

Homeless Education: Analyzing the Problematic Legal Remedies Available to Homeless School Children

Clifton S. Tanabe
University of Hawai'i at Mānoa

Given the extent to which our society values education, it is perplexing to learn that we continue to struggle to provide all children, especially homeless children, an adequate education. This troubling issue is the focus of this paper. Specifically, this paper will center around two basic questions; 1) what has the legal system done to ensure that homeless children receive an adequate education, and 2) what might be done, legally, to advocate for the educational well-being of such children? In addressing these two questions, this paper will begin by problematizing the definition of homelessness and by analyzing some national statistics on homelessness and homeless education. It will go on to discuss a few barriers to resolving the problem of homeless education. Then, it will examine two potential remedies to this problem. The first is the McKinney-Vento Homeless Assistance Act. The second is an alternative schooling arrangement that is uniquely designed to address the educational needs of homeless students. Ultimately, I hope to show that homeless children and families face a number of debilitating barriers to receiving an adequate education and that while the available remedies to these barriers (legal and non-legal) have offered some relief, they are not without problems.

The United States Supreme Court has determined that the Constitution does not require that individuals receive a free public education.¹ In *Plyler v. Doe*, Justice Brennan, who wrote the majority opinion for the Court, states, “[p]ublic education is not a ‘right’ granted to individuals by the Constitution.”² However, he goes on to qualify this statement when he writes, “but, neither is [public education] some governmental ‘benefit’ indistinguishable from other forms of social welfare legislation.”³ In fact, Justice Brennan asserts that education has a fundamental role in “maintaining the fabric of our society.”⁴

The tension between the idea that education is a privilege rather than a right, and the idea that education carries a special importance for individuals and society, is reflected in our nation’s continuing to struggle to provide all children, and especially homeless children, an adequate education. This troubling issue is the focus of this paper. Specifically, this paper will address two basic questions; 1) what has the legal system done to ensure that homeless children receive an adequate education, and 2) what legal and policy approaches might be pursued to advocate for the educational well-being of such children?

In addressing these two questions, this paper will begin by problematizing the definition of homelessness and by analyzing some national statistics on homelessness and homeless education. It will go on to discuss a few barriers to resolving the problem of homeless education. Then, it will examine two potential remedies to this problem. The first is the McKinney-Vento Homeless Assistance Act. The second is an alternative schooling arrangement that is uniquely designed to address the educational needs of homeless students. Ultimately, I hope to show that homeless children and families face a number of debilitating barriers to receiving an adequate education and that while the available remedies to these barriers (legal and education related) have offered some relief, they are not without problems.

The Problem of Defining Homelessness

National statistics on the number of homeless people in this country vary according to who is reporting them. Some of this variance is due to fundamental differences in the methodological approaches taken by different studies. For example, a researcher who is trying to determine how many homeless people there are in a given area may limit his or her study to counting the number of individuals in nearby shelters during a given period of time. While this is a good way to determine the number of people who are using services such as homeless shelters, it invariably underestimates the total number of homeless people, many of whom are not found in emergency shelters.⁵ On the other hand, while the “shelter focused” studies tend to *underestimate* the actual number of homeless people, studies that try to count all the homeless people in a given area at one specific point in time, rather than over a period of time, tend to *overestimate* the extent of the homeless problem. This is because the approach produces a kind of “snap shot” of the homeless situation.⁶ It does not take into account the fact that some of the people in the “snap shot” are not chronically homeless, but rather intermittently homeless.

While some of the differences between the various studies on homelessness can be attributed to differences in research method, there is also another basic reason that these studies are inconsistent. Homeless people are both difficult to classify and difficult to find because they are highly mobile in two different ways: 1) high status mobility (based on self-perception) and 2) high physical mobility. First, extremely poor people move back and forth between considering themselves homeless and considering themselves not-so-homeless. That is, they are sometimes undeniably homeless (when, for example, they are sleeping in an emergency shelter or in an

abandoned building or under a bridge). And, at other times, they do not feel homeless, but consider themselves simply to be poor people who are currently in a less than desirable temporary living arrangement.⁷ This movement back and forth (alternating self-perception) is often difficult to predict because it can be sudden depending on perspective, opportunity and luck.

Second, homeless people regularly move from place to place. That is to say that homeless people find it very difficult to stay, physically, in one area for very long.⁸ This may not be surprising. After all, by definition homeless people are in *temporary* living arrangements. However, the intensity of this mobility is much greater than one might guess. One study indicates that within one year a staggering 97 percent of homeless children move at least once, and many move three or more times!⁹ For obvious reasons, this kind of mobility makes it very difficult for researchers to obtain accurate data concerning homeless families.

For the purposes of this paper, I will adhere to the statutory definition of homelessness provided by the McKinney-Vento Homeless Assistance Act. The Act states that a homeless child is an individual who lacks a “fixed, regular, and adequate nighttime residence”¹⁰ According to the Act, if a child’s nighttime residence is based on “sharing the housing of other persons due to loss of housing, economic hardship, or similar reason” the child is homeless. Likewise, if the child is sleeping in a motel or on a camping ground due to lack of alternative accommodation, or is sleeping in a “car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting,” the child is homeless. The Act goes on to state that a child is to be considered homeless even if he or she is in an “emergency or transitional shelter, [or has been] abandoned in a hospital, [or is] awaiting foster care placement.”¹¹

The Number of School-Age Homeless Children

In 1997 the U.S. Department of Education reported that the number of school-age homeless children (K-12) in the country was approximately 625, 330.¹² This same report noted that this was an increase from 272,773 school-aged homeless children reported in 1989 (see Table 1).

Table 1
**Number of School-Age Children in U.S. as
Reported in 1997 by the U.S. Department of Education**

Year	School-Age Homeless
1989	272,773
1991	327,773
1993	744,266 ¹³
1997	625,330

In 2000, the Department of Education issued another report on homelessness, however this time it decided to add preschool-age children to the category of “homeless school-age children.”¹⁴ In doing so, it recalculated past data and stated that in 1997 there were actually 841,700 homeless school-age children. The report went on to indicate that the number of homeless children had risen to 930,200 in 2000 (see Table 2).¹⁵ In any case, the large number of homeless children in America is shocking.¹⁶

Table 2
**Number of Pre-school Age and School-Age Children in U.S. as
Reported in 2000 by the U.S. Department of Education**

Year	Preschool and School-Age Homeless
1997	841,700
2000	930,200 ¹⁷

The Educational Barriers Faced by Homeless Children

Homeless children are suffering academically.¹⁸ One reason for this is that they are not making it to school on a regular basis. In 2000, the Department of Education reported that only 67 percent of homeless school-age children regularly attended school.¹⁹ It is obvious that a young child cannot succeed in school if she is not able to regularly attend her classes. Part of the reason for this high absentee rate is, no doubt, the result of the highly mobile existence of homeless families.

In addition to missing more school than their non-homeless counterparts homeless children are twice as likely to repeat a grade, are four times more likely to show “delayed development,” and twice as likely to be suspended from school.²⁰ Homeless students are also twice as likely to be diagnosed with learning and emotional disabilities.²¹ And, one study revealed that, in particular, “homeless children experience difficulty with language.²² This section examines some of the barriers to addressing these educational needs including a lack of transportation to and from school, legal and bureaucratic barriers to enrolling in school and the social barriers that come with the stigma of being homeless.

The 2000 U.S. Department of Education report states that “[t]ransportation remains the biggest barrier for homeless children enrolling in school and accessing available programs and services.”²³ Several studies have shown that because homeless families are highly mobile, the children of these families often have to transfer from school to school within the span of a short period of time. One study revealed that some 40 percent of homeless children attend two different schools within a year and 28 percent attend three or more different schools within a year.²⁴

When a homeless family resides in a shelter that is, for example, outside of walking distance to the nearest school, it is very difficult for the young children of this family to get to and from school. School buses do not generally stop at nearby homeless shelters to pick these children up. Related to this problem is the even more thorny issue of transporting homeless children back to their home schools. Several studies have suggested that returning children to their “school of origin” is “the single most important influence on a child’s school performance.”²⁵

Legal and Bureaucratic Barriers to Enrollment

In addition to the transportation barrier, homeless children face other barriers to school enrollment that are the result of legal and/or bureaucratic requirements. For example, some school districts use legal residency requirements “to keep ‘undesirable’ homeless children out by labeling homeless families nonresidents.”²⁶ Often, when homeless children are finally allowed to attend school, local ordinances that limit how long families may stay in emergency shelters force parents to remove their children from school because the law requires them to find different housing arrangements.²⁷

Legal guardianship requirements can be another barrier to school enrollment. Homeless parents often leave their children with family members or friends who are able to provide more adequate housing alternatives. One study conducted by the National Center on Family Homelessness found that within one year, 22 percent of homeless children are separated from their families.²⁸ Because these arrangements are expected to be temporary, the children's parents never transfer guardianship rights to these relatives or friends. As a result, these children are often unable to register for schools that require children to be enrolled by their parents or legal guardians.

In addition to formal legal barriers, it is not surprising to learn that the bureaucratic structure of a school and/or a school district can amount to a significant obstacle to homeless parents who are desperately trying to enroll their children in school. More to the point, it is often the bureaucratic *decision making process* of such institutions that leads to long delays and confusing lines of communication. Even when schools try to accommodate homeless students, the process that must be endured by them and their parents is inefficient and time consuming and often ends up delaying their enrollment. As a result homeless children are regularly put at an early educational disadvantage.²⁹

One consistent bureaucratic obstacle experienced by homeless parents is the requirement that their children be fully immunized before being allowed to attend school.³⁰ The policy of full immunization is not illogical, of course, but for homeless children who neither have the stability nor the resources to acquire such immunizations, this hurdle is nearly insurmountable. Even for those homeless children who have received the proper immunizations, the task of maintaining and then producing the records documenting this fact is daunting.³¹ While non-homeless families may have the luxury of filing such records in a cabinet in their basement, for example, homeless families must carry them on their backs from shelter to shelter.

Social Barriers to Attendance

As one would imagine, there are certain social barriers that homeless students must navigate in order to obtain an adequate education. Perhaps the most difficult is the problem of the stigma that comes with being homeless. Even young children who are homeless have learned to be ashamed of their predicament and resist going to school in order to avoid being teased and taunted because of their lack of school supplies or their unkempt appearance.³² Often teachers

are unaware or insensitive to the obstacles that homeless children face. As a result homeless children become isolated from school personnel as well as from their classmates.³³ This isolation is compounded by the fact that homeless students often are not allowed to participate in certain school activities because they cannot pay the required special fees, or they are unable to participate in after-school activities because of unique transportation arrangements.

If this lack of support at school is not enough, homeless children often face a lack of support among their family members as well. The United States Conference of Mayors published a report indicating that 67 percent of homeless people are members of single parent families.³⁴ Being homeless is obviously difficult, but being a homeless single parent who is desperately seeking a way to support her children as well as seeking alternative living arrangements for her family, is much more difficult. Such parents feel so overwhelmed that they are unable or unwilling to devote time and energy to their children's educational issues.³⁵

Remedy One: The Federal McKinney-Vento Homeless Assistance Act

The original McKinney-Vento Homeless Assistance Act was enacted in 1987 and was designed to "comprehensively combat homelessness."³⁶ It remains the primary federal statute directed at homelessness and the *only* federal program that provides educational outreach to homeless children and youth. "The cornerstone of [this act] is the requirement that each local educational agency make individual, case-by-case determinations based upon the 'best interest' of the child."³⁷ In short, this means that the school district and the parent or guardian of a homeless child must decide how best to remove all barriers to the enrollment and retention of the child in school. While the aims of the original McKinney Act were commendable, it was not often implemented in a satisfactory manner.

Ensuring that homeless children actually benefited from the original McKinney Act was a problem. "Despite the law ... [and the funding that came with it] the rights of homeless children were being systematically ignored."³⁸ As a result, a group of homeless parents filed a class action lawsuit against the Chicago Public Schools (CPS) and the Illinois State Board of Education (ISBE).³⁹ The case was settled in 1996. In 1999 the CPS and ISBE received a court order to carry out the terms of the settlement.

The settlement included, among other things, a stipulation by the CPS and ISBE that the court could continue to enforce the terms of the settlement, a broader definition of homelessness

and a commitment that “CPS will take steps to identify and to enroll homeless children and youth in the schools.”⁴⁰ However, “[t]he single most significant practical achievement of the settlement is the expansive new transportation system it establishes for homeless children.”⁴¹ Ultimately, many of the changes made to the McKinney-Vento Act during the reauthorization process were “based on Illinois’ successes.”⁴²

In January 2002, Title VII-B (Education for Homeless Children and Youth Program) of the Act was reauthorized under the enactment of the No Child Left Behind Act.⁴³ Among the most important provisions of the reauthorized Act is the requirement that all states, regardless of whether the state is receiving funding from this particular Act or not, ensure that all homeless children receive the same “free and appropriate public education” that is available to other non-homeless children.⁴⁴ Toward this effort, the Act encourages states to aggressively “ensure academic success for students in homeless situations by giving students the right to remain in school … and by guaranteeing access to all appropriate education opportunities and services.”⁴⁵

This provision has an impact on several other key aspects of the Act. For instance, the Act requires that each state submit a detailed “state plan” describing how it “will provide for the education of homeless children and youths within the state.”⁴⁶ This plan must now include a description of how every single school district in the state will address this issue, not just those that are being funded by the Act. The Act also requires that each state have a “state coordinator” and that each school district have at least one “local educational agency liaison.” The coordinator, with the assistance of the liaisons must, among other things, develop and carry out the state plan.

The reauthorized McKinney-Vento Act is an improvement on the original version of the Act. In addition to the changes mentioned above, the most profound improvements include how the Act addresses the transportation issue and how it addresses the bureaucratic and social barriers to enrolling homeless children in school. However, despite these improvements, the reauthorized McKinney-Vento Act has some problems of its own.

McKinney-Vento: Addressing the Transportation Problem

The expanded coverage of the Act allows it to address the “lack of transportation” issue, directly. The Act states, “the State and its local educational agencies 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.”⁴⁷ Therefore, if a child once lived on the east side of town, but now lives in an emergency shelter on the west side of town , the Act requires that the state make a reasonable effort to transport the child to the school on the east side of town which he or she originally attended.⁴⁸

Note, however, that this provision is not an affirmative guarantee of transportation for homeless children. It still requires the parent or guardian or liaison to *request* that the school district provide transportation. It is not clear whether such requests will be made when necessary. Parents and guardians may simply be unaware of this provision within the law or they may be unable or unwilling to make the request required in order to trigger the transportation provision. Nonetheless, that the Act directly addresses the barrier of transportation is evidence that members of Congress are paying attention to recent research on the problem of homeless education.

McKinney-Vento: Addressing Legal-Bureaucratic and Social Barriers

In addition to addressing the issue of transportation, the Act now speaks directly to the legal and bureaucratic barriers discussed earlier in this paper. The Act holds that local educational agencies must develop strategies to address “problems resulting from enrollment delays that are caused by: (i) immunization and medical records requirements; (ii) residency requirements; (iii) lack of birth certificates, school records, or other documentation; (iv) guardianship issues; or (v) uniform or dress code requirements.”⁴⁹ This is an affirmative responsibility now placed on school districts to reshape educational policy to meet the demands of providing homeless children with reasonable access to public education. The Act goes on to assert that school districts “shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment.”⁵⁰

Perhaps most surprising is language in the Act directed at reducing the often debilitating *stigma* faced by homeless children in the educational setting. The Act requires state and local educational agencies to provide assurances that they “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.”⁵¹ This is broad language that is strongly worded. While the term “stigma” has legal precedence, because it was used in a number of well-cited Supreme Court opinions regarding affirmative action,⁵² it still remains broad and difficult to define. Nonetheless, this provision is

clearly not a soft recommendation that school districts stop a generalized stigmatization of homeless children. It is much stronger than this. It is, in fact, a command that state and local educational agencies proactively determine ways to ensure that homeless children are not stigmatized by administrators, teachers or students, while pursuing a public education.

The Problem of Lack of Sufficient Funding

Despite the recognized strengths of the reauthorized McKinney-Vento Act, several writers have raised some concerns. As it was noted above, the Act requires that homeless children in every state be allowed to receive the same “free and appropriate public education”⁵³ that is provided to all other children. Part of this mandate includes requiring that local education agencies (LEAs) *affirmatively* ensure that “homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies.”⁵⁴ This affirmative responsibility to seek out and identify homeless students is often given short shrift by school districts. Part of the reason for this is that the Act’s mandates to provide transportation and affirmative identification are largely unfunded. As a result, school districts that operate under tight fiscal restraints are often financially unable to meet the affirmative demands of the Act.⁵⁵

In addition to failing to meet the affirmative identification requirements, states are often unable to meet the administrative requirements of the McKinney-Vento Act. For example, as it was mentioned above, the Act requires that each state assign a coordinator for homeless education. For many states the lack of funding provided by the Act has forced them to tack this responsibility on to the job descriptions of people who already have other full-time duties.⁵⁶ As a result, many states have had to delay the important task of developing and modifying the “state plans” that are required by the Act.⁵⁷

One writer “holds no punches” when she states, “McKinney Act funding is insufficient to provide homeless students with a guarantee of improved services.”⁵⁸ This author’s comments were published before the reauthorization of the Act, and before the recently passed American Recovery and Reinvestment Act of 2009 (ARRA) which provides a one time amount of \$70 million in fiscal year funds under the McKinney-Vento Act.⁵⁹ Given this, are such comments still valid? I believe they are. For example, the state of Wisconsin reported nearly 17,000 homeless children in 2002 and the state received a mere \$530,300 for that year from the

McKinney-Vento Act.⁶⁰ That comes out to about \$31 per homeless child for the year. Even a one-time boost of a million dollars from the ARRA would only bump this figure to around \$90 per homeless child. And, presumably, this bump up would be for only one year.

The Problem of a Litigation Limitation Provision in NCLB

In addition to the lack of funding provided for homeless education, there is an equally troubling question concerning the McKinney-Vento Act. The question is whether under the Act, homeless students and their parents still retain the right to sue to enforce the Act.

Pre-reauthorization of the Act, the U.S. Court of Appeals for the District of Columbia made it clear that homeless students and parents had a right to sue to enforce the McKinney-Vento Act. In *Lampkin v. District of Columbia*, in 1993, a homeless advocacy group sued the District of Columbia on behalf of homeless children.⁶¹ The group argued that, among other things, by not providing transportation and by not ensuring access to various educational programs, D.C. was not in compliance with the McKinney-Vento Act.⁶² At first, the district court did not get to the merits of the plaintiff's case because it granted the District's motion to dismiss on the grounds that the plaintiffs did not have a private right of action.⁶³ The United States Court of Appeals for the District of Columbia, however, reversed this decision and held that, "[t]he language of these provisions is sufficiently clear to put the States on notice of the obligations they assume when they choose to accept grants made under the Act."⁶⁴ The Court of Appeals goes on to say, "the McKinney Act confers enforceable rights on its beneficiaries and that appellants may invoke section 1983 to enforce those rights."⁶⁵ The Supreme Court did not hear the case.

However, since McKinney-Vento was reauthorized under the No Child Left Behind Act the right to sue, reinforced by the court in *Lampkin*, may be in jeopardy. The No Child Left Behind Act is the most significant reform to the Elementary and Secondary Education Act (ESEA) since it was passed in 1965.⁶⁶ Among its tremendous number of provisions, is a section that governs litigation for states that receive funds under the Act (which amounts to every state in the union, without exception). This section is called the "Paul D. Coverdell Teacher Protection Act."⁶⁷ In short, this subpart of the No Child Left Behind Act limits liability for "teachers," which it defines as, among others; teachers, instructors, principals, administrators, educational

professionals, and school board members.⁶⁸ It says that “no ‘teacher’ shall be liable for harm caused by an act or omission of the ‘teacher’ on behalf of the school.”⁶⁹

While the McKinney-Vento Act, by itself, does not expressly deny a private right of action it does not endorse it either. It does, however, require that local education agencies provide homeless children with access to an adequate *administrative* dispute resolution process. The Act states, “[i]f a dispute arises over school selection or enrollment in a school . . . the child, youth, parent, or guardian shall be referred to the local educational agency liaison . . . who shall carry out the dispute resolution process as expeditiously as possible.”⁷⁰ Notice that it is the liaison, an employee of the local educational agency, who is required to carry out the dispute resolution process.

While this particular administrative remedy is better than no remedy at all, it lacks some of the fundamental strengths of civil litigation. For instance, it does not provide a set of procedures allowing for full discovery (this would be particularly important in cases where a homeless child, hoping to convince a decision maker of his need for relief, lacked sufficient information concerning the extent of the school district’s non-compliance). In addition, the administrative remedy lacks the option, available in civil litigation, of having one’s case determined by a jury of one’s peers. In fact, this remedy may also lack a non-jury, neutral decision maker (after all it is the public school liaison who is in charge of the dispute resolution process). This would be acceptable if the decision maker (i.e. the liaison) were effective in protecting the rights of the homeless child in the dispute. However, given that this child will have very little social capital, and that the school district will be very influential, one might argue that there is little chance that a homeless child will be able to effectively encourage a liaison to force a non-complying state or school district to comply with the McKinney-Vento Act.

Can a Homeless Child Sue?

Given the way the No Child Left Behind Act is constructed, it seems to suggest that any person working for a school district that takes funding from this Act is protected under the Paul D. Coverdell liability limitation provision. If the courts interpret the Act to say that any person working for the state that has anything to do with education is protected from litigation, then it may be nearly impossible for a homeless child to sue to enforce the McKinney-Vento provisions of the No Child Left Behind Act.

However, the Act can be read as protecting only school personnel, and not other members of the state apparatus, from liability. Under this reading, if a state is not taking reasonable action to ensure that its school districts are complying with the McKinney-Vento Act, perhaps in this context the courts might follow Lampkin and construe the reauthorized version of McKinney-Vento as putting the states on notice as to their obligations. This, in turn, would allow a homeless child to invoke 42 U.S.C. § 1983 to enforce these rights with regard to the state's portion of responsibility for non-compliance.

If this fails, perhaps a different route may prevail. It might be argued that upon inspection, it appears that the Paul D. Coverdell provision of the No Child Left Behind Act does not properly correlate with the *purpose* of the Act. The Act expressly states that its purpose is "to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind."⁷¹ However, if this is its purpose, it seems antithetical to remove from the hands of the express beneficiaries of the Act, namely children, the right to enforce the Act when states and school districts are not working "to close the achievement gap." Arguably, the most effective way Congress can encourage states and school districts to be accountable to the achievement of children is by maintaining and even strengthening the right of children to sue to enforce the Act's provisions.

This kind of enforcement is uniquely important when it comes to *homeless* children who are extremely poor and vulnerable. Unlike their non-homeless counterparts, homeless children lack the raw social power (or social capital) to make states and school districts address their educational needs through informal as well as formal dispute resolution processes. Thus, it can be argued that if the Coverdell provision were to be used to take away the right to sue to enforce McKinney-Vento, then it would be helping the state do exactly what the McKinney-Vento Act says that it cannot do; namely, put up a barrier that effectively hinders homeless children from obtaining an adequate education.

Perhaps, with these arguments, the courts might recognize that the Paul D. Coverdell litigation limitation provision and the McKinney-Vento Act do not properly or rationally fit together under one Act and that school districts must not be immune from litigation to enforce the educational rights of homeless children.

Remedy Two: Separate Schools for Homeless Students

There is another approach to addressing the problem of homeless education that has been taken up by some parents and school district administrators across the nation. Instead of looking to Congress or the court system to remedy the inadequate access homeless children have to education, these parents and administrators have decided to open separate schools for homeless children.⁷² Proponents of these schools argue that homeless children are in a unique situation and as a result they endure unique problems and have unique educational needs.⁷³

One school for homeless children, called the Thomas J. Pappas School, has gained national attention.⁷⁴ This school is located in Phoenix, Arizona. The Pappas School was opened in 1990 and is committed to providing “enrichment opportunities to curtail homelessness.”⁷⁵ Today there are actually three Pappas schools serving roughly 2100 students throughout the state of Arizona. These schools have been described as an island of acceptance and stability in the unstable lives of homeless children.⁷⁶

The Pappas Schools argue that separate schools for homeless children allow school districts to maximize the limited resources available for such children.⁷⁷ Moreover, they claim that the individual needs of homeless children are effectively addressed through the specialized programming offered at the Pappas Schools. Included in this programming are “routine” medical examinations and onsite/offsite counseling services for the students and their families. In addition, each of the Pappas Schools offers programs to assist the student’s and their families with rent, food and clothing needs.

Some Criticisms of Separate Schools for Homeless Children

However, the concept of separate schools for homeless children has received some recent criticism. One criticism is that they are not inline with the spirit of the McKinney-Vento Act.⁷⁸ The language of the Act, for example, seems to run counter to the idea of a separate school for homeless children. The “statement of policy” section at the beginning of the Act specifically holds that, “[h]omelessness alone is not a sufficient reason to separate students from the mainstream school environment.”⁷⁹

On one hand, the idea that homeless students should be integrated into the mainstream system, rather than placed in separate schools, seems to fit well with the larger idea that homeless students are entitled to the same free and appropriate education available to all other

students.⁸⁰ However, on the other hand, if the only way homeless students can obtain free and appropriate education is through a separate school, then the idea of separate schools for such students may not obviously conflict with the goals of the Act.

Another criticism is that separate schools for homeless students are often under funded.⁸¹ One such school consisted of two classrooms in a larger existing school building. One of the classrooms housed students from kindergarten to third grade and the other classroom was for students from fourth to sixth grade.⁸² This kind of situation, critics argue, would not be tolerated for non-homeless children.⁸³

In addition, critics argue that by segregating homeless children, separate schools are setting these children up to suffer an even greater stigma than they would if they were integrated into the regular public school system.⁸⁴ The argument is that by being segregated into schools specifically targeted to homeless children, children who attend such schools draw even more attention to their homeless status. That is to say that their status is “revealed by association” with the homeless schools.

Finally, critics also contend that separate schools amount to a form of “de facto ethnic and racial segregation.”⁸⁵ The argument is that homelessness afflicts people who are at the highest risk of poverty. People in this high risk category often tend to be members of racial and ethnic minority groups. As a result, separate schools for homeless students are populated largely by minority group members and this amounts to a subtle form of racial segregation.

Each of these criticisms is not without weight. Separate schools for homeless children will not cure all of the problems associated with educating such children. These schools deserved to be criticized and improved whenever possible. However, we must not ignore the reality that for years homeless children have been regularly funneled into mainstream educational settings and they have not done well.⁸⁶ There comes a point at which one must try something different in the name of progress. Perhaps an innovative program focused intensely on the unique problems of homeless children is one response to the difficult and entrenched problem of homeless education.

Conclusion

In conclusion, children who are homeless continue to struggle to obtain an adequate education. While the reauthorized McKinney-Vento Homeless Education Act is directed at

assisting homeless children in their struggle to obtain an adequate education, it is not a panacea. In fact, it may be a “dual-edged sword.” It has clearly put the states on notice that they must take the education of homeless children seriously. However, at the same time, because it was reauthorized under the No Child Left Behind Act, it may have taken the private right of action away from homeless children who want to enforce the provisions of the Act through civil litigation. Like the “Trojan Horse,” this Act seemed like a gift at first, but it may end up being an invasion. Because homeless children are extremely vulnerable, it would be a tragedy if they were stripped of one more form of protection, namely the protection of ethical and hard working advocate attorneys who are willing to fight to force states and school districts to comply with every law that is aimed at protecting and enhancing the interests of homeless students.

In addition to the McKinney-Vento Act, some parents and school administrators have taken bold steps to address the problem of homeless education by initiating separate schools that focus intensely on the unique educational needs of homeless children. This approach is not without weighty criticism. However, one should keep in mind the sentiment expressed by Howard Fuller, the former superintendent of the Milwaukee Public School system. While discussing the need for change in urban education, he once suggested that it is a moral imperative to pursue creative alternatives when *anything* is better than what we now have.⁸⁷

¹ San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973); Plyler v. Doe, 457 U.S. 202 (1982).

² Plyler v. Doe, 457 U.S. 202 at 221 (1982).

³ *Id.*

⁴ *Id.*

⁵ James H. Stronge, Evelyn Reed-Victor, "Educating Homeless Students: Promising Practices" at 36 (2000).

⁶ *Id.*

⁷ National Coalition for the Homeless, "Fact Sheet #2," *available at* <http://www.nationalhomeless.org/index.html> (2008).

⁸ National Center on Family Homelessness, "America's Youngest Outcasts," *available at* http://www.homelesschildrenamerica.org/pdf/rc_full_report.pdf (2009).

⁹ *Id.*

¹⁰ McKinney-Vento Homeless Assistance Act, Pub. L. 107-110 (2002).

¹¹ *Id.*

¹² U.S. Department of Education, "Education for Homeless Children and Youth Program: Report to Congress" (1997).

¹³ Note that between the years of 1991 and 1993 there is an extremely large increase in the reported number of school-age homeless children. In the introduction to the 1997 Report, the Department of Education states that between the years of 1991 and 1995 it dealt with some data collection problems associated with identification, duplication, extrapolation, and differing State definitions of homelessness. This may help to explain the dramatic difference between the 1991 figure and the 1993 figure. See U.S. Department of Education, Education for Homeless Children and Youth Program: "Report to Congress" (1997).

¹⁴ U.S. Department of Education, "Education for Homeless Children and Youth Program: Report to Congress" (2000).

¹⁵ *Id.*

¹⁶ It would be remiss not to mention that there are other studies that conflict with the two Department of Education reports. For example, the Urban Institute reported that there are an

estimated 1.4 million children in the U.S. who experience homelessness in a given year. See The Urban Institute, “The 1996 National Survey of Homeless Assistance Providers and Clients,” available at <http://www.urban.org> (2002).

¹⁷ U.S. Department of Education, “Education for Homeless Children and Youth Program: Report to Congress” (2000).

¹⁸ The National Center on Family Homelessness, “America’s Youngest Outcasts” (2009).

¹⁹ U.S. Department of Education, “Education for Homeless Children and Youth Program: Report to Congress” (2000).

²⁰ The National Center on Family Homelessness, “America’s Youngest Outcasts” (2009).

²¹ *Id.*

²² Henrietta S. Evans Attles, “The Effects of Homelessness on the Academic Achievement of Children,” at 63 (1997).

²³ U.S. Department of Education, “Education for Homeless Children and Youth Program: Report to Congress” (2000).

²⁴ The National Center on Family Homelessness, “America’s Youngest Outcasts” (2009).

²⁵ Yvonne Raferty, “The Legal Rights and Educational Problems of Homeless Children and Youth,” 17 *Educ. Evaluation & Policy Analysis*, at 39 (1995).

²⁶ Evan Stolove, “Pursuing the Educational Rights of Homeless Children: An Overview for Advocates,” 53 *Maryland Law Review* 1344, at 1347 (1994).

²⁷ *Id.*

²⁸ The National Center on Family Homelessness, “America’s Youngest Outcasts” (2009).

²⁹ Deborah M. Thompson, “Breaking the Cycle of Poverty: Models of Legal Advocacy to Implement the Educational Promise of the McKinney Act for Homeless Children and Youth,” 31 *Creighton Law Review* 1209, at 1223 (1998).

³⁰ *Id.* at 1224.

³¹ *Id.*

³² Lisa K. Mihaly, “Homeless Families: Failed Policies and Young Victims, CDF’s Child, Youth and Family Futures Clearinghouse,” at 1 (1991).

³³ Maria Foscarinis and Sarah McCarthy, “Removing Educational Barriers for Homeless Students: Legal Requirements and Recommended Practices;” Stronge and Evelyn Reed-Victor, at 138.

³⁴ The United States Conference of Mayors, “Status Report on Hunger and Homelessness in America’s Cities,” *available at* <http://www.usmayors.org/uscm/hungersurvey/2000/hunger2000.pdf> (2000).

³⁵ Stolove at 1347.

³⁶ Barbara Duffield, Laurene M. Heybach, Patricia F. Julianelle, “Educating Children Without Housing,” at ix (2002).

³⁷ Thompson at 1226.

³⁸ Rene Heybach and Patricia Nix-Hodes, “The Education Right of Homeless Children: Creating a Model Program in Illinois,” The Chicago Coalition for the Homeless, *available at* <http://cch.issuelab.org/research> (2000).

³⁹ Salazar v. Edwards, No. 92CH-5703 (Ill. Cir. Ct. 1992).

⁴⁰ Laurene M. Heybach and Stacey E. Platt, “Enforcing the Educational Rights of Homeless Children and Youth: Focus on Chicago,” The Chicago Coalition for Homeless *available at* <http://cch.issuelab.org/research> (1998).

⁴¹ *Id.*

⁴² Heybach and Nix-Hodes (2000).

⁴³ Duffield, et. al. (2002).

⁴⁴ Interview with Mary Maronek, Wisconsin State Coordinator for Education of Homeless Children and Youths (December 4, 2003).

⁴⁵ McKinney-Vento Homeless Assistance Act (2002).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* (emphasis added).

⁵² Regents of the University of California v. Allan Bakke, 438 U.S. 265 (1978); Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

⁵³ Individuals with Disabilities Education Act, Pub. L. 105-17 (1997).

⁵⁴ McKinney-Vento Homeless Assistance Act (2002).

⁵⁵ Interview with Mary Maronek (2003)

⁵⁶ Telephone and email correspondence with Judy Tonda, Hawaii State Coordinator for Education of Homeless Children and Youths (2003).

⁵⁷ *Id.*

⁵⁸ JoAnn Grozczak Goedert, "The Education of Homeless Children: the McKinney Act and its Implications," 140 Education Law Reporter [9], at 18 (2000).

⁵⁹ U.S. Department of Education, "Guidance on McKinney-Vento Homeless Children and Youth Program Funds Made Available under the American Recovery and Reinvestment Act of 2009" (2009).

⁶⁰ Wisconsin Department of Public Instruction, "Education for Homeless Children and Youth Program" (2003).

⁶¹ Lampkin v. District of Columbia, 27 F.3d 605 (D.C. Cir. 1994).

⁶² *Id.*

⁶³ Goedert (2000).

⁶⁴ Lampkin, 27 F.3d at 611.

⁶⁵ *Id.* at 612.

⁶⁶ U.S. Department of Education, "Introduction: No Child Left Behind," available at <http://www.nclb.gov/next/overview/index.html> (2003).

⁶⁷ No Child Left Behind at § 2361.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ McKinney-Vento at § 722(g)(3)(E).

⁷¹ No Child Left Behind at § 1001.

⁷² Caroline Larson, “Balancing the Books: The Stewart B. McKinney Homeless Assistance Act and Separate Schools for Homeless Children in Arizona,” 34 Ariz. ST. L.J. 705, at 716 (2002).

⁷³ *Id.*

⁷⁴ 60 minutes, “Putting 3 R’s into Homeless” *available at* <http://www.cbsnews.com/stories/2001/02/23/60minutes/main274176.shtml> (2001).

⁷⁵ Thomas J. Pappas School, “Mission Statement,” *available at* <http://www.tjpappasschool.org> (2003).

⁷⁶ 60 minutes.

⁷⁷ Thomas J. Pappas School, “Frequently Asked Questions,” *available at* <http://www.tjpappasschool.org> (2003).

⁷⁸ Caroline Larson at 711 (2002).

⁷⁹ McKinney Vento Act.

⁸⁰ *Id.*

⁸¹ Caroline Larson at 718.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 720.

⁸⁵ *Id.* at 721.

⁸⁶ The National Center on Family Homelessness.

⁸⁷ Howard Fuller, “Lecture at the University of Wisconsin – La Crosse” (January 28, 1999).