UPDATED USDOE RESPONSES TO MCKINNEY-VENTO REQUIREMENTS

Transportation

From email to State Coordinators from Gary Rutkin, Title X Program Manager, USDOE
Dated 7/03/03

Guidance/Policy issue for Homeless Education Program on Districts' obligation for transporting formerly homeless students.

States have inquired, based on Section 722(g)(3) Local Educational Agency Requirements, if an LEA makes a best interest determination to transport a homeless student to the school of origin and the student may continue to attend for the remainder of the year, even after they become permanently housed, does the LEA have an obligation to continue to provide transportation to the school of origin after it is determined that the student is no longer homeless?

The McKinney-Vento Act expressly requires LEAs to provide or arrange transportation for homeless students to and from their school of origin at the request of a parent or guardian (based on child's best interest and feasibility). ED's homeless guidance reinforced this by stating that as a statutory requirement, transportation to school of origin cannot be paid for using other Federal funds (no supplanting requirement).

Additionally, McKinney-Vento allows students who become homeless between or during academic years to continue in the school of origin for the remainder of the academic year if the student becomes permanently housed during an academic year. However, there is no statutory definition of permanently housed. The statute refers to fixed, regular and adequate nighttime housing.

Discussions on this issue with the Office of General Council and the OESE Senior Policy Group it was determined that the provision of transportation to the school of origin is based on a student's status as homeless. The provision to remain in the school of origin during the remainder of the year is to provide for school stability. However, the transportation provision is for homeless students only. Once a student becomes permanently housed and chooses to remain in their school of origin, it at the district's discretion to continue to provide or arrange transportation, as appropriate. The district is under no statutory obligation.

Guidance/Policy issue for Homeless Education Program on Districts' use of Federal funds to pay the excess costs of transporting formerly homeless students.

States have inquired in a similar vein to the prior question: if a student is no longer homeless and would otherwise qualify for Title I, A services, may districts use Title I funds reserved under Section 1113(c)(3)(A), other Title I or Title V funds to pay for the excess costs of transportation to the school of origin?

ED Homeless education program guidance states: "LEAs may not use funds under Title I, Part A or Title V, Part A to transport homeless students to or from their school of origin. Transportation services to the school of origin are mandated under the McKinney-Vento Act's legislation. The supplanting provisions in Title I and Title V prohibit such funds from being used to support activities that the LEA would otherwise be required to provide."

Homeless children and youth are automatically eligible for services under Title I, Part A. An LEA must reserve funds for homeless children who do not attend participating Title I schools and may, for instance, provide support services to children in shelters and other locations where homeless children live.

However, the legislation is silent on the educational support needs of formerly homeless students who become 'permanently housed' during the academic year. The McKinney-Vento Act permits formerly homeless students to remain in their school of origin despite residential instability, yet lack of transportation can prevent them from doing so. Given that transportation has been one of the foremost enrollment barriers, States are asked to highlight in guidance to districts the new transportation responsibilities of LEAs under the reauthorized McKinney-Vento legislation. It is equally important for the Department to encourage school districts to prevent fragmentation of school services for formerly homeless students who may not be able to maintain the continuity of their education in the school of origin once transportation support is no longer provided under the statute.

School districts should be encouraged to adopt a number of options to aid formerly homeless students to remain in the school of origin for the remainder of the school year. If a homeless child or youth becomes permanently housed during an academic school year, school districts may wish to use Title I funds reserved under 1313(c)(3)(A), other Title I funds, Title V or where available, McKinney-Vento sub grant funds, to cover the excess costs of transportation to the school of origin for the remainder of the school year. This practice will assist students who are in the highest economically disadvantaged category to receive appropriate education and support services uninterrupted by sudden changes in housing status that is often not in their control.

While this is an unintended gray area of the legislation, school districts may use such funds to assist a formerly homeless student to remain in their school of origin. Homelessness and transition to more permanent housing are often fragile periods for families. While the use of Title I and Title V funds for transportation is unallowable for homeless students, formerly homeless students would not create an issue of supplanting. The use of such funds may be viewed as appropriate for students who were homeless during the school year in which they became permanently housed. Therefore, district may use funds, as appropriate, reserved under Section 1313(c)(3)(A), other Title I funds, Title V or where available, McKinney-Vento sub grant funds to assist a formerly homeless student to remain in their school of origin for the remainder of the academic year, if they become permanently housed. This recommendation to LEAs is permissive and is not a mandatory condition of services or implied burden.

Preschool Programs Operated by an SEA or LEA

From 7/3/03 email to State Coordinators from Gary Rutkin, Title X Program Manager, USDOE

Recently questions have come up about district obligations for transporting preschoolers to the school of origin. Information on this topic was recently shared by partner organizations desiring to assist in interpreting the statute. It is the Department's position that compulsory education and access to pre-school educational services - even if provided by a State or local governmental agency - can not be held to the same standard. The entire authorization and reauthorization of ESEA is based on students receiving FAPE based on compulsory attendance. There is no concept for a 'school of origin' for a voluntary pre-school educational service. Most state compulsory education laws stem from statutes written in the 19th or early 20th century which makes minimum school age of 6 with permission for 5 year olds to enter into this system. Parents can be subject to legal actions for violating state compulsory education attendance laws. Only special education requires pre-school education for 3-5 year olds - and this is by Federal law. It would be a gross misapplication of the McKinney-Vento statute to impose upon States an obligation to set requirements for public pre-school education other than the existing comparability and coordination language.

Awaiting Foster Care Placement

From email to State Coordinators from Gary Rutkin, Title X Program Manager, USDOE
Dated 7/23/03

As stated previously, from time to time the Department will add to its guidance on the McKinney-Vento Education for Homeless Children and Youth Program. We have had several inquiries regarding the statutory meaning for children "awaiting foster care placement". After consultation with program and public policy officials at the U.S. Department of Health and Human Services and its Administration for Children and Families, which oversees laws and policies related to foster care, we offer the following information:

Under Section 725(2) of the McKinney Vento Homeless Assistance Act, the term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence and includes children and youth who are "awaiting foster care placement". Some questions have arisen concerning the meaning of the phrase "awaiting foster care placement". The purpose of this note is to provide some additional guidance on this issue.

Children and youth who have already been placed in foster care are not considered homeless; children and youth who are awaiting foster care placement are considered homeless. In interpreting the phrase "awaiting foster care placement", we are guided by the definition of "foster care" in 45 CFR 1355.20, a regulation promulgated by the Department of Health and Human Services. Under this regulation, children and youth in the following circumstances have been placed in foster care and, therefore, are not considered to be homeless:

"Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made."

In order to determine whether a child or youth is "homeless" under the McKinney-Vento legislation because he or she is "awaiting foster care placement", local school officials should consult with their district liaison for homeless children and youth as well as their local public social service agency providers. The determination should include public social service agency providers' input, in as much as the agency may be able to define its relationship to the child or youth based on current or prior family court actions.

I was asked to clarify how the HHS regulations would permit a dialogue between schools and social service agencies regarding identifying a student as both homeless and 'awaiting a foster care placement', if in fact their appears to be no instances of awaiting foster-care. Obviously we have incompatible language with legislations designed to protect and serve at-risk children. For McKinney-Vento purposes, which means for purposes of serving the needs of a child who fits the definition of homeless children and youth, liaisons can be guided by the HHS regulatory definitions, however, they can still collaborate with social services to jointly advocate for educational services that supports the educational needs of an individual student in a given temporary living situation. For example, both parties may reach an agreement to serve a student under McKinney-Vento while in a short-term emergency placement in order to maintain a stable school setting (e.g., school of origin).

It is, therefore, essential to establish collaborative relationships to help define how language that supports children eligible for McKinney-Vento (awaiting foster care placement) can be used to help them receive those services, even when there are competing regulations. We believe circumstances will naturally come about that we cannot anticipate that will call for flexibility in interpreting how statutory language is applied to serve the best needs of homeless students. As State Coordinators you are in the best position to recommend and guide liaisons in understanding how to be flexible in supporting students, while understanding compatible and competing statutory requirements.

Services for a student once he/she has permanent housing until the end of the school year

QUESTION

Once a homeless students has become permanently house, are they still eligible under McKinney-Vento until the end of the school term? I know about transportation but what about other comparable services, such as: purchasing uniforms, paying for field trips, school pictures, etc.

RESPONSE FROM USDOE

While there is no statutory requirement, it would be in a student's (and school's) best interest to continue to provide those services that will assist a formerly homeless student to remain in the school of origin for the remainder of the school year. The services suggested in the question below could be provided through other Federal, State or local funds, where appropriate.

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U.S. Department of Education
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