



July 23, 2021

Office for Civil Rights,
U.S. Department of Education
400 Maryland Avenue SW,
Washington, DC 20202-1100.

Submitted via online portal: <https://www.regulations.gov/document/ED-2021-OCR-0068-0001>

Re: FR 2021-11990, Non-Discriminatory Administration of School Discipline

To Whom It May Concern:

SchoolHouse Connection (SHC) is a national nonprofit organization working to overcome homelessness through education. Our national network is composed of school district and charter school homeless education liaisons designated under the education subtitle of the McKinney-Vento Act, as well as early childhood programs, institutions of higher education, and local homeless service providers.

Homelessness and School Discipline

Homelessness is often overlooked in school discipline research, policy, and practice, despite the disproportionate impact of school discipline on students experiencing homelessness, and despite the disproportionate impact of homelessness on students of color, students with disabilities, LGBTQ students, teen parents, and English learners. Therefore, efforts to ensure an equitable, inclusive, and safe school climate must focus intentionally and specifically on homelessness, and on upholding federal protections for students who experience it.

Prior to the pandemic, public schools identified an estimated 1.4 million children and youth experiencing homelessness -- a number that is likely to grow in the wake of the economic crisis, the conclusion of eviction moratoria, and the limited and slow distribution of rent relief.¹

Multiple studies have found that students experiencing homelessness are subjected to punitive discipline measures much more often than their housed peers.

¹ National Center for Homeless Education. (2021). Federal Data Summary: School Years 2016-17 through 2018-2019. Retrieved from <https://nche.ed.gov/wp-content/uploads/2021/04/Federal-Data-Summary-SY-16.17-to-18.19-Final.pdf>

- Students experiencing homelessness in Texas were twice as likely to be referred to in-school suspension, 2.5 times more likely to be suspended from school, and five times more likely to be referred to a Disciplinary Alternative Education Program.²
- In Indiana, students experiencing homelessness receive both in-school and out-of-school suspensions at twice the rate of housed students.³

These disproportionalities are worse for students experiencing homelessness than for other low-income students, demonstrating the impact of homelessness over and above poverty.

- In Florida, 16% of students experiencing homelessness were suspended at least once in the 2015-16 school year, compared to 11% of housed students receiving free or reduced lunch, and 6% of housed students not receiving free or reduced lunch.⁴
- In Washington state, students experiencing homelessness were suspended at twice the rate of housed students, and at higher rates than housed, low-income students. This disproportionality held true for students in all homeless living situations, including those in shelters, those in motels, those sharing the housing of others due to loss of housing, economic hardship, or a similar reason, and those who were unsheltered.⁵
- In Michigan, 16% of students experiencing homelessness were disciplined, compared to 11% of their economically disadvantaged peers who had never experienced homelessness.⁶ The association between homelessness and higher rates of disciplinary action persisted even after stable housing was found: Michigan students who were currently housed, but had experienced homelessness at any point in the last eight years, were disciplined at rates even higher than their currently homeless peers (18% vs. 16%, respectively), which raises concerns of the long-lasting traumatic impacts of the experience of homelessness on children and youth. The disproportionality in discipline also impacted young children experiencing homelessness, with 9% of children in the second grade and below being suspended or expelled from school, a number similar to the 8% of high

² Texas Appleseed and Texas Network of Youth Services (2017). *Young, Alone and Homeless in the Lone Star State*. Retrieved November 3, 2018 from <https://www.texasappleseed.org/homeless-youth>

³ Coalition for Homelessness Intervention & Prevention (2018). *Home: Indianapolis Coordinated Community Plan to Solve Homelessness for Youth & Young Adults*.

⁴ Shinberg Center for Housing Studies, University of Florida, & Miami Homes for All. (2017). *Homelessness and Education in Florida: Impacts on Children and Youth*. Retrieved from http://www.shimberg.ufl.edu/publications/homeless_education_fla171205RGB.pdf

⁵ Schoolhouse Washington (2018). *Students Experiencing Homelessness in Washington's K-12 Public Schools: Trends, Characteristics and Academic Outcomes 2016-17*. Retrieved from https://buildingchanges.org/wp-content/uploads/2021/04/SchoolhouseWA_OutcomesReport_2018.pdf

⁶ Erb-Downward, Jennifer, & Blakeslee, Michelle. (2021) *Recognizing trauma: Why school discipline reform needs to consider student homelessness*. University of Michigan's Poverty Solutions. Retrieved from https://poverty.umich.edu/files/2021/05/Poverty-Solutions_Recognizing-Trauma_School-Discipline-Reform_May2021-1.pdf

school students who have never experienced homelessness that were also at some point subjected to disciplinary action.

Finally, there are significant racial disparities among students experiencing homelessness, including higher rates of disciplinary action. Data gathered from the Center for Disease Control's Youth Risk Behavior Survey (YRBS), highlights the disproportionate likelihood of Black, Hispanic, American Indian/Alaska Native and LGBT students to experience homelessness.⁷ An analysis of Michigan student data from Poverty Solutions at the University of Michigan further reveals that Black students who are formerly homeless and currently homeless are disciplined at 27% and 24%, respectively, in contrast to their White peers who are formerly and currently homeless, disciplined at 14% and 13%, respectively. A disparity also exists for Hispanic students who are formerly and currently homeless, who are disciplined at 15% and 12% respectively.

Current and Previous Guidance on School Discipline

With the two exceptions described below, ED's previous guidance documents on school discipline do not contain specific information on homelessness.

1. In the Office of Civil Rights' (OCR) 2014 Resource Guide for Improving School Climate, the third guiding principle of equity and continuous improvement addresses schools understanding their legal obligations under federal civil rights laws and professional development training for educators, training them to apply an "equitable and fair response without regard to a student's personal characteristics," including a student's status as a homeless student, in response to student misconduct.

While in general, disregarding a student's personal characteristics when responding to student conduct advances the cause of equity, in the case of homelessness, it may promote inequities. Students experiencing homelessness experience a wide range of impediments to satisfying some of the standards typically expected of students. For example, they commonly experience trauma, violence, instability, hunger, and bullying, all of which can create physical and emotional strains on self-regulation. They also may be tardy due to problems with transportation and constant mobility and may not be able to complete homework assignments due to lack of conducive environments. To ensure equity, it is imperative that homelessness, and the myriad of practical challenges it causes, are considered when responding to student conduct.

The 2014 guidance did not include mention of the McKinney-Vento Act. Yet in addition to civil rights laws that prevent against discrimination on the basis of a student's race, sex, gender, and disability, educators must also be provided training on the

⁷SchoolHouse Connection. (2021). *Student Homelessness: Lessons from the Youth Risk Behavior Survey*. SchoolHouse Connection. Retrieved from <https://www.schoolhouseconnection.org/student-homelessness-lessons-from-the-youth-risk-behavior-survey-yrb>

McKinney-Vento Homeless Assistance Act, a civil rights law aimed at removing barriers to education for students experiencing homelessness. Under the McKinney-Vento Act, state educational agencies (SEAs) and local educational agencies (LEAs) are required to revise and review policies that may act as barriers to the retention of students experiencing homelessness. LEAs must participate in professional development offered by the state, and ensure that school personnel providing McKinney-Vento services receive professional development and other support. Increased awareness of the challenges which arise for students as a result of their homelessness are necessary to combat the disproportionate rate at which students experiencing homelessness are disciplined in schools.

2. In its [Education in a Pandemic: the Disproportionate Impacts of COVID-19 on America's Students](#) resource, OCR made critical mention of the right of students experiencing homelessness to be immediately enrolled in school. Due to the high mobility of children, youth, and families, and the difficulties unaccompanied youth may face in obtaining vital documents and/or parental signatures, children and youth experiencing homelessness may face significant barriers to enrolling in school and being able to access school-offered services. The McKinney-Vento Act ensures that these students do retain access to school, despite their homelessness, by requiring immediate enrollment of these students, and removing enrollment barriers.

“Education in a Pandemic” provides additional critical information as it relates to youth experiencing homelessness, including the acknowledgement of the disproportionate risk that LGBTQ youth face in experiencing homelessness, physical, and emotional abuse, as well as the prevalence of chronic disease and higher levels of stress within this population. The resource also provided data from a survey of higher education students carried out by the Hope Center, which revealed that more than half of the 30,000 respondents were experiencing food insecurity, housing insecurity, or homelessness. The inclusion of these troubling data brings attention to the needs of youth who are often overlooked and forgotten, and who have been disproportionately impacted by the COVID-19 pandemic. It also serves to highlight the importance of targeted efforts from the Department of Education and schools to locate these students and provide them with much needed support and assistance.

School Discipline and School Climate Policies of Particular Concern to Students Experiencing Homelessness

Educators may unknowingly discipline children and youth for behaviors that are directly related to their homelessness. The policies and practices listed below are of particular concern.

Attendance Policies. Disciplinary actions related to punctuality and attendance disproportionately impact students experiencing homelessness, who often face tremendous barriers getting to school regularly and on time: they are often highly mobile, may lack transportation, or have other responsibilities which prevent them from arriving at school on

time, such as caring for younger siblings. In addition, an analysis of the Centers for Disease Control's Youth Risk Behavior Survey (YRBS), found that students experiencing homelessness are 3.35 times more likely to miss school due to feeling unsafe.⁸ Dress codes and grooming policies also have several implications for students experiencing homelessness, who simply lack the resources to purchase school uniforms/clothes for school, and may not have access to a shower, or other hygiene supplies and sanitary products. In addition, there also are major racial, ethnic, and cultural concerns as it relates to grooming, which may disproportionately impact students of color and LGBTQ students, and particularly transgender students, who are also experiencing homelessness.

Suspensions and Expulsions. Punitive discipline practices such as suspensions and expulsions that remove students from opportunities to learn are associated with increased negative outcomes, including lower academic performance, disengagement from school, increased risk of dropping out of school, and an increased likelihood of that student's entanglement with the juvenile justice system.⁹ Students experiencing homelessness are already 87% more likely to drop out of school in comparison to their housed peers, which puts them at further risk of experiencing homelessness later in life.¹⁰¹¹ Contact with the juvenile justice system can also create additional barriers to success and stability, and is often traumatic for these students. Consequences for problematic behaviors should support the well-being of the student and the school community. Best practices incorporate aspects of restorative justice, where homeless students are given opportunities to reintegrate into their communities rather than being removed from them following disciplinary infractions.

In addition to these long-term outcomes, suspension and expulsion policies may create immediate safety concerns for students experiencing homelessness. When suspended from school, students experiencing homelessness may have no safe or stable place to be, or may lack transportation to a safe place. The suspension of essential LEA-provided transportation services as a form of punishment not only adds to safety concerns by removing the only reliable and accessible form of transportation, and is also a direct violation of McKinney-Vento rights. Without transportation, or a safe place to be during the day, these students are even more at risk of predation and harm. Research has shown rates of human trafficking among

⁸SchoolHouse Connection. (2019). *Student Homelessness: Lessons from the Youth Risk Behavior Survey*. SchoolHouse Connection. Retrieved from <https://www.schoolhouseconnection.org/student-homelessness-lessons-from-the-youth-risk-behavior-survey-yrb>

⁹ Smith, M.L. (2015). *A Generation at Risk: The Ties Between Zero Tolerance Policies and the School-to-Prison Pipeline*. McNair Scholars Research Journal. Retrieved from <https://commons.emich.edu/mcnair/vol8/iss1/10/>

¹⁰ America's Promise Alliance. (2016). *Hidden in Plain Sight: Homeless Students in America's Public Schools*. Retrieved from <https://www.americaspromise.org/report/hidden-plain-sight>

¹¹ Voices of Youth Count, & Chapin Hall at the University of Chicago. (2017). *Missed Opportunities: Youth Homelessness in America*. Retrieved from <https://voicesofyouthcount.org/brief/national-estimates-of-youth-homelessness/>

youth and young adults experiencing homelessness ranging from 19% to 40%.¹² In-school suspensions may act as an appropriate last resort intervention in certain instances; however, out-of-school suspensions, suspension of required services, and expulsions should be avoided wherever possible. [Texas](#) and [Nevada](#) legislatures have both implemented laws which take these harms into account, and are aimed at reducing the suspension and expulsion rates for students experiencing homelessness.

Bullying. In some cases, schools may also take disciplinary action for activities that take place off-campus, such as cyber-bullying, in addition to disciplining students who are victims of harassment for misconduct that arises as a result of such harassment. YRBS data show that high school students experiencing homelessness are 2.59 times more likely to be bullied- both on school property and electronically- when compared to their housed peers.¹³ When disaggregated further by race, Hispanic/Latino students experiencing homelessness were 2.5 times more likely to have been bullied at school than Black or African American homeless students, and were approximately 2 times more likely to have been bullied electronically than white homeless students and homeless students of all other races. In this same analysis, Black or African American students experiencing homelessness were also found to be 2 times more likely to attempt suicide within a 12 month period in comparison to their White and Hispanic/Latino peers who were also experiencing homelessness. LGBTQ students also face high likelihood of bullying on school property. In this same analysis, Black or African American students experiencing homelessness were also found to be 2 times more likely to attempt suicide within a 12 month period in comparison to their White and Hispanic/Latino peers who were also experiencing homelessness.

These worrisome statistics show that students experiencing homelessness are very vulnerable to bullying and harassment. Students who are bullied are more likely to experience depression and anxiety, and also see a decrease in academic performance and increased risk of missing, skipping, or dropping out of school. Rather than enacting strict punitive countermeasures, schools should instead make efforts to adopt strong anti-bullying policies and offer support and behavioral intervention to students who are victims of bullying, and may be suffering from its negative impacts.

Virtual Learning. Disciplinary actions related to virtual learning also have severe negative impact on students experiencing homelessness, who may face tremendous barriers to consistently accessing online learning. In a report prepared by SchoolHouse Connection and Poverty Solutions at the University of Michigan, 64% of McKinney-Vento liaisons surveyed

¹² National Network for Youth. (2018). *Responding to Youth Homelessness: A Key Strategy for Preventing Human Trafficking*. Retrieved from https://nn4youth.org/wp-content/uploads/White-Paper_2018_Preventing-Human-Trafficking.pdf

¹³ SchoolHouse Connection. (2019). *Student Homelessness: Lessons from the Youth Risk Behavior Survey*. SchoolHouse Connection. Retrieved from <https://www.schoolhouseconnection.org/student-homelessness-lessons-from-the-youth-risk-behavior-survey-yrb>

indicated internet connectivity as a significantly unmet need in their communities.¹⁴ Also uncovered in this report was the severe disconnection of students experiencing homelessness from school, with an estimated 420,000 fewer students being identified and enrolled in school for the 2020-2021 school year, which translates to a 28% decrease. This decrease in enrollment can be attributed to a number of reasons, including lack of access to virtual learning environments and increased mobility/instability amidst the COVID-19 pandemic. These revelations call for a massive effort towards the reengagement of students experiencing homelessness and intentional outreach, rather than excessive punitive measures.

“During the beginning of the outbreak, I had to undergo ACL surgery which had put me in a sort of foggy mental state, due to the medicine that I was receiving for my recovery. Due to this, I was unable to complete most assignments by myself and I was also counted absent for my meetings because I was either asleep or just out of it. The majority of my teachers did not try to work anything out with me, and they just kinda wrote me off as a student that wasn’t willing to show up and work. However, I was willing to do all this, but I couldn’t be the best version of myself because I was on medicine that doctors had ordered me to take on a daily basis.”

-Eric P., SchoolHouse Connection Young Leader

Promising LEA Practices on School Discipline, School Climate, and Homelessness

In light of the numerous negative consequences of school discipline policies on students experiencing homelessness, we recommend the following practices for state and local educational agencies:

- Consult McKinney-Vento liaisons or school counselors on the discipline of students experiencing homelessness.
- Add a child’s experience of homelessness as a factor to be considered prior to the removal of any student from school.
- Incorporate training on school discipline, trauma, and homelessness into the credentialing process for homeless liaisons and continuing education credentials for school administrators, teachers, and other school personnel.
- Work with guidance counselors, liaisons, and mental health professionals to avoid criminalizing trauma responses.
- Expand programs and funding that increase mindfulness and mental health supports and infrastructure in schools, and ensure adequate outreach to students who are experiencing or have experienced homelessness, so that they have access to and can fully participate in these programs.
- Raise awareness in schools of protections and supports available to students experiencing homelessness through the McKinney-Vento Homeless Assistance Act.

¹⁴ SchoolHouse Connection, & University of Michigan Poverty Solutions. (2020). *Lost in the Masked Shuffle & Virtual Void: Children and Youth Experiencing Homelessness Amidst the Pandemic*. Retrieved from schoolhouseconnection.org/lost-in-the-masked-shuffle-and-virtual-void/

In addition, the practice of operating from a trauma-informed perspective is a critical component in fostering and maintaining a positive school climate. In order for this approach to be implemented equitably, the trauma resulting from a child or youth’s experience of homelessness must also be addressed.

Given the traumatic nature of experiencing homelessness, addressing the socio-emotional needs of these students is a necessary component of creating a positive school environment. Externalizing behaviors, such as fighting, swearing, and status offenses, e.g., use of drugs and alcohol, running away, etc., are often related to trauma. Maladaptive behaviors should be addressed in a way that supports the physical and emotional well-being of the child rather than exacerbating the harmful effects of these. Social-emotional learning supports trauma-informed practice by teaching healthy relationship-building skills, helping children understand their emotions, and manage any strong emotions they may experience as a result of trauma in a safe and healthy way.¹⁵ Research has also shown a positive correlation between social-emotional learning improvements and academic and behavioral outcomes.¹⁶

“For students experiencing homelessness, schools are a rare point of access for needs beyond education. The COVID-19 pandemic has demonstrated the potential for educational and community institutions to provide centralized access to food, internet, physical and mental health support, transportation, social support, and much more for vulnerable students and families. The needs of students and families experiencing homelessness can vary greatly depending on context, highlighting the importance of flexibility in allowing schools and their homeless liaisons to use funding provided to best meet the needs of the community.”

-Kara F., SchoolHouse Connection Young Leader

Recommended Actions for OCR to Support SEAs and LEAs

Data and experience suggest that school administrators and school personnel are in need of education on the rights of students experiencing homelessness under the McKinney-Vento Homeless Assistance Act, the trauma associated with homelessness, and the intersectionality between homelessness and race/ethnicity, LGBTQ identity, and disability.

To this end, we recommend that OCR:

¹⁵ Ohio Department of Education. (2019). *Trauma-Informed Schools and Social-Emotional Learning*. Retrieved from

<http://education.ohio.gov/getattachment/Topics/Learning-in-Ohio/Social-and-Emotional-Learning/Social-and-Emotional-Learning-Standards/Trauma-Informed-Schools-and-SEL.pdf.aspx?lang=en-US>

¹⁶ Kanopka, Klint, Claro, Susana, Loeb, Susanna, et al. (2020). *What Do Changes in Social-Emotional Learning Tell Us About Changes in Academic and Behavioral Outcomes?* CORE-PACE Research Partnership. Retrieved from <https://files.eric.ed.gov/fulltext/ED609206.pdf>

- Specifically include homelessness and McKinney-Vento rights in all relevant OCR documents and activities, making mention of the unique risks, challenges, and needs of students who experience homelessness.
- Develop and disseminate materials for chief state school officers and LEAs on implementing positive school discipline for students experiencing homelessness. Such materials also should highlight positive state policies, such as SB 354 from the Nevada State Legislature, which limits the suspension or expulsion of students if the behavior at question was determined to be caused by their homelessness, in a process involving the McKinney-Vento liaison. The legislation also requires discipline conferences to consider the impact of homelessness on the student, and include interventions to mitigate the impact, and ensures that unaccompanied homeless youth are not punished for the actions of their parents.

Recommendations for Professional Development Practices

It is important that all school staff, including administrators, teachers, school bus drivers, and administrative staff, receive training on homelessness (including the definition of homelessness); the rights and responsibilities under the McKinney Vento Act; the disproportionate impact of school discipline policies on students experiencing homelessness; the intersection of homelessness and race, ethnicity, sexual identity/orientation, and disability; and strategies for creating positive school climates for students experiencing homelessness.

Actions to address school discipline and homelessness should be part of ED's overall effort to ensure compliance with and implementation of the McKinney-Vento Act, as well as the specific protections for students experiencing homelessness under IDEA, and the appropriate reservation and use of Title I Part A funds for students experiencing homelessness.

Recommendations for Data Collections and Analysis

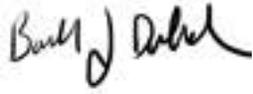
Additional measures that OCR can implement and promote to improve school discipline practices include disaggregating OCR data by homelessness status, making these data publicly available, and creating action plans to address any observed disproportionalities. We also recommend the cross-tabulation of data gathered by the OCR on school discipline with data on homeless students, which can be retrieved from the National Center for Homeless Education, making these data publicly available, and include this data in materials disseminated by ED.

In Conclusion

Homelessness is a devastating experience that affects all areas of a child's life. The long-term impact of disproportionate, unjustly administered school discipline that does not consider the effects of homelessness can impede student success, contributing to homelessness later in life. The administration of stringent punitive measures also comes with the risk of further compounding trauma for already vulnerable children and youth. For these reasons and the others described in our comments, we urge OCR to be keen in its attention to the particular challenges faced by students experiencing homelessness

Thank you very much for considering these comments. Should you have any questions, please do not hesitate to contact me at barbara@schoolhouseconnection.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara Duffield". The signature is written in a cursive style with a large, stylized initial 'B'.

Barbara Duffield
Executive Director