

**Unaccompanied Immigrant Children
Education and Homelessness
Patricia Julianelle, November 2014**

NAEHCY offers this short document to assist our members in providing appropriate educational services to unaccompanied immigrant children¹ who may be arriving in their communities. Please note that this document provides only an over-simplified snapshot of immigration law and policy as it affects unaccompanied immigrant children. It is designed to assist McKinney-Vento and other education staff to provide appropriate services to these children. More detailed information, including an August, 2014 fact sheet from the US Department of Education, is available at the websites listed at the end of the document.

Background

Significant numbers of unaccompanied immigrant children from El Salvador, Guatemala and Honduras have been arriving to the US since at least 2007. However, as gang violence and sexual assaults in those countries have increased, this immigration also has increased, particularly from Honduras. In FY 2009, 3,304 unaccompanied children were apprehended in the US (including 968 from Honduras); by May 31 of FY 2014, the number had risen more than tenfold to 34,611 (including 13,282 from Honduras).

The basic process an unaccompanied immigrant child goes through upon being apprehended is as follows: Initial detention leads to temporary shelter, often on a military base (average length of stay is 35 days), and ultimately a longer-term placement, most often with individuals (87% of children placed with sponsors are placed with individuals, which may include a parent, relative, family friend/acquaintance, or legal guardian). The states receiving the most children placed with sponsors are California, Florida, Maryland, New York, Texas and Virginia.

Education

While children are in detention and temporary shelter, the Department of Health and Human Services (DHHS) has the legal obligation to meet their basic needs, including shelter, food, health care and education. Education services generally are provided on-site, include English language classes and other activities, and may be provided by a non-profit organization, contractor, or in partnership with the local school district.

All children receive a health screening and all needed immunizations. The Centers for Disease Control and Prevention (CDC) believes that the children arriving at U.S. borders pose little risk of spreading infectious diseases to the general public.²

¹ In immigration law, children who arrive on their own from other countries without previous legal immigration status are known as “unaccompanied alien children.” In this document, we refer to them as unaccompanied immigrant children. This term has no relation to the McKinney-Vento Act term “unaccompanied youth” or “unaccompanied homeless youth.”

² More information clarifying the negligible health risk posed by immigrant children is available at www.acf.hhs.gov/unaccompanied-children-frequently-asked-questions.

Once children have been placed in longer-term accommodations, whether in a group home, shelter, foster family or with another individual, their education becomes the responsibility of the local school district. Undocumented students have the same right to public education as U.S. citizens.³ In addition, school districts are required to identify students who need language services and provide programs that meet their linguistic, cultural and academic needs, while not segregating them unnecessarily from English-speaking peers. On May 8, 2014, the Departments of Education and Justice once again issued a Dear Colleague Letter, fact sheet and frequently asked questions document, reminding states and school districts of these rights.⁴

Unaccompanied immigrant children in the community must be provided with educational services as would any other resident of the school district. School districts have been enrolling and serving these children for many years, often using federal Title III funds to assist. However, as more immigrant children arrive in particular school districts, some districts are approaching their State Educational Agencies to seek additional Title III funds. Under federal law, states may set aside as much as 15 percent of their Title III funds for districts to use specifically for providing services to recently-arrived immigrants.

Homelessness

Eligibility for services under the McKinney-Vento Act's Education of Homeless Children and Youth program always requires a case-by-case analysis of a child's actual living situation, to determine whether it meets the Act's definition of "homeless."⁵ McKinney-Vento liaisons have the legal responsibility and authority to make that determination.⁶ Some unaccompanied immigrant children will be considered homeless under the McKinney-Vento Act, while others will not.

Case-by-case determinations remain essential in the context of unaccompanied immigrant children. However, unaccompanied immigrant children also exist in a complex legal limbo that affects their housing status. From their initial apprehension to their transfer to temporary DHHS custody awaiting longer-term placement, they are essentially in federal custody. Generally, children in this status are not eligible for McKinney-Vento services, because they would not be considered "homeless." They may be incarcerated or in a short-term placement under DHHS care, such as on a military base. During this time, DHHS has the legal responsibility to provide for their education.

According to DHHS, children's average stay in temporary placement is 35 days, until they are moved to a longer-term placement in the community. Once children are placed in the community, they are more likely to be eligible for McKinney-Vento services. Again, case-by-case determinations are essential, guided by the following principles:

- Eligibility hinges upon the child's living situation: Is the living situation fixed, regular, and adequate for the child? The sponsor's housing status is not relevant, unless the sponsor is homeless (in which case the child living with the sponsor necessarily also would be homeless).

³ Plyler v. Doe, 457 U.S. 202 (1982). This right includes the right to receive appropriate educational services, including, where indicated, special education and related services and gifted and talented services. Immigrant students also have the right to apply for free school meals without providing a social security number.

⁴ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

⁵ 42 U.S.C. §11434A.

⁶ 42 U.S.C. §11432(g)(1)(J)(ii).

- The brief “Determining Eligibility for Rights and Services Under the McKinney-Vento Act” provides tools and guidance for evaluating each child’s living situation.⁷
- It is a good practice to provide McKinney-Vento Act information in Spanish⁸ to unaccompanied immigrant children enrolling in the district. This information will help them identify themselves to the liaison if they are homeless or become homeless later.

The companion “Unaccompanied Immigrant Children and the McKinney-Vento Act” flowchart provides general information that may assist liaisons in their analysis.

It is important to note that unaccompanied immigrant children’s living situations tend to be extremely unstable. A child who may not be McKinney-Vento eligible upon arrival in the school district very well may become homeless shortly thereafter. This is particularly true if the child is placed with an adult other than a parent. Consider:

- Immigrant children placed with family members often have never met, or cannot remember, the adults with whom they are placed. Essentially, the adults are foster parents, but without financial or service coordination support and with the added challenges of managing the children’s legal proceedings, English language limitations, and the extent of integration.
- Children placed with family friends or acquaintances (27% of unaccompanied immigrant children) commonly have no relationship whatsoever with that adult and are at a particularly high risk of labor and sex trafficking. There have been multiple reports of children placed with supposed acquaintances only to be sold to sex or labor traffickers within days of placement. The children are afraid to inform authorities that they do not know these supposed acquaintances.
- According to children’s advocates and McKinney-Vento liaisons, many unaccompanied immigrant children are forced out of their sponsor’s home or leave after experiencing abuse or exploitation.
- Sponsors sign an agreement stating they will care for the child placed with them. However, there is little, if any, monitoring of compliance with this agreement.⁹
- Sponsor agreements do not grant any kind of legal guardianship, leaving the children with no one legally empowered to get them medical care, enroll them in school, or take other actions on their behalf that would require legal guardianship.

The result of these factors is a high rate of homelessness among unaccompanied immigrant children over time. For example, the liaison for Fairfax County Public Schools, Virginia reported that in the 2013-2014 school year, 131 unaccompanied immigrant children qualified as McKinney-Vento unaccompanied homeless youth.

⁷ http://center.serve.org/NCHE/downloads/briefs/det_elig.pdf

⁸ Spanish posters and brochures are available at no cost from the National Center for Homeless Education: http://center.serve.org/nche/downloads/parentbrochure_sp.pdf; http://center.serve.org/nche/downloads/youthposter_sp_color.pdf.

⁹ DHHS maintains that once a child is released from the agency’s care, its statutory mandate to the child ends. It is not clear which government agency is responsible for ensuring the safety of children once they are released to sponsors or for ensuring their compliance with the signed ORR agreement.

Websites for more information

- Catholic Legal Immigration Network, Inc.
<https://cliniclegal.org/>
- Kids in Need of Defense
<http://www.supportkind.org>
- National Association for the Education of Homeless Children and Youth, “Immigration and Schools: Supporting Success for Undocumented and Unaccompanied Homeless Youth.”
<http://www.naehcy.org/sites/default/files/images/dl/immig.pdf>
- National Center for Homeless Education, Immigrant and Refugee Resources.
http://center.serve.org/nche/ibt/sc_imm.php
- Office of Refugee Resettlement
<http://www.acf.hhs.gov/programs/orr/programs/ucs/about>
- US Conference of Catholic Bishops (USCCB), “The Changing Face of the Unaccompanied Alien Child: A Portrait of Foreign-Born Children in Federal Foster Care and How to Best Meet Their Needs.”
http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf
- USCCB and Lutheran Immigration and Refugee Service, “Post-Release Services: Family Preservation Services for Immigrant Children Released from Federal Custody.”
<http://www.rcusa.org/uploads/pdfs/LIRS-and-USCCB-Post-Release-Services-FAQs-Final.pdf>
- US Department of Education, “Educational Services for Immigrant Children and Those Recently Arrived to the United States.”
<http://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>
- Vera Institute of Justice, “The Flow of Unaccompanied Children Through the Immigration System.”
<http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>
- Education Week articles
<http://www.edweek.org/ew/articles/2014/06/27/36unaccompanied.h33.html>
http://blogs.edweek.org/edweek/learning-the-language/2014/06/surge_of_unaccompanied_minors_.html
http://blogs.edweek.org/edweek/learning-the-language/2014/07/for_districts_bracing_for_infl.html