



Kansas Legislative Research Department

Providing nonpartisan, objective research and fiscal analysis for the Kansas Legislature since 1934

68-West-Statehouse | 300 SW 10th Ave. | Topeka, Kansas 66612-1504
(785) 296-3181

kslegres@klrd.ks.gov

kslegislature.org/klrd

October 20, 2020

To: Special Committee on Foster Care Oversight

From: Norma Volkmer, Fiscal Analyst

Re: Transportation of Foster Care Children to School

EDUCATIONAL STABILITY AND TRANSPORTATION OF FOSTER CARE CHILDREN

This memorandum reviews federal law related to the educational stability and transportation of children and youth in foster care attending K-12 educational institutions.

McKinney-Vento

The McKinney-Vento Education for Homeless Children and Youth Program (McKinney-Vento) was originally authorized by Title VII-B of the McKinney-Vento Homeless Assistance Act (PL 100-77) and was reauthorized under the Every Student Succeeds Act (ESSA) in 2015. McKinney-Vento sets several requirements for state educational agencies (SEA) and local educational agencies (LEA) regarding the education of homeless children and youth. Children are defined as homeless if they lack a fixed, regular, and adequate nighttime residence. This definition includes:

- Children and youths who share the housing of other persons due to loss of housing, economic hardship, or a similar reason; live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; live in emergency or transitional shelters; or are abandoned in hospitals;
- 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;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

- Migratory children¹ living in one the above situations.²

As part of the 2015 reauthorization, children “awaiting foster care placement” were removed from the definition of homeless children.³ However, such children awaiting foster care placement can receive assistance if they are living in one of the above situations.

Under McKinney-Vento, SEAs and LEAs must work to remove barriers to high-quality education for homeless children and youth. Every SEA must have a statewide coordinator and every LEA must have a local liaison. Additionally, McKinney-Vento requires the following:

- Homeless students have the right to remain in their school of origin, which is the school where they were enrolled when last permanently housed or where they were last enrolled, so long as it is in their best interest.
- If it is not in the student’s best interest, homeless students must be allowed to immediately enroll in a new school, regardless of the ability to provide records normally required. Unaccompanied youths can enroll even without proof of guardianship. The parents, guardians, and unaccompanied youths have the right to contest eligibility, school selection, and enrollment decisions.
- Transportation to and from the school of origin must be provided at the request of a parent, guardian, or LEA liaison (for unaccompanied youths).
- Homeless students must be provided access to all programs and services for which they are eligible.

Fostering Connections to Success and Increasing Adoptions Act of 2008

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) (PL 110-351) amended Title IV, Parts B and E of the Social Security Act. The Fostering Connections Act requires state child welfare agencies ensure the educational stability of children and youth in foster care. Foster care is defined as “24-hour substitute care for children placed away from their parents or guardians and for whom the title IV–E agency has placement and care responsibility.”⁴ To ensure the educational stability of children and youth in foster care, the child welfare agency must coordinate with the LEA and include certain assurances in the child’s case plan. The first assurance is that the placement of the child in foster care considers the appropriateness of the current school and the proximity of the school to the child’s placement.⁵ Second, there must be an assurance that the child will continue to be enrolled in the same school they were enrolled in when they entered the foster care system

1 Defined as children and youth who have moved in the last three years as a migratory agricultural worker or a migratory fisher, or moved with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher. 20 USCA § 6399 (West 2015).

2 42 USCA § 11434a (West 2016).

3 Every Student Succeeds Act, S.1177, 114 Cong. §9105 (2015).

4 45 CFR § 1355.20.

5 See 42 USCA § 675 (West 2018).

(school of origin), unless it is not in the best interest of the child.⁶ If continued enrollment in the school of origin is not in the best interest of the child, the plan must include assurances from the child welfare agency and LEA that the child will be immediately enrolled in a new school and all educational records will be provided to the new school.⁷

In addition to requiring educational stability assurances, the Fostering Connections Act expanded the use of federal funding by including reasonable transportation costs in the definition of foster care maintenance payments. The child welfare agency determines what is considered reasonable transportation costs, but factors considered might include the actual cost, distance traveled, and length traveled. Foster care maintenance payments are made on behalf of eligible children under Title IV-E of the Social Security Act to cover daily living costs. Children and youth in foster care eligible for foster care maintenance payments might include those removed from an eligible home voluntarily or by judicial determination for the welfare of the child, those placed and in the care of the child welfare agency, and those placed with a licensed home or institution. Prior to the Fostering Connections Act, a state could claim reasonable transportation costs as administrative costs, which required a 50.0 percent state match. The ability to claim reasonable transportation costs as part of foster care maintenance payments allows for a higher federal match under the Federal Medical Assistance Percentage (FMAP) rate.

Every Student Succeeds Act

The ESSA (PL 114-95), which reauthorized and amended the Elementary and Secondary Education Act of 1965 (ESEA), was signed into law in 2015. ESSA mandated collaboration between child welfare agencies, SEAs, and LEAs to ensure the educational stability of children in foster care. Consistent with the Fostering Connections Act, foster care is defined as when the child welfare agency has placement and care responsibility for children placed away from their parents or guardians. Many of these requirements mirror those in the Fostering Connections Act and McKinney-Vento.

Much of the work under the ESEA, as amended by ESSA, required LEAs to collaborate with state and local child welfare agencies, though SEAs were encouraged to create state plans for uniformity and hold LEAs accountable to the new requirements. To this end, LEAs appointed a point of contact (POC), who is the main liaison between the LEA and the child welfare agencies.

Under ESEA, as amended by ESSA, a child in foster care has a right to continue enrollment at the school of origin, unless it is not in the child's best interest. Under ESSA, the school of origin is defined as the school at which the child is enrolled upon entry into foster care or upon a change in placement. If it is not in the child's best interest to stay enrolled in the school of origin, then the child should immediately be enrolled in another school, even if the documentation normally required is not provided. The new school should contact the school of origin to obtain the child's records. The child placing agency and the POC determine the child's best interest, but the child placing agency has the final say if there is a disagreement. The following factors are considered in the best interest determination in Kansas: length of time enrolled in school of origin, learning behaviors or disabilities, safety factors, participation in extracurricular activities, distance of new placement from school of origin, Individualized Education Program and 504 Plan [for students with disabilities] services, child preference,

⁶ *Id.*

⁷ *Id.*

parent preference if parental rights are still intact, child's attachment to school of origin, placement of siblings, influence of school climate, and availability and quality of services.⁸

ESSA also amended Title I, Part A of ESEA to require LEAs receiving Title I funding to coordinate with state and local child welfare agencies to create procedures ensuring transportation of students in foster care, including the means of funding. As noted above, ESSA also removed the phrase "children awaiting foster care placement," from the definition of homeless youth in McKinney-Vento, which requires transportation of homeless youth. LEAs were required to create transportation plans for children in foster care by December 10, 2016, including explanations for the arrangement and funding of transportation. These plans must ensure children in foster care receive transportation promptly, in a manner that is cost-effective, and in accordance with the State's ability to use Title IV-E funds. If there are no additional costs, LEAs are directed to provide the transportation. If there are additional costs, the LEA will provide transportation only if the LEA agrees to pay the costs, the child welfare agency agrees to reimburse the costs, or the LEA and child welfare agency share the costs.⁹ Per the Kansas Department of Education, LEAs (which in Kansas are generally school districts) cover transportation costs for children in foster care; however, there is no statewide policy.

8 Kansas Department for Children and Families, Prevention and Protection Services Policies, 5254 Ensuring Educational Stability.

9 20 USCA § 6312(c)(5)(B) (West 2015).