

2009

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### Recommended Citation

Eric S. Tars, *Separate & Unequal in the Same Classroom: Homeless Students in America's Public Schools*, 14 Pub. Interest L. Rptr. 267 (2009).

Available at: <http://lawcommons.luc.edu/pilr/vol14/iss3/7>

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# SEPARATE & UNEQUAL IN THE SAME CLASSROOM: HOMELESS STUDENTS IN AMERICA'S PUBLIC SCHOOLS

*by* ERIC S. TARS

Over one million children experience homelessness in America every year, and with the growing foreclosure crisis, another two million children will likely experience homelessness in the next year.<sup>1</sup> Homeless children face many of the same problems as poor and racial minority children across the country, indeed poor and minority families are disparately impacted by homelessness. However, in addition to the problems of race or poverty, homeless students' intersectional identity also creates unique issues in accessing education, such as the lack of documentation to enroll in school to the lack of

regular transportation. These issues present barriers above and beyond those faced by other students.

Although the movement to protect the interests of homeless students does not have the constituency of the broader school desegregation or funding equity movements, it has made progress, particularly with the adoption of the McKinney-Vento Homeless Assistance Act (the Act).<sup>2</sup> Similar to the desegregation and equity movements, homeless advocates face challenges implementing and funding laws, and should work collectively to address these problems. This article introduces and describes the educational barriers faced by homeless students and the legal mechanisms developed in response. Drawing parallels between the homeless movement and the desegregation and equity movements, this article concludes with an invitation to begin a dialogue about possible joint solutions to help all the nation's youth enjoy their full right to education.

#### IDENTIFYING AMERICA'S HOMELESS STUDENTS

Today, homelessness is a widespread and growing problem for American families.<sup>3</sup> Even before the current foreclosure crisis, approximately three to four million Americans experienced homelessness each year, one million of whom are children.<sup>4</sup> The economic crisis is expected to have a deep impact on children, with an additional two million children facing the loss of housing due to foreclosure in the next two years.<sup>5</sup> At the same time, as foreclosure and unemployment shrinks schools' tax base, there are fewer resources to meet the increased need.<sup>6</sup>

Homelessness disparately impacts poor and minority communities, compounding many of the challenges children in these communities already face. African-Americans, make up an estimated 45 percent of the homeless population and 8 percent are Native American.<sup>7</sup> Approximately 41 percent of homeless persons are families with children.<sup>8</sup>

The primary cause of homelessness is the lack of affordable housing. Fourteen percent of all households spend more than half of their incomes on housing.<sup>9</sup> Racial minorities constitute a disproportionate percentage of those living in acutely substandard housing or suffering from unmanageably severe rent burdens. More than half of those with worst case housing needs are African American or Hispanic.<sup>10</sup>

It is important to note from the beginning that under the federal Department of Education definition, “homeless” is more than just those families living on the streets, in their cars, or in shelters, but also includes families living “doubled up” with friends or relatives.<sup>11</sup> In fact, the majority of homeless students identified by schools are in doubled up situations, while only a quarter are in shelters and less than 10 percent are unsheltered.<sup>12</sup> Although they have roofs over their heads, these families face many of the same issues of other homeless families, from lack of privacy in their living space to not knowing whether they will have to move again as their hosts’ patience wears out. Additionally, because they often do not self-identify as homeless, it is often more difficult to reach these families with appropriate services. Because of this difficulty, the almost 700,000 students identified as homeless in 2007 is almost certainly an under-count.<sup>13</sup>

#### BARRIERS KEEPING HOMELESS STUDENTS SEPARATE & UNEQUAL

Homeless students face numerous barriers that have a devastating effect on their educational prospects. This includes the stresses of their own uncertain and inadequate living spaces, the difficulties of enrolling and staying in school without a fixed address and the desire of schools to treat homeless students separately from their own population. Illustrating the challenges faced by homeless students, one mother living in a garage with her son stated that he “is depressed a lot. He does his work for class, but very slowly, like he’s thinking. He worries a lot about living like this.”<sup>14</sup>

Almost all homeless families move at least once during the course of a year and approximately one out of five live in three or more different homes.<sup>15</sup> With each move, children must learn to adjust to new environments. Both shelters and doubled-up situations are often overcrowded with entire families sharing a single room, sharing bathroom facilities, and sleeping on couches and floors. As a result of the overcrowded and unhealthy living situations they are more likely to suffer from illnesses.<sup>16</sup> Unfortunately, these illnesses often cause homeless children to miss valuable days of class. Importantly, children often live with the knowledge that these situations are temporary and worry about whether they will soon be without a place to live. They often worry about their parents, who are similarly experiencing stress in relation to those issues as well as higher incidences of unemployment, illness, domestic violence, and drug and alcohol abuse.<sup>17</sup> Homeless children are also likely to be separated from

their parents by either being placed in foster care or being left with friends or relatives while parents search for suitable employment or housing to accommodate the entire family.<sup>18</sup> It is these stresses that homeless children bring to school with them each day as they prepare to learn.

While residential mobility has severe effects, school mobility, or being forced to repeatedly change schools, also takes its toll on homeless students. More than half of all homeless students transfer schools at least once a year, and more than 15 percent transfer three or more times in any given academic year.<sup>19</sup> Students who frequently transfer suffer academically, psychologically and socially. Researchers estimate that it takes a child four to six months to recover academically from each school transfer and as many as 18 months to regain a sense of equilibrium, security and control.<sup>20</sup> Over a period of six years, students who have moved more than three times can fall a full academic year behind students who do not move around.<sup>21</sup> Moreover, while 86 percent of high school students graduate nationally, the graduation rate is only 60 percent for students who changed high schools at least twice.<sup>22</sup>

Compounding these problems, homeless children often experience delays simply trying to enroll in new schools. These delays typically stem from locally-required records requests that demand such items as proof of residency, proof of immunization, birth certificates and academic records. Families tend to lose such documents during the course of frequent and sometimes sudden moves. Doubled-up families are particularly unable to prove residency through items such as lease agreements and utility bills, which usually bear the name of the host family. Students can lose valuable days, and sometimes weeks, of school as parents and schools search for these records.

Before the Act was adopted, homeless students often transferred multiple times to different schools over the course of their homelessness and were at a given school for only a short period of time. Because of this, many districts kept homeless students in separate classrooms, or even multi-age classrooms located at homeless shelters that resembled the one-room schoolhouse of early rural America.<sup>23</sup> Expectations and resources were low for homeless students in these segregated settings.<sup>24</sup> These schools typically failed to provide the same curriculum, activities, services and resources as regular public schools and often violated health and safety codes.<sup>25</sup> Because these schools cannot provide the same educational services as regular public schools, homeless children risk falling behind their peers academically.<sup>26</sup>

As a result of these obstacles, it is tremendously important to provide mechanisms to assist homeless students in remaining connected to their school. In the words of one formerly homeless student, “Through it all, school is probably the only thing that has kept me going. I know that every day I walk in those doors; I can stop thinking about my problems. School keeps me motivated and encourages me to find a better life for myself.”<sup>27</sup>

## OVERCOMING BARRIERS THROUGH THE MCKINNEY-VENTO ACT

The McKinney-Vento Act is the primary federal legislation focused on homelessness in America.<sup>28</sup> Originally passed in 1987, the Act included, among other things, education provisions designed to address and alleviate some of the barriers discussed above.<sup>29</sup> The Act’s education provisions were last reauthorized under the 2002 No Child Left Behind Act.<sup>30</sup> As it currently functions, the Act increases stability in schools, provides access to new schools and services, eliminates segregated classrooms, addresses student access and financial needs through supplemental programs and ensures implementation through dedicated personnel.

School stability plays an important role in a student’s academic and social life. One of the primary breakthroughs of the Act is that it not only allows homeless children to remain in one school throughout the duration of homelessness, it ensures that they will be able to access this benefit. Homeless students can continue at their “school of origin,” regardless of a move to different attendance zones, school districts, or even across state lines.<sup>31</sup> School districts are required to provide homeless children with transportation from their temporary homes to and from their school of origin.<sup>32</sup> The only limitations on attendance at the school of origin are the wishes of the parent and the best interests of the child (e.g. two hour bus rides may be deemed against a child’s best interest).<sup>33</sup> This provision not only reduces academic delays caused by school transfers, but it also relieves stress and improves a student’s psychological well-being. Students can find comfort in a stable school environment that features familiar teachers, friends and expectations even as they are experiencing instability and uncertainty in their home life. Studies show that this mechanism results in better outcomes for homeless students.<sup>34</sup>

The Act also provides for immediate and full access to new schools for those homeless families who choose to enroll their children in new schools due to

their own preferences or feasibility concerns that prevent attendance at a school of origin.<sup>35</sup> To alleviate enrollment delays, the Act requires schools to immediately enroll homeless children even if they lack typically required documents such as proof of residency, birth certificates and immunization records.<sup>36</sup> If a child was receiving special education services at their previous school, they must be provided immediately with comparable services in their new school.<sup>37</sup> Under the Act's 2002 reauthorization, homeless students must be allowed to learn in the same environment as other non-homeless students.<sup>38</sup> According to adopted guidelines, schools are required to "adopt policies and practices to ensure that students are not segregated or stigmatized on the basis of their status as homeless."<sup>39</sup> This includes explicit bans on transitional classrooms within the schools and off-site facilities.<sup>40</sup>

In order to address homeless student needs, the Act provides funding and access to certain supplemental programs.<sup>41</sup> It provides states with funding to award grants to school districts that want to address the unique needs of their homeless populations. Districts apply for competitive grants that can be used for transportation, tutoring programs, mentoring programs, psychological counseling, school supplies, after-school academic enrichment activities or for other uses that promote the academic or social growth of homeless children. Homeless students are also automatically eligible for Title I benefits (federal supplemental funding for low-income schools) and free school meal programs.<sup>42</sup> Those students are eligible for Title I benefits even if their school does not otherwise receive Title I funds and districts are required to set aside Title I funds for this purpose.<sup>43</sup>

The Act seeks to ensure implementation by requiring state departments of education and school districts to designate personnel to be responsible for the education of homeless students.<sup>44</sup> State Coordinators of Homeless Education train school district employees on legal requirements and best practices for serving this special population.<sup>45</sup> School district homeless liaisons train school personnel, ensure that students are able to enroll in school or remain in their school of origin, oversee the provision of transportation and supplemental services, develop and maintain special programs and help resolve disputes between schools and families.<sup>46</sup>

MOVING BEYOND SEPARATE & UNEQUAL: PARALLELS AND CONTRASTS  
WITH THE DESEGREGATION AND EQUITY MOVEMENTS

The movement to address the barriers to homeless children's education has claimed some victories, but faces ongoing challenges. At its core, the goals of this movement are the same as that of the equity and desegregation movements: seeking to ensure that all children enjoy their right to achieve their fullest potential through education. The desegregation movement sought to ensure this right by bringing black and white students together in the same classroom. After initial progress under *Brown* and its progeny, this movement was largely thwarted by white flight to the suburbs and the court decision in *Milliken v. Bradley* that stopped integration at school district lines.<sup>47</sup> Schools which instituted voluntary desegregation mechanisms are now struggling to continue their programs under the recent *Parents Involved in Community Schools v. Seattle School District No. 1* decision.<sup>48</sup> The funding equity movement seeks to make the right to education real by forcing states to provide the full cost of an adequate education, accounting for the relative dearth of resources in cities (in large part caused by the white flight described above). While a federal remedy was denied in *San Antonio Independent School District v. Rodriguez*, there have been recent court victories at the state level.<sup>49</sup> However, the equity movement, too, is being thwarted by legislatures' refusal to actually provide the resources compelled by their own court ordered costing-out studies. In particular, the legal requirements for transportation of homeless students, the threat to the ban on segregated schools from charter schools, and the mechanisms for providing funding equity are areas worth further exploration.

Just as transportation was and is key to many minority students accessing better education through desegregation busing, it similarly is essential to homeless students. Because schools draw their populations from largely residentially segregated neighborhoods, the ability of racial minority students to access better schools in white majority areas relies heavily on transportation. After *Brown* found that segregated education violated the United States Constitution, courts and districts tried to determine what the required remedy should be.<sup>50</sup> In *Swann v. Charlotte-Mecklenburg Board of Education*, the Supreme Court unanimously approved a sweeping judicial remedy to the failure of integration efforts – gerrymandering of school districts and the busing of students between inner-city and outlying schools.<sup>51</sup> Then, *Milliken* shut the door to inter-dis-

strict desegregation, allowing residential segregation to resume its functional segregation of the schools.<sup>52</sup> It is significant that the Act achieves for homeless students what *Milliken* prevented for minority students, namely, inter-district busing. Before the Act, many homeless children simply could not get to school. Now, homeless children may not be able to access better schools through busing, because the school of origin and the residence school may be located in impoverished areas and school districts; however, at a minimum, transportation for homeless students back to their school of origin prevents worse outcomes by maintaining the academic stability throughout the duration of homelessness, and requirements to ensure transportation in a new district of residence enables as great continuity as possible.

Therefore, the integrative value *Brown* originally sought can be achieved at least in part by having homeless students together with their stably-housed peers, sensitizing both students and staff to the realities of homeless and poor children. To the extent positive results are obtained in this capacity, those who continue to advocate for expanded desegregation as a solution to educational inequity may benefit from the inter-district precedent set in the Act by demonstrating the value, reaffirmed in numerous Supreme Court cases, of integrated education.<sup>53</sup>

The desegregation movement sought to prevent the psychological effects of segregation and also ensure the equality of resources. The method of combating the under-resourcing of black schools was to require their integration into the mainstream white schools. Even though *Milliken* stopped courts from requiring integration, many school districts adopted voluntary desegregation policies toward those same ends.<sup>54</sup> However, in *Parents Involved*, the Supreme Court prevented school districts from directly using race and ethnic criteria to promote the benefits of school diversity to reduce the harms caused by re-segregation.<sup>55</sup> Thus, as separation has returned to schools, so too has the inequality, with many schools today more segregated than in the 1960s, with available resources similarly divided along racial lines.<sup>56</sup> Many advocates have given up on seeking full integration and funding adequacy for all students, instead opting to put their energy into creating better charter schools operating within these failing school districts.

Similarly, homeless advocates have had to combat the marginalization of homeless students by placing them in separate, inferior classrooms or schools.<sup>57</sup> Many schools established separate, segregated classrooms within the school or

even at shelter sites for homeless students. Sometimes it is intended to cater to the homeless students needs; often it is intended to keep homeless students from disrupting non-homeless classrooms.<sup>58</sup> The 2002 reauthorization of the Act banned separate schools and required full integration of homeless students into mainstream schools and classrooms.<sup>59</sup> As a practical matter, this requirement has been largely successful in that most of these separate schools have been closed; though integrating homeless students remains an ongoing challenge.

However, with the growth of the charter school movement, the question of the “benign segregation” of homeless students has re-emerged.<sup>60</sup> Homeless charter schools would, in theory, target additional appropriate resources to the needs of homeless students. However, this would reduce the incentive for mainstream schools to adequately serve the needs of the remaining homeless students. Although these new charter schools would be theoretically optional for homeless students, history indicates that homeless students will be pressured into attending these special schools, either actively or through the district’s failure to provide adequate services at mainstream schools.<sup>61</sup> Additionally, because such specialized charter schools are often started with a combination of public and private dollars, if they lose some of that funding, the result will be the exact segregated, under-resourced schools the Act sought to prevent. From an advocacy perspective, the charter school movement has had the same effect on homeless education as it has on public schools; it has sapped resources and advocates away from efforts to make all public schools adequate. Before the Act, rather than challenging policies preventing homeless children from receiving a full education, some homeless advocates themselves cited these policies as a reason for separate schools, rather than working to make mainstream schools adhere to the law.<sup>62</sup> Similarly today, proponents of separate schools ultimately draw resources and support away from serving other homeless students in integrated classes.<sup>63</sup> Ultimately, appropriate integration not only serves the needs of homeless students themselves, but sensitizes school staff and students to those needs. Homeless education advocates need to work together with those in the broader education adequacy and desegregation movements to develop comprehensive plans to make the right to education real for all, rather than being divided in advocating for special services for the few.

Concurrent with desegregation efforts, the funding equity movement seeks equality of resources by forcing the government to provide adequate funding for a meaningful education, including an equitable distribution of funding be-

tween rich and poor school districts within a state.<sup>64</sup> However in *Rodriguez*, the Court held that there is no federal right to an adequate education and that so long as there is not an absolute denial of access to education, funding of education should be left to local control. Although this local control resulted in inadequate education, in *Missouri v. Jenkins*, the Court ruled that a judge who had ordered a property tax increase to improve the schools of Kansas City had abused his discretion, preventing judges from forcing the adequate funding of the schools.<sup>65</sup> However, where federal remedies failed, state courts have, in some cases, stepped in to provide a method of equalizing funding and resources for schools. For example, New York's highest court ordered the state to determine the cost of, and then actually fund, a "meaningful high school education."<sup>66</sup>

Similar to the funding equity movement, the Act targeted additional resources for homeless students within the mainstream schools. By making homeless students automatically eligible for free transportation, student meals, tutoring, clothing, and school supplies under both McKinney-Vento funding and Title I funding, the law seeks to ensure that homeless students are given meaningful equal access to their education. A key provision of the law states that schools are required to provide these services regardless of whether or not they receive funding under the Act or under Title I. As with the adequacy cases, the government is essentially told that they must provide these basic services in order to fulfill the state's constitutional or statutory obligation under the right to education. However in practice, only six percent of schools nationwide receive funding under the Act, and schools are prevented from using federal Title I dollars for transportation of homeless students (one of the highest cost areas), meaning the majority of schools must provide services out of their own budgets.<sup>67</sup> As states struggle with the implications of the lawsuits that force them to provide funding for adequate education, many also struggle with costs required for homeless students.<sup>68</sup> Despite the legal requirement to give students these resources, homeless advocates see daily problems with implementation, and must engage in frequent advocacy to uphold students' rights.

As with both the desegregation and adequacy movements, funding for truly adequate services is difficult to obtain from policy-making bodies, meaning homeless children's advocacy requires a constant interplay between the courts and those bodies. Many schools have resisted fully implementing the Act because of the individualized attention required for homeless students, including potentially expensive individual transportation plans.<sup>69</sup> Frequently, schools re-

sist implementation by failing to appropriately identify homeless students (either through neglect or purposeful narrowing of eligibility criteria) and by failing to give them information about their rights. This allows schools to deny services which, similar to adequacy and desegregation, have led to prolific litigation seeking to enforce students' rights, district-by-district, and state-by-state. This litigation often results in consent decrees, which then need to be enforced with the state actors. In terms of overall compliance, it would be useful to have adequate resources devoted to homeless children's education in the first place. Thus, it is critical to further develop relationships with adequacy advocates so that the needs of homeless students are considered when states do costing-out studies under funding equity lawsuit orders and develop budgets to meet the costing-out studies' recommendations.

## CONCLUSIONS

A vast majority of Americans believe that education is a basic human right.<sup>70</sup> With every human right comes a corresponding duty on the government to ensure that right is respected, protected and fulfilled. While lauding the goal of a sound basic education for all, our government, at the federal, state and local levels, has fallen short of fulfilling this goal. The impact of this failure falls disproportionately on poor and racial minority students, and even more so on homeless students who often face the barriers of poverty, race and homelessness combined.

Advocates for homeless education, desegregation, and equity have largely overlapping target populations and missions. All of us work in one way or another to decrease the racial and poverty gap through increasing access to a meaningful education. Despite this fact, those in these movements have worked largely in their own silos of activity. Advocates have, thus, been unable to capitalize on the benefits of integration. This article has sought to be a first step in the direction of a more unified movement, describing the specific challenges and achievements of the homeless education movement for audiences in the desegregation and equity movements. There are many opportunities for integrated work in the future, ranging from shared legal strategies to joint advocacy for additional, targeted funding. More conversations between these parallel worlds of advocacy are necessary to share strategies and combine our strengths to advocate for a less separate and more equal education for all our children.

## NOTES

- 1 Phillip Lovell and Julia Isaacs, *The Impact of the Mortgage Crisis on Children*, FIRST FOCUS, May 2008, 1, available at <http://www.firstfocus.net/Download/HousingandChildrenFINAL.pdf>.
- 2 42 U.S.C. § 11431.
- 3 *Hunger and Homelessness Survey*, THE UNITED STATES CONFERENCE OF MAYORS, A-25 Survey December 2008, available at [http://www.usmayors.org/pressreleases/documents/hungerhomelessnessreport\\_121208.pdf](http://www.usmayors.org/pressreleases/documents/hungerhomelessnessreport_121208.pdf).
- 4 Martha Burt, *What Will It Take to End Homelessness?* URBAN INSTITUTE, 1, Oct. 1, 2001, [http://www.urban.org/UploadedPDF/end\\_homelessness.pdf](http://www.urban.org/UploadedPDF/end_homelessness.pdf).
- 5 Phillip Lovell and Julia Isaacs, *supra* note 1.
- 6 *Id.* at 5.
- 7 The Urban Institute, et al., *Homelessness: Programs and The People They Serve*, INTERAGENCY COUNCIL ON THE HOMELESS, 6, Dec. 1999, available at <http://www.hudhre.info/documents/HomelessProgramsPeople.pdf>.
- 8 *Hunger and Homelessness Survey*, *supra* note 3.
- 9 Stegman et al., *Housing America's Working Families*, URBAN RESEARCH MONITOR, Vol. 5. Is. 5, Nov./Dec. 2000, 1, available at [http://www.huduser.org/periodicals/urm/urm\\_12\\_2000/urm1.html](http://www.huduser.org/periodicals/urm/urm_12_2000/urm1.html).
- 10 *America's Rental Housing – Homes for a Diverse Nation*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, 5, 2006, available at [http://www.jchs.harvard.edu/publications/rental/rh06\\_americas\\_rental\\_housing/rh06\\_0\\_intro.pdf](http://www.jchs.harvard.edu/publications/rental/rh06_americas_rental_housing/rh06_0_intro.pdf).
- 11 42 U.S.C. § 11431 (2), *supra* note 2; This definition is broader than that used by U.S. Department of Housing and Urban Development which has been read to exclude doubled-up families. See 42 U.S.C. § 11302 (a).
- 12 *Education For Homeless Children and Youth Program*, NATIONAL CENTER FOR HOMELESS EDUCATION, 8, July 2008, available at [http://www.serve.org/nche/downloads/data\\_comp\\_03-06.pdf](http://www.serve.org/nche/downloads/data_comp_03-06.pdf).
- 13 *Id.* at 6.
- 14 Kari Huis, *'Tidal Wave' of Homeless Students Hits Schools*, MSNBC.COM, March 2, 2009, <http://www.msnbc.msn.com/id/29356160/>.
- 15 *Homeless in America: A Children's Story (Part One)*, Homes for the Homeless and the Institute for Children and Poverty, 10, 25 (1999).
- 16 *Id.* at 4.
- 17 *Id.* at 10, 16.
- 18 *Id.* at 17.
- 19 *Id.* at 12.
- 20 Linda Jacobson, *Moving Targets*, EDUCATION WEEK, April 4, 2001, <http://www.edweek.org/login.html?source=http://www.edweek.org/ew/articles/2001/04/04/29mobility.h20.html&destination=http://www.edweek.org/ew/articles/2001/04/04/29mobility.h20.html&levelId=2100>.
- 21 *Elementary School Children: Many Change Schools Frequently, Harming Their Education*, UNITED STATES GENERAL ACCOUNTING OFFICE, GAO/HeHs-94-45, 1994, available at <http://archive.gao.gov/t2pbat4/150724.pdf>.
- 22 Russell Rumberger, *The Causes and Consequences of Student Mobility*, JOURNAL OF NEGRO EDUCATION, 72, at 6-21 (2003), available at <http://education.ucsb.edu/rumberger/internet%20>

pages/Papers/Rumberger—Cause%20&%20Consequences%20of%20Student%20Mobility%20(JNE%202003).pdf.

23 *Separate & Unequal: A Report on Educational Barriers for Homeless Children & Youth*, NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, Jan. 2000.

24 *Id.*

25 *Id.*

26 *Id.* at 27.

27 Carrie Arnold, LeTendre Scholar Speech (2002) (on file with author).

28 42 U.S.C. § 11431, *supra* note 2.

29 *Id.*

30 *Id.*

31 *Education for Homeless Children and Youth Program*, Title VII of the McKinney-Vento Homeless Assistance Act as Amended by the No Child Left Behind Act of 2001, Non-Regulatory Guidance, UNITED STATES DEPARTMENT OF EDUCATION, A-4, July 2004, <http://www.ed.gov/programs/homeless/guidance.pdf> (last visited Apr. 15, 2009); “School of origin” is either the last school a homeless child attended or the last school attended while permanently housed.

32 *Id.*

33 *Id.*

34 John Buckner, *Impact of Homelessness on Children: An Analytic Review of the Literature*, in Deb J. Rog, et al., *Characteristics and Dynamics of Homeless Families With Children*, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, Fall 2007, *available at* <http://aspe.hhs.gov/hsp/homelessness/improving-data08/report.pdf>.

35 *Education for Homeless Children and Youth Program*, *supra* note 31 at A-4.

36 *Id.*

37 *Id.* at F-5.

38 *Id.* at A-4.

39 *Id.* at E-2.

40 *Id.* at E-2, E-4.

41 *Id.* at B.

42 *Id.* at M-3.

43 20 U.S.C. § 6313 (c)(3); Schools typically receive Title I grants through their state education agency if they have more than 40% of their students under the federal poverty line, often measured by the number of students receiving free school meals. *See* 20 U.S.C. § 1113 (a)(5).

44 *Education for Homeless Children and Youth Program*, *supra* note 31 at A-4.

45 *Id.* at D-3.

46 *Id.* at F-2.

47 *See generally* *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *See generally* *Milliken v. Bradley*, 418 U.S. 717 (1974).

48 *See generally* *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (U.S. 2007), (held schools required to prove their voluntary desegregation plans are narrowly tailored to a compelling governmental interest, the most stringent legal standard which is almost never achieved).

49 *See generally* *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1 (1973), (held there was no federal Constitutional right to a minimum education that would require states to create equitable funding mechanism for school districts with an inadequate tax base to support adequate education); *See generally* *Campaign for Fiscal Equity v. New York State*, 719 N.Y.S.2d 475 (N.Y. 2001); *See also* Access Quality Education, School Funding Litigation, <http://www.schoolfunding.info/litigation/litigation.php3>.

50 *Brown*, *supra* note 47.

51 *Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1 (1971).

52 See generally *Milliken*, *supra* note 47. (In *Milliken*, the parents of black children argued that Detroit schools could be desegregated only by permitting cross-district busing to and from the surrounding mostly white suburban school districts. The Court found that the school district boundaries of the suburban districts were an essential component of local control and autonomy established by the state of Michigan. Those boundaries could be transgressed only if black parents could prove that the suburban districts were guilty of intentionally discriminating against black children in Detroit – a task that was virtually impossible).

53 See generally *Brown*, *supra* note 47; *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003).

54 See generally *Milliken*, *supra* note 47.

55 See generally *Parents Involved*, *supra* note 48.

56 Gary Orfield and Chungmei Lee, *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies*, UCLA CIVIL RIGHTS PROJECT, August 2007, at 3, available at [http://www.civilrightsproject.ucla.edu/research/deseg/reversals\\_reseg\\_need.pdf](http://www.civilrightsproject.ucla.edu/research/deseg/reversals_reseg_need.pdf).

57 *Separate & Unequal*, *supra* note 23.

58 *Id.*

59 42 U.S.C. § 11431 (e)(3), *supra* note 2.

60 Charter schools directed to the needs of homeless and other at-risk students include the Urban Peaks School in Denver, CO, the Baldwin Park school in Los Angeles, CA, and a proposed boarding school for homeless students at North Lawndale Prep charter school in Chicago, IL.

61 *Separate & Unequal*, *supra* note 23 at 36.

62 *Id.* at 34.

63 *Chicago weighs boarding schools for homeless*, Associated Press, May 23, 2008, <http://www.msnbc.msn.com/id/24795197/>.

64 See generally *San Antonio Indep. School Dist.*, *supra* note 49, (held that the commonality of the plaintiffs in being (supposedly temporarily) impoverished did not create a protected class under the equal protection clause. More importantly, while *Brown* proclaimed education to be important, the Court ruled that adequate education is not fundamental right protected by the Constitution).

65 See generally *Missouri v. Jenkins*, 495 U.S. 33 (1990).

66 *CFE v. State*, Slip Op. 15615 (2003), (“CFE II”); *In Campaign for Fiscal Equity, Inc. (CFE) v. State of New York*, 86 N.Y. 2d 307 (1995), (“CFE I”).

67 *Separate & Unequal*, *supra* note 23 at 13.

68 *Id.*

69 *National Law Center on Homelessness & Poverty, et al. v. New York State, et al.*, Civil Action No. 04 0705 (E.D. N.Y. 2004), (Court in denying motion to dismiss held the McKinney Vento Act was enforceable by parents of homeless students. Ultimately, all parties settled and agreed to comply with all applicable state and federal laws relating to homeless students); *Lampkin v. District of Columbia*, 27 F. 3d 605 (C.A. D.C. 1994).

70 *Human Rights in the U.S., Opinion Research with Advocates, Journalists, and the General Public*, THE OPPORTUNITY AGENDA, 3, (2007).