

SCHOOL SELECTION PROVISIONS FROM THE MCKINNEY-VENTO ACT AND THE TEXAS EDUCATION CODE

According to the *McKinney-Vento Act* school districts shall, according to the “best interest” of the child:

1. Continue the child’s education in the school of origin for the duration of homelessness, if the child’s family becomes homeless between academic years or during an academic year;
2. Continue the child’s education in the school of origin for the duration of the academic year, if the child becomes permanently housed during an academic year; or
3. Enroll the child in any school that non-homeless students who live in the attendance area in which the child is actually living are eligible to attend.

In determining the “best interest” of a child, the school district (or other local educational agency (LEA)) shall:

1. To the extent feasible, keep a homeless child in the school of origin, except when doing so is contrary to the wishes of the child’s parent or guardian;
2. Provide a written explanation to the homeless child’s parent or guardian, including a statement of appeal rights, if the District sends the child to a school other than the school of origin or a school requested by the parent or guardian; and
3. In the case of an unaccompanied youth, consider the views of the child and provide the notice required in the event of an enrollment dispute.

McKinney-Vento Homeless Education Assistance Improvements Act of 2001
Sec. 722(g)(3); 42 U.S.C. 11432(g)(3)

The *McKinney-Vento Homeless Education Assistance Improvements Act of 2001 (McKinney-Vento Act)* affords a student experiencing homelessness the choice between two campuses where he or she can attend school, and a determination must be made as to which campus the student will attend. A child or youth experiencing homelessness can either continue in their school of origin or they can enroll in the school of the attendance zone where they are actually living while homeless (*McKinney-Vento Act, Sec. 722(g)(3)(A)*; see sidebar for the text of the law).

SCHOOL OF ORIGIN

The ‘school of origin’ is defined in the *McKinney-Vento Act* as “the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled” (*McKinney-Vento Act, Sec. 722(g)(3)(g)*). There are some circumstances in which a child or youth experiencing homelessness could have two schools that meet the *school of origin* definition simultaneously—the school the child or youth attended when they became homeless and the last school the child or youth attended. In these special circumstances, a student would have a choice among three schools: (1) the school they were attending when they became homeless; (2) the last school they attended, and (3) the school to which they are assigned based on where they are actually living.

CHILD’S ‘BEST INTEREST’

The choice of where a child attends school is governed by the *child’s or youth’s best interest (McKinney-Vento Act, Sec. 722(g)(3)(A)*; see sidebar for the text of the law.). Although the choice about where a homeless student should attend school is to be made in the *child’s or youth’s best interest*, there is no language in the law that defines the specific criteria to be considered in determining a child’s best interest. The law does specify, however, that in determining the best interest of the child the district will keep a homeless child in the school of origin, to the extent feasible, unless the parents want to enroll the child in the school where they now actually live. The decision about which school the student should attend—the school that is in the best interest of the child—is left up to the parents. If the student is an unaccompanied youth, the homeless liaison shall assist in the placement or enrollment decisions and should consider the views of the unaccompanied youth. If a district sends the homeless student to a school other than the school of origin or a school requested by the parent or guardian, the district must provide a written explanation to the family, including information regarding the right to appeal this decision.

In order for parents to make an informed decision about what is in their child’s best interest, they need to have as much practical information as possible. Parents may have much less knowledge and information about the implications of the choice they will make for the student than the homeless liaison or other district staff involved in the enrollment process.

For example, a parent needs to know the distance to the campuses under consideration, both in terms of miles and travel time. A parent needs to know that while a district must provide transportation to a

homeless student who wants to remain at the school of origin, this transportation only applies to compulsory school attendance during the regular school day—districts are not obligated to provide transportation from the school of origin after regular school hours. Therefore, transportation from after-school activities is not mandated and a student's ability to participate in extra-curricular activities might be affected. A parent should also consider intangible factors, such as a student's social network or the importance of stability and continuity in a child or youth's education. Compulsory education in Texas is between ages 6 and 18, and does not include Pre-Kindergarten or Kindergarten.

Please note: Services, including transportation, that the District is required to provide shall not be considered in determining feasibility. The district shall provide transportation to a homeless student assigned to attend the school of origin, as provided by law. Many school districts in Texas have adopted policy language recommended by the Texas Association of School Boards (TASB) in the *Policy Update 71* (October, 2003) which states that "...if such a student ceases to be homeless, the District shall continue to provide transportation to and from the school of origin through the end of the school year, upon request from the parent or guardian."

TEXAS EDUCATION CODE (TEC)

In addition to the Federal McKinney-Vento provisions, Texas has specific state laws that address the question of where children and youth experiencing homelessness can enroll. The *Texas Education Code* (TEC) §25.001(b)(5) states that a school district shall enroll a person that is homeless, "regardless of the residence of that person or either parent of that person, or of the person's legal guardian or other person having lawful control of that person." Therefore, if a student is homeless, he or she can, literally, enroll in any district in the State of Texas, regardless of where the student's parent(s) or guardian(s) reside. ***The TEC does not specify a process for establishing which school within a district the homeless student will attend.***

Because these two laws, Section 25.001(b)(5) of the TEC and the school selection provision of the McKinney-Vento Act, are similar, they are often confused. However, they do provide for different things. Section 25.001(b)(5) of the TEC concerns ***the district*** in which a child or youth experiencing homelessness can enroll. The school selection provision of the McKinney-Vento Act concerns the ***specific school campuses*** that a child or youth experiencing homelessness may attend—the selection between the campus (school) of origin and the attendance zone campus where the child is residing. However, because the TEC provision is not mandated under Federal law, ***school districts enrolling a homeless student into their district under this district choice provision in the state law are not required to provide transportation for the student to this campus*** from their residence or any other location.

DURATION OF SERVICES/FEASIBILITY

Both Federal and State provisions regarding school selection extend for the entire duration of the family's or youth's homelessness. When a homeless family or youth becomes permanently housed during the course of a school year, the school choice option remains in effect until the end of that school year. Therefore, if a homeless child or youth becomes permanently housed before the end of the school year, they may continue to attend the school they were attending while homeless until the end of that school year. If the family's or youth's homelessness lasts longer than the school year, the school choice option remains in effect the entire duration of homelessness.

The feasibility of educating a homeless student in his or her school of origin is based on the feasibility from the perspective of the student, not from that of the school district. In determining the ***feasibility*** of educating a homeless student in his or her school of origin, the following considerations, while not all-inclusive, may assist in helping district staff and parents (or an unaccompanied youth) in making the decision of whether a child will attend the school of origin or the local attendance zone campus.