

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Determining Homelessness by the Definition¹

Experience has shown that, despite its specificity, the McKinney-Vento Act's definition of homelessness leaves us with some gray areas. State Coordinators, liaisons and others need a process to resolve those gray areas. This document suggests some potential elements of such a process.

The McKinney-Vento Act's definition of "homeless children and youths" provides the following general framework: individuals who lack a fixed, regular, and adequate nighttime residence. The law then lists several situations which fit within that framework. This list is not exclusive; rather, it is meant to address some of the more common situations of homelessness. Migrant children who are living in one of the described situations are also considered homeless under the Act.

It cannot be emphasized enough that determining whether a particular child or youth fits the definition of homeless is a case-specific inquiry. General answers based on incomplete information or hypothetical situations will often be legally incorrect.

STEP 1

Is the child or youth covered by subparagraph (B)(i) of the definition?

Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
Living in emergency or transitional shelters;
Abandoned in hospitals; or
Awaiting foster care placement.

If yes, apply the McKinney-Vento Act.

If no, go to Step 2.

If unclear, see if Step 4 can help, and/or seek advice from your attorney, the U.S. Department of Education, your peers, or other appropriate individuals.

To further define "awaiting foster care placement", collaborate with child welfare officials, attorneys and other community members to establish guidelines.

¹ Drafted by the National Law Center on Homelessness & Poverty, March 2003. Address questions/comments to Patricia Julianelle, at julianelle@nlchp.org. This information is not offered as legal advice and should not be used as a substitute for seeking professional legal advice. It does not create an attorney-client relationship with you.

STEP 2

Is the child or youth covered by subparagraph (B)(ii) of the definition?

Has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

If yes, apply the McKinney-Vento Act.

If no, go to Step 3.

If unclear, see if Step 4 can help, and/or seek advice from your attorney, the U.S. Department of Education, your peers, or other appropriate individuals.

STEP 3

Is the child or youth covered by subparagraph (B)(iii) of the definition?

Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting.

If yes, apply the McKinney-Vento Act.

If no, go to Step 4.

If unclear, see if Step 4 can help, and/or seek advice from your attorney, the U.S. Department of Education, your peers, or other appropriate individuals.

To further define “substandard housing”, collaborate with attorneys and other community members to establish guidelines sensitive to community standards and cultural norms.

STEP 4

Does the child or youth lack a fixed, regular, and adequate nighttime residence?

If yes, apply the McKinney-Vento Act.

If no, don't apply the McKinney-Vento Act.

If unclear, see if the definitions below can help, and/or seek advice from your attorney, the U.S. Department of Education, your peers, or other appropriate individuals.

a) FIXED²

*Securely placed or fastened.
Not subject to change or fluctuation.*

(Merriam-Webster's Collegiate Dictionary, Tenth Edition)

A fixed residence is one that is stationary, permanent, and not subject to change.

*(e.g. Arizona, Massachusetts and Michigan McKinney-Vento State Plans,
2002)*

b) REGULAR³

*Normal, standard.
Constituted, conducted, or done in conformity with established or prescribed
usages, rules, or discipline.
Recurring, attending, or functioning at fixed or uniform intervals.*

(Merriam-Webster's Collegiate Dictionary, Tenth Edition)

Consistent.

(Ballentine's Law Dictionary, 3rd Edition)

A regular residence is one which is used on a regular (i.e., nightly) basis.

*(e.g. Arizona, Massachusetts and Michigan McKinney-Vento State Plans,
2002)*

c) ADEQUATE

² Other informative definitions include:

Inhabitant--One, who, although he may not be a citizen, dwells or resides in a place permanently, or has a *fixed* residence therein, as distinguished from an occasional lodger or visitor.

Dwell--To inhabit; to reside; to have a *fixed* place of residence.

Domicil--The place where a person has his true *fixed* permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning, and from which he has no present intention of moving.

Ballentine's Law Dictionary, 3rd Edition (emphases added).

³ Other informative definitions include:

Habitual--By habit; constant; customary, accustomed, usual; common; ordinary; *regular*; familiar.

Ballentine's Law Dictionary, 3rd Edition (emphasis added).

*Sufficient for a specific requirement.
Lawfully and reasonably sufficient.*

(Merriam-Webster's Collegiate Dictionary, Tenth Edition)

Fully sufficient; equal to what is required; lawfully and reasonably sufficient.

(Ballentine's Law Dictionary, 3rd Edition)

An adequate residence is one that is sufficient for meeting both the physical and psychological needs typically met in home environments.

(e.g. Arizona, Massachusetts and Michigan McKinney-Vento State Plans, 2002)

The McKinney-Vento Act
42 U.S.C. §§11431 et seq.

“SEC. 725. DEFINITIONS.

“For purposes of this subtitle:...

“(2) The term ‘homeless children and youths’--

“(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and

“(B) includes--

“(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

“(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));

“(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

“(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).”