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DPS: 2012-07
Date: January 31, 2013

Technical Assistance Paper Coordination of the McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and the Individuals with Disabilities Education Act

Summary: This technical assistance paper clarifies the requirements of the McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and its relationship to the Individuals with Disabilities Education Act and to Florida students identified with disabilities. It applies to all local educational agencies and does not impose any requirements beyond those in the program statute and other applicable Federal statutes and regulations.

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Status: New Technical Assistance Paper
 Revises and replaces existing Technical Assistance Paper:

Issued by the
Florida Department of Education
Division of Public Schools
Bureau of Federal Educational Programs
<http://www.fldoe.org/bsa/>
Bureau of Exceptional Education and Student Services
<http://www.fldoe.org/ese/>

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A. Background and Terminology–McKinney-Vento Homeless Education Assistance Improvements Act of 2001

A-1. What is the McKinney-Vento Homeless Education Assistance Improvements Act of 2001?

The McKinney-Vento Homeless Education Assistance Improvements Act of 2001, hereafter referred to as the McKinney-Vento Act, is the primary federal legislation concerning the education of children and youths experiencing homelessness. This Act requires State Educational Agencies (SEAs) to ensure that homeless children and youths have equal access to a Free Appropriate Public Education (FAPE), including a public preschool education, as provided to other children and youths.

The McKinney-Vento Act was amended as a part of the No Child Left Behind (NCLB) Act in 2001 and also is cited as the McKinney-Vento Homeless Education Assistance Improvements Act of 2001 (42 USC 11301), under Public Law 107-110, Title X, Part C, Subtitle B, Sections 721-726.

A-2. What is the purpose of the McKinney-Vento Education for Homeless Children and Youths (McKinney-Vento) Program?

The McKinney-Vento Program addresses the problems that homeless children and youths face in enrolling, attending, and succeeding in school. Under this program, SEAs, including the Florida Department of Education (FDOE), must ensure homeless children and youths have equal access to the same free, appropriate public education as non-homeless students. Homeless children and youths should have access to educational and other services that they need to enable them to meet the Next Generation Sunshine State Standards to which all Florida students are held. In addition, homeless students shall not be segregated in a separate school, or in a separate program within a school, based on their homelessness.

The FDOE and Local Educational Agencies (LEAs) are required to review and revise laws, regulations, practices, or policies that may act as barriers to the enrollment, attendance, or success in school of homeless children and youths. In Florida, this applies to all LEAs, including the 67 school districts, the Lake Wales Charter Schools System, the four university developmental research schools, and the Florida School for the Deaf and the Blind.

A-3. What are the key provisions of the McKinney-Vento Act?

The key provisions of the Act are:

- Every LEA must appoint a homeless liaison.
- Schools must immediately enroll homeless students, even if they do not have with them the required enrollment records such as guardianship, proof of residency, immunizations records, school records, or other required documentation.
- Homeless students may remain in the same school they attended when housed or the last school attended (their school of origin), even if they move to another

school zone within the district or across district lines, if it is in the best interest of the student, is the wish of the parent or guardian, and is feasible.

- LEAs must prohibit segregation of homeless students.
- LEAs must provide homeless students with transportation to and from the school of origin.
- LEAs must have a dispute resolution process in place to challenge school placement decisions made by schools and districts if such decisions are contrary to the wishes of the parent or unaccompanied homeless youth.
- LEAs must identify and refer homeless children and youths to appropriate educational services, including exceptional student education.
- LEAs must provide free meals to homeless students through their school meals program.
- LEAs must enroll unaccompanied homeless youths (youths not in the physical custody of a parent or guardian) in school immediately, even if they do not have a parent or guardian to enroll them.

A-4. Do all LEAs receive federal funding through the McKinney-Vento Act?

No. The U.S. Department of Education (USDE) provides federal funding to states, which then distribute the funds to their school districts through a competitive application process.

However, the McKinney-Vento Act requirements apply to all LEAs, even those not receiving Title X, Part C funds (Subtitle VII-B of the McKinney-Vento Homeless Assistance Act, reauthorized by Title X, Part C).

A-5. What is the purpose of the McKinney-Vento Act funds?

The McKinney-Vento Act funds are used to ensure that children and youths experiencing homelessness have access to Free Appropriate Public Education (FAPE), to which they are entitled under federal law. As outlined in the Act (Section 723(d), Public Law 107-110), these funds may be used for:

- The provision of tutoring, supplemental instruction, and enriched educational services that are linked to the achievement of state academic content and achievement standards.
- The provision of expedited evaluations of the strengths and needs of homeless children and youths, including needs and eligibility for programs and services (such as educational programs for gifted and talented students, children with disabilities¹, and students with limited English proficiency, services provided under Title I or similar state or local programs, programs in vocational and technical education, and school nutrition programs).
- Professional development and other activities for educators and pupil services personnel that are designed to heighten the understanding and sensitivity of such personnel to the needs of homeless children and youths, the rights of such children

¹ Note: Under 6A-6.0331(3)(d), Florida Administrative Code, initial evaluations in Florida have a 60-school-day timeframe.

and youths under this subtitle, and the specific educational needs of runaway and homeless youths.

- The provision of referral services to homeless children and youths for medical, dental, mental, and other health services.
- The provision of assistance to defray the excess cost of transportation for homeless students, not otherwise provided through federal, state, or local funding, where necessary to enable students to attend the school of origin.
- The provision of developmentally appropriate early childhood education programs, not otherwise provided through federal, state, or local funding, for preschool-aged homeless children.
- The provision of services and assistance to attract, engage, and retain homeless children and youths, and unaccompanied youths, in public school programs and services provided to non-homeless children and youths.
- The provision for homeless children and youths of before- and after-school, mentoring, and summer programs in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities.
- If necessary, the payment of fees and other costs associated with tracking, obtaining, and transferring records necessary to enroll homeless children and youths in school, including birth certificates, immunization or medical records, academic records, guardianship records, and evaluations for special programs or services.
- The provision of education and training to the parents of homeless children and youths about the rights of, and resources available to, such children and youths.
- The development of coordination between schools and agencies providing services to homeless children and youths.
- The provision of pupil services (including violence prevention counseling) and referrals for such services.
- Activities to address the particular needs of homeless children and youths that may arise from domestic violence.
- The adaptation of space and purchase of supplies for any nonschool facilities to provide services under the Act.
- The provision of school supplies, including those supplies to be distributed at shelters or temporary housing facilities, or other appropriate locations.
- The provision of other extraordinary or emergency assistance needed to enable homeless children and youths to attend school.

B. Background and Terminology—Individuals with Disabilities Act

B-1. What is the Individuals with Disabilities Education Act (IDEA)?

The Individuals with Disabilities Education Act is a law ensuring services to children identified with disabilities throughout the nation. IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 6.5 million eligible infants, toddlers, children, and youth identified with disabilities (<http://idea.ed.gov/>). It authorizes state and local aid for special education and related services for children identified with disabilities and affords protections that include administrative remedies for children identified with disabilities and their parents.

Part B of IDEA requires that all eligible students identified with disabilities have available to them FAPE, including special education and related services designed to meet the particular needs of each student identified with a disability. Students identified with disabilities who are homeless have the same right to FAPE under Part B as non-homeless students identified with disabilities.

B-2. What services does IDEA provide?

IDEA provides special education and related services to students identified with disabilities. *Special education* is instruction specially designed to meet the unique needs of a student identified with a disability, provided by schools at no cost to the parents.

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

B-3. What are the disabilities covered under IDEA?

To receive special education, students must be identified as having a disability that affects their education.

In Florida, students are identified with disabilities using the following terminology:

- Intellectual Disabilities (InD)
- Speech Impairments (SI)
- Language Impairments (LI)
- Orthopedic Impairment (OI)
- Emotional/Behavioral Disabilities (E/BD)
- Other Health Impairments (OHI), which includes Attention Deficit Disorder (ADD)/Attention Deficit Hyperactivity Disorder (ADHD)
- Traumatic Brain Injury (TBI)
- Deaf or Hard-of-Hearing (DHH)
- Visually Impaired (VI)
- Autism Spectrum Disorder (ASD)
- Specific Learning Disabilities (SLD)
- Homebound or Hospitalized (HH)
- Dual-Sensory Impairment (DSI)
- Developmental Delay (DD)

B-4. What does Free Appropriate Public Education (FAPE) mean?

For special education purposes, FAPE means special education or specially designed instruction and related services for students ages three through 21 that:

- Are provided at public expense, under public supervision and direction, and without charge to the parent
- Meet the standards of the FDOE
- Include an appropriate preschool, elementary school, or secondary school education in the state
- Are provided in conformity with an Individual Educational Plan (IEP) – or an Individualized Family Support Plan (IFSP), if used as an IEP for children ages three through five

FAPE shall be made available to students with disabilities, including students who have been suspended or expelled and any individual student with a disability who needs special education and related services, even though the student has not failed or been retained in a course or grade and is advancing from grade to grade.

B-5. What is Part C of IDEA?

Part C of IDEA assists states in meeting the early intervention needs of infants and toddlers from birth through two years old with disabilities and their families. The rights and protections applicable to infants and toddlers with disabilities and their families under Part C of IDEA also apply to homeless children identified with disabilities. In Florida, the the lead agency and office for Part C is the Department of Health, Children’s Medical Services, Early Steps State Office.

B-6. What is Child Find?

Child Find is a component of IDEA that requires states to identify, locate, and evaluate all children with disabilities, from birth to age 21, who are in need of early intervention or special education services. This obligation is also applicable to homeless children. In Florida, the Florida Diagnostic & Learning Resources System (FDLRS) assists districts in locating children who may be in need of services and who are not yet enrolled in public school.

B-7. How can school districts implement and facilitate outreach to homeless children?

School districts must implement procedures to find and evaluate all students suspected of having disabilities, specifically including students experiencing homelessness. The following includes some ways the National Center for Homeless Education (NCHE)² suggests school districts provide information regarding students who may have special education needs.

² Source: NCHE, *Best Practices: Supporting Homeless Students with Disabilities* (20 USC §§1412(a)(3)(A), 1435. 34 CFR §300.103)

- Build collaborations between the local homeless liaisons and special education staff to coordinate special education identification with McKinney-Vento identification.
- Develop short, simple posters and wallet cards that explain special education services. Place these posters and cards in all schools and in the community, including shelters, motels, food banks, health clinics, employment and public benefits offices, social services offices, laundromats, and convenience stores.
- Include IDEA and McKinney-Vento basics in information that goes home to parents, such as school newsletters, brochures, and the student handbook.
- Hold family-oriented events during the school year with opportunities to screen children and youths for health and mental health needs and possible disabilities. Offer transportation, food, health services, school supplies, or other incentives to encourage attendance.
- Encourage teachers and school counselors to discuss concerns about students with parents and special education staff.
- Train teachers and school counselors on the basics of IDEA and the McKinney-Vento Act and the possible indicators of disabilities and homelessness.
- Work with surrogate parents and parent support centers to identify homeless students who may have special needs.
- Invite shelter staff and other caseworkers working with children to attend special education training sessions conducted for parents. By doing so, they will understand the special education process and can assist parents, along with the school staff.

B-8. Are there specific amendments in IDEA that pertain to homeless students?

Yes. The 2004 reauthorization of IDEA includes amendments that reinforce timely assessment, inclusion, and continuity of services for homeless children and youths who have disabilities. Specifically, these amendments provide information to special educators, early intervention providers, and homeless liaisons about some of the requirements of the IDEA and the McKinney-Vento Act that apply when serving homeless students identified with disabilities.

IDEA defines homeless children to include any children or youths considered homeless under the McKinney-Vento Act. IDEA includes a specific requirement that ensures that students identified with disabilities experiencing homelessness are identified, located, and evaluated.

C. Other Laws Pertaining to Homeless Students with Disabilities

C-1. What are the other federal laws that protect students with disabilities?

The other two federal civil rights laws that protect students identified with disabilities are Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (Title II).

C-2. What is Section 504?

Section 504 is a federal civil rights statute prohibiting discrimination on the basis of disability in any program or activity receiving federal financial assistance. Section 504 guarantees the right to full participation and access to FAPE.

“No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” – 29 United States Code (U.S.C.) §794

As applied to schools, Section 504 broadly prohibits denying participation in public education or enjoyment of the benefits offered by public school programs because of a student’s disability. The law recognizes that equal treatment and services may not be sufficient to convey equal benefit. For nondiscrimination to occur, the school must provide services that level the playing field so that Section 504 eligible students have equal participation and opportunity for benefit.

The U.S. Department of Education (USDE), Office for Civil Rights (OCR) provides compliance oversight for Section 504. Additional information on the requirements for Section 504 can be found at <http://www.gpo.gov/fdsys/pkg/CFR-1999-title34-vol1/content-detail.html>.

C-3. What is Title II?

Title II also prohibits disability discrimination by public entities, including public schools, and similarly applies to students with disabilities who are homeless as well as those who are not homeless. For more information on the requirements of Title II, please consult the Title II regulations at <http://www.gpo.gov/fdsys/pkg/CFR-1999-title28-vol1/content-detail.html>.

D. Connections between the McKinney-Vento Act and IDEA

D-1. What is the connection between the two Acts?

School personnel must consider both Acts as they navigate homeless students’ unique living situations to provide an appropriate education. School personnel must have the information they need to enroll, promote the attendance, and ensure the success of students identified with disabilities who are experiencing homelessness. Educational decisions for these students should be made in compliance with IDEA and the McKinney-Vento Act. Due to the high mobility of students who are homeless, even small delays in enrollment can present barriers to homeless students.

D-1. What are ways that the two laws can work together to help homeless students?

School districts should create and promote policies and practices for regular, ongoing communication and collaboration between IDEA and McKinney-Vento staff.

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

D-2. What are some samples for ongoing communication and collaboration?

The NCHE, in its brief, *Best Practices: Navigating the Intersections of IDEA and McKinney-Vento: A Problem-Solving Process*, has provided some sample practices for regular, ongoing communication and collaboration between the two programs as follows:

- Training all IDEA administrators on the McKinney-Vento Act on an annual basis.
- Training all McKinney-Vento local homeless liaisons on IDEA on an annual basis.
- Including McKinney-Vento local liaisons in IEP team 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 with other IEP team members.
- Ensuring cross-program consultation between the McKinney-Vento local liaisons and an IEP team member when considering McKinney-Vento best interest determinations for students identified with disabilities.
- Including staff members from one program in trainings and workshops hosted by the other program.
- Establishing an advisory committee on cross-program issues (e.g., IDEA, McKinney-Vento, Title I, Part A, Migrant, Attendance/Truancy, Head Start).
- Ensuring the participation of the McKinney-Vento State Coordinator on the State Advisory Committee for the Education of Exceptional Students (IDEA, Part B) and the Florida Interagency Coordinating Council for Infants and Toddlers with Disabilities (IDEA, Part C).

D-3. How is transportation arranged?

Under the McKinney-Vento Act, students who meet the homeless definition have the right to receive transportation to and from their school of origin. These transportation services are mandated under the McKinney-Vento Act [Section 722(g)(1)(J)(iii)].

In general, LEAs may not use funds under Title I, Part A or Title X, Part C funds (except for excess cost of transportation) to transport homeless students to or from their school of origin. The "no-supplanting" provisions in Title I prohibit those funds from being used to support activities that the LEA would otherwise be required to provide.

Under IDEA, students with disabilities have the right to receive transportation if it is listed as a related service in their IEP. If a student is entitled to receive transportation under both laws, the school district(s) involved should decide how to fund transportation services.

D-5. What is the McKay Scholarship for Students with Disabilities Program?

The McKay Scholarships for Students with Disabilities Program expands statewide the school choice program originally created in 1999 as a pilot program. The scholarships are available to eligible students with disabilities to enable them to attend an eligible public or private school of their choice. Students with disabilities include K–12 students who are documented as having a disability.

D-6. Who provides transportation for McKay Scholarship homeless students?

On the issue of transportation for homeless students as it relates to the McKay Scholarship, the following would apply:

- If the parent chooses a public school option consistent with the school board’s choice plan, the school district is responsible for providing transportation to the public school selected by the parent.
- If the parent chooses a public school within the district that is not consistent with the school board’s choice plan or a public school in an adjacent district, the parent is responsible for providing transportation to the selected public school for the student.
- If the family is homeless and chooses a private school of choice for the student to attend, then the school district is not required to provide transportation.

Additional resources include the FDOE Office of Independent Education and Parental Choice’s “Frequently Asked Questions” documents and its *Technical Assistance Paper on Transportation of Homeless Students*, which pertains to general transportation of students (Question 3).

<http://www.floridaschoolchoice.org/Information/McKay/faqs.asp>

http://www.floridaschoolchoice.org/information/Charter_schools/files/Homeless_Student_Transportation_TAP.pdf

http://www.floridaschoolchoice.org/information/charter_schools/faqs.asp

E. Special Education in Relationship to Homeless Children and Youths

E-1. How can schools determine if a student is a student with a disability or is just struggling in school because of poor attendance or the stress of homelessness?

Evaluating the effects of homelessness on a student can be very challenging, but schools may offer a multi-tiered system of supports (MTSS) for providing academic and behavioral instruction and intervention to all students at increasing levels of intensity matched to student need. MTSS, often referred to as the Response to Intervention (RtI) framework, is a school-wide approach that addresses the needs of all students including struggling learners, homeless children and youths, students performing at the average or

high-ability level, gifted students, students with behavioral difficulties, and students with disabilities.

In a MTSS, resources and services are organized efficiently on a continuum of intensity based on students' academic and behavioral needs and on response to instruction and interventions implemented through a problem-solving process.

- Parents and educators are informed and involved in planning and providing interventions for students.
- Parents and educators see levels of support (academic and behavioral) that increase or decrease in intensity depending on students' needs.
- Parents and educators receive, review, and analyze frequent progress monitoring data about how students respond to the interventions provided.
- Parents and educators are involved in a team that uses information gathered from students' response to instruction and intervention to make important decisions regarding the students' educational needs. This may include decisions about special education services.

The RtI framework is depicted as a three-tier model that uses increasingly more intense instruction and interventions. Data collected at each tier are used to measure the efficacy of the interventions so that meaningful decisions can be made about which instruction and interventions should be maintained and layered.

- **Tier 1: Core, Universal Instruction and Supports.** General academic and behavior instruction and support provided to all students in all settings.
- **Tier 2: Targeted, Supplemental Interventions and Supports.** More targeted instruction/intervention and supplemental support in addition to and aligned with the core academic and behavior curriculum.
- **Tier 3: Intensive, Individualized Interventions and Supports.** The most intense (increased time, narrowed focus, reduced group size) instruction and intervention based upon the individual student's need, provided in addition to and aligned with Tiers 1 and 2 academic and behavior instruction and supports.

Additional information may be found at <http://www.florida-rti.org/>, including a parent brochure about RtI.

E-2. What can parents do if they feel that interventions are not working or if they think their child needs special education?

Parents have a right to request an initial evaluation at any time to determine if their child is a student with a disability and in need of special education services. The engagement in the problem-solving process and RtI data to improve student learning cannot be used to delay or deny an evaluation for eligibility under IDEA. School district staff can also refer students for exceptional student education evaluations, but parents must consent before any evaluation starts.

If the district agrees that there is reason to suspect that the student may be a student with a disability, the district must conduct the evaluation. If the district does not suspect that the student has a disability, the district may deny the request but must provide the parents with a written notice of refusal.

E-3. Do students receiving special education who are homeless have the right to remain in their school of origin?

The LEA serving such students shall, according to what is in the students' best interest, continue the students' education in the school of origin for the duration of homelessness. In determining the best interest of the students, the LEA shall, to the extent feasible, keep homeless students in the school of origin, except when doing so is contrary to the wishes of the students' parents or guardians (Section 722(g)(3), P.L. 107-110).

If parents wish for their children to remain in the school of origin, students have the right to do so. The homeless liaison is encouraged to work with the parents of youths to help them determine if it is in the best interest of their children, as defined in the McKinney-Vento Act, to remain in the school.

The liaison and parents are also encouraged to consult with the IEP team in determining what is in the youths' best interests. The McKinney-Vento Act applies to students receiving special education services the same way it applies to other students. In addition, any state receiving IDEA funds must ensure that the requirements of the McKinney-Vento Act are met for all homeless students with disabilities in the state. Therefore, homeless students receiving special education have the right to remain in the school of origin, unless it is not feasible or against the parents'/guardians' wishes.

More often than not, the feasibility equation will weigh in favor of keeping special education students in the same school, because changing schools and educational programs can be particularly detrimental to students with special needs. Of course, if the distance is such that the commute would be more detrimental than changing schools would be, then the parents may wish for the students to change schools. The final consideration would be what is in the best interest of the children [Section 722(g)(3)(A)].

E-4. What is the LEA required to do if it determines that it is not in the student's best interest to remain at the school of origin?

If the LEA determines that it is not in the best interest of the student to remain at the school of origin, it shall provide a written explanation, including a statement regarding the right to appeal the LEA's decision, to the homeless student's parent or guardian. While the dispute is in process, the student remains at the school of origin and the LEA must provide transportation to and from the school until the dispute is resolved.

E-5. Must schools immediately enroll students receiving special education who are homeless?

Yes. The McKinney-Vento Act applies to students who are homeless and who receive special education. Those students must be enrolled immediately in school, to include

attending classes and participating fully in school activities. In addition, any state receiving funds under IDEA must ensure that the requirements of the McKinney-Vento Act are met for all students with disabilities in homeless situations.

E-6. Must a school provide special education services immediately to a homeless student who has an IEP from another school district or state?

Yes. When a student with a current IEP changes school districts within Florida during the school year, the new district must provide the student with FAPE, “including services comparable to those described” in the previous IEP, in consultation with the parents. While such services are being provided, the district can adopt the existing IEP or develop and implement a new IEP.

If a student had an IEP in effect in a previous school district in another state and enrolls in a new school in Florida within the same school year, the new Florida school district (in consultation with the parents) must provide the student with FAPE. This includes provision of services comparable to those described in the student’s IEP from the previous school district. This will be in effect until the new Florida school district conducts an initial evaluation (if determined to be necessary by the Florida school district) and develops and implements a new IEP [6A-6.0334, Florida Administrative Code (F.A.C.)].

E-7. How can a school determine what services to provide a homeless student receiving special education if there are no school records?

The enrolling school must admit the student and must contact the previous school for records. To facilitate provision of FAPE for a student who changes districts during the school year, IDEA specifically requires the receiving school to promptly obtain the child’s records from the previous school, and the previous school to respond promptly to such records requests. The McKinney-Vento liaison should work with exceptional student education staff to ensure that a homeless student’s special needs can be identified and addressed quickly.

The district should establish procedures for obtaining a student’s school records expeditiously. If the records cannot be transmitted immediately, the enrolling school can speak with staff from the previous school to get basic information about the student. Former teachers, counselors, and administrators should be able to provide this information. Even if records are delayed, the student must be enrolled in school and provided FAPE immediately.

E-8. If a student changes school districts while special education evaluations are underway, must the new school district continue the evaluation process?

Yes. Under Florida law, school districts must complete initial evaluations within 60 cumulative school days of a parent’s signed consent of which the student is in attendance (6A-6.0331(3)(d), F.A.C.). These time limits apply to a student who changes school districts during the evaluation process, so the new school district cannot “restart the clock” when a student enrolls.

The 60-day timeframe for an evaluation does not apply to a school district if:

- The parent of the student repeatedly fails or refuses to produce the student for the evaluation.
- A student enrolls in a school served by the school district after the timeframe has begun, but prior to a determination by the student's previous school district as to whether he or she is a student with a disability.

This exception applies only if the new school district is making sufficient progress to ensure a prompt completion of the evaluation and if the parent and the new school district agree to a specific time when the evaluation will be completed.

An assessment of a student with disabilities who transfers from one school district to another school district in the same school year must be coordinated with the student's prior and new schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations (6A-6.0331(3)(e), F.A.C.). To expedite evaluations, the new school should immediately get all the evaluations and other paperwork completed on the student by the prior school and consult with the previous school psychologist, counselor, and/or teachers about the student's needs.

F. Special Education in Relationship to Homeless Unaccompanied Youths

F-1. If an unaccompanied youth is under 18, who provides consent for special education services?

Under IDEA, the following people can provide consent for special education services for a minor:

- a parent or legal guardian,
- an adult acting in the place of a parent and with whom the youth is living, or
- a foster parent, if consistent with state law.

If the school district cannot identify or locate such an adult, the district must appoint a surrogate parent. If the student is an unaccompanied youth or a ward of the state, IDEA requires that the district ensure the student's rights are protected, including the assignment of a surrogate parent. The surrogate parent must be trained in special education procedures and cannot be a school district employee or other person who might have a conflict of interest. However, as the process of appointing a surrogate parent can take several weeks, school districts should appoint immediate, "temporary" surrogate parents for unaccompanied youth.³ Temporary surrogate parents can consent to evaluations or sign IEPs so that assessments and services can begin immediately while a regular surrogate is being appointed.

³ 34 CFR §300.519(f). Section 300.519(f) allows LEAs to appoint a temporary surrogate parent 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 are involved in the education or care of the child.

Due to their more limited role, appropriate candidates for temporary surrogates include appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs⁴, as well as McKinney-Vento liaisons or other school district staff.

F-2. Is there a way to get a surrogate parent appointed more quickly for an unaccompanied youth?

Yes. An unaccompanied youth’s mobility and life circumstances make it critical to initiate needed services as soon as possible. Therefore, recent changes to IDEA state that an unaccompanied youth should have a temporary surrogate parent appointed immediately. A temporary surrogate parent can make immediate special education decisions while the school district goes through the regular surrogate parent appointment process. Unlike regular surrogate parents, a temporary surrogate parent can be an employee of a shelter, street outreach program, school, and other agencies involved in the student’s care or education.

It is important for school districts to develop a simple, expedited procedure for appointing a temporary surrogate parent for an unaccompanied youth. Recommended procedures include:

- Talking with the youth about the process.
- Asking the youth to suggest someone appropriate to serve as a temporary surrogate parent.
- Talking with that candidate to ensure that he or she feels comfortable participating, has a basic understanding of the process, and does not have interests that conflict with those of the youth.

F-3. How can schools determine if youths have a “parent” or identify a potential surrogate parent or temporary surrogate parent?

Schools may ask the students about adults they trust in their lives. They also can see if there are case managers, mentors, family members, outreach workers, neighbors, coaches, social workers, counselors, or other adults who could serve as a surrogate parent.

F-4. How can schools be sure “parents” or unaccompanied youths understand the decision and their rights?

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 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 Federal Regulations. 46712 (August 14, 2006)

G. Addressing Policies

G-1. What should states and LEAs do if state and local laws, regulations, practices, or policies act as a barrier to the enrollment, attendance, or success in school of homeless students?

The McKinney-Vento Act requires that any state that has a compulsory residency requirement as a component of the state's compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, shall review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths (Section 721(2), Public Law 107-110).

It further requires that the SEA and LEAs demonstrate that they have developed, and reviewed and revised, policies to remove barriers to the enrollment and retention of homeless children and youths in schools in the state (Section 722(g)(1)(I), Public Law 107-110).

Policies that work well generally 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, who often times do not have the required documents to verify residency, guardianship, immunizations, IEPs, etc. Educators should be involved in reviewing and revising state and local policies to ensure streamlined enrollment, attendance, and receipt of appropriate services for homeless students.

G-2. What are some suggestions for addressing policy issues to assist with resolving complex situations?

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

- Include the McKinney-Vento Act's homeless definition and basic requirements in IDEA policies.
- 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, procedures to resolve disputes between school districts, strict requirements and timelines for transmitting special education records for students experiencing homelessness, etc.

G-3. What policies and procedures should school districts put in place to serve homeless students with disabilities better?

In their existing local policies and procedures, school districts should:

- Implement procedures to expedite evaluations for homeless students
- Work with parent involvement specialists and the Parent Training and Information Centers to support parents throughout the evaluation and IEP process

- Develop expedited surrogate parent appointment procedures for unaccompanied youth
- Develop clear policies to help district staff navigate the intersections of the IDEA and McKinney-Vento Acts, paying particular attention to transportation, school of origin, and immediate enrollment
- Organize regular meetings between special education staff and local liaisons from nearby school districts, in anticipation of inter-district mobility; be knowledgeable of other's policies and procedures; and develop policies and procedures collaboratively to expedite evaluations for highly mobile students

G-4. How should a school district begin to develop these policies?

- Ensure that homeless education and special education staff collaborate and are familiar with the legal requirements and procedures of both programs.
- Include the local homeless liaison on existing special education advisory committees.
- Form a school district advisory committee on special education and homeless students.
- Arrange for the local homeless liaison, special education staff, migrant education staff, parent involvement specialists, Child Find team, and other district staff to meet regularly to review, revise, and/or develop policies and procedures that affect the students they serve.

H. How to Handle Records in Times of Natural Disasters

H-1. How should school staff members handle new homeless students coming to their schools because of a natural disaster?

The schools should enroll the students immediately, as they would any homeless students, and follow up with schools in previous school districts to obtain the necessary school records and documentation.

Regardless of the cause of their homelessness, all homeless students benefit from continuity in their education and are afforded the same rights as non-homeless students.

H-2. What should the school do if the student is an exceptional education student without any records?

While waiting for official records, if phone/email contact information is available, it may be helpful to talk with previous teachers, school counselors, and others for informal assistance with placement decisions. Likewise, talking with physicians and/or nurses on behalf of those students who have prescribed medications or those whose IEPs require classroom accommodations may also be advantageous.

Receiving schools may also be able to access standardized testing or other achievement data from state or local database systems.

H-3. What is the Family Educational Rights and Privacy Act (FERPA)?

The Family Educational Rights and Privacy Act is one of the nation's strongest privacy protection laws that protects official student educational records and confidential documents. FERPA, also known as the Buckley Amendment, defines educational records as all records that schools maintain about students.

FERPA gives parents the right to review and confirm the accuracy of educational records. These rights transfer to students when they turn 18 years old or attend a postsecondary institution. At that time, students are designated as "eligible students" and hold the same rights as their parents held with respect to educational records.

Prior consent is not required for schools to disclose information from an eligible student's educational record to the parents if the eligible student is a dependent for tax purposes under the Internal Revenue Service rules.

The primary rights of parents and eligible students under FERPA are the right to:

- Inspect and review educational records
- Seek amendments to educational records
- Have some control over the disclosure of information from educational records (<http://www.fldoe.org/esc/pdf/ferpa.pdf>)

I. Additional Information

I-1. Where can I get more information and resources on serving homeless children and youths with disabilities?

The following organizations and websites are good resources:

- **Council for Exceptional Children (CEC):** An organization dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities, and/or the gifted. <http://www.cec.sped.org/>

- **Council of Parent Attorneys and Advocates (COPAA):** An independent, nonprofit organization of attorneys, advocates, and parents. <http://www.copaa.org>. The site includes a resource bank of attorneys and advocates in every state. <http://www.copaa.org/find-a-resource/find-an-attorney/>
- **National Association for the Education of Homeless Children and Youth (NAEHCY):** A national grassroots membership association of educators and advocates supporting the education of children and youths in homeless situations. <http://www.naehcy.org/>
- **National Association of State Directors of Special Education (NASDSE):** An association established in 1938 to promote and support education programs and related services for children and youths with disabilities in the United States and outlying areas. This site allows users to search the publication database for publications by entering the keyword “homeless.” <http://www.nasdse.org>
- **National Center for Homeless Education (NCHE):** A USDE-funded clearinghouse providing research, resources, and information enabling communities to address the educational needs of children and youths experiencing homelessness. <http://www.serve.org/nche>
- **National Disability Rights Network (NDRN):** A nonprofit membership organization for the federally mandated legal services for people with disabilities (Protection and Advocacy Systems and Client Assistance Programs). <http://www.napas.org>
- **National Dissemination Center for Children With Disabilities:** A central source of information on disabilities in infants, toddlers, children, and youths; IDEA; No Child Left Behind (as it relates to children with disabilities); and research-based information on effective educational practices. <http://www.nichcy.org>. The site includes a resource bank for every state at <http://www.nichcy.org/states.htm>.
- **National Law Center on Homelessness & Poverty:** A nonprofit organization whose mission is to alleviate, ameliorate, and end homelessness by serving as the legal arm of the national movement to end homelessness. <http://www.nlchp.org>
- **Parent Training and Information Centers:** Centers that serve families of children and young adults from birth to age 22 with all disabilities—physical, cognitive, emotional, and learning. They help families obtain appropriate education and services for their children with disabilities; work to improve educational results for all children; train and inform parents and professionals on a variety of topics; resolve problems between families and schools or other agencies; and connect children with disabilities to community resources that address their needs. The phone number is (888) 248-0822. <http://www.parentcenternetwork.org/>

- **Office of Special Education Programs, USDE:** An office dedicated to improving results for infants, toddlers, children, and youths with disabilities ages birth through 21 by providing leadership and financial support to assist states and local districts. <http://www.ed.gov/about/offices/list/osers/osep/index.html?src=mr>
- **Bureau of Exceptional Education and Student Services, Florida Department of Education:** This bureau administers programs for students with disabilities. Additionally, the bureau coordinates student services throughout the state and participates in multiple inter-agency efforts designed to strengthen the quality and variety of services available to students with special needs. <http://www.fldoe.org/ese/>
- **Bureau of Federal Educational Programs, Homeless Education Program Office, Florida Department of Education:** This office carries out the requirements of the McKinney-Vento Education for Homeless Children and Youth Program, which is designed to address the problems that homeless children and youth face in enrolling, attending, and succeeding in school. Under this program, the FDOE must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth. <http://www.fldoe.org/bsa/title1/titlex.asp>