

## **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.<sup>1</sup> 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.” 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. 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.

#### **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.

**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. 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.

**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.

**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.

**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. 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."

**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.

**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.

**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. 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.

**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. 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. 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.

**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.

**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.

**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.

**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. 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. 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. . The McKinney-Vento Act requires states and school districts to eliminate barriers to enrollment and retention and to enroll unaccompanied youth in school immediately.

**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. 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. 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.

**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.