

# Legal Update: U.S. Department of Education Guidance Rights of Homeless Children and Youths under McKinney-Vento as Amended by the Every Student Succeeds Act (ESSA)

PUBLISHED ON

**September 2, 2016**

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On July 27, the U.S. Department of Education (ED) issued a "Dear Colleague Letter" and accompanying Non-Regulatory Guidance document addressing the educational rights of homeless children and youths under Title VII-B of the McKinney-Vento Homeless Assistance Act (McKinney-Vento), as amended by the Every Student Succeeds Act (ESSA). The guidance also addresses certain provisions of Title I, Part A of the Elementary and Secondary Act of 1965 (ESEA), as amended by ESSA, that are specifically relevant to homeless children and youths. The revised guidance replaces prior guidance issued by ED in July 2004.

Under McKinney-Vento, LEAs must ensure homeless children and youths have equal access to the same free, appropriate public education - including a public preschool education - as provided to other children and youths. U.S. Congress passed McKinney-Vento in 1987 and ESSA re-authorized it in December 2015. Homeless children and youths protected under McKinney-Vento include those that lack a fixed, regular and adequate nighttime residence.

That includes:

- Children and youths 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 lack of alternative adequate accommodations; are living in emergency or transitional shelters; or abandoned in hospitals;
- Children and youths who have a primary nighttime residence that is a public or private place not designated for ordinarily used as a regular sleeping accommodation for human beings;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children who qualify as homeless because the children are living in circumstances as described above.

McKinney-Vento Homeless Assistance Act, Title VII, Subtitle B, 725(2).

McKinney-Vento no longer defines children and youths who are awaiting foster care placement as "homeless children and youths." A June 23 joint guidance from ED and the Department of Health and Human Services (HHS) addressed the changes, with text of the alterations found at [U.S. Departments of Education and Health and Human Services Release Joint Guidance on Foster Youth](#).

The ESSA amendments to McKinney-Vento create a number of new or changed requirements, many of which become effective Oct. 1. Some of the key changes:

- Increased focus on the identification of homeless children and youths;
- Homeless students who meet relevant eligibility criteria must not face barriers to accessing academic and extracurricular activities;
- Training and professional development requirements to ensure that personnel are provided with the information necessary to carry out their duties;
- Clarification that preschool-aged homeless children and their families must be provided with access to services, if eligible, under Local education agency (LEA)-administered preschool and early intervention programs;
- Increased emphasis on collaboration and coordination efforts with other services providers, including public and private child welfare and social service agencies, law enforcement, juvenile and family courts, agencies providing mental health services, domestic violence agencies, child care providers, runaway and homeless youth centers, providers of services and programs funded by under the Runaway and Homeless Youth Act and providers of emergency, transitional, and permanent housing, including public housing agencies shelter operators and operators of transitional housing facilities;
- There is a presumption that keeping homeless children enrolled in the school of origin is in the child's best interest, except when contrary to the request of the parent/guardian or the youth (in the case of an unaccompanied youth). If the LEA determines that it is not in the best interest of the child to attend the school of origin or the school requested, the LEA must provide a written explanation for the determination;
- "School of origin" has been expanded to include not only the school the homeless child or youth was last enrolled in, but also now includes preschools and "receiving schools," which are defined as the school a child would attend after completing the final grade level at the school of origin;
- Expanded dispute resolution procedures to address eligibility as well as school selection and enrollment;
- Requirement that an LEA selected based on the homeless student's best interest immediately enroll the student. During the period of any dispute the student must be enrolled in the LEA where placement is sought and be provided with transportation to or from the school of origin upon request and during an appeals; and
- Requirement that any information pertaining to a homeless child's living situation be afforded protection as a non-directory student record.

The full text of the guidance is available at Education for [Homeless Children and Youths Program Non-Regulatory Guidance](#).

If you have any additional questions regarding this guidance, or if we can provide any assistance as you review your existing policies and procedures, please do not hesitate to contact us.