

Identifying and Educating Students Experiencing Homelessness

40th Annual School Client Conference



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AGENDA

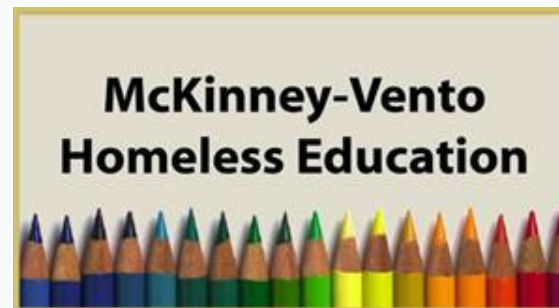
- Applicable Laws
- Identifying Homeless Students
- The Rights of Homeless Students
- Disputes Over Homeless Status
- Appeals to the Commissioner





McKinney-Vento and NYS Law

- McKinney-Vento Homeless Assistance Act is a federal law protecting students who are homeless (42 U.S.C. 11431 et seq.);
- Originally enacted in 1987, reauthorized in 2001;
- Changes to McKinney-Vento were enacted in 2016;
- Both Education Law §3209 and §100.2(x) of the Commissioner's regulations conform to the definition of "homeless children and youths" in McKinney-Vento.





The Homeless Liaison

- School Districts must appoint a **Homeless Liaison** to act as a Facilitator, Coordinator, and Advocate.
- Their responsibilities include:
 - Conducting outreach and posting public notices of homeless student educational rights,
 - Identifying and enrolling homeless students
 - Ensuring a full and equal opportunity to succeed and meet all academic standards.
 - Acting as the primary contact between homeless students and families, school staff, and local social service agencies.
 - Referring students to health, mental health, substance abuse, dental, housing, and other services.



The Homeless Liaison

- Additional responsibilities include:
 - Assembling documents, arrange for immunizations where necessary.
 - Informing unaccompanied youth of their status as independent students for FAFSA purposes.
 - Coordinating transportation.
 - Coordinating Special Education services.
 - Assisting families in disputes over homeless status.
 - Applying these responsibilities to unaccompanied youth.
- Districts should ensure that the individual appointed as the Homeless Liaison is appropriately trained, understands his or her duties, and devotes the appropriate time and resources to ensuring homeless students receive their education.



Identifying Homeless Students



Who is a “Homeless Student”?

- Any student who lacks a:
 - Fixed;
 - Regular; and
 - Adequate nighttime residence.
- Any student whose primary nighttime residence is:
 - In a public or private shelter designed to provide temporary living accommodations; or
 - A place not designed for, or ordinarily used as, regular sleeping accommodations
- Unaccompanied youth not in the physical custody of a parent or guardian;
 - Typically includes runaways, shelters, living on streets alone, or abandoned by parents
 - Does NOT include living with someone else solely to take advantage of the school district



Determining Homelessness

- **Fixed:** stationary, permanent residence, not subject to change
 - How long have you stayed there?
 - Are you actively looking for housing?
 - Is there a lease or other written agreement?
- **Regular:** place a student can return to consistently and count on night after night
 - Are you staying at the same place every night?
 - Where are you listing address, receiving mail?
 - Do you have a key?
- **Adequate:** residence that meets the physical and psychological needs typically met in homes
 - How many people living there?
 - Where do you sleep?
 - Do you have water, electricity, heat?



When is a student “homeless”?

- Although this is a **fact specific** analysis, the following living arrangements do not provide a fixed, regular, adequate nighttime residence:
 - Sharing the housing of other persons due to a loss of housing, economic hardship or similar reason;
 - Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
 - Abandoned in hospitals;
 - Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
 - Migratory children because they are living in the circumstances described above.



When is a student “homeless”?

- When housing is **inadequate**:
 - Motel room or basement apartment with no kitchen. Dec. No. 18,250 (2023); Dec. No. 17,700 (2019).
 - Home in severe disrepair that lacks sufficient insulation, electricity, or potable water. Dec. No. 16,643 (2014).
 - One-bedroom apartment where grandparents occupied bedroom, and student slept on couch with mother and sibling. Dec. No. 17,794 (2019).
 - Two-bedroom apartment where the mother and three children occupied one bedroom and aunt occupied the other. Dec. No. 18,086 (2022).
- Displaced due to natural disasters and living in temporary housing or with other family.
- Children removed from their home by welfare workers. See NYS Field Memo #07-2015.
- Student deemed unaccompanied youth by keeping a bed at a friend’s house because of a volatile relationship with parents. Dec. No. 17,161 (2017).



When is a student NOT “homeless”?

- Rental housing on a month-to-month basis or without a lease. Dec. No. 17,134 (2017); Dec. No. 17,096 (2017).
- A residence where two families reside or “doubling-up” with a relative for three years. Dec. No. 18,145 (2022); *see also* Dec. No. 17,497 (2018).
- An expectation of eviction without a specific date to vacate the premises, or a landlord stating they may not renew the lease or may sell the property. Dec. No. 17,473 (2018); Dec. No. 18,320 (2023).
- A one-bedroom apartment where the children slept in the living room. Dec. No. 17,909 (2020).
- With relatives absent evidence that the living arrangements are temporary, transitional, or inadequate. Dec. No. 18,300 (2023).
- Living in single-family housing provided by a non-profit housing organization meant for families to stay for two to five years. Dec. No. 18,142 (2022).



The Rights of Homeless Students



School Choice and Designation

- The parents or guardian of a homeless student, or the homeless student themselves (with liaison help if needed), have the right to designate their school of attendance.
- **School District of Origin:** where the student attended school before becoming homeless;
 - Can include public preschool, Head Start, or IDEA provider;
 - Can include school of the school-aged sibling of a homeless child.
- **School District of Location:** where the student is currently housed;
- A school district participating in a **regional placement plan**.



School Choice and Designation

- After the parent or student makes their choice, the chosen school must make a **Best Interest Determination**.
- **Presumption:** the *school of origin* is in the best interest of the student, since it maintains continuity and stability;
 - However, the *school of origin* may not be in the best interest of the student when the parent or student chooses to attend another school.
 - The parent or child's decision is given priority.
- In making this best interest determination, the school of choice will consider certain factors including the impact of enrollment in the school on the achievement, education, health, or safety of the homeless child.



Enrollment in School of Choice

- Schools must immediately enroll an alleged homeless student, even if the parent or student:
 - Missed application or enrollment deadlines
 - Remains unable to produce records normally required for enrollment such as academic records, medical records, or proof of residency
- Immediate enrollment is not required if student has an infectious or communicable disease.
- Homeless students are entitled to remain at their school of choice for:
 - The entire duration of their homelessness.
 - Through the end of the school year in which the student obtains permanent housing, regardless of the permanent housing location.
 - For one additional school year if that next school year is the student's **terminal year** in the school building.



Access to School Resources

- A homeless student may access the same programs, services, and activities as resident students.
- Homeless students may not be denied any services or program because of their homeless status.
- Homeless students are automatically entitled to free meals.
- Schools cannot create barriers to school resources (e.g. fees, fines).





Transportation Rights

- The child's designated school must provide transportation to a homeless student.
- Includes transportation to and from extracurricular activities and summer school.
- 50-mile one-way limit, unless Commissioner determines longer commute is in the student's best interest.
- Must be provided for remainder of year when student obtains permanent housing and one additional year if that is the student's "terminal year."





Disputes Over Homeless Status



Disputes over Homeless Status

Districts should promulgate and follow established policies and procedures for resolving disputes regarding whether a student is “homeless”.

- **STEP 1:** Conduct an appropriate investigation.
- **STEP 2:** Provide the parent with an opportunity to submit evidence of homelessness.
- **STEP 3:** Make a final determination regarding the student’s homeless status.



Disputes over Homeless Status

All final homelessness determinations must:

- Be in writing and mailed to the parent or child
- State that the determination may be appealed to the Commissioner of Education; and
- State the name and contact information for the school district's homeless liaison,
 - The homeless liaison is required to assist in filing appeals, along with a form petition.
- Districts must delay the implementation of a final determination for 30 days to allow for an appeal.
 - No requirement for parent to ask for stay.



Appeals to the Commissioner



The Petitioner's Burden

"In an appeal to the Commissioner, the petitioner has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which the petitioner seeks relief." 8 NYCRR § 275.10

- The Petitioner must establish the lack of a fixed, regular, and adequate nighttime residence.
- The Petitioner must also show the student's current residence is of a temporary or transitional nature.
- *See Appeal of T.C.*, Decision No. 16,502 (holding that Petitioner failed to meet her burden by submitting no evidence that she lacked a fixed, regular, and adequate nighttime residence).
- *See Appeal of M.D.*, Decision No. 16,656 (noting that even Petitioner did not plead that the residence at which she resided with her children was inadequate).



The Petitioner's Burden

The Commissioner is unlikely to deem a student “homeless” if the Petitioner fails to provide evidence establishing their housing is not fixed, regular, or adequate, or fails to show they live in temporary or transitional housing.

- *See Appeal of T.C.*, Decision No. 16,502 (holding that Petitioner failed to meet her burden by submitting no evidence that she lacked a fixed, regular, and adequate nighttime residence).
- *See Appeal of M.D.*, Decision No. 16,656 (noting that even Petitioner did not plead that the residence at which she resided with her children was inadequate).
- *See Appeal of D.S.*, Decision No. 16,503 (holding that the petitioner made no assertion that her current residence is of a temporary or transitional nature and therefore is not homeless).

Questions?



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