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Enforcing the Educational Rights of Homeless Children and Youth: Focus on Chicago

By Laurene M. Heybach and Stacey E. Platt. Laurene Heybach is lead counsel on the Salazar v. Edwards litigation and director of the Law Project of the Chicago Coalition for the Homeless, 1325 South Wabash, Suite 205, Chicago, IL 60605; 312.435.4548; rheybach@aol.com. Stacey Platt, formerly counsel on Salazar v. Edwards, is associate director of the ChildLaw Clinic and assistant clinical professor at Loyola University Chicago School of Law, 16 East Pearson Street, Chicago, IL 60611; 312.915.7940; splatt@luc.edu.

Unlike a tainted sports event . . . a childhood cannot be played again. We are children only once; and after those few years are gone, there is no second chance to make amends. [T]he consequences of unequal education have a terrible finality.

--JONATHAN KOZOL, SAVAGE INEQUALITIES

The obstacles facing homeless children and youth in securing a "free appropriate public education" are truly daunting.^{1/} The frequent, often forced mobility of homeless families is a major barrier to maintaining their children's attendance at any particular school. The bureaucratic structure of school systems coupled with the multiple demands placed on the parents of homeless children is an additional--sometimes insurmountable--obstacle to school enrollment and attendance. Equally troubling is the prejudice homeless children and youth face in the systems that serve them; such bias often denies them the choices and opportunities afforded other children.^{2/} This article is an in-depth look into the struggle to improve educational access for homeless children and youth in Chicago. Because Chicago's school system is both massive and bureaucratic, our hope is that the significant success achieved in Chicago through litigation and advocacy will inspire others to confront and work closely with the schools in their communities.

I. Background: The Challenge of Educating Homeless Children

Chicago's public school system, District 299, is comprised of 560 individual schools, which span a geographical area of 228 square miles. District 299 is divided into geographical "attendance areas." With some exceptions, children are required to attend the school in the attendance area in which they reside with their parents or guardians. In a year's time approximately 500,000 children are served by these schools.^{3/} Within the city itself an estimated 10,000 families with school-age children are homeless at some time during the year. As many as 22,000 of Chicago's children may experience homelessness in the current year.^{4/} Of the homeless families in Chicago's shelters, approximately 30 percent indicate that domestic violence is a cause of their loss of housing.^{5/}

Although from year to year the number of shelters serving homeless families in Chicago varies with funding, willing providers, and receptive communities, there are generally around 50 such facilities.^{6/} To access most of these shelters, a family first must contact the City of Chicago Department of Human Services (CDHS), pass an eligibility screening, and then accept whatever shelter location is offered. Almost all shelters have a defined period of stay. Most permit families to stay 90--120 days, but many are shorter-term shelters. Theoretically shelters assist families in exiting the system by helping them locate affordable housing. In reality most shelters have no expertise in doing this and suffer the same failures as their residents in trying to secure a permanent place for the family to live. Thus families move from shelter to shelter frequently and

often rotate between leaving the shelter system and doubling up with a friend or family member briefly, then reentering the system.

This built-in mobility is exacerbated by at least two additional problems. First, in 1995 the City of Chicago determined that families entering the shelter system initially would reside in an "assessment center." After a brief 72-hour stay in such a facility, where the family's needs were to be assessed, the family was to be placed in a shelter. Due to the overall lack of shelter beds for needy families, however, stays in the assessment centers were often comparatively lengthy (three weeks or more). Although this "assessment" system came under intense public criticism and CDHS disbanded the substandard warehouselike facilities it was employing, it now continues to send families to warming centers--shorter-term shelters--as a first stop on the shelter odyssey. Second, families can be, and sometimes are, summarily ejected from shelters for any reason. Or, because of conflict, dislike of often overcrowded and rundown facilities or unworkable shelter rules, families choose to move on. Whatever the reason for a change in shelter accommodations, the moves are ultimately controlled by availability of alternative space. Thus one family may spend three weeks in one facility and then move as many as 15 miles away to another shelter facility, and so on throughout the academic year.

The practical problems identified above are compounded by the additional needs homeless children present. They are often hungry, lack proper clothing, and suffer from exhaustion, depression, and anxiety. They lack a "neighborhood," or community base, for a source of connection and after-school activity. Many homeless children act as caretakers for other children, even for parents. And homeless children frequently lack a quiet and organized space for homework tasks.

All of these facts and statistics infuse the problem of educating homeless children with particular difficulty. From an educational perspective, it is essential to a child's ability to learn that the child have a stable consistent school setting where he or she can develop trust with influential adults and experience friendships. A stable school--in addition to presenting a consistent and organized learning curriculum--is a base for developing confidence, social mastery, and a sense of safety and regularity.^{7/}

II. Identifying a Legal Need and Charting a Course of Action

In 1990 the Legal Assistance Foundation of Chicago's Homeless Advocacy Project (HAP)^{8/} procured a modest grant from the Poverty and Race Research Action Council to study the educational problems of homeless children in Chicago. At that time Title VII-B (now Title VI-B) of the federal Stewart B. McKinney Homeless Assistance Act (the McKinney Act) had been in effect for two years.^{9/} Money appropriated under the Act and allocated to Illinois had been distributed for more than a year. Chicago had received more than \$200,000 of the allocation for fiscal year 1992. Yet HAP staff had been contacted almost daily by homeless families who simply could not access schools, whose children spent weeks and even months without schooling. Children were routinely ejected from their neighborhood schools, or denied any assistance, which would have allowed them to remain. The same children were then denied entry into the schools nearest their temporary shelters. HAP staff repeatedly met homeless families whose young children were placed on waiting lists for kindergarten--never to be called in. Because the size of the public school system was so formidable, project attorneys felt that conducting a systemwide study was essential if any systemic legal action was to be taken. Such a study authoritatively would counter any argument that the instances of noncompliance with the McKinney Act provisions were sporadic, incidental, and uncharacteristic of the public school system as a whole.

The study, published as "A Long Way From Home: Chicago's Homeless Children and the Schools,"¹⁰ was based on a five-month period during which HAP staff visited numerous area homeless shelters, talked with parents, children, and homeless service providers and advocates, and contacted numerous public school staff on behalf of homeless clients. Its results wholly confirmed the widespread, indeed entrenched, nature of the problems homeless children were confronting in accessing schools, remaining stabilized in school, and obtaining fair treatment. A sampling of specific findings from the study best illustrates the magnitude of the problems homeless families faced: Most of the homeless children interviewed attended three or more schools in the 1990--91 academic year; one-third of the families interviewed had children who either were not enrolled in school at all or had missed more than two weeks of schooling; most parents were not aware that they had a right to choose to keep their child in the school they had previously attended; children were routinely ejected from schools in which they had become established because, once homeless, they were "out of district"; no transportation assistance was offered to families unless they had an advocate working with them; homeless children were often told that schools and programs were overcrowded and were frequently steered to less appropriate or attractive alternatives; "dropout" students were refused reentry to their schools. And, almost invariably, clerks and principals had little or no knowledge about the legal imperatives of the McKinney Act.

One of the most troubling issues to emerge during HAP's work serving homeless families was the poor quality of educational services given to children who were forced to attend a Chicago public school classroom for the homeless operated on site at a privately funded Chicago emergency shelter facility. The single classroom purported to provide educational services to children at all elementary grade levels with only a single teacher. Because the shelter was a 30-day program, children enrolled in the classroom were certainly suffering at least two school disruptions: one upon entry to the shelter facility (the shelter required enrollment in its on-site "school"), and the other when the stay at the shelter terminated. Most clients served by HAP did not remain in the facility long enough for advocates fully to scrutinize or understand the school's philosophy or curriculum. Some clients tolerated what appeared to be a less than adequate educational program for the convenience of an on-site school and a welcome relief from the constant records requests which hampered their efforts to gain entry to another Chicago public school.¹¹

III. Focus on Relief: What a School System Should Provide

Before a meaningful demand for change of the public schools could be made on behalf of homeless children and youth, it was essential to have a vision of what a system responsive to the needs of homeless children would look like. The McKinney Act itself was a guide. Developing a vision of a more responsive school system was not difficult.

A. Access and Enrollment

Obviously a primary concern in education is that children be in school and be in attendance regularly. Thus a system, which permitted immediate enrollment of all children who could be broadly defined as "homeless" was ideal. Whatever impeded this process needed to be corrected. In particular, school administrators needed to understand and respect the right of homeless children to enroll in school immediately.

One obstacle, of course, was what to do about children who had no immunizations or physical examinations. A review of applicable Chicago Public Schools (CPS) regulations indicated that children were allowed to go to school without immunizations for religious reasons and that children could be admitted without immunizations if parents agreed to obtain immunizations for

them promptly. Thus there appeared to be flexibility in the immunization requirement. If the school could make a referral to a free clinic for immunization and examination, prompt admission of children would be possible.

CPS claimed to have a computer system that retained information from previous Chicago public schools. Access to school records for children who moved within the CPS system seemed easy. For children not previously in the CPS system, a phone call from a school employee easily could obtain a fax response from even an out-of-state school. Immediate admission, therefore, seemed very feasible.

B. Stability, Continuity, and Transportation Assistance

Ensuring stability in school was a tougher problem. First, families needed to be informed in a timely and concise manner about the right of homeless children to attend their school of origin and the importance--academically and socially--of keeping children in a stable school setting. Second, without transportation, that choice would never materialize for the vast majority of homeless children.

Transportation was a complex issue: Chicago's multimillion-dollar busing program is a massive logistical nightmare. To get a bus and to get a student on the right bus take great effort and planning. But we were aware of helpful teachers who had successfully linked up children to already existing school bus routes. We also knew that several special populations received bus service. These included students with special education needs, students attending specialized "magnet" schools, and students being bused to achieve racial integration.

Our research had revealed CPS's sporadic distribution of half-fare passes and tokens for Chicago Transit Authority (CTA) trains and buses to some poor children, and even to parents accompanying them. Some shelters (and CDHS) had vans that they used to transport clients to special events. Some of those same shelters received McKinney Act money.

With this information, we envisioned that an effective transportation system for homeless children spread throughout the city likely would have many components: the capacity to link children to already existing buses, a token system to allow use of public transportation and to permit parents to escort children on public transportation, special vans to bring children to intersecting bus routes or to take children to school, and a program to reimburse neighbors or relatives who could transport a child by car. Because we knew that much of this patchwork existed for other populations, and because we knew that the McKinney Act required the State to address issues of transportation and to provide "comparable services" to homeless children, we knew our proposals were both legally and practically on solid ground. We also believed that the shelter system itself was part of the problem: If we could work toward keeping families in shelters in their neighborhoods, this would lessen the need for changing schools and for transportation.

With respect to cost, we had several ideas that we thought might make the additional expense of transportation palatable: At the time Illinois could have amended its state plan for Aid to Families with Dependent Children to include a cash increment for transportation for homeless children to school.¹² Involvement of the CTA system might have permitted discounted costs or free services for some part of the population. And Illinois already had a fund to reimburse families of any income level for providing transportation by car. Our argument was that this fund could be better utilized.

C. Community Participation

Our vision for relief also included community involvement. We hoped to establish a process for bringing together government agencies, social service providers, and community residents and

activists to understand better and promote awareness of the myriad difficulties facing homeless children. We also hoped that such a coalition would collaborate in seeking resolutions to those problems, including organizing food, clothing, and school supplies assistance programs, and in generally promoting community-based educational advocacy on behalf of homeless children and families.

D. Notice and Process

As with all programs involving government services to the poor, any resolution would have to include critical elements of due process: a clear written policy; notice of benefits to the people affected; a complaint resolution process; training of staff to understand the legal and educational issues; and continued provision of information to plaintiffs' counsel to assure us that any new system was working.

V. The Litigation--Phase One

Upon completion of the "Long Way From Home" study, potential plaintiff clients sent to CPS and the Illinois State Board of Education (ISBE) a threat-to-sue letter outlining numerous instances of noncompliance with the law and asserting the possibility of initiating litigation. A letter was sent also to CDHS; it sought to draw them into what plaintiffs hoped would become a coordinated effort (as envisioned by the McKinney Act) to reduce the frequency of movement of families in the shelter system and/or to aid in resolving complex transportation issues so that homeless children could continue in their schools of origin.

CPS and ISBE agreed to meet with HAP staff. A series of frustrating meetings then ensued: ISBE appeared to relinquish any responsibility for commanding compliance with the McKinney Act from CPS; CPS disavowed any noncompliance; and, while CDHS did attend one meeting with CPS, CDHS's approach was defensive and unproductive.[/13/](#)

A. The Complaint

On June 12, 1992, a week before the end of the 1991--92 academic year, 15 plaintiffs--including parents and children--filed in the Illinois circuit court a class action lawsuit court based on Section 1983, the McKinney Act, provisions of the Illinois School Code, and the state and federal constitutions. Plaintiffs sought broad-based declarative and injunctive relief against local and state school officials, including an order that the defendants submit to the court a comprehensive remedial plan designed to cure the systemic violations of state and federal law.[/14/](#)

B. Classes Asserted in the Complaint

Two classes were asserted: Class A consisted of all children between the ages of 3 and 20, inclusive,[/15/](#) who, on or after January 1, 1991, have lived, live, or will live in Chicago and, during such period have been, are, or will be homeless as defined in the McKinney Act, but have not been, are not, or will not be attending private or parochial schools while homeless.[/16/](#) Class B consisted of the parents, guardians, or other persons having custody of the children in Class A.[/17/](#)

C. Claims Against Local Defendants

Plaintiffs alleged two counts for injunctive and declaratory relief.[/18/](#) The first count charged that defendant "local educational agency" (LEA) engaged in practices, customs and policies that violated Illinois state law and the McKinney Act, as well as the state and federal constitutions. Specifically the first count charged that LEA engaged in practices, customs, and policies that violated:

- Illinois state law permitting parents and children the option to choose to remain in their home school until the academic year is completed;[/19/](#)

- the McKinney Act requirement that LEA afford each homeless child the opportunity to remain in his or her school of origin for the remainder of the academic year or to enroll in the school nearest where he or she is actually living, whichever is in the child's best interest, and afford a process for giving consideration to the wishes of the child's parent regarding which school is in the child's best interest;[/20/](#)
- the McKinney Act requirement that LEA ensure the enrollment and educational success of homeless children;[/21/](#)
- Illinois state law requiring CPS to provide access to transportation to enable Chicago schoolchildren to exercise choice in the selection of school placement;[/22/](#)
- the McKinney Act requirement that LEA provide for each homeless child services comparable to those, including transportation assistance, for nonhomeless children;[/23/](#)
- the state law prohibiting denial of enrollment to any child for failure to produce previous student records;[/24/](#)
- the McKinney Act provision requiring that school records be maintained in a manner that allows prompt access for reenrollment or transfer;[/25/](#)
- the Act's provision requiring revision of policies--including policies regarding enrollment requirements, records, and guardianship rules--which act as barriers to the enrollment of homeless children and further requiring that special attention be given to the enrollment of children not attending school at all;[/26/](#)
- the Act's requirement that LEA coordinate with other agencies and social service programs serving homeless families;[/27/](#)
- the Act's provision requiring a process for the prompt resolution of school placement disputes;[/28/](#)
- the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 2, of the Constitution of the State of Illinois requiring notice and prohibiting deprivation of a protected property interest without proper process; and
- Article X, Section 1, of the Constitution of the State of Illinois guaranteeing every child in Illinois the right to a free appropriate public education to the age of 21.[/29/](#)

D. Claims Against the State Defendants

Count two of the complaint charged that state defendant ISBE members engaged in practices, customs, and policies that violated the McKinney Act and the state and federal constitutions. Specifically count two charged that the state defendants engaged in practices, customs, and policies that violated:

- the McKinney Act provisions requiring ISBE to assure that LEA comply with the McKinney Act mandates and that the state coordinator of Education of Homeless Youth carry out the state plan;[/30/](#)
- the Act's requirement that ISBE revise policies--including policies related to transportation, records, residency, and enrollment and transfer requirements--that act as barriers to the enrollment of homeless children and youth;[/31/](#)
- the Act's mandate that ISBE require LEA to revise such policies;[/32/](#)
- the McKinney Act's provision requiring ISBE to ensure that Illinois schools address all barriers--including transportation problems, cumbersome immunization and residency requirements, lack of records, and problems posed by guardianship rules--to the education of homeless children and youth;[/33/](#)

- the federal requirement that ISBE ensure that each homeless child within Illinois receive services--including inter alia transportation--comparable to those received by other public school students;./34/
- the requirement that ISBE ensure maintenance by LEA of school records in a manner that allows timely access for purposes of enrolling homeless children;./35/
- the McKinney Act provision requiring ISBE to ensure that homeless parents and children be accorded a prompt procedure for the resolution of school placement disputes;./36/
- the Act's requirement that ISBE adopt, and ensure that LEA adopt, practices that keep homeless children and youth from being isolated and stigmatized;./37/
- the provision requiring the state coordinator to facilitate coordination between other agencies and social service programs serving the homeless;./38/
- the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 2, of the Constitution of the State of Illinois requiring notice and prohibiting deprivation of a protected property interest without proper process; and
- Article X, Section 1, of the Constitution of the State of Illinois guaranteeing every child in Illinois the right to a free appropriate public education to the age of 21./39/

The collective actions of defendants allegedly resulted in a systemic failure to (1) locate and ensure the enrollment and success of homeless children in CPS; (2) provide transportation assistance to enable such children to attend school; (3) implement any meaningful plan to remove systemic barriers faced by homeless children in obtaining an education; (4) give notice to parents or children of the child's legal right to remain in the "school of origin" after becoming homeless; and (5) afford homeless parents and children a process in which to contest adverse school decisions./40/

E. Temporary Restraining Order

A temporary restraining order was immediately sought on behalf of seven of the plaintiff children to require CPS officials to allow them to enroll in and attend the appropriate school of choice, including the "school of origin," and to assist in their transportation to enable them to do so. One family sought entry for its twins into a summer program to compensate for the children having been placed on a "waiting list" for kindergarten for the entire year. Because the restraining order was sought very close to the end of the school year, plaintiffs' demands could be regarded as modest and easily achievable. CPS immediately agreed to provide the relief requested even as it stridently insisted--after months of unsuccessful negotiations--that if such relief had been sought without litigation, it would have been provided.

F. Further Attempts at Negotiation

The parties then went into a protracted period--approximately a year--of ultimately unproductive negotiations. CPS adopted a posture of openness to negotiation but, in fact, never did more than use the negotiation meetings to attempt to prove that plaintiffs were wrong. Negotiation and resolution of disputes on behalf of individual class members were doubly difficult because neither ISBE nor CPS had any internal advocates for homeless children.

G. Motion to Dismiss

In the spring of 1993 state defendants filed a motion to dismiss, asserting that plaintiffs had failed to state a cause of action. The State relied principally on the decision of a lower federal court in *Lampkin v. District of Columbia*, which held that the educational provisions of the McKinney Act created no enforceable federal rights./41/ The *Lampkin* court purported to apply the enforceability test which had recently been enunciated by the U.S. Supreme Court in *Suter v.*

Artist M./42/ The State further argued, inter alia, that the Illinois constitutional provision afforded no right to an education. CPS adopted the State's motion to dismiss. On May 24, 1993, after lengthy briefing and oral argument, the action was dismissed in a remarkably terse oral ruling./43/ In an analysis at odds with federal case law governing the enforceability of federal statutes, the court determined that the McKinney Act was not enforceable because it was intended as a mere "entice[ment]" to states to assist homeless children; that the Act was intended to benefit the state alone and not the homeless plaintiffs who sought to enforce it; that nothing in the Act "even hints at a private right of action"; that language in the Act requiring state assurances only "to the extent practicable under . . . State law" accords the state great latitude;/44/ that the Act creates no binding obligation on the state; that an action for enforcement would "pit the courts against the [educational] agency"; and that the obligation of the federal Secretary of Education to determine if a state plan "adequately" addressed the needs of homeless children was as amorphous and vague as the "reasonable efforts" language found unenforceable in *Suter v. Artist M.*/45/

The court further held--contrary to controlling precedent--that the Illinois Constitution conferred "no right" to an education and that the Illinois School Code provisions had been invoked by plaintiffs only "to bootstrap the McKinney Act claims."/46/ Thus even those sections of the Illinois School Code which expressly provided a private right of action or had a private right of action implied by Illinois case law were dismissed.

V. The Appeal, New Improved Legislation, and the Overturning of Lampkin

Plaintiffs appealed, and a lengthy briefing schedule ensued./47/ While the appeal was pending, three key events affecting it occurred. First, advocates in Illinois, including plaintiffs, took advantage of intense media attention directed toward a school district's poor treatment of a homeless family in one of the Republican-dominated suburbs of Chicago. Because the family's story was extremely sympathetic, and because the family was left unprotected by the then existing provisions of the McKinney Act, there was a groundswell of interest in the 1994 session of the General Assembly in passing legislation to ensure greater protections for homeless children in Illinois. Advocates were invited to draft legislation. They did so with an eye toward solving the many problems the McKinney Act did not resolve. The new state legislation specified that schools were to afford transportation to homeless children returning to the school of origin; provided for immediate enrollment of homeless children and required schools to assist families in records gathering; permitted homeless children to stay in the same school for as long as they remained homeless; created a clear dispute-resolution process with time limits; and provided a private civil action for persons aggrieved./48/

Second, advocates on the national level, including principally the National Coalition for the Homeless, worked on a second set of amendments to the McKinney Act. Chicago's experience with its recalcitrant school system--and the ruling of its circuit court in *Salazar*--informed those efforts. A few of the precise arguments raised by defendants in the *Salazar* appeal (e.g., that compliance was not required as evidenced by weak language in the statute) were addressed by the revisions. A stronger McKinney Act thus emerged effective July 1, 1995./49/

Third, the *Lampkin* decision was overturned by the D.C. Circuit Court of Appeals in a well-reasoned opinion which interpreted the pre-1995 language of the Act--the language which the *Salazar* defendants argued was weak--to be fully enforceable./50/ Certainly, if this precedent were applied by the Illinois appellate court, the new language of the McKinney Act--which was even stronger and more specific than the pre-1995 language--could hardly be ruled unenforceable. Then the Supreme Court denied certiorari in *Lampkin*./51/ Passage of the new

amendments to the educational provisions of the McKinney Act after the Lampkin ruling on enforceability strengthened the argument of plaintiff-appellants in Salazar that Congress intended the statute to be enforceable; otherwise Congress would have eliminated expressly any private right of action in light of Lampkin.

On the eve of oral argument in the Salazar appeal, faced with the developments above, as outlined by plaintiffs in their motion for leave to cite additional authority, state and local defendants conceded that the McKinney Act as amended was enforceable. The court thus entered a brief order on August 1, 1995, remanding the cause for trial.

VII. Litigation--Phase Two

On November 13, 1995, plaintiffs filed a motion for leave to amend their complaint and joined 16 new plaintiffs, dropping those who, after such a long period of time, were no longer actively involved in the litigation. The amended complaint included new claims premised upon Illinois's Education for All Homeless Children Act⁵² as well as claims premised upon the revised McKinney Act.⁵³

A. Amended Complaint

The new plaintiffs' problems sharply defined the entrenched nature of CPS's failure to comply with state and federal law. After a full three and a half years of litigation and a full nine years since enactment of McKinney, CPS's treatment of homeless children was still appalling. In one case a school refused enrollment to a kindergarten-age homeless girl, first because she lacked medical records. After the family produced the records (eight days later), the girl was enrolled and then removed from the classroom the same day because she was "from the shelter" and the shelter had its own school (although it had no kindergarten). Her brother was also ejected from the neighborhood school because he needed special education services that the school could not provide. The school initially offered to locate an appropriate school for the boy but then failed to contact the family.

Even after the amended complaint was filed, CPS failed to rectify these problems until counsel for plaintiffs intervened. Other plaintiffs were not informed of the right to choose the school of origin; when they did assert that right, they were told that they must pay \$220 per month for bus service. CPS later offered CTA tokens to transport a third- and first-grader on public transportation but denied their mother tokens to escort them. Yet another plaintiff was denied preschool admission for lack of records. The family could not afford medical treatment and thus could not comply with the medical record request. All new plaintiffs missed schooltime due to the actions of noncompliant CPS employees.

B. Motion to Dismiss--Round Two

After remand local defendants once again sought dismissal of plaintiffs' claims; this time they asserted mainly that plaintiffs failed to exhaust administrative remedies.⁵⁴ In other words, defendants claimed that plaintiffs must first go through an administrative dispute process on behalf of each individual claimant before court action could be taken. Plaintiffs argued in response, *inter alia*, that the exhaustion doctrine did not apply to the case because: the Illinois Education for All Homeless Children's Act did not confer exclusive jurisdiction upon CPS to hear plaintiffs' claims, as required to bar court action under Illinois law; the Act did not empower an ombudsperson to grant plaintiffs complete relief--including declaratory and injunctive judgments as well as attorney fees; and the complaint on its face demonstrated that pursuit of administrative remedies would be futile. Plaintiffs argued further that, as raised in the amended complaint, plaintiffs were challenging CPS's complete failure to have in place any functioning dispute-resolution process. Thus the court would need to determine the existence and validity of

a dispute-resolution system rather than rely upon CPS's assertion that such a system was in place, for, at the same time that CPS advanced its exhaustion defense, discovery was confirming what plaintiffs already knew through continual advocacy on behalf of individual homeless children: There was no administrative dispute-resolution process in place.

C. Temporary Restraining Order Number Two

On remand a new trial judge had entered the case. Educating this new judge to the breadth of the problems faced by homeless families, as well as the specific legal issues of the case, became a top priority for plaintiffs. A graphic presentation of plaintiffs' view was presented when, in May 1996, a temporary restraining order was sought on behalf of another child, a ten-year-old boy, denied admission to a neighborhood school and told that he must go to the "shelter school." Although CPS agreed to ensure enrollment the very next day, the school did not comply. The child's mother, Robin LeFlore, was particularly eloquent and indignant about the treatment of her child. The court determined the testimony of the principal--who asserted that the family came to the school merely to talk, not to seek enrollment--incredible. An order was entered granting the child's immediate admission.

Shortly thereafter the trial court rejected local defendants' administrative-exhaustion argument, as well as their argument of mootness, and denied the motion to dismiss.⁵⁵ Full discovery then commenced.

D. Settlement

After the hearing on plaintiff LeFlore's request for a temporary restraining order and the ruling in favor of plaintiffs on the motion to dismiss, the parties then entered into a mediation process for possible settlement, facilitated by the court. This process was lengthy; obtaining concessions from defendants on the most modest points was difficult. Nevertheless, a comprehensive settlement agreement was achieved. It covered each of the major subjects of the litigation, including transportation assistance, notice of rights to parents and children, training of staff, immediate enrollment of homeless children, defendants' duty to coordinate with other services and programs for homeless families, preschool availability and tutoring, a complaint-resolution process, and the provision to plaintiffs' counsel of information necessary to monitor CPS's performance. In a settlement agreement and stipulation to dismiss, in exchange for specific written commitments from defendants, plaintiffs agreed to dismiss the action but retained the court's jurisdiction for the purpose of awarding fees and costs. Some of the most significant achievements of the settlement follow.

1. Enforcement

Under the terms of the settlement, the defendants stipulated to the classes as defined (homeless children and their parents or guardians) and further agreed that the court retained "continuing jurisdiction . . . in order to enforce the term or terms of th[e] Agreement pursuant to a motion filed under this paragraph or otherwise."⁵⁶ Any class member may file a motion seeking enforcement.⁵⁷

2. Definitions and Time Lines

One of the most important achievements of the settlement is its clarity on some key definitions, time lines and procedures: who is homeless; who is a "guardian"; when is notice to be distributed to parents and students; how quickly must enrollment occur; etc. Significantly the defendants agreed to adopt the federal Department of Education's broad definition of "homeless," as expressed in a document entitled "Preliminary Guidance for the Education of Homeless Children and Youth Program, June 1995." "Homeless" thus includes children and youth (from preschool-age and up)⁵⁸ who are "doubled up" in another family's housing "because of a loss of housing

or similar situation."/59/ Also included are throwaways and runaways, even if their parents are willing to house them,/60/ teen mothers living in facilities for unwed parents,/61/ children abandoned in hospital settings,/62/ migrant children living in unfit habitations,/63/ children awaiting placement in foster care,/64/ children who are in the care of the state and are institutionalized because they have no other placement in which to live,/65/ and children and youth in emergency shelters or living in trailer parks and camping grounds without adequate accommodations./66/

The term "guardian" is defined as one, not a parent, who has physical or legal custody of a child./67/ As implemented under the settlement, this allows a wide variety of adults (e.g., an older sister or aunt) to act on behalf of a child without having to procure formal guardianship papers. Thus one of the most persistent barriers to the enrollment of children in Chicago--the lack of custody papers--is resolved in the settlement.

3. Policies

Under the settlement CPS must "adopt, implement and comply" with policies which ensure the equal access of homeless children to school services; establish safeguards to protect children from discrimination on the basis of homelessness,/68/ and take steps to identify and enroll homeless children and youth in the schools and the community./69/ No homeless child or youth may be discriminated against, isolated, or segregated from the mainstream school environment because of homelessness./70/ A formal written policy of CPS and a formal written policy of state defendants, both appended to the settlement, must be followed./71/ The state policy (which CPS also is bound to follow)/72/ provides that all school districts "have a responsibility to help foster consistent attendance by reaching out to homeless families and working with them" to ensure that homeless children "continue to attend their school of origin without interruption, wherever possible."/73/ Thus CPS may not simply afford parents information regarding school selection; CPS should work affirmatively with families to keep children stabilized in one school.

4. Enrollment

As part of its commitment to ensure that homeless children and youth are provided equal access "CPS will take steps to identify and to enroll homeless children and youth in the schools and the community."/74/ Under the terms of the settlement CPS may not discourage any student from attending his or her school of origin./75/ Each homeless child must be notified of, and given a choice in, school selection consistent with the law/76/ and must be permitted to remain in that school for as long as he or she is homeless or, if permanently housed, until completion of the academic year./77/

Enrollment must be effectuated immediately. If records are missing, including medical records, or if immunizations are not up to date, the responsibility is cast upon CPS to "make a reasonable effort" to contact the prior school and to procure medical records./78/ Each school must give immediate referrals to free medical clinics for physicals or immunizations. No school may deny or delay enrollment because those items are lacking./79/

The settlement requires CPS to ensure that children are given the opportunity upon enrollment to participate in all free and low-cost breakfast, lunch, and other food programs available through CPS./80/

5. Transportation

The single most significant practical achievement of the settlement is the expansive new transportation system it establishes for homeless children. Essentially it creates two programs: utilization of public transportation and busing in "hardship" situations for which public

transportation will not work. Transportation must be made available for school-related activities as well as to and from school.^{/81/}

Under the new program children in sixth grade and below (through preschool) who choose to go to the school of origin are given tokens and a half-fare student pass card application fee.^{/82/} A parent or guardian receives full-rate tokens to accompany the child.^{/83/} If the parent cannot accompany the child for a brief period, the parent in a letter may authorize another adult to receive the tokens for up to a two-week period.^{/84/} If, however, the parent or guardian is prevented from accompanying a child to school because of employment, an educational program or job training, a disability, shelter rules, the Department of Children and Family Services' or a court's requirement that the parent be somewhere else, the parent having to transport children to different locations, or some other unspecified hardship,^{/85/} then alternative transportation must be provided. Currently this is a school bus. Children in grades higher than sixth grade who select a school of origin are given tokens for themselves only.^{/86/} Homeless children and youth who are entitled to transportation irrespective of their status as homeless (e.g., for integration purposes or through a special education program or enrollment in a magnet school) must continue to receive those services.^{/87/}

6. Coordination

CPS committed in the settlement agreement to "develop a model and implement such model for CPS's coordination of services . . . with other agencies and entities serving homeless children or youth."^{/88/} To facilitate such coordination and to satisfy the responsibility to identify and enroll homeless children, each Chicago school with a shelter for the homeless in its attendance boundaries must identify a school employee to serve as a liaison to the shelter. The liaison is to assist in identifying and enrolling homeless children in whatever school is chosen pursuant to CPS policy.^{/89/} CPS is also required to provide tutoring services for all homeless children whose parents or guardians request them. If the school a homeless child attends does not have an on-site tutoring program, CPS must make other arrangements for the child to receive tutoring.^{/90/} Under the new state Board of Education policy on the education of homeless children and youth enunciated in the settlement agreement, CPS is additionally bound to undertake coordination activities with domestic violence agencies, shelter operators, transitional housing programs, and runaway and homeless youth centers.^{/91/}

7. Notification of Rights

CPS agreed in the settlement to give a notice of rights; this was negotiated word for word by the parties. The notice is to be sent semiannually, in September and January, to all students enrolled in Chicago public schools and their parents. The notice--which is prepared in Spanish and English--must be available also at each school during report card pickup and at the end of each semester. The notice, along with a copy of the CPS policy on education of homeless children and youth, must be kept available at each school and must be posted in a prominent location. It includes specifics regarding the rights and services for homeless children as well as information regarding the dispute-resolution process, transportation, and the CPS contact for its homeless services.^{/92/}

8. Dispute-Resolution Process

CPS agreed in the settlement to establish a procedure for resolving disputes whereby school personnel must assist complainants in completing grievance forms regarding enrollment or transportation disputes.^{/93/} The school principal must attempt to resolve the dispute by the end of the next school day.^{/94/} If the dispute is not resolved, it must be referred immediately to the school's regional education officer, who must either resolve the problem to the parent's

satisfaction or convene a meeting of the parties and attempt to resolve the issues within four school days.^{95/} The regional officer's ultimate decision is then considered the school board's final decision (subject, of course, to judicial review and enforcement of the settlement).^{96/} One of the most fundamental features of the dispute-resolution process from plaintiffs' perspective is the requirement that CPS inform parents about the process and about sources of free or low-cost legal assistance and advocacy services whenever a dispute arises^{97/} .

Even more important, upon receiving a grievance, CPS immediately must enroll a child and/or provide transportation assistance pending the board's final decision on the dispute.^{98/}

9. Training

The settlement requires CPS to provide annual training programs regarding the new policies and procedures under the settlement. The training sessions are to be attended by all principals, assistant principals, and other CPS staff responsible for enrollment, transportation, counseling, and administration. The training must cover school choice for homeless children and youth; immediate enrollment and transfer of homeless children and youth; transportation assistance programs; nondiscrimination and equal-access policies; the dispute-resolution process; and the CPS's obligations of under state and federal law.^{99/} The state policy mandates programs of professional development in districts (including Chicago) which receive McKinney funds and further requires such programs to address the special needs and challenges facing homeless youth. Training is to include "methods to determine whether the family of a child or youth is homeless, without creating stigmatization or isolation."^{100/}

VII. Ongoing Issues for Chicago's Homeless Children

The Salazar settlement includes provisions for the production of information to plaintiffs' counsel for purposes of measuring compliance.^{101/} These provisions expire at the end of the 1998--99 reporting period, although CPS's duty to collect the relevant information is ongoing.^{102/} After the production period expires, most information still can be obtained through the Freedom of Information Act.^{103/} The information includes data regarding transportation, complaints, training, numbers of homeless children within and without the school system, cooperating agencies, requests for information or assistance, barriers or problems encountered by homeless students in CPS, efforts to locate and enroll homeless children, truancy services and copies of policies, training materials, notices, etc.^{104/}

The information produced for the 1996--97 school year reveals continuing systemic problems but also reflects significant progress in the training of CPS staff, the dissemination of pertinent information and the routinization of certain important procedures. Because the settlement was not finally approved until January 23, 1997, full implementation was not anticipated until March 1997, and thus data gathered for the 1996--97 school year cover quite a short period of time.

As always, the best barometer of the success of the new CPS program is the experience of homeless families. A significant number of problems still occur. However, the establishment of a new set of clear rules on school selection and access to transportation has greatly eased the task of advocates. As training has progressed, there appears to be greater familiarity among school staff with some of the most basic aspects of the settlement. Securing the immediate enrollment of children in the proper school is much easier for advocates, and obtaining records is less of an obstacle than before the settlement. Arranging transportation is significantly easier.

Some reported problems, however, suggest additional institutional resistance to important settlement aspects such as coordination of community agencies and efforts to seek out and enroll homeless children. Access to preschool remains a major issue, and some specific difficulties with the transportation system are not satisfactorily addressed. Nevertheless, overall the Salazar

litigation has succeeded in bringing the problems and needs of homeless children in CPS to the forefront,¹⁰⁵ creating an effective mechanism for prompt resolution of problems and creating a much broader base of knowledge within the school system of the rights and remedies of homeless children.

IX. Conclusion

Securing the rights of Chicago's homeless children to a free appropriate education has been especially difficult. Now, just cresting over the ten-year anniversary of the McKinney Homeless Assistance Act, real change finally has come to the Chicago public schools. Mutually recognized legal mandates are in place and the difficult task of implementation is under way. How genuine and enduring the new changes will be certainly depends upon continued monitoring and enforcement of the terms of the Salazar settlement as well as the commitment of CPS staff.

Clearinghouse Web Site Discussion

The second of the Clearinghouse's newly launched Web site discussions is based upon "Enforcing the Educational Rights of Homeless Children and Youth: Focus on Chicago." The article's authors, Laurene M. Heybach and Stacey E. Platt, go on line to the Clearinghouse Web site to answer questions about the struggle to improve educational access for homeless children and youth. The discussion brings together advocates from anywhere in the country (and the world?) who want to talk about homeless children's obstacles in securing a free, appropriate public education. Won't you join us? Enter www.ncslplp.org/disc1_frm.htm. There you can view messages posted by the authors and others, respond to those messages, and add new messages. The discussion is now open.

Footnotes

/1/ The federal Stewart B. McKinney Homeless Assistance Act, discussed in detail infra note 9, requires that "each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . as provided to other children and youth." 42 U.S.C.A. Sec. 11431 (1995) (emphasis added).

/2/ Although we are aware of no study measuring public perceptions of homeless children, a study of public perceptions of the adult homeless population discloses that Americans perceive a leading cause of homelessness to be irresponsible behavior. Bruce Link et al., Public Attitudes and Beliefs About Homeless People, in HOMELESSNESS IN AMERICA 143, 148 (Jim Baumohl ed., 1996). Generally the public tends to associate the homeless with other stigmatized groups (alcoholics, mentally ill, incarcerated persons). Id.

/3/ Data provided by the Chicago Public Schools (CPS).

/4/ These estimates are based upon the Chicago Coalition for the Homeless' analysis of data taken from the 1990 Chicago Comprehensive Housing Affordability Strategy and updated yearly using the mayor's reported percentage increase in homelessness. 1990 was the last year in which the city of Chicago made an effort to count its overall homeless population. Because the data show that approximately 80,000 Chicagoans are homeless annually and, nationally, 40 percent of such persons are families with children (32,000) consisting of two to three children per family, 22,000 homeless children are a realistic, if not completely accurate, figure.

/5/ Julie Dworkin, Domestic Violence and Homelessness: Abuse Fuels Fastest Growing Homeless Population, HOMEWARD BOUND, Winter 1998 (policy paper insert).

/6/ Chicago's shelter system is comprised of both publicly funded and privately funded shelters. The City of Chicago Department of Human Services issues a list of shelter providers twice a year. The number 50 is derived from those lists.

/7/ Highly mobile children clearly suffer from repeated change in schools. Joy J. Rogers states: "Lack of continuity is widely recognized within the field of education as jeopardizing any child's school success 'A rule of thumb' among educators is that it takes a child four to six months to recover academically from the disruption of changing schools." Education Report of Rule 706 Expert Panel presented in *H. v. Johnson*, No. 88 C 5599 (N.D. Ill. 1991), at 2. See also David Wood et al., *Impact of Family Relocation on Children's Growth, Development, School Function and Behavior*, 270 *JAMA* 1334, 1336 (1993 ("Children in families that moved frequently . . . were between 50 and 100% more likely to be reported to have a delay in growth or development, to have a learning disorder, to have repeated a grade, or to have four or more frequently occurring behavioral problems.")).

/8/ This project was initiated and directed by Laurene M. Heybach. A number of attorneys with the Legal Assistance Foundation of Chicago participated in the project's work on homeless education and worked extensively on the ensuing litigation. They included Julie Biehl, Patricia Nix-Hodes, Stacey Platt, Diane Redleaf, Robert Lehrer, and John Whitcomb.

/9/ In July 1987 Congress enacted the Stewart B. McKinney Homeless Assistance Act, the first federal statute that attempted comprehensively to address the "immediate and unprecedented crisis" of homelessness in America, 42 U.S.C.A. Sec. 11301(a)(1). Title VI-B of the Act, 42 U.S.C.A. Secs. 11431-35 (1995), addresses the educational needs of homeless children and youth. It requires states to revise educational rule and practice in order to break down barriers to the enrollment, attendance, and success of homeless children and youth in school; ensure that homeless children and youth are not segregated from the mainstream school environment; and ensure that they have equal access to all educational services and opportunities. *Id.* Sec. 11431 (1995). In discussing 1990 amendments to the Act, Sen. Edward M. Kennedy expressed its educational purpose: "Homeless children have been denied the education provided to all young people because they do not have a stable address or cannot afford the transportation to the nearest school. The bill attempts to remove the barriers placed before those children and requires teachers to be aware of and respect the specific educational needs of homeless children and youth. If we are to ensure that homeless children do not remain in the cycle of homelessness through adulthood, we must dedicate ourselves to giving them an education equal to those of non-homeless children." 136 CONG. REC. 17227 (Oct. 26, 1990). The McKinney Act requires, *inter alia*, that public schools within states accepting federal money under the Act grant homeless families a choice in school selection, including allowing them to attend the school they last attended or the school they attended at the time they became homeless (the "school of origin" or "home school"); provide homeless children and families with transportation assistance, allowing them to take advantage of school choice; enroll homeless children in school promptly by eliminating burdensome records requirements; remove educational barriers and affirmatively provide services to enable homeless children to enroll, attend, and succeed in school; provide a process for resolving disputes between homeless families and the schools; and prohibit educational discrimination against homeless children. 42 U.S.C.A. Sec. 11432 (1995).

/10/ The study was authored by Bernadine Dohrn, now director of the Children and Family Justice Center of Northwestern University School of Law. Though now dated, the study still can be obtained from the Clearinghouse on Urban Education at Columbia University, Box 40, 525 W. 120th St., New York, NY 10027; 800.601.4868.

/11/ For a more detailed discussion of this school see Laurene M. Heybach, *Homeless Students Rights Become Reality*, 8 BEAM 1 (1997).

/12/ The Temporary Assistance for Needy Families program has replaced the Aid to Families with Dependent Children program. States are free to include the cost of transportation for homeless children as part of the new program without federal approval.

/13/ Later plaintiffs introduced and obtained passage of legislation which required that the shelter system take into consideration the location of a child's school when placing families. Illinois Homeless Family Placement Act, 310 ILL. COMP. STAT. 85/1-25 (West Supp. 1997), Public Act 88-336, effective Jan. 1, 1994.

/14/ Salazar v. Edwards, No. 92 CH 5703 (Ill. Cir. Ct. Cook County filed June 12, 1992) (Clearinghouse No. 48,264) (complaint).

/15/ Under Illinois law children have a right to attend public school from age 5 until age 21. 105 ILL. COMP. STAT. ANN. 5/10-20.12 (West 1993). The federal Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1411-20, describes the obligations of schools to provide special education services for qualifying children beginning at age 3. Thus all children from 3 through 20 are entitled to receive a free, appropriate public education in Illinois.

/16/ Salazar, Complaint ¶ 13(a).

/17/ Id. ¶ 13(b).

/18/ Id. ¶¶ 74-79.

/19/ ILL. REV. STAT. ch. 122 Sec. 10-20.12a (1991).

/20/ 42 U.S.C.A. Sec. 11432(e)(3) (1988).

/21/ Id. Sec. 11432(e)(8) (Supp. III 1991).

/22/ ILL. REV. STAT. ch. 122 Sec. 34-18(7) (1991).

/23/ 42 U.S.C.A. Sec. 11432(e)(5) (Supp. III 1991).

/24/ ILL. REV. STAT. ch. 122 Sec. 50-8.1 (1991).

/25/ 42 U.S.C.A. Sec. 11432(e)(6) (1988).

/26/ Id. Sec. 11432(e)(9) (Supp. III 1991).

/27/ Id. Sec. 11432(e)(7) (Supp. III 1991).

/28/ Id. Sec. 11432(e)(1)(B) (Supp. III 1991).

/29/ Salazar, Complaint ¶¶ 74-76.

/30/ 42 U.S.C.A. Secs. 11432(c)(4), (d)(2), (e)(1), (2) (Supp. III 1991). Specifically the McKinney Act requires each state to have a coordinator responsible for estimating the number of homeless children and youth in the state and the number of those children served pursuant to grants under the Act; gathering information on the nature of homeless children and youth's problems in gaining access to schools and their particular special needs, as well as the schools' progress in meeting their needs; developing and carrying out the state plan under the McKinney Act; preparing reports for federal oversight; facilitating coordination between state and local educational and social service agencies serving homeless children, youth, and families; and developing relationships and coordinating with other educational and social service agencies to improve the provision of comprehensive services to homeless children, youth, and families. Id. Sec. 11432(f) (1995). McKinney also requires that local educational agencies receiving McKinney funds appoint a liaison to ensure that homeless children and youth enroll and succeed in school and receive educational services. Id. Sec. 11432(g)(7)(A) (1995).

/31/ Id. Sec. 11432(e)(9) (Supp. III 1991).

/32/ Id. Sec. 11432(e)(1)-(2) (Supp. III 1991).

/33/ Id. Sec. 11432(e)(1)(G) (Supp. III 1991).

/34/ Id. Sec. 11432(e)(5) (Supp. III 1991).

/35/ Id. Sec. 11432(e)(6) (1988).

/36/ Id. Sec. 11432(e)(1)(B) (Supp. III 1991).

/37/ Id. Sec. 11432(e)(1)(I) (Supp. III 1991).

/38/ Id. Sec. 11432(d)(4) (Supp. III 1991).

/39/ Salazar, Complaint ¶¶ 77-79.

/40/ Id. ¶ 2.

/41/ Lampkin v. District of Columbia, No. 92-0910 (RCL), 1992 WL 151813 (D.D.C.), rev'd, 27 F.3d 605 (D.C. Cir. 1994) (Clearinghouse No. 48,581).

/42/ Suter v. Artist M., 503 U.S. 347 (1992) (Clearinghouse No. 48,036).

/43/ Salazar, Transcript of May 24, 1993, at 68-76.

/44/ This referred to section 11432(e)(2): "Each plan adopted under this subsection shall assure, to the extent practicable under requirements relating to education established by State law, that local educational agencies within the State will comply with the requirements of paragraphs (3) through (9)." 42 U.S.C.A. Sec. 11432(e)(2) (Supp. III 1991).

/45/ Salazar, Transcript of May 24, 1993, at 68-76.

/46/ Id.

/47/ At this point in the litigation the law firm of Sonnenschein, Nath and Rosenthal became involved. The late Edwin Rothschild and Evan Siegel wrote the brief on appeal for amici curiae for the Chicago Coalition for the Homeless and the National Coalition for the Homeless in support of plaintiff-appellants. Later lawyers Alan Posner, Mark Hanover, and Ronald Bell of that firm became cocounsel for the plaintiffs. Heybach, Posner, and Hanover continued to represent the plaintiffs after federal legal services regulations barring programs from working on class action lawsuits forced the Legal Assistance Foundation to withdraw from the case. The lawyers from Sonnenschein played, and continue to play, an invaluable role in the litigation of the case.

/48/ Education for All Homeless Children Act (EHCA), 105 ILL. COMP. STAT. 45 (West Supp. 1997). The new law, Public Act. 88-634, took effect in January 1995.

/49/ 42 U.S.C.A. Secs. 11431-35. (1995). See plaintiff-appellants' motion for leave to cite additional authority in Salazar, No. 93-2223 (Ill. App. Ct. filed July 20, 1995).

/50/ Lampkin, 27 F.3d at 605. Notably, after the defendant D.C. School Board was held accountable under Lampkin, the district opted to forgo federal money under the McKinney Act rather than comply with its dictates on behalf of homeless children. See Lampkin, 886 F. Supp. 56 (1995).

/51/ District of Columbia v. Lampkin, 513 U.S. 1016 (1994).

/52/ EHCA, 105 ILL. COMP. STAT. 45 (West Supp. 1997).

/53/ The most notable amendments to the McKinney Act address preschool education. Whereas the pre-1995 Act did not specify preschool as a goal, the amended Act repeatedly mentions the right to preschool services, evidencing Congress' intent to address barriers to the provision of equal educational opportunity for preschool-age homeless children. Thus, in addition to amending the Act's Statement of Policy to include equal access to preschool education, 42 U.S.C.A. Sec. 11431(1) (1995), the amendments also require that states use McKinney money to provide activities for and services to preschool-age children, that the coordinator in each state gather information on the problems homeless children have in gaining access to preschool programs, that states facilitate coordination of services to preschool-age children, that the state plan describe procedures for ensuring that homeless children have access to the same public preschool programs as other children, and that each local educational agency's homeless liaison ensure that homeless children receive preschool programs for which they are eligible. Id. Sec.

11432 (1995). This focus on preschool access is mirrored in Illinois's Consolidated State Plan, in which Illinois "assure[s] that homeless children and youth are a priority population in public preschools and before/after school programs." Illinois State Board of Education Consolidated State Application for Federal Program, Sec. III, at 33 (June 1996). CPS's Early Childhood Education State PreKindergarten Program eligibility guidelines state unequivocally that "[homeless]children have priority for school enrollment. [If there is a waiting list,] they go to the top of the list until the next available opening." Chicago Public Schools State PreKindergarten Program Screening Component, at 23.

/54/ CPS also claimed that certain named plaintiffs failed to state a cause of action because they were no longer homeless or no longer lived in Chicago and therefore their claims against CPS were moot. Finally, CPS claimed that one of the plaintiffs should be foreclosed from proceeding because she was only four years old and thus had no right to enrollment in a preschool program.

/55/ Salazar (Ill. Cir. Ct. Cook County June 4, 1996) (order). The court agreed with plaintiffs on all counts; it held that the exhaustion doctrine was inapplicable to the case and noted specifically that CPS was responsible for advising families of and commencing any dispute-resolution process and that the EHCA did not grant CPS exclusive jurisdiction over disputes. The court also held that the public-interest exception applied to CPS's claims of mootness and that the four-year old plaintiff's claims were not barred because she sought only the same educational opportunity offered to nonhomeless children of her age.

/56/ Salazar, Settlement Agreement and Stipulation to Dismiss (Nov. 21, 1996) ¶¶ 32-33.

/57/ Id. ¶ 33.

/58/ U.S. DEPT OF EDUCATION, PRELIMINARY GUIDANCE FOR THE EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM 20 (June 1995).

/59/ Id. at 21.

/60/ Id. at 22-23.

/61/ Id.

/62/ Id.

/63/ Id. at 22.

/64/ Id. at 21.

/65/ Id. at 22.

/66/ Id. at 21.

/67/ Salazar, Settlement ¶ 3(c).

/68/ Plaintiffs were successful in negotiating CPS's agreement, as part of the settlement, to close down promptly the one-room shelter school, which discovery revealed had segregated homeless children and youth at the shelter from the mainstream educational environment and had provided those children with inferior educational services.

/69/ Salazar, Settlement ¶ 9.

/70/ Id.

/71/ Id. ¶ 9(c).

/72/ Id.

/73/ Id., Exhibit D at 2.

/74/ Id. ¶ 9(a).

/75/ Id. ¶ 10(d).

/76/ The law provides three choices: the school the child or youth was last enrolled in; the school the child was enrolled in when he or she lost housing; and the school which nonhomeless

children attend in the area nearest where the child or youth is actually living. EHCA, 105 ILL. COMP. STAT. 45/1-10 (West Supp. 1997).

/77/ Salazar, Settlement ¶¶ 10(c)-(d), 12.

/78/ Id. ¶ 10(f).

/79/ Id. ¶ 10(g).

/80/ Id. ¶ 10(h).

/81/ Id. ¶ 13(a), Exhibit C (Policy and Procedures on Education of Homeless Youth) at 4.

/82/ Id.

/83/ Id. ¶ 13(b), Exhibit C at 4-5.

/84/ Id., Exhibit C at 5.

/85/ This could include, for example, that transportation time on the public transportation system was excessive.

/86/ Salazar, Settlement ¶ 13(a).

/87/ Id., Exhibit C at 5.

/88/ Id. ¶ 20.

/89/ Id. ¶ 21.

/90/ Id. ¶ 22.

/91/ Id., Exhibit D (Proposed Policy of the State Board of Education on the Education of Homeless Children & Youth) at 2.

/92/ Id., Exhibit E (Notice of the Chicago Public Schools Policy on Education of Homeless Children and Youth).

/93/ Id. ¶ 16(a).

/94/ Id. ¶ 16(d).

/95/ Id. ¶ 16(d), (e).

/96/ Id. ¶ 16(g).

/97/ Id. ¶ 16(h).

/98/ Id. ¶ 15.

/99/ Id. ¶ 17.

/100/ Id., Exhibit D at 2-3.

/101/ Id. ¶¶ 25-29.

/102/ Id. ¶¶ 26-27.

/103/ Id. ¶ 26.

/104/ Id. ¶¶ 25(a)-(j), 27(a)-(m).

/105/ State efforts to serve homeless children also have been significantly improved. During the course of the litigation Daniel Miller became the Illinois coordinator for the education of homeless children and youth. For the first time in Illinois's ten years of participation in the McKinney program, the coordinator has designated a full-time staff member, Gary Dickerson, to work on the issues affecting homeless families. Dickerson can be reached at 217.782.3370. Utilizing technical expertise, the state board is now making a concerted effort to assist schools in understanding and applying state and federal law. The Opening Doors project of the Adult Learning Resource Center is a provider of technical assistance. An excellent contact at the center is Cathy Conrad; she can be reached at 847.803.3535. Review 1998 My-Je Salazar 04/22/98 4:36 PM 1515