



National Center for Homeless Education
Supporting the Education of Children and
Youth Experiencing Homelessness
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MCKINNEY-VENTO LAW INTO PRACTICE BRIEF SERIES

Supporting Homeless Children and Youth with Disabilities: Legislative Provisions in the McKinney-Vento Act and the Individuals with Disabilities Education Act

INTRODUCTION

Each year, over 1.2 million children and youth identified as homeless in the nation's schools experience educational disruption that is caused by not having a safe and stable place to live (NCHE, 2014). Homeless children and youth face educational challenges that include a lack of basic necessities, such as food, clothing, and medical services; discontinuity of education due to mobility; and trauma caused by the chaos, poverty, and instability of their family's circumstances, or in the case of unaccompanied homeless youth, their own circumstances.

Many homeless children and youth have disabilities that create additional challenges for educational progress. The National Center on Family Homelessness reported that children who are homeless, as compared to other children, have three times the rate of emotional and behavioral problems, are four times more likely to show delayed development, and have twice the rate of learning disabilities (NCFH, 2008).

Educational barriers homeless children and youth with disabilities face include:

- not being identified as needing special education services;

McKinney-Vento Definition of *Homeless* 42 U.S.C. § 11434a(2)

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 adequate 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).

- difficulty with diagnosis due to mobility and other stressors;
- lack of timely assessment, diagnosis, or service provision;
- lack of continuity of services due to school transfers;
- lack of timely or efficient records transfer when enrolling in a new school; and
- lack of an available parent or surrogate to represent the child or unaccompanied youth.

Two federal laws increase the educational stability and support needed to help homeless children and youth with disabilities succeed in school:

- Subtitle VII-B of the McKinney-Vento Homeless Assistance Act [42 U.S.C. §§ 11431-11435], reauthorized in 2001 by Title X, Part C of the No Child Left Behind Act (subsequently referred to in this brief as the McKinney-Vento Act), ensures educational protections for children and youth in homeless situations.
- The Individuals with Disabilities Education Act of 2004 [20 U.S.C. §§ 1400-1444] (subsequently referred to as IDEA in this brief) ensures that all children with disabilities receive a free, appropriate public education (FAPE), including special education and related services to prepare them for further education, employment, and independent living [20 U.S.C. § 1400(d)(1)(A)]. IDEA defines special education as “specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability” [20 U.S.C. § 1401(29)].

This brief reviews the requirements of the McKinney-Vento Act and IDEA so that educators and administrators in education for homeless children and youth (EHCY) programs and special education programs can increase their familiarity with both laws in order to coordinate efforts to improve the educational access and success of homeless

children and youth with disabilities. In addition, the brief summarizes specific amendments and implementing regulations in IDEA that address the needs of homeless and highly mobile children and youth with disabilities. Briefs on additional homeless education topics are available at <http://www.serve.org/nche/briefs.php>.

ELIGIBILITY FOR SERVICES

Eligibility under McKinney-Vento

The McKinney-Vento Act defines homeless children and youth as individuals who lack a fixed, regular, and adequate nighttime residence [42 U.S.C. § 11434(a)(2)]. The fixed, regular, and adequate standard forms the guiding phrase of the definition; which then lists specific living arrangements that qualify as homeless due to not meeting this standard. See the *McKinney-Vento Definition of Homeless sidebar* on page 1 for the complete legislative wording of the definition of homeless used by U.S. public schools.

Eligibility under IDEA

To be eligible for services under IDEA, a child must have a disability and require specialized instruction to benefit from school. See the *IDEA Definition of Disability sidebar* on page 3 for the complete legislative wording of the definition of child with a disability.

Children with a disability who have not graduated from high school are eligible for IDEA rights and services through age 21 [20 U.S.C. § 1412(a)(1)(A)]. Some states continue to provide rights and services to students beyond age 21. Services are available to individuals with disabilities beginning at birth through Part C, Infants and Toddlers. Children under three are served under an Individualized Family Service Plan (IFSP) [20 U.S.C. § 1436].

McKinney-Vento Rights and Services

In order to remove educational barriers for homeless children and youth, the McKinney-Vento Act mandates:

- immediate school enrollment and full participation in all school activities for eligible children, even when records normally required for enrollment are not available [42 U.S.C. § 11432 (g)(3)(C)];
- the right of children and youth experiencing homelessness to remain in their school of origin (the school the student attended when

IDEA Definition of Disability 20 U.S.C. § 1401(3)

Child with a disability

(A) In general

The term “child with a disability” means a child—

- with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

- experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and
- who, by reason thereof, needs special education and related services.

permanently housed or the school in which the student was last enrolled), when feasible and in the child’s or youth’s best interest to do so [42 U.S.C. § 11432 (g)(3)(A)];

- transportation to and from the school of origin [42 U.S.C. § 11432 (g)(1)(J)(iii)];
- access to programs and services, including special education services, preschool services, free school meals, Title I services, services for English language learners, vocational/technical education, gifted and talented services, and before- and after-school care [42 U.S.C. § 11432 (g)(4)]; and
- the appointment of a local homeless education liaison in every school district or local education agency (LEA) to ensure that homeless children and youth are identified and given full and equal access to all educational services for which they are eligible in order to succeed in school [42 U.S.C. § 11432 (g)(6)(A)].

IDEA Rights and Services

Special education services may include

- specialized instruction
- academic or behavioral support;
- vocational education;
- related services, such as transportation, physical therapy, psychological services, social work services, and counselling;
- medical services for diagnostic or evaluation purposes;
- parent counselling and training;
- recreation; and
- other support services, if students need them to benefit from a special education program [20 U.S.C. § 1401(26)].

Eligibility and services are determined through evaluation and the development of an Individualized Education Program (IEP) [20 U.S.C. § 1414(d)]. For eligible children, IDEA specifies that special education instruction may

take place in a general education classroom, special education classroom, specialized school, home, hospital, or institution [20 U.S.C. § 1401(29)(A)]. Under the provision to educate children in the least restrictive environment, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily [20 U.S.C. § 1412(a)(5)(A)].

SERVING HOMELESS AND HIGHLY MOBILE CHILDREN AND YOUTH UNDER IDEA

The 2004 reauthorization of IDEA included amendments that reinforce the timely assessment, appropriate service provision and placement, and continuity of services for children and youth with disabilities who experience homelessness and high mobility. Following is a description of the amendments and implementing regulations. Legislative citations for the amendments and regulations and excerpts from a Congressional report and the *Federal Register* are included in the endnotes.

Definitions

- IDEA contains a definition of homeless children, to include any children or youth considered homeless under the McKinney-Vento Act.¹
- “Parents,” for the purpose of special education, include biological, adoptive or foster parents, guardians, surrogate parents, individuals legally responsible for the child’s welfare, or individuals acting in the place of a parent and with whom the child lives (specifically including grandparents, stepparents or other relatives).² Additionally, if a judge issues a court order that identifies a specific person to act as the “parent” of

a child or to make educational decisions on behalf of the child, then this person is determined to be the “parent” for the purpose of special education.³

- The term “ward of the state” means a child who, as determined by the state where the child resides, is a foster child, is a ward of the state, or is in the custody of a public child welfare agency.⁴

Identification

- The Child Find provisions in the statute include a requirement that states ensure that homeless children with disabilities are identified, located, and evaluated.⁵

Coordination/Compliance with the McKinney-Vento Act

- Any state receiving IDEA funds must ensure that the requirements of the McKinney-Vento Act are met for all homeless children with disabilities in the state.⁶
- IDEA requires every state receiving IDEA funds to maintain a State Advisory Panel to advise the state education agency (SEA) on unmet needs in the state; to comment publicly on proposed rules and regulations; and to advise the SEA on self-evaluation, data reporting, ensuring compliance and coordination of services for children with disabilities. IDEA requires states to include state and local McKinney-Vento personnel on the panel, as well as a representative of the state child welfare agency responsible for foster care.⁷

Evaluations and IEPs

- IDEA requires LEAs to complete an initial evaluation within 60 days of a parent’s consent, or within time frames established by the state.⁸
- IDEA requires LEAs to ensure that assessments of children who change LEAs during the school year are coordinated with prior schools “as necessary and as expeditiously as possible, to ensure prompt

completion of full evaluations.”⁹

- If a child changes LEAs while the evaluation is pending, IDEA states that the standard time frame does not apply, but **ONLY IF** the new LEA “is making sufficient progress to ensure a prompt completion of the evaluation, **AND** the parent and LEA agree to a specific time when the evaluation will be completed.”¹⁰
- When children with current IEPs change LEAs during the school year, the new LEA is required to provide the children with FAPE immediately, “including services comparable to those described” in the previous IEP, in consultation with the parents. The LEA can then either adopt the current IEP or implement a new IEP. If the LEA is in a state that is different from where a child formerly resided, the LEA can conduct a new evaluation, if determined necessary, and develop a new IEP.¹¹
- To facilitate provision of FAPE for children who change LEAs during the school year, IDEA requires enrolling schools to promptly obtain the child’s records from the previous school, and previous schools to promptly respond to such records requests.¹²

Unaccompanied Homeless Youth

- IDEA requires each public agency to ensure that the rights of unaccompanied homeless youth are protected.¹³
- The definition of “parent” includes individuals acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives. The regulations specify that “include” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.¹⁴
- For unaccompanied youth, IDEA specifically requires LEAs to appoint surrogate parents, and to make reasonable efforts to complete the appointment process within 30 days.¹⁵ The regulations specify that staff members of emergency shelters,

transitional shelters, independent living programs, and street outreach programs can serve as temporary surrogate parents for unaccompanied youth, when appropriate. Additionally, a temporary surrogate may be the employee of an SEA, LEA, as well as anyone else involved in the care or education of the child.¹⁶

- For wards of the state, IDEA does not require an LEA to obtain parental consent for an initial evaluation, if the LEA cannot find the parent, the parent’s rights have been terminated, or a judge has removed the parent’s educational decision-making rights and appointed another person to represent the child.¹⁷
- For wards of the state, IDEA permits judges to appoint surrogate parents.¹⁸

Services for Children beyond Those with IEPs

- IDEA allows LEAs to use up to 15% of their grants to develop and implement programs to intervene with K-12 students who have not been found eligible for special education but who need additional academic and behavioral support, with an emphasis on primary grades.¹⁹

Resolution of Disputes

- When filing a state complaint or requesting a mediation or due process hearing under IDEA, families and youth experiencing homelessness do not need to provide a residence address; only available contact information for the child and the name of the school the child is attending are required.²⁰

Infants and Toddlers: Part C

- Any state receiving a Part C grant must make early intervention services available to infants and toddlers with disabilities who are homeless and their families.²¹
- States must ensure that appropriate early intervention services using scientifically based research are available, to the extent

practicable, to infants and toddlers with disabilities who are homeless and their families.²²

- States must ensure the meaningful involvement of homeless families and wards of the state in the planning and implementation of the Part C program.²³
- In the report accompanying Part C, Congress stated that states should conduct public awareness programs about the Part C program in homeless family shelters, health service offices, public schools, and the child welfare system.²⁴
- Any state receiving a Part C grant must establish a State Interagency Coordinating Council, which must include a representative of the State office of the coordinator for education of homeless children and youth and the state child welfare agency responsible for foster care.²⁵

ADDITIONAL RESOURCES

For more information on specific questions related to serving homeless and highly mobile children and youth with disabilities, read *Questions and Answers on Special Education and Homelessness* developed by the Office of Special Education and Rehabilitative Services (OSERS) in 2008 (<http://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>). Readers should also view links to Dear Colleague letters related to serving homeless children and youth issued by OSERS on NCHE's IDEA web page (<http://www.serve.org/nche/legis/idea.php>).

Links to the federal resources and national agencies provided below will also help create an in-depth understanding of the laws that address the needs of homeless and highly mobile children and youth with disabilities.

Educational administrators and educators in SEAs and LEAs are encouraged above all to work together to create awareness of one another's programs and to coordinate strategies to best serve these vulnerable children and youth.

NCHE's brief, *Navigating the Intersections of IDEA and McKinney-Vento* (http://center.serve.org/nche/downloads/briefs/nav_idea_mv.pdf), provides a process to assist with establishing a strong collaborative relationship between the two programs.

Homeless Education Organizations and Agencies

- National Center for Homeless Education: <http://www.serve.org/nche>
- National Association for the Education of Homeless Children and Youth: <http://www.naehcy.org>
- U.S. Department of Education's Education for Homeless Children and Youth Program: <http://www2.ed.gov/programs/homeless/index.html>

Special Education Organizations and Agencies

- Council for Exceptional Children: <http://www.cec.sped.org>
- Early Childhood Technical Assistance Center: <http://ectacenter.org>
- IDEA Partnerships: <http://www.ideapartnership.org>
- National Association for State Directors of Special Education: <http://www.nasdse.org>
- U.S. Department of Education Office of Special Education and Rehabilitative Services: <http://www2.ed.gov/about/offices/list/osers/osep/index.html>

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1. “HOMELESS CHILDREN.—The term ‘homeless children’ has the meaning given the term ‘homeless children and youths’ in section 1143a of title 42.”

20 U.S.C. § 1401(11); 34 C.F.R. § 300.19
2. The term “parent” means— (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); (B) a guardian (but not the State if the child is a ward of the State); (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or (D) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

20 U.S.C. § 1401(23); 34 C.F.R. § 300.30
3. If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

34 C.F.R. § 300.30(b)(2)
4. “WARD OF THE STATE.—
(A) IN GENERAL.—The term ‘ward of the State’ means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.
(B) EXCEPTION.—The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).”

20 U.S.C. § 1401(36); 34 C.F.R. § 300.45
5. “(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:…
(3) CHILD FIND.—
(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.”

20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111
6. “(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:…
...(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—
(A) IN GENERAL.—The State educational agency is responsible for ensuring that—
...(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.”

20 U.S.C. § 1412(a)(11)(A)(iii); 34 C.F.R. § 300.149(a)(3)
7. “(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:
...(21) STATE ADVISORY PANEL.—
“(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.
(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including—
...(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento

Homeless Assistance Act (42 U.S.C. 11431 et seq.);

...(x) a representative from the State child welfare agency responsible for foster care; ...

(D) DUTIES.—The advisory panel shall—

- (i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;
- (ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
- (iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;
- (iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and
- (v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.”

20 U.S.C. § 1412(a)(21); 34 C.F.R. § 300.167, § 300.168(a)(5), § 300.169

8. “EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS.—

(1) INITIAL EVALUATIONS.—

...(C) PROCEDURES.—

(i) IN GENERAL.—Such initial evaluation shall consist of procedures—

- ...(I) to determine whether a child is a child with a disability (as defined in 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and
- (II) to determine the educational needs of such child.”

20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c)

9. “(b) EVALUATION PROCEDURES.—

...(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

...(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children’s prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.”

20 U.S.C. § 1414(b)(3)(D); 34 C.F.R. § 300.304(c)(5)

10. “EXCEPTION.—The relevant timeframe in subparagraph (i)(I) shall not apply to a local educational agency if—

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child’s previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed.”

20 U.S.C. § 1414(a)(1)(C)(ii); 34 C.F.R. § 300.301(d)–(e)

11. “(d) INDIVIDUALIZED EDUCATION PROGRAMS

...(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

...(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—

(i) IN GENERAL.—

(I) TRANSFER WITHIN THE SAME STATE.—In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) TRANSFER OUTSIDE STATE.—In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.”

20 U.S.C. § 1414(d)(2)(C)(i)

“(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had a previous IEP that was in

effect in a previous agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either –

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in section 300.320 through 300.324.

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency –

(1) Conducts an evaluation pursuant to section 300.304 through 300.306 (if determined to be necessary by the new public agency); and
(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in section 300.320 through 300.324.”

34 C.F.R. § 300.323(e)-(f)

12. “(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i)—

(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and
(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.”

20 U.S.C. § 1414(d)(2)(C)(ii); 34 C.F.R. § 300.323(g)

13. “(a) Each public agency must ensure that the rights of a child are protected when –

...(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6))...”

34 C.F.R. § 300.519(a)(4)

14. See endnote 2, 20 U.S.C. § 1401(23); 34 C.F.R. § 300.30.

“Include means that the items named are not all the possible items that are covered, whether like or unlike the ones named.”

34 C.F.R. § 300.14

15. “TYPES OF PROCEDURES.—The procedures required by this section shall include the following:

...“(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—

... (ii) an unaccompanied homeless youth as defined in section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.”

20 U.S.C. § 1415(b)(2)

“(a) Each public agency must ensure that the rights of a child are protected when –

...(4) The child is an unaccompanied homeless youth as defined in section 11434a(6) of title 42...

(b) The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method –

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.”

34 C.F.R. § 300.519(a)-(b)

16. “Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate

parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.”

34 C.F.R. § 300.519(f)

“Section 300.519(f) allows LEAs to appoint a temporary surrogate parents for a child who is an unaccompanied homeless youth, without regard to the requirement in 300.519(d)(2)(i) that a surrogate parent not be an employee of any agency involved in the education or care of the child. Thus, a temporary surrogate parent for an unaccompanied homeless youth may include State, LEA, or agency staff that is involved in the education or care of the child ... Section 519(f) specifically allows the appointment of a temporary surrogate parent without regard to the non-employee requirements in 300.519(d)(2)(i). There are no similar exceptions for the requirements in 300.519(d)(2)(ii) and (iii). Therefore, temporary surrogate parents for unaccompanied homeless youth must not have a personal or professional interest that conflicts with the interest of the child the surrogate parents represents, and must have the knowledge and skills that ensure adequate representation of the child, consistent with 300.519(d)(2)(ii) and (iii) respectively.”

71 Federal Register 46712 (August 14, 2006)

17. “(iii) CONSENT FOR WARDS OF THE STATE.—

(I) IN GENERAL.—If the child is a ward of the State and is not residing with the child’s parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) EXCEPTION.—The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if—

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.”

20 U.S.C. § 1414(a)(1)(D)(iii); 34 C.F.R. § 300.300(a)(2)

18. “(2)(A) In the case of—

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child’s care provided that the surrogate meets the requirements of this paragraph....”

20 U.S.C. § 1415(b)(2)(A)(i); 34 C.F.R. § 300.519(c)

19. “EARLY INTERVENING SERVICES.—

(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

(2) ACTIVITIES.—In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include—

...(B) providing educational and behavioural evaluations, services, and supports, including scientifically based literacy instruction.”

20 U.S.C. § 1413(f); 34 C.F.R. § 300.226(a)-(b)(2)

20. “TYPES OF PROCEDURES.—The procedures required by this section shall include the following:

...(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

(ii) that shall include—

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 11434(a) of title 42, available contact information for the child and the name of the school the child is attending....”

20 U.S.C. § 1415(b)(7)(A)(ii); 34 C.F.R. §§ 300.507-508(b)(4)

“FILING A COMPLAINT.

...(b) The complaint must include--

- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for the complainant; and
- (4) If alleging violations with respect to a specific child--
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending.

34 C.F.R. § 300.153(b)

21. “In order to be eligible for a grant under section 1433, a State shall provide assurances to the Secretary that the State—
 - (1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State.”

20 U.S.C. § 1434(1)

22. “(a) IN GENERAL.—A statewide system described in section 1433 shall include, at a minimum, the following components:
 - ...(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.”

20 U.S.C. § 1435(a)(2)

23. “ASSURANCES.—The application described in subsection (a)—
 - ... (7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this part.”

20 U.S.C. § 1437(b)(7)

24. “The Conferees intend that the public awareness program include a broad range of referral sources such as homeless family shelters, clinics and other health service related offices, public schools and officials and staff in the child welfare system.”

H.R. Report No. 108-779 (2004), 237(290)

25. “IN GENERAL.—The council shall be composed as follows:
 - ...(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH.—Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.
 - (L) STATE FOSTER CARE REPRESENTATIVE.—Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.”

20 U.S.C. § 1441(b)(1)(K) and (L)

This brief was developed by:

National Center for Homeless Education

800-308-2145 (Toll-free Helpline)

<http://www.serve.org/nche>

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Every state is required to have a State Coordinator for Homeless Education, and every school district is required to have a local homeless education liaison. These individuals will assist you with the implementation of the McKinney-Vento Act. To find out who your State Coordinator is, visit the NCHE website at http://www.serve.org/nche/states/state_resources.php.



For more information on the McKinney-Vento Act and resources for implementation, call the NCHE Helpline at 800-308-2145 or e-mail homeless@serve.org.

Local Contact Information: