

QUESTIONS AND ANSWERS ON SPECIAL EDUCATION AND HOMELESSNESS

February 2008

Introduction

The Office of Special Education and Rehabilitative Services and the Office of Elementary and Secondary Education issue this Question and Answer (Q & A) document to provide State and local educational officials, early intervention services providers, and homeless assistance coordinators with information to assist with implementation of the requirements of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations and the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act). This Q & A document represents the Department's current thinking on these topics. It does not create or confer any rights for or on any person. This Q & A document does not impose any requirements beyond those required under applicable law and regulations.

If you are interested in commenting on this Q & A document, please email us your comment at OSERSguidancecomments@ed.gov (put the word Homelessness in the subject line of your e-mail) or write to us at the following address:

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Specifically, this Q & A document provides information to special educators, early intervention providers, and homeless assistance coordinators about some of the requirements of the IDEA and the McKinney-Vento Act that apply in serving homeless children with disabilities. The IDEA assists States in meeting the early intervention needs of infants and toddlers with disabilities and their families and the special education and related services needs of children with disabilities. The IDEA rights and protections applicable to children with disabilities and their parents under Part B of IDEA (Grants to States program) and the rights and protections applicable to infants and toddlers with disabilities and their families under Part C of IDEA (Infants and Toddlers With Disabilities program) apply to homeless children with disabilities. Part B of IDEA (Part B) provides assistance to States, and through them to local school districts, to assist in providing a free appropriate public education (FAPE¹) to children with disabilities between the ages of 3 and 21, inclusive. FAPE under Part B of IDEA is a statutory term

¹ The term free appropriate public education is used in IDEA, the McKinney-Vento Act and section 504 of the Rehabilitation Act of 1973, as amended. This term, however, has a different meaning under each statute. Therefore, the acronym FAPE, as used in this document, only refers to FAPE under IDEA.

that has a specific meaning, and includes, among other elements, the provision of special education and related services, at no cost to parents, under public supervision and direction, in an appropriate preschool, elementary school, or secondary school program in the State involved, in conformity with an individualized education program (IEP). States and their public agencies also have an affirmative obligation to identify, locate, and evaluate all children residing in the State 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, known as “child find”, is specifically applicable to homeless children. Relevant requirements regarding FAPE and child find under Part B as they particularly apply to homeless children with disabilities are described in more detail throughout this Q & A document.

Part C of IDEA (Part C) authorizes assistance to States in developing and implementing a coordinated, Statewide early intervention system to meet the early intervention needs of infants and toddlers with disabilities and their families. Some relevant requirements of Part C relating to child find and the provision of early intervention services as they apply in particular to homeless infants and toddlers with disabilities and their families also are described further in this Q & A document.

In addition, two Federal civil rights laws, section 504 of the Rehabilitation Act of 1973 (Section 504) and title II of the Americans with Disabilities Act (Title II), protect students with disabilities. Section 504 ensures that educational institutions receiving Federal financial assistance from the Department of Education (Department) do not discriminate on the basis of disability against “qualified” students with disabilities. Generally, any student with a disability who is of mandatory school age is “qualified,” regardless of whether or not the student is homeless. Section 504 requires public elementary and secondary school systems to provide a free appropriate public education to each qualified student with a disability, regardless of the nature or severity of the disability. Title II also prohibits disability discrimination by public entities, including public schools, and similarly applies to students with disabilities who are homeless as well as those who are not homeless. For more information on the requirements of Section 504 and Title II, please consult the Section 504 Final Regulations at 34 CFR Part 104, at http://www.access.gpo.gov/nara/cfr/waisidx_07/34cfr104_07.html and the Title II regulations at http://www.access.gpo.gov/nara/cfr/waisidx_07/28cfr35_07.html.

The McKinney-Vento Act provides assistance to States to help them ensure educational rights and protections for children and youth experiencing homelessness. This program helps State educational agencies (SEAs) ensure that homeless children, including preschoolers and youths, have equal access to a free, appropriate public education, including a public preschool education, as provided to other children and youth. Consistent with the McKinney-Vento Act, children experiencing homelessness are to be provided services comparable to those received by other students in the school they attend, including transportation services, and education programs for which such students are otherwise eligible, such as services provided under Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 or similar State or local programs and programs for students with disabilities. These obligations are described in more detail in this document. For more information on the

requirements of the McKinney-Vento Act, please see the Non-regulatory guidance on the Education for Homeless Youth Program (2004), found at:

<http://www.ed.gov/programs/homeless/legislation.html>

The questions and answers included in this document are based on questions submitted to the Department by the National Homeless Assistance Law Center. For clarity, some additional questions and answers have been added to address issues that may arise in connection with providing special education and related services to homeless children with disabilities and affording the rights and protections under Part B to those children and their parents. The information contained in this document is not intended to reflect all requirements of Parts B and C of IDEA, Section 504 and Title II, and the McKinney-Vento Act that are applicable to homeless children with disabilities and their families. In some cases, the questions, and corresponding answers, presented in this Q & A document required interpretation of IDEA, Section 504 and Title II, and their implementing regulations, and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. This document is not intended to be a replacement for careful study of IDEA and its implementing regulations. The statute, regulations, and other important documents, including Qs and As released in January 2007, related to IDEA and the regulations are found at <http://sites.ed.gov/idea>. This website includes the final Part B regulations, which became effective on October 13, 2006 and the Notice of Proposed Rulemaking for Part C, published at 72 FR 26456 (May 9, 2007). A copy of the current regulations for Part C of IDEA can be found at: http://www.access.gpo.gov/nara/cfr/waisidx_07/34cfr303_07.html

A. General Requirements Relating to the Education of Homeless Children with Disabilities

Authority: McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. and the Individuals with Disabilities Education Act, Part B, 20 U.S.C. 1401, 1411-1419 and 34 CFR Part 300, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 and 34 CFR Part 104 and Title II of the Americans With Disabilities Act, 42 U.S.C. 12131 et seq. and 28 CFR Part 35.

Question A-1: How does the McKinney-Vento Act help to remove educational barriers for homeless children?

Answer: The McKinney-Vento Act, as amended and reauthorized by the No Child Left Behind Act of 2001 (NCLB), is the primary Federal law addressing the educational needs of homeless children and youth. Its major provisions include the following:

- **Definition of Homelessness.** The McKinney-Vento Act covers all children and youth who meet its definition of homelessness. This means those children who “lack a fixed, regular, and adequate nighttime residence.” 42 U.S.C. 11434a(2). The examples listed in the law include children and youth who:
 - share the housing of other persons due to loss of housing, economic hardship, or a similar reason;
 - live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
 - live in emergency or transitional shelters;
 - are abandoned in hospitals;
 - are awaiting foster care placement;
 - 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;
 - live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;

- are migratory children who otherwise fit the definition of homelessness.
- **Immediate Enrollment.** Children experiencing homelessness must be able to enroll in school immediately, even if they are unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation. If the child needs to obtain immunizations, or medical or immunization records, the enrolling school must immediately refer the parent or guardian of the child or youth to the designated local educational agency (LEA) liaison, who must assist in obtaining necessary immunizations, or immunization or medical records.
- **Comparable Services.** Homeless children must have services available that are comparable to those offered to non-homeless children. Homeless children with disabilities must have equal access to FAPE under Part B as would be provided to other children with disabilities. Their ability to participate in special education programs cannot be hindered by homelessness or such related factors as frequent school transfers.
- **Supplemental Services.** School districts may receive McKinney-Vento subgrants that can be used to provide supplemental services such as tutoring, expedited evaluations for special education or other services, school supplies, or referrals for health services.²

See 42 U.S.C. 11433(d).

Question A-2: What rights are afforded to homeless children with disabilities under Part B?

Answer: Part B requires that all eligible children with disabilities have available to them FAPE, including special education and related services designed to meet the particular needs of each child with a disability. Children with disabilities who are homeless have the same right to FAPE under Part B as non-homeless children with disabilities. Homeless children with disabilities and their parents

² Supplemental services provided under McKinney-Vento are not necessarily the same as supplemental educational services provided under section 1116 of Title I of the Elementary and Secondary Education Act as amended by NCLB. Supplemental services under NCLB can be provided to children of low-income families who attend a Title I school that has been designated by the State to be in need of improvement for more than one year. A homeless child attending such a school may be eligible to receive supplemental services under both McKinney-Vento and NCLB.

are subject to the same IDEA protections and requirements as children with disabilities and their parents who are not homeless. These requirements include the parental consent, evaluation, and eligibility requirements in 34 CFR §§300.300 through 300.311, the IEP requirements in 34 CFR §§300.320 through 300.324, the least restrictive environment and placement requirements in 34 CFR §§300.114 through 300.117, and the procedural safeguards and due process rights, including the discipline procedures in 34 CFR §§300.500 through 300.536. Generally, students eligible for services under Part B also are covered by Section 504 and Title II. One way to meet the free appropriate public education requirements of Section 504 and Title II is by implementing an IEP developed in accordance with Part B of IDEA. 34 CFR §104.33(b)(2).

B. Child Find and Homeless Students

Authority: The requirements for child find under Part B are found in the Part B regulations at 34 CFR §300.111. The requirements for location of children and notification under Section 504 are found in the Section 504 regulations at 34 CFR §104.32.

Question B-1: What are Part B's child find requirements? How do these requirements apply to children and youth who are homeless?

Answer: Under 34 CFR §300.111(a)(1)(i), all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State, and children with disabilities attending private schools, who are in need of special education and related services, regardless of the severity of their disability, must be identified, located, and evaluated. This requirement, known as child find, includes activities to determine whether a child is a child suspected of having a disability who should be referred for evaluation to determine eligibility for special education and related services under Part B. Referrals of homeless children can be made from any source that suspects a child may be eligible for special education and related services. Therefore, persons such as employees of the SEA, LEA, or other public agencies responsible for the education or care of the child may identify homeless children suspected of having disabilities who may be in need of special education and related services.

Highly mobile homeless children often fail to remain in one school long enough to be appropriately diagnosed with a disability. As a result, school and district administrators, consistent with applicable child find requirements, should consider that homeless children may be at greater risk of having undiagnosed disabilities. Public agencies should coordinate with staff of emergency shelters, transitional shelters, independent living programs, street outreach programs, and other advocacy organizations to assist in identifying the warning signs of a disability as quickly as possible so that homeless children suspected of having disabilities can be evaluated, and if found eligible, receive required special education and related services.

Question B-2: What rights do parents of homeless children have during child find?

Answer: Once a public agency or school district identifies any child through the Part B child find process as a child suspected of having a disability, the procedural safeguards in 34 CFR §§300.500 through 300.536 become applicable. These procedural safeguards, which are fully applicable to parents of homeless children, include, among other protections, written prior notice of the school district's proposed action to evaluate the child for possible eligibility for services under Part B, which must include an explanation of the reasons for the proposed action. 34 CFR §300.503(a) and (b)(1)-(2). This prior written notice must reflect all of the content requirements in 34 CFR §300.503(b).

Under 34 CFR §300.503(c)(1), this prior written notice must be written in language understandable to the general public and provided in the parent's native language or other mode of communication used by the parent unless it is clearly not feasible to do so. If the language or other mode of communication of the parent is not a written language, 34 CFR §300.503(c)(2)(i)-(ii) requires the public agency to take steps to ensure that the notice is translated orally or by other means for the parent in his or her native language or other mode of communication and that the parent understands the content of the notice. In addition to the prior written notice, a copy of the procedural safeguards available to the parents of a child with a disability under Part B, which must contain a full explanation of those safeguards, also must be given to the parents upon initial referral or parent request for evaluation. 34 CFR §300.504(a)(1) and (c). The notice of procedural safeguards also must be provided in language understandable to the general public and in the parent's native language or other mode of communication, unless it clearly is not feasible to do so. If the parent's native language or other mode of communication is not a written language, the same requirements for oral translation or other communication to the parent which apply to the prior written notice in §300.503(c)(2) are applicable to the procedural safeguards notice. 34 CFR §300.504(d).

A parent who disagrees with the public agency or school district on matters arising under Part B, including matters arising prior to the filing of a due process complaint, must have the opportunity to resolve the dispute through the mediation process described at 34 CFR §300.506. A parent who disagrees with a public agency's proposal or refusal to identify or evaluate their child as a child with a disability under Part B may file a due process complaint notice to

request a due process hearing in accordance with procedures in 34 CFR §§300.507 through 300.518. If a child is an unaccompanied homeless youth, the prior written notice and procedural safeguards notice would be provided to the surrogate parent appointed to represent the child in special education matters. Similarly, the surrogate parent could utilize mediation or exercise due process rights on behalf of the child. See Section F of this Q & A document regarding Unaccompanied Homeless Youth and Surrogate Parents.

Question B-3: Which children are covered by Part B of IDEA?

Answer: A child is considered to be a “child with a disability” under Part B of IDEA if the child is evaluated in accordance with 34 CFR §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to as ‘emotional disturbance’), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf blindness, or multiple disabilities, and who, by reason of that impairment, needs special education and related services. 34 CFR §300.8(a)(1). Children with disabilities under Part B also may include children aged three through nine experiencing developmental delays. 34 CFR §300.8(b).

Question B-4: Does Section 504’s requirement that recipients of Federal financial assistance operating public elementary or secondary education programs identify and locate qualified individuals with disabilities apply to children and youth who are homeless?

Answer: Yes, Section 504 requires that recipients of Federal financial assistance operating public elementary or secondary education programs or activities must identify annually and locate every qualified individual with a disability residing in the recipient’s jurisdiction who is not receiving a public education. 34 CFR §104.32(a). The Department interprets this requirement as applying to an individual with a disability residing in the recipient’s jurisdiction regardless of whether the student has an official place of residence or is homeless. Section 504 also requires recipients to provide annual notice to parents regarding the recipient’s Section 504 obligations. *See* 34 CFR § 104.32(b).

Question B-5: Which individuals are considered disabled under Section 504 and Title II?

Answer: Under Section 504 and Title II, “individual with a disability” means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

C. Evaluations

Authority: The Part B requirements for consent and evaluations are found at 34 CFR §§300.300 through 300.311. The IEP requirements for children who transfer from one public agency to another public agency within the same school year are found at 34 CFR §300.323(e), (f) and (g). The Section 504 evaluation and placement requirements are found at 34 CFR §104.35.

Question C-1: Who may initiate a request for an evaluation under Part B?

Answer: Under 34 CFR §300.301(b), a parent or a public agency may initiate a request for an evaluation, subject to the parent consent requirements described below, to determine if a child is a child with a disability under Part B. As defined in 34 CFR §300.30, parent means a biological or adoptive parent of a child; 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; 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); an individual acting in the place of a biological or 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 a surrogate parent who has been appointed in accordance with 34 CFR §300.519 or section 639(a)(5) of IDEA. See Section F of this Q & A document regarding Unaccompanied Homeless Youth and Surrogate Parents.

Question C-2: How do the parental consent requirements for initial evaluations and reevaluations under Part B apply to homeless children with disabilities?

Answer: The Part B parental consent requirements for evaluations and reevaluations are fully applicable to parents of homeless children. Under 34 CFR §300.300(a)(1)(i), a public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 CFR §300.8 must, after providing notice consistent with 34 CFR §§300.503 and 300.504, obtain informed consent from the parent of the child, consistent with 34 CFR §300.9, before conducting the evaluation. Parental consent for the initial evaluation must not be construed as consent for the initial provision of special education and related services. 34 CFR §300.300(a)(1)(ii). The public agency must make

reasonable efforts to obtain informed consent from the parent for an initial evaluation. 34 CFR §300.300(a)(1)(iii). Under 34 CFR §300.300(d)(5), a public agency must document its attempts to obtain parental consent, consistent with 34 CFR §300.322(d). Documentation could include keeping detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits. In the case of a child who is homeless, reasonable efforts may include, if applicable, attempts to contact the family's caseworker or other staff at an emergency shelter, transitional shelter, independent living program, or street outreach program.

Parental consent for the initial evaluation is required from parents of all children, including parents of homeless children, except under the circumstances specified in 34 CFR §300.300(a)(2) where the child is a ward of the State and is not residing with the child's parent. For unaccompanied homeless youth, the requisite consent could be provided by a surrogate parent appointed in accordance with 34 CFR §300.519. See Section F of this Q & A document regarding Unaccompanied Homeless Youth and Surrogate Parents.

In addition, a public agency must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. 34 CFR §300.300(c)(1)(i). However, informed parental consent for the reevaluation need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain consent and the child's parent failed to respond. 34 CFR §300.300(c)(2). Under 34 CFR §300.300(d)(5), the public agency must document its attempts to obtain parental consent for the reevaluation, consistent with 34 CFR §300.322(d), as described above. In the case of a child who is homeless, reasonable efforts may include, if applicable, attempts to contact the family's caseworker or other staff at an emergency shelter, transitional shelter, independent living program, or street outreach program. If the parent of a child enrolled in or seeking to enroll in public school refuses to consent to the initial evaluation or reevaluation or fails to respond to the request to provide consent for the initial evaluation, the public agency may, but is not required to, pursue the evaluation or reevaluation by using the procedural safeguards in Subpart E of the Part B regulations, including the mediation procedures under 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516, if appropriate, except to the extent inconsistent with State law relating to such parental consent. 34 CFR §300.300(a)(3)(i) and 300.300(c)(1)(ii).

Question C-3: How do the Part B requirements for conducting initial evaluations apply to homeless children?

Answer: Under Part B, evaluations of all children, including homeless children, are subject to the requirements of 34 CFR §§300.304 and 300.305. Requirements for eligibility determinations for all children are subject to the requirements of 34 CFR §300.306. For children suspected of having specific learning disabilities, the requirements in 34 CFR §§300.307 through 300.311 also are applicable. What follows is a summary of some of the relevant requirements of Part B that are applicable to initial evaluations and reevaluations of all children who have disabilities or who are suspected of having disabilities.

The purpose of the Part B evaluation, as defined at 34 CFR §300.15, is to determine whether the child has a disability and the nature and extent of the special education and related services that the child needs. The public agency must provide the parents prior written notice, in accordance with 34 CFR §300.503, describing any evaluation procedures the agency proposes to conduct. 34 CFR §300.304(a). In conducting the evaluation, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining whether the child is a child with a disability and the child's educational needs.

34 CFR §300.304(b)(1). No single measure or assessment may be used as the sole criterion for determining whether a child is a child with a disability and an appropriate educational program for the child. 34 CFR §300.304(b)(2). Assessments and other evaluation materials must be selected and administered so as not to be discriminatory on a racial or cultural basis

(34 CFR §300.304(c)(1)(i)), must be valid and reliable, and must be administered by trained and knowledgeable personnel.

34 CFR §300.304(c)(1)(iii)-(iv). Also, assessments or other evaluation materials must be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. 34 CFR §300.304(c)(1)(ii).

The child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 CFR §300.304(c)(4).

The additional requirements for review of existing evaluation data on the child in 34 CFR §300.305 also are applicable to initial

evaluations, if determined appropriate, and any reevaluations conducted under Part B.

Question C-4: If a school district knows that a child is homeless and, therefore, may leave a school prior to the completion of special education evaluations, must the school district begin the process of initial evaluations?

Answer: Yes. Consistent with the child find obligation in 34 CFR §300.111 described above, all children who are suspected of having disabilities and who are in need of special education and related services, including homeless children, must be evaluated in a timely manner and without undue delay before the initial provision of special education and related services. Either a parent or a public agency may initiate a request for an initial evaluation. 34 CFR §300.301(b). Under 34 CFR §300.301(c)(1), once parental consent is obtained, an initial evaluation must be completed within 60 days or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. With the exception noted in question C-5 below, the requirement for timely initial evaluations applies to homeless children who transfer to a new public agency or school district. Under 34 CFR §300.304(c)(5), assessments of children with disabilities who transfer from one public agency to another public agency in the same school year must be coordinated with those children's prior and subsequent public agencies, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e) (described in Question C-5 below), to ensure prompt completion of full evaluations.

Question C-5: How does the exception to the timeline for completion of evaluations apply to children who are homeless?

Answer: The initial evaluation timeframe (whether 60-day or State-established) does not apply if (1) the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or (2) a child enrolls in a school of another public agency or school district after the relevant timeframe has begun and prior to a determination by the child's previous public agency or school district whether the child is a child with a disability under Part B. 34 CFR §300.301(d). In the latter situation, the new public agency or school district may extend the 60-day or State-established timeframe only if: (1) it is making sufficient progress to ensure prompt completion of the evaluation; and (2) the parent and the new public agency agree to a specific time when the evaluation will be completed. 34 CFR §300.301(e).

Question C-6: How does the evaluation process proceed when a child who is homeless transfers to a new school district before the previous school district completes the evaluation and eligibility process?

Answer: When a child transfers to a new public agency or school district during the same school year while the evaluation is still pending, the child's prior and subsequent schools must coordinate the assessments as necessary and as expeditiously as possible, consistent with 34 CFR §300.301(d)(2) and (e), to ensure prompt completion of full evaluations. 34 CFR §300.304(c)(5). In addition, under 34 CFR §300.323(g)(1), the new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including any supporting documents and any records related to the provision of special education and related services to the child, pursuant to 34 CFR §99.31(a)(2) of the regulations for the Family Educational Rights and Privacy Act (FERPA). These FERPA regulations permit disclosure without parent consent of a student's education records to officials of a school or school system where a student seeks or intends to enroll. Under 34 CFR §300.323(g)(2), the previous public agency or school district in which the child was enrolled must take reasonable steps to promptly respond to the request for the student's records. These efforts can assist in the prompt completion of the evaluation process since the new school district may decide not to replicate the aspects of the evaluation completed by the previous school district. If records are shared in a timely manner, the new school district will be able to incorporate the previous school district's evaluations in making its eligibility determination for the child and in developing the child's IEP, if appropriate. In addition, the new school district will have access to the information it needs to determine whether further evaluations or assessments are necessary before making its eligibility determination.

Question C-7: What are the evaluation and placement requirements under Section 504 for homeless children?

Answer: A process of evaluation and reevaluation in accordance with Section 504 is required to determine whether a child has or continues to have a disability under Section 504. A recipient that operates a public elementary or secondary education program or activity must conduct an evaluation of any individual who, because of disability, is believed to need special education or related services. 34 CFR §104.35(a). The evaluation must use established standards and procedures, including tests and other evaluation

materials that have been properly validated for the specific purpose and must be administered by trained personnel.

34 CFR §104.35(b)(1). In interpreting evaluation data and in making placement decisions, the recipient must draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, and must ensure that information obtained from these sources is documented and carefully considered. 34 CFR §104.35(c). If the student is found to have a disability under Section 504, then an appropriate placement decision is made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. 34 CFR §104.35(c)(3). School districts also may create a plan or other document describing the evaluation and placement decisions they make pursuant to Section 504. A recipient also is required to establish procedures for the periodic reevaluation of students who have been provided special education and related services. The Section 504 regulations specify that evaluation procedures established under IDEA would satisfy this requirement. 34 CFR §104.35(d).

D. Eligibility and IEPs

Authority: The requirements for the eligibility determination are found at 34 CFR §300.306. The requirements for parent consent for the initial provision of special education and related services are found at 34 CFR §300.300(b). The requirements for development and implementation of IEPs are found at 34 CFR §§300.320 through 300.324.

Question D-1: If a public agency determines that a homeless child has a disability following the homeless child’s initial evaluation, what steps must be taken before the child can receive special education and related services for the first time?

Answer: After completion of administration of assessments and other evaluation measures, a group of qualified professionals, including the parents of the child, must determine whether the child is a “child with a disability” under Part B and the educational needs of the child. 34 CFR §300.306(a)(1). The public agency must provide the parent with a copy of the evaluation report and documentation of the eligibility determination at no cost. 34 CFR §300.306(a)(2). If the homeless child is an unaccompanied homeless youth, as defined in section 725(6) of the McKinney-Vento Act, the requirements for appointment of surrogate parents in 34 CFR §300.519 would be applicable, and the requirements for eligibility determinations that are applicable to parents would apply to the surrogate parent appointed to represent the child in special education matters. See Section F of this Q & A document regarding Unaccompanied Homeless Youth and Surrogate Parents.

In interpreting evaluation data for purposes of determining whether the child is a child with a disability under 34 CFR §300.8, and the educational needs of the child, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior (34 CFR §300.306(c)(1)(i)). Each public agency also must ensure that information obtained from all of these sources is documented and carefully considered (34 CFR §300.306(c)(1)(ii)). If a determination is made that the child has a disability and needs special education and related services, an IEP that meets the requirements of §§300.320 through 300.324 must be developed for the child. 34 CFR §300.306(c)(2).

Question D-2: Must parents of children with disabilities give their informed consent before their child's IEP is developed and implemented for the first time? What happens if the parent of a homeless child with a disability fails to respond to the request for consent?

Answer: A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent for the initial provision of special education and related services. 34 CFR §300.300(b)(1). If the child is an unaccompanied homeless youth, the requirements in 34 CFR §300.519 regarding surrogate parents are applicable, and the public agency must obtain the informed consent of the child's surrogate parent appointed to represent the child in special education matters. See Section F of this Q & A document regarding Unaccompanied Homeless Youth and Surrogate Parents. The public agency must make reasonable efforts to obtain informed consent from the parent or surrogate parent for the initial provision of special education and related services. 34 CFR §300.300(b)(2). To meet the reasonable efforts requirement, under 34 CFR §300.300(d)(5), the public agency must document its attempts to obtain parental consent, using the procedures in 34 CFR §300.322(d). These procedures include keeping detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits to the parent's home or place of employment and the results of those visits. In the case of a child who is homeless, reasonable efforts may include, if applicable, attempts to contact the family's caseworker or other staff at an emergency shelter, transitional shelter, independent living program or street outreach program. If the parent fails to respond or refuses consent to the initial provision of special education and related services, the public agency may not use the consent override procedures, including the mediation procedures in §300.506 and the due process procedures under §§300.507 through 300.516, in order to obtain agreement or a ruling that the services may be provided to the child. 34 CFR §300.300(b)(3). If the parent refuses to consent to the initial provision of special education and related services or fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency or school district is not required to convene an IEP meeting to develop an IEP for the child for the special education services for which the parent's consent was requested. 34 CFR §300.300(b)(4)(ii).

Question D-3: What are the timelines in Part B for conducting IEP Team meetings?

Answer: At the beginning of each school year, each public agency must have in effect for each child with a disability in the agency's jurisdiction an IEP as defined in §300.320. 34 CFR §§300.323(a). An IEP is a written statement for a child, developed, reviewed, and revised at a meeting of a team, which includes school officials and parents, in accordance with §§300.320 through 300.324. Each child's IEP must include, among other elements, a statement of the child's present levels of academic achievement and functional performance, measurable annual goals designed to meet the child's needs that result from the child's disability, special education and related services to be provided, supplementary aids and services, and program modifications or supports for school personnel. 34 CFR §300.320(a)(1), (2), and (4). The special education and support services are to enable the child to be involved and make progress in the general education curriculum, that is, the same curriculum as for nondisabled students, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with children with and without disabilities in those activities. 34 CFR §300.320(a)(4)(ii)-(iii). For children age 16 and older, and for younger children if determined appropriate by the IEP Team, the child's IEP must contain a statement of appropriate measurable postsecondary goals and the transition services needed to assist the child in reaching those goals. 34 CFR §300.320(b). A meeting to develop an initial IEP for a child with a disability must be conducted within 30 days of the determination that the child needs special education and related services. 34 CFR §300.323(c)(1). Under 34 CFR §300.323(c)(2), as soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. Each public agency must ensure that the child's IEP Team reviews the child's IEP periodically, but not less than annually, to ensure that the annual goals are being achieved, and revises the IEP as appropriate. 34 CFR §300.324(b)(1).

Question D-4: What steps must public agencies take to ensure that the parents of a homeless child attend their child's IEP Team meeting? What steps must the public agency take if the public agency has been unable to confirm a meeting with the parent?

Answer: Under 34 CFR §300.322(a), each public agency must take steps to ensure that one or both of the parents of a child with a disability

are present at each IEP Team meeting or are afforded the opportunity to participate. These steps include notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. Under 34 CFR §300.322(c), if neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).

If the child is an unaccompanied homeless youth, then the public agency must attempt to schedule the IEP meeting with the child's surrogate parent appointed under 34 CFR §300.519, and the requisite notice of IEP meetings that must be provided to the child's parents must be provided to the child's surrogate parent. See Section F of this Q & A document regarding Unaccompanied Homeless Youth and Surrogate Parents.

Question D-5: Under what circumstances may an IEP Team meeting be conducted without a parent in attendance?

Answer: Under 34 CFR §300.322(d), an IEP meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place. This can include detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parent's home or place of employment and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits. While attempts to make visits to a family residence may be impossible when families are homeless, public agencies should attempt to locate parents of homeless children through such means as visiting the place where the family is temporarily housed, such as an emergency shelter, transitional shelter, independent living program or street outreach program, or contacting the family's case worker or other staff from those shelters or programs if appropriate.

Question D-6: What steps must the responsible school district take to ensure that homeless children with disabilities enrolled in new schools in another school district have the opportunity to immediately attend classes and participate in school activities?

Answer: Part B contains requirements for IEPs when students with disabilities transfer into new school districts, and these requirements are fully applicable to homeless children with disabilities. Under 34 CFR §300.323(e), if a child with a disability who had an IEP in effect in a previous school district or public agency transfers to a new school district or public agency within the same State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency) until the new public agency either adopts the child's IEP from the previous public agency or develops, adopts and implements a new IEP for the child that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

Under 34 CFR §300.323(f), if a child with a disability who had an IEP in effect in a previous public agency in another State transfers to a new public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency) until the new public agency (1) conducts an evaluation of the child that meets the requirements of §§300.304 through 300.306 (if the new public agency determines it is necessary) and (2) develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR §§300.320 through 300.324. Under

34 CFR §300.323(g)(1), the new school district in which the child is enrolled must take reasonable steps to promptly obtain the child's records from the previous public agency, including the child's IEP and supporting documents and any other records related to the provision of special education and related services.

Each child's IEP must contain, among other elements, a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided to enable the child to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic

activities; and to be educated and participate with other children with disabilities and nondisabled children in those activities. 34 CFR §§300.320(a)(4) and 300.324(b).

Further, under 34 CFR §300.107, States must ensure that their public agencies take steps to afford children with disabilities an equal opportunity for participation in nonacademic and extracurricular services and activities, including counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. Through appropriate implementation of these and other applicable provisions, public agencies can ensure that homeless children with disabilities can promptly attend school and receive required instruction and services as well as participate in the range of nonacademic and extracurricular activities available to other children with and without disabilities.

Question D-7: What options are available when an out-of-state transfer student who is homeless cannot produce an IEP, and the parent is the source for identifying “comparable” services?

Answer: The Part B regulations require, at 34 CFR §300.323(g), the new public agency and the previous public agency to take steps to facilitate the transition for a child who transfers to a new public agency that is either in the same State or in a different State and enrolls in a new school in the same school year. 34 CFR §300.323(e) and (f). The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR §99.31(a)(2). 34 CFR §300.323(g)(1). The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency. 34 CFR §300.323(g)(2). Similarly, the McKinney-Vento Act requires children experiencing homelessness to be able to immediately enroll in school, even if they are unable to produce records normally required for enrollment, such as previous academic records, which include IEPs.

If, after taking these reasonable steps, the new public agency is not able to obtain the IEP from the previous public agency or from the

parent, the new public agency is not required to provide services to the child pursuant to 34 CFR §300.323(f)(2). This is because the new public agency, in consultation with the parents, would be unable to determine what constitutes comparable services for the child, since that determination must be based on the services contained in the child's IEP from the previous public agency. However, the new public agency must place the child in the regular school program and conduct an evaluation and eligibility determination pursuant to 34 CFR §§300.304 through 300.306, if determined to be necessary by the new public agency. 34 CFR §300.323(f)(1). If there is a dispute between the parent and the new public agency regarding whether an evaluation is necessary or regarding what special education and related services are needed to provide FAPE to the child, the dispute could be resolved through the mediation procedures in 34 CFR §300.506 or, as appropriate, the due process procedures in 34 CFR §§300.507 through 300.518. Once a due process complaint notice requesting a due process hearing is filed, under 34 CFR §300.518(b), the child, with the consent of the parents, must be placed in the regular school program during the pendency of any due process proceedings.

Question D-8: How can parents of homeless children with disabilities exercise their due process rights or file State complaints when their child has no fixed residence?

Answer: If a parent of a child with a disability disagrees with a public agency on any matter regarding the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child, the parent may exercise their due process rights as described at 34 CFR §§300.507 through 300.518. In filing a due process complaint notice to request a due process hearing as outlined in 34 CFR §§300.507 through 300.508, for homeless children or youth within the meaning of the McKinney-Vento Act, the due process complaint notice must include available contact information for the child, in lieu of the address of the child's residence, and the name of the school the child is attending. 34 CFR §300.508(a)(4). The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency files a due process complaint to request a due process hearing. 34 CFR §300.507(b). If the homeless child or youth has no parent within the meaning of 34 CFR §300.30, the child's surrogate parent would exercise due process rights on the child's behalf. See Section F of this Q & A document regarding Unaccompanied Homeless Youth and Surrogate Parents. In

addition, under 34 CFR §§300.151 through 300.153, States must have procedures for resolving any signed written complaint filed by an organization or individual, including a complaint filed by an individual from another State, alleging that a public agency has violated a requirement of Part B of IDEA or the Part B regulations. 34 CFR §§300.153(a). If a State complaint is filed alleging violations regarding a specific child, and the complaint involves a homeless child or youth within the meaning of the McKinney-Vento Act, the signed written complaint must include available contact information for the child, in lieu of the address of the child's residence, and the name of the school the child is attending. 34 CFR §300.153(b)(4)(iii).

E. Schools of Origin

Authority: The requirements for schools of origin are found in the McKinney-Vento Act at 42 U.S.C. 11432(g)(3). The requirements for placements are found in the Part B regulations at 34 CFR §300.116.

Question E-1: Can a homeless child's disability be a factor in determining whether continuing in a school of origin is in their best interest?

Answer: Yes. The McKinney-Vento Act defines "school of origin" as the school the child or youth attended when permanently housed or the school in which the child or youth was last enrolled. If a child becomes homeless, LEAs must, depending on what is in the best interest of the child, either continue the child's education in the school of origin or enroll the child in any public school that non-homeless students who live in the attendance area where the child is actually living are eligible to attend. In determining best interest, LEAs must, to the extent feasible, keep children in the school of origin, unless it is against the wishes of the parent or guardian. 42 U.S.C. 11432(g)(3).

Determinations regarding best interest are fact-specific and need to be made on an individual basis. Additionally, there may be circumstances in which the existence of a disability may factor into best interest determinations affecting school placements. Under 34 CFR §300.116(a)(1), in determining the educational placement of a child with a disability, including a preschool child with a disability, each child's placement decision must be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of evaluation data, and placement options. Further, under 34 CFR §300.116(b)(1)-(2), the child's placement is determined at least annually and is based on the child's IEP. Therefore, the placement group from the public agency responsible for providing FAPE to a homeless child with a disability would need to determine whether it would be appropriate to continue the child's placement in his or her school of origin or place the child in a new school.

Question E-2: If a homeless child moves to a new school district in the same State during the same school year and elects to attend the school of origin, which school district is responsible for providing special education and related services?

Answer: If a homeless child with a disability moves into a new school district in the same State but elects to attend the school of origin, the SEA, consistent with its general supervisory responsibility, must determine which public agency in the State is responsible for ensuring that the child receives FAPE. 34 CFR §300.149. Consistent with 34 CFR §300.201, the public agency that the State determines is responsible for ensuring that the homeless child with a disability receives FAPE is responsible for obtaining parental consent, conducting evaluations and reevaluations, and determining eligibility in accordance with 34 CFR §§300.300 through 300.311, developing and implementing the child's IEP in accordance with 34 CFR §§300.320 through 300.324, ensuring placement in accordance with the least restrictive environment provisions in 34 CFR §§300.114 through 300.117, and affording eligible children and their parents the procedural safeguards and due process rights, including the discipline procedures in 34 CFR §§300.500 through 300.536.

The SEA could determine that the school district in which the child continues to be enrolled retains the responsibility for providing FAPE to the child, or the SEA could assign that responsibility to the new public agency or school district where the child is located.

Question E-3 How does the 'school of origin' provision apply to homeless children with disabilities who move across State lines?

Answer: If homeless children move across State lines, under IDEA, responsibility for providing FAPE to the homeless child with a disability generally shifts to the State where the child moves. If a homeless child with a disability moves across State lines and continues to attend the school of origin, the Department encourages the State where the child moves and the State where the school of origin is to work together to ensure that the homeless child who continues enrollment in the school of origin receives appropriate services.

If a homeless child with a disability moves across State lines and enrolls in a new school in the new State within the same school year, the requirements of 34 CFR §300.323(f) and (g) are applicable. Under 34 CFR §300.323(f), if a child with a disability

(who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency—

- (1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
- (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

Additionally, under 34 CFR §300.323(g), to facilitate the child's transition, the new public agency in which the child enrolls and the previous public agency must take prompt and reasonable steps to ensure that the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, are provided to the new public agency pursuant to 34 CFR §99.31(a)(2) of the regulations for the Family Educational Rights and Privacy Act. The IDEA requirements specified in this section of the Q & A document facilitate the provision of appropriate services to homeless children with disabilities who move across State lines.

F. Unaccompanied Homeless Youth and Surrogate Parents

Authority: The requirements for surrogate parents are found at 34 CFR §300.519.

Question F-1: When are homeless children considered “unaccompanied youth” and what protections do these children have under Part B?

Answer: The McKinney-Vento Act defines “unaccompanied youth” as youth who are not in the physical custody of a parent or guardian. 42 U.S.C. 11434(a)(6). If a child with a disability is an unaccompanied homeless youth under 34 CFR §300.519(a)(4), the public agency must ensure that the youth’s rights are protected through assignment of a surrogate parent, including a method for determining whether the child needs a surrogate parent and for assigning a surrogate parent to the child. 34 CFR §300.519(a)(4) and (b). An individual appointed to act as a surrogate for the parent must meet all of the selection criteria in 34 CFR §300.519(d). These criteria permit a surrogate to be appointed in any manner permitted under State law. 34 CFR §300.519(d)(1). Under 34 CFR §300.519(d)(2), the surrogate parent may not be an employee of the SEA, LEA, or any other agency that is involved in the education or care of the child, must have no personal or professional interest that conflicts with the interest of the child, and must have knowledge and skills that ensure adequate representation of the child. 34 CFR §300.519(d)(2)(i). However, under 34 CFR §300.519(f), in the case of a child with a disability who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs that are involved in the education or care of the child may be appointed as temporary surrogate parents without regard to the non-employee requirement in §300.519(d)(2)(i) until a surrogate parent can be appointed who is not an employee of an agency that is involved in the education or care of the child. Individuals appointed as temporary surrogate parents still must have no personal or professional interest that conflicts with the interests of the child and must have knowledge and skills adequate to represent the child. 34 CFR §300.519(d)(2)(ii)-(iii). Surrogate parents, including temporary surrogate parents, are considered the unaccompanied homeless youth’s “parent” for special educational purposes. Under 34 CFR §300.519(g), surrogate parents may represent a child in all matters relating to: (1) the identification, evaluation, and educational placement of the child; and (2) the provision of FAPE to the child. Under 34 CFR §300.519(h), the SEA must make

reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after the public agency determines that the child needs a surrogate parent.

Question F-2: What rights are afforded to an unaccompanied homeless youth with a disability who has reached the age of majority under State law?

Answer: Under 34 CFR §300.520(a), a State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law), the public agency must provide any notice required by the Part B regulations to both the child and the parents and all rights accorded to parents under Part B transfer to the child. Additionally, under 34 CFR §300.520(a)(3), whenever a State provides for this transfer of rights, the agency must notify the child and the parents of the transfer of rights.

A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program. 34 CFR §300.520(b). Although not required by Part B, for an unaccompanied homeless youth, these procedures could include the appointment of a surrogate parent in accordance with 34 CFR §300.519 to represent the child's educational interests throughout the period of the child's eligibility under Part B.

G. Early Intervention Services

Authority: Part C of IDEA is found at 20 U.S.C. §§1431 through 1444 and 34 CFR Part 303. The requirements for providing appropriate early intervention services for homeless infants and toddlers with disabilities and their families are found at 20 U.S.C. §§1434(1) and 1435(a)(2).

Question G-1: Must early intervention services be made available to homeless infants and toddlers?

Answer: Part C of IDEA requires States that accept Part C funds to make appropriate early intervention services available to infants and toddlers with disabilities and their families located in the State, including infants and toddlers with disabilities and their families who are homeless. 20 U.S.C. §§1434(1) and 1435(a)(2). Infants and toddlers with disabilities include children under the age of three who need early intervention services because they (1) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of these developmental areas – cognitive, physical (including vision and hearing), communication, social or emotional or adaptive; or (2) have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. 20 U.S.C. §1432(5)(A). A State may also include, at its discretion, at-risk infants and toddlers who may include at-risk infants and toddlers who are homeless. 20 U.S.C. §1432(5)(B)(i).

Question G-2: How do the Part C child find requirements apply to homeless infants and toddlers?

Answer: Part C requires a State's child find system to include the policies and procedures that the State will follow to ensure that all infants and toddlers, including homeless infants and toddlers, in the State who are eligible for early intervention services under Part C are identified, located, and evaluated. *See* 20 U.S.C. §§1412(a)(3)(A), 1434(1) and 1435(a)(2) and 34 CFR §303.321(b)(1).

Question G-3: What are some practices that may be helpful in identifying homeless infants and toddlers who would benefit from early intervention services?

Answer: The State's child find system provides that the State may conduct outreach to primary referral sources such as family shelters for the

homeless, health service offices, and public schools by providing these entities with public awareness materials about the State's Part C program. See 34 CFR §303.320, including Note 1. The Part C lead agency may wish to disseminate public awareness materials that summarize the State's Part C eligibility criteria (i.e., provide a State specific definition of Infants and toddlers with disabilities and examples of key components of the definition, such as diagnosed conditions or developmental delays).

Public awareness activities could include developing fact sheets and brochures about the Part C program and the McKinney-Vento Act; presentations by Part C staff and McKinney-Vento staff at each other's staff meetings; providing informational presentations for parents and professionals at such venues as surrogate parent programs and Parent Training and Information Centers; distributing posters and wallet cards about early intervention services for homeless parents at schools, shelters, food banks, and health clinics; and sponsoring family-centered events to inform parents of homeless infants and toddlers about the McKinney-Vento Act and the Part C program. States also could establish joint child find and identification teams where Part C staff refer homeless families to the local liaison and the liaison refers homeless families with children whom they suspect may be eligible for Part C to Part C staff for further screening and evaluation. States also may want to coordinate with staff of emergency shelters, transitional shelters, independent living programs, street outreach programs, and other advocacy organizations and seek their assistance in identifying the warning signs of a disability as quickly as possible.

Additionally, the State interagency coordinating council under Part C must include among its members a representative designated by the Office of the Coordinator for Education of Homeless Children and Youth. 20 U.S.C. §1441(b)(1)(K). Administrators of State Part C programs should explore different methods of ensuring the participation of homeless infants and toddlers with disabilities and their families in the State's Part C early intervention program. *See* 20 U.S.C. §1437(b)(7). A State, through its interagency coordinating council, could explore the possibility of entering into an interagency agreement for child find purposes with the homeless representative required under IDEA section 641(b)(1)(K). This agreement could address streamlining referrals to Part C programs from shelters and other primary referral sources (including attaching any relevant and available medical records of a child), training staff from such sources in preliminary screening methods, and jointly developing consent forms that would enable communication between Part C programs and referral sources and

increase the service coordinator's ability to contact shelter or other staff working with the family.

H. Coordination Between McKinney-Vento and Special Education Programs

Authority: The requirements for State Advisory Panels are found in the Part B regulations at 34 CFR §§300.167 through 300.169. The requirements for the State Interagency Coordinating Council under Part C are found at 20 U.S.C. §1441(b)(1)(K). The requirements for State Coordinators under the McKinney-Vento Act are found at 42 U.S.C. §11432(f).

Question H-1: Does Part B include any requirements for special education personnel to coordinate with homeless education personnel?

Answer: Yes. Part B requires that State and local homeless education officials be included on State Advisory Panels established and maintained for the purpose of providing policy guidance on the provision of special education and related services for children with disabilities in the State. 34 CFR §§300.167 and 300.168(a)(5). Other members of the State advisory panel who must be appointed by the Governor, or any other official authorized under State law to make such appointments, include parents of children with disabilities (ages birth through 26), individuals with disabilities, teachers and administrators of programs for children with disabilities, representatives of other State agencies involved in the financing or delivery of related services to children with disabilities, representatives of institutions of higher education that prepare special education and related services personnel, representatives of private schools and public charter schools, at least one representative of a vocational, business, or community organization concerned with the provision of transition services to children with disabilities, a representative from the State child welfare agency responsible for foster care, and representatives from the State juvenile and adult corrections agencies. 34 CFR §300.168(a). The majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26). 34 CFR §300.168(b). One duty of the State advisory panel is to advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities. 34 CFR §300.169(e).

Similarly, as noted above, the State Interagency Coordinating Council for Part C programs must include at least one representative from the office of the Coordinator for Education of Homeless Children and Youth. 20 U.S.C. 1441(b)(1)(K). Under the McKinney-Vento Act, State Coordinators for the Education of

Homeless Children and Youth must collaborate with other educators to improve the provision of comprehensive education and related services to homeless children.

42 U.S.C. §11432(g)(6)(C).