FREQUENTLY ASKED QUESTIONS ON HOMELESSNES AND THE EDUCATION RIGHTS OF HOMELESS CHILDREN AND YOUTH

This FAQ provides answers to frequently asked questions on the McKinney-Vento Homeless Assistance Act and the education rights of children and youth in homeless situations.[1] The answers are general responses based on the law. This document is meant to provide basic information and tools to assist parents, youth, educators and advocates in understanding the McKinney-Vento Act.

In this document, the term "school district" is used to mean local educational agencies. The term "McKinney-Vento Act" refers only to Subtitle VII-B of the Act, the Education for Homeless Children and Youths program (42 U.S.C. §§11431-11435). The McKinney-Vento Act is a federal law that supersedes conflicting state laws or local policies.

Definitions/Identification

1. Do school districts have the responsibility to identify or locate children and youth experiencing homelessness?
A: Yes. The McKinney-Vento Act requires school districts to ensure that "homeless children and youths are identified by school personnel and through coordination with other entities and agencies." 42 U.S.C. §11432(g)(6)(A). The purpose of identification is to offer appropriate services to the family, child or youth.

2. The McKinney-Vento Act states that children and youth who lack "a fixed, regular, and adequate nighttime residence" will be considered homeless. 42 U.S.C. §11434A(2). Is there any guidance on what "fixed, regular, and adequate nighttime residence" means?

A: The Act does not define those terms. However, the following definitions may provide guidance:

(1) Fixed: Securely placed or fastened; Not subject to change or fluctuation. (Merriam-Webster's Collegiate Dictionary, Tenth Edition.) A fixed residence is one that is stationary, permanent, and not subject to change.

(2) Regular: Normal, standard; Constituted, conducted, or done in conformity with established or prescribed usages, rules, or discipline; Recurring, attending, or functioning at fixed or uniform intervals. (Merriam-Webster's Collegiate Dictionary, Tenth Edition.) Consistent. (Ballentine's Law Dictionary, 3rd Edition.) A regular residence is one which is used on a regular (i.e., nightly) basis.

(3) Adequate: Sufficient for a specific requirement; Lawfully and reasonably sufficient. (Merriam-Webster's Collegiate Dictionary, Tenth Edition.) Fully sufficient; Equal to what is required; Lawfully and reasonably sufficient. (Ballentine's Law Dictionary, 3rd Edition.) An adequate residence is one that is sufficient for meeting both the physical and psychological needs typically met in home environments.

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[1] The terms "children and youth experiencing homelessness" and "children and youth in homeless situations" are used interchangeably in this document, instead of the legal phrase "homeless children and youth," to emphasize the fact that homelessness is a temporary, dynamic experience, and not a static condition or fixed group of people.

International law defines adequate as follows:
"Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost."
International Covenant on Economic, Social and Cultural Rights, General Comment 4, paragraph 7 (1991), citing Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000.

3. Is there a time limit on how long a child or youth can be considered homeless?
A: No, there is no specific time limit on homelessness. Whether a child or youth meets the definition of homelessness depends upon the living situation and the individual circumstances. It is a case-specific inquiry. Due to the extremely limited incomes of most families experiencing homelessness (on average, less than half the federal poverty line) and the severe shortage of affordable housing across the country, experiences of homelessness can sometimes last an extended period of time.

4. Are families who move in with relatives or friends covered by the Act?
A: In many circumstances, yes. Children and youth who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason are covered by the McKinney-Vento Act. 42 U.S.C. §11434A(2)(B)(i). Families who share adequate housing due to cultural preferences or convenience would not be covered by the Act. Also, families who are sharing housing on a permanent basis are unlikely to be covered by the Act.

5. Is transitional housing considered a homeless situation?
A: Yes. The McKinney-Vento Act specifically applies to children and youth living in transitional shelters. 42 U.S.C. §11434A(2)(B)(i). This term includes transitional housing programs and transitional living programs. A federal court affirmed that transitional housing programs are covered by the McKinney-Vento Act. Bullock v. Board of Education of Montgomery County, Civ. A. DKC 2002-0798 (D. Md.), memorandum decision filed November 4, 2002.

6. What ages does the McKinney-Vento Act cover?
A: The McKinney-Vento Act applies to children and youth age 21 and under, consistent with their eligibility for public education services under state and federal law. State laws vary, but generally provide access to all students until high school graduation or equivalent, or until age 18 (or over in some states). For special education students, federal law provides the right to access services until age 22. 20 U.S.C. §1412(a)(1)(A).

7. What are a district's responsibilities for advising families about their rights if families do not identify or consider themselves as homeless?
A: Families and youth in homeless situations frequently will not identify themselves as such. This may be due to the stigma and prejudices associated with homelessness or because the youth or family does not recognize that the living situation would be considered a homeless situation under the McKinney-Vento Act. Indeed, most families and youth are likely unaware of the McKinney-Vento Act. Therefore, schools must

ensure that families and youth are aware of the Act, who it covers, and what it provides. 42 U.S.C. §§11432(g)(6)(A)(i), (iv). The Act requires school districts to disseminate public notice of the education rights of children and youth in homeless situations where such children and youth receive services, such as schools, family shelters, and soup kitchens. 42 U.S.C. §11432(g)(6)(A)(v). Identification and outreach techniques must be administered sensitively and without stigma, to create an environment in which families, children and youth will be comfortable seeking support. Once a school has sensitively and discretely explained the rights available under the McKinney-Vento Act, families or youth may choose not to take advantage of McKinney-Vento services, at their discretion.

8. Can a district refuse to enroll undocumented immigrants who have no proof of guardianship?
A: No, not if they are covered by the McKinney-Vento Act. Undocumented students have the same right to public education as U.S. citizens. Plyler v. Doe, 457 U.S. 202 (1982). Therefore, the McKinney-Vento Act applies to them in the same way it would apply to any student: if the student meets the definition of homeless, he or she must be enrolled in school immediately, even if lacking proof of guardianship. The McKinney-Vento Act does not apply to immigrant students who live in a fixed, regular and adequate residence.

School Selection

9. What factors should be considered for keeping children at their school of origin to the extent feasible?
A: Students must be allowed to attend their school of origin "to the extent feasible." [School of origin is defined as the school the student attended when permanently housed, or the school in which the student was last enrolled. 42 U.S.C. §11432(g)(3)(G).] Changing schools significantly impedes students' academic and social growth. The literature on highly mobile students indicates that it can take a student four to six months to recover academically after changing schools. Many studies also have found highly mobile students to have lower test scores and overall academic performance than peers who do not change schools. Therefore, the McKinney-Vento Act calls for school districts to maintain students in their school of origin to the extent feasible, unless that is against the wishes of the parent of guardian. 42 U.S.C. §11432(g)(3). Students have the right to attend the school of origin; this provides continuity of instruction, teachers, and peers. Considerations for changing schools, other than as a result of a parent, guardian or unaccompanied youth's wishes, must be based on a student-centered, individualized determination. Factors that may be considered include: the age of the child or youth; the impact the commute may have on the student's education; personal safety issues; the students' need for special instruction; length of anticipated stay in temporary shelter or other temporary location; and time remaining in the school year. There may be other student-centered factors not enumerated here that will help determine feasibility. Above all, feasibility is a child-centered decision.

10. Can a student finish the school year or semester in the school of origin?
A: Yes. Students have the right to remain in the school of origin for the duration of homelessness. In addition, if a student moves into permanent housing during the school

year, the student can finish that academic year in the school of origin. 42 U.S.C. §11432(g)(3)(A).

11. If a student is out of school for an extended period of time, does the student still have the right to go to the school of origin?
A: Yes. The law applies as in any other situation: the student has the right to remain in the school of origin unless it is not feasible. That the student missed a period of schooling does not in itself make attending the school of origin unfeasible. For example, it may be better for the child to return to a familiar school, teachers and peers, to make up for lost time and to reintegrate smoothly into school.

Immediate Enrollment and Attendance

12. How "immediate" is immediate enrollment?
A: The McKinney-Vento Act requires schools to enroll students experiencing homelessness immediately, even if the student is unable to provide documents that are typically required for enrollment. 42 U.S.C. §11432(g)(3)(C). Enroll means permitting the student to attend classes and participate fully in school activities. 42 U.S.C. §11434A(1). Although the Act does not define immediate, the standard dictionary definition is "without delay." Therefore, the student must begin attending classes and participating fully in school activities without delay. Generally, that would mean the same or the following day.

13. Can schools require verification of proof of residency, such as seeing a lease in the case where a family is hosting a student who is not a family member?
A: No. Schools may not require verification of proof of residency as a condition of enrollment. 42 U.S.C. §11432(g)(3)(C). Due to their living situations, it frequently will be impossible for families and youth experiencing homelessness to provide such verification. Further, schools must not contact the landlords of host families to discuss living arrangements. Residence information provided by parents or youth to schools is part of the student's educational records and protected by federal privacy laws. Such contact could also lead to eviction of the host family. However, the Act does not prohibit schools from requiring parents, guardians, or youths to submit emergency contact information. 42 U.S.C. §11432(g)(3)(H).

14. How can schools verify age for enrollment in kindergarten without a birth certificate?
A: The McKinney-Vento Act requires immediate enrollment, even if typically required documents cannot be produced. 42 U.S.C. §11432(g)(3)(C). Therefore, the school must enroll the child in kindergarten immediately and work with the family to obtain acceptable proof of age. Many types of documents can be accepted to prove age, including medical records, baptismal certificates, or a simple statement of age signed by the parent or guardian.

15. If we enroll a student who is homeless without requiring proof of immunizations, aren't we putting the entire school at risk?

A: The McKinney-Vento Act requires immediate enrollment, even if students are unable to produce immunization or other medical records, recognizing that families and youth who are homeless are frequently unable to obtain and keep copies of records. 42 U.S.C. §11432(g)(3)(C). The vast majority of homeless students have been enrolled in school before and have had required immunizations. These records should be a part of their school records. Since the enrolling school is required to contact the previous school for records, the information should be available quickly. 42 U.S.C. §§11432(g)(3)(C), (D). The enrolling school and the liaison should work together to get immunization records as soon as possible. If a student has not had immunizations, initial doses should be administered as soon as possible, unless the student has a philosophical, religious, or medical exemption. It is accepted practice in most states and in the public health community that some children will not be immunized for these reasons. It is recognized among public health practitioners that the fact that most students are immunized prevents serious outbreaks from occurring. Should an outbreak of illness occur, the same procedures used to protect unimmunized children can be used to protect students whose immunization records have not yet been obtained.

16. If we enroll a student who is homeless without requiring school records, how do we know the child was not suspended or expelled from the previous school?
A: The enrolling school must immediately admit the student and must contact the previous school for records. 42 U.S.C. §§11432(g)(3)(C), (D).

17. Can the previous school transfer records to the new school without a parent's signature?
A: Yes. The Federal Education Rights and Privacy Act (FERPA) is a federal law that protects the privacy of educational records. Generally, FERPA requires schools to have written permission from a parent before releasing any information from a child's records. However, FERPA allows schools to release records without a parent's permission to schools to which a student is transferring. 20 U.S.C. §1232g.

18. Can a previous school refuse to send records due to fees owed for textbooks, etc.?
A: No. That school would be creating a barrier to the enrollment and retention of the child in school, which violates the McKinney-Vento Act. 42 U.S.C. §§11432(g)(3)(C) and (D), (g)(1)(I), (g)(7).

19. How can a school determine what classes or services to provide a student if there are no school records?
A: The enrolling school must immediately admit the student and must contact the previous school for records. 42 U.S.C. §§11432(g)(3)(C), (D). If the records cannot be transmitted immediately, the enrolling school can speak with staff from the previous school to get basic information about the student. Former teachers, counselors, and administrators should be able to provide this information. The enrolling school can also get information regarding class schedules from parents and youth. The school can also establish procedures for conducting a quick assessment of the student's skills. Even if records are delayed, the student must be enrolled in school and provided the most

appropriate services possible immediately. Upon receipt of previous school records, the school can make any necessary adjustments to the student's classes and services.

Issues Facing Youth

20. How does the McKinney-Vento Act define "unaccompanied youth"? Is there an age range?
A: Unaccompanied youth is defined as a youth not in the physical custody of a parent or guardian. 42 U.S.C. §11434A(6). The Act does not provide an age range.

21. Must schools enroll youth in school without proof of guardianship?
A: Yes. Lack of guardianship papers cannot delay or prevent the enrollment of an unaccompanied youth. 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(F)(ii). The McKinney-Vento Act requires states and school districts to eliminate barriers to enrollment and retention and to enroll unaccompanied youth in school immediately. 42 U.S.C. §§11432(g)(1)(I), (g)(7).

22. Can a school require a caregiver to get legal guardianship to enroll a student in school?
A: No. The McKinney-Vento Act requires states to address the problem of guardianship issues in school enrollment and requires school districts to enroll youth in school immediately, even if they lack typically required enrollment documents. 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(F)(ii). The decision to seek legal guardianship is a serious decision that significantly affects the legal rights of the parent and caregiver well beyond the school arena. While that step will be appropriate in some cases, it will not be in others.

23. Do schools have to contact the police when enrolling unaccompanied youth?
A: The McKinney-Vento Act requires schools to enroll unaccompanied youth in school immediately. 42 U.S.C. §11432(g)(3)(C). Since the Act requires school districts and states to eliminate barriers to enrollment and retention in school, schools should exercise care and concern when contacting social services or law enforcement agencies. 42 U.S.C. §§11432(g)(1)(I), (g)(7). Liaisons should work with police and social services to keep the youth in school and to serve the student's best interest, recognizing that most unaccompanied youth have fled abuse or severe dysfunction in their homes. In many cases, unaccompanied youth will be in the care of an adult, and there will be no reason to suspect neglect or abuse. It is likely that state mandatory reporting laws would not require contacting police in such cases. However, if school personnel have a reasonable suspicion of child abuse, state law may require staff to contact local social services or police. If this is the case, a liaison or school counselor should work with the youth to support him or her and avoid casting the school as an agent of punishment. Where state law provides a choice, as most do, schools should contact social services rather than the police.

24. Can students who are homeless receive free school meals without documenting income?

A: Yes. The U.S. Department of Agriculture's Child Nutrition Division issued a policy in 2002 (later enacted into law by the Child Nutrition and WIC Reauthorization Act of 2004) that makes any child, identified as homeless, automatically eligible for free school meals. They do not have to complete an application. Free school meals should commence immediately.