



**SUMMARY:**  
**IMPROVING EDUCATION FOR HOMELESS AND FOSTER CHILDREN  
WITH DISABILITIES IN THE INDIVIDUALS WITH DISABILITIES  
EDUCATION IMPROVEMENT ACT OF 2004 (IDEA 2004)<sup>1</sup>  
(P.L. 108-446)**

There are more than 540,000 children living away from their families in foster families, group homes, or child care institutions. A large number of children in foster care have special needs and 30-40% of them are receiving special education services. Although federal law protects the rights of children with disabilities to receive free and appropriate education, there are many characteristics of foster care that make it challenging for these children to access special education services. Many children in foster care move frequently and often with little notice. Generally, as children move from home to home and school to school, too frequently their records don't follow them and their special needs go unnoticed. Even if there is an existing Individualized Education Program (IEP), children's records often do not move with them to new schools or new districts, and the process has to start over. In addition, too many children in foster care do not have parents actively involved in their care who can advocate for their educational needs. Those working with them may have limited knowledge about IDEA, the special needs of the child in their care and how to access appropriate services. The cost of failing to address such challenges for these vulnerable children is high. Children who lack the special services they need often drop out of school or fall behind in a way that makes dropping out more likely. Studies show that children in foster care have higher rates of grade retention, lower academic skills as measured by standardized tests, higher absentee and tardy rates, and higher drop out rates. Congress addressed a number of these concerns in their reauthorization of the Individuals with Disabilities Education Act (IDEA) in December 2004.

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) includes the following changes intended to improve the access of children who are homeless and children who are wards of the state to special education services and to improve the quality of those services.

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<sup>1</sup> Sources include: The Individuals With Disabilities Improvement Act of 2004 (P.L. 108-446); House Bill H.R. 1350; Senate Bill S. 1248; Senate Amendment S.A. 3148; Conference Report on H.R. 1350 and S. 1248; 34 CFR Parts 300 and 303, Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities (IDEA Final Regulations), Federal Register, Vol. 64, No. 48 (1999); and the Individuals with Disabilities Education Act Amendments of 1997 (P.L. 105-71).

### **Includes Definitions of Children Who Are Homeless And Wards of the State**

- The term “homeless children” has the same meaning as the term “homeless children and youths” in section 725 of the McKinney-Vento Homeless Assistance Act. (Sec. 602 (11))
- “Ward of the state” is defined as a child who, as determined by state law where the child resides, is a foster child, is a ward of the state, or is in the custody of a public child welfare agency, but does not include a foster child who has a foster parent who meets the revised definition of parent in paragraph 23 (we are assuming that this exclusion applies only to those children with foster parents who have assumed the role of parent and hope that it will be clarified in regulations). (Sec. 602 (36))

### **Expands Definition of Parent**

- IDEA 2004 makes explicit what has been included in regulations since 1997. It states that the definition of parent includes a range of individuals, in addition to natural and adoptive parents, who are knowledgeable about a child’s needs, including foster parents (unless a foster parent is prohibited by State law from serving as a parent), relative caregivers, and other individuals who are acting in the place of parents. Current regulation §300.20 includes language that further clarifies that foster parents should be defined as parent only when the natural parents’ education rights have been extinguished, and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child, and has no conflict with the interests of the child. (Sec. 602 (23) and CFR Sec. 300.20)

### **Strengthens Services For Children Who Are Homeless and Wards Of The State**

- **Expands the list of children included in Child Find** to include children with disabilities who are homeless or are wards of the state. (Sec. 612 (a)(3)(A))
- **Adds a representative from the state child welfare agency responsible for foster care to the state advisory panel.** The final bill expands membership of the state advisory panel to include representatives for homeless children and children who are wards of the state. However, it does not include language from the Senate Amendment which would have further required participation by at least one foster parent, at least one grandparent or other relative caregiver, and representatives of wards of the state, including attorneys for children in care, a guardian ad litem, court appointed special advocate or judge. (Sec. 612 (a)(21)(B))

## **Increases Opportunities for Continuity Of Services When Children With Disabilities In Foster Care Or Who Are Homeless Move From One School Or One School District To Another.**

- **During the initial evaluation.** Requires evaluations to be completed within 60 days of parental consent, but provides an exception if a child moves from one school district to another school district during the evaluation, but only if the new LEA is making sufficient progress to ensure prompt completion of the evaluation and the parent and the new school district agree to a specific time when the evaluation will be completed. IDEA 2004 also requires schools to expeditiously coordinate assessments of children with disabilities who transfer from one district to another school district before the initial evaluations are complete. (Sec. 614 (a)(1)(C) and Sec. 614 (b)(3)(D))<sup>2</sup>
- **After an IEP has been developed.** Requires a school to apply the existing IEP, including comparable services, when a child transfers school districts within the state, in consultation with the parents, until the local educational agency (LEA) either adopts the previous IEP or implements a new IEP. When a student transfers to a school district outside the state, the new school also must implement the existing IEP until the new LEA determines whether an evaluation is necessary, and if so, develops a new IEP. (Sec. 614 (d)(2)(C)(i))
- **Ensures that records for children with disabilities in foster care or who are homeless follow them in a timely fashion as they move from one school district to another.** In order to facilitate transition of children from school to school when transfers are necessary, the new school must take reasonable steps to promptly obtain all of the child's necessary records related to the provision of special education related services from the previous school, and the previous school must take reasonable steps to promptly respond to those requests. (Sec. 614 (d)(2)(C)(ii))

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<sup>2</sup> The conference report recognizes that the "high mobility of some children, including homeless children and youth and children and youth in the custody of a state child welfare agency, may cause delays in the assessment process and in the provision of a free and appropriate public education. In order to minimize such delays, the Conferees intend that local agencies ensure that assessments for these children and youth be completed expeditiously, taking into consideration the date on which such children and youth were first referred for assessment in any LEA. Such assessments shall be made in collaboration with parents (including foster parents) and, where applicable, surrogate parents, homeless liaisons designated under Section 723 (g)(1)(j)(ii) of the McKinney-Vento Homeless Assistance Act, court appointed special advocates, a guardian ad litem, or a judge." Congressional Record page H9947, November 17, 2004.

## **Ensures That A Parent's Inability To Consent To An Evaluation Does Not Delay The IEP Process For A Child In Foster Care While Protecting The Parents' Right to Make Decisions About The Child's Care**

- IDEA requires that the agency proposing to conduct an initial evaluation obtain parental consent before conducting the evaluation. Previously, there was no exception for a ward of the state with a parent who was unable or unwilling to consent. Under the exception created in IDEA 2004, the agency is required to make reasonable efforts to obtain informed consent for an initial evaluation from the parent of a child who is a ward of the state and is not residing with his/her parent unless the following three exceptions exist: 1) despite reasonable efforts to do so, the agency cannot determine the whereabouts of the parent; 2) parental rights have been terminated; or 3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. (Sec. 614 (a)(1)(D)(iii))

## **Prevents Delays In The Appointment Of Surrogate Parents For Children With Disabilities In Foster Care Whose Parents Cannot Represent Them**

- **Allows either the local educational agency or a judge to appoint a surrogate when the child is a ward of the state.** The previous version of the law required that public agencies have procedures to protect the rights of the child, including the assignment of an individual to act as a surrogate for the parents “whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the state.” IDEA 2004 adds that when the child is a ward of the state, either the LEA or the “judge overseeing the child’s care” may appoint the surrogate. (Sec. 615 (b)(2)(A)(i))
- **Adds requirement that the state make reasonable efforts to appoint an educational surrogate parent within 30 days.** Regardless of who appoints the surrogate, the state must make reasonable efforts to ensure the assignment occurs within 30 days of a determination by the agency that the child needs a surrogate. Although the surrogate for unaccompanied youth must be appointed within 30 days, the law itself is not clear about who may be appointed in this role. The Conference report encourages states to quickly appoint a surrogate for unaccompanied youth and makes clear that staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs may serve as a temporary surrogate. It specifically exempts them from being considered an employee of an agency involved in the education or care of youth, for purposes of the prohibition of certain state agency employees from acting as surrogates as set forth in Sec. (b)(2)(A), and allows them to serve as a temporary surrogate until a more permanent surrogate can be appointed.<sup>3</sup> (Sec. 615 (b)(2)(B))

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<sup>3</sup> House Congressional Record page H9947, November 17, 2004.

## **Strengthens Early Intervention Services For Infants and Toddlers Who Are Homeless and Those Who Are In Foster Care, Who Represent the Fastest Growing Segment of the Foster Care Population**

- **Promotes the availability of early intervention services to all infants and toddlers with disabilities who are wards of the state or are homeless.** In order to be eligible for federal funding of early intervention services, states must adopt a policy that provides assurances that all infants and toddlers with disabilities, including homeless children and their families, and infants and toddlers with disabilities who are wards of the state, have access to services. (Sec. 634 (1))
- **Provides greater emphasis on reaching out to parents of high-risk infants.** IDEA 2004 adds that the early intervention public awareness program is designed “especially to inform parents of premature infants, or infants with other physical risk factors associated with learning or developmental complications” on the availability of intervention services. The lead agency is also responsible for preparing and disseminating procedures to assist sources in sharing such information. The Conference report specifies that the public awareness program should include a number of referral sources including homeless family shelters and officials and staff in the child welfare system. (Sec. 635 (a)(6))
- **Requires states to provide a description of policies and procedures that mandate the referral to services for infants and toddlers who are involved in the child welfare system.** The state application must include policies and procedures for the referral to services for infants and toddlers who are “involved in a substantiated case of child abuse” or “affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.” (Sec. 637 (a)(6))
- **Includes representatives of children with disabilities who are wards of the state or are homeless in the planning and implementation of early intervention services.** The state must include in their early intervention grant application assurances that policies and procedures have been adopted to ensure the meaningful involvement of underserved groups, including homeless families and children with disabilities who are wards of the state, in the planning and implementation of the program. (Sec. 637 (b)(7))
- **Requires the inclusion of a representative of the foster care agency and homeless children coordinator on the state interagency coordinating council.** Expands the list of required participants on the state interagency coordinating council to include at least one representative from the office of the coordinator of education of homeless children and youth, the state agency responsible for children’s mental health, and the state child welfare agency responsible for foster care. (The final bill does not include language from the Senate version of the bill, which also would require the inclusion of a foster parent of a child with a disability, and at least one grandparent or relative caregiver of a child with a disability on the coordinating council.) (Sec. 641 (b)(1)(K-M))

## **Modifies Transition Services For Older Youth Which Would Include Those In Foster Care And Those Who Are Homeless**

- **Requires that an IEP for older youth include appropriate post secondary goals based on transition assessments related to training, education, employment, and where appropriate, independent living skills.** Previously, the Act provided a 3-tier transition plan. At age 14, the IEP was to include a statement focused on the transition needs of the child as it related to their courses of study (e.g. advanced placement courses or a vocational program). At age 16, the IEP Team was to include a statement of needed transition services, including when necessary, a statement of interagency responsibilities. And at least one year before the age of majority, the IEP was required to include a statement that the child had been informed of any rights that transfer to him or her on reaching the age of majority. IDEA 2004 combines the first two tiers and adds a requirement that the IEP include “appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills.” At the same time, the trigger for these transition services has been delayed from age 14 to age 16. (Sec. 614 (d) (1)(A)(i)(VIII))

*Children's Defense Fund  
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*For further information, please contact CDF's Child Welfare and Mental Health Division at 202-662-3629 or email [jchang@childrensdefense.org](mailto:jchang@childrensdefense.org).*

For more information about how IDEA 2004 provisions impact children and youth experiencing homelessness, visit the National Association for the Education of Homeless and Youth website at [www.naehcy.org](http://www.naehcy.org).