

# Clearinghouse REVIEW

March–April 2007  
Volume 40, Numbers 11–12

Journal of  
Poverty Law  
and Policy



# Paternity

PROVE IT THROUGH VOLUNTARY ACKNOWLEDGMENT



## MORE:

Judicial Deference to  
Administrative Agencies  
Massachusetts' Health Care  
Reform Law  
Reform State Rules on Asset Limits  
Mobile Home Owners' Dream  
or Nightmare?

From Closed Military Property  
to Affordable Housing  
Federal Homeless Education Law  
Depose an Organization Without  
"Discovery Runaround"

## AND

Walter Mosley on Poverty and the  
Religion of Capitalism



# TWENTY YEARS OF FEDERAL HOMELESS EDUCATION LAW: Where We Stand on Enforcement

By Joy Moses

**Joy Moses**  
Staff Attorney

National Law Center on  
Homelessness & Poverty  
1411 K St. NW, Suite 1400  
Washington, DC 20005  
202.638.2535  
jmoses@nlchp.org

**T**he McKinney-Vento Homeless Assistance Act, signed into law twenty years ago in July 2007, is the first and only nationwide effort to deal comprehensively with the problem of homelessness. A number of provisions protect homeless children and youth seeking a public school education. Over the last two decades, many students have sought to enforce these rights through state administrative dispute resolution procedures and litigation. Although very few education-related impact lawsuits have been filed under the Act (also known as the McKinney-Vento Act), the outcomes of such cases have largely been positive. In one recent victory, a class of homeless students asserted a right to sue under federal homeless education law and the equal protection clause, and a district court in New York affirmed that right.

## Homeless Children and Youth

A common misperception about homelessness in America is that it touches only the lives of single adult men. Since that particular population is highly noticeable in major cities and can often be found sleeping on streets and begging for change, it has become the face of homelessness. However, many children and youth experience homelessness each year. These young people are far less visible, sleeping in unknown shelters, cars, parks, camping grounds, and the various homes of friends and family members.

There are some common causes of child homelessness. Chief among them is a lack of affordable housing. On average, a family must earn \$15.78 per hour in order to afford a two-bedroom apartment in communities across the United States.<sup>1</sup> Since the current federal minimum wage is only \$5.15 per hour, affordable housing is largely out of reach for those at the bottom of the economic spectrum.<sup>2</sup> Federal housing assistance programs (e.g., Section 8 and public housing) fall short in meeting the need for affordable housing. They serve only 32 percent of eligible major city residents.<sup>3</sup>

Another major cause of child homelessness is domestic violence. Some 18 percent of homeless children lose permanent housing when a custodial parent escapes a domestic violence situation.<sup>4</sup> Disasters may be a third cause of homelessness. Since 2005, various school districts have been serving children who remain homeless since Hurricanes Katrina and Rita. And many young people become homeless when they run

<sup>1</sup>NATIONAL LOW-INCOME HOUSING COALITION, *OUT OF REACH* (2005), available at [www.nlhc.org/oor/oor2005](http://www.nlhc.org/oor/oor2005).

<sup>2</sup> At writing, Congress was close to passing legislation that would raise the federal minimum wage from \$5.15 per hour to \$7.25 per hour. See *Fair Minimum Wage Act of 2007*, H.R. 2, 110th Cong. (2007).

<sup>3</sup>U.S. CONFERENCE OF MAYORS, *HUNGER AND HOMELESSNESS SURVEY 5* (2004), available at [www.usmayors.org](http://www.usmayors.org).

<sup>4</sup>HOMES FOR THE HOMELESS & INSTITUTE FOR CHILDREN AND POVERTY, *HOMELESS IN AMERICA: A CHILDREN'S STORY* (Part One) 10 (1999).

away from home, leave home with the consent of their parents, or are thrown out by their parents. Many factors cause such family separations; they include physical abuse, sexual abuse, teen pregnancy, hostility toward a teen's sexual orientation, or a parent's inability to provide for the young person.

So just how many young people are living in homeless situations? The data are inexact. According to the U.S. Department of Education, the nation's schools identified and served about 603,000 homeless students during the 2003–2004 school year.<sup>5</sup> However, the actual number of homeless children and youth is likely to be greater than that figure, which does not account for those not attending school or those who do not apprise school officials of their housing situation.

Various statistics do indicate that the numbers of homeless children may have increased in recent years. For instance, each year between 2000 and 2004 the child poverty rate increased.<sup>6</sup> About 17.6 percent (nearly 13 million) of America's children live in poverty.<sup>7</sup> Requests for emergency housing have increased each year between 1985 and 2002, with a 20 percent increase occurring in 2002.<sup>8</sup>

### Barriers to Education and the McKinney-Vento Homeless Assistance Act

Homeless children face formidable barriers to obtaining a quality education—

multiple school transfers and enrollment requirements. Frequent moves from one temporary housing situation to another often lead to school transfers. More than half of all homeless students transfer schools at least once a year; more than 15 percent transfer three or more times each academic year.<sup>9</sup> Research indicates that such school mobility is a serious academic risk factor that has been linked to increased likelihood of repeating a grade, poor attendance, lower standardized test scores, and dropping out.<sup>10</sup> According to the National Association of School Psychologists, children who change schools also need six to eighteen months to regain a sense of equilibrium, security, and control.<sup>11</sup> These young people often find it difficult to make new friends and are more likely to experience alienation, withdrawal, or discipline problems.<sup>12</sup>

On top of barriers associated with frequent school transfers, homeless children are burdened by enrollment requirements. Local schools typically demand items such as proof of residency, proof of immunization, birth certificates, and academic records. Families tend to lose such documents during frequent and sometimes sudden moves. Families living with others are unable to prove residency with items such as lease agreements and utility bills, which usually bear the name of the host family. Due to these requirements, students may lose valuable days or weeks of schools while others may never gain admission.

<sup>5</sup>U.S. DEPARTMENT OF EDUCATION, REPORT TO THE PRESIDENT AND CONGRESS ON THE IMPLEMENTATION OF THE EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM UNDER THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT 5 (2006), available at [www.ed.gov/programs/homeless/rpt2006.doc](http://www.ed.gov/programs/homeless/rpt2006.doc).

<sup>6</sup>U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2005, at 52 (2006), available at [www.census.gov/hhes/www/poverty/poverty.html](http://www.census.gov/hhes/www/poverty/poverty.html).

<sup>7</sup>*Id.*

<sup>8</sup>U.S. CONFERENCE OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES 47 (2002), available at [www.usmayors.org](http://www.usmayors.org).

<sup>9</sup>HOMES FOR THE HOMELESS & INSTITUTE FOR CHILDREN AND POVERTY, *supra* note 4, at 12.

<sup>10</sup>See *id.*; RUSSELL W. RUMBERGER ET AL., THE EDUCATION CONSEQUENCES OF MOBILITY FOR CALIFORNIA STUDENTS AND SCHOOLS (1999); TEXAS EDUCATION AGENCY, A STUDY OF STUDENT MOBILITY IN TEXAS PUBLIC SCHOOLS: STATEWIDE TEXAS EDUCATIONAL PROGRESS STUDY REPORT NO.3 (1997); RUSSELL W. RUMBERGER, *Student Mobility and Academic Achievement*, ERIC DIGEST, June 2002, [www.ericdigests.org/2003-2/mobility.html](http://www.ericdigests.org/2003-2/mobility.html).

<sup>11</sup>Linda Jacobson, *Moving Targets*, EDUCATION WEEK, April 4, 2001, at 32–34.

<sup>12</sup>Russell W. Rumberger et al., *The Educational Consequences of Mobility for California Students and Schools*, PACE POLICY BRIEF, Jan. 1999, available at [www.education.ucsb.edu/rumberger/internet%20pages/Papers/Rumberger—Mobility%20study%20PACE%20Policy%20Brief.pdf](http://www.education.ucsb.edu/rumberger/internet%20pages/Papers/Rumberger—Mobility%20study%20PACE%20Policy%20Brief.pdf).

The McKinney-Vento Act, which was most recently reauthorized as a section of the No Child Left Behind Act of 2001, addresses these barriers as follows:

**School of Origin.** To maintain school stability, homeless children may remain in a school of origin for the entire time they are homeless and until the end of the academic year in which they find permanent housing.<sup>13</sup> The “school of origin” is defined as the school that the student attended when permanently housed or the last school attended.<sup>14</sup> Children and youth may continue in a school of origin even if they move across attendance zones or school district lines. School districts are required to provide transportation even if it means rerouting buses or providing services not given to nonhomeless children.<sup>15</sup> The only limitations on the school-of-origin requirement are feasibility and the best interests of the child (with the presumption that attending the school of origin is in the student’s best interests).<sup>16</sup>

**Immediate Enrollment.** According to the McKinney-Vento Act, schools must immediately enroll students even if they do not have typically required documents such as previous academic records, medical records, or proof of residency.<sup>17</sup> The word “enroll” is defined as “attending classes and participating fully in school activities.”<sup>18</sup>

**Dedicated Personnel.** The law requires states and school districts to appoint personnel to be responsible for the education of homeless children and youth.<sup>19</sup> These individuals must ensure that the McKinney-Vento Act is being implemented appropriately.

**Funding for Special Programs.** Under the McKinney-Vento Act, school districts may receive subgrants to fund special homeless education programs.<sup>20</sup> Such funds are typically used for school transportation, dedicated staff, tutoring services, mentoring programs, and free school supplies.

### Enforcing the McKinney-Vento Homeless Assistance Act

The McKinney-Vento Act is unevenly enforced. Sometimes school and school district personnel are completely unaware of the federal homeless education program, which is much smaller and receives far less funding than higher-profile programs such as special education (Individuals with Disabilities Education Act) and testing/accountability (No Child Left Behind requirements). Not surprisingly, many families are also unaware of their rights and thus not in a position to enforce them. Those families that do hear about the federal homeless education program are often too distracted by other problems, or too discouraged by initial resistance from schools, to pursue appropriate placements and services.

To the extent that parties have sufficient information about their rights and disagree about educational decisions, state and school district personnel resolve those disagreements informally. The McKinney-Vento Act requires that formal dispute resolution procedures be in place.<sup>21</sup> States and districts have a great deal of flexibility in designing such procedures, which usually involve an opportunity for both sides to be heard and final decisions made by school district

<sup>13</sup>42 U.S.C. § 11432(g)(3)(A)(2001).

<sup>14</sup>*Id.* § 11432(g)(3)(G).

<sup>15</sup>*Id.* § 11432(g)(1)(J)(iii).

<sup>16</sup>*Id.* § 11432(g)(3)(B).

<sup>17</sup>*Id.* § 11432(g)(3)(C)(i).

<sup>18</sup>*Id.* § 11434a(1).

<sup>19</sup>*Id.* § 11432(d)(3); 11432(g)(1)(J)(ii)(2001).

<sup>20</sup>*Id.* § 11433.

<sup>21</sup>*Id.* § 11432(g)(3)(E).

homeless liaisons or state coordinators of homeless education or both.

Litigation has been rare. Class action cases in Illinois and Maryland were settled before any judicial decisions reaching the issue of enforceability or the substance of the claims.<sup>22</sup> Only two lawsuits have resulted in published court opinions. The first, *Lampkin v. District of Columbia*, was decided in the early 1990s, which was not long after the passage of the first version of the McKinney-Vento Act.<sup>23</sup> An opinion in the second case, *National Law Center on Homelessness and Poverty v. New York*, came in 2004 not long before the twentieth anniversary of the legislation.<sup>24</sup>

### ***Lampkin v. District of Columbia***

The National Law Center on Homelessness and Poverty and ten homeless parents filed *Lampkin v. District of Columbia*, one of the first McKinney Act lawsuits, against the District of Columbia.<sup>25</sup> The plaintiffs claimed that the district's school system failed to make best-interest determinations and school placements in a timely manner. Families requesting shelter services were sometimes forced to wait several weeks or months before the school system recognized them as "homeless". The complaint further alleged that transportation services were inadequate and inaccessible to some homeless children.

When the district court evaluated the case based on the law and the undisputed policies of the District of Columbia Public

Schools, it granted summary judgment in favor of the plaintiffs and ordered systemwide injunctive relief.<sup>26</sup>

The issue that proved central to the case was not whether the district had violated the law but whether the plaintiffs had a right to enforce the McKinney Act. The district court determined that plaintiffs had no legal right to sue the district to force it to comply with the law.<sup>27</sup> This issue was appealed to the District of Columbia Circuit Court, which ultimately decided that the plaintiffs did have a private right of action via Section 1983 of the Civil Rights Act of 1871.<sup>28</sup>

**McKinney Act and Section 1983.** In applying U.S. Supreme Court precedent from *Wilder v. Virginia Hospital Association* and *Suter v. Artist M.*, the D.C. Circuit used a three-part test:

- Was the statute intended to benefit the plaintiff?
- Does the legislative language create a binding obligation rather than a congressional preference for a certain kind of conduct?
- Is the right being asserted too vague and amorphous such that it is beyond the competence of the judiciary to enforce?<sup>29</sup>

The court's analysis of the first factor was brief. The parties agreed that the McKinney Act was enacted to benefit homeless children, a group that included the plaintiffs in the case.

<sup>22</sup>The Maryland cases, *Collier v. Prince George's County Board of Education*, No. 8-01-cv-1179 (D. Md. settled Sept. 10, 2001), and *Bullock v. Board of Education of Montgomery County*, No. 8-02-cv-798 (D. Md. settled Nov. 3, 2003), were brought by the Public Justice Center. More information can be found on the organization's website ([www.publicjustice.org](http://www.publicjustice.org)). The Illinois case, *Salazar v. Edwards*, No. 92-CH-5703 (Ill. Cir. Ct. settled Nov. 21, 1996) (Clearinghouse No. 48,264), was brought by the Chicago Coalition for the Homeless. More information can be found on the organization's website ([www.chicagohomeless.org](http://www.chicagohomeless.org)).

<sup>23</sup>*Lampkin v. District of Columbia*, 27 F.3d 605 (D.C. Cir. 1994) (Clearinghouse No. 48,581).

<sup>24</sup>*National Law Center on Homelessness and Poverty v. New York*, 224 F.R.D. 314 (E.D.N.Y. 2004).

<sup>25</sup>In 1992, when *Lampkin* was filed, the homeless education law was referred to as the "McKinney Act." In subsequent years, it became known as the McKinney-Vento Act.

<sup>26</sup>*Lampkin*, 879 F. Supp. 116 (D.D.C. 1995).

<sup>27</sup>*Id.* 1992 WL 151813 (D.D.C. 1992).

<sup>28</sup>*Id.* 27 F.3d 605 (D.C. Cir. 1994).

<sup>29</sup>*Id.* at 610-11, citing *Wilder v. Virginia Hospital Association*, 496 U.S. 498 (1990), and *Suter v. Artist M.*, 503 U.S. 347 (1992) (Clearinghouse No. 48,036).

In reviewing the second prong of the test, the court concluded that the legislative language of the McKinney Act did create a binding obligation.<sup>30</sup> It pointed to several legislative and regulatory provisions that were worded in terms of specific, mandatory requirements as opposed to congressional preferences.

The court acknowledged the parallels between the McKinney Act and the Adoption Assistance and Child Welfare Act, which was declared unenforceable via private action by the Supreme Court in *Suter*. Both statutes required states to submit plans to the federal government. However, according to the D.C. Circuit, the ruling in *Suter* was based on an assessment that the Adoption Assistance Act required only the submission of a state plan and placed no other binding obligations on the states. The D.C. Circuit differentiated *Lampkin* by adjudging that the McKinney Act required more than the submission of a state plan—it included requirements for how the plan was to be implemented as well as other obligations that were independent of the plan. The court concluded: “The 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.”<sup>31</sup> The court noted that the McKinney Act included no statutory mechanisms for administrative enforcement, a factor supporting the argument that Congress did not intend to foreclose a private cause of action.

In looking to the third and final prong of the test, the D.C. Circuit examined whether the rights asserted were too vague to be enforceable. It concluded that rights as outlined in the Act were sufficiently worded so as to render the courts capable of ruling on cases such as the one filed by the plaintiffs in *Lampkin*.<sup>32</sup>

Having passed all three prongs of the test outlined in *Wilder* and *Suter*, the D.C. Cir-

cuit determined that the McKinney Act was enforceable via Section 1983.<sup>33</sup>

**McKinney Act and Implied Private Right of Action.** The plaintiffs in *Lampkin* did not raise any claims based on an implied private right of action. Nevertheless, the district court offered dicta on that issue. The judge suggested that the McKinney Act could not pass the Supreme Court test for implied private right of action as outlined in *Cort v. Ash*.<sup>34</sup> The opinion expressed doubts about whether Congress intended to imply a private right of action as a remedy for the McKinney Act.

**McKinney Act and Equal Protection.** The *Lampkin* complaint included an equal protection claim challenging the District of Columbia’s transportation policies that made school bus transportation available to disabled students while failing to provide equivalent services to homeless children. The district court applied rational-basis review because the parties agreed that education was not a fundamental right and no suspect classes were involved. The decision noted that the District of Columbia had a rational reason for treating disabled children differently—there was good reason to believe that disabled children were physically and mentally less capable of traveling to school and the same could not be said for homeless children.<sup>35</sup> Since the equal protection claim was not raised on appeal, the D.C. Circuit did not consider it.

### **National Law Center on Homelessness and Poverty v. New York**

Nearly fifteen years after *Lampkin* was filed, homeless families in Suffolk County, New York faced similar problems in accessing educational services. The National Law Center on Homeless-

<sup>30</sup>*Id.*

<sup>31</sup>*Id.* at 611.

<sup>32</sup>*Id.* at 612.

<sup>33</sup>*Id.*

<sup>34</sup>*Id.* 1992 WL 151813 (D.D.C.) at 7–8.

<sup>35</sup>*Id.* at 9.

ness and Poverty and its pro bono partner, Goodwin Procter, worked with the families to file a lawsuit against various school districts, a social services agency, and the state. The named plaintiffs had missed days, weeks, and even months of school while seeking to enroll in school, maintain school placements, and secure transportation services.

As in *Lampkin*, the complaint in *National Law Center on Homelessness and Poverty v. New York* was filed in district court and alleged a series of violations of the McKinney-Vento Act and the equal protection clause of the U.S. Constitution.<sup>36</sup> By the time the case was filed in 2004, the McKinney-Vento Act had been modified and strengthened during two congressional reauthorizations. Significantly the law has come to require “immediate” school enrollments and includes a more strongly worded right to transportation.

Once again, the central focus of the dispute was not the merits of the plaintiffs’ case (i.e., were the school systems providing a free and appropriate public education to homeless students?) but whether students had the right to sue to enforce the McKinney-Vento Act.

### McKinney-Vento Act and Section 1983.

As a result of defense counsel’s motion under Federal Rule of Civil Procedure 12(b)(6), the district court evaluated whether the plaintiffs were allowed to bring their claims pursuant to Section 1983. In doing so, the district court partially relied on Supreme Court cases that had been decided since *Lampkin*. The most significant of those were *Blessing v. Freestone* and *Gonzaga University v. Doe*.<sup>37</sup> Ultimately the decision in *Lampkin* proved to be persuasive, and the judge,

ruling in favor of the plaintiffs, allowed them to move forward with proving their claims.

The district court turned to the test outlined by the Supreme Court. First, the district court determined that the McKinney-Vento Act imposed mandatory requirements rather than optional activities.<sup>38</sup> Second, the district court concluded that McKinney-Vento conferred entitlements that were specific rather than vague.<sup>39</sup> The opinion noted that states and local educational agencies were directed to carry out specific activities.<sup>40</sup>

The third consideration was whether the entitlements were conferred on specific individuals. According to the district court, “statutes that focus on specific individuals rather than policies or practices indicate Congressional intent to confer individually enforceable rights.”<sup>41</sup> The judge in *National Law Center on Homelessness and Poverty* ultimately decided that the McKinney-Vento Act entitlements were directed toward individuals including the plaintiffs. Specifically the law directs local education agencies to provide certain services (e.g., immediate enrollment and choice of school of origin) to individual students.<sup>42</sup>

The district court evaluated whether the McKinney-Vento Act included a sufficient administrative means of enforcing the requirements against the states. Since the Act does not specifically grant the U.S. secretary of education the power to enforce federal homeless education law, the judge answered that question in the negative.<sup>43</sup>

Given the above analysis, the court in *National Law Center on Homelessness and Poverty* held that the McKinney-Vento

<sup>36</sup>*National Law Center on Homelessness and Poverty*, 224 F.R.D. at 314.

<sup>37</sup>*Blessing v. Freestone*, 520 U.S. 329 (1997) (Clearinghouse No. 50,109), and *Gonzaga University v. Doe*, 536 U.S. 273 (2002) (Clearinghouse No. 54,643).

<sup>38</sup>*National Law Center on Homelessness and Poverty*, 224 F.R.D. at 319.

<sup>39</sup>*Id.* at 319–20.

<sup>40</sup>*Id.* at 319.

<sup>41</sup>*Id.* at 320.

<sup>42</sup>*Id.*

<sup>43</sup>*Id.* at 321.

Act was privately enforceable via Section 1983.

**McKinney-Vento Act and Implied Private Right of Action.** The decision in *National Law Center on Homelessness and Poverty* did not include any analysis of an implied private right action.

**McKinney-Vento Act and Equal Protection.** The equal protection argument in *National Law Center on Homelessness and Poverty* was different from the one in *Lampkin*. Whereas the plaintiffs in *Lampkin* compared the transportation services for homeless children to transportation for disabled children, the complaint in *National Law Center on Homelessness and Poverty* sought to compare the basic access to school of homeless children to that of all nonhomeless children.

The district court saw the merits of this argument and ruled that the homeless plaintiffs had a valid Constitutional claim under the equal protection clause.<sup>44</sup> In reaching that opinion, the district court heavily relied on *Plyler v. Doe*, a Supreme Court case that established an intermediate standard of scrutiny in certain education cases.<sup>45</sup> Essentially the Supreme Court in *Plyler* reasoned that “education was so important to the American way of life and to the function of state and local governments that any denial of education must be justified by some ‘substantial

goal’ of the State.”<sup>46</sup> Since the plaintiffs in *National Law Center on Homelessness and Poverty* alleged a denial of access to education that could lead to significant and enduring consequences, the district court allowed them to move forward with their equal protection claim.



For nearly twenty years, the McKinney-Vento Act has been available to address comprehensively the needs of the nation’s homeless population, including the educational needs of its children. The next twenty years will witness, we hope, an end to homelessness and housing instability among the nation’s poor.<sup>47</sup> In the meantime, being allowed to enforce the McKinney-Vento Act will be crucial to ensuring that children can enter schoolhouse doors. State administrative procedures are helpful, but the ability to litigate can be essential. Though limited, case law thus far has been largely positive, supporting the rights of homeless children to sue under the U.S. Constitution and the McKinney-Vento Act in conjunction with Section 1983. Future courts, we hope, will follow the lead of the *Lampkin* and *National Law Center on Homelessness and Poverty* decisions, helping secure educational rights that may be key in helping young people break the cycle of poverty and develop productive lives.

---

<sup>44</sup>*Id.* at 322.

<sup>45</sup>*Plyler v. Doe*, 457 U.S. 202 (1982).

<sup>46</sup>*National Law Center on Homelessness and Poverty*, 224 F.R.D. at 321 (citing *Plyler*, 457 U.S. at 223–24).

<sup>47</sup>For recommended revisions of the McKinney-Vento Act, see page 671.

## Time to Review and Revise the McKinney-Vento Homeless Assistance Act

2007 is significant to the world of homeless education for two reasons. First, it marks the twentieth anniversary of the passage of the McKinney-Vento Homeless Assistance Act, the primary federal law dealing with the education of homeless children. Second, Congress will begin reauthorization of the No Child Left Behind Act, which includes the education provisions of the McKinney-Vento Act. This offers an opportunity to review and revise the law and further improve the services provided to homeless students throughout the nation.

Congress will consider a number of issues. Congress may create new provisions or legislative history or both to support the recent court decisions concluding that the McKinney-Vento Act is enforceable with a private right of action.

The level of federal funding is a critical issue. Congress is authorized to spend only \$70 million on the Education of Homeless Children and Youth program. Current appropriations have remained static at about \$62 million. A number of factors indicate that this is simply not enough. For instance, the U.S. Department of Education's 2006 report to Congress finds that only 48 percent of homeless children attend school in districts that receive McKinney-Vento funding (U.S. Department of Education, *Report to the President and Congress on the Implementation of the Education for Homeless Children and Youth Program Under the McKinney-Vento Homeless Assistance Act* (2006)). Anecdotal accounts from state and school district-level officials also reflect a lack of funding for critical program elements such as transportation, tutoring, school supplies, and salaries for personnel focused on the needs of homeless students.

Congress may examine the negative impact of the No Child Left Behind Act's testing requirements on homeless students. Unfortunately, the law's efforts to close the achievement gap between white and

minority students while also increasing the test scores of all students has created an incentive for schools and districts to avoid serving students with low test scores. The penalties for serving too many struggling learners include negative labels, loss of students to school transfers, and school closures. Since frequently transferring students, including many homeless children, tend to have lower test scores, they are particularly at risk of facing administrators with no desire to serve them.

Congress may also consider increasing school access for special subpopulation groups of homeless students, such as preschool children and unaccompanied youth. Both groups face unique barriers to pursuing an education. For preschool children, available high-quality program options are lacking. Many communities have waiting lists for various preschool programs, and this often leaves homeless children at a disadvantage. Since they frequently move from community to community while awaiting permanent housing, such children rarely succeed in reaching the top of any one community's waiting list before moving on to someplace new. Further, due to the U.S. Department of Education's limited interpretation of how the McKinney-Vento Act applies to preschoolers, transportation and school stability are a challenge for young children.

On the opposite end of the age spectrum, older young people who are on their own often face barriers stemming from the absence of a parent to sign the various required school forms and papers (e.g., enrollment forms, report cards, and permission slips to participate in field trips or sports). For the small number of unaccompanied runaway young people who have a parent looking for them, concerns about being arrested for leaving home without permission (a status offense) may keep them from attending school and identifying themselves to school officials.

# Subscribe to CLEARINGHOUSE REVIEW and [www.povertylaw.org](http://www.povertylaw.org)

## Annual subscription price covers

- six issues (hard copy) of CLEARINGHOUSE REVIEW and
- [www.povertylaw.org](http://www.povertylaw.org) access to the Poverty Law Library containing CLEARINGHOUSE REVIEW issues back to 1990, case reports and case documents, and other materials

## Annual prices (effective January 1, 2006):

- \$250—Nonprofit entities (including small foundations and law school clinics)
- \$400—Individual private subscriber
- \$500—Law school libraries, law firm libraries, other law libraries, and foundations (price covers a site license)

## Subscription Order Form

Name \_\_\_\_\_

*Fill in applicable institution below*

Nonprofit entity \_\_\_\_\_

Library or foundation\* \_\_\_\_\_

Street address \_\_\_\_\_ Floor, suite, or unit \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

\*For Internet Provider-based access, give your IP address range \_\_\_\_\_

## Order

Number of subscriptions ordered \_\_\_\_\_

Total cost (see prices above) \$ \_\_\_\_\_

## Payment

- My payment is enclosed.  
*Make your check payable to **Sargent Shriver National Center on Poverty Law.***

- Charge my credit card: Visa or Mastercard.

Card No. \_\_\_\_\_ Expiration Date \_\_\_\_\_

Signature \_\_\_\_\_

*We will mail you a receipt.*

- Bill me.

Please mail or fax this form to:  
Sargent Shriver National Center on Poverty Law  
50 E. Washington St., Suite 500  
Chicago, IL 60602  
Fax 312.263.3846

CUT HERE