

McKinney-Vento Best Interest Determinations Frequently Asked Questions

The following Frequently Asked Questions are intended to help local educational agency (LEA) McKinney-Vento liaisons understand and implement the requirements for best interest determinations for children and youth experiencing homelessness.

What is the purpose of a best interest determination under the McKinney-Vento Act and the Code of Maryland Regulations (COMAR)?

The best interest determination is the legally-mandated process to determine whether a student will remain in the school of origin¹ or enroll in another “public school that nonhomeless students living in the attendance area in which the child or youth is living are eligible to attend.”²

What triggers a best interest determination?

State and federal laws require a best interest determination at the time a student is identified as eligible for rights and services under the McKinney-Vento Act, to determine the student’s appropriate school of attendance. However, the formality of the best interest determination process can vary depending on the circumstances.

- If a parent, guardian, or unaccompanied youth prefers to enroll in the LEA where the student currently is residing instead of the school of origin, the student must be enrolled immediately in that LEA without a best interest determination.
 - If the liaison from the LEA of origin is aware of the transfer, the liaison should reach out to the liaison from the LEA of residence to facilitate immediate enrollment and a smooth transition to the new school.
 - The enrolling school must ensure that the student and family are aware of the right to remain in the school of origin. If, upon learning of that right, the student or family indicates a preference to remain in the school of origin, the enrolling school should contact the liaison in the LEA of origin immediately to facilitate enrollment and transportation to the school of origin. A formal best interest meeting would not be required unless the LEA of origin does not believe it is in the student’s best interest to remain in the school of origin.
- When the LEA of origin and the parent, guardian, or unaccompanied youth³ agree that remaining in the school of origin is in the student’s best interest, a formal best interest determination meeting is not required. The LEA of origin must record the agreement informally, such as on a paper or electronic form

¹ The school of origin is the school the child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool. The term includes the designated receiving school at the next grade level for all feeder schools when the child or youth completes the final grade level served by the school of origin. COMAR §13A.05.09.02.B(7); 42 U.S.C. §11432(g)(3)(I)(i).

² COMAR §13A.05.09.04.A; 42 U.S.C. §11432(g)(3)(A).

³ An unaccompanied youth is a child or youth experiencing homelessness and not in the physical custody of a parent or guardian. COMAR §13A.05.09.02.B(8); 42 U.S.C. §11434a(6).

or through email or text. This record will serve to document the agreement in the event that a question is raised later regarding the parent's, guardian's, or unaccompanied youth's wishes. The student will continue attending the school of origin without disruption, and the involved LEA(s) will arrange transportation.

- Since the school of origin is familiar with the student and family, the LEA of origin is the appropriate LEA to manage the best interest determination. The LEA of residence may contact the LEA of origin to provide input on the decision, but the meeting should not be delayed if the LEA of residence does not participate. The LEA of origin should work with the LEA of residence immediately to let them know the student is living in their LEA and to arrange transportation.
- If the LEA of origin has objective, student-centered reasons to believe it may not be in a student's best interest to remain in the school of origin, a more formal best interest meeting is required. Details on the requirements for best interest determination meetings follow.
 - Since the school of origin is familiar with the student and family, the LEA of origin is the appropriate LEA to manage the best interest determination. The McKinney-Vento liaison from the LEA of origin should consult with the McKinney-Vento liaison from the LEA of residence to discuss the situation, ask about available services, and let the LEA know the student may be enrolling there. The meeting should not be delayed if the LEA of residence does not participate.

Do best interest determinations apply to prekindergarten (Pre-K) children experiencing homelessness?

Yes. The definition of school of origin includes preschools, so a best interest determination is triggered for a Pre-K student under the same circumstances as for older students.⁴

What are some examples of invalid reasons for a best interest determination?

The only valid reason for a best interest determination is to evaluate what school is in the best interest of a child or youth. Best interest determinations are not to be used as means to remove a student from a school due to behavioral or academic challenges, to avoid costly transportation arrangements, or otherwise to withdraw a student from school for reasons not directly proceeding from student-centered factors related to the impact of mobility on achievement, education, health, and safety.⁵ LEAs must review and revise policies to remove barriers to identification, enrollment and retention in school, including barriers related to fees, fines, and absences.⁶ These barriers are the LEA's responsibility to address and are not appropriate considerations in a best interest determination.

Chronic absenteeism may be considered at a best interest meeting; however, any recommendation to change a student's school due to poor attendance must be accompanied by the following documentation (which may be included as part of the written explanation of the best interest determination provided to the parent, guardian, or unaccompanied youth):

- Written documentation demonstrating multiple attempts by the LEA to improve attendance over an extended period and including varied interventions deliberately tailored to the specific needs of the

⁴ COMAR §13A.05.09.02.B(7); 42 U.S.C. §11432(g)(3)(I)(i).

⁵ COMAR §13A.05.09.04.B(3); 42 U.S.C. §11432(g)(3)(B)(ii).

⁶ COMAR §13A.05.09.03.A(1); 42 U.S.C. §11432(g)(1)(I).

student. Documentation may include notes from meetings with parents/students and evidence of service implementation.

- Written confirmation that absenteeism is not related to transportation delays, unreasonably lengthy or complex routes, or other problems with the school of origin transportation provided by the LEA, such as a statement from the LEA's transportation department regarding efforts to set up transportation.
- A written explanation for why changing schools is expected to improve attendance and the interventions that will be recommended for the new school.

What factors must LEAs consider when making best interest determinations?

- LEAs must presume that it is in a student's best interest to remain in the school of origin, unless the parent, guardian, or unaccompanied youth wishes to enroll in the school for which their current residence is zoned, or another public school they are eligible to attend based on their current residence.⁷
- LEAs must give priority to the request of the parent, guardian, or unaccompanied youth.⁸
- An LEA can remove a McKinney-Vento student from the school of origin against a parent's, guardian's, or unaccompanied youth's wishes *only if* student-centered factors related to the impact of mobility on achievement, education, health, and safety overcome the presumption that remaining in the school of origin is in the student's best interest.⁹ Factors may include the student's age, experiences at the school of origin, academic and emotional needs, and safety; anticipated length of stay in the current living situation; time remaining in the school year; continuity of instruction; the school(s) the student's sibling(s) attends; and student-centered, transportation-related factors. Significant documentation of these factors should be provided by the school and in the student's records.

Must best interest determination meetings occur in-person?

No. Best interest meetings can be held in-person, over the phone, or via video conference. Meetings should occur as quickly as possible, and the timing and format should accommodate the needs of the parent, guardian, or unaccompanied youth. Regardless of the meeting format, the conversation must be documented.

Must parents, guardians, and unaccompanied youth be included in best interest determination meetings?

Yes. Parents, guardians, and unaccompanied youth are an essential part of the best interest determination. Their wishes must be given priority, and they have a unique and critical perspective on each of the student-centered best interest factors. LEAs must exercise due diligence to help parents, guardians, and unaccompanied youth attend best interest meetings, including accommodating their schedules, providing transportation, offering virtual and phone meetings, and rescheduling meetings if they cannot attend. However, if an LEA has made multiple, documented attempts to assist parents, guardians, or unaccompanied youth to participate in a best interest meeting without achieving participation, the LEA may go forward with the meeting.

⁷ COMAR §13A.05.09.04.B(1); 42 U.S.C. §11432(g)(3)(B)(i).

⁸ COMAR §13A.05.09.04.B(2); 42 U.S.C. §11432(g)(3)(B)(ii) & (iv).

⁹ COMAR §13A.05.09.04.B(3); 42 U.S.C. §11432(g)(3)(B)(ii).

Are LEAs required to conduct a formal best interest determination at the start of each school year?

No. Neither federal nor state laws require annual best interest determinations. Some LEAs may have local policies or practices that require annual best interest determinations. In this case, nothing in federal or state laws would prohibit the best interest determination, as long as it does not delay the student's immediate enrollment in the school in which the parent, guardian, or unaccompanied youth is seeking enrollment. Enrollment is defined to include attending classes and participating fully in school activities.¹⁰ In addition, a best interest determination may be triggered if the LEA believes that a school other than the school of origin or the school requested by the parent, guardian, or unaccompanied youth may be in the student's best interest.

Importantly, McKinney-Vento eligibility must be redetermined each year, as families and students may secure permanent housing over the summer. The determination of eligibility does not necessitate a new best interest determination, unless circumstances indicate otherwise.

Is a best interest determination required every time a student moves?

No. Neither federal nor state laws require best interest determinations every time a student moves. A best interest determination may be triggered if the LEA believes that a school other than the school of origin or the school requested by the parent, guardian, or unaccompanied youth may be in the student's best interest.

What is the appropriate procedure if the LEA of origin or the LEA of residence wishes to conduct a best interest determination meeting, but the other involved LEA does not believe a best interest determination meeting is warranted or appropriate?

LEAs may have local policies or practices (or, as in the case of Delaware, state policies) that require best interest determination meetings every time a student moves or a new school year begins. These policies and practices are not inconsistent with federal or state law, *as long as they do not delay a student's immediate enrollment in school*, to include attending classes and participating fully in school activities. When one LEA is attempting to arrange a best interest determination, the other involved LEA should cooperate. However, the LEA initiating the meeting cannot require in-person attendance and cannot delay the student's immediate enrollment or full participation while setting up and holding the meeting.

What tools are available to help LEAs structure best interest determinations?

Whenever an LEA is considering placing a student in a school other than the school requested by the parent, guardian, or unaccompanied youth, the LEA must document the reasons for determining that a particular school is in a student's best interest. Having a checklist or other structured tool to guide best interest determinations can help resolve concerns and avoid disputes. LEAs are required to share the checklist or tool the LEA uses to guide and document best interest determinations as part of Annual Program Review. [Sample checklists are available from MSDE.](#)

When must a written explanation of the LEA's determination be provided to a parent, guardian, or unaccompanied youth?

If an LEA determines that it is not in a student's best interest to attend the school of origin or the school requested by the parent, guardian, or unaccompanied youth, the LEA must provide a written explanation of the determination to the parent, guardian, or unaccompanied youth, in a manner and form understandable to the

¹⁰ COMAR §13A.05.09.02.B(2); 42 U.S.C. §11434a(1).

parent, guardian, or unaccompanied youth, including a statement regarding the right to appeal.¹¹ LEAs are required to share a copy of the written explanation they use as part of Annual Program Review. [Sample written explanations are available from MSDE](#). Upon receiving the written explanation, a parent, guardian, or unaccompanied youth may decide to initiate a formal dispute.

¹¹ COMAR §13A.05.09.04.B(4); 42 U.S.C. §11432(g)(3)(B)(iii).