

**Education Alert
May 2016**

**CHANGES TO MCKINNEY-VENTO HOMELESS ASSISTANCE
ACT**

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On December 10, 2015, President Obama signed into law the Every Student Succeeds Act (“ESSA”), which amended the McKinney-Vento Homeless Assistance Act (“McKinney-Vento”). The amended McKinney-Vento goes into effect on July 1, 2016, with a few exceptions.

ESSA amends McKinney-Vento in a number of ways. These amendments are complicated and will require further clarification from the Department of Elementary and Secondary Education (“DESE”).

Changes to definition of “School of Origin”: DESE had previously clarified that “school of origin” referred to the physical school building that a student attends. However, with the new law, “school of origin” includes not just the physical school building, but also the designated “receiving school” at the next grade level. Thus, for example, if a 5th grade student in elementary school becomes homeless, his or her “school of origin” would include both the elementary school and the middle school into which the elementary school feeds for 6th grade. DESE has not indicated yet whether the school district is responsible for multiple placements in different receiving schools, *i.e.* the student’s placement from elementary to middle school and then from middle school to high school.

Best interest analysis: The law presumes that keeping the student in the school of origin is in the student’s best interest. The law outlines specific factors to consider when determining best interest, such as the impact of changing schools on achievement, education, health and safety of homeless children, and giving priority to the request of a student or guardian, or in the case of an unaccompanied youth, the youth.

Transportation entitlement once permanently housed: Previously when a student received permanent housing in the middle of the school year, the student could remain in his or her school of origin until the end of the school year, but the student would cease to be entitled to transportation under McKinney-Vento once permanently housed. Under the amended law, when a student obtains permanent housing in the middle of the school year, the responsible school districts must provide transportation until the end of the academic year, if it is in the student’s best interest to remain in that school. If a school district believes that it is not in a student’s best interest to remain in the school, the school district will have to invoke the DESE appeal process. DESE will have to clarify what happens with regard to placement and/or transportation if it is not in a student’s best interest to remain in his or her school of origin for the balance of the year.

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Children in foster care: Currently, once a student is placed in a foster care home, he or she is no longer considered to be homeless; only students awaiting foster care placement are homeless. Effective December 10, 2016, all children in any phase of foster care proceedings will no longer be considered “homeless” under McKinney-Vento, but will still be entitled to McKinney-Vento like protections. For example, foster care students will be allowed to remain in their school of origin, if it is in their best interest. Nonetheless, school districts will not be required to provide transportation to the school of origin, if there are additional costs, unless the Department of Children and Families (“DCF”) pays for the additional costs, the local school district and DCF agree to share the costs, or the local school district chooses to pay the additional costs. To ensure that there is compliance with this rule, a school district’s Title I plan must contain an assurance that the school district will collaborate with DCF and designate a contact person for DCF on these issues. By December 2016, the school district in its Title I plan must develop and implement a procedure on how to transport foster youth to the school of origin, when in their best interest; how the arrangements will be funded; and how to ensure that foster youth receive this transportation in the most cost-effective manner.

Clarification of FERPA protections: Under the amended law, a student’s living arrangements, i.e. homeless status and address, are protected under the Family Education Rights Privacy Act as a confidential “educational record.”

Policies and procedures: School districts must also reserve funds for homeless youth and children, including providing educationally related support services in shelters and other locations where children live, and must adopt policies and practices to ensure that homeless liaisons participate in professional development and other technical assistance activities, as the DESE Coordinator of Homeless Children and Youth deems appropriate. The school district must have policies to appropriately identify homeless children and to properly enroll and retain homeless children.

In response to these substantial federal amendments, DESE has stated its intent to issue new McKinney-Vento advisories in early July 2016. The DESE Coordinator of Homeless Children and Youth will be required to gather information on the number of homeless children and youth and post that number annually, and provide professional development to local school districts.

If you have any questions about this issue, please contact Felicia Vasudevan or the attorney responsible for your account, or call (617) 479-5000.

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