

# **Children's Issues Series: Rights of Homeless Students under the McKinney-Vento Act**

## **What is the McKinney-Vento Act?**

The McKinney-Vento Homeless Assistance Act ("Act"), **42 U.S.C. 11431 et seq.**, is a federal law that is designed to ensure that homeless children and youth have the same access as other children to public education, including public preschool programs.

## **Who is protected under McKinney-Vento?**

Massachusetts has adopted **Section 725(2)** of the Act which defines homeless children and youth as individuals who lack a "fixed, regular and adequate nighttime residence. This includes children who:

- Share the housing of other persons due to loss of housing, economic hardship, or similar conditions;
- Live in motels, hotels, trailers or camping grounds due to lack of alternative housing;
- Live in shelters;
- Have been abandoned in hospitals;
- Have been placed out of their home into temporary, transitional or emergency living placement, including STARR programs, and are waiting for a foster care placement;
- Have a primary nighttime residence that is not meant for regular sleeping accommodations;
- Live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar settings; and
- Have been "thrown out" or have run away and as a result are not in the physical custody of a parent or guardian and are living in a shelter, on the street, with friends or relatives, or are moving around from one place to another.

Also included are migratory children who qualify as homeless because they live in any of the circumstances described above. **Mass. Dept. of Elementary and Secondary Education Homeless Education Advisory 2002-1, 2004-9, 2007-9A**

## **What rights to students have under McKinney-Vento?**

- The right to immediate enrollment. **DESE Homeless Education Advisory 2002-2.**
  - A school must immediately enroll a homeless student, even if the student does not have documents normally required for enrollment, such as academic and medical/immunization records or proof of residency. Once enrolled, the Homeless Education Liaison of the school must help the family obtain the necessary records and/or immunizations.

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- The right to choose what school to attend. **DESE Homeless Education Advisories 2002-1, 2002-2, 2003-3.**
  - Students have the right to continue attending their “school of origin”. The “school of origin” is the school where the child or youth was last enrolled or the school the child or youth was attending when s/he became homeless. The school district shall keep a student in the “school of origin” unless it goes against the wishes of the parent. The student also has the option of enrolling in school where he is currently living.
  - If the school district sends a student to a school other than the school of origin or a school requested by the parent, the district must provide the parent with a written explanation of the decision, which includes the right to appeal the decision to the Department of Elementary and Secondary Education (DESE).
  - The school district must make placement decisions based on the best interests of the student.
  - If a student obtains permanent housing during the school year, the student has the right to stay in their current school until the end of the school year.
- The right to transportation. **DESE Homeless Education Advisory 2002-3, 2007-10.**
  - The parent or guardian (or, in the case of an unaccompanied youth, the school homeless liaison) of a homeless student may request that transportation be provided to and from school. If the student is still in the same district as the school of origin, the school district must provide transportation. If the student is not living within the district of the school of origin, the district of origin and the district where the student is living must determine how to share transportation costs and responsibility. If the districts cannot come to an agreement, then the responsibility and costs must be shared equally. In general, transportation time should be limited to one hour or less in each direction.
  - Please note, the transportation provisions of McKinney-Vento only apply to students who are currently homeless. If a student obtains permanent housing and continues to attend his/her school of origin until the end of the school year, the continued provision of transportation is at the discretion of the district of origin.
- The right to participate in the same programs and activities as other students.
  - Homeless students have the same rights as all other students to participate in School Nutrition, after school and special education programs.
  - In order to determine the eligibility for free or reduced price meals, school officials must accept documentation that the student is homeless from the local Homeless Education Liaison or the director of the homeless shelter where the student resides. If a student is temporarily residing with another household, the household size and income of the host family are not taken into consideration when determining the free meal eligibility for the homeless student. However, the host family may include the homeless family as household members if the host

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family is providing financial support to the family. **DESE Homeless Education Advisory 2002-4.**

- Homeless students who qualify for special education services must be provided appropriate services based on the information that is available to the school. A school may not delay providing such services based on the non-receipt of school records. **DESE Homeless Education Advisory 2003-6, 2004-8, 2004-9, 2007-10**, Homeless children are also included under child find requirements in the Individuals with Disabilities Education Act **20 U.S.C. 1412(a)(3)**.
- Under the Act, every school district is required to have a Homeless Education Liaison. It is the job of the Liaison to ensure that homeless students have the same opportunities as all other students, which includes ensuring that homeless students are able to attend school, arranging for transportation in a timely manner, keeping the school staff informed of the rights of homeless students and providing appropriate referrals to service providers.

### **What if the school district challenges enrollment or there is a disagreement about school placement?**

- The Massachusetts McKinney-Vento dispute resolution process can be found in **DESE Homeless Education Advisory 2003-7.**
- If a school district challenges the right of a homeless student to attend a district school, the school district must continue to provide transportation and other services to the student until the dispute is resolved.
- The dispute resolution process begins when the school district challenges the student's enrollment/continued enrollment in school. The same day the school district challenges the enrollment of the student, the district must notify the Homeless Liaison and the parent/guardian or unaccompanied youth in writing. This notice must include the right of the parent/guardian or unaccompanied youth to appeal the decision. The district must also notify the DESE the same day and provide the DESE with copies of all notices provided to the parent/guardian or unaccompanied youth.
- The Liaison must then provide the parent/youth with a clear, easy-to-understand, written explanation of dispute resolution process and include the contact information for Massachusetts Advocates for Homeless Children and Youths (MAEHCY).
- The school district then has two working days to determine whether it will continue to challenge the right of the student to be enrolled in school. During this time, DESE may provide technical assistance to the school on the requirements of McKinney-Vento.
- The final decision by the school district must be made in writing by the Superintendent and must state all factual reasons and the legal basis for the decision.
- If the final decision of the school district is adverse to the student, the District must provide the DESE and homeless liaison (who then notifies the parent) with a copy of

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the written decision that same day. The parent/youth then has the right to appeal the decision to the DESE.

- Once the DESE has received the appeal, the Commissioner has two working days to make a decision. The decision made by the Commissioner is final.

### **Helpful Resources**

- The Office for the Education of Homeless Children and Youth at the DESE
  - Peter D. Cironi, State Corrdinator: 781-338-6294
  - Sarah Slutterback, Specialist: 781-338-6330
- All advisories referenced above can be found on the DESE page on McKinney-Vento: <http://www.doe.mass.edu/mv/>
- To find the homeless liaison for a school district in Massachusetts go to: <http://profiles.doe.mass.edu>
  - Click on "Search/Directories" at the top of the page.
  - Click on "People Search" on the left hand side of the page.
  - Under the dropdown menu for "Function", choose "homeless liaison"
  - In "Organization keyword" enter the name of the school district.
- U.S. Department of Education page:  
<http://www2.ed.gov/programs/homeless.index.html>

***This information is general in nature and not intended as legal advice.  
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