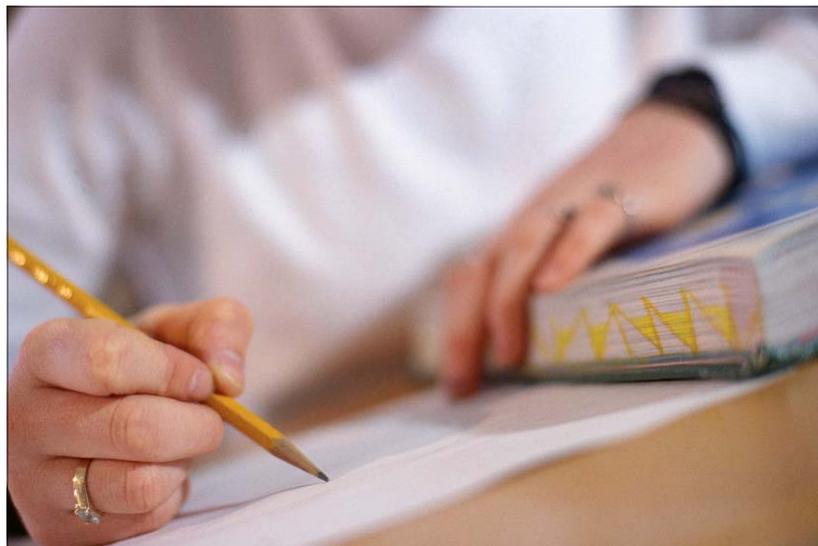


NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

Connecting Homeless Students to
Special Education Services:

*A Guide to
Rights and Resources*



1411 K Street, NW, Suite 1400, Washington, DC 20005
202-638-2535

The National Law Center on Homelessness & Poverty is a registered 501(c)(3) non-profit organization. NLCHP serves as the legal arm of the national movement to alleviate, prevent, and end homelessness through impact litigation, public policy, and public education.

BOARD OF DIRECTORS

Pamela Malester
Co-Chairperson
Community Volunteer

Bruce Casino
Secretary
Baker & Hostetler, LLP

Vasiliki Tsaganos
Fried Frank Harris Shriver
& Jacobson

Roderick DeArment
Co-Chairperson
Covington & Burling

Jeannette Austin
Community Volunteer

Judith Winston
Winston Withers & Associates

Margaret Pfeiffer
Vice-Chairperson
Sullivan & Cromwell

Deborah Dennis
Policy Research Associates

Maria Foscarinis
President and
Executive Director

William Breakey, M.D.
Treasurer
Community Volunteer

Terri Montague
Enterprise Foundation

* Affiliations for identification
purposes only

Jack Rothstein
Rothstein Investment Advisors

STAFF

Maria Foscarinis
Executive Director

Andy Zovko
Development Director

Allison Mitchell
Outreach Coordinator
AmeriCorps VISTA
Member

Laurel Weir
Policy Director

Tulin Ozdeger
Civil Rights Program Attorney

Vibha Bhatia
Office Manager

Michele Frome
Director of Operations

Joy Moses
Education Program Attorney

Melanie Mullen
Development Associate

Rebecca Troth
Legal Director,
Housing Program Attorney

Naomi Stern
Domestic Violence Program Attorney

Meagan Leatherbury
Program Assistant

THE REASONS FOR THIS BOOKLET . . .

UNDERSTANDING CHILDREN AND YOUTH WITH SPECIAL NEEDS

Many children and youth experience physical (*e.g.*, blindness, speech problems) and learning disabilities (*e.g.*, dyslexia) that may make it difficult for them to reach their full potential. However, schools can change classrooms and education plans to meet their unique needs, providing them the best possible opportunity to succeed.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

In 1975, Congress passed a federal special education law that was later called the Individuals with Disabilities Education Act (IDEA). IDEA allows students with disabilities to have their own Individualized Education Programs (IEPs) to meet their special needs.

HOMELESS STUDENTS WITH DISABILITIES FACE GREAT CHALLENGES

In 2000, the United States Department of Education reported that homeless students have trouble accessing special education services in at least half of the states. Changing schools frequently and not knowing their rights are two reasons that students in homeless situations may not receive the help they need in school.

TABLE OF CONTENTS



Q & A: IDEA BASICS 1

What IDEA is

Which students are covered

Which disabilities are covered

Who makes decisions

How students get into special education

What to do if schools do not notice a disability

What happens after disability evaluations/tests

What the IEP is

How retests occur and when an IEP can change



Q & A: BEYOND IDEA BASICS 5

Students who frequently change schools

Students who change schools before finishing evaluations/tests

Transferring student special education records

Students with discipline problems

Services for students who are suspended

Surrogates for youth living away from parents or guardians



Q & A: SPECIAL IDEA SERVICES 9

Extended school year

Tutoring for non-disabled students

Transportation



Q & A: NON-COMPLIANCE WITH IDEA 10

Schools that do not comply with IDEA

Preparing for hearings

Reviewing school records

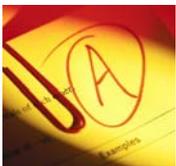


OTHER USEFUL LAWS 13

Title II of the ADA

Section 504 of the Rehabilitation Act

McKinney-Vento Act



FURTHER RESOURCES 15

IDEA and homeless education information

State Coordinator contact information



Q & A: IDEA BASICS

Q: WHAT IS IDEA?

A: The Individuals with Disabilities Education Act (IDEA) is the main federal law guiding special education. Special education is specially-designed instruction to meet the needs of individual students. IDEA also allows for related services, which include transportation, speech or language therapy, physical therapy, psychological services, counseling, medical services, recreation, and other needed services. Schools must provide these services to those students who need them to benefit from a special education program.

Q: WHICH STUDENTS ARE COVERED UNDER IDEA?

A: IDEA protects all students who need special education and related services, including those who are homeless. Children suspected of having a disability also are protected. In order to benefit from special education, students must be between the ages of 3 and 21. However, IDEA does fund special services for some children beginning at birth.

Q: WHAT DISABILITIES ARE COVERED UNDER IDEA?

A: IDEA provides rights to students with various disabilities, including (but not limited to) the following:

- ◆ Mental retardation
- ◆ Hearing and vision impairments
- ◆ Speech and language problems
- ◆ Learning disabilities (*e.g.*, dyslexia)
- ◆ Emotional problems
- ◆ Autism

Q: WHO MAKES SPECIAL EDUCATION DECISIONS ?

A: Under IDEA, a parent must usually agree to have a student tested for a disability and parent agreement is required for participation in special education services. However, the law says the following people can be considered parents:

- ◆ Birth or natural parent
- ◆ Adoptive Parent
- ◆ Foster Parent
- ◆ Guardian
- ◆ A person who acts as a parent and has the student living in his or her home—possibly a grandparent or other relative
- ◆ A surrogate parent selected by the school district or a judge

Q: HOW DO STUDENTS GET INTO SPECIAL EDUCATION?

A: Schools and districts must follow IDEA's "child find" rule. This rule requires states to find all students with disabilities. In order to do so, schools should pay attention to all children, including those who are homeless, and look for problems with classroom performance and behavior that may suggest a disability. If there is a problem, schools should then reach out to a parent and suggest that the student be tested for a disability.

Q: WHAT IF I THINK A HOMELESS STUDENT HAS A DISABILITY BUT THE SCHOOL HAS NOT NOTICED?

A: If a parent or other helpful adult thinks a child or youth has a disability, he or she may want to talk to the child's teacher. A parent can also ask the school to do evaluations/tests. In doing so, a parent should do the following:

- ◆ Put the request in writing
- ◆ Put a date on the request
- ◆ Give a copy of the request to the school principal or guidance counselor

IDEA requires schools to provide all necessary tests. Schools will have to finish testing within 60 days unless the state has another rule in place. Ask the student's school or school district special education office if your state follows a different timeline.

Q: THE TESTS HAVE BEEN TAKEN; NOW WHAT?

A: If the tests or evaluations show that the child may have a disability, the school should hold an IEP (Individualized Education Program) meeting. The meeting is a time to discuss test results, the educational needs of the student, and an IEP plan to address those needs. It should include a special education teacher, the student's regular education teacher, disability experts, a parent, and any lawyer or other advocate that the parent wants to bring along.

Q: WHAT IS IN THE IEP?

A: The IEP includes information about the class or classes in which the student will be placed. IEPs should ensure that students spend as much time as possible in classes and activities with regular education students. The IEP also may list other necessary services, such as transportation and specific therapy. Finally, the IEP must include educational goals and a list of ways to show that those goals are being reached.

Q: DO SCHOOLS EVER RETEST OR RECONSIDER IEPs?

A: Parents can ask for retesting at any time. If they do not ask, schools must retest every 3 years or after a shorter time if they believe it to be necessary. Schools and parents must review an IEP at least once a year or whenever they believe the child's special education needs have changed.



Q & A: BEYOND IDEA BASICS

Q: WHAT HAPPENS IF HOMELESSNESS CAUSES A STUDENT TO MOVE FREQUENTLY AND CHANGE SCHOOLS OFTEN?

A: Students who have been placed in special education have the right to receive similar services in each new school they attend. Youth, parents, and other helpful adults can help in this process by immediately informing new schools that the student was enrolled in special education at their old school. Sometimes, new schools will want to do new tests, hold new IEP meetings, and possibly create a new IEP. Parents still must be a part of these decisions.

Q: WHAT IF A STUDENT MOVES WHILE BEING TESTED AND BEFORE BEING PLACED IN SPECIAL EDUCATION?

A: If old schools have begun testing for special education, new schools

must finish the job. Both schools must finish their evaluations within 60 days unless the state has another timeline in place. New schools may ask parents for permission to extend the deadline, but parents must agree to any extensions. Schools also must make sufficient progress toward completing the testing. Parents, other helpful adults, and youth can help in this process by immediately informing new schools that the student was being considered for special education in the old school. Finally, parents should avoid extending a deadline if the student has been waiting a long time for services

Q: WHAT HAPPENS IF PARENTS FORGET TO TELL A SCHOOL ABOUT THEIR CHILD'S SPECIAL EDUCATION HISTORY? HOW WILL THE SCHOOL FIND OUT ABOUT IT?

A: IDEA and the federal McKinney-Vento homeless education law (see pages 13-14) require new schools to immediately request records from old schools. Old schools must immediately send those records to new schools. Those records should include any and all information about a student's special education needs.

Q: WHAT IF A STUDENT HAS DISCIPLINE PROBLEMS?

A: IDEA has discipline rules that apply when a special education student is suspended for more than 10 days. A student's IEP team

must meet and make a “manifestation determination,” which is a judgment about whether the student’s behavior was caused by his or her disability. If the behavior was a result of the disability, the student will not be suspended and the IEP team will change the IEP to better fit the needs of the student. However, there are exceptions to this rule—student behavior that involves drugs, weapons, or serious bodily injury can lead to suspensions of up to 45 school days even if this behavior is caused by a disability.

Q: WHAT HAPPENS TO STUDENTS WHOSE DISCIPLINE PROBLEMS ARE NOT CAUSED BY THEIR DISABILITIES?

A: Students who have behavior problems that were not caused by their disabilities can be suspended or expelled. Schools will apply the same rules to them as they apply to students in regular education. Parents have the right to appeal to a special education hearing officer if they disagree with the IEP team and believe that the behavior problems were caused by a disability.

Q: WHERE DO CHILDREN AND YOUTH GO WHEN THEY ARE SUSPENDED?

A: Schools must place suspended students in an alternative school, classroom, or other setting. Alternative settings are required to provide students with an education that helps them to reach the goals that are in their IEPs.

Q: HOW CAN UNACCOMPANIED YOUTH GAIN ACCESS TO SPECIAL EDUCATION?

A: Youth who are living on their own (e.g. in teen shelters or with friends) cannot enroll themselves in special education or request necessary evaluations or tests. If the youth is living with an adult who is acting in the role of a parent (perhaps a grandparent or the parent of a friend), that adult can agree to special education testing, placements, and services. Youth who do not have such adults in their lives should ask their school districts to appoint a “surrogate parent.” Helpful adults such as local homeless liaisons, teachers, counselors, social workers, or youth program workers may also suggest that school districts appoint surrogates.

Q: WHO ARE THE SURROGATE PARENTS?

A: Surrogate parents can be individuals who know the youth, such as a family friend or relative. A surrogate also can be a member of the community who was previously unknown to the youth. Surrogates are selected by school districts and some communities require that they receive some training beforehand.

Q: HOW MUCH TIME DOES A DISTRICT HAVE TO RESPOND TO A REQUEST FOR SURROGATE PARENTS?

A: School districts should appoint a surrogate within 30 days.



Q & A: SPECIAL IDEA SERVICES

Q: IF A STUDENT MISSES A LOT OF SCHOOL DUE TO HOMELESSNESS, IS THERE ANY WAY THAT IDEA CAN HELP HIM/HER MAKE UP FOR LOST TIME?

A: The extended school year rule gives students the right to attend summer school if they need such services due to a disability and have it listed in their IEPs. Students in homeless situations often fall behind in school when they miss days due to their homelessness. An extended school year can help students with disabilities make up days they may have missed.

Q: CAN CHILDREN AND YOUTH WHO DO NOT HAVE DISABILITIES RECEIVE SERVICES UNDER IDEA?

A: Yes, some students can receive services that are aimed at preventing later placement in special education. These “early intervening” services may include tutoring and reading help. Such programs may be useful to homeless students who miss school due to

frequent moves. However, not all school districts participate in the early intervening services program. You should ask your school district's special education office if it offers such services.

Q: DOES IDEA HELP WITH TRANSPORTATION?

A: Although the federal McKinney-Vento homeless education law requires school districts to provide transportation in certain situations, getting to school is still a problem for some homeless students. IDEA requires that transportation be provided to those students who need such services due to a disability and have it listed in their IEPs.



**Q & A: NON-COMPLIANCE
WITH IDEA**

Q: WHAT IF A SCHOOL DOES NOT FOLLOW IDEA?

A: If a school does not evaluate a student, does not complete an IEP, does not provide appropriate services, or does not follow any other part of IDEA, parents should make the school aware of their concerns and potentially ask for a mediator (or outside person) to help

them work out their problems with the school. If possible, parents should talk to an attorney or other advocate before asking for a mediator. If parents continue to be concerned, they can ask for a special education hearing. Schools and districts must provide parents with information about how to get started with this process.

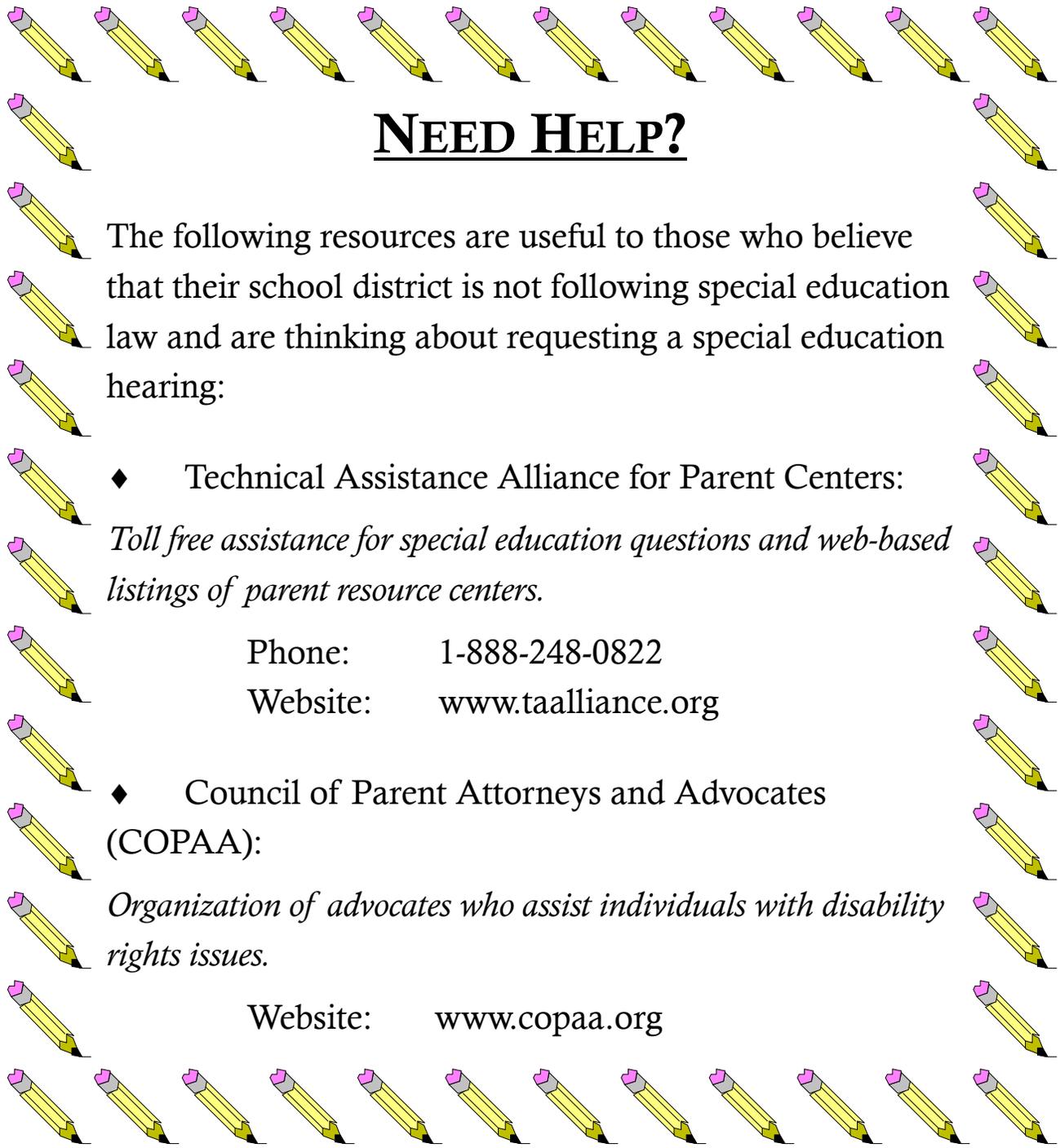
Q: HOW DO I PREPARE FOR A HEARING?

Parents can and should ask attorneys to represent them at the hearing or seek advice and assistance from others who are knowledgeable about the process. In many communities, such services can be obtained free of charge. Information about connecting to these resources is available on the next page. If parents can not find assistance or want to prepare for a hearing on their own, they should:

- ◆ Read any information about hearings that the school or the school district special education office provides.
- ◆ Gather and review all of the student's education records.
- ◆ Write a short statement about why the school is wrong, ending with a list of things you now want the school to do—this will probably be a part of your hearing request.
- ◆ Prepare to tell the above information to a hearing officer.

Q: WHAT CAN I DO IF I WANT TO REVIEW THE SCHOOL'S RECORDS?

A: Parents who want to review student records in preparation for a hearing, or for any other reason, can simply ask the school to make the records available. Schools are required to allow parents to review those materials.



NEED HELP?

The following resources are useful to those who believe that their school district is not following special education law and are thinking about requesting a special education hearing:

◆ Technical Assistance Alliance for Parent Centers:

Toll free assistance for special education questions and web-based listings of parent resource centers.

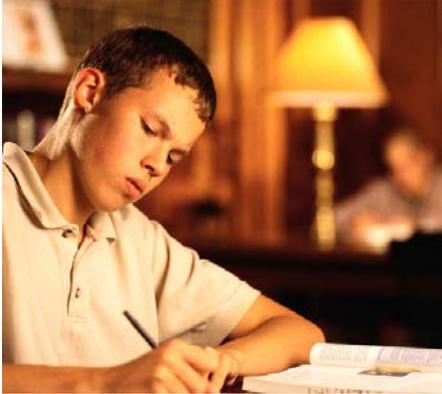
Phone: 1-888-248-0822

Website: www.taalliance.org

◆ Council of Parent Attorneys and Advocates (COPAA):

Organization of advocates who assist individuals with disability rights issues.

Website: www.copaa.org



OTHER USEFUL LAWS

In addition to IDEA, there are other federal laws that can help homeless students with disabilities:

- ◆ Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act guard the rights of students who face discrimination based on their disabilities. Both laws generally require that students be provided with a free appropriate public education, including special education. Unlike IDEA, they also apply to students with disabilities who require special accommodations (*e.g.*, wheelchair ramps), but not specialized instruction.
- ◆ The McKinney-Vento Homeless Assistance Act is the main federal homeless education law. It can be useful in preventing special education difficulties that result from unnecessary school transfers and enrolling in new schools. McKinney-Vento protects all students who do not have a fixed, regular, and adequate nighttime residence, such as those living in:
 - ⇒ Doubled-up housing with other families or friends
 - ⇒ Runaway/homeless youth shelters (even if parents invite the youth home)
 - ⇒ Hotels or motels

- ⇒ Shelters, including domestic violence shelters
- ⇒ Transitional housing shelters
- ⇒ Cars, abandoned buildings, parks, the streets, or other public spaces
- ⇒ Campgrounds or inadequate trailer homes

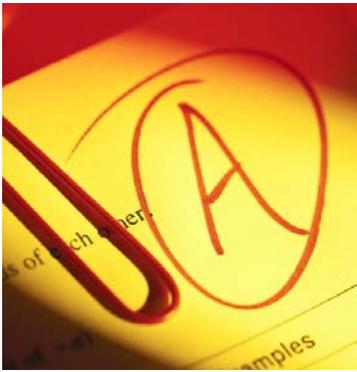
The McKinney-Vento Homeless Assistance Act requires states and school districts to ensure that students in homeless situations can attend and succeed in public school. Schools must immediately enroll students, even if they do not have proof of residency, school and immunization records, birth certificates, or other documents. Students also have the right to stay at their school even if their lack of housing forces them to move out of an attendance zone or a school district. Schools must provide necessary transportation.

Should you want to read the law...

The U.S. Department of Education has most federal education laws on its website (www.ed.gov). You may also refer to the Legal Information Institute to find statutes (www.4.law.cornell.edu/uscode) and regulations (www4.law.cornell.edu/cfr).

Laws mentioned in this pamphlet are identified as follows:

- | | |
|-------------------------------|-------------------------------------------------------|
| 1) IDEA: | 20 U.S.C 1400 (statute)
34 C.F.R 300 (regulations) |
| 2) McKinney-Vento Act: | 42 U.S.C 11431 (statute) |
| 3) Section 504: | 29 U.S.C 794 (statute)
34 C.F.R 104 (regulations) |
| 4) Title II: | 42 U.S.C 12131 |



FURTHER RESOURCES

To learn more about IDEA or special education, visit the following websites:

- ◆ **U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS):**
www.ed.gov/about/offices/list/osers
- ◆ **Council for Exceptional Children:**
www.cec.sped.org
- ◆ **National Disability Rights Network (NDRN):**
www.ndrn.org
- ◆ **The EDLAW Center, Inc.:**
www.edlaw.net

To learn more about homeless education and related issues, visit the following websites:

- ◆ **The National Law Center on Homelessness & Poverty**
www.nlchp.org
- ◆ **The National Association for the Education of Homeless Children & Youth (NAEHCY)**
www.naehcy.org
- ◆ **The National Center for Homeless Education**
www.serve.org/nche

If you experience any problems with school enrollment or attendance of a child or youth experiencing homelessness, you should immediately call your school district and ask to speak to your local homeless coordinator. You also may contact your State Coordinator.

State Coordinators

ALABAMA
Dorothy Riggins
334-242-8199

DELAWARE
Joanne Miro
302-739-2767 x3284

IOWA
Ray Morley
515-281-3966

ALASKA
Sondra Meredith
907-465-8706

FLORIDA
Betty Applewhite
850-245-0709

KANSAS
No Contact Person
785-296-6714

ARIZONA
Mattie McVey
602-542-4963

GEORGIA
David Davidson
404-651-7555

KENTUCKY
Mary Marshall
502-564-3791

ARKANSAS
Susan Underwood
501-682-4847

HAWAII
Judy Tonda
808-394-1394

LOUISIANA
Deidre Kibbe
225-342-5688

CALIFORNIA
Leanne Wheeler
916-319-0383

IDAHO
Jan Byers
208-332-6953

MAINE
Shelley Reed
207-624-6637

COLORADO
Margie Milenkiewicz
303-866-6930

ILLINOIS
Rich DeHart
217-782-2948

MARYLAND
Walter E. Varner
410-767-0293

CONNECTICUT
Louis Tallarita
860-807-2058

INDIANA
Christina Endres
317-232-0548

MASSACHUSETTS
Peter Cirioni
781-338-6294

MICHIGAN
Mike McGraw
517-241-8369

MINNESOTA
Tom Gray
651-582-8282

MISSISSIPPI
Gloria White Adams
601-359-3499

MISSOURI
Amy James
573-522-8763

MONTANA
Terry Teichrow
406-444-2036

NEBRASKA
Roger Reikofski
402-471-2968

NEVADA
Jacquelyn Moore
775-687-9248

NEW HAMPSHIRE
Lynda Thistle Elliott
603-271-3840

NEW JERSEY
Danielle Anderson Thomas
609-984-4974

NEW MEXICO
Joseph Sanchez
505-827-1805

NEW YORK
Patricia McGuirk
518-473-1236

NORTH CAROLINA
Debra McHenry
919-807-3941

NORTH DAKOTA
Ann Ellefson
701-328-2292

OHIO
Thomas Dannis
614-466-4161

OKLAHOMA
Amy Davis
405-522-3251

OREGON
Dona Horine Bolt
503-378-3600 x2727

PENNSYLVANIA
Sheldon Winnick
717-772-2813

PUERTO RICO
Esperanza Vega
787-759-8910 x210

RHODE ISLAND
Janice Stavros
401-222-4600 x2207

SOUTH CAROLINA
Brenda Myers
803-734-3215

SOUTH DAKOTA
Laura Johnson Frame
605-773-2491

TENNESSEE
Janice Routon
615-532-6314

TEXAS
Barbara James
512-475-8765

UTAH
Kreig Kelley
801-538-7975

VERMONT
Wendy Ross
802-828-5148

VIRGINIA
Patricia Popp
757-221-7776

WASHINGTON
Melinda Dyer
360-725-4968

WEST VIRGINIA
Lisa Burton
304-558-8830

WISCONSIN
Mary Maronek
608-261-6322

WYOMING
Carolee Buchanan
307-777-3562

You can make a difference in the lives of homeless children and families by becoming a member of the National Law Center on Homelessness & Poverty

You are invited to join the network of attorneys, students, advocates, activists and committed individuals who make up NLCHP's membership network. The network provides a forum for individuals, non-profits, and corporations to participate and learn more about using the law to advocate for solutions to homelessness.

NLCHP Members also receive the following benefits:

- ◆ Free electronic copies of NLCHP reports e-mailed when each report is released
- ◆ A free paper copy of NLCHP reports upon request
- ◆ 45% discount on registration for monthly NLCHP audio trainings
- ◆ 10% discount on registration for NLCHP conferences, forums, & workshops
- ◆ Access to NLCHP program attorneys and members through **members-only list serve** that will give you the opportunity to communicate with NLCHP staff attorneys and advocates from around the country, as well as:
 - NLCHP's **monthly e-updates**
 - Invitations to upcoming **conferences and events**.
 - Timely legislative **action alerts**.
 - Notice of **internship and volunteer opportunities**.

To become a member, go to www.nlchp.org
or give us a call at (202) 638-2535.

JOIN US

The National Law Center on Homelessness & Poverty serves as the legal arm of the national movement to alleviate, prevent and end homelessness.

The Law Center publishes investigative reports, fact sheets and a monthly e-newsletter. Our work is cited in the press and is used by national policy makers and the general public.

To receive a listing of our publications, including many works on the Education of Children and Youth Experiencing Homelessness, please contact us through the information below.

We would like to thank our Anonymous Donor, the Kellogg Foundation, the Freddie Mac Foundation and the Butler Family Fund for their support of our work with children in homeless situations.

NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

1411 K Street, NW, Suite 1400
Washington, DC 20005
Tel: (202) 638-2535 Fax: (202) 628-2737
<http://www.nlchp.org>
nlchp@nlchp.org