



COLORADO DEPARTMENT OF EDUCATION

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GUIDANCE

IDEA 2004 & the McKinney-Vento Homeless Assistance Act

IDEA 2004 specifically requires each State to meet the mandates of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act)¹ as a condition of receiving federal special education funding. The McKinney-Vento Act establishes educational rights and protections for children and youth experiencing homelessness. It was first enacted in 1987 and was most recently reauthorized in January 2000 through the enactment of the No Child Left Behind Act. Colorado has enacted legislation that implements the McKinney-Vento Act at the state level.²

There are three purposes for this guidance: (1) to summarize Colorado's statutory requirements regarding homeless students; (2) to identify what some of the effects of homelessness may be for students with disabilities and how to mitigate those effects; and (3) to provide information about resources that may help special education directors comply with federal and state homelessness laws.

General Overview

Colorado's general requirements addressing the educational rights of homeless children are as follows:

- No child shall be denied the benefits of a free education in Colorado's public schools because the child is homeless.
- The term "homeless child" means a school-aged child who lacks a fixed, regular, and adequate nighttime residence. A homeless child includes:
 - 1) A child who (A) is living in a motel, hotel, or camping ground due to lack of alternative adequate accommodations, (B) is living in an emergency or transitional shelter, (C) is abandoned in a hospital, (D) is awaiting foster care placement, or (5) has a primary

nighttime residence that is (i) a supervised, publicly or privately operated shelter designed to provide temporary living accommodations, (ii) an institution that provides a temporary residence for individuals intended to be institutionalized, or (iii) a public or private place not ordinarily used as a regular sleeping

accommodation (such as a car, a park, an abandoned building, a bus or train station, etc.).

2) School aged migrant children or unaccompanied (i.e., not in the physical custody of a parent/legal guardian) children are considered to be homeless if they otherwise meet the definition a "homeless child."³

3) Imprisoned/detained children are not considered to be homeless.

- Each school district must designate one or more school employees to act as its homeless child liaison. If two districts are involved, the homeless liaisons from each district need to work together to assist the child. The role of the homeless child liaison is to (1) facilitate a homeless child's access to and success in school, (2) assist in the mediation of disputes about school enrollment, (3) assist in making transportation arrangements for the child, (4) assist in requesting school and immunization records, and (5) assist any unaccompanied homeless child in making enrollment decisions.
- To the extent feasible, the homeless student must be allowed to attend the student's school of origin for the duration of the student's homelessness, unless enrollment in the student's school of origin is against the wishes of the parent/legal guardian or unaccompanied homeless student. The term "school of origin" means (1) the school attended at the time the child became homeless, or (2) if the child became homeless during a period of time that (s)he was not attending school, the last school the child attended prior to becoming homeless.
- The school district in which the school of origin is located and the school district where the child is living, if different, make the determination -- based on the best interests of the child -- about which school the child will attend. If the school selected by the district(s) is different from either (1) the school of origin, or (2) the school requested by the parent/legal guardian/unaccompanied student, the district(s) making the determination must provide a written explanation, including an explanation of appeal rights.
- The selected school must immediately enroll the homeless child, even if the child lacks records normally required for enrollment. The enrolling

school must immediately contact the last school of attendance for any records necessary for enrollment. If the child's immunizations are incomplete or immunization records are unavailable, the enrolling school must arrange for any necessary immunizations.

- If there is a dispute between the two districts about what school is in the best interests of the child, the dispute may be submitted to CDE for resolution.⁴
- When there is a dispute between the school district(s) and the parent/legal guardian/unaccompanied child about what school the child should attend, dispute resolution procedures established by CDE must be followed.
- When school selection disputes arise, the child must be enrolled immediately in the school selected by the parent/legal guardian/unaccompanied child pending resolution through the applicable appeal process.
- If it is determined that the child will attend the child's school of origin and the child presently seeks shelter outside the district in which the school of origin is located, transportation to and from school must be provided if it is requested by the parent/legal guardian/homeless liaison on behalf of the child. The affected districts must agree upon a method to apportion cost and responsibility for transportation. If the districts are unable to reach an agreement, then the transportation costs must be shared equally.
- As necessary, the district of attendance must provide those services for which the homeless student is eligible, including special education and related services, preschool services, free or reduced school meals, Title I services, services for English Language Learners, before and after school care, etc.

Considerations Concerning Homeless Special Education Students⁵

- Existing evidence suggests that homeless children have a disproportionately high incidence of disabilities yet they often do not receive the special education services for which they are eligible.⁶
- Identification appears to be a major obstacle to the provision of special education services. Frequent moves from one school district to another disrupt the evaluation process. An additional factor is that it is difficult to separate the effects of homelessness, which is an environmental factor, from the effect of an existing disability.⁷

- Frequent moves disrupt continuity of special education services, often because special education records are not timely requested and/or transferred between schools.
- Often, the parents/guardians of unaccompanied children cannot be located and an educational surrogate parent must be appointed for such children.
- Parental involvement at IEP team meetings may be adversely affected. Parents of homeless children usually do not have mailing addresses for receiving IEP meeting notices, correspondence requesting consent for reevaluation, etc.⁸
- Parental access to dispute resolution options may be adversely affected. For example, content requirements for due process complaints and state-level complaints often include address and telephone contact information.

Colorado's Special Education Transfer Requirements

Out-of state transfers. If the student is transferring from out-of state, the receiving special education administrative unit may either:

- Implement the out-of-state IEP if the IEP meets Colorado education standards; or
- If the out-of-state IEP is not adopted, then the administrative unit must obtain parental consent to conduct an initial evaluation. While the initial evaluation is being conducted, the administrative unit must provide interim special education and related services agreed to by the parent. If, however, the parent and the administrative unit cannot agree upon interim services, the child must be placed in the regular school program until the initial evaluation is completed.⁹

In-state transfers. If the student is transferring within the state, the administrative unit must:

- Immediately implement the child's current IEP if a copy of the IEP is available;
- If a copy of the IEP is not available, provide services agreed to by the special education director and parents. If a copy of the IEP is not received within a reasonable period of time, the student must be referred for complete assessment and planning. While the initial assessment and IEP planning is pending, the administrative unit must continue to provide the student with services agreed to by the parents and the special education director; or

- Immediately refer the student for a complete evaluation while providing the student with the services listed on the IEP or as agreed to by the parents and the special education director.¹⁰

Services delivery. Special education services must commence:

- Immediately if the services/program are available;
- Within three school days of requested enrollment if the services/program need to be developed, or
- In accordance with other options agreed to in writing by the parents.¹¹

Recommendations¹²

- ✓ Establish and maintain on-going communication with the CDE's homeless coordinator and your own district's homeless liaison. CDE's homeless coordinator is:

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Colorado State Coordinator for the Education of Homeless
Children and Youth
(303) 866-6930
milenkiewicz_m@cde.state.co.us

- ✓ Remember that Child Find requirements under the IDEA and Colorado's Exceptional Children's Educational Act apply to homeless children, including infants and toddlers who are not yet enrolled in school. Develop outreach activities targeted to parents and unaccompanied children in temporary shelters.
- ✓ Develop procedures for alerting school personnel when a student in need of special education evaluation is living in a temporary shelter.
- ✓ Expedite the initial assessment process.
- ✓ If an initial assessment has been completed and you know that the family is in transition, give the parent/guardian/unaccompanied child a copy of the initial assessment results rather than assuming that a copy will be timely transferred to the new school.

- ✓ Develop administrative unit policies and procedures that will result in expedited records requests and transfer of school records (including special education records) for homeless special education students.
- ✓ Know who your homeless parents and unaccompanied children are. Review your policies to ensure that, for parents/guardians of homeless children and unaccompanied children, there are alternative means beside written correspondence for contacting them. Agree upon alternate, effective methods of communicating with parent/guardians and unaccompanied children.
- ✓ Be sure to timely request from CDE the appointment of an educational surrogate parent for those unaccompanied homeless students whose parents cannot be located or whose parental rights have been terminated.
- ✓ Review your policies and procedures to ensure that due process hearing policies are being applied flexibly for homeless parents and children, especially when it comes to required contact information.

Resources

Additional information about the McKinney-Vento Act, Colorado's implementing legislation and other resources is located at CDE's *Education for Homeless Children and Youth* webpage located at:

<http://www.cde.state.co.us/cdeprevention/pihomeless.htm>

¹ 42 U.S.C. 11431 *et seq.*

² Colo. Rev. Stat. §§ 22-1-102, 22-1-102.5, 22-20-107.5 and 22-33-103.5

³ Colo. Rev. Stat. 22-1-102.5 (2) (a)

⁴ Colo. Rev. Stat. 22-20-107.5

⁵ This section is derived in large part from *Homelessness and Students with Disabilities: Educational Rights and Challenges* (Jackson, Terry L. January 2004). This document is a product of Project FORUM at the National Association of State Directors of Special Education. This document may be accessed at <http://www.cde.state.co.us/cdeprevention/download/pdf/quick%20forum%20article%20SPED.pdf>

⁶ Id at page 3

⁷ Id at page 4

⁸ Id

⁹ Rule 4.03(1) of the Rules for the Administration of the Exceptional Children's Education Act

¹⁰ Rule 4.03(2) of the Rules for the Administration of the Exceptional Children's Educational Act

¹¹ Rule 4.03(1)(d) of the Rules for the Administration of the Exceptional Children's Educational Act

¹² *Homelessness and Students with Disabilities: Educational Rights and Challenges*, above, at page 6