

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

A.E., B.E., S.E., and M.E. minors,	:	
by their mother, C.E., and father, W.E.,	:	
	:	
Plaintiffs,	:	C.A. No. 2009
	:	
	:	
v.	:	
	:	
CARLYNTON SCHOOL DISTRICT and	:	
DR. GERALD ZAHORCHAK, Secretary of the	:	
Pennsylvania Department of Education in his official	:	
capacity only	:	
	:	
	:	
Defendants	:	

COMPLAINT

I. PRELIMINARY STATEMENT

This lawsuit is filed on behalf of four children in Pennsylvania who became homeless when their father lost his job and the family was evicted from their home. Plaintiff children are served by the Interfaith Hospitality Network Shelter of the South Hills (“IHN Shelter”) located in Carlynton School District (hereinafter “School District” or “District”) and thus the family sought to enroll their children in that District. The School District objected and Plaintiff children now face disenrollment unless this Court resolves this case in their favor.¹ The School District seeks to disenroll the children on

¹ Plaintiff children are temporarily enrolled in Carlynton School District pending the outcome of this litigation, pursuant to agreement of the parties.

the ground that the IHN Shelter (where the family conducts all daily living activities) provides overnight accommodations both within and beyond the School District's attendance area and therefore the children are not actually living in the District. The Department of Education has issued an administrative decision in favor of the School District. Neither the School District nor the Department of Education has identified any school district where Plaintiff children reside that is obligated to enroll the children in light of their living situation.

Disenrollment from school will have a devastating impact on the children's educational progress and will undermine their precarious living situation. Intervention by this Court is needed to prevent disenrollment and to ensure that these children are afforded all substantive and procedural protections guaranteed to them by the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C. §§ 11431-11435 (2002) ("Act"). This Act mandates that all children experiencing homelessness are entitled to attend school in the district where they are living for the duration of their homelessness or, if they are no longer homeless, for the remainder of the school year.

Plaintiffs seek declaratory and permanent injunctive relief, including an order directing Defendant School District to educate Plaintiff children in the School District in accordance with the Act and directing the Department of Education to reverse its decision and to ensure the School District's compliance. Plaintiffs also seek an order directing Defendants to review, revise and eliminate policies and practices that act as barriers to school enrollment for Plaintiffs and other homeless children.

II. STATEMENT OF JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3), on the ground that this action arises under the laws of the United States, including 42 U.S.C. §§ 11431-11435 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 Western District of Pennsylvania, where named Plaintiffs reside.
3. There is an actual controversy between the Plaintiffs and the Defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

III. PARTIES

4. C.E. and W.E. are the parents of the named Plaintiff children, A.E., B.E., S.E., and M.E and bring this lawsuit on their behalf.
5. A.E. is a 12-year-old girl who was initially denied enrollment in the District on August 18, 2009, and is currently attending school in the District pending the outcome of this dispute.
6. B.E. is a nine-year old girl who was initially denied enrollment in the District on August 18, 2009, and is currently attending school in the District pending the outcome of this dispute.
7. S.E. is a six-year old boy who was initially denied enrollment in the District on August 18, 2009, and is currently attending school in the District pending the outcome of this dispute.

8. M.E. is a five-year old boy who was initially denied enrollment in the District on August 18, 2009, and is currently attending school in the District pending the outcome of this dispute.
9. The Carlynton School District (“the School 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.
10. Defendant Secretary of Education Gerald Zahorchak is the chief executive officer of the Pennsylvania Department of Education (“PDE”), which is an executive agency of the Commonwealth of Pennsylvania that oversees and supervises the Commonwealth’s public education system and is responsible for the general supervision of LEAs. PDE is also the “State Educational Agency” (“SEA”) within the meaning of the McKinney-Vento Act and is a recipient of federal funds under the Act. By accepting those funds, PDE is required to comply with all provisions of the McKinney-Vento Act and to ensure compliance by LEAs, including the School District. 42 U.S.C. § 11431(1). Secretary Zahorchak is sued in his official capacity only.
11. At all relevant times, each Defendant was acting or purporting to act under color of state law.

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

12. The McKinney-Vento Act (the “McKinney-Vento Act” or “the 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.
13. 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.
14. The Act states that children and youths 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).
15. 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).
16. The Act mandates that, if the State enacts “regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths,” it must “review and undertake steps to

revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.” 42 U.S.C. § 11431(2).

17. In order for a State to be eligible to receive funds under the Act, 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 and document that written notice has been provided. 42 U.S.C. § 11432(e)(3)(E).
18. The Act provides in part that a school district such as Defendant School District “shall[,] 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).
19. 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).
20. In addition, the Act provides that the child may enroll in “any public school that non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.” 42 U.S.C. § 11432(3)(g)(A)(ii)
21. Thus, the Act expressly provides that a homeless child shall have three school options: the “school of origin” (that is, the current school *or* the school attended when last permanently housed) *or* the local school where

the family is actually living. 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).

22. In the event an LEA determines that a child must attend a school other than a school 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).
23. If there is a dispute about school enrollment, the child or youth must be immediately admitted to the school in which the parent or child is seeking enrollment pending full resolution of the dispute process. 42 U.S.C. § 11432(g)(3)(E).
24. The State must submit a State Plan that includes a description of procedures for the State’s “prompt resolution of disputes regarding the educational placement of homeless children and youths.” 42 U.S.C. § 11432(g)(1)(C).
25. The State Plan must also describe how the State will ensure that local education agencies (LEAs) 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. 42 U.S.C. § 11432(g)(2)(A).
26. Pennsylvania’s Education for Homeless Children and Youth State Plan, Amended 2006 (hereinafter “State Plan”) requires the State to make a final

decision concerning an enrollment dispute within 20 business days of a family filing an appeal to PDE's State Homeless Coordinator. State Plan at p. 3.

27. The Secretary of the Department of Education has promulgated regulations requiring that for state-administered programs such as the McKinney-Vento Act, each "State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications." See 34 C.F.R. § 76.700.

V. FACTUAL ALLEGATIONS

28. Plaintiff children "lack a fixed, regular, and adequate nighttime residence" and qualify as homeless within the definition of the McKinney-Vento Act. 42 U.S.C. § 11434a(2)(A).
29. Plaintiff children and their parents were rendered homeless due to lack of permanent housing in April 2009, at which time they began living at the Interfaith Hospitality Network of South Hills homeless shelter (hereinafter "IHN Shelter" or "the Shelter") where they have remained ever since.
30. The IHN Shelter is located at 7 Oregon Avenue, Crafton, Pennsylvania, 15205, which is within the School District.
31. The IHN Shelter serves families by providing accommodations to homeless families and adults, including Plaintiffs, and functions as the place for them

to conduct their ordinary daily living activities such as bathing, dressing, and cooking.

32. Plaintiffs have a room at the IHN Shelter where their clothing and possessions are kept.
33. The IHN Shelter arranges overnight accommodations for its residents, including Plaintiffs, through one of eight host churches on a rotating weekly basis.
34. One of the eight churches where Plaintiffs sleep is located in the District while the remaining seven churches are scattered in several different school districts.
35. All residents at the IHN Shelter who stay overnight at different churches in the surrounding area return each morning and evening to the Shelter.
36. The children at the IHN Shelter are picked up and dropped off by the school bus from the shelter, and the shelter serves as a “home” to families where they spend their day working to obtain housing, employment etc.
37. The IHN Shelter is similar to other community-based shelters operating in Pennsylvania and throughout the country that provide shelter and support to homeless families through a single shelter home supported by a network of churches that provide nightly accommodations.
38. When the Plaintiffs and their family first became homeless in April of 2009 and came to the IHN Shelter, C.E. and W.E., the parents of Plaintiff children, arranged for the children to continue to attend school in the Woodland Hills School District, the school district they had been attending

before they became homeless, for the remaining weeks of the 2008-2009 school year.

39. During that two-month period, the children travelled over 45 minutes each way to and from school and were picked up and dropped off at the IHN Shelter in Carlynton School District.
40. In August of 2009, however, C.E. and W.E. decided that it was no longer in the best interests of their children to continue attending their school district of origin due to the deleterious impact on their lives and education of traveling almost two hours by bus each day, and because the family intended to obtain permanent housing in the School District. The family therefore concluded that it was in the best interest of their children to attend school in the Carlynton District where the IHN Shelter is located.
41. Accordingly, on August 18, 2009, C.E., tried to enroll Plaintiff children in the School District. At that time, C.E. presented a letter from the IHN Shelter confirming both the family's homeless status and that the family was living in the Shelter. She also submitted proof of age and immunizations for each of the four children.
42. C.E. was immediately informed by the Local School District's Homeless Liaison Jan Sweeney, as well as the Superintendent of the District Michael Panza, that her children could not enroll in the School District.
43. The School District's Homeless Liaison and Superintendent refused to provide C.E. with any written explanation of the school's decision to refuse to enroll Plaintiff children, although such notice was expressly requested.

44. The School District also did not provide C.E. with any information about her right to appeal the decision through Pennsylvania's Regional or State Coordinator.
45. The School 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 Pennsylvania State Coordinator or Regional Coordinator as set forth in the State Plan.
46. The School District informed C.E. that they do not accept any children from the IHN Shelter. The School District orally explained that since families do not sleep at the IHN Shelter in the School District, they were not entitled to attend school in the School District.
47. Under the School District's interpretation of applicable law, Plaintiff children would have no right to attend any school where they are now living due to homelessness or would be required to enroll in a new school district every week.
48. On or about August 20, 2009, the family contacted the Education Law Center.
49. On August 24, 2009, the Education Law Center submitted a complaint to Pennsylvania's Homeless State Coordinator, Sheldon Winnick, outlining the pertinent facts and requesting that the dispute be resolved in Plaintiffs' favor and that the school district be ordered to enroll Plaintiff children while they are homeless or to the end of the school year should they be permanently housed as is required by the Act. The Complaint also asked that the School

District be directed to immediately enroll Plaintiff children pending full resolution of the dispute.

50. Upon information and belief, a factually analogous dispute was presented to PDE last year when the same school district refused to enroll another homeless child living at the IHN Shelter. However, the family relocated to a different school district before PDE resolved the enrollment dispute.
51. On August 26, 2009, the School District agreed to enroll Plaintiff children pending the outcome of the dispute only, but stated their intent to continue to challenge the continued enrollment of the children in the School District.
52. Plaintiff children have adjusted well to their new school and are making educational progress.
53. On September 9, 2009, the School District filed a Response to ELC's administrative Complaint. The School District agreed with the facts presented in ELC's appeal and as repeated in this Complaint.
54. In its Response, the School District contended that because the IHN Shelter provided Plaintiff children with different overnight accommodations located in several different school districts, Plaintiff children are not "actually living" in Carlynton and therefore have no right to attend school in the School District.
55. Plaintiffs submitted a Reply to the School District's letter on September 15, 2009. In this Reply, Plaintiffs contended that the children are in fact "actually living" in the School District where they spend the majority of their time.

56. Plaintiffs also contended in their Reply that the School District's position contravened the language and intent of the Act and led to an absurd result: either Plaintiff children have no place to attend school at all or must enroll in a different school district each week as they change overnight accommodations.
57. On September 22, 2009, PDE's State Homeless Coordinator Sheldon Winnick issued an administrative decision ruling that Plaintiff children "have no right or entitlement under state or federal law to attend the Carlynton School District." While resolving the dispute in favor of the School District, the decision also states that no intervention is required because the children have been provisionally enrolled. *Id.*
58. On that same date, counsel for the School District verbally agreed that Plaintiff children would be permitted to remain enrolled in school pending the filing of this Complaint and possibly resolution of the dispute by this Court in accordance with the requirements of the Act

VI. INJURY TO PLAINTIFFS

59. As set forth above, as a result of Defendants' policies and practice, Plaintiff children A.E., B.E., S.E, and M.E. have been denied protection under the McKinney-Vento Act, including their right to continued enrollment in the District.
60. As a result of PDE's decision, Plaintiff children may be disenrolled from school at any time. Moreover, if the family cannot enroll their children of compulsory school age in another school because they are being served by

the shelter, the family may be forced to choose between having a place to live and their children's schooling.

61. As a result of the School District's failure to immediately enroll the children in school at the beginning of the school year, they missed almost a full week of school, falling behind their classmates at the very beginning of the school year in a new school.
62. Plaintiffs have no adequate remedy at law.

COUNT I

VIOLATIONS OF THE MCKINNEY-VENTO ACT

BY DEFENDANT SCHOOL DISTRICT

63. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the paragraphs set forth above.
64. Defendant School District has violated Plaintiffs' rights under the McKinney-Vento Act, 42 U.S.C. §§ 11431 – 11435, as enforced via 42 U.S.C. §1983 by:
 - a. Denying Plaintiff children continued enrollment in the School District for the period in which they remain homeless or the end of the school year in which they are permanently housed. 42 U.S.C. § 11432(g)(3)(A).
 - b. Failing to provide the family with a written explanation of the School District's decision, failing to apprise the family of their right to appeal, and

failing to assist the family to file an appeal. 42

U.S.C. § 11432(g)(3)(B)(ii) and 42 U.S.C.

§ 11432(e)(3)(E).

- c. Failing to immediately enroll Plaintiff children in the School District, the district in which Plaintiffs sought to enroll, pending full resolution of any dispute regarding enrollment or school choice. 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, in particular homeless children who now or in the future reside at the IHN Shelter. 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).

COUNT II

VIOLATIONS OF THE MCKINNEY-VENTO ACT BY DEFENDANT PDE

65. Defendant PDE has violated Plaintiffs' rights under the Mc-Kinney Vento Act, 42 U.S.C. §§ 11431 – 11435, as enforced via 42 U.S.C. §1983, and failed to comply with its obligations under 34 C.F.R. §76.700 by :
- a. Failing to resolve the dispute in favor of Plaintiffs and to ensure that the children can remain enrolled in the school as long as they are homeless or until the end of the school year in which they become permanently housed. 42 U.S.C. § 11432(g)(3)(A).
 - b. Failing to ensure that Plaintiffs have access to a fair and prompt process for challenging and resolving enrollment disputes affecting homeless children. 42 U.S.C. §11432(g)(1)(C).
 - c. Failing to direct the School District to: (i) provide Plaintiffs with written notice and an explanation of the School District's basis for denying enrollment, (ii) provide assistance to Plaintiffs through its Local Homeless Liaison and to help them access the dispute resolution process. 42 U.S.C. § 11432(e)(3)(E) and 42 U.S.C. § 11432(g)(2)(A).
 - d. Failing to ensure that the School District complied with the Act, including failing to review, revise and

eliminate policies and practices that act as barriers to school enrollment such as the School District's policy of refusing to enroll students from the IHN Shelter who are experiencing homelessness or failing to give homeless students and their families written notice of their decision and their right to appeal as required by the Act. U.S.C. § 11432(g)(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that this Court:

1. Issue a declaratory judgment against Defendants declaring that they have violated the rights of Plaintiff children under this Act as set out in this Complaint.
2. Issue a permanent injunction:
 - (a) Compelling Defendant PDE to:
 - i. reverse its determination as set out in its letter of September 22, 2009 and declare that Plaintiff children are entitled to maintain enrollment in Carlynton School District for the duration of homelessness or, in the event that they are no longer homeless, for the duration of the academic year and are entitled to other procedural and substantive protections of the Act.
 - ii. ensure that the School District complies with the Act.
 - iii. provide Plaintiffs a fair and prompt process for challenging and resolving enrollment disputes.

(b) Compelling Defendant School District to:

- i. maintain enrollment of Plaintiff children in Carlynton School District for the duration of homelessness or, in the event that they are no longer homeless, for the duration of the academic year and provide Plaintiffs with all other procedural and substantive protections of the Act
 - ii. adopt a policy which makes clear that all children, including Plaintiffs, who are served by the IHN Shelter are entitled to enroll and attend the School District and to receive substantive and procedural rights as set out in the Act.
 - iii. develop policies and procedures to ensure that homeless students and their families, including Plaintiffs, receive required notice of their right to appeal, a written explanation of the School District's decision, and assistance in filing an appeal.
3. Award Plaintiffs their costs and reasonable attorneys' fees; and
 4. Award such other and further relief as the Court may deem appropriate.

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