

## 14.0 EDUCATION LAW ISSUES

### 14.1 Overview

Federal law provides protections for children who are homeless or become displaced as a result of a disaster.<sup>1</sup> The code defines “homeless children and youths” as children who do not have a fixed, regular, and adequate nighttime residence.<sup>2</sup> The McKinney-Vento Act includes protections for children and youths who reside in shelters, transitional housing, cars, campgrounds, hotels, motels, and even those children and youths who are forced to live with others temporarily because of a disaster.<sup>3</sup>

### 14.2 Homeless/Displaced Students Are Entitled to Immediate Enrollment

The McKinney-Vento Act guarantees the right of homeless/displaced students to enroll immediately into the public school that serves the attendance area where the students are staying temporarily.<sup>4</sup> Additionally, the Texas Education Code allows a homeless student to enroll in any school district in Texas, regardless of where they are living temporarily.<sup>5</sup> Thus, to make the best and most informed school enrollment decision, families and students impacted by a disaster should spend some time seeking additional guidance on what to do given their specific circumstances.

### 14.3 Homeless/Displaced Students Can Enroll Without Documentation

Students who are homeless/displaced as a result of a disaster are entitled to immediate enrollment in public school even if they don’t have the documentation that schools typically require for registration, like proof of residency, birth certificates, and immunization and health records.<sup>6</sup> School districts are required to help students obtain these important documents. For example, school districts should provide Emergent Bilingual Students who enroll without documentation from their previous school with protections that allow access to appropriate programming. This inquiry is made more accessible after conversations with parents and students, as well as a review of the documents already within their possession. Advocates can also request that a student’s enrolling district make a Texas Records Exchange (TReX) System request to the student’s previous district, as many impacted districts still have access to electronic student information.

### 14.4 Other Protections to Which Homeless/Displaced Students Are Entitled

First, under the McKinney-Vento Act, homeless/displaced students are eligible for free school meals without delay. Second, homeless/displaced students have the right to go back to their “school of origin” (the school they attended before the disaster), and the school district must provide them with transportation to and from their “school of origin” if a parent or guardian makes a request. Third, homeless/displaced students who enroll in a new school district must receive transportation services that are comparable to the transportation services that other regularly housed students receive. Fourth, school districts must assess the needs of homeless/displaced students and refer those students and their families

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<sup>1</sup> See generally [42 U.S.C. Ch. 119](#).

<sup>2</sup> [42 U.S.C. § 11434a\(2\)\(A\)](#).

<sup>3</sup> [42 U.S.C. § 11434a\(2\)\(B\)\(i\)](#).

<sup>4</sup> [42 U.S.C. § 11432\(g\)\(3\)\(C\)](#).

<sup>5</sup> [Tex. Educ. Code § 25.001\(b\)\(5\)](#).

<sup>6</sup> [42 U.S.C. § 11432\(g\)\(3\)\(C\)\(i\)](#).

to appropriate local resources, including health, mental health, dental, housing, substance abuse, and other community-based supports and services. Fifth, homeless/displaced students are entitled to participate in any school and extracurricular activities to the fullest extent. Sixth and finally, if a receiving school does not agree that a homeless/displaced student is eligible to attend that school, the student has the right to remain enrolled pending any appeals, to receive a written explanation of the reasons for the district's objections to enrollment, and to receive assistance from the district's homeless liaison to dispute the school's decision regarding school selection and enrollment.

#### **14.5 Every School District Is Required to Designate a Homeless Liaison**

Every school district in Texas is required to have a homeless liaison that is responsible for coordinating efforts to assist and support homeless/displaced students. The Texas Education for Homeless Children and Youth Program (TEHCY)<sup>7</sup> maintains a [current directory](#) of these liaisons. TEHCY also maintains a toll-free hotline: 1-800-446-3142. The hotline is staffed from Monday through Friday, 8:00 A.M. to 8:00 P.M.

#### **14.6 Special Education**

Homeless status is exclusive of special education identification, and thus special education programming follows students to any school in which they enroll. Parents who are forced to enroll a student with a disability in a different district because of displacement due to a disaster are entitled to services comparable to what they previously received.

A parent should disclose if their child was previously receiving special education services during the enrollment procedure to ensure that the school gives the student expedited special education services. For students with disabilities who enroll with missing or incomplete special education records, school districts must ensure those students receive a Free Appropriate Public Education (FAPE) by using whatever information is available at the time of enrollment. This information includes, but is not limited to, records provided by the parent, interviews with the parent and student, and conversations with the student's medical and/or mental health providers.<sup>8</sup>

The receiving school must provide services comparable to those the student received in the old district until it either: 1) adopts the Individual Education Plan (IEP) developed by the old district; or 2) develops, adopts, and implements a new IEP.<sup>9</sup> Within 30 days, the receiving school must then gather additional information, develop or propose new IEPs, and determine the need for further assessment.<sup>10</sup> The receiving school may not dismiss programs and services from the prior IEP without developing a new IEP in accordance with state and federal procedural requirements.<sup>11</sup> IEP supports include related services such as special education transportation, counseling, occupational therapy, physical therapy, assistive technology, speech therapy, behavior supports, and specialized instruction.<sup>12</sup>

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<sup>7</sup> NTD: THEO appears to have been replaced by TEHCY.

<sup>8</sup> [20 U.S.C. § 1414\(d\)\(2\)\(C\)\(i\)](#).

<sup>9</sup> [34 C.F.R. § 300.323\(e\)](#).

<sup>10</sup> Education Service Center Region 4, *Student Transfers Flowchart*, [esc4.net/Assets/transfer-students-flowchart\(1\).pdf](#); [19 Tex. Admin. Code § 89.1050\(j\)\(2\)](#).

<sup>11</sup> [34 C.F.R. § 300.323\(e\)\(2\)](#); [20 U.S.C. § 1414\(d\)\(2\)\(C\)\(i\)\(I\)](#).

<sup>12</sup> [34 C.F.R. § 300.34\(a\)](#); [20 U.S.C. § 1401\(26\)](#).

If a disaster destroys a student's records that documented a disability or established the student's special education eligibility and consequently were the basis of educational and Admission, Review, and Dismissal (ARD) committee decisions, the school district where the child is enrolled must convene an ARD committee to address the student's specific situation. The ARD committee must determine a course of action to address the lack of documentation and what steps the student needs to take to remain in compliance with the federal framework for special education eligibility. The ARD committee should gather, review, and discuss data and observations from teachers and related services staff that might establish the student's continued eligibility by conducting a Review of Existing Evaluation Data (REED). If the school district cannot establish the student's eligibility, it must conduct a new assessment with parental consent.<sup>13</sup>

After a disaster, new academic or behavioral needs may arise within a student's educational program. The student's school district must convene an ARD committee to determine the best course of action to address the student's new needs.

The Individuals with Disabilities Education Act (IDEA) imposes an affirmative obligation on Texas and its public agencies to identify, locate, and evaluate all children residing in Texas who are suspected of having disabilities and who are in need of special education and related services, regardless of the severity of their disability. This obligation is called "child find."<sup>14</sup> Texas law also provides specific timelines for schools to respond to a parent's written request for special education evaluation, so parents should try to make requests for special education evaluation in writing.<sup>15</sup>

The IDEA allows children with any disability to receive special education if the disability gives rise to a need for specially designed instruction, which can include modified academic instruction or behavioral supports.<sup>16</sup>

For a student who is not eligible to receive special education services under the IDEA, but is still experiencing educational difficulties after a disaster, the student may be eligible for disability identification under Section 504 of the [Rehabilitation Act](#). Section 504 provides a broader definition of an individual with a disability and allows for accommodations and supports within the education environment that may be appropriate for a trauma-based diagnosis.

#### **14.7 COVID-19-Related Issues**

Students who are homeless or displaced are more at risk of losing services during the COVID-19 pandemic. The protections under the McKinney-Vento Act are still available to homeless/displaced students. Homeless/displaced students may remain enrolled in their "school of origin" if they move outside of their attendance zone.

In addition, school districts remain obligated to carry out their "child find" obligations under the IDEA. The COVID-19 pandemic may result in an increase in students experiencing a disability covered by the IDEA (including students experiencing a health impairment or a serious emotional disturbance as a result of the pandemic).

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<sup>13</sup> [34 CFR § 300.305](#).

<sup>14</sup> [20 U.S.C. § 1412\(a\)\(3\)\(A\)](#).

<sup>15</sup> [19 Tex. Admin. Code § 89.1011\(b\)](#).

<sup>16</sup> [34 CFR §300.8](#).

If a student with a disability, including one at high risk of severe medical complications, is excluded from school during an outbreak of COVID-19 and the student's school remains open, then the student is entitled to certain protections under the IDEA. If the exclusion from school lasts longer than ten school days, then such exclusion from school may constitute a change in placement. Under the IDEA, a change in placement is subject to certain procedural safeguards, including requiring decision-making by a group of persons including the parents and other persons knowledgeable about the child and the placement options. In addition, Section 504 of the Rehabilitation Act offers other evaluation and procedural safeguards for a change in placement, including periodic reevaluation of the disability determination.<sup>17</sup> As a general rule, before a student can be served in a homebound setting, the ARD committee must review documentation from a physician stating that the student is expected to be confined to the home for a minimum of four consecutive weeks.<sup>18</sup> Alternatively, some districts may allow homebound placements for chronically ill students who are expected to be confined to the home for a minimum of four weeks throughout the school year. With the majority of state funding for virtual learning ending, more disputes may arise over whether homebound services are required for students who no longer have the option to participate through online learning but believe they are at higher risk of contracting COVID during in person instruction.

In addition to each school district's homeless liaison and the TEHCY hotline referenced above under 14.5, TEHCY maintains an Inclement Weather FAQ which has a section on "Resources, Assistance and Support" [tea.texas.gov/academics/special-student-populations/tehcyc-inclement-weather-faqs.pdf](https://tea.texas.gov/academics/special-student-populations/tehcyc-inclement-weather-faqs.pdf). More general information: [tea.texas.gov/about-tea/news-and-multimedia/correspondence/taa-letters/additional-severe-weather-and-disaster-guidance](https://tea.texas.gov/about-tea/news-and-multimedia/correspondence/taa-letters/additional-severe-weather-and-disaster-guidance).

Students who move or become homeless during school closures are likely to have trouble contacting the registrar at the nearest campus. If that occurs, they may try reaching the homeless liaison. If the student has a disability, they can also contact the school's special education department. The Texas Education Agency has assembled guidance on many topics related to the pandemic in a centralized location that continues to be updated.<sup>19</sup>

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<sup>17</sup> U.S. Department of Education, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 2020). [www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf](https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf).

<sup>18</sup> [19 Tex. Admin. Code § 89.1005\(c\)\(2\)\(A\)](#).

<sup>19</sup> Texas Education Agency, *Coronavirus (COVID-19) Support and Guidance*, [tea.texas.gov/texas-schools/health-safety-discipline/covid/coronavirus-covid-19-support-and-guidance](https://tea.texas.gov/texas-schools/health-safety-discipline/covid/coronavirus-covid-19-support-and-guidance).