

Homeless and Transient Student Legislation

Wilmington Education Improvement Commission Meeting

February 27, 2018

McKinney-Vento Homeless Assistance Act

- 42 U.S.C. Chapter 119, Subchapter V
- The purpose of this Act is to ensure that homeless students have the same access to free public education as other students. 42 U.S.C. §11431(1).
- The Act places requirements on any states which receive grant money pursuant to the Act. 42 U.S.C. §11431(a).
- Among other requirements of the Act, when it is in the best interests of the youth, the youth is to remain in her or his school of origin for the duration of homelessness. 42 U.S.C. §11431(g)(3)(A).



The McKinney-Vento Definition of *Homeless*

Subtitle VII-B of the McKinney-Vento Homeless Assistance Act (per Title IX, Part A of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act) defines *homeless* as follows:

The term "homeless children and youths"--

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and

(B) includes--

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;*

(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 (within the meaning of section 103(a)(2)(C));

(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 (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

42 U.S. Code § 11302 - General definition of homeless individual

- (a) In general. For purposes of this chapter, the terms “homeless”, “homeless individual”, and “homeless person” means—
 - (1) an individual or family who lacks a fixed, regular, and adequate nighttime residence;
 - (2) an individual or family with 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, including a car, park, abandoned building, bus or train station, airport, or camping ground;
 - (3) an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);
 - (4) an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided;
 - (5) an individual or family who—
 - (A) will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by—
 - (i) a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;
 - (ii) the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or
 - (iii) credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;
 - (B) has no subsequent residence identified; and
 - (C) lacks the resources or support networks needed to obtain other permanent housing;

900 Special Populations

901 Education of Homeless Children and Youth

1.0 Purpose

Consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.), the intent of this regulation is to ensure the educational rights and protections for children and youth experiencing homelessness.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

"Awaiting foster care placement" as defined by the provisions of 14 Del.C. §202(c) includes all children in foster care.

"Department" means the Delaware Department of Education.

"Homeless Children and Youths" as defined by the provisions of the 42 U.S.C. §11434a(2), means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); and includes:

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 lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are Awaiting foster care placement;

Children and youths who have a primary nighttime residence that is in a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));

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 (as such term is defined in section 6399 of Title 20, the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described above.

TITLE 14

Education

Free Public Schools

CHAPTER 2. THE PUBLIC SCHOOL SYSTEM

Subchapter I. System of Free Public Schools

§ 201 System of free public schools.

The system of free public schools throughout this State shall be general and efficient.

14 Del. C. 1953, § 201; [56 Del. Laws, c. 292, § 4](#);

§ 202 Free schools; ages; attendance within school district; nonresidents of Delaware.

(a) The public schools of this State shall be free to persons who are residents of this State and who are age 5 years through 20 years inclusive when they are attending kindergarten through grade 12.

(b) The public schools of any school district which maintains schools established under § 203 or § 204 [repealed] of this title for persons below the age of 5 years shall be free to persons who are residents of such school district and who have attained the specified age below the age of 5 years for which such schools are established.

(c) Persons attending the public schools of this State shall attend the public schools in the school district within which they reside, except as provided in Chapters 4, 5 and 6 of this title and in Chapter 92, Volume 23, Laws of Delaware, as amended by Chapter 172, Volume 55, Laws of Delaware. Notwithstanding the foregoing, homeless children and unaccompanied youth, as defined by 42 U.S.C. § 11434a, shall attend school in accordance with the McKinney-Vento Homeless Education Assistance Improvement Act [42 U.S.C. §§ 11431 to 11435]; provided any person determined to be ineligible under the act may be denied enrollment. Children in the custody of the Department of Services for Children, Youth and Their Families under Chapter 25 of Title 13 must attend school in accordance with § 202A of this title.

Transient Students Under McKinney-Vento

- As previously stated, the McKinney-Vento definition of homelessness includes any child or youth who lacks “fixed, regular, and adequate nighttime residence” and includes “children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.”
- Transient students who lack a permanent residence, and who are sharing housing with other persons would be considered “homeless” for the purposes of the statute and afforded the same protections and opportunities as other homeless youths and children.
- There is a State Coordinator for Homeless Education, as well as Local Homeless Education Liaisons for districts and charter schools.

Are there “Transient Students” that are not covered by McKinney-Vento?

- According to the National Center for Homeless Education, homelessness is addressed on a case by case basis.
- Possible legislative Changes: broaden definition to include language from 42 U.S.C. § 11302(a)(5): “an individual or family who will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others ...”
- To the extent that a homeless youth later finds a permanent resident, under 42 U.S.C. §11431(g)(3)(A)(ii) that student would be permitted to remain in the school of origin for the remainder of the school year.
- There could be political or practical concerns with any proposed legislation.