The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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December 12, 2011

The Honorable Thomas M. Stanley
Massachusetts House of Representatives
State House, Room 167
Boston, MA 02133-1020

RE: Temporary Housing for Homeless Families and Children, Education Cost Impacts

Dear Representative Stanley:

This letter is in response to your request to the State Auditor's Division of Local Mandates (DLM) regarding educational and transportation costs incurred by communities hosting homeless families and children living in temporary housing until their respective transfer to permanent housing. (The families placed in motels, family and battered women's shelters, "doubled up" with other families, temporary scattered site family shelters and children awaiting foster care are collectively referred to as "homeless families" or "homeless children," and these housing options are referred to as "temporary housing.") In particular, you ask whether the Local Mandate Law, M.G.L. c. 29, § 27C applies to the costs of providing school transportation for homeless children, the majority of whom are placed in temporary housing in the City of Waltham by the Department of Housing and Community Development (DHCD). In addition, there are classroom cost impacts.

On October 27, I responded to similar issues raised by Representative Theodore Speliotis on behalf of the Town of Danvers. This letter refers not only to Waltham's costs associated with homeless families in Waltham motels, but also to the costs associated with hosting children awaiting foster care and homeless families in other forms of temporary housing in the City. Because the cost of busing and educating these children is substantial, and the plight of homeless families and children is severe and heartbreaking, it is important to frame the context within which these issues arise before addressing your specific questions.

Serving Homeless Families and Children in Massachusetts and in the City of Waltham

From the early 1980s when homeless families were first placed in motels by the Department of Public Welfare (now known as the Department of Transitional Assistance [DTA]), the numbers of homeless families placed in temporary housing by Massachusetts state agencies has varied as prevailing economic conditions waxed and waned. The attached spreadsheet entitled "EA (Emergency Assistance) Historical Data" prepared by DTA and DHCD illustrates this fact. It shows data back to fiscal year 2000 on the numbers of homeless families residing in various settings, including congregate and scattered site

family shelters, and other forms of temporary housing. Historically motels were used as a last resort due primarily to the per diem expense. Thus, of particular note, the data shows a remarkable drop in the numbers of families placed in motels through fiscal year 2007, followed by an equally remarkable increase that began with the stock market crash in 2008, ending with a monthly average of 855 families in motels in fiscal 2011. According to the attached DHCD report, "EA families in Hotels, 12.6.11– by Community, Hotel, Children" (herein referred to as the "Homeless Families Report"), that number has spiked to 1,327 families living in motels in 32 communities throughout the Commonwealth. Five of these communities are each hosting over 100 families. According to data supplied by the state Department of Elementary and Secondary Education (DESE), over 14,000 of the children attending public schools in Massachusetts in fiscal 2011 were homeless and living in the various forms of temporary housing. The approximate breakdown by type of temporary housing was: "doubled up" with other families 41%; shelters 26%; awaiting foster care 14%; motels 13%; unaccompanied youth 5%; and unsheltered less than 1%.

In an effort to address this trend, beginning in fiscal year 2011, the Legislature and the Governor approved major funding, approximately $165 million, for temporary housing services and for a short term housing transition program known as "HomeBase." Initial fiscal 2012 allocations for these programs exceed $136 million, and DHCD anticipated that the need for supplemental appropriations might arise. On November 11, the Governor approved a supplemental spending plan that recognized that the demand for HomeBase services had quickly outpaced available resources. The plan provides an additional $39.2 million for emergency housing programs and sets a cutoff date of October 28, 2011 for the HomeBase rental assistance program. It also calls for a committee of the Executive and Legislative branches to develop recommendations by December 9, 2011 for the sustainable operation of these programs. (See St. 2011, c. 171, §§ 6, 7, and 9.) Thus, notwithstanding these developments, significant educational costs continue at the local level.

Focusing on the City of Waltham, the recent federal census indicates that this is a community of approximately 60,000 citizens. Route 128 with its wealth of high tech businesses curves through the City. Due to this geographical and economic configuration, there are two budget "suite type" motels just off this highway. According to the Homeless Families Report, there are 94 homeless families residing in these two motels with 73 school-aged children. This number is without regard for the other forms of temporary housing in Waltham for homeless families and children. Including several transported into Waltham from other communities, 97 homeless children are attending Waltham Public Schools as of October this year. Although the number of students is tilted to the elementary grades as mothers with younger children appear to sustain a greater incidence of homelessness, the overall average impact is an additional 8 students per grade. Waltham officials indicate that an additional second grade class has been added because of the numbers of homeless children enrolled at that level. Twenty-five of the homeless children in temporary housing in Waltham are being transported back to their schools of origin in Boston, Brockton, Malden, Milton, Newton, and Plympton.

With just under one percent of the population of the Commonwealth, Waltham is hosting at least twelve percent of the homeless children in the Commonwealth. Despite this manifest disproportionate burden, the people of Waltham, and in particular the Waltham school system, have embraced these families. There is presently underway a system-wide clothing drive to collect jackets, mittens, and boots, among other items to be cleaned and distributed to the homeless children. The School Department invited the homeless children to attend summer programs that provided breakfast, lunch, enrichment activities, as well as transportation. These children have been included in holiday toy drives, and there are expectations of additional outreach efforts.

Within this context, it is noted that the Commonwealth pays for the cost of providing temporary housing for the homeless families and children, and thus, you question whether the State is also obligated to pay for the related transportation and school services that Waltham must provide.

Issues under the Local Mandate Law

When there is no feasible alternative, DHCD may place eligible families in temporary emergency housing, including hotels and motels, pursuant to 106 CMR 309.040(C). When the temporary shelter is located outside of the community where the family lived prior to becoming homeless, in some instances the new or "host" community must assume or share financial responsibility for the school transportation and/or educational needs of any school-aged children. In other instances, the community where the family lived and a child attended school prior to becoming homeless (school of origin) must assume these obligations. Described in more detail below, these requirements are embodied in the State Plan for the Education for Homeless Children and Youths Program (State McKinney-Vento Plan) adopted by DESE to support its request to the federal Department of Education for funds under Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.

Specifically, you ask whether these requirements are unfunded state mandates subject to the provisions of the Local Mandate Law, M.G.L. c. 29, § 27C. As further explained below, it is my opinion that M.G.L. c. 29, § 27C applies to the requirements in the State McKinney-Vento Plan that school departments must arrange and pay for transporting certain homeless children back to schools in their community of origin, if that is the choice of the parent(s). This mandate imposes costs upon the school departments both in the host community and in the community where the school of origin is located. Additionally, it is my opinion that M.G.L. c. 29, § 27C applies to the education costs imposed upon a school of origin when a homeless family or child is placed in temporary housing in a host community, and a child's parent/guardian elects to keep the child in the school of origin. However, I have concluded that M.G.L. c. 29, § 27C does not apply to costs that may be incurred by a host community when a parent/guardian elects to enroll a child in the host community school system.

The following discussion explains these positions, first addressing threshold issues, then turning to the school transportation questions. This is followed by an analysis of the education cost questions and a determination of the amount of the cost imposed upon the City of Waltham. The final portion of this letter provides options for plausible remedies.

I. Threshold Matters:

In general terms, the Local Mandate Law provides that any post-1980 state law, rule or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth, or subject to local acceptance. Pursuant to M.G.L. c. 29, § 27C (e), any community aggrieved by an unfunded state mandate may petition the superior court for an order exempting the community from complying with the mandate until the Commonwealth provides funding to assume the cost. DLM's determination of the compliance cost shall be prima facie evidence of the amount of state funding necessary to sustain the mandate. Alternatively, a community may seek legislative relief.

To determine whether the local cost impacts stemming from the State McKinney-Vento Plan are subject to the Local Mandate Law, two threshold matters must be addressed: A) whether the plan is a federal mandate and, therefore, is exempt from the Local Mandate Law; and B) whether the costs at issue are the result of a Massachusetts state law, rule, or regulation.

A) The McKinney-Vento Act is not a federal mandate.

According to documents supplied by DESE, on May 29, 2002 DESE (then known as the state Department of Education) applied for federal McKinney-Vento funds from the United States Department of Education (USDOE). In support of that application, DESE filed certain assurances and certifications. Among others, these included statements that DESE was adopting the congressional policies and definitions provided in the McKinney-Vento Act and the Massachusetts State McKinney-Vento Plan. DESE agreed to ensure that each school department provides transportation "to and from the school of origin" when requested by the student's parent/guardian. Additionally, DESE pledged to ensure that "…local school districts…either continue the child/youth's education in the school of origin, or enroll the child/youth in school in a public school that non-homeless students who live in the attendance area where the child/youth [has been placed in temporary emergency housing] are eligible to attend." As a result of this voluntary decision, Massachusetts has received over $10,000,000 in federal financial assistance to support school services for homeless students over the last ten years. Because DESE accepts this aid, the requirements of the McKinney-Vento Act apply in Massachusetts.

Most relevant to the issue at hand, when a homeless family or child is moved into emergency housing in another city or town, the Act requires that school placements be made to further a child's best interests. For the duration of the homelessness, this allows for placement in the new community's (host community) schools, or in the community from which the family or child moved (school of origin). The child's parent/guardian makes this choice, unless plainly against the child's best interests. When the parent chooses the host community schools, that city or town provides and pays for the education of the child, as it provides transportation that is provided to other children who live in the attendance area. When the parent chooses the school of origin, the city or town where the school of origin is located provides and pays for the education of the child, and the two communities share the cost of transportation to and from the school of origin—unless the two communities reach an alternative payment agreement.

It should also be noted that there are circumstances where a host community school system may become a school of origin. DLM has been advised of several instances where families placed in temporary housing in Waltham initially chose to enroll their children in Waltham schools (host community schools). When these families were subsequently relocated to shelters or other settings in community "X," Waltham then became their community of origin, being the most recent school system to serve the students prior to their relocation. After moving to shelter in community X, the parents then chose to keep their children in Waltham schools, having become the schools of origin. These "coming and going" placements resulting from state agency decisions add to the numeric and financial burden on impacted communities.

It is DLM's long-held position that the Local Mandate Law does not apply to costs imposed upon cities and towns by federal law. However in this case, there is no federal mandate, because DESE has voluntarily accepted McKinney-Vento aid. Even though this aid does not cover the cost of compliance, the amount of the aid is significant, and would be difficult to turn down. Nonetheless, this difficult choice is a choice whereby DESE invites the programmatic and financial obligations on local school departments that accompany it. "The language of these provisions is sufficiently clear to put the States on notice of the obligations they assume when they choose to accept grants made under the [McKinney-Vento] Act. *Lampkin v. District of Columbia*, 27 F. 3d 605, 611 (1994) citing *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1(1981) "Quite clearly, the [McKinney-Vento] Act is meant to apply only to those states that receive grants." *Lampkin v. District of Columbia*, 886 F. Supp. 56, 61 (1995).

Notwithstanding the view of the D. C. Court of Appeals in *Lampkin*, DESE has advised that, at least with respect to homeless children who are enrolled in special education programs, the federal Individuals with Disabilities Education Act (IDEA) requires compliance with the relevant provisions of

the McKinney-Vento Act. See IDEA, 20 U.S.C. § 1412 (a) (11). However, like the McKinney-Vento Act, IDEA is explicitly voluntary to the states, and compliance is required in exchange for federal financial assistance. "The receipt of this federal money [under IDEA] is contingent upon the state's performing certain affirmative duties with respect to the education of [students with disabilities.]" *New Mexico Association for Retarded Citizens v. the State of New Mexico*, 678 F. 2d 847, 853 (1982) (*New Mexico*). Nonetheless, DESE further asserts that states are bound to comply with IDEA (and consequently the IDEA requirement relative to McKinney-Vento) under the provisions of Section 504 of the Rehabilitation Act of 1973, which applies to states that receive any type or amount of federal financial aid. DESE cites the U.S. Court of Appeals analysis in *New Mexico*, addressing the extent of state educational obligations to disabled students when the state had declined federal IDEA aid (at that time known as the Education for All Handicapped Children Act.)

> Section 504 regulations unambiguously require that elementary and secondary schools receiving federal funds provide handicapped students with appropriate education services suited to their *unique* needs. 34 C.F.R. § 104.33(a), and (b) (1980). *See generally Sherry*, 479 F. Supp. at 1335. These special education programs must serve handicapped students adequately, in the same way that traditional education programs serve nonhandicapped students. 34 C.F.R. § 104.33(b) (1980). *Id*. at 854.

Although I agree that *New Mexico* underscores the Section 504 special obligations to disabled students in states that receive any form of federal assistance, this section does not require total compliance with the literal terms of IDEA. "Neither the language, purpose, nor history of § 504 reveals an intent to impose an affirmative action obligation on all recipients of federal funds." *Id*. at 852, citing *Southeastern Community College v. Davis*, 442 U.S. 397(1979). The case was remanded to federal district court for (among other things) a determination of whether the education programs in the state of New Mexico excluded "the handicapped from enjoying program benefits realized by the nonhandicapped." Even absent the provisions of the state McKinney-Vento Plan, it is likely that homeless students with disabilities would be "appropriately" served, and certainly at least as adequately, as nonhandicapped, nonhomeless students are served in Massachusetts schools. Accordingly, I do not agree that Section 504 automatically requires literal compliance with all components of IDEA. Even if it did, like the obligations of the McKinney-Vento Act and IDEA, the requirements of Section 504 are imposed upon the states as a condition to the receipt of federal financial assistance. While it would be impracticable for any state to forego all federal aid and thereby avoid Section 504, acceptance of federal monies with the strings that go along with it is nonetheless a voluntary state action.

As a threshold matter, I conclude that the school transportation and education requirements at issue are not mandated by federal law. Rather, these obligations apply in Massachusetts as a result of the state application for and acceptance of federal aid that partially funds the state McKinney-Vento Plan.

B) The State McKinney-Vento Plan is a rule or regulation within the meaning of the State Administrative Procedures Act, M.G.L. c. 30A.

As noted above, the Local Mandate Law may apply to post-1980 state laws, rules, or regulations. Although there is no codified state law or regulation that requires local school departments to provide the levels of services defined in the State McKinney-Vento Plan, DLM has long recognized the definition of the term "regulation" provided in M.G.L. c. 30A, § 1(5) that includes: "the whole or any part of every rule, regulation, standard or other requirement of general application and future effect." Although DESE has awarded McKinney-Vento subgrants to an average of 20 school districts per year, the language of the Massachusetts State McKinney-Vento Plan applies generally to every district throughout the Commonwealth. Clearly, a number of communities have no facilities for housing homeless families, and the State Plan will have *de facto* minimal impacts in these locations. This happenstance, however, does

not diminish the *de jure* standard that all districts must be prepared to implement the requirements of the State Plan should the need arise.

Additionally, data from the USDOE show McKinney-Vento payments to Massachusetts dating back to 2001; the Massachusetts State McKinney-Vento Plan was filed with the USDOE in 2002. There is no indication that DESE plans to suspend the State Plan or withdraw from the program. Accordingly, the State Plan is a long-standing requirement on school systems with future effect. DLM concludes that the Massachusetts State McKinney-Vento Plan is a state "regulation" as defined in M.G.L. c. 30A, § 1(5) for the purposes of M.G.L. c. 29, § 27C.

II. M.G.L. c. 29, § 27C and the Transportation Requirements of the State McKinney-Vento Plan

As noted above, the Local Mandate Law applies to new financial obligations imposed upon cities, towns and school districts by the state government after 1980. Importantly, it must be determined that a post-1980 law or regulation imposes substantive new obligations that did not exist under prior law. This principle is fully developed in *City of Worcester v. the Governor*, 416 Mass. 751 (1994).

As DESE filed the Massachusetts State McKinney-Vento Plan with the USDOE on May 29, 2002, this is clearly a post-1980 requirement. Moreover, the requirements in the State Plan relative to transporting homeless pupils back to their schools of origin impose obligations upon host communities and schools of origin beyond the provisions of pre-1981 or current state law. To the extent that state law (pre-1981 and current) requires school departments to provide transportation to regular school programs[1], as a rule, this obligation ends at the boundary of the school district. *Murphy v. School Committee of Brimfield*, 378 Mass. 31 (1979). Although there are exceptions, including out-of-district transportation that may be required under special education law, or for a small community that does not maintain public schools, these exceptions do not encompass the scope of transportation obligations imposed by the State McKinney-Vento Plan. On these facts, DLM concludes that the State McKinney-Vento plan is a post-1980 regulation that imposes substantive new obligations upon host communities and schools of origin that must share the expense of school transportation for homeless students.

III. M.G.L. c. 29, § 27C and the Education Requirements of the State McKinney-Vento Plan

The education requirements of the State McKinney-Vento Plan may impact A) schools of origin, or B) host communities, depending upon which school system a homeless child's parent/guardian elects.

A) When a homeless parent chooses the school of origin, it is my opinion that the Local Mandate Law applies to the additional cost incurred by the school of origin to provide an educational program for the child. The requirement to provide school services to a person who no longer resides within the school district is clearly a post-1980 obligation. Consistent with the standards enunciated in *Worcester*, this is not a mere clarification of a pre-1981 requirement that would fall beyond the scope of M.G.L. c. 29, § 27C. *Worcester, supra* at 754–757. Rather, this is a substantive new obligation with no discernible history in pre-1981 law.

As far back as the colonial era, Massachusetts law has required communities to provide education for school-aged residents. The current text of related law remains unchanged from at least as far back as

[1]Regional school districts must provide transportation within the borders of the regional district for students in kindergarten through grade 12 that live more than 1 ½ miles from school. Local school districts must provide transportation within the borders of the city or town for students in kindergarten through grade six that live more than 2 miles from school. (Prior to a 1991 amendment, the obligation on local school districts applied from kindergarten through grade 12.) M.G.L. c. 71, § 68.

1966: "Every town…shall maintain a sufficient number of schools for the instruction of all children who may legally attend a public school therein." M.G.L. c. 71, § 1. Dating at least as far back as 1921, M.G.L. c. 76, § 1 provides that every school-aged child is entitled to attend a public day school in the town where she or he resides. As a rule, under Massachusetts General Law, a given community's obligation to school-aged children is limited to those children that live within the boundaries of the school district. Although there may be exceptions, including the circumstance where a school system voluntarily admits nonresidents, these exceptions do not encompass the scope of educational obligations imposed by the State McKinney-Vento Plan. Accordingly, I conclude that this aspect of the State Plan is subject to M.G.L. c. 29, § 27C.

B) When a homeless parent chooses to enroll a child in the host community school system, it is my opinion that this expense is not subject to the Local Mandate Law. In this instance, the child is living in the host community – albeit in temporary emergency housing. The long pre-1981 history of the duty to provide education for school-aged residents is cited in part A of this discussion. Because the Local Mandate Law applies only to state laws and regulations that impose obligations that did not exist under pre-1981 law, the facts in this instance do not support a determination of state mandate.

That said, it should be noted that there are reasonable arguments to support the opposite conclusion. It has been suggested that the historical notion of duty to school-aged residents did not contemplate the modern state practice of placing homeless families and children in temporary housing and the scope of the State McKinney-Vento Plan. This point recognizes a substantial difference between a family or child placed in temporary housing by a state agency due to widespread homelessness, and a family or child who has a fixed residence in the community. The Legislature may therefore choose to provide educational support in these circumstances, but it is my opinion that it is not required by the Local Mandate Law.

IV. The Local Financial Effect: City of Waltham

A) Transportation Requirements of the State McKinney-Vento Plan

The Waltham School Department provided data regarding its share of the cost of complying with the school transportation requirements of the State McKinney-Vento Plan. In some cases the costs are incurred as a host community that shares in the expense of transporting pupils back to schools of origin. In other cases, the costs are incurred as a school of origin that shares in the expense of transporting pupils in from other host communities. We note that there is no set number of days for this service; it varies depending upon how long a given student resides in a given temporary housing placement—some as little as one month or less, others for the full school year. Additionally, costs will fluctuate depending upon distances of travel to and from schools of origin, and the relative ease or difficulty of coordinating transportation routes and vendors. Accordingly, any effort to project costs for a given year is complicated by these factors. Nonetheless, the Local Mandate Law requires DLM to determine the amount of the cost imposed by an unfunded state mandate. To this end, the data provided for school years 2009-2010 and 2010-2011 will serve the basis for projecting costs for 2011-2012.

School year 2009-2010:

Transporting 54 students living in temporary housing in Waltham to other communities	$81,334
Transporting 29 students living in temporary housing in other communities to Waltham Public Schools	16,898
	$98,232
Per pupil average cost	*$1,184*

Note: The Waltham School Department also transported pupils from temporary housing in Waltham to Waltham schools. This cost is not included because pre-1981 law required communities to provide transportation to community schools for children residing within the community. Accordingly, this amount is not subject to the Local Mandate Law.

School year 2010-2011:

Transporting 44 students living in temporary housing in Waltham to other communities	$48,594
Transporting 24 students living in temporary housing in other communities to Waltham Public Schools[2]	72,363
	$120,957
Per pupil average cost	*$1,779*

Note: The Waltham School Department transported additional pupils from temporary housing in Waltham to Waltham schools. This cost is not included because pre-1981 law required communities to provide transportation to community schools for children residing within the community. Accordingly, this amount is not subject to the Local Mandate Law.

School year 2011-2012:

The number of homeless students that may be transported from temporary housing in Waltham to other communities and to Waltham Public Schools from other communities throughout the school year is unknown at this time. Also unknown is the number of days each student will require transportation service and the destination or pick-up location. With these key variable unknowns, cost projections must

[2] The $72,363 amount for transporting 24 students includes greater than average outlays for five pupils transported to Waltham schools from Boston, Cambridge, Lynn and Norwood. For the most part, these students were transported individually at the rate of $150 per day. In one case, the student was transported to Waltham for the full 10-month school year, and Waltham was not reimbursed the expected 50% share from the community where the student resided in temporary housing.

rely on past experience. From data presented above, the two-year average per pupil cost of providing transportation service pursuant to the state McKinney-Vento Plan was $1,452. The Waltham School Department reports that in October of this school year, 25 homeless children living in Waltham were being transported back to their schools of origin. Eight homeless pupils were being transported from other communities to attend Waltham schools. On these variables, DLM projects the cost to the City of Waltham to comply with the transportation mandates of the state McKinney-Vento Plan for the current school year to be approximately $48,000, but recognizes that this amount must be adjusted to account for actual end-of-year student data.

B) Education Requirements of the State McKinney-Vento Plan

As a school of origin, the Waltham Public Schools enrolled eight homeless pupils that were living in temporary housing in other communities at the beginning of the 2011-2012 school year. Although I have concluded that the additional cost of providing school programs for pupils who do not live in the community pursuant to the state McKinney-Vento Plan is subject to the Local Mandate Law, Waltham school officials have advised that up to this point, the City has been able to accommodate these eight pupils within existing class size limits negotiated with teacher union representatives.[3] Notwithstanding Waltham's position, other communities may not be equally able to absorb costs associated with educating students who do not live in the community.

Conclusion and Recommendations

There is no provision for local acceptance relative to the requirements of the State McKinney-Vento Plan, and the Commonwealth has not provided for assumption of the cost "by general law and by appropriation." "Requiring the specific allocation of funds for each mandated service best effectuates the fiscal protection of local government that Proposition 2 ½ was designed to achieve." *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 701 (1985). In light of the factors set out above, it is my opinion that M.G.L. c. 29, § 27C applies to costs imposed upon cities and towns – in this case, upon the City of Waltham – by the stated elements of the State McKinney-Vento Plan.

As explained earlier, the M.G.L. c. 29, § 27C remedy for an unfunded state mandate is a court-ordered exemption from compliance. As a practical matter, however, such an opt out would be neither adequate nor helpful given the dimension of the problem. Alternatively, a municipality may seek a legislative remedy, which may involve state funding or repeal/modification of the mandate. As you know, the primary issue in this case is the shortage of appropriate temporary housing pending more permanent arrangements for families that lose their homes. The legislative effort to address this problem, HomeBase, is now under reevaluation primarily due to budget constraints. In the meantime, state leaders may wish to take additional steps to address the school-related financial consequences of these important state policies. In summary, if DESE, DHCD, the Governor, the Legislature and the impacted school systems determine that the best interests of homeless children and the schools that educate and transport them are better served by a solution other than an exemption from compliance, these steps should be considered:

- The Legislature and the Governor should consider approving appropriations to assume the cost of school transportation services shared by host communities and schools of origin as mandated by the State McKinney-Vento Plan. DESE data collected from school districts indicates that the

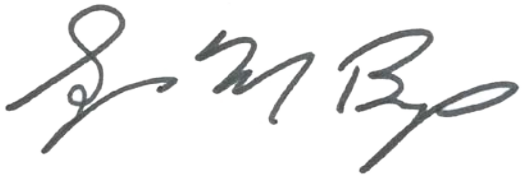
[3] As explained earlier, Waltham officials reported adding one additional second grade class to accommodate homeless pupils living in temporary housing in Waltham and attending Waltham Public Schools. It is my opinion that classroom expenses associated with pupils who live in the community are not subject to M.G.L. c. 29, § 27C.

statewide fiscal 2011 local cost impact was approximately $10.4 million. This figure includes costs incurred by both host communities and schools of origin for transporting students living in the various forms of temporary housing.

- The Legislature and the Governor should consider establishing a fund to assume any incremental costs imposed upon schools of origin for the education of children who no longer reside in the community. It appears that data is not available on a statewide basis to determine how many of the school-aged children living in temporary housing are attending schools of origin rather than host community schools. Data from the Waltham School Department indicates that 25 of the 114 homeless children living in temporary housing in Waltham are attending schools of origin outside of Waltham, that is, approximately 22 percent. Even though it is not expected that this ratio would carry over statewide, for purposes of illustration, assume that 22 percent of the approximately 14,000[4] homeless school-attending children in Massachusetts enroll in their schools of origin. On this assumption, if the Legislature chose to apply the School Choice Law's[5] funding increment of $5,000 per pupil, the statewide cost would approximate $15 million. I have instructed DLM to initiate a data collection effort to identify the numbers of homeless students served by schools of origin statewide to inform any legislative efforts to fund these mandated costs.

I look forward to working with you and the other members of the Legislature and the Patrick-Murray administration to address the important issues raised by your inquiry on behalf of the City of Waltham and this determination.

Sincerely,



Suzanne M. Bump
Auditor of the Commonwealth

cc: The Honorable Jeanette A. McCarthy,
Mayor of the City of Waltham

[4] Source: DESE, *Homeless Student Program Data, 2010-11.*

[5] Per the "School Choice Law," a school district that votes to participate may enroll students that live outside the district, and receive tuition payments not to exceed $5,000 per student. M.G.L. c. 76, § 12B. The tuition payments are deducted from the M.G.L. c. 70 school aid otherwise payable to the school districts where such students reside.