



## The Every Student Succeeds Act of 2015: Amendments to the McKinney-Vento Act

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## The Every Student Succeeds Act of 2015: Amendments to the McKinney-Vento Act

The Every Student Succeeds Act's (ESSA) amendments to the McKinney-Vento Act and Title I, Part A will change the way schools support the academic success of children and youth experiencing homelessness, from preschool through high school graduation. ESSA's McKinney-Vento amendments took effect on October 1, 2016.<sup>1</sup>

The McKinney-Vento Act binds all state and local educational agencies (SEAs and LEAs). This article provides a brief overview of ESSA's amendments to the McKinney-Vento Act. Additional information about how ESSA impacts the rights of children and youth experiencing homelessness, including on-going policy updates, is available at [schoolhouseconnection.org](http://schoolhouseconnection.org).

### STUDENTS COVERED BY THE MCKINNEY-VENTO ACT

ESSA made one significant change to the McKinney-Vento Act's definition of "homeless child or youth": children and youth "awaiting foster care placement" are no longer eligible for the Act's protections.<sup>2</sup> The remainder of the definition remains the same: "individuals who lack a fixed, regular, and adequate nighttime residence," specifically including children and youth who are:

- Sharing the housing of others due to loss of housing, economic hardship or a similar reason;
- Living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodations;
- Staying in emergency or transitional shelters; and
- Living in cars, parks, abandoned buildings, substandard housing, bus or train stations or similar settings.<sup>3</sup>

### DUTIES OF THE MCKINNEY-VENTO HOMELESS LIAISON

ESSA added to the requirement that every LEA designate a McKinney-Vento liaison by specifying that the liaison must be "able to carry out the duties described" in the law.<sup>4</sup> Guidance from the U.S. Department of Education interprets this language to mean LEAs "should allocate sufficient time for... liaisons to do their jobs effectively and should support them in fulfilling their duties as outlined in the law and in making timely decisions."<sup>5</sup> Specifically, "LEA administrators should review the legal requirements for the position, data

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indicating the prevalence and needs of homeless children and youths in the State or school district (including efforts that may be necessary to improve the identification of such children and youths), and past technical assistance provided to the LEA...<sup>6</sup>

ESSA also expanded liaisons' duties, to include:

- Requiring public notice of educational rights to be disseminated "in locations frequented by parents or guardians... and unaccompanied youths, ...in a manner and form understandable to [them]."<sup>7</sup>;
- Ensuring school personnel providing McKinney-Vento services receive professional development and other support<sup>8</sup>; and
- Ensuring unaccompanied youths are enrolled in school and receive support to accrue credits and access higher education (explained in more detail in the section headed "Credit Accrual and College Readiness")<sup>9</sup>.

ESSA requires liaisons to receive appropriate professional development to understand their duties. SEAs and LEAs must "adopt policies and practices to ensure participation by liaisons... in professional development and other technical assistance activities... as determined appropriate by the [State] Coordinator."<sup>10</sup> While each state will establish guidelines for this professional development, it is anticipated that in most states, liaisons will be required to participate in some kind of annual training.

Lastly, SEAs and LEAs must inform school personnel, service providers, advocates working with homeless families, parents, guardians and homeless children and youths of the duties of the liaison. The state must publish an annually updated list of liaisons on the SEA website.<sup>11</sup>

### SCHOOL STABILITY

Extensive research documents the negative impact of school mobility on academic achievement, high school graduation, and school climate. The McKinney-Vento Act attempts to mitigate the negative effects of mobility created by homelessness by allowing students to remain stable in their school of origin, if in their best interest, for the duration of their

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homelessness and until the end of the academic year in which a student becomes permanently housed.<sup>12</sup> ESSA codified pre-existing U.S. Department of Education Guidance regarding how LEAs implement the school of origin provisions, including requiring that LEAs:

- Presume that it is in a student's best interest to remain in the school of origin, unless contrary to the parent's, guardian's, or unaccompanied youth's request<sup>13</sup>;
- 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<sup>14</sup>; and
- Give priority to the request of the parent, guardian, or unaccompanied youth<sup>15</sup>;

In addition, ESSA amended the definition of "school of origin" in two important ways. The definition of school of origin now includes preschools and "the designated receiving school at the next grade level for all feeder schools" when a student "completes the final grade level served by the school of origin."<sup>16</sup>

The McKinney-Vento Act requires LEAs to provide or arrange transportation for students to attend their schools of origin, at the request of the parent or guardian (or at the request of the liaison for unaccompanied youth). ESSA expanded this obligation in two ways. First, by adding preschools and receiving schools to the definition of school of origin, ESSA requires LEAs to provide or arrange transportation when it is in a student's best interest to remain at a preschool of origin or move into a designated receiving school upon completing the final grade level served by the school of origin. Second, ESSA now requires LEAs to provide transportation to the school of origin for students who have become permanently housed but are completing the academic year in their school of origin.<sup>17</sup>

### IMMEDIATE ENROLLMENT AND FULL PARTICIPATION

ESSA continues to require immediate enrollment for McKinney-Vento students, even in the absence of records normally required for enrollment.<sup>18</sup> The definition of "enrollment" still includes "attending classes and participating fully in school activities."<sup>19</sup> However, ESSA expanded immediate enrollment in the following ways:

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- Schools are specifically required to provide immediate enrollment even if the student “has missed application or enrollment deadlines during any period of homelessness.”<sup>20</sup>
- SEAS and LEAs must develop, review and revise policies to remove barriers to the identification, enrollment and retention of homeless children and youth, including barriers “due to outstanding fees or fines, or absences.”<sup>21</sup>
- Procedures must be in place to ensure that students who meet the relevant eligibility criteria “do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, on-line learning, and charter school programs.”<sup>22</sup>

In addition, new Guidance from the U.S. Department of Education requires LEAs to provide transportation to extra-curricular activities if necessary for a student to participate.<sup>23</sup>

### DISPUTES

ESSA impacts local dispute procedures in several ways.<sup>24</sup> First, ESSA clarifies that McKinney-Vento dispute procedures must be available for disputes over eligibility, as well as school selection or enrollment.<sup>25</sup> Second, ESSA retains the requirement for students to be immediately enrolled in the school in which enrollment is sought in the case of a dispute, but extends that right to unaccompanied youth, so they can be enrolled in the school in which they seek enrollment pending disputes<sup>26</sup>, and clarifies that enrollment must continue until the “final resolution of the dispute, including all available appeals.”<sup>27</sup>

In addition, ESSA continues to require written explanation of decisions, including the right to appeal, but expanded the requirement:

- Unaccompanied youth have the right to receive such written notice, as well as parents or guardians who accompany their children<sup>28</sup>;
- Written explanation is required of decisions made by the school, LEA or SEA involved<sup>29</sup>; and
- Written explanation must be in a manner and form understandable.<sup>30</sup>

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### CREDIT ACCRUAL AND COLLEGE READINESS

ESSA now requires states to identify and remove “barriers that prevent [homeless youth] from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school policies.”<sup>31</sup> While this is a state-level requirement, ESSA legally requires LEAs, and McKinney-Vento liaisons in particular, to implement it.<sup>32</sup>

### PRIVACY

ESSA clarifies that information about a McKinney-Vento student’s living situation must be treated as a student education record under the Family Educational Rights and Privacy Act (FERPA).<sup>33</sup> In other words, schools cannot release a homeless student’s address or other information about the living situation without obtaining prior consent or ensuring the information meets one of FERPA’s exceptions to the consent requirement.<sup>34</sup> FERPA’s consent exceptions remain in place, including those related to financial aid.<sup>35</sup> In fact, ESSA requires liaisons to ensure that unaccompanied youth “are informed of their status as independent students [for college financial aid] and that the youths may obtain assistance... to receive verification of such status.”<sup>36</sup>

### STATE REQUIREMENTS THAT IMPACT LEAS

ESSA creates new requirements for McKinney-Vento State Coordinators that will impact LEAs. Perhaps most importantly, ESSA now requires State Coordinators to conduct monitoring of LEAs to ensure their compliance with McKinney-Vento.<sup>37</sup> While many SEAs already conduct this monitoring, many LEAs will be subject to new oversight and consequences for non-compliance. In addition, State Coordinators must respond to inquiries from parents, guardians and unaccompanied youth to ensure that students receive the full protections and services of the McKinney-Vento Act.<sup>38</sup> This duty is likely to increase SEAs’ compliance activities with LEAs.

A complete list of State Coordinators and contact information is available at [http://nche.ed.gov/states/state\\_resources.php](http://nche.ed.gov/states/state_resources.php).

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## About SchoolHouse Connection

SchoolHouse Connection is a national organization promoting success for children and youth experiencing homelessness, from birth through higher education. We engage in strategic advocacy and provide technical assistance in partnership with early care and education professionals (including school district homeless liaisons and state homeless education coordinators), young people, service providers, advocates, and local communities. To learn more, visit [www.schoolhouseconnection.org](http://www.schoolhouseconnection.org) or [www.facebook.com/SchoolHouseConnection](https://www.facebook.com/SchoolHouseConnection).

<sup>1</sup> U.S. Department of Education (March, 2017). *Education for Homeless Children and Youths Program Non-Regulatory Guidance*, p. 3.

<sup>2</sup> The deletion of “or are awaiting foster care placement” went into effect on December 10, 2016 in every State except Arkansas, Delaware and Nevada, where the deletion is effective on December 10, 2017. ESSA Sec. 9105. ESSA created new rights for children in foster care who attend LEAs that receive Title I, Part A funds. Those provisions allow children in foster care to remain in the school of origin if it is in their best interest. 20 U.S.C. 6311(g)(1)(E)(i) as amended by ESSA Sec. 1005. LEAs must work with child welfare agencies to develop procedures to transport children in foster care to their schools of origin; however, unlike the McKinney-Vento Act, Title I requires LEAs to pay any additional costs for transportation only if the LEA agrees to pay. 20 U.S.C. 6312(c)(5)(B) as amended by ESSA Sec. 1006.

<sup>3</sup> 42 U.S.C. Sec. 11434A(2).

<sup>4</sup> 42 U.S.C. Sec. 11432(g)(1)(J)(ii) as amended by ESSA Sec. 9102(5).

<sup>5</sup> U.S. Department of Education, p. 15.

<sup>6</sup> U.S. Department of Education, p. 15.

<sup>7</sup> 42 U.S.C. Sec. 11432(g)(6)(A)(vi) as amended by ESSA Sec. 9102(5).

<sup>8</sup> 42 U.S.C. Sec. 11432(g)(6)(A)(ix) as amended by ESSA Sec. 9102(5).

<sup>9</sup> 42 U.S.C. Sec. 11432(g)(6)(A)(x) as amended by ESSA Sec. 9102(5).

<sup>10</sup> 42 U.S.C. Sec. 11432(g)(1)(J)(iv) as amended by ESSA Sec. 9102(5).

<sup>11</sup> 42 U.S.C. Sec. 11432(g)(6)(B) as amended by ESSA Sec. 9102(5).

<sup>12</sup> 42 U.S.C. Sec. 11432(g)(3)(A)(i).

<sup>13</sup> 42 U.S.C. Sec. 11432(g)(3)(B)(i) as amended by ESSA Sec. 9102(5).

<sup>14</sup> 42 U.S.C. Sec. 11432(g)(3)(B)(ii) as amended by ESSA Sec. 9102(5).

<sup>15</sup> 42 U.S.C. Sec. 11432(g)(3)(B)(ii) and (iv) as amended by ESSA Sec. 9102(5).

<sup>16</sup> 42 U.S.C. Sec. 11432(g)(3)(I) as amended by ESSA Sec. 9102(5); U.S. Department of Education, Question I-1. Neither ESSA nor U.S. Department of Education Guidance defines “preschool” in this context. However, the definition used for data collection by the U.S. Department of Education is a helpful reference: “early childhood education programs for children aged 0-5, funded through tax dollars or other public funds, and for which the LEA is a financial or administrative agent or for which the LEA is accountable for providing early childhood education services.” Examples of preschool programs included in federal data collection include preschool

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programs operated or administered by an LEA; Head Start programs receiving funding from the LEA or for which the LEA is the grant recipient; preschool special education services, operated or funded by the LEA or mandated under the Individuals with Disabilities Education Act; preschool programs and services administered or funded by the LEA through the use of Title I or similar government grants; or home-based early childhood educational services funded and administered by an LEA. National Center for Homeless Education (2016). *Guide to Collecting and Reporting Federal Data*. Available at <http://nche.ed.gov/downloads/data-guide-15-16.pdf>.

<sup>17</sup> 42 U.S.C. Sec. 11432(g)(1)(J)(iii) as amended by ESSA Sec. 9102(5); U.S. Department of Education, Question J-5.

<sup>18</sup> 42 U.S.C. Sec. 11432(g)(3)(C)(I).

<sup>19</sup> 42 U.S.C. Sec. 11434A(1).

<sup>20</sup> 42 U.S.C. Sec. 11432(g)(3)(C)(II) as amended by ESSA Sec. 9102(5).

<sup>21</sup> 42 U.S.C. Sec. 11432(g)(1)(I) as amended by ESSA Sec. 9102(5).

<sup>22</sup> 42 U.S.C. Sec. 11432(g)(1)(F)(iii) as amended by ESSA Sec. 9102(5); U.S. Department of Education, pp. 24-25.

<sup>23</sup> U.S. Department of Education, Question J-11.

<sup>24</sup> U.S. Department of Education Guidance also includes many suggestions for effective local and state dispute resolution procedures and supportive discipline. U.S. Department of Education, Section K.

<sup>25</sup> 42 U.S.C. Sec. 11432(g)(3)(E) as amended by ESSA Sec. 9102(5).

<sup>26</sup> 42 U.S.C. Sec. 11432(g)(3)(E)(iv) as amended by ESSA Sec. 9102(5).

<sup>27</sup> 42 U.S.C. Sec. 11432(g)(3)(E)(i) as amended by ESSA Sec. 9102(5).

<sup>28</sup> 42 U.S.C. Sec. 11432(g)(3)(E)(ii) as amended by ESSA Sec. 9102(5).

<sup>29</sup> 42 U.S.C. Sec. 11432(g)(3)(E)(ii) as amended by ESSA Sec. 9102(5).

<sup>30</sup> 42 U.S.C. Sec. 11432(g)(3)(B)(iii) as amended by ESSA Sec. 9102(5).

<sup>31</sup> 42 U.S.C. Sec. 11432(g)(1)(F)(ii) as amended by ESSA Sec. 9102(5).

<sup>32</sup> 42 U.S.C. Sec. 11432(g)(6)(A)(x) as amended by ESSA Sec. 9102(5).

<sup>33</sup> 42 U.S.C. Sec. 11432(g)(3)(G) as amended by ESSA Sec. 9102(5).

<sup>34</sup> See 34 C.F.R. Sec. 99.31.

<sup>35</sup> 34 C.F.R. Sec. 99.31(a)(4).

<sup>36</sup> 42 U.S.C. Sec. 11432(g)(6)(A)(x) as amended by ESSA Sec. 9102(5).

<sup>37</sup> 42 U.S.C. Sec. 11432(f)(5) as amended by ESSA Sec. 9102(4).

<sup>38</sup> 42 U.S.C. Sec. 11432(f)(7) as amended by ESSA Sec. 9102(4).