UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

N.C. and N.G.C., minors, by their parents, M.C. and K.C., Plaintiffs	:	C.A. No. 2013 -
v.	:	
EASTON AREA SCHOOL DISTRICT and	:	
CAROLYN DUMARESQ, Acting Secretary for the Pennsylvania Department of Education, Defendants.	:	

COMPLAINT

PRELIMINARY STATEMENT

This lawsuit is filed on behalf of two students experiencing homelessness who have recently been dis-enrolled from their public schools due to "lack of residency." Plaintiff N.C. is a senior in high school who is on track to graduate and his brother, Plaintiff N.G.C. ("N.G.") is an 8th grade student. Both children have special education needs and have attended school in Easton Area School District ("District") all their lives. In March 2011, following their father's loss of employment and foreclosure on their family home, the children and their parents began living in a "camper" (a/k/a "trailer truck") which the family had previously used only for vacations. The family's goal was

to keep the children in the same school district despite their living disruption in order to ensure this measure of stability in their lives and support school success.

Shortly after the family began living in the campground, which is located outside the District's attendance area, District administrators approached the family and informed them that the children qualified as students experiencing homelessness and were therefore entitled to additional protections and legal entitlements under the federal McKinney-Vento Homeless Assistance Act ("McKinney Vento" or "Act"), including the right to continue attending school in the District. Over the course of the time that they have lived in the camper, the family has also faced additional hardships and incurred significant medical expenses: their younger son, N.G., required open heart surgery, and K.C. and her son, N.C., were hospitalized following a nearly-fatal car accident. The family, who lacked health insurance, continues to pay these debts.

In October of this year, the family received a letter stating that the children would be dis-enrolled due to non-residency. This letter stated in part that the District had concluded that the children "no longer" qualified as students experiencing homelessness under the McKinney-Vento Act. The letter did not explain the basis for this decision nor did it apprise the family of their right to file an appeal from this decision with the State. However, as a result of the family's own efforts to learn more about their rights, the family completed an on-line appeal form and submitted it to the Pennsylvania Department of Education (PDE). The family subsequently received a letter from the District informing the family that the State had verbally agreed with the District's conclusion. Once again, the letter offered no explanation of the basis for its decision. In accordance with that letter, the children were dis-enrolled on December 9, 2013.

This lawsuit seeks the immediate re-enrollment of N.C. and N.G. on several grounds. First, the Act expressly requires that students claiming to be experiencing homelessness are entitled to remain in their chosen school until the full resolution of any dispute. By filing this case today it is clear that this dispute in ongoing and, accordingly, the children are entitled to continue attending school pending a final decision by a court. Second, we the District and the State erred by refusing to continue to recognize the children as homeless under the Act based, we assume, on the reasoning that their living situation had become permanent. However, it is well-settled that there is no arbitrary cut-off to homelessness, and the status of these children has remained unchanged since they were first recognized as homeless under the Act. Third, the Act provides that even if the children were to become permanently housed during the school year due to a change in circumstance, they are nonetheless entitled to remain in the same school until the end of the academic year. Because these children were recognized as homeless in September, they are legally entitled to remain in school until the end of this school year even.

The McKinney-Vento Act was created to ensure school stability for children like plaintiffs who are living in transient circumstances due to economic hardship. The facts surrounding these students are particularly compelling. N.C. is a 12th grade student who is on track to graduate this year and attends a specialized vocational program that is not available to him elsewhere. N.G. is a student with special education needs who requires the continuity of remaining in the same school.

By filing a Motion for Preliminary Injunction along with this Complaint, we ask this Court to ensure that these children receive the important protections of the McKinney-Vento Act and that the District be directed to immediately re-enroll these

students in their respective schools in accordance with the McKinney-Vento Act's "pendency" mandate and in light of their continuing homelessness status. Plaintiffs also seek an order requiring defendant District to continue to provide both students with 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.* and, if necessary, to award compensatory education services for any days these students have missed. Finally, plaintiffs seek an order directing both the District and the State to review and revise all policies and practices that fail to comply with the procedural protections of the Act and which act as barriers to ensuring school stability for all children experiencing homelessness.

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 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 claims set forth herein occurred in the Eastern District of Pennsylvania, where named plaintiffs reside.

3. There is an actual controversy between the plaintiffs and defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

PARTIES

4. N.G. is a 13-year-old boy in 8th grade who has previously been found eligible for and receives special education services under the IDEA.

5. N.C. is an 18-year-old youth in the 12th grade who also receives special education services under the IDEA and is on track to graduate in June 2014.

6. K.C. and M.C. are parents of the named plaintiffs who bring this lawsuit on behalf of their sons.

7. Defendant Easton Area School District ("Easton" 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.

8. Defendant Carolyn Dumaresq is Acting Secretary of Education, the chief executive officer of the Pennsylvania Department of Education ("Department"), which is an executive agency of the Commonwealth of Pennsylvania that oversees and supervises the Commonwealth's public education system. The Department is responsible for the general supervision of LEAs and is the "State Educational Agency" ("SEA") within the meaning of the IDEA and the McKinney-Vento Act. The Department is a recipient of federal funds under McKinney-Vento and, by accepting those funds, the Department is required to comply with all provisions of the McKinney-Vento Act and to ensure compliance by LEAs, including the District. 42 U.S.C. § 11431(1). Secretary Dumaresq is sued in her official capacity only.

9. At all relevant times, defendants were acting or purporting to act under color of state law.

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

10. 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.

11. 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 "living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations." 42 U.S.C. §11434a(2)(B)(i).

12. In enacting McKinney-Vento, Congress made funds available 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).

13. 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).

14. 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).

15. 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).

16. 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).

17. Thus, the Act expressly provides that a homeless child should 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.

18. 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).

19. 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).

20. If there is a dispute about school enrollment, the child or youth must be immediately admitted to the school 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.

21. 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).

22. 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).

23. Pursuant to the requirements of the McKinney-Vento Act, Pennsylvania has developed a State Plan, known as Pennsylvania's Education for Children and Youth Experiencing Homelessness Program, Amended October 2013 (hereinafter "State Plan") which further delineates how the State and local education agencies shall comply with requirements set forth in the Act, including ensuring immediate enrollment, providing written notice of a school's decision regarding enrollment, 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).

24. Pursuant to the State Plan, "[t]he homeless state coordinator is responsible for program coordination and collaboration at the state level, as well as dispute resolutions among LEAs." State Plan at p.5.[1]

25. The Pennsylvania Department of Education ("Department") 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" or "Guidance").[2]

26. Pursuant to this Guidance and the approved State Plan, if a dispute arises over school selection or enrollment, the child or youth involved must be immediately admitted to the school in which they are seeking enrollment, pending resolution of the dispute, 42 U.S. §11432(g)(3)(E)(i), and the parent or guardian must be provided with a written explanation of the school's decision on the dispute, including the right to appeal. 42 U.S. §11432 (g)(3)(E)(ii). Moreover, the parent/guardian/youth must be referred to the school district McKinney-Vento contact person ("LEA liaison"), who will carry out the state's dispute resolution process as expeditiously as possible after receiving notice of the dispute. 42 U.S. §11432 (g)(3)(iv).

27. In its Guidance, the Department recommends that the parent, guardian or unaccompanied youth who initiates the dispute contact the LEA liaison for individuals experiencing homelessness as soon as possible after receiving appropriate notice of the

1 A copy of the State Plan can be accessed at http://www.portal.state.pa.us/portal/server.pt/community/homeless_children's_initiative_projects/7491/overview/508546

2 This BEC is available at http://www.education.state.pa.us/portal/server.pt/community/basic_education_circulars/7497

dispute. If the person initiating the dispute does not contact the LEA liaison directly, the LEA shall be responsible for contacting the LEA liaison regarding the dispute as soon as possible and referring the family or youth involved to the liaison.

28. In accordance with the express provisions of the Act, the LEA liaison must ensure that the child or youth is immediately enrolled, explain the dispute resolution process to families and help them to use it. 42 U.S.C.A. §11432(g)(3)(E)(iii).

29. The LEA is also required to issue a written disposition of the dispute within 20 business days after the LEA liaison is notified of the dispute. The disposition shall be provided to the parent, guardian or unaccompanied youth and must explain the "basis for the decision" and advise the parent, guardian or youth of the right to appeal. 42 U.S.§11432(g)(3)(E)(i).

30. The State Plan further provides that when disputes or complaints of non-compliance arise regarding the education of children and youth experiencing homelessness, the State Coordinator may refer individual cases to the Pennsylvania Department of Education's Office of Chief Counsel, as needed. The Department will deliver a response within 20 business days of the receipt of the complaint.

31. State Guidance on the dispute resolution process further provides that LEAs should use and maintain copies of the Department's "Notice of Procedural Safeguards" form, which ensures that all LEAs (a) inform families of the basis of their decision regarding enrollment or school selection; (b) notifies families of their right to remain in their school of choice pending resolution of the dispute; and (c) explains the procedures for challenging the decision of the LEA.

32. The guidance further states that if the parent, guardian or unaccompanied youth is dissatisfied with the LEA's disposition of a dispute or would like to raise any issue of McKinney-Vento Act noncompliance, they may file a complaint or appeal with a McKinney-Vento site or regional coordinator or with the state coordinator. In lieu of filing an appeal with a McKinney-Vento coordinator, a parent, guardian or unaccompanied youth may elect to appeal the LEA decision directly to a court of competent jurisdiction. Participation in the appeal procedure is not required prior to taking legal action.

33. In addition, pursuant to this Guidance, the State Coordinator must review the complaint or appeal and assign it to a site or regional coordinator for disposition. The coordinator to whom the appeal is assigned may contact, interview and accept documentation from any individual or LEA involved, and shall issue a written disposition within 20 business days after the complaint or appeal has been assigned. The disposition shall be provided to the parent, guardian or unaccompanied youth involved. The child or youth shall continue to be enrolled in the school in which he or she is seeking enrollment until the complaint or appeal is resolved.

FACTUAL ALLEGATIONS

34. Plaintiff students have attended schools in Easton Area School District all of their lives and have strong connections to their respective schools.

35. Plaintiff N.C. is a senior in high school who is on track to graduate in June 2014. He attends both the regular high school and the Career Institute of Technology in the Electrical Construction Technology Program. N.C. is currently Shop Foreman and made honor roll in both schools this past quarter. Following graduation

from this program, he intends to apprentice with International Brotherhood of Electrical Workers ("IBEW") next year in order to become a licensed electrician. N.C. also has a specific learning disability in reading.

36. Plaintiff N.G. is in 8th grade with special education needs. He has been diagnosed with significant attention deficit issues and has a recognized exceptionality of emotional disturbance under the IDEA. Because the child stopped growing at age seven, he had a history of being targeted for bullying. The student has developed a strong social network at his current school.

37. Both students have been previously identified as eligible for and in fact receive special education services under the IDEA.

38. In September 2010, Plaintiff M.C. lost his job.

39. Plaintiffs became homeless in March 2011, following foreclosure on their home located at 3998 Glover Road in Easton, Pennsylvania, which is within the Easton Area School District.

40. Because the family had lost their home, car, and possessions and could not afford to rent an apartment in the community, they were forced to live in the family's camper which they owned and had previously used for family vacations.

41. Beginning in March 2011 and continuing to the present, Plaintiffs have lacked "a fixed, regular, and adequate nighttime residence" and qualify as homeless within the definition of the McKinney-Vento Act. Specifically, Plaintiff students qualify as children living in a camping grounds due to lack of alternative adequate accommodations. 42 U.S.C. §11434a(2)(B)(i).

42. During the time that the family has been homeless and continuing to the present, Plaintiff K.C. has worked part-time as an assistant teacher at the District.

43. When the children first became homeless in March of 2011, Michael Simonetta, Chief Operations Officer for the District, approached K.C. and explained that due to the family's living situation the children qualified as homeless under the McKinney-Vento Act.

44. In accordance with the requirements of the Act, the District agreed that the children could continue to attend their school of origin within the District although they now lived in a campground outside the District. The District also offered to provide N.C. and N.G. with transportation as required by the Act. K.C. declined the offer of transportation but accepted the District's offer of free and reduced lunch.

45. The camper where the family lives is a 24 by 7 foot trailer truck which is not winterized and was not intended for year-round use. The camper, which is nine years old, often loses power and occasionally the water lines freeze, forcing the family to stay with others on a temporary basis. Snow causes the camper to collapse and therefore snow and ice must be removed immediately.

46. The family has modified the camper to make it more livable by adding pieces of insulation where they could and openings for electricity. They have also fitted a water line with heat tape. There is no permanent plumbing or electricity. Drainage tanks must be emptied every few days. They have flexible water hoses and drainage tubing to which they added coating to reinforce it against the cold weather. There is no permanent skirting outside the camper, but they have added some home-made insulation. Heat is

supplied by propane tank, and there is an electric 3 gallon hot water tank which relies on water from the campground.

47. The campground has no mailing address and is privately owned. The Chestnut Lake Camp Ground is located at Frantz Road in Brodheadsville, PA 18322, approximately 15-20 miles from the District. Fees for use of the site are charged on a daily, weekly, or monthly basis. The family pays a monthly fee of $435 to use the site where the camper is located and, in addition, are required to pay an additional fee of $45 per child.

48. From a legal standpoint, there is a significant difference between living in a campground and living in a "manufactured home park" (a/k/a mobile home park). Pursuant to the Manufactured Home Community Rights Act of 2012, 68 P.S. § 398.1 *et seq.*, there are significant legal protections for residents of a mobile home park. For example, a mobile home park resident can only be evicted for nonpayment of rent, for violating the rules of the mobile home park more than once in a six-month period, or if the park closes or changes its use. All park rules must be written into the lease or otherwise provided to the tenant in writing. Rents for a mobile home site, commonly known as ground rents, cannot change more than once in a 12-month period.

49. There are no such legal protections for those living in a campground and therefore Plaintiffs can be asked to leave the site at any time without a need for an eviction hearing. There is no written lease. The website for the campground where Plaintiffs live states that rates can be changed at any time without notice.

50. In addition, the campgrounds can ice over in winter, causing Plaintiffs to be unable to access the camper and requiring them to stay with others or go to a hotel.

51. In the Fall of 2011, the family experienced additional setbacks and hardships. Thirteen-year-old N.G. experienced serious heart problems which ultimately required open heart surgery due to a rare condition known as "Wolf Parkinson White" disease. In addition, K.C. and N.C. were in a near-fatal car accident which required both to be hospitalized. At that time, the family had no health insurance, and, consequently, the family incurred significant medical expenses which they are still paying for.

52. Fortunately, in February 2013, M.C. secured a job working at a casino, and the family has recently started to save money while continuing to pay down their debt. The family plans to move to a rental apartment in Easton this Spring once they have secured sufficient money for rent.

53. The children began this school year enrolled in the District.

54. Without any advanced warning, the family received a letter from the District dated October 8, 2013, entitled "Notice of Removal For Non-Residency Status," informing the parents that N.C. and N.G. would be dis-enrolled. This was the first indication the family had that their children were no longer entitled to the protections of the McKinney-Vento Act. A copy of the October 8th letter is attached hereto as Exhibit A.

55. Although the letter referenced a right to request a hearing in order to prove "residency" in the District, the letter did not explain the dispute resolution process for non-residents under McKinney-Vento Act, nor did the letter provide any basis for the District's new position that the students were no longer eligible for the protections of the Act. The District's missive also failed to 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 Pennsylvania's State Plan and the BEC.

56. Because the family could not prove residency in the District, they did not request a residency hearing.

57. Due to family's concerns that their children were now subject to disenrollment, the family tried desperately to learn what options, if any, they could pursue under the McKinney-Vento Act. M.C. called legal aid and several numbers at the Pennsylvania Department of Education. He ultimately found, on his own, a copy of a state-issued McKinney-Vento complaint form which he completed and submitted to the State.

58. Using this form, the family filed an appeal of the District's decision with the State on October 11, 2013.

59. Thereafter, M.C. received a call from the Regional McKinney Vento Coordinator Russell Valentini, who explained that he was aware of their situation and was talking to the District about it. He stated that he anticipated the children would be able to remain in the District as they fell within the definition of students experiencing homelessness under the Act.

60. Approximately six weeks later, M.C. received a call from Sheldon Winnick, State Coordinator for Pennsylvania's Education for Children and Youth Experiencing Homelessness at the Pennsylvania Department of Education. He stated that the District had concluded that the students were no longer eligible to attend their school of origin because they did not lack a fixed, regular nighttime residence. He explained that the decision was made by the District not the State and his only role was to provide

technical assistance and not to make any legal determination. Therefore, he concluded, because the District had determined that these students were no longer eligible under the Act he would agree with that decision.

61. The October 8th pro forma letter and M.C.'s subsequent conversation with the State Coordinator left the family with no understanding of the basis for the District's determination or the scope of the State's investigation.

62. No letter was ever issued by the State explaining the basis for its decision.

63. The family received a second letter from the District dated November 21, 2013, which informed them that the State agreed with the District and therefore the children would be dis-enrolled from school on December 9, 2013. A copy of this letter is attached hereto as Exhibit B.

64. Similarly, this letter did not provide the parents with any information regarding the basis for its conclusion or information about any right to undertake further appeal of the decision.

65. In response to this letter, M.C. repeatedly called the District explaining how detrimental it would be to dis-enroll his sons in the beginning of December and requesting that his sons be able to complete the school year. The District refused these requests.

66. Counsel for plaintiffs only recently became involved in this case, but explained our intent to file a lawsuit to counsel for the District. In light of the continuing dispute, counsel specifically requested that the children be permitted to remain in school.

Opposing counsel refused this request and made clear her client's intent to dis-enroll the students as planned on December 9, 2013.

67. As a result of Defendants' decisions and practices, Plaintiffs have been denied the protections and entitlements of the McKinney-Vento Act, including: the right to remain in the same school for the duration of homelessness; the right to remain in the same school for the remainder of an academic year if it determined that a child is permanently housed; the right to be informed in writing of the legal basis for the District and State decisions to deny continuing enrollment, and the right to be apprised of and be supported in the filing an appeal.

68. As a result of the Defendant District's failure to permit plaintiff students to remain in the same school, the Plaintiff children are no longer receiving a free appropriate public education in accordance with their rights under the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C.§1400, *et. seq.*

69. Plaintiffs have no adequate remedy at law.

COUNT I

VIOLATIONS OF THE MCKINNEY-VENTO ACT BY DEFENDANT DISTRICT

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

71. 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 ensure school stability for plaintiff students for the duration of homelessness. *See* 42 U.S.C. § 11432(g)(3)(B)(i).

b. Failing to permit the students to remain in the same school pending full resolution of this dispute. 42 U.S.C. § 11432(e)(3)(E).

c. Failing to provide plaintiffs with a written explanation of the 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).

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 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 school in accordance with the Act. 42 U.S.C. § 11432(g)(7)(C).

COUNT II

VIOLATIONS OF THE MCKINNEY-VENTO ACT BY DEFENDANT DEPARTMENT

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

73. The Department 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 fully resolve the dispute in favor of Plaintiffs 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 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; and (ii) direct the District and its Local Homeless Liaison to provide assistance to Plaintiffs 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 District complied with the Act, including failing to review, revise and eliminate policies and practices that act as barriers to school enrollment 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).

COUNT III

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

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

75. 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 Plaintiff students with the services identified in their respective Individualized Education Plans and thereby depriving Plaintiff students of a free appropriate public education in contravention of 20 U.S.C. § 1415 (2005). *See* 20 U.S.C. § 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).

76. 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 Plaintiffs students N.C. and N.G. as set out in this Complaint.
2. Issue a preliminary injunction directing the District to immediately re-enroll Plaintiff students in the District due to this ongoing dispute in accordance with the pendency provisions of the Act. 42 U.S.C. § 11432(e)(3)(E).
3. Issue a permanent injunction directing the District to:

i. maintain enrollment of Plaintiff students in the District for the duration of homelessness, in a manner consistent with the terms of the McKinney-Vento Act. See 42 U.S.C. § 11432(g)(3)(B)(i).

ii. provide Plaintiff students with all other procedural and substantive protections of the Act.

iii. provide Plaintiff students a free appropriate public education ("FAPE") in accordance with the IDEA, 20 U.S.C. 1400, *et. seq.*

iv. ensure that in the event Plaintiff students become permanently housed during the school year that they will continue their 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 Plaintiffs, receive required notice of their right to appeal, a written explanation of the District's decisions, and assistance in filing an appeal.

4. Issue a permanent injunction compelling Defendant State to:

i. revise its practices for addressing McKinney-Vento disputes to require the State Coordinator to issue a written decision in every case explaining the basis of its decision, describing its investigation, and advising families of their rights to further appeal.

ii. Institute policies and procedures to closely monitor the practices of school districts to ensure full compliance with the Act.

5. Award Plaintiffs their costs and reasonable attorneys' fees;

6. Award Plaintiffs compensatory special education services for any tine they were out of school and were therefore denied a free appropriate public education as a result the District's conduct. 20 U.S.C. § 1415(i)(2)(c)(iii).

7. Award such other and further relief as the Court may deem appropriate.

Respectfully submitted,

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