

## School Selection for Students in Out-of-Home Care

### Introduction

The **Legal Center for Foster Care and Education** and the **National Center for Homeless Education** present this brief to provide a framework for local homeless education liaisons, educators, child welfare caseworkers, and other child welfare advocates for assessing best interest when selecting a school for students in out-of-home care. While the brief focuses on students "awaiting foster care placement" under the McKinney-Vento Act, it provides information relevant to school selection and school stability for all children and youth in out-of-home care.

Two federal laws give children and youth in out-of-home care certain rights to remain stable in one school despite changes in their living placement: The **McKinney-Vento Homeless Assistance Act** and the **Fostering Connections to Success and Increasing Adoptions Act**.

### Legal Background: The McKinney-Vento Act

The McKinney-Vento Act guarantees eligible children the right to continue attending their school of origin despite changes in their living situation.<sup>1</sup> Children and youth "awaiting foster care placement" are eligible for services under the McKinney-Vento Act. While the McKinney-Vento Act does not define this term further, some states have created policies to provide its districts with more specific guidance on serving this population. Contact your State Coordinator for Homeless Education to see if further state-level policy or guidance can be provided; contact information is available at [http://www.serve.org/nche/states/state\\_resources.php](http://www.serve.org/nche/states/state_resources.php). For the full McKinney-Vento definition of "homeless," see the panel to the right.

<sup>1</sup> McKinney-Vento Homeless Assistance Act, Subtitle VII-B: 42 USC 11432(g)(3) (A)-(B).



#### Who is homeless?

#### (McKinney-Vento Homeless Assistance Act of 2001 – Title X, Part C of the No Child Left Behind Act – Sec 725)

The term "homeless children and youth"—

- A. means individuals who lack a fixed, regular, and adequate nighttime residence...; and
- B. includes —
  1. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
  2. 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...
  3. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
  4. migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

## School Selection Under McKinney-Vento

The McKinney-Vento Homeless Assistance Act guarantees children and youth experiencing homelessness the right to attend one of two schools: the school of origin or the local attendance area school.

“The local educational agency [LEA or school district] serving each child or youth to be assisted under this subtitle shall, according to the child’s or youth’s best interest-

- i. continue the child’s or youth’s education in the school of origin for the duration of homelessness-
  - I. in any case in which a family becomes homeless between academic years or during an academic year; or
  - II. for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or
- ii. enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.”

[M-V: 722(g)(3)(A)]

## Schools Defined Under McKinney-Vento

**School of Origin:** “The school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled”

[M-V: 722(g)(3)(G)]

**Local Attendance Area School:** “Any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend”

[M-V 722(g)(3)(A)(ii)]

## Best Interest Under McKinney-Vento

“Best Interest—In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall—

- i. to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child’s or youth’s parent or guardian;
- ii. provide a written explanation, including a statement regarding the right to appeal under subparagraph (E), to the homeless child’s or youth’s parent or guardian, if the local educational agency sends such a child or youth to a school other than the school of origin or a school requested by the parent or guardian; ...”

[M-V 722(g)(3)(B)]

## **U.S. Department of Education: Education for Homeless Children and Youth Program Guidance**

### **"G-4. What should a school district consider when determining the extent to which it is feasible to educate a homeless child in his or her school of origin?"**

As stated above, to the extent feasible, a district must educate a homeless child or youth in his or her school of origin, unless doing so is contrary to the wishes of the parent or guardian. The placement determination should be a student-centered, individualized determination. Factors that an LEA may consider include the age of the child or youth; the distance of a commute and the impact it may have on the student's education; personal safety issues; a student's need for special instruction (e.g., special education and related services); the length of anticipated stay in a temporary shelter or other temporary location; and time remaining in the school year."

*(Education for Homeless Children and Youth Program Non-Regulatory Guidance, July 2004)*

### **Legal Background: The Fostering Connections Act**

In addition to the McKinney-Vento Act, a relatively new child welfare statute supports school stability for children in out-of-home care. This law is the Fostering Connections to Success and Increasing Adoptions Act of 2008, and it applies both to students eligible under the McKinney-Vento Act as "awaiting foster care placement" and those in foster care but not eligible under McKinney-Vento. The Fostering Connections Act requires that child welfare agencies have a plan for ensuring the educational stability of every child in care.<sup>2</sup> When placing a child in out-of-home care, the child welfare agency must take into account the appropriateness of the current educational setting and the distance between the school and the child's living placement. The agency also must coordinate with local educational agencies to ensure that children in care remain in the school in which they were enrolled when they were brought into care, if that is in their best interest. In other words, child welfare agencies must focus on school stability in their planning and placements and must be active participants in best interest determinations for all children in care.

### **How do McKinney-Vento and Fostering Connections Work Together?**

When a child is "awaiting foster care placement" under the McKinney-Vento Act, both that Act and the Fostering Connections Act provide the child with rights. Since the McKinney-Vento Act applies to schools, it establishes the proper framework for best interest decisions for children awaiting foster care placement. Therefore, the LEA and the local homeless education liaison should take the lead in assessing best interest and ensuring immediate enrollment for students awaiting foster care placement. The child welfare agency must participate in the best interest decision by sharing appropriate information, coordinating with the LEA, and assisting the local liaison with the practical aspects of enrollment and transportation, as needed.

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<sup>2</sup> *Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351); 42 USC 675(1)(G).*

## School Stability Under Fostering Connections

Children in out-of-home care who do not meet the local or state definition of “awaiting foster care placement” are not eligible for the McKinney-Vento Act’s protections. However, the Fostering Connections Act requires child welfare agencies to coordinate with LEAs to ensure that all children in care remain in the school in which they were enrolled when they were brought into care, if that is in their best interest. Therefore, child welfare agencies should work with LEAs to provide school stability for all children in care, consistent with their best interest. Child welfare caseworkers who are determining a child’s best interest can use the information below as a guide to assist in making their decisions.

### Making Best Interest Decisions

Children in out-of-home care tend to have many adults involved in their lives, and it may be unclear who has the authority to make general education decisions for them. Usually, birth or adoptive parents are the decision makers, even if a child has been removed from the home. However, a state law, regulation, or court order may restrict parental authority, giving general educational decision-making rights to foster parents, caseworkers, relatives, or other advocates. In these cases, for children in out-of-home care and those awaiting foster care placement, the educational decision maker will assume the rights of the parents under the McKinney-Vento Act, including the right to select the school in the child’s best interest and pursue any disputes with the school district. The school must be informed of who has decision-making authority for each student; the responsibility of informing the school typically lies with the student’s child welfare caseworker.

In order for parents or other educational decision makers to make informed decisions about selecting the school that is in a child’s best interest, they need to have as much practical information as possible. Every LEA has a local homeless education liaison, who must ensure each eligible child receives his or her rights under the McKinney-Vento Act, including the right to attend the school of origin. The local liaison and school or district staff can play an instrumental role in assisting with choosing the school that is in a student’s best interest. For children in foster care who are not McKinney-Vento eligible, schools should identify staff to assist with the school selection provisions of the Fostering Connections Act. In these situations state laws and policies will determine the schools’ specific role in best interest decisions; however, school staff always should be involved and provide input related to the decisions.

In all of these situations, the local liaison, teachers, and other school or district staff can:

- Reinforce the importance of school stability and educational continuity for children.
- Provide input on the academic, social, and emotional impact that transferring to a new school may have on children.
- If the child has special education needs, provide input on the impact that changing schools may have on the child’s progress and services. If a school change is indicated, ensure that evaluations and/or services are not interrupted.
- Help determine which programs at the two schools are comparable and appropriate for the child and make arrangements for the parents or educational decision maker and the

child to visit the school considered for a possible transfer.

- Provide information on the commute to the schools under consideration in terms of the distance, mode of transportation, and travel time, and work with caseworkers to develop transportation plans.
- Work with school staff and data managers to ensure appropriate confidentiality about the student's out-of-home placement.
- Work with caseworkers to develop immediate and long-term educational plans for the student, ensuring that the student's education is not interrupted and considering the anticipated duration of the child's out-of-home placement and permanency plan.

## **Key Questions to Consider When Making a School Selection**

1. How long is the child's current placement expected to last?
2. What is the child's permanency plan?
3. How many schools has the child attended over the past few years? How many schools has the child attended this year? How have the school transfers affected the child emotionally, academically and physically?
4. How strong is the child academically?
5. To what extent are the programs and activities at the potential new school comparable to or better than those at the current school?
6. Does one school have programs and activities that address the unique needs or interests of the student that the other school does not have?
7. Which school does the student prefer?
8. How deep are the child's ties to his or her current school?
9. Would the timing of the school transfer coincide with a logical juncture such as after testing, after an event that is significant to the child, or at the end of the school year?
10. How would changing schools affect the student's ability to earn full academic credit, participate in sports or other extra-curricular activities, proceed to the next grade, or graduate on time?
11. How would the length of the commute to the school of origin impact the child?
12. How anxious is the child about having been removed from the home and/or any upcoming moves?
13. What school do the child's siblings attend?
14. Are there any safety issues to consider?

## Conclusion

Decisions regarding school selection should be made on a case-by-case basis, giving attention to the circumstances of each individual student. The following checklist may help local liaisons or other designated education and child welfare agency staff guide a discussion on school-selection options available to the student and the advantages and disadvantages of each option. If a district has large numbers of homeless, foster, and other highly mobile students, it may be beneficial to train several staff members at both the child welfare agency and the school district to assist in this decision-making process.

## Additional Information

For additional information on supporting the education of students in out-of-home care, visit the Legal Center for Foster Care and Education at <http://www.abanet.org/child/education/> and the National Center for Homeless Education at [http://www.serve.org/nche/ibt/sc\\_foster.php](http://www.serve.org/nche/ibt/sc_foster.php).

# School Selection: A Checklist for Decision Making

(adapted from the Texas Homeless Education Office)

| School of Origin Considerations |   | Local Attendance Area School Considerations |  |
|---------------------------------|---|---|--|
| <input type="checkbox"/>        | <p><b>Continuity of instruction</b><br/> <i>Student is best served due to circumstances that look to his or her past.</i></p>   | <input type="checkbox"/>                    | <p><b>Continuity of instruction</b><br/> <i>Student is best served due to circumstances that look to his or her future.</i></p>  |
| <input type="checkbox"/>        | <p><b>Age and grade placement of the student</b><br/> <i>Maintaining friends and contacts with peers is critical to the student's meaningful school experience and participation. The student has been in this environment for an extended period of time.</i></p>  | <input type="checkbox"/>                    | <p><b>Age and grade placement of the student</b><br/> <i>Maintaining friends and contacts with peers in the school of origin is not particularly critical to the student's meaningful school experience and participation. The student has attended the school of origin for only a brief time.</i></p>                  |
| <input type="checkbox"/>        | <p><b>Academic strength</b><br/> <i>The child's academic performance is weak, and the child would fall further behind if he/she transferred to another school.</i></p>  | <input type="checkbox"/>                    | <p><b>Academic strength</b><br/> <i>The child's academic performance is strong and at grade level, and the child would likely recover academically from a school transfer.</i></p>   |
| <input type="checkbox"/>        | <p><b>Social and emotional state</b><br/> <i>The child is suffering from the effects of mobility, has developed strong ties to the current school, and does not want to leave.</i></p>  | <input type="checkbox"/>                    | <p><b>Social and emotional state</b><br/> <i>The child seems to be coping adequately with mobility, does not feel strong ties to the current school, and does not mind transferring.</i></p>   |
| <input type="checkbox"/>        | <p><b>Distance of the commute and its impact on the student's education and/or special needs</b><br/> <i>The advantages of remaining in the school of origin outweigh any potential disadvantages presented by the length of the commute.</i></p>   | <input type="checkbox"/>                    | <p><b>Distance of the commute and its impact on the student's education and/or special needs</b><br/> <i>A shorter commute may help the student's concentration, attitude, or readiness for school. The local attendance area school can meet all of the necessary educational and special needs of the student.</i></p> |
| <input type="checkbox"/>        | <p><b>Personal safety of the student</b><br/> <i>The school of origin has advantages for the safety of the student.</i></p>   | <input type="checkbox"/>                    | <p><b>Personal safety of the student</b><br/> <i>The local attendance area school has advantages for the safety of the student.</i></p>  |
| <input type="checkbox"/>        | <p><b>Student's need for special instruction</b><br/> <i>The student's need for special instruction, such as Section 504 or special education and related services, can be met better at the school of origin.</i></p>  | <input type="checkbox"/>                    | <p><b>Student's need for special instruction</b><br/> <i>The student's need for special instruction, such as Section 504 or special education and related services, can be met better at the local attendance area school.</i></p>   |
| <input type="checkbox"/>        | <p><b>Length of anticipated stay in a temporary shelter or other temporary location</b><br/> <i>The student's current living situation is outside of the school-of-origin attendance zone, but his/her living situation or location continues to be uncertain. The student will benefit from the continuity offered by remaining in the school of origin.</i></p> | <input type="checkbox"/>                    | <p><b>Length of anticipated stay in a temporary shelter or other temporary location</b><br/> <i>The student's current living situation appears stable and unlikely to change suddenly; the student will benefit from developing relationships with school peers who live in his local community.</i></p>                 |

This brief was developed by:

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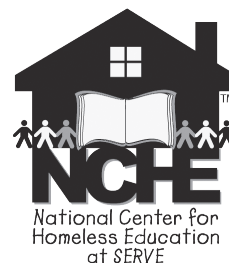
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Every state is required to have a State Coordinator for Homeless Education, and every school district is required to have a local homeless education liaison. These individuals will assist you with the implementation of the McKinney-Vento Act. To find out who your State Coordinator is, visit the NCHE website at [http://www.serve.org/nche/states/state\\_resources.php](http://www.serve.org/nche/states/state_resources.php).

For more information on the McKinney-Vento Act and resources for implementation, call the NCHE Helpline at 800-308-2145 or e-mail [homeless@serve.org](mailto:homeless@serve.org).



**Local Contact Information:**