



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



MCKINNEY-VENTO LAW INTO PRACTICE BRIEF SERIES

Dispute Resolution

INTRODUCTION

Subtitle VII of the McKinney-Vento Homeless Assistance Act, reauthorized in 2001 by Title X, Part C of the No Child Left Behind Act and referred to in this brief as the McKinney-Vento Act, guarantees rights and services to remove educational barriers for homeless children and youth. The law requires states and school districts to follow a dispute resolution process when parents, guardians, or unaccompanied youth and schools or local educational agencies (LEAs) or school districts disagree on the enrollment or educational placement (school selection) of homeless children and youth.

The dispute resolution process is intended to represent each party's views for objective consideration so that disagreements can be brought to closure expeditiously. During the dispute process, the law requires that the LEA allow the child or youth to attend the school that the parents or guardians wish their child to attend, or that the unaccompanied youth wishes to attend, to minimize educational disruption. This NCHE brief summarizes the key provisions related to dispute resolution included in 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).

REQUIREMENT FOR A DISPUTE RESOLUTION POLICY IN MCKINNEY-VENTO STATE PLANS

The McKinney-Vento Act requires every state to include a dispute resolution policy as part of its state plan for implementing the law. The dispute resolution policy must describe procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youth. [42 U.S.C. § 11432(g)(1)(C)]

LEA REQUIREMENTS FOR DISPUTE RESOLUTION

When a dispute arises under the McKinney-Vento Act, the law requires the following minimum procedures:

1. The child or youth “shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute” [42 U.S.C. § 11432(g)(3)(E)(i)]. As students must be enrolled in school pending a dispute, the local liaison must ensure that unaccompanied youth are immediately enrolled in the school [42 U.S.C. § 11432 (g)(3)(E)(iv)]. The U.S. Department of Education (ED) strongly emphasizes the importance of this requirement in the 2004 *Non-Regulatory Guidance*:

When enrollment disputes arise, it is critical that students not be kept out of school. Interruption of education can severely disrupt the student’s academic progress. To avoid such disruptions, LEAs need an established process for resolving school placement disputes. Permitting students to enroll immediately in the school of choice pending resolution of disputes helps provide needed stability [G-5].

While disputes are pending, students have the right to participate fully in school and receive all services which they would normally receive. This includes transportation services, as the 2004 *Non-Regulatory Guidance* clearly indicates: “The

McKinney-Vento Act’s transportation requirements apply while disputes are being resolved” [H-5].

2. The parent, guardian, or unaccompanied youth must be provided with a written explanation of the school’s decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision [42 U.S.C. § 11432 (g)(3)(E)(ii)]. In addition, any time a student is sent “to a school other than the school of origin or the school requested,” the LEA must provide a written explanation of its decision and an explanation of the right to appeal, whether or not the placement is disputed [42 U.S.C. § 11432 (g)(3)(B)(ii)]. In the case of an unaccompanied homeless youth, the notice explaining the decision and the right to appeal are provided directly to the youth [42 U.S.C. § 11432 (g)(3)(B)(iii)].
3. The child, youth, parent, or guardian must be referred to the local homeless liaison, who will carry out the dispute resolution process as quickly as possible [42 U.S.C. § 11432 (g)(3)(E)(iii)]. The local homeless liaison must be familiar with the state’s McKinney-Vento dispute resolution policy and follow all procedures outlined therein.

STATE-LEVEL STRATEGIES FOR IMPLEMENTATION

State Coordinators for homeless education programs should

- Make their state’s McKinney-Vento dispute resolution policy available to all LEAs and train local homeless liaisons in its implementation on a regular basis;
- Ensure that any other participants in the dispute process at the state-level are sufficiently trained in the McKinney-Vento Act;
- Ensure that the dispute process includes a clear timeline within which all components of the dispute must occur, from the provision

of written notice after a parent, guardian, or unaccompanied youth wishes to dispute a school or LEA decision to the rendering of the decision;

- Include indicators for LEA monitoring that pertain to an LEA's implementation of the dispute process, including the provision of written notice to parents, guardians, or unaccompanied youth; and
- Review all disputes, once resolved, to determine in what ways the dispute policy may need improvement and revise accordingly. (For a dispute review checklist, see Appendix 8B: Dispute Review Guide in NCHE's *Homeless Liaison Toolkit*: http://center.serve.org/nche/pr/liaison_toolkit.php.)

LEA-LEVEL STRATEGIES FOR IMPLEMENTATION

Local homeless liaisons should

- Avoid disputes when possible by
 - » Training school staff members on the provisions of the McKinney-Vento Act and their responsibilities for enrolling and serving homeless children and youth;
 - » Communicating in person with parents, guardians, and unaccompanied youth to try to diffuse disagreements before they reach the dispute level; and
 - » Training school staff members on trauma-informed approaches to working with homeless families and youth;
- Provide written notice to parents, guardians, or unaccompanied youth when they disagree with a school's or LEA's decision that includes
 - » Contact information for the local homeless liaison and the State Coordinator with a brief description of their roles;
 - » A simple form that can be detached and

submitted to the school to initiate the dispute process;

- » A description of the dispute process, timeline, and instructions for what they need to do to dispute the school's or LEA's decision (A sample form for written notice is in Appendix 8A of NCHE's *Homeless Liaison Toolkit*: http://center.serve.org/nche/pr/liaison_toolkit.php); and
 - » Notice of the right to obtain the assistance of advocates or attorneys;
- Provide parents, guardians, and unaccompanied youth assistance as needed with the dispute process by
 - » Offering to assist parents, guardians, or unaccompanied youth with gathering information and providing referrals to advocates or attorneys;
 - » Ensuring that parents, guardians, or unaccompanied youth understand the timeline and can meet deadlines and being flexible with deadlines when necessary;
 - » Allowing parents, guardians, or unaccompanied youth to submit written and/or oral documentation to support their position;

Allowing parents, guardians, or unaccompanied youth to submit their documentation for the dispute at the school to minimize any inconvenience that would occur by requiring them to go to other offices;

- Gather information in ways that do not harass or intimidate parents, guardians, or unaccompanied youth and do not violate confidentiality or the Family Education Rights and Privacy Act;
- Keep thorough documentation of all communication with parents, guardians, or unaccompanied youth related to the dispute;
- During the dispute process, follow up with the school in which the parents or

guardians want their child to attend, or the unaccompanied youth wishes to attend, to ensure that the child or youth is enrolled and receiving all services, including transportation if the dispute is over attendance at the school of origin; and

- Follow up with the parent, guardian, or youth and school once a decision is rendered to assist with the implementation of the decision.
 - » This is especially important when the decision is not what the parents, guardians, or youth wanted; the liaison can play a key role in helping them accept the decision and to put supports in place for transitioning the child or youth to a new school.

RESOURCES

Bowman, D., Endres, C., and Moore, J. 2013. Dispute resolution. In the *Homeless Liaison Toolkit* (chap. 8). Retrieved from <http://center.serve.org/nche/downloads/toolkit2/ch8.pdf>

Bowman, D., Garris Hardy, B., and Popp, P. 2010. Dispute resolution. In the *State Coordinators' Handbook* (sec. J). Retrieved from <http://center.serve.org/nche/downloads/sc/hb/j.pdf>

REFERENCES

Subtitle VII of the McKinney-Vento Homeless Assistance Act. 20 U.S.C. §§ 11431-11435. Retrieved March 16, 2015 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 March 16, 2015 from <http://www2.ed.gov/programs/homeless/guidance.pdf>

PROVISIONS IN THE MCKINNEY-VENTO ACT RELATED TO DISPUTE RESOLUTION

State Plan – (1) In General – Each State shall submit to the Secretary a plan to provide for the education of homeless children and youths within the State. Such plans shall include the following: (C) A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths. [42 U.S.C. § 11432(g)(1)(C)]

LEA Requirements –

Best Interest – In determining the best interest of the child or youth, the LEA staff shall ... (ii) provide written explanation, including a statement regarding the right to appeal under subparagraph (E), to the homeless child's or youth's parent or guardian, if the LEA sends such a child or youth to a school other than the school of origin or a school requested by the parent or guardian; and (iii) in the case of an unaccompanied youth, ensure that the homeless liaison designated under paragraph (1)(J)(ii) assists in placement or enrollment decisions under this subparagraph, considers 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)]

Enrollment Disputes – if a dispute arises over school selection or enrollment in a school – (i) the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute; (ii) the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding the school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision; (iii) the child, youth, parent, or guardian shall be referred to the local educational agency liaisons designated under paragraph (1)(J)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and (iv) in the case of an unaccompanied youth, the homeless liaisons shall ensure that the youth is immediately enrolled in school pending resolution of the dispute. [42 U.S.C. § 11432(g)(3)(E)]

This brief was developed by:

National Center for Homeless Education

800-308-2145 (Toll-free Helpline)

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

April 2015

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: