

## THE MCKINNEY VENTO ACT AS APPLIED TO FOSTER YOUTH

The McKinney-Vento Homeless Assistance Act, as reauthorized by the No Child Left Behind Act of 2001, ensures educational rights and protections for homeless children. In light of the Act's definition of "homeless children and youth," these provisions will apply to many youth in foster care. This outline seeks to summarize the key provisions of the Act and their application to dependent children.

### I. Scope of the Act -- Definition of "Homeless Youth"

#### A. "Homeless children and youth" is defined at 42 U.S.C.§11434A(2)

- i. "Homeless" is defined as "an individual who lacks a fixed, regular, and adequate nighttime residence" and "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"
- ii. Transitional housing means housing, the purpose of which is to facilitate the movement of homeless individuals and families to permanent housing within 24 months or such longer period as the Secretary [of US Department of Housing and Urban Development] determines necessary. 42 U.S.C.§11384
- iii. Under the No Child Left Behind Act, 42 USC 11434A(2) -- "Homeless" specifically includes children and youth who either "living in emergency or transitional shelters" or "are awaiting foster care placement."
  - \* Pursuant to this definition, foster youth who are initially detained or who have been moved and are awaiting a permanent placement should receive consideration for the rights and protections afforded under the Act

#### B. Age range

- i. includes children and youth who are eligible for public education,
- ii. includes preschool, under state or federal law.
- iii. Includes LEA and SEA administered Head Start, Even Start, and pre-school programs and medical and mental health services It does not apply to Head Start programs that are not administered by SEAs or LEAs, or to other health services, although there are collaboration provisions re: ensuring access to Head Start and referring for medical and mental health services.

## II. Rights and Protections Afforded to Youth Under the Act

### A. School Placement; Right to Remain in School of Origin

- i. Local Education Agencies ("LEAs") must to the extent feasible *keep youth covered under the Act in their school of origin (school where last enrolled or school attended when permanently housed)*. This provision stems for the recognition that these youth "frequently move, so maintaining a stable school environment is critical to their success in school." (Section 722(g)(3)(B)(i).)
- ii. Students have a right to remain in school of origin until the end of any academic year in which they move into permanent housing or, if longer, for the duration of their "homelessness" (Section 722(g)(3)(A)(i)(II).)
- iii. Students may choose to enroll in any public school that other students living in the same attendance area are eligible to attend (Section 722(g)(3)(A)(ii).)
- iv. "Liaison" at each school district must help youth who are not in the physical custody of a parent or guardian choose whether to remain in the school or origin and, if they are to be moved, enroll in a school. (Section 722(g)(1)(J)(ii).)
- v. If a student is sent to a school other than the school of origin or the school requested by a youth, parent or guardian, the LEA must provide a written explanation of its decision and the right of appeal, even if the placement is not disputed. (Section 722(g)(3)(B)(ii).)

### B. Transportation to School of Origin

- i. For unaccompanied youth, transportation to and from the school of origin must be provided at the liaison's request. (Section 722(g)(1)(J)(iii).)
- ii. At a parent or guardian's request, homeless students must be provided with transportation to and from their school of origin. (Section 722(g)(1)(J)(iii).)
  - a) If the student's temporary residence and the school of origin are in the same LEA, that LEA must provide transportation. (Section 722(g)(1)(J)(iii)(I).)

- b) If the student lives outside the school of origin's LEA, the LEA where the student is living and the school of origin's LEA must determine how to divide the responsibility and cost of providing transportation, or they must share the responsibility and cost equally. (Section 722(g)(1)(J)(iii)(II).)

C. Best Interest determination

- i. To ensure stability for these youth, the legislation requires that LEAs make school placement determinations on the basis of the "best interest" of the youth. (Section 722(g)(3)(A).)
- ii. In making a placement determination, the LEA must, according to the child's or youth's best interest, "continue the child's or youth's education in the school of origin" unless doing so is contrary to the wishes of the child's or youth's parent or guardian. (Section 722(g)(3)(B)(i).)

D. Immediate Enrollment

- i. Enrollment requirements must be revised to remove barriers to immediate enrollment. "The school shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation." (Section 722(g)(3)(C)(i).)
- ii. Immediate enrollment even without documentation is required if youth are to be placed in a different school
  - a) "Enrolled" defined as attending classes and participating fully in school activities (Section 725(1).)
  - b) Enrolling school obtains school records from previous school; LEA liaison shall assist the parent or guardian in obtaining with immunizations and immunization records. (Section 722(g)(3)(C)(iii).)
  - c) Schools must address problems resulting from enrollment delays caused by
    - (1) immunization and medical records requirements,
    - (2) residency requirements,
    - (3) lack of birth certificates, school records or other documentation,
    - (4) guardianship issues, or
    - (5) uniform or dress code requirements.

D. Resolution of Enrollment Disputes

- i. Every state must have in place process to promptly resolve disputes
- ii. While dispute is being resolved, the student must be *immediately admitted* to the school of choice (Section 722(g)(3)(E)(i).)
- iii. A written explanation of the school's decision must be provided if a parent, guardian, or unaccompanied youth disputes a school placement or enrollment decision. The written explanation must include a discussion of the right of the parent, guardian, or youth to appeal the decision. (Section 722(g)(3)(E)(ii).)
- iv. The school must refer the student, parent, or guardian to the local liaison to carry out the dispute resolution process as expeditiously as possible (Section 722(g)(3)(E)(iii).)
- v. Liaisons are responsible for ensuring this provision is followed for unaccompanied youth. (Section 722(g)(3)(E)(iv).)

E. Records

- i. Any record ordinarily kept by the school of each homeless child or youth must be maintained (Section 722(g)(3)(D)(i).)
- ii. Records must be available in a timely fashion when a child or youth enters a new school district (Section 722(g)(3)(D)(ii).)

F. Comparable services

- i. educational services for which the children or youth meets the eligibility criteria including educational programs for children with disabilities or with limited English proficiency (Section 722(g)(4)(B).)
- ii. programs in vocational education (Section 722(g)(4)(C).)
- iii. programs for gifted and talented students; (Section 722(g)(4)(D).)
- iv. school meals programs (Section 722(g)(4)(E).)
- v. Head Start; Even Start and pre school programs administered by the LEA
- vi. Referrals to health, mental health, dental, and other appropriate services.
- vii. before and after school, mentoring and summer programs in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities.

### III. Implementation

#### A. State Plan

- i. Must describe how students in homeless situations will be given the opportunity to meet the same challenging state academic achievement standards as other students (Section 722(g)(1)(A).)
- ii. describe the procedures the State educational agency will use to identify homeless children and youth and to assess their special needs (Section 722(g)(1)(B).)
- iii. Must provide technical assistance to all Local Education Agency (LEA) in order to ensure compliance with the following LEA requirements:
  - a) School choice/placement
  - b) Best interest determination
  - c) Enrollment
  - d) Enrollment disputes
  - e) Records
  - f) Comparable services
  - g) Coordination
  - h) Local liaison duties
  - i) Review and revision of policies
  - j) Prohibition on segregation

#### B. Coordination

- i. Each LEA shall coordinate with local social services agencies and other agencies or programs providing services to homeless children or youth and their families. (Section 722(g)(5)(A).)
- ii. Includes services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C.A § 5701 et seq.). (Section 722(g)(5)(A)(i).)

#### C. LEA Liaison Duties

- i. Every LEA must designate an appropriate staff person as a LEA Liaison for students in homeless situations (Section 722(g)(6)(A).)

- ii. Liaisons must ensure that:
  - a) Students in homeless situations are identified by school personnel and through coordination activities with other entities and agencies (Section 722(g)(6)(A)(i).)
  - b) Students in homeless situations enroll in and have full and equal opportunity to succeed in the school of the LEA (Section 722(g)(6)(A)(ii).)
  - c) Families, children and youth receive educational services for which they are eligible (Section 722(g)(6)(A)(iii).)
  - d) Public notice of the educational rights of homeless children and youth is disseminated where they receive services (Section 722(g)(6)(A)(v).)
  - e) Parents are informed of educational opportunities for their children and provided with meaningful opportunities to participate in their children's education. (Section 722(g)(6)(A)(iv).)

D. Review and Revision of Policies

- i. Each State educational agency and LEA shall review and revise any policies that may act as barriers to enrollment or retention. (Section 722(g)(7)(A).)
- ii. Consideration shall be given to issues concerning:
  - a) Transportation
  - b) Immunization
  - c) Residency
  - d) Birth certificates
  - e) School records
  - f) Other documentation
  - g) Guardianship (Section 722(g)(7)(B).)
- iii. Special attention must be given to children and youth not currently attending school. (Section 722(g)(7)(C).)

E. Prohibition on Segregation

Children and youth who are homeless may not be segregated from other students. (Section 722(e)(3)(A).)