

# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

## HOMELESS STUDENTS COUNT: HOW STATES AND SCHOOL DISTRICTS CAN COMPLY WITH THE NEW MCKINNEY-VENTO EDUCATION LAW POST-ESSA<sup>1</sup>



### EXECUTIVE SUMMARY

Too many states were struggling to make schools accessible to students experiencing homelessness, even **before** heightened legal requirements went into effect this fall. This report, based on a national survey of current state laws, flags common areas where states need to take aggressive action to come into full compliance with federal law, including the amendments to the federal McKinney-Vento Homeless Assistance Act that went into effect on October 1, 2016.

The following are **note-worthy trends**:

- With over 1.36 million homeless children and youth attending public schools in the U.S., the number of students identified as homeless has steadily increased over the years and **nearly doubled since 2007**.
- Only a **minority of school districts receive federal funding** through McKinney-Vento subgrants. E.g., only 10.7% of California school districts or local educational agencies (“LEAs”), 14.7% of New York LEAs, and

### ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

*The National Law Center on Homelessness & Poverty (“Law Center”) is the only national organization dedicated solely to using the power of the law to end and prevent homelessness and to enforce the rights of homeless children and youth to educational continuity and stability, through training, policy advocacy, impact litigation, and public education.*

10.4% of Texas LEAs receive funds to provide services to homeless students.

- Under-identification of homeless students continues to be a challenge for many state educational agencies (“SEAs”) and LEAs. Only 17% of surveyed states reported that all of their LEAs identified homeless students. Other states reported that anywhere from one to 418 of their LEAs have **not identified any homeless students**.
- Capacity to fulfill McKinney-Vento obligations remains a challenge. Over 90% of district-level liaisons report that they **work in another official capacity** and 89% say they spend just half of their time or less on their responsibilities as liaisons. At the state level, 58% of state coordinators spend most of their time on the McKinney-Vento program, while 42% of state coordinators spend less than 60 % of their time on being a state coordinator.
- Most states **do not have a formal, comprehensive monitoring** or reporting process for evaluating McKinney-Vento compliance and most reports were not readily available online.
- **School discipline policies and local criminal laws** can be serious barriers that interfere with access to education for homeless children and youth.

<sup>1</sup> The Law Center thanks Michael Santos, Janelle Fernandez, Janet Hostetler, Eric Tars, and Maria Foscarinis for their comments, edits, support, and contributions. The Law Center extends a special thanks to DLA Piper for its pro bono support. The Law Center also acknowledges with gratitude the generous support of the W.K. Kellogg Foundation, Wilson Foundation, and Ogden Foundation.

- Dispute resolution processes often **fail to provide sufficient safeguards** for families.
- Access to **early childhood education** programs remains limited and only 28% of states collect data regarding homeless children’s enrollment in ECE programs.
- Some LEAs, in determining eligibility, are **violating students’ privacy** and further threatening families’ housing stability.

**Recommendations:** This report’s recommendations focus on ensuring that homeless children and youth are identified and can enroll in, attend, and succeed in school, as guaranteed by McKinney-Vento. These recommendations take into account the various educational needs of homeless students and include:

- Adequately funding McKinney-Vento to fully meet federal requirements.
- Ensuring state coordinators and LEA liaisons have sufficient capacity to fulfill their obligations.
- Improving monitoring, oversight, collection of data, and dispute resolution procedures.
- Ensuring homeless children and youth are not disciplined or criminalized because of their housing status.
- Ensuring homeless children and youth who have to change schools receive credit for all of their work and can graduate.
- Increasing access to early childhood education programs.
- Protecting the privacy rights of homeless students.

## INTRODUCTION

The Education for Homeless Children and Youth Program, under Title VII-B of the McKinney-Vento Homeless Assistance Act (“McKinney-Vento”), requires states and school districts to remove barriers to education, ensuring that homeless children and youth are identified and can enroll in, attend, and succeed in school. This federal law requires educational continuity and stability, and ensures that free, appropriate public education is accessible by guaranteeing children and youth who lack a fixed, regular, and adequate night-time residence the right to remain in their school, and to receive free transportation, even if they move.<sup>2</sup>

In December 2015, the Every Student Succeeds Act of 2015 (“ESSA”), amended and reauthorized McKinney-Vento. And on October 1, 2016, changes made by ESSA to McKinney-Vento went into effect. These changes created more legal responsibilities for SEAs and LEAs to strengthen the educational rights of over 1.36 million homeless children and youth, provide them with much needed educational continuity and stability, and minimize the destabilizing effects of homelessness by connecting them to necessary supports and services.<sup>3</sup>

However, even **before** ESSA’s heightened obligations went into effect, many states and school districts struggled with McKinney-Vento compliance. The National Law Center on Homelessness & Poverty recently undertook a national survey to identify challenges around the country.<sup>4</sup> This report highlights the areas of greatest challenge nationally and is intended to help SEAs and LEAs come into full compliance with McKinney-Vento as they adopt changes to their laws, regulations, policies, procedures, and practices in the coming year.<sup>5</sup>

<sup>2</sup> More detailed information about the educational requirements of McKinney-Vento can be found in the National Law Center on Homelessness & Poverty’s resource, *No Barriers: A Legal Advocate’s Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act (2<sup>nd</sup> Ed.)*, (hereinafter “No Barriers”) (2016), available at <https://www.nlchp.org/documents/NoBarriers>, which is being released at the same time as this report.

<sup>3</sup> U.S. Dep’t of Educ., ED Data Express, available at <http://eddataexpress.ed.gov/data-element-explorer.cfm/tab/data/deid/5353/sort/idown/>.

<sup>4</sup> The Law Center, with pro bono assistance from DLA Piper, conducted research on certain key metrics discussed in this report. The data related to each metric was obtained by legal research, general online research and interviews with SEA and LEA administrators responsible for administration of McKinney-Vento in each of the 50 states and the District of Columbia. Data collected for each metric varied for each jurisdiction but includes the funding information for 41 states, credit accrual policies for 42 states and D.C., and interviews about capacity with 26 states. Throughout this report, D.C. is considered a state for the purposes of analyzing the results of our survey and research.

<sup>5</sup> See generally, *No Barriers*.

This report also highlights some of the challenges SEAs and LEAs face in key issue areas such as funding, staffing and capacity, technical assistance and monitoring, criminalization of homeless students, dispute resolution, credit accrual, access to early childhood education, and privacy. The report also provides key recommendations in each of these areas for systemic changes, with the goal of showing what states can do when implementing changes under ESSA in order to fulfill the promise of equal access to free, appropriate public education for all students regardless of their housing status.

## I. FUNDING

**Issue:** Funding is not sufficient to meet the educational needs of homeless children and youth.

The number of students identified as homeless has steadily increased over the years and nearly doubled since 2007.<sup>6</sup> This increasing trend is unlikely to reverse any time soon, both because families continue to face high levels of housing instability, and because LEAs are becoming more adept at identifying homeless students. While McKinney-Vento goes hand-in-hand with other federally funded programs like Title I, it is often the only funding stream solely dedicated to address the multidimensional educational needs of homeless children and youth.<sup>7</sup>

All states receive some federal funding, triggering the requirement that all school districts within each state must comply with the federal law. While ESSA slightly increased authorized funding for McKinney-Vento, most school districts receive no funding to do so.<sup>8</sup> The Law Center's survey found that only a few LEAs actually receive subgrants of federal funds from their SEAs. For example, in 2013-2014 school year, only 10.7% of California LEAs, 14.7% of New York LEAs, and 10.4% of Texas LEAs receive McKinney-Vento subgrants.<sup>9</sup> These three states enroll the highest number of homeless students in the country.<sup>10</sup>



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*Only 10.7% of California LEAs, 14.7% of New York LEAs, and 10.4% of Texas LEAs received federal funding.*

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The increase in the number of identified homeless students has outpaced the moderate increase in funding for many states. ESSA authorizes \$85 million for each of the fiscal years 2017 through 2020, representing a 21% increase over the previously authorized level of \$70 million.<sup>11</sup> Of the states from which funding information was available for the 2012-2013 academic year, 20% decreased funding since 2006, while 80% increased funding, reflecting a reallocation between states as federal funds were the same in 2006 and 2012.<sup>12</sup> Even for those states that increased funding, however, funding was outpaced by growth in need. For example, while states' share of federal funds have increased by 50% at most, many states report 200-300% increase in identified students experiencing homelessness.

**Recommendation:** The federal government needs to adequately fund McKinney-Vento so SEAs and LEAs can effectively address the needs of homeless children and youth. States and localities must, however, provide supplemental funding for programs related to the education of homeless children and youth if federal funds are not sufficient. Funding should be based on the number and needs of identified students.

6 Compare 2013-2014 data to 2007-2008 data at <http://eddataexpress.ed.gov/data-elements.cfm/sqid/220/>.

7 See generally, *No Barriers*.

8 See NCHES State Profiles, [http://nche.ed.gov/states/state\\_resources.php#map](http://nche.ed.gov/states/state_resources.php#map).

9 Profiles are available at: <http://profiles.nche.seiservices.com/StateProfile.aspx?StateID=6> (California); <http://profiles.nche.seiservices.com/StateProfile.aspx?StateID=40> (New York); <http://profiles.nche.seiservices.com/StateProfile.aspx?StateID=51> (Texas).

10 *Id.*

11 Nat'l Ass'n for the Educ. Of Homeless Children & Youth, *Summary of Major Amendments on Homelessness and Foster Care in The Every Student Succeeds Act of 2015* (2016), <http://www.naehcy.org/sites/default/files/dl/legis/NofootnoteSUMMARYJuly16.pdf>.

12 Changes in funding are not adjusted for inflation.



## II. STAFFING AND CAPACITY

**Issue:** States and school districts are unable to fully comply with McKinney-Vento if they lack sufficient staffing or if staff have not been adequately trained.

A recent GAO study found that lack of capacity for the state coordinators and LEA homeless liaisons tasked with implementing McKinney-Vento obligations is a serious challenge and contributes to under-identification of homeless students.<sup>13</sup> The LEA's ability to identify all students experiencing homelessness is vital because the students will not receive appropriate services and resources if they are not identified. Furthermore, many students hesitate to self-identify out of embarrassment, fear of stigma, ignorance of the need to do so, fear of being evicted from a tenuous housing situation, or worry that their family may be broken apart by government intervention.<sup>14</sup> Only 17% of the states that the Law Center surveyed reported that all of their LEAs identified homeless students. 83% of States reported that anywhere from one to 418 of their LEAs identified zero homeless students, signifying a very high probability of under-identification or inaccurate reporting of homeless students in the majority of states.

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*Under-identification: 83% of states reported at least some school districts had identified zero homeless students. One state identified zero homeless students in 61% of its school districts.*

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State coordinators and LEA liaisons almost always have multiple responsibilities that go beyond their McKinney-Vento duties. A recent study revealed that over 90% of liaisons report that they work in another official capacity and 89% say they spend just half of their time or less on their responsibilities as liaisons.<sup>15</sup> The Law Center's survey revealed better results at the state level, with 58% of state coordinators spending most of their time on the McKinney-Vento program, and 42% of state coordinators spending less than 60 percent.<sup>16</sup> The amount of time a

13 U.S. Gov't Accountability Office, *Education of Homeless Students – Improved Program Oversight Needed* (July 2014), available at <http://www.gao.gov/assets/670/665185.pdf>.

14 See e.g., Erin S. Ingram, et al., *Hidden in Plain Sight* (2016), <http://civicenterprises.net/MediaLibrary/Docs/HiddeninPlainSightOfficial.pdf>.

15 *Id.*

16 58% of respondents said they worked at least 75% of their time as a state coordinator. It should be noted that state coordinators

state coordinator spends on the McKinney-Vento program depends on staffing in that state. Additional resources are still needed to ensure state coordinators and LEA liaisons devote adequate time to working on the McKinney-Vento program and identifying homeless students.

ESSA's amendments to McKinney-Vento recognize these challenges and specifically require that appropriate school personnel, including LEA homeless liaisons, receive training and professional development in order to raise awareness of issues and challenges associated with homelessness, to improve their identification of McKinney-Vento children and youth and heighten their awareness of, and capacity to respond to, their specific educational needs.<sup>17</sup> Additionally, changes under ESSA require every SEA to designate a state coordinator who can sufficiently carry out their duties,<sup>18</sup> and each LEA must designate a liaison able to carry out their legal duties.<sup>19</sup> By improving the capacity of both state coordinators and homeless liaisons, states are in a better position to collect better data and accurately determine the unmet needs of homeless children and youth.

**Recommendation:** SEAs and LEAs must hire sufficient numbers of state coordinators and liaisons, and these staff must have sufficient capacity and training to fulfill all obligations.<sup>20</sup> As is the case with funding, fulfilling this requirement is likely to lead to higher levels of compliance across the board.

## III. TECHNICAL ASSISTANCE AND MONITORING

**Issue:** States and school districts need more technical assistance and training and they need effective monitoring to ensure accountability. Data collection varies but is generally insufficient in quantity and quality to allow for meaningful monitoring.

Generally, federal law does not specify the particular method or frequency with which States must monitor their LEAs. Whatever process is used, however, States are expected to have mechanisms in place sufficient to ensure that they are able to collect and review critical implementation data with the frequency and intensity required to ensure effective and fully compliant McKinney-

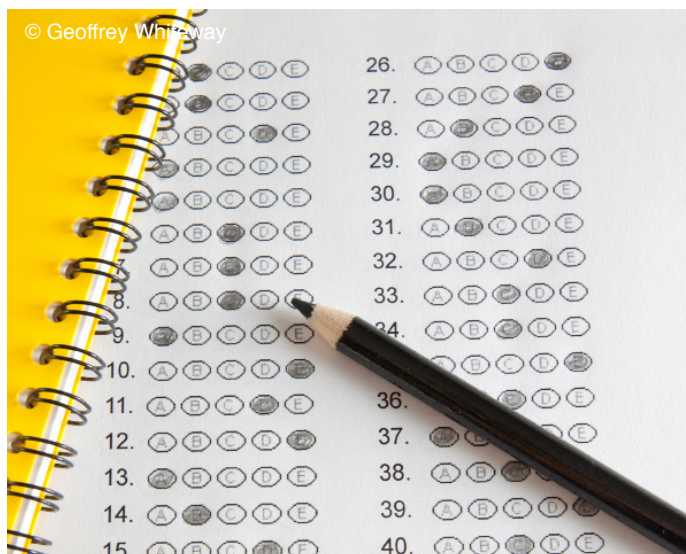
with more capacity may have been more willing to participate in the follow-up interviews.

17 42 U.S.C. § 11432(d)(5).

18 42 U.S.C. § 11432(d)(3).

19 42 U.S.C. § 11432(g)(6).

20 See also 42 U.S.C. § 11432(d)(3); 42 U.S.C. § 11432(g)(6).



Vento programs. On the federal level, the U.S. Department of Education is authorized to provide federal grants to states to “administer and oversee activities” under the Education for Homeless Children and Youth (EHCY) program.<sup>21</sup> The U.S. Department of Education monitors, *inter alia*, states’ monitoring and evaluation of all LEAs; implementation procedures to address the identification, enrollment, and retention of homeless students through coordination and collaboration with other agencies; compliance with statutory and regulatory requirements; and prompt resolution of disputes.<sup>22</sup> The Law Center’s review of publicly available monitoring reports reveal that most states do not have a formal, comprehensive monitoring or reporting process for evaluating McKinney-Vento compliance, and most reports were not readily available online.

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ESSA now requires States to conduct monitoring of all LEAs in addition to providing technical assistance. Additionally, states are required to make publicly available

21 *Education of Homeless Students Improved Program Oversight Needed*, United States Government Accountability Office (GAO) Report to Congressional Requestors, at 2, July 2014, available at <http://www.gao.gov/assets/670/665185.pdf>.

22 See generally, U.S. Dep’t of Educ., Office of Elementary and Secondary Education Monitoring Reports, <http://www2.ed.gov/admins/lead/account/monitoring/map/index.html>.

the number of identified homeless children and youth, problems related to accessing school, barriers to their participation and achievement, progress made to address such problems, and success of programs in identifying and allowing them to enroll in, attend, and succeed in school.<sup>23</sup> States are also required to disaggregate achievement and high school graduation data for homeless students.<sup>24</sup>

**Recommendation:** States should develop comprehensive monitoring and reporting plans to ensure adequate oversight of the McKinney-Vento program, standardize a universal data collection and evaluation system for use by school districts to identify and track local activities and services implemented through McKinney-Vento, and establish mandatory reporting requirements and deadlines for reporting on implementation and compliance at least every two years.

#### IV. DISCIPLINE & CRIMINALIZATION OF HOMELESS STUDENTS

**Issue:** Laws or rules that criminalize or punish homelessness can be barriers that prevent students’ equal access to schooling.

School policies and criminal laws that result in punishing students because they are homeless can create a detrimental barrier to education in violation of McKinney-Vento. Homeless children and youth should not be punished when they are unable to follow rules or laws **because** of their homelessness. Some laws criminally punish people experiencing homelessness for life-sustaining acts in public spaces (such as prohibitions against sleeping in public spaces or in cars). Status offenses, such as truancy or curfews, punish or criminalize behavior for a minor that would not be otherwise criminal for an adult and, again, may be impossible to avoid for a homeless student. Punitive school discipline and harsh zero-tolerance policies can punish a child for being late despite lack of LEA-provided transportation, or for having a dirty uniform when her family can only afford one uniform. The Law Center is aware of a case where a student, whose family had just been evicted, was expelled after bringing the family’s kitchen utensils – including a knife – to school in his backpack. These policies and practices unnecessarily entangle homeless students with the juvenile and criminal justice systems and further compound the numerous legal barriers they face in meeting basic necessities of life, including their

23 42 U.S.C. § 11432(f)(1).

24 20 U.S.C. § 6311(h)(1)(C)

educational needs.<sup>25</sup>

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*A student, whose family had just been evicted, was expelled after bringing the family's kitchen utensils to school in his backpack.*

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McKinney-Vento has always had an ongoing requirement for SEAs and LEAs to remove barriers to the education of homeless children & youth. New guidance under ESSA affirms these obligations extend into the community and throughout the disciplinary process. Guidance from the U.S. Department of Education tells schools to play a role in ending the criminalization of homeless children and youth; SEAs and LEAs are to coordinate and consult with state and local policymakers to ensure legislation and policies like status offense laws or ordinances that criminalize homelessness do not create barriers for the education of homeless children and youth.<sup>26</sup> The ongoing obligation to review and revise policies should also include a review of school discipline policies that disproportionately impact homeless students, including those who are also children and youth of color; those who identify as lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ); English learners; and students with disabilities.<sup>27</sup>

**Recommendation:** SEAs and LEAs need to review and change school discipline policies to ensure that no student is punished because of their housing status. SEAs and LEAs further need to coordinate with policymakers and other state and local stakeholders to ensure that there are no criminal laws that impede access to school for homeless children and youth.

## V. DISPUTE RESOLUTION

**Issue:** Dispute resolution procedures vary across state and school district lines, creating barriers for highly mobile homeless students; these policies lack procedural safeguards to ensure that they are fair, adequate, and reliable.

<sup>25</sup> See generally, Nat'l Law Center on Homelessness & Poverty, *Alone Without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth* (Sept. 2012), <https://www.nlchp.org/Alone-Without-A-Home>.

<sup>26</sup> U.S. Dep't of Educ., *Education for Homeless Children and Youths Program Non-Regulatory Guidance, Title VII-B of the McKinney-Vento Homeless Assistance Act, as Amended by the Every Student Succeeds Act, Non-Regulatory Guidance* (hereinafter "2016 McKinney-Vento Guidance"), at E-8 (July 27, 2016), available at <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcycguidance072716.pdf>.

<sup>27</sup> 2016 McKinney-Vento Guidance A-4.

SEAs and LEAs are required to have a dispute resolution process in place if a dispute arises over school placement or enrollment. However, parents, guardians, and unaccompanied youth deemed ineligible often find themselves wrongly shut out of the process because the dispute resolution process was opened only to those who (according to the school district) meet the McKinney-Vento homeless definition. The Law Center also found in our state survey that parents, guardians, or unaccompanied youth generally go through the dispute resolution process without legal representation and that procedures vary across district and state lines, creating additional barriers to those who have to cross school districts.

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*Some LEAs and SEAs limit the dispute resolution process to students who (according to the school district) are eligible under McKinney-Vento, leaving no place to resolve disputes over eligibility.*

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ESSA affirmed that procedural safeguards are necessary to address disputes arising over eligibility, school selection, and enrollment. ESSA further strengthened the right of homeless children and youth to educational continuity and stability by clarifying that staying in the school of origin is presumed to be in their best interest; that the best interest determination must consider student-centered factors related to the child's best interest, including factors related to the impact of mobility on achievement, education, health, and safety of the child; and that LEAs must give priority to the request of the parent, guardian, or unaccompanied homeless youth.<sup>28</sup>

**Recommendation:** Dispute resolution procedures required of SEAs and LEAs must be impartial but also accessible to homeless students and their families. States should provide LEAs with a strong local dispute resolution policy for all LEAs to adopt.<sup>29</sup> Such common policies create consistency for highly mobile homeless students who have to cross school district and/or state lines. LEAs should also engage their legal community to develop robust dispute resolution policies and to further assist homeless children, youth, and their families with the proceeding.

<sup>28</sup> 42 U.S.C. § 11432(g)(3)(B) et seq.

<sup>29</sup> See also, 2016 McKinney-Vento Guidance, K-1 at 30.



## VI. CREDIT ACCRUAL

**Issue:** Highly mobile homeless students who are forced to switch schools have trouble obtaining credit for work they have done while attending a previous school, particularly when they moved mid-semester. In many cases, switching schools can set back a homeless student because different schools may have different graduation requirements.

Programs and policies that award partial credit and/or ensure homeless students have a fair chance to graduate high school vary widely across the United States and are inadequate in many places. The Law Center found that only about 20% of states have publicly available policies that award partial credit to homeless students for work completed at another school prior to a mid-semester move. Only 14% of states have publicly available policies that facilitate graduation when a student is forced by homelessness to move to a district with different graduation requirements. Such policies are implemented at the district level, which results not only in access disparities from state-to-state, but also within a state. Only 10% of states had released graduation statistics for homeless students prior to ESSA, and all of those data show that homeless students have lower graduation rates than their permanently housed peers.

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*Only 20% of states have publicly available policies for awarding partial credit when students move mid-semester because of homelessness. 14% of states have publicly available policies to facilitate graduation when a student moves to a new district too late to meet the new graduation requirements.*

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ESSA now requires that if a homeless child or youth needs to change schools, barriers to receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school must be identified and removed.<sup>30</sup>,

**Recommendation:** SEAs and LEAs need credit accrual policies for homeless children and youth who have to change schools and supports and services to ensure that they graduate from high school. States should adopt a statewide model partial credit policy that LEAs can adopt, and should consider granting graduation waivers for students if the graduation standards were lower at a school from which the student transferred and the student relied

<sup>30</sup> 42 U.S.C. § 11432(g)(1)(F)(ii).



on, and met, the standards at the prior school.

## VII. ACCESS TO EARLY CHILDHOOD EDUCATION (ECE)

**Issue:** The high need of children experiencing homelessness to access early childhood education is rarely matched with sufficient services.

States use early childhood education programs to provide children ages five and younger with access to educational resources that are typically provided by private preschool programs. In addition to traditional education benefits, many ECE programs also include health and nutrition programs and engage parents as early as possible in order to foster parent involvement and investment in their child's educational process and progress. ECE policies across the United States can be best described as patchwork. In recent years, there has been a policy push for state and local governments to develop and expand government-sponsored and -funded ECE programs. These "ECE for all" programs aim to provide low- and moderate-income families with access to ECE programs that were typically only available to those who could afford the private preschool tuition. Programs like these can be especially important for families experiencing homelessness, as such programs can provide young children access to a safe and healthy learning environment.

The Law Center surveyed state-by-state efforts regarding ECE programs and access to them, and found that at least 18% of states have an Early Head Start program and 27% of states have an ECE program other than Early Head Start. The survey also showed that states are inconsistent in collecting data regarding homeless children's enrollment in

ECE programs, with only 61% of states with ECE programs doing so. Cross-collaboration among such state and local agencies can help increase the chance that at-risk children and their families receive access to all the services needed to place them on the best path for success.

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*ESSA extends McKinney-Vento protections to Preschool and Pre-K programs.*

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McKinney-Vento extends the right of access to publicly provided schooling to homeless preschool children.<sup>31</sup> For those attending preschool programs, ESSA guarantees school of origin enrollment and transportation rights to homeless preschoolers just as they are guaranteed to other homeless children and youth in K-12 public schools. SEAs and LEAs must recognize the right of young homeless children to continue attending the same LEA- or SEA-administered preschool program despite a residential move that may affect enrollment.<sup>32</sup>

**Recommendation:** States should adopt ECE programs and policies that take into account the needs of homeless children and families and include procedures for coordinating services across governmental agencies such as ECE, nutrition and health, mental health and addiction, housing services and social services.<sup>33</sup>

## VIII. PRIVACY

**Issue:** Some LEAs' policies and practices to verify residency and McKinney-Vento eligibility do not comport with federal law's requirements to protect homeless students' privacy – and in doing so, increase housing instability for families trying to get back on their feet.

Homeless children and youth may have unstable living arrangements, such as couch surfing or living doubled up with multiple family friends or relatives.<sup>34</sup> Those friends or relatives may not necessarily have stable living arrangements themselves. Some hosts of homeless students and their families living doubled-up or couch-

<sup>31</sup> 42 U.S.C. § 1432(g)(1)(F)(i).

<sup>32</sup> 42 U.S.C. § 1432(g)(3)(I); Nat'l Ctr. for Homeless Educ., *Early Care and Education for Young Children Experiencing Homelessness* (2013), available at [https://www.acf.hhs.gov/sites/default/files/ecd/nche\\_early\\_childhood\\_brief\\_november\\_2013.pdf](https://www.acf.hhs.gov/sites/default/files/ecd/nche_early_childhood_brief_november_2013.pdf).

<sup>33</sup> See e.g., U.S. Dep't of Health & Human Servs., Head Start Office, Subchapter B—The Administration for Children and Families, Head Start Program, available at <http://eclkc.ohs.acf.hhs.gov/hslc/standards/hspps/nprm>.

<sup>34</sup> See generally, 42 U.S.C. § 11434a(2)(B).

surfing may be reluctant to provide information to verify residency for fear that they may be in violation of their lease. Use of intrusive tactics to verify residency or to determine eligibility has, at times, put students and their families in danger or created further housing instability for both the family and those attempting to support the family. The Law Center is aware of several such cases. In one case, a school investigated a students' eligibility by following the student home, knocking on neighbors' doors, and calling the landlord of the family temporarily sheltering the student. The landlord threatened the family with eviction and the student was forced to find a new place to live.

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*A school investigated a students' eligibility by following the student home, knocking on neighbors' doors, & calling the landlord of the family temporarily sheltering the student. The landlord threatened the host family with eviction & the student was forced to find a new place to live.*

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In addition to McKinney-Vento's requirement for SEAs and LEAs to assure homeless children and youth are not stigmatized, ESSA clarifies that a homeless student's living situation is part of the student's education record and is protected by federal privacy laws.<sup>35</sup> SEAs and LEAs must use due care to ensure that residency verification policies, McKinney-Vento eligibility determinations, and other procedures designed to prevent fraud accommodate the unique needs of homeless students and/or their families, and do not erect barriers to their identification or immediate enrollment.<sup>36</sup> SEAs and LEAs must not share a student's living situation with third parties without the parent's, guardian's, or unaccompanied youth's written consent.

**Recommendation:** Residency verification policies and other related procedures must be reviewed and revised to ensure they accommodate the unique needs of homeless students and/or their families, to ensure they do not erect barriers to identification or immediate enrollment of homeless students, and to ensure homeless students are not stigmatized and that their privacy rights are respected.

For more information about ESSA and McKinney-Vento, please consult the Law Center's resource, *No Barriers: A Legal Advocate's Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act (2<sup>nd</sup> Ed.)*.

<sup>35</sup> 42 U.S.C. § 11432(g)(1)(J)(i); 42 U.S.C. § 11432(g)(3)(G).

<sup>36</sup> 42 U.S.C. § 11431(2).