McKinney-Vento related Transportation

Questions/Answers by Schoolhouse Connections

What is the legal basis to say that a district must continue providing school of origin transportation to a McKinney-Vento student who has been suspended from the bus?

Answer: Several provisions of the McKinney-Vento Act apply here, including the requirement that students remain in their school of origin if in their best interest (42 USC §11432(g)(3)(A)-(B)), and that schools provide transportation to and from the school of origin (42 USC §11432(g)(1)(J)(iii). The bottom line of the legal requirements is that the district has to provide transportation to the school of origin. The only legal reason not to provide transportation to the school of origin is if a determination is made that it is not in the child's best interest to remain at the school of origin.

A discipline issue may rise to the level of changing the best interest determination, but there would be many other factors involved in that determination. In addition, since data show that McKinney-Vento student receive more suspensions and expulsions than their housed peers, we encourage schools to engage in positive discipline practices as an attendance and graduation strategy, as well as to comply with the McKinney-Vento Act's requirement to remove barriers to enrollment and retention in school.

The district is not necessarily required to continue to transport the student on the school bus. The McKinney-Vento Act does not supersede discipline policies, so a bus suspension can stand. However, the district may wish to pursue forms of discipline that do not keep the child off the bus. It usually is in both the district's and the student's best interest to try to find a way to make the bus transportation work, considering cost and logistics. If it is a serious safety issue, then the district may have to remove the student from the bus. In that case, the district will need to find another transportation option. If a parent driving is not an option, they may need to look at a taxi or other arrangement.

If my Head Start program is considered a preschool because my district is the fiscal agent, is the district obligated to provide transportation?

Answer: The McKinney-Vento Act applies to preschools – including Head Start programs – that are funded or administered in whole or in part by local educational agencies. You are correct that your Head Start program would be a McKinney-Vento preschool, since your district is the fiscal agent.

This means that the transportation requirements of the McKinney-Vento Act also apply: comparable transportation; school of origin transportation (if a McKinney-Vento child moves after enrolled in the preschool, and subject to best interest, the child has the right to remain in the preschool and be transported by the district); and removing barriers caused by transportation.

We have a 10th grade student staying in domestic violence shelter. The parent will not divulge the address of the shelter and is requesting her child be picked up and dropped off at a donut shop. How are these types of situations usually handled? Our statewide transportation system will not pick up students at storefronts, and also the LEA needs a contact address.

Answer: In situations like this, schools cannot require the address of the shelter. Many or most domestic violence shelters do not allow residents to share the address. That is a critical element of safety for all the families staying there. If the school were to require the parent to share the address, the parent most likely would be forced to leave the shelter, and all the residents of the shelter could be at risk. Even though the school would keep the address information confidential, there's no way to know if an administrator or other person with access to the information could be an abusive spouse, or relative of an abusive spouse who might share the location information.

Those safety reasons and shelter rules mean it would be a barrier to identification, enrollment and retention in school for the school to require the parent to reveal the address of the shelter. Since the McKinney-Vento Act requires the school to remove those barriers, the school must allow the student to enroll and attend without that information. The bus will have to pick the student up at a mutually-agreeable location. If the parent wants the donut shop, considering the age of the student, that seems like a reasonable request. Considering that this is a domestic violence situation, the parent presumably is choosing a location where she believes her child will be safe. If there is a concern about potential liability, the parent could sign a release/consent to have the student picked up and dropped off at that location. If the school requires another pick-up location, and the abuser shows up and abducts the child, the school likely would be at much greater risk of liability. If needed, the school and parent can work together to find a suitable location (not the shelter), that would be agreeable to both parties.

McKinney-Vento does permit schools to require contact information, but the school cannot require information that would be a barrier to identification, enrollment or retention in school, which the shelter address would be in this case. So a phone number for the mother, and secondary contact information of the mother's choosing, would be appropriate.

I have a student who was identified under McKinney-Vento this school year, and now recently has been placed in foster care. Should we continue to serve the student under McKinney-Vento, or under the Title I foster care provisions? (If under McKinney-Vento, the districts split the cost of transportation; however, under foster care, our child welfare agency reimburses the cost of transportation.)

Answer: If a student is identified as experiencing homelessness under the McKinney-Vento Act this school year, and later in the year is taken into child welfare custody and put in foster care, the district can continue serving the student under McKinney-Vento for the rest of this school year, like any other previously McKinney-Vento student. If the student is still in foster care next school year, the student must be served under the Title I foster care provision next year.

Since the Title I foster care provisions require local plans to provide transportation to the school of origin, your district and local child welfare agency may elect to serve the student under the Title I foster care provisions. The bottom line under both the McKinney-Vento Act and Title I is that the student must be allowed to continue in the school of origin, if in the student's best interest. Local agreements regarding payment for transportation may vary.

A family lost their electricity and then was evicted in November, and the children moved in with grandparents. Shortly after the move, a judge gave the grandparents legal custody. The students remain in the school of origin. 1) Do the students meet McKinney-Vento criteria? 2) Is the grandparents' district responsible for sharing the cost of transportation to the school of origin?

Answer: Yes and yes. The students lost their housing due to an eviction (as well as substandard conditions–specifically, no electricity). They moved in with grandparents due to the loss of housing. The custody order does not change that. If the children are going to remain with grandparents long-term, and the housing is adequate for them, then the children may no longer be homeless. But the McKinney-Vento eligibility lasts for the duration of the school year.

As for transportation, the McKinney-Vento Act is clear that the district of residence and the district of origin share the responsibility for transportation. If an agreement about how to share costs is not reached, the law requires the costs to be split equally between the two districts.

We have three students, two brothers and a little girl, who need out of district transportation to the same area. So far this year, all three have been a part of our after school program getting help with homework, math, and reading. All of them need the help. But now the mother of the two brothers doesn't want them attending the

after school program. Do we now need to provide transportation for the two boys right after school and transportation for the girl after the after-school program? Can we tell the mother that transportation will be after our after school program at least until the end of the quarter when the after-school program ends?

Answer: I think you can maintain the same transportation arrangements at least until the end of the quarter. While the school can't force a parent to participate in the after-school program as a condition of transportation to the school of origin, the school does have some flexibility in providing transportation, as long as it is safe and appropriate. In this case, the boys will continue to be safe staying at school until after the tutoring program. The school can tell the parent that the transportation will continue to run after the program. As you know, you are "required to ensure that transportation is provided" to and from the school of origin.

The only caveat would be if there is some safety reason, or other reason related to homelessness, that the parent wants the boys home earlier. For example: if they are staying in an unsafe area, and as it is getting darker earlier, the boys would have a dangerous walk from the bus stop to their home. Or, for example, they are staying at a shelter that requires the whole family to be at the shelter by a particular time to access the shelter. If there is a safety or related issue, that could present a barrier to enrollment and retention (and potentially put the school district at risk for liability). In that case, the district would need to get them home immediately after school.

Can a district make school of origin transportation contingent upon a family interview at the Homeless Office? The school is trying to deny school of origin transportation because of prior absences.

Answer: No, transportation cannot be contingent on a family going to the homeless office. If the student has been missing excessive amounts of school, the school is within its rights to re-evaluate whether it is in the student's best interest to remain in the school of origin (while recognizing the presumption in favor of keeping the student in the school of origin and the priority given to the parent's or unaccompanied youth's wishes). 42 U.S.C. § 11432(g)(31)(BJ)(iii). The school must involve the family in that discussion. However, the school cannot require the family to meet in person at the homeless office, since homeless families commonly do not have transportation and may have work or other basic needs issues that prevent them from attending a meeting. The school may be able to help the parents attend by providing transportation and offering the meeting at a convenient time. The school also may offer the parents another means to attend, such as by phone. Ultimately, if the school is totally unable to reach the parent to discuss best interest, the school can make its best interest determination without the parent's involvement. But then the school would be required to provide the parent with written notice of its decision and ensure the parent can access the dispute process. 42 U.S.C. § 11432(g)(3)(B)(iii) and § 11432(g)(3)(E)(ii).

Also, if the parent or student appeals, the student must remain enrolled in the school of origin, and the school must continue to provide transportation, as the dispute process unfolds. 42 U.S.C. § 11432(g)(3)(E)(i).

Can you provide perspective on schools using ride-sharing services such as Uber or Lyft as student transportation?

Answer: It's really up to the school district to determine if they want to use ride-sharing services. The district's lawyers or risk managers may have a position on whether those services are appropriate to transport students. Under the McKinney-Vento Act, the means of transportation is not specified, and school districts can choose how to provide transportation, as long as the methods are safe and appropriate. (The McKinney-Vento Act requires transportation to and from the school of origin for as long as it is the student's best interest to attend that school, as well as transportation to remove barriers to attendance and participation, as well as any other transportation that is comparable to what housed students receive. 42 U.S.C. § 11432(g)(3)(A) and § 11432(g)(4)(A)). Uber or Lyft may be appropriate for a parent and student together, or for an older student. But since there are not the same background checks that many taxi companies use, ride-sharing services may not be appropriate for school districts at all.

If the student, parent, and school of origin all agree that it is in the student's best interest to remain in the school of origin, can the district where the student is laying their head at night require a best interest meeting prior to agreeing to assist with transportation?

Answer: The short answer is that the district where the child is laying their head does not determine best interest, and cannot require that it participate in a best interest determination in order to assist with transportation. Under current law, the local educational agency where the child is attending school must "presume that keeping the child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the child's or youth's parent or guardian, or (in the case of an unaccompanied youth) the youth." 42 U.S.C. §11432(g)(3)(B)(i). The best interest determination must be based on a student-centered, individualized analysis of factors related to the "child's or youth's best interest, including but not limited to factors related to the impact of mobility on achievement, education, health, and safety of homeless children and youth, giving priority to the request of the parent, guardian, or unaccompanied youth." 42 U.S.C. §11432(g)(3)(B)(ii). Therefore, if the LEA where the child is attending school, and the parent (or unaccompanied youth), determine that it is in the child's best interest to stay in their school of origin, transportation must be provided, per the McKinney-Vento transportation provisions. Those provisions state that the two districts must split the cost if they cannot agree on another method to apportion costs.

If a parent experiencing homelessness chooses to withdraw her child from the school of origin and enroll in a charter school, will the child receive transportation to the charter school?

Answer: Transportation is required to the school of origin, while the student is homeless and until the end of the academic year in which she finds housing (assuming it is in the child's best interest to remain in the school of origin). If the family chooses to change to a charter school, the child will receive transportation comparable to what other students would receive. So if the charter school does not provide transportation to its students, this child also will not be entitled to transportation. The only exception would be if the lack of transportation presents a particular barrier to enrollment.

Question on the allowable use of Title 1A homeless reservation and how to calculate (or define) "excess cost" of transportation. If an LEA does not provide high school students with transportation, then would the entire cost to transport a homeless high school student be considered "excess" and therefore an allowable Title 1 A set aside expense?

Answer: Yes, with a couple of caveats. Normally, to calculate the excess cost, you're looking at the difference between the transportation being provided to the McKinney-Vento student and what the district typically would provide other students. So in this case, since the district provides no transportation at all, the entire cost would be excess.

Two caveats:

1. Make sure the student isn't entitled to transportation for some other reason, such as pursuant to an IEP
2. The district cannot use its entire set-aside to pay for transportation. The set-aside must provide McKinney-Vento students with services comparable to those provided to other Title I students.

So the set-aside must provide those other, comparable services first (e.g. tutoring or graduation coaching for your high schoolers, etc.), and then can be used to cover excess transportation costs with the money left over. Ultimately, this particular district might need to increase its Title IA set-aside amount if it's going to dip into it significantly to cover transportation costs.

A student has been transported to the school of origin during this school year. If the student is re-identified next school year as McKinney-Vento eligible, can the student continue to attend the school of origin, and receive transportation?

Answer: "Yes. Students retain the right to stay in their school of origin – and the right to transportation to their school of origin – for the duration of their homelessness, provided that staying in their school of origin continues to be in their best interest. The best interest decision must take into account student-centered factors, including factors related to the impact of mobility on achievement, education, health, and safety. It also must prioritize the wishes of the parent or, for unaccompanied youth, the youth.

If, after this best interest determination, the LEA determines that it is not in the youth's best interest to continue in the school of origin, it must provide the child's or youth's parent or guardian, or the unaccompanied youth, with a written explanation of the reasons for its determination, including information regarding the right to appeal.

So, all of that is to say that if the student is still homeless at the beginning of next school year, you would need to do a best interest determination; if it still in his or her best interest to attend the school of origin in the next school year, transportation must be provided."

Family living in District C lost housing 2 years ago and began doubling up in District A. Family enrolled in District A, so there have not been any inter-district transportation needs. Now family moved and is doubled up in District B. District A is asking about who should be sharing transportation with them — District B, or District C?

Answer: "I look at this in 2 steps. First, what does MV say about paying for school of origin transportation when the student moves out of district: the local educational agency of origin and the local educational agency in which the child or youth is living shall agree upon a method to apportion the responsibility and costs for providing the child or youth with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally." (42 USC 11432(g)(1)(J)(iii)(II))

So the LEA where living is easy— that's now District B.

Second, what is the LEA of origin? The LEA of origin in this situation is District A since that is the school of origin the students are attending. It is correct that the definition of the school of origin includes the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool. So technically, one student can have two "schools of origin". But when it comes to transportation, the real question is which school of origin is the child attending— i.e. which school are they seeking transportation to/from. In this case, that's District A. So District A is the only school of origin that matters. So in this situation, District A and District B "shall agree upon a method to apportion the responsibility and costs" of transportation to the District A school. Or the state could establish a policy that one or the other district pays. Or, if there is no state policy and they can't agree, they can split it 50/50."

The Department of Education requires that LEAs provide transportation for extracurricular activities if the lack of transportation poses a barrier. Which activities are covered under this mandate? Would you call the Boys and Girls Club an extracurricular activity if it is not district-administered, but it is housed at the school? If so, does this depend on whether or not there is an academic component to the program?

Answer: In this scenario, the Boys and Girls Club probably is not an extracurricular activity, because it is not funded or administered by the LEA. The in-kind donation of space to a community agency wouldn't rise to the level of making it an LEA activity. I don't think the academic component would be a factor, unless the LEA was providing the academic

component. If the Boys and Girls Club is providing an academic component, like tutoring or homework help, then transportation would be an allowable use of Title I set-aside funds. But it would not be required.

I have a student in my housing program who attends a charter school that does not provide transportation for any of their students. The school (which is the student's school of origin) is telling the parent there is nothing they can do in terms of providing transport. But they should, right? What do I do if they are in fact not in compliance?

Answer: You are correct. The McKinney-Vento Act applies to charter schools. The school must provide transportation to the school of origin for the child, as long as continuing to attend the school of origin is in the child's best interest.

As far as approaching the situation, you definitely should contact your state coordinator first, to ask for her assistance. It would be very good for her to know about this situation, so that she can step in if necessary. You also might reach out to the liaison for your school district, who might have a working relationship with the charter school, and who might be able to step in to help pave the way for a conversation.

Can you provide me with the legal references and timeline for transportation to the school of origin?

Answer: The McKinney-Vento Act states that: "The school selected in accordance with this paragraph [either the school of origin or local school] shall immediately enroll the homeless child or youth." 42 USC 11432(g)(3)(c). The law then defines "enroll" to "include attending classes and participating fully in school activities." 42 USC 11434A(1).

These legal provisions require that transportation be provided immediately, as the child cannot attend classes and participate fully in school activities if the child is not at school. While the statute does not define the word "immediately," in normal usage, immediately means right away. Therefore, delays in transportation do not comply with the federal law.

The law also requires local educational agencies to "review and revise policies to remove barriers to the… enrollment and retention of homeless children and youth in schools…." 42 USC 11432(g)(1)(I).