

Navigating the Intersections of IDEA and McKinney-Vento: A Problem-Solving Process



Background Information

The Individuals with Disabilities Education Act (IDEA) is the main federal program concerning the education of children with disabilities. It authorizes state and local aid for special education and related services for children with disabilities and contains detailed due process protections for children with disabilities and their parents.

The McKinney-Vento Homeless Assistance Act is the main federal program concerning the education of children and youth experiencing homelessness. It provides federal funding to states, which then distribute the funds to their school districts through a competitive application process; the funds are used to ensure that children and youth experiencing homelessness have access to the free, appropriate public education to which they are entitled under federal law.

This publication was developed from the McKinney-Vento Act and Individuals with Disabilities Education Act (IDEA) administrators one-day web-based policy forum co-hosted by the National Center for Homeless Education (NCHE) and Project Forum at the National Association for State Directors of Special Education (NASDSE). In June 2008, NASDSE and NCHE convened online state and local teams of McKinney-Vento and IDEA Part B and Part C administrators from Colorado, Texas, and Virginia. The purpose of this forum was to develop a collaborative process and identify strategies to enable state and local IDEA and McKinney-Vento staff to think through complex issues from an administrative and policy perspective. Patricia Julianelle, Legal Counsel for the National Association for the Education of Homeless Children and Youth (NAEH CY), developed this brief to assist in addressing complex issues that arise in applying the McKinney-Vento Act and IDEA to children who experience homelessness and have disabilities.

Conflicting or Complementary?

There are many areas in which actual or perceived tensions exist between the mandates of IDEA and those of the McKinney-Vento Act. Often, these tensions result from misunderstandings about what the laws truly require or their lack of specificity. In other cases, differences in perspectives and procedures complicate school districts' and service providers' efforts to act in the child's best interest. Whether these challenges are based in law, policy, or practice, navigating the intersections of IDEA and McKinney-Vento requires creativity, flexibility, and above all, collaboration.

Who is homeless? (Sec. 725)

The term "homeless children and youth"—

- (A) means individuals who lack a fixed, regular, and adequate nighttime residence ...; and
- (B) includes—
 - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings ...
 - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - (iv) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

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Some common questions regarding the interplay of IDEA and the McKinney-Vento Act are represented in the following scenarios:

Scenario 1: Christopher and Josie

- a. *Christopher and his mother just arrived at our school to enroll. Christopher meets the McKinney-Vento Act's definition of homeless, and his mother informed us that he was receiving some special services at his previous school. How does my school district implement the McKinney-Vento Act's requirement to enroll Christopher in school and provide him with full participation immediately if the district doesn't yet have a copy of the IEP from his previous school?*
 - b. *Christopher's mother just contacted our IDEA Part C agency seeking services for her toddler Josie. Josie meets the McKinney-Vento Act's definition of homeless, and her mother informed us that she was receiving some special services in her previous community. How does the McKinney-Vento Act apply to Josie? How can the Part C agency determine whether she was receiving Part C services? What would be the appropriate plan of action if Josie were receiving services in her previous community? What if she were not?*
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Scenario 2: Mariela

- a. *Mariela was living in my school district and placed by the district in a nonpublic school pursuant to her IEP. She and her family lost their housing and are staying temporarily in another school district. Is the nonpublic school Mariela's school of origin under the McKinney-Vento Act? How does my district determine if remaining in the nonpublic school is in Mariela's best interest? How does the IDEA requirement to educate Mariela in*

the least restrictive environment influence the determination?

- b. *If my school district determines that it is in Mariela's best interest to continue to attend the nonpublic school as her school of origin, how is it determined which school district is responsible for providing services and/or funding? Who pays for Mariela's education and transportation: our district or her district of residence? Should services be funded by special education, McKinney-Vento, or the district's general funds?*
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Each question in the above scenarios has both legal and practical responses; however, even more important than the final "answer" is the process utilized by school district and program staff to determine what is consistent with federal laws, state laws and regulations, and, most importantly, the best interest of the child or youth.

What follows is a problem-solving process for IDEA and McKinney-Vento staff to use in resolving tough questions such as those posed above.

Working Together to Support Children and Youth

1. Create and promote policies and practices for regular, ongoing communication and collaboration among IDEA and McKinney-Vento staff.

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

Some sample policies for regular, ongoing

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communication and collaboration are:

- a. Mandatory McKinney-Vento training for all IDEA administrators on an annual basis.
- b. Mandatory IDEA training for all McKinney-Vento local liaisons on an annual basis.
- c. Consistent participation of the McKinney-Vento State Coordinator on the IDEA Part B State Advisory Panel and Part C State Interagency Coordinating Council.
- d. Requiring that McKinney-Vento local liaisons be invited to attend IEP meetings for students experiencing homelessness; the local liaison can participate in the meeting, send a designee, help the parent participate by providing transportation or other resources, provide a written report to the IEP team, or share comments and impressions orally with other IEP team members.
- e. Requiring McKinney-Vento local liaisons to consult with an IEP team member when considering McKinney-Vento best interest determinations for students with disabilities.
- f. Some sample practices for regular, ongoing communication and collaboration are:
- g. Staff members from one program are invited routinely to trainings and workshops hosted by the other program.
- h. IDEA and McKinney-Vento staff members meet informally for a brown-bag lunch once a month.
- i. Various programs unite to form an advisory committee on cross-program issues (e.g., IDEA, McKinney-Vento, Title IA, Migrant, Attendance/Truancy, Head Start, etc.). The committee has formal meetings three times a year, with any member empowered to call a special meeting at any time to discuss a new policy change, share important information,

or seek advice on a challenging case.

2. Review and, if necessary, revise state and local policies and practices so the necessary tools are available to address complex situations creatively, flexibly, and expeditiously.

State and local policies generally are not designed with homeless children and youth in mind. Policies that work well for students who enroll on the first day of school and remain in the district for several years may create significant barriers for students experiencing homelessness. IDEA and McKinney-Vento personnel who work on a daily basis with homeless children who have disabilities are aware of how policies and practices can complicate, rather than facilitate, their efforts. Therefore, IDEA and McKinney-Vento personnel must be involved in reviewing and revising state and local policies so they streamline enrollment, attendance, and receipt of appropriate services.

Some suggestions for addressing policy issues to assist with resolving complex situations are:

- a. Include the McKinney-Vento Act's definition of homeless and basic requirements in IDEA policies.
- b. Create policies to address complex situations that are not covered specifically in federal laws, such as cost-sharing, allocating cost and responsibility for inter-district transportation, maintaining nonpublic school placements across district lines, procedures to resolve disputes between school districts, strict requirements and timelines for transmitting special education records for students experiencing homelessness, etc.

Some suggestions for practices to assist with resolving complex situations are:

- a. Provide enrollment personnel with a checklist of questions to ask upon enrollment; these questions should be

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designed to identify possible homelessness and eligibility for special education. Contact information for the McKinney-Vento local liaison and special education administrators should be included. (Visit the NCHE website at http://www.serve.org/nche/downloads/briefs/det_elig.pdf for a brief on determining eligibility and http://www.serve.org/nche/downloads/toolkit/app_d.pdf for sample enrollment forms.)

- b. Maintain school records of homeless students, including special education records, in a location and format so they can be transmitted immediately should the student transfer schools.
- c. Provide parents with copies of their children's records, including special education records, when they withdraw their children for reasons related to a loss of housing.
- d. Hold quarterly meetings among transportation, IDEA, and McKinney-Vento staff to address challenges and develop procedures to provide appropriate transportation quickly for homeless students with disabilities.

3. When a complex situation arises, work as a team, utilizing a clear and consistent process to resolve the situation.

- a. Assemble the team.

Who has information about the child, his or her educational needs, available services, and relevant law? These people should be invited to participate in resolving the situation, either through a formal meeting or informal sharing. Meeting participants may include parents, guardians, surrogate parents, caregivers of unaccompanied youth, unaccompanied youth themselves, special education administrators, teachers, the McKinney-Vento local liaison, other appropriate school or program staff

(transportation staff, counselors, nurses, social workers, etc.), and staff from other involved school districts or agencies. The local liaison or a special education administrator should lead the team.

- b. Gather and confirm all the relevant facts.

If team members have different perceptions of the issues, they are likely to come to different conclusions. The local liaison, special education/early intervention administrator, and parent/surrogate parent/guardian/caregiver/youth should discuss the situation together and arrive jointly at a comprehensive, agreed-upon set of facts.

- c. Break the situation into its component parts.

Any complex situation regarding a child or youth with disabilities who is homeless is likely to involve several discrete issues. Try to break the situation into its component parts. Taking Mariela's situation above as an example, the parts might be:

- i. Does the nonpublic school meet the definition of school of origin under the McKinney-Vento Act?
- ii. What school is in Mariela's best interest to attend? What are the best interest considerations under McKinney-Vento? What should the team consider, and how should the team analyze her best interest?
- iii. How does the IDEA requirement to educate Mariela in the least restrictive environment influence the determination?
- iv. If the team determines that it is in Mariela's best interest to continue to attend the nonpublic school as her school of origin, how is it determined which school district must pay for her education and transportation?
- v. How does the team determine what

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specific funds should be used to pay for transportation: special education, McKinney-Vento, or the district's general funds?

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

The McKinney-Vento local liaison should provide the law and guidance regarding the rights to immediate enrollment and/or attendance at the school of origin, best interest determinations, the right to receive transportation, and sharing the cost of transportation across districts. IDEA administrators should provide the law and guidance regarding special education placements, least restrictive environment, and the right to receive transportation. If there are other relevant federal laws (i.e., Title I, Part A; Section 504 of the Rehabilitation Act; etc.), state laws, regulations, or local policies, the team should gather and share information about them.

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

At this point, the team starts to put the puzzle together by applying the law to the agreed-upon facts. For example, in Mariela's situation, the team might begin to apply the law as follows:

- i. Does the nonpublic school meet the definition of school of origin under the McKinney-Vento Act?

The McKinney-Vento Act defines school of origin as the school the child attended when permanently housed or the school in which she was last enrolled. According to the facts, the school district placed Mariela in a nonpublic school pursuant to her IEP. It was not a unilateral, private school placement by her parents. In essence, Mariela is a public school

student. She attended the nonpublic school when she was permanently housed. Therefore, the nonpublic school is her school of origin under the McKinney-Vento Act.

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

The McKinney-Vento Act gives Mariela the right to continue attending her school of origin for the duration of her homelessness and until the end of the academic year in which she finds permanent housing, unless this is against her parent's or guardian's wishes. She is currently homeless, so the right applies.

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

"The placement determination should be a student-centered, individualized determination. Factors that an LEA may consider include the age of the child or youth; the distance of a commute and the impact it may have on student's education; personal safety issues; a student's need for special instruction (e.g., special education and related services); the length of anticipated stay in temporary shelter or other temporary location; and the time remaining in the school year."

The team should analyze the best interest factors together, specifically considering Mariela's need for special education and related services and the impact a change in schools may have on her education. If her disability weighs heavily in favor

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of keeping her stable in school, she is doing well in her current program, her disability does not make the commute unsafe or unmanageable for her, etc., it is in Mariela's best interest to continue attending her school of origin.

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

Under IDEA, schools are required to educate students in the least restrictive environment. This generally requires that students with disabilities be educated with students who are not disabled, to the maximum extent appropriate. The U.S. Department of Education's regulations further specify that students must be educated as close as possible to their home and in the school the student would attend if not disabled (unless the IEP requires another arrangement). These requirements seem to conflict with the McKinney-Vento Act's provisions regarding the school of origin.

However, IDEA also requires that the McKinney-Vento Act be implemented for homeless students with disabilities. This establishes that the least restrictive environment requirements do not overrule the school of origin requirements. In essence, IDEA requires that Mariela be given the right to remain in her school of origin pursuant to McKinney-Vento. The team has determined attendance at the school of origin to be in Mariela's best interest, considering her special needs, so she must be allowed to attend that school. To ensure full compliance with both statutes, the team may decide to amend Mariela's IEP to specify that she will be attending her school of origin.

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

The parent/guardian/surrogate parent/caregiver/unaccompanied youth are important members of the team under both IDEA and McKinney-Vento. By including these individuals on the team from the outset, the team hopes to reach an informed, consensual decision about the student's best interest. However, both laws require that notice of rights, including certain due process and appeal rights, be given to these parties.

4. Repeat steps 1 and 2 at least annually.

Now that the team has addressed several complex situations, consider how existing collaborations could be strengthened or adjusted to prepare your school district and Part C agency to confront future challenges. Consider how your state, school district and Part C policies and practices have hindered or supported your efforts to resolve tricky situations. How should those policies and practices be changed? Work with other IDEA and McKinney-Vento administrators to make those changes.

Additional Information

For more information on the intersections of the McKinney-Vento Act and IDEA, visit the NCHE website at http://www.serve.org/nche/ibt/sc_spec_ed.php.

This brief was developed collaboratively by:

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Every state is required to have a State Coordinator for Homeless Education, 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/states/state_resources.php*.



For more information on the McKinney-Vento Act and resources for implementation, call the NCHE Helpline at 800-308-2145 or e-mail *homeless@serve.org*.



Local Contact Information: