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ABSTRACT

This paper highlights the educational rights and needs of homeless children under both the McKinney Act and the Individuals with Disabilities Act. Section 1 explains the Stewart B. McKinney Homeless Assistance Act of 1987, which included the Education for Homeless Children and Youth Program mandating a free, appropriate public education for all children, including those with special needs. This section also describes the Individuals with Disabilities Education Act (IDEA), which covers homeless children and homeless children with disabilities. Section 2 discusses the educational challenges confronting homeless children with disabilities, highlighting findings from a 1999 forum on the needs of homeless children and youth with disabilities. Section 3 presents strategies for addressing educational needs and service challenges, including: increase awareness about the educational needs and rights of homeless children, including those with disabilities; address mobility issues related to identifying homeless students with disabilities and provide continuity of services; provide timely, appropriate, and multidisciplinary assessment for homeless students; and increase valid and reliable data on issues related to homelessness. Implications for advocacy and action include: remember that only one-third of homeless children are in shelters; provide one champion for each homeless child; and foster collaboration with those working with the homeless and those working in schools. (SM)

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The Legal Rights and Educational Needs of Homeless Children With Disabilities



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Introduction

The Stewart B. McKinney Homeless Assistance Act (McKinney Act) was passed by Congress in 1987 as part of the reauthorization of the Elementary and Secondary Education Act (ESEA). Within this legislation, the educational rights and needs of children and youth who are homeless were specified. In 1990, amendments to the McKinney Act expanded the legislation to further improve the educational experiences of those who are homeless; however, there is no specific mention of children with disabilities who are homeless.

In 1975, Congress expanded upon previous legislation addressing the education of children and youth with disabilities and passed P.L.94-142. Known as the Education for all Handicapped Children Act (EHA) of 1975, this law granted children and youth with disabilities, for the first time, a right to a free appropriate public education (FAPE) in the least restrictive environment (LRE). Several subsequent reauthorizations made significant changes to the Education for all Handicapped Children Act and the 1990 amendments changed the name to the Individuals with Disabilities Education Act (IDEA). Although children and youth who are homeless were always covered by this disability legislation, they were not explicitly mentioned until the final regulations for the 1997 amendments to the IDEA (P.L.105-17) were issued in March 1999.

This presentation highlights the educational rights of homeless children under both the McKinney Act and the IDEA. It also describes the major educational challenges confronting homeless children and youth with disabilities and proposes strategies to address their educational needs and service challenges. A final section highlights implications for advocacy and action.

I. The Educational Rights of Homeless Children/Youth with Disabilities

A. The Stewart B. McKinney Homeless Assistance Act

In 1987, Congress recognized the disruption that homelessness causes in people's lives with the passage of the McKinney Act. This Act authorized a wide range of programs and benefits to

provide urgently needed aid to the nation's homeless. Title VII-B, the Education for Homeless Children and Youth Program, provides protection for the educational needs of children and youth who are homeless. The 1990 amendments to the Act significantly expanded the federal directives to ensure that school districts respond to the educational needs of students who are homeless. In 1994, the Act was further strengthened as part of the reauthorization of the Improving America's Schools Act (IASA).¹

The Education for Homeless Children and Youth Program is intended to ensure that homeless children have "equal access to the same free, appropriate public education, including a public preschool education, as provided to other children." Eight major components of the Act are described below.²

1. It defines *homeless* and *children* who are protected by the Act.
 - The term "child" or "youth" includes "those persons who, if they were children of residents of the state, would be entitled to a free public education."
 - The term "homeless" or "homeless individual" includes: (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and (2) an individual who has a primary nighttime residence that is (A) a subsidized publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (B) an institution that provides temporary residence for individuals intended to be institutionalized; or (C) a public or private place not designated for, or ordinarily used as a regular sleeping accommodation for human beings.

¹ The Stewart B. McKinney Act can be downloaded from the National Center for Homeless Education's web site at <http://www.serve/nche>

² For a more complete discussion of these issues, please refer to the following article: Rafferty, Y. (1999). Legal Issues in Educating Homeless Children: Past Accomplishments and Future Challenges. Journal for a Just and Caring Education, 5(1), 19-33

2. It mandates the adoption of policies and practices to ensure that homeless children are not stigmatized: "Homelessness alone should not be sufficient reason to separate students from the mainstream school environment."
3. It mandates equal access to public schools and a choice of school placement. Children may remain in their current school or transfer into the school serving the attendance area in which they are currently staying. Local Educational Agencies (LEAs) are required to comply, to the extent feasible, with the request made by the parent or guardian regarding school selection.
4. It mandates equal access to all educational services and programs. Students who are homeless need proper educational placement, appropriate support services, and promotion of their social and emotional well being.
 - According to State Educational Agencies (SEAs) nationwide, the most frequently reported educational needs of children who are homeless include (a) remediation/tutoring, (b) support services such as counselors, and after-school/extended day/summer programs to provide the basic needs for food, shelter, and recreation.
 - Some children who are homeless may require special education services, bilingual services, and services for gifted students. Children who are homeless, including preschoolers, are guaranteed the same access to special education services as their housed peers. In addition, all children who are homeless are automatically eligible for services under Title 1 Part A of the Elementary and Secondary Education Act (ESEA) whether or not they live in a Title 1 school attendance area. Children who are homeless may receive Title 1 educational or support services in schools and shelters, or other facilities outside of school.
5. It mandates the removal of barriers to the enrollment, attendance, and success in school.

- Before passage of the McKinney Act, residency requirements were the most significant barrier because homeless students are, by definition, without a residence. When parents attempted to enroll their children in the school district where they were temporarily staying, admission was frequently denied because they were not residents of the district. Even when they were allowed to register, many experienced substantial delays because of missing records (e.g., birth certificates, academic records, and immunization records). If children wanted to stay at their current school, this was often made impossible because of transportation barriers. There were also school access barriers as a result of discriminatory shelter policies against males (particularly those over the age of 12) who lived with relatives or friends and not their parent or legal guardian. The 1990 amendments substantially strengthened this aspect of the Act by expressing intolerance for any and all barriers.
6. It mandates the provision of direct services to promote enrollment, attendance, and success in school.
 - The 1990 amendments moved beyond access barriers and recognized the need for services once children are enrolled in school. SEAs are explicitly mandated to provide grants to LEAs for these purposes. Schools may use funds for such services as before- and after-school programs, tutoring, preschool programs, parent education, counseling, social work services, transportation, and a variety of other services that may not otherwise be available. LEAs that receive such funds are required designate a liaison for homeless education and to coordinate with other agencies.
 7. It imposes comprehensive requirements for states that participate in the program and mandated coordination by SEAs, including the assignment of a Coordinator of Education of Homeless Children and Youth at the State Education Agency.

- State coordinators are required to (a) estimate the number of children and youth who are homeless in the state; (b) document problems they experience gaining access to schools/preschools, progress made in addressing access barriers, and success facilitating school enrollment, and attendance; and (c) report their finding to the United States Department of Education (USED).
 - All of the requirements and recommendations regarding school-age children also apply to all children with disabilities (including preschoolers). At the local level, school districts with homeless liaisons (i.e., those with McKinney grants) must identify educational access problems for all children (including preschoolers and children with disabilities) and ensure their participation in programs for which they are eligible.
8. It mandates oversight by the USED, including reviewing applications and state plans, monitoring compliance by the states, and reporting to the Congress at the end of each fiscal year. The USED is also authorized to make grants available to SEAs for implementing the Education for Homeless Children and Youth Program.

In summary, Congress took a major step in 1987 to address the educational needs of children and youth who are homeless, and this was reinforced in 1990 and 1994. Students covered under this Act are also covered under the IDEA, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Head Start Act. The following section highlights their legal rights under the IDEA.

B. The Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) has always covered children who are homeless, but their needs were not always addressed.³ The IDEA was amended in 1997, and the

³ Several projects funded by the U.S. Department of Education's Office of Special Education and Rehabilitative Services provide Special Education Technical Assistance. They include The Federal Resource Center for Special Education <http://www/dssc.org/frc>; The National Information Center

final regulations that were issued on March 12, 1999, specifically mentioned children who are homeless for the first time:

(1) The State must have in effect policies and procedures to ensure that--

- (i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and*
- (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.*

(2) The requirements of [this] paragraph of this section apply to—

- (i) Highly mobile children with disabilities (such as migrant and homeless children).*

The current legislation contains five primary guidelines designed to ensure (a) a free appropriate public education, (b) appropriate evaluation, (c) individualized education program, (d) parent and student involvement in decision making, and (e) procedural safeguards. Although there is only one mention of children who are homeless in the IDEA's regulations (and an additional mention in the comments that accompany the regulations), issued March 12, 1999, it is a powerful phrase because

for Children and Youth with Disabilities (NICHCY) <http://www.nichcy.org>; The National Early Childhood Technical Assistance System (NECTAS) <http://www.nectas.unc.edu>; Federation for Children with Special Needs <http://www.fcsn.org/peer>; Technical Assistance Alliance for Parent Centers <http://www.taalliance.org>; and the National Association of State Directors of Special Education <http://www.nasdse.org/forum.htm>. The NYS-TEACHES Website provides a directory of organizations that deal with homeless children and youth: <http://nysteachs.sricbooces.org>.

it puts to rest any notion that the law does not apply. This phrase also addresses the concern that agencies have about children who are homeless not being identified, located, and evaluated as required by the IDEA. However, advocacy is still absolutely necessary for this population.

Key elements of the 1997 amendments to the IDEA include the following:⁴

1. The IDEA entitles eligible school-age children with disabilities to a free appropriate public education (FAPE) in the least restrictive environment (LRE). The IDEA emphasizes that “special education” is a service or set of services, not a place (e.g., classroom in a school building, wing in school building or separate school).

- These are services a student needs to benefit from special education in the least restrictive environment—an environment that would be most like a regular education classroom.

Although local administrators may believe that in certain cases it is easier to group children who are homeless (or children with certain disabilities) into one setting, the law states that these children are entitled to a free appropriate public education in the least restrictive environment.

2. All eligible children ages 3 through 21 with disabilities are entitled to an Individualized Education Program (IEP).

- Homeless shelter staff and other advocates for children who are homeless are often surprised that parents have the legal right to participate in their child’s IEP meeting, including parents who are homeless or coping with drug addiction. Parents may also have other persons, such as an advocate or expert, as members of their child’s IEP team. Some shelter directors have helped parents to advocate for their children

⁴ The Annual Report on Individuals with Disabilities Act is available online at: <http://www.ed.gov/offices/OSERS/OSEP/OSEP98AnlRpt>

3. Infants and toddlers (birth through age two) with disabilities are also protected by the IDEA. They are entitled to receive services identified in the Individualized Family Service Plan (IFSP).
 - This is a critical element of the law because a large percentage of children who are homeless are under the age of three years, a population covered by Part C of the IDEA.
 - The IDEA specifies that services for young children with disabilities be provided in “natural environments,” unless there is a justifiable reason to serve a child in another setting.Children who are homeless should have the same access to evaluations and services as their permanently housed peers, and screening for disabilities should be occurring in places accessible to families who are homeless. The Child Find requirements of IDEA apply to homeless children (ages 0-21).
4. The 1997 amendments emphasize the role of the regular education teacher.
 - For a child who is, or may be, participating in the regular education environment, at least one of that child’s teachers must be a member of the IEP team. That teacher must, as appropriate, be present at the IEP meeting and identify the modifications needed for the student with a disability (including one who is homeless) to succeed in the regular education teacher’s classroom.
5. Increasingly, states are requiring that high school students pass a test, or a series of tests, to graduate (e.g., New York). Also, at the elementary and secondary levels states are introducing tests that function as accountability measures and document progress of individual students and the specific schools.
 - The 1997 amendments require that students with disabilities participate in state and district-wide assessment programs (with appropriate accommodations, if needed). The state or local educational agency must develop alternate assessments for those children with disabilities who cannot participate in state and district-wide assessment programs. Participation in these

testing programs poses big problems for students who are homeless who often have poor attendance. This problem requires increasing collaboration between general and special education at the SEA level. Generally, in states where there are penalties for schools if a student does not participate, efforts are made to include students who are homeless. But, in other places, children who are homeless are left in the shelters on testing days.

6. Another new set of requirements in the 1997 amendments addresses students with disabilities who have behavior problems.
 - In developing a child's IEP, the IEP team, in the case of a child whose behavior impedes his or her learning or that of others, must consider, when appropriate, strategies and support to address that behavior, including positive behavioral interventions. Other provisions of the law address functional behavioral assessments and behavioral intervention plans. Generally, students who are suspected of having a disability and have been referred for special education evaluation are protected under IDEA. This is particularly important for students who are homeless because their high mobility often lengthens the evaluation process.

II. Educational Challenges Confronting Homeless Children with Disabilities

In December 1999, Project FORUM at the National Association of State Directors of Special Education (NASDSE) planned and convened a policy to examine the needs related to homeless children and youth with disabilities. The goals of the policy forum were: (1) To identify key issues and challenges related to children with disabilities who are homeless; (2) to discuss current educational strategies; and (3) to propose federal, state, and local actions for improving the education of these children. The following section lists the six major challenges identified by participants.

1. To increase awareness about the educational needs and rights of children who are homeless and enroll them in school.
2. To sustain multi-pronged advocacy (including parents), through public education and training, and legislative and administrative advocacy.

3. To address mobility issues as they relate to identifying students with disabilities who are homeless and providing continuity of services.
4. To provide timely, appropriate and multi-disciplinary assessment for students who are homeless.
5. To find solutions to broad problems (e.g., adequate affordable housing) and specific problems (e.g., childcare, transportation) through collaboration between schools and communities.
6. To increase the amount of valid and reliable data on issues related to homelessness (e.g., mobility, assessment, effective strategies).

III. Strategies to Address Educational Needs and Service Challenges

Participants proposed strategies to address the highest priority challenges listed above.⁵

These strategies should be considered and implemented knowing that “homeless children” do not all reside in shelters and are heterogeneous in many other ways.

1. To increase awareness about the educational needs and rights of children who are homeless, including children with disabilities, and enroll them in school.

- Create a simple poster with pertinent facts about Childfind, the McKinney Act and Title I, and post in public places (e.g., schools, and shopping centers).
- Use public service announcements (PSAs) to disseminate pertinent facts about Childfind, the McKinney Act and Title I.

⁵ Related strategies pertaining to the education of all homeless children (including those with disabilities) are discussed in the following article: Rafferty, Y. (1999). Meeting the Educational Needs of Homeless Children, *Educational Leadership*, 55(4), 48-52. It can be downloaded from the NYSTEACHS website at <http://nysteachs.sricbores.org>

- Provide staff development for all school employees (e.g., principals, teachers, support staff) on issues related to educating students who are homeless, including the importance of having high expectations.
 - Use the federally funded Parent Training and Information Centers (PTIs) and other parent groups to provide training to both staff and parents in shelters for homeless families with children.
 - Make the federal parent and professional training materials on the 1997 amendments to the Individuals with Disabilities Education Act (IDEA) available to homeless advocates and McKinney Act liaisons.
 - Generate more awareness material on students with disabilities who are homeless that is sensitive to cultural, linguistic, and regional issues (e.g., race, gender, sexual orientation, and citizen/residency status).
 - Disseminate written materials at state and national conferences on issues related to education for children who are homeless.
 - Make presentations at state and national conferences that are sponsored by disability groups and other organizations and associations about issues related to education for children who are homeless.
 - Require that all districts have coordinators for homeless education, not only those with McKinney grants (3% nationwide).
- 2. To sustain multi-pronged advocacy (including parents), through public education and training, and legislative and administrative advocacy.**
- Target parents of homeless children, shelter providers, religious leaders, child and family agency stakeholders, and the health community for advocacy training.

- Provide education and training by a multidisciplinary team (e.g., parents, advocates, teachers, child and family agency professionals and lawyers) at shelters for homeless families about special education.
 - Provide follow-up outreach in the form of technical assistance and consultation for parents at family shelters and other sites that serve homeless children and youth eligible for special educational services.
 - Promote advocacy by providing information on web sites and public service announcements (PSAs) in multiple languages.
 - Support legislative and administrative advocacy for the improvement of educational services for children who are homeless.
 - Put homeless issues on the agenda of the Federal Interagency Coordinating Council (FICC), the National Association of Protection and Advocacy Systems (NAPAS), the IDEA Partnership Projects, and others.
 - Access resources from the private and public sector, including state and federal discretionary funds, to coordinate advocacy and services for children who are homeless provided by state directors for homeless education, protection and advocacy systems, National Coalition of Title I Families, National Center on Homeless Education, and others.
 - Promote interagency collaboration and responsibility to improve educational outcomes for children who are homeless.
3. **To address mobility issues as they relate to identifying students with disabilities who are homeless and providing continuity of services.**
- Make shelter placements with consideration of children's educational needs and community ties. Every effort should be made to keep students in the school that is in their best interests.

- Earmark funds to transport children who are homeless to their school of origin to provide for continuity of educational services.
 - Contact immediately the student's previous school to acquire pertinent school records especially individualized education programs (IEPs) and individualized family service plans (IFSPs).
 - Require that families be provided with copies of evaluation reports (immediately, not only upon transfer from school) and encourage families to keep this information and provide it to their children's new school.
 - Design and implement a state policy on the timely transfer of school records.
 - Develop technology for electronic school record transfer that is both efficient and confidential.
 - Support the timely transfer of school records across state lines.
 - Conduct timely screening and evaluation of children to insure the services needed are received.
 - Provide waivers for students who are homeless to allow them to enroll in programs or participate in activities that may be filled before they enter the school (e.g., preschool programs, enrichment activities, after school programs, and extracurricular activities).
 - Collaborate with other agencies that provide services to homeless families to ensure continuation of services following a change in living location.
 - Identify model programs and practices that minimize disruption to education caused by homelessness and family mobility for infants, toddlers and school age children.
4. **To provide timely, appropriate and multi-disciplinary assessment for students who are homeless.**

- Conduct screenings and evaluations by an appropriate school-based or early intervention team, and have shelter staff facilitate this process (e.g., transportation).
 - Provide students and their families with information about all resources and support services available in the school.
 - Complete the educational evaluation immediately if the student being evaluated becomes homeless during the evaluation process.
 - Be sensitive to the fact that many students who are homeless do not need a full-scale evaluation and parents may be reluctant to “label” their child. (It can be damaging to the student to bring an inappropriate amount of attention to the student upon entry to a new school.)
 - Track the living status of the student to establish the appropriate timeline for assessment. (For example, if the student is in a 30-day shelter, immediate attention should be paid to getting the evaluation process expedited.)
- 5. To find solutions to broad problems (e.g., adequate affordable housing) and specific problems (e.g., childcare, transportation) through collaboration between schools and the community.**
- Create a funded initiative to promote collaboration between school and community providers (e.g., “seed money” and model demonstration projects).
 - Identify communities that have effective interagency collaborations supporting families who are homeless, reward them with recognition, and provide funding for dissemination of effective strategies.
 - Conduct program reviews in all school districts on the implementation of state and federal (McKinney Act) laws, not just in districts with McKinney grant funds.
 - Coordinate efforts and activities of all categorical programs (e.g., special education, early childhood, Title I, English language learners).

- Post on state-level web sites available resources in the area of homelessness.
- Establish a state-level interagency task force that includes families who are, and were formerly, homeless.
- Include on interagency task forces members who are knowledgeable about homelessness and special education issues.

6. To increase the valid and reliable data on issues related to homelessness.

- Use the McKinney Act's definition of "homeless" (i.e., those in shelters, living with relatives, doubled-up situations, etc.).
- Disaggregate state-wide assessment data by homelessness and disability status.
- Require the newly-mandated district liaisons under the McKinney Act to collect data on students with disabilities who are homeless, including but not limited to: number of children, type of living situation (e.g., shelter, relatives), mobility, referral and placement process, services provided, setting, and progress.
- Develop procedures, guidance, and technical assistance as to how to include students who are homeless in accountability systems.
- Use varied data sources and methods, especially community resources, to collect data on homeless students with disabilities. (Telephone inquiries and surveys are not effective methods.)
- Require that annually reported data on students served under IDEA include the number of students served who are homeless by age.
- Coordinate migrant and language minority programs for better collection and maintenance of data on students with disabilities who are homeless.
- Provide funding to support data collection on homeless children that is efficient, comprehensive, and consistent.

- Use qualitative approaches (e.g., case studies, focus groups) to research the problems with identification of disabilities, the referral process, and service provision.

IV. Implications for Advocacy and Action

- Keep in mind that only about one third of children who are homeless are in shelters. The others are living in “doubled or tripled-up situations,” campgrounds, or cars.
- Publish information about homelessness in publications that are read by those other than homeless advocates. This increases awareness and builds interagency relationships. Often, the only people who come to conferences about the homeless are those who work in this area or are already familiar with the issues. Too often in education (federal and state level), there are separate “silos” or departments where each sub-population (e.g., English language learners, poor, disabled, general learners) is addressed separately.
- The Elementary and Secondary Education Act is in the process of reauthorization and the protections for students with disabilities who have discipline problems (in the IDEA) are being considered so that education continues even for disciplined students without disabilities. One other proposal for this law is a requirement that every system have a contact person to help students who are homeless.
- Children who are homeless need a “champion”—one dedicated person, especially one in a position of authority, who can make a program work by requiring participation in awareness and training programs. There is always a true champion in school districts that have successful programs.
- Although there are many barriers to overcome in schools and communities, state leadership is necessary to bring systemic change to the local level.
- There are only two states with laws regarding education for the homeless—Iowa and Illinois—and even in these states, the lack of awareness about homelessness poses problems.

- The federal funds appropriated for IDEA are important and give the law power, without which it would have less of an impact. The McKinney Act has only \$28 million, which means it has a small impact and less power.
- Implement activities to address the issues described above.
 - Provide shelter directors and others who work with children who are homeless outside of school with information about the rights of students with disabilities, and the IEP and Individualized Family Service Plan (IFSP) process.
 - Assist parents who are homeless in learning about IDEA and their rights. Many parents are not aware of the protections under IDEA. More workshops should be provided in shelters at times when parents are available (e.g., evenings). The churches that work with shelters could also assist with this. Homeless issues are being addressed at some of the Parent Training and Information Centers, but more is needed. The Improving America's Schools Act (IASA) Regional Conferences and the National Parent Center Conference could provide more coverage on problems for children with disabilities who are homeless. Facilitate the participation of parents who are homeless in the IEP and IFSP processes, including providing accommodations if necessary.
 - Foster collaboration and cooperation between those who work with the homeless and those who work in the schools.



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