

# Education for Homeless Youth

**42 USCA § 11431 et seq.**

**DATE OF ISSUE:** February 3, 2010

**REPLACES:** Education of Homeless Youth, BEC 42 U.S.C. §11431, issued February, 2005

## **PURPOSE**

In 1987, Congress passed the Stewart B. McKinney Homeless Assistance Act, (subsequently renamed the McKinney-Vento Homeless Assistance Act) to aid homeless persons. The Act defines the term "homeless children and youths" as individuals who lack a fixed, regular, and adequate nighttime residence. The Act explicitly includes within the definition of "homeless children and youths" those who are "awaiting foster care placement."

This BEC explains the categories of children who are "homeless" and entitled to the protections of the federal law. These categories include:

- (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; are abandoned in hospitals; or are awaiting foster care placement;
- (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 under federal law because the children are living in circumstances described in clauses (i) through (iii) above. The term "migratory children" means children who are (or whose parent(s) or spouse(s) are) migratory agricultural workers, including migratory dairy workers, or migratory fishermen, and who have moved from one school district to another in the preceding 36 months, in order to obtain (or accompany such parents or spouses in order to obtain) temporary or seasonal employment in agricultural or fishing work.
- (v) children and youths "awaiting foster care placement," including those who live in shelters or are placed in emergency, interim or respite foster care; kinship care; evaluation or diagnostic centers or placements for the sole purpose of evaluation. Local school officials should consult with their county children and youth agencies whenever necessary to determine if a case-by-case basis, whether a child who does not clearly fall into one of these categories is nevertheless a child "awaiting foster care placement."
- (vi) "Unaccompanied homeless youth" including any child who is "not in the physical custody of a parent or guardian." This includes youth who have run away from home, been thrown out of their home, been abandoned by parents or guardians, or separated from their parents for any other reason.

Under the *Pennsylvania Education for Homeless Children and Youth State Plan*, homeless children are defined as:

Children living with a parent in a domestic violence shelter; runaway children and children and youth who have been abandoned or forced out of their home by parents or other caretakers; and school-aged parents living in houses for school-aged parents if they have no other available living accommodations.

The McKinney-Vento Act states that it is the policy of Congress that state educational agencies shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths. 42 USCA § 11431. Specifically, 42 USCA § 11432(g)(3)(A) indicates that the local educational agency shall according to the child's best interest:

(i) continue the child's or youth's education in the school of origin for the duration of homelessness (I) in any case in which a family becomes homeless between academic years or during an academic year;

OR

(II) for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or (ii) enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

*According to the McKinney-Vento Act the term "school of origin" means the school the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled. 42 USCA § 11432(g)(3)(G).*

#### I. Homeless Students Residing in Shelters, Facilities or Institutions

Section 1306 of the Pennsylvania Public School Code (24 P.S. §13-1306) deals with the public school admission of non-resident students living in shelters, facilities or institutions. Implementing regulations for Section 1306 are found in Section 11.18 of the State Board of Education regulations. 22 Pa. Code § 11.18 Subsection (a) of Section 11.18 addresses the public school admission of nonresident children who live in an institution, shelter, or custodial care facility:

The Board of school directors of a school district in which there is located an agency, supervised or licensed shelter, group home, maternity home, residence, facility, orphanage or other institution for care or training of children or adolescents, shall admit to the district's public schools school age children who are living at or assigned to the facility or institution and who are residents of the district or another district in this Commonwealth.

#### 22 Pa. Code § 11.18

Section 11.18, as it applies to homeless children and youth, includes within the definition of "supervised or licensed shelters" those facilities which provide temporary shelter for a specified, limited period of time. Therefore, children in temporary shelters and children who "lack a fixed, regular, adequate night time residence" – homeless children – are entitled to free school privileges from either the school district in which their person or the shelter is located or the school district of origin.

## II. Homeless Students Not Residing in a Shelter, Facility or Institution

Homeless students may reside in hotels, motels, cars, tents or temporarily doubled-up with a resident family because of lack of housing. In determining residence and in the case of homeless children, equating "residence" and "domicile" (home) does not apply. They are presently unable to establish "homes" on a permanent basis. **Homeless families are not required to prove residency regarding school enrollment.** These students should be enrolled without delay, in the district where they are presently residing, or continue their education in the district of prior attendance.

Children experiencing homelessness are often highly mobile and may not stay in the same school district each night or each week. This is particularly true regarding children who stay overnight in vehicles, those who stay with different family members or friends, or those who receive services from agencies, organizations or networks which facilitate overnight accommodations in multiple school districts. These children should not be forced to change school districts every time their overnight accommodations change. Rather, these children are entitled to attend school in any school district where a parent, guardian, an adult caring for them, or where an unaccompanied child:

- spends the greatest percentage of his or her time **or**
- has a substantial connection such as where he or she is (1) regularly receiving day shelter or other services involving any of the sixteen McKinney Vento Activities (42 U.S.C. 11433(d)) for individuals who are homeless, (2) conducting daily living activities, or (3) staying overnight on a recurring basis.

This policy helps maintain continuity and school stability for homeless children in compliance with the McKinney-Vento Act.

The child/youth shall continue to be enrolled in the school in which he or she is seeking enrollment until the complaint/appeal is fully resolved by a McKinney-Vento Coordinator, State Coordinator, through mediation, or in court.

## III. School Placement

The McKinney-Vento Act states, "local educational agencies will designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local educational agency liaison for homeless children and youth." This person has the following responsibilities:

1. Identify homeless children and youth with assistance by school personnel and through coordination activities with other entities and agencies;
2. Inform parents or guardians of educational rights and related opportunities available to their children, and provide them with meaningful opportunities to participate in the education of their children;
3. Disseminate public notice of the educational rights of homeless students where children and youth receive services under the Act (such as schools, family shelters, and food pantries);
4. Mediate enrollment disputes in accordance with the Enrollment Dispute section;
5. Inform the parent/guardian of a homeless child or youth, and any unaccompanied youth, of all transportation options, including to the school of origin, and assist in accessing these transportation services;

6. Liaisons are required to ensure that unaccompanied youth are immediately enrolled in school pending resolution of disputes that might arise over school enrollment or placement;
7. Liaisons are required to assist children and youth who do not have immunizations, or immunization or medical records, to obtain necessary immunizations, or immunization or medical records;
8. Understand the Pennsylvania Department of Education guidance issued for the education of homeless students and be ready to explain the Basic Education Circular related to homeless education to school district staff;
9. Get to know the best resources in your community to assist families with referrals for things such as shelter, counseling, food, and transportation;
10. Distribute information on the subject of homeless students and arrange staff development workshops and presentations for school personnel, including office staff;
11. Provide standard forms and information about enrollment procedures and key school programs to each shelter in your district;
12. Become familiar with the various program materials that are available from the Pennsylvania Department of Education.
13. Liaisons must collaborate with the school district special education program to ensure that homeless children who are in need of special education and related services are located, identified, and evaluated. This is a requirement under the Individual with Disabilities Education Act, which mandates that highly mobile children with disabilities, including homeless children, be identified and served. Liaisons should also ensure that homeless youth who have or may have disabilities have a parent or surrogate parent to make special education or early intervention decisions. In the case of unaccompanied homeless youth, if a student is disabled or may be disabled and the youth does not have a person authorized to make special education decisions, the following people can be temporary surrogate parents: staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs, and state, local educational agency or child welfare agency staff involved in the education or care of the child. This rule applies only to unaccompanied homeless youth.
14. Liaisons should also identify preschool-aged homeless children by working closely with shelters and social service agencies in their area. In addition, the liaison should inquire, at the time they are enrolling homeless children and youth in school, whether the family has preschool-aged children.
15. Liaisons can identify unaccompanied homeless youth while respecting their privacy and dignity by providing specific outreach to areas where eligible students who are out of school may congregate.

Appropriate school placement arrangements, based on the child's best interest, should be implemented through the cooperative efforts of the respective chief school administrators. Each case presents a unique set of circumstances and, therefore, requires an individualized response. In all cases, the local educational agency shall comply, to the extent feasible, with the request made by a parent or guardian regarding school selection, shall attempt to minimize disruptions, and shall maintain the highest possible degree of continuity in programs for all homeless students. The choice regarding placement shall be made regardless of whether the child or youth lives with the homeless parents or has been temporarily placed elsewhere.

Homelessness alone is not a reason to separate students from the mainstream school environment. Homeless children and youth should have access to education and other services that they need to ensure that such children and youth have an opportunity to meet the same challenging state student performance standards to which all students are held.

Best Interest. –In determining the best interest of the child or youth under McKinney-Vento Act, the LEA shall:

- (i) to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child's or youth's parent or guardian;
- (ii) provide a written explanation, including a statement regarding the right to appeal, to the homeless child's or youth's parent or guardian, if the local educational agency sends such 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 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.

The school selected shall immediately enroll the child/youth in school, **even if the child or youth lacks records** normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation

The terms "enroll" and "enrollment" are defined to include attending classes and participating fully in school activities. The enrolling school must immediately contact the last school attended to obtain relevant academic and other records.

In order to ensure immediate enrollment, the LEA is encouraged to: train school enrollment staff about the legal requirement that homeless children and youth be immediately enrolled and provided transportation; review school regulations and policies to ensure that they comply with the McKinney-Vento requirements; inform families and youth in a language they can understand of their rights; develop clear, understandable, and accessible forms for written explanations of decisions and the right to appeal; and expeditiously follow up on any special education and language assistance needs presented by the students.

#### IV. School/Health Records

The educating district should immediately enroll and begin to provide instruction. The receiving school district may contact the district of origin for oral confirmation that the child has been immunized. Oral confirmation between professionals is a sufficient basis to verify immunization with written confirmation to follow within 30 days. The instructional program should begin as soon as possible after the enrollment process is initiated and should not be delayed until the procedure is completed.

According to federal law, "(iii) If the child or youth needs to obtain immunizations, or immunization or medical records, the enrolling school shall immediately refer the parent or guardian of the child or youth to the local educational agency liaison designated under paragraph (1)(J)(ii), shall assist in obtaining necessary immunizations, or immunization or medical records, in accordance with subparagraph (D)." 42 USCA §11432(g)(c)(iii).

#### V. Title I

Title I of the Elementary and Secondary Education Act I (Reauthorized January 2002) mandates that funds be reserved to serve homeless children. Title I states, "A local educational agency shall reserve such funds as are necessary . . .to provide services comparable to those provided to children in schools funded under this part to serve—"(A) homeless children who do not attend participating schools, including providing educationally related support services to children in

shelters and other locations where children may live. . . ." Title I also indicates that homeless children are eligible for services if they are attending schools served by an LEA.

## VI. Transportation

The State and its LEAs are required to adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin. If the homeless student continues to live in the area served by the LEA in which the school of origin is located, that LEA must provide or arrange transportation. If the homeless student moves to an area served by another LEA, though continuing his or her education at the school of origin, the LEA of origin and the LEA in which the student is living must agree upon a method to apportion responsibility and costs for transportation to the school of origin. If the LEAs cannot agree upon such a method, the responsibility and costs must be shared equally. Distance, time of year, options available, the effects of a transfer, etc., should all be addressed.

## VII. Fiscal Responsibilities

Fiscal responsibilities apply to all homeless students, whether in regular or special education classes.

The educating district should apply the following criteria when determining fiscal responsibility:

A. The procedures outlined below will be followed in cases when the education of the child is provided by the district where the homeless student is temporarily living (doubled up, motel, shelter). The procedures shall also apply in cases when the district of prior attendance, where that is not the district the child attended when permanently housed, will educate the child.

1. Homeless individuals not in facilities (shelters) or institutions, as well as homeless individuals living in hotels, motels, cars, tents, doubled-up with a resident family, shall be reported and reimbursed as resident students;
2. For homeless individuals in temporary shelters, the educating school district will send a PDE-4605 Determination of District of Residence for Student in Facilities or Institutions in Accordance with Section 1306 of the Pennsylvania Public School Code to the presumed district of residence.
3. If PDE-4605 is acknowledged by the resident district, the educating district will enter the child on its rolls as a nonresident student from the acknowledging resident school district. The educating district will bill the resident district for tuition and will report membership data according to PDE child accounting procedures; and
4. If PDE-4605 is disclaimed and a district of residence cannot be determined, the child will be considered a ward of the state. The educating district will enter the child on its rolls as a nonresident ward of the state and will report membership according to PDE child accounting procedures. The Department of Education will pay tuition to the educating district based on membership reported to Child Accounting.

B. In cases when the education of the child is provided by the district of origin, where that is the district the child attended when permanently housed, that district will continue to educate a homeless student for the period of temporary displacement and should maintain the homeless student on its roll as a resident student.

C. In cases when the student becomes permanently housed during the academic year and continues in the school of origin, which is not in the district of new residence, the educating district will continue to educate the formerly homeless student, if requested by the student's parent or guardian, until the end of the academic year and should maintain the homeless student

on its roll as a non-resident student. The educating district should advise the new district of residence of its financial responsibility for this student and send a tuition bill.

#### VIII. Categorical Eligibility for Migrant, Homeless, and Runaway Children Under the National School Lunch and Breakfast Programs

Effective July 1, 2004, Section 107 of the Child Nutrition and WIS Reauthorization Act of 2004 amended Section 9(b) of the Richard B. Russell National School Lunch Act to make runaway, homeless and migrant children categorically eligible for free meal benefits under the National School Lunch and School Breakfast Programs. Following are the guidelines set out by the Pennsylvania Department of Education for implementation of this amendment.

#### Documentation and Procedures

1. Homeless, runaway or migratory children are automatically certified as eligible for free meal benefits and can begin receiving free meal benefits upon proper documentation for meals. Please note that documentation as runaway, homeless, or migratory can only be provided by Migrant Education or Homeless staff.
2. Migrant Education or Homeless staff are responsible for providing proper documentation of a child's status to the Food Service Directors in each school district.

#### IX. Dispute Resolution Process

Pursuant to the McKinney-Vento Act, every state must develop procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youth. 42 USCA §11432(g)(1)(C). The state must ensure that LEAs comply with requirements set forth in the McKinney-Vento Act, including ensuring immediate enrollment, providing written notice to families concerning school selection and enrollment decisions, and providing enrollment and pendency in the school of choice while a dispute is being resolved. 42 USCA §11432(g)(2)(A).

The Pennsylvania Department of Education ("PDE") has developed the following procedures to govern the resolution of disputes regarding enrollment, school selection, homeless status, or complaints of non-compliance with legal requirements pertaining to the education for homeless children and youth:

#### **Level 1 – A dispute may be raised with a Local Education Agency ("LEA")**

If a dispute arises over school selection or enrollment, the child or youth involved must immediately be admitted to the school in which he/she is seeking enrollment, pending resolution of the dispute. 42 USCA §11432(g)(3)(E)(i). PDE recommends that the parent/guardian or unaccompanied youth who initiates the dispute should contact the LEA Liaison for individuals experiencing homelessness (the "LEA Liaison") as soon as possible after receiving notice of the dispute. If the person initiating the dispute does not contact the LEA Liaison directly, the LEA shall be responsible for contacting the LEA Liaison regarding the dispute as soon as possible and referring the family or youth involved to the Liaison.

The LEA Liaison shall ensure that the child/youth is immediately enrolled, explain the dispute resolution process to families, and help them to use it. 42 USCA §11432(g)(3)(E)(iii). The LEA shall issue a written disposition of the dispute within 20 business days after the date on which the LEA Liaison is notified of the dispute. The disposition shall be provided to the parent, guardian or unaccompanied youth, shall explain the basis for the decision, and advise the parent, guardian or youth of the right to appeal. 42 USCA §11432(g)(3)(E)(i).

**NOTE:** The LEA should use and maintain copies of PDE's "Notice of Procedural Safeguards" form (see attached) which ensures that all LEAs (a) inform families of the basis of their decision regarding enrollment or school selection; (b) notifies families of their right to remain in their

school of choice pending resolution of the dispute and (c) explains the procedures for challenging the decision of the LEA.

## **Level 2 – A complaint may be filed with a McKinney-Vento Coordinator**

If the parent or unaccompanied youth is dissatisfied with the LEA's disposition of a dispute or would like to raise any issue of McKinney-Vento Act non-compliance, he or she may file a complaint/appeal with a McKinney-Vento Site or Regional Coordinator or with the State Coordinator. (See attached list which contains contact information for all of the McKinney-Vento coordinators in Pennsylvania). In lieu of filing an appeal with a McKinney-Vento Coordinator, a parent or unaccompanied youth may elect to appeal the LEA decision directly to a court of competent jurisdiction. Participation in the appeal procedure is not required prior to taking legal action.

A Regional or Site Coordinator with whom a complaint/appeal is filed must notify the State Coordinator immediately. Upon being notified, the State Coordinator will review the complaint/appeal and assign it to a Site or Regional coordinator for disposition. The coordinator to whom the appeal is assigned may contact, interview and accept documentation from any families/unaccompanied youth or LEAs involved, and shall issue a written disposition within 20 business days after the complaint/appeal has been assigned. The disposition shall be provided to the LEA and the family or child/youth involved. The child/youth shall continue to be enrolled in the school in which he or she is seeking enrollment until the complaint/appeal is resolved or until a disposition from a McKinney-Vento Coordinator is received.

The State Coordinator may assist in the mediation of disputes directly and may also invite those involved to have the dispute mediated **at any time in the process** through the Dispute Resolution Program operated by the Commonwealth Office of General Counsel ("OGC"). The OGC Dispute Resolution Program is a voluntary informal process through which a trained mediator assists in reaching a mutually acceptable resolution. (For more information about OGC's Dispute Resolution Program go to: [http://www.ogc.state.pa.us/portal/server.pt/community/dispute\\_resolution/4415](http://www.ogc.state.pa.us/portal/server.pt/community/dispute_resolution/4415)) Participating in mediation is not a waiver of the right to file a lawsuit nor is participation in mediation required prior to taking legal action.

**NOTE:** The parent, guardian or unaccompanied youth may file a complaint with the McKinney-Vento Site, Regional or State Coordinator on the attached Complaint form. However, **use of the attached form is not mandatory**. Any dispute raised by a homeless family or youth concerning school enrollment or any other right under the McKinney-Vento Act whether received via telephone, letter or any mode of communication shall be treated as a complaint.

### **REFERENCES:**

#### **Purdon's Statutes, State Board of Education Regulation**

24 P.S. § 13-1301  
24 P.S. § 13-1302  
24 P.S. § 13-1306

22 Pa. Code § 11.18

#### **Federal Statutes**

No Child Left Behind Act of 2001  
McKinney-Vento Homeless Assistance Act

## **Other**

Pennsylvania Education for Homeless Children and Youth State Plan  
U.S. Dept. of Education- Guidelines – Homeless Children and Youth Programs

### **CONTACT BUREAU/OFFICE:**

Education for Homeless Children and Youth Program  
Bureau of Community and Student Services  
Pennsylvania Department of Education  
333 Market Street, 5th Floor  
Harrisburg, PA 17126-0333  
Voice: 717-783-6468

### **Child Accounting questions should be referred to:**

Bureau of Budget and Fiscal Management  
Division of Subsidy Data and Administration  
Pennsylvania Department of Education  
333 Market Street  
Harrisburg, PA 17126-0333  
Voice: 717-787-5423

### **Transportation questions should be referred to:**

Bureau of Budget and Fiscal Management  
Division of Subsidy Data and Administration  
Pennsylvania Department of Education  
333 Market Street  
Harrisburg, PA 17126-0333  
Voice: 717-787-3195

### **Attachments:**

Attachments are PDF versions and need free [Adobe Reader](#)

- [Procedural Safeguards Notice of Denial of Enrollment](#)
- [Enrollment Complaint to PA Department of Education](#)
- [Pennsylvania McKinney-Vento Coordinators \(State, Regional & Site\)](#)
- [Education for Homeless Youth BEC \(printable version\)](#)