

## Intersection of McKinney-Vento and IDEA

The following questions provide guidance to Virginia school divisions to ensure that students with disabilities who are experiencing homelessness receive the educational services for which they are entitled while complying with the Education of Homeless Children and Youth Program in the *McKinney-Vento Homeless Assistance Act (McKinney-Vento)* and the *Individuals with Disabilities Education Act (IDEA)*.

### Resources

**Q1.** If a student with a disability is experiencing homelessness, where can I find information to ensure *McKinney-Vento* and *IDEA* are implemented?

**A1.** There are a variety of resources that delineate how *McKinney-Vento* and *IDEA* interface when a student with a disability experiences homelessness:

- United States Department of Education, Office of Special Education and Rehabilitative Services and the Office of Elementary and Secondary Education. (2008). [Questions and answers on special education and homelessness](#).
- National Center on Homeless Education has a dedicated [Special Education](#) page for students with disabilities.
- [Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#)
- Information briefs from the Virginia Department of Education, through Project HOPE-Virginia, are available at: [Project HOPE - Virginia](#).

### Disability and Determining School of Origin Best Interest

**Q2.** Can a homeless student's disability be a factor in determining whether continuing in a school of origin is in his/her best interest? (OSERS-OESE,2008, E-1)

**Direct Quote from OSERS-OESE, 2008, Questions and Answers<sup>i</sup>:**

**A2.** *Yes. The requirements for schools of origin are found in the McKinney-Vento Act at 42 U.S.C. 11432(g)(3). The requirements for [special education] placements are found in the Part B regulations at 34 CFR §300.116. The McKinney-Vento Act defines "school of origin" as the school the student or youth attended when permanently housed or the school in which the student or youth was last enrolled. If a student becomes homeless, LEAs must, depending on what is in the best interest of the student, either continue the student's education in the school*

*of origin or enroll the student in any public school that non-homeless students who live in the attendance area where the student is living are eligible to attend. In determining best interest, LEAs must, to the extent feasible, keep children in the school of origin, unless it is against the wishes of the parent or guardian. 42 U.S.C. 11432(g)(3).*

*Determinations regarding best interest are fact-specific and need to be made on an individual basis. Additionally, there may be circumstances in which the existence of a disability may factor into best interest determinations affecting school placements. Under 34 CFR §300.116(a)(1), in determining the educational placement of a student with a disability, including a preschool student with a disability, each student's placement decision must be made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of evaluation data, and placement options. Further, under 34 CFR §300.116(b)(1)-(2), the student's placement is determined at least annually and is based on the student's [Individualized Education Program] IEP. Therefore, the placement group from the public agency responsible for providing FAPE [free appropriate public education] to a homeless student with a disability would need to determine whether it would be appropriate to continue the student's placement in his or her school of origin or place the student in a new school [usually called the IEP Team].*

#### Additional Implementation Considerations:

A parent may challenge a best interest determination regarding school of origin. When a parent does not agree with best interest determination, the school, in collaboration with the school division, must provide written notification, including information about the state's dispute resolution process (Refer to Superintendent's Memo #215-17 and related forms at: [Project HOPE - Virginia](#)).

Best interest must be determined on factors related to the individual student's education and well-being. If the IEP includes transportation, the liaison should consult with the IEP Team to determine if the disability may be a factor in determining the best interest for school of origin.

### **Homeless Status as an IEP Consideration**

**Q3.** Can a student's homeless status be a factor in IEP Team determinations?

**A3.** Yes. If a change in placement for a student with a disability who is experiencing homelessness is considered by the IEP Team, the team should consult with the local homeless education liaison and ensure that the parents have been informed of the student's right to remain in the school of origin under *McKinney-Vento*. The IEP Team should balance the importance of least restrictive environment and school stability. The local homeless education liaison or designee should be included in the IEP meeting to ensure school stability is considered as part of the placement decision.

If the IEP Team determines the student’s educational needs cannot be met in the current school, the school of origin can no longer be considered “in the student’s best interest.” If the student still resides in the same school division as the school of origin, the same school division will be responsible for the new placement. (School of origin does not mean divisions of origin. If the student is residing in another school division, IEP responsibilities for FAPE transfer to the new school division. Refer to Q5.)

### **School of Origin and FAPE Responsibility**

**Q4.** If a student experiencing homelessness moves to a new school division in Virginia during the same school year and elects to attend the school of origin, which school district is responsible for providing special education?

**A4.** According to the U.S. Department of Education (OSERS-OESE Q&A E-2), the state must determine which local education agency in the state is responsible for ensuring that the student receives FAPE (as defined in IDEA). The [\*Regulations Governing Special Education Programs for Children with Disabilities in Virginia\*](#)<sup>ii</sup> states:

D. If a child with a disability is living with the parent in the residence of the local school division, the local school division is responsible for ensuring that the child receives a free appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents’ request to enroll the child. (34 CFR 300.101) (8VAC20-81-30)

However, when a student experiencing homelessness is living in a different school division and attending the school of origin, the Virginia Department of Education has determined that the responsibility for ensuring that the student with a disability experiencing homelessness receives FAPE will remain with the school division that reports the student for average daily attendance and average daily membership.

If the student has been placed under the *Children’s Services Act* (formerly the *Comprehensive Services Act* when the regulation was written), school divisions should follow the state regulation found in 8VAC20-81-120, Children Who Transfer, section D:

D. When a child with a disability who was placed in a private residential school under the *Comprehensive Services Act* transfers to a new local educational agency, the new local educational agency shall review the current placements and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the student's transfer. The former *Comprehensive Services Act* team is responsible for paying for services until 30 calendar days after the new *Comprehensive Services Act* team receives written notification of the student's residence in the new local educational agency from the former [*Children’s Services Act*] team. (The CSA Implementation Manual)

Transportation to a private day or residential placement determined by the IEP Team is considered part of FAPE. Therefore, such transportation remains the responsibility of the school division responsible for the IEP and FAPE. Refer to question Q6 for additional transportation guidance.

### **Change in Placement and FAPE Responsibility**

- Q5.** If a student experiencing homelessness moves to a new school division in Virginia during the same school year and elects to attend the school of origin, but subsequently needs a change in placement, which school division is responsible for providing special education and related services?
- A5.** *McKinney-Vento* addresses educational stability by providing students with the option to remain in their *school* of origin when it is in the student's best interest. The law does not address *school division* of origin. When a change in placement is considered by the IEP Team, the team should include the homeless education liaison or designee to ensure that the student's right to remain in the school of origin under *McKinney-Vento* is part of the decision-making process. If the IEP Team determines the student's needs can no longer be met in the current school, the school of origin is no longer in the student's best interest. The school division in which the student resides has sole responsibility for providing FAPE (as defined in IDEA). The student should be immediately enrolled in the appropriate school for the student's current residence consistent with *McKinney-Vento* and the IEP process for a transfer student should be followed.

### **Transportation to School of Origin**

- Q6.** If a student with a disability experiencing homelessness moves into a new school division in the same State but elects to attend the school of origin, which school division is responsible for the provision of transportation to the school of origin?
- A6.** The following three scenarios address common situations:
- a. Transportation is not a related service in the IEP.**

If the student with a disability experiencing homelessness does not require specialized transportation due to the disability and transportation is not addressed in the IEP, school divisions should comply with *McKinney-Vento* §722(g)(1)(J)(iii) and follow their normal procedures for coordinating *McKinney-Vento* school of origin transportation.

**b. Transportation is a related service in the IEP.**

If the student with a disability experiencing homelessness requires specialized transportation due to a disability and transportation is a related service in the IEP, the

school division responsible for FAPE (as defined in *IDEA*) is responsible for providing the transportation. All transportation costs remain the responsibility of the school division responsible for FAPE. (Refer to Question A4.) Cooperation between school divisions to coordinate school of origin transportation is encouraged.

**c. The IEP Team may revisit transportation as a related service as a result of changes in the commute to maintain the school of origin placement.**

It is possible that a student’s disability may impact how transportation to the school of origin is provided. (For example, the longer commute may necessitate having an aide accompany the student.) The IEP Team may add transportation as a related service and apportion some reasonable part of the expense as a special education responsibility. Cooperation between school divisions to provide school of origin transportation is encouraged.

The IEP Team and best interest determination participants may determine that the school of origin is no longer in the student’s best interest due to issues such as safety, or the impact of a long commute considering the disability. (Refer to Question A5)

8VAC20-81-100. Free appropriate public education. Section G. Transportation. (§§ 22.1-221 and 22.1-347 of the *Code of Virginia*; 34 CFR 300.107) and *McKinney-Vento* §722(g)(1)(J)(iii)

### **Unaccompanied Homeless Youth**

- Q7.** If a student with a disability (or suspected disability) experiencing homelessness as an unaccompanied youth, who can act as parent for *IDEA*?
- A7.** *IDEA* includes a broad definition of “parent” that can be useful when serving unaccompanied youth experiencing homelessness (Refer to 8VAC20-81-10. Definitions). Note that there may be situations in which several parties meet the definition of parent. When attempting to act as the parent, the biological or adoptive parent shall be presumed to be the parent unless educational decision-making rights have been terminated.

If no parties can be identified who meet the definition of parent or are willing to act as a parent, a surrogate parent should be appointed by the school division.

For unaccompanied youth, *IDEA* specifically requires LEAs to appoint surrogate parents, and to make reasonable efforts to complete the appointment process within 30 days. The regulations specify that staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs can serve as temporary surrogate parents for unaccompanied youth, when appropriate. Additionally, a temporary surrogate may be the employee of an SEA, LEA, as well as anyone else involved in the care or education of the child.<sup>iii</sup> (NCHE, 2015)<sup>iv</sup>

## Endnotes

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- <sup>i</sup> United States Department of Education, Office of Special Education and Rehabilitative Services and Office of Elementary and Secondary Education. (February 2008). *Questions and answers on Special Education and homelessness*. Retrieved February 25, 2022, from: [Questions and Answers on Special Education and Homelessness](#).
- <sup>ii</sup> Virginia Department of Education. (2010). *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. Retrieved February 25, 2022 from: [Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#).
- <sup>iii</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 Supporting Homeless Children and Youth with Disabilities 11 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 C.F.R. § 300.519(f ) “Section 300.519(f ) allows LEAs to appoint a temporary surrogate parents for 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 parents 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 Federal Register 46712 (August 14, 2006)
- <sup>iv</sup> National Center for Homeless Education. (2015). *Supporting Homeless Children and Youth with Disabilities*. Retrieved February 25, 2022 from: [Supporting Homeless Children and Youth with Disabilities: Legislative Provisions in the McKinney-Vento Act and the Individuals with Disabilities Education Act](#).