

The Rights of Students Experiencing Homelessness

August 2019

Children and youth who experience homelessness – including those who are living in shelters, doubled-up due to economic circumstances, in temporary housing, or “couch-surfing” – have important rights under a federal law called the “McKinney-Vento Act.”¹

This law ensures that students experiencing homelessness are able to stay in their current school even if they no longer live in the same neighborhood or are able to immediately enroll in a new school. The law also provides additional services to support students to be successful. This fact sheet explains those rights and protections and what to do if a student needs help.

WHO QUALIFIES AS “HOMELESS” UNDER THE LAW?

Students attending public schools – including charter schools or school programs operated by Intermediate Units – qualify for additional rights under the McKinney-Vento Act if they are homeless. The law applies to eligible students beginning in preschool and continuing to age 21 or high school graduation.² The protections apply for as long as the student experiences homelessness, and certain protections – like school stability and transportation – apply for the remainder of the year that the child secures permanent housing.³ Courts have recognized that there is no duration to homelessness and the situation may continue for many years.⁴

Students are considered “homeless” under the Act if they lack a consistent, adequate, fixed nighttime residence. This includes but is not limited to: “living doubled-up” with friends or family due to economic hardship or loss of housing, “couch-surfing,” living in temporary or emergency shelter, living in a car, hotel, campground, trailer park, living in a place that is not ordinarily used for sleeping, living unsheltered, or living in housing that is legally recognized as substandard.⁵

Students experiencing homelessness should be referred to “McKinney-Vento eligible” to avoid being stigmatized in school or disclosing confidential information to peers.

CAN YOUTH WHO ARE LIVING ON THEIR OWN QUALIFY AS HOMELESS?

Yes. Students who are experiencing homelessness and living on their own qualify as homeless and are under the law are referred to as “unaccompanied youth.” Many of these students have experienced abuse, been kicked out of or run away from home, or been abandoned or separated from their family for another reason. It is important for schools to ask older youth about their living

¹ 42 U.S.C.A. § 11431 (2016) *et seq.*

² 42 U.S.C.A. § 11432(g)(1)(F)(i); 42 U.S.C.A. § 11431(1); *See infra* note 7.

³ 42 U.S.C.A. § 11432(g)(3)(A)(i).

⁴ *See G.S. v. Rose Tree Media Area School District*, 914 F.3d 206 (3d Cir. 2018)

⁵ 42 U.S.C.A. § 11434a(2)(B).

situation in a non-judgmental way. Unaccompanied youth living on their own are allowed to enroll themselves in school and are entitled to additional protections under the McKinney-Vento Act.⁶ For example, schools must help these youth enroll in school, access extracurriculars, and apply to college.⁷ In addition, if an unaccompanied homeless youth is also a student with a disability, a school district or charter school must appoint a “surrogate parent” to act as that student’s special education decisionmaker through the IEP process.⁸

Remember: All students have a legal right to attend school until the end of the school term in which they turn 21.⁹ Youth who have been out of school may re-enroll themselves even if they cannot earn enough credits to graduate or already have a GED.

DO MCKINNEY-VENTO ELIGIBLE STUDENTS HAVE THE SAME RIGHTS IN SCHOOL AS HOUSED STUDENTS?

Yes. Students who qualify as homeless under the Act have the same rights to access all educational programs and opportunities as students who are housed who can show proof of residency.¹⁰ Schools are prohibited from segregating students, discriminating against them, or stigmatizing these students because they are experiencing homelessness.¹¹

WHERE CAN THESE STUDENTS ATTEND SCHOOL?

McKinney-Vento eligible students have a legal right to stay in their current school or a prior school they attended before becoming homeless. If remaining in such a school is not in the child’s best interest, the child can immediately enroll in a new school where they are staying – even without providing any of the documents normally required for enrollment.

School Stability: McKinney-Vento eligible students have a right to “school stability,” which means that they can continue to attend their current school or the school they attended prior to becoming homeless. Students can continue to stay in the same school even if they move again, until they secure permanent and adequate housing.¹² The current school or the school the student attended prior to experiencing homelessness is called the “school of origin” under the McKinney-Vento Act.¹³

Immediate Enrollment: Alternatively, a student can enroll in a new school where they now are living or where they have “any substantial connection.”¹⁴ This is particularly important for children and youth who stay in different locations over the course of weeks. Children must be enrolled immediately – on the same day they seek enrollment – even without any

⁶ 42 U.S.C.A. § 11434a(6).

⁷ *Id.*

⁸ 34 CFR 300.519(f).

⁹ 22 PA. CODE § 11.12 (2004); *See also* 24 P.S. 13-1301-13 1306 (explaining that children are considered school age until they are 21).

¹⁰ 42 U.S.C.A. §§ 11432(g)(1)(F), (g)(6)(A)(ii).

¹¹ 42 U.S.C.A. § 11431(1) (explaining a State’s obligation to provide equal access to a “free appropriate public education” to all McKinney-Vento eligible students); § 11432(e)(3)(C)(III)(dd) (stating school personnel are prohibited from stigmatizing McKinney-Vento eligible students).

¹² 42 U.S.C.A. § 11432(g)(3)(A)(i).

¹³ 42 U.S.C.A. § 11432(g)(3)(I)(i).

¹⁴ See Basic Education Circular on Enrollment of Youth Experiencing Homelessness

at: <https://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/Purdons%20Statutes/Enrollment%20of%20Students.pdf>.

documents normally required for enrollment and even if the school does not have the student's education records, including a child's IEP.¹⁵

WHO MAKES THE DETERMINATION?

The determination regarding where a child will attend school is based on the "best interest" of the child as determined by their parent, legal guardian, or youth who is enrolling on his/her own in conjunction with school district staff.¹⁶ It is "presumed" that it is in the best interest of the student to attend her school of origin unless the parent disagrees.¹⁷ Remaining in the same school is preferable because research shows that students lose 6-8 months of academic progress with every school move.

This "best interest determination" is completed by a student's local school district or charter school, called a Local Education Agency (LEA) by the McKinney-Vento Act. Each determination is "student-centered" and must be focused on the individual needs of the student who is experiencing homelessness.¹⁸ The determination must take into consideration the preferences of unaccompanied students, or the parent's wishes if the student is experiencing homelessness with her parent or guardian.¹⁹ The school district must consider the "impact of mobility on achievement, education, health, and safety" of each student.

WHAT IF AN UNACCOMPANIED STUDENT OR PARENT DISAGREES WITH A SCHOOL'S "BEST INTEREST DETERMINATION"?

If the parent or unaccompanied student disagrees with a school district's determination, they can challenge the process through dispute resolution. In the meantime, the student has a *right to attend the school the unaccompanied youth or parent wants the student to attend until the dispute resolution process is fully resolved.*²⁰

CAN A STUDENT EXPERIENCING HOMELESSNESS BE ENROLLED WITHOUT IMMUNIZATION RECORDS?

Yes. Under the law, all McKinney-Vento eligible students must be enrolled immediately even without documentation ordinarily required for enrollment.²¹ However, the new school must *immediately* request the student's records and help an unaccompanied youth obtain these enrollment documents: proof of age, immunization records, and an Act 26 statement, also known as a parent registration form relating to school discipline. McKinney-Vento eligible students must provide an address where they are living if possible, but they need not do so in order to enroll in school.²² If a student needs help obtaining immunization records, the "McKinney-Vento Liaison" at the student's school must help the student obtain these records. They have a specific affirmative duty to help all unaccompanied youth obtain enrollment documents.²³

¹⁵ 42 U.S.C.A. § 11432(g)(3)(C)(i).

¹⁶ 42 U.S.C.A. § 11432(g)(3)(A)-(B).

¹⁷ 42 U.S.C.A. § 11432(g)(3)(B)(i). See *G.S. v. Rose Tree Media School District*,

¹⁸ 42 U.S.C.A. § 11432(g)(3)(B)(ii).

¹⁹ 42 U.S.C.A. § 11432(g)(3)(B)(i)-(iv).

²⁰ 42 U.S.C.A. § 11432(g)(3)(E)(i).

²¹ 42 U.S.C.A. § 11432(g)(3)(C)(i)(I).

²² 42 U.S.C.A. § 11432(g)(3)(C)(ii)-(iii).

²³ 42 U.S.C.A. § 11432(g)(3)(C)(iii).

DOES A CHILD WHO IS TRANSITIONING TO A NEW MIDDLE SCHOOL OR HIGH SCHOOL HAVE A RIGHT TO SCHOOL STABILITY?

Yes. Under the 2016 amendments to the Act, the right to school stability applies to all “feeder schools.” This means that a student who is transitioning from an elementary school to a middle school or middle school to high school can remain with her peers in the new school.²⁴ Students have a right to “school stability within a feeder pattern.”²⁵

DO OLDER STUDENTS EXPERIENCING HOMELESSNESS HAVE TO GO TO A NIGHT SCHOOL OR ACCELERATED OR ALTERNATIVE PROGRAM, IF THEY ARE UNDER-CREDITED OR HAVE NOT BEEN IN SCHOOL FOR A WHILE?

No. Until a student turns 21 or graduates, she has the same right to access all educational opportunities and programs as any other student.²⁶ Students who are under-credited do not have to attend a night school, an accelerated program, or a twilight program. Like other students, McKinney-Vento eligible students may choose to attend such optional programs if they wish.

WHOSE JOB IS IT TO HELP MCKINNEY-VENTO ELIGIBLE STUDENTS AT SCHOOL?

Every school district or charter school must designate a liaison,²⁷ sometimes called a “McKinney-Vento Liaison,” to assist students experiencing homelessness. It is their job to help identify students who are experiencing homelessness, ensure eligible students receive McKinney-Vento protections, connect unaccompanied students or a student’s parents to resources, and inform unaccompanied students or a student’s parent or guardian about their rights under the law.²⁸ Liaisons tell unaccompanied students and parents about their right to disagree with a school’s decision and how to challenge it.²⁹ In some districts, school counselors serve in this role or assist Liaisons.

HOW CAN A MCKINNEY-VENTO LIAISON SUPPORT UNACCOMPANIED YOUTH WHO ARE ON THEIR OWN?

If a student is an unaccompanied youth, the Liaison has additional responsibilities to make sure the student enrolls in school, has the same opportunities as other students, receives credit for coursework completed, and accesses higher education, including helping youth secure financial aid by completing the FAFSA application or applying for state grants.³⁰

CAN A MCKINNEY-VENTO ELIGIBLE STUDENT RECEIVE PARTIAL CREDIT FOR COURSEWORK, EVEN IF SHE MOVES IN THE MIDDLE OF THE YEAR?

Yes. McKinney-Vento eligible students should receive full credit or partial credit for the work they complete satisfactorily at a prior school.³¹ A school’s McKinney-Vento Liaison can help students figure out how many credits or partial credits they have, even if the student moved in the middle of the year and did not fully complete a class, or took classes that are not offered at their new school. Students should be given full credit for they work they complete, and schools should work

²⁴ 42 U.S.C.A. § 11432(g)(3)(l)(ii).

²⁵ 42 U.S.C.A. § 11432(g)(3)(l)(ii).

²⁶ 42 U.S.C.A. §§ 11432(g)(1)(F), (g)(6)(A)(ii).

²⁷ 42 U.S.C.A. § 11432(g)(1)(J)(ii).

²⁸ 42 U.S.C.A. § 11432(g)(6)(A).

²⁹ *Id.* at (vi).

³⁰ 42 U.S.C.A. § 11432(g)(6)(A)(x).

³¹ 42 U.S.C.A. § 11432(g)(1)(F)(ii)-(iii).

with all highly mobile students to give them opportunities to make up credits they missed, so that they can graduate on time. Informing students and parents of credits needed to graduate is key.

The McKinney-Vento Act also requires Pennsylvania’s Department of Education to identify and remove barriers faced by eligible students to ensure that they have “equal access to appropriate secondary education and support services.”³² For example, McKinney-Vento eligible students must be given equal access to credit recovery programs, SAT prep classes, and other supports.³³

WHO IS RESPONSIBLE FOR TRANSPORTING MCKINNEY-VENTO ELIGIBLE STUDENTS TO AND FROM SCHOOL?

Local educational agencies (LEAs) must provide *free transportation* to and from a student’s “school of origin.” Even if a student becomes permanently housed in the middle of the year, the school must continue to provide free transportation *until the end of the school year*.³⁴

If a student needs to be transported across district or state lines, and it is in her best interest to continue attending her “school of origin,” the LEAs from both jurisdictions must work together to transport the student.³⁵ The schools must also consider the student’s needs when arranging for transportation and must treat students who are McKinney-Vento eligible the same way they would treat students who are not experiencing homelessness.³⁶ The McKinney-Vento Liaison can work with the transportation department at the student’s school district to set up the transportation.³⁷

WHAT OTHER SUPPORTS OR SERVICES ARE AVAILABLE TO HELP STUDENTS TO BE SUCCESSFUL IN SCHOOL? WHAT HAPPENS IF A STUDENT NEEDS A SCHOOL UNIFORM, SCHOOL SUPPLIES, TUTORING HELP, OR MEALS AT SCHOOL?

All McKinney-Vento eligible students are entitled to free breakfast (if it is offered at their school) and free lunch.³⁸ Under the McKinney-Vento Act, eligible students are also entitled to receive a school uniform and school supplies.³⁹ Some schools give students what is called a “uniform voucher,” which students can turn in to receive a free school uniform. Students must be given up-to-date uniforms so that they are not stigmatized and treated differently from other students. A school cannot give McKinney-Vento eligible students uniforms that look different from other students.⁴⁰ In addition, “Title IA” funds, when available, may be used to provide a variety of support services to help eligible students meet academic achievement standards. These supports include tutoring help, counseling, eyeglasses, SAT prep and testing fees, food, etc.

WHAT CAN UNACCOMPANIED STUDENTS OR PARENTS/GUARDIANS OF STUDENTS EXPERIENCING HOMELESSNESS DO IF THEY DISAGREE WITH A SCHOOL’S DECISION?

If a parent or unaccompanied youth disagrees with an LEA about where the student should attend school based on the student’s best interest, or whether the student qualifies as McKinney-Vento

³² 42 U.S.C.A. § 11432(g)(1)(f)(ii).

³³ 42 U.S.C.A. § 11431(1).

³⁴ 42 U.S.C.A. § 11432(g)(1)(J)(iii).

³⁵ 42 U.S.C.A. § 11432(g)(5)(A)(ii).

³⁶ 42 U.S.C.A. § 11432(g)(4)(A).

³⁷ 42 U.S.C.A. § 11432(g)(1)(J)(iii)(I).

³⁸ Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265, §10.

³⁹ 42 U.S.C.A. § 11433(d)(15)(16).

⁴⁰ 42 U.S.C.A. § 11432(e)(C)(i)(III)(dd).

eligible, the parent, guardian, or youth may use a dispute resolution procedure to resolve the disagreement.⁴¹

During the pendency of any dispute, the McKinney-Vento Act requires the school district to permit the student to remain in her current “school of origin” or to immediately enroll in a new school as the school of choice. The right to remain in this school placement and receive other McKinney-Vento protections and rights continues *until the dispute resolution process is over*.⁴² It is the McKinney-Vento Liaison’s job to make sure this happens.⁴³

WHAT IS THE DISPUTE RESOLUTION PROCESS?

A school must provide a written notice to a parent, guardian, or youth explaining the reasons for the school’s decision in a manner that is understandable.⁴⁴ This notice, often called a Procedural Safeguards Notice form,⁴⁵ must be provided in a parent’s or youth’s preferred language and must explain the complaint process and right to appeal the school’s decision.⁴⁶ Unaccompanied students must be directly provided with this notice by the McKinney-Vento Liaison, who can assist them to challenge the decision.⁴⁷ At first, the dispute will be addressed by the McKinney Vento Liaison at the school. If the parent, guardian, or unaccompanied youth is dissatisfied with the LEA’s disposition of a dispute or wants to raise any issues regarding McKinney-Vento Act noncompliance, a parent or youth may file a complaint or appeal with a McKinney-Vento Regional Coordinator or with Pennsylvania’s State Coordinator. See [Education for Homeless Youth Basic Education Circular](#) for more information, including a listing of how to contact these coordinators and attached sample complaint.

WHO CAN AN UNACCOMPANIED STUDENT OR PARENT/GUARDIAN OR SHELTER PROVIDER CALL FOR HELP?

If you are an unaccompanied student or parent or guardian of a McKinney-Vento eligible student who needs help, you can call the Helpline at the Education Law Center at 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh).

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC’s publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC’s Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh) – or contact another attorney of your choice.

⁴¹ 42 U.S.C.A. § 11432(g)(3)(E).

⁴² 42 U.S.C.A. §§ 11432(g)(3)(E)(i)-(iv).

⁴³ 42 U.S.C.A. §§ 11432(g)(3)(E)(i)-(iv).

⁴⁴ 42 U.S.C.A. § 11432(g)(3)(B)(iii).

⁴⁵ See Procedural Safeguards, Notice of Denial of Enrollment, available at

<https://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/US%20Code/Procedural%20Safeguards%20Notice%20of%20Denial%20of%20Enrollment.pdf>

⁴⁶ 42 U.S.C.A. § 11432(g)(3)(E)(ii).

⁴⁷ 42 U.S.C.A. § 11432(g)(3)(B)(iv).

Complaint to McKinney-Vento State Coordinator

Date: _____

**State Coordinator, Education for Homeless Children & Youth Program
Pennsylvania Homeless Children's Initiative
Pennsylvania Department of Education
333 Market Street, 5th Floor
Harrisburg, PA 17126-0333**

Re: Homeless Dispute

_____ (your name)
_____ (full address)
_____ (phone number) (optional)
_____ (email) (optional)
_____ (Relationship to child/children)

Dear State Coordinator:

My child _____ is homeless. I am writing because the _____ School District:

- would not enroll my child.

_____.
- would not let my child remain in the same school.

_____.
- would not provide transportation to support my child to stay in the same school.

_____.
- would not provide special education testing/placement services.

_____.
- Other _____

_____.

Please call, email or write to me at the address listed at the top of the page with any questions you may have. Thank you.

Name

NOTE: I HAVE SENT A COPY OF THIS LETTER TO THE REGIONAL COORDINATOR WHERE MY SCHOOL IS LOCATED. MY REGIONAL COORDINATOR IS:_____.