

## Individuals with Disabilities Education Improvement Act (IDEA) of 2004: Provisions for Homeless Children and Youth with Disabilities



Over 1.35 million children and youth experience homelessness each year (Burt & Laudan, 2000). These children and youth face educational challenges that include a lack of basic necessities, such as food, clothing, and medical services; discontinuity of education due to mobility; and trauma caused by the chaos, poverty, and instability of their family's circumstances or, in the case of unaccompanied youth, their own circumstances.

Children and youth who are homeless face additional educational challenges when they have disabilities. 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 (Better Homes Fund, 1999).

Yet children and youth who are homeless and have disabilities may not receive the special education services for which they are eligible. Barriers to access these children and youth face include:

- Not being identified as needing special education services
- Difficulty with diagnosis due to mobility and other stressors
- Lack of timely assessment, diagnosis, or service provision
- Lack of continuity of services due to school transfers
- Lack of timely or efficient records transfer when enrolling in a new school
- Lack of an available parent or surrogate to represent the child or unaccompanied youth

### Federal Response

Two federal laws that address the needs of homeless children and youth with disabilities are the McKinney-Vento Homeless Education Assistance Improvements Act and the Individuals with Disabilities Education Improvement Act (IDEA).

### The McKinney-Vento Homeless Education Assistance Improvements Act

The McKinney-Vento Act, reauthorized in 2002 as part of the No Child Left Behind Act, ensures access to a free, appropriate public education (FAPE) for children experiencing homelessness. (See the sidebar for the definition of "homeless children and youth".)

The McKinney-Vento Act mandates:

#### Who is Homeless?

(McKinney-Vento Homeless Assistance Act of 2001 – Title X, Part C, of the No Child Left Behind Act – Sec 725)

The term "homeless children and youth"—

- A. means individuals who lack a fixed, regular, and adequate nighttime residence...; and
- B. includes —
- 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; or are awaiting foster care placement;
  - 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...
  - children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
  - 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).

- Immediate school enrollment and full participation in all school activities for eligible children, even when records normally required for enrollment are not available [Sec. 722(g)(3)(C)]
- The right of children and youth experiencing homelessness to remain in their school of origin (the school the student attended when permanently housed or the school in which the student was last enrolled) [Sec. 722(g)(3)(A)]
- Transportation to the school of origin [Sec. 722(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 [Sec. 722(g)(4)]
- The appointment of a local homeless education liaison in every school district to ensure that homeless children and youth are identified and given full and equal access to all educational services for which they are eligible in order to succeed in school [Sec. 722 (g)(6)(A)]

### **The Individuals with Disabilities Education Improvement Act**

The purpose of IDEA, amended in 2004, is to ensure that all children with disabilities receive a FAPE, including special education and related services, to prepare them for further education, employment, and independent living [Part A, Sec. 601(d)(1)(A)]. Special education is defined as specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability [Part A, Sec. 602(29)]. (See the sidebar for the definition of “child with a disability.”)

To be eligible, the child must have a disability and require specialized instruction to benefit from school. Special education instruction may take place in a general education classroom, special education classroom, specialized school, home, hospital, or institution [Part A, Sec. 602(29)(A)] and may include academic or behavioral support, speech and language pathology services, vocational education, and many other services. Related services may include transportation, physical therapy, psychological services, social work services, and counselling. Also included are certain medical services, parent counselling and training, recreation, and other support services if students need them to benefit from a special education program [Part A, Sec. 602(26)]. Eligibility and services are determined through evaluation and the development of an Individual Education Plan (IEP) [Part A, Sec. 614(d)]. Students who have not graduated from high school are eligible through age 21 [Part A, Sec. 612(a)(1)(A)]. Services are available to individuals with disabilities beginning at birth through Part C, Infants and Toddlers. Children under three are served under an Individualized Family Services Plan (IFSP) [Part C, Sec. 636].

### **Federal Guarantees for Children Who are Homeless and Have Disabilities**

The McKinney-Vento Act and IDEA mandate protections and services for children and youth who are homeless and children and youth with disabilities. Moreover, both the McKinney-Vento Act and IDEA address serving children and youth who are homeless and have disabilities, ensuring that their complex and unique needs are met.

In reviewing the needs of homeless children and youth with disabilities, educators should bring to bear the full range of both laws to optimize the educational access and success of these children. It is important to note that the two laws do not operate exclusively of one another, nor does one law supersede the other.

The 2004 reauthorization of IDEA in particular includes amendments that reinforce the timely assessment, appropriate service provision and placement, and continuity of services for children and youth with disabilities who experience homelessness and high mobility. Coordination and compliance with the McKinney-Vento Act are mandated specifically. The general requirements for a FAPE, evaluations, and IEPs are unchanged.

Following is a listing of the amendments in the reauthorized IDEA and implementing regulations from the U.S. Department of Education as related to the education of homeless children and youth with disabilities, pointing out the changes from prior law.

## **Definitions**

- IDEA now mentions specifically and observes the McKinney-Vento definition of “homeless children and youth”.<sup>1</sup>
- The definition of “parent” has been changed, so that the statute now contains a similar definition to that contained in the federal regulations since 1999, with the notable addition of foster parents to the list of persons considered to be “parents.” For the purpose of special education, “parents” now include biological, adoptive or foster parents, guardians, surrogate parents, individuals legally responsible for the child’s welfare, or individuals acting in the place of a parent and with whom the child lives (specifically including grandparents, stepparents or other relatives).<sup>2</sup>
- IDEA now contains a definition of “ward of the state.”<sup>3</sup>

## **Identification**

- The Child Find requirements in the statute now include a specific requirement that states ensure that homeless children with disabilities are identified, located, and evaluated. (This requirement has been in federal regulations since 1999.)<sup>4</sup>

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

- Any state receiving IDEA funds must ensure that the requirements of the McKinney-Vento Act are met for all homeless children and youth with disabilities in the state.<sup>5</sup>
- IDEA requires every state receiving IDEA funds to maintain a State Advisory Panel to advise the State Educational Agency (SEA) on unmet needs in the state; to comment publicly on proposed rules and regulations; to advise the SEA on self-evaluation, data reporting and ensuring compliance; and to improve service coordination. IDEA now requires states to include state and local McKinney-Vento personnel on the Panel, as well as a representative of the state child welfare agency responsible for foster care.<sup>6</sup>

## **Evaluations and IEPs**

- IDEA now requires Local Educational Agencies (LEAs) to complete initial special education evaluations within 60 days of a parent’s request, or within time frames established by the state.<sup>8</sup>
- IDEA now specifically requires LEAs to ensure that assessments of children who change LEAs during the school year are coordinated with prior schools “as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.”<sup>8</sup>
- IDEA states specifically that the same time frame for completing initial evaluations applies if a

child changes LEAs while the evaluations are pending, unless the new LEA “is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and LEA agree to a specific time when the evaluation will be completed.”<sup>9</sup>

- When children with current IEPs change LEAs during the school year, the new LEA is now specifically required to provide the children with a FAPE immediately, “including services comparable to those described” in the previous IEP, in consultation with the parents. The LEA can then either adopt the old IEP or implement a new IEP. If the LEA is in a new state, the LEA can conduct new evaluations, if determined necessary, and develop a new IEP; but the LEA must still provide a FAPE, including services comparable to those described in the previous IEP, until the evaluations are completed and the new IEP is implemented.<sup>10</sup>
- To facilitate the provision of a FAPE for students who change LEAs during the school year, IDEA now specifically requires enrolling schools to obtain the child’s records from the previous school promptly, and previous schools to respond to such records requests promptly.<sup>11</sup>

### **Unaccompanied Youth**

- IDEA now requires each public agency to ensure that the rights of unaccompanied homeless youth are protected.<sup>12</sup>
- The definition of “parent” includes individuals acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives. The regulations specify that “include” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. Thus, both relatives and non-relatives of unaccompanied homeless youth may be considered a parent if they are acting in the place of a biological or adoptive parent and the youth is living with them.<sup>13</sup>
- For unaccompanied youth, IDEA specifically requires LEAs to appoint surrogate parents, and to make reasonable efforts to complete the appointment process within 30 days.<sup>14</sup> In the interim, LEAs are to appoint temporary surrogate parents for unaccompanied youth. Temporary surrogates may be appropriate staff members of emergency shelters, transitional shelters, independent living programs, street outreach programs, the State, the LEA, or another agency involved in the education or care of the child, as long as the staff member has adequate knowledge and skills and does not have a personal or professional interest that conflicts with the interest of the youth.<sup>15</sup>
- For wards of the state, IDEA now does not require an LEA to obtain parental consent for an initial evaluation, if the LEA cannot find the parent, the parent’s rights have been terminated, or a judge has removed the parent’s educational decision-making rights and appointed another person to represent the child.<sup>16</sup>
- For wards of the state, IDEA now explicitly permits judges to appoint surrogate parents.<sup>17</sup>

### **Services**

- IDEA now allows LEAs to use up to 15% of their grants to develop and implement programs to intervene with K-12 students who have not been found eligible for special education but who need additional academic and behavioral support, with an emphasis on primary grades.<sup>18</sup> (This provision should assist children experiencing homelessness with overcoming barriers to accessing services expeditiously.)

### **Resolution of Disputes**

- When requesting a mediation or due process hearing under IDEA, families and youth experiencing homelessness do not need to provide a residential address; only available contact information is required.<sup>19</sup>

### **Infants and Toddlers (Part C)**

- Any state receiving a Part C grant must make early intervention services available to homeless infants and toddlers with disabilities and their families.<sup>20</sup>
- States must ensure that appropriate early intervention services using scientifically based research are available, to the extent practicable, to homeless infants and toddlers with disabilities and their families.<sup>21</sup>
- States must ensure the meaningful involvement of homeless families and wards of the state in the planning and implementation of the Part C program.<sup>22</sup>
- In the report accompanying Part C, Congress stated that states should conduct public awareness programs about the Part C program in homeless family shelters, health service offices, public schools and the child welfare system.<sup>23</sup>
- Any state receiving a Part C grant must establish a State Interagency Coordinating Council, which must include a representative of the State McKinney-Vento Coordinator and the state child welfare agency responsible for foster care.<sup>24</sup>

## References

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- Burt, M. & Laudan, A. (2000). *America's homeless II: Populations and services*. Washington, D.C.: The Urban Institute.
- U.S. Department of Education, Office of Elementary and Secondary Education. (2000). *Education for homeless children and youth program report to Congress: Fiscal year 2000*. Retrieved December 18, 2004 from [http://www.serve.org/nche/downloads/2000\\_congress.doc](http://www.serve.org/nche/downloads/2000_congress.doc).

## Print Resources

- Council for Exceptional Children. (2003, March). Exceptional and homeless. *Today*, 9(16), 1-2.
- Individual with Disabilities Education Improvement Act of 2004, P.L. 108-446. Retrieved December 18, 2004 from <http://thomas.loc.gov/cgi-bin/cpquery/z?cp108:hr779.108>.
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- Jackson, T.L. (2004). Homelessness and students with disabilities: Educational rights and challenges. *National Association of State Directors of Special Education: Project Forum*. Retrieved December 18, 2004 from <http://www.nasdse.org/forum.htm>.
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- Myers, M. & Popp, P. (2003, Fall). What educators need to know about homelessness and special education. (Information Brief No. 7). Williamsburg, VA: Project HOPE. Retrieved December 18, 2004 from <http://www.wm.edu/hope/infobrief/personnel-complete.pdf>.
- National Association for State Directors of Special Education. (2004). *The Individuals with Disabilities Education Act: A comparison of P.L. 105-17 (IDEA '97) to H.R. 1350*. Washington, DC: Author.
- Smith, D. (1999, June). 20 Special education questions and answers. National Association of Protection and Advocacy, Inc. Retrieved December 18, 2004 from <http://www.napas.org/I-3/I-3-F/20%20Special%20Ed%20Ques%20II.htm>.

## Special Education Agencies

- Council for Exceptional Children (CEC): <http://www.cec.sped.org>
- IDEA Partnerships: <http://www.ideapractices.org>
- National Association for State Directors of Special Education: <http://www.nasdse.org>
- U.S. Department of Education Office of Special Education Programs: <http://www.ed.gov/offices/OSERS/OSEP>

## National Partners in Homeless Education

### **The National Center for Homeless Education (NCHE)**

Contact: Diana Bowman, Director, 800-755-3277, [dbowman@serve.org](mailto:dbowman@serve.org)

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

NCHE, funded by the U.S. Department of Education, is a national resource center, providing valuable information, training, and materials to educators and community members seeking to address the educational needs of homeless children and their families. These materials are made available to the public at no charge and include such items as educational rights posters, parent packs, training resources, and homeless education issue briefs.

### **U.S. Department of Education, Education for Homeless Children and Youths Program**

Contact: Gary Rutkin, Coordinator, 202-260-4412, [gary.rutkin@ed.gov](mailto:gary.rutkin@ed.gov)

Web Address: <http://www.ed.gov/programs/homeless/index.html>

The Education for Homeless Children and Youths Program oversees the education of homeless children and youth in our nation's public schools, including the granting of McKinney-Vento funds and the monitoring of their usage. Program Coordinator Gary Rutkin, working with other U.S. Department of Education officials and national partners, provides official guidance to states and school districts on implementing the McKinney-Vento Homeless Education Assistance Improvements Act.

### **The National Association for the Education of Homeless Children and Youth (NAEHCY)**

Contact: Barbara Duffield, Policy Director, 202-364-7392, [bduffield@naehcy.org](mailto:bduffield@naehcy.org)

Web Address: <http://www.naehcy.org>

NAEHCY, a national grassroots membership association, serves as the voice and social conscience for the education of children and youth in homeless situations. NAEHCY brings together educators, parents, advocates, researchers and service providers to ensure school enrollment and attendance, and overall success for children and youth experiencing homelessness. NAEHCY accomplishes this through advocacy, partnerships, and education. NAEHCY also hosts an annual national conference on homeless education, which brings together educators and service providers to learn about best practices and new developments within the field.

### **The National Law Center on Homelessness & Poverty (NLCHP)**

Contact: Joy Moses, Education Staff Attorney, 202-638-2535, [jmoses@nlchp.org](mailto:jmoses@nlchp.org)

Web Address: <http://www.nlchp.org>

NLCHP's mission is to prevent and end homelessness by serving as the legal arm of the nationwide movement to end homelessness. To achieve its mission, NLCHP pursues three main strategies: impact litigation, policy advocacy, and public education. NLCHP strives to place homelessness in the larger context of poverty. By taking this approach, NLCHP aims to address homelessness as a very visible manifestation of deeper causes: the shortage of affordable housing, insufficient income, and inadequate social services. NLCHP provides guidance and produces high-quality publications on legal issues pertaining to homelessness and poverty.

### **The National Network for Youth (NN4Y)**

Contact: Bob Reeg, Director of Public Policy, 202-783-7949 x3109, [bob.reeg@verizon.net](mailto:bob.reeg@verizon.net)

Web Address: <http://www.nn4youth.org>

NN4Y is the leading advocacy organization for runaway and homeless youth. NN4Y seeks to promote opportunities for growth and development for youth who face greater odds due to abuse, neglect, family conflicts and disconnection from family, lack of resources, discrimination, differing abilities, or other life challenges. NN4Y achieves this through advocacy on national policy related to at-risk youth, and through the provision of training, technical assistance, consultation services, and publications on the issue of supporting and protecting at-risk youth.

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This brief was developed by:

National Center for Homeless Education (NCHE)  
800-308-2145 (toll-free HelpLine)  
*<http://www.serve.org/nche>*

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Every state is required to have a State Coordinator for the Education of Homeless Children and Youth, and every school district is required to have a local homeless education liaison. These individuals will assist you with the implementation of the McKinney-Vento Act. To find out who your State Coordinator is, visit the

NCHE website at *<http://www.serve.org/nche>*.



For further information on the McKinney-Vento Act and resources for implementation, call the NCHE HelpLine at 800-308-2145 or e-mail *[homeless@serve.org](mailto:homeless@serve.org)*.



**Local Homeless Education Liaison:**

## Endnotes

<sup>1</sup> “HOMELESS CHILDREN.—The term ‘homeless children’ has the meaning given the term ‘homeless children and youths’ in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).”  
Section 602(11); 34 C.F.R. §300.19

<sup>2</sup> “PARENT.—The term ‘parent’ means—

(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

(B) a guardian (but not the State if the child is a ward of the State);

(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or

(D) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent.”

Section 602(23)

“(a) Parent means—

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological 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

(5) A surrogate parent who has been appointed in accordance with section 300.519 or section 639(a)(5) of the Act.  
34 C.F.R. §300.30

<sup>3</sup> “WARD OF THE STATE.—

(A) IN GENERAL.—The term ‘ward of the State’ means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

(B) EXCEPTION.—The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).”

Section 602(36); 34 C.F.R. §300.45

<sup>4</sup> “(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:...

(3) CHILD FIND.—

(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.”

Section 612(a)(3)(A); 34 CFR §300.111

<sup>5</sup> “(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:...

...(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

(A) IN GENERAL.—The State educational agency is responsible for ensuring that—...

(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.”

Section 612(a)(11)(A)(iii); 34 CFR §300.149(a)(3)

<sup>6</sup> “(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:...

...(21) STATE ADVISORY PANEL.—

“(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official

authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including—

...(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);

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

(D) DUTIES.—The advisory panel shall—

(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.”

Section 612(a)(21); 34 CFR §300.167, §300.168(a)(5), §300.169

<sup>7</sup> “EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS.—

(1) INITIAL EVALUATIONS.—

...(C) PROCEDURES.—

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

(I) to determine whether a child is a child with a disability (as defined in section 602) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.”

Section 614(a)(1)(C)

“The initial evaluation—

(1) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(2) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe....”

34 CFR §300.301(c)

<sup>8</sup> “(b) EVALUATION PROCEDURES.— ...

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

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

Section 614(b)(3)(D)

“Each public agency must ensure that—

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children’s prior and subsequent schools, as necessary and as expeditiously as possible, consistent with section 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.”

34 CFR §300.304 (c)(5)

<sup>9</sup> “EXCEPTION.—The relevant timeframe in subparagraph (i)(I) shall not apply to a local educational agency if—

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child’s previous local educational agency as to whether the child is a child with a disability (as defined in section 602), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed.”

Section 614(a)(1)(C)(ii)

“(d) Exception. The time frame described in paragraph (c)(1) of this section does not apply to a public agency if—

...(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child’s previous public agency as to whether the child is a child with a disability under section 300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.”

34 CFR 300.301 (d) – (e)

<sup>10</sup> “(d) INDIVIDUALIZED EDUCATION PROGRAMS...

(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

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

(i) IN GENERAL.—

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

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

Section 614(d)(2)(C)(i)

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

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

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

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

(1) Conducts an evaluation pursuant to section 300.304 through 300.306 (if determined to be necessary by the new public agency); and

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

34 CFR §300.323 (e)-(f)

<sup>11</sup> “(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i)—

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

(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.”

Section 614(d)(2)(C)(ii); 34 CFR §300.323 (g)

<sup>12</sup> “(a) Each public agency must ensure that the rights of a child are protected when—...(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6))....”

34 CFR §300.519(a)

<sup>13</sup> See endnote 2, Section 602(23)(C); 34 C.F.R. §300.30.

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

34 C.F.R. §300.20

<sup>14</sup> “TYPES OF PROCEDURES.—The procedures required by this section shall include the following:

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

case of—...

(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph. (B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.”

Section 615(b)(2)

“(a) Each public agency must ensure that the rights of a child are protected when—...(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6))....

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

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

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

34 CFR §300.519(a)-(b)

<sup>15</sup> “Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.”

34 CFR §300.519(f)

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

71 Fed. Reg. 46712 (August 14, 2006)

<sup>16</sup> “(iii) CONSENT FOR WARDS OF THE STATE.—

(I) IN GENERAL.—If the child is a ward of the State and is not residing with the child’s parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 602) of the child for an initial evaluation to determine whether the child is a child with a disability.

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

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

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

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

Section 614(a)(1)(C)(iii); 34 CFR §300.300(a)(2)

<sup>17</sup> “(2)(A) ...In the case of—

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

Section 615(b)(2)(A)(i); 34 CFR §300.519(c)

<sup>18</sup> “EARLY INTERVENING SERVICES.—

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

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

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

Section 613(f); 34 CFR §300.226(a)-(b)(2)

<sup>19</sup> “TYPES OF PROCEDURES.—The procedures required by this section shall include the following:

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

(ii) that shall include—

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

(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending....”

Section 615(b)(7)(A)(ii); 34 CFR §§300.507-508(b)(4)

<sup>20</sup> “In order to be eligible for a grant under section 633, a State shall provide assurances to the Secretary that the State—

(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State”

Section 634(1)

<sup>21</sup> “(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:...

(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.”

Section 635(a)(2)

<sup>22</sup> “ASSURANCES.—The application described in subsection (a)—...

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

Section 637(b)(7)

<sup>23</sup> “The Conferees intend that the public awareness program include a broad range of referral sources such as homeless family shelters, clinics and other health service related offices, public schools and officials and staff in the child welfare system.”

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<sup>24</sup> “IN GENERAL.—The council shall be composed as follows:...

(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH.—Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

(L) STATE FOSTER CARE REPRESENTATIVE.—Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.”

Section 641(b)(1)(K) and (L)