



DISPUTE PROCEDURES – NOTICE OF RIGHTS
McKinney-Vento
Education of Homeless Children and Youth Act
Every Student Succeeds Act of 2015 (ESSA)

The Every Student Succeeds Act of 2015 (ESSA) reauthorizes the McKinney–Vento Homeless Assistance Act Subtitle VII Section 722(g)(1)(C) [42 U.S.C. §§ 11431-11434A]. This law requires the South Dakota Department of Education (SD DOE) to adopt procedures for resolving disputes regarding certain decisions made by school districts pertaining to students experiencing homelessness. This guide and form explains how to file a dispute.

South Dakota Department of Education (SEA)
Dispute Procedures for McKinney-Vento Programs
[42 U.S.C. § 11432(g)(1)C]

General Information

- The district makes a written decision and the parent, guardian or unaccompanied youth disagrees leading to a dispute. A dispute must be initiated at the school/school district level by a parent, guardian or unaccompanied youth with the assistance of the school district M-V liaison. The local liaison must ensure that disputes are mediated in accordance with the State’s procedures. [42 U.S.C. § 11432(g)(6)(A)(vii)] If applicable, please provide notice that the person initiating the dispute speaks English as a second language so that accommodations may be made, if needed.
- A dispute must have proceeded through the school district process, a district decision made, and the school district decision provided to the parent, guardian or unaccompanied youth in writing. Only disputes that have gone through all levels of the district resolution process will be reviewed by SD DOE.
- If the dispute is not resolved to the satisfaction of the parent, guardian or unaccompanied youth, further action may be initiated by the parent, guardian or unaccompanied youth. The dispute may be forwarded to the SD DOE for further consideration. The school district M-V liaison may assist, upon request, with completing the paperwork for the SD DOE.
- The SD DOE will process the dispute according to the department’s established procedures as quickly as possible and provide the parent, guardian or unaccompanied youth, and the school district with a written explanation of the decision.
- If the SD DOE decision is not satisfactory, further action through the courts may be investigated by the parent, guardian or unaccompanied youth.

Explanation of Disputes

The law states that certain school district actions may be disputed. The three areas are defined below.

- **Eligibility** - The school district failed to identify my child or youth or, in the cases of unaccompanied youth, myself as homeless under the M-V Statute. By failing to make identification, the rights of the student experiencing homelessness were not protected.
 - A homeless student is allowed immediate enrollment regardless of missing school records, proof of residency, immunization and other required health records, lack of a parent or guardian or other documentation.

- **School Selection** - The school district failed to allow my child or youth or, in the case of unaccompanied youth, myself to continue to attend the school of origin based on “best interest” and the wishes of the parent, guardian or, in the cases of the unaccompanied youth, myself.
 - School Selection – based on the “best interest” of the child or youth and the wishes of the parent, guardian, or unaccompanied youth, was the child able to attend the school of origin or enroll in the local attendance area school.

- **Immediate Enrollment and/or Full Participation** - The school district failed to immediately enroll and/or allow the student to fully participate. Immediate is defined as “without delay”.
 - Full participation is attending classes immediately, even if the school has not yet received school records, special education records, immunization or other health documents. Is the child or youth being provided full participation in school activities? Has enrollment been immediate in any public school that regularly housed students, who live in the attendance area in which the child or youth is actually living, are eligible to attend?

Dispute Process at the SD DOE level

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

SOUTH DAKOTA

**DISPUTE OF ELIGIBILITY, SCHOOL SELECTION, OR ENROLLMENT
UNDER THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT**

Note: This form may be used at the district level (as allowed) and the state level. You have the right to retain an advocate or attorney at your own expense. If English is not your native language, or if you need additional supports because of disability, translators, interpreters or other support services, the services will be made available to you without charge in the appropriate language.

This form is for use to initiate the dispute resolution process required by the McKinney-Vento Homeless Assistance Act when the parent, guardian, or unaccompanied youth disagrees with the District’s eligibility, school selection, or enrollment decision.

District policy requires the parent, guardian, or unaccompanied youth to use the dispute resolution process set out in the attached information. Filling out this form is the first step in that process.

To file a formal dispute under the McKinney-Vento Homeless Assistance Act (“Act”), please fill out this form completely and submit it by hand-delivery, e-mail, or U.S. Mail to the principal or the District’s liaison for homeless students or the superintendent. Policy typically requires dispute forms to be filed within 15 District business days of receiving the written explanation of the District’s decision. However, because the Act’s dispute process should be expedited whenever possible, South Dakota Department of Education (SD DOE) recommends that you submit the form as soon as possible, preferably within ten District business days of receiving the written explanation of the District’s decision you are disputing. If a dispute arises over school selection or enrollment in a school, the child shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute. The student will remain attending the school where enrollment is sought during the entire dispute resolution process.

If you need assistance filling out this form or if you have other questions, please contact the liaison for homeless students.

Principal

Name: _____

Address/Location: _____

Phone number: _____

E-mail: _____

District Liaison for Homeless Students

Name: _____

Address/Location: _____

Phone number: _____

E-mail: _____

The principal or liaison will forward this form to the administrator, typically the Superintendent or designee, who will conduct the dispute resolution conference. (district’s assigned person below)

Name: _____

Address: _____

Phone number: _____

E-mail address: _____

If you will be represented in presenting your dispute by someone other than the liaison for homeless students, please identify the person representing you.

Name: _____

Address: _____

Phone number: _____

E-mail address: _____

Please describe the McKinney-Vento eligibility, school selection, or enrollment decision that has prompted this dispute resolution process. Attach any documentation you have received from the school regarding this dispute.

What was the date you received written notice of the District's decision causing this dispute?

Please explain why you are dissatisfied with the eligibility, school selection, or enrollment decision.

Please describe the outcome you seek from this dispute and why you believe this outcome to be in the student's best interest. Please attach any documents and/or provide any information that you believe supports your desired outcome.

Student's or parent's signature: _____

Signature of student's or parent's representative: _____

Date that District personnel received this formal appeal: _____

Name and title of the District personnel receiving this formal appeal:

Attach to this form any documents that you believe will support the dispute resolution process; if unavailable when you submit this form, they may be presented no later than the dispute resolution conference. Please keep a copy of the completed form and any supporting documentation for your records.

The District's homeless liaison is available to assist the parent, guardian, or unaccompanied youth in completing and submitting this form.

Every state is required to have a coordinator for the education of homeless children and youth, and every school district is required to have a liaison for homeless students. These individuals will assist you with the implementation of the McKinney-Vento Act. For information on the education of children and youth experiencing homelessness in South Dakota and to obtain contact information for the liaison in your district, please contact:

South Dakota Department of Education
McKinney-Vento State Coordinator's Office
Office of Educational Services and Supports
800 Governor Drive
Pierre, SD 57501
605-773-5669 (main office)
605-773-3782 (fax)

End – Form to File Dispute

School District - Give this list of requirements to the parent, guardian or unaccompanied youth for reference of the rights.

School District Requirements under the Law

School District Requirements under the Law during the Dispute Process (provide a copy to parent, guardian or unaccompanied youth). When a dispute arises under the McKinney-Vento Act, the law requires the school district (LEA) to follow a set of minimum procedures. Following are excerpts from the law describing these procedures:

- The child or youth “shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals.” [42 U.S.C. § 11432(g)(3)(E)(i)]
- “In the case of an unaccompanied youth, the liaison shall ensure that the youth is immediately enrolled in the school in which the youth seeks enrollment pending resolution of the dispute.” [42 U.S.C. § 11432(g)(3)(E)(iv)]
- Since enrollment includes “attending classes and participating fully in school activities” [42 U.S.C. § 11434a(1)], while disputes are pending, students must be able to participate fully in school and receive all services to which they are entitled. This includes transportation services that are specified in the law.
- “The parent or guardian of the child or youth or (in the case of an unaccompanied youth) the youth shall be provided with a written explanation of any decisions related to school selection or enrollment made by the school, the local educational agency, or the State educational agency involved, including the rights of the parent, guardian, or unaccompanied youth to appeal such decisions.” [42 U.S.C. § 11432(g)(3)(E)(ii)].
 - In addition, “if ... the local educational agency determines that it is not in the child’s or youth’s best interest to attend the school of origin or the school requested by the parent or guardian, or (in the case of an unaccompanied youth) the youth,” the LEA must “provide the child’s or youth’s parent or guardian or the unaccompanied youth with a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth, including information regarding the right to appeal under subparagraph (E).” [42 U.S.C. § 11432(g)(3)(B)(iii)]
 - “In the case of an unaccompanied youth, the LEA must ensure that the local liaison ... “assists in placement or enrollment decisions under this subparagraph, gives priority to the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E).” [42 U.S.C. § 11432(g)(3)(B)(iv)]
- “If a dispute arises over eligibility, or school selection or enrollment in a school...the parent, guardian, or unaccompanied youth shall be referred to the local educational

agency liaison ... who shall carry out the dispute resolution process ... as expeditiously as possible after receiving notice of such dispute.” [42 U.S.C. § 11432(g)(3)(E)(iii)]
Simply put, when a McKinney-Vento dispute occurs

1. the child or youth must be admitted to the school in which enrollment is sought pending final resolution of the dispute;
2. the parent, guardian, or unaccompanied youth must be provided written notice of the school’s, LEA’s, or SEA’s decision, which must include the reasons for its decision and the right to appeal; and
3. the parent, guardian, or unaccompanied youth must be referred to the local liaison to carry out the dispute process.

Every district in every State must follow McKinney-Vento’s dispute resolution procedures. The McKinney-Vento Act applies to every district in every State, regardless of whether the district receives McKinney-Vento funds. If dispute processes are not followed, or if a parent, guardian, or unaccompanied youth is not satisfied with the final resolution of a dispute at the State level, there is no further action available through SD DOE. The parent, guardian or unaccompanied youth may consult a private attorney about pursuing action in the courts against both the SD DOE and the school district.