
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

South Dakota State Procedures – Dispute Resolution Under McKinney-Vento Act

Programs under the McKinney-Vento Homeless Assistance Act (“McKinney-Vento”) are designed to address the problems faced by homeless children and youth in enrolling, attending, and succeeding in school. Under such programs, state educational agencies (“SEAs”) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as given to other children and youth. Additionally, McKinney-Vento requires each SEA establish procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youth.

The South Dakota Department of Education’s Homeless Education Program ensures that homeless children and youth are enrolled and attending school and are given a full and equal opportunity to reach the same high academic standards expected of all children. In so doing, the program is likewise responsible for ensuring that each child of an individual experiencing homelessness and each youth experiencing homelessness has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youth. Specifically, the Office of Educational Services and Support is tasked with ensuring the requirements of McKinney-Vento are followed. SDAR 24:05:20:18.3. South Dakota’s dispute resolution policy regarding the education of homeless children and youth can be found at: http://doe.sd.gov/oess/documents/TitleX_DOEComplaintPolicy.pdf. Sample forms related to the dispute resolution and appeals process can be found at <http://www.doe.sd.gov/oess/TitleXpartC.aspx>. South Dakota’s definition of “homeless children and unaccompanied youth” mirrors that of McKinney-Vento. SDAR 24:05:13:01.16.

Furthermore, it appears that South Dakota has not codified within its own statutes the requirements of McKinney-Vento. Rather, the state developed a plan by which it would implement procedures for dispute resolution and appeals that mirrors McKinney-Vento. *See* § 11342(g)(1). For additional information, therefore, refer to the McKinney-Vento Act for Step One, and to the provided South Dakota Department of Education Complaint/Dispute Resolution Procedure for Steps Two and Three.

Step One: School Enrollment

A child or youth who meets the definition of “homeless children and unaccompanied youth” is entitled to receive a free, appropriate public education and necessary support services in either of the following: the district in which the homeless child or youth is actually residing; or, the district of origin.

The Department of Education shall locate and identify homeless children and youth and assess their special needs. SDAR 24:05:22:01.1. Furthermore, following McKinney-Vento, the Department of Education is tasked with ensuring that neither the Department itself nor any public school district or public school will implement compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youth. § 11341(2).

Furthermore, pursuant to McKinney-Vento, each board shall determine school placement with particular attention paid to the best interests of a homeless child or youth. § 11342(g)(3)(A). To the extent feasible, each board shall keep a homeless child or youth in the school of origin, unless doing so is contrary to the wishes of the homeless child's or youth's parent or guardian § 11342(g)(3)(B)(i). In the event a homeless child or youth becomes permanently housed during an academic year, enrollment shall continue in the school of origin for the remainder of the academic. §§ 11342(g)(3)(A)(i)(I)-(II).

Step Two: Enrollment Dispute

McKinney-Vento requires each SEA establish procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youth.

If the homeless child or youth is placed or enrolled in a school other than the district of origin or other than a school requested by the parent or guardian or unaccompanied youth, the district shall provide a written explanation of its decision. *See* S.D. Dept. of Educ. Proc. Such written explanation must include notice of the right to appeal the decision to the parent or guardian or unaccompanied youth. *Id.* Parents, guardians, and unaccompanied youth may initiate the dispute resolution process directly at the school they choose, at the public school district, or at the LEA homeless liaison's office. *Id.* The board of directors of a public school district shall immediately enroll a homeless child or youth in the school in which enrollment is sought and be provided with all services for which they are eligible pending resolution of the dispute. *Id.* In the case of an unaccompanied youth, a surrogate parent shall be appointed. *Id.*

Step Three: Appeal Process

The South Dakota Department of Education has established procedures for handling complaints and dispute resolutions when individual parents, a community group, or members of the general public suspect that a public school district may be violating a state-administered program. Disputes regarding the enrollment of homeless children and unaccompanied youth and other barriers to their education are addressed under these established procedures. *See* S.D. Dept. of Educ. Proc.

Notably, since a complaint implies a lack of cooperation between the district and the aggrieved party, the Department of Education states that it is advisable to initially consult with the local public school administration about the alleged violation. *Id.* In the event this course of action produces no results, then a formal complaint should be filed with the SEA. *Id.* Complaints may be received at the local and state level. *Id.*

Any time a school district denies access to a homeless child or youth, the district shall notify in writing the child, youth, or parent or guardian of the child or youth of the right to appeal and manner of appeal to the Department of education for resolution of the dispute. *Id.* This notice shall be documented, and shall contain the name, address, and telephone number of the legal services office in the area. *Id.*

Appeal may initially be made to the LEA. *Id.* A written record containing information relating to the source and nature of the appeal should be initiated. *Id.* Within fifteen days following receipt of the appeal, a hearing shall be held by a hearing committee appointed by the school district superintendent. *Id.* Minutes of the hearing shall be kept and maintained at the LEA, and a copy of said minutes along with committee recommendations and any administrative action taken shall be filed with the SEA. *Id.* The parent or guardian or unaccompanied youth shall be provided with a written explanation of the district decision including the right to appeal the decision to the SEA. *Id.* The SEA shall maintain a record of all hearings, and the designated State Coordinator shall review all records and conduct a follow-up with the LEA. *Id.* If the dispute is not resolved to the mutual consent of the parties, then either party may appeal to the SEA. *Id.*

Appeals to the SEA shall be referred to the designated Coordinator of the South Dakota Department of Education for investigation and resolution. *Id.* When appeal is made to the SEA, it shall conduct a timely investigation. *Id.* The Coordinator shall acknowledge receipt of the appeal, and shall send a letter with an attached copy of the appeal to the Superintendent of the affected district with a request for review and comment within fifteen days. *Id.* Upon receipt of the district's response, a meeting shall be arranged with the Coordinator and any other appropriate state staff to determine further action aimed at resolution. *Id.* The investigation must begin within twenty days of the SEA's receipt of the appeal, and shall be completed within forty days. *Id.* At the close of the investigation a final report shall be prepared and submitted to the Coordinator. *Id.* All decisions of the SEA are final. *Id.*

Additional Resources

<http://www.doe.sd.gov/oess/TitlexpartC.aspx>

http://doe.sd.gov/oess/documents/TitleX_DOEComplaintPolicy.pdf

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