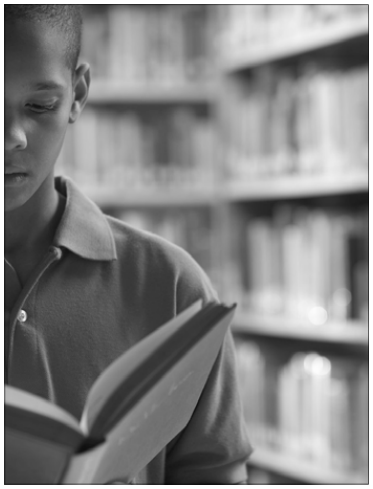
APPENDIX 5

BEST PRACTICES IN HOMELESS EDUCATION

Determining Eligibility for Rights and Services Under the McKinney-Vento Act



The McKinney-Vento Homeless Assistance Act defines "homeless children and youths" as "individuals who lack a fixed, regular, and adequate nighttime residence." However, because the circumstances of homelessness vary with each family's or unaccompanied youth's situation, determining the extent to which the family or youth fits the definition must occur on a case-by-case basis. Enrollment staff and/or the local homeless education liaison must gather and analyze information from the family or youth and make an appropriate determination of eligibility. Expeditious determination of eligibility and immediate school enrollment are critical to the child's educational continuity.

This tool is designed to assist school and school district staff in applying the definition to individual children and youth to determine eligibility for rights and services under the McKinney-Vento Act.

Step 1: Get the facts. What is the family's or youth's situation?

- Use a standard enrollment form that asks about the family's or youth's living situation to gather initial information. (See U. S. Department Education for Homeless Children and Youth Program Guidance, Appendix D, "Sample Student Residency Questionnaire" at *http://www.serve.org/nche/downloads/guidance_jul2004.pdf*).
- If the form indicates that the student may be homeless, ask questions to get a better sense of the family's or youth's circumstances.
- Avoid using the word "homeless" as the stigma associated with the word may lead parents or youth to insist they are not homeless, even though their living situation would fit the McKinney-Vento definition. Tell them the purpose of the questions is to determine if they are eligible for extra services like transportation, clothing, school supplies, and/or tutoring.
- Do not contact persons or agencies outside the school system to obtain information about the student's living situation; this would likely violate the family's or youth's privacy and dignity as well as the Family Education Rights and Privacy Act (FERPA). For example, do not contact landlords, public housing agencies, or law enforcement to verify living situations. For sample questions to assist with gathering information directly from parents, guardians, or youth regarding their living situation, see page 5.
- Respect the family's or youth's privacy by talking to them in a private space where other students and faculty members cannot overhear the conversation.
- Share information on the rights and services available under the McKinney-Vento Act for eligible children and youth, and ask the parent/guardian or youth to provide the information you need to make the determination of eligibility. Understand that families or

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Who is homeless?

(McKinney-Vento Homeless Assistance Act of 2001 – Title X, Part C of the No Child Left Behind Act – Sec 725)

The term "homeless children and youth"—

A. means individuals who lack a fixed, regular, and adequate nighttime residence…; and

B. includes —

i. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

ii. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings…

iii. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

iv. migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

youth may be hesitant to answer questions for various reasons that include a desire for privacy, concerns related to domestic violence, or fear of losing their children or housing; however, in most cases you will have enough information to make a determination.

Sample questions at the end of this document will assist you in obtaining information to make a determination of eligibility.

Step 2: Analyze the facts. Is the student eligible for McKinney-Vento services?

To be eligible for services, the student must meet the Act's definition of homeless. The McKinney-Vento Act defines "homeless children and youths" as "individuals who lack a fixed, regular, and adequate nighttime residence." Lacking any one of these three conditions would make a child eligible. In other words, if the residence is not fixed, regular, **and** adequate, it is considered a homeless situation.

The law then lists several situations as specific examples of homelessness. Migrant children who are living in one of the described situations are included as well. The list of examples included in the definition is not exclusive; rather, it is meant to address some of the more common situations of homelessness.

Again, determining whether a particular child or youth fits the definition of homeless is a case-by-case analysis. The easiest way to make a determination of homelessness is to: (A) see if the student's situation fits into one of the specific examples of homelessness listed in the law; and if not, (B) consider if the student is in another situation that would fit the definition of homelessness by not meeting the fixed, regular, and adequate standard.

IF THE RESIDENCE IS NOT **FIXED, REGULAR, AND ADEQUATE,**
IT IS CONSIDERED A HOMELESS SITUATION.

A. Does the child or youth's living situation fit into one of the specific examples of homelessness listed in the law?

- Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.

  "Sharing the housing of other persons…" implies that the student is staying in another person's home. Some pertinent questions to help determine if this is the case would include:
  - Does the student have any legal right to be in that home?
  - Can the student be asked to leave at any time with no legal recourse?
  - Is the living situation intended to be temporary or long-term?
  - Did the student move into the home as an urgent measure to avoid being on the street or in another precarious situation?

  "…due to loss of housing..." implies that the student has no personal housing available. Did the student or family lose their previous housing due to:
  - An eviction or an inability to pay the rent or other bills?
  - Destruction of or damage to the previous home?
  - Abuse or neglect (such as in the case of a youth who leaves or is asked to leave the home)?
  - Unhealthy conditions such as an inadequate physical environment, infestations, drug or alcohol abuse in the home, or domestic violence?
  - The absence of a parent or guardian due to abandonment, the parent's or guardian's incarceration, or another reason?

"…economic hardship …" includes cases where limited financial resources have forced families or youth to leave personal residences and share housing due to an inability to pay rent and other bills. The way that the shared housing came about and the intention of the residents are significant. For example:

- If economic hardship such as an accident or illness, loss of employment, loss of public benefits, or condition of poverty forces families to share housing temporarily, the children and youth are eligible for McKinney-Vento services.
- A long-term, cooperative living arrangement among families or friends that is fixed, regular, and adequate should not be considered a homeless situation, even if the parties are living together to save money.

- Living in a motel, hotel, trailer park, or camping ground due to the lack of alternative adequate accommodations.

  The phrase*"…due to the lack of alternative adequate accommodations"* can help determine whether these living situations should be considered homeless situations.

  - Motels, hotels, and camping grounds will almost always be homeless situations, as they are rarely fixed, regular, and adequate; however, considering whether alternative adequate accommodations are available can help identify possible exceptions, such as a wealthy family living in a luxury hotel on a long-term basis when adequate alternatives are available to the family.
  - In contrast, trailer parks often are fixed, regular, and adequate residences. Asking questions about the condition and size of the trailer, the number of people living there, the intended length of stay, and whether the family or youth has an adequate alternative will help determine if the student is eligible for McKinney-Vento services. (See the discussion of substandard housing below for more information.)

- Living in an emergency or transitional shelter.

  Emergency or transitional shelters of all kinds, including youth shelters, domestic violence shelters, family shelters, transitional living programs, and supportive housing programs are homeless situations.

- Abandoned in a hospital.

  A child or youth abandoned in the hospital is eligible for McKinney-Vento services.

- Awaiting foster care placement.

  It is essential that state and local educational agencies collaborate with child welfare agencies, child welfare attorneys, and other community members to establish guidelines for determining if a student in the custody of child welfare is eligible for McKinney-Vento services. Such guidelines should consider the extent to which the student lacks a fixed, regular, and adequate nighttime residence (see Step 2B below). For example, foster homes, shelters, evaluation centers, and group homes that are intended to be emergency, interim, or short-term are unlikely to be fixed, regular, and adequate.

  Several states have refined the definition of "awaiting foster care placement" on a state level. For example, the Tennessee Department of Children's Services, in consultation with the Tennessee Department of Education, has released a policy defining those students in state custody who are eligible for McKinney-Vento services to include students who are placed in emergency foster homes, emergency shelters, primary treatment centers, or other temporary, emergency placements. The policy is available at *http://www.serve.org/nche/forum/foster.php*.

  Local liaisons should check with their State Education Agency to see if policies exist that clarify which stages of their state's child welfare process are included in the McKinney-Vento definition of "homeless".

- Living in a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

  Examples of some places that meet these criteria include a health clinic, an office, a public restroom, or an unfinished basement or attic.

- Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting.

  These specific examples are largely self-explanatory. In evaluating whether housing is "substandard," consider that substandard means "deviating from or falling short of a standard or norm" or "of a quality lower than that prescribed by law."[1] Thus, determining if housing is substandard requires comparing the housing with community norms and the law, including a consideration of such factors as:
  - Health and safety concerns
  - Number of occupants per square foot
  - Age of occupants
  - State and local building codes

  Local educational agencies may wish to collaborate with attorneys and other community members to establish guidelines incorporating state and local legal requirements and community standards.

B. If the child's, family's, or youth's situation does not fit the examples provided in the definition, is the child or youth living in another type of situation that is not fixed, regular, and adequate?

If the student does not fit any of the specific situations in Step 2A, he or she may still be eligible for McKinney-Vento services if the living situation is not fixed, regular, and adequate. Consider and apply the following definitions to the information gathered from the family or youth.

- Fixed
  - "Securely placed or fastened." "Not subject to change or fluctuation."[2].
  - "A fixed residence is one that is stationary, permanent, and not subject to change."[3].
  - "Inhabitant: One who, although he may not be a citizen, dwells or resides in a place permanently or has a fixed residence therein, as distinguished from an occasional lodger or visitor."[4].
  - "Domicile: The place where a person has his true fixed permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning, and from which he has no present intention of moving."[5].

- Regular
  - "Normal, standard." "Constituted, conducted, or done in conformity with established or prescribed usages, rules, or discipline." "Recurring, attending, or functioning at fixed or uniform intervals."[6].
  - "Consistent."[7].

(continued on the next page)

[1] *Merriam-Webster's Collegiate Dictionary*, Tenth Edition.
[2] *Ibid.*
[3] Arizona, Massachusetts, and Michigan McKinney-Vento State Plans, 2002.
[4] *Ballentine's Law Dictionary*, 3rd Edition.
[5] *Ibid.*
[6] *Merriam-Webster's Collegiate Dictionary*, Tenth Edition.
[7] *Ballentine's Law Dictionary*, 3rd Edition.

- "A regular residence is one which is used on a regular (i.e., nightly) basis."[8].
- "Habitual: By habit; constant; customary, accustomed, usual; common; ordinary; regular; familiar."[9].

- Adequate
  - "Sufficient for a specific requirement." "Lawfully and reasonably sufficient."[10].
  - "Fully sufficient; equal to what is required; lawfully and reasonably sufficient."[11].
  - "An adequate residence is one that is sufficient for meeting both the physical and psychological needs typically met in home environments."[12].

*(*Adapted from "Determining Homelessness by the Definition," National Law Center on Homelessness & Poverty, *http://www.nlchp.org.)*

Step 3: Get additional input.

If you are still not sure if a student is eligible for McKinney-Vento services, consider the following resources:

- Contact your local homeless education liaison (if you are a school staff person).
- Contact your State Coordinator for Homeless Education.
- Post a question to the NCHE Homeless Education Listserv to solicit input from other homeless education practitioners. (Contact Beth Hartness at *bhartnes@serve.org* to learn how to join the listserv.)
- Call the NCHE Helpline at 800-308-2145.
- Contact other national homeless education partners (see below for contact information).

Sample Questions to Ask the Students or Parents for Information Gathering

The following questions are designed to elicit information that is relevant for the McKinney-Vento definition of homeless; that is, to determine the extent to which the children and their families or the youth are living in a fixed, regular, and adequate living situation.

Fixed ("A fixed residence is one that is stationary, permanent, and not subject to change."[13])

- Is this a permanent arrangement or just temporary?
- Are you looking for another place to live?
- Do you plan to move out soon?
- Why are you staying in your current place?
- Where were you living right before this place? Why did you leave?
- Where would you go if you couldn't stay where you are?
- Are you staying with friends/relatives just for a little while?
- Did you and your friends/relatives decide to move in together and share a home and expenses for the long term? Or is this a temporary situation for you?
- Could your friends/relatives ask you to leave if they wanted to?
- Are you all sharing the home equally, or are you more like guests in the home?

[8] Arizona, Massachusetts, and Michigan McKinney-Vento State Plans, 2002.
[9] *Ballentine's Law Dictionary*, 3rd Edition.
[10] *Merriam-Webster's Collegiate Dictionary*, Tenth Edition.
[11] *Ballentine's Law Dictionary*, 3rd Edition.
[12] Arizona, Massachusetts, and Michigan McKinney-Vento State Plans, 2002.
[13] *Ibid.*

Regular ("A regular residence is one that is used on a regular [i.e., nightly] basis."[14])

- Do you stay in the same place every night?
- Do you have a key to the place where you are living?
- Do you move around a lot?
- How long have you been at that place? How long do you plan to stay?
- How long did you live in your last place?

Adequate ("An adequate residence is one that is sufficient for meeting both the physical and psychological needs typically met in home environments.[15])

- How many people are living in the home? How many bedrooms/bathrooms does it have?
- Are you and your children sharing a room? How many people are staying in one room?
- Are you and your children sleeping in a bedroom, or a public area, like a dining room?
- Does the home have heat/electricity/running water?
- What condition is the home in? Does it keep out rain and wind? Is it safe? Is it warm and dry? Do the windows have glass panes?
- Can you come and go as you please?

If the child or youth is eligible, provide appropriate services.

Determining eligibility is only the first step. Children and youth who are eligible for services may have different needs. They may have physical needs for clothing, uniforms, school supplies, free meals, and health care. They may have mental health needs. They may have academic needs. They may need transportation. Or they may need nothing more than the ability to enroll in school immediately without documents.

In determining the appropriate services for a particular child, youth, or family, consider what barriers to education can be removed by applying the McKinney-Vento Act and what is in the best interest of each child or youth. Also consider all the programs in the school district that can support children experiencing homelessness, especially Title I, 21st Century Learning Center programs, Even Start, Head Start, special education and related services, Section 504 services, drop-out prevention programs, and Safe Schools/Healthy Schools grants.

National Partners in Homeless Education

National Association for the Education of Homeless Children and Youth (NAEHCY)
http://www.naehcy.org

National Center for Homeless Education (NCHE)
http://www.serve.org/nche

National Law Center on Homelessness and Poverty (NLCHP)
http://www.nlchp.org

[14] *Ibid.*
[15] *Ibid.*

This brief was developed by:

National Center for Homeless Education
800-308-2145 (toll-free HelpLine)
http://www.serve.org/nche

Fall 2006

NCHE is supported by the U.S. Department of Education Student Achievement and School Accountability Programs.

Every state is required to have a coordinator for the education of homeless children and youth, and every school district is required to have a liaison for homeless students. These individuals will assist you with the implementation of the McKinney-Vento Act. To find out who your state coordinator is, visit the NCHE website at *http://www.serve.org/nche*.

For further information on the McKinney-Vento Act and resources for implementation, call the NCHE HelpLine at 800-308-2145 or e-mail *homeless@serve.org*.

Local Contact Information: