



National Center for Homeless Education
Supporting the Education of Children and
Youth Experiencing Homelessness
www.serve.org/nche



BEST PRACTICES IN HOMELESS EDUCATION BRIEF SERIES

Navigating the Intersections of the McKinney-Vento Act and Individuals with Disabilities Education Act: Coordination to Help Homeless Children and Youth with Disabilities

INTRODUCTION

Each year, over 1.2 million children and youth identified as homeless in the nation's schools experience the 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 an unaccompanied homeless youth, their own circumstances.

Many homeless children and youth have disabilities that create additional challenges for educational progress. Educational barriers homeless children and youth with disabilities face include:

- not being identified as needing special education services;
- difficulty with diagnosis due to mobility and other stressors;
- lack of timely assessment, diagnosis, and service provision;
- lack of continuity of services due to school transfers;

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).

- lack of timely or efficient records transfer when enrolling in a new school;
- 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)
- The Individuals with Disabilities Education Act of 2004 [20 U.S.C. §§ 1400-1444] (subsequently referred to as IDEA)

Coordination between education for homeless children and youth (EHCY) programs, which implement the McKinney-Vento Act, and special education programs, which implement IDEA, is key to ensure that homeless children and youth with disabilities receive the full range of services to meet their complex needs. Yet, many school districts or local educational agencies (LEAs) struggle with aligning laws, policies, and practices across programs to best meet the needs of these students.

This brief offers some practical strategies to help local homeless education liaisons (subsequently referred to as local liaisons) and special education program administrators create a coordinated approach to serve homeless children and youth with disabilities. Drawing on good practices shared for over a decade, including a policy forum hosted in 2008 by the National Center for Homeless Education (NCHE) and the National Association of State Directors of Special Education, the brief features a collaborative process that will enable local EHCY and special education staff to work through complex issues from an administrative and policy perspective.

Although the brief does not include a review of the provisions of the McKinney-Vento Act and IDEA related to homeless children and youth

with disabilities, the following two resources will provide the legislative context in which the collaborative strategies should be implemented.

- NCHE's brief "Supporting Homeless Children and Youth with Disabilities: Legislative Provisions in the McKinney-Vento Act and the Individuals with Disabilities Education Improvement Act" <http://center.serve.org/nche/downloads/briefs/idea.pdf>
- Office of Special Education and Rehabilitative Services' (OSERS) publication Questions and Answers on Special Education and Homelessness <http://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>

Briefs on additional homeless education topics are available at <http://www.serve.org/nche/briefs.php>.

WORKING TOGETHER TO SUPPORT CHILDREN AND YOUTH

Following are three key strategies to increase the collaboration between local EHCY and special education programs.

1. Create and promote policies and practices for regular, ongoing communication and collaboration among EHCY and special education staff.

Any question regarding a homeless child with disabilities will likely involve needs related to both conditions, requirements under both laws, and services available through both programs. Therefore, it is imperative that McKinney-Vento and IDEA program staff get to know each other, become familiar with the requirements of and services provided under each other's laws, and work together to meet students' needs.

Some recommended policies that LEAs can implement for regular, ongoing communication and collaboration are

- mandating McKinney-Vento training for all

IDEA administrators on an annual basis;

- mandating IDEA training for all McKinney-Vento local liaisons on an annual basis;
- requiring that schools invite local liaisons to IEP meetings for students experiencing homelessness; the local liaison can participate in the meeting, send a designee, help the parent participate by providing transportation or other resources, provide a written report to the Individualized Education Program (IEP) team, or share comments and impressions orally with other IEP team members;
- requiring local liaisons to consult with an IEP team member when considering the student's best interest for school selection decisions and other services for students with disabilities; and
- requiring the local liaison and special education coordinator to review LEA data on homeless children and youth with disabilities on an annual basis to identify needs and strategies to address the needs.

Some recommended practices that LEAs can implement for regular, ongoing communication and collaboration are

- having each program routinely invite staff members from the other to attend its trainings and workshops;
- having IDEA and McKinney-Vento staff members meet informally for a brown-bag lunch once a month; and
- convening an advisory committee on cross-program issues (e.g., IDEA, McKinney-Vento, Title I-Part A, Migrant, Attendance/T truancy, Head Start, etc.) that meets formally several times a year, with any member empowered to call a special meeting at any time to discuss a policy change, share important information, or seek advice on a challenging case.

2. Review and, if necessary, revise state and local policies and practices to remove barriers

and ensure the necessary tools are available to address complex situations creatively, flexibly, and expeditiously.

Many state and local policies are not designed to address the needs of homeless and highly mobile children and youth. Policies that work well for students who enroll on the first day of school and remain in the district for several years may create significant barriers for students experiencing homelessness whose education is complicated by a move to a new school, school district, or state during the school year. IDEA and McKinney-Vento personnel should be involved in reviewing and revising state and local policies to streamline enrollment, attendance, and provision of appropriate services for homeless children and youth with disabilities. Clear policies and procedures can often prevent situations that cause disruption in a child's education.

Suggestions for LEAs to address policy issues to assist with resolving complex situations:

- Include the McKinney-Vento Act's definition of homeless and requirements in IDEA related to serving homeless and highly mobile children and youth in LEA policies.
- Create policies to address complex situations that are not covered specifically in the McKinney-Vento Act and IDEA, such as cost-sharing across programs, allocating cost and responsibility for interdistrict transportation, maintaining nonpublic school placements across district lines, procedures to resolve disputes between school districts, strict requirements and timelines for transmitting special education records for students experiencing homelessness, etc.
- Include representatives from surrounding school districts to discuss policies, since homeless students frequently cross school district lines as they move during the school year.

Suggestions for LEAs to implement practices to assist with resolving complex situations:

- The local liaison and special education coordinator should provide school registrars with a checklist of questions to ask families upon enrollment of their children; these questions should be designed to identify possible homelessness and eligibility for special education. Contact information for the local liaison and special education coordinator should be included.

- » NCHÉ’s brief “Determining Eligibility for McKinney-Vento Services” includes questions to help school staff identify families or youth that may be experiencing homelessness (http://www.serve.org/nche/downloads/briefs/det_elig.pdf).
- » NCHÉ’s *Homeless Liaison Toolkit*, Appendix 3.A, includes a sample enrollment form with questions related to a family’s living situation to help determine eligibility for McKinney-Vento services (<http://center.serve.org/nche/downloads/toolkit2/app3a.docx>)

If a homeless student is enrolling without school records, school staff should ask the parent questions about the student’s prior classes, including questions that might indicate that he or she has an IEP, such as, “Did your child receive special instruction in your other school?” or “Was your child in a class with just a few other students?” or “Did you attend a meeting where a team of people discussed some special services for your child and had you sign some forms?”

If the school registrar thinks that the student may be homeless or have an IEP, he or she should contact the local liaison and/or special education coordinator so that these administrators can follow up to get the student’s records and arrange appropriate services to minimize educational disruption.

- Schools should maintain records of homeless students, including special education records, in a location and format so they can be transmitted immediately should the student transfer schools.

- Schools should provide parents with copies of their children’s records, including special education records, when they withdraw their children for reasons related to a loss of housing.
- The LEA should convene quarterly meetings among transportation, IDEA, and McKinney-Vento staff to identify challenges and develop procedures to arrange appropriate transportation quickly for homeless students with disabilities.

3. When a complex situation related to a specific student arises, work as a team, utilizing a clear and consistent process to resolve the situation. Note the following suggested steps in the process.

- a. Assemble a team.

An LEA administrator should identify everyone who has information about the child, his or her educational needs, available services, and relevant laws, and create a team to resolve the situation in a formal or informal meeting. Team members may include parents, guardians, surrogate parents, caregivers of unaccompanied homeless youth, unaccompanied homeless youth themselves, special education administrators, teachers, the local liaison, transportation staff, counselors, nurses, social workers, etc. If other school districts are involved, the team should include staff from these as well. The team facilitator could be the homeless liaison, special education coordinator, or another LEA administrator.

- b. Gather and confirm all the relevant facts.

If team members have different perceptions of the issues, they are likely to come to different conclusions. The team should discuss the situation, review all documentation, and arrive at a comprehensive, agreed-upon set of facts. The team facilitator should designate someone to take notes for each member to review and use for reference.

c. Break the situation into its component parts.

Any complex situation regarding a homeless child or youth with a disability is likely to involve several discrete issues. Break the situation into its component parts by asking questions, such as

- » Which aspects of the situation apply to or are covered by the McKinney-Vento Act? Which apply to or are covered by IDEA? Are there other federal, state, or local laws or policies that need to be considered?
- » Which aspects of the situation are not relevant to the educational decision that must be made?
- » What is the parent or student requesting?
- » What is the school district requesting?
- » What are the areas of conflict or disagreement?
- » What is in the best interest of the student?
- » What actions could lead to an acceptable outcome for all parties?

d. Gather and confirm the laws, regulations, and policies that apply to each component part.

The team should review in detail the relevant portions of all laws, regulations, and guidance. The local liaison and special education coordinator should respond to any questions that would clarify the team's understanding of the law. If other laws and policies are involved, appropriate staff, including the school district attorney, should be invited to provide input. (It is important to keep in mind that federal law supersedes state and local law.)

e. Apply the laws, regulations, and policies to each component part, keeping the student's best interest central to the discussion.

At this point, the team will start to determine how the laws, policies, and regulations relate to the agreed-upon facts. In many cases, a clear understanding of legislative requirements will lead to a resolution. In other cases, the law will not provide the level of specificity needed, and the team will need to look at alternative paths to resolution, such as

- » calling upon program administrators at the state level to discuss and weigh in on the issue, which may also entail their seeking advice from the state's general counsel or from national experts;
- » coming to a resolution that calls for a level of compromise within the bounds of the law and maintains the best interest of the student; or
- » coming to a resolution that will likely be appealed by the party that does not agree, which will lead to a formal dispute.

f. Be sure the parent or unaccompanied youth understands the decision and his/her right to appeal the decision.

Parents, guardians, surrogate parents, caregivers, and unaccompanied youth are considered important members of the team under both IDEA and the McKinney-Vento Act. By including these individuals from the outset, the team should be able to reach an informed, consensual decision about the student's best interest. However, in the event that the LEA and parents disagree, both laws require that a notice of rights, including certain due process and appeal rights, be given to these parties.

g. Once the situation is resolved, debrief the process.

Wrestling with each complex situation provides an opportunity to identify what can be done to improve the collaborative process to resolve situations, what training is needed to avoid a difficult situation in the

future, and what state or local policies and procedures should be changed. The outcome of this conversation should inform the ongoing formal and informal collaboration between the EHCY and special education programs.

APPLYING THE PROCESS

In the sidebar, you will see a scenario regarding a homeless child with a disability who has moved to another school district. The information that follows demonstrates how the process outlined above would apply in this situation. The outcome of this example is not a clear cut solution because IDEA provides flexibility for states and districts to determine some issues related to educating special education students who cross district lines; nevertheless, the process is one that can move a complex situation to closure.

The steps toward resolving Mariela's situation include:

a. Assemble a team.

The local liaison and special education coordinator from both school districts should be involved in the discussion. Because it is a situation that crosses school district lines, involving the state coordinators for both programs would be wise, as well. Others could include Mariela's teachers and counselors, parents/guardians, and possibly Mariela.

b. Gather and confirm all relevant facts.

Information relevant to Mariela's situation would include a confirmation of her family's homelessness – when the family became homeless and where the family moved (how long they are planning to stay there), and confirmation that they are still homeless; confirmation that Mariela has an IEP and the nature of her disability; confirmation of her attendance at the nonpublic school; information on what is required for her transportation to the school (whether

transportation is part of her IEP, for example); information on who placed her in the non-public school; her progress in her current school placement; services available in the school district where Mariela is now staying; and what school district is currently paying for Mariela's services.

c. Break the situation into its component parts.

Questions to identify the component parts of Mariela's situation may include:

- » Does the nonpublic school meet the definition of school of origin under the McKinney-Vento Act?
- » What school is in Mariela's best interest to attend? What are her parents requesting? Her teachers or school counselor? Mariela? What should the team consider, and how should the team analyze her best interest?
- » How does the IDEA requirement to educate Mariela in the least restrictive environment influence the

Scenario: Mariela

Mariela was living in Fordham school district and placed by the district in a nonpublic school pursuant to her Individualized Education Program (IEP). She and her family lost their housing and are staying temporarily in the Wheaton school district. Is the nonpublic school Mariela's school of origin under the McKinney-Vento Act? How does the district determine if remaining in the nonpublic school is in Mariela's best interest? How does the IDEA requirement to educate Mariela in the least restrictive environment influence the determination?

If the Fordham school district determines that it is in Mariela's best interest to continue to attend the nonpublic school as her school of origin, which school district is responsible for providing services and/or funding? Which district pays for Mariela's education and transportation? Should services be funded by the special education program, EHCY program, or the district's general funds?

determination of the school she should attend?

- » If the team determines that it is in Mariela's best interest to continue to attend the nonpublic school as her school of origin, how will the two districts determine the allocation of the cost and responsibility of her education and transportation?
- » How will the team determine what specific funds should be used to pay for transportation: special education, McKinney-Vento, or the district's general funds?

- d. Gather and confirm the laws, regulations, and policies that apply to each component part.

The team should review the portions of all relevant laws in detail. In particular, the team should review the McKinney-Vento Act and the U.S. Department of Education's 2004 *Non-regulatory Guidance* for the definition of school of origin, feasibility considerations for best interest determinations on school selection, right to immediate enrollment and attendance at the school of origin, the right to receive transportation, and sharing the cost of transportation across districts.

The team should review IDEA's provisions and guidance on special education placements, least restrictive environment, and the right to receive transportation.

The team should review other relevant federal laws (e.g., Title I, Part A or Section 504 of the Rehabilitation Act), regulations, state laws, or local policies, as appropriate.

- e. Apply the laws, regulations, and policies to each component part, concentrating on the student's best interest.

In Mariela's situation, the team might begin to apply the laws as follows:

- » Does the nonpublic school meet the

definition of school of origin under the McKinney-Vento Act?

The McKinney-Vento Act defines school of origin as the school the child attended when permanently housed or the school in which she was last enrolled [42 U.S.C. § 11432(g)(3)(G)]. According to the facts, the school district placed Mariela in a nonpublic school pursuant to her IEP. It was not a unilateral, private school placement by her parents. In essence, Mariela is a public school student. She attended the nonpublic school when she was permanently housed. Therefore, the nonpublic school is her school of origin under the McKinney-Vento Act.

- » What school is in Mariela's best interest to attend? What are the best interest considerations under McKinney-Vento? What should the team consider, and how should it analyze her best interest?

The McKinney-Vento Act gives Mariela the right to continue attending her school of origin for the duration of her homelessness and until the end of the academic year in which she finds permanent housing, unless this is against her parent's or guardian's wishes [42 U.S.C. § 11432((g)(3)(A)]. She is currently homeless, so the right applies.

To determine whether Mariela should attend her school of origin, the team must determine if it is in her best interest to do so. The U.S. Department of Education's 2004 *Non-regulatory Guidance* establishes the following process for best interest determinations:

"The placement determination should be a student-centered, individualized determination. Factors that an LEA may consider include the age of the child or youth; the distance of a commute and the impact it may have on student's

education; personal safety issues; a student's need for special instruction (e.g., special education and related services); the length of anticipated stay in temporary shelter or other temporary location; and the time remaining in the school year." [U.S. Department of Education EHCY Program, G-4]

The team should analyze the best interest factors, specifically considering Mariela's need for special education and related services and the impact a change in schools may have on her education. If her disability weighs heavily in favor of keeping her stable in school, she is doing well in her current program, her disability does not make the commute unsafe or unmanageable for her, etc., it is likely in Mariela's best interest to continue attending her school of origin.

- » How does the IDEA requirement to educate Mariela in the least restrictive environment influence the determination?

Under IDEA, schools are required to educate students in the least restrictive environment. This generally means that students with disabilities should be educated with students who are not disabled, to the maximum extent appropriate. The U.S. Department of Education's regulations further specify that students must be educated as close as possible to their home and in the school the student would attend if not disabled (unless the IEP requires another arrangement) [C.F.R. §§ 300.114-300.117]. These requirements sometimes seem to conflict with the McKinney-Vento Act's provisions regarding the school of origin. At this time, federal law and regulations do not address this issue, so the team should involve their state EHCY and special education coordinators to determine how their state addresses this particular

issue.

A strong argument for allowing Mariela to remain in her school of origin is that IDEA requires that the McKinney-Vento Act be implemented for homeless students with disabilities [U.S.C. § 1412(a)(11)(A)(iii)]. This provision establishes that the least restrictive environment requirements do not overrule the school of origin requirements. In essence, IDEA requires that Mariela be given the right to remain in her school of origin pursuant to the McKinney-Vento Act. If the team has determined attendance at the school of origin to be in Mariela's best interest, considering her special needs, she must be allowed to attend that school. To ensure full compliance with both statutes, the team may decide to amend Mariela's IEP to specify that she will be attending her school of origin.

If the team agrees that Mariela should continue in her school of origin, then it should determine how to allocate the cost of her education. IDEA allows the state to determine which school district should pay for a special education student who moves to another district (U.S. Department of Education OSERS, E-2). The school districts' finance departments should discuss the budgetary considerations with the state EHCY and special education coordinators and finance managers at the state educational agency (SEA).

The McKinney-Vento Act requires school districts to share the cost and responsibility of providing transportation to the school of origin when homeless students cross school district lines. IEP teams frequently write the provision of transportation into a student's IEP. The team should come to an agreement on what each district should pay for transportation and

whether the cost should be covered by the EHCY program or special education program. The team should review any SEA policy and guidance on this issue.

- f. Be sure the parent or unaccompanied youth understands the decision and his/her rights to appeal the decision.

The team should explain the outcome to Mariela's parents and answer any questions.

- g. Once the situation is resolved, debrief the process.

Once the LEAs determine where Mariela should continue her education and all services are arranged, the local liaison and special education coordinator should discuss questions, such as

- » What went well during this process, and what could be improved?
- » How could we establish better cross district coordination for homeless students with disabilities?
- » What training is needed for staff and administrators?
- » About what state policies related to allocation of services and costs did we learn and how can we better incorporate these into our planning?
- » What LEA policies should we review and revise that relate to non-public school placements and transfers for homeless students with disabilities?
- » How can we minimize the educational disruption that occurs when processing complex issues for homeless students with disabilities?

ADDITIONAL RESOURCES

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>

REFERENCES

- Individuals with Disabilities Education Improvement Act, 20 U.S.C. §§ 1400-1444 (2004). Retrieved from <http://www.gpo.gov/fdsys/pkg/PLAW-108publ446/html/PLAW-108publ446.htm>
- McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435 (2002). Retrieved from <http://center.serve.org/nche/downloads/mv-full-text.docx>
- National Center for Homeless Education. (2014, September). *Education for Homeless Children and Youth Consolidated State Performance Report data*. Greensboro, NC: Author. Retrieved from <http://center.serve.org/nche/downloads/data-comp-1011-1213.pdf>
- U.S. Department of Education Office of Special Education and Rehabilitative Services. (2008, February). *Questions and answers on special education and homelessness*. Washington, D.C.: Author. Retrieved from <http://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>
- U. S. Department of Education Education for Homeless Children and Youth Program. (2004, July). *Education for Homeless Children and Youth program non-regulatory guidance*. Washington, D.C.: Author. Retrieved from <http://www2.ed.gov/programs/homeless/guidance.pdf>

This brief was developed by:

National Center for Homeless Education

800-308-2145 (Toll-free Helpline)

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

October 2015

The National Center for Homeless Education (NCHE) operates the U.S. Department of Education's technical assistance center for the federal Education for Homeless Children and Youth (EHCY) Program. NCHE is supported by the U.S. Department of Education's Office of Safe and Healthy Students. The contents of this brief were developed under a grant from the Department; however, these contents do not necessarily reflect the views or policies of the Department.

NCHE would like to acknowledge the contribution of Ms. Patricia Julianelle, Director of State Projects and Legal Affairs for the National Association for the Education of Homeless Children and Youth, who developed the original version of this brief in 2008.

Every state is required to have a coordinator for the education of homeless children and youth, and every school district is required to have a liaison for homeless students. These individuals will assist you with the implementation of the McKinney-Vento Act. For information on the education of children and youth experiencing homelessness in Texas and to obtain contact information for the liaison in your district, please contact:



www.theotx.org

TEXAS HOMELESS EDUCATION OFFICE

The University of Texas at Austin
Charles A. Dana Center
3925 W. Braker Lane, Suite 3.801
Austin, TX 78759

In Texas: 1-800-446-3142 **Main:** 512-475-9702

Local contact information: