

QUICK REFERENCE ON SCHOOL STABILITY: GUIDE FOR CHILD ADVOCATES IN MASSACHUSETTS



INTRODUCTION TO SCHOOL STABILITY: Under federal law, homeless children and children in foster care have the right to remain in their “school of origin” when they become homeless or when they are in the custody of the Department of Children and Families (DCF) and enter foster care or change foster care placements. The McKinney-Vento Homeless Assistance Act (McKinney-Vento) provides these rights to homeless children (see back), and Title I of the Every Student Succeeds Act of 2015 (ESSA) and the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) provide these rights to children in foster care.

STUDENTS IN FOSTER CARE

TITLE I OF ESSA, 20 U.S.C. §§ 6311–12

- This federal law governs state education agencies and school districts.
- States and school districts must ensure that all children placed or changing placements in foster care remain in their school of origin unless not in their best interest and must receive transportation.
- If not in their best interest to remain in school of origin, children in foster care must be enrolled immediately in new district, even if records normally required for enrollment are not available.
- **CAUTION:** This right does not apply to children in third party custody situations, guardianships, Department of Youth Services (DYS) foster homes, or Department of Mental Health (DMH) placements.

FOSTERING CONNECTIONS, 42 U.S.C. § 675(I)(G),

- This federal law governs state child welfare agencies.
- DCF must include assurances in its case plan that it has preserved the educational stability of the child while in foster care, including that DCF:
 - ⇒ considered the geographical proximity of the child’s school of origin when choosing a foster placement and
 - ⇒ coordinated with the school district to keep the child in their school of origin.
- If staying in the school of origin is not in the child’s best interest, DCF must provide immediate enrollment with records for the child in the new school district. A lack of records should not delay enrollment.

SCHOOL OF ORIGIN as defined in Title I of ESSA is the last school the child attended prior to entering foster care and prior to any placement change.

NOTE: MA Department of Elementary and Secondary Education (DESE) interprets “school of origin” in Title I to mean the school building the child last attended (e.g., a child has no right to transition from the middle to high school in the district of origin). A district can always opt to allow a student to attend the next school.

BEST INTEREST DETERMINATION FACTORS

child’s age ♦ child’s preference ♦ preference of parent ♦ child’s attachment to school ♦ placement of siblings ♦ distance or length of travel time to school (up to one hour is generally reasonable) ♦ time of academic year ♦ current educational goals and services ♦ skills, needs and social connections ♦ anticipated length of placement ♦ permanency goal ♦ number of placements ♦ family relationships / extra curriculars ♦ clinical / behavioral issues ♦ school climate ♦ appropriateness of services

NOTE: Who will provide transportation should not be a consideration. See DCF, NO. 97-002, Education Policy (rev. Jan. 3, 2022).

STEPS TO ACHIEVING SCHOOL STABILITY

- When DCF places a child into foster care or changes a child’s foster care placement, DCF must make a best interests determination regarding school placement. The presumption is that staying in the school of origin is in the child’s best interest. See Best Interest Determination Factors box.
- DCF should make the best interest determination in collaboration with the child (as appropriate), the child’s family and/or foster family, the child’s attorney, the school and district of origin, and the school district serving the child’s foster care placement. DCF makes the final determination.
- DCF’s decision should be made in writing and placed in the child’s DCF file. Ask DCF to provide written copies of the determination to the school districts for their records as well.
- DCF and the school district should work together to provide transportation to the school of origin. Absent an agreement, the school district of origin must provide transportation. See DESE & DCF, Educational Stability for Students in Foster Care (Jan. 2018), www.doe.mass.edu/sfs/foster/guidance.docx.

PRACTICE TIPS

- Ensure that DCF makes best interest determination in writing every time a child changes placement.
- If school district fails to fulfill its school stability obligations (failing to enroll or transport), consider initiating a complaint through DESE’s Problem Resolution System at www.doe.mass.edu/prs.
- If DCF fails to fulfill its obligations, or parent or student disagree with their determination:
 - ⇒ Contact DCF’s Education Manager or Regional Educational Specialists to discuss concern.
 - ⇒ Ask the school district to appeal the DCF decision. The school district can seek review of DCF’s decision by utilizing a Foster Care School Selection Dispute Resolution Process established by DESE and DCF. The DESE Foster Care Point of Contact is the point person for this process. For Guide and Appeal Form, see www.doe.mass.edu/sfs/foster/.
 - ⇒ As attorney for the child or the parent(s), file a motion in juvenile court to compel DCF to fulfill its school stability obligations or to contest its best interests determination.

HOMELESS STUDENTS

MCKINNEY-VENTO, 42 U.S.C. §§ 11431–35

- This federal law governs state education agencies and school districts and was re-authorized and amended by Title IX, Part A, of ESSA.
- States must ensure that each homeless child has access to the same education as other children, including public preschool programs.
- Homeless children may remain in their school of origin or immediately enroll in the new school district, even without normally required documentation.
- The definition of “homeless children and youth” includes families living in motels, shelters, and staying with relatives or friends. 42 U.S.C. § 11434a(2).
- Children in temporary foster care placement are no longer covered under McKinney-Vento but are covered under Title I of ESSA.

SCHOOL OF ORIGIN, as defined in McKinney-Vento, is the last school district the child attended prior to becoming homeless, including preschool and the designated receiving or feeder school at the next level (e.g., the child has a right to transition from middle to high school in the school district of origin).

STEPS TO ACHIEVING SCHOOL STABILITY

- McKinney-Vento mandates that when a child become homeless, that child’s parent/guardian, or in the case of an unaccompanied youth, the homeless youth and school district liaison, have the right to choose where the child should attend school. They may choose either the school of origin, where the child attended prior to becoming homeless, or the school in the district where the child is currently living. See School of Origin box.
- If the parent/guardian chooses the school of origin, the school of origin must provide transportation.
- If the parent/guardian chooses the new school district, the new school district must immediately enroll the child.
- If a school district challenges the decision for the child to remain in the school of origin, the school district must provide a written explanation to the parent, including a statement regarding the right to appeal. Pending the appeal the child may continue attending the school of origin. For information on appeal process, see <https://www.doe.mass.edu/sfs/mv/advisories.docx>.

PRACTICE TIP

If the school district fails to fulfill its school stability obligations, consider initiating a complaint through DESE’s Problem Resolution System (PRS) at www.doe.mass.edu/prs. **NOTE:** Appeal timeline is three days but can extend.

SUMMARY OF LEGAL FRAMEWORK

	LIVING ARRANGEMENT	RELEVANT LAW	SCHOOL STABILITY PROTECTIONS	
			ENROLLMENT	TRANSPORTATION TO SCHOOL OF ORIGIN
FOSTER CARE	Any type of foster care placement while child is in DCF custody	Title I of ESSA & Fostering Connections	Right to remain in school of origin OR Immediately enroll in new school (if not in best interest to remain in school of origin) (DCF decides)	DCF and school district must work together to determine who pays for transportation. If no agreement, school district of origin must provide transportation.
HOMELESS	Currently homeless	McKinney-Vento (Title IX of ESSA)	Right to remain in school of origin OR	School district must provide transportation.
	Formerly homeless students who find stable housing		Immediately enroll in new school (Parent decides but school can challenge decision)	School district must provide transportation to school of origin until the end of the school year.

SPECIAL EDUCATION CONSIDERATIONS

When a student receives special education services, the school district in which the student is enrolled is programmatically responsible (responsible for developing the IEP and implementing it). To determine which district is financially responsible for the students’ IEP see 603 C.M.R. 28.10(5).

HELPFUL RESOURCES

- DESE on Education Stability for Students in Foster Care: www.doe.mass.edu/sfs/foster/
- DESE on Education of Homeless Children and Youth: www.doe.mass.edu/mv/
- DCF Education Policy: <https://www.mass.gov/doc/education-policy/download>
- U.S. Department of Education: www2.ed.gov/policy/elsec/leg/essa/index.html
- Contact the Children’s Law Center of Massachusetts or the EdLaw Project at the contact information below.

The **Children’s Law Center of Massachusetts (CLCM)** is located at P.O. Box 710, 2 State Street, 2nd Floor, Lynn, MA 01903. Contact and related information available at www.clcm.org; call 781-581-1977 (toll-free 1-888-KIDLAW8) or find us on Facebook. The **EdLaw Project of the Committee for Public Counsel Services**, located at 75 Federal Street, 6th Floor, Boston, MA 02110. Contact and related information at www.edlawproject.org; email us at edlawproject@publiccounsel.net or call our Helpline at 617-910-5829. This project was supported by Grant #15PJDP-21-GG-02749-JIDX awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this PowerPoint are those of the author(s) and do not necessarily reflect those of the Department of Justice. **Revised March 2023.**