

Recommendations for Improving Education Outcomes for Children and Youth in Foster Care Through Amendments to the McKinney-Vento Act/Education Reauthorization in the No Child Left Behind Act

Children and youth in foster care encounter numerous barriers to school success. In addition to the abuse and neglect initially bringing them to the attention of the child welfare system they must deal with the emotional consequences of being removed from their homes and communities, separation from siblings, being bounced from home to home, and having the child welfare agency and court system involved in all aspects of their lives. Schools should be safe havens for children during times of transition and instability, but due to poor coordination and communication between schools and child welfare agencies, this often does not occur. With no federal law to ensure school stability and access to supportive services for children in foster care there is often as much movement among schools as there is in living arrangements. When children change schools, education records frequently do not follow in a timely fashion. Indeed, youth in foster care in some states have been reported to move through an average of nine different schools during their tenure in foster care. These children and youth are commonly out of school for weeks or months on end and, not surprisingly fall behind academically, cognitively, and socially. They often need to repeat courses and are unable to access the support services that could improve education outcomes. Schools need a better understanding of the unique situations and experiences of children in foster care and child welfare agencies need to focus more on the educational needs and outcomes of the children and youth they are serving. The reauthorization of Title X, Part C of the No Child Left Behind (NCLB) McKinney-Vento Homeless Assistance Act (McKinney-Vento) provides an opportunity to do both and to better address the needs of children and youth in foster care.

Snapshot of Educational Outcomes for Children in Foster Care:

- Children and youth in foster care are struggling academically, with lower graduation rates, reading abilities, and overall academic performance than their peers who are not in foster care.
- Children and youth in foster care are often highly mobile, experiencing on average one or two different foster placements each year. These changes in living arrangements are often coupled with changes in school placements.
- These high school mobility rates affect education outcomes, resulting in failing grades, behavior problems, and decreased likelihood of high school completion.

McKinney-Vento provides access to essential federal education protections and rights for children and youth who are homeless. Children and youth who are eligible for McKinney-Vento have access to supports for school success that many children involved in child welfare lack: school stability or immediate enrollment if stability is not possible, school staff charged with ensuring their prompt enrollment, and more. While these protections currently apply to a

subset of children involved in foster care, including those “awaiting foster care placement,” states have defined this phrase differently. States vary widely in their application of these protections for this population. As a result, the opportunities for children and youth in foster care may depend on where they live. The reauthorization of McKinney-Vento provides an opportunity to ensure these protections are available to *all* children in foster care, with special accommodation for the needs and family dynamics that face children in foster care. The inclusion of these protections for children in foster care in McKinney-Vento is an important first step in improving their educational opportunities and outcomes. Companion recommendations for amendments to child welfare legislation that build on the recommendations outlined in this memo are being developed to ensure coordination, collaboration and mutual attention on the part of child welfare agencies to the important education needs of children in the foster care system.

Recommended Changes to McKinney-Vento (changes are in bold and underlined)

Recommendation #1: Amend the Act to make explicit that all children and youth in out of home care are eligible for the full range of education protections, rights and supports. The amended bill would clarify that it protects children in transition, including both children who lack a fixed, regular, and adequate nighttime residence, and children who are in out of home care in the custody of the public child welfare agency.

Recommended language:

SEC. 725. DEFINITIONS. (42 U.S.C. 11434A)

For purposes of this subtitle:

The term **‘eligible children and youths’ include both—**

(A) **Homeless children and youth.** “Homeless children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)), and includes

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters and housing; are abandoned in hospitals; or are awaiting foster care placement;

(ii) 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 (within the meaning of section 103(a)(2)(C));

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this

subtitle because the children are living in circumstances described in clauses (i) through (iii); and

(B) Children and youth in out of home care in the custody of the public child welfare agency, including foster family homes, kinship care families, group homes and child care institutions.

Rationale:

McKinney-Vento currently includes children who are “awaiting foster care placement” in its definition of eligible children. Federal law does not define “awaiting foster care placement” and regulations leave interpretation up to the states.

Some jurisdictions have expansively defined “awaiting foster care placement” to include all children in foster care who have not reached their permanency goal. Others have narrowly construed the term to include only those foster youth in emergency shelter care. This lack of clarity as to the scope of federal protections means that a child in one state will receive federal protections while a child in another state will not. Our recommendation to explicitly include all children in out of home care in the eligibility definition will ensure that these protections are available to all foster children, wherever they live.

Recommendation #2: Amend the Act to clarify who can make education decisions for children and youth in out of home care.

Recommended Language:

SEC. 725. DEFINITIONS. (42 U.S.C. 11434A)

For purposes of this subtitle:

(5) The term ‘parent or guardian’ for a child or youth in out of home care means

a. the birth or adoptive parent or legal guardian unless such person’s right to make educational decisions for the child or youth has been terminated or suspended by a court; or

b. a person appointed by the court to make educational decisions for the child or youth. If the birth or adoptive parent or legal guardian’s right to make educational decisions for the child or youth has been terminated or suspended, or if the birth, adoptive parent or legal guardian cannot be identified or located after reasonable efforts, is not available with reasonable promptness to assist in enrollment or placement decisions, or is not acting in the best educational interests of the child in enrollment or placement decisions, a court may appoint an individual to serve as the ‘parent or guardian’ of the child or youth for the purposes of making educational

decisions under this act. In making this appointment, if the child or youth is eligible for services under the Individuals with Disabilities Education Act (IDEA), the court should consider the person serving as the parent of the child or youth under IDEA and whether that person should serve as the parent for the purpose of this Act.

Rationale:

In McKinney-Vento, parents/guardians are the decision-makers, with the exception of unaccompanied youth. The Act presumes a child or youth should remain in his or her school of origin, but the parents and the Local Education Agency (LEA) consult about this placement decision. If the parents disagree with the LEA's placement decision, they can appeal. The parent can also participate in enrollment dispute processes and request transportation assistance. Decisions should be timely and therefore the decision-maker needs to be someone who is available with reasonable promptness.

When a child is in the custody of a child welfare system, a simple question like "Who is this child's parent for purposes of making education decisions?" can become complicated. Is the decision-maker the child's birth parent, foster parent, the child welfare agency, the court or someone else entirely? Parents can play a pivotal role in meeting the educational needs of their children when their children are in foster care. Parents' rights to make educational decisions are not automatically terminated or suspended when a child or youth is placed in foster care. On the other hand, sometimes when a child or youth is in foster care, his or her birth parent may not be available to make timely decisions. Similarly, the birth parent may not be making decisions in the child or youth's best interests. Therefore it is critical that the law clarify who will act as the parent for a child to make critical educational decisions. In particular, it is important that a mechanism exists to protect the rights of all parties, including the child, the child's birth parents, and other caregivers including the foster parent or relative caregiver. We recommend that the court identify an alternate decision maker when the child's parents are unable or unwilling to make such decisions in a timely manner. The goal of this provision is to ensure that a child or youth in foster care will have a clearly identified decision maker for McKinney-Vento decisions, and that such a person is well equipped to represent the child's or youth's educational interests.

Recommendation #3: For children and youth in the custody of the child welfare agency in out of home care, notice of school of origin decisions, appeals, and transportation that are provided to the decision-maker, should additionally be given to the child welfare agency and the court of jurisdiction.

Recommended New Language:

(E) **DISPUTES**- If a dispute arises over **eligibility for services**, school selection, enrollment in a school, **or any other issue under this subtitle--**

(i) the child or youth shall be immediately **enrolled in** the school in which enrollment is sought, pending **final** resolution of the dispute, **including all available appeals**;

(ii) the parent, guardian, **or unaccompanied youth** shall be provided with **written explanations of any decisions made by the school, the local educational agency, or the State educational agency, which shall include information about the right to appeal the decisions. For a child or youth in out of home care, the responsible local child welfare agency and the court also shall additionally be provided such written explanation and shall, in turn, provide notice to individuals involved in the child or youth's care, as appropriate**;

Rationale:

For children in foster care, there are multiple individuals or entities who should perhaps receive critical notices in addition to the decision-maker. In particular the court and the child welfare agency are best suited to intervene if the parent is unable to serve as education decision maker or bear responsibility for implementing the decisions of the LEA. The court and the child welfare agency can then determine if it is appropriate to provide notice to other individuals, such as the child or youth's foster parent, and to determine whether someone other than the child or youth's parent needs to be making educational decisions for the child.

Recommendation #4: McKinney-Vento funding authorization levels must increase to meet the existing needs as well as the increased needs created with the inclusion of all children in out of home care in the McKinney-Vento legislation.

- The authorized and appropriated funding level for the McKinney-Vento program should be raised to \$210 million to build the capacity for serving all eligible children.
- A separate funding stream should be established at the state level to assist districts with transportation expenses for all McKinney-Vento eligible children. Transportation is the largest expense under the program. It is also linked to greater stability and school success and is therefore an essential component of closing the academic achievement gap.

Recommendation #5: In addition to amendments to McKinney-Vento, provisions within Title I should be amended to clearly address the unique situation of children in foster care. The current definition of "parent" in Section 7801(31) does not indicate who should receive notice or make decisions about rights and services in a situation in which a child in out-of-home care may have no birth parent or multiple persons who could serve as the "parent" for these purposes.

While we do not have specific language to provide at this time, we ask that consideration be taken of the unique needs of children in foster care on these issues: namely that multiple parties may need to receive notice of the rights and services under Title I, and that determinations must be made regarding who has the authority to make parental decisions when a child is in foster care.

Recommendation #6: In addition to specific recommendations to apply the protections of McKinney-Vento to all children in foster care, we recognize the importance of strengthening the overall provisions within McKinney-Vento so that all eligible children, including children who are homeless or in foster care, have meaningful and timely access to a quality education and related supports. In particular, we recommend that provisions be strengthened and enhanced through increased transportation assistance and community collaborations and provisions be clarified and strengthened to help eligible students overcome barriers and achieve their full potential. Finally, we realize that the designation of a liaison for eligible students in every school district is among the most successful features of the McKinney-Vento program. Liaisons coordinate school district efforts to support eligible students through identification, enrollment, professional development and other activities. In order to fully carry out these important responsibilities, liaisons must have sufficient time, authority, and training.

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