Neurontin, Buspar, Celexa, Trazodone, Clonidine, and Adderall (Exhibits 8, 10, 12).

The Department initially placed the appellant in Towne Place Suites in Tewksbury on 8/21/02 (Testimony).

On 2/2/03 the appellant was transferred to Pawtucket House a congregate shelter in Lowell with common areas, dining area, and shared bathrooms (Testimony).

Subsequent to the 2/2/03 placement the children's mental health deteriorated, specifically both children became more anxious, depressed, sadder, hopeless, more impulsive, less able to concentrate, and their medication was increased (Exhibits 10, 16). The appellant's psychiatrist is of the opinion that the only placement likely to help the children's deterioration is the Towne Place Suites in Tewksbury due to it being a private setting without the problems of a congregate shelter, it is a place where they already lived and were stable and most familiar and it would allow them to maintain medical services and keep attending Billerica schools.

Subsequent to the 2/2/03 placement the children's performance at school deteriorated, including the appellant's son's behavior and both children's grades. On 6/23/03 the appellant's son's special education teacher states his behavior continues to worsen and repairing his grades he was doing poorly, and he had failed at least one class. She notes his symptoms increase when he has been forced to make transitions to new settings or schools (Exhibits 9, 11, and 17).

On 4/28/03 the Pawtucket House Program Director informed the Department that the children's behavior had worsened and their psychiatric symptoms exacerbated due to what appeared to be a change in their environment and residence (Exhibit 13).

Continued
On 6/20/03 the Program Manager notified the Department that the children were doing much better and were adjusting well to their new environment. He acknowledged that the appellant had stated that her daughter had two panic attacks but this was not reported to them. The appellant also stated to him that her son was staying with her mother because he was having a hard time. The program director further stated that the children seemed to fit well with other children and adults. Also on 6/20/03 the Family Life Advocate described improvement in adjusting by both children, including being friendly and outgoing. He acknowledged the appellant saying the children having panic attacks but had not observed panic attacks in her presence. (Attachment to Exhibit 1)

The Department's psychiatrist continues to be of the opinion that Towne Place Suites is the only placement that will halt their deterioration, prevent psychiatric harm, and possible hospitalization. (Exhibits 16, 18) The Department provided a modification to E's rule by permitting to place the appellant in a escorted day shelter in Lynn. (Exhibit 18) Lynn is 19 or 20 miles from Billerica. The Department has also offered a scattered site shelter in Methuen.

The appellant's children would be transported from Lynn to Billerica by the Billerica Public School. The pick-up will be at 5:45 AM. Estimated travel time is one hour to one hour twenty minutes each way. The pick-up for special education students is that students not be in a vehicle longer than one hour. (Exhibit 19)

CONCLUSIONS OF LAW:

The policies of the Department must be administered in accordance with the rights guaranteed to recipients by Massachusetts and Federal Law (106 CMR 701.300). All activities conducted by the Department must be conducted in accordance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act of 1990, as amended, the Massachusetts Constitution, the Commonwealth's Department of Transitional Assistance does not discriminate on the basis of race, color, religious, national origin, handicap in admission or access to, or treatment or employment in any program or activity. The Director of Equal Opportunity has been designated to help coordinate the Department's efforts to comply with the US Department of Health and Human Services' regulations (45 CFR Parts 80, 91) implementing those federal laws.

The Department's obligations under Title II of the American's with Disabilities Act are found at 106 CMR 701.390. According to 106 CMR 701.390(D) the Department shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Department can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. The Department may not provide an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or reach the same level of achievement as others.

The appellant seeks a modification to the regulations found at 106 CMR 309.040(C) which state in part:

An E's assistance unit shall be placed in a family shelter when such shelter is available. 106 CMR 309.040(C)(2)(a).
The EAC assistance unit will be placed in an interim placement, such as shelter beyond 20 miles of a hotel/motel, only if appropriate Department approved family shelter space is not available. The unit shall be advised on the type of placement that it will be transferred from another interim shelter and appropriate Department approved family shelter at the earliest possible date. (106 CMR 309.04[8])

The Department acknowledged that the applicant is entitled to a modification in her placement at Pawtucket House, a congregate shelter in Lowell within 20 miles of the home community of Billerica. The modification proposed in the Department notice dated 7/1/03 is a placement at SPIN shelter, a scattered site shelter in Lynn. The Department subsequently proposed a scattered site shelter in Malden.

The Department uses Mitigating.com to put the distance between Billerica and Lynn at 20 miles. The Department's distance guide lists the distance as 19 miles. This places the SPIN shelter at the northern 20 mile limit. The distance guide lists the distance between Malden and Billerica as 16 miles. The distance issue is of the ability of the applicant's children to adjust to certain changes, including increased travel time to their schools and medical appointments. The adjustment to the longer travel and what affect this might have on her son's participation at Billerica Boy's Club would most likely be a more difficult adjustment than a placement closer to Billerica that would entail shorter bus or van rides.

The Department relied on the applicant being able to transport the children by car when it is more likely they will be transported by the Billerica School Dept. Based on the medical documentation submitted as well as the documentation from the Billerica School Department, a placement closer to Billerica, and in 16 miles, would provide transportation to the applicant's children for their health and educational needs and provide a better opportunity to reach the same level of achievement as that provided to other children. See 105 CMR 7.01(3)(a).

The other issue is whether only the Towne Place Suites can provide the accommodation(s) needed for the applicant's children. It is difficult to determine because we only know that the children did have adjustment problems going from the motel to Pawtucket House. These problems are well documented, although the Program Director and the Family Life Advocate at Pawtucket House indicate improvement in June, but the specialized social worker indicates the children continue to have problems in school and the children's grades have deteriorated. One can not know to what extent the adjustment problem is related to the nature of the change, the new, lack of privacy, and common areas, or the mere fact of moving from one place to the other. One can not show for sure if the children would have similar adjustment problems if they were placed at a motel or in a congregate facility. Towne Place Suites, they have their own bathroom, more privacy and possibly less noise. The psychiatrist's opinion is that the only placement likely to halt the children's deterioration is the Towne Place Suites, but can be certain that the Towne Place Suites is the only placement that can accommodate the needs of the applicant's children? The children see the psychiatrist monthly or a regular basis and some visits in between. Is there evidence of regular counseling by the therapist to deal with adjustment issues, considering the seriousness of the adjustment issues described. (There is mention of referral to a school psychologist and support services by the Billerica School Department.) Similarly, the Department can not be certain that the children will adjust to SPIN shelter and their mental health will be unaffected.

Continued
I find there is no substantial evidence to establish that the Towne Place Suites is the only acceptable placement and require that placement is not reasonable. Allowing the appellant to remain in a non-congregate housing is found to be necessary and not a fundamental alteration of the nature of the service or program, but excluding the appellant from all family shelters, with their added services and support staff as well as rules, is not a reasonable accommodation. The appellant and her children may have to make another adjustment, but if that adjustment addresses most of their needs, travel, privacy, etc., etc., that adjustment may or be as difficult as the appellant expects.

This appeal is approved in part and denied in part. A placement within 10 miles of the home community is warranted, but retaining the appellant to the Towne Place Suites only is not a reasonable modification.

ACTION FOR DEPARTMENT:

Place the appellant in a family shelter not of the congregate type within 10 miles of the home community and when available.

Edward J. Shannon
HEARING OFFICER

cc: Michelle Lerner, Attorney
659 Longley Rd.
Groton, MA 01450

Ruth Greenholz, Attorney
Legal Division