

Comments on the Proposed Rule published in 82 FR 28431, pursuant to Executive Order 13777.

Docket ID: ED-2017-OS-0074

SchoolHouse Connection is a national organization promoting success for children and youth experiencing homelessness, from birth through higher education. We submit this comment in response to the Department of Education’s request to inform its Task Force's evaluation of existing regulations and guidance that have a policy impact.

We write to bring to the Department’s attention its December 5, 2016 letter to Chief State School Officers regarding the Every Student Succeeds Act’s protections for children in foster care. The following sentence in the December 5 letter is unnecessary, ineffective, and creates a serious inconsistency with the Every Student Succeeds Act, thereby interfering directly with regulatory reform initiatives:

“It is important to note that children awaiting foster care placement may still be covered under the McKinney-Vento Act if they qualify under another definition of homeless, such as being doubled-up or living in a shelter.”

This sentence has given rise to a concept of dual program eligibility—of children who are covered by **both** the foster care provisions in Title I, Part A, **and** the McKinney-Vento Act. In fact, in enacting the Every Student Succeeds Act, Congress deliberately and specifically created a separate set of protections for children in foster care under Title I, Part A, completely distinct from the protections for children experiencing homelessness, who are covered by the McKinney-Vento Act. Congress specifically removed children “awaiting foster care placement” from the McKinney-Vento Act. In so doing, Congress eliminated unnecessary and ineffective redundancy in education programs. The Department of Education’s December 5 letter overreaches Congress and resuscitates an unnecessary and ineffective inconsistency.

The Department of Education’s joint guidance with the Department of Health and Human Services reiterates the federal regulatory definition of foster care as:

“Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, **emergency shelters**, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.” [emphasis added]

This definition clearly establishes that children “for whom the title IV-E agency has placement and care responsibility” are “in foster care,” even if they are staying in a shelter. However, the December 5 letter has created a notion of dual program eligibility that is inconsistent with the statute and creates confusion in implementation. This confusion results in time-consuming disagreements between agencies, delays or denials of services to children, and diversion of scarce resources from McKinney-Vento programs for homeless children and youth. Particularly following natural disasters such as Hurricanes Harvey and Irma and devastating wildfires in western states, the McKinney-Vento program must be focused on the students it was intended to benefit: those experiencing homelessness and without the support of the significant federal and state resources at the disposal of the child welfare system.

The McKinney-Vento Act covers children living in shelters. However, the McKinney-Vento Act specifically does ***not*** cover children in foster care, or those who are awaiting foster care placement. Congress removed “awaiting foster care placement” from the definition of homeless in the McKinney-Vento Act. It was a purposeful and well-considered policy decision that removed the only reference to foster care in the McKinney-Vento Act, simultaneously created a new program to serve all children “in foster care” under Title I, Part A, and staged implementation to ensure a smooth transition of children from one program to another.

We helped to develop the recommendations for the Title I, Part A protections for children in foster care, and advocated strongly for their passage. The provision of school stability and immediate enrollment for children in foster care is critically important to their academic success. However, the December 5 letter has created a serious inconsistency that is causing confusion and redundancy in implementation of both Title I and the McKinney-Vento Act.

In sum, to eliminate an unnecessary, ineffective, and inconsistent policy, we respectfully request that the Department’s Task Force rescind the December 5 letter and replace it with new guidance that removes the concept of dual program eligibility and clarifies that children in foster care are not covered by the McKinney-Vento Act, even if they are staying in a shelter, doubled-up situation, or other situation that may fit the McKinney-Vento Act’s definition of homeless.

Thank you for your consideration. Please do not hesitate to contact Barbara Duffield at [barbara@schoolhouseconnection.org](mailto:Barbara@schoolhouseconnection.org) or 202.364.7392 if we can provide additional information.