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NAVIGATING THE INTERSECTION OF MCKINNEY-VENTO AND IDEA

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ABSTRACT

Students with disabilities who are also experiencing homelessness face compounded challenges related to attending and participating in school. These children and youth are provided educational protection through two federal laws: the 2004 “Individuals with Disabilities Education Act” (IDEA) and the McKinney-Vento (MV) Education of Homeless Children and Youth (EHCY) program. It is the responsibility of educators, school personnel, and families to carefully navigate the dual mandates in order to ensure equitable educational opportunities, while also meeting the unique needs of each student. The purpose of this article is to offer a foundation for understanding the intersection of the two laws and for effectively implementing them to deliver appropriate services and resources to students. First, an overview of the combined impact of disability and homelessness on students, as well as of the EHCY program, is provided. Then, the key areas of intersection of the two laws are articulated through Virginia-specific examples, in addition to relevant court cases. Finally, intersectionality considerations related to the improvement of service coordination for this population of students are offered.

INTRODUCTION

Supporting equitable school experiences for students with disabilities who also experience homelessness (hereinafter, “SWDEH”) requires careful coordination and collaboration among educators, other school personnel, and families. SWDEH are provided educational protection through two federal laws: the 2004 “Individuals with Disabilities Education Act” (IDEA) and the McKinney-Vento (MV) Education of Homeless Children and Youth (EHCY) program.¹ In order to simultaneously implement the requirements of these statutes, experts must navigate dual mandates that focus on different priorities and safeguards, while also maintaining a child-centered focus on the unique needs of each student.²

Although there are some requirements for coordination and referrals for young children (birth to ages two or three) that intersect with IDEA Part C, McKinney-Vento mandates primarily focus on students eligible to attend

¹ EHCY is part of the “McKinney-Vento Homeless Assistance Act” (McKinney-Vento) but reauthorized as part of the Elementary and Secondary Act, most recently known as the 2015 “Every Student Succeeds Act.” EHCY is commonly referred to as “McKinney-Vento” by educators and homeless service providers. *See* Every Student Succeeds Act, 20 U.S.C. § 6301 et seq. (2015); Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (2004).

² 20 U.S.C. § 1400 et seq; *see* 20 U.S.C. § 6301 et seq.

public schools.³ Therefore, most of this article will address school-age children receiving special education services through Individualized Education Programs (IEPs), who are in unstable living conditions.

Part I of this article highlights the combined impact of disability and homelessness on students. Part II provides a brief overview of the EHCY program under McKinney-Vento. Part III identifies the key areas of intersection between IDEA and McKinney-Vento through examples from Virginia and illustrates how the laws may be navigated simultaneously. Part IV follows with summaries and implications of relevant court cases. Finally, Part V includes a selection of intersectionality considerations to improve the coordination of services for this population of students.

I. THE IMPACT OF DISABILITY AND HOMELESSNESS

In comparison with their peers, SWDEH can face increased risks related to poverty, poor mental and physical health, vulnerabilities related to violence and abuse, and educational disruptions.⁴ Certain adversities associated with homelessness, such as health problems, hunger and poor nutrition, traumatic experiences, and absenteeism, can negatively impact these students. These adversities affect students' participation in school, their physical and emotional well-being, and ultimately their academic achievement.⁵ In some instances, students with disabilities may be more likely to experience homelessness, and in others, instances of homelessness can contribute to developmental delays and special education eligibility.⁶

Despite SWDEH being identified for special education at greater rates than their stably housed peers, these students may receive inappropriate services when misdiagnosed.⁷ Some barriers that these students face due to trauma and high mobility (i.e. frequent residential moves) can delay identification and evaluation for special education services.⁸ Further, incomplete or delayed educational records and chronic absenteeism can make

³ McKinney-Vento Act, 42 U.S.C. § 11431 (2015); *see* 20 U.S.C. § 1431 et seq. (2004).

⁴ *See* NAT'L CTR. FOR HOMELESS EDUC., SUPPORTING STUDENTS EXPERIENCING HOMELESSNESS WHO HAVE DISABILITIES: FEDERAL PROVISIONS TO INCREASE ACCESS AND SUCCESS 1 (2022).

⁵ *See* LYNDA THISTLE-ELLIOTT, NAT'L CTR. FOR HOMELESS EDUC., RESEARCH SUMMARY: SUPPORTING HOMELESS CHILDREN AND YOUTH THROUGH PROACTIVE AND POSITIVE BEHAVIOR MANAGEMENT AND INTERVENTION PRACTICES 3-4 (2014).

⁶ *See* NAT'L CTR. FOR HOMELESS EDUC., *supra* note 4.

⁷ *American Almanac of Family Homelessness 2015*, INST. FOR CHILD., POVERTY, & HOMELESSNESS (Sept. 1, 2015), <https://www.icphusa.org/reports/american-almanac-of-family-homelessness-2015/>.

⁸ *See* NAT'L CTR. FOR HOMELESS EDUC., *supra* note 4, at 1-2.

it difficult for educators to develop and implement IEPs.⁹ These obstacles contribute to negative academic outcomes, such as repeating grades or performing poorly on state assessments.¹⁰ Given the well-researched correlation between increased educational attainment and better health and socioeconomic outcomes for adults, it is imperative that educators develop and engage in effective processes to identify and provide appropriate services for SWDEH.¹¹

II. THE BASIC EDUCATIONAL REQUIREMENTS OF MCKINNEY-VENTO

Federal legislation to ensure students experiencing homelessness have access to education and opportunities for school stability began with the passage of the Stewart B. McKinney Homeless Assistance Act in 1987.¹² Since the early 1990s, the section known as the “Education for Homeless Children and Youth program” (EHCY) has been reauthorized as part of the “Elementary and Secondary Education Act,” and currently is Title IX, Part A, of the “Every Student Succeeds Act.”¹³ McKinney-Vento requires every state to appoint a state coordinator for the education of homeless children and youth and every local education agency (LEA) to have a McKinney-Vento liaison.¹⁴ Contact information for liaisons must be posted on the state department of education’s website.¹⁵

Students experiencing homelessness must be identified, immediately enrolled in school, and given the option to remain in the same school (“school of origin”) even when a move due to housing instability changes attendance zones, provided it is in the student’s best interest.¹⁶ Unlike IDEA, there are no federal or state regulations associated with McKinney-Vento. Practitioners must rely on the language in the statute, the U.S. Department of Education’s (ED) Non-regulatory Guidance (2018), and technical assistance

⁹ *American Almanac of Family Homelessness 2015*, *supra* note 7.

¹⁰ *Id.*

¹¹ Kati Haycock, *The Education-Health Link: Why Success in School Matters to Health Throughout Life*, NASN SCH. NURSE, May 2010, at 161; Anna Zajacova & Elizabeth M. Lawrence, *The Relationship Between Education and Health: Reducing Disparities Through a Contextual Approach*, 39 ANN. REV. OF PUB. HEALTH 273, 275 (2018).

¹² THE NAT’L CTR. FOR HOMELESSNESS EDUC., HOMELESS LIAISON TOOLKIT 3 (2020).

¹³ NAT’L CTR. FOR HOMELESSNESS EDUC., ADVANCING EQUITY IN HOMELESS EDUCATION: SERVING STUDENTS IN HISTORICALLY UNDERSERVED POPULATIONS (2023), <https://nche.ed.gov/wp-content/uploads/2023/09/Historically-Underserved-Populations.pdf>.

¹⁴ 42 U.S.C. § 11432(d)(3) (2015); 42 U.S.C. § 722(g)(1)(J)(ii); 42 USC § 11432(g)(1)(J)(ii).

¹⁵ 42 U.S.C. § 722(g)(6)(B); 42 U.S.C. § 11432(g)(6)(B).

¹⁶ 42 U.S.C. § 722(g)(3)(A)-(C); 42 U.S.C. § 11432(g)(3)(A)-(C).

from the National Center for Homeless Education (NCHE)—the ED-funded technical assistance center for homeless education.¹⁷ Additionally, limited examples of case law and non-profit organizations, such as SchoolHouse Connection (SHC) and the National Association for the Education of Homeless Children and Youth (NAEHCY), offer examples and resources that can inform McKinney-Vento implementation.¹⁸

The definition of homelessness, for education purposes, is the broadest of any federal agency and includes a variety of living situations. Under § 725(2) of McKinney-Vento, the term “homeless children and youths”:

A. means individuals who lack a fixed, regular, and adequate nighttime residence; and

B. includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

(ii) children and youths who 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;

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).¹⁹

A special subgroup of students who are homeless are those living without

¹⁷ See NAT'L CTR. FOR HOMELESS EDUC., <https://nche.ed.gov/> (last visited Feb. 1, 2024); *Education for Homeless Children and Youths Program Non-Regulatory Guidance: Title VII-B of the McKinney-Vento Homeless Assistance Act, as Amended by the Every Student Succeeds Act*, U.S. DEP'T OF EDUC. (July 26, 2016), <https://oese.ed.gov/files/2020/07/160240ehcyguidanceupdated082718.pdf>.

¹⁸ See, e.g., *G.S. v. Rose Tree Media School District*, 914 F.3d 206, 210-11 (3d Cir. 2018) (interpreting the meaning of “homeless children and youths” within the McKinney-Vento Act); *McKinney-Vento Act: Quick Reference*, SCHOOLHOUSE CONNECTION (Sept. 1, 2023), <https://schoolhouseconnection.org/mckinney-vento-act/>; *The McKinney-Vento Act and Title I Part A, as Amended by the Every Student Succeeds Act of 2015*, NAT'L ASS'N FOR THE EDUC. OF HOMELESS CHILD. & YOUTH, <https://naehcy.org/essa/> (last visited Feb. 2, 2024).

¹⁹ 42 U.S.C. § 725(2); 42 U.S.C. § 11434(a)(2).

their parents or guardians.²⁰ An unaccompanied homeless youth (UHY) is “a homeless child or youth not in the physical custody of a parent or guardian.”²¹ An UHY includes runaways, children and youth abandoned by their parents, and those that are told they can no longer live at home and are forced to leave.²² These young people may be preschoolers abandoned by parents or youth over eighteen that have not yet graduated from high school.²³ UHY have specific rights under McKinney-Vento, including the right to immediate school enrollment without a guardian’s signature and to be informed of their rights under the statute, which can be communicated by the local homeless liaison or other school district personnel through brochures and one-to-one conversations.

Prior to the COVID-19 pandemic, public schools across the United States identified as many as 1.5 million students experiencing homelessness annually.²⁴ Following significant decreases in identification during the pandemic, public schools across the United States identified over 1.2 million students experiencing homelessness in 2021-2022.²⁵ This is about 2.4% of all students enrolled in public schools. Students with IEPs accounted for twenty percent of the total homeless count, in contrast with fifteen percent of the general population.²⁶

III. KEY POINTS OF INTERSECTION BETWEEN MCKINNEY-VENTO AND IDEA

Intersectionality must be considered when students are experiencing

²⁰ See NAT’L ASS’N FOR THE EDUC. OF HOMELESS CHILD. AND YOUTH, *Higher Education Unaccompanied Homeless Youth Tip Sheet*, https://www.cceh.org/wp-content/uploads/2018/09/SPOC-Homeless_Youth_Tip_Sheet-NAEHCY.pdf.

²¹ 42 U.S.C. §11434(a)(6).

²² See NAT’L ASS’N FOR THE EDUC. OF HOMELESS CHILD. AND YOUTH, *supra* note 20.

²³ See *e.g.*, *Supporting the Education of Unaccompanied Students Experiencing Homelessness*, NAT’L CTR. FOR HOMELESS EDUC. 2 (2017), <https://nche.ed.gov/wp-content/uploads/2018/10/youth.pdf> (providing examples of how youth become unaccompanied and explaining that children of all ages can qualify as an unaccompanied youth).

²⁴ See *Student Homelessness in America School Years 2019-20 to 2021-22*, NAT’L CTR. FOR HOMELESS EDUC. 4 (2023), https://nche.ed.gov/wp-content/uploads/2023/12/SY-21-22-EHCY-Data-Summary_FINAL.pdf.

²⁵ See *id.*

²⁶ *National Overview*, NAT’L CTR. FOR HOMELESS EDUC. AT SERVE, <https://profiles.nche.seiservices.com/ConsolidatedStateProfile.aspx> (last visited Jan. 20, 2024) (children with IEPs made up twenty percent of total homeless count for the 2021-2022 year); *Preprimary, Elementary, and Secondary Education: Students with Disabilities*, NAT’L CTR. FOR EDUC. STAT. (May 2023), <https://nces.ed.gov/programs/coe/indicator/cgg/students-with-disabilities> (students with IEPs count for fifteen percent of the general population in public schools in 2021-2022).

homelessness and have a disability that requires special education. Exploring data to understand the current context and addressing the legal intersections (including advisory representation, IDEA “Child Find” and McKinney-Vento identification, immediate enrollment and IEP-driven services, student-centered decision making, and special considerations for unaccompanied youth) can provide a baseline to document improved outcomes and improve support for this subpopulation of students.

A. Using Data to Inform Practice

Disaggregating data for these students is not federally mandated; however, it is critical to making informed, data-driven decisions.²⁷ Oftentimes, school and district administrators, as well as politicians, offer statistics about student enrollment and achievement, which can be misleading if the statistics provided refer to the general student population. When scholars and practitioners disaggregate data, or break it down into individual and overlapping reporting categories, they establish a clearer depiction of where students in minority groups or disadvantaged situations are, and how they are doing personally and academically.

i. Incidence Data

Comparing state and local incidence and achievement data to national trends can lead to important discussions around policies and practices. Are there local education agencies (LEAs) where students with disabilities are significantly over- or under-identified? Are the differences reasonable? What do these data suggest about current practices to implement McKinney-Vento and IDEA in those communities? In Virginia, the state rates are consistent with national trends.²⁸ Virginia has begun analyzing LEA data to determine where state support may be needed.²⁹ Figure 1 provides a visual representation at the school division level and compares the percentage of students with IEPs to the total population of students experiencing

²⁷ See 20 U.S.C.A. § 1416 (a)(3) (West) (IDEA does not include students with IEPs experiencing homelessness as a priority area for monitoring); see also Christine Pitts, *Why Disaggregated Data and Radical Transparency Are Critical for Schools' Pandemic Recovery Efforts*, MATHEMATICA BLOG (Oct. 11, 2023), <https://www.mathematica.org/blogs/why-disaggregated-data-and-radical-transparency-are-critical-for-schools-pandemic-recovery-efforts>.

²⁸ See *Virginia Summary Statements*, NATION'S REP. CARD (2022), https://www.nationsreportcard.gov/profiles/stateprofile/overview/VA?cti=PgTab_Findings&chort=1&sub=MAT&sj=VA&fs=Grade&st=MN&year=2022R3&sg=Gender%3A%20Male%20vs.%20Female&sgv=Difference&ts=Single%20Year&sfj=NP (comparing average mathematics, reading, and science scores of Virginia grade 4 and 8 public school students with average scores of all public school students in the nation).

²⁹ See Samantha Hollins, Assistant Superintendent of Special Educ. and Student Servs., LEA Determinations: Establishing a Process that Supports Program Improvement, Idea Data Ctr. (Apr. 8, 2020), https://ideadata.org/sites/default/files/media/documents/2020-11/Determinations%20Webinar%20PowerPoint_RW_04072020_V8.pdf.

homelessness.³⁰ While less populated areas with few students cannot be analyzed statistically and require a more case-by-case analysis, maps like this are a useful starting point for conversations to evaluate student identification and enrollment, as well as geographic trends.

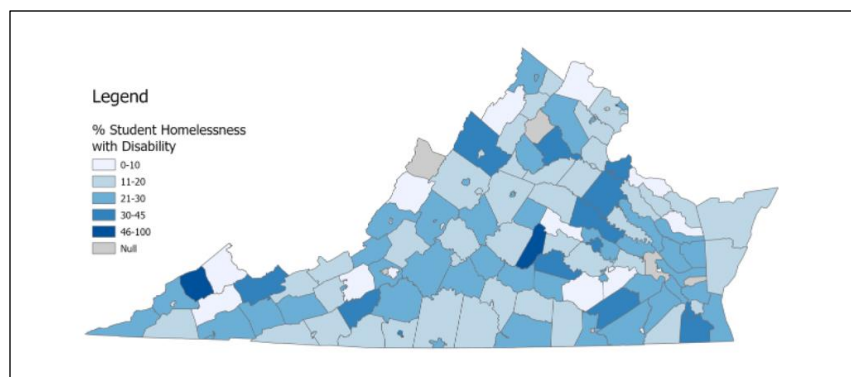


Figure 1: Percentage of Students with IEPs in Virginia’s Homeless Population (2022-23).³¹

ii. Educational Achievement

The “Every Student Succeeds Act,” (ESSA) requires disaggregated achievement data for students with disabilities and students experiencing homelessness.³² The data for both of these subpopulations indicates lower rates of on-time graduation and passing state achievement assessments.³³ Virginia is drilling further into this data to explore how intersectionality among populations affects educational outcomes, targeting students with disabilities and English learners, as those subpopulations are most likely to

³⁰ See generally *Virginia Has Almost 18,000 Homeless Students Statewide*, INST. FOR CHILD., POVERTY & HOMELESSNESS (May 19, 2017), <https://www.icphusa.org/reports/%EF%BB%BFvirginia-almost-18000-homeless-students-statewide/> (the data in Figure 1 was collected from state coordination data that is not publicly available).

³¹ The data used to create Figure 1 was collected from state coordination data that is not publicly available. Counts less than 10 are suppressed to protect the identities of individual students (per author, Virginia protects personally identifiable data, thus preventing us from reporting data for less than 10 students).

³² 20 U.S.C. § 6311 (2015).

³³ See JOINT LEGIS. AUDIT AND REV. COMM’N., K-12 SPECIAL EDUCATION IN VIRGINIA 16-17 (2020); see also *The Graduation Gap Hurting Homeless Students*, THE CTR. FOR PUB. INTEGRITY (Nov. 15, 2022), <https://publicintegrity.org/education/unhoused-and-undercounted/graduation-gap-hurting-homeless-students/>.

require additional support.³⁴ As Figure 2 illustrates, when students are homeless and have an IEP, high school graduation rates are further impacted.³⁵ Figure 3 illustrates a similar pattern in students who pass Virginia's statewide standardized tests, called the Standards of Learning (SOL) assessments. These analyses are recent; next steps include further research to explore what practices lead to improved outcomes. What changes in policies and practices are needed at the state level? Which school divisions have demonstrated greater success? How can their practices be shared with other districts?

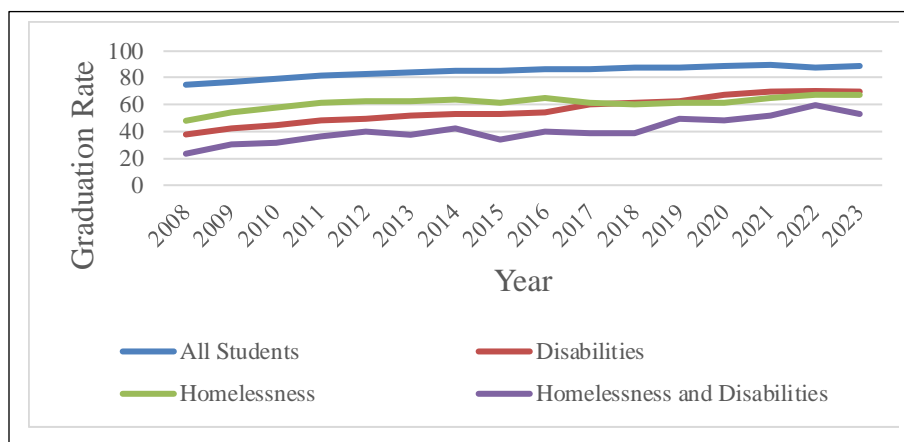


Figure 2: Virginia Longitudinal FGI Graduation Rates.³⁶

³⁴ See VA. DEPT. OF EDUC., VIRGINIA STATE LEVEL ON-TIME GRADUATION AND DROPOUT RATES CLASS OF 2023 (2023); see also *Non-Regulatory Guidance Doc.: Every Student Succeeds Act State and Local Report Cards*, U.S. DEPT. OF EDUC. (Jan. 2017) <https://www2.ed.gov/policy/elsec/leg/essa/essastatereportcard.pdf> (English Learners are not included in the analyses presented here. However, they comprise another critical subpopulation that is impacted by the intersectionality with homelessness).

³⁵ *Cohort Graduation Build-A-Table*, VA. DEPT. OF EDUC., https://p1pe.doe.virginia.gov/apex_captcha/home.do?apexTypeId=305 (last updated 2023) (graduation rates) (the data used to create Figure 2 can be accessed here).

³⁶ *Cohort Graduation Build-A-Table*, supra note 35.

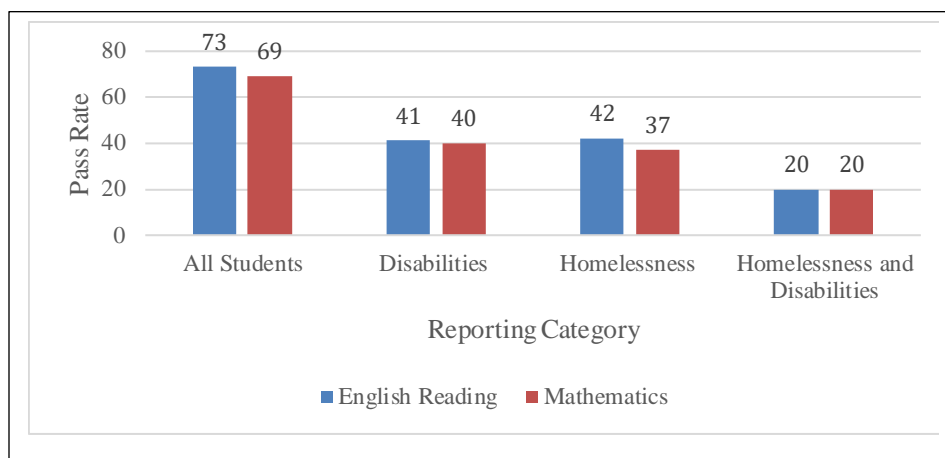


Figure 3: Virginia Standards of Learning Assessment Pass Rates (2022-23).³⁷

B. McKinney-Vento Requirements and the Special Education Process

Practitioners need to consider a variety of factors when determining which law takes the lead when a student experiencing homelessness has a disability. Clearly, issues related solely to special education should follow IDEA (including federal and state regulations). Issues that relate solely to homeless education rights must follow McKinney-Vento mandates and consider the non-regulatory guidance, most recently updated by the U.S. Department of Education in 2018.³⁸ Beyond that, federal law does not assign responsibility.³⁹ Therefore, where both laws inform requirements, collaboration is essential.

Figure 4 demonstrates the critical need to coordinate legislative requirements as well as implementation efforts across programs to ensure that each are effectively supporting students.⁴⁰ Coordination is reflected by the

³⁷ *Test Results Build-A-Table*, VA. DEPT. OF EDUC., https://p1pe.doe.virginia.gov/apex_captcha/home.do?apexTypeId=306 (last updated 2023) (test results) (the data used to create Figure 3 can be accessed here).

³⁸ *Education for Homeless Children and Youths Program Non-Regulatory Guidance: Title VII-B of the McKinney-Vento Homeless Assistance Act, as Amended by the Every Student Succeeds Act*, *supra* note 17.

³⁹ See generally *Individuals with Disabilities Education Act*, H.R. 1350, 108th Cong. (2004) (demonstrating the large discretion given in creating advisory panels for the education of children with disabilities).

⁴⁰ See generally John McGah & Elena Saavedra, *Homelessness & Education Cross-System Collaboration: Applied Research Summary & Tools*, NAT'L CTR. FOR HOMELESS EDUC. (2015), <https://nche.ed.gov/wp-content/uploads/2018/11/res-summ-cross-system.pdf> (discussing the importance of joint efforts between departments).

bottom section of the graphic, which emphasizes the importance of joint efforts across special education and homeless education departments, spanning federal, state, and local levels. The following sections address those topics that require discussion and offer opportunities for joint guidance, training, and technical assistance.

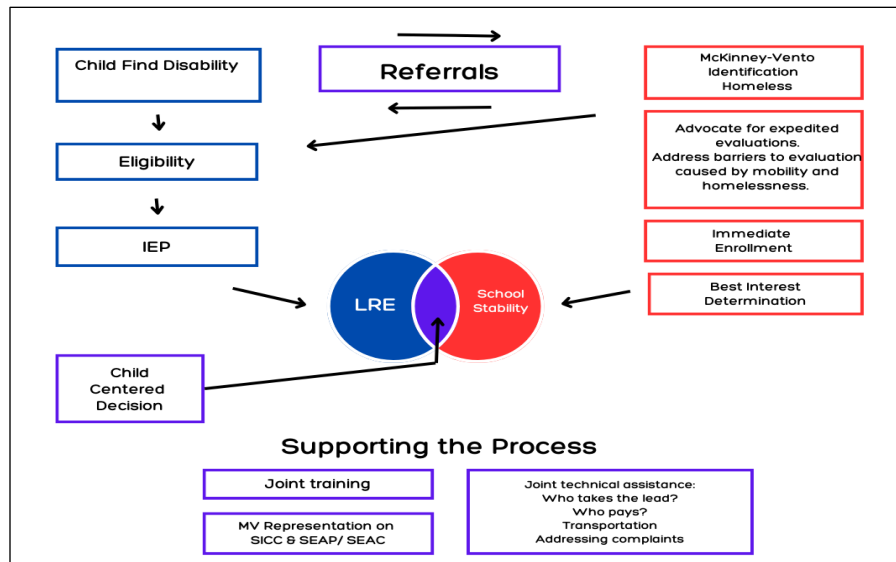


Figure 4: Points of IDEA and MV Coordination.⁴¹

Educators can look to guidance from state and national agencies as a starting point for coordination processes. In 2008, for example, the Office of Special Education and Rehabilitative Services (OSERS) and the Office of Elementary and Secondary Education (OESE) issued a Question-and-Answer document stating that it is up to the states to determine responsibility for a free appropriate public education (FAPE) when a student is homeless.⁴² Some states have adopted additional guidance and recommended practices to address the intersection.⁴³ In Virginia, the McKinney-Vento state coordinator collaborated with the VDOE Office of Special Education to create a technical assistance Question-and-Answer document that provides the processes school divisions should follow when there is an overlap between the two

⁴¹ Figure 4 was created by the authors and was influenced by their research and interpretation of the law.

⁴² *Questions & Answers on Special Education & Homelessness*, OFF. OF SPECIAL EDUC. & REHABILITATIVE SERV. (Feb. 2008), <https://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>.

⁴³ See e.g., *State Plan for the Educ. For Homeless Children & Youth Program*, KAN. STATE DEPT. OF EDUC., https://kckps.org/images/departments/student_services/homeless_programs/state_plan.pdf?r=0.9034068104811013 (Kansas assigns residency to homeless children and youth through Kansas Code K.S.A. 71-1046).

federal laws.⁴⁴

i. Advisory Representation

McKinney-Vento representation is mandated in IDEA. In Part C, the State Interagency Coordinating Council (SICC) must include at least one representative designated by the Office of the Coordinator for Education of Homeless Children and Youth.⁴⁵ Representation in the SICC offers support to McKinney-Vento liaisons who must ensure that homeless children have access to certain early childhood programs, such as Head Start, early childhood education, and early intervention.⁴⁶

A similar mandate exists in IDEA Part B.⁴⁷ The State Advisory Panel (SAP), called the State Special Education Advisory Committee (SSEAC) in Virginia, must include “[s]tate and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act.”⁴⁸ The Office of Special Education Programs (OSEP) has recommended using McKinney-Vento representatives to increase the participation of parents experiencing homelessness in IDEA family surveys.⁴⁹ McKinney-Vento liaisons can be instrumental in supporting parent participation in these surveys by ensuring parents know the importance of the survey and assisting with technology to access the survey.⁵⁰ Without McKinney-Vento representation on these state advisory committees, liaisons may not even be aware these vehicles for parent input exist. Further, McKinney-Vento representation on these committees allows input on state improvement plans (SIP) and state performance reports that are submitted to OSEP annually.⁵¹ Disaggregated data on pass rates and graduation rates for students experiencing homelessness with IEPs can be presented to the SAP to increase awareness and inform SIP decisions.⁵² Local parent representatives on the SAP are encouraged to invite their McKinney-Vento liaisons to their school district

⁴⁴ See *Intersection of McKinney-Vento & IDEA*, PROJECT-HOPE VIRGINIA (2022), <https://education.wm.edu/centers/hope/publications/infobriefs/intersection-of-mckinney-vento-idea.pdf>.

⁴⁵ 20 U.S.C. § 1441(b)(1)(K).

⁴⁶ 42 U.S.C. § 11432(g)(6)(A)(iii); 20 U.S.C. § 1431; see 42 U.S.C. § 9831.

⁴⁷ 20 U.S.C. § 1411(a)(1).

⁴⁸ See 20 U.S.C. § 1412(a)(21)(v).

⁴⁹ See Nat’l Ctr. for Homeless Educ., *Building Bridges Between IDEA and McKinney-Vento*, YOUTUBE (Sep. 20, 2023), https://www.youtube.com/watch?v=dotK_TEGxww.

⁵⁰ See *id.*

⁵¹ See *id.*

⁵² See *Getting to Graduation*, NAT’L CTR. FOR HOMELESS EDUC., <https://nche.ed.gov/wp-content/uploads/2019/01/Getting-to-Graduation-Data-Manual-Final-2019-Main-Sections-Only.pdf> (last updated Jan. 2019).

meetings to discuss how localities are serving these students.⁵³

Both the SICC and SAP include opportunities for public comment.⁵⁴ The topic of children and youth with disabilities who are experiencing homelessness and their needs can be presented by advocates and parents in these forums.

ii. McKinney-Vento Identification and IDEA Child Find

McKinney-Vento liaisons must ensure “homeless children and youths are identified by school personnel through outreach and coordination activities with other entities and agencies.”⁵⁵

IDEA Parts B and C include a mandate to proactively identify children with disabilities in order to provide needed services.⁵⁶ This mandate is known as “Child Find.”⁵⁷ Parts B and C both reference children and youth who are homeless in those Child Find requirements.⁵⁸ While not explicitly identified in the Part C Child Find requirement, there are multiple references to underserved populations that include “infants and toddlers with disabilities who are homeless children and their families” in eligibility, state policy, and assurances requirements.⁵⁹ Part B requires the state to identify all children with disabilities, including those who are homeless, and implement a process to determine which of these students are receiving special education services.⁶⁰

These mandates offer clear opportunities for collaboration. McKinney-Vento liaisons can identify children and youth who may benefit from IDEA services and IDEA staff may be the first to recognize that a child is homeless.⁶¹ This requires joint training. IDEA staff must be able to recognize warning signs that suggest homelessness, and McKinney-Vento staff should know what questions to ask to determine if a new student has an IEP or if a child shows signs of developmental delays.⁶² There should be joint processes

⁵³ See *Navigating the Intersections of the McKinney-Vento Act and Individuals with Disabilities Education Act: Coordination to Help Homeless Children and Youth with Disabilities*, NAT'L CTR. FOR HOMELESS EDUC. AT SERVE (Oct. 2022), https://nche.ed.gov/wp-content/uploads/2018/10/nav_idea_mv.pdf.

⁵⁴ See *State Resources: Part C, IDEAS THAT WORK*, <https://osepideasthatwork.org/resources-grantees/sap-sicc/part-c> (last visited Feb. 1, 2024).

⁵⁵ 42 U.S.C. § 722(g)(6)(A)(i) (2015).

⁵⁶ 20 U.S.C. § 1435(a)(2); see 20 U.S.C. § 1434(1);

⁵⁷ See 20 U.S.C. § 1412(a)(3)(a); see also 20 U.S.C. § 1435(a)(5).

⁵⁸ See 20 U.S.C. § 1412(a)(3)(a); see also 20 U.S.C. § 1435(a)(2).

⁵⁹ 20 U.S.C. § 1434(1); 20 U.S.C. § 1435(a)(2); see 20 U.S.C. § 1437(b)(7).

⁶⁰ See 20 U.S.C. § 1412(a)(3)(A).

⁶¹ NAT'L CTR. FOR HOMELESS EDUC., *supra* note 12, at 3-1, 3-2.

⁶² *Id.* at 5-2.

that allow for referrals in both directions. Many school districts use housing questionnaires.⁶³ These can include a basic needs assessment that asks about IEPs or other special services a student may require.⁶⁴ Often such forms ask about young children in the home so referrals can be made to early childhood programs.⁶⁵ Housing questionnaires can be shared with IDEA staff, or a referral process to the McKinney-Vento liaison could be established whenever common warning signs of housing instability are observed.

iii. Eligibility

Eligibility for McKinney-Vento is based on the child's or youth's living situation.⁶⁶ While a disability may exacerbate mobility (for example, behaviors related to a disability may disrupt a shelter stay or being able to remain in the home of family or friends), a disability does not influence the determination of homelessness.⁶⁷ To qualify for early intervention services under IDEA Part C, the child must have an identified disability; however, the law allows states to include additional risk factors in determining eligibility for infants and toddlers in need of services.⁶⁸ For a child or youth to be eligible for special education under IDEA Part B, there must be an identified disability and documented need that specialized education is needed to make academic progress.⁶⁹ Homelessness and mobility can be compounding factors when determining eligibility for special education services.

There are no clear means to determine what learning difficulties are caused by a disability, trauma, or the lack of opportunity to learn. When a disability is suspected, the parent, school staff, or other person can make a referral that should lead to an evaluation. There are times when school staff will not pursue an evaluation following a referral that cites to trauma and/or mobility that the student has experienced. However, questions about the impact of trauma and mobility should be considered as part of all the data collected for an eligibility determination, rather than functioning as a gatekeeper at the

⁶³ See generally *Determining McKinney-Vento Program Eligibility*, NAT'L CTR. FOR HOMELESS EDUC. (Aug. 2017), <https://nche.ed.gov/determining-eligibility/>.

⁶⁴ See *Student Housing Questionnaire*, BELLINGHAM PUB. SCH., <https://bellingshamschools.org/wp-content/uploads/2016/08/student-housing-form.pdf> (last visited Feb. 1, 2024).

⁶⁵ See *Student Housing Questionnaire*, WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, https://ospi.k12.wa.us/sites/default/files/2023-08/housing_questionnaire_sample.docx (last visited Feb. 1, 2024).

⁶⁶ *Confirming Eligibility for McKinney-Vento Rights and Services*, NAT'L CTR. FOR HOMELESS EDUC. 1 (Aug. 2017), <https://nche.ed.gov/wp-content/uploads/2018/10/conf-elig.pdf>.

⁶⁷ NAT'L CTR. FOR HOMELESS EDUC., *supra* note 4, at 5.

⁶⁸ See 20 U.S.C. § 1432(5)(i).

⁶⁹ *IDEA Part B*, U.C. S.F. OF DEVELOPMENTAL PRIMARY CARE, <https://odpc.ucsf.edu/communications-paper/idea-part-b#:~:text=The%20Individuals%20with%20Disabilities%20Education,disabilities%20ages%20to%2021> (last visited Feb. 1, 2024).

beginning of the special education process.⁷⁰

School staff also may wish to explore strategies under the response to intervention (RtI) model that allows staff to provide interventions and collect more data about the student prior to considering a special education evaluation.⁷¹ RtI allows additional help to be provided without a special education label.⁷² If these interventions are successful, a special education evaluation may not be needed. While RtI can benefit students experiencing homelessness when lower tiers of support are needed, special education evaluations may be delayed while waiting for RtI data.⁷³ If the student moves frequently, RtI data may not be available.⁷⁴

In recognition of this challenge, OSERS and OSEP published Dear Colleague Letters on education for highly mobile children, which encouraged states and school districts to adopt policies and practices to ensure such students receive timely evaluations and eligibility determinations.⁷⁵ These offices reiterated that mobility and implementation of RtI for highly mobile students should not delay an evaluation and that records should be expedited when a student moves to a new locality during an evaluation.⁷⁶ Furthermore, the parents in highly mobile families need to be aware of the requirements to continue the evaluation in a new school district, unless the parent and district agree to an extension. For example, a Virginia McKinney-Vento liaison was able to expedite an evaluation for a student by having a strong collaborative relationship with the school district's director of special education.⁷⁷ When the liaison was serving a student with a history of being very mobile and unlikely to be in the school district long enough to complete an evaluation,

⁷⁰ See CEC's *Position on Response to Intervention (RTI): The Unique Role of Special Education and Special Educators*, COUNCIL FOR EXCEPTIONAL CHILD. (Oct. 2008), https://exceptionalchildren.org/sites/default/files/2020-08/RTI_FIXED.pdf; see generally *Question and Answers on Special Education and Homelessness*, U.S. DEPT OF EDUC.: OFF. OF SPECIAL EDUC. AND REHAB. SERV. (Feb. 2008), <https://sites.ed.gov/idea/files/spec-ed-homelessness-q-a.pdf>.

⁷¹ See CEC's *Position on Response to Intervention (RTI): The Unique Role of Special Education and Special Educators*, COUNCIL FOR EXCEPTIONAL CHILD. (Oct. 2008), https://exceptionalchildren.org/sites/default/files/2020-08/RTI_FIXED.pdf

⁷² See *Question and Answers on Special Education and Homelessness*, *supra* note 70.

⁷³ See *id.*

⁷⁴ See, e.g., *id.*

⁷⁵ OFF. OF SPECIAL EDUC. PROGRAMS, *Dear Colleague Letter* (Nov. 10, 2022), <https://sites.ed.gov/idea/files/Letter-to-State-Directors-of-Special-Education-on-Ensuring-a-High-Quality-Education-for-Highly-Mobile-Children-11-10-2022.pdf>; OFF. OF SPECIAL EDUC. PROGRAMS, *Dear Colleague Letter* (July 19, 2013), <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf>.

⁷⁶ *Dear Colleague Letter* (Nov. 10, 2022), *supra* note 75; *Dear Colleague Letter* (July 19, 2013), *supra* note 75.

⁷⁷ See generally MICHAEL SANTOS, *THE MOST FREQUENTLY ASKED QUESTIONS ON THE EDUCATIONAL RIGHTS OF CHILDREN & YOUTH IN HOMELESS SITUATIONS* 50 (Oct. 2017).

the liaison was able to advocate for the student to be prioritized for an evaluation.⁷⁸

iv. Immediate Enrollment and IEP-Driven Services

When a student experiencing homelessness moves to a new school, McKinney-Vento mandates immediate enrollment.⁷⁹ Even if a student lacks proper documents, their enrollment cannot be delayed. Enrollment is defined as “attending classes and participating fully in school activities.”⁸⁰ IDEA requires that services be provided based on a student’s IEP, and addresses how an IEP should be implemented when a student moves. If the IEP is current (written, signed, and in effect for the current academic year), the new school district must immediately provide appropriate services. Appropriate means “services comparable to those described” in the previous IEP, in consultation with parents.⁸¹

The new school district must promptly obtain the child’s records from the previous school, and the previous school must promptly respond to records requests. The new district can adopt the former IEP or develop a new one.⁸² To ensure immediate enrollment that includes access to special education, a phone call may be required to expedite the transfer of records and obtain the information needed to allow the student to begin attending school.⁸³ Online IEP systems have lessened some of the delays related to record transfer.⁸⁴ When delays do occur, McKinney-Vento liaisons and state coordinators can assist.⁸⁵ Liaisons can contact the previous school district liaison for assistance and, when students come from other states, state coordinators can reach out to their counterparts in those states.⁸⁶

When high mobility or natural disasters delay locating records, there is no consensus regarding appropriate steps. OSERS addressed the question about what should occur when the IEP cannot be obtained, suggesting the local

⁷⁸ *Id.*

⁷⁹ See 42 U.S.C. § 11432.

⁸⁰ See 42 U.S.C. § 11434(a).

⁸¹ 34 C.F.R. § 300.323(e) (2024); see 20 U.S.C. § 1414.

⁸² 34 C.F.R. § 300.323(e) (2024); see 20 U.S.C. § 1414(d)(2)(C).

⁸³ See *Moving, Schools, Records & IEP's*, LEARNING DISABILITIES ASS'N OF AM., https://ldaamerica.org/lda_today/moving-school-records-ieps/ (last visited Feb. 1, 2024).

⁸⁴ See *Virginia IEP*, Va. Dep’t of Educ., <https://www.doe.virginia.gov/programs-services/special-education/iep-instruction/virginia-iep> (last visited Feb. 1, 2024).

⁸⁵ See *Navigating the Intersections of the McKinney-Vento Act and Individuals with Disabilities Education Act: Coordination to Help Homeless Children and Youth with Disabilities*, *supra* note 53.

⁸⁶ See *Local Homeless Education Liaisons: Important Information for New Local Liaisons*, NAT’L CTR. FOR HOMELESS EDUC. AT SERVE (Aug. 2017), <https://nche.ed.gov/wp-content/uploads/2018/10/new-liaisons.pdf>.

education agency would not be required to provide services.⁸⁷ The Department did say, “[h]owever, the new public agency must place the child in the regular school program and conduct an evaluation and eligibility determination . . . if determined to be necessary by the new public agency.”⁸⁸

NAEHCY and the National Law Center on Homelessness and Poverty (NLCHP) submitted a response to OSERS and OESE which voiced concern that, “[t]his guidance has the potential to result in many students with current IEPs not receiving services.”⁸⁹ Instead, NAEHCY and NLCHP recommended using practices adopted in the aftermath of Hurricane Katrina: “[t]o avoid students being placed in inappropriate classrooms, many school districts employ interim IEPs and/or provide special education and related services based upon oral reports from parents and previous teachers of what the current IEP requires.”⁹⁰

Other solutions that have been posed include placing students whose IEPs are not available in co-taught classrooms or other inclusive practices and expediting evaluations when significant needs are observed.⁹¹ As noted previously, online IEP systems have reduced not only record delays but the challenges of non-extant paper records.

v. Student-Centered Decision Making and Responsibility

When a student moves to another living situation, McKinney-Vento presumes that maintaining school stability and remaining in the school of origin will be in the student’s best interest, unless it is against the wishes of the parent, guardian, or UHY.⁹² IDEA includes free appropriate public education (FAPE) and least restrictive environment (LRE) as key principles. To ensure compliance with both laws, the best practice is to include representation from both programs when changes in IEP placement are being considered, or when a student’s residence changes.

a) Responsibility for FAPE

OSERS responded to questions from NCHE in 2013 that revisited the issue of providing FAPE to students physically moving to a new school district, but still attending their school of origin in another district.⁹³ OSEP

⁸⁷ *Question and Answers on Special Education and Homelessness*, *supra* note 70, at 22-23.

⁸⁸ *Id.* at 23.

⁸⁹ *Response to “Question and answers on special education and homelessness,”* U.S. DEPT. OF EDUC. (Aug. 24, 2008) (from the Office of Special Education and Rehabilitative Services) (out of print).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 42 U.S.C. 11432 (g)(3)(B)(i).

⁹³ *Question and Answers on Special Education and Homelessness*, *supra* note 70, at 26.

acknowledged that states have discretion in determining which district provides FAPE.⁹⁴ Therefore, each state should have a process to assign responsibility for FAPE. If this is not a written process, the state coordinator and state special education staff may wish to develop a statement.

b) Balancing LRE and School Stability

To provide FAPE, the student's education must be provided in the LRE.⁹⁵ Therefore, when a student's IEP team is considering a change in placement, the importance of school stability should be included in the decision making. In other words, school stability and the option to remain in the school of origin should be added to the FAPE analysis when a student experiences homelessness.

Conversely, when a student experiencing homelessness with an IEP changes residence, not only school stability, but FAPE and LRE, must be considered.⁹⁶ When an IEP change in placement is considered, consultation with the McKinney-Vento liaison or designee is needed. When a change in residence occurs, an IEP representative should be included in the best interest determination to consider appropriateness of the current placement, and the possibility of a less restrictive setting where the child now resides.

c) Transportation Considerations

In its response to NCHE, OSERS also outlined processes related to transportation to the school of origin for students experiencing homelessness with disabilities.⁹⁷ OSERS recommended IEP and McKinney-Vento teams coordinate when determining whether McKinney-Vento or IDEA funds should be used to transport students.⁹⁸ If transportation is part of a student's IEP, or is related to the school of origin as part of a student's best interest, then IDEA funds can be used to provide transportation.⁹⁹ If transportation is not a requirement of the IEP, then McKinney-Vento funds can be used to transport students to their school of origin.¹⁰⁰

More specifically, the letters discussed the use of special education buses. In general, IDEA funds are designated to cover excess costs of education and

⁹⁴ *Id.* at 25.

⁹⁵ *Id.* at 5-6.

⁹⁶ See NAT'L CTR. FOR HOMELESS EDUC, *supra* note 4, at 6.

⁹⁷ Letter from Melody Musgrove, Dir., Off. of Special Educ. Programs, to Diana Bowman, Dir., Nat'l Ctr. for Homeless Educ. (Aug. 5, 2013) (on file with the U.S. Dep't of Educ. Off. of Special Educ. and Rehab. Servs.).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

services.¹⁰¹ However, there could be situations where other students receiving incidental benefits are able to ride special education buses.¹⁰² This might allow a McKinney-Vento student who did not require specialized transportation to access transportation that was provided with IDEA funds. However, since most special education transportation is not provided with IDEA funds, but rather with local funds, the specialized transportation for students experiencing homelessness or transportation in an IEP should be coordinated across the two programs to improve efficiencies in arranging transportation.¹⁰³ These issues were included in the 2022 Virginia Q&A document to provide school districts with a consistent state response from both programs.¹⁰⁴

d) Special Considerations for Unaccompanied Homeless Youth

The broad definition of “parent” in IDEA can help UHY access the special education process. Many of these students have someone who meets the broad definition of parent who can sign for permission to conduct an evaluation and provide IEP services.¹⁰⁵ When more than one person meets the definition of parent, the wishes of parents *who are engaged in their children’s education* must be prioritized in the special education process.¹⁰⁶ If no one is available to act as a parent, the LEA must appoint a surrogate within thirty days.¹⁰⁷ Since this cannot delay enrollment or the provision of services for a student experiencing homelessness, IDEA regulations include the provision for a temporary surrogate to be appointed during the interim.¹⁰⁸ This temporary surrogate can be staff of homeless shelters, independent living programs, or street outreach programs.¹⁰⁹

Most unaccompanied homeless youth in Virginia, however, are not served

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See id.* (describing how IDEA and McKinney-Vento funds can be used as a substitute for the other in certain situations); *Intersection of McKinney-Vento and IDEA*, *supra* note 44 (discussing how McKinney-Vento and IDEA work together).

¹⁰⁴ *Intersection of McKinney-Vento and IDEA*, *supra* note 44.

¹⁰⁵ 34 C.F.R. § 300.30 (defining parent as (1) A biological or a adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) an individual acting in the place of a biological or a adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or (5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act).

¹⁰⁶ 20 U.S.C.A. § 1400 (West).

¹⁰⁷ 20 U.S.C.A. § 1415(b)(B) (West).

¹⁰⁸ 20 U.S.C.A. § 1415(2)(a)(ii) (West).

¹⁰⁹ 34 C.F.R. § 300.519(f).

by runaway and homeless youth programs or homeless shelters. Federal guidance therefore includes allowing a temporary surrogate parent (unlike a regular surrogate parent) to be the employee of an SEA or LEA, as well as anyone else involved in the care or education of the student.¹¹⁰ Given the potential conflict of interest—when a school employee also acts as the student advocate and therefore has to balance student needs and school district resources—this practice has not been encouraged in Virginia, nor have specific cases where this provision would be helpful come to the attention of the state coordinator.¹¹¹

IV. INTERPRETATION OF THE LAWS IN COURT CASES

As of 2023, there has been only one federal circuit court ruling that explicitly dealt with the intersection of the McKinney-Vento Act and the Individuals with Disabilities Education Act.¹¹² Accordingly, school administrators and personnel must rely on more generally related legal precedents to navigate the delivery of services to students who are experiencing homelessness with disabilities. Of note, there are two U.S. Supreme Court rulings in addition to the federal circuit court ruling that relate to identification, meaningful participation, and parent involvement in equitable educational opportunities for students with disabilities experiencing homelessness.¹¹³ These decisions can provide a foundation for future decisions related to these students.

A. G.S. v. Rose Tree Media School District

The case of *G.S. v. Rose Tree Media School District*—which found in favor of the family—highlights the need for school district personnel to follow appropriate McKinney-Vento protocol to ensure FAPE for students with disabilities who are experiencing homelessness.¹¹⁴ In this case, a family

¹¹⁰ *Supporting Students Experiencing Homelessness Who Have Disabilities: Federal Provisions to Increase Access and Success*, NAT'L CTR. FOR HOMELESS EDUC. (Aug. 2022), <https://nche.ed.gov/wp-content/uploads/2022/08/disabilities-brief.pdf>; see Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46712 (Aug. 14, 2006) (to be codified at 34 C.F.R. pts. 300, 301) (a surrogate parent for education purposes is assigned to make educational choices for a child that is in the child's best educational interest. Surrogate parents typically do not include SEA or LEA employees due to conflict of interest, but here there is a carveout for unaccompanied homeless youth).

¹¹¹ See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. at 46712.

¹¹² See generally *G.S. v. Rose Tree Media Sch. Dist.*, 914 F.3d 206 (3d. Cir. 2018).

¹¹³ See generally *Rose Tree Media Sch. Dist.*, 914 F.3d at 206; *Plyler v. Doe*, 457 U.S. 202 (1982); *Lau v. Nichols*, 414 U.S. 563 (1974).

¹¹⁴ *Rose Tree Media Sch. Dist.*, 914 F.3d at 208.

who had been renting a property in the Rose Tree Media School District lost housing and moved in with a family member in another district.¹¹⁵ According to the McKinney- Vento Act, the student and his sister were identified as experiencing homelessness due to being “doubled-up,” or in “inadequate living circumstances,” and were therefore allowed to continue attending their school of origin.¹¹⁶ Later that year, the student was suspended in response to a disciplinary infraction.¹¹⁷ The school district and family reached an agreement for the student to attend an out-of-district school and the parents waived homeless claims for the following school year.¹¹⁸ However, when the family tried to reenroll their son in Rose Tree the following year, they were denied by the school district, *even though his sister was still enrolled there*.¹¹⁹ Subsequently, the family filed a grievance with the Pennsylvania Department of Education.¹²⁰ The issue went to a federal district court, where the school district appealed the grievance, arguing that: (1) the parents had signed a waiver for enrollment, (2) the family was no longer homeless due to the length of the living arrangements, and (3) reenrollment was not in the student’s best interest.¹²¹ Ultimately, the District Court issued a summary judgment in favor of the family, which required the school district to allow the family to enroll their son in Rose Tree because they *did* meet the McKinney-Vento definition of homelessness.¹²²

The ruling of this case underlines the need for practitioners to be familiar with the McKinney-Vento definition of homelessness, which focuses on residential qualities of “fixed,” “regular,” and “adequate.”¹²³ Specifically, the law clarifies “doubled-up” circumstances, in which families or friends are sharing a residency that is not fixed, regular, and adequate.¹²⁴ In *G.S. v Rose Tree Media School District*, the student was sleeping in the kitchen, living room, or basement, which meant his living conditions were not adequate.¹²⁵ Additionally, the Court of Appeals for the Third Circuit noted that there was no time limit on homeless circumstances in the McKinney-Vento Act and the school district did not have the right to deny the student reenrollment,

¹¹⁵ *Id.*

¹¹⁶ Rose Tree Media Sch. Dist., 914 F.3d at 208.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 208-9.

¹²⁰ Rose Tree Media Sch. Dist., 914 F.3d at 209.

¹²¹ *Id.*

¹²² *Id.*

¹²³ McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 1143a(2)(A).

¹²⁴ *Id.*

¹²⁵ Rose Tree Media Sch. Dist., 914 F.3d at 208.

especially since his sister was identified as homeless.¹²⁶ Finally, the issue of best interest—which acknowledges the positive impact of a student remaining in their school of origin unless it goes against the parents’ wishes—was also before the Third Circuit.¹²⁷ Because this student’s parents made it clear they wanted their son to remain in Rose Tree, their request complied with best interest provision under McKinney-Vento.¹²⁸

B. Related Supreme Court Rulings

Although no cases directly involving McKinney-Vento and IDEA have escalated to the Supreme Court, there have been two Supreme Court rulings that established grounds for the enrollment of students in public schools and the provision of services necessary for meaningful learning opportunities. These determinations establish precedence for practitioners in terms of serving students without legal documentation and offering services that create equitable situations in which students can engage and participate.¹²⁹

First, *Plyler v. Doe* provided grounds for ensuring that undocumented children are entitled to educational opportunities that include FAPE.¹³⁰ In this case, the Smith County School District denied enrollment to school-aged children from Mexico because they did not have legal documentation.¹³¹ The District Court and the Court of Appeals for the Fifth Circuit held that the Texas statute responsible for denying the students’ enrollment violated the Equal Protection Clause of the Fourteenth Amendment, and the students should have been able to attend school.¹³² In the following two years, similar suits arose in other districts around the state, resulting in their ascents to the U.S. Supreme Court. The U.S. Supreme Court ruled that denying undocumented immigrant children the right to attend public school constitutes discrimination violating the Equal Protection Clause of the Fourteenth Amendment.¹³³ The National School Boards Association (NSBA) and the National Education Association (NEA) produced a guidance document that addressed the application of *Plyler* to McKinney-Vento for

¹²⁶ *Id.* at 211.

¹²⁷ *Id.* at 209.

¹²⁸ *Id.* at 211-12.

¹²⁹ See Nicholas Espíritu, *Education and Democracy from Brown to Plyler*, 96 St. John's L. Rev. 899, 919 (2022).

¹³⁰ *Plyler v. Doe*, 457 U.S. at 230.

¹³¹ *Id.*

¹³² *Id.* at 208-9.

¹³³ *Id.* at 230.

undocumented students who are experiencing homelessness.¹³⁴ The guidance emphasized immediate enrollment regardless of immigration status.¹³⁵ Such undocumented students that also have a disability have the same educational rights to enroll and meaningfully participate in school.¹³⁶

Secondly, the *Lau v. Nichols* case helped clarify the need for students to have equitable chances to participate in public education, without discrimination based on race, color, or national origin in any federally funded program or activity.¹³⁷ In this case, the San Francisco school system was integrated in 1971, resulting in the enrollment of 2,856 students of Chinese ancestry who did not speak English.¹³⁸ One-thousand students received supplemental English instruction, but the other 1,800 did not, which the families claimed violated their Fourteenth Amendment rights.¹³⁹ Although the district court denied relief and the Court of Appeals for the Ninth Circuit affirmed, the U.S. Supreme Court reversed, holding that these students were unable to participate in meaningful ways in the public school system, in violation of the Civil Rights Act of 1964.¹⁴⁰ This case has application for students who are experiencing homelessness and/or those with a disability, as their educational rights are also protected under federal laws.¹⁴¹ It is the responsibility of local and state personnel to ensure students receive appropriate accommodations to have full access to school experiences.¹⁴²

V. CONCLUSION

The special education process is complex and requires a wide variety of participants to ensure the needs of students with disabilities are met, and appropriate educational services are provided. When students with disabilities have protections under various federal education statutes,

¹³⁴ See generally JOHN W. BORKOWSKI, NAT'L SCH. BDS. ASS'N & NAT'L EDUC. ASS'N, LEGAL ISSUES FOR SCHOOL DISTRICTS RELATED TO THE EDUCATION OF UNDOCUMENTED CHILDREN (Lisa E. Soronen ed., 2009).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See *Lau v. Nichols*, 414 U.S. at 565-66.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See, e.g., *Lloyd v. Reg'l Transp. Auth.*, 548 F.2d 1277, 1285 (7th Cir. 1977) (applying the private right of action in *Lau* to the facts of the case further laying out that federal disability protections require school districts to accommodate affected students).

¹⁴² See *Protecting Students with Disabilities*, U.S. DEP'T OF EDUC., 1-3 (2023), <https://www2.ed.gov/about/offices/list/ocr/504faq.html>.

additional expertise related to that legislation must be incorporated into the special education process. Similarly, special education expertise must be incorporated into the processes required under these additional legislative mandates. For students eligible under McKinney-Vento and IDEA, coordination is required at the federal, state, and local levels through cross-representation on advisory boards to navigate the potential conflicts between laws that emphasize different needs a student may have. Ongoing conversations are needed to ensure effective processes for identifying students, determining eligibility for services, and resolving conflicts. Focusing on the intersectionality for these students in data analyses can identify areas that need greater attention and provide a metric to determine progress in these efforts. These conversations should lead to clear procedures, joint or cross-training of educators who provide these services, and a process for joint technical assistance.

There are many opportunities for additional research on this topic. For example, we need additional data to assist in eligibility determinations for special education when high mobility has affected a student's opportunities to learn. Moreover, we need to understand what strategies are most critical to the success of these students and the most effective ways to coordinate services across programs to improve graduation rates. And finally, more research is needed to ensure that classroom teachers and others working directly with these students have the knowledge and skills needed to make a difference with each child.