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# ADVOCACY AND OBSTACLES IN THE EDUCATION OF HOMELESS CHILDREN AND YOUTH IN ILLINOIS

*by* LAURENE M. HEYBACH

The Law Project of the Chicago Coalition for the Homeless (the Law Project) is in its thirteenth year of service. The Law Project's primary purpose is the development and enforcement of the educational rights of children and youth experiencing homelessness especially in the greater Chicago area. The Law Project grew out of work undertaken by the author and her colleagues in the Homeless Advocacy Project of what is now the Legal Assistance Foundation of Metropolitan Chicago. This year, 2009, thus marks 20 years of legal advocacy in Illinois specifically directed to gaining equal access to education for children and youth experiencing homelessness. This article sets forth some

of the key challenges and successes achieved in Illinois as well as currently important issues.

## BACKGROUND

In 1987, the United States Congress initiated the first comprehensive response to the emerging national problem of homelessness. As part of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act),<sup>1</sup> Title VII-B focused on the stunning dilemma that thousands of children throughout the U.S. were simply unable to access primary or secondary education because they had no permanent address. If lucky enough to acquire shelter or other temporary accommodations while homeless, families had no real choice to remain living near their children's school. They took whatever abode was available. Moreover, with no transportation resources available the children simply could not maintain school attendance.

The Chicago Coalition for the Homeless joined organizations throughout the country in lobbying for the McKinney Act which, among other things, created a broad right to equal access to education, the non-stigmatization of homeless students and a right to remain in the same school district while experiencing homelessness.

No sooner had this victory been celebrated then the hard reality hit: school districts in Illinois, including Chicago were simply not complying. Federal funding was slow in coming and was too little for the increasing size of the problem. Educators and the bureaucracies understood little about homelessness or how to respond to educating children who faced this terrible dilemma. Bigotry, too, had a considerable role.

## WHAT IS LIFE LIKE FOR CHILDREN AND YOUTH EXPERIENCING HOMELESSNESS?

After twenty years of legal work in Chicago for children, youth and families experiencing homelessness, the staff of the Law Project can say unequivocally that the face of homelessness in the greater Chicago metropolitan area is overwhelmingly one of color. Though predominantly African American, clients include Latino families as well. Rarely, do we represent a white family. Na-

tionally too, families of color are overrepresented in the homeless population.<sup>2</sup> This racial disparity in the 21st Century is itself deeply troubling, but a closer look at what homelessness means for the families in our nation who experience it is almost unbearable.

According to the National Center on Family Homelessness (NCFH), children experiencing homelessness are four times more likely to show delayed development and have twice the rate of learning disabilities as their housed peers. They have three times the rate of emotional and behavioral problems compared to non-homeless children. At the tender ages between three and six years, one out of five has emotional problems warranting professional help. Forty-seven percent of school-age homeless children experience anxiety, depression and withdrawal as compared to 18 percent of their housed peers.<sup>3</sup>

Physical well-being suffers as well. Children experiencing homelessness have nutritional deficiencies and go hungry at twice the rate of other children. They are four times more likely to get sick, have four times as many respiratory infections, twice the number of ear infections and are four times more likely to have asthma.<sup>4</sup>

As if this isn't enough of a burden for these children to carry, research shows that they are significantly more likely to face family separation, spend time in foster care and face homelessness as adults. They routinely live with stress and worry that they will have no place to live or sleep and that something bad will happen to their family.<sup>5</sup>

#### MAKING RIGHTS A REALITY FOR ILLINOIS CHILDREN

What advocates knew about the needs of homeless students in the late nineteen eighties —now extensively well-documented — is that constant shifting from school to school, i.e., “school mobility” significantly impairs a child's learning. For the child and parent, it adds to the chaos experienced in losing a domicile, cuts off friendships and meaningful relationships with teachers, coaches and other caring adults and casts the students out of a community in which they had achieved some sense of place and hopefully, safety. For those of us serving these families, the sheer misery felt by children of all ages and their families when they were shut out of schools to which they often had deep

attachments or when they were simply shut out of school altogether motivated us to make change.

In 1990 through a small grant from the Poverty and Race Research Action Council, a study was undertaken by the Homeless Advocacy Project to identify specific issues with the Chicago Public Schools. From the study (Dohn, Bernardine, *A Long Way from Home: Chicago's Homeless Children and the Schools*) sprung first negotiation, then frustration, then litigation. *Salazar v. Edwards*, a class action lawsuit initiated by homeless parents and their children against the Chicago Public Schools (CPS) and the Illinois State Board of Education (ISBE) (responsible under the McKinney Act for ensuring state-wide compliance) was filed in the spring of 1992 in the Circuit Court of Cook County.<sup>6</sup> This litigation galvanized the low-income advocacy community's commitment to make Illinois schools serve its poorest, most vulnerable children better.

Both of the institutional defendants, ISBE and CPS resisted compliance with the McKinney Act, prolonged the legal proceedings from the outset and fought the legal effort to compel change. When the case was dismissed, despite the strength of the federal law and important provisions of the Illinois School Code, the families appealed.

#### CHANGING ILLINOIS LAW

In 1994, a suburban Chicago school district engaged legal counsel to keep three young children experiencing homelessness from continuing to attend its district schools. Thanks to grassroots advocacy, a groundswell of support developed in the media and among Illinois legislators to amend the Illinois School Code to ensure that homeless children's access to education and ability to maintain continuity in school were better protected.

Using the experience gained in representing numerous homeless families, advocates helped shape Illinois House Bill 3244 to address some of the more ambiguous or problematic provisions in the McKinney Act. Enacted in 1994, effective January 1, 1995, the Illinois Education for Homeless Children Act (EHCA): (1) requires school districts to immediately enroll homeless students without requiring the production of records, immunizations, physical examinations or transfer forms; (2) gives parents the power to determine which choice of schools is in the "best interest" of their child including choosing to

remain the child's "school of origin;" (3) provides an unequivocal right to transportation if the child returns to the home school with a directive that school districts agree on sharing costs or split them equally for a child living in one district but returning to the school of origin in another; (4) defines "homeless" consistently with the McKinney Act and even somewhat more liberally; (5) creates a right to a "dispute resolution" process (allowing the child to enroll, attend and receive transportation during any dispute); and (6) creates the right to advocacy assistance for the family or child and the right to file a civil action for enforcement.<sup>7</sup> If the family prevails in the action, "appropriate relief" can be awarded together with attorneys' fees and costs.<sup>8</sup>

With this new law, Illinois emerged as a national leader in solidifying and clarifying the educational rights of homeless students. In 2001, U.S. Congresswoman Judy Biggert took key elements of the EHCA and imported them into the reauthorized McKinney Act.

#### *SALAZAR V. EDWARDS: HOPE FOR REAL RELIEF*

In 1995, Plaintiff homeless families successfully appealed the Circuit Court's dismissal of the *Salazar* case.<sup>9</sup> In 1996, an amended complaint was filed detailing widespread noncompliance and asserting new claims under a reauthorized McKinney Act and the new EHCA. Facing a trial, the mandates of the new Illinois law and the potential loss of federal funds if Chicago and Illinois were found not in compliance with the McKinney Act, both ISBE and the CPS entered into a Settlement Agreement. Numerous important provisions were included for CPS to comply with both state and federal law and to annually report on its compliance. The Settlement with ISBE established the first statewide technical assistance program designed to aid school districts in understanding and complying with the mandates of both the Illinois EHCA and the McKinney Act.

By 1999, however, it was clear that CPS had utterly failed to implement even the simplest provisions of the Settlement Agreement. In three years, for example, only about 60 children had ever been accorded adequate bus transportation to their home school. Individual schools turned homeless students away, failed to allow any process for dispute resolution and failed to train staff to properly identify or serve homeless families.

The plaintiff parents and children filed a motion to enforce directed against CPS only. Overwhelming evidence of CPS' non-compliance was established and one of the most extensive injunctive relief orders ever entered by the Circuit Court of Cook County was issued. Again, CPS appealed the ruling.

Frustrated by CPS's willingness to continue protracted and expensive litigation against the very families it was obligated to serve—and the very poorest in the CPS system—plaintiffs took a new tack. Approaching Dr. Blondean Davis, a key executive in the CPS bureaucracy who had testified impressively at trial, plaintiffs urged that CPS change course, settle the case and work cooperatively with advocates to become a national leader in the educational rights of homeless students. A comprehensive Settlement Agreement was entered.

#### CHANGING ILLINOIS POLICY

The overarching mandate of the, re-named, McKinney-Vento Homeless Assistance Act (the McKinny-Vento Act) is the directive for state and local educational agencies to identify and address all “barriers” to the “enrollment, attendance and success” of students experiencing homelessness.<sup>10</sup> This is a powerful engine to drive continued examination of what practices, policies and services work well for educating homeless students. In 1996, as part of the *Salazar* Settlement, ISBE issued its first policy governing the educational rights of homeless students.<sup>11</sup> Though strong in some respects, the policy proved mostly ineffective.

By 2002 Illinois had made relatively modest progress despite the enactment of EHCA: (1) installation of a new, more proactive State Coordinator for the Education of Homeless Children and Youth (required by federal law), but one given little authority vis-à-vis 800 Illinois school districts and (2) establishment of a solid, but small technical assistance program. The success of the litigation in Chicago, however, began to secure real change for the largest group of children experiencing homelessness in Illinois and it did so in the third largest school system in the United States. Nonetheless, many of the other school districts throughout the State either had no specific policies or plans for serving homeless students or gave little attention to compliance with even the basic requirements of federal and state law. The Law Project continued with sporadic and individual litigation in other districts.

From 2003 to 2005 ISBE legal counsel took greater responsibility to enforce the EHCA and the McKinney-Vento Act. ISBE was willing to exercise its authority – albeit sparingly – to ensure enforcement. In December of 2005, after urging by the Law Project and other advocates as well as testimony at a public hearing, ISBE issued a strong new policy on the Education of Homeless Children and Youth.<sup>12</sup>

Among the most important provisions of the new policy are, first, the existence of clear procedures on the handling of a dispute resolution hearing. Such hearings can occur whenever “an issue related to the rights of homeless students” arises. While federal and state law calls for such hearings, these procedures clarify the Illinois process. This now includes the right to appeal a local dispute decision to the State Coordinator with final determination made by the ISBE Superintendent. Second, there is clarification that homeless children and youth who stay “day-to-day in different attendance areas,” such as Public Action to Deliver Shelter, or P.A.D.S. programs where shelter is offered at a different church each night of the week, may choose any of one of the attendance area schools in which to enroll. Third, there is a requirement that school staff aid any student who may not be eligible to attend the school so that the student is promptly enrolled in the correct school instead of simply being turned away.

The ISBE Policy also clearly delineates the responsibilities of the local homeless liaisons. Under federal law, each school district must have a designated “liaison.” The ISBE policy clarified those responsibilities. Another important policy change occurred in 2007 when ISBE adopted an “Equal Opportunities for All Students” regulation,<sup>13</sup> which explicitly prohibited exclusion, discrimination or segregation of any homeless pupil by any Illinois school system.

Finally, again at the urging of advocates, the Illinois State Plan required a description of how Illinois complies with federal law to be submitted to the U.S. Department of Education. It also required that the McKinney-Vento Act funding be revised and strengthened in May of 2007, particularly with respect to preschool for homeless children.

## CONTINUED CHALLENGES IN REPRESENTING STUDENTS EXPERIENCING HOMELESSNESS

The Law Project has handled hundreds of cases in which children or youth experiencing homelessness have been denied one or more of their rights as accorded by Illinois or federal law. Almost always the Law Project is able to secure relief for the family. This suggests that the Law Project's legal tools—after 20 years of advocacy—are quite significant. Over this period of time, school district knowledge about EHCA and the McKinney-Vento Act as well as the needs of homeless families has become much more commonplace. But challenges persist and Illinois is a long way from satisfactory compliance and service under both EHCA and the McKinney-Vento Act. Key obstacles identified through the Law Project's experience are noted below and require continued attention.

### *Awareness*

Many districts, including those in the Chicago metropolitan area, continue to lack basic policies and practices to implement the law effectively. One can easily see this by perusing websites of schools and districts or entering school buildings and seeing no materials, instructions, forms or notices regarding the education of homeless students. District personnel in many places erroneously believe that the onus is on the family or youth to identify themselves to the school as “homeless” when, in fact, it is the responsibility of schools and districts to sensitively identify, serve and count the children and youth experiencing homelessness. Often districts express the belief that there are no homeless children or youth in their area and, thus, utterly fail to plan for transportation and services or to train admissions staff and teachers.

More professional development to raise awareness among admissions clerks, staff, teachers and particularly the homeless liaisons should be undertaken by districts themselves. Local communities should be saturated with easily accessible information. Liaisons should be thoroughly informed about and involved with community resources to assist these families.

## *Enforcement*

Based on the Law Project's experience, some school districts engage in conduct which clearly violates the law and only when confronted with parents or youth who are legally represented do the districts honor the students' rights. Pernicious practices include forcing children or youth to immediately leave school when it appears to school personnel that they no longer reside in the district. Under the Illinois School Code, all children have the right to finish the school year in the same school tuition-free once they have lawfully begun the school year.<sup>14</sup> They also have a right to notice and a hearing on the issue of residency with the opportunity to stay in the school until the residency determination is concluded.<sup>15</sup> All homeless children, which includes children who are doubled-up living with other families due to "loss of housing, economic hardship or a similar reason,"<sup>16</sup> have a right to remain in that school and have a right to transportation, if needed, to do so.<sup>17</sup> Moreover, they are to be accorded notice of their rights, including the right to a dispute resolution hearing and a State-level appeal while they remain enrolled.<sup>18</sup> Thus, to force a student to leave immediately is clearly unlawful and yet, in our experience, it is frequently done.

In addition, for those experienced with the issues faced by homeless families and youth, we know, as school staff should, that residency changes can be a red flag signaling homelessness. Rather than assess the situation to identify homelessness, some districts will force these families, while in crisis, to undergo residency hearings. These hearings, unlike the dispute resolution process that should be applied if there is an issue, cast the legal burden on the family to prove residency with documentation and witnesses.<sup>19</sup> The residency hearing officers are often school officials or school firm lawyers. There is no system for assisting the family or referring them to free or low cost legal assistance. Thus, desperate and impoverished families are intimidated, out-resourced and have little recourse.

Under the dispute resolution process, on the other hand, a family is entitled to a fair and impartial hearing officer (Ombudsperson) appointed by the Regional Office of Education. Assistance must be given to ensure that the facts are fully and fairly developed and the family has a right to be referred to free or low cost attorneys or advocates.<sup>20</sup> They are also entitled to assistance and do not bear the legal burden of proof. ISBE has made clear that the residency hearing

process must immediately stop when the family is homeless. Of course, if a family is experiencing homelessness, there should be no hearing of any kind and no exclusion from school. The child has the right to remain for as long as he or she is homeless and until the end of the year in which he or she is housed.<sup>21</sup>

Despite these rules, some districts continue to immediately exclude clearly homeless children. Other pernicious practices include the release by districts of private information protected by the Illinois School Student Records Act,<sup>22</sup> i.e., the family's living circumstances and other identifying information to housing inspectors, landlords and private investigators.<sup>23</sup> Such information can result in the eviction not only of the homeless children but of the family in whose home they are temporarily living.

Numerous similar experiences coupled with the insensitive and ill treatment often accorded the students and families involved, compels us to recognize that there is likely, and sometimes expressly, bias against those who are homeless coupled with racial discrimination. These intractable problems require greater enforcement by the ISBE in accordance with the State's duties under the McKinney-Vento Act to ensure statewide compliance.

#### THE EXCLUSION OF HOMELESS CHILDREN AND YOUTH AND THE TREATMENT OF UNACCOMPANIED YOUTH

In addition to the unlawful and harsh exclusion of homeless students described above (turned away from admissions, wrongfully excluded as non-residents), homeless students are also excluded through truancy and disciplinary proceedings that are draconian and simply inappropriate. Like many advocates for low-income children and families, the Law Project has experienced grossly disproportionate penalties imposed for not atypical adolescent behavior. Expulsion of students for one and two years can destroy that child's chance for a meaningful education. In the context of homelessness, it can literally mean that an expelled unaccompanied youth is left to wander the streets. Homeless students, moreover, as noted above, are coping with enormous emotional and practical difficulties which, if understood by school personnel could be handled much more effectively while continuing to educate the child or youth. Absenteeism, for example, which can be related to the youth's living circumstances should not be penalized but, instead, understood and resolved. Home-

less youth are also excluded when schools do not accord them sufficient credit or permit older students to re-engage with school and complete graduation.

The McKinney-Vento Act's overarching purpose is to engage homeless students in school. States and districts are bound to identify and address those things which act as "barriers" to the "enrollment, attendance and success" of these vulnerable students. Districts should review and revise policies which affect the ability of homeless students to have access to school and obtain an equivalent education.

### *Access to Preschool*

The McKinney-Vento Act expressly covers preschool-aged children in its protections.<sup>24</sup> The State clearly bears responsibility for ensuring the equal access of homeless preschoolers to preschool services.<sup>25</sup> The inherent instability of these families, however, can mean that preschool classrooms are filled first with other students; that pre-enrollment processes (screening and assessment in advance of enrollment) do not reach and do not work for homeless preschoolers. In Illinois, the ISBE and the Early Learning Council are engaged in a multi-year process to provide preschool education in every community for every Illinois 3 and 4 year old whose parent desires it. The benefits of preschool education for brain development, health, social adjustment, learning and employability are prodigious. Children denied that opportunity, it is fair to say, begin their education already lagging. Many school districts offer preschool but have limited availability. Many non-profits are being funded by the State through an ISBE grant-making process to offer "Preschool For All". It is crucial then that homeless families in every community know about and obtain enrollment in these programs; that the programs provide immediate enrollment and transportation as well as skilled support for the children and parents. Equally important is that funding be made available to enable these services.

### *Funding Locally and Nationally*

Federal funding under the McKinney-Vento Act has never reached its authorized appropriation of \$70 million dollars. Typically, Illinois receives no more than \$4 million annually to implement services in almost 800 school districts. Title I federal funding, which intends to improve the academic achievement of the disadvantaged, is to be utilized as well. Nevertheless this falls far short of

what would be needed, ideally, to serve Illinois families. In the 2007-2008 school year, CPS alone identified 10,642 homeless students. For this current year, numbers are increasing significantly: 23 percent more students were counted as of December 31st, 2008 than in the same month in 2007. State-wide, including CPS, more than 26,000 homeless students were identified last year. ISBE has projected that as many as 60,000 low-income children throughout the state are experiencing homelessness. For schools to employ well-skilled liaisons who work collaboratively with all community agencies and resources, provide adequate outreach and notice, work effectively with families and provide transportation, counseling, tutoring, activities, uniforms, fee waivers and other appropriate McKinney-Vento Act services, significantly more funding is needed.

In FY 2009, the Illinois State Board recommended for the first time that state dollars be directed specifically for the education of homeless children and youth. This \$3 million was appropriated by the General Assembly and is currently being distributed to schools. Yet ISBE's fiscal year 2010 budget recommendations contain no suggested appropriation. Clearly, more resources must be brought to our schools.

## CONCLUSION

Many of the racial and class conflicts in the United States for the past hundred years have been played out at the schoolhouse door. This Symposium asks the question is education today "Separate and Unequal?" As advocates for homeless children, we must respond "yes." However, full implementation of the McKinney-Vento Act, which we see preeminently as a civil rights law, can lead us to a higher path.

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## NOTES

1 P.L. 100-77 (1987).

2 National Center on Family Homelessness, *The Characteristics and Needs of Families Experiencing Homelessness*, Jan. 31, 2009, available at [http://www.familyhomelessness.org/pdf/Characteristics\\_Needs\\_Homeless\\_Families.pdf](http://www.familyhomelessness.org/pdf/Characteristics_Needs_Homeless_Families.pdf).

3 *Id.* at 5.

4 *Id.* at 4.

5 *Id.* at 6.

- 6 *Salazar v. Edwards*, 92 CH 5703 (Cir. Ct. of Cook Co., IL 2000) (Settlement Agreement and Stipulation to Dismiss).
- 7 105 ILCS § 45 (1995)
- 8 105 ILCS § 45/1-1 (1995) *et seq.*
- 9 *Salazar*, *supra* note 6.
- 10 42 U.S.C. §§ 11431(2) (2008); 42 U.S.C. §§ 11432(g)(1)(I) and (g)(7)(A) (2008).
- 11 § 45, *supra* note 7.
- 12 Illinois State Board of Education, Policy of the Illinois State Board of Education on the Education of Homeless Children and Youth Overview, *available at* <http://www.isbe.state.il.us/homeless/pdf/policy.pdf>.
- 13 23 Il. Admin. Code 1.240 (2005).
- 14 105 ILCS 5/10-20.12(a) (1999).
- 15 *Id.*
- 16 42 U.S.C. §11434a(2)(B)(1) (2008).
- 17 42 U.S.C. §§ 11432(g)(1)(J); (g)(2)(A); and (g)(3) (2008).
- 18 42 U.S.C. §§ 11432(g)(3)(E)(ii) and (vii); (g)(6)(A)(iv) and (v) (2008).
- 19 105 ILCS 5/10-20.12b(c)(c-5) (1999).
- 20 105 ILCS 45/1-25 (1995).
- 21 105 ILCS 45/1-10(a)(1) (1995).
- 22 105 ILCS 10/2(e) CAN'T FIND YEAR
- 23 See Legal Advisory of the ISBE, *Homeless Education: Violation of Zoning Ordinances or Local Housing Authority Rules*, Aug. 10, 2000.
- 24 42 U.S.C. § 11431(1)
- 25 42 U.S.C. §§ 11432(f)(4) and (g)(1)(F)(i)