



National Center for Homeless Education
Supporting the Education of Children and
Youth Experiencing Homelessness
www.serve.org/nche



McKINNEY-VENTO LAW INTO PRACTICE BRIEF SERIES

Migrant Students Experiencing Homelessness: Rights and Services Under the McKinney-Vento Act

INTRODUCTION

Migrant students often face significant educational challenges resulting from a highly mobile lifestyle lived in poverty-level conditions. Many migrant workers move frequently to obtain temporary or seasonal employment in agriculture, fishing, meat packing, or dairy work, leading to high residential and school mobility for their children.

With each school change, migrant students may:

- Face difficulty enrolling in school;
- Experience inappropriate educational placement due to lack of school records and other documentation;
- Suffer educational disruption and loss of academic credit due to the varying curricula used in different school districts; and
- Experience social isolation due to difficulties in adapting to new living and school environments.

The cultural and linguistic diversity of many migrant children and the financial strains faced by their families, resulting from low pay and inconsistent work, further compound the potentially devastating effects on a student's education.

In some instances, migrant students may experience homelessness and qualify for services provided by the McKinney-Vento Act. This brief provides information about the federal Migrant Education Program (MEP) and Education for

Who is migrant?

(Title I, Part C of the Elementary and Secondary Education Act – Sec 1309, as updated by U.S. Department of Education Guidance, August 2010)

According to sections 1115(b)(1)(A) (incorporated into the MEP program by virtue of sections 1304(c)(2)) and 1309(2) of the statute and §§ 200.81(e) and 200.103(a) of the regulations, a child is a “migratory child” and is eligible for MEP services if all of the following conditions are met:

1. The child is not older than 21 years of age; *and*
2. The child is entitled to a free public education (through grade 12) under State law or is below the age of compulsory school attendance; *and*
3. The child is a migratory agricultural worker or a migratory fisher, or the child has a parent, spouse, or guardian who is a migratory agricultural worker or a migratory fisher; *and*
4. The child moved within the preceding 36 months in order to seek or obtain qualifying work, or to accompany or join the migratory agricultural worker or migratory fisher identified in paragraph 3, above, in order to seek or obtain qualifying work; *and*
5. With regard to the move identified in paragraph 4, above, the child:
 - a. Has moved from one school district to another; *or*
 - b. In a State that is comprised of a single school district, has moved from one administrative area to another within such district; *or*
 - c. Resides in a school district of more than 15,000 square miles and migrates a distance of 20 miles or more to a temporary residence to engage in or to accompany or join a parent, spouse, or guardian who engages in a fishing activity. (*This provision currently applies only to Alaska.*)

Homeless Children and Youth (EHCY) Program and how they can work together to support the education of homeless migrant students.

MIGRANT AND HOMELESS?

Who is migrant?

Title I, Part C, of the Elementary and Secondary Education Act authorizes the federal Migrant Education Program and defines a migratory child as a child who works, or whose parents work, in the agriculture, dairy, or fishing industry and who has made a *qualifying move* in search of work within the previous 36 months. (See sidebar on page 1 for the full definition.)

Who is homeless?

According to the McKinney-Vento Homeless Assistance

Who is homeless?

(McKinney-Vento Homeless Assistance Act – Title X, Part C of the Elementary and Secondary Education 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).

Act (Title X, Part C, of the Elementary and Secondary Education Act), a child or youth is homeless if he or she lacks a *fixed, regular, and adequate nighttime residence*. The definition lists a number of living arrangements that are not fixed, regular, and adequate, and, therefore, would be considered homeless. (See sidebar for the full definition.)

Included in the definition of homeless are migrant children living in the circumstances described in the definition; therefore, while migrant students are not categorically eligible for McKinney-Vento services, migrant students living in a primary nighttime residence that is not fixed, regular, and adequate are.

The McKinney-Vento Act also applies to unaccompanied youth whose living arrangement meets the definition of homeless. Unaccompanied is defined as *not in the physical custody of a parent or guardian*. (See sidebar on page 4 for a full discussion of issues related to youth). This may be particularly relevant for migrant youth who come to the United States alone in search of work or who, through a variety of circumstances, no longer live with their parents. These youth may find themselves homeless and unaccompanied due to economic hardship and separation from their parent or guardian.

Determining Eligibility

In some instances, it will be clear that a student’s living arrangement meets the McKinney-Vento definition of homeless. In other instances, however, questions will arise as to whether a student should be deemed McKinney-Vento eligible. These situations should be examined on an individual basis, considering the unique circumstances of each student’s living arrangement.

When deciding whether a migrant student would be McKinney-Vento eligible, the school district’s local homeless education liaison and migrant recruiter should work through the case-by-case consideration together, with the local liaison making the final determination according to the McKinney-Vento definition of homeless. Under the McKinney-Vento Act, the local liaison is charged with ensuring that homeless children and youth are identified by school personnel and through coordination activities with other entities and agencies.

Guiding Questions

For further information on making case-by-case determinations of McKinney-Vento eligibility, consult NCHC’s *Determining Eligibility for Rights and Services Under the McKinney-Vento Act* issue brief, available at <http://center.serve.org/nche/briefs.php>. This brief provides a detailed analysis of the McKinney-Vento definition

of *homeless*, including guiding questions to assist in understanding concepts such as *fixed, regular, and adequate, substandard housing*, and more.

RIGHTS OF ELIGIBLE STUDENTS

McKinney-Vento eligible students, including migrant students experiencing homelessness, have the right to:

- Receive a free, appropriate public education.
- Enroll in school immediately, even if lacking documents normally required for enrollment.
- Enroll in school and attend classes while the school gathers needed documents.
- Enroll in the local school; or continue attending the school of origin (the school they attended when permanently housed or the school in which they were last enrolled), if that is preferred by the parent or guardian and is feasible. If the school district believes that the school selected is not in the best interest of the student, then the district must provide the parent, guardian or unaccompanied youth with a written explanation of its position and information about the right to appeal its decision.
- Receive transportation to and from the school of origin, if the parent, guardian, or local liaison (on behalf of an unaccompanied youth) requests this.
- Receive educational services comparable to those provided to all other students, according to the student's needs.

PERSONNEL AND FUNDING

For migrant education programs and homeless education programs to collaborate effectively, it is important for each program to have a clear understanding of the other's personnel and funding structures.

MEP Personnel and Funding

MEP personnel structure varies by state. Most State Educational Agencies (SEAs) administer their state's MEP and designate a State Director of Migrant Education. In states where the SEA does not operate the MEP, the U.S. Department of Education may provide funding to another public or nonprofit agency to

administer the program. State MEP contact information may be found at <http://results.ed.gov/stateprofiles>.

Federal MEP funds are allocated by formula to SEAs, based on each state's per pupil expenditure for education and counts of eligible migratory children, age 3 through 21, residing within the state. States then subgrant MEP funds to qualifying school districts, consortia of school districts, or other eligible non-profit agencies as formula grants based on the number of migrant students:

- Enrolled in the school district(s) within the subgrantee's service area;
- Identified as *Priority for Services*; and
- Identified as needing additional educational supports, including English Language Learner (ELL) instruction.

States also consider the availability of other funds that could be used to provide services to migrant students.

MEP funds support high quality education programs for migratory children and help ensure that migratory children who move between states are not penalized in any manner by disparities among states in curriculum, graduation requirements, or state academic content and student academic achievement standards. For more information on allowable uses of MEP funding, see section X, subsection F of the MEP Policy Guidance at <http://www2.ed.gov/programs/mep/mepguidance2010.doc>.

EHCY Personnel and Funding

Under the McKinney-Vento Act, every SEA must have an office of Coordinator for Homeless Education to oversee the implementation of the Act within the state. Each school district also is required to appoint a local homeless education liaison to be the key homeless education contact for the district. The local liaison plays a critical role in the district's implementation of the McKinney-Vento Act and should be a local migrant education staff member's first contact when seeking to build collaboration between the two programs. State Coordinator contact information may be found at http://www.serve.org/nche/states/state_resources.php. Local liaison contact information may be found by calling the school district's switchboard, visiting the state's homeless education webpage, or contacting the State Coordinator.

Federal EHCY funds are allocated to the 50 states, the District of Columbia, and Puerto Rico based on each state's share of Title I, Part A, funds. The outlying areas and the Bureau of Indian Affairs also receive funds. A portion of these funds supports the position of the State Coordinator and state-level activities aimed at ensuring that homeless children and youth have equal access to

a free, appropriate public education. States distribute their remaining funds to school districts through a competitive subgrant process. These funds support school districts in facilitating the school enrollment, attendance, and success of students experiencing homelessness. For more information on allowable uses of EHCY funding, see section L of the EHCY Policy Guidance at <http://www2.ed.gov/programs/homeless/guidance.doc>.

School districts also may set aside Title I, Part A, funds to be used specifically for serving homeless students. For more information, see question G-11 of the Title I, Part A, Guidance issued in September 2009, available at <http://www2.ed.gov/policy/gen/leg/recovery/guidance/titlei-reform.pdf>.

COLLABORATION STRATEGIES

Collaboration between MEP and EHCY personnel to serve migrant students experiencing homelessness ensures that services are provided in an efficient, non-duplicative fashion and that students receive a full range of supports to meet their needs.

Local MEP Contributions

MEP personnel can provide EHCY Program personnel with the following:

- Insights on the work patterns of local migrant communities.
- Understanding of the educational, health, emotional, or social needs unique to migrant children.
- Locations of migrant camps and communities.
- Referrals of migrant students who may be experiencing homelessness.
- Contact and communication with migrant families (in the native language when necessary) whose children may be eligible for and in need of the educational services provided by the McKinney-Vento Act.
- Contact and communication with migrant employers; this may result in their cooperation with identifying children who may be covered by the McKinney-Vento Act and in posting information publicly about the Act.

YOUTH: ELIGIBILITY AND TERMINOLOGY

Discussions between MEP and EHCY Program personnel about youth may generate confusion, as the two programs use different terminology and criteria for determining eligibility and services to be provided. The information below provides clarification.

Age range

In order to be eligible for MEP services, a youth may not be older than 21 years of age. In order to be eligible for EHCY Program services, a youth must be eligible to receive K-12 public education services within the state where he/she is attending school.

Emancipated youth

MEPs define an emancipated youth as a child under the age of majority in accordance with state law who is living independently from his/her parent or guardian and who is solely responsible for his/her own welfare. The term *emancipated youth* is not used regularly by EHCY Programs. When used, the term refers to a minor who has completed the legal process of emancipation according to state law, thereby making him independent of his parents for legal purposes.

Unaccompanied youth

The term *unaccompanied youth* is not used regularly by MEP personnel; see *emancipated youth* above. EHCY Programs define an unaccompanied youth as a youth who is not in the physical custody of a parent or guardian; the youth's living arrangement must meet the McKinney-Vento definition of homeless for the student to be eligible for EHCY services.

Out-of-School Youth (OSY)

MEPs define an OSY as a youth up through age 21 who is entitled to a free public education and who meets the definition of *migratory child*, but who currently is not enrolled in a K-12 school. This may include youth who have dropped out of school, are working on a GED outside of a K-12 school, or are *here-to-work* only. *Here-to-work* youth have immigrated to the United States with the primary purpose of working. Most *here-to-work* youth are not traveling with parents, but may be traveling with peer relatives or friends. MEPs serve OSY by increasing their access to medical, dental, and other social services; while MEPs seek to re-engage OSY in educational opportunities, MEPs also provide services to OSY not enrolled in school.

EHCY Programs consider an OSY to be a youth who is entitled to a free public education, is experiencing homelessness, but who currently is separated from the public schools. EHCY Programs provide these youth with all services for which they are eligible under the McKinney-Vento Act, including educationally related support services and referrals to community resources, according to each student's needs.

Local EHCY Contributions

EHCY personnel can provide MEP personnel with the following:

- Guidance in determining which migrant students are eligible for McKinney-Vento services according to the definition of *homeless*.
- Understanding of the provisions of the McKinney-Vento Act and ways it may be used to provide services, including immediate school enrollment and school stability, to eligible migrant children.
- Assistance with accessing supports available through Title I, Part A, homeless set-aside funds.
- Knowledge of community referral resources, including providers of health, mental health, housing, and basic needs services.

By working together, the MEP and the EHCY Program benefit migrant students experiencing homelessness in their educations and beyond by ensuring they are served efficiently and effectively with a comprehensive array of services.

BRINGING COLLABORATION TO LIFE

Collaboration between MEPs and EHCY Programs may take many forms, depending on the local program's administration, programming priorities, and resources. School districts across the country are finding ways to add value to the services provided to migrant students experiencing homelessness by bringing the two programs together to provide a more comprehensive network of support.

Polk County School District (Bartow, FL)



In Polk County, FL, the MEP and EHCY Program work together to identify students with dual program eligibility and provide these students with a variety of support services.

- Polk County's migrant recruiters use a needs assessment form to identify the services needed by migrant students. The form includes a check box for referring the migrant student to the EHCY Program for evaluation of eligibility.
- Migrant students experiencing homelessness in Polk County are granted immediate school enrollment under the McKinney-Vento Act, even if lacking documents normally required for enrollment. As a follow-up, Polk County's MEP transports these students to needed appointments, including to obtain immunizations or school physicals normally required by Florida schools for enrollment.
- Polk County's EHCY Program provides shoes to homeless students through a shoe voucher program offered by a national discount footwear retailer. Since this service is not provided by the MEP, it is an added support made available to migrant students experiencing homelessness.

Speak with your local MEP or EHCY Program to see what form collaboration might take in your area.

This brief was developed by:

National Center for Homeless Education

800-308-2145 (Toll-free Helpline)

<http://www.serve.org/nche>

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For more information, visit *<http://www.escort.org/>*.



Every state is required to have a State Coordinator for Homeless Education, and every school district is required to have a local homeless education liaison. These individuals will assist you with the implementation of the McKinney-Vento Act. To find out who your State Coordinator is, visit the NCHE website at *http://www.serve.org/nche/states/state_resources.php*.



For more information on the McKinney-Vento Act and resources for implementation, call the NCHE Helpline at 800-308-2145 or e-mail *homeless@serve.org*.



Local Contact Information: