
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

ENFORCING HOMELESS CHILDREN'S RIGHT TO EDUCATION

Children and youth without permanent housing often have problems enrolling and participating in school. As a result, Congress passed the McKinney-Vento Homeless Assistance Act in 1987. This law gives these children and youth without a fixed, adequate night-time residence the right to remain in, and receive free transportation back to the same school even if they move, or enroll immediately in a new school without typically required records, as well as other rights to ensure the continuity of their education and their full participation in school. The law has been strengthened through amendment several times since then.

Despite these requirements, many schools fail to comply with the Act, either through ignorance of the law or active efforts to avoid the burdens of transporting or enrolling students. The National Law Center on Homelessness & Poverty (NLCHP) protects the rights of children to attend school by enforcing the law, most often through trainings and working collaboratively with schools and parents to educate them about the law; the Law Center has also been active in Congress and with the U.S. Department of Education to expand the law. Litigation is sometimes necessary, however, and below are listed the cases we have brought under the Act. Beyond these cases, the Law Center has also consulted with and given technical support to many other legal organizations that have brought other litigation as well.

- **Lampkin v. District of Columbia. 27 F. 3d 605. (Washington DC, 1994)**

In this groundbreaking 1994 litigation, the first under the McKinney-Vento Act, ten parents, on behalf of their children, and NLCHP filed a lawsuit in federal court, challenging DC Public Schools' (DCPS) failure to consider the best interests of children and youth in making school placements; ensure transportation to the schools that were in the students' best interests; coordinate social services and public education; and ensure comparable services and school meals for students experiencing homelessness. The court initially dismissed the suit, but the federal appeals court reversed and ordered DCPS to identify children experiencing homelessness and refer them for all services required by the law, including transportation. DCPS was ordered to pay \$185,000 in attorney fees and costs associated with the case. DCPS is now working collaboratively with the Law Center on educating their staff on the law's requirements and instituting best practices.

- **National Law Center on Homelessness & Poverty v. New York State, Civil Action No. 04 0705 (U. S. District Court, Eastern District of New York, filed February 20, 2004)**

This case, filed together with pro bono partner Goodwin Procter, alleged systemic noncompliance by the state education agency, state social services agency, 15 local educational agencies, and county social services with state and federal laws relating to the education of homeless children and youth. The school districts settled their portion of the case early in the proceedings, while the state and county social services moved to dismiss the case. The U.S. District Court denied the motion to dismiss, holding the Act was enforceable. Ultimately, all parties settled and agreed to comply with all applicable state and federal laws relating to homeless students. The consent decrees wrapped up in mid-2008, with all parties appearing to have substantially complied with the terms of the decrees.

- **National Law Center on Homelessness & Poverty, et. al. v. New York State, et. al. (U.S. District Court, Eastern District of New York, filed December 22, 2008)**

Despite NLCHP's positive work with New York State, we were forced to file a lawsuit against both the state and an individual district in late 2008. The case concerns a child who moved into his grandmother's basement in a neighboring school district after his mother lost her housing due to high medical bills from breast cancer. For a year, the school district provided transportation back to the school of origin, as required under the McKinney-Vento Act and its state equivalent. In this period, the child, a special needs student, experienced a number of behavioral issues, but since the beginning of the current school year had been having remarkable success. Although the family's living situation had not changed, in November 2008, the district informed them that they would no longer provide transportation and the child would have to enroll in the neighboring district, threatening the child's newfound educational stability. Under the McKinney-Vento Act, families who are "doubled-up" due to economic hardship are explicitly protected, and there is no time limit placed on homelessness. Moreover, children are allowed to remain enrolled in school pending the resolution of any disputes, but in this case the state refused to issue an order staying the dis-enrollment. NLCHP's involvement in the case resulted immediately in negotiations which allowed the child to remain in school through the end of the school year, pending the outcome of the litigation. This case is currently ongoing, but even this interim victory was a tremendous relief to the mother could rest confident that her son's educational stability would be ensured.

Other Advocacy

Only a small percentage of cases NLCHP addresses ever actually make it to court, most are resolved prior to litigation. Though less visible, this work is essential in enforcing the law. A few examples of this important work are below.

- **Advocacy with a NY School District (2008)**

Following the 2004 lawsuit, the Law Center developed a collaborative relationship with New York State, and the State requested our assistance in dealing with a non-compliant district. A child, whose family had lost its housing due to high heating costs over the winter, had moved in with his aunt in a neighboring town. This child had been successfully attending a special school due to his autism, but upon his move was dis-enrolled and not allowed to attend school for *over 5 months*. Though even the State Board of Education told the school repeatedly this child needed to be re-enrolled, the school refused to comply. However when the Law Center sent a demand letter threatening legal action, the child was re-enrolled and attending school within days.

- **Advocacy with a PA School District (2008)**

After losing her job, a mother and her first-grade child moved into a shelter in suburban Pittsburgh. This shelter provided a day-area for families with storage lockers, showers, and a place to cook their meals, a mailing address, and other facilities but each night the families were transported to one of eight area churches to stay overnight. The local school, which was walking distance from the day shelter, refused to enroll the child, arguing that despite the fact that all their major life activities took place in the day shelter, because the families sometimes stayed outside the district at night, they did not qualify for residency in the district. Although federal law is clear that if there is a dispute, the child must be enrolled pending the resolution of that dispute, the school was adamantly opposed to even allowing the child to enroll on a temporary basis, and kept the child out of school for two weeks before the Law Center was involved. The Law Center, together with pro bono partner Jones Day, sent a demand letter threatening litigation, and the district conceded, admitting the child the very next day. Two months into the dispute process where the Law Center was pressing the State for an administrative decision on behalf of the child, the parent found permanent housing in another district, thus resolving the case before a final decision. Were it not for the Law Center's advocacy, however, the child would have missed more than two months of school, and the dispute with the State would likely have set a negative precedent for future children at this and similar shelters.