



National Center for Homeless Education
Supporting the Education of Children and
Youth Experiencing Homelessness
www.serve.org/nche



BEST PRACTICES IN HOMELESS EDUCATION BRIEF SERIES

Determining Eligibility for Rights and Services Under the McKinney-Vento Act

INTRODUCTION

The McKinney-Vento Homeless Assistance Act (reauthorized under Title X, Part C of the No Child Left Behind Act of 2001, and subsequently referred to as the McKinney-Vento Act in this brief) defines “homeless children and youths” as “individuals who lack a fixed, regular, and adequate nighttime residence.” However, because the circumstances of homelessness vary with each family’s or unaccompanied youth’s situation, determining the extent to which the family or youth fits the definition must occur on a case-by-case basis. The local homeless education liaison and/or enrollment staff must gather and analyze information from the family or youth and make an appropriate determination of eligibility. Expedient determination of eligibility and immediate school enrollment are critical to the student’s educational continuity.

This tool is designed to assist local educational agencies (LEAs or school districts) and staff in applying the definition to individual children and youth to determine eligibility for rights and services under the McKinney-Vento Act.

Who is homeless?

Subtitle VII-B of the McKinney-Vento Homeless Assistance Act (as reauthorized by Title X, Part C of the Elementary and Secondary Education Act, as amended)

The term “homeless children and youth”—

- A. means individuals who lack a fixed, regular, and adequate nighttime residence...; and
- B. includes —
 2. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 3. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings...
 4. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 5. migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

A STEP-BY-STEP PROCESS FOR ANALYZING SITUATIONS

Step 1: Get the facts. What is the family's or youth's situation?

NCHE recommends the following strategies when learning more about a family's or youth's living arrangement:

- Use a standard enrollment form that asks about the family's or youth's living situation to gather initial information. (See the *U.S. Department Education for Homeless Children and Youth Program Non-Regulatory Guidance, Appendix D*, "Sample Student Residency Questionnaire.") If the form indicates that the student may be homeless, ask additional questions as needed to get a better sense of the family's or youth's circumstances.
- Avoid using the word "homeless," as the stigma associated with the word may lead parents or youth to insist they are not homeless even though their living situation would fit the McKinney-Vento definition.
- Explain that the purpose for asking questions about their living arrangement is to determine if they are eligible for some additional educational supports and request that the parent/guardian or youth provide you with the information needed to make a determination. Understand that families or youth may be hesitant to answer questions for various reasons that include a desire for privacy, concerns related to domestic violence, or fear of losing their housing or custody of their children; however, in most cases you will be able to gather enough information to make a determination.
- Respect the family's or youth's privacy by talking to them in a private space where other students and faculty members cannot overhear the conversation.
- Conduct a conversation with the family or youth using applicable questions provided in Appendix A.

- Do not contact persons or agencies outside the school system to obtain information about the student's living situation; this likely would violate the family's or youth's privacy and dignity as well as the Family Education Rights and Privacy Act (FERPA). For example, do not contact landlords, public housing agencies, or law enforcement to verify living situations. See NCHE's brief entitled "*Confirming Eligibility for McKinney-Vento Services: Do's and Don'ts for McKinney-Vento Local Liaisons.*"

Step 2: Analyze the facts. Is the student eligible for McKinney-Vento services?

To be eligible for services, the student must meet the Act's definition of homeless. The McKinney-Vento Act defines "homeless children and youths" as "individuals who lack a fixed, regular, and adequate nighttime residence." Lacking any one of these three conditions would make a child eligible. In other words, if the residence is not fixed, regular, and adequate, it is considered a homeless situation. The law then lists several situations as specific examples of homelessness (see sidebar on page 1). The list of examples included in the definition is not exclusive; rather, it is meant to address some of the more common situations of homelessness.

Determining whether a particular child or youth fits the definition of homeless is done on a case-by-case basis. To make a determination of homelessness: (A) see if the student's situation fits into one of the specific examples of homelessness listed in the law; and if not, (B) consider if the student is in another situation that would fit the definition of homelessness by not meeting the fixed, regular, and adequate standard.

A. Does the family or youth's living situation fit into one of the specific examples of homelessness listed in the law?

- Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.

“Sharing the housing of other persons...” implies that the student or family is staying in another person’s home. Some pertinent questions to help determine if this is the case would include:

- » Does the student have a legal right to be in that home?
- » Can the student or family be asked to leave at any time with no legal recourse?
- » Is the living situation intended to be temporary or long term?
- » Did the student or family move into the home as an urgent measure to avoid being on the street or in another precarious situation?

“...due to loss of housing...” implies that the student or family has no personal housing available. Did the student or family lose their previous housing due to

- » An eviction or an inability to pay the rent or other bills?
- » Destruction of or damage to the previous home?
- » Abuse or neglect (such as in the case of a youth who leaves or is asked to leave the home)?
- » Unhealthy conditions, such as an inadequate physical environment, infestations, drug or alcohol abuse in the home, or domestic violence?
- » The absence of a parent or guardian due to abandonment, the parent’s or guardian’s incarceration, or another reason?

“...economic hardship ...” includes cases where limited financial resources have forced families or youth to leave personal residences and share housing due to an inability to pay rent and other bills. The way that the shared housing came about and the intention of the residents are significant.

- » If economic hardship such as an

accident or illness, loss of employment, loss of public benefits, or condition of poverty forces a family or youth to share the housing of others temporarily, the children and youth are eligible for McKinney-Vento services.

- Living in a hotel, motel, or trailer park due to the lack of alternative adequate accommodations.

The phrase *“...due to the lack of alternative adequate accommodations”* can help determine whether these living situations should be considered homeless situations.

- » Motels, hotels, and camping grounds will almost always be homeless situations, as they are rarely fixed, regular, and adequate; however, considering whether alternative adequate accommodations are available can help identify possible exceptions, such as a wealthy family living in a luxury hotel on a long-term basis when adequate alternatives are available to the family.
- » In contrast, trailer parks often are fixed, regular, and adequate residences. Asking questions about the condition and size of the trailer, the number of people living there, the intended length of stay, and whether the family or student has an adequate alternative will help determine if he or she is eligible for McKinney-Vento services. (See the discussion of substandard housing below for more information.)
- Living in an emergency or transitional shelter.
 - » Emergency or transitional shelters of all kinds, including youth shelters, domestic violence shelters, family shelters, transitional living programs, and supportive housing programs are homeless situations.
- Abandoned in a hospital.
 - » A child or youth abandoned in the hospital is eligible for McKinney-Vento

services.

- Awaiting foster care placement.
 - » The McKinney-Vento Act includes the phrase “awaiting foster care placement” within its definition of homelessness. The *U. S. Department Education for Homeless Children and Youth Program Non-Regulatory Guidance* states that while children and youth awaiting foster care placement are considered homeless and therefore eligible for McKinney-Vento services, children who are already in foster care are not considered homeless [G 10]. As with all categories included in the definition of homelessness, the local homeless education liaison is responsible for determining whether a child or youth is considered to be “awaiting foster care placement.”
 - » Many state Education for Homeless Children and Youth programs have created formal or informal guidance to specify how “awaiting foster care placement” will be defined and implemented within their state. Local homeless education liaisons should consult with their State Coordinator for Homeless Education. State Coordinator contact information is available at http://center.serve.org/nche/states/state_resources.php.
- Living in a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.
 - » An example of a place that meets these criteria is a public restroom.
- Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting.

These specific examples are largely self-explanatory. In evaluating whether housing is “substandard,” consider standard dictionary definitions of the word *substandard*: “deviating from or falling short

of a standard or norm” or “of a quality lower than that prescribed by law” (*Merriam-Webster’s Collegiate Dictionary*).” Thus, determining if housing is substandard may include a consideration of such factors as:

- » Health and safety concerns, such as inoperable plumbing;
- » Number of occupants per square foot;
- » State and local building codes;
- » Federal standards, such as those created by the U.S. Department of Health and Human Services and Housing and Urban Development.

LEAs may wish to collaborate with attorneys and other community members to establish guidelines incorporating state and local legal requirements and community standards.

- Migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described above.
- Unaccompanied youth who fit the definition of homeless as defined in the McKinney-Vento Act are also eligible for McKinney-Vento services.

B. If the child’s, family’s, or youth’s situation does not fit the examples provided in the definition, is the child or youth living in another type of situation that is not fixed, regular, and adequate?

If the student does not fit any of the specific situations in Step 2A, he or she may still be eligible for McKinney-Vento services if the living situation is not fixed, regular, and adequate. Consider the following definitions in light of the information gathered from the family or youth.

Fixed

- “Securely placed or fastened” and “not

subject to change or fluctuation” (*Merriam-Webster’s Collegiate Dictionary*)

- “Fixed residence: one that is stationary, permanent, and not subject to change”¹
- “Inhabitant: one who, although he may not be a citizen, dwells or resides in a place permanently or has a fixed residence therein, as distinguished from an occasional lodger or visitor” (*Ballentine’s Law Dictionary*)
- “Domicile: the place where a person has his true fixed permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning, and from which he has no present intention of moving” (*Ballentine’s Law Dictionary*)

Regular

- “Normal, standard;” “constituted, conducted, or done in conformity with established or prescribed usages, rules, or discipline;” and “recurring, attending, or functioning at fixed or uniform intervals” (*Merriam-Webster’s Collegiate Dictionary*)
- “Consistent” (*Ballentine’s Law Dictionary*)
- “Regular residence: one which is used on a regular (e.g., nightly) basis”²
- “Habitual: by habit; constant, customary, accustomed, usual; common; ordinary; regular; familiar” (*Ballentine’s Law Dictionary*)

Adequate

- “Sufficient for a specific requirement” and “lawfully and reasonably sufficient” (*Merriam-Webster’s Collegiate Dictionary*)
- “Fully sufficient; equal to what is required; and lawfully and reasonably sufficient” (*Ballentine’s Law Dictionary*)
- “Adequate residence: one that is sufficient for meeting both the physical and

¹ Several states, including Arizona, Massachusetts, and Michigan utilized this definition in their McKinney-Vento State Plans developed in 2002.

² Ibid.

psychological needs typically met in home environments”³

Step 3: Get additional input.

If you are still not sure if a student is eligible for McKinney-Vento services, consider the following resources:

- The school district’s local homeless education liaison
- The State Coordinator for homeless education
- The NCHE Helpline at 800-308-2145 or homeless@serve.org

Determining eligibility is only the first step in implementing the McKinney-Vento Act. Once the school district determines that a child or youth fits the definition of homeless, the district and school should provide all rights and services required under the law.

RESOURCES

National Center for Homeless Education. (2013). *Local homeless education liaison toolkit*. Retrieved from http://center.serve.org/nche/pr/liaison_toolkit.php

National Center for Homeless Education. (2007). *Confirming eligibility for McKinney-Vento services: Do’s and don’ts for local liaisons*. Retrieved from http://center.serve.org/nche/downloads/briefs/verif_ll.pdf

³ Ibid.

REFERENCES

Title X, Part C, No Child Left Behind Act of 2001. 20 USC 6301. (McKinney-Vento Act). Retrieved from <http://center.serve.org/nche/legis/mv.php>

U. S. Department of Education. (2004). Education for Homeless Children and Youth program non-regulatory guidance. Retrieved from <http://www2.ed.gov/programs/homeless/guidance.pdf>

Ballentine's law dictionary (3rd ed.). (1969) Rochester, NY: Lawyers Co-operative Publishing Company.

Merriam-Webster's collegiate dictionary (10th ed.). (1993). Springfield, MA: Merriam-Webster.

The following questions are designed to assist in gathering information from families or youth to determine the extent to which their living arrangement is fixed, regular, and adequate. These questions should be used to guide a conversation with the parent/guardian or youth.

Fixed:

- Is this a permanent arrangement or just temporary?
- Are you looking for another place to live?
- Do you plan to move out soon?
- Why are you staying in your current place?
- Where were you living right before this place? Why did you leave?
- Where would you go if you couldn't stay where you are?
- Are you staying with friends/relatives just for a little while?
- Did you and your friends/relatives decide to move in together and share a home and expenses for the long term? Or is this a temporary situation for you?
- Could your friends/relatives ask you to leave if they wanted to?
- Are you all sharing the home equally, or are you more like guests in the home?

Regular:

- Do you stay in the same place every night?
- Do you have a key to the place where you are living?
- Do you move around a lot?
- How long have you been at that place? How long do you plan to stay?
- How long did you live in your last place?

Adequate:

- How many people are living in the home? How many bedrooms/bathrooms does it have?
- Are you and your children sharing a room? How many people are staying in one room?
- Are you and your children sleeping in a bedroom, or in a public area, like a dining room?
- Does the home have heat/electricity/running water?
- What condition is the home in?
 - » Does it keep out rain and wind?
 - » Is it safe?
 - » Is it warm and dry?

This brief was developed by:

National Center for Homeless Education

800-308-2145 (Toll-free Helpline)

<http://www.serve.org/nche>

March 2015

This brief is a revision of the original that was a joint publication of the National Center for Homeless Education and the National Association for the Education of Homeless Children and Youth.

The National Center for Homeless Education (NCHE) operates the U.S. Department of Education's technical assistance center for the federal Education for Homeless Children and Youth (EHCY) Program. NCHE is supported by the U.S. Department of Education's Office of Safe and Healthy Students. The contents of this brief were developed under a grant from the Department; however, these contents do not necessarily reflect the views or policies of the Department.

Every state is required to have a State Coordinator for Homeless Education, and every school district is required to have a local homeless education liaison. These individuals will assist you with the implementation of the McKinney-Vento Act. To find out who your State Coordinator is, visit the NCHE website at http://www.serve.org/nche/states/state_resources.php.



For more information on the McKinney-Vento Act and resources for implementation, call the NCHE Helpline at 800-308-2145 or e-mail homeless@serve.org.

Local Contact Information: