



<b>COLORADO DEPARTMENT OF HUMAN SERVICES</b> <b>1575 SHERMAN ST., DENVER, COLORADO 80203-1714</b>	<b>NUMBER:</b> CW-10-02-I
<b>AGENCY LETTER</b>	<b>CROSS REFERENCE NUMBER:</b>
<b>DIVISION OR OFFICE:</b> Children, Youth, and Families	<b>DATE:</b> January 29, 2010
<b>PROGRAM AREA:</b> Child Welfare - CW	<b>DIVISION (OFFICE) DIRECTOR</b> 
<b>TITLE:</b> Implementation of Rules Regarding Implementation of Requirements in the Fostering Connections to Success and Achieving Adoptions Act of 2008 and the Relative Guardianship Assistance Program	<b>DEPUTY EXECUTIVE DIRECTOR</b> 
<b>TYPE:</b> I - Information	

**Target Audience:**

County directors, child welfare administrators and managers, supervisors, caseworkers, and resource or certification caseworkers

**Purpose:**

To convey information regarding implementation of the following rules:

1. Emancipation Transition Plan;
2. Additional eligible youth for the Chafee Foster Care Independence Program;
3. Adoption Assistance Program changes and educational requirements;
4. Planning for educational stability;
5. Reasonable transportation costs to school and liability insurance for children in out-of-home care;
6. International diligent search and assurances that diligent search on behalf of Native American children; and,
7. Relative Guardianship Assistance Program.

**Background:**

The Fostering Connections to Success and Achieving Adoptions Act of 2008 (Public Law 110-351) was signed into law on October 7, 2008. The law is contained within the Social Security Act and impacts Title IV-B (child welfare services) and Title IV-E (foster care, relative guardianship, and adoption funding).

The federal law requires child welfare practices that support children and youth who are in out-of-home care through planning for educational stability for school-age children and for emancipation of youth. The federal law also requires achievement of permanency for children and youth who are in out-of-home care through diligent search, reducing barriers for adoption, and relative guardianship assistance. An overview of Public Law 110-351 (P.L. 110-351) was provided in Agency Letter CW-09-29-I dated July 28, 2009.

Rules regarding the items in the Public Law are outlined below and will be effective on February 1, 2010.

## Information:

### 1. Emancipation Transition Plan:

- 7.305.2, E (12 CCR 2509-4) -The Emancipation Transition Plan (ETP) is a personalized youth-driven written document that supports the emancipation process and is intended to prevent a youth from becoming homeless. The youth, county department caseworker, provider(s), and other representatives of the youth as appropriate, jointly develop a detailed, formal emancipation transition plan with specific connections to self-sufficiency resources at a minimum of ninety (90) business days prior to the projected emancipation date of the youth. The ETP includes, but is not limited to, ensuring the following:
  - ❑ Meets the specific cost of living standard in the county or state where the youth plans to reside.
  - ❑ An individualized comprehensive written assessment is used to develop the ETP that is as detailed as the youth elects, and is signed and dated by the youth and the parties that developed the plan.
  - ❑ Personalization of the ETP is at the direction of the youth to meet the youth's individual emancipation needs in order to help prevent homelessness.
  - ❑ Copies of verifiable vital documents are issued to the youth as required in Section 7.305.5 and as needed to be self-sufficient.
  - ❑ Has "specified connections" for the youth to housing, health insurance, education, local opportunities for safe mentors, continuing after-care support services, work force supports and employment services resources.
  - ❑ Is documented in the State Department's automated system (Trails) Family Services Plan, Part IV-D and a copy of the ETP is given to the youth free of charge.

For additional details about the ETP rule implementation and rollout supports the following is available:

- Agency letter CW-09-40-I, dated November 19, 2009 regarding the Trails upgrade of the Emancipation Transition Plan (ETP) and the Independent Living Plan (ILP) in the Family Services Plan, Part IV-D.
- Web-based training that is currently available.
- There are four (4) statewide regional trainings (train-the-briefer/trainer sessions) scheduled for early February 2010.

### 2. Additional eligible youth for the Chafee Foster Care Independence Program

- 7.305.4, D - Includes youth age 16 to 21 who meet requirements for relative guardianship assistance or adoption assistance, or who met such requirements prior to their 18<sup>th</sup> birthday as eligible populations for the Chafee Foster Care Independence Program.

### 3. Adoption Assistance Program

The changes to the adoption assistance program are related to new eligibility factors.

- 7.306.41, A, 8 and 7.306.41, B, 7 – A youth who is 16 years or older and adopted after October 1, 2010 (and the siblings placed in the same home) is not required to meet the AFDC criteria in order to be eligible for a federally-reimbursed adoption assistance agreement. The law requires that the other requirements are met, including having special needs, being in the care of a public or private adoption agency, and that the youth should not be returned to the home.
  - The targeted age criteria decreases by two (2) years annually until all children and youth, regardless of their age, will not need to meet the AFDC criteria by FFY 2018 (i.e. age sixteen (16) in 2010, age fourteen (14) in 2011, etc.)
- 7.306.41, B, 7 – A child or youth in care for 60 consecutive months (and siblings are placed in the same home) need not meet the AFDC criteria in order to be eligible for a federally reimbursed adoption assistance agreement.
  - As in the changed noted above, other requirements must be met.
- 7.306.41, B, 10, - Children and youth who are eligible for federally reimbursed adoption assistance must attend school. The law requires that the agency providing the assistance must verify school attendance annually.
- 7.306.41 B, 8 - If a youth is adopted after the age of 16, the youth continues to be eligible for a federally reimbursed adoption assistance agreement up to the age of 21 as long as the youth is:
  - Completing secondary school, or,
  - Enrolled in post-secondary or vocational school, or,
  - Participating in a program that promotes or removes barriers to employment, or,
  - Employed 80 hours per month, or,
  - Determined incapable of any of the above due to a documented medical condition.
  - In addition to the above criteria, the federally reimbursed adoption assistance agreement may continue (as was always the case), when the child or youth has a physical or mental handicap.
- 7.306.53, F - Additional changes were made related to international adoptions. In the past, if a child or youth who was adopted internationally met the special needs criteria and the adoptive parents applied for reimbursement of non-recurring adoption expenses, the family was eligible for reimbursement. This law prohibits adoption assistance payments of any kind, including reimbursement of non-recurring expenses for international adoptions.

### 4. Planning for Educational stability

- 7.301.241, A and B - Require that county departments document a plan for educational stability for school-age children and youth in out-of-home care, including the efforts that were made. County departments shall coordinate with local schools, school districts, Boards of Cooperative Educational Services (BOCES), etc., to facilitate the child or youth remaining in the same school including:

- ❑ Documentation about reasonable travel that is arranged for the child or youth to continue in the same school that was attended prior to placement in out-of-home care or a change in the out-of-home placement and other factors that were considered, such as the appropriateness of the current educational placement and proximity of the out-of-home placement to the educational setting; or,
- ❑ The reasons why remaining in the same school is not in the best interests of the child or youth;
- ❑ The efforts that were made to coordinate with the local school, school district, and/or BOCES to assure enrollment in a new school, including timely provision or transfer of the educational records to the school as defined in Section 22-32-138, C.R.S. The requirements were previously outlined in Agency Letter CW-09-02-I, dated January 5, 2009 regarding the education of children and youth in out-of-home care; and,
- ❑ To assure the child or youth is attending school as required by Colorado statute (see educational options below).
- ❑ Documentation about the factors that were considered regarding the enrollment of the child or youth should be entered in the comment area in the Educational area under each school that is listed. The Colorado Trails Users Group (CTUG) will make recommendations about future enhancements in Trails for this requirement.
- ❑ "School Selection for Students in Out-of-Home Care" is attached and provides information about decision-making regarding school selection, and includes a checklist. The article is a joint publication from the Legal Center for Foster Care and the National Center for Homeless Education.
- ❑ Documentation of the efforts should be entered in the Placement tab in the FSP in the IV-B and IV-C boxes regarding "How the placement meets the child's best interest and special needs including proximity to the child's school/home", preserving primary connections.

Documentation regarding education or healthcare provider contacts that were made on behalf of a child or youth should be entered in the Educational Tabs of the Health Passport in Trails, including:

- 7.301.24, E - Proximity of the out-of-home placement to the school that the child or youth attended, and
- 7.301.24, G - Contact information in the Health Passport/Education tab, which shall be updated prior to case reviews.

For children and youth who are in an adoption assistance agreement, or in a relative guardianship assistance agreement, the county department must annually document that the child or youth is attending school as required in Colorado statute. The verification shall be documented in the adoption assistance or relative guardianship assistance record for the following education options:

- An elementary or secondary institution as determined in state statute,
- Home schooling (in Colorado this would only apply to relative caregivers in certain circumstances) or children in adoption assistance,
- Independent study as allowed by statute and administered by the school district, or

- The child or youth is incapable of attending school full-time due to medical conditions, which is documented and regularly updated in the educational plan. This option is rare.

Additional Information:

"Boards of Cooperative Educational Services (BOCES) services are those needed by students, teachers, or school administrators but which can be more effectively and efficiently provided cooperatively across school districts. There are twenty-one (21) recognized BOCES in Colorado. Colorado's BOCES (or Educational Services agencies) are unique in that they are an extension of the local member school districts. A BOCES in Colorado exists at the discretion of its member school districts and provides only those programs and services authorized by its members".

Sometimes in rural areas a BOCES is a partnership of several school districts to provide special education services. Information about the locations of the BOCES is available on the Colorado Department of Education webpage:

<http://www.cde.state.co.us/scripts/districtprofiles/k12schlwebsites.asp>

5. Reasonable transportation costs to school and liability insurance for children in out-of-home care
  - 7.418.1 (12 CCR 2509-5) - Revised the definition of claimable IV-E reimbursements. County departments of human/social services, child placement agencies, residential child care facilities (RCCFs), and therapeutic residential child care facilities (TRCCFs), etc. may include reasonable transportation and liability insurance costs when submitting rate setting materials to the state and when negotiating county rates. County departments will have the authority to claim Title IV-E funding for liability insurance for children in care and to provide reasonable school transportation services to support children and youth who are Title IV-E eligible to continue attending their home school when placed in out-of-home care. 7.406.1, MM and NN - Allow reimbursement for reasonable travel to school and liability insurance for children or youth in care, respectively.
  - 7.418.1, A - Adds reasonable travel to school and liability insurance in the definition of child maintenance.
6. International diligent search and assuring diligent search of Native American children and youth
  - 7.304.52, A - Requires that diligent search occurs beyond the United States, its territories, or Puerto Rico as appropriate.
  - 7.304.52, D - Requires that diligent search continue on behalf of all children, including Native American children throughout the life of the case.

The county department is responsible for conducting the initial 30-day diligent search efforts and ongoing efforts for children and youth who are Native American. Tribes may provide information, however tribes will not conduct the initial or ongoing searches for relatives.

## 7. Relative Guardianship Assistance Program

- 7.311 - A new section was developed for the Relative Guardianship Assistance Program.

The Relative Guardianship Assistance Program is intended to remove financial or other barriers for a relative guardian of a Colorado youth or child by providing assistance to the relative guardian to care for and raise the youth or child so that permanency is achieved. Appointment for relative guardianship must occur through the Probate Court. This program is open to all eligible youth and children regardless of the funding source for the service. The program will operate similarly to the Adoption Assistance Program. A youth or child in a Relative Guardianship Assistance Agreement is entered into Program Area 6 in Trails. The relative guardians will be eligible for up to \$800 in non-recurring expenses and case services. The requirements are outlined in the following sequence:

- 7.311.1 Eligibility Requirements
- 7.311.2 County Department Responsibilities
- 7.311.21 Placement with Siblings
- 7.311.22 Inclusion of Siblings in a Relative Guardianship Assistance Agreement
- 7.311.3 Relative Guardianship Assistance Records
- 7.311.4 Benefits
- 7.311.41 Legal Residence of the Youth or Child in a Relative Guardianship Assistance Agreement for Medicaid
- 7.311.42 Chafee Foster Care Independence Program Services
- 7.311.5 Relative Guardianship Assistance Program Services
- 7.311.51 Provision of Services
- 7.311.6 Relative Guardianship Assistance Agreement Services
- 7.311.61 Title IV-E Relative Guardianship Assistance
- 7.311.62 State-County Relative Guardianship Assistance (Non-Title IV-E)
- 7.311.63 Negotiation of Relative Guardianship Assistance Agreements
- 7.311.7 Medical Payments in Relative Guardianship Assistance Agreements
- 7.311.71 Reimbursable and Non-Reimbursable Relative Guardianship Assistance Case Services
- 7.311.72 Non-Recurring Relative Guardianship Expenses
- 7.311.8 Accepting and Processing Applications for Relative Guardianship Assistance from Relative Family Foster Care Parents who are Certified by Child Placement Agencies
- 7.311.81 Review of Eligibility for All Ongoing Relative Guardianship Assistance Agreements
- 7.311.82 Procedures for Relative Guardianship Assistance Payment When a Youth or Child is in Out-of-Home Care or Committed to the Division of Youth Corrections
- 7.311.9 Termination of Relative Guardianship Assistance Agreements
- 7.311.91 Reinstatement
- 7.311.92 Right to Appeal
- 7.311.93 State Monitoring/Progressive Discipline Process of Relative Guardianship Assistance Programs in County Departments

Relative guardianship may **only** be an option when reunification and adoption efforts have been exhausted and are no longer appropriate permanency goals for the youth or child based on the individual needs. Relative guardianship may not supplant diligent reunification or adoption efforts. Documentation must support the efforts that were made for reunification and adoption to justify a relative guardianship.

- Relative guardianship is the least permanent of the three options and must be considered very carefully.
- Any party may petition the Probate Court and request a review of the relative guardianship at any time. This could create undue stress for the relative guardian, the youth or child, and disrupt permanency for the youth or child.
- The program is most appropriate for **older youth** who choose not to be adopted and who want to maintain familial ties while living safely and achieving permanency with a relative guardian. County departments must be diligent in seeking adoptive placements for children who cannot be reunified. Adoption may be an option in a home where a youth is in relative guardianship and the same caretaker adopts the younger children.
- Youth who are twelve (12) years and older and who refuse adoption must receive ongoing counseling by a professional who is knowledgeable about adoption and permanency issues.
- The county department is required to discuss the purpose and responsibilities of relative guardianship with the parents or legal custodian of a youth or child and the importance of achieving permanency. This will assist the parents to understand the importance of their cooperation with the relative guardian while the Relative Guardianship Assistance Agreement is in effect to promote stability for the youth or child.

The Colorado statute was effective July 1, 2009. Eligibility requirements for the prospective relative guardian and youth and/or child must be documented in Trails. Requirements include:

- The prospective guardian is a relative through the fifth (5<sup>th</sup>) degree of kinship.
- The most recent removal occurred through a court order, or a voluntary placement agreement; and, the prospective relative guardian was the certified kinship foster or family foster care parent for the youth or child for a minimum of six (6) consecutive months while the youth or child resided in the home, excluding breaks in full certification due to provisional or probationary certificates being issued, or other adverse action taken regarding the certificate.
- The youth or child demonstrates a strong attachment to the relative.
- Youth who are age twelve (12) or older are consulted about their expressed wishes to be placed in a relative guardianship.
- The prospective relative guardian has a strong commitment to caring for the youth or child permanently.
- The reason why permanent placement with a prospective relative guardian and receipt of a relative guardian assistance payment is in the best interests of the youth or child.

The county department shall assess and demonstrate the appropriateness of the youth or child for the Relative Guardianship Assistance Program and document the efforts in Trails including:

- Efforts to discuss adoption with the relative family foster care parent (and a youth 12 years of age and older) as the more permanent option for the youth or child and the reasons that the prospective relative guardian is unwilling to adopt. The goal of the discussion shall be to assure that the prospective guardian makes a fully informed decision regarding the permanency options that are available. The discussion shall include, but not be limited to, the following areas:
  - ❑ The legal differences between termination of parental rights for adoption and the transfer of relative guardianship;
  - ❑ The relationship with the birth or custodial family; and,
  - ❑ Visitation.
- The prospective relative guardian understands the significance of permanency through guardianship and the importance in continuing to be a permanent family after the youth or child exits the relative guardianship assistance program.
- Efforts to discuss the relative guardianship assistance arrangement with the parents or legal custodians of the youth or child, and if it was not discussed with the parents, provide the reasons why the efforts were not made.
- If relinquishment or termination of parental rights occurred for the youth or child, documentation must occur regarding how the requirements in Section 7.306 are met.

#### Sibling Placements

The county department is required to document the efforts to place siblings together in the relative family foster care homes, the ongoing efforts to facilitate placement together, and the efforts to maintain frequent visitation and ongoing connections for siblings that live apart.

- Public Law 110-351 also requires this for children and youth *in out-of-home care and in adoptive placements*. Rules will be submitted to the State Board of Human Services in 2010 to assure that the State is in compliance with this requirement.

P.L. 110-351 and 19-3-403 (3.6) (a) (IV), C.R.S. require that prospective relatives be notified of the requirements to become a foster parent. In a 1979 Supreme Court case, *Miller v. Youakim*, the Court ruled that the Social Security Act gives preference to relatives and directed local child welfare agencies to inform relatives that they may be licensed as foster parents if they wish. If the family meets licensing requirements, the local child welfare agency is required to pay kinship family foster care providers the same rate that other foster parents are given. In addition, P.L. 110-351 requires that if a state has a relative guardianship assistance program, that relatives must be informed. The following rules assure compliance with the *Miller v. Youakim* ruling and the federal notification requirement.

- 7.304.21, D, 1, c - Requires that kinship care providers are advised of all support options available to them through the county department, including, family preservation, certification for kinship family foster care, and the relative guardianship assistance program.



- 7.304.21, D, 1, e - Requires that relative kinship care providers and potential relative kinship care providers are informed about the relative guardianship assistance program (see Section 7.311, et seq.). The information shall be documented in the State Department's automated system.

#### County Department Procedures

The Relative Guardianship Assistance Program adds another permanency option for youth/children who are eligible. The goals and efforts to achieve reunification and adoption supersede relative guardianship. There are no changes in the Dependency and Neglect (D&N) process. In order to implement the Relative Guardianship Assistance Program, the county departments will need to establish procedures, including the following:

- To assure that relatives are informed of the options available at the onset of the case. This partially occurs during the 30-day diligent search efforts and there are other decision-making points in the course of the case.
- Establish a process for the negotiation, case record maintenance, and review of relative guardianship assistance cases.
- Establish a process with the court to receive authorization for the prospective relative guardian to apply for relative guardianship with the Probate Court.

#### Agency letters for reference:

- CW-09-40-I dated November 19, 2009 regarding a Trails upgrade for the Emancipation Transition Plan and IV-D of the FSP.
- CW-09-02-I dated January 5, 2009 regarding the education of children and youth in out-of-home care.

The Department is taking the following steps to implement the Relative Guardianship Assistance Program:

- The legislature appropriated funds to accommodate a Trails enhancement for the Relative Guardianship Assistance Program. The rollout for the enhancement is scheduled on March 29, 2010. Relative Guardianship Assistance Program data may be entered into Trails retroactively to February 1, 2010.
- Web-Based Training (Trails) will be available in February 2010. Information will be provided to county departments in advance.
- Three-hour videoconferencing (statewide sites) and onsite training will be available at Ft. Logan regarding implementation of the program will occur on January 26, 27, and 29, 2010. Videoconferencing and onsite training will be available through June 2010, as needed. The focus of the training is policy related to relative guardianship. Information about training will be provided to county departments in advance.
- In February the training content will include entry of information into Trails for the Relative Guardianship Assistance Program, as well as, policy information.
- The Relative Guardianship Assistance application, agreement, and three-year review forms will be available by February 1, 2010.
- An agency letter with instructions and screen shots of applicable Trails windows that need to be accessed for the Relative Guardianship Assistance Program will be issued prior to the Trails rollout in March 2010.

Attachment:

- "School Selection for Students in Out-of-Home Care" is published by The Legal Center for Foster Care and the National Center for Homeless Education

Effective Date:

February 1, 2009

Supersedes:

N/A

Contact Person:

For questions about:

IV-E reimbursement for reasonable transportation for school and liability insurance with respect to a child: Larry Armstrong (303) 866-4587 or [larry.armstrong@state.co.us](mailto:larry.armstrong@state.co.us)

90-day transition planning: Bob Coulson (303) 866-4706 or [bob.coulson@state.co.us](mailto:bob.coulson@state.co.us)

Chafee Foster Care Independence Program (CFCIP): Shirley Dodd (303) 866-4539 or [shirley.dodd@state.co.us](mailto:shirley.dodd@state.co.us)

Relative guardianship, foster care, diligent search, and planning for educational stability: Mary Griffin (303) 866-3546 or [mary.griffin@state.co.us](mailto:mary.griffin@state.co.us)

Adoption: Constance Vigil (303) 866-3209 or [constance.vigil@state.co.us](mailto:constance.vigil@state.co.us)

# BEST PRACTICES IN HOMELESS EDUCATION

## 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.



#### 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).

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

## 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)(iii)]

## 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)(2)(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.

<sup>2</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) 42 USC 6751(j)(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"/>	<b>Continuity of instruction</b> <i>Student is best served due to circumstances that look to his or her past.</i>	<input type="checkbox"/>	<b>Continuity of instruction</b> <i>Student is best served due to circumstances that look to his or her future.</i>
<input type="checkbox"/>	<b>Age and grade placement of the student</b> <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>	<input type="checkbox"/>	<b>Age and grade placement of the student</b> <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>
<input type="checkbox"/>	<b>Academic strength</b> <i>The child's academic performance is weak, and the child would fall further behind if he/she transferred to another school.</i>	<input type="checkbox"/>	<b>Academic strength</b> <i>The child's academic performance is strong and at grade level, and the child would likely recover academically from a school transfer.</i>
<input type="checkbox"/>	<b>Social and emotional state</b> <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>	<input type="checkbox"/>	<b>Social and emotional state</b> <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>
<input type="checkbox"/>	<b>Distance of the commute and its impact on the student's education and/or special needs</b> <i>The advantages of remaining in the school of origin outweigh any potential disadvantages presented by the length of the commute.</i>	<input type="checkbox"/>	<b>Distance of the commute and its impact on the student's education and/or special needs</b> <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>
<input type="checkbox"/>	<b>Personal safety of the student</b> <i>The school of origin has advantages for the safety of the student.</i>	<input type="checkbox"/>	<b>Personal safety of the student</b> <i>The local attendance area school has advantages for the safety of the student.</i>
<input type="checkbox"/>	<b>Student's need for special instruction</b> <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>	<input type="checkbox"/>	<b>Student's need for special instruction</b> <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>
<input type="checkbox"/>	<b>Length of anticipated stay in a temporary shelter or other temporary location</b> <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>	<input type="checkbox"/>	<b>Length of anticipated stay in a temporary shelter or other temporary location</b> <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>

This brief was developed by:

**National Center for Homeless Education**

800-308-2145 (Toll-free Helpline)

<http://www.serve.org/nche>

**Legal Center for Foster Care and Education**

202-662-1733

<http://www.abanet.org/child/education/>

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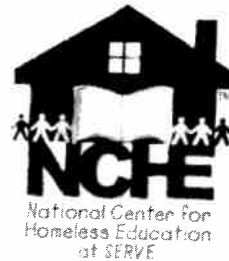


LEGAL CENTER FOR

FOSTER CARE & EDUCATION

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:**

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