



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



BEST PRACTICES IN HOMELESS EDUCATION BRIEF SERIES

Determining Eligibility for McKinney-Vento Rights and Services

This NCHE brief

- explores in detail the definition of *homeless* included in Subtitle VII-B of the McKinney-Vento Homeless Assistance Act, and
- provides a step-by-step guide for making determinations of McKinney-Vento eligibility on a case-by-case basis.

INTRODUCTION

Children and youth experiencing homelessness face unique challenges in accessing and succeeding in school. Subtitle VII-B of the McKinney-Vento Homeless Assistance Act, reauthorized in 2015 by Title IX, Part A of the Every Student Succeeds Act (42 U.S.C. § 11431 et seq.; hereafter *the McKinney-Vento Act*), establishes the definition of *homeless* used by U.S. public schools, and the educational rights to which children and youth experiencing homelessness are entitled. For schools to be able to provide services to students in homeless situations, they first must be able to identify these students. To this end, an effective understanding of the McKinney-Vento definition of *homeless* is a key first step to ensuring the delivery of needed supports to some of our nation's most vulnerable students.

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).

This brief provides local homeless education liaisons¹ (hereafter *local liaisons*) and other school personnel with an in-depth understanding of the McKinney-Vento definition of *homeless*. The brief also outlines a step-by-step process for making determinations of McKinney-Vento eligibility on a case-by-case basis. Briefs on additional homeless education topics are available at <http://center.serve.org/nche/briefs.php>.

GENERAL CONSIDERATIONS WHEN DETERMINING ELIGIBILITY

When making determinations of McKinney-Vento eligibility, the most important and fundamental step is to familiarize yourself with the Act's definition of *homeless*, paying close attention to legislative wording. Key legislative phrases may provide needed clarity when evaluating whether a particular child's or youth's living arrangement meets the definition. In addition, NCHE recommends the following considerations when determining eligibility:

Remember to make determinations on a case-by-case basis, considering what is known about each individual child's or youth's circumstances.

Understand that some cases will be clear-cut and lend themselves to easy determinations, while others may require further inquiry and a more nuanced analysis. Requests for additional information from parents, guardians, or unaccompanied youth should be conducted privately and diplomatically.

Remember that under the McKinney-Vento Act, the local liaison is charged with ensuring that homeless children and youth are identified by school personnel through outreach and coordination activities with other entities and agencies [42 U.S.C. § 11432(g)(6)(A)(i)]. As such, while the Act establishes the need for a collaborative approach to identifying eligible students, the local liaison maintains the final authority for making determinations. Local liaisons in some districts, particularly those with large student bodies, may choose to appoint and train school-level points of contact to assist with determining eligibility. It is important to speak with the local liaison in your district to determine what steps you should take should you come into

¹ The McKinney-Vento Act requires school districts to designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local liaison to carry out the duties described in the Act. [42 U.S.C. § 11432(g)(1)(J)(ii)].

UNACCOMPANIED YOUTH EXPERIENCING HOMELESSNESS

While unaccompanied students are not referenced specifically in the McKinney-Vento definition of *homeless*, unaccompanied children and youth whose living arrangements meet the McKinney-Vento definition of homeless are eligible for services under the Act. The term *unaccompanied youth* is defined in the Act as "a homeless child or youth not in the physical custody of a parent or guardian" [42 U.S.C. § 11434a(6)]. For more information on serving unaccompanied youth under the McKinney-Vento Act, download *Supporting the Education of Unaccompanied Students Experiencing Homelessness* at <http://nche.ed.gov/briefs.php>.

contact with a student you believe might be experiencing homelessness.

A STEP-BY-STEP PROCESS

STEP 1: GET THE FACTS

The first step in determining McKinney-Vento eligibility is gathering information about the child's or youth's situation. To this end, NCHE recommends the following strategies:

Use a housing questionnaire that asks about the child's or youth's living arrangement as part of your district's enrollment paperwork. If the questionnaire indicates that the student might be experiencing homelessness, refer the questionnaire to the school point-of-contact or local liaison for next steps. For sample housing questionnaires that can be tailored for use in your district, visit

http://center.serve.org/nche/ibt/sc_eligibility.php.

Avoid using the word "homeless" on school forms and in conversation with families or youth. Many families or youth would not want to be called "homeless" due to the stigma that may be associated with the term. Further, families or youth may not consider themselves homeless even though their living arrangement meets the definition.

If additional information is needed, explain to the family or youth that you are requesting this information to help

you determine whether the child or youth would be eligible for additional supports. Conduct this conversation in a private space and in a diplomatic manner, understanding that these conversations are very personal for the family or youth.

Refrain from contacting people or agencies outside the school system to seek more information about the family's or youth's situation. Information about the living arrangement of a child or youth experiencing homelessness is considered to be part of the student's education record and, as such, is covered by the privacy protections included in the Family Educational Rights and Privacy Act (FERPA) [42 U.S.C. § 11432(g)(3)(G)].

STEP 2: ANALYZE THE FACTS.

Now that you have gathered needed information, the next step is to determine whether the child's or youth's living arrangement meets the McKinney-Vento definition of homeless (see the *McKinney-Vento Definition of Homeless* sidebar). To make a determination of homelessness, consider whether the student's living arrangement fits into one of the specific examples listed in the definition. If not, consider whether the student's living arrangement, although not mentioned explicitly in the law, would be considered homeless because it is not fixed, regular, and adequate. See *Appendix A: A Guide for Determining McKinney-Vento Eligibility* for more information on walking through this process.

STEP 3: SEEK ADDITIONAL INPUT, AS NEEDED.

If, after gathering and analyzing available information, you still are not sure if a child or youth should be considered McKinney-Vento eligible, consider consulting with

the local liaison in your district (if you are not your district's local liaison) or in the neighboring district (if you are the local liaison and have a collegial relationship with neighboring liaisons).

the State Coordinator for Homeless Education in your state. Visit http://center.serve.org/nche/states/state_resources.php for contact information.

the National Center for Homeless Education helpline. Contact 800-308-2145 or homeless@serve.org.

CONFIRMING MCKINNEY-VENTO ELIGIBILITY

In the process of determining McKinney-Vento eligibility, school districts may encounter instances where they believe it may be necessary to take steps to confirm information provided about a child's or youth's living arrangement. In these cases, districts must ensure that all such efforts are reasonable, grounded in discretion and sensitivity, and in keeping with the mandates of the Family Educational Rights and Privacy Act (FERPA). For more information, download *Confirming Eligibility for McKinney-Vento Services* at <http://nche.ed.gov/briefs.php>.

Finally, remember that determining eligibility is only the first step in providing students in homeless situations with needed supports, as required by the McKinney-Vento Act. Once your district determines that a child or youth is McKinney-Vento eligible, the district and school should provide all rights and services required by law. Visit the NCHE website at <http://nche.ed.gov> for more information.

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APPENDIX A: A GUIDE FOR DETERMINING MCKINNEY-VENTO ELIGIBILITY

When determining eligibility for McKinney-Vento rights and services, it helps to follow an orderly process. Once needed information about a student's circumstances has been gathered, consider whether the student would be considered homeless because the student's living arrangement fits into one of the specific examples listed in the McKinney-Vento Act's definition of *homeless*. If not, would the student be considered homeless because his or her living arrangement, although not mentioned explicitly in the law, is not fixed, regular, and adequate?

DOES THE STUDENT'S LIVING ARRANGEMENT FIT INTO ONE OF THE SPECIFIC EXAMPLES LISTED IN THE MCKINNEY-VENTO ACT'S DEFINITION OF HOMELESS?

To determine whether a student's living arrangement is mentioned specifically in the definition of homeless, it is helpful to consider the definition phrase by phrase.

Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason

Sharing the housing of other persons implies that the family or youth is staying in someone else's housing. Questions to help determine if this is the case include:

Is the family or youth living in someone else's residence as an urgent measure to avoid being on the street or in another precarious situation?

Where would the family or youth live if not sharing someone else's housing?

Does the family or youth have a legal right to be in the residence?

Can the family or youth be asked to leave at any time with no legal recourse?

Due to loss of housing implies that the family or youth has no personal housing available. Did the family or youth lose their previous housing due to

an eviction or an inability to pay the rent, mortgage, and/or other bills?

destruction of or damage to the previous housing?

abuse or neglect (such as in the case of a youth who leaves or is asked to leave the home)?

an inadequate or hazardous physical environment caused by infestations, drug or alcohol abuse, domestic violence, or some other unsafe or untenable circumstance?

the absence of a parent or guardian due to abandonment, death, incarceration, or a similar reason?

Economic hardship implies that limited financial resources have forced the family or youth to leave personal housing due to an inability to pay the rent, mortgage, and/or other bills, and share someone else's housing. The way that the shared housing came about and the intention of the residents are significant. Has the family or youth been forced to share someone else's housing due to economic hardship caused by an accident or illness, the loss of employment or public benefits, or a similar reason?

Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations

The phrase *due to the lack of alternative adequate accommodations* can help determine whether the named living situations would meet the definition of homeless.

Most families or youth living in motels, hotels, or camping grounds are likely to be considered homeless, as these arrangements are rarely fixed, regular, and adequate, or intended to serve as a permanent residence; however considering whether alternative adequate accommodations are available can help identify possible exceptions.

Most trailers would be considered fixed, regular, and adequate residences; however asking questions about the condition and size of the trailer, the number of people living there, the intended length of stay, and whether the family or youth needs and has an adequate alternative accommodation available can help identify possible exceptions. For further consideration, see the discussion of substandard housing below.

Living in an emergency or transitional shelter

Children and youth living in emergency or transitional shelters are considered homeless. This includes children and youth living in youth shelters, family shelters, domestic violence shelters, and transitional living programs.

Abandoned in hospitals

This portion of the definition is largely self-explanatory.

Living in a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings

This portion of the definition is largely self-explanatory.

Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting

This portion of the definition also is largely self-explanatory, with the exception of “substandard housing”. While the law does not define this phrase, the U.S. Department of Education includes the following considerations for determining substandard housing in Question A-3 of its *Education for Homeless Children and Youths Program Non-Regulatory Guidance* (2017). In considering whether a living arrangement would be considered substandard, districts may consider whether the arrangement

lacks one of the fundamental utilities, such as water, electricity, or heat;

is infested with vermin or mold;

lacks a basic functional part, such as a working kitchen or toilet; or

may present unreasonable dangers to adults, children, or persons with disabilities.

Further, the *Guidance* states that standards for adequate housing may vary by locality, underscoring the need to consider housing within the context of broader community norms and local or state building codes.

Migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii)

Migrant children, as defined by the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act [20 U.S.C. § 6399(3)], are mentioned specifically in the definition of homeless, as migrant families often live in conditions of poverty and may not be able to afford fixed, regular, and adequate housing. Migrant children and youth, however, are not categorically McKinney-Vento eligible; rather they are eligible to the extent that their living arrangement is one described in the Act’s definition of *homeless*. For more information, download *Migrant Students Experiencing Homelessness: Rights and Services under the McKinney-Vento Act* at <http://nche.ed.gov/briefs.php>.

IF THE STUDENT'S LIVING ARRANGEMENT DOES NOT FIT INTO ONE OF THE SPECIFIC EXAMPLES LISTED IN THE MCKINNEY-VENTO ACT'S DEFINITION OF HOMELESS, IS IT ANOTHER TYPE OF HOUSING THAT IS NOT FIXED, REGULAR, AND ADEQUATE?

If the student's living arrangement does not fit any of the specific situations listed in the law, the student still might be considered McKinney-Vento eligible if he or she lives in housing that would not be considered fixed, regular, and adequate. While the statute does not define these terms, the following working definitions may be helpful.

Fixed

placed or attached in a way that does not move easily (Merriam-Webster.com)

securely placed or fastened (Merriam-Webster.com)

not subject to change or fluctuation (Merriam-Webster.com)

Inhabitant

one who, although he may not be a citizen, dwells or resides in a place permanently or has a *fixed* [emphasis added] residence therein, as distinguished from an occasional lodger or visitor (Ballentine's Law Dictionary)

Domicile

the place where a person has his true *fixed* [emphasis added] permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning, and from which he has no present intention of moving (Ballentine's Law Dictionary)

Regular

happening over and over again at the same time or in the same way; occurring every day, week, month, etc. (Merriam-Webster.com)

recurring, attending, or functioning at fixed, uniform, or normal intervals (Merriam-Webster.com)

conforming to an established rule, principle, or custom (Ballentine's Law Dictionary)

consistent; following a fixed procedure or schedule; acting or happening at uniform intervals (Ballentine's Law Dictionary)

Adequate

sufficient for a specific requirement (Merriam-Webster.com)

fully sufficient; equal to what is required; lawfully and reasonably sufficient (Ballentine's Law Dictionary)

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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.

Local Contact Information:

Enter local contact information here