

Virginia's McKinney-Vento Best Interest Determination Through Dispute Resolution Under ESSA

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Context: Why Now?



- Increasing numbers, longer periods of instability
- Little or no growth (or reduction) in resources
- Expanded requirements under ESSA

Expansion under ESSA

- School of origin (SOO)
 - Includes feeder schools and LEA/SEA preschool programs
 - Feasibility change to Best Interest
 - Presumption that SOO is in best interest
- Transportation
 - To end of school year in which permanent housing is found
- Eligibility added to disputable issues

An ounce of prevention....

- Training staff
- Tracking technical assistance and complaints
- Informing advocacy groups
- Trauma-informed practice
- Withholding judgment

State Plan must include:

'722(g)(1)(C) A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths.

July 21, 2017 Superintendent's Memo
#215-17

Local Educational Agency Requirements - Section 722(g)(3)(E)

ENROLLMENT DISPUTES- If a dispute arises over eligibility, or school selection or enrollment in a school--

'(i) the child or youth shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals;

'(ii) the parent or guardian of the child or youth or (in the case of an unaccompanied youth) the youth shall be provided with a written explanation of any decisions related to school selection or enrollment made by the school, the local educational agency, or the State educational agency involved, including the rights of the parent, guardian, or unaccompanied youth to appeal such decisions;

'(iii) the parent, guardian, or unaccompanied youth shall be referred to the local educational agency liaison designated under paragraph (1)(j)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

'(iv) in the case of an unaccompanied youth, the liaison shall ensure that the youth is immediately enrolled in the school in which the youth seeks enrollment pending resolution of such dispute.

Liaison Responsibilities - 722(g)(6)

- Ensure that:
- (vii) enrollment disputes are mediated in accordance with paragraph (3)(E);

Critical Components of a Dispute Resolution Process

- Local procedure implemented by the liaison
- Written notification
- Immediate enrollment in school of preference during dispute resolution
- Informal and accessible
- Per guidance, must have an SEA level of appeal

Written Notice

- Contact information for liaison and SC
- Simple, detachable form to complete and submit to initiate dispute (school should give parent a copy)
- Step-by-step description of appeal process
- Notice of right to immediately enroll
- Notice of right to appeal to state
- Timelines for LEA and SEA level appeals

Eligibility

- Challenge: protect students and schools
- Train staff to explain definition and determination to parent/student
- Consider using a checklist
- If situation does not meet definition
 - Provide written notice with right to appeal

Eligibility

- **Written Notice**
- Appeal to
 - Liaison OR
 - Project HOPE-VA
- State Level Appeal
 - To State Coordinator or designee (Adv. Bd?)
 - Within 5 business days of school division final decision
 - Final determination within 5 business days

Enrollment/School Selection

- SOO (possibly 2)
 - Feeder schools
 - Preschool
- Local school
- Other school children in the residency area can attend



722(g)(3) (B) SCHOOL STABILITY- In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall--

(i) **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;*

(ii) **consider student-centered factors** related to the child's or youth's best interest, including 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 child's or youth's parent or guardian or (in the case of an unaccompanied youth) the youth;

(iii) if, after conducting the best interest determination based on consideration of the presumption in clause (i) and the student-centered factors in clause (ii), **the local educational agency determines that it is not in the child's or youth's best interest to attend the school of origin or the school requested by the parent or guardian, or (in the case of an unaccompanied youth) the youth, provide the child's or youth's parent or guardian or the unaccompanied youth with a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth, including information regarding the right to appeal under subparagraph (E); and**

(iv) in the case of an unaccompanied youth, ensure that the local educational agency liaison designated under paragraph (1)(j)(ii) assists in placement or enrollment decisions under this subparagraph, gives priority to the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E).

Best Interest Determination (BID)

- Can be an informal conversation
 - Document
 - Reasonable when consensus exists
- When there is disagreement or uncertainty
 - Use BID worksheet
 - Optional Likert scale
 - SOO selected, note when to revisit
- After BID parties still disagree
 - Provide written explanation
 - Enroll in school of preference until resolution

Enrollment/School Selection

- **Written Notice**
- Appeal to
 - Liaison OR
 - Project HOPE-VA
- State Level Appeal
 - To State Coordinator or designee
 - Fact finding and consult with HOPE Advisory Board
 - Within 5 business days recommendation to State Superintendent
 - Final determination within 10 business days

McKinney-Vento Disagreements (Disputable)

- Homeless status when student was appropriately identified as homeless previously (e.g., doubled-up in same location for two years)
- Homeless status questioned due to additional information
- Immediate enrollment in school of residency - eligibility
- Remaining in school of origin

MV compliance – not dispute

- School failed to inform of MV educational rights
- Student is not provided free meals
- Systemic non-compliance by an LEA which requires state intervention (failure to identify homelessness; lack of outreach and coordination within schools and community)

Transportation

- Contract
- Mode of transportation offered



Not MV Compliance: Services are allowable/beneficial

- Additional activities could enhance homeless identification (e.g., using a residency questionnaire)
- Summer school could improve student's academic performance but is not required to pass a course

Not MV

- Student wishes to enroll in a school that is not an option for students in the residency area and is not a school of origin
- Parent disagrees with the services being offered in an IEP

Scenario # 1

- You receive a call from a principal. Mother is residing in a motel. She has moved from another distant state where she sold her home. She is in the motel while deciding where to buy her home. She wants to enroll her children in a school of her choice. It is not the local school for the motel. Mom claims she can enroll her children there under McKinney-Vento.

Scenario # 2

- Family, identified as homeless and doubled up last year, is still residing with same family as a new school year begins. School tells family that the children must enroll in the local school this year.

Scenario # 3

- 14 year old from another country is sent to live with her 18 year old sister. The liaison has explored the reason for the move and is told that the schools are better here and the family wants the child to have an education. Despite questions, the family does not identify loss of housing or economic hardship as a reason for the move. After the school denied enrollment, the sister is claiming homelessness.

Documentation to maintain

- Clear, concise description of the issue
- Timeline of contacts (school, SEA, parent/youth)
- Emails between school and parent
- Log of phone contacts and meetings
- Best interest determination
- Eligibility information