

## Chapter Eight: Dispute Resolution



### 8.1 Purpose of Dispute Resolution Policy

Parents, guardians, or unaccompanied youths experiencing homelessness may disagree with schools or school districts on issues related to eligibility for McKinney-Vento services, school 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 the intervention of an objective third party 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 few people enjoy conflict, a dispute resolution process is an important tool to protect the rights and best interests of homeless children and youths, 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 the prompt resolution of disputes in its state plan for homeless education [42 U.S.C. § 11432(g)(1)(C)].

In addition, SEAs are required to have a McKinney-Vento dispute resolution process in place [42 U.S.C. §11432(g)(1)(C)]. While each district is allowed to design its own process as long as basic requirements are included, it is important for LEA dispute policies to align with the state dispute resolution policy. This allows parents, guardians, unaccompanied homeless youth, and district personnel to clearly understand the terms, expectations, and process whether the dispute is settled at the local or state level. Moreover, it is good practice to have a written dispute resolution policy for homeless education at the LEA level that 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 over eligibility, school selection, or enrollment in a school, the law requires the following minimum procedures:

1. The child or youth “shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals” [42 U.S.C. § 11432(g)(3)(E)(i)]. In the case of an unaccompanied youth, the local liaison also must ensure that the youth is immediately enrolled in the school in which the youth seeks enrollment pending the resolution of the dispute [42 U.S.C. § 11432(g)(3)(E)(iv)]. While disputes are pending, students have the right to participate fully in school and receive all services that they would normally receive, as the definition of enrollment includes “attending classes and participating fully in school activities” [42 U.S.C. § 11434a(1)].
2. The parent, guardian, or unaccompanied youth must be provided with a written explanation of any decisions related to school selection or enrollment made by the school, the LEA, or the SEA involved, including the rights of the parent, guardian, or unaccompanied youth to appeal such decisions [42 U.S.C. § 11432(g)(3)(E)(ii)]. The LEA must provide a written explanation of the reasons for its determination, in a manner and form understandable to the parent, guardian, or unaccompanied youth, including information regarding the right to appeal [42 U.S.C. § 11432(g)(3)(B)(iii)]. 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)(iv)].
3. The parent, guardian, or unaccompanied youth must be referred to the local liaison, who will carry out the dispute resolution process as expeditiously 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 policy, 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 eligibility, or 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 required health records, lack of a parent or guardian, or other documentation?

#### *School Selection*

Is it in the child’s or youth’s best interest to continue attending the school of origin or to enroll in the local attendance area school? Does the parent’s, guardian’s, or unaccompanied youth’s preference conflict with the school’s or LEA’s determination of best interest?

#### *Enrollment*

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 required 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?

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 unaccompanied youth understand the scope of the McKinney-Vento Act and connect to other

programs and resources that could better address the expressed needs and wishes.

Nevertheless, if the decision is related to eligibility, school selection, or school enrollment, the LEA must provide written notice; allow the parent, guardian, or unaccompanied youth to dispute the decision; and provide immediate enrollment in the school in which enrollment is sought pending the resolution of the dispute. While some disagreements may appear to be outside of the scope of the law and not appropriate for the McKinney-Vento dispute resolution process, additional information may surface during the dispute process that is applicable to the law and could put the LEA in a position of non-compliance had it refused to allow the dispute process to go forward and the parent, guardian, or unaccompanied youth complained to the SEA.

Table 8.1 Common Disagreements is a listing of conflicts that regularly occur and either are 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 resolution, but which are McKinney-Vento compliance issues	<ul style="list-style-type: none"> <li>• School failed to inform of educational rights under McKinney-Vento</li> <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>

Type of Conflict	Examples
	<ul style="list-style-type: none"> <li>• LEA did not provide transportation after determining it was in the student's best interest to attend the school of origin</li> <li>• LEA did not provide transportation that permitted the student to attend classes and participate fully in school activities</li> </ul>
Issues which do not indicate McKinney-Vento compliance, but address services which are allowable or beneficial	<ul style="list-style-type: none"> <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>• Parent disagrees with the services being offered in an Individualized Education Program</li> <li>• Parent wants child to enroll in a school which is neither the school of origin nor the local attendance area school</li> </ul>

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

Attending to details before a dispute occurs, during the dispute process, 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 should 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 unaccompanied 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 dispute decisions,
- how to initiate the dispute,
- how the process will unfold,
- who in the LEA and SEA they can contact with questions, and;
- the timeline for the process.

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

Parents, guardians, and unaccompanied youth should be able to initiate the dispute resolution process directly at the school they choose or at the local liaison's office. 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, and if timelines are short, the families or unaccompanied youth may be unable to initiate the dispute within the required time frame. To eliminate transportation barriers, parents, guardians, and unaccompanied 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 unaccompanied youth accessing the process. The written notice, for example, could include a space where the parent, guardian, or unaccompanied 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**

Written notice protects both students and schools by outlining the specific reasons for the school's decision. It facilitates the dispute resolution by providing the decision maker with documents to guide their determinations. Written notice should be complete, as brief as possible, simply stated, and provided in a language the parent, guardian, or unaccompanied youth can understand.

Specifically, written notices should include 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 parent, guardian, or unaccompanied youth for his or her 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 enrolled in the school in which enrollment is sought, pending resolution of the dispute and all available appeals, 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 (U.S. Department of Education, p. 31-34).

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

### **8.4.2 During the Dispute**

Once a parent, guardian, or unaccompanied youth 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: What is Legal and What is Reasonable

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 in support of 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. They also may violate the Family Educational Rights and Privacy Act (FERPA), humiliate families and youth, and put temporary housing arrangements in jeopardy.

For cautions and good practices in obtaining information on families and youth experiencing homelessness, see Section 8.6 Links to Resources for the NCHE issue brief, *Confirming Eligibility for McKinney-Vento Rights and Services*.

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. See Section 8.6 Links to Resources for sample forms developed for this purpose.

### 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 the child fits the definition of homeless or should attend a certain school, and why the LEA disagrees);
- a timeline of contacts between the school and the parent, guardian, or unaccompanied youth;
- copies of emails between the school or LEA and the parent, guardian, or unaccompanied youth;
- a log of phone contacts and meetings between the school or LEA and the parent, guardian, or unaccompanied 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, Guardians or Unaccompanied Youth with the Dispute Process**

Parents, guardians, and unaccompanied youth 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, guardians, and unaccompanied youth that they can seek the assistance of advocates, attorneys, and other service providers with whom they are working. 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, guardians, and unaccompanied youth 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 arrange to obtain their statement orally. Reaching out to parents, guardians, or unaccompanied youth 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 and develop strategies to implement the outcome, make it as palatable as possible, and to assure him or her that the best interest of the student was 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 Resolution Guide is a worksheet to help you review a dispute 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 effective 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 a disagreement.

Table 8.2 Diffusing Disputes: Issues and Strategies

Issue	Strategies
School or LEA is not compliant with implementing the McKinney-Vento Act.	If a school or the LEA is not implementing the McKinney-Vento Act and is creating barriers to the education of homeless children and youths, 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.

Issue	Strategies
A parent, guardian, or unaccompanied youth desires an action or service that is not covered in the McKinney-Vento Act, such as attending a school other than the school of origin or the school in the local attendance area where they are temporarily staying.	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.
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 what exactly the parent, guardian, or youth wants and see if there are other programs or ways to provide the service or outcome.
Parents, guardians, or unaccompanied youth feel disrespected by the school or LEA and want 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, guardian, or youth 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, guardian, or youth “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) and what extraneous issues will not be addressed (e.g., a principal who treated a child unfairly). While both are serious grievances, the focus of <i>your</i> work is on the issue relevant to the McKinney-Vento Act.

## 8.6 Links to Resources

### **NCHE Issue Brief: Dispute Resolution**

<https://nche.ed.gov/wp-content/uploads/2018/10/resolution.pdf>

### **NCHE Issue Brief: *Confirming Eligibility for McKinney-Vento Services***

<https://nche.ed.gov/wp-content/uploads/2018/10/conf-elig.pdf>

### **NCHE Issue Brief: Determining Eligibility for McKinney-Veto Services**

[https://nche.ed.gov/wp-content/uploads/2018/10/det\\_elig.pdf](https://nche.ed.gov/wp-content/uploads/2018/10/det_elig.pdf)

### **National Center for Homeless Education Enrolling Children and Youth Experiencing Homelessness in School, Sample Forms**

<https://nche.ed.gov/enrolling/>

### **NCHE State Coordinator's Handbook, Appendix G-5, Common Disagreements**

<https://nche.ed.gov/wp-content/uploads/2018/10/app-g5.docx>

### **U.S. Department of Education**

#### ***Education for Homeless Children and Youths Program Non-Regulatory Guidance***

<https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidanceupdated082718.docx>

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## 8.7 Resources and Tools for Chapter Eight

Appendix 8.A Written Notification of Decision

Appendix 8.B Dispute Review Guide