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LITIGATION RELATED TO THE MCKINNEY-VENTO ACT

Kaleuati v. Tonda, Civil Action No. 07-504 (U.S. District Court, District of Hawaii, filed October 6, 2007).

Lawyers for Equal Justice, the ACLU of Hawaii and Alston Hunt Floyd & Ing represent three homeless families that have been denied access to education and, on behalf of all homeless families statewide, has filed a class action lawsuit against the State of Hawaii in U.S. District Court, seeking statewide injunctive relief to remove policies that violate federal law and ensure that homeless children have full, meaningful access to a public education. The court recently granted a motion for preliminary injunction and certified the class. Visit <http://www.lejhawaii.org/mckinney/kaleuati.html> for more information, including current status and copies of pleadings and decisions.

Boisseau v. Picard, Civil Action No. 2007-0565 (U.S. District Court, Eastern District of Louisiana, filed February 1, 2007).

The NAACP Legal Defense Fund filed this action to ensure that students who had been displaced by Hurricane Katrina would be able to enroll in school immediately as their families return to New Orleans. Many returning students had been refused enrollment or placed on waiting lists. The demand letter and complaint are available at <http://www.naacpldf.org/issues.aspx?subcontext=84>

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

This case alleged systemic noncompliance by the state education agency, state social services agency, 15 local educational agencies, and county social services with state and federal laws relating to the education of homeless children and youth. The school districts settled their portion of the case early in the proceedings, while the state and county social services moved to dismiss the case, saying the McKinney-Vento Act was not enforceable by parents (no implied private right of action under *Gonzaga v. Doe*). The U.S. District Court denied the motion to dismiss, holding the Act was enforceable. Ultimately, all parties settled and agreed to comply with all applicable state and federal laws relating to homeless students.

Muriel C. v. Gallagher, Hart and Evergreen Park Community High School District (filed in Cook County Circuit Court, February 2003).

Muriel C. and her children were living in Evergreen Park (a south suburb of Chicago). The family lost their housing in Evergreen Park and doubled-up with Muriel C.'s mother in Chicago. In January 2003, the high school issued letters to the family stating that the children were to be excluded from school due to non-residency. A dispute resolution

hearing was held in which the lawyer for the school district argued that the children were not homeless because they did not wear dirty clothes to school. The school district lawyer also argued – and the hearing officer agreed -- that the family had the burden of proof in the hearing. Thus, it essentially was up to the family to prove that they were in fact homeless at the hearing. The hearing officer found that the family was not homeless and the children were excluded from school for approximately two weeks. Muriel C. contacted the Law Project after the child had been excluded. The school agreed to re-enroll the children only after Plaintiffs filed a complaint in the Circuit Court of Cook County. The parties are currently litigating the case and are also engaged in settlement discussions.

Bullock, et al. v. Board of Education of Montgomery County, et al., DKC-2002-798 (U. S. District Court, District of Maryland, filed March 14, 2002).

Montgomery County is also a large suburban school district bordering on Washington, D.C. A lawsuit and motion for temporary restraining order and preliminary injunction was filed on behalf of several homeless families. The case raised many issues related to the McKinney-Vento Act, including the rights of children in transitional housing, “time limits” on homelessness for doubled-up families, and segregation.

The case eventually settled. The school district agreed to implement broad reforms ranging from giving children awaiting foster placement full McKinney rights to widely publicizing the rights of homeless children throughout the district, to training school administrators and school personnel on McKinney rights, to implementing new forms and school-based guidelines to identify and serve homeless children, to providing transportation to the school of origin within 4 school days of the request. There will be a two year monitoring period. The school district also agreed to pay \$195,000 in attorneys fees to counsel for the plaintiff class.

Mitzi H. v. Murray and Board of Education of Homewood-Flossmoor High School District 233 and *Mitzi H. v. Ramsey and Board of Education of Homewood School District 153*. (filed in Cook County Circuit Court, September 2002).

These two cases involved one family with two children in an elementary district and one child in a high school. Under McKinney-Vento and the Illinois law, when the children lost their housing in Homewood, they should have been permitted to stay in the Homewood schools and obtain transportation assistance. In fact, the children were kept out of school for a total of five months until shelter personnel in Chicago referred them to the Law Project. After advocacy by the Law Project, the students were re-enrolled in March 2002. In September 2002, two separate complaints were filed in the Circuit Court of Cook County against both schools, seeking damages and other relief.

The high school filed a motion to dismiss arguing that the children could not bring suit because their homelessness was caused by a step-parent’s wrongdoing. The high school also argued that the family was not homeless. After briefing and oral argument, the court denied the motion to dismiss. The court found that the Illinois statute protected children

experiencing homelessness regardless of the reason for their homelessness. The court further found that the family met the definition of “homeless” when they were living in a motel. The parties are currently engaged in settlement negotiations.

Collier, et al. v. Board of Education of Prince George’s County, et al. DKC-2001-1179 (U. S. District Court, District of Maryland, filed April 16, 2001).

Prince George’s County is a large suburban school district bordering on Washington, D.C. A class action lawsuit and a motion for temporary restraining order and preliminary injunction were filed against the school district, on behalf of homeless families in the county.

Initially, the court ordered the school district to provide plaintiffs with transportation to the school of origin. The case was then expanded to include a broad range of McKinney issues, including transportation, identification, school selection, dispute resolution, and inter-agency issues. In September 2001, the case was settled. The school district agreed to take broad reform measures to address all of these issues. More than a thousand homeless school children have availed themselves of the new processes and procedures. Plaintiffs’ counsel logged more than \$300,000 in attorney fees on the case; defendants are attempting to negotiate a lower fee.

Sarah and Seth Doe v. Governor Wentworth Regional School District. SB #00-30 New Hampshire State Administrative Hearing, March 21, 2001).

After losing their housing in the fall of 2000, a family moved into a homeless shelter in a different school district. The parent sought to keep her children in their school of origin. However, conflicts between state laws and the McKinney-Vento Act resulted in a long dispute between the family and the school district of origin. The school district argued that the McKinney-Vento Act was not applicable because the district did not receive a subgrant and that the state could choose to force homeless children to attend school where they are temporarily residing. Despite active pre-litigation involvement by the State Coordinator and local attorneys, the school district refused to follow the law. So New Hampshire Legal Assistance filed an administrative complaint in March of 2001

On March 21, 2001, the Administrative Law Judge found in favor of the family. The children were permitted to remain in their school of origin. The State Coordinator and New Hampshire Legal Assistance have diligently worked to revise state education laws to comply with the McKinney-Vento Act. Unfortunately, they have had only modest success.

Burgin v. Community Consolidated School District 168. Cook County Commission on Human Rights (filed November 22, 2000).

The Burgin family, who are African-American, had rented an apartment in District 168 and four of their children attended District 168 schools (two of whom were honor roll

students). In March of 2000, the Burgins were evicted from their apartment following a period of unemployment. They doubled-up with family members in a nearby suburb. The Burgins were denied continued enrollment in District 168 because they were not residents. When an employee of the Illinois State Board of Education (ISBE) attempted to re-enroll the children, the superintendent stated: “If I let scum like that back in my schools, pretty soon the whole area will be a ghetto.” After threatening litigation, the District agreed to re-enroll.

Because of the District’s unlawful efforts to exclude the Burgin children even after being made aware of the legal requirements and because of the derogatory racial remark made about the family, the family filed a complaint with the Cook County Commission on Human Rights. The Cook County Human Rights Ordinance prohibits discrimination based on race as well as based on “housing status.” Discovery was conducted in the case and revealed that all of the District’s registration and enrollment materials and policy were misleading and inaccurate with respect to children experiencing homelessness. The parties entered into a settlement agreement in which the District agreed to, among other things: A total monetary settlement of \$100,000; annual training on and implementation of the McKinney-Vento Act, the Illinois Education for Homeless Children Act and the Cook County Human Rights Ordinance; and to establish a diverse committee of parents, staff, and community organizations to analyze the racial impact of school policies and practices.

Doe v. Richardson. Civ. A. 98-1165-N (U. S. District Court, Middle District of Alabama, filed October 13, 1998).

In October, 1998, the Southern Poverty Law Center brought a lawsuit against the state of Alabama and two school districts for violating the McKinney-Vento Act and discriminating against a student on the basis of race. The school district had adopted a policy requiring children to enroll in school within the first ten days of the semester. Anyone enrolling later, including homeless children, would only be admitted at the discretion of a special enrollment committee. An African-American student residing at a shelter in the district was refused admission to the local high school, after she tried to enroll more than ten days after school had started. The County Board of Education initially referred her to another high school. However, that school had a tacit policy against enrolling African American students. After learning the student’s race, the Board offered to enroll her in a high school an hour away from the shelter.

Overwhelmed by negative press, the state and school district agreed to settle the case immediately. The student was enrolled in the local high school, and the State Board of Education and both involved school districts adopted new policies affirming their duties under the McKinney-Vento Act and their commitment to nondiscrimination. The settlement also required defendants to pay \$5000 in attorney fees and costs associated with the case.

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

Ten parents, on behalf of their children, and the National Law Center on Homelessness & Poverty filed a lawsuit in federal court, challenging DC Public Schools' failure to ensure free, appropriate education for children experiencing homelessness, as required by the McKinney-Vento Act. The suit alleged that DCPS was failing to: consider the best interests of children and youth in making school placements; ensure transportation to the schools that were in the students' best interests; coordinate social services and public education; and ensure comparable services and school meals for students experiencing homelessness. The court initially dismissed the suit, but the federal appeals court reversed, agreeing with the plaintiffs that the McKinney-Vento Act created enforceable rights, and returned the case to the lower court. That court then ordered DCPS to identify children experiencing homelessness and refer them for all services required by the law, including transportation, within 72 hours of a family's application for emergency shelter. For the children of the more than 300 families on the waiting list for emergency shelter, the court allowed two weeks. The court also ordered the District to provide tokens to all children and youth in homeless situations who had to travel more than 1.5 miles to school, and also to parents who chose to escort their children to school. DCPS was ordered to pay \$185,000 in attorney fees and costs associated with the case. (Abbreviated summary taken from a document written by L. Norris and P. Julianelle in 2003).

Salazar v. Edwards. 92 CH 5703 (Cir. Ct. Cook County, IL, filed June 12, 1992).

Litigation was filed on behalf of homeless children after the Chicago Public Schools (CPS) failed to meet the requirements of the McKinney-Vento Act and the IL Homeless Education Act. In November of 1996, negotiations resulted in settlement. While the defendants admitted no violation of law, they agreed to remove any perceived barriers to the enrollment, attendance and success in school of homeless children and youth. The settlement covered a broad array of issues, including: discrimination and segregation; identification and immediate enrollment of homeless students; choice of schools and school stability; transportation; dispute resolution; training; coordination; and monitoring. Plaintiffs also received approximately \$260,000 in attorney fees.

In 1999, following persistent noncompliance in several areas, plaintiffs filed a motion to enforce this settlement agreement. The court granted the motion, ordering full compliance with the settlement, a "massive informational campaign addressing the rights of the homeless throughout Chicago", trainings, designation of school personnel to ensure implementation of the settlement, reporting, a court-appointed monitor, and sanctions of up to \$1000 per day for continued noncompliance. Plaintiffs also received an additional \$189,000 in attorney fees.