

EDUCATING AMERICA'S HOMELESS YOUTH THROUGH REINFORCEMENT OF THE MCKINNEY VENTO HOMELESS ASSISTANCE ACT

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I. INTRODUCTION

Oftentimes it is easy to ignore the homeless man on the street corner asking for spare change or the “bag ladies” living alone in alleys as the world passes them by. It is not surprising to hear people whisper under their breath that these people choose that lifestyle or that they do not take personal responsibility for the bad decisions that resulted in his or her current plight. However, what is indeed surprising is the reality that one will see when stereotypes are set aside.

Entire families have joined the ranks of the homeless population in America. The startling reality is that children are among the homeless due to complex circumstances beyond their control and understanding. These children are forced to endure a transient lifestyle and as a result face numerous emotional, physical, and mental challenges that their peers do not. The unforgiving circumstances placed on these innocent children can leave traumatic effects that many adults could never attempt to imagine. Sadly enough, it is the children who are among the most vulnerable of the homeless population and who “need extra understanding and help because they played no part in becoming homeless.”¹

Who are the Homeless Youth?

The federal government has defined homeless children as “individuals who lack a fixed, regular, and adequate nighttime residence.”² Examples of this include:

¹ James Gonser, *Homeless Children Face Unique Barriers*, THE HONOLULU ADVERTISER (May 9, 2004), <http://the.honoluluadvertiser.com/article/2004/May/09/ln/ln05a.html>.

² McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11434a (2002).

children who are sharing the housing of other persons...; are living in motels, hotels, trailer parks, or camping grounds...; are living in emergency or transitional shelters; [and] children... 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.³

This definition specifically includes children in homeless families as well as unaccompanied children who have run away from home or institutional care. There are numerous national estimates of the homeless population in the United States. However, since being homeless is often a temporary condition, there is no definitive representation of how many people actually experience being homeless in a given year.⁴ Nonetheless, it is estimated that anywhere between 1.6 and 2.8 million children run away from their homes each year, and 1.35 million children of homeless families may at some point also face a lack of a fixed residence.⁵

For these children, some of the most basic necessities of normal life are nearly impossible to acquire. Included in this list of necessities is an adequate education. To a homeless child, the idea of succeeding in school may seem far-fetched when there are thoughts of having a stable home to live in, clean clothes to wear, and warm food to eat. Instead of living carefree lives like children should, these children suffer through the struggle of having to survive impossible conditions at a young age. Stability is vital for a child's healthy development, but it is not practicable for a homeless child who faces a life of constant change.

II. THE DEVASTATING EFFECTS OF BEING A HOMELESS CHILD

Physical, Emotional, and Mental Deterioration

In order to adequately understand the harsh impact that homelessness has on the educational opportunities of children, it is

³ *Id.*

⁴ Jennifer A. Na, *For Better or For Worse?: A Closer Look at the Federal Government's Proposal to Provide Adequate Educational Opportunities for Homeless Children*, 51 *HOW. L. J.* 863, 866 (2008).

⁵ Patricia Julianelle, *Using What We Know: Supporting the Education of Unaccompanied Homeless Youth*, 7 *SEATTLE J. FOR SOC. JUST.* 477, 477; Na, *supra* note 4, at 866.

important to recognize the nature of homelessness itself. Before a homeless child's lack of education can come to the forefront of concern it is necessary to see the impact that homelessness has on a child's physical, emotional, and mental health. Being homeless can wreak havoc on a child's physical wellbeing; the lack of a permanent residence, having to seek shelter in crowded living situations, and constant exposure to the elements lead to high rates of illness for homeless children.⁶ In particular, homeless children "suffer from asthma and elevated blood lead levels" at higher rates than children with a fixed residence, and they are also more likely to make emergency rooms visits and to be hospitalized.⁷

In addition to sickness taking a toll on a child's body, being homeless places children at risk of abuse and violence. As a result of living in public places, homeless children risk becoming victims of physical and sexual assaults, and are sometimes left to barter for food and shelter by taking part in sexual acts.⁸ It is no surprise that a child's emotional state is shaken, given the traumatic physical effects of homelessness.

Tragically, homelessness has the potential to create emotional baggage that a child carries into adulthood; childhood consists of some of the most sensitive years in a person's development. However, it is impossible for homeless children to grow and develop individualism when they fear being stigmatized by their peers due to their noticeably poor condition. Forty-seven percent of homeless children have emotional problems such as anxiety, depression, and withdrawal compared to only eighteen percent of other children.⁹ Withdrawing from other children and becoming isolated from their communities contributes significantly to accumulated stress and eventually leads to feelings of loneliness, sadness, and fear.¹⁰ These feelings take an unquestionable toll and usually result in low self-esteem, poor social skills, and unruly behavior.¹¹ Homeless children usually fail to receive medical atten-

⁶ Julianelle, *supra* note 5, at 478.

⁷ John H. Wong et al., *McKinney-Vento Homeless Assistance Act Subtitle B—Education for Homeless Children and Youths Program: Turning Good Law into Effective Education*, 16 *GEO. J. POVERTY L. & POL'Y* 53, 58 (2009).

⁸ Julianelle, *supra* note 5, at 478.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Na, *supra* note 4, at 869.

tion for their emotional problems and extreme psychological damages can result without access to an adequate support system or services to deal with the trauma of being homeless, extreme psychological damage can result.

In addition to the physical and emotional barriers faced by homeless children, their mental stability is also at risk. Homeless children suffer from high rates of developmental delays, and are at an even higher risk for learning disabilities.¹² Often, children in homeless families do not have parents with the time to be mindful of their developmental needs, resulting in these needs going unmet. As a result, these children are more likely to repeat the same grades multiple times or drop out of school completely.

Interrupted Education

After taking notice of the many obstacles homeless children face in their everyday lives, it is no surprise that homelessness drastically interrupts a homeless child's education. The absence of a home and the constant mobility that come with homelessness have been ranked by psychologists as two of the primary reasons for a homeless child's poor attendance and performance in school.¹³ Since school districts nationwide impose strict requirements for entry into their schools, registering a homeless child in a public school may present complications resulting from legal and administrative barriers. Most public schools implement residency, immunization, and school record requirements; however, it is unrealistic that a homeless child can obtain these requirements. Even if a child is able to enroll in a public school despite the requirements imposed, the most basic barriers such as obtaining books, supplies, clothing, and the lack of transportation will usually prevent the child from succeeding in school.

In order to attend school, a child must live permanently within the boundaries of the school district. Unfortunately, homeless children cannot accomplish this because they have no residence. Moreover, school districts often disagree over how residency is determined, causing homeless children remain in "legal limbo" during which time they are not considered residents any-

¹² Wong, *supra* note 7, at 58.

¹³ Andrea B. Berkowitz, *Homeless Children Dream of College Too: The Struggle to Provide Americas' Homeless Youth with a Viable Education*, 31 HOFSTRA L. REV. 515, 519 (2002).

where.¹⁴ Homeless children are always on the move in order to find stable shelter; thus, they are unable to establish legal residency in any particular school district.¹⁵

In addition to the residency requirements, immunization and school records are also barriers that homeless children must overcome in order to gain entry into school. Attempting to obtain records such as birth certificates, proof of medical immunizations, and proof of prior attendance in school can be a logistical nightmare for many homeless parents. For a homeless family on the move, getting and keeping track of these records is an impossible task, especially if the family is not in one place long enough to gain access to the respective agencies that would have the specific records.¹⁶ Many homeless parents are ill prepared to handle these problems and as a result their child may not be allowed to attend school while attempts to retrieve her necessary records are made.

Although residency and record requirements keep many homeless children out of school, a lack of transportation between the child's current shelter and school may be the most serious burden placed on a homeless child attempting to acquire an education. Homeless children suffer problems with transportation due to the fact that their parents do not own cars, nor can they afford the cost of public transportation in order to get their children to and from school.¹⁷ Accordingly, some homeless children are forced to walk as far as two miles to school, while others are bused to schools more than forty miles away.¹⁸ The problem with transportation puts a tremendous strain on a homeless child's dream of obtaining an education. When a homeless child cannot get to school on a daily basis they lose their shot at an education and face troubles integrating into society.

With no education, homeless children will be unable to support themselves emotionally or financially. Without the proper education, homeless children will grow to be uneducated, unskilled, and will eventually find themselves contributing to unemployment rates. For the lucky few who may find a job, the wage

¹⁴ National Coalition for the Homeless, *Broken Lives: Denial of Education to Homeless Children* 7 (1987).

¹⁵ *Id.*

¹⁶ Berkowitz, *supra* note 12, at 520.

¹⁷ Na, *supra* note 4, at 868.

¹⁸ *Id.*

they receive will likely not be enough to cover all expenses they have, and the result will more than likely be that these children are left to engage in activities that will lead to juvenile delinquency.

III. HOMELESSNESS AS A PRECURSOR TO JUVENILE DELINQUENCY

There is a significant overlap between homelessness and contact with the juvenile justice system. It seems as though there is a cause and effect relationship between the two, since in some cases homelessness triggers actions that put some children in contact with the juvenile justice system. Usually, the offenses that lead to homeless children being taken into custody are nonviolent “quality of life” offenses, such as panhandling, loitering, and sleeping or camping in public.¹⁹ Although these are minor offenses, most homeless children do not have the money to pay any fines that may come as a result. Thus, a warrant may be issued for their arrest, which can and often does lead to major consequences at a later time.²⁰

Also, as previously discussed, some homeless children engage in different types of survival tactics that can have legal ramifications. Most homeless children, specifically runaways, may be left on their own for long periods of time without an adult to help guide their behavior and keep them out of trouble, so they do whatever they think is necessary to survive. For instance, some resort to prostitution, stealing, or selling drugs in exchange for a place to stay or as a means to earn quick money.²¹ Furthermore, the longer unaccompanied children experience homelessness, the greater the probability of committing an offense that will cause them to fall victim to the juvenile justice system due to the extreme stress and pressure of their living situation.

Although homeless children may become perpetrators of criminal activity, they may also, unfortunately, become the victims of criminal activity; this outcome results from the homeless chil-

¹⁹ National Center for Homeless Education, *Best Practices in Interagency Collaboration: Youth Homelessness and Juvenile Justice* 1, 1 (2001), available at center.serve.org/nche/downloads/briefs/juv_just.pdf.

²⁰ *Id.*

²¹ *Id.* at 1-2.

dren being forced to spend great lengths of time in public spaces.²² However, regardless of whether the child is a victim or an offender, the juvenile justice system should be used as a means to assist the child, but the process is generally counterproductive.²³ When homeless children fall into the system they are often exposed to heightened levels of criminal sophistication that they may not have seen while on the streets. Throughout the United States, the juvenile justice systems are overcrowded with violent and repeat offenders, and there is usually no time or money to devote to homeless children and their needs.²⁴

One way to keep homeless children clear of the juvenile justice system is by providing them with the opportunity to attend school and obtain an adequate education. Attending school can be a critical reason why and how a homeless child avoids contact with law enforcement, because children who are neither in school nor working, are at significantly greater risks of breaking the law than their peers who attend school each day. Not only is attending school important for a child's educational development and criminal history, it is also important for their normal socialization process as well. Further, attending school may very well be the only stable situation a homeless child has.

Homeless children who have the chance to attend school are more likely to access a variety of services that can take their minds off of their home-life situations and allow them some type of peace of mind, even if it is only temporary. It has been shown that a homeless child can gain many beneficial things by attending school, including: tutoring, free meals, physical and mental health services, access to positive adult role models, and most importantly they have the opportunity to take part in extra-curricular activities with their peers.

For a homeless child, having the ability to attend school daily and gain an education has only positive effects. This is why the many barriers these children must face in order to go to school like every other child seem unfair and simply heartbreaking. From an early age these children face disadvantages in life and thus have

²² See National Network for Youth, *Consequences of Youth Homelessness* 1, 2 (2008), available at http://www.nn4youth.org/system/files/IssueBrief_Youth_Homelessness.pdf.

²³ *Id.*

²⁴ *Id.*

no way to acquire the skills necessary to escape poverty, and work towards becoming contributors in society.²⁵ Having recognized the obstacles in the path of a homeless child's access to education, it would seem logical to think that the government would provide some type of protection or a remedy to fix the problem.²⁶

IV. THE FEDERAL GOVERNMENTS' ROLE IN EDUCATING HOMELESS CHILDREN

The McKinney Vento Homeless Assistance Act

The right of a homeless child to be given the opportunity to receive access to a free public education is firmly established in federal law.²⁷ The McKinney Vento Homeless Assistance Act, adopted in 1987 and reauthorized by Title X, Part C, of the No Child Left Behind Act, is the first and perhaps most successful piece of legislation enacted to protect the rights of homeless children.²⁸ The current McKinney Vento Act has been amended four times, and each amendment, for the most part, has expanded the scope and strengthened the provisions of the original legislation which has helped obtain the overall purpose of addressing the problems that homeless children have faced in enrolling, attending, and succeeding in school.²⁹

The Education for Homeless Children and Youth Program

The McKinney Vento Homeless Assistance Act currently contains nine titles, with Title VII being the focus for the educational opportunities of homeless children.³⁰ Title VII authorized four programs, the most important being the Education of Homeless Children and Youth Program (hereinafter EHCY) which is administered by the Department of Education.³¹ The EHCY Pro-

²⁵ Na, *supra* note 4, at 869.

²⁶ *Id.*

²⁷ Yvonne Vissing, *Homeless Children and Youth: An Examination of Legal Challenges and Directions*, 13 J.L. Soc'y 455, 482 (2012).

²⁸ Carolyn Weisman, *Student Note*, Giving Credit Where Credit is Due: Advancing the Highly Mobile Student Population Toward High School Graduation, 50 Fam. Ct. Rev. 527, 532 (2012).

²⁹ National Coalition for the Homeless, Fact Sheet #18: McKinney Vento Act 3, 6 (2006), available at www.nationalhomeless.org/publications/facts/McKinney.pdf

³⁰ *Id.*

³¹ *Id.*

gram was created in order to direct federal funding to ensure every homeless child has the equal access to the same free, appropriate public education, as provided to other children.³²

In dealing with the plight of homeless children, the EHCY has made four specific requirements which protect the homeless child's right to an education. First, the Act expressly prohibits a school from segregating a homeless child simply because he or she is homeless.³³ Homeless children are often stereotyped as having a negative influence on other children in public school. The EHCY allows homeless children to be given the chance to attend school with their peers and not be isolated or discriminated against because they do not have a permanent place to live. Second, in order to address the lack of transportation that homeless children have, the Act requires states to adopt policies to ensure that homeless children are provided transportation to and from their school of origin at the request of the child's parent or guardian.³⁴

Third, if a dispute arises over a school placement, pending resolution of the dispute, the homeless child must be admitted to the school where her parent or guardian seeks to enroll the child.³⁵ This results in the child being able to enroll in school immediately, even if they do not have the required documents for school registration.³⁶ This requirement eliminates many strenuous record requirements that act as a burden on homeless children's access to public school.

Fourth, while determining the best interests of the child, local education agencies must keep a child in the "school of origin", unless doing so is against the wishes of the child's parent or guardian.³⁷ In addition to the EHCY's four requirements, the No Child Left Behind Act amended the EHCY to provide a twenty-five per-

³² 42 U.S.C.A. § 11431(4)(2002)(West, WestlawNext through P.L. 113-296)(effective January 8, 2002).

³³ 42 U.S.C.A. § 11432(e)(3)(A)(West, WestlawNext through P.L. 113-296)(effective July 30, 2008); *see also* U.S. DEP'T. OF EDUC., EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM TITLE VII-B OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT, AS AMENDED BY THE NO CHILD LEFT BEHIND ACT OF 2001 NON-REGULATORY GUIDANCE 3 (2004) <http://www2.ed.gov/programs/homeless/guidance.pdf>.

³⁴ 42 U.S.C.A. § 11432(e)(3)(C)(cc)(West, WestlawNext through P.L. 113-296)(effective July 30, 2008); *see also* U.S. DEP'T. OF EDUC., *supra* note 33, at 3.

³⁵ 42 U.S.C.A. § 11432(g)(2)(E)(i).

³⁶ U.S. DEP'T OF EDUC., *supra* note 33, at 16.

³⁷ *Id.* at 14.

cent increase of state funds over the 2001 amount for state educational activities. The EHCY also requires that sub-grants be awarded to all local education agencies for the purpose of facilitating the enrollment, attendance, and success of homeless children in school.³⁸

Federal Awards to States and State Uses of Funds

Although the McKinney Vento Act is federal legislation, it must be implemented at state and local levels in order to fulfill its overall purpose. The federal government provides grants to all states that want to take part in helping educate homeless children. The Department of Education awards McKinney Vento funds to states by formula, with the minimum state allocation for a year being \$150,000.³⁹ However, in order to receive federal funds, states are obligated to meet certain requirements.

For instance, states must establish an "Office of Coordinator for Education of Homeless Children and Youths" in the state educational agency.⁴⁰ This office is responsible for collecting data on that state's homeless children and implementing a plan to address the educational needs of homeless children.⁴¹ In addition to the Office of Coordinator, states must also require all school districts to designate local liaisons for homeless children who provide public notice to homeless families and facilitate access to school services such as transportation.⁴² Specifically, in order to receive federal funds and to comply with the McKinney Vento Act, states must undertake steps to revise laws, regulations, and policies that have the potential to act as barriers to the enrollment, attendance, or success of a homeless child in school.⁴³ The state educational agencies have the responsibility to make sure that homeless children have access to educational services as well as other services

³⁸ U.S. DEP'T. OF EDUC., THE NO CHILD LEFT BEHIND ACT OF 2001: PRELIMINARY OVERVIEW OF PROGRAMS AND CHANGES (last modified January 19, 2005), <http://www2.ed.gov/nclb/overview/intro/progsum/progsum.pdf> (providing a twenty-five percent increase from the amounts provided for under the Reformed Act).

³⁹ U.S. DEP'T. OF EDUC., *supra* note 33, at 4.

⁴⁰ Weisman, *supra* note 28, at 533.

⁴¹ *Id.*

⁴² U.S. DEP'T OF EDUC., *supra* note 33, at 9-10.

⁴³ See 42 U.S.C.A. § 11431(West, WestlawNext through P.L. 113-296)(effective January 8, 2002).

they need in order to meet the challenging state academic achievement standards to which all students are held.⁴⁴

The Implementation of McKinney Vento

The McKinney Vento and, more specifically, the EHCY Program, appear to be flawless legislation. However, despite the affirmative steps the federal government took to address the problem of the lack of educational opportunities for homeless children, significant improvement remains in many areas. One of the problems associated with the reauthorization of the EHCY Program “is the federal governments’ lack of guidance and careless monitoring of it” through the Department of Education’s Office of Elementary and Secondary Education (hereinafter “OESE”).⁴⁵

Currently, states are given the authority to determine their own categories for measurement in meeting the objectives of the EHCY Program through individual state plans.⁴⁶ However, rather than taking the time to create plans that reflect the specific needs of the homeless children in their area, many state coordinators simply copy the federal requirements into their plans.⁴⁷ This causes school districts to fail in determining school placements based on case by case determinations of the best interests of the child.

This problem is going uncorrected due to the elusive review and monitoring process conducted by the OESE. Instead of conducting thorough reviews to ensure that states have specific and workable measures that meet the needs of homeless children, the review process only checks to see whether states have indicated a means of battling the barriers faced by homeless children.⁴⁸ This approach is highly irresponsible and will continue to have a detrimental effect on homeless children if nothing changes. The federal government should be held more accountable; additionally, it should establish specific requirements and guidelines for the states to follow to ensure exact compliance.

Another equally pressing problem is inadequate funding due to extremely limited resources available to implement the

⁴⁴ *Id.*

⁴⁵ *Na, supra* note 4, at 885.

⁴⁶ *Id.*

⁴⁷ *Id.* at 886.

⁴⁸ *Id.* at 887.

McKinney Vento Act.⁴⁹ The amount of funding that a state receives under the McKinney Vento Act is based on the proportion of funds allocated by Congress each year.⁵⁰ However, appropriations for the EHCY Program have not kept up with inflation or demand for services.⁵¹ As a result, only \$45.93 per homeless child is allocated per year as of 2008.⁵² Given the residential, financial, and transportation barriers in the paths of homeless children, it is doubtful that \$45.93 per child per year will assist in providing for an adequate education.

Such a nominal amount of money makes it nearly impossible for states, as well as school districts, to fully comply with the Program. If Congress does not allocate additional funding to aid specific organizations that work to assist homeless children, it is unlikely that individual states will be able to meet the needs of the homeless children in their jurisdictions. What is more distressing is that if states cannot meet the basic needs of homeless children, they will also not have the means to establish long-standing programs which will allow for the proper identification and nurturing of these children.

Finally, the largest problem, and perhaps the greatest detriment to homeless children who depend on help to attend school, is that there is no remedy if a state fails to comply with any provisions of the McKinney Vento Act.⁵³ As it exists today, neither the provisions within McKinney Vento, nor legislative history, provide any enforcement mechanism for state violations.⁵⁴ Due to the inadequate funding of the EHCY, and McKinney Vento in general, it is no surprise that states consider implementing the program in their respective jurisdictions as a burden. The burden is sometimes so massive that some states and school districts may simply choose to opt out of participating. These were the circumstances behind the notable case *Lampkin v. District of Columbia*.⁵⁵

In *Lampkin*, a group of mothers of school-age children brought suit against the District of Columbia and its public schools

⁴⁹ *Id.* at 881.

⁵⁰ U.S. DEP'T, OF EDUC., *supra* note 33, at 4.

⁵¹ *Id.*, *supra* note 4, at 882.

⁵² *See id.* at 883.

⁵³ *Id.* at 888.

⁵⁴ *Id.* at 890.

⁵⁵ *Lampkin v. District of Columbia*, 879 F. Supp. 116 (D.D.C. 1995).

for failure to comply with the educational provisions of the McKinney Vento Act.⁵⁶ The National Law Center on Homelessness and Poverty filed suit on behalf of the parents, seeking declaratory and injunctive relief requiring the school system to do a number of things, such as ensure that every homeless child had access to transportation services and meal plans.⁵⁷ The United States Court of Appeals for the District of Columbia, over objections from the school system, ruled that homeless children have enforceable rights under the McKinney Vento Act.⁵⁸ Therefore, once a state accepts funds through the EHCY Program it is obligated to ensure enforcement of the Act. However, although *Lampkin* was the first federal ruling that ordered a local government to comply with the EHCY Program; it is not considered a success in the eyes of many.

Lampkin is most recognized as being illustrative of the difficulties that homeless children may face under the McKinney Vento Act, even if there is a court order requiring compliance. After the decision, rather than following the court's order and meeting the requirements of the Act, the District of Columbia returned its federal funding and chose to no longer participate in the EHCY Program.⁵⁹ Moreover, the District contended that complying with the Program would be too costly.⁶⁰ This ended its obligation to provide assistance to homeless children, and accordingly the children were left without the opportunity to have access to a free public education.

Although the McKinney Vento Act looks good on paper, its weaknesses appear once application begins. The Act itself is sound in logic and could become a powerful tool to combat the problems of homeless children if the federal government would make a more aggressive effort to carry out its administrative responsibilities, such as providing adequate funding and closely monitoring the states in order to ensure compliance with the requirements of the Act. But without more accountability on both the federal and state governments, the McKinney Vento Act as well as the EHCY Program will fail and homeless children will

⁵⁶ *See id.*

⁵⁷ *Id.* at 119.

⁵⁸ *Id.* at 120.

⁵⁹ Na, *supra* note 4, at 890.

⁶⁰ *Id.*

lose access to help and remain at a disadvantage for the rest of their lives. However, despite its downfalls, the McKinney Vento Homeless Assistance Act is landmark legislation. It has established valuable programs that have helped thousands of homeless children regain stability in their lives, and most importantly, it has provided them with the chance to receive an education that many were unlikely to achieve otherwise.

CONCLUSION

Overall, children without a fixed, stable home suffer major consequences. The effects that homelessness has on a child's physical, emotional, and mental well-being can ultimately have a substantial impact on their academic performance, thereby becoming a precursor to juvenile delinquency. For these reasons, homeless children are already at a disadvantage compared to other children. Thus, if they are not given the access to an adequate education, it will be nearly impossible for them to acquire the skills they need to escape poverty and to work towards a positive future as adults. The McKinney Vento Homeless Assistance Act was a tremendous beginning to addressing the problems homeless children face, but now it is time to work towards making the McKinney Vento Act a success so that homeless children can succeed in school and someday become productive members of society.

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