

108TH CONGRESS  
1ST SESSION

# S. 1619

To amend the Individuals with Disabilities Education Act to ensure that children with disabilities who are homeless or are wards of the State have access to special education services, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2003

Mrs. MURRAY (for herself and Mr. DEWINE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Individuals with Disabilities Education Act to ensure that children with disabilities who are homeless or are wards of the State have access to special education services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving Education  
5 for Homeless and Foster Children with Disabilities Act  
6 of 2003”.

1 **SEC. 2. FINDINGS.**

2 Section 601(c) of the Individuals with Disabilities  
3 Education Act (20 U.S.C. 1400(c)) is amended by adding  
4 at the end the following:

5 “(11) Children and youth in foster care (ap-  
6 proximately 588,000 nationwide) have a higher prev-  
7 alence of physical, developmental, and behavioral  
8 health problems than other children. They are also  
9 more likely than other children to have academic and  
10 behavioral trouble in school, higher rates of absen-  
11 teeism and tardiness, and are more likely than other  
12 children to be in special education, repeat a grade,  
13 and have disabilities that affect their ability to learn.

14 “(12) In a number of States, more than 60 per-  
15 cent of children and youth in foster care drop out  
16 of school before graduation; a rate that is twice as  
17 high as the dropout rate for all students.

18 “(13) More than 1,350,000 children will experi-  
19 ence homelessness at least once during the course of  
20 a year.

21 “(14) While homeless children are diagnosed  
22 with learning disabilities at a disproportionately high  
23 rate, such children are underserved by special edu-  
24 cation programs. In 1997, 20 of 47 States reported  
25 that special education was a major need of homeless  
26 children, yet 39 percent of States also reported that

1 such children had difficulties accessing special edu-  
 2 cation services.

3 “(15) In reports to the Department of Edu-  
 4 cation, 50 percent of States indicated that homeless  
 5 children had difficulties accessing special education  
 6 services.”.

7 **SEC. 3. DEFINITIONS.**

8 Section 602 of the Individuals with Disabilities Edu-  
 9 cation Act (20 U.S.C. 1401) is amended—

10 (1) by redesignating paragraphs (9) through  
 11 (30) as paragraphs (10) through (31), respectively;

12 (2) by inserting after paragraph (8) the fol-  
 13 lowing:

14 “(9) HOMELESS CHILDREN.—The term ‘home-  
 15 less children’ has the meaning given the term ‘home-  
 16 less children and youths’ in section 725 of the  
 17 McKinney-Vento Homeless Assistance Act.”;

18 (3) by striking paragraph (20) (as redesignated  
 19 by paragraph (1) of this section) and inserting the  
 20 following:

21 “(20) PARENT.—

22 “(A) IN GENERAL.—The term ‘parent’—

23 “(i) means—

24 “(I) a natural or adoptive parent  
 25 of a child;

1                   “(II) a guardian (but not the  
2                   State if the child is a ward of the  
3                   State);

4                   “(III) an individual acting in the  
5                   place of a natural or adoptive parent,  
6                   including a grandparent, stepparent,  
7                   or other relative with whom the child  
8                   lives or an individual who is legally re-  
9                   sponsible for the child’s welfare; or

10                   “(IV) except as used in sections  
11                   615(b)(2) and 639(a)(5), an indi-  
12                   vidual assigned under either of those  
13                   sections to be a surrogate parent; and

14                   “(ii) in the case of a homeless child  
15                   who is not in the physical custody of a par-  
16                   ent or guardian, includes a related or unre-  
17                   lated adult with whom the child is living or  
18                   other adult jointly designated by the child  
19                   and the local educational agency liaison for  
20                   homeless children and youths (designated  
21                   pursuant to section 722(g)(1)(J)(ii) of the  
22                   McKinney-Vento Homeless Assistance  
23                   Act), in addition to other individuals per-  
24                   mitted by law.

1           “(B) FOSTER PARENT.—Unless State law  
2 prohibits a foster parent from acting as a par-  
3 ent, the term ‘parent’ includes a foster parent  
4 if—

5           “(i) the natural or adoptive parents’  
6 authority to make educational decisions on  
7 the child’s behalf has been extinguished  
8 under State law; and

9           “(ii) the foster parent—

10           “(I) has an ongoing, long-term  
11 parental relationship with the child;

12           “(II) is willing to make the edu-  
13 cational decisions required of parents  
14 under this Act; and

15           “(III) has no interest that would  
16 conflict with the interests of the  
17 child.”; and

18           (4) by adding at the end the following:

19           “(32) WARD OF THE STATE.—The term ‘ward  
20 of the State’ means a child who—

21           “(A) is considered a ward of the State in  
22 the State where the child resides; or

23           “(B) is in the custody of a public child  
24 welfare agency, including if the child is resid-  
25 ing—

1                   “(i) in a foster family home, group  
2                   home, or other alternative residential set-  
3                   ting; or

4                   “(ii) at home under protective super-  
5                   vision.”.

6 **SEC. 4. STATE ELIGIBILITY.**

7           Section 612(a) of the Individuals with Disabilities  
8 Education Act (20 U.S.C. 1412(a)) is amended—

9                   (1) in paragraph (3)(A), by striking “disabil-  
10                   ities attending” and inserting “disabilities who are  
11                   homeless children or are wards of the State and chil-  
12                   dren with disabilities attending”; and

13                   (2) in paragraph (21)(B)—

14                           (A) in clause (i), by striking the semicolon  
15                           at the end and inserting “, including not less  
16                           than 1 foster parent of a child with disabilities  
17                           who is a ward of the State and 1 grandparent  
18                           or other relative who is acting in the place of  
19                           a natural or adoptive parent;”;

20                           (B) in clause (v), by striking the semicolon  
21                           at the end and inserting “, including officials  
22                           who carry out activities under subtitle B of title  
23                           VII of the McKinney-Vento Homeless Assist-  
24                           ance Act;”;

1 (C) in clause (ix), by striking “and” after  
2 the semicolon;

3 (D) in clause (x), by striking the period at  
4 the end and inserting a semicolon; and

5 (E) by adding at the end the following:

6 “(xi) representatives from the State  
7 child welfare agency; and

8 “(xii) a representative of wards of the  
9 State who are in foster care, such as an at-  
10 torney for children in foster care, a guard-  
11 ian ad litem, a court appointed special ad-  
12 vocate, or a judge.”.

13 **SEC. 5. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**

14 Section 613(f)(2) of the Individuals with Disabilities  
15 Education Act (20 U.S.C. 1413(f)(2)) is amended—

16 (1) in subparagraph (B), by striking “and title  
17 XVI of the Social Security Act (supplemental secu-  
18 rity income)” and inserting “title XVI of the Social  
19 Security Act (supplemental security income), part E  
20 of title IV of the Social Security Act (foster care and  
21 adoption assistance), the John H. Chafee Foster  
22 Care Independence Program under section 477 of  
23 the Social Security Act, and State case plans for  
24 wards of the State”;

1           (2) in subparagraph (C), by striking “and”  
2 after the semicolon;

3           (3) in subparagraph (D), by striking the period  
4 at the end and inserting “, that includes staff from  
5 the State child welfare agency; and”; and

6           (4) by adding at the end the following:

7                   “(E) developing and coordinating strate-  
8 gies with local educational agency liaisons for  
9 homeless children and youths (designated pur-  
10 suant to section 722(g)(1)(J)(ii) of the McKin-  
11 ney-Vento Homeless Assistance Act) to facili-  
12 tate service delivery to children with disabilities  
13 who are homeless children.”.

14 **SEC. 6. EVALUATIONS, ELIGIBILITY DETERMINATIONS, IN-**  
15 **DIVIDUALIZED EDUCATION PROGRAMS, AND**  
16 **EDUCATIONAL PLACEMENTS.**

17           Section 614 of the Individuals with Disabilities Edu-  
18 cation Act (20 U.S.C. 1414) is amended—

19           (1) in subsection (a)(1)(C), by adding at the  
20 end the following:

21                   “(iii) EXCEPTION FOR WARDS OF THE  
22 STATE.—The agency shall not be required  
23 to obtain an informed consent from the  
24 parents of a child for an initial evaluation  
25 to determine whether the child is a child

1 with a disability if such child is a ward of  
2 the State and consent has been given by  
3 the judge appointed to the child’s case or  
4 the child’s attorney, guardian ad litem, or  
5 court appointed special advocate.”;

6 (2) in subsection (b)(3)—

7 (A) in subparagraph (C), by striking  
8 “and” after the semicolon;

9 (B) in subparagraph (D), by striking the  
10 period at the end and inserting “; and”; and

11 (C) by adding at the end the following:

12 “(E) assessments of homeless children and  
13 wards of the State are—

14 “(i) expedited and coordinated with  
15 such children’s prior and subsequent  
16 schools as necessary to ensure timely com-  
17 pletion of full evaluations; and

18 “(ii) completed within time limits—

19 “(I) established for all students  
20 by Federal, State, and local laws; and

21 “(II) that computes the com-  
22 mencement of time from the date on  
23 which such children are first referred  
24 for assessments in any local edu-  
25 cational agency.”;

1 (3) in subsection (d)—

2 (A) in paragraph (1)(B)—

3 (i) in clause (vi), by striking “and”  
4 after the semicolon;

5 (ii) in clause (vii), by striking the pe-  
6 riod at the end and inserting “; and”; and

7 (iii) by adding at the end the fol-  
8 lowing:

9 “(viii) if the child is a ward of the  
10 State, the individual with primary respon-  
11 sibility for the child’s education needs,  
12 such as a foster parent, a relative with  
13 whom the child lives who acts as a parent  
14 to the child, an attorney for the child, a  
15 guardian ad litem, a court appointed spe-  
16 cial advocate, a judge, or an education sur-  
17 rogate.”; and

18 (B) in paragraph (2), by adding at the end  
19 the following:

20 “(C) PROGRAM FOR HOMELESS CHILDREN  
21 AND WARDS OF THE STATE.—In the case of a  
22 homeless child or a ward of the State who en-  
23 rolls in a new school and who had an IEP that  
24 was in effect in the same or another State, the  
25 local educational agency, State educational

1 agency, or other State agency, as the case may  
 2 be, shall immediately have in effect such IEP  
 3 until such agency—

4 “(i) adopts such IEP; or

5 “(ii) develops a new IEP.”; and

6 (4) in subsection (f), by adding at the end the  
 7 following: “Decisions regarding the educational  
 8 placement of a child with a disability who is a home-  
 9 less child shall comply with the requirements de-  
 10 scribed under section 722(g)(3) of the McKinney-  
 11 Vento Homeless Assistance Act.”.

12 **SEC. 7. PROCEDURAL SAFEGUARDS.**

13 Section 615 of the Individuals with Disabilities Edu-  
 14 cation Act (20 U.S.C. 1415) is amended—

15 (1) in subsection (a), by inserting “, including  
 16 children with disabilities who are wards of the  
 17 State,” after “children with disabilities”;

18 (2) in subsection (b)—

19 (A) in paragraph (2)—

20 (i) by striking “or the child is a ward  
 21 of the State” and inserting “the child is a  
 22 ward of the State, or the child is a home-  
 23 less child who is not in the physical cus-  
 24 tody of a parent or guardian”; and

1 (ii) by inserting “in accordance with  
2 subsection (n)” after “surrogate for the  
3 parents”;

4 (B) in paragraph (7)—

5 (i) in subparagraph (B)(i), by striking  
6 “residence of the child,” and inserting  
7 “residence of the child (or available contact  
8 information in the case of a homeless  
9 child),”; and

10 (ii) by striking “and” after the semi-  
11 colon;

12 (C) in paragraph (8), by striking the pe-  
13 riod at the end and inserting “; and”; and

14 (D) by adding at the end the following:

15 “(9) procedures to protect the rights of the  
16 child whenever the child is a ward of the State, in-  
17 cluding procedures that preserve the rights of the  
18 natural or adoptive parent to make the decisions re-  
19 quired of parents under this Act (unless such rights  
20 have been extinguished under State law) but that  
21 permit a child who is represented in juvenile court  
22 by an attorney, guardian ad litem, or another indi-  
23 vidual, to be represented by such attorney, guardian  
24 ad litem, or other individual in any meetings, medi-

1 ation proceedings, or hearings provided under this  
2 Act.”;

3 (3) in subsection (l), by striking “disabilities,”  
4 and inserting “disabilities, or under subtitle B of  
5 title VII of the McKinney-Vento Homeless Assist-  
6 ance Act or parts B and E of title IV of the Social  
7 Security Act,”; and

8 (4) by adding at the end the following:

9 “(n) SURROGATE PARENT.—

10 “(1) ASSIGNMENT.—The assignment of a sur-  
11 rogate under subsection (b)(2) shall take place not  
12 more than 30 days after the earlier of the following  
13 takes place:

14 “(A) The child is referred to the local edu-  
15 cational agency for an initial evaluation to de-  
16 termine if the child is a child with a disability.

17 “(B) There is a determination made by the  
18 agency that the child needs a surrogate parent  
19 because the child’s parent cannot be identified,  
20 the child becomes a ward of the State, or, de-  
21 spite reasonable efforts to do so, the agency  
22 cannot discover the whereabouts of the parent  
23 of the child.

24 “(2) REQUIREMENTS OF SURROGATE.—An indi-  
25 vidual may not be assigned to act as a surrogate for

1 the parents under subsection (b)(2) unless the indi-  
2 vidual—

3 “(A) signs a written form agreeing to  
4 make the educational decisions required of par-  
5 ents under this Act;

6 “(B)(i) has the knowledge and skills nec-  
7 essary to ensure adequate representation of the  
8 child; or

9 “(ii) agrees to be trained as an educational  
10 surrogate; and

11 “(C) has no interests that would conflict  
12 with the interests of the child.

13 “(3) FOSTER PARENT AS SURROGATE.—A fos-  
14 ter parent of a child may be assigned to act as a  
15 surrogate for the parents of such child under sub-  
16 section (b)(2) if the foster parent—

17 “(A) has an ongoing, long-term parental  
18 relationship with the child;

19 “(B) agrees to make the educational deci-  
20 sions required of parents under this Act;

21 “(C) agrees to be trained as an educational  
22 surrogate; and

23 “(D) has no interest that would conflict  
24 with the interests of the child.”.

1 **SEC. 8. FINDINGS AND POLICY.**

2 Section 631(a)(5) of the Individuals with Disabilities  
3 Education Act (20 U.S.C. 1431(a)(5)) is amended by in-  
4 serting “, and infants and toddlers in foster care” after  
5 “rural populations”.

6 **SEC. 9. ELIGIBILITY.**

7 Section 634(1) of the Individuals with Disabilities  
8 Education Act (20 U.S.C. 1434(1)) is amended by insert-  
9 ing “, infants or toddlers with disabilities who are home-  
10 less children, and infants or toddlers with disabilities who  
11 are wards of the State” after “located in the State”.

12 **SEC. 10. REQUIREMENTS FOR STATEWIDE SYSTEM.**

13 Section 635 of the Individuals with Disabilities Edu-  
14 cation Act (20 U.S.C. 1435) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (5), by inserting before  
17 the period at the end the following: “, and in-  
18 cluding a requirement, based on a State policy,  
19 that all children under 3 years of age who are  
20 involved in a substantiated case of child abuse  
21 or neglect are referred to the system described  
22 in section 633 for evaluation and, if appro-  
23 priate, receipt of early intervention services”;

24 (B) in paragraph (6), by striking “hos-  
25 pitals and physicians” and inserting “hospitals,  
26 physicians, homeless family shelters, medicaid

1 and State child health insurance program en-  
 2 rollment offices, health and mental health clin-  
 3 ics, public schools in low-income areas serving  
 4 low-income children, staff in State and local  
 5 child welfare agencies, and judges”; and

6 (C) by adding at the end the following:

7 “(17) A procedure to ensure that early inter-  
 8 vention services and evaluations are available to in-  
 9 fants or toddlers with disabilities who are—

10 “(A) homeless children; and

11 “(B) wards of the State or in foster care,  
 12 or both.”; and

13 (2) by adding at the end the following:

14 “(c) CONSTRUCTION.—Nothing in subsection (a)(5)  
 15 shall be construed to alter the responsibility of a State  
 16 under title XIX of the Social Security Act with respect  
 17 to early and periodic screening, diagnostic, and treatment  
 18 services (as defined in section 1905(r) of such Act).”.

19 **SEC. 11. STATE APPLICATION AND ASSURANCES.**

20 Section 637 of the Individuals with Disabilities Edu-  
 21 cation Act (20 U.S.C. 1437) is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (8)(C), by striking “and”  
 24 after the semicolon;

1 (B) by redesignating paragraph (9) as  
2 paragraph (10); and

3 (C) by inserting after paragraph (8) the  
4 following:

5 “(9) a description of policies and procedures to  
6 ensure that infants or toddlers with disabilities who  
7 are homeless children and their families and infants  
8 or toddlers with disabilities who are wards of the  
9 State have access to multidisciplinary evaluations  
10 and early intervention services; and”;

11 (2) in subsection (b)(7), by striking “low-in-  
12 come, and rural families” and inserting “low-income,  
13 homeless, and rural families and children with dis-  
14 abilities who are wards of the State”.

15 **SEC. 12. STATE INTERAGENCY COORDINATING COUNCIL.**

16 Section 641(b)(1) of the Individuals with Disabilities  
17 Education Act (20 U.S.C. 1441(b)(1)) is amended—

18 (1) in subparagraph (A), by striking the period  
19 at the end and inserting “, not less than one other  
20 member shall be a foster parent of a child with a  
21 disability, and not less than one other member shall  
22 be a grandparent or other relative acting in the  
23 place of a natural or adoptive parent of a child with  
24 a disability.”; and

25 (2) by adding at the end the following:

1           “(J) OFFICE OF THE COORDINATOR OF  
2           EDUCATION OF HOMELESS CHILDREN AND  
3           YOUTH.—Not less than 1 representative des-  
4           ignated by the Office of Coordinator for Edu-  
5           cation of Homeless Children and Youths.

6           “(K) STATE CHILD WELFARE AGENCY.—  
7           Not less than 1 representative from the State  
8           child welfare agency responsible for foster care.

9           “(L) REPRESENTATIVE OF FOSTER CHIL-  
10          DREN.—Not less than 1 individual who rep-  
11          resents the interests of children in foster care  
12          and understands such children’s education  
13          needs, such as an attorney for children in foster  
14          care, a guardian ad litem, a court appointed  
15          special advocate, a judge, or an education sur-  
16          rogate for children in foster care.”.

17 **SEC. 13. ADMINISTRATIVE PROVISIONS.**

18          Section 661(e)(2) of the Individuals with Disabilities  
19          Education Act (20 U.S.C. 1461(e)(2)) is amended—

20                 (1) in subparagraph (E), by striking “and”  
21                 after the semicolon;

22                 (2) in subparagraph (F), by striking the period  
23                 at the end and inserting “; and”; and

24                 (3) by adding at the end the following:

1           “(G) projects that provide training in edu-  
2           cational advocacy to individuals with responsi-  
3           bility for the needs of wards of the State, in-  
4           cluding foster parents, grandparents and other  
5           relatives acting in the place of a natural or  
6           adoptive parent, attorneys for children in foster  
7           care, guardians ad litem, court appointed spe-  
8           cial advocates, judges, education surrogates,  
9           and children’s caseworkers.”.

10 **SEC. 14. CONFORMING AMENDMENTS.**

11           Section 612(a)(12)(B)(i) of the Individuals with Dis-  
12           abilities Education Act (20 U.S.C. 1412(a)(12)(B)(i)) is  
13           amended—

14           (1) by striking “602(22)” and inserting  
15           “602(23)”;

16           (2) by striking “602(29)” and inserting  
17           “602(30)”;

18           (3) by striking “602(30)” and inserting  
19           “602(31)”.

○