

**The Most Frequently Asked Questions on the Education Rights of Children in Homeless Situations:
Issues Facing Unaccompanied Youth**

This document is an excerpt from “The Most Frequently Asked Questions on the Education Rights of Children in Homeless Situations,” published by the National Association for the Education of Homeless Children and Youth (NAEH CY) and the National Law Center on Homelessness & Poverty (NLCHP) in September 2016. To download the entire document, see http://www.naehcy.org/sites/default/files/dl/legis/2016-09-16_FAQ_FINAL.pdf

The answers are general responses based on federal statutes, regulations, and guidance; relevant case law; and best practices from across the country. It cannot be emphasized enough that these are general responses, and that answers could change based on the facts of a particular case. McKinney-Vento issues require a case-specific inquiry. This document is meant to provide basic information and tools to assist parents, youth, liaisons, administrators and advocates in understanding the McKinney-Vento Act.

66. How does the McKinney-Vento Act define “unaccompanied youth”? Is there an age range?

A: Unaccompanied youth is defined as a homeless child or youth not in the physical custody of a parent or guardian. 42 U.S.C. §11434A(6). The Act does not provide an age range.

67. Is there an age limit on serving secondary students?

A: Since the McKinney-Vento Act does not include any age limits for serving students, it applies to children and youth age 21 and under, consistent with their eligibility for public education services under state and federal law. State laws vary, but generally provide access to all students until high school graduation or equivalent, or until age 18 (or older in some states). For special education students, federal law provides the right to access services until age 22. 20 U.S.C. §1412(a)(1)(A).

68. Must schools enroll youth in school without proof of guardianship?

A: Yes. Lack of a legal guardian or guardianship documents cannot delay or prevent the enrollment of an unaccompanied youth. 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv). States and LEAs have established various procedures for enrolling youth. Many permit the youth to enroll himself or herself; some have the McKinney-Vento liaison handle enrollment; others use caregiver forms to allow adult caregivers, when present, to enroll youth. Whatever procedures are used, they must ensure immediate enrollment, as the McKinney-Vento Act requires states and LEAs to eliminate barriers to identification, enrollment and retention and to enroll unaccompanied youth in school immediately. 42 U.S.C. §§11432(g)(1)(I), (g)(7). LEAs may adopt their own policies to meet these mandates. More information about approaches to enroll unaccompanied youth immediately is available at <http://www.serve.org/nche/downloads/briefs/youth.pdf>.

69. Can a school require a caregiver to get legal guardianship to enroll a student in school?

A: No. The McKinney-Vento Act requires states to address enrollment barriers related to lack of guardianship in school enrollment and requires LEAs to enroll youth in school immediately, even if they lack a legal guardian or typically required enrollment documents. 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(I). The decision to seek legal guardianship is a serious decision that significantly affects the legal rights of the parent, caregiver and youth well beyond the school arena. While that step will be appropriate in some cases, it will not be in others.

70. Who can make educational decisions for an unaccompanied youth?

A: States and LEAs have established various procedures for educational decision-making. Some permit the youth to make educational decisions on his/her own behalf; some vest the liaison with that authority; others allow adult caregivers, when present, to make such decisions. FERPA allows “an individual acting as a parent in the absence of a parent or a guardian” to access a student’s education records, thereby permitting schools to discuss educational issues with such caregivers. 34 CFR §§99.3-99.4. The McKinney-Vento Act requires states and LEAs to eliminate barriers to enrollment and retention and to enroll unaccompanied youth in school immediately. 42 U.S.C. §§11432(g)(1)(I), (g)(7). LEAs may adopt their own policies to meet these mandates. It should be noted that the Individuals with Disabilities Education Act (IDEA) has its own rules and procedures for appointing a “surrogate parent” to make special education decisions for minors, where a parent or legal guardian is not available. See Question 103.

71. Do schools have to contact the police when enrolling unaccompanied youth?

A: No, absent other circumstances. While state law determines the obligations of school staff to contact child protective services (CPS) or law enforcement if they suspect abuse, the McKinney-Vento Act requires states and LEAs to eliminate barriers to identification, enrollment and retention of students experiencing homelessness. 42 U.S.C. §§11432(g)(1)(I), (g)(7). U.S. Department of Education Guidance elaborates that the “McKinney-Vento Act includes a broad, ongoing requirement for SEAs and LEAs to review policies or practices that may act as barriers to the identification, enrollment, attendance and school success of homeless children and youths.... It is important for SEAs and LEAs to consistently review their policies and practices with regular input from homeless parents, youths, and advocates so that new barriers, or barriers that the SEA or LEA staff may be unaware of, do not prevent children and youths from receiving the free, appropriate public education to which they are entitled.” 2016 Guidance, A-4.

Based on these requirements, schools should exercise care and restraint when deciding whether to contact CPS or law enforcement agencies. Calling CPS or law enforcement as a matter of course would erect a significant barrier to the enrollment of unaccompanied youth. Youth are very unlikely to enroll in or attend school if they fear being taken into custody simply because they are unaccompanied. A recent survey of 3,616 domestic violence survivors and help-seekers found that 48% of those under

age 18 did not seek help from someone for fear of being reported.¹ Other studies have found similar effects of reporting on youth seeking help.² While educators and others are required to report reasonable suspicions of child abuse, in many cases unaccompanied youth are in the care of a safe adult or otherwise out of immediate danger, and there is no reason to suspect abuse. It is likely that state mandatory reporting laws would not require contacting CPS or police in such cases. Some states have clarified this in their state code, such as California's law stating that "the fact that a child is homeless or is classified as an unaccompanied minor, as defined in Section 11434a of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), is not, in and of itself, a sufficient basis for reporting child abuse or neglect." CA Penal Code §11165.15. A state-by-state guide to mandatory reporting laws is available from the Child Welfare Information Gateway, at <https://www.childwelfare.gov/pubPDFs/manda.pdf>. If school personnel have a reasonable suspicion of child abuse, liaisons should work with police and CPS to keep the youth in school and to serve the student's best interest.

72. What if an unaccompanied youth gets injured in school? How will the child receive medical care without a parent? Will the school be liable?

A: If an unaccompanied youth has a medical emergency, the school can contact the local emergency room. Medical professionals should be familiar with the rules to treat minors and will respond appropriately to medical emergencies. Liability for injuries is based on a party's failure to exercise reasonable care. By exercising reasonable care in creating a safe environment and responding appropriately to medical emergencies, the school can help protect itself from liability. In any event, such concerns do not relieve the school of its responsibilities under the McKinney-Vento Act. Indeed, if a school violates the Act by refusing to enroll an unaccompanied youth in school, and the youth is subsequently injured off school grounds, a parent or guardian could have a cause of action to sue the school for having turned the youth away.

A guide to state laws regarding the rights of minors to receive medical care without a parent or guardian in non-emergency situations is available at <http://naehcy.org/sites/default/files/pdf/State%20by%20state%20overview.pdf>.

73. If runaway youth would just follow their parents' rules, they could live at home; why should we encourage their bad behavior?

¹ C. Lippy, C. Burk & M. Hobart (2016). *There's no one I can trust: The impact of mandatory reporting on the help-seeking and wellbeing of domestic violence survivors*. Seattle: National LGBTQ DV Capacity Building Learning Center. Retrieved August 11, 2016 from <http://www.nwnetwork.org/the-learning-center/>.

² League of Women Voters of Oregon Education Fund (2006). *Oregon's Homeless Youth*. Salem, OR: Author. Retrieved September 3, 2007 from http://www.lwvrv.org/pdf_docs/homeless-youth%202006.pdf. Moore, J. (2006). *Unaccompanied and Homeless Youth: Review of Literature (1995-2005)*. Washington, DC: National Center for Homeless Education. Retrieved July 18, 2007 from http://www.serve.org/nche/downloads/uy_lit_review.pdf. Boyer, D. et al. (2002). *Street Youth Task Force Barriers to Shelter Study, Pilot Project Needs Assessment: Final Recommendations Report*. Seattle: City of Seattle. Retrieved August 24, 2007 from <http://www.cityofseattle.net/humanservices/doc/YouthShelterStudy.pdf>. Massachusetts Appleseed Center for Law and Justice (Nov. 2012). *Mandatory Reporting Survey: DRAFT*, available from Patricia Julianelle, pjulianelle@naehcy.org.

A: Most runaway youth, especially those who stay away from home a significant length of time, have fled abusive homes for their own survival. Studies of unaccompanied youth have found that 20 to 50 percent were sexually abused in their homes, while 40 to 60 percent were physically abused.³ Severe dysfunction in the home is also common. Forty percent of callers to the National Runaway Switchboard identified negative family dynamics as the leading reason for leaving home.⁴ For example, over two-thirds of unaccompanied youth surveyed in a recent study reported that at least one parent abused drugs or alcohol.⁵

Many young people are not welcome in their parents' or guardians' homes due to their sexual orientation or identity, pregnancy, or other types of family conflict. For example, 20 to 40% of homeless youth identify as gay, lesbian, bisexual, questioning and/or transgender⁶, and 10% of currently homeless female teenagers are pregnant.⁷ More than half of youth living on the streets became homeless for the first time because they were asked to leave home by a parent or caregiver.⁸ Youth often leave home to remove themselves from an immediately painful situation, but without plans for what to do next. In a recent survey of unaccompanied homeless youth in California, over half felt that being homeless was as safe as or safer than being at home.⁹ More than 60% of homeless youth report being raped, beaten, robbed or otherwise assaulted while living on the streets, and homelessness is the largest risk factor for commercial sexual exploitation and sex trafficking of minors.¹⁰ Despite their dire living situations, many runaway youth continue to value education and the opportunities, safety, and stability it provides. Excluding these youth from school will harm them and society.

74. How can schools minimize unaccompanied youth's contact with the juvenile and criminal justice systems?

A: Where laws, regulations, practices, or policies may act as a barrier to the identification, enrollment, attendance, or success in school of homeless children and youths, SEAs and LEAs must 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. 42

³ Toro, P., et al. (2007). "Homeless Youth in the United States: Recent Research Findings and Intervention Approaches." *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research*. Washington, DC: U.S. Dept. of Health and Human Services; Robertson, Marjorie and Toro, Paul (1999). "Homeless Youth: Research, Intervention, and Policy." *Practical Lessons: The 1998 National Symposium on Homelessness Research*. Washington DC: U.S. Dept. of Housing and Urban Development; MacLean, Michael G., Embry, Lara E. & Cauce, Ana Mari (1999). Homeless Adolescents' Paths to Separation from Family: Comparison of Family Characteristics, Psychological Adjustment, and Victimization. *Journal of Community Psychology*, 27(2), 179-187.

⁴ <http://www.1800runaway.org/>

⁵ MacLean, et al. (1999).

⁶ The National Gay and Lesbian Task Force and the National Coalition for the Homeless (2007). *Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness*. Washington DC: Authors.

⁷ Toro, P., et al. (2007).

⁸ Family and Youth Services Bureau (2016). *Quick Facts*. Retrieved August 11, 2016 from <http://www.acf.hhs.gov/fysb/quick-fact>.

⁹ Bernstein, N. & Foster, L.K. (2008). *Voices from the Street: A Survey of Homeless Youth by Their Peers*. Sacramento, CA: California Research Bureau.

¹⁰ Family and Youth Services Bureau (2016).

U.S.C. §§11432(g)(1)(I), (g)(7). “The process of reviewing and revising policies should include a review of school discipline policies that disproportionately impact homeless students, including those who are also children and youths of color; those who identify as lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ); English learners; and students with disabilities.” 2016 Guidance, A-4 (citations omitted). In particular, one-strike policies or policies that encourage the involvement of law enforcement rather than school personnel in disciplinary matters should be revised to ensure homeless students are not needlessly entangled with the criminal or juvenile justice system. See Question 60.

75. What steps should SEAs and LEAs take to revise the laws and policies in their communities that serve as barriers to the identification, enrollment, attendance, and success of homeless students?

A. Where laws, regulations, practices, or policies may act as a barrier to the identification, enrollment, attendance, or success in school of homeless children and youths, SEAs and LEAs must 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. 42 U.S.C. §§11432(g)(1)(I), (g)(7). This obligation extends to laws and policies that exist outside of the school system itself: SEAs and LEAs “should also coordinate and consult with State and local policymakers to ensure that legislation and policies do not create barriers for the education of homeless children and youths, which may in some cases fall under their ongoing obligation to review and revise such barriers. For example, status offense laws or ordinances that criminalize homelessness can make it more difficult for homeless families and youths to get to school ready to learn. Likewise, a lack of affordable housing within a community may make it difficult for families to obtain permanent housing and escape the cycle of homelessness.” 2016 Guidance, E-8. For example, a student who is forced to stay awake all night because there is no legal place for the student to sleep faces a barrier to her educational retention and success. A student in a state which criminalizes the act of running away may try to keep his status hidden from school officials for fear of criminal consequences, which is a barrier to his identification. Exclusionary zoning laws which prevent the siting of youth or family shelters or affordable housing in the community mean more homeless students will have to travel further distances to their school of origin, presenting a barrier to their retention. SEAs and LEAs are under an affirmative obligation to speak to the public and their policymakers about the harms that laws criminalizing homeless children and youth or preventing affordable housing from being developed can present. While SEAs and LEAs cannot change these laws on their own, they must speak out on behalf of the youth they serve in the public conversation as these laws are debated.

A state-by-state summary of laws affecting unaccompanied youth is available at https://www.nlchp.org/Alone_Without_A_Home. A discussion of the criminalization of homelessness, and resources for advocating in the community is available at <https://www.nlchp.org/criminalization>.

76. How can the Runaway and Homeless Youth Act help unaccompanied youth?

A: The Runaway and Homeless Youth Act can help youth in many ways. First, it contains a Basic Center Program that supports emergency shelters for up to 15 days for unaccompanied youth under 18 years old. Second, the law supports Transitional Living Programs, which provide long-term housing for up to

18 months and life skills for young people 16-21 years old. Third, the law contains a Street Outreach Program to provide outreach and services to youth on the streets. Lastly, the law funds the National Runaway Switchboard, trainings for youth workers, and other information and supports. Runaway and Homeless Youth Act programs are required to provide youth with information about the McKinney-Vento Act and to collaborate with their McKinney-Vento liaisons. More information about this program is available at <http://www.acf.hhs.gov/fysb> and <http://www.1800runaway.org/>. 42 U.S.C. §§5701 et seq.; 42 U.S.C. §5712(b)(3); 45 C.F.R. §1351.18(e).