NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

Students living in transitional housing programs are considered homeless under Subtitle VII-B of the McKinney-Vento Act.

Thank you for contacting me regarding whether students living in transitional housing programs are considered homeless under Subtitle VII-B of the McKinney-Vento Act. As I explain below, students living in transitional housing are considered homeless under Subtitle VII-B.

As you know, the reauthorization of Subtitle VII-B of the McKinney-Vento Act defines the term "homeless children and youths." 42 U.S.C. §11435(2); No Child Left Behind Act, Title X, Part C, §1032, §725(2). First, the definition incorporates the more general McKinney-Vento Act definition of homeless people as "individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1))…"[1] Subtitle VII-B then goes on to elaborate upon the basic definition of homeless by specifically including children and youth living in transitional shelters. 42 U.S.C. §11435(2)(B)(i); No Child Left Behind Act, Title X, Part C, §1032, §725(2)(B)(i).

Subtitle VII-B does not clarify the differences, if any, between transitional housing programs, transitional living programs, and transitional shelters. For the question at hand, the important point is that Subtitle VII-B uses *all three terms* to describe states of homelessness. First, the definitions specifically include transitional shelters as homeless situations, as explained above. Second, State Coordinators for the Education of Homeless Children and Youths, who are required to implement the Act in the state, are directed to do the following:

> [I]n order to improve the provision of comprehensive education and related services to homeless children and youths and their families, coordinate and collaborate with… providers of services to homeless and runaway children and youths and homeless families (including… *transitional housing facilities*, …*and transitional living programs* for homeless youths)….
> 42 U.S.C. §11432(f)(5)(B); No Child Left Behind Act, Title X, Part C, §1032, §722(f)(5)(B).

[1] Section 103(a)(1), codified at 42 U.S.C. §11302(a)(1), repeats the definition of homeless as lacking a fixed, regular, and adequate nighttime residence. The immediately following section clarifies that people having "a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including… transitional housing for the mentally ill)…" are considered homeless. 42 U.S.C. §11302(a)(2)(A). In this section, the law characterizes transitional housing for the mentally ill as one type of shelter. The law sees no significant difference between "shelter" and "transitional housing."

1411 K Street NW, Suite 1400
Washington, DC 20005
www.nlchp.org
nlchp@nlchp.org
Phone: 202.638.2535
Fax: 202.628.2737

This section indisputably assumes that transitional housing facilities and transitional living programs provide services to homeless children, youths and families. Therefore, the residents of these facilities must be considered homeless under the law.

The United States Department of Education (USDOE) has also blended the terms transitional shelter and transitional housing. In its policy guidance on Subtitle VII-B, USDOE specifically states that "[I]n general, children or youth living in welfare hotels [and] transitional housing shelters… are considered homeless." USDOE, "Preliminary Guidance for the Education for Homeless Children and Youth Program, Title VII, Subtitle B," June 1995, page 21. By incorporating the two terms into one, USDOE demonstrates that it sees no significant difference between transitional shelters and transitional housing. Significantly, this USDOE guidance served as the basis for the definitions in the reauthorized Subtitle VII-B.

It is my understanding that the specific housing program currently at issue is transitional housing funded by the U.S. Department of Housing and Urban Development's Supportive Housing Program. The statute and regulations governing this program make it clear that transitional housing is considered to be a homeless situation. First, the statute defines transitional housing as follows:

> For purposes of this section, the term 'transitional housing' means housing, the purpose of which is to facilitate the movement of homeless individuals and families to permanent housing within 24 months or such longer period as the Secretary determines necessary.
> 42 U.S.C. §11384.

This definition shows that transitional housing is not permanent housing, but rather temporary accommodations for homeless individuals and families, as a step to permanent housing. Residents of transitional housing continue to be considered homeless until they move into permanent housing. The regulations implementing this statute use the same definition of transitional housing as the statute does. The regulations also clarify that the term homeless for this program is defined by McKinney-Vento Act section 103 (the same general definition used by Subtitle VII-B). 24 C.F.R. §583.5

Therefore, transitional housing programs, like transitional living programs and transitional shelters, are homeless situations under the Act. In fact, at least twelve separate federal agencies have endorsed a definition of homeless that includes people living in transitional housing programs.[1]

Of course, the fact that children and youth in transitional housing are considered homeless under the McKinney-Vento Act only means that the law applies to them. How the law

[1] The following 12 federal agencies jointly designed and sponsored a report entitled "Homelessness: Programs and the People They Serve," which explicitly included people living in transitional housing programs as homeless and those who at any point had lived in transitional shelters as formerly homeless: the Departments of Housing and Urban Development, Health and Human Services, Veterans Affairs, Agriculture, Commerce, Education, Energy, Justice, Labor, and Transportation as well as the Social Security Administration and the Federal Emergency Management Agency. Interagency Council on the Homeless, "Homelessness: Programs and the People They Serve," December 1999, page 1.

applies will depend on the particular issue facing the students and the school.[2] As I understand it, the question currently at issue regards the provision of clothing to meet a school dress code. Subtitle VII-B is very clear on this point. The State Plan, which must be implemented by the State Coordinator, must include "strategies to address other problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays that are caused by… uniform or dress code requirements." 42 U.S.C. §11432(g)(1)(H)(v); No Child Left Behind Act, Title X, Part C, §1032, §722(g)(1)(H)(v). Such strategies must also not stigmatize the students. 42 U.S.C. §11432(g)(1)(J)(i); No Child Left Behind Act, Title X, Part C, §1032, §722(g)(1)(J)(i).

In this situation, the only response that would both eliminate enrollment delays and avoid stigmatizing the students would be for the students to be provided with appropriate required clothing at no cost, or at a significantly reduced cost that homeless families and youth can realistically be expected to afford. Many school districts address this issue by establishing partnerships with local businesses or social service agencies that are willing to provide clothing to homeless children and youth at no cost. Simply providing families with a referral without laying the groundwork for such a partnership would not adequately eliminate enrollment delays. It is my understanding that the particular school at issue here already has supplies of appropriate clothing on hand at the school. It would likely be easiest for the school to supply clothing to the homeless students, and possibly develop a supply of "gently used" clothing to help meet future needs.

I hope this information proves helpful. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Patricia F. Julianelle
Staff Attorney

[Excerpted from a letter sent in August, 2002. This information is not offered as legal advice and should not be used as a substitute for seeking professional legal advice.]

[2] For example, if the question here were one of placement in the school of origin, and the provision of transportation to and from the school of origin, the analysis would have to examine whether it would be feasible for a particular student to travel to and from a non-local school on a daily basis for up to 24 months. Depending upon the distance, unless there were compelling social-emotional or educational reasons for the student to remain in the school of origin, the impact of the commute on the student's education may make such an arrangement unfeasible.