

# GUIDANCE

THE MCKINNEY-VENTO ACT:  
EDUCATION OF CHILDREN AND YOUTH EXPERIENCING HOMELESSNESS



New York State Education Department

ESSA Funded Programs

August 2019

McKinney-Vento Homeless Assistance Act, Subtitle VII-B Reauthorized December 10, 2015 by  
Title IX, Part A of the Every Student Succeeds Act (Effective October 1, 2016)  
Education Law §3209, (pursuant to Part C of Ch. 56 of the Laws of 2017) (Effective April 20, 2017)  
Commissioner's Regulation 8 NYCRR §100.2(x) (Effective July 1, 2017)

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## INTRODUCTION

During the 2016-2017 school year, New York State schools enrolled more than 148,000 students that were identified as McKinney-Vento eligible (see chart on the next page). Being temporarily housed or homeless does not typically bring to mind images of children and youth, but the reality is that many people experiencing homelessness are under the age of 18.

As defined in the federal legislation of McKinney-Vento, the term “homeless children and youth” refers to minors who lack a fixed, regular, **and** adequate nighttime residence. Included are those who are:

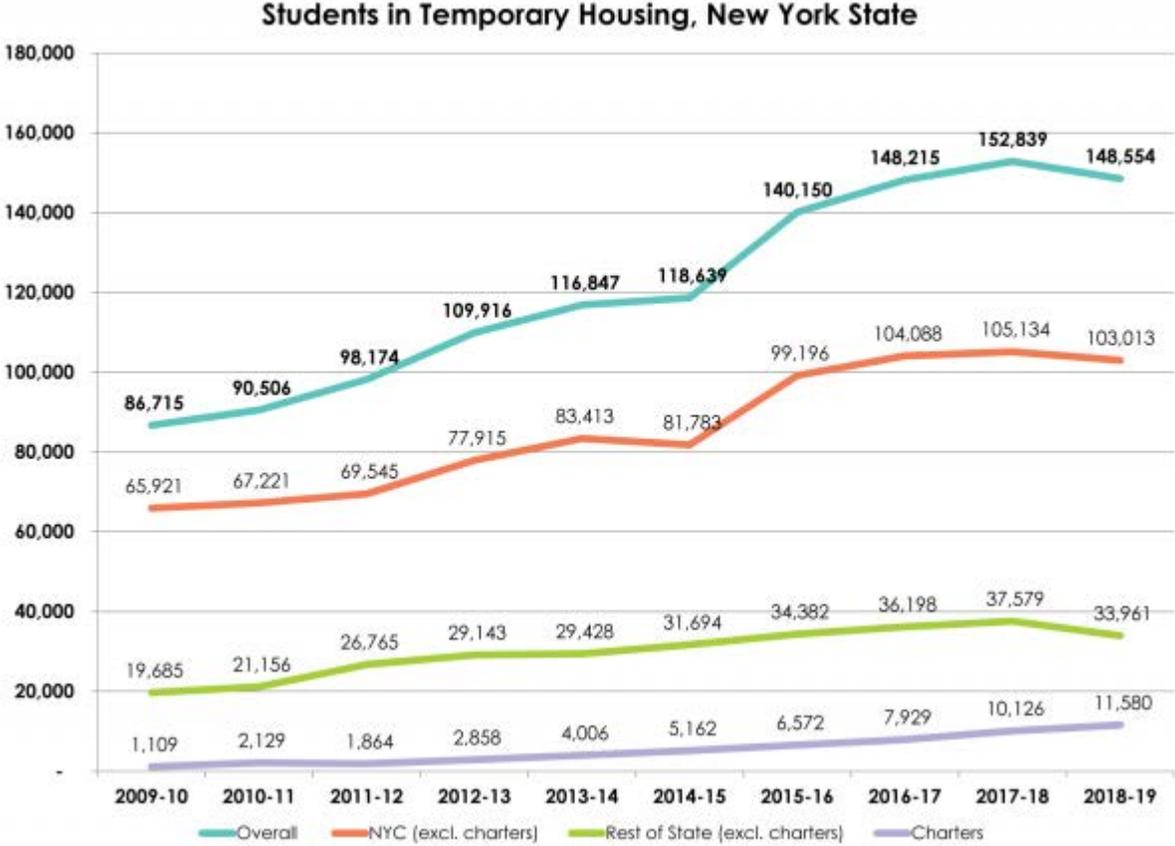
- sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- living in motels, hotels, trailer parks, shelters;
- living in a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- migratory children who qualify as homeless because they are children who are living in similar circumstances listed above.

It was not until 1986 that Congress began considering legislation to address the problem of homelessness. The McKinney-Vento Homeless Assistance Act was passed in 1987. This act is the only major federal legislation dealing with homelessness. The program ensures that supports are available at school for students that are temporarily housed.

The McKinney-Vento Act has been amended over the years to expand its scope and strengthen its provisions. The most recent amendment was made in 2015 in connection with passage of the Every Student Succeeds Act (ESSA). The 2015 amendment mandates that districts remove barriers to the enrollment, attendance, and opportunity to succeed in school for homeless children and youth. Districts are required to designate a homeless liaison; pro-actively identify homeless children and youth; and provide transportation to stabilize the educational experiences of homeless students. Students can enroll without having to provide documentation of their current address, school records, or immunization records. Besides transportation, students are to have access to food, medical services, and tutoring. The homeless liaison’s role is to help homeless students and families by providing information and access to resources.

As a result of the 2015 amendment to the McKinney-Vento Act, on April 20, 2017, Governor Cuomo signed into law amendments to Education Law §3209 that align State law with the new federal requirements. These amendments went into effect immediately. These changes also resulted in the Commissioner’s regulation §100.2(x) impacting how New York State school districts and charter schools provide services to students experiencing homelessness. At the May 2017 Board of Regents meeting, the Board of Regents took emergency action to amend Commissioner’s regulation §100.2(x) and those changes went into effect on July 1, 2017.

This guidance is intended to provide basic information on the educational rights of students in temporary housing in New York State including information on New York State Education Department (NYSED or “the Department”) guidance, forms, and resources.



For additional information regarding Data and Statistics on Homelessness please see: <https://nysteachs.org/topics/data-stats-homelessness/>

## RIGHTS AND PROGRAMS UNDER THE MCKINNEY-VENTO ACT

Children and Youth who are experiencing homelessness have the following rights guaranteed under the McKinney-Vento Act:

- The right to go to school, no matter where they live or how long they have lived there.
- The right to choose between the local school close to where they are currently living and their school of origin, which is the school they attended before losing their housing or the school where they were last enrolled.
- The right to be immediately enrolled and to participate in school without providing any documents, such as proof of residency, immunizations, school records, or other documents normally needed for enrollment.
- The right to transportation to and from the school where they were last permanently housed or last attended.
- The right to receive free meals at school, without filling out an application.
- The right to access the same special programs and services, if needed, as those offered to other students who are eligible to receive them.

### McKinney-Vento Funding for States and Local Education Agencies (LEAs)

The U.S. Department of Education (USDE) allocates McKinney-Vento funding annually to states based on the state's proportion of the Title I, Part A federal allocation. States must subgrant funds competitively to LEAs within the state to be used for program implementation at the district level.

States must distribute no less than 75% of its annual McKinney-Vento allocation to LEAs in subgrants. Subgrants are awarded competitively, based on need and the quality of the subgrant application.

The New York State Education Department (NYSED or "the Department") competitively awards LEAs three-year McKinney-Vento grants to LEAs to facilitate the enrollment, attendance, and academic success of homeless children and youth. Grant awards are needs-based and take into account the number of children and youth who are homeless and enrolled in preschool, elementary school, and secondary schools within the LEA or Consortium of LEAs.

For additional information regarding NYS's McKinney-Vento Grant Program, please visit <https://nysteachs.org/grantees/>

For a list of acceptable usages of subgrant funds as outlined in the McKinney-Vento Act, please visit <https://nysteachs.org/topics/mckinney-vento-grant-program/>

For a fact sheet on the McKinney-Vento Act from the U.S. Department of Education, please visit <https://www2.ed.gov/policy/elsec/leg/essa/160315ehcyfactsheet072716.pdf>

## RESOURCES

### Relevant Laws, Regulations and Related Field Memos

#### Federal law:

Important changes related to McKinney-Vento were included in the Every Student Succeeds Act of 2015 (ESSA) Changes went into effect October 1, 2016 can be found at:

[https://nysteachs.org/wp-content/uploads/2018/10/INF\\_LP\\_MVAct.pdf](https://nysteachs.org/wp-content/uploads/2018/10/INF_LP_MVAct.pdf)

SED's Field Memo of Implementation of Changes to McKinney-Vento Homeless Act as a Result of Passage of Every Student Succeeds Act (September 29, 2016): [https://nysteachs.org/wp-content/uploads/2018/09/INF\\_SED\\_FieldMemo\\_ImplementChangesESSA\\_112916.pdf](https://nysteachs.org/wp-content/uploads/2018/09/INF_SED_FieldMemo_ImplementChangesESSA_112916.pdf)

#### State law and Commissioner's Regulations:

Education Law 3209 Education of homeless children.as amended April 20, 2017:

[https://nysteachs.org/wp-content/uploads/2018/10/INF\\_LP\\_EdLaw3209.pdf](https://nysteachs.org/wp-content/uploads/2018/10/INF_LP_EdLaw3209.pdf)

Commissioner's Regulation §100.2(x), Education of Children and Youth Experiencing Homelessness

<http://www.p12.nysed.gov/part100/pages/1002.html#x>

Changes to Education Law §3209 (effective April 20, 2017) and Commissioner's Regulation §100.2(x), Education of Children and Youth Experiencing Homelessness (effective July 1, 2017). These changes

can be viewed by visiting [https://nysteachs.org/wp-content/uploads/2018/09/INF\\_SED\\_FieldMemo\\_ImplementChangesEdu3209\\_110617.pdf](https://nysteachs.org/wp-content/uploads/2018/09/INF_SED_FieldMemo_ImplementChangesEdu3209_110617.pdf)

### Resources for More Information

#### National Resources:

#### **United States Department of Education Non-Regulatory Guidance for the Education for Homeless Children and Youths**

On March 2, 2017, and updated August 2018, the U.S. Department of Education issued new Non-Regulatory Guidance for the federal Education for Homeless Children and Youth (EHCY) Program. This Guidance replaces the July 2016 Guidance, and it includes new Q&A about the amendments to the McKinney-Vento Act made by the Every Student Succeeds Act (ESSA). The Guidance also describes promising practices for implementing homeless education requirements at the State and local levels.

This guidance can be found at: [https://nysteachs.org/wp-content/uploads/2018/08/INF\\_USDOE\\_MVGuidance\\_090518.pdf](https://nysteachs.org/wp-content/uploads/2018/08/INF_USDOE_MVGuidance_090518.pdf)

**National Center for Homeless Education (NCHE):** NCHE operates the U.S. Department of Education's technical assistance and information center for the federal Education for Homeless Children and Youth (EHCY) Program. More information can be found at: <https://nche.ed.gov/>.

**SchoolHouse Connections:** SchoolHouse Connection is a national organization working to overcome homelessness through education. They provide strategic advocacy and technical assistance in partnership with early childhood programs, schools, institutions of higher education, service providers, families, and youth. More information can be found at: <https://www.schoolhouseconnection.org/>.

**National Association for the Education of Homeless Children and Youth (NAEHCY):** The National Association for the Education of Homeless Children and Youth (NAEHCY) is a national membership association dedicated to educational equity and excellence for children and youth experiencing homelessness. More information can be found at: <http://naehcy.org/>.

#### NYSED Resources:

Technical assistance and support to local education agencies (LEAs) is provided by **New York's Homeless Education Program Associate**, Melanie Faby. Ms. Faby can be reached via email at [melanie.faby@nysed.gov](mailto:melanie.faby@nysed.gov) or by phone at 518-473-0295.

**New York State Technical and Education Assistance Center for Homeless Education (NYS-TEACHS)** operates the NYS technical assistance and information center for the NYSED's Homeless Program. NYS-TEACHS provides information, referrals, and trainings to schools, school districts, social service providers, parents, and others about the educational rights of children and youth experiencing homelessness. For more information on NYS-TEACHS, visit their website at [www.nysteachs.org](http://www.nysteachs.org) or call the Center toll free at 1-800-388-2014.

To increase awareness about the educational rights of children and youth experiencing homelessness, NYS-TEACHS provides free posters, brochures, training materials, and publications.

Outreach: In addition to English the free posters are available in 10 languages and brochures are available in Spanish at; <https://nysteachs.org/posters-brochures/>

Training: Access turn-key PowerPoint presentations, past training and workshop materials at: <https://nysteachs.org/trainings/>

Webinars: Watch a recorded webinar or download PowerPoint presentations and other documents from recent webinars offered by NYS-TEACHS at: <https://nysteachs.org/trainings/training-archive/>

Publications: Access useful, basic information on the educational rights of students in temporary housing situations in the form of NYS-TEACHS short guides for New York State and New York City, found at: <https://nysteachs.org/topics/nysteachs-publications/>

Top 10 Resources for Liaisons: Great resource for new or established Liaisons, can be found at: <https://nysteachs.org/lea-liaisons/top-10-resources-for-liaisons/>

#### Local Education Agency (LEAs) Resources:

The McKinney-Vento Act requires every Local Education Agency (LEA) to appoint an LEA liaison. The liaison is responsible for identifying temporarily housed youth who may be eligible for enrollment in the school district and to ensure they receive the education and services they are guaranteed by law. Please see: <https://nysteachs.org/lea-liaisons/> for more information.

## QUESTIONS AND ANSWERS

### I. *Definitions/Identification*

#### A. Do Local Education Agencies (LEAs) have the responsibility to identify children and youth experiencing homelessness?

Yes. Under the federal McKinney-Vento Homeless Assistance Act, as amended by the Every Student Succeeds Act of 2015 (ESSA) and Education Law Section §3209, as amended in 2017, all districts are obligated to affirmatively identify all students in temporary housing.

To determine whether there are students in temporary housing within the LEAs must use a housing questionnaire to determine the nighttime residence of all newly enrolled students and all students whose address changes during the school year. Not all students in temporary housing can be identified through social service agencies or shelters, as children may be sharing the housing of other persons, such as family or friends, due to loss of housing, economic hardship, or other similar reason. Housing Questionnaire link: [http://www.nysteachs.org/media/INF\\_SED\\_HousingQuest.docx](http://www.nysteachs.org/media/INF_SED_HousingQuest.docx)

LEAs must designate an appropriate staff person to serve as the McKinney-Vento liaison to help students in temporary housing and their families. This person is responsible for ensuring immediate enrollment, arranging transportation, and providing support for students experiencing homelessness in the school district. For more information regarding Liaison responsibilities: <https://nysteachs.org/lea-liaisons/responsibilities/>

#### B. What does it mean to be “homeless”?

Children and youth are considered "homeless" under the McKinney-Vento Act when they are:

- Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- Living in emergency or transitional shelters; or are abandoned in hospitals;
- Living in 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 (within the meaning of section 11302(a)(2)(C));
- Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- Migratory children who qualify as homeless because the children are living in circumstances described above.

#### C. Under what circumstances should a student be designated homeless?

A student should be designated homeless if she lacks a fixed, adequate **and** regular nighttime residence. If any one of the three criteria are missing, the student is protected under McKinney-Vento.

**D. What do the terms "fixed, regular and adequate" mean in relation to residence?**

A "fixed residence" is one that is stationary, permanent, and not subject to change. For example: a tent is not "fixed," but a house or an apartment are usually fixed to the ground.

A "regular residence" is a place that a student can return to consistently and count on, night after night. Example: If the family has a lease or they own their own home, the housing is usually "regular," but if the students are staying in someone else's home with the host's permission, the housing may not be regular.

An "adequate residence" is one that is sufficient for meeting both the physical and psychological needs that are typically met in home environments. For example: A home without heat, running water, or with an infestation may not be "adequate."

**E. What are the school rights and protections of students in temporary housing?**

Students in temporary housing have the right to:

- Go to school, no matter where they live or how long they've lived there.
- Choose between the local school where they are living and the school of origin. The definition of a school of origin includes preschools, charter schools, and feeder schools.
- Please note: A student may have more than one school of origin. A school of origin could be the school the student attended, or was entitled or eligible to attend before the student lost housing; or the school where the student was last enrolled.
- Be immediately enrolled in school without proof of residency, immunizations, school records, or other documents normally needed for enrollment, even if they have missed the application or enrollment deadlines during any period of homelessness.
- Receive free transportation to school and to school-related programs for the duration of homelessness and for the remainder of the school year if they move into permanent housing and continue to attend the same school
- Receive credit for full or partial coursework satisfactorily completed at a prior school.
- Receive the same special programs and services, if needed, provided to all other students served in these programs. Enroll and attend class in the school of their choice, even while the family or youth and school district resolve disagreements about enrollment.

**II. School Selection**

**A. What does "school of origin" mean?**

Under the McKinney-Vento Act, students in temporary housing have the right to attend their school of origin or their local school. The term "school of origin" means the school where the student was enrolled when last permanently housed or the school they most recently attended. The definition of a "school of origin" also includes the designated receiving school at

the next grade level for all feeder schools. The term "local school" means any school where permanently housed students who are living in the same area can attend.

#### **B. Who decides where a temporarily housed student attends school?**

In New York State, the "designator" decides which school district a temporarily housed child or youth will attend. A "designator" is:

- the parent or person in parental relation (e.g., guardian) of a student in temporary housing; or
- the student in temporary housing, with help from the McKinney-Vento liaison if no parent or guardian is available (e.g., for unaccompanied youth); or
- the student in temporary housing, with help from the director of a residential program for runaway and homeless youth, where a temporarily housed student is living in such program.

#### **C. How long can a student in temporary housing attend the designated school?**

A student can attend the school of origin for the entire time the student is temporarily housed and throughout the remainder of the school year in which the student moves into permanent housing. The student can possibly attend one additional year after becoming permanently housed, if it is the student's terminal year in that school (i.e., 8th grade or 12th grade).

### **III. *Transportation***

#### **A. Under what circumstances must a LEA provide transportation?**

Under the McKinney-Vento Act and N.Y. Education Law § 3209, students in temporary housing are entitled to transportation to help students stay in school. Transportation protections were expanded under the Every Student Succeeds Act of 2015 and NY State law. They include:

- Transportation to the school the student attended when they were last permanently housed up to 50 miles each way, or to the most recent school they attended, even if the school is in a different school district from where the student is temporarily living.
- Continued transportation to the same school for the rest of the academic year when the student moves into permanent housing, even if the new housing is located outside of the school district.
- In New York State, transportation is also provided for an extra year after the student moves into permanent housing if that year is the student's final year in the school building (e.g., 12th grade).
- If a student in temporary housing attends school in the same district where they are temporarily housed, then they can get the same transportation as their permanently housed peers. If permanently housed students don't have transportation, and the lack of transportation creates a barrier for a student in temporary housing, then the district has to supply transportation to overcome the barrier.

- Transportation to extracurricular activities if the lack of transportation would be a barrier to the student participating.

**B. Who is responsible for setting up transportation for students in temporary housing?**

The McKinney-Vento liaison or Homeless liaison for the district where the student is enrolled in school must make sure transportation is arranged for students in temporary housing. In some cases, the liaison may need to coordinate with the local department of social services, Runaway Homeless Youth (RHY) shelters, or neighboring school districts.

**C. Are transportation services available to students who enroll in the local school where they are temporarily residing?**

Yes. Students who transfer to their local school are entitled to comparable transportation services offered to permanently housed students living in the district. If the lack of transportation creates a barrier to the student's ability to participate in school, the school district must eliminate the barrier. All school districts must review and revise transportation policies that may act as barriers to a student's enrollment and attendance in school.

**D. How long does a school district need to provide transportation for a student in temporary housing?**

A school district must provide transportation for the entire time the youth is in temporary housing and through the remainder of the year when a student finds permanent housing. In New York State, districts must also provide transportation for an additional year if that year is the student's terminal year in the school building. For example, if a student in temporary housing finds permanent housing in the middle of their junior year, the student can receive transportation for the remainder of their junior year as well as their senior year.

**E. What happens if the school of origin is very far away from where the student is temporarily living?**

Transportation must be provided for students who are temporarily housed within 50 miles one way of their school building. If the school is more than 50 miles away, the school district is not required to provide transportation for the student unless the Commissioner of the State Education Department determines it is in the best interest of the student.

**F. Can school districts provide transportation to parents to accompany their children to school?**

Yes. For example, districts have provided parents with gas cards or reimbursed parents using the federal mileage reimbursement rate when parents in temporary housing use their own cars to bring their children to and from school. Districts have also provided public transportation passes to parents to accompany their children on public transit when busing was unavailable.

**G. When is the Department of Social Services (DSS) responsible for transportation for students in temporary housing?**

The local DSS is responsible for the transportation of students to and from school any time the DSS has placed a student in temporary housing at an address which is outside of the school district of attendance and the student is eligible for Emergency Assistance for Families (EAF). However, if a DSS requests that the school district supplies the transportation, then the school district is responsible for providing transportation to and from school. If the school district supplies the transportation, the school district is allowed to bill the DSS for their transportation costs, and the DSS is required to reimburse the district for the costs.

**For more information regarding Transportation please see this chart:** [https://nysteachs.org/wp-content/uploads/2018/11/INF TEACHS TransportationGuide 111418.pdf](https://nysteachs.org/wp-content/uploads/2018/11/INF_TEACHS_TransportationGuide_111418.pdf)

This chart provides information on the transportation rights of students in temporary housing attending school in New York State. It also includes information on available services, the responsible agency, and funding sources when serving students in many different housing situations, including for students attending charter schools.

**IV. Immediate Enrollment and Attendance**

**A. What does immediate enrollment mean?**

The McKinney-Vento Act requires school districts to immediately enroll students in temporary housing, even if the student is unable to provide documents typically required for enrollment, such as school records, medical records including immunization records, proof of residency, guardianship papers, birth certificate, or other documents normally needed. School districts are also required to enroll students in temporary housing even if they missed application or enrollment deadlines during a period of homelessness.

**B. Who is responsible for getting the documents for students in temporary housing if they wish to enroll in school?**

The enrolling school must request the student's records from the student's former school. Within five days of receiving a records request, the previous district in which the student was last enrolled must send all records to the new school. Students have the right to attend classes while the new school waits for the student's records.

**C. Can a previous public-school district refuse to send records because a student in temporary housing owes fines or fees to the school?**

No. Under the McKinney-Vento Act school districts must remove barriers to students in temporary housing who want to enroll in school, including barriers due to outstanding fees, fines, or absences.

**D. Can a previous school still transfer records to the new school, even without a parent's signature?**

Yes. The Family Educational Rights and Privacy Act (FERPA) allows schools to send records to a new school district to which a student is transferring without formal permission from the parent. FERPA protects the privacy of educational records and generally requires schools to have written permission from a parent before releasing any other information from a child's records to any other party. Please note that under recent changes to the McKinney-Vento Act, schools must treat information about a homeless child's or youth's living situation as a student education record, subject to all the protections of the Family Educational Rights and Privacy Act.

**E. Are students in temporary housing allowed to enroll in after-school programs?**

Yes. Districts must make sure that students in temporary housing have the same access to programs and services that are available to permanently housed students. This includes before- and after-school programs, as well as educational programs for children with disabilities, educational programs for English learners, programs in career and technical education, programs for gifted and talented students, and school nutrition programs.

**F. Can a district refuse to enroll undocumented immigrants, i.e. immigrants who are in this country without legal permission and who are temporarily housed?**

Undocumented students have the same right to attend public schools as U.S. citizens. If an undocumented student is designated as homeless, the student has the same rights and protections under the McKinney-Vento Act as would a U.S. citizen. *Plyler v. Doe*, 457 U.S. 202 (1982).

**G. Can a student be held accountable for absences caused by homelessness?**

No. If a student missed school because of homelessness, those absences should not count against the student. For example, if a family is evicted from their home and is waiting for transportation assistance after moving from one household to another, or if students are required to be present at the time a family applies for shelter, the student may miss school. These absences should be treated as excused absences.

**H. Must LEAs publicize information about the McKinney-Vento Act?**

Yes. McKinney-Vento liaisons must make sure that families are aware of the educational and related opportunities available to their children (including transportation) and must post public notice of the education rights of children and youth in homeless situations.

Posters, such as the ones provided by NYS-TEACHS (<https://nysteachs.org/posters-brochures/>) must be disseminated in a manner and form understandable to the parent, guardian, or unaccompanied youth, in places frequented by them.

## **V. *Issues Facing Youth: Unaccompanied Youth***

### **A. Who are Unaccompanied Youth?**

Unaccompanied youth are students who are not in the physical custody of a parent or guardian. This includes youth who have run away from home, have been kicked out of their homes, or have been abandoned by parents. These students are protected under the McKinney-Vento Act when the student also does not have a fixed, adequate and regular nighttime residence. Without a parent or guardian to help, these students may not understand their school rights or know how to get help. District McKinney-Vento liaisons must make an extra effort to help connect unaccompanied youth with the support and services they may need.

### **B. Is there an age limit to be identified as an Unaccompanied Youth?**

No. There is no age limit associated with being identified as an unaccompanied youth. Unaccompanied youth are usually in their teens. In New York State, all students have the right to a free public education until they graduate, or until the school year when they turn twenty-one, whichever comes first.

### **C. Do unaccompanied youth experiencing homelessness need their parents in order to enroll in school?**

No. Unaccompanied youth can enroll in school by themselves, or with help from another adult. If another adult helps the youth, the school can't require guardianship papers. Missing papers can't delay or prevent enrollment of an unaccompanied youth.

### **D. Can all unaccompanied youth automatically get services under McKinney-Vento?**

Unaccompanied youth are only eligible for protection under the McKinney-Vento Act if their housing is not fixed, regular, and adequate. For instance, a student who has lived in permanent housing with a grandparent since childhood, but apart from their legal parent or guardian, would not be protected under the McKinney-Vento Act. This NCHC resource is useful to determine McKinney-Vento Eligibility of Unaccompanied Youth: [https://nysteachs.org/wp-content/uploads/2018/09/INF\\_NCHE\\_UnaccompaniedEligibilityFlowChart\\_112513.pdf](https://nysteachs.org/wp-content/uploads/2018/09/INF_NCHE_UnaccompaniedEligibilityFlowChart_112513.pdf)

## **VI. *Preschool and Other Early Childhood Programs***

### **A. Are preschoolers eligible for protections under the McKinney-Vento Act?**

Yes. Preschoolers are covered under the McKinney-Vento Act and have the right to maintain enrollment and receive transportation to their school of origin.

In the New York City Department of Education (NYC DOE), with Universal Pre-kindergarten (pre-k), any family who applies for pre-k will be offered a seat. If there are no pre-kindergarten classes in the district, every effort should be made to find an appropriate placement for children whose parents request pre-kindergarten classes. See NYC DOE Chancellor's Regulations A-780[II] for more information about Universal Pre-K.: <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-780-students-in-temporary-housing-english>

**B. What are the school selection options for a preschool age student?**

Preschool age students can attend the school where the family is currently located or can attend their school of origin. Under new amendments to New York State Education Law Section 3209, the definition of school of origin has been expanded, and the school selection options for preschool age children has been clarified.

A preschooler can enroll in:

- The school that the child attended when permanently housed.
- If the child was not attending school where the family was last permanently housed, the school of origin would include a public preschool in which the child was eligible to apply, register or enroll before the initial loss of housing. If the child has a sibling attending the school in the district where the family was last permanently housed, then the child would be entitled to attend school in that district as well. The school of origin for the child would be based on the sibling's last permanent residence.
- The school where the child was last enrolled.
- The child's new local preschool.

**C. Can LEAs use McKinney-Vento and Title I homeless set-aside funds to serve preschoolers experiencing homelessness?**

Yes. Districts can use their McKinney-Vento subgrants and their Title I homeless set-asides to provide early childhood education programs for children in homeless situations, if such programs are not otherwise provided through federal, state, or local funding.

**D. How can one determine whether a preschool program is administered by a LEA, and therefore subject to the requirements of the McKinney-Vento Act?**

Neither ESSA nor U.S. Department of Education (USDE) Guidance includes a specific definition of “preschool.” To determine whether a particular early childhood education program is a “preschool” under ESSA, a helpful reference is the definition USDE uses for McKinney-Vento data collection. Per the USDE’s data collection, specific examples of preschool programs that meet this definition include:

- Preschool programs operated or administered by an LEA;
- Head Start programs receiving funding from an LEA or for which an LEA receives the grant;

- Preschool special education services operated or funded by the LEA or mandated under the Individuals with Disabilities Education Act;
- Preschool programs and services administered or funded by the LEA through the use of Title I or similar government grants; and
- Home-based early childhood educational services funded and administered by an LEA.

A helpful flowchart that districts can review to gain a better understanding of the definition can be found posted at <https://www.schoolhouseconnection.org/wp-content/uploads/2017/09/PreschoolFlowchart.pdf>. The document also helps explain the concept of “feeder schools” as they apply to preschool programs under ESSA’s amendments to the McKinney-Vento Act.

## **VII. *Dispute Resolution/Appeal Process***

### **A. Does the McKinney-Vento Act contain procedures for resolving disputes?**

Yes. The McKinney-Vento Act requires each state to establish its own procedures to resolve disputes promptly.

### **B. What is the Dispute Resolution and Appeal Process?**

All New York State school districts must have a policy for the prompt resolution of disputes regarding school selection or enrollment of a homeless child or youth. A sample policy that school districts may adopt in order to follow the New York State procedure for resolving disputes regarding the McKinney-Vento Act is located here: [https://nysteachs.org/wp-content/uploads/2018/08/INF\\_SED\\_SampleLEADisputeResolution\\_102516.doc](https://nysteachs.org/wp-content/uploads/2018/08/INF_SED_SampleLEADisputeResolution_102516.doc)

If a family or student in temporary housing and their school district disagree about a student's McKinney-Vento eligibility for enrollment, school selection options, or transportation, the school district may challenge the student's eligibility under McKinney-Vento.

To do so, the school district must:

- Provide written explanation to the student or family about the reasons for their disagreement, including a statement regarding the (1) right to appeal and (2) responsibility of the McKinney Vento Liaison to help the parent, guardian or unaccompanied youth with any appeal in a manner and form understandable to such parent, guardian or unaccompanied youth;
- Immediately enroll and transport the student to the desired school of attendance;
- Delay any final determination to decline to enroll and/or transport the student for 30 days; and
- Continue to allow attendance and transportation of the student if the parent, guardian or unaccompanied youth commences an appeal within 30 days of the final determination.

The McKinney-Vento Liaison must provide the following materials and services to a parent, guardian or unaccompanied youth once the dispute process is initiated:

- Assist the parent, guardian or unaccompanied youth in bringing an appeal to the Commissioner under Education Law §310;
- Assist the parent, guardian or unaccompanied youth in completing the form;
- Provide photocopies of petition and supporting documents, at no cost to the parent, guardian or unaccompanied youth;
- Accept petition forms and supporting documents on behalf of the school district and arrange for mailing to the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234 within 5 days of receipt;
- Provide the parent, guardian or unaccompanied youth with a signed and dated acknowledgement of receipt of petition and supporting documents;
- Accept and facilitate in any subsequent correspondence related to the appeal; and
- Maintain record of all appeals of enrollment, school selection, transportation and final determination.

#### **VIII. Title I, Part A of the Elementary and Secondary Education Act**

##### **A. What is Title I?**

Title I of the Elementary and Secondary Education Act, a federal law, provides funding to states to improve the academic achievement of disadvantaged students. Students in temporary housing are categorically eligible for services under Title I, even if they do not live in a Title I school attendance area or match the academic standards required of other children with Title I eligibility. Beginning in the 2017-2018 academic year, all LEAs must set-aside a portion of their Title I, Part A funds to provide services to students in temporary housing.

##### **B. Are children and youth in homeless situations eligible for Title I, Part A services? What if they are succeeding in school?**

Yes. All children and youth in homeless situations are automatically eligible for Title I, Part A services, whether they live in a Title I school attendance area or meet the academic standards required of other children for eligibility. The poverty, unstable and often unhealthy living situations, and emotional trauma of homelessness place even outstanding students at risk of academic regression and failure.

##### **C. What can Title I set-aside funding be used for?**

A LEA may use funds to provide services to eligible students in temporary housing in both Title I and non-Title I schools that are comparable to services provided to non-homeless students in Title I schools. Title I services should help children to meet New York State's academic content and achievement standards.

Title I funding cannot be used to supplant services that are already required under the McKinney-Vento Act. For students who are eligible for McKinney-Vento protections, Title I set-aside funding may also be used for excess costs of transportation to the school of origin, transportation once the student is permanently housed, and for the hiring of the McKinney-Vento liaison and other support staff. For additional allowable expenditures: <http://www.nysed.gov/common/nysed/files/2017-18-homeless-allowable-unallowable.pdf>