



MCKINNEY-VENTO LAW INTO PRACTICE BRIEF SERIES Dispute Resolution

This NCHE brief

- summarizes the key provisions in the McKinney-Vento Act related to dispute resolution and
- suggests implementation strategies at the SEA and LEA levels.

INTRODUCTION

Subtitle VII-B of the McKinney-Vento Homeless Assistance Act (Section 721 *et seq.*; McKinney-Vento Act) guarantees educational rights and services for children and youth experiencing homelessness (CYEH). The Act requires state educational agencies (SEAs) and local educational agencies (LEAs; commonly referred to as *school districts*) to follow a dispute resolution process when parents, guardians, or unaccompanied youth disagree with LEAs concerning eligibility for McKinney-Vento rights and services, or school selection or enrollment under the Act (Section 722(g)(3)(E)). The dispute resolution process is intended to represent each party's views for objective consideration, ensuring that disagreements can be resolved expeditiously and in keeping with McKinney-Vento Act provisions. This NCHE brief summarizes the key provisions in the McKinney-Vento Act related to dispute resolution and suggests implementation strategies at the SEA and LEA levels.

THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT DEFINITION OF *HOMELESS* (Section 725(2))

The term "homeless children and youths"—

- A. means individuals who lack a fixed, regular, and adequate nighttime residence...; and
- B. includes—
 - 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; or are abandoned in hospitals;
 - 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 for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

This brief is a technical assistance resource intended to support the implementation of the McKinney-Vento Act through practical guidance. The brief does not create new requirements and should be read in conjunction with existing [federal statute](#) and [non-regulatory guidance](#). Additionally, some jurisdictions may have SEA- and/or LEA-specific dispute resolution requirements and procedures. As such, SEAs and LEAs are encouraged to consult with their legal counsel, as needed, when applying McKinney-Vento dispute resolution provisions to the specific circumstances of individual disputes.

STATUTORY REQUIREMENTS RELATED TO DISPUTE RESOLUTION

SEA REQUIREMENTS

Under the McKinney-Vento Act, every state must include in its state plan for implementing the Act a description of procedures for the prompt resolution of disputes regarding the educational placement of CYEH (Section 722(g)(1)(C)).

LEA REQUIREMENTS

If a dispute arises under the McKinney-Vento Act concerning eligibility, school selection, or school enrollment (Section 722(g)(3)(E)), the Act requires LEAs to take the following steps:

1. The child or youth shall be immediately enrolled in the school in which enrollment is sought (see the *Statutory Parameters for School Selection* section below for additional details), pending final resolution of the dispute, including all available appeals (Section 722(g)(3)(E)(i)). In the case of an unaccompanied youth (see the *Unaccompanied Youth* sidebar), the local homeless education liaison (local liaison) must ensure that the youth is enrolled immediately in the school in which the youth seeks enrollment, pending final resolution of the dispute (Section 722(g)(3)(E)(iv)). While disputes are pending, students have the right to participate fully in school and receive all services for which they are eligible (U.S. Department of Education [ED], 2018, p. 34), as the definition of *enrollment* includes “attending classes and participating fully in school activities” (Section 725(1)).
2. The parent, guardian, or unaccompanied youth must be provided with a written explanation of any dispute-related decisions that the involved school, LEA, or SEA makes, including the right of the parent, guardian, or unaccompanied youth to appeal such decisions (Section 722(g)(3)(E)(ii)). The LEA must provide this written explanation, including the reasons for its determination and information regarding the right to appeal, in a manner and form that the parent, guardian, or unaccompanied youth can understand (Section 722(g)(3)(B)(iii)). In the case of an unaccompanied youth, the local liaison must ensure that this written notice is provided directly to the youth (Section 722(g)(3)(B)(iv)).

Unaccompanied Youth

The McKinney-Vento Act defines unaccompanied youth as “a homeless child or youth not in the physical custody of a parent or guardian” (Section 725(6)). Under the Act, unaccompanied youth have the right to access the dispute resolution process and have disputes that may arise related to the implementation of the McKinney-Vento Act resolved expeditiously and in keeping with the Act’s provisions. For more information, download NCHE’s [Supporting the Education of Unaccompanied Students Experiencing Homelessness issue brief](#).

3. The parent, guardian, or unaccompanied youth must be referred to the local liaison, who will carry out the dispute resolution process described in the state’s McKinney-Vento plan as expeditiously as possible after receiving notice of the dispute (Section 722(g)(3)(E)(iii)). The local liaison must be familiar with the state’s McKinney-Vento dispute resolution process and follow all procedures outlined therein.

STATUTORY PARAMETERS RELATED TO DISPUTE RESOLUTION

DISPUTABLE ISSUES

The McKinney-Vento Act states that issues of eligibility, school selection, or school enrollment may be disputed under the Act (Section 722(g)(3)(E)).

- **Eligibility:** Eligibility pertains to whether a child or youth is eligible for McKinney-Vento rights and services. Eligibility is determined based on whether the child’s or youth’s living arrangement meets the McKinney-Vento definition of *homeless* (Section 725(2); see *The McKinney-Vento Homeless Assistance Act Definition of Homeless* sidebar).
- **School selection:** School selection pertains to whether it is in the best interest of a child or youth experiencing homelessness to attend the school of origin or the local school, as defined in the McKinney-Vento Act (see the *Statutory Parameters for School Selection* section below). This is a student-centered determination informed by the unique educational and related needs of each child or youth (Section 722(g)(3)). For more information, download NCHE’s [School Selection and Best Interest Determinations: Strategies for Educators](#) issue brief.
- **School enrollment:** School enrollment pertains to whether a child or youth experiencing homelessness is attending classes and participating fully in school activities (Section 725(1); ED, 2018, p. 32).

DISPUTE SCOPE AND SEQUENCING: RESOLVING ELIGIBILITY FIRST

When a child’s or youth’s McKinney-Vento eligibility is under dispute, the McKinney-Vento Act requires that the child or youth be provided all rights and services—including those related to school selection and enrollment—afforded under the Act for the duration of the dispute (Section 722(g)(3)(E); ED, 2018, p. 34). However, during an eligibility dispute, to ensure procedural clarity, the scope of the formal dispute resolution process should remain limited to determining whether the child’s or youth’s living arrangement meets the Act’s definition of *homeless*. Issues concerning school selection or enrollment may be formally disputed, if necessary, after the child or youth is determined to be McKinney-Vento eligible.

OUT-OF-SCOPE ISSUES FOR MCKINNEY-VENTO DISPUTES

Some situations fall outside of the parameters of the McKinney-Vento dispute resolution process (ED, 2018, p. 34). Examples may include issues related to the provision of special education services that are unrelated to and/or do not intersect with issues related to McKinney-Vento Act implementation. Examples may also include issues related to school choice that fall outside the school selection options

provided by the McKinney-Vento Act, as detailed in the *Statutory Parameters for School Selection* section below.

STATUTORY PARAMETERS FOR SCHOOL SELECTION

When serving CYEH under the McKinney-Vento Act, LEAs must, according to the child's or youth's best interest,

- continue the child's or youth's education in the school of origin for the duration of homelessness—
 - in any case in which a family becomes homeless between academic years or during an academic year; and
 - for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or
- enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend (Section 722(g)(3)(A)).

Given these statutory parameters and requirements, the following schools may be considered when determining the best interest of a child or youth experiencing homelessness:

- **School of origin:** The school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool (Section 722(g)(3)(I)(i))
- **Receiving school:** When the child or youth completes the final grade level served by the school of origin, the term "school of origin" shall include the designated receiving school at the next grade level for all feeder schools (Section 722(g)(3)(I)(ii))
- **Local school:** Any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend (Section 722(g)(3)(A)(ii))

Under the McKinney-Vento Act, the school of origin and the local school are the only options that LEAs are required to consider for school selection and enrollment (Section 722(g)(3)(A)). The Act limits school selection to these two statutory options; it does not extend a broader right for a parent, guardian, or unaccompanied youth to choose a school outside of this framework. Accordingly, disputes related to school selection may only address whether the school of origin or the local school is in the student's best interest. Requests for enrollment in schools beyond these two categories fall outside the scope of the McKinney-Vento Act's school selection and dispute resolution provisions.

STRATEGIES FOR IMPLEMENTATION

STATE-LEVEL STRATEGIES

State coordinators for homeless education (state coordinators) should

- make their state's McKinney-Vento dispute resolution process available to all LEAs in the state and train local liaisons regularly on its implementation;

- ensure that any state-level participants in the dispute resolution process are sufficiently trained on the McKinney-Vento Act;
- ensure that the dispute resolution process includes clear timelines for each step in the full life cycle of a dispute—for the parent, guardian, or unaccompanied youth, as well as the LEA and, when applicable, the SEA—in a manner that supports a prompt resolution while maintaining fairness for all parties (ED, 2018, p. 34);
- operationalize indicators for LEA monitoring that pertain to the implementation of the dispute process under the McKinney-Vento Act, including the provision of written notice to parents, guardians, and unaccompanied youth (Section 722(f)(5)); and
- review all McKinney-Vento disputes, once resolved, to ensure compliance with the state dispute resolution process, determine ways in which the process may need to be improved, and revise the process as necessary. (For a dispute review checklist, see *Appendix 8B: Dispute Review Guide* in NCHE's [Homeless Liaison Toolkit](#).)

LEA-LEVEL STRATEGIES

Local liaisons should

- prevent disputes when possible by
 - training relevant LEA and school staff members on the provisions of the McKinney-Vento Act and their responsibilities for enrolling and serving CYEH;
 - communicating proactively with parents, guardians, and unaccompanied youth to attempt to mediate and resolve disagreements before they reach the level of a formal dispute (ED, 2018, p. 34); and
 - training relevant LEA and school staff members on trauma-informed approaches for working with families and youth in homeless situations.
- provide written notice to parents, guardians, and unaccompanied youth when they disagree with an LEA's decision that includes
 - contact information for the local liaison and the state coordinator as well as a brief description of their roles;
 - a simple form that can be submitted to the school or LEA to initiate a formal dispute;
 - a description of the dispute resolution process, timeline, and steps to appeal the LEA's decision (for a sample written notice template, see *Appendix 8A: Written Notification of Decision* in NCHE's [Homeless Liaison Toolkit](#)); and
 - notice of the right to obtain the assistance of advocates or attorneys as well as a list of legal and advocacy service providers in the area that can assist with any part of the dispute process (ED, 2018, p. 33).
- provide parents, guardians, and unaccompanied youth with assistance in the dispute process, as needed, by
 - offering to assist them with gathering information;
 - providing referrals to local legal and advocacy service providers;

- ensuring that they understand the dispute resolution timeline, including deadlines they may need to meet;
- allowing them to submit written documentation and/or oral statements to support their position; and
- allowing them to submit dispute-related documentation at their child’s school to minimize any barrier that could be created by requiring them to submit documentation at other locations.
- gather dispute-related information in ways that do not harass or intimidate parents, guardians, or unaccompanied youth, and do not violate privacy guidelines, including those specified in the [Family Educational Rights and Privacy Act](#) (FERPA; Section 444) and any other applicable federal or state laws.
- keep thorough documentation of all dispute-related communications with parents, guardians, or unaccompanied youth.
- follow up with the school requested by the parent, guardian, or unaccompanied youth during the dispute process to ensure that the student is enrolled and receiving all services for which the student is eligible, including transportation to and from the school of origin.
- follow up with the parent, guardian, or unaccompanied youth and the involved school(s) once a final dispute decision is rendered to help implement the decision. This follow-up is especially important when the decision is not what the parent, guardian, or unaccompanied youth requested. The local liaison can play a key role in helping the parent, guardian, or youth accept the decision and access available student supports, regardless of how the dispute was resolved.

RESOURCES

For more information about developing and implementing an effective McKinney-Vento dispute resolution process, consult the following resources:

- U.S. Department of Education, [Education for Homeless Children and Youths Program: Non-Regulatory Guidance](#), Section K: Dispute Resolution Procedures
- National Center for Homeless Education, [Homeless Liaison Toolkit](#), Chapter 8: Dispute Resolution
- National Center for Homeless Education, [Navigating McKinney-Vento Disputes: A Checklist Tool for Local Liaisons](#)
- National Center for Homeless Education, [State Coordinators’ Handbook](#), Chapter 11: Managing Disputes

REFERENCES

Subtitle VII-B of the McKinney-Vento Homeless Assistance Act, McKinney-Vento Act section 721 et seq.

<https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter119/subchapter6/partB&edition=prelim>

U.S. Department of Education. (2018). *Education for Homeless Children and Youths Program non-regulatory guidance*.

<https://oese.ed.gov/files/2020/07/160240ehcyguidanceupdated082718.pdf>

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Every state is required to have a state coordinator for homeless education, and every school district is required to have a local homeless education liaison. These individuals oversee the implementation of the McKinney-Vento Act. To find out who your state coordinator is, visit the [NCHE website](http://nche.ed.gov).

For more information on issues related to the education of children and youth experiencing homelessness, contact the NCHE helpline at 305-306-8495 or NCHE.help@safalpartners.com.

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