



Project HOPE-Virginia

Office on the Education of Children and
Youth Experiencing Homelessness

In collaboration with the Virginia Department of Education

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Bibliography of Homeless Education Resources

Table of Contents

Articles & Reports	A1 - A28
Books & Chapters	B1 - B17
Children's Books	B11
Young Adult Books	B16
Audiovisual	AV1 - AV3
Curricula & Resource Kits	C1 - C2
Legal Resources	L1 - L9

Articles & Reports



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Legal Resources



LEGAL RESOURCES

Litigation

Kaleuati v. Tonda, Civil Action No. 07-504 (U.S. District Court, District of Hawaii, filed October 6, 2007).

Lawyers for Equal Justice, the ACLU of Hawaii and Alston Hunt Floyd & Ing represent three homeless families that have been denied access to education and, on behalf of all homeless families statewide, has filed a class action lawsuit against the State of Hawaii in U.S. District Court, seeking statewide injunctive relief to remove policies that violate federal law and ensure that homeless children have full, meaningful access to a public education. The court recently granted a motion for preliminary injunction and certified the class. Visit <http://www.lejhawaii.org/mckinney/kaleuati.html> for more information, including current status and copies of pleadings and decisions.

National Law Center on Homelessness & Poverty, et al. v. New York State, et al. Civil Action No. 04 0705 (U. S. District Court, Eastern District of New York, filed February 20, 2004).

This case alleged systemic noncompliance by the state education agency, state social services agency, 15 local educational agencies, and county social services with state and federal laws relating to the education of homeless children and youth. The school districts settled their portion of the case early in the proceedings, while the state and county social services moved to dismiss the case, saying the McKinney-Vento Act was not enforceable by parents. The U.S. District Court denied the motion to dismiss, holding the Act was enforceable. Ultimately, all parties agreed to comply with all applicable state and federal laws relating to homeless students. Attorneys fees are currently being negotiated.

Muriel C. v. Gallagher, Hart and Evergreen Park Community High School District. (filed in Cook County Circuit Court, February 2003).

Muriel C. and her children were living in Evergreen Park (a south suburb of Chicago). The family lost their housing in Evergreen Park and doubled-up with Muriel C.'s mother in Chicago. In January 2003, the high school issued letters to the family stating that the children were to be excluded from school due to non-residency. A dispute resolution hearing was held in which the lawyer for the school district argued that the children were not homeless because they did not wear dirty clothes to school. The school district lawyer also argued – and the hearing officer agreed -- that the family had the burden of proof in the hearing. Thus, it essentially was up to the family to prove that they were in fact homeless at the hearing. The hearing officer found that the family was not homeless and the children were excluded from school for approximately two weeks. Muriel C. contacted the Law Project after the child had been excluded. The school agreed to re-enroll the children only after Plaintiffs filed a complaint in the Circuit Court of Cook

County. The parties are currently litigating the case and are also engaged in settlement discussions.

Bullock, et al. v. Board of Education of Montgomery County, et al. _DKC-2002-798 (U. S. District Court, District of Maryland, filed March 14, 2002).

Montgomery County is also a large suburban school district bordering on Washington, D.C. A lawsuit and motion for temporary restraining order and preliminary injunction was filed on behalf of several homeless families. The case raised many issues related to the McKinney-Vento Act, including the rights of children in transitional housing, “time limits” on homelessness for doubled-up families, and segregation.

The case eventually settled. The school district agreed to implement broad reforms ranging from giving children awaiting foster placement full McKinney rights to widely publicizing the rights of homeless children throughout the district, to training school administrators and school personnel on McKinney rights, to implementing new forms and school-based guidelines to identify and serve homeless children, to providing transportation to the school of origin within 4 school days of the request. There will be a two year monitoring period. The school district also agreed to pay \$195,000 in attorneys fees to counsel for the plaintiff class.

Mitzi H. v. Murray and Board of Education of Homewood-Flossmoor High School District 233 and *Mitzi H. v. Ramsey and Board of Education of Homewood School District 153.* (filed in Cook County Circuit Court, September 2002).

These two cases involved one family with two children in an elementary district and one child in a high school. Under McKinney-Vento and the 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 until shelter personnel in Chicago referred them to the Law Project. After advocacy by the Law Project, the students were re-enrolled in March 2002. In September 2002, two separate complaints were filed in the Circuit Court of Cook County against both 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 are currently engaged in settlement negotiations.

Collier, et al. v. Board of Education of Prince George's County, et al. DKC-2001-1179 (U. S. District Court, District of Maryland, filed April 16, 2001).

Prince George's County is a large suburban school district bordering on 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 the school of origin. The case was then expanded to include a broad range of McKinney issues, including transportation, identification, school selection, dispute resolution, and inter-agency issues. In September 2001, the case was settled. The school district agreed to take broad reform measures to address all of these issues. More than a thousand homeless school children have availed themselves of the new processes and procedures. Plaintiffs' counsel logged more than \$300,000 in attorney fees on the case; defendants are attempting to negotiate a lower fee.

Sarah and Seth Doe v. Governor Wentworth Regional School District. SB #00-30 New Hampshire State Administrative Hearing, March 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 McKinney-Vento Act resulted in a long dispute between the family and the school district of origin. The school district argued that the McKinney-Vento Act was not applicable because the district did not receive a subgrant 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. So 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 permitted to remain in their school of origin. The State Coordinator and New Hampshire Legal Assistance have diligently worked to revise state education laws to comply with the McKinney-Vento Act. Unfortunately, they have had only modest success.

Burgin v. Community Consolidated School District 168. Cook County Commission on Human Rights (filed November 22, 2000).

The Burgin family, who are African-American, had rented an apartment in District 168 and four of their children attended District 168 schools (two of whom were honor roll students). In March of 2000, the Burgins were evicted from their apartment following a period of unemployment. They doubled-up with family members in a nearby suburb. The Burgins were denied continued enrollment in District 168 because they were not residents. 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 threatening litigation, 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, among other things: A total monetary settlement of \$100,000; annual training on and implementation of the McKinney-Vento Act, 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.

Doe v. Richardson. Civ. A. 98-1165-N (U. S. District Court, Middle District of Alabama, filed October 13, 1998).

In October, 1998, the Southern Poverty Law Center brought a lawsuit against the state of Alabama and two school districts for violating the McKinney-Vento Act and discriminating against a student on the basis of race. 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. An African-American 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 County Board of Education initially referred her to another high school. However, 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 involved school districts adopted new policies affirming their duties under the McKinney-Vento Act and their commitment to nondiscrimination. The settlement also required defendants to pay \$5000 in attorney fees and costs associated with the case.

Lampkin v. District of Columbia. 27 F. 3d 605. (Washington DC, 1994).

Ten parents, on behalf of their children, and the National Law Center on Homelessness & Poverty filed a lawsuit in federal court, challenging DC Public Schools’ failure to ensure free, appropriate education for children experiencing homelessness, as required by the McKinney-Vento 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 court initially dismissed the suit, but the federal appeals court reversed, agreeing with the plaintiffs that the McKinney-Vento Act created enforceable rights, and returned the case to the lower court. That court then ordered 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 the District 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. (Abbreviated summary taken from a document written by L. Norris and P. Julianelle in 2003).

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

Litigation was filed on behalf of homeless children after the Chicago Public Schools (CPS) failed to meet the requirements of the McKinney-Vento Act and the IL Homeless Education Act. 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. Plaintiffs also received approximately \$260,000 in attorney fees.

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 "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 \$1000 per day for continued noncompliance. Plaintiffs also received an additional \$189,000 in attorney fees.

Orozco v. Sobol. 703 F. Supp. 1113. (S.D. New York. 1989).

A little girl, who was a US citizen and was born in Puerto Rico, moved to the US, where she and her mother lived in Mt. Vernon, New York. After a period of time, they returned to Puerto Rico, and the little girl attended school there. They then moved back to NY, and the mother applied for public assistance. The family received emergency housing in Yonkers. The mother hoped to find permanent housing in Mt. Vernon, so she tried to enroll her daughter in their schools. She was told she could enroll at the elementary school, yet when she tried, she was rejected. When she returned to the school board office, she was told that she needed to enroll her daughter in Yonkers' schools. However, when she tried to enroll her daughter in Yonkers' schools, they denied her because she was not a permanent resident. The mother filed suit claiming that she did not receive a hearing or written notice of the decision and her subsequent options, instead of following

administrative procedures. A temporary restraining order was issued so the girl could be enrolled in Yonkers' school, saying it is a property right that cannot be denied. The court recognized that the woman's situation is based on where DSS places her, and therefore, her residence is in Yonkers.

Harrison v. Sobol. 705 F. Supp. 870. (S.D. N.Y. 1988).

A homeless woman and her two children filed suit against the Peekskill School District because the children were no longer admitted to school. The family became homeless, moved to Florida, and when they moved back to New York, the children lived with their father who resided in the Peekskill School District. The landlord forced the children to move out, and they moved in with their mother who was living in a hotel outside of the school district. Several weeks later, the mother was notified that her children were no longer eligible to attend school within the district, but there was no information regarding her rights to a hearing or for the grounds of exclusion. The mother asked for a preliminary injunction so her children could remain in school which caused the students to miss several days of school. Peekskill voluntarily readmitted the students. The court recognized that the family was denied their due process as the school district did not follow procedure and submit the decision in writing. In 1988, new state regulations went into effect, allowing parents who are homeless to designate whether they prefer their children to stay in the original school (school of origin) or switch to one based on where they are temporarily residing. School districts denying admission were required to provide written notification as to why. Given this along with the voluntary readmission to Peekskill schools, the plaintiff's claims for declaratory judgment and permanent injunction are moot.

Mason v. Board of Education. No. 2865/87. N.Y. Sup. Ct. Mem. Op. (April 22, 1987).

A mother of four children who was homeless brought suit to the New York Supreme Court. The court decided that the children should be sent to school in the district in which they currently lived, where the shelter was located rather than their previous district.

Delgado v. Freeport Public School District. 499 N.Y.S. 2d 606. (N.Y. Sup. Ct. 1986).

A woman currently receiving public assistance filed a lawsuit against Freeport Union Free School District for not allowing her two children to enroll in school. For two years, the students attended FPS. Since then, for reasons beyond their control, they have lived in several different places. They presently live in a transitional home in Roosevelt. Roosevelt Union Free School District believes that the students should be enrolled in Freeport schools based on the idea that residency only changes when there is an effort to change it. Freeport argues they are not responsible for the children's schooling because the family has lived in three different places lately, and that the family's current housing situation is temporary, so they are not legal residents entitled to enrollment of schools without tuition payment. The court found that the family legally resides in the Roosevelt School District, and the children should be immediately enrolled there.

Richards v. Board of Education of Union Free School District Number 4. No. 11490. New York Department of Education (1985).

A mother and child who were homeless brought suit regarding where the child should go to school. The court decided that the child could remain in the previous district and furthermore stated that “residence of homeless children should be decided on a case-by-case basis.” The court felt that the mother’s attempts to remain in the community warranted her child the ability to remain in the previous school district.

Plyler v. Doe. No. 80-1538. 457 U.S. 202. (Texas, 1982).

This civil action suit was filed by parents of undocumented children in Texas because the Tyler Independent School District would not allow these students to enroll in school without paying tuition under Texas state code. The parents claimed it was a violation of the equal protection. The court found that the Fourteenth Amendment applies to illegal immigrants, and that by applying this policy, TISD is creating a class of children who are deprived of an education through no fault of their own, as they are minors and must follow their parents. It also found this section of the code to be irrational and unconstitutional because it goes beyond the misdemeanor of illegal immigration provided by federal legislation by placing additional burdens and punishment on children who will be relegated to the lowest level of employment in society by virtue of their denial of education. The case eventually was heard in front of the Supreme Court, which affirmed the District court’s opinion, believing that the code was a violation of the Equal Protection Clause of the Fourteenth Amendment because neither the undocumented status nor the state’s argument for the use of limited resources for legal residents to be rational .

Callahan v. Carey. N.Y. Sup. Ct. (Dec. 5, 1979).

This action was commenced in 1979 as a challenge to the sufficiency and quality of shelter for homeless men in New York City. The parties entered into a consent decree in August 1981 that determined: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State: or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter."

Legislation

P.L. 100-77. Stewart B. McKinney Homeless Assistance Act of 1987. Codified at 42 U.S.C. 11301-11472 (1987, July 22).

Originally consisting of fifteen programs, the McKinney act provided services such as emergency shelter, transitional housing, job training, primary health care, education, and some permanent housing.

P.L. 101-645. Stewart B. McKinney Homeless Assistance Amendment Act of 1990. (1990, November 29).

The amendments expanded several McKinney Act programs, including increasing the percentage of funds that could go to essential services under the Emergency Shelter Grants Program. Essential services include employment, health, drug abuse, and education services. The amendments also created some new programs, including the Shelter Plus Care program, and the Projects in Assistance in Transition from Homelessness (PATH). The 1990 amendments also specified the obligations of states and local educational agencies to ensure that homeless children and youth have access to public education. The amendments increased the Education of Homeless Children and Youth program's authorization and required states to make grants to local educational agencies for the purpose of implementing the law.

P. L. 110-107. McKinney -Vento Homeless Education Assistance Act of 2001- Part C of the No Child Left Behind Act of 2001 (2002, January 8). <http://www.ed.gov/legislation/ESEA02>

Federal legislation that gives students experiencing homelessness the right to free appropriate education, immediate enrollment, opportunity to remain in the school of origin and transportation there.

P.L. 89-10. Elementary and Secondary Education Act of 1965. (1965, April 11).

Created under the assumption that children from impoverished homes require more education than children from affluent homes, it allocated funding for programs Head Start, Follow-Through, Bilingual Education, and various guidance and counseling programs.

P.L. 103-382. Improving America's Schools Act of 1994. (1994, September 28).

A reauthorization of the Elementary and Secondary Education Act of 1965, the purpose of this title was to enable schools to provide opportunities for children served to acquire the knowledge and skills contained in the challenging State content standards and to meet the challenging State performance standards developed for all children.

P.L. 107-110. No Child Left Behind Act of 2001. (2002, January 8).

A reauthorization of the Elementary and Secondary Education Act of 1965, the purpose of this legislation was to ensure that all children receive a fair, equal, and significant opportunity to obtain a high-quality education and reach, at minimum, proficiency on challenging State academic achievement standards and assessments.

P.L. 108-265. Child Nutrition and WIC Reauthorization Act 2004. (2004, June 30).

Homeless and runaway children and youth are automatically eligible for free and reduced meals at school. It also extends eligibility for snacks and meals for children in homeless and domestic violence shelters up to the age of 18.

P.L. 108-96. Runaway and Homeless Youth Act of 2003. (2003, October 10)

There are three programs under this act: Basic Center Program, designed to provide financial assistance to meet the immediate needs of runaway and homeless youth and their families; Transitional Living Program, supports projects that provide long-term residential services to homeless youth ages 16-21 for up to 18 months; and the Street Outreach Program, which provides funds to private, nonprofit agencies for outreach efforts to serve runaway and homeless youth and move them off the streets. This act speaks to the need to collaborate among homeless liaisons and service providers.

P.L. 108-446. Individuals with Disabilities Education Improvement Act of 2004. (2004, December 3).

IDEA (1997) was reauthorized in 2004 to ensure that all children with disabilities have a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living as well as ensuring their rights are protected and to ensure and assess the effectiveness of the efforts to educate children with disabilities. This act also includes the definition for homeless children has the meaning given the term “homeless children and youths” in section 725 of the McKinney-Vento Homeless Assistance Act.

Further Guidance

U.S. Department of Education. (2003, March). Draft guidance for the McKinney-Vento education for homeless children and youth program. Washington, DC: Author. (<http://www.ed.gov/offices/OESE/SASA/hmlsprogresp.html>).

U. S. Department of Education. (1995). *Non-regulatory guidance on the Subtitle B of the McKinney Homeless Assistance Act.* Washington, DC: Author.

Illinois State Board of Education Legal Department (August 10, 2000). Homeless Education: Violations of Zoning Ordinances or Local Housing Authority Rules. A letter explaining that revealing a homeless student’s address or housing situation to landlords, housing agencies, or other third parties constitutes a prohibited disclosure of school records under Illinois’ version of the Federal Education Rights and Privacy Act.

Additional Resources

Project HOPE-Virginia

Virginia Department of Education
The College of William and Mary – SOE
P.O. Box 8795
Williamsburg, VA 23187-8795
(757) 221-4002 Toll Free (877) 455-3412
Email: homlss@wm.edu

This and other information briefs are available on the Project HOPE-Virginia website:

<http://www.wm.edu/hope>

Project HOPE-Virginia is the Office on the Education of Children and Youth Experiencing Homelessness. The College of William and Mary administers the program for the Virginia Department of Education. Funding is authorized under the McKinney-Vento Homeless Education Act, Title X, Part C of the *No Child Left Behind Act* (P.L. 107-110). The purpose of Project HOPE is to ensure the enrollment, attendance, and success of homeless children and youth in school.

National Association for the Education of Homeless Children and Youth www.naehcy.org

National organization whose members are state coordinators and others interested in homeless education. Their website contains policy statements and resources for serving students experiencing homelessness, including materials presented at the annual conference. NAEHCY organizes an annual conference on homeless education and manages the LeTendre scholarship program for students who have experienced homelessness.

National Center for Homeless Education www.serve.org/nche

A clearinghouse for research and papers on serving students in high poverty and homeless situations. Their website contains free access to many resources and publications.

National Law Center on Homelessness and Poverty

www.nlchp.org

National legal advocacy organization with an attorney dedicated to education issues. The center publishes documents, research, and guidance for serving homeless students and eliminating homelessness.

National Network for Youth

www.nn4y.org

National advocacy organization dedicated to issues faced by America's youth. Website contains links to resources, research, and publications to assist in serving youth experiencing homelessness.

Project HOPE-Virginia

www.wm.edu/hope

Access contact information for all Virginia liaisons, the Local Homeless Education Liaison Toolkit, Virginia guidance, information briefs, and many other resources for serving students and implementing McKinney-Vento in schools. HOPE also offers a professional development seminar each spring and training throughout the year.

US Department of Education

www.ed.gov

Website contains guidance on implementing the McKinney-Vento Act and ensuring that students succeed in school.

DEFINITION OF HOMELESS

Anyone who, *due to a lack of housing*, lives:

- In emergency or transitional shelters;
- In motels, hotels, trailer parks, campgrounds, abandoned in hospitals, awaiting foster care placement;
- In cars, parks, public places, bus or train stations, abandoned buildings;
- Doubled up with relatives or friends;
- In the above conditions and is a migratory child or youth.

*To determine homelessness, consider the permanence and adequacy of the living situation.

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