

FACT SHEET: Foster Children's Right to School Stability

Child and Family Services Agency (CFSA) often enrolls children in a new school after removing them from their family or following foster care placement changes. In some cases, these school placement changes are necessary to protect a child's safety or improve a child's academic performance. But many – perhaps most – school placement changes hurt children's academic performance and represent another emotionally difficult disruption. Under federal and District law, foster children have a right to school stability. Guardians *ad litem* and parents' attorneys have several grounds to help them enforce this right.

THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT

The federal McKinney-Vento Act, which is incorporated into District law,¹ addresses the harm of unnecessary school disruptions by providing children with two important rights:

- The right to attend their "school of origin;" and
- When attending their school of origin does not serve their best interests, the right to enroll *immediately* in a new school, even without regular enrollment papers.

All District of Columbia foster children enjoy these McKinney-Vento rights.

- The McKinney-Vento Act covers all "homeless" students, a category defined to include children "awaiting foster care placement."²
- The District's state plan (the formal document governing how the District will comply with the federal law) defines "awaiting foster care" to include *all* foster children – meaning McKinney-Vento covers all foster children in the District.³
- McKinney-Vento applies to children in public preschool programs, not only K-12 schools.⁴

Even with a right to attend their school of origin, obtaining transportation is complicated.

The McKinney-Vento Act entitles foster children to receive "comparable" transportation assistance to non-homeless students. The District has not defined "comparable transportation services." The District's state plan requires it to provide Metro fare to homeless students and their parents.⁵ In many cases, this assistance will be insufficient to transport foster children to their school of origin, particularly if a child's foster placement is outside of the District.

TITLE IV-E AND THE FOSTERING CONNECTIONS TO SUCCESS ACT

Federal foster care law imposes an obligation on CFSA to "ensure" foster children's school stability. Federal and District law require CFSA to develop a "plan for ensuring the educational stability of the child while in foster care" including "an assurance" that CFSA has coordinated with the relevant schools "to ensure that the child remains in the school in which the child is enrolled at the time of placement," unless doing so is contrary to the child's best interests.⁶

Federal law also provides funding for CFSA to transport foster children to their schools of origin. For children eligible for Title IV-E assistance, the federal government will pay 70 percent of the cost of "reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement."⁷ The plain statutory language of this provision applies to *any* placement change, but the federal government has issued guidance suggesting it may only pay this 70 percent reimbursement to transport children to the school they were attending when first removed from their families.⁸ Even if this narrow interpretation prevails and CFSA cannot obtain the 70 percent reimbursement, CFSA can obtain 50

percent reimbursement under separate federal guidance regarding a different form of Title IV-E funding known as “administrative costs.”⁹

HOW CAN I TROUBLESHOOT PROBLEMS IN MY CASES?

CFSA’s vision is that school enrollment decisions should be made collaboratively with families and not unilaterally by social workers, and that they should respect the value of school stability. If that is not occurring in a particular case, lawyers for parents and for children should discuss with the social worker and his/her supervisor. Lawyers should also consider contacting Dr. Benjamin Dukes in CFSA’s Office of Clinical Practice to resolve school stability problems. Dr. Dukes may be reached at (202) 715-7789 or Benjamin.dukes@dc.gov.

SO, WHAT’S MY ARGUMENT IN COURT?

If CFSA is seeking to or has recently changed the school placement of your client or your client’s child contrary to your client’s wishes and the child’s best interests, argue forcefully why the change is contrary to the child’s best interests. In addition, you can make the following argument:

1. CFSA has violated the child’s right to attend his school of origin as provided by the McKinney-Vento Act and implemented in District law.
2. CFSA has failed to satisfy its obligation under federal and District law to “ensure” the child’s right to school stability.
3. CFSA must provide the transportation necessary to effectuate the child’s right to school stability and fulfill its obligation to ensure the child attends his school of origin. CFSA can receive federal financial support for the cost of this transportation, which lessens concerns that cost makes it impossible for CFSA to meet its legal obligation to foster school stability.

WHAT IF THE CHILD’S BEST INTERESTS REQUIRE ENROLLMENT IN A NEW SCHOOL?

Sometimes a new school is required – to keep the child safe, to improve his academics, or because the new foster home is so far away from the child’s school that a long commute is worse than a school disruption. These children have a right to immediate enrollment in a new school.

WHAT IF THE CHILD RECEIVES SPECIAL EDUCATION SERVICES?

If a child has an individual education plan (IEP), special education law provides another protection for her school stability. In many cases, only the child’s educational decisionmaker (not CFSA) should be changing her school placement and only in accordance with special education procedures. Also, children receiving special education services may be eligible for special education transportation to their school of origin.

QUESTIONS ABOUT A CASE?

Call the Children’s Law Center Helpline, 202-467-4900, option 4. Our Helpline attorney will be happy to discuss the issue with you after conducting a conflict check.

ENDNOTES

¹ 42 U.S.C. § 11431 *et seq.* The federal law is incorporated into District law at 5 D.C.M.R. §§ 2010 & 5099.

² 42 U.S.C. § 11434a(2)(B)(i); 5 D.C.M.R. § 5099.

³ McKinney-Vento Homeless Assistance Act State Plan at 3, http://www.osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/mckinney-vento_state_plan_0910.pdf.

⁴ 42 U.S.C. §§ 11431(1), 11432(g)(1)(F)(i).

⁵ State Plan at 10.

⁶ 42 U.S.C. § 675(1)(G). DC Act 18-298, enacted as temporary legislation, incorporated the language from the federal law into DC Code § 1301.02(3)’s definition of a “case plan.” <http://www.dccouncil.us/lims/legislation.aspx?LegNo=B18-0578&Description=%22PREVENTION+OF+CHILD+ABUSE+AND+NEGLECT+TEMPORARY+AMENDMENT+ACT+OF+2010%22.%0d%0a+&ID=23485>. Permanent legislation with identical provisions is now pending. Bill 18-579, <http://www.dccouncil.us/lims/legislation.aspx?LegNo=B18-0579&Description=%22PREVENTION+OF+CHILD+ABUSE+AND+NEGLECT+AMENDMENT+ACT+OF+2009%22.&ID=23486>.

⁷ 42 U.S.C. § 675(4)(A).

⁸ ACYF-CB-PI-08-05, at 8, http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2008/pi0805.pdf.

⁹ U.S. Dep’t of Health and Human Services, Administration for Children and Families, Children’s Bureau, Child Welfare Policy Manual section 8.1B Question 27, http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/questDetail.jsp?QAId=1803.