

Educational Rights of Homeless Children and Youths

The McKinney-Vento Act and Its Impact on North Carolina's Schools

By Joseph D. Ableidinger

More than a million children in the United States experience homelessness during the course of a year, a startling figure that begs the question, "What does it mean to be homeless?"¹ School administrators ask this question every day. It is not simply a theoretical issue; for an individual student, the answer can make the difference between an extensive bundle of rights and services provided by the local school system and no right to attend the schools at all.

Under the McKinney-Vento Homeless Assistance Act's Education for Homeless Children and Youths Program (hereinafter McKinney-Vento), the phrase "homeless children and youths" refers to "individuals who lack a fixed, regular, and adequate nighttime residence" and includes children and youths in several specific categories (as detailed in the section below).² Although only one of many definitions of the term *homeless*, the act's language provides an idea of the scope of a social problem extending beyond conventional notions of homelessness that often evoke images of hobos, bag ladies, and skid row denizens. McKinney-Vento recognizes a more widespread situation and attempts to address, through federal guidance and funding, the obstacles homeless students face in enrolling, attending, and succeeding in school.³ Linked with other federal programs through Title I of the Elementary and

Secondary Education Act, McKinney-Vento applies to all states receiving federal funding under the act (currently all states).⁴ As a funding statute, McKinney-Vento encourages states to provide homeless children and youths with the same free, appropriate public education, including preschool, received by other children and youths, and to provide it within the mainstream school environment.

McKinney-Vento grew out of the emergence of family homelessness as a social phenomenon in the 1980s and has evolved with the dramatic increase in the number of homeless people over the past generation.⁵ The act in its original form, the Stewart B. McKinney Homeless Assistance Act, was passed in 1987 as a comprehensive federal approach to ending homelessness through a "continuum of care" strategy.⁶

Regulatory Guidance (hereinafter U.S. Dept. of Educ., *Education for Homeless Children and Youth Program*), July 2004, at A-1. Available at <http://www.ed.gov/programs/homeless/guidance.pdf> (last visited August 26, 2004).

4. 20 U.S.C. § 6301 *et seq.* As reauthorized in January 2002, Title I of the Elementary and Secondary Education Act, § 1111 (a)(1), provides that in "any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan . . . that is coordinated with other programs under this Act [other acts include the Individuals with Disabilities Education Act and the Head Start Act], and the McKinney-Vento Homeless Assistance Act." Similar provisions apply to local educational agencies. See §§ 1112 (a)(1), (b)(1)(E), (b)(1)(O); 1113 (c)(3)(A); 1115 (b)(2)(E).

5. See discussion and cited material in J. Wong, A. Salomon, L. T. Elliott, L. Tallarita, and S. Reed, "The McKinney-Vento Homeless Assistance Act—Education for Homeless Children and Youths Program: Turning Good Law Into Effective Education." *Georgetown Journal on Poverty Law and Policy* 11 (Spring, 2004): 283, 284–89. This article briefly chronicles the history of homelessness and links the problem to other social trends, notably the rise of housing costs and the fall of real wages in the 1980s.

6. P.L. 100-77 (July 22, 1987). See also Wong et al., "The McKinney-Vento Homeless Assistance Act" (citing U.S. Department of Housing and Urban Development, *Homeless Assistance Programs*, at www.hud.gov/offices/cpd/homeless/programs/index.cfm, and M. Foscarinas, "The Federal Response: The Stewart B. McKinney Homeless Assistance Act," in *Homelessness in America*, ed. Jim Baumohl for National Coalition for the Homeless (Phoenix: Oryx Press, 1996).

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1. An Urban Institute study in 2000 estimated that 3.5 million people, or about 1 percent of the U.S. population, experience homelessness in a given year, and that about 1.35 million of them are children. See discussion of methodology and results in National Coalition for the Homeless, NCH Fact Sheet #2: How Many People Experience Homelessness? (2002) at <http://www.nationalhomeless.org/numbers.html> (last visited March 5, 2005).

2. 42 U.S.C. § 11431 *et seq.*

3. U.S. Department of Education, *Education for Homeless Children and Youth Program: Title VII-B of the McKinney-Vento Homeless Assistance Act*, Non-

The act was comprised of nine titles and numerous subtitles, one of which—Title VII, Subtitle B—specifically addressed the educational needs of homeless children and youths. Notable amendments to this subtitle occurred in 1990, when Congress made changes aimed at increasing the school attendance levels of homeless children,⁷ and in 1994, when Congress granted local school districts greater leeway in their use of McKinney Act funds.⁸

By far the most sweeping amendments were enacted in January 2002 and took effect in July of that year as part of the No Child Left Behind Act. Most of the provisions of the resulting reauthorized McKinney-Vento Program, unlike those of previous versions, apply to all school districts. McKinney-Vento's major provisions, examined in detail below, guarantee homeless children and youths certain rights and set up an extensive administrative apparatus to locate homeless students; allow them to enroll in school immediately; provide them the same free, appropriate public education offered to their peers; and resolve disputes over the act's requirements.

This article provides guidance for school administrators and others concerned with implementing the McKinney-Vento Program. First, it examines two threshold issues in implementation: deciding whether a student is homeless and, if so, determining what the law requires of administrators. The article then takes a step back to chronicle the legislative antecedents of the current act and review related case law. Exploring the history of McKinney-Vento will help the practitioner or curious reader understand the evolution of McKinney-Vento and its current provisions. Next, the article details those provisions: the specific requirements for identifying homeless students and addressing their needs in the public schools. Finally, it examines the implementation of McKinney-Vento in North Carolina and its impact on students, families, and schools.

As will be seen below, although the current McKinney-Vento Program is an improvement over its predecessors—because it provides sorely needed guidance and more-detailed definitions of schools' duties and students' rights—recent changes have not left the law free of ambiguous or controversial provisions. Many of the hazy issues presented by McKinney-Vento are just now surfacing in North Carolina; this article aims to increase school officials' awareness of those issues and strengthen the state's efforts to implement the program.

Two Key Questions

Across the country, district and school administrators in local education agencies (LEAs) responsible for complying with McKinney-Vento must first determine whether or not the law applies in a given situation. They must ask, "Is this particular child or youth homeless?" If the answer is yes, the administrator must then answer a second question: "What does McKinney-Vento require the LEA to do?" These two questions present several difficulties for school officials.

In answering the first question, administrators confront the ambiguity of the term *homeless* as it applies to an individual student.

- (2) The term 'homeless children and youths'—
- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and
 - (B) includes—
 - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));
 - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - (iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).⁹

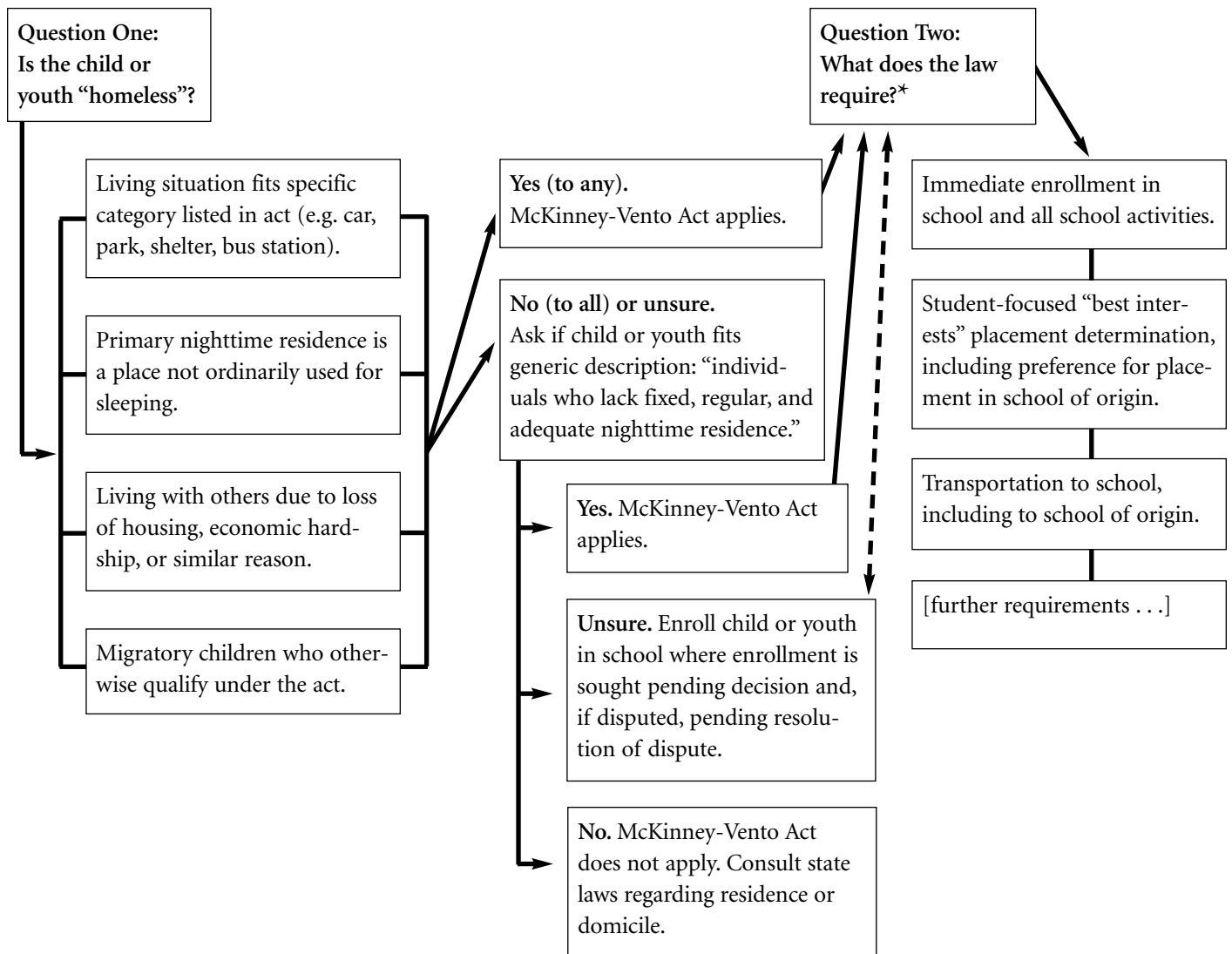
The definition above includes a number of situations in which children and youths clearly qualify as homeless and to which McKinney-Vento's provisions indisputably apply. The vast majority of homeless children and youths are likely to fit into one of the specific categories enumerated—living in motels, shelters, or public places, or "doubled up" (living with others) due to an eviction or other demonstrable hardship

7. See Evan S. Stolove, "Pursuing the Educational Rights of Homeless Children: An Overview for Advocates," *Maryland Law Review* 53 (1994): 1344, 1351–52. States choosing to seek federal grants of McKinney funds had to put into place plans to increase school attendance levels of homeless children.

8. See Wong et al., "The McKinney-Vento Homeless Assistance Act" at 293.

9. Sec. 725(2).

McKinney-Vento: Threshold Issues in Implementation



* Only three requirements of the law are shown here. For more detail about the law's specific provisions, consult the "Key Provisions" section below and the act itself.

related to loss of housing or financial concerns. On the other hand, there are other situations in which a student changes residences but McKinney-Vento clearly does not apply: for example, when a family relocates or when a student is sent to live with a relative to attend a better school or take advantage of a resource or opportunity in another district (e.g., a student sent to live with an aunt to play on a championship-caliber high school football team at a school in the aunt's district).¹⁰

In between these clear-cut cases are other scenarios not easily categorized as either within or outside McKinney-

Vento's definition of homelessness. In these situations, the more general language of the definition—"individuals who lack a fixed, regular, and adequate nighttime residence"—may provide a guideline for school officials attempting to determine whether or not a student qualifies. Even in these unclear situations, a few things are certain. Schools must enroll a student pending administrators' determination of whether or not the student is homeless or pending resolution of a dispute in which the student, parent, or guardian disagrees with the school's determination. The McKinney-Vento provision requiring enrollment in disputable situations recognizes that in spite of the act's detailed definition of homelessness, questions and uncertainties are likely to arise. Although the act requires states to revise any laws, regulations, policies, and practices that may serve as barriers to the enrollment, attendance, and success of homeless children and youths, it does

10. The key factor appears to be one of choice. A student who could stay in the home district but is sent elsewhere by the family to pursue opportunities available in another location is not homeless. By contrast, a student will generally be classified as homeless when the factors forcing the student to the new district are beyond the family's choice or control.

not require states to revise laws to define homelessness any more broadly, or any more specifically, than the definition provided.¹¹ Schools must deal with the first question—whether or not a student is homeless—before even reaching the other provisions of McKinney-Vento. Once a student is found to be homeless (or if there is a dispute or uncertainty requiring enrollment in the interim), all of the rights and services under McKinney-Vento attach to that student.

Determining precisely what the law requires in a particular student's situation is the second inquiry school administrators must make. The bulk of the act's provisions helping administrators respond to this inquiry are examined below in the section "Key Provisions of the 2002 McKinney-Vento Act." Though the act's provisions are for the most part unambiguous, problems may still arise during implementation. School officials may experience frustrations related to complying with the law's requirements for a particular student while remaining mindful of the broader concerns of the LEA and other students: for example, the funding and administrative burdens that McKinney-Vento's transportation requirements impose on LEAs and the question of whether McKinney-Vento creates a double standard that gives homeless students more-favorable treatment than non-homeless students. These issues are examined below in the section "McKinney-Vento in North Carolina: Implementation and Constraints."

Before turning to the sections describing how administrators in North Carolina can answer the second question—what the act requires—it will be useful to review the sources of the act's provisions, how they evolved, and what legal actions have been taken to enforce McKinney-Vento since its original enactment in 1987.

Cases, Controversies, and Political Action, 1987–2004

Few homeless education cases have been litigated to completion or settled during McKinney-Vento's seventeen-year history.¹² The limited case law does, however, demonstrate the complex interactions between federal and state law and policy and the potential impact of litigation on legislative efforts—and vice versa—in the evolution of the law.

Shortly after passage of the original Stewart B. McKinney Homeless Assistance Act in 1987, two actions were brought in

federal court in New York when children were refused enrollment because of state residency requirements.¹³ In *Orozco v. Sobol*, a seven-year-old child was denied enrollment both in the school district where her family resided in emergency housing and in the district where her family had contacts and hoped to find permanent residence. The court grappled with the limits state residency requirements placed on a child's right to education, ultimately issuing a temporary injunction directing the school district where her family resided in emergency housing to enroll the child pending a decision on the merits of the case.

The following year *Harrison v. Sobol* reached the same court. As in *Orozco*, two school districts engaged in a conflict over which district bore responsibility for educating the plaintiff's homeless children. The children had lived for a time with their father and attended school in the district where he resided. After their house burned down, the children resided temporarily in a motel with their mother in another district. The students were out of school for a week before one of the districts admitted the students pending resolution of the dispute. The plaintiffs recovered nominal damages for the days the students missed school because of the school districts' actions.

In both New York cases, the issue was not whether the students were entitled to an education but *where* they would receive it. Although the cases did not lead directly to legislative reform, they did highlight a major flaw in the original act: for homeless students, residency would often be open to question. If schools were free to engage in gamesmanship over residency requirements, students could be prevented from receiving any educational services at all. The 1990 amendments to the McKinney Act, therefore, took steps to clarify this area of the law, prohibiting the use of homelessness to deny a student admission to school and mandating that states eliminate any barriers to school entry for homeless students presented by residency and records requirements.¹⁴

The most oft-cited case brought during the seventeen-year history of McKinney-Vento is *Lampkin v. District of Columbia*, which held in 1994 that individual litigants could sue to enforce individual rights conferred by the act.¹⁵ The plaintiffs in *Lampkin*, parents of homeless children in

13. *Orozco v. Sobol*, 674 F.Supp. 125 (S.D. N.Y. 1987); *Harrison v. Sobol*, 705 F.Supp. 870 (S.D. N.Y. 1988). Neither case was brought under the McKinney Act, though *Orozco* utilized the then-current definition of *homeless* contained in the act. Both were § 1983 actions to enforce rights under the Due Process Clause (and, in *Orozco*, the Equal Protection Clause) of the Fourteenth Amendment.

14. See Stolove, "Pursuing the Educational Rights of Homeless Children: An Overview for Advocates," at 1352.

15. *Lampkin v. District of Columbia*, 27 E3d 605 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1016 (1994). Under 42 U.S.C. § 1983, "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other

11. Sec. 721 (2); Sec. 722 (g)(1)(J).

12. See Patricia F. Julianelle, "The McKinney-Vento Act: Stable Schooling Despite Unstable Housing," *Clearinghouse Review: Journal of Poverty Law and Policy* 37 (January-February 2004): 509, available to subscribers at www.povertylaw.org/legal_research/articles/index.cfm (last visited March 30, 2005).

Washington, D.C., brought suit alleging that the District violated specific provisions of McKinney-Vento and asking the court to grant an order requiring compliance. The court found that the act imposed mandatory obligations on the states (the District of Columbia is considered a “state” under McKinney-Vento) and that those obligations were well defined for states that accepted McKinney Act funds. The court commented that the legislation was not too “vague and amorphous” to allow judicial enforcement. After reviewing prior case law, the court ruled that McKinney-Vento conferred enforceable rights on homeless children and that 42 U.S.C. § 1983 could be used to enforce those rights.¹⁶ The Supreme Court subsequently denied the District’s writ of certiorari, allowing the lower court’s ruling to stand without deciding on the merits of the case.

Again, although the decision in this case was not directly linked to McKinney-Vento amendments, its subject matter—individual rights enforceable against decisions made by local officials—was at the heart of the enhancement of local control over use of McKinney funds that became the focus of congressional action in 1994.¹⁷ Indeed, on remand, the district court judge spelled out specific requirements for identification and enrollment of homeless students and for providing transportation. In response, the District withdrew from the McKinney Program to avoid a court order it deemed too costly, and the district court judge dissolved his earlier injunction.¹⁸

Passage of an Illinois homeless education law and a class action lawsuit filed in 1992 against the Chicago Public Schools influenced the substance of McKinney-Vento more than any other sources of authority. In 1994 the Illinois legislature passed the Illinois Education for Homeless Children Act in response to a suburban district’s attempt to exclude homeless students and related state-level advocacy efforts.¹⁹

person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

16. The court characterized the act as “a mix of large visions and gritty detail, combining specific sections dealing with the provision of education to homeless children and youths with a broad congressional policy that ‘each State educational agency . . . assure that each child of a homeless individual and each homeless youth have access to a free, appropriate public education . . . [and that] homelessness alone . . . not be sufficient reason to separate students from the mainstream school environment’” (*Lampkin*, 27 F.3d at 606, citing 42 U.S.C. § 11431 (Supp. IV 1992)). The court then compared judicial review of “best interests” determinations, which defendants alleged was a vague and amorphous criterion, with review of determinations of “appropriate education” under the Education for the Handicapped Act, which the court had done without difficulty on several occasions in recent years and did not consider a vague criterion. *Id.* at 612.

17. See Wong *et al.*, “The McKinney-Vento Homeless Assistance Act” at 293.

18. *Lampkin v. District of Columbia*, 886 F.Supp. 56 (D.D.C. 1995).

19. See R. Heybach and P. Nix-Hodes, “The Educational Rights of Homeless Children: Creating a Model Program in Illinois,” Chicago Coalition for the Homeless Policy Paper (n.d.), available at <http://www.chicagohomeless.org/factsfigures/facts.htm> (last visited March 5, 2005).

Salazar v. Edwards, filed in 1992 under the 1990 McKinney statute, was eventually settled, without trial, four years later.²⁰ After years of the defendants’ alleged noncompliance with the *Salazar* settlement, the plaintiffs moved to enforce it. In 1999 the court entered an order requiring the school board to take the specific steps agreed to in the settlement to comply with both McKinney-Vento and the state statute.²¹

The court order required the board (1) to undertake a massive information campaign on the rights of individuals experiencing homelessness; (2) to train school personnel about the requirements of the act and how to comply with it; (3) to designate school liaisons for identifying, assisting, and enrolling homeless children; (4) to provide bus passes so homeless children could attend their schools of origin; (5) to inform homeless parents about the dispute resolution process; and (6) to comply with reporting and information production requirements.²² After the 1999 order, the lead attorney for the homeless children and families reported much-improved relations among schools, homeless children, parents, and advocates.²³

Not coincidentally, the order in *Salazar* bears a remarkable similarity to McKinney-Vento as it looked beginning in 2002. Judy Biggert, a member of the U.S. House of Representatives from suburban Chicago, introduced the McKinney-Vento reauthorization legislation and was instrumental in its passage.²⁴ The success of the Illinois program was encouraging and had a dramatic impact on federal homeless education laws. It remains to be seen whether the successes of the Illinois program can be replicated in other states and what flaws in that approach will be exposed as other jurisdictions attempt to implement large portions of it through McKinney-Vento.

In 2001 another case brought earlier that year was settled in Maryland. The plaintiffs in *Collier v. Board of Education of Prince George’s County* claimed that the county was not in compliance with McKinney-Vento and related state laws.²⁵ The settlement required the school board to put in place many of the measures contained in the Illinois settlement. They included training school employees to recognize signs of homelessness and assist homeless students; requiring immediate enrollment of students, even without proof of

20. 92 CH 5703 (Ill. Cir. Ct. Cook County, Chancery Division, filed June 12, 1992).

21. 92 CH 5703 (Ill. Cir. Ct., Chancery Division, Cook County August 3, 1999).

22. For settlement agreement summary, see National Center on Poverty Law at <http://www.povertylaw.org/legalresearch/cases> (last visited May 24, 2005).

23. Telephone Interview with Laurene Heybach, Director, Law Project of the Chicago Coalition for the Homeless (Dec. 21, 2001) cited in *Northern Illinois University Law Review* 23 (2003): 257, 275.

24. See Heybach and Nix-Hodes, “The Educational Rights of Homeless Children.”

25. *Collier*, DCK 2001-1179 (D. Md., filed Apr. 20, 2001).

residency or other records; allowing students to remain in their schools of origin or immediately transfer to a nearby school when they move to temporary housing; and providing transportation for homeless students whose parents or guardians want them to remain at their original schools.²⁶ Along with *Salazar*, *Collier* may signal a move toward increased use of litigation to enforce student rights under McKinney-Vento.

Actions in two cases decided after passage of the 2002 McKinney-Vento amendments have clarified the law's requirements. The first was a motion to certify a plaintiff class to challenge the Board of Education of Montgomery County, Maryland, for alleged violations of McKinney-Vento. In granting the motion for class certification, the judge ruled that students living in transitional housing qualify as homeless under McKinney-Vento and that time-limited housing focused on helping families move to permanent housing qualifies as "transitional housing."²⁷ In the second case, New York's highest state court applied a state definition of residency to determine that the district of the children's last permanent residence was responsible for their educational costs.²⁸ These recent cases illustrate that, in spite of all of the changes in McKinney-Vento over the past seventeen years, critical components of the statute—including the fundamental issues of defining what it means to be homeless and how residency is to be determined—still perplex local officials.

In many ways, failure to implement McKinney-Vento properly seems more likely than ever to lead to legal controversy. In February 2004, the National Law Center on Homelessness and Poverty (NLCHP) filed a class action lawsuit in federal court in New York, alleging a state failure to provide homeless children access to a free, appropriate public education as required under McKinney-Vento.²⁹ Among the alleged deficiencies were failure to provide required transportation, school officials' impermissible demands that homeless students provide records and documentation, failure to make school selection decisions based on the best interests of the child, and denial of homeless students' right to remain in their schools of origin.

The NLCHP suit may be a harbinger of litigation yet to come. Armed with the provisions of the 2002 version of McKinney-Vento and the knowledge that settlements and courts tend to favor plaintiffs' positions, advocacy groups for homeless students appear to be increasingly assertive and well

organized. At the same time, many resources are available to help schools understand and comply with McKinney-Vento and reduce the likelihood of litigation.³⁰

Key Provisions of the 2002 McKinney-Vento Act

McKinney-Vento spells out several duties to be performed by officials at the federal and state levels, though the bulk of responsibility for implementation falls on school officials at the local level.³¹ The secretary of the U.S. Department of Education is responsible for federal efforts under McKinney-Vento, which include providing oversight, support, and technical assistance to states, and evaluating and disseminating information about programs designed to meet the educational needs of homeless students.

At the state level, every state educational agency (SEA) is charged with "[ensuring] that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public pre-school education, as provided to other children and youths."³² Each state is required to have a coordinator for the education of homeless children and youths. This official is responsible for coordinating the provision of services for homeless students by state agencies, providing technical assistance to local educational agencies (LEAs) and local liaisons to ensure statewide compliance, collecting information and data on homeless education in the state, developing and carrying out a state plan, and submitting progress reports to the U.S. Department of Education. The state plan must demonstrate that the SEA and LEAs have developed policies to remove barriers to enrollment and retention that result from immunization and medical records requirements, residency requirements, lack of documentation, guardianship issues, and uniform or dress code requirements.³³ The plan must also ensure that homeless children and youth will not be segregated, stigmatized, or isolated on account of their

30. See Patricia F. Julianelle, "The McKinney-Vento Act: Stable Schooling Despite Unstable Housing," *Clearinghouse Review: Journal of Poverty Law and Policy* 37 (January–February 2004): 509, available to subscribers at www.povertylaw.org/legal_research/articles/index.cfm (last visited March 30, 2005). See also the organizations and Web sites listed on the sidebar on p. 8. These organizations offer additional explanations of key legislative provisions and implementation strategies. Each resource represents the views of the organization providing it and so may be biased. School officials will be best served by talking with local counsel about ambiguous or troublesome aspects of McKinney-Vento.

31. The duties and requirements discussed in this section are from Subtitle B of Title VII, "Education for Homeless Children and Youths," McKinney-Vento Homeless Assistance Act, (42 U.S.C. § 11431 *et seq.*) unless otherwise noted. The full text of Subtitle B is available at www.nationalhomeless.org/ehcylaw.html (last visited January 25, 2005).]

32. Sec. 721. "Statement of Policy."

33. See U.S. Department of Education, "Notice of School Enrollment Guidelines," 67 Fed. Reg. 46 (March 8, 2002).

26. Steve Schmadeke, "Settlement Gives Homeless Better Access to Schools," *Washington Post*, August 23, 2001, T16.

27. *Bullock v. Bd. of Educ. of Montgomery County*, 210 F.R.D. 556 (D. Md. 2002).

28. *Longwood Central School District v. Springs Union Free School District*, 806 N.E.2d 970 (N.Y. Feb. 17, 2004).

29. First Amended Class Action Complaint for Declaratory and Injunctive Relief, National Law Center on Homelessness and Poverty v. State of New York, Civil Action No. 04 0705 (ADS/ARL), March 31, 2004.

homelessness; that every LEA in the state has designated a local liaison; and that other local obligations under McKinney-Vento (discussed below) are met.

The bulk of McKinney-Vento's requirements necessarily fall on the LEAs and local school officials. This section does not provide an exhaustive treatment of the act's provisions but instead highlights the schools' major responsibilities. The LEAs must implement these provisions for every student determined to be homeless under the framework discussed above and for every student enrolled while engaged in the dispute resolution process over his or her eligibility for McKinney-Vento services. The provisions govern ten broad areas of implementation: school selection, enrollment, dispute resolution, records, transportation, access to comparable services, academic achievement standards, local liaisons, segregation, and coordination.³⁴

School Selection

McKinney-Vento contains provisions that allow parents to choose between two school placements when the family relocates because of homelessness. The relevant circumstances arise most frequently when a family becomes homeless and leaves one district and moves to temporary housing (e.g., shelter, hotel, living with friends) in another district. In these circumstances, the LEA is required to keep the child in the school in the first district (the "school of origin") unless the parent or guardian prefers a different placement.³⁵ This preference for the school of origin was one of the recent changes to McKinney-Vento brought about by research documenting links between educational stability and school success.³⁶ The statute provides only one limitation to the school-of-origin preference by stating that districts must honor the preference "to the extent feasible."³⁷ This limitation refers to the parents' choice and the student's best interests, not to the school's or district's ability to pay or its administrative convenience. An LEA may legitimately consider the student's age, special needs, length of commute and its educational impact, anticipated

length of stay in temporary housing, and the time remaining in the school year.³⁸

Enrollment

McKinney-Vento requires the school selected according to the above criteria to immediately enroll homeless children or youths, even if they cannot produce records that are normally required. If a child or youth needs immunizations, or medical records are not available, the LEA must immediately refer the parent or guardian to the local liaison. The student is to remain enrolled while the liaison helps the student or parents obtain necessary immunizations or medical records.

The term *enrollment* under McKinney-Vento refers to full participation in all school activities, not just classes. States and localities are charged with reviewing and revising laws, regulations, policies, and practices that may act as barriers to enrollment. Matters related to records requirements, immunizations, residency, guardianship issues, or uniform or dress codes may not prevent the enrollment of homeless students.

Dispute Resolution

Under McKinney-Vento, every state must establish procedures to promptly resolve disputes over the placement of homeless students.³⁹ If a homeless student is to be sent to a school other than the school of origin or the school preferred by the parents or guardian, or is to be denied enrollment altogether, the LEA must provide a written explanation of the decision. The LEA must also notify the parent, guardian, or student of the right to appeal and, while the dispute is pending, enroll the student in the school preferred by the youth and his or her parent. The dispute resolution process must be carried out "as expeditiously as possible" with the assistance of the local liaison.⁴⁰ The liaison is also responsible for helping unaccompanied youths navigate the dispute resolution process.

Records

The act places responsibility for obtaining relevant academic and other records from the student's former school on the enrolling school. The school district must also help arrange, through the local liaison, for the student to obtain immunizations, immunization records, and other medical records. Schools are to provide for the retention and maintenance of records of homeless students and make pertinent information readily available when students switch schools.⁴¹

34. This framework is borrowed from a summary collaboratively developed by several organizations, including the National Center for Homeless Education (NCHE), funded by the U.S. Department of Education, and other national groups that address homelessness and homeless education. See, e.g., NCHE, McKinney-Vento 2001—Law into Practice Issue Brief, "The Education of Students in Homeless Situations in the 2001 No Child Left Behind Act: Summary of McKinney-Vento Act and Title I Provisions" (2002).

35. The "school of origin" is defined more precisely as "the school the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled." Sec. 722(g)(3)(G). Schools are required to make placement decisions according to the student's "best interests," which the act defines as the school of origin unless that is contrary to the parent or guardian's wishes.

36. J. Wong, A. Salomon, L. T. Elliott, L. Tallarita, and S. Reed, "The McKinney-Vento Homeless Assistance Act—Education for Homeless Children and Youths Program: Turning Good Law Into Effective Education." *Georgetown Journal on Poverty Law and Policy* 11 (Spring, 2004): 283, 284–89.

37. Sec. 722(g)(3)(B).

38. U.S. Dept. of Educ., *Education for Homeless Children and Youth Program*, at G-4.

39. Sec. 722(g)(1)(C); Sec. 722(g)(3)(E).

40. Sec. 722(g)(3)(E).

41. The law requires the school to maintain "any record ordinarily kept by the school, including immunizations or medical records, academic records, birth certificates, guardianship records, and evaluations for special services or programs." Sec. 722(g)(3)(D).

McKinney-Vento Resources on the World Wide Web

North Carolina's Homeless Education Program
<http://www.ncpublicschools.org/schoolimprovement/alternative/homeless/>

North Carolina Coalition to End Homelessness
<http://www.ncceh.org/>

National Alliance to End Homelessness
www.endhomelessness.org

National Association for the Education of Homeless Children and Youth (NAEHCY)
www.naehcy.org

National Center for Homeless Education (NCHE)
www.serve.org/nche

National Coalition for the Homeless (NCH)
www.nationalhomeless.org

National Law Center on Homelessness & Poverty (NLCHP)
www.nlchp.org

National Network for Youth (NN4Y)
www.NN4Youth.org

Institute for the Study of Homelessness & Poverty
www.weingart.org/institute

Transportation

According to the U.S. Department of Education, transportation has historically been the number one barrier to enrollment of homeless children and youths.⁴² Every state's McKinney-Vento plan must contain assurances that LEAs will provide transportation from the homeless student's temporary residence to his or her school of origin in accordance with the placement provisions described above. In cases of interdistrict—or even interstate—placement, the two LEAs involved must agree on a method for transporting the student and apportioning the related costs. If they cannot agree, the act directs that they share the responsibility and costs of transportation equally as long as the dispute is pending.⁴³ This requirement applies even if an LEA is not receiving a McKinney-Vento subgrant or does not provide transportation to its non-homeless students.⁴⁴

42. U.S. Dept. of Educ., *Education for Homeless Children and Youth Program*, following H-1.

43. *Id.* at H-1, H-5.

44. See "McKinney-Vento in North Carolina" below for information on subgrants to LEAs.

Access to Comparable Services

Homeless students must receive services comparable to those offered to an LEA's non-homeless students, including special education, gifted and talented programs, school nutrition, public preschool, programs for students with limited English proficiency, vocational education, before- and after-school programs, and transportation. As long as the homeless student meets eligibility criteria applied to all students, he or she must receive the same or comparable services. As noted above, *enrollment* includes "attending classes and participating fully in school activities."⁴⁵ McKinney-Vento's provisions on access to comparable services supplement this definition of enrollment and extend the equality of homeless and non-homeless students beyond normal everyday school activities to include all special services available to subsets of the school population.

Academic Achievement Standards

McKinney-Vento states that homeless children and youth must be held to the same state standards for academic achievement as other students. States must include homeless students in their academic assessment, reporting, and accountability systems. The state's own education plan must explain how the state is preparing homeless students to meet the same standards as other students.

Local Liaisons

Every LEA in a state receiving federal funds, not only those receiving McKinney-Vento subgrants, must designate a local liaison for homeless children. This official is responsible for identification of homeless children and, in coordination with external service providers and agencies, is responsible for locating and serving local homeless families, children, and youth. He or she identifies appropriate services for each enrolled homeless student, notifies parents or guardians of their rights and available services under McKinney-Vento, and assists in resolving enrollment disputes and transportation problems. The local liaison also provides for the public distribution of information about the educational rights of homeless children and youths in places where such children and youths are likely to be found.

Segregation

"Homelessness alone is not sufficient reason to separate students from the mainstream school environment."⁴⁶ With a few narrow exceptions, states that receive assistance under McKinney-Vento (currently all states) are prohibited from segregating homeless students in separate schools, programs, or settings within schools. There are exceptions for situations

45. Sec. 725(1).

46. Sec. 721(3).

in which separation is necessary for the health and safety of the students or “to provide temporary, special, and supplementary services to meet the unique needs of homeless children and youths.”⁴⁷ States and localities must also adopt specific policies and programs to prevent segregation or stigmatization based on a student’s homeless status. The U.S. Department of Education recommends, for example, avoiding use of the word *homeless* on outreach posters, suggesting instead that such posters describe symptoms of homelessness rather than referring to a person’s homeless status.⁴⁸

Coordination

McKinney-Vento requires state and local homeless coordinators to cooperate with the SEA, state social services, state and local housing agencies, and other agencies to provide services to homeless children and youths and their families. LEAs must also work with local agencies and programs and with other LEAs to resolve interdistrict issues such as transportation or transfer of school records. Furthermore, the act requires LEAs that receive McKinney-Vento subgrants to coordinate with other agencies to “ensure that homeless children and youths have access and reasonable proximity to available education and related support services” and that school personnel and service providers are aware of the challenges associated with homelessness.⁴⁹

McKinney-Vento in North Carolina: Implementation and Constraints

North Carolina received an estimated \$1.3 million in 2004 and will receive approximately the same amount to implement McKinney-Vento in 2005. That amount places the state tenth in funding out of the fifty states that receive funds and marks a nearly twofold increase over federal funding received in 2001.⁵⁰ McKinney-Vento requires the state to subgrant at least 75 percent of its allocation to LEAs, based on their demonstrated needs and the quality of their applications. For 2003 the state awarded grants totaling \$949,042—75 percent of the federal grant to North Carolina—to 26 LEAs.⁵¹ The remaining \$315,562 paid state administrative costs. The maximum grant to an LEA was \$40,000 and the vast majority of

grantees received between \$39,000 and \$40,000. Four applicants were not approved for funding.

When grant funds are broken down to the LEA level, it is easy to see why many believe the program is drastically underfunded, especially in areas serving large numbers of homeless children. The local liaison the act requires each LEA to identify may, and often does, have additional duties within the district; yet he or she is responsible for addressing transportation issues, conducting outreach, and satisfying the other requirements of McKinney-Vento outlined in the preceding section—all with \$40,000 per year. The state and localities are left to pick up the balance. Moreover, individual LEAs do not have the option to forego the grant money and thereby “opt out” of McKinney-Vento; many requirements are binding on *all* LEAs, whether or not they receive McKinney grant funds. A state can opt out of McKinney-Vento (though none have), but an LEA, by itself, cannot.

North Carolina’s state plan for homeless children, revised most recently on November 5, 1998, includes the following state responsibilities: reviewing and recommending revisions of residency requirements in state education laws that may impede access to homeless children and youth; gathering data on the number and location of homeless children in the state; consulting with LEAs; evaluating the state plan; and reporting to the U.S. Department of Education as required under federal law.⁵² The state plan also assigns to LEAs responsibility for identifying homeless students; collecting data; coordinating school assignments, services, and education planning; maintaining school records, and providing homeless students the right to appeal school decisions. Though many of these provisions may be outdated due to the 2002 McKinney-Vento amendments, the plan provides a useful starting point for state-level action to ensure compliance with McKinney-Vento.

A number of issues have arisen across the state regarding parts of McKinney-Vento that attorneys and school officials find ambiguous, unfair, or administratively impractical due to resource constraints.⁵³ The issue mentioned most frequently is McKinney-Vento’s transportation requirement, which can impose enormous costs on districts and generate situations that make those costs seem unnecessary to school officials. Residency determinations and the “immediate

47. Sec. 722(e)(3); Sec. 723(a)(2)(B)(ii).

48. “Identifying Homeless Children and Youth: Best Practices,” in U.S. Department of Education, *Education for Homeless Children and Youth Program*, following F-6.

49. Sec. 722(g)(5)(C).

50. Based on estimates from U.S. Department of Education “State Tables By State,” Excel Spreadsheet, Row 4559, at www.ed.gov/about/overview/budget/statetables (last visited August 27, 2004). North Carolina received \$728,563 in 2001, \$1.05 million in 2002, and \$1.26 million in 2003.

51. “Executive Summary: Education for Homeless Children and Youth Grant Award.” North Carolina State Board of Education Meeting, August 2003.

Available at http://www.ncpublicschools.org/sbe_meetings/03index.html. The \$949,042 total includes \$946,687 from the 2003 federal grant and \$4,708 in carry-over funds.

52. November 5, 1998, is the “current policy date” listed in the North Carolina State Board of Education Policy Manual. The state’s 2002 State Consolidated Plan under No Child Left Behind contains general assurances that programs will be administered in accordance with applicable statutes and a program-specific assurance that the state plan for Title I implementation is consistent with McKinney-Vento.

53. The author wishes to thank the numerous state and local school officials and attorneys who provided their thoughts on post-reauthorization McKinney-Vento implementation in North Carolina.

enrollment” requirement have also caused problems, especially for districts dealing with unaccompanied youth.⁵⁴ Some school administrators are troubled as well by what they perceive as a double standard created by the law’s requirements, which force them to suspend rules (e.g., immunization requirements) for homeless students while enforcing them for other students.

Transportation

Among school officials across the state, the transportation requirements are the most commonly cited source of frustration related to McKinney-Vento. In many situations the problems come down to the funds needed to comply with the requirements, while in others the issue involves McKinney-Vento’s indirect impact on an LEA’s budget. The funds needed depend on the number of homeless students served in an LEA and on each student’s specific situation, including whether he or she needs to be transported within the district or to a school of origin in another district. The indirect impact on an LEA’s budget may result when, for example, frequent scheduling changes due to homeless student relocations negatively impact bus efficiency, which is measured by a bus efficiency ratio used to compute state funding levels for transportation. In this way, McKinney-Vento can affect an LEA’s budget in areas not directly related to homeless education.

Administrative difficulties further complicate the transportation issues. In many districts, bus scheduling is a carefully timed, precise operation. Minor alterations in pickup and dropoff locations cause ripple effects across the system. Of course, systems are built to accommodate the minor, infrequent shifts caused by student relocations, but many officials are frustrated by the frequency and lack of predictability of changes for homeless students, especially when these changes may necessitate interdistrict arrangements.

In addition to funding issues and logistical difficulties, school officials may encounter situations in which the transportation requirements produce negative outcomes for a given student. As noted earlier, school officials are required to make student-centered calculations of each student’s best interests as part of the school placement process and may not consider the school district’s own financial or administrative burdens related to transportation.⁵⁵ Still, a school may con-

sider such transportation-related variables as the length of a student’s commute in making a “best interests” determination. In some cases, the school’s assessment of a student’s best interests may differ from that of the student or parents.

Consider the hypothetical situation of a student who wants to be transported an hour per day in each direction to attend a low-performing school that is her school of origin while a high-performing school is located just three blocks from her current temporary housing. What can a school do in a situation like this, where its determination of what is best for the student (based on quality of school and distance from student’s housing) disagrees with that of the student or parents? Ultimately, the school may decide to assign the student to another school (i.e., not the school of origin) but must provide an opportunity for the decision to be appealed and must enroll the student in the school of origin while the appeal is pending. Thus, McKinney-Vento’s strong preference for the school of origin gives parents ample opportunity to push for this option even when administrators are confident that a different placement is in the student’s best interests.

“Best interests” determinations affecting school placements aside, McKinney-Vento’s transportation provisions are quite clear: As long as a student resides in a LEA, that LEA is responsible for arranging and funding transportation. When a student continues to attend a school of origin in another LEA, the two LEAs must agree on a method of transportation and a way to apportion the costs of transporting the student. If no agreement is reached, the LEAs must share the costs equally.

This cost-sharing does not make the burdens any lighter for the LEAs, however, and many are turning to the only currently available alternative—creative planning. School districts have used buses, trains, taxis, mileage reimbursements to families, and various combinations of these methods to arrange transportation for homeless students. At least one district explored, but ultimately rejected, the idea of having school officials drive some students in the school officials’ own vehicles. The law does not require the school to take extreme measures to provide the most desirable or efficient means of transportation as long as the method used is “comparable to [transportation] services offered to other students in the school.”⁵⁶

Residency/Domicile Issues

A second problematic area relates to students whose permanent legal residence (*domicile*) is not North Carolina. State law provides that “it is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education on the same basis as all

54. Several other issues were raised during the author’s conversations with individuals across the state. Some of these were purely budgetary or administrative in nature (e.g., the amount of funding provided, the logistics of collecting data on students in an LEA), and others dealt specifically with coordination between particular organizations or types of organizations (e.g., links between schools and other service providers to address homeless students’ needs). Without intending to neglect these issues, we omit them here because they are beyond the scope of this discussion of specific McKinney-Vento provisions.

55. U.S. Department of Education, *Education for Homeless Children and Youth Program*, at G-4.

56. Sec. 722(g)(4).

children who are domiciled in this State.”⁵⁷ When a child or youth fits the definition of “homeless” in McKinney-Vento, North Carolina guarantees the student access to a FAPE, regardless of whether he or she is domiciled in the state.

However, the child or youth who is living in North Carolina but is not domiciled in the state and is not homeless according to McKinney-Vento’s definition is in a difficult position under North Carolina law.⁵⁸ Only a nondomiciled child who fits one of several specific categories enumerated in the state’s school assignment statute has a right to attend public school in the state without paying tuition.⁵⁹ As a result, the stakes are high for such children and youths; a determination that they are not “homeless” may make the difference between receiving the rights and services provided under McKinney-Vento and no right to attend the state’s public schools. If a student arrives at a school and asserts that he or she is homeless according to McKinney-Vento, even if the school disagrees about the child or youth’s homeless status, the student must be enrolled in the school where enrollment is sought while any appeal is pending. In addition, under state law a student cannot be denied an education because of uncertainty regarding his or her domiciliary status.⁶⁰

Often residents of other states, or even other countries, move to North Carolina to live with family or friends and want to enroll in the state’s public schools. The first question school officials must ask when they encounter such a student is—as it is with any child or youth—“Is this child or youth homeless under McKinney-Vento?” If so, the student must be enrolled, in spite of any potential contrary conclusion under state residency or domicile laws.⁶¹ This applies even to unaccompanied youth (those not in the physical custody of a parent or guardian) and to undocumented children.⁶² If

these students are not homeless under McKinney-Vento, they may still qualify for educational services under *state law*; or they may have to pay tuition or be refused enrollment. Decisions should be made on case-by-case basis.

McKinney-Vento’s Double Standard

School officials have identified several double standards that they are required to implement under McKinney-Vento. In the case of immunizations, for example, parents, teachers, and administrators may all agree that requiring immunizations as a prerequisite to enrollment in school protects all students’ health.⁶³ McKinney-Vento’s provision for relaxing immunization rules for homeless students by requiring immediate enrollment may strike many as unfair. The same concern applies to relaxation of other requirements (provision of academic or medical records or proof of residency) for homeless students under McKinney-Vento.

McKinney-Vento raises other questions of equity as well. Why do homeless students almost always have the right to attend their schools of origin after relocating to a new residence, with transportation provided, while other students do not? Why are liaisons appointed to help homeless students but not non-homeless students? Has McKinney-Vento created an unfunded mandate for LEAs in spite of federal grant funds? These questions reflect a concern that McKinney-Vento creates a separate class of students based on their homeless status and gives them advantages over their non-homeless peers.

Conclusion

The McKinney-Vento Homeless Assistance Act, a federal funding statute, outlines the Education for Homeless Children and Youths Program, an attempt to improve educational outcomes for homeless children. It creates an elaborate administrative structure and a set of requirements that states must comply with to serve homeless students. When presented with a student who may qualify for services through the McKinney-Vento Program, school administrators must first decide whether the child is homeless and, if so, what actions the law requires the school or LEA to take. As the experience of North Carolina school officials shows, answering these seemingly straightforward questions can sometimes be exceedingly difficult. ■

57. N.C. GEN. STAT. § 115C-366 (a2) (hereinafter G.S.).

58. The current McKinney-Vento definition of homelessness is more inclusive than definitions in prior versions of the law, one of which was used as the basis for the definition of homelessness included in the North Carolina statute. Thus, if the current McKinney-Vento definition does not apply, the child or youth will not be “homeless” under the definition contained in G.S. 115C-366.

59. G.S. 115C-366 (a3) extends the right to attend school in a LEA to children who are residing with an adult domiciled in the LEA for the following reasons: “as a result of a) death, serious illness, or incarceration of a parent or legal guardian, b) abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance, c) abuse or neglect by the parent or legal guardian, d) the physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, or e) the loss or uninhabitability of the student’s home as the result of a natural disaster.” See also G.S. 115C-366.2.

60. G.S. 115C-366 (a2).

61. In fact, McKinney-Vento requires the state to revise such state laws if they may act as barriers to school attendance by homeless children or youths. Sec. 721 (2); Sec. 722 (g)(7).

62. See, e.g., Sec. 722 (e)(3)(c)(i); Sec. 722 (g)(1)(J)(iii). See also U.S. Dept. of Educ., *Education for Homeless Children and Youth Program*, at J-1, J-2; Plyler v.

Doe, 457 U.S. 202 (1982) (undocumented children have a right to free public education).

63. G.S. 130A-155 (a). “No child shall attend a school (pre K-12), whether public, private or religious, a child care facility as defined in G.S. 110-86(3), unless a certificate of immunization indicating that the child has received the immunizations required by G.S. 130A-152 is presented to the school or facility.”