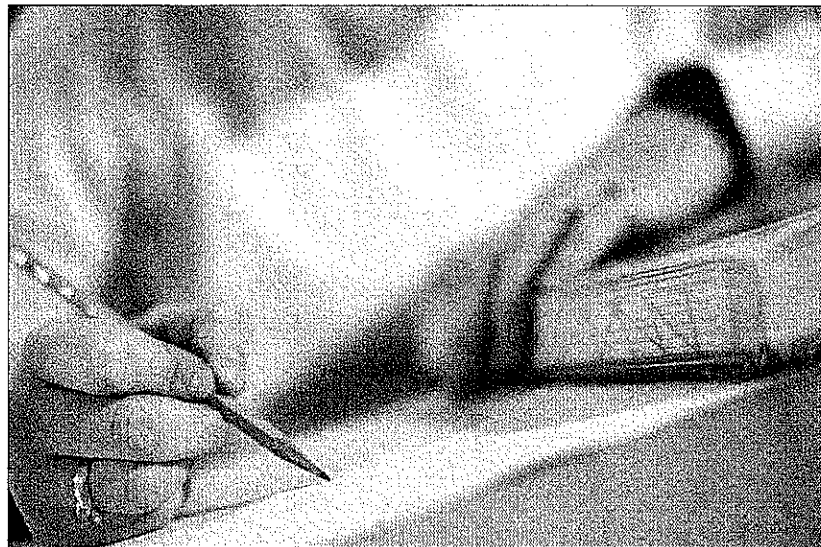


NATIONAL LAW CENTER  
ON HOMELESSNESS & POVERTY

Connecting Homeless Students to  
Special Education Services:

*A Guide to  
Rights and Resources*



**The National Law Center on Homelessness & Poverty** is a registered 501(c)(3) non-profit organization. NLCHP serves as the legal arm of the national movement to alleviate, prevent and end homelessness through impact litigation, public policy and public education.

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## **THE REASONS FOR THIS BOOKLET . . .**

### *UNDERSTANDING CHILDREN AND YOUTH WITH SPECIAL NEEDS*

Many children and youth experience physical (e.g. blindness, speech problems) and learning disabilities (e.g. dyslexia) that may make it difficult for them to reach their full potential. However, schools can change classrooms and education plans to meet their unique needs, providing them with the best possible opportunity to succeed.

### *THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)*

In 1975, Congress passed a federal special education law that was later called the Individuals with Disabilities Education Act (IDEA). IDEA allows students with disabilities to have their own Individualized Education Programs (IEPs) to meet their special needs.

### *HOMELESS STUDENTS WITH DISABILITIES FACE GREAT CHALLENGES*

In 2000, the United States Department of Education reported that homeless students have trouble getting special education services in at least half of the states. Changing schools frequently and not knowing their rights are two reasons that students in homeless situations may not receive the help they need in school.

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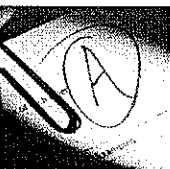


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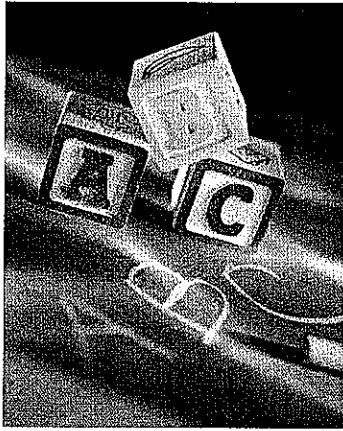
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## Q & A: IDEA BASICS

### **Q: WHAT IS IDEA?**

A: The Individuals with Disabilities Education Act (IDEA) is the main federal law guiding special education. Special education is specially designed instruction to meet the needs of individual students. IDEA also allows for related services, which include transportation, speech or language therapy, physical therapy, psychological services, counseling, medical services, recreation and other needed services. Schools must provide these services if students need them to benefit from a special education program.

### **Q: WHAT STUDENTS ARE COVERED UNDER IDEA?**

A: IDEA protects all students who need special education and related services, including those who are homeless. Students must be between the ages of 3 and 21. Children suspected of having a disability are also protected.

**Q. WHAT DISABILITIES ARE COVERED UNDER IDEA?**

A: IDEA provides rights to students with various disabilities, such as:

- ◆ Mental retardation
- ◆ Hearing and vision impairments
- ◆ Speech and language problems
- ◆ Learning disabilities (e.g. dyslexia)
- ◆ Emotional problems
- ◆ Other health impairments

**Q: WHO MAKES SPECIAL EDUCATION DECISIONS ?**

A: Under IDEA, a parent must usually agree to have a student tested for a disability and parent agreement is required for participation in special education services. However, the law says the following group of people can be considered parents:

- ◆ Birth or natural parent
- ◆ Adoptive Parent
- ◆ Foster Parent
- ◆ Guardian
- ◆ A person who acts as a parent and has the student living in his or her home—possibly a grandparent or other relative.
- ◆ A surrogate parent picked by the school district or a judge

**Q: HOW DO STUDENTS GET INTO SPECIAL EDUCATION?**

**A:** Schools and districts must follow IDEA's child find rule. This rule requires states to find all students with disabilities. In order to do so, schools should pay attention to all children, including those who are homeless, and look for problems with classroom performance and behavior that may suggest a disability. If there is a problem, schools should then reach out to a parent and suggest that the student be tested for a disability.

**Q: WHAT IF I THINK A HOMELESS STUDENT HAS A DISABILITY BUT THE SCHOOL HASN'T NOTICED?**

**A:** If a parent thinks a child or youth has a disability, he or she should ask the school to do evaluations or tests. In doing so, a parent should do the following:

- ◆ Put the request in writing
- ◆ Put a date on the request
- ◆ Give a copy of the request to the school principal or guidance counselor

IDEA requires schools to provide all necessary tests. Usually, schools will have to finish testing within 60 days. Ask your child's school or school district special education office if your state has a different rule in place.



**Q: THE TESTS HAVE BEEN TAKEN; NOW WHAT?**

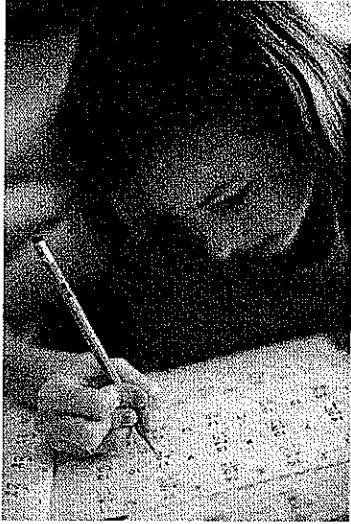
**A:** Once the school finishes its tests, it should hold an IEP (Individualized Education Program) meeting. The meeting is a time to discuss test results, the educational needs of the student, and an IEP plan to address those needs. It should include a special education teacher, the student's regular education teacher, disability experts, a parent, and any lawyer or other advocate that the parent wants to bring along.

**Q: WHAT IS IN THE IEP?**

**A:** The IEP includes information about the class or classes in which the student will be placed. IEPs should make sure that students spend as much time as possible in classes and activities with regular education students. The IEP may also list other necessary services such as transportation and specific therapy. Finally, the IEP will include educational goals and a list of ways to show that those goals are being reached.

**Q: DOES AN IEP EVER CHANGE?**

**A:** Schools and parents must review an IEP at least once a year. IEPs may change at that time or after a school retests the student. Parents can ask for retesting at any time. If they don't ask, schools must retest every 3 years or after a shorter time if they believe that a student's special education needs have changed.



## Q & A: BEYOND IDEA BASICS

**Q: WHAT HAPPENS IF HOMELESSNESS CAUSES A STUDENT TO MOVE A LOT AND CHANGE SCHOOLS OFTEN?**

A: Students who have been placed in special education can receive similar services in each new school they attend. Parents can help in this process by immediately informing new schools that the student was enrolled in special education at their old school. Sometimes, new schools will want to do new tests, hold new IEP meetings, and possibly create a new IEP. Parents still must be a part of these decisions.

**Q: WHAT IF A STUDENT MOVES WHILE BEING TESTED AND BEFORE BEING PLACED IN SPECIAL EDUCATION?**

A: If old schools have begun testing for special education, new schools must finish the job. Both schools must finish their evaluations within 60 days. New schools may ask parents for permission to extend the deadline, but parents must agree to any extension. Schools must also make sufficient progress towards completing the testing. Parents and others working with homeless students can help in this process by immediately informing new schools that the student was being considered for special education in the old school.

**Q: WHAT HAPPENS IF PARENTS FORGET TO TELL A SCHOOL ABOUT THEIR CHILD'S SPECIAL EDUCATION HISTORY? HOW WILL THE SCHOOL FIND OUT ABOUT IT?**

A: IDEA and federal homeless education law require new schools to immediately request records from old schools. Old schools must immediately send those records to new schools. Those records should include any and all information about a student's special education needs.

**Q: WHAT IF A STUDENT HAS DISCIPLINE PROBLEMS?**

A: IDEA has discipline rules that apply when a special education student is suspended for more than 10 days. A student's IEP team must meet and make a "manifestation determination," which is a

judgment about whether the student's behavior was caused by his or her disability. If the behavior was a result of the disability, the student will not be suspended and the IEP team will change the IEP to better fit the behavioral needs of the student. However, there are exceptions to this rule—student behavior that involved drugs, weapons, or seriously bodily injury can lead to suspensions of up to 45 school days even if this behavior was caused by a disability.

**Q: WHAT HAPPENS TO STUDENTS WHOSE DISCIPLINE PROBLEMS ARE NOT CAUSED BY THEIR DISABILITIES?**

A: Students that have behavior problems that were not caused by their disabilities can be suspended and expelled. Schools will apply the same rules to them as they apply to students in regular education and students. Parents have the right to appeal to a special education hearing officer if they disagree with the IEP team and believe that the behaviors problems were caused by a disability.

**Q: WHERE DO CHILDREN AND YOUTH GO WHEN THEY ARE SUSPENDED?**

A: Schools must place suspended students in an alternative school or classroom. These settings are required to provide students with an education that helps them to reach the goals that are in their IEPs.

**Q: HOW CAN UNACCOMPANIED YOUTH GAIN ACCESS TO SPECIAL EDUCATION?**

A: Youth who are living on their own (e.g. in teen shelters or with friends) cannot enroll themselves into special education or request necessary testing. If the youth is living with an adult who is acting in the role of a parent (perhaps a grandparent or the parent of a friend), that adult can agree to special education testing, placements, and services. Youth who do not have such adults in their lives should ask their school districts to appoint a “surrogate parent.” Helpful adults such as local homeless liaisons, teachers, counselors, social workers, or youth program workers may also suggest that school districts appoint surrogates.

**Q: WHO ARE THE SURROGATE PARENTS?**

A: Surrogate parents can be individuals who know the youth such as a family friend or relative. A surrogate can also be a member of the community who was previously unknown to the youth. Surrogates are selected by school districts and some communities require that they receive some training beforehand.

**Q: HOW LONG DOES A DISTRICT HAVE TO RESPOND TO A REQUEST FOR SURROGATE PARENTS?**

A: School districts should appoint a surrogate within 30 days.



## Q & A: SPECIAL IDEA SERVICES

**Q: IF A STUDENT MISSES A LOT OF SCHOOL DUE TO HOMELESSNESS, IS THERE ANY WAY THAT IDEA CAN HELP HIM/HER MAKE-UP FOR LOST TIME?**

A: The extended school year rule gives students with disabilities the right to attend summer school if they need it. If a student needs summer school, it must be listed on his or her IEP. Students in homeless situations often fall behind in school when they miss days due to their homelessness. An extended school year can help students with disabilities make up days they may have missed.

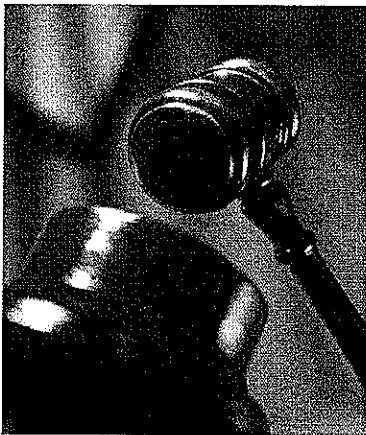
**Q: CAN CHILDREN AND YOUTH WHO ARE NOT DISABLED RECEIVE SERVICES UNDER IDEA?**

A: Yes, some students can receive services that are aimed at preventing later placement in special education. These “early intervening” services may include tutoring and reading help. Such programs may be helpful to homeless students who miss school due

to frequent moves. However, not all school districts participate in the early intervening services program. You should ask your school district's special education office if it offers such services.

**Q: DOES IDEA HELP WITH TRANSPORTATION?**

A: Although homeless education law requires school districts to provide transportation in certain situations, getting to school is still a problem for some homeless students. IDEA requires that transportation be provided to those students who need such services and have it listed in their IEPs.



**Q & A: NON-COMPLIANCE  
WITH IDEA**

**Q: WHAT IF A SCHOOL DOES NOT FOLLOW IDEA?**

A: If a school does not evaluate a student, does not complete an IEP, does not provide appropriate services or does not follow any other part of IDEA, parents should make the school aware of their concerns and potentially ask for a mediator (or outside person) to

help them work out their problems with the school. If a parent remains unhappy, they can ask for a special education hearing. Schools and districts can give parents information about how to get started.

## **HOW DO I PREPARE FOR A HEARING?**

Parents can and should ask attorneys to represent them at the hearing or seek advice and assistance from other advocates. In many communities, such services can be obtained free of charge. Information about connecting to these resources is in the back of this pamphlet. If parents can't find assistance or want to prepare for a hearing on their own, they should:

- ◆ Read any information about hearings that was provided by the school or the school district special education office.
- ◆ Gather and review all of the student's education records.
- ◆ Write a short statement about why the school is in the wrong and that ends with a list of things you now want the school to do—this will probably be a part of your hearing request.
- ◆ Prepare to tell the above information to a hearing officer.

**Q: WHAT CAN I DO IF I WANT TO REVIEW THE SCHOOL'S RECORDS?**



A: Parents who want to review student records in preparation for a hearing, or for any other reason, can simply ask the school to do so. Schools are required to allow parents to review those materials.



## NEED HELP?

The following resources are useful to those who believe that their school district isn't following special education law and are therefore thinking about requesting a special education hearing:

◆ **Technical Assistance Alliance for Parent Centers:**

*Toll free assistance for special education questions and web-based listings of parent resource centers.*

Phone: 1-888-248-0822

Website: [www.taalliance.org](http://www.taalliance.org)

◆ **Council of Parent Attorneys and Advocates (COPAA):**

*Organization of advocates who assist individuals with disability rights issues.*

Website: [www.copaa.org](http://www.copaa.org)



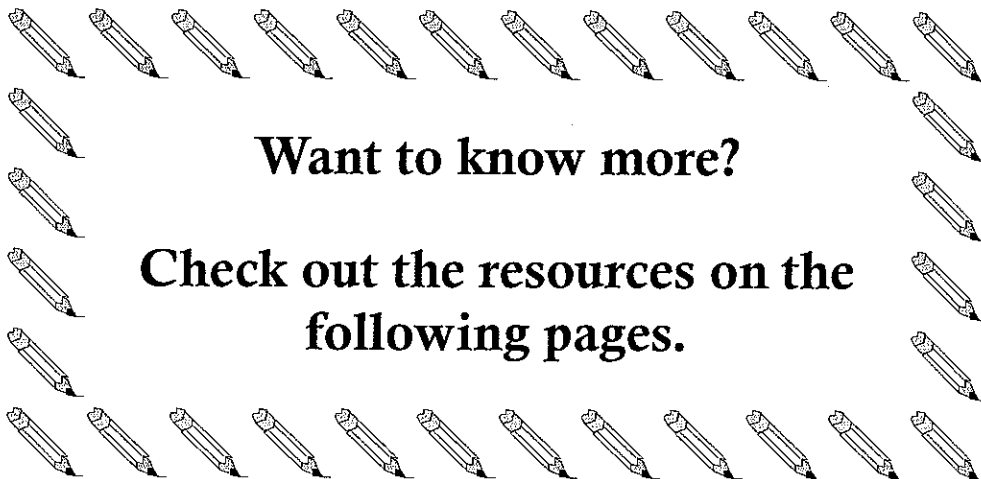
## OTHER USEFUL LAWS

In addition to IDEA, there are other federal laws that can help homeless students with disabilities:

- ◆ Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act generally guard the rights of students who face discrimination based on their disabilities. Section 504 can also provide protections that are very similar to those of IDEA.
- ◆ The McKinney-Vento Act is the main federal homeless education law. It can be useful in preventing special education difficulties that result from unnecessary school transfers and enrolling in new schools. The McKinney-Vento Act protects all students who do not have a fixed, regular and adequate residence, such as those living in:
  - ◆ Doubled-up housing with other families or friends

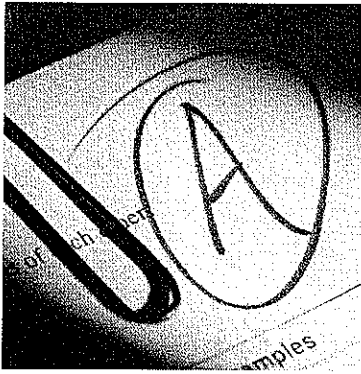
- ◆ Runaway/homeless youth shelters (even if parents invite the youth home)
- ◆ Hotels or motels
- ◆ Shelters, including domestic violence shelters
- ◆ Transitional housing shelters
- ◆ Cars, abandoned buildings, parks, the streets or other public spaces
- ◆ Campgrounds or inadequate trailer homes

The McKinney-Vento Act requires states and school districts to make sure students in homeless situations can attend and succeed in public school. Schools must immediately enroll students, even if they do not have proof of residency, school and immunization records, birth certificates or other documents. Students also have the right to stay at their school even if their lack of housing forces them to move out of an attendance zone or a school district. Schools must provide necessary transportation.



**Want to know more?**

**Check out the resources on the following pages.**



## FURTHER RESOURCES

To learn more about IDEA or special education, visit the following websites:

- ◆ **U.S. Department of Education, Office of Special Education Programs:**  
[www.ed.gov/about/offices/list/osers/osep](http://www.ed.gov/about/offices/list/osers/osep)
- ◆ **Council for Exceptional Children:**  
[www.cec.sped.org](http://www.cec.sped.org)
- ◆ **National Association of Protection and Advocacy Systems (NAPAS):**  
[www.napas.org](http://www.napas.org)
- ◆ **The EDLAW Center, Inc.:**  
[www.edlaw.net](http://www.edlaw.net)

To learn more about homeless education and related issues, visit the following websites:

- ◆ **The National Law Center on Homelessness & Poverty**  
[www.nlchp.org](http://www.nlchp.org)
- ◆ **The National Association for the Education of Homeless Children & Youth (NAEHCY)**  
[www.naehcy.org](http://www.naehcy.org)
- ◆ **The National Center for Homeless Education**  
[www.serve.org/nche](http://www.serve.org/nche)

**If you experience any problems with the enrollment or attendance in school of a child or youth experiencing homelessness, you should immediately call your school district and ask to speak to your local homeless coordinator. You may also want or need to contact your State Coordinator.**

### **State Coordinators**

**ALABAMA**

Dorothy Riggins  
334-242-8199

**DELAWARE**

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No Contact Person  
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**ARIZONA**

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**GEORGIA**

David Davidson  
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**KENTUCKY**

Mary Marshall  
502-564-3791

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Susan Underwood  
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## **NLCHP Members also receive the following benefits:**

- ◆ Free electronic copies of NLCHP reports e-mailed when each report is released
- ◆ A free paper copy of NLCHP reports upon request
- ◆ 45% discount on registration for monthly NLCHP audio trainings
- ◆ 10% discount on registration for NLCHP conferences, forums, & workshops
- ◆ Access to NLCHP program attorneys and members through **members-only list serve** which will give you the opportunity to communicate with NLCHP staff attorneys and advocates from around the country, as well as:
  - NLCHP's **monthly e-updates**
  - Invitations to upcoming **conferences and events**.
  - Timely legislative **action alerts**.
  - Notice of **internship and volunteer opportunities**.

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or give us a call at (202) 638-2535.

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The Law Center publishes investigative reports, fact sheets and a quarterly newsletter. Our work is cited in the press and is used by national policy makers and the general public.

To receive a listing of our publications, including many works on the Education of Children and Youth Experiencing Homelessness, please contact us through the information below.

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