Meeting the Educational Needs of Children and Youth Who Are Homeless or in Foster Care
Presented by

Ashley Fretthold
LAF (formerly Legal Assistance Foundation of Metropolitan Chicago)

Laurene M. Heybach
Law Project of the Chicago Coalition for the Homelessness

Kristin Kelly
ABA Center on Children and the Law
Causes of Homelessness

- Lack of affordable housing
- Severe poverty
- Health problems and costs
- Discrimination
- Domestic violence
- Natural and other disasters
- Abuse/neglect (unaccompanied youth)
- Criminal records screening
Who are the children and youth experiencing homelessness?

- 1,168,354 identified and enrolled preK-12 in 2011-12 school year.
  - 72% increase since start of recession.
  - Illinois public schools: 51,638 in 2012-13
- 51% of homeless children in shelters are under the age of six.
- Average income of a homeless family is less than half the federal poverty line.
The Whirlwind of Homelessness

✓ Living with strangers
  • In strange house/room/bed
  • Different rules/routine
  • No privacy, concerns about safety
  • Families often become separated
  • Often overcrowded, unsanitary

✓ Severe poverty
  • Few or no possessions
  • Poor health, nutrition, health care

✓ Uncertainty about future
  • Where will I sleep tonight?
  • Will we find a home?
What are the educational experiences of students in homeless situations?

✓ 40% of homeless children attend 2 different schools per school year; 28% of homeless children attend 3 or more different schools.¹

✓ Homeless children are 4 times more likely to have delayed development and twice as likely to have learning disabilities, yet are significantly less likely to receive needed special education services.²

✓ 1/3 of homeless students will repeat a grade.³
Who are the children and youth in out-of-home care?

- 399,546 children and youth in foster care on September 30, 2012.
- 62% school age (K-12); 33% under age 5.
- 47% in care less than a year.
- 51% return home to parent.
- More than 27,000 young people emancipated from the foster care system in 2012.
The Whirlwind of Out-of-Home Care

✓ Removed from home/parents/siblings
  • May not have had chance to say goodbye
  • Uncertain about where parents/siblings are

✓ Living with strangers
  • In strange house/room/bed
  • Different customs/routine
  • Other children in home

✓ Few or none of your possessions
  • Lucky to have trash bag of belongings

✓ New neighborhood, school, maybe even town

✓ Uncertainty about future
  • Where will I live?
  • Will I return home?
  • Where will I go to school?
What are the educational experiences of students in out-of-home care?

✓ Percent of foster youth who change schools when first entering care: 56%-75%
✓ Likelihood of foster youth receiving special education: 2.5-3.5x that of others
✓ More likely to repeat a grade.
✓ Three times as likely to not have a high school diploma or GED.
✓ Nearly six times more likely to not have a postsecondary degree.
✓ More than twice as likely to be suspended, four times as likely to be expelled
Homelessness and Foster Care
What’s the Connection?

✓ 12% of homeless children have been placed in foster care, compared to 1% of other children.¹

✓ 30% of children in foster care could return home if their parents had access to housing.²

✓ 25% of youth “aging out” of foster care experience homelessness.³
Barriers to Education for Both Groups of Students

- Enrollment requirements (school records, immunizations, proof of residence and guardianship, transcripts)
- High mobility resulting in lack of school stability and educational continuity (special education eligibility)
- Education records missing (special education records)
- Lack of transportation
- Lack of awareness (school personnel)
- Lack of focus on education (child welfare agencies)
- Lack of communication between agencies
- Poor health, fatigue, hunger
- Violence and bullying
- Trauma and mental health issues
- Bias, stigma, and misunderstanding
“Education was one of the few stabilities I had in my life. That was the greatest gift. Even though it was a battle and a roller coaster, it was a sense of normalcy for me. It made the difference.

“For foster youth, who lose their culture, sense of self, and identity, education is their ticket to success.”

*Lupe Tovar, Program Coordinator of In My Shoes Inc., and Foster Youth Alumnae*
Why School Matters

✓ A positive school experience can help children cope with personal trauma.
  • Children speak of school as an oasis of stability, safety, friendship and normalcy.

✓ Education critical for successful adulthood.
  • Even without higher education, youth with a high school diploma earn an average of $9,476 more per year than those without a diploma.
  • Youth in care were significantly less likely to be employed at ages 25-26, and their jobs generally paid less and offered fewer hours.
McKinney-Vento
Homeless Assistance Act

- First Passed in 1987 – 25th Anniversary
- Reauthorized 2002 by NCLB
- Main themes:
  - School stability
  - School access
  - Support for academic success
  - Child-centered, best interest decision making which also honors parent choice
McKinney-Vento State Coordinators

✓ Every State Education Agency has a State Coordinator for the Education of Homeless Children and Youth.
  • Collaboration responsibilities across agencies and with communities
  • Technical assistance to local education agencies (LEAs)
  • Compliance
  • Professional development
  • Data collection and reporting
McKinney-Vento Liaisons

✓ Every LEA must designate a liaison for McKinney-Vento students.
  • Ensure that eligible children and youth are identified through the school and community
  • Ensure that eligible students enroll in and have full and equal opportunity to succeed
  • Link with educational services, including preschool and health services
  • Resolve disputes
  • Inform parents, guardians, and youth of transportation services
  • Title I, Part A funds can support liaison
Eligibility: Who is Covered?

✓ Children who lack a fixed, regular, and adequate nighttime residence—
  • Sharing the housing of others due to loss of housing, economic hardship, or similar reason
  • Living in motels, hotels, trailer parks, camping grounds due to lack of adequate alternative accommodations
  • Living in emergency or transitional shelters
Eligibility: Who is Covered? (cont.)

- Living in a public or private place not designed for humans to live

- Living in cars, parks, abandoned buildings, substandard housing, bus or train stations, etc.

- Migratory children living in one of the above situations

- Unaccompanied youth - youth not in the physical custody of a parent or guardian who also meet the eligibility criteria
Eligibility: Youth in Out-of-Home Care

✓ Youth “awaiting foster care placement” are eligible.

✓ Several states already have definitions of AFCP:
  • Delaware law defines “awaiting foster care placement” to include all children in foster care.
  • Massachusetts and Connecticut have MOUs base eligibility on the stability of the placement.
  • For a list of state policies, please see www.abanet.org/child/education
Eligibility: Youth in Out-of-Home Care

✓ Some youth who are, or have been, involved in the child welfare system are eligible regardless of the definition of AFCP:

• Youth who have run away from foster placements and are living in a homeless situation.
• Youth who have been abused or neglected and are living in a homeless situation, but have not been placed in the custody of the child welfare system.
• Youth who have aged out of foster care and are living in a homeless situation, but have not graduated from high school.
School Stability: Key Provisions

- Students who are in an eligible living situation can attend (at least):
  - The same school other children in that attendance area are eligible to attend; or
  - Their “school of origin”;
- School of origin is the school attended when permanently housed or where last enrolled.
- When students move to a living situation that is not eligible, they can finish the school year in the school of origin.
School Stability (cont.)

✓ Who chooses which school?
  • The LEA, in conjunction with the parent/educational decision-maker, youth, and case worker (if applicable).

✓ How do we choose a school?
  • It is a case-by-case determination, based on the student’s best interest and, for homeless students, parental choice as well.
Best Interest Determinations

✔ The US Dept. of Education has stated that the decision is individualized, child-centered and based on several factors, including:

- Continuity of instruction
- Age of the child or youth and safety concerns
- Likely length of stay in the temporary living situation
- Likely area of eventual permanent placement
- Student’s need for special instructional programs
- Impact of the commute on education
- School placement of siblings
- Time remaining in the school year
School Stability (cont.)

✓ What if there’s a disagreement?
  • Must have a dispute resolution process.
  
  • If the child is to be placed in a school other than the school requested by the parent/guardian, the school district must put that decision in writing.

  • The school district must provide the parent/guardian with information about the dispute right and process.
Why School Stability Matters

✓ Students who switch schools frequently score lower on standardized tests; studies have found up to 20 point difference.

✓ Students who changed high schools even once were less than half as likely as stable students to graduate, even controlling for other factors.

✓ Mobile students are less likely to participate in extracurricular activities and more likely to act out or get into trouble.
Transportation: Key Provisions

✓ LEAs must provide transportation to and from the school of origin, at a parent’s or guardian’s request.

✓ Title I, Part A Funds can be used

✓ If crossing LEA lines, the LEAs must determine how to divide the responsibility and share the cost, or they must share the cost equally.

✓ LEAs also must provide eligible students with transportation services comparable to those provided to other students.
Enrollment: Key Provisions

- If school of origin is not in the youth’s best interest (or the parent chooses against the school of origin), children and youth are entitled to **immediate enrollment** in any public school that students living in the same attendance area are eligible to attend.

- The terms “enroll” and “enrollment” include attending classes and participating fully in school activities.
Enrollment (cont.)

- Enrollment must be immediate, even if students do not have required documents (school or health records, residency or guardianship, etc.).

- Enrolling schools must obtain school records from the previous school.

- SEAs and LEAs must develop, review, and revise policies to remove barriers to the enrollment and retention of McKinney-Vento students.
Unaccompanied Youth: Who Are They?

✓ Definition: child or youth who is eligible under the Act and is not in the physical custody of a parent or guardian

✓ Many have run away from abusive homes:
  • Studies have found that 20-50% were sexually abused in their homes, while 40-60% were physically abused.

✓ Many have been forced out of home by parents:
  • 20-40% identify as gay, lesbian, bisexual, and/or transgender (compared to 3-5% of the overall population).
  • Pregnant/parenting teens are also overrepresented.

✓ Many have aged out of foster care:
  • 25-40% of youth who emancipate from foster care will end up homeless.
Unaccompanied Youth: Key Provisions

✓ Liaisons must help unaccompanied youth choose and enroll in a school, after considering the youth’s wishes, and inform the youth of his or her appeal rights.

✓ School personnel must be made aware of the specific needs of runaway and homeless youth.
Preschool-Aged Children

✓ Liaisons must ensure that families and children have access to Head Start, Even Start, and other public preschool programs administered by the LEA.

✓ State plans must describe procedures that ensure that eligible children have access to public preschool programs.

✓ The new Head Start Act includes collaboration and service requirements.
  • http://eclkc.ohs.acf.hhs.gov/hslc
Access to Services

✓ McKinney-Vento students must have access to educational services for which they are eligible, including special education, programs for English learners, gifted/talented programs, and career/tech. ed. programs.

✓ McKinney-Vento students are automatically eligible for free school meals.
  • USDA policy permits liaisons and shelter directors to obtain school meals for students immediately by providing a list of names of eligible students with effective dates.
Removing Barriers To Access

The McKinney-Vento Act requires that SEAs and LEAs “review and revise, policies to remove barriers to the enrollment and retention of homeless children and youths in the State.”

Powerful tool to advocate for specific changes in school procedures or practices which discourage or deter homeless families and youth such as: restrictive policies on how high school credit is earned, inflexible deadlines, limitations on participation in sports or clubs, inflexible attendance and tardiness policies, provision of transportation services which are too restrictive, lengthly or inconvenient, and inflexible disciplinary policies.
Access to Services: IDEA 2004

✓ Individuals with Disabilities Act contains provisions to ensure highly mobile students with disabilities receive special education and related services without delay.

✓ Children with disabilities experiencing homelessness and wards of the state must be identified, located and evaluated.

✓ Any state receiving IDEA funds must ensure that the McKinney-Vento Act is followed for children with disabilities experiencing homelessness.
Access to Services: IDEA 2004

- School districts must coordinate the evaluation process “as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.”

- Evaluation clock continues to run, unless new district “is making sufficient progress to ensure a prompt completion” of evaluations and parent agrees to a new time frame.

- When students with current IEPs change school districts, the new district must provide services immediately, “including services comparable to those described” in the IEP, in consultation with the parents.
Inclusion of low income parents

Parent participation is critical to a child or youth’s educational development.

Federal law (Title I) specifically requires schools to honor and foster parental involvement as “full partners in their child’s education;”

Substantive parental involvement must be accorded at every level including school planning, communication about the child’s education and decision-making.

*Parental Involvement: Title I, Part A*

*Non-Regulatory Guidance, U.S. Department of Education*  *April 23, 2004.*
McKinney-Vento Outcomes

- Positive Report to Congress in 2006
- From 2003 to 2006, more eligible students participated in assessments.
- From 2003 to 2006, proficiency rates in reading and math assessments improved.
  - Reading: from 36% to 44% proficient grades 3-12
  - Math: from 35% to 43% proficient grades 3-12
- Both increased school stability and immediate enrollment/participation contributed to these successes.
McKinney-Vento Act Funding

✓ $70 million authorized

✓ $65 million appropriated for FY2014 – flat funding since 2009

✓ Only 6% of school districts nationwide receive subgrants; only half of all identified eligible students receive direct services through the Act.
Foster Care and McKinney-Vento

What we know:

✓ Many children in the foster care system are being served under McKinney-Vento, but the numbers and the child’s situation vary by state.

✓ All children in foster care need the kinds of protections provided in McKinney-Vento

✓ McKinney-Vento is not currently designed to serve all youth in the foster care system
Blueprint for Change: Education Success for Children in Foster Care

✓ 8 Goals for Youth

✓ Benchmarks for each goal indicating progress toward achieving education success

✓ National, State, and Local Examples
Goals for Youth

**Goal 1:** Remain in the Same School
**Goal 2:** Seamless Transitions Between Schools
**Goal 3:** Young Children Are Ready to Learn
**Goal 4:** Equal Access to the School Experience
**Goal 5:** School Dropout, Truancy, and Disciplinary Actions Addressed
**Goal 6:** Involving and Empowering Youth
**Goal 7:** Supportive Adults as Advocates and Decisionmakers
**Goal 8:** Obtaining Postsecondary Education
Child Welfare Law and Education Placement Stability

✓ Fostering Connections to Success Act, 2008
✓ Has many requirements related to school enrollment and stability.
  • Does not provide all the same protections as McKinney-Vento but includes some key provisions
  • First federal law to provide strong mandates for child welfare system to focus on education
Fostering Connections Act

- Every foster child’s case plan must include assurances that the placement of the child in foster care takes into account the proximity to the school of origin. The case plan must also consider the appropriateness of the current education setting.
- Child welfare agency must coordinate with school to ensure child remains in the school of origin if in the child’s best interest.
- Child welfare agency can receive federal reimbursement for some school transportation costs.
Fostering Connections Act

- Child welfare agencies and schools must ensure immediate enrollment in a new school, with school records, for youth who will not remain in their school of origin.
- Child welfare agencies must also ensure that all IV-E eligible children are enrolled and attending school (this must be documented in their state plan).
- Note: Recent changes to FERPA make it easier for child welfare agency workers to get education records without parental consent.
State Implementation of Fostering Connections

- Interagency collaboration; role of courts and attorneys;
- Statutory or regulatory changes;
- Opportunity to incorporate some of the strengths of McKinney-Vento, such as:
  - Creation of a liaison or key point of contact in both child welfare and education agencies
  - Requirement for education agency to coordinate
  - Creation of protocols for best interest determinations as well as process for dispute resolution
  - Identifying role of the court in these processes given the children in care are court involved
For Homeless Students not in the Custody of the Child Welfare System:

- Systemic litigation has been successful in:

- Sample: *National Law Center on Homelessness & Poverty v. New York State*, 224 F.R.D. 314 (E.D.N.Y. 2004) Plaintiffs 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. Included failures to locate and ensure enrollment, provide transportation and provide comparable services. Initial positive court rulings led to sweeping settlements with all defendants and major changes.
Salazar v. Edwards  92 CH 5703 (Circuit Court, Cook County, Il 1992) Plaintiff homeless children and parents alleged comprehensive systemic violations of the educational rights of Chicago’s homeless children and youth. Class action claims were based on the McKinney Act, the Illinois School Code and State and Federal constitutional provisions. Defendants include Chicago Public Schools (CPS) and the Illinois SEA for failure to enforce Chicago’s compliance. After initial dismissal, appeal, re-instatement, and issuance of sweeping injunctive relief, a consent decree entered in 2000 now governs. This litigation continues to shape CPS services for homeless children, youth and parents.
For Children in the Custody of the Child Welfare System:

**Bullock v. Bd. of Educ. of Montgomery County,** 210 F.R.D. 556 (D.Md. 2002). Homeless children, filed a lawsuit against the Board of Education of Montgomery County, alleging, among other things, that the defendants arbitrarily adopted a limited definition of “homeless” that denied homeless children and families their rights. After initial positive rulings by the court, the school district settled the case, agreeing, among other things, to give children awaiting foster placement full McKinney-Vento rights.
ATTORNEYS/ADVOCATES
Other ways to make a difference

• Attorneys often volunteer for, or sit on the boards of SEAs or LEAs or otherwise work with schools: using knowledge of these laws, attorneys can encourage solid implementation strategies and excellent policies

• Attorneys who work with youth in any capacity - link education law attorneys with caseworkers and other advocates for children in foster care to assist/consult with related to education matters

• Seek training and take on *pro bono* cases for children in foster care and in homeless situations: handle dispute resolution hearings, negotiate with school officials, work with community groups advancing education issues
ATTORNEYS/ADVOCATES MAKE A DIFFERENCE

Attorney advocacy in Illinois has been very successful:

- Drafting and passing the Illinois Education for Homeless Children Act
- Amending the School Code to ensure trained and impartial hearing officers in disputes
- Securing SEA policies which create locally effective solutions to problems not solved by federal law
- Creating a right to free legal representation
- Creating a state-funding mechanism for appropriations to McKinney-Vento school programs
ATTORNEYS/ADVOCATES
Other ways to make a difference

• Local bar associations - sponsor forums or roundtables to bring attention to the education needs of highly mobile children
  • bring key decision-makers from various community agencies and resources to the table to participate in the discussion

• All attorneys - Encourage leadership from the bench in child welfare cases:
  • judges should raise education questions and issues at hearings to ensure appropriate attention to education needs is paid by parties and agencies.
ATTORNEYS/ADVOCATES
Other ways to make a difference

- Data Analysis
  - Analyzing data about who is/is not identifying students who are homeless
  - Example: Districts of Concern – Districts whose % of homeless students falls way below the statewide average and other demographic data does not explain discrepancy.

- FOIAs
  - Finding out more about what districts are/are not doing to serve homeless students

- Collaboration with State Coordinator
  - Sharing data with Coordinator to pressure districts to comply
Why School Matters

“Through it all, school is probably the only thing that has kept me going. I know that every day that I walk in those doors, I can stop thinking about my problems for the next six hours and concentrate on what is most important to me. Without the support of my school system, I would not be as well off as I am today. School keeps me motivated to move on, and encourages me to find a better life for myself.”

*Carrie, 2002 LeTendre Scholar; formerly homeless youth*
Homeless Education Resources

✓ National Association for the Education of Homeless Children and Youth
  www.naehcy.org

✓ National Center on Homeless Education
  center.serve.org/nche

✓ National Law Center on Homelessness & Poverty
  http://www.nlchp.org
Foster Care Education Resources

✓ Legal Center for Foster Care and Education
www.fostercareandeducation.org

✓ National Working Group on Foster Care and Education
Resources

✓ Federal Guidance on McKinney-Vento

✓ The Statute:
http://www2.ed.gov/policy/elsec/leg/esea02/pg116.html#sec1031

✓ IL State Policy:
http://www.isbe.state.il.us/homeless/pdf/policy.pdf
ABA Commission on Homelessness & Poverty

For more information about the Homeless Children and Youth Law Initiative, please visit www.ambar.org/homeless or contact:

Amy E. Horton-Newell, Director, ABA Commission on Homelessness & Poverty
1050 Connecticut Ave. NW, Suite 400
Washington, DC 20036
T: 202.662.1693
Amy.HortonNewell@americanbar.org

Casey Trupin, Special Advisor, Homeless Children and Youth Law Initiative
Columbia Legal Services
casey.trupin@columbialegal.org
Contact Information

Ashley Fretthold
LAF (formerly Legal Assistance Foundation of Metropolitan Chicago)
AFretthold@lafchicago.org

Laurene Heybach
Law Project of the Chicago Coalition for the Homeless
lheybach@yahoo.com

Kristin Kelly
American Bar Association Center on Children and the Law
Kristin.kelly@americanbar.org
www.fostercareandeducation.org