
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

School Enrollment for Unaccompanied Youth¹

Unaccompanied youth are young people “not in the physical custody of a parent or guardian”² and include youth who have run away from home or have been forced to leave their homes. According the National Runaway Switchboard of the U.S. Department of Health and Human Services, one out of every seven children will run away before the age of 18.³ Unaccompanied youth live in a wide variety of situations, including shelters, the streets, abandoned buildings, doubled-up with friends or relatives, cars and campgrounds. 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.⁴ Severe dysfunction in the home is also common. For example, over two-thirds of the youth reported that at least one parent abused drugs or alcohol. Many young people are not welcome in their homes due to their sexual orientation or identity, pregnancy, or other types of family conflict. Tragically, 5,000 unaccompanied youth will die each year from assault, illness or suicide.⁵

Despite their dire circumstances, many unaccompanied youth remain committed to education. School may be the only safe, stable environment in their lives. These young people recognize the importance of an education and earnestly desire to attend and succeed in school. Delays in enrollment will not only negatively impact these young people’s academic achievement, but it may also deter them from remaining in school.

By definition, unaccompanied youth live apart from their parents and legal guardians. Therefore, they may attempt to enroll in school independently, or with the assistance of a friend, relative or mentor. Under the McKinney-Vento Act, the lack of a parent or legal guardian cannot delay the enrollment of an unaccompanied youth. Schools must immediately enroll homeless youth in school, even if they are “unable to produce records normally required for enrollment, such as previous academic records,

¹ NLCHP, 2003. This information is not offered as legal advice and is not intended to be a substitute for seeking professional legal advice. It does not create an attorney-client relationship with the reader.

² 42 U.S.C. §11434A(6) (2002).

³ <http://www.nrscrisisline.org/>

⁴ Robertson, Marjorie and Toro, Paul. “Homeless Youth: Research, Intervention, and Policy.” Fosburg, Linda and Dennis, Deborah (Eds.), Practical Lessons: The 1998 National Symposium on Homelessness Research. Washington DC: U.S. Dept. of Housing and Urban Development (1999) available at <http://aspe.os.dhhs.gov/progsys/homeless/symposium/3-Youth.htm>); 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.

⁵ <http://www.nrscrisisline.org/mediakit.pdf>

medical records, proof of residency, or other documentation.”⁶ States must address enrollment delays caused by guardianship issues.⁷ Therefore, schools cannot delay enrollment for unaccompanied youth, even if they lack proof of guardianship or other documentation.

Although all homeless youth have a right to enroll in and attend public school, school policies that require parent or guardian involvement in enrollment effectively eliminate or stall this right for unaccompanied youth. To eliminate these barriers and ensure immediate access to school for unaccompanied youth, the McKinney-Vento Act requires states and local educational agencies to develop, review and revise policies to remove barriers to the enrollment and retention in school of unaccompanied youth and all homeless children and youth.⁸

To comply with this requirement, states have taken different approaches to remedy the enrollment difficulties faced by unaccompanied youth. This memo outlines some of those approaches. Regardless of their state’s particular approach, every local educational agency (LEA) must have a designated staff person, referred to in the McKinney-Vento Act as a liaison, who must assist unaccompanied youth in placement and enrollment decisions, explain the youth’s right to appeal school decisions, ensure the youth is immediately enrolled in school while appeals are pending, and ensure the youth has access to transportation to school.⁹

Ways to Ensure Immediate Enrollment for Unaccompanied Youth

Explicit Statutory Language

The clearest and strongest way for states to eliminate enrollment delays caused by guardianship issues is to pass a state law specifying that schools must enroll unaccompanied youth in school. Oregon’s statute is one model. The relevant language reads: “A school district shall not exclude from admission a child located in the district

⁶ See 42 U.S.C. §11432(g)(3)(C)(i) (2002) (“The school selected...shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation.”).

⁷ See 42 U.S.C. §11432(g)(1)(H)(iv) (2002) (explaining that each State must submit a plan discussing strategies addressing “problems resulting from enrollment delays that are caused by...guardianship issues...”).

⁸ See 42 U.S.C. §11431(2) (2002) (“In any State that has a compulsory residency requirement as a component of the State’s compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, the State will review and 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) (2002) (State plans must demonstrate “that the State educational agency and local educational agencies in the State have developed, and shall review and revise, policies to remove barriers to the enrollment and retention of homeless children and youths in school in the State.”).

⁹ 42 U.S.C. §§11432(g)(3)(B)(iii), 11432(g)(3)(E)(iv); 11432(g)(6)(A)(vii) (2002).

solely because the child does not have a fixed place of residence or solely because the child is not under the supervision of a parent, guardian or person in a parental relationship.”¹⁰ In practice, this law allows unaccompanied youth to enroll themselves in school.

New York’s Education of Homeless Children statute is even more specific, by defining “designator” (the person who chooses the school district and enrolls the student) as a parent, guardian or “the homeless child, if no parent or person in parental relation is available,” or “the director of a residential program for runaway and homeless youth... in consultation with the homeless child, where such homeless child is living in such program.”¹¹ Missouri law specifically provides that, “in order to register a pupil, the parent or legal guardian of the pupil or the pupil himself or herself shall provide” necessary documentation.¹² These statutes permit youth to accomplish school enrollment independently, without a parent, guardian or other adult.

Board Policy and Agency Supervision

State Board of Education policy can also alleviate problems unaccompanied youths encounter. With proper agency supervision, board policies can be as effective as state laws in ensuring immediate enrollment for young people. The West Virginia Board of Education policy on attendance explains that a student is officially enrolled when a “student appears at school to enroll with or without a parent/guardian; or student and/or parent/guardian appears at school to enroll with or without records.”¹³ Assuming it is fully implemented, this policy eliminates barriers to enrollment for unaccompanied youth.

Caregiver Authorization Forms

Passing state laws, state regulations or state school board policies that allow unaccompanied youth to enroll themselves in school presents the fewest barriers to immediate enrollment for young people. However, some states have adopted a useful alternative, which permits enrollment without a parent or legal guardian, as long as a responsible adult accompanies the youth. For example, California and Virginia use “caregiver” forms to permit non-parent adults to enroll youth in school. California law requires the caregiver to be a California resident at least 18 years of age.¹⁴ This form is helpful and benefits many youth who live with friends or relatives. However, some unaccompanied youth are forced to live on their own and are not able to seek support from a caregiver. The caregiver form continues to exclude these students. A state

¹⁰ OR. REV. STAT. §339.115(7) (1999).

¹¹ N.Y. ED. LAW §3209(1)(b)(2) (McKinney 2001).

¹² MISS. REV. STAT. §167.020(2) (West 2002).

¹³ West Virginia, Legislative Rule, Board of Education, Attendance (4110) §126-81-4.

¹⁴ CAL. FAM. CODE § 6550 (West 1996). The California Department of Education has developed form to implement this statute, which incorrectly states that the caregiver must be a relative. Requiring a caregiver to be a relative would render the process useless to youth who are residing with friends, mentors, or other unrelated individuals.

wishing to create a caregiver procedure should be careful to address this concern and to use plain language and simple procedures to prevent delays in enrollment.¹⁵

Unwritten Policy

The McKinney-Vento Act requires LEA liaisons to work closely with homeless youth to ensure immediate enrollment in school, including while disputes are pending.¹⁶ Liaisons are thereby given the authority, and responsibility, of ensuring that unaccompanied youth are enrolled in school. The majority of states seem to expect liaisons to implement this requirement, without mandating a particular enrollment procedure or providing explicit direction from the state level. While this practice may work in many circumstances, it creates a risk that particular schools or school personnel may not permit unaccompanied youth to enroll in school, either through ignorance of the law or unwillingness to enroll the students.¹⁷ It also fails to give liaisons support for their efforts to ensure youth are enrolled in school and to implement the McKinney-Vento Act in their school districts.

As long as state and local policies do not create an explicit exception to guardianship requirements for unaccompanied youth, young people are at risk of being denied an education. In addition, states and LEAs without such policies have not complied with the McKinney-Vento Act's requirement to revise policies and practices that act as barriers to enrollment of unaccompanied youth and all homeless children and youth.

Conclusion

The states that have enacted state laws or policies to provide for the immediate enrollment of unaccompanied youth are much more likely to eliminate enrollment delays and to be in compliance with the McKinney-Vento Act. States that lack written policies for enrolling unaccompanied youth should enact such policies, through advocacy with the state educational agency, state school board or state legislature. In the short term, states that are awaiting this change should continue educating schools about the McKinney-Vento Act's requirements and the role of the liaison. At the local level, liaisons must ensure unaccompanied youth can enroll in school immediately. Liaisons should craft local policies to ensure enrollment, such as flexible caregiver forms or other procedures.

¹⁵ Caregiver forms, much like appointments of surrogate parents for students with disabilities, do not affect the primary rights or responsibilities of parents toward their children. Parents retain these rights and responsibilities until their children reach the age of majority or a court removes parental rights.

¹⁶ 42 U.S.C. §11432 (g)(3)(E)(iv) (2002).

¹⁷ Email correspondence with state homeless education coordinators about enrollment requirements confirmed that secretaries, principals and superintendents are not always aware of the law. The sheer number of school districts in the United States, combined with school building and district staff turnover, compound this problem.