
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Maine State Procedures – McKinney-Vento Act Dispute Resolution

Pursuant to the McKinney Vento Homeless Assistance Act, a Local Education Agency (“LEA”) must continue to educate the child or unaccompanied youth in their school of origin for the duration of homelessness when the homelessness occurs between or during an academic year; or for the remainder of the academic year if the child or unaccompanied youth becomes permanently housed during the academic year; or enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is living are eligible to attend. McKinney Vento Act § 722(3)(A)(i)(ii). If a dispute arises over school selection or enrollment, the LEA must immediately enroll the student in the school in which enrollment is sought pending resolution of the dispute. § 722(3)(E)(i). Similar provisions apply to the placement of an unaccompanied youth.

Maine follows the sentiment of the federal McKinney Vento Act. According to Maine Revised Statutes section 261, the Commissioner of Education may adopt rules to ensure that a homeless student has unrestricted access to free public education in accordance with the McKinney Vento Act. See Maine Revised Statutes Title 20-A, Part 3, Ch 213, § 5205(2)(7). In Maine, a homeless student must lack a fixed, regular, and adequate night time residence or alternatively live in a shelter, temporary residence, or in a public place not suitable for residence. CMR 05-071-014 1.1. The dispute resolution process with regard to homeless education is codified in the Code of Maine Rules. The following procedures have been established in the event that there is a dispute with regard to where a homeless child may enroll in school.

Step One: School Enrollment

The parent or guardian of a homeless student decides in which school the student should attend. CMR 05-071-014 2. The child may attend the school that the student attended when permanently housed, school in which he or she was last enrolled, or school that provides education in the current location. CMR 05-071-014 2. This determination may be made by the parent or guardian on behalf of the student, regardless of whether the homeless child is living with the parent or guardian or whether the homeless child has been temporarily placed elsewhere by the parents or guardians. CMR 05-071-014 2. If the parent or guardian is unable to make this determination, the decision will be made by a social worker or by the homeless student. CMR 05-071-014 2. A homeless student will have immediate access to education in that school unit, including eligibility in school programs for which he or she meets the criteria as well as transportation services. CMR 05-071-0142 2.2, 2.3. The student should have no difficulties securing enrollment with school selection. The process to challenge enrollment is up to the school districts.

Step Two: Informal Dispute Resolution Process

Initially, the parent or guardian does not have an avenue to dispute the school enrollment because the school district is supposed to accept the student as presented and not turn the student away.

In the event that the student is turned away, a parent or guardian may call the Maine Homeless Education Coordinator for assistance.

If the school unit does not believe that providing education to the homeless student is in the best interest of the child, the superintendent or a designee may seek informal resolution through the Homeless Education Coordinator. CMR 05-071-0142 3.1. The Homeless Education Coordinator must attempt to resolve the dispute within twenty days from the date of the request. CMR 05-071-0142 3.1. The parent or guardian must be made aware of these proceedings and will be a party to the proceedings. These educational services must continue to be provided to the student during the dispute resolution process.

Step Three: Formal Appeal Process

The formal appeal process may be used if the informal process does not resolve the dispute or as an alternative to the dispute. CMR 05-071-0142 3.2(A). To initiate the process, the superintendent or designee may formally appeal the determination to the Commissioner of Education or to the Commissioner's designee. CMR 05-071-0142 3.2(A). The appeal must be contain all the information that the Commissioner of Education requires. CMR 05-071-0142 3.2(B). If the superintendent believes the best interest of the homeless student would be in attending another school unit, the superintendent must identify that school unit. CMR 05-071-0142 3.2(B).

The superintendent must provide note of the appeal to any other school unit identified, the parent or guardian, social worker, and homeless student, as necessary. CMR 05-071-0142 3.2(B). The Commissioner of Education may request a response from any of these parties. CMR 05-071-0142 3.2(B). The Commissioner of Education has the discretion to provide an opportunity for a hearing to decide the appeal. CMR 05-071-0142 3.2(D). Any hearings must be conducted as an adjudicatory proceeding for the purposes of the Maine Administrative Procedure Act, 5 MRSA § 8001 et seq. and shall follow the hearing procedures set forth in 5 MRSA § 9051 et seq. CMR 05-071-142 3.2(D).

The Commissioner of Education will determine which school is responsible for educating the homeless student, in the best interest of the student. CMR 05-071-0142 3.2(C). The superintendent should consider the student's social, educational, and physical needs related to the homeless situation; other available options; and other information from school authorities and out of school agencies. CMR 05-071-0142 3.2(C). This decision is final with regard to the Maine Administrative Procedure Act. CMR 05-071-0142 3.2(E).

Step Four: Appeal to Superior Court

The parent or guardian may appeal a Commissioner of Education's unfavorable decision to the Superior Court as set forth in 5 MRSA § 11001 et seq. CMR 05-071-0142 3.2(E). This process is an 80C action under the Main Rules of Civil Procedure.

Appeal Documents and Timeline for Filing an Appeal

Process:	Completed by:	Given to:	Due Date:
Enroll student	Parent or Guardian	School District	-
If issues with school enrollment, call Homeless Student Coordinator for assistance	Parent or Guardian	-	-
Informal resolution	Superintendent or Designee	Coordinator of Education for Homeless Children and Youth	-
Informal resolution	Coordinator of Education for Homeless Children and Youth	Parent or Guardian and Superintendent	20 days from date of request
Formal appeal	Superintendent or Designee	Commissioner of Education with notice to any other school unit identified, the parent or guardian, social worker, and homeless student, as necessary	-
Potential for investigation or adjudicatory proceedings	Commissioner of Education	-	-
Final decision	Commissioner of Education	Parent or Guardian and Superintendent	-
Appeal to Superior Court	Parent or Guardian	Superior Court	-

Additional Information

Contact Information: Jacinda Goodwin, Truancy, Dropout, Alternative Education, and Homeless Education Coordinator, 23 State House Station, Augusta, Me 04333-0023, Phone: 207-624-6637, Fax: 207-624-6624, Jacinda.Goodwin@Maine.Gov

To determine your local homeless liaison, please contact Ms. Goodwin for more information. For additional information, please visit the Maine Department of Education Homeless Education website, http://www.maine.gov/education/homeless_ed/

CODE OF MAINE RULES

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AGENCY 05. DEPARTMENT OF EDUCATION

SUB-AGENCY 071. GENERAL

CHAPTER 014. REGULATIONS REGARDING SCHOOL BOARD POLICIES ON
EXCEPTIONS TO THE GENERAL RESIDENCY RULES, AND EDUCATION OF
HOMELESS STUDENTS. EDUCATION ACCESS FOR HOMELESS STUDENTS

CMR 05-071-014 (2012)

05 071 014. REGULATIONS REGARDING SCHOOL BOARD POLICIES ON EXCEPTIONS
TO THE GENERAL RESIDENCY RULES, AND EDUCATION OF HOMELESS
STUDENTS. EDUCATION ACCESS FOR HOMELESS STUDENTS

Summary:

This chapter defines a homeless student, procedures for enrolling the student in public school, a process for resolving disputes of residency and assures access to appropriate education in public schools for a homeless student.

1. DEFINITIONS:

1.1 Homeless Student

A homeless student means a student eligible to attend elementary or secondary school, pursuant to 20-A M.R.S.A. section 5201, who:

A. Lacks a fixed, regular and adequate night time residence;

B. Has a primary night time residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;

(2) An institution that provides temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

C. Is the child of a parent or guardian to whom paragraph A or B applies.

The term "homeless student" does not include a person housed in a correctional facility, jail, or detention facility.

1.2 School of Origin, School Unit of Origin

The school of origin shall mean the school that the student attended when permanently housed, the school in which the student was last enrolled, or the school which the student would have been entitled to attend upon reaching the appropriate school age or grade. The school unit of origin shall mean the school administrative unit in which the school of origin is located.

1.3 School of Current Location, School Unit of Current Location

The school of current location shall mean the school that nonhomeless students are eligible to attend in the attendance area in which the homeless student is currently located. The school unit of current location shall mean the school administrative unit in which the school of current location is located.

2. EDUCATION ACCESS FOR HOMELESS STUDENTS

2.1 Designated School

A. The parent, an adoptive parent or guardian of a homeless student shall determine whether the homeless student shall attend:

(1) the school of origin for the remainder of the academic year or in any case in which a family becomes homeless between academic years, for the following academic year; or

(2) the school of current location,
whichever is in the best interest of the homeless student.

B. In the event that a parent, an adoptive parent or a legal guardian is unavailable to make the determination described in paragraph (A), that determination shall be made by a social worker or by the homeless student.

C. The determination described in paragraph (A) shall be made regardless of whether the homeless student is living with homeless parents or has been temporarily placed elsewhere by the parents.

2.2 Services to be provided

Whether a homeless student attends school in the school of current location or the school of origin, such student shall have immediate access to education in that school unit. Such student shall be provided services comparable to services available to other students in the designated school. These services shall include, but not be limited to, educational services for which the student meets relevant eligibility criteria, such as compensatory education programs for the disadvantaged; education programs for students with disabilities and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; school meals; before and after school care programs.

2.3 Transportation

A homeless student who has enrolled in the school of current location (pursuant to section 2.1) shall be provided transportation by the school unit of current location.

Transportation for a homeless student who has enrolled in the school of origin shall be arranged by the superintendent of the school of origin (pursuant to section 2.1) through an agreement with the superintendent of the school unit of current location, provided that these school units are contiguous.

3. RESOLUTION OF DISPUTES REGARDING EDUCATIONAL PLACEMENT OF HOMELESS STUDENTS

3.1 Informal Process

In the event that the superintendent of a school unit designated pursuant under 2.1 believes that the determination is not in the best interest of the homeless student, the superintendent or a designee may seek informal resolution through the Coordinator of Education for Homeless Children and Youth. The Coordinator shall attempt to resolve the dispute within 20 school days from the date of the request.

3.2 Formal Appeal

A. In the event that the informal procedure described in subsection 1 has not resolved the dispute, or as an alternative to the informal procedure, the superintendent of the designated school unit or a designee may formally appeal that determination to the Commissioner of Education or the Commissioner's designee.

B. The appeal shall be made on forms provided by the Commissioner and shall contain such information as the Commissioner requires. If the appealing superintendent believes that the interests of the homeless student would be best served by enrollment in another specific school unit, the superintendent shall identify that other school unit. The Commissioner shall provide notice of the appeal to any other school unit identified and to the parent or person in parental relations to the homeless student, to a social worker or to the homeless student him/herself, as the case may be. The Commissioner may request a response and any other information from these parties.

C. The Commissioner shall determine which school is responsible for educating the homeless student. In making this determination the Commissioner shall be guided only by the best interests of the homeless student. This shall include, but not be limited to: (1) an assessment of the student's social, educational, and physical needs related to the homeless situation; (2) a review of other options available to the student for education; and (3) other information from school authorities and out-of-school agencies.

D. The Commissioner shall have the discretion to provide a hearing or opportunity for a hearing to decide the appeal. Any hearing shall be conducted as an adjudicatory proceeding for purposes of the Maine Administrative Procedure Act, 5 MRSA section 8001 et seq. and shall follow the hearing procedures set forth in 5 MRSA section 9051 et seq.

E. The decision of the Commissioner shall be final agency action for purposes of the Maine Administrative Procedure Act and may be appealed to Superior Court as set forth in 5 MRSA section 11001 et seq. The Commissioner may defer the effective date of the decision when mandated by the need for continuity of education or the best interests of the homeless student.

3.3 Enrollment Status of Student During Resolution Process

During the pendency of the informal procedure or a formal appeal, the homeless student shall remain enrolled in the school designated pursuant to section 2.1 and shall receive all services to which the student is entitled under section 2.2 and 2.3.

BASIS FOR ADOPTION

Maine's State Plan for Assuring Access to Education for Homeless Children and Youth was developed under guidelines provided by the U.S. Department of Education in compliance with the Stewart B. McKinney Homeless Assistance Act. The Department of Education in receiving funding under the McKinney Act has committed the State of Maine to revise its school residency laws and regulations to remove barriers to school for homeless students. The Maine State Plan, approved by the USDOE in September of 1991, outlines the activities and strategies to be carried out which place our state in compliance with the federal statutes.

This chapter is an integral part of the state plan, which identifies the barriers to accessing education for homeless children in Maine. The State Plan describes each of the identified barriers

and the objectives to be achieved in removing these barriers for Maine's homeless children and youth.

AUTHORITY:

20-A MRSA Sections 261 and 5205 (7)

EFFECTIVE DATE: SEP 18 1992

Each school must have a School Homeless Liaison. This person must ensure that homeless children and youth are identified, enrolled, and receive educational services for which they are eligible. <http://www.slideserve.com/alta/integrated-training-for-school-homeless-and-keeping-maine-s-children-connected-liaisons>

If the school decides to send the child to another school other than the one requested, it must provide parent, guardian, or unaccompanied youth with a written explanation of the decision with information regarding the right to appeal. <http://msad75.schoolfusion.us/modules/cms/pages.phtml?sessionid=&pageid=267872>

If there is a dispute, the child will remain enrolled in the school until the dispute is settled. Work with LEA.

If the superintendent of the school system believes that the decision is not in the best interest of the child, he or she may attempt to have the decision changed. The superintendent may request an informal decision from the Coordinator of Education from Homeless Children and Youth. The Coordinator must try to get the parent or guardian and superintendent to agree within twenty days. Alternatively, the superintendent may appeal to the Commissioner of Education. If the superintendent appeals, he or she must file the forms requested by the Commissioner. The forms must state in which school he believes would serve the child best. The parent or guardian must receive notice of the appeal. The Commissioner may request for the parent or guardian to state his or her beliefs in writing or hold an oral hearing on the matter. If a hearing is to be held, the parent or guardian must be given notice, be allowed to attend, and be permitted to present his opinion. The Commissioner will then decide where the child will be sent to school. In making his decision, he should consider: the child's social, educational, and physical needs, availability of other options, and other information from school authorities and out of school agencies.

If parent or guardian is not satisfied with the Commissioner's decision, he or she may appeal the Superior Court. The appeal must occur within thirty days of the decision. The superintendent or any other party involved may also appeal to the Superior Court. <http://www.kidslegalaid.org/parents/education/homeless.htm>

20-A M.R.S. § 1 (2011) 13-A. HOMELESS STUDENT. "Homeless student" means a person eligible to attend elementary or secondary school pursuant to section 5201 who:

- A. Lacks a fixed, regular and adequate nighttime residence;
- B. Repealed. Laws 2003, c. 477, § 1.

B-1. Is a child or a youth:

- 1) Who is sharing the housing of other persons due to loss of housing or economic hardship or a similar reason; is living in a motel, hotel, trailer park or camping ground due to the lack of alternative adequate accommodation; is living in an emergency or transitional shelter; is abandoned in a hospital; or is awaiting foster care placement;
- 2) Who is living in a car, park or public space or in an abandoned building, substandard housing, bus or train station or similar setting;
- 3) Who has 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; and
- 4) Who is a migratory child, as defined in Section 1309 of the federal Elementary and Secondary Education Act of 1965, who qualifies as homeless for the purpose of this chapter because the child is living in circumstances described in this section.

C. Repealed. Laws 2003, c. 477, § 3.

The term “homeless student” does not include a person housed in a correctional facility, jail or detention facility.

20-A M.R.S. § 261 (2011)

§ 261. Schooling privileges

The commissioner may adopt rules regarding tuition charges, accounting, audits, contracts and other aspects of schooling privileges between receiving schools approved for tuition purposes and sending school administrative units.

The commissioner may adopt rules to implement statutory policies regarding student residency, the right of a student to attend school in another administrative unit, homeless students and other exceptions to the general residency rules. Rules adopted by the commissioner pursuant to this section shall take precedence over any inconsistent or conflicting rules adopted by a school board pursuant to section 5201, subsection 4.

20-A M.R.S. § 5205 (2011) 7. HOMELESS STUDENTS. Pursuant to section 261, the commissioner may adopt rules to ensure that each homeless student has unrestricted access to the free public education afforded by section 2, subsection 1. The rules must implement the

requirements and policies of the McKinney-Vento Homeless Education Assistance Improvement Act of 2001, 42 United States Code, Section 11431 et seq., and may be adopted as part of or in conjunction with the required state plan. The rules must include, but are not limited to, provisions for the resolution of disputes regarding the educational placement of homeless students according to the best interest of homeless students, provisions that homeless students receive services comparable to services offered to other students in the schools they attend, provisions to address transportation and health records as a barrier to school admission and other provisions required by United States Code, Title 42, Section 11431.

22 M.R.S. § 4099-E (2011)

§ 4099-E. Comprehensive program for homeless youth

The department shall establish and support a comprehensive program for homeless youth in the State by contracting with organizations and agencies licensed by the department that provide street outreach, shelter and transitional living services for homeless youth. The department shall by rule establish licensure requirements and shall establish performance-based contracts with organizations and agencies to provide the following programs and services:

1. **STREET AND COMMUNITY OUTREACH AND DROP-IN PROGRAMS.** Youth drop-in centers to provide walk-in access to crisis intervention and ongoing supportive services, including one-to-one case management services on a self-referral basis and street and community outreach programs to locate, contact and provide information, referrals and services to homeless youth, youth at risk of homelessness and runaways. Information, referrals and services provided may include, but are not limited to family reunification services; conflict resolution or mediation counseling; assistance in obtaining temporary emergency shelter; case management aimed at obtaining food, clothing, medical care or mental health counseling; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases, HIV and pregnancy; referrals to other agencies that provide support services to homeless youth, youth at risk of homelessness and runaways; assistance with education, employment and independent living skills; aftercare services; and specialized services for highly vulnerable runaways and homeless youth, including teen parents, sexually exploited youth and youth with mental illness or developmental disabilities;

2. **EMERGENCY SHELTER PROGRAM.** Emergency shelter programs to provide homeless youth and runaways with referrals and walk-in access to short-term residential care on an emergency basis. The program must provide homeless youth and runaways with safe, dignified, voluntary housing, including private shower facilities, beds and at least one meal each day, and assist a runaway with reunification with family or a legal guardian when required or appropriate. The services provided at emergency shelters may include, but are not limited to, family reunification services or referral to safe, dignified housing; individual, family and group counseling; assistance obtaining clothing; access to medical and dental care and mental health counseling; education and employment services; recreational activities; case management, advocacy and referral services; independent living skills training; and aftercare, follow-up services and transportation; and

3. **TRANSITIONAL LIVING PROGRAMS.** Transitional living programs to help homeless youth find and maintain safe, dignified housing. The program may also provide rental assistance and related supportive services or may refer youth to other organizations or agencies that provide such services. Services provided may include, but are not limited to, provision of safe, dignified housing; educational assessment and referrals to educational programs; career planning, employment, job skills training and independent living skills training; job placement; budgeting and money management; assistance in securing housing appropriate to needs and income; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases and pregnancy; referral for medical services or chemical dependency treatment; parenting skills; self-sufficiency support services or life skills training; and aftercare and follow-up services.