



**ACCESS TO PRE-K EDUCATION UNDER
THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT**

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Under federal law, states are required to ensure that homeless children have equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths. This policy brief provides an overview of the law and its limitations and describes policies that can help increase the number of homeless children included in pre-k programs. It is intended to serve as a resource for state policy makers and advocates seeking to maximize participation.

SUMMARY OF STATE POLICY RECOMMENDATIONS

- Expand pre-k funding and capacity so all homeless children have the opportunity to participate;
- Include homelessness as an eligibility factor for state pre-k programs and require public and private providers receiving state funds to target and prioritize enrollment of homeless children;
- Remove the most common attendance barriers by requiring LEAs to provide transportation to homeless preschoolers and clarify through regulations that all pre-k programs receiving state education funding must immediately enroll homeless children, even if they lack immunization and other records normally required under state and local rules; and
- Extend the requirements of McKinney-Vento to all state-funded pre-k programs, including those funded and administered by state agencies outside of the public education system.

THE MCKINNEY-VENTO ACT

The federal McKinney-Vento Homeless Assistance Act¹ (“McKinney-Vento”) provides federal funding to states to address the problems that homeless children and youth encounter in enrolling, attending, and succeeding in the nation’s public schools. McKinney-Vento requires states to develop plans that ensure homeless children and youth the same access to free public education as is available to other students; eliminate barriers to enrollment, attendance, and success in school; prevent the

Compared to their middle class peers and low-income children who are housed, “young homeless children experience more developmental delays, emotional problems such as anxiety and depression, and behavior issues.”²⁵

segregation of homeless students from the mainstream school environment; and provide access to the education and services needed to ensure that homeless students have an opportunity to meet the same academic standards as all other students. Local education authorities (LEAs)² are required under McKinney-Vento to ensure that homeless children and youth are immediately identified, enrolled in school, and provided with all necessary services, including transportation, to allow school attendance.³

McKinney-Vento clearly recognizes the necessity of equal access to high quality public pre-k education for homeless children. The Act states, “Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, *including a public preschool education*, as provided to other children and youths.”

To effectuate McKinney-Vento's pre-k directive, state implementation plans must describe procedures to ensure that children experiencing homelessness have access to pre-k programs administered by the state.⁴ States are also required to use federal McKinney-Vento funds in part to provide activities and services for pre-k children in homeless situations, so they can enroll in, attend, and succeed in pre-k programs.⁵

States must employ homeless coordinators whose duties include coordinating with agencies that serve preschoolers to improve the provision of comprehensive services to children.⁶ LEAs are required to employ a homeless liaison whose responsibilities include ensuring that young children receive the educational services for which they are eligible, including "Head Start and Even Start programs and preschool programs administered by the [LEA]."⁷ LEAs can also use their McKinney-Vento funds to provide early childhood education programs for children in homeless situations, if such programs are not otherwise provided through Federal, State, or local funding.⁸

BENEFITS OF PRE-K FOR HOMELESS CHILDREN

Preschool not only provides young homeless children with a stable and fixed center to their otherwise chaotic lives, but it also imparts the early cognitive and social skills children need for academic success.²⁶ Moreover, the benefits of high quality pre-k continue to accrue during the school years, with participants experiencing lower incidences of grade retention, school dropout, and placement in special education and remedial services, when compared to non-participant children. Most states' policymakers and the nation's leading educators agree that pre-k for disadvantaged children is an indispensable component of a public education.²⁷

The plain language of the McKinney-Vento Act expresses its intent to elevate the right of access to public pre-k for homeless children as equal to the right of access granted to older homeless students enrolled in grades kindergarten through twelve.

LIMITATIONS OF THE MCKINNEY-VENTO ACT

McKinney-Vento has two significant limitations that impact the interests of homeless pre-k children. First, the guarantee of *equal access* to pre-k is constrained by the inadequate number of public pre-k programs and classrooms. Unlike K-12 public education, which all states provide to all age-eligible students, access to public pre-k will depend on state and local eligibility criteria and the sufficiency of public funding, facilities, and other resources. In most states, public pre-k is woefully underfunded and the number of children that LEAs have the capacity to educate, either in public school programs or through collaborations with community providers, is far below the number of eligible children.⁹ In a survey by the National Law Center on Homelessness & Poverty, seventy percent of state homeless coordinators and service providers reported that funding was inadequate to meet the pre-k needs of homeless children. Eighty percent of these same respondents indicated that public pre-k programs have waiting lists from less than 30 days to more than 12 months.¹⁰

For K-12 students, McKinney-Vento's right of equal access equates with an unqualified right to attend a public school, with all barriers to school attendance removed, because all students in all states are guaranteed a K-12 education. Homeless pre-k children, on the other hand, benefit from the guarantee of equal access only to the

Three and a half million people in the United States are without a home. Thirty-nine percent of homeless Americans are children and, even more alarmingly, forty-two percent of these children are under the age of five.²⁸ The situation shows no sign of abating anytime soon—in fact, the current economic downturn and mortgage crisis have compounded the incidence of homelessness among children.²⁹

extent that pre-k programs are available within their original LEA or the LEA in which they actually reside, and if the programs have the capacity to serve them.

Second, McKinney-Vento governs state and local education agencies only and not other agencies that may

administer state pre-k programs. Several states, including Alabama, Georgia, Massachusetts, Washington and Florida, have independently made the policy decision to run their public pre-k programs through a department separate and distinct from their SEA. For example, Massachusetts operates its public pre-k program through the Department of Early Education and Care, not the Department of Education, and Georgia administers its program through the Department of Early Care and Learning. Although the pre-k programs in these states provide educational services, they are not subject to McKinney-Vento unless the non-SEA agency provides pre-k funding to an LEA. An LEA that operates a pre-k program, regardless of administrative funding and governance, must comply with McKinney-Vento's mandates by providing equal access to homeless pre-k children and must "review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths."¹¹

CONTINUING BARRIERS TO PRE-K ATTENDANCE

Despite what appears to be a strong and simple message of equal access to public pre-k for the youngest and most vulnerable homeless population, transportation and requirements for immunization and other school records remain obstacles to pre-k attendance.

TRANSPORTATION

Transportation is the most common barrier to homeless students' enrollment in public school.¹² For this reason, McKinney-Vento states that LEAs are obligated, upon a parent or guardian's request, to provide transportation to the homeless student's "school of origin," i.e., the school the student attended when permanently housed or the last school of attendance.¹³ If a student becomes homeless and is forced to move out of the school district where he or she was previously a resident, the LEA still must provide free transportation to the student's school of origin in order to prevent the disruption and loss of learning that might occur if that student was forced to change schools in the middle of the academic year.

In 2004, in the most recent non-regulatory guidelines issued under McKinney-Vento, the United States Department of Education (“the Department”) drew a distinction

between an LEA’s

obligation to provide

transportation to homeless

students in grades K-12

and its obligation

respecting pre-k students.

For K-12 students, an LEA

must provide or arrange

transportation to and from

the school of origin at the

parent or guardian’s

request, even if it does not

provide transportation to

non-homeless students.

With regard to homeless

pre-k children, however, an

LEA must only provide

“comparable services,” that is, transportation to the child’s school of origin if that same

transportation is provided to non-homeless pre-k children.¹⁴

Issues with DOE's current interpretation of the McKinney-Vento Act.

- 1) Imposing a comparable services requirement on LEAs creates a negative incentive that might lead LEA’s to cut transportation services to all pre-k children.
- 2) The ostensible justification for the comparable services interpretation—the fact that pre-k attendance is not compulsory—directly contradicts the plain language and clear intent of McKinney-Vento. The inclusion of public pre-k children in the language of the Act is not separate and apart from the rights identified for homeless youth attending kindergarten through twelfth grade, and there is no differentiation on the basis of the compulsory nature of K-12 public schools and preschools in the Act.
- 3) Congress' amendment of McKinney-Vento to include access to public pre-k as a protected educational right of homeless children cannot have any true meaning if free and safe transportation is not guaranteed. Without the provision of transportation, the statutory right to equal access to public pre-k is effectively denied.

IMMUNIZATION AND RECORD REQUIREMENTS

Homeless children and their families frequently lack the health, school, and other documentation typically required by schools for enrollment. Homeless families can be highly mobile and are often forced to leave their homes in crisis, leaving behind important records. They often do not have easy access to phones, computers, or fax machines to make record requests. Homeless families also frequently lack health insurance and the ability to obtain immunizations. Lack of required documentation increases the delays that homeless children face in accessing public pre-k programs.

McKinney-Vento addresses missing records and documents by requiring LEAs to enroll homeless pre-k children immediately despite any outstanding educational or medical records, residence documents, birth certificates or immunization requirements.¹⁵ When a student does not possess the requested school records, the enrolling school is mandated to contact the school last attended by the child to obtain relevant academic or other information.¹⁶ If a child needs to obtain immunization, the enrolling school is obligated to immediately refer the parent or guardian of the child to the LEA's homeless liaison who will then assist the child in obtaining the necessary immunization.¹⁷

McKinney-Vento is clear that under no circumstances is the lack of an educational or medical record, immunization, or birth certificate to result in the prevention of a child's immediate pre-k enrollment, but a lack of records still exists as a barrier to homeless children enrolling in public pre-k programs.¹⁸ This barrier persists because LEAs and Head Start centers and private providers with which they contract continue to follow state and local laws requiring such documentation for all students,

despite federal directives aimed at easing the path to enrollment for homeless children.¹⁹

WHAT STATES CAN DO TO INCREASE HOMELESS CHILDREN'S PARTICIPATION IN STATE-FUNDED PRE-K

McKinney-Vento requires states and LEAs to undertake significant actions to enable young homeless children to attend pre-k programs, but it does not go far enough to protect the interests of these children. Requiring LEAs to ensure that homeless pre-k children are immediately identified, enrolled in pre-k programs for which they are eligible, and provided with necessary services will not result in actual pre-k participation by all homeless children unless states take additional steps.

EXPAND STATE-FUNDING OF PRE-K PROGRAMS

As explained earlier in this brief, McKinney-Vento's guarantee of equal educational access does not benefit homeless pre-k children to the extent it does K-12 students simply because there are not enough pre-k programs and classrooms to serve all of the homeless children who need them. Most states' pre-k programs lack the capacity to serve more than a small fraction of three- and four-year-old children, and less than sixteen percent of eligible pre-k homeless children were enrolled in pre-k programs according to the U.S. Department of Education's McKinney-Vento Report to Congress for Fiscal Year 2004.²⁰ States can address the need to serve more homeless preschool

age children by ramping up funding and expanding the capacity of public pre-k programs, as many states are already doing.

PRIORITIZE ENROLLMENT OF HOMELESS CHILDREN

State policy should recognize that homeless pre-k children are especially at-risk among disadvantaged children. As compared with both their middle-class and housed low-income peers, young homeless children experience more developmental delays, emotional problems such as anxiety and depression, and behavioral issues.²¹ The intense need for early childhood education and the lack of capacity to educate all pre-k children necessitate the prioritization of homeless children in state-funded pre-k programs until such time as states are able to serve all eligible children.

Significantly, several state-funded pre-k programs, as well as the federal Head Start program, recognize the special needs of homeless children. Eleven state programs consider homelessness an eligibility factor for enrollment, while two of these same states give priority to homeless children, even in programs not covered by the McKinney-Vento Act.²² For example, Washington's Early Childhood Education and Assistance Program requires pre-k providers to give priority to children who are homeless, in foster care, from families with the lowest incomes, and from families with multiple needs.²³ In addition, under the federal Head Start reauthorization legislation signed into law in December of 2007, Head Start agencies are now required to identify young homeless children in their service area, and prioritize their enrollment.²⁴

To protect and enhance the well-being of young homeless children, all states should adopt policies and regulations that require pre-k providers receiving state funds to prioritize, target and enroll homeless pre-k children. In addition, states that do not fund a pre-k program at all and those with limited capacity should require LEAs to do everything possible, including provide funding, to place homeless children in a community public or private pre-k program.

REQUIRE ALL STATE FUNDED PROGRAMS TO MEET THE NEEDS OF HOMELESS CHILDREN

As explained in earlier in this brief, McKinney-Vento governs the duties of SEAs and LEAs in states receiving federal funds under the Act; it does not apply to those states that govern and fund pre-k outside of the public education system. To address the needs of homeless pre-k children, states should extend the requirements of McKinney-Vento to all state-funded pre-k programs. All programs should be required to remove barriers and grant equal access to homeless pre-k children, regardless of the state program's governance and funding mechanisms.

ELIMINATE OTHER BARRIERS TO ENROLLMENT

States should take steps to eliminate two of the most common obstacles to homeless children's participation in public pre-k programs—lack of transportation and lack of health and other records. Although the United States Department of Education's most recent interpretation of McKinney-Vento does not require states to provide

transportation to homeless pre-k children, states should take the lead and require LEAs and other recipients of state pre-k funds to transport homeless children to and from school as they already do for K-12 children. Without transportation, the likelihood of a child's participation in pre-k is substantially diminished.

States should also clarify through program regulations and guidance that LEAs and other pre-k providers are bound by McKinney-Vento to immediately admit and serve all homeless children, even if they lack immunization, school, residency, and other records normally required for school enrollment.

CONCLUSION

Homeless pre-k children are extremely vulnerable and have a significant risk of school failure. Participation in high quality pre-k programs can help mitigate the impact of extreme disadvantage on their academic achievement. While federal law provides many protections, in many instances, it does not go far enough. To maximize participation of homeless children in pre-k programs, state policymakers must do more.

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About Education Law Center

Founded in 1973, ELC is recognized as one of the nation's premier education advocacy organizations working on behalf of public school children for access to an equal and adequate education under state and federal laws. ELC focuses on improving public education for disadvantaged children, and children with disabilities and other special needs using multiple strategies, including public education and engagement, policy initiatives, research, communications and legal action.

ELC has achieved significant success in improving education for school children in New Jersey's high poverty urban school districts through implementation of the programs and reforms ordered by the New Jersey Supreme Court in the landmark *Abbott v Burke* education equity case.

In addition, because of its expertise in school finance, preschool, and other areas of education law and policy, ELC provides support to attorneys and advocates in other states seeking to improve their public schools.

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ENDNOTES

¹ 42 U.S.C. § 11431.

² A local educational authority is “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.” 20 U.S.C. §7801(26).

³ 42 U.S.C. § 11431 (g)(6)(A).

⁴ 42 U.S.C. § 11432(g)(1)(F)(i).

⁵ 42 U.S.C. § 11432(d)(2).

⁶ 42 U.S.C. §§ 11432(f)(4), (f)(5)(A).

⁷ 42 U.S.C. § 11432(g)(6)(A).

⁸ 42 U.S.C. § 11433(d)(6).

⁹ See, e.g., THE STATE OF PRESCHOOL, at 15 (listing pre-K access by state).

¹⁰ National Coalition for the Homeless, Education of Homeless Children and Youth NCH Fact Sheet #10, June 2008, citing National Law Center on Homelessness & Poverty, 1997 (hereinafter cited as “NCH Fact Sheet #10”).

¹¹ 42 U.S.C. § 11431(2); Notes from Interview of John McLaughlin, Federal Program Manager for the Title I, Part D Neglected, Delinquent, or At Risk Programs, Nov. 10, 2008 (hereinafter cited as “Interview of John McLaughlin”).

¹² U.S. Department of Education, Office of Elementary and Secondary Education, “Report to Congress Fiscal Year 2000: Education For Homeless Children and Youth,” 9.

¹³ 42 U.S.C. §§ 11432(g)(1)(J)(iii), -g)(1)(I).

¹⁴ U.S. Dept of Education, “Education for Homeless Children and Youth Program, Title VII-B of the McKinney-Vento Homeless Assistance Act, as Amended by the No Child Left Behind Act of 2001, Non-Regulatory Guidance,” July 2004, p. 22.

¹⁵ 42 U.S.C. §11432(g)(3)(c).

¹⁶ 42 U.S.C. § 11432(g)(3)(c)(ii).

¹⁷ 42 U.S.C. § 11432(g)(3)(c)(iii).

¹⁸ See Laura Noble, The Meaning of a Free Appropriate Public Education for Homeless Children, 23 STETSON L. REV. 429 (1994) (identifying “state residency and medical record requirements” and “local school record requirements” among the “myriad of barriers” that homeless children face).

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- 19 NCH Fact Sheet #10, 1-2; Interview with Barbara Duffield, Policy Director and Media Contact—National Association for the Education of Homeless Children and Youth, November 11, 2008.
- 20 NCH Fact Sheet #10, June 2008.
- 21 Bridging the Gap: Early Education and Care For Massachusetts Young Homeless Children, 4; Rafferty and Shinn, “The Impact of Homelessness on Children” (*American Psychologist*, 1991); Kourgialis et al., “Improving the Nutrition Status of Homeless Children” (*Children’s Health Fund*, 2000).
- 22 The eleven states that consider homelessness among the eligibility criteria for enrollment in their preschool programs include Massachusetts, Hawaii, Pennsylvania, Washington, Maryland, Colorado, Illinois, Iowa, Nevada, Texas, and Virginia. Massachusetts and Washington take the important next step of also granting homeless children priority in enrollment, while in Maryland, all homeless children are eligible for enrollment.
- 23 Washington Department of Early Learning, “Early Childhood Education and Assistance Program Performance Standards,” at 9.
- 24 42 U.S.C. §9845 (m)(1).
- 25 Bridging the Gap: Early Education and Care For Massachusetts Young Homeless Children, OCTOBER 2008, *Highlighting The Impact of New Policy*, citing See Rog and Buckner, “Homeless Families and Children” (March, 2007), at 4, (hereinafter cited as “Bridging the Gap: Early Education and Care For Massachusetts Young Homeless Children”); Rafferty and Shinn, “The Impact of Homelessness on Children” (*American Psychologist*, 1991); Kourgialis et al., “Improving the Nutrition Status of Homeless Children” (*Children’s Health Fund*, 2000).
- 26 In a review of Head Start Demonstration Project interim and final reports, “significant improvements were noted by teachers in the learning and behavior of homeless children during the time of enrollment. For example, ‘children appeared more rested and less anxious about eating after spending a month or longer in Head Start;’ noticeable ‘increases in vocabulary, expressive language and gross and fine motor skills’ were observed; and the longer children remained in attendance they were less aggressive and behavior problems diminished.” National Law Center on Homelessness & Poverty, “Blocks to Their Future: A Report on the Barriers to Preschool Education for Homeless Children,” 23, Sept. 1997 (hereinafter cited as “Blocks to Their Future”).
- 27 See, e.g., Michael Resnick, *The Time Has Come for Voluntary Pre-K for All*, Sch. Board News, Dec. 26, 2006, at 2; Nat’l Ass’n of Elementary Sch. Principals, *Leading Early Childhood Learning Communities: What Principals Should Know and Be Able to Do* 7 (2005); Council of Chief State School Officers, *Building a Cadre of Champions*; Nat’l Educ. Ass’n, *NEA on Pre-kindergarten and Kindergarten* 6 (2004) Am. Fed’n of Teachers, *Where We Stand: Early Childhood Education* 11 (2003).
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- ²⁸ National Coalition for the Homeless, “NCH Fact Sheet #3,” June 2008.
- ²⁹ Catherine Gewertz, Districts See Rising Numbers of Homeless Students, EDUCATION WEEK, November 5, 2008; Barbara Duffield & Phillip Lovell, The Economic Crisis Hits Home: The Unfolding Increase In Child and Youth Homelessness. National Association for the Education of Homeless Children and Youth, December 2008; Ellie Ashford, Districts Cope with Rising Numbers of Homeless Students, NATIONAL SCHOOL BOARDS ASSOC., January 2009.