



**National Center for Homeless Education**  
Supporting the Education of Children  
and Youth Experiencing Homelessness  
<https://nche.ed.gov>



McKinney-Vento Law into Practice Brief Series

## Supporting Students Experiencing Homelessness Who Have Disabilities: Federal Provisions to Increase Access and Success

This NCHE brief

- reviews the educational rights of children and youth guaranteed in the McKinney-Vento Act, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act of 1973;
- addresses frequently raised issues regarding the needs and rights of students experiencing homelessness who have disabilities;
- provides information to improve the educational access and success of students experiencing homelessness who have disabilities.

### Introduction

Each year, over 1.2 million children and youth identified as homeless in the nation's schools experience educational disruption caused by not having a safe and stable place to live (NCHE, 2021). Children and youth experiencing homelessness face educational challenges that include a lack of basic necessities such as food, clothing, and medical services; educational interruptions due to mobility; and trauma caused by the chaos, poverty, and instability of their circumstances.

Many students who have disabilities and are experiencing homelessness face additional challenges for educational progress that require close coordination between homeless and special education staff in State and local education agencies. The National Center on Family Homelessness (NCFH) reported that children experiencing homelessness 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 as other children (NCFH, 2008). Additional data show that while students with disabilities make up 14% of the overall student population, they make up 19% of students experiencing homelessness (NCHE, 2021).

### Who is Homeless?

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 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;
- 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).

Children and youth experiencing homelessness who have disabilities face the following educational barriers:

- mobility that prevents the timely identification and evaluation of special education needs;
- interruptions in services due to school transfers;
- delays in the transfer of records when enrolling in a new school;
- the absence of a consistent teacher of record and case conference committee familiar with student milestones and effective interventions for students who transfer school districts; and
- the absence of a parent or guardian to represent an unaccompanied youth.

To counter these and other barriers, three federal laws work to increase the educational stability and support for students experiencing homelessness who have disabilities:

- Subtitle VII-B of the McKinney-Vento Homeless Assistance Act as amended by the Every Student Succeeds Act (hereafter referred to as the McKinney-Vento Act) ensures children and youth in homeless situations have equal access to the same free, appropriate public education (FAPE) as provided to other children and youth (42 U.S.C. § 11431 *et seq.*).
- The Individuals with Disabilities Education Act (IDEA) ensures that all children with disabilities receive a FAPE 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)).
- Section 504 of the Rehabilitation Act of 1973 as amended also requires school districts to provide FAPE to students. Under Section 504, FAPE includes regular or special education and related aids or services that are designed to meet the needs of students with disabilities as adequately as the needs of students without disabilities (C.F.R. 34 § 104.33).

## 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 foundation of the definition, which also lists specific living arrangements that qualify as homeless. See the [McKinney-Vento Definition of Homeless](#) for the on page 1 for the complete legislative wording of the definition of *homeless* used by public schools.

### **Eligibility under IDEA**

To receive services under IDEA, a child must have a disability and require specialized instruction to benefit from school. Services are available to individuals with disabilities beginning at birth through IDEA Part C, Infants and Toddlers. Children under three receive services under an Individualized Family Service Plan (IFSP) (20 U.S.C. § 1436) while school-aged students receive services under an Individualized Education Program (IEP). 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)). Additionally, some states opt to provide rights and services to students beyond age 21.

### **Eligibility under Section 504**

To receive services under Section 504, a student must have a physical or mental impairment that substantially limits one or more major life activities, have a record of such an impairment, or be regarded as having such an impairment (34 C.F.R. § 104.3(j)). While IDEA focuses specifically on specialized instruction needed by students to succeed in school as a result of students’ disabilities, learning is just one of several major life activities addressed by Section 504 plans to support students. Additional examples include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and working (34 C.F.R. § 104.3(j)(2)(ii)).

### *McKinney-Vento Rights and Services*

To remove educational barriers for students experiencing homelessness, 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, including an IEP or 504 Plan, are not available (42 U.S.C. § 11432 (g)(3)(C));
- the right of students experiencing homelessness to remain in their schools of origin (the school the student attended when permanently housed or the school in which the student was last enrolled), when it is in the students’ 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 (hereafter referred to as local liaison) in every school district to ensure that students experiencing homelessness are identified and given full and equal access to all educational services for which they are eligible (42 U.S.C. § 11432 (g)(6)(A)).

### *IDEA Rights and Services*

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)). IDEA also requires that schools educate children in the least restrictive environment to ensure that students with disabilities are educated with their peers without disabilities to the maximum extent possible. Special classes, separate schooling, or otherwise removing students with disabilities from the regular educational environment occurs only if the nature of the students’ disabilities makes it impossible to provide an education satisfactorily in regular classes with the use of supplementary aids and services (20 U.S.C. § 1412(a)(5)(A)). Special education services provided under IDEAmay include

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

Parents have the right to request that their child be evaluated for an IEP, as do public agencies such as a school district or state department of education. Once parents provide consent for an evaluation, the initial evaluation must be completed within 60 days or within the time set by the state if the state established a different timeframe (34 C.F.R. § 300.301). Screenings, evaluations, initial assessments, and the initial meeting to develop the IFSP for early intervention services must be conducted within 45 days from the date that early intervention services agency receives a referral for a young child served under Part C of IDEA (34 C.F.R. § 300.310).

## Section 504 Rights and Services

Section 504 plans can be utilized with greater flexibility than an IEP. For example, school districts must notify the parents before an evaluation is completed, but Section 504 does not require school districts to obtain written consent from a parent prior to the evaluation (34 C.F.R. § 104.36) although some districts may require this. Evaluations draw on information from various sources that have knowledge about the student and must be completed before a significant change in placement can occur (34 C.F.R. § 104.35). Examples of accommodations that may be implemented in a 504 plan include

- extra time to transition between classes;
- access to an elevator otherwise not used by students when students have mobility issues related to the use of a wheelchair or due to an injury;
- extra time to complete an assignment or test;
- an allergen-free environment for students with severe allergies;
- voice to text technology; and
- seating near the front of the room to assist with hearing or visual barriers.

## Serving Students Experiencing Homelessness under IDEA and Section 504

Students who experience homelessness and have a disability often have complex barriers to education and need supports from more than one education program. As a result, educators often ask whether the McKinney-Vento Act, IDEA, or Section 504 should be implemented first. Because all provide discrete services based on the specific nature of the student's needs and their impact on education, the priority must be made on a case-by-case basis. While state and school district policies must align to federal law, none of the federal laws overrules the others; they must be applied concurrently if the student is eligible for services under more than one of the laws.

### Parents, Surrogate Parents, and Unaccompanied Youth Experiencing Homelessness

Knowing and understanding the requirements related to parent consent can be particularly helpful for students experiencing homelessness who need accommodations or special education supports. The McKinney-Vento Act recognizes *unaccompanied youth* as children or youth who are both homeless and are not in the physical custody of a parent or guardian (42 U.S.C. § 11434a(6)). Unaccompanied youth experiencing homelessness have the same right to enroll in school and receive a public education as other students. However, when youth who are homeless and unaccompanied need supports to address their disabilities, many questions can come up about if or how the schools can provide those supports. This is especially true since an unaccompanied youth experiencing homelessness can be of any age, including children who qualify for early intervention services.

Under IDEA, the term *parent* is defined as not only a biological, adoptive, foster, or surrogate parent, and an individual legally responsible for the welfare of the student, but also as an individual acting in the place of a parent and with whom the student lives. As many unaccompanied youth experiencing homelessness have caregivers who are not legal parents or guardians, this provision can help school districts obtain parental permission for evaluations and services provided through an IEP (20 U.S.C. § 1401(23)). Additionally, education agencies must ensure that the rights of unaccompanied youth experiencing homelessness with regard to special education identification, evaluation, educational placement, or provision of FAPE are protected (34 C.F.R. § 300.519(a)(4)). In doing so, educational agencies must make reasonable efforts to assign a surrogate parent for an unaccompanied youth experiencing homelessness within 30 days. In the interim, a temporary

IDEA 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 parent (unlike a surrogate parent) may be the employee of an SEA or LEA, as well as anyone else involved in the care or education of the student (34 C.F.R. § 300.519(f)).

surrogate parent must be assigned to support the student during IEP and related special education meetings (20 U.S.C § 1415(b)(2)).

While Section 504 requires that parents or guardians are provided notice about Section 504 rights and services, are allowed to review relevant records for their child, and are permitted to participate in an impartial hearing for the student (34 C.F.R. § 104.36), Section 504 does not require that a parent provide written consent for an evaluation or services provided under a 504 plan prior to the provision of the services. It does, however, require that decisions about student placements for special education purposes draw on information from a variety of sources, including teacher recommendations and the student's social or cultural background.

Placement decisions for special education purposes under Section 504 must be made based on a group of persons who are knowledgeable about the child, the meaningful of evaluation data, and the placement options (34 C.F.R. § 104.35). These placement determinations should also take into consideration the school placement options available to students through the McKinney-Vento Act, including the local attendance area school and the school of origin. Given the valuable information provided by school personnel about students when developing or re-evaluating an IEP and a 504 plan, a student's disability-related needs should always be considered when weighing the best interest of a student experiencing homelessness and their continued attendance in the school of origin (42 U.S.C. § 11432(g)(3)(B)ii).

### ***Identifying Students***

Students that qualify as homeless under the McKinney-Vento Act must be identified as homeless, regardless of what additional services the students qualify for, including special education services. IDEA also notes that any child or youth considered homeless under the McKinney-Vento Act is also considered homeless under IDEA (20 U.S.C. § 1401(11)). Both the McKinney-Vento Act and special education law include provisions focused on the identification of students who are eligible for services.

- The first responsibility of local liaisons designated under the McKinney-Vento Act requires that they ensure the identification of eligible students by school personnel through outreach to students and through coordinated activities with other agencies within the community (42 U.S.C. § 11432(g)(6)(A)).
- The Child Find provisions in the IDEA include a requirement that states ensure that children who are homeless and have disabilities are identified, located, and evaluated (20 U.S.C. § 1412(a)(3)(A)).
- Section 504 requires that public elementary and secondary education programs take steps to identify all students who are eligible for services, who reside within the area, and who are not receiving a public education. They are also responsible for taking appropriate steps to notify students who are eligible for services and their parents or guardians of their eligibility for services on an annual basis (34 C.F.R. § 104.32).

### ***Coordination/Compliance with the McKinney-Vento Act***

The McKinney-Vento Act requires state coordinators of homeless education and local liaisons to collaborate and coordinate with community and school personnel who are responsible for providing education and related services to homeless students (42 U.S.C. § 11432(g)(6)(C)). Similarly, IDEA requires that any state receiving IDEA funds must ensure that the requirements of the McKinney-Vento Act are met for all children experiencing homelessness with disabilities in the state (20 U.S.C. § 1412(a)(11)(A)(iii)). The following are examples of required collaborations:

- IDEA requires states to include state and local McKinney-Vento personnel as members of the State Advisory Panel. This panel advises the state educational agency (SEA) on unmet needs in the state; comments publicly on proposed rules and regulations; and advises the SEA on self-evaluation, data reporting, and ensuring compliance and coordination of services for children with disabilities (20 U.S.C. § 1412(a)(21)).
- Liaisons and state coordinators must ensure that school personnel providing services under the McKinney-Vento Act receive professional development and other support (42 U.S.C. § 11432(g)(6)(A)(ix); 42 U.S.C. §§ 11432(f)(6)). To ensure that school personnel, including those who may be serving as surrogate or temporary surrogate parents, effectively support students experiencing homelessness, they

should be included in professional development focused on identifying and meeting the needs of these students.

In addition, to ensure all eligible students receive services, liaisons should work with special education personnel and community agencies to identify all students experiencing homelessness, including those with disabilities.

### **Evaluations and IEPs**

Mobility frequently interrupts the special education services provided under the IEPs of students experiencing homelessness and who have a disability. When students have an established IEP in place but transfer to a new school within the same state, the new school must provide services comparable to those in the previously held IEP, in consultation with the parents, until the school adopts the IEP, or the school develops, adopts, and implements a new IEP. Likewise, when a student transfers to a new school outside of the state, the new school must implement services comparable to those described in the previously held IEP, in consultation with the parents, but the new school may also conduct a new evaluation of the student's needs and, if appropriate, develop a new IEP (20 U.S.C. § 1412(d)(2)(C)).

However, when the school district receives a request to complete an initial evaluation for services under IDEA, the district is required to complete the evaluation within 60 days of a parent providing consent or within the timeframe set by the state if it is less than 60 days (20 U.S.C. 1414(a)(1)(C)). If a student changes school districts while the evaluation is in process, IDEA states that the standard time frame does not apply if

- the new school district “is making sufficient progress to ensure a prompt completion of the evaluation” and
- the parent and school district “agree to a specific time when the evaluation will be completed” (20 U.S.C. § 1414(a)(1)(C)(ii)).

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 (20 U.S.C. § 1414(d)(2)(C)(ii)). The McKinney-Vento Act also requires school districts to enroll students experiencing homelessness immediately, even if they do not have records normally required at the time of enrollment, and to immediately contact the previous school to obtain relevant academic records (42 U.S.C. § 11432(g)(3)(C)(i)(1); 42 U.S.C. § 11432(g)(3)(C)(ii)).

### **Dispute Resolution**

Both the McKinney-Vento Act and IDEA provide opportunities for disputes to be resolved. The McKinney-Vento Act allows a parent, guardian, or unaccompanied youth to request a dispute resolution related to three issues:

1. eligibility for services under the McKinney-Vento Act (e.g., being determined as experiencing homelessness);
2. school placement, including the school of origin or the local attendance area school; and
3. enrollment in school (42 U.S.C. § 11432(g)(3)(E)).

Procedural safeguards under both Section 504 and IDEA require the development of review procedures and dispute mediation related to special education services (34 C.F.R. § 300.510; U.S. Department of Education Office for Civil Rights, 2020, #7). It is also important to ensure that the proper dispute procedure is used as parents, guardians, or unaccompanied youth may need to request mediation under one or both federal laws.

### **Transportation**

The McKinney-Vento Act provides students experiencing homelessness with the right to transportation to and from the school of origin for the duration of their homelessness or until the end of the school year in which the students become permanently housed. If the student is attending the school of origin while temporarily residing in a different LEA's attendance zone, the district of origin and the district of residence may come to an agreement on how to split the excess cost of transportation or split the excess cost 50-50 if no such agreement can be reached (42 U.S.C. § 11432(g)(1)(J)(iii)).

IDEA and Section 504 also include provisions related to the transportation of students based on their need for supports to address their disabilities. Under Section 504, if an education agency places a student in another agency or refers a student for services to another agency because of their disability, transportation services must be provided to the student to the same extent that they would be provided if the education agency provided the special education services directly (34 C.F.R. § 104.33(c)(2)). Transportation is a related service under IDEA and can include travel to and from school, travel between schools, travel in and around school buildings, and special equipment such as buses or lifts (34 C.F.R. § 300.34(c)(16)).

Because all three laws require transportation for eligible students, it is important to determine whether the excess cost of transportation is related to homelessness or a special education need. If the excess cost of transportation is related to the student's housing situation, it would be appropriate to use McKinney-Vento funds to cover the excess cost. If the cost of transportation is related to the student's disability, then it would be appropriate to provide the service under IDEA or Section 504.

### ***Infants and Toddlers***

Young children who are not yet in school may receive early intervention services under Part C of IDEA while homeless.

- States must ensure that appropriate early intervention services using scientifically based research are available, to the extent practicable, to all infants and toddlers with disabilities and their families (20 U.S.C. § 1435(a)(2)). This includes children experiencing homelessness.
- States must ensure the meaningful involvement of families experiencing homelessness in the planning and implementation of the Part C program (20 U.S.C. § 1437(b)(7)).
- In the report accompanying Part C, Congress stated that states should conduct public awareness programs about the Part C program in family homeless shelters, health service offices, public schools, and the child welfare system (H.R. Report No. 108-779, 2004, p. 237).
- 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 (20 U.S.C. §§ 1441(b)(1)(K-L)).

### **Additional Considerations**

Given that rates of students with an IEP are higher for students experiencing homelessness than their housed peers (NCHE, 2021), school districts should assess the ways they provide services and establish policies and procedures to coordinate services consistent with the McKinney-Vento Act, Section 504, and IDEA. It may be helpful to consider the following questions:

- How many students in your district receive special education services? How many students experiencing homelessness receive special education services? If only students who qualify for an IEP or 504 Plan have been identified as homeless, your district is likely under-identifying students without disabilities or over-identifying disabilities among students who are homeless.
- How many of the students experiencing homelessness and with identified disabilities were evaluated and provided services within 60 days of receiving parent consent or within your state's time limit if it is less than 60 days? How many of the young children were evaluated and provided services within 45 days or within your state's time limit if it is less than 45 days?
- When students transfer from one school district to another, how does your district work with previous districts to ensure the immediate enrollment of students with disabilities who are experiencing homelessness, even when they do not have an IEP or 504 plan at the time they enroll?
- How does your district work to ensure that students are evaluated in a timely fashion, even when they transfer to another LEA due to homelessness?
- How do your transportation department, special education department, and local liaison work together to ensure transportation is provided continuously for students experiencing homelessness who have

disabilities?

- How many of your LEA's students who were identified as homeless were suspended? Why were they suspended? Could the suspension be a manifestation of the student's disability that should be addressed via a 504 Plan or an IEP?

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