UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

August 5, 2013

Diana Bowman, Director
National Center for Homeless Education
SERVE Center at UNCG
5900 Summit Avenue, #201
Browns Summit, NC 27214

Dear Ms. Bowman:

This letter is in response to your questions to the Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education (Department) regarding children with disabilities who are homeless. In your discussions with Laura Duos, a member of OSERS staff, you asked questions regarding a child's school of origin and the transportation of children who are homeless. Answers to your questions are included below.

Question 1: Are Individuals with Disabilities Education Act (IDEA) funds or McKinney-Vento funds used to transport students with disabilities to their school of origin?

Answer: Depending on the circumstances, both McKinney-Vento Act and IDEA Part B funds can be used to transport homeless children with disabilities to their school of origin. Transportation is defined as a related service under 34 CFR §300.34(a) of the IDEA regulations and, under 34 CFR §300.34(c)(16), could include travel to and from school and between schools. A child's individualized education program (IEP) Team is responsible for determining if transportation is required to assist a child with a disability to benefit from special education, and how the transportation services should be provided. If a child's IEP Team determines that a child requires transportation as a related service, then IDEA funds can be used to provide transportation to the child. Transportation for a child with a disability who is homeless may include transportation to the child's school of origin if attending the school of origin is determined to be in the child's best interest. 34 CFR §300.34(c)(16) and 42 U.S.C. 11432(g)(1)(J)(iii). If a child with a disability who is homeless does not require transportation as a related service, IDEA funds may not be used to provide transportation to the child's school of origin. However, McKinney-Vento funds may be used to transport the child to the school of origin. 42 U.S.C. 11432(g)(1)(J)(iii).

Question 2: Under what circumstances may a homeless child without a disability ride a "special education" school bus to their school of origin?

Answer: Generally, IDEA Part B funds must be used only to pay the excess costs of providing special education and related services to children with disabilities. 34 CFR §300.202(a)(2) and 20 U.S.C. 1413(a)(2)(A)(i). Under the permissive use of funds provisions in IDEA section 613(a)(4)(A)(i) and 34 CFR §300.208(a)(1), IDEA Part B funds may be used for "the costs of special education and related services . . . provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more

nondisabled children benefit from these services." It is permissible to use IDEA funds in cases such as this, where an "incidental benefit" is provided to nondisabled children as a result of special education and related services provided under IDEA to children with disabilities. There could be situations where, although buses are purchased for the express purpose of transporting students with disabilities, those buses are not full. Buses should not be purchased with IDEA funds with the expectation that the buses will be used, in whole or in part, to transport children without disabilities. For example, if a school district purchases more buses or larger buses than are necessary to provide transportation to all students with disabilities within their district requiring such transportation, with the purpose of using those buses (or extra seats resulting from those buses) to provide transportation to children without disabilities, it would constitute an improper expenditure of IDEA funds on children without disabilities.

Under circumstances in which buses are purchased exclusively to transport children with disabilities but are not full and are able to pick up nondisabled homeless children along the usual bus routes, and no additional IDEA funds would need to be expended to transport those nondisabled children, buses purchased with IDEA funds may be used to transport nondisabled homeless children under the permissive use of funds provisions because the use of IDEA Part B funds in this situation would confer an incidental benefit on the nondisabled homeless children. Whether LEAs could rely on this provision in other situations would depend on the specific facts involved. We would suggest that if LEAs are seeking to rely on the permissive use of funds provisions in IDEA and 34 CFR §300.208(a)(1) to transport disabled and nondisabled homeless children in a vehicle purchased with Part B funds to transport children with disabilities, they would need to consult with officials of their State Department of Education to confirm whether the particular use of Part B funds would be permissible and whether the benefit conferred on the nondisabled children could be considered an incidental benefit.

OSEP also notes that the IDEA does not require LEAs to transport children with disabilities in separate vehicles isolated from their peers. In fact, many children with disabilities can receive the same transportation provided to nondisabled children, consistent with the least restrictive environment requirements in 34 CFR §§300.114 through 300.120. For more information, see Questions and Answers on Serving Children with Disabilities Eligible for Transportation, which is posted on the Department's Web site at:
http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C12%2C

Question 3: If a child with a disability who is homeless is allowed to attend his or her school of origin, rather than a school in the LEA where the child is located, is there a change in placement or a change in the least restrictive environment (LRE) for the child with a disability?

Answer: 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. 42 U.S.C. 11432(g)(3)(G). 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 the 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)(B)(i).

Under the IDEA, placement decisions for all children with disabilities, including homeless children with disabilities, must be made annually, on an individual basis, in accordance with their IEPs by a group of knowledgeable persons, including the child's parents. Further, each child with a disability is educated in the school the child would attend if not disabled unless the child's IEP requires some other arrangement. 34 CFR §300.116(b)-(c). Historically, the Department has referred to 'placement' as points along the continuum of placement options available for a child with a disability (i.e., regular class, special school or separate school) and "location" as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. *Analysis of Comments and Changes to* the final Part B regulations, 71 FR 46540, 46588 (Aug. 14, 2006). In the case of a child with a disability who is homeless, providing the set of services included in the child's IEP in the school of origin does not necessarily mean a change in placement has occurred. If 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. These determinations are fact-specific and would need to be made on a case-by-case basis.

Question 4: Some state regulations require the LEA of residence to be responsible for the child's free appropriate public education (FAPE). If a homeless child moves to a shelter in a new school district but attends the school of origin in the previous school district, how does the new LEA of residence ensure FAPE is provided?

Answer: Under IDEA, one public agency generally is responsible for ensuring the provision of a free appropriate public education (FAPE) to children with disabilities in its jurisdiction. While most States allocate responsibility for providing FAPE based on the district in which the child's parents reside, States have discretion in determining which LEA or school district is responsible for providing FAPE to children with disabilities who are homeless. If State regulations require the LEA of residence to be responsible for FAPE, that LEA 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 LRE 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. Because the child is attending a school in another district the school districts must coordinate with one another to ensure the child receives FAPE. Section 300.323(g) of the IDEA regulations requires school districts to promptly exchange relevant records when a child changes school districts. Relevant records include existing evaluation data, consistent with 34 CFR §300.305. Coordinating assessments and exchanging relevant records promptly is critical to providing FAPE, and we encourage school districts to be as proactive as possible in providing and securing this information.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Laura Duos at 202-245-7324 or by email at Laura.Duos@ed.gov.

Sincerely,

/s/ Melody Musgrove

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs