



NO BARRIERS

**A Legal Advocate's Guide
to Ensuring Compliance
with the Education Program
of the McKinney-Vento Act**

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NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty is the only national organization dedicated solely to using the power of the law to end and prevent homelessness. We work with federal, state and local policymakers to draft laws that prevent people from losing their homes and to help people out of homelessness. We have been instrumental in enacting numerous federal laws, including the McKinney-Vento Act, the first major federal legislation to address homelessness. We helped enact the federal program that makes vacant government properties available at no cost to non-profits for use as facilities to assist people experiencing homelessness, and we ensure it is enforced including through litigation. We have won federal legal protections for tenants affected by the foreclosure crisis and we are working to make sure lenders comply with it.

We aggressively fight laws criminalizing homelessness and promote measures protecting the civil rights of people experiencing homelessness. We are advocating for proactive measures to ensure that those experiencing homelessness have access to housing, jobs, and public benefits even though they have no address so that they can escape homelessness. We are also upholding the right to vote for those who are experiencing homelessness.

We work to improve access to housing for domestic violence survivors and their children and we were instrumental in adding landmark housing rights amendments to Violence Against Women Act.

We invalidate laws that prevent other charitable organizations from distributing food and social services to people experiencing poverty and homelessness in inner cities.

We protect the right of children and youth experiencing homelessness to stay in school and get the support they need to succeed.

For more information about our organization, access to publications, and to contribute to our work, please visit our website at www.nlchp.org

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LEGAL DISCLAIMER

This advocacy manual is designed to provide an understanding of the relevant provisions of the Education for Homeless Children and Youth Program in Title VII of the McKinney-Vento Homeless Assistance Act (commonly referred throughout the manual as “McKinney-Vento” or the “Act”) and the legal advocacy tools needed to effectively assist homeless children and youth. This manual is a guide and resource. It is not intended to serve as a substitute for legal counsel. Contact an attorney if you need legal advice. For non-legal advocates and attorneys alike, do not rely on this information without consulting an attorney or an appropriate agency about the rights of homeless children and youth. Laws and legal procedures are subject to frequent change and differing interpretations, and the Law Center does not guarantee that the information in this manual is current. If you have any questions about the manual or need additional information, please contact Michael Santos at msantos@nlchp.org.

The Law Center is solely responsible for the views expressed in this report.

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EXECUTIVE SUMMARY

Homelessness is an ongoing crisis that continues to displace and negatively impact the lives of millions of Americans each year. Homeless children and youth are among the most vulnerable and invisible groups in the United States. Lacking political power, homeless children and youth are subjected to policies that have lasting impact on their lives:

- In 2010, **one in every 45** children and youth were homeless.
- In 2013, **one in every 30** children and youth were homeless—a total of 2.5 million.
- In the 2013-2014 school year (the most recent date for which numbers are available), **over 1.3 million** public school students were homeless—an **over 70% increase** since the recession began.
- **LGBTQ youth represent up to 40%** of the U.S. homeless youth population and yet they are only 5-7% of the total youth population, with a significant majority of LGBTQ homeless youth being LGBTQ youth of color.

With no signs of this increasing trend reversing anytime soon, providing homeless students much-needed services and support is of critical importance.

The Education for Homeless Children and Youth Program, under Title VII-B of the McKinney-Vento Homeless Assistance Act (“McKinney-Vento”), specifically addresses barriers to education to ensure that homeless children and youth **are identified** and can **enroll in, attend, and succeed** in school. This federal law requires educational continuity and stability and ensures that quality education is accessible by guaranteeing children and youth who lack a fixed, regular, and adequate night-time residence **the right to remain in their school and to receive free transportation to and from the same school** even if they move.

In December 2015, McKinney-Vento was reauthorized under the **Every Student Succeeds Act (ESSA)**. Recent changes under ESSA took effect on **October 1, 2016** and include:

- Improved identification of, and provision of services to, homeless children and youth;

- Revised “best interest” standard to include student-centered factors when making school placement decisions;
- Clarified the definition of “schools of origin” to include preschools and receiving school at the next grade level for all feeder schools;
- Improved data collection and coordination of housing and education services.

These changes created **additional legal obligations**, and it is vital to make sure that state and local educational agencies are in compliance with the recent amendments. Even prior to heightened requirements under ESSA, many schools **failed to fully comply** with the federal law, either through lack of capacity, ignorance, or active efforts to avoid their legal obligations. Unfortunately, many families and children and youth experiencing homelessness are not aware of their rights under McKinney-Vento. And those who are aware seldom have access to legal resources to enforce their rights.

In order to increase the provision of legal services to homeless children and youth, the National Law Center on Homelessness & Poverty has updated “*No Barriers: A Legal Advocate’s Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act*,” first published in 2015. This advocacy manual is designed to provide legal advocates an understanding of the relevant provisions of McKinney-Vento and the **legal advocacy tools** needed to effectively assist homeless children and youth in accessing school, including the **challenges ahead, compliance resources, and lessons learned from litigation**. Furthermore, the manual identifies **other federal laws and state laws** that offer legal protections to homeless children and youth.

The manual recognizes the diversity of homeless children and youth and attempts to address issues that are relevant to those who identify as students with disability, as immigrants, as LGBTQ students, as students displaced by a disaster, as children of domestic violence survivors, or as children awaiting foster care.

The Law Center offers this manual as a tool for legal advocates and attorneys responding to **individual requests** for assistance, as well as those seeking **broader, systemic reforms** in the education of homeless children and youth.

INTRODUCTION

As previously reported in the National Law Center on Homelessness & Poverty's publication, *No Safe Place: The Criminalization of Homelessness in U.S. Cities*, homelessness remains a national crisis.¹ The impact of homelessness is felt particularly sharply among children and youth. In 2010, over 1.6 million children and youth, or one in every 45, were found to be homeless – an increase of 38% since 2007.² More recent data shows that the problem is getting worse. According to the most recent data reported by the U.S. Department of Education, 1,360,747 homeless students were enrolled in U.S. preschools and K-12 schools in the 2013-2014 school year alone.³ This is an increase of 71% since the Department counted 795,054 homeless students enrolled in the 2007-2008 school year and the highest number on record.⁴ Combined with an estimate of younger non-school aged homeless children, the number of children and youth experiencing homelessness is estimated to be as high as **2.5 million**, which translates to **one in every 30 children and youth** in the United States.⁵

One reason the number of homeless children and youth continue to increase every year is because of improved identification, but increased poverty, lack of affordable housing, continuing impacts of the economic recession, racial disparities in economic opportunities, the challenges of single parenting, and the ways in which traumatic experiences, such as domestic violence, precede and prolong homelessness.⁶ As wages stagnate and cost of housing soar, there is no end in sight for the homelessness crisis.⁷

Studies show that homelessness has deleterious effects on children and youth's physical and emotional wellbeing and on their academic performance.⁸ Irreparable harm can result when a child's education is interrupted.⁹ Furthermore, homelessness is directly correlated to decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions.¹⁰ Central to meeting the needs of homeless children and youth is ensuring their access to stable education: homeless children and youth face steep academic challenges, and a much greater risk of being held back in school, leading to a greater risk of dropping out and potentially compromising their future. Schools also serve as a source of nutritious meals and basic health care, and can serve as an entry point for other vital services, including but not limited to housing, for children and youth

and their families. Moreover, school stability is critical for homeless children and youth, not only providing continuity during a turbulent time in their lives but also leading to improved academic outcomes.¹¹ Continuity of education during homelessness is vital not only for children and youth's mental and emotional health in the short-term, but for their future ability to succeed in a competitive job market and break the cycle of homelessness and poverty, because childhood homelessness is a strong predictor of adult homelessness.¹²

Past studies have shown that it takes a child four to six months to recover academically from each school transfer.¹³ Children who change schools need 6 to 18 months to regain a sense of equilibrium, security, and control.¹⁴ Homeless children who frequently transfer schools are more likely to repeat a grade, more likely to have poor attendance, and more likely to have worse overall academic performance than their peers who remain in stable school placements.¹⁵ Increasing the need for stability and support is the fact that compared to permanently housed children, school-age homeless children were significantly more likely to have a mental health problem.¹⁶

Staying in school not only offers homeless children and youth stability and a path toward academic and lifetime achievement, it is also a right protected by the Education for Homeless Children and Youth Program, under Title VII of the McKinney-Vento Homeless Assistance Act, (hereinafter "McKinney-Vento" or the "Act"). McKinney-Vento recognizes that children and youth without permanent housing often encounter barriers in enrolling, staying, and participating in school. This federal law provides children and youth without a fixed, regular, and adequate nighttime residence the right to remain in their school of origin and to receive free transportation to and from the same school even if they move.¹⁷ It provides homeless children and youth the right to immediately enroll in a new school without typically required records, and guarantees other rights to ensure the continuity of their education and their

full participation in school.¹⁸

Implemented properly, these legal protections make a measurable impact. However, many schools fail to comply with the Act, either through ignorance of the law or active efforts to avoid their legal obligations. If left unaddressed, children and youth's education rights will continue to be unprotected. This manual seeks to change this by providing tools and resources to legal advocates.

The manual is organized into the following sections:

Understanding McKinney-Vento: Key Concepts and Provisions: This section outlines the education rights of children and youth experiencing homelessness and highlights the important roles of state and local actors in protecting those rights.

The Role of Other Education-Related Laws: This section enumerates other education-related laws and how such laws can benefit homeless children and youth.

Meeting the Additional Needs of Students Experiencing Homelessness: This section explains the additional vulnerabilities experienced by homeless students, discusses educational barriers, and highlights important issues legal advocates should know when working with these children and youth.

Challenges Ahead: This section summarizes the problems in implementing and complying with McKinney-Vento, provides factual excerpts from various cases to demonstrate and highlight how schools have not complied with the federal law, and lists some issues to guide legal advocates in ensuring compliance.

Compliance Resources: This section shares compliance tools and resources as gathered by the Law Center's experts in the field to ensure compliance with the law.

Learning from Litigation: This section highlights the lessons learned from litigation and features summaries of cases where certain provisions of McKinney-Vento have been successfully enforced in court.

Appendix: This section provides, among other things, sample legal advocacy documents such as advocacy letters and sample pleadings to inform advocates when assisting a family or youth experiencing homelessness.



McKinney-Vento: Throughout this document, the term “McKinney-Vento” refers specifically to the Education for Homeless Children and Youth Program, under Title VII of the McKinney-Vento Homeless Assistance Act. The McKinney-Vento Homeless Assistance Act has other provisions that are *not* related to the education of homeless children and youth and which are not discussed in this manual.

Children, Youth: For the purposes of this manual, the terms children and youth are used interchangeably and include preschool children. States, stakeholders, and other jurisdictions cited in this manual may have different statutory definitions for children, youth, unaccompanied children, and unaccompanied youth.

UNDERSTANDING MCKINNEY-VENTO: KEY CONCEPTS AND PROVISIONS

UNDERSTANDING MCKINNEY-VENTO: KEY CONCEPTS AND PROVISIONS

Children and youth experiencing homelessness often have to overcome numerous barriers to enrolling, attending, participating, and staying in school. In 1987, Congress passed and President Reagan signed into law the Stewart B. McKinney Homeless Assistance Act, now known as the McKinney-Vento Homeless Assistance Act to address the growing national crisis of homelessness, the first major federal legislation to do so.¹⁹ The Education for Homeless Children and Youth Program under Title VII of the McKinney-Vento Act was reauthorized in 2015 through the enactment of the Every Student Succeeds Act.²⁰ McKinney-Vento specifically addresses barriers to education for homeless children and youth to ensure that children and youth can enroll in, attend, and succeed in school.²¹ The law requires States and school districts to provide a broad range of rights and assistance to homeless children and youth. The purpose of this section is to outline the basic rights and requirements provided by the Act.²²

The cornerstone of McKinney-Vento is maintaining school stability to ensure success in school for homeless children and youth. Stability means allowing a child to remain in the same school even after the child becomes homeless and is no longer living in the same school district. Students often benefit from remaining in one school while they are homeless. Staying put means they are less likely to fall behind in their schoolwork, repeat a grade, or drop out of school. Because students will often move multiple times before finding permanent housing, these effects can be cumulative. The continuity of education provides them stability and an environment where they can find comfort with familiar teachers, friends, and activities. McKinney-Vento requires schools to enroll students experiencing homelessness immediately, even if the student is unable to provide documents that are typically required for enrollment or has missed application or enrollment deadlines during any period of homelessness.²³ Generally, schools are prohibited from segregating homeless students from other students except as needed for short periods of time for health and safety emergencies or to provide services to meet the unique needs of homeless students.²⁴

When working with homeless children and youth, it is important to remember the following key policies and principles to ensure educational continuity and stability and full compliance with McKinney-Vento:

- ❖ Homeless children and youth must have equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youth.
- ❖ Laws, regulations, practices, or policies that may act as barriers to the identification of, or the enrollment, attendance, or success in school of, homeless children and youth must be reviewed and revised.
- ❖ Homelessness is not sufficient reason to separate students from the mainstream school environment.
- ❖ Homeless children and youths should have access to needed education and other services to ensure an opportunity to meet the same challenging State academic standards to which all students are held.²⁵

Who is covered under McKinney-Vento?

Any child or youth who is experiencing homelessness is protected by the law, which also includes, but is not limited to, unaccompanied youth who are not in physical custody of their parents or guardians. In most cases, the parent or guardian can enforce the rights of homeless children or youth. If the child or youth is unaccompanied, a designated representative can enforce the rights, giving priority to the views of that child or youth. ESSA amended McKinney-Vento to explicitly state that unaccompanied youth are able to enforce their rights should there be a disagreement between the child or youth and the parent or guardian. State and local laws may provide additional guidance on this issue.

42 USC 11434a(2)

(2) The term “homeless children and youths”—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

What is the definition of “homeless”?

Under McKinney-Vento, a person is considered to be homeless when they lack a fixed, regular, and adequate nighttime residence.²⁶ These terms are undefined under federal law, but the following definitions should provide some additional guidance:²⁷

- Fixed –not subject to change or fluctuation.²⁸
- Regular – constituted, conducted, scheduled, or done in conformity with established or prescribed usages, rules, or discipline.²⁹
- Adequate – sufficient for a specific requirement;

lawfully and reasonably sufficient.³⁰

When conducting eligibility determinations, state and local educational agencies must ensure that homeless children, youth, and their families are not stigmatized and that information about their living situation are treated as a student education record protected by applicable privacy laws and not shared to third parties without their written consent.³¹

To better inform the definitions above, McKinney-Vento specifically states that for homeless children and youth, homelessness *includes* situations where a child or youth is:

- sharing the housing of others due to loss of housing, financial problems, or a similar reason;
- staying in a motel, hotel, trailer park, or campground because they have nowhere else to go;
- living in a shelter, including emergency or transitional shelters, domestic violence shelters, and runaway and homeless youth shelters;
- staying in sub-standard housing;
- living in places not ordinarily used for sleeping, including cars, parks, public places, abandoned buildings, or bus or train stations; or
- abandoned in a hospital.³²

In determining whether a child or youth is living in “substandard housing,” a local educational agency (“LEA”) may consider whether the setting in which the family, child, or youth is living lacks one of the fundamental utilities such as water, electricity, or heat; is infested with vermin or mold; lacks a basic functional part such as a working kitchen or a working toilet; or may present unreasonable dangers to adults, children, or persons with disabilities. Each city, county, or State may have its own housing codes that further define the kind of housing that may be deemed substandard.³³

The Act does not indicate that shared housing, or any other type of temporary housing, must be free in order for occupants to qualify as homeless. Not only are commercial motels, hotels, and trailer parks considered non-permanent under the Act, but some shelters and transitional facilities, which courts have deemed a form of temporary housing, may also charge residents a pro-rated or subsidized rent.³⁴ The plain language of McKinney-Vento focuses on the living arrangement of the person, not the person's income or ability to pay rent. It is important to note that the definition of "homeless" under this section of McKinney-Vento is different from the definition of "homeless" under other provisions of McKinney-Vento dealing with the U.S. Department of Housing and Urban Development's (HUD) subsidized housing programs. The lack of alignment of these definitions given HUD's much narrower definition is a significant barrier to accessing additional supports for homeless children and youth and their families.

What rights are available?

McKinney-Vento gives children and youth experiencing homelessness the right to:

- remain in the school of origin even if they move;³⁵
- enroll in any public school where other non-homeless students living in the same attendance area are eligible to attend;³⁶
- immediately enroll in school without typically required records such as proof of residency, academic records, birth certificate, immunizations and other required health records, school records, proof of guardianship, or other papers;³⁷
- immediately enroll in school even if the child or youth has missed application or enrollment deadlines during any period of homelessness;³⁸
- participate fully in school activities;³⁹
- receive adequate and appropriate transportation to and from school and related activities;⁴⁰
- receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;⁴¹
- receive related school services that they may need,⁴² including assistance from counselors to help get ready

for college;⁴³

- dispute decisions made by schools and school districts;⁴⁴
- privacy, with information about the homeless child's or youth's living situation treated as student education record that cannot be disclosed without written consent.⁴⁵

Which school can students experiencing homelessness attend?

A student experiencing homelessness can choose to attend either the student's "school of origin" or any public school that non-homeless students living in the new attendance area (as the homeless student) are eligible to attend.⁴⁶ A "school of origin" is either the school that a student last attended when permanently housed or the school in which the student was last enrolled, including a preschool.⁴⁷ When the child or youth completes the final grade level served by the school of origin, the term "school of origin" attaches to the designated receiving school at the next grade level for all feeder schools. For example, a student was last enrolled in School A in grade 5, which is the final grade level served by School A. Students at School A are designated to attend School B beginning in the next grade level, grade 6. The school of origin for this student would therefore include School A and School B.⁴⁸

Homeless students transitioning from preschool to elementary, elementary to middle, or middle to high school sometimes have faced barriers to remaining enrolled in a school with their peers because they are technically no longer at their specific school of origin. In 2016, the definition of "school of origin" was updated to clarify that receiving schools are schools of origin to ensure that homeless students are able to attend the same schools as their peers. Public schools in certain areas may include charter or magnet schools that enroll children and youth all over a city. States are required to ensure that homeless children and youth who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet schools, summer schools, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the State and local levels.⁴⁹ Under the Act, children and youth in homeless situations are entitled to remain in the schools they attended before they lost their housing, or to stay at whatever schools they

were enrolled in last.⁵⁰ A child may remain in the school that is chosen for the duration of homelessness, and for the remainder of the academic year should the student find permanent housing during the school year.⁵¹

McKinney-Vento requires school placement decisions (school of origin versus new local school) to be made according to the child or youth's best interests. This determination is fact-specific and must be an individualized assessment.

- The local educational agency must presume that attending the school of origin is in the best interests of the child, unless this is contrary to the request of the parent, guardian,⁵² or unaccompanied youth.
- The LEA must consider student-centered factors related to the child's or youth's best interest, including factors related to the impact of mobility on achievement, education, health, and safety of homeless children and youth.⁵³ LEAs should also consider the school placement of siblings when making this determination.⁵⁴
- The selected school must immediately enroll the homeless child or youth, even if the student is unable to produce records normally required for enrollment or has missed application or enrollment deadlines during any period of homelessness.⁵⁵
- If the child has to change schools, the law minimizes the disruptive effects of homelessness on students' education by allowing homeless students to accrue credits to progress in school and receive credit for prior work done from a different school.⁵⁶

In the case of preschoolers, LEAs should also consider the child's attachment to preschool teachers and staff; the impact of school climate on the child, including the school's safety; the availability and quality of services to meet the child's comprehensive needs; and travel time to and from the school.⁵⁷



Because homelessness can have disruptive effects on the education of homeless children and youth, a homeless student's poor attendance, low achievement, or continuing struggle at the student's school of origin is not sufficient reason to support a transfer from the school of origin against the unaccompanied youth's, parent's, or guardian's request. Specific reasons should be provided indicating that the student would not have similar difficulties at the school proposed for transfer or that the student's performance may improve at another school.

If the LEA determines that it is not in the child's or youth's best interest to attend the school of origin or the school requested by the parent, guardian, or unaccompanied youth, the LEA must provide a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth, including information about a right to appeal the decision.⁵⁸

42 USC 11432(g)(3)

(3) LOCAL EDUCATIONAL AGENCY REQUIREMENTS

(A) In general - The local educational agency serving each child or youth to be assisted under this subtitle shall, according to the child's or youth's best interest—

(i) continue the child's or youth's education in the school of origin for the duration of homelessness—

(I) in any case in which a family becomes homeless between academic years or during an academic year; and

(II) for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or

(ii) enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

(B) SCHOOL STABILITY - In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall—

(i) presume that keeping the child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the child's or youth's parent or guardian, or (in the case of an unaccompanied youth) the youth;

(ii) consider student-centered factors related to the child's or youth's best interest, including factors related to the impact of mobility on achievement, education, health, and safety of homeless children and youth, giving priority to the request of the child's or youth's parent or guardian or (in the case of an unaccompanied youth) the youth;

(iii) if, after conducting the best interest determination based on consideration of the presumption in clause (i) and the student-centered factors in clause (ii), the local educational agency determines that it is not in the child's or youth's best interest to attend the school of origin or the school requested by the parent or guardian, or (in the case of unaccompanied youth) the youth, provide the child's or youth's parent or guardian or the unaccompanied youth with a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth, including information regarding the right to appeal under sub-paragraph (E); and

(iv) in the case of an unaccompanied youth, ensure that the local educational agency liaison designated under paragraph (1)(J)(ii) assists in placement or enrollment decisions under this subparagraph, gives priority to the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E).

(C) IMMEDIATE ENROLLMENT

(i) **IN GENERAL** - The school selected in accordance with this paragraph shall immediately enroll the homeless child or youth, even if the child or youth

(I) is unable to produce records normally required for enrollment, such as previous academic records, records of immunization and other required health records, proof of residency, or other documentation; or

(II) has missed application or enrollment deadlines during any period of homelessness.

(ii) **RELEVANT ACADEMIC RECORDS** - The enrolling school shall immediately contact the school last attended by the child or youth to obtain relevant academic and other records.

(iii) **RELEVANT HEALTH RECORDS** - If the child or youth needs to obtain immunizations, or other required health records, the enrolling school shall immediately refer the parent or guardian of the child or youth, or (in the case of an unaccompanied youth) the youth, to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall assist in obtaining necessary immunizations, or screenings, or immunization, or other required health records, in accordance with subparagraph (D).

(D) RECORDS - Any record ordinarily kept by the school, including immunization or other required health records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, regarding each homeless child or youth shall be maintained—

(i) so that the records involved are available, in a timely fashion, when a child or youth enters a new school or school district; and

(ii) in a manner consistent with section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(E) ENROLLMENT DISPUTES - If a dispute arises over eligibility, or school selection or enrollment in a school—

(i) the child or youth shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals;

(ii) the parent or guardian of the child or youth or (in the case of unaccompanied youth) the youth shall be provided with a written explanation of any decisions related to school selection or enrollment made by the school, the local educational agency, or the State educational agency involved, including the rights of the parent, guardian, or unaccompanied youth to appeal such decisions;

(iii) the parent, guardian, or unaccompanied youth shall be referred to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

(iv) in the case of an unaccompanied youth, the liaison shall ensure that the youth is immediately enrolled in school in which the youth seeks enrollment pending resolution of such dispute.

(F) PLACEMENT CHOICE - The choice regarding placement shall be made regardless of whether the child or youth lives with the homeless parents or has been temporarily placed elsewhere.

(G) PRIVACY – Information about a homeless child's or youth's living situation shall be treated as a student education record, and shall not be deemed to be directory information, under section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(H) CONTACT INFORMATION – Nothing in this subtitle shall prohibit a local educational agency from requiring a parent or guardian of a homeless child or youth to submit contact information.

(I) SCHOOL OF ORIGIN DEFINED - In this paragraph:

(i) **IN GENERAL** - the term “school of origin” means the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool.

(ii) **RECEIVING SCHOOL** - When the child or youth completes the final grade level served

by the school of origin, as described in clause (i), the term “school of origin” shall include the designated receiving school at the next grade level for all feeder schools.

How can SEAs and LEAs ensure students experiencing homelessness fully participate in school?

“Enroll” means permitting the student to attend classes and participate fully in school activities.⁵⁹ “School activities” includes field trips and other extracurricular activities at school. Most school athletic associations, just like state and local educational agencies, must comply with McKinney-Vento. In conjunction with the Act's requirement to develop, review, and revise policies to remove barriers – or remove policies that may act as barriers – state educational agencies (SEAs) and LEAs need to find ways to ensure that homeless students are able to participate in extracurricular activities. Sports and other school activities help keep students engaged in school and can even lead to scholarships after high school.⁶⁰ It is important to ensure that students experiencing homelessness have access to such activities, which may mean that schools may need to provide fee waivers to facilitate access to school programs, regardless of whether they are formally operated by the school or by an outside vendor. Students cannot be excluded from participation because of the student's inability to pay fees.

What are the legal obligations to help students experiencing homelessness get to school?

There are three ways adequate and appropriate transportation can be obtained to help a student experiencing homelessness get to school, any of which should be available as an option.

1. For students attending their school of origin, school districts must provide or arrange transportation for students to and from their schools of origin upon request of the student or their parents.⁶¹ This requirement applies even when a student moves to a different city, county, or school district and must cross attendance zones or school district lines. Homeless liaisons must help set up the transportation (see below).
2. For homeless students who have enrolled in a new district, they must receive transportation services that

are comparable to those offered to non-homeless students in the schools they attend.

3. Districts are also subject to an overarching obligation to “remove barriers to the enrollment and retention of homeless students” which may require them to go above and beyond what is provided to permanently housed students.⁶² For example, even if a student is in an area normally zoned for walking to school, if the student is living on or near an extremely busy intersection, in a very dangerous neighborhood, or is otherwise unable to attend school without transportation, the district must eliminate lack of transportation as a barrier to the child attending school.

School districts often use school buses, passes for public transportation, taxis, or gas cards so that parents can drive their children or youth to school. If a student needs to cross district lines, the districts need to apportion the responsibility and costs for providing transportation. If the districts are unable to agree upon this method, the costs and responsibility shall be shared equally.⁶³

Providing individualized transportation can be expensive for a district, which is why the Law Center encourages school boards and personnel to become advocates for increased affordable housing and shelter resources locally, rather than needing to transport from further away. SEAs and LEAs are required to coordinate with state and local housing agencies to ensure homeless children and youth are promptly identified, and have access to and are in reasonable proximity to available education and related support services, which includes accounting for the transportation needs of homeless students in determining housing placements.⁶⁴ The Law Center published a report on how schools and communities can work together to create more affordable housing to supplement exclusive reliance on McKinney-Vento transportation policies. This report, *Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs* (September 2011), is available online at http://www.nlchp.org/documents/Beds_and_Buses.

Who needs to implement and comply with the law?

The obligation to implement and comply with the law ultimately rests on each state, through its state educational agencies (SEAs) and local educational agencies (LEAs). McKinney-Vento authorizes the U.S. Department of Education to provide grants to SEAs to ensure that

homeless children and youth have equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youth.⁶⁵ Each SEA is required to have a state coordinator for homeless education. *McKinney-Vento applies to every LEA in every state receiving federal funds, regardless of whether a particular LEA receives a subgrant from that state.*⁶⁶

What are the SEA's responsibilities under the law?

SEAs, through their state coordinators, have obligations under the law and are responsible for ensuring that local educational agencies follow the law. States must review and revise laws, regulations, practices, or policies that may act as barriers to the identification of, or the enrollment, attendance, or success in school of, homeless children and youth.⁶⁷ Under McKinney-Vento, the SEA and the office of the state coordinator must:

- Provide technical assistance to *and conduct monitoring* of *all* local educational agencies in coordination with LEA liaisons to ensure compliance;
- Gather and make publicly available reliable, valid, and comprehensive information on the number of identified homeless children and youth; the nature and extent of their problems in gaining access to pre-K-12 schools and programs; the difficulties in identifying their special needs and barriers to their participation and achievement; progress made to address such problems and difficulties; and the success of programs in identifying and allowing them to enroll in, attend, and succeed in school. Note that states must disaggregate achievement and high school graduation data for homeless students;⁶⁸
- Develop and carry out the state plan, as discussed below;
- Collaborate and coordinate with LEA liaisons, school personnel, homeless service providers, child welfare and social services agencies, and other community organizations and groups that work with and represent homeless children and youth and their families;
- Provide professional development opportunities for LEA personnel and liaisons to assist them in identifying and meeting the needs of homeless children and youth;

- Provide training to LEA liaisons on the definitions of terms related to homelessness; and
- Respond to inquiries from parents and guardians of homeless children and youths to ensure that each child or youth who is the subject of such an inquiry receives the full protections and services provided by the law.⁶⁹

The National Center for Homeless Education (NCHE) (<http://nche.ed.gov/>) has a list of coordinators for each state, information that should also be available from any state department of education website.

Besides collecting data on homeless students and providing trainings, advice, and other assistance to LEAs, state coordinators develop and carry out their respective state plans to provide for the education of homeless children and youth within their states to be submitted to the U.S. Department of Education.⁷⁰ The plan must include:

- A description of how homeless children and youth are or will be given the opportunity to meet academic standards all students are expected to meet;
- A description of procedures used to identify homeless children and youth and assess their needs;
- A description of procedures for prompt resolution of disputes regarding the educational placement of homeless children and youth;
- A description of programs to heighten the awareness of school personnel (including liaisons, principals, other school leaders, attendance officers, teachers, enrollment personnel, and specialized instructional support personnel) of the specific needs of homeless children and youth;
- A description of procedures that ensure eligible homeless children and youth can participate in Federal, State, or local nutrition programs;
- A description of procedures to ensure that homeless children have access to public preschool programs as provided to other children in the State;
- A description of procedures to ensure that homeless youth and youth separated from public schools are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent homeless youth from receiving appropriate credit for

full or partial coursework satisfactorily completed while attending a prior school;

- A description of procedures to ensure that homeless children and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the State and local levels;
- Strategies to address identified problems relating to education of homeless students;
- Assurances that the State and LEAs are complying with McKinney-Vento, including assurances that homeless children and youth are not stigmatized or segregated due to their homelessness, that liaisons are able to carry out their duties and participate in professional development and technical assistance activities; and
- A description of how youth will receive assistance from counselors to advise, prepare, and improve their readiness for college.⁷¹

What are LEA's responsibilities under the law?

Local educational agencies are required to provide educational continuity and stability to children and youth experiencing homelessness. LEAs are required by law, according to the child's or youth's best interest, to:

- Continue the child's or youth's education in the school of origin for the duration of homelessness and for the remainder of the academic year if the child or youth becomes permanently housed during that academic year, and consequently provide transportation to and from the school;⁷² or
- Enroll the child or youth in any eligible public school that nonhomeless students in the attendance area in which the child or youth is actually living.⁷³

In determining school placement, LEAs must presume that staying in school of origin is in best interest of the child or youth unless contrary to the request of the parent, guardian, or the unaccompanied youth.⁷⁴

- The LEA must provide the parent, guardian, or unaccompanied youth with a written explanation of

any decisions related to school selection or enrollment made by the school, the LEA, or the SEA involved, along with a written explanation of the appeal rights.⁷⁵

The Act also requires each LEA to have a “liaison” able to carry out their McKinney-Vento duties in charge of ensuring students who are homeless can enroll and succeed in school.⁷⁶ Families and children and youth can call their school district’s central office or visit their website to get their liaison’s contact information. Under the Act,⁷⁷ liaisons must ensure that:

- Homeless children and youth are identified by school personnel through outreach and coordination with other entities and agencies;
- Homeless children and youth are immediately enrolled and provided with an equal opportunity to succeed in school;
- Homeless children and youth and their families have access to and receive educational services for which they are entitled to, including transportation, preschool, special education, English language learner services, and vocational education;
- Homeless children and youth and their families receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;
- Parents and guardians of homeless children and youth are informed of the educational and related opportunities available and are provided with meaningful opportunities to participate in their children’s or youth’s education;
- Public notice of the educational rights of homeless children and youth is disseminated in locations frequented by homeless children and youth and their families;
- Enrollment disputes are mediated according to the LEA’s required dispute resolution procedures;
- Parents, guardians, and unaccompanied youth are fully informed of all transportation services and are assisted in accessing transportation to the school selected;
- School personnel providing services receive professional development and other support;

- Unaccompanied youth are informed of their status as independent students and that they may obtain assistance from liaisons to receive verification of such status for purposes of the Free Application for Federal Student Aid;
- The dispute resolution process is carried out as expeditiously as possible;⁷⁸ and
- The provision of education and related services to homeless children and youth are coordinated and collaborated with State coordinators and community and school personnel.⁷⁹

Additionally, those liaisons that received training on definitions of homelessness may affirm the eligibility of children and youth who meet the U.S. Department of Housing and Urban Development’s (HUD) definition of homelessness for HUD homeless assistance programs.⁸⁰

State coordinators and LEAs must inform school personnel, service providers and advocates working with homeless families, homeless children and youths, and parents and guardians of homeless children and youths of the duties of the LEA liaisons, and publish an annually updated list of the liaisons on the State educational agency’s website.⁸¹

What decisions can be appealed?

Under McKinney-Vento, parents, guardians, and unaccompanied youth have the right to appeal an adverse determination of a school, LEA, or SEA. In practice, decisions about eligibility, school choice, school enrollment and participation, fee waivers, guardianship requirements, and transportation are the most commonly appealed issues. However, it is important to consider that other barriers, which fall under an SEA’s or LEA’s ongoing obligation to review and revise, can be appealed as well.⁸²

How can unfavorable decisions be appealed?

Students are entitled to due process of the law.⁸³ The state educational agency must have a description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youth.⁸⁴ The local educational agency must also have a dispute resolution process in place if a dispute arises over eligibility, school selection, or school enrollment.⁸⁵ If there is a dispute, the LEA is required to provide the parent,

guardian, or unaccompanied youth with a written notice explaining the school's decision and their rights to appeal such decision.⁸⁶

LEAs must provide the parent, guardian, or unaccompanied youth with a written explanation of any decisions related to school selection or enrollment made by the school, the LEA, or the SEA involved, along with a written explanation of the appeal rights.⁸⁷

The child or youth must be immediately enrolled in the school in which enrollment is sought until a full and final resolution of the dispute and all available appeals.⁸⁸ This requirement is commonly referred to as the “pendency” requirement under McKinney-Vento. The LEA liaison must carry out the dispute resolution process as expeditiously as possible after receiving notice of the dispute.⁸⁹ Due care should be given to ensure that disputes are resolved using the appropriate grievance procedure. Disputes over eligibility, school selection, or enrollment must be resolved using the state and local dispute resolution procedures.

The dispute resolution process should be as informal and accessible as possible, including not requiring unnecessary notarization or authentication of documents or other materials submitted, not requiring strict legal evidentiary standards, and allowing for impartial and complete review.⁹⁰

While the Act mandates the creation of a dispute resolution process, it does not specify its features. Each state is responsible for developing and promulgating its own set of procedures. Please check with the relevant state educational agency for more updated information. The language of the pendency provision under McKinney-Vento clearly states that if a dispute arises over eligibility, school selection, or enrollment, the child must immediately be admitted pending the final resolution of the dispute.⁹¹ If a student is denied the right to immediate enrollment pending the resolution of a dispute, the student need not wait until the dispute is fully resolved before seeking an injunction from a court for the purposes of enrolling.



Alternatively, the parent, guardian, or unaccompanied youth may seek court intervention if they would like to appeal the decision of the state educational agency. If the parent, guardian, or unaccompanied homeless youth chooses to resolve the dispute through litigation or other available appeals, the child must remain enrolled in the school in which enrollment is sought, pending resolution of the dispute.

Are there other resources available to students experiencing homelessness?

For many newly homeless families, or those at risk of homelessness, the school homeless liaison may be able to provide references and connections to other services. Homeless liaisons have a duty to ensure the enrollment and retention of homeless students, as well as to coordinate with state and local housing agencies.⁹² In many cases, the best way to ensure school access and retention would be to provide immediate access to local housing resources.

McKinney-Vento requires schools and state educational agencies to coordinate with state and local housing agencies responsible for developing comprehensive housing affordability strategy to minimize educational disruption for homeless children and youth.⁹³ A close collaboration between schools and housing authorities would benefit not only the homeless child or youth and their families, but the school and community as well. To see how this can be made possible, please see the Law Center's Report, *Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs* (September 2011), available online at http://www.nlchp.org/documents/Beds_and_Buses.

THE ROLE OF OTHER EDUCATION-RELATED LAWS

In addition to McKinney-Vento, there are other federal and state education laws, initiatives, and resources that can benefit homeless children and youth. The rules and regulations listed below are not exhaustive. There may be additional laws at the federal, state, and local levels that also offer legal protections to the education of homeless children and youth.

Some laws to consider when working with families and children experiencing homelessness include:

-  Family Educational Rights and Privacy Act
 -  Head Start and Early Care and Education Services
 -  Individuals with Disabilities in Education Act
 -  Fostering Connections to Success and Increasing Adoptions Act
 -  Child Nutrition and WIC Reauthorization Act of 2004
 -  Title I of the Elementary and Secondary Education Act
 -  Violence Against Women Act
 -  National Affordable Housing Act
 -  Non-discrimination laws in Federal, State, and local levels
 -  Other relevant state laws and regulations
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FEDERAL LAWS

Family Educational Rights and Privacy Act - 20 U.S.C. §1232 et seq.

The Family Educational Rights and Privacy Act (FERPA) is the primary federal law governing the authorized use of education records.⁹⁴ It seeks to protect individual student privacy while securing parental rights to view education records. This section provides an overview of the legislation and its relevance to the education of children and youth experiencing homelessness.⁹⁵ Advocates should note that in addition to FERPA, states have their own privacy rules and regulations that can provide additional protection and support for homeless children and youth.

FERPA Basics

FERPA applies to both state and local educational agencies. It prohibits the improper disclosure of personally identifiable information from education records. Information obtained through other means such as personal observation or personal knowledge is not covered under FERPA.⁹⁶

Some key points to consider:

- FERPA can help protect important privacy matters for homeless children, including current residence.
 - Parents and guardians have the right to inspect and review the education records of their children. A caregiver may stand in lieu of a parent when accessing the education records of unaccompanied youth.
 - Certain individuals must obtain written parental permission prior to releasing records or personally identifiable information to a third party.
 - There are additional important considerations for children of domestic survivors and how to ensure family safety and privacy from an abuser.
 - FERPA is not a legitimate reason to slow down enrollment or transfer or sharing of legitimate information.
 - Furthermore, school and LEA officials with a legitimate educational interest in students experiencing homelessness may access their files without parental permission. This list would likely include the school district's homeless liaison and support staffers, transportation coordinators, school meal coordinators, Title I program coordinators, and preschool providers.
 - FERPA allows records to be transferred between schools, without parental permission, when a student seeks to enroll in a new school.
-

Parental Access to Records

Parents have the right to inspect and review the education records of their children or youth, which includes records maintained by both the school district and the state education department. States and districts must establish a reasonable timeframe for granting access to records, which cannot exceed 45 days.⁹⁷ FERPA also gives caregivers, which includes “an individual acting as a parent in the absence of a parent or guardian” full rights to access a student’s education records. FERPA gives custodial and noncustodial parents alike certain rights with respect to their children or youth’s education records unless a school is provided with evidence that there is a court order or State law that specifically provides to the contrary.⁹⁸ Under FERPA, schools may release any and all information to parents, without the consent of the eligible student, if the student is a dependent for tax purposes under the Internal Revenue Service.

Many homeless students are survivors of domestic violence or have other safety issues that must be taken into account in student records and information release procedures. Failure to protect personal information, particularly where there has been a court order that terminates one parent’s rights to access school records, can result in an inappropriate release of information that endangers students, their caregivers, and possibly even school personnel.⁹⁹

Non-Parental Access to Records

Educators and certain individuals must obtain parental permission prior to releasing education records or personally identifiable information to a third party. Parental permission for the release of records is **not** required for certain individuals and entities, including:

- School or district officials, including teachers who have a legitimate educational interest in the student. The agency holding the records is responsible for determining who has a legitimate interest;
- Officials of other school systems in which the student is seeking to enroll. Parents must be notified of the transfer of records and receive a copy of the record if desired;
- State education department officials and the Secretary of the U.S. Department of Education when such information is necessary to audit or evaluate a federally supported education program;
- Schools associated with applications for, and receipt of, financial aid;
- Organizations conducting studies for an educational agency for the purpose of developing, validating or administering predictive tests or improving instruction;
- Accrediting organizations; and
- Emergency personnel that must receive student information to protect the health or safety of the student or other persons.¹⁰⁰

Directory Information

General directory information such as a student’s name, address, telephone listing, date and place of birth may be released without specific permission. However, districts must inform parents of the categories of information in the directory and provide an opportunity to opt-out of the release of such information. Note, however, that information about a homeless child’s or youth’s living situation must be treated as a student education record and must not be treated as directory information.¹⁰¹

Federal laws clarify that a student’s living situation is part of the student’s education record and is protected by federal privacy laws.¹⁰² States and local educational agencies should use due care to ensure that residency verification policies, McKinney-Vento eligibility determinations, and other procedures designed to prevent fraud accommodate the unique needs of homeless students and/or their families and do not erect barriers to their identification or immediate enrollment.¹⁰³ Schools and school districts must not share a student’s living situation with third parties without the parent’s, guardian’s, or unaccompanied youth’s written consent. When a homeless child’s or youth’s privacy is violated, the parent, guardian, or unaccompanied youth and/or their advocate can consider filing a FERPA administrative complaint or litigating for noncompliance with McKinney-Vento.

Notice of Rights & Right to Appeal

Parents must be informed of their FERPA rights on an annual basis. Additionally, parents have the right to an administrative hearing in the event that they want to assert a violation of a student's privacy rights. Parents may file FERPA related complaints with the Family Policy Compliance Office at the U.S. Department of Education.¹⁰⁴

FERPA and Students Experiencing Homelessness

Special Rules for Transferring Records between Schools

FERPA allows records to be transferred between schools, without parental permission, when a student seeks to enroll in a new school. McKinney-Vento requires that the school records of homeless students be maintained so that they are available in a timely fashion when a student enters a new school or school district.¹⁰⁵ Enrolling schools must immediately request records from the previous school. McKinney-Vento also requires that students be immediately enrolled in school and allowed to attend classes even if their education records are awaiting transfer or they are lacking other documents typically required for enrollment.

Copies of Student Records and Fees for Access

Although there is no general right to receive a copy of a student's education record unless the state or school district has created a right on its own, parents can request and are entitled to receive an actual copy of the record if the student enrolls in a new school or school district and his/her records are transferred. It may be helpful to advise parents experiencing homelessness to always obtain copies of school records so that they may immediately present them to a new school upon enrollment. Such actions would allow schools to make more appropriate class and program placements while they await official records from the previous school.

Homeless Agency Personnel Access to Records

School and school district officials with a legitimate educational interest in students experiencing homelessness may access their files without parental permission. This list would likely include the school district's homeless liaison and support staffers, transportation coordinators, school meal coordinators, Title I program coordinators, and preschool providers. Other individuals having access to homeless student files may include state coordinators of homeless education and officials at the U.S. Department

of Education who are monitoring and evaluating state and local homeless education programs.

Social Services Personnel Access to Records

The Uninterrupted Scholars Act amends FERPA to permit educational agencies and institutions to disclose a student's education records, without parental consent, to a caseworker or other representative of a state or tribal child welfare agency that is authorized to access a student's case plan "when such agency or organization is legally responsible, in accordance with state or tribal law, for the care and protection of the student."¹⁰⁶ The amendment also allows educational agencies to disclose records pursuant to judicial order without requiring additional notice to the parent, in specified types of judicial proceedings in which the parent is involved (e.g. custody hearings).¹⁰⁷

Providing Information about Homeless Students to Third Parties

Homeless liaisons and state coordinators may partner with other agencies (e.g., housing authorities, social services agencies that provide shelter), organizations (e.g., non-profits providing services or program funding), and individuals (e.g., host families, relatives) to provide comprehensive services to homeless families. Some educators seek to verify homeless status or eligibility for services by contacting similar individuals/entities. In conducting such activities, educators must be careful not to release personally identifiable information about the student/family unless they first have the permission of the student's parent or guardian.

Sharing personal information without consent from a student's education record not only violates FERPA, but could impair the well-being of the child or family. For instance, providing a housing authority with information about the living situation of a family that is doubled-up in public housing may jeopardize the permanent housing of the host family (due to the breaking of occupancy rules associated with the lease), and thus put at risk the temporary housing of the family experiencing homelessness. Schools are also generally entitled to share directory information without consent unless the student or family has opted out. Schools publishing address information that indicates students are living in a shelter may lead to stigmatization of students experiencing homelessness, so homeless families should be specifically advised of their ability to opt out.

FERPA and Unaccompanied Youth

Typically, FERPA rights belong to the parent rather than the student. However, the FERPA definition of “parent” includes “a parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.”¹⁰⁸ Thus, schools must allow individuals “acting as a parent” to access education records, including report cards and attendance records. Under McKinney-Vento, schools must address problems resulting from enrollment delays that are caused by guardianship issues.¹⁰⁹ All children and youth who reach the age of 18 can assume FERPA rights for themselves.¹¹⁰ After a youth has turned 18, schools can transfer records to enrolling schools even if they do not have parental permission.¹¹¹

FERPA and Domestic Violence Situations

There are certain FERPA provisions with special relevance for domestic violence survivors. Typically, both parents of a student have the right to inspect and review education records.¹¹² Unfortunately, this ability to access records may assist an abusive parent in perpetrating violence against the survivor and other family members who have fled the domestic violence situation. Families should be warned of this possibility. FERPA regulations indicate that an abusive parent can be denied access to education records only when there is a court order, state statute, or legally binding document that specifically revokes the abusive parent's rights.¹¹³



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A few states have helpful statutes that specifically address the intersection of education records, abusive parents, and protection orders. For instance, in Massachusetts, after a protective order is granted, the abusive parent is automatically denied access to education records even if the order does not specifically mention this.¹¹⁴ Illinois lists “prohibition of access to records” as a potential item to be included in a protection order, which encourages judges to consider the issue of school records when issuing such orders.¹¹⁵ In Pennsylvania, if a plaintiff has an order of protection, and the court concludes that the defendant poses a threat of continued danger, the plaintiff can request that her address, telephone number and location not be disclosed. The court must order that government agencies, including school districts, and any schools that the child has been enrolled in, not disclose the presence of the plaintiff or child in the jurisdiction.¹¹⁶

Another best practice is to have requested educational records be sent through an intermediary, such as the state homeless coordinator or attorney general. A single office or person sending all records increases the chance that information will not be disclosed improperly or inadvertently, such as to an abusive parent, who has lost such rights under court order.

Head Start and Early Care and Education Services – 42 U.S.C. §9801 et seq.

Overview

Homelessness experienced during early childhood is harmful to a child's growth and development.¹¹⁷ Access to preschool education is important and vital for all children, but perhaps even more so for children experiencing homelessness. The longer the experience of homelessness, the greater the cumulative toll of negative outcomes on the child, the family, and the community. McKinney-Vento extends the right of access to publicly provided schooling to homeless preschool children.¹¹⁸ And ESSA now guarantees school of origin enrollment and transportation rights to homeless preschoolers just as they are guaranteed to other homeless children and youth in K-12 public schools. SEAs and LEAs must recognize the right of young homeless children to continue attending the same LEA- or SEA-administered preschool program despite a residential move that may affect enrollment.¹¹⁹ Some state laws guarantee homeless students enrollment in public preschool.¹²⁰

Some key points to consider:

- Children experiencing homelessness are automatically eligible for Head Start services.
 - Head Start agencies must prioritize homeless children for immediate enrollment.
 - School districts need to provide appropriate and adequate transportation services to homeless preschool children.
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Head Start is a preschool program that aims to promote school readiness in low-income children. Due to high demand and a nationwide shortage of slots, communities typically have waitlists that pose difficulties for homeless children who often move away from a neighborhood prior to reaching the top of a list. The Department of Health and Human Services (HHS) released new guidance for Head Start agencies in 2013.¹²¹ In it, HHS recommended updated strategies for increasing access to Head Start programs and program improvements to better meet the unique needs of homeless children. In 2016, HHS issued final regulations marking the first holistic revision and complete reorganization of the Head Start Program Performance Standards since they were originally published in 1975. The regulations, which take effect on November 17, 2016, contain new policies on the prioritization and attendance of homeless children, as well as other procedures to facilitate the identification, enrollment, and stability of homeless children in Head Start and Early Head Start.¹²²

Research shows that families experiencing homelessness are less likely to access childcare than low-income families who are stably housed.¹²³ The Administration for Children and Families in HHS released final regulations to implement the Child Care and Development Fund program (CCDF), which provides funds to states to help low-income families pay for child care while a parent works or is in an educational or job training program.¹²⁴ The CCDF regulations eliminate some of the barriers homeless families face, facilitate their access to childcare, and provide opportunities for states and local agencies to support them.

Below we provide information about the important elements of increasing access to early education services for children experiencing homelessness:

Determining, Verifying, and Documenting Eligibility

Homeless children who meet the McKinney-Vento homeless definition are categorically eligible for Head Start services.¹²⁵ This automatic eligibility means that they do not have to prove eligibility through traditional methods like income verification. Regulations permit verification using alternative means and provide some flexibility to establish eligibility.¹²⁶ Furthermore, requiring families to provide documents to confirm a child's age cannot be required if doing so creates a barrier for the family to enroll the child.¹²⁷

Selection, Recruitment, Attendance, and Enrollment

Head Start agencies are required to:

- Create a recruitment process to clearly and effectively inform all eligible homeless families of Head Start services, encourage them to apply, and actively locate and recruit children with disabilities and other vulnerable children, including children in foster care and children experiencing homelessness;¹²⁸
- Allow homeless families the flexibility to apply to, enroll in, and attend Head Start programs;¹²⁹ and
- Prioritize homeless children based on community needs by immediately enrolling them, or ranking them at the top of the Head Start program's waiting list, so they may enter the program as openings become available.¹³⁰ Head Start programs are permitted to reserve enrollment slots for children who experience homelessness.
- While Head Start programs must comply with state immunization enrollment and attendance requirements, there are exceptions that apply to homeless children. For example, homeless children are allowed to attend for up to 90 days or as long as allowed under state licensing requirements, without immunization and other records, to give the family reasonable time to present these documents.¹³¹
- If a child experiencing homelessness is unable to attend classes regularly because the family does not have transportation to and from the program facility, the program must utilize community resources, where

possible, to provide transportation for the child.¹³²

- Consistent with the educational continuity and stability guaranteed under McKinney-Vento, Head Start programs must make efforts, in accordance with the family's needs, to maintain a homeless child's enrollment or transition the child to a program near the new location when a family or child moves to a different service area.¹³³
- For families and children moving out of the community in which they are currently served, including homeless families and foster children, Head Start programs must undertake efforts to support effective transitions to other Early Head Start or Head Start programs. If Early Head Start or Head Start is not available, the program should assist the family to identify another early childhood program that meets its needs.¹³⁴

Program Planning, Needs Assessment, and Training

All Head Start programs must conduct community needs assessments at least once over the five-year federal grant period. Such assessments must use data that include homeless children, in collaboration with, to the extent possible, McKinney-Vento local educational agency liaisons.¹³⁵ Community assessments must be annually reviewed and updated to reflect any significant changes, including rates of family and child homelessness.¹³⁶ If a Head Start program proposes to serve children who are not categorically eligible, and who are between 100 and 130 percent of the poverty line, the program must report how it is meeting the needs of homeless and foster children and other low-income families.¹³⁷ Head Start programs are required to establish necessary collaborative relationships and partnerships with community organizations that may include housing assistance agencies and providers of support for children and families experiencing homelessness, including the LEA liaison designated under McKinney-Vento.¹³⁸

Individuals with Disabilities in Education Act – 20 U.S.C. §1400 et seq.

The Individuals with Disabilities in Education Act (IDEA) (34 C.F.R. §300.1) is the primary federal law governing the provision of special education. It requires that students with disabilities covered by IDEA have specifically designed instruction and related services to meet their individual

needs. The 2004 IDEA reauthorization included new provisions that reinforce the access to special education services for homeless and highly mobile students, decreasing the likelihood that school transfers will result in delays in the provision of necessary services.¹³⁹ This legislation is vital to homeless students, who are at higher risk for developmental delays, speech problems, and learning disabilities.¹⁴⁰ McKinney-Vento improves coordination efforts by requiring local educational agencies to coordinate the provision of appropriate services to homeless children and youth, including services provided under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act.¹⁴¹

SEAs and LEAs retain their obligations to ensure that homeless children and youths who are eligible children with disabilities under Part B of the IDEA or qualified students with disabilities under section 504 of the Rehabilitation Act of 1973 (Section 504) retain the rights and protections of those laws, including their right to receive a free appropriate public education. State lead agencies, and LEAs, if applicable, also retain their responsibilities to ensure that eligible infants and toddlers with disabilities and their families receive required early intervention services under Part C of the IDEA.¹⁴²

This section outlines important information to help families, children, and youth experiencing homelessness navigate the special education system. Several provisions of IDEA can be particularly strong tools in advocating for educational stability and appropriate services for homeless students with disabilities, including: Child Find regulations, which require state educational agencies to implement procedures to identify, locate and evaluate children and youth with disabilities;¹⁴³ rules prohibiting suspensions or expulsions of special education students in certain circumstances;¹⁴⁴ the “stay-put” provision, which compels maintenance of the child's school placement during disputes;¹⁴⁵ rules providing parents with access to school records;¹⁴⁶ and compensatory education requirements. Some of these provisions are discussed in greater detail in the following sections.

Some key points to consider:

- A student with a disability is entitled to receive a free and appropriate public education regardless of the student's disability. Children with disabilities who are homeless have the same right to a free and appropriate public education as non-homeless children with disabilities.
 - Schools are required to identify all students in need of special education services.
 - Schools are required to conduct an appropriate evaluation of students who are suspected of having a disability. If the evaluation indicates that a child has a disability, an Individual Education Program should be developed for the child.
 - To the maximum extent possible, children with disabilities should be educated with children who do not have a disability.
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IDEA Basics

- *Disabilities Covered by IDEA*
- IDEA covers students with:
 - mental retardation;
 - hearing impairments (including deafness);
 - speech and language impairments;
 - visual impairments (including blindness);
 - serious emotional disturbance;
 - orthopedic impairments;
 - autism;
 - traumatic brain injury;
 - other health impairments; and
 - specific learning disabilities.¹⁴⁷

Free, Appropriate Public Education (FAPE)

IDEA ensures that all students receive a “free and appropriate public education,” regardless of their disability. An education that meets FAPE standards may include regular or special education and related services to accommodate the unique needs of the individual.¹⁴⁸ IDEA’s mandate is to ensure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities, and to ensure children and youth with disabilities and their families have access to a free appropriate public education and to improve educational results for children and youth with disabilities.¹⁴⁹

Child Find

The Child Find mandate requires schools to identify all students in need of special education services.¹⁵⁰ If a parent thinks that a child or youth has a disability, the parent has the right to ask the school to do an evaluation.¹⁵¹ The parent can submit a dated, written request to the school principal or guidance counselor. Usually the school must finish testing within 60 days of the parent’s consent to testing, but this time frame varies by state.¹⁵²

Evaluation

IDEA requires that schools conduct an “appropriate evaluation” of students who are suspected of having a disability.¹⁵³ A team of knowledgeable and trained evaluators must utilize sound evaluation procedures, administered on a non-discriminatory basis.¹⁵⁴ An appropriate evaluation must also determine and make recommendations regarding a child’s eligibility for special education services, and must be completed in a timely manner.¹⁵⁵

Individual Education Program (IEP)

If the evaluation indicates that a child has a disability, a meeting must take place within 30 days to discuss the evaluation results, educational needs of the students, and the development of the IEP.¹⁵⁶ The IEP meeting must include the child’s parents, at least one regular education teacher and special education teacher, and a person who is able to interpret the relevant evaluation(s) and its implications on the child’s education. It may include the child and other individuals with special expertise regarding the child.¹⁵⁷

The IEP must lay out the proposed educational program for a student with disabilities, including the related services needed and annual goals.¹⁵⁸ The IEP must be reviewed periodically but not less than annually.¹⁵⁹ Parents must be afforded the opportunity to participate in all IEP team meetings.¹⁶⁰ The IEP will also include a determination of the appropriate educational placement for the student.¹⁶¹

Placement

To determine the educational placement of a child with a disability, each school must ensure that this decision is (1) made by a group of persons, including the child's parents, and other people who are knowledgeable about the child, the evaluation results and the placement options; and (2) is made in conformity with the least restrictive environment requirements.¹⁶² The child's placement must be determined at least annually, be based on the child's IEP, and must be as close as possible to the child's home.¹⁶³

Least Restrictive Environment (LRE)

To the maximum extent possible, children and youth with disabilities should be educated with their peers who do not have disabilities.¹⁶⁴ This is similar to McKinney-Vento's prohibition on segregating homeless students. Special classes, separate schooling or other forms of removing children and youth with disabilities from the regular education environment should only occur when the severity of the disability makes it such that education in a regular classroom, even with the use of supplementary aids, cannot be achieved satisfactorily.¹⁶⁵

School Discipline

If a student with a disability is suspended for more than 10 days, the IEP team must meet to address whether or not the student's behavior was caused by his or her disability.¹⁶⁶ Parents have the right to appeal to a special education hearing officer if they disagree with the IEP team's determination.¹⁶⁷ Schools must also place suspended children and youth in alternative schools or classrooms during the suspension.¹⁶⁸

Procedural Safeguards and Appeal Process for Parents

IDEA establishes procedural safeguards that help parents and students ensure compliance with federal law. Parents have the right to review all education records, and to receive prior notice about any meeting concerning their child's evaluations, IEP, and placement. If a disagreement

arises, parents have the right to request mediation or due process hearings with state-level education agencies.¹⁶⁹ After this, they have the right to appeal a decision to state or federal court.¹⁷⁰

Special Education for Infants and Toddlers (0-3)

Infants and toddlers aged 0-3 are eligible for IDEA services under Part C of the Act, and can receive either home-based supports or transportation to site based services for both infants and parents.¹⁷¹

Transition Planning

IEPs for youth aged 16 or older must address their post-secondary goals and timeline for transition including the development of appropriate education, employment, and independent living skills.¹⁷²

IDEA and Special Considerations for Homeless Students

IDEA and McKinney-Vento Education Program Coordination

The IDEA uses McKinney-Vento's definition of "homeless children and youth," which refers to children and youth who "lack a fixed, regular and adequate nighttime residence."¹⁷³ Children and youth with disabilities who are homeless have the same right to FAPE as non-homeless children and youth with disabilities.

Evaluations and IEP's of Highly Mobile Students

Assessments of children and youth with disabilities who transfer from one school to another in the same school year are coordinated with their prior and subsequent schools, as necessary and as expeditiously as possible.¹⁷⁴ If a student transfers in the middle of a school year, before the original school district has completed the child's evaluation, the new school district may not unilaterally delay the evaluation or extend the evaluation time frame. 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 have the right to decline any extensions. Without such parental consent, highly mobile children and youth must have a timely and expedited eligibility determination to meet the deadline. Schools are allowed to use McKinney-Vento funding to expedite the evaluation process. When a child with a current IEP changes schools during the school year,

the new school is required to immediately provide the student with FAPE; this includes services comparable to those described in the IEP from the previous school.¹⁷⁵

To expedite this process, it is recommended that parents immediately inform the new school that the student was being considered for special education services at the old school. Even if the parent forgets to tell the school about the child's special education history, both the IDEA and McKinney-Vento require new schools to immediately request records from the old school – which puts the new school on notice of the need to act quickly to complete the IEP or to provide services under an existing IEP.

Determining the Best Placement for Students

There can be circumstances where a disability may factor into the decision about which school is best for the student. The IEP team, which must include the parent or surrogate, and other individuals who understand the meaning of the evaluation and of placement options, must make these placement decisions based on the individual needs of the student. A student must remain enrolled in his or her current educational placement during the pendency of any judicial or administrative proceeding; however, if the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.¹⁷⁶ If the IEP does not already include transportation, it can be modified to include transportation to the school of origin (allowing the school to draw on federal IDEA dollars rather than their local transportation or McKinney-Vento budgets).

Providing Supportive Services

When a student transfers schools, the new school is required to provide the student with services comparable to those described in the IEP from the previous schools. For example, if the student's previous IEP provides Extended School Year (ESY) services,¹⁷⁷ the new school must provide ESY as comparable services.¹⁷⁸ Furthermore, IDEA, like McKinney-Vento, requires the provision of transportation for students who need it and have it listed in their IEP.¹⁷⁹

Unaccompanied Youth

Unaccompanied youth may face additional difficulties ensuring that their special education needs are met. IDEA has no provision for youth living on their own to

enroll themselves in special education services or request evaluations. Instead, IDEA requires schools to assign a surrogate parent who can represent the unaccompanied youth in all matters related to the identification, evaluation, and educational placement and the provision of FAPE to the unaccompanied youth.¹⁸⁰ IDEA will consider certain persons as surrogate parents for the sake of special education services, including a person who acts as a parent and has the student living in his or her home, a shelter / outreach worker, or a surrogate picked out by a school district or a judge.¹⁸¹

Fostering Connections to Success & Increasing Adoptions Act – 42 U.S.C. §5701 et seq.

In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act, which incorporates principles of educational stability into child welfare law.¹⁸² Similar to McKinney-Vento, the law supports the proposition that children and youth in foster care should remain in their school of origin when it is in their best interest or that the State or LEA “provide immediate and appropriate enrollment in a new school” if a move becomes necessary, which means that students should be in class and participating fully in school activities, even if they are missing normally required paperwork.¹⁸³ Further, the Act permits the use of foster care maintenance dollars to support transportation to and from the school of origin.¹⁸⁴ Changes under ESSA complement and supplement the Act, providing protections to all children and youth in out-of-home placements and a potential source of additional funding for services. ESSA clarified rights for students awaiting foster care and provided additional resources for them. Children and youth in foster care, including those awaiting foster care, will be able to attend their school of origin unless it is determined that it is not in their best interest to do so.¹⁸⁵ ESSA requires that the State Coordinator for Homeless Education Program cannot be the same employee who will serve as the point of contact for the child welfare agencies.¹⁸⁶

On June 23, 2016, the U.S. Department of Education and U.S. Department of Health and Human Services jointly issued a non-regulatory guidance on ensuring educational stability for children in foster care.¹⁸⁷

Child Nutrition & WIC Reauthorization Act of 2004 – 42 U.S.C. §1751 et seq.

The Child Nutrition Act provides low-income children and youth with free and reduced price school meals.¹⁸⁸ The law allows homeless parents to forgo the application and proof of income process, making their children and youth automatically eligible for free school meals. Homeless shelters or a school district homeless liaison must only provide a list of student names to school lunch programs. The legislation also reimburses homeless shelters for meals served to children and youth. Eligibility for free and reduced price school meals under this law must be implemented in conjunction with the school personnel's duty under McKinney-Vento not to stigmatize homeless students receiving free lunch.¹⁸⁹

Some best practices to consider:

- Never discuss student's eligibility in front of other students or parents. Ensure that any necessary conversations are held in advance and in private. Students can be courteously taken aside and the matter discussed outside the presence of other students and staff.
- If it is obvious which students are paying cash for their lunch and which do not, consider providing homeless students with some token coins or bills each day before lunch, so they can maintain the appearance of payment.
- LEAs need to ensure that lunch staff members are sensitized to homeless students' needs. Free lunch is an entitlement for them and may be the only meal they receive that day. Discretion should be granted in their favor with no public questions or drawing attention to a request for larger portion. Providing homeless students easy access to school meals will help them stay engaged in school activities.

The United States Department of Agriculture provides additional information on eligibility for school meals of runaway and homeless youth.¹⁹⁰ Because they are automatically eligible for free school meals once they are identified by the school homeless liaison, homeless children and youth living doubled up with relatives need

not provide their host family's information as part of the qualification process.¹⁹¹

Title I, Part A of ESEA – 20 U.S.C. §6301 et seq.

Title I of the Elementary and Secondary Education Act (also known as the No Child Left Behind Act), as amended by ESSA, funds programs designed to improve the academic achievement of low-income students. Schools and districts commonly use Title I funds for tutoring programs and other academic supports. Title I includes several provisions to ensure that homeless students benefit from its programs and services.¹⁹² The law requires schools to reserve or set aside funds so that homeless children and youth receive services even when attending schools that do not receive Title I funding. Additionally, school districts may use reserved Title I funds to provide homeless students with services that are not ordinarily provided to other Title I students and that are not available from other sources (e.g. funding for the designated LEA liaison or transportation).¹⁹³ The amount of funds required must be determined based on the total allocation received by the local educational agency and prior to any allowable expenditure or transfers by the local educational agency.¹⁹⁴

Violence Against Women Act

Domestic violence is a leading cause of family homelessness nationally. Some victims or survivors of domestic violence and their children lose their homes when they flee abuse. Other victims become homeless after being evicted, or after being denied housing as a result of the violence committed against them. The Violence Against Women Act (VAWA) is designed to remedy, among other things, the housing challenges victims face when they flee abuse. The law was most recently reauthorized and amended in 2013.¹⁹⁵ It improves upon lifesaving services for all survivors of domestic violence, dating violence, and stalking, and includes critical protections for immigrants, individuals who identify as LGBTQ, Native American women, college students and youth, and public housing residents.

VAWA expands on the landmark housing protections passed in the 2005 reauthorization by including federally subsidized housing programs under the Department of Housing and Urban Development, Department of Agriculture, and the Department of Treasury, explicitly protecting survivors of sexual assault, and mandating

that housing agencies create and implement emergency housing transfer options. VAWA prohibits denial of admission to public housing because of incidents of domestic violence, dating violence, or stalking. It allows for bifurcation of a lease and eviction of the household member responsible for the violence, while continuing to allow the victim to remain on the lease and receive assistance. The law makes provisions for protecting the confidentiality rights of survivors and their families.

But the housing protections offered by VAWA do not speak directly to protecting the education rights of children of domestic violence victims. Once survivors and their children lose housing, children's rights under McKinney-Vento are implicated. Conversely, the education rights guaranteed under McKinney-Vento do not fully account for the needs of survivors and their children. The gap within the intersection of domestic violence, education, and homelessness still needs to be addressed; and integrated services for survivors of domestic violence are yet to be developed in practice. See above section on FERPA rights for domestic violence survivors for some best practices in the intersection of domestic violence and education.

National Affordable Housing Act

McKinney-Vento expresses the need for state coordinators to coordinate services with State and local housing agencies responsible for developing comprehensive affordable housing strategies.¹⁹⁶ Communities and schools can work together to create more affordable housing, thereby preventing homelessness from forcing families and children and youth to move outside of the school district. This coordination, as provided under McKinney-Vento, would be a cost-effective solution for schools that rely heavily on costly transportation.

The intersection of McKinney-Vento's requirement of access to education for homeless children and youth, and the need for affordable housing for families, was explicitly noted in 1992 with the enactment of the Cranston-Gonzales National Affordable Housing Act. McKinney-Vento stipulates that, "each State educational agency and local educational agency . . . shall coordinate with State and local housing agencies responsible for developing the comprehensive housing affordability strategy . . . to minimize educational disruption for children and youths who become homeless. . . [Such coordination should] ensure that homeless children . . . have access and reasonable proximity to available education and related

support services . . . and raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness."¹⁹⁷ Similarly, under the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, HUD Continuums of Care are required to collaborate with school districts to assist in the identification and enrollment of homeless children and youth, and under McKinney-Vento, liaisons are required to collaborate with community service providers. McKinney-Vento and Cranston-Gonzales Acts both require a close collaboration between schools and housing authorities.

The U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Health and Human Services (HHS) released a resource entitled Youth Specific FAQs for Coordinated Entry.¹⁹⁸ Coordinated Entry (CE) is a process implemented by local HUD Continuums of Care (CoCs) to ensure that all people experiencing a housing crisis have fair and equal access to the community's housing and homeless assistance resources and are quickly identified, assessed for, and connected to housing and service options. This resource provides guidance to communities in developing and implementing a CE process that is responsive and developmentally appropriate to the needs of youth.

While these requirements have been unevenly implemented at best, a number of model practices do exist. For a summary of various state-implemented programs that illustrate that collaboration between school districts and local housing authorities benefits both students and school districts, please see the Law Center's Report, *Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs* (September 2011), available online at http://www.nlchp.org/documents/Beds_and_Buses.

Non-Discrimination Laws

Decades after the landmark decision in *Brown v. Board of Education*, access to integrated, quality education remains limited for many students of color. Homelessness disproportionately impacts children and youth of color, children and youth who identify as LGBT, and children and youth with disabilities. Homeless children and youth of color, with disabilities, and those who identify as LGBT may experience discrimination and barriers to enrolling, attending, and succeeding in school at levels significantly higher than other children and youth experiencing homelessness. While McKinney-Vento addresses the

barriers to education that homeless children and youth experience to ensure that they can enroll in, attend, and succeed in school, other federal nondiscrimination laws may be available to protect the civil rights of homeless children and youth.

School districts receiving federal funds must ensure that their educational programs for homeless children and youth are administered in a nondiscriminatory manner. Federal laws prohibit discrimination on the basis of undocumented status; race, color, or national origin (Title VI of the Civil Rights Act of 1964); sex (Title IX of the Education Amendments of 1972); and disability (Section 504 of the Rehabilitation Act of 1973, as applied to recipients of Federal financial assistance and Title II of the Americans with Disabilities Act of 1990, as applied to public educational entities).¹⁹⁹

Title VI of the Civil Rights Act prohibits entities receiving federal funds, such as public schools, from discriminating based on factors such as race, color, or national origin.²⁰⁰ Title VI protections include the prohibition of school enrollment policies that discourage students from participating in school or exclude them based on their citizenship or immigration status or that of their parents or guardians.²⁰¹ Title VI requires SEAs and LEAs to take 'affirmative steps' to address language barriers so that English Language Learner (ELL) students may participate meaningfully in schools' educational programs.²⁰² Practices that may violate a school's Title VI obligations include unnecessarily segregating ELL students or not providing meaningful communication with limited English proficiency (LEP) parents.²⁰³ Another practice that may be a violation of Title VI is if a school has a policy of encouraging its employees to report undocumented children and youth or discouraging undocumented children and youth to attend school, which may have a chilling effect on students with foreign-born parents.²⁰⁴

The Equal Educational Opportunities Act (EEOA) is another federal law that prescribes broad policy to ensure equal education for "all children enrolled in public schoolswithout regard to race, color, sex or national origin."²⁰⁵ Under the EEOA, a state may not "deny equal educational opportunity to an individual on account of his or her

race, color, sex or national origin, by...the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."²⁰⁶ Unlike other federal laws, however, no federal funding is required for EEOA to be enforced against local and state educational agencies.²⁰⁷ The requirement for school systems "to take appropriate action to overcome language barriers" applies to translation of McKinney-Vento-related materials in the same manner as it applies to translation of other important notices or documents.²⁰⁸

STATE LAWS & REGULATIONS

Title VII-B of the McKinney-Vento Homeless Assistance Act provides specific provisions requiring states to protect the education rights of homeless children and youth. As part of their obligations to review and revise laws, regulations, practices, or policies, States should enact state laws and regulations, as necessary, to fully implement federal law and further protect the rights of homeless children and youth. Such state laws vary greatly in scope and level of additional protection for homeless children and youth. State and local educational agencies should build upon the federal law's requirements and strengthen the educational rights of homeless children and youth.

McKinney-Vento requires states to continually review and revise their current laws to conform to its requirements. And states can also do more. This section excerpts several exemplary state statutes, regulations, and policy statements that track and supplement the federal law in providing legal protections to the education of homeless children and youth. Excerpts include policies from California, Colorado, Illinois, Iowa, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Texas, and Virginia. Some model policies recommended by the Law Center are included as well. These excerpts are listed according to the relevant policy topic, which are arranged alphabetically. This list is not intended to be exhaustive. There may be other state and local policies that provide legal protections that are equivalent to or that go above and beyond what is offered under McKinney-Vento.

Comparable Services

Beyond equal access to school, homeless children and youth are entitled to services that are comparable to those offered to non-homeless children and youth. State legislators and department of education officials can incorporate "comparable services" provisions that mirror

McKinney-Vento while providing some guidance about the particular areas that should be targeted by the requirement.

Maine

Services to be Provided. Whether a homeless student attends school in the school of current location or the school of origin, such student shall have immediate access to education in that school unit. Such student shall be provided services comparable to services available to other students in the designated school. These services shall include, but not be limited to, educational services for which the student meets relevant eligibility criteria, such as compensatory education programs for the disadvantaged; education programs for students with disabilities and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; school meals; before and after school-care programs.²⁰⁹

Coordination Among State Agencies

McKinney-Vento recognizes the need for coordination between various state and local agencies in providing homeless students with comprehensive services and educational opportunities. The most beneficial collaborations would include a state department of education, social services agencies, housing assistance agencies, and children and youth services providers. Social services agencies can assist unaccompanied youth and families in need of supplemental services such as food stamps, health care, and possibly emergency housing. Housing agencies can work with school districts to find appropriate housing for school-aged children and youth. Youth services providers may be able to assist in identifying homeless students while also offering beneficial services to all such students once identified.

New York

By January thirty-first, nineteen hundred ninety-five, the commissioner, the commissioner of social services, and the director of the division for youth shall develop a plan to ensure coordination and access to education for homeless children and shall annually review such plan.²¹⁰

Maryland

Each local school system in Maryland shall:

- (2) Coordinate with local social services agencies and other agencies or programs providing services to homeless children and youth and their families;

- (3) Coordinate with other local school systems on interdistrict issues, such as transportation or transfer of school records.²¹¹

Dispute Resolution

Under McKinney-Vento, a school must provide parents with a written explanation of its disputed decisions. Such explanations should include a statement of the rights of the parent, guardian, child, or youth to appeal the decision. Students are entitled to attend their school of choice while the dispute is still pending. State law provisions should reflect these McKinney-Vento requirements while setting forth a clearly defined dispute resolution process.

Illinois

(a) Each regional superintendent of schools shall appoint an ombudsperson who is fair and impartial and familiar with the educational rights and needs of homeless children to provide resource information and resolve disputes at schools within his or her jurisdiction relating to the rights of homeless children under this Act. If a school denies a homeless child enrollment or transportation, it shall immediately refer the child or his or her parent or guardian to the ombudsperson and provide the child or his or her parent or guardian with a written statement of the basis for the denial. The child shall be admitted and transported to the school chosen by the parent or guardian until final resolution of the dispute. The ombudsperson shall convene a meeting of all parties and attempt to resolve the dispute within 5 school days after receiving notice of the dispute, if possible.

(a-5) Whenever a child and his or her parent or guardian who initially share the housing of another person due to loss of housing, economic hardship, or a similar hardship continue to share the housing, a school district may, after the passage of 18 months and annually thereafter, conduct a review as to whether such hardship continues to exist. The district may, at the time of review, request information from the parent or guardian to reasonably establish the hardship, and sworn affidavits or declarations may be sought and provided. If, upon review, the district determines that the family no longer suffers such hardship, it may notify the family in writing and begin the process of dispute resolution as set forth in this Act. Any change required as a result of this review and determination shall be effective solely at the close of the school year. Any person who knowingly or willfully presents false information regarding the hardship of a child in any review under this subsection

(a-5) shall be guilty of a Class C misdemeanor.²¹²

(b) Any party to a dispute under this Act may file a civil action in a court of competent jurisdiction to seek appropriate relief. In any civil action, a party whose rights under this Act are found to have been violated shall be entitled to recover reasonable attorney's fees and costs.

(c) If a dispute arises, the school district shall inform parents and guardians of homeless children of the availability of the ombudsperson, sources of low cost or free legal assistance, and other advocacy services in the community.²¹³

Domestic Violence and Protecting School Records

Domestic violence survivors often have unique concerns about parental access to school records. The Family Educational Rights and Privacy Act (FERPA) requires educational agencies to maintain a record indicating all individuals, agencies, or organizations, which have requested or obtained copies of a student's education records. This information must be included with the student's other education records. Unfortunately, this ability to access records may assist an abusive parent in finding children and abuse victims who have fled a domestic violence situation. FERPA regulations allow states to create laws specifically revoking parental rights to access files.

Massachusetts

. . . any parent who does not have physical custody of a child shall be eligible for the receipt of information[school records] unless: (1) the parent's access to the child is currently prohibited by a temporary or permanent protective order, except where the protective order, or any subsequent order which modifies the protective order, specifically allows access to the information described in this section; or (2) the parent is denied visitation or, based on a threat to the safety of the child, is currently denied legal custody of the child or is currently ordered to supervised visitation, and the threat is specifically noted in the order pertaining to custody or supervised visitation.²¹⁴

Eliminating Barriers

States are obligated to remove barriers to the enrollment and success of homeless students. They should outline those areas that commonly present barriers. They can also provide a specific list of sample services that can assist in alleviating typical barriers.

Maryland

Each local school system in Maryland shall:

(1) Develop, review, and revise policies to eliminate barriers to the enrollment, retention, and success in school of homeless students in a manner which addresses:

(a) Transportation issues;

(b) Enrollment delays caused by residency requirements;

(c) Lack of available records normally required for enrollment such as birth certificates, previous school records, immunization records, medical records, proof of residency, or other documentation;

(d) Guardianship issues;

(e) Uniform or dress code requirements; and

(f) Opportunities to meet the same challenging State student academic achievement standards to which all students are held.²¹⁵

New York

Public welfare officials, except as otherwise provided by law, shall furnish indigent children with suitable clothing, shoes, books, food, transportation and other necessities to enable them to attend upon instruction as required by law. Upon demonstration of need, such necessities shall also include transportation of indigent children for the purposes of evaluations pursuant to [the state's special education law].²¹⁶

Iowa

If a child or youth is determined to be homeless as defined by these rules, a school district is encouraged, subject to state law, to waive any fees or charges that would present a barrier to the enrollment or transfer of the child or youth, such as fees or charges for textbooks, supplies, or activities. A Homeless child or youth, or the parent or guardian of a homeless child or youth, who believes a school district has denied the child or youth entry to or continuance of an education in the district on the basis that mandatory fees cannot be paid may appeal to the department of education using the dispute resolution mechanism in rule 33.9(256).²¹⁷

Texas

Texas recognizes the challenges homeless children and youth experience in accessing education. In 2015, the Texas legislature passed a bill, which states that:

1. School records must be transferred within ten days of the homeless child starting the new school.
2. Access to extracurricular activities, extra credit work, online courses, after school tutoring, summer programs, and credit transfer programs be facilitated for homeless students at nominal or no cost.
3. Schools must work to develop programs that make the transition of a student who is homeless easier and less burdensome.
4. Schools must establish procedures that lessen the adverse impact of the movement of a student who is homeless or in substitute care to a new school.
5. Schools must enter into an agreement with the Department of Family and Protective Services regarding the exchange of information to facilitate the transition of homeless students from one school to another.
6. School districts should be encouraged to assist homeless students when they are applying for post-secondary education (admission process as well as securing funding).
7. Require school districts accept a referral for special education services made by a previous school attended by the homeless student.
8. Require that school districts provide notice to the homeless child's significant education decision maker regarding any issue that may significantly affect the education of a child.
9. Develop procedures to allow a homeless student who was previously enrolled in a course that was a prerequisite to graduating the opportunity, to complete the course at no additional cost before the next school year commences.
10. If an 11th or 12th grade homeless student transfers from one school district to another and is not eligible to graduate in the district they transfer to... the student can request a diploma from the district transferred from if eligibility criteria are met in the original school

district.²¹⁸

Equal Access

Homeless students are entitled to equal access to an education. States should consider adopting statements that reflect the federal equal access guarantees and further expanding access to other education-related programs to help homeless students escape poverty and succeed in school.

California

Homeless and foster youth must be provided priority access with fees waived for state-funded afterschool programs. Afterschool programs must use all federally funded resources available to prevent hunger and support healthy outcomes.²¹⁹

Colorado

Equal access to school. Nothing in this article shall be construed to prohibit a child from attending a public school without the payment of tuition solely because the child is homeless . . .²²⁰

Guardianship Requirements

State and local guardianship provisions can act as a barrier to unaccompanied youth and other homeless students seeking school enrollment. McKinney-Vento requires schools to enroll homeless students even if proof of guardianship is unavailable. States can help school districts and schools comply with McKinney-Vento by amending statutes to reflect flexibility in the categories of individuals who are able to enroll homeless children and youth.

New York

Designator. The term "designator" shall mean:

- (1) the parent or the person in parental relation to a homeless child; or
- (2) the homeless child, if no parent or person in parental relation is available; or
- (3) the director of a residential program for runaway and homeless youth established pursuant to article nineteen-H of the executive law, in consultation with the homeless child, where such homeless child is living in such program.²²¹

New York allows a “designator” to designate a school choice and either keep the homeless child or youth in the school of origin or enroll him or her in a new school.

Oregon

A school district shall not exclude from admission a child located in the district solely because the child does not have a fixed place of residence or solely because the child is not under the supervision of a parent, guardian or person in a parental relationship.²²²

Higher Education

Providing educational continuity and stability to homeless children and youth, as required by McKinney-Vento, not only includes equal access to pre-K-12 public education but also higher education. ESSA requires state plans to include a description of how homeless youth will receive assistance from counselors to advise them and prepare and improve their readiness for college.²²³ Some states like California and Colorado have passed legislation to improve access to higher education.

California

California state colleges, state universities and University of California are encouraged to disseminate information about admission requirements and financial aid to foster agencies; to assist the transition of students who are homeless youth or foster youth into four-year public institutions of higher education; and to develop a plan to ensure that current and former homeless youth and current and former foster youth can access housing resources as needed during and between academic terms, including during academic and campus breaks, regardless of whether the campus maintains student housing facilities. The law also requires California community colleges, California state universities and the University of California system to provide priority housing to current and former homeless youth and current and former foster youth.²²⁴

Homeless youth must receive the same priority enrollment given to foster youth in state universities and community colleges. The law requires a single point of contact to assist homeless and foster youth to access and complete higher education. The bill also requires schools to post public notice about financial and other assistance available to homeless and foster youth. Additionally, homeless youth who meet the minimum academic requirements are exempt from community college fees and those youth

under age 19 who currently reside in CA are afforded with in-state tuition.²²⁵

Homeless college students who are enrolled in coursework, have paid tuition fees, and are in good standing with the community college district are allowed to shower at community colleges.²²⁶

Colorado

In-state tuition status in Colorado is determined by whether or not an individual falls under the criteria designated on a ‘qualified persons’ list. Currently, this list includes adults, emancipated minors, and graduate students. This bill adds individuals classified under the term ‘Unaccompanied Homeless Youth,’ as defined by McKinney-Vento, to receive in-state tuition at institutions of higher education in Colorado. The law further empowers local educational agency liaisons to verify whether a youth is an unaccompanied homeless youth.²²⁷

Homeless Education Personnel

States may need to amend their legal codes to include a provision that details the requirement for each school district to appoint an LEA liaison able to carry out the duties and obligations under the law.²²⁸ **To be able to carry out such legal duties and obligations, liaisons must not have a conflict of interest and must be an effective advocate on behalf of homeless children and youth.** Such provisions could include information about the liaison’s responsibilities. Alternatively, the school district may be placed in charge of communicating job duties to the liaison or a statute/regulation could directly reference the relevant provisions of McKinney-Vento.

The type of person best suited to address the problems faced by homeless children and youth may vary according to the particular circumstances within a State or district. In general, however, an effective liaison will have the following experience, knowledge, skills, and attitudes (some of which may be acquired through training). For example, in appointing a liaison, an LEA should consider the following:

- Ability to effectively advocate for at-risk students and parents; work within a school system; and engage in program coordination and cross-program or interagency collaboration.
- Knowledge of homelessness and its impact on families and youth; McKinney-Vento and related laws; community resources; and the LEA’s systems

for professional development, budgeting, and data collection.

- Ability to communicate clearly orally and in writing; develop clear policies and procedures relating to homeless students' enrollment, transportation, and referrals for services; establish trust and open communication with homeless youth and families; train and oversee staff, including with regard to following the requirements of the law; resolve conflicts; keep clear records; collaborate with internal and external partners.
- Understands that at-risk children need and deserve support in order to succeed; that decisions shall be student-centered; that services for the most vulnerable, when necessary, shall go above and beyond those for other children and youth; and that homeless children and youth shall receive the protections and services mandated by McKinney-Vento and other related laws.

In large LEAs, where it is likely that the LEA will have to revise local policies and procedures and conduct substantial training to address enrollment and school attendance barriers, the LEA may want to designate as a liaison an individual who is currently in a position to communicate effectively with school system policy makers and delegate school-based staff for the provision of frontline support policymakers. In smaller LEAs, the LEA might consider designating as a liaison an individual closer to the provision of direct services. For example, social workers, other support staff, and guidance counselors have been successful liaisons due to their skills and experience with outreach efforts in the community.

Maryland

A. Each local school system in Maryland shall:

5) Designate a homeless education coordinator responsible for:

- (a) Ensuring that homeless children and youth are identified by school personnel, are enrolled in, and have a full and equal opportunity to succeed in schools of that local school system;
- (b) Coordinating the referrals of homeless children to health care, dental care, mental health services, and other appropriate services;
- (c) Expediting school placement decisions;

- (d) Identifying homeless children, youth, and families in the community;
- (e) Coordinating programs and services to prevent duplication of services;
- (f) Monitoring programs and projects to ensure their compliance with applicable statutory and regulatory requirements, if the local school system receives funds under the McKinney Act;
- (g) Informing parents or guardians of homeless children and youth of the educational and related opportunities available to their children, ensuring that they are provided with meaningful opportunities to participate in the education of their children;
- (h) Disseminating public notice of the educational rights of homeless children and youth in the schools, community agencies, family shelters, soup kitchens, and organizations where children and youth receive services;
- (i) Ensuring that the parent or guardian of a homeless child or youth and any unaccompanied youth is fully informed of all transportation services, including transportation to the school of origin, is assisted in accessing transportation to the school that is selected, and that enrollment disputes are mediated in accordance with Regulation .07 of this chapter;
- (j) Working with Title I administrators to ensure that Title I services are provided in accordance with the reservation of funds required by McKinney-Vento Act;
- (k) Coordinating and collaborating with the State coordinator and community and school personnel responsible for the provision of education and related services to homeless children and youth;
- (l) Developing and implementing a program to train school personnel on the educational rights of homeless children and youth, policies and procedures to identify and serve homeless children and youth, and on the special needs of homeless children and youth;
- (m) Assisting unaccompanied homeless youth in the school selection process; and
- (n) Ensuring that enrollment disputes are mediated according to the local school system's appeal process consistent with Regulation .07 of this chapter.²²⁹

Homeless Student Identification

In fulfilling the purposes and requirements of McKinney-Vento, States should develop methods of identifying homeless students in need of services. This task is made easier through outreach designed to inform families about who qualifies for McKinney-Vento programs, as well as the services and educational rights that are available.

Iowa

The board of directors of a public school district shall do all of the following:

33.3(1) The board shall locate and identify homeless children or youth within the district, whether or not they are enrolled in school.

33.3(2) The board shall post, at community shelters and other locations in the district where services or assistance is provided to the homeless, information regarding the educational rights of homeless children and youth and encouraging homeless children and youth to enroll in the public school.²³⁰

The board shall designate an appropriate staff person as the district's local educational agency liaison for homeless children and youth to carry out the following duties . . .

e. Ensure that public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under the federal McKinney-Vento Homeless Assistance Act, such as schools, family shelters, and soup kitchens . . .

²³¹

Immediate Enrollment

Under McKinney-Vento, homeless students are entitled to immediate enrollment even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation, including immunization records. Many states have implemented this provision by borrowing language directly from McKinney-Vento.

Illinois

Enrollment. If the parents or guardians of a homeless child or youth choose to enroll the child in a school other than the school of origin, that school immediately shall enroll the homeless child or youth even if the child or youth is unable

to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation. Nothing in this subsection shall prohibit school districts from requiring parents or guardians of a homeless child to submit an address or such other contact information as the district may require from parents or guardians of nonhomeless children. It shall be the duty of the enrolling school to immediately contact the school last attended by the child or youth to obtain relevant academic and other records. If the child or youth must obtain immunizations, it shall be the duty of the enrolling school to promptly refer the child or youth for those immunizations.²³²

Immunization Requirements

Federal law allows homeless children and youth to enroll in school immediately, even if they don't have necessary immunizations or records of such immunizations. Local homeless liaisons must help families obtain the homeless child's records or shots. States should develop simplified methods for verifying immunizations. For example, school districts can obtain oral confirmations of immunizations from other school districts—such exchanges should be sufficient until official records are received. Pennsylvania and Virginia have noteworthy sample policies.

Pennsylvania

The educating district should immediately enroll and begin to provide instruction. The receiving school district may contact the district of origin for oral confirmation that the child has been immunized. Oral confirmation between professionals is a sufficient basis to verify immunization with written confirmation to follow within 30 days. The instructional program should begin as soon as possible after the enrollment process is initiated and should not be delayed until the procedure is completed.

According to federal law, "(iii) If the child or youth needs to obtain immunizations, or immunization or medical records, the enrolling school shall immediately refer the parent or guardian of the child or youth to the local educational agency liaison designated under paragraph (1)(J)(ii), shall assist in obtaining necessary immunizations, or immunization or medical records, in accordance with subparagraph (D)" 42 U.S. §11432(g)(c)(iii).²³³

Virginia

... [if] a homeless child or youth “does not have documentary proof of necessary immunizations or has incomplete immunizations and (b) is not exempted from immunization . . . the school division shall immediately admit such student and shall immediately refer the student to the local school division liaison, as described in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. §11431 et seq.) (the Act), who shall assist in obtaining the documentary proof of, or completing, immunization and other services required by such Act.”²³⁴

Monitoring

States must monitor their school districts and school districts must monitor their schools. Monitoring protocol should be detailed in state laws and/or regulations. Time frames and procedures should be thoroughly outlined.

National Law Center on Homelessness and Poverty Model Language

The State Coordinator of Homeless Education will monitor local homeless education programs. Monitoring activities will include:

- (1) Collecting relevant data from each school district in the state;
- (2) Periodically conducting site visits to each school district in the state;
- (3) Bi-Annually conducting site visits for the three school districts in the state that have the largest number of homeless students.

Preschool

According to the U.S. Department of Education's most recent report on homeless education, preschoolers are less likely to have educational access than any other age group. Unfortunately, this group has a large representation amongst homeless children nationally. States and school districts should create laws and policies that increase homeless preschooler identification and reduce or eliminate barriers to enrollment and full participation. These policies may need to address transportation needs or waitlists that pose a significant problem for highly mobile students who often move to a new location before their name makes it to the top of the list.

Massachusetts

In Massachusetts, Homeless Education Liaisons must:

- Identify preschool-aged homeless children by working closely with shelters, emergency assistance motels, and social service agencies in their area, and by inquiring when enrolling homeless students in school, whether the family also has younger children.
- Collaborate with the school district special education program and providers of Early Intervention services to ensure that the Individual with Disabilities Education Act (IDEA) requirement that highly mobile children with disabilities, such as homeless children who are in need of early intervention, special education and related services, are located, identified and evaluated and that homeless children are included in the “Child Find” process for early identification of special education needs.
- Work with preschool program staff to stress the essential nature of their services for homeless children and their families, to help them identify and remove barriers, such as waiting lists, that may prevent homeless families from obtaining child care or related services.²³⁵

Iowa

A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of homeless in these rules shall not be denied access to a free, appropriate public education solely on the basis of transportation. The necessity for and feasibility of transportation shall be considered, however, in deciding which of two districts would be in the best interests of the homeless child or youth. The dispute resolution procedures in rule 33.9(256) are applicable to disputes arising over transportation issues.²³⁶

Prohibition Against Segregation

With extremely limited exceptions, McKinney-Vento prohibits segregated schools and classrooms. Homeless students should not be isolated from their regularly housed peers. State laws should reflect this federal prohibition.

Maryland

Homeless children and youth, while receiving a free public education, may not be segregated in a separate school

or in a separate program within a school, based on their status as homeless. Homeless children and youth shall be educated as part of a school regular academic program.²³⁷

Records Transfers

McKinney-Vento requires schools to adequately maintain records so that they may be easily transferred to another school upon request. Under this federal law, schools enrolling homeless students must request records from the student's previous school. States also should consider providing homeless families with full copies of records, allowing families to personally deliver the documents to new schools. New schools should honor these hand-delivered records until they receive official copies from the previous school. Such a policy would allow new schools to make appropriate placements (*e.g.*, special education, gifted and talented, skill-level matched courses) immediately.

Iowa

The school records of each homeless child or youth shall be maintained so that the records are available in a timely fashion when a child or youth enters a new school district, and in a manner consistent with the federal statutes and regulations related to student records. Upon notification that a homeless student intends to transfer out of the district, a school district shall immediately provide copies of the student's permanent and cumulative records, or other evidence of placement or special needs, to the homeless child or youth or the parent or guardian of a homeless child or youth who may take the copies with them. Upon the enrollment of a homeless child or youth, a school district shall accept copies of records, or other evidence of placement provided by the homeless child, youth, or the parent or guardian of the homeless child or youth, for purposes of immediate placement and delivery of education and support services. Thereafter, the receiving school shall request copies of the official records from the sending school. The receiving school shall not dismiss or deny further education to the homeless child or youth solely on the basis that the prior school records are unavailable.²³⁸

Residency Requirements

States may need to amend any residency requirements to account for homeless students.

Colorado

Place of residence of a homeless child. A child found to be homeless . . . may be deemed by the school districts . . .), taking into consideration the best interests of the child, to reside in:

(a) The school district where the child presently seeks shelter or is located; or

(b) For so long as the child remains homeless, the school district in which the child's school of origin is located; except that a child who, subsequent to becoming homeless, becomes permanently housed in the same school year may be deemed to reside in the school district of the school of origin, but only for the remainder of the school year.²³⁹

. . .

(2) A child shall be deemed to reside in a school district if:

(a) Both his or her parents, or the survivor of them, or the one of them with whom such child resides a majority of the time pursuant to an order of any court of competent jurisdiction resides in the school district;

(b) The legally appointed guardian of his person resides in the school district . . .

(h) The child is found to be . . . and the child presently seeks shelter or is located in the school district; except that a homeless child shall be deemed to reside in another school district if the child attended school in such school district at the time the child became homeless, the child remains homeless, the affected school districts find that attendance in such other school district is in the best interests of the child . . . and the child chooses to continue attendance in such other school district;

(i) The child is found to have become homeless . . . during a period that school is not in session, the child remains homeless, and the child presently seeks shelter or is located in the school district; except that the child shall be deemed to reside in another school district if the child attended school in such school district immediately prior to the time the child became homeless, the child remains homeless, the affected school districts find that attendance in such other school district is in the best interests of the child . . . , and the child chooses to continue attendance in such other school district.²⁴⁰

Pennsylvania

II. Homeless Students Not Residing in a Shelter, Facility or Institution

Homeless students may reside in hotels, motels, cars, tents or temporarily doubled-up with a resident family because of lack of housing. In determining residence and in the case of homeless children, equating “residence” and “domicile” (home) does not apply. They are presently unable to establish “homes” on a permanent basis. Homeless families are not required to prove residency regarding school enrollment. These students should be enrolled without delay, in the district where they are presently residing or continue their education in the district of prior attendance.

Children experiencing homelessness are often highly mobile and may not stay in the same school district each night or each week. This is particularly true regarding children who stay overnight in vehicles, those who stay with different family members or friends, or those who receive services from agencies, organizations or networks which facilitate overnight accommodations in multiple school districts. These children should not be forced to change school districts every time their overnight accommodations change. Rather, these children are entitled to attend school in any school district where a parent, guardian, an adult caring for them or where an unaccompanied child:

- spends the greatest percentage of his or her time; or
- has a substantial connection such as where he or she is
 - (1) regularly receiving day shelter or other services involving any of the 16 McKinney-Vento Activities (42 U.S.C.A. 11433(d)) for individuals who are homeless;
 - (2) conducting daily living activities; or
 - (3) staying overnight on a recurring basis.

This policy helps maintain continuity and school stability for homeless children in compliance with the McKinney-Vento Act.

The child or youth shall continue to be enrolled in the school in which he or she is seeking enrollment until the complaint or appeal is fully resolved by a McKinney-Vento Coordinator, state coordinator, through mediation or in court.²⁴¹

School Choice

State statutes and regulations should allow homeless children and youth to choose between their school of origin and the school located near their temporary residence. Several states have chosen to borrow language directly from McKinney-Vento’s school choice provisions.

Maryland

A. The local educational agency serving each child or youth shall, according to the child’s or youth’s best interest, establish a procedure to:

(1) Continue the child’s or youth’s education in the school of origin for the duration of homelessness:

- (a) In any case in which a family becomes homeless between academic years or during an academic year; or
- (b) For the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or

(2) Enroll the child or youth in any public school that nonhomeless students living in the attendance area in which the child or youth is living are eligible to attend.

B. In determining the best interest of the child or youth under §A of this regulation, the local school system shall:

(1) To the extent feasible, keep a homeless child or youth in the school of origin, unless contrary to the wishes of the child’s or youth’s parent or guardian;

(2) In determining best interest consider the following factors:

- (a) The student’s age;
- (b) The school which the student’s siblings attend;
- (c) The student’s experiences at the school of origin;
- (d) The student’s academic needs;
- (e) The student’s emotional needs;
- (f) Any other special needs of the family;
- (g) Continuity of instruction;

- (h) Length of stay in the shelter;
- (i) The likely location of the family's future permanent housing;
- (j) Time remaining in the school year;
- (k) Distance of commute and the impact it may have on the student's education and other student-centered, transportation related factors; and
- (l) The safety of the child.²⁴²

Special Education

Homeless students, like all other students, are entitled to special education and related services if they have a disability. States should create laws and policies designed to ensure that homeless children and youth are able to receive the full benefit of these rights. Homeless children and youth need speedy evaluations and immediate implementation of an interim IEP (Individualized Education Program) that is substantially influenced by their previous IEPs from other school districts.

New Jersey

Each State agency shall ensure all students with a disability in the agency's State facilities are provided a free and appropriate public education as set forth under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and shall provide special education and related services as stipulated in the individualized education program (IEP) in accordance with the rules governing special education at N.J.A.C. 6A:14.²⁴³

Transportation

State law provisions need to guarantee that homeless children and youth are provided with transportation to and from their schools of origin. McKinney-Vento requires LEAs to reach individual agreements about the apportionment of transportation costs in those instances where the homeless child is temporarily residing in one school district but attending a school of origin in another school district. States must not allow the negotiation process between districts to delay providing transportation to homeless students. They can assign initial responsibility to one district (e.g., the one housing the school of origin) and make provisions for potential reimbursements based on subsequent agreements. Local laws can also specify that transportation is to be provided throughout the school

year in which the homeless child or youth finds permanent housing.

Texas

The District shall provide transportation to a homeless student assigned to attend the school of origin, as provided by law. If such a student ceases to be homeless, the District shall continue to provide transportation to and from the school of origin through the end of the school year, upon request from the parent or guardian.²⁴⁴

National Law Center on Homelessness and Poverty Model Language

School districts shall adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin, as follows:

- (1) If the homeless child or youth continues to live in the school district of origin, the child's or youth's transportation to and from the school of origin shall be provided or arranged by the school district of origin.
- (2) If the homeless child or youth is living in an area that is not served by the school district of origin, the following will apply:
 - (a) the school district of origin will immediately arrange transportation to and from the school of origin unless the two school districts have previously reached a mutual policy agreement that applies to homeless children in their region;
 - (b) the school district of origin and the local school district in which the homeless child or youth is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin;
 - (c) if the school districts are unable to agree upon an apportionment of cost, the responsibility and costs for transportation shall be shared equally;
 - (d) the agreement, or equally shared cost arrangement, between the two school districts will be retroactive to the date in which the homeless child first requested transportation services. The school district of origin will be reimbursed accordingly.

MEETING ADDITIONAL NEEDS OF STUDENTS EXPERIENCING HOMELESSNESS

Unaccompanied Homeless Youth

Each year, an estimated 1.7 million children and youth experience homelessness without a parent or guardian.²⁴⁵ These unaccompanied homeless youth include young people who:

- an away from home;
- were thrown out of their homes;
- left home with the consent of a parent;
- have no formal custody papers or arrangements while their parents are in jail, the hospital, or a rehabilitation center; or
- were abandoned by their parents.

These young people are separated from their parents for a variety of reasons, which may include severe family conflict, parental abuse or neglect, parental mental health issues, or substance abuse.



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The term “homeless youth,” is sometimes used to refer to unaccompanied homeless youth aged 12 to 24 years, while “homeless children” is used to refer to any minor homeless child who is with her family. For example, the National Alliance to End Homelessness’ typology of homeless youth includes four major categories: runaway (fleeing youth), transitory or episodic (couch surfing youth), unaccompanied homeless youth (shelter hoppers), and street- dependent youth (squatters and travelers). The nomenclature of referring to unaccompanied homeless youth as homeless youth, although widely accepted, is not necessarily universal, which can be the source of confusion and misinterpretation of data. For example, U.S. Interagency Council on Homelessness documents use the terms ‘homeless youth’ and ‘unaccompanied homeless youth’ interchangeably when they mean one and not the other. To avoid confusion, this manual uses the full term ‘unaccompanied homeless youth.’²⁴⁶

Additional Educational Barriers

Unaccompanied homeless youth face numerous legal barriers in meeting their basic needs. School may be the only safe and stable environment available to unaccompanied youth. Despite their dire circumstances, many unaccompanied youth remain committed to education. Yet unaccompanied youth often face unique barriers to enrolling and succeeding in school. Without a parent or guardian to advocate for them and exercise parental rights, they are sometimes denied enrollment and remain out of school for extended periods of time. Unaccompanied youth also may not understand their educational rights or know how to access resources needed to uphold such rights.

Unaccompanied youth generally have the same rights as other students experiencing homelessness. Under McKinney-Vento, the lack of a parent or legal guardian

cannot delay the enrollment of an unaccompanied youth. They have the right to: (1) remain in their school of origin; (2) be provided transportation to and from their school of origin; (3) immediately enroll in a new school serving the area in which they are currently living even if they do not have typically required documents (e.g. proof of guardianship); and (4) equal access to programs and services such as gifted and talented education, special education, vocational education, and English Language Learner services. As noted above, unaccompanied homeless youth may face additional barriers in requesting assessments for disabilities.²⁴⁷ McKinney-Vento education program state plans must include strategies for preventing enrollment delays due to guardianship issues.²⁴⁸

A student's eligibility must be evaluated based on the nature of his or her current nighttime living arrangement, not the circumstances that caused him or her to leave home.²⁴⁹ Under McKinney-Vento, there are only two questions to be asked: is the youth unaccompanied (not in the custody of their parent or guardian) and is the youth homeless (under any of the situations described in the law). If so, the child is an unaccompanied homeless youth and must be enrolled. There is no need to inquire into, determine, or judge the youth's reasons for leaving home. When it comes to school selection, placement, and enrollment, the law requires LEA liaisons to assist in making such decisions, giving priority to the views of the unaccompanied youth.²⁵⁰ If there is a dispute or disagreement between the child and the child's parents regarding school enrollment, the homeless liaison must still enroll the child and later coordinate with the family, social worker, or case manager, and the school. The LEA must consider *student-centered* factors related to the youth's best interest.²⁵¹

The law also provides rights specific to unaccompanied homeless youth. The state plan must describe how youth experiencing homelessness who are not attending school are to be identified and accorded equal access to appropriate secondary education and support services, and this includes identifying and removing barriers that prevent youth from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school.²⁵² School personnel must be made aware of the specific needs of runaway and homeless youth.²⁵³ McKinney-Vento education program funds can be used for services and assistance to attract, engage, and retain unaccompanied youth in public school programs and services.²⁵⁴ It is important to remember that McKinney-Vento requires any law, regulation, practice, or policy that may act as a barrier

to the enrollment, attendance, or success in school of homeless children and youth to be revised.²⁵⁵

For more information on the legal barriers facing unaccompanied homeless youth, please see the Law Center's report, *Alone Without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth*, available at http://nlchp.org/Alone_Without_A_Home.

Children and Youth who are Racial or Ethnic Minorities

Homelessness disproportionately impacts people of color, particularly African Americans.²⁵⁶ The same is true for families, children and youth experiencing homelessness, and each of the subgroups discussed in this section. It is important for legal advocates to understand how racial bias, whether overt or implicit and whether an individual action or systemic policy, can increase the challenges that families, children, and youth of color experiencing homelessness face.

Schools in areas of racial and economic concentration, where children and youth of color attend disproportionately, generally have fewer resources to help students stay and succeed in school. An additional compounding issue is the discriminatory application of school discipline that funnels children and youth of color out of school and into the juvenile and criminal justice systems.²⁵⁷ The physical and mental stresses homeless children and youth experience are often multiplied by stresses related to racial discrimination and segregation, which can include overt racism, higher exposure to violent crime, and disparate access to health care.

As discussed above, federal and state anti-discrimination laws may be applicable in cases where homeless children and youth of color are treated differently than white homeless children and youth. Legal advocates are encouraged to consider how their clients may be experiencing challenges disproportionately and use all applicable strategies and laws to ensure that children and youth of color receive the full education rights afforded by law.

LGBTQ Children and Youth

Homeless children and youth identifying as lesbian, gay, bisexual, transgender, or questioning (LGBTQ) must contend with education barriers, not only because they are homeless, but because of their LGBTQ identity as well.²⁵⁸ LGBTQ homeless children and youth are an overrepresented and vulnerable homeless subpopulation, particularly within the group of unaccompanied homeless youth.²⁵⁹ Most LGBTQ homeless youth live on the streets.²⁶⁰ While there are numerous interrelated reasons for this, it is important to note that LGBTQ children and youth are more likely to have lost their family support structure, more likely to be driven from the foster care system, and less likely to find safety in a shelter. It is important for legal advocates, as well as schools, to take into consideration the multiple vulnerabilities experienced by LGBTQ homeless students.

LGBTQ youth represent up to 40% of the U.S. homeless youth population and yet they are only 5-7% of the total youth population, with a significant majority being LGBTQ youth of color.²⁶¹ Conservative estimates put the number of LGBTQ youth experiencing homelessness in a given year to be between 320,000 and 400,000, and could actually be as high as 800,000.²⁶² Because of high incidence of harassment experienced at school, LGBTQ unaccompanied homeless youth contribute to the alarming 75% drop out rate for unaccompanied homeless youth generally,²⁶³ and a majority of this subpopulation (65%) will attempt suicide.²⁶⁴

LGBTQ homeless youth are much more likely than non-LGBTQ homeless youth to be unaccompanied because of the increased likelihood that they were made homeless by family/guardian rejection, abuse, or abandonment due to their sexual orientation or gender identity.²⁶⁵ LGBTQ youth are well over twice more likely to be removed from their homes due to physical violence than their non-LGBTQ peers.²⁶⁶ Once out of the home, the foster care system is generally hostile to LGBTQ youth, and many feel safer living on the streets.²⁶⁷ Although 65% of LGBTQ unaccompanied homeless youth have lived in foster or group homes at some point,²⁶⁸ they are often homeless due to factors such as anti-LGBTQ prejudice, harassment, or physical danger.²⁶⁹ Once on the streets, homeless LGBTQ youth experience significantly higher rates than their non-LGBTQ homeless peers of: physical and sexual victimization, substance abuse, mental health issues, risky sexual behavior, school dropout, incarceration, and suicide.²⁷⁰ As a result, these youth tend to be distrustful

of adults and may deny their LGBTQ status, making it all the more important to identify and to help them using all legal tools available for them to enroll, participate, stay, and succeed in safe schools.

Although schools can be an important source of stability for homeless children and youth, LGBTQ unaccompanied homeless youth face potentially hostile and unwelcoming school environments due to their LGBTQ status, making school selection critically important when utilizing McKinney-Vento. Over two-thirds of LGBTQ students nationwide feel unsafe at school, experiencing considerably higher rates of physical assault and verbal, physical, and sexual harassment than their non-LGBTQ peers, with worse rates for middle school LGBTQ students than their LGBTQ high school peers.²⁷¹ LGBTQ students face frequent hostility from school faculty and staff, both explicitly and in the form of bias in the application of school disciplinary policies.²⁷² As a result, nearly one-third of all LGBTQ students reported missing at least one full day of school in the previous month, and almost two-thirds regularly avoid school functions and extracurricular activities, putting them at academic and social disadvantage.²⁷³ Ultimately, one-third of all LGBTQ students drop out of high school, three times the rate of their non-LGBTQ peers, which markedly decreases their opportunities for success and increases the likelihood that they will have some form of contact with the criminal justice system.²⁷⁴

Federal law provides some additional protection and recourse to LGBTQ unaccompanied homeless youth against discrimination and harassment based upon their LGBTQ status; however, their ability to avail of such protections is often limited due to lack of knowledge, parental oversight, and resources. For example, federal law prohibits sex discrimination in schools receiving federal funds, including sexual harassment directed at LGBTQ students or those perceived to be LGBTQ, and gender-based harassment based on a student's failure to adhere to gender stereotypes.²⁷⁵ While some states have enacted their own anti-discrimination statutes to protect LGBTQ students, other states like Alabama, Arizona, Louisiana, Mississippi, Oklahoma, South Carolina, Texas, and Utah have enacted anti-LGBTQ curriculum laws that expressly identify LGBT issues for disfavored treatment in school.²⁷⁶

While there is still a lot of work needed around inclusion of LGBTQ issues in federal, state, and local policies, in recent years, the federal government has taken steps to ensure equal housing rights for LGBTQ homeless youth. On September 20, 2016, the U.S. Department of Housing and Urban Development (HUD) issued guidance on appropriate placement for transgender persons in HUD-funded sex-segregated homeless shelters.²⁷⁷ The guidance builds on the Equal Access to Housing rule that HUD published in 2012, and is geared towards addressing harassment, difficulty, and even sexual assault LGBTQ homeless youth experience when trying to access homeless shelters.²⁷⁸

Establishing Gay-Straight Alliance clubs (GSA) and anti-bullying policies may be an effective ways to increase safety and decrease discrimination for LGBTQ students. GSAs are LGBTQ student support groups run by students in schools. These groups significantly increase LGBTQ students' sense of safety, and decrease the frequency of anti-LGBTQ harassment and LGBTQ student truancy.²⁷⁹ Although some states and districts have tried to ban GSAs, the federal Equal Access Act protects these groups.²⁸⁰ School district anti-bullying policies that specifically enumerate LGBTQ students for protection have positive impacts on school climate for LGBTQ children and youth.²⁸¹ Unfortunately, only 30% of LGBTQ students nationwide attend schools with anti-bullying policies protecting them on the basis of sexual orientation, and only 17% attend schools with gender identity protections.²⁸²

Immigrant Children and English Language Learner Children

McKinney-Vento applies equally to immigrant children and youth or those recently arrived to the United States who are determined to be homeless under the Act. Every child in the U.S. has a right to equal access to a public education through secondary school.²⁸³ According to the Supreme Court, a State cannot withhold free public education from any child living in the United States regardless of that child's immigration status.²⁸⁴ The process of immigrating to the U.S. can be a very stressful and destabilizing time in a child's life.²⁸⁵ For children and youth who experience homelessness as a part of this process, McKinney-Vento

helps to alleviate this destabilization by ensuring that they have access to education.²⁸⁶

The economic hurdles that immigrant families face make them more prone to experiencing homelessness and poverty.²⁸⁷ Additionally, immigrant children and youth generally have higher rates of mobility.²⁸⁸ Immigrant students who fit within the definition of homelessness under McKinney-Vento are entitled to continue attending their school of origin in spite of moving often, which makes the number of immigrant children and youth within the law's reach significant.²⁸⁹

Additional Educational Barriers Due to Immigration Status

School policies such as encouraging employees to report undocumented children and youth may be considered barriers to enrollment for immigrant children and youth experiencing homelessness, and therefore be prohibited under McKinney-Vento.²⁹⁰ There can be several additional barriers to the enrollment of immigrant students in the U.S. A few of these barriers along with tips and practices to remove them are provided below.²⁹¹

A school or school district's efforts to comply with its McKinney-Vento or Title VI obligations may be impeded if materials, resources, and notices are not translated into other non-English languages spoken by families and children and youth experiencing homelessness. Having a bilingual staff or interpreter who can effectively communicate with such families and children and youth may help resolve this issue.

- A district is not allowed to keep a child who is experiencing homelessness from enrolling in school because the child does not have the documents needed to show residence or proof of legal presence in the United States.²⁹²
- Schools must enroll students regardless of possession of documents that provide the child's or a parent's social security number.²⁹³
- While schools may ask a parent for a document that would verify a child's age so they know the child is eligible to attend, schools cannot deny a child enrollment because the child does not have a birth certificate or has one from another country.²⁹⁴
- While districts can ask that a parent provide information on his or her child's ethnicity or race for Federal and/

or state data collection purposes, districts must enroll children and youth regardless of whether the parents decide to give this information.²⁹⁵

- A school cannot require students to show proof of “legal presence” in the United States.²⁹⁶

Legal Sub-Categories of Immigrant Children

In 2014, there were reportedly over 840,000 immigrant students and more than 4.6 million English learners enrolled in U.S. schools.²⁹⁷

Some children and youth who are immigrants to the U.S. fall under one of these legal sub-categories:

- Unaccompanied immigrant children (UIC):²⁹⁸ Unaccompanied immigrant children refers to children under 18 without legal status in the U.S. who do not have a parent/legal guardian in the country, or do not have a parent/legal guardian in the country who has physical custody of them and can care for them.²⁹⁹ 68,000 UIC reportedly arrived in the United States in 2014.³⁰⁰
 - o The Division of Children’s Services (DCS) in the Office of Refugee Resettlement (ORR) within the Administration for Children and Families (ACF), which is a part of the U.S. Department of Health and Human Services (HHS), is responsible for caring for and placing youth who arrive in this country alone.³⁰¹ Once they are under HHS temporary custody, unaccompanied immigrant children are considered incarcerated and are therefore not within the McKinney-Vento definition of homeless.³⁰²
 - o Unaccompanied immigrant children may later fall under the McKinney-Vento definition of homeless children.³⁰³ Once released from HHS custody and placed in a community, these children generally have living arrangements that are insecure.³⁰⁴ There have been many reports of these children being made to leave the home of their sponsor or leaving after being abused or exploited.³⁰⁵ Also, an unaccompanied child’s placement would fall under the McKinney-Vento definition of homeless children if it were housing that is “doubled-up.”³⁰⁶ Due to housing instability, there is a large possibility that an unaccompanied immigrant child will experience homelessness at some point.³⁰⁷

- o Furthermore, while some children and youth come to the U.S. alone, others who arrive with their parents may subsequently become unaccompanied due to any number of factors, such as abuse or abandonment, or because their parents are deported.³⁰⁸

- Migrant children: A “migratory child” is a child who either personally or whose parent works in a migratory agricultural industry, and additionally has moved in the last 3 years for work in this industry, and therefore had to relocate to another school district, or to another administrative area in a district, or who lives in a district of a certain size and travels over 20 miles to a transient home for fishing work.³⁰⁹
 - o Children who immigrate to the U.S. with or without parents or guardians to work and also fit within the definition of migratory child may also fall under the McKinney-Vento definition of homeless youth.³¹⁰
- Refugee children: A “refugee” is someone outside his country of nationality, or if he has no nationality, outside of the last country where he was habitually living and is unable or unwilling to go back due to persecution or good reason to fear such persecution because of his belonging to a certain social group or due to his race, faith, nationality, or political view.³¹¹
 - o Refugee children may also qualify for McKinney-Vento services.³¹² Refugees generally have housing given the services provided them, but they might move often, or may stay with family or friends in transient or overcrowded housing to save money.³¹³ As a result, it is easy for refugee children, as well as similarly situated immigrants generally, to be unaccounted for and to miss out on the educational benefits to which they are entitled.

Further Considerations for Working with Immigrant Students Experiencing Homelessness

In addition to FERPA and IDEA, there are several additional relevant laws to consider when working with immigrant students experiencing homelessness:

- Services for Educationally Disadvantaged Children (Title I): If immigrant students are enrolled in Title I schools, they could be entitled to receive services such as translated materials and language interpreters under Title I, Part A of the Elementary and Secondary Education Act (ESEA), which supplies money to help

increase the achievement levels of youth who go to “high-poverty schools.”³¹⁴

- **English Language Acquisition Programs:** The Elementary and Secondary Education Act (ESEA) requires states to allocate 15% of ESEA Title III funding³¹⁵ they receive for school districts that have had a large growth of new students who are immigrants.³¹⁶ The students do not have to be English Language Learners (ELL) to be beneficiaries of services provided by this funding, which along with a wide variety of activities can include tutoring and programs for participating in the community.³¹⁷
- **Migrant Education Programs (MEP):** MEP supplies educational and helpful resources specifically to migratory children, including immigrant children who are also migratory children.³¹⁸ States’ funding for MEP is allocated through Title I, Part C of the Elementary and Secondary Education Act (ESEA).³¹⁹

Children and Youth in Foster Care

Homeless children and children in interim social services placements face similar barriers to school stability and success.

- 📖 Between 56 and 75% of children change schools when they first enter care.
- 📖 34% of 17-18 year olds in care have experienced five or more school changes.
- 📖 Only 50% of foster youth complete high school by age 18.
- 📖 Only 20% of foster youth who graduate from high school will attend college.³²⁰

Under Every Student Succeeds Act (ESSA), children and youth in foster care, including those awaiting foster care, will be able to attend their school of origin if it is in their best interest under Title I, Part A. ESSA removes “awaiting foster care placement” from the Title VII definition of children and youth experiencing homelessness. For states that do not have a statutory law that defines or describes the phrase “awaiting foster care placement” under the state implementing statute, this change in law is effective on December 10, 2016.³²¹ New provisions for ensuring educational continuity and stability of children in foster care under Title I, Part A are discussed at length in the joint U.S. Department of Education and Department

of Health and Human Services (HHS) guidance issued in 2016.³²² As part of the effort to expand the capacity of state coordinators to ensure that they can sufficiently carry out their duties under McKinney-Vento, ESSA requires that the State Coordinator for Homeless Education Program cannot be the same employee who will serve as the point of contact for the child welfare agencies.

Students Displaced By Natural Disasters

Children and youth displaced by hurricanes and other disasters such as floods, tornadoes and wildfires typically find themselves in temporary living situations that may include hotels, motels, trailers, shelters, cars, or sharing the housing of friends or relatives. Displaced children and youth without permanent and stable housing are considered homeless for education purposes. Indeed, they have much in common with young people who were made homeless for other reasons.³²³ They have similar mobility patterns and face similar educational barriers.

Providing displaced students who have yet to find permanent housing with the educational services provided under McKinney-Vento promotes school stability by allowing children and youth displaced by natural disasters to remain in their school of origin. The ability to continue in a school of origin may be limited by the best interests of the child, feasibility, or the preference of a parent or guardian. In the context of displaced students, it would not be feasible for a child living in a shelter in Florida to attend a school in New Jersey. Similarly, if the student’s school of origin has been destroyed or closed as a result of a hurricane or other disaster, it would not be possible for the student to continue to attend school there. However, transportation crossing state lines is possible for students separated by shorter distances from their school of origin, if it is in their best interest.

Schools should inform parents that under McKinney-Vento, a school of origin could be “the school in which the child or youth was last enrolled.”³²⁴ If it is not possible for students to attend their original school, they are entitled to enroll in a new school close to where they are temporarily living. Once they have done so, they have established a new school of origin. Schools must immediately enroll the student even if normally required documents are unavailable. Academic records may not be immediately available, particularly if the student was living in an area struck by a disaster, particularly if schools are closed or

some records are destroyed.

McKinney-Vento prohibits the segregation of homeless students. Children and youth who attend a new school after a disaster should not be confined to classrooms in shelters or other settings where they would be isolated from their non-homeless peers. The anti-segregation provisions allow children who have experienced the trauma of evacuation to quickly return to a sense of normalcy by attending regular schools with other children.

For more information on providing educational resources to displaced children and youth, please consult the National Law Center on Homelessness & Poverty's *Homeless Education Advocacy Manual: Disaster Advocacy Manual*, published in January 2013. The Manual can be accessed at http://nlchp.org/documents/Homeless_Education_Advocacy_Manual_Disaster_Edition.

Children of Domestic Violence Survivors

Domestic violence is a leading cause of family homelessness. While links between domestic violence, education, and homelessness are documented in literature, coordination and integration of these issues in policy and practice is still developing. This is particularly true in the case of children and young students of domestic violence survivors experiencing homelessness. In fleeing the abuser, it is important for school selection to consider issues of safety and stability.

Schools have a critical role to play in meeting the needs of children who are homeless as a result of domestic violence. Providers should make themselves aware of the educational rights of and services for these children, and include schools in their partnerships. FERPA requires that school records include information about individuals or entities that have requested those records, including new schools. FERPA also gives parents, *including abusive parents*, the right to access school records. Under current FERPA regulations, there are limited methods of preventing abusive parents from gaining access to school records indicating the child's new school or community. In order to prevent an abusive parent from accessing school records, the domestic violence survivor's family may need a detailed restraining order specifically limiting access to school records, a legally binding document that specifically revokes the abusive parent's rights, or assistance from state law.

Additional information and resources are available through the National Center for Homeless Education's website, http://nche.ed.gov/ibt/sps_dom_viol.php.

Preschool-aged Children

Recent data show that a major share of the overall homeless population is composed of preschool-aged homeless children. More than 50% of children served by HUD-funded emergency/transitional housing providers in 2012 were age five or younger.³²⁵ Amendments to McKinney-Vento made under ESSA emphasize the educational needs of these young homeless children. This includes the explicit inclusion of preschools in the revised definition of "school of origin";³²⁶ ensuring that preschool-aged homeless children and their families have access to and receive services, if eligible, under LEA-administered preschool programs, including Head Start, Part C of the Individuals with Disabilities Education Act (IDEA) (Early Intervention Program for Infants and Toddlers with Disabilities), and other preschool programs administered by the LEA.³²⁷



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CHALLENGES AHEAD

Problems with Implementing, Enforcing, and Complying with the Law

One of the ultimate challenges our nation faces in ending and preventing intergenerational homelessness is for schools, districts, and states to appropriately implement McKinney-Vento nationwide. While there is no simple solution for addressing the needs of the 2.5 million children and youth experiencing homelessness, providing them with a stable education is key to ending the cycle of homelessness and poverty. Violations, noncompliance, inconsistent application and reading of the law at the state and local levels are commonplace for a variety of reasons. In addition to ignorance of and/or active resistance to the law, the following themes are common:

- **FUNDING.** Funding has not kept pace with meeting the educational needs of homeless children and youth. All LEAs of states that receive McKinney-Vento funding are required to comply with the law, yet only a few LEAs actually receive subgrants from their SEAs. Even though other funding streams are available to help homeless students, McKinney-Vento is often the only funding stream solely dedicated to providing supports and services to homeless children and youth. Compliance with the law remains challenging particularly because special transportation arrangements across attendance zones and district lines are a costly expense.
- **CAPACITY.** Lack of capacity remains prevalent across SEAs and LEAs, further contributing to under-identification of homeless students. SEAs and LEAs have limited staff and resources to provide technical assistance and necessary services and supports.
 - o Over 90% of liaisons surveyed report that they work in another official capacity; 89% say they spend just half of their time or less on their responsibilities as liaisons. 1/3 of liaisons (34 percent) reported that they are the only person within their school district who receives training to help identify and intervene with homeless youth and families.³²⁸
- **TRAINING.** There is no single, systematic, and streamlined source of information to disseminate, train, and increase staff awareness within schools about the needs of homeless students.³²⁹ Some LEAs and school personnel who have direct contact with homeless students do not have the necessary information and training to comply with McKinney-Vento. Reluctance to enroll new homeless students due to stereotypes about individuals experiencing homelessness is not uncommon.
- **AWARENESS.** There is no simple method to educate homeless children, youth, their families, and other service providers who are unaware of the law. Students and families can play a role in identifying and correcting non-compliance, but only if they are aware of their school's legal requirements and their legal rights. Compliance would increase if more schools, service providers, families, and children and youth become familiar with McKinney-Vento.
- **FEDERAL ENFORCEMENT.** The federal government lacks capacity and resources to enforce McKinney-Vento beyond the limited technical assistance, monitoring, and enforcement duties of the U.S. Department of Education.³³⁰ McKinney-Vento authorizes the Department of Education to provide federal grants to states to “administer and oversee activities” under the Education for Homeless Children and Youth (EHCY) program.³³¹ If the state does not comply with McKinney-Vento, the federal government can deny such state or LEAs any additional federal funds or grants.³³² To help ensure state compliance with McKinney-Vento, the U.S. Government Accountability Office recommended that the U.S. Department of Education develop a monitoring plan to ensure adequate oversight of the Education for Homeless Children and Youth program.³³³
- **ACCESS TO JUSTICE.** While McKinney Vento can be enforced in court, children and youth experiencing homelessness have limited access to counsel and other legal resources to help enforce their rights.³³⁴ The U.S. Department of Education has advised SEAs and LEAs to engage legal and advocacy service providers in their respective areas and to connect homeless students and their families to legal assistance and support.
- **DISPUTE RESOLUTION.** The dispute resolution required under McKinney-Vento is limited and only

addresses issues concerning eligibility, school placement, and school enrollment. Some SEAs do not have a formal process in place to address noncompliance or issues outside of the dispute resolution process. Furthermore, dispute resolution processes at the LEA level vary across school districts, making it challenging for homeless students who move across school district lines due to their homelessness.

Laws Criminalizing Homeless Youth

Laws that criminalize youth for homelessness or poverty negatively impact youth's ability to access education and stay, participate, and succeed in school. In effect, laws that criminalize youth homelessness become additional barriers to schooling, exactly what McKinney-Vento is designed to eliminate.

For example, status offenses are behaviors or actions that are legally punishable only when performed by minors (e.g. running away, truancy, and curfew violations). A child or youth without a home or shelter will necessarily violate curfew laws because she has nowhere to go at night. While purportedly designed to protect young people from harm and victimization, they also restrict the rights of youth and can result in entangling otherwise law-abiding youth with the juvenile justice system. Advocates argue that criminalizing behaviors such as truancy contributes to the school-to-prison pipeline.³³⁵ While committing these status offenses may have negative impact on a homeless student's education, addressing the underlying causes with community-based organizations, rather than the juvenile justice system, is a more fruitful, humane, and cost-effective approach.³³⁶ Attorneys, along with homeless education liaisons and other providers, can act as advocates for these youth by affirming their rights to access public education and alleviating the challenges associated with their homelessness that could cause entanglements with the juvenile justice system.

Although the U.S. Department of Justice confirmed that it is unconstitutional to punish people for sleeping outside when they have no other options,³³⁷ communities across the country continue to enact and enforce anti-homelessness ordinances that criminalize people based on their housing status.³³⁸ As a result, homeless youth are subject to ticketing, fines, and even arrest due to violating so-called "quality of life" ordinances that ban loitering, panhandling, and camping, saddling otherwise law-abiding youth with a criminal record and perpetuating

stereotypes about criminal behavior among this population. Involvement with the criminal justice system can have the unfortunate consequence of impeding a young person's entire educational career. Since enforcement of these actions takes place in public spaces, and unaccompanied homeless youth are more likely to be unsheltered than their adult peers, they are particularly subject to this type of policing.³³⁹ SEAs and LEAs need to coordinate and consult with State and local policymakers to ensure legislation and policies like status offense laws or ordinances that criminalize homelessness do not create barriers for the education of homeless children and youth.³⁴⁰

The U.S. Department of Education, as demonstrated in its guidance, also recognizes how schools can play a role in criminalizing homeless children and youth through status offenses and harsh, zero-tolerance school discipline policies. While schools can be a gateway to needed supports and services for many homeless children and youth, they can also be a pipeline for homeless students to come into contact with the juvenile and criminal justice systems. Discipline and/or interactions with the juvenile justice system are not appropriate consequences for actions that are entirely or predominantly because of a child's homelessness or poverty. As part of the broad, ongoing obligation to revise laws, regulations, practices, or policies that may act as a barrier to the identification, enrollment, attendance, or success in school of homeless children and youth, SEAs and LEAs need to review school discipline policies that disproportionately affect homeless students, including those who are also children and youth of color; those who identify as lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ); English learners; and students with disabilities.³⁴¹ SEAs and LEAs should ensure school personnel consider issues related to homelessness prior to taking disciplinary action.³⁴²

For more information on the legal barriers facing homeless youth, please see the Law Center's report, *Alone Without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth*, available at http://nlchp.org/Alone_Without_A_Home.

Case Law Excerpts

The excerpts below are summaries based on original complaints homeless children and families filed in different lawsuits. They are meant to highlight how schools and school districts get the law wrong, to provide real life examples of noncompliance, and to show the systemic

problems legal advocates address in litigation to ensure compliance with McKinney-Vento. To learn more about the details of each case, including the outcome, review the case summaries at the end of this manual and consult the pleadings in Appendices E-J.

C.H. v. New York, CV-11-5995 (E.D.N.Y. 2011)

What was the problem?

A.H. and S.H. are siblings. C.H. is their father. A.H. is currently in eighth grade. The 2011-2012 school year is A.H.'s last year in middle school before progressing to high school. S.H. is currently in elementary school and is severely autistic. The 2011-2012 school year is S.H.'s last year in elementary school before progressing to middle school. A.H. and S.H. were living with their mother in Hauppauge, New York until their mother lost her home due to foreclosure proceedings in the fall of 2010. A.H. and S.H. then lived with their mother in a homeless shelter until the shelter discharged them in June 2011. During this time, however, A.H. and S.H. suffered from excessive absences from school. C.H. then took the children to live with him and their aunt in their aunt's home outside of the school district. The living arrangement was temporary, shared housing.

How did the school initially address the problem?

The school district informed C.H. that it intended to remove S.H.'s applied behavior analysis therapy sessions due to his failure to attend regularly. The school district met with C.H. and C.H.'s sister and advised them that McKinney-Vento would be of no aid to C.H. or his children. Later on, the school district informed C.H. that S.H. and A.H. would be excluded from school because the school district concluded that the children were no longer district residents. The school district failed to refer C.H. to a homeless liaison and advised C.H. that an appeal would be unsuccessful and therefore a waste of time. When C.H. arrived at the school a few days later to speak to the school psychologist, police officers appeared and refused to permit C.H. entry. The school psychologist and principal conducted a meeting with C.H. outside the school, on the street, in public.

N.J. v. New York, 872 F.Supp.2d 204 (E.D.N.Y. 2011)

What was the problem?

N.J.(m) is the mother of N.J. and A.J. In 2009, the family suffered a fire in its residence and was forced to move out. They have been homeless since then, but managed to stay

with E.V. who lives and whose children also attend school in the same school district. Relations between E.V. and the family eventually deteriorated; and the family was forced to leave, and moved in with another family friend, V.C. V.C. resides in a single bedroom suite in the basement of a home that he owns and leases to another family. The home is located outside the school district. N.J. and A.J. did not have a bedroom but instead slept on the sofa in the living room of the basement. E.V. subsequently notified the school of the family's move.

How did the school initially address the problem?

The District notified N.J.(m) that N.J. and A.J. cannot attend school because the family lived outside the district. The family attempted to appeal the decision, but due to a technical defect in service, the petition was not heard. The plaintiffs served the District with a petition appealing the District's decision to exclude the children and seeking a stay of exclusion pending the outcome of the petition. In response, the District filed an Affidavit in Opposition to Stay, claiming that the appeal was untimely, that the appeal was not properly served, and that Plaintiffs voluntarily left the district and chose to move in with V.C. Later, Plaintiffs were informed that the stay request was denied, forcing the children to attend a different school.



COMPLIANCE RESOURCES

There are many tools that can be used to ensure compliance, enforce the McKinney-Vento education laws, and avoid litigation. Litigation can be very expensive and time-consuming for all parties involved. This section contains resources developed by the Law Center and informed by its long experience and history in policy advocacy, public education, and impact litigation.

What's permitted and what's prohibited under the law?

Homeless students, advocates, and schools should be in compliance with McKinney-Vento. Noncompliance is harmful to homeless students and families and violates the law.

DOs

- Schools must immediately enroll or admit a child or youth during the pendency of a dispute resolution.³⁴³
- Schools must provide services to homeless students comparable to services offered to other students in the school selected, including adequate and appropriate transportation services to and from the school and educational programs for children with disabilities.³⁴⁴
- Homeless children and youth are entitled to due process of the law when appealing a decision by a LEA or SEA. A written explanation of the decision, including the family's right to appeal, should be provided to the family.³⁴⁵
- The dispute resolution process should be as informal and accessible as possible, including not requiring unnecessary notarization or authentication of documents or other materials submitted, not requiring strict legal evidentiary standards, and allowing for impartial and complete review.³⁴⁶
- The LEA must provide the parent, guardian, or unaccompanied youth with a written explanation of the LEA's decision and notice of their rights, including the right to appeal, in a manner and form understandable to such parent, guardian, or unaccompanied youth.³⁴⁷

DON'Ts

- Schools are prohibited from segregating a child or youth in a separate school, or in a separate program within a school, based on such child's or youth's status as homeless, unless the statutory exemption is met.³⁴⁸
- Barriers to the enrollment of homeless children and youth are prohibited. Local educational agencies must review and revise policies that are and may act as barriers.³⁴⁹
- Schools should not tell students or families that they must enroll immediately in a new school district.³⁵⁰
- Schools cannot automatically disenroll homeless students between school years or when they are progressing from a lower to a higher school, particularly without doing an individualized assessment of eligibility.³⁵¹

Issue-Spotting Checklist for Legal Advocates

The following checklist, while not exhaustive, may be helpful in ensuring that schools are complying with McKinney-Vento. This list contains preliminary questions that may be helpful to ask homeless children and their families to determine any potential noncompliance issues.

Identification and Confidentiality

- Is the child eligible for school or preschool?
- Is the child enrolled or attempting to enroll in public school or public preschool?
- Is the child homeless under McKinney-Vento? If a liaison is unsure whether a student has a fixed, regular, and adequate nighttime residence, consider the following information when talking to the student or the student's family:
 - The lasting or transitory nature of the home where the student is living;
 - If and why the student is staying at a home with extended family or friends;

- If and why the student is unaccompanied;
 - The length of time the student was in the last place the student lived, when the student moved to the current place and why;
 - If the student knows the duration of stay in the current location;
 - The number of bathrooms and bedrooms in the house in comparison to how many people live there;
 - The number of people who share rooms in the home to sleep in; and
 - The condition of the house, including what utilities it has.³⁵²
- o Has the child or child's family been notified of her eligibility for McKinney-Vento rights?
 - o Is there a homeless liaison or state coordinator assisting the child?
 - o Did the child receive a residency questionnaire upon enrollment?
 - o Is the child being treated with discretion and confidentiality within the identification process?

Enrollment and School Stability

- o Is the child's enrollment to the school refused or delayed?
- o Are there requirements that prevent the child from enrolling in school?
- o Does the child receive assistance in obtaining necessary records?
- o Is the child immediately enrolled pending transfer of the documents?
- o Is the child able to participate in extracurricular activities, afterschool programs, and interscholastic sports?
- o Are there fees, costs, or other issues preventing the child from enrolling, staying, and participating in school and extracurricular activities?
- o Is the child placed in regular classrooms and not

segregated?

- o Has the child been disenrolled?
- o Does the child receive additional services and academic supports to meet the child's needs?
- o Is the child enrolled in free school meal programs?

Transportation

- o Is the child able to receive adequate and appropriate transportation to and from the school?
- o Are transportation routes developed and tailored to the student's needs to avoid stigmatization and to avoid revealing the student's homeless status with the student's peers?

Dispute Resolution Process

- o Is the child referred to and assisted by a homeless liaison for dispute resolution?
- o Did the child receive notice in writing of the reasons for the dispute?
- o Is the notice in a manner and form understandable to the parent, guardian, or unaccompanied youth?
- o Are the evidentiary standards and procedures clear?
- o Is there an opportunity for clear, impartial review?
- o Is the child enrolled during the pendency of the dispute?
- o Is the child receiving adequate and appropriate transportation during the pendency of the dispute?

Strategies for Checking and Enforcing Compliance with McKinney-Vento

Enforcement action may be necessary if there are noncompliance issues raised. The following resources may apply when providing individual technical and legal assistance to a child experiencing homelessness.

Know the law and check for noncompliance

An instance of noncompliance with a single family or child experiencing homelessness may be a gateway to uncovering systemic patterns of noncompliance. While there is no single way of ascertaining noncompliance,

learning the relevant federal laws, state laws and regulations, and agency policies should help bolster the advocate's position. Here are some resources to check and consider:

- o Title VII-B of the McKinney-Vento Act;
- o Relevant State's Plan under Title VII-B of the McKinney-Vento Act;
- o U.S. Department of Education McKinney-Vento Guidance;³⁵³
- o Family Educational Rights and Privacy Act (FERPA);
- o State laws enacted or amended as required by McKinney-Vento to remove barriers to public education for homeless students, particularly school admission laws;
- o Other state statutes, regulations, policies, and guidance;
- o State and federal cases, including settlements that helped create policy;
- o State monitoring reports;³⁵⁴
- o State education programs and profiles;³⁵⁵
- o Other education-related laws and policies relevant in a particular situation, as outlined in this manual e.g., IDEA/Special Education, Section 504, English Language Learners, undocumented immigrants, guardianship laws, health/immunization requirements;
- o Forms used by LEAs regarding district residency, parental rights/ guardianship, dispute resolution, supervision, proof of age, transportation arrangements, etc.;
- o NAEHCY and NCHE materials and resources;
- o Relevant dispute resolution procedures for the relevant state and/or school district;³⁵⁶
- o Any applicable agency and school district policies;
- o Any applicable services provided to homeless students; and
- o Other information included in this manual and resources by the Law Center.³⁵⁷

Build capacity

- o Work with attorneys, homeless liaisons, and advocates that work with families, children, and youth on McKinney-Vento.
- o Develop relationships in the relevant state to support enforcement efforts.
- o Develop relationships with local school personnel early, and use them wisely. If enforcement becomes challenging, allies who understand the law and the advocate's position can be very valuable.

Document

- o Document and archive incoming calls, emails, visits, and other exchanges within the field.
- o Include dates and names in the details, and describe the response from the advocate's office.
- o Develop facts. When advocating for compliance in a particular case, always take the time to learn the whole story. Make additional inquiries if necessary.

Communicate

- o Contact the parties involved directly and attempt to voluntarily resolve any outstanding issues.
- o Provide a better understanding of the law. A simple explanation of the McKinney-Vento requirements may resolve noncompliance.
- o Carefully drafted letters can be powerful enforcement tools. Such letters:
 - o Are brief and courteous, with a tone of concern;
 - o Cite federal and state laws and policies where compliance is in question;
 - o Recommend best practices in the given situation; and
 - o Invite further discussion and clarification, providing phone and email contacts.
- o Point out possible consequences for failure to comply;
- o Request a prompt response, or specify a certain timeline for response and action;

- o Include a copy to relevant parties such as administrative superiors, advocates, and the state homeless education office.

Copies of technical assistance letters to different school districts are available in Appendices B-D.

Monitor and Record Strategies

- o Engage in the monitoring activities outlined above, as a means of providing technical assistance to prevent noncompliance and to get alerts about noncompliance “hot-spots.”
- o Share strategies with others to develop best practices.
- o If advocacy with the LEA is not successful, contact the State Coordinator for assistance. The State Coordinator should be able to provide support and help determine the best course of action. Attorneys from the relevant state Department of Education or Attorney General’s office may also be helpful.



LEARNING FROM LITIGATION

The failure of states to adequately implement the Act and comply with the law, such as removing barriers to enrollment and developing transportation systems, has been the subject of numerous lawsuits. Common subjects of litigation include: (1) failure to grant automatic enrollment while dispute is being resolved; (2) failure to provide transportation; (3) failure to recognize and accommodate unaccompanied youth; (4) failure to accept appeals of enrollment decisions (i.e. the student is deemed not homeless and therefore not entitled to appeal); (5) other collateral damage such as denial of participation in extracurricular activities. ESSA includes important changes that the Law Center and other advocates requested, as well as the codification of gains made through litigation over the past decade, which are explained in more detail below. The Law Center's advocacy and litigation strategies were informed by our experience working with families and school districts around the country, but we also gained information on ways to strengthen the law from focus groups of liaisons, state coordinators, and homeless/formerly homeless families and youth that we held with National Association for the Education of Homeless Children and Youth. Gaining a broader understanding of the needs of homeless children and youth will allow state and local education agencies to implement better policies and practices, which in turn will ensure that children access, stay, and succeed in school, and eliminate the need for legal intervention.

Case Summaries

In the following cases, LEAs and SEAs allegedly violated federal laws including McKinney-Vento, state laws that complement and supplement the federal law, and in some cases, the Fourteenth Amendment of the Constitution.³⁵⁸ Homeless students and their parents who were harmed and deprived of their rights sought monetary damages, temporary restraining orders, and injunctions to force school districts to follow the law and to revise policies to meet the needs of homeless children and youth, thereby decreasing the disruption on children's education. Some families filed a class action suit; others sued individually. In a few cases, SEAs and LEAs had to pay large sums of money for legal fees – these are indicated where information was readily available. Those who settled agreed to comply with the law. Overall, these cases have helped clarify the nuances

of Title VII McKinney-Vento provisions.

PROCEDURAL ISSUES

Supremacy of McKinney-Vento

McKinney-Vento applies to every district within a state that receives any McKinney-Vento funds – including schools districts that do not receive funding. To the extent that state law conflicts with the provisions of McKinney-Vento, federal law prevails. Schools must follow McKinney-Vento even if there are state or local laws or policies that conflict with it. If schools, school districts, or states have rules that keep students who are homeless out of school, McKinney-Vento mandates those rules to be changed.

Doe v. Governor Wentworth Regional Sch. Dist., SB #00-30 New Hampshire State Administrative Hearing, Mar. 21, 2001)

After losing their housing in the fall of 2000, a family moved into a homeless shelter in a different school district. The parent sought to keep her children in their school of origin. However, conflicts between state laws and the Act resulted in a long dispute between the family and the school district of origin. The school district argued that the Act was not applicable because the district did not receive a sub-grant for homeless education programs and that the state could choose to force homeless children to attend school where they are temporarily residing. Despite active pre-litigation involvement by the State Coordinator and local attorneys, the school district refused to follow the law. Therefore, New Hampshire Legal Assistance filed an administrative complaint in March of 2001. On March 21, 2001, the Administrative Law Judge found in favor of the family. The children were subsequently permitted to remain in their school of origin.

Private Enforcement of McKinney-Vento and Class Actions

McKinney-Vento is privately enforceable under Section 1983.³⁵⁹ Section 1983 is a federal statute recognized by the Supreme Court that may be invoked to challenge violations of federal statutes.³⁶⁰ While not explicitly provided for in the law, the Act allows private parties such as parents and homeless children and youth to bring a lawsuit to enforce the provisions of McKinney-Vento. McKinney-Vento does not specifically require parties to exhaust administrative

remedies before going to court. Furthermore, courts have permitted class actions against state and local educational agencies, but have said that failure to certify a class would not be fatal to individual claims for violations of McKinney-Vento. In the absence of other interested parties willing to hold LEAs and SEAs accountable under the law, Plaintiffs pursuing a Section 1983 claim for violations of McKinney-Vento rights are entitled to seek compensatory damages in an amount sufficient to restore the plaintiff to the position he or she was in prior to being wronged.³⁶¹ And courts routinely award compensatory damages to plaintiffs with successful Section 1983 claims.³⁶²

Nat'l Law Ctr on Homelessness & Poverty v. New York, 224 F.R.D. 314 (E.D.N.Y. 2004)

The National Law Center on Homelessness & Poverty on its own behalf, as well as on behalf of parents of homeless children from Suffolk County, New York, sought declaratory and injunctive relief against the State of New York, claiming that enrollment and transportation procedures of school districts in the county violated students' rights under McKinney-Vento Act and Equal Protection Clause. The State moved to dismiss the case. The Court held that the statutes under McKinney-Vento (1) imposed a mandatory requirement on the states; (2) provided for specific entitlements; (3) conferred entitlements on homeless children; and (4) did not provide individuals with sufficient administrative means of enforcing the requirement against States that failed to comply. As for the Equal Protection claim, the Court applied heightened scrutiny review and denied the motion to dismiss, holding that the Plaintiffs have met their burden of stating a claim under the Equal Protection Clause also enforceable under section 1983. In arriving at this conclusion, the Court relied on the Supreme Court's rationale under *Plyler v. Doe*, 457 U.S. 202 (1982). The Supreme Court "implied that statutes which create circumstances that involve the penalization of children for the 'illegal conduct of their parents' and risk significant and enduring adverse consequences to children should be reviewed using the *Plyler* rationale."³⁶³ The Court found the Defendants appear to be penalizing homeless children because of the misfortunes or misdeeds of their parents. This case is also significant because it further reaffirmed the enforceability of McKinney-Vento, similar to an earlier decision in *Lampkin v. District of Columbia*.

Bullock v. Bd. of Educ. of Montgomery Cnty., 210 F.R.D. 556 (D. Md. Nov. 4, 2002)³⁶⁴

A federal district court allowed homeless parents to represent a class of homeless children in a class action suit against the county school board for allegedly denying the children educational benefits under McKinney-Vento. The court held that the numerosity requirement was met because hundreds of homeless children, constantly entering and leaving homeless status, made individual suits difficult. The court also held that the commonality and typicality requirements under a class action suit were satisfied. While there were differences in each child's case, there were common issues regarding policies, patterns, and practices of the school board alleged to have violated McKinney-Vento.

Lampkin v. District of Columbia, 27 F.3d 605 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1016 (1994).

The first federal court case dealing with Title VII of McKinney-Vento, this is one of the most important cases in homeless education rights jurisprudence. The National Law Center on Homelessness & Poverty, on behalf of parents of homeless children residing in the District of Columbia, sought to invoke 42 U.S.C. §1983 to enforce provisions of McKinney-Vento. Concluding that the Act does not confer enforceable educational rights on homeless children, the District Court granted the District of Columbia's motion to dismiss. The D.C. Circuit disagreed with this interpretation and reversed and remanded the case to the district court, where plaintiffs later prevailed.³⁶⁵ The D.C. Circuit held that homeless children can enforce the relevant provisions of McKinney-Vento pursuant to Section 1983. The Court analyzed the statutory provisions of the law, held that the Act was enacted to benefit homeless children, and found that the obligations McKinney-Vento imposes on participating States were clear. Furthermore, the Court held that the language of the relevant provisions was sufficiently clear to put the States on notice of the obligation they assume when they choose to accept grants made under the Act. Finally, the Court found that the Act contained no statutory mechanisms for the administrative enforcement of homeless children's rights and that the provisions were not overly vague for judicial enforcement. The Supreme Court denied certiorari. A cautionary note: as a result of this litigation, D.C. refused federal McKinney-Vento funding for a number of years in order not to be required to comply with the Act. While D.C. has since rejoined McKinney-Vento compliance and no other state has ever taken such a step, it should be acknowledged this

is a possible outcome of litigation.

SUBSTANTIVE ISSUES

Removing Barriers to Education

When McKinney-Vento was enacted, Congress had a broad mandate for States, local governments, school districts, and schools: revise laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youth. It is important to remember that the operative text of the law serves as a catchall phrase that requires states to “review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youth are afforded the same free, appropriate public education as provided to other children and youths.”³⁶⁶ Barriers can range from qualifying as homeless under the Act and ensuring immediate enrollment and provision of transportation services to training school personnel to be sensitive to the needs of homeless children and youth.

Allen v. Hoover City Schs., No. 2:12-cv-00013-RDP (N.D. Ala. filed Aug. 15, 2014)

This case was an action for violation of McKinney-Vento and of the Equal Protection Clause of the 14th Amendment. Plaintiffs claimed that defendants violated the Act in several ways, including failing to identify homeless students, to ensure students stay in their schools of origin, to provide transportation services, to provide comparable services under the Act, and to remove barriers to enrollment. The National Law Center on Homelessness and Poverty submitted an amicus brief regarding the private enforcement of McKinney-Vento under section 1983 and its application to extracurricular activities. The case eventually settled and was later dismissed.

C.H. v. New York, CV-11-5995 (E.D.N.Y. 2011)

Two homeless children and their parent filed suit against the State of New York, the New York State Education Department, and the Hauppauge School District, seeking injunctive relief to compel defendants to maintain the homeless children’s enrollment in their schools of origin pending the outcome of administrative remedies. The school refused to enroll the children after their homelessness left them living in shared housing in a different district. As a consequence, the homeless children were turned away from school midyear, impacting their educational development. In addition to alleged violations of state and federal laws, the defendants implemented a stay procedure whereby

homeless children may be excluded from their schools of origin pending the outcome of dispute resolution. The stay provision effectively created a barrier for homeless youth accessing education by denying an effective right of appeal. A strong temporary injunctive order was granted, but the case was later voluntarily dismissed before final disposition.

A copy of the Complaint filed in this case, including a Memorandum in Support of Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction, is available in Appendices H-J.

Peterson v. Bd. of Educ. of Baltimore Cnty., No. 1:06-cv-01067-CCB (D. Md. filed Jun. 19, 2008).

This was a class action suit brought by a class of homeless students and their parents against a local school board seeking declaratory relief, injunctive relief, and damages. Plaintiffs alleged that Defendants had adopted policies and practices that violated McKinney-Vento, including refusing to provide transportation, failing to identify homeless children and inform them of their rights, failing to provide comparable services, and failing to remove barriers to enrollment, retention, and success in school. There was no judicial determination that Defendants violated the law; however, the parties settled and Defendants agreed to improve their McKinney-Vento program in order to ensure sustained legal compliance. Plaintiffs received \$145,000 in legal fees. Following implementation of the agreed-upon reforms, homeless students in Baltimore County showed improvement in math and reading scores on statewide standardized tests.

Kaleuati v. Tonda, Civil Action No. 07-504 (D. Haw. Oct. 6, 2007)

Local advocates represented three homeless families who alleged denial of access to education and, on behalf of all homeless families statewide, filed a class action lawsuit against Hawaii seeking statewide injunctive relief to remove policies that violated the Act, and to ensure that homeless children would have full, meaningful access to a public education. On August 12, 2008, the court approved a final settlement, which required the Hawai’i Department of Education and Board of Education to: (1) run additional school buses (or provide reimbursement for alternative methods of transportation) and/or modify existing school bus routes to pick up homeless children; (2) hire additional homeless liaisons to assist homeless families in navigating the public school system; (3) inform homeless students

and families of their rights under the Act; (4) conduct yearly trainings of school personnel; (5) modify its enrollment forms and computer systems to facilitate the enrollment process and improve attendance for homeless children; and (6) take affirmative steps to avoid stigmatizing homeless families.

Nat'l Law Ctr on Homelessness & Poverty v. New York, Civil Action No. 04 (E.D.N.Y. Feb. 20, 2004)

This case alleged systemic noncompliance by the New York state education agency and state social services agency, fifteen local educational agencies, and several county social service agencies with state and federal laws, including the Act, relating to the education of homeless children. The school districts settled their portion of the case early in the proceedings, while the state and county social service agencies moved to dismiss the case. The court denied those motions to dismiss, holding the Act was enforceable. Ultimately, on August 31, 2005, all parties settled and agreed to comply with applicable state and federal laws relating to homeless students. The court signed the settlement agreement and consent order on March 31, 2006. Defendants agreed to identify homeless children attending public schools in their jurisdiction, to provide complete and timely information to homeless families and unaccompanied youth, to revise existing enrollment and withdrawal forms to better track and provide services to homeless students, to provide transportation, and to account for the needs of homeless students with disabilities.

Bullock v. Bd. of Educ. of Montgomery Cnty., Civ. A. No. DKC-2002-0798 (D. Md. Mar. 14, 2002)

Montgomery County is a large suburban school district bordering Washington, D.C. Several homeless families filed a lawsuit and motion for temporary restraining order and preliminary injunction was filed against the county. The case raised many issues related to the Act, including the rights of children in transitional housing, "time limits" on homelessness for doubled-up families, and segregation. The complaint alleged that Defendants violated the law by (1) failing to identify families as homeless as defined by the Act; (2) arbitrarily adopting a limited definition of "homeless" that denies homeless children and families their rights under McKinney-Vento; (3) failing to provide a process for selecting the school

that is in the best interest of the homeless child; (4) failing to provide an opportunity for the parent of a homeless child to state what he or she believes to be the best interest of the child in school selection; (5) failing to ensure that homeless children have an opportunity to remain in their schools of origin, and instead forcing them to transfer to the "local school" in the area in which they stay while homeless; (6) failing to comply with the parent's choice regarding school selection by refusing to provide the services necessary, such as transportation, to accommodate the parent's choice; and (7) failing to remove barriers when a parent chooses to re-enroll her child in the home school or transfer her child to the local school. The case eventually settled. The school district agreed to implement broad reforms including giving children awaiting foster placement full rights under the Act, widely publicizing the rights of homeless children throughout the district, training school administrators and school personnel on rights under the Act, implementing new forms and school-based guidelines to identify and serve homeless children, and providing transportation to the school of origin within four school days of the request. The parties also agreed to a two-year monitoring period, and the school district further agreed to pay \$195,000 in attorneys' fees to counsel for the plaintiff class.

Collier v. Bd. of Educ. of Prince George's Cnty., DKC-2001-1179 (D. Md. Filed Sept. 10, 2001)

Prince George's County is a large suburban school district bordering Washington, D.C. A class action lawsuit and a motion for temporary restraining order and preliminary injunction were filed against the school district, on behalf of homeless families in the county.

Initially, the court ordered the school district to provide plaintiffs with transportation to their school of origin. The case was then expanded to include a broad range of issues under the Act, including transportation, identification, school selection, dispute resolution, and inter-agency issues. In September 2001, the case settled and plaintiffs received approximately \$265,000 in legal fees. The school district agreed to take broad reform measures to address all of these issues, including, but not limited to, providing informational outreach to homeless children and school personnel, upholding children's rights under the Act, establishing a toll free number for parents

and children to contact with questions about their rights under the Act, and providing transportation and fee waivers.

Independent evaluations conducted following implementation of these reforms revealed significant improvements in the school system's capacity to identify and serve homeless students, and on homeless students' resulting academic performance. In the years following settlement, Prince George's County Public Schools identified greater numbers of homeless students, reduced school mobility among homeless students, cut the time required to arrange transportation for students attending their schools of origin, and expanded access to free meals and school activities. Homeless students, in turn, scored higher on standardized tests, and achieved higher rates of attendance, graduation, and grade promotion.

Doe v. Richardson, Civ. A. 98-1165-N (M.D. Ala. filed Oct. 13, 1998)

In October 1998, a homeless African-American child sued the state of Alabama and two school districts for violating McKinney-Vento and for racial discrimination. The school district had adopted a policy requiring children to enroll in school within the first ten days of the semester. Anyone enrolling later, including homeless children, would only be admitted at the discretion of a special enrollment committee. The student, residing at a shelter in the district, was refused admission to the local high school, after she tried to enroll more than ten days after school had started. The local county board of education initially referred her to another high school, but that school had a tacit policy against enrolling African American students. After learning the student's race, the board offered to enroll her in a high school an hour away from the shelter. Overwhelmed by negative press, the state and school district agreed to settle the case immediately. The student was enrolled in the local high school, and the State Board of Education and both school districts adopted new policies affirming their duties under the Act and their commitment to nondiscrimination. The settlement also required defendants to pay \$5,000 in attorney fees and costs associated with the case.

Lampkin v. District of Columbia, 886 F.Supp. 56 (D.D.C. 1995)

Ten parents and the National Law Center on Homelessness & Poverty filed a lawsuit in federal court, challenging failure by D.C. Public Schools (DCPS) to ensure free, appropriate education for children experiencing homelessness, as required by the Act. The suit alleged that DCPS was failing to: consider the best interests of children and youth in making school placements; ensure transportation to the schools that were in the students' best interests; coordinate social services and public education; and ensure comparable services and school meals for students experiencing homelessness. The trial court dismissed the suit, but the appeals court reversed, agreeing with the plaintiffs that the Act created enforceable rights, and remanded the case to the lower court. The trial court then issued an injunction, ordering DCPS to identify children experiencing homelessness and refer them for all services required by the law, including transportation, within 72 hours of a family's application for emergency shelter. For the children of the more than 300 families on the waiting list for emergency shelter, the court allowed two weeks. The court also ordered DCPS to provide tokens to all children and youth in homeless situations who had to travel more than 1.5 miles to school, and also to parents who chose to escort their children to school. DCPS was ordered to pay \$185,000 in attorney fees and costs associated with the case. Subsequently, the District of Columbia withdrew from the Act's education program and moved to vacate the court's order. The trial court reluctantly held that such withdrawal ended the obligation of DCPS to provide assistance to homeless children under the Act and dissolved the injunction.

Salazar v. Edwards, 92 CH 5703 (Il. Cir. Ct. Cook Cnty. filed June 12, 1992)

Homeless parents and homeless students filed a lawsuit against Chicago Public Schools (CPS) and members of the Illinois State Board of Education for failing to meet the requirements of the Act and the Illinois Homeless Education Act. The court initially dismissed the case, relying on a lower court decision in *Lampkin v. District of Columbia*, No. 92-0910, 1992 WL 151813 (D.D.C. June 9, 1992), which held that there was no right to private action in the McKinney-

Vento Act. During the appeal, Illinois passed the Education for Homeless Children Act, enacted the 1994 amendments to the McKinney-Vento Act, and overturned the lower court decision in Lampkin.³⁶⁷ In November of 1996, negotiations resulted in settlement. While the defendants admitted no violation of law, they agreed to remove any perceived barriers to the enrollment, attendance and success in school of homeless children and youth. The settlement covered a broad array of issues, including: discrimination and segregation, identification and immediate enrollment of homeless students, choice of schools and school stability, transportation, dispute resolution, training, coordination, and monitoring.

In 1999, following persistent noncompliance in several areas, plaintiffs filed a motion to enforce this settlement agreement. The court granted the motion, ordering full compliance with the settlement, a liaison in every CPS school, a “massive informational campaign addressing the rights of the homeless throughout Chicago,” trainings, designation of school personnel to ensure implementation of the settlement, reporting, a court-appointed monitor, and sanctions of up to \$1,000 per day for continued noncompliance. Plaintiffs also received an additional \$189,000 in attorney fees.

Rights of Students Displaced by Disasters

Displaced students who have yet to find permanent housing qualify for services under McKinney-Vento. The law applies to all children throughout the United States. Evacuee children fit in the legal definition of homelessness, which includes a person lacking a fixed, regular, and adequate nighttime residence.

Boisseau v. Picard, No. 2007-0565 (E.D. La. Feb. 1, 2007)

The NAACP Legal Defense Fund, as counsel, filed a class action suit against Cecil Picard, Robin Jarvis, the Recovery School District, Phyllis Landrieu, the Orleans Parish School Board, and Linda Johnson to ensure that students who had been displaced by Hurricane Katrina would be able to enroll in school immediately when their families returned to New Orleans. Many returning students had been refused enrollment or placed on waiting lists. The parties settled the case with defendants agreeing to address the plaintiffs’ concerns, including enrolling students

by the second instructional day after their request and providing a centralized enrollment process.

Right to attend school during pendency of appeal

Homeless children, lacking a stable home environment, have a particular need for continuity in their education. The McKinney-Vento Act specifically requires that States ensure that the LEAs provide an expeditious process of resolving disputes affecting the educational rights of homeless children.³⁶⁸ Moreover, the Act states that if a dispute arises over school enrollment, the homeless student “shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute.”³⁶⁹ Disruption of education leads to irreparable harm and takes away opportunities for homeless children to learn, develop, grow, and overcome the extreme hardships imposed on them through no fault of their own.

N.J. v. New York, 872 F.Supp.2d 204 (E.D.N.Y. 2011)

In December 2011, N.J., whose home was destroyed by fire, filed suit against the Malverne Union Free School District and the New York State Department of Education, alleging that they denied children the rights afforded to homeless children in obtaining free public education under the Act and New York Education Law. N.J. sought to prevent the defendants from disenrolling her children from the schools they currently attended.

The court found that: (1) N.J. was likely to succeed on the merits of her claim that defendants violated the Act by not allowing the children to remain enrolled in school while the appeal was pending; (2) it was likely that irreparable harm would result if the children had to change schools twice in a relatively short time period if the appeal was successful; and (3) the balance of equities and public interests weighed in favor of the children receiving an uninterrupted education. Accordingly, the court granted a preliminary injunction, which allowed the children to continue attending their school of origin.

This case is important because it established that a state’s denial of a stay pending appeal violates McKinney-Vento, which requires that the child be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute.³⁷⁰

A copy of the Complaint filed in this case, including a Memorandum in Support of Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction, is available in Appendices E-G.

Residency Issues

The Act expressly provides that a homeless child shall have three school options: the “school of origin,” which is either (1) the current school or (2) the school attended by the child when last permanently housed; or (3) the local school where the family or child is actually living. The child may remain in the school that is chosen for the duration of homelessness, or for the remainder of the academic year in the case of a student who finds permanent housing during the school year.³⁷¹

N.C. v. Easton Area Sch. Dist., C.A. No. 2013 (E.D.P.A. filed Dec. 10, 2013)

The Easton Area School District agreed to re-enroll Plaintiff students N.C. and N.G. after the Education Law Center, as counsel, filed a complaint and a motion for preliminary injunction against the District. The two students, both of whom have special education needs, were abruptly dis-enrolled from their public schools due to lack of residency. At the time, the children’s family had been experiencing homelessness due to the father’s loss of employment and foreclosure on the family’s home. The District initially permitted the students to stay enrolled, but later concluded that the children no longer qualified as students experiencing homelessness under the Act. After a preliminary injunction was filed, the district agreed to continue the students’ enrollment in the appropriate school district through the end of the school year.

A.E. v. Carlynton Sch. Dist., C.A. No. 09-1345 (W.D.P.A. 2009)

The Education Law Center and the National Law Center on Homelessness & Poverty as counsel settled a lawsuit with the Pennsylvania Department of Education and the Carlynton School District, which ensured the continued enrollment of four homeless children in Allegheny County and significantly revised state policies to better protect the rights of homeless students. The suit began in October 2009, when Carlynton School District officials sought to remove four homeless children from a District school, claiming the family did not actually live in the District because

while their day shelter was in the District, they spent nights in one of eight different locations, only some of which were in the District. When the Pennsylvania Department of Education concurred with the District’s decision, the family sued under the Act. As part of the settlement agreement, the Pennsylvania Department of Education issued a new Basic Education Circular (BEC) that made clear that: (1) children, like the plaintiffs, who may sleep overnight in different places, are legally entitled to attend school where they have a substantial connection, including where they receive day shelter services, conduct daily living activities, or stay overnight on a recurring basis; and (2) school districts must immediately enroll a child who claims to be homeless and must notify families of their rights under the Act. Pennsylvania, in compliance with federal law, also now requires school districts to inform families in writing of the basis of a denial of school enrollment or school selection decision; apprise families of their right to remain in their school of choice pending resolution of a dispute; and explain the procedures for challenging a school district’s decision.

This case is significant because it established state guidance regarding “highly mobile” students and their right to attend school where they have a “substantial connection” (e.g., daily living activities, day shelter, stay on recurring basis).

Muriel C. v. Gallagher (II. Cir. Ct. Cook Cnty. filed Feb. 2003)

Muriel C. and her children lost their housing in Evergreen Park and then went to live with Muriel C.’s mother in Chicago. In January 2003, the Chicago high school where the children sought to enroll issued the family letters stating that the children were to be excluded from school due to non-residency. The lawyer for the school district argued in a dispute resolution hearing – and the hearing officer agreed – that the family had the burden of proof to show that they were, in fact, homeless. Upon review, the hearing officer found that the family was not homeless and the children were excluded from the Chicago school for approximately two weeks. After the family filed a complaint in the Circuit Court of Cook County, with the assistance of the Law Project of the Chicago Coalition for the Homeless, the school district agreed to re-enroll the children.

Burgin et al. v. Cmty. Consol. Sch. Dist. 168, No. 2000 PA 010 (Cook County Comm. on Human Rights, *complaint filed* Nov. 22, 2000)

The Burgin family rented an apartment in District 168, and four of the children (two of whom were honor roll students) attended District 168 schools in Cook County, Illinois. In March of 2000, the Burgins were evicted from their apartment following a period of unemployment. They then went to live with family members in a nearby suburb. Thereafter the Burgins were denied continued enrollment in District 168 because they were not residents of that district. When an employee of the Illinois State Board of Education (ISBE) attempted to re-enroll the children, the superintendent stated: "If I let scum like that back in my schools, pretty soon the whole area will be a ghetto." After litigation was threatened, the District agreed to re-enroll. Because of the District's unlawful efforts to exclude the Burgin children even after being made aware of the legal requirements and because of the derogatory racial remark made about the family, the family filed a complaint with the Cook County Commission on Human Rights. The Cook County Human Rights Ordinance prohibits discrimination based on race as well as based on "housing status." Discovery was conducted in the case and revealed that all of the District's registration and enrollment materials and policy were misleading and inaccurate with respect to children experiencing homelessness. The parties entered into a settlement agreement in which the District agreed: to payment of a total monetary settlement of \$100,000; to conduct annual training on and implementation of McKinney-Vento, the Illinois Education for Homeless Children Act and the Cook County Human Rights Ordinance; and to establish a diverse committee of parents, staff, and community organizations to analyze the racial impact of school policies and practices.

No Time Limit on Homelessness

In some cases, schools argue that the homeless youth is no longer homeless because the student has lived long enough at a certain temporary housing and that such housing has become permanent. Homelessness is not confined to one school year. For many families, homelessness spans a number of years, a reality exacerbated by economic insecurity. In acknowledgment of this trend, case law makes it clear that there is no maximum duration of homelessness.

An LEA must accommodate a homeless child for the entire time of homelessness.

L.R. v. Steelton-Highspire Sch. Dist., Civ.A. No. 10-00468 (M.D. Pa., filed Apr. 7, 2010)

In January 2009, L.R., a student with disability, who resided with his grandmother, became homeless after his home was destroyed by fire. The school L.R. was attending permitted him to continue attending school until the end of the school year, but refused to enroll him for the next school year because L.R. continued to reside in another district and because L.R. was deemed no longer homeless for living with relatives. In March 2010, L.R. and his grandmother, with the assistance of the Education Law Center and the National Law Center on Homelessness & Poverty, filed suit against the Steelton-Highspire School District in Pennsylvania, seeking damages and injunctive and declaratory relief requiring the defendants to comply with the Act. The court issued a preliminary injunction on March 29, 2010, and an opinion on the preliminary injunction on April 7, stating that: (1) there is no maximum duration of homelessness; (2) schools must follow dispute resolution procedures and immediately enroll students even if the schools do not believe they qualify as homeless; and (3) Congress had expressed its opinion in the Act that immediate enrollment pending disputes is in the public interest. On April 14, 2010, the court issued an order converting the preliminary injunction to a permanent injunction.

Cause of Homelessness is Irrelevant

McKinney-Vento defines homeless children as "individuals who lack a fixed, regular, and adequate nighttime residence."³⁷² The Act then provides examples of children who would fall under this definition. Under the plain language of the Act, the cause of a child's homelessness is irrelevant in evaluating whether that child falls under the law's definition of homeless. School policies should not vary when taking into account circumstances that have caused homelessness, which are usually beyond their control.

Mitzi H. v. Murray & Mitzi H. v. Ramsey (Il. Cir. Ct. Cook Cnty. filed Sept. 2002)

These two cases involved one family with two children in an elementary school district and one child in a high school district. Under the Act and Illinois law, when

the children lost their housing in Homewood, they should have been permitted to stay in the Homewood schools and obtain transportation assistance. In fact, the children were kept out of school for a total of five months. After advocacy by the Law Project of the Chicago Coalition for the Homeless, the students were re-enrolled in March 2002. In September 2002, the family filed two separate complaints in the Circuit Court of Cook County against both the elementary and the high schools, seeking damages and other relief. The high school filed a motion to dismiss, arguing that the children could not bring suit because their homelessness was caused by a step-parent's wrongdoing. The high school also argued that the family was not homeless. After briefing and oral argument, the court denied the motion to dismiss. The court found that the Illinois statute protected children experiencing homelessness regardless of the reason for their homelessness. The court further found that the family met the definition of "homeless" when they were living in a motel. The parties entered into a non-public settlement.



NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY RESOURCE LIST

The Law Center may be able to provide assistance or legal referrals depending on the situation. Please contact the Education Program of the Law Center at 202-638-2535 or education@nlchp.org for assistance with patterns or practices indicating systemic violations of the law, for any questions about the manual, or for additional information.

For assistance with an issue related to the education of a child or youth experiencing homelessness, contact the National Center for Homeless Education (NCHE) homeless education helpline toll-free at (800) 308-2145 or homeless@serve.org. NCHE operates the U.S. Department of Education's technical assistance center for the federal Education for Homeless Children and Youth (EHCY) Program.

Additional resources are also available through the National Association for the Education of Homeless Children and Youth (NAEHCY), a national membership association of local homeless education liaisons, educators, school counselors, social workers, registrars, nurses, child advocates, shelter staff, state and federal policy specialists, and partners from community-based and national non-profit organizations. NAEHCY provides professional development, resources, and training support for anyone and everyone interested in supporting the academic success of children and youth challenged by homelessness, *available at* <http://naehcy.org/>.

Compliance

School Legal Checklist for Compliance with the McKinney-Vento Act (2011), available at http://www.nlchp.org/documents/McKinney-Vento_School_Legal_Checklist.

Education of Homeless Children & Youth: The Guide to Their Rights (2011), available at http://www.nlchp.org/documents/Education_of_Homeless_Children_and_Youth.

Criminalization

No Safe Place: The Criminalization of Homelessness in U.S. Cities (2014), available at http://www.nlchp.org/documents/No_Safe_Place.

Dispute Resolution

McKinney-Vento Dispute Resolution Procedures, http://www.nlchp.org/MV_State_Dispute_Resolution.

Transportation

Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs (2011), available at http://www.nlchp.org/documents/Beds_and_Buses.

Unaccompanied Youth

Alone Without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth (2012), available at http://www.nlchp.org/documents/Alone_Without_a_Home.

APPENDIX A
FULL TEXT OF TITLE VII OF THE MCKINNEY-VENTO
HOMELESS ASSISTANCE ACT

42 U.S.C. § 11431 - STATEMENT OF POLICY

The following is the policy of the Congress:

- (1) Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.
- (2) In any State where compulsory residency requirements or other requirements, in laws regulations, practices, or policies, may act as a barrier to the identification of, or the enrollment, attendance, or success in school of, homeless children and youths, the State educational agency and local educational agencies in the State will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.
- (3) Homelessness is not sufficient reason to separate students from the mainstream school environment.
- (4) Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State academic standards to which all students are held.

42 U.S.C. § 11432 - GRANTS FOR STATE AND LOCAL ACTIVITIES FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTHS

(a) GENERAL AUTHORITY - The Secretary is authorized to make grants to States in accordance with the provisions of this section to enable such States to carry out the activities described in subsections (d) through (g) of this section.

(b) GRANTS FROM ALLOTMENTS. The Secretary shall make the grants to States from the allotments made under subsection (c)(1).

(c) ALLOCATION AND RESERVATIONS

(1) ALLOCATION –

(A) Subject to subparagraph (B), the Secretary is authorized to allot to each State an amount that bears the same ratio to the amount appropriated for such year under section [11435](#) of this title that remains after the Secretary reserves funds under paragraph (2) and uses funds to carry out section [11434 \(d\)](#) and (h) of this title, as the amount allocated under section 1122 of the Elementary and Secondary Education Act of 1965 [[20 U.S.C. 6332](#)] to the State for that year bears to the total amount allocated under section 1122 of such Act to all States for that year, except that no State shall receive less than the greater of—

- (i) \$150,000;
- (ii) one-fourth of 1 percent of the amount appropriated under section [11435](#) of this title for that year; or
- (iii) the amount such State received under this section for fiscal year 2001.

(B) If there are insufficient funds in a fiscal year to allot to each State the minimum amount under subparagraph (A), the Secretary shall ratably reduce the allotments to all States based on the proportionate share that each State received under this subsection for the preceding fiscal year.

(2) RESERVATIONS –

(A) The Secretary is authorized to reserve 0.1 percent of the amount appropriated for each fiscal year under section [11435](#) of this title to be allocated by the Secretary among the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, according to their respective need for assistance under this part, as determined by the Secretary.

(B)(i) The Secretary shall transfer 1 percent of the amount appropriated for each fiscal year under section [11435](#) of this title to the Department of the Interior for programs for Indian students served by schools funded by the Secretary of the Interior, as determined under the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450](#) et seq.), that are consistent with the purposes of the programs described in this part.

(ii) The Secretary and the Secretary of the Interior shall enter into an agreement, consistent with the requirements of this part, for the distribution and use of the funds described in clause (i) under terms that the Secretary determines best meet the purposes of the programs described in this part. Such agreement shall set forth the plans of the Secretary of the Interior for the use of the amounts transferred, including appropriate goals, objectives, and milestones.

(3) STATE DEFINED - For purposes of this subsection, the term “State” does not include the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(d) ACTIVITIES - Grants under this section shall be used for the following:

(1) To carry out the policies set forth in section [11431](#) of this title in the State.

(2) To provide services and activities to improve the identification of homeless children and youths (including preschool-aged homeless children) and enable such children and youths to enroll in, attend, and succeed in school, including, if appropriate, in preschool programs.

(3) To establish or designate in the State educational agency an Office of the Coordinator for Education of Homeless Children and Youths that can sufficiently carry out the duties described for the Office in this subtitle in accordance with subsection (f).

(4) To prepare and carry out the State plan described in subsection (g) of this section.

(5) To develop and implement professional development programs for liaisons designated under subsection (g)(1)(J)(ii) and other local educational agency personnel--

(A) to improve their identification of homeless children and youths; and

(B) to heighten the awareness of the liaisons and personnel of, and their capacity to respond to, specific needs in the education of homeless children and youths.

(e) STATE AND LOCAL SUBGRANTS

(1) MINIMUM DISBURSEMENTS BY STATES - From the sums made available each year to a State through grants under subsection (a) to carry out this part, the State educational agency shall distribute not less than 75 percent in subgrants to local educational agencies for the purposes of carrying out section [11433](#) of this title, except that States funded at the minimum level set forth in subsection (c)(1) of this section shall distribute not less than 50 percent in subgrants to local educational agencies for the purposes of carrying out section [11433](#) of this title.

(2) USE BY STATE EDUCATIONAL AGENCY - A State educational agency may use the grant funds remaining after the State education agency distributes subgrants

under paragraph (1) to conduct activities under subsection (f) of this section directly or through grants or contracts.

(3) PROHIBITION ON SEGREGATING HOMELESS STUDENTS

(A) IN GENERAL - Except as provided in subparagraph (B) and section [11433 \(a\)\(2\)\(B\)\(ii\)](#) of this title, in providing a free public education to a homeless child or youth, no State receiving funds under this part shall segregate such child or youth in a separate school, or in a separate program within a school, based on such child's or youth's status as homeless.

(B) EXCEPTION - Notwithstanding subparagraph (A), paragraphs (1)(J)(i) and (3) of subsection (g) of this section, section [11433 \(a\)\(2\)](#) of this title, and any other provision of this part relating to the placement of homeless children or youths in schools, a State that has a separate school for homeless children or youths that was operated in fiscal year 2000 in a covered county shall be eligible to receive funds under this part for programs carried out in such school if—

- (i) the school meets the requirements of subparagraph (C);
- (ii) any local educational agency serving a school that the homeless children and youths enrolled in the separate school are eligible to attend meets the requirements of subparagraph (E); and
- (iii) the State is otherwise eligible to receive funds under this part.

(C) SCHOOL REQUIREMENTS - For the State to be eligible under subparagraph (B) to receive funds under this part, the school described in such subparagraph shall—

(i) provide written notice, at the time any child or youth seeks enrollment in such school, and at least twice annually while the child or youth is enrolled in such school, to the parent or guardian of the child or youth (or, in the case of an unaccompanied youth, the youth) that—

(I) shall be signed by the parent or guardian (or, in the case of an unaccompanied youth, the youth);

(II) sets forth the general rights provided under this part;

(III) specifically states—

(aa) the choice of schools homeless children and youths are eligible to attend, as provided in subsection (g)(3)(A) of this section;

(bb) that no homeless child or youth is required to attend a separate school for homeless children or youths;

(cc) that homeless children and youths shall be provided comparable services described in subsection (g)(4) of this section, including transportation services, educational services, and meals through school meals programs; and

(dd) that homeless children and youths should not be stigmatized by school personnel; and

(IV) provides contact information for the local liaison for homeless children and youths and the State Coordinator for Education of Homeless Children and Youths;

(ii)(I) provide assistance to the parent or guardian of each homeless child or youth (or, in the case of an unaccompanied youth, the youth) to exercise

the right to attend the parent's or guardian's (or youth's) choice of schools, as provided in subsection (g)(3)(A) of this section; and
(II) coordinate with the local educational agency with jurisdiction for the school selected by the parent or guardian (or youth), to provide transportation and other necessary services;
(iii) ensure that the parent or guardian (or, in the case of an unaccompanied youth, the youth) shall receive the information required by this subparagraph in a manner and form understandable to such parent or guardian (or youth), including, if necessary and to the extent feasible, in the native language of such parent or guardian (or youth); and
(iv) demonstrate in the school's application for funds under this part that such school—

- (I) is complying with clauses (i) and (ii); and
- (II) is meeting (as of the date of submission of the application) the same Federal and State standards, regulations, and mandates as other public schools in the State (such as complying with section 1111 of the Elementary and Secondary Education Act of 1965 [[20 U.S.C. 6311](#), [6316](#)] and providing a full range of education and related services, including services applicable to students with disabilities).

(D) SCHOOL INELIGIBILITY - A separate school described in subparagraph (B) that fails to meet the standards, regulations, and mandates described in subparagraph (C)(iv)(II) shall not be eligible to receive funds under this part for programs carried out in such school after the first date of such failure.

(E) LOCAL EDUCATIONAL AGENCY REQUIREMENTS - For the State to be eligible to receive the funds described in subparagraph (B), the local educational agency described in subparagraph (B)(ii) shall—

- (i) implement a coordinated system for ensuring that homeless children and youths—
 - (I) are advised of the choice of schools provided in subsection (g)(3)(A) of this section;
 - (II) are immediately enrolled, in accordance with subsection (g)(3)(C) of this section, in the school selected under subsection (g)(3)(A) of this section; and
 - (III) are promptly provided necessary services described in subsection (g)(4) of this section, including transportation, to allow homeless children and youths to exercise their choices of schools under subsection (g)(3)(A) of this section;
- (ii) document that written notice has been provided—
 - (I) in accordance with subparagraph (C)(i) for each child or youth enrolled in a separate school under subparagraph (B); and
 - (II) in accordance with subsection (g)(6)(A)(vi) of this section;
- (iii) prohibit schools within the agency's jurisdiction from referring homeless children or youths to, or requiring homeless children and youths to enroll in or attend, a separate school described in subparagraph (B);

- (iv) identify and remove any barriers that exist in schools within the agency's jurisdiction that may have contributed to the creation or existence of separate schools described in subparagraph (B); and
- (v) not use funds received under this part to establish—
 - (I) new or additional separate schools for homeless children or youths; or
 - (II) new or additional sites for separate schools for homeless children or youths, other than the sites occupied by the schools described in subparagraph (B) in fiscal year 2000.

(F) REPORT –

- (i) Preparation The Secretary shall prepare a report on the separate schools and local educational agencies described in subparagraph (B) that receive funds under this part in accordance with this paragraph. The report shall contain, at a minimum, information on—
 - (I) compliance with all requirements of this paragraph;
 - (II) barriers to school access in the school districts served by the local educational agencies;
 - (III) the progress the separate schools are making in integrating homeless children and youths into the mainstream school environment, including the average length of student enrollment in such schools; and
 - (IV) the progress the separate schools are making in helping all students meet the challenging State academic standards.”
- (ii) Compliance with information requests For purposes of enabling the Secretary to prepare the report, the separate schools and local educational agencies shall cooperate with the Secretary and the State Coordinator for Education of Homeless Children and Youths established in the State under subsection (d)(3) of this section, and shall comply with any requests for information by the Secretary and State Coordinator for such State.
- (iii) Submission The Secretary shall submit the report described in clause (i) to—
 - (I) the President;
 - (II) the Committee on Education and the Workforce of the House of Representatives; and
 - (III) the Committee on Health, Education, Labor, and Pensions of the Senate.

(G) DEFINITION - For purposes of this paragraph, the term “covered county” means—

- (i) San Joaquin County, California;
- (ii) Orange County, California;
- (iii) San Diego County, California; and
- (iv) Maricopa County, Arizona.

(f) FUNCTIONS OF THE OFFICE OF COORDINATOR - The Coordinator for Education of Homeless Children and Youths established in each State shall—

- (1) gather and make publicly available reliable, valid, and comprehensive information on

- (A) the number of homeless children and youths identified in the State, which shall be posted annually on the State educational agency's website;
 - (B) the nature and extent of the problems of homeless children and youths have in gaining access to public preschool programs and to public elementary schools and secondary schools;
 - (C) the difficulties in identifying the special needs and barriers to the participation and achievement of such children and youths;
 - (D) any progress made by the State educational agency and local educational agencies in the State in addressing such problems and difficulties; and
 - (E) the success of the programs under this subtitle in identifying homeless children and youths and allowing such children and youths to enroll in, attend, and succeed in, school;
- (2) develop and carry out the State plan described in subsection (g);
- (3) collect data for and transmit to the Secretary, at such time and in such manner as the Secretary may reasonably require, a report containing information necessary to assess the educational needs of homeless children and youths within the State, including data necessary for the Secretary to fulfill the responsibilities under section 724(h);
- (4) in order to improve the provision of comprehensive education and related services to homeless children and youths and their families, coordinate activities and collaborate with –
- (A) educators, including teachers, special education personnel, administrators, and child development and preschool program personnel;
 - (B) providers of services to homeless children and youths and their families, including public and private child welfare and social services agencies, law enforcement agencies, juvenile and family courts, agencies providing mental health services, domestic violence agencies, child care providers, runaway and homeless youth centers, and providers of services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.);
 - (C) providers of emergency, transitional and permanent housing to homeless children and youths, and their families, including public housing agencies, shelter operators, operators of transitional housing facilities, and providers transitional living programs for homeless youths;
 - (D) local educational agency liaisons designated under subsection (g)(1)(J)(ii) for homeless children and youths; and
 - (E) community organizations and groups representing homeless children and youths and their families
- (5) provide technical assistance to and conduct monitoring of local educational agencies in coordination with local educational agency liaisons designated under subsection (g)(1)(J)(ii), to ensure that local educational agencies comply with the requirements of subsection (e)(3) and paragraphs (3) through (7) of subsection (g);
- (6) provide professional development opportunities for local educational agency personnel and the local educational agency liaison designated under subsection (g)(1)(J)(ii) to assist such personnel and liaison in identifying and meeting the needs of homeless children and youths, and provide training on the definitions of terms related to homelessness specified in section 103, 401, and 725 to the liaison; and

(7) respond to inquiries from parents and guardians of homeless children and youths, and (in the case of unaccompanied youths) such youths, to ensure that each child or youth who is the subject of such an inquiry receives the full protections and services provided by this subtitle.

(g) STATE PLAN

(1) IN GENERAL. - For any State desiring to receive a grant under this subtitle, the State educational agency shall submit to the Secretary a plan to provide for the education of homeless children and youths within the State. Such plan shall include the following:

- (A) A description of how such children and youths are (or will be) given the opportunity to meet the same challenging State academic standards all students are expected to meet.
- (B) A description of the procedures the State educational agency will use to identify such children and youths in the State and to assess their needs.
- (C) A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths.
- (D) A description of programs for school personnel (including liaisons designated under subparagraph (J)(ii), principals and other school leaders, attendance officers, teachers, enrollment personnel, and specialized instructional support personnel) to heighten the awareness of such personnel of the specific needs of homeless children and youths who are runaway and homeless youths.
- (E) A description of procedures that ensure that homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local nutrition programs.
- (F) A description of procedures that ensure that—
 - (i) homeless children have access to public preschool programs, administered by the State educational agency or local educational agency, as provided to other children in the State;
 - (ii) youths described in section 725(2) and youths separated from public schools are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent youths described in this clause from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school policies; and
 - (iii) homeless children and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the State and local levels.
- (G) Strategies to address problems identified in the report provided to the Secretary under subsection (f)(3).
- (H) Strategies to address other problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays that are caused by—
 - (i) requirements of immunization and other required health records;
 - (ii) residency requirements;

- (iii) lack of birth certificates, school records, or other documentation;
- (iv) guardianship issues; or
- (v) uniform or dress code requirements.

(I) A demonstration that the State educational agency and local educational agencies in the State have developed, and shall review and revise, policies to remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths in schools in the State, including barriers to enrollment and retention due to outstanding fees or fines, or absences.

(J) Assurances that the following will be carried out:

(i) The State educational agency and local educational agencies in the State will adopt policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless.

(ii) The local educational agencies will designate an appropriate staff person, able to carry out the duties described in paragraph (6)(A), who may also be a coordinator for other Federal programs, as a local educational agency liaison for homeless children and youths.

(iii) The State and the local educational agencies in the State will adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin (as determined in paragraph (3)), in accordance with the following, as applicable:

(I) If the child or youth continues to live in the area served by the local educational agency in which the school of origin is located, the child's or youth's transportation to and from the school of origin shall be provided or arranged by the local educational agency in which the school of origin is located.

(II) If the child's or youth's living arrangements in the area served by the local educational agency of origin terminate and the child or youth, though continuing the child's or youth's education in the school of origin, begins living in an area served by another local educational agency, the local educational agency of origin and the local educational agency in which the child or youth is living shall agree upon a method to apportion the responsibility and costs for providing the child or youth with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally.

(iv) The State and the local educational agencies in the State will adopt policies and practices to ensure participation by liaisons described in clause (ii) in professional development and other technical assistance activities provided pursuant to paragraphs (5) and (6) of subsection (f), as determined appropriate by the Office of the Coordinator.

(K) A description of how youths described in section 725(2) will receive assistance from counselors to advise such youths, and prepare and improve the readiness of such youths for college.

(2) COMPLIANCE

(A) IN GENERAL. - Each plan adopted under this subsection shall also describe how the State will ensure that local educational agencies in the State will comply with the requirements of paragraphs (3) through (7).

(B) COORDINATION - Such plan shall indicate what technical assistance the State will furnish to local educational agencies and how compliance efforts will be coordinated with the local educational agency liaisons designated under paragraph (1)(J)(ii).

(3) LOCAL EDUCATIONAL AGENCY REQUIREMENTS

(A) In general - The local educational agency serving each child or youth to be assisted under this subtitle shall, according to the child's or youth's best interest—

(i) continue the child's or youth's education in the school of origin for the duration of homelessness—

(I) in any case in which a family becomes homeless between academic years or during an academic year; and

(II) for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or

(ii) enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

(B) SCHOOL STABILITY - In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall—

(i) presume that keeping the child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the child's or youth's parent or guardian, or (in the case of an unaccompanied youth) the youth;

(ii) consider student-centered factors related to the child's or youth's best interest, including factors related to the impact of mobility on achievement, education, health, and safety of homeless children and youth, giving priority to the request of the child's or youth's parent or guardian or (in the case of an unaccompanied youth) the youth;

(iii) if, after conducting the best interest determination based on consideration of the presumption in clause (i) and the student-centered factors in clause (ii), the local educational agency determines that it is not in the child's or youth's best interest to attend the school of origin or the school requested by the parent or guardian, or (in the case of unaccompanied youth) the youth, provide the child's or youth's parent or guardian or the unaccompanied youth with a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth, including information regarding the right to appeal under sub-paragraph (E); and

(iv) in the case of an unaccompanied youth, ensure that the local educational agency liaison designated under paragraph (1)(J)(ii) assists in placement or enrollment decisions under this subparagraph, gives priority to the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E).

(C) IMMEDIATE ENROLLMENT

(i) **IN GENERAL.** - The school selected in accordance with this paragraph shall immediately enroll the homeless child or youth, even if the child or youth

(I) is unable to produce records normally required for enrollment, such as previous academic records, records of immunization and other required health records, proof of residency, or other documentation; or

(II) has missed application or enrollment deadlines during any period of homelessness.

(ii) **RELEVANT ACADEMIC RECORDS.** - The enrolling school shall immediately contact the school last attended by the child or youth to obtain relevant academic and other records.

(iii) **RELEVANT HEALTH RECORDS** - If the child or youth needs to obtain immunizations or other required health records, the enrolling school shall immediately refer the parent or guardian of the child or youth, or (in the case of an unaccompanied youth) the youth, to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall assist in obtaining necessary immunizations or screenings, or immunization or other required health records, in accordance with subparagraph (D).

(D) RECORDS - Any record ordinarily kept by the school, including immunization or other required health records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, regarding each homeless child or youth shall be maintained—

(i) so that the records involved are available, in a timely fashion, when a child or youth enters a new school or school district; and

(ii) in a manner consistent with section 444 of the General Education

Provisions Act (20 U.S.C. 1232g).

(E) ENROLLMENT DISPUTES - If a dispute arises over eligibility, or school selection or enrollment in a school—

(i) the child or youth shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals;

(ii) the parent or guardian of the child or youth or (in the case of unaccompanied youth) the youth shall be provided with a written explanation of any decisions related to school selection or enrollment made by the school, the local educational agency, or the State educational agency involved, including the rights of the parent, guardian, or unaccompanied youth to appeal such decisions;

(iii) the parent, guardian, or unaccompanied youth shall be referred to the local educational agency liaison designated under paragraph (1)(J)(ii),

who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

(iv) in the case of an unaccompanied youth, the liaison shall ensure that the youth is immediately enrolled in school in which the youth seeks enrollment pending resolution of such dispute.

(F) PLACEMENT CHOICE - The choice regarding placement shall be made regardless of whether the child or youth lives with the homeless parents or has been temporarily placed elsewhere.

(G) PRIVACY - Information about a homeless child's or youth's living situation shall be treated as a student education record, and shall not be deemed to be directory information, under section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(H) CONTACT INFORMATION – Nothing in this subtitle shall prohibit a local educational agency from requiring a parent or guardian of a homeless child or youth to submit contact information.

(I) SCHOOL OF ORIGIN DEFINED - In this paragraph:

(i) **IN GENERAL**- the term “school of origin” means the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool.

(ii) **RECEIVING SCHOOL**. – When the child or youth completes the final grade level served by the school of origin, as described in clause (i), the term “school of origin” shall include the designated receiving school at the next grade level for all feeder schools.

(4) COMPARABLE SERVICES - Each homeless child or youth to be assisted under this subtitle shall be provided services comparable to services offered to other students in the school selected under paragraph (3), including the following:

(A) Transportation services.

(B) Educational services for which the child or youth meets the eligibility criteria, such as services provided under title I of the Elementary and Secondary Education Act of 1965 ([20 U.S.C. 6301](#) et seq.) or similar State or local programs, educational programs for children with disabilities, and educational programs for English learners.

(C) Programs in career and technical education.

(D) Programs for gifted and talented students.

(E) School nutrition programs.

(5) COORDINATION -

(A) IN GENERAL - Each local educational agency serving homeless children and youths that receives assistance under this subtitle shall coordinate—

(i) the provision of services under this subtitle with local social services agencies and other agencies or entities providing services to homeless children and youths and their families, including services and programs funded under the Runaway and Homeless Youth Act ([42 U.S.C. 5701](#) et seq.); and

(ii) transportation, transfer of school records, and other interdistrict activities, with other local educational agencies.

(B) HOUSING ASSISTANCE - If applicable, each State educational agency and local educational agency that receives assistance under this subtitle shall coordinate with State and local housing agencies responsible for developing the comprehensive housing affordability strategy described in section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) to minimize educational disruption for children and youths who become homeless.

(C) COORDINATION PURPOSE - The coordination required under subparagraphs (A) and (B) shall be designed to—

- (i) ensure that all homeless children and youths are promptly identified;
- (ii) ensure that all homeless children and youths have access to, and are in reasonable proximity to, available education and related support services; and
- (ii) raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness.

(D) HOMELESS CHILDREN AND YOUTHS WITH DISABILITIES. – For children and youths who are to be assisted both under this subtitle, and under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), each local educational agency shall coordinate the provision of services under this subtitle with the provision of programs for children with disabilities served by that local educational agency and other involved local educational agencies.

(6) LOCAL EDUCATIONAL AGENCY LIAISON -

(A) DUTIES - Each local educational agency liaison for homeless children and youths, designated under paragraph (1)(J)(ii), shall ensure that—

- (i) homeless children and youths are identified by school personnel through outreach and coordination activities with other entities and agencies;
- (ii) homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that local educational agency;
- (iii) homeless families and homeless children and youths have access to and receive educational services for which such families, children, and youths are eligible, including services through Head Start programs (including Early Head Start programs) under the Head Start Act (42 U.S.C. 9831 et seq.), early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and other preschool programs administered by the local educational agency;
- (iv) homeless families and homeless children and youths receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;
- (v) the parents or guardians of homeless children and youths are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- (vi) public notice of the educational rights of homeless children and youths is disseminated in locations frequented by parents or guardians of

such children and youths, and unaccompanied youths, including schools, shelters, public libraries, and soup kitchens, in a manner and form understandable to the parents and guardians of homeless children and youths, an unaccompanied youths;

(vii) enrollment disputes are mediated in accordance with paragraph (3)(E);

(viii) the parent or guardian of a homeless child or youth, and any unaccompanied youth, is fully informed of all transportation services, including transportation to the school of origin, as described in paragraph (1)(J)(iii), and is assisted in accessing transportation to the school that is selected under paragraph (3)(A).

(ix) school personnel providing services under this subtitle receive professional development and other support; and

(x) unaccompanied youths –

(I) are enrolled in school;

(II) have opportunities to meet the same challenging State academic standards as the State establishes for other children and youth, including through implementation of the procedures under paragraph (1)(F)(ii); and

(III) are informed of their status as independent students under section 480 of the Higher Education Act of 1965 (20 U.S.C. 1087vv) and that the youths may obtain assistance from the local educational agency liaisons to receive verification of such status for purposes of the Free Application for Federal Student Aid described in section 483 of such Act (20 U.S.C. 1090).

(B) NOTICE - State coordinators established under subsection (d)(3) and local educational agencies shall inform school personnel, service providers, and advocates working with homeless families, parents and guardians of homeless children and youths, and homeless children and youths of the duties of the local educational agency liaisons, and publish an annually updated list of the liaisons on the State educational agency's website.

(C) LOCAL AND STATE COORDINATION - Local educational agency liaisons for homeless children and youths shall, as a part of their duties, coordinate and collaborate with State coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youths. Such coordination shall include collecting and providing to the State Coordinator the reliable, valid, and comprehensive data needed to meet the requirements of paragraphs (1) and (3) of subsection (f).

(D) HOMELESS STATUS. – A local educational agency liaison designated under paragraph (1)(J)(ii) who receives training described in subsection (f)(6) may affirm, without further agency action by the Department of Housing and Urban Development, that a child or youth who is eligible for and participating in a program provided by the local educational agency, or the immediate family of such a child or youth, who meets the eligibility requirements of this Act for a program or service authorized under title IV, is eligible for such program or service.

(7) REVIEW AND REVISIONS

(A) IN GENERAL - Each State educational agency and local educational agency that receives assistance under this subtitle shall review and revise any policies that may act as barriers to the identification of homeless children and youths or the enrollment of homeless children and youths in schools that are selected under paragraph (3).

(B) CONSIDERATION - In reviewing and revising such policies, consideration shall be given to issues concerning transportation, immunization, residency, birth certificates, school records and other documentation, and guardianship.

(C) SPECIAL ATTENTION - Special attention shall be given to ensuring the identification, enrollment, and attendance of homeless children and youths who are not currently attending school.

42 U.S.C. § 11433 - LOCAL EDUCATIONAL AGENCY SUBGRANTS FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTHS

(a) GENERAL AUTHORITY

(1) IN GENERAL - The State educational agency shall, in accordance with section [11432 \(e\)](#) of this title, and from amounts made available to such agency under section [11435](#) of this title, make subgrants to local educational agencies for the purpose of facilitating the identification, enrollment, attendance, and success in school of homeless children and youths.

(2) SERVICES

(A) IN GENERAL - Services under paragraph (1)—

(i) may be provided through programs on school grounds or at other facilities;

(ii) shall, to the maximum extent practicable, be provided through existing programs and mechanisms that integrate homeless children and youths with nonhomeless children and youths; and

(iii) shall be designed to expand or improve services provided as part of a school's regular academic program, but not to replace such services provided under such program.

(B) SERVICES ON SCHOOL GROUNDS - If services under paragraph (1) are provided on school grounds, the related schools—

(i) may use funds under this part to provide the same services to other children and youths who are determined by the local educational agency to be at risk of failing in, or dropping out of, school, subject to the requirements of clause (ii); and

(ii) except as otherwise provided in section [11432 \(e\)\(3\)\(B\)](#) of this title, shall not provide services in settings within a school that segregate homeless children and youths from other children and youths, except as necessary for short periods of time—

(I) for health and safety emergencies; or

(II) to provide temporary, special, and supplementary services to meet the unique needs of homeless children and youths.

(3) REQUIREMENT - Services provided under this section shall not replace the regular academic program and shall be designed to expand upon or improve services provided as part of the school's regular academic program.

(4) DURATION OF GRANTS. – Subgrants made under this section shall be for terms not to exceed 3 years.

(b) APPLICATION - A local educational agency that desires to receive a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing or accompanied by such information as the State educational agency may reasonably require. Such application shall include the following:

(1) An assessment of the educational and related needs of homeless children and youths in the area served by such agency (which may be undertaken as part of needs assessments for other disadvantaged groups).

(2) A description of the services and programs for which assistance is sought to address the needs identified in paragraph (1).

(3) An assurance that the local educational agency's combined fiscal effort per student, or the aggregate expenditures of that agency and the State with respect to the provision of free public education by such agency for the fiscal year preceding the fiscal year for which the determination is made, was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second fiscal year preceding the fiscal year for which the determination is made.

(4) An assurance that the applicant complies with, or will use requested funds to comply with, paragraphs (3) through (7) of section [11432 \(g\)](#) of this title.

(5) A description of policies and procedures, consistent with section [11432 \(e\)\(3\)](#) of this title, that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and youths.

(6) An assurance that the local educational agency will collect and promptly provide data requested by the State Coordinator pursuant to paragraphs (1) and (3) of section 722(f).

(7) An assurance that the local educational agency will meet the requirements of section 722(g)(3)

(c) AWARDS

(1) IN GENERAL - The State educational agency shall, in accordance with the requirements of this part and from amounts made available to it under section [11435](#) of this title, make competitive subgrants to local educational agencies that submit applications under subsection (b) of this section. Such subgrants shall be awarded on the basis of the need of such agencies for assistance under this part and the quality of the applications submitted.

(2) NEED - In determining need under paragraph (1), the State educational agency may consider the number of homeless children and youths enrolled in early childhood education and other preschool programs, elementary schools, and secondary schools within the area served by the local educational agency, and shall consider the needs of such children and youths and the ability of the local educational agency to meet such needs. The State educational agency may also consider the following:

(A) The extent to which the proposed use of funds will facilitate the identification, enrollment, retention, and educational success of homeless children and youths.

(B) The extent to which the Application reflects coordination with other local and State agencies that serve homeless children and youths.

(C) The extent to which the applicant exhibits in the application and in current practice (as of date of submission of the application) a commitment to education for all homeless children and youths.

(D) Such other criteria as the State agency determines appropriate.

(3) QUALITY - In determining the quality of applications under paragraph (1), the State educational agency shall consider the following:

(A) The applicant's needs assessment under subsection (b)(1) of this section and the likelihood that the program presented in the application will meet such needs.

(B) The types, intensity, and coordination of the services to be provided under the program.

(C) The extent to which the applicant will promote meaningful involvement of parents or guardians of homeless children or youths in the education of their children.

(D) The extent to which homeless children and youths will be integrated into the regular education program.

(E) The quality of the applicant's evaluation plan for the program.

(F) The extent to which services provided under this part will be coordinated with other services available to homeless children and youths and their families.

(G) The extent to which the local educational agency will use the subgrant to leverage resources, including by maximizing nonsubgrant funding for the position of the liaison described in section 722(g)(1)(J)(ii) and the provision of transportation.

(H) How the local educational agency will use funds to serve homeless children and youths under section 1113(c)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(c)(3)).

(I) The extent to which the applicant's program meets such other measures as the State educational agency considers indicative of a high-quality program, such as the extent to which the local educational agency will provide case management or related services to unaccompanied youths.

(d) AUTHORIZED ACTIVITIES - A local educational agency may use funds awarded under this section for activities that carry out the purpose of this part, including the following:

(1) The provision of tutoring, supplemental instruction, and enriched educational services that are linked to the achievement of the same challenging State academic standards as the State establishes for other children and youths.

(2) The provision of expedited evaluations of the strengths and needs of homeless children and youths, including needs and eligibility for programs and services (such as educational programs for gifted and talented students, children with disabilities, and English learners, services provided under title I of the Elementary and Secondary Education Act of 1965 [[20 U.S.C. 6301](#) et seq.] or similar State or local programs, programs in career and technical education, and school nutrition programs).

(3) Professional development and other activities for educators and specialized instructional support personnel that are designed to heighten the understanding and sensitivity of such personnel to the needs of homeless children and youths, the rights of such children and youths under this part, and the specific educational needs of runaway and homeless youths.

- (4) The provision of referral services to homeless children and youths for medical, dental, mental, and other health services.
- (5) The provision of assistance to defray the excess cost of transportation for students under section [11432 \(g\)\(4\)\(A\)](#) of this title, not otherwise provided through Federal, State, or local funding, where necessary to enable students to attend the school selected under section [11432 \(g\)\(3\)](#) of this title.
- (6) The provision of developmentally appropriate early childhood education programs, not otherwise provided through Federal, State, or local funding, for preschool-aged homeless children.
- (7) The provision of services and assistance to attract, engage, and retain homeless children and youths, particularly homeless children and youths who are not enrolled in school in public school programs and services provided to nonhomeless children and youths.
- (8) The provision for homeless children and youths of before- and after-school, mentoring, and summer programs in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities.
- (9) If necessary, the payment of fees and other costs associated with tracking, obtaining, and transferring records necessary to enroll homeless children and youths in school, including birth certificates, immunization or other required health records, academic records, guardianship records, and evaluations for special programs or services.
- (10) The provision of education and training to the parents and guardians of homeless children and youths about the rights of, and resources available to, such children and youths, and other activities designed to increase the meaningful involvement of parents and guardians of homeless children or youths in the education of such children or youths.
- (11) The development of coordination between schools and agencies providing services to homeless children and youths, as described in section [11432 \(g\)\(5\)](#) of this title.
- (12) The provision of specialized instructional support services (including violence prevention counseling) and referrals for such services.
- (13) Activities to address the particular needs of homeless children and youths that may arise from domestic violence and parental mental health or substance abuse problems.
- (14) The adaptation of space and purchase of supplies for any nonschool facilities made available under subsection (a)(2) of this section to provide services under this subsection.
- (15) The provision of school supplies, including those supplies to be distributed at shelters or temporary housing facilities, or other appropriate locations.
- (16) The provision of other extraordinary or emergency assistance needed to enable homeless children and youths to attend school and participate fully in school activities.

42 U.S.C. § 11434 - SECRETARIAL RESPONSIBILITIES

(a) REVIEW OF STATE PLANS - In reviewing the State plan submitted by a State educational agency under section [11432 \(g\)](#) of this title, the Secretary shall use a peer review process and shall evaluate whether State laws, policies, and practices described in such plan adequately address the problems of homeless children and youths relating to access to education and placement as described in such plan.

(b) TECHNICAL ASSISTANCE - The Secretary shall provide support and technical assistance to a State educational agency to assist such agency in carrying out its responsibilities under this part, if requested by the State educational agency.

(c) NOTICE –

(1) IN GENERAL. - The Secretary shall, before the next school year that begins after the date of enactment of the Every Student Succeeds Act, update and disseminate nationwide the public notice of the educational rights of homeless children and youths and disseminate such notice described in this subsection (as in effect prior to such date) of the educational rights of homeless children and youths.

(2) DISSEMINATION. – The Secretary shall disseminate the notice nationwide to all Federal agencies, and grant recipients, serving homeless families or homeless children and youths.

(d) EVALUATION, DISSEMINATION, AND TECHNICAL ASSISTANCE - The Secretary shall conduct evaluation, dissemination, and technical assistance activities for programs designed to meet the educational needs of homeless elementary and secondary school students, and may use funds appropriated under section 726 to conduct such activities.

(e) SUBMISSION AND DISTRIBUTION - The Secretary shall require applications for grants under this part to be submitted to the Secretary not later than the expiration of the 120-day period beginning on the date that funds are available for purposes of making such grants and shall make such grants not later than the expiration of the 180-day period beginning on such date.

(f) DETERMINATION BY SECRETARY - The Secretary, based on the information received from the States and information gathered by the Secretary under subsection (h) of this section, shall determine the extent to which State educational agencies are ensuring that each homeless child and homeless youth has access to a free appropriate public education, as described in section [11431 \(1\)](#) of this title. The Secretary shall provide support and technical assistance to State educational agencies, concerning areas in which documented barriers to a free appropriate public education persist.

(g) GUIDELINES - The Secretary shall develop, issue, and publish in the Federal Register, not later than 60 days after the date of enactment of the Every Student Succeeds Act, guidelines concerning ways in which a State—

(1) may assist local educational agencies to implement the provisions related to homeless children and youths amended by that Act; and

(2) may review and revise State policies and procedures that may present barriers to the identification of homeless children and youths, and the enrollment, attendance, and success of homeless children and youths in school.

(h) INFORMATION

(1) IN GENERAL - From funds appropriated under section [11435](#) of this title, the Secretary shall, directly or through grants, contracts, or cooperative agreements, periodically collect and disseminate data and information regarding—

(A) the number and primary nighttime residence of homeless children and youths in all areas served by local educational agencies;

(B) the education and related services such children and youths receive;

(C) the extent to which the needs of homeless children and youths are being met; and

(D) such other data and information as the Secretary determines to be necessary and relevant to carry out this part.

(2) COORDINATION - The Secretary shall coordinate such collection and dissemination with other agencies and entities that receive assistance and administer programs under this part.

(i) REPORT - Not later than 4 years after January 8, 2002, the Secretary shall prepare and submit to the President and the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the status of education of homeless children and youths, which shall include information on—

- (1) the education of homeless children and youths; and
- (2) the actions of the Secretary and the effectiveness of the programs supported under this part.

42 U.S.C. § 11434a – DEFINITIONS

For purposes of this part:

- (1) The terms “enroll” and “enrollment” include attending classes and participating fully in school activities.
- (2) The term “homeless children and youths”—
 - (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section [11302 \(a\)\(1\)](#) of this title); and
 - (B) includes—
 - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;
 - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section [11302 \(a\)\(2\)\(C\)](#) ^[1] of this title);
 - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - (iv) migratory children (as such term is defined in section [6399](#) of title [20](#)) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).
- (3) The terms “local educational agency” and “State educational agency” have the meanings given such terms in section [8101](#) of title [20](#).
- (4) The term “Secretary” means the Secretary of Education.
- (5) The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.
- (6) The term “unaccompanied youth” includes a homeless child or youth not in the physical custody of a parent or guardian.

42 U.S.C. § 11435 - AUTHORIZATION OF APPROPRIATIONS

McKinney-Vento Homeless Assistance Act as Amended by Every Student Succeeds Act
National Law Center on Homelessness & Poverty

There are authorized to be appropriated to carry out this subtitle \$85,000,000 for each of fiscal years 2017 through 2020.

EFFECTIVE DATE: October 1, 2016

APPENDIX B

2011-12-16 TECHNICAL ASSISTANCE LETTER TO FAYETTE

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Cary Martin
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Margaret Pfeiffer
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Jeffrey Simes
Goodwin Procter LLP

Angela Ward
Community Volunteer

Maria Foscarinis
President
Executive Director

Affiliations for
identification purposes only

December 16, 2011

Ms. Barbara Serapion, Director of Pupil Personnel Service

Fayette County Board of Education
Lafayette Educational Center
205 Lafayette Avenue
Fayetteville, Georgia 30214

Dear Ms. Serapion:

I write regarding E.B., a homeless student currently enrolled in Fayette Middle School. The National Law Center on Homelessness and Poverty (NLCHP), a nonprofit organization based in Washington, D.C., engages in advocacy to ensure that homeless students across the country have access to public schools. Among other efforts, we provide technical assistance regarding the rights of homeless children and youths nationwide. In making your decision, we hope that you will consider the following points.

As we understand it, E.B. and her mother left their home in Clayton County in August 2010 to flee domestic violence. They initially stayed with one of their relatives. They then moved to a friend's house in Fayette County in late August or early September, 2010. E.B. continued to attend W. Clayton Elementary School for a while, but when it became too difficult to do so, in mid-September, E.B. withdrew from there and enrolled in Fayette Middle School.

E.B. and her mother stayed in Fayette for the following nine (9) months. In June 2011, the basement of the friend's house in which they were staying flooded, and E.B. and her mother had to move to another temporary residence in Fairburn. In July or August 2011, the host family in Fayette invited them back. E.B. and her mother stayed with them until November 5, 2011, when, after the death and hospitalization of two (2) people whom they were living with, they had to leave the residence in Fayette and move to Fairburn again. E.B.'s mother's goal is to find stable housing in Fayette as soon as she is able to do so and, as such, she would like E.B. to continue to attend Fayette Middle School.

Our concerns regarding the school district's handling of E.B.'s case are set forth below.

E.B. Qualifies as Homeless Child Under the Act.

Under the McKinney Vento Homeless Assistance Act (the “Act”), a “homeless children and youths” includes “individuals who lack a fixed, regular, and adequate nighttime residence . . . [including] sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason . . .” 42 U.S.C. §11434A(2)(A)–(B)(i). E.B.’ situation clearly meets that definition. E.B. and her mother have shared the home of various friends and family since they lost their own housing in August 2010. E.B. and her mother have no legal right to remain at their current residence; even in the absence of any indication that they are about to be asked to leave, they remain guests in the home, and their situation cannot be called permanent housing. E.B. is clearly “sharing the housing of other persons due to loss of housing.” *Id.* She meets the definition of a homeless child and should receive the protections of the Act.

Moreover, the Act does not indicate that shared housing, or any other type of temporary housing, must be free in order for occupants to qualify as homeless. Not only are commercial motels, hotels, and trailer parks considered non-permanent under the Act, but transitional facilities, which courts have deemed a form of temporary housing, may also charge residents a pro-rated or subsidized rent.¹ See *Bullock v. Bd. of Educ. of Montgomery Cnty*, 210 F.R.D. 556, 561 (D. Md. 2002). Thus, regardless of whether E.B. and her mother are contributing as they can to rent, they qualify as homeless.

Additionally, homelessness is not confined to one school year. See *Bullock v. Bd. of Educ. of Montgomery Cnty*, 210 F.R.D. 556, 561 (D. Md. 2002) (finding plaintiffs to be homeless and part of the class even though their temporary, transitional housing could be in place for 24 months of longer).² For many families, homelessness spans a number of years, a reality exacerbated by the recession economy. In acknowledgement of this trend, case law makes it clear that there is no maximum duration of homelessness. See *L.R. v. Steelton-Highspire School Dist.*, No. 1:10-CV-00468, 2010 WL 1433146, at *4 (M.D. Pa. Apr. 7, 2010) (finding plaintiff to be homeless even though he had shared the housing of relatives for over a year). Instead, the local educational agency must accommodate a homeless child for the entire time they are homeless.

E.B. Is Entitled to Protection Under the Act.

The Act expressly requires every local educational agency liaison to ensure, among other things, that: (i) homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies; (ii) homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that local educational agency; (iii) homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start and Even Start programs, and referrals to health care, dental, mental health, and other appropriate services; (iv) the parents or guardians of homeless children and youths are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children; and (v) the parent or guardian of a homeless child or youth is fully informed of all transportation services. 42 U.S.C. §11432(g)(6)(A).

¹ See, e.g., My Sister’s Place, DC; Dawson Beach Transitional Housing, VA; and Salvation Army Adult Rehabilitation Center, MA.

² See also *Residency of Student G. Doe* (RI Commissioner of Education Decision, Oct. 3, 2006) citing *Bullock* and recognizing protections of the Act for transitional housing residents despite its potential duration of two (2) years.

The school district has failed to comply with its obligation to identify and remove any barriers to the enrollment and retention of homeless children and youths in schools. 42 U.S.C. § 11432(g)(1)(I), (g)(7). During her initial conversations with the school personnel, E.B.'s mother was told that because they are "doubled up" for economic reasons, they did not qualify as homeless. This assessment not only fails to conform to the statutory definition of "homeless child or youth," which explicitly includes families "sharing the housing of other persons," but also violates the above requirements that homeless children and youth be identified by school personnel and informed of the educational and related opportunities available to them. 42 U.S.C. §§ 11434A(2)(A)–(B)(i), 11432(g)(6)(A).

Moreover, schools may not require verification or proof of residency as a condition of enrollment. 42 U.S.C. §11432(g)(3)(C). When choosing the school a child experiencing homelessness should attend, the choice must be made "according to the child's or youth's best interest." 42 U.S.C. § 11432(g)(3)(A). In determining the child's best interest, the school district "shall to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child's or youth's parent or guardian." 42 U.S.C. § 11432(g)(3)(B). "School of origin" is defined as the school the student attended when permanently housed, or the school in which the student was last enrolled (*i.e.*, the school near the initial temporary housing). 42 U.S.C. § 11432(g)(3)(G). Therefore, under the Act, students have the right to remain in the school of origin for the duration of homelessness, if they so wish, even if the child's homelessness extends over multiple school years and even if they move to a different school district. In addition, if a student moves into permanent housing during the school year, the student can finish that academic year in the school of origin. *Id.*

In order to comply with the law, the school district must recognize E.B.'s status as a homeless student and ensure that she remain enrolled and be provided any assistance she needs for the entire time she is homeless. If you would like to discuss this matter, please contact me at (202) 638-2535 or etars@nlchp.org. In any event, we hope to hear from you within the next 30 days with information about a positive resolution to this problem, and about any steps you may be taking to ensure similar situations do not occur.

Sincerely,



Eric Tars, Esq.
Director of Human Rights and Children's Rights Programs
National Law Center on Homelessness & Poverty

APPENDIX C
2008-08-07 TECHNICAL ASSISTANCE LETTER
TO MIDDLETOWN



Ms. Selena Fischer
Acting Homeless Liaison
Middletown Special Services
443 E. Main St.
Middletown, NY 10940

Dr. Kenneth Eastwood, Superintendent
Middletown CSD
223 Wisner Avenue Extension
Middletown, NY 10940

August 7, 2008

Dear Ms. Fisher and Dr. Wood:

I write regarding the situation that has arisen in the Middletown School District (MSD) involving student R.B.. R.B., a student in the MSD who withdrew when his family lost its housing due to economic hardship, has been attempting to re-enroll since May. As a homeless child, under the federal Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., R.B. has a legal right to continue attending, and receive transportation to, his school of origin in Middletown for the duration of his homelessness, and until the end of the school year in which he moves into permanent housing. We request that the Middletown School District *immediately* re-enroll R.B. and continue his Individual Education Plan at the Devereux School.

The National Law Center on Homelessness & Poverty (NLCHP), based in Washington, DC, advocates on behalf of homeless persons nationwide, including bringing litigation to enforce the rights of homeless children to attend school. For example, not long ago we filed suit against 13 school districts in Suffolk County, NY challenging obstacles experienced by homeless children attempting to attend school in those districts—a suit that was successfully resolved. In this case, as we understand it, R.B. had been receiving special education services through the MSD under his Individual Education Plan (IEP) at the Devereux School for several years. R.B.'s father, Ronald, lost his housing in Middletown due to economic hardship and moved to Florida in February 2008, withdrawing R.B. from school. R.B. never moved to Florida, however, and he and his father are currently living in Cuddlebackville, NY, temporarily doubled up with family. Since April 7, 2008, Mr. B. has attempted to reenroll R.B. in MSD as his school of origin. However, the MSD orally informed Mr. Burrows that it will not reenroll R.B., only putting such notice in writing as of July 24. Both the New York State Education Department and NY-TEACHS, a state contractor charged with ensuring access to education for homeless children, have informed the MSD that R.B. should be re-enrolled and his IEP should be continued, but MSD still has not reenrolled R.B. In the meantime, R.B. has been out of school for close to five months. MSD is clearly on notice and bears responsibility for ongoing disregard for the law.

The McKinney-Vento Act requires that school districts shall, “to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child’s or youth’s parent or guardian.” 42 U.S.C. §11432(g)(3)(B)(i). Ronald’s express wish is for his son to remain in the Devereux school under the IEP with the MSD. Under the Act, a “homeless child or youth” includes “individuals who lack a fixed, regular, and adequate nighttime residence... [including] sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason...” 42 U.S.C. §§11434A(2)(A)-(B)(i). The B. family is sharing the housing of other persons due to a loss of their own housing on the basis of economic hardship. They fit squarely within the purview of the McKinney-Vento Act.

Pursuant to this federal law, school districts must provide transportation to the school of origin regardless of the services a student receives, including special education and related services. 42 U.S.C. §11432(g)(1)(J)(iii). The McKinney-Vento Act does not specify any mileage or time limit for travel to the school of origin. 42 U.S.C. §11432(g)(1)(J)(iii). Transportation services must rest on an individualized feasibility determination, not blanket mileage limits such as the State of New York’s suggested guideline of 50 miles as a maximum distance for transportation to school. At 14 years old, R.B. is certainly old enough to take even a lengthy bus trip to school; in fact, R.B. had already been traveling a longer distance when he was actually living in Middletown. The federal law supersedes contrary state or local blanket mileage policies. In any event, the distance is clearly outweighed by the services he has been receiving at Devereux.

R.B.’s need for special instruction also supports his continuing at Devereux through the Middletown District. The McKinney-Vento Act applies to students receiving special education services the same way it applies to other students, requiring continued placement in and transport to their school of origin. R.B.’s IEP was developed with the Middletown special education staff, which determined that Devereux is an appropriate placement. R.B. has now been out of school for five months, and cannot afford additional time away from school. Devereux offers year-round education services; R.B.’s reenrollment should take place immediately.

If the MSD wishes to dispute R.B.’s right to enroll in school in the district, R.B. must be attending classes while such a dispute is resolved. 42 U.S.C. §11432(g)(3)(C), (E). “When enrollment disputes arise, it is critical that students not be kept out of school... Permitting students to enroll immediately in the school of choice pending resolution of disputes helps provide needed stability...” U.S. Dep’t of Education, Education for Homeless Children and Youth Guidance, July 2004, page 14. Moreover, if MSD wishes to contest R.B.’s placement, it must provide his family with a written explanation of its decision not to allow R.B. to enroll; inform them of the opportunity to appeal that decision; and assist them with filing an appeal should they wish to do so.

However, in this case, MSD has neither permitted R.B. to attend classes, and only provided him with a written decision after close to three months from his first re-application. R.B. has been sitting at home now for five months as this dispute has



persisted -- in clear violation of both the letter and spirit of the law. Students in similar situations have been awarded monetary compensation for the loss of their educational opportunities.

In order to comply with the law, MSD must *immediately* reenroll R.B. and continue his IEP by providing him with transportation to the Devereux School. We are writing to you at this time in the interest of resolving this matter without the need for legal action. If you would like to discuss this matter, please contact me at 215-392-0298 or etars@nlchp.org. In any event, we hope to hear from you within the next 30 days with information about a positive resolution to this problem, and about any steps you may be taking to ensure similar situations do not reoccur.

Sincerely,

Eric S. Tars, Esq.
Children & Youth Staff Attorney
National Law Center on
Homelessness & Poverty

cc: Jennifer Pringle, NY-TEACHES
Patricia McGuirk, NYSED Homeless Coordinator
Jeffery Simes, Goodwin Proctor

APPENDIX D
2010-08-10 TECHNICAL ASSISTANCE LETTER
TO OAKLAND MILLS

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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Maria Foscarinis
President
Executive Director

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August 10, 2010

Dr. Sydney Cousin, Superintendent
Dr. Craig Cummings, Coordinator of Pupil Personnel Services
Howard County Public School System
10910 Route 108
Ellicott City, MD 21042

Dear Dr. Cousin and Dr. Cummings:

I write regarding the enrollment eligibility of C.M. an unaccompanied homeless student seeking to attend Oakland Mills High School. The National Law Center on Homelessness and Poverty (NLCHP), a nonprofit organization based in DC, engages in advocacy to ensure that homeless students across the country have access to public schools. Among other efforts, we provide technical assistance regarding the rights of homeless children and youth nationwide. In making your decision, we hope that you will consider the following points.

As we understand it, C.M. was ejected from his father's and stepmother's home in Texas, where he initially stayed with friends for several weeks at a time and periodically slept on the lawn of a local church. Although he attempted to move back home, his father and stepmother refused to house him. His mother, moreover, has been institutionalized due to mental illness, and cannot care for him. Lacking other accommodations, C.M. arrived in Maryland in March of 2010 in order to live with his cousin and her boyfriend. He is currently staying in the living room of the two-bedroom apartment that the couple shares with additional relatives.

C.M.'s aunt, M.M., has attempted on more than one occasion to enroll her nephew in Oakland Mills High School in keeping with the provisions of the McKinney Vento Act concerning unaccompanied youth. While Dr. William Cohee, State Homeless Education Coordinator, also recommended that C.M. be enrolled, the County responded that they did not consider C.M. to be an unaccompanied youth. When Ms. Montanez contacted the Howard County Board of Education to appeal this determination, the Board informed her that the decision could not be appealed.

Our concerns regarding the HCPSS's handling of C.M.'s case, with respect to both the County's analysis of the substantive issues and the procedures it employed, are set forth below.

A) Substantive Issues

Under the McKinney Vento Act, a “homeless child or youth” includes “individuals who lack a fixed, regular, and adequate nighttime residence... [including] sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason...” 42 U.S.C. §§11434A(2)(A)-(B)(i). C.M.’ situation clearly meets that definition. He is sharing housing with his cousin and her boyfriend because he lost his own housing when his father and stepmother ejected him. He has no legal right to remain at this residence; even in the absence of any indication that he is about to be asked to leave, he remains a guest in the home, and his situation cannot be called permanent housing. C.M. is clearly “sharing the housing of other persons due to loss of housing.” *Id.* He meets the definition of a homeless child and should receive the protections of the Act.

The Act, moreover, defines “unaccompanied youth,” as a youth not in the physical custody of a parent or guardian. 42 U.S.C. §11434A(6). As C.M. was asked to leave his father’s home and is staying with his cousin and her boyfriend, outside of his parent’s physical custody, he qualifies under the Act as an unaccompanied youth.

B) Procedural Issues

From a procedural standpoint, it is problematic that the district failed to provide Ms. M. with a written explanation of its decision, including information about the right to appeal. 42 U.S.C. §§11432(g)(3)(B)(iii), (g)(3)(E). During her initial conversations with the principal of Oakland Mills High School and with Dr. Cummings, she was informed that because C.M. “has a father,” he did not qualify as homeless, and, therefore, was not entitled to a formal dispute resolution. This assessment not only fails to conform to the statutory definition of “unaccompanied youth,” which in no way equates the term with orphanhood, but also violates the requirement that unaccompanied youth be provided with a written explanation of any decision regarding school selection or enrollment. 42 U.S.C. §§11432(g)(3)(E)(ii).

While Ms. M. ultimately received a written response from the State Superintendent of Schools after submitting a letter of complaint to Governor O’Malley, the response merely reiterated that the County “did not consider [C.M.] to be a homeless, unaccompanied youth” and that he would not be enrolled. Not only did the letter fail to explain the basis for this determination, it also contained no reference to such procedural concerns as the relevant limitations periods for appeals.

In keeping with the dispute procedure outlined in COMAR 13A.05.09.07, Ms. M. subsequently appealed the County’s decision to the local board of education. The board, however, failed to issue a decision, stating instead that the County’s determination was “not a decision that [could] be appealed.” Contrary to this interpretation, Maryland regulations clearly state that “[t]he local board *shall decide* the appeal on an expedited basis,” indicating an obligation to issue a substantive decision upon appeal. 13A.05.09.07:A(6).

Finally, the County is required to enroll C.M. pending the resolution of this dispute. 42 U.S.C. §11432(g)(3)(C), (E). “When enrollment disputes arise, it is critical that students not be kept out of school... Permitting students to enroll immediately in the school of choice pending resolution of disputes helps provide needed stability....” U.S. Dep’t of Education, *Education for Homeless Children and Youth Guidance*, July 2004, page 14. To date, the County has not permitted C.M. to attend classes, depriving him of schooling since his arrival in March. Students in similar situations have been awarded monetary compensation for the loss of their educational opportunities.

In order to comply with the law, the County must *immediately* admit C.M. and ensure that he remain enrolled pending resolution of this dispute. We are writing to you at this time in the interest of resolving this matter without the need for legal action. If you would like to discuss this matter, please contact me at (202) 638-2535 or rnatelson@nlchp.org. In any event, we hope to hear from you within the next 30 days with information about a positive resolution to this problem, and about any steps you may be taking to ensure similar situations do not occur.

Sincerely,

Rachel Natelson, Esq.
Staff Attorney
National Law Center on Homelessness & Poverty

cc: William Cohee, Maryland State Homeless Education Coordinator
Nancy Grasmick, Maryland State Superintendent of Schools
Ellen Flynn Giles, Chairman, HCPSS Board of Education

APPENDIX E
N.J. V. NEW YORK – ORIGINAL PETITION/COMPLAINT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**N.J., individually, and as parent and
natural guardian of N.J. and A.J., minor
children, individually,
Plaintiffs,**

**v.
MALVERNE UNION FREE SCHOOL
DISTRICT and DR. JOHN B. KING,
JR., COMMISSIONER OF
EDUCATION OF THE STATE OF
NEW YORK,
Defendants.**

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**Civil Action No. 11-cv-05935-ADS-
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PLAINTIFFS' FIRST AMENDED VERIFIED PETITION

Plaintiffs N.J.(m)., N.J., and A.J. (collectively, "Plaintiffs") file this First Amended Petition against Defendants Commissioner of Education of the State of New York Dr. John B. King, Jr. and Malverne Union Free School District.

INTRODUCTION

1. This lawsuit seeks to remedy the failure of the education system in New York State and Malverne Union Free School District to provide N.J. and A.J., homeless children, with the substantive and procedural protections they are entitled to under the Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435 (the "McKinney-Vento Act") and New York State Education Law § 3209.

2. The Plaintiffs in this case are N.J.(m) and her homeless children, N.J. and A.J. (collectively "Plaintiff Children"), who live in Nassau County.¹ Defendants have denied

¹ Plaintiffs are identifying themselves in this pleading and all other public documents filed in this case through initials only. Plaintiff Children are minor children. Accordingly, the named Plaintiffs have requested identification by initials only in order to protect their privacy rights pursuant to the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g(b). See also *Webster Groves School Dist. v. Pulitzer Pub. Co.*, 898 F. 2d 1371, 1374-75 (8th Cir. 1990).

Plaintiff Children enrollment in their schools of origin in violation of the requirements of the McKinney-Vento Act, Education Law § 3209, and the regulations promulgated thereunder. The consequence of the Defendants' conduct is that homeless children are being turned away at the schoolhouse door midyear, significantly impacting their educational development and their opportunity to participate in the decision-making process regarding the provision of a free and appropriate education. Without relief, Plaintiff Children will be denied the educational benefits Congress sought to provide children like them in enacting the McKinney-Vento Act. *See* 42 U.S.C. § 11431.

3. As set forth more fully herein, Plaintiffs allege that these policies and practices violate state and federal laws. Plaintiffs therefore seek injunctive relief compelling the Defendants to maintain Plaintiffs' enrollment in their schools of origin pending the outcome of administrative remedies that Plaintiffs are currently pursuing.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3), on the ground that this action arises under the laws of the United States.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1), on the ground that Defendant Malverne Union Free School District is located in Nassau County, New York.

6. Plaintiffs have been deprived of their federal statutory rights and thus bring this action pursuant to 42 U.S.C. § 1983.

7. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs' claims of violations of New York State Education Law and the New York Constitution, Article XI, § 1.

8. There is an actual controversy between the Plaintiffs and the Defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201, and Federal Rule of Civil Procedure Rule 57.

PARTIES

N.J.(m), N.J., and A.J.

9. N.J.(m) is the mother of N.J. and A.J., who attend school in Malverne Union Free School District. Plaintiffs are all citizens of the United States and at all times mentioned herein were and are living in Nassau County.

Commissioner of Education of the State of New York Dr. John B. King

10. As Commissioner of Education of the State of New York, Dr. John B. King (“Dr. King”), is the New York state official responsible for educational matters affecting Malverne Union Free School District and for the general supervision and management of the Nassau County Public Schools. Dr. King is also officially responsible for ensuring compliance with federal, state, and local laws governing this system.

11. Dr. King is directly responsible for granting or denying stays of exclusion from New York public schools pending the outcome of a dispute under the McKinney Vento Act.

12. Dr. King, a state officer, was at all relevant times acting or purporting to act under color of state law.

The School District Defendants

13. Upon information and belief, Defendants Malverne Union Free School District (the “District”) is a municipal corporation duly organized and existing under New York State Education Law and is a Local Educational Agency (“LEA”) under the McKinney-Vento Act.

14. The District establishes local rules and practices concerning enrollment, transportation, and education of children within its district, including homeless children.

FACTUAL BACKGROUND

15. On May 8, 2009, the family suffered a fire in its residence and was forced to move out.

16. Plaintiffs have been homeless since the 2009 fire, but they managed to continue to stay in the District, in Lynbrook, New York, until September 2011.

17. After the residential fire forced Plaintiffs from their home, the family moved in with a friend, E.V., who also resided in Nassau County within the District. E.V.'s children also attend school in the District.

18. While living with E.V., the children did not have a bedroom but slept in the living room.

19. E.V.'s and Plaintiffs' relationship eventually deteriorated, negatively impacting the children's performance in school. N.J.(m) and her family could not remain with E.V. because the living conditions created undue stress on Plaintiff Children. Therefore, although grateful for the assistance E.V. had provided, Plaintiffs were forced to leave E.V.'s residence to ameliorate the emotional strain caused by the broken relationship.

20. After leaving E.V.'s residence, Plaintiffs moved in with another family friend, V.C., in September 2011. V.C. resides in a single bedroom suite in the basement of a home that he owns and leases to another family. This home is located outside the District. N.J. and A.J. do not have a bedroom, but instead sleep on the sofa in the living room of the basement.

21. The living situation with V.C. is not a permanent housing solution, but a temporary situation necessitated by economic hardship. Plaintiffs' alternative is to attempt to move into a homeless shelter, which they do not wish to do.

22. Immediately upon Plaintiffs' leaving E.V.'s residence, E.V., for unknown reasons, notified the District of Plaintiffs' departure. Upon information and belief, the District communicated with E.V. regarding Plaintiffs' living situation, without Plaintiffs' authorization.

23. N.J.(m) intends to move the family back into the District as soon as she is able to secure affordable housing.

24. On September 20, 2011, the District notified Plaintiffs that Plaintiff Children may not attend school in the District because the family lives outside the District.

25. The family attempted to appeal the decision, but due to a technical defect in service, the petition was not heard. On November 8, 2011, the District again informed N.J.(m) that her children may not attend school in the District and that they would be excluded from school effective November 18, 2011.

26. On November 17, 2011, Plaintiffs personally served the District Liaison with a petition appealing the District's decision to exclude the children and seeking a stay of exclusion pending the outcome of the petition.

27. In response to Plaintiffs' petition, the District filed an Affidavit in Opposition to Stay, claiming that the November 16 appeal was untimely, that the appeal was not properly served (even though the appeal was properly submitted to the District's homeless liaison), and claiming that Plaintiffs voluntary left E.V.'s residence and chose to move in with V.C.

28. On November 30, 2011, Plaintiffs were informed by telephone that the stay request was denied. However, Plaintiffs were not informed of the date on which the children would be excluded from school.

Rights of Plaintiffs as Homeless Children Under Federal and State Law

The McKinney-Vento Act

29. Congress acted decisively to remove the obstacles faced by homeless children in enacting the McKinney-Vento Act, Pub. L. No. 100-77, § 102(b)(2), 100 Stat. 482, 485 (codified as amended at 42 U.S.C. §§ 11301, *et seq.*), in 1987 to provide a broad range of assistance to homeless individuals and families. Subtitle VII-B of the McKinney-Vento Act relates to the education of homeless children and youth. 42 U.S.C. §§ 11431-11435.

30. The McKinney-Vento Act states that children and youths who “lack a fixed, regular, and adequate nighttime residence” will be considered homeless. *Id.* § 11434a(2)(A). Congress specifically studied the housing arrangements of homeless families and concluded that it was essential to the functioning of the McKinney-Vento Act that families “doubling up” with others in temporary housing arrangements must be included within the definition of homeless. Thus, in defining what it means to “lack a fixed, regular, and adequate nighttime residence,” the McKinney-Vento Act expressly includes “children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.” *Id.* § 11434a(2)(B)(i).

31. In enacting the McKinney-Vento Act, Congress made available funds for States to assist in the education of homeless children on the condition that “[e]ach State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . . as provided to other children and

youths.” *Id.* § 11431(1). The McKinney-Vento Act also mandates that if the State enacts “regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths,” it must “review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.” *Id.* § 11431(2). The McKinney-Vento Act imposes the same obligations on LEAs. *Id.* § 11432(g)(7).

32. The McKinney-Vento Act specifically requires that States ensure that the LEAs provide an expeditious process of resolving disputes affecting the educational rights of homeless children. *Id.* § 11432(g)(3)(E)(iii).

33. Moreover, the McKinney-Vento Act states that if a dispute arises over school enrollment, the homeless student “*shall* be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute.” *Id.* § 11432(g)(3)(E)(i) (emphasis added).

34. The McKinney-Vento Act requires that “[e]ach State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . . as provided to other children and youths.” 42 U.S.C. § 11431(1). The McKinney-Vento Act also mandates that if the State enacts “regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths,” it must “review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.” *Id.* § 11431(2).

New York State Education Law § 3209

35. New York State Education Law § 3209 requires the Defendants to provide for the education of homeless children in New York State. Pursuant to statutory authority, New York State enacted regulations which provide for the education of homeless children in New York State. *See* 8 N.Y.C.R.R. § 100.2(x). Defendant Dr. King, as Commissioner of Education of the State of New York, is responsible for enforcing these regulations.

36. New York Education Law § 3209 mandates that a homeless child's family or an unaccompanied youth may choose whether the child will attend school where the family or child lived before becoming homeless (the "school district of origin") or where he or she currently lives (the "school district of current location"), and that the school district must immediately admit and enroll the homeless child. N.Y. Educ. Law § 3209(1)-(2).

37. In implementing Education Law § 3209, however, New York State has enacted 8 N.Y.C.R.R. § 100.2(x)(7)(ii)(c). Under this regulation, each school district shall:

delay for 30 days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the commissioner pursuant to Education Law, section 310 with a stay application within 30 days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the commissioner renders a decision on the stay application.

The Defendants' Duties Under Federal and State Law

38. Under the aforementioned laws, Dr. King is obligated, in relevant part, to undertake, supervise, or ensure the State's compliance with the following:

- (a) prepare and carry out an adequate state plan for implementing the McKinney-Vento Act and ensure the LEAs' compliance with the plan;

- (b) ensure that the local social service agency complies with the provisions of New York State Education law and its regulations in providing education and transportation services to homeless children and youth;
- (c) review and revise policies that may act as barriers to and provide services that enable the enrollment, attendance, and success in school of each homeless child in New York State, including policies related to transportation, records requirements, and residency requirements;
- (d) provide procedures for the prompt resolution of placement and transportation assistance disputes affecting homeless children in New York State;
- (e) identify and address problems affecting the education of homeless children in New York State;
- (f) ensure that policies and practices are adopted by the State and LEAs to ensure that homeless children in New York State are not stigmatized or isolated;
- (g) ensure that the LEAs provide written notice to homeless school-age children and the parents or legal guardians of such children of any adverse action affecting their placement in schools, a fair opportunity to challenge such decisions, including the notice of the availability of an ombudsperson, and a process of resolving the dispute;
- (h) ensure the LEAs' compliance with state law and regulations (New York Education Law § 3209 and 8 N.Y.C.R.C. § 100.2(x));
- (i) ensure that the LEAs locate and provide educational services to all eligible children in New York State;

- (j) ensure that homeless youths and youths separated from the public schools are identified and accorded equal access to appropriate secondary education and support services; and
- (k) identify homeless children and youth and assess their special needs.

39. Under the same laws discussed above, the School District Defendants are obligated to:

- (a) make available to each homeless child and family who seeks to enroll (or continue the child) in school the designation form provided by the commissioner;
- (b) review the designation form to assure that it has been completed;
- (c) where the school district of origin is designated, the child shall be entitled to return to the school building where previously enrolled;
- (d) where the school district is the school district of current location, (1) the child shall be admitted to the school, (2) the homeless child shall be treated as a resident for all purposes, and (3) the LEA must make a written request to the school district where the child's records are located for a copy of such records and forward the designation form to the commissioner and the school district of origin if applicable;
- (e) where a homeless child is not entitled to receive transportation pursuant to Education Law § 3209(4) from the Department of Social Services or from the Division for Youth, the child shall be transported by the designated school district;

- (f) establish policies and procedures to ensure compliance with the provisions of New York State Education Law § 3209 and its regulations, and review and revise any local regulations, policies, or practices that may act as barriers to the enrollment or attendance of homeless children in school or their receipt of comparable services as defined in Part B of Title VII of the McKinney-Vento Act; and
- (g) periodically report such information to the commissioner as he or she may require to carry out the purposes of Education Law § 3209.

Defendants’ Violations of Their Statutory and Other Duties

40. Defendants have failed to revise their policies and practices, which create a barrier to the enrollment, attendance, and success of homeless youths, and have failed to ensure that LEAs revise their policies and practices regarding education of homeless children.

41. Defendants have implemented a stay procedure whereby homeless children such as Plaintiffs may be excluded from their schools of origin pending the outcome of dispute resolution.

42. New York State Education Department’s (“NYSED”) appeals process is lengthy, which is difficult for *pro se* parents of homeless children to comply with.

43. As Commissioner of Education of the State of New York, Dr. King is responsible for overseeing NYSED’s appeals process, including but not limited to granting or denying a stay of exclusion.

44. Denial of stay disrupts a child’s education because if an appeal is successful after a stay is denied, a child will be asked to return to the district of origin months later when NYSED finally comes to a decision. This essentially moots the appeal process.

45. Homeless liaisons at school districts such as the Malverne Union Free School District lack the resources and information to provide assistance to homeless families such as Plaintiffs as part of the appeal process.

46. Delays in the appeals process present an obstacle to homeless families, whose situations and means do not permit them to wait for months to receive a final decision from NYSED. The practical effect of NYSED's appeals process is to deny homeless youths such as the Plaintiffs an effective right of appeal.

47. Defendants have failed to establish an effective and timely procedure for the resolution of disputes.

48. The failure to comply with the dispute resolution requirements has been twice noted by monitors from the federal Department of Education charged with assessing implementation of the McKinney-Vento Act. In 2009, the monitoring report stated "NYSED must issue—and submit a copy to ED—a written memorandum clarifying that during a dispute resolution process at the LEA and SEA levels, the LEAs of origin and residence must offer immediate enrollment in the requested district and provide transportation to the school in which the child is placed until the dispute is resolved." U.S. Dept. of Education, Student Achievement and School Accountability Program, *New York State Education Department, March 23-27, 2009*, 19 (2009). A recurring finding is noted in the 2010 monitoring report, stating that "[t]he NYSED has not ensured that its LEAs have procedures for the prompt resolution of disputes and a process to direct LEAs on how to resolve enrollment disputes consistent with LEA requirements stated in section 722(g)(3)(E)." U.S. Dept. of Education, Student Achievement and School Accountability Program, *New York State Department of Education, May 24-28, 2010*, 23 (2010). However, outside of withholding funds from the entire state (which would harm the tens of

thousands of homeless students appropriately identified each year), the federal Department has little power to enforce its findings on the State, and the State's non-compliance has persisted unabated.

49. Dr. King is complicit in permitting districts like Malverne Union Free School District to implement such a process and take such positions, which is a further violation of the McKinney-Vento Act.

50. Defendants have refused to recognize that Plaintiffs are homeless; that is, lacking "a fixed, regular, and adequate nighttime residence."

51. Upon information and belief, Defendant District violated the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g, by communicating with E.V. about Plaintiffs' living conditions, without Plaintiffs' authorization.

52. Defendants have refused to allow Plaintiffs to remain enrolled in their schools of origin.

53. Defendants have refused Plaintiffs' stay request pending the outcome of Plaintiffs' appeal.

54. Defendants have refused or failed to provide Plaintiffs their full rights and entitlements under the law.

Injury to Plaintiffs

55. As set forth above, as a result of Defendants' policies and practice, Plaintiffs have suffered and continue to suffer irreparable harm.

56. Plaintiff Children N.J. and A.J. are denied protection under the McKinney-Vento Act entitling them to continued enrollment in the schools of their origin and are being forced to temporarily enroll in an adjacent school district midway through the school year.

57. Plaintiffs' injuries result from Defendants' failure to comply with the McKinney-Vento Act.

58. Plaintiffs have no adequate remedy at law.

CAUSES OF ACTION

COUNT 1

VIOLATIONS OF THE MCKINNEY-VENTO ACT

59. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

60. The processes established by NYSED, and enforced by Dr. King, for pursuing such an appeal and for seeking to keep children such as N.J. and A.J. in school pending the appeal are unnecessarily cumbersome and cannot reasonably be complied with by homeless families such as Plaintiffs.

61. In addition, on information and belief, and under Dr. King's authority, NYSED has distributed to districts throughout the State, such as Malverne Union Free School District, incorrect information about the federal definition of homelessness under the McKinney-Vento Act and their duties to immediately enroll homeless students and maintain their enrollment throughout the duration of any dispute process. As a result, homeless liaisons that the school districts are required to employ to assist homeless families such as the Plaintiff family have been unable to provide those families the assistance and direction the law requires.

62. By allowing districts to contest the stay of the disenrollment order, the NYSED appeals process imposes special burdens on such families. Most families proceed through the appeals process *pro se*, but their petitions are contested by lawyers suggesting evidentiary burdens, akin to those in seeking temporary injunctions, which Dr. King and the NYSED Board

of Commissioners accepts, promulgates, and uses to deny enrollment to homeless students pending the final resolution of their appeals. In fact, the issue of a stay should never be raised, as the students are entitled to enrollment throughout the dispute resolution process. Because they will be denied the opportunity to keep their children in the school of their choice pending an appeal, those families are essentially forced to acquiesce in the decision of the school districts to terminate enrollment. The alternative—to permit successive disruptions of a homeless child's education—is unacceptable to the overwhelming majority of homeless families.

63. This 30-day delay and appeal requirement is in direct contravention of the McKinney-Vento Act, which mandates that the homeless child must be *immediately* enrolled in the school district of their choice, pending resolution of the dispute. *See* 42 U.S.C. § 11432(g)(3)(E)(i).

64. Moreover, NYSED's appeal process is needlessly and excessively lengthy. Months typically pass before a decision on the merits is reached. Plaintiffs can thus expect a semester or more to pass between the time their stay request is denied and the time that they can expect a final decision from NYSED. These excessive delays, for which Dr. King as overseer of NYSED's appeals process is ultimately responsible, impose undue burdens on homeless families seeking to exercise their rights under the McKinney-Vento Act.

65. After denying Plaintiffs a proper opportunity to be heard and offer evidence to show that they are, in fact, homeless, NYSED, under Dr. King's direction and/or supervision, essentially mooted their appeals of the District's decision to terminate their enrollment. Plaintiffs should not be forced to re-enroll in a new school district only to have their schooling disrupted once more many months from now when NYSED finally reaches a decision on the

merits. Without relief with respect to the stay decision—which is effectively dispositive here—Plaintiffs will effectively be denied an appeal.

66. Defendants have failed to address the impediments to enrollment caused by residency and record requirements in violation of 42 U.S.C. § 11432(g)(1)(F), have failed to develop, “review, [and] revise policies to remove the barriers to the enrollment and retention of homeless children and youth” in violation of 42 U.S.C. § 11432(g)(1)(I), and have failed to ensure homeless students’ right to be “immediately admitted to the school in which enrollment is sought, pending resolution of the dispute” in violation of 42 U.S.C. § 11432(g)(3)(E)(i).

67. Defendants have failed to “review and revise any policies that may act as barriers to the enrollment of homeless children and youth in schools,” as required under 42 U.S.C. § 11432(g)(6) and (9).

68. Defendants have violated the rights of the Plaintiffs under the McKinney-Vento Act, 42 U.S.C. §§ 11431-11435.

COUNT II

VIOLATIONS OF NEW YORK STATE EDUCATION LAW § 3209

69. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

70. Plaintiffs constitute homeless children as defined in New York Education Law § 3209(1)(a)(1) as they lack a “fixed, regular, and adequate nighttime residence.”

71. Plaintiffs have been denied the right to attend a public school in the “school district of origin” as that term is defined in New York Education Law § 3209(1)(c).

COUNT III

VIOLATIONS OF 42 U.S.C. § 1983

72. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

73. By implementing and authorizing the policies and practices pursuant to which Plaintiffs are denied access to public education in the District, Defendants have deprived, and will continue to deprive, Plaintiffs of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States in violation of 42 U.S.C. § 1983 and of rights guaranteed by the Fourteenth Amendment of the United States Constitution, Article XI § 1 of the New York Constitution, the McKinney-Vento Act, 42 U.S.C. §§ 11431-11435, and New York Education Law § 3209 and the regulations promulgated thereunder.

74. All Defendants have acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Defendants' acts described herein were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendants acted willfully, knowingly, and with the specific intent to deprive Plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983 and by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Defendants have conspired among themselves to do so (taking numerous overt steps in furtherance thereof), and failed to prevent one another from doing so.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

75. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

76. N.J.(m), N.J., and A.J. seek a temporary restraining order to prohibit Defendants from dis-enrolling Plaintiffs in their schools of origin, permitting them to attend school in the District pending full resolution of this dispute in accordance with the pendency provision of the McKinney-Vento Act as set forth in 42 U.S.C. § 11432(g)(3)(E)(i), and to provide Plaintiffs with timely school bus or other safe and adequate transportation to their schools of origin for so long as they continue to be homeless as defined in the McKinney-Vento Act.

REQUEST FOR PRELIMINARY INJUNCTION

77. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

78. N.J.(m), N.J., and A.J. seek a preliminary injunction to prohibit Defendants from dis-enrolling Plaintiffs in their schools of origin, permitting them to attend school in the District pending full resolution of this dispute in accordance with the pendency provision of the McKinney-Vento Act as set forth in 42 U.S.C. § 11432(g)(3)(E)(i), and to provide Plaintiffs with timely school bus or other safe and adequate transportation to their schools of origin for so long as they continue to be homeless as defined in the McKinney-Vento Act.

REQUEST FOR PERMANENT INJUNCTION

79. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

80. N.J.(m), N.J., and A.J. seek a permanent injunction mandating Defendants' compliance with the McKinney Vento Act and NY Education Law § 3209.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all persons similarly situated, pray that this Court:

- A. Immediately grant a temporary restraining order and preliminary injunction compelling the Defendants to maintain Plaintiffs' enrollment in their schools of origin and provide Plaintiffs with transportation to and from their schools of origin;
- B. Grant a permanent injunction against Defendants;
- C. Award Plaintiffs their costs and reasonable attorneys' fees; and
- D. Award such other and further relief as the Court may deem appropriate.

Dated: January 10, 2012

By: /s/Stephen P. Davidson

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N.J.(m), N.J., and A.J.

CERTIFICATE OF SERVICE

I hereby certify that I have this date caused to be forwarded via ecf filing, a copy of the following document: Plaintiffs' First Amended Verified Petition, to:

Joseph W. Carbonaro, Esq.
Frazer & Feldman, LLP
Attorneys for Defendant Malverne
Union Free School District
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Dated: January 10, 2012

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APPENDIX F
N.J. V. NEW YORK – MEMO ISO ORDER TO SHOW
CAUSE FOR TRO/PI

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

**N.J.(m), individually, and as parent and
natural guardian of N.J. and A.J. minor
children, individually,
Plaintiffs,**

v.

**STATE OF NEW YORK, NEW YORK
STATE EDUCATION DEPARTMENT,
and MALVERNE UNION FREE
SCHOOL DISTRICT,
Defendants.**

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**Civil Action No. 2:11-cv-05935-ADS-
AK**

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF
COURT’S DECEMBER 13, 2011 ORDER GRANTING TEMPORARY
RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

Pursuant to this Court’s December 13, 2011 Order, Plaintiffs N.J.(m), N.J., and A.J. respectfully submit this brief in support of the Court’s December 9, 2011 conclusion that the proper inquiry for showing a likelihood of success on the merits is Plaintiffs’ likelihood of showing that the state regulation permitting the Commissioner to deny a stay of disenrollment during the pendency of Plaintiffs’ § 310 appeal conflicts with the pendency provision of the McKinney-Vento Act, 42 § 11432(g)(3)(E)(i), and in support of the Court’s December 13, 2011 Order granting Plaintiffs’ request for Temporary Restraining Order and Preliminary Injunction.

I. INTRODUCTION

During the hearing on Friday, December 9, 2011, this Court asked, “At first blush it would appear that I would have to decide, as far as standing is concerned, whether in fact the plaintiff minor children were homeless...Query: Do I have to decide that now and risk a contrary decision with the state on the very issue of homelessness?” (Dec. 9, 2011 P.M. Hrg. Trans., 9:6-14, attached hereto as **Exhibit 1**.) The Court’s answer and analysis was precisely correct: “The

answer is in the statute...that if there is a dispute over enrollment, including homelessness, the child shall be immediately admitted to the school in which enrollment is sought pending resolution of the dispute. Resolution of the dispute in my view means the final resolution of the dispute and not the denial of a stay.” (*Id.*, 9:14-10:9.) Relying on the plain language of the McKinney-Vento Act, the Court correctly held that its role in deciding the preliminary injunction is to enforce the plain words of the statute, which oblige the school district to enroll the children (or not disenroll the children) pending final resolution of the dispute. Although we have not located any case law that directly weighs on this issue, legislative history and public policy support the Court’s conclusion.

II. FACTUAL BACKGROUND

1. The McKinney-Vento Act And New York Rules And Regulations Part 100.

This Court already is familiar with the history and provisions of the McKinney-Vento Act (the “Act”). *See* December 13, 2011 Memorandum of Decision and Order (the “December 13 Order”) at 6-9 [Dkt. No. 16]; *see also Nat’l Law Ctr. on Homelessness & Poverty v. New York*, 224 F.R.D. 314, 318 (E.D.N.Y. 2004) (recounting the history of the McKinney-Vento Act). As the Court is aware, the McKinney-Vento Act first was enacted in 1987. *See* Pub. L. No. 100-77, 101 Stat. 525 (codified at 42 U.S.C. § 11431). It was reauthorized as part of No Child Left Behind in 2001. *See* Pub. L. 107-110, Title X, § 1032, 115 Stat. 1989 (codified at 42 U.S.C. § 11301 *et seq.*). Its New York state law counterpart, which is now New York Education Law § 3209, first was enacted in 1990. *See* 1990 N.Y. ALS 53, 12. New York Rules and Regulations Part 100.2(x), which purports to implement the requirements of the McKinney-Vento Act, has existed in its present form since 2005. *See* 8 NYCRR § 100.2 (legislative history).

The Act anticipates that school districts and families may disagree about the applicability of the protections afforded by Congress under the Act, in particular, whether a child may enroll in his or her school of choice, and the Act specifies how a school district is to treat a child in such a situation:

(E) ENROLLMENT DISPUTES- If a dispute arises over school selection or enrollment in a school--

(i) the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute;

(ii) the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;

(iii) the child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

(iv) in the case of an unaccompanied youth, the homeless liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute.

42 U.S.C. § 11432(g)(3)(E)(1).

The Act further requires that states implement dispute resolution provisions. *See* 42 U.S.C. § 11432(g)(1)(C). In New York, the dispute resolution provision enacted in New York's Rules and Regulations Part 100 necessarily incorporates an appeal process as mandated by the Act. *See* 42 U.S.C. § 11432(g)(3)(E)(ii); 8 CRR-NY 100.2(7)(ii)(b) ("Dispute resolution. Each school district shall: (b) provide a written explanation, including a statement regarding the right to appeal pursuant to 42 U.S.C. section 11432(g)(3)(E)(ii)...and the form petition for commencing an appeal to the commissioner...").

A "dispute" covered by the dispute resolution process mandated by the McKinney-Vento Act and implemented in New York's Rules and Regulations includes a dispute about the status of the child as homeless. *See* 8 CRR-NY 100.2(7)(ii)(a) ("Dispute resolution. Each school district shall: (a) establish procedures, in accordance with 42 U.S.C. section 11432(g)(3)(E), for the prompt resolution of disputes regarding school selection or enrollment of a homeless child or

youth [] including, but not limited to, disputes regarding transportation and/or *a child's or youth's status as a homeless child* or unaccompanied youth.”) (emphasis added).

2. Plaintiffs And The Malverne Union Free School District Are Engaged In A Dispute.

There is no doubt that there exists a dispute between Plaintiffs and Defendant Malverne Union Free School District. Plaintiffs N.J. and A.J. (the “Children”) have attended school in the Malverne Union Free School District (the “District”) since 2007. On September 20, 2011, the District informed Plaintiffs that the Children may not attend school in the District because the family lives outside of the District. (Verif. Compl. ¶ 24.) Plaintiff N.J.(m) attempted to appeal this decision, but because she served the Petition directly on the School District instead of the homeless liaison, the Board of Education would not hear the petition. (*Id.* ¶ 25.) On November 8, 2011, the District again informed Plaintiffs that the Children may not attend school in the District. (*Id.*) On November 17, 2011, Plaintiffs personally served the District Liaison with the petition appealing the District’s decision to exclude the Children and seeking a stay of exclusion pending the outcome of the petition. (*Id.* ¶ 26.) Plaintiffs’ Petition was received by the Homeless Liaison and served on the Board of Education. (November 17, 2011 Verification by Thedra McCrae, attached hereto as **Exhibit 2**.) The District served an Affidavit of Opposition, opposing the request for stay. (Affidavit of Opposition, attached to Plaintiffs’ Memorandum In Support Of TRO as Exhibit B [Dkt. No. 3].) Plaintiffs’ request for a stay pending resolution of the dispute was denied.(Verif. Compl. ¶ 28.) Plaintiffs’ dispute still is pending.

III. ARGUMENT

1. A Plain Reading Of The Statute And NY Regulations Support The Court’s Ruling.

“It is axiomatic that the plain meaning of a statute controls its interpretation.” *Lee v. Bankers Trust Co.*, 166 F.3d 540, 544 (2d Cir. 1999). Here, in its December 13, 2011 Order, the

Court correctly interpreted the Act according to its plain meaning, finding that the Court need not make a determination of whether Plaintiffs are homeless in order to apply the pendency provision of the Act.

The language of the pendency provision of the McKinney-Vento Act is clear on its face – if a dispute arises over school selection or enrollment in a school, the child must immediately be admitted pending resolution of the dispute. *See* 42 U.S.C. § 11432(g)(3)(E)(1). The dispute resolution process referred to in the pendency provision also is clear: the child must be permitted to remain enrolled during any appeal process. *See id.* § 11432(g)(3)(E)(ii). Finally, there can be no doubt that disputes over a child’s status of homeless are subject to this dispute resolution provision and pendency provision. *See* 8 CRR-NY 100.2(7)(ii)(a).

Accordingly, under a plain reading of the statute and the portions of the New York regulation that are consistent with the statute: (1) if a dispute arises about school selection or enrollment based upon a dispute about the child’s status as homeless; (2) the child must be immediately enrolled in his/her school of choice; (3) pending resolution of the dispute through the dispute resolution process that includes *at least* the statutory appeal procedure.

In this case, there is no reasonable disagreement that: (1) there is a dispute between Plaintiffs and Defendants about the Plaintiff Children’s enrollment, which is based on a dispute about the Plaintiff Children’s status as homeless; (2) Plaintiffs have chosen to remain in the schools of the Malverne Union Free School District, which they have attended for years prior to becoming homeless; and (3) Plaintiffs have appealed the District’s determination that Plaintiff Children are not homeless; and (4) the appeal currently is pending. (Verif. Compl. ¶¶ 24-28.) Based on a plain reading of the Act, the Children must be permitted to remain in their school of choice until their dispute with the District is resolved.

The District has argued that the requirement that the dispute resolution process be completed has been met here. The District points to the New York regulation permitting a parent to seek a stay of the initial decision by the District to exclude a homeless student from school, and claims that it can legally remove the Children from the District's schools upon a denial of the stay. *See* Dec. 9, 2011 P.M. Hrg. Trans. 3:16-19 (**Ex. 1**); 8 CRR-NY 100.2(x)(7)(ii)(c). The District is incorrect. The Act creates no artificial cut-off to the boundaries of a "dispute" concerning enrollment; it states simply that until the "dispute" is resolved, a student seeking the protection of the Act "shall be immediately admitted to the school in which enrollment is sought" 42 U.S.C. § 11432(g)(3)(E)(1). Because the "dispute" here has not been resolved, the children are entitled to the full protection of the Act.

The express language of the statute dictates that the question of whether Plaintiffs are homeless is not to be resolved in order for the pendency provision to apply, but is a question to be decided upon resolution of the parties' dispute. 42 U.S.C. § 11432(g)(3)(E)(1); 8 CRR-NY 100.2(7)(ii)(a).

2. Legislative Intent Supports The Court's Ruling.

As noted above, the Act was reauthorized in 2001 in the No Child Left Behind Act. Speaking about H.R. 1, on May 22, 2001, Representative Judy Biggert, who helped to craft No Child Left Behind, stated,

Mr. Chairman, H.R. 1 strengthens the McKinney program by incorporating the provisions contained in the McKinney-Vento Homeless Education Act of 2001. This bill ensures that a homeless child is immediately enrolled in school. That means no red tape, no waiting for paperwork, no bureaucratic delays. It limits the disruption caused by homelessness by requiring schools to make every effort to keep homeless children in the school they attended before becoming homeless. It also creates a mechanism to quickly and fairly resolve enrollment disputes, ensuring that such process burdens neither the school nor the children's education.

147 Cong. Rec. 8858 (2001).

Clearly, the legislative intent in enacting the pendency provision was to ensure that children's education would not be disrupted pending the resolution of any dispute.

3. Public Policy Supports The Court's Ruling.

The pendency provision of the Act – the provision that provides for children to remain in their school of origin pending resolution of a dispute with a school district – serves a crucial role in helping to preserve for children an anchor during a tumultuous time in their lives. With recent economic downturn, homelessness has increased, particularly among families. According to a report by the National Alliance to End Homelessness, released January 1, 2011, the largest percentage increase in the homeless population in 2008-2009 was in the number of family households, which increased by over 3,200 households (4 percent increase). *See* Sermons, Witte, State of Homelessness in America, A Research Report on Homelessness, at 1 (Jan. 2011), *available at* www.endhomelessness.org. According to the National Coalition of Homelessness, “of every 200 children in America, three will be homeless today and more than double that number will be at risk for homelessness.” National Coalition for the Homeless, “Education of Homeless Children and Youth,” (Sept. 2009), *available at* www.nationalhomeless.org.

Homeless children frequently are bounced around from school to school as their families seek safe, affordable housing. *Id.* Indeed, homeless children and youth are often forced to transfer schools *multiple times in a single year*. *Id.* Every time a child has to change schools, his or her education is disrupted; homeless children are *nine times* more likely to repeat a grade, *four times* more likely to drop out of school, and *three times* more likely to be placed in special education programs than their housed peers. *Id.*, *citing* Institute for Children and Poverty. (2008). “National Data on Family Homelessness;” *available at* <http://www.icpny.org> (emphasis added).

The pendency provision of the Act aims to end, or at least mitigate, this instability. It allows students to remain in school pending the outcome of the dispute and prevents the child from having to change schools multiple times when a stay is denied but a petition is granted. As Representative Biggert explained, stability for the children's sake is the very purpose of the Act: "[D]espite the progress made by this Act over the last decade, we know that homeless children continue to miss out on what is the only source of stability and promise in their lives: school attendance." 147 Cong. Rec. 8858.

The District's tortured construction of the Act's requirement for resolution of the dispute to mean a decision on the request for an interim stay while the dispute is ongoing defeats the underlying purpose of the statute itself, which is to prevent homeless children from being moved between several schools while homeless. Under the District's construction, a child would be required to move between schools pending an appeal, even if the child ultimately wins that appeal. Thus, by pursuing the appeals process to its conclusion, a District could keep a child in flux for years. This would render meaningless the protections of the Act.

Public policy therefore dictates that the Court need not determine whether Plaintiff Children are in fact homeless in order to grant a Temporary Restraining Order or Preliminary Injunction ordering the Malverne Union Free School District to allow Plaintiff Children to remain in their school of origin pending the outcome of their dispute.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that the Court's December 13, 2011 is correct and accurately interprets the McKinney-Vento Act.

Dated: December 16, 2011

By: s/Stephen P. Davidson

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N.J.(m), N.J., and A.J.

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
N.J., individually, and as parent and natural guardian
Of N.J. and A.J., minor children, individually,
Plaintiff,
-against- : US Courthouse
Central Islip, NY

STATE OF NEW YORK, NYS
EDUCATION DEPARTMENT, and
MALVERNE UNION FREE SCHOOL DISTRICT,
Defendants. : December 9, 2011

- - - - - X
EXCERPT OF PROCEEDINGS - AFTERNOON SESSION
BEFORE THE HONORABLE ARTHUR D. SPATT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Transcript produced by computer.

1 first instance has to the right to do.

2 So I read the statute as meaning that the
3 decision, *ab initio*, that the initial determination,
4 whatever one chooses to call it, is made by the school
5 district. And I think that is supported in law by the
6 commissioner's interpretation of it; the Commissioner of
7 Education, who has issued regulations allowing the school
8 district to do what it did.

9 So I don't think the statute is intended to give
10 the plaintiff a stay that can last literally for years.

11 THE COURT: So you think the stay is until the
12 decision made by the school board, by the school?

13 MR. CARBONARO: Under McKinney-Vento I think the
14 stay is until 30 days after the school board, including
15 the school district, makes a decision.

16 Under the Commissioner's regulations, though, it
17 goes further than that. Under state law it is until after
18 the Commissioner of Education denies the stay. I think it
19 is 30 days after the Commissioner denies the stay.

20 So in this instance, as I pointed out before,
21 the children have been in the school for 72 days after the
22 parties received notice that they would be excluded. Now,
23 I don't know what she has done in those 72 days, but it
24 would seem to me, your Honor, that there was more than
25 adequate time for this plaintiff to have enrolled her

1 THE COURT: Okay. This is an application for an
2 order pursuant to Federal Rule 65A, enjoining the
3 defendants during the pendency of this action from
4 disenrolling plaintiffs from their schools of origin
5 pending the outcome of the dispute resolution process.

6 Now, this is a very interesting case. At first
7 blush it would appear that I would have to decide, as far
8 as standing is concerned, whether in fact the plaintiff
9 minor children were homeless. That is the real underlying
10 issue in the case. Of course the school district decided
11 they weren't homeless under the statute.

12 Query: Do I have to decide that now and risk a
13 contrary decision with the state on the very issue of
14 homelessness? The answer is in the statute.

15 The answer clearly to me is in the
16 McKinney-Vento Act which is designed to cover situations
17 like this. And what does the Act say? That is Title 42,
18 Section 11432, I believe. Title: *Grants For State and*
19 *Local Activities For the Education of Homeless Children.*
20 The key portion of the statute is the McKinney-Vento Act,
21 42 United States Code, Section 11434A, subdivision 2.
22 With respect to the section on enrollment disputes,
23 subdivision E:

24 *"If a dispute arises over school selection or*
25 *enrollment in a school - i, the child or youth shall be*

1 *immediately admitted into the school in which enrollment*
2 *is sought, pending resolution of the dispute."*

3 That is the key language, that if there is a
4 dispute over enrollment, including homelessness, the child
5 shall be immediately admitted to the school in which
6 enrollment is sought pending resolution of the dispute.

7 Resolution of the dispute in my view means the
8 final resolution of the dispute and not the denial of a
9 stay.

10 Now, the state statute, entitled Education of
11 Homeless Children, says in part:

12 *"Provided that if the parent or guardian of a*
13 *homeless child or youth...commences an appeal to the*
14 *Commissioner pursuant to Education Law, Section 310, a*
15 *stay application within 30 days of such final*
16 *determination, the homeless child or youth...shall be*
17 *permitted to continue attending the school he or she is*
18 *enrolled in at the time of the appeal until the*
19 *Commissioner renders a decision on the stay application."*

20 Well, according to counsel for the school
21 district, they allowed the children to stay longer than
22 the 30 days. That is under the state statute. The
23 federal statute, however, says, *"If there is a dispute*
24 *over enrollment, the child shall be immediately admitted*
25 *to the school in which enrollment is sought pending*

EXHIBIT 2

FORM FOR VERIFICATION OF RECEIPT AND TRANSMITTAL OF PETITION AND MATERIALS BY LOCAL EDUCATIONAL AGENCY LIAISON

I, Thedra McCrae (name of liaison), the local educational agency liaison for homeless children and youth for the

Malverne School District (name of school district) School

District; verify that on the 17 day of November, 2011

I received the form petition and supporting documents for N. J. (by mail)

(name of parent, guardian or unaccompanied youth) and will transmit these documents on

behalf of N. and A. J. (name of parent, guardian or unaccompanied youth) to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

Date: November 17, 2011

Signature of Local Educational Agency Liaison: Ms. Thedra McCrae

APPENDIX G
N.J. V. NEW YORK – ORDER

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
N.J., individually, and as parent and natural guardian of N.J.
and A.J., minor children, individually,

Plaintiffs,

-against-

**MEMORANDUM OF
DECISION AND ORDER**
11-CV-5935 (ADS) (AKT)

STATE OF NEW YORK, NEW YORK STATE
EDUCATION DEPARTMENT and MALVERNE UNION
FREE SCHOOL DISTRICT,

Defendants.

-----X

APPEARANCES:

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By: Joseph W. Carbonaro, Esq., Of Counsel

SPATT, District Judge.

The plaintiffs in this case are N.J. and her children N.J(m)¹ and A.J (“the plaintiff children” and collectively “the Plaintiffs”). The Plaintiffs allege that they are “homeless” as

¹ Because the minor child N.J. has the same initials as his mother, the Court will refer to the minor child as “N.J.(m)”.

defined under federal and state law. The Plaintiffs have commenced this action against the Malverne Union Free School District (“the District”), the State of New York (“the State”) and the New York State Education Department (“the NYSED” and together with the District and the State “the Defendants”). The Plaintiffs allege that the Defendants denied to them the rights afforded to homeless children in obtaining a free public education in violation of the McKinney-Vento Act, 42 U.S.C. § 11431 *et seq.*, New York Education Law § 3209, and 42 U.S.C. § 1983. Presently before the Court is a motion by the Plaintiffs for a preliminary injunction preventing the District from disenrolling the plaintiff children from the schools they currently attend within the District, and an order requiring the District to arrange for the plaintiff children’s transportation in accordance with the McKinney-Vento Act and New York law. For the reasons set forth below, the Plaintiffs’ motion is granted.

I. BACKGROUND

On May 8, 2009, the home where N.J.(m). and A.J. lived was destroyed by a fire. At the time, both N.J.(m) and A.J. attended public school in the Malverne Union Free School District. After the fire, the Plaintiffs rented the upstairs apartment of a residence owned by N.J.’s friend E.V., which was located in Lynbrook (“Lynbrook Residence”). Because the Lynbrook Residence was also within the District, N.J.(m) and A.J. continued to attend public school within the District while living there. Although the circumstances surrounding their departure are disputed by the parties, neither party disputes that, at the end of the summer in 2011, the Plaintiffs moved from the Lynbrook Residence to an apartment in the Bronx belonging to N.J.’s boyfriend, V.C. (“the Bronx Residence”).

The Bronx Residence, which is located outside of the District, is a single bedroom suite in the basement of a home that V.C. owns and leases to another family. (Compl., ¶ 20.) N.J.(m)

and A.J. do not have a bedroom in the Bronx Residence and sleep on a sofa in the living room of the basement. (Id.) According to the Plaintiffs, their living arrangement in the Bronx Residence is not a permanent housing solution, but rather “a temporary situation necessitated by economic hardship”. (Compl., ¶ 21.)

In September 2011, the District became aware that N.J.(m) and A.J. were no longer residing within the District and commenced a residency investigation. On September 13, 2011, Thedra McCrae, the Director of Pupil Personnel Services for the Malverne District, sent N.J. a letter informing her that the District had obtained information indicating that she was no longer a resident of the district (“the September 13 Letter”). (McCrae Aff., Ex. C.) The September 13 Letter advised N.J. that if she disputed the allegation of non-residency, she could arrange a meeting with McCrae, where N.J. and the District would have the opportunity to present evidence. (Id.)

On September 19, 2011, N.J. sent an email to the principals of N.J.(m) and A.J.’s schools, stating that she did not have a permanent address. (Id. at Ex. D.) That same day, N.J., accompanied by another District parent, attended a meeting held by the District Registrar, Maureen Madden and McCrae to address the allegations of non-residency (“the Residency Meeting”). (McCrae Aff., ¶ 23–25.) At the conclusion of the Residency Meeting, the District concluded that the Plaintiffs were not residents of the District, and therefore the students would be disenrolled from their schools. According to McCrae, at the conclusion of the Residency Meeting, she advised N.J. that a non-residency determination could be appealed to the Board of Education and provided N.J. with written instructions on how to appeal the non-residency determination. (McCrae Aff., ¶ 30–31.)

Following the Residency Meeting, also on September 19, 2011, N.J. sent a letter to the District stating that N.J.(m) and A.J. were eligible for protection as homeless students under the McKinney-Vento Act, 42 U.S.C. § 114334(a), and the New York Education Law. (McCrae Aff., Ex. F.) In addition, on September 20, 2011, McCrae received a call from Melanie Faby, an associate from the New York State Education Department Homeless Education Program, with regard to N.J.'s claim of homelessness. (McCrae Aff., ¶ 34.) That same day, McCrae forwarded all of the information related to N.J.'s case, including the September 19 Letter and the information provided by Faby, to Spiro Chris Colaitis, the Assistant Superintendent for Business in the District. (McCrae Aff., ¶ 36.)

By letter dated September 20, 2011 from Colaitis to N.J., Colaitis affirmed the District's non-residency determination and further found that N.J.(m) and A.J. did not qualify as "homeless" under the McKinney-Vento Act. (McCrae Aff., Ex. G.) The September 20, 2011 letter also informed N.J. of her right to appeal the decision to the Commissioner pursuant to New York Education Law § 310. (Id.)

In early October, the Plaintiffs attempted to appeal the finding that they were neither residents of the District nor homeless students, but their petition was rejected for insufficient service of process. (See letter from the New York State Education Department to the Malverne District, October 12, 2011, McCrae, Ex. I.) On November 16, 2011, the Plaintiffs filed another petition appealing the District's determination to the Commissioner pursuant to New York Education Law § 310 ("the section 310 appeal"), as well as a stay application that would permit N.J.(m) and A.J. to remain at their schools pending the Commissioner's ruling on their section 310 appeal.

According to the Plaintiffs, the NYSED informed them by phone on November 30, 2011 that their application for a stay was denied. (Compl., ¶ 28.) The NYSED also confirmed the denial of the stay application to N.J. in a December 1, 2011 letter. (McCrae Aff., Ex. J.) As a result of the denial of the stay application, on December 5, 2011, the District sent a letter to N.J. stating that, as of the end of the day on December 6, 2011, N.J.(m) and A.J. would no longer be permitted to attend school within the District. (McCrae Aff., Ex. K.)

On December 6, 2011, N.J., individually and as parent and natural guardian of N.J.(m) and A.J. commenced the instant action against the State of New York, the New York State Education Department, and the Malverne Union Free School District alleging violations of the federal McKinney-Vento Act, 42 U.S.C. § 11431, *et seq.*, New York Education Law § 3209, and 42 U.S.C. § 1983. In addition, by order to show cause, the Plaintiffs filed an application for a Temporary Restraining Order and Preliminary Injunction, seeking to enjoin the Defendants from disenrolling the plaintiff children from the District schools pending the resolution of their section 310 appeal to the NYSED.

On December 12, 2011, the Court held a hearing on the order to show cause. The Court is not aware whether the District had actually excluded the plaintiff children from the District schools as of the date of the hearing. After hearing argument from counsel for all parties, the Court rendered a decision on the record granting the preliminary injunction and stated that a short written decision would follow. This order memorializes the Court's decision rendered on the record at the hearing.

II. DISCUSSION

A. The McKinney-Vento Act and its Implementation under the New York Education Law

The McKinney–Vento Act (“the Act”) was enacted in 1987 “to provide urgently needed assistance to protect and improve the lives and safety of the homeless” Pub.L. No. 100–77, 101 Stat. 525 (codified at 42 U.S.C. § 11431 (1988)). In 2002, the Act was reauthorized as part of the No Child Left Behind Act (NCLBA). Pub.L. No. 107–110, 115 Stat. 1989. The Act requires states to assure that each child of a homeless individual and each homeless youth have access to a free and appropriate public education. 42 U.S.C. § 11431. Under the Act, Congress authorized the Secretary of Education to grant funds to the states that comply with the provisions of the Act. Id. § 11432. By accepting the federal funds, New York assumed the obligation to comply with the Act’s requirements. 42 U.S.C. § 11432(c).

The Act defines homeless children and youths, in relevant part, as:

- (A) [I]ndividuals who lack a fixed, regular, and adequate nighttime residence . . . and
- (B) includes—
 - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardships, or a similar reason; are living in motels, hotels, trailer parks, or camp grounds due to a lack of alternative adequate accommodations; are living in emergency or traditional shelters; are abandoned in hospitals; or are awaiting foster care placement.

42 U.S.C. § 11434a(2)(A),(B)(i).

As part of its purpose to “ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education,as provided to other children and youths,” id. § 11431, the Act requires that each state prepare “a plan to provide for the education of homeless children and youths within the State”. Id. § 11432(g)(1). Pursuant to this plan, if it is in the best interest of the child, the local educational agency (“LEA”) is required to continue a child’s education in his or her school of origin for the duration of

homelessness. Id. § 11432(g)(3)(A)(i). Moreover, as a condition for a state receiving the federal funds, the LEA's must implement a system to provide necessary services for homeless children, including, with certain limitations, transportation to and from the school of origin.

§ 11432(e)(3)(E)(i)(III).

With respect to dispute resolution, the Act requires that the state "shall" include "a description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths". Id. § 11432(g)(1)(C). Of importance, in the event a dispute arises over school enrollment, the Act requires that the child "*shall* immediately be admitted to the school in which enrollment is sought, pending resolution of the dispute." Id. at § 11432(g)(3)(E)(i) ("Pendency Provision") (emphasis added).

New York Education Law § 3209 incorporates the requirements of the McKinney-Vento Act and sets forth the provisions for the education of homeless children within the state. Under New York law, an individual between the ages of five and twenty-one who has not yet received a high school diploma is entitled to attend a public school on a tuition free basis. N.Y. Educ. L. § 3202. However, this right is not an absolute right to attend any public school in New York, but rather is limited to attending public schools within the school district where the individual is a resident. Id. In the event a child is homeless, this residency restriction is modified to allow a homeless child to attend a public school in either: "(1) the school district of current location; (2) the school district of origin; or (3) a school district participating in a regional placement plan". N.Y. Educ. L. § 3209(2)(a); see also N.Y. Educ. L. § 3202(8) ("A homeless child, . . . shall be entitled to attend a public school without the payment of tuition, in accordance with the provisions of section thirty-two hundred nine of this article.").

When a dispute arises regarding school selection for a homeless child or youth, “including, but not limited to, disputes regarding transportation and/or a child’s or youth’s status as a homeless child”, the Commissioner has promulgated regulations in accordance with Education Law § 3209 and the McKinney-Vento Act providing in relevant part that:

Each school district shall:

(a) establish procedures, in accordance with [McKinney-Vento Act], 42 U.S.C. § 11432(g)(3)(E), for the prompt resolution of disputes regarding school selection or enrollment of a homeless child or youth . . . ;

(b) provide a written explanation, including a statement regarding the right to appeal pursuant to [McKinney-Vento Act], 42 U.S.C. section 11432(g)(3)(E)(ii), the name, post office address and telephone number of the local educational agency liaison and the form petition for commencing an appeal to the commissioner pursuant to Education Law, section 310 of a final determination regarding enrollment, school selection and/or transportation, to the homeless child's or youth's parent or guardian, if the school district declines to either enroll and/or transport such child or youth to the school of origin or a school requested by the parent or guardian . . . ; and

(c) delay for 30 days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the commissioner pursuant to Education Law, section 310 with a stay application within 30 days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the commissioner renders a decision on the stay application.

8 N.Y.C.R.R. § 100.2(x)(7)(ii). Accordingly, even when a section 310 appeal is pending, under New York law, a school may disenroll a child that the district has determined is not homeless, if the Commissioner denies the stay application.

Here, because the Lynbrook Residence was located in the District, the public schools located within the District are N.J.(m) and A.J.’s schools of origin under both the McKinney–Vento Act and the Education Law. See 42 U.S.C. § 11432(g)(3)(G) (defining “school or origin” as “the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled”); N.Y. Educ. L. § 3209(c) (“The term “school district of origin” shall mean the school district within the state of New York in which the homeless child was attending a public school on a tuition-free basis or was entitled to attend when circumstances arose which caused such child to become homeless, . . .”).

According to the Plaintiffs, because the state law makes it discretionary to stay an alleged homeless student’s disenrollment pending the outcome of a section 310 appeal of the school’s decision, the state law directly conflicts with the Act’s mandatory Pendency Provision. Thus, the Plaintiffs argue that by denying their request for a stay while their section 310 appeal is pending, the Defendants have violated the McKinney-Vento Act and their rights under the Act. The Plaintiffs seek a preliminary injunction preventing the Defendants from disenrolling the plaintiff children and requiring the Defendants to pay for their transportation to the schools in the District pending the resolution of the section 310 appeal.

B. Legal Standard for a Preliminary Injunction

“In order to justify a preliminary injunction, a movant must demonstrate 1) irreparable harm absent injunctive relief; and 2) ‘either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiff’s favor.’ Metro. Taxicab Bd. of Trade v. City of New York, 615 F.3d 152, 156 (2d Cir. 2010) (quoting Almontaser v. N.Y. Dep’t of Educ., 519 F.3d 505, 508 (2d. Cir. 2008)). Generally, the purpose of a preliminary injunction is to preserve the status of

the parties until a determination on the merits of the plaintiffs' claims can be made. Univ. of Tex. v. Camenisch, 451 U.S. 390, 395, 101 S. Ct. 1830, 1834, 68 L. Ed. 2d 175 (1981). However, “[w]hen, as here, the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme, the injunction should be granted only if the moving party meets the more rigorous likelihood-of-success standard.” Metro. Taxicab, 615 F.3d at 156 (quoting Cnty. of Nassau v. Leavitt, 524 F.3d 408, 414 (2d Cir. 2008)); Lynch v. City of New York, 589 F.3d 94, 98 (2d Cir. 2009).

A party seeking such a “mandatory injunction” faces a higher burden. D.D. ex rel. V.D. v. New York City Bd. of Educ., 465 F.3d 503, 510 (2d Cir. 2006) (citing Tom Doherty Assocs., Inc. v. Saban Entm't, Inc., 60 F.3d 27, 33–34 (2d Cir.1995)). Indeed, this type of “mandatory preliminary injunction” should only be granted “upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from a denial of preliminary relief.” Cacchillo v. Insmmed, Inc., 638 F.3d 401, 405–06 (2d Cir. 2011) (internal quotation marks omitted). “This higher standard is particularly appropriate when a plaintiff seeks a preliminary injunction against a government body such as a school district.” Cave v. East Meadow Union Free School Dist., 480 F. Supp. 2d 610, 631–32 (E.D.N.Y. 2007) (citing D.D. ex rel. V.D., 465 F.3d at 510, citing Mastrovincenzo v. City of New York, 435 F.3d 78, 89 (2d Cir. 2006)); Wright v. Giuliani, 230 F.3d 543, 547 (2d Cir. 2000).

C. Whether the Court Should Grant the Preliminary Injunction

The Plaintiffs argue that the Pendency Provision of the McKinney-Vento Act requires an “automatic preliminary injunction”, and operates as an “absolute rule” requiring the Court to grant the preliminary injunction without consideration of their likelihood of success on the merits or irreparable harm. Again, the Pendency Provision states that in the event a dispute arises over

school enrollment, the Act requires that the child “shall immediately be admitted to the school in which enrollment is sought, pending resolution of the dispute.” 42 U.S.C. § 11432(g)(3)(E)(i).

In support of this argument, the Plaintiffs cite to Zvi D. v. Ambach, 694 F.2d 904 (2d Cir. 1982), where the Second Circuit addressed the standard for granting a preliminary injunction pursuant to a similar provision in the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.*, which stated that during the pendency of administrative and judicial proceedings challenging a child’s educational placement “the child shall remain in the then current education placement until all such proceedings have been completed”. Id. at 906 (citing 20 U.S.C. § 1415(e)(3)). This provision of the IDEA is referred to as the “stay put” provision. The Second Circuit held that the stay put provision of the IDEA constituted an “automatic preliminary injunction” and “substitutes an absolute rule in favor of the status quo for the court’s discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of the hardships.” Id.

However, the cases imposing an automatic preliminary injunction under the stay put rule are distinguishable. The stay put rule applies to any proceeding where a plaintiff is challenging the merits of a claim for a child’s educational placement under IDEA. This includes actions commenced in the United States District Court for judicial review of an administrative decision regarding a child’s educational placement, as well as any appeal of the district court’s decision. See Ringwood Bd. of Educ. v. K.H.J. ex rel. K.F.J., 469 F. Supp. 2d 267, 269-270 (D.N.J. 2006). Thus, where the issue before the court is the merits of the plaintiff’s underlying IDEA claim, the stay put provision requires an automatic preliminary injunction.

By contrast, the issue before this Court is not the merits of the Plaintiffs’ claim for enrollment in the District under the McKinney-Vento Act. That dispute is the subject of the

pending section 310 appeal before the NYSED. The case before this Court involves the procedural protections of the Act and the Defendants' compliance with the Act's dispute resolution requirements. Indeed, whether the Pendency Provision applies to any proceeding addressing an enrollment dispute under the Act beyond the school district's determination is precisely the issue before this Court. Accordingly, it is the Plaintiffs likelihood of success of prevailing on this claim that guides the Court's analysis.

Nevertheless, even assuming an automatic preliminary injunction is warranted, it would not impact the outcome of the Court's decision. As set forth below, the Court examines the traditional preliminary injunction considerations under the heightened mandatory injunction standards articulated above, and finds that a preliminary injunction is warranted.

1. Likelihood of Success on the Merits

Although the Plaintiffs assert a number of claims in the complaint, the basis for seeking the preliminary injunction is their contention that the Defendants violated the McKinney-Vento Act, and their rights under the McKinney-Vento Act, by denying them a stay of disenrollment while their section 310 appeal is pending before the NYSED.

As an initial matter, the parties heavily dispute the question of whether the plaintiffs qualify as "homeless". According to the Defendants, the Plaintiffs are not entitled to a preliminary injunction if they cannot show a likelihood of success on their assertion of homelessness. Not so. As interpreted by the Commissioner, the Act's dispute resolution requirements apply to school enrollment disputes regarding "a child's or youth's status as a homeless child or unaccompanied youth". 8 N.Y.C.R.R. § 100.2(x)(7)(ii)(a) (emphasis added). The Court finds the Defendants' circular reasoning—where a child is entitled to a stay of disenrollment during a dispute over his or her status as homeless child only if the child is found

to be homeless—to be unavailing and unsupported by the text of the Act, which does not condition the Pendency Provision on a likelihood of success. Accordingly, for the purposes of determining whether the Court should grant a preliminary injunction, the relevant inquiry is whether the Plaintiffs are likely to succeed in showing that the Defendants, in promulgating the state law, denying the stay application, and attempting to disenroll the plaintiff children, have violated the McKinney-Vento Act and the Plaintiffs' rights thereunder.

Here, the Court finds that the Plaintiffs have shown a likelihood of success on this claim. The McKinney-Vento Act clearly contemplates that the children remain in the subject school “pending resolution of the dispute”. The purpose of this provision “is that a homeless child not suffer while a school district determines whether he or she is properly enrolled”. L.R. ex rel. G.R. v. Steelton-Highspire School Dist., No. 10-CV-468, 2010 WL 1433146, at *5 (M.D. Pa. April 7, 2010). Although not explicitly stated, in the Court's view, the Act provides that an allegedly homeless child shall remain admitted to the school in which enrollment is sought pending the final resolution of the dispute, not simply the resolution at the school level.

While the Court takes no position on what stage in the dispute resolution process the decision becomes final, the Plaintiffs have shown a likelihood of success on their contention that the Pendency Provision at least covers the section 310 appeal of the District's decision to the NYSED. Moreover, the likelihood of the Plaintiffs' success on this claim is further supported by the 2009 and 2010 U.S. Department of Education “Student Achievement and School Accountability Program” reports for the State of New York, which have both raised questions about New York's compliance with the Act's Pendency Provision. See U.S. Dep't of Education, Student Achievement and School Accountability Program, New York State Education Department, March 23–27, 2009, 19 (2009) (finding that “students are not enrolled in school

during the appeal process nor were they provided transportation, as required by the McKinney-Vento Act” and requiring the NYSED to issue “a written memorandum clarifying that during a dispute resolution process at the LEA and SEA levels, the LEAs of origin and residence must offer immediate enrollment in the requested district and provide transportation to the school in which the child is placed until the dispute is resolved”); U.S. Dep’t of Education, Student Achievement and School Accountability Program, New York State Education Department, May 24–28, 2010, 23 (2010) (finding that “[t]he NYSED has not ensured that its LEAs have procedures for the prompt resolution of disputes and a process to direct LEAs on how to resolve enrollment disputes consistent with LEA requirements stated in section 722(g)(3)(E)” and requiring that the NYSED submit a report to the U.S. Department of Education including, among other information, the number of students who were not immediately enrolled in their school of origin when they initiated a dispute, and further stating that “[i]f any of these points of investigation involve non-compliant procedures or outcomes that are disproportionately unfavorable to the disputants, the NYSED must revise its dispute resolution policy and guidance to all LEAs informing them of steps it will take to ensure compliance and equitable outcomes for students who report that they are experiencing homelessness and submit these revised policies and guidance documents to [the Department of Education]”). Accordingly, the Plaintiffs have satisfied the first element for obtaining a preliminary injunction.

2. Irreparable Harm

With respect to irreparable harm, the Plaintiffs argue that the McKinney-Vento Act, by virtue of including the Pendency Provision, creates a presumption that a failure to comply with the provisions would cause irreparable harm. That may be so. However, even if this were not the case, the Court nevertheless finds that irreparable harm exists. It has been held that

“interruption of a child's schooling causing a hiatus not only in the student's education but also in other social and psychological developmental processes that take place during the child's schooling, raises a strong possibility of irreparable injury.” Ross v. Disare, 500 F. Supp. 928, 934 (S.D.N.Y. 1977). Here, the potential injury to the plaintiff children is not simply changing schools once, which, while disruptive, may not rise to the level of irreparable harm. Rather, absent a stay, the plaintiff children in this case risk having to change schools twice in a relatively short time period if their appeal is successful. The Court finds that this constitutes an irreparable harm sufficient to warrant a preliminary injunction.

3. Balance of the Equities and the Public Interest

The District's decision to disenroll the plaintiff children, and the NYSED's decision to deny the plaintiff children a stay of disenrollment pending the outcome of the section 310 appeal, appear to directly conflict with the Pendency Provision of the McKinney-Vento Act, “which grants special rights and protections to children experiencing homelessness in order to ensure school stability and academic success”. L.R. ex rel. G.R. v. Steelton-Highspire School Dist., No. 10-CV-468, 2010 WL 1433146, at *5 (M.D. Pa. April 7, 2010). The benefit to the plaintiff children of uninterrupted education during their formative middle and high school years, due to circumstances outside of their control, far outweighs the harm to the District in continuing their enrollment. Although the harm will be less severe in the event the children are found not to be homeless, the Court is unwilling to gamble with a child's education. Although the District will face the additional burden of expending the costs for transporting the plaintiff children to their schools within the District during the pendency of the section 310 appeal, these funds are provided by the federal government by the Act for precisely this purpose.

In passing the Act, Congress has made it clear that the laws of a state shall “ensure that homeless child and youths are afforded the same free, appropriate public education as provided to other children and youths”. 42 U.S.C. § 11431(2). This expression of the public interest behind the Act would be undermined by treating a potentially homeless student differently than other students simply because no final determination has been made on whether he or she qualifies as homeless. Thus, the Court finds that the balance of the equities and the public interests also weigh in favor of granting the preliminary injunction.

III. CONCLUSION

For the foregoing reasons, it is hereby

ORDERED, that the Plaintiffs’ motion for a preliminary injunction is granted, and it is further

ORDERED, that the District is enjoined from disenrolling N.J.(m) and A.J. from their respective schools within the District until a decision has been rendered on their section 310 appeal to the NYSED, and it is further

ORDERED, that the District shall arrange for transportation for N.J.(m) and A.J. to their respective schools within the District consistent with the District’s obligations under the McKinney-Vento Act and New York Education Law § 3209, and it is further

ORDERED, that the parties are afforded until Friday, December 16, 2011, to file a brief not to exceed ten pages in length addressing this Court’s finding that the proper inquiry for showing a likelihood of success on the merits was not the Plaintiffs’ homelessness, but rather the Plaintiffs likelihood of showing the state regulation permitting the Commissioner to deny a stay of disenrollment during the pendency of a section 310 appeal is in conflict with the Pendency Provision of the McKinney-Vento Act.

SO ORDERED.

Dated: Central Islip, New York
December 13, 2011

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge

APPENDIX H
C.H. V. NEW YORK – ORIGINAL PETITION

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
★ DEC 09 2011 ★

C.H. individually, and as parent and
natural guardian of A.H. and S.H. minor
children, individually,
Plaintiffs,

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LONG ISLAND OFFICE
CV 11 5995

v.
STATE OF NEW YORK, NEW YORK
STATE EDUCATION DEPARTMENT,
and HAUPPAUGE SCHOOL
DISTRICT,
Defendants.

Civil Action No.

NO SUMMONS ISSUED
WEXLER, J
WALL, M.J.

PLAINTIFFS' ORIGINAL VERIFIED PETITION

Plaintiffs C.H., A.H. and S.H. (collectively, "Plaintiffs") file this Petition against Defendants State of New York, New York State Education Department, and Hauppauge School District, and respectfully show the Court as follows:

INTRODUCTION

1. This lawsuit seeks to remedy the failure of the education system in New York State and Hauppauge School District (the "School District") to provide A.H. and S.H., homeless children, with the substantive and procedural protections they are entitled to under the Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435 (the "McKinney-Vento Act") and New York State Education Law § 3209.

2. The Plaintiffs in this case are C.H. and his homeless children, A.H. and S.H., who live in shared housing in Suffolk County.¹ Defendants have denied A.H. and S.H. enrollment in their schools of origin in violation of the requirements of the McKinney-Vento Act, Education

¹ Plaintiffs are identifying themselves in this pleading and all other public documents filed in this case through initials only. Plaintiff Children are minor children. Accordingly, the named Plaintiffs have requested identification by initials only in order to protect their privacy rights pursuant to the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g(b). See also *Webster Groves School Dist. V. Pulitzer Pub. Co.*, 898 F. 2d 1371, 1374-75 (8th Cir. 1990).

Law § 3209, and the regulations promulgated thereunder. The consequence of the Defendants' conduct is that homeless children are being turned away at the schoolhouse door midyear, significantly impacting their educational development and their opportunity to participate in the decision-making process regarding the provision of a free and appropriate education. Without relief, A.H. and S.H. will be denied the educational benefits Congress sought to provide children like them in enacting the McKinney-Vento Act. *See* 42 U.S.C. § 11431.

3. The Defendants, collectively and individually, have been responsible for refusing to recognize either A.H. or S.H. as a "homeless child" as defined in the McKinney-Vento Act and Education Law § 3209, and have systematically failed to remove procedural obstacles to their continued enrollment in their schools of origin.

4. As set forth more fully herein, Plaintiffs allege that these policies and practices violate state and federal laws. Plaintiffs therefore seek injunctive relief compelling the Defendants to maintain Plaintiffs' enrollment in their schools of origin pending the outcome of administrative remedies that Plaintiffs are currently pursuing.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3), on the ground that this action arises under the laws of the United States.

6. Venue is proper in this School District pursuant to 28 U.S.C. § 1391(b)(1). Plaintiffs and Defendant Hauppauge School District reside within Suffolk County, in the Eastern District of New York, and a substantial part of the events or omissions giving rise to the claims occurred in this School District.

7. Plaintiffs have been deprived of their federal statutory rights and thus bring this action pursuant to 42 U.S.C. § 1983.

8. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs' claims of violations of New York State Education Law and the New York Constitution, Article XI, § 1.

9. There is an actual controversy between the Plaintiffs and the Defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201, and Federal Rule of Civil Procedure Rule 57.

PARTIES

C.H., S.H., AND A.H.

10. C.H. is the father of S.H. and A.H., homeless children who have attended school in the School District for several years. A.H. is thirteen years old. S.H. is ten years old. Plaintiffs are all citizens of the United States and at all times mentioned herein were and are living in Suffolk County.

11. C.H. is divorced from the children's mother, who has residential custody of the children.

12. As a result of a series of economic hardships, S.H. and A.H. have been homeless and have lacked a fixed, adequate and regular nighttime residence.

13. From the Fall of 2010 to June 2011, S.H. and A.H. resided with their mother in a homeless shelter. As set forth in further detail below, S.H. and A.H. subsequently went to live with C.H.

14. Unable to find alternate affordable housing, C.H., S.H. and A.H. sought refuge in shared housing. Plaintiffs currently reside on a temporary basis in the home of C.H.'s sister in Huntington Station, New York, which is located outside the School District.

The State Defendant

15. The State of New York is a state of the United States and operates the New York State Education Department.

16. New York State Education Department ("NYSED") is a governmental agency of Defendant State of New York with control over educational matters affecting the School District and responsibility for the general supervision and management of the Suffolk County Public Schools. NYSED is responsible for ensuring compliance with federal, state, and local laws governing this system.

17. NYSED is a recipient of federal funds under the McKinney-Vento Act. By accepting those funds, NYSED is required to comply with all provisions of the McKinney-Vento Act.

18. NYSED was at all relevant times acting or purporting to act under color of state law.

The School District Defendants

19. Upon information and belief, Defendant Hauppauge School District (the "School District") is a municipal corporation duly organized and existing under New York State Education Law and is a Local Educational Agency ("LEA") under the McKinney-Vento Act.

20. The School District establishes local rules and practices concerning enrollment, transportation, and education of children within its district, including homeless children.

FACTUAL BACKGROUND

21. A.H. entered the School District as a first grader. S.H. entered the School District approximately four years ago. A.H.'s and S.H.'s schools of origin are in the School District.

22. A.H. is currently in the eighth grade. The 2011-2012 school year is A.H.'s last

year in middle school before progressing to high school.

23. S.H. is currently in elementary school and is severely autistic. The 2011-2012 school year is S.H.'s last year in elementary school before progressing to middle school. As an elementary school student in the School District, S.H. has received special education services, including applied behavior analysis therapy, through the School District under his Individual Education Plan (IEP) since he was enrolled as a first grader.

24. A.H. and S.H. were living with their mother in Hauppauge, New York until their mother lost her home due to foreclosure proceedings in the fall of 2010. A.H. and S.H. then lived with their mother in a homeless shelter until the shelter discharged them in June 2011. During this time, however, A.H. and S.H. were suffering from excessive absences from school. When they did attend school, they often did so excessively fatigued, without clean clothing or lunches. During this time, S.H. missed critical therapy sessions and, as a result, suffered serious regression.

25. In June 2011, the School District called C.H. to inquire about the A.H.'s and S.H.'s extended absences from school and about S.H. missing applied behavior analysis therapy sessions after school. The School District informed C.H. that it had not been able to get in contact with S.H.'s and A.H.'s mother. The School District further informed C.H. that A.H. and S.H. were obviously suffering as a result of missing school and the upheaval in their personal lives. Finally, the School District informed C.H. that it intended to remove S.H.'s applied behavior analysis therapy sessions due to his failure to attend regularly.

26. Upon learning of his children's extended absences, although he did not have residential custody of his children, C.H. took the children in to live with him and their aunt in their aunt's home in Huntington Station, New York. The family's current living arrangement is

temporary, shared housing.

27. Upon moving into shared housing, under the direct supervision of C.H., the children were able to attend school regularly, fed and with sufficient sleep to make it through the school day. S.H. was able to return to his regular therapy sessions and improved tremendously over the time when he was living in the homeless shelter with his mother. However, S.H.'s and A.H.'s housing remains insecure. S.H.'s and A.H.'s mother remains homeless, moving between different friends' homes. Although C.H. currently owns property in Coram, New York, he cannot afford to live in or maintain the property, and therefore rents the property to a paying tenant pending a sale of the property. Indeed, C.H. has missed multiple mortgage payments to the lender on this house and has received numerous letters from the lender threatening foreclosure proceedings if he does not make these payments. Thus, C.H. lives with A.H. and S.H. in shared housing due to economic hardship.

28. In or around the beginning of October 2011, Linda Karman of the Hauppauge School District met with C.H. and C.H.'s sister. Ms. Karman advised them that the McKinney-Vento Act would be of no aid to C.H. or his children but that she would assist C.H. in attempting to enroll S.H. and A.H. in the South Huntington School District.

29. On or about Friday, October 21, 2011, at around 3 p.m., the Superintendent of Business Operations for Hauppauge School District, James Stucchio, contacted C.H. to inform C.H. that S.H. and A.H. would be excluded from school effective the following Monday. Confused, C.H. visited Mr. Stucchio's office to find out why the children were being excluded. Mr. Stucchio informed C.H. that the School District had concluded that A.H. and S.H. were not residents of the School District, and therefore could no longer attend their schools of origin. C.H. explained the children's housing situation, but Mr. Stucchio failed to refer C.H. to the

School District's homeless liaison or inform C.H. of A.H.'s and S.H.'s rights as homeless children. Rather, when C.H. told Mr. Stucchio that he intended to appeal the School District's determination, Mr. Stucchio told C.H. that an appeal would be unsuccessful and therefore a waste of time.

30. The following Monday, C.H. returned to S.H.'s school to speak with the school psychologist, Dr. Mike Weisberg, to determine S.H.'s options for continued enrollment and therapy. When C.H. arrived at the school, police officers appeared and refused to permit C.H. entry. The police officers advised C.H. that someone at the school had called them and told them that C.H. was not permitted to enter the school, and so the police were simply carrying out that order. C.H. indicated that he only returned to the school to speak to Dr. Weisberg, and the police assured him that he could do so.

31. Rather than allowing C.H. into the school, however, Dr. Weisberg and principal Claudine DiMuzio came outside and conducted a meeting with C.H. in the street, in public. C.H. asked Dr. Weisberg and Ms. DiMuzio for assistance, but neither provided C.H. with any information about the rights of A.H. and S.H. or what steps C.H. might take to ensure his children's continued education. Later, Mr. Stucchio informed C.H. that he must enroll his children in South Huntington School District, the district in which the family's shared housing is located – though the children had never previously attended school in that district.

32. South Huntington School District administrators correctly informed C.H. that his children must be permitted to remain in Hauppauge schools. The administrator at South Huntington School District educated C.H. about the McKinney-Vento Act (a responsibility that truly belonged to the School District), and advised C.H. not to enroll his children in South Huntington because Plaintiffs still have the right to remain in Hauppauge School District.

33. The School District permitted the children to return to school for a short period of time. However, on October 21, 2011, Mr. Stucchio sent C.H. a letter indicating that the School District had determined that A.H. and S.H. were not homeless, and that A.H. and S.H. would be excluded as of November 21, 2011.

34. C.H. appealed this decision on November 18, 2011 and sought a stay pending the outcome of the petition. The School District opposed the stay, and on November 30, Mr. Stuccio called C.H. and informed him that the stay was denied and that the children would be excluded from school, effective Monday, December 5, 2011. On December 1, 2011, two security guards delivered a letter addressed to C.H. at his sister's home. The letter, signed by Mr. Stucchio, informed C.H. that the stay was denied and that the children would be excluded from school effective Monday, December 5, 2011.

35. Plaintiffs' counsel attempted to seek amicable resolution of the issue by contacting the School District's counsel on Friday, December 2, 2011. Plaintiffs' counsel asked whether the children may at least attend school at their schools of origin until the petition is resolved. The School District's counsel refused this request. The School District's counsel informed Plaintiffs' counsel that the children could attend school on Monday, December 5, 2011, but that they would not be permitted to attend thereafter without proof that C.H. was attempting to enroll the children in a different school district.

36. Because of the School District's position, Plaintiffs have remained home from school beginning on Wednesday, December 7.

Rights of Plaintiffs as Homeless Children Under Federal and State Law

The McKinney-Vento Act

37. Congress attempted to remove the obstacles faced by homeless children in

enacting the McKinney-Vento Act, Pub. L. No. 100-77, § 102(b)(2), 100 Stat. 482, 485 (codified as amended at 42 U.S.C. § 11301, *et seq.*) in 1987 to provide a broad range of assistance to homeless individuals and families. Subtitle VII-B of the McKinney-Vento Act relates to the education of homeless children and youth. *See* 42 U.S.C. §§ 11431-11435.

38. The McKinney-Vento Act states that children and youths who “lack a fixed, regular, and adequate nighttime residence” will be considered homeless. *Id.* § 11434a(2)(A). Congress specifically studied the housing arrangements of homeless families and concluded that it was essential to the functioning of the McKinney-Vento Act that families “doubling up” with others in temporary housing arrangements must be included within the definition of homeless. Thus, in defining what it means to “lack a fixed, regular, and adequate nighttime residence,” the McKinney-Vento Act expressly includes “children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.” *Id.* § 1434a(2)(B)(i).

39. In enacting the McKinney-Vento Act, Congress made available funds for States to assist in the education of homeless children on the condition that “[c]ach State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . . as provided to other children and youths.” *Id.* § 11431(1). The McKinney-Vento Act also mandates that if the State enacts “regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths,” it must “review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.” *Id.* § 11431(2). The McKinney-Vento Act imposes the same obligations on LEAs. *Id.*

§ 11432(g)(7).

40. The McKinney-Vento Act specifically requires that States ensure that the LEAs provide an expeditious process of resolving disputes affecting the educational rights of homeless children. *Id.* §11432(g)(3)(E)(iii).

41. Moreover, the McKinney-Vento Act states that if a dispute arises over school enrollment, the homeless student “*shall* be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute.” *Id.* § 11432(g)(3)(E)(i) (emphasis added).

42. The McKinney-Vento Act requires that “[e]ach State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . . as provided to other children and youths.” 42 U.S.C. § 11431(1). The McKinney-Vento Act also mandates that if the State enacts “regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths,” it must “review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.” *Id.* § 11431(2).

New York State Education Law § 3209

43. New York State Education Law § 3209 commits the Defendants to provide for the education of homeless children in New York State. Pursuant to statutory authority, Defendant NYSED enacted regulations which provide for the education of homeless children in New York State. *See* 8 N.Y.C.R.R. § 100.2(x).

44. New York Education Law § 3209 mandates that a homeless child’s family or an

unaccompanied youth may choose whether the child will attend school where the child lived before becoming homeless (the “school district of origin”) or where he or she currently lives (the “school district of current location”), and that the school district must immediately admit and enroll the homeless child. N.Y. Educ. Law § 3209(1)-(2).

45. In implementing Education Law §3209, however, NYSED has enacted 8 N.Y.C.R.R. § 100.2(x)(7)(ii)(c), which imposes barriers to the rights granted under § 3209.

Under this regulation, each school district shall:

delay for 30 days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the commissioner pursuant to Education Law, section 310 with a stay application within 30 days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the commissioner renders a decision on the stay application.

The Defendants’ Duties Under Federal and State Law

46. Under the aforementioned laws, Defendants are obligated, in relevant part, to:
- (a) prepare and carry out an adequate state plan for implementing the McKinney-Vento Act and ensure the LEAs’ compliance with the plan;
 - (b) ensure that the local social service agency complies with the provisions of New York State Education law and its regulations in providing education and transportation services to homeless children and youth;
 - (c) review and revise policies that may act as barriers to and provide services that enable the enrollment, attendance, and success in school of each homeless child in New York State, including policies related to transportation, records - requirements, and residency requirements;

- (d) provide procedures for the prompt resolution of placement and transportation assistance disputes affecting homeless children in New York State;
 - (e) identify and address problems affecting the education of homeless children in New York State;
 - (f) ensure that policies and practices are adopted by the State and LEAs to ensure that homeless children in New York State are not stigmatized or isolated;
 - (g) ensure that the LEAs provide written notice to homeless school-age children and the parents or legal guardians of such children of any adverse action affecting their placement in schools, a fair opportunity to challenge such decisions, including the notice of the availability of an ombudsperson, and a process of resolving the dispute;
 - (h) ensure the LEAs' compliance with state law and regulations (New York Education Law § 3209 and 8 N.Y.C.R.C. § 100.2(x));
 - (i) ensure that the LEAs locate and provide educational services to all eligible children in New York State;
 - (j) ensure that homeless youths and youths separated from the public schools are identified and accorded equal access to appropriate secondary education and support services;
 - (k) identify homeless children and youth and assess their special needs.
47. Under the same laws discussed above, the Defendants are obligated to:
- (a) make available to each homeless child and family the designation form provided by the commissioner who seeks to enroll (or continue) the child in school;

- (b) review the designation form to assure that it has been completed;
- (c) where the school district of origin is designated, the child shall be entitled to return to the school building where previously enrolled;
- (d) where the school district is the school district of current location, (1) the child shall be admitted to the school, (2) the homeless child shall be treated as a resident for all purposes, and (3) the LEA must make a written request to the school district where the child's records are located for a copy of such records and forward the designation form to the commissioner and the school district of origin if applicable;
- (e) where a homeless child is not entitled to receive transportation pursuant to Education Law § 3209(4) from the Department of Social Services or from the Division for Youth, the child shall be transported by the designated school district;
- (f) establish policies and procedures to ensure compliance with the provisions of New York State Education Law § 3209 and its regulations, and review and revise any local regulations, policies, or practices that may act as barriers to the enrollment or attendance of homeless children in school or their receipt of comparable services as defined in Part B of Title VII of the McKinney-Vento Act;
- (g) periodically report such information to the commissioner as he or she may require to carry out the purposes of Education Law § 3209.

Defendants' Violations of Their Statutory and Other Duties

48. Defendants have failed to revise their policies and practices, which create a

barrier to the enrollment, attendance, and success of homeless youths, and have failed to ensure that LEAs revise their policies and practices regarding education of homeless children.

49. Defendants have implemented a stay procedure whereby homeless children such as Plaintiffs may be excluded from their schools of origin pending the outcome of dispute resolution.

50. NYSED's appeals process is lengthy which is difficult for *pro se* parents of homeless children to comply with.

51. Denial of stay disrupts a child's education because if an appeal is successful after a stay is denied, a child will be asked to return to the district of origin months later when NYSED finally comes to a decision. This essentially moots the appeal process.

52. Homeless liaisons at school districts such as the Hauppauge School District lack the resources and information to provide assistance to homeless families such as Plaintiffs as part of the appeal process.

53. Delays in the appeals process presents an obstacle to homeless families, whose situations and means do not permit them to wait for months to receive a final decision from NYSED. The practical effect of NYSED's appeals process is to deny homeless youths such as the Plaintiffs an effective right of appeal.

54. Defendants have failed to establish an effective and timely procedure for the resolution of disputes.

55. The failure to comply with the dispute resolution requirements has been twice noted by monitors from the federal Department of Education charged with assessing implementation of the McKinney-Vento Act. In 2009, the monitoring report stated "NYSED must issue—and submit a copy to ED—a written memorandum clarifying that during a dispute

resolution process at the LEA and SEA levels, the LEAs of origin and residence must offer immediate enrollment in the requested district and provide transportation to the school in which the child is placed until the dispute is resolved.” U.S. Dept. of Education, Student Achievement and School Accountability Program, *New York State Education Department, March 23-27, 2009*, 19 (2009). A recurring finding is noted in the 2010 monitoring report, stating that “[t]he NYSED has not ensured that its LEAs have procedures for the prompt resolution of disputes and a process to direct LEAs on how to resolve enrollment disputes consistent with LEA requirements stated in section 722(g)(3)(E).” U.S. Dept. of Education, Student Achievement and School Accountability Program, *New York State Department of Education, May 24-28, 2010*, 23 (2010). However, outside of withholding funds from the entire state (which would harm the tens of thousands of homeless students appropriately identified each year), the federal Department has little power to enforce its findings on the State, and the State’s non-compliance has persisted unabated.

56. The State is complicit in permitting districts like Hauppauge School District to implement such a process and take such positions, which is a further violation of the McKinney-Vento Act.

57. Defendants have refused to recognize that Plaintiffs are homeless; that is, lacking “a fixed, regular, and adequate nighttime residence.”

58. Defendants have refused to allow Plaintiffs to remain enrolled in their schools of origin.

59. Defendants have refused Plaintiffs’ stay request pending the outcome of Plaintiffs’ appeal.

60. Defendants have refused or failed to provide Plaintiffs their full rights and

entitlements under the law.

Injury to Plaintiffs

61. As set forth above, as a result of Defendants' policies and practice, Plaintiffs have suffered and continue to suffer irreparable harm.

62. As a result of Defendant School District's policies and practice, A.H. and S.H. have been denied protection and entitlements under the McKinney-Vento Act, including their right to immediate enrollment pending a dispute and continued enrollment in the School District.

63. In violation of rights set forth under the McKinney-Vento Act, the School District is attempting to force A.H. and S.H. to enroll in an adjacent school district mid-way through the school year.

64. Plaintiffs' injuries result from Defendants' failure to comply with the McKinney-Vento Act.

65. Plaintiffs have no adequate remedy at law.

CAUSES OF ACTION

COUNT 1

VIOLATIONS OF THE MCKINNEY-VENTO ACT

66. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

67. The processes established by NYSED for pursuing such an appeal and for seeking to keep children such as A.H. and S.H. in school pending the appeal are unnecessarily cumbersome and cannot reasonably be complied with by homeless families such as those of the Plaintiffs.

68. In addition, on information and belief, NYSED has distributed to districts

throughout the State, such as the School District, incorrect information about the federal definition of homelessness under the McKinney-Vento Act and their duties to immediately enroll homeless students and maintain their enrollment throughout the duration of any dispute process. As a result, homeless liaisons that the school districts are required to employ to assist homeless families such as the Plaintiffs' family were unable to provide them the assistance and direction the law requires.

69. By allowing districts to contest the stay of the disenrollment order, the NYSED appeals process imposes special burdens on such families. Most families proceed through the appeals process *pro se*, but their petitions are contested by lawyers suggesting evidentiary burdens, akin to those in seeking temporary injunctions, which the NYSED Board of Commissioners accepts, promulgates, and uses to deny enrollment to homeless students pending the final resolution of their appeals. In fact, the issue of a stay should never be raised, as the students are entitled to enrollment throughout the dispute resolution process. Because they will be denied the opportunity to keep their children in the school of their choice pending an appeal, those families are essentially forced to acquiesce in the decision of the school districts to terminate enrollment. The alternative – to permit successive disruptions of a homeless child's education – is unacceptable to the overwhelming majority of homeless families.

70. This 30-day delay and appeal requirement is in direct contravention of the McKinney-Vento Act, which mandates that the homeless child must be *immediately* enrolled in the school district of their choice, pending resolution of the dispute. *See* 42 U.S.C. § 11432(g)(3)(E)(i).

71. Moreover, NYSED's appeal process is needlessly and excessively lengthy. Months typically pass before a decision on the merits is reached. Plaintiffs can thus expect a

semester or more to pass between the time their stay request is denied and the time that they can expect a final decision from NYSED. These excessive delays, which are entirely the fault of NYSED, impose undue burdens on homeless families seeking to exercise their rights under the McKinney-Vento Act.

72. After denying Plaintiffs a proper opportunity to be heard and offer evidence to show that they are, in fact, homeless, NYSED essentially mooted their appeals of the School District's decision to terminate their enrollment. Plaintiffs should not be forced to re-enroll in a new school district only to have their schooling disrupted once more many months from now when NYSED finally reaches a decision on the merits. Without relief with respect to the stay decision—which is effectively dispositive here—Plaintiffs will effectively be denied an appeal.

73. Defendants have failed to address the impediments to enrollment caused by residency and record requirements in violation of 42 U.S.C. § 11432(g)(1)(F), have failed to develop, “review, [and] revise policies to remove the barriers to the enrollment and retention of homeless children and youth” in violation of 42 U.S.C. § 11432(g)(1)(I), and have failed to ensure homeless students' right to be “immediately admitted to the school in which enrollment is sought, pending resolution of the dispute” in violation of 42 U.S.C. § 11432(g)(3)(E)(i).

74. Defendants have failed to “review and revise any policies that may act as barriers to the enrollment of homeless children and youth in schools,” as required under 42 U.S.C. § 11432(g)(6) and (9).

75. Defendants have failed to address the impediments to enrollment caused by residency and record requirements in violation of 42 U.S.C. § 11432(g)(1)(F), have failed to develop, “review, [and] revise policies to remove the barriers to the enrollment and retention of homeless children and youth” in violation of 42 U.S.C. § 11432(g)(1)(I), and have failed to

ensure homeless students' right to be "immediately admitted to the school in which enrollment is sought, pending resolution of the dispute" in violation of 42 U.S.C. § 11432(g)(3)(E)(i).

76. Defendants have violated the rights of the Plaintiffs under the McKinney-Vento Act, 42 U.S.C. §§ 11431-11435. In particular, Defendants failed to immediately enroll A.H. and S.H. in their school of origin, pending resolution of this dispute, in violation of 42 U.S.C. § 11432(e)(3)(F). Defendants further failed to make a determination as to whether it would be in A.H.'s and S.H.'s best interest to continue attending their schools of origin in accordance with the standard set forth in the McKinney-Vento Act, in violation of 42 U.S.C. §§ 11432(g)(3)(A), (g)(3)(B)(i).

77. As a result of Defendants' conduct, Plaintiffs will be irreparably harmed and have also suffered damages in an amount to be proven at trial.

COUNT II

VIOLATIONS OF NEW YORK STATE EDUCATION LAW § 3209

78. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

79. Plaintiffs constitute homeless children as defined in New York Education Law § 3209(1)(a)(1) as they lack a "fixed, regular, and adequate nighttime residence."

80. Plaintiffs have been denied the right to attend a public school in the "school district of origin" as that term is defined in New York Education Law § 3209(1)(c).

81. As a result of Defendants' conduct, Plaintiffs will be irreparably harmed and have also suffered damages in an amount to be proven at trial.

COUNT III

VIOLATIONS OF 42 U.S.C. § 1983

82. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

83. By implementing and authorizing the policies and practices pursuant to which Plaintiffs are denied access to public education in the School District, Defendants have deprived, and will continue to deprive, Plaintiffs of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States in violation of 42 U.S.C. § 1983 and of rights guaranteed by the Fourteenth Amendment of the United States Constitution, Article XI § 1 of the New York Constitution, the McKinney-Vento Act, 42 U.S.C. §§ 11431-11435, and New York Education Law § 3209 and the regulations promulgated thereunder.

84. All Defendants have acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Defendants' acts described herein were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendants acted willfully, knowingly, and with the specific intent to deprive Plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983 and by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Defendants have conspired among themselves to do so (taking numerous overt steps in furtherance thereof), and failed to prevent one another from doing so.

85. As a result of Defendants' conduct, Plaintiffs will be irreparably harmed and have also suffered damages in an amount to be proven at trial.

COUNT IV

**VIOLATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION
IMPROVEMENT ACT ("IDEA")**

86. Plaintiffs hereby repeat and incorporate by reference each of the preceding paragraphs.

87. Defendants violated Plaintiffs' rights under the IDEA, 20 U.S.C. § 1400, *et seq.*, by failing to continue to provide S.H. with the services identified in his IEP and thereby depriving S.H. of a free and appropriate public education in contravention of the IDEA. 20 U.S.C. §§ 1400(1)(A), 1401(a)(18), 20 U.S.C. § 1401(8), 20 U.S.C. § 1415(b)(6).

88. Exhaustion of administrative remedies pursuant to 20 U.S.C. § 1415(f) is not required as a hearing officer lacks the authority to grant the relief sought and hence recourse to IDEA administrative proceedings would be futile or inadequate.

89. As a result of Defendants' conduct, Plaintiffs will be irreparably harmed and have also suffered damages in an amount to be proven at trial.

COUNT V

**REQUEST FOR TEMPORARY RESTRAINING ORDER
(against HAUPPAUGE SCHOOL DISTRICT)**

90. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

91. Plaintiffs seek a temporary restraining order to prohibit Defendant Hauppauge School District from disenrolling Plaintiffs in their schools of origin, permitting them to attend school in the School District pending full resolution of this dispute in accordance with the pendency provision of the McKinney-Vento Act as set forth in 42 U.S.C. § 11432(g)(3)(E)(i), and to provide Plaintiffs with timely school bus or other safe and adequate transportation to their

schools of origin for so long as they continue to be homeless as defined in the McKinney-Vento Act.

COUNT VI

**REQUEST FOR PRELIMINARY INJUNCTION (against
HAUPPAUGE SCHOOL DISTRICT)**

92. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

93. Plaintiffs seek a preliminary injunction to prohibit Defendant Hauppauge School District from disenrolling Plaintiffs in their schools of origin, permitting them to attend school in the School District pending full resolution of this dispute in accordance with the pendency provision of the McKinney-Vento Act as set forth in 42 U.S.C. § 11432(g)(3)(E)(i), and to provide Plaintiffs with timely school bus or other safe and adequate transportation to their schools of origin for so long as they continue to be homeless as defined in the McKinney-Vento Act.

COUNT VII

REQUEST FOR PERMANENT INJUNCTION

94. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the foregoing paragraphs set forth above.

95. Plaintiffs seek a permanent order mandating Defendants' compliance with the McKinney Vento Act and NY Education Law § 3209.

PRAYER FOR RELIEF

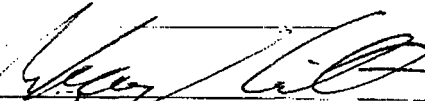
WHEREFORE, Plaintiffs, individually pray that this Court:

A. Immediately grant a temporary restraining order and preliminary injunction compelling the School District to maintain Plaintiffs' enrollment in their schools of origin

and provide Plaintiffs with transportation to and from their schools of origin;

- B. Grant a permanent injunction against Defendants;
- C. For Counts I-IV, damages in an amount to be proven at trial;
- D. Award Plaintiffs their costs and reasonable attorneys' fees; and
- E. Award such other and further relief as the Court may deem appropriate.

Dated: December 8, 2011

By: 

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APPENDIX I

C.H. V. NEW YORK – MEMO ISO ORDER TO SHOW CAUSE FOR TRO/PI

★ DEC 09 2011 ★

LONG ISLAND OFFICE

C.H. individually, and as parent and natural guardian of A.H. and S.H. minor children, individually,
Plaintiffs,

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Civil Action No.

v.
STATE OF NEW YORK, NEW YORK STATE EDUCATION DEPARTMENT, and HAUPPAUGE SCHOOL DISTRICT,
Defendants.

CV 11 5995

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

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Plaintiffs C.H., A.H. and S.H. (collectively, “Plaintiffs”), by their attorneys, DLA Piper LLP (US), respectfully submit this Memorandum of Law in Support of Order to Show Cause for a Temporary Restraining Order and a Preliminary Injunction. Plaintiffs seek a Temporary Restraining Order and Preliminary Injunction against Defendant Hauppauge School District to prevent Defendant Hauppauge School District from disenrolling Plaintiffs from school.

INTRODUCTION

The issue here is simple: Is the Hauppauge School District (the “School District”) entitled to restrain two homeless children from attending the schools they have attended since they began going to school simply because the children are now living in temporary shared housing outside the School District? The answer is equally simple: Of course not. Yet that is precisely what the School District has attempted to do and why Plaintiffs seek emergency relief from this Court.

Plaintiffs A.H. and S.H.¹ are homeless children who resided in the Hauppauge School District before becoming homeless. Plaintiff S.H. is a severely autistic child who requires regular and consistent therapy. His brother, A.H., is in his last year in middle school before he begins high school. The School District, which originally had hand picked S.H. to participate in a specially designed program for treatment with four other students, now seeks to disenroll S.H. from the program and prevent S.H. and A.H. from continuing to attend school in the School District.

Because their mother is unable to care for them, the children live with their father, C.H.,

¹ To ensure the privacy of Plaintiffs, two of whom are minors and one of whom has special education needs, pursuant to the Family Education Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g(b), 34 C.F.R. § 99.30 (1988), and the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, 20 U.S.C. § 1417(c)(1988), 34 C.F.R. §§ 300.571, 572, 573. Plaintiffs request that all references to the Plaintiffs in public documents be made by initials only. Plaintiffs will further seek an order that any document containing identifying information be filed under seal.

in shared housing, even though C.H. does not have residential custody of the children. Because of economic hardship, C.H. does not have housing of his own. Unfortunately, this shared housing is located outside of the School District, where the children have attended school since they began their education.

In violation of the McKinney-Vento Act, 42 U.S.C. §§ 11431-11435, the School District has informed the Plaintiffs that the children may not remain in school pending the outcome of Plaintiffs' appeal of the School District's decision to exclude the children from District Schools.

Plaintiffs therefore request that the Court issue a temporary restraining order and preliminary injunction prohibiting the District from excluding Plaintiffs from their schools of origin and removing any other impediments to Plaintiffs' continued enrollment and attendance at the school they have attended since they began their education.

FACTUAL BACKGROUND

Plaintiffs A.H. and S.H. (the "children") are the children of Plaintiff C.H. (Verified Petition ("Verif. Ptn.") ¶ 10.) C.H. is divorced from the children's mother, who has residential custody of the children. (*Id.* ¶ 11.) The children were living with their mother in Hauppauge, NY until their mother lost her home in a foreclosure proceeding in the fall of 2010. (*Id.* ¶ 23.) A.H. and S.H. then lived with their mother in a homeless shelter until the shelter discharged them in June 2011. (*Id.*) During their time in the homeless shelter, the children suffered from excessive absences from school. (*Id.*) When they did attend school, they often were excessively fatigued and without clean clothing or lunches. (*Id.*) S.H. often missed his intensive applied behavior analysis therapy that he was to attend after school each day and suffered serious regression as a result. (*Id.*)

In June 2011, the School District called C.H. to inquire about the children's extended

absences from school and about S.H. missing applied behavior analysis therapy sessions after school. (*Id.* ¶ 24.) The School District informed C.H. that it had not been able to get in contact with the children's mother. (*Id.*) It further informed C.H. that both children were obviously suffering as a result of missing school and the upheaval in their personal lives. (*Id.*) Finally, the School District informed C.H. that it intended to remove S.H. from applied behavior analysis therapy due to his missing so many sessions.

C.H. was concerned about his children's well-being upon learning of this situation, so he took the children in to live with him and their aunt in their aunt's home in Huntington Station, New York, where he was living on a temporary basis due to his own economic hardship. (*Id.* ¶ 25.) C.H. had moved in with his sister because he could no longer afford to pay for his prior residence. (*Id.* ¶ 26.) Although C.H. owns a property in Coram, New York, he cannot afford to live in or maintain the property and therefore rents the property to a paying tenant in hopes of avoiding foreclosure. (*Id.*) C.H. has missed multiple mortgage payments to the lender on this house and has received numerous letters from the lender threatening foreclosure proceedings if he does not make these payments. (*Id.*)

Upon moving in with C.H., the children were able to attend school regularly, with sufficient food and sleep to make it through the school day. S.H. was able to return to his regular therapy sessions and improved tremendously over the time when he was living in the homeless shelter with his mother. (*Id.* ¶ 26.) However, the children's housing remains insecure. C.H. continues to live with his sister on a temporary basis, and the children's mother continues to be homeless, moving between different friends' homes. (*Id.*)

In or around the beginning of October 2011, Linda Karman of the School District met with C.H and C.H.'s sister. (*Id.* ¶ 27.) Ms. Karman advised them that the McKinney-Vento Act

would be of no aid to C.H. or his children, but that she would assist C.H. in attempting to enroll S.H. and A.H. in the South Huntington School District. (*Id.*)

On or about Friday, October 21, 2011, at around 3 p.m., the Superintendent of Business Operations for Hauppauge School District, James Stucchio, contacted C.H. to inform him that his children would not be permitted back to school beginning the following Monday. (*Id.* ¶ 28.) Confused, C.H. visited Mr. Stucchio's office to find out why. (*Id.*) Mr. Stucchio informed C.H. that the School District had concluded that the children were not residents of the School District, and therefore could no longer attend their schools of origin. (*Id.*) C.H. explained the children's housing situation, but Mr. Stucchio failed to refer C.H. to the School District's homeless liaison or inform C.H. of the children's rights as homeless children. (*Id.*) Rather, when C.H. told Mr. Stucchio that he intended to appeal the School District's determination, Mr. Stucchio told C.H. that he could appeal, but it would be a waste of time because he would not succeed. (*Id.*)

The following Monday, October 24, 2011, C.H. returned to S.H.'s school to speak with the school psychologist, Dr. Mike Weisberg, to find out the family's options for continued enrollment and therapy for S.H. (*Id.* ¶ 29.) When C.H. arrived at the school, he was stopped by police officers, who informed him that he could not enter the school. (*Id.*) When he asked the police officers why he could not enter, C.H. was told that someone at the school had called them and told them that he was not permitted to enter the school, and they were simply carrying out that order. (*Id.*) C.H. indicated that he returned to the school simply to speak to the social worker, and the police officer assured him that he could do so.

Rather than allowing C.H. into the school, however, Dr. Weisberg and principal Claudine DiMuzio came outside and conducted a meeting with C.H. in the street, in public. (*Id.* ¶ 30.) C.H. asked Dr. Weisberg and Ms. DiMuzio for assistance, but neither provided him with any

information about the children's rights or what steps he might take to ensure his children's continued education. (*Id.*) C.H. then went to see Mr. Stucchio. Mr. Stucchio informed C.H. that he must enroll his children in South Huntington School District, the district in which the family's shared housing is located – even though the children had never previously attended school in that district. (*Id.*)

C.H. then went to South Huntington School District, but upon hearing the story of the children's housing insecurity, the South Huntington School District administrators correctly informed C.H. that his children must be permitted to remain in Hauppauge schools. (*Id.* ¶ 31.) Indeed, the administrator at South Huntington School District educated C.H. about the McKinney-Vento Act (a responsibility that truly belonged to the School District), and advised C.H. not to enroll his children in South Huntington because Plaintiff's still have the right to remain in Hauppauge School District. (*Id.*)

The District permitted the children to return to school, but only for a short period of time. On October 21, 2011, Mr. Stucchio sent a letter stating that he had determined that the children are not homeless, and that the children would not be permitted to attend school as of November 21, 2011. (Stucchio Letter, attached hereto as **Exhibit A.**)

C.H. appealed this decision on November 18, 2011, and sought a stay pending the outcome of the petition. (Petition, attached hereto as **Exhibit B.**) However, the District opposed the stay. On November 30, Mr. Stucchio called C.H. and informed him that the stay was denied and that the children would be excluded from school, effective Monday, December 5, 2011. (Verif. Ptn. § 33.) On December 1, 2011, two security guards delivered a letter addressed to C.H. at his sister's home. The letter, signed by Mr. Stucchio, informed C.H. that the stay was denied and that the children would be excluded from school effective Monday, December 5,

2011. (*Id.*; Dec. 1, 2011 Stucchio Letter, attached hereto as **Exhibit C.**)

Plaintiffs' counsel attempted to seek amicable resolution of the issue by contacting the School District's counsel on Friday, December 2, 2011. Plaintiffs' counsel asked whether the children may at least attend their schools of origin until the petition is resolved; however, the School District's counsel refused this request. The School District's counsel informed Plaintiffs' counsel that the children could attend school on Monday, December 5, 2011, but that they would not be permitted to attend thereafter without proof that C.H. was attempting to enroll the children in a different school district. (Email from Susan Fine, attached hereto as **Exhibit D.**) Because of the District's position, Plaintiffs have remained home from school beginning on Wednesday, December 7. (Verif. Ptn. ¶ 36.)

ARGUMENT

A.H. and S.H. are homeless children entitled to attend their schools of origin during the duration of their homelessness, pursuant to the McKinney-Vento Act, 42 U.S.C. § 11431 *et seq.* **At the very least**, however, A.H. and S.H. **must** be permitted to remain in their school of origin during resolution of their petition. This is the express mandate of the McKinney-Vento Act. If the children are excluded from their schools of origin, even for a short period of time, they will suffer immediate, irreparable harm.

I. PLAINTIFFS ARE ENTITLED TO AN INJUNCTION PROHIBITING THE SCHOOL DISTRICT FROM EXCLUDING THEM FROM SCHOOL PENDING THE OUTCOME OF THEIR PETITION TO THE BOARD OF EDUCATION.

Under the McKinney-Vento Act, the School District – a local education agency (“LEA”) – is required to continue a homeless child's education in the school of origin for the duration of homelessness, or enroll the child in the appropriate public school within the attendance area of the student's temporary housing. *See* 42 U.S.C. § 11432(g)(3)(A)(i),(ii). The McKinney-Vento Act defines homeless children and youths, in relevant part, as:

3 (A) [I]ndividuals who lack a fixed, regular, and adequate nighttime residence ... and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardships, or a similar reason; are living in motels, hotels, trailer parks, or camp grounds due to a lack of alternative adequate accommodations; are living in emergency or traditional shelters; are abandoned in hospitals; or are awaiting foster care placement.

42 U.S.C. § 11434a(2)(A)(B)(i).

The statute defines “homeless” to include children who are sharing the housing of other persons due to loss of housing, economic hardship or a similar reason. Indeed, since data has been collected, children doubled-up in shared housing have been the majority of homeless students identified under the law, making up 71% of students identified in the 2009-10 school year, the most recent year for which data is available. *See* National Center for Homeless Education, Education for Homeless Children and Youth Program, Data Collection Summary (2011) at 4, 14. Indeed, the statute seeks to protect children who are forced to endure living in shared, temporary housing precisely because pulling them from their schools while they are experiencing so much upheaval in their lives would be manifestly unfair. *See, e.g., L.R. ex rel. G.R. v. Steelton-Highspire School Dist.*, No. 10–CV–00468, 2010 WL 1433146, at *5 (M.D. Pa. Apr. 7, 2010) (“[T]he McKinney-Vento Act . . . grants special rights and protections to children experiencing homelessness in order to ensure school stability and academic success. Congress has determined through its enactment of the McKinney-Vento Act that homeless children are particularly vulnerable to falling through the cracks of a fractured local educational system.”).

Here, the McKinney-Vento Act protects Plaintiffs’ rights to free education because Plaintiffs are homeless children. Although C.H. and his children have a roof over their heads, they still fall squarely under the definition of “homeless” as provided in the McKinney-Vento

Act and New York law. Plaintiffs are the very population for whom Congress sought to provide stability in their education in passing the McKinney-Vento Act – they do not have a “fixed, regular and adequate nighttime residence” because they are living with their father and aunt in their aunt’s house on a temporary basis. They have not chosen to live there due to preference or convenience, but are living there out of economic necessity. They were homeless beginning in the fall of 2010, when they were living with their mother in a “supervised, publicly or privately operated shelter designed to provide temporary living accommodations.” (Verif. Ptn. ¶ 25.) They remain homeless today as they are “sharing the housing of other persons due to a loss of housing, economic hardship or a similar reason,” in this case, with their father, who does not have residential custody, and who is himself temporarily sharing the housing of his sister. (*Id.*) Plaintiffs are homeless children within the definition of the McKinney-Vento Act, and are due the protections afforded by that Act.

A. The McKinney-Vento Pendency Provision Guarantees Plaintiffs Continued Enrollment In Their Schools Of Origin During The Dispute Resolution Process And Serves As An Automatic Injunction Without The Need To Prove Irreparable Harm, Success On The Merits, Or A Balance Of Hardships.

The McKinney-Vento Act’s provisions on enrollment disputes state that, “[i]f a dispute arises over school selection or enrollment in a school, the child or youth *shall* be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute. 42 U.S.C. § 11432(g)(3)(E)(i) (emphasis added) (“pendency provision”). The pendency provision requires enrollment in the district of choice until there has been *full resolution* of the dispute. *See L.R.*, 2010 WL 1433146, at *5 (granting preliminary injunction under 42 U.S.C. § 11432(g)(3)(E)(i) maintaining student’s enrollment in district “pending full resolution of [the] dispute”). Enrollment must be made immediately and without documents, avoiding unfair burden to those proceeding *pro se*. 42 U.S.C. § 11432(g)(3)(C) Additionally, a “[s]chool may

not require verification or proof of residency as a condition of enrollment.” *Id.* at § 11432(g)(3)(C).

U.S. Department of Education Enrollment Guidelines to Local Education Agencies also direct that “if a dispute arises between a school district and parents or guardians over school selection or enrollment, the LEA *must immediately enroll the child or youth in the school in which the parent or guardian seeks enrollment, pending resolution of the dispute.*” See 67 Fed. Reg. 46 III(B)(3) (March 8, 2002) (emphasis added); see also Guidance for the Education of Homeless Children and Youth Program (July 2004) available at http://www.serve.org/NCHE/downloads/guidance_jul2004.pdf.6].

Therefore, these statutory pendency provisions operate as an “automatic preliminary injunction” and should be enforced as “an absolute rule” in place of a court’s discretionary consideration of the standard preliminary injunction factors of irreparable harm, likelihood of success on the merits or balance of hardships. See *Zvi D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982). In *Ambach*, the Court considered the effect of the Education of the Handicapped Act of 1976, 20 U.S.C. §§ 1400-1461, which gives parents the right to a hearing on the placement of their handicapped children. The language considered by the Court in *Ambach* is substantially similar to the language in the pendency provision in the McKinney-Vento Act and serves the same purpose. Compare 20 U.S.C. § 1415(j) (“[D]uring the pendency of any proceedings conducted pursuant to this section, . . . the child shall remain in the then-current educational placement of the child . . . until all such proceedings have been completed.”) with 42 U.S.C. § 11432(g)(3)(E)(i) (“If a dispute arises over school selection or enrollment in a school the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute.”). The Court noted that the pendency provision of the Education of the

Handicapped Act functions, in effect, as an automatic preliminary injunction. *Ambach*, 694 F.2d at 906. The Court went on to state that “[t]he statute substitutes an absolute rule in favor of the status quo for the court’s discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of hardships.” *Id.* at 906.

Like the stay-put provision of the Education of the Handicapped Act, the pendency provision of the McKinney-Vento Act requires schools to automatically enroll students while the dispute is pending. *See* 42 U.S.C. § 11432(g)(3)(E)(i). By doing so, the McKinney-Vento Act also serves as an absolute rule in favor of ensuring stability for the child and honors the family’s or student’s choice of school placement during the pendency of a dispute. *See id.* The provision applies regardless of the merits of the dispute, the balance of the hardships, or the weight of public interest.

Furthermore, like the Education of the Handicapped Act’s stay-put provision, the McKinney-Vento Act’s pendency provision is a clear and express mandate that essentially presumes irreparable harm to the child if the school placement is changed and proactively protects against that outcome. Moreover, the competing interests between the student and the school district have already been balanced by Congress in favor of the child, and the Commission’s role is to enforce the provision’s “absolute rule” without delay and without applying its own discretionary preliminary injunction analysis.

Here, C.H. has appealed the School District’s decision to remove his children from school. The School District has violated the McKinney-Vento Act by even requiring C.H. to seek a stay, let alone denying his request. Because the School District has denied Plaintiffs’ stay request and will exclude Plaintiffs from their schools of origin pending the outcome of their

petition, Defendants have unequivocally violated the McKinney-Vento Act, and the Court should enjoin the School District from enforcing its determination. Furthermore, Plaintiffs are likely to prevail on the ultimate issue of whether they are homeless and entitled to McKinney-Vento's protections. Plaintiffs A.H. and S.H. are living in shared housing at their aunt's house with their father, C.H., who does not even have residential custody but has had to take care of the children nonetheless. C.H. has no other options but to live with his sister, because he is on the verge of losing his home, which is currently being occupied by tenants in an effort to stave off foreclosure. A.H. and S.H. are entitled to remain in their school pending resolution of the outstanding petition.

B. Even If Plaintiffs Must Prove The Standards For A Preliminary Injunction, Plaintiffs Are Entitled To A Preliminary Injunction Because They Will Suffer Irreparable Harm Without An Injunction, They Have A Likelihood Of Success On The Merits, And The Balance Of Hardships Weighs In Their Favor.

An applicant for a temporary restraining order must meet the same standards applicable to the issuance of a preliminary injunction. *See Gund, Inc. v. SKM Enters.*, No. 01 Civ. 0882, 2001 U.S. Dist. LEXIS 1324, at *4 (S.D.N.Y. Feb. 14, 2001). Plaintiffs must demonstrate “(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.” *Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 405-06 (2d Cir. 2011) (quoting *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010)); Fed. R. Civ. P. 65(b)(1)(A); *see, e.g., Berg v. Glen Cove City School Dist.*, 853 F. Supp. 651 (E.D.N.Y. 1994); *Orozco v. Sobol*, 674 F. Supp. 125, 127-28 (S.D.N.Y. 1987). Plaintiffs meet the standard here and thus are entitled to a temporary restraining order and preliminary injunction.

1. Plaintiffs Will Suffer Irreparable Harm Absent an Injunction.

Irreparable harm is “the single most important prerequisite for the issuance of a preliminary injunction.” *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 233-34 (2d Cir. 1999). The irreparable harm suffered by a child being removed from a school has been recognized by Congress, the Supreme Court, and the Courts of this Circuit and District. Congress has recognized the manifest irreparable harm suffered by homeless children who face disruption in their education. Indeed, the McKinney-Vento Act *exists* because of the fundamental, irreparable harm that homeless children, such as Plaintiffs, suffer from such disruptions, which Congress recognized as having deleterious effects on the development of homeless children, and which impedes them from breaking the cycle of poverty and homelessness. *See, e.g.*, H.R. Conf. Rep. No. 100-174, at 93 (1987), reprinted in 1987 U.S.C.C.A.N. 472. This is the reason that the statute states that homeless children are to remain in the schools they were in *before* becoming homeless.

As the United State Supreme Court has observed:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Bd. of Education, 347 U.S. 483, 493 (1954); *see also Cox v. Brown*, 498 F. Supp. 823, 828-29 (D.D.C. 1980) (irreparable harm results when students “[lack] each day of their young lives an appropriate education . . .”).

The Courts of this Circuit further recognize that even a brief disruption of a child's education can have grave effects. "Interruption of a child's schooling[,] causing a hiatus not only in the student's education but also in the other social and psychological development processes that take place during the child's schooling, raises a strong possibility of irreparable injury." *Orozco by Arroyo v. Sobol*, 674 F. Supp. 125, 128 (S.D.N.Y. 1987); *see also Cronin v. Bd. Of Educ.*, 689 F. Supp. 197, 204 (S.D.N.Y. 1998) (finding that a disruption in schooling constitutes irreparable harm because of the accompanying loss of educational, vocational, and social development); *Hadley v. Rush Henrietta Central School Dist.*, 409 F. Supp. 2d 164, 167 (W.D.N.Y. 2006) (student would suffer irreparable harm if he could not play lacrosse during his final year of school). Thus, homeless children such as the Plaintiffs, who lack the stable home environment many other children enjoy, have particular need for continuity in their education.

Here, there is no question that Plaintiffs will suffer irreparable harm without immediate, interim relief. Plaintiffs are homeless children who have been removed from school; at stake is not merely whether these children will learn arithmetic or grammar in a timely manner but, more fundamentally, whether they will be given the opportunity to develop, grow and overcome the extreme hardships imposed on them through no fault of their own. Plaintiffs will lose the stability of remaining in the schools they have attended since before becoming homeless and the support network effectuated by long-time, consistent attendance at these schools, during a time when their home lives are in upheaval.

A.H. and S.H. have effectively been denied an education, starting the beginning of this week, because Hauppauge School District has told C.H. not to take them to school anymore. Meanwhile, the South Huntington School District has correctly informed C.H. that enrollment of the children in its schools is not appropriate because the children belong in their district of origin,

which is the Hauppauge School District. Every day this dispute lasts is another day that A.H. and S.H. are denied not only their school of choice, but any schooling at all. This is particularly distressing for S.H., who suffers from severe autism and requires constant and regular therapy. The risk that he will regress multiplies every day that he is held out of the specially designed program that the Hauppauge District originally selected him for.

No sum of money can adequately address the Plaintiffs' injuries. The injury to Plaintiffs in being denied access to the same public education available to all other children is the very archetype of "irreparable injury." This Court should grant Plaintiffs' motion for injunctive relief.

2. Plaintiffs Are Likely to Succeed on the Merits.

Defendants' conduct in this case is not merely an arguable or technical violation of a statute; it is a wholesale abdication of their legal obligations under a statutory regime specifically intended to protect homeless children such as Plaintiffs against this sort of neglect and malfeasance. Defendants' conduct was unlawful and without justification.² Plaintiffs are likely to succeed on the merits.

As noted above, the pendency provision of 42 U.S.C. § 11432(g)(3)(E)(i) requires the school to enroll, or keep enrolled, a homeless child during the pendency of any dispute about enrollment. However, New York Regulations and the conduct of the School District and the Education Department in this case directly contravene the federal statute.

Indeed, the New York General School Regulations state that "Each school district shall . . . (c) delay for 30 days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school of origin or a

² As set forth in Plaintiffs' Verified Petition, Defendants' conduct also violates IDEA, 20 U.S.C. § 1400, *et seq.*, by failing to continue to provide S.H. with the services identified in his IEP and thereby depriving S.H. of a free and appropriate public education in contravention of the IDEA. 20 U.S.C. §§ 1400(1)(A), 1401(a)(18), 20 U.S.C. § 1401(8), 20 U.S.C. § 1415(b)(6).

school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the commissioner pursuant to Education Law, section 310 with a stay application within 30 days of such final determination, *the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the commissioner renders a decision on the stay application.*” 8 NY ADC

100.2(x)(7)(ii)(c) (emphasis added).

It is not only the Plaintiffs who find the stay provision offends the requirements of the McKinney-Vento Act. Monitors from the federal Department of Education, who are charged with assessing implementation of the McKinney-Vento Act, have twice noted in their monitoring reports that the stay provision is inappropriate. In 2009, the monitoring report stated “NYSED must issue – and submit a copy to ED - a written memorandum clarifying that during a dispute resolution process at the LEA and SEA levels, the LEAs of origin and residence must offer immediate enrollment in the requested district and provide transportation to the school in which the child is placed until the dispute is resolved.” U.S. Dept. of Education, Student Achievement and School Accountability Program, *New York State Education Department, March 23-27, 2009, 19* (2009). A recurring finding is noted in the 2010 monitoring report, stating “The NYSED has not ensured that its LEAs have procedures for the prompt resolution of disputes and a process to direct LEAs on how to resolve enrollment disputes consistent with LEA requirements stated in section 722(g)(3)(E).” U.S. Dept. of Education, Student Achievement and School Accountability Program, *New York State Department of Education, May 24-28, 2010, 23* (2010). Despite these repeated findings, the State’s noncompliance persists.

Merely incorporating a discretionary stay pending the outcome of the appeal contravenes

the mandate of the McKinney-Vento Act. Denying the stay, however, wholly offends it by denying Plaintiffs the specific protections the McKinney-Vento Act is designed to provide – keeping the boys in the same school while the parties work through their dispute. Accordingly, Plaintiffs are likely to succeed on the merits of their claim that the School District, the Board of Education, and the State of New York have violated an express mandate of federal law by seeking to exclude Plaintiffs from their schools of origin pending the outcome of their appeal. *L.R. ex rel. G.R.*, 2010 WL 1433146, at *5 (granting emergency motion for preliminary injunction ordering school district to immediately re-enroll student “pending a determination on the merits of their school selection”).

3. The Balance Of Hardships Weighs In Plaintiffs’ Favor.

This case cries out for injunctive relief, as the balance of equities strongly favors an injunction. *Olson v. Wing*, 281 F. Supp. 2d 476, 489 (E.D.N.Y. 2003) (“[B]ecause a preliminary injunction is an exercise of equitable authority, a court considering such a motion should consider the balance of equities, including the public interest, involved.”), *aff’d*, No. 03-7193, 2003 WL 21384509 (2d Cir. June 10, 2003). If the Court does not issue an injunction, the Plaintiffs will miss school, fall back in their studies, and miss opportunities to develop intellectually and socially. Every day that Plaintiffs are denied access to school will disrupt their education and create further risk of lower educational achievement. The disruption to the school environment will eliminate one of the few stable features in Plaintiffs’ lives.

By contrast, there is minimal, if any, burden on Defendants. The only “harm” to Defendants of being forced to comply with their statutory obligations would be the cost and effort of providing schooling and transportation to Plaintiffs – something for which the federal and state governments provide funding. In fact, because Defendants already operate school buses, classrooms, and the other educational basics in which Plaintiffs seek to participate by this

motion, the incremental burden to Defendants of an injunction would be virtually nil.

Public policy also strongly favors the issuance of an injunction. Fair administration of the public school system in a manner that does not discriminate against homeless children is an important public goal. *See Lavelle v. Quinones*, 679 F. Supp. 253, 259 (E.D.N.Y. 1988) (“[M]aintenance of public confidence in the integrity of the administration of the schools is of concern to the entire city.”).

Finally, homelessness is a societal problem, and the public interest is served by breaking the cycle of poverty that leads to homelessness. If the Court issues an injunction, and Plaintiffs are given additional opportunity for educational achievement, society’s interest in assisting its most defenseless members will be advanced. The incremental cost of providing this opportunity to the Plaintiffs – a cost that the elected officials of both the federal and state governments have determined that the taxpayers should bear – pales in comparison. Thus, this Court should issue the requested injunctive relief.

II. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant a temporary restraining order and a preliminary injunction in their favor.

Dated: December 8, 2011

By: 

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APPENDIX J
C.H. V. NEW YORK – ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

C.H. individually, and as parent and
natural guardian of A.H. and S.H. minor
children, individually,
Plaintiffs,

v.

STATE OF NEW YORK, NEW YORK
STATE EDUCATION DEPARTMENT,
and HAUPPAUGE SCHOOL
DISTRICT,
Defendants.

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ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION
AND TEMPORARY
RESTRAINING ORDER

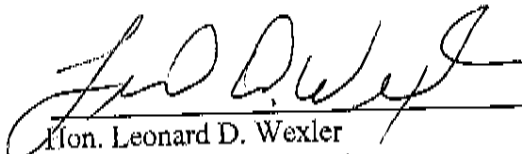
11-CV-5995 (LDW) (WDW)

Upon the Memorandum of Law in Support of Plaintiffs' Order to Show Cause for a Preliminary Injunction and Temporary Restraining Order, and upon the Declaration of Anthony D. Gill sworn to the 8th day of December, 2011, and upon the copy of the Verified Petition hereto annexed, it is ORDERED, that Defendant Hauppauge School District show cause before this Court, at room 940, United States Court House, Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, New York on January 6, 2011 at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Fed. R. Civ. P. 65(a) enjoining the defendant(s) from preventing AH and SH from attending the Hauppauge School District and requiring the Hauppauge Union Free School District to provide transportation to AH and SH pending the outcome of this action; and it is further ORDERED, that sufficient reason having been shown, therefore, pending the hearing of Plaintiffs' application for a preliminary injunction, pursuant to Fed. R. Civ. P. 65(b), the defendant(s) are temporarily restrained and enjoined from preventing AH and SH from attending the Hauppauge School District and will provide transportation for AH and SH to the Hauppauge School District as soon as reasonably practicable; and it is further ORDERED, that service by regular mail of a copy of this

order and annexed affidavit upon the defendant(s) or his counsel by December 12, 2011 shall be deemed good and sufficient service thereof.

DATED: December 13, 2011
Central Islip, New York

12:15 PM


Hon. Leonard D. Wexler
United States District Judge

EASTM7408197.1

(ENDNOTES)

- 1 Nat'l Law Ctr. on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* (2014), available at http://www.nlchp.org/documents/No_Safe_Place.
- 2 The Nat'l Ctr. on Family Homelessness, *State Report Card on Homelessness: America's Youngest Outcasts 2010*, at 6 (2011).
- 3 U.S. Dep't of Educ., 2013-2014 Consolidated State Performance Report, available at <http://www2.ed.gov/admins/lead/account/consolidated/index.html>.
- 4 U.S. Dep't of Educ., 2007-2008 Consolidated State Performance Report, available at <http://www2.ed.gov/admins/lead/account/consolidated/index.html>.
- 5 Am. Institutes for Research, *America's Youngest Outcasts – A Report Card on Child Homelessness 14* (2014), available at <http://www.homelesschildrenamerica.org/mediadocs/282.pdf>.
- 6 Am. Institutes for Research, *America's Youngest Outcasts – A Report Card on Child Homelessness 14* (2014), available at <http://www.homelesschildrenamerica.org/mediadocs/282.pdf>; see also Nat'l Ctr. for Children in Poverty, *Homeless Children and Youth – Causes and Consequences* (2009), at 4-5 (listing behavioral health problems and lack of positive social support as factors that contribute to homelessness).
- 7 See Nat'l Low Income Housing Coalition, *Out of Reach 1* (2015), available at http://nlihc.org/sites/default/files/oor/OOR_2015_FULL.pdf.
- 8 Nat'l Ctr. on Family Homelessness, *The SHIFT Study: Final Report*, <http://www.familyhomelessness.org/media/389.pdf> (As demonstrated in the 2007-2010 Service and Housing Interventions for Families in Transition (SHIFT) Longitudinal Study conducted by the National Center on Family Homelessness, addressing the needs of homeless children is critical to their well-being and future prospects; it is also essential to ensuring family stability); see also Megan Sandel, *infra* note 117.
- 9 *Cox v. Brown*, 498 F. Supp. 823, 828-29 (D.D.C. 1980).
- 10 Mai Abdul Rahman, *The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education* 55 (Mar. 2014) (Ph.D. dissertation, Howard University), available at <http://gradworks.umi.com/3639463.pdf> (citations omitted).
- 11 A 2006 study by the Washington State Agency Council on Coordinated Transportation compared the performance of homeless students who stayed in their schools of origin with homeless students who changed schools and found that those who stayed in their schools of origin consistently achieved higher test scores and grade point averages than those who changed schools. The constancy and community helped provide the support these children needed. See Daniel Carlson et al., *Homeless Student Transportation Project Evaluation*, Washington State Transportation Center (TRAC), University of Washington (2006), <http://www.wsdot.wa.gov/research/reports/fullreports/665.1.pdf>.
- 12 Ann Elizabeth Montgomery, et al., *Relationship Among Adverse Childhood Experiences, History of Active Military Service, and Adult Outcomes: Homelessness, Mental Health, and Physical Health*, Am J Public Health (2013).
- 13 Debbie Staub & Mona Meighan, *Improving Educational Success for Children and Youth in Foster Care: Ensuring School Stability*, available at <http://www.nasponline.org/publications/cq/36/4/fostercare.aspx>.
- 14 Linda Jacobson, *Moving Targets*, Education Week (Apr. 4, 2001); see also Nat'l Ctr. for Homeless Educ., NCHE Mobility Study Bibliography (Sept. 2011), center.serve.org/nche/downloads/nche_mobil_biblio.doc.
- 15 Homes for the Homeless & The Inst. for Children & Poverty, *Homeless in America: A Children's Story – Part One* (1999); see also 2016 McKinney-Vento Guidance, n.6 at 2 (citations omitted).
- 16 Ellen Bassuk, et al., *The Prevalence of Mental Illness in Homeless Children: A Systematic Review and Meta-Analysis*, 54 JOURNAL OF THE AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY (2015).
- 17 42 U.S.C. § 11431 et seq.
- 18 *Id.*
- 19 *Id.*
- 20 See generally Title IX Part A of Every Student Succeeds Act, available at <https://www.gpo.gov/fdsys/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf>.
- 21 U.S. Dep't of Educ., *Education for Homeless Children and Youths Program Non-Regulatory Guidance, Title VII-B of the McKinney-Vento Homeless Assistance Act, as Amended by the Every Student Succeeds Act, Non-Regulatory Guidance* (hereinafter "2016 Guidance"), at 1 (July 27, 2016), available at <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf>.
- 22 The full text of the McKinney-Vento education provisions is available in Appendix A.
- 23 42 U.S.C. § 11432(g)(3)(C)(i).
- 24 42 U.S.C. § 11433(a)(2)(B)(ii).
- 25 42 U.S.C. § 11431.
- 26 42 U.S.C. § 11434a(2)(A).
- 27 See Nat'l Ass'n for the Educ. of Homeless Children & Youth & Nat'l Law Ctr on Homelessness & Poverty, *The Most Frequently Asked Questions on the Education Rights of Children and Youth in Homeless Situations*, http://www.nlchp.org/McKinney-Vento_FAQs/.
- 28 Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/fix> (last visited Aug. 25, 2015).
- 29 Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/regular> (last visited Aug. 25, 2015).
- 30 Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/adequate> (last visited Aug. 25, 2015).
- 31 42 U.S.C. § 11432(g)(1)(J)(i); 42 U.S.C. § 11432(g)(3)(G); see also 20 U.S.C. § 1232 et seq.
- 32 42 U.S.C. § 11434a(2)(B).
- 33 2016 Guidance A-3.
- 34 See, e.g., My Sister's Place, DC; Dawson Beach Transitional Housing, VA; and Salvation Army Adult Rehabilitation Center, MA.
- 35 42 U.S.C. § 11432(g)(3)(A)(i).
- 36 42 U.S.C. § 11432(g)(3)(A)(ii).
- 37 42 U.S.C. § 11432(g)(3)(C) et seq.
- 38 42 U.S.C. § 11432(g)(3)(C)(i)(II).
- 39 42 U.S.C. § 11434a(1).
- 40 42 U.S.C. § 11432(g)(1)(J)(iii); see also 2016 Guidance J-4 and at 31.
- 41 42 U.S.C. § 11432(g)(6)(A)(iv).
- 42 42 U.S.C. § 11432(g)(4).
- 43 42 U.S.C. § 11432(g)(1)(K).
- 44 42 U.S.C. § 11432(g)(3)(E).
- 45 42 U.S.C. § 11432(g)(3)(G).
- 46 42 U.S.C. § 11432(g)(3)(A)(ii).
- 47 42 U.S.C. § 11432(g)(3)(I)(i).
- 48 2016 Guidance I-1.
- 49 42 U.S.C. § 11432(g)(1)(F)(iii).
- 50 42 U.S.C. § 11432(g)(3)(B).
- 51 42 U.S.C. § 11432(g)(3)(A)(i).

- 52 42 U.S.C. § 11432(g)(3)(B)(i).
- 53 42 U.S.C. § 11432(g)(3)(B)(ii).
- 54 2016 Guidance I-3.
- 55 42 U.S.C. § 11432(g)(3)(C)(i).
- 56 42 U.S.C. § 11432(g)(1)(F)(ii).
- 57 2016 Guidance N-3.
- 58 42 U.S.C. § 11432(g)(3)(B)(iii).
- 59 42 U.S.C. § 11434A(1).
- 60 L. John Wertheim & Ken Rodriguez, Sports Illustrated, *Young, Gifted & Homeless* (2014), <http://www.si.com/longform/homeless/>.
- 61 42 U.S.C. § 11432(g)(1)(J)(iii).
- 62 42 U.S.C. §§ 11432(g)(1)(I), (g)(7).
- 63 42 U.S.C. § 11432(g)(1)(J)(iii).
- 64 42 U.S.C. § 11432(g)(5)(C)(ii).
- 65 42 U.S.C. § 11432(1).
- 66 81 Fed. Reg. 14432 (Mar. 3, 2016).
- 67 42 U.S.C. § 11432(2).
- 68 20 U.S.C. § 6311(h)(1)(C) et seq. (effective 2017-2018 school year).
- 69 42 U.S.C. § 11432(f) et seq.
- 70 42 U.S.C. § 11432(g)(1).
- 71 42 U.S.C. § 11432(g)(1) et seq.
- 72 42 U.S.C. § 11432(g)(3)(A)(i).
- 73 42 U.S.C. § 11432(g)(3)(A)(ii).
- 74 42 U.S.C. § 11432(g)(3)(B)(i); *see supra* Which school can students experiencing homelessness attend?
- 75 2016 Guidance K-2.
- 76 42 U.S.C. § 11432(g)(1)(J)(ii).
- 77 *See generally* 42 U.S.C. § 11432(g)(6)(A) et seq.
- 78 42 U.S.C. § 11432(g)(3)(E)(iii).
- 79 42 U.S.C. § 11432(g)(6)(C).
- 80 42 U.S.C. § 11432(g)(6)(D).
- 81 42 U.S.C. § 11432(g)(6)(B).
- 82 42 U.S.C. § 11431(2); 42 U.S.C. § 11432(g)(1)(I); 42 U.S.C. § 11432(g)(7)(A).
- 83 *Goss v. Lopez*, 419 U.S. 565, 574 (1975).
- 84 42 U.S.C. § 11432(g)(1)(C).
- 85 42 U.S.C. § 11432(g)(3)(E).
- 86 42 U.S.C. § 11432(g)(3)(E)(ii).
- 87 42 U.S.C. § 11432(g)(3)(E)(ii).
- 88 42 U.S.C. § 11432(g)(3)(E)(i).
- 89 42 U.S.C. § 11432(g)(3)(E)(iii).
- 90 2016 Guidance at 33.
- 91 42 U.S.C. § 11432(g)(3)(E)(1).
- 92 42 U.S.C. § 11432(g)(5) *et seq.*
- 93 42 U.S.C. § 11432(g)(5)(B).
- 94 *See* 20 U.S.C. § 1232(g); U.S. Dep't of Educ., <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.
- 95 *See generally* 2016 Guidance A-6.
- 96 U.S. Dep't of Educ., *The Family Educational Rights and Privacy Act Guidance for Parents* (Feb. 2011), *available at* <http://familypolicy.ed.gov/sites/fpco.ed.gov/files/for-parents.pdf>.
- 97 *See* 20 U.S.C. § 1232(g)(a)(1).
- 98 U.S. Dep't of Educ., *supra* note 96.
- 99 2016 Guidance A-8.
- 100 *See* 20 U.S.C. § 1232 g(b)(1)(I).
- 101 42 U.S.C. § 11432g(3)(G).
- 102 42 U.S.C. § 11432(g)(3)(G).
- 103 42 U.S.C. § 11431(2).
- 104 *See* 20 U.S.C. § 1232g(g).
- 105 *See* 42 U.S.C. § 11432(g)(3)(D).
- 106 U.S. Dep't of Educ., Office of Special Education and Rehabilitative Programs, *Dear Chief State School Officers Letter on Guidance on the Amendment to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act* (May 27, 2014), *available at* <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>.
- 107 *Id.*
- 108 34 C.F.R. § 99.3.
- 109 42 U.S.C. § 11432(g)(1)(H)(iv).
- 110 34 C.F.R. § 99.5.
- 111 20 U.S.C. § 1232g(b).
- 112 20 U.S.C. § 1232g(a)(1)(A).
- 113 34 C.F.R. § 99.4.
- 114 MASS. GEN. LAWS ANN. Ch. 71, § 34H(a).
- 115 750 ILL. COMP. STAT. 60/214.
- 116 23 PA. CONS. STAT. ANN. § 6112.
- 117 Megan Sandel et al., Children's Health Watch & Ctr. for Housing Policy at Nat'l Housing Conference, *Compounding Stress: The Timing and Duration Effects of Homelessness on Children's Health*, http://www.childrenshealthwatch.org/wp-content/uploads/Compounding-Stress_2015.pdf (citation omitted).
- 118 Educ. Law Ctr., *Access to Pre-K Education Under the McKinney-Vento Homeless Assistance Act* (Feb. 2010), http://www.edlawcenter.org/assets/files/pdfs/student%20residency/PreKPolicyBrief_AccessToEducation.pdf.
- 119 Nat'l Ctr. for Homeless Educ., *Early Care and Education for Young Children Experiencing Homelessness* (2013), *available at* https://www.acf.hhs.gov/sites/default/files/ece/nche_early_childhood_brief_november_2013.pdf.
- 120 Maryland state law requires a "local school system shall enroll in prekindergarten all 4-year-old applicants who are from families with economically disadvantaged backgrounds or who are homeless." Md. Code Regs. 13a.06.02.03(A), *available at* <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.06.02.03.htm>.
- 121 U.S. Dep't of Health & Human Servs., *Policies and Procedures to Increase Access to ECE Services for Homeless Children & Families*, <http://www.acf.hhs.gov/programs/ece/interagency-projects/ece-services-for-homeless-children/policies>.
- 122 Final Head Start regulations are available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-22986.pdf>;
- 123 Nat'l Assoc. for Educ. of Homeless Children & Youth, Summary of Final Head Start Regulations Related to Homelessness (Oct. 4, 2016), *available at* <http://naehcy.org/sites/default/files/dl/legis/Summary%20of%20Final%20Head%20Start%20Regulations%20Related%20to%20Homelessness%20FINAL.pdf>.
- 124 45 CFR Part 98. The final CCDF Regulations are available for downloading at <https://www.federalregister.gov/d/2016-22986>.
- 125 45 CFR §1302.12(c)(iii).
- 126 45 CFR §1302.12(i)(3).
- 127 45 CFR §1302.12(h).
- 128 45 CFR §1302.13.
- 129 *See e.g.*, 45 CFR §1302.12(i)(3).
- 130 45 CFR §1302.14(a)(1).
- 131 45 CFR §§1302.15(e); 1302.16(c)(1).
- 132 45 CFR§1302.16(c)(2).
- 133 45 CFR §1302.15(b)(3).
- 134 45 CFR §1302.72(a)
- 135 42 U.S.C. 11432(6)(A); 45 CFR §1302.11(b)(1)(i)
- 136 45 CFR §1302.11(b)(2)
- 137 45 CFR §1302.12(d)(2)
- 138 45 CFR §1302.53(a)(2)(vi).
- 139 *See e.g., infra* IDEA and Special Considerations for Homeless

- Students.
- 140 See e.g., Megan Sandel, *supra* note 117.
- 141 42 U.S.C. § 11432(g)(5)(D).
- 142 2016 Guidance A-4 (citing to 34 CFR part 300 (regulations implementing Part B of the IDEA), 34 CFR part 104 (regulations implementing Section 504), 4 CFR part 303 (the Department's regulations implementing Part C of the IDEA)).
- 143 34 C.F.R. § 300.111.
- 144 See e.g., 34 C.F.R. § 300.114(a)(2)(ii); see also 34 C.F.R. § 300.530 et seq.
- 145 34 C.F.R. § 300.518 (“during the pendency of any administrative or judicial proceeding regarding a complaint under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement”); see also 34 C.F.R. § 300.533.
- 146 34 C.F.R. § 300.501.
- 147 34 C.F.R. § 300.8.
- 148 34 C.F.R. § 300.17.
- 149 20 U.S.C. § 1400(c).
- 150 34 C.F.R. § 300.111.
- 151 34 C.F.R. § 300.311(a)(7)(ii)(C); see also 34 C.F.R. § 300.502.
- 152 34 C.F.R. § 300.301(c)(1)(i).
- 153 34 C.F.R. § 300.304.
- 154 34 C.F.R. § 300.304(c).
- 155 34 C.F.R. § 300.304.
- 156 34 C.F.R. § 300.323(c)(1) et seq.
- 157 34 C.F.R. § 300.321.
- 158 34 C.F.R. § 300.320.
- 159 34 C.F.R. § 300.324(b)(1)(i).
- 160 34 C.F.R. § 300.322.
- 161 34 C.F.R. § 300.116(a)(2)(b)(2).
- 162 34 C.F.R. § 300.116 et seq.
- 163 *Id.*
- 164 34 C.F.R. § 300.114(a)(2)(i).
- 165 34 C.F.R. § 300.114(a)(2)(ii).
- 166 34 C.F.R. § 300.530(e) et seq.
- 167 34 C.F.R. § 300.532(a).
- 168 34 C.F.R. § 300.533.
- 169 34 C.F.R. § 300.506.
- 170 34 C.F.R. § 300.516.
- 171 34 C.F.R. Part 303.
- 172 34 C.F.R. § 300.43.
- 173 42 U.S.C. § 11434a(2).
- 174 34 C.F.R. § 300.304(c)(5).
- 175 34 C.F.R. § 300.149(a)(3).
- 176 34 C.F.R. § 300.518.
- 177 34 C.F.R. § 300.106.
- 178 42 U.S.C. 11432(g)(4) (“Each homeless child or youth to be assisted under this part shall be provided services comparable to services offered to other students in the school selected. . .”).
- 179 34 C.F.R. § 300.34(c)(16).
- 180 34 C.F.R. § 300.519 et seq.
- 181 34 C.F.R. § 300.519(f).
- 182 Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of the United States Code).
- 183 42 U.S.C. § 5714–23(b)(9); 42 U.S.C. §675(1)(G).
- 184 42 U.S.C. § 5714–2(a)(15).
- 185 20 U.S.C. 6311(g)(1)(E)(i).
- 186 20 U.S.C. 6311(g)(1)(E)(iv).
- 187 Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, available at <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>.
- 188 Child Nutrition and WIC Reauthorization Act of 2004, 118 Stat. 729, available at http://center.serve.org/nche/downloads/nutrition_act_2004.pdf.
- 189 42 U.S.C. § 11432(e)(3)(C)(i)(III).
- 190 See generally U.S. Dep’t of Agriculture, Eligibility Manual for School Meals (2014), available at <http://www.fns.usda.gov/sites/default/files/cn/EliMan.pdf>.
- 191 *Id.*
- 192 Am. Bar Ass’n Comm’n on Homelessness & Poverty, Educating Children Without Housing – A Primer on Legal Requirements and Implementation Strategies for Educators, Advocates and Policymakers 65 (Amy Horton-Newell, et al. eds., 4th ed. 2014) (If a child is in out-of-home care and also meets the McKinney-Vento definition of a child awaiting foster care placement, both McKinney-Vento and Fostering Connections Act apply.)
- 193 *Id.* at 80; 20 U.S.C. 6313(c)(3)(C).
- 194 20 U.S.C. 6313(c)(3)(B).
- 195 Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4. Title VI of VAWA 2013, entitled “Safe Homes for Survivors of Domestic Violence, Dating Violence, Sexual Assault, and Stalking” addresses housing. Copies of the legislation are available at <http://thomas.loc.gov> by clicking on “Public Laws.”
- 196 42 U.S.C. § 11432(g)(5).
- 197 42 U.S.C. § 11432(g)(5)(B).
- 198 Available at <http://www.acf.hhs.gov/fysb/resource/youth-specific-faq-coordinated-entry-20160824>.
- 199 See e.g., U.S. Dep’t of Educ., *supra* note 21, at 7; see discussion *infra* Immigrant Children and English Learners (discussing *Plyler v. Doe*, 457 U.S. 202 (1982)).
- 200 *Id.* (citing 42 U.S.C. § 2000d).
- 201 U.S. Dep’t of Justice, Civil Rights Division & U.S. Dep’t of Education, Office for Civil Rights, Office of General Counsel, *Dear Colleague Letter on the Rights of All Children to Enroll in Public Schools* (May 8, 2014), available at <http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf>.
- 202 U.S. Dep’t of Justice, Civil Rights Division & U.S. Dep’t of Education, Office for Civil Rights, *Dear Colleague Letter on English Learner Students and Limited English Proficient Parents* 5 (Jan. 7, 2015), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.
- 203 *Id.* at 8-9.
- 204 See e.g., Press Release, Dep’t of Health & Human Servs., State of Arizona Agrees to Improve Immigrant Access to Federal Public Benefits Programs, available at <http://www.hhs.gov/ocr/civilrights/activities/agreements/Arizona/bulletin.pdf> (discussing a Title VI violation in the healthcare context).
- 205 20 U.S.C. 1701(a)(1).
- 206 *U.S. v. Texas*, 601 F.3d 354 (5th Cir. 2010) (quoting 20 U.S.C. 1703(f)); *Castaneda v. Pickard*, 648 F.2d 989, 1009-10 (5th Cir. 1981).
- 207 See *Idaho Migrant Council v. Bd. of Educ.*, 647 F. 2d 69 (9th Cir. 1981).
- 208 See, e.g., April 28, 2010, Settlement Agreement between The United States of American and Adams 12 Five Star Schools, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/crt/educational-opportunities-cases#origin> (last visited June 24, 2016).
- 209 ME ADC 05-071 Ch. 14, § 2.2.
- 210 N.Y. Educ. Law § 3209(5)(a).
- 211 MD ADC 13A.05.09.03(A)(2) and (3).

- 212 105 ILL. COMP. STAT. ANN. 45/1-25.
- 213 105 ILL. COMP. STAT. 45/1-25.
- 214 Mass. Gen. Laws Ann. 71 § 34H(a).
- 215 MD ADC 13A.05.09.03(A).
- 216 N.Y. Educ. Law § 3209(6).
- 217 IOWA ADMIN. CODE 281-33.6.
- 218 TX SB 1494 (2015).
- 219 See Cal. Educ. Code §8482.6.
- 220 COLO. REV. STAT. ANN. § 22-33-103.5.
- 221 N.Y. Educ. Law § 3209(1)(b).
- 222 OR. REV. STAT. §339.115(7).
- 223 42 U.S.C. § 11432(g)(1)(K).
- 224 See Cal. Educ. Code § 66019.3.
- 225 See Cal. Educ. Code § 69514.5.
- 226 See Cal. Educ. Code § 76010.
- 227 See CO HB 16-1100 (2016).
- 228 42 U.S.C. § 11432(g)(6).
- 229 Md. Code Regs. 13A.05.09.03(A)(5).
- 230 IOWA ADMIN. CODE 281-33.3.
- 231 IOWA ADMIN. CODE 281-33.3(7).
- 232 105 ILL. COMP. STAT. 45 (1-20).
- 233 Pennsylvania's Basic Education Curricular, available at <http://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/US%20Code/Education%20for%20Homeless%20Youth.pdf>.
- 234 VA. CODE ANN. § 22.1-271.2(C).
- 235 Mass. Dep't of Ed., Homeless Education Advisory 2003—6: Serving Homeless Preschool Children.
- 236 IOWA ADMIN. CODE 281-33.10(1).
- 237 MD ADC 13A.05.09.01(C).
- 238 IOWA ADMIN. CODE 281-33.4(256).
- 239 COLO. REV. STAT. ANN. § 22-33-103.5.
- 240 COLO. REV. STAT. ANN. § 22-1-102.
- 241 Pennsylvania's Basic Education Curricular, available at [http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS_0_123089_1242174_0_0_18/Education%20for%20Homeless%20Youth%20\(42%20USCA%2011431\).pdf](http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS_0_123089_1242174_0_0_18/Education%20for%20Homeless%20Youth%20(42%20USCA%2011431).pdf).
- 242 Md. Code Regs. 13A.05.09.04.
- 243 N.J. ADMIN. CODE § 6A:17-3.3.
- 244 Texas Ass'n of Sch. Bds. Policy, available at http://www.utdanacenter.org/theo/downloads/factsheets/RP55_TASB_Policies_Oct2003.pdf.
- 245 Nat'l Alliance to End Homelessness, An Emerging Framework for Ending Unaccompanied Youth Homelessness NAEH typology (2012).
- 246 Nat'l Alliance to End Homelessness, *LGBTQ Homeless Youth Fact Sheet*, available at <http://www.safeschoolscoalition.org/LGBTQhomelessFactSheetbyNAEH.pdf>.
- 247 See *supra* IDEA and Special Considerations for Homeless Students.
- 248 42 U.S.C. §11432(g)(1)(H)(iv); 42 U.S.C. §11432(g)(7)
- 249 Nat'l Ctr. for Homeless Educ., *Supporting the Education of Unaccompanied Homeless Students*, available at <http://center.serve.org/nche/downloads/briefs/youth.pdf>.
- 250 42 U.S.C. §11432(g)(3)(B)(iv).
- 251 42 U.S.C. §11432(g)(3)(B)(ii).
- 252 42 U.S.C. §11432(g)(1)(F)(ii).
- 253 42 U.S.C. §11433(d)(3).
- 254 42 U.S.C. §11433(d)(7).
- 255 42 U.S.C. §11431(2).
- 256 While data on the racial and ethnic breakdown of homeless children and youth enrolled in public elementary and secondary schools are unavailable, the U.S. Department of Housing and Urban Development's 2013 Annual Homeless Assessment Report's findings highlight the manifestation of racial gap among individuals experiencing homelessness. 2013 Annual Homeless Assessment Report 1-9, available at <https://www.hudexchange.info/onecpd/assets/File/2013-AHAR-Part-2.pdf> (citing that (1) 62 percent of the sheltered homeless population identified as members of a minority group and (2) people in a shelter were 3 times more likely to be African American than those in the total U.S. population).
- 257 See e.g., Am. Civil Liberties Union, School-to-Prison Pipeline, <https://www.aclu.org/issues/racial-justice/race-and-inequality-education/school-prison-pipeline>.
- 258 Mimi Laver & Andrea K. Khoury, *Protecting LGBTQ Youth in Foster Care* (Am. Bar Ass'n, 2012), available at http://www.americanbar.org/publications/gpsolo_ereport/2012/january_2012/lgbtq_foster_youth.html
- 259 U.S. Interagency Council on Homelessness, *Framework to End Youth Homelessness: A Resource Text for Dialogue and Action 11* (2013), available at http://usich.gov/resources/uploads/asset_library/USICH_Youth_Framework_FINAL_02_13_131.pdf; see also Nat'l Ass'n for the Educ. of Homeless Children and Youth, *Using What We Know: Supporting the Education of Unaccompanied Homeless Youth 6* (2008), available at http://www.naehcy.org/dl/uwwk_youth.pdf.
- 260 True Colors Fund, *Our Issue*, available at <https://truecolorsfund.org/our-issue/> (Over 1 in 4 of all LGBTQ teens who come out of to their family are thrown out of the home); see also U.S. Dep't of Health & Human Servs., *Admin. on Children, Youth & Families Memorandum: Lesbian, Gay, Bisexual, & Transgender Youth in Foster Care 2* (2011), available at <http://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf>.
- 261 Melissa Dunn & Aisha C. Moodie-Mills, Ctr. for Am. Progress, *The State of Gay & Transgender Cmty. of Color in 2012: The Economic, Educational, and Health Insecurities these Communities are Struggling with and How We Can Help Them X 4* (2012), available at <https://www.americanprogress.org/issues/lgbt/news/2012/04/13/11493/the-state-of-gay-and-transgender-communities-of-color-in-2012>; see also Freeman, L. & Hamilton, D. *A Count of Homeless Youth in New York City. Empire State Coalition of Youth and Family Services* (2008), available at www.citylimits.org/images_pdfs/pdfs/HomelessYouth.pdf.
- 262 Nico Sifra Quintana, et al., Ctr. for Am. Progress, *On the Streets: The Federal Response to Gay & Transgender Homeless Youth 6* (2010).
- 263 Nat'l Coalition for the Homeless, *Youth and Homelessness*, <http://nationalhomeless.org/issues/youth/>.
- 264 Ctr. for Am. Progress, *Gay and Transgender Youth Homelessness by the Numbers*, <https://www.americanprogress.org/issues/lgbt/news/2010/06/21/7980/gay-and-transgender-youth-homelessness-by-the-numbers/>.
- 265 Robert Kim, et al., Nat'l. Educ. Ass'n: Human & Civil Rights, Ctr. for Am. Progress, *A Report on the Status of Gay, Lesbian, Bisexual and Transgender People in Education: Stepping out of the closet, into the light 27* (2009), available at <http://www.nea.org/assets/docs/HE/HE/glbstatus09.pdf>; see also Jerome Hunt & Aisha C. Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System X 1* (2012), available at <http://www.americanprogress.org/issues/lgbt/report/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth/>.
- 266 Angela Irvine, *We've Had Three of Them: Addressing the Invisibility*

- of Lesbian, Gay, Bisexual, and Gender Nonconforming Youths in the Juvenile Justice System, 19 Colum. J. Gender & L. 675, 691-92 (2010), available at <http://www.nccdglobal.org/sites/default/files/content/weve-had-three-of-them.pdf>.
- 267 Nico Sifra Quintana, et al., *supra* note 262, at 6.
- 268 U.S. Dep't of Health & Human Servs., *Administration on Children, Youth and Families Memorandum: Lesbian, Gay, Bisexual, and Transgender Youth in Foster Care 2* (2011), available at <http://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf>.
- 269 See G.P. Mallon, N. Aledort, M. Ferrera, *There's no place like home: Achieving safety, permanency, and well-being for lesbian and gay adolescents in out-of-home care settings*, 81(2) Child Welfare 407, 418-19 (2002); see also Nicholas Ray, Nat'l Gay & Lesbian Task Force, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* 83 (2006).
- 270 Bryan N. Cochran, Angela J. Stewart, Joshua A. Ginzler, Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents With Their Heterosexual Counterparts*, 92(5) Am. J. of Pub. Health 773, 775 (May 2002), available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.92.5.773>; see Jerome Hunt and Aisha C. Moodie-Mills, Ctr. for Am. Progress, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System 1* (2012), available at <http://www.americanprogress.org/issues/lgbt/report/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth>; see also Louis P. Nappen, *Why Segregated Schools for Gay Students May Pass a 'Separate But Equal' Analysis But Fail Other Issues And Concerns*, 12 Wm. & Mary J. of Women & L. 101, 116 (2005)(citations omitted).
- 271 See Joseph Kosciw, et al., *The 2013 Nat'l Sch. Climate Survey: The Experience of Lesbian, Gay, Bisexual, and Transgender Youth in Our Nation's Schools 12*, 22-23, 25, 28, 94 (2014), available at http://www.glsen.org/sites/default/files/NSCS_ExecSumm_2013_DESIGN_FINAL.pdf.
- 272 *Id.* at 4; Hannah Brückner, Kathryn E. W. Himmelstein, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127(1) *Pediatrics* 49, 49 (2010), available at <http://pediatrics.aappublications.org/content/early/2010/12/06/peds.2009-2306.full.pdf+html>.
- 273 Joseph Kosciw, *supra* note 271, at 12-13.
- 274 See Lambda Legal, *Facts: Gay and Lesbian youth in Schools*, <http://www.jasmyrn.org/wp-content/uploads/2011/03/Lambda-Legal-LGBT-youth-in-schools.pdf>; see also Louis Nappen, *Why Segregated Schools for Gays May Pass a "Separate But Equal" Analysis but Fail Other Issues and Concerns*, 12 Wm. & Mary J. of Women & L. 101, 116 (2005).
- 275 See generally U.S. Dep't of Educ. Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence*, B-2 (2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.
- 276 Lambda Legal, #DontEraseUs: FAQ About Anti-LGBT Curriculum Laws, available at <http://www.lambdalegal.org/dont-erase-us/faq> (South Carolina, for example, has a discriminatory provision which reads: "The program of instruction provided for in this section may not include a discussion of alternative sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases.").
- 277 Press Release, U.S. Dep't of Housing & Urban Dev., HUD Issues Final Rule to Ensure Equal Access to Housing and Services Regardless of Gender Identity (Sept. 20, 2016), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-137.
- 278 *Id.*; see also U.S. Dep't of Housing & Urban Dev., Notice CPD-15-02: Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities (Feb. 20, 2015), available at <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf> (The Equal Access Rule explicitly prohibits discrimination on the basis of sexual orientation and gender identity in HUD-funded housing programs. The rule requires HUD housing programs to provide shelter to individuals without regard to actual or perceived sexual orientation and/or gender identity. The rule also prohibits owners and administrators of certain HUD-funded housing from inquiring about sexual orientation or gender identity to determine eligibility for HUD-assisted or HUD-insured housing.).
- 279 Joseph Kosciw, *supra* note 271, at X, 56, 66-67.
- 280 U.S. Dep't of Educ., *Open letter releasing the Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-Led Noncurricular Groups* (2011).
- 281 Gay Lesbian & Straight Education Network, *From State house to Schoolhouse 7* (2015), <http://www.glsen.org/article/new-state-and-school-district-anti-bullying-policies>.
- 282 *Id.* at 64.
- 283 U.S. Dep't of Educ., Laws & Guidance, *Educational Services for Immigrant Children and Those Recently Arrived to the United States* (last modified Sept. 19, 2014), <http://www2.ed.gov/policy/rights/guid/unaccompanied-children.html> (last visited July 27, 2015).
- 284 See *Plyler v. Doe*, 457 U.S. 202 (1982).
- 285 Nat'l Ctr. for Homeless Educ., *Immigrant and Homeless: Information for Local Liaisons*, Best Practices in Homeless Education (2006), at 1, available at http://center.serve.org/nche/downloads/briefs/imm_lia.pdf.
- 286 See Nat'l Ctr. for Homeless Educ., *Immigrant and Homeless: Information for School District Title III Programs and Community Agencies*, Best Practices in Homeless Education (2006), at 1, available at http://center.serve.org/nche/downloads/briefs/imm_gen.pdf.
- 287 See *id.*
- 288 *Id.* at 1; Nat'l Ctr. for Homeless Educ., *supra* note 285, at 3.
- 289 See Nat'l Ctr. for Homeless Educ., *supra* note 286, at 1.
- 290 See 42 U.S.C. §§ 11432(g)(1)(I), 11432(g)(3)(C), 11432(g)(7).
- 291 See U.S. Dep't of Justice & U.S. Dep't of Education, *Fact Sheet: Information on the Rights of All Children to Enroll in School* (May 8, 2014), available at <http://www.justice.gov/crt/about/edu/documents/plylerfact.pdf>.
- 292 *Id.* at 1; see also 42 USC 11432(g)(3)(C)(i).
- 293 *Id.* at 2.
- 294 *Id.* at 1.
- 295 *Id.* at 2.
- 296 See e.g., 23 Ill Admin. Code 1.240(b), available at <http://www.isbe.net/rules/archive/pdfs/oneark.pdf> ("documents required by a school system as proof of residency for a student, when taken together, shall not result in a requirement for proof of legal presence, such as a Social Security number").
- 297 See U.S. Dep't of Educ., *supra* note 283.
- 298 This term is similar to the term "unaccompanied alien child" as defined in the Homeland Security Act.
- 299 See Admin. for Children & Families, *Fact Sheet* (Nov. 2014), citing 6 U.S.C. § 279(g)(2), available at <https://www.acf.hhs.gov/sites/>

- default/files/orr/fact_sheet.pdf (the federal government uses the term "Unaccompanied Alien Children" instead).
- 300 Kids in Need of Defense, *Advocacy Fact Sheet* (Apr. 12, 2015), available at <https://supportkind.org/wp-content/uploads/2015/04/Advocacy-KIND-Factsheet-4.24.2015.pdf>.
- 301 Admin. for Children & Families, *supra* note 299.
- 302 Nat'l Ass'n for the Educ. of Homeless Children & Youth (NAEHYC), *Unaccompanied Immigrant Children: Education and Homelessness* (Nov. 2014), at 2, available at <http://naehcy.org/sites/default/files/dl/uic-brief.pdf>.
- 303 *Id.*
- 304 *Id.*
- 305 *Id.*
- 306 U.S. Dep't of Educ., *supra* note 283.
- 307 NAEHCY, *supra* note 302, at 3.
- 308 Kids in Need of Defense & Nat'l Ass'n for the Educ. of Homeless Children & Youth, *Immigration and Schools: Supporting Success for Undocumented and Unaccompanied Homeless Youth* (November 2010), at 4, available at <https://supportkind.org/wp-content/uploads/2015/04/Immigration-and-Schools-FINAL-NOV-2010.pdf>.
- 309 20 U.S.C. § 6399(2).
- 310 See U.S. Dep't of Educ., *supra* note 283; see also Nat'l Ctr. for Homeless Educ., *Migrant Students Experiencing Homelessness: Rights and Services Under the McKinney-Vento Act*, McKinney-Vento Law Into Practice Brief Series (updated Summer 2012), at 2, available at <http://center.serve.org/nche/downloads/briefs/migrant.pdf>.
- 311 Immigration & Nationality Act § 101(a)(42)(A), <http://www.uscis.gov/iframe/link/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-195.html> (last visited July 27, 2015).
- 312 Nat'l Ctr. for Homeless Education, *Immigrant and Homeless: Information for Local Liaisons*, Best Practices in Homeless Education (Fall 2006), at 3, available at http://center.serve.org/nche/downloads/briefs/imm_lia.pdf.
- 313 *Id.*
- 314 U.S. Dep't of Educ., *supra* note 283.
- 315 Funding under Title III of the ESEA, "Language Instruction for Limited English Proficient and Immigrant Students," 20 U.S.C.S. § 6801 et seq., is meant to help children who are not proficient in English, including immigrant youth, achieve proficiency and generally do well academically. See 20 U.S.C. §§ 6801, 6812.
- 316 U.S. Dep't of Educ., *supra* note 283.
- 317 *Id.*
- 318 *Id.*
- 319 *Id.*
- 320 See Nat'l Working Grp. on Foster Care & Educ., *Fostering Success in Education: Fact Sheet on the Educational Outcomes of Children in Foster Care*, <http://goo.gl/KeXVtO> January 2014.
- 321 2016 Guidance A-2.
- 322 The joint guidance on educational stability for children in foster care is available at: <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>.
- 323 Additional information is available through National Center for Homeless Education's website, <http://center.serve.org/nche/pr/briefs.php#csds> (follow "Connecting Schools and Displaced Students series").
- 324 42 U.S.C. §11432(g)(3)(G).
- 325 Administration for Children & Families, *Early Childhood Homelessness in the United States: 50-State Profile* (January 2016), available at https://www.acf.hhs.gov/sites/default/files/ecd/homelessness_profile_package_with_blanks_for_printing_508.pdf.
- 326 42 U.S.C. § 11432(g)(3)(I).
- 327 42 U.S.C. § 11432(g)(6)(A)(iii).
- 328 Erin S. Ingram, et al., Civic Enterprises, *Hidden in Plain Sight* (2016), available at <http://civicenterprises.net/MediaLibrary/Docs/HiddeninPlainSightOfficial.pdf>.
- 329 See generally Keith Alan Cunningham, *A Question of Priorities: A Critical Investigation of the McKinney-Vento Act*, Critical Questions in Education (Oct. 2014) at 219.
- 330 U.S. Gov't Accountability Office, *Education of Homeless Students – Improved Program Oversight Needed* (July 2014), available at <http://www.gao.gov/assets/670/665185.pdf>.
- 331 *Education of Homeless Students Improved Program Oversight Needed*, United States Government Accountability Office (GAO) Report to Congressional Requestors, at 2, July 2014, available at <http://www.gao.gov/assets/670/665185.pdf>.
- 332 *Lampkin v. District of Columbia*, 27 F.3d 605 (D.C. Cir. 1994), cert. denied, 513 U.S. 1016 (1994), on remand, 879 F.Supp. 116 (D.D.C. 1995), dissolving injunction, 886 F.Supp. 56 (D.D.C. 199), when the District of Columbia refused to provide transportation as provided under McKinney-Vento Act because it was too costly and withdrew entirely from the program and funding ceased.
- 333 U.S. Gov't Accountability Office, <http://www.gao.gov/products/GAO-14-465> (click on the "Recommendations" tab) (last visited Aug. 31, 2015).
- 334 *Lampkin v. District of Columbia*, 27 F.3d 605 (D.C. Cir. 1994), cert. denied, 513 U.S. 1016 (1994).
- 335 See e.g., Nat'l Ctr. for State Courts, *Recognizing and Combating the "School-To-Prison" Pipeline In Texas*, (last visited Aug. 29, 2015) ("Criminalizing kids for minor misbehavior in our schools unnecessarily exposes them to our justice system and increases the likelihood they will drop out of school and face later incarceration.").
- 336 Marc Levin & Derek Cohen, Texas Public Policy Foundation, *Kids Doing Time for What's Not a Crime: The Over-Incarceration of Status Offenders*, available at <http://www.texaspolicy.com/library/docLib/2014-03-pp12-juvenilejusticestatusoffenders-cej-derekcohenmarclevin.pdf>.
- 337 See generally Statement of Interest of the United States, *Bell v. Boise*, Civ. A. No. 1:09-cv-540-REB (D. Idaho Aug. 6, 2015) (No. 276), available at <http://www.justice.gov/opa/file/643766/download>.
- 338 See generally Nat'l Law Center on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities*, available at http://www.nlchp.org/documents/No_Safe_Place.
- 339 Henry, Meghan, Dr. Alvaro Cortes, and Sean Morris, U.S. Dep't of Housing & Urban Dev., *The 2013 Annual Homeless Assessment Report (AHAR) to Congress Part 1: Point-in-Time Estimates of Homelessness* (2013).
- 340 2016 Guidance E-8.
- 341 2016 Guidance A-4.
- 342 2016 Guidance at 33.
- 343 42 U.S.C. §11432(g)(3)(E)(i).
- 344 42 U.S.C. §11432(g)(4)(A) & (B).
- 345 Am. Bar Ass'n Comm'n on Homelessness & Poverty, *supra* note 192, at 26.
- 346 2016 Guidance at 33
- 347 42 U.S.C. §11432(g)(3)(B).
- 348 42 U.S.C. §11432(e)(3)(A).
- 349 42 U.S.C. §11432(g)(7)(C).
- 350 Am. Bar Ass'n Comm'n on Homelessness & Poverty, *supra* note 192, at 26.
- 351 *Id.*
- 352 Nat'l Ctr. for Homeless Educ., *Immigrant and Homeless: Information*

- for Local Liaisons, Best Practices in Homeless Education* (Fall 2006), at 3, available at http://center.serve.org/nche/downloads/briefs/imm_lia.pdf.
- 353 U.S. Dep't of Educ., <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf>.
- 354 U.S. Dep't of Educ., <http://www2.ed.gov/admins/lead/account/monitoring/index.html>.
- 355 Nat'l Ctr. for Homeless Educ., http://center.serve.org/nche/states/state_resources.php.
- 356 Nat'l Law Ctr. on Homelessness & Poverty, http://nlchp.org/MV_State_Dispute_Resolution.
- 357 Nat'l Law Ctr. on Homelessness & Poverty, http://nlchp.org/youth_resources.
- 358 *See infra Nat'l Law Ctr on Homelessness & Poverty v. New York*, 224 F.R.D. 314 (E.D.N.Y. 2004) (A heightened scrutiny review may be applied under the Equal Protection Clause); *see also Goss v. Lopez*, 419 U.S. 565, 574 (1975) (holding that a student has a legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause).
- 359 42 U.S.C. §1983 (1988).
- 360 *Maine v. Thiboutot*, 448 U.S. 1, 6-8 (1980).
- 361 *See Carey v. Piphus*, 435 U.S. 247, 254 (1978) (“[T]he basic purpose of a §1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights.”).
- 362 *See e.g., Bogle v. McClure*, 332 F.3d 1347, 1359 (11th Cir. 2003).
- 363 *Nat'l Law Ctr on Homelessness & Poverty v. New York*, 224 F.R.D. 314, 322 (E.D.N.Y. 2004) (citation omitted).
- 364 *See infra* Removing Barriers to Education.
- 365 *See infra* Removing Barriers to Education.
- 366 42 U.S.C. § 11431(2).
- 367 Ryan Dowd, Comment, *No Other Choice: Litigating and Settling Homeless Education Rights Cases*, 23 N. Ill. U. L. Rev. 257, 273 (2003).
- 368 42 U.S.C. §11432(g)(3)(E)(iii).
- 369 42 U.S.C. §11432(g)(3)(E)(i) (emphasis added).
- 370 A copy of the Complaint filed in this case, including a Memorandum in Support of Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction, is available in Appendices E-G.
- 371 42 U.S.C. §11432(g)(3)(A).
- 372 42 U.S.C. § 11434a(2)(A).

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