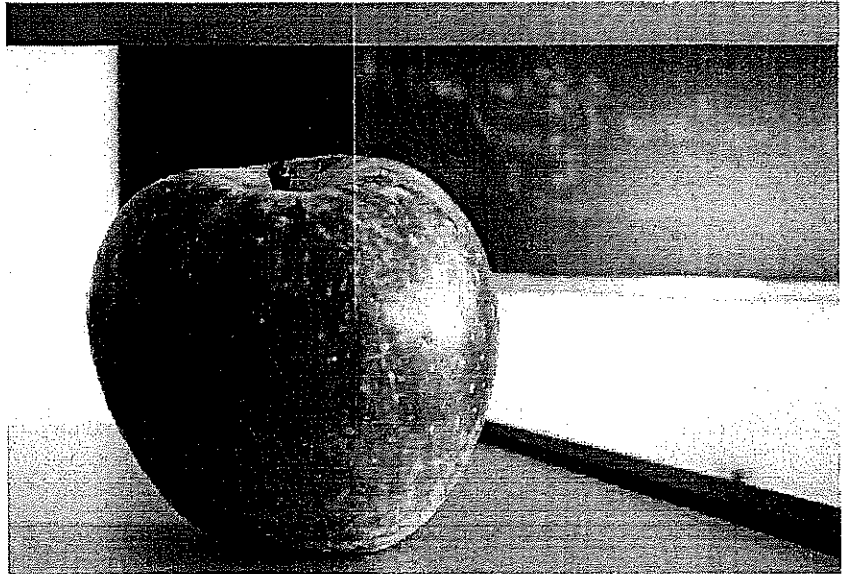




National Center for Homeless Education
Supporting the Education of Children and
Youth Experiencing Homelessness
<http://nche.ed.gov>



MCKINNEY-VENTO LAW INTO PRACTICE BRIEF SERIES

Dispute Resolution

This NCHE brief:

- summarizes the key provisions of the McKinney-Vento Act related to dispute resolution, and
- provides an overview of implementation strategies at the State and local levels

INTRODUCTION

Subtitle VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.; hereafter *the McKinney-Vento Act*), reauthorized in 2015 by Title IX, Part A of the Every Student Succeeds Act, guarantees educational rights and supports for students experiencing homelessness. The Act requires State educational agencies (SEAs) and local educational agencies (LEAs; commonly referred to as *school districts*) to follow a dispute resolution process when parents, guardians, or unaccompanied youth disagree with schools over eligibility for services, school selection, or school enrollment under the Act [42 U.S.C. § 11432(g)(3)(E)]. The dispute resolution process is intended to represent each party's views for objective consideration so that disagreements can be resolved expeditiously and in keeping with McKinney-Vento provisions. This NCHE brief summarizes the key provisions related to dispute resolution included in the McKinney-Vento Act, and suggests strategies for

MCKINNEY-VENTO DEFINITION OF HOMELESS 42 U.S.C. § 11434a(2)

The term "homeless children and youth"—

- A. means individuals who lack a fixed, regular, and adequate nighttime residence...; and
- B. includes —
 - i. 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; or are abandoned in hospitals;
 - ii. 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...;
 - iii. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - iv. 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).

implementation at the SEA and LEA levels.

STATUTORY REQUIREMENTS RELATED TO DISPUTE RESOLUTION

SEA REQUIREMENTS

The McKinney-Vento Act requires every State to include in its State plan for implementing the Act a description of procedures for the prompt resolution of disputes regarding the educational placement of children and youth experiencing homelessness [42 U.S.C. § 11432(g)(1)(C)].

LEA REQUIREMENTS

If a dispute arises under the McKinney-Vento Act over eligibility, school selection, or school enrollment [42 U.S.C. 11432(g)(3)(E)], the Act requires LEAs to take the following steps:

1. The child or youth shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals [42 U.S.C. § 11432(g)(3)(E)(i)]. In the case of an unaccompanied youth, the local homeless education liaison (hereafter *local liaison*) must ensure that the youth is enrolled immediately in the school in which the youth seeks enrollment pending final resolution of the dispute [42 U.S.C. § 11432(g)(3)(E)(iv)]. While disputes are pending, students have the right to participate fully in school and receive all services for which they are eligible (U.S. Department of Education, 2017, p 35), as the definition of enrollment includes “attending classes and participating fully in school activities” [42 U.S.C. § 11434a(1)].
2. The parent, guardian, or unaccompanied youth must be provided with a written explanation of any dispute-related decisions made by the school, LEA, or SEA involved, including the right of the parent, guardian, or unaccompanied youth to appeal such decisions [42 U.S.C. § 11432(g)(3)(E)(ii)]. The LEA must provide this written explanation, including the reasons for its determination and information regarding the right to appeal, in a manner and form understandable to the parent, guardian, or unaccompanied youth [42 U.S.C. § 11432(g)(3)(B)(iii)]. In the case of an unaccompanied youth, the local liaison must ensure

that this written notice is provided directly to the youth [42 U.S.C. § 11432(g)(3)(B)(iv)].

3. The parent, guardian, or unaccompanied youth must be referred to the local liaison, who will carry out the dispute resolution process described in the State McKinney-Vento plan as expeditiously as possible after receiving notice of the dispute [42 U.S.C. § 11432(g)(3)(E)(iii)]. The local liaison must be familiar with the State’s McKinney-Vento dispute resolution process and follow all procedures outlined therein.

STRATEGIES FOR IMPLEMENTATION

STATE-LEVEL STRATEGIES

State Coordinators for Homeless Education (hereafter *State Coordinators*) should

- make their State’s McKinney-Vento dispute resolution process available to all LEAs, and train local liaisons regularly on its implementation;
- ensure that any State-level participants in the dispute resolution process are trained sufficiently on the McKinney-Vento Act;
- ensure that the dispute resolution 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 expresses a desire to dispute a school or LEA decision, to the final resolution of the dispute;
- include indicators for LEA monitoring that pertain to the implementation of the McKinney-Vento dispute process process, including the provision of written notice to parents, guardians, or unaccompanied youth; and
- review all McKinney-Vento disputes, once resolved, to ensure compliance with the State dispute resolution process, determine ways in which the process may need improvement, and revise the process, as necessary. (For a dispute review checklist, see *Appendix 8B: Dispute Review Guide* in NCHE’s *Homeless Liaison Toolkit* at https://ncche.ed.gov/pr/liaison_toolkit.php.)

LEA-LEVEL STRATEGIES

Local 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 children and youth experiencing homelessness;
 - communicating in person with parents, guardians, and unaccompanied youth to try to diffuse disagreements before they reach the level of a formal dispute; and
 - training school staff members on trauma-informed approaches to working with families and youth in homeless situations.
- 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 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 a formal dispute;
 - a description of the dispute resolution process, timeline, and steps to take to appeal the school's or LEA's decision (For a sample form for

UNACCOMPANIED YOUTH

The McKinney-Vento Act defines unaccompanied youth as "a homeless child or youth not in the physical custody of a parent or guardian" [42 USC § 11434a(6)]. Under the Act, unaccompanied youth have the right to access the dispute resolution process, and have any disputes that may arise resolved expeditiously and in keeping with the Act's provisions. For more information on unaccompanied youth, download NCHE's Supporting the Education of Unaccompanied Students Experiencing Homelessness brief at <https://nche.ed.gov/pr/briefs.php>.

written notice, see *Appendix 8A: Written Notification of Decision* in NCHE's *Homeless Liaison Toolkit* at https://nche.ed.gov/pr/liaison_toolkit.php); and

- notice of the right to obtain the assistance of advocates or attorneys, and a list of legal and advocacy service providers in the area that can provide assistance during any part of the process.
- provide parents, guardians, and unaccompanied youth with assistance with the dispute process, as needed, by
 - offering to assist them with gathering information, and providing referrals to local legal and advocacy service providers;
 - ensuring that they understand the dispute resolution timeline, including deadlines they may need to meet, and being flexible with deadlines when necessary;
 - allowing them to submit written documentation and/or oral statements in support of their position; and
 - allowing them to submit dispute-related documentation at their child's school to minimize any inconvenience that could occur by requiring them to submit documentation at other locations.
- gather information in ways that do not harass or intimidate parents, guardians, or unaccompanied youth, and do not violate privacy guidelines, including those specified in the the Family Educational Rights and Privacy Act (FERPA; 20 U.S.C. § 1232g) and any other applicable Federal or State laws.
- keep thorough documentation of all dispute-related communication with parents, guardians, or unaccompanied youth.
- during the dispute process, follow up with the school selected by the parent, guardian, or unaccompanied youth to ensure that the student is enrolled and receiving all services for which the student is eligible, including transportation to and from the school of origin.

- follow up with the parent, guardian, or unaccompanied youth and the involved school(s) once a final decision is rendered to assist with the implementation of the decision. This follow-up is especially important when the decision is not what the parent, guardian, or unaccompanied youth requested. The local liaison can play a key role in helping the parent, guardian, or youth accept the decision and access available student supports, regardless of how the dispute was resolved.

RESOURCES

For more information about developing and implementing an effective McKinney-Vento dispute resolution process, consult the following resources:

- U.S. Department of Education, *Education for Homeless Children and Youths Program: Non-Regulatory Guidance, Section K: Dispute Resolution Procedures*
<https://www2.ed.gov/policy/elsec/leg/essa/160240e-hcyguidance072716updated0317.pdf>
- National Center for Homeless Education, *Homeless Liaison Toolkit, Chapter 8: Dispute Resolution*
https://nche.ed.gov/pr/liaison_toolkit.php
- National Center for Homeless Education, *State Coordinators' Handbook, Section G: Dispute Resolution*
<https://nche.ed.gov/pr/sc-hb.php>

REFERENCES

- Subtitle VII-B of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq.
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<http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter6/part3&edition=prelim>
- U.S. Department of Education. (2017). *Education for Homeless Children and Youth Program non-regulatory guidance*. Retrieved from
<https://www2.ed.gov/policy/elsec/leg/essa/160240e-hcyguidance072716updated0317.pdf>

This brief was developed by:
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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 oversee the implementation of the McKinney-Vento Act. To find out who your State Coordinator is, visit the NCHE website at http://nche.ed.gov/states/state_resources.php.

For more information on issues related to the education of children and youth experiencing homelessness, contact the NCHE helpline at 800-308-2145 (toll-free) or homeless@serve.org.

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