

Frequently Asked Questions about Homelessness and Special Education

Introduction

This document provides responses to frequently asked questions received by Department staff specific to serving students with disabilities who are homeless, under the Individuals with Disabilities Education Act (IDEA) and the McKinney-Vento Homeless Education Assistance Act (herein referred to as the McKinney-Vento Act). It is intended to supplement existing state and federal guidance on the topic. Responses to general questions about the provisions of the McKinney-Vento Act are available <http://www.dpi.wi.gov/homeless/faq.html>. Additional guidance on the IDEA and the McKinney Vento Acts from the Office of Special Education and Rehabilitative Services and the Office of Elementary and Secondary Education is available at <http://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>.

The McKinney-Vento Act requires children, youth, and unaccompanied youth who are homeless to have access to public school educational programs and services that allow them to meet the same challenging state academic standards to which all students are held, including students enrolled in public 4K and 5K programs. The McKinney-Vento Act does not apply to private schools.

Consistent with the McKinney-Vento Act, children and youth experiencing homelessness must be provided services comparable to those received by other students in the public school they attend. Such services include education programs for which such students are otherwise eligible, such as services provided under Title I of the Elementary and Secondary Education Act and programs for students with disabilities in accordance with IDEA. Comparable services may also include transportation, free school meals, course fee waivers, and other services needed for the full participation of students in school. Under the McKinney Vento Act, each Local Education Agency (LEA) must designate a homeless liaison responsible for ensuring all homeless children and youth are identified and receive a free appropriate public education (FAPE) consistent with the provisions of the Act.

Terminology used in this document

FAPE—Free Appropriate Public Education. Every child with a disability ages 3-21 who has not graduated with a regular high school diploma, is entitled to FAPE at no cost to the parent, provided in accordance with the child’s Individual Education Program (IEP). 34 C.F.R. §300.17.

Homeless - The term “student who is homeless” as used throughout this document includes all children, youth, and unaccompanied youth who lack a fixed, regular, and adequate nighttime residence. The term includes children and youth who:

- share the housing of other persons due to the 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 in hospitals;
- are awaiting foster care placement;
- have a primary night-time residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- migratory children who qualify as homeless because they are living in circumstances described above. 42 U.S.C. §11434a.(2)

IDEA - The Individuals with Disabilities Education Act. The Federal law governing how states and local education agencies provide special education and related services to children with disabilities ages 3 through 21.

IEP (Individualized Education Program) - A written statement for a student with a disability that is developed, reviewed, and revised in accordance with IDEA. 34 C.F.R. §300.22.

IEP Team (Individualized education program team) - A group of individuals responsible for conducting special education evaluations and developing, reviewing, or revising a student's IEP and determining the placement for a student with a disability. 34 C.F.R. §300.23; Wis. Stat. §115.78(2).

LEA (local education agency) - a school district where the student lives, or other public agency legally responsible for the student's public education (such as the Department of Corrections). 34 C.F.R. §300.28.

Parent - The term "parent" as used in this document includes the student's biological or adoptive parent, legal guardian, or other individual defined as a "parent" in Wis. Stat. §115.76 (12).

Resident LEA - the LEA in which the student resides.

School of Origin - "School of origin" is the public school building the child or youth attended when permanently housed or the public school in which the child or youth was last enrolled. §42 U.S.C. §11432 (g)(3)(G).

Unaccompanied Youth - This term refers to a youth not in the physical custody of a parent or guardian. 42 U.S.C. §11434a.(6).

Frequently Asked Questions

1. What are the rights of students with disabilities who are homeless under the McKinney Vento Act and IDEA?

The provisions of the McKinney-Vento Act and IDEA are intended to be compatible with one another. While there are additional legal requirements under IDEA for students with disabilities, IDEA does not supersede the McKinney-Vento Act or vice versa. Students with disabilities who are homeless are afforded the same rights under the McKinney-Vento Act as non-disabled students who are homeless.

IDEA requires LEAs to identify, locate, and evaluate all students with disabilities ages 3 through 21 who are in need of special education, including children who are homeless. All eligible students with disabilities ages 3 through 21, must have FAPE made available to them, including special education and related services designed to meet each student's individual needs. As with any eligible student with a disability, an IEP team makes special education program and placement decisions to address the student's disability-related needs. The student's parent(s) are members of the IEP team that makes such decisions. Homeless students with disabilities and their parents are afforded the same protections under IDEA as students with disabilities and their parents who are not homeless. 34 C.F.R. §300.101, 34 C.F.R. §300.111, 34 C.F.R §§300.500 -300.536.

LEAs must provide students with disabilities who are homeless services comparable to those offered to students who are not homeless. They must be provided with the same access to FAPE as other students with disabilities, including enrollment in public 4K and 5K programs. The ability to receive special education services in accordance with the student's IEP cannot be hindered by homelessness or related factors such as frequent school transfers. 42 U.S.C. §11432 (g).

2. How are the McKinney Vento Act and IDEA applied when making school of origin decisions for students with disabilities?

In most cases, the LEA should apply the McKinney Vento provisions as for all students who are homeless. In general, the student remains in his or her school of origin unless the parent or unaccompanied youth wishes otherwise. This decision does not require an IEP team meeting and is made in the same manner as for non-disabled students.

The provisions related to "school of origin" apply only to public schools operated by an LEA in which the student is enrolled. The provisions do not apply to students attending private schools.

3. What happens when a student with a disability who is homeless relocates and the student's parent or the unaccompanied youth decides to enroll in the new resident LEA?

The student is treated as a transfer student. Upon transfer, the new LEA, in consultation with the parents, provides FAPE to the student, including services comparable to those described in the student's IEP from the previous agency, until the new LEA either:

- Adopts the student's IEP from the previous public agency; or
- Develops, adopts, and implements a new IEP. 34 C.F.R. §300.323 (e)

If the LEA determines a new evaluation is needed, it may chose to conduct a new evaluation. Comparable services are provided until the LEA completes the evaluation and, as appropriate, develops and implements a new IEP.

Upon transfer, the student is enrolled in the new LEA in the school he or she would attend if not disabled, unless otherwise specified by the student's IEP. A change in the student's district of enrollment does not automatically prompt an IEP team meeting.

The McKinney-Vento Act requires schools to enroll students experiencing homelessness immediately, even if the student is unable to provide documents that are typically required for enrollment. This means, the student must be permitted to begin attending classes in his or her attendance area school, and participate in school activities without interruption. 42 U.S.C. §11432 (g)(3)(C). The new LEA must take reasonable steps to promptly obtain the student's records from the prior LEA, including the student's IEP and supporting documents and any other records related to the provision of special education and related services. Wisconsin LEAs must respond to a request for records within five working days of receipt of a written notice that a student has transferred. Wis. Stat. §118.125(4).

4. Which LEA is responsible for providing FAPE when a student with a disability is homeless and continues to attend the school of origin located in another LEA?

In general, the LEA where the student who is homeless is currently living is the LEA responsible for implementing the student's IEP and insuring the student receives FAPE. When a student becomes homeless, the resident LEA, depending on what is in the best interest of the student must either:

- continue the student's education in the school of origin, or
- enroll the student in a public school attendance area that students who are not homeless, who reside where the student is currently living, are eligible to attend.

However, when the parent, guardian, or unaccompanied youth requests the student remain in the student's school of origin, the two LEAs may agree the LEA previously responsible for the student's IEP placement remains responsible for FAPE. The student, to the extent feasible, should continue to attend his or her school of origin, unless it is against the wishes of the parent. An IEP team meeting is not required when the student remains in his or her current placement in the school of origin, irrespective of whether the student's LEA has changed.

5. What if the parent or unaccompanied youth request a student with a disability remain in the school of origin, but the decision is made that remaining in the school of origin is not in the student's best interest?

If, after following the LEA's usual process for addressing McKinney-Vento requirements, the decision is made that remaining in the school of origin is not in the

student's best interest, the parents or unaccompanied youth are informed of the decision and their right to appeal under McKinney-Vento. 42 U.S.C. §11432 (g)(3)(E). The student transfers to the new school, unless the parent appeals the decision. The same transfer and special education related provisions apply as for all students. A student's disability may be a factor in determining if the student remains in his or her school of origin.

Disagreements about the student's enrollment should follow the LEA's dispute resolution and appeal process that applies to all students who are homeless. If unsuccessful, a parent, guardian, or unaccompanied youth who is homeless may file a complaint with the State Superintendent of Public Instruction under Wis. Admin. Code PI.1.

If a parent believes the student's special education needs cannot be met in the school selected, an IEP team meeting should be conducted to determine placement. If the parent disagrees with the IEP team decision regarding placement, the dispute resolution options under IDEA are available to the parent.

6. When a student who is homeless relocates to a new LEA, is parental consent required before the school of origin LEA can share the student's education records with the student's new resident LEA?

The student's previous LEA may transfer student records to the new LEA when either the parent has informed the LEA in writing of the intent to transfer to the new district, or the LEA receives written notice from the new LEA that the student has enrolled in school. In other circumstances, parental consent is required prior to sharing education records, including special education records, with staff of an LEA in which the student is not enrolled. Wis. Stat. §118.125(4), Wis. Stat. §118.125 (2).

7. Can a student with a disability who is 18 years of age or older be considered homeless under the McKinney-Vento Act?

Yes, the McKinney Vento Act applies to all students enrolled in a public school grade 4K-12 program, including adult students who have not yet graduated. Students with disabilities who have not graduated with a regular high school diploma are entitled to receive FAPE through the term they turn 21. Students without disabilities who have not graduated from high school are entitled to enroll in a public school through age 20.

8. How, if at all, does a student's homelessness status affect his or her eligibility for special education?

A student's homeless status should not affect the student's eligibility for special education. LEAs have an obligation to locate and identify all children with disabilities who reside in the school attendance area covered by the LEA. This child find obligation applies to all children and youth ages 3-21, including students who are homeless. LEAs must initiate an evaluation of any student who is suspected of being a child with a disability and for whom a special education referral has been made, including students who are homeless. Wis.Stat. §115.777.

The same evaluation procedures and eligibility criteria apply to all referred students, including students who are homeless. In interpreting evaluation data for purposes of determining whether the student is a “child with a disability” and determining the educational needs of the student, the IEP team must draw upon information from a variety of sources. As with any student being evaluated for special education, the IEP team may not determine a student is a child with a disability if the determinant factor is a lack of appropriate instruction in reading or math, limited English proficiency, or if the child does not otherwise meet eligibility criteria for any of the impairments under consideration. If a determination is made that the student has a disability and needs special education and related services, an IEP must be developed. Wis. Stat. §115.78 (2).

9. What happens if a student referred for a special education evaluation becomes homeless and relocates to a new school district before the evaluation is completed? Does the evaluation process start over?

No. However, when a student transfers into a new LEA before the previous LEA has made an eligibility determination, and sufficient progress is being made to ensure a prompt completion of the evaluation, the student’s parents and LEA may extend the 60 day timeline and agree to a specific time when the evaluation will be completed. This exception applies to all students being evaluated for special education eligibility, including students who are homeless. 34 C.F.R. §301(d)(2)-(e).

10. Should transportation be added to a student’s IEP if a student with a disability who previously did not require transportation as a related service, needs transportation to school because they have become homeless?

No. Transportation is not automatically added to a student’s IEP when a student becomes homeless and needs transportation to attend school. A student with a disability must receive transportation as an IEP service if the student’s IEP team determines the student requires specially designed transportation as a result of the student’s disability.

The need for transportation as a special education service is a separate issue from the LEA obligation to provide transportation to students who are homeless consistent with the McKinney-Vento Act. Under the Act, when the school of origin is not in the student’s resident LEA, the cost of transportation is generally shared between the resident LEA and district where the student attends school. 42 U.S.C. §11432 (g)(1)(J)(iii).

If, upon becoming homeless, there is a concern that the student might require specially designed transportation, the student’s IEP team would be convened to consider if specially designed transportation is needed as a result of the student’s change in circumstances and disability related needs that would prevent the student from participating in regular transportation.