

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

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.

1. Do school districts have the responsibility to identify or locate children and youth experiencing homelessness?

A: Yes. Every school district must designate a liaison for children and youth experiencing homelessness. 42 U.S.C. §11432(g)(1)(J)(ii). The McKinney-Vento Act requires school district liaisons 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. Coordination with schools and community agencies is an essential identification strategy, as are professional development, awareness and training activities within school buildings and school districts. Local liaisons should be working with the community and any shelters located in Georgia to identify homeless children and youth. A list of local school system liaisons is available by clicking on the following link:

2. 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.

3. Are children and youth who live in trailer homes or trailer parks covered by the Act?

A: Under some circumstances, yes. Under the McKinney-Vento Act, children and youth who live in trailer parks are covered by the Act if they live in the trailer park “due to the lack of alternative adequate accommodations.” 42 U.S.C. §11434A(2)(B)(i). Therefore, whether children and youth living in trailer parks are covered by the Act is a case-by-case determination to be made by the local liaison, in light of the family's circumstances. The liaison will need to consider the adequacy of the trailer home, including the number of people living in the trailer, the condition of the trailer, and the availability of running water, electricity, and other standard utilities. If the trailer is inadequate, it should be considered a homeless situation. The relative permanence of the living situation must also be examined: if the family is living in the trailer temporarily, they are likely to be covered by the Act.

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. State Coordinators are also required to “coordinate and collaborate with... providers of services to homeless and runaway children and youths and homeless families (including... transitional housing facilities, ...and transitional living programs for homeless youths).” 42 U.S.C. §11432(f)(5)(B).

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. For special education students, federal law provides the right to access services until age 22. 20 U.S.C. §1412(a)(1)(A).

7. Does the McKinney-Vento Act’s definition of homelessness in the education provisions (Education for Homeless Children and Youths) also qualify the family or youth to access services from other agencies (i.e. housing, food assistance, etc.).

A: At this time, the education definitions apply only for educational purposes. The U.S. Department of Housing and Urban Development (HUD) and other agencies have adopted their own definitions, which are narrower than the education definition. For example, families sharing housing and many families staying in motels are not considered homeless by HUD and cannot access HUD Emergency Shelter Grant services for homeless persons. However, these families can access HUD funds that are targeted to low-income individuals. Educators and advocates should approach their HUD Continuums of Care to seek such funding and support. In fact, the McKinney-Vento Act requires states and school districts that receive McKinney-Vento funds to coordinate with state and local housing agencies and other service providers to minimize educational disruption for children and youth who become homeless. 42 U.S.C. §11432(g)(5).

8. In the event that a child’s temporary housing is located in a different school district or state from the school of origin, which district is financially responsible for the child’s education?

A: The McKinney-Vento Act does not assign financial responsibility. The possibility of nonpayment does not affect districts’ obligation to provide education and transportation. Inter-district disputes cannot delay the immediate enrollment (defined as attending classes and participating fully in school activities) of children in the school selected. If there are no state policies to address fiscal responsibility, it may be reasonable for the district receiving state and federal funds for the student to retain financial responsibility.

9. If a student finds temporary housing across state lines, does the McKinney-Vento Act still apply?

A: Yes. Since the McKinney-Vento Act is a federal law, it applies as in any situation. Therefore, the student must be placed in the school of origin, unless that is against the parents'/guardians' wishes or is not feasible. For victims and evacuees, placement in the school

of origin is not feasible, so students should be served by the school system in which they are temporarily residing.

10. What if placing a student in the school the parent chooses would violate a school desegregation order?

A: The school district should follow the McKinney-Vento Act. Generally, desegregation orders predate the McKinney-Vento Act or simply did not consider the Act. However, the rights conferred by the Act must be protected. If this becomes a significant issue, the school district may want to petition the court to amend the desegregation order to account for the McKinney-Vento Act. See, e.g., U.S. Department of Education, Public School Choice Draft Non-Regulatory Guidance, December 2002, Section G.

11. Must a school district provide transportation to school for students experiencing homelessness?

A: The McKinney-Vento Act requires districts to provide transportation comparable to that provided to housed students. 42 U.S.C. §11432(g)(4)(A). Therefore, if the district transports housed students to the local school, it must also transport students experiencing homelessness. Finally, school districts must eliminate barriers to the school enrollment and retention of students experiencing homelessness. For example, if a student is living on or near an extremely busy intersection, in a very dangerous neighborhood, or is otherwise unable to attend school without transportation, the district must eliminate lack of transportation as a barrier to the child attending school. 42 U.S.C. §§11432(g)(1)(I), (g)(7).

12. Can a school district pay parents to transport their children?

A: Yes. School districts may reimburse parents or youth who have cars and are able to provide transportation, as a cost-effective means to meet the district's obligation.

13. Does providing or arranging for transportation mean door-to-door transportation, similar to transportation for students receiving special education services?

A: Generally, no. The McKinney-Vento Act does not require door-to-door transportation, unless that is the only appropriate arrangement for a particular student. For example, if a student is living on or near an extremely busy intersection, it may not be appropriate to expect the child to cross the intersection. The mode and details of transportation cannot present a barrier to the child's attendance in school. 42 U.S.C. §§11432(g)(1)(I), (g)(7).

14. 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.

15. 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).

16. 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.

17. 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 (the Louisiana Department of Education is going to be posting information regarding access to student records on their website the week of September 5th). 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. 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.

18. 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).

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 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.

20. Must schools enroll unaccompanied 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). States and school districts have established different procedures for enrolling youth. Some permit the youth to enroll himself or herself; some have the liaison handle enrollment; others use caregiver forms to allow adult caregivers to enroll 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. 42 U.S.C. §§11432(g)(1)(I), (g)(7).

21. 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.

22. Does the McKinney-Vento Act contain procedures for resolving disputes?

A: Yes. The McKinney-Vento Act requires each state to establish its own procedures to resolve disputes promptly. 42 U.S.C. §11432(g)(1)(C). The Act requires schools to admit students immediately to the school in which they are seeking enrollment, until the dispute is resolved. 42 U.S.C. §11432(g)(3)(E). The school must provide a written explanation of its decision, including information about the right to appeal. 42 U.S.C. §§11432(g)(3)(B)(iii), (g)(3)(E). The school must then refer the student, parent, or guardian to the district liaison, who must carry out the dispute resolution process as quickly as possible. 42 U.S.C. §11432(g)(3)(E).

23. Does the McKinney-Vento Act apply to schools that are not receiving its funding?

Yes, the McKinney-Vento Act applies to every local educational agency in every state. As with most education laws, the Act applies to states receiving the federal funds.

24. If a school district does not follow the law, is there a penalty?

A: Yes. States are required to ensure that school districts in the state comply with the McKinney-Vento Act. 42 U.S.C. §§11432(f)(6), (g)(2). Therefore, the state can sanction noncompliant school districts by withholding federal funds or other means. Families can also sue school districts in state and/or federal court. Several lawsuits have been filed under the McKinney-Vento Act, including lawsuits in Illinois, Maryland, Alabama, and New York. As a result, school districts have been forced to change their policies and practices and pay significant attorneys' fees. In addition, the U.S. Department of Education monitors state and school district compliance with the McKinney-Vento Act and could withhold or require repayment of federal funds in cases of noncompliance.

25. Does the requirement for immediate enrollment include enrollment in optional enrichment programs, extended-day programs, and other supplemental services?

A: Yes. Enrollment is defined to include attending classes and participating fully in school activities. 42 U.S.C. §11434A(1). Enrichment programs and other supplemental services are school activities. Furthermore, liaisons are required to ensure that children and youth in homeless situations have a full and fair opportunity to succeed in school. 42 U.S.C. §11432(g)(6)(A). Enrichment programs clearly support that requirement. To the extent that individual students experiencing homelessness can benefit from such programs, they must be provided access to the programs.

26. If a youth has not been in a school and tries to enroll mid-semester, what obligation does the school have to enroll the student and give him/her credit for the work they do in the remainder of the semester?

A: The McKinney-Vento Act requires the school to enroll the student immediately. 42 U.S.C. §§11432(g)(3)(C). The Act also requires the school district to remove barriers to the student's retention in school. 42 U.S.C. §§11432(g)(1)(I), (g)(7). Since the inability to earn any credit is a disincentive to remaining in school, the school must address that problem. The school must make any necessary adjustments to the student's schedule to permit the student to obtain partial or pro-rated credit for his or her work.

27. 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 by a liaison or shelter director, automatically eligible for free school meals. They do not have to complete an application. When a liaison or a shelter director provides a child's name to the local school food service office, free school meals should commence immediately. A copy of the USDA policy is available at www.nlchp.org/FA_Education.

28. To what extent should services for dental, medical, and other such needs be provided for children experiencing homelessness?

A: To the extent that such services are available at school, children experiencing homelessness must have access to them. 42 U.S.C. §11432(g)(4). Outside of school, liaisons are required to provide referrals for health, mental health, dental, and other appropriate services in the community. 42 U.S.C. §11432(g)(6)(A)(iii). "Other appropriate services" may include housing, shelter, job training, public assistance, food and nutrition, and legal assistance.

29. Does the McKinney-Vento Act address preschool?

A: Yes. The McKinney-Vento Act clearly and specifically includes preschool programs within its definition of free, appropriate public education. 42 U.S.C. §11431(1).

30. What must states do to serve preschoolers experiencing homelessness?

A: State plans must describe procedures to ensure that preschoolers experiencing homelessness have access to preschool programs administered by the State. 42 U.S.C. §11432(g)(1)(F)(i). States are to use McKinney-Vento grants in part to provide activities and services for

preschoolers in homeless situations, so they can enroll in, attend, and succeed in preschool programs. 42 U.S.C. §11432(d)(2). State coordinators must coordinate with agencies that serve preschoolers, including child development and preschool personnel, to improve the provision of comprehensive services to children. 42 U.S.C. §§11432(f)(4), (f)(5)(A).

31. What must school districts do to serve preschoolers experiencing homelessness?

A: School district liaisons must ensure that families and children experiencing homelessness can enroll in Head Start and Even Start programs and preschool programs administered by the school district. 42 U.S.C. §11432(g)(6)(A)(iii). Districts can also use their McKinney-Vento subgrants to provide early childhood education programs for children in homeless situations, if such programs are not otherwise provided through Federal, State, or local funding. 42 U.S.C. §11433(d)(6).

32. In a situation where students stay at a shelter for only a short period of time, can a district provide a teacher to teach at the shelter?

A: No. The McKinney-Vento Act prohibits segregating students experiencing homelessness in shelter classrooms, separate schools, or separate programs within a school. 42 U.S.C. §11432(e)(3)(A). No public funds can support separate education for homeless students, for any period of time. Students experiencing homelessness must be immediately enrolled in either the local school or their school of origin. However, supplemental services such as after-school tutoring or mentoring can be provided at a shelter, using McKinney-Vento, Title I, Part A, or other public funds.

33. The McKinney-Vento Act says that its funds can be used to provide services to children experiencing homelessness in a separate setting within a public school, only “as necessary for short periods of time for health and safety emergencies.” How is “health and safety emergencies” defined?

A: McKinney-Vento Act funds must expand or improve upon services provided as part of a school’s regular academic program, and cannot replace regular academic services. 42 U.S.C. 11433(a)(2)(A)(iii). The Act does contain a very limited provision for providing services to students experiencing homelessness in a separate setting within a public school, as described in the question. The very limited "health and safety emergency" exception says:

1. only school districts that get McKinney subgrants
2. can provide services to homeless students in separate settings within a public school (not at a shelter or other location)
3. as necessary
4. for short periods of time
5. for health and safety emergencies

There is no specific definition of “health and safety emergencies.” However, Hurricane Katrina would most likely constitute a health and safety emergency under the Act. GDOE will be seeking additional guidance from the United States Department of Education in this regard.

34. What obligations do private schools have under the McKinney-Vento Act? If the school of origin is a private school, must the student be allowed to continue attending?

A: The McKinney-Vento Act does not apply to schools that are entirely privately funded. Therefore, private schools are not required to allow children to continue to attend or to provide transportation. Public schools should offer McKinney-Vento and Title I, Part A services to students experiencing homelessness who are attending private schools, as public schools do for other private school students who are eligible for public education services (for example, special education and Title I, Part A services).

35. Do charter schools have to accept students experiencing homelessness if it is an attendance area school and there are other public schools available in the attendance area? Do charter schools have to appoint a homeless liaison?

A: Yes and yes. Public charter schools have the same responsibility under the McKinney-Vento Act as other schools and school districts. If a student experiencing homelessness attempts to enroll in a charter school, the school must enroll him or her as long as other students living in the same area would be eligible to attend the school. If the charter school has particular, skills-related entrance requirements, the student must meet those criteria (for example, a fine arts charter school with requirements related to artistic ability). Charter schools that are considered their own LEAs must designate a liaison for students experiencing homelessness.

36. Must schools immediately enroll students receiving special education who are homeless?

A: Yes. The McKinney-Vento Act applies to students who are homeless and who receive special education. Those students must be enrolled immediately in school, to include attending classes and participating fully in school activities. There are additional legal requirements under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq., that might come into play. However IDEA does not supersede the McKinney-Vento Act; a special education student retains all McKinney-Vento rights.

37. How can a school determine what services to provide a student receiving special education, 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). The local liaison should work with special education staff to ensure that a child's special needs can be identified and addressed quickly. The district should establish procedures for obtaining a child's school records expeditiously. If the records cannot be transmitted, the enrolling school can speak with the parent to determine what services were provided by the previous school system. In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another state, the school must provide the child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the school conducts an evaluation, if deemed to be necessary by the school, and develops a new IEP, if appropriate, that is consistent with federal and state law. Even if records are delayed, the student must be enrolled in school and provided the most appropriate services possible immediately. 20 U.S.C. §§1412(a)(1)(A), 1412(a)(4), 1414(d)(2)(A); 34 C.F.R. §§300.341, 300.300. In fact, IDEA's regulations specifically cite students experiencing homelessness as a group which requires special efforts and outreach to ensure such students who have disabilities are identified, evaluated, and served. 34 C.F.R. §300.125(a)(2)(i).

**38. Are children and youth in homeless situations eligible for Title I, Part A services?
What if they are succeeding in school?**

A: Yes. All children and youth in homeless situations are automatically eligible for Title IA services, whether or not they live in a Title I school attendance area or meet the academic standards required of other children for eligibility. 20 U.S.C. §6315(b)(2)(E). The poverty, unstable and often unhealthy living situations, and emotional trauma of homelessness place even outstanding students at risk of academic regression and failure.

39. If a student experiencing homelessness attends a school that does not receive Title I, Part A funds, how does the student receive services?

A: Every school district that receives Title IA funds is required to set aside a portion of its allotment to provide comparable services to homeless students attending schools that do not receive Title IA services. 20 U.S.C. §6313(c)(3). For example, Title IA funds frequently serve elementary school students. The mandatory set-aside ensures that middle and high school students experiencing homelessness in those districts receive Title IA services.

40. What kind of services can Title I, Part A funds (including set-asides and other funds) pay for?

A: Title IA funds, including those under the set-aside and other funds, can be used to serve students experiencing homelessness in both Title IA and non-Title IA schools. The services should support the students to succeed in school and to meet academic achievement standards. The funds can be used to provide services that are not ordinarily provided to other Title IA students. Examples of services school districts have provided with Title IA funds to students experiencing homelessness include: supporting the position of the liaison, mentoring, tutoring, enrichment activities, case management, school supplies, testing fees, clothing, activity fees, graduation fees, and other services to enable students to enroll in, attend, and succeed in school.