

**Education for Homeless Children and Youths Program  
Non-Regulatory Guidance**

**Title VII-B of the McKinney-Vento Homeless Assistance Act, as amended by  
the Every Student Succeeds Act**



**July 27, 2016**

**Updated March 2017**

## **I. Introduction**

### **A. Rights and Eligibility**

#### **A-1. What is meant by the term “homeless children and youths”?**

Section 725(2) of the McKinney-Vento Act<sup>10</sup> defines “homeless children and youths” as individuals who lack a fixed, regular, and adequate nighttime residence. The term includes—

- Children and youths who are:
  - sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as “doubled-up”);
  - living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
  - living in emergency or transitional shelters; or
  - abandoned in hospitals;
- Children and youths who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children who qualify as homeless because they are living in circumstances described above.

#### **A-2. Are children who are awaiting foster care placement still eligible for services under the McKinney-Vento Act?**

The McKinney-Vento Act no longer includes children and youths who are awaiting foster care placement in the definition of “homeless children and youths.” For all non-“covered” States, this change is effective on December 10, 2016.<sup>11</sup> This means that after the effective date, children who are awaiting foster care placement will no longer be considered homeless and will therefore not be eligible for McKinney-Vento services unless they meet the revised definition of “homeless children and youths.”

The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the ESSA,<sup>12</sup> includes new provisions for ensuring the educational stability of children in foster care under Title I, Part A. Joint U.S. Department of Education and Department of Health and Human Services (HHS) guidance on those provisions can be found [here](#).<sup>13</sup>

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<sup>10</sup> All statutory citations are to the McKinney-Vento Act unless otherwise indicated.

<sup>11</sup> For “covered” States (i.e., those that have a statutory law that defines or describes the phrase “awaiting foster care placement” for purposes of a program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act), the effective date for this change is December 10, 2017. (ESSA section 9105(b)).

<sup>12</sup> Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

<sup>13</sup> The joint guidance on educational stability for children in foster care is available at: <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>.

### **A-3. What criteria may an LEA consider when determining if a child or youth lives in “substandard housing”?**

The inclusion of substandard housing in the definition of homeless children and youths has caused some confusion because standards for adequate housing may vary by locality. In determining whether a child or youth is living in “substandard housing,” an LEA may consider whether the setting in which the family, child, or youth is living lacks one of the fundamental utilities such as water, electricity, or heat; is infested with vermin or mold; lacks a basic functional part such as a working kitchen or a working toilet; or may present unreasonable dangers to adults, children, or persons with disabilities. Each city, county, or State may have its own housing codes that further define the kind of housing that may be deemed substandard.



### **A-4. How can SEAs and LEAs ensure that homeless children and youths have equal access to the same free, appropriate public education, including public preschool education, as provided to other children and youths?**

The McKinney-Vento Act includes a broad, ongoing requirement for SEAs and LEAs to review policies or practices that may act as barriers to the identification, enrollment, attendance, and school success of homeless children and youths, including barriers due to outstanding fees or fines or absences. (See, e.g., sections 721, 722(g)(1)(I)). It is important for SEAs and LEAs to consistently review their policies and practices with regular input from homeless parents, youths, and advocates so that new barriers, or barriers that the SEA or LEA staff may be unaware of, do not prevent children and youths from receiving the free, appropriate public education to which they are entitled.

In addition, where laws, regulations, practices, or policies may act as a barrier to the identification, enrollment, attendance, or success in school of homeless children and youths, SEAs and LEAs must undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths. (Sections 721, 722(g)(1)(I), 722(g)(7)). The process of reviewing and revising policies should include a review of school discipline policies that disproportionately impact homeless students, including those who are also children and youths of color; those who identify as lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ); English learners<sup>14</sup>; and students with disabilities. In addition, SEAs and LEAs retain their obligations to ensure that homeless children and youths who are eligible children with disabilities under Part B of the IDEA or qualified students with disabilities under section 504 of the Rehabilitation Act of 1973 (Section 504) retain the rights and protections of those laws, including their right to receive a free appropriate public education (FAPE). (See 34 CFR part 300 (the Department’s regulations implementing Part B of the IDEA) and 34 CFR part 104 (the Department’s regulations implementing Section 504)). State lead agencies, and LEAs, if applicable, also retain their responsibilities to ensure that eligible infants

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<sup>14</sup> Additional information about an LEA’s obligations to EL students and limited English proficient parents under Title VI and EEOA is available in a Dear Colleague Letter jointly released by ED and the Department of Justice in January 2015, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>. The Department’s English Learner Tool Kit helps SEAs and LEAs to fulfill these obligations and support ELs. The Tool Kit has 10 chapters (one for each section of the DCL), contains an overview, sample tools, and resources, and is available at <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf>.