

Remarks of the Honorable David J. Hickton
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Summit II
Collaborations and Models Impacting Children and Youth Experiencing Homelessness

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Good afternoon.

The welfare of our children is one of society's most important concerns. Children are our future. The proper raising and rearing of our youngest members determines the course of tomorrow. Ensuring the physical, emotional and social welfare of the youngest among us is essential. Frederick Douglass said, "It is easier to build strong children than to repair broken men." Our investment in our children is not only morally required, it is the product of good judgment and common sense.

Countless commentators have said that the single most important thing we can do to improve the world is to save the children. The Attorney General has said repeatedly and recently with emphasis at The National Forum on Youth Violence and Protection, "We will never give up on our children – I repeat, we will never give up on our children." This is the policy of this Administration, and I embrace it with my heart and soul.

The protection of children is a fundamental and recurring foundation of my work as United States Attorney every day. When we work as we do to help protect the national security of our country, we are working to prevent harm to our children. When we work to vindicate deprivations of civil rights and prosecute outrageous crimes of child exploitation, we are protecting our children. When we work to reduce community violence and try to eradicate guns and drugs in our neighborhoods, we seek safety for our children. And, when we fight to eliminate fraud and public corruption, we are providing accountability to protect our future for our children.

Among all children, some are most vulnerable. The plight of homeless children is heartbreaking. You have heard the statistics: approximately 1.5 million children a year are homeless; thousands of them in Pennsylvania. The average age of a homeless child is 7 years. At least 7% of all 5th graders have lived in a shelter or car at some point in their young lives. Most homeless children can expect to live in poverty all of their lives.

Catastrophic events such as natural disasters and personal events such as threats of domestic violence or a parent losing a job are causes of homelessness from which it may take months or even years for families to recover. Tragically, many families experience several episodes of homelessness.

Years ago, the rise in family homelessness was greatly attributed to a growing shortage of affordable rental housing and a major increase in severe poverty. During the early 1980's, the increasing number of individuals and families living on the street became a highly visible problem in America.

The recent economic downturn and resulting foreclosure crisis have had a significant impact on homelessness in the past few years and have dramatically changed the face of homelessness. As a result, homeless families are widely divergent and no longer easily defined nor easily identifiable. Homeless families may be transient; they may be too distrustful and ashamed to seek help. The term

“homelessness” defies rigid definition. All of these factors can pose barriers to identifying and serving homeless children and unaccompanied youth.

Children and youth in homeless situations, particularly unaccompanied youth who have survived domestic violence, are at high risk for experiencing violence and victimization. Unaccompanied homeless youth include those who have run away, have been thrown out of their homes, or have been abandoned by their parents. Many unaccompanied youth become homeless after leaving abusive or destructive home environments. Their homelessness places them at further risk of further victimization, including sexual and/or physical assault.

Homeless children and unaccompanied homeless youth face many challenges to their welfare. Poverty, dysfunctional family structure, poor educational opportunity, lack of health care and lack of housing and transportation are among them and any of these issues, let alone a combination of them, make the prospects of a successful and productive life difficult. The secondary challenges of violent crime further compound their lives.

The homeless children crisis is a civil rights issue. Homeless children deserve equal protection and equal opportunity under the law. The Department of Justice has renewed the mission of its Civil Rights Division. Under Attorney General Eric Holder, the Civil Rights Division is restoring its role as the conscience of the nation – and reaffirming that it is once again open for business. The Civil Rights Division is working hard to level the playing field and ensure that every American has the opportunity to reach for the American dream.

The protection of civil rights is the unfinished business of America. We recognize that, in addition to blatant violations and festering discrimination, it is often the disparity in equal access which destroys opportunity and undermines equality for all. We are dedicated to providing justice by enforcing all of the laws to ensure that each of the promises of our freedoms exist for all Americans.

Here in the Western District of Pennsylvania, we have followed the lead of Main Justice. In October, when we reorganized the office, we created a Civil Rights Section. Many of you here today were present in December when Tom Perez, the Assistant Attorney General for Civil Rights, came here to recognize our partnership. Joe Lagana and others here were important to that program. We are committed to the civil rights of all Americans and one of the immediate benefits of the enhanced focus here has been the spotlight put on nontraditional areas of disadvantage and discrimination, including homeless children.

Brown v. Board of Education was decided more than a half a century ago, yet securing equal educational opportunity remains a serious civil rights issue across the Nation. This issue becomes much more complex relating to the educational opportunities of our homeless children.

Homeless youth and children are faced with unique barriers to obtaining an education. They are also the most educationally at-risk student population. Children experiencing homelessness are more likely to drop out than graduate and more likely to become homeless and unemployed as adults. This ensures another generation of downward cycle, despair and lost promise and opportunity.

General enrollment policies have the potential to create insurmountable barriers for students experiencing homelessness. However, the McKinney-Vento Homeless Assistance Act is designed to remove those barriers.

The McKinney-Vento Act requires educational agencies to develop, review and revise policies to remove barriers to the enrollment and retention of homeless children and youth in schools. Further, the Act’s

Statement of Policy emphasizes that homelessness alone is not sufficient reason to separate students from the mainstream school environment.

Homeless children should have access to the education and other services that all children need to ensure they have an opportunity to meet the same rigorous student academic achievement standards to which all students are held. If it is in their best interest, students who are homeless can remain in one school, even if their temporary living situation is located in another school district or attendance area, and the school must provide transportation.

Under the McKinney-Vento Act, homeless children are defined as individuals who lack a fixed, regular and adequate nighttime residence. This definition includes children and youth who:

- are sharing the housing of other persons due to loss of housing, economic hardship or similar reason;
- are living in motels, hotels, trailer parks or camping grounds due to lack of alternative accommodations;
- are living in emergency or transitional shelters;
- are abandoned in hospitals;
- are awaiting foster care;
- are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar settings; or
- are migratory children and youth living in any of these circumstances.

Some of the established definitions may cause confusion when a school is attempting to determine if a student meets the definition of being homeless. If there is any doubt, the student should be enrolled immediately in the school in which enrollment is sought, pending resolution of the dispute.

The McKinney-Vento Act defines “enroll” as “attending classes and participating fully in school activities.” Delaying immediate enrollment to a homeless student may not only endanger the student – it violates Federal law.

Any efforts to confirm a student’s living situation or previous school attendance must be rounded in sensitivity, discretion and respect, keeping the academic well-being and best interests of the student at the forefront. Additional care must be taken to avoid stigmatizing students experiencing homelessness. Failure to do so could destabilize the youth or family even further, possibly creating a barrier to the student’s enrollment and thereby violating the McKinney-Vent Act and the student’s civil right to obtain an education.

Statistics show that the number one barrier to the education of homeless children has been transportation. It can be extremely difficult to fulfill this requirement, especially if the child needs to be transported across district lines. Children experiencing homelessness are often highly mobile and may not stay in the same district each night or week. These children should not be forced to change school districts every time their overnight accommodations change.

If it is determined to be in the best interest of the homeless child to attend a school which requires their transportation to that school, it must be provided to remain compliant with the law. The method of transportation is discretionary, but it must be appropriate for the student and family.

One of the key duties created by the McKinney-Vento Act is the requirement for each local education agency or LEA to appoint a liaison for homeless children and unaccompanied youth. Some key responsibilities of the liaison are:

- identify homeless children and youth with assistance from school personnel and through activities with other entities and agencies;
- inform parents or guardians of educational rights and related opportunities available to their children;
- inform and assist the parent or guardian of a homeless child or youth or an accompanied youth as to all transportation options; and
- mediate enrollment disputes.

The LEA liaison's duties are essential to ensuring the protection of the civil rights of children and youth experiencing homelessness. The individual fulfilling these duties must understand the importance of a student's education continuity. The liaison must be an advocate committed to assuring the student's enrollment and attendance; and to being positive and supportive, instead of invasive and threatening. This is essential to fulfillment of their right to an equal education.

Subtitle B of The McKinney-Vento-Act states that "[e]ach 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, including a public preschool education, as provided to other children and youths." Thus, not only is ensuring the education of all youth regardless of their socioeconomic status or living arrangements what we *should* do – it is the law.

The most significant legal precedent in this area occurred right here in the Western District of Pennsylvania. In 2009, Carlynton School District was sued by the Education Law Center and the National Law Center on Homelessness and Poverty to stop the disenrollment of four students who were served by the Inter-Faith Hospitality Network Shelter located within the Carlynton School District. The Pennsylvania State Department of Education had issued guidance to Carlynton advising that they did not owe an education to the children living at the shelter because "they did not live in the District."

The presence of Federal funds and now expanded by stimulus funds creates a clear Federal interest in the question. The result of the Carlynton lawsuit was a favorable revised Basic Education Circular ("BEC") from the Pennsylvania Department of Education . Now, the BEC provides clearly that a homeless child may attend school in any district where their adult caregiver resides or where the unaccompanied child:

- 1) Spends the greatest percentage of time or
- 2) has a substantial connection to where he or she is
 - a) regularly receiving shelter
 - b) conducts daily living activities or
 - c) staying overnight on a recurring basis.

A dispute resolution process is provided in the BEC and other guidance and administrative mechanisms were created but, most importantly, it is now clear that the child at issue must be enrolled immediately and without delay pending resolution of any dispute.

I do not engage in giving predictive guidance on the decisions of our Office going forward regarding specific cases. I can say that the new structure of our Office contemplates an active civil rights effort; and, the leadership of Civil Chief Mike Comber and Civil Rights Chief Shaun Sweeney is prepared to receive complaints of deprivations of civil rights. These claims may be based upon violations of Federal statutes, Constitutional rights violations where Federal funds are involved, and/or Constitutional rights violations of due process or equal protection under the law. We will be aggressive in our pursuit of Civil Rights violations.

There is another aspect to our work here. I have spoken several times now in various settings regarding our responsibility to work in equal measure to both prosecute and prevent crime.

We are all aware of the correlation between crime and poverty. Violent crime and victimization rates are much higher in areas where economic hardship and destitution are the highest – not just in our Country, but around the world.

Through the Youth Futures Commission, we are working every day in partnership with the United Way, the local business and foundation communities and community organizations to provide programs for at-risk children to give them a fighting chance at success. These programs provide after-school and weekend activities. Most importantly, these programs provide mentors and education to support the children and fill gaps in their family and social support structures. Homeless children are at risk by definition, and the programs in the prevention axis of our work will be available to them.

State and local education agencies must work together and with human services agencies on behalf of homeless children and youth to remove any barriers to enrollment, attendance and achievement. In a life filled with uncertainty, loss, and deprivation, school is a place of safety, structure and opportunity. School is a place of hope.

Regardless of how, when, where or even how many times they are homeless, the civil rights of homeless children to obtain an education must be maintained and protected. It is the law, and it is the right thing to do, and every possible measure must be exhausted to ensure it.

Finally, I offer this. The protection of children of disadvantage is doing God's work. The noted author Marianne Williamson has written a beautiful poem called "Our Deepest Fear." You may know this poem from the popular movie *Coach Carter*. It has been quoted by Nelson Mandela and others. This poem has universal relevance, and I believe it pertains here:

Our deepest fear is not that we are inadequate.
Our deepest fear is that we are powerful beyond measure.
It is our light, not our darkness, that most frightens us.
We ask ourselves, Who am I to be brilliant, gorgeous, handsome, talented and fabulous?
Actually, who are you not to be? You are a child of God.
Your playing small does not serve the world.
There is nothing enlightened about shrinking so that other people won't feel insecure around you.
We are all meant to shine as children do.
We were born to make manifest the glory of God within us.
It's not just in some; it is in everyone.
And,
as we let our own lights shine, we unconsciously give other people permission to do the same.
As we are liberated from our own fear, our presence automatically liberates others.

I say to you, let the light of homeless children shine. Let them be educated for they have a chance; their plight is not their fault. Let us liberate them by ensuring that their civil rights are protected. There is no more noble exercise of our work here on Earth.

I commend all of you for your important work. I pledge to be your partner and I thank you for honoring me with this opportunity to speak here today.

Thank you.