

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

**February 2015**

Currently, the McKinney-Vento Act's Education for Homeless Children and Youth program contains a definition of homeless that includes the phrase "awaiting foster care placement." States and local school districts must determine which children are considered to be "awaiting foster care placement."

Over the past fourteen 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 both for children in foster care and children who are homeless. Despite the many similarities between children in foster care and those experiencing homelessness, a critical difference distinguishes children in foster care: they are in the custody of a state agency that has responsibility for their safety, permanency, and well-being. Children and youth experiencing homelessness are not provided the same protections or supports and are much more difficult to identify. For them, the McKinney-Vento Act is often the only safety net.

Based on the challenges in implementing the McKinney-Vento Act for children and youth in foster care, and the legislative foundation provided by the Fostering Connections to Success and Increasing Adoptions Act, NAEHCY recommends that the ESEA reauthorization provide children and youth in foster care with core protections for school stability and school access through a statutory vehicle in that is separate from the McKinney-Vento Act, and that creates clear, distinct, and appropriate responsibilities for both the education and child welfare agencies.

**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:" Over a decade of struggling to apply the McKinney-Vento Act to children "awaiting foster care placement" has demonstrated that the McKinney-Vento Act does not adequately address, and does not have the resources to support, 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:

- Loss of Attention to, and Services for, Homeless Children and Youth. 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. A recent GAO Report ([GAO-14-465](#)), and a 2006 Report to Congress, both noted lack of capacity and time for liaisons as very significant program challenges. Liaisons lack the capacity to serve homeless students adequately, and for homeless students, there is no public agency funded and tasked with protecting their well-being and safety.

1,258,182 homeless children and youth were identified by public schools in 2012-2013; this is an 85% increase since the 2006-2007 school year. 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.

Despite the unprecedented increase in child homelessness, McKinney-Vento funding has not increased. Funds are extremely limited, reaching only 22% of school districts and, even in those districts, not meeting needs. A recent GAO Study ([GAO-14-465](#)) noted that the cost of providing transportation to homeless children and youth was a disincentive for some school districts to identify children and youth experiencing homelessness. Including students awaiting foster care placement under McKinney-Vento’s protections has increased the cost of implementation and threatened services to homeless students.

- Eligibility. In many 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 interpretations of “awaiting foster care placement,” leading to disputes that take time away from serving children and youth.
- Decision-making. McKinney-Vento establishes roles for parents, guardians, and unaccompanied youth in school placement decisions and dispute resolution procedures. However, for children and youth in foster care, 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. The Act also does not address the proper role of the court, the child welfare agency, and other adults and advocates who may be involved in a child’s life, such as attorneys and foster parents. Case workers, attorneys, biological parents and foster parents with conflicting opinions all may seek to make education decisions for children and youth in foster care, which can result in a paralyzing indecision regarding students’ educational best interest. Youth in foster care sometimes are simply out of school while participants argue. Schools are rarely informed 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 effort that specifically addresses the challenges of decision-making and court-involvement for foster youth directly, in a thoughtful and appropriate way, is the best vehicle to resolve these conflicts.

- Inter-Agency Conflicts. Applying the McKinney-Vento Act to children “awaiting foster care placement” has created inter-agency conflicts that have complicated the school stability, enrollment and success of both children in foster care and those experiencing homelessness. Child welfare statutes like the Fostering Connections Act have sought to address the barriers to educational success that result from a child’s involvement in the child welfare system. Full implementation of these laws is essential to provide children and youth in foster care with safe, stable living placements close to their schools and families. However, the Fostering Connections Act overlaps with the McKinney-Vento Act in confusing and awkward ways, which has created severe confusion and conflict between agencies in many states.

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.

### **Recommendations for ESEA Reauthorization**

Children and youth in foster care face significant 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. Like children and youth experiencing homelessness, they need school stability, immediate school access, and support for academic success.

The education provisions in the Fostering Connections Act laid 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. Fostering Connections also allows child welfare agencies to use Title IV-E funds to pay for the cost of transportation to a child’s original school.

Changes in education law will help ensure the education provisions of Fostering Connections can be fully realized. Reciprocal requirements for state and local education systems that are cleanly and clearly aligned with Fostering Connections will facilitate implementation. Specifically, ESEA reauthorization should:

- Ensure that children can remain in their same school when they enter foster care and change foster care placements, provided it is in their best interest.
- Ensure children in foster care can enroll immediately when a school change is necessary, even without the records normally required for enrollment.
- Ensure that school records are maintained and immediately transferred if a child in foster care enters a new school.

- Require child welfare and education agencies to collaborate to develop and implement a plan for how transportation will be provided, arranged and funded to keep students in foster care in their school of origin when it is in the child's best interest. Under this plan, LEAs should pay for transportation if they are reimbursed by the child welfare agency, if they agree to pay for it, or if the LEA and the child welfare agency agree to share the costs.
- The phrase "awaiting foster care placement" should be removed from the McKinney-Vento Act.

By including these provisions in ESEA to complement Fostering Connections, barriers to educational success for children and youth in foster care can be eliminated. At the same time, the McKinney-Vento Act must be allowed to focus on its intended population of students with no other protection: children and youth experiencing homelessness.