McKinney-Vento
How Not To Get Sued for McKinney-Vento
Noncompliance: Advancements in Homeless Education From Litigation

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
Background Info & Challenges
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McKinney-Vento Homeless Assistance Act

❖ Passed in 1987
❖ Reauthorized by No Child Left Behind Act in 2002
❖ McKinney-Vento program works hand-in-hand with other federal education programs like Title IA. Note that other federal programs don’t take effect until 2017.
❖ $85 million authorized funding to ALL SEAs. Not all LEAs necessarily get funding, but still on the hook.
❖ Key sources: 42 U.S.C. 11431 et. seq. & 2016 McKinney-Vento Guidance
McKinney-Vento Homeless Assistance Act

- Every state must designate a State Coordinator who can sufficiently carry out their duties. 42 USC 11432(d)(3).

- Every LEA must designate a McKinney-Vento liaison able to carry out his/her legal duties. 42 USC 11432(g)(6).

- Coordination and collaboration is key. 42 USC 11432(g)(5)(C).
McKinney-Vento Homeless Assistance Act

- Background on NLCHP & Lawyers Education Access Resource Network (Project LEARN) re: advocacy
- Lampkin vs. District of Columbia (D.C. Cir. 1994)
- Homelessness = mobility in multiple jurisdictions

Barriers & Current Challenges

- Lack of enforcement mechanism
- More funding needed – high cost to meet needs
- Capacity, Oversight & Monitoring, Data Collection
- Under-identification
- Collaboration and coordination
- Noncompliance

Impact of Homelessness on Children and Youth
NJ Statistics

✓ 2013-2014: 10,303
✓ 2012-2013: 8,660
✓ 2011-2012: 4,897

National Statistics

In 2010, 1.6 million or one in every 45 children and youth were found to be homeless. In 2013, this statistic increased to 2.5 million or one in every 30.
McKinney-Vento Responsibilities – State Coordinators

42 U.S.C. § 11432(f)

❖ Ensure compliance.

❖ Increase transparency; collect and disaggregate data

❖ Publicize information on homeless children and youth, problems and challenges, success in programs.

❖ Develop and carry out the state plan (starting in 2017).

❖ Collaborate and coordinate with LEA liaisons, school personnel, homeless service providers, child welfare and social services agencies, and other community organizations and groups that work with and represent homeless children and youth and their families;

❖ Provide technical assistance to & conduct monitoring of LEAs

❖ Provide PD opportunities for LEA personnel and liaisons to ID and meet needs
McKinney-Vento Responsibilities – State Coordinators
42 U.S.C. § 11432(f)

- Provide training to liaisons on the definitions of terms related to homelessness.

- Respond to inquiries from parents and guardians of homeless children and youths.

- Implement professional development programs for liaisons and other LEA personnel to improve ID and heighten awareness.

- Coordinate with policymakers to ensure that legislation and policies do not create barriers such as criminalization and school discipline policies.
McKinney-Vento Responsibilities – LEA Liaisons
42 U.S.C. § 11432(g)(6)(A)

- Identify homeless children and youth through outreach and coordination
- **Enroll** & provide with full & equal opp’ty to succeed in school;
- Ensure **access to** and receive educational services
- Provide referrals to supports and services
- Inform parents and guardians of educational related opportunities and transportation services
- Disseminate public notice of educational rights
- Mediate enrollment disputes
McKinney-Vento Responsibilities – LEA Liaisons
42 U.S.C. § 11432(g)(6)(A)
❖ School personnel providing services PD & other support;
❖ Informed UAY of independent status for FAFSA
❖ Carry out dispute resolution process as expeditiously as possible
❖ Coordinate and collaborate with SC and other personnel to provide services, collect data
❖ Participate in SC’s PD. 42 USC 11432(g)(1)(F)(ii)
❖ Affirm HUD assistance eligibility. 42 U.S.C. § 11432(g)(6)(D).
Identification - DEFINITION

- Under McKinney-Vento, a person is considered to be homeless when they lack a fixed, regular, and adequate nighttime residence. 42 U.S.C. § 11434a(2)(A). This includes situations like:
  - Sharing of housing
  - Staying in a motel, hotel, trailer park, or campground
  - living in a shelter
  - staying in sub-standard housing *(depends on city, county, or state housing codes, but consider whether residence lacks fundamental utilities such as water, electricity, or heat; is infested with vermin or mold; lacks a basic functional part such as working kitchen or toilet; or may present unreasonable dangers to inhabitants – 2016 MV Guidance A-3).*
Identification - DEFINITION

- Under McKinney-Vento, a person is considered to be homeless when they lack a fixed, regular, and adequate nighttime residence. 42 U.S.C. § 11434a(2)(A). This includes situations where a child or youth is:

  - living in places not ordinarily used for sleeping, including cars, parks, public places, abandoned buildings, or bus or train stations;

  - abandoned in a hospital; OR

  - awaiting foster care placement (before December 10, 2016).
Identification – ELIGIBILITY

- Eligibility determinations – fact-specific, individualized assessment
- LEAs may reassess homeless status.
- Assessments and reassessments subject to privacy laws and overarching obligation not to stigmatize homeless children and youth
  - Information about a homeless child’s or youth’s living situation shall be treated as a student education record, and shall not be deemed to be directory information. 42 U.S.C. § 11432(g)(3)(G).
  - Ensure homeless children & youth are not stigmatized or segregated due to homelessness. 42 U.S.C. § 11432(g)(1)(J)(i)
  - No TIME LIMIT!
Identification - SUBPOPULATION

Unaccompanied homeless youth – LGBTQ youth
Children and youth with disabilities
Immigrant children and English Language Learners
Children exiting or aging out of foster care
Children and youth displaced by natural disaster
Children of domestic violence survivors

School Stability – SCHOOL PLACEMENT DECISIONS

- Each LEA must, according to each child’s or youth’s best interest:
  - Continue the student’s education in the school of origin for the duration of homelessness **AND** until the end of the academic year in which the student becomes permanently housed; OR
  - Enroll in any public school that housed students living where the student is living are eligible to attend. 42 U.S.C. § 11432(g)(3)(A)(ii).
School Stability – SCHOOL OF ORIGIN

School of origin is the school attended when permanently housed OR school in which last enrolled, including a preschool. 42 U.S.C. § 11432(g)(3)(I)(i).

“School of origin” attaches to the designated receiving school at the next grade level for all feeder schools.
School Stability – BEST INTEREST ANALYSIS

❖ School placement decisions (school of origin vs. new local school) – made according to child or youth’s best interest – fact-specific, individualized assessment

❖ LEAs must presume that attending the school of origin is in the best interests of the child, unless this is contrary to the request of the parent, guardian, or unaccompanied youth. 42 U.S.C. § 11432(g)(3)(B)(i).

❖ Priority given to parent’s/guardian’s/unaccompanied youth’s request
School Stability – BEST INTEREST ANALYSIS


❖ For preschoolers, consider attachment to teachers; availability and quality of services in the new area; travel time. 2016 MV Guidance N-3

❖ LEA must provide a written explanation of the reasons for its determination, in a manner and form understandable to parent, guardian, or UAY, including info about right to appeal.
School Stability – IMMEDIATE ENROLLMENT

- The school selected must immediately enroll even if unable to produce normally required records for enrollment OR while obtaining school records from previous school. 42 U.S.C. § 11432(g)(3)(C)(i).

- “Enroll” means permitting the student to attend classes and participate fully in school activities, including extracurricular activities. 42 U.S.C. § 11434A(1).

- McKinney-Vento students are automatically eligible for free school meals.
School districts (including preschools) must provide or arrange transportation for students to and from their schools of origin upon request.

Homeless students must receive transportation comparable to those offered to non-homeless students in the new district they attend.

Districts are also subject to an overarching obligation to remove barriers. **NOTE: Transportation requirements apply until end of school year when student finds permanent housing.**
School Stability – DISPUTE RESOLUTION

- Parents, guardians, unaccompanied youth have right to appeal adverse determination of school, LEA, or SEA.

- SEAs must have procedures for prompt resolution of disputes regarding educational placement. 42 U.S.C. § 11432(g)(1)(C).

- LEAs must also have a dispute resolution process on eligibility, school selection, or school enrollment. 42 U.S.C. § 11432(g)(3)(E).

- Dispute requires LEA to provide notice of decision and right to appeal. 42 U.S.C. § 11432(g)(3)(E)(ii).

- PENDENCY REQUIREMENT: immediately enrollment required until a full and final resolution of the dispute and all available appeals. 42 U.S.C. § 11432(g)(3)(E)(i).

- Parent, guardian, UAY must be referred to liaison.
Support for Academic Success – ACCESS TO LEA PROGRAMS

- States must have procedures to eliminate barriers to academic and extracurricular activities. 42 U.S.C. § 11432(g)(1)(F)(iii)

- Each LEA must coordinate the provision of MV services with the provision of programs for children with disabilities. 42 U.S.C. § 11432(g)(5)(D).

- LEA liaisons must ensure that children and youth have access to and receive educational services for which they are eligible, including services through Head Start programs, early intervention services under IDEA Part C, and other LEA preschool programs. 42 U.S.C. § 11432(g)(6)(A)(iii).

- Giving priority in waitlists is encouraged.
Support for Academic Success – CREDIT ACCRUAL AND SCHOOL CLIMATE

- **Procedures to ensure MV students receive appropriate full or partial credit.** 42 U.S.C. §§ 11432(g)(1)(F)(ii); 11432(g)(6)(A)(x);

- **Consider homelessness prior to taking disciplinary action.** 2016 MV Guidance p. 33.

- **Provide trauma-informed training.** 2016 MV Guidance p. 34.

- **Coordinate with policymakers to prevent criminalization.**

- **Review and revise policies or practices that may act as barriers to the identification, enrollment, attendance, and school success, including barriers due to outstanding fees or fines or absences, school discipline policies.** 2016 MV Guidance A-4.
Support for Academic Success – HIGHER ED

- All McKinney-Vento youth must be able to receive individualized college counseling. 42 U.S.C. § 11432(g)(1)(K); 2016 MV Guidance Q-1

- Liaisons must ensure unaccompanied youth are informed of their status as independent students and obtain verification of that status. 42 U.S.C. § 11432(g)(6)(A)(x)(III); 2016 MV Guidance Q2
Additional Resources

- NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
- NATIONAL CENTER FOR HOMELESS EDUCATION
- NATIONAL ASSOCIATION FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH
Q&A

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