

Addressing the Needs of Students Experiencing Homelessness Who Have Disabilities

This tip sheet:

- provides basic information about the homeless education and special education programs, including their authorizing statutes and supports provided to eligible students; and
- explores the intersection of policy and practice when supporting children experiencing homelessness who have a disability.

Context

During the 2019-2020 school year, U.S. public schools enrolled 1,280,886 children and youth experiencing homelessness (National Center for Homeless Education [NCHE], 2021, p. 1). These students experience many challenges and stressors outside of school — including unmet basic needs, mobility and instability, uncertainty, and anxiety — that they carry with them to school each day. Some of these students also have special education needs due to a disability; in fact, students in homeless situations have a disproportionately high rate of special education needs, with 14% of the overall U.S. student population having a disability while 19% of students experiencing homelessness have a disability (p. 11).

This tip sheet will help educators, service providers, advocates, and other people working with students experiencing homelessness who have a disability understand the rights and services available to these students under federal and California state law and how to work together to ensure that these students' needs are addressed in a comprehensive and coordinated way.

Homeless Education and Special Education Basics

Federal and California state law include provisions specific to meeting the needs of students experiencing homelessness and students with disabilities.

Homeless Education

The McKinney-Vento Act authorizes a variety of housing and supportive services for people experiencing homelessness. Subtitle VII-B of the act focuses on the education of children and youth experiencing homelessness. The act includes the definition of [*homeless children and youths*](#) used by U.S. public schools and authorizes rights and services to ensure that the unique educational needs of these children and youth are addressed.

Under the McKinney-Vento Act and California state law, children and youth experiencing homelessness have the right to

- receive a free, appropriate public education (FAPE) (42 U.S.C. § 11431(1); Ca. Educ. Code § 320);
- enroll in school immediately, even if lacking documents normally required for enrollment [42 U.S.C. § 11432(g)(3)(C)(i)(I); Ca. Educ. Code § 48850(a)(3)(A)];



- enroll in the local school or continue attending their school of origin (the school they attended when permanently housed or the school in which they were last enrolled), according to the student’s best interest (42 U.S.C. § 11432(g)(3)(A); Ca. Educ. Code § 48852.7);
- receive transportation to and from the school of origin, if requested [42 U.S.C. § 11432(g)(1)((J)(iii); Ca. Educ. Code § 48852.7(e)(1)];
- receive educational services comparable to those provided to other students according to the student’s needs [42 U.S.C. § 11432(g)(4)].

For more information about the education of children and youth experiencing homelessness, visit the website of the [National Center for Homeless Education \(NCHE\)](#), the U.S. Department of Education’s federal homeless education technical assistance center, or the website of the [Homeless Education Technical Assistance Center \(HETAC\)](#), the California Department of Education’s state homeless education technical assistance center.

Special Education



Prior to the 1970s, U.S. public schools did not serve some children with severe disabilities, or provided only basic services with minimal educational focus. In response to several landmark court cases that deemed that all children have a right to a public education regardless of disability, Congress enacted the Education for All Handicapped Children Act of 1975, now known as the Individuals with Disabilities Education Act (hereafter *IDEA*, 20 U.S.C. § 1400 *et seq*) (Petek, 2019, p. 3).

States such as California that receive federal IDEA funds must agree to implement a three-step process for serving students with disabilities (p. 4):

1. Identify affected students through proactive efforts, a responsibility commonly known as “child find” (42 U.S.C. § 1412(a)(3); Ca. Educ. Code § 56301).
2. Develop an Individualized Education Program (IEP) to address the student’s unique learning needs [34 C.F.R. § 300.323(a); Ca. Educ. Code § 56426.9(b)].
3. Provide a FAPE based on the IEP [34 C.F.R. § 300.101; Ca. Educ. Code § 56426.9(b)].

For a student to be eligible to receive special education services, the child must have a disability that interferes with their ability to learn. The definition of *disability* includes

- an intellectual disability,
- a hearing impairment (including deafness),
- a speech or language impairment,
- a visual impairment (including blindness),
- a serious emotional disturbance,
- an orthopedic impairment,
- autism,
- traumatic brain injury,
- an other health impairment,
- a specific learning disability,
- deaf-blindness, or
- multiple disabilities (34 C.F.R. § 300.8; 5 C.C.R. § 3030).

Special education instruction and related services that may be provided as part of a student’s IEP include

- transportation;
- speech-language pathology and audiology services;
- interpreting services;
- psychological services;
- physical and occupational therapy;
- recreation, including therapeutic recreation;
- social work services;
- school nurse services designed to enable a child with a disability to receive a FAPE;
- counseling services, including rehabilitation counseling, orientation, and mobility services; and
- medical services for diagnostic and evaluation purposes only [20 U.S.C. § 1401(26); Ca. Educ. Code § 56363(a)].

Students with disabilities must be provided with a FAPE in the least restrictive environment (LRE), being educated with nondisabled students to the maximum extent appropriate (20 U.S.C. § 1412(a)(5)(A); Ca. Educ. Code § 56040.1).

For more information about the education of students with disabilities, visit the [U.S. Department of Education’s IDEAs that Work website](#) or the [California Department of Education’s Special Education webpage](#).

Intersecting Policy and Practice

Federal and California state homeless and special education statutes both reference the need to ensure that children and youth experiencing homelessness who have disabilities receive a FAPE.

Special Education under the McKinney-Vento Act

Under the McKinney-Vento Act,

- students experiencing homelessness must receive educational services, including special education services, comparable to those provided to other students according to the student’s needs [42 U.S.C. § 11432(g)(4)].
- local educational agencies (LEAs) must coordinate the provision of McKinney-Vento services with the provision of programs for children with disabilities served by that LEA and other involved LEAs [42 U.S.C. § 11432(g)(5)(D)].
- LEA liaisons must ensure that young children experiencing homelessness have access to services for which they’re eligible, including early intervention services provided to infants and toddlers with disabilities from birth to age two under IDEA Part C [42 U.S.C. § 11432(g)(5)(D)].¹
- LEAs receiving McKinney-Vento subgrant funds may use these funds to provide expedited evaluations, including to assess a student’s possible need for special education services [42 U.S.C. § 11433(d)(2)].



¹ This tip sheet focuses on special education services provided to students ages 3-21 under IDEA Part B; learn more about [California’s Early Start Program](#), which provides early intervention services to children birth to age 2 under IDEA Part C.

Additionally, question J-12 of the U.S. Department of Education’s [Education for Homeless Children and Youths Program Non-Regulatory Guidance](#) (U.S. Department of Education [ED], 2018, p. 30) states the following about serving students experiencing homelessness who have disabilities:

- **Best interest**

All McKinney-Vento Act requirements — including immediate enrollment and school selection best interest determinations — apply to students experiencing homelessness with and without disabilities. It should be presumed to be in the student’s best interest to continue attending the school of origin unless this is against the wishes of the parent, guardian, or unaccompanied youth [42 U.S.C. § 11432(g)(3)(B)]; however, the best interest determination should consider student-centered factors, including all aids and services included in the student’s IEP.

- **Transportation**

When a student experiencing homelessness — including a student with a disability — continues to attend the school of origin after moving to an area served by a different LEA, the LEA of origin and the LEA where the student resides must agree to a method for apportioning the responsibility and costs for providing school of origin transportation; if they cannot agree upon a method, the LEA of origin and LEA of residence must share the responsibility and costs equally [42 U.S.C. § 11432(g)(1)(J)(iii)(II)]. LEAs are encouraged to explore all options for paying for school of origin transportation for McKinney-Vento students who have a disability, including federal or state education funds in cases where transportation is a related service under the student’s IEP, McKinney-Vento subgrant funds, or Title I, Part A homeless set-aside funds.

Students Experiencing Homelessness under IDEA



IDEA includes specific requirements related to the provision of special education services to students experiencing homelessness; these requirements help to ensure timely access to an educational decision maker for unaccompanied youth and to address the educational disruption that can be caused by school mobility.

Educational Decision Makers: Parents, Surrogate Parents, and Temporary Surrogate Parents

One of IDEA’s foundational principles is the right of parents to participate in educational decision making regarding their child with a disability. Under IDEA, parents

- may initiate a request for an initial evaluation to determine if their child has a disability [20 U.S.C. § 1414(a)(1)(B); Ca. Educ. Code § 56506(b)] and must provide informed consent before the evaluation can begin [20 U.S.C. § 1414(a)(1)(D)(i)(I); Ca. Educ. Code § 56321(c)(1)].²
- are entitled to be members of any group that decides whether their child has a disability and meets eligibility criteria for special education services [34 C.F.R. §300.306(a)(1); Ca. Educ. Code § 56506].
- have the right to participate in meetings related to the evaluation, identification, and educational placement of their child [34 C.F.R. § 300.501(b); Ca. Educ. Code § 56506].
- are entitled to be members of the team that develops, reviews, and revises their child’s IEP [20 U.S.C. § 1414(d)(1)(B)(i); Ca. Educ. Code § 56341(b)(1)].

² If the parent does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide the consent, the local educational agency may, but is not required to, pursue the initial evaluation utilizing procedural safeguards established in accordance with federal and California state law [20 U.S. Code § 1415; Ca. Educ. Code § 56321(b)(4)(c)(2); Ca. Educ. Code § 56501(a)].

- are entitled to be members of any group that makes placement decisions for their child [34 C.F.R. § 300.327; Ca. Educ. Code § 56506].

Under IDEA, the term *parent* means:

- a natural, adoptive, or foster parent;
- a guardian (but not the state if the child is a ward of the state);
- 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
- an individual assigned to be a surrogate parent [20 U.S.C. § 1401(23); Ca. Educ. Code § 56028(a)].

In instances where the parents of the child are not known or the LEA cannot, after reasonable efforts, locate the parents, the LEA must appoint someone to act as the child's surrogate parent and educational decision maker; this person shall not be an employee of the state educational agency (SEA), the LEA, or any other agency that is involved in the education or care of the child [20 U.S.C. § 1415(b)(2)(A); Ca. Educ. Code § 56050; Ca. Gov. Code § 7579.5]. Reasonable efforts must be made to ensure the assignment of a surrogate not more than 30 days after there is a determination that the child needs a surrogate [20 U.S.C. § 1415(b)(2)(B); Ca. Gov. Code § 7579.5(a)].

In the case of unaccompanied youth, defined as a homeless child or youth not in the physical custody of a parent or guardian [42 U.S.C. § 11434a(6)], IDEA allows for the immediate appointment of a temporary surrogate parent until a surrogate parent can be appointed; unlike surrogate parents, temporary surrogate parents may be involved in the education or care of the child [34 C.F.R. § 300.519(f)].

For more information about surrogate and temporary surrogate parents, download the California Department of Education's [Surrogate Parents in California Special Education: An Overview](#).

Evaluations and IEPs: Mitigating the Effects of School Mobility

While timely evaluations and educational continuity are important for all students with disabilities, they are especially important for students in homeless situations, who often experience high residential and school mobility that may interrupt the evaluation for and provision of special education services.

- **LEA Transfers and Evaluations**

Once an LEA receives a request to complete an initial evaluation for IDEA services for a student, the LEA must complete the evaluation **within 60 days** of a parent providing consent [20 U.S.C. § 1414(a)(1)(C); Ca. Educ. Code § 56043(f)(1)]. If the student enrolls in a different LEA while the evaluation is in process, the 60-day timeframe does not apply if the new LEA is making sufficient progress to ensure a prompt completion of the assessment and the parent and enrolling LEA agree to a specific date by which the assessment will be completed [20 U.S.C. § 1414(a)(1)(C)(ii); Ca. Educ. Code § 56302.1(b)].

- **LEA Transfers and IEPs**

If a student with an established IEP transfers to a different LEA within California, the enrolling LEA must provide the student with services comparable to those in the established IEP, in consultation with the parents; the enrolling LEA then has **30 days** to either adopt the existing IEP or develop, adopt, and implement a new IEP that is consistent with federal and state law [20 U.S.C. § 1414(d)(2)(C)(i)(I); Ca. Educ. Code § 56325(a)(1)]. If a student with an established IEP transfers to a California LEA from another state, the enrolling LEA must provide the student with services

comparable to those in the established IEP, in consultation with the parents, until the enrolling LEA conducts an evaluation, if necessary, and develops a new IEP, if appropriate, that is consistent with federal and state law [20 U.S.C. § 1414(d)(2)(C)(i)(II); Ca. Educ. Code § 56325(a)(3)].

Students experiencing homelessness must be enrolled in school immediately, even as enrolling districts consider issues related to special education evaluations and IEP transfers. [42 U.S.C. § 11432(g)(3)(C)(i)(I); Ca. Educ. Code § 48850(a)(3)(A)];

Nonpublic Schools

Under federal and California state law, children with special education needs who are enrolled in private schools are entitled to receive special education and related services under IDEA (20 U.S.C. § 1412(a)(10)(A); Ca. Educ. Code § 56171). Nonpublic nonsectarian schools (NPS) are specialized private schools that provide services to California public school students with disabilities. NPS must be certified by CDE and meet standards established by the California State Superintendent of Public Instruction and Board of Education (Ca. Educ. Code § 56034). NPS are held to the same standards as public schools, including teacher credentials and student access to standards-based curriculum, extracurricular activities, and support services (Ca. Educ. Code § 56366.10).

In order to ensure the LRE, a student shall not be placed in an NPS unless the nature or severity of the student's disability is such that education in a regular class with the use of supplementary aids and services cannot be achieved satisfactorily (Ca. Educ. Code § 56040.1). Students with special education needs, including those experiencing homelessness, shall not be referred to, or placed in, an NPS unless the student's IEP specifies that the placement is appropriate (Ca. Educ. Code § 56342.1) and this placement is agreed upon by the student's educational decision maker (Ca. Educ. Code § 56506). At least annually, the LEA that developed the student's IEP must consider whether the student's needs continue to be met best at the NPS and whether changes to the student's IEP are necessary, including whether the student may be transitioned to a public school setting [Ca. Educ. Code § 56366(a)(2)(B)(ii)].

For more information about the provision of special education to students in private schools, download the U.S. Department of Education's [Q&A on Serving Children with Disabilities Placed by Their Parents in Private Schools](#). For more information about NPS, including a list of all NPS currently certified by CDE, visit the [CDE website](#).

Dispute Resolution

Federal and California state law establish procedures for the resolution of homeless education and special education disputes.

The McKinney-Vento Act establishes the right of the parent, guardian, or unaccompanied youth to dispute a student's McKinney-Vento eligibility, school selection, or school enrollment. In the event of a dispute, the Act outlines the responsibilities of the LEA related to eligibility, enrollment, and written notice [42 U.S.C. § 11432(g)(3)(E); Ca. Educ. Code § 48852.7(e)(1)].



IDEA establishes the right of the educational decision maker to file a due process complaint related to:

- special education assessments,
- a student's eligibility for special education,
- implementation of a student's IEP,

- a student’s educational placement, or
- changes made to the student’s IEP without educational decision maker approval [34 C.F.R. § 300.510; Ca.Ed. Code § 56501].

For more information on dispute resolution under the McKinney-Vento Act, visit the California Homeless Education Technical Assistance Center’s [Dispute Resolution webpage](#). For more information about due process under IDEA, visit the California Department of General Services’ [Special Education Due Process and How it Works webpage](#).

Partnering for Student Success

To ensure the coordinated implementation of the McKinney-Vento Act and the Individuals with Disabilities Education Act, and ultimately to provide California students with the best chance of educational success, homeless education and special education practitioners must partner intentionally to ensure that students experiencing homelessness who have a disability are provided with all available supports under federal and California state law to meet their unique educational needs.

References

National Center for Homeless Education [NCHE] (2021). *Student homelessness in America: School years 2017-18 to 2019-20*. Retrieved from <https://nche.ed.gov/wp-content/uploads/2021/12/Student-Homelessness-in-America-2021.pdf>

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