Summary and Analysis of Every Student Succeeds Act Regulations on Accountability/State Plans: Students Experiencing Homelessness or in Foster Care

Transportation to School of Origin for Children in Foster Care- §299.13(c)(ii)

This regulation requires LEAs that receive Title I Part A funds to collaborate with State and local child welfare agencies on written procedures that describe how the statutory requirements of ESSA in section 1112(c)(5)(B) will be met in the event of a dispute over which agency/agencies will pay additional costs of transportation, including which agency/agencies will initially pay additional costs during the pendency of the dispute. Specifically, the regulation states:

“To ensure that children in foster care promptly receive transportation, as necessary, to and from their schools of origin when in their best interest under section 1112(c)(5)(B) of the Act, the SEA must ensure that an LEA receiving funds under title I, part A of the Act will collaborate with State and local child welfare agencies to develop and implement clear written procedures that describe:

(A) How the requirements of section 1112(c)(5)(B) of the Act will be met in the event of a dispute over which agency or agencies will pay any additional costs incurred in providing transportation; and

(B) Which agency or agencies will initially pay the additional costs so that transportation is provided promptly during the pendency of the dispute.”

Nothing in the final regulation changes the limited statutory obligations of LEAs to provide transportation if there are additional costs, and only if they are reimbursed or agree to pay for it.¹

In addition, the regulation does not presume which agency/agencies are responsible for additional transportation costs during disputes. Instead, the regulation requires LEAs that receive Title I Part A funds to collaborate with State and local child welfare agencies to develop procedures that describe which agency/agencies will pay for additional costs during disputes over which agency/agencies must pay.
Definitions of “Homeless” and “Foster Care” for Report Cards - §200.30(f)

§200.30(f) describes the meaning of the term “homeless status” to mean the definition of homelessness in section 725 of Subtitle V-B of the McKinney-Vento Act (42 U.S.C. §11434a). This is the same definition used by public schools to implement the educational protections in the McKinney-Vento Act, as well as the Individuals with Disabilities Education Act, the Child Nutrition Act, the Head Start Act, and the Higher Education Act.

§200.30(f) defines “status as a child in foster care,” with the same meaning as defined in 45 C.F.R. §1355(a):

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.

This definition comes from federal child welfare regulations. It explicitly includes children placed in emergency shelters and specifies that whether the placement is licensed or payments are being made is irrelevant to the status.

High School Graduation Rates for Youth Experiencing Homelessness and Youth in Foster Care – §200.34(e)

This regulation requires SEAs and LEAs to disaggregate graduation rates for children who are homeless or in foster care at any time during the cohort period. Specifically, the regulation states:

“In reporting graduation rates disaggregated by each subgroup of students described in § 200.16(a)(2), homeless status, and status as a child in foster care, a State and its LEAs must include students who were children with disabilities, English learners, children who are homeless (as defined in § 200.30(f)(1)(ii)), or children who are in foster care (as defined in § 200.30(f)(1)(iii)) at any time during the cohort period.”

Many students move in and out of homelessness and foster care over the course of their education. Therefore, graduation rates are incomplete and inconclusive if they only include students who were homeless or in foster care at the time they exited high school. Disaggregating graduation rates for children who are homeless or in foster care at any time during the cohort period will help SEAs and LEAs capture accurate data, including students who were homeless or in foster care earlier in high school, as well as those who dropped out of school prior to 12th grade.

Consolidating the McKinney-Vento Act’s Education for Homeless Children and Youths Program with the State Plan under ESSA - §§299.13, 299.19(b)(7)

The final regulations permit the McKinney-
Vento Act’s Education for Homeless Children and Youths program to be included in a state’s consolidated plan [§299.13(j)], or submitted as an individual program state plan [§299.13(k)].

If a state chooses to submit the McKinney-Vento program plan individually, the plan must address all State plan or application requirements, including all required statutory and programmatic assurances. §299.13(k).

If a state submits the McKinney-Vento Act program as part of its consolidated state plan, the regulations specify the elements that must be included in §299.19(b)(7). Those elements include descriptions of:

- The procedures the SEA will use to identify homeless children and youths in the State and assess their needs;
- Programs for school personnel (including liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Act, principals and other school leaders, attendance officers, teachers, enrollment personnel, and specialized instructional support personnel) to heighten the awareness of such school personnel of the specific needs of homeless children and youths, including such children and youths who are runaway and homeless youths;
- SEA procedures to ensure that--
  - Disputes regarding the educational placement of homeless children and youths are promptly resolved;
  - Youths described in section 725(2) of the McKinney-Vento Act and youths separated from the public school are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent youths described in this paragraph from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school polices;
- Homeless children and youths have access to public preschool programs, administered by the SEA or LEA, as provided to other children in the State;
- Homeless children and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities; and
- Homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, and local nutrition programs;
- SEA strategies to address problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays and retention, consistent with section 722(g)(1)(H) and (I) of the McKinney-Vento Act.

**Supporting All Students – §299.19(a)(1)**

§299.19 requires each state’s consolidated state plan to describe how the SEA will use funds under the consolidated state plan to ensure that all children have a significant opportunity to meet challenging state academic standards and career and technical standards. SEAs would have to describe how its state strategies considered both academic and non-academic needs of subgroups of students, including homeless children and youth, and children and youth in foster care.
(c) ASSURANCES.— (1) IN GENERAL. Each local educational agency plan shall provide assurances that the local educational agency will— ...

(5) collaborate with the State or local child welfare agency to—...

(B) by not later than 1 year after the date of enactment of the Every Student Succeeds Act, develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care, which procedures shall—

(i) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with section 475(4)(A) of the Social Security Act (42 U.S.C. 675(4)(A)); and

(ii) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin if—

(I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;

(II) the local educational agency agrees to pay for the cost of such transportation; or

(III) the local educational agency and the local child welfare agency agree to share the cost of such transportation....