



NATIONAL ASSOCIATION  
FOR THE EDUCATION OF  
HOMELESS CHILDREN  
AND YOUTH

*Building Futures Through Education*

### **The Education of Children and Youth in Foster Care In the Reauthorization of the Elementary and Secondary Education Act**

Children and youth in foster care face unique educational challenges. High rates of mobility, separation from their families and communities, and the trauma of the abuse and neglect they have experienced create hurdles to educational success.

Currently, the McKinney-Vento Act's Education for Homeless Children and Youth program provides immediate school enrollment and school stability to a subset of children and youth in foster care. The Act's definition of homeless contains the phrase "awaiting foster care placement," which includes a subgroup of children in out-of-home care. States and local school districts must determine which children are considered to be "awaiting foster care placement."

Over the past eight years, many challenges have arisen in the implementation of the McKinney-Vento Act for children and youth "awaiting foster care placement." In many cases, this has resulted in unintended negative consequences for children in foster care, and for children who are homeless. Despite the many similarities between children in foster care and children experiencing homelessness, children in foster care are in the custody of a state agency that has responsibility for their safety, permanency, and well-being; this distinguishes them from children experiencing homelessness, who are much more difficult to identify, and are not provided the same protections or supports. Yet both populations share the need for school stability, immediate school access, and support for academic success.

Based on the challenges in implementing the McKinney-Vento Act for children and youth in foster care and the new legislative foundation provided by the Fostering Connections to Success and Increasing Adoptions Act, NAEHCY recommends that the ESEA reauthorization provide all children and youth in foster care with core protections for school stability and school access through a separate statutory vehicle that creates clear, distinct, and appropriate responsibilities for both the education and child welfare agencies. Furthermore, in order to ensure that the needs of both homeless and foster children are met, any legislation that addresses the education of children and youth in foster care must: 1) require child welfare agencies to pay for the cost of transportation to the school of origin for as long as children and youth are in the custody of the state; 2) require school districts to pay for transportation for the remainder of the school year when a child exits foster care; and 3) require school districts and child welfare agencies to collaborate on the logistics of transportation. A dedicated funding stream must be provided. The Fostering Success in Education Act, S. 2801, accomplishes these objectives. For these reasons, NAEHCY supports this legislation. A more in-depth explanation is provided below.

## **Background:**

NAEHCY is a grassroots membership association composed of educators and service providers working directly with children and youth in public schools and communities nationwide. Our recommendations are based upon the following experiences.

Challenges in Implementing “Awaiting Foster Care Placement:” With the passage of the No Child Left Behind Act, children and youth “awaiting foster care placement” were made statutorily eligible for McKinney-Vento protections and services. Although implementation of this eligibility began in 2002, it took several school years for implementation challenges to come to light at the local and state level. These problems have demonstrated that the McKinney-Vento Act was not intended to address, and does not have the resources for, the kind of inter-agency responsibilities that are necessary to serve children and youth in foster care. As a result, serious conflicts have arisen between schools and child welfare agencies that have resulted in both a loss of attention and focus on children and youth who are homeless, and uneven and incomplete implementation of protections for children and youth in foster care. Specific implementation challenges include the following:

- Eligibility. In some states, “awaiting foster care placement” is defined very narrowly or not at all, and few if any children in foster care benefit from the protections of the McKinney-Vento Act. In other states, implementing state or local definitions of “awaiting foster care placement” has been fraught with problems. School districts and child welfare agencies have clashed over which children and youth in foster care fall within local or state guidance of “awaiting foster care placement,” leading to disputes that take time away from serving children, and creating divisive tensions between agencies.
- Decision-making. McKinney-Vento provides roles for parents, guardians, and unaccompanied youth in school placement decisions and dispute resolution procedures. For children and youth in foster care, however, these terms have no clear definition or application. The biological parents of children and youth in foster care sometimes do not have decision-making authority, and may not be available or appropriate decision-makers for the youth. Case workers, attorneys, biological parents and foster parents may jockey to make education decisions for children and youth in foster care, often having conflicting opinions, which can result in a paralyzing indecision regarding youth’s educational best interest. Youth in foster care sometimes are simply out of school while participants argue. Schools and foster parents are rarely made aware of who truly has legal decision-making authority. Federal law, as well as courts overseeing child welfare cases, must address these problems. However, adapting McKinney-Vento to address these problems needlessly complicates the statute and confuses implementation for homeless children and youth. A unique federal program that specifically addresses the challenges of decision-making and court-involvement for foster youth directly, in a thoughtful and appropriate way, is the best way to resolve these conflicts.
- Inter-Agency Conflicts. McKinney-Vento awkwardly addresses the barriers that schools impose on foster youth, but it cannot address those imposed by child welfare agencies. Child welfare statutes have touched upon a few of those barriers, but in incomplete and

insufficient ways. It is essential to have a single, unified approach to foster youth's educational success, an approach that combines the roles and responsibilities of both child welfare and education in one program. Patching together various laws that affect schools and child welfare separately has not been effective, as one system attempts to transfer its responsibilities to the other, or casts blame for students' instability and failure on the other. Inter-agency conflict leads to confusion, frustration, and ill-will toward the very children and youth the law is intended to serve. As these frustrations build, the students – those in foster care and those who are homeless - pay the price.

- Transportation Responsibilities. McKinney-Vento requires school districts to provide and arrange transportation to the school of origin, regardless of whether the school district receives any funding to provide the transportation. Many school districts have sought to minimize costs by failing to identify and serve homeless children and youth, who are an invisible population with few advocates and rarely any attorneys, and by making decisions about where children should attend school that are based on cost and convenience, rather than best interest. Expanding “awaiting foster care placement” to include more children and youth in foster care exacerbated this troublesome trend. Even if foster youth are covered by a new, separate statute, requiring schools to pay for transportation for foster youth will continue to have a negative impact on the education of homeless students (see Transportation to the School of Origin, below).
- Lack of Funding. McKinney-Vento funds are extremely limited, reaching only 9% of school districts and, even in those districts, not meeting needs. In the 2008-2009 school year, more than 300,000 of the identified homeless children and youth did not receive direct services through the program. Moreover, the number of homeless children and youth enrolled in public schools has increased by 38% over the past two school years. In addition to the many identified homeless children and youth who are not receiving services because of the lack of funding, many more children and youth have not been identified, and, as a result, have not received services. Without school staff who have the time to identify homeless students, coordinate services with community agencies to ensure that basic needs are met, and resolve disputes over eligibility and school selection on their behalf, homeless children and youth will not be in school receiving the education that they need to escape poverty and homelessness as adults. In some states, efforts to include more children and youth in foster care under “awaiting foster care placement” have led to a loss of attention and services for homeless children and youth, for whom school liaisons are often the only support and source of advocacy.

Passage of the Fostering Connections Act. The education provisions in the Fostering Connections Act lay the groundwork for significant changes in child welfare practices on education. Importantly, Fostering Connections recognizes the child welfare agency's role in educational success and accepts that school stability and continuity for children in foster care requires collaboration between child welfare and education agencies. However, while Fostering Connections allows child welfare agencies to use Title IV-E funds to pay for the cost of transportation, not all children in foster care are Title IV-E eligible. Moreover, Fostering Connections does not allocate any additional money to pay for transportation, nor does it specify that child welfare agencies must pay for transportation to the school of origin. As long as there

is no clear requirement for child welfare agencies to pay for the cost of transportation to the school of origin, and no additional funding to do so, many students in foster care will go without transportation to their schools of origin, homeless students will continue to be under-identified and underserved, and the school stability protections included in the Fostering Connections Act will remain illusory.

### **Recommendations for ESEA Reauthorization**

In order for the education provisions of Fostering Connections to be effective, reciprocal changes in federal education law are necessary. A unique education program for children in foster care that lays out clearly the responsibilities of both school districts and child welfare agencies will allow the goals of Fostering Connections to be met without jeopardizing the education of children and youth who are homeless.

Any legislation that addresses the education of children and youth in foster care must:

- Allow children and youth in foster care to remain in their schools of origin when it is in their best interest to do so.
- Define a “best interest” process that is child-centered, individualized, and inclusive of all relevant parties.
- Require school districts to immediately enroll children and youth in foster care in school, even if they lack records that are normally required for enrollment.
- Define a clear, accessible, and expeditious process to resolve disputes between agencies and among the adults involved in the child’s life.
- Require child welfare agencies to pay the cost of transportation to the school of origin for as long as children and youth are in the custody of the state. When a child exits foster care in the middle of an academic year, school districts should be responsible for transportation to the school of origin for the remainder of the year, if it is in the child’s best interest to remain there. Both agencies must be required to collaborate on the logistics of transportation.
- Authorize dedicated funding for the implementation of both education and child welfare responsibilities.

The Fostering Success in Education Act, S. 2801, incorporates these essential provisions. Therefore, NAEHCY supports this legislation.

### **Transportation to the School of Origin: A Critical Component of School Stability**

In light of the high costs and logistical challenges, the issue of transportation is particularly difficult and contentious. Yet the provision of transportation is essential to ensure school stability, and school stability is essential to ensure school success. The rationale for our position on transportation is outlined below.

**Making school districts responsible for transportation costs for children and youth in foster care will lead to the loss of school access and stability for homeless children and youth.**

If child welfare agencies are not required to pay for school of origin transportation costs while children are in foster care, the cost of this transportation for both homeless children and children in foster care will be placed on school districts. This approach puts at risk the educational access and stability of homeless children and youth, for whom school districts are the sole source of support for transportation and many other basic services.

Transportation to the school of origin is critical to ensure academic success; it enables school to be a stable, secure learning environment in the midst of upheaval. Yet it is very expensive. As noted above, only 9% of school districts receive McKinney-Vento funds, yet all school districts are required to provide transportation. Even in those districts that receive funding, McKinney-Vento funding does not begin to cover the costs for transporting homeless students. In just one example, school districts in Massachusetts spent nearly \$9.2 million transporting homeless children and youth last year. This is nine times more than the entire state of Massachusetts receives in McKinney-Vento funding. Moreover, more than \$6 million was spent on homeless student transportation by those school districts in Massachusetts that receive no funding at all through McKinney-Vento.

The cost of transporting students to their school of origin has generated ill will toward the McKinney-Vento Act and homeless students in many school districts. It has created an incentive for districts to avoid identifying and serving students who are homeless. Adding children in foster care to schools' responsibilities would significantly increase both transportation costs and the resulting ill will. As states and school districts slash education budgets, adding more unfunded transportation mandates will lead more school districts to avoid serving homeless students, as they seek to cut costs by identifying fewer homeless children, or by steering best interest determinations away from the school of origin, thus having a direct and immediate negative impact on the school attendance and stability of homeless children and youth.

**Child welfare agencies determine living placements, which in turn determine transportation costs; therefore, these agencies should bear the costs for the duration of a child's placement in state custody. School districts should pay for transportation for the remainder of the year, once a child's case is closed.**

Child welfare agencies are responsible for children and youth's overall well-being and for their living placements. The agency determines where a child in out-of-home placement will live. This living placement determines the distance between the child's home and school, in turn determining the length and cost of the child's commute to school. Since the child welfare agency's placement decisions determine the need for transportation to school, that agency should pay for the transportation while the child is in the care of the agency. When a child exits foster care in the middle of an academic year, school districts should be responsible for transportation to the school of origin for the remainder of the year, if it is in the child's best interest to remain there. This is an equitable form of cost sharing that recognizes the appropriate roles of both agencies, and ensures that the needs of both homeless and foster children are met.

Any other method for schools and child welfare agencies to share transportation costs is not workable or appropriate. Our experience implementing the McKinney-Vento Act for children

“awaiting foster care placement” demonstrates that any subjective cost-sharing mechanisms will generate inter-agency disputes and conflicts, and result in foster children and youth being out of school while the agencies argue. Nor is it acceptable to leave cost sharing arrangements to state or local discretion as a means of avoiding a consistent federal policy. Federal law must clearly delineate transportation responsibilities, as described above, in order to protect homeless children and youth in every state and in all local jurisdictions, particularly since the vast majority homeless children and youth do not have access to courts, lawyers, caseworkers, advocates, or other adults to advocate on their behalf to ensure equitable treatment.

**Requiring child welfare agencies to pay for transportation to the school of origin creates positive incentives for placement stability.**

Making child welfare agencies responsible for transportation costs will create positive new financial incentives for agencies. If child welfare agencies pay for transportation to the school of origin, they will have a financial incentive to prioritize the proximity of a proposed living placement to the child’s school when making living placements. In turn, this will increase the incentives to develop more placement options, recruit more foster parents, and to place children in foster homes within their communities. In addition to improving educational stability, neighborhood-based placements can contribute to other positive outcomes and in many cases shorten stays in foster care. In contrast, putting the cost of transportation on school districts creates no positive incentives for child welfare agencies. Instead, it imposes on schools an additional financial burden that is based on the decisions of another agency.

Schools and child welfare agencies must be required to collaborate to facilitate the logistics of school of origin transportation. For example, child welfare agencies should be able to extend contracts to school districts or independent transportation providers to provide transportation in an efficient and cost-effective manner.

**In recognition of the costs involved, any legislation addressing the education of children and youth in foster care must provide funding to assist in the cost of transportation to the school of origin.**

Minimizing the real costs of transportation to the school of origin is a disservice to children in foster care, and to children who are homeless. It undercuts the school stability that is essential for their academic success. Our experience in implementing the McKinney-Vento Act has demonstrated repeatedly that the cost of transportation to the school of origin shapes the attitudes, efforts, and services available to vulnerable children and youth. Congress must not back away from its commitment to school stability for children in foster care and children who are homeless. Adequate funding for transportation must be provided for both populations, including 1) funding for child welfare agencies to provide transportation for children and youth in foster care while they are in care; 2) funding for school districts to provide transportation to the school of origin, for the remainder of the school year, once children have exited foster care; and 3) funding for school districts to provide transportation for all homeless children and youth.