

**FOSTER AND SUBSTITUTE CARE**

The McKinney-Vento Homeless Assistance Act (Subtitle B-Education for Homeless Children and Youth), reauthorized in January 2002, ensures educational rights and protections for children and youth experiencing homelessness. This Fact Sheet clarifies the basic provisions in the law concerning students who are *awaiting foster care placement*. The *McKinney-Vento Act* states the following:

***Who is homeless? (Sec. 725)***

*The term “homeless children and youth” –*

*(A) means individuals who lack a fixed, regular, and adequate nighttime residence... and*

*(B) includes-*

- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; **or are awaiting foster care placement;***
- (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings ....*
- (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations , or similar settings; and*
- (iv) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).*

**KEY PROVISIONS**

*Substitute Care* is the umbrella term used by Children’s Protective Services (CPS) for the care of children outside of their immediate family situation. This can be accomplished through **formal or informal processes**.

**FORMAL PROCESSES**

- Children and youth who are placed by CPS in **formal substitute care** through a court order, with conservatorship retained by CPS, **are not identified as homeless** by the McKinney-Vento definition of “awaiting foster care”. “Foster child” as defined in the Texas Family Code identifies the child as being in the managing conservatorship of CPS and in a foster-care placement (see *Texas Family Code, Section 263.001 (4)*).

These formal substitute care placements include:

## FOSTER CARE

1. **Foster (Family) Home Placement** – The foster home may be a relative home (if they are a licensed/certified foster home), but is usually an unrelated, and most frequently an unconnected family home that has gone through training and been licensed by Residential Community Care Licensing (RCCL). **The placements in this home are court-ordered** and CPS retains conservatorship. CPS provides financial and casework services.
2. **Foster Group Homes** –Foster group homes are licensed by Residential Community Care Licensing (RCCL). **Children/youth are placed by CPS through a court order**, while CPS retains conservatorship. CPS provides financial and casework services.

## OTHER TYPES OF FORMAL CARE

1. **Residential Treatment Centers** – These residential facilities provide treatment programs to children and youth. They are licensed by RCCL. **Children and youth are placed through a court order**, and CPS retains conservatorship. CPS provides financial and casework services.
  2. **Kinship Care** – These homes are relative family homes approved by CPS but not licensed or certified as foster homes. **Children are placed by a court order**, while CPS retains conservatorship. There is some financial and casework support provided by CPS.
  3. **Legal Guardianship or Adoption** – Legal guardianship and adoption are **permanent legal placements** that do not qualify the child for McKinney-Vento services based on their placement situation. However it is possible that an adoptive or legal-guardianship family may be homeless depending upon their living situation, separate and apart from child placement issues. Each situation must be looked at individually to decide eligibility for McKinney-Vento services.
- While children in the above formal substitute-care situations generally are not eligible for homeless services under McKinney-Vento, they are eligible for the following services through legislation aimed at serving children in state conservatorship:
    1. Enrollment – Foster children in the conservatorship of the state are to be enrolled immediately in school. The school district of enrollment should send for the child's records from the previous district of attendance. There is a 30-day window of time for receiving these records.
    2. School Nutrition – Foster children must apply for the free meals program as a household of one using only those resources at their immediate disposal, i.e. an allowance. They are not required to use the income of the foster parent or birth

parent when applying for free nutritional services at the school.

3. Title I Services – Foster children are eligible for Title I services in the same manner as other children on their campus.
4. Unaccompanied youth – **may** be eligible for food stamps, housing and other financial assistance from the state.
5. Unaccompanied youth parent of a child – **may** be eligible for Temporary Assistance for Needy Families (TANF), food stamps, section 8 housing or transitional housing assistance, and day-care assistance.
6. Disabled child – Supplemental Security Income (SSI)
7. Child with a deceased parent – Social Security

### **INFORMAL PROCESSES**

- Children and youth are also frequently placed through more informal means, without court order, or CPS conservatorship. These children are generally considered to be eligible for homeless services under McKinney-Vento. The below situations meet the definition of informal placements.
  1. **Relative Care** – This is a relative home where placement is made in one of several ways. Placement may be voluntary and made by the parents of a child, with or without CPS suggestion to do so; placement may also be made temporarily by CPS while continuing an investigation, or while seeking court order and a more formal placement situation, or while providing family based safety services (FBSS program) to the family prior to the child’s return; or placement may occur by the child/youth voluntarily going to stay with a relative. There is no home study completed by the state. The home is not certified or licensed for the child’s care. There is no court order for placement, and CPS does not seek or retain conservatorship. This is considered a “doubled-up” situation under McKinney-Vento.
  2. **Non-Relative Care** – Non-relative care may also occur when a family friend agrees to care for a child voluntarily placed with them by the parent, or the unaccompanied youth voluntarily seeks permission to stay with the non-relative family, or CPS permits the child to remain with the family friend while they continue an investigation, provide FBSS to the family, or seek a court-order and conservatorship. This may include situations as informal as “couch surfing”, where youth move from one friend’s home to that of another, without any formal agreement for care by the adults in the home. This is considered a “doubled-up” situation under McKinney-Vento.
  3. **Emergency Shelter Care** – Placement of a child/youth in an emergency shelter may be made temporarily by CPS to “await” foster (family) home, or foster group home

placement, voluntarily by the parents of children/youth through an agreement with the shelter – sometimes at the suggestion of CPS, or by the child/youth voluntarily going to the shelter to seek services. Domestic violence shelters, runaway youth shelters, children’s shelters and homeless shelters are included in this definition. There may or may not be a court order for placement, and CPS may or may not retain custody; however the nature of emergency shelter care is temporary whether CPS places the child there or not. Residence in temporary shelter situations qualifies a child for McKinney-Vento services.

4. **Transitional Living** – Children and youth in transitional living situations are eligible for services under McKinney-Vento, as long as there is not placement through a court order, with CPS conservatorship.
  5. **Unaccompanied Youth** – Unaccompanied youth who stay with relatives, or friends are eligible for McKinney-Vento services. See Unaccompanied Youth Fact Sheet.
- Children in the above informal placement situations have the same rights under McKinney-Vento as other students experiencing homelessness. These rights include the right to enroll in, participate in, and succeed in public school.

Other fact sheets and resources outlining specific provisions for children and youth experiencing homelessness may be found on the THEO website at [www.utdanacenter.org/theo](http://www.utdanacenter.org/theo).

Situation: CPS involved	McKinney-Vento Eligible	CPS/Foster Care - Not MV Eligible
Child in CPS Court ordered custody, placed in a licensed/certified foster home or foster group home (home study, training, licensed/certified, and financially supported).		X
Child placed with Texas Youth Commission (TYC).		X
Child placed in a Neglect or Delinquent Center (N or D Center).		X
Child placed in a Residential Treatment Centers (RTC).		X
Child in CPS court ordered custody, placed in an emergency shelter or transitional living.	X	X
Child in CPS court ordered custody, but ran away from the foster home, returned to stay with birth family.		X
Child in CPS court ordered custody, but ran away from the foster home, living with extended family or friends. Child is considered “doubled-up” and MV eligible.	X	X
Child in CPS court ordered custody, placed with a formal kinship home (home study, training, licensed/certified, and financially supported).		X
Child informally placed in a kinship or family friend home (home is NOT licensed/certified no training, no home study) & CPS does NOT have custody. CPS “dropped off” the child with or without a safety plan, and/or power of attorney - this child is considered “doubled- up” under MV. Power of attorney is not guardianship.	X	
Child in CPS custody, and “awaiting foster care”, is not yet placed with a foster family.	X	
CPS has court ordered custody and the child is moved from one temporary foster family (licensed/certified, home study, training, and financially supported) to another, perhaps repeatedly.		X
Child is placed with a legal guardian. (Guardianship is a lengthy court proceeding.)		X
Child is placed in an adoptive home.		X

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