

Frequently Asked Questions: Definitions/Eligibility

The McKinney-Vento Homeless Assistance Act is a federal law that entitles children in temporary housing to a free, appropriate public education, and requires schools to remove barriers to their enrollment, attendance, and success in school. The McKinney-Vento Act promotes school continuity for children in temporary housing.

Children and youth are considered "homeless" under the McKinney-Vento Act when they:

- i. are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- ii. are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- iii. are living in emergency or transitional shelters; or are abandoned in hospitals;
- iv. 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));
- v. are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- vi. are migratory children who qualify as homeless because the children are living in circumstances described above.

42 U.S.C. § 11434a(2)(B); N.Y. Education Law § 3209(1).

Under what circumstances should a student be designated homeless?

A student should be designated homeless if she lacks a fixed, adequate and regular nighttime residence. 42 U.S.C. § 11434a(2)(A). If any one of the three criteria are missing, the student is protected under McKinney-Vento.

What does "fixed, regular and adequate" mean?

Fixed:

- Fixed residence: one that is stationary, permanent, and not subject to change. Example: a tent is not "fixed," but a house or an apartment are usually fixed to the ground.

Regular:

- A regular residence is a place that a student can return to consistently and count on, night after night. Example: If the family has a lease or they own their own home, the housing is usually "regular," but if the students are staying in someone else's home with the host's permission, the housing may not be regular.
- Normal, standard; constituted, conducted, or done in conformity with established or prescribed usages, rules, or discipline; and
- recurring, attending, or functioning at fixed or uniform intervals. (Merriam-Webster's Collegiate Dictionary)
- Regular residence: one which is used on a regular (for example, nightly) basis.

Adequate:

- Fully sufficient; equal to what is required; and lawfully and reasonably sufficient. (Ballentine's Law Dictionary)
- Adequate residence: one that is sufficient for meeting both the physical and psychological needs that are typically met in home environments. For example: A home without heat, running water, or with an infestation may not be "adequate."

What is a "doubled-up" living situation?

Students often live in temporary housing situations with relatives, friends, or others because of a loss of housing, economic hardship, or similar reason. 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.

If a student is placed in housing that the Department of Social Services (DSS) considers "permanent" housing, can the student still qualify for protection under the McKinney-Vento Act?

Sometimes. It depends on the nature of the housing arrangement, i.e. whether it is fixed, adequate and regular. DSS has a more narrow definition of homelessness than the McKinney-Vento Act has for the purpose of shelter eligibility. For example, families in doubled up situations are often not considered "homeless" by DSS, but students in doubled up housing are still homeless under the McKinney-Vento Act.

Are children in foster care covered under the McKinney-Vento Act?

A child in foster care is not considered homeless. Changes to the definition of homelessness under the McKinney-Vento Act, as reauthorized under the Every Student Succeeds Act (ESSA), went into effect on October 1, 2016. Under these changes, children who are "awaiting foster care placement" are also not considered homeless. 42 U.S.C. § 11434a (2)(B)(i); N.Y. Education Law § 3209(a)(3).

Are preschoolers eligible for protections under the McKinney-Vento Act?

Yes, preschoolers are covered under the McKinney-Vento Act. 42 U.S.C. § 11432(g)(1)(F)(i). If the district offers pre-k services, then the same services must also be made available to students in temporary housing. If a student attended preschool before a loss of housing, that student can keep attending the preschool in the school last attended. 42 U.S.C. § 11432(g)(3)(I)(i); N.Y. Education Law § 3209(2)(b). If there are no pre-kindergarten classes in the district, every effort should be made to find an appropriate placement for the children whose parents request pre-kindergarten classes. NYC has undertaken initiatives to expand preschool access to all.

Are migrant students covered under the McKinney-Vento Act?

Many migrant children and youth, because of frequent moves, are likely to fit the definition of homeless under the McKinney-Vento Act. Migrant students who meet the definition of homelessness should be designated as McKinney-Vento eligible. These students have the same rights as other students experiencing homelessness. 42 U.S.C. § 11434a(2)(B)(iv); N.Y. Education Law § 3209(1)(a)(1)(iv).

Is transitional housing covered under the McKinney-Vento Act?

Yes. The McKinney-Vento Act applies to children and youth who "are living in emergency or transitional shelters," including transitional housing programs and transitional living programs. 42 U.S.C. § 11434a (2)(B)(i); See also, *Bullock v. Board of Education of Montgomery County, Civ. A.DKC 2002-0798* (D. Md.).

Can a school district contact a student's landlord to verify the student's living situation?

No. Schools must treat information about a homeless child's or youth's living situation as a student education record, subject to all the protections of the Family Educational Rights and Privacy Act (FERPA). 42 U.S.C. § 11432(g)(3)(G); 42 U.S.C. § 1232g. If the district does not believe the student to be homeless, they may conduct an investigation after immediately enrolling the student in school. However, in conducting investigations, districts must be careful not to disclose any personally identifiable information about the student/family unless they have prior written permission from the parent to do so. Sharing personal information from a student's education record violates the Family Educational Rights and Privacy Act (FERPA) and can jeopardize a family's living situation. 20 U.S.C. § 1232g; 34 CFR Part 99. For more information about FERPA, please see our information about [privacy](#), or visit the U.S. Department of Education's [Student Privacy Website](#).

Can a student be covered under the McKinney-Vento Act if her family left their home voluntarily and was not evicted by authorities?

Yes, if as a result of the move the student now lacks a fixed, regular and adequate nighttime residence. For instance, if a family flees due to domestic violence or agrees to vacate an apartment after a landlord threatens them with an eviction, the student's new living situation may be temporary.

Is there an age limit to qualify for services under the McKinney-Vento Act?

The McKinney-Vento Act covers all school-age children. In New York State this means children are protected until they receive their high school diploma, or through the school year in which they turn 21 years old, whichever comes first. N.Y. Education Law § 3202; Chancellor's Regulation A-240.

What are the school rights and protections of students in temporary housing?

Students in temporary housing have the right to:

- Go to school, no matter where they live or how long they've lived there. 42 U.S.C. § 11431(1).
- [Choose between](#) the local school where they are living and the school of origin. 42 U.S.C. § 11432(g)(3)(A); N.Y. Education Law § 3209(2)(a). The definition of a school of origin includes preschools, charter schools, and feeder schools. N.Y. Education Law § 3209(1)(c). A student may have more than one school of origin:
 - The school the student attended, or was entitled or eligible to attend before the student lost housing;
 - The school where the student was last enrolled.
N.Y. Education Law § 3209(1)(c).
- Be immediately enrolled in school without proof of residency, immunizations, school records, or other documents normally needed for enrollment, even if they have missed the application or enrollment deadlines during any period of homelessness. 42 U.S.C. § 11432(g)(3)(C); N.Y. Education Law § 3209(2)(f)(2).
- Receive free transportation to school and to school-related programs for the duration of homelessness and for the remainder of the school year if they move into permanent housing and continue to attend the same school. 42 U.S.C. §§ 11432(g)(1)(J)(iii), 11432(g)(4)(A), and 11432(g)(6)(A)(vii); N.Y. Education Law § 3209(4).
- Receive credit for full or partial coursework satisfactorily completed at a prior school. 42 U.S.C. § 11432(g)(1)(F)(ii).

- Receive the same special programs and services, if needed, provided to all other students served in these programs. 42 U.S.C. § 11432(g)(1)(A), 42 U.S.C. § 11432(g)(1)(F), and 42 U.S.C. § 11432(g)(4); 8 N.Y.C.R.R. § 100.2(x)(4)(iii).
- Enroll and attend class in the school of their choice, even while the family or youth and school district resolve disagreements about enrollment. 42 U.S.C. § 11432(g)(3)(E); N.Y. Education Law § 3209(5)(a)).

Can students who have dropped out of school or earned a GED return to school?

Yes. If a student has dropped out of school or earned a GED, the student can re-enroll in school to earn a high school diploma through the year during which they turn 21 years old or until they graduate with a high school diploma, whichever occurs first. N.Y. Education Law § 3202(1).

Is there a limit on the amount of time a person can be considered homeless?

No. A youth can be homeless for an unspecified amount of time as long as housing is not fixed, regular, or adequate. Given the limited availability of affordable housing across the state, it is not unusual for a temporarily housed student to be designated as homeless for multiple academic years.

What happens if families who are temporarily housed do not identify as nor consider themselves homeless?

Families and youth who are homeless oftentimes do not identify themselves. There are many reasons for this. Most families and youth do not know about the McKinney-Vento Act, and school districts must work to ensure that families and youth are aware of their legal protections. Those who are aware of the law still may not self-identify because of the stigma attached to being homeless. Families and youth in temporary living situations do not have to self-identify as homeless in order to be eligible for protection under the law. 42 U.S.C. § 11432(g)(6)(A)(i); 42 U.S.C. § 11432(g)(6)(A)(vi).

Must a student be poor to be covered under McKinney-Vento? Are there income eligibility requirements under McKinney-Vento?

No. There are no income eligibility requirements under the McKinney-Vento Act. There are a wide range of reasons anyone may lose their housing, regardless of their income. All students who lack a fixed, regular, and adequate nighttime residence are considered homeless