

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

L.R. a minor,
by his guardian/grandmother, G.R.,

Plaintiff,

v.

STEELTON-HIGHSPIRE SCHOOL DISTRICT,

Defendant.

C.A. No. 2010 -

COMPLAINT

PRELIMINARY STATEMENT

This lawsuit is filed on behalf of a 13-year-old, child, L.R., who until last year was living with his grandmother in defendant Steelton-Highspire School District (“Steelton-Highspire” or the “District”) and attending its schools. In January 2009, the family’s house was destroyed by a fire. At that time, L.R. and his grandmother moved in temporarily with relatives in the adjacent Harrisburg School District.

L.R. was at that point and is still a “homeless” child within the meaning of the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C. §§ 11431-11435 (2002) (“McKinney-Vento Act,” or the “Act”). However, in violation of that Act, defendant

Steelton-Highspire failed to determine whether it would be in L.R.'s best interest to continue to be educated in its schools during his period of homelessness, "best interest" being defined in the Act as requiring that a child be allowed to continue, if feasible, in his school of origin unless the family disagrees. Instead, last September, Steelton-Highspire simply informed L.R. that he would have to attend school elsewhere.

Meanwhile, the Harrisburg School District also refused to enroll L.R. on the ground that, under the McKinney-Vento Act, he was entitled to continue to be educated in Steelton-Highspire in accordance with the family's wishes. As a result, L.R., who has special education needs, remained out of school for the first five months of the current school year.

Recently, Harrisburg School District agreed to accept L.R., who is now attending school there. While this is certainly better for L.R. than being out of school altogether, the McKinney-Vento Act does not permit defendant Steelton-Highspire to disclaim responsibility for a homeless student in this manner. Rather, Steelton-Highspire was required to make a written determination as to whether it is in L.R.'s best interest to continue in Steelton-Highspire in accordance with the definition of "best interest" set forth in the Act and to inform the family in writing of the right to appeal the District's refusal to permit L.R. to enroll in its schools. Steelton-Highspire

was also obligated to maintain L.R. in its schools during the time required for it to make this determination and to resolve any subsequent dispute with L.R.'s family (the McKinney-Vento Act's "pendency" requirement).

Accordingly, plaintiff L.R. through his grandmother and sole caretaker G.R. now requests court intervention to immediately re-enroll L.R. in the District in accordance with the Act's "pendency" mandate and to require defendant District to determine, in accordance with the terms of the Act, whether it is in L.R.'s best interest to remain in the District during his period of homelessness. Plaintiff also seeks an order requiring defendant to provide L.R. during his enrollment in the District a free appropriate public education in the least restrictive environment in accordance with the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. §1400, *et. seq.* Finally, plaintiff seeks an order directing the District to review, revise and eliminate policies and practices that act as barriers to school enrollment for plaintiff and other homeless children.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3) and 20 U.S.C. § 1415(b)(6) on the ground that this action arises under the laws of the United States,

including 42 U.S.C. §§ 11431-11435, 20 U.S.C. §§1400, *et seq.*, and 42 U.S.C. § 1983.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), on the ground that the events or omissions giving rise to the federal and state claims set forth herein occurred in the Middle District of Pennsylvania, where named plaintiff resides.
3. There is an actual controversy between the plaintiff and defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

PARTIES

4. L.R. is a 13-year-old boy.
5. G.R. is the grandparent and sole caretaker of the named plaintiff L.R., and brings this lawsuit on his behalf.
6. Steelton-Highspire School District (“Steelton” or “District”) is a Local Educational Agency (“LEA”) within the meaning of the McKinney-Vento Act. The District establishes local rules and practices concerning the enrollment, transportation and education of children within its district, including homeless children.
7. At all relevant times, defendant was acting or purporting to act under color of state law.

KEY PROVISIONS OF THE MCKINNEY-VENTO ACT AND OF PENNSYLVANIA'S STATE PLAN

8. The McKinney-Vento Act was enacted in 1987 to provide a broad range of assistance to homeless individuals and families and was significantly amended in 1990. Subtitle VII-B of the McKinney-Vento relates to the education of homeless children and youth. 42 U.S.C. §§ 11431-11435. In 2001, Congress reauthorized the McKinney Education of Homeless Children and Youth Program as the McKinney-Vento Homeless Education Assistance Improvements Act in the No Child Left Behind Act signed on January 8, 2002.
9. The Act states that children and youth who “lack a fixed, regular, and adequate nighttime residence” shall be considered homeless and entitled to the Act’s protections. 42 U.S.C. § 11434a(2)(A). This definition expressly includes “children and youths who are sharing the housing of other persons due to loss of housing, economic hardship or a similar reason.” 42 U.S.C. §11434a(2)(B)(i).
10. In enacting McKinney-Vento, Congress made available funds for States to assist with the education of homeless children on the condition 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 . . . as provided to other children and youths.” 42 U.S.C. § 11431(1).

11. Under the Act, Local Education Agencies (“LEAs”) must ensure that homeless children and youth are advised of their choice of schools, immediately enrolled in their selected school and promptly provided necessary services to allow homeless children to exercise their choice of schools; LEAs must also provide families with a written explanation of a school selection or enrollment decision, including the rights of the family to appeal the decision. 42 U.S.C. § 11432(e)(3)(E).
12. The Act provides in part that a school district such as Defendant District shall, according to the child’s “best interest,” “continue the child’s or youth’s education in the school of origin for the duration of homelessness,” or, if the child becomes permanently housed, for the remainder of the school year. 42 U.S.C. § 11432(g)(3)(A)(i).
13. In determining “best interest,” the school district “shall – (i) to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the

child's or youth's parent or guardian." 42 U.S.C. § 11432(g)(3)(B)(i).

14. Under the Act, "school of origin" is defined as the school the child most recently attended or the school the child attended when last permanently housed. 42 U.S.C. § 11432(g)(3)(G). In this case the District is L.R.'s "school of origin" under both tests.
15. Thus, the Act expressly provides that a homeless child shall remain in the current school (or the school he attended when last permanently housed) rather than attend the local school where the family is actually living unless doing so is contrary to the family's wishes.
16. Under the Act, the child may remain in the school that is chosen "for the duration of homelessness," or in the case of a student who finds permanent housing during the school year "for the remainder of the academic year." 42 U.S.C. § 11432(g)(3)(A).
17. In the event an LEA determines that a child must attend a school other than a school of origin requested by the parent or guardian, it must provide the parent with a written explanation, along with notice of the right to appeal. 42 U.S.C. § 11432(g)(3)(B)(ii).

18. If there is a dispute about school enrollment, the child or youth must be immediately admitted to the school of origin in which the parent or guardian is seeking enrollment pending full resolution of the dispute process. 42 U.S.C. § 11432(g)(3)(E). Plaintiffs refer to this as the Act’s “pendency” requirement.
19. The Act also provides that a homeless child shall receive services comparable to services offered to other students in the school selected including transportation services and “educational programs for children with disabilities.” 42 U.S.C. § 11432(g)(4) (A) and (B).
20. The Act further provides that local education agencies “shall review and revise any policies that may act as barriers to the enrollment of homeless children and youths” and that “[s]pecial attention shall be given to ensuring the enrollment and attendance of homeless children and youths who are not currently attending school.” 42 U.S.C. § 11432(g)(7)(C).
21. Pursuant to the requirements of the McKinney-Vento Act, Pennsylvania has developed a State Plan, known as Pennsylvania’s Education for Homeless Children and Youth State Plan, Amended 2006 (hereinafter “State Plan”) which

further delineates how local education agencies (LEAs) shall comply with LEA requirements set forth in the Act including ensuring immediate enrollment, providing written notice of a school's decision, promptly resolving enrollment disputes and providing pendency in the school of choice while a dispute is resolved. See 42 U.S.C. § 11432(g)(2)(A).

22. Pennsylvania Department of Education (“PDE”) has also issued guidance to school districts and others regarding the aforementioned requirements of the McKinney-Vento Act, including the process established by the State to resolve enrollment disputes and ensure pendency in the form of a Basic Education Circular entitled “Education for Homeless Youth” (hereinafter “BEC”).

FACTUAL BACKGROUND

23. Plaintiff child L.R. and his grandmother G.R. became homeless on January 27, 2009 when their home located within the District was destroyed by a fire.
24. Beginning on this date and continuing to the present, Plaintiff has lacked “a fixed, regular, and adequate nighttime residence” and qualifies as homeless within the definition of the McKinney-

Vento Act. 42 U.S.C. § 11434a(2)(A) as a child who is “sharing the housing of other persons due to loss of housing, economic hardship or a similar reason.” 42 U.S.C. §11434a(2)(B)(i).

25. Plaintiff G.R. has been L.R.’s sole caretaker since 2001 when Plaintiff child was five years old. L.R. has continuously lived with G.R. in the District from 2001 until the fire at their home on January 27, 2009.
26. L.R. entered the District as a kindergarten student in the fall of 2003. Upon entering the District, L.R. was evaluated and identified as a student with a specific learning disability in reading and math. The District provided L.R. with special education services pursuant to the IDEA throughout the time that he was a student in the District.
27. As a result of losing their home, L.R. and his grandmother began staying temporarily in the home of L.R.’s aunt and cousins and have remained there ever since because they have no other options. The aunt’s home is located in the Harrisburg School District, approximately ten minutes from the District. L.R. and his grandmother are living doubled up with L.R.’s aunt and several cousins.

28. When L.R. and his grandmother first became homeless in January of 2009, Steelton-Highspire, recognized L.R. as homeless and the District's Homeless Liaison, Scott Kuren arranged for L.R. to continue to attend school in Steelton under the McKinney-Vento Act. In accordance with the Act, the District provided L.R. with transportation between his school in the District and his aunt's home in Harrisburg School District for the remainder of the 2008-2009 school year.
29. In August 2009, L.R.'s grandmother expected that the District would continue L.R.'s enrollment in Steelton-Highspire as the family remained homeless and continued to be on a waiting list for low-income housing assistance for a home in the District.
30. When the school year began in the District, L.R. waited for the District-provided transportation to take him to school at Steelton-Highspire Jr. High School.
31. When transportation was not provided within the first several days of the school year, G.R. contacted the District's Homeless Liaison and explained that she wanted L.R. to continue to be

educated in the District because they remained homeless but that L.R.'s transportation had not been provided.

32. In September 2009, Mr. Kuren informed G.R. that L.R. could no longer attend school in the District. At that time, Mr. Kuren provided no explanation verbally or in writing but informed G.R. that L.R. should enroll in Harrisburg School District.
33. The District did not provide G.R. with any information about her right to appeal the decision, including the family's option of seeking to resolve the dispute through a McKinney-Vento Regional Coordinator or State Coordinator.
34. The District did not offer to assist the family in any way to utilize or access the State's dispute resolution process by submitting a complaint to the Regional or State Coordinator as set forth in the State Plan and the BEC.
35. During the fall of 2009, G.R. attempted to contact the District on numerous occasions to enroll L.R. in the District; on these occasions, the District refused to enroll L.R. and informed her that Harrisburg School District was required to enroll him. Throughout this time, the District also failed to provide the

family with a written explanation of its continuing refusal to enroll L.R. or to apprise the family of its appeal options.

36. On or about September 24, 2009, G.R. attempted to enroll L.R. in Harrisburg School District. However, that school district refused to enroll L.R. as well.
37. Beginning in November 2009 and continuing throughout January 2010, DaNatia Baker, a community based probation officer at Dauphin County Juvenile Probation repeatedly contacted Steelton-Highspire on behalf of the family to assist G.R. in enrolling L.R. in the District. She explained that the family remained homeless and wanted L.R. to remain enrolled in the District.
38. In December 2009, G.R. contacted Student Services at Capital Area Intermediate Unit #15 (“Capital Area IU”) and requested assistance to enroll L.R. in Steelton-Highspire.
39. In December 2009, Mr. Kuren, Steelton-Highspire’s Homeless Liaison, told Ms. Baker that before L.R. could be enrolled in the District, the District must conduct a “home visit” at the home where L.R. was temporarily living in Harrisburg. Although the home visit was subsequently scheduled for Friday, December 18,

2009, the visit never occurred through no fault of the family.

G.R. received no further communications from the District's

Homeless Liaison.

40. On or about January 7, 2010, Ms. Baker contacted Sheldon Winnick, the State Coordinator for the Education for Homeless Children and Youth Program of the Pennsylvania Department of Education and requested his assistance to enroll L.R. in Steelton-Highspire. Mr. Winnick directed Ms. Baker to contact the Capital Area IU for assistance.
41. On or about January 11, 2010, Ms. Baker was informed by the Capital Area IU that the appropriate Student Services staff was aware of the situation and was working on resolving L.R.'s enrollment in the Steelton-Highspire with Mr. Kuren, Steelton-Highspire's Homeless Liaison.
42. On January 13, 2010, undersigned counsel for the Education Law Center contacted the Pennsylvania Homeless Children's Initiative Regional Coordinator for Region 2 ("McKinney-Vento Regional Coordinator") and explained that L.R. was homeless and had been trying unsuccessfully to enroll in Steelton-Highspire. The Coordinator informed counsel that the Capital Area's IU would

contact Steelton-Highspire and that the District's Homeless Liaison would schedule L.R.'s enrollment appointment and be available to welcome L.R. back to school in the District.

43. On January 14, 2010 Mr. Kuren notified Ms. Baker that, contrary to this information, Steelton-Highspire had not agreed to enroll L.R. and that the family should seek enrollment in Harrisburg through the Harrisburg School District Homeless Liaison.
44. On January 15, 2010, the Capital Area's IU administrator notified Ms. Baker that Steelton-Highspire was being "uncooperative" and would not enroll L.R., but that Harrisburg School District was now willing to enroll L.R.
45. Ms. Baker subsequently contacted the Steelton-Highspire one last time to request that the District enroll L.R.; however, Ms. Baker was informed that Steelton-Highspire would not enroll L.R. Once again, the District provided no explanation verbally or in writing for its refusal to enroll L.R.
46. On January 28, 2010, G.R. took L.R. to enroll in Harrisburg and informed Harrisburg that L.R. was homeless and only temporarily staying with L.R.'s aunt in Harrisburg School

District and that she wanted L.R. to continue going to school in Steelton-Highspire.

47. On that date, the family was once again refused enrollment by Harrisburg School District and was once again informed that L.R. should be enrolled in the Steelton-Highspire because it was his school of origin.
48. On February 3, 2010, the McKinney-Vento Regional Coordinator notified the Capital Area IU, the Harrisburg School District's Homeless Liaison, and Ms. Baker by email of her attempts to resolve L.R.'s enrollment situation. She concluded that because L.R. had been out of school for so long she had determined that L.R.'s "best interest" was to be in any school that would accept him, and that, at this point, this was Harrisburg School District. The Regional Coordinator therefore directed the Harrisburg Homeless Liaison to meet the family and ensure enrollment in Harrisburg School District.
49. On February 4, 2010, lacking any other option, G.R. enrolled L.R. in Harrisburg School District and arranged for L.R. to begin attending the Roland School on Monday, February 8, 2010.

50. On or about February 5, 2010, counsel for the School District informed undersigned counsel that the District remained unwilling to enroll L.R.
51. On February 8, 2010, the Regional Coordinator notified undersigned counsel that L.R. enrolled in Harrisburg School District on February 4, 2010 and started attending classes on February 8, 2010. The Regional Coordinator noted that had she learned in the early fall that the District refused to re-enroll L.R., she would have determined that Steelton-Highspire, as L.R.'s school of origin, was the proper school district for the student to attend and in his "best interest."

INJURY TO PLAINTIFFS

52. As a result of Defendant District's policies and practice, L.R. has been denied protection and entitlements under the McKinney-Vento Act, including his right to immediate enrollment pending a dispute and continued enrollment in the District.
53. As a result of the District's failure to immediately re-enroll L.R. in school at the beginning of the school year, the student missed more than five months of school during which time he failed to receive a free appropriate public education in accordance with his

rights under the Individuals with Disabilities Education Act
 (“IDEA”) 20 U.S.C. §1400, *et. seq.*

54. Plaintiffs have no adequate remedy at law.

FIRST CAUSE OF ACTION
(VIOLATIONS OF THE MCKINNEY-VENTO ACT BY
DEFENDANT DISTRICT)

55. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the paragraphs set forth above.

56. Defendant District violated Plaintiffs’ rights under the McKinney-Vento Act, 42 U.S.C. §§ 11431 – 11435, as enforced via 42 U.S.C. §1983 by:

(a) Failing to immediately enroll L.R. in Steelton-Highspire, his school of origin, pending resolution of this dispute. 42 U.S.C. § 11432(e)(3)(E).

(b) Failing to make a determination as to whether it would be in L.R.’s best interest to continue attending Steelton-Highspire, in accordance with the standard set forth in the McKinney-Vento Act (*i.e.* that he continue in his school of origin if feasible unless this is contrary to the wishes of his family). 42 U.S.C. § 11432(g)(3)(A) and 42 U.S.C. § (g)(3)(B)(i).

(c) Failing to provide G.R. with a written explanation of the School District's decision, failing to apprise G.R. of her right to appeal, and failing to assist G.R. to file an appeal. 42 U.S.C. § 11432(g)(3)(B)(ii) and 42 U.S.C. § 11432(e)(3)(E).

(d) Failing to establish policies and procedures to ensure compliance with the McKinney-Vento Act and to review and revise policies or practices that may act as barriers to the enrollment or attendance of homeless children in the School District, or children's receipt of comparable services as defined in Part B of Title VII of the McKinney-Vento Act. 42 U.S.C. § 11432(g)(1)(F); 42 U.S.C. § 11432 (g)(1)(I) § 11432(g)(6) and (7) and 42 U.S.C. § 11432(g)(3)(E)(iii).

(e) Failing to ensure the enrollment and attendance of homeless children and youths who are not currently attending any school in accordance with the Act. 42 U.S.C. § 11432(g)(7)(C).

SECOND CAUSE OF ACTION

(VIOLATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (IDEA) BY DISTRICT)

57. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the paragraphs set forth above.
58. Defendant District violated Plaintiffs' rights under the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400, *et seq*, by failing to continue to provide L.R. with the services identified in his Individualized Education Program and thereby depriving Plaintiff a free appropriate public education in contravention of the IDEA. See 20 U.S.C. § 1400(1)(A), 1401(a)(18). See 20 U.S.C. §1401(8) and 20 U.S.C. §1415(b)(6).
59. Exhaustion of administrative remedies pursuant to 20 U.S.C. § 1415(f) is not required as a hearing officer lacks the authority to grant the relief sought and hence recourse to IDEA administrative proceedings would be futile or inadequate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

1. Issue a declaratory judgment against Defendants declaring that they have violated the rights of L.R. as set out in this Complaint.

2. Enforce Plaintiff L.R.'s right to return to the District as his pendent status in accordance with 42 U.S.C. § 11432(e)(3)(E) or, in the alternative, issue a preliminary injunction directing the District to immediately re-enroll L.R. in Steelton-Highspire and to maintain his enrollment in the District pending full resolution of this dispute
3. Issue a permanent injunction compelling Defendant District to:
 - i. determine whether it is in L.R.'s best interest to continue his education in Steelton-Highspire for the duration of homelessness, in a manner consistent with the terms of the McKinney-Vento Act (*i.e.*, by determining that it is in L.R.'s best interest to continue in his school of origin unless this would be contrary to the wishes of the child's or youth's guardian or is not feasible). See 42 U.S.C. § 11432(g)(3)(B)(i).
 - ii. provide L.R. with all other procedural and substantive protections of the Act, including transportation.
 - iii. provide L.R. a free appropriate public education ("FAPE") in accordance with the IDEA, 20 U.S.C. 1400, *et. seq.*
 - iv. in the event that L.R. becomes permanently housed and is no longer homeless continue his education in the District for the

remainder of the school year in accordance with the Act. 42
U.S.C. § 11432(g)(3)(A)(i).

- v. develop policies and procedures to ensure that homeless students and their families, including Plaintiff, receive required notice of their right to appeal, a written explanation of the School District's decisions, and assistance in filing an appeal.
4. Award Plaintiffs their costs and reasonable attorneys' fees;
5. Award Plaintiff compensatory special education services for the five months L.R. was out of school and was therefore denied a free appropriate public education as a result the District's conduct. 20
U.S.C. § 1415(i)(2)(c)(iii).
6. Award such other and further relief as the Court may deem appropriate.

Respectfully submitted,

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Of Counsel

CERTIFICATE OF SERVICE

I, Len Rieser hereby certify that on this 2nd day of March, 2010, I served a copy of Plaintiff's Complaint to the following counsel by first-class mail:

Allen D. Smith, Esq.
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Counsel for Defendant Steelton-Highspire School District

s/ Len Rieser
Len Rieser