

## When Legal Guardians Are Not Present: Enrolling Students on Their Own



### Who is homeless?

**(McKinney-Vento Homeless Assistance Act of 2001 – Title X, Part C of the No Child Left Behind Act – Sec 725)**

The term “homeless children and youth”—

- A. means individuals who lack a fixed, regular, and adequate nighttime residence...; and
- B. includes —
  - i. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
  - ii. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings...
  - iii. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
  - iv. migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

In most LEAs (local education agencies or school districts), enrollment procedures are predicated on the expectation that children are living with their parents or legal guardians. Requiring parents or legal guardians to sign forms upon enrolling children provides schools with protection from certain types of liability and with contact information for situations in which additional permissions or consultations are needed.

In a number of instances, however, children and youth who are enrolling in a school may not be living with their parents or legal guardians. Frequently, children in families experiencing homelessness are sent to live temporarily with friends or relatives. This type of living arrangement has been especially prevalent in families displaced by the 2005 Gulf Coast hurricanes. In other situations, youth have been forced to leave home due to abusive environments or are on their own for other reasons. These children and youth, in most cases, fit the definition of homeless, unaccompanied youth in the McKinney-Vento Act: a youth not in the physical custody of a parent or guardian [42 U.S.C. §11434A(6)] and eligible for immediate school enrollment.

The McKinney-Vento Act requires school districts to enroll homeless children and youth in school immediately, even if they lack required enrollment documents [42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(F)(ii)]. (“Enroll” and “enrollment” are defined as “attending classes and participating fully in school activities” [42 U.S.C. §11434A(1)].) The Act further requires states to review and revise any policy that may act as a barrier to the enrollment of homeless children and youth and requires states to give particular attention to guardianship issues [42 U.S.C. §§11432(g)(7)].

Therefore, schools may not condition school enrollment upon the receipt of proof of legal guardianship by caregivers of homeless, unaccompanied youth; nor may they require caregivers to become legal guardians within a certain period of time after the child enrolls in school. The decision to seek legal guardianship is a serious decision that affects significantly the legal rights of the parent and caregiver well beyond the education arena. Although that step may be appropriate in some cases, it will not be in others.

In addition, it is important to note that the absence of an available caregiver must not impede enrollment. Unaccompanied, homeless youth who are on their own completely must be enrolled in school immediately.

Under the McKinney-Vento Act, every school district must designate a local homeless education liaison [42 U.S.C. §11432(g)(1)(J)(ii)]. The local liaison plays a key role in identifying and supporting unaccompanied, homeless youth and is required to help them choose

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and enroll in school after considering their wishes; inform them of their right to transportation; assist them in accessing transportation; provide them with notice of their right to appeal school or school-district decisions; and ensure that they are enrolled in school immediately, pending resolution of disputes [42 U.S.C. §11432(g)(6)(A)].

## Best Practices

Following are some suggestions school districts have reported as best practices:

- Develop a caregiver form that establishes the responsibilities of caregivers and requests their contact information to replace traditional proof of guardianship. This form should be crafted carefully so it does not create further barriers or delay school enrollment. The 2004 U.S. Department of Education's *Education for Homeless Children and Youth Program Non-Regulatory Guidance* suggests using "caretaker affidavits, enrollment forms for unaccompanied youth, and other forms [that] replace typical proof of guardianship" to facilitate immediate enrollment (p.16). A sample of such a form, taken from the *Local Homeless Education Liaison Toolkit*, is included in this brief. The form is based on a form in use in California and adopted by many school districts nationwide. The complete *Local Homeless Education Liaison Toolkit* can be downloaded at [www.serve.org/nche/training.php](http://www.serve.org/nche/training.php).
- Become familiar with other state and local policies pertaining to unaccompanied youth and guardianship.
- Review and revise LEA policies that may serve as a barrier to immediate enrollment for unaccompanied youth .
- Establish a local task force that includes representatives from the homeless education program, LEA legal department, child welfare agency, youth agencies, and department of juvenile justice to develop consistent and agreed-upon policies and procedures for working with unaccompanied youth.
- Ensure that enrollment staff at all district schools understand the rights of unaccompanied youth and are familiar with the policies and procedures for immediate enrollment of these students.
- Contact parents or legal guardians, when appropriate, to clarify their relationship with the caregiver and what authority they wish them to exercise.

## Excerpts from the Law

Following are related excerpts from the McKinney-Vento Act:

"The term unaccompanied youth includes a youth not in the physical custody of a parent or guardian." [42 U.S.C. §11434A(6)]

"The school selected [...] shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation." [42 U.S.C. §§11432(g)(3)(C)(i)]

"The terms 'enroll' and 'enrollment' include attending classes and participating fully in school activities." [42 U.S.C. §11434A(1)]

“Each state shall submit to the Secretary a plan to provide for the education of homeless children and youths within the state. Such plan shall include the following:

[...] (H) Strategies to address other problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays that are caused by—

[...] (iv) guardianship issues. [42 U.S.C. §§11432(g)(1)(H)(iv)]

“Each state educational agency and local educational agency that receives assistance under this subtitle shall review and revise any policies that may act as barriers to the enrollment of homeless children and youths in schools that are selected under paragraph (3).” [42 U.S.C. §§11432(g)(7)(A)]

“In reviewing and revising such policies, consideration shall be given to issues concerning transportation, immunization, residency, birth certificates, school records and other documentation, and guardianship.” [42 U.S.C. §§11432(g)(7)(B)]

“[L]ocal educational agencies will designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local educational agency liaison for homeless children and youths, to carry out the duties described in paragraph (6)(A)[.]” [42 U.S.C. §11432(g)(1)(J)(ii)]

The 2004 U.S. Department of Education’s *Education for Homeless Children and Youth Program Non-Regulatory Guidance* is available at [www.serve.org/nche](http://www.serve.org/nche).

This brief was developed by:  
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Every state is required to have a coordinator for the education of homeless children and youth, and every school district is required to have a liaison for homeless students. These individuals will assist you with the implementation of the McKinney-Vento Act. For information on the education of children and youth experiencing homelessness in Texas and to obtain contact information for the liaison in your district, please contact:



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