

# **SURROGATE PARENTS AND UNACCOMPANIED HOMELESS YOUTH UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

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## **CONTEXT**

Each year, between 1.5 and 1.6 million youth run away from home or are forced out of their homes by their parents. While many of these youth return home quickly, others remain separated from their families and live in homeless situations. In the 2013-2014 school year, public school districts identified 88,966 “unaccompanied homeless youth,” defined as students living in homeless situations outside the physical custody of a parent or guardian.<sup>1</sup>

Unaccompanied homeless youth consistently report family dysfunction as a primary reason they no longer live at home. Family problems often include issues related to parental substance abuse, pregnancy and sexual activity or orientation. In addition, parental neglect and abuse (emotional, physical or sexual), incarceration, illness, deportation or death can lead to youth being on their own. Many youth experience homelessness after running away from a foster care placement or aging out of foster care.<sup>2</sup> Unaccompanied homeless youth live in a variety of temporary situations, including shelters, the homes of friends or relatives, cars, campgrounds, public parks, abandoned buildings, motels and bus or train stations.<sup>3</sup> They strive to survive on their own in unsafe or unstable housing.

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<sup>1</sup> Data of the U.S. Department of Education as reported by the National Center for Homeless Education. Retrieved March 16, 2016 at <http://profiles.nche.seiservices.com/ConsolidatedStateProfile.aspx>.

<sup>2</sup> Many unaccompanied youth have fled abuse in the home: Studies have found that 20-40% of unaccompanied youth were sexually abused in their homes, while 40-60% were physically abused. Hammer, H., Finkelhor, D., & Sedlak, A. (2002). “Runaway / Throwaway Children: National Estimates and Characteristics.” *National Incidence Studies of Missing, Abducted, Runaway, and Throwaway Children*. Washington DC: Office of Juvenile Justice and Delinquency Prevention. See also Greene, J. (1995). “Youth with Runaway, Throwaway, and Homeless Experiences: Prevalence, Drug Use, and Other At-Risk Behaviors.” *Research Triangle Institute*. Washington DC: U.S. Dept. of Health and Human Services. Over two-thirds of callers to the National Runaway Switchboard report that at least one of their parents abuses drugs or alcohol. National Runaway Switchboard, <http://www.1800runaway.org/>. Many youth have been thrown out of their homes due to their sexual orientation: 20-40% of unaccompanied youth identify as gay, lesbian, bisexual or transgender (compared to 3-5% of adults). The National Gay and Lesbian Task Force and the National Coalition for the Homeless (2007). *Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness*. Washington DC: Authors. Many youth have been thrown out of their homes due to pregnancy. 10% of currently homeless female teenagers are pregnant. 2007 National Symposium on Homelessness Research.

<sup>3</sup> “...The term ‘homeless children and youths’-- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); 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

Every local educational agency (LEA) has a designated homeless liaison, with the responsibility to identify homeless students and ensure they can enroll in school and receive appropriate services and supports. Homeless liaisons are trained to determine which students meet the federal definition of “homeless” based on the objective nature of each student’s current nighttime living arrangement, rather than the circumstances that caused him or her to leave home. Special education staff should contact liaisons for information about students who have been identified as homeless, or who appear to meet the criteria.

Students experiencing homelessness are more likely than their housed peers to have disabilities that affect their learning. Studies indicate that children who are homeless are twice as likely to have learning disabilities and three times as likely to have an emotional disturbance as children who are not homeless.<sup>4</sup>

## **LEGAL LANDSCAPE**

The Individuals with Disabilities Education Act (IDEA) contains many references to homeless students, including unaccompanied homeless youth specifically:

- Each public agency must ensure that the rights of unaccompanied homeless youth are protected.<sup>5</sup>
- State educational agencies must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after the public agency determines the child needs a surrogate parent.<sup>6</sup>
- To avoid delays in evaluations and services, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs may be appointed as temporary surrogate parents without regard to the requirements in §300.519(d)(2)(i), until a compliant surrogate parent can be appointed.<sup>7</sup>

The McKinney-Vento Act (*Title IX of the Every Student Achieves Act of 2015*) provides extensive rights to students experiencing homelessness, including:

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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 (within the meaning of section 103(a)(2)(C)); (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 (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).... (6) The term ‘unaccompanied youth’ includes a youth not in the physical custody of a parent or guardian.” 42 USC §11434a; 20 USC §1401(11).

<sup>4</sup> *Better Homes Fund. (1999). Homeless children: America’s new outcasts. Newton Center, MA:*

*Author.*

<sup>5</sup> 34 CFR §300.519(a)(4).

<sup>6</sup> 34 CFR §300.519(h).

<sup>7</sup> 34 CFR §300.519(f).

- The right to attend classes and participate fully in school activities immediately, even without documents that are typically required for enrollment, such as school records, proof of residency, and guardianship.<sup>8</sup>
- The right to remain in the school of origin (the school attended when permanently housed or the school in which last enrolled).<sup>9</sup>
- Transportation to the school of origin.<sup>10</sup>
- LEAs must coordinate McKinney-Vento and special education services within the LEA, and with other involved LEAs.<sup>11</sup>

Any state receiving IDEA funds must ensure that the requirements of the McKinney-Vento Act are met for all children with disabilities in homeless situations in the state.<sup>12</sup> More information about the McKinney-Vento Act is available at [www.naehcy.org](http://www.naehcy.org).

### **WHO CAN CONSENT FOR SPECIAL EDUCATION EVALUATIONS AND SERVICES FOR UNACCOMPANIED HOMELESS YOUTH?**

#### 1. Their natural or adoptive parent

By definition, unaccompanied homeless youth are not in the physical custody of a parent or guardian. On occasion, an unaccompanied youth's natural or adoptive parent may remain involved in the youth's education. When such parents maintain an active role in their child's education, they must be allowed to participate in the special education process as defined in IDEA and related regulations and state laws.

However, it is more common for parents of unaccompanied youth to have no educational involvement or sporadic involvement, at best. If an unaccompanied youth's parent does not respond to the school district's attempts to make contact regarding special education evaluations or services, the school district must identify or appoint another adult to consent. The same is true if a parent initially communicates with the school district, but later stops responding. The school district must document reasonable attempts to contact the parent. However, these attempts must be balanced with IDEA's explicit requirement to ensure that the rights of unaccompanied homeless youth are protected.

For example, if repeated calls, emails, and letters over the course of a month do not elicit a response from the parent, the district should proceed to the surrogate parent process to avoid delays in evaluations and the provision of a free appropriate public education for the student.

<sup>8</sup> 42 USC §11432(g)(3).

<sup>9</sup> 42 USC §11432(g)(3).

<sup>10</sup> 42 USC §11432(g)(1)(J)(iii).

<sup>11</sup> 42 USC §11432(g)(5)(D) as amended by the Every Student Achieves Act of 2015.

<sup>12</sup> 20 USC §1412(a)(11)(A)(iii).

*An unaccompanied homeless youth age 15 was struggling in school. Her teacher felt a special education evaluation was warranted. The school district was able to contact the student's parent by phone, who consented verbally for the evaluations. She provided a mailing address for paperwork to be sent allowing her to provide written consent.*

*The mother never returned the paperwork, and repeated attempts to contact her by phone and mail were fruitless. After one month of such attempts, the school district appointed a temporary surrogate parent to assist with the evaluation process. By the time evaluations were completed, a regular surrogate had been appointed and participated in the student's IEP meeting with the student.*

2. An "individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives"

Some unaccompanied youth live with informal caregivers who provide the student with shelter. Some of these adults may be involved in the youth's education and appropriately may be considered a "parent" under IDEA.<sup>13</sup> These adults may consent for evaluations and services. In other cases, caregivers are not "acting in the place of" a parent and do not wish to participate in the youth's education. These adults *do not* meet IDEA's definition of parent.

3. A surrogate parent

Most unaccompanied homeless youth have neither a natural/adoptive parent nor individual acting in the place of a parent to consent for special education evaluations and services. IDEA's surrogate parent provisions for unaccompanied youth help protect these students' rights and provide the school district with an appropriate adult with whom to communicate about evaluations and services.

Due to homeless students' mobility, time is of the essence in providing them with special education services. In fact, the U.S. Department of Education's Office of Special Education Programs has stated:

"There are compelling reasons for school districts to complete evaluations and eligibility determinations for highly mobile children well within the evaluation time frame that is

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<sup>13</sup> Section 602(23). Despite the specific listing of relatives, IDEA's definition of "including", to mean "things like or unlike" makes clear that an individual acting in the place of a parent does not necessarily have to be a relative.

applicable in a State, and we strongly encourage school districts to complete their evaluations of highly mobile children within expedited time frames (e.g., within 30 days)....”<sup>14</sup>

To ensure timely services, it is important for school districts to develop simple, expedited procedures to:

1. Attempt to contact an unaccompanied youth’s natural or adoptive parent. The LEA homeless liaison is likely to know the level of involvement of an unaccompanied youth’s parent. The special education team should contact the liaison immediately for guidance and information. LEAs must maintain a delicate balance when working with unaccompanied homeless youth, as IDEA requires both attempts to contact parents and procedures to protect students’ rights. To achieve the appropriate balance, the LEA should conduct required efforts to contact the parent as quickly as possible, maintain appropriate documentation, and ensure these efforts do not unreasonably delay the youth’s ability to receive special education evaluations and services. In general, if the LEA’s diligent attempts to contact a parent do not elicit a response within 30 days, the LEA should proceed to appointing a temporary surrogate parent, and later a regular surrogate parent.
2. Assess whether the youth has an “individual acting in the place of” a parent. Again, the LEA homeless liaison should have this information available. Speaking directly with the young person about caregiver arrangements also is a best practice.
4. Appoint a temporary surrogate for unaccompanied youth. Recommended procedures include:
  - talking with the youth about the process;
  - asking the youth to suggest someone appropriate to serve as a temporary surrogate;
  - talking with that candidate to ensure that he/she feels comfortable participating, has a basic understanding of the process, and does not have interests that conflict with those of the youth;
  - expediting the process: Federal regulations require the appointment of surrogate parents within 30 days, while temporary surrogates should be appointed much more quickly and ideally, within seven days; and
  - developing a pool of surrogate parents trained on the challenges unaccompanied homeless youth face and positive youth development strategies. Retired teachers and professionals working with local homeless youth service programs may be appropriate volunteers.
4. Provide special education administrators and teachers with annual professional development about the McKinney-Vento Act and how to serve unaccompanied homeless youth with special needs, so those professionals will understand how to address parental consent issues and ensure timely evaluations and services for unaccompanied youth.

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<sup>14</sup> Letter to State Directors of Special Education from the US Department of Education’s Office of Special Education and Rehabilitative Services, July 19, 2013.

## **RESOURCES**

Every state has a McKinney-Vento State Coordinator. Contact information for every state is available at: [http://center.serve.org/nche/states/state\\_resources.php](http://center.serve.org/nche/states/state_resources.php).

Every local educational agency has a local McKinney-Vento homeless liaison. Local contact information is available from your State Coordinator.

The National Center for Homeless Education and NASDSE's Project Forum developed several briefs and resources to assist local educational agencies in serving students with disabilities experiencing homelessness. Resources are available at [http://center.serve.org/nche/ibt/sc\\_spec\\_ed.php](http://center.serve.org/nche/ibt/sc_spec_ed.php) and <http://www.nasdse.org/Projects/projectforum/tabid/415/default.aspx>.

Letter from the Office of Special Education and Rehabilitative Services to Diana Bowman, National Center for Homeless Education regarding transportation for homeless students with disabilities, August 5, 2013. Available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/nc-bowman-homeless-final-8-5-13.pdf>.

Letter from the Office of Special Education and Rehabilitative Services to State Directors of Special Education regarding expediting evaluations for highly mobile children, July 19, 2013. Available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf>.

Memorandum from the Office of Special Education and Rehabilitative Services to State Directors of Special Education, "A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA), July 11, 2011. Available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>.