

CLIENT NEWS BRIEF

U.S. Department of Education Issues Guidance on Implementing ESSA's New Provisions Regarding Homeless Students

On July 27, 2016, the United States Department of Education (DOE) issued [non-regulatory guidance](#) to the nation's schools addressing changes to the Elementary and Secondary Education Act of 1965 as implemented by the Every Student Succeeds Act of 2015 (ESSA) to the definition of homeless students under the McKinney-Vento Act (42 U.S.C. § 11301 et seq.). The guidance addresses state and local requirements for educating homeless youth, including local educational agencies' (LEAs) obligations to identify and enroll homeless students without stigma or barriers, ensure that preschool-aged homeless children receive supportive services and provide transportation to a student's school of origin until the end of the school year, even if the student later becomes permanently housed.

While the guidance is not legally binding and does not add any new legal requirements for LEAs not already included in ESSA, it constitutes a useful reference for LEAs, particularly for understanding how to provide services to homeless children as part of California's requirement that LEAs develop Local Control and Accountability Plans. In addition to the guidance, the DOE issued a [fact sheet](#) summarizing the guidance and a "[Dear Colleague Letter](#)" outlining the requirement to provide homeless students notice of their rights and protections.

LEAs receiving Title I funds must begin implementing the new ESSA requirements by October 1, 2016. However, children awaiting foster care placement will no longer be included in the definition of "homeless children and youths" and will not be eligible for McKinney-Vento services starting on December 10, 2016. The DOE and U.S. Department of Health and Human Services recently issued guidance on ESSA's changes regarding students in foster care to address this transition ([see 2016 Client News Brief No. 43](#)).

While ESSA leaves development of specific guidelines, policies and procedures to state and local agencies, the guidance does provide some direction. Specifically, it encourages LEAs to review and revise policies and practices that may act as a barrier to the identification, enrollment, attendance or success of homeless youth. This includes the recommendation that schools identify students living in "substandard housing" as homeless, such as if the child's residence lacks water, electricity or heat.

Additionally, LEAs must educate homeless students in a school's regular academic program. Schools must not segregate homeless students by placing them in a separate school, or in a separate program within the same school, based on their homeless status. LEAs shall not, absent emergency circumstances, educate a student at a shelter, even a domestic violence shelter. LEAs should instead coordinate with support service providers to protect the child's identity, provide confidential transportation services and train staff to remain sensitive to the situation. The California Department of Education has [resource tools](#) available for schools to assist homeless students to enroll and participate in school.

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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The guidance also urges collaboration between local liaisons, federally qualified health centers and social services agencies that provide public benefits to identify homeless preschool-aged children. The local liaison should make significant efforts to enroll these children in preschool, even in districts without universal preschool. These efforts include asking preschools to advance homeless children on wait lists and finding preschools that keep spots open specifically for homeless children. Further, LEAs must provide homeless preschoolers transportation to preschool.

The guidance clarifies that all homeless youth must be provided transportation to and from their school of origin – the school they were enrolled in when they became homeless – to maintain educational stability if it has been determined that remaining in their school of origin is in their best interest. If such students no longer live in the area of their school of origin, the LEA where the student now lives and the LEA of origin must agree to share responsibility and costs for transportation. Transportation to and from the school of origin must be provided until the homeless student has found permanent housing. Once the homeless student finds permanent housing, LEAs must still provide this transportation for the remainder of the school year.

Additional ESSA provisions covered in the guidance include requirements for helping homeless students apply for financial aid, transfer credits from their previous school and find housing through U.S. Housing and Urban Development (HUD) homeless assistance programs. LEAs must also alter their dispute resolution policies over eligibility, school selection and enrollment matters, and must allow a homeless student to immediately enroll in their requested school pending any appeal.

If you have any questions about the implementation of ESSA's new provisions relating to homeless youth, the DOE's new guidance or California's requirements for serving homeless youth, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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