

Children and Family Law Division Committee for Public Counsel Services

ESSA Creates New Federal Rights for Foster Children to School Stability¹

What is ESSA?

In December 2015, President Obama signed into law the Every Student Succeeds Act (ESSA). ESSA amends the Elementary and Secondary Education Act (ESEA). Two parts of the amended ESEA are particularly relevant to children in foster care: Title I, which now provides school stability rights for children in foster care, and Title IX, the McKinney-Vento statute. Some of the changes to McKinney-Vento went into effect in October 2016. **The Title I changes related to foster care are effective December 10, 2016.**

What has changed for children in foster care?

- All children in foster care have to right to remain in their school of origin and receive transportation to their original school.
- If it is not in their best interests to remain in their school of origin, they must be enrolled immediately in the new school, even if records normally required for enrollment are not available.
- Children who are placed in STARR programs and other temporary placements will no longer be considered homeless under the McKinney-Vento statute (but may continue to have rights as formally homeless students).
- The state and local school systems must collect and report data on the academic performance of children in foster care.

Why is this important?

Studies show that children lose 4-6 months academically every time they change schools. Many children in foster care change placements and change schools frequently during their time in state custody. Enrollment delays mean missed school time, as children fall further behind academically. Foster children also lose important connections to adults and friends when they change schools and must adjust to new routines, teachers and peers. Not surprisingly, children in foster care do more poorly academically than their peers on all measures. They are more likely to perform below grade level, be suspended or expelled, have gaps in schooling, and not graduate from high school. This law helps promote continuity of education for these vulnerable children.

¹ Prepared by Amy Karp, November 2016

What rights do foster children have to remain in their school of origin?

All children in foster care have the right to remain in their school of origin, unless it is contrary to their best interests. Prior to ESSA, some foster children (those in STARR programs and other temporary placements), were considered “homeless” under McKinney-Vento and had the right to remain in the school they were attending before they became homeless (i.e., the school they attended before they were placed in DCF custody) and to receive transportation to their home school. Under revisions to Title I, all children in DCF custody now have the right to attend their school of origin.

Although school of origin is not defined in Title I, a Guidance issued by the US Department of Education states that this right applies not just to the initial removal, but to subsequent changes in placement. See <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>. For example, a child is removed from Springfield and placed in a foster home in Northampton. The child may continue in school in Springfield, or instead enroll in Northampton. Assume, the child is enrolled in the Northampton public schools. Nine months later the child is moved to a new foster home in Holyoke. The child has a right to remain in school in Northampton.

What happens if it is not in the child’s best interests to remain in their school of origin?

If it is not in the child’s best interests to remain in their school of origin, the child must be enrolled immediately in the school in the town where they are placed, even if records normally required for enrollment are not available. This means the school cannot refuse to enroll a child because they don’t have the child’s immunization records or IEP.

How is the best interests determination made?

DCF will make the decision in consultation with the school. The child, parents and their attorneys should ask to participate in this decision. DCF and the Massachusetts Department of Elementary and Secondary Education (DESE) are finalizing a memorandum that will identify a non-exclusive list of factors to be considered. They are likely to be similar to the memorandum that DCF and DESE agreed upon when implementing the education provisions of the Fostering Connections to Success law. Factors likely to be included are: age of child, time of school year, child’s preference, safety issues, travel time, current educational goals (IEP), expected length of placement, ability to maintain family relationships, etc. See www.doe.mass.edu/mv/EducationalStability.docx. Availability of transportation should **not** be considered under the new law.

How will transportation be provided?

The new law requires the local school district (aka LEA or local education agency) to collaborate with DCF to develop a plan to ensure that children in foster care promptly receive transportation

to their school of origin. It provides that DCF can pay for transportation through federal foster care payment reimbursements under Title IV-E of the Social Security Act. It further provides that if there are any additional costs associated with transporting the child they shall be paid, either by the school, DCF, or shared between the two. It is hoped that DCF and DESE will issue a joint memorandum advising the local schools how to arrange and pay for transportation.

Does McKinney-Vento still apply?

The McKinney Vento statute (Title IX) provides students experiencing homelessness the right to attend their school of origin and receive transportation provided by the schools. Prior to ESSA, the definition of homeless, included children “awaiting foster care”. Foster children placed in STARR homes and other temporary placements were considered “awaiting foster care” and thus received the benefits of McKinney-Vento. ESSA removed “awaiting foster care” from the definition of homeless.

However, there are two categories of children who still may benefit from McKinney-Vento. First, as of December 10, 2016 (the ESSA effective date) foster children who previously were considered homeless, arguably are “formerly” homeless under McKinney Vento. Under another amendment to the McKinney Vento statute, students who become permanently housed have the right to attend their school of origin and receive transportation by the school, until the end of the school year. This means that foster children currently receiving transportation under McKinney-Vento should continue to receive it until the end of the school year, after which they will benefit from the new foster care provisions in Title I.

Additionally, there may be youth under a CRA or care and protection case that still fall under the definition of homeless, if they are living in a shelter or hotel with their family, doubled up with relatives or friends, living in substandard housing or in a place not designed for humans to live (campground, park, car).

Are the school stability provisions in the Fostering Connections to Success Act still applicable?

Yes. ESSA imposes new obligations on school districts and DCF. However, DCF must also comply with the school stability provisions in the Federal Fostering Connections to Success law enacted in 2008. Among other things, Fostering Connections requires DCF to:

1. Ensure that decisions about a child’s placement take into account the appropriateness and proximity of the child’s school to the proposed placement;
2. Coordinate with schools to ensure a child placed in foster care can remain in his school of origin, and
3. If remaining in the school origin is not in the child’s best interests, ensure that hat the child is enrolled immediately in a new school and that the new school obtains relevant academic and other records.

Where can I get more information about the new law?

The US Department of Education website has numerous resources, including the complete text of the statute, recently enacted regulations, guidance memoranda, powerpoints and advisory letters at <https://www2.ed.gov/policy/elsec/leg/essa/>. Also, visit the website of the Children's Law Center at <http://www.clcm.org/schoolstability.html>.