



This document is scheduled to be published in the Federal Register on 03/17/2016 and available online at <http://federalregister.gov/a/2016-06073>, and on FDsys.gov

4000-01-U

DEPARTMENT OF EDUCATION

McKinney-Vento Education for Homeless Children and Youths Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary issues guidelines for States related to requirements under the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), as amended by the Every Student Succeeds Act (ESSA). These guidelines address ways in which a State may (1) assist local educational agencies (LEAs) to implement the provisions related to homeless children and youths amended by the ESSA and (2) review and revise policies and procedures that may present barriers to the identification, enrollment, attendance, and success of homeless children and youths in school.

FOR FURTHER INFORMATION CONTACT: John McLaughlin, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-6132. Telephone: (202) 401-0962 or by email: john.mclaughlin@ed.gov.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION

I. Background

Section 724(g) of the McKinney-Vento Act, as amended by the ESSA (Pub. L. 114-95), requires the Secretary to develop, issue, and publish in the Federal Register guidelines concerning ways in which a State: (1) may assist LEAs to implement the provisions related to homeless children and youths amended by the ESSA and (2) may review and revise policies and procedures that may present barriers to the identification, enrollment, attendance, and success of homeless children and youths in school.

Under the McKinney-Vento Education for Homeless Children and Youth (EHCY) program, which is administered by the U.S. Department of Education's (the Department) Office of Elementary and Secondary Education, State educational agencies (SEAs) must ensure that homeless children and youths have equal access to the same free, appropriate public education, including a public preschool education, as is provided to other children and youths. The SEA and LEAs in the State must review and revise any laws, regulations, practices, or policies that may act as

barriers to the identification, enrollment, attendance, or success in school of homeless children and youths. LEAs and schools may not separate homeless students from the mainstream school environment on the basis of their homelessness. Homeless students must also have access to the education and other services that they need to meet the same challenging State academic standards to which all students are held. (Section 721 of the McKinney-Vento Act, as amended by the ESSA).

Following reauthorization of the McKinney-Vento Act by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107-110), the Secretary published a notice in the Federal Register on March 8, 2002 (67 FR 10697), that provided detailed guidelines to help States expedite the school enrollment of homeless children and youths. These guidelines included a review of statutory enrollment provisions related to both SEA and LEA responsibilities and concluded with a discussion of ways in which States have assisted, or may assist, LEAs in immediately enrolling students experiencing homelessness in schools.

Since the McKinney-Vento Act was last reauthorized under NCLB, SEAs and LEAs have made great strides in revising policies that posed barriers to the enrollment and success of homeless children and youths. The ESSA provides

a new opportunity for States to review these policies and procedures to address continued barriers to homeless student success, as well as to review and refine policies related to new or changed provisions in the law.

II. Definitions

Section 725 of the McKinney-Vento Act, as amended by the ESSA, defines the following terms:

(a) Homeless children and youths means individuals who lack a fixed, regular, and adequate nighttime residence. The term includes—

(1) 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.

(2) 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.

(3) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) Migratory children (as defined in section 1309 of the Elementary and Secondary Education Act of 1965, as amended), who qualify as homeless because they are living in circumstances described in this definition.

(b) Enroll and enrollment include attending classes and participating fully in school activities.

(c) Unaccompanied youth includes a homeless child or youth not in the physical custody of a parent or guardian.

III. Changes to the EHCY Program Under the ESSA

The ESSA amended a number of key provisions under the EHCY program. Significant changes affect the following areas of the EHCY program:

(1) State Plans

State plan requirements have been modified and must include:

(a) A description of procedures to ensure (i) that homeless children and youths separated from public schools are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent youths described in this clause from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school policies and (ii) that homeless children

and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the State and local levels. (Section 722(g) (1) (F) (ii-iii)).

(b) A demonstration that SEAs and LEAs have developed policies to remove barriers to the identification, enrollment, and retention of homeless children and youths, including barriers to enrollment and retention due to outstanding fees or fines, or absences. (Section 722(g) (1) (I)).

(c) An assurance that SEAs and LEAs will adopt policies and practices to ensure that LEA liaisons participate in professional development and other technical assistance activities provided by the State Office of the Coordinator for Education of Homeless Children and Youths (Office of the Coordinator). (Section 722(g) (1) (J) (iv)).

(d) A description of how homeless children and youths will receive assistance from counselors to advise such youths, and prepare and improve the readiness of such youths for college. (Section 722(g) (1) (K)).

(2) Functions of the Office of the Coordinator

The statute now requires the State Coordinator for Education of Homeless Children and Youths (State Coordinator) to:

(a) Make publicly available reliable, valid, and comprehensive information on (i) the number of homeless children and youths identified in the State, which must be posted annually on the State's Web site, and (ii) the difficulties in identifying the special needs of and barriers to the participation and achievement of homeless children and youths. (Section 722(f)(1)(A) & (C)).

(b) Conduct monitoring of LEAs. (Section 722(f)(5)).

(c) Provide professional development opportunities for LEA personnel, including the LEA liaison for homeless children and youths (LEA liaison), to assist these personnel in identifying and meeting the needs of homeless children and youths and provide training on the Federal definitions of terms related to homelessness. (Section 722(f)(6)).

(d) Respond to inquiries from parents and guardians of homeless children and youths, as well as unaccompanied homeless youths, to ensure that they receive the protections and services required by the McKinney-Vento Act. (Section 722(f)(7)).

(e) In conjunction with LEA liaisons, inform parents and guardians of homeless children and youths, as well as unaccompanied homeless youths, of the duties of LEA liaisons and publish an annually updated list of LEA liaisons on the SEA's Web site. (Section 722(g)(6)(B)).

(3) Duties of LEA Liaisons

The statute now requires LEA liaisons for homeless children and youths to:

(a) Ensure that school personnel providing services under the McKinney-Vento Act receive professional development and other support. (Section 722(g)(6)(A)(ix)).

(b) Ensure that unaccompanied homeless youths (i) are enrolled in school, (ii) have opportunities to meet the same challenging State academic standards as other children and youths, and (iii) are informed of their status as independent students under the Higher Education Act of 1965 and that they may obtain assistance from the LEA liaison to receive verification of such status for purposes of the Free Application for Federal Student Aid. (Section 722(g)(6)(A)(x)).

(c) Ensure that public notice of the educational rights of the homeless children and youths is disseminated in locations frequented by parents or guardians of such youth, and unaccompanied homeless youths, including

schools, shelters, public libraries, and soup kitchens, in a manner and form that is understandable. (Section 722(g) (6) (A) (vi)).

In addition, LEA liaisons who receive appropriate training may now affirm that a child or youth who is eligible for and participating in a program provided by the LEA, or the immediate family of such a child or youth, is eligible for homeless assistance programs administered under Title IV of the McKinney-Vento Act. (Section 722(g) (6) (D)).

(4) School Stability

The statute has modified the requirements governing "best interest" determinations to include the following:

(a) The LEA must presume that keeping a homeless child or youth in the school of origin is in the child's or youth's best interest unless doing so is contrary to the request of the child's or youth's parent or guardian, or (in the case of an unaccompanied youth) the youth. (Section 722(g) (3) (B) (i)).

(b) The LEA must consider student-centered factors related to a child's or youth's best interest, giving priority to the request of the child's or youth's parent or guardian, or (in the case of an unaccompanied youth) the youth. (Section 722(g) (3) (B) (ii)).

(c) If the LEA determines that it is not in a child's or youth's best interest to attend the school of origin, or the school requested by the parent, guardian, or unaccompanied youth, it must provide a written explanation of the reasons for its determination, in a manner and form that is understandable. (Section 722(g)(3)(B)(iii)).

(5) Immediate Enrollment

The ESSA now requires that a school selected based on a homeless child's or youth's best interest must immediately enroll such child or youth even if he or she has missed application or enrollment deadlines during any period of homelessness. (Section 722(g)(3)(C)(i)(II)).

(6) Enrollment Disputes

The enrollment dispute procedures now encompass eligibility and the protections in those procedures have been clarified. For example, the Office of the State Coordinator now has an explicit duty to respond to inquiries from the parents and guardians of homeless children and youths, which may include eligibility disputes. (Section 722(f)(7)). In addition, if a dispute arises over eligibility, the child or youth shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals. (Section 722(g)(3)(E)).

(7) School of Origin

The definition of "school of origin" now specifically includes preschools and, when a child or youth completes the final grade level served by the school of origin, it also includes the designated receiving school at the next grade level for all feeder schools. (Section 722(g) (3) (I)).

(8) Privacy

The law now specifies that 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. (Section 722(g) (3) (G)).

(9) Definition of Homeless Children and Youth

The definition no longer includes "awaiting foster care placement." The deletion of "awaiting foster care placement" goes into effect on December 10, 2016, in every State except Delaware and Nevada, where the deletion is effective on December 10, 2017. (Section 725(2) (B) (i)).

IV. Guidelines for States on Assisting LEAs with the Implementation of EHCY Provisions Amended by the ESSA

A. State Responsibilities in Assisting LEAs

In its State plan, an SEA must assure that every LEA in the State designates an appropriate staff person to

serve as a LEA liaison. (Section 722(g)(1)(J)(ii)). The LEA liaison will help ensure that homeless children and youths enroll in, and have a full and equal opportunity to succeed in, the schools of that LEA. (Section 722(g)(6)(A)(ii)).

The State Coordinator in each State must, among other things, provide technical assistance to, and conduct monitoring of, LEAs in coordination with LEA liaisons, to ensure that LEAs comply with EHCY program requirements. (Section 722(f)(5)). As described more fully above, State Coordinators also are responsible for providing professional development opportunities for LEA liaisons and other personnel to assist them in carrying out EHCY program requirements. (Section 722(f)(6)). Because the protections afforded to homeless children and youths apply regardless of whether an LEA receives a McKinney-Vento Act subgrant, the State Coordinator must ensure that technical assistance and professional development opportunities are provided to all LEAs.

Through strong leadership, collaboration, and communication with LEA liaisons, the State Coordinator can help ensure that LEAs are aware of, understand, and can successfully implement the changes to the EHCY program under the ESSA. Establishing clear-cut policies and

procedures at the State level, and making sure LEAs understand them, will facilitate a smooth transition to and implementation of new and revised EHCY program requirements.

B. State Activities That Can Be Effective for Assisting LEAs in Implementing the Provisions in the McKinney-Vento Act, as Amended by the ESSA

States have many options for ensuring that all LEA liaisons and LEAs receive training and information on changes to the EHCY program resulting from enactment of the ESSA. As previously shared in past guidance and technical assistance, we encourage SEAs to prepare and disseminate to their LEAs and schools memoranda, guidance documents, notices, or letters summarizing the new and existing EHCY program requirements and to share with them guidance provided by the Department. In doing so, we encourage States to use all available technology, such as e-mail notices, listservs, the SEA Web site, Statewide hotlines, and teleconferencing. Additional State activities that may assist LEAs in implementing the law include:

(1) Hosting statewide trainings and orientations, especially for new LEA liaisons.

States can implement a system to ensure that every LEA liaison receives annual professional development on the

provisions in the McKinney-Vento Act and good practices for implementation. States should require LEAs to notify the State Coordinator whenever a new LEA liaison is appointed so that the State Coordinator can provide or arrange small group or individually customized orientations with resources and support to equip new liaisons to fulfill their role effectively. Furthermore, the State Coordinator should ensure that all LEA liaisons receive ongoing information and professional development on challenging areas of implementation, including determining eligibility, determining best interest for school selection, and facilitating the dispute resolution process. States should investigate ways to assess LEA liaison competency and knowledge of LEA requirements and obligations under the McKinney-Vento Act. States may want to include other education personnel, as appropriate, in such training.

(2) Disseminating templates, forms, and policies.

States can provide sample forms, checklists, and other information on effective practices and procedures that may be implemented related to new and continuing statutory provisions under the EHCY program. SEAs can also provide samples of local Memoranda of Agreement that LEAs may utilize for coordination with local housing and social service agencies.

(3) Hosting and encouraging meetings and convenings.

States should provide networking opportunities for LEA liaisons through venues such as State or regional meetings, including homeless education strands of statewide Federal education or vulnerable student programs, as well as periodic conference calls or online meetings such as Webinars. These opportunities can provide LEA liaisons with direct access to and collaboration with the State Coordinator, colleagues in other LEAs, and useful resources. These may also provide opportunities to connect to and coordinate with contacts at other homeless-serving agencies and local programs.

V. Guidelines for Reviewing and Revising State Policies and Procedures

Section 722(g)(1)(I) requires, in the State Plan, a demonstration that the State educational agency and local educational agencies in the State have developed, and shall review and revise, policies to remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths in schools in the State, including barriers to enrollment and retention due to outstanding fees or fines, or absences. The following are examples of effective ways in which a State may review and revise State policies and procedures

that may present barriers to the identification, enrollment, attendance, and success in school of homeless children and youths:

(1) Convening a statewide advisory committee to review State policies and procedures.

An SEA may form a broad-based committee of experts and stakeholders to review relevant State policies and procedures affecting homeless children and youths and provide input on changes that may be needed. Such a committee could include representatives of the State coordinator's office; other SEA officials, including transportation officials; representatives from other State agencies, including public health and social services agencies; LEA officials, including LEA liaisons; legislative staff; homeless families and youths; and advocacy groups. The committee should review State laws, rules, regulations, letters, memoranda, and guidance documents to ensure that the State's policies comply with the requirements of the McKinney-Vento Act. The committee should pay particular attention to issues concerning transportation policies; student records and record-transfer requirements; enrollment of unaccompanied youths, including guardianship requirements; procedures for

resolving enrollment disputes; and barriers resulting from school-related fees or school uniform policies.

(2) Soliciting public comment.

A State may use a public comment process to solicit input on policies and procedures that should be revised to remove barriers to homeless children and youths' identification, enrollment, attendance, and school success. This process can include public hearings and meetings as well as the online submission of comments. This process could include sharing and analyzing existing EHCY data and conducting a survey of LEA liaisons and homeless youth and families. The SEA should engage specific stakeholder groups, including homeless children and youths and their families, to encourage them to provide comment. This process can be reopened biennially or annually as a request for information.

(3) Consulting with the Federal EHCY program office's technical assistance contractor, the National Center for Homeless Education (NCHE), and participating in facilitated peer workgroups.

The Federal EHCY program office and NCHE will work with State coordinators to disseminate information on innovative policies and approaches to implementation from across the country so that State Coordinators can learn

from each other to improve statewide policy and practice. States may convene and/or join ad-hoc topical workgroups or a regular community of practice, as well as access more general Webinars and written advice, for crafting comprehensive State plans. NCHE will also facilitate the peer review of State plans and create ways to disseminate exemplary policies and practices after plans have been approved by the Department.

(4) Ensuring sufficient capacity in its Office of the Coordinator.

Ensuring the Office of the Coordinator has sufficient capacity is critical to facilitating an effective review of policies and procedures. This review is essential for (1) developing State plans, (2) providing for the professional development of LEA liaisons, and (3) providing for technical assistance to LEA liaisons. Beyond the development of the State plan, the Office of the Coordinator should be able to analyze LEA data on enrollment or other demographic information for patterns of possible under-identification of homeless children and youths or subgroups across the State. Such under-identification may necessitate the revision of policies and procedures.

As previously communicated by the Department in 2014 and 2015, for FY 2016 and FY 2017, the Office of the Coordinator should have the capacity to create annual work plans with measurable goals to improve identification, enrollment, attendance, achievement, and graduation for homeless students. Creating such annual work plans and setting measurable goals are elements included in the Federal EHCY program logic model. These elements are also part of the program leading indicators developed in 2014, with baseline implementation beginning in FY 2015 and further technical assistance coming from NCHE. Engagement in these activities affords the Office of the Coordinator an opportunity to revisit and revise, as appropriate, policies and procedures.

VI. Future Guidance

In light of the amendments to the McKinney-Vento Act under the ESSA, the Department is in the process of reviewing current guidance on the EHCY program and anticipates issuing updated guidance at a future date. General guidance, an email address to submit questions, and other information on ESSA is available online at: www.ed.gov/ESSA.

Accessible Format: Individuals with disabilities may obtain this notice in an accessible format (e.g., braille,

large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to this Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, as amended by the Every Student Succeeds Act (Pub. L. 114-95).

Dated: March 14, 2016.

Ann Whalen,
Senior Advisor to the Secretary
Delegated the Duties of Assistant
Secretary for Elementary and
Secondary Education.

[FR Doc. 2016-06073 Filed: 3/16/2016 8:45 am; Publication Date: 3/17/2016]