
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

New York State Procedures – Dispute Resolution under McKinney-Vento Act

Step One: Enrollment

According to the McKinney-Vento Homeless Assistance Act, homeless children are guaranteed a right to education. The Local Education Agency (LEA) must continue educating the child or unaccompanied youth in the 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 that 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 unaccompanied youths.

All school districts must have the following procedures in place for the prompt resolution of disputes regarding school selection or enrollment of a homeless child or unaccompanied youth (N.Y.C.R.R. § 100.2(x)(7)(b)(i)).

Step Two: Appeal to the School Board

Homeless families and unaccompanied youths may be unaware of their right to challenge placement and enrollment decisions. Therefore, the school district must provide a written explanation, including a statement regarding the right to appeal, to the unaccompanied youth or the homeless child's parent or guardian if the school district declines to either enroll and/or transport such child or unaccompanied youth to the school of origin or a school requested by the parent or guardian (§ 722(3)(B)(ii)). This written explanation must include the name, post office address, and telephone number of the homeless liaison as well as the petition form used to file an appeal with the Commissioner (N.Y.C.R.R. § 276.10(3)(7)(ii)(b)). The petition form is filled out by the homeless student's parent or guardian or by the unaccompanied youth, with the assistance of the homeless liaison (N.Y.C.R.R. § 276.10(3)(7)(iii)(c)). The petition form is then submitted to the Office of Counsel at the New York State Education Department (Department) (N.Y.C.R.R. § 276.10(3)(7)(iii)(c)(7)). Children receiving special education services who submit a Section 310 appeal are entitled to enforcement of their educational rights under any individualized education plan (IEP) or individualized family service plan (IFSP).

Step Three: Appeal to Commissioner

You do have a right to appeal a decision of the LEA. If the parent or guardian of a homeless child or an unaccompanied youth commences an appeal to the Commissioner within thirty (30) days of an LEA determination and completes the stay order section of the petition, the student shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay request. The stay order is requested

by completing the section at the end of the petition form which requests “interim relief” from the Commissioner. If the Commissioner grants the stay request and issues a stay order, the homeless child or unaccompanied youth can continue attending the school until the Commissioner issues an appeal decision. However, if the Commissioner dismisses the appeal, the homeless child or unaccompanied youth will no longer be entitled to attend the school (N.Y.C.R.R. § 276.10(3)(7)(ii)(c)).

The LEA must also maintain a written log of all appeals submitted by a homeless family or unaccompanied youth and be prepared to produce this log on request by the Department when needed and/or during monitoring visits.

The Regulations on the appeal process concerning a homeless child or unaccompanied youth and the forms used to file an appeal may be found on the Office of Counsel’s website. (<http://www.counsel.nysed.gov/#admendment>) The LEA must maintain a sufficient supply of form petitions and make them readily available to petitioners.

Appeal Documents and Timeline for Filing an Appeal

Name of Form:	Completed by:	Given to:	Due Date:
Form Notice of Petition	Parent guardian, or unaccompanied youth (“the petitioner”)	McKinney-Vento Liaison , who the either accepts service of delivers the petition to the designated person who can accept service for the LEA. The LEA then sends the Petition to the State Education Department.	Parent, guardian or unaccompanied youth must submit the completed Petition to the McKinney-Vento liaison within 30 calendar days of receiving the LEA’s written decision. The LEA must submit the completed Petition and Affidavit of Service (see below) to the State Education Department within 5 calendar days of the LEA’s acceptance of the Petition.
Affidavit of Service (personal or by mail)	McKinney-Vento Liaison	State Education Department	LEA must submit to the State Education Department the completed Affidavit of Service and Petition (see above) within 5 calendar days of the LEA’s acceptance of

			the Petition.
Form for Verification of Receipt and Transmittal of Petition	McKinney-Vento Liaison	Petitioner	Not Specified.
Affidavit of Opposition (to the request for immediate relief)	LEA	Petitioner and State Education Department	LEA must give the petitioner its Affidavit of Opposition within 3 business days after the district accepts the Petition. It must also deliver a copy of the Affidavit to the State Education Department within 24 hours of the petitioner's acceptance of it.
Answer	LEA	Petitioner and State Department of Education	Within 20 calendar days of the LEA's acceptance of the Petition, the LEA must serve the Answer on the petitioner or serve it on the liaison to give to the petitioner. LEA must submit the completed Answer and Affidavit of Service (see above) to the State Education Department within 5 calendar days of the petitioner's acceptance of the Answer.
Reply (this is not a required document)	Petitioner	McKinney-Vento Liaison , who then either accepts service or delivers the petition to the designated person who can accept service for the LEA. The LEA then sends the Petition to State Education Department .	If the petitioner wants to submit a Reply, she/he must submit it to the McKinney-Vento liaison within 10 calendar days of accepting the Answer. The LEA must submit the completed Reply and Affidavit of Service (see above) to

			the State Education Department within 5 calendar days of the LEA's acceptance of the Reply.
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