

Foster Care & Education

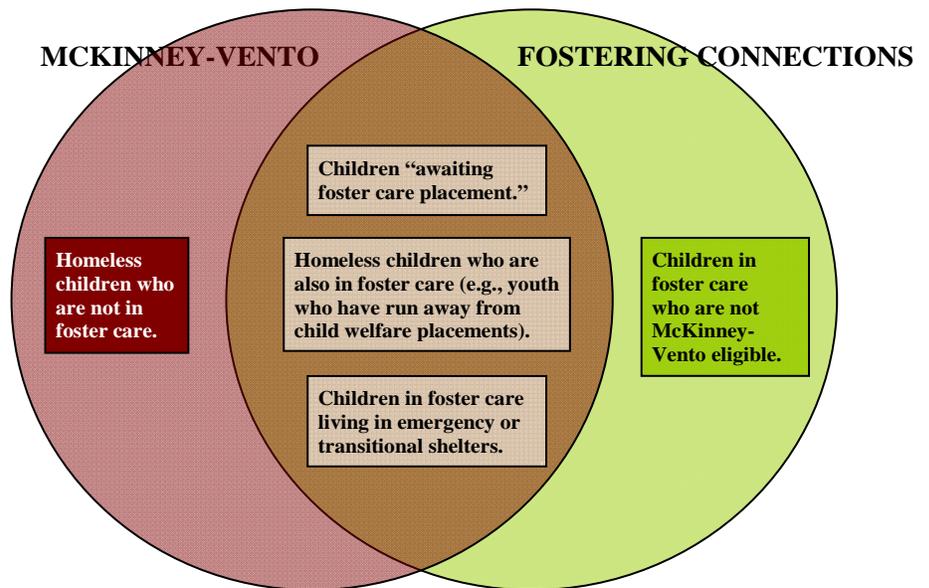
Q&A

HOW FOSTERING CONNECTIONS AND MCKINNEY-VENTO CAN SUPPORT SCHOOL SUCCESS FOR ALL CHILDREN IN OUT-OF-HOME-CARE

Current education law, the McKinney-Vento Homeless Assistance Act (McKinney-Vento), has been providing education stability for some children in out-of-home care. A child welfare law, the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections), also supports education stability for all children in out-of-home care. Both laws recognize the need for school stability and continuity for these highly mobile children. However, each provides a different set of rights and responsibilities. This fact sheet provides a brief overview of the overlap between the two laws, and the critical importance of collaboration between the education and child welfare systems to appropriately serve the needs of children in out-of-home care.

Q: Who is eligible under each law and can some children be eligible under both?

A: The diagram at right demonstrates that those children eligible under the McKinney-Vento Act and Fostering Connections Act may overlap. For example, if a child is in out-of-home care and also meets the definition of awaiting foster care placement, both Fostering Connections and McKinney-Vento apply. State laws may also apply. The application of one law does not diminish the rights provided by the others. Rather, each law adds a layer of rights and protections for children, based on their circumstances and needs.



Q: What education rights do the Fostering Connections Act and the McKinney-Vento Act provide for children in out-of-home care? Who is eligible? How do the two laws overlap?

A: The chart on page 2 summarizes the education rights available under each law, who is eligible, and the overlap between the laws in terms of rights and who is covered.

Rights and Eligibility Under the McKinney-Vento and Fostering Connections Acts

| LAW | WHO'S ELIGIBLE | RIGHTS | | | | |
|--|---|---|---|---|---|--|
| | | Remain in School | Transportation | Immediate Enrollment | Expedited Record Transfer | Designated Staff Resource |
| McKinney-Vento Homeless Assistance Act | Homeless children, including: children in emergency or transitional shelters, unaccompanied homeless youth, or those "awaiting foster care placement" as defined by state or school district policy or at the discretion of the McKinney-Vento Liaison. | If in their best interest, children are entitled to remain in their school of origin unless their parent disagrees. | LEAs are required to provide or arrange transportation to the school of origin. (When disputes between LEAs arise, they must split the cost.) | Schools must enroll children immediately, even without typically required documents (e.g. birth certificate, immunization record). | Schools must maintain records so they are available in a timely fashion when a child enters a new school or school district. | Every SEA has a McKinney-Vento State Coordinator and every LEA must designate a McKinney-Vento Liaison. |
| Fostering Connections to Success and Increasing Adoptions Act of 2008 | Every child in out-of-home care. | Unless not in the child's best interest, the child welfare agency must work with the education agency to ensure child can remain in their school at the time of placement. ¹ | No specific mandate, ² but for IV-E eligible children in out-of-home care, "foster care maintenance payments" may include reasonable transportation to a child's school. | When staying in the same school is not in the child's best interest, child welfare and LEAs must provide immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school. | When staying in the same school is not in the child's best interest, child welfare and LEAs must provide immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school. | Not specified. |
| McKinney-Vento AND Fostering Connections | Children in out-of-home care who are McKinney eligible including: children in emergency or transitional shelters, unaccompanied homeless youth, and those "awaiting foster care placement." | Unless not in the child's best interest, the child welfare agency and the McKinney Vento liaison must work together to ensure child remains in the school of origin. ³ | Unless another state or local agreement exists between education and child welfare, LEA must provide transportation. | Child welfare agency and education agency must work together to ensure immediate enrollment, even without typically required documents. | Child welfare agency and education agency must work together to expedite record transfers. | Child welfare agency caseworker and liaison must work together to provide for all of the child's rights under both Acts. |

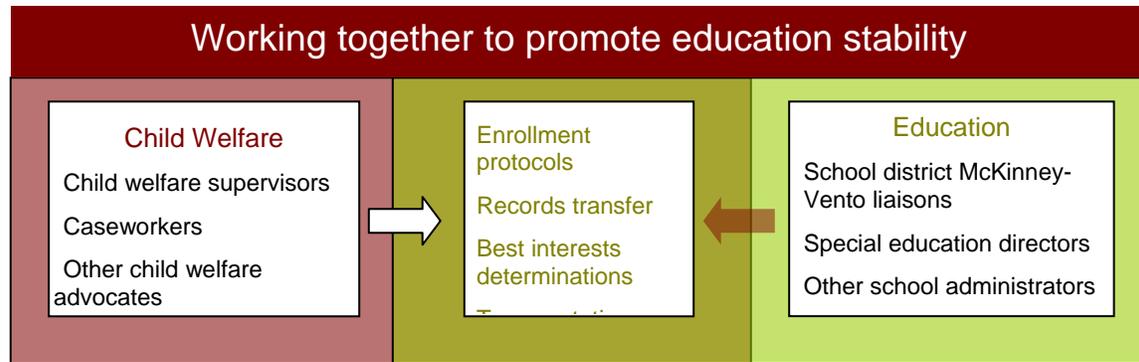
¹ The 2011 Child and Family Services Improvement and Innovation Act clarified in statute that the school stability requirements of Fostering Connections apply at a child's *initial* placement into foster care, as well as any *subsequent* placement changes. Previous guidance had *encouraged* this, but now it is absolutely clear that the requirements apply throughout the time the child is in care.

² While not explicit in the statute, legislative intent of providing children in foster care with school stability and continuity implies that child welfare's responsibility to "ensure" school stability for children in foster care, consistent with their best interest, includes providing transportation to the child's school when necessary and appropriate.

³ While both child welfare agencies and McKinney-Vento liaisons must determine what is best for the child (and best practice would suggest making those decisions collaboratively), if the child is being found eligible under McKinney-Vento, the McKinney-Vento liaison oversees the final decision. If disagreement occurs, the McKinney-Vento dispute procedures can be followed.

Q: How should child welfare advocates navigate the two laws?

A: Fostering Connections, McKinney-Vento, and other federal and state education and child welfare laws must work together to support students in out-of-home care. Initially, advocates should determine which federal and state laws and policies apply to a particular child. Advocates should then ensure the child receives the protections of *all* applicable laws.



To ensure proper implementation of federal and state laws for children in out-of-home care, child welfare supervisors, caseworkers, and other advocates should meet with school district McKinney-Vento liaisons, special education directors, and other administrators. Meetings should address topics such as best interest determinations, transportation plans, enrollment protocols and record transfers. Communication and collaboration among education and child welfare professionals are critical to support school success for children in out-of-home care.

Q: Does Fostering Connections impact eligibility for McKinney-Vento protections for children in out-of-home care?

A: No. The passage of Fostering Connections, a child welfare law, does not change the rights and protections of McKinney-Vento. Children in out-of-home care may continue to be eligible under McKinney-Vento if they are living in transitional or emergency shelters, are “awaiting foster care placement,” or are unaccompanied homeless youth.

Q: How should best interest school selection decisions be made under Fostering Connections and McKinney-Vento and who should make these determinations?

A: The passage of Fostering Connections, a child welfare law, does not change in any way the best interest determination for children who qualify for McKinney-Vento. This decision is still made by the McKinney-Vento liaison. Just as before, best practice suggests that the McKinney-Vento liaison should gather information about a child from the child, foster parent, child’s caseworker and child advocate or attorney in making a best interest determination. While the input of a caseworker is very critical in making a best interest determination under the McKinney-Vento Act, it is only the McKinney-Vento liaison and parent who will ultimately make this decision.

However, when a child in out-of-home care is not eligible for McKinney-Vento, the rights of Fostering Connections still apply. As such, it may be the child welfare agencies’ responsibility to make the best interest determinations. Best practice would suggest that education agency staff should be consulted in making these decisions.

Q: What is the role of the parent in making education decisions?

A: Unless a court has limited a parent's education rights, the parent continues to be the decisionmaker for all special and general education decisions. This is true under both Fostering Connections and McKinney-Vento.

Q: How is transportation covered under both laws?

A: Children in care who are eligible under McKinney-Vento and require transportation to remain in their schools of origin are still entitled to transportation under McKinney-Vento by the education agency. However, child welfare agencies should collaborate to support these efforts as much as possible. For children in care not eligible under McKinney-Vento, child welfare agencies may use IV-E foster care maintenance or administrative dollars to support transportation to keep children in the same school. While this is an allowable reimbursement, it is not mandatory. However, since the agency is required to ensure that when in a child's best interest he or she remains in the same school, providing transportation will often be necessary to comply with this requirement.

Resources

The following organizations provide these additional resources on the McKinney-Vento and Foster Connections Acts:

The Legal Center for Foster Care and Education

www.abanet.org/child/education

- *Q&A: Fostering Connections to Success and Increasing Adoptions Act* (outlines the Act's education provisions)
- *Implementation Guide* (helps states implement the education provisions of the Act)
- Fostering Connections Implementation Issue Brief Series (covering such topics as Best Interest Determinations, Transportation, and Collaborating with Schools)

All available at:

http://www.americanbar.org/groups/child_law/projects_initiatives/education/state_implementation_to_olkit.html

The National Association for the Education of Homeless Children and Youth (NAEHCY)

www.naehcy.org

- *The McKinney-Vento Act and Children and Youth Awaiting Foster Care Placement: Strategies for Improving Educational Outcomes Through School Stability*
www.abanet.org/child/education/publications/stability.html

The National Center for Homeless Education (NCHE)

www.serve.org/nche

- *Best Practices in Homeless Education* (fact sheet about how to determine best interest)
www.serve.org/nche/downloads/briefs/sch_sel_checklist.pdf
- *Clearing the Path to School Success for Students in Out-of-Home Care*
www.serve.org/nche
- *Homeless Education Issue Briefs*