

**Educating Homeless Children in the United States:
Are We Succeeding?**

Lauren M. Scott

**The Pennsylvania State University
Dickinson School of Law**

INTRODUCTION

“Through it all, school is probably the only thing that has kept me going. I know that every day that I walk in those doors, I can stop thinking about my problems for the next six hours and concentrate on what is most important to me. Without the support of my school system, I would not be as well off as I am today. School keeps me motivated to move on, and encourages me to find a better life for myself.” –Homeless Student from Charlotte, North Carolina¹

Family homelessness was first identified as a national problem in the early 1980s. Since then, the number of homeless families has increased, but homelessness has all but escaped the radar of domestic policy concerns. It is impossible to know with accuracy the number of people who experience homelessness each year because of the high turnover in the homeless population, the frequent relocation of homeless people, and the inability to count the homeless who are “hidden” in places where they cannot be located. One study conducted in 2004 suggested that approximately 3.5 million people, 1.35 million of them children, experience homelessness each year.² Another study estimated that over 800,000 children experience homelessness each year.³ Regardless of the disparity in these counts, the increasing demand on shelters indicates that homelessness remains problematic.⁴

The number of homeless families with children is growing which means there are more homeless children than ever before who need to be identified and educated.⁵ The United States Constitution does not explicitly or implicitly provide a right to education.⁶ However, the importance of receiving an education cannot be underestimated given that education is fundamental to maintaining society.⁷ It is essential that every child, regardless of their living

¹ U.S. Dep’t of Educ., Report to the President and Congress on the Implementation of the Education for Homeless Children and Youth Program Under the McKinney-Vento Homeless Assistance Act (2006). This statement was made in 2002 by a former homeless student from Charlotte, NC.

² National Coalition for the Homeless. “How Many People Experience Homelessness?” (June, 2005).

³ U.S. Dep’t of Educ., Education for Homeless Children and Youths – Grants for State and Local Activities, <http://www.ed.gov/programs/homeless/index.html>.

⁴ *Supra* note 2.

⁵ See Carrie Cassidy, The Patriot News, *Number of Homeless Students Increasing*, <http://www.pennlive.com/printer/printer.ssf?base/news/1140776456224690.xml&coll=1>.

⁶ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973).

⁷ *Pylar v. Doe*, 457 U.S. 202, 221 (1982).

situation, receives an education.⁸ Unfortunately, many barriers prevent homeless children from enrolling in, regularly attending, and succeeding in school.⁹

President Ronald Reagan's policies, collectively referred to as "Reaganomics", were largely responsible for the surge in family homelessness in the 1980s. Ironically, President Regan also signed the first and only major federal legislative response to homelessness. On July 22, 1987, President Reagan signed the Stewart B. McKinney Homeless Assistance Act, which was designed to provide states with federal funding to offer services to America's homeless population.¹⁰ Title VII-B of the McKinney Act authorized the Education for Homeless Children and Youth Program which directed some federal funding toward educating homeless children.¹¹ In 2001, Congress amended the educational provision of the McKinney Act and reauthorized it as part of the No Child Left Behind Act.¹² This legislation was signed by President George W. Bush on January 8, 2002.¹³ What was formerly Title VII-B of the Stewart B. McKinney Homeless Assistance Act is now known as the McKinney-Vento Homeless Education Assistance Improvements Act ("McKinney-Vento Act").

The federal government correctly identified the education of homeless children or lack thereof as a problem and sought to rectify this problem through the McKinney Act and subsequently, the McKinney-Vento Act. However, the effectiveness of these pieces of legislation must be questioned given that more than fifteen years after the Education of Homeless Children and Youth Program was first implemented, states still struggle to identify homeless children, enroll them in school, and ensure that they receive an education comparable to that received by non-homeless students who attend the same school.

⁸ *Id.*

⁹ Only 77% of homeless children who are enrolled in school are regularly in attendance. National Coalition for the Homeless. "Education of Homeless Children and Youth" (June, 2005).

¹⁰ 42 U.S.C.A. §§ 11301 et seq. (West 2006).

¹¹ *Id.*

¹² *Id.* at §§ 11431-11435 et seq.

¹³ U.S. Dep't of Educ., The Education for Homeless Children and Youth Program: Learning to Succeed, Executive Summary (2002).

I. Homelessness in the United States

A. Defining “Homeless”

The definition of “homeless” is one difficulty that has prevented some homeless children from receiving the education to which they are entitled under McKinney-Vento. The Merriam-Webster Dictionary defines “homeless” as “having no home or permanent place of residence.”¹⁴ The Stewart B. McKinney Homeless Assistance Act defines a “homeless individual” as someone who

lacks a fixed, regular, and adequate nighttime residence and . . . has a primary nighttime residence that is (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations, (B) an institution that provides a temporary residence for individuals intended to be institutionalized, or (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.¹⁵

These definitions are sufficient for some purposes. However, the McKinney-Vento Act provides a more comprehensive definition of “homeless” that must be used to determine if children are “homeless” for education purposes. Under McKinney-Vento, “homeless children and youth” are “individuals who lack a fixed, regular, and adequate nighttime residence.”¹⁶ This includes, but is not limited to:

- (i) Children and youth 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; are abandoned in hospitals; or are awaiting foster placement
- (ii) Children and youth 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;
- (iii) Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (iv) Migratory children who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).¹⁷

¹⁴ Merriam-Webster Online Dictionary, <http://www.m-w.com/dictionary/homeless>.

¹⁵ 42 U.S.C.A. § 11302(a) (West 2006).

¹⁶ *Id.* at § 11434a(2).

¹⁷ *Id.*

Although this definition was amended by Congress in 2001, it lacks clarity because it does not define what constitutes “fixed”, “regular” and “adequate” with regard to nighttime residences. In particular, this definition created some difficulty when state and local education agencies had to assess whether children evacuated as a result of Hurricanes Katrina and Rita in the fall of 2005 qualified as “homeless”. Ultimately, decisions as to whether these students were covered under McKinney-Vento were made on a case-by-case basis. In sum, the definition of “homeless” should be more clearly defined so that the children for whom the McKinney-Vento Act was created can be identified and educated.

B. Responding to Problems Associated with Educating Homeless Children

Family homelessness in the United States has existed since parents and children immigrated to this country from Europe. Families came to find a better life, but some ended up homeless because they spent all of their money on traveling to America. However, it was not until the early 1980s when housing costs soared, employment opportunities dwindled, and federal funding for low income housing was cut that family homelessness was recognized as a national problem. Although President Ronald Reagan’s policies forced many into homelessness during this time, he was the one who signed the first federal response to this crisis.

On July 22, 1987, President Reagan signed into law the Stewart B. McKinney Homeless Assistance Act, a piece of federal legislation that addressed many of the problems facing the homeless.¹⁸ This remains the only major federal legislative response to homelessness. Title VII-B of the McKinney Act authorized the Education for Homeless Children and Youth Program, which provided guidelines for educating homeless children. The Education for Homeless Children and Youth Program was amended several times and then, in 2001 Congress reauthorized the program. President George W. Bush signed the amended program into law on January 8, 2002 as part of the No Child Left Behind Act. The program is formally known as the McKinney-Vento Homeless Education Assistance Improvement Act.

¹⁸ 42 U.S.C.A. §§11301 et seq. (West 2006).

II. Barriers to Educating Homeless Children

A combination of barriers caused by the environment in which homeless children live and by administrative bureaucracy prevents these children from enrolling in, regularly attending, and succeeding in school. Environmental barriers are obstacles that exist simply because the children are homeless. On the contrary, administrative barriers are obstacles created by the laws and policies of states and school districts. McKinney-Vento targets the removal of administrative barriers because those are the impediments over which the government has the most direct control. One of the main policies of McKinney-Vento requires states and school districts to eliminate these barriers by changing any laws, regulations, policies, and practices that prevent homeless children from receiving the same free, appropriate public education that is provided to other children.¹⁹

A. Environmental Barriers

While many environmental barriers impede the enrollment of homeless children in school and a continued, seamless education, the largest barrier exists because of the frequent relocation that is characteristic of homeless people. Children are often forced to move from one temporary housing location to another. For example, some children move between homeless shelters or foster placements. Sometimes, these relocations require students to change schools. When a child relocates to a new “home” and the parent or guardian wants the child to switch to a school closer to the new “home,” the child’s education is interrupted. By the time the child is enrolled at a new school, he or she may have been out of school for weeks or month which is very disruptive to the educational process. Unfortunately, despite its prevalence, this environmental barrier is virtually impossible to overcome. The McKinney-Vento Act allows a homeless child to remain in his or her school despite relocating to a “home” outside of the school district. However, the child’s parents or guardians are still permitted to move the child to another school.

Some homeless children face additional environmental burdens such as family violence, addiction, or teen pregnancy. These burdens also make it difficult for homeless children to enroll

in and regularly attend school. Children who experience violence in the “home” are less likely to attend school regularly because their education is generally not the families’ greatest concern. In addition, children may be forced to stay home if they have visible signs of physical abuse because families do not want to get in trouble for child abuse. In some cases, children may try to escape the situation by running away from “home” which makes them difficult to locate and educate. Also, when the parents of homeless children are addicted to drugs or alcohol, they are less likely to attend to their child’s educational needs. Homeless children may not attend school regularly if their parents or guardians are too drunk or high to ensure they get to school each day. Furthermore, teens with young children may find themselves homeless after being kicked out of their houses. While some of these young women remain devoted to school, this becomes difficult if there is no one to care for the child while the mother attends school. It is unfortunate that these environmental barriers keep homeless children from enrolling in and regularly attending school. School counselors and educators, especially those trained to help homeless children deal with their unique problems, could provide them with resources to deal with their tumultuous situations.

Finally, some homeless parents and children experience anxiety that prevents the children’s successful education. Homeless parents who are embarrassed about being “homeless” or who fear their children will be taken from them if they admit that they are homeless are less likely to enroll their children in school. Even when these parents send their children to school, the children may be unable to access all of the resources available to them under McKinney-Vento since they have not been identified as “homeless.” “Parents often order children not to tell anyone about their living situation to avoid scrutiny from child-welfare agencies.”²⁰ Like their parents, homeless children may also experience anxiety. These children may be reluctant to attend school if they have been labeled, feel they will be made fun of, or feel that they stand out from their peers because of being homeless.

¹⁹ *Id.* at § 11431(2).

²⁰ *Supra* note 5.

B. Administrative Barriers

Administrative barriers present additional hurdles that must be overcome before homeless children can be educated. These barriers, which include residency requirements, guardian requirements, and record requirements, are the most frustrating for homeless parents who actively try to enroll their children in school and keep them in school despite the difficulties associated with homelessness. The McKinney-Vento Act was designed to eliminate administrative barriers that deny homeless children “equal access to the same free, appropriate, and public education . . . provided to other children.”²¹ While some administrative barriers have become less problematic since the 2001 reauthorization of the Act, several continue to pose difficulties throughout the United States.

Residency requirements imposed by state laws and implemented by school district policies present obstacles for homeless children who try to enroll in school. These requirements generally obligate children to attend school in the district in which the children, parents, or guardians reside. Because school districts rely on local property taxes to fund their schools, they are often hesitant to permit the children of non-taxpayers to reap the benefits of their schools. Traditionally, a person resides where he or she is physically present and intends to remain for an indefinite period of time. The homeless are often unable to satisfy the second prong especially when they live in shelters which limit their length of stay. The McKinney-Vento Act mandates that states who receive funding under the Act eliminate barriers caused by residency requirements. However, state-imposed residency requirements for public schools do not violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.²² Therefore, residency requirements present a formidable barrier when school districts are not aware of McKinney-Vento’s mandate that they waive these requirements for homeless children.²³

²¹ 42 U.S.C.A. § 11431(1) (West 2006).

²² *See Martinez v. Bynum*, 461 U.S. 321 (1983).

²³ 42 U.S.C.A. § 11431(2) (West 2006).

Another administrative barrier involves the transportation of homeless children. School transportation is primarily a local issue and thus districts are responsible for providing this service to students. Local property taxes help to cover the high costs of this transportation.²⁴ When a homeless child's parent or guardian is not a resident of the school district, the district does not receive tax dollars from the family that would normally cover transportation costs. Furthermore, the transportation of homeless children poses a unique problem for schools because these children often do not live on one of the district's pre-established bus routes. Some children live outside of the school district in which they are enrolled and must be bussed in from outlying areas that are not normally serviced by the district's busses. Although McKinney-Vento requires school districts to provide transportation for homeless children to and from their schools of origin that are comparable to those offered to other students in the school, the money, if any, that schools receive under McKinney-Vento rarely covers these transportation costs.²⁵

Prior academic and immunization records, which are required by many districts for school enrollment, present another administrative barrier.²⁶ Although the records barrier was expressly addressed in the 2001 reauthorization and many states and districts have since removed it, this obstacle still presents a hurdle for enrollment in some schools. Most students can provide these records without difficulty, but not homeless children. Immunization requirements present a formidable barrier for homeless children because they either have not received the necessary immunizations or they have lost their immunization records. Likewise, these children face difficulties when the school requires their academic records prior to enrollment. The frequent relocation of the homeless inhibits adequate record retention. Regardless, records of a child's academic history help the school to provide the child with a suitable education. Although the child's former school may have his or her academic records, the records are not always immediately transferred to the new school.

²⁴ U.S. Dep't of Educ., *The Education for Homeless Children and Youth Program: Learning to Succeed, Volume I: Reducing Barriers for Homeless Children for Access and Achievement* 18 (2002).

²⁵ 42 U.S.C.A § 11432(g)(1)(J)(ii) – (iii), (g)(3)(4)(A) (West 2006).

²⁶ *Id.* at § 11432(g)(3)(D).

Finally, guardianship requirements present an added challenge when the school is unaware that these must be waived for homeless children. Not every child that attempts to enroll in school is in the physical custody of a parent or guardian. Some children have run away from their families or have been kicked out of their houses. For these children, guardianship requirements are not met. Schools are hesitant to enroll children who are not accompanied by a parent or guardian for liability reasons. However, McKinney-Vento requires schools to immediately enroll homeless youth even if they do not have guardianship papers.²⁷ Despite McKinney-Vento's mandate that guardianship requirements be waived for homeless children, some schools are not knowledgeable about this provision.

III. The McKinney-Vento Act

The McKinney-Vento Act was established to make that certain homeless children have equal access to educational opportunities. The Act does this in part by addressing barriers that homeless children face in enrolling in, attending, and succeeding in school. The Act mandates that every homeless child have "equal access to the same free, appropriate public education . . . as provided to other children" to "ensure that such children . . . have an opportunity to meet the same challenging State student academic achievement standards to which all students are held."²⁸ It is clear from the Act that "homelessness alone is not a sufficient reason to separate homeless students from the mainstream school environment."²⁹ McKinney-Vento also requires states that have compulsory residency requirements, attendance laws, or other barriers to the enrollment and regular school attendance of homeless children to revise their laws and practices to ensure that these children receive the same free, appropriate public education as non-homeless children.³⁰

²⁷ *Id.* at §11432(g)(3)(C).

²⁸ *Id.* at §11431(1), (4).

²⁹ *Id.* at §11431(3).

³⁰ *Id.* at §11431(2).

A. Who is Involved in the Implementation of the McKinney-Vento Act?

The McKinney-Vento Act established a grant program to which states apply for federal funding. Most of the money received by state educational agencies is subsequently be distributed to local educational agencies. The implementation of McKinney-Vento involves many people. Each participant has assigned tasks regarding the execution of the Act, but the participants' responsibilities frequently overlap. Consequently, coordination and communication among the participants is essential to the successful education of homeless children.

The United States Secretary of Education ("Secretary") has several tasks under McKinney-Vento. Some of these tasks include reviewing state plans, providing states with technical assistance, and reporting to Congress and the President regarding the education of homeless children, the actions of the Secretary, and the effectiveness of the programs supported by McKinney-Vento.³¹ The most recent report on the implementation of the Education for Homeless Children and Youth Program under the McKinney-Vento Homeless Assistance Act was released by the Secretary early in 2006.³² This report marked the first time that the data used to compile the report was based on actual counts and records of homeless students enrolled in school.³³ Previous reports were less accurate because they relied solely on estimates.³⁴

States educational agencies ("SEAs") also play a vital role in ensuring that the purposes of McKinney-Vento are fulfilled. A "state educational agency" is the state agency responsible for all public schools.³⁵ The SEA in every state that wishes to receive funding under McKinney-Vento must submit an application to the Secretary.³⁶ The SEA must also establish an Office of the Coordinator for Education of Homeless Children and Youth ("Coordinator"). The Coordinator's responsibilities include identifying homeless children, gathering information regarding the problems these children have in gaining access to public school programs and

³¹ *Id.* at §11434.

³² U.S. Dep't of Educ., Report to the President and Congress on the Implementation of the Education for Homeless Children and Youth Program under the McKinney-Vento Homeless Assistance Act (2006).

³³ *Id.* at ii.

³⁴ *Id.*

³⁵ 20 U.S.C.A. §7801(26)(A) (West 2006).

services, and developing and carrying out a detailed state plan to address these problems. In addition, the Coordinator is responsible for working with local educational agencies to ensure compliance with McKinney-Vento.³⁷ The 2001 reauthorization requires SEAs and Coordinators to provide technical assistance to local educational agencies.³⁸ Therefore, SEAs must be involved in the actual education homeless children rather than just administrative duties.

Local educational agencies (“LEAs”), which are defined as “public board[s] of education or other public authorit[ies] legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools . . . or a combination of school districts or counties,” are also involved in the execution of the McKinney-Vento Act.³⁹ LEAs include school districts and, in some states like Pennsylvania, “intermediate units” which are groupings of school districts that provide specialized services such as learning support, psychological services, and hearing and visual services to students in a cost-effective, management-efficient manner.⁴⁰ Because LEAs operate on the local level and are closer to the children they serve, they have are expected to actively address the children’s educational needs. LEAs are required to coordinate, often through an LEA liaison, with social service agencies and other LEAs so that administrative and environmental barriers can be effectively eliminated.

Finally, LEA liaisons (“liaisons”), also referred to as school district liaisons, participate in the education of homeless children. Previously, liaisons were only required in districts that received funding under McKinney-Vento. However, since the 2001 reauthorization, every school district in states that receive funding under the Act is required to designate a liaison.⁴¹ Liaisons have the important responsibilities of identifying homeless children, and ensuring that they enroll in school and have a full and fair opportunity to succeed. Liaison tasks also include informing the

³⁶ 42 U.S.C.A. § 11432(b) (West 2006).

³⁷ *Id.* at § 11432(f).

³⁸ *Id.* at § 11432(f)(6).

³⁹ 20 U.S.C.A. § 7801(26)(E) (West 2006).

⁴⁰ Pennsylvania Association of Intermediate Units, <http://www.paiu.org>.

⁴¹ 42 U.S.C.A. § 11432(g)(1)(J)(ii) (West 2006).

children's parents and guardians of the educational opportunities available their children, providing the children with meaningful opportunities to engage in those opportunities, and assisting families in arranging school transportation for their children.⁴²

It takes many people to carry out the policies of McKinney-Vento. While each of these participants technically has his or her own duties, communication and cooperation among all participants are vital if homeless children are to receive the education to which they are entitled under the Act. Some of the participants' job descriptions overlap, which should theoretically allow for greater accountability and compliance with the Act. However, this overlap also provides a way for those involved in the implementation of McKinney-Vento to shift responsibilities and blame to others assigned to the same task.

B. An Overview of the Most Important Provisions of the McKinney-Vento Act

McKinney-Vento saddles LEAs and liaisons with the hands-on work that is necessary to guarantee that homeless children enroll in school. However, SEAs are supposed to provide technical assistance to LEAs according to the 2001 reauthorization. Detailed provisions in the Act guide LEAs and liaisons in dealing with issues of school selection, immediate enrollment, comparable services, and transportation regarding homeless children.⁴³

Once a homeless child is identified, a decision must be made as to where the child should attend school. The child may remain in his or her school of origin for the duration of homelessness. The "school of origin" is the school the child attended when permanently housed or the school in which the child was last enrolled.⁴⁴ Alternatively, the child may enroll in any public school that non-homeless students living in the same area are eligible to attend.⁴⁵ The Parents, guardians, and applicable LEAs are responsible for deciding on an appropriate school of enrollment for the child considering his or her best interests.⁴⁶ A child's best interests are not

⁴² *Id.* at § 11432(g)(6).

⁴³ *Id.* at § 11432(g)(3)(A)-(G), (4).

⁴⁴ *Id.* at § 11432(g)(3)(A)(i), (G).

⁴⁵ *Id.* at § 11432(g)(3)(A)(ii).

⁴⁶ *Id.* at § 11432(g)(3)(A).

determined by a detailed analysis of the needs and desires of the child as one might assume. Rather, they are “to the extent feasible, [to] keep a homeless child . . . in the school of origin, except when doing so is contrary to the wishes of the child’s . . . parent or guardian.”⁴⁷ There are two main reasons why it is essential to select a school with care. First, homeless children lack a stable home environment and therefore a firm educational environment is of utmost importance. Second, it takes four to six months for a child to recover academically after changing schools so ideally school transfers should be kept to a minimum.⁴⁸

Once a school is selected, the child must be enrolled immediately even if he or she is unable to produce records of residency, immunization, guardianship, or prior academics that the school would otherwise require for enrollment.⁴⁹ Once the child is enrolled, records and immunizations can be obtained if necessary. McKinney-Vento further requires schools to waive any other requirements such as dress codes or strict attendance policies that would prevent the continued regular attendance of homeless children.

Following the child’s enrollment, the school district is required to arrange transportation for the child. The McKinney-Vento Act requires SEAs and LEAs to adopt policies that ensure transportation for the child to and from the school of origin upon request of the child’s parent or guardian.⁵⁰ This transportation must be comparable to that provided to non-homeless students.⁵¹ It is more difficult to provide comparable services to children living outside the school’s attendance area. For example, a homeless student living outside the district is not on any of the normal bus routes. Therefore, the homeless child may be transported to and from school in a taxi, separate from other children, rather than on a bus with other children. This does not seem “comparable” to the transportation used by other children, but it is the most cost effective way to get the child to school.

⁴⁷ *Id.* at §11432(g)(3)(B)(i).

⁴⁸ *Supra* note 33.

⁴⁹ 42 U.S.C.A. §11432(g)(3)(C)(i) (West 2006).

⁵⁰ *Id.* at §11432(g)(1)(J)(iii).

⁵¹ *Id.* at §11432(g)(4)(A).

Finally, McKinney-Vento requires LEAs to provide to each homeless child with services comparable to those offered to non-homeless students attending the same school. Services include, but are not limited to, public preschool programs such as Head Start, gifted and talented programs, special education programs, before and after school programs, athletic activities, and school nutrition programs.⁵² The language of the Act is vague as to whether the services need only be offered or whether the children must be provided with a meaningful opportunity to take advantage of these services. However, the general policies of the McKinney-Vento Act indicate that Congress wanted homeless children to have a real chance to take advantage of these programs and services.⁵³

C. Funding Under the McKinney-Vento Act

All fifty states, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands are authorized to receive funds under McKinney-Vento. With the exception of the District of Columbia, all of these states and territories receive funding to educate homeless children.⁵⁴ Regardless of whether the funding is used by SEAs or LEAs, Congress requires that money be used to carry out the basic policies of McKinney-Vento, which are set forth in 42 U.S.C.A. § 11431 (West 2006).

The Secretary provides funded states with an amount determined by the formula set forth in McKinney-Vento and within the limits placed by Congress.⁵⁵ In 1990, Congress appropriated just \$7 million to educate nearly 300,000 homeless children.⁵⁶ However, William J. Clinton assumed the presidency, funding increased. During 1995, the amount of money available under McKinney-Vento was approximately \$28 million, or four times what it had been just five years

⁵² *Id.* at § 11432(g)(4).

⁵³ *See* 42 U.S.C.A. § 11431(1) (West 2006).

⁵⁴ *Supra* note 32, pg. 1. The District of Columbia accepted federal funding under the McKinney-Vento Act until homeless parents sought to enforce their children's rights under the McKinney-Vento Act in *Lampkin v. District of Columbia*, 886 F. Supp. 56 (D.D.C. 1995). The District of Columbia was not pleased with the Court's order and has since declined funding.

⁵⁵ 42 U.S.C.A. § 11432(c) (West 2006).

⁵⁶ U.S. Dep't of Educ., Archived Information: McKinney-Vento Homeless Assistance Program

earlier.⁵⁷ For fiscal year 2002, President George W. Bush authorized a \$70 million appropriation for the implementation of McKinney-Vento and “such sums as may be necessary for each of fiscal years 2003 through 2007.”⁵⁸ However, Congress appropriated only about \$50 million in 2002, \$55 million in 2003, and \$60 million in 2004.⁵⁹ Most recently, in 2005, Congress appropriated \$62.5 million for the education of homeless children. The average award to states that accepted funds under the Act in 2004 was \$1,116,000.⁶⁰

States that receive grants disperse the majority of the money that they receive, generally at least 75%, in the form of sub-grants to LEAs.⁶¹ LEAs use the funds to provide children with services related to education such as tutoring, transportation, and school supplies.⁶² The sub-grant money also benefits homeless children indirectly through programming and other activities designed to teach educators and school personnel about the problems facing these children and the best ways to help them.⁶³

D. Interpreting McKinney-Vento Using Administrative Law and Case Law

Those who work to implement the McKinney-Vento Act have had little assistance from administrative law or case law with regard to interpreting the Act and understanding how to enforce it. To date, no federal regulations have been promulgated, which means that SEAs and LEAs must decipher the Act’s provisions on their own. Similarly, courts have provided little guidance. There have been no lawsuits dealing with the enforceability of the McKinney-Vento Act that have run a full course through the federal court system. Only one case dealing with the enforceability of the McKinney Act that has done so, and the results were catastrophic.⁶⁴

In *Lampkin v. District of Columbia*, the mothers of homeless children filed an action alleging that the District of Columbia, the Mayor of the District of Columbia, the District of

⁵⁷ *Id.*

⁵⁸ 42 U.S.C.A. § 11435 (West 2006).

⁵⁹ U.S. Dep’t of Educ., Education for Homeless Children and Youths – Grants for State and Local Activities, <http://www.ed.gov/print/programs/homeless/funding.html>.

⁶⁰ *Id.*

⁶¹ 42 U.S.C.A. § 11432(e)(1) (West 2006).

⁶² *Id.* at § 11433(d).

⁶³ *Id.* at § 11433(d)(3).

Columbia public schools, and the Superintendent of the District of Columbia public schools failed to comply with the requirements of the McKinney Act.⁶⁵ Specifically, the parents said the defendants did not implement a best interest standard in placing homeless children in school, arrange transportation to and from school, coordinate social services and public education, ensure comparable educational services, or provide a free, appropriate public education for these children in the District of Columbia.⁶⁶ The district court dismissed the case stating that Congress did not imply a private right of action as a remedy for McKinney Act violations.⁶⁷ On appeal by the parents, the court held that the McKinney Act provided a right of action and was thus enforceable by the parents.⁶⁸ The court then reversed and remanded the case.⁶⁹ On remand, the district court decided in favor of the homeless children and their parents and entered an injunction that ordered Defendants to comply with the McKinney Act.⁷⁰

Two months after the order was issued, Defendants sought to give back McKinney funds to avoid compliance with the order. Defendants successfully challenged the continued application of the injunction. The district court noted that “[w]hatever commitment the District [of Columbia] has to ameliorate the educational obstacles faced by homeless children, that commitment has not survived its head-on collision with budget realities.”⁷¹ “Given the District’s withdrawal from the Program, there is now no law to apply.”⁷² Although the district court sympathized with the homeless children, it acknowledged that its role is to interpret existing law, not to create a statutory scheme for the children’s benefit.⁷³ The result of *Lampkin* was tragic because homeless children in the District of Columbia no longer receive the educational benefits

⁶⁴ *Lampkin v. District of Columbia*, 886 F. Supp. 56 (D.D.C. 1995).

⁶⁵ *Id.* at 58.

⁶⁶ *Lampkin v. District of Columbia*, Civ. A. No. 92-0910 (D.D.C. June 9, 1992).

⁶⁷ *Id.*

⁶⁸ *Lampkin v. District of Columbia*, 27 F.3d 605, 611-12 (C.A.D.C. 1994).

⁶⁹ *Id.*

⁷⁰ *Lampkin v. District of Columbia*, 879 F.Supp. 116, 127 (D.D.C. 1995).

⁷¹ *Lampkin v. District of Columbia*, 886 F. Supp. 56, 65 (D.D.C. 1995).

⁷² *Id.* at 63

⁷³ *Id.*

previously provided by federal funding. The District of Columbia has not accepted funding under the McKinney Act since the case was decided in 1995.

The enforceability of McKinney-Vento continues to be litigated despite the results of *Lampkin*.⁷⁴ Courts have reiterated that education is a power that belongs to the States and only states that receive funding under McKinney-Vento must adhere to the Act. The federal government cannot penalize SEAs and LEAs that violate McKinney-Vento except by withholding future funding. However, by retaining money, the federal government exacerbates the harm to the children that Congress sought to benefit. Congress should take a firmer stance on homeless education. If Congress threatened to withhold all federal funding for public education due to noncompliance with McKinney-Vento, states would surely be compelled to obey the Act.

IV. The Education of Homeless Children in Pennsylvania

Over three years, the number of homeless students in Pennsylvania increased by 28% from 15,801 in 2002 to 20,210 in 2005.⁷⁵ Like all other states, Pennsylvania receives funding under McKinney-Vento to improve the education situation of homeless children.⁷⁶ The State established twenty-nine intermediate units that work in conjunction with school districts and the SEA to ensure that children in all of its 501 school districts receive educational services that meet their needs.⁷⁷ For the 2004-2005 school year, Pennsylvania received \$2,033,995 in grant money under the McKinney-Vento Act.⁷⁸ Given that 20,210 homeless students were served in Pennsylvania in 2005, each homeless student had spent on him or her a maximum of \$100.64 from the Act for the school year. This amount is extremely low considering the broad policies of the McKinney-Vento Act.

⁷⁴ See, e.g., *Nat'l Law Ctr. v. New York*, 224 F.R.D. 314 (E.D.N.Y. 2004).

⁷⁵ *Supra* note 5.

⁷⁶ PA Dep't. of Educ., *Student Services and Programs: Programs Statistics*, http://www.pde.state.pa.us/svcs_students/cwp/view.asp?a=140&Q=49731&svcs_studentsNav=|3880|&svcs_studentsNav=|3875|.

⁷⁷ *Id.*

⁷⁸ *Id.*

Pennsylvania's Education for Homeless and Youth State Program aspires to "ensure homeless children . . . a free and appropriate public education on an equal basis with all other children in the state."⁷⁹ The State attempts to meet this goal by informing schools of their responsibilities regarding homeless children and creating policies that bring Pennsylvania into compliance with the McKinney-Vento Act.⁸⁰ Many of the key components of the State Plan are taken directly from the Act.⁸¹ In addition to the State Plan, Pennsylvania's Homeless Children's Initiative sets out specific goals and strategies to achieve them.⁸² The ultimate goal is to ensure that homeless children experience minimal disruption to their education.⁸³ The State wants to make certain that homeless children continue their education in their current school or are rapidly enrolled in a new school close to their temporary housing. The State also want homeless children to have the opportunity to participate in the entire school program including field trips, extracurricular activities, and extra instructional programs, and experience a caring school environment in which the children can find success in their daily learning activities.⁸⁴

A second goal set forth in the initiative is to educate others who are in a position to help homeless students minimize disruptions in their education.⁸⁵ These people include teachers, parents, school staff, shelter staff, and social workers. Pennsylvania seeks to educate them about the importance of curtailing disruptions to a homeless child's education, and to inform these helpers of their roles and responsibilities with respect to the education of these children.

Mary Clark, a site coordinator in Westmoreland County, Pennsylvania, indicated that the identification of homeless children is the biggest barrier to enrolling homeless children that she

⁷⁹ PA Dep't of Educ., *Student Services and Programs: Overview*, http://www.pde.state.pa.us/svcs_students/cwp/view.asp?a=140&Q=49906&svcs_studentsNav=|3877|&svcs_studentsNav=|3875|.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² PA Dep't of Educ., *Student Services and Programs: Goals and Activities*, http://www.pde.state.pa.us/svcs_students/cwp/view.asp?a=140&Q=49913&svcs_studentsNav=|3876|&svcs_studentsNav=|3875|.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

has faced.⁸⁶ Some schools are better at identifying homeless children than others.⁸⁷ Each of the three homeless shelters in Westmoreland County is usually full and the children living there are easy to identify.⁸⁸ However, there are many more homeless children than the shelters can accommodate. “When a family is living in their car or truck, or floating from one relative to another, or staying in a motel” or “when the kids end up being dumped at grandma’s [house] because mom is too busy with her drug habit or has been incarcerated,” identification is more complex.⁸⁹ In addition, the identification of unaccompanied youth who have run away from home or who have been thrown out of their home presents another vexing problem. Ms. Clark indicated that shelters in Westmoreland County are not able to accommodate unaccompanied children. Therefore, it is difficult to identify unaccompanied children who are “on the run.”⁹⁰

Overall, transportation difficulties rank among the top three reasons for delays in the school enrollment of homeless children in Pennsylvania.⁹¹ McKinney-Vento requires districts to provide these with transportation to and from their schools of origin. Pennsylvania districts are learning to cooperate with this requirement.⁹² However, the cost of transporting children not located on a regular bus route or being transported across district lines is high. Districts have trouble generating funds to cover these costs.⁹³ In addition, some districts have numerous homeless shelters located within their attendance area. These districts face higher school transportation costs than other districts which have few or no shelters because they usually have more homeless children attending their schools.⁹⁴

⁸⁶ E-mail interview with Mary Clark, Site Coordinator, Pennsylvania Region #4 Westmoreland IU #7 (March 29-30, 2006).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Supra* note 76.

⁹² *Supra* note 86.

⁹³ *Id.*

⁹⁴ *Id.*

V. Is the McKinney-Vento Act Working?

It has been nearly twenty years since the McKinney Act was signed and five years since the most recent reauthorization of the Education for Homeless Children and Youth Program. There has been progress in the education of homeless children which is indicated by the fact that 87% of homeless children were enrolled in school in 2004.⁹⁵ This number is much higher than the 57% of homeless children who were who were enrolled in 1987 before the McKinney Act was created.⁹⁶ Despite this progress, the 2006 report submitted to President Bush and Congress by the Secretary of Education indicates that there continues to be room for improvement.⁹⁷

The recent progress under McKinney-Vento can be largely attributed to changes made to the Act in 2001. The reauthorization required all school districts, not just those receiving funding under the Act, to designate a liaison.⁹⁸ There are numerous benefits to having a liaison in every district, including increased identification of homeless children and better coordination of school district services. Because of liaisons, more services are being provided to homeless children including transportation, community awareness of the issues related to homeless education has increased, and better coordination exists between districts, intermediate units, social service agencies, and SEAs.

Identification of homeless children has increased since the reauthorization mandated liaisons in every district.⁹⁹ In Rutherford County School District in Tennessee, 500 homeless children have been identified since the district liaison was appointed.¹⁰⁰ Previously, zero homeless children had been identified.¹⁰¹ In 2000, the total number of homeless children enrolled in grades K-12 in the United States was 580,499.¹⁰² With the assistance of local

⁹⁵ *Supra* note 8.

⁹⁶ *Id.*

⁹⁷ *Supra* note 32.

⁹⁸ *Id.*

⁹⁹ *Id.* at 14.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 5

liaisons, that number grew to 600,051 by 2003-2004.¹⁰³ In August and September of 2005, Hurricanes Katrina and Rita disrupted the lives and the education of many children. Although the children impacted by these hurricanes were evaluated on a case-by-case basis, most were considered “homeless” for purposes of McKinney-Vento. Consequently, the number of homeless children enrolled in school during the 2005-2006 school year likely increased significantly from the prior year.

Progress has also been made under the McKinney-Vento Act with respect to providing homeless children with greater educational stability.¹⁰⁴ Increased stability is the result of the Act’s immediate enrollment requirement and its provision permitting homeless children to remain in their schools of origin. Since the 2001 reauthorization, immediate enrollment for homeless children is more frequent as districts have become aware of what is expected of them under McKinney-Vento. Because of the district’s knowledge of the Act’s mandates, many schools now waive residency, guardianship, and immunization requirements. Since 1994, at least twelve states have either changed or relaxed laws that imposed legal guardianship requirements to help homeless students.¹⁰⁵ While few local liaisons indicate difficulties with guardianship requirements, the most progress was made with respect to the elimination of immunization record requirements.¹⁰⁶

McKinney-Vento is successful in that there is more collaboration between SEA, LEAs, homeless shelters, and other agencies that provide services to homeless children. Also, data collection and the monitoring of homeless students have also improved.¹⁰⁷ Ultimately, the collaboration and attention to detail in reporting has maximized the funding and services available to homeless students, and improved the identification of the needs of these students.

Finally, progress has been made with respect to the number of sub-grants that states are awarding. In 2003-04, states awarded 56% more sub-grants than they had in the 2001-02 school

¹⁰³ *Id.*

¹⁰⁴ *Id.* at i.

¹⁰⁵ *Id.*

¹⁰⁶ *Supra* note 25, pg. 19.

year, which allowed a greater number of LEAs to receive funding specifically earmarked for homeless education.¹⁰⁸ With more funding, LEAs have been able to serve 52% more homeless students.¹⁰⁹ The LEAs are able to better help these students by providing tutoring services, staff professional development and awareness, transportation, before and after school programs, mentoring, parent and child education, coordination between schools and agencies, assistance in domestic violence situations, clothing, school supplies, and other services.¹¹⁰ Unfortunately, the academic progress of homeless children in school districts receiving McKinney-Vento sub-grants was not tracked until the 2003-04 school year. Therefore, there is insufficient data to analyze how sub-grants relate to academic progress.¹¹¹

Despite the progress made since 2001, barriers remain that prevent the Act from fulfilling its mission to educate all homeless children. District liaisons have proven to be an essential component of homeless education. However, high turnover among liaisons and other demands on their time have made it difficult for them to fully coordinate with others involved in the implementation of McKinney-Vento.¹¹² This has resulted in tenuous coordination between LEAs and SEAs. Homeless children cannot receive effective assistance when there is poor coordination between those charged with implementing the Act.

Furthermore, even when local liaisons are able to work fulltime to serve homeless children, they cannot always identify these children, especially when they are living “doubled up” with friends or family or when they are unaccompanied. States reported that in 2003-04, 50.5% of their homeless students lived doubled up with friends and relatives.¹¹³ Given that high percentage, there are likely many more children living in these arrangements that qualify for

¹⁰⁷ *Supra* note 32, pg. ii.

¹⁰⁸ *Id.* at i.

¹⁰⁹ *Id.* at 11.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 12.

¹¹² *Id.* at 13.

¹¹³ *Id.* at 6.

assistance under McKinney-Vento. These children have not yet been located and reaching them remains problematic.

Several administrative and environmental barriers continue to prevent homeless children from enrolling in school with the ease envisioned by Congress. The biggest challenge to educating homeless children continues to be the high mobility of these children because frequent relocation makes it difficult to provide them with a constant education. Unfortunately, this is a barrier that McKinney-Vento fails to address because the Act focuses on improving the results rather than addressing the causes of homelessness. The transportation barrier also remains problematic. Schools still struggle to fund the transportation of homeless students because the sub-grant money they receive, if any, is minimal and the policies of McKinney-Vento are broad.¹¹⁴ Also, guardianship requirements continue to pose difficulties especially when schools are unaware of the wavier requirement for homeless children mandated by McKinney-Vento. However, some progress has been made with respect to this barrier because liaisons who are familiar with the law have been working closely with schools and the children.

McKinney-Vento is not working to its fullest potential because in some instances, the school personnel that interact with the homeless students are unaware of the special needs of these students and how they must be treated under the Act. Homeless students have unique needs that the Act addresses and it is important to educate the people who work with these students about their unique needs. A lack of awareness of or sensitivity to these needs keeps homeless children from enrolling in, regularly attending, and succeeding in school. Furthermore, not all homeless students have equal access to comparable educational services even though it is required under McKinney-Vento. Educators are unaware of the requirements of the law. If educators and school personnel were better trained to deal with the problems that homeless children face, the success rate for educating these children would increase.

¹¹⁴ *Id.* at 39.

Finally, Congress' inadequate funding of McKinney-Vento is one very significant reason that SEAs and LEAs are unable to provide all homeless children with a public education. The number of homeless children is increasing and each of those children needs to be educated to become part of the workforce. In 2004, \$59,646,800 was appropriated to educate 1.35 million homeless children.¹¹⁵ This means that that \$44.18 was appropriated for each homeless child. With such little funding, it is no surprise that SEAs and LEAs struggle to strictly adhere to all of the McKinney-Vento Act's policies and mandates.

CONCLUSION

An increasing number of children experience homelessness each year in the United States. During the 1990s, the number of children experiencing homelessness in the United States increased by 350%.¹¹⁶ It is imperative that we find an effective way to identify these children and monitor them with care to ensure that they each receive an education. Many people complain about how their hard earned dollars are used to support people who are "living off of the system". If we educate homeless children, they will be better prepared for the workforce. Therefore, they will be less likely to rely on public assistance in the future. However, if we fail to educate these children, they are more likely to continue relying on public assistance throughout their lives. Children born into homeless families never receive an education, end up unemployed, are forced to rely on public assistance, and then have children, which starts the cycle all over again. In sum, we must identify homeless children, enroll them in school, and monitor their educational progress. By doing this, we will decrease the number of people who rely on public assistance in the future.

The McKinney-Vento Act established goals and policies regarding homeless education. All fifty states currently accept funding under McKinney-Vento. This is evidence that the states realize the importance of educating homeless children. Furthermore, states and many school

¹¹⁶ U.S. Dep't of Educ., McKinney-Vento Homeless Education Act of 2001, Title X Part C, No Child Left Behind Act-2001 (2002); See Education Development Center, *Featured Articles: Educating Homeless Children* (August 2003) <http://main.edc.org/newsroom/features/homeless.asp>.

districts have gone to the next level and adopted laws and policies geared toward ensuring that this occurs. Although many improvements have been made that allow homeless children to better access the education system, a significant number of children are still not being reached. It has been nearly twenty years since the Stewart B. McKinney Homeless Assistance Act was signed and room for progress with regard to homeless education still exists.