

---

# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

---

## **West Virginia State Procedures – Dispute Resolution under McKinney-Vento Act**

According to the McKinney-Vento Homeless Assistance Act, a 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.

West Virginia’s state education law is codified at West Va. Code § 126-81-5. The West Virginia Department of Education is committed to ensuring that all West Virginia children and youth experiencing homelessness have the opportunity to enroll, attend and succeed in school. West Virginia has a general appeals procedure for any claims by a citizen against the West Virginia Board of Education, and has specific forms for each step. See below.

The attendance director shall serve as the liaison for homeless children and youth as defined in W. Va. Code §18-8-4. The attendance director/ liaison is required to ensure that enrollment disputes are mediated as outlined in Paragraph (3)(E) of the McKinney-Vento Act.

### **Step One: School Enrollment**

If a dispute arises over school selection or enrollment, the child/youth must be immediately enrolled in the school in which he/she is seeking enrollment, pending resolution of the dispute. Enrollment is defined as "attending classes and participating fully in school activities." Although the Act does not define immediate, the standard dictionary definition is "without delay." Therefore, the student must begin attending classes and participating fully in school activities without delay. Generally, that would mean the same or the following day.

### **Step Two: Enrollment Dispute – School Level**

The attendance director shall serve as the liaison for homeless children and youth as defined in W. Va. Code §18-8-4. The attendance director/ liaison is required to ensure that enrollment disputes are mediated as outlined in Paragraph (3)(E) of the McKinney-Vento Act.

In the event that the concern is not resolved informally, a formal, written appeal may be filed with the principal or school administrator by the parent guardian, or unaccompanied youth. Level I Form.

A written decision by the Level I administrator shall be made within ten (10) days after receipt of the appeal. Should either party request a conference at this level, the Level I administrator will

have five (5) additional days to provide the written decision. When the decision is not in favor of the citizen(s), a copy of the Level II appeal form shall be included with the decision.

### **Step Three: Appeal Process – County Superintendent of Schools**

Within fifteen (15) days after receiving the decision of the Level I administrator the parent guardian, or unaccompanied youth may appeal the decision in writing on the prescribed form to the county superintendent of schools. Level II Form. The superintendent or his/her designee shall, within ten (10) days, have a conference with the citizen(s) in an attempt to resolve the appeal. The superintendent or his/her designee shall issue a written decision within ten (10) days following this conference. When the decision is not in favor of the citizen(s), a copy of the Level III appeal form shall be included with the decision.

### **Step Four: Appeal Process – County Board of Education**

Within fifteen (15) days of receiving the decision of the county superintendent, the aggrieved citizen(s) may appeal the decision in writing on the prescribed form to the county board of education. Level III Form.

A hearing on the appeal shall be held by the county board of education if requested by the aggrieved citizen(s) when filing the Level III appeal or if the board itself determines that a hearing should be held.

For an appeals hearing held before a county board of education, the procedures include proper notice of the hearing, the opportunity to be represented by counsel, the opportunity to present evidence and testimony, the opportunity to call witnesses and the opportunity to cross-examine adverse witnesses.

A decision shall be rendered by the county board of education within twenty-five (25) days following receipt of the Level III appeal. The board may affirm, modify, or reverse the Level II decision and require such remedial action as it deems necessary. When the decision is not in favor of the citizen(s), a copy of the Level IV appeal form shall be included with the decision.

### **Step Five: Appeal Process – State Superintendent of Schools**

If the aggrieved citizen(s) is not satisfied with the decision of the county board of education, the decision may be appealed to the state superintendent of schools. Level IV Form. The appeal shall be submitted within thirty (30) days of receiving the decision of the county board of education. A copy of the Level IV appeal and any supporting documents shall, at the same time, be transmitted to the county superintendent of schools.

At the request of either party, a hearing shall be conducted by an impartial review officer appointed by the state superintendent. Both the citizen(s) and representatives of the county board of education shall be permitted to appear before the impartial review officer. The hearing shall be

conducted in accordance with the usual and customary rules governing administrative hearings and shall be held at a place designated by the impartial review officer.

The decision of the impartial review officer shall be issued within thirty (30) days of receipt of the appeal and shall be final unless altered or set aside by a court of competent jurisdiction. The decision of the impartial review officer may be appealed to the appropriate court or review may be sought by original proceeding.

<b>Procedural Step:</b>	<b>Completed by:</b>	<b>Given to:</b>	<b>Due Date:</b>
Citizens Appeal Form (Level I)	Parent guardian, or unaccompanied youth (“the petitioner”)	Principal/School Administrator	Not specified. May be filed after initial concern is not resolved with school administrator.  Level I administrator must make decision within 10 days after receipt of appeal. If either party requests a conference, Level I administrator shall have an additional 5 days.
Citizens Appeal Form (Level II)	Petitioner	County Superintendent	Must be submitted within 15 days of Level I decision, along with Level I decision.  Superintendent shall have a conference with petitioner within 10 days of appeal and issue written decision 10 days after conference.
Citizens Appeal Form (Level III)	Petitioner	County Board of Education (“Board”) and County Superintendent (each member to receive a copy)	Must be submitted within 15 days of Level II decision, along with Level I and II decisions.  A hearing will held where both parties can

			call witnesses and testify. A decision by the Board must be by a majority of the members present at the hearing and must be made within 25 days from receipt of the Level III Appeal.
Citizens Appeal Form (Level IV)	Petitioner	State Superintendent	Must be submitted within 30 days of Level III decision, along with any supporting documents.
Level IV Decision	Impartial review officer	Petitioner	A hearing will held before an impartial review officer and a decision must be made within 30 days from receipt of the Level IV Appeal.

## **Additional Resources**

Required Forms: <http://wvde.state.wv.us/policies/p7211forms.pdf>

Policies: <http://wvde.state.wv.us/policies/p7211.html>

Rebecca Derenge  
Coordinator, McKinney-Vento, Attendance and Student Support Services  
Office of Optional Educational Pathways  
Bldg. 6, Room 728  
1900 Kanawha Blvd.  
Charleston, West Virginia 25305  
Office – 304-558-7881 x 53204  
Fax – 304-558-5042  
rderenge@access.k12.wv.us

Homeless

Liasons: <http://wvde.state.wv.us/institutional/Homeless/Attendance%20DIRHomeless.doc>