

9/21/2017

Managing Hurricane Harvey at School: A Review of Federal Law

Hurricane Harvey displaced thousands of families across the State of Texas. For students, this natural disaster may have added significant chaos and trauma to their lives. Quickly and thoroughly managing Hurricane Harvey's impacts on student well-being is essential, especially for children with disabilities. School personnel are perfectly placed to accomplish this task.

With this resource, you will better understand your obligations to enroll and serve displaced students with disabilities under two federal laws: the McKinney-Vento Homeless Assistance Act and the Individuals with Disabilities Education Act (IDEA). Summaries provided here are not comprehensive. Rather, this resource highlights the most critical legal requirements that your school must follow as families cope with displacement caused by the storm. For more information on major requirements, contact Disability Rights Texas at 1-800-252-9108.

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act protects, among others, youth experiencing homelessness, including those displaced by natural disasters. In 2015, the U.S. Congress revised and reauthorized these protections under the Every Student Succeeds Act (ESSA). Below, you'll find a summary of the McKinney-Vento Act's requirements (including recent ESSA amendments) divided into the following categories:

- Eligibility under the Act;
- Student enrollment;
- Prohibition against the segregation of students experiencing homelessness;
- Services for students experiencing homelessness, including students with disabilities; and
- Key personnel required under the Act.

Eligibility Under the McKinney-Vento Act

- The Act covers youth who lack a fixed, regular, and adequate nighttime residence. 42 U.S.C. §11434(a)(2)(A).
- This definition includes kids who:
 - Are sharing housing due to loss of housing, economic hardship, or a similar reason;

- Are living in hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- Are living in emergency or transitional shelters;
- Are abandoned in hospitals;
- Have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Are living in cars, parks, public spaces, abandoned buildings; substandard housing, bus or train stations, or similar settings; and
- Are migratory children.
- See 42 U.S.C. §11434(a)(2)(B).

Student Enrollment

School Stability and the School of Origin

- There is a presumption that keeping youth enrolled in their school of origin is in each youth's best interest, except when contrary to the request of a parent or guardian (or the individual youth, if he or she is unaccompanied). 42 U.S.C. §11432(g)(3)(B)(i).
- Determinations of best interest for the youth must include considerations of student-centered factors, such as the impact of mobility on achievement; safety; and the request of the parent, guardian, or youth. 42 U.S.C. §11432(g)(3)(B)(ii).
- School of origin is defined as where the youth attended school when he or she was permanently housed or the school in which the youth was last enrolled. 42 U.S.C. §11432(g)(3)(I)(i).
 - This definition includes preschools and "receiving schools" (i.e., a school that the child is to attend after completing the final grade level at the school of origin). 42 U.S.C. §11432(g)(3)(I)(ii).
- Local education agencies must enable youth to remain in their school of origin for the duration of that youth's homelessness or until end of school year in which the student becomes permanently housed. If it is in the youth's best interest, the local educational agency may also enroll the youth in another public school within the youth's attendance area. 42 U.S.C. §11432(g)(3)(A).

Student Records Upon Enrollment

- Regardless of the school district, the school selected by a displaced family must immediately enroll the youth experiencing homelessness. 42 U.S.C. §11432(g)(3)(C)(i); Tex. Educ. Code 25.001(b)(5).
 - Districts may not require certain paperwork upon enrollment for youth experiencing homelessness. This paperwork includes: previous academic records, records of immunization and other required health records, proof of residency, or other documentation. 42 U.S.C. §11432(g)(3)(C)(i)(I).
 - Districts must also enroll youth experiencing homelessness, even if the youth has missed application or enrollment deadlines during any period of homelessness. 42 U.S.C. §11432(g)(3)(C)(i)(II).
- The enrolling school is required to immediately contact the school last attended by the youth in order to obtain relevant academic and other records. 42 U.S.C. §11432(g)(3)(C)(ii).

- In Texas, local education agencies can fulfill this requirement by accessing the Texas Records Exchange (TREx) system. Note that information related to the receipt of special education services (including a student’s individualized education program (IEP)) must be included in student records sent through TREx. Tex. Educ. Code 7.010.
- If the student needs to obtain immunizations or other required health records, the enrolling school is required to immediately refer the parent or guardian (or the individual youth, if he or she is unaccompanied) to the local educational agency’s designated McKinney-Vento liaison. The liaison is required to assist in obtaining the needed immunizations, screenings, or health records. 42 U.S.C. §11432(g)(3)(C)(iii).
- Schools must maintain any records ordinarily kept by a school regarding each youth experiencing homelessness so that the records are available in a timely fashion when a youth enters a new school or district. 42 U.S.C. §11432(g)(3)(D).

Enrollment Disputes

- If a dispute arises over eligibility, school selection, school enrollment:
 - The youth shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals. 42 U.S.C. §11432(g)(3)(E)(i).
 - The parent or guardian (or the individual youth, if he or she is unaccompanied) shall be provided with a written explanation of any decisions related to school selection or enrollment made by the school, the local educational agency, or the state educational agency. The explanation must include the rights of the parent, guardian, or unaccompanied youth to appeal such decisions. 42 U.S.C. §11432(g)(3)(E)(ii).
 - The parent or guardian (or the individual youth, if he or she is unaccompanied) shall be referred to the local educational agency’s McKinney-Vento liaison. The liaison must carry out the dispute resolution process as expeditiously as possible after receiving notice of the dispute. 42 U.S.C. §11432(g)(3)(E)(iii).
- In the case of an unaccompanied youth, the liaison must ensure that the youth is immediately enrolled in the school in which the youth seeks enrollment pending resolution of such dispute. 42 U.S.C. §11432(g)(3)(E)(iv).

Prohibition Against the Segregation of Students Experiencing Homelessness

- The Act explicitly states that homelessness is not a sufficient reason to separate students from the mainstream school environment. Thus, students displaced by Hurricane Harvey may not be segregated from their peers because of their displacement. 42 U.S.C. §11432(e)(3)(A), 42 U.S.C. §11432(g)(1)(J)(i).
- There are exceptions to this rule in “covered counties.” As of September 2017, none of these counties existed in Texas. 42 U.S.C. §11432(e)(3)(B-G).

Services for Students Experiencing Homelessness

Comparable Services

- Each youth experiencing homelessness must be provided services comparable to services offered to other students in the school. 42 U.S.C. §11432(g)(4).

- This requirement includes:
 - Transportation services;
 - Education services for which the youth meets eligibility criteria, such as educational programs for children with disabilities;
 - Programs in career and technical education;
 - Programs for gifted and talented students; and
 - School nutrition programs.
- Youth experiencing homelessness (including those with disabilities) must have access to the services they need to ensure that they have an opportunity to meet the same challenging state academic standards to which all students are held. 42 U.S.C. §11432(g)(1)(A).

Services for Students with Disabilities

- Students with disabilities who are experiencing homelessness may also receive services under the IDEA or Section 504 of the Rehabilitation Act.
- For these students, each local educational agency must coordinate service provision under the McKinney-Vento Act, the IDEA, and Section 504. 42 §11432(g)(5)(D).

Transportation Services

- State and local educational agencies must adopt policies and practices to ensure that free transportation is provided, at the request of the parent or guardian (or the local liaison, in the case of unaccompanied youth), to and from a student's school of origin. 42 U.S.C. §11432(g)(1)(J)(iii).
 - Who provides the transportation depends on where the student experiencing homelessness currently resides.
 - If the child **continues to live in the same area** served by the local educational agency in which school of origin is located, the transportation shall be provided by the local educational agency in which the school of origin is located. 42 U.S.C. §11432(g)(1)(J)(iii)(I).
 - If the child **begins living in an area served by another local educational agency**, the local educational agency of origin and the local educational agency in which the youth now lives shall agree on a method for transportation to the school of origin. If an agreement cannot be made, the responsibility and costs for that transportation must be shared equally. 42 U.S.C. §11432(g)(1)(J)(iii)(II).
 - In either case, transportation to the school of origin must be provided free of charge to the student experiencing homelessness.

Key Personnel Required Under the McKinney-Vento Act

The Local Educational Agency Liaison

- Every local educational agency must designate a local liaison to ensure that youth experiencing homelessness enroll and have a fully opportunity to succeed in school. 42 U.S.C. §11432(g)(1)(J)(ii).
 - The duties of the local liaison are extensive. 42 U.S.C. §11432(g)(6)(A). The liaison must ensure that:

- Youth experiencing homelessness are identified by school personnel through outreach and coordination activities with other entities;
- Youth experiencing homelessness are enrolled in and have full and equal opportunity to succeed in school;
- Families and youth experiencing homelessness have access to and receive education services for which they are eligible, including early intervention services provided to children with disabilities under Part C of the IDEA;
- Families and youth experiencing homelessness receive referrals to relevant services, including health care services, dental services, mental health and substance use disorder services, and housing services;
- Parents and guardians are informed of opportunities available to their children and are provided meaningful opportunities to participate in their children's education;
- Public notice of the educational rights regarding youth experiencing homelessness is disseminated in locations frequented by persons impacted by homelessness (including schools, shelters, libraries, and soup kitchens) in both a manner and form that is understandable;
- Enrollment disputes are mediated in accordance with McKinney-Vento provisions;
- The parent, guardian, or unaccompanied youth is fully informed of all available transportation services and is assisted in accessing transportation to the youth's selected school;
- School personnel providing services to youth experiencing homelessness receive professional development and other support to successfully serve these students; and
- Unaccompanied youth:
 - Are enrolled;
 - Have opportunities to meet the same challenging state academic standards as their peers; and
 - Are informed of that status as independent students and are provided with assistance relevant to this status.
- As of 2016, the local liaison has new authority to affirm the eligibility of identified youth experiencing homelessness for programs administered by HUD. 42 U.S.C. §11432(g)(6)(D).

The Office of the Coordinator

- Every state educational agency must have an Office of the Coordinator for Education of Homeless Children and Youths. 42 U.S.C. §11432(d)(3). The Coordinator must:
 - Gather and make publicly available reliable, valid, and comprehensive data on certain topics, including:
 - The number of identified youth experiencing homelessness in the state;
 - The nature and extent of problems faced by these youth in gaining access to public school programs, including preschool programs;
 - The difficulties in identifying special needs and barriers to the participation and achievement of youth experiencing homelessness;

- Any progress made by the state and local education agencies in addressing such difficulties; and
 - The success of programs in identifying youth experiencing homelessness and allowing those youth to enroll in, attend, and succeed in school;
- Develop and carry out the state plan regarding youth experiencing homelessness required under 42 U.S.C. §11432(g);
- Collect data for and transmit a report to the Secretary of the U.S. Department of Education containing information necessary to assess the educational needs of youth experiencing homelessness in the state;
- To improve comprehensive education and related services to youth experiencing homelessness, coordinate with certain groups including:
 - Teachers, special education personnel, and administrators;
 - Various service providers, law enforcement agencies, mental health agencies, and youth centers;
 - Providers of emergency, transitional, and permanent housing;
 - Local liaisons for youth experiencing homelessness; and
 - Community organizations that represent families and youth experiencing homelessness;
- Provide technical assistance to and conduct monitoring of local education agencies in coordination with local liaisons to ensure compliance with the Act, particularly regarding student segregation;
- Provide professional development opportunities for local educational personnel and liaisons to assist personnel in identifying and meeting the needs of youth experiencing homelessness; and
- Respond to inquiries from parents and guardians to ensure that youth experiencing homelessness receive the full protections and services to which they are entitled under the McKinney-Vento Act.
- See 42 U.S.C. §11432(f).
- The Texas Homeless Education Office (THEO) fulfills these duties in our state.
- Recent amendments were made to state law that encourage districts to accommodate and serve students experiencing homelessness as they transition between schools. To implement those amendments, TEA may engage in new rulemaking to clarify responsibilities. Tex. Educ. Code 25.007(c).

The Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) guarantees the right to a free and appropriate public education for students with disabilities. Below, you'll find a summary of the IDEA's key requirements as they relate to students experiencing homelessness following Hurricane Harvey.¹ These requirements are divided into the following categories:

- Child Find;
- Expeditious FIEs;

¹ For more information about the IDEA, see education-related resources on DRTx's website at <https://www.disabilityrightstx.org/resources/education>.

- ARD committee participants;
- Surrogate parents; and
- Back-to-school parental notice on professional qualifications of educators.

Child Find for Youth Experiencing Homelessness

- School districts and open-enrollment charter schools have an affirmative duty to identify, locate, and evaluate all children suspected of having a disability and a need for special education. This affirmative responsibility is typically known as “child find” under the IDEA. 34 C.F.R. 300.111(a)(1).
- The child find responsibility specifically extends to and includes youth who are experiencing homelessness. 34 C.F.R. 300.111(a)(1)(i).
- School districts and charter schools also have a similar child find duty under Section 504 of the Rehabilitation Act. The Section 504 child find responsibility covers children not receiving a public education, such as youth experiencing homelessness who are not enrolled in school. 34 C.F.R. 104.32(a).

Expeditious FIEs for Youth Experiencing Homelessness

- For a child to possibly begin receiving special education services under IDEA, he or she must first undergo a full and individual initial evaluation (FIE). 34 C.F.R. 300.301(a).
- In Texas, there are state specified timelines for FIEs. 19 Tex. Admin. Code 89.1011.
- The U.S. Department of Education, in commentary accompanying the publication of IDEA final regulations, explained that despite the general timelines for FIEs, the circumstances of a youth experiencing homelessness dictate an expeditious FIE.
- “Congress recognized the unique problems homeless children face and included several new provisions in the Act to ensure that homeless children and youth with disabilities have access to the same services and supports as all other children with disabilities. The Department recognizes that the high mobility rates of some homeless children with disabilities (as well as other children, including some children who are in the custody of a State child welfare agency) pose unique challenges when a child is referred for an evaluation, but moves to another district or State before an evaluation can be initiated or completed. In such cases, the Department believes it is important that the ***evaluations be completed as expeditiously as possible, taking into consideration the date on which the child was first referred for evaluation in any LEA.***” [emphasis added] 71 Fed. Reg. 46637 (Aug. 14, 2006).

Reevaluations for Youth Experiencing Homelessness

- The IDEA requires not only initial testing upon entry into the special education system but also additional reevaluations on a regular basis or as circumstances warrant. 34 C.F.R. 300.303.
- If a child with a disability is displaced and becomes homeless, this circumstance might warrant consideration of a reevaluation. 34 C.F.R. 300.303(a)(1).
- Parents may request a reevaluation as they deem necessary and do not have to provide a specific reason for a request for a reevaluation by a new school district.
- “Section 300.303(b), consistent with section 614(a)(2)(A)(ii) of the Act, states that a ***reevaluation may occur if the child’s parent or teacher requests a reevaluation. There is no***

requirement that a reason for the reevaluation be given and we agree that a reevaluation cannot be conditioned on the parent providing a reason for requesting a reevaluation.” [emphasis added] 71 Fed. Reg. 46640 (Aug. 14, 2006).

ARD Committee Participants for Youth Experiencing Homelessness

- Under the IDEA, an Admission, Review and Dismissal (ARD) Committee meets to consider, develop, review, and revise a child’s individualized education program (IEP). 19 Tex. Admin. Code 89.1050.
- For a youth experiencing homelessness, it is appropriate to invite and include an educator from the child’s previous school to participate and discuss the child’s earlier IEPs and special education services.
- The U.S. Department of Education, in commentary accompanying the publication of IDEA final regulations, explained that either the school district or the parents may invite educators from another school district to share relevant information about a youth experiencing homelessness
- “Section 614(d)(1)(B)(vi) of the Act states that ***other individuals who have knowledge or special expertise regarding the child may be included as members of a child’s IEP Team at the discretion of the parent or the agency.*** Consistent with § 300.321(c), the party (parents or public agency) who invites the individual to be a member of the IEP Team determines the knowledge or special expertise of such individual.” [emphasis added] 71 Fed. Reg. 46669 (Aug. 14, 2006).

Surrogate Parents for Unaccompanied Youth Experiencing Homelessness

- IDEA requires that school districts and open-enrollment charter schools appoint a surrogate parent to protect the rights of unaccompanied youth experiencing homelessness. 34 C.F.R. 300.519(a)(4).
- School districts and charter schools may appoint a staff member of an emergency shelter as a temporary surrogate parent for the unaccompanied youth until a surrogate parent can be appointed. 34 C.F.R. 300.519(f).
- The U.S. Department of Education, in commentary accompanying the publication of IDEA final regulations, explained that while there are some relaxed standards for temporary surrogate parents, they nonetheless must be prepared for serving in the role of a surrogate parent. Thus, school districts should ensure the necessary training and preparation of shelter staff if they will be utilized as temporary surrogate parents.
- “Section 300.519(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.” [emphasis added] 71 Fed. Reg. 46712 (Aug. 14, 2006).

Back-to-School Parental Notice on Professional Qualifications of Educators for Youth Experiencing Homelessness

- Title I of the Elementary and Secondary Education Act (ESEA) requires that local education agencies receiving title I funds provide parents with youth enrolled at a school receiving title I funds with certain notices at the beginning of the school year. Among other things, these parents must receive notice that they are entitled to request the qualifications of their youth's classroom teachers and paraprofessionals. 20 U.S.C. 6312(e)(1).
- The parents of youth experiencing homelessness who have enrolled at a title I school as the new school year begins should receive the ESEA notice informing them of their ability to ask for information regarding the professional qualifications of teachers and paraprofessionals.
- The U.S. Department of Education, in commentary accompanying the publication of IDEA final regulations, explained that the ESEA title I requirement for notification of parents of their right to request information on the qualifications of their youth's educators does apply in limited fashion to special education personnel.
- "These requirements apply only to those special education teachers who teach core academic subjects in title I schools." 71 Fed. Reg. 46561 (Aug. 14, 2006).

Disability Rights Texas strives to update its materials on an annual basis, and this handout is based upon the law at the time it was written. The law changes frequently and is subject to various interpretations by different courts. Future changes in the law may make some information in this handout inaccurate.

This handout is not intended to and does not replace an attorney's advice or assistance based on your particular situation.