

## Chapter Eight: Dispute Resolution



### 8.1 Purpose of Dispute Resolution Policy

Parents, guardians, or unaccompanied youth experiencing homelessness and schools or school districts may disagree on issues related to enrollment and school selection. In most cases, parties can resolve these issues before entering into a formal dispute; however, there are times when an informal resolution is not possible and a formal dispute resolution must be pursued.

#### Formal dispute resolution

- ensures that each party’s views are represented,
- enables the facts of the case to be considered objectively, and
- allows students to attend school while bringing the disagreement to closure.

While no one enjoys conflict and what often appears to be the “zero-sum” outcome of a dispute, a dispute resolution process is an important tool to protect the rights and best interests of homeless children and youth, as well as those of the local educational agency (LEA). Therefore, the McKinney-Vento Act requires each state educational agency (SEA) to include a written procedure for resolving disputes in its state plan for homeless education.

In addition, LEAs are required to have a dispute resolution process in place. While each district is allowed to design its own process as long as basic requirements are included, it is important for LEAs to coordinate with the state dispute resolution policy. This allows parents and district personnel to clearly understand the terms, expectations, and process whether the dispute is settled at the local or state level. Coordination also allows LEAs to draft policies that meet the requirements of the law without doing extensive policy drafts as much of what is in the state process should apply at the local level, thus saving liaisons valuable time. Moreover, it is good practice to have a written dispute resolution policy for homeless education at the LEA level that coordinates with and reinforces the state dispute resolution policy to facilitate efficient and expedient resolutions to disputes.

## 8.2 What the McKinney-Vento Act Requires

When a dispute arises under the McKinney-Vento Act, the law requires the following minimum procedures:

1. The child or youth “shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute” [42 U.S.C. § 11432(g)(3)(E)(i)]. In disputes involving unaccompanied homeless youth, the local liaison must ensure that unaccompanied homeless youth are immediately enrolled in school [42 U.S.C. § 11432(g)(3)(E)(iv)]. The U.S. Department of Education (ED) emphasizes the importance of the requirement for enrollment during the dispute process in the 2004 Non-Regulatory Guidance:

When enrollment disputes arise, it is critical that students not be kept out of school. Interruption of education can severely disrupt the student’s academic progress. To avoid such disruptions, LEAs need an established process for resolving school placement disputes. Permitting students to enroll immediately in the school of choice pending resolution of disputes helps provide needed stability [G-5].

While disputes are pending, students have the right to participate fully in school and receive all services which they would normally receive. This includes transportation services, as indicated by the Non-Regulatory Guidance:

The McKinney-Vento Act’s transportation requirements apply while disputes are being resolved [2004, H-5].

2. The parent, guardian, or unaccompanied youth must be provided with a written explanation of the school’s decision regarding school selection or enrollment, including the right of the parent, guardian, or youth to appeal the decision any time the student is denied enrollment in a requested school [42 U.S.C. § 11432(g)(3)(E)(ii)]. In the case of an unaccompanied homeless youth, the notice explaining the decision and the right to appeal are provided directly to the youth [42 U.S.C. § 11432(g)(3)(B)(iii)].

3. The child, youth, parent, or guardian must be referred to the local liaison, who will carry out the dispute resolution process as quickly as possible [42 U.S.C. § 11432(g)(3)(E)(iii)]. The local liaison must be familiar with the state’s McKinney-Vento dispute resolution process and follow all procedures outlined therein.

### 8.3 Common Topics for McKinney-Vento Disputes

The McKinney-Vento Act mandates basic protections and procedures to follow when a dispute arises “over school selection or enrollment in a school” [42 U.S.C. § 11432(g)(3)(E)]. Therefore, the protections and procedures must be available to address any dispute about whether a student has the right to enroll in a particular school, whether based on eligibility, best interest, school selection, or immediate enrollment. The law also defines enrollment as “attending classes and participating fully in school activities” [42 U.S.C. § 11434a(1)]. Therefore, McKinney-Vento dispute procedures apply to any dispute arising under the Act, including disputes over questions such as:

#### *Eligibility*

Does the child or youth requesting enrollment meet the definition of homeless such that immediate enrollment is required, regardless of missing school records, proof of residency, immunization and other health records, guardianship records, or other documentation?

#### *School Selection*

Is it in the best interest of the child or youth to continue attending the school of origin or to enroll in the local attendance area school?

#### *Participation*

Is the child or youth attending classes immediately, even if the school has not yet received school records, including special education records, immunization or other health documents? Is the student provided full participation in school activities? Is enrollment granted immediately in any public school that non-homeless students who reside in the same area as the homeless child or youth are eligible to attend?

#### *Transportation*

Is the school district required to provide transportation to a student in a particular situation? Does the transportation provided permit the child to

attend classes and participate fully in school activities?

In some instances, a parent, guardian, or unaccompanied youth experiencing homelessness may disagree with the LEA on an issue that does not fall under the McKinney-Vento Act. For example, a parent, guardian, or youth may disagree on an issue more appropriately addressed through the special education program, or the conflict may center on a desire to attend a school other than the local attendance area school or school of origin. In these cases, the local liaison should help the parent, guardian, or youth understand the scope of the McKinney-Vento Act and help make connections to other programs and resources that could better address the expressed needs and wishes. In order for the local liaison to make these types of referrals, the liaison must thoroughly understand the McKinney-Vento Act to ensure that the parent, guardian, or youth is not denied legitimate rights to dispute a McKinney-Vento issue.

If you have any doubt about whether McKinney-Vento applies to the request of a parent, guardian, or unaccompanied youth, you are urged to contact your State Coordinator to discuss the request. If you incorrectly deny the right to dispute the LEA’s decision, you run the risk of being cited for noncompliance by the state homeless education office.

Table 8.1 Common Disagreements is a list of conflicts that regularly occur and are either related to the McKinney-Vento Act or may appear to be McKinney-Vento dispute resolution issues at first glance. Note that these examples are for illustrative purposes only. Actual cases will have nuances not captured in the abbreviated descriptions offered in the table.

Table 8.1 Common Disagreements

| Type of Conflict                            | Examples  |
|---|---|
| McKinney-Vento dispute resolution conflicts | <ul style="list-style-type: none"> <li>• Disagreement about remaining in school of origin</li> <li>• Disagreement about immediate enrollment in school of residency</li> <li>• Disagreement about homeless status when student was appropriately identified as homeless previously (e.g., doubled-up in same location for two years)</li> </ul> |
| Conflicts not appropriate for dispute       | <ul style="list-style-type: none"> <li>• School failed to inform of educational</li> </ul>  |

| Type of Conflict  | Examples  |
|---|---|
| resolution, but which are McKinney-Vento compliance issues  | rights under McKinney-Vento <ul style="list-style-type: none"> <li>• Student is not provided free meals</li> <li>• Systemic non-compliance by an LEA which requires state intervention (e.g., failure to identify homeless students; lack of outreach and coordination within schools and community)</li> </ul>   |
| Issues which do not implicate McKinney-Vento compliance, but address services which are allowable or beneficial | <ul style="list-style-type: none"> <li>• Preschool student could benefit from school of origin transportation</li> <li>• Additional activities could enhance homeless identification (e.g., using a residency questionnaire)</li> <li>• Summer school could improve student's academic performance but is not required to pass a course or grade</li> </ul> |
| Conflicts not related to McKinney-Vento status  | <ul style="list-style-type: none"> <li>• Student wishes to enroll in a school that is not an option for students in the residency area and is not a school of origin</li> <li>• Parent disagrees with the services being offered in an Individualized Education Program</li> <li>• Student never lost housing</li> </ul>                                    |

## 8.4 Important Considerations Before, During, and After the Dispute Resolution Process

Attending to details before a dispute occurs, during the mediation, and after a dispute is resolved will ensure the LEA is prepared to carry out the process in the fairest and most objective manner possible while also reviewing each case for lessons learned to improve the process.

### 8.4.1 Before a Dispute Occurs

Make sure the LEA dispute process is streamlined and accessible to homeless parents, guardians, and unaccompanied youth. The LEA is required to have written procedures to ensure that all LEA staff members involved know their responsibilities and ensure barriers to initiating the dispute process are eliminated.

Most parents and youth experiencing homelessness have limited resources, little to no ability to secure attorneys or advocates, and are dealing with the extreme stressors of homelessness. Parents, guardians, and unaccompanied youth must receive clear and simple information about

- their right to appeal decisions,
- how to initiate the appeal,
- how the process will unfold,
- who in the LEA and SEA they can contact with questions, and
- the timeline for the process.

Schools should provide this information in writing, but the local liaison should explain the process orally to ensure that parents, guardians, and youth understand.

In addition, the Non-Regulatory Guidance recommends that parents, guardians, and unaccompanied youth be able to initiate the dispute resolution process directly at the school they choose or at the local liaison's office [2004, G-9]. It is important to offer both options as most homeless families and youth struggle with transportation. They may not have a way to travel to a particular office to initiate the dispute process. The need to travel may delay them initiating the dispute. If timelines are short, the families or youth may be unable to initiate the dispute within the required timeframe. To eliminate transportation barriers, parents, guardians, and youth should be provided maximum flexibility to initiate the dispute and submit appeals documents at the most convenient school or district office.

The paperwork necessary to initiate a dispute should be minimal to eliminate barriers to parents, guardians, and youth accessing the process. The written notice, for example, could include a space where the parent, guardian, or youth indicates whether he or she agrees with the decision. Indicating a disagreement should trigger a conversation about the dispute process and an immediate referral to the liaison.

#### **8.4.1.1 Written Notice**

The Non-Regulatory Guidance states, "Written notice protects both students and schools by outlining the specific reasons for the school's decision. It facilitates the dispute resolution by providing decision-makers with documents to guide their determinations (2004, G-5)... Written notice should

be complete, as brief as possible, simply stated, and provided in a language the parent, guardian, or unaccompanied youth can understand” (2004, G-9).

Specifically, the Non-Regulatory Guidance suggests that written notices contain the following elements:

- contact information for the local liaison and State Coordinator, with a brief description of their roles;
- a simple, detachable form that parents, guardians, or unaccompanied youth can complete and submit to the school to initiate the dispute process (the school should copy the form and return the copy to the custodial parent, guardian, or youth for their records when it is submitted);
- a step-by-step description of how to formally dispute the school’s decision;
- notice of the right to “be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute,” including the right to participate fully in all school activities;
- notice of the right to appeal to the state if the district-level resolution is not satisfactory; and
- timelines for resolving the district-level and state-level appeals (2004, G-9).

For an example of a form providing written notice, see Appendix 8.A Written Enrollment Decision Notice.

### **8.4.2 During the Dispute**

Once a parent has initiated a dispute, the LEA is obligated to carry out the dispute process as objectively and quickly as possible. The dispute process allows the LEA and the parent, guardian, or unaccompanied youth (or local liaison on behalf of the youth) to present all case-related facts and documentation to a third party. In some states, the documentation is first reviewed by someone at the LEA level, and then provided at the state level.

It is critical that you are familiar with the process in your state and carry it out as specified. You should have the state dispute resolution policy and the LEA dispute policy on hand to guide you through the process.

### 8.4.2.1 Getting the Facts: Legal and Reasonable Steps

When a dispute arises under the McKinney-Vento Act, particularly when regarding eligibility, an LEA may wish to look further into the situation of the family or youth to compile evidence to support its position. *It is absolutely critical that all such efforts be grounded in sensitivity and respect, keeping the academic well-being and best interest of the child or youth in the forefront.* Invasive or threatening techniques to confirm eligibility or explore the situation of a family or youth violate the McKinney-Vento Act, may violate the Family Educational Rights and Privacy Act (FERPA), humiliate families and youth, and may put temporary housing arrangements in jeopardy.

For cautions and good practices in obtaining information on families and youth experiencing homelessness, see the NCHE issue brief, *Confirming Eligibility for McKinney-Vento Rights and Services: Do's and Don'ts for LEAs* (a link to the brief is included in Section 8.6).

To assist with confirming eligibility for McKinney-Vento services, many LEAs have developed residency forms with informative, yet sensitive, questions to help determine eligibility and gather information. Visit the NCHE webpage to see examples of state and LEA forms developed for this purpose: <http://center.serve.org/nche/forum/eligibility.php>.

### 8.4.2.2 Providing Information Relevant to a Dispute

The local liaison should keep thorough documentation of interactions with a parent, guardian, or unaccompanied youth, and be prepared to provide this information to the designated third party in an organized fashion.

The following documentation may be reviewed during the dispute process:

- a clear, concise description of the issue (e.g., what the parents, guardians, or unaccompanied youth are disputing, such as why the parent feels his child fits the definition of homeless or feels his child should attend a certain school, and why the LEA disagrees);
- a timeline of contacts between the school and the parent, guardian, or youth;
- copies of emails between the school or LEA and the parent, guardian, or youth;
- a log of phone contacts and meetings between the school or LEA and

- the parent, guardian, or youth;
- a description of what the LEA has done to follow the dispute policy; and
- any written documentation or information the parent, guardian, or unaccompanied youth (or local liaison on behalf of the youth) has provided.

### **8.4.2.3 Helping Parents or Guardians with the Dispute Process**

Parents or guardians often need help to know what information to provide, how to obtain it, and how to present it. If they receive help in providing appropriate information, the case will proceed more efficiently.

Schools and LEAs may inform parents or guardians that they can seek the assistance of advocates, attorneys and other service providers with whom they are working, such as counselors. You may wish to provide a list of local attorneys and advocates who have a thorough knowledge of the McKinney-Vento Act and are willing to work with parents or guardians.

Parents or guardians may have difficulty meeting deadlines. It is important to inform them of deadlines in the dispute process, and determine with them if there is a need to be flexible with the deadlines. In the event that parents are unable to write statements to explain their case, the LEA should make arrangements to obtain their statement orally. Reaching out to parents or guardians in this way ensures they are not disadvantaged in the dispute process due to logistical challenges or their inexperience with interacting with an organization in a formal way.

Once a decision is rendered on the dispute, the local liaison should ensure that all parties involved are apprised of the decision and arrangements are made to carry it out in the most efficient way possible. In the event that the decision is not made in favor of the parent, guardian, or unaccompanied youth, it is considered a good practice to discuss the decision with this person, develop strategies to implement the outcome, make the outcome as palatable as possible, and ensure that the best interest of the student is kept at the forefront.

### 8.4.3 After the Dispute

Dispute resolution is usually a complex process, and every case is unique. It is beneficial to debrief each case to determine lessons learned that can be used to improve the process and policy for future disputes. The local liaison is encouraged to review aspects of the process that worked efficiently and what could be improved after each dispute is resolved. Liaisons should discuss needed changes with all LEA and school staff involved, as well as with the State Coordinator.

Appendix 8.B Dispute Review Guide is a worksheet to help you review a disputed case and identify what needs to be done differently next time.

### 8.5 Prevention is the Best Solution

Many disagreements between a parent, guardian, or unaccompanied youth and the LEA can be avoided. Diffusing disagreements through better communication can eliminate the need for a formal dispute.

Table 8.2 Diffusing Disputes: Issues and Strategies provides a chart of issues that arise, and strategies that, when used to address them appropriately, can diffuse disagreements.

Table 8.2 Diffusing Disputes: Issues and Strategies

| Issue   | Strategies  |
|---|---|
| The school or LEA is not compliant with implementing the McKinney-Vento Act.  | If a school or LEA is not implementing the McKinney-Vento Act and is creating barriers to the education of homeless children and youth, then parents, guardians, and unaccompanied youth have a legitimate grievance that should be brought to the attention of the local liaison or State Coordinator. To avoid this type of dispute, ensure that all LEA and school staff members are familiar with the McKinney-Vento Act and understand their responsibility to implement it. |
| A parent, guardian, or unaccompanied youth desires an action or service that is not covered in the McKinney-Vento Act, such as wanting to attend a school other | The local liaison should explain the law to the parent, guardian, or unaccompanied youth, and provide the provisions of the law to clarify the issue. Referrals to other programs should be made, if appropriate.   |

| Issue  | Strategies  |
|--|---|
| than the school of origin or the school in the local attendance area of the temporary residence.                                       |   |
| A parent, guardian, or unaccompanied youth becomes angry and behaves inappropriately when expressing disagreement.                     | LEA and school staff should be trained to understand the trauma faced by homeless families and ways to de-escalate trauma responses. (See Chapter 10 Working With Parents for more information.)  |
| A parent, guardian, or unaccompanied youth wants a certain service or outcome and attempts to use a designation of homeless to get it. | When parents, guardians, or unaccompanied youth appear to be “manipulating the system,” LEA and school staff should attempt to determine exactly what they want and see if there are other programs or ways to provide the service or outcome.  |
| A parent, guardian, or unaccompanied youth feels disrespected by the school or LEA and wants the school district to be punished.       | Parents, guardians, and unaccompanied youth should be treated with respect at all times. When parents are sent to multiple offices to address an issue, when they are confused about how to get services for their children or what services are available, or when they receive a notice in the mail that their child is going to be disenrolled from school, they are likely to become angry and feel mistreated by the school or LEA. They will want justice and retribution to become part of the dispute. LEA and school staff should have face-to-face conversations with the parent to foster an understanding of the law and process. Oftentimes, direct communication will develop rapport and trust with parents and make them more willing to be a partner in determining what can and cannot be done. |
| A parent brings a lot of grievances to the table, some of which may not be relevant to a McKinney-Vento dispute.                       | It is important to help the parent “keep the main thing the main thing.” Be very clear as the dispute process is initiated what issue the dispute will address (e.g., determining eligibility for homelessness) and what extraneous issues being aired will not be addressed (e.g., a principal who treated a child unfairly). While both are serious grievances, the focus of your work is on the issue relevant to the McKinney-Vento Act.  |

## 8.6 Useful Links

**Issue Brief: *Confirming Eligibility for McKinney-Vento Services: Do's and Don'ts for Local Liaisons***

<http://center.serve.org/nche/downloads/briefs/verif ll.pdf>

**Issue Brief: *Confirming Eligibility for McKinney-Veto Services: Do's and Don'ts for School Districts***

<http://center.serve.org/nche/downloads/briefs/verif sch.pdf>

**The NCHE Forum has a section dedicated to sample dispute resolution policies and forms. They can be accessed at:**

[http://center.serve.org/nche/ibt/sc\\_dispute.php](http://center.serve.org/nche/ibt/sc_dispute.php)

**Section K of the State Coordinator's Handbook focuses on the topic of Dispute Resolution**

<http://center.serve.org/nche/downloads/handbook2/k.pdf.pdf>

## 8.7 Resources and Tools for Chapter Eight

Appendix 8.A Written Enrollment Decision Notice

Appendix 8.B Dispute Review Guide