

Chapter 14: EDUCATION OF HOMELESS STUDENTS

Summary: This chapter defines a homeless student, outlines procedures for identifying and enrolling homeless students and for resolving disputes over their identification and educational placement, and assures access to appropriate educational services for homeless students, consistent with the *McKinney-Vento Homeless Assistance Act*.

SECTION 1. PURPOSE

1. The purpose of this rule is to ensure that the rights of homeless students are protected in accordance with the *McKinney-Vento Homeless Assistance Act* by clearly defining the roles and responsibilities of the State and other covered entities.

SECTION 2. DEFINITIONS

1. **Homeless student.** A homeless student means a student eligible to attend preschool, elementary, or secondary school, pursuant to 20-A M.R.S. §5201, who:
 - A. Lacks a fixed, regular and adequate night-time residence; and
 - B. Includes:
 - (1) Students 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) Students who have a primary night-time residence that is a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings;
 - (3) Students who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - (4) Migratory students who are living in circumstances described in (1) through (3).
2. **Unaccompanied homeless student.** An unaccompanied homeless student is a homeless student, as defined in subsection 1 above, who is not in the physical custody of a parent or guardian.

3. **School of origin.** The school of origin means the school that a student attended when permanently housed or the school in which the student was last enrolled, including a preschool. When a student completes the final grade level served by the school of origin, the term shall include all receiving schools at the next grade level that students in the school administrative unit of origin may attend.
4. **School administrative unit of origin.** The school administrative unit of origin means the school administrative unit that operates the school of origin or is otherwise responsible for funding the educational placement of the student in the school of origin.
5. **School of current residence.** The school of current residence means the school or schools that non-homeless students are eligible to attend in the attendance area where a homeless student is residing.
6. **School administrative unit of current residence.** The school administrative unit of current residence means the administrative unit which operates the school of current residence or is otherwise responsible for funding the educational placement of students in the attendance area where a homeless student is residing.
7. **Enrollment.** The term ‘enrollment includes registration, attending classes, and participating fully in school activities.

SECTION 3. COVERED ENTITIES

This rule applies to the following covered entities:

1. School administrative units, as defined in Title 20-A §1(26);
2. Education in the Unorganized Territories;
3. Maine Indian Education;
4. The Maine Educational Center for the Deaf and Hard of Hearing;
5. Public magnet schools, including the Maine School of Science and Mathematics;
6. The Child Development Services State Intermediate Educational Unit regional sites.

SECTION 4. OBLIGATIONS OF COVERED ENTITIES

1. Appointment and Support of a Local Homeless Education Liaison

A covered entity must appoint and support a local homeless education liaison. The liaison must attend training provided by the Department of Education. The liaison is responsible for ensuring that:

- A. homeless students are identified by school personnel through outreach and coordination with other entities and agencies;

- B. there is an established process for routine communication with all career and technology education (CTE) centers and regions, other regional and out of district entities, special purpose private schools, and private schools that receive public funds to serve students enrolled through the covered entity so that students attending such programs are promptly and equally identified;
- C. homeless students are enrolled in, and have an equal opportunity to succeed in, schools in the covered entity;
- D. homeless students and their families have access to and receive educational services for which such students and families are eligible, including Career and Technical Education programs, Head Start programs, early intervention services under Part C of the *Individuals with Disabilities Education Act* (IDEA), and other public preschool programs;
- E. homeless students and their families receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;
- F. parents or guardians of homeless students are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- G. public notice of the educational rights of homeless students is disseminated in locations frequented by parents or guardians of such students and unaccompanied homeless students;
- H. disputes over identification and enrollment are resolved using the local dispute resolution process described in subsection 8 below;
- I. parents or guardians of homeless students and unaccompanied homeless students are informed of the availability of transportation services and are assisted in accessing transportation to the school the student will attend; and
- J. school personnel in the unit receive appropriate training such that they are aware of laws, policies, and practices pertaining to the education of homeless students.

2. **Inform all families of the rights of homeless students**

A covered entity must provide written notice to all parents, guardians, and unaccompanied youth regarding the choice of schools available to youth who meet the definition of homeless, the right to comparable services, full participation, transportation, school meals, and the right to be served in school without stigma or separation. Notice must include contact information for the local liaison, described below, and for the State Coordinator for Homeless Education. Notice must be presented at the time any child or youth seeks enrollment in the covered entity and be widely available throughout the school year.

3. **Identification of Homeless Students**

- A. Covered entities must have processes in place to identify students who meet the definition of homeless student, as set forth in Section 1.1, and must maintain records of all students identified as homeless.
- B. If a dispute arises over eligibility, any covered entity that refuses to identify a student as a homeless student, must provide the parent, guardian or (in the case of an unaccompanied homeless student) the student with a clear, understandable written explanation of the reasons for its determination, including information regarding the right to appeal.
- C. In the case of a dispute over eligibility, a covered entity must treat a student as if they are eligible, including making a determination of the student's best interest and ensuring that the student is enrolled in accordance with subsection 3 below, pending final resolution of the dispute (including all available appeals).

4. **School Stability and Determination of Student's Best Interest**

- A. The school administrative unit or other covered entity that operates or is otherwise responsible for funding the student's attendance at his or her school of origin shall, according to the student's best interest:
 - (1) Continue the student's education in the school of origin for the duration of homelessness in any case in which a family becomes homeless between academic years or during an academic year and for the remainder of the academic year, if the student becomes permanently housed during an academic year; or
 - (2) Ensure that the student is enrolled in a school operated by the school administrative unit of current residence, including providing the student's education records to the school administrative unit of current residence.
 - (3) **Exception:** The school administrative unit of current residence, rather than the school administrative unit of origin, may carry out the responsibilities designated in Paragraph 4A at the request of the parent, guardian, or unaccompanied youth or if the school unit of residence is unable to obtain a prompt response to its request for a determination by the SAU of origin.
- B. In determining the best interest of the homeless student, the covered entity described subsection A above must:
 - (1) Initially presume that keeping the student in the school of origin is in the student's best interest except when doing so is contrary to the request of the parent or guardian or (in the case of an unaccompanied homeless student) the student;
 - (2) Consider student-centered factors related to the student's best interest, including factors related to the impact of mobility on achievement,

education, health and safety of homeless students, giving priority to the request of the student's parent or guardian, or the unaccompanied student;

- (3) Consider the views of the school administrative unit of current residence;
- (4) If the determination is that it is not in the student's best interest to attend the school of origin or the school requested by the parent, guardian, or unaccompanied student, provide the parent, guardian or unaccompanied youth a clear, understandable written explanation of the reasons for its determination, including information regarding the right to appeal; and
- (5) In the case of an unaccompanied student, ensure that the local homeless education liaison assists in placement or enrollment decisions, gives priority to the view of the unaccompanied student, and provides notice to the student of the right to appeal.
- (6) In the case of a dispute over enrollment, ensure that the student in enrolled in the school that the parent, guardian or unaccompanied student has selected pending final resolution of the dispute (including all available appeals).

5. **Enrollment**

Covered entities are responsible for eliminating barriers to the immediate enrollment of students who are determined to be homeless, even if the student is unable to produce records normally required for enrollment or if an application or enrollment deadline has been missed during a period of homelessness. The entity must assist students and families to obtain needed records, but may not delay enrollment due to their absence. The determination of eligibility and/or best interest may be reconsidered in light of documentation that becomes available after enrollment.

Covered entities must ensure that homeless students are fully able to participate in school activities and may not prevent unaccompanied homeless students from participation in school activities based on the lack of a parent or guardian to sign school forms such as a permission slip or release.

6. **Confidentiality and Privacy**

The identification of a student as homeless is part of that student's education record and is therefore subject to the provisions of FERPA and 20-A M.R.S. §6001. Information regarding a student's living situation is personally identifiable information that cannot constitute directory information and can only be disclosed with prior written consent, except where FERPA provides a specific exception, such as a disclosure to school officials with legitimate educational interests, for transfer or enrollment purposes, to appropriate parties in connection with a student's financial aid application, or to appropriate health, safety, monitoring, and judicial authorities under conditions set forth in FERPA.

Covered entities should establish communications practices to protect the privacy of homeless students and their families out of an appreciation for the fact that homeless students and their families are often victims of domestic violence and other safety issues

that make inappropriate release of personally identifying information especially problematic.

7. **Access to comparable services**

Homeless students, regardless of where they are enrolled, must have access to all specialized services for which they are eligible and full access to all programs and services comparable to those that are available to non-homeless students attending the school. This includes, but is not limited to: school choice options, before and after school programs, special education, transportation, support services, supplemental and enrichment programming, and programs designed to increase college readiness. Homeless students are immediately eligible for the school's free lunch program and federal Title IA programs, even if the school in which they are enrolled is not a Title I school.

8. **Transportation**

If requested by a parent, guardian, or unaccompanied youth, homeless students must be provided with daily transportation to and from school, regardless of whether non-homeless students in the school are eligible for transportation services. If the homeless student continues to live in the geographic area where the school of origin is located, the school administrative unit of origin is responsible for providing transportation to the school of origin. If the student is attending the school of origin but not residing in the geographic area where the school of origin is located, the school administrative units of origin and current residence should collaborate in order provide the safest, most appropriate and efficient use of transportation resources.

If the school administrative unit provides transportation to its students for other academic and/or other supplemental activities, comparable transportation services must also be made available to homeless students. In cases where a lack of transportation poses a barrier to a homeless student's full participation in school programs for which he or she is eligible or which are deemed critical for the student's success, the school unit must provide the needed transportation services.

When providing transportation for homeless students, schools are expected to employ the same safety standards that are used in the regular transportation program.

9. **Local dispute resolution**

Covered entities must have a clear written procedure for resolving eligibility and enrollment disputes between the school administrative unit and the parent/guardian of a homeless student (or, in the case of an unaccompanied youth, the student him or herself). The State Homeless Education Coordinator will provide a model local dispute resolution procedure on the Department's website that covered entities may use to devise their own processes. Parents, guardians, and unaccompanied students must be informed of the local process. Should an unaccompanied homeless youth, or a parent/guardian of a homeless student wish to dispute the school's eligibility decision or the school's determination of best interest, they are to be referred to the local liaison for the unit of origin. The liaison is responsible for assisting students and families through the local dispute resolution process and through a state level appeal if that is requested. Covered entities must maintain records of dispute resolution actions at the local level and convey those records to the Department of Education's State Homeless Education Coordinator if a state level

appeal is sought. During the local dispute resolution process, students must be treated as if they are eligible, and enrolled in the school that the parent, guardian, or unaccompanied student selects.

SECTION 5. STUDENTS WITH DISABILITIES

1. The determination of the best interest of a homeless student with a disability must be made in accordance with the provisions of Section 4.3 above. In addition, the school administrative unit of origin or other covered entity must: consider information about the student's disability in the determination of best interest, expedite the conveyance of special education records to the school that the student will be attending, and collaborate fully with the special education program of any school outside of the school administrative unit that a homeless student may attend.
2. If the homeless student remains in the school of origin, the school administrative unit of origin remains responsible for the provision of FAPE to the student even if the school of origin is not located in the school administrative unit of origin (*e.g.* the student is attending an out-of-district day placement or an out-of-district residential placement).
3. If the homeless student is going to attend the school of current residence, the school administrative unit of current resident must follow the regulatory requirements applicable to a student who transfers from one school administrative unit to another by immediately providing comparable services to those contained in the student's IEP pending review by the student's IEP Team. A surrogate parent must be appointed for an unaccompanied homeless student with a disability prior to any IEP Team meeting about the student.

SECTION 6. FISCAL RESPONSIBILITIES

1. If a homeless student remains in his or her school of origin, the school administrative unit of origin retains fiscal responsibility for the education of the student, including any tuition paid to the school of origin.
2. If a homeless student attends the school of current residence, the school administrative unit of current residence becomes fiscally responsible for the education of the student, including any tuition paid to the school of current residence.
3. In a situation where both the school administrative unit of origin and the school administrative unit of current residence would allow the homeless student to continue to attend the school of origin (*e.g.*, both units send their students to the same school or both units offer "choice" to students), and it is determined to be in the best interest of the student to remain in his or her school of origin, the school administrative unit of origin will retain fiscal responsibility for the student. If it is determined to be in the best interest of the student to attend a different school that is available to non-homeless students in the school unit of current residence, then the school unit of current residence becomes fiscally responsible for the education of the student.
4. In cases where a homeless student remains in the school of origin but resides outside of the geographic area served by the school administrative unit of origin, and the parent, guardian or homeless student requests transportation to and from school, the

superintendents of the school administrative unit of origin and the school administrative unit of residence must determine how to distribute the cost of transportation between them. In the absence of such an agreement, transportation costs must be shared equally.

SECTION 7. STATE LEVEL DISPUTE RESOLUTION PROCESS

1. If a parent or guardian of a homeless student or an unaccompanied homeless student disagrees with either the school administrative unit of origin's or the school administrative unit of current residence's determination of eligibility or best interest and remains in disagreement after completing all steps of the local dispute resolution process, the local decision may be appealed to the State Department of Education.
2. The Department will make forms and instructions for the state level appeal process available on its public website. The local liaison must assist the parent, guardian, or unaccompanied homeless student in assembling the appeal packet and assure that it is sent to and received by the State Homeless Education Coordinator. The appeal packet must include the school administrative unit's original letter of determination, all documentation related to the local dispute resolution process, and the State dispute resolution appeal form.
3. **Initial State Review:** Upon receipt of the packet, the State Homeless Education Coordinator will review the materials provided, request any additional information deemed necessary to make his or her determination, and document all additional information received in response to the request(s). Within ten (10) working days of receipt of the appeal packet, the Coordinator will provide written findings and a determination to the disputant and the school administrative unit(s). If all parties are satisfied with the resolution provided by the Coordinator, this finding will constitute the final resolution.
4. **Final Review by the Commissioner:** If any party remains dissatisfied with the determination of the Coordinator, a final appeal may be made to the Commissioner of Education. That party has seven (7) working days to inform the Coordinator in writing of their appeal to the Commissioner. The Coordinator will provide the parties no less than ten (10) working days to respond in writing to the proposed determination, and will convey the original appeal packet, the proposed determination, and any timely written responses to the Commissioner. At the Commissioner's request, a hearing may be held to clarify issues related to the dispute. In any case, the Commissioner will issue a decision within twenty (20) working days of receiving the appeal. The Commissioner's decision is final.
5. In situations where the school unit of origin and the school unit of residence are in disagreement over a determination of eligibility or best interest, either unit may request informal assistance from the State Homeless Education Coordinator. Should the dispute persist after such consultation, either district may initiate the state level dispute resolution process described above. The parent, guardian or homeless student must receive copies of all documents sent to the Department with respect to the dispute, and must be given the opportunity to submit their own statement and/or documents with respect to the dispute. The local liaison must assist the parent, guardian or homeless student in assembling any statement or documents they wish to submit and ensuring that they are sent to and received by the State Homeless Education Coordinator. In any situation where the school units of origin and residence are in disagreement, the student must be immediately

enrolled and receiving services in the school chosen by the parent, guardian, or unaccompanied youth until the dispute resolution process is concluded.

STATUTORY AUTHORITY: 20-A MRS §§ 261, 5205(7)

EFFECTIVE DATE:

September 18, 1992 as “Regulations Regarding School Board Policies on Exceptions to the General Residency Rules, and Education of Homeless Students. Education Access for Homeless Students”, filing 92-356

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 19, 1996

REPEALED AND REPLACED:

May 9, 2018 as “Education of Homeless Students”, filing 2018-074