

## Recent Informal Guidance on Homeless Children with Disabilities

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Practice Area: School Law

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The United States Department of Education's (the Department) Office of Special Education and Rehabilitative Services (OSERS) recently issued informal guidance related to the interplay between the Individuals with Disabilities Education Act (IDEA) and the McKinney-Vento Act (McKinney-Vento). The purpose of this *Legal Update* is to briefly review the issues addressed in that informal guidance.

McKinney-Vento was passed as part of the No Child Left Behind Act and was designed to ensure the continuity of a child's education when that child becomes homeless during the school year. One chapter of McKinney-Vento addresses a district's responsibility to transport homeless students. Under McKinney-Vento, a district must adopt policies to ensure that, when in the child's best interest, transportation is provided to and from the school that the child attended when permanently housed, or the school where the child was last enrolled, otherwise known as the child's "School of Origin."

OSERS recently considered whether a homeless child without a disability could ride a "special education" school bus to their School of Origin. OSERS concluded that buses purchased with IDEA funds may be used to transport nondisabled, homeless children under the Permissive Use of Funds provision because the use of IDEA Part B funds in this situation would confer only an incidental benefit on a nondisabled, homeless child. However, districts should remember that special education buses must be purchased exclusively to transport children with disabilities. Such buses may be used to transport homeless children as described by OSERS only if the buses are not full and they are able to pick up the nondisabled, homeless children along the usual bus routes with no additional IDEA funds expended to transport them.

OSERS also addressed the use of IDEA funds to transport students with disabilities to their School of Origin under McKinney-Vento. OSERS concluded that if a child with a disability who is homeless does not require transportation as a related service in his or her IEP, IDEA funds may not be used to provide transportation to the child's School of Origin, but McKinney-Vento funds may be used.

OSERS also addressed two questions related to homeless, disabled children relative to their LEA. First, OSERS considered whether a change in placement occurs when an IDEA pupil receives services in the School of Origin rather than the school of residence. OSERS opined that "[i]f the child's services are essentially the same and are being provided in a setting that is the same option on the continuum and the level of interaction with nondisabled peers is the same, then the change in location of services to the School of Origin would not constitute a change in placement under IDEA." Finally, OSERS noted the importance of coordination between the LEA of residence and the LEA of the School of Origin.

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