

Fighting for Homeless Children*

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Upon taking office as United States attorney, in August 2010, I was resolved to have an active civil rights effort as a top priority in my work. Despite all the progress that has been made through the hard and dedicated work of many, the promises of our freedoms do not extend to all Americans. In practice, unfortunately, our pledge of liberty and justice for all means liberty and justice for some—not all—Americans.

In announcing a dedicated Civil Rights Section in the reorganization of our office, we took an important step in sending the community a message about our resolve. In addition, I came to know the civil rights activists and stakeholders much better. I learned that by simply breaking down the walls between individuals and groups dedicated to equal justice for all, we could unleash a reservoir of positive energy, multiplying the efforts of all involved. Investing in each community group illuminates the heroic work that was previously less visible.

Such work includes the great accomplishments of the Pittsburgh-based Homeless Children's Education Fund (HCEF). That organization's efforts have been driven by many distinguished community leaders and led by the seemingly boundless determination and brilliant vision of Joe Lagana.

Joe Lagana served for many years as a teacher and coach in public schools. Formed in 1999 at Joe's "retirement" party, the HCEF provides hope through learning—seeking opportunities to educate and increase awareness of homeless children.

A priority of the HCEF is to champion the right to education for all children, even—especially—those made invisible by homelessness. Their plight, which is no fault of their own, is now the life's cause of so many.

Western Pennsylvania has been identified as a leader in this national cause, and its efforts have aided children and helped fuel the civil rights work being done here.

A key event in this work was the 2009 case involving a local school district. *A.E., B.E., M.E., minors, et al v. Carlynton School District, et al.*, filed in the United States District Court for the Western District of Pennsylvania, was a suit on behalf of a suburban Pittsburgh family with two boys and two girls, ages six to twelve, who were to be excluded from school because they were homeless.

After they were evicted from their home, this family reached out to the Interfaith Hospitality Network (IHN) in Crafton, which provided them with a place to store their belongings. The IHN shelter could not provide them with overnight accommodations, however, so it placed them at a series of eight local churches. Although the IHN shelter was located squarely within Carlynton School District, a few of the churches where the family slept were outside it. Because of this technicality, the school un-enrolled the children.

The family petitioned Carlynton to re-enroll their children, but when the school year began, the Pennsylvania State Department of Education informed the school district that they were not obligated to do so, since the family "did not live in the District." These four children, still struggling with being homeless, were left without any apparent educational options. Because they were without a permanent home, no school would take them.

Fortunately, this family had help. IHN put them in touch with the National Law Center on Homelessness and Poverty and the Education Law Center. The two organizations filed suit against Carlynton School District, demanding that it stop discriminating

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against homeless students. Within six months, the school district settled the lawsuit and agreed to enroll the children.

This story is not unique. As families have struggled in the current economic environment, it has become increasingly common. Approximately 1.35 million children face homelessness each year, tens of thousands of them in Pennsylvania. This misfortune is not reserved for older, more capable teenagers; a full 42% of homeless children in this country are under the age of six. By fifth grade, at least 7% of all children in this country have spent time living in shelters or cars.

Homeless children are the most educationally at-risk student population. They are more likely to drop out of school than graduate and more likely than other students to become homeless as adults. Failing today's homeless youth ensures another generation of underachievement and lost promise. What is more, school-enrollment policies can create insurmountable barriers for homeless students.

However, the federal government has tools to break down these barriers. The most important of those tools is the McKinney-Vento Homeless Assistance Act, which requires schools, school districts, and other educational agencies to consider homeless children when determining enrollment policy. The act emphasizes that homeless youth have a right to the same services as other students, from enrollment to transportation to class selection. Homelessness alone is not a sufficient reason to exclude students from the mainstream school environment.

McKinney-Vento protects any child who lacks a fixed, regular, and adequate nighttime residence. This definition is broad enough to include many children and youth whose living situations might otherwise complicate their enrollment. It includes children who:

- are sharing housing due to loss of housing, economic hardship, or similar reason;
- are living in motels, hotels, or camping grounds due to lack of alternative accommodations;
- are living in emergency or transitional shelters;
- are living in cars, parks, public spaces, or substandard housing; or
- migrate between these and/or other circumstances.

The Carlynton lawsuit is the most significant legal precedent in this area of the law. It did much more than secure the right of a single family to send its children to school. Building on the work of individual school districts, it spurred the Pennsylvania Department of Education to change its policy on the educational rights of homeless children. According to the new policy, a school district where a child's adult caregiver resides, where the child spends the greatest percentage of his or her time, or with a substantial connection to where a child receives shelter or stays overnight must accept that child's enrollment.

Homeless families face a constant struggle, but it is a fight they can win if we collectively raise our consciousness. Far too many in our communities face homelessness, but we have an increasing array of institutions and laws ready to serve them. These institutions offer more than a meal and a bed; they offer services and support to help families confront the unexpected obstacles that inevitably accompany homelessness. The McKinney-Vento Act represents an important step in communities' making the transition from merely tolerating homeless children to proactively meeting their needs and helping them to thrive.

As United States attorney, I know that the McKinney-Vento Act is more than a statute about education; it is about civil rights. Homeless children deserve equal protection and equal opportunity under the law, including the right to an equal education. A half-century after *Brown v. Board of Education*, securing equal educational opportunity remains all too difficult across the nation. Homeless children deserve the opportunity to be taught and to be tested, to learn and to be challenged. More than anything, they deserve to be students, fully participating members of their schools and communities.

Our work on behalf of homeless children is integral to the full body of our civil rights enforcement efforts. Joe Lagana and the Homeless Children's Education Fund have been very successful in cultivating hope and opportunity for homeless children in Western Pennsylvania, but they are not alone. When they fight for the right to an education, they fight for rights guaranteed by the law of the United States of America, and all of us who have sworn to uphold it stand beside them. ■

David J. Hickton was nominated for United States attorney for the Western District of Pennsylvania by President Barack Obama on May 20, 2010 and sworn in as the district's 57th U.S. attorney on August 12, 2010.