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THE 100 MOST FREQUENTLY ASKED QUESTIONS ON THE EDUCATION RIGHTS OF CHILDREN AND YOUTH IN HOMELESS SITUATIONS[1]

This document provides answers to 100 frequently asked questions on the McKinney-Vento Homeless Assistance Act and the education rights of children and youth in homeless situations.[2] The answers are general responses based on the law. It cannot be emphasized enough that these are general responses, and that answers could change based on the facts of a particular case. McKinney-Vento issues require a case-specific inquiry. This document is meant to provide basic information and tools to assist parents, youth, educators and advocates in understanding the McKinney-Vento Act.

In this document, the term "school district" is used to mean local educational agencies. The term "McKinney-Vento Act" refers only to Subtitle VII-B of the Act, the Education for Homeless Children and Youths program (42 U.S.C. §§11431-11435). The McKinney-Vento Act is a federal law that supersedes conflicting state laws or local policies.

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[1] Drafted by the National Association for the Education of Homeless Children and Youth and the National Law Center on Homelessness & Poverty, ~~May~~ 2004. Address questions/comments to Barbara Duffield, at bduffield@naehcy.org or Joy Moses, at jmoses@nlchp.org. This information is not offered as legal advice and should not be used as a substitute for seeking professional legal advice. It does not create an attorney-client relationship with you.

[2] The terms "children and youth experiencing homelessness" and "children and youth in homeless situations" are used interchangeably in this document, instead of the legal phrase "homeless children and youth," to emphasize the fact that homelessness is a temporary, dynamic experience, and not a static condition or fixed group of people. Yeah!!!

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Definitions/Identification

1. Do school districts have the responsibility to identify or locate children and youth experiencing homelessness?
A: Yes. Every school district must designate a liaison for children and youth experiencing homelessness. 42 U.S.C. §11432(g)(1)(J)(ii). The McKinney-Vento Act requires school district liaisons to ensure that "homeless children and youths are identified by school personnel and through coordination with other entities and agencies." 42 U.S.C. §11432(g)(6)(A). The purpose of identification is to offer appropriate services to the family, child or youth. Coordination with schools and community agencies is an essential identification strategy, as are professional development, awareness and training activities within school buildings and school districts. Additional strategies are available at www.naehcy.org/IdentifyingStudents.pdf.

2. Is there any guidance on what "fixed, regular, and adequate nighttime residence" means?
A: The McKinney-Vento Act states that children and youth who lack "a fixed, regular, and adequate nighttime residence" will be considered homeless. 42 U.S.C. §11434A(2)(A). The Act does not define those terms. However, the following definitions may provide guidance:

(1) Fixed: Securely placed or fastened; Not subject to change or fluctuation. (Merriam-Webster's Collegiate Dictionary, Tenth Edition.) A fixed residence is one that is stationary, permanent, and not subject to change. (e.g., Arizona, Massachusetts and Michigan McKinney-Vento State Plans, 2002.)

(2) Regular: Normal, standard; Constituted, conducted, or done in conformity with established or prescribed usages, rules, or discipline; Recurring, attending, or functioning at fixed or uniform intervals. (Merriam-Webster's Collegiate Dictionary, Tenth Edition.) Consistent. (Ballentine's Law Dictionary, 3rd Edition.) A regular residence is one which is used on a regular (i.e., nightly) basis. (e.g., Arizona, Massachusetts and Michigan McKinney-Vento State Plans, 2002.)

(3) Adequate: Sufficient for a specific requirement; Lawfully and reasonably sufficient. (Merriam-Webster's Collegiate Dictionary, Tenth Edition.) Fully sufficient; Equal to what is

required; Lawfully and reasonably sufficient. (Ballentine's Law Dictionary, 3rd Edition.) An adequate residence is one that is sufficient for meeting both the physical and psychological needs typically met in home environments. (e.g. Arizona, Massachusetts and Michigan McKinney-Vento State Plans, 2002.)

International law defines adequate as follows:

> "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost."
>
> International Covenant on Economic, Social and Cultural Rights, General Comment 4, paragraph 7 (1991), citing Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000.

3. Is there a time limit on how long a child or youth can be considered homeless?
A: No, there is no specific time limit on homelessness. Whether a child or youth meets the definition of homelessness depends upon the living situation and the individual circumstances. It is a case-specific inquiry. Due to the extremely limited incomes of most families experiencing homelessness (on average, less than half the federal poverty line) and the severe shortage of affordable housing across the country, experiences of homelessness can sometimes last an extended period of time.

4. Are children and youth who live in trailer homes or trailer parks covered by the Act?
A: Under some circumstances, yes. Under the McKinney-Vento Act, children and youth who live in trailer parks are covered by the Act if they live in the trailer park "due to the lack of alternative adequate accommodations." 42 U.S.C. §11434A(2)(B)(i). Therefore, whether children and youth living in trailer parks are covered by the Act is a case-by-case determination to be made by the local liaison, in light of the family's circumstances. The liaison will need to consider the adequacy of the trailer home, including the number of people living in the trailer, the condition of the trailer, and the availability of running water, electricity, and other standard utilities. If the trailer is inadequate, it should be considered a homeless situation. The relative permanence of the living situation must also be examined: if the family is living in the trailer temporarily, they are likely to be covered by the Act.

5. Are families who move in with relatives or friends covered by the Act?
A: In many circumstances, yes. Children and youth who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason are covered by the McKinney-Vento Act. 42 U.S.C. §11434A(2)(B)(i). Families who share adequate housing due to cultural preferences or convenience would not be covered by the Act. Also, families who are sharing housing on a permanent basis are unlikely to be covered by the Act.

6. Is transitional housing considered a homeless situation?
A: Yes. The McKinney-Vento Act specifically applies to children and youth living in transitional shelters. 42 U.S.C. §11434A(2)(B)(i). This term includes transitional housing programs and transitional living programs. State Coordinators are also required to "coordinate and collaborate with… providers of services to homeless and runaway children and youths and homeless families (including… transitional housing facilities, …and transitional living programs for homeless youths)." 42 U.S.C. §11432(f)(5)(B). A federal court affirmed that transitional

housing programs are covered by the McKinney-Vento Act. Bullock v. Board of Education of Montgomery County, Civ. A. DKC 2002-0798 (D. Md.), memorandum decision filed November 4, 2002.

7. To what extent are children awaiting foster placement covered by the McKinney-Vento Act?
A: The McKinney-Vento Act specifically covers children awaiting foster care placement. 42 U.S.C. §11434A(2)(B)(i). However, the Act does not define that phrase. Before attempting to apply the McKinney-Vento Act to children and youth in state custody, educators and advocates should consult their state laws, regulations and policies (both education and social services) to see if they contain authority for keeping foster children in their schools of origin, providing transportation, and/or requiring immediate enrollment. State or local social services officials and child welfare attorneys will have access to social services laws and policies.

When interpreting the McKinney-Vento Act phrase "awaiting foster care placement," state coordinators and school district liaisons should collaborate with state and local social services agencies to advocate for educational services that support the educational needs of individual students. Generally speaking, the definition must apply to children and youth "who lack a fixed, regular, and adequate nighttime residence." Collaboration between education and social services agencies is imperative. School district liaisons, social services personnel, and advocates should engage in a local dialogue on this issue, to agree upon categories of out-of-home placements that fall within the statute. Educators and social services personnel should engage the assistance of attorneys from many specialties, including legal aid, education, social services, and guardians ad litem. Communities that have worked collaboratively and systemically have achieved success in applying the McKinney-Vento Act appropriately to children and youth in state custody. For an example of a proactive policy regarding applying the McKinney-Vento Act to children awaiting foster care placement, download Policy 21-14 of the Tennessee Department of Children's Services, at www.state.tn.us/youth/policies/Chapter%2021%20Education/21-14%20Serving%20The%20Educational%20Needs%20of%20The%20Child-Youth%20in%20..pdf.

8. Do incarcerated youth qualify for McKinney-Vento protection and services?
A: No. Children and youth who are incarcerated for violation or alleged violation of a law should not be considered homeless. Incarcerated children and youth are part of the juvenile justice system and subject to the requirements and regulations thereof. However, children and youth residing in shelters or other homeless situations after leaving detention centers are covered by the Act. U.S. Department of Education, Draft Nonregulatory Guidance on the Education of Homeless Children and Youths Program (March 2003), p. 27 (hereinafter "2003 Guidance").

9. What ages does the McKinney-Vento Act cover?
A: The McKinney-Vento Act applies to children and youth age 21 and under, consistent with their eligibility for public education services under state and federal law. 2003 Guidance, p. 27. State laws vary, but generally provide access to all students until high school graduation or equivalent, or until age 18 (or over in some states). For special education students, federal law provides the right to access services until age 22. 20 U.S.C. §1412(a)(1)(A).

10. What are a district's responsibilities for advising families about their rights if families do not identify or consider themselves as homeless?
A: Families and youth in homeless situations frequently will not identify themselves as such. This may be due to the stigma and prejudices associated with homelessness or because the youth or family does not recognize that the living situation would be considered a homeless situation under the McKinney-Vento Act. Indeed, most families and youth are likely unaware of the McKinney-Vento Act. Therefore, schools must ensure that families and youth are aware of the Act, who it covers, and what it provides. 42 U.S.C. §§11432(g)(6)(A)(i), (iv). The Act requires school districts to disseminate public notice of the education rights of children and youth in homeless situations where such children and youth receive services, such as schools, family shelters, and soup kitchens. 42 U.S.C. §11432(g)(6)(A)(v). Identification and outreach techniques must be administered sensitively and without stigma, to create an environment in which families, children and youth will be comfortable seeking support. Once a school has sensitively and discretely explained the rights available under the McKinney-Vento Act, families or youth may choose not to take advantage of McKinney-Vento services, at their discretion. Strategies for identification, creating awareness, and disseminating notice are available at www.naehcy.org/IdentifyingStudents.pdf.

11. Does the family's/youth's income affect whether they are covered by the Act?
A: Generally, no. The Act's definition of homelessness centers on the student's living arrangement. There are no specific income limits in the definition. Income is vaguely referenced in the context of children and youth "sharing the housing of others due to loss of housing, economic hardship, or a similar reason." Therefore, in determining whether shared housing meets the Act's definition, it may be appropriate to consider the family's or youth's financial resources. 42 U.S.C. §11434A(2)(B)(i). Statistically, the mean income of families experiencing homelessness is less than half the federal poverty line.

12. Is there any procedure in place to prevent families who have permanent housing from claiming to be homeless just to obtain McKinney-Vento services?
A: Yes. Every school district must designate a liaison for students experiencing homelessness. 42 U.S.C. §11432(g)(1)(J)(ii). One of the liaison's duties is to identify children and youth who meet the statutory definition of homeless. 42 U.S.C. §11432(g)(6)(A)(i). School districts must enroll students experiencing homelessness immediately. If, after enrollment, it is determined that a student is not homeless as defined in the law, school districts should follow the policies that are in place to address other forms of fraud. Written notice should be given to the parent, guardian, or youth, including his or her right to appeal the decision. Over the past 17 years, documented cases of families falsely claiming to be homeless have been extremely rare; the few cases that have been documented were resolved quickly at the district level.

13. Does the McKinney-Vento Act's definition of homelessness in the education provisions (Education for Homeless Children and Youths) also qualify the family or youth to access services from other agencies (i.e. housing, food assistance, etc.).
A: At this time, the education definitions apply only for educational purposes. The U.S. Department of Housing and Urban Development (HUD) and other agencies have adopted their own definitions, which are narrower than the education definition. For example, families sharing housing and many families staying in motels are not considered homeless by HUD and cannot

access HUD Emergency Shelter Grant services for homeless persons. However, these families can access HUD funds that are targeted to low-income individuals. Educators and advocates should approach their HUD Continuums of Care to seek such funding and support. In fact, the McKinney-Vento Act requires states and school districts that receive McKinney-Vento funds to coordinate with state and local housing agencies and other service providers to minimize educational disruption for children and youth who become homeless. 42 U.S.C. §11432(g)(5).

14. Are migrant students covered by the McKinney-Vento Act?
A. Yes, migrant students are covered by the Act if they are living in a homeless situation. 42 U.S.C. §11434A(2)(b)(iv). More information on applying the Act to migrant students is available at www.naehcy.org/issuebriefs.html.

15. Can a district refuse to enroll undocumented immigrants who have no proof of guardianship?
A: No, not if they are covered by the McKinney-Vento Act. Undocumented students have the same right to public education as U.S. citizens. Plyler v. Doe, 457 U.S. 202 (1982). Therefore, the McKinney-Vento Act applies to them in the same way it would apply to any student: if the student meets the definition of homeless, he or she must be enrolled in school immediately, even if lacking proof of guardianship. The McKinney-Vento Act does not apply to immigrant students who live in a fixed, regular and adequate residence.

Liaisons generally

16. Does every school district have to have a liaison?
A: Yes. The McKinney-Vento Act requires every local educational agency to "designate an appropriate staff person" to serve as liaison. 42 U.S.C. §11432(g)(1)(J)(ii).

17. What are the liaison's duties?
A: The McKinney-Vento Act specifies the duties of liaisons, as follows: identify homeless children and youth; ensure that children and youth experiencing homelessness enroll in, and have a full and fair opportunity to succeed in, school; ensure that families, children and youth receive educational services for which they are eligible, including Head Start, Even Start and other public preschool programs, and referrals to health care, dental, mental health and other appropriate services; inform parents and guardians of the educational and related opportunities available to their children and provide them with meaningful opportunities to participate in that education; disseminate public notice of educational rights; ensure that enrollment disputes are mediated; inform families and youth about transportation services and assist them in accessing transportation. Many resources are available to assist liaisons in accomplishing these duties, including a liaison toolkit (www.serve.org/nche/downloads/tlktbook.pdf), a liaison issue brief (www.naehcy.org/LEAs.pdf), State Coordinators (www.serve.org/nche/Statecoordinators.htm), and an annual conference (www.naehcy.org). 42 U.S.C. §11432(g)(6)(A).

School Selection

18. What factors should be considered for keeping children at their school of origin to the extent feasible?
A: Students must be allowed to attend their school of origin "to the extent feasible." [School of origin is defined as the school the student attended when permanently housed, or the school in which the student was last enrolled. 42 U.S.C. §11432(g)(3)(G).] Changing schools significantly impedes students' academic and social growth. The literature on highly mobile students indicates that it can take a student four to six months to recover academically after changing schools. Many studies also have found highly mobile students to have lower test scores and overall academic performance than peers who do not change schools. Therefore, the McKinney-Vento Act calls for school districts to maintain students in their school of origin to the extent feasible, unless that is against the wishes of the parent of guardian. 42 U.S.C. §11432(g)(3). Students have the right to attend the school building of origin; this provides continuity of instruction, teachers, and peers. Considerations for changing schools, other than as a result of a parent, guardian or unaccompanied youth's wishes, must be based on a student-centered, individualized determination. Factors that may be considered include: the age of the child or youth; the impact the commute may have on the student's education; personal safety issues; the students' need for special instruction; length of anticipated stay in temporary shelter or other temporary location; and time remaining in the school year. There may be other student-centered factors not enumerated here that will help determine feasibility. Above all, feasibility is a child-centered decision. 2003 Guidance, p. 12.

19. Can a student finish the school year or semester in the school of origin?
A: Yes. Students have the right to remain in the school of origin for the duration of homelessness. In addition, if a student moves into permanent housing during the school year, the student can finish that academic year in the school of origin. 42 U.S.C. §11432(g)(3)(A).

20. What is the school of origin for a student who becomes homeless, enrolls in the new school near the temporary housing, and then moves again to a third attendance area?
A: School of origin is defined as the school the student attended when permanently housed, or the school in which the student was last enrolled. 42 U.S.C. §11432(g)(3)(G). In the situation described, the family or youth can choose ***either*** the school near the initial temporary housing (the school in which the student was last enrolled) or the school the student attended when permanently housed.

21. In the event that a child's temporary housing is located in a different school district from the school of origin, which district is financially responsible for the child's education?
A: The McKinney-Vento Act does not assign financial responsibility. States may have policies about shared fiscal responsibilities. The possibility of nonpayment does not affect districts' obligation to provide education and transportation. Inter-district disputes cannot delay the immediate enrollment (defined as attending classes and participating fully in school activities) of children in the school selected. If there are no state policies to address fiscal responsibility, it may be reasonable for the district receiving state and federal funds for the student to retain financial responsibility.

For transportation, if two districts are involved, they must agree upon a method to apportion the cost and responsibility of transportation, or split it equally. States should develop a system to assist with inter-district transportation issues, including disputes between districts

regarding apportioning costs and responsibility. The state attorney general's office may also be able to assist. Establishing inter-district transportation procedures and formalized agreements will be essential to ensure that transportation is arranged quickly for students. (See also Question 28.)

22. If a student finds temporary housing across state lines from the school of origin, does the McKinney-Vento Act still apply?
A: Yes. Since the McKinney-Vento Act is a federal law, it applies as in any other situation. Therefore, the student must be placed in the school of origin, unless that is against the parents'/guardians' wishes or is not feasible. Crossing state lines is not inherently unfeasible. In many border communities, mobility across state lines is common. It is also not uncommon for homelessness to force families across state lines, as the closest available shelter may be in a neighboring state. Schools must conduct the standard feasibility inquiry, based on the needs and circumstances of the individual student. Communication among the involved State Coordinators and liaisons can facilitate the provision of services.

23. If a student is out of school for an extended period of time, does the student still have the right to go to the school of origin?
A: Yes. The law applies as in any other situation: the student has the right to remain in the school of origin unless it is not feasible. That the student missed a period of schooling does not in itself make attending the school of origin unfeasible. For example, it may be better for the child to return to a familiar school, teachers and peers, to make up for lost time and to reintegrate smoothly into school.

24. Sometimes a student in a homeless situation will enroll in a new school, because the parent/guardian or unaccompanied youth was not informed of the student's right to remain in the school of origin. In that case, does the student still have the right to go back to the school of origin?
A: Yes. If parents or youth are not informed of their rights, then the school district must enroll the student in the original school of origin, consistent with the parent's or youth's wishes (and feasibility). The school district is required to inform families of their rights. 42 U.S.C. §§11432(g)(6)(A)(i), (iv), (v), (vii). Not knowing one's rights does not mean not having the rights.

25. What if placing a student in the school the parent chooses would violate a school desegregation order?
A: The school district should follow the McKinney-Vento Act. Generally, desegregation orders predate the McKinney-Vento Act or simply did not consider the Act. However, the rights conferred by the Act must be protected. If this becomes a significant issue, the school district may want to petition the court to amend the desegregation order to account for the McKinney-Vento Act. See, e.g., U.S. Department of Education, Public School Choice Draft Non-Regulatory Guidance, December 2002, Section G.

Transportation

26. Under what circumstances must a school district provide transportation to school for students experiencing homelessness?
A: The McKinney-Vento Act requires school districts to provide transportation for students experiencing homelessness in three situations. First, school districts must provide transportation to the school of origin upon the request of a parent or guardian, or in the case of an unaccompanied youth, upon the request of the liaison. 42 U.S.C. §11432(g)(1)(J)(iii). That is true regardless of whether the district provides transportation for other students or in other circumstances. Second, for other transportation (as opposed to the school of origin), the McKinney-Vento Act requires districts to provide transportation comparable to that provided to housed students. 42 U.S.C. §11432(g)(4)(A). Therefore, if the district transports housed students to the local school or to a summer program, it must also transport students experiencing homelessness. Finally, school districts must eliminate barriers to the school enrollment and retention of students experiencing homelessness. For example, if a student is living on or near an extremely busy intersection, in a very dangerous neighborhood, or is otherwise unable to attend school without transportation, the district must eliminate lack of transportation as a barrier to the child attending school. 42 U.S.C. §§11432(g)(1)(I), (g)(7).

27. How far is too far to travel to the school of origin? What if my state has established a general limit on all school transportation of one hour or 30 miles?
A: The McKinney-Vento Act does not specify any mileage or time limit for travel to the school of origin. The Act requires school districts to provide transportation to the school of origin at the request of a parent or guardian or, for unaccompanied youth, at the liaison's request. 42 U.S.C. §11432(g)(1)(J)(iii). Therefore, whenever a student is attending the school of origin, transportation is required. (See Question 18.) A commute so lengthy as to be harmful to the child's educational achievement will weigh against placement in the school of origin. This determination will depend on the student's circumstances. For example, a lengthy commute that may be harmful to a young child may be feasible for an older youth. Similarly, in many rural areas, lengthy commutes to school are common; the commute of a child experiencing homelessness in such an area would need to be evaluated in that context. Therefore, transportation services must rest on the individualized feasibility determination, not blanket limits. State or school district policies that establish blanket limits on transportation violate the McKinney-Vento Act. The federal law supersedes these contrary state or local policies.

28. Is transportation required if the school of origin is in another school district?
A: Yes. As long as attendance at the school of origin is feasible, transportation is required, even if it requires students to cross district lines. If two districts are involved, they must agree upon a method to apportion the cost and responsibility of transportation, or split it equally. 42 U.S.C. §11432(g)(1)(J)(iii). States should develop a system to assist with inter-district transportation issues, including disputes between districts regarding apportioning costs and responsibility. The state attorney general's office may also be able to assist. States may have policies about shared fiscal responsibilities. The possibility of nonpayment does not affect districts' obligation to provide transportation. Inter-district disputes cannot delay the immediate enrollment (defined as attending classes and participating fully in school activities) of children in the school selected. 42 U.S.C. §§11432(g)(3)(C), 11434A(1). Establishing inter-district transportation procedures will be essential to ensure that transportation is arranged quickly for students. (See also Question 22.)

29. If a student is crossing district lines to remain at the school of origin, which district has primary responsibility to arrange and fund the transportation?
A: The McKinney-Vento Act first gives school districts and states the ability to agree upon a method to apportion cost and responsibility. The Act further states that in the absence of agreement, the two districts must apportion cost and responsibility equally. 42 U.S.C. §11432(g)(1)(J)(iii). However responsibility is divided, students must be provided with transportation without delay. In practice, states may wish to designate either the district of origin or the district of residence as the lead agency, to avoid any delays in initiating services while such disagreements are resolved. Any such delays would violate the McKinney-Vento Act's requirement that students be immediately enrolled in the selected school.

30. When two states are involved in a dispute regarding provision of transportation and either state absolutely refuses to pay any of the cost, is there a provision for a federally-enforced resolution?
A: The states may call the USDE for technical assistance in resolving the dispute. The state attorney general's office also may be able to assist. States may have policies about shared fiscal responsibilities. The possibility of nonpayment does not affect districts' obligations to provide transportation. Inter-state disputes cannot delay the immediate enrollment (defined as attending classes and participating fully in school activities) of children in the school selected. 42 U.S.C. §§11432(g)(3)(C), 11434A(1). Establishing inter-state transportation procedures will be essential to ensure that transportation is arranged quickly for students. Communication among the involved State Coordinators and liaisons can facilitate the provision of services.

31. Can a school district pay parents to transport their children?
A: Yes. School districts may reimburse parents or youth who have cars and are able to provide transportation, as a cost-effective means to meet the district's obligation.

32. Does providing or arranging for transportation mean door-to-door transportation, similar to transportation for students receiving special education services?
A: Generally, no. The McKinney-Vento Act does not require door-to-door transportation, unless that is the only appropriate arrangement for a particular student. For example, if a student is living on or near an extremely busy intersection, it may not be appropriate to expect the child to cross the intersection. The mode and details of transportation cannot present a barrier to the child's attendance in school. 42 U.S.C. §§11432(g)(1)(I), (g)(7).

33. Does providing access to public transportation qualify as providing transportation?
A: Yes, if the public transportation is appropriate. For example, young children cannot be expected to use public transportation alone. In such cases, school districts should provide transit passes for an adult caregiver to escort the child, or provide another form of transportation. Similarly, if traveling to a school of origin on public transit requires an unreasonable length of time, another mode of transportation may be required. The mode and details of transportation cannot present a barrier to the child's attendance in school. 2003 Guidance, p. 16; 42 U.S.C. §§11432(g)(1)(I), (g)(7).

34. If a district doesn't offer transportation to summer school for any students, does it have to provide summer school transportation for students in homeless situations?
A: Generally, no. The McKinney-Vento Act requires schools to provide comparable transportation services for students in homeless situations. If the school does not provide transportation to summer school for housed students, then it is generally not required to provide transportation to homeless students. However, if attendance in summer school is required for the student to pass to the next grade, and lack of transportation will prevent the child from participating, that presents a barrier to the student's academic success. The district must remove that barrier, so the student can avoid being retained in the same grade. 42 U.S.C. §§11432(g)(1)(I), (g)(7).

35. Is transportation required while a dispute is being resolved?
A: Yes, to the extent it would be required if there were no dispute. (See Question 28.) While disputes are pending, students must be enrolled in the school in which they are seeking enrollment. If that school is the school of origin, the school district(s) involved must provide transportation. 2003 Guidance, p. 18; 42 U.S.C. §11432(g)(1)(J)(iii). If that school is the local school, transportation must be provided to the extent it is provided to housed students, and to the extent necessary to ensure it is not a barrier to attendance. 42 U.S.C. §§11432(g)(1)(I), (g)(4), (g)(7). These provisions apply whether the dispute is about school enrollment, school selection, or whether the child or youth is homeless under the McKinney-Vento Act.

36. If a student's temporary housing is across state lines from the school of origin, is transportation still required?
A: Yes. Since the McKinney-Vento Act is a federal law, it applies as in any other situation. Therefore, if the student is attending the school or origin, transportation must be provided at the parent's/guardian's request or at the liaison's request, in the case of an unaccompanied youth. Communication among the involved State Coordinators, liaisons and transportation directors can facilitate the provision of transportation. (See Question 22.)

37. Our state legislature is considering a bill that would require school districts to transport students only in official school vehicles. How would this interact with McKinney-Vento's transportation requirements?
A: Such a state law would not violate the McKinney-Vento Act. School districts would still have to continue to provide transportation to the school of origin at the request of parents, guardians, or liaisons (in the case of unaccompanied youth), while complying with the new state transportation law.

Immediate Enrollment and Attendance

38. How "immediate" is immediate enrollment?
A: The McKinney-Vento Act requires schools to enroll students experiencing homelessness immediately, even if the student is unable to provide documents that are typically required for enrollment. 42 U.S.C. §11432(g)(3)(C). Enroll means permitting the student to attend classes and participate fully in school activities. 42 U.S.C. §11434A(1). Although the Act does not define immediate, the standard dictionary definition is "without delay." Therefore, the student

must begin attending classes and participating fully in school activities without delay. Generally, that would mean the same or the following day.

39. Can schools require verification of proof of residency, such as seeing a lease in the case where a family is hosting a student who is not a family member?
A: No. Schools may not require verification of proof of residency as a condition of enrollment. 42 U.S.C. §11432(g)(3)(C). Due to their living situations, it frequently will be impossible for families and youth experiencing homelessness to provide such verification. Further, schools must not contact the landlords of host families to discuss living arrangements. Residence information provided by parents or youth to schools is part of the student's educational records and protected by federal privacy laws. Such contact could also lead to eviction of the host family. However, the Act does not prohibit schools from requiring parents, guardians, or youths to submit emergency contact information. 42 U.S.C. §11432(g)(3)(H).

40. How can schools verify age for enrollment in kindergarten without a birth certificate?
A: The McKinney-Vento Act requires immediate enrollment, even if typically required documents cannot be produced. 42 U.S.C. §11432(g)(3)(C). Therefore, the school must enroll the child in kindergarten immediately and work with the family to obtain acceptable proof of age. Many types of documents can be accepted to prove age, including medical records, baptismal certificates, or a simple statement of age signed by the parent or guardian. 2003 Guidance, p. 14.

41. If we enroll a student who is homeless without requiring proof of immunizations, aren't we putting the entire school at risk?
A: The McKinney-Vento Act requires immediate enrollment, even if students are unable to produce immunization or other medical records, recognizing that families and youth who are homeless are frequently unable to obtain and keep copies of records. 42 U.S.C. §11432(g)(3)(C). The vast majority of homeless students have been enrolled in school before and have had required immunizations. These records should be a part of their school records. Since the enrolling school is required to contact the previous school for records, the information should be available quickly. 42 U.S.C. §§11432(g)(3)(C), (D). The enrolling school and the liaison should work together to get immunization records as soon as possible. If a student has not had immunizations, initial doses should be administered as soon as possible, unless the student has a philosophical, religious, or medical exemption. It is accepted practice in most states and in the public health community that some children will not be immunized for these reasons. It is recognized among public health practitioners that the fact that most students are immunized prevents serious outbreaks from occurring. Should an outbreak of illness occur, the same procedures used to protect unimmunized children can be used to protect students whose immunization records have not yet been obtained.

42. If we enroll a student who is homeless without requiring school records, how do we know the child was not suspended or expelled from the previous school?
A: The enrolling school must immediately admit the student and must contact the previous school for records. 42 U.S.C. §§11432(g)(3)(C), (D). If the records cannot be transmitted immediately, the enrolling school can speak with staff from the previous school to get basic

information about the student. Former teachers, counselors and administrators should be able to provide this information.

43. Can the previous school transfer records to the new school without a parent's signature?
A: Yes. The Federal Education Rights and Privacy Act (FERPA) is a federal law that protects the privacy of educational records. Generally, FERPA requires schools to have written permission from a parent before releasing any information from a child's records. However, FERPA allows schools to release records without a parent's permission to schools to which a student is transferring. 20 U.S.C. §1232g. There are additional exceptions to the FERPA requirements; visit www.ed.gov/policy/gen/guid/fpco/ferpa/index.html for more information.

44. Can a previous school refuse to send records due to fees owed for textbooks, etc.?
A: No. That school would be creating a barrier to the enrollment and retention of the child in school, which violates the McKinney-Vento Act. 42 U.S.C. §§11432(g)(3)(C) and (D), (g)(1)(I), (g)(7).

45. How can a school determine what classes or services to provide a student if there are no school records?
A: The enrolling school must immediately admit the student and must contact the previous school for records. 42 U.S.C. §§11432(g)(3)(C), (D). If the records cannot be transmitted immediately, the enrolling school can speak with staff from the previous school to get basic information about the student. Former teachers, counselors, and administrators should be able to provide this information. The enrolling school can also get information regarding class schedules from parents and youth. The school can also establish procedures for conducting a quick assessment of the student's skills. Even if records are delayed, the student must be enrolled in school and provided the most appropriate services possible immediately. Upon receipt of previous school records, the school can make any necessary adjustments to the student's classes and services.

46. If a state or school district has zero tolerance rules for absences (for example, requiring students with 10 absences to be referred to juvenile court, or to fail classes automatically), how do those rules apply to students in homeless situations?
A: The McKinney-Vento Act requires schools to identify and remove all barriers to enrollment and retention in school for children and youth in homeless situations. 42 U.S.C. §§11432(g)(1)(I), (g)(7). Zero tolerance rules for absenteeism can be such barriers, particularly when they result in class failures, exclusion from school, or court involvement. Frequently, students in homeless situations will miss school due to their living situations. Absences caused by homelessness should not be counted against students. The McKinney-Vento Act requires that zero tolerance rules address the realities of homelessness and not create a barrier to enrollment and retention in school.

47. If a student in a homeless situation seeks enrollment in an alternative school that does not enroll students until April (and it is now January), what may the liaison do to ensure that the student receives appropriate services?
A: Youth in homeless situations are entitled to immediate enrollment in the school of origin or "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." 42 U.S.C. §§11432(g)(3)(A), (C). Therefore, if the alternative school serves other youth living in the same attendance area, and the youth meets the attendance criteria for the alternative school, he must be allowed to enroll. Limits on enrollment timing conflict with the immediate enrollment requirement of the McKinney-Vento Act and are superseded by the Act. Furthermore, states and school districts must remove barriers to the enrollment and retention of homeless children and youth in schools. 42 U.S.C. §§11432(g)(1)(I), (g)(7). This enrollment schedule presents a barrier to enrollment and retention of a youth experiencing homelessness in school, and so should be revised to create an exception for youth experiencing homelessness, who meet the attendance eligibility criteria, but enter the district between enrollment periods.

48. How should a school handle the enrollment of a youth in a homeless situation who was recently involved in a criminal act?
A: It is inappropriate to suspect runaway youth of criminal pasts, and it violates the McKinney-Vento Act to require proof of good standing prior to enrollment. 42 U.S.C. §§11432(g)(3)(C). Nevertheless, it is important for the school district liaison to gather as much information as possible about the youth's background for the primary purpose of obtaining appropriate services. If the liaison discovers that the youth has been involved in criminal activity, district policies relating to students with a criminal background would take effect.

49. What if a child has been abducted? If the enrolling school does not require proof of guardianship, how will abducted children be found?
A: The provisions of the McKinney-Vento Act requiring immediate enrollment are even more important in a case of child abduction. If there is legitimate cause for concern, the school should immediately contact the police, children's protective services, or if possible, the student's parents, consistent with state law. While law enforcement and/or children's protective services are conducting their investigations, the safest place for the student is school, rather than isolated with a potential abductor. It is advisable to involve the school counselor or social worker, who can closely monitor the situation.

50. Must school districts publicize information about the McKinney-Vento Act?
A: Yes. 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. 42 U.S.C. §§11432(g)(6)(A)(iv), (v), (vii). Posters, such as the ones provided by the U.S. Department of Education (available at www.serve.org/nche) and other readable information translated into languages represented in the community must be placed where homeless families and youth receive services. To comply with the McKinney-Vento Act, the district should train all school enrollment staff, secretaries, school counselors, school social workers, and principals on the legal requirements for enrollment. School nutrition staff, school nurses, teachers, and bus drivers should receive training on homelessness that is specific to their field. For example, school nutrition staff should be knowledgeable about the provisions regarding free lunch under the federal school breakfast and lunch programs (see Question 73). The training should take place on a yearly basis to address staff turnover. This information should be provided in writing, as in a district handbook.

Issues Facing Youth

51. How does the McKinney-Vento Act define "unaccompanied youth"? Is there an age range?
A: Unaccompanied youth is defined as a youth not in the physical custody of a parent or guardian. 42 U.S.C. §11434A(6). The Act does not provide an age range.

52. Is there an age limit on serving secondary students?
A: The McKinney-Vento Act applies to children and youth age 21 and under, consistent with their eligibility for public education services under state and federal law. 2003 Guidance, p. 27. State laws vary, but generally provide access to all students until high school graduation or equivalent, or until age 18 (or over in some states). For special education students, federal law provides the right to access services until age 22. 20 U.S.C. §1412(a)(1)(A).

53. Must schools enroll youth in school without proof of guardianship?
A: Yes. Lack of guardianship papers cannot delay or prevent the enrollment of an unaccompanied youth. 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(F)(ii). States and school districts have established different procedures for enrolling youth. Some permit the youth to enroll himself or herself; some have the liaison handle enrollment; others use caregiver forms to allow adult caregivers to enroll youth. The McKinney-Vento Act requires states and school districts to eliminate barriers to enrollment and retention and to enroll unaccompanied youth in school immediately. 42 U.S.C. §§11432(g)(1)(I), (g)(7). School districts may adopt their own policies to meet these mandates. More information about approaches to enroll unaccompanied youth immediately will soon be available at www.nlchp.org/FA_Education.

54. Can a school require a caregiver to get legal guardianship to enroll a student in school?
A: No. The McKinney-Vento Act requires states to address the problem of guardianship issues in school enrollment and requires school districts to enroll youth in school immediately, even if they lack typically required enrollment documents. 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(F)(ii). The decision to seek legal guardianship is a serious decision that significantly affects the legal rights of the parent and caregiver well beyond the school arena. While that step will be appropriate in some cases, it will not be in others.

55. Who can make educational decisions for an unaccompanied youth?
A: States and school districts have established different procedures for educational decision-making. Some permit the youth to make educational decisions on his/her own behalf; some vest the liaison with that authority; others use caregiver forms to allow adult caregivers to make such decisions. The McKinney-Vento Act requires states and school districts to eliminate barriers to enrollment and retention and to enroll unaccompanied youth in school immediately. 42 U.S.C. §§11432(g)(1)(I), (g)(7). School districts may adopt their own policies to meet these mandates. It should be noted that the Individuals with Disabilities Education Act (IDEA) has its own rules and procedures for appointing a "surrogate parent" to make special education decisions for minors, where a parent or legal guardian is not available (see Question 90).

56. Do schools have to contact the police when enrolling unaccompanied youth?

A: State law determines the obligation of a school liaison or service provider concerning unaccompanied youth. The McKinney-Vento Act requires schools to enroll unaccompanied youth in school immediately. 42 U.S.C. §11432(g)(3)(C). Since the Act requires school districts and states to eliminate barriers to enrollment and retention in school, schools should exercise care and concern when contacting social services or law enforcement agencies. 42 U.S.C. §§11432(g)(1)(I), (g)(7). Liaisons should work with police and social services to keep the youth in school and to serve the student's best interest, recognizing that most unaccompanied youth have fled abuse or severe dysfunction in their homes (see Question 58). In many cases, unaccompanied youth will be in the care of an adult, and there will be no reason to suspect neglect or abuse. It is likely that state mandatory reporting laws would not require contacting police in such cases. However, if school personnel have a reasonable suspicion of child abuse, state law may require staff to contact local social services or police. To find your state's laws on reporting child abuse and neglect, visit the on-line statute finder of the National Clearinghouse on Child Abuse and Neglect Information, at http://nccanch.acf.hhs.gov/general/legal/statutes/manda.cfm. If this is the case, a liaison or school counselor should work with the youth to support him or her and avoid casting the school as an agent of punishment. Where state law provides a choice, as most do, schools should contact social services rather than the police. Social services agencies should have the training and facilities to respond more appropriately to such reports.

57. What if an unaccompanied youth gets injured in school? How will the child receive medical care without a parent? Will the school be liable?
A: If an unaccompanied youth has a medical emergency, the school can contact the local emergency room. Medical professionals should be familiar with the rules to treat minors and will respond appropriately to medical emergencies. Liability for injuries is based on a party's failure to exercise reasonable care. By exercising reasonable care in creating a safe environment and responding appropriately to medical emergencies, the school can help protect itself from liability. In any event, such concerns do not relieve the school of its responsibilities under the McKinney-Vento Act. Indeed, if a school violates the Act by refusing to enroll an unaccompanied youth in school, and the youth is subsequently injured off school grounds, the school could face liability for having turned the youth away. As state laws vary regarding the rights of minors to receive medical care without a parent or guardian, liaisons and other advocates may with to contact the Center on Adolescent Health and the Law (www.cahl.org) or state/local resources for more information.

58. If runaway youth would just clean their rooms and turn down their music, they could live at home; why should we encourage their bad behavior?
A: Most runaway youth, especially those who are on the streets a significant length of time, have fled from abusive homes for their own survival. Some leave home without a parent's permission; others are forced out of their homes by their parents or guardians. Studies of unaccompanied youth have found that 20 to 50 percent were sexually abused in their homes, while 40 to 60 percent were physically abused.[3] Severe dysfunction in the home is also

[3] Robertson, Marjorie and Toro, Paul. "Homeless Youth: Research, Intervention, and Policy." Fosburg, Linda and Dennis, Deborah (Eds.), Practical Lessons: The 1998 National Symposium on Homelessness Research. Washington DC: U.S. Dept. of Housing and Urban Development (1999) available at http://aspe.os.dhhs.gov/progsys/homeless/symposium/3-Youth.htm); MacLean, Michael G., Embry, Lara

common. Forty percent of callers to the National Runaway Switchboard identified negative family dynamics as the leading reason for leaving home.[4] For example, over two-thirds of unaccompanied youth surveyed in a recent study reported that at least one parent abused drugs or alcohol.[5] Many young people are not welcome in their parents' or guardians' homes due to their sexual orientation or identity, pregnancy, or other types of family conflict. Youth often leave home to remove themselves from an immediately painful situation, but without plans for what to do next. 5,000 runaway youth die every year from assaults, illness, or suicide. Yet many runaway youth continue to value education and the opportunities, safety, and stability it provides. Excluding these youth from school will harm them and society.

59. Can unaccompanied youth apply for federal financial aid (through the FAFSA) without providing information about their parents' income and their parents' signature?
A: With advocacy, yes. Under the Higher Education Act, youth who meet the definition of "independent student" can apply for federal aid without parental information or signature. To be considered independent, a student must be an orphan, a ward of the court, a veteran, a graduate student, married, or have a dependent. A financial aid administrator at a college can also designate a student as independent due to "other unusual circumstances." Homelessness or separation from parents can be considered an unusual circumstance. McKinney-Vento liaisons and unaccompanied youth have worked with financial aid administrators to have unaccompanied youth designated as independent. Contact the financial aid administrator at the college of your choice for more information. For more information, download "Legal Tools to End Youth Homelessness" from www.nlchp.org/content/pubs/Youth%20Legal%20Tools.pdf. 20 U.S.C. §1087vv(d).

60. Can unaccompanied youth enroll in Job Corps without parental approval?
A: With advocacy, yes. Job Corps is a comprehensive residential, education and job training program for at-risk youth, ages 16 through 24. It provides academic, vocational, and social skills training to nearly 70,000 students a year, at 118 different sites. Youth who are homeless are eligible for Job Corps. Although the Job Corps law does not require a parent's or guardian's signature for a youth to participate, federal Job Corps policy does. However, Job Corps programs can waive that requirement for youth who have no parent or guardian, cannot find a parent or guardian, or are legally emancipated. The requirement can also be waived for youth whose parents are not willing to sign, as long as they do not object to the youth participating. McKinney-Vento liaisons have used this exception to advocate successfully for unaccompanied youth to participate in Job Corps without a parent's signature. For more information about this program, download "Legal Tools to End Youth Homelessness" from www.nlchp.org/content/pubs/Youth%20Legal%20Tools.pdf. 20 C.F.R. §664.200; 29 U.S.C. §2884(3)(C); Job Corps Policy Requirements Handbook; 29 U.S.C. §2801(25).

61. How can the Runaway and Homeless Youth Act help unaccompanied youth?

E. & Cauce, Ana Mari (1999). Homeless Adolescents' Paths to Separation from Family: Comparison of Family Characteristics, Psychological Adjustment, and Victimization. Journal of Community Psychology, 27(2), 179-187.
[4] http://www.nrscrisisline.org/
[5] MacLean, supra, note 3.

A: The Runaway and Homeless Youth Act can help youth in many ways. First, it contains a Basic Center Program that supports emergency shelters for up to 15 days for unaccompanied youth under 18 years old. Second, the law supports Transitional Living Programs for youth, which provide long-term housing for up to 18 months and life skills for youth 16-21 years old. Third, the law contains a Street Outreach Program to provide outreach and services to youth on the streets. Lastly, the law funds the National Runaway Switchboard, trainings for youth workers, and other information and supports. Runaway and Homeless Youth Act programs are required to provide youth with information about the McKinney-Vento Act and to collaborate with their local school district liaisons. For more information about this program, download "Legal Tools to End Youth Homelessness" from www.nlchp.org/content/pubs/Youth%20Legal%20Tools.pdf. 42 U.S.C. §§5701 et seq.; 42 U.S.C. §5712(b)(3); 45 C.F.R. §1351.18(e).

Disputes and Enforcement

62. Does the McKinney-Vento Act contain procedures for resolving disputes?
A: Yes. The McKinney-Vento Act requires each state to establish its own procedures to resolve disputes promptly. 42 U.S.C. §11432(g)(1)(C). The Act requires schools to admit students immediately to the school in which they are seeking enrollment, until the dispute is resolved. 42 U.S.C. §11432(g)(3)(E). The school must provide a written explanation of its decision, including information about the right to appeal. 42 U.S.C. §§11432(g)(3)(B)(iii), (g)(3)(E). The school must then refer the student, parent, or guardian to the district liaison, who must carry out the dispute resolution process as quickly as possible. 42 U.S.C. §11432(g)(3)(E).

63. Does the district liaison <u>have</u> to be the person listening to the grievance procedure?
A: No, although it is considered a good practice. The McKinney-Vento Act requires every state to develop a procedure to promptly resolve disputes. 42 U.S.C. §11432(g)(1)(C). Therefore, the state can determine the specifics of the dispute resolution process. The liaison does not have to be the person listening to the grievances; however, liaisons are required to carry out the dispute resolution process, making sure that families and youth are aware of their rights to appeal and are able to access the dispute process. 42 U.S.C. §11432(g)(3)(E).

64. Does the state need to be involved in resolving disputes?
A. Yes. The McKinney-Vento Act requires states to ensure that school districts comply with the Act. 42 U.S.C. §§11432(f)(6), (g)(2). Without a role in dispute resolution, the state will not be able to ensure compliance. Further, the U.S. Department of Education has outlined dispute resolution procedures which include a state-level appeal. 2003 Guidance, p. 15. Allowing school districts to resolve disputes without state involvement and oversight would allow barriers to school enrollment and retention to arise, in violation of the McKinney-Vento Act. 42 U.S.C. §§11432(g)(1)(I), (g)(7). Finally, state involvement early in the dispute process will be important when inter-district issues arise.

65. Must school districts provide transportation during disputes?
A: Yes, to the extent it would be required if there were no dispute. (See Question 35.) While disputes are pending, students must be enrolled in the school in which they are seeking

enrollment. If that school is the school of origin, the school district(s) involved must provide transportation. 2003 Guidance, p. 18; 42 U.S.C. §11432(g)(1)(J)(iii). If that school is the local school, transportation must be provided to the extent it is provided to housed students, and to the extent necessary to ensure it is not a barrier to attendance. 42 U.S.C. §§11432(g)(1)(I), (g)(4), (g)(7). These provisions apply whether the dispute is about school enrollment, school selection, or whether the child or youth is homeless under the McKinney-Vento Act.

66. Does the McKinney-Vento Act apply to schools that are not receiving its funding?
Yes, the McKinney-Vento Act applies to every local educational agency in every state. As with most education laws, the Act applies to states receiving the federal funds.

67. If a school district does not follow the law, is there a penalty?
A: Yes. States are required to ensure that school districts in the state comply with the McKinney-Vento Act. 42 U.S.C. §§11432(f)(6), (g)(2). Therefore, the state can sanction noncompliant school districts by withholding federal funds or other means. Families can also sue school districts in state and/or federal court. Several lawsuits have been filed under the McKinney-Vento Act, including lawsuits in Illinois, Maryland, Alabama, and New York. As a result, school districts have been forced to change their policies and practices and pay significant attorney fees. In addition, the U.S. Department of Education monitors state and school district compliance with the McKinney-Vento Act and could withhold or require repayment of federal funds in cases of noncompliance.

Barriers to Academic Success

68. Does the requirement for immediate enrollment include enrollment in optional enrichment programs, extended-day programs, and other supplemental services?
A: Yes. Enrollment is defined to include attending classes and participating fully in school activities. 42 U.S.C. §11434A(1). Enrichment programs and other supplemental services are school activities. Furthermore, liaisons are required to ensure that children and youth in homeless situations have a full and fair opportunity to succeed in school. 42 U.S.C. §11432(g)(6)(A). Enrichment programs clearly support that requirement. To the extent that individual students experiencing homelessness can benefit from such programs, they must be provided access to the programs.

69. Should students in homeless situations be exempt from attendance rules for participating in school sports (for example rules requiring attending school for a semester before being eligible for sports at that school)?
A: Yes. The McKinney-Vento Act requires states and school districts to eliminate barriers to school enrollment and retention for children and youth experiencing homelessness. 42 U.S.C. §§11432(g)(1)(I), (g)(7). Enrollment is defined as attending school and participating fully in school activities. 42 U.S.C. §11434A(1). Sports and other extra-curricular activities are school activities. Courts have determined that school athletic associations are generally considered to be part of the state, due to their close relationship with the state. Therefore, athletic associations must comply with the McKinney-Vento Act's requirement to remove barriers, by exempting

homeless students from sports participation rules that students cannot meet due to their homelessness and mobility, such as attendance rules.

70. What if children experiencing homelessness cannot pay fees associated with extra-curricular activities, such as club dues, sports uniforms, etc.?
A: Again, barriers to full participation in school must be eliminated. 42 U.S.C. §§11432(g)(1)(I), (g)(7). Fees for extra-curricular activities should be waived, or paid with other funds (such as McKinney-Vento funds or Title I, Part A funds).

71. If a youth has not been in a school and tries to enroll mid-semester, what obligation does the school have to enroll the student and give him/her credit for the work they do in the remainder of the semester?
A: The McKinney-Vento Act requires the school to enroll the student immediately. 42 U.S.C. §§11432(g)(3)(C). The Act also requires the school district to remove barriers to the student's retention in school. 42 U.S.C. §§11432(g)(1)(I), (g)(7). Since the inability to earn any credit is a disincentive to remaining in school, the school must address that problem. The school must make any necessary adjustments to the student's schedule to permit the student to obtain partial or pro-rated credit for his or her work.

72. Is there any obligation to provide education services to a student who is homeless and is expelled from school due to behavior?
A: Student discipline and expulsion rules apply to students in homeless situations in the same way they apply to housed students. However, schools must be careful not to discipline or penalize students for behavior related to their homelessness. For example, a school district policy that issues suspensions for multiple absences must excuse absences caused by homelessness. The failure to provide such exemptions would create a barrier to the retention in school of students experiencing homelessness, in violation of the McKinney-Vento Act. 42 U.S.C. §§11432(g)(1)(I), (g)(7).

73. Can students who are homeless receive free school meals without documenting income?
A: Yes. The U.S. Department of Agriculture's Child Nutrition Division issued a policy in 2002 (later enacted into law by the Child Nutrition and WIC Reauthorization Act of 2004) that makes any child, identified as homeless by a liaison or shelter director, automatically eligible for free school meals. They do not have to complete an application. When a liaison or a shelter director provides a child's name to the local school food service office, free school meals should commence immediately. A copy of the USDA policy is available at www.nlchp.org/FA_Education. Some states may also have established policies to support this federal law.

74. To what extent should services for dental, medical, and other such needs be provided for children experiencing homelessness?
A: To the extent that such services are available at school, children experiencing homelessness must have access to them. 42 U.S.C. §11432(g)(4). Outside of school, liaisons are required to provide referrals for health, mental health, dental, and other appropriate services in the community. 42 U.S.C. §11432(g)(6)(A)(iii). "Other appropriate services" may include housing, shelter, job training, public assistance, food and nutrition, and legal assistance.

Preschool

75. Does the McKinney-Vento Act address preschool?
A: Yes. The McKinney-Vento Act clearly and specifically includes preschool programs within its definition of free, appropriate public education. 42 U.S.C. §11431(1).

76. What must states do to serve preschoolers experiencing homelessness?
A: State plans must describe procedures to ensure that preschoolers experiencing homelessness have access to preschool programs administered by the State. 42 U.S.C. §11432(g)(1)(F)(i). States are to use McKinney-Vento grants in part to provide activities and services for preschoolers in homeless situations, so they can enroll in, attend, and succeed in preschool programs. 42 U.S.C. §11432(d)(2). State coordinators must coordinate with agencies that serve preschoolers, including child development and preschool personnel, to improve the provision of comprehensive services to children. 42 U.S.C. §§11432(f)(4), (f)(5)(A).

77. What must school districts do to serve preschoolers experiencing homelessness?
A: School district liaisons must ensure that families and children experiencing homelessness can enroll in Head Start and Even Start programs and preschool programs administered by the school district. 42 U.S.C. §11432(g)(6)(A)(iii). Districts can also use their McKinney-Vento subgrants to provide early childhood education programs for children in homeless situations, if such programs are not otherwise provided through Federal, State, or local funding. 42 U.S.C. §11433(d)(6).

78. Does the McKinney-Vento Act require Head Start programs to enroll children without birth certificates or other documents?
A: This depends upon what agency operates the Head Start program. The McKinney-Vento Act applies to state and local education agencies. Therefore, a Head Start program administered by a state or local education agency may be covered by the Act and therefore required to enroll families and children immediately, even without birth certificates or other documents. 42 U.S.C. §11432(g)(3)(C). Head Start bills currently pending in Congress would require all Head Start programs to permit immediate enrollment and to assist families in obtaining necessary documentation.

The U.S. Department of Health and Human Services also issued a policy brief in 1992 encouraging all Head Start programs to comply with many of the McKinney-Vento Act's requirements. The policy brief further encourages Head Start programs to eliminate barriers to enrolling homeless families, such as reserving spaces for those families, moving them to the top of waiting lists, and conducting outreach activities. A copy of the policy brief is available at www.nlchp.org/FA_Education.

Segregation

79. In a situation where students stay at a shelter for only a short period of time, can a district provide a teacher to teach at the shelter?

A: No. The McKinney-Vento Act prohibits segregating students experiencing homelessness in shelter classrooms, separate schools, or separate programs within a school. 42 U.S.C. §11432(e)(3)(A). No public funds can support separate education for homeless students, for any period of time. Students experiencing homelessness must be immediately enrolled in either the local school or their school of origin. However, supplemental services such as after-school tutoring or mentoring can be provided at a shelter, using McKinney-Vento, Title I, Part A, or other public funds.

80. The McKinney-Vento Act says that its funds can be used to provide services to children experiencing homelessness in a separate setting within a public school, only "as necessary for short periods of time for health and safety emergencies." How is "health and safety emergencies" defined?
A: McKinney-Vento Act funds must expand or improve upon services provided as part of a school's regular academic program, and cannot replace regular academic services. 42 U.S.C. 11433(a)(2)(A)(iii). The Act does contain a very limited provision for providing services to students experiencing homelessness in a separate setting within a public school, as described in the question. The very limited "health and safety emergency" exception says:

1. only school districts that get McKinney subgrants
2. can provide services to homeless students in separate settings within a public school (not at a shelter or other location)
3. as necessary
4. for short periods of time
5. for health and safety emergencies

There is no specific definition of "health and safety emergencies." One possible example of a permissible service under this clause might be for a school in a McKinney-Vento funded school district to keep students who are affected by domestic violence in a separate setting at dismissal time to make sure they get home safely. 42 U.S.C. 11433(a)(2)(B)(ii). Since McKinney-Vento services cannot replace regular academic services, this provision would not allow for separate classes for students in homeless situations, included those affected by domestic violence. For children affected by domestic violence, whether they are residing in shelters or other situations, the public schools they attend must work with the parent to ensure safety, confidentiality, sensitivity, and appropriate services. More information on how schools and shelters can assist victims of domestic violence will soon be available at www.nlchp.org.

Private Schools, Tribal Schools, and Charter Schools

81. What obligations do private schools have under the McKinney-Vento Act? If the school of origin is a private school, must the student be allowed to continue attending?
A: The McKinney-Vento Act does not apply to schools that are entirely privately funded. Therefore, private schools are not required to allow children to continue to attend or to provide transportation. Public schools should offer McKinney-Vento and Title I, Part A services to students experiencing homelessness who are attending private schools, as public schools do for other private school students who are eligible for public education services (for example, special education and Title I, Part A services).

82. Are tribal schools required to designate a liaison for their schools?
A: Probably. The Department of the Interior receives McKinney-Vento funds for schools run by the Bureau of Indian Affairs (BIA). 42 U.S.C. §11432(c)(2)(B)(i). The Secretary of Education and the Secretary of the Interior must enter into an agreement to ensure that such funds are used to meet the purposes of the Act. The Secretary of the Interior must establish goals, objectives and milestones for use of the funds. Since the liaison position is essential to meet the purposes of the McKinney-Vento Act, it is likely that BIA schools would be required to designate a liaison. However, advocates working with Native American children experiencing homelessness should consult the Department of the Interior to obtain a copy of the McKinney-Vento plan and determine what activities are required. 42 U.S.C. §11432(c)(2)(B)(ii).

83. In our state, charter schools do not have to provide transportation to students (except for special education students) unless they choose to do so. Do charter schools have to enroll students experiencing homelessness if the charter school is the school of origin? Do charter schools have to accept students experiencing homelessness if it is an attendance area school and there are other public schools available in the attendance area? Do charter schools have to appoint a homeless liaison?
A: Yes, yes, and yes. Public charter schools have the same responsibility under the McKinney-Vento Act as other schools and school districts. If a student who attends a charter school becomes homeless, the student has the same right to remain in the school of origin as other public school students. If a student experiencing homelessness attempts to enroll in a charter school, the school must enroll him or her as long as other students living in the same area would be eligible to attend the school. If the charter school has particular, skills-related entrance requirements, the student must meet those criteria (for example, a fine arts charter school with requirements related to artistic ability). Charter schools that are considered their own LEAs must designate a liaison for students experiencing homelessness.

Students Receiving Special Education and Related Services

84. Do students receiving special education who are homeless have the right to remain in their school of origin?
A: Yes. The McKinney-Vento Act applies to students receiving special education services the same way it applies to other students. Therefore, a student receiving special education who is homeless must remain in the school of origin, unless it is not feasible or against the parent's/guardian's wishes. More often than not, the feasibility equation will weigh in favor of keeping a special education student in the same school, because changing schools and educational programs can be particularly detrimental to students with special needs. Of course, if the distance is such that the commute would be more detrimental than changing schools would be, then the student may have to change schools.

There are additional legal requirements under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq., that might come into play. However, IDEA does not supersede the McKinney-Vento Act; a special education student retains all McKinney-Vento rights.

85. If a student receiving special education services becomes homeless and elects to remain in the school of origin, who pays for transportation?
A: School districts must provide transportation to the school of origin upon request. 42 U.S.C. §11432(g)(1)(J)(iii). This is true regardless of the services the student receives, including special education and related services. Transportation can be included as a related service in a student's Individualized Education Program (IEP). 20 U.S.C. §1402(22). If transportation is listed as a related service in a student's IEP, the student's transportation should be funded from the special education budget. If transportation is not an appropriate related service, the student's transportation should be funded in the same manner as that of other students experiencing homelessness.

86. Must schools immediately enroll students receiving special education who are homeless?
A: Yes. The McKinney-Vento Act applies to students who are homeless and who receive special education. Those students must be enrolled immediately in school, to include attending classes and participating fully in school activities. There are additional legal requirements under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq., that might come into play. However IDEA does not supersede the McKinney-Vento Act; a special education student retains all McKinney-Vento rights.

87. How can a school determine what services to provide a student receiving special education, if there are no school records?
A: The enrolling school must immediately admit the student and must contact the previous school for records. 42 U.S.C. §§11432(g)(3)(C), (D). The local liaison should work with special education staff to ensure that a child's special needs can be identified and addressed quickly. The district should establish procedures for obtaining a child's school records expeditiously. If the records cannot be transmitted immediately, the enrolling school can speak with staff from the previous school to get basic information about the student. Former teachers, counselors and administrators should be able to provide this information. Even if records are delayed, the student must be enrolled in school and provided the most appropriate services possible immediately. 20 U.S.C. §§1412(a)(1)(A), 1412(a)(4), 1414(d)(2)(A); 34 C.F.R. §§300.341, 300.300. In fact, IDEA's regulations specifically cite students experiencing homelessness as a group which requires special efforts and outreach to ensure such students who have disabilities are identified, evaluated, and served. 34 C.F.R. §300.125(a)(2)(i). State laws and regulations implementing IDEA may also contain procedures for providing interim IEPs and interim services.

88. If a student has special education testing or an Individualized Education Program (IEP) from the previous school, must the new school implement it?
A: The new school must provide a free, appropriate public education for the student. Under IDEA, the new school must hold a meeting with the parents to adopt the previous IEP or create a new IEP. However, until the meeting takes place, the school should implement the previous IEP, to provide appropriate services and avoid disruption in the child's education and the school. If the previous school was in the midst of developing an IEP but hadn't finished it, the new school should: 1) get all the evaluations and other paperwork completed on the student from the old school; 2) talk to the school counselor and/or teachers about the student's needs; and 3) develop

an IEP as soon as possible. 20 U.S.C. §§1412(a)(1)(A), 1412(a)(4), 1414(d)(2)(A); 34 C.F.R. §§300.341, 300.300, 300.343(b).

89. If an unaccompanied youth is under 18, who signs for special education services?
A: Under the Individuals with Disabilities Education Act (IDEA), the following people can sign for special education services for a minor: A parent, guardian, adult relative with whom the child is living, a person legally responsible for the child, or in many cases, a foster parent. 34 C.F.R. §300.20. If no such adults are available, the school district may have to assign a surrogate parent. The school district must assign a surrogate if the youth is a ward of the state, or if the district cannot locate a parent or other adult who can sign for services. 34 C.F.R. §300.515. The surrogate parent must be trained in special education procedures and cannot be a school district employee or other person who might have a conflict of interests.

If the youth is not a ward of the state and a parent's location is known, then the parent or another adult who can sign for services must be convinced to participate in the special education process on behalf of the youth. This can be a challenge for unaccompanied youth. Some approaches might include working with the parent; helping the youth find an adult relative who would be willing to get involved; helping a non-relative caretaker take the necessary steps to become legally responsible for the youth; determining whether emancipation is available and appropriate; determining whether terminating the parents' rights is appropriate; and determining whether the youth is a ward of the state (for example, a foster child who has left placement).

Whatever approach is used, since states must ensure that all homeless children with disabilities are identified, located and evaluated, a child under 18 should not be denied access to special education services simply because the parent is not available to sign for services. 34 C.F.R. §300.125.

Title I, Part A of the Elementary and Secondary Education Act

90. Are children and youth in homeless situations eligible for Title I, Part A services? What if they are succeeding in school?
A: Yes. All children and youth in homeless situations are automatically eligible for Title IA services, whether or not they live in a Title I school attendance area or meet the academic standards required of other children for eligibility. 2003 Guidance, p. 24; 20 U.S.C. §6315(b)(2)(E). The poverty, unstable and often unhealthy living situations, and emotional trauma of homelessness place even outstanding students at risk of academic regression and failure.

91. If a student experiencing homelessness attends a school that does not receive Title I, Part A funds, how does the student receive services?
A: Every school district that receives Title IA funds is required to set aside a portion of its allotment to provide comparable services to homeless students attending schools that do not receive Title IA services. 2003 Guidance, p. 24; 20 U.S.C. §6313(c)(3). For example, Title IA funds frequently serve elementary school students. The mandatory set-aside ensures that middle and high school students experiencing homelessness in those districts receive Title IA services.

92. Is there a formula for calculating Title I, Part A set-asides?

A: No, there is no mandated formula for Title IA set-asides. However, the set-aside must be sufficient to provide "comparable services" to students attending non-participating schools. 2003 Guidance, p. 24; 20 U.S.C. §6313(c)(3). Therefore, the set-aside must be based on the number and needs of children and youth experiencing homelessness in the school district. Some states have established statewide guidelines for determining set-aside amounts and have found it beneficial. Some possible methods to calculate the set-aside include: (1) identify and assess the needs of students in homeless situations in the district, and set aside funds accordingly; (2) multiply the number of identified students experiencing homelessness by the Title IA per-pupil allocation; (3) for districts with a McKinney-Vento subgrant, reserve an amount greater than or equal to the district's McKinney-Vento funding request; (4) reserve a specific percentage based on the district's poverty level or total Title IA allocation. (Calculation methods taken from: "Four Methods for Determining New Mandatory Title I, Part A Set-Aside for Homeless Children." *NCLB Financial Compliance Insider* (Nov. 2003).)

93. What kind of services can Title I, Part A funds (including set-asides and other funds) pay for?
A: Title IA funds, including those under the set-aside and other funds, can be used to serve students experiencing homelessness in both Title IA and non-Title IA schools. The services should support the students to succeed in school and to meet academic achievement standards. The funds can be used to provide services that are not ordinarily provided to other Title IA students. Examples of services school districts have provided with Title IA funds to students experiencing homelessness include: supporting the position of the liaison, mentoring, tutoring, enrichment activities, case management, school supplies, testing fees, clothing, activity fees, graduation fees, and other services to enable students to enroll in, attend, and succeed in school. 2003 Guidance, p. 24-5.

94. Can Title I, Part A set-asides be used to fund liaisons and other school district level activities?
A: Yes. School districts can use Title IA set-asides to serve children and youth experiencing homelessness in both Title I and non-Title I schools. 2003 Guidance, p.24-5. For example, Title IA set-asides may be used to support the liaison position, to allow the liaison to dedicate more time to McKinney-Vento Act activities or to hire additional staff for the McKinney-Vento program. The set-aside can also fund district-wide activities conducted by the liaison (such as identification and professional development), extended day and summer activities, school supplies, and other services. 2003 Guidance, p. 24-5.

95. What can Title I, Part A funds not be used for?
A: The Title I statute states that Title I funds cannot supplant other state or local funds. 20 U.S.C. §6320A(b)(1). In other words, Title I funds cannot be used for services that are part of the core services provided by public schools, and services that schools are required to provide even in the absence of Title I funding.

96. How must a school district plan for serving children experiencing homelessness under Title I, Part A?
A: For a school district to receive Title IA funds, its Title IA plan must describe the services the district will provide to children and youth experiencing homelessness, including but not limited

to those services provided with the set-aside. 20 U.S.C. §6312(b)(1)(O); 2003 Guidance, p. 24. School district Title IA plans must also be coordinated with the McKinney-Vento Act. 20 U.S.C. §6312(a)(1); 20 U.S.C. §6312(b)(1)(E)(ii). Finally, State Title I, Part A plans must also be coordinated with the McKinney-Vento Act. 20 U.S.C. §6311(a)(1).

Resources

97. Where can I find information about pending federal legislation related to the education of children and youth in homeless situations?
A: The National Association for the Education of Homeless Children and Youth (NAEHCY) provides updates on pending legislation, as well as many other publications and services geared toward educators specializing in the education of children and youth in homeless situations. Legislative updates are available at www.naehcy.org/legislative_update.html.

98. What is the federal government doing to help schools comply with the McKinney-Vento Act?
A: The U.S. Department of Education (USDE) has been very active in its support of states and local school districts as they implement the McKinney-Vento Act. USDE has established a clearinghouse on the McKinney-Vento Act and its implementation, at the National Center on Homeless Education (www.serve.org/nche). NCHE can provide technical assistance documents, trainings, posters, manuals, outreach materials, and other support. In March 2003, USDE issued Guidance on the law (available at www.nlchp.org/FA_Education). USDE sponsors annual meetings for McKinney-Vento State Coordinators and the Federal McKinney-Vento Coordinator participates in an annual conference of educators who work with the McKinney-Vento Act. The Federal Coordinator for the McKinney-Vento Act responds to phone call and email requests for assistance and is accessible to state and school district staff, as well as other advocates, parents and youth. USDE also conducts document reviews and on-site compliance monitoring across the country.

99. Where can one find national statistics on homelessness, especially on children?
A: Some sources of statistics include:
U.S. Conference of Mayors, 2003 Hunger and Homelessness Survey
(www.usmayors.org/uscm/hungersurvey/2003/onlinereport/HungerAndHomelessnessReport2003.pdf)
National Association for the Education of Homeless Children and Youth
(www.naehcy.org)
National Law Center on Homelessness and Poverty
(www.nlchp.org)
National Coalition for the Homeless fact sheets
(www.nationalhomeless.org/facts.html)
National Low Income Housing Coalition, Out of Reach 2003
(www.nlihc.org/oor2003/)
Urban Institute, Homelessness: Programs and the people they serve, 12/99
(www.urban.org/Template.cfm?Section=ByTopic&NavMenuID=62&TopicID=189&TopicName=Homelessness)

100. Where can I find research on the effects of school mobility on academic achievement?
A: There is a growing body of research on this topic. The National Center for Homeless Education (NCHE) has conducted a review of the literature on this topic and is currently conducting a school stability study. Contact NCHE at (800) 308-2145 for more information. The following bibliography is a small sampling of what has been published:

-- Craig, Virginia, "A Report from the Kids Mobility Project," Kids Mobility Project (1998) (612-375-9644).
-- Fowler-Finn, Thomas, "Student Stability vs. Mobility," *The School Administrator* 36 (August 2001)
-- Heinlein, Lisa Melman and Marybeth Shinn, "School Mobility and Student Achievement in an Urban Setting," 37 *Psychology in the Schools* 349 (2000).
--Jacobson, Linda, "Moving Targets," 20 *Education Week* 32 (2001).
-- Kerbow, David, "Pervasive Student Mobility: A Moving Target for School Improvement," *Study of the Chicago Panel on School Policy and the Center for School Improvement at the University of Chicago* (1996).
--Lash, Andrea and Sandra Kirkpatrick, "A Classroom Perspective on Student Mobility," 91 *The Elementary School Journal* 177 (1990).
-- Mantzicopoulos, Panayota and Dana Knutson, "Head Start Children: School Mobility and Achievement in the Early Grades," 93 *Journal of Educational Research* 305 (2000).
-- Policy Analysis for California Education. "The Educational Consequences of Mobility for California Students and Schools," 1 *PACE Policy Brief* 1 (May 1999) (www-gse.Berkeley.edu/research/PACE/pace.html)
-- Popp, Patricia, Jenny Hindman, and James Stronge. Students on the Move: Reaching and Teaching Highly Mobile Children and Youth. National Center for Homeless Education (2003). Available at http://www.serve.org/nche/downloads/studentmobilitydocument.pdf.
-- Reed-Victor, Evelyn and Lynn Pelco, "Helping Homeless Students Build Resilience: What the School Community Can Do," 5 *Journal for a Just and Caring Education* 51 (1999).
--Rogers, Dr. Joy, of the Loyola University Department of Education, Education Report of Rule 706 Expert Panel presented in B.H. v. Johnson, 715 F. Supp. 1387 (N.D. Ill. 1989), 1991.
-- Rothstein, Richard, "Equalizing Education Resources on Behalf of Disadvantaged Children," in *A Notion at Risk: Preserving Public Education as an Engine for Social Mobility*, ed. by Richard Kahlenberg, Century Foundation Press (2000).
-- Rumberger, Russell, "Student Mobility," *The Informed Educator Series*, Educational Research Service (2001).
-- Rumberger, Russell and Katherine Larson, "Student Mobility and the Increased Risk of High School Dropout," 107 *American Journal of Education* 1 (1998).
-- Stover, Del, "Schools grapple with high student mobility rates," 20 *School Board News*, no. 11 (2000).
--"Student Mobility: How Some Children Get Left Behind," *Journal of Negro Education* Special Issue (Winter 2003).
--Texas Education Agency, "A Study of Student Mobility in Texas Public Schools," Statewide Texas Educational Progress Study Report No. 3 (1997).
-- Williams, Debra, "Kids, Schools Suffer from Revolving Door," *Catalyst: Voices of Chicago School Reform* (April 1996).

-- Wood, David, et al. “Impact of Family Relocation on Children’s Growth, Development, School Function, and Behavior,” 270 *Journal of the American Medical Association* 1334 (1993).