

## LEGAL FACT SHEET

### Kinship Children Who are “Homeless”

The federal McKinney Vento law requires that children who are homeless can attend the school where they last resided or enroll in another school tuition free. Each school has a homeless liaison who can help with determining if a kinship child qualifies. The definition of homelessness includes many children who are in kinship care.

#### From National Center for Homeless Education – Determining the Rights and Services Under McKinney-Vento Act:

“*Sharing the housing of other persons...*” implies that the student or family is staying in another person’s home. Some pertinent questions to help determine if this is the case would include:

- Does the student have a legal right to be in that home?
- Can the student or family be asked to leave at any time with no legal recourse?
- Is the living situation intended to be temporary or long term?
- Did the student or family move into the home as an urgent measure to avoid being on the street or in another precarious situation?

“*...due to loss of housing...*” implies that the student or family has no personal housing available.

- Did the student or family lose their previous housing due to an eviction or an inability to pay the rent or other bills?
- Destruction of or damage to the previous home?
- Abuse or neglect (such as in the case of a youth who leaves or is asked to leave the home)?
- Unhealthy conditions, such as an inadequate physical environment, infestations, drug or alcohol abuse in the home, or domestic violence?
- Absence of a parent or guardian due to abandonment, the parent’s or guardian’s incarceration, or another reason?

“*...economic hardship ...*” includes cases where limited financial resources have forced families or youth to leave personal residences and share housing due to an inability to pay rent and other bills. The way that the shared housing came about and the intention of the residents are significant. If economic hardship such as an accident or illness, loss of employment, loss of public benefits, or condition of poverty forces a family or youth to share the housing of others temporarily, the children and youth are eligible for McKinney-Vento services.

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### From San Francisco United School District FAQs:

Are families who move in with relatives or friends covered by the Act?

A: In many circumstances, yes. Children and youth who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason are covered by the McKinney-Vento Act. 42 U.S.C. §11434A(2)(B)(i). Families who share adequate housing due to cultural preferences or convenience would not be covered by the Act. Also, families who are sharing housing on a permanent basis are unlikely to be covered by the Act.

Can a district refuse to enroll undocumented immigrants who have no proof of guardianship?

A: No, not if they are covered by the McKinney-Vento Act. Undocumented students have the same right to public education as U.S. citizens. Plyer v. Doe, 457 U.S. 202 (1982). Therefore, the McKinney-Vento Act applies to them in the same way it would apply to any student: if the student meets the definition of homeless, he or she must be enrolled in school immediately, even if lacking proof of guardianship. The McKinney-Vento Act does not apply to immigrant students who live in a fixed, regular and adequate residence.

### More from NYS TEACHS:

What is a "doubled-up" living situation?

A: Oftentimes, students live in temporary housing situations with relatives, friends, or other individuals because of a loss of housing or economic hardship. Unaccompanied youth (students who are not in the physical custody of a parent or legal guardian) often find themselves living in doubled-up situations. These students should be designated as homeless under the McKinney-Vento Act.

### Revised Definition of "Homelessness":

Only Change is that "or are awaiting foster care placement" was deleted in definition under (2)(B)(i). Below, we have copied both the revised and prior version to show full definition.

42 USC Sec. 11434a – effective 12/10/16:

For purposes of this part:

- (1) The terms "enroll" and "enrollment" include attending classes and participating fully in school activities.
- (2) The term "homeless children and youths"
  - (A) Means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of [section 11302\(a\)\(1\)](#) of this title); and

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(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; **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 (within the meaning of section 11302(a)(2)(C) [1] of this title);
- (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 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

(3) The terms “local educational agency” and “State educational agency” have the meanings given such terms in [section 7801 of title 20](#).

(4) The term “Secretary” means the Secretary of Education.

(5) The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) The term “unaccompanied youth” includes a homeless child or youth not in the physical custody of a parent or guardian.

([Pub. L. 100–77, title VII, § 725](#), as added [Pub. L. 107–110, title X, § 1032](#), Jan. 8, 2002, [115 Stat. 2005](#); amended [Pub. L. 114–95, title IX, §§ 9105\(a\), 9215\(zz\)](#), Dec. 10, 2015, [129 Stat. 2136](#), 2184.)

### **Prior Definition of “Homelessness”:** SEC. 725. DEFINITIONS.

For the purposes of this subtitle:

- (1) The terms enroll’ and enrollment’ include attending classes and participating fully in school activities.
- (2) The term homeless children and youth
  - (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; are abandoned in hospitals; **or are awaiting foster care placement;**
    - (ii) Children and youth who have a primary nighttime residence that is 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));

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- (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)
- (3) The terms local educational agency' and State educational agency' have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965
  - (4) The term Secretary' means the Secretary of Education
  - (5) The term State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico
  - (6) The term unaccompanied youth' includes a youth not in the physical custody of a parent or guardian.

This is the 2016 Non-Regulatory Guidance, Question 2A, that address the revision:

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. 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 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](#).

The above information is not legal advice. It is not a substitute for consulting an attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Any opinions, legal opinions, findings, conclusions or recommendations expressed in this publication or on the NYS Kinship Navigator website or by any person or entity to whom you may be referred are those of the Kinship Navigator, Catholic Charities Family and Community Services and/or the person or entity you are referred to and do not necessarily represent the official views, opinions, legal opinions or policy of the State of New York and/or the New York State Office of Children and Family Services (OCFS). NYS Kinship Navigator is a Catholic Charities Family and Community Services program, funded by the New York State Office of Children and Family Services. Catholic Charities Family and Community Services is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein is published by the NYS Kinship Navigator.